REDISTRICTING IN THE SOUTH

Prepared by the Rose Institute of
State and Local Government

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Introduction

Since the so-called "reapportionment revolution" of the 1960s--a series of Supreme Court decisions that established the principle of "one man-one vote" in the districting of congressional and state legislative seats--the redistricting process has been a subject of concern to scholars, politicians, and voters alike. The concern is well-founded, for the past twenty years have shown that district population equality is no shield against partisan gerrymandering or gerrymandering to insure the re-election of incumbents. The character of the Congress and the legislatures is still shaped in part by the way districts are redrawn every decade or so. The redistricting process can still decide the electoral fate of individual lawmakers, determine the partisan composition of the national and state legislatures, and even influence the outcome of policy deliberations. It is no extravagance to say that all Americans are affected by what happens in the redistricting process.

Redistricting may be of great importance, but it is also one of the least studied and least understood processes in American politics. It is for this reason that the Rose Institute has undertaken a major publications program aimed at illuminating redistricting in all its aspects. The present volume, the first account of redistricting history and prospects in all the states of the South, is a major contribution to that effort. It is one of four regional surveys (the other three cover the states of the Northeast, Midwest, and Far West) featuring essays by scholars familiar with redistricting history, law, and politics in the individual states. Indeed, many of the contributors to this volume are experts on redistricting in their

particular states, having previously published books or articles on the subject, advised political leaders, or offered expert testimony in state and federal court. Each essay is designed to serve as a convenient introduction to redistricting practice and outlook in the individual states, with the emphasis in most cases on the great changes that have occurred since the 1960s and the critical problems facing the state redistricting agencies--legislatures, bipartisan commissions, and other responsible bodies-- as they approach the redistrictings of the 1980s. Most authors have concentrated their attentions on the redistricting of state legislatures rather than the congressional seats, in order to keep the essays manageable and to point up the importance of local politics in state redistricting.

This is the only study of redistricting in the South. The fifteen states covered here differ considerably in how they have performed redistrictings in the past, and how they will carry out the redistricting process for the decade to come. It is only by analyzing the redistricting history and prospects of each individual state, however, that we become aware of all the problems of redistricting and all the influences that come to bear in the redistricting process. It is also only on the basis of a state-by-state analysis that we can hope to answer the question of what will happen in the redistrictings of the 1980s.

ALABAMA

William H. Stewart

The subject of redistricting in Alabama will be considered under two basic categories. First we will look at the politically complex but mechanically simpler subject of congressional redistricting. The remainder, and larger part, of the present essay will be devoted to state legislative redistricting. It should be noted that the subject of districting also has been controversial at the local level in Alabama. However, in cities and counties the response to challenges to districting arrangements frequently has been to abandon districting altogether and elect officials at large, rather than to devise new apportionment plans.

Congressional Redistricting

Alabama's delegation in the U.S. House of Representatives decreased by one after the census of 1960. Thus congressional redistricting was essential even before the *Wesberry* mandate of 1964. However, the legislature did not succeed in redistricting the state until 1966. This was not simply because of a reluctance to draw eight (instead of nine) equally populated districts but also because of an unwillingness to deal with the political problems associated with drawing lines that would probably put a sitting congressman out of his job.

In the first congressional primary following the 1960 census, the state utilized a unique "nine-eight" plan whereby the nine sitting congressmen, all renominated first in their old districts, next ran in the state at large, the low man being out. The slate of eight elected in the general election of 1962 theoretically represented the state as a whole, although in fact they continued primarily to represent their old districts, with the large Mobile area, whose incumbent had been low man, being virtually unrepresented.

In 1964 another "nine-eight" primary had to be held because of the Alabama legislature's continuing inability to pass a congressional redistricting bill. This time, incumbent Representative Carl Elliott, a Democratic member of the House Rules Committee and a close ally of the national Democratic administration, lost his seat in the statewide primary vote. In the general election of November 1964, Alabama voters sent five Republicans to Congress in the wake of the Goldwater landslide in the Deep South. Only one incumbent Democratic congressman survived the 1964 elections when challenged by a Republican in the statewide race; two others did not have Republican opposition.

With Republicans now dominating the Alabama House delegation, the overwhelmingly Democratic Alabama legislature found it easier to devise a new districting system, one which presumably would help reassert Democratic dominance in the state's House contingent. Jefferson County, for example, the state's largest county and fertile ground for Republican gains since the days of Eisenhower, was divided among four congressional districts by the Democratic legislature, thus scattering and dissipating GOP voting strength. Jefferson County's Republican voters would be dominant in only one district, the 6th, composed solely of residents within this county. The "chop-up" redistricting bill was challenged in federal court, but the challenge was unsuccessful and the plan was allowed to stand.

In the general election of 1966, following the redistricting that occurred in 1965, the Democrats picked up two congressional seats from the Republicans in Alabama. One incumbent Republican was defeated outright by a Democratic challenger, and another opted to run (unsuccessfully, as it turned out) for governor instead of trying for another term in the House.

In 1972, when the state was again obliged to redistrict due to the loss of a congressional seat (as well as to ensure population equity), its delegation having dropped from eight to seven, redistricting was simplified by the death of an

incumbent congressman, George Andrews. Most of his district, located in the southeast part of Alabama, was merged with another to reduce the total number of districts. The Democratic legislature expected that, by adding most of the late Democratic congressman's territory to a district then represented by Republican William Dickinson, it would make Dickinson's re-election more difficult. The tactic did not succeed, however. Dickinson had served in Congress for nearly eight years and was able effectively to exert the many powers of incumbency. Furthermore, his conservative views were very much in harmony with the thinking of most of the district's voters. Since Republicans made their first modern appearance in Alabama's congressional delegation, only one Republican incumbent (Glenn Andrews) has been unseated by a Democrat, no matter what the districting arrangements were.

Redistricting probably will be necessary in 1981 or 1982 to conform to the one person-one vote standard, and not because of a gain or loss of congressional seats. The state of Alabama will have seven seats in the eighties, just as it did in the seventies. Redistricting in the past two decades has not had a major impact on the make-up of Alabama's congressional delegation. Up to the 1980 primary elections, three Republicans originally elected in the Goldwater sweep of the state in 1964 had been able to hold on to their seats in a predominantly Democratic state. No black has been elected to Congress from Alabama in the twentieth century, although one black did reach a Democratic primary run-off position in 1978.

State Legislative Redistricting

The Alabama legislature currently is operating under a reapportionment plan handed down early in 1972 by a three-judge federal court. The criterion of population equality among legislative districts is followed almost precisely, based on 1970 census figures. Traditional county boundary lines are in many instances bypassed as

district lines of demarcation in favor of geographic parameters used by the U.S. Census Bureau.

The Alabama constitution of 1901 mandated legislative reapportionment every ten years on the basis of federal census enumerations. According to the constitution, both houses were to be apportioned on a population basis, with the very important exception that each county in the state (Alabama has sixty-seven counties) would have at least one member in the House of Representatives. Senate districts were to consist of one or more counties comprising districts electing one member each to the upper chamber. House districts were in many instances multimember districts.

Like most other state legislatures, the Alabama legislature ignored the constitutional call for fair representation through equally populated districts. The Black Belt, so named by geographers because of the area's rich black soil (not because of its racial composition), was overrepresented in the legislature. Located in the southern portion of Alabama, and stretching east to west across the state, this region would not respond to the pleas of north Alabama, which was significantly underrepresented, for a redistribution of seats. Not all north Alabamians favored reapportionment, however. Birmingham industrialists frequently expressed more confidence in a Black Belt-dominated, conservative legislature than in the prospect of an assembly dominated by more progressive interests. North Alabama legislators were more likely to favor heavier taxing and spending for social programs (particularly public education) and less likely to endorse more extreme measures for suppression of black suffrage. The coalition of planter and industrial interests launched, on adoption of the Alabama constitution of 1901, a state legislative apportionment scheme destined to become even more unfair with the passage of time, and this same coalition perpetuated the scheme until the federal courts finally intervened in the matter. During the late 1940s and early 1950s, populistic

Governor James Folsom, an advocate of liberal social programs and an opponent of discrimination against blacks, tried unsuccessfully many times to persuade the Alabama legislature to call a constitutional convention to deal with the problem of reapportionment, but the legislature would not do so. Presumably, it would have been easier for the legislature simply to pass a new reapportionment plan itself, but Governor Folsom had so little confidence in the legislature that he repeatedly advocated the awkward mechanism of a constitutional convention to reallocate legislative representation as between north and south Alabama.

No reapportionment plan was ever implemented in Alabama from the time of the adoption of the constitution in 1901 until the 1960s and the advent of the Baker era. By the latter period, only 25.1 percent of the state's population lived in districts represented by a majority of the membership of the state Senate. Only 27.5 percent resided in counties which could choose a majority of the members of the House of Representatives. Population variance ratios among Senate districts were as high as 41-to-1, and as high as 16-to-1 among House districts. Bullock County, which had a population of just 13,462 in 1960, and Henry County, whose residents numbered only 15,286, each had two seats in the Alabama House; Mobile County, with 314,301 residents, had only three seats, while Jefferson County (Birmingham), with 634,864 residents, functioned with only seven representatives. In the upper house, Jefferson County had one senator, as did Lowndes County (population 15,417) and Wilcox County (18,739).1/ Relief for those Alabamians underrepresented because of these population imbalances in legislative districts came only after the federal judiciary decided to enter the "political thicket" which it had for so long avoided.

The litigation initially known as Sims v. Frink 2/ was begun in 1961. The same federal panel, which included then District Judge Frank M. Johnson, sat during all proceedings in the 1960s regarding apportionment of the Alabama legislature. The

first action of the panel was to put into effect a temporary compromise plan including the better features of two separate schemes which had won state legislative approval. According to the compromise plan, the House of Representatives would have its 106 members apportioned on the basis of population by the "equal proportions" method after each county had been awarded one seat. Thirty-five Senate districts were approved along county lines, with only modest adjustments from the old districts. This judicially-approved apportionment was to be only temporary.

It was Reynolds v. Sims which affirmed the lower federal court's stop-gap actions with respect to the composition of the Alabama legislature. In addition to extending the one person-one vote principle to both houses of state legislatures throughout the nation, this case gave the stamp of approval to the declared intention of the District Court for the Middle District of Alabama "to take some further action should the (partially) reapportioned Alabama legislature fail to enact a constitutionally valid, permanent apportionment scheme. . . ."3/

Following Reynolds v. Sims, the Alabama legislature, in special session in 1965, enacted reapportionment legislation. The plan for the Senate, which called for thirty-five senators elected from twenty-six districts--each consisting of from one to five counties--was accepted by the court. The state plan for the House, however, was held to be discriminatory against blacks; therefore the court substituted its own House districting arrangement, in which 106 representatives were elected from forty-three multi-member districts consisting of from one to three counties each. These districting arrangements were used in state legislative elections held in 1966 and 1970.

During 1970-71, new suits were filed by blacks and by the chairman of a county Republican executive committee, challenging existing apportionment arrangements. Blacks particularly disliked at-large elections of legislators. These

suits were consolidated. During judicial deliberations, several plans for reapportionment were considered, including four different plans from the state. However, the federal court rejected all of the state plans in favor of a proposal submitted by the plaintiffs.

The plan accepted by the court, and under which the Alabama legislature presently is apportioned, was devised by Dr. David Valinsky of the City University of New York. This plan was constructed with census divisions, districts, tracts, and groups. Based on 1970 census data, the most overrepresented House district (out of a total of 105, one less than the old membership of the House) was only 1.08 percent off the ideal of perfect population equality, while the most underrepresented district was off by only 1.15 percent, for a total maximum deviation of 2.23 percent.

Population equity achieved in Senate districts was even more striking. Professor Valinsky was able to devise thirty-five single-member Senate constituencies (each consisting of three House districts) in which the most overrepresented district was only 0.67 percent off the population ideal, and the most underrepresented only 0.72 percent off the ideal, for a total deviation of 1.39 percent. In Valinsky's House of 105 members, the ideal population per district was 32,802; one hundred of the House districts varied by less than one percent from perfect mathematical equality of representation (based on 1970 census figures). As for Valinsky's Senate districts, the ideal population was 98,406, and not one of the thirty-five districts deviated by more than one percent from this figure.

Maintenance of the county as the fundamental basis of state legislative representation was subordinated in the Valinsky plan to the desire for population equity. One county, for example, which had a population of less than 32,802 (the House ideal), could have been placed wholly within one district, but instead was parceled out among four districts. Sixty-one counties, having less than 98,406 inhabitants each (the Senate ideal), could have been situated entirely within one

district; thirty-eight were, but twenty-three were not. The court gave the force of law to the Valinsky plan because, despite its disregard for county lines, "it achieves near precision in guaranteeing that one man's vote is essentially equal to that of another."4/

The most obvious consequence of the current Alabama state legislative apportionment plan has been the election of more black members to the legislature. Before the 1972 reapportionment--but more importantly, before the passage of the Voting Rights Act of 1965--there were no blacks in the Alabama legislature. In the last legislative session (1980) there were three blacks in the Senate, thirteen in the House. The current plan may also have contributed to a decline in the number of attorneys who are legislators. Representation of a small district does not have the vocational rewards (for example, the building up a remunerative legal practice by a young attorney) associated with representation of a larger constituency. The occupational group which has most noticeably increased its membership in the Alabama legislature in recent years is public schoolteachers. Twenty percent of the membership of the current House of Representatives consists of individuals employed in education. There can be little doubt that reapportionment with small districts has encouraged legislative campaigns by individuals without large sums of money but who nevertheless enjoy the advantage of being well known within a limited constituency--a high-school teacher or an insurance salesperson, for example. These aspiring representatives may also have the support of important interest groups within and beyond their districts--in the case of educators, the local and state teachers associations.

If the state is willing to continue using census units rather than counties for redistricting, the state legislature's work on a redistricting plan for the 1980s could be relatively easy. The districts established in 1972 were characterized by nearly perfect equality of population. Population changes and shifts since that time have

not been of a radical sort. Thus it appears at this point that only modest adjustments in existing districting arrangements may be necessary to ensure continued state conformance with the one person-one vote principle in both legislative houses.

NOTES

1/ These figures are presented in Reynolds v. Sims, 377 U.S. 533 (1964), at 545-46.

2/ 208 F. Supp. 431 (M.D. Ala. 1962).

3/ 377 U.S. 587 (1964).

4/ 336 F. Supp. 924 (1972).

FLORIDA

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State legislative and congressional reapportionment have been significant issues in Florida since the 1950s. The primary reason is simple: over the past thirty years, Florida's population has more than doubled, making the state the eighth largest in the country. The U.S. Bureau of the Census places Florida among the three states which gained over two million people from 1970 to 1979, and among the five states which experienced more than a 30 percent population growth in the same nine-year period (see Table 1).1/

The 1950s

During the 1950s, apportionment of the Florida legislature was governed by provisions of the state constitution of 1885 which allowed the legislature to reapportion itself. Because the state constitution decreed that no county could have more than one senator, a mere 17.2 percent of the population, all from rural districts, elected a majority of the 38-member Florida Senate. 2/ A comparable situation existed in the Florida House. The constitution provided that each county must have one member and entitled the five largest counties to three each. Just 17.7 percent of the population, again all from rural districts, controlled a majority of the ninety-five House seats.

Under a peculiar provision of the Florida constitution, reapportionment of the legislature took place at mid-decade. To prepare for this, in 1955, Governor LeRoy Collins appointed a reapportionment study commission, of which Manning J. Dauer, co-author of this article, was a member. For the commission, the percent

population index cited above was developed for Florida and later for all other states. This percent index was later cited by the U.S. Supreme Court in Baker v. Carr. The commission recommended a revision of the state constitution to reduce the disparity between the distribution of legislative seats and the distribution of citizens. The governor called a special session of the legislature which met between June 6 and September 29, 1955, to consider the commission's recommendation. This was the first of nine such special reapportionment sessions to be called by Florida governors in the next decade.

A three-fifths vote of each house was required to propose an amendment to the constitution, but at no time during the next decade could such a majority be achieved for any measure that would seriously alter the distribution of legislative seats. What constitutional amendments were proposed by the legislature during this decade provided no significant change in the status quo and, accordingly, were rejected overwhelmingly by the voters. The upshot of this stalemate was the polarization of the legislature into a majority rural bloc (the "pork chop gang") and a minority urban bloc (the "lamb choppers"). This stark division had both structural and important policy ramifications. The speakership of the House and the presidency of the Senate, along with the chairmanships of key committees, were controlled by the "pork choppers." Tax measures favored rural areas; receipts from the pari-mutuel tax, for example, were divided equally among the sixty-seven counties. Road funds and education appropriations also favored rural areas. No general laws, such as general planning authorization legislation, could be passed (although some cities secured planning authorization by local action or by local ordinance). The result of this polarization was a complete deadlock, broken only after the U.S. Supreme Court case of Baker v. Carr in 1962. 3/

The 1960s

Following Baker v. Carr, the 1965 Florida case of Swann v. Adams (1) 4/struck down the Florida constitutional provisions for geographical representation; the U.S. Supreme Court instructed the state legislature to reapportion on the basis of population. The legislature attempted a new reapportionment, but the Court declared it invalid in Swann v. Adams (2) 5/ in 1966 and ordered the U.S. district court to enforce its own districting plan if the legislature failed again.

In the meantime, Manning J. Dauer had been admitted as an amicus curiae party to the Swann case as early as 1965, and his 1967 brief presented a plan for reapportionment which was adopted by the three-judge federal district court in the 1967 case Swann v. Adams (3). 6/ The Dauer plan provided for a Senate of forty-eight members and a House of 119 members, with some multi-member and some single-member districts, using single counties or groupings of counties for the districts. A population variation of no more than five percent above or below the ideal district population was provided in this reapportionment system. These districts remained in force in Florida from 1967 until the reapportionment of 1971, following the 1970 census.

It should be observed that the 1967 reapportionment plan mandated by the court transferred many legislative seats from the rural panhandle of Florida to central and south Florida. This area of the state contained the bulk of Republican strength. The outcome was, as Table 2 shows, an increase in Republican representation in both the House and the Senate. Between 1965 and 1967, the number of Republicans in the Senate increased from two to twenty. At the same time, the number of Repubicans in the House increased from ten to thirty-nine. Thus an important step was taken to increase two-party competition at the state and local levels.

The governor called a special session of the legislature in the summer of 1967 to consider total revision of the Florida state constitution, including a complete new reapportionment plan. The 1965 legislature had authorized creation of a Constitution Revision Commission, so this Commission's work was considered in detail by the legislature and, with some modification, was presented to the voters in November of 1968 and was adopted as the 1968 constitution. The reapportionment article provided for a Senate of no fewer than thirty and no more than forty members, and a House of no fewer than eighty and no more than 120 members. The districts could be either single- or multi-member districts, and were to be equal in population. Counties and cities could be divided, and the legislature was to make its apportionment the second year after the decennial census. If the legislature failed to redistrict in its regular session, the governor was required to call a special session. The state Supreme Court was empowered to review the apportionment, and, if the legislature failed to properly apportion, the court could order corrections and instruct the legislature to try one last time. If the legislature failed again, then the state Supreme Court would draw up the districts.

Reapportionment in the 1970s

In accordance with the 1968 constitution, the 1971 Florida legislature reapportioned strictly according to population. The state attorney general asked Manning J. Dauer to suggest principles which he in turn would recommend to the legislature. The principles were: (1) no legislative district should vary from another by more than one percent; (2) districts should be as compact as possible; (3) counties and cities could be divided; (4) a combination of single-member and multi-member districts could be used. These were then sent to the special House Reapportionment Committee and, following public hearings, were adopted by that body. The Senate's special committee followed similar rules regarding population variation. The result

was that each house presented a plan for the maximum number of members authorized in the new state constitution: forty senators and 120 representatives. The population variation from one district to another was under one percent. U.S. census enumeration districts or tracts were the population units used to construct districts, and city and county boundary lines were disregarded. Table 3 shows the number of single- and multi-member districts in each chamber.

The use of multi-member districts has been a feature of Florida government since the state was admitted to the Union in 1845. A system of multi-member districts, or at-large elections, has also been followed in almost all elections for county commissions, school boards, and most city commissions, especially in those cities following the city-manager form which is popular in Florida. Proponents believe such electoral arrangements prevent ward politics and parochialism. That multi-member district systems long antedated the segregation issue deflects the charge that it was adopted to avoid desegregation. It should also be noted that, since 1960, Florida has not experienced discrimination against black registration, and thus no counties are required, under the Voting Rights Act of 1965, to have federal registrars for voter registration. (However, the attorney general of the United States issued an order in 1975 requiring ballots in Spanish in five Florida counties. The effect of this on the 1982 reapportionment will be that all changes affecting district lines in those five counties will have to be cleared in accordance with the Voting Rights Act and orders from the U. S. Department of Justice.)

The 1971 redistricting plan was upheld by the state Supreme Court in the case in re Apportionment Law (1971). 7/ Another challenge was made in 1972 before the three-judge federal court in Woolfson v. Nearing. 8/ Dauer acted as expert defense witness in this case on behalf of the state. One criticism advanced in Woolfson concerned broken city and county lines and whether such actions were fair to local government. The NAACP also attacked multi-member districts as discriminating

against minorities. The court upheld the plan, nonetheless. The 1972 and subsequent elections of the state legislature were held under the 1971 reapportionment plan.

Recently, the legislative districts have been attacked as discriminating against minorities. However, in October 1980 the Florida state Supreme Court ruled in the case of Milton v. Smathers that multi-member districts are constitutional because there is no evidence of intent to discriminate.

Regarding gerrymandering, a few of the House and Senate districts drawn in the apportionment plan of 1971 have been criticized. But so far court pleas on this topic have been unsuccessful.

In 1977, under a provision of the 1968 constitution, a new Constitution Revision Commission was appointed by the governor. The 37-member Revision Commission held hearings around the state, including hearings on Section 16 of Article III, the reapportionment section of the state constitution. As a consequence of testimony by minority representatives and by representatives of the Republican party and the Association of Florida Conservatives, the Commission adopted a plan sponsored by Common Cause for single-member districts, a bipartisan reapportionment commission, an anti-gerrymandering provision, and instructions to maintain city and county boundaries when possible. Altogether, the Revision Commission adopted eight different constitutional revision propositions, which were not required to pass the legislature but were placed directly on the ballot for the 1978 general election. All eight propositions, including the proposed changes in reapportionment procedure, were defeated.

Thereupon a coalition headed by Common Cause of Florida, and including the NAACP, the state Republican party, the State Conservative Association, and others, began to pressure the legislature to place the Common Cause plan on the ballot as a constitutional amendment to be considered by the voters at the 1980 general

election. When it became evident that the legislature would not enact such a proposition, the coalition sought to place an initiative on the ballot at the 1980 general election. Common Cause was quite active in the effort, but the local organizations of the NAACP and the Republican party did little work. As a result, the necessary 250,000 signatures (eight percent of the 1976 presidential vote) were not secured by the August 1980 deadline, and the drive failed.

There have been several effects of reapportionment on the legislative process. In the first place, the average number of Republicans in each chamber has been increased from only two or three percent before 1967 to an average of thirty percent from 1967 to date. As a result, while one-party domination by the Democrats continues, Republicans' input has become much more significant. In the second place, there has been a transfer of majority power from the rural areas to the urban. At the same time, this has produced a numerical transfer of seats from north Florida to central and south Florida. Before reapportionment, a majority of legislative seats were in north Florida. Now this area has less than one-third of the seats, while central and south Florida have over two-thirds. Immediately in 1967 this ended the domination of the "pork chop gang" in the Democratic party. For the first time, after 1967, speakers of the House were elected from south Florida urban areas, including Richard Pettigrew from Miami and Terrell Sessums from Tampa. Legislators from these areas also included four or five blacks in the House. The urban legislators themselves divided within the Democratic party into liberal and conservative blocs. On matters such as expenditures, the Democratic conservatives united with Republicans to produce a moderately conservative level of expenditures for welfare programs, education, and social programs. However, the Democrats coalesced again to produce a majority for conservation programs, women's rights, the enactment of a new state constitution, the ending of segregation, and transfers of many types of state spending, such as that for the establishment of state

hospitals from rural to urban areas of the state. The general character of state politics was thus Democratic, but a moderate conservatism persisted as to expenditures on state programs.

There have been several important policy consequences of reapportionment. Although the Florida legislature has not adopted the Equal Rights Amendment, a considerable amount of legislation was adopted during the 1970s placing Florida in the forefront among Southern states in guaranteeing women's rights. In 1972 a state Comphrehensive Planning Law was enacted, and the legislature also adopted considerable legislation to protect the environment. While Florida's rank in support of education has not changed among the states, the legislature has redistributed available funds to more populous counties, and the same appropriation pattern has developed since reapportionment in the redistribution of road funds.

The final census results announced by the director of the census in December 1980 show that Florida gets four additional U.S. House of Representative seats. This increases the size of the Florida congressional delegation from fifteen to nineteen, and increases the electoral vote from seventeen to twenty-one for presidential elections.

The legislature elected in 1980 will confront the thorny question of redrawing congressional and state legislative boundaries once again. Undoubtedly, the arguments concerning multi- versus single-member districts will continue, especially since during the 1970s the Florida House of Representatives averaged only five blacks per session and none were elected to the Senate. And, while it is true that minority groups do influence the election of whites in multi-member districts, the extent of that influence remains an empirical question. In the state there is much continuing argument as to whether or not multi-member districts actually dilute the voting strength of blacks. For instance, in a five-member district which includes a number of blacks, all candidates, unless voting is completely polarized on a racial

basis, usually seek to gain black support. The outcome is that blacks can most often influence four or five seats in the legislature rather than only one or two. Such would not be the case if the vote were polarized on a racial basis, but this situation does not prevail in most of Florida. Another problem as to racial groups and single-member districts is the lack of concentration of blacks in the same compact area. In most Florida cities, black residential areas are predominantly segregated; but such areas are scattered in most counties and cities, except in those cities with over 500,000 population. The point is that, as in many other Southern cities, blacks in Florida cities are segregated but not in a single pocket. There are multiple pockets scattered in different areas of the same city, without enough blacks in any one pocket to create a majority for a legislative district. Even in cities of over 500,000, such as Miami, Tampa, Jacksonville, Ft. Lauderdale, and St. Petersburg, there would not be more than one or, at most, two legislative districts per city with a majority black population. As a result, it is doubtful that more than two additional black majority districts could be created even if only single-member districts were allowed. In Dade County (Miami) perhaps two or three majority Hispanic districts could be constructed. Similarly, Republicans would gain a few seats in several larger counties now predominantly Democratic; but they would lose an equal number of seats in several large, predominantly Republican counties. In short, even under a single-member districting scheme, the overall racial, ethnic, and partisan composition of the legislature would not be altered dramatically.

Summary and Conclusions

Florida is one of the most rapidly growing states. In the state legislature the battle before reapportionment was between two factions of the Democratic party, one representing urban areas, the other, and majority, being rural. After apportionment this has changed to a two-party contest between Republicans and Democrats.

Within the legislature some coalitions transcend party lines. But these are largely conservatives, whether urban or rural, versus moderates and a very few liberals. Blacks have made considerable progress in securing offices in county, city, and school board elections, even with at-large or multi-member districts, but there remain disproportionately fewer blacks in the state legislature. Finally, much energy has been devoted to the enactment of legislation concerning the environment, women's rights, and the redistribution of state funds geographically. Not all the changes are due to reapportionment, but it has had an important and lasting impact.

In conclusion, it may be stated that at its November 1980 session, the Florida legislature authorized reapportionment committees of each house to prepare plans; the lawmakers agreed, however, not to consider legislation until the April 1982 session. Common Cause of Florida has set as its number one priority in the next redistricting the securing of single-member districts.

NOTES

1/ U. S. Bureau of the Census, "Population Growth Reports," Series P27, no. 876.

2/ At the time, the largest county, Dade, contained more than one million people, while the smallest, Liberty, had approximately 2,000.

3/ 369 U.S. 286.

4/ 378 U.S. 553.

5/ 385 U.S. 440.

6/ 263 F. Supp. 225.

7/ 263 So. 2d 797 (Fla.).

8/ 346 F. Supp. 799.

Table 1

Florida Population Increase
1950-1980

Decade	Percent Increase	Population Increase
1950-1960	79%	2,180,000
1960-1970	38%	1,832,000
1970-1980*	36%	2,453,000

*1980 figures are estimates.

Table 2

Republicans and Democrats in the Florida Legislature

Year	Actual Districts: Democrat	Actual Districts: Republican	Republican Percentage
1961 Senate	37	1	.03
1961 House	88	7	.07
1963 Senate	43	2	.04
1963 House	109	16	.03
1965 Senate	42	2	.05
1965 House	102	10	.09
1967 Senate	28	20	.42
1967 House	78	41	.35
1971 Senate	32	16	.30
1971 House	79	38	.32

Source: Manning J. Dauer, "Florida, the Different State," in The Changing Politics of the South ed. W. C. Havard (Baton Rouge: Louisiana State University Press, 1972), p. 123.

Table 3

Number of Single-and Multi-Member Districts in Florida House and Senate Reapportionment in 1971-81*

Senate Apportionment		Districts
5	1-member districts	5
7	2-member districts	14
7	3-member districts	21
		40

House Apportionment		
21	1-member districts	21
5	2-member districts	10
3	3-member districts	9
5	4-member districts	20
6	5-member districts	30
5	6-member districts	30
		120

*Florida, Statutes 1977, Title III, Ch. 10.06, pp. 31-32.

GEORGIA

Keith R. Billingsley

Between 1961 and 1974, Georgia enacted seventeen major reapportionment plans.1/ The ten U.S. House seats were reapportioned four times--1961, 1964, 1971, and 1972; the Georgia Senate, six times--1961, 1962, 1967, 1968, 1971, and 1972; and the Georgia House, seven times--1961, 1965, 1967, 1968, 1971, 1972, and 1974.

From 1961 to 1968, the Georgia General Assembly attempted to respond in redistricting to the 1960 census and to increased pressure from the courts to create districts of equal population. From 1971 to 1974, the Assembly attempted to respond to the 1970 census and the new pressures from the U.S. Justice Department to enforce compliance with the Section V provisions of the Voting Rights Act of 1965. Additionally during the decade of the 1970s, the General Assembly and its reapportionment staff dealt with hundreds of plans for reapportioning such local political bodies as county commissions, city councils, school boards, and the boards of local police, water, and fire districts.

Redistricting in the 1960s

Georgia began the decade of the 1960s with some of the worst malapportionment in the nation. In 1960, for instance, the Georgia House had a ratio of largest to smallest district populations of 98 to 1. This disparity arose from provisions of the Georgia constitution of 1877, as amended in 1920. The constitutional formula for House apportionment provided the eight largest counties with three representatives each, the thirty next largest counties with two representatives each, and the remaining counties with one representative each. This formula remained constant

even as the number of counties in the state changed. By 1960, Georgia had 159 counties--the current number--and 205 House seats.

The number of representatives per county under the House formula was also used in conducting statewide elections in the Democratic primary, under what was known as the Neill Primary Act of 1917. (Recall that until recently, the Democratic primary was the only election that mattered in Georgia.) This act provided that each county would have twice the number of votes as it had members in the Georgia House and that these votes would be cast as a unit for the winner in the county returns. The act thus established what is generally known in Georgia as the <u>county-unit system</u>. This method of deciding elections was modelled closely after the national electoral college, and it gave rise to some of the same "evils" generally attributed to the national system. In dozens of instances from 1918 to 1960, candidates with a minority of the total popular vote used the county-unit system to defeat candidates with a clear popular majority.2/

As time went on, the tremendous growth of urban centers such as Atlanta generated considerable pressure for changing the county-unit system; but appeals for change to the legislature met deaf ears. It is not hard to see why. Many key elected officials owed their jobs to a system which was unresponsive to population shifts. Legislators from many rural counties faced the certainty that apportionment according to population would eliminate their legislative seats. Reapportionment bills had to pass both the House and the Senate and then face the governor. None of the principals could see much benefit from changing the system; most could only see possible harm.

This lack of response from the lawmakers set the stage for the novel judicial involvement in what had previously been considered the business solely of the legislature and the governor. The key federal and Georgia court cases of the 1960s have been reviewed adequately elsewhere.3/ Beginning in 1962, the Georgia

legislature and the courts began the now familiar cycle of court orders followed by incomplete legislative response. By 1968, however, the General Assembly had enacted apportionment plans which provided districts for the House and Senate which came within 10 percent of the ideal district populations for Georgia. Even if one allows for error in some of the population estimates, it is probable that no district was off by more than 20 percent. By the middle of 1968, both the courts and the legislature were aware that a new census was coming; and, with a sigh of relief, both decided to allow the apportionment of 1968 to stand until new population figures were available in 1971.

Redistricting in the 1970s 4/

The legislators elected in 1970 knew they had to confront the issue of reapportionment early in 1971. The legislative leadership, particularly in the House, decided to face the issue of population equality directly. The goal for the 1970-71 session was to create congressional and state districts of near-exact population equality. To facilitate the redistricting task, the General Assembly--led by the speaker of the House, George T. Smith--entered into a contract with the University of Georgia to create a task force of faculty, students, and technicians to provide basic population data, supporting maps, a computer program for accessing and tabulating census data "on-line", and a group of trained assistants to work as needed with legislators in Atlanta. The result of this contract was the establishment of the Legislative Reapportionment Service Unit at the university's Institute of Government. The object of the university's involvement was to remove from the legislature all of the technical burden associated with processing census data. The politics of the process, however, remained in the hands of the legislators.

Beginning in May 1971, the university task force prepared all of the required items; and by July, the apportionment committees in both houses were busily

engaged in drafting alternative plans. The Senate committee worked on the U.S. House and the Senate plans; and the House committee worked on the U.S. House and House plans. Early in the process, a political decision was made to report only total population figures for the various census sub-units--all race data were deleted. This decision turned out to be a serious error.

In September 1971, the General Assembly met in special session to reapportion the congressional, House, and Senate districts. During this session, ten congressional districts, 180 House districts, and fifty-six Senate districts were drawn. On November 5, 1971, the three districting plans were submitted to the U.S. Justice Department for the pre-enforcement review required by the Voting Rights Act. The Justice Department objected to all three plans, with the most serious objection lodged against the House plan. As a result of this objection by Justice, the 1972 regular session of the General Assembly passed a slightly different set of plans; and this new set was submitted to the Justice Department on March 15. On March 24, 1972, the attorney general expressed objections to the House plan; specifically, the Justice Department objected to all thirty-two multi-member districts in the House plan on the grounds that such districts tended to dilute unnecessarily the voting power of black citizens.

The General Assembly decided at this point that it had gone far enough in insuring minority rights, and it refused to change any of the House districts. The Justice Department then filed suit in federal district court.

Soon thereafter, the district court issued an injunction against holding elections under the 1972 House plan. Unfortunately, the qualifying time for the 1972 elections was rapidly approaching, and Georgia Attorney General Arthur Bolton appealed to the U.S. Supreme Court for a stay against the lower court's injunction. The appeal was granted. The 1972 elections were held on time and the representatives were allowed to serve their full terms.

The U.S. Supreme Court finally held a full review of the dispute between Georgia and the U.S. Department of Justice; and on May 7, 1973, the High Court upheld both Justice's right to review the Georgia plan and the judgment of Justice Department attorneys in their continued challenge to fifteen districts of the Georgia House. (The Justice Department had dropped its challenges to seventeen other districts when it became obvious that the objections would have to be defended in court.)

During the hearings in the above case, Georgia had requested that, if the decision were to support the Department of Justice, then Justice should be directed to provide a specific listing of the districts which would be subject to further review. On August 16, 1973, the Justice Department filed its listing and added four districts to the fifteen previously challenged successfully. Georgia, however, took the position that the attorney general had approved these four districts in the past, and that he was therefore acting without authority in seeking to review them now. Georgia filed its objection to the addition of the four districts in the district court, which on September 14, 1973, upheld Georgia's position.

This victory was, however, a relatively minor one. Between June 1973 and February 1974, the House and its staff ground away at the almost insurmountable problem of satisfying incumbent legislators in sub-dividing the fifteen multi-member districts while at the same time meeting the requirements of population equality and racial balance. There was little joy in the Georgia Assembly when the final plan was signed on February 25, 1974. Because of the extensive informal negotiations with the Justice Department which preceded adoption of the plan, the attorney general elected not to object to this apportionment act. It appears that the 1974 House plan, then, like the 1972 congressional and Senate plans, will remain in effect until repealed by the 1981 apportionment act.

What's in Store for the 1980s?

It took Georgia almost ten years to adjust to the idea that districts must be substantially equal in population. It took only another five years for legislators to adjust to the idea that the political rights of racial minorities must be protected not only in registration and voting but also in the construction of representative districts. It would be pleasant to predict that the 1981 redistricting process would benefit from both lessons and that the legislature would draw districts both equal in population and acceptable to the U.S. Department of Justice. At best, however, such a prediction would be premature.

Preliminary census figures indicate that the population of Georgia has changed considerably during the past decade, both in its size and in its distribution. There are more Georgians, but the rural areas have declined in population while the central cities have lost residents to the surrounding suburban counties. These population shifts may affect most noticeably those districts containing significant numbers of black voters. For this reason, it is quite possible that the legislature will have to use a new set of rules in order to draw districts that will stand up under Justice Department scrutiny.

An additional concern for 1981 is the fact that more and more legislators are learning to use the census figures and will thus feel capable of constructing their own plans; inevitably, the first order of business in all these plans will be to take proper care of the constructor. As more and more individuals become involved in the redistricting process, compromise becomes more difficult, and the costs in time and money go higher.

Georgians have learned three lessons about redistricting in their state: the districts must be equal in population, they must protect the voting power of black citizens, and there is always a new lesson to be learned.

NOTES

1/ Much of Georgia's reapportionment history is summarized in Albert B. Saye, A Constitutional History of Georgia, 1732-1968 (Athens, Ga.: University of Georgia Press, 1970), pp. 412-426. Saye's high-school text, Georgia History and Government (Austin, Tex.: Steck-Vaughn, 1973), pp. 230-237, also provides a surprising amount of material, including maps, which should be of interest to scholars studying apportionment. The reader should be aware, however, of Saye's bias against change in districting--especially change forced by the federal courts.

2/ Saye, Constitutional History, pp. 415-17.

3/ See the two Saye volumes previously cited.

4/ Much of this section is drawn from an unpublished internal staff report to the General Assembly, titled "History of Georgia Reapportionment" (n.d.). I thank Linda Meggers for providing this document.

KENTUCKY

J. Allen Singleton

Constitutional Provisions

The present Kentucky constitution (adopted in 1891) provides for a bicameral legislature of thirty-eight senators and 100 representatives. Section 33 of the constitution states that legislative districts are to be "as nearly equal in population as may be," but then adds, "without dividing any county. . ." (emphasis added). (Multiple-district counties are allowed.) The constitution further states in the same section that, "Not more than two counties shall be joined together to form a Representative District. . . ." Section 33 also precludes altering the boundaries of counties just to create legislative districts and requires that "counties forming a district shall be contiguous." Within this same section, decennial reapportionment by the General Assembly is provided. These provisions are historically in conformity with the state's earlier constitutions.

Background

Any discussion of the redistricting process in Kentucky must take note of the preeminent role of counties in Kentucky government and politics, the distribution of population within Kentucky, and the regional complexities of the state. Although the county unit has been of importance in many other states, the enormous importance of the county in Kentucky is best illustrated by this analogy in Robert M. Ireland's The County in Kentucky History:

> Nineteenth century Kentucky in many ways resembled medieval Germany, which was essentially a loose collection of miniature states, duchies, principalities, and other constitutional subdivisions and only in the loosest sense a political unit.

Although its importance has not persisted in this extreme form, the county unit remains a crucial element in Kentucky politics for the election of statewide officials and of legislators. This highly decentralized political environment is also reflected in the lack of any readily definable coalitions being visible on the statewide political scene. Even the traditional urban/rural conflicts observable in other states have not been present in Kentucky. Factors which contribute to this lack of traditional urban/rural conflict are varied. It should be noted that there are only two cities in the state--Louisville and Lexington--with populations in excess of 100,000 persons. The total population of all the SMSA's of the state, in fact, constitutes less than half of Kentucky's total population.

The most significant factor in Kentucky politics has been the topography of the state. This has accentuated the significance of localized politics and made more difficult the establishment of political communications linkages between the various parts of the state. (With the opening of the present interstate/tollway system of highways in the 1970s, this pattern began to crumble.) These difficulties of communication served to increase the diffusion of political power within the state.1/

Redistricting Prior to the 1960s

Prior to the 1960s, only two twentieth-century Kentucky redistrictings (1918 and 1942) had been allowed to stand by the courts. The 1906 redistricting law was declared invalid by the Kentucky Court of Appeals on grounds that the newly created districts were grossly unequal in population; the court therefore ordered that the previously existing districts be retained.2/ In that same ruling, however, the court did acknowledge as valid the principle that in order to achieve the "approximate equality of population" required by the state constitution, it was acceptable to combine more than two counties to form a legislative district. The 1930 reapportionment was also invalidated by the appeals court for its population disparities.3/

In addition to the problems created by constitutional restrictions, there were other factors which complicated the process of redistricting in Kentucky. One of the more significant factors was the use of rotation agreements within multi-county districts. Through this device, the legislative seat was "rotated" among the counties. Counties were often reluctant to alter such arrangements. This device, coupled with the traditional political competition, inhibited effective redistricting in Kentucky.

On the eve of the Baker v. Carr decision, Kentucky's representative districts ranged in population from over 50,000 (a Fayette County district) to just under 13,000. The average district population was 29,448. In the Senate, the populations of districts ranged from over 104,000 (Kenton County) to just under 63,000. On the average, Senate districts contained a population of 77,500.4/

Redistricting in the 1960s

A redistricting plan was enacted by a special session of the General Assembly in January of 1963. The act followed the constitutional mandate against dividing any county (except multiple-district counties) and followed the rule-of-thumb that no existing district would be altered except where the deviation from the average district population exceeded 25 percent. The 1963 act was not challenged in the courts even though significant discrepancies existed between district populations. The plan resulted in a malapportionment favoring the rural areas.

Although the Republican party is the minority party within the state, there are specific geographic areas which traditionally vote Republican. Several counties regularly elect only Republicans to county offices. A number of state legislators and two of the state's seven U.S. Representatives are elected from these Republican-dominated areas. Republicans have also been elected in recent statewide campaigns. These factors tend to lessen the direct effect of malapportionment

upon the minority Republican party. This is not to say that there was no such malapportionment.

Redistricting in the 1970s

Historically, the effects of legislative malapportionment in Kentucky have been lessened by the secondary role played by the General Assembly in a state where the legislature has been dominated by the governor. (The General Assembly meets for only sixty days each biennium.) In 1968 a Republican governor was elected for the first time in over fifty years. The Democrats maintained their usual preponderant legislative majorities.

It was in this political climate that Republican Governor Louis Nunn convened a special session of the General Assembly in February 1971, to draw up a new redistricting plan. The act which resulted was approved by a legislature in which the president pro-tem of the Senate was a candidate for governor and the speaker of the House was a candidate for lieutenant governor. Despite the apportionment decisions of the 1960s, the plan emphasized maintaining the provision against county-splitting in the Kentucky constitution. The governor allowed the reapportionment bill to become law without his signature. Almost immediately after its passage, however, the act was struck down by the U.S. District Court for Eastern Kentucky.5/ Judge Mac Swinford opined that the act did not meet the "as-nearly-equitable-as-possible" population standard. Because party primaries had already been held, the judge allowed the election of members for the 1972 General Assembly from the districts created under the 1971 act, but he directed the 1972 General Assembly to reapportion itself on the basis of the "one man-one vote" principle.

The regular 1972 session of the legislature failed to reach agreement on a reapportionment bill. In June of 1972, therefore, Governor Wendell Ford called a special session of the General Assembly. The act passed by the special session

created districts featuring maximum deviations of about ± 2.8 percent from the average district population. These districts are currently in effect.

Redistricting in the 1980s

Population changes and shifts revealed by the 1980 census indicate that a reapportionment of legislative districts in Kentucky is needed. Without doubt, significant changes have also occurred in the political arena in Kentucky since the 1972 legislative redistricting. One critical change has been in the relationship between the governor and the General Assembly. Several factors have combined to create an increased independence for the legislature. The direct effect of this change on the redistricting process is limited, but one probable result should be noted: When decisions are made for locating district boundaries, it is quite likely that some of the districts which have traditionally elected "the governor's" legislative candidates will disappear.

At least two additional changes which will probably occur as a result of the 1981 redistricting process also should be noted. At least one of the congressional seats traditionally controlled exclusively by the Republican party will become more competitive between the two parties. There will also be an increase in the number of legislative districts which include fragments of counties, and an increase in the number of representatives from metropolitan areas.

NOTES

1/ For a more detailed discussion, see A.Y. Lloyd and J.A. Singleton, Kentucky Government (Frankfort Ky.: Kentucky Legislative Research Commission, 1980), chap. 1.

2/ Ragland v. Anderson, 125 Ky. 141, 100 S.W. 865.

3/ Stiglitz v. Schardien, 239 Ky. 799, 40 S.W. (2d) 315.

4/ The Legislative Process in Kentucky (Frankfort, Ky.: Kentucky Legislative Research Commission, 1955), p. 55.

5/ Hensley v. Wood, 329 F. Supp. 787 (1971).

LOUISIANA

Ronald E. Weber

Redistricting Prior to 1960--The State Legislature

The Louisiana constitution of 1921 provided for the apportionment of the Senate and the House. The Senate was composed of thirty-nine seats from thirty-three districts. None of the state's sixty-four parishes except Orleans could be divided between districts. Multi-parish districts allocated more than one seat could elect only one senator from each parish. The legislature after the next census enumeration was to reapportion the Senate districts. The House was composed of 100 seats. Each of the sixty-three parishes outside of Orleans Parish, together with the seventeen wards of Orleans, were guaranteed at least one House seat apiece; the remaining twenty seats were allocated on the basis of population to the largest parishes and Orleans wards. The maximum House membership was set at 101. The legislature after the next census enumeration was to reapportion the House districts.

During the next forty years, the legislature took very little action on legislative apportionment despite the requirements of the 1921 constitution. The Senate was not reapportioned after the 1930, 1940, or 1950 censuses. Constitutional amendments in 1938, 1948, and 1956 made minor adjustments in the Senate apportionment. Nor was the House reapportioned after the 1930, 1940, and 1950 censuses. A constitutional amendment in 1960 increased the size of the House to 105 members. Two of the larger parishes, East Baton Rouge and Jefferson, were given additional seats as a result of the increase in the House size.

Prior to 1960--Congressional Districting

The last redistricting by the legislature of Louisiana's congressional seats, prior to the 1960s, occured in 1912, when the size of the Louisiana delegation was increased from seven to eight as a result of the 1910 census.

Impact of the U.S. Supreme Court Decisions of the 1960s--The State Legislature

At the time of the Baker v. Carr decision in 1962, no significant reapportioning had been done in either house since 1921. The Senate districts, based on data from the 1960 census, had a population per senator ranging from 31,175 in Ward 3 of New Orleans to 248,427 in Senate District 10, composed of Jefferson, St. Charles, and St. John Parishes. Only 33 percent of the population was needed to elect a majority of the Senate. New Orleans was not disadvantaged under the plan; it had 19.27 percent of the state's population and 20.51 percent of the Senate membership. The House districts, based on data from the 1960 census, ranged in population from 6,909 (Cameron Parish) to 120,205 persons (Ward 9 of New Orleans). Only 34.1 percent of the state population was needed to elect a majority of House members. The smallest parishes were advantaged: those with under 25,000 people, containing a total of 16.2 percent of the population, could elect 30.5 percent of the members of the House. The largest parishes (those with over 100,000 residents), outside of New Orleans, contained 31.3 percent of population but could fill only 18.1 percent of the House seats. New Orleans, with 19.3 percent of people, elected 19.0 percent of the representatives.

Following the Baker v. Carr decision, a suit was filed in federal district court by several residents of East Baton Rouge Parish, challenging the House apportionment. The court deferred its decision in Daniel v. Davis until the legislature had had an opportunity to carry out its own reapportionment. At a special session called to consider reapportionment, the legislature reapportioned the House in compliance

with the provisions of the Louisiana constitution. The federal court held that the legislators' plan for the House was constitutional, since there was no more they could do without violating the Louisiana constitution. Later that year, Bannister v. Davis was filed in federal court by a resident of Jefferson Parish, challenging the apportionment of the Senate. Once the U.S. Supreme Court decided standards and criteria for reapportionment in Reynolds v. Sims, Spencer v. McKeithen was filed in federal court by a resident of Jefferson Parish, calling for reapportionment of both houses. The three-judge federal panel consolidated the Bannister and Spencer cases and in 1966, after the legislature failed to reapportion itself, the court declared the apportionment of both houses unconstitutional and ordered the legislature to reapportion before January 1, 1967. A special session in 1966 reapportioned both houses, and the federal court approved both plans.

Impact of the U.S. Supreme Court Decisions of the 1960s--Congressional Districting

At the time of the Wesberry v. Sanders decision in 1964, Louisiana's eight congressional districts were badly apportioned. Three South Louisiana districts, encompassing New Orleans, Baton Rouge, and their respective suburbs were underrepresented by as much as 32 percent. At the same time, two rural districts in North Louisiana were overrepresented by as much as 35 percent. The absolute range of district population was 263,850 in the 8th District and 536,029 in the 6th District. Harwell v. McKeithen (1964) was filed in federal court by a resident of East Baton Rouge Parish, challenging the state's congressional districting. The case was discontinued after the legislature redistricted the congressional seats in 1966.

The Redistrictings of the 1960s--The State Legislature

The first reapportionment action of the 1960s took place at a special session of the legislature in June 1963. Acting on a "call" limited to House reapportionment, the

legislature, following the provisions of the state constitution, passed an act which reallocated eight seats. Six of the reallocated seats shifted representation from less populous parishes to certain urban and suburban parishes. The other two seats were redistributed within Orleans Parish to make the representation of the wards more nearly equal. This reapportionment had very little impact on the makeup of the House elected in 1964, since very few districts were changed by it. The new House plan still had districts ranging in population from 6,090 to 57,662.

Several reapportionment bills were introduced in the legislature in 1964 and 1965, but none was passed. A special joint committee to study reapportionment was also unable to come up with a plan. Rural legislators were opposed to reapportionment and prevented the joint committee from recommending plans to the full chambers.

Not until the federal court declared the apportionment of both houses unconstitutional, in 1966, did the legislature take action on reapportionment. Faced with the possibility of at-large elections in 1967, the legislature reapportioned itself. In passing the new plans, the legislature ignored the geographical requirements of the state constitution, since the constitutional provisions had been invalidated by the federal court. The new plans, while not crossing parish lines or ward lines in Orleans Parish, created new districts that came much closer to population equality than the previous districts. Both plans made extensive use of multi-member districts in order to equalize representation without crossing Orleans ward lines or parish lines in the rest of the state.

The new apportionment plan for the Senate altered the representation of about two-thirds of Louisiana's sixty-four parishes. Twelve parishes (most of them urban) gained representation, while thirty-six (most of them rural) lost representation. Parishes with populations of 200,000 or more (except for New Orleans) made the greatest gains. Under the new plan, the minimum percentage of the state

population needed to elect a majority of the Senate was 48.34, rather than the 33 percent needed under the old plan.

The new House apportionment scheme drastically changed the basis of representation in the House by ending the practice of guaranteeing every parish and every ward of Orleans Parish at least one seat. Only sixteen parishes remained as single-parish districts under the new plan. The rest of the parishes were combined into multiple-parish districts, and in some cases rural parishes were combined with urban parishes in order to create districts of nearly equal population. The largest gainers under the new scheme were the urban parishes of Caddo, East Baton Rouge, and Jefferson. The overall representation of Orleans Parish was unchanged, although representation for the wards within the parish was altered.

Primary and general elections were held using the new apportionment plans in late 1967 and early 1968. The impact of the new Senate plan was minimal, with just a few senators from rural northern Louisiana losing their seats. Democrats were elected to all the new seats created for urban and South Louisiana parishes. No Republicans or Blacks were elected to the state Senate under the new plan. The elections for the House of Representatives, however, had a greater impact upon the makeup of that body. Sixteen representatives from rural parishes all over the state lost their seats and were replaced by representatives from larger parishes. Thus, the rate of membership turnover in the House was greater than it had been after previous elections using the old apportionment plan. For the first time since the end of Reconstruction, a Black was elected to the House. No Republicans, however, were elected under the new plan.

The Redistrictings of the 1960s--Congressional Districting

The first congressional redistricting action of the 1960s occurred during the regular session of the legislature in 1966. The new plan, first used in the elections of 1968,

made moderate changes in the size of the districts. The two districts with the largest populations, the 2nd (West New Orleans and the nearby suburbs) and the 6th (the Baton Rouge area), were both reduced in size, while the 8th (central Louisiana, including Alexandria), which had been the smallest district under the old plan, had seven parishes added to it. The deviations from population equality were reduced, with the 2nd District being the most underrepresented (13.66 percent above the population median) and the 8th District still being the most overrepresented (9.09 percent below the population median). No incumbents were placed in the same district by the new plan. In the elections of 1968, all incumbents but one were reelected; Edwin Willis in the 3rd District was not renominated in the primary. His defeat was not attributed to redistricting, however. On the other hand, Hale Boggs, the majority whip in the U.S. House, had a close race with a Republican challenger, and the closeness of the contest was thought to have been affected by the removal of two Democratic parishes from Boggs' 2nd District during the redistricting.

In 1969, after the U.S. Supreme Court in Kirkpatrick v. Preisler and Wells v. Rockefeller tightened the standards for congressional districting, the Louisiana legislature acted again to redistrict the state's eight congressional seats. In redrawing the districts, the Democratic legislature not only created districts that were very close to being equal in population (on the basis of 1960 census figures), but also devised a district that would be politically more favorable to Hale Boggs. The largest district under the new plan was now the 8th (409,056 residents), while the smallest district was the 7th (403,756). For the first time, the legislature cut across ward and parish boundary lines in order to draw districts meeting equal-population requirements. The elections held in 1970 using the new districts produced no change in the congressional delegation. Hale Boggs was easily reelected in the district that had been drawn to exclude areas in Jefferson Parish that had been supportive of Republican candidacies in Boggs' former district.

The Redistrictings of the 1970s--The State Legislature

The reapportionment of the state Senate and House districts after the promulgation of the 1970 census figures was difficult to achieve. Since the districts drawn in 1966 were not substantially equal in population based on the new census data, the legislature in its 1971 regular session enacted new apportionment plans for both the Senate and the House. The thirty-nine Senate seats were divided among twenty-four districts, of which twelve were multi-member. The deviations from the mean district population ranged from a low of -10.56 percent to a high of +11.82 percent, for a total spread of 22.38 percent. The 105 House seats were divided among fifty-three districts, of which twenty-five were multi-member. The deviations from the mean population ranged from a low of -14.82 percent to a high of +12.31 percent, for a total spread of 27.13 percent.

Two suits were immediately filed in the federal district court -- one by Victor Bussie, president of the state AFL-CIO, and one by Dorothy Taylor, a New Orleans House member -- challenging both plans enacted by the legislature. The major contentions of the plaintiffs were that the plans did not comply with the one man-one vote guidelines of the U.S. Supreme Court and that they had the effect of diluting Black voting strength. Before making a final ruling on the suits, the federal district judge appointed a special master to devise alternative apportionment plans for the court to consider as possible substitutes for the ones being challenged. Before the judge could act on the suits, however, the U.S. Department of Justice entered an objection to the legislature's redistricting acts, indicating that the two plans were racially discriminatory under provisions of the Voting Rights Act of 1965. The Justice Department's objection was based largely on the continued use of multi-member districts to dilute Black voting power. Having taken note of the Justice Department's argument, the federal district court invalidated the acts of the legislature, then adopted the alternative apportionment plans drawn by the special master as replacements.

The court-approved plans were markedly different from the plans adopted by the legislature. For the first time, single-member districts were used exclusively as the basis for apportionment. Local political boundaries (parish and ward lines) were crossed to create the single-member districts, with the result that many parishes were fragmented to create districts with substantially equal populations. The special master's plan for the Senate created a great deal of controversy because, in two New Orleans districts, it put a pair of incumbent senators together, while in one district of East Baton Rouge it placed three incumbent senators together. The seven affected senators intervened in the court proceedings and successfully convinced the Circuit Court of Appeals to accept alternative plans for New Orleans and East Baton Rouge Parish that would not force incumbents to run against one another. In the 1972 regular session of the legislature, the plans approved by the Circuit Court of Appeals were enacted into the state statutes.

The court-ordered plans came closer to achieving population equality than the plans they replaced. The new Senate plan had districts with deviations from the mean population ranging from a low of -8.8 percent to a high of +5.6 percent, for a total spread of 14.4 percent. The districts in the new House plan had population deviations ranging from a low of -4.6 percent to a high of +4.5 percent, for a total spread of 9.1 percent.

The new apportionment plans were first used in the primary election of late 1971 and the general election of early 1972. Under the House plan, a number of incumbents had to run against each other in order to continue to serve in the legislature. A higher-than-usual turnover in legislative membership was guaranteed, as no incumbents filed for eleven Senate seats and thirty-five House seats. A number of these retirements can clearly be attributed to movement to the use of single-member districts. In a number of cases, incumbent House members gave up their seats to seek election to the Senate.

The Senate elected under the court-ordered plan included twenty new members out of the total membership of thirty-nine. No Republicans or Blacks were elected to the new Senate. The impact of reapportionment on the House elections was more dramatic, however. In the new House, sixty-five of the 105 members had never served in the legislature before. Moreover, four Republicans and eight Blacks were chosen under the single-member House apportionment plan. In subsequent elections held in 1975 and 1979 using the same apportionment plans, the number of Republicans grew to ten in the House, while the number of Blacks in the legislature as a whole increased to twelve. The switch to single-member districts thus produced an increase in the representation of both partisan and racial minorities in the legislature.

The Redistrictings of the 1970s--Congressional Districts

Louisiana was one of the last states to accomplish congressional redistricting on the basis of the 1970 census figures. Because the 1971 session of the legislature was limited to considering fiscal matters only, the state lawmakers waited until the 1972 regular session to undertake congressional redistricting. The new census data indicated that none of the existing districts was close to the ideal district population of 455,398. The two largest districts were the 3rd (the central coast, around Lafayette) and the 6th (the Baton Rouge region), with one of them being 23.5 percent above the ideal district size. The smallest district was the 7th (southwestern Louisiana, around Lake Charles), where the population was 0.41 percent below the ideal district size. Overall, the variance between the largest and the smallest districts was 32.91 percent.

In redrawing the districts, the legislature shifted parishes from North Louisiana districts. Prior to redistricting, North Louisiana was the focus of three districts--the 4th, 5th, and 8th. After redistricting, only the 4th and 5th districts

were left as North Louisiana districts. Given Democratic control of the legislature, the districts were drawn generally to ensure the re-election of Democratic incumbents. In the two districts where Democratic incumbents were retiring, and in the district vacated by Edwin Edwards when he was elected governor earlier in the year, an attempt was made to create districts that would be favorable to key supporters of Governor Edwards. All of the districts created were substantially equal in population, with the variance between the largest and smallest districts being only 0.31 percent.

In the elections of 1972, the five Democratic incumbents were reelected without Republican opposition. In the elections for the three open seats, Democrats backed by Governor Edwards won the contests in the 7th and 8th Districts. In the race for the 2nd District seat, David Treen was elected as the first Republican congressman from the state since the end of Reconstruction. Treen's election was partly attributable to redistricting, since the removal of Lafayette Parish and Democratic parts of Jefferson Parish from the 2nd District tended to concentrate the Republicans in South Louisiana in the district.

Redistricting in the 1980s--The State Legislature

The next reapportionment of the Senate and the House will be governed by the provisions of Louisiana's new constitution which went into effect in 1975. The legislature is required to create single-member districts for each chamber. The number of senators is not to exceed thirty-nine, while the number of representatives is limited to 105. The legislature is required to accomplish its reapportionment by the end of the year following the year that the U.S. Census Bureau reports the final census figures to the president of the United States. This provision means that, barring abnormal circumstances, the legislature will have to complete reapportionment of its seats by December 31, 1981. If the legislature fails to

reapportion itself by then, any registered voter may petition the state Supreme Court requesting that the court carry out the reapportionment.

The legislature is presently expecting to tackle reapportionment in a special session in the fall of 1981. Preliminary population figures suggest that many of the districts will have to be redrawn. Most of the parishes in the northern part of the state have not been growing as rapidly as the state as a whole, and hence the new districting plan should shift representation in the direction of South Louisiana. The suburbs of New Orleans and the parishes along the Mississippi River between Baton Rouge and New Orleans have been growing more rapidly and will gain several seats. New Orleans has lost population and will lose representation in both chambers.

Louisiana now has a Republican governor, and it is very likely that partisan considerations will affect the reapportionment of the legislature. Although there are no Republicans in the Senate and only a handful in the House, it is expected that the governor will try to ensure that Republicans will be better able to contest the legislature in the 1980s.

Redistricting in the 1980s--Congressional Districting

The population shifts of the 1970s from North Louisiana to South Louisiana will also require the legislature to undertake a redistricting of the state's congressional seats. The state is expected to continue to have eight congressional seats. The preliminary population figures indicate that three districts--the 4th and the 5th in North Louisiana and the 2nd in South Louisiana--have too few people. On the other hand, the 3rd, and 6th districts in South Louisiana are now too populous and will have to lose people in the redistricting. As in the legislative reapportionment, North Louisiana and New Orleans will lose representation while the New Orleans suburbs and the river parishes between Baton Rouge and New Orleans will gain representation.

The legislature plans to undertake congressional redistricting either during a special session in the fall of 1981 or during the regular session of 1982. Elections are scheduled for Congress in September and November of 1982.

Two of the eight congressional seats are presently held by Republicans, and the Republican governor is expected to take a keen interest in ensuring that the two Republicans are protected. He is also expected to watch out for GOP interests as the legislature redraws the other six districts.

MARYLAND

M. Margaret Conway

Apportionment of state legislative seats has been the focus of controversy in Maryland since the colonial period. The conflict has been generated by economic, ethnic, and sectional differences. By the time of the Supreme Court's decision in Maryland Committee for Fair Representation v. Tawes in June 1964, Maryland was one of the most malapportioned states in the country, containing three of the nation's ten most underrepresented counties.

During the colonial period, the upper house of the legislature consisted of the governor and his appointed council. Members of the lower house, the House of Delegates, were elected, with each county electing four delegates and the city of Annapolis and the town of Baltimore each electing two delegates.

In 1776, the new constitution continued the colonial apportionment formula for the House of Delegates and apportioned senators on geographic basis, with nine elected from the more populous area west of the Chesapeake Bay and six selected from the Eastern Shore area. Senators were chosen indirectly by electors who were themselves popularly elected, two from each county and one each from Baltimore and Annapolis. Indirect election of state senators was terminated by a constitutional amendment in 1837, under which each county and the city of Baltimore gained the right to elect one state senator.

The 1851 state constitution continued the 1837 formula for the apportionment of state senators. As a result, 29 percent of the state's population could elect a Senate majority. The constitution did change the formula for apportionment of members of the House of Delegates. Baltimore city was separated from Baltimore

County, and the city was to elect four more delegates than the most populous county. The House of Delegates was to be reapportioned after each federal census on the basis of population, but each county was to have at least two delegates. The size of the House of Delegates could range between sixty-five and eighty members. Dissatisfaction with the 1851 constitution and the gaining of power by the Unionists resulted in a new constitution being adopted in 1864. Under that constitution, one senator was to be elected from each county, and three from districts within the city of Baltimore.

The unpopular 1864 constitution was soon replaced by one drafted in 1867 which is still in force though often amended. The 1867 constitution continued the existing system of apportionment for the state legislature. The apportionment formula for the House of Delegates was weighted, with counties under 18,000 population receiving two delegates, and representation increasing--though disproportionately--with gains in population. A county having a population of more than 55,000 was entitled to only six delegates regardless of its population. As the smaller counties gained population, the number of delegates to which they were entitled increased, while the large counties were frozen at the maximum of six. An amendment in 1900 increased the number of Baltimore legislative districts from three to four, and another amendment, in 1922, increased the city's districts from four to six. In 1950, the constitution was amended to establish the maximum size of the House of delegates at 123, with thirty-six to be elected from the Baltimore city legislative districts, six from each of the seven largest counties, four each from four counties, three each from five counties, and two each from the remaining seven counties. Thus, Maryland became one of two states to specify its legislative apportionment in the state constitution.

During the 100 years from 1860 to 1960, the proportion of the state's population, which could gain effective control over the state legislature decreased.

While in 1860 29 percent of the people could elect a majority of the state Senate, by 1960 only 14 percent could control the Senate. After the 1960 census, the state's five largest subdivisions (the city of Baltimore, and Baltimore, Anne Arundel, Montgomery, and Prince George's Counties) had 75.3 percent of the state's population, yet they elected only ten of the twenty-nine state senators and sixty of the 123 members of the House of Delegates.

Several patterns of political conflict were the basis of the continuing battle over representation in Maryland. During the colonial period the area north and west of the fall line was occupied by farmers with small landholdings. In the Tidewater areas of the Western Shore and on the Eastern Shore, large plantations worked by slaves dominated by economy. As the events leading to the Civil War unfolded, the plantation-dominated counties feared that control of the state legislature by the more populous areas of the state would result in the freeing of the slaves. Thus, sectional and economic interests formed the basis not only for an urban-rural conflict, but for conflict between Tidewater and non-Tidewater rural areas. Later immigration into the growing industrial city of Baltimore by immigrants from southern and eastern Europe intensified the estrangement between rural and urban interests. The less populous areas maintained their political domination of the state through the apportionment system; any apportionment based on population would destroy their control over the legislature. Furthermore, domination of the governor's office by rural political interests was guaranteed by the nominating system used: each county and the city of Baltimore had as many voters in the state nominating convention as it had seats in the House of Delegates. Hence, from 1910 until 1966, a candidate for governor could win a majority of popular votes in his party's primary, but under this "county unit system" the primary winner could lose the nomination if he did not win enough convention delegate votes.

The New Deal realignment created a sometimes strained alliance between the New Deal Democrats of the Baltimore area and the growing suburbs of Washington, and the traditional rural Democrats who could trace family patterns of Democratic party loyalty back to the Civil War or even to the days of Jackson. The sometimes impossible task for Democratic leaders has been to unite the party's disparate parts, which when united command the loyalty of approximately 70 percent of Maryland's registered voters.

The reapportionment revolution struck Maryland in 1964, when the United States Supreme Court issued its decision in Maryland Committee for Fair Representation v. Tawes, overturning the existing pattern of state legislative apportionment. That case had its beginnings with a small group of underrepresented suburbanites and Baltimore city residents who organized as a committee and filed suit on August 12, 1960, in the Circuit Court of Anne Arundel County. The plaintiffs challenged the apportionment of both houses of the state legislature as unrepresentative and therefore a violation of the Fourteenth Amendment to the United States Constitution. The Circuit Court judge dismissed the complaint, but on appeal the case was remanded by the state's highest court, the Court of Appeals, to the Circuit Court for hearing on its merits. The evidence presented demonstrated conclusively the underrepresentation of Baltimore city and the suburban counties. The court concluded that the apportionment of the House of Delegates was invidiously discriminatory; eventually, however, after being ordered by the Court of Appeals to determine the issue, the Circuit Court declared that the Senate's apportionment could be based on geography and area. The Court of Appeals affirmed the lower court ruling on July 23, 1962; the ruling was then appealed to the federal court.

A temporary reapportionment enacted by the state legislature in 1962 continued the House of Delegates' size at 123 members, granting each county and

Baltimore city two delegates. The remainder of the delegates were to be apportioned according to population.

When the U. S. Supreme Court reviewed the decision of the Maryland court in Maryland Committee for Fair Representation v. Tawes, it also considered the temporary reapportionment of the House of Delegates enacted in 1962, and in its decision invalidated the apportionment of both houses of the state legislature. In October 1965, the legislature passed, and Governor J. Millard Tawes signed, two alternative apportionment laws, leaving to the federal court the choice of which one to put into effect. Selected as valid was the plan which created a Senate of forty-three members and a House of Delegates with 142 seats. This apportionment was adopted as an amendment to the state's constitution in 1970.

Several different conflicts added to the complexity of the struggle over representation and reapportionment which occurred in Maryland during the 1960s. The struggle was in part an urban-rural conflict, with political leaders in the less populous counties seeking to continue their domination over the state's political system. The battle was also in part a dispute within Baltimore city among local political organizations based in the legislative districts; some of these organizations would lose control of legislative seats to other local organizations as a result of reapportionment. Within the suburban counties, the conflict also focused on how any enlarged county delegation would be elected: should it be by districts or at large? Under the one-senator-per-county apportionment system, the single state senator, through senatorial courtesy, held enormous power over local government legislation which was so important in counties that did not have home rule. One of the consequences of reapportionment of the state legislature was the enactment of legislation to facilitate the changing of the county governments to home-rule systems.

The Maryland constitution was amended again in 1972 to create a system with forty-seven senators and 141 delegates. The state is now divided into forty-seven

legislative districts with each district electing one senator and three delegates. For the purpose of electing delegates, a district may be divided into single-member or multi-member subdistricts. This flexibility in the structuring of subdistricts for elections to the House of Delegates permits the legislature to ensure maximum representation of different district interests within the legislature, be they political subdivisions, economic interests, or partisan interests. The state constitution requires that legislative districts be contiguous, compact, and of essentially equal population, with due regard to natural boundaries and the boundaries of political subdivisions.

According to the constitution, after each decennial census and after public hearings, the governor is to prepare a plan setting forth the boundaries of the legislative districts for electing members of the Senate and the House of Delegates. The plan is to be presented to the legislature not later than the first day of the legislative session in the second year following each census (for the 1970 census, the third year was specified). If the legislature fails to formulate and adopt a redistricting plan by the forty-fifth day after the opening session of the General Assembly, the governor's plan becomes law. The state Court of Appeals has original jurisdiction over legislative districting laws and, upon petition of any registered voter, reviews the plan.

The 1973 legislature enacted into law a redistricting plan which was basically that submitted by Governor Marvin Mandel. The plan effectively protected the interests of the regular Democratic party organizations in the various political subdivisions, although some incumbent legislators from the more liberal Washington suburb of Montgomery County were not satisfied with the plan. Court of Appeals review of the plan was petitioned by registered voters who alleged that the plan failed in four different ways to meet constitutional requirements. The Court invalidated the governor's plan in its order of July 31, 1973, ruling that the plan had

not been properly promulgated and adopted because the public hearing required to be held by the governor prior to the plan's submission to the legislature had not been held. The Court, however, proposed acceptance of the governor's plan for the boundaries of legislative districts and ordered public hearings held before the Court-appointed special master, retired Chief Judge of the Court of Appeals Hall Hammond. After public hearings, filing of a preliminary plan, and further public responses, a final report was filed with the Court by the special master on January 24, 1974. Judge Hammond, concluding that parts of the governor's plan were unconstitutional, proposed major changes in the plan which would have had adverse effects on incumbents elected with the support of the regular Democratic organizations in Baltimore County. Hammond's plan also would have split a heavily Jewish district in the western part of the county between two new legislative districts, displeasing many residents. Other aspects of the plan would have benefited incumbents in Montgomery County, increased the probability of electing a black state senator from Prince George's County, weakened the re-election chances of some incumbent Democratic legislators in Anne Arundel County, and created a new middle Eastern Shore district.

The Court of Appeals issued its order establishing the new state legislative districts on March 22, 1974. The Court-ordered plan was offered with very little justifying rationale for the boundaries drawn. The plan kept most elements of the governor's proposal, including some elements characterized by the special master as unconstitutional, but the Court did adopt the special master's proposal for changes in the Montgomery County and Eastern Shore legislative district boundaries. The plan was welcomed with pleasure and relief by most incumbent legislators and by the regular Democratic party organizations throughout the state. Baltimore *Sun* reporter Barry Rascover noted that the plan's contents blunted talk of running Democratic organization-endorsed candidates against the two Court of Appeals

judges, Robert C. Murphy of Baltimore County and Irving A. Levine of Montgomery County, who would be seeking election to full fifteen-year terms on the Court of Appeals in November.

Redistricting after the 1980 census will occur using a now firmly established constitutional process, with Governor Harry Hughes presenting a plan to the legislature by the first day of the 1982 session. If the legislature does not adopt its own plan by the forty-fifth day of the session, the governor's plan becomes law. If the governor's plan is acceptable to the legislature, they may enact it unchanged, or they may enact it with modifications.

Preliminary 1980 census data released by the Bureau of the Census indicate that shifts in population have occurred since the 1970 census, with the city of Baltimore and the suburban areas located adjacent to Baltimore and Washington losing population, and the suburban areas located further from the central cities gaining population. Thus it appears that some shifts in legislative seats between political subdivisions will be mandated by constitutional requirements. Some redistricting will also be necessary to adjust for changes in population patterns within Baltimore city and the suburban counties. Since the state legislature is heavily Democratic, intra-party accomodation will be more prevalent than negotiations between the two parties.

Congressional districting in Maryland has also been the subject of court action. In a law enacted in 1963, Maryland was divided into eight congressional districts, but the districts varied in population from approximately 240,000 to over 700,000. In _Maryland Citizens Committee for Fair Congressional Redistricting, Inc. v. Tawes_, a three-judge federal district court on March 26, 1964, declared the 1963 apportionment to be unconstitutional, but permitted the 1964 election to be held using the existing seven districts, with the eighth representative to be elected from the state at large, with redistricting occurring after the 1964 election.

Preliminary estimates indicate that Maryland will neither gain nor lose congressional representation as a consequence of the 1980 census. Redistricting will be necessary, however, because of population growth in the outer suburbs of Baltimore and the areas of Maryland adjacent to Washington.

MISSISSIPPI

Thomas B. Hofeller

Introduction

By almost any standard, the most prolonged and complex redistricting struggle of the 1970s occurred in Mississippi. This protracted redistricting case ran from the original Connor decision in 1965 to the final Supreme Court decision in Mississippi v. United States handed down on February 19, 1980. This fifteen-year litigation involved the two major problems addressed by the federal court system on the issue of legislative redistricting--equality of district populations and minority representation. The Mississippi case offered a classic example of the difficulties that courts encounter when they are forced to perform a basically legislative function--the determination of the boundaries of legislative districts. The case is most interesting, however, for its racial aspects.

History Prior to 1977

Prior to the Reynolds decision in 1964 and the passage of the Civil Rights Act in 1965, Mississippi had been districted on a county basis. No struggle had developed between the rural areas of the state and the urban areas because Mississippi was--and still is--primarily a rural state. The stakes involved in gaining three or four more seats for urban areas in a lower house of 122 members and an upper house of fifty-two members were not very high when "urban" representation comprised, at a maximum, 25 percent of the total legislative membership.

The representation of municipalities became a major issue only when it became apparent that many of the opportunities for blacks to gain seats in the state

legislature were to be found in the larger cities of Mississippi. The issue of county representation then became entangled with the issue of single-member districts, as blacks sought to use the latter to gain their proper share of representation in the state legislature.

Mississippi entered the redistricting period of the 1970s without a resolution of the litigation of the 1960s, which had centered around the issue of the under-representation of blacks. The damaging effects of multi-member districts on blacks, the failure to elect any black to the upper house, the presence of only four blacks in the lower house -- these had been the topics that had monopolized the earlier litigation. Mississippi also entered the 1970s with the federal court retaining jurisdiction over the redistricting process in the state. Mississippi holds legislative elections every four years, and new legislatures were elected in the years 1967, 1971, 1975, and 1979. Essentially, the legislature and the court fell into a pattern that was followed for the first three post-Reynolds elections. In first stage, either the federal district court or the U. S. Supreme Court would declare the districting plan passed by the legislature to be invalid. In the second stage, the federal district court would adopt its own plan for that election. Finally, the district court plan would be held unconstitutional by a subsequent U.S. Supreme Court decision or rendered obsolete by an intervening census. The whole cycle would then be repeated. Each time, Mississippi would move a small step closer to having single-member legislative districts of equal population.

1977: The Court Turns to Single-Member Districts

In 1977 the United States Supreme Court directed the district court to devise a plan of single-member districts for Mississippi. At the same time, the high court ruled that federal courts, when drawing redistricting plans, would be held to a more rigid standard than legislatures in regard to both population equality and racial

representation. The Supreme Court was declaring, in effect, that when courts assume the legislative function of redistricting, they should adopt procedures and criteria that result in the drafting of plans that leave them above any suspicion of racial prejudice, malapportionment, or gerrymandering. Having enunciated these tough standards for the judiciary, the Supreme Court admonished the federal district court in Mississippi to act with dispatch in the preparation of a plan for the legislative elections of 1979.

Acting in August of 1977, the district court directed all the parties to the Connor case (the Mississippi black activists, the Justice Department, and the legislature) to submit their own plans to the court by the end of October 1977. The motivations of the district court in proceeding in this manner are not clear. Perhaps the court, having failed to have its own single-member plan meet with the approval of the Supreme Court, wanted to see what the other parties could devise. On the other hand, the court may have felt that the process of soliciting plans from all interested parties would precipitate a legislative solution to Mississippi's redistricting problem. Perhaps, too, the court felt that if all parties were forced to deal with the technical difficulties involved in the development of a single-member plan, they would be able to work out a compromise. It is even possible that the court simply did not know how to proceed, and wanted to see what the other parties could devise. It was clear, however, that the parties to the litigation had many more resources at their disposal than did the court.

Development of the 1977 Court Plans

The drafting of single-member plans for the state presented many technical difficulties for all the parties involved. The first problem was the determination of accurate populations for proposed districts. A choice was required between using either enumeration districts or voter precincts as the building blocks of districts. If

enumeration districts were used, accurate populations could be determined for all the proposed districts. The problem with this method, however, was that a plan using enumeration districts would end up splitting a large number of voter precincts. There was some doubt that local election officials in the state would be able to determine the residences of individual voters in the portions of split precincts contained in different districts. In this case, all voters in precincts split by the new district lines (and perhaps voters throughout the entire state) would have to be re-registered. This, in turn, could wipe out gains in registration made by black voters.

If, on the other hand, precincts were used as the basic building blocks of districts, another set of difficulties would be encountered. In some counties the exact boundaries of the precincts were not known. In other counties, precincts were so large in population that they could be used only with difficulty as the units with which to build legislative districts of acceptably equal populations. In many areas of the state, census data were not available in units that corresponded with precinct boundaries. In this case precinct populations could only be established by estimating populations of portions of enumeration districts split by precinct boundaries. This could, and did, result in endless haggling over the methods to be used in "splitting" enumeration districts. It made plans more prone to technical error in the determination of both total district population and population by race.

Another problem with the use of precincts in Mississippi was their irregular geographic shapes, which generally resulted from an unusual feature of county politics in the state. Before the "one man-one vote" ruling of the Supreme Court, supervisorial seats in Mississippi were apportioned on the basis of county road mileage. Each supervisorial district in a given county was supposed to contain an equal number of miles of county roads. This policy has been referred to by the present author as "one road-one vote." As a result of lawsuits during the early seventies, many Mississippi county boards of supervisors were forced to redraw their

districts, or "beats", in accordance with population equality standards. In many of these counties, the overwhelming majority of the population lived in one central city. Thus, in an attempt to adhere to both the "one man-one vote" rule and the "one road-one vote" rule, supervisors would divide up that central city to gain needed population, and extend corridors out into the surrounding rural areas to equalize road mileage. These maneuvers often resulted in district configurations that were bizarre indeed; and the voting precincts formed within these districts were very irregular in shape. Thus, a policy that called for the exclusive use of precinct boundaries to form legislative districts could result in strangely shaped legislative districts that looked like gerrymanders, although they had not been devised to give advantage to any particular political or racial group.

All the difficulties discussed above had to be resolved by the parties submitting plans before the October 29, 1977, deadline. In effect, the parties involved had only two months to carry out the entire district-building process from start to finish, even though they all began the process without data bases, without software, and even without adequate precinct maps. The imposition of this unrealistic deadline for presenting plans serves as clear evidence that the district court failed to understand the difficulties involved in the redistricting process. It is, in fact, remarkable that all the parties were able to submit plans. What is not surprising is that the plans of all the parties required later adjustments in order to correct technical mistakes discovered after they had been submitted.

At any rate, the Connor plaintiffs and the Justice Department submitted precinct-based plans. The Justice Department also submitted a plan based upon enumeration districts, as did the Mississippi legislature. The district court, upon receipt of all these plans, directed the legislature to redraft its plan using precincts as the building blocks. The court also hinted that it might reduce the size of the legislature to provide for two lower-house districts within each Senate district (a

total of ninety House seats and forty-five Senate seats). A reduction in the size of the legislature was not agreeable to any of the parties to the litigation. The blacks would have less opportunity to construct black districts if the district population size were increased, while the legislature would have more trouble protecting incumbents. The threat of a reduction in size did, however, propel the legislature into devising a precinct-based plan, which was submitted to the court in January of 1978. By March of 1978, the plans of all the parties were in their final forms before the district court.

Creation of the Statutory Plan by the Legislature

One of the standards that the Supreme Court had established for the plans submitted to the district court was a higher degree of population equality among the individual districts. Adherence to this tighter standard had resulted in the fracturing of many of the state's counties in the plans presented to the court. Many small portions of counties were included in districts dominated by comparatively larger portions of neighboring counties. Since the county is a traditionally respected unit of redistricting in Mississippi, multiple fracturing of counties caused much distress in the legislature and in the counties themselves. The solution to this problem was the construction of a new statutory plan, passed by the legislature and signed by the governor. Under the Supreme Court guidelines, such a plan would not have to adhere to the same tight standards of population equality as a court-imposed plan. It would allow for less fracturing of counties and, in addition, it would result in a legislative solution to Mississippi's redistricting problems--as contrasted with a solution forced on the state by the district court.

In December of 1977, the legislature adopted a statutory plan based on enumeration districts. This plan was redrafted to follow precinct boundaries in the following spring, and was approved and signed by the governor in April of 1978. This

new plan contained less fracturing of counties than all of the previous plans devised by the legislature, and less than was present in any of the plans submitted to the district court by either the Connor plaintiffs or the Department of Justice.

Following the adoption of the redistricting statute, the district court was faced with a difficult decision. Should it stay action on a court solution, pending pre-clearance of the state's plan by the Justice Department under Section 5 of the Civil Rights Act, or should it continue to seek a judicial remedy as directed by the Supreme Court? The district court chose the latter course of action and, in May of 1978, the district court's master presented a plan to the court that contained pieces of the plan of the Connor plaintiffs and the legislature's court-requested precinct plan of January 1978. The master, however, avoided making a choice between the two plans in the districting of two areas--Hinds County and Warren County. These were counties in which there was considerable controversy concerning the formation of black districts. They were also the areas in which there were the greatest differences between the plans of the Connor plaintiffs and the legislature. The master left the choice of districts in these two areas up to the district court itself. The court, viewing all of the plans before it (there now being five for each house), ascertained that there were large areas of the state in which the position of the legislature was not much different from the position of the Connor plaintiffs and the Justice Department. The court decided, therefore, to direct the parties involved to enter into discussion to see if a compromise plan could be agreed upon.

In June of 1978, representatives of all parties met at the direction of the court and devised a "compromise" plan on which they could all agree. This plan was, in essence, a modified version of the statutory plan signed by the governor in April, with several modifications in districts for both the Senate and the House. Unfortunately, because of legal differences, the compromise plan did not receive the final consent of all the parties involved, although it was, nonetheless, reported to the

district court. This plan is important because it became a key element in the case between the Department of Justice and the state over the statutory plan, and also because it was adopted, with minor adjustments, by the district court as its plan in the spring of 1979.

Mississippi v. United States - The Statutory Plan

In accordance with the Civil Rights Act of 1965, the plan enacted by the legislature and signed by the governor in April of 1978 was submitted to the attorney general of the United States for his pre-clearance in June of 1979. This pre-clearance is required before voting statutes can become law in the state of Mississippi and in most other southern states. On July 31, 1979, the Department of Justice dis approved the plan, claiming that it had both the intent and the effect of discrimination against black voters in the state of Mississippi. In accordance with the Civil Rights Act, the state then petitioned the district court in the District of Columbia to set up a special three-judge review panel, and requested the panel to declare that the plan did not discriminate against black voters in Mississippi. This case, Mississippi v. United States, was separate from the Connor case being tried in Jackson, Mississippi, but was a related action. A trial date in the special three-judge court was set for September of 1978, and the district court in Mississippi, with a compromise plan in hand, stayed action in the Connor case pending a decision in the District of Columbia court.

The standard against which redistricting plans are judged is defined by the Beer decision. Briefly, a redistricting plan must be free of intent to discriminate and also free of the effect of discrimination. The effect is determined by comparing the proposed plan with the plan which it will supersede. If the voting power of minorities is either the same or augmented, then there is no effect of discrimination. On the other hand, if minority voting power is diminished,

discrimination is established. The problem in trying to use the Beer standard in the Mississippi case was that the 1975 legislative elections had been held under a court-ordered plan, which was later replaced by another court plan, which was in turn disapproved by the United States Supreme Court. The state of Mississippi maintained that the present legislative districts should be used in applying the Beer standard, while the Justice Department and the Connor plaintiffs argued that a plan that had been superseded by another court plan should not be the standard. In their opinion, use of the 1975 districts was especially improper because the district court had redrafted the 1975 plan after finding that it both violated "one man-one vote" rule and discriminated against black voters. It is, however, important to note that no judgment was ever entered against the 1975 plan. The districts were simply redrawn on the authority of the same court that which had drafted the original plan. It is also fair to note, however, that the 1975 plan would not have satisfied the standards handed down by the Supreme Court in the Connor decision of 1977.

This confusion presented the District of Columbia court with a difficult problem. The court wished to apply the Beer standard, but was unsure about which plan should be used as a basis of comparison in judging the 1978 statutory plan. Eventually, the three-judge panel settled on the "compromise" plan of June 1978 as the Beer standard, because it was the only plan that all parties agreed was constitutional--in terms of both population deviation and racial makeup. The only problem in using this plan, in the eyes of the District of Columbia court, was that the plan had no legal standing-- never having been adopted by either a legislative body or a court. This problem was solved when in April of 1979, having been prodded again by the Supreme Court, the district court in Mississippi adopted the compromise plan, in slightly modified form, as its own plan and ordered it into effect as a solution to the Connor litigation.

Acting in June of 1979, the District of Columbia court ruled in favor of Mississippi, declaring that the statutory plan was free of both the intent and the

effect of discrimination. The court found that the differences between the compromise plan and the statutory plan, when each was considered as a whole, were minor. The court ruled that both the compromise plan and the statutory plan had the same number of "black" districts. The court also noted that the statutory plan was definitely an improvement for blacks when compared with the 1975 plan under which the existing legislature had been elected. The three-judge panel therefore overruled the Justice Department and allowed the statutory plan to become law. Elections were held under that plan in November of 1979. As a result of those elections, black membership in the House increased from four to fourteen, and the first three black state senators were elected since Reconstruction.

The Justice Department and the Connor Plaintiffs appealed the District of Columbia court ruling to the Supreme Court (Henry v. Mississippi), which affirmed the lower court decision in February of 1980. Justice John Paul Stevens, writing for the majority, ruled that while the Supreme Court was affirming the lower court's final judgment as to the constitutionality of the legislature's plan, the lower court had erred in respect to the Beer standard. Justice Stevens noted that the compromise plan had not been in effect at the time the legislature was devising its own plan. To use a plan not in effect as a pre-existent standard was "logically indefensible." Stevens further stated that "to require a state legislature to predict what court-ordered plans may be entered while a Voting Rights suit is pending and then to draw its plan to ensure that no dilution occurs (would be) a futile exercise clearly not required by the (Civil Rights) statute." It would appear from this opinion that any plan under which a sitting legislature has been elected becomes the standard of comparison by which a new plan is to be judged under the Beer standard. It remains to be seen, however, if that is the interpretation of this decision that will be upheld by the Supreme Court in future rulings.

Conclusion

The Mississippi experience of the 1970s will probably not be repeated in the 1980s. The Mississippi legislature has now successfully completed a court-approved, single-member district apportionment. With single-member districts in place, it seems highly unlikely in the future that legislators elected from those same districts will protest their existence and the fracturing of counties. Also, most of the possible black districts that could be formed were enacted into law in 1978, and the legislature will not be faced in the 1980s with the necessity of placing white incumbents in districts drawn to elect blacks.

NORTH CAROLINA

J. Oliver Williams

Introduction

In the redistricting of North Carolina's congressional seats and the General Assembly in 1981, it is likely that the most controversial issues will involve population imbalance, the contiguity of representative districts, representation for blacks, and the state's mixed pattern of single-member and multi-member districts.

North Carolina has maintained a moderate growth rate during the past decade, which demographers expect to exceed the growth rate of the 1960s. Hence, it is certain that the state legislature will have to deal again after the 1980 census with the wrenching issues of reapportionment and redistricting.

After having a court-ordered redistricting plan imposed upon it in the late sixties, the North Carolina General Assembly was able to adjust the districts for population imbalance following the 1970 census with little public conflict and no further legal challenge. In achieving reasonable population balance, however, the legislature continued to utilize counties as the basis of legislative districts and resorted to a mix of single-member and multi-member districts, with some districts utilizing numbered seat plans and others choosing representatives at large. (Where seats are numbered, a candidate declares for a particular seat and runs only against other candidates who have declared for the same seat.) With political jurisdictions preserved as the basis for districting, some state legislative districts were neither compact nor contiguous.

With the qualitative features of districting plans likely to receive more judicial scrunity in the 1980s, North Carolina legislators will be forced to pay more

attention to the shape as well as the population of districts in the next redistricting. If counties remain the basis for creating districts, the legislature may find it necessary either to create a uniform system of numbered districts or to revert totally to at-large representation within districts. The present mixed system is vulnerable to challenges to its racial fairness, and since any redistricting plan is subject to review by the U.S. attorney general or the U.S. district court of Washington, D.C., by virtue of the Voting Rights Act of 1965, the legislature must, of necessity, consider issues affecting the voting power of black citizens.

Partisanship will be more pronounced in North Carolina redistricting in the 1980s, although North Carolina remains largely Democratic in both its state and local politics. The state is unlikely to gain another congressman, and it seems fairly certain that attempts at partisan advantage will emerge in the redrawing of congressional districts as a consequence of Republican gains in the 1980 general election. If there is a serious dispute between the parties during the 1981 redistricting, however, it will most likely be over the districting of the state legislature, and how that body addresses the issues of single-member and multi-member districts and the county unit system of representation. Republicans also increased their strength in the General Assembly in 1980.

After a brief description of the politics of redistricting in North Carolina during the past two decades, this article will address the key issues that are likely to have an impact on redistricting decisions in the state during the 1980s.

History of Redistricting in North Carolina

Some of the representational principles which will apply to redistricting in the 1980s were laid down in North Carolina nearly 150 years ago. The state's constitution in 1835 established the size of the House of Representative at 120 and provided that the members should be elected by counties. Until the redistricting of 1971, each

county was guaranteed at least one representative, and extra seats were given to counties with the largest populations. The North Carolina Senate has fifty members, and the state constitution has mandated since 1868 that senators be elected from districts of equal population. Districts were to be altered after each federal census so that each would contain, as near as might be, an equal number of constituents.

Until 1920, the North Carolina legislature faithfully applied the representational principles of the constitution to both houses of the General Assembly every ten years. To obtain equality in representation, both houses of the legislature came to accept a system of single-member and multi-member constitutencies combined with at-large elections. In the early twentieth century, however, conflict between large and small counties, combined with a fair amount of partisan squabbling, prevented the legislature from accomplishing any redistricting or reapportionment. No attempt to shift seats to account for population was undertaken in the 1930s or the 1950s, and only insignificant changes occurred in the redistricting of 1941. Thus, North Carolina was in the situation of many other states when, in 1964, the U. S. Supreme Court established the one person-one vote principle in Reynolds v. Sims. The state legislature was badly malapportioned. Guaranteeing each county a seat in the House, while having only twenty additional seats to provide added representation for large counties (there are 100 counties in the state), had resulted in a "minimum controlling percentage" in the House of Representatives of 27.09. ("Minimum controlling percentage" is one of several statistical tests which courts apply to determine the extent of malapportionment in state legislatures. As applied to North Carolina, this means that counties with only 27.09 percent of the state's population were able, theoretically, to elect a majority of the House of Representatives.) Interestingly, however, the North Carolina Senate, despite the fact that it had not been significantly reapportioned in forty years, was

within 13.1 percent of an equitable minimum controlling percentage. This is an indication that an important factor in creating imbalance in the North Carolina legislature was the scheme of allowing each county a representative in the House.

The effort to bring the North Carolina legislature into compliance with the one person-one vote principle was affected not only by Reynolds v. Sims but also by the issue of whether a state legislative districting plan may include a combination of single-member and multi-member districts. When the courts failed to rule out inclusion of multi-member districts (Whitcomb v. Chavis, 1970), the North Carolina legislature in 1971 continued its traditional mixed pattern of single-member and multi-member districts for both houses.

Unsuccessful Attempts in the 1960s

Efforts of the North Carolina legislature to comply with the equality-of-representation requirements of the courts can be briefly described in a chronology of events extending from 1961 to 1967. In its regular session, the 1961 General Assembly was successful in redrawing the state's congressional districts (which had been reduced in number from twelve to eleven), and with a mere shifting of four counties the legislature also realigned the House of Representatives. Efforts to redistrict the Senate failed, however. In the next biennial legislative session, in 1963, the General Assembly was again unable to redistrict the Senate. This failure led to the last-minute adoption of a resolution asking the governor to call a special session to deal with the Senate problem. In the special session, which convened in late 1963, rural legislators, who had fought efforts to distribute the fifty Senate seats on a strict population basis, conceded several seats to metropolitan counties, but at the same time proposed a constitutional amendment which would have reduced the size of the House to 100 members (one per county) while increasing the Senate size to seventy members. This proposal was put to the voters in the form of a referendum in January of 1964, and was rejected.

When the 1965 legislature met, one year after Reynolds v. Sims, electoral districts of the North Carolina legislature were still far from compliance with the numerical equality of population implied in the one person-one vote decision. Instead of making further efforts to bring the legislature into line with the court's decision, however, the 1965 General Assembly passed a resolution asking the Congress to call a constitutional convention. The purpose would be to propose an amendment to the U.S. Constitution authorizing states to use factors other than population in apportioning one house of a bicameral legislature.

Shortly after the 1965 legislature adjourned, Renn Drum, Jr., a young Winston-Salem attorney, instituted a suit (Drum v. Sewell) challenging the constitutionality of state legislative and congressional districting in North Carolina. The suit, filed in September 1965, threw the matters of reapportionment and redistricting into a year of adjudication which led to continuing judicial review of subsequent redistricting in the state.

In late 1965, a U.S. district court invalidated North Carolina's Senate, House, and congressional districting plans. The legislature was given until January 31, 1966, to enact valid plans. Finally, under court order to comply with principle of representative equality, a special session of the legislature, in early 1966, redistricted the Senate and House and revised the state's congressional districts. Only part of the legislature's handiwork was acceptable to the courts, however. The Senate and House plans were acceptable for the rest of the decade, but the congressional districting plan was approved for the 1966 elections only. An interim plan of congressional districts was devised for the 1968 and 1970 elections.

Reapportionment and Redistricting as of 1971

Thus, even after several years of struggling with court requirements and the political divisiveness stemming both from urban-rural and regional conflicts, the

North Carolina legislature was able to obtain only interim districting plans. These plans lasted for only two elections before new population figures, from the 1970 census, required repeating the redistricting process.

The 1971 legislature immediately tackled both congressional and legislative districting. In addition to the likelihood of court review to determine compliance with the equal-representation principle, those making efforts to reapportion and redistrict in 1971 also confronted the certainty of review by the U.S. attorney general or the federal district court of Washington, D.C., since thirty-nine counties of the state were covered by the triggering mechanism of the 1965 Voting Rights Act. This provision required automatic review of any changes in electoral laws to determine whether the changes involved racial discrimination.

Congressional Redistricting, 1971

The growth and shift of population revealed by the 1970 census necessitated a considerable number of changes in North Carolina's congressional districts. The 1971 congressional districting plan (Figure 1) shifted ten counties from existing districts, but avoided the pairing of any two incumbent congressmen. Republicans, who held three of the state's congressional seats in 1971, did not object to the plan adopted by the legislature's Democratically-controlled redistricting committee. The most controversial feature of the plan was the inclusion of Orange County in the 2nd Congressional District. Orange is contiguous to Durham County, and those two counties, along with Wake County, compose the Research Triangle Region, which contains the state's three major universities; there was considerable support for including Orange County with Durham and Wake Counties in the 4th Congressional District.

The 1971 congressional district plan achieved substantial equalization of population among districts--an average deviation of only 1.01 percent from the

district population norm, with a range of deviation from 1.67 percent below to 2.12 percent above the norm.

State Legislative Redistricting, 1971

To deal with regional conflict among the eastern, the piedmont, and the western sections of the state, the House Committee on State Legislative Districts created two subcommittees in 1971 and directed each subcommittee to produce a plan to district half of the state. This approach was successful in blunting the traditional regional conflict, but several other problems arose during the House redistricting. One concerned the question of whether the state constitutional requirement of contiguity was met when portions of a district were connected only at a point constituting the common corner of two counties (called "point contiguity"). Three of the proposed House districts were held together in this way, and there was a dispute as to the existence of any common point at all in one district (the 14th District, Franklin and Johnston Counties).

A larger issue arose over the matter of mixing single-member and multi-member districts with numbered and at-large seats. The plan recommended by the committee included ten single-member districts and thirty-five multi-member districts, with twenty-five of the thirty-five multi-member districts utilizing a seat-numbering system and the others holding elections at large.

The initial attitude of the Senate committee on redistricting in 1971 was to wait until it had the guidance of the United States Supreme Court in the Whitcomb v. Chavis case before proceeding with its task. However, after several months of waiting, a subcommittee headed by Senator F. O'Neil Jones developed a tentative plan. The plan of the Jones subcommittee was sent to the Senate floor late in the session. There was little time left for the Senate to deal with redistricting matters. Senators from the far-western area of the state, however, were successful in reshaping the districts in the mountain area. Two other attempts to change the

Senate committee's redistricting plan were rejected, and a final Senate redistricting bill was adopted.

Figures 2 and 3 indicate the redistricting plans for the North Carolina House of Representatives and the state Senate. These plans achieved the greatest degree of population equality that the state had had in its legislative districts since the mid-nineteenth century. In the House, each representative should have had 42,350 constituents to achieve perfect representational equality. The range of deviation from that norm in the 1971 districts was from minus 10.24 percent to plus 8.22 percent. The plan also created a minimum controlling percentage of 44.82 percent in the House. In the Senate, the average population per district was 101,641. The average deviation from this figure was 3.17 percent and the minimum controlling percentage for the Senate was 50.45 percent.

Shortly after the House and Senate plans were adopted in 1971, the federal courts in effect declined to disallow mixed patterns of single-member and multi-member districts, and no legal challenges were made to the state's districting plans. Later in 1971, however, the U.S. attorney general disapproved, as violative of the 1965 Voting Rights Act, the numbering of seats in those senatorial and representative districts that contained one or more of the counties covered under the Voting Rights Act. The effect of this ruling was to prohibit seat-numbering in six Senate and sixteen representative districts.

Issues in the 1980s

The growth and shift of population during the past decade, without question, will require redrawing of North Carolina's congressional districts after the 1980 census. Courts have consistently held congressional districts to strict standards, requiring them to be as nearly equal in population as practicable. The courts have allowed more leeway in the drawing of state legislative districts, although the 10 percent *de*

minmus rule (the rule specifying the maximum percentages by which the largest and smallest district populations may deviate from the "ideal" population) throws the burden of justifying deviations from equal representation on the state when district populations deviate from the ideal by more than 10 percent. North Carolina's present House districts, based on 1970 population, approach the threshold of "burden of proof" (at 9.2 percent), but that is without taking into account the population changes that have occurred since 1970. Senate districts are somewhat better, at 6.8 percent.

The size of the legislature's task in 1981 will depend to a considerable extent upon the population changes that have occurred in the past decade as shown in the 1980 census. State demographers expect the census to reveal moderate growth of about 12 percent during the decade (compared to 11.6 percent in the 1960s). Of greater impact on districting will be the patterns of growth that have occurred in recent years in the state. The most rapid growth in the state has not been in metropolitan areas, but in counties adjacent to the state's seven standard metropolitan statistical areas (SMSA's) and in mountain and coastal resort regions. The state's largest metropolitan areas (Charlotte, Winston-Salem, and Greensboro) have not grown as rapidly as smaller metropolitan counties, and in fact have not kept pace with the overall state growth rate. The impact of this growth pattern on redistricting efforts can be seen in the effects on the present congressional districts. Two of the fastest growing metropolitan areas (Fayetteville and Wilmington) are located in the same congressional district (CD 7), insuring that part of that district will have to be removed in redistricting. Similar population imbalance exists in CD 4, with Wake County (Raleigh) having the fastest growth rate among the large urban counties. Based on the population projections of the North Carolina Office of Budget and Management, Table 1 shows the estimated deviation of existing congressional districts compared to the deviation after the two most recent apportionments (which were based on 1960 and 1970 census data).

Table 1
Comparison of 1967 and 1971 Congressional Apportionment in North Carolina with Estimated Deviation of Existing Districts After 1980 Census

1967 Reapportionment	
Average population per district (norm)	414,196
Average deviation from norm	1.06%
Range of deviation from norm	-1.86% to +2.31%
Largest to smallest ratio	1.04 to 1
1971 Reapportionment	
Average population per district (norm)	462,005
Average deviation from norm	1.01%
Range of deviation from norm	-1.67% to +2.12%
Largest to smallest ratio	1.04 to 1
Estimated Deviation after 1980 Census 1/	
Estimated average population per district (norm)	519,363
Estimated average deviation from norm	2.63%
Estimated range of deviation from norm	-5.2% to +6.5%
Estimated largest to smallest ratio	1.14 to 1

1/ Based on North Carolina Population Projections (Raleigh, N.C.: Office of State Budget and Management, June 1980).

Population growth and differing growth rates are only two factors that are likely to influence North Carolina's 1981 redistricting. Point contiguity, the state's mixed electoral patterns (single-member and multi-member districts, at-large and numbered-seat elections), the impact of the redistricting on the voting power of blacks, and the partisan balance in state politics also are likely to emerge as issues and affect the shape of the districts that are devised for elections in the decade of the 1980s. The interplay of these issues may make it difficult for the legislature to devise plans which meet the constitutional requirement to form districts without violating county boundaries. Although the legislature will be inclined to create districts which conform to county lines, issues of redistricting may force decision-makers to consider dividing local political subdivisions to create House and Senate districts.

Partisanship will be stronger in 1981 than in other recent years when redistricting was attempted. Republicans are still a distinct minority in the state, but the minority party increased its strength significantly in the 1980 general election. Republicans now entirely control eight of the forty-five House districts and have some representation in seven more. The GOP also entirely controls five of the twenty-seven Senate districts and has representation in two additional Senate districts. Republicans won two additional congressional districts from Democrats in 1980, giving the GOP four of the state's eleven congressmen. More important than the number of Republican office-holders, however, is the demonstrated electoral strength of the Republican party in North Carolina. The size of the GOP vote in the 1980 election no doubt will tempt the Democratically-controlled redistricting committees in the legislature to attempt a partisan gerrymander in 1981. The concentration of Republican voters in the western piedmont and mountain counties will make it difficult, however, for Democrats to change the partisan balance in the 9th and 11th Congressional Districts. Republicans have held the 9th District since

1952 and gained the 11th in 1980. The redistricting committees may well be tempted, however, to consider partisan advantage in redrawing the 6th Congressional District, which the Republicans gained in 1980. Partisanship may also influence the redistricting of House and Senate seats in the same western piedmont and mountain counties.

Redistricting historically has not been an important issue for black political leaders in the state, but several features of the 1981 redistricting are likely to concern black leaders. These are the effect of at-large elections, which are used in some House and Senate districts, on the election chances of black candidates and the possibility of creating districts which would make the election of black candidates more likely. For example, a congressional district which combined Orange and Durham Counties with several rural counties that have high concentrations of blacks would make it likely that a black would be elected to Congress from North Carolina.

Conclusion

After two decades of struggling with reapportionment and redistricting, the North Carolina legislature has successfully faced up to the issue of "quantity" or one person-one vote. In the last redistricting, House and Senate plans were brought within the 10 percent _de minimum_ rule, while congressional districts were finally devised which deviated from population equality by no more than the three percent which courts have required in numerous apportionment plans.

In the past, the state has escaped any challenges based upon issues of "quality," despite obvious problems concerning "point contiguity" and the state's mixed electoral patterns. While continuing to meet the challenge of one man-one vote, the North Carolina legislature will most likely also face qualitative issues during the next period of legislative redistricting.

OKLAHOMA

J. Allen Singleton

The history of redistricting in Oklahoma is one of the most fascinating in any of the states. The Oklahoma constitution, drafted and adoped in 1907, is one of the most detailed of all state constitutions. It includes items ranging from a flash test and specific gravity test for kerosene (Article XX) to a detailed description of the boundaries of each of the state's seventy-seven counties (Article XVII, Section 8).

Provisions dealing with the legislature are found in Article V. In the constitution as adopted, Sections 9 through 16 of Article V dealt with the manner and modes of apportionment. (In May of 1964, State Question No. 416 repealed Section 9-16 and replaced them with Sections 9A, 10A, and 11A through E. Provisions of the present sections will be described later.) Several features of the Oklahoma system were noteworthy. The provisions for apportionment of the Senate were separate and distinct from provisions regarding the House of Representatives. Under Section 9(a) of the original constitution, provision was made for the election of forty-four senators. Each senatorial district was to "contain as near as may be an equal number of inhabitants. . . ." Each of the districts was to elect one senator. It was further provided that counties could not be divided to create districts. This all sounds clear and precise until an ambiguous "except" is encountered: ". . . except that in the event any county shall be entitled to three or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators. . . ." The first legislature interpreted this provision in such a way as to establish thirty-three Senate districts, twenty-two of which elected one senator each and eleven of which elected two senators each. This

pattern was followed in the 1919, 1937, and 1941 senatorial apportionments, the only senatorial apportionments which occurred prior to 1962. A 1945 apportionment statute was voided by the state Supreme Court essentially on the grounds that the 1941 apportionment had been based on the census and a new apportionment should not be made before there was another census.1/ An earlier Supreme Court decision 2/ had approved an increase in the total number of senators to forty-seven (three for Tulsa County, four for Oklahoma County, and forty fo the remaining seventy-five counties), as provided in the 1941 apportionment.

The original constitutional formula for establishing representation in the House was based on a ratio derived by dividing the state's total population by 100 (the number of seats in the House) and assigning representatives to counties based on that ratio. The constitution allowed counties to be combined to achieve an acceptable ratio level, but limited to seven the maximum number of representatives allowed any one county. It was also provided that no part of one county was to be attached to another county or part thereof to form a separate district.

A striking element of the ratio method of apportionment was the provision for the election of additional representatives apportioned among the legislative sessions of the decennial period (Section 10(e)). This created floaterial representation, but no precise method for allocating seats among sessions was provided in the constitution. This aspect of the constitutional provisions regarding apportionment, together with the "except" portion of Section 9(a), created grounds for dispute as to the "intent" of the drafters of the constitution.

For forty years, an apportionment act for the House of Representatives was passed after each decennial census (1911, 1921, 1931, 1941, and 1951). Beginning with the 1931 apportionment, each of these apportionments gave at least one seat to each of the state's seventy-seven counties, even though the populations of many counties fell below the half ratio prescribed for each House by Section 10(h) of the constitution.

The first court test of the apportionment process in Oklahoma came in 1944.3/ The constitution clearly provided in Section 10(j) of Article V, that "An apportionment by the Legislature shall be subject to review by the Supreme Court at the suit of any citizen, under such rules and regulations as the Legislature may prescribe. . . ." In its ruling, the Court held that since the legislature had not "prescribed" any rules and regulations by which a citizen could challenge an apportionment of the legislature, the suit had no standing. The Court also added that the word "review" could not be interpreted so as to grant the authority to "revise"; that is, the Court, basing its decision on the "separation of powers" doctrine, declared itself unable to make the actual apportionment regardless of how the legislature had apportioned itself.

After having thus been blocked by the state Supreme Court, supporters of legislative apportionment "reform" turned to the initiative provisions of the Oklahoma constitution. On September 20, 1960, Initiative Petition No. 266 (State Question No. 397) was defeated almost 2 to 1 by the voters of the state (347,180 against, 189,348 for).4/ The strategy proposed by the referendum was to create a Legislative Apportionment Commission. Such a Commission was to be comprised of the attorney general, the secretary of state, and the state treasurer. The Commission would have been charged with the responsibility for reapportioning the legislature as soon as practicable after each decennial census. A similar initiative was defeated in 1962.

The most apparent goal of those seeking a change in the pattern of legislative apportionment was to win a fairer deal for urban areas in the collection of state taxes and the allocation of state monies. Concisely put, the urban areas felt they were providing a disproportionately larger share of state revenues than rural areas, and receiving a significantly smaller share of state funds. For all intents and purposes, the battle over malapportionment in Oklahoma was a classic urban vs.

rural conflict. The population of senatorial districts ranged from a low of 13,125 in one district to a high of 346,038 in another. The average number of persons per senator was 52,916. The population of House districts ranged from 4,589 to 46,479. The average population was 18,457.5/

The Impact of Baker v. Carr

Because of a politically active "reapportionment movement" in Oklahoma, almost immediate relief was sought based on the U.S. Supreme Court decision in the Baker v. Carr case. The U.S. Circuit Court, in Moss v. Burkhart,6/ declared that the apportionment of the Oklahoma legislature was inoperative and that the legislature should reapportion itself on the basis of the Baker v. Carr decision. What followed was a period of intense litigation. The legislative apportionment plan passed during the 1963 biennial legislative session was declared unconstitutional on the grounds that the existing population patterns of districts clearly violated the concept of "one man-one vote." The Circuit Court then essentially adopted the "Model C" plan put forward by the Bureau of Government Research of the University of Oklahoma. In the meantime the citizens of Oklahoma adopted State Question 416, changing the constitutional provisions for apportioning the legislature. Based on that action, the Court accepted in August of 1964 a modification of a plan presented by the attorney general as the basis for the elections for the 1965 legislative session. The attorney general's plan was acceptable to the Circuit Court because it was based on the revised constitution which the Court felt was in substantial conformity with the United States Constitution.7/

The legislative map of Oklahoma was significantly redrawn as a result of the 1964 reapportionment. The most obvious change was in the representation of Oklahoma and Tulsa Counties. Rather than the seven House members each had had under the pre-Moss v. Burkhart apportionment, they now had nineteen and fifteen

representatives respectively. Gone too was the old pattern of having at least one representative from each county. Several multi-county House districts appeared, and county boundary lines were violated in structuring some of the new districts.

As earlier indicated, Sections 9, 10, and 11 of Article V of the Oklahoma constitution were replaced in 1964 with new sections more in keeping with the U.S. Supreme Court's recent apportionment decisions. The Senate was now to be elected from forty-eight single-member districts, each to be as nearly equal in population as possible. The House of Representatives was also to be elected from single-member districts as nearly equal in population as possible. One hundred and one such districts were created.8/

The new Section 11A of the constitution created an Apportionment Commission that was to function within ninety days of the convening of the first regular session of the legislature following release of the official census figures, if the legislature had failed to (or refused to) reapportion the state in that time. The Commission was to consist of three elected constitutional officers: the attorney general, the secretary of state, and the state treasurer. Section 11B required that: "Each order of Apportionment rendered by the Apportionment Commission shall be in writing and shall be filed with the Secretary of State and shall be signed by at least two (members of the Commission)." Section 11C authorized any elector to challenge any apportionment order or law. A petition of challenge had to be filed within sixty days of the passage of the law or filing of the apportionment order, and had to include a "proposed apportionment more nearly in accordance with this Article." Although no constraints were placed on the time within which the Commission had to act, Section 11E provided that any qualified elector could petition the Supreme Court to compel the Apportionment Commission to act in a "timely" fashion. An apportionment case had precedence over all other cases and proceedings before the state Supreme Court. Section 11C also provided that if the

Court were not in session at the time a petition of challenge was filed, it was to meet promptly to consider the petition.

Reapportionment in the 1970s

The legislature began its reapportionment labors in a timely fashion during the first session following release of the 1970 census results. Each chamber quickly devised a reapportionment plan for itself, as previously agreed. The House apportionment subcommittee relied upon computer programming to design districts as nearly equal in population as possible. The result was precisely that, districts whose populations were strikingly close to population equality. The mean variance in population of districts above the average district size was 0.3 percent, and the mean variance among districts below the average district size was 0.4 percent. The least populous district was only 1.2 percent at variance with the ideal district population, while the most populous district was only 1.0 percent at variance with the ideal population for a district. Without a doubt, something very close to numerical equality in district populations had been achieved for the House. As for the senatorial districts, they came even closer to the "ideal." The maximum variance in population from the ideal-sized Senate district was only ± 0.5 percent.

Nonetheless, the 1971 apportionment acts were not to go unchallenged. The State House of Representatives Apportionment Act of 1971 was challenged by the Oklahoma State Conference of Branches of the National Association for the Advancement of Colored People. During the period from statehood until after reapportionment in 1964, only one black legislator had been elected in Oklahoma (to the 1908 legislative session). The four black members in the reapportioned legislature came exclusively from metropolitan districts. The plaintiffs argued that rather than using only gross population data, the subcommittee of the legislature should have used data indicating the racial distribution of population in structuring

its districting plan. The U.S. district court, in dismissing the suit, applied the principle that:

> Color-conscious approach to districting if designed to aid the blacks is constitutionally permissible and if designed to harm the blacks is impermissible, but a color-conscious approach is never mandated.9/

Needless to say, in a state normally dominated by Democratic officeholders reapportionment decisions will generally favor the majority party. Normally the "majority" will also include a majority faction which will benefit particularly when such decisions are made. Such was the case in the 1971 Oklahoma apportionments.10/

Redistricting in the 1980s/Conclusions

The circumstances surrounding redistricting of the Oklahoma legislature in 1981 seem to be not too different from what the situation was in 1971. Essentially, as in 1970, the population of the metropolitan areas has proportionately increased over that of the more rural areas of the state. Each chamber will prepare its own plan for self-apportionment. Almost certainly the legislature will act within the ninety-day time limit. Minority ethnic factions may well seek to discover some means through which to assure greater representation.

NOTES

1/ Grim v. Cordell, 169 P. 2d 567 (1946).

2/ Jones v. Freeman, 146 P. 2d 564 (1944).

3/ Ibid.

4/ Oklahoma, State Legislative Council, Research Department, Thumbnail Statistical Data on Three Proposed Constitutional Amendments, Report No. 61-2 (September 15, 1961).

5/ See Bureau of Government Research, The Apportionment Problem in Oklahoma (Norman, Okla.: Bureau of Government Research, 1959), pp. 6-7, and Oklahoma Government Finance (Norman, Okla.: Bureau of Government Research, 1962), especially chap. 4 and the appendix.

6/ 207 F. Supp. 885.

7/ Moss v. Burkhart, 220 F. Supp. 149 (1963); 378 U.S. 558 (1964); and 233 F. Supp. 323 (1964).

8/ The reapportionment plans which have been put into effect are based on the constitutional provision (art. V, sec. 10A) which provides "for approximately 100 representatives (the ratio being 1/100th of the population of the state)." Reynolds v. State Election Board, 233 F. Supp. 329 (1964).

9/ Dunn v. State of Oklahoma, 343 F. Supp. 320 (1972). The Senate apportionment was similarly fruitlessly challenged in Ferrell v. State of Oklahoma, 339 F. Supp. 73 (1972).

10/ Richard D. Bingham, Reapportionment of the Oklahoma House of Representatives: Politics and Process (Norman, Okla.: Bureau of Government Research, 1972), p. 15.

SOUTH CAROLINA

Robert H. Stoudemire

At the time the Reynolds v. Sims case was decided, representation in the South Carolina General Assembly was governed by the 1895 constitution. 1/ This constitution provided that each county would be an election district, that regardless of size each of the forty-six counties would have one senator elected for a four-year term, that the House of Representatives would have 124 members with each county being assigned one and then the remaining seventy-eight being allocated on the basis of population, that House seats would be reapportioned after each U.S. census, and that the term of office for House members would be two years.

Provisions of earlier constitutions, of course, influenced the stipulations of the 1895 constitution. For example, the 1790 constitution provided that the House have 124 members, that the members of both legislative chambers be popularly elected, that a census be taken every ten years, and that representation be based on a combination of population and taxes paid. The 1868 constitution required that representation in the House be based solely on population, that the county be the election district, and that each county have one senator except that Charleston was to have two. The constitutions preceding the present one actually specified the number of legislators granted to each district, except that beginning in 1809 the House had to reapportion itself after each census.

Until the adoption of the 1895 constitution, there was a constant struggle between the aristocratic "low state" (Charleston and the surrounding areas) and the "upstate" over representation. The low country had the rich plantations and resources, but the upstate had more people. While the upstate made significant

gains, over the years the low state--especially Charleston--maintained an advantage in the legislature. While there are still some divisional battles over representation between the upstate and the low state, the major differences since 1900 have been between the large counties and the small counties. This has been especially true in the Senate, where each county traditionally had equal representation. For example, the Senate on several occasions refused to go along with the House in calling a constitutional convention. Senators also demanded that, in exchange for their support of House reapportionment plans, the House agree to allocate state funds to the counties on the basis of the last census. Furthermore, in the 1960s the members of the upper house drew up Senate apportionment plans that clearly favored the small counties.

Prior to 1960, there were no major court cases on legislative apportionment in South Carolina, nor movements to reallocate Senate seats on some basis other than one for each county. Ever since the early 1800s, however, the General Assembly had faithfully reapportioned the House of Representatives following each census. Until Reynolds v. Sims, then, counties served as the districts in South Carolina for both representatives and senators.

Reynolds v. Sims and the 1960s

The South Carolina House of Representatives was reapportioned in 1961 using the method provided in the state constitution whereby each county was granted at least one House seat. Thirteen counties lost one member each in this reapportionment, with the state's four largest counties in population gaining eight seats. According to a study done for the National Municipal League, the 1961 reapportionment gave South Carolina the most representative lower house in the country. Fifty percent of the House membership represented about 46 percent of the population. Based on the state's total population and the total size of the House, each member should have

represented 19,214 people (the ideal constituency size). Unfortunately, despite the overall representativeness of the House, there were great variations in representation among the populations of the counties. Twenty-three counties were overrepresented, while twenty-three others were underrepresented. McCormick County, with a population of only 8,629 and one representative, was overrepresented by 54.8 percent. Clarendon County, with one representative for 29,490 people, was underrepresented by 53.9 percent. Three other counties were in about the same situation as Clarendon. The four largest counties, however, having a total of forty members, came close to the ideal in population-per-member.

The 1961 House apportionment was not challenged in the federal district court until 1966, in the case of Mungo v. McNair. Michael J. Mungo was a private citizen who thought the House apportionment was unfair to a number of counties. He argued that giving each county at least one member was contrary to the federal constitution and that counties should no longer be the election districts in South Carolina. The three-member federal court decided that the apportionment was constitutional and fair when considered as a whole. It found that single-member counties has 13.80 percent of the population and 13.70 percent of the members, that the two-member counties represented 25.25 percent of the population and had 25.80 percent of the House seats, and that similar parallels could be cited for counties having three, four, five, or more House members. Furthermore, the district court reasoned that it was essential to keep each county intact since the legislators of each county were responsible for enacting the county budgets and for selecting a number of local officials. Once the Mungo case was decided, there were no further court challenges to the apportionment of the South Carolina House until after the 1970 census.

After the 1960 census, the state continued the practice of electing one senator per county regardless of population. The census revealed a population variance of

401.1 percent between the largest Senate district (county) and the smallest. Thirty-three counties had 39.1 percent of the people but accounted for 71.7 percent of the Senate seats. After the Reynolds decision, these large disparities caused a great deal of criticism from the public at large, the members of the House of Representatives, and the senators from the large counties. A Senate reapportionment committee was created in early 1965, but no action was taken until a three-judge federal court ruled that the Senate must be reapportioned on a population basis and that the reapportionment must be completed by early 1966 so that the entire Senate could stand for re-election under the new plan in the fall of 1966. 2/

During a special session of the General Assembly in 1966, the Senate and the House had a great deal of difficulty in agreeing on a Senate redistricting plan. Finally, an act was passed creating a fifty-member senate to be elected from twenty-seven districts. The number of senators per district ranged from one in the least populous districts to four in the most populous districts. Counties were kept intact. Only five of the twenty-seven districts varied from the population-per-member ideal by more than 15 percent.

The federal district court found a number of defects with the new Senate plan, with the judges questioning the constitutionality of increasing the total Senate membership from forty-six to fifty and the variations in population per member in many of the districts. Because of these questionable aspects, the court permitted the plan to be used for the 1966 election only, and ordered a new one to be developed thereafter which did not give continued dominance of the Senate to the small counties.

In the meantime, the South Carolina Supreme Court ruled that the state constitution limited the membership of the Senate to forty-six. A new apportionment act was therefore passed in 1967, allocating forty-six Senate seats among twenty districts. Counties were again kept intact, but still only one district varied

from the ideal population per senator by more than 10 percent. Efforts were made in the 1967 plan to place senior senators in districts where their re-election would be almost assured.

The 1970 Census and Apportionment

The 1970 census revealed that, ideally, each House member should represent 20,891 people and each senator 56,316. Only seven seats had to be moved from one county to another in the House, as compared to thirteen in 1960. Population growth was most noticeable in the Charleston and Columbia metropolitan areas.

In 1971 the House was reapportioned as usual, following the old pattern of granting each county at least one member. In the ten years since the 1961 reapportionment, the Republican party had come into its own in South Carolina, winning a number of seats in the General Assembly, electing a U.S. senator and a congressman, and carrying the state for the Republican presidential candidates in both 1964 and 1968. Also during this period, blacks had become much more politically active in the state, electing some local officials and also electing in 1970 South Carolina's first three black legislators since the days of Reconstruction. The Republicans and the NAACP joined hands in testing the 1971 reapportionment of the House, with both interested parties demanding that single-member districts be established without regard for county lines. The GOP and the NAACP felt that single-member districts would strengthen their power and permit the election of more black legislators and more Republicans. So a case was brought before a three-member federal district court, which found the 1971 reapportionment act to be constitutional. 3/ This decision was appealed, and the U.S. Supreme Court reversed and remanded the case to the U.S. district court. Following the decision of the Supreme Court, the South Carolina General Assembly in 1973 created 124 single-member districts for the House of Representatives, stressing in the process

population equality rather than protection of incumbents. In the new plan, the average deviation from the population ideal was only 2.67 percent. None of the new districts was an obvious gerrymander, although there is some evidence that a few were drawn to aid the Democrats and the whites.

In 1971, the Senate passed a reapportionment plan similar to the one approved in 1967. This plan, however, failed to meet the approval of the U.S. Justice Department, whose acceptance was required under the 1965 Voting Rights Act. In April of 1972, the three-judge federal district court rejected two different plans that had been submitted for the Senate, finding that the population variances in both were too great to meet the present standards, and that each unfairly aimed to protect the seats of incumbent senators. 4/ The court then returned the Senate reapportionment problem to the General Assembly, giving it thirty days to enact an acceptable plan. Again, two plans were submitted, and this time one was accepted by the court. The Justice Department went along with the court's judgement. The 1972 act created sixteen senatorial districts electing a total of forty-six senators. The average percentage of deviation from the population-per-senator ideal in the sixteen districts was 1.95 percent.

At this writing, there is a case before the district court (Simpkins v. Gressette) which challenges the 1972 Senate plan as being discriminatory against blacks. No action is expected on the case, however, since the 1980 census data will soon be released and a new Senate plan will be prepared.

Effects of the Reapportionment

The reapportionment acts since the 1960s have had a noticeable effect on state and local government in South Carolina. Mastery of local government has been returned to the localities, and counties are now controlled by county councils rather than by members of the General Assembly. Both counties and municipalities have been

granted very broad powers under the Local Government Act of 1975. The House of Representatives has become more independent of the Senate, as demonstrated by the strong opposition it showed to some provisions of the various Senate reapportionment acts. Single-member districts in the House have facilitated the election of blacks and women. There has been a very noticeable reduction in the number of lawyers serving in the House. Reapportionment activities have also renewed citizens' interest in the legislative process. State social programs have been expanded by the new legislature, and such programs receive better financial support than in the past.

Congressional Districts

Since 1930, South Carolina has had six congressional seats. The 1930 district boundaries were still in effect in 1960. The 1960 census, however, showed that there were serious population variations among the six districts--the largest having 531,555 people and the smallest 272,220. Despite such great variations, the General Assembly failed to act at all on the redistricting question until 1963. In that year it moved one county from one district to another, but this did very little to help. A proposal was made to shift two large counties from overpopulated to underpopulated districts, but no such action was taken because the political opposition was too great.

In 1965, Michael J. Mungo filed suit in federal court challenging the apportionment of South Carolina's congressional districts. Mungo's suit did cause the General Assembly to act. In May of 1966, the legislature approved the transfer of two large counties to new districts. This caused the state's most populous district to be underrepresented by only 6.1 percent and the smallest to be overrepresented by 5.4 percent. No further action was taken until after the 1970 census.

The 1970 census showed significant shifts in the South Carolina population, and a difference in the populations of the largest and the smallest congressional districts in excess of 24 percent. After long debate in the legislature a redistricting bill was passed on the last day of the 1971 legislative session. Three counties were shifted, causing the largest district to be underrepresented by 3.4 percent and the smallest to be overrepresented by 4.8 percent. This districting plan remains in effect today and has not been tested in the courts, although the maximum population variation of 8.2 percent is probably too great, based on cases decided by the U.S. Supreme Court since 1973.

The 1980s

Preliminary census figures indicate that South Carolina now has a population of more than three million, which means that each House member should represent about 24,000 people and each senator about 66,000. Major growth areas are in two counties of the metropolitan Charleston area (Berkeley and Dorchester), two other coastal counties (Beaufort and Horry), Lexington County (adjoining Columbia), and Pickens County (a part of metropolitan Greenville). Population in most of the large counties has increased at a proportionately faster rate than in the small counties. Consequently, there may be a sharp division in 1981 between the small and large counties over reapportionment of the Senate and the congressional districts. Reapportionment of the House, with its 124 single-member districts, is not expected to cause serious problems, although the small counties will lose members and the geographical size of the rural districts will have to be increased to take in population.

There will be a very strong movement in 1981 to establish single-member districts for the Senate, crossing county lines where necessary. Single-member districts will be supported by blacks, Republicans, and legislators from South

Carolina's large counties. Blacks are especially interested, since no blacks at all were elected to the Senate in 1980. Already a suit has been filed requesting the federal courts to require the Senate to establish single-member districts. Having single-member districts in the Senate may be strongly opposed, however, by the senior members of the upper house. Presently most of them are elected from safe districts encompassing small rural counties.

Given the considerable growth in several of the large counties, it will be necessary in 1981 to redraw South Carolina's six congressional districts. In congressional redistricting, there may be a sharp division between the Republicans and Democrats, since four of the six seats are now filled by Republicans but the Democrats still dominate the legislature. Also, the apportionment of the metropolitan areas may cause a problem. At present, each metropolitan area is wholly contained in one district. There is, however, considerable support among blacks and Republicans for dividing these areas when a new apportionment plan is adopted. The twenty-two Republicans and fifteen blacks in the legislature may well work as a group in developing reapportionment plans in 1981. The present governor, Richard W. Riley, is likely to lend his support to speedy reapportionment of both the legislative and congressional seats following release of the official census data. He is a realist and will probably support reapportionment plans which will meet the requirements of the federal court.

NOTES

1/ The best source of information on reapportionment and redistricting in South Carolina is George Michael Briggs, "South Carolina Reapportionment, 1776-1978" (M.A. thesis, University of South Carolina, 1978). The present essay is based to a considerable extent on Briggs's work.

2/ O'Shields v. McNair, 254 F. Supp. 708 (1966).

3/ Stevenson v. West, unpub. U.S. district court opinion.

4/ Twiggs v. West, Civil No. 71-1106 (U.S.D.C., S.C., 1972).

TENNESSEE

Richard L. Wilson

History of Redistricting in the State

Redistricting has a special significance in Tennessee, since it was Tennesseans who initiated the lawsuit which resulted in the landmark Supreme Court decision of Baker v. Carr.1/ This 1962 decision held for the first time that the way in which state legislatures were redistricted was a subject of judicial inquiry.

In Tennessee, as in many other states in the United States, the failure to redistrict had resulted in substantial unfairness. In spite of the fact that the Tennessee state constitution required a redistricting of legislative seats at least once every ten years (after each federal census), the Tennessee legislature did not redistrict itself for over sixty years after a redistricting which occurred in 1901.2/Tennessee had major shifts in population during those sixty years, so that by the end of the period there were substantial disparities between the largest and the smallest legislative districts. For example, Moore County, Tennessee's smallest county with a population of about 4,000 people, had one representative in the state legislature, while Shelby County, Tennessee's largest county, had eight legislators for about 500,000 people. The ratio of one to 62,500 in Shelby County, compared to a ratio of one to 4,000 in Moore County, resulted in a vote for legislative seats being worth fifteen times more in Moore County than in Shelby County.

As in most other states, the major population shifts in Tennessee had been from rural areas to urban areas. Thus, a small portion of the state's rural population could elect a majority of the legislators. The perception was widespread that urban Tennesseans were not given an equal share of the benefits that state government had to offer. Several groups of citizens, including the League of Women Voters,

initiated Baker v. Carr in a state court; although defeated there, the suit was ultimately carried to the Supreme Court of the United States, where the plaintiffs were finally successful in making redistricting a justiciable issue.

Following the decision in Baker v. Carr, The Tennessee General Assembly held a special session to adopt a new districting plan. But the new plan was still grossly unrepresentative and a three-judge federal panel ordered the legislature to redistrict again, setting a deadline of mid-1963 but allowing the redistricting plan of the special session to stand for the 1962 election. The legislature failed to meet the mid-1963 deadline, and the federal court insisted on several changes in the 1962 plan. The plan with these changes was used for the 1964 election. A part of the court order required that the legislature produce a new plan prior to June of 1965 or else the court's modifications would be kept in place.3/ Ultimately, a change in the Tennessee constitution, brought about by the 1965 Constitutional Convention, produced a new provision which allowed for the splitting of urban counties into districts rather than requiring at-large elections. With this provision adopted in 1966, it was possible finally for legislative districts inside the urban counties to be substantially equal in population.4/

The 1960s brought about a whole series of Supreme Court decisions which steadily tightened the requirements for population equality. The plan which the legislature adopted in 1966, and which was used in the 1968 and 1970 elections, was a much better districting than had been in existence earlier in the century; but still, the 1966 plan was not close enough to population equality to meet what would be regarded as an acceptable standard today. Many decisions, including Kirkpatrick v. Preisler,5/ have required even higher standards of population equality.

The major effects of legislative redistricting in the 1960s were to increase the number of urban members of the General Assembly, to increase the number of Republican members of the General Assembly, and to produce the election of black

members for the first time in recent history. While it was obvious that there would be an increase in the number of urban legislators, it was less obvious that Republicans would make gains. In fact, in most states in the United States, it was urban Democratic legislators who increased in number in comparison to rural Republicans. However, in Tennessee, the most overrepresented counties were rural counties in traditionally Democratic Middle and West Tennessee. While there was some increase in the number of urban Democratic legislators, there was also an increase in the number of legislators from Republican East Tennessee and from previously unrepresented pockets of Republicans in the state's cities. Also, as a part of the increased urban representation, six blacks were elected to the House in 1966 and one black was elected to the Senate in 1968.

In February 1964, in the case of Wesberry v. Sanders,6/ the Supreme Court mandated that congressional as well as legislative districts be subjected to population equality standards. In response, the Tennessee legislature attempted to redraw the state's nine congressional districts in 1965. However, the disparities in population were still great. In the end, when the legislature failed to meet the court's deadline, the court drew the congressional districts which were used in 1968 and 1970.7/

The 1968 and 1970 congressional districts resulted in the election of five Democrats and four Republicans. In 1971, the Democratically-controlled legislature redrew these districts amid Republican charges of a gerrymander. However, these purportedly Democratic-gerrymandered districts produced a 5-to-3 Republican majority in the congressional delegation in 1972 (Tennessee lost one seat as a result of reapportionment). Later in the decade, the Democrats came back to pick up two of the seats, producing a 5-to-3 Democratic majority in the delegation. Some talk of Tennessee's regaining its ninth congressional district has gone on throughout the decade, and the preliminary 1980 census data does support this hope.

Redistricting in the 1970s

The 1970 census figures came out too late for action by the General Assembly in its 1971 session. In the 1972 legislative session, both houses of the General Assembly set out to draw new redistricting plans, but they used different political techniques to achieve the results. In the Senate, the leadership of both political parties agreed to try a bipartisan approach which would allow each of the senators to draw lines aimed at reassuring his own re-election regardless of his party. The end result was passed by a nearly unanimous vote and occasioned little controversy. Naturally, the result of this bipartisan gerrymander was that only a small turnover in Senate membership occurred during most of the rest of the decade--and that was brought about almost entirely by the retirement of certain elderly members. (The 1972 reapportionment was modified slightly in 1973 but its essentially bipartisan character was retained. Small additional changes were made in 1979 in response to a federal court case.)

Both houses of the General Assembly in the 1970s were confronted with a Tennessee constitutional amendment that permitted metropolitan counties to be split in redistricting if they were entitled to elect more than one legislator, but continued an older prohibition in the constitution against splitting counties which were not entitled to more than one representative in order to achieve districts of equal population. In short, this provision of the Tennessee constitution envisioned creating legislative districts out of whole counties except for very large counties which were entitled to more than one representative. The idea undoubtedly was to preserve the political subdivision of the county and to give county voters an effective voice in naming an individual legislator. However, the federal mandate that legislative districts be equal in population insured that there would be occasions on which counties would have to be split. In Tennessee, there were certain counties that were too small to have representatives of their own; however, if any of their

neighboring whole counties were added to them, the resulting district would be too large. Thus, if population equality was to be a goal of redistricting, counties would have to be split. Since there were thirty-three members of the Tennessee Senate and ninety- nine members of the Tennessee House (these figures are mandated by the Tennessee state constitution), it was easier to construct Senate districts without cutting county lines than House districts, because the Senate districts were three times as large and could accommodate larger building blocks. However, neither the House nor the Senate could achieve population equality without cutting some county lines.

Despite ample presentation of the mathematical impossibility of drawing equal-sized districts without cutting county lines, there were still many state legislators in 1972 who refused to vote for a redistricting bill which violated the Tennessee constitution. These legislators maintained that they would be violating their oaths of office if they voted for a redistricting plan that violated the constitution. Other legislators argued that the federal Constitution took precedence over the state constitution in cases of conflict like this, but they got nowhere because a sizable portion of the legislature refused to vote to split county lines.8/

In order to resolve the issue so that a bill could be passed, a legislative strategy was devised to pass a two-stage redistricting plan. In the first stage, both houses of the legislature would draw district lines without cutting any county lines, even though the population disparity of the resulting districts was greater than that currently being approved by the federal courts. At the same time, a second plan would be drawn, to take effect if the first plan was declared unconstitutional, which had strict population equality but split some counties. As usual, both Senate plans had almost complete bipartisan support. The bipartisan support in the Senate was helpful because the political situation in the early '70s found a Republican governor, Winfield Dunn, facing Democratic majorities in both houses of the General

Assembly. The Democratic majority was much larger in the Senate than in the House, but the Senate Democrats were far more conservative than the House Democrats and frequently joined the Republicans in bipartisan efforts. Thus, the Senate redistricting plans passed in both 1972 and 1973 with the support of the governor, who signed them into law.

The situation in the House of Representatives was much different, as the House redistricting bill became a subject of partisan charges and countercharges. Despite attempts to work out a bipartisan plan, the Democratic and Republican House leaderships failed to agree. Although accommodations were made for the benefit of many individual Republicans, the 1972 House plan was a Democratic bill which passed by a partisan vote. The Tennessee Senate and House had previously agreed that they would respect each other's deliberations. Accordingly, the House districts automatically passed in the Senate and the Senate redistricting plan automatically passed in the House. The Republican governor signed the Senate plan but he vetoed the House districting plan. Although the Senate Democrats had been willing to compromise with Senate Republicans to pass a bipartisan redistricting bill for their own house, the Democratic majority in the Senate supported the House Democrats in overriding the governor's veto of the House plan.

Given the governor's veto, the override, and the partisan charges and counter-charges that surrounded the proceedings, it was widely expected that the Republicans would file suit in federal court. The most obvious ground for judicial action was the fact that the first stage of the legislature's plan had been drawn without splitting counties, and thus featured high variance in population among the districts. But the Republicans also hoped that the federal court, in addition to striking down the first-stage plan, would ultimately adopt a Republican plan because of errors in the second stage of the Democratic plan. The Republicans had some grounds for this hope because, in the House, numerous errors had occurred in

drafting the second-stage plan. In some areas, geographic sections were omitted from any district at all. In others areas, certain geographic sections were placed in two districts. In still others, noncontiguous districts had been drawn.

In the federal court suit, Kopald v. Carr,9/ the act passed by the legislature was defended by the state attorney general, although, from the onset, the attorney general admitted that the first-stage plan was unconstitutional because of wide population disparities. The attorney general also admitted that certain unintentional errors had occurred in drafting the second-stage plan, but he argued that the legislature was still the principal body charged with drawing legislative lines, and that small amendments made by the court could bring the second-stage legislative plan into conformity with the U.S. Constitution. The attorney general's proposed modifications did, however, preserve the essential features of the plan passed by a Democratic majority in the House.

The Republican party plaintiffs argued that the entire House plan should be thrown out and a Republican plan adopted. To the surprise of the Republican attorneys, their alternate plan was shown in the hearing to have the same kinds of errors that were present in the plan passed by the legislature. As a result, the three-judge panel put the Democratic plan, (with small modifications suggested by the attorney general) into effect for the 1972 elections. However, the court also retained jurisdiction over the case and ordered the legislature to try again in 1973.

As Table 1 indicates, despite charges of gerrymandering, the 1972 plan produced a close correspondence between the percentage of the votes cast for a party and the percentage of the seats won by that party.

The Democrats held on to a slim majority in both houses of the General Assembly in 1972. In 1973, as these Democratic majorities attempted to come into compliance with the federal court rulings of 1972, they still faced a Republican governor. Again, the Senate achieved a bipartisan plan which was approved by the

governor. The Senate plan made only small revisions aimed at reducing the number of split counties. As might be expected, however, this reduction in the number of split counties led to somewhat larger population disparities. (In fact, the bipartisan Senate plan was actually further from population equality than the so-called partisan plan adopted by the House in 1973.) While these changes were allowed to stand by the three-judge federal panel, a subsequent lawsuit forced the Senate to redraw certain district lines in 1979 because of the population disparities.

In the House of Representatives in 1973, the majority Democrats made a significant political change when they elected a new Democratic speaker. The new speaker favored a bipartisan plan of the kind which had passed the Senate in the previous year. The speaker wanted to avoid a gubernatorial veto, since he had only fifty-one Democrats to face forty-eight Republicans.

After lengthly negotiations, the speaker finally developed a plan which appeared to have bipartisan support, since it included numerous concessions to Republicans. Because of the agreement that each house would pass a plan favored by the other house without amendment, it was believed the House-passed plan would be adopted in both houses and would be signed by the governor.

Although the House-passed plan had considerable bipartisan support, two Republicans who had essentially drawn their own districts were still not satisfied. These two House Republicans pressed Governor Dunn to veto the bill. Dunn, knowing that there was widespread Republican support for the plan, refused to veto it unless the caucus specifically requested that he do so. The two Republican legislators then tried repeatedly to gain a favorable caucus vote. On their first two tries, the caucus voted against the two malcontents and in favor of the House plan. But, on a third caucus vote, the two disaffected Republicans mustered a 25-to-20 vote in favor of pressing the governor for a veto. The governor then vetoed the bill, but he did so in a way that allowed the Democratic leadership to muster the votes

for an immediate override. The Senate, still acting under the old agreement whereby it would support a House-passed plan, overrode the governor's veto the next day. The federal three-judge panel, which had retained control of the lawsuit, noted that the population disparities in the new House plan were very small, and allowed the 1973 redistricting plan to stand for the rest of the decade.

Although the Democratic party had majorities in both houses throughout the 1970s, and although the Democrats showed sufficient strength to override the Republican governor's veto on two occasions, the actual pattern of redistricting in Tennessee does not reflect strong partisan control. The Senate plan, as we have seen, was openly bipartisan, while the House plan may be described as a Democratic plan with Republican approval. Any charges of partisan gerrymandering are hard to sustain.

As Table 1 indicates, there does not seem to have been any substantial benefit for either political party as a result of the reapportionment plans passed by the General Assembly in either 1972 or 1973. The House plan (the alleged gerrymander) shows no more than a four percent advantage for Democrats any election, and in two of the four elections the plan apparently gave the Democrats no advantage at all. In the Senate, the Democrats did get a higher percentage of the seats than their percentage of the two-party vote warranted in 1976, but they also got a smaller percentage of seats than their percentage of the two-party vote indicated in 1978. It would certainly be difficult to conclude from these figures that partisan gerrymandering was a dominant feature of Tennessee redistricting in the 1970s.

Conclusion: Redistricting in the 1980s

While the final U.S. census figures for 1980 are not yet available, some preliminary figures have been released and they once again show the likelihood of population changes that will require redistricting. Again, a slight shifting of population from

rural to urban areas seems evident, but a much larger shifting seems to be taking place from urban to suburban areas within metropolitan counties.

An examination of election returns in House and Senate districts indicates substantial disparities in size. In 1978, the number of votes cast in Senate District 13 was 13,306, while in Senate District 7 the total vote was 42,731; this suggests a very large population disparity between the two districts. Again in 1978, in one House district the total legislative vote cast was 4,272, while in another House district, the total legislative vote cast was 21,777. Of course, total votes cast is not the same as population, but the vote totals are certainly suggestive.

The political situation appears on the surface to remain the same in 1980 as in 1972-73, with a Republican governor facing Democratic majorities in both houses of the legislature. The governor has announced his belief that the Republicans can win control of both houses of the legislature in 1980, but most observers think it is impossible for this goal to be realized in either house. It is also impossible to determine whether either house of the legislature will be able to develop a satisfactory bipartisan redistricting plan in 1981.

However, the greatest dispute of the 1980s redistricting in Tennessee may not be a partisan fight or even an urban-rural fight. The fight may well be over the accuracy of the census figures themselves. From the outset of the 1980 census, certain groups were skeptical of the accuracy of a census conducted by mail-back questionnaires as opposed to the older, more expensive door-to-door enumeration methods. The Census Bureau has engaged in a major public relations campaign to convince people that the Bureau's methodology is sound, but it remains to be seen whether the federal courts will continue to regard the census figures with the same deference as they have in the past. Still more significant are the complaints which have come from mayors who have looked at the preliminary census data. The preliminary census figures from the third and fourth largest counties in Tennessee

(Knox and Hamilton respectively) indicate that both of these counties have shown growth of only 8-11 percent over the last decade. The mayors of Knoxville, in Knox County, and Chattanooga, in Hamilton County, doubt these figures very much. Of course, the complaints of the mayors may be unfounded, and may show only their disappointment that the optimistic assessments of their respective Chambers of Commerce have not come true. Calls for a special census enumeration have gone out in both counties, however, but no legal action has been initiated.

The political outcome of redistricting in the policy area is particularly hard to discern. Prior to 1960, the state's rural population thoroughly dominated the legislature, which featured seventy-seven representatives from rural counties and only twenty-two from the four metropolitan counties. As a result of the redistrictings in the 1960s and the 1970s, the representation of the metropolitan counties increased from 22 percent to 43 percent, but there still remains a 57 percent rural control of the legislature. Thus, rural domination of the legislature, though by a reduced margin, has remained in effect in Tennessee. Moreover, both political parties have urban and rural wings. Table 2 shows the distribution of Tennessee state legislators by party and urban-rural breakdowns. As can be seen, no one party is either the "urban" or the "rural" party in either the House or the Senate.

Redistricting has had some impact on the representation of blacks in the Tennessee legislature. Prior to 1964 there were no black representatives in the Tennessee General Assembly (and there had not been since the Reconstruction era). The malapportionment of the Tennessee House and Senate had given heavy representation to rural counties which did not have substantial percentages of black voters. In the urban areas, which had significant numbers of blacks, blacks were kept out of the legislature by the use of at-large legislative districts which diluted the minority vote substantially. (Similarly, a few rural counties which did have substantial numbers of black voters diluted the black vote by using an old system of "floterial"

TABLE 2
DISTRIBUTION OF TENNESSEE STATE LEGISLATORS
BY PARTY AND BY URBAN-RURAL

TENNESSEE STATE SENATE*

	1973 - 1974			1975 - 1976		
Party	Urban	Rural	(No.)	Urban	Rural	(No.)
Democrats	57%	61%	(19)	57%	67%	(19)
Republicans	43%	39%	(13)	43%	33%	(13)
Total	100%	100%		100%	100%	
(No.)	(14)	(18)		(14)	(18)	

TENNESSEE STATE HOUSE OF REPRESENTATIVES*

	1973 - 1974			1975 - 1976		
Party	Urban	Rural	(No.)	Urban	Rural	(No.)
Democrats	49%	51%	(51)	60%	66%	(63)
Republicans	51%	40%	(40)	40%	37%	(35)
Total	100%	100%		100%	100%	
(No.)	(43)	(57)		(43)	(57)	

*One Independent rural legislator has been deleted from the analysis in both the Senate and the House.

districts.) As a result of redistricting and the abandonment of at-large and "floterial" districts, a number of black legislators have been elected. Starting in 1966 and continuing gradually over the next fifteen years, black representation increased from no members at all to twelve members. Since blacks constitute only about 15 percent of Tennessee's population and since black legislators now constitute about 10 percent of the General Assembly, it is difficult to believe that any great changes will occur in black representation as a result of the next redistricting

Reapportionment and the use of single-member districts consistently throughout the state have tended to produce other examples of "minority" representation. In formerly solidly Republican East Tennessee, certain pockets of Democratic voters now are able to elect Democratic legislators. On the other hand, in predominantly Democratic Middle and West Tennessee, certain pockets of Republican voters now elect Republican legislators. Certain liberal Democratic urban areas now send to the legislature a few conservative Republican legislators, while some rural conservative Republican areas now elect a few fairly liberal Democratic legislators. The overall result is a moderate Tennessee General Assembly, reflecting the generally moderate political views of Tennesseans. That the legislature is not fairly evenly divided between Democrats and Republicans simply reflects a growing two-party system (albeit one in which Democrats still comprise a slight majority) The existing party balance should continue through the 1980s, barring a partisan gerrymander that is highly unlikely in the existing political climate.

NOTES

1/ 369 U.S. 186 (1962).

2/ Richard L. Wilson, Tennessee Politics (Dubuque: Kendall/Hunt, 1976), p. 149.

3/ Stanley J. Folmsbee, Robert E. Corlew, and Enoch L. Mitchell, Tennessee: A Short History (Knoxville: University of Tennessee Press, 1969), pp. 548-49.

4/ Lee S. Greene, David H. Grubbs, and Victor C. Hobday, Government in Tennessee (Knoxville: University of Tennessee Press, 1975), p. 83.

5/ 394 U.S. 526 (1969).

6/ 376 U.S. 1 (1964).

7/ Folmsbee, Corlew, and Mitchell, Tennessee, p. 549.

8/ For discussion in greater detail, see Wilson, Tennessee Politics, pp. 149-55.

9/ 343 F. Supp. 51 (1972).

TEXAS

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Redistricting-Reapportionment in Texas before 1960

The apportionment-districting history of Texas exhibits many of the same problems common to all states and a few peculiar to Texas. Prior to the 1950s, Texas practiced the "silent gerrymander," the refusal of the legislature to reapportion legislative and congressional districts following each census. State legislative districts were not redrawn between 1921 and 1951, while congressional districts were not restructured between 1933 and 1957. Unfortunately, this hiatus accompanied Texas' most sudden and disruptive population growth and redistribution up to that time.

During the 1940s, Texas changed from a mostly rural to a predominantly urban state; by the end of the 1950s, a majority of Texans lived in metropolitan areas. The population increase of the period was not equally distributed across the state. In addition to major metropolitan areas, whole sections, including the Rio Grande Valley of South Texas and the High Plains of West Texas, were left seriously underrepresented in the legislature and in the congressional delegation. Other areas of declining population were egregiously overrepresented. The best example of underrepresentation was Dallas County, the most populous congressional district in the United States in the 1950s, with one representative for well over a million people. Contiguous with Dallas County to the northeast was Speaker Sam Rayburn's old district, which contained only one-fifth of the population of Dallas County.

Responding to strong pressure from Governor Beauford Jester in 1948, the legislature submitted an amendment to the Texas constitution creating the Texas

Legislative Redistricting Board, consisting *ex officio* of the lieutenant governor, attorney general, speaker of the House of Representatives, comptroller of public accounts, and commissioner of the general land office. The Board was to redistrict state legislative seats should the legislature fail to do so at its first regular session after each federal census. The ratification of the proposed amendment by the voters in 1948 wrote *finis* to the silent gerrymander of state legislative (but not congressional) seats.

The legislature finally redistricted state legislative seats in 1951 rather than have the job done by an *ex-officio* agency. The legislative reapportionment of 1951 provided additional representation for Texas' burgeoning cities, but not nearly as much as would have been provided if seats had been apportioned solely on the basis of population. This was not possible in 1951 because of two provisions of the Texas constitution subsequently declared unconstitutional in federal court. One provision limited any Texas county to not more than seven representatives until its population reached 700,000, with one additional representative for each additional 100,000 people thereafter. As a result of this provision, Texas' four most populous counties combined were awarded one representative for each 81,000 people in 1951, while most other counties were getting one for each 45,000 to 50,000.1/

Diminishing urban representation still more was a constitutional provision limiting any county to one state senator, regardless of its population. This section of the constitution also apportioned membership in the Senate according to the number of qualified electors--as determined by the number of poll tax receipts--rather than by the number of inhabitants in the county. This latter provision particularly limited senatorial representation in South and Southwest Texas, with their large numbers of Mexican-Americans who usually did not pay poll taxes.

Redistricting-Reapportionment in the 1960s

In the early 1960s, Texas' constitution still precluded equitable legislative apportionment. Only vague rumblings of federal judicial intervention were felt in Texas, although the apportionment environment throughout the United States was about to be transformed. Federal courts would soon demand that the legislature move to adapt state practice to the requirements of the United States Constitution.

In 1961, a limited reapportionment was made. Geographic shifts of population were reflected in this reapportionment, particularly those from the north and east toward the south and west. Though all metropolitan counties gained, they still remained underrepresented because of the state constitutional provisions preventing more equitable accommodation of metropolitan growth. This would soon change through judicial intervention.

On July 15, 1963, Kilgarlin v. Martin was filed in federal district court, beginning the transformation of Texas' legislative apportionment practices. In 1965, the court invalidated the sections of the Texas constitution which had obstructed fair apportionment by limiting counties to one senator and by establishing irrational population limits for House districts. Without these changes in the constitution, it would have taken years for natural increases in population to augment representation for urban areas.

The court in 1963 ordered the legislature to apportion the House fairly by August 2, 1965. Senate districts were not challenged. In 1966, plaintiffs attacked the population disparity of the new House districts (especially the flotorial district), the political and racial gerrymandering that was evident in the new plan, the disenfranchisement of Negroes, and the overall crazy-quilt irrationality of the apportionment.2/ The court invalidated the flotorial districts and approved legislation intended to satisfy the other complaints. The 1966 elections occurred under the modified 1965 plan, with a judicial mandate to comply fully with the court by

August 1, 1967; if the legislature did not comply, the flotorial districts would become multi-member districts. In 1967, the legislature reconstructed itself again under the strictures of Kilgarlin v. Martin. The United States Supreme Court upheld this latest districting plan, except for the population variances in non-flotorial districts, which were ordered corrected.3/

The federal courts also seriously altered congressional districting in the 1960s. On October 19, 1963, a three-judge federal district court in Houston heard an assault upon the constitutionality of the 1957 Texas statutes creating congressional districts. Texas was entitled to twenty-three congressmen after the 1960 federal census, but in 1963 the state was still operating with just the twenty-two congressional districts created by the legislature in 1957. The Texas population of 9,579,677 (according to the 1960 census) required the average congressional district to have a population of 435,000.

In reviewing the 1957 congressional apportionment, the court noted that eleven of the existing twenty-two districts were under the state average, with seven of these having less than 300,000 population. District 4, represented by Speaker Sam Rayburn, had a population of only 216,371. Districts in great metropolitan counties of Texas had populations seriously in excess of the average size: the Dallas County district had a population of 951,527, two districts in Harris County (Houston) had populations of 568,198 and 674,965 respectively, Tarrant County (Fort Worth) had a population of 538,495, and Bexar County (San Antonio) had a population of 687,151.

The court declared the 1957 congressional districts to be invidiously discriminatory, but deferred legislative correction until November 1, 1963. After electing congressmen in 1964 from extant districts, Texas was required to reconstruct congressional districts to meet judicial guidelines by August 1, 1965. The court affirmed the good faith of the legislature by declining to enjoin the 1965

plans, and on June 8, 1967, the legislature created twenty-three new congressional districts for the elections of 1968.4/

Redistricting-Reapportionment in the 1970s

As the state's urban and suburban populations continued to grow, the legislature proved incapable of designing an acceptable redistricting plan for the seventies. In 1971, the Senate failed to reach agreement on a redistricting plan, and the House-adopted plan was invalidated for unnecessarily splitting counties in violation of the state constitution.

As a result of these developments, the Legislative Redistricting Board designed a plan for each house. The Board's Senate plan survived a federal court challenge in 1972 and has been used for all Senate elections in the decade. The Board's House plan was invalidated by a three-judge federal district court for excessive population deviations and for reliance upon multi-member districts in all metropolitan areas except Houston. Multi-member districts were declared constitutionally defective for diluting the votes of minorities, and single-member districts were ordered for Dallas and Bexar Counties for the 1972 election. While the Board's plan for the remainder of the House was allowed to stand for the 1972 elections, the legislature was directed to redistrict the entire House after the 1972 elections to correct population disparities.

The district court's opinion was confirmed in part and reversed in part by the United States Supreme Court in White v. Register (1973).5/ The Court found the 9.9 percent maximum population variance constitutionally acceptable but affirmed the constitutional defectiveness of the multi-member districts for Dallas and Bexar Counties. In 1974, another federal court invalidated the multi-member districts that included Forth Worth, El Paso, Lubbock, Austin, Corpus Christi, Waco, Beaumont-Port Arthur, and Galveston.6/ Before completion of the appeals of this

case to the Supreme Court, the 64th Texas Legislature in 1975 provided for single-member districts in each of the contested metropolitan counties. The single-member districts in Fort Worth, Corpus Christi, and Beaumont-Port Arthur were denied preclearance under the provisions of the Voting Rights Act, extended to Texas in 1975 (preclearance under the Voting Rights Act of 1965 requires the United States attorney general to approve any changes in Texas election laws), and additional federal litigation was necessary through 1978 before the federal boundaries were established.

The Politics of Redistricting-Reapportionment in Texas

The politics of reapportionment reveals some of the unique features of Texas' political system.7/ Many of the analytical notions that political scientists normally apply to reapportionment and redistricting are of little value in studying Texas. Rural-urban conflict did not dominate the redistricting process in the Lone Star State; on the contrary, rural and urban representatives tended to cooperate in making redistricting decisions. Nor was there a sharp division of opinion along party lines in Texas. The most serious divisions were based on ideology, rather than on differences of geography, population density, or political party. The staunch conservatism that has persisted in Texas politics for more than a century was strongly reflected in the politics of redistricting.

Redistricting decisions of the Texas legislature throughout the 1960s and the 1970s were principally designed to assure the re-election of incumbents representing the dominant conservative faction of the one-party, Democratic legislature. Instead of the partisan gerrymandering found in two-party states, gerrymandering in Texas more often involved personal vendettas or factional disputes between a conservative faction centered around the speaker of the House or the lieutenant governor (who presided in the Senate) and a more liberal faction including liberal Democrats,

Blacks, Hispanics, and liberal Republicans. Though redistricting committees conducted open hearings on redistricting bills, redistricting really proceeded under the control of the speaker of the House and the lieutenant governor, who sought to maintain a membership loyal to their leadership.

It is not surprising that the speaker and the lieutenant governor usually dominated the redistricting process, because their formal and informal powers were so extensive. Members became indebted to the presiding officers immediately, since the presiding officers appointed members to all committees, appointed committee chairmen and vice-chairmen, and referred all bills to standing committees, giving them life and death power over proposed legislation. Legislators who were loyal to the presiding officers even found their bills on local matters handled more expeditiously on the floor than similar bills authored by those members who were not "part of the team."

Redistricting plans for metropolitan areas were usually fashioned by each area's legislative delegation, as long as the plans did not conflict with the broader objectives of the presiding officers. Proposals by minorities to shape districts to their liking were generally rejected in redistricting committees or after floor challenges to committee reports. Both houses usually showed mutual respect for each other's prerogatives, and each was free to draw up its redistricting plan without fear of interference from the other. The flotorial district was a device whereby the legislators could play token obeisance to population increments in the cities while avoiding the unpleasant task of substantially redrawing district lines.

Every other factor shaping legislation in Texas is overshadowed by a specific limitation in the constitution on the length of each regular legislative session to 140 days. The entire legislative process is adversely influenced by this constitutional provision. Time pressures are further increased by a constitutional stipulation that regular legislative sessions occur only on a biennial schedule. The legislature thus

has to do two years' work, on all manner of subjects, in 140 days. The inevitable struggle over fiscal policies alone could absorb 140 days; when the overweening weight of redistricting decisions is added to the regular legislative load, the pressures on the lawmakers are increased tremendously.

The roles of the governor and the minority Republican party have been minimal in the redistricting process. During the 1970s, the number of Republicans in the Texas legislature varied from twelve to twenty-eight, out of a total membership of 181 (150 in the House and thirty-one in the Senate). Republican members have come primarily from suburban areas, and their interest in shaping redistricting legislation has been little different from that of their Democratic colleagues.8/ The governor is not a member of the Legislative Redistricting Board and could exercise no direct influence on the infrequent actions of the Board, whether he were a Republican or a Democrat. Since none of the members of the Redistricting Board was a Republican, the Republican Party exerted no influence on the one occasion in the 1970s in which the Board was activated in the redistricting process.

The Policy Impact of Redistricting-Reapportionment

The composition of the House has been altered significantly though not dramatically during the past decade. The use of single-member districts has been most responsible for these changes, but increased urbanization and suburbanization of the Texas population, the in-migration of Republicans, and the greater intensity of political competition in the state have also contributed. Minority representation in the House increased from nine percent in 1971 to 21 percent in 1980. Only one woman served in the House in 1971; now there are eleven. The number of Republicans has more than doubled, from ten to twenty-eight, in the same period. Representation of the four largest cities -- Houston, Dallas, San Antonio, and Fort

Worth -- increased from 23 percent in 1971 to 41 percent in 1972. In the Senate, less change has occurred, since serious malapportionment was corrected in the 1960s. The numbers of Blacks, Hispanics, and Republicans in the Senate have increased, but none of these groups comprises as much as 15 percent of the upper chamber.

Redistricting has contributed to a legislature more representative of the state's diverse population. The recent changes in the composition of the legislature have contributed to passage of several bills that had their strongest support in urban areas: public utility regulation, liquor-by-the-drink, and a minimum-wage law. Demographic alterations and redistricting also may have contributed to the legislature's rewriting of the Texas constitution (the altered version was rejected by the voters in 1975) and to the emergence of the liberal, reform-minded House Study Group, a counterpart to the Democratic Study Group in the United States House of Representatives.

Reapportionment and Redistricting in the 1980s

Reapportionment and redistricting in Texas in 1981 will likely be affected by the changing population distribution, a scandal involving the incumbent speaker of the House, the presence of the first Republican governor in a hundred years, and the necessity for the redistricting plan to gain preclearance by the Department of Justice.

For the first time there is a virtual certainty that after the 1981 redistricting, the four major cities in the state will control a majority of the seats in the House and a majority or near-majority in the Senate. Population growth has been greatest in the state's metropolitan areas (especially around Houston), with the suburbs likely to gain the most additional seats. Many of the smaller S.M.S.A.'s are also likely to gain House seats. Increased Republican representation may result from suburban

growth, producing something closer to a two-party legislature. Texas' population growth also should justify two additional representatives in the United States House of Representatives, one of whom will undoubtedly come from Houston.

The likely role of the Republican governor in the 1981 redistricting process remains unclear. If the governor vetoes the legislature's redistricting plan, responsibility for drawing a new plan would fall to the Redistricting Board, which is controlled by incumbent Democrats. A plan drawn by the Board cannot be vetoed by the governor. It is also difficult to tell whether the Republican governor would call a special session of the legislature to produce redistricting legislation, in the event a redistricting plan is not approved in the regular session.

The necessity to gain Justice Department preclearance should make the legislature more sensitive to the demands of Blacks and Hispanics for greater representation.

Speaker of the House Billy Clayton has been indicted for accepting a bribe in the F.B.I. investigation of labor leaders' attempts to bribe public officials, which makes it still more difficult to predict the outcome of the 1981 redistricting process. If an urban representative replaces Clayton, redistricting in the 1980s might be more favorable to minorities and urbanites than would otherwise be the case.

The likelihood that the 1981 regular session will fade into history without producing a redistricting-reapportionment plan is increased by the fact that final census data will be available only late in the session. There is a good chance, then, that the 1981 Texas redistricting plan will be drawn by the Legislative Redistricting Board. Public apathy, and the tendency of the legislators to shirk responsibility, could contribute to such a development.

NOTES

1/ Wesley Chumlea, "The Politics of Legislative Apportionment in Texas -1921-1957" (Ph.D. dissertation, University of Texas, 1959), pp. 1-266.

2/ Kilgarlin v. Martin, 252 F. Supp. 404 (Cov. A. No. 63-H-390, U.S.D.C., Southern Tex., Houston Div., 1966). Upheld in part, reversed in part: Kilgarlin v. Hill, 386 U.S. 120 (1967). Flotorial districts were created by combining a county whose population justified one or more House seats with a contiguous smaller county lacking sufficient population for any representation. The voters in the smaller county could then elect a "floating" representative, who theoretically represented citizens of both the larger and the smaller counties. Residents of the more populous parent county could vote for their own representative and for the "floating" representative, while voters in the smaller county could vote only for the flotorial representative. It was this disparity in voting opportunity that led the court to declare that the arrangement invidiously diluted the votes of the residents of the less populous county. There were eleven such districts at the time of the decision in Kilgarlin v. Martin.

3/ Kilgarlin v. Martin, at 418-24.

4/ Bush v. Martin, 224 F. Supp. 499 (1963); Bush v. Martin, 251 F. Supp. 484 (1966). Upheld, Martin v. Bush, 376 U.S. 22 (1964). See Wesley Chumlea, "Congressional Redistricting in Texas: Pattern for the Seventies," Public Affairs Comment vol. 18, no. 1 (November 1971), pp. 1-5.

5/ 412 U.S. 755 (1973).

6/ Graves v. Barnes, 378 F. Supp. 640 (1974).

7/ H. Dicken Cherry, "Texas: Factions in a One-Party Setting," in The Politics of Reapportionment ed. Malcolm E. Jewell (New York: Atherton Press, 1962), pp. 120-29; August O. Spain, Luther G. Hagard, Jr., and Samuel B. Hamlett, Legislative Redistricting in Texas, Arnold Foundation Monographs (Dallas: Southern Methodist University. 1965); William C. Adams, "Wheeling and Dealing, Gerrymandering, and Litigating: Redistricting the Texas House of Representatives," in Eugene W. Jones et al., Practicing Texas Politics, 4th ed. (Boston: Houghton Mifflin Co., 1980), pp. 305-11.

8/ Ibid., pp. 280-81.

VIRGINIA

Robert J. Austin

Virginia constitutions since 1830 have required a population basis for congressional redistricting. Redistricting was considered mandatory, however, only if the census changed the number of the state's representatives. State legislative districts also followed a loose population standard, although the constitution itself was silent until 1971 on legislative apportionment criteria. Incumbency, communities of interest, and natural boundaries also were factors in determining legislative districts, and an inviolable informal rule prevented the division of any city or county. Multi-member and floater districts were used to preserve this rule.1/

Urban-rural and sectional conflict characterized legislative redistricting. The roots of the Democratic "Organization," the conservative faction led by Senator Harry F. Byrd, Sr., which dominated the party and controlled Virginia politics until little more than a decade ago, were in rural eastern and southern Virginia. Urban areas, least attuned to the Byrd philosophy of limited growth and minimal services, afforded whatever opposition the Organization encountered. The state's tiny Republican party found a base in rural southwest Virginia's traditional mountain Republicanism.

By custom the legislature appointed a redistricting study commission from among its own membership in each census year. The several commissions consistently recommended more extensive changes than the General Assembly would accept. Organization leaders in the legislature asserted control once the commission reported, drawing largely upon the available districts of rural retirees to allot urban areas some, but not all, of the additional state legislative seats merited under

the latest census. In turn, competition among the urban areas for the limited number of new seats thwarted any urban coalition strategy. The handful of incumbent Republicans generally were secure and more often than not supported the Organization plan. Congressional districting was largely a matter of incumbency protection and district stability.

Redistricting was a legislative prerogative. Congressional incumbents usually sought advantage through legislative intermediaries, and the governor, normally an Organization stalwart, intervened in the redistricting process only to ensure that a stalemate did not develop. In 1952, for example, the governor called a special session after the Assembly failed to redistrict at its regular session.

Redistricting in the 1960s

Rapid urbanization after World War II created an "urban corridor" stretching from the northern Virginia suburbs of Washington, D.C., south to Richmond, and then east to the cities of the Hampton Roads and Tidewater regions. The 1960 census revealed that the plans drawn in 1952 now underrepresented urban areas by eight seats in the House (100 members) and by three seats in the Senate (forty members). Maximum population deviations between districts were 308.8 percent for the House and 235.5 percent for the Senate. In congressional districting, all urban areas were underrepresented: northern Virginia was 33.3 percent over the ideal district population, the urban Tidewater 25.0 percent. The maximum population deviation for congressional districts was 54.2 percent.

The General Assembly showed little inclination to address these problems, failing in 1960 to create the customary redistricting commission. The governor appointed a commission composed equally of legislators and non-legislators, but the 1962 Assembly ignored its recommendations and made only token legislative redistricting changes. No action was taken on congressional districts, since the number of representatives remained at ten.

Urban voters challenged both House and Senate districts in federal court immediately after the Baker decision. A 1962 district court decision overturning both plans was upheld by the Supreme Court on June 15, 1964, in one of the companion cases to the Reynolds decision.2/ Acting under a district court deadline, the legislature then drew districts which gave urban areas their full representation. The redistricting was more partisan than before, as several Republican districts were extensively altered; most Republican legislators voted against the plan. The district court in 1965 rejected a challenge by black voters in Richmond to a multi-member House district embracing Richmond and suburban white Henrico County.

The reapportioned legislature was only marginally younger and more diverse in composition than its predecessors. Republican strength remained at eleven House and four Senate seats. Paradoxically, however, the 1966-68 sessions were markedly more progressive and productive than their predecessors. The Virginia electorate practically doubled when the 24th Amendment (1964) removed the poll tax. Senator Byrd died in 1965, and Democrats, under the leadership of Mills Godwin (who was elected governor in 1965), sought to appeal to the new urban and black electorate by moderating the party's traditional posture. The next sessions were dramatically different in policy output not so much because the membership was different but because many of the same legislators now saw the political need for change.

New congressional districts were drawn in 1965 after the state Supreme Court held the existing plan in violation of both the state constitution and the U. S. Supreme Court's one man-one vote standard.3/ The new plan was adopted without obvious partisan overtones. Three distinctly urban districts resulted, while two other districts had large "urban corridor" components. The only casualty of the redistricting occurred in one of these latter districts when an area of suburban northern Virginia, added to the district in place of several rural counties, helped defeat House Rules Committee Chairman Howard Smith in the primary and elect a

Republican in the general election. Republicans also picked up a fourth seat not related to reapportionment events. The new congressional districts ranged from 6.1 percent above to 4.5 percent below the population ideal.

Redistricting in the 1970s

The Democratic party had dissolved into factionalism and a Republican was governor by 1971. Republicans controlled six of ten congressional seats and, while moderate and conservative Democrats still controlled the General Assembly, Republican strength had risen to twenty-four House and seven Senate seats.

The General Assembly faced the task, after the 1970 census, of shifting approximately eight House and three Senate seats to urban areas. The central issue in state legislative redistricting, however, was whether the Assembly would abandon tradition and adopt a single-member system, which would require that cities and counties be split. Pressure to do so was exerted both by the need to meet the narrower population "exactness" standards of the Preisler decision and by the possibility that the Department of Justice, in its review under the 1965 Voting Rights Act, might require a single-member system anyway. The traditional redistricting commission was dropped from the redistricting process after 1970. Instead, the standing committees of the legislature, to which reapportionment measures are referred, also undertook the pre-session activities.

The Senate generally was agreed to protect incumbents, target a few "mavericks" (such as liberal faction leader Henry Howell of Norfolk) for defeat, and create districts of manageable campaign and constituent-contact size. The Senate found that these goals could be realized by using a single-member system which divided urban localities and a few rural localities, and Senate redistricting was accomplished with little difficulty. All but one of the districts were within five percent of the population ideal. Only one Republican clearly seemed to be targeted

for defeat, and most Republicans supported the plan. The Senate "Old Guard," remnants of the pre-1965 Organization, simplified matters by choosing to retire.

In the House, close residential proximity of incumbents in urban multi-member districts made it likely that several incumbents would end up in the same single-member districts. Nor was there any clear partisan advantage to be gained from a single-member system. And finally, cities and counties as units of representation would have been much more eroded in the House than in the Senate by single-member districts.

The House therefore finally approved a plan using multi-member and floater districts which had a maximum population deviation of at least 16.4 percent. For the first time a locality was divided, two five-member districts being drawn for Fairfax County. The plan was the most partisan to date; several rural Republican incumbents were submerged in Democratic majorities, and a floor amendment shifted an extra seat from Fairfax, where Republicans had enjoyed recent success, to Norfolk, a Democratic city.

The Department of Justice objected to multi-member districts in five Virginia cities but withdrew its objection after the Supreme Court refused, in Whitcomb v. Chavis, to rule such districts per se unconstitutional. Both legislative plans in the meantime were challenged in federal district court, the cases being combined as Howell v. Mahan.4/ Senator Howell successfully sought a combined three-member Senate district for Norfolk and part of Virginia Beach due to technical difficulties in allocating shipboard Navy population among single-member districts. The court overturned the House plan because of the population disparities and ordered its own plan, under which the House was elected in 1971. The court plan divided a dozen localities but continued to use multi-member and floater districts.

On appeal, the U. S. Supreme Court on February 21, 1973, issued the landmark Mahan v. Howell decision, in which the Court first distinguished a less restrictive

standard for state legislative than for congressional districts.5/ The Court upheld the 1971 Assembly plan, specifically recognizing that since the legislature does enact legislation applying to localities, protection of political subdivision boundaries was a rational state purpose justifying the deviation from the ideal. The Court upheld the lower court change in the Senate plan.

Congressional redistricting in 1971 differed most markedly from the past in the level of partisanship. In order to preserve separate districts for two Democratic incumbents, the 4th District was allowed to snake narrowly along the James River, from urban Tidewater to Appomattox County in the center of the state. On the other hand, Republican incumbents in both the 6th and 8th Districts were shifted into districts already held by Republicans, the 9th and 10th Districts respectively. The necessary shifts of seats to urban areas were made without much difficulty, northern Virginia receiving an additional district of its own (its second) and urban Tidewater's weight increasing in a district which it shared with rural neighbors. (A second district continued to be composed entirely of urban Tidewater localities.) Refusal to divide any locality other than Fairfax County left the plan with a maximum deviation of 7.3 percent, however, which was above the 1969 Supreme Court standard set in Preisler.

The congressional plan was challenged in federal district court after the state Supreme Court refused to act. The federal court found the plan inadequate on population grounds and enjoined elections under the plan. Within two weeks of the court's decision, the 1972 legislature produced an acceptable plan with a maximum deviation of 0.68 percent. (The announcement by the 4th District incumbent, after the injunction, that he would not seek re-election aided the Assembly considerably.) Population exactness was approached by dividing three localities in addition to Fairfax County.

The changes affecting Republican congressmen were allowed to stand, but the Republicans captured all four affected districts in the 1972 elections. They increased their strength to seven in all by capturing the redrawn 4th District as well.

Redistricting in the 1980s

Virginia increasingly has become Republican in national and statewide politics. The GOP has held the governor's office throughout the seventies. One of two U. S. senators is a Republican, as are six of the ten members of the House of Representatives. After a mid-seventies decline in legislative seats, Republicans also may be on the verge of extending their success to the state legislative arena. In the 1979 general elections they captured twenty-five House and nine Senate seats. With the Assembly the last bastion of Democratic control, partisan factors are bound to color the 1981 reapportionment.

Preliminary estimates are that the state's population has increased by 14 percent since 1970, with most of the growth coming in the outer suburbs of northern Virginia, the Tidewater, and Richmond. Transfer of seats to these localities from the central cities and the inner suburbs, rather than rural to urban shifts, will be the dominant fact in 1981. Redistricting again will be controlled by the standing legislative committees, since no commission was created. Numerous groups are prepared to monitor the redistricting, including some (such as Common Cause) who favor single-member districts. The governor, a dedicated Republican, can be expected to use his access to the public forum to protect his party's interests, if necessary. Nothing suggests, however, that the tradition that redistricting is the domain of the General Assembly will change in 1981.

The Senate is set to extend its single-member system, since census data this year will allow the division of Norfolk. Only eight districts are within the

five percent tolerance which has been set as a guideline, and the main question will be whether conflicts among Democratic incumbents can be avoided. Retirements may hold the key as to whether the process will be a harmonious one. Recent Republican successes also may make some members of that party inviting targets for major district changes by the Democratic majority, both because of their party and because many of them lack seniority.

The practical dilemma for the House will be much the same as in 1971, namely whether to adopt a single-member system which has the same political and practical drawbacks that it did in 1971. Another major problem for the House is that preliminary population estimates suggest that counties and cities cannot easily be arranged into districts meeting a five percent deviation criteria. (Only eleven districts, with nineteen delegates, are now within that tolerance.) The steps required to bring all the districts into line--namely, extensive breaking up of traditional local groupings, creation of multi-member districts of large geographical and population size, and use of several large floaters--may prove politically very difficult. The choice of approaches could well split party, sectional, and factional ranks in the House, and no clear preference of approaches yet has emerged.

Adjustments will be necessary in all but one of the congressional districts, where deviations are estimated to range from 12.06 percent above to 7.66 percent below the ideal. Growth in the outer northern Virginia suburbs makes the 7th and 8th Districts the most overpopulated, and the excess population from these districts almost certainly will be distributed to the 5th and 6th Districts. These adjustments appear politically feasible at this point, and all affected incumbents should retain separate districts. The most difficult problem, and the one which may give rise to some serious partisan conflict, promises to be the rearrangement of the common borders of the 5th, 6th, and 7th Districts. A University of Virginia Professor has put

forth the idea of creating a "central city" district of Norfolk, Portsmouth, Hampton, and part of Newport News. There seems to be little legislative sentiment in favor of this idea, but the concept may become an issue at some point.

NOTES

1/ A "floater" district refers to a situation in which two or more regular districts, each with its own separate representation, are combined to elect an additional, or "floater," representative.

2/ Davis v. Mann, 377 U.S. 678 (1964).

3/ Wilkins v. Davis, 205 Va. 803, 139 S.E. 2d (1965).

4/ 330 F. Supp. 1138 (E.D. Va. 1971).

5/ 93 S. Ct. 979 (1973).

WEST VIRGINIA

Kathleen M. Arnold

County integrity, rather than partisan politics, has historically played the predominant role in West Virginia redistrictings. The original constitution stated that the criteria in drawing legislative districts should be, in order of priority, the preservation of county integrity, compactness, contiguity, and populations as equal as possible. Therefore, population has traditionally been a less prominent concern than the issue of county representation. Because of these constitutional priorities, the constitutional formulas for House and Senate representation have made it all but impossible to strictly apply the one man-one vote rule in West Virginia.

According to the constitution, seats in the House of Delegates, the legislature's lower chamber, were to be apportioned so that each county would receive at least one delegate unless a county had insufficient population to entitle it to a delegate. If a county did not qualify for individual representation, due to the fact that its population was less than three-fifths of the quotient obtained by dividing the membership of the House by the population of the state, then it was to be combined with one or several other counties to form a delegate district.1/ However, although the constitution allowed for a scheme where some counties would serve as multi-member districts, and some small counties would be combined to form either single or multi-member districts, the legislature usually ignored these constitutional provisions and gave each county at least one delegate rather than combining any county with another to form a delegate district.2/

The original constitution provided senatorial representation through nine senatorial districts, each electing two senators. These districts followed the mandate of the constitution that county lines be left intact. By 1970 the number of two-member Senate districts had been increased to seventeen.

At the time of the 1960s redistricting, Democrats controlled both houses of the legislature, as well as the governorship. Therefore, this redistricting was conducted by a Democratic legislature without fear of a veto by the governor. However, the redistricting centered around the issue of county representation rather than partisan politics. The legislature proposed a constitutional amendment in 1962 that would have guaranteed at least one House delegate to each county, but the amendment was defeated by the voters.3/ In 1963 the House voted to increase its membership from 100 to 106 so that the size of the districts would be smaller, thus lowering the ratio of representation and requiring the creation of fewer delegate districts. By increasing the size of the House, the ratio of representation was lowered to 10,530; twelve counties were below this ratio, as opposed to thirteen under the 100-delegate plan.4/ The legislature, however, still refused to create delegate districts and eventually gave each county at least one representative, regardless of population.

The complicating factor in the 1960s Senate districting was that the state's population had shifted such that Kanawha County could not be represented by a single two-member district without causing huge population disparities. But constitutionally neither Kanawha County nor the city of Charleston could be split to form two districts. Therefore, a seventeenth "replica district" was added to the plan in 1968 so that Kanawha County was represented by both the 8th and the 17th Senate Districts, giving the county a total of four senators. The rest of the Senate districts all contained one or several counties. (The larger two-member districts made it easier for the legislature to maintain county lines in Senate districting than in House districting.)

Congressional districts are the largest districts in West Virginia, and it would follow that the size of the districts would make them the easiest for the legislature to draw, given the legislature's concern for county integrity; but it was the congressional districts drawn in 1961 that led to the only redistricting court case to be filed in West Virginia in the 1960s. The suit, which was filed in federal district court by five Republicans, charged that the 1961 districts, with a population disparity between the largest and the smallest of 39.1 percent, were not in keeping with the state constitutional mandate that districts by as nearly equal as possible in population. The court ruled in favor of the plaintiffs and ordered the legislature to redraw the congressional plan. The new plan, drawn in 1968 using 1960 census data, had a population disparity of 1.9 percent between the largest and the smallest districts, and still did not cut any county lines. At that time these districts had the lowest disparity of any congressional districts in the United States. Politically, the redistricting gave Representative Ken Hechler (D), who had been the target for defeat in earlier plans, an advantage at the expense of Representative John M. Slack, Jr. (D). The only Republican congressman (Arch Moore, who retired to run for governor in 1969) was not affected by the plan drawn by the Democratic majority in the legislature.5/

West Virginia attempted another redistricting in 1971, and it was the '71 plan rather than the '61 plan that prompted the first court challenge to the constitutional scheme of apportionment in the state. The population trends of the 1960s were the same as those of the '50s, and the 1970 census revealed a significant increase of population in the city of Charleston and the surrounding area of Kanawha County. Therefore, when the House attempted to redistrict itself so as to provide at least one representative to each county, the result was a population deviation between the largest and the smallest district of 122.9 percent. Plaintiffs from counties underrepresented in this plan lost no time in filing suit in federal district court.

Represented by the Appalacian Research and Defense Fund, they claimed that the huge population variances diluted their votes. In Goines v. Haiskell,6/ a three-judge panel declared the 1971 House plan unconstitutional. The state constitutional formula regarding House reapportionment was struck down on the grounds that it resulted in impermissible variations in district populations. The state was ordered to hold the 1972 elections with the plan drawn in 1963, even though the 1970 census figures showed that the districts in that plan had even greater population disparities than those in the 1971 plan. The court threatened to enact a plan of its own if the legislature failed to redistrict by the end of its 1973 session.

The plan enacted by the legislature in 1973 did not follow the constitutional formula, but rather combined adjoining counties to form large multi-member House districts. County lines were cut in six instances in this plan, the first time this had been done in legislative redistricting in West Virginia. The maximum percentage variance of the new plan, based on 1970 census figures, was 16.2 percent. Due to the fact that the U.S. Supreme Count had just approved a 16.4 percent variance in a Virginia legislative redistricting case,7/ the West Virginia legislature had some confidence that its new plan would be upheld.

Nevertheless, the plaintiffs in the previous House redistricting suit petitioned the federal court to reopen the case, maintaining that a more equitable plan was possible and thus constitutionally required. They presented an alternative plan, one with a maximum variance of only 2.3 percent. The plaintiffs' plan, however, cut the boundaries of twenty-three of the state's fifty-five counties. The court, in the case restyled as Goines v. Rockefeller,8/ upheld the legislature's plan in August 1973.

In the early 1970s, West Virginia had a Republican governor, Arch Moore, and his reaction to Senate redistricting, which did not prompt any court case, was to veto every plan the legislature drew. His concern was that the large districts created by the Democratic legislature would submerge Republican votes. Moore

vetoed the 1971 and the 1974 plans. In 1976 the legislature presented a new plan with a 22.9 percent population variance between the largest and the smallest districts, according to 1970 census data. Democratic Governor John D. Rockefeller IV, who was elected in 1976, let the plan become law without his signature.

In 1971, West Virginia lost a seat in Congress, its delegation being reduced from five to four; therefore, a new congressional districting plan was necessary. In 1971, the legislature enacted a congressional redistricting plan that left county lines intact. Because the federal courts had imposed a more stringent population requirement for congressional districts than for state legislative districts,9/ the smallest possible population deviation was mandated. The 1971 plan created congressional districts with a percentage variance of less than one percent (0.8 percent), based on 1970 census figures.

Despite this very small variance, however, the congressional redistricting was challenged in federal court, the plaintiffs contending that the legislature had passed over several possible plans with even smaller percentage variances. Defenders of the enacted plan responded that the alternative plans, although perhaps closer to population equality, were unreasonable in that they severed county lines, created districts that were not compact, and established districts composed of areas that had no community of interest. In West Virginia Civil Liberties Union v. Rockefeller (1972), the three-judge federal court unanimously upheld the enacted plan.

The 1981 redistricting in West Virginia can be expected to create few major controversies. The November 1980 voting resulted in the re-election of Democratic Governor John D. Rockefeller IV, as well as the preservation of Democratic control in the legislature. Therefore, partisan conflicts will be avoided when the state attempts to redistrict, and the central controversy will be over the question of how to maintain the integrity of the counties. The House districting will probably be

accomplished using the same criteria and methods used in 1973, since the legislature is unlikely to risk another court suit. It might be somewhat easier to preserve county lines in 1981, since Kanawha County has lost population, while the smaller mining counties of the panhandle have gained population. Thus the state's population as a whole will be more evenly distributed throughout the counties.

The 17th Senate District, the "replica district" in Kanawha County which was created in 1968, will probably remain in the 1981 plan, since the Kanawha County population has not dropped enough for the county to lose a Senate district. And although the number of congressional districts will not change in 1981, a congressional redistricting will still be necessary since mid-decade census projections have revealed a 6.8 percent maximum population deviation between the largest and the smallest existing congressional districts, and the U.S. Supreme Court has set three percent as the *de minimum* standard for congressional districts.

NOTES

1/ Oscar D. Lambert, West Virginia and Its Government (Boston: D.C. Heath & Co., 1951), p. 210.

2/ Claude J. Davis, West Virgina State and Local Government (Morgantown: Bureau of Government Research, West Virginia University, 1963), p. 82.

3/ "Legislative Ratios Questioned in West Virginia," National Civic Review 52 (April 1963): 209-10.

4/ Davis, West Virginia, p. 83.

5/ "West Virginia 1968," Congressional Quarterly, March 22, 1968, pp. 607-8.

6/ 272 F. Supp. 313 (1972).

7/ Mahan v. Howell, 93 S. Ct. 979 (1973).

8/ 338 F. Supp. 1189.

9/ Kirkpatrick v. Preisler, 89 S. Ct. 1225 (1969).