

**REDISTRICTING AND ITS REFORM:
AN INTRODUCTION**

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PREFACE

This publication is one of a series planned by the Rose Institute on the redistricting process, both in California and nationally. The first in the series, this volume is intended to:

1. introduce the history and practice of redistricting, with special attention to California.
2. provide an overview of various proposals for the reform of redistricting.

Gerrymandering — or the effort to gain partisan or incumbent advantage from drawing jurisdictional lines — is as old as the single member district system. Even before 1812, when the process was named for Massachusetts' Elbridge Gerry, Patrick Henry had attempted to redistrict James Madison out of a seat in the First Continental Congress. In the past quarter-century, however, the scale and effectiveness of gerrymandering have outgrown all precedents.

Decisions of the U.S. Supreme Court of the 1960s — Earl Warren's one-man-one-vote opinions in Reynolds v. Sims and Wesberry v. Sanders — revolutionized the rules for drawing district lines. Up to that time, partisan advantage in districting was largely a product of malapportionment, sometimes called the passive or silent gerrymander, or the failure to redraw boundaries to reflect population change. In the old days, a district was Republican or Democratic, safe or marginal, depending on the political history of the area and on more or less permanent geopolitical features such as county boundaries.

After the Warren Court decisions, however, states were required to redistrict to reflect population change. Unable to secure either party or incumbent advantage through malapportionment, majority parties turned instead to active gerrymandering on an unprecedented scale. And, because equal population was now judicially mandated as the paramount criterion, redistricters were free as never before to ignore county boundaries and other traditional constraints on district composition.

In the 1970s, the reach for political advantage in the redistricting process was further assisted by the development of computerized geographic retrieval systems. Much of the guesswork was now removed from redrawing boundaries as legislators hired computer technicians to sum the political consequences of each line as it was entered on the map. Today, control of redistricting is a far mightier power than ever in the past. The extent to which this power has been abused — and the adverse consequences for representative government — are nowhere better demonstrated than in California. And efforts now underway to end California's gerrymanders have great importance for redistricting reform nationally.

The Rose Institute is indebted to the McKenna Foundation for providing funds to improve its technical capabilities in redistricting analysis: empirical tests of guidelines, on which some of the conclusions in this publication are based, were performed using an improved version of the Institute's REDIS system. We are pleased to record our gratitude, also, to the Haynes Foundation, which had what we believe to be the foresight, and what all will recognize as the courage, to support research in an area of intense controversy. Of course, neither these foundations nor the Governors of the Rose Institute are responsible for the opinions expressed herein.

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Chapter 1: An introduction to the redistricting process in California

History.

In California, as elsewhere, the reach for political advantage via districting has deep historical roots. No stranger to malapportionment in the first half of the Twentieth Century, it was in 1951 that the State first experienced an aggressive partisan gerrymander. Of the seven new Congressional seats apportioned to California that year, the Republicans, who then controlled the State Legislature and the Governorship, seized the lion's share. In 1952, 19 Republicans were elected to the 30-member delegation. Similar results were initially achieved on the state legislative level, even in the grossly malapportioned State Senate. By 1958, however, their gerrymanders were unravelling at the polls: in that year's election, Republicans won only 14 of the 30 seats. Control of the state legislature shifted to the Democrats.

In 1961, California was apportioned eight new Congressional seats. This time the Democrats controlled the State Legislature and the Governorship. Playing a tit-for-tat game Democrats used their power to assure that only 13 Republicans were elected to the 38-seat delegation in 1962. Similar gains were achieved in the State Assembly. By 1966, however, their gerrymanders, too, could not prevent the shifts in public opinion from having electoral consequences. Republicans won 17 seats to the Democrats 21 in the congressional elections of that year. By 1968 Republicans took control of the state legislature despite the interim juggling following the 1964 court rulings.

California's first congressional redistricting under the "one-man-one-vote" occurred in 1967. Philip Burton, Democratic Congressman and San Francisco power broker, was the mastermind that year of a bipartisan or "sweetheart" gerrymander. The interchange of territory between incumbents of both parties produced some of the most extreme and effective gerrymanders putting their predecessors to shame. The districts orchestrated by Burton and his colleagues in 1967 protected all of California's 38 congressmen in the next three elections.

In 1971, when five new congressional seats were apportioned in California, redistricting became the focus of a furious partisan struggle, in which both sides relied heavily on the new computer technology. Narrow Republican legislative control in 1968 was replaced by narrow Democratic legislative control. The only protection Republicans had against a unified legislative majority was a Republican governor.

After Governor Ronald Reagan vetoed Democratic plans in 1971 and 1973, the Supreme Court entrusted the redistricting tasks to three-judge court masters. Although borrowing some elements from the Democrats' gerrymander, the "Masters' Plan," unveiled in 1973, provided a fairly even playing field for the two parties, with almost a quarter of its districts proving competitive. In 1974, in the wake of Watergate, most of the competitive districts swung to the Democrats. Republicans elected only 15 of the 43 person delegation, five fewer than their 1972 totals. Later in the decade, however, following the triumph of Jarvis' Prop 13 and the setbacks of the Carter Presidency, the Masters' plan allowed a major Republican comeback: the 1980 election gave Republicans 21 seats to the 22 for Democrats.

The 1980's.

This history of to-and-fro, in which gerrymanders yielded brief advantages to the redistricting party, came to an end with California gerrymanders of 1981 and 1982, of which the congressional districts were most blatant. The 1981 districts provided an extreme demonstration of the partisan advantages of "one-man-one-vote." Cutting across city and county boundaries, breaking up communities of interest, jumping natural geographic boundaries, using the narrowest of corridors to link widely separated centers of population, the districts were nevertheless equal in population. Indeed, exact population equality became rationale for what Philip Burton, the chief designer, publicly proclaimed as "my contribution to modern art."

Redistricting legislation involving three plans (congressional, assembly, and state senate) was signed into law by Governor Jerry Brown in September 1981. Shortly thereafter three referenda qualified for the June, 1982 primary election ballot.

Before the voting, however, the issue entered the legal arena. Democratic counteraction against the referenda reached the State Supreme Court, presided over by Rose Bird, in the case of Assembly v. Deukmejian. Burton and the Democratic leaders of the State Legislature challenged the referenda on grounds of alleged violations of petition circulation procedures. Governor Deukmejian and Republican leaders asked for a stay in use of the districts that would be voided by the referenda. The Court, although rejecting the Democratic challenge to the referenda, refused to stay the use of the districts which were then rejected by popular vote.. The ironical result was that, although the districts were overturned by the June referenda, the districts were used in the November elections. In that election, the gerrymanders achieved their goal: the party balance of 22 Democrats and 21 Republicans was replaced by 28 Democrats and 17 Republicans.

The state's legislative districts, too, although voided by the people in June, returned Democratic majorities in November. The newly elected Legislature, taking office in December of 1982, focused its energies on consolidating the gains that had been made. The 1981 districts rejected by popular vote, the legislature elected from the voided districts had the opportunity to realign their districts.

Time was of the essence. The Democratic governor who approved the districts rejected by the public was leaving office in January 1983. Acting quickly to solidify their own districts Democratic leaders left to the Republican minority the option of drawing their own districts from what was left. Recognizing the inevitability of their fate, Republican incumbents joined Democrats in carving districts which gave legislators of both parties districts of greater mutual security.

On the congressional level, Democratic technicians further fine-tuned the districts which had yielded the Democrats their huge electoral advantage. The new congressional districts, together with the "sweetheart" legislative districts, were signed into law by outgoing Governor, Jerry Brown, on January 2, 1983.

In June of 1983, an initiative containing new boundaries for all state legislative and congressional districts, sponsored by Assemblyman Don Sebastiani, qualified for the 1984 ballot. The initiative-cum-maps constituted a unique challenge to traditional redistricting practices, as well as to the power structures of both parties. Many competitive districts would have been created. Again, the issue came before the

California Supreme Court, which again acted to protect the existing districts. The initiative was declared unconstitutional because it would have redrawn district lines a second time in the same decade. The State Supreme Court removed from the ballot an initiative which had easily qualified. To the party faithful a joyful Speaker, Willie Brown, commented: "Sister Rose and the Supremes took care of that little matter [the Sebastiani incident]."

In June of 1984, a second redistricting initiative, under the direct sponsorship of Governor Deukmejian, was qualified for the November ballot. The proposal sought to reform the process by which district lines are drawn. Taking the matter out of the hands of the Legislature, it would have established a board, composed of retired appellate court judges, with power to create new districts in 1986. In November, it went down to defeat at the polls, the victim of a campaign against "politicizing the judiciary."

Although Republicans filed a suit (Badham v. Eu) in federal courts to challenge the congressional district lines, the Democratic gerrymander continued to work its intended effects. Unlike most of its predecessors, its partisan advantage continued through the decade. Democrats maintained their huge majority of seats that they first won in 1982 even when, as in 1984, they earned less than a majority of the votes.

Incumbents of both parties can also take comfort from the continuing effectiveness of the congressional gerrymander. In 1986 and 1988, not only did all of California's House members secure re-election, but only two were returned with less than a 15 percent vote margin. A U. S. Supreme Court action in 1989 virtually assures that the current districts will continue to work their magic for incumbents in 1990.

Chapter 2: Techniques, types, and technology of gerrymanders

The Massachusetts gerrymander of 1812 involved an effort by the Republican-Democrats in the state legislature to concentrate Federalist voters in a few districts, while carrying off a majority of the seats for themselves. The effort failed, for the elections of 1813 were won by the Federalists.

Techniques of Gerrymandering.

The basis of all gerrymanders is the effort of power holders to perpetuate or add to their power in the legislature. It is a useful over-simplification to recognize two main types of gerrymander: (a) the bipartisan or "incumbent survival" plan; (b) the partisan or "majority party" plan. In bipartisan gerrymanders, the prime aim is to preserve incumbent legislators, generally by adding to the number of the party registrants within the district. The tell-tale signs of such a gerrymander are increased majorities for all or most incumbents, reduction in two-party competition, or even the elimination of electoral challenges in many districts. The partisan gerrymander has the prime aim of maintaining or adding to the number of seats held by the majority party. Again, it is a useful over-simplification to distinguish two principal techniques of doing so. The first is by concentration of the voters of the minority party in as few districts as possible: these districts will then produce large majorities for minority party representatives, but at the price of preventing or limiting effective minority party competition in other districts. Alternatively, the wasting effect may be achieved by dispersal of the voters of the opposition party: by dividing up concentrations of minority party strength among a number of districts, but assuring that the minority voters will always fall short of a majority in these districts, the majority party wins additional seats. Statistically, the tell-tale sign of a partisan gerrymander is that the percentage of the seats held by the majority party in the legislature is significantly higher than its percentage of the two-party vote in the preceding election. In terms of shape, a frequent characteristic of both partisan and bipartisan gerrymanders is the presence of narrow corridors or elongated "necks" of territory.

The great variety of gerrymandering techniques is not suggested by this simple account. Thus, bipartisan gerrymanders are sometimes built onto partisan gerrymanders. This was the case of the 1982 amendments to the 1981 plan for California's state legislative districts—the former assuring the greater electoral security of all survivors of the latter. Similarly, many of the most successful gerrymanders incorporate elements of both concentration and dispersal: from a technical perspective, this is the principal reason for the long-running success of the 1982 gerrymander of California's congressional districts. Republicans were concentrated in an extreme manner and Democrats judiciously dispersed with fine finesse.

Types of Gerrymander

On the basis of examples in the literature and participant-observer experience the following classification system has been developed (and is further discussed in Professor Leroy Hardy's publication, Gerrymandering :A Synopsis):

silent gerrymander
concentration gerrymander
dispersal gerrymander
elongation gerrymander
isolation gerrymander
projection gerrymander

In each case, the adjective describes the technique used to create a political gain or advantage. Any effort to control gerrymandering must consider the techniques and how to minimize their operation in the re-districting process.

THE TECHNOLOGY OF GERRYMANDERING

Not so long ago, in the era before the application of computer technology to politics, it was common for politicians and their staffs to spread out maps on their office floors and, using adding machines to work their arithmetic, slowly build new districts from census tracts and precincts. Such a procedure was not only infinitely laborious, but it also prevented the full reach for political advantage. The redistricting team might start out at one end of the state, for example, build satisfactory districts until they reached the other end, and then find that they were short of majority party registrants or had miscalculated the population needed for the final districts. The task of "rippling" additional voters from one end of the state to the other presented huge difficulties in this kind of non-automated redistricting. Often, too, the plans would be built using only the most primitive political and demographic information: politicians backed their hunches after "eye-balling" a few statistics, or simply guessed what the political impact might be of adding or subtracting territory from districts.

In redistricting, most decisions must be made sequentially: one boundary change requires another, which requires yet another, and so forth. The computer is able to speed each decision, so that the whole process is accelerated. Many more alternatives, based on very much fuller information, can thus be considered.

During the 1960s a number of computerized redistricting systems were created. They aimed to optimize goals such as equality of population, district compactness, and various demographic standards. Most of these systems were designed to operate with population and demographic data, but not with vote history or registration data. Only one system — the Kaiser-Nagel system — saw extensive practical use.

These different modelling systems were not more widely employed in actual redistrictings because they failed to meet the political needs of legislative users. Moreover, all these systems failed to capitalize fully on the major advantage of the

computer in the redistricting process: namely, the ability to sample and present information from a very extensive demographic and political data base. The data bases on which these early systems operated represented only one single time-period, i.e., the party counts, election results, and demographic figures for a particular year. As a result, the political decision maker could develop only a weak understanding of how an area would vote; he had no information, for example, on how the voting characteristics of an area were shifting over time.

Today, computers are used to aid redistricting decisions from the beginning of the district formation process to the stage of final analysis and evaluation. They operate with inputs and outputs not only of tabular data, but also of graphic data. They accept interrogations in the form of geographic areas of interest and produce results in the form of geographic display. Thus, the user not only sees the facts, but he sees what areas they represent.

The systems are user-oriented — tailored to the specific needs and interests of legislative users. They work with very extensive data bases, often those that have been developed for use in statewide election campaigns and that include great quantities of politically relevant information. They incorporate advanced software systems, generalized data management systems, and a variety of advanced equipment (digitizers, plotters, graphic display units, etc.).

The greatest advance has been in the area of geographic retrieval, or the ability of the systems to determine accurate values (population or political and demographic characteristics) for any geographic area, no matter how large, or as small as an individual precinct or a fraction of a census tract. Generally, geographic retrieval is accomplished by entering a map area on a digitizer — a table with x and y axis scales that are read by an electro-optical encoder that can transmit to the computer the x and y positions of a tracing stylus. This function is particularly useful in the decisional stage on district boundaries, when large areas are being traded between proposed districts, and at the fine tuning stage, when very small areas are being moved in order to achieve equality of population (without losing the desired political characteristics of the districts involved).

Modeling and simulation functions are possible on the new systems. For example, projections can be made for an entire district based on specific criteria, and assessments can be made of its future voting behavior in different political circumstances. Search functions are also incorporated in the new systems, providing the user with the ability to determine the areas in the state that possess certain specified characteristics: the results of the search can not only be listed, but plotted so the user can grasp the geographic pattern.

It is helpful to distinguish between two main types of reform: the redistricting commission and redistricting criteria and guidelines.

The Commission

In most states, redistricting is the initial responsibility of the legislature. It was a responsibility, however, that many legislatures found difficult, or even impossible, to perform in the 1970s and 1980s: in more than a dozen states, federal or state courts stepped into the process to impose their own plans. Great political turmoil surrounded the redistricting process in a number of other states, and their final legislative plans were often intensely controversial.

The legitimacy of legislatively-conducted redistrictings is now under challenge. It is widely charged that there is an inherent "conflict-of-interest" in allowing state legislators to draw district lines. "Incumbent protection" is the aim and result of most legislative plans. Evidence is also brought forward to show that legislatively-conducted redistricting undermines two-party competition, not only in individual safe districts, but in state-wide politics. Parties are weakened, the argument insists, by the security of their office-holders. Fielding high-quality candidates is a waste of time. Districts top-heavy with registrants of one party tend to elect candidates who represent the extreme, ultra-loyalist wings of the respective party. Moreover, the responsiveness to public opinion of individual office-holders and of legislative parties is lessened. Incumbents can ride out all but the most massive electoral tides in the security of safe districts. The policy process itself, it is claimed, is distorted. Electoral coalition building is superfluous. Indeed, many groups (particularly ethnic minorities), it is said, are permanently shut out of the policy process by party-controlled districting. Thus, the indictment embraces many facets of the representative system — its competitiveness or its responsiveness, the quality of representation, its capacity to produce effective policy, and the adequacy of group participation in politics.

The National Common Cause Commission

Common Cause has long headed the movement of "reapportionment reform" via commission. The national Common Cause approach has three main elements: establishment of an independent, non-partisan reapportionment commission in every state; strict anti-gerrymandering standards; and prompt judicial review. The argument for the approach was summarized in the Common Cause publication, "Reapportionment: A Better Way":

The purpose of political gerrymandering is to shut people out of the political process. Reapportionment reform is designed to benefit the public by broadening political participation and increasing electoral competition. Reapportionment reform is designed to strengthen the political process by providing an incentive for political parties to bring new ideas and new people into the process. By reforming the reapportionment process and improving state legislatures, states may increase public respect for state government and strengthen the role of state government in our federal system.

(For further detail on the Common Cause Commission, see Appendix 1)

California's Proposition 14 Commission

Proposition 14 appeared on the November 1982 state ballot in California. The proposed commission would have been required to adopt, prior to the October of 1983, new districting plans (the 1981 plans having been rejected by the voters in a referendum in June of 1982). The Commission would have consisted of at least 10 appointed members. A panel of justices from the California Courts of Appeal would have selected four members, including the chair of the commission. The largest two political parties in California would have each appointed three members, two of whom could be members of the legislature. In addition, any other political party having 10 percent or more representation in the state legislature would have been authorized to appoint a single member. The commission was required to draw districting plans that would conform to the following standards:

1. Each districting plan to provide fair representation for all citizens, including racial, ethnic, and language minorities, and political parties.
2. Each Board of Equalization district to be composed of 10 Senate districts, and each Senate district shall be composed of two Assembly districts.
3. The population of state legislative districts to be within 1 percent of the average district population, but can vary by up to 2 percent to accomplish the objectives and standards specified in the measure. Congressional districts to be as nearly equal in population as practicable.
4. Each district to have only one representative.
5. There must be no lapse of representation for a district because of district numbering.
6. To the extent practicable, districts:
 - .To be geographically compact,
 - .To not cross any common county boundary more than once,
 - .To be comprised of whole census tracts, and
 - .To minimize the division of cities, counties, and geographical regions.

If the commission was unable to adopt a redistricting plan or plans within the designated time frame, or if any plan was found unconstitutional or rejected by the voters through the referendum process, the measure would have required the Supreme Court to adopt a plan or plans in accordance with the objectives and standards set forth in the measure.

In voting on November 2 of 1982, Proposition 14 failed with 3,065,072 votes (45.5%) to 3,672,301 (54.5%).

(See text of Proposition 14 at Appendix 1.)

California's Proposition 39 Commission

In 1984, Governor George Deukmejian sponsored a constitutional amendment to the California Constitution to establish a new reapportionment commission that would re-draw the existing districts in 1985 and decennially thereafter. The commission would have consisted of at least ten members, eight of whom would be voting members. The President of the University of California would select the eight voting members by lot from two lists of retired or voluntarily resigned state appellate court judges or, if necessary, lower court judges. These lists would be provided by the Judicial Council. One list would be composed of judges initially appointed by Governors affiliated with the political party which had the largest number of persons registered to vote at the time of the last statewide general election. The second list would be composed of justices initially appointed by Governors affiliated with the political party which had the second largest number of persons registered to vote at the time of the last statewide general election. The President of the University of California would select, by lot, four names from each list.

The commission would have at least two *nonvoting* members. One member would be appointed by the Governor, and a second would be appointed by a statewide officer not affiliated with the political party to which the Governor belongs. In the event all statewide officers are affiliated with the Governor's political party, the second nonvoting member would be appointed by the chairman of the largest political party with which the Governor is not affiliated. An additional nonvoting member would be appointed if at least 20 percent of all registered voters at the last statewide general election belong to a third political party. This nonvoting member would be appointed by the third political party (provided that none of the other nonvoting members on the commission were affiliated with that party).

The commission was required to solicit public comments and hold public hearings prior to adopting final reapportionment plans. In addition, the measure required that the commission's reapportionment plans promote certain objectives and conform with certain standards, including requirements to:

1. Promote competition for elective office,
2. Provide that each State Senate district be composed of two adjacent Assembly districts and each Board of Equalization district be composed of 10 adjacent Senate districts,
3. Assure that districts be comprised of whole census units,
4. Provide that districts be geographically compact, be composed of contiguous territories, and not cross any common county boundary more than once.

If a majority of the commission was unable to reach agreement on the adoption of a final plan, the chairman of the commission would reconstitute the commission

as specified in the measure until a plan could be direct primaries, and the commission would be required to adopt a new plan within 120 days of the rejection. The California Supreme Court would have exclusive state court jurisdiction to review a plan adopted by the commission. If the court found a plan to be in violation of federal or state constitutional or federal statutory provisions, and the commission failed to adopt a new plan by February 1 of the year in which the statewide primary elections and general elections are held, the elections would be conducted under the previous reapportionment plan adopted by the commission. The commission would be required to adopt a new plan for *subsequent elections* within 120 days following this date.

On November 6th of 1984, Proposition 39 was defeated with 3,995,762 (44.8%) votes to 4,919,860 (55.2%).

(See text of Proposition 39 at Appendix 1.)

Public Plan Commissions

There are a number of proposals for an open process, in which any individual or organization may submit a plan for review against specified standards. The reviews are conducted by court-appointed "Special Masters", a specially constituted "Jury", or "Neutral Administrators". Perhaps the best known of these is associated with Norman S. Primus of South Bend, Indiana. In Mr. Primus' public plans, the neutral administrator is responsible for:

- *securing population data and maps and preparing them for public use in map drawing
- *establishing schedules
- *selecting the final plans from public submissions as the result of applying "quantitative criteria".

The quantitative criteria are: population deviation, compactness (measured in terms of boundary lengths), and city integrity (determined by number of splits).

STRUCTURAL CHANGES AND STANDARDS OR GUIDELINES

In California, where the commission concept has twice been rejected by the voters, recent reform attention has tended to focus on means of improving legislatively-conducted redistricting. A number of structural changes have been proposed or are possible:

The Supermajority.

The idea of a supra-partisan legislative vote of two-thirds is sometimes proposed as a means of limiting partisan gerrymanders. Unless associated with other changes, however, the supermajority could easily prove to be a recipe for bipartisan gerrymanders.

Public Hearings and Time Limits.

Gerrymanders are time-consuming exercises, best conducted behind closed doors, and unveiled late in the legislative session, when little can be done to prevent them. Required public hearings and a time limit (e.g., 60 or 90 days after receipt of census data, or passage into law prior to June 30) would not only inhibit gerrymandering action to some degree, but would also permit timely filing of referenda. In turn, the threat of a referendum might bring about a degree of restraint, induced by the uncertainty of the outcome, on the part of the legislative majority. Currently, by delaying action on the redistricting legislation, the majority can prevent filing of a referendum until so late in the year that the court (as in 1982) might allow the next election to take place in the challenged districts.

Mandatory Referenda or Review and Redistricting by Initiative

In order to check blatant gerrymandering, redistricting plans could be subjected to an automatic vote of the people. Such a device, however, would probably require mechanisms for the establishment of interim plans for the next succeeding elections. An alternative device would permit redistricting by initiative to occur within a certain period after the initial redistricting--an approach that would seem to impose some strain on the initiative process, requiring voters to choose between the lines of different maps, but that would certainly cause some second thoughts about legislative gerrymandering.

A number of standards or guidelines could also be used to improve the process.

District "Nesting"

A requirement that senate districts each be composed of two assembly districts could limit the reach for political advantage in redistricting in both houses and, as a result, should produce more competitive districts. One difficulty with the concept, of course, is that it would be difficult, given the changing numbers of the State's delegation in Congress, to nest Congressional districts without also altering the number of legislative districts. A further problem could be that, by greatly complicating the political tasks involved in drawing new lines, the requirement might prolong the process or even bring it to stalemate.

Compactness.

Many measures, both simple and complex, can be used to determine compactness: the aggregate length of boundaries (e.g. the Common Cause concept that the aggregate length of all district lines should not exceed by more than 5% their shortest possible aggregate length); use of measures of population density and the proximity of population

to the district's center; the number of times that lines drawn between opposite extremities cross district boundaries; and so forth. The value of the concept is that it yields an objective and measurable standard. Sometimes attacked on partisan grounds (but rarely on the basis of empirical evidence), the concept is also subject to the challenge that it ignores county, city, and other community boundaries.

County/City Integrity.

Limitations on the number of times county or city boundaries may be crossed offer the hope of checking gerrymandering, while also protecting units of local government (and encouraging competition against legislative and congressional incumbents by local officeholders). Some proposals simply require that only one district may cross the common boundary of any two counties, or that cities with less population than that of a district must not be divided (unless it is necessary to do so to achieve population equality).

District numbering

Since many political games hinge around district numbering, it is often suggested that districts be consecutively numbered north to south, and that some system (typically population percentages) be used for assuring distribution of odd and even numbers.

Community unit sequencing

A new reform proposal, resulting from the Haynes Grant to the Rose Institute, requires the sequencing of counties, cities, statistical areas or other such community units. The essence of the reform, which is being developed by Professor Leroy Hardy, is that the redistricter is deprived of flexibility: he cannot draw districts with "necks" that sprawl across the map. The approach may be associated with a variable starting point (to assure neutralization of the process).

APPENDIX 1

Common Cause Commission

The proposed Common cause amendment provides for the following: single-member districts, a commission to supervise population parameters, the use of traditional jurisdictional boundaries, compact territory standards, a ban on the use of political information, judicial review, and set duration of the plans.

***Decennial Reapportionment in Single Member Districts.** The amendment provides for reapportionment of state legislative and congressional districts and requires single member districts.

***Establishment of Commission.** The amendment provides for the establishment of a five member reapportionment commission. Four members of the commission are appointed by the legislative leaders — one each by the President of the Senate, the Speaker of the House, the Minority Leader of the Senate, and the Minority Leader of the House. The four members select a fifth member who serves as chair. None of the five members may be a public official. The amendment requires the legislature to provide law for the qualifications, duties, and powers of commissioners, procedures for the selection of commissioners and filling of vacancies, and adequate funding for the commission.

***Population Parameters.** The amendment provides that districts in each house shall have “population as nearly equal as is practicable” based on the federal census. Specific population parameters are established to give definition to the requirement of substantial population equality. For state legislative districts, the amendment provides that the average percentage deviation of all the districts of a house from the average population of all districts in that house shall not exceed one percent. No district shall have a population which varies from the average population of all districts unless necessary to comply with one of the other reapportionment standards. In no case shall a district have a deviation from the average of more than five percent. Thus, the maximum allowable deviation from the highest to the lowest populated district is ten percent. In the event of a court challenge, the commission has the burden of justifying any deviation.

For congressional districts, the amendment provides that the same standards shall be used as for state legislative districts, except that no district shall have a population deviation of more than one percent from the average population of all districts.

***Use of Traditional Jurisdictional Boundaries.** The amendment provides that district lines be drawn to coincide with the boundaries of political subdivisions (for example, towns and counties) to the extent consistent with the requirement of substantial population equality.

***Compactness and Convenient Contiguity.** The amendment requires districts to be “compact in form and composed of convenient contiguous

territory.” The amendment provides that the aggregate length of all district boundaries shall be as short as practicable, consistent with the constitutional requirements of substantial population equality and maintenance of political subdivision boundaries. The requirement provides that in no case shall the aggregate length of all the districts exceed by more than five percent the shortest possible aggregate length of all the districts under any other plan consistent with the population and political subdivision standards. The same compactness standard applies to district lines within local political subdivisions that have two or more complete districts.

***Ban on Use of Political Information.** The proposed amendment provides that: “No district shall be drawn for the purpose of favoring any political party, incumbent legislator, or other person or group.” The amendment prohibits the commission from taking into account the addresses of incumbent legislators. The commission may not use the political affiliations of registered voters, previous election results, or demographic information other than population headcounts for the purpose of favoring any political party, incumbent legislator, or other person or group. The amendment further provides that no district shall be drawn for the purpose of diluting the voting strength of any racial or language minority group.

***Judicial Review.** The amendment provides that the state supreme court has original jurisdiction over apportionment matters. The model authorizes any registered voter to file a petition to challenge a reapportionment plan or to compel the commission or any person to perform duties required by the model. Challenges to an apportionment plan must be filed within forty-five days of adoption of a plan. The court must give apportionment matters precedence over all other matters and must render a decision within sixty days after a petition is filed. The court may declare a plan invalid in whole or in part and must order the commission to prepare a new plan.

Text of Proposition 14

PROPOSED ADDITION OF ARTICLE IV A, REPEAL OF ARTICLE XXI, AMENDMENT OF ARTICLE IV, SECTIONS 1 AND 6, AND AMENDMENT OF ARTICLE VI, SECTION 17

First - That Article IV A is added to read:

Article IV A

DISTRICTING OF STATE SENATE, ASSEMBLY AND BOARD OF EQUALIZATION AND UNITED STATES HOUSE OF REPRESENTATIVES

SEC. 1 Except as provided in this article, the sole and exclusive authority to specify the boundaries of districts for the State Senate, Assembly, Board of Equalization and the United States House of Representatives for California is vested in the Districting Commission established by this article.

SEC. 2. The Districting Commission shall adopt two districting plans, one for the State Senate, Assembly and Board of Equalization, and one for the United States House of Representatives.

SEC. 3

(a) Each districting plan shall provide fair and effective representation for all citizens of the State, including racial, ethnic and language minorities, and for political parties. The Commission shall endeavor to maintain identifiable communities of interest, promote competition for elective office, and facilitate individual and group political activity.

(b) Each State Senate district shall be composed of two Assembly districts and each Board of Equalization district shall be composed of ten Senate districts.

(c) Districts shall be single member.

(d) Districts shall be composed of convenient contiguous territory with reasonable access between population centers in the district.

(e) State legislative districts shall not vary in population more than one percent from the average district population based on the decennial census, except that they may vary up to two percent if necessary to accomplish the objectives and standards of this section.

(f) Congressional districts shall have populations which are as nearly equal as practicable.

(g) State Senate districts with the greatest percentage of population from currently even-numbered districts shall be given even numbers and those districts with the greatest percentage from currently odd-numbered districts shall be given odd numbers, except to ensure an equal number of even- and odd-numbered districts. There shall not be a lapse of representation for a district because of district numbering.

(h) To the extent consistent with the objectives and standards set forth in paragraphs (a) through (g) of this section, and insofar as practical, in the Commission's judgment, districts shall:

(1) Be geographically compact; populous contiguous territory shall not be bypassed to reach distant populous areas.

(2) Minimize the division of counties and cities;

(3) Not cross any common county boundary more than once;

(4) Not be created so that a county contains a majority of the population of more districts plus one than the number of whole districts to which it would be entitled;

(5) Minimize the division of geographic regions in California; and

(6) Be comprised of whole census tracts.

SEC. 4. Members of the Districting Commission shall be chosen for the term of the Commission in the year of the decennial census.

(a) A chairperson and three other members shall be appointed by December 31 by a panel of seven justices of the California Court of Appeal, by a two-thirds vote.

(1) The panel shall be selected in order of seniority, beginning with presiding justices by date of appointment to that office, and then associate justices by date of appointment. No more than four shall have been registered as affiliated with the same political party at the time of appointment to the Court of Appeal.

(2) The panel shall appoint, to the extent practical, knowledgeable, politically independent women and men who will give the Commission geographic, social and ethnic diversity. If the justices appoint a person registered to vote within the last three years as affiliated with a political party referred to in paragraphs (b) or (c) of this section, they shall appoint an equal number of persons registered as affiliated with the other of those parties. Appointees shall not hold or have held partisan public or party office within the previous five years.

(b) Three members shall be appointed between December 10 and December 20 by representatives of the political party with which the largest number of persons registered to vote were affiliated at the time of the last statewide election, as follows:

(1) One member by the members of the State Assembly, and one member by the members of the State Senate, registered to vote as affiliated with the party at the date of their nomination.

(2) One member, not a state legislator, appointed by the state chairman of the party, with the approval of the party's executive committee.

(c) Three members shall be appointed between December 10 and December 20 by representatives of the political party with which the second largest number of persons registered to vote were affiliated at the time of the last statewide election, as follows:

(1) One member by the members of the State Assembly, and one member by the members of the State Senate, registered to vote as affiliated with the party at the date of their nomination.

(2) One member, not a state legislator, appointed by the state chairman of the party, with the approval of the party's executive committee.

(d) If persons belonging to any other political party have 10% of the membership of the State Legislature, one additional member may be appointed by the state legislators belonging to that party between December 10 and December 20.

(e) Each member of the Commission shall be registered to vote in California.

(f) Vacancies shall be filled by the body that made the previous appointment in the manner required by this section.

(g) Failure to have one or more members appointed under sections (b) and/or (c) shall not affect the power of the Commission to adopt plans.

SEC. 5.

(a) The Commission shall adopt rules and regulations to fulfill its responsibilities under this article.

(b) Commission meetings shall be open to the public. Commission records, data and plans shall be available to the public.

(c) All action by the Commission shall require approval by a recorded roll call vote of two-thirds of the appointed members, except as otherwise provided in this article.

(d) The Commission shall employ needed staff, consultants and services. The Executive Director must be selected by the vote required to adopt a plan. Members appointed pursuant to sections 4 (a), (b) and (c) shall each be allocated sufficient equal budgets to select staffs responsible to them. These staffs shall have equal access to the policy discussions and decisions of the Commission and to all data compiled and systems used by the Commission.

(e) The Secretary of State shall collect and maintain data necessary to carry out the purposes of this article and provide it to the Commission and, for a reasonable fee, to other interested persons.

SEC. 6.

(a) A Commission shall initially be appointed by December 31, 1982. Appointments made under sections 4 (b), (c) and (d) shall be made by December 20, 1982 and under section 4 (a) by December 31, 1982. The Commission shall adopt districting plans for the 1984 through

1990 elections based on the 1980 decennial census and shall remain in existence until there are final plans for those elections.

(b) Thereafter a Commission shall be appointed in the year of each decennial census. It shall adopt districting plans based on that census and shall remain in existence until there are final plans for that decade.

(c) The Commission shall:

(1) Adopt regulations that further define the objectives and standards for plans.

(2) Establish geographic regions for districting purposes based on major geographical, urban and rural divisions in California.

(3) Hold public hearings throughout the state on proposed plans, including at least two hearings prior to the adoption of plans when those plans are in substantially final form.

(4) Adopt final plans by October 1 of the year following appointment of the Commission, or 180 days after receipt of necessary census data, whichever is later.

(5) Provide written findings and reasons for adoption of plans.

(d) Plans must be adopted by a recorded roll call vote of two-thirds of the appointed members of the Commission, including at least three votes from members appointed pursuant to section 4 (a), one vote from any member appointed pursuant to section 4 (b), and one vote from any member appointed pursuant to section 4 (c).

SEC. 7.

(a) An adopted districting plan shall take effect for the first direct primary following expiration of the period for judicial review and referendum. If that expiration date is later than February 1 of the year of a direct primary, the plan shall take effect for the next following direct primary. Plans shall be effective for the rest of decade.

(b) An adopted districting plan shall have the full effect of a statute. The plan's adoption date shall be deemed to be the enactment date of a statute. The plan shall be published in the Statutes of California.^a

(c) Any statute adopted by the Legislature fixing boundaries for districts covered by a plan shall be void.

SEC. 8.

(a) A plan shall not be subject to repeal or amendment by the Legislature.

(b) A plan adopted by the Commission is subject to referendum under the same requirements and procedures applicable to statutes.

(c) When a referendum petition is certified as adequate by the Secretary of State, the California Supreme Court shall order the next primary and general election to be held in the existing districts, or adopt an interim plan subject to the requirements of Section 9 (b) and (c).

SEC. 9

(a) The California Supreme Court shall have original and exclusive jurisdiction to review a plan adopted by the Commission. A petition for mandamus or other review may be filed by a resident of state within 45 days after the adoption of the plan.

(b) The Supreme Court shall adopt a districting plan within 60 days, in accordance with the objectives and standards set forth in section 3, if:

(1) The Commission has been unable to adopt a plan by October 1 of the year before a direct primary, or 180 days after receipt of necessary census data, whichever is later;

(2) A plan adopted by the Commission has been rejected by the voter; or

(3) A plan adopted by the Commission is finally adjudicated as unconstitutional or in violation of federal statute.

(c) The Supreme Court shall use the Commission with its staff, if at all possible, as its special masters.

SEC. 10. Commission members and staff shall not hold, or be eligible for election to, any state elective office whose district boundaries have been adopted by the Commission for four years from the date the Commission convenes, except those members who are members of the State Legislature at the time of their appointment.

SEC. 11.

(a) The Legislature shall appropriate funds to the Districting Commission and to the Secretary of State adequate to carry out their duties under this article.

(b) Each Commission member who is not an elected state official shall receive monthly compensation equal to the salary of a member of the State Legislature, except during months in which the Commission is not active.

SEC. 12. If any part of this article or the application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which reasonably can be given effect without the invalid provision or a application.

Second - That Article XXI is repealed.

Third - That Section 1 of Article IV is amended to read:

SEC. 1. Except as provided in Article IV A, the legislative power of this State is vested in the California Legislature which consists of the Senate and Assembly, but the people reserve to themselves the powers of initiative and referendum.

Fourth - That Section 6 of Article IV is amended to read:

SEC. 6. For the purpose of electing members of the Legislature, the State shall be divided into 40 Senatorial and 80 Assembly districts as specified in the redistricting plan adopted under Article IV A. One member shall be elected from each district. The Senatorial districts shall be numbered from one to 40, and the Assembly districts shall be numbered from one to 80, in each case commencing at the northern boundary of the State.

Fifth - That Section 17 of article VI is amended to read:

SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment, judicial office, or service on a selection panel as provided for in Section 4 of Article VI A. A judge of the superior or municipal court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

A judicial officer may not receive fines or fees for personal use.

Text of Proposition 39

PROPOSED ADDITION OF ARTICLE VI A, REPEAL OF ARTICLE XXI, AMENDMENT OF ARTICLE IV, SECTION 6, AMENDMENT OF ARTICLE VI, SECTION 17 REPEAL OF DIVISION 18 OF THE ELECTIONS CODE

First - That Article VI A is added thereto to read:

ARTICLE VI A REAPPORTIONMENT OF SENATE, ASSEMBLY, BOARD OF EQUALIZATION AND UNITED STATES HOUSE OF REPRESENTATIVES

Section 1. The people find and declare each of the following:

(a) Fair reapportionment is essential to representative democracy.

(b) Unfair reapportionment dilutes the political power of voters, reduces competition for elective office, and destroys public confidence in government.

(c) The recent history of reapportionment in California is distinguished by unfair attempts to protect incumbent officeholders and the political party in power. The people overwhelmingly rejected unfair apportionment plans enacted by the Legislature. The Legislature thereupon thwarted the people's will by adopting new apportionment plans which were not essentially different from those rejected by the people. Efforts of the people to enact their own apportionment plans through the initiative process were rejected by the state Supreme Court.

(d) Permitting legislators to reapportion their own districts is an obvious conflict of interest. It encourages political gerrymandering while discouraging meaningful political competition. The current manner of reapportionment also diverts the Legislature's attention from other pressing state business. Partisan legislative struggles over reapportionment at times result in the complete paralysis of state government. The process, therefore, should be removed from the Legislature.

(e) It is possible to prepare apportionment plans for the Legislature, Congress, and the Board of Equalization without a partisan, legislative struggle. Apportionment plans should be based on objective criteria to ensure fair representation for all people of the State, including ethnic, racial, and language minorities, and should avoid political gerrymandering.

(f) Newly developed computer technology permits non-partisan personnel trained in its use to design districts that comply with objective reapportionment criteria. Given adequate time and opportunity for interested persons to analyze proposed apportionment plans and provide criticism and comment, an impartial commission can evaluate proposals and adopt fair apportionment plans.

(g) Experienced former judges without past ties to the Legislature, by virtue of training and judicial temperament, are uniquely qualified to serve as members of such an impartial commission and decide on fair apportionment plans.

(h) Apportionment plans defining the boundaries of existing districts should be immediately repealed in favor of fair apportionment plans. The responsibility for devising these apportionment plans, which will establish district boundaries for the remainder of this decade, and thereafter, should be vested in the Fair Reapportionment Commission created by this article.

(i) The immediate adoption and implementation of fair reapportionment is necessary to restore public faith in California state democratic institutions.

SECTION 2. Subject to provisions of the Constitution relating to the initiative and referendum powers of the people, the sole and exclusive authority to adopt apportionment plans which specify the boundaries of districts for the state Senate, State Assembly, State Board of Equalization and the United States House of Representatives for California is vested in the Fair Reapportionment Commission established by this article. All existing apportionment plans shall be void and of no further effect upon the adoption of this article.

SECTION 3. In 1985 and thereafter, in the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Fair Reapportionment Commission shall adopt separate plans of apportionment for the state Senate, state Assembly, state Board of Equalization, and the United States House of Representatives for California.

SECTION 4.

(a) Each apportionment plan shall provide fair representation for all people of the State, including racial, ethnic, and language minorities, consistent with the requirements of the United States Constitution.

(b) Each apportionment plan shall promote competition for elective office.

(c) Each state Senate district shall be composed of 2 adjacent Assembly districts and each Board of Equalization district shall be composed of 10 adjacent Senate districts.

(d) Districts shall be single-member.

(e) State legislative districts shall have populations which are as nearly equal as practicable, except that they may vary to accomplish the objectives and standards of this section, consistent with federal constitutional standards applicable to state legislative districts.

(f) Congressional districts shall have populations which are as nearly equal as practicable, consistent with federal constitutional standards applicable to congressional districts.

(g) Districts shall be comprised of whole census units.

(h) The 20 Senate districts with the highest percentage of population from currently even-numbered districts shall be assigned even numbers and the 20 Senate districts with the highest percentage of population from currently odd-numbered districts shall be assigned odd numbers.

(i) To the extent it is practical to do so, districts shall:

(1) Be geographically compact. Populous contiguous territory shall not be bypassed to reach distant populous areas.

(2) Not cross any common county boundary more than once.

(3) Be composed contiguous territory, with reasonable access between population centers in the district.

(4) Preserve identifiable communities of interest.

(j) To the extent it is practical to do so, apportionment plans shall:

(1) Minimize the division of counties and cities.

(2) Not be drawn for the purpose of favoring any political party.

(3) Not be drawn for the purpose of favoring incumbents.

SECTION 5. (a) Members of the Fair Reapportionment Commission shall be chosen in the year of adoption of this article, and thereafter in the year following the year in which the national census is taken under the direction of the Congress of the United States at the beginning of each decade, in the following manner:

(1) Within 20 days following adoption of this article, and thereafter by January 10 following the year in which the national decennial census is taken, the Judicial Council shall provide the Secretary of State the names of all former justices of the court of appeal and Supreme Court who voluntarily resigned or retired from their respective judicial spots for reasons other than physical or mental disability and who:

(i) Have served as judges of a court of record of this state for 5 years or longer.

(ii) Have never served as members of the state Senate, state Assembly, state Board of Equalization, or the United States House of Representatives.

(iii) Do not hold a public office or political party office.

(iv) Are not employed for compensation to influence any member of the United States Congress, state Senate, state Assembly, or state Board of Equalization.

(2) The names of eligible justices shall be provided by the Judicial Council on 2 lists. One list shall be composed of justices initially appointed by Governors of the political party with which the largest number of persons registered to vote were affiliated at the time of the last statewide general election. The second list shall be composed of justices initially appointed by Governors of the political party with which the second largest number of persons registered to vote were affiliated at the time of the last statewide general election.

(3) Within 10 days after such names have been furnished to the Secretary of State, the President of the University of California, under the supervision of the Secretary of State, or either of their designees, shall draw by lot and record the order of the names of justices from each list until all names are drawn. The first 4 justices on each list who are available to serve shall constitute the voting membership of the commission. The president shall notify the justices of their selection and upon the selection of 4 justices from each list shall notify the Secretary of State that the commission has been constituted.

(4) In the event either list is exhausted, it shall be augmented by the Judicial Council, first with the names of former superior court judges who meet the qualifications prescribed by section 5 for former appellate court justices and then, if necessary, with the names of former municipal court judges meeting those qualifications. The list of former justices initially appointed by governors of the largest political party shall be augmented with the names of former judges currently affiliated with that party. The list of former justices initially appointed by the governors of the second largest political party shall be augmented with the names of former judges affiliated with that party. Selections made from each list shall be made in accordance with the procedures prescribed by paragraph (3).

(5) In addition to 8 voting members, one nonvoting member shall be a
and a second nonvoting member shall be appointed by a statewide officer hinted by the
Governor

dated with the largest
political party of which the Governor is not a member, in the following order of priority: first, Lieutenant Governor; second, Attorney General; third, Secretary of State; fourth, Controller; and fifth, Treasurer.

(6) In the event all of the statewide officers referred to in paragraph (5) and the Governor are affiliated with the same political party, the second nonvoting member shall be appointed by the chairman of the largest political party with which the Governor is not affiliated.

(7) An additional nonvoting member shall be appointed by the chairman of any other political party qualified to participate in the statewide direct primary if both of the following criteria exist:

(i) At least 20 percent of all voters registered to vote at the last statewide general election were affiliated with the party.

(ii) Neither nonvoting member appointed pursuant to paragraphs (5) and (6) was appointed by a statewide officer or party chairman affiliated with the party.

(b) Members of the commission shall serve until apportionment plans adopted by the commission become effective and all legal and referendum challenges have been resolved. Any vacancy in the voting membership of the commission which occurs after the commission is constituted shall be filled within 3 days by a new drawing by lot from the judicial list of the prior incumbent, conducted in the manner prescribed by this section. A vacancy in the non-voting membership shall be filled in the manner prescribed for the selection of the previous incumbent, except that if the party affiliation of the appointing authority has changed since the prior appointment, the vacancy shall be filled in the manner prescribed by paragraphs (5) and (6) of subdivision (a) by a statewide officer or party chairman of the same party as the prior appointing authority. SECTION 6. (a) Within 20 days after the commission is constituted, it shall hold its first meeting at a time and place designated by the Secretary of State.

(b) The commission shall elect, from its voting membership, a chairman and vice chairman who shall not be affiliated with the same political party.

(c) The commission shall employ and contract for needed staff, consultants, and services, and, by a majority vote of all of the voting members, shall appoint an executive director who shall serve at the commission's pleasure. Each nonvoting member shall be entitled to appoint a staff assistant. Commission staff, as well as staff appointed by nonvoting members, shall be exempt from civil service.

(d) Nonvoting members and their staff assistants shall be entitled to participate in all meetings and deliberations of the commission and shall have equal access to information gathered by the commission and to services of commission staff. However, these members shall be ineligible to vote and their attendance shall not be considered in determining the existence of a quorum.

(e) Commission meetings shall be open to the public. Commission records, data, and plans shall be available, at no charge, for public inspection. Copies of records, data, and plans shall be provided, for a reasonable fee, to any interested person.

(f) A majority of the entire voting membership of the commission shall constitute a quorum for the transaction of business or exercise of any power of the commission. All action by the commission shall require approval of a majority of the entire voting membership, excluding members rendered ineligible to vote under the provisions of subdivision (f) of Section 7.

(g) The Secretary of State shall collect and maintain data necessary to carry out the purposes of this article and provide it to the commission and, for a reasonable fee, to other interested persons.

SECTION 7. (a) The commission initially formed under this article shall adopt final apportionment plans for the 1986 through 1990 elections based on the 1980 national decennial census. These plans shall be adopted and filed with the Secretary of State by July 31, 1985.

(b) Subsequent commissions shall adopt plans based on the national decennial census taken in the year preceding the commission's formation, as set forth in Section 5. These plans shall be adopted and filed with the Secretary of State by October 1 next following the formation of the commission, or 180 days after receipt of necessary census data, whichever is earlier.

(c) A commission formed under this article shall remain in existence until final apportionment plans for the decade in which the commission was created become effective and all legal and referendum challenges have been resolved. At that time the powers of the commission to adopt apportionment plans shall terminate.

(d) In fulfilling its responsibilities under this article, the commission shall solicit public comment and shall hold public hearings both before and after the preparation of preliminary apportionment plans. At least 60 days prior to the deadline for the adoption of final plans, as provided in subdivisions (a) and (b), the executive director of the commission, after consulting with commission members, shall prepare and file with the Secretary of State individual preliminary apportionment plans for the state Senate, state Assembly, state Board of Equalization, and United States House of Representatives. Each plan shall be in substantially final form. The commission shall hold at least 2 additional public hearings after preliminary plans have been filed with the Secretary of State.

(e) The commission shall provide notice of all public hearings reasonably calculated to provide interested parties adequate opportunity to appear or provide written comments.

(f) Whenever a majority of the commission is unable to reach agreement on the adoption of a final apportionment plan, or an individual element thereof, or on the selection of an executive director, and in the judgement of the chairman there is no reasonable probability that a majority will agree in the future, the chairman shall declare an impasse and the following procedures shall apply:

(1) On the day the impasse is declared, the chairman shall prepare and furnish to the commission a written "notice of impasse" which identifies the disputed issue or issues creating the impasse.

(2) No later than 2 days after an impasse is declared, the commission shall vote on the issue or issues identified in the notice of impasse and if a majority again fails to concur, the name of a commission member shall be drawn by lot, pursuant to procedures previously established by the commission, and the member so selected shall be ineligible to again vote SECTION 11. If any part of this article or the application to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications which reasonably can be given effect without the invalid provision or application.

Second - That Article XXI is repealed.

Third - That Section 6 of Article IV thereof is amended to read:

SEC. 6. For the purpose of electing members of the Legislature, the state shall be divided into 40 Senatorial and 80 Assembly districts as specified in apportionment plans adopted under Article VIA. One member shall be elected from each district. The Senatorial districts shall be numbered from 1 to 40, and the Assembly districts shall be numbered from 1 to 80, in each case commencing at the northern boundary of the state.

Fourth - That Section 17 of Article VI thereof is amended to read:

SEC. 17. A judge of a court of record may not practice law and during the term for which the judge was selected is ineligible for public employment or public office other than judicial employment, judicial office, or service on the Fair Reapportionment Commission as provided in Section 5 of Article VI A. A judge of the superior or municipal court may, however, become eligible for election to other public office by taking a leave of absence without pay prior to filing a declaration of candidacy. Acceptance of the public office is a resignation from the office of judge.

APPENDIX 2

THE COURTS AND REAPPORTIONMENT

Beginning in 1962, the U.S. Supreme Court took jurisdiction over complaints against "malapportionment" and quickly developed population standards for redistricting state legislative, congressional and other electoral districts. It was a dramatic turnabout; as recently as 1946, in Colegrove v. Green, the court had denied relief in a case challenging an Illinois Congressional districting plan that gave one district nine times

1. Key Decisions 1962-1977. The major decisions through which the Court entered the "reapportionment thicket" are:

Baker v. Carr (1962). A group of urban residents of Tennessee had challenged the make-up of the rurally-controlled state legislature. Although the Tennessee constitution provided for a population-based apportionment and required decennial reapportionments, no apportionment changes had been made since 1901 — despite great population growth and shifts. By 1960, lower house districts ranged from 3,454 to 79,301 in population — a disparity of 23 to 1; Senate districts ranged from 39,727 to 237,905 — a 6 to 1 disparity. The Court held that the issue was justifiable, that the federal courts had jurisdiction over complaints against malapportioned legislatures. The Court refused, however, to specify what lesser population disparity might be constitutional or to consider appropriate remedies; the case was remanded to the lower court.

(Note: Justice Felix Frankfurter's dissenting opinion read, in part: "What, then, is this question of legislative apportionment? Appellants invoke the right to vote and their votes are counted. They go to the polls, they cast their ballots, they send their representatives to the state councils. Their complaint is simply that the representatives are not sufficiently numerous or powerful — in short, that Tennessee has adopted a basis of representation with which they are dissatisfied ... What is actually asked of the Court in this case is to choose among competing bases of representation, really, among competing theories of political philosophy." Appeal for relief, Frankfurter insisted, should not be made in the courts but rather "to an informed, civically militant electorate.").

Gray v. Sanders (1963). The case presented a challenge to Georgia's county unit system of voting in statewide and congressional primary elections, which gave each county a certain number of votes, usually the number of its seats in the state legislature. The court held that use of the system deprived city residents of equal protection of the laws and ruled that "within a given constituency, there can be room but for a single constitutional rule — one voter, one vote."

(Note: The majority opinion, written by Justice William O. Douglas, emphasized that the decision did not reach the question of state or federal legislative districts of unequal size. But the ground was laid: "The concept of 'we the people' under the Constitution visualizes no preferred class of voters, but equality among those who meet the basic qualifications." In dissent, Justice John M. Harlan said that the decision "surely flies in the face of history": the principle of "one person, one vote" had "never been the universally accepted political philosophy of England, the American colonies or the United States." He said a state should have the authority to grant more voice to rural areas, either in election of state legislators or statewide officials "in order to assure against a predominantly 'city point of view' in the administration of the state's affairs.")

Wesberry v. Sanders (1964). The Court struck down Georgia's Congressional districting plan, holding that Article 1, Section 2 of the Constitution required that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."

(Note: Commenting on this case in a later decision, Chief Justice Warren stated: "Wesberry clearly established that the fundamental principle of representative government in this country is one of equal representation for equal numbers of people, without regard to race, sex, economic status, or place of residence within a state.")

Reynolds v. Sims (1964). The Court announced decisions in six reapportionment cases on June 15, 1964, which came to be known collectively by the name of the first case, Reynolds v. Sims, from Alabama. The rulings held all six state reapportionments unconstitutional and established several major points:

*The Equal Protection clause of the XIVth Amendment to the U.S. Constitution "requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."

*Legislative districts must be substantially equal.

*Mathematical "exactness of precision" may be impossible, but apportionment must be "based substantially on population."

*Even if approved by a majority of the people in an initiative or referendum, an apportionment that is not based on substantial equality of population is unconstitutional. "A citizen's constitutional rights can hardly be infringed upon because a majority of the people choose to do so."

*Any other basis for representation, other than population, is discriminatory. "Legislators represent people, not trees or acres." They are "elected by voters, not farms or cities or economic interests."

Swann v. Adams (1967). In this case, the Court began to elaborate its definition of equality of population. Florida's state legislative reapportionment plan was overturned because it contained senate districts ranging from 15.09 percent above the average district and 10.56 below, and house districts ranging from 18.28 percent above to 15.27 percent below.

Kirkpatrick v. Preisler (1969). The court ruled that "the 'as nearly equal as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality..... the State must justify each variance, no matter how small." The Court held that Missouri had failed to justify the deviations in its 1967 redistricting plan, and overturned it. The deviations were very small; the most populous district was 3.13 percent above the average district and the least populous was 2.84 percent below.

Whitcomb v. Chavis (1971). A challenge was presented to a state legislative reapportionment in Indiana on the basis that the use of multi-member districts resulted in invidious discrimination against the black voters of Indianapolis. The Court held that the challengers had not proved that the multi-member districts had operated unconstitutionally to dilute or cancel the voting strength of racial or political elements in the state.

(Note: In a 1960 case, Gomillion v. Lightfoot, the Court had outlawed racial gerrymandering, finding that the city boundaries of Tuskegee, Alabama, had been drawn to exclude Negro voters in violation of the 15th Amendment. In 1964, in Wright v. Rockefeller, however, the Court dismissed a challenge to New York's Congressional districts brought by voters who charged that Manhattan's 17th "silk stocking" District was gerrymandered to exclude Negroes and Puerto Rican citizens. Wright and Whitcomb were widely cited as evidence that the Court was unwilling to deal with the whole problem of gerrymandering, whether racial or partisan gerrymanders.)

Mahan v. Howell (1973). Justified deviations in population of state legislative districts were set at a significantly higher level than in the Kirkpatrick ruling on Congressional districts. The Court upheld a 1971 Virginia state legislative reapportionment plan with a population deviation from the largest to the smallest district of 16.4 percent: the Court indicated, however, that "this percentage may well approach tolerable limits." The Court noted that the plan "may reasonably be said to achieve the rational state policy of respecting the boundaries of political subdivisions."

(Note: In two other cases in 1973 the Court hinted at further guidelines on the meaning of "equality." In Gaffney v. Cummings, Connecticut's 1971 state legislative reapportionment plan was upheld, despite a deviation of 7.83 percent between the largest and smallest districts, and despite rather clear evidence of the use of partisan data in the drawing of district lines. The court ruled that "minor deviations from mathematical equality among state legislative districts are insufficient to make out a *prima facie* case of invidious discrimination under the Fourteenth Amendment so as to require justification by the state." In White v. Weiser, however, the Court overturned a Texas Congressional districting plan with maximum deviations of 2.43 percent above and 1.7 percent below the average on grounds that the deviations "were not 'unavoidable', and the districts were not as mathematically equal as reasonably possible.")

Chapman v. Meier (1975). The Court rejected a court-ordered state legislative redistricting plan in North Dakota involving multi-member districts. The ruling was that "unless there are persuasive justifications," a court-ordered reapportionment plan of a state legislature must avoid use of multi-member districts. The Court carefully noted that it was not ruling that multi-member districts were unconstitutional, but merely exercising its supervisory powers over lower federal courts.

United Jewish Organizations v. Carey (1977). Legislative modification of a New York redistricting plan (in order to bring it into compliance with the 1965 Voting Rights Act) had divided a community of Hasidic Jews to establish several substantially non-white districts in Kings County. The court upheld the plan, ruling that such a use of racial criteria did not violate either the XIVth or the XVth Amendments.

Response to the Court Decisions. The Court's decision on Baker v. Carr in 1962 was followed by a flurry of citizen suits challenging malapportionment in state legislatures. By March 1964, 26 states had approved new apportionment plans. Alabama, Oklahoma, and Tennessee were redistricted under court-drafted plans; several states redistricted under court threats of postponement of elections or at-large elections. In Delaware, a court order gave the legislature 12 days to reapportion; Wisconsin was given 19 days, and Michigan 33 days. Faced with these examples of judicial severity, most states now voluntarily undertook reapportionments.

At the time of the Reynolds decisions in June 1964, court action on reapportionment was underway in 39 states. The 1964 decisions further accelerated the process. Two years later, legislatures in 46 of the 50 states had brought their apportionments into some degree of compliance with judicial standards of population equality. Indeed, by this point, several states were experiencing their second reapportionment of the decade: legislatures that had

been reapportioned after Baker now adopted their own new plans. In a few states, reapportionment had been handed over to specially created commissions, established by statute or by constitutional amendment. In some states too, constitutional provisions requiring geographic or other modifications to population-based apportionments were abandoned or amended. Elsewhere, states created multi-member and floterial districts in order to preserve the boundaries of traditional political subdivisions in their districting systems. A number of states actually changed the size of their state legislatures in order to accommodate population-based apportionments.

Although in the period 1963 through 1965 there had been movements in Congress (principally, the so-called "Dirksen Amendment") and in the states (backed by groups such as the American Farm Bureau Federation) to limit the effect of the court decisions, these faltered and faded from sight by the late 1960s. By 1970, the state legislatures were all effectively based on equal population; thus there was no longer any impetus in the movement to resist "one-man-one-vote." The Reapportionment Revolution," a dramatic judicially-imposed change in the character of the representative system, was apparently complete.

2. Key Decisions 1980-87.

The Court has begun to develop new doctrines in the redistricting field. The key decisions of the period are:

Karcher v. Daggett, (1983). A deviation of .698% was neither unavoidable nor justified, and there were other plans with lesser deviations but satisfying state policies that were available. The statistical imprecision of the census is not a justification for the challenged deviations, but rather a *de minimis* argument. See concurring opinions of Justices Stevens and Powell, and dissenting opinion of Justice White, suggesting their willingness to consider the issue of political gerrymandering in the right case. See also the opinion of the three-judge district court on remand for a recognition that the challenged plan was an intentional gerrymander. Dagget v. Kimmeleman, (D.N.J. 1984).

Brown v. Thomson, (1983). Wyoming's historical policy giving each county legislative representation justifies a deviation of 89%, because the policy has been applied h from any taint of arbitrariness or discrimination.

Thornburg v. Gingles, (1986), (1986). Minority voters who contend that multi-member districting violates Section 2 of the Voting Rights Act must prove that the use of such districts operates to minimize or cancel out their ability to elect their preferred candidates. In a district where few elections are shown to be polarized, the fact that racially polarized voting is not present in one election or a few elections does not necessarily negate a conclusion that the district experiences legally sufficient bloc voting.

Davis v. Bandemer, (1986). Political gerrymandering is properly justifiable under the Equality Rights Protection Clause. The plaintiffs in this case, however, failed to make a threshold showing of discriminatory vote dilution required for a *prima facie* case. A plurality concluded that unconstitutional vote discrimination occurs only when the electoral system is arranged in a manner that will consistently degrade a voter's or a group of voters' influence over the political process.

The most important of these recent cases is undoubtedly Davis v. Bandemer because of its plurality holding that persistent discrimination against the minority party may be unconstitutional. It is very important to note, however, that despite this ruling, the Court refused to find that the Indiana districts, which had been blatantly gerrymandered by the Republicans, were unconstitutional. Moreover, several of the justices seem dissatisfied or doubtful that the kind of data presented in Davis can ever fully prove discrimination. That is, the disproportion of votes to seats and the bizarre shapes of districts are found inadequate as proofs by the three conservatives (Rehnquist, Burger and O'Connor); and White, speaking for the plurality, although accepting them as appropriate types of evidence, rejects them as sufficient proofs in the Indiana case. Lurking behind White's reservations about the evidence in the Indiana case is the clear worry that the test of unconstitutionality could become too easy—thus flooding the Court with cases from every level of government. And, although White has sharp words for O'Connor's concern about judicial imposition of proportional representation, it is likely that he and some others supporting his opinion are not uninfluenced by her argument that there is no logical stopping point between use of vote-to-seat disproportionality and PR. It is also clear that White has no answer for O'Connor's claim that partisan gerrymandering is a self-limiting process, which may become the most effective challenge to efforts to show majority party discrimination. With so much confusion as to the future direction of the Court, much attention has recently been focused on the attitudes toward gerrymandering of Court nominees.