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REPORT OF THE

LEGISLATIVE BRANCH COMMITTEE

TO THE

CONSTITUTIONAL STUDY COMMISSION

ON

JULY 20, 1972.

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PROBLEMS OF REAPPORTIONMENT

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sota Constitutional Study Commission

From: Legislative Branch Committee

Subject: Recommendations for Revising Constitutional Provisions Regarding Apportionment and Districting

We are enclosing a copy of our Report which sets forth the recommendations we are making with respect to revision of the constitutional provisions regarding apportionment and districting.

Senator Robert J. Brown dissents from these recommendations, but agrees that the task of apportionment and districting should be taken away from the Legislature. We are also enclosing a copy of Senator Brown's alternative proposal.

We should point out that the recommended provisions regarding the size of the Legislature are tentative only and should not be taken as reflecting the final judgment of our Committee.

Our report is scheduled for consideration at the full Commission meeting on July 20.

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RECOMMENDED CONSTITUTIONAL PROVISIONS
FOR PERIODIC REAPPORTIONMENT AND REDISTRICTING

I. INTRODUCTION

Minnesota's recent experience with reapportionment following the 1970 Census reveals the inadequacy of the existing constitutional provisions governing reapportionment and redistricting. We are proposing alternative constitutional provisions which would take this task away from the Legislature and entrust it to an Apportionment and Districting Commission.

A brief summary of our recent experience will help to underscore the need for constitutional revision in this area.

II. HISTORY OF REAPPORTIONMENT IN MINNESOTA

A. Constitutional Provisions

1. Article 1, section 1 provides:

> The legislature shall consist of the Senate and the House of Representatives. The Senate shall be composed of members elected for a term of four years and the House of Representatives shall be composed of members elected for a term of two years by the qualified voters at the general election.

2. Article 4, section 2 provides:

> The number of members who compose the Senate and House of Representatives shall be prescribed by law, but the representation in the Senate shall never exceed one member for every 5,000 inhabitants, and in the House of Representatives one member for every 2,000 inhabitants. The representation in both houses shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof.

3. Article 4, section 23 provides:

> The legislature shall have the power to provide by law for an enumeration of the inhabitants of this State, and also have the power at their first session after each enumeration of the inhabitants of this State made by the authority of the United States, to prescribe the bounds of congressional, senatorial and representative districts, and to apportion anew the senators and representatives among the several districts according to the provisions of section second of this article.

4. Article 4, section 24 provides:

> The senators shall also be chosen by single districts of convenient contiguous territory, at the same time that members of the House of Representatives are required to be chosen, and in the same manner; and no representative district shall be divided in the formation of a Senate district. [The section then contains provisions which eliminated staggered senatorial elections after the 1881 reapportionment. It goes on to say that] thereafter, senators shall be chosen for four years, except there shall be an entire new election of all the senators at the election of representatives next succeeding each new apportionment provided for in this article.

B. Reapportionments Prior to 1972 Reapportionment

Despite the fact that Art. IV, section 23 has called for reapportionment at the first legislative session after each federal census, there have only been nine general reapportionments in Minnesota since the adoption of the State's Constitution in 1857. Initially there were 26 districts, 37 senators and 80 representatives.[1/] The

succeeding plans, and the number of districts and legislators they specified, were

	Districts	Senators	Representatives
Laws 1860, c. 73	21	21	42
Laws 1866, c. 4	22	22	47
Laws 1871, c. 20	41	41	106
Laws 1881, c. 128	47	47	103
Laws 1889, c. 2	54	54	114
Laws 1897, c. 120	63	63	119
Laws 1913, c. 91	67	67	130

By Laws 1917, c. 217, the number of representatives was increased by one (the 65th district), but there was no accompanying general reapportionment.

Ex. Sess. Laws 1959, c. 45	67	67	135
Ex. Sess. Laws 1966, c. 1	67	67	135

In the 46 years that elapsed between the 1913 and the 1959 reapportionment, the Minnesota Supreme Court refused to intervene to compel reapportionment.[2] The 1959 reapportionment was spurred by a pioneer three-judge federal district court ruling which anticipated the later decision of the Supreme Court of the United States in Baker v. Carr[3]. The federal court concluded that it had jurisdiction to entertain a suit to have the 1913 reapportionment declared unconstitutional because of the federal constitutional issue asserted, namely that the 1913 reapportionment violated the equal protection clause of the Fourteenth Amendment to the U.S. Constitution.[4] Though the court held that the Legislature's duty to apportion itself was

"unmistakable," it deferred consideration of the issue presented until the legislature "has once more had an opportunity to deal with the problem, which is of vital concern to the people of the state."[5/]

In the light of the Supreme Court's subsequent holdings, the 1959 reapportionment was unconstitutional, particularly after the 1960 census.[6/] On December 3, 1964, a three-judge federal district court, presided over by Judge Blackmun, said so.[7/] Based on the 1960 census, the population of Senate districts varied from 100,520 to 24,428, -- a maximum population-variance ratio of 4.1 to 1; the population of House districts varied from 56,076 to 8,343, a maximum population-variance ratio of 6.7 to 1.[8/] But the court, following the example of Magraw v. Donovan,[9/] allowed the Legislature a final opportunity to reapportion itself. The Legislature passed a reapportionment bill which was vetoed by Governor Rolvaag. The Governor's veto power over this subject matter was challenged but was upheld by the Minnesota Supreme Court.[10/]

The Legislature then adjourned without passing a new reapportionment bill. Though requested to reapportion the Legislature itself, the three-judge federal court refused to do so.[11/] Instead it urged Governor Rolvaag to call the Legislature into special session.[12/] The Governor responded to this urging and the Legislature passed the 1966 reapportionment bill which he signed into law.

The 1970 federal census took place in due course. The 67th session of the Minnesota Legislature convened in

January 1971 and its committees immediately began to consider possible reapportionment plans. But it was not able to produce a reapportionment bill during its regular session, which ended on May 24, 1971. In April 1971, while the Legislature was in regular session, three qualified voters of the State brought an action in the federal district court seeking (1) a declaratory judgment that the 1966 Act was unconstitutional; (2) an injunction restraining the Minnesota Secretary of State and all county auditors from conducting future elections for legislators pursuant to the 1966 Act; and (3) reapportionment of the Legislature by the federal court itself. The Sixty-seventh Minnesota State Senate intervened as a party defendant, as did three other qualified voters. The Democratic Farmer-Labor Party , the Minnesota Farmers' Union, the Minnesota Farm Bureau Federation, the Minnesota Chapter of Americans for Democratic Action, Lieutenant Governor Rudy Perpich and State Representative Jack Fena were admitted as amici curiae.

The court awaited action by the Legislature. Immediately following the end of the regular session, Governor Wendell Anderson called a special session of the Legislature, primarily because a tax bill for the coming biennium had not yet been passed. The special session lasted from May 25-July 31 and from October 12-30, a total of 86 calendar days, during which the Legislature met on 54 days. It was the longest special session in the State's history and cost approximately $600,000.

On October 29, 1971, the Legislature passed a reapportionment bill and adjourned sine die on October 30. The Governor vetoed the bill and did not call another special session of the Legislature.

On June 25, a month after the regular sessions adjournment, a three-judge district court was convened. On November 15, 1971, it declared the 1966 Reapportionment Act to be unconstitutional in its entirety, enjoined the Secretary of State and county auditors from conducting future elections under that Act and appointed two Special Masters (a third was named later) to aid it in formulating a reapportionment plan. On December 3, it announced that it would divide the State into 35 senatorial districts and each senatorial district into three house districts and requested the parties, intervenors and amici to propose apportionment plans on this basis.

On January 25, 1972, the federal district court entered its final plan of apportionment and ordered 1972 elections under the new plan, "or a constitutional plan adopted after this date by the State of Minnesota," for all positions in the Senate and House.[13/] The Minnesota Senate appealed to the Supreme Court of the United States from the orders of the three-judge federal District Court. The Supreme Court concluded that the District Court had erred in reducing the size of the Minnesota Legislature, and summarily vacated its orders and remanded the case for further proceedings "promptly to be pursued."[14/] As a guide to the federal district court, the Supreme Court stated:

> We do not disapprove a court-imposed minor variation from a State's prescribed figure when that change is shown to be necessary to meet constitutional requirements. And we would not oppose the District Court's reducing, in this case, the number of representatives in the Minnesota house from 135 to 134, as the parties apparently have been willing to concede. That action would fit exactly the 67th district pattern.[15/]

III LESSONS FROM MINNESOTA EXPERIENCE

It seems clear that even a constitutional directive to the Legislature to reapportion itself periodically will not assure that this will be done. The political impact of reapportionment upon the contending political parties and upon incumbent legislators is almost guaranteed to produce stalemate whenever the Legislative and Executive branches of government are controlled by different political parties. When both the Legislative and Executive branches of government are controlled by the same political party, there is always great danger that the resulting reapportionment will be unfair to the party out of power.

Recent experience, therefore, throws some doubt on the wisdom of the view expressed by the United States Supreme Court in Reynolds v. Sims that "legislative apportionment is primarily a matter for legislative consideration and determination." 16/ At the same time, it also underscores the wisdom of the three-judge federal district court which hesitated to apportion the Legislature in 1966. The court explained:

> [T]he courts are not designed for the purpose of drafting legislative reapportionment plans. We are not equipped with the expert staff and manpower necessary for gathering, by public hearing, or otherwise, the required basic data and diverse, political, geographical and social viewpoints necessary to frame an equitable and practical reapportionment plan. Judges are not ideally suited by training or experience artfully to perform the task. We are basically interpreters, not makers of the law.

> We are not unmindful that the courts do have authority to decree reapportionment, but this is a power to be exercised only in the extraordinary situation where the Legislature failed to do so in a timely fashion after having had an adequate opportunity to do so. . . .[17]

The initial, aborted effort of the federal district court to reapportion in 1972 made it very difficult for the political parties to prepare for the 1972 election. Primaries are scheduled for September 12. Legislative candidates must file between July 5 and July 18 and it was not until May 30 that any candidate knew the contours of the district in which he might wish to run. Furthermore, Minnesota law requires that a legislative candidate establish residence in his district by May 7. Since the Supreme Court's decision was handed down April 29, 1972, the Court recognized that this deadline could not be met. Accordingly, it stated that the District Court "has the power appropriately to extend the time limitations imposed by state law." [18]

Clearly it is desirable that the state should act so as to make it unnecessary for the federal courts to intervene in its political affairs. It is equally desirable to minimize the participation of state courts in these political matters so as not to risk jeopardizing the trust and confidence that should be reposed in courts when they perform their other judicial functions.

The constitutional procedure for periodic reapportionment and redistricting which we recommend attempts to avoid the

difficulties encountered in our past experience. We propose to take the task of reapportionment away from the Legislature and impose it upon a commission.

Before we present our recommendation in detail, it may be helpful to indicate how the constitutions of other States handle the problem of reapportionment.

IV. SYSTEMS OF APPORTIONMENT IN OTHER STATES

Ten states provide an alternative procedure for reapportionment if the Legislature fails to reapportion itself. But in the first instance they impose the duty of apportionment upon the Legislature itself. Eight states bypass the Legislature entirely and provide for initial reapportionment and redistricting by some agency other than the Legislature. No uniformity is apparent in the systems actually used by each group of states. Appendix I sets forth the constitutional provisions of these states.

A. States Which Look To Legislature To Reapportion Itself But Provide An Alternative Procedure If Legislature Fails To Perform Its Duty.

1. CALIFORNIA

Article IV, section 6 of the California Constitution requires the Legislature to reapportion itself at its first regular session after each Federal census. But if it fails to do so, a Reapportionment Commission is created to perform the task. The Commission consists of the Lieutenant Governor, who is its chairman; the Attorney General; State Controller; Secretary of State and State Superintendent of Public Instruction.

2. CONNECTICUT

Section 6a of the Connecticut Constitution requires the General Assembly to reapportion itself at its first regular session after each Federal census, but by a vote of at least two-thirds of the membership of each House. If it fails to do so by the April 1 next following the completion of the census, the Governor is required to appoint an eight-member Commission to undertake the task. The president pro tempore of the Senate, the Speaker of the House of Representatives, the minority leaders of the Senate and House each designate two members.

The Commission must act by July 1 next succeeding the appointment of its members. Six of its eight members must approve its reapportionment plan. If it fails to act by July 1, a three-member board must be empaneled to accomplish the task by October 1 next succeeding its selection. The Speaker and the minority leader of the House of Representatives are each required to designate as one member of the board a judge of the state's Superior Court. The two members of the board so designated select an elector of the state as the third member.

3. Illinois

The Illinois Constitution, Section 3, directs the General Assembly to redistrict itself, after each Federal census, into compact and contiguous districts which are substantially equal in population. If no redistricting plan is in effect by June 30 of the year following the census, a bipartisan Legislative Redistricting Commission to do the redistricting must be formed by July 10. The Commission is to consist of eight members, no more than four of whom may be members of the same political party. Four members are to be legislators, one Senator appointed by the President of the Senate, one Senator appointed by the Minority Leader of the Senate, one Representative appointed by the Speaker of the House of Representatives and one Representative appointed by the Minority Leader of the House of Representatives and four members are to be non-legislators, one of whom is appointed by each of the four chief officials of the Legislature.

By August 10, the Commission must file with the Secretary of State a redistricting plan approved by at least five members. If it fails to do so, the Supreme Court is required, by September 1, to submit the names of two persons, not of the same political party, to the Secretary of State. By September 5

the Secretary of State must select the "tie-breaker" by lot. A redistricting plan approved by at least five members must be filed with the Secretary of State by October 5.

4. Maine

Article IV, section 3 of the Maine Constitution provides that if the Legislature should fail to apportion itself, the Supreme Judicial Court of the State shall do so.

5. Maryland

Article III, section 5 of the Maryland Constitution requires the Governor to prepare a plan for legislative districting and apportionment after each federal census. The plan must be presented to the Maryland General Assembly which may then, by law, enact it or a plan of its own. If it fails to do so within a specified time, the plan proposed by the Governor becomes law.

6. North Dakota

Article II, section 35 requires the Legislature to reapportion itself after each Federal census. If it fails to do so, the task is imposed upon the Chief Justice of the Supreme Court, the Attorney General, Secretary of State, and the majority and minority leaders of the House of Representatives.

7. Oklahoma

Article V, section 11A of the Oklahoma Constitution makes it the duty of the Legislature to reapportion after each Federal census. If it fails to do so within the time specified, then the task is imposed upon an Apportionment Commission composed of the Attorney General, Secretary of State, and the State

8. Oregon

Article IV, section 6 of the Oregon Constitution imposes the duty of reapportionment after each Federal census upon the Legislature. If the Legislature acts, its reapportionment plan may be reviewed by the state Supreme Court at the instance of any qualified elector. If the Supreme Court invalidates the Legislature's plan, it is required to direct the Secretary of State to draw up a plan. This plan, in turn, is subject to judicial review until such time as the Court approves it. When it finally does so, it files the plan with the Governor and it becomes law upon such filing.

If the Legislature fails to act within a specified time, the Secretary of State is required to draw a reapportionment plan, subject to review, as explained above, by the state Supreme Court.

9. South Dakota

Article III, section 5 of the South Dakota Constitution requires the Legislature to reapportion its membership after each Federal census. If the Legislature fails to do so, the task must be undertaken by the Governor, Superintendent of Public Instruction, Presiding Judge of the Supreme Court, Attorney General and Secretary of State.

10. Texas

Article III, section 28 of the Texas Constitution, imposes the duty of reapportionment after each Federal census upon the Legislature. If the Legislature fails to do so within the specified time, the task devolves upon the Legislative Redistricting Board of Texas. This Board is composed of five members -- the Lieutenant Governor, the Speaker of the House of Representatives, the Attorney General, the Comptroller of Public Accounts and the Commissioner of the General Land Office.

The state Supreme Court is empowered to compel the Board to perform its duty.

B. States Which Bypass Legislature And Provide For Initial Reapportionment And Redistricting By Some Agency Other Than Legislature Itself

1. Alaska

Article VI, section 3 of the Alaska Constitution empowers the Governor to reapportion the Alaska House of Representatives after each Federal census. It requires him to appoint a Reapportionment Board to advise him in the performance of this task. Section 8 provides that the Board must consist of five members, appointed without regard to political affiliation, none of whom may be public employees or officials and at least one of whom must be appointed from the Southeastern, Southcentral, Central and Northwestern Senate Districts. Within 90 days following the official reporting of the Federal census, the Board must submit a reapportionment and redistricting plan to the Governor. Within 90 days after receiving the plan, the Governor must issue a proclamation of reapportionment and redistricting and explain any change he made from the Board's plan.

Apparently, once the election districts for the House of Representatives are fixed, the Board and Governor also determine which districts shall be included in each senatorial district.

2. Arkansas

Article 8, section 1 of the Arkansas Constitution makes it the "imperative duty" of a Board of Apportionment -- consisting of the Governor, the Secretary of State and the Attorney General -- to apportion legislative representatives in accordance with the provisions of the Constitution. Any citizen or taxpayer may bring an action in the state Supreme Court to compel the Board to perform its duties.

Proceedings "for revision" of the Board's work may be instituted in the Supreme Court of Arkansas. But the court may substitute its plan for that of the Board only if it finds that the Board acted arbitrarily or abused its discretion.

3. Hawaii

Article III, section 4 of the Hawaii Constitution requires reapportionment every eighth year beginning in 1973. For this purpose, it creates a Legislative Reapportionment Commission consisting of nine members -- two selected by President of Senate; two, by Speaker of House; one, by the members of the House belonging to the Party or Parties different from that of the Speaker; one, by the members of the Senate belonging to the Party or Parties different from that of the President of the Senate; two, by the latter two members. The eight members so selected, by a three-fourths vote, choose the ninth member, who acts as Chairman.

The Commission must present a reapportionment plan within 120 days from the date on which it is formally constituted. No member of the Commission is eligible to become a candidate for election to either house in either of the first two elections under the plan.

Any registered voter is authorized to bring suit in the Supreme Court of Hawaii to compel the Commission to perform its duty or "to correct any error made in a reapportionment plan."

4. Michigan

Article IV, section 6 of the Michigan Constitution imposes the task of reapportionment after each Federal census upon an eight-member Commission on Legislative Apportionment. Four of the eight are to be selected by the State organization of the political party whose candidate for Governor received the highest vote at the last general election at which a Governor was elected preceding each apportionment; the other four are to be selected by the state organization of the political party whose candidate for Governor received the next highest vote at such election. If a candidate for Governor of a third political party received more than 25 percent of the vote at such election, the Commission membership is expanded to 12 and the state organization of the third party selects four members.

Geographic representation is required on the Commission.

Members of the Commission are not eligible for election to the Legislature until two years after the apportionment in which they participated becomes effective.

The Commission is required to complete its work within 180 days after all necessary census information

is available. If a majority of the Commission cannot agree on a plan, each member of the Commission, individually or jointly with other members, may submit a proposed plan to the State Supreme Court. The Supreme Court must then decide which plan complies most accurately with Constitutional requirements and direct that it be adopted by the Commission.

5. Missouri

a. House of Representatives

Article IV, section 2 of the Missouri Constitution imposes the duty of reapportioning the House of Representatives after each federal census upon a Reapportionment Commission. Two persons are to be nominated for membership on the Commission by each congressional district committee of the political party casting the highest vote for Governor at the last preceding election. Two additional persons are to be nominated for membership on the Commission by each congressional district committee of the political party casting the next highest vote at such election.

The lists of nominees are to be submitted to the Governor who is empowered to appoint one person from each list to the Commission.

If any congressional district committee fails to submit a list, the Governor is required to choose a member from the district in question and from the political party of the committee that failed to act.

Members of the Commission are disqualified from holding office as members of the legislature for four years following the date on which the Commission filed its final apportionment plans.

Within five months of its appointment, the Commission is required to publish a tentative reapportionment plan and hold public hearings to hear any objections to it. Within six months of its appointment, the Commission is required to file its final plan with the Secretary of State. The final plan must have the approval of seven-tenths of the Commission's members.

If the Commission fails to act within the specified time, the task of reapportioning the House of Representatives devolves upon the commissioners of the State Supreme Court.

b. Senate

Article III, section 7 of the Missouri Constitution imposes the task of re-apportioning the Senate after each federal census upon a 10-member Senatorial Apportionment Commission. Ten persons are to be nominated for membership on the Commission by the state committee of the political party casting the highest vote for Governor at the last preceding election. Ten additional persons are to be nominated for membership on the Commission by the state committee of the political party casting the next highest vote at such election.

To be valid, the Commission's reapportionment plan must be approved by seven-tenths of its members.

If the Commission fails to act within six months of its appointment, the task of reapportioning the Senate devolves upon the commissioners of the State Supreme Court.

The lists of nominees are to be submitted to the Governor who is empowered to appoint five persons from each list to the Commission.

If either of the party committees fails to submit a list of nominees, the Governor is required to choose the five members from the political party of the committee that failed to act.

Members of the Commission are disqualified from holding office as members of the Legislature for four years following the date on which the Commission filed its final apportionment plan.

6. New Jersey

Article 4, section III of the New Jersey Constitution imposes the task of reapportionment and redistricting after each Federal Census upon a 10-member Apportionment Commission. Five members are to be appointed by the chairman of the State Committee of the political party whose candidate for Governor received the largest number of votes at the most recent gubernatorial election. Five members are to be appointed by the chairman of the State Committee of the political party whose candidate for Governor received the next largest number of votes at such election. Each state chairman, in making such appointments, is required to give due consideration to the representation of the various geographical areas of the State.

The Commission must act within one month of the receipt by the Governor of the official federal decennial census for the state or on or before February 1 of the year following the year in which the census is taken, whichever date is later.

If the Commission fails to act within the specified time, it must so notify the Chief Justice of the State Supreme Court who is then required to appoint an eleventh member of the Commission. The Commission must then act within one month after the eleventh member is appointed.

7. Ohio

Article XI, section 10 of the Ohio Constitution requires a board consisting of the Governor, State Auditor and Secretary of State, or any two of them, after each Federal census, to ascertain and determine "the ratio of representation, according to the decennial census, the number of representatives and senators each county or district shall be entitled to elect, and for what years within the next ensuing ten years. This power has been held to include the power to redistrict.

8. Pennsylvania

Article II, section 17 of the Pennsylvanis Constitution imposes the duty of reapportioning after each Federal census upon a Legislative Reapportionment Commission consisting of five members -- the majority and minority leaders of both the Senate and House of Representatives and a member and chairman selected by the four. If the four are unable to agree on a chairman, a majority of the entire membership of the State Supreme Court will appoint him.

The Commission is required to file a preliminary reapportionment plan, to which any persons aggrieved by it may file exceptions. After considering any exceptions that may be filed, the Commission is required to issue its final plan.

If the Commission fails to act within the specified time, the duty of reapportionment devolves upon the State Supreme Court.

V. Past Recommendations For Minnesota

It may be of interest also to indicate the proposals with regard to reapportionment procedures which have been made by Minnesota citizens' and groups in the past.

A. The 1948 Constitutional Commission

The 1948 Constitutional Commission recommended that the duty of reapportionment be imposed upon the Legislature in the first instance.[19] If the Legislature failed to discharge its duty, the Governor would be empowered to appoint a Commission of 10 members to reapportion the Legislature. He would choose five members from a list of 10 qualified voters submitted to him by the state committee of the political party casting the highest vote for Governor in the last preceding election and 5 from a list of 10 submitted by the political party casting the next highest vote in that election.[20] If the Commission failed to reapportion, then at the next election, senators would be elected at large, four from each congressional district, and representatives would be elected on the basis of one from each county.[21]

B. The 1959 Citizen-Legislator Committee on Reapportionment

This Commission, appointed by Governor Freeman, also recommended that the duty of

reapportionment be imposed upon the Legislature in the first instance. If the Legislature failed to discharge this duty, it recommended that the duty be assumed by a Commission of district judges designated by and representative of every judicial district in the state.

During the 67th session of the Legislature, Senators Hughes, Ashbach and Brown introduced a bill embodying a modified version of the recommendation of the 1959 Committee.[22] Under the bill, a panel of three (state) district judges would be given the task of reapportionment if the Legislature failed to act by a specified date. The majority and minority leaders of the House of Representatives and Senate would meet with the Chief Justice of the State Supreme Court and proceed to strike the names of district judges until only three remained. The remaining three would constitute the reapportionment panel.

C. The 1965 Bipartisan Reapportionment Commission[23]

This commission, too, recommended that the duty of reapportionment be imposed upon the Legislature in the first instance. If the Legislature failed to discharge its duty, the task would devolve upon a bipartisan commission.

D. Senator Nicholas Coleman's Proposal

Senator Coleman has suggested that the task of reapportionment be imposed upon a body consisting of the Governor, Attorney General, Secretary of State, President Pro Tempore of the Senate (or other person selected by the majority), a member of the Senate minority selected by the minority, the Speaker of the House, a minority member of the House selected by the minority, one Democrat selected by the State Chairman of the State Democratic-Farmer-Labor Party and one Republican selected by the State Chairman of the State Republican Party.

E. National Municipal League's Model State Constitution

The Model State Constitution imposes the duty of reapportionment upon the Governor, with the advice of a nonpartisan board.[24] It does not state how this board should be constituted.

VI. Recommendations

As has been noted, there is great variety in the states' constitutional provisions for periodical reapportionment. We know of no study which has been made of the relative effectiveness of the various provisions. The selection of one method over another can be based only on practical political judgment made in the light of Minnesota's experience with legislative self-apportionment. All we claim for our recommendations is that they are based upon such judgment.

We think our recommendations can best be presented by suggesting the text of the amendments to Article IV, sections 1, 2, 23 and 24 which we propose, with an accompanying commentary.

A. Proposed Amendment of Article IV, Section 1.

> Composition of legislature; length of terms and length of session. Section 1. The legislature shall consist of the Senate and House of Representatives. The Senate shall be composed of members elected by the qualified voters at the general election for a term beginning at noon of the second Tuesday in January next following the election and ending at noon of the second Tuesday in January four years thereafter, except that there shall be an entire new election of all the Senators at the election of Representatives next succeeding each new apportionment provided for in this article.

The House of Representatives shall be composed of members elected by the qualified voters at the general election for a term beginning at noon of the second Tuesday in January next following the election and ending at noon of the second Tuesday in January two years thereafter.

Representatives shall be elected at the general election held in each even numbered year. Senators shall next be chosen at the general election held in the year (an even numbered year) and at the general election every four years thereafter, except as provided herein.

A special session of the legislature may be called as otherwise provided by this constitution.

Comment. The recommended changes in Article IV, section 1 merely make clearer what are the present constitutional provisions. In Honsey v. Donovan, the three-judge federal district court expressed the opinion that the last clause of the existing section 24 of Article IV, which we recommend bringing up to section 1, "would seem to require an election of senators at the very next election following reapportionment, even though four years had not elapsed since their last election. . . ."[25/] The three-judge federal district court in Beens v. Erdahl so held.[26/] We see no reason to change this constitutional provision. It eliminates any federal constitutional question that may be raised because of the delay in Senate reapportionment. And it ensures that the Senate, like the House, will reflect any shifts of population in the state as rapidly as it is practicable for it to do so.

Under this provision, there will be an election of senators in 1972, 1976, 1980, 1982, 1986, 1990, 1992, etc. The senators elected in the year in which the federal census is taken will serve only a two-year term.

> The legislature shall meet at the seat of government in regular session in each odd numbered year at the time prescribed by law for a term not exceeding one hundred twenty(120)legis-

lative days; and no new bill shall be introduced in either branch, except on the written request of the Governor, during the last thirty (30) days of such sessions.

A special session of the legislature may be called as otherwise provided by this constitution.

Comment. For the present, we are recommending no change in these provisions of the Constitution, but are setting them forth to show where our recommended changes would fit.

B. Proposed Amendment Of Article IV, Section 2

Number of members. Section 2. The number of members who compose the Senate shall be prescribed by law, but shall not exceed sixty-seven (67). The number of members who compose the House of Representatives shall be prescribed by law, but shall not exceed one hundred thirty-five (135).

Comment. The existing Section 2 sets no practical limit on the size of the Legislature. Minnesota's recent reapportionment acts have tied the size of the Legislature to the particular apportionment and districting plan adopted by the act in question.

Minnesota, which ranks 19th among the states in population and 14th in land area, presently has the largest state Senate in the nation and the tenth largest state House of Representatives. Compared with the other ten states that have populations of between 2.5 million and 4.0 million and areas ranging from 40,000 to 82,000 square miles, Minnesota has the largest state House of Representatives. Throughout its history, as we have indicated above, Minnesota has sought to solve difficult apportionment problems by increasing the size of its Legislature until the Legislaure attained its present, inordinate size. The Apportionment Act of 1860 was the only one in the history of Minnesota that did not in-

crease the size of the legislature; in fact, it reduced the Senate from 37 to 21 and the House from 80 to 42.

Only a constitutional limit on the size of the Legislature will discourage this unwise expediency. We are strongly of the view that the size of the Legislature should not be further increased for the foreseeable future. We think the question of the size of the Legislature should be left to the Legislature to determine from time to time.

C. Proposed Amendment of Article IV, Section 23.

Census Enumeration, apportionment and districting. Section 23. Census enumeration. (a) The legislature shall have the power to provide by law for an enumeration of the inhabitants of this state.

Standards for apportionment and districting (b)(1). The representation in the House of Representatives and the Senate shall be apportioned equally throughout the different sections of the state, in proportion to the population thereof.

(2). Contressional, senatorial and representative districts shall contain as nearly as practicable an equal number of persons, as determined by the most recent federal or state census. Minor deviations from the population norm, determined by dividing the population of the state by the number of districts in question, shall be permitted in order to take into consideration the factors of contiguity, compactness, extraordinary natural boundaries and the maintenance of the integrity of counties, cities, incorporated towns and townships, but only if such criteria are uniformly applied.

(3) The entire state shall be divided into as many separate congressional, senatorial, and representative districts as there are congressmen, senators and representatives respectively. No representative district shall be divided in the formation of a senate district. The congressional, senatorial and representative districts, respectively, shall be separately numbered in a regular series.

(4) Each congressional, senatorial and representative district shall be composed of geographically contiguous territory. Unless absolutely necessary, no county, city, incorporated town or township shall be divided in forming either a congressional, senatorial or representative district. If such a division is absolutely necessary and a choice is possible among more than one such unit, cities or towns shall be divided in preference to counties and more populous units shall be divided in preference to less populous ones. Consistent with these standards, the aggregate length of the boundary lines of each congressional, senatorial and representative district shall be as short as possible.

Comment. The existing Constitution prescribes but a few standards for apportionment and districting -- that representation in both houses of the state legislature should be apportioned equally throughout the different sections of the state in proportion to the population thereof; that senators shall be chosen by single districts of convenient contiguous territory; and that no representative district shall be divided in the formation of a senate district.

We have kept these standards and added others to discourage gerrymandering.

The three-judge federal district court sanctioned minor deviations from the population norm not to exceed two (2) percent.[27/] We propose to permit such minor deviations if necessary because of extraordinary natural boundaries or in the interest of contiguity, compactness, and the maintenance of county and political subdivision lines. To make certain that even minor deviations from the popular norm will not be used for gerrymandering purposes, we propose that they be permitted only if they are used for the purposes indicated in a uniform fashion.

We do not recommend that the two (2) percent limit, or any other limit, on deviations from the population norm be written into the Constitution. We would leave this matter to be determined by the courts from case to case. But we should point out that the U.S. Supreme Court has required that a good-faith effort be made in congressional- and presumably state legislative-districting to achieve "precise mathematical equality" of population in each district.[28/]

We also propose to eliminate multi-member districts in the House, because of the possibility of submerging the interests of racial, ethnic, economic or political minorities in such districts. The three-judge federal district court eliminated all multi-member House districts in the most recent reapportionment/redistricting.[29/]

We considered the advisability of deleting the constitutional prohibition (contained in the existing section 24) against dividing representative districts in forming senatorial districts. We recognize that this prohibition makes the task of districting on a population basis more difficult. But we have concluded that it provides an additional safeguard against gerrymandering and is justified for this reason.

The existing Constitution requires that senatorial districts shall consist of convenient contiguous territory. We have tried to define this requirement a little more preceisely, viewing a district as "convenient" if the aggregate length of its boundary lines is as short as possible.

It is recognized that even if our suggested standards are met, it may still be possible to cancel out or minimize the voting strength of racial, economic or political elements in a particular area. It is expected, however, that the danger of various kinds of gerrymandering will be lessened by entrusting the apportionment/districting function to a commission constituted as we propose. It is not feasible, however, to attempt to specify any additional standards in the Constitution, for there is no general agreement on what they should be.

D. Proposed Amendment of Article IV, Section 24.

Procedure for periodic reapportionment and redistricting, Section 24. Frequency and time of Commission's action. (a) In each year following that in which the Federal decennial census is officially reported as required by Federal law, or whenever reapportionment is required by court order, or because the number of members who compose the Senate or House has been altered by law, the Apportionment and Districting Commission created under this section shall apportion anew the Senators and Representatives among the several districts and prescribe anew the bounds of the congressional districts in the state.

In performing these duties, the Commission shall be guided by the standards set forth in Section 23 of this Article and shall assure all persons fair representation.

Comment. The Supreme Court of the United States has indicated that the federal Constitution does not require reapportionment more frequently than after each federal

decennial census. The requirement formerly in section 23 of Article IV of the Minnesota Constitution that the legislature take a population census every 10 years beginning in 1865 has been eliminated. The recommended section 24(a) requires reapportionment only after each federal decennial census, even if the Legislature chooses to exercise the power granted it by the recommended section 23 to conduct a state census.

It may be that the federal government, with the aid of statistical and computer techniques, will begin to publish official population statistics more frequently than once every 10 years, or that the Legislature may decide to conduct a state census. Even so, we do not think that the State Constitution should require reapportionment more frequently than after each decennial census. There are advantages to be gained from keeping each districting and apportionment plan stable for a decade.

> Governor's request for appointment of Commission members. (b) Not later than January 15 of the year following that in which the Federal decennial census is officially reported as required by Federal law, the Governor shall request the persons designated herein to appoint members of the Apportionment and Districting Commission, as hereinafter provided.

> Composition of Apportionment and Districting Commission. (c)(1). The Apportionment and Districting Commission shall consist of

thirteen (13) members and the concurrence of eight (8) of its members shall be required to adopt a final plan of apportionment and districting.

The Speaker and Minority Leader of the House of Representatives, or two (2) Representatives appointed by them, shall be members. The Majority and Minority Leaders of the Senate, or two Senators appointed by them, shall be members.

Each of the state central committees of the two (2) political parties whose candidates for Governor received the highest number of votes at the most recent gubernatorial election shall appoint two (2) members. If a candidate for Governor of a third political party has received twenty (20) percent or more of the total gubernatorial vote at such election, the state central committee of the third political party shall appoint two (2) members. If each of the candidates for Governor of four (4) political parties has received twenty (20) percent or more of the total gubernatorial vote at such election, the state central committee of each political party shall appoint two (2) members.

Within ten (10) days after they are requested by the Governor to appoint Commission members, the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, and the state central committees of the political parties shall certify the members they have appointed to the Secretary of State, or notify the Secretary of State of their failure to make any appointment.

Within three (3) days after receiving notice that an appointing authority has failed to appoint its quota of members, the Secretary of State shall so inform the Chief Justice of the State Supreme Court. Within ten (10) days after such information has been received, a majority of the entire membership of the Supreme Court shall appoint the necessary number of Commission members and certify them to the Secretary of State.

The Commission members so certified shall meet within seven (7) days of their appointment and within seventeen (17) thereafter shall elect, by unanimous vote, the number of members necessary to complete the Commission and certify them to the Secretary of State, or notify the Secretary of State that they are unable to do so. Within three (3) days after receiving notice of failure to complete the membership of the Commission, the Secretary of State shall so inform the Chief Justice of the state Supreme Court. Within seventeen (17) days after such information has been received, a majority of the entire membership of the Supreme Court shall appoint the members necessary to complete the Commission and certify them to the Secretary of State.

(2) Except for the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate, their designees, notaries public, members of the armed forces reserves and officers and employees of public educational institutions, no United States Senator, member of the United States House of Representatives, elected official of state or local government, and no employee of the federal, state or local government, shall be eligible for membership on the Commission.

In making their appointments, the State Central Committees, the eight (8) original Commission members and the State Supreme Court shall give due consideration to the representation of the various geographical areas of the State.

Any vacancy on the Commission shall be filled within five (5) days by the authority that made the original appointment.

A majority of all the members of the Commission shall choose a Chairman and a Vice Chairman and establish its rules of procedure.

(3) Members of the Commission shall hold office until the new apportionment and districting in which they participated becomes effective. Except for the Speaker and Minority Leader of the House of Representatives, the Majority and Minority Leaders of the Senate and their designees, they shall not be eligible for election to Congress or the State Legislature until the general election following the first one under the apportionment and districting in which they participated.

(4) The secretary of State shall be Secretary of the Commission without vote and in that capacity shall furnish all technical services requested by the Commission. Commission members shall receive compensation at a rate not less than $35 per day plus expenses. The Legislature shall appropriate funds to enable the Commission to perform its duties.

Comment. As indicated above, we recommend that reapportionment and redistricting be taken entirely out of the hands of the Legislature. We are aware that these processes involve legitimate political considerations of which the Legislature itself is most aware. But we have concluded that our State's experience with reapportionment and redistricting by the Legislature justifies our recommendation.

It is not advisable to ask the Legislature to take action which effects the self-interest of individual legislators so directly. A form of bipartisan gerrymandering intended to protect incumbents often is the result of

such action. When it is not, and the same political party controls both the legislative branches of government at the time of the reapportionment and redistricting, partisan gerrymandering may result. These latter considerations are also present in congressional redistricting and, therefore, we recommend that this task, too, be entrusted to a Commission.

Strong arguments have been made that the task of reapportionment and redistricting should be entrusted to a nonpartisan commission. It has been suggested that a nonpartisan commission might be comprised of "university presidents, bar association presidents, or incumbents in other prestigious posts of a non-political nature."[30/] Yet it is doubtful that there would be general agreement that even a commission so composed would be truly nonpartisan.

The Hughes-Ashbach-Brown bill is another attempt at creating a nonpartisan commission. But we seriously doubt the wisdom of imposing the duty of reapportionment and redistricting upon any group of judges (particularly judges who must stand for re-election), except as a last resort.

More important, we do not think it wise to try entirely to insulate reapportionment and redistricting, which has great political impact, from the political process. This is doubly important when the legislature is being relieved of the task of reapportioning itself.

A member of the Michigan Bipartisan Apportionment Commission wisely pointed out:

> Every [reapportionment and redistricting] plan has a political effect, even one drawn by a seventh grade civics class whose parents are

> all nonpartisans and who have only the United States census data to work with. Even though they drew such a plan with the most equal population in districts, following the maximum number of political subdivision boundaries and with the most regular shapes, it could very well result in a landslide election for a given political party.[31]

The Apportionment and Districting Commission we propose to constitute is strictly neither nonpartisan nor bipartisan. The recommendations we make to involve the leadership of the State Senate and House of Representatives and the political parties (including third or fourth parties) in the appointment of Commission members assure that political realities and varying political views will be taken into account.

This leadership will appoint eight (8) of the thirteen (13) Commission members. The eight (8) so appointed will select the remaining five (5) member. A unanimous vote is required for this purpose. If the eight (8) are unable to agree, the task of selection is imposed upon the entire membership of the State Supreme Court. No federal, state or local official or employee may be appointed to the Commission by the leadership of the political parties (excluding the legislative leaders), the original eight (8) Commission members or the State Supreme Court.

This method of selection holds out the greatest promise

that the five (5) Commission members who may hold the balance of power will be acceptable to the other eight (8) and the political interests the latter represent.

Eight (8) Commission members must concur to approve a final apportionment and districting plan. This means that if the original eight (8) form blocs and disagree, the bloc that carries the day will have to win the votes of four out of five of the remaining members. Together with the method of selecting these remaining members and the standards for apportionment and districting recommended above, this requirement is another safeguard against the danger of gerrymandering.

Activities of Apportionment and Districting Commission. (d)(1) The Commission shall hold such public hearings in the different geographic areas of the State as it may deem necessary or advisable to give individual citizens and interested groups of citizens the opportunity to submit proposed apportionment and districting plans or otherwise to testify, orally or in writing, concerning their interest in apportionment and districting.

(2) Not later than six (6) months after the Commission has been finally constituted, or the population count for the State and its political subdivisions as determined by the Federal decennial census is available, whichever is later in time, the Commission shall file its final reapportionment and redistricting plans and maps of the districts with the Secretary of State.

(3) Within ten (10) days from the date of such filing, the Secretary of State shall publish the final plans once in at least one newspaper of general circulation in each congressional, senatorial and representative district. The publication shall contain maps of the State showing the new congressional districts, the complete reapportionment of the Legislature by districts and a map showing the new congressional, senatorial and representative districts in the area normally served by the newspaper in which the publication is made. The publication shall also state the population of the congressional, senatorial, and representative districts having the smallest and largest population, respectively, and the percentage variation of such districts from the average population for congressional, senatorial and representative districts.

(4) The final plans shall have the force and effect of law upon the date of such publications.

(5) The Secretary of State shall keep a public record of all the proceedings of the Commission.

Comment. Because the apportionment and Districting Commission is entrusted with legislative powers of great mo-

ment to the political life of the State, it is required to undertake a series of public hearings in different parts of the State before adopting its final apportionment and districting plan. Public participation in the work of the Commission in this manner will help to enlighten the Commission and win public acceptance of its final plan.

Judicial review of Commission action. (e) Within thirty (30) days after any reapportionment and redistricting plan adopted by the Commission is published by the Secretary of State, any qualified voter may petition the state Supreme Court to review the plan. The state Supreme Court shall have original jurisdiction to review such plan, exclusive of all other courts of this State.

If a petition for review is filed, the state Supreme Court shall determine whether such plan complies with the requirements of this Constitution and the United States Constitution. If the state Supreme Court determines that such plan complies with constitutional requirements, it shall dismiss the petition within sixty (60) days of the filing of the original petition. If the state Supreme Court, or any United States court, finally determines that such plan does not comply with constitutional requirements, the state Supreme Court, within sixty (60) days of the filing of the original petition or thirty (30) days of the decision of the United States court, shall modify the plan so that it complies with constitutional requirements and direct that the modified plan be adopted by the Commission.

Failure of Apportionment and Districting Commission to Act. (f). If the Commission fails to adopt a final plan to apportion anew the Senators and Representatives among the several districts and to prescribe anew the bounds of such districts, or a final plan to prescribe anew the bounds of congressional districts, by the time

specified herein, each member of the Commission, individually or jointly with other members, may submit a proposed plan or plans to the state Supreme Court within thirty (30) days after the date for Commission action has expired. Within ninety (90) days after such submission, the Supreme Court shall select the plan which it finds most closely satisfies the requirements of this Constitution and, with such modifications as it may deem necessary to completely satisfy these requirements, shall direct that it be adopted by the Commission and published as provided herein. If no Commission member submits a plan by the time specified, the Supreme Court, within four (4) months after the date for the submission of individual member plans has expired, shall itself prescribe anew the bounds of congressional districts or apportion anew the Senators and Representatives among the several districts and prescribe anew the bounds of such districts.

Applicability of any reapportionment or redistricting. (g). Each new districting and apportionment made in accordance with the provisions of this Article shall govern the next succeeding general elections of congressmen, senators and representatives.

Comment. Provision is made for the possibility that eight (8) Commission members may be unable to agree upon an apportionment and districting plan. The task of districting and apportionment is then imposed upon the state Supreme Court, but the Court is required to work with the plan, if any, submitted by one, or a group, of the Commission members which most closely satisfies constitutional requirements. If no plan is submitted by any Commission member - an eventuality which is highly unlikely - the task of reapportionment and

redistricting is imposed upon the state Supreme Court.

The state Supreme Court is given original jurisdiction to review the Commission's plan. The decision of the state Supreme Court, in turn, would be subject to review by the United States Supreme Court.

The following table summarizes the time table which our recommendations impose upon all participants in the reapportionment and redistricting process. Even in the extraordinary case, the process should be completed well in advance of the time reasonably needed by candidates for membership in the Congress and the state Legislature.

Activity in Question	Deadline
Governor's request for appointment of Commission members	January 15, 1981
Certification of Commission members or notification of failure to make requisite appointment	January 25, 1981
Notice by Secretary of State to Chief Justice of failure to make requisite appointment	January 28, 1981
Appointment of necessary members by Supreme Court	February 7, 1981
First meeting of designated and appointed Commission members	February 14, 1981
Election of remaining members or failure to do so	March 3, 1981
Notice by Secretary of State to Chief Justice of failure to elect remaining members	March 6, 1981
Appointment of remaining members by Supreme Court	March 23, 1981
Filing of final plans by Commission	September 22, 1981
Publication and effective date as law	October 2, 1981
Petition for review of Commission action	November 1, 1981
Final State Supreme Court action	January 1, 1982
Review by Supreme Court of United States	?
Submission of individual member plans if Commission fails to act	October 22, 1981

Selection by state Supreme Court of plan or plans	January 22, 1982
Review by Supreme Court of United States	?
State Supreme Court action if individual members fail to submit plans	February 22, 1982
Review by Supreme Court of United States	?

FOOTNOTES

1. Minn. Const. 1857, Schedule section 12 (both versions).
2. See State ex rel. Meighen v. Weatherill, 125 Minn. 336 (1914) and Smith v. Holm, 220 Minn. 486 (1945).
3. 369 U.S. 186 (1962).
4. Magraw v. Donovan, 163 F. Supp. 184 (1958).
5. Id. at 187.
6. For the principal Supreme Court opinions, see Reynolds v. Sims, 377 U.S. 533 (1964); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964); Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656 (1964); Davis v. Mann, 377 U.S. 678 (1964); Roman v. Sincock, 377 U.S. 695 (1964); Lucas v. Colorado General Assembly, 377 U.S. 713 (1964); Swann v. Adams, 385 U.S. 440 (1967); Kilgarlin v. Hall, 386 U.S. 120 (1967); Kirkpatrick v. Preisler, 394 U.S. 526 (1969).
7. Honsey v. Donovan, 236 F. Supp. 8 (1964).
8. Id. at 15-16.
9. 163 F. Supp. 184 (1958).
10. Duxbury v. Donovan, 272 Minn. 424 (1965).
11. Honsey v. Donovan, 249 F. Supp. 987 (1966).

12. Id. at 988.

13. Beens v. Erdahl, 336 F. Supp. 715 (1972).

14. Sixty-Seventh Minnesota State Senate v. Beens, 92 S.Ct. 1477 (1972) (The Court's opinion was per curiam; Mr. Justice Stewart dissented).

15. Id. at 1485.

16. 377 U.S. 533, 586 (1964).

17. Honsey v. Donovan, 249 F. Supp. 987, 988 (1966).

18. Sixty-Seventh Minnesota State Senate v. Beens, 92 S.Ct. 1477, 1486 (1972).

19. Report of the Constitutional Commission of Minnesota 23-24 (1948).

20. Id. at 24.

21. Ibid.

22. S.F. 171, 67th Minn. Leg. Ex. Sess., Oct. 19, 1971.

23. See Report of the Governor's Bipartisan Reapportionment Commission, January 15, 1965, 49 Minn.L.Rev. 367 (1965).

24. National Municipal League, Model State Constitution, section 4.04 (rev. 1968).

25. 236 F.Supp. 8, 21 (D. Minn. 1964).

26. 336 F.Supp. at 732.

27. 336 F. Supp. at 719

28. Kirkpatrick v. Preisler, 394 U.S. 526, 530-531 (1969). In this case, a maximum deviation of 3.1 percent was declared unconstitutional in Missouri congressional districting. In Wells v. Rockefeller, 394 U.S. 542 (1969), the Supreme Court invalidated New York congressional districting in which the maximum deviation was 6.6 percent.

29. 336 F.Supp. at 719.

30. McKay, Reappointment Reappraised 27 (1968).

31. A. Robert Kleiner, Democratic member of Michigan Bipartisan Apportionment Commission, National Municipal League Speech, 1966, quoted by Dixon, The Court, The People and "One Man, One Vote," in Reapportionment in the 1970s 20 (Polsby ed., 1971).

A Statement on Proposed Changes in the Method of Apportioning the Legislature

by Robert J. Brown

My proposal is based on the following three premises:

1. The legislature should not reapportion itself in the future. It is too costly, too time consuming and does not lead to the best possible apportionment. A legislative solution is usually: (a) a partisan gerrymander if one faction controls state government; or (b) either a sweetheart bill to protect incumbents or a stalemate if governmental control is divided.

2. So-called citizen reapportionment commissions selected by political parties or by partisan constitutional officers suffer from the strong likelihood of partisanship or stalemate.

3. Reapportionment is a relatively simple, quickly accomplished process if politics is taken out of it. I believe it could be done in about 30 days.

My proposal is essentially the same one I presented to the Commission earlier this year. A panel of state district court judges should do the reapportionment, employing technical staff to do the mechanics under guidelines established by the legislature.

The panel should be selected in a process in which the majority and minority leaders of the legislature alternately

strike names from a list of all state district court judges. The remaining three judges should be the least partisan members of the least political branch of government.

The legislature should be given the constitutional authority to prescribe criteria which could be followed by the panel. For example, the legislature could state the maximum population deviation allowed or the maximum population of communities which should not be split in any reapportionment.

I believe that by having the legislative leaders involved in the process of picking the panel and by permitting the legislature to establish criteria, the concerns of many legislators can be met as to the role of the legislature in the reapportionment process. At the same time this proposal would do more than any other plan I have seen to remove politics from the process of reapportionment.