MINNESOTA CONSTITUTIONAL STUDY COMMISSION

LEGISLATIVE BRANCH COMMITTEE REPORT

This report constitutes committee recommendations to the Constitutional Study Commission. See the Final Report for the Commission's action which in some cases differed from the committee recommendations.

November, 1972

COMMITTEE

Professor Carl Auerbach, Chairman

Senator Robert J. Brown

Representative Aubrey W. Dirlam

Mrs. Diana E. Murphy

Representative Joseph Prifrel

Research Assistants:

Michael Glennon

Richard Holmstrom

PART ONE

PROBLEMS OF REAPPORTIONMENT

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The following modifications in the Reapportionment Section of the Report of the Legislative Branch Committee were made by the Constitutional Study Commission:

The word "districting" was substituted for the phrase "apportionment and districting" throughout.

P.22 For proposed amendment of Article IV, Sec.2 the following was substituted:

> Number of members. Section 2. The number of members who compose the Senate and the House of Representatives respectively shall be prescribed by law.

P.23 For proposed amendment of Article IV, Sec.23 the following was substituted:

> Census enumeration 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 districting. (b)(1). The entire State shall be divided into as many separate congressional, senatorial, and representative election 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.
>
> (2) Congressional, senatorial and representative districts shall be composed of compact and contiguous territory and be as nearly equal in population as is practicable.
>
> (3) Unless absolutely necessary to meet the other standards set forth in this section, no county, city, town township, or ward shall be divided in forming either a congressional, senatorial or representative district.

P.25 For proposed amendment of Article IV, Sec.24, paragraph 1, the following was substituted:

Procedure for periodic districting. 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 wherever districting is required by court order or because the number of members who compose the Senate or House has been altered by law, the Districting Commission created under this section shall prescribe anew the bounds of the congressional, senatorial and representative districts in the State.

P.27 For proposed amendment of Article IV, Sec.24, third paragraph, the following was substituted:

The Governor shall appoint two (2) members. Two (2) members shall be appointed by the state executive committee of each political party, other than that to which the Governor belongs, whose candidate for Governor received twenty (20) or more percent of the votes at the most recent gubernatorial election, or by any successor authority to the state executive committee which is charged by law with the administration of the party's affairs.

P.28 For proposed amendment of Article IV, Sec.24, subd.2, first full paragraph, the following was substituted:

No United States Senator, member of the United States House of Representatives and no member of the State Senate or House, other than the speaker and minority leader of the House, the majority and minority leaders of the Senate, and their appointees, if any, shall be eligible for membership on the Commission.

P.27 The "State executive committee" was substituted for the State central committee" wherever mentioned in Section 24.

P.28 For proposed amendment of Article IV, Sec.24, second full paragraph on P.28, the following was substituted:

(2) In making their appointments, the State executive committees or their successor authorities, 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.

P.31 The Districting Commission was required to report within five months rather than six months.

P. 34 For proposed amendment of Article IV, Sec. 24, the last sentence before (g), the following was substituted:

> If no Commission member submits a plan by the time specificd, a majority of the entire membership of the Supreme Court shall select a panel of three state court judges, other than Supreme Court judges, to prescribe anew the bounds of congressional districts, or senatorial and representative districts, or both. The panel shall do so within four (4) months after the date for the submission of individual member plans has expired.
>
> The districting prescribed by the panel shall be subject to review by the State Supreme Court and the federal courts in the manner provided for review of a plan adopted by the Districting Commission.

P. 35 Because of some of the above changes, several dates in the timetable are changed. (See Final Report. P.18.)

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, Sec.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, Sec.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, Sec.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, Sec. 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 Article IV, Sec.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) transposed?
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 (district 65), 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 twice 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 Sixty-seventh 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 to July 31 and from October 12 to 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 session's 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. Nine 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.

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, Sec. 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, and 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, Article IV, Sec.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. 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, Sec. 3 of the Main 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, Sec. 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, Sec.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, Sec.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 Treasurer.

8. OREGON

Article IV, Sec. 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, Sec.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, Sec. 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 a Non-Legislative Agency

1. ALASKA

Article VI, Sec. 3 of the Alaska Constitution empowers the Governor to reapportion the Alaska House of Representatives after each federal census. Section 8 requires him to appoint a Reapportionment Board to advise him in the performance of this task. The Board consists 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, Sec. 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 State Supreme Court. The court may substitute its plan only if it finds that the Board acted arbitrarily or abused its discretion.

3. HAWAII

Article III, Sec. 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 the president of Senate; two by the speaker of the 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 choose, by a three-fourths vote, 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, Sec. 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.

Representation of all geographic areas 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 III, Sec. 2 of the Missouri Constitution imposes the duty of reapportioning the House of Representatives after each federal census upon an Apportionment 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 each 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, Sec. 7 of the Missouri Constitution imposes the task of reapportioning 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.

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.

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.

6. MONTANA

Article V, Sec. 14 of the recently adopted Montana Constitution imposes the redistricting task upon a Commission of five citizens, none of whom may be public officials. The majority and minority leaders of the Senate and House each designate one commissioner. The four commissioners so designated then select the fifth member and he serves as chairman. If four cannot agree upon a fifth member, a majority of the Supreme Court selects him.

The Commission is directed to submit its districting plans (covering both congressional and legislative districts) to the Legislature at the first regular session after its appointment or after the federal census figures are available. Within 30 days after submission, the Legislature must return the plan to the Commission with its recommendations. Within 30 days thereafter, the Commission must file its final plan with the Secretary of State and it then becomes law.

7. NEW JERSEY

Article IV, Sec.3 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.

8. OHIO

Article XI, Sec. 11 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.

9. PENNSYLVANIA

Article II, Sec.17 of the Pennsylvania Constitution imposes lthe duty of reapportioning after each federal census upon a Legislative Reapportionment Commission consisting of five members--the majority and minority leaders of the Senate and House of Representatives and a member and chairman selected by these 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 Sixty-Seventh 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 person selected by the State Chairman of the Democratic-Farmer-Labor Party and one person selected by the State Chairman of the 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 of the 1972 Commission's Legislative Committee

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, Sec.1

> Composition of legislature; length of terms and length of session. Sec. 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 Legisature may be called as otherwise provided by this Constitution.

Comment. The recommended changes in Article IV, Sec. 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 H use, will reflect any shifts of population in the state as rapidly as is practicable

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) legislative 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, Sec.2

> Number of Members. Sec.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 nineteenth among the states in population and fourteenth in land area, presently has the largest Senate in the nation and the tenth largest House of Representatives. Compared with the other ten states that have populations of between 2.5 million and 4 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 Legislature attained its present inordinate size. The Apportionment Act of 1860 was the only one in the history of Minnesota that did not increase 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, Sec.23

Census Enumeration, apportionment and districting. Sec.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). Congressional, 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 precisely, 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 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 affects 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 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) members. 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 power of great moment 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 constitution 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 next page contains the timetable which our recommendations impose upon all participants in the reapportionment and redistricing 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	?

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.

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 1970's 20 (Polsby ed., 1971).

PART TWO

OTHER RECOMMENDATIONS ON THE

LEGISLATIVE BRANCH

TABLE OF CONTENTS

The following modifications in Part Two of the Report of the Legislative Branch Committees were made by the Constitutional Study Commission.

P.5 After passage of the 1972 constitutional amendment on flexible legislative sessions, the Commission voted that further consideration of length and frequency of session should await experience under the new constitutional provisions.

P.9 The Commission voted that legislative size should be determined by the Legislature and limits not be prescribed in the Constitution.

P.11 The matter of the constitutional initiative was discussed at a later date than this report, during final presentation of the Amendment Process Committee's Report. The Commission decided that citizen initiative should apply, but be limited to matters affecting the structure of the Legislature.

P.16 The Commission took no action on the residency requirements for legislators.

I. INTRODUCTION

On July 20, 1972 the Legislative Branch Committee submitted a report to the Commission proposing revisions in the constitutional provisions regarding periodic reapportionment and redistricting.

Because of the limited time and resources available to us, we have been unable to study all other aspects of Article IV with the depth necessary to enable us to make definitive recommendations with respect to them. This Report has been prepared by the Chairman of our Committee in the hope that it may be helpful to the members of the Legislature, the Governor and the people of the State. It outlines and briefly discusses certain constitutional issues raised by Article IV other than those involving reapportionment and redistricting. It makes certain recommendations but will also indicate the matters in the Report with which one or more members of our Committee are in disagreement.

We should like to thank Mr. Mike Glennon, a student at the University of Minnesota Law School for his general research assistance and Mr. Arthur Reynolds, a graduate student in political science at the University of Minnesota and Ms. Helen Marsh, a student at Hamline University, for their informative papers on unicameralism. We have also benefited greatly from the study of the 50 American legislatures by the Citizens Conference on State Legislatures.[1]

II. OVERALL EVALUATION OF MINNESOTA LEGISLATURE

The Legislative Evaluation Study of the Citizens Conference ranked the 50 state legislatures according to their ability (A) to function effectively, (B) to account to the public for their actions, (C) to gather and use information, (D) to avoid undue outside influence, and (E) to represent the people.[2] The Evaluation Study concerned itself with legislative structure (committee structure, length and frequency of sessions, leadership, compensation, staffing, rules and procedures, ethics) "apart from state and local politics and apart from the legislation actually produced."[3]

Overall, Minnesota's legislature was ranked tenth in the nation in mid-1970; only the legislatures of California, New York, Illinois, Florida, Wisconsin, Iowa, Hawaii, Michigan and Nebraska were ranked ahead of it.[4] Minnesota was ranked 27th in being functional, 7th in being accountable, 13th in being informed, 23rd in being independent and 12th in being representative.[5] The Citizens Conference concluded that the Minnesota Legislature's "outstanding feature is the general openness and accessibility of its processes and activities;" some of its weaknesses were due to constitutional session limitations, low salaries and limited supporting services for members (staff, information resources, etc.)[6]

The Executive Director and staff of the Citizens Conference made the following recommendations to improve the Minnesota Legislature:[7]

1. reduce the overall size of the Legislature so that the combined number of members of both Houses is somewhere between 100 and 150.

2. reduce the number of committees from 28 in the House of Representatives and 18 in the Senate to from 10 to 15 committees in each house and give parallel jurisdiction to one House and one Senate committee.

3. reduce the number of committee assignments so that each member of the House of Representatives is assigned to no more than three committees and each Senator to no more than four.

4. remove constitutional restrictions on session and interim time.

5. amend the constitution to provide a presession organizing session following a general election to elect leaders, appoint committee chairmen, assign members to committees, refer prefiled bills to committee, hold committee organizational meetings and conduct orientation conferences for new as well as returning members of the legislature.

6. have the legislature hold an orientation conference for new legislators, preferably after each general election.

7. increase legislative compensation; current salaries of $4,800 per year should be doubled immediately and increased again within the next few years as other improvements in the Legislature are made.

8. strengthen minority party role by (a) providing minority representation on the committee on rules approximating the minority proportion of the membership of the given house; and (b) empowering the minority leader in the Senate, in consultation with the minority caucus, to assign minority party members to Senate committees. (This is now done in the House of Representatives.)

9. require committees to issue reports describing and explaining their action on bills recommended for passage at the time the bill moves from the committee to the floor.

10. all standing committees should automatically become interim committees when the Legislature is not in session. (Presently 21 of the 28 House standing committees have interim status; Senate committees must request interim status.)

11, provide staff assistance to leaders of both the majority and minority caucuses, including a secretary and an administrative assistant at the professional level, with space to work reasonably adjacent to the offices of members and leaders.

12. provide rank-and-file members (majority and minority caucuses on an equal basis) with individual staff assistance consisting of a minimum of an administrative assistant at the professional level and a secretary. Such staff support should also be furnished each legislator in an office in his district.

13. reimburse legislators for travel expenses they incur while carrying out their legislative duties.

14. provide private, individual offices for every legislator, with nearby space for his assistants. The quality and amount of office space should not differ substantially between majority and minority party members.

15. establish an office in Washington, D.C. to represent the Legislature and be its most direct liaison with Congress.

Of these 15 recommendations, only two (recommendations 4 and 5) would require constitutional amendment before they could be effectuated.

We shall first discuss these recommendations and then the others which, if thought desirable, could be put into effect by the Legislature under the powers it now possesses.

Senator Robert Brown, however, is "not impressed by the extensive reference (in this report) to the Citizens Conference on State Legislatures." He writes: "While some people may think that Minnesota finished fairly high in their survey I believe that the survey was done by people with obvious biases, the survey was not well done, and the researchers did not even have all the data they said they needed (at least in the Minnesota State Senate) when they issued their final report."

Mrs. Diana Murphy, too, thinks the Report should not be linked so closely with the recommendations of the Citizens Conference.

III. LENGTH AND FREQUENCY OF LEGISLATIVE SESSIONS

Article IV, section 1 authorizes the Legislature to meet in regular session only in each odd numbered year and then only for a term not exceeding 120 legislative days. The Supreme Court of Minnesota has held that a regular session is limited to 120 calendar days, exclusive of Sundays, from the date when the Legislature convenes.[8] The Court rejected the contention that "legislative day" means any day on which the Legislature actually meets. Instead, it ruled, a legislative day "is any day on which the Legislature may meet, which includes each calendar day from the day of convening, excluding only Sundays."[9]

The 1971 Legislature passed an act[10] proposing an amendment to this section which will be submitted to the voters at the 1972

general election. According to this proposal, the Legislature would meet in regular session in each biennium at the times prescribed by law for not exceeding a total of 120 legislative days. The "legislative day" would also be defined by law. The Legislature would not be permitted to meet in regular session, or any adjournment thereof, after the first Monday following the third Saturday in May of any year.

We agree with the 1971 Legislature that the existing constitutional restrictions on the frequency and length of legislative sessions are highly undesirable. The constitution should not prohibit a Legislature from meeting whenever the business at hand requires it, nor should it compel the Legislature to adjourn until that business is completed in an orderly and deliberative manner.

The Constitutional amendment proposed by the 1971 Legislature represents, as the Citizens Conference described a similar proposal, a "modest but significant improvement" [11] over the existing Constitutional provisions. If it passes, the experience of the 1973 Legislature will help to determine whether this improvement is all that is necessary. The Citizens Conference, it should be noted, did not envisage that the proposal it made for "modest but significant improvement" would prohibit the Legislature from meeting after the first Monday following the third Saturday in May of any year.

We recognize that the question whether the Legislature should be authorized to meet in continuous session is related to the questions of the legislature's size, the compensation to

be paid legislators, and the staff facilities to be furnished them. We shall now turn to some of these questions.

IV. LEGISLATIVE COMPENSATION

Article IV, Section 7 authorizes the Legislature to fix the compensation of Senators and Representatives. Minnesota Statutes 1971, section 3.10 fixes the compensation of each Representative at $9,600 for his entire two-year term and that of each Senator at $19,200 for his entire four-year term. To accompany its proposed amendment dealing with the length and frequency of legislative sessions, the 1971 Legislature increased this compensation to $16,800 in the case of a Representative and $33,600 in the case of a Senator. Thus the legislative compensation would be increased from $4,600 to $8,400 per year. The increases are to become effective January 2, 1973 but only if the voters approve the proposed amendment prior to that time.

In our opinion, even $8,400 a year does not reflect the heavy demands made by citizens and the legislative process upon the legislator's time. Nor does it reflect the importance of the legislator's job. The low salaries paid legislators preclude from running for legislative office those citizens who are not well-to-do and are not in occupations which they can carry on simultaneously with their legislative tasks. We are disturbed by the relatively large number of legislators who have refused to run for re-election in 1972. We think the financial sacrifice involved in serving in our Legislature had something to do with these decisions, as did the fact that the low salaries are thought to reflect the regard

with which the people of our State hold our legislators. We think legislative compensation should be high enough to make it possible for citizens of different occupations, races, sexes and economic circumstances to consider running for the Legislature. This is the real meaning of a "citizen legislature." Adequate salaries will thus help to make the Legislature more representative. At the same time, it will help to minimize potential conflicts of interest between the public and private careers of legislators.

As indicated above, the Citizens Conference recommended that legislative salaries in Minnesota should be doubled immediately to $9,600 per year and "increased again within the next few years as other improvements in the Legislature are made."[12] We do not have a precise figure to recommend. But is is clear to us that legislators are most reluctant to raise their own salaries to adequate levels. Such action invites a campaign issue incumbents are anxious to avoid.

For this reason, we urge that the Legislature create a permanent Citizens Commission to advise it concerning the periodic adjustment of legislative compensation. Backed by the recommendations of such a Commission, the Legislature may be emboldened to bring legislative compensation to a more adequate level and maintain it there.

Senator Brown disagrees with the above discussion of legislative compensation. He writes: "This is not a constitutional issue and has no place in our Report unless we decide to make it a constitutional matter by removing the authority over legislative pay

from the Legislature--a proposal that might have some merit. While I am against including this subject in our Report, if it is to be included, I think that it should be written in a more balanced way. For example, I do not agree that raising the pay above $8,400 (or even $4,800) will necessarily broaden the base of competent legislative candidates. I feel very strongly that if salaries are too high, it attracts candidates who could not make that much money doing anything else and thus will resort to gross demagoguery in order to obtain and retain a legislative seat. There must be a balance between setting salaries so low as to discourage good people and so high as to encourage candidacies primarily because of money."

V. SIZE OF LEGISLATURE

We have considered the question of what the Constitution should say, if anything, about the size of the Legislature. At present, Article IV, section 2 authorizes the Legislature to prescribe by law the number of members who compose each House. It also imposes the obsolete limitation that the number in the Senate shall never exceed one member for every 5,000 inhabitants, which would mean a maximum number of 761 Senators according to the 1970 Census, and in the House of Representatives, one member for every 2,000 inhabitants, which would mean a maximum number of 1,902 Representatives.

As we stated in our Report proposing a new constitutional system of periodic reapportionment and redistricting, Minnesota has the largest Senate and the tenth largest House of Representatives in the nation. Ideally, as the Citizens Conference study states,

"a legislature should be large enough to represent and reflect the diverse elements of the constituency, and small enough to get things done."[13] But opinions differ as to the numbers fitting this ideal.

For Minnesota, the Citizens Conference recommended that the Senate and House of Representatives together should have a combined membership of 100 to 150.[14] Under the reapportionment and redistricting plan recently devised by the three-judge federal district court and set aside by the U.S.Supreme Court, the combined membership would have been 140—a House of 105 members and a Senate of 35 members. This plan received popular support in many sections of the State and in the ranks of both political parties.

We have been able to agree only to the proposition that for the foreseeable future, the Legislature should not become larger than it is now. This is one of the recommendations we have made in connection with our proposals for periodic reapportionment and redistricting. There is support in our Committee for the view that the size of the Legislature should be cut to that set forth in the plan of the federal district court (105 member House and 35 member Senate); that the present size of the Legislature should be maintained; and that the present size of the House should be maintained but the Senate's size should be cut.

Should the present constitutional provision authorizing the Legislature to fix its size be changed or retained? To retain this provision dims any chance of a reduction in size. We appreciate that the maximum size we propose in our Report on reapportionment and redistricting will probably remain the size of the

Legislature. Short of a constitutional convention, the matter of size can be taken away from the Legislature only by a constitutional amendment which would allow initiated constitutional amendments or legislation for the purpose of fixing the size of the Legislature for all purposes. It is our judgment that it would not be possible or wise to try to limit the initiative to this purpose exclusively because there are like reasons to extend the initiative for other purposes as well. We are aware, of course, that the Amendment Process Committee opposes a constitutional provision for the use of the initiative to make laws or amend the Constitution. In discussing this Committee's recommendation, the Commission should bear in mind the problem of altering the Legislature's size.

The alternative of trying to deal with the Legislature's size in the Constitution runs the danger of mistaken estimates of future population changes. The 1948 Constitutional Commission, for example, recommended a change in the Constitution to limit the number of Senators to not more than one for every 40,000 inhabitants and the number of Representatives to not more than one for every 20,000 inhabitants.[15] This would have allowed the 1973 Senate to have 95 members and the 1973 House, 190 members, sizes we all agree would be excessive.

Our Committee is not in agreement on whether the size of the Legislature should be precisely fixed in the Constitution. Speaker Dirlam is of the view that the Legislature should continue to be authorized to fix the size of the Legislature subject to the limits proposed in our recommendations for periodic reapportionment and redistricting. Professor Auerbach is inclined to the view that it

may be preferable to specify the precise number of Senators and Representatives in the Constitution, provided that the Constitution is made easier to amend. Then the size could be adjusted in the light of new population figures. But the question discussed above would still remain as to how realistic it is to expect the Legislature to propose a constitutional amendment cutting its size.

Senator Brown writes: "Personally, I favor a reduction in size of the Legislature and I favor both upper and lower size limits being written into the Constitution. I would suggest 120 and 60 as upper limits and 80 and 40 as lower limits. That way, as long as we maintain some semblance of a citizen legislature, it could be relatively large; but when a decision is made to go to a "professional" legislature, the size could be cut drastically. Also, these limits would permit a change in the House-Senate ratio from 2-1 to 3-1 if so desired. Actually, the 120-40 plan would be my choice. Limits should be written effective with the 1980 census."

Senator Brown also favors the initiative for all types of constitutional amendments, but hopes that the Commission will agree to recommend the initiative at least with respect to all of Article IV.

VI. Other Recommendations

A. Other Citizens Conference Recommendations

As indicated above, the other recommendations made by the Citizens Conference to improve the Minnesota Legislature can be effectuated by the Legislature itself under existing constitutional provisions. In fact, since these recommendations were made in mid-1970, the Citizens Conference reports that the Minnesota Legislature has taken some steps to improve its organization and

procedures accordingly.[16] We have already mentioned the constitutional amendments which the 1971 Legislature has proposed. In addition, the Senate conducted a pre-session orientation program before the 1971 session. The number of standing committees in the 1971 Legislature was reduced in both Houses and each member was assigned to fewer committees. Major additions have been made to the staff, including administrative assistants, Senate Counsel assistants, the employment of ten research specialists during the session and a full-time librarian in the Senate Index department. The Senate Finance Committee added a full-time legislative analyst to bring full-time strength up to three. The clerical staff in the Senate has also been increased 28 per cent. Facilities have been improved and further improvements are in process or planned.

We urge the Legislature to appoint a joint standing committee of the Houses, composed of legislators from both caucuses in equal numbers, to study the Citizens Conference recommendations and initiate the steps to implement those that are deemed desirable and have not yet been adopted. Improvement of the Legislature's effectiveness should be a continuing task of this legislative committee.

Senator Brown thinks that all of the above discussion under A has no place in the Committee's Report.

B. Party Designation

In fact, Minnesota is a State with a vigorous two-party system, which reflects itself in the Legislature as well as in national politics. There are good reasons why political party identification of candidates for the Legislature should be required

and the Legislature organized on the basis of a majority and a minority along party lines. Party designation will make for a more comprehensible, more accountable and more legitimate Legislature.

The existing Constitution is silent on this issue and party designation may be required by legislation. We think the Constitution should remain silent on this issue, but that it should be dealt with by legislation. As a practical matter, this issue, like that of the Legislature's size, will not be a constitutional issue without the initiative or a constitutional convention. A Legislature which is unwilling to make party designation a statutory requirement will probably also be unwilling to propose a constitutional amendment to make party designation a constitutional requirement.

Senator Brown thinks that all of the above discussion under Part B has no place in the Commission's report, unless the Commission decides to recommend that party designation be made a constitutional issue. He writes: "I have some sympathy with that, although it may be getting too detailed to be a constitutional issue."

C. Special Sessions

Article V, Sec.4 empowers the Governor "on extraordinary occasions" to "convene both houses of the legislature." We think the Legislature should be authorized to call itself into special session whenever, in its opinion, the State's welfare so requires. Such authority would bolster the Legislature's independence and increase its responsibility and thereby make state government more effective.

To assure that the expense of a special session is not incurred unless the matters in question are important enough to warrant it, the Legislature should be authorized to call itself into session only upon a two-thirds vote each House.

It is possible that passage of the amendment proposed by the 1971 Legislature regarding the length and frequency of legislative sessions may accomplish the same purpose as an amendment empowering the Legislature to call itself into special session. For this reason, we do not urge the latter amendment at this time, but would prefer to await the vote on the proposed amendment in the 1972 election and, if it is adopted, some experience thereunder.

Senator Brown thinks the Committee should recommend something specific on special sessions or delete the discussion under C above.

D. Presiding Officer of Senate

Article IV, Sec. 5 directs the House of Representatives to elect its presiding officer. Article V, Sec. 6 makes the Lieutenant Governor ex officio president of the Senate. The 1971 Legislature passed an act proposing to amend these sections to direct each House to elect its presiding officer and to delete the provision making the Lieutenant Governor the presiding officer of the Senate. These proposals will go to the voters in the November, 1972 election.

Because the Lieutenant Governor may not vote to break a tie,[17] his role in the Senate has become largely ceremonial. We think this role can be dispensed with and therefore favor the proposed amendment. In any case, we do not think the Lieutenant Governor's role in the Senate should be more than ceremonial because such a role

detracts from the Senate's sense of independence and responsibility. Only leaders elected by the Senators should exercise significant powers in the Senate.

E. Legislative Procedures

On the whole, the Legislature may determine its own procedures. The Citizens Conference has made a number of procedures which need re-examination:

1. Should the Constitution continue to direct, as does Article IV, Sec.10, that all bills for raising revenue shall originate in the House of Representatives? We think not: the Constitution should be amended to delete this provision. The Senate, then, would also be empowered to originate revenue bills.

2. Should the Constitution continue to authorize the "pocket veto", as does Article IV, section 11?

3. Should the Constitution continue to require, as does Article IV, section 20, that every bill be read on three different days in each separate House? We think it would suffice to require that every bill be "reported", not "read", on three different days. This would provide the protection against hasty action intended by the present requirement yet eliminate the cumbersome and time-consuming aspects of compliance with it.

F. Qualification of Legislators

Article IV, Sec.25 requires not only that legislators be qualified voters of the State but also that they reside a year in the State and six months immediately preceding the election in the district from which they are elected. The latter requirement may work unfairly in the election immediately following reapportionment

and redistricting, and the Supreme Court in Sixty Seventh Minnesota State Senate v. Beens intimated that the federal district court could waive it. We are skeptical about the current justification for these residency requirements.

G. Unicameralism

Interest in the possibility of a unicameral legislature in Minnesota heightened when the three-judge federal district court reduced the size of both houses of the Minnesota Legislature for purposes of its first reapportionment and redistricting plan. This interest has not dissipated. It parallels the growing interest in unicameralism in other states. Yet Nebraska continues to be unique among the states in having a unicameral legislature. Only recently the voters in North Dakota and Montana rejected the opportunity to have a unicameral legislature.

We are not recommending unicameralism for Minnesota. But we think this possibility should be kept open and debated in the years to come. To this end, we shall present briefly some of the major considerations militating for and against unicameralism in Minnesota.

Contemporary interest in unicameralism may be said to have been revived by the U. S. Supreme Court's decision in Reynolds v. Sims[19] requiring population to be the predominant basis of representation in both houses of a state legislature. Responding to the argument that the Court's decision rendered the concept of bicameralism "anachronistic and meaningless," Mr. Chief Justice Warren said:

> A prime reason for bicameralism, modernly considered, is to insure mature and deliberate consideration of, and to prevent precipitate action on, proposed legislative measures. Simply because the controlling criterion for apportioning representation is required to be the same in both houses does not mean that there will be no differences in the composition and complexion of the two bodies. Different constituencies can be represented in the two houses. One body could be composed of single-member districts while the other could have at least some multimember districts. The length of terms of the legislators in the separate bodies could differ. The numerical size of the two bodies could be made to differ, even significantly, and the geographical size of districts from which legislators are elected could also be made to differ. And apportionment in one house could be arranged so as to balance off minor inequities in the representation of certain areas in the other house. In summary, these and other factors could be, and are presently in many states, utilized to engender differing complexions and collective attitudes in the two bodies of a state legislature, although both are apportioned substantially on a population basis.[20]

The current debate over unicameralism versus bicameralism centers, in part, on the question whether, in fact, we are engendering "differing complexions and collective attitudes in the two bodies of a state legislature" and whether such differences contribute to fair and effective democratic state government.

At the same time, it should be kept in mind that the Supreme Court's decision in Reynolds v. Sims also removed one of the principal objections traditionally raised to bicameralism, namely, that the "upper house" served to check the popular will reflected in the "lower house." Mr. Chief Justice Warren did not envisage that bicameralism would play such a role any longer.

It should also be pointed out before we launch into our discussion that one of the factors mentioned by Mr. Chief Justice Warren as possibly making for differences between the two houses would be foreclosed under the recommendations we made for periodic

reapportionment and redistricting. We recommend single-member districts in both the Senate and the House.

1. Does Bicameralism Insure Mature and Deliberate Consideration of Proposed Legislation?

An affirmative answer to this question is one of the principal justifications of bicameralism. The proponents of unicameralism argue both that deliberation does not now characterize the bicameral legislature which passes so many of its bills during the last days of the session and that a unicameral legislature need not be less deliberative.

2. Alleged Advantages of Unicameralism and Their Assessment

The proponents of unicameralism also contend that a unicameral legislature would be superior in the following respects:

a. It would not require legislative work to be done twice.

b. It is more accountable to the people, that is, it is easier to understand because simpler in structure. There are no problems of overcoming the rivalry and friction between the two houses and coordinating their work, managing joint committees or controlling conference committees. Thus the voters are better able to know what their legislators are doing and to punish or reward their performances. Indeed the Citizens Conference Evaluation Study ranked Nebraska first among the 50 states in being accountable.[21]

c. It would cost less compared to a bicameral legislature and thus make it easier to provide higher salaries and more adequate staff and facilities to legislators. The acceptance of this contention depends, of course, upon whether the number of legislators

in a unicameral legislature will be fewer than the combined number in both houses of a bicameral legislature. In Minnesota it could be safely assumed that this would be the case.

d. It would attract a better type of legislator. Since Nebraska affords the only basis of comparison, this contention is still not proven. Moreover, it is difficult to assess this claim because there is little agreement on what constitutes a "good" legislator. However, it should be mentioned that the American Political Science Association's Committee on American Legislatures accepted the view that a unicameral legislature would attract more outstanding citizens to legislative service.[22]

Even if we grant the defects of the bicameral legislature pointed out by the proponents of unicameralism--the duplication of legislative work, the added expense, the lack of sufficient accountability—the question would remain whether they are more than balanced by its advantages. It is difficult to make such an assessment without evaluating the legislative output itself and then one's stand on issues tends to affect one's views about legislative structure. It is interesting, therefore, to note that a national "Quality of Life" study conducted in 1967 by Dr. John O. Wilson ranked Minnesota 4th in the Nation and Nebraska 38th, for its "Democratic Process." In the same study, Minnesota was ranked 1st in the nation for "Health and Welfare" and "Equality"; Nebraska ranked 32nd on these categories.[23] This does not mean of course that unicameralism is responsible for Nebraska's relatively poor rankings in these categories and bicameralism for Minnesota's relatively high rankings. A unicameral legislature

in Minnesota might result in even higher rankings for Minnesota and a bicameral legislature in Nebraska, in even lower rankings for Nebraska. It means only that unicameralism should not be regarded as a panacea for all the ills that beset our states.

Even with respect to legislative structure alone, it is interesting that in spite of its unicameralism the Nebraska legislature was ranked 9th in the Citizen's Conference Legislative Evaluation Study while the bicameral Minnesota Legislature ranked 10th.[24] Nebraska ranked ahead of Minnesota only in being accountable (Minnesota ranked 7th); but Nebraska ranked 35th in being functional compared with 27th for Minnesota; 16th in being informed compared with 13th for Minnesota; 30th in being independent compared with 23rd for Minnesota and 18th in being representative compared with 12th for Minnesota.[25] Overall, nine bicameral legislatures were ranked ahead of Nebraska's legislature.

In the successful campaign for unicameralism in Nebraska in 1934, Senator George W. Norris and his co-workers agreed that unicameralism would bring about more representative government and would curb, if not destroy, the activities of lobbyists, who allegedly effected their purposes by appealing to the prejudices of the two houses and hid their schemes in the mazes of legislative procedure in the bicameral system.[26] Yet Nebraska is ranked behind Minnesota in being independent and representative. Unicameralism has not freed Nebraska from undue influence on the part of lobbyists. Indeed, it may be more difficult for lobbyists to exert improper influence in a bicameral legislature.

The Citizens Conference also recommends that the Nebraska Legislature require dual committee consideration of legislation

affecting significant sums of money--first by a substantive policy committee and then by a finance committee. Such dual committee consideration, of course, is a common characteristic of bicameral legislatures. So at least where money bills are concerned, bicameralism does seem to have the virtue of insuring their adequate legislative consideration. This is not to say that the procedures of a unicameral legislature could not be formulated so as to promote mature and deliberative legislative consideration. But a bicameral legislature can more easily assure consideration by legislators holding differing viewpoints on public policy. True, this increases the chances of legislative deadlock, but it also increases the chances of accommodation acceptable to larger numbers of people.

Since mid-1970, Nebraska, too, has improved the effectiveness of its unicameral legislature, though the shortcomings adverted to above have not been eliminated.[27] There is no way of knowing whether the improvements made by both Minnesota and Nebraska have changed the relative ranking of either in the Citizens Conference's national ranking of state legislatures. This is because the Citizens Conference report on legislative progress from mid-1970 through 1971 did not undertake to re-rank the state legislatures.[28]

3. Can The Two Houses Be Made To Represent Different Constituencies?

The answer to this question is crucial to the continued justification of bicameralism. The answer is probably yes but no one can be sanguine about the probability. Undoubtedly, the length of terms of Senators and Representatives, the numerical

sizes of the districts from which legislators are elected, will continue to differ in Minnesota. But all these factors mentioned by Mr. Chief Justice Warren, taken together, do not guarantee that the two houses will represent different constituencies. This can be done only if districts are drawn consciously so that a Senator represents more heterogeneous social, economic, ethnic and racial groups in the population than a Representative. Such a result is facilitated by the greater geographical size of the Senatorial district but is made more difficult to achieve by the constitutional requirement that a representative district may not be split in forming a senatorial district. In our Report on periodic reapportionment and redistricting, we have recommended that this requirement be retained in order to discourage gerrymandering. This is another instance in which two desirable objectives come into conflict.

If Senate districts are made more heterogeneous, the Senate will speak for less parochial interests than the House. To help assure that the legislators of at least one House will view problems from a statewide point of view is a strong argument for bicameralism. Unicameralism cannot attain this objective without sacrificing the strong representation of local and, sometimes, minority interests. Bicameralism avoids this sacrifice. But this advantage of bicameralism cannot yet be said to have been achieved in Minnesota.

4. Conclusion

Traditional acceptance of bicameralism will force the proponents of a change to unicameralism to bear the burden of proving that the change is indispensable to needed reform of the state

legislature. To date, this burden is not sustained by the evidence.

Mrs. Murphy does not think our Report should express opposition to or support of unicameralism, but should merely indicate the interest of citizens in the subject.

Speaker Dirlam does not think the Report states the case for bicameralism strongly enough.

Senator Brown writes: "Despite an overwhelming lack of public interest in unicameralism, it has been manufactured into an issue in the past two years by a few self-appointed experts on legislative reform. While there may be some merit to the study of unicameralism, I think that it has already received more attention than it deserves if we set priorities on potential constitutional change necessary for the improvement of government in Minnesota. Reynolds v. Sims did not change the method of apportioning either house of the Minnesota legislature—since statehood, both houses of our legislature were to be apportioned on the basis of population. Thus the argument that the senate was a "House of Lords" to check the popular will of the lower house never was accurate in Minnesota.

"Finally, if we are to look at unicameralism seriously as a means of making government more responsive, then also consider the parliamentary system. With a chief executive selected by the legislature and elections called immediately if the government loses a vote of confidence, the parliamentary system is most responsive. Also, unlike unicameralism in which there is only one model (Nebraska), there are numerous models of the parliamentary system at national and subnational levels in Canada and Western Europe that we could exercise."

1. Burns, The Sometime Governments: A Critical Study of the 50 American Legislatures by the Citizens Conference on State Legislatures (Bantam Books, 1971), hereinafter cited as The Sometime Governments

2. Id. at 7.

3. Ibid.

4. Id. at 49.

5. Id. at 52

6. Id. at 239

7. Id. at 239-240.

8. Knapp v. O'Brien, 288 Minn 103, 179 N.W.2d 88 (1970).

9. Id. at 106.

10. Minnesota Extra Session Laws 1971, Chapter 32, section 22.

11. The Sometime Governments, at 240

12. Ibid.

13. Id. at 66.

14. Id. at 240

15. Report of the Constitutional Commission of Minnesota 23 (1948).

16. The information that follows is taken from Legislatures Move to Improve Their Effectiveness: A Report on Legislative Progress from mid-1970 through 1971, 32-33 (Citizens Conference on State Legislatures Research Memorandum 15, April 1972). The information was supplied to the Conference by Aubrey W. Dirlam, Speaker of the Minnesota House and George C. Goodwin, Secretary of the Minnesota Senate.

17. See State ex rel. Palmer v. Perpich, 289 Minn. 149, 182 N.W.2d 182 (1971)

18. The Sometime Governments, at 157-160

19. 377 U.S. 533 (1964)

20. Id. at 576-577

21. The Sometime Governments, at 52.

22. American State Legislatures: Report of APSA's Committee on American Legislatures (Zeller ed. 1954).

23. The Quality of Life in Minnesota (Minnesota Department of Economic Development, 1970).

24. The Sometime Governments, at 52.

25. Idid.

26. Senning, The One-House Legislature 57 (1937).

27. Supra note 16, at 35-36

28. Id. at 4.