

**REAPPORTIONMENT  
IN  
PENNSYLVANIA**

**Rose Institute of State and Local Government**

**Claremont Men's College**





**REAPPORTIONMENT IN PENNSYLVANIA:  
A HISTORY OF THE REAPPORTIONMENT PROCESS  
AND THE  
LEGISLATIVE REAPPORTIONMENT COMMISSION**

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## INTRODUCTION

There can be little doubt that the process of legislative reapportionment--or malapportionment as it should really be called--entails one of the most blatant and persistent examples of conflict of interest in politics today. Perhaps even more important is the reality that few, if any, political processes are more continually abusive of the public interest or more likely to enhance the already dangerously low esteem that the American public currently holds for state legislatures and state legislative processes.

In 1968, the Pennsylvania constitutional convention provided for a Legislative Reapportionment Commission to rid the state of the "evils" of reapportionment by the legislature. Past instances of gerrymandering, district population inequality, and a lack of political subdivision integrity led the convention delegates to the conclusion that Pennsylvania should have a bipartisan and independent redistricting commission, which would be guided in its work by constitutionally-defined criteria. It was hoped that such a commission might produce a reapportionment plan that would be acceptable to all citizens, not just the "self-serving" legislative incumbents. In 1972, the Pennsylvania commission adopted its first redistricting plan, but not without encountering a good many citizen challenges. Was the 1972 commission plan, in fact, any more equitable than the previous legislative plans, or did the commission plan suffer from similar problems? What are the likely outcomes of the commission process in 1981?

Each state encounters differing problems in developing a reapportionment plan. Among these are political partisanship, rural/urban conflicts, and rivalry among racial and ethnic groups. This historical study of representation and reapportionment in Pennsylvania will make clear the origins of the questions presently facing the 1981 reapportionment commission. Special emphasis is placed in this study on the legal aspects of reapportionment, since the work of the

Legislative Reapportionment Commission must be guided in large part by past judicial decisions. Finally, this study offers an analysis of the current status of redistricting in Pennsylvania, in hope of shedding light on the functioning of the 1981 Legislative Reapportionment Commission.

Since congressional reapportionment in Pennsylvania is still a responsibility of the General Assembly (state legislature), the redrawing of congressional districts will not be discussed in this study. Instead, we will focus our attention solely on legislative reapportionment.



## Chapter 1

### A HISTORY OF REAPPORTIONMENT IN THE PENNSYLVANIA LEGISLATURE

#### The Provincial Assembly

From William Penn's second Frame of Government in 1683 through the state constitution of 1776, the county served as the basic unit of representation in the Pennsylvania legislature. The 1683 Frame set a pattern for later Pennsylvania constitutions by specifically providing that the number of legislative representatives should be enlarged from time to time in line "with the increase and multiplying of the people." The Charter of Privileges of 1701 provided that the Assembly should consist of four persons from each county, but that whenever the separation of the Lower Counties (Delaware) transpired, the counties of Pennsylvania proper should be entitled to double their representation.

The demographic picture of early Pennsylvania was complex. Four major groups of people settled the colony, forming regional communities of interest. The English Quakers were the dominant group, settling mostly in the southeastern counties. By the mid-eighteenth century, the Germans constituted a full third of the population, having settled mainly in the interior counties of Northampton, Berks, Lancaster, Lehigh, and the surrounding areas. The Scots-Irish frontiersmen settled first in the Cumberland Valley, then moved farther west into central and western Pennsylvania. Philadelphia became the metropolis of the British colonists.<sup>1</sup> Since each region represented a nearly homogeneous unit of socio-economic interest, sectionalism became a major issue in early Pennsylvania politics.

With counties as the unit of legislative representation, certain sectional factions were able to construct the Assembly to their own political advantage. Fears of city domination caused representatives from rural regions to rally against

the urban areas. Thus, to maintain their power, the Quakers united with the small eastern counties to keep Philadelphia from becoming the dominant power center in the colony and to prevent the western counties, as they increased in population, from electing a majority in the Assembly and forming a coalition with the city. As the Quakers and their allies saw the situation, the danger in the east was from the number of people in Philadelphia, while in the west the danger was from the number of counties. Their solution was simple--to keep the city populace disenfranchised,<sup>2</sup> to create new counties slowly, and to restrict representation in the Assembly of both Philadelphia and the western counties.

The Quakers' efforts, however, were stymied by the continued growth of the larger eastern counties. By 1752, the Assembly was composed of thirty-six members: twenty-six came from Philadelphia, Chester, and Bucks Counties (including two from Philadelphia City), while the Scots-Irish settlements of the "back-counties" had only ten representatives.

The first official report on the unbalanced relationship between population and representation was issued by the Committee of the Assembly on August 20, 1752. This report, using the representation of Philadelphia County as a population/representation standard, showed that the western counties of Lancaster, York, and Cumberland combined had three less representatives than their population merited, while Philadelphia City had one less. Meanwhile, Chester and Bucks Counties had five more representatives than they truly deserved.

The 1752 report had no salutary effect, however, and by 1760--after the creation of Berks and Northampton Counties--the population discrepancies in representation had actually worsened. The three original counties (excluding Philadelphia City) had a total of 13,587 taxable inhabitants and twenty-four representatives. The western counties had a total of 15,443 taxables, but held only ten seats in the Assembly.

Animosity increased toward the older eastern counties as the newly-created counties were denied their fair share of representation. These new, western counties were developing more rapidly in population, wealth, and tax-paying ability than were the older counties, yet where principles of equity demanded an increase in the number of western legislators (whether representation was based on taxation or population), the east responded by making it still more difficult for the west to gain seats.

On March 23, 1764, a petition listing many complaints was presented to the Assembly by Cumberland County. The foremost complaint was inadequate representation in the Assembly. Inequitable representation, it was pointed out, spurred many antipathies--sectional, religious, and ethnic. Westerners felt strongly that if they had been represented adequately in the Assembly in the past, many of these conflicts would never have arisen.

Later in the 1760s, more petitions for the creation of new counties, and for greater legislative representation for those already established, descended upon the Assembly. Fighting back, the eastern-controlled Assembly took a major step in January of 1770 to make increased membership more difficult for the westerners. A law was passed providing that, thereafter, all members "shall be chosen from among the inhabitants of the City or County from which they were elected." This law prevented the western counties from choosing representatives from the east who could be present at all times during the sessions of the Assembly with much less inconvenience than was suffered by persons whose homes were in the west.

By 1771, the eastern counties were overrepresented to a greater extent than ever, having seven more members than they should have been allotted, while the western counties had eleven fewer than they were deserving. Between 1771 and 1773, three additional western counties were created, but still there was no increase in the Assembly membership. By 1776, the west had gained just five repre-

sentatives, bringing its total to fifteen, in comparison with the twenty-six from the east.

With the outbreak of the Revolutionary War, the west sought its revenge, and took action in the state constitutional convention of 1776.<sup>3</sup>

### **The Constitution of 1776**

On March 14, 1776, the Assembly added 17 representatives from the western counties and Philadelphia. Although this addition would seem to alleviate the problem of the inequitable distribution of representatives, any real political effect was mitigated by the degree of power maintained by the eastern and Quaker contingency. Also, Pennsylvania continued to use a stiff property qualification for suffrage.

A marked change occurred, however, when the Provincial Conference decided to give each county equal representation in the constitutional convention. This gave the west its chance to lash back at the east. The new constitution provided for a unicameral Assembly comprised of six representatives from each county and six from the city of Philadelphia. This system of geographic representation was to last for only a short time, however, after which Assembly membership was to be based upon proportional representation. Section 17 of the constitution declared that "representation in proportion to the number of taxable inhabitants is the only principle that can at all times secure liberty and make the voice of a majority of the people the law of the land." The equal representation by county was therefore offered for a two-year period only, at the end of which the Assembly would identify taxable inhabitants in each county and in Philadelphia, and would "appoint a representative to each, in proportion to the number of taxables in return." The term of office would be one year.

Two salient features of this constitution made for a more "democratic"

legislature than the old Provincial Assembly. First, the new constitution lifted all property and/or financial qualifications, both from the electorate and from the elected. Second, population increases and shifts were to be kept track of by a septennial enumeration of taxable inhabitants, followed by reapportionment.<sup>4</sup>

### **The Constitution of 1790**

The constitutional convention of 1789 created a bicameral legislature, but the conditions regarding representation remained unchanged. The constitution of 1790 set the number of representatives at no fewer than sixty and no more than one hundred. It also guaranteed each county at least one representative, but this provision did not apply to any counties created in the future.<sup>5</sup>

It was the task of the new legislature to set requirements for the newly created state Senate. The Senate would have between one-fourth and one-third the number of Assembly representatives. The 1790 constitution provided for both single- and multi-member senatorial districts, but no district could elect more than four senators. No city or county boundaries could be divided in the districting process (although a district could contain two contiguous counties); Philadelphia was thus limited to four senators. The term of office was four years.<sup>6</sup>

### **The Constitution of 1838**

The provisions for septennial redistricting and reapportionment remained unchanged with respect to both houses of the legislature in the 1838 constitution. However, senatorial apportionment requirements were altered such that a senatorial district could elect no more than two members. A single-member district could not violate city or county boundaries, but the new constitution made an exception for a city or county entitled to more than two senators. Still, no city or county would be allotted more than four seats in the upper house, so Philadelphia remained restricted

to four senators.<sup>7</sup>

### **The Constitution of 1873**

The constitution of 1873 introduced a number of changes in the Pennsylvania legislature. The membership of both the House and the Senate was nearly doubled, in the hope that sheer numbers would make bribery difficult and the costs of extensive bribery prohibitive. The division of the state into representative and senatorial districts was still left to the legislature, but the new constitution required that these districts be based upon a ratio determined by dividing the total state population by 200 for representative districts and by fifty for senatorial districts. Each county, regardless of its population, was entitled to at least one representative. The new provision for legislative representation specified that representation would be based upon the federal decennial census rather than a septennial enumeration of taxables.<sup>8</sup>

The Senate. With respect to Senate representation, the new constitution provided that the fifty senators be elected from single-member districts. It changed Philadelphia's representation by prohibiting any city or county from having more than one-sixth the total number of senators. This limitation aroused bitter protest among the members of the Philadelphia delegation to the 1873 constitutional convention. All other delegates, however, seemed allied against Philadelphia--even the delegates from Allegheny County, with its rapidly growing population--so the one-sixth limitation was adopted.<sup>9</sup>

Under the constitution of 1838, Philadelphia City had been granted four senators, with Philadelphia County entitled to an additional one. With the consolidation of the city and the county, the additional representative was lost. Based on 1870 census figures, Philadelphia in 1874 had one senator for each 168,000 people; Allegheny County had one per 87,400; Montgomery County, one for 81,000;

Fayette and Greene Counties, one for 69,000. Thus, the one-sixth limitation in the 1873 constitution prevented "equal" representation for Philadelphia.

Supporters of the limit on Philadelphia Senate seats argued that population should be used as a basis of representation, but that an adjustment should be made where the concentration of population and wealth brings an excess of power. They felt that the greater power of Philadelphia to organize politically would place the rest of the state at its mercy. It was believed that cities were not only havens of political corruption but were also unproductive consumers of the products of rural society. Rural representatives charged that Philadelphia and Pittsburgh virtually dominated the legislature, and that Philadelphia controlled the most important committees.

Philadelphia countered these claims by pointing out that no Philadelphian had been a Pennsylvania governor or United States senator for fifty years. Philadelphians also argued that since they paid more than one-third of the total state taxes, they were entitled to a numerically fair share of state representatives. Moreover, they claimed that Philadelphia suffered more from internal interference by the legislature than any other area of the state. They felt that if they could not have equal representation, they should at least have "home rule."<sup>10</sup>

Extensive debate arose during the 1873 constitutional convention regarding the districting method for senators (i.e., single-member districts, multi-member districts, or some combination of both). One small group of delegates proposed the use of cumulative voting or limited voting. The cumulative voting plan weighed an elector's vote such that if three members were to be elected from a multi-member district, each voter had three votes and could distribute them as he pleased. He could issue one vote each to three candidates, or give two votes to one candidate and one to another, or give three votes to a single candidate. Limited voting, for its part, limited an elector's vote to less than the full number of members to be elected

from the district in question. For example, if three members were to be elected from a legislative district, a vote could cast a ballot for only one or two candidates.

Both of these plans were criticized as being partisanly inspired. With cumulative voting, the legislature would probably reflect each party's electoral strength, whereas the normal result of limited voting in a three-member legislative district would be to give two seats to the majority party and one seat to the strongest minority party.

The chairman of the Committee on Suffrage, Elections, and Representatives at the constitutional convention was Charles Buckalew,<sup>11</sup> the convention's Democratic leader. He argued for the election of all senators under a limited-vote plan, with one-half of the membership to be elected every two years. This plan, he believed, would not only ensure minority representation, but would also improve the quality of the men elected. It would become a function of each party's state convention to select the best candidates. Buckalew's critics, however, deemed it inadvisable to select senators in a state party convention, and questioned whether this system would indeed improve candidate choices.<sup>12</sup>

The House. It was initially proposed in the 1873 constitutional convention that the size of the House be increased to a minimum of 200 members, with a slightly higher figure to be expected due to fractional ratios and the guarantee of one representative per county. This plan, however, met with serious opposition on the convention floor. Convention Republican leader Wayne MacVeagh saw no need for the membership increase. The new constitution, after all, outlawed special legislation, which had been the primary source of legislative corruption in the past. Further, MacVeagh argued that the legislature would be focusing more on statewide than on local issues, and he felt that a large body could not be deliberative.<sup>13</sup> A smaller body would be more prestigious and would attract better candidates, and far from lending itself to corruption, the concentration of responsibility would promote



greater integrity.<sup>14</sup>

The convention's Committee on the Legislature, however, believed a larger House to be more desirable, and it recommended a House of 150 members. On second reading, this size was approved (although it would be changed later).

The debate concerning the size of the House became inseparable from the question of the basis of representation. The larger the House membership, the smaller would be the average population per member. The smaller the House, the greater would be the representational distortion if each county were given at least one representative. The convention delegates finally decided on an even larger membership than 150, and overrode their second-reading decision and raised the minimum size of the House to 200. There would be something closer to population equality under these circumstances, although the populous cities and counties were still dissatisfied.

The Philadelphia delegates cried discrimination. After being denied the fair representation they had sought in the Senate, they were not going to accept a House plan that granted a seeming advantage to the smallest counties. They argued that separate representation should not be guaranteed to the six smallest counties, and that no county with less than half a ratio should be granted its own representative.<sup>15</sup> One Philadelphia delegate stated that the favored plan gave representation to acres, not people. With a population of 674,000, Philadelphia would have only twenty representatives, while the state's least populous counties, with a combined population of 634,000, would have forty-nine.

Charles Buckalew then introduced an alternative proposal which combined the eleven least populous counties into five districts, but otherwise kept the principle of county representation intact. Philadelphia would get twenty-eight of 150 representatives. This plan won support from the Philadelphia delegation, but was rejected outright by the less populous counties. They felt that their diversified rural

interests (agriculture, timber, coal, oil) were deserving of a greater voice in the General Assembly. The smaller counties controlled a majority of the delegates on this issue. Eventually, the convention approved the principle of county-based representation, and increased the total House membership to approximately 200.

Under the 1870 census, the apportionment ratio indicated that there should be one representative per 17,500 people. The decision to use a population ratio for the apportionment of representatives among counties posed another problem: how to handle fractional ratios in the distribution of seats. The original proposal of the Committee on the Legislature granted an additional seat to each county having a remainder that was more than one-half a ratio. The plan that was finally adopted, however, gave counties with fewer than five representatives an additional representative for a remainder that was more than one-half a ratio, but counties with five or more representatives needed a full ratio for each additional seat.<sup>16</sup> The House membership increase from 150 to 200 lessened the opposition to this plan by the larger counties because the unrepresented remainders would be smaller.

There was added controversy over whether or not to retain the single-member district system. Some delegates contended that, with the increased size of the House, single-member districting would bring representatives closer to their constituencies. But Buckalew, who had proposed the 1857 constitutional amendment for single-member districts, now opposed such districts because they "tended to degrade and lower the tone and character of representation in legislative bodies."<sup>17</sup>

In the end, the delegates decided to adopt a system permitting both single- and multi-member districts, but with no district to have more than four representatives. Cities with more than four ratios were cut up into districts, but not necessarily into single-member districts.

Apportionment Provisions. The constitutional apportionment provisions, though actively debated in 1873, did not become as controversial as the sections pertaining

to the composition of the House and Senate. Article II, section 18 of the 1873 constitution stated:

The General Assembly at its first session after the adoption of this Constitution, and immediately after each United States decennial census, shall apportion the State into Senatorial and Representative Districts agreeably to the provisions of the two preceding sections.

Previously, there had been no problem with compelling reapportionment, so frequency of redistricting was not at issue. The principal source of debate was the question of whether or not the legislature should be entrusted with the redistricting process.

Buckalew criticized reapportionment by the General Assembly, fearing incumbent gerrymandering. As an alternative, he proposed the creation of a reapportionment commission. The commission was to be composed of twelve members, four elected by the Senate and eight by the House under a system of limited voting.<sup>18</sup>

The constitutional convention rejected the Buckalew proposal, but considered other commission plans. One called for a popularly elected commission chosen at large under a limited voting system. Another proposed a mixed system whereby the legislature would establish senatorial districts but local commissions would create single-member districts from multi-representative counties.<sup>19</sup>

Representative MacVeagh argued at the constitutional convention for legislative reapportionment, stating that the "newly-reformed Legislature would be more capable (than a commission) of handling the task." He suggested that the convention establish certain standards, such as a maximum district population deviation, to insure legislative accountability. In a close convention vote, legislative reapportionment was adopted--and without any "safeguards" other than immediate action following each decennial census.

## Aftermath of the Constitution of 1873: Partisan Repercussions

When the legislature began implementing the new constitution, the Republican majority set to sacrificing constitutional intent to partisan interest. Initially, controversy developed over the framing of a reapportionment bill to provide for the increased membership of the House and Senate. In both houses, the Committees on Reapportionment were appointed with only token Democratic representation, and as the process went on, a partisan battle ensued. Since the constitutional convention had failed to impose any requirements for population equality, compactness, or contiguity of territory in election districts, the Republicans indulged in the same kind of gerrymandering characteristic of previous state reapportionments.<sup>20</sup>

In the Senate bill, strong Democratic counties were united into single districts, while marginal Democratic counties were joined with overwhelmingly Republican areas. The result, according to the Democrats, guaranteed the Republicans thirty-three of the fifty Senate seats.<sup>21</sup>

The Democrats claimed that the House reapportionment bill was equally unjust. The "Republican plan" was designed to give the GOP control of thirty-three of Philadelphia's thirty-eight seats. In addition, Republican Allegheny County, with 262,000 inhabitants, was divided into five districts electing fourteen assemblymen, while marginal Luzerne County, with a population of 161,000, was divided into eight districts electing nine members. Basing its conclusions on the vote in the 1872 gubernatorial election, the Harrisburg Patriot claimed the bill would result in the election of 128 Republicans and only seventy-three Democrats, whereas an equitable apportionment in terms of party strength would have resulted in the election of 106 Republicans and ninety-five Democrats.<sup>22</sup>

In an effort to force a less partisan reapportionment, the Democrats refused to approve the appointments of Republican Governor Hartranft, and again rejected them when they were resubmitted. Journalists representing the Republican

"machine" accused the Democrats of blackmail, and appealed to Senate Republicans to make the reapportionment bill as partisan as possible. The Republicans refused to compromise, and succeeded in enacting both the Senate and the House bills.

Undoubtedly, the 1874 redistricting was partisan. The Senate ratio of representation, based on 1870 census figures, was about 70,400 inhabitants. Under the 1874 act, no county with less than four-fifths of a ratio was to form a separate Senate district unless the adjoining counties were each entitled to one or more senators. In that case, a county with less than four-fifths of a ratio could be assigned a senator, provided its population exceeded one-half of a ratio (or 35,200). Since Chester and Montgomery Counties, adjoining Philadelphia, each had at least one senator, Delaware County, with a population of 39,400, was made into a separate Senate district. Lebanon County, with a population that was slightly less than half a ratio (34,100 inhabitants), was also made into a separate Senate district, since adjoining Berks, Lancaster, Dauphin, and Schuylkill Counties were all entitled to at least one senator each. Staunchly Republican Chester and Delaware Counties were assigned the same representation (one senator each) as Democratic Berks County, although the latter had more than three times the population of either Chester or Delaware.

Gerrymandering at the House level was less obvious, but also less "necessary" for the Republicans because of the size and nature of the House. Philadelphia and Allegheny Counties together would elect fifty-three of the 201 House members.

These reapportionment acts remained in effect for thirteen years, insuring Republican control of the General Assembly during all of that time.

#### **Reapportionment After 1874**

After the 1874 reapportionment, the legislature's record on reapportionment was erratic. The legislature waited until 1887 before reapportioning on the basis of

the 1880 census, and there was not another reapportionment until 1906. The legislators took no action after the 1910 census, but acted promptly after the 1920 census and redistricted the state in 1921. Both houses were reapportioned and redistricted in 1937, but the reapportionment bills were improperly drawn and were put aside by the courts. The House was reapportioned in 1953, but the 1953 Senate plan neglected to include one township, and the bill died. This meant that the 1921 senatorial districts stood until the state Supreme Court reapportioned the state in 1966.

The 1953 House plan was loudly protested by the Democratic leadership for its partisan overtones. The plan was enacted by a vote of 106-92, one more than the constitutional requirement for a majority. (In 1953, the House had 110 Republicans and ninety-eight Democrats; 105 votes were needed for passage.) All but one of the negative votes were cast by Democrats. The deciding vote was cast by a hospitalized Republican who was wheeled into the chamber just for that purpose.

Two important aspects of the 1953 plan deserve attention. Almost half (97) of the House members were elected from two-, three-, or four-member districts. Between 1954 and 1964 (when the Pennsylvania Supreme Court invalidated multi-member districts), very few minority-party legislators were elected in these districts. The districts tended to be politically homogeneous, either solidly Republican or solidly Democratic. Aside from the problem of partisanship, the multi-member district system simplified the nature of the redistricting process, since it was much easier for the legislature to subtract a member from a three-member district than to draw two new districts.<sup>23</sup>

The population shift from urban to suburban areas meant that, by the 1960s, the 1953 plan was disadvantaging the suburban areas far more than it was hurting the cities. In fact, by 1960 Pittsburgh and Philadelphia were slightly overrepresented in the House, while the four suburban counties surrounding Philadelphia

controlled only 9 percent of the House seats, although they had 14 percent of the population.

Clearly, the legislative apportionment section of the Pennsylvania constitution (article II, section 18) was practically ignored until Baker v. Carr, when the United States Supreme Court issued its first mandate on reapportionment requirements.





## Chapter 2

### PENNSYLVANIA REAPPORTIONMENT IN THE 1960s AND 1970s

#### Constitutional Provisions

On March 26, 1962, the United States Supreme Court held in Baker v. Carr<sup>1</sup> that a claim founded on the equal protection clause of the Fourteenth Amendment to the United States Constitution, challenging the validity of an apportionment of seats in a state legislature, was justiciable. Two years later, in Reynolds v. Sims,<sup>2</sup> the Court delineated the standards to be followed in enforcing equal protection:

(a) (T)he Equal Protection Clause requires that a state make an honest and good faith effort to construct districts in both houses of its legislature, as nearly of equal population as is practicable. . . .

(b) A state may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative reapportionment scheme. . . . Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines may be little more than an open invitation to partisan gerrymandering. . . . (But) the overriding objective must be substantial equality of population among the various districts. . . .

(c) (D)ivergencies from a strict population standard . . . based on legitimate considerations incident to the effectuation of a rational state policy . . . are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.

In sum, districts must be as nearly equal in population as practicable. States may choose to follow guidelines for the integrity of political subdivisions, compactness and contiguity, but only as long as they adhere to the "strict population standard" as part of their state policy.

Federal and state courts were directed to establish appropriate and timely "remedial devices" to enforce state compliance with this Supreme Court mandate.<sup>6</sup>

The intent was to force the state legislatures to take affirmative action under these guidelines, and to have the federal district and state appellate courts intervene "only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so."<sup>7</sup>

### **Pennsylvania in the 1960s**

Following the 1960 census, the state legislature tried and failed to enact a reapportionment bill. The failure resulted from the partisan composition of the legislature: the House had a 110-100 Democratic majority, but there was a 25-25 Democratic-Republican split in the Senate. The legislature did not succeed in passing a reapportionment bill until Governor William Scranton called a special session in 1963. By that time, both houses of the legislature were again under Republican control, and the legislature was required to act in order to meet the provisions of Baker. Before the state Supreme Court could respond to a challenge by "taxpayers and electors" to the 1963 reapportionment, the United States Supreme Court had issued its decision in Reynolds. The Pennsylvania Supreme Court was then forced to try to do something about the inequities in the state constitution.<sup>8</sup>

As noted earlier, the Pennsylvania constitution of 1873 required that the legislature be apportioned on the basis of district population equality. The constitution also mandated compact and contiguous districts.<sup>9</sup> Before 1964, however, very little effort was put into fulfilling these constitutional provisions. The one notable exception was in 1938, when the Dauphin County districts were redrawn to make them more contiguous.<sup>10</sup> It was not until its decision in Butcher v. Bloom,<sup>11</sup> on January 14, 1964, that the Pennsylvania Supreme Court made a serious effort to address the problems of state legislative apportionment.

On March 30, 1962, some Pennsylvania voters sued the Secretary of the Commonwealth, George I. Bloom,<sup>12</sup> in an attempt to preclude the future election of

state legislators under existing apportionment statutes.<sup>13</sup> The Dauphin County Court did not stay the 1962 election, but did retain jurisdiction while it allowed the legislature the time to enact appropriate redistricting legislation during its next session.<sup>14</sup>

During the 1963 regular session, the legislature took no action on reapportionment. At a special session that same year, however, the General Assembly enacted two reapportionment statutes, to become effective on January 9, 1964. The plaintiffs in the Dauphin County court suit then petitioned the Pennsylvania Supreme Court to take immediate jurisdiction with the approach of the 1964 legislative elections. On January 15, 1964, the Supreme Court directed the Dauphin County court to hear the case and remit its findings to the state Supreme Court. On September 29, 1964, in a unanimous opinion authored by Justice Roberts,<sup>15</sup> the Court found the new districts malapportioned and directed the legislature to prepare a new reapportionment law for the 1966 election, but allowed the 1964 elections to be conducted under the 1964 law.<sup>16</sup> The Court retained jurisdiction pending legislative action.<sup>17</sup>

Meanwhile, in November of 1963, a similar suit (Drew v. Scranton) had been filed in federal district court. In April of 1964, the federal court held the Pennsylvania Reapportionment Acts of 1964--as well as certain provisions of the Pennsylvania constitution--to be in violation of the Fourteenth Amendment to the United States Constitution.<sup>18</sup> On appeal, however, the U. S. Supreme Court vacated the lower federal court's decision because the same issues were pending in the Pennsylvania Supreme Court.<sup>19</sup>

Following the Drew decision, the Pennsylvania Court unanimously struck down the concept of fractional ratios, the one-House-member-per-county system, the provisions which forbade the crossing of political boundary lines in redistricting, and the one-sixth limitation on Senate seats per county. The Court even insisted that,

"in light of constitutional pitfalls" inherent in the multi-member district system, it would be "more prudent" for the legislature to create single-member districts.<sup>20</sup>

In Butcher I, the Pennsylvania Supreme Court held the 1964 apportionment in violation of the Reynolds standard of equal-population representation.<sup>21</sup> The Pennsylvania Court determined that the plan for the House created single-member districts ranging in population from 4,485 to 81,534. This meant that the representative from the most populous district, Clearfield County, spoke for approximately eighteen times as many constituents as the representative of the least populous district, Forest County. Other small-population counties besides Forest were likewise overrepresented; for example, there was one representative from Sullivan County for only 6,251 people and one from Cameron County for only 7,856. The Court also showed that, while the 39th Senate District had a population of 352,629, the 14th District had only 129,851. Similarly, the 10th and 20th Senate Districts had more than twice the populations of the 14th, 33rd, and 36th Districts.<sup>22</sup>

When the General Assembly enacted the apportionment statutes, it had not had the benefit of the guidelines set forth in Reynolds, which was decided six months later. As indicated earlier, the Pennsylvania Supreme Court refused to enjoin the approaching 1964 elections and allowed them to take place under the Acts of 1964. While the Court retained jurisdiction, it gave the legislature until September 1, 1965, to reapportion both houses properly.

When the legislature failed to meet this deadline, the Court itself undertook the task of reapportionment. The Court allowed any interested party to submit proposals. After considering these proposals, the Court handed down its own apportionment plan on February 4, 1966--in time for the primary elections of that year.<sup>23</sup> The basis of the Court's plan was described in the per curiam opinion:

In the formation of the reapportionment plans herein adopted, we have been guided by the dictates of the Federal Constitution and the controlling decisions of the Supreme

Court of the United States. Our primary concern has been to provide for substantial equality of population among legislative districts. At the same time, we have sought to maintain the integrity of political subdivisions and to create compact districts of contiguous territory, insofar as these goals could be realized under the circumstances of the population distribution of this Commonwealth.<sup>24</sup> We believe such plans to be constitutionally valid and sound.

One year later, in Newbold v. Asser, the Pennsylvania Supreme Court considered a challenge to the apportionment of councilmanic districts in the city of Philadelphia.<sup>25</sup> A reapportionment ordinance was passed in September of 1966 which divided the city into districts of nearly absolute population equality. The ordinance was challenged because it "was motivated by illegal, improper and unconstitutional partisan political factors" and because it created district boundaries which were "neither compact nor consistent with traditional, historical, geographical, physical or neighborhood boundaries."<sup>26</sup> A lower state court invalidated the reapportionment ordinance and ordered at-large elections.<sup>27</sup> On March 21, 1964, the Pennsylvania Supreme Court granted a supersedeas, and on April 19, 1967, it reversed the lower court's decision.

In Justice Roberts's opinion, issued on May 24, 1967, the Court adopted a "substantial equality" test and ruled that no inquiry should be made for any factor other than equality of population:

(W)e are convinced that the ordinance redistricting City Council does not deviate enough from the substantial equality of population tests laid down in this state's or federal reapportionment decisions to require that inquiry into compactness, preservation of historical or physical boundaries, or gerrymandering which inquiry is proper when the population deviation is substantial.<sup>28</sup>

The Court also considered the claim of political gerrymandering, which the lower court had found sufficient to invalidate the redistricting ordinance. The Supreme Court held that gerrymandering does not raise a "cognizable federal constitutional claim" and rejected the lower court's opinion that gerrymandering raised a cognizable state constitutional claim:

(T)here is no basis . . . in Pennsylvania's present Constitution or laws for the proposition that gerrymandering per se, as distinct from departure from explicit constitutional or statutory requirements of compactness or contiguity, may constitute the sole basis upon which a legislative plan of apportionment may be judicially invalidated.<sup>29</sup>

When the delegates to the constitutional convention of 1967-68 met, they had to re-examine the 1873 reapportionment system in light of the numerous United States Supreme Court and Pennsylvania judicial decisions on reapportionment. The convention decided to eliminate the requirement that each county be guaranteed a minimum of one House member, and to eliminate as well the system of fractional ratios. Presumably as a safeguard against gerrymandering, the 1968 constitution forbade the partition of any political subdivision or ward in redistricting unless it was "absolutely necessary." Several examples of how badly the legislature had dealt with reapportionment in the past led the convention delegates to favor the establishment of a Legislative Reapportionment Commission. The commission was to be composed of the majority and minority leaders of the House and Senate (or their proxies), and a "neutral" fifth member who could not be a paid local, state, or federal government employee. The commissioners were to be given forty-five days to select the fifth member (who was to serve as chairman); if, at the end of that period, they were unable to agree on a selection, the task would be given to the state Supreme Court. If the full commission was then unable to formulate a reapportionment plan within ninety days, the responsibility would fall into the hands of the Court. Once the commission filed a plan, it would have thirty days to receive objections from any person. The commission could then revise the plan, which would become law unless there were a successful appeal to the Supreme Court.<sup>30</sup> (See the Appendix for the full text of the reapportionment provisions of the 1968 Pennsylvania constitution.)

## Reapportionment in the 1970s

Pennsylvania has been reapportioned by a commission only once; but, as will be discussed in Chapter 3, this experience laid the groundwork for the present redistricting situation in the state. It is difficult to determine what went on in the 1971 closed-door sessions of the Reapportionment Commission, so the following account must necessarily be sketchy in places; it is based on scattered press reports and on interviews with legislators and their aides, who have requested anonymity.

As required by the 1968 constitution, the 1971 commission was to be composed of the two majority and minority leaders or their appointed deputies.<sup>31</sup> In 1971, the leaders chose not to play the active role and selected deputies to serve in their stead. These four commission members deadlocked immediately, unable to reach agreement on who should serve as the fifth member and chairman—so this decision was thrown to the state Supreme Court. Aides to Democratic Governor Milton Schapp charged that the deadlock was a Republican maneuver, that the Republican members of the commission had been hoping the Court would choose the chairman, since the Court had a 6-1 Republican majority. Interestingly, however, the Court selected Dr. A. Leo Levin, who was a professor at the University of Pennsylvania Law School and a registered Democrat (albeit an inactive one).

Following selection of the commission members, the following procedural steps were to be observed as outlined in article 17 of the constitution:

(1) Filing of a preliminary reapportionment plan by the Legislative Reapportionment Commission.

(2) Thirty days for the commission to make corrections in the plan and for "any aggrieved person" to file exceptions.

(3) If exceptions were received, thirty days for the commission to file a revised reapportionment plan, which would then become the final plan.

(4) Thirty days for any aggrieved person to appeal the final plan to the state

Supreme Court.

(5) Determination by the Pennsylvania Supreme Court as to whether the final plan was contrary to law.

In addition, the constitution declared that "any reapportionment plan" had to be published in a newspaper of general circulation in each senatorial and representative district,<sup>32</sup> in order to give notice to the public and allow any aggrieved person to file exceptions.

The Reapportionment Commission was also to follow the constitutional standards prescribed in Reynolds and Butcher: (1) senatorial and representative districts were to be as nearly equal in population as practicable; (2) districts were to be composed of compact and contiguous territory; and (3) the integrity of political subdivisions was to be maintained.

Pursuant to these provisions, the Pennsylvania State Legislative Reapportionment Commission filed its preliminary reapportionment plan on November 17, 1971. After limited hearings and consideration of exceptions to the plan, the commission made some minor changes and filed its final reapportionment plan on December 29, 1971. Thereafter, eighteen parties appealed the reapportionment plan to the Pennsylvania Supreme Court, which agreed to begin hearing arguments on February 2, 1972, in Philadelphia.<sup>33</sup>

It appears that the partisan members of the commission had been able to reach agreement without too much trouble on most of the district boundaries. Wherever problems arose, Chairman Levin had adopted a strategy of mediation. He would meet in panels of three--himself and the two Republicans or the two Democrats--and would then meet with the full commission only when he felt he had obtained an agreeable compromise. Levin did not seem to want to cast deciding ballots, and his mediator's role served to bring about a high level of political consensus, although it also minimized his power as chairman. Although a number of



individuals and civic groups submitted their own reapportionment plans to the commission, the commissioners seemed to pay primary attention to the ideas of the local party leaders.<sup>34</sup>

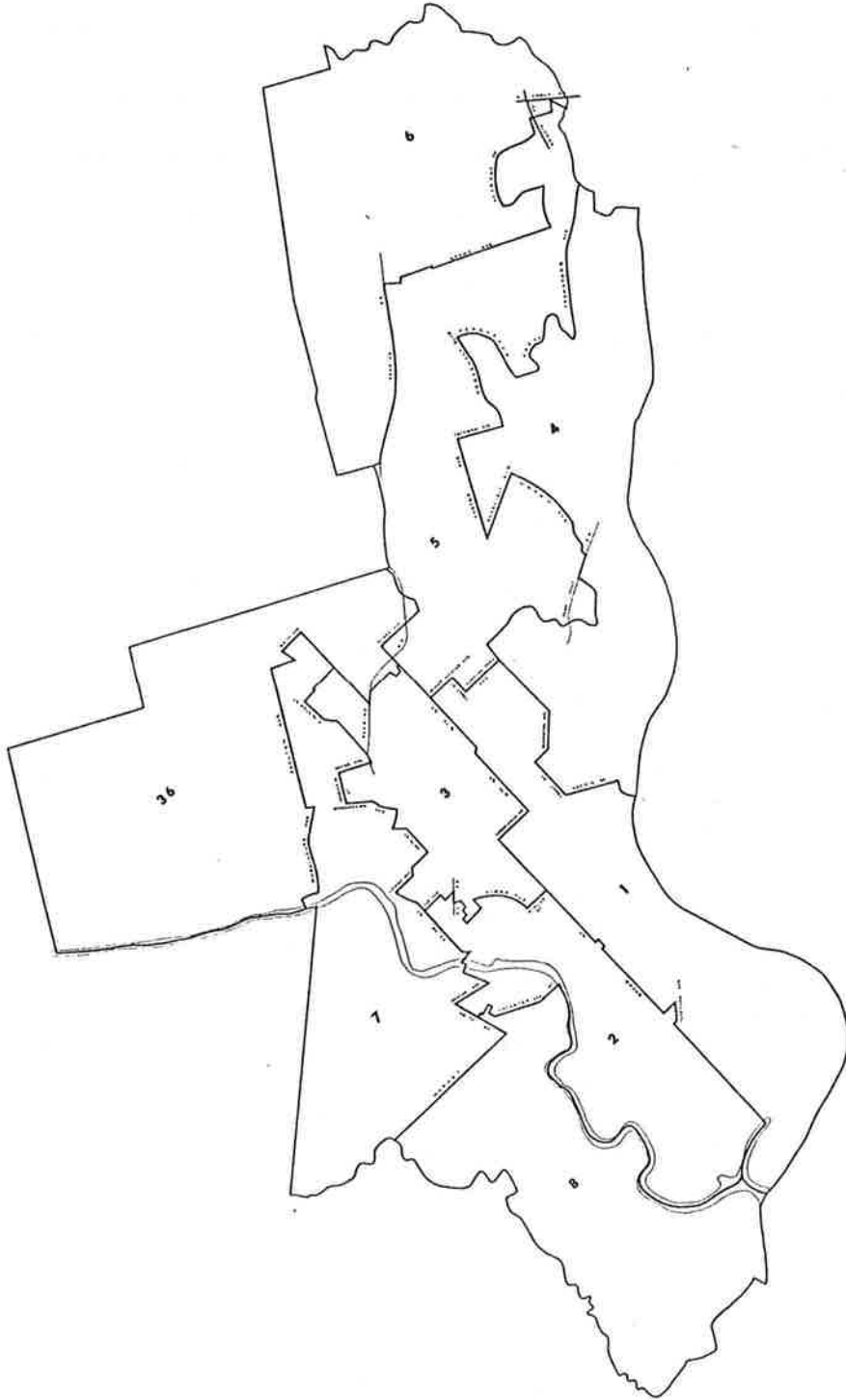
The principal complaint against the commission's plan concerned the redistricting of Philadelphia County. The attacks came from both partisan and non-partisan sources.<sup>35</sup> All of the Philadelphia appellants argued that the commission's plan created non-compact districts and failed to maintain the integrity of political subdivisions. The "Committee of Seventy" complaint, for instance, described one district as "a leg and a foot," and another as "a marvel of uncompactness, extending almost from one end of the city to another," with all of this adding up to a "misbegotten spawn of political avarice."<sup>36</sup> (See Map 1.) Foremost, the appellants claimed that the commission's plan sought to protect incumbents. A chart prepared for the Committee of Seventy for an appeal to the United States Supreme Court noted that incumbents, unless their districts were eliminated or they expressed a desire to retire, were placed in separate districts with almost the same types of constituencies as before.<sup>37</sup> Along these same lines, it might be noted that when appellant Specter was asked why the reapportionment plan failed to comply with the standard of compactness, he replied:

The legislative Reapportionment Commission has chopped up Philadelphia in order to protect the chances of incumbent State Senators and State Representatives when they seek reelection--for with few exceptions there is but a single incumbent legislator in each of these ill-shaped districts. . . . The Commission has butchered Philadelphia to prepare a feast for politicians!<sup>38</sup>

The appellants made no direct attack on the population-equality aspects of the commission's plan, although two appellants did propose alternative plans for which they claimed lower population deviations and more compact and contiguous districts.<sup>39</sup>

The state attorney general filed one brief in response to all eighteen

**Map 1**  
**Supplement to Senate District Map—Philadelphia**



1980  
Dick Thornburgh  
Governor of Pennsylvania  
William R. Davis  
Secretary of the Commonwealth

**PHILADELPHIA**  
**REAPPORTIONMENT PLAN**  
**SENATE SUPPLEMENT**

appeals.<sup>40</sup> Therein, the state argued that "there had been a faithful adherence to a plan of population-based representation" as established by the state Supreme Court in Butcher II; the only changes from the Court's plan made were those necessitated by population shifts.<sup>41</sup> The state further argued that the 1972 plan, when compared with the old 1966 plan, reduced population differences for Senate districts from almost 20 percent to just 4.3 percent, and for House districts from more than 30 percent to a "mere 5.45 percent."<sup>42</sup>

Responding to the appellants' contentions regarding compactness and contiguity, the state argued that the 1972 commission plan was as compact as the 1966 Court plan, that "considerations of geography and political boundaries are secondary to the prime goal of achieving equal population among districts," and that "absent any allegations of invidious discrimination, it is inconceivable that any court would strike down a state reapportionment plan which comes as close to achieving absolute equality as the Commission's final plan because the plan is not composed of fifty and 203 squares and circles."<sup>43</sup>

The state did not directly attempt to counter the specific objections raised in any appeal to geographic considerations, and made no further comment regarding district compactness and contiguity. The state did not seek to refute or respond to any of the appellants' contentions of political gerrymandering. Instead, the state concentrated on showing that the population variances in the commission's plan were less than in any previous plan. The state sought to put the burden on the appellants to find grounds for invalidating the commission's plan, and it asked the Court to consider the arguments without evaluating the alternative plans proposed by the appellants.<sup>44</sup>

On February 7, 1972, in a 4-3 decision, the Pennsylvania Supreme Court issued the following statement affirming the commission's plan:

(W)e find that the Final Reapportionment Plan of the Pennsylvania State Legislative Reapportionment Commission filed on December 29, 1971, is in compliance with the mandates of

the Federal and Pennsylvania Constitutions and therefore shall have the force of the law. Hence it is ordered that the said Plan filed on December 29, 1971, shall be used in the forthcoming Primary and General Elections of 1972 and thereafter shall remain in force and effect until constitutionally altered.<sup>45</sup>

The bases for this order were to be issued in a later opinion.

After three weeks, the explanatory opinion still was not filed. The appellant in No. 54, Arlen Specter joined with the appellants in No. 56, a group of Republican state legislators, in filing a class-action suit under the Civil Rights Act in the United States district court for the eastern district of Pennsylvania, seeking to enjoin the enforcement, operation, and execution of the final reapportionment plan. Specter and his fellow appellants charged that the plan violated the due process and equal protection clauses of the Fourteenth Amendment to the United States Constitution.<sup>46</sup>

On the last day of the ninety-day appeal period, Arlen Specter filed an appeal to the United States Supreme Court from the order of the Pennsylvania Supreme Court.<sup>47</sup> The appeal was dismissed "for want of substantial federal question" on October 10, 1972.

The explanatory opinions of the Pennsylvania Supreme Court were filed on June 5, 1972, almost four months after the original order upholding the plan. After reviewing the U. S. Supreme Court decisions of the 1960s and both Butcher cases, the justices turned to the plan filed by the commission in 1971. The Court majority found that the plan satisfied the primary requirement of "substantial equality of population,"<sup>48</sup> by providing a maximum deviation of 4.31 percent in the Senate and 5.46 percent in the House.<sup>49</sup>

No decision of the United States Supreme Court or of this Court has ever invalidated a reapportionment plan with population deviations as minimal as those occasioned by the Commission's plan, and we believe that the deviations clearly do not dilute the equal-population principle "in any significant way." We conclude therefore that the Commission's plan fully achieves the constitutionally-mandated overriding objective of substantial equality of population.<sup>50</sup>

The Court also concluded that the large number of political subdivision splits in the 1971 plan was "obviously necessitated by the stricter requirements of population equality that are now in order."<sup>51</sup>

We also conclude that the Commission's final plan has properly maintained the integrity of political subdivisions to the extent that it is possible without defeating<sup>52</sup> the overriding principle of substantial equality of population.

The Court majority finally concluded that "there is a certain degree of unavoidable noncompactness in any apportionment scheme."<sup>53</sup> The Court felt that the appellants failed to uphold their claim that the plan's degree of compactness was contrary to law,<sup>54</sup> since none of the appellants offered "any concrete or objective data indicating that the districts...lack compactness"<sup>55</sup> and since an evaluation "cannot be made merely by a glance at an electoral map."<sup>56</sup>

Thus, the Court majority accepted the arguments of the state. The justices maintained that population equality was the fundamental issue, and did not discuss in any detail such factors as subdivision integrity, compactness, contiguity, and gerrymandering. The dissenters on the Court, however, strongly contested the majority's findings. All three dissenters rejected the majority's approach to the equality-of-population standard. They argued that the U. S. Supreme Court in Kirkpatrick had expressly rejected any de minimus exception, and had stressed that it was up to the state to justify each variance.<sup>57</sup> All of the dissenting justices (Chief Justice Jones, Justice Pomeroy, and Justice Manderino) issued statements criticizing the population variances in the commission plan. Chief Justice Jones and Justice Pomeroy offered the following opinion:

It may be that satisfactory explanation for and justification of the comparatively minor population deviations which are contained in the present plan can be made. Unfortunately, however, this can be done only by the Reapportionment Commission which struggled with the problem... (T)he Commission did not see fit to explain or justify its report in any way, or to indicate on what grounds it dismissed the exceptions which form the bases for those appeals. We therefore have before us only the plan itself, which constitutes the entire record in this case. I cannot agree that this

"res ipsa loquitur" approach passes constitutional muster today.<sup>58</sup>

Similarly, Justice Manderino rejected the "substantial equality" standard:

The Fourteenth Amendment does not speak of substantial equal protection of the laws. It speaks of equal protection of the laws. When absolute equality is not achieved, the government must show that the lack of equality was either unavoidable or that the lack of equality of treatment of a citizen resulted from a rational plan or scheme devised to achieve legitimate state objectives.<sup>59</sup>

Justice Manderino continued, noting that there was no indication by the commission that the population deviations were unavoidable or justifiable.<sup>60</sup>

A mere statement, however, that population variances in the legislative districts resulted from the pursuit of legitimate state constitutional objectives does not make it so unless this Court is presented with a rational state plan whose implementation resulted in population variances. . . . We have been presented with no such plan and are completely in the dark as to whether the discriminations that occurred in population variations resulted from the implementation of a rational state plan or were crazy-quilt.<sup>61</sup>

The three dissenters also criticized the commission's plan on grounds other than population inequality. On the question of the integrity of political subdivisions, all three dissenters rejected the approach adopted by the Court majority. Chief Justice Jones claimed that the commission "utterly" failed "to demonstrate any necessity in any manner in justification of the many divisions of political entities embodied in the plan."<sup>62</sup>

Time after time, instance after instance, the . . . Commission has not only divided counties, boroughs and other municipalities but in some instances divided precincts in the same ward so that persons living in the same precinct on opposite sides of a street would vote for representatives in different legislative and senatorial districts.<sup>63</sup>

Criticizing other facets of the commission's plan, Justice Pomeroy stated that the increased number of political subdivision splits was not, as the majority argued, "necessitated by stricter requirements of population equality." Such "necessary" splitting, said Pomeroy, was "by no means obvious."<sup>64</sup>

In the face of constitutional language which prohibits divi-

sions unless "absolutely necessary," there surely must be some showing of necessity, some demonstration that "the population principle cannot otherwise be satisfied." The Commission has vouchsafed nothing, and the Court is reduced to trying to read its mind. It may be acknowledged that some dividing of counties, municipalities and wards and some surrender of compactness is unavoidable, but there is no presumption that each split that was made or each misshapen district that was created falls into this category.<sup>65</sup>

Justice Manderino continued the criticism of the reapportionment plan on similar grounds. He maintained that the primary problem was that the commission withheld a suitable explanation or set of reasons for its actions.

We have no way of knowing whether the lack of compactness in the districts or the violation of the integrity of the political subdivisions resulted because of the application of a rational state plan. The Commission has presented its conclusion that the lack of compactness and the split of political subdivisions was necessary. Why? We are not told. We have no way of knowing whether the defects resulted from arbitrary picking and choosing in various parts of the Commonwealth. A plan is not constitutionally validated by merely stating the objectives.<sup>66</sup>

Finally, the dissenters objected to the majority opinion regarding compactness of districts--that just because districts failed to be aesthetically pleasing, this did not necessarily mean that they were not compact. Chief Justice Jones argued that "even the most cursory examination of the reapportionment plan... reveals a complete failure... to comply with the requirement of compactness."<sup>67</sup> (See Maps 1-8.)

There is an old Chinese proverb that says: "One picture is worth more than 10,000 words." The reapportionment plan clearly presents a picture more eloquent than words of a complete disregard by the Commission of the constitutional mandate that the districts be compact in nature. In many instances the districts involved in these appeals "twist and wind their way across the map in an erratic, amorphous fashion in order to include scattered pockets of partisan support or exclude centers of opposition voting strength."<sup>68</sup>

Justice Manderino continued along the same line:

The Pennsylvania Constitution also states as legitimate objectives the compactness and contiguity of territory... A look at the Pennsylvania map with the population of each political subdivision superimposed will readily show that

many districts are not compact although they are all contiguous.<sup>69</sup>

In sum, the three dissenting justices rejected the res ipsa loquitur approach of the state attorney general.<sup>70</sup> They criticized the degree of population variance in the commission's plan, and also the lack of district compactness in the plan and the lack of political subdivision integrity. Further, they placed the burden of proof on the commission to justify its actions, and remarked that the failure to justify the plan and follow the constitutional requirements might indicate that the plan was a partisan gerrymander.<sup>71</sup>

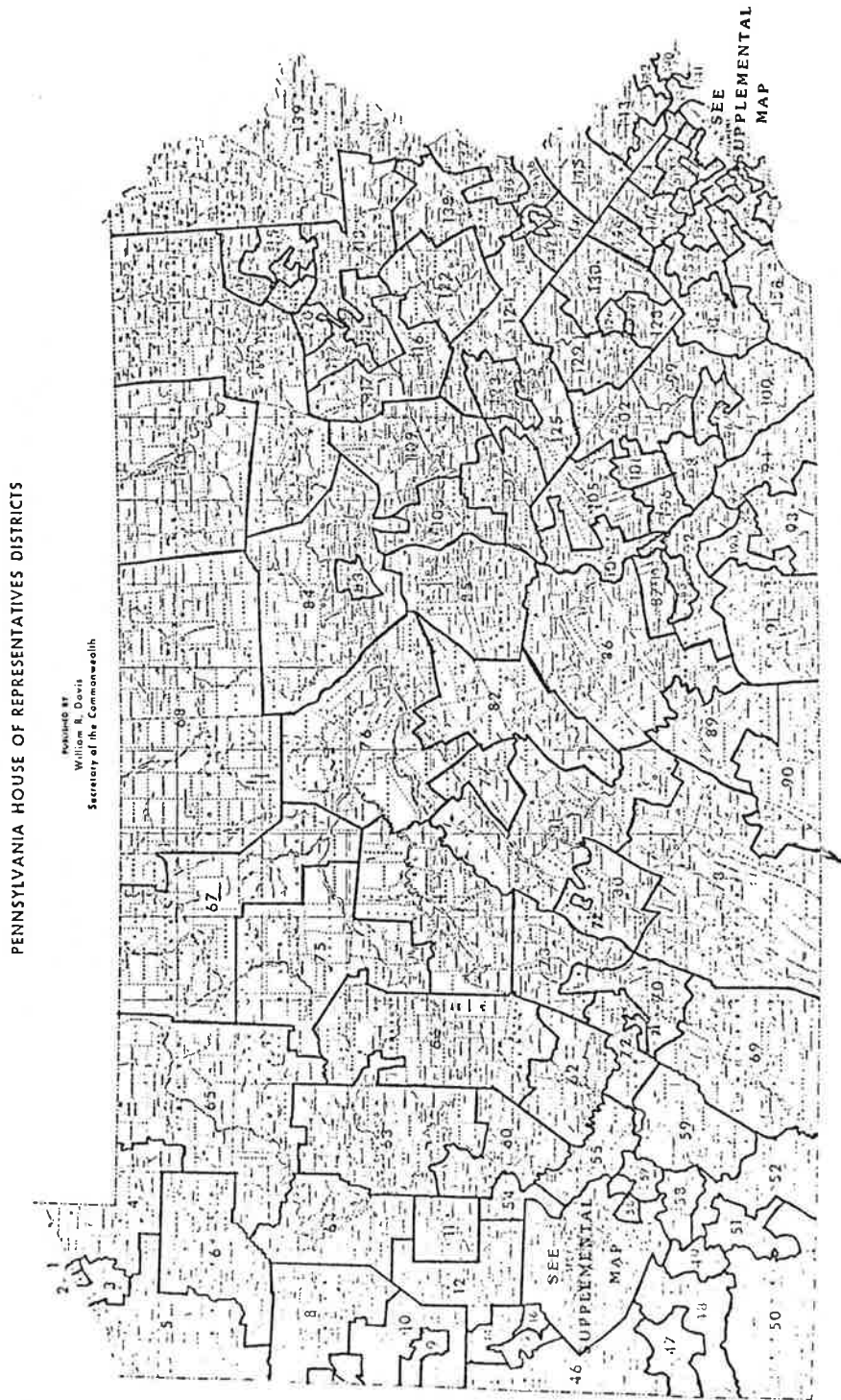
The major result of the 1972 reapportionment plan was obvious. The large cities of Pennsylvania had shared in the population decline suffered by most northeastern cities between 1960 and 1970. Philadelphia, therefore, lost three House seats, going from thirty-seven to thirty-four; Pittsburgh lost two, going from eleven to nine. Each city also lost one Senate seat, with Philadelphia going down to eight seats and Allegheny County (which is mostly Pittsburgh) going down to seven. This meant that, in the House, these two cities now held only forty-three of the 203 seats instead of their previous forty-eight and, in the Senate, they held only fifteen of the fifty seats instead of their previous seventeen. The major gains went to the suburban areas.<sup>72</sup>

The movement of legislative seats out of the state's two major cities had definite partisan consequences. Just before the 1971 reapportionment, all but three of the Philadelphia members of the House were Democrats, and the entire Pittsburgh delegation was Democratic. The movement of seats out of these Democratic cities and into such traditionally Republican suburban counties as Bucks, Montgomery, and Chester was certain to benefit the GOP.<sup>73</sup>



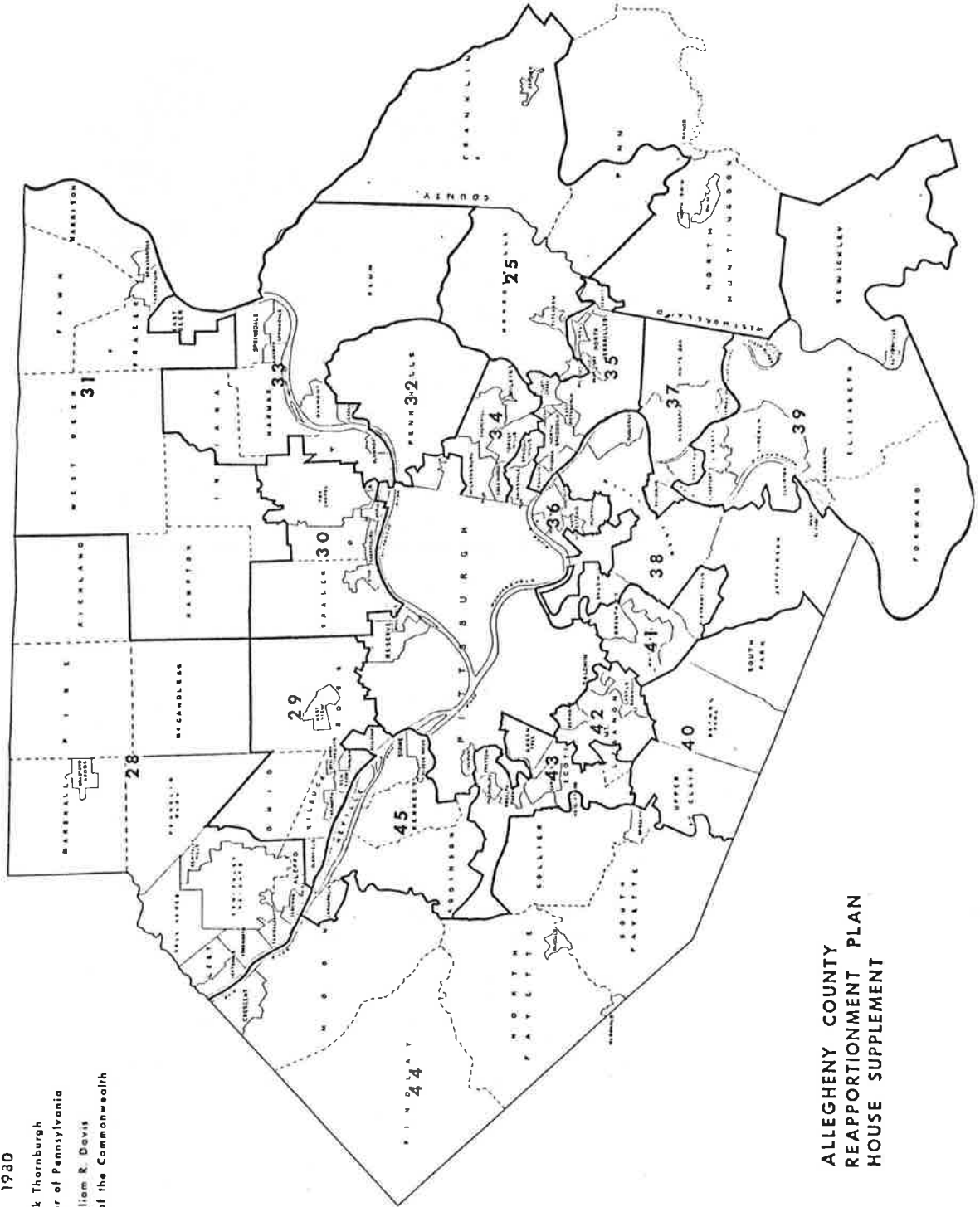
Map 2

1972 Commission Plan: House of Representatives Districts



Map 3

Supplement to House of Representatives District Map—Allegheny County

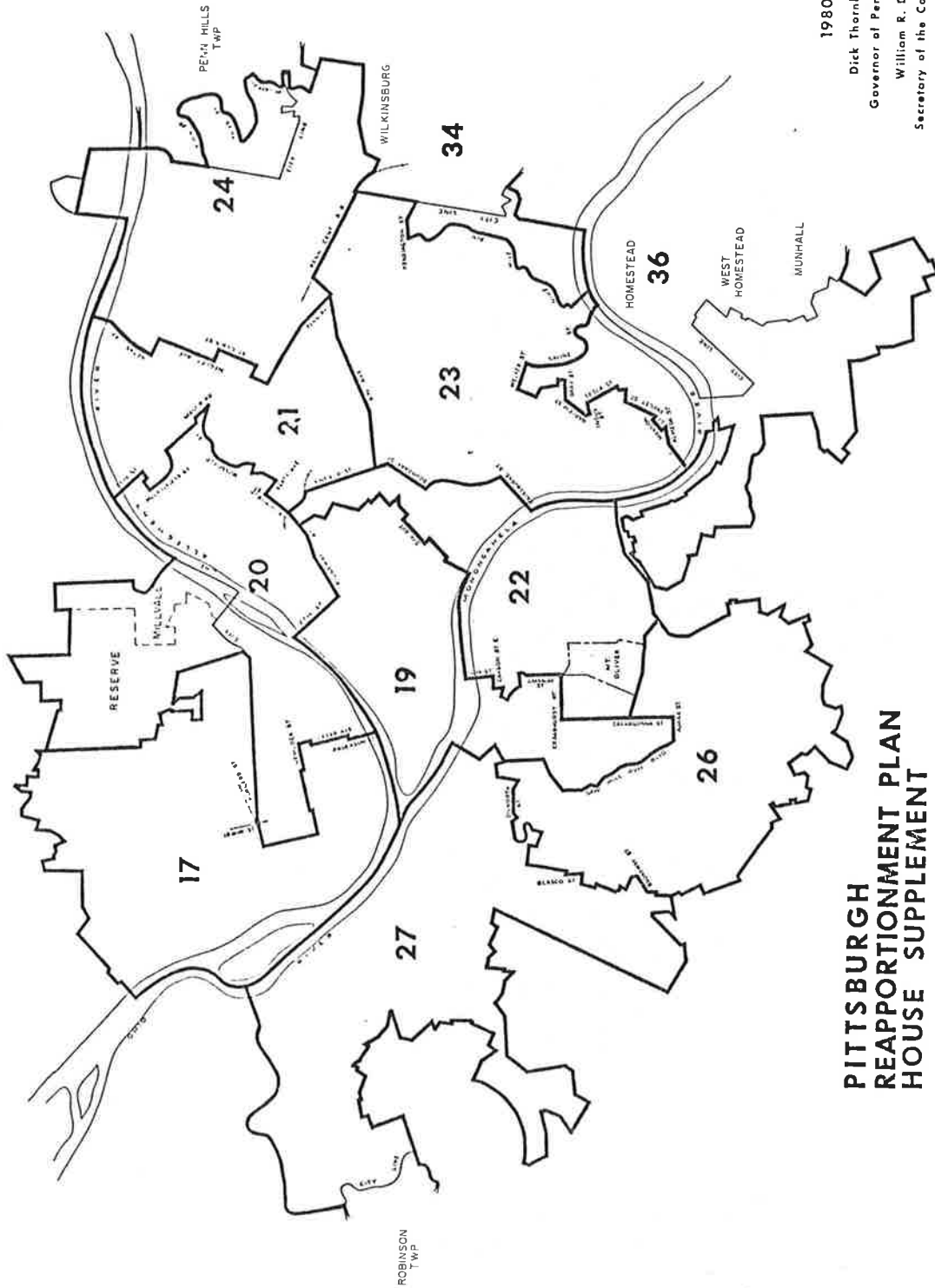


1930

Dick Thornburgh  
Governor of Pennsylvania  
William R. Davis  
Secretary of the Commonwealth

Map 4

Supplement to House of Representatives District Map—Pittsburgh

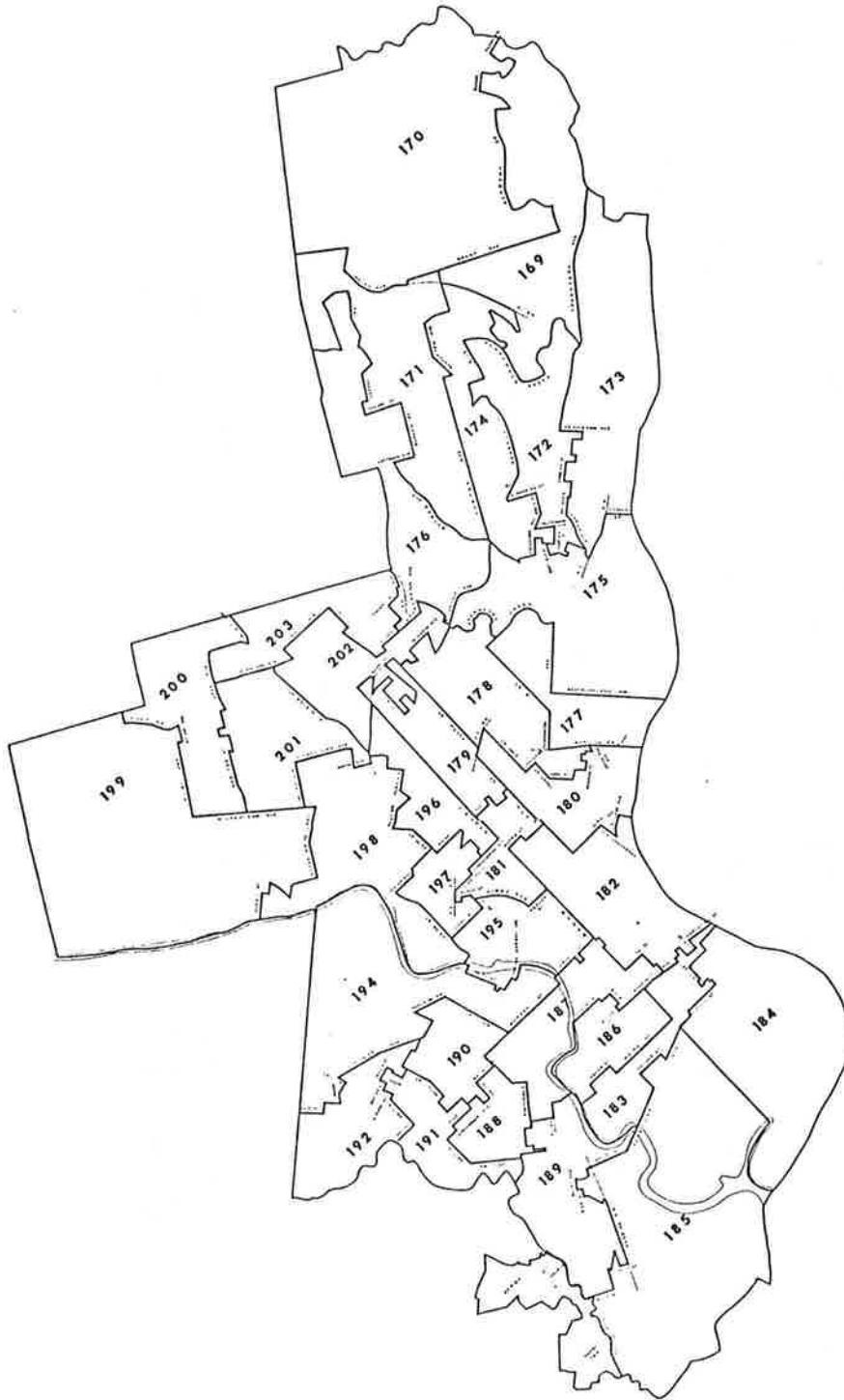


1980  
Dick Thornburgh  
Governor of Pennsylvania  
William R. Davis  
Secretary of the Commonwealth

**PITTSBURGH  
REAPPORTIONMENT PLAN  
HOUSE SUPPLEMENT**

Map 5

Supplement to House of Representatives District Map—Philadelphia



1980

Dick Thornburgh  
Governor of Pennsylvania  
William R. Davis  
Secretary of the Commonwealth

PHILADELPHIA  
REAPPORTIONMENT PLAN  
HOUSE SUPPLEMENT

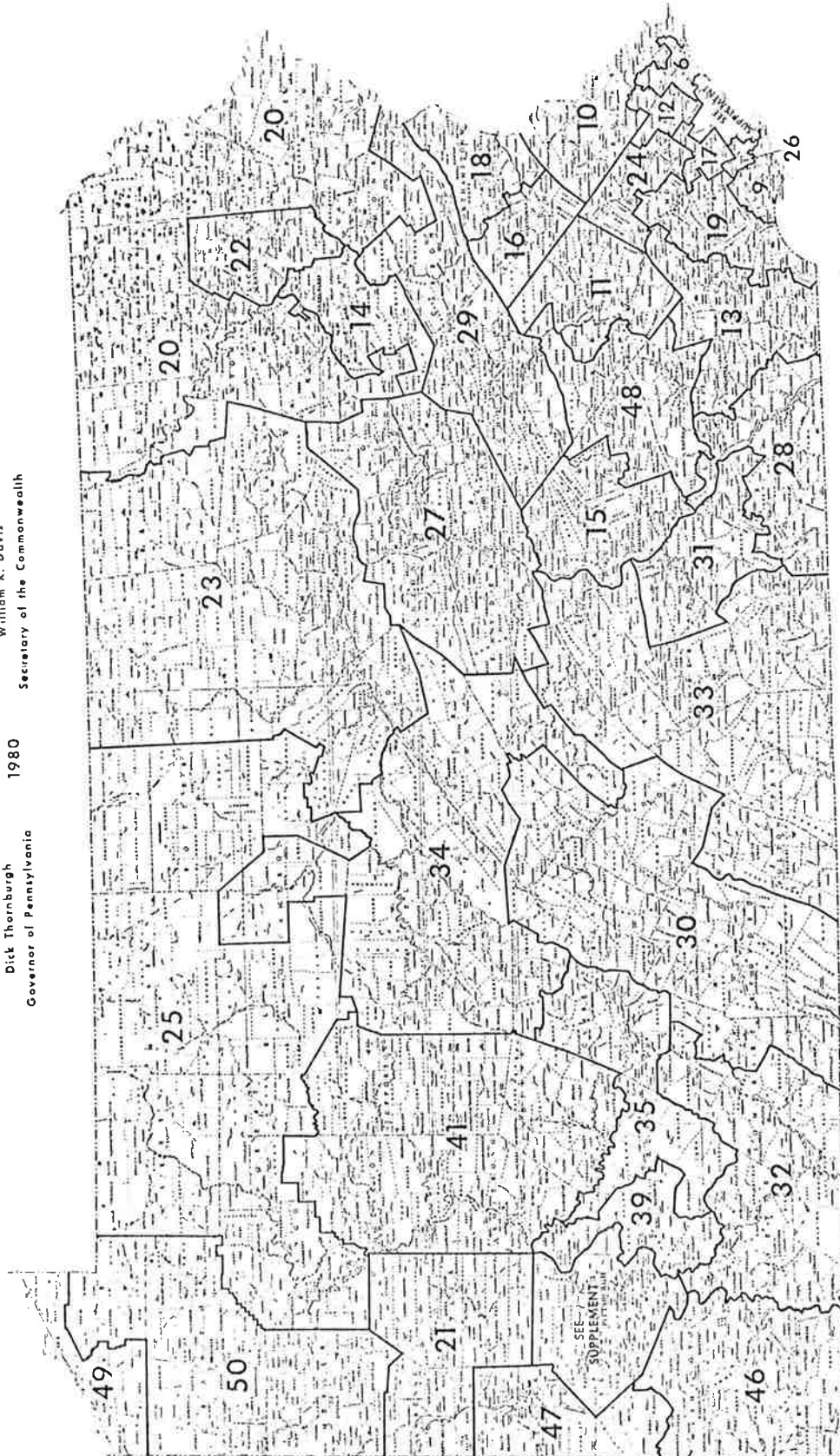
Map 6

1972 Commission Plan: Senate Districts

PENNSYLVANIA SENATORIAL DISTRICTS

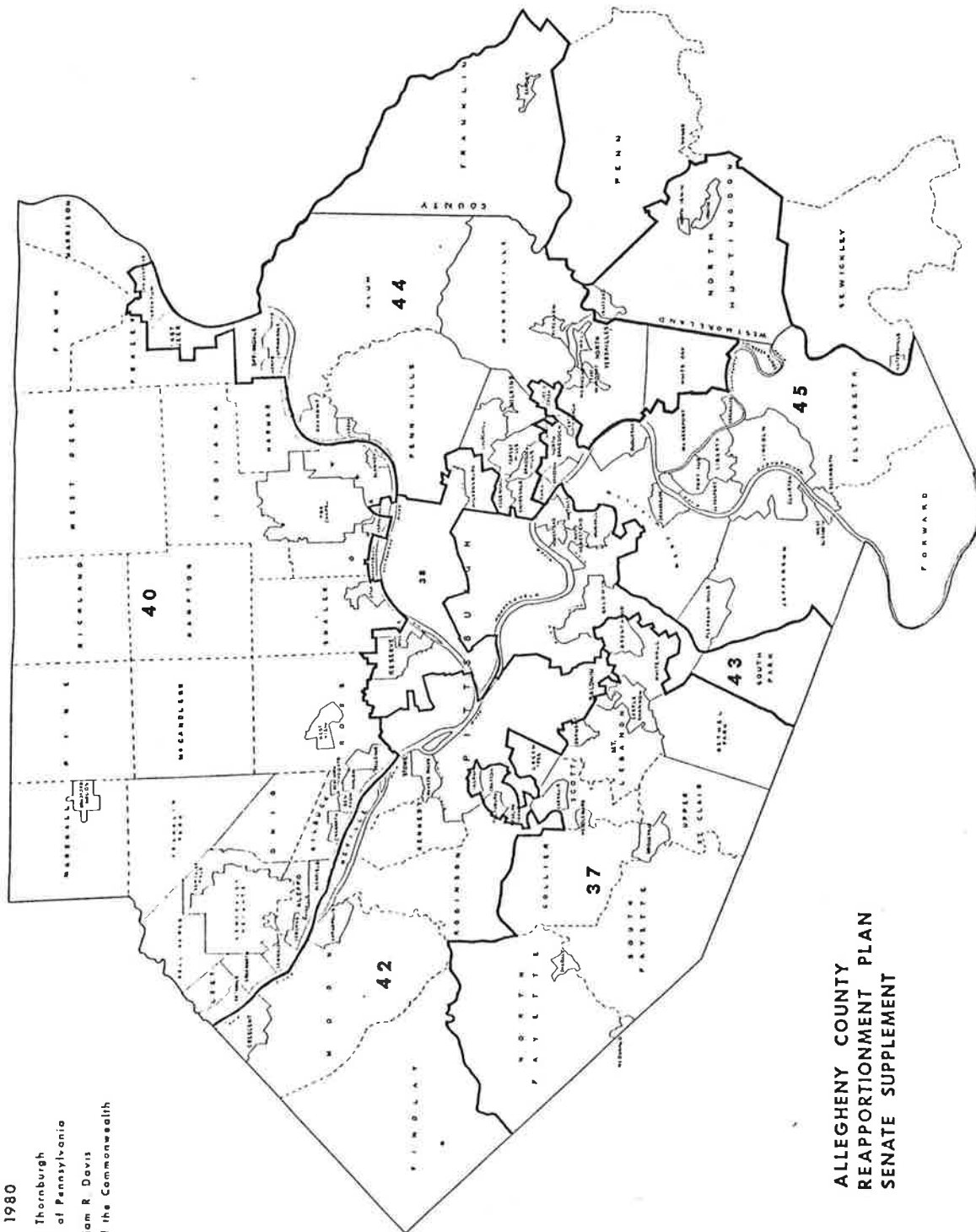
1980  
Dick Thornburgh  
Governor of Pennsylvania

William R. Davis  
Secretary of the Commonwealth



Map 7

Supplement to Senate District Map—Allegheny County



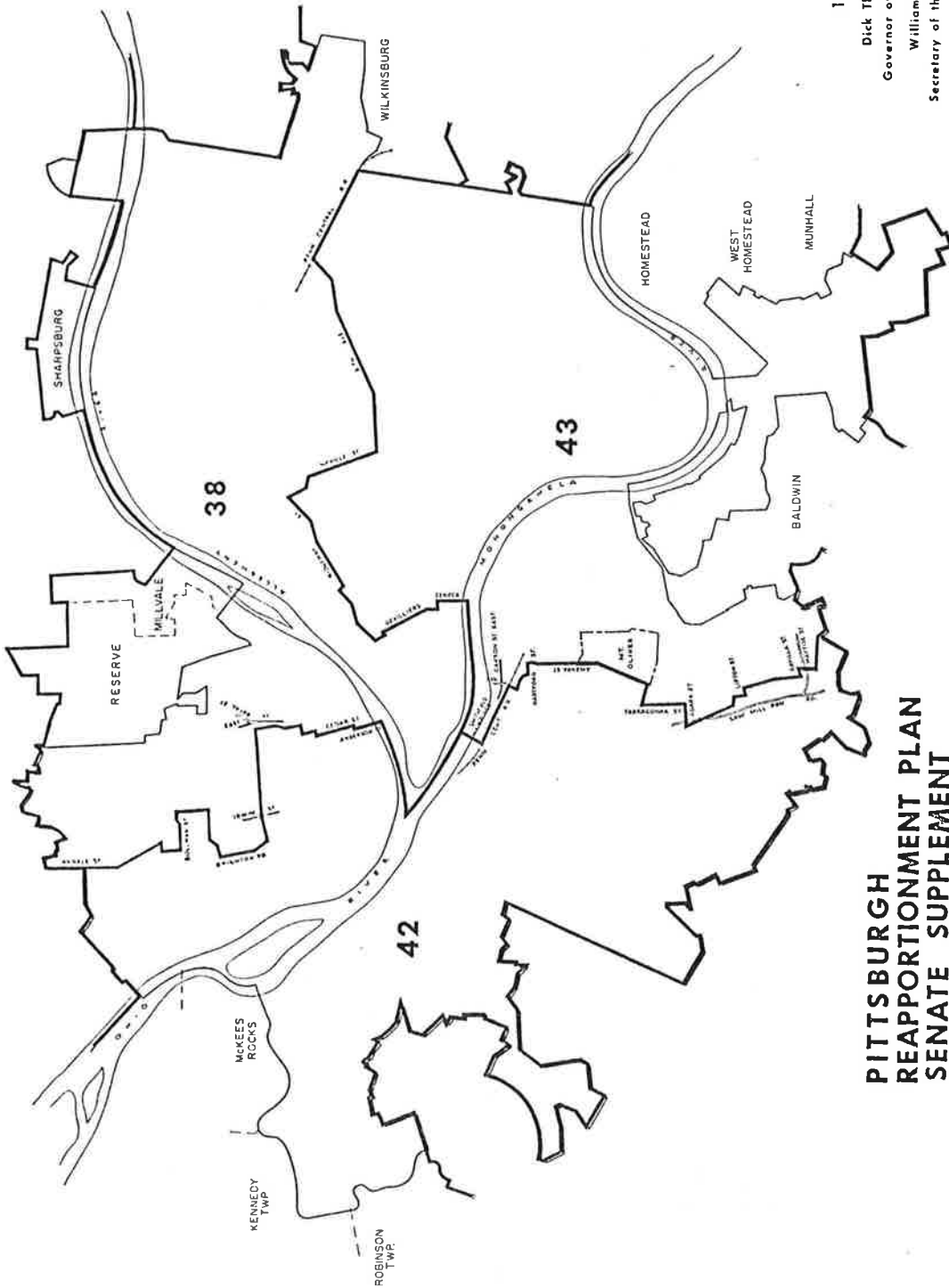
1980

Dick Thornburgh  
Governor of Pennsylvania  
William R. Davis  
Secretary of the Commonwealth

ALLEGHENY COUNTY  
REAPPORTIONMENT PLAN  
SENATE SUPPLEMENT

Map 8

Supplement to Senate District Map—Pittsburgh



1980  
Dick Thornburgh  
Governor of Pennsylvania  
William R. Davis  
Secretary of the Commonwealth

PITTSBURGH  
REAPPORTIONMENT PLAN  
SENATE SUPPLEMENT





## Chapter 3

### PENNSYLVANIA REAPPORTIONMENT IN THE 1980s

#### The Groundwork

In setting the guidelines for the 1981 Pennsylvania reapportionment, House and Senate members made a considerable effort to outline their major objectives and confront the foreseeable problems. Primarily by drawing reference to the 1972 commission experience, the legislature seems much better prepared now to confront the 1981 reapportionment process. In a January 20, 1981 memorandum, the chief counsel of the House of Representatives established the following timetable for 1981 legislative reapportionment:<sup>1</sup>

(1) January 26 Deadline: Certification of Four (4) Commission Members--On or before Monday, January 26, 1981, the Speaker of the House and the President Pro Tempore of the Senate must certify to the Secretary of the Commonwealth the names of the four (4) Legislative Reapportionment Commission members designated by the respective majority and minority leaders of the four caucuses (see Article 2, Section 17(b), Pennsylvania Constitution).

(2) 75-day Deadline: Selection of Fifth Member (45 Days for Commission to Act and 30 Additional Days for Supreme Court if Commission Fails to Act)--The four (4) legislative members have 45 days from their date of certification. If the four (4) legislative members fail to select a fifth member within this 45-day period, the Supreme Court (by majority vote of its entire membership) has 30 days thereafter to select the fifth member.

If the legislative commission members are certified at the deadline (January 26), the legislative members would be required to select the fifth member on or before March 12, 1981; in the event they fail to do so, the Supreme Court would be required to select the fifth member by April 11, or more probably, April 13, 1981 (since April 11 falls on a Saturday). The Constitution is silent on the consequences of a Supreme Court failure to select the fifth member within this 30-day period (see Article 2, Section 17(b), Pennsylvania Constitution). If the four legislative commission members are certified prior to January 26, the deadlines for selection of the fifth member would be advanced accordingly.

Once the fifth member (the Chairman) is selected, his appointment must be certified immediately to the Secretary of the Commonwealth. If the appointment is made by the four (4) legislative members, they would certify the fifth member; if the Supreme Court selects the fifth member, it would certify the appointment. The Constitution does not set out a specific deadline for "immediate" certification. Presumably, the Commission is deemed certified on the same date the fifth member is certified (see Article 2, Section 17(b), supra).

(3) 90-day Deadline: Preparation of a Preliminary Plan--The Commission has 90 days within which to file a preliminary plan with the Secretary of the Commonwealth. The 90-day period begins to run on the later of the following two dates: (1) The date on which the Commission is duly certified to the Secretary of the Commonwealth (April 13, 1981 at the latest); or (2) The date on which the census data for Pennsylvania becomes "available" within the meaning of the Pennsylvania Constitution (see Article 2, Section 17, supra). The date of "availability" is impossible to determine, or even estimate, at this time.

Obviously, the population data cannot be deemed "available" (for the purpose of triggering the 90-day period) until the Commonwealth first receives from the Census Bureau the detailed population figures for municipalities, census tracts, enumeration districts, block groups and blocks. Under federal law (see 2 U.S.C. 141(c)), the deadline for providing this population data to the states is April 1, 1981. Because of complications created by several lawsuits filed against the Census Bureau which challenge the accuracy of the population count, it is possible that this detailed population data might not be transmitted to Pennsylvania and other states by April 1. However, I spoke with Ms. Cathy Talbert, Special Assistant to the Assistant Division Chief for User Services of the Census Bureau, who advises that the Bureau will probably be in a position to provide Pennsylvania with this data by April 1 (barring further developments in the lawsuits or other unanticipated contingencies).

Open to interpretation is the date on which the Pennsylvania population data is deemed "available" for the purpose of commencing the 90-day period for preparation of the preliminary plan. It could be argued that the detailed population data is "available" on the date it is actually received from the Census Bureau (i.e. possibly by April 1). On the other hand, it could also be argued that the census data is not "available" until it is converted into a suitable format for reapportionment (i.e. transfer of census data onto ward and election district maps). Resolution of this legal point may ultimately require a commission decision after consultation with its counsel.

(4) 30-day (Minimum) - 60-day (Maximum) Deadline:

Commission Review of Preliminary Plan--The period for Commission review of preliminary plan can be as short as 30 days or as lengthy as 60 days (or possibly a day or two longer, if a deadline falls on a weekend). Once this deadline expires, the plan is deemed to be final.

The Commission has 30 days to correct or to receive objections to the preliminary plan after it is filed. If no objections are filed or no corrections are made within this 30-day period, the plan is deemed to be final. If objections are filed within this 30-day time frame, the Commission has an additional 30 days (from the date the objections are filed) to consider those objections and to file a revised plan. Thus, if an objection were filed on the 30th day, the total Commission review period could last for 60 days (see Article 2, Section 17(b), supra).

(5) 30-day Period for Appeal of Final Plan to Supreme Court--Persons aggrieved by the final plan would have 30 days from its date of filing (with the Secretary of the Commonwealth) to lodge an appeal with the Pennsylvania Supreme Court. When the Court decides an appeal or after the last date for filing an appeal, if no appeal is taken, the reapportionment plan has the force of law and remains in effect until the next reapportionment, which will follow the 1990 census.

(6) February 16, 1982: Circulation of Nomination Petitions--If, due to the lawsuits or for any other reason, the data does not become "available" until early autumn or later, the schedule for reapportionment could disrupt the election calendar schedule for the 1982 State Legislative and Congressional elections. The first date for circulating nomination petitions occurs on February 16, 1982. The 1982 Primary will be held on the third Tuesday in May. It is interesting to note that the 1981 reapportionment plan was finalized just before the start of the 1972 election process. The 1971 plan was filed by the Commission on December 29, 1971, and upheld by the Pennsylvania Supreme Court on February 7, 1972.

The 1981 commission should be able to meet its deadlines easily. The Pennsylvania Legislative Data Processing Center has produced the cartographic and statistical information needed for interpreting the Pennsylvania data.<sup>2</sup> The computer support services available to the commission members include:

1. Listings of population counts arranged by county, municipality, ward, and precinct.
2. The ability to apply new district codes to each election precinct and rese-

quence listings to the new coding.

3. A deviation and range analysis measuring the population size of each district and resequencing districts from the smallest to the largest.

4. A composite district report containing a narrative description of the components in each district and the population of each district.

### **State Reapportionment Activities to Date**

In accordance with the pre-established timetable, the 1981 commission has begun its work with a fervor. Party leaders seem to have a renewed interest in the process. The 1981 legislative majority and minority leaders elected to serve as members of the commission, rather than appointing deputies as happened in 1971. The Legislative Reapportionment Commission members are Senator Edward P. Zemprelli, Democrat; Senator Robert C. Jubelirer, Republican; Representative Samuel E. Hayes, Jr., Republican; and Representative James J. Manderino, Democrat. Senator Zemprelli was chosen to serve as temporary chairman until the appointment of the fifth commission member.

Early in the process, problems began to develop regarding the selection of the fifth commission member. Speculation arose that the present legislative leaders would be no more able to appoint a fifth member than were the 1972 commission members, mainly because political battles continued. This year, the Democrats have much greater leverage than they had in 1971. At the beginning of the year, the Pennsylvania Supreme Court was split 3-3 between the parties, with one vacant seat. The candidate for the open seat was Roy Wilkinson, Jr., a Republican. To be seated on the Supreme Court bench, Wilkinson had to receive the two-thirds approval of the state Senate. The Democrats refused to contribute any of the thirty-four votes needed for Wilkinson's confirmation unless they were certain that the reapportionment commission chairman would be acceptable to them. By late

February, the party leaders apparently were deadlocked on the issue.

As of Tuesday, February 24, the commission had selected five finalists from among sixty-seven candidates for the commission chairmanship. The five finalists were Richard B. Close, political science department chairman at Kutztown State College (a Democrat); Robert J. Courtney, political science department chairman at La Salle College (a Republican); Joseph C. Dougherty, professor of political science, University of Scranton (a Republican); James O. Freedman, dean of the University of Pennsylvania Law School (a Democrat); and Robert L. Rosholt, political science department chairman at Bloomsburg State College (a registered Nonpartisan). All of these candidates were to be interviewed on February 25.<sup>3</sup>

Senator Zemprelli indicated that Dr. A. Leo Levin, the 1971 commission chairman, should also be offered the opportunity to be interviewed. Levin was in San Francisco, so Zemprelli attempted to reach him by telephone, but stated that there was a 95 percent chance Levin would not be interested.<sup>4</sup>

Senator Jubelirer indicated that two factors would heavily influence his decision on who should be commission chairman. Noting that all four legislative leaders were from western Pennsylvania districts, Jubelirer said he felt that the chairman "ought to be from the east." (Senator Zemprelli said that geography would play a part in his decision also).<sup>5</sup>

Further, Senator Jubelirer expressed some reservations about considering faculty members employed in the state college system. He wanted to avoid "a potential constitutional question" arising from the constitutional requirement that the fifth member not be a local, state or federal official "holding an office to which compensation is attached."<sup>6</sup>

On February 26, just one day after the interviews, the fifth member was selected--James Freedman, the only nominee who received the approval of all four legislative leaders. Senator Zemprelli said that Freedman "could acclimate to

(commission) legal problems quickly, and he impressed us that he will be eminently fair. . . . I am satisfied he could make the hard decisions. . . . I think his demeanor and his honesty and the consciousness of his answers were outstanding."<sup>7</sup>

All five finalists were considered to be "non-political," but Zemprelli said that Freedman was ultimately selected because he seemed the furthest removed from political partisanship.<sup>8</sup> Freedman was neither politically active nor had he ever held any political office. Salary for the commission chairmanship has been tentatively set at \$25,000. The proposed budget for the commission is \$380,000.<sup>9</sup> Freedman was formally installed as chairman on March 16.

The commission's selection of Freedman broke the Senate deadlock on Judge Wilkinson's confirmation to serve on the state Supreme Court. At the time of Freedman's appointment, Senator Zemprelli said that he "sensed" the Democratic caucus now would be willing to go along with Wilkinson's appointment to the bench. Senator Jubelirer promptly made plans to have a floor vote on the Wilkinson appointment on March 16. Jubelirer indicated that, had the Senate been in session at the time of Freedman's selection, the Wilkinson nomination would have been called up without delay.<sup>10</sup>

The partisan implications of the Freedman and Wilkinson appointments are obvious. The Democrats have a majority on the Legislative Reapportionment Commission, but their power may be in question. The state Supreme Court has the final say on any challenges to the commission's redistricting plan, and the Republicans now have a 4-3 majority on the Court. The Pennsylvania Court has been known to act in a partisan fashion, so there is little likelihood that the Democrats on the commission will try to gerrymander the state.

#### **Probable Outcomes of the 1981 Commission Plan**

The 1981 Pennsylvania reapportionment should benefit the Republicans once

again. Based upon preliminary 1980 census figures, of the eleven traditionally Democratic counties, only one (Northampton) has had enough population growth in the past ten years to increase its legislative representation, and even that growth is not substantial enough to warrant a full House seat. The population growth in eight other Democratic counties has been negligible.<sup>11</sup>

Population growth in the state has been slight. Total state population for 1981 is certified at 11,866,788, an increase of only 145,758 since the 1970 census. Based upon this figure, the ideal House district will have a population of 58,457 and the ideal Senate district will have a population of 237,335. These ideal figures are strikingly similar to the 1972 House and Senate figures of 58,115 and 235,947, respectively.<sup>12</sup>

Urban areas will be the hardest hit by the 1981 redistricting. Philadelphia has lost 14 percent of its population and Allegheny County (Pittsburgh) has lost at least 10 percent. These population declines could mean a loss of four House seats and at least one Senate seat in Philadelphia, with the loss of another Senate seat unless the district lines are drawn to take in a significant number of residents from adjacent Bucks County. Pittsburgh probably will lose one House and one Senate seat.<sup>13</sup>

The "coal counties" in western and north-central Pennsylvania (Cambria, Clarion, Clearfield, Indiana, and Jefferson), which usually vote Democratic, have generally maintained their populations and should emerge from the redistricting with the same number of representatives. The largest population gain has been in suburban Bucks County, which should gain one House and one Senate seat unless part of the county is consolidated with part of Philadelphia County. Interestingly, most of the other suburban counties have had stable populations in the past decade, and Delaware County, the second largest suburban county, has actually had a population decrease.<sup>14</sup> The areas of significant growth, it seems, are neither suburban nor rural. Rather, they are the "exurban" counties (Cumberland, Lancaster, Lebanon,

and York), which have many farmers but which also have a significant amount of industry and a number of thriving metropolitan centers. Growth in these counties will probably give additional strength to Republicans in the legislature.<sup>15</sup>

The 1981 reapportionment will probably serve to increase the present Republican domination of the state legislature. In the House, there are now 103 Republicans and 100 Democrats. The state constitution requires a simple majority for the passage of any bill. Since the Republicans just barely have this majority, it gives any two Republican representatives an enormous amount of power. The Republicans gained three Senate seats in 1980 (creating a 25-25 tie in the Senate), thus winning formal control because the lieutenant governor, William Scranton, is a Republican, and is entitled to cast a tie-breaking vote on procedural matters. (He cannot vote on legislative matters, however, such as reapportionment.)

Bearing in mind the 1980 population shifts, the Republicans should attain a very comfortable majority in the House in 1982. They also should emerge victorious in the Senate, since the urban and Democratic counties did not have any significant population gains in the past decade. Striking another serious blow to the Democrats was the November 18, 1980, announcement that Milton Street, a newly-elected Black senator from Philadelphia, had switched from the Democratic to the Republican party. Street is a colorful, well-known Philadelphia figure, and it is likely that he will retain his seat in 1982 despite the party change. This means that the Democrats will lose one Philadelphia Senate seat in the 1981 reapportionment and another Philadelphia seat because of Street's defection. The Republicans should have solid control of the Senate after the 1982 elections.

#### **Sources of Court Intervention: Population Standards**

Obviously, the principal objective of the 1981 commission will be developing a plan that complies with the "one man-one vote" constitutional standards. A major



question, however, will be how much latitude the state Supreme Court will permit in deviations from ideal House and Senate district populations. In 1972, the Court employed an "overall range" analysis for determining whether the plan met the mandate for "substantial equality of population among districts." This type of analysis is based upon the percentages by which the largest and smallest districts deviate from the ideal district size. The overall range is determined by adding these percentages, disregarding the plus or minus factor. It is reasonable to assume that the Court will utilize this same method in 1981.

In the 1972 reapportionment case Specter v. Levin, the state Supreme Court found the overall range for the House districts to be 5.46 percent; the most populous district was 2.98 percent above the ideal and the least populous 2.48 percent below. In the Senate, the overall range was 4.31 percent; the most populous district was 2.29 percent above and the least populous 2.02 percent below the ideal. The Court went on to lay emphasis on the number of House and Senate districts that were within 1.5 percent and 1 percent of the ideal district population. The justices found forty of the fifty Senate districts to be within 1.5 percent of the ideal population, and twenty-two of these to be within 1.0 percent. In the House, 149 of the 203 districts were within 1.5 percent of the ideal, and ninety-five of these were within 1.0 percent. This led to the Court's determination that the commission's plan was within the legal standards of one man-one vote.

As a result of several post-Specter United States Supreme Court decisions, it appears that the 1981 commission will have even wider latitude in creating districts that deviate from the ideal district size. In White v. Regester (1973), a case involving a Texas House plan which was in compliance with population variance requirements but which was invalidated because of the racial and ethnic implications of its multi-member districts, the Supreme Court's decision suggested that the Court would accept an overall range of 10 percent without requiring the state to

justify the variance.<sup>16</sup> The Court stated:

We cannot glean an equal protection violation from the single fact that two legislative districts in Texas differ from one another by as much as 9.9%, when compared to the ideal district ("overall range"). Very likely, larger differences between districts would not be tolerable without justification "based on legitimate considerations incident to the effectuation of a rational state policy."<sup>17</sup>

This is not to suggest that the Court will automatically accept any plan having an overall range of less than 10 percent. It should be noted that in White, although the overall range was high, the average deviation from the ideal district size was only 1.82 percent. The Court also observed that only twenty-three of the seventy-nine single-member districts were over- or underrepresented by more than 3 percent, and of these, only three deviated by more than 5 percent.<sup>18</sup>

Similarly, in Gaffney v. Cummings (1973), the U.S. Supreme Court upheld a Connecticut state legislative reapportionment plan with an overall range for the House of 7.83 percent. Again, the Court looked at the average district deviation and found it to be only 1.9 percent--well within the Court's standard of substantial equality.

The implication of these decisions is that there may be greater leniency for the 1981 Reapportionment Commission (although no more than a 10 percent deviation is allowable).<sup>19</sup> The U.S. Supreme Court, it seems, has adopted the same rationale as did the Pennsylvania Court in Specter--they have shifted the burden of proof to the appellants to show a real violation of the equal protection clause of the United States Constitution.

### **Problems with Political Subdivisions and District Compactness**

In all probability, the most serious challenges to the 1981 plan will center on allegations of unnecessary political subdivision splits and lack of district compactness. Unlike the standards pertaining to population equality, there are no specific

legal criteria guiding the commission with respect to these issues.<sup>20</sup> The Pennsylvania Supreme Court, it will be recalled, sustained the 1971 reapportionment plan only by a 4-3 margin, with lack of compactness and subdivision integrity a major source of complaint on the part of the dissenters. There is a strong likelihood that these issues will be just as troublesome in 1981 as they were ten years ago.<sup>21</sup>

In 1971, the Pennsylvania Court majority rationalized subdivision splits on the following grounds:

While it is true that the Commission's plan provides for more political subdivision splits than did this court's reapportionment plan of 1966, this increase was obviously necessitated by the stricter requirements of population equality that are now in order. Yet despite these stricter population requirements, the number of subdivision splits called for by the Commission's plan is still quite small when compared to the 2,566 municipalities and 9,576 voting precincts in this Commonwealth.<sup>22</sup>

However, with the current potential for greater population leverage than was acceptable in 1971, the Pennsylvania Court may prove to be more critical of subdivision splits than it was in 1971. If the proposed 1981 plan shows a substantial degree of subdivision splits combined with a greater population variance, the Court surely will threaten the plan on the grounds that many of the splits are "unnecessary." In general, splits should be necessary only when used to maintain an acceptable population variance, to take into account certain geographic boundaries (e.g., mountains and rivers), or to maintain communities of interest (e.g., ethnic or cultural groups).

The issue of compactness is even more open to subjective judgment, since allegations previously have been based upon little more than cursory glances at electoral maps. With the rise of computerized redistricting systems, however, it will be much easier to test grossly misshapen districts to see if it was really necessary to construct them in that way. Those challenging the 1981 plan may be able to utilize computer techniques to show possible partisan or incumbent gerry-

mandering in the commission's plan. This possibility may force the 1981 commission to justify fully any non-compact districts, and not to rely on unsubstantiated claims that it was necessary to draw non-compact districts in order to attain a low population variance, as did the 1971 commission. Since there are no federal constitutional standards requiring district compactness or limiting political subdivision splits, it is possible that the Pennsylvania Court will again grant the commission a fairly free hand in interpreting article 2, section 16 of the state constitution.

### **Gerrymandering**

Reapportionment by commission is intended to preclude the possibility of partisan gerrymandering. The structure of the Pennsylvania commission, with the members being the two leaders of each party and a "non-partisan" arbiter/chairman, did serve to dampen the cries of partisan gerrymandering in 1972. The fact that the 1981 legislative leaders were able to reach a satisfactory compromise on the chairmanship may indicate that partisanship will not be a major issue in the next reapportionment.

However, the possibility of incumbent gerrymandering may not be so easily dismissed. As noted previously, the legislative leaders paid special attention in the 1972 plan to the interests of local party leaders. There was hardly an instance where an incumbent lost a seat as a result of the commission's plan. It is likely that the 1981 commission will also try to protect incumbents.

With respect to possible litigation on this issue, the outcome is uncertain. The United States Supreme Court has made no decision detailing what constitutes an incumbent gerrymander. On several occasions, however, the Supreme Court has opined that in a redistricting plan, an effort to minimize contests between incumbents does not, in and of itself, constitute a violation of the Fourteenth

Amendment.<sup>23</sup> In White v. Weiser, the Court declared: "We repeat what we have said in the context of state legislative reapportionment: 'The fact that district lines may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness.'"<sup>24</sup>

Although the 1981 plan will be almost immune to federal constitutional challenge,<sup>25</sup> it still may be subjected to challenge in the Pennsylvania Supreme Court (under article 2, section 16 of the state constitution). If the Pennsylvania Court's ruling on the 1972 plan is any indicator, however, it is doubtful that the 1981 Court will take issue with incumbent gerrymandering.



## CONCLUSION

After an in-depth examination of the history of reapportionment in Pennsylvania, it is possible to make a judgment on the effectiveness of the commission experience in the Keystone State. Was the Pennsylvania Legislative Reapportionment Commission, as Common Cause suggests, preferable to the state legislature as the reapportionment agency in Pennsylvania?

The avowed purpose of the commission was to remove the "politics" from the reapportionment process. If the 1972 experience is any indicator, this was hardly the result in Pennsylvania. The whole commission process, in the end, rests on the integrity of one man--the commission chairman--and on the partisan character of the state Supreme Court. In a state where the Supreme Court justices are elected on a partisan ballot, it would be erroneous to assume that the bench is above partisan concern.<sup>1</sup> Particularly with the 1981 struggle between the Republican and Democratic commission members to appoint a chairman, and with the partisan struggle to fill a Supreme Court vacancy, the "politics" of the reapportionment issue become obvious.

If one purpose of the commission was to take reapportionment out of the hands of the state Supreme Court, the commission failed dramatically.<sup>2</sup> Although the Pennsylvania commission has original jurisdiction over any reapportionment plan, the Court has the final word. In 1972, the Court had to hear eighteen challenging suits before making its decision to uphold the commission's plan.

The Court was not an effective tool, however, in enforcing the constitutional provisions for district compactness and political subdivision integrity. The 1972 House map has forty-five of the state's sixty-seven counties divided (see Map 2). Furthermore, there are small voter precincts where residents on opposite sides of a

street have different representatives.<sup>3</sup>

The Senate map is even more confusing (see Map 6). A recent Philadelphia Inquirer story contained the following description:

The state Senate's Fifth District in Philadelphia, now represented by Sen. James Lloyd, has more twists and turns than the Schuylkill River.

Out in Pittsburgh, Sen. James Romanelli's 43d District resembles an uprooted maple tree with a surrealistic trunk.

Sen. Frank O'Connell's 20th District in northeastern Pennsylvania has a chin, mouth, nose and forehead sitting atop an Ichabod Crane neck.

The maps of Pennsylvania's legislative and congressional districts include many other weird shapes-- horseshoes, barbells, wrenches and hourglasses.<sup>4</sup>

There were also several complaints in 1972 that the commission plan allowed for population deviations that were higher than necessary. Where the Court could have made serious objections against the 1972 plan, the justices allowed the plan to escape unscathed. This Court decision protected a probable incumbent gerrymander.

The Pennsylvania Legislative Reapportionment Commission does not seem to be a significantly better mechanism than the state legislature for providing an equitable reapportionment plan. The Commission has been subject to partisanship and to concern for incumbents, and--when backed by a partisan Court--the commission seems to have had greater freedom than the legislature might have to deviate from the state constitutional standards. Yet, for 1981, the Commission represents the single best hope of attaining improved representation.



## APPENDIX

The following are the legislative reapportionment provisions of the Pennsylvania constitution (article II, sections 16 and 17).

### LEGISLATIVE DISTRICTS

Section 16. The Commonwealth shall be divided into 50 senatorial and 203 representative districts, which shall be composed of compact and contiguous territory as nearly equal in population as practicable. Each senatorial district shall elect one Senator, and each representative district one Representative. Unless absolutely necessary no county, city, incorporated town, borough, township or ward shall be divided in forming either a senatorial or representative district.

### SCHEDULE

Section 16, if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

### LEGISLATIVE REAPPORTIONMENT COMMISSION

Section 17. (a) In each year following that in which the Federal decennial census is officially reported as required by Federal law, a Legislative Reapportionment Commission shall be constituted for the purpose of reapportioning the Commonwealth. The commission shall act by a majority of its entire membership.

(b) The commission shall consist of five members: four of whom shall be the majority and minority leaders of both the Senate and the House of Representatives, or deputies appointed by each of them, and a chairman selected as hereinafter provided. No later than the fourth Monday in January of the year following the year in which the Federal decennial census is officially reported as required by Federal law, the four members shall be certified by the President pro tempore of the Senate and the Speaker of the House of Representatives to the elections officer of the Commonwealth who under law shall have supervision over elections.

The four members within 45 days after their certification shall select the fifth member, who shall serve as chairman of the commission, and shall immediately certify his name to such elections officer. The chairman shall be a citizen of the Commonwealth other than a local, State or Federal official holding an office to which compensation is

attached.

If the four members fail to select the fifth member within the time prescribed, a majority of the entire membership of the Supreme Court within 30 days thereafter shall appoint the chairman as aforesaid and certify his appointment to such elections officer.

Any vacancy in the commission shall be filled within 15 days in the same manner in which such position was originally filled.

(c) No later than 90 days after either the commission has been duly certified or the population data for the Commonwealth as determined by the Federal decennial census are available, whichever is later in time, the commission shall file a preliminary reapportionment plan with such elections officer.

The commission shall have 30 days after filing the preliminary plan to make corrections in the plan.

Any person aggrieved by the preliminary plan shall have the same 30-day period to file exceptions with the commission in which case the commission shall have 30 days after the date the exceptions were filed to prepare and file with such elections officer a revised reapportionment plan. If no exceptions are filed within 30 days, or if filed and acted upon, the commission's plan shall be final and have the force of law.

(d) Any aggrieved person may file an appeal from the final plan directly to the Supreme Court within 30 days after the filing thereof. If the appellant establishes that the final plan is contrary to law, the Supreme Court shall issue an order remanding the plan to the commission and directing the commission to reapportion the Commonwealth in a manner not inconsistent with such order.

(e) When the Supreme Court has finally decided an appeal or when the last day for filing an appeal has passed with no appeal taken, the reapportionment plan shall have the force of law and the districts therein provided shall be used thereafter in elections to the General Assembly until the next reapportionment as required under this section 17.

(f) The General Assembly shall appropriate sufficient funds for the compensation and expenses of members and staff appointed by the commission, and other necessary expenses. The members of the commission shall be entitled to such compensation for their services as the General Assembly from time to time shall determine, but no part thereof shall be paid until a preliminary plan is filed. If a preliminary plan is filed but the commission fails to file a revised or final plan within the time prescribed, the commission members shall forfeit all right to compensation not paid.

(g) If a preliminary, revised or final reapportionment plan is not filed by the commission within the time prescribed

by this section, unless the time be extended by the Supreme Court for cause shown, the Supreme Court shall immediately proceed on its own motion to reapportion the Commonwealth.

(h) Any reapportionment plan filed by the commission, or ordered or prepared by the Supreme Court upon the failure of the commission to act, shall be published by the elections officer once in at least one newspaper of general circulation in each senatorial and representative district. The publication shall contain a map of the Commonwealth showing the complete reapportionment of the General Assembly by districts, and a map showing the reapportioned districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the senatorial and representative districts having the smallest and largest population and the percentage variation of such districts from the average population for senatorial and representative districts.

#### SCHEDULE

Section 17, if approved by the electorate voting on April 23, 1968, shall become effective the year following that in which the next Federal decennial census is officially reported as required by Federal law.

## NOTES

### Introduction

<sup>1</sup>Walter A. Zelman, "Redistricting: The Case for an Independent Commission," in The John Brown Cook Association for Freedom: Lectures on Redistricting: 1980-1981, ed. Alan Heslop (Claremont, Calif., n.p., 1981), p. 48.

### Chapter 1

<sup>1</sup>The Pennsylvania Manual, vol. 104, ed. Gail Ackley and Patricia D. Arcuri (Harrisburg, Penn.: Department of General Services, 1979), p. 6.

<sup>2</sup>Suffrage requirements at that time were very rigid, and nearly disenfranchised the lower classes in Philadelphia. It was estimated that one in ten met the suffrage requirements in rural districts, while only one in fifty qualified in the city.

<sup>3</sup>J. Paul Selsam, The Pennsylvania Constitution of 1776 (New York: Da Capo Press, 1971), pp. 31-39.

<sup>4</sup>Pennsylvania, Constitution (1776), art. I, sec. 17.

<sup>5</sup>Pennsylvania, Constitution (1790), art. I, secs. 1, 2, 4.

<sup>6</sup>Ibid., secs. 5, 6, 7.

<sup>7</sup>Pennsylvania, Constitution (1838), art. I, secs. 1, 2, 4 (House), and secs. 4-7 (Senate).

<sup>8</sup>Legislative Apportionment, Reference Manual No. 6 (prepared for the delegates to the constitutional convention by the Preparatory Committee, 1967), p. 13.

<sup>9</sup>Ibid.

<sup>10</sup>Debates of the Constitutional Convention to Amend the Constitution of Pennsylvania, 1872-1873, 9 vols. (Harrisburg: State Office, 1874), 2: 170-208 (hereafter cited as Debates).

<sup>11</sup>Charles Buckalew previously had written a book on proportional representation. As the Democratic convention leader, he played the most active role in setting the guidelines for the 1873 constitution.

<sup>12</sup>Debates, 5: 511-15.

<sup>13</sup>Legislative Apportionment, p. 14.

<sup>14</sup>Ibid., pp. 14-16.

<sup>15</sup>Debates, 5: 667.

<sup>16</sup>Ibid., p. 661.

<sup>17</sup>Ibid., 7: 30.

<sup>18</sup>Ibid., pp. 190-91.

<sup>19</sup>Ibid., pp. 212-18.

<sup>20</sup>Frank B. Evans, Pennsylvania Politics, 1827-1877: A Study in Political Leadership (Harrisburg, Penn.: Pennsylvania Historical and Museum Commission, 1966), p. 99.

<sup>21</sup>Ibid.

<sup>22</sup>Ibid.

<sup>23</sup>Sidney Wise, "Pennsylvania," in Reapportionment Politics: The History of Redistricting in the 50 States, ed. Leroy Hardy, Alan Heslop, and Stuart Anderson (Beverly Hills, Calif.: Sage Publications, 1981), pp. 277-78.

## Chapter 2

<sup>1</sup>369 U.S. 186 (1962).

<sup>2</sup>377 U.S. 533 (1964).

<sup>3</sup>Id. at 577.

<sup>4</sup>Id. at 578-79.

<sup>5</sup>Id. at 579.

<sup>6</sup>Id. at 585-87.

<sup>7</sup>Id. at 586.

<sup>8</sup>Wise, "Pennsylvania," p. 278.

<sup>9</sup>Pennsylvania, Constitution (1874), art. II, secs. 16, 17.

<sup>10</sup>Lyme v. Lawrence, 45 Dauph. 322 (Pa. C.P. 1938).

<sup>11</sup>415 Pa. 438, 203 A.2d 556 (1964).

<sup>12</sup>Butcher v. Bloom, C.D. 1962, No. 151 (Dauphin County, Pa.) (hereinafter cited as Butcher I).

<sup>13</sup>Act of May 10, 1921, P.L. 449, as amended, PA. STAT. ANN. tit. 25, 2201 (1953) (Senate districts); Act of July 29, 1953, P.L. 956, PA. STAT. ANN. tit. 25, 2215 (1953) (House districts).

<sup>14</sup>Butcher v. Trimarchi, 28 Pa. D. & C. 2d 537 (Dauphin County C.P. 1962).

<sup>15</sup>415 Pa. 459-61, 203 A.2d 568-69.

<sup>16</sup>Id. at 463, 203 A.2d at 570.

<sup>17</sup>Id. at 468, 203 A.2d at 573.

<sup>18</sup>Drew v. Scranton, 229 F. Supp. 310 (U.S.D.C.M.D. Pa. 1964).

<sup>19</sup>Scranton v. Drew, 379 U.S. 40 (1964).

<sup>20</sup>Wise, "Pennsylvania," p. 278.

<sup>21</sup>415 Pa. at 457, 203A.2d at 567.

<sup>22</sup>Legislative Apportionment, pp. 18-19.

<sup>23</sup>Butcher v. Bloom, 420 Pa. 305, 216 A.2d 457 (1966) (hereinafter cited as Butcher II.)

<sup>24</sup>420 Pa. 309-10, 216 A.2d 459.

<sup>25</sup>425 Pa. 478, 230 A.2d 54 (1967).

<sup>26</sup>Id. at 482, 230 A.2d at 56.

<sup>27</sup>Id. at 482-87, 230 A.2d at 56-58.

<sup>28</sup>Id. at 487, 230 A.2d at 58-9.

<sup>29</sup>Id. at 489, 230 A.2d at 60.

<sup>30</sup>Pennsylvania, Constitution, art. II, sec. 17.

<sup>31</sup>Ibid., sec. 17(b).

<sup>32</sup>Ibid., sec. 17(h).

<sup>33</sup>Martin H. Belsky, "Reapportionment in the 1970's--A Pennsylvania Illustration," Temple Law Quarterly 47 (1973): 21-22.

<sup>34</sup>Wise, "Pennsylvania," p. 279.

<sup>35</sup>Appeal No. 54, May Term, 1972, was filed on behalf of Arlen Specter, individually and as district attorney of Philadelphia County. No. 69, May Term, 1972, was filed on behalf of the "Committee of Seventy," a nonpartisan "watchdog" organization. Appeal No. 56, May Term, 1972, was filed on behalf of Republican state Senator Robert Rovner and other Republican state legislators. Appeal No. 59, May Term, 1972, was filed on behalf of former Democratic Mayor James H. J. Tate and two Democratic representatives. See Belsky, "Reapportionment in the 1970's," p. 22n.

<sup>36</sup>Ibid., pp. 22-23.

<sup>37</sup>Ibid.

<sup>38</sup>Ibid., p. 22.

<sup>39</sup>Ibid., pp. 22-23.

<sup>40</sup>Brief for Appellee in re Appeals from the Final Reapportionment Plan of the Legislative Reapportionment Commission (hereinafter cited as Brief for Appellee), at 15-21.

<sup>41</sup>Id. at 7-11.

<sup>42</sup>Id. at 9-10.

<sup>43</sup>Id. at 13-14. See also Belsky, "Reapportionment in the 1970's," p. 23.

<sup>44</sup>Ibid., p. 24.

<sup>45</sup>448 Pa. at 4-5.

<sup>46</sup>Belsky, "Reapportionment in the 1970's," pp. 24-25; Commonwealth ex rel. Specter v. Levin, Civil Action No. 72-402. The complaint alleged (1) that notice in Philadelphia County of the preliminary plan denied the citizens of Philadelphia County equal and adequate notice in violation of the due process and equal protection clauses of the Fourteenth Amendment; (2) that the commission failed to abide by the federal and Pennsylvania constitutional requirements of compactness and contiguity; and (3) that population variations among districts were based on politically motivated gerrymandering and thus were constitutionally impermissible.

<sup>47</sup>Commonwealth of Pennsylvania ex rel. Specter v. Tucker, October Term, 1971, No. 1445 (filed May 5, 1972). In his jurisdictional statement, Specter listed the questions presented as follows (quoting):

I. Did the publication of the preliminary reapportionment plan in Philadelphia County just four days prior to the cessation of the period to file exceptions to the plan violate the due process and equal protection clauses of the Fourteenth Amendment of the United States Constitution as it gave the citizens of Philadelphia County an inadequate and unequal period to evaluate, analyze and prepare criticisms of the plan?

II. Does the revised or final reapportionment plan filed on December 29, 1971, by the Pennsylvania State Legislative Reapportionment Commission violate the equal protection clause of the United States Constitution in that it establishes districts on the basis of impermissible political considerations and not composed of compact and contiguous territory?

III. Does the revised or final reapportionment plan filed on December 29, 1971, by the Pennsylvania State Legislative Reapportionment Commission violate the equal protection clause of the Fourteenth Amendment of the United States Constitution in that the Commission did not make a good faith effort to create districts of equal population 'as nearly as practicable'?

<sup>48</sup>448 Pa. at 16, 293 A.2d at 22.

<sup>49</sup>Belsky, "Reapportionment in the 1970's," p. 26.

<sup>50</sup>Ibid.

<sup>51</sup>Ibid.

- <sup>52</sup>448 Pa. at 16, 293 A.2d at 22.
- <sup>53</sup>Id. at 18, 293 A.2d at 23; Belsky, "Reapportionment in the 1970's," p. 26.
- <sup>54</sup>448 Pa. at 19, 293 A.2d at 24.
- <sup>55</sup>Id.
- <sup>56</sup>Id. at 18, 293 A.2d at 23.
- <sup>57</sup>Belsky, "Reapportionment in the 1970's," p. 27.
- <sup>58</sup>448 Pa. at 25-26, 293 A.2d at 27.
- <sup>59</sup>Id. at 29, 293 A.2d at 29.
- <sup>60</sup>Id. at 30, 33, 35, 293 A.2d at 29, 31, 32; Belsky, "Reapportionment in the 1970's," p. 28.
- <sup>61</sup>448 Pa. at 34, 293 A.2d at 31.
- <sup>62</sup>Id. at 22, 293 A.2d at 25-26; Belsky, "Reapportionment in the 1970's", p. 28.
- <sup>63</sup>448 Pa. at 22-23, 293 A.2d at 26.
- <sup>64</sup>Id. at 27, 293 A.2d at 28; Belsky, "Reapportionment in the 1970's," p. 29.
- <sup>65</sup>448 Pa. at 27-28, 293 A.2d at 28.
- <sup>66</sup>Id. at 36-37, 293 A.2d at 32-33.
- <sup>67</sup>Id. at 21, 293 A.2d at 25; Belsky, "Reapportionment in the 1970's," p. 29.
- <sup>68</sup>448 Pa. at 21-22, 293 A.2d at 25.
- <sup>69</sup>Id. at 36, 293 A.2d at 32.
- <sup>70</sup>Belsky, "Reapportionment in the 1970's," p. 30.
- <sup>71</sup>Ibid., pp. 30-31.
- <sup>72</sup>Wise, "Pennsylvania," p. 280.
- <sup>73</sup>Ibid.

### Chapter 3

<sup>1</sup>Edward C. Hussie to Samuel E. Hayes, Jr., Memorandum on the Background of State Legislative and Congressional Reapportionment, January 20, 1981, pp. 2-4 (hereinafter cited as "Hussie to Hayes").

<sup>2</sup>Richard E. Campbell to Legislative Reapportionment Commission Members, Memorandum on the Legislative Data Processing Center, February 24, 1981, pp. 1-3.



- <sup>3</sup>Harrisburg Evening News, February 24, 1981.
- <sup>4</sup>Ibid.
- <sup>5</sup>Ibid.
- <sup>6</sup>Ibid., February 26, 1981.
- <sup>7</sup>Harrisburg Patriot, February 26, 1981.
- <sup>8</sup>Pittsburgh Post-Gazette, February 26, 1981.
- <sup>9</sup>Harrisburg Evening News, February 26, 1981.
- <sup>10</sup>Ibid.
- <sup>11</sup>Wise, "Pennsylvania," p. 280.
- <sup>12</sup>"Hussie to Hayes," p. 6.
- <sup>13</sup>Wise, "Pennsylvania," pp. 280-81.
- <sup>14</sup>Ibid.
- <sup>15</sup>Ibid.
- <sup>16</sup>"Hussie to Hayes," pp. 6-7.
- <sup>17</sup>412 U.S. at 764.
- <sup>18</sup>"Hussie to Hayes," p. 7.
- <sup>19</sup>Mahan v. Howell, 410 U.S. 315 (1973).
- <sup>20</sup>"Hussie to Hayes," p. 11.
- <sup>21</sup>Ibid., p. 12.
- <sup>22</sup>Specter v. Levin, 448 Pa. at 16, 293 A.2d at 22.
- <sup>23</sup>"Hussie to Hayes," p. 11. See Burns v. Richardson, 384 U.S. 73 (1966); White v. Weiser, 412 U.S. 783 (1973).
- <sup>24</sup>Id.
- <sup>25</sup>Id.

#### Chapter 4

<sup>1</sup>Alfred Balitzer, The Commission Experience: Studies of Non-legislative Approaches to Redistricting (Claremont, Calif.: Rose Institute of State and Local Government, 1980), p. 6.

<sup>2</sup>Ibid., p. iii.

<sup>3</sup>Philadelphia Inquirer, March 2, 1981.

<sup>4</sup>Ibid.

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