MINNESOTA

REAPPORTIONMENT

STAFF REPORT

Minnesota LEGISLATIVE RESEARCH COMMITTEE

Publication No. 100

January 1965

MINNESOTA LEGISLATIVE RESEARCH COMMITTEE

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The Legislative Research Committee is a joint committee of the legislature, meeting quarterly at the State Capitol and giving advance consideration to problems expected to confront the next legislature.

The Committee (1) acts as a clearing house for current legislative problems by receiving proposals for research studies; (2) determines and directs the study and research necessary for proper consideration of all proposals; (3) disseminates advance information on these problems to other legislators, the governor and the public by means of committee and research reports; and (4) reports to the legislature one month in advance of the regular session.

The Research Department of the Legislative Research Committee is organized to provide an unbiased, factual source of information with regard to problems which may be acted upon by the legislature. This department is engaged in objective fact finding under the general supervision of members of the Committee.

M I N N E S O T A

LEGISLATIVE RESEARCH COMMITTEE

STAFF REPORT

REAPPORTIONMENT

Research Report issued Pursuant to Proposal No. 146

A PROPOSAL to study the matter of reapportionment and the census figures that would be applicable in the event of reapportionment.

Publication No. 100

January 1965

Decisions of the United States Supreme Court on Reapportionment

Prior to 1946, federal courts had considered reapportionment issues as "political" in nature, and therefore had refused to take action on them. In 1946, the U. S. Supreme Court confirmed this view in Colegrove v. Green, 328 U. S. 549 (1946), the vote of the justices being four to three. Since this case the Supreme Court has held, as a general rule, that reapportionment and redistricting problems are subject to review by the federal courts. Colegrove and other recent supreme court cases pertaining to reapportionment are summarized below.

In 1946 Illinois congressional districts were grossly unequal, apportionment being based on a 1901 statute. In Colegrove v. Green, Colegrove and two other qualified voters brought suit in federal district court to restrain state officials from conducting an election in 1946 under the 1901 statute. The federal court dismissed the case as non-justiciable, and the plaintiffs appealed to the U. S. Supreme Court. The Supreme Court sustained the dismissal, declaring that apportionment of legislative districts involved "political questions" which should be left to the state legislature. State courts would act only if the reapportionment was so inequitable as to show complete disregard of the state constitution. The courts cited the Colegrove case as a precedent.

Historically, the federal courts refused to accept reapportionment cases on the three grounds listed below.

1. The question of reapportionment was political and therefore not justiciable.

2. The separation of powers doctrine forbade the courts to enter into the problem.

3. Finally, the courts of the central government felt that they were not empowered to violate the sovereignty of the state.

Beginning in 1956 with Dyer v. Kazushisa Abe, 138 F. Supp. 220 (1960), gradual inroads were made on the concept of judicial non-intervention in cases involving reapportionment of state legislatures. For more than 55 years, no reapportionment legislation had been enacted in Hawaii - then a territory and not a state. As a result of this inaction, and population shifts, representation in the territorial legislature of Hawaii became more and more unequal. Dyer, a qualified voter, brought suit in federal district court, claiming violations of the Fifth and Fourteenth Amendments of the United States Constitution.

The federal district court for the first time held that a case involving voting districts was a justiciable question over which it had jurisdiction. The reapportionment sought in the suit was withheld, pending action by the territorial legislature. Before further legal action could be taken, Congress laid out new legislative districts for Hawaii, and made the governor responsible for further legislative reapportionment.

Baker v. Carr, 369 U.S. Rep. 186 was decided on March 26, 1962. The appellants were qualified to vote for members of the Tennessee General Assembly. They brought suit in federal district court in Tennessee to regain their federal

constitutional rights allegedly deprived them by legislation classifying voters with respect to representation in the General Assembly. They claimed that the 1901 Tennessee Reapportionment Act denied their rights under the Equal Protection Clause of the Fourteenth Amendment of the U. S. Constitution. They sought to have the 1901 law declared unconstitutional and to restrain the state from conducting further elections under that law.

A federal district court dismissed the case on the grounds that it had no jurisdiction.

It was appealed to the Supreme Court which held:

1. The federal district court had jurisdiction of the federal constitutional claim asserted in the complaint.

2. Appellants had standing to maintain the suit.

3. Appellants' allegations of a denial of equal protection presented a justiciable constitutional cause of action upon which they were entitled to a trial and decision.

On March 18, 1963 a decision was handed down in Gray v. Sanders, 372 U. S. 368. The plaintiff, a qualified voter in Foulton County, Georgia, sued in a federal district court to restrain state officials from using Georgia's county-unit system as a basis for counting votes in a democratic primary election. The court held the system invalid, and prohibited its use in the next primary.

On appeal the Supreme Court held:

1. Since the constitutionality of a state statute was involved, and the question was a substantial one, a three judge court was properly convened to hear this case.

2. State regulation of these primary elections makes the election process state action within the meaning of the Fourteenth Amendment of the U. S. Constitution.

3. Plaintiff in the lower court, whose right to vote was impaired, had standing to sue.

4. This election system, used in a state-wide election violates the Equal Protection Clause of the Fourteenth Amendment.

A. The district court correctly held that the county-unit system, as applied in a state-wide election, violates the Equal Protection Clause of the Fourteenth Amendment.

B. The Equal Protection Clause requires that all who participate in an election have one vote.

C. The only weighting of votes sanctioned by the Constitution concerns matters of representation, such as the allocation of Senators irrespective of

population, and the use of the electoral college in the choice of a President.

D. The concept of political quality can mean only one thing, one person one vote.

On June 15, 1964, the Supreme Court handed down its decisions on apportionment cases consolidated from six states; Alabama, Colorado, Delaware, Maryland, New York and Virginia, 84 S.C. 1362 et seq.

Alabama--Reynolds v. Sims

This decision represents the current view of the U. S. Supreme Court. In this case one justice dissented.

The Supreme Court remanded this case to a federal district court, which had temporarily reapportioned the Alabama Legislature pending further legislative action. The district court will take further action should the temporarily reapportioned legislature fail to take action on a permanent apportionment scheme.

In its opinion the Court said: "A predominate consideration in determining whether a state legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature."

The Court went on to say that its focus must be concentrated upon ascertaining whether there has been any discrimination against certain of the state's citizens, which would constitute an impairment of their right to vote. If a state should provide that the votes of citizens in one part of the state should be given two, five or ten times the weight of votes of citizens in another part of the state it could be said that this was an effective dillution of the votes of those citizens living in the disfavored area.

The prevailing Justices stated that with respect to the allocation of representation, all voters stand in the same relation regardless of where they live. Further, that any criteria for differentiation of citizens is insufficient, unless relevent to the practical purposes of legislative apportionment. Therefore the controlling criteria for judgment in legislative apportionment must be population.

> "We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis."

In thus holding, they state that they mean that the Equal Protection Clause requires that a state make an honest and good faith effort to construct districts, in both houses, as nearly of equal population as is practicable. But they realize that mathematical exactness is an impossibility. The Court felt that if either house were apportioned according to any other factor than population, the citizens right to equal representation would be as effectively impaired as if neither house were apportioned on a population basis. However, the Court saw how two houses of a bicameral state legislature could conceivably represent different constituencies.

Possibly one body could be composed of single member districts while the other could have some multi-member districts. Or, the numerical size of the two bodies could differ, and the geographical size of the districts could vary. So long as divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal population principle are constitutionally permissible in either or both houses of a bicameral state legislature. This is not to say, however, that consideration of area alone is sufficient justification for deviation from the equal population principle.

The Court did feel that one consideration justifying some deviations from population based representation is that of insuring some voice to political subdivisions.

> "Several factors make more than insubstantial claims that a state can rationally consider according to political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained."

The Court pointed out that a state may want to construct districts along political subdivision lines to deter the possibilities of gerrymandering. However, this is not to imply that political subdivisions can be given separate representation regardless of population.

> "But if, even as a result of a clearly rational state policy of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the state's citizens to cast an effective vote and adequately weighted vote would be unconstitutionally impaired."

In its opinion the Court denied the applicability of the federal system to the state legislative apportionment arrangements. It pointed out that while states are considered sovereign entities in relation to the federal government, political subdivisions of states are not considered sovereign. State subdivisions, the Court noted, are regarded as subordinate governmental instrumentalities created by the states to assist in the carrying out of state governmental functions.

The Court did not lay down any specific standards for apportionment, or remedies available through the courts.

> "The courts can and assuredly will work out more concrete and specific standards for evaluating state legislative apportionment schemes in the context of actual litigation."

Neither was the Court clear as to what population was to be used in apportioning state legislatures. Can apportionment be based on only registered voters, or people voting in the last election, or must it be based on the total population of the state?

In respect to the cases consolidated in Reynolds v. Sims the Court said:

1) Colorado--Lucus v. Forty-fourth General Assembly of Colorado

The Supreme Court reversed a district court decision upholding a federal type plan for apportionment, which Colorado voters had chosen in an initiative over a strict population system.

2) Delaware--Roman v. Sincock

A federal district court decision, ruling the Delaware apportionment system unconstitutional was upheld by the Supreme Court. The case was sent back to the lower court to determine whether reapportionment must take place before the 1964 elections.

3) Maryland--Maryland Committee for Fair Representation v. Tawes

The Supreme Court reversed a judgment of the Maryland Court of Appeals. The Maryland Court had upheld the constitutionality of senate apportionment based on area. The Supreme Court held that the Legislature of Maryland must reapportion itself before elections in 1966. If no action is taken, the Maryland court is instructed to take action itself.

4) New York--W.M.C.A. v. Lomenzo

The Supreme Court ruled that the county based apportionment of New York violates the Equal Protection Clause of the Fourteenth Amendment. The Supreme Court majority held the apportionment plan of New York was unconstitutional because 41.8 percent of the citizens could elect a majority in the senate. This case was sent back to the lower court to determine whether reapportionment must take place before the 1964 elections.

5) Virginia--Davis v. Mann

The Supreme Court affirmed a federal district court decision which held Virginia apportionment unconstitutional. Under the Virginia plan, 41.1 percent of the electorate could elect a majority in the upper house, and 45 percent in the lower house.

A federal district court decision, Magraw v. Donovan, 163 Fed. Supp. 185 (March 21, 1958) may be of interest to Minnesotans. In this case action was taken by citizen voters to have the 1913 Minnesota Legislative Redistricting Act declared invalid, and prevent further elections under that law. Federal district court retained jurisdiction of this case stating that if the sixty-first session (1959) of the state legislature didn't act on reapportionment the parties could, sixty days after adjournment of the legislature, petition the court for such action as they deemed appropriate. The plaintiffs cause was dismissed without prejudice in view of the reapportionment action taken by the Legislature in 1959.

A case filed in the federal district court challenged the 1959 reapportionment in Minnesota (July 1964). The plaintiffs claim that the reapportionment of 1959 was not valid because it was based on 1950 census figures, and there should be a new apportionment based on the 1960 figures. Both sides in this suit requested that the federal district court retain jurisdiction of the case until

the end of the 1965 Session of the Legislature which would give the 1965 Legislature an opportunity to reapportion the state.

Five appendix tables have been prepared and are published in the appendix section of this report to provide the legislature with background information of the reapportionment situation throughout the states.

Appendix Table I shows the basis that the states have used up to now for their apportionment. Until recently twelve states have apportioned on population factors only. Nineteen states have used only area factors in apportionment of their state legislatures. The remaining nineteen states have combined both area and population in legislative apportionment. This is of historical interest only in view of the Reynolds v. Sims decision.

Appendix Table II deals with frequency of apportionment among the states. Forty-two states have been apportioned since 1960. Nine of these states are among those twelve that apportion according to population only. Between 1950 and 1960, eight states apportioned their legislatures. Three of these states are among those that apportion according to population only. Presumably under the Reynolds v. Sims decision reapportionment will be required after every federal census.

Appendix Table III, which shows state apportioning agencies, indicates that in thirty-nine states this power rests with the legislature. Among these thirty-nine states, ten apportion according to population. Eleven states by law directly delegate a person or body other than the legislature to do the apportioning. In some states it will be noted that the power to reapportion is delegated if the legislature fails to act.

Appendix Table IV will give the legislature knowledge of what action is currently being taken among the several states relating to the reapportionment problem. This has been compiled from the most recent information available from various sources.

Appendix Table V shows the difference in population of Minnesota legislative districts in 1950 and 1960.

Appendix VI reproduces the recent Federal Court decision with respect to reapportionment in Minnesota.

APPENDIX TABLE I
(As of January 31, 1964)

Basis of Apportionment of State Legislatures

Alabama
- Senate: Population, except no district more than one member.
- House: Population.

Alaska
- Senate: Area and population factors; combination of house districts into four at-large districts and a varying number of minor districts.
- House: Population.

Arizona
- Senate: Senate districts established by constitution.
- House: Population; votes cast for governor at last election, but not less than if computed on the basis of the election of 1930.

Arkansas
- Senate: Fixed.
- House: Each county at least one member, remainder by the rule of equal proportions.

California
- Senate: Population; no county or city and county to have more than one member. No more than three counties in any district.
- House: Population.

Colorado
- Senate and House on population ratios.

Connecticut
- Senate: Population; each county at least one member.
- House: Two members from each town over 5,000. Others same as in 1874.

Delaware
- Senate: Geographical.
- House: Population.

Florida
- Senate: Population and geography, but no county except Dade more than one member.
- House: Population, each county at least one member.

Georgia
- Senate: Districts established by General Assembly.
- House: Population, three for eight largest counties, two for next thirty largest, one each for others.

Hawaii
- Senate: Districts specified by constitution.
- House: Population, but each county at least one member.

Idaho
- Senate: One member from each county.
- House: Total not to exceed three times the size of the Senate. Each county at least one representative, remainder apportioned according to population.

Illinois
- Senate: Fixed districts based on area.
- House: Population

Indiana
- Both Senate and House by male inhabitants over 21 years of age.

APPENDIX TABLE I (cont.)

Iowa
Senate: Population, but no county more than one member.
House: One member for each county and one additional for each of the nine largest counties.

Kansas
Senate: Population.
House: Population, but each county at least one member.

Kentucky
Senate: Population.
House: Population, but no more than two counties joined in a district.

Louisiana
Senate: Population.
House: Population, but each parish and each ward of New Orleans at least one member.

Maine
Senate: Population, but no county has less than one or more than five members.
House: Population, but each county at least one member.

Maryland
Senate: One member from each county and from each of six districts constituting Baltimore city.
House: Population, with minimum of two per county and Baltimore city districts.

Massachusetts
Senate: Legal voters.
House: Population figures in each county.

Michigan
Senate: 80% population, 20% area.
House: Population.

Minnesota
Senate and House population.

Mississippi
Senate: One member for each district, except for three districts which have two members.
House: Prescribed by constitution, each county at least one member, remainder according to population.

Missouri
Senate: Population.
House: Population, but each county at least one member.

Montana
Senate: One member from each county.
House: Population, but at least one member from each county.

Nebraska
Unicameral legislature 80% population, 20% area.

Nevada
Senate: One member for each county.
House: Population.

New Hampshire
Senate: By direct taxes paid.
House: Population.

New Jersey
Senate: One member from each county.
House: Population, but at least one member from each county.

APPENDIX TABLE I (cont.)

New Mexico
- Senate: One member for each county.
- House: At least one member from each county and additional members for more populous counties.

New York
- Senate: Population, no county more than 1/3 the membership, no more than 1/2 membership to two adjoining counties.
- House: Population, each county except Hamilton, at least one member.

North Carolina
- Senate: Population.
- House: Population but each county at least one member.

North Dakota
- Senate: Set by constitution, but somewhat reflects population.
- House: Population, but each county or district entitled to one member.

Ohio
- Senate: Population.
- House: Population, but each county at least one member.

Oklahoma
- Senate and House by population.

Oregon
- Senate and House by population.

Pennsylvania
- Senate: Population, but no city or county to have more than 1/6 of membership.
- House: Population, but each county at least one member.

Rhode Island
- Senate: Qualified voters, but minimum of one and maximum of six per city.
- House: Population, but at least one member from each town or city, and no town or city more than 1/4 of total.

South Carolina
- Senate: One member from each county.
- House: Population, but at least one member from each county.

South Dakota
- Senate and House by population.

Tennessee
- Senate and House by qualified voters.

Texas
- Senate: Qualified electors, but no county more than one member.
- House: Population, but no county more than 7 representatives unless population is greater than 700,000, then one additional representative for each 100,000.

Utah
- Senate: Population.
- House: Population, each county at least one member, with additional representatives on a population ratio.

Vermont
- Senate: Population, but each county at least one member.
- House: One member from each inhabited town.

Virginia
- Senate and House by population.

Washington
- Senate and House by population.

APPENDIX TABLE I (cont.)

West Virginia
- Senate: Population, but no two members from any county unless one county constitutes a district.
- House: Population.

Wisconsin
- Senate and House by population.

Wyoming
- Senate: Population, but each county at least one member.
- House: Population, but each county at least one member.

APPENDIX TABLE II

(As of January 31, 1964)

Frequency of Required Reapportionment and Dates of the Last Two Apportionments

State	Frequency	Last Two Apportionments	
Alabama	Every 10 years	1962	1906
Alaska	Every 10 years	1961	1956
Arizona	Every 2 years (House). No provision for Senate.	H 1962 S 1953	H 1958
Arkansas	Every 10 years	H 1962 S 1956	1951
California	Every 10 years	1961	1951
Colorado	After each federal census.	1963	1953
Connecticut	Every 10 years (Senate). No provision for House.	H 1876 S 1903	H 1818 ....
Delaware	Every 10 years	1897	....
Florida	Every 10 years	1963	H 1955 S 1945
Georgia	Every 10 years	H 1961 S 1962	H 1953 S 1946
Hawaii	Every 10 years	1959	1958
Idaho	Every 10 years	1963	1951
Illinois	Every 10 years (House).	1955	1901
Indiana	Every 6 years	1963	1921
Iowa	Every 10 years	1961	H 1941 S 1953
Kansas	Every 5 years	H 1961 S 1947	H 1959 S 1933
Kentucky	Every 10 years	1963	1942
Louisiana	Every 10 years	H 1963	1921
Maine	Every 10 years (House).	H 1964 S 1961	H 1961 S 1951
Maryland	Every 10 years	1962	1943
Massachusetts	Every 10 years after state census.	H 1963 S 1960	H 1947 S 1948
Michigan	Every 10 years	1962	1953
Minnesota	Every 10 years and after each state census.	1959	1913
Mississippi	Every 10 years	1963	1916
Missouri	Every 10 years	1961	1951
Montana	Every 10 years, session following the federal census.	1961	1951
Nebraska	No more than once every 10 years.	1963	1935
Nevada	Every 10 years	1961	1951
New Hampshire	Every 10 years for House, Senate from time to time.	H 1961 S 1961	H 1951 S 1915
New Jersey	Every 10 years	1961	1941

APPENDIX TABLE II (cont.)

State	Frequency	Last Two Apportionments	
New Mexico	Every 10 years	1963	1955
New York	Every 10 years	1954	1944
North Carolina	Every 10 years	H 1961 S 1963	H 1941 S 1941
North Dakota	Every 10 years, session following the federal census.	H 1963	1931
Ohio	Every 10 years, each biennium.	1961	1951
Oklahoma	Every 10 years	1963	1951
Oregon	Every 10 years	1961	1954
Pennsylvania	Every 10 years	1964	H 1953 S 1921
Rhode Island	After any presidential election.	H 1930 S 1960	H .... S 1940
South Carolina	Every 10 years	1961	1952
South Dakota	Every 10 years	1961	1951
Tennessee	Every 10 years	1963	1962
Texas	Every 10 years	1961	1951
Utah	Every 10 years	1963	1955
Vermont	Every 10 years for Senate, no provision for House.	H 1793 S 1962	H .... S 1941
Virginia	Every 10 years	1962	1958
Washington	Every 10 years	1957	1931
West Virginia	Every 10 years	1963	1950
Wisconsin	Every 10 years	1951	1921
Wyoming	Every 10 years	1963	1931

APPENDIX TABLE III
(As of January 31, 1964)

State	Apportioning Agency
Alabama	Legislature.
Alaska	Apportionment board; its recommendations are reviewed and confirmed or changed by the governor.
Arizona	No provision for Senate; House by County Boards of Supervisors.
Arkansas	Board of Apportionment. Subject to revision by State Supreme Court.
California	Legislature, or if it fails, a reapportionment commission. In either case, subject to a referendum.
Colorado	General Assembly.
Connecticut	General Assembly for Senate, no provision for House.
Delaware	Apportionment Commission.
Florida	Legislature.
Georgia	General Assembly "may" change senatorial districts. Shall change House apportionment at first session after each U.S. census.
Hawaii	Governor.
Idaho	Legislature.
Illinois	General Assembly, or if it fails, a reapportionment commission appointed by the governor.
Indiana	General Assembly.
Iowa	General Assembly.
Kansas	Legislature.
Kentucky	General Assembly.
Louisiana	Legislature.
Maine	Legislature, of if it fails, the Supreme Judicial Court.
Maryland	Governor for House, no provision for Senate.
Massachusetts	General Court.
Michigan	Commission on Legislative Apportionment.
Minnesota	Legislature "shall have power".
Mississippi	Legislature "may".
Missouri	House, Secretary of State apportions among counties. Senate, a commission appointed by the governor.
Montana	Legislative Assembly.
Nebraska	Legislature "may".
Nevada	Legislature.
New Hampshire	General Court.
New Jersey	For House, Legislature apportions among counties.
New Mexico	Legislature "may".
New York	Legislature, subject to review by courts.
North Carolina	General Assembly.
North Dakota	Legislative Assembly, or if it fails, a special board.
Ohio	Governor, Auditor, and Secretary of State, or any two of them.
Oklahoma	Legislature.
Oregon	Legislative Assembly, or if it fails, Secretary of State. Reapportionment subject to Supreme Court Review.
Pennsylvania	General Assembly.
Rhode Island	General Assembly "may" after any presidential election.
South Carolina	General Assembly.
South Dakota	Legislature or failing that governor, Superintendent of Public Instruction, Presiding Judge of Supreme Court, Attorney General, and Secretary of State.

APPENDIX TABLE III (cont.)

State	Apportioning Agency
Tennessee	General Assembly.
Texas	Legislature, of if it fails, Legislative Redistricting Board.
Utah	Legislature.
Vermont	Legislature apportions Senate, no provision for House.
Virginia	General Assembly
Washington	Legislature or by initiative.
West Virginia	Legislature.
Wisconsin	Legislature.
Wyoming	Legislature.

APPENDIX TABLE IV
(As of November 1, 1964)

Present Reapportionment Status Among The States

ALABAMA -- Suit is pending in federal court after U.S. Supreme Court decision voiding a "federal plan" of apportionment. Legislature established a committee to study the problem and report to the 1965 regular session.

ALASKA -- Governor order State Advisory Reapportionment Board to report to him before December 15 with a reapportionment plan.

ARIZONA -- Federal court delayed action until after next session. Governor appointed a group to study the problem.

ARKANSAS -- Suit challenging existing apportionment dismissed because State Board of Apportionment hasn't had a chance to reapportion.

CALIFORNIA -- U.S. Supreme Court denied to hear a suit challenging the apportionment of the senate. State senate requests to intervene in suit to prevent senatorial elections pending reapportionment of that house on population basis. Senate Judiciary Committee has been holding hearings on the problem.

COLORADO -- U.S. Supreme Court voided a "federal plan". State Supreme Court ruled out a new scheme, but will permit its use this year. Appeal from a district court asks U.S. Supreme Court to find if apportionment of lower house is severable from senate apportionment.

CONNECTICUT -- Federal court ordered new districts before September 10, 1964. Special session of legislature couldn't agree on reapportionment. Federal court ordered legislative elections not to be held on November 3, and current legislature to continue to serve in a holdover capacity. After temporary reapportionment by special session, a special election will be held for 1965 legislators and there will be a statewide referendum to approve proposed Constitutional Amendments on reapportionment.

DELAWARE -- New apportionment plan passed on July 7. Federal district court denied a request to enjoin holding 1964 elections under this plan.

FLORIDA -- U.S. Supreme Court on June 22 said they must reapportion. Suit pending. New governor will call a special session next year.

GEORGIA -- Federal court ordered 1965 legislature to reapportion and provide for special elections to fill house seats when the plan is completed. U.S. Supreme Court will hear appeal on two points of lower court decision: 1) invalidation of at-large election of senators from multi-member senate districts, 2) an order that the legislature cannot perform non-legislative functions until reapportioned. House Apportionment Study Committee is currently in session.

APPENDIX TABLE IV (cont.)

HAWAII -- On August 13, 1964, suit was filed in federal district court, asking the court to 1) enjoin holding 1964 elections under present apportionment, 2) order an election at large or promulgate its own apportionment plan, if the legislature failed to do so, 3) retain jurisdiction, and 4) promulgate its own apportionment plan for 1966 elections if legislature fails to act. Court denied relief and set January 11, 1965 for hearings on the merits.

IDAHO -- U.S. Supreme Court on June 22 said Idaho must reapportion. Federal court will wait until end of next session to act. Special session of the legislature appropriated $20,000 for a Legislative Council study of reapportionment.

ILLINOIS -- On June 22, 1964, U.S. Supreme Court said Illinois must reapportion. Federal district court may order temporary reapportionment until 1968, when legislature can legally act.

INDIANA -- Election in November according to 1963 geography plan, then if 1965 session doesn't act the court will.

IOWA -- U.S. Supreme Court on June 22, 1964, affirmed a federal district court order approving use of a temporary apportionment plan for 1964 elections. If legislature doesn't pass a permanent reapportionment bill next year, the court will take further action.

KANSAS -- No hearing set in federal court suit.

KENTUCKY -- Kentucky's 1963 apportionment act is believed to meet Supreme Court standards.

LOUISIANA -- House reapportioned in 1963, special session to be called this fall for senate reapportionment.

MAINE -- Group remapped house in January. Same group will remap senate in September special session.

MARYLAND -- U.S. Supreme Court threw out a "federal plan". Legislature will act during 1965 session if a special session isn't called. A special committee is currently studying the problem.

MASSACHUSETTS -- No action before elections.

MICHIGAN -- U.S. Supreme Court threw out apportionment allowing 20% weight to area. Michigan Legislative Apportionment Commission adopted a straight population plan which became law on August 27, 1964.

MINNESOTA -- Governor named a bipartisan group to submit a plan for reapportionment. Legislative Research Committee is studying the problem. Recent federal court ruling requires 1965 Legislature to reapportion.

APPENDIX TABLE IV (cont.)

MISSISSIPPI -- It is believed that apportionment of July 1963 is legal.

MISSOURI -- Apportioned according to population in 1961, but federal court suits seek more weight for populous areas.

NEBRASKA -- Court threw out 1963 apportionment, order a new plan for the 1966 elections.

NEVADA -- Suit now pending in federal court. A committee has been appointed by the governor to study the problem.

NEW HAMPSHIRE -- New apportionment plan went to the voters in November.

NEW JERSEY -- Suit asking for redistricting by January 1 is now pending in New Jersey Supreme Court.

NEW MEXICO -- No action seen until 1965.

NEW YORK -- U.S. Supreme Court threw out a county based apportionment plan. Federal court ordered reapportionment by next April. Governor appointed a group to study the problem. Governor called special session of the legislature which is now considering reapportionment.

NORTH CAROLINA -- Lower house redrawn in 1961, senate in 1963. More action possible in 1965.

NORTH DAKOTA -- Court ordered the 1965 session to reapportion itself. The Subcommittee on Constitutional Revision of the North Dakota Legislative Research Committee is working on proposals for submission to the legislature.

OHIO -- U.S. Supreme Court on June 22, declared present house apportionment unconstitutional. Federal court retained jurisdiction, ordering the legislature to submit a constitutional amendment apportioning according to population to the voters in 1965. The Ohio Legislative Service Commission appointed a committee to study the problem.

OKLAHOMA -- U.S. Supreme Court declared its apportionment unconstitutional. Federal court voided the May primary election and ordered a new primary under a federal court apportionment plan. The November elections were also held under this plan.

OREGON -- No change needed.

PENNSYLVANIA -- Pennsylvania Supreme Court held that 1964 elections could be held under present apportionment, but 1966 elections must be held under new apportionment plans meeting requirements of U.S. Supreme Courts decisions. U.S. Supreme Court affirmed this decision.

RHODE ISLAND -- Proposed constitutional convention will consider reapportionment if voters approve their convening in November elections.

APPENDIX TABLE IV (cont.)

SOUTH CAROLINA -- No action likely unless suit is brought.

SOUTH DAKOTA -- Nothing pending, no action likely before January.

TENNESSEE -- Federal court has approved apportionment plans for the house and senate. Even if the legislature doesn't accept them they will become effective upon their adjournment.

TEXAS -- Federal court met in October to hear challenge of 1961 apportionment.

UTAH -- Committee appointed to study reapportionment. If January session doesn't reapportion, the court will do it 30 days after closing of the session.

VERMONT -- Court has ordered redistricting by April, 1965. Legislators elected under the current apportionment will enact no legislation except that dealing with reapportionment. The second part of this decision has been appealed to the U.S. Supreme Court, and if it is denied, the Governor may call a special session.

VIRGINIA -- Federal court set December 15, 1964 as the date for calling a special session of the legislature for reapportioning both houses. Present terms of legislators will expire no later than the second Wednesday in January 1966.

WASHINGTON -- U.S. Supreme Court on June 22, declared existing apportionment unconstitutional. Federal court allowed 1964 elections under existing apportionment, but all legislative terms will expire on January 9, 1967 or at such other time as provided by a constitutionally valid reapportionment plan approved by the court. Until the legislature approves an acceptable plan it may consider and enact: 1) Appropriations for legislative expenses, 2) legislative apportionment measures, 3) veto messages from 1963 session, and 4) confirmation of gubernatorial appointments.

WEST VIRGINIA -- No action pending.

WISCONSIN -- State Supreme Court ordered their own plan which will hold until governor and legislature agree on a valid plan.

WYOMING -- A special session of the legislature has been called to consider legislative reapportionment.

APPENDIX TABLE V

POPULATION OF CERTAIN MINNESOTA LEGISLATIVE DISTRICTS
(1950, 1960 and Difference)

Legislative District	Senate District	Population			House District	Population		
		1950	1960	Increase		1950	1960	Increase
1	Houston and Fillmore Co.	38,900	40,356	1,456	Houston Co.	14,435	16,588	2,153
					Fillmore Co.	24,465	23,768	(697)
2	Winona Co.	39,841	40,937	1,096	City of Winona	25,031	24,895	(136)
					Balance of County	14,810	16,042	1,232
3	Wabasha and Olmsted Co. except city of Rochester & townships of Haverhill, Cascade, Rochester & Marion.	29,330	30,524	1,194	Wabasha Co.	16,878	17,007	129
					Olmsted Co. (stated portion)	12,452	13,517	1,065
4	City of Rochester & townships of Haverhill, Cascade, Rochester and Marion.	35,776	52,015	16,239	Same	Same	Same	Same
5	Mower and Dodge Co.	54,901	61,757	6,856	Mower Co. (except Austin)	19,177	20,590	1,413
					City of Austin	23,100	27,908	4,808
					Dodge Co.	12,624	13,259	635
6	Goodhue Co.	32,118	33,035	917	Same	Same	Same	Same
7	Rice Co.	36,235	38,988	2,753	Same	Same	Same	Same
8	Waseca and Steele Co.	36,112	41,070	4,958	Waseca Co.	14,957	16,041	1,084
					Steele Co.	21,155	25,029	3,874
9	Freeborn Co.	34,517	37,891	3,374	Same	Same	Same	Same
10	Faribault and Martin Co.	49,534	50,671	1,137	Faribault Co.	23,879	23,685	(194)
					Martin Co.	25,655	26,986	1,331
11	Blue Earth Co.	38,327	44,385	6,058	City of Mankato	18,809	23,797	4,988
					Balance of County	19,518	20,588	1,070

APPENDIX TABLE V (cont.)

Legislative District	Senate District	Population 1950	Population 1960	Increase	House District	Population 1950	Population 1960	Increase
12	LeSueur and Scott Co.	35,574	41,815	6,241	LeSueur Co.	19,088	19,906	818
					Scott Co.	16,486	21,909	5,423
13	Dakota Co.	49,019	78,303	29,284	Cities of So. St. Paul, West St. Paul & Village of Inver Grove	24,531	35,846	11,315
					Balance of County	24,488	42,457	17,969
14	McLeod and Carver Co.	40,353	45,759	5,406	McLeod Co.	22,198	24,401	2,203
					Carver Co.	18,155	21,358	3,203
15	Nicollet and Sibley Co.	36,745	39,424	2,679	Nicollet Co.	20,929	23,196	2,267
					Sibley Co.	15,816	16,228	412
16	Meeker and Renville Co.	42,920	42,136	(784)	Meeker Co.	18,966	18,887	(79)
					Renville Co.	23,954	23,249	(705)
17	Redwood and Brown Co.	48,022	49,394	1,372	Redwood Co.	22,127	21,718	(409)
					Brown Co.	25,895	27,676	1,781
18	Watonwan, Cottonwood & Jackson Co.	45,950	46,127	177	Watonwan Co.	13,881	14,460	579
					Cottonwood Co.	15,763	16,166	403
					Jackson Co.	16,306	15,501	(805)
19	Nobles, Rock and Murray Co.	48,514	49,972	1,458	Nobles Co.	22,435	23,365	930
					Rock Co.	11,278	11,864	586
					Murray Co.	14,801	14,743	(58)
20	Lincoln, Pipestone and Lyon Co.	46,406	45,911	(495)	Lincoln Co.	10,150	9,651	(499)
					Pipestone Co.	14,003	13,605	(398)
					Lyon Co.	22,253	22,655	402
21	Pine, Chisago & Isanti Co.	43,015	43,953	938	Pine Co.	18,223	17,004	(1,219)
					Chisago & Isanti Co.	24,792	26,949	2,157

APPENDIX TABLE V (cont.)

Legislative District	Senate District	Population 1950	Population 1960	Increase	House District	Population 1950	Population 1960	Increase
22	Lac qui Parle, Chippewa & Yellow Medicine Co.	47,563	45,173	(2,390)	Lac qui Parle Co.	14,545	13,330	(1,215)
					Chippewa Co.	16,739	16,320	(419)
					Yellow Medicine Co.	16,279	15,523	(756)
23	Swift and Kandiyohi Co.	44,481	44,923	442	Swift Co.	15,837	14,936	(901)
					Kandiyohi Co.	28,644	29,987	1,343
24	Stevens, Big Stone, Grant and Traverse Co.	38,308	36,589	(1,719)	Stevens and Grant Co.	20,648	20,132	(516)
					Traverse & Big Stone Co.	17,660	16,457	(1,203)
25	Douglas & Pope Co.	34,166	33,227	(939)	Douglas Co.	21,304	21,313	9
					Pope Co.	12,862	11,914	(948)
26	Stearns Co. except City of St. Cloud, Village of Waite Park & Township of St. Cloud	43,052	46,542	3,490	Villages of Meire Grove, Brooten, Belgrade, Paynesville, Freeport, St. Rosa, New Munich, St. Martin, Spring Hill, Greenwald, Lake Henry, Elrosa & Roscoe; Cities of Sauk Centre & Melrose; Towns of Ashley, Sauk Centre, Melrose Raymond, Getty, Grove, North Fork, Lake George, Spring Hill, Crow Lake, Crow River, Lake Henry, Zion, Millwood, Oak, St. Martin & Paynesville	19,863	20,729	866
					Balance of District	23,189	25,813	2,624
27	City of St. Cloud, Village of Waite Park, Township of St. Cloud and County of Benton	46,196	54,256	8,060	Portion of the City of St. Cloud located in Stearns County, Village of Waite Park and Township of St. Cloud	27,629	33,803	6,174
					County of Benton & portion of City of St. Cloud located in Sherburne Co.	18,567	20,453	1,886

APPENDIX TABLE V (cont.)

Legislative District	Senate District	Population 1950	Population 1960	Increase	House District	Population 1950	Population 1960	Increase
28	Kanabec, Mille Lacs and Sherburne Co. except that portion of City of St. Cloud located in Sherburne County	32,362	33,262	900	Same (Two Representative at Large)	Same	Same	Same
29	Wright Co.	27,716	29,935	2,219	Same	Same	Same	Same
30	City of Robbinsdale, Villages of Brooklyn Center, Brooklyn Park, Crystal, Golden Valley, Greenfield, Rockford, Hanover, Rogers, Maple Grove, Dayton, Champlin and Osseo, and the Townships of Champlin, Dayton, Hassan & Corcoran, all in Hennepin Co.	38,076	100,520	62,444	City of Robbinsdale, & the Villages of Brooklyn Center & Brooklyn Park	18,638	50,934	32,296
					Balance of District	19,438	49,586	30,148
31	City of Wayzata, Villages of New Hope, Plymouth, Medicine Lake, Minnetonka, Deephaven, Woodland, Excelsior, Tonka Bay, Shorewood, Minnetonka Beach, Spring Park, Island Bay, Orono, Mound, St. Bonifacius, Long Lake, Greenwood, Maple Plain, Independence, Loretto and Medina, Townships of Eden Prairie & Minnetrista, all in Hennepin Co.	43,709	75,637	31,928	Villages of New Hope, Plymouth, Medicine Lake, and Minnetonka & Township of Eden Prairie	20,068	41,721	21,653
32	Villages of Bloomington & Richfield and the Fort Snelling Reservation	29,988	93,919	63,931	Village of Bloomington	9,902	50,498	40,596
					Balance of District	20,086	43,421	23,335

APPENDIX TABLE V (cont.)

Legislative District	Senate District	Population 1950	Population 1960	Increase	House District	Population 1950	Population 1960	Increase
33	Villages of Edina & Morningside and Cities of St. Louis Park & Hopkins	41,682	85,162	43,480	City of St. Louis Park	22,644	43,310	20,666
					Balance of District	19,038	41,852	22,814
34*	City of Minneapolis (part)	61,413	59,475	(1,938)	Same (Two Representatives at Large)	Same	Same	Same
35*	City of Minneapolis (part)	72,171	70,915	(1,256)	Same (Two Representatives at Large)	Same	Same	Same
36*	City of Minneapolis (part)	60,187	53,233	(6,954)	Same (Two Representatives at Large)	Same	Same	Same
37*	City of Minneapolis (part)	56,653	65,120	8,467	Same (Two Representatives at Large)	Same	Same	Same
38*	City of Minneapolis (part)	33,850	24,428	(9,422)	Same (Two Representatives at Large)	Same	Same	Same
39*	City of Minneapolis (part)	66,500	67,806	1,306	Same (Two Representatives at Large)	Same	Same	Same
40*	City of Minneapolis (part)	43,513	37,154	(6,359)	Same (Two Representatives at Large)	Same	Same	Same
41*	City of Minneapolis (part) and Village of St. Anthony (part)	65,270	65,162	(108)	Same (Two Representatives at Large)	Same	Same	Same
42*	City of Minneapolis (part)	63,567	44,323	(19,244)	Same (Two Representatives at Large)	Same	Same	Same
43*	Ramsey County (part) and City of St. Paul (part)	46,783	83,210	36,427	North	19,754	56,010	36,256
					South	27,029	27,200	171
44*	City of St. Paul (part)	47,188	53,179	5,991	North	28,363	27,538	(825)
					South	18,825	25,641	6,816

APPENDIX TABLE V (cont.)

Legislative District	Senate District	Population 1950	Population 1960	Increase	House District	Population 1950	Population 1960	Increase
45*	City of St. Paul (part)	53,121	51,610	(1,511)	North	29,905	28,020	(1,885)
					South	23,216	23,590	374
46*	City of St. Paul (part)	60,331	42,264	(18,067)	North	37,608	21,608	(16,000)
					South	22,723	20,656	(2,067)
47*	City of St. Paul (part)	63,130	62,623	(507)	North	26,166	30,501	4,335
					South	36,964	32,122	(4,842)
48*	Ramsey County (part) & City of St. Paul (part)	36,735	76,077	39,342	North	24,229	53,104	28,875
					South	12,506	22,973	10,467
49*	City of St. Paul (part)	48,044	53,562	5,518	North	24,819	25,556	737
					South	23,225	28,006	4,781
50	Washington Co.	34,544	52,432	17,888	Same (Two Representatives at Large)	Same	Same	Same
51	Anoka Co.	35,579	85,916	50,337	Same (Two Representatives at Large)	Same	Same	Same
52	Aitkin and Carlton Co.	38,911	40,094	1,183	Aitkin Co.	14,327	12,162	(2,165)
					Carlton Co.	24,584	27,932	3,348
53	Crow Wing & Morrison Co.	56,707	58,775	2,068	Crow Wing Co.	30,875	32,134	1,259
					Morrison Co.	25,832	26,641	809
54	Wadena and Todd Co.	38,226	35,318	(2,908)	Wadena Co.	12,806	12,199	(607)
					Todd Co.	25,420	23,119	(2,301)
55	Ottertail Co.	51,320	48,960	(2,360)	Same (Two Representatives at Large)	Same	Same	Same
56	Clay and Wilkin Co.	40,930	49,730	8,800	Clay Co.	30,363	39,080	8,717
					Wilkin Co.	10,567	10,650	83

APPENDIX TABLE V (cont.)

Legislative District	Senate District	Population 1950	Population 1960	Increase	House District	Population 1950	Population 1960	Increase
57	Becker and Hubbard Co.	35,921	33,921	(2,000)	Becker Co.	24,836	23,959	(877)
					Hubbard Co.	11,085	9,962	(1,123)
58	Itasca and Case Co.	52,789	54,726	1,937	Itasca Co.	33,321	38,006	4,685
					Cass Co.	19,468	16,720	(2,748)
59*	St. Louis Co. (part) & City of Duluth (part)	54,230	56,249	2,019	Same (Two Representatives at Large)	Same	Same	Same
60*	St. Louis Co. (part) & City of Duluth (part)	47,039	46,355	(684)	Same (Two Representatives at Large)	Same	Same	Same
61*	St. Louis Co. (part) Lake and Cook Co. and City of Duluth (part)	38,109	50,700	12,591	City of Duluth (part)	24,660	30,324	5,664
					St. Louis Co. (part) & Lake and Cook Co.	13,449	20,376	6,927
62	St. Louis Co. (part)	36,634	50,135	13,501	Same (Two Representatives at Large)	Same	Same	Same
63	St. Louis Co. (part)	40,731	45,228	4,497	Same (Two Representatives at Large)	Same	Same	Same
64	Beltrami, Lake of the Woods, & Koochiching Co.	46,827	45,919	(908)	Beltrami and Lake of the Woods Co.	29,917	27,729	(2,188)
					Koochiching Co.	16,910	18,190	1,280
65	Norman, Mahnomen & Clearwater Co.	30,172	26,458	(3,714)	Norman Co.	12,909	11,253	(1,656)
					Mahnomen & Clearwater Co.	17,263	15,205	(2,058)
66	Pennington, Red Lake & Polk Co.	55,671	54,480	(1,191)	Pennington & Red Lake Co.	19,771	18,298	(1,473)
					Polk Co.	35,900	36,182	282
67	Kittson, Roseau & Marshall Co.	40,279	34,759	(5,520)	Kittson Co.	9,649	8,343	(1,306)
					Roseau Co.	14,505	12,154	(2,351)
					Marshall Co.	16,125	14,262	(1,863)

* Population of legislative districts within the cities of St. Paul, Minneapolis and Duluth and the counties of Ramsey and St. Louis are estimated because some of the boundary lines of the legislative districts differ from the boundary lines of the census tracts or census blocks. Where a legislative district boundary line divided a census tract or census block it was necessary to divide the population of the census tract or census block between the particular legislative districts.

The 1960 population figures for the City of Duluth and St. Louis County were furnished by the Governmental Research Bureau, Inc., Duluth, Minnesota. All other figures were compiled from various reports of the Bureau of the Census, United States Department of Commerce.

APPENDIX VI

UNITED STATES DISTRICT COURT
DISTRICT OF MINNESOTA
FOURTH DIVISION

Milton C. Honsey, Connie Burchett, Harold H. Hoffmann, Donald L. Huber, Clark Mac Gregor, Glenn G. C. Olson, Stanley W. Olson, Richard J. Parish and Kenneth Wolfe,

Plaintiffs,

vs.

Joseph L. Donovan, Secretary of State of the State of Minnesota; Eugene A. Monick, Auditor of Ramsey County, Minnesota; Robert F. Fitzsimmons, Auditor of Hennepin County, Minnesota; Kenneth W. Campbell, Auditor of Anoka County, Minnesota; Carl D. Onischuk, Auditor of Dakota County, Minnesota; Individually as Auditors of Their Respective Counties and as Representatives of All County Auditors of the State of Minnesota,

Defendants,

Donald Sinclair; Rudolph Hanson; William C. Novosad; A. P. Lofgren; Charles Cheney; Richard C. Bergan; S. W. Rodekuhr; Martin L. Vanseth; and David G. Kankel,

Intervening Defendants.

No. 4-64-Civ. 169

MEMORANDUM ORDER

Vernon E. Bergstrom, Minneapolis, Minnesota, and Clayton L. LeFevere of Howard, Peterson, LeFevere, Lefler & Hamilton, Minneapolis, Minnesota, for plaintiffs;

Walter F. Mondale, Attorney General, State of Minnesota, and John F. Casey, Jr., Deputy Attorney General, Saint Paul, Minnesota, for defendant Joseph L. Donovan;

William B. Randall, County Attorney, Ramsey County, and Thomas M. Quayle, Assistant County Attorney, Ramsey County, Saint Paul, Minnesota, for defendant Eugene A. Monick;

George M. Scott, County Attorney, Hennepin County, Minneapolis, Minnesota, for defendant Robert F. Fitzsimmons;

Filed Dec. 4 1964
[illegible] A. Massey, Clerk.
By Regina E. Gabrielson
Deputy

Robert W. Johnson, County Attorney, Anoka County, Anoka, Minnesota, for defendant Kenneth W. Campbell;

J. Jerome Kluck, County Attorney, Dakota County, Hastings, Minnesota, for defendant Carl D. Onischuk;

Gordon Rosenmeier and John E. Simonett, Little Falls, Minnesota, for intervenors Donald Sinclair and Rudolph Hanson;

William P. Scott of Scott & Miller, Gaylord, Minnesota, for intervenor William C. Novosad; and

Lyman A. Brink of Brink & Sobolik, Hallock, Minnesota, for intervenors A. P. Lofgren, Charles Cheney, Richard C. Bergan, C. W. Bodekuhr, Martin L. Vanseth and David G. Kankel.

Before BLACKMUN, Circuit Judge, DEVITT, Chief District Judge, and NORDBYE, District Judge.

BLACKMUN, Circuit Judge.

This suit, instituted June 4, 1964, is based on those civil rights statutes which are now compiled as 42 U.S.C. §§ 1983 and 1988 and 28 U.S.C. § 1343(3) and (4). It challenges the validity of the present apportionment of both houses of the bicameral Minnesota legislature.

The nine plaintiffs are residents and qualified voters of Anoka, Dakota, Hennepin, and Ramsey Counties, respectively; these embrace the State's Twin City metropolitan area. The complaint seeks, among other relief, (a) to have the most recent Minnesota legislative redistricting act, Laws 1959, Ex. Sess., ch. 45, now M.S.A. §§ 2.02 to 2.715, inclusive, declared void and violative of both the equal protection clause of the fourteenth amendment of the Constitution of the United States and the equal-apportionment-of-both-houses-by-population requirement[1] of Article IV, § 2, of the Constitution of the State of Minnesota; (b) to restrain the defendant Donovan, who is the Minnesota

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1. "The representation in both houses shall be apportioned equally throughout the different sections of the State, in proportion to the population thereof, exclusive of Indians not taxable under the provisions of law".

Secretary of State, and the other defendants, who are the auditors of the four named counties, individually and as representatives of all other Minnesota county auditors, from performing acts necessary for the election of members of the state legislature, under the existing statutes, until the legislative districts have been properly reapportioned; and (c) to direct that elections for legislators be at large until new and proper apportionment legislation has been enacted. The defendants by their answer ask that the suit be dismissed or, in the alternative, that the court defer action until the adjournment of the forthcoming 1965 regular legislative session.

Inasmuch as the suit is one to restrain the enforcement and execution of Minnesota statutes by a state officer, this three-judge district court was designated. 28 U.S.C. §§ 2281, 2284(1).

The pertinent facts are established by the original parties by admissions in the pleadings and by stipulation. The last of the original briefs was filed on August 26. Shortly after the case was so submitted and before a decision was rendered, intervenors Sinclair and Hanson presented their joint application under Rule 24(a)(2), F. R. Civ. P., for leave to intervene as additional defendants as of right. The application, as authorized by 28 U.S.C. § 2284(5), was promptly heard by Judge Devitt and, with all of us concurring, was granted with permission to the intervenors and the plaintiffs to file affidavits and additional briefs.[2] By stipulations and with the court's consent, the other seven intervenors named in the title were also permitted to intervene as additional defendants. The last of the second set of briefs was received on October 30.

Intervenors Sinclair and Hanson are, respectively, residents and qualified voters of Marshall and Freeborn Counties, Minnesota. Mr. Sinclair is a Minnesota state senator representing the Sixty-seventh

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2. Despite the fact that this and the other applications for intervention were filed only after the case had been submitted, we concluded that, under all the circumstances, the Rule's requirement of timeliness was satisfied. Kozak v. Wells, 278 F. 2d 104, 109 (8 Cir. 1960).

Legislative District consisting of Kittson, Marshall and Roseau Counties in northwestern Minnesota. Mr. Hanson is a Minnesota state senator representing the Ninth Legislative District consisting of Freeborn County in southern Minnesota. Intervenor Novosad is a resident, a qualified voter and the auditor of Sibley County in south central Minnesota. Intervenors Lofgren, Cheney, Bergan, Rodakuhr, Vanseth, and Kankel are the respective auditors of the six counties of Kittson, Marshall, Roseau, Pennington, Polk, and Red Lake, comprising the northwestern corner of the State.

Although the complaint requested injunctive relief, this aspect of the case, so far as the 1964 elections for the Minnesota House were concerned, was not seriously pressed upon us. Indeed, the plaintiffs by their brief stated that they did not "insist" that the 1964 candidates run at large. In view of this partial concession and in view of the lateness of the hour when the complaint was filed, we deemed it both unnecessary and undesirable to interfere with the then pending and not immediately past primary and general elections. Reynolds v. Sims 377 U.S. 533, 585 (1964). Those elections have taken place in due course.

The earlier Minnesota reapportionment case. A suit similar to this one and for like relief, and alleging deprivation of rights guaranteed by the fourteenth amendment, was instituted in this court in 1957 against the defendant Donovan, two of the same county auditors, and others. It attacked the Minnesota legislative apportionment effected by Laws 1913, ch. 91. The 1913 Act was then still in effect even though the Minnesota Constitution, art. IV, § 23, calls for reapportionment at the first legislative session after each federal census.[3]

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3. Section 23 reads:

> "The legislature shall provide by law for an enumeration of the inhabitants of this State in the year one thousand eight hundred and sixty-five, and every tenth year thereafter. At their first session after each enumeration so made, and also

(continued following page)

The statutory three-judge federal court designated to hear that case recognized "the unmistakable duty of the State Legislature to reapportion itself periodically in accordance with recent population changes", noted that the legislature was then soon to be elected in its entirety and was to convene in early January 1959, and observed that "It is not to be presumed that the Legislature will refuse to take such action as is necessary to comply with its duty under the State Constitution". Although retaining jurisdiction, the court deferred decision on the issues "in order to afford the Legislature full opportunity to 'heed the constitutional mandate to redistrict'". Magraw v. Donovan, 163 F. Supp. 184, 187-88 (D. Minn. 1958).

Pending this deferral of decision, the 1959 Minnesota legislature effected the State's current apportionment which, as the original parties by the pleadings concede, is "based, somewhat, on the 1950 federal census". Thereafter the plaintiffs in the 1957 suit moved, under Rule 41(a)(2), F. R. Civ. P., to dismiss that action without prejudice. Judge Bell granted that motion. Magraw v. Donovan, 177 F. Supp. 803 (D. Minn. 1959).[4]

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3. (continued)
at their first session after each enumeration made by the authority of the United States, the legislature shall have the power 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."

Despite the apparent limiting character of this language, the section has been construed to mean that the legislature has the duty, not merely the power, to reapportion after a census, and that if this step is not taken at the first session after the census, it may be taken at a subsequent session. State ex rel. Meighen v. Weatherill, 125 Minn. 336, 341, 147 N.W. 105, 107 (1914). In Smith v. Holm, 220 Minn. 486, 490, 19 N.W. 2d 914,916 (1945), the Minnesota court also noted that "The responsibility to heed the constitutional mandate to redistrict is laid upon the legislature. . . . This language was quoted with approval in State ex rel. LaRose v. Tahash, 262 Minn. 552, 558, 115 N.W. 2d 687, 691 (1962), appeal dismissed, 371 U.S. 114.

4. For other aspects of the same litigation see Magraw v. Donovan, 159 F. Supp. 901 (D. Minn. 1958), and Rosso v. Magraw, 288 F. 2d 840 (8 Cir. 1961).

The federal constitutional development. Since the enactment of the 1959 statute and since the termination of the Magraw litigation the federal constitutional picture has been brought into focus and greatly clarified. The United States Supreme Court, in a series of now well-known decisions, has taken positive action with respect to the federal constitutional aspects of state legislative districting. The first three cases, decided near the end of the Court's 1961 term, were Baker v. Carr, 369 U.S. 186 (1962), Scholle v. Hare, 369 U.S. 429 (1962), and WMCA, Inc. v. Simon, 370 U.S. 190 (1962). A detailed analysis of those cases and of their respective procedural approaches is not necessary here. It suffices merely to say that, among other things, they established (a) that the very civil rights statutes invoked by the plaintiffs here afford a United States district court jurisdiction over a claim of alleged federal unconstitutionality of state legislative districting; (b) that plaintiffs who are qualified to vote for members of a state legislature have standing to sue; and (c) that, in the setting of those cases, an allegation of a denial of the equal protection of the laws under the fourteenth amendment presents a justiciable constitutional cause of action. Clearly, these cases establish the jurisdiction of this court for the present action, the present plaintiffs' standing to sue, and the existence here of a justiciable controversy.

This trilogy was followed by Gray v. Sanders, 372 U.S. 368 (1963), which concerned the constitutionality of the use of Georgia's county-unit system in a primary election for the nomination of a United States Senator and state-wide officers and is the source, p. 381, of Mr. Justice Douglas' pronouncement, in a majority setting, of the "one person, one vote" concept, and by Wesberry v. Sanders, 376 U.S. 1 (1964), which concerned the Georgia statute apportioning the state's congressional districts and is the source, p. 20, of Mr. Justice Harlan's statement in dissent, "I had not expected to witness the day when the Supreme Court of the United States would render a decision which casts

grave doubt on the constitutionality of the composition of the House of Representatives". These two decisions perhaps contained the first definite indications of the Supreme Court's current attitude as to the merits of the apportionment-constitutional issue.

Then came the six cases of June 15, 1964, decided, in fact, after the institution of the present lawsuit. These were the Alabama case of Reynolds v. Sims, supra, 377 U.S. 533; the New York case of WMCA, Inc. v. Lomenzo, 377 U.S. 633; the Maryland case of Maryland Committee for Fair Representation v. Tawes, 377 U.S. 656; the Virginia case of Davis v. Mann, 377 U.S. 678; the Delaware case of Roman v. Sincock, 377 U.S. 695; and the Colorado case of Lucas v. Forty-fourth General Assembly, 377 U.S. 713. One week later nine other pending cases were remanded, per curiam, for further proceedings in the light of Reynolds v. Sims and its companions. Swann v. Adams, 378 U.S. 553 (Florida); Meyers v. Thigpen, 378 U.S. 554 (Washington); Nolan v. Rhodes, 378 U.S. 556 (Ohio); Williams v. Moss, 378 U.S. 558 (Oklahoma); Germano v. Kerner, 378 U.S. 560 (Illinois); Marshall v. Hare, 378 U.S. 561 (Michigan); Hearne v. Smylie, 378 U.S. 563 (Idaho); Pinney v. Butterworth, 378 U.S. 564 (Connecticut); Hill v. Davis, 378 U.S 565 (Iowa).

Here, too, it is not necessary for us to discuss in detail the six cases' factual differences. Their holdings and implications, despite the presence of vigorous dissent, are clear. So far as pertinent for the present case, the majority opinions, all written by Mr. Chief Justice Warren, hold:

1. The equal protection clause of the fourteenth amendment requires substantially equal legislative representation for all citizens of a state. This is the basic concept.

2. "[T]he Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable". Reynolds v. Sims, p. 577 of 377 U.S.

3. But "Mathematical exactness or precision is hardly a workable constitutional requirement". Reynolds v. Sims, p. 577 of 377 U.S. And "it is neither practicable nor desirable to establish rigid

mathematical standards . . . Rather, the proper judicial approach is to ascertain whether . . . there has been a faithful adherence to a plan of population-based representation, with such minor deviations only as may occur in recognizing certain factors that are free from any taint of arbitrariness or discrimination". Roman v. Sincock, p. 710 of 377 U.S.

4. "So long as the divergencies from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible. . . ." Reynolds v. Sims, p. 579 of 377 U.S.

5. However, weighting of votes according to area is discriminatory. A "built-in bias against voters living in the State's more populous counties" does not meet constitutional standards. WMCA, Inc. v. Lomenzo, p. 654 of 377 U.S. Also, "neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation. Citizens, not history or economic interests, cast votes". [footnote omitted]. Reynolds v. Sims, pp. 579-80 of 377 U.S.

6. Any reliance on either the federal Senate and House analogy or on the Federal Electoral College analogy is misplaced.

7. A state "can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, so long as the basic standard of equality of population among districts is maintained" and "provide for compact districts of contiguous territory". But in so doing population must not be "submerged as the controlling consideration in the apportionment of seats in the particular legislative body". Reynolds v. Sims, pp. 580, 578, and 581 of 377 U.S.

8. "It is simply impossible to decide upon the validity of the apportionment of one house of a bicameral legislature in the abstract, without also evaluating the actual scheme of representation employed with respect to the other house". Maryland Committee for Fair Representation v. Tawes, p. 673 of 377 U.S.

9. A state may, consistently with the equal protection clause, provide for only periodic revision of its reapportionment scheme. Decennial reapportionment "would clearly meet the minimal requirements for maintaining a reasonably current scheme of legislative representation". But reapportionment accomplished with less frequency "would assuredly be constitutionally suspect". Reynolds v. Sims, pp. 583-84.

10. "Where a federal court's jurisdiction is properly invoked, and the relevant state constitutional and statutory provisions are plain and unambiguous, there is no necessity for the federal court to abstain pending determination of the state law questions in a state court". Davis v. Mann, p. 690 of 377 U.S.

11. A court "should attempt to accommodate the relief ordered to the apportionment provisions of state constitutions insofar as is possible". Reynolds v. Sims, p. 584 of 377 U.S.

12. Reapportionment "is primarily a matter for legislative consideration and determination, and . . . judicial relief becomes appropriate only when a legislature fails to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so". Reynolds v. Sims, p. 586 of 377 U.S. Retention of jurisdiction may be appropriate.

The Minnesota facts. With these principles in mind, we turn to Minnesota's facts as established by the pleadings, the stipulation, the State's Constitution, and the 1959 Act:

By statute (not by its Constitution) the State is divided into "67 senatorial and representative districts". M.S.A. § 2.03. Each district elects one senator. Most districts elect two representatives, but five elect only one and six elect three. This makes a total of 67 senators and 135 representatives. In 17 districts the plural representatives run at large. Every other district which has more than one representative is geographically subdivided. M.S.A. §§ 2.02, .04-.70. Each house district falls entirely within or is congruent with a senate district and does not overlap another senate district. This meets the state constitutional requirement, art. IV, § 24, that senators shall

"be chosen by single districts of convenient contiguous territory . . . and no representative district shall be divided in the formation of a senate district". Although not required by the state Constitution, county lines have been

utilized generally in the formulation of districts.[5]

Senators serve a 4-year term. Inasmuch as all senators were elected in 1962, they were not up for election in 1964 but, instead, serve until the first Monday in January 1967. House members serve a 2-year term. The present representatives hold their offices until the first Monday in January 1965. Minn. Const. art. IV, § 1, and art. VII, § 9. New house members, therefore, were chosen in the recent 1964 election. They assume office January 4, 1965.

In the century which elapsed between the 1857 Minnesota Constitutional Convention and the 1959 Act the State's legislative districts were reapportioned generally seven times, namely, in 1860, 1866, 1871, 1881, 1889, 1897, and 1913. The 1959 Act was thus the eighth reapportionment, but it was the first in 46 years. Because the 1959 Act by its terms, M.S.A. § 2.71, did not go into effect until 1962 and thus affected only the 1962 election and those thereafter, the federal census of 1960 became due and was made in the interim. The Minnesota legislature's regular sessions of 1961 and 1963 and the two extra sessions of 1961 were held after that census. The 1959 Act was not amended at any of those sessions and no redistricting based upon the 1960 census has ever yet been effected.

The population of Minnesota increased 14.5% between the 1950 census and that of 1960. This increase was not uniform throughout the state's 87 counties. The increases in the counties in which the respective plaintiffs reside varied from 18.9% (Ramsey) to 141.5% (Anoka). The plaintiffs' four counties were among the nine with the greatest increases.

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5. Exceptions as to both Senate and House are (a) the metropolitan counties of Hennepin (Thirtieth District to Forty-second District, inclusive) and Ramsey (Forty-third District to Forty-ninth District, inclusive); (b) the Third and Fourth Districts of Wabasha and Olmsted Counties; (c) the Twenty-sixth, Twenty-seventh and Twenty-eighth Districts, with their problem occasioned by the multi-county location of the City of Saint Cloud; (d) the Fifty-ninth, Sixtieth, Sixty-second, and Sixty-third Districts in Saint Louis County; and (e) the Sixty-first District of Cook and Lake Counties and part of Saint Louis County. Exceptions as to the House alone exist in the Second, Fifth, Eleventh, and Thirteenth Districts.

According to the 1960 federal census the population of Minnesota was 3,413,864. This number, divided by the number of senate districts (67) produces a figure of 50,953. When this population is divided by the number of house districts (135), a figure of 25,288 results. Based strictly on the 1960 population figure these are the average or "ideal" numbers for the senate and house districts.

Also, according to the 1960 census, the populations of the senate districts range from 100,520 to 24,428. Thus the largest district in population (the Thirtieth, in suburban Hennepin County) has almost twice the average figure; the smallest (the Thirty-eighth, in the City of Minneapolis and also in Hennepin County) has less than half the average figure. The smallest, too, has less than one-third of the population of each of the seven largest districts. The second smallest (the Sixty-fifth) has less than one-third of the population of each of the five largest districts. Each of the third and fourth smallest (the Third and Twenty-ninth) has less than one-third of the population of each of the two largest. The population ratio of each of the five largest to each of the nineteen smallest is over two to one. The same ratio applies between each of the nine largest and the ten smallest. The following ratios represent the population of each of the five districts where six of the plaintiffs reside (two plaintiffs live in the Thirty-first) as compared to the population of one of the adjoining or corner-touching districts: 100,520:24,428 (Thirtieth to Thirty-eighth); 93,919:41,815 (Thirty-second to Twelfth); 85,916:29,935 (Fifty-first to Twenty-ninth); 78,303:33,035 (Thirteenth to Sixth); 75,637:29,935 (Thirty-first to Twenty-ninth).

The populations of the house districts range from 56,076 to 8,343. Thus the ratio of the largest (the Forty-third North) to the smallest (Kittson County in the Sixty-seventh) is nearly 7 to 1. The ratio of the five largest to the three smallest is over 5 to 1. The ratio of the thirteen largest to the sixteen smallest is over 3 to 1. The ratio of the twenty-five largest to the thirty-three smallest is over 2 to 1. The largest district has over twice the average figure. The smallest has less than one-third of that average. The Forty-third District, divided into

North and South, has more than double the number of people in the North than in the South. The same is true of the divided Forty-eighth; as between the City of Austin and Dodge County in the Fifth; as between Nobles County and Rock County in the Nineteenth; as between Lincoln County and Lyon County in the Twentieth; as between Swift County and Kandiyohi County in the Twenty-third; as between Aitkin County and Carlton County in the Fifty-second; as between Clay County and Wilkin County in the Fifty-sixth; as between Becker County and Hubbard County in the Fifty-seventh; and as between Itasca County and Cass County in the Fifty-eighth. Some of these more-than-2-to-1 ratios existed under the figures of the 1950 census.

It is stipulated that the disparity of populations of the legislative districts, as shown by the 1960 census, continues to the present time.

If one uses the 1960 figures, then one may say that, in 1962, a majority of the state's population was represented by only 26 senators, or 38.8% of the 67 seats, and by only 48 representatives, or 35.5% of the 135 seats. Stating this in reverse, the 34 smallest senatorial districts were represented by the majority of the Senate but contained only 39.1% of the population. The 68 smallest House districts were represented by a majority of the House but contained only 35% of the population.[6]

The affidavits filed in connection with the interventions refer to other undisputed facts. We mention these even though the relevancy of some of them may well be questionable.

There were reapportionment discussions and activity, within the Minnesota legislature and outside it, not only during the 1959 regular and extra sessions, but, as well, in the regular sessions of 1955 and 1957 and the extra session of 1957. A number of bills were introduced.

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6. These statements and figures are to be distinguished from the frequently advanced theoretical proposition that, with equally populated districts, only 26% of the electorate (a bare majority of the voters in a bare majority of the districts) could elect a majority of the legislators. Mr. Justice Stewart referred to this in footnote 12 to his dissent in Lucas v. Forty-fourth General Assembly, supra, p. 750 of 377 U.S. That theoretical approach rests on the percentage of each district's electorate. Our comments are based on the percentage of the entire population represented by a majority of legislators.

Some reached advanced stages in the legislative process but none was enacted until the 1959 statute. As a definite companion measure to that Act, the legislature proposed, Laws 1959, Ex. Sess., ch. 47, certain amendments to Article IV of the Minnesota Constitution. Included were fixed maximums of members in both the senate and the house; representation in the house "on the basis of equality according to population"; representation in the senate "in a manner which will give fair representation to all parts of the state"; confinement of the percentage representation of the five counties "adjacent to and including the county containing the seat of government of the state" (Ramsey) to 35% of the members of the senate, even though those counties might have 35% or more of the State's total population; and a mandatory extra session for reapportionment purposes whenever reapportionment was not effected at the first regular session after a decennial census. These amendments were submitted in due course to the state's electorate in 1960 but failed to pass.

The legislature was aware of its duty to reapportion. The Legislative Research Committee, created under M.S.A. § 3.31, made its report on relevant apportionment factors in the 1950's. There was a Citizen-Legislator Committee on Reapportionment appointed by the governor in late 1957 to recommend a reapportionment program. Its report was available for the 1959 sessions. The legislature in 1959 was aware of estimated population increases since the 1950 census and by the 1959 Act gave some recognition to increases in the more rapidly growing areas of suburban Hennepin County, Ramsey County, Rochester and its suburbs, Mower County, Anoka County, Washington County, and the City of Saint Cloud.

The intervenors' position. The intervenors argue that "the factual environment of none of the Reapportionment Cases is present here"; that "There is no pattern of discrimination which by any test, or by dictionary definition, can be called invidious or arbitrary, notwithstanding obvious population differences"; that "Use of county lines for single county, multi-county districts, or multi-district counties, has

been a practical necessity in apportionment to avoid the governmental awkwardness of dividing county government between senatorial districts and multiple representative districts"; that "Minnesota's 1959 reapportionment enactment was a rational plan, designed on county and other governmental subdivision lines, which afforded adequate and substantially equal representation to all parts of the state without sacrificing the equal-population concept, was wholly devoid of invidious discrimination against any area of the state or any population segment, and anticipated in spirit and letter the mandate of Reynolds"; that "Apportionment in Minnesota has followed the almost universal practice in the United States of using the county structure of the state, a practice benignly looked upon by the Court in Reynolds"; that "There was no adjusting of representation to favor rural counties as such or disfavor urban areas as such, nor were suburban districts as such discriminated against"; that "Apportionment to counties in this fashion, based on population, is grounded on the realistic premise that counties are the smallest territorial units to which apportionment can be made rationally"; that "it is important that the measure be seen as redistricting carefully planned and in good faith designed to comply with constitutional requirements"; that the 1959 reapportionment was not based on the 1950 population but "the population of that census was adjusted to what was believed by the evidence presented to the committees to be the actual 1959 population distribution, i.e., the distribution reflected later in the 1960 census"; that "Federal constitutional command should be deemed met by redistricting next according to the 1970 census inasmuch as the 1959 Act was valid when passed"; that apportionment to the plaintiffs' counties as a whole is "demonstrably adequate by constitutional standards"; that in the metropolitan centers each county voter, in effect, has a number of senators and representatives speaking for him "on any parochial interest of legislative nature"; that "it has not been said that a federal court should take cognizance of a local contention that constitutional inequality is alleged because a complainant's district in Minneapolis has more people than another

district in the same city, or because a suburban complainant has discovered a district in his county seat and core city has fewer people than his"; that "there could be no question if the same apportionment called for an at-large election" in the county; that there was no complaint to the legislature that any plaintiff's district was inequitably treated when the 1959 Act was passed; and that it has become "common thinking" to allow a variation, which equates with a $1\frac{1}{2}$ to 1 ratio, of 20% from the average population per district.

It is to be noted (a) that this argument clearly concedes the existence of "obvious population differences"; (b) that it stresses the use of county lines "as a practical necessity"; (c) that at the same time it recognizes, as it must, that exceptions do exist under the 1959 Act in that some counties find themselves allocated to more than one senatorial district; and (d) that it seeks to overcome any intra-county population discrepancy by the approach (which strikes us as one resting not essentially on fact but on concepts of political theory) that the voter in the multiple-district county really has multiple representation in the legislature and that, therefore, a within-the-county population discrepancy is of no constitutional consequence.

We need not consider the "state of mind" of the legislature or of individual members thereof in the formulation and passage of the 1959 Act. Neither do we need to consider any question of basic good faith in the enactment of that legislation or, indeed, any question of the validity of the 1959 Act as of the time of its passage. We do not impugn the legislature's motive and we may assume that it acted in good faith. But all this does not render the 1959 Act, based, as it was, on the 1950 census updated, impervious to federal constitutional attack on facts which exist five years later in 1964.

The admitted legislative district population figures, both senate and house, clearly demonstrate, it seems to us, first, that the plaintiffs have sustained their burden of proof, Thigpen v. Meyers, 211 F. Supp. 826, 832 (W.D. Wash. 1962), affirmed on the merits and remanded,

376 U.S. 554; Mann v. Davis, 213 F. Supp. 577, 584, (E.D. Va., 1962) affirmed on the merits and remanded, 377 U.S. 678, and, second, that the 1959 apportionment presently violates the equal protection clause of the fourteenth amendment and fails to meet the minimal standards promulgated by the United States Supreme Court in the several recent cases which have been cited. Those standards, of course, are binding upon the Minnesota legislature, are binding upon us as a federal court and would be equally binding upon a Minnesota court if this litigation were in a state tribunal. Maryland Committee for Fair Representation v. Tawes, supra, p. 674 of 377 U.S.

The Minnesota Constitution, as has been noted, relates representation in both houses solely to population. We therefore are not confronted here with the situation, present in some cases, where the applicable state statute or constitutional provision recognizes factors other than population. But the disparities in population-representation apparent from the Supreme Court's opinions, even accepting in each the most favorable plan under consideration, reveal that the present Minnesota apportionment falls short of the prescribed standards and is not legitimatized by proper "considerationsincident to the effectuation of a rational state policy". Thus we have:

State and case	Population variance (upper and lower house)	Percentage represented by majority (upper and lower house)
Alabama, Reynolds v. Sims	20-1 and 5-1	27.6% and 37%
New York, WMCA, Inc. v. Lomenzo	3.9-1 and 21-1	41.8% and 34.7%
Maryland, Maryland Committee for Fair Representation v. Tawes	34-1 and 6-1	14.1% and 35.6%
Virginia, Davis v. Mann	2.65-1 and 4.36-1	41.1% and 40.5%
Delaware, Roman v. Sincock	15-1 and 12-1	21% and 28%
Colorado, Lucas v. Forty-fourth General Assembly	3.6-1 and 1.7-1	33.2% and 45.1%

These compare, as above noted, with Minnesota population variances of 4 to 1 and almost 7 to 1 and majority representation percentages of 39.1% and 35%. The Virginia discrepancies in all respects were less

than those of Minnesota and would be less still if, as was urged, the large number of military personnel in that state were not taken into account. Yet, in Davis v. Mann, supra, p. 691 of 377 U.S., it was held that the "state legislative malapportionment, whether resulting from prolonged legislative inaction or from failure to comply sufficiently with federal constitutional requisites, although reapportionment is accomplished periodically, falls . . . within the proscription of the Equal Protection Clause". That case flatly controls this one, not only in its holding, but upon its facts.

The intervenors would assert, however, that, while there are population variances in Minnesota under the 1959 Act, these result from "no pattern of discrimination against any part of the state or in favor of any part of the state" and "no design to dilute the vote of the people of any area". They point out that some of the least populated Minnesota districts are in the metropolitan area but others are spread all over the state and that some rural areas are also among the most populated districts. It is suggested that Reynolds v. Sims and its companion cases have, as an essential element, "a deliberate weighting of the votes of the citizens of one area against those of another area".

We do not read the June 1964 cases so narrowly and we feel that they are not so easily to be explained away. It is true, of course, that the Supreme Court, as we have pointed out, did say that weighting of votes according to area is discriminatory. But the decisions are far broader than that in their holdings and in their implications. They are concerned with discrimination against individual citizens and groups of citizens and are not confined to discrimination against one type of area or one type of economic or interest group. We repeat that those cases stress equal legislative representation for all citizens and apportionment substantially on a population basis. Failure to meet these standards is improper discrimination. This is so whether the discrimination is against both urban and rural areas, or against only one. A specific pattern of area discrimination is not necessary. Discrimination against some urban areas is not justified because of

the simultaneous existence of discrimination against some rural areas. Discrimination is discrimination, wherever it exists and in whatever form it assumes.

The intervenors' argument that population variances among districts in the same county have no significance in the determination of constitutionality also merits mention. We find it unpersuasive because, first, the variances evident from the facts before us are not confined to districts within a multi-district county. Thus, for example, the population variance between the Thirtieth District in Hennepin County and the Sixty-fifth District of Norman, Mahnomen and Clearwater Counties is 3.8 to 1. But we also feel that the principles enunciated by the Supreme Court do not stop short in their application at the county line and that it cannot be said that, so long as the county as a whole has an acceptable proportion of legislators, it makes no difference how the intra-county districts are themselves composed. Only slight imagination reveals the extremes to which this approach could take us. The more than 4 to 1 variation between the Hennepin County Thirtieth District and the Hennepin County Thirty-eighth District is an illustration. Neither does the suggestion that a county's legislators could be required to run at large and thereby become invulnerable to constitutional attack lend weight. The same suggestion could also be made as to a state as a whole; despite this, the decisions of June 1964 were rendered. If apportionment is attempted, it must be proper throughout.

We feel—and we are aware that we are repeating when we say this—that what is important here is equality of representation; that inequality in representation in both houses of Minnesota's legislature must be avoided so far as practicable; that this is what is meant by the "one person, one vote" concept; and that a situation where one senator represents over 100,000 people and another senator represents only 24,428, is not one of acceptable equality but is, instead, improperly discriminatory. This is not a matter, so far as this court is concerned, of basic contest between densely populated metropolitan centers, on the one hand, and the less populated areas, on the other,

or between cities and rural communities, or between political parties. No one in this day would argue that Citizen X should be entitled to 4 votes in a gubernatorial election but Citizen Y should be entitled to only one. Yet this is not significantly different from the situation where Citizen X must participate with 100,000 others in the election of one state senator, but Citizen Y may participate with only 25,000 others in the election of another state senator. It is in this light and in this respect that apportionment becomes a matter of concern under the equal protection clause of the fourteenth amendment of the United States Constitution. Reynolds v. Sims, supra, pp. 562-63 of 377 U.S.

We should also add a word about the youthful character of the 1959 Act. We recognize that, as the intervenors point out, the last Minnesota apportionment was evolved only a little over five years ago and that the Act became effective only in 1962, less than three years ago. It is then suggested that, since the 1959 Act rested on updated 1950 census figures, reapportionment this soon is not constitutionally demanded until, even, 1970. We doubt if reapportionment may be effected only near the end of the decennial period between censuses and may thereby assume a mantle of validity for another decade.[7] One might wonder, also, why the 1959 Act was not made promptly effective, rather than deferred until after the 1961 elections. We are not sure, as has been suggested, that this was required by the last clause of Article IV, § 24, of the State's Constitution.[8] That provision 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, rather than to prohibit an election until the four year term had been completed. In any event, we are confronted here with the facts of 1964 and with the interim decisions of the United States Supreme Court which are clear in

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7. The Minnesota constitutional provision quoted in footnote 3, supra, would itself seem to contraindicate this.

8. "[A]nd thereafter senators shall be chosen for four years, except there shall be an entire new election for all the senators at the election of representatives next succeeding each new apportionment provided for in this article."

their import and direct in their mandate. On the present facts the comparative youth of the 1959 Act does not preserve its validity.

This determination of federal unconstitutionality is all that the present case requires. Although the complaint also asserts violation of the Minnesota Constitution, we need not meet that issue even if we were to conclude that this court had the power and were an appropriate tribunal so to do.

This brings us to the question of remedy. Although the existing Minnesota apportionment plan is invalid, as we here determine, equitable considerations in the aggregate demand that we withhold at this time the requested injunctive relief. We have every confidence that the Minnesota legislature will fulfill its constitutional obligations and, at the forthcoming 1965 regular session (limited by law to 120 legislative days, Minn. Const. art. IV, § 1), will enact appropriate reapportionment legislation effective forthwith, that is, for the 1966 and subsequent elections. We are confident, too, that this can be done without conflict with present Minnesota constitutional provisions even though county lines may have to be respected less strictly, but without gerrymandering, than has been the case in the past. The coming session will provide the legislature, to use the words of Reynolds v. Sims, p. 586 of 377 U.S., with "an adequate opportunity" to reapportion "in a timely fashion". If the legislature fails to fulfill its constitutional reapportionment duty at its 1965 regular session, then more direct judicial relief may become appropriate.

The details of redistricting we recognize as basically and primarily a legislative responsibility. Reynolds v. Sims, supra, p. 586 of 377 U.S.; Maryland Committee for Fair Representation v. Tawes, supra, p. 676 of 377 U.S. The applicable standards are evident from the six Supreme Court opinions of June 15, 1964. We have endeavored to list, in summary form above, those standards which are pertinent here. We emphasize and repeat, for what assistance it may provide, that among the established guidelines are the following: substantially equal legislative representation is the base; mathematical exactness is not

a workable constitutional requirement; there may be present an element, but not the governing one, resting upon the integrity of political subdivisions and other legitimate considerations incident to the effectuation of a rational state policy; this element, however, must be free from arbitrariness or discrimination; neither history alone, nor economic or other group interests are factors which justify disparities from population-based representation; political subdivisions may be accorded some independent representation in at least one house so long as the basic standard of equality of population among districts is maintained; weighting of votes according to residence is discriminatory; and there must be no "built-in bias".

We add the following conclusionary comments:

1. We are not unaware of the anomaly which seems to be present in allowing and expecting an improperly constituted or "de facto" legislature to proceed to enact reapportionment legislation. This, however, is a practical fact which exists and which must be faced. The Supreme Court has recognized the propriety of reapportionment by just such a body. Reynolds v. Sims, supra, p. 585 of 377 U.S. We, of course, do no less. See League of Nebraska Municipalities v. Marsh, 232 F. Supp. 411, 414 (D. Neb. 1964).

2. We know that it is very easy to criticize an existing apportionment and that, in contrast, it is not easy to formulate a plan which will not only meet constitutional standards but which will prove so acceptable to an existing legislature as a whole as to result in formal approval of that plan by that legislature. By our holding in this case we have endeavored, and certainly have intended, not to be destructively critical in any way.

3. Reapportionment is a problem common to all states today. Many of our states, perhaps most, are going through the throes of reapportionment in one manner or another. The problem is not Minnesota's alone. It will be solved and, as we have stated, we are confident that it will be solved promptly and effectively at the forthcoming session. As the intervenors have noted, the topic is a lively one and helpful

and worthwhile suggestions are already being evolved and are available from a number of official and other responsible sources.

4. It is theoretically possible, of course, if country-to-city trends continue to the extreme, for a state conceivably to be reduced to only one legislative district for its territory apart from its metropolitan areas, and with all remaining districts in the cities. This, however, is a problem to be considered and resolved in another day.

5. The Supreme Court has agreed to hear the appeal (No. 178) in the case of Dorsey v. Fortson, 228 F. Supp. 259 (N.D. Ga. 1964). This concerns the validity of a Georgia statute requiring county-wide election of senators in multi-district counties but unitary elections elsewhere. The trial court held that this was violative of the fourteenth amendment. The Supreme Court's decision in that case may come down before Minnesota's 1965 regular legislative session is completed. The existence of the Georgia case indicates that a problem might possibly be present in connection with multi-legislator districts. This will be kept in mind as Minnesota reapportionment progresses.

This memorandum constitutes the findings of fact and the conclusions of law required by Rule 52(a), F. R. Civ. P. Jurisdiction of the case is retained.

Dated December 30, 1964.

Harry A. Blackmun
United States Circuit Judge

Edward J. Devitt
United States District Judge

Gunnar H. Nordbye
United States District Judge