

MINUTES

SENATE COMMITTEE ON LEGISLATIVE AND CONGRESSIONAL APPORTIONMENT

September 9, 1981

Room 527 - Statehouse

Committee Members

Senator Dan Thiessen, Chairman
Senator Elwaine Pomeroy, Vice-Chairman
Senator Charlie Angell
Senator Neil Arasmith
Senator Norman Gaar
Senator Paul Hess
Senator Jan Meyers
Senator Joe Norvell
Senator Nancy Parrish
Senator Jim Francisco (Excused)
Senator Jack Steineger (Excused)

Staff Present

J. Russell Mills, Jr., Kansas Legislative Research Department
Myrta Anderson, Kansas Legislative Research Department
Fred Carman, Revisor of Statute's Office
Mary Torrence, Revisor of Statute's Office

Senator Thiessen called the meeting to order at 10:00 a.m. and expressed his appreciation for the attendance of the Committee members. He stated that Russell Mills of the Kansas Legislative Research Department would bring the Committee up to date and they would then discuss the minutes of the joint meeting and the goals of the Committee.

Russell Mills, Kansas Legislative Research Department, explained that since the first joint meeting, a Joint Subcommittee has been holding public hearings across the state. City meetings have been held in four cities where the Subcommittee received input from concerned citizens. There were approximately 30 to 35 people present at the Kansas City meeting on July 22; the concern of nearly all present was that Kansas City and Wyandotte County not be split but be put back together and that Wyandotte County should probably be combined with Johnson County or Douglas County because of the community of interest.

There were approximately 60 people present for the Lawrence meeting on July 22; the overwhelming majority expressed strong opposition to Douglas County being placed in the 5th District. There were only two persons who did favor being placed in the 5th District. The general consensus was to place Douglas County in the 3rd with Johnson and Wyandotte or to place Douglas in the 2nd with Shawnee.

At Wichita on August 26, there were 40 to 50 people present; the conferees from Sedgwick County stated they should not be split between two districts. Conferees from Marion and McPherson Counties expressed strong support for being left in the 4th District and not being placed in the 1st or 5th District. In Hutchinson, there were approximately 20 people present; most expressed the desire to stay in the 4th District and not be put in the 1st District.

Senator Pomeroy stated that the overriding message he received was that the people wanted to stay where they are and the counties that are now divided do not want to be split. He also stated that he had asked all persons present at the meetings to try their hands at drawing maps that would fit the criteria the Committee has adopted.

Senator Thiessen stated that the map submitted by Donald Hay at the Lawrence meeting had undergone some correction of population figures by the staff.

Senator Pomeroy stated that as a result of the Wichita-Hutchinson meetings he had received a map from Kent Sallee of McPherson, along with a cover letter explaining the plan (Attachment I).

Senator Thiessen requested that any Committee member who develops a map or has a map given to them submit the plan to the Research Department so that the population figures can be verified.

Senator Hess requested an explanation of the change in population figures. Russell Mills replied that, since the last meeting, the U.S. Bureau of the Census has revised the figures for Kansas twice. As of this time, the state total of 2,363,679 is the revised figure. This calculates to an "ideal" district population of 472,736. He also stated that the Census Bureau data does not follow ward and precinct lines. Senator Hess stated he hated to see the staff calculate population data to the precinct level within cities. He does not see that it will accomplish anything except involving staff time on a project that will never be used. Senator Meyers mentioned that it is important that we know where the people are. It might not be so important for Congressional or Senate districts but it might be more important for House districts.

Fred Carman, Revisor of Statute's Office, presented the Committee with a copy of the U.S. District Court case cited by attorney J. R. Russell at the Kansas City meeting (Civil Action No. KC-3697, filed March 26, 1974). This case dealt with alleged discrimination against the black community by diluting their voting power. The court found that these rights were not violated and the decision was upheld by the U.S. Supreme Court (420 U.S. 957). Senator Arasmith questioned the population data on Page 5 of the decision stating it did not add up. Staff determined that there was a typographical error in the typewritten decision.

Robert A. Coldsnow, Legislative Counsel, presented information to the Committee regarding decisions of federal courts concerning congressional redistricting (Attachment II).

Senator Hess stated that it seems that, once you start dividing political subdivisions, there is no stopping and apparently most of the dispute is on the variation of population. Mr. Coldsnow replied that the trial court took the position that once you start cutting lines there is no reason you cannot get to a much finer population deviation.

Senator Parrish asked what was the lowest maximum deviation that has been struck down by the court. Mr. Carman replied that it is below 1 percent but you have to look at the circumstances of the case, as what would be a minimum under one set of circumstances might not be under another. What is valid in one state, might not be valid in another, he noted.

Russell Mills presented the Committee with a report from the Council of State Governments on the 11 states that had completed congressional redistricting as of August 12, 1981. Most of them are under 1 percent deviation, with the two exceptions of North Carolina and Tennessee. The Senate and House districts for those two states were not too precise. Colorado adopted a plan with a deviation of 41 people which was later vetoed for other reasons.

Senator Hess stated that 0.15 percent deviation in Kansas would be a little over 700 people. He inquired about the "ideal" figure and was informed that it is now 472,736. Senator Thiessen noted that the Joint Committee adopted the deviation of 0.15 percent and those are the figures we have to work with. Senator Meyers noted that if we make the population deviation too narrow we may be locking ourselves into a situation of drawing as good a map as possible. Senator Thiessen stated that we may be locking ourselves in and not be able to draw counties that we do not want to do unless absolutely necessary. Senator Pomeroy stated he would feel uncomfortable in changing the announced goal without having seen what any map that meets these criteria look like. He would be interested in seeing what sort of a configuration there would be in meeting this goal. Senator Meyers stated that we must first try to meet the goal, but if we just cannot, then we may have to change the goal.

Senator Arasmith wondered how many municipalities straddle county lines. Mr. Mills stated that about ten but there are none in the areas of contention. Mr. Mills stated he would get a list of those cities for the Committee's information.

Senator Hess stated that it is evident that the two sorest spots in the state are Reno and Douglas Counties in terms of where they are going to end up. It is apparent, that, if we are going to keep a very tight deviation, there is no way Douglas County can be put in the 3rd District with Wyandotte and Johnson Counties. This leaves a choice between the 5th and the 2nd Districts. Senator Hess stated that it is mathematically impossible to put Reno County in the 4th District. The Committee ought to recognize these realities. Senator Hess also stated that the Kansas congressional delegation plan is seriously out of line with the adopted deviation goal.

Afternoon Session

Russell Mills presented the Committee with the latest revision of population data by county and also the information on Kansas cities split by county lines.

Senator Thiessen requested approval of the minutes of the Joint Committee meeting. Senator Arasmith moved that the minutes of the July 1, 1981, meeting be approved. Senator Pomeroy seconded the motion. The motion passed.

Senator Hess questioned why we keep pushing the 1st District further and further to the east. He stated that Reno County has more identification with the 4th rather than the 1st. We should keep the line toward the middle of the state instead of pushing it further to the east all the time.

Senator Pomeroy wondered how the Senate Committee is going to share their ideas with the House Committee since the next Senate Committee meeting is scheduled the day before the next House Committee meeting. The possibilities suggested were: (1) request the House Committee to change their meeting date; (2) keep the Senate dates as they are and have a joint meeting after the House has had their next meeting; or (3) have a Senate meeting on December 7 and eliminate the October 28 meeting. Discussion followed. It was decided to leave the dates as scheduled and request a joint meeting in December.

Senator Meyers stated that people are not much interested in what is going on and will not be until they find out where the lines are going to be drawn.

Senator Norvell stated he does not think there would be any opposition to placing Reno County in the 1st District. The media coverage mainly comes from Hutchinson and Reno County is a market center for agriculture.

Senator Angell suggested that a bill be introduced and run the first week of the session. He noted that one chamber can introduce a bill and it can be changed on the floor and all of our work will be lost. There is an advantage to putting a bill out that the two Committees have agreed upon and worked on through the summer.

A possible joint meeting or additional Senate meeting date of December 11, 1981, was discussed.

The staff was directed to come up with several different plans that meet the criteria established by the Joint Committee, including some within the 0.15 percent deviation goal and some which do not split county lines. Staff was also directed to draw maps placing Reno County in the 1st and 4th Districts, and placing Douglas County in the 2nd, 3rd, and 5th Districts.

The meeting was adjourned.

Prepared By J. Russell Mills, Jr.

Approved by Committee on:

October 28, 1981
Date

Attachment I

August 30, 1980

Senator Elwaine F. Pomeroy
1415 Topeka Ave.
Topeka, Kansas
66612

Dear Senator Pomeroy,

Enclosed please find my proposed re-apportionment plan. After studying all the different aspects and considerations I feel this plan best suits the needs of the state both now and in the future.

Consider if you will the following points:

- 1) No split counties.
- 2) The 5th district while under the ideal by .06% will benefit from future growth trends in Douglas, Osage, and Lyon counties.
- 3) In the 1st district where population figures are on the decline, a full 1% above the ideal will compensate for future trends.
- 4) Major changes in the 3rd district were necessary due to the consolidation of Wyandotte county. Douglas and Franklin counties were replaced by Miami and Linn counties because of their large differences in population both at present and projected for the future.
- 5) Douglas was moved to the 5th to offset the consolidation of Sedgwick into the 4th.
- 6) The addition of Reno county into the 1st District was perhaps the most difficult to arrive at. The factors I considered were Reno counties major involvement in agri-buisness which will benefit the agrarian 1st, in addition it will become the most populous county in the district thus the county will benefit both politically and economically.

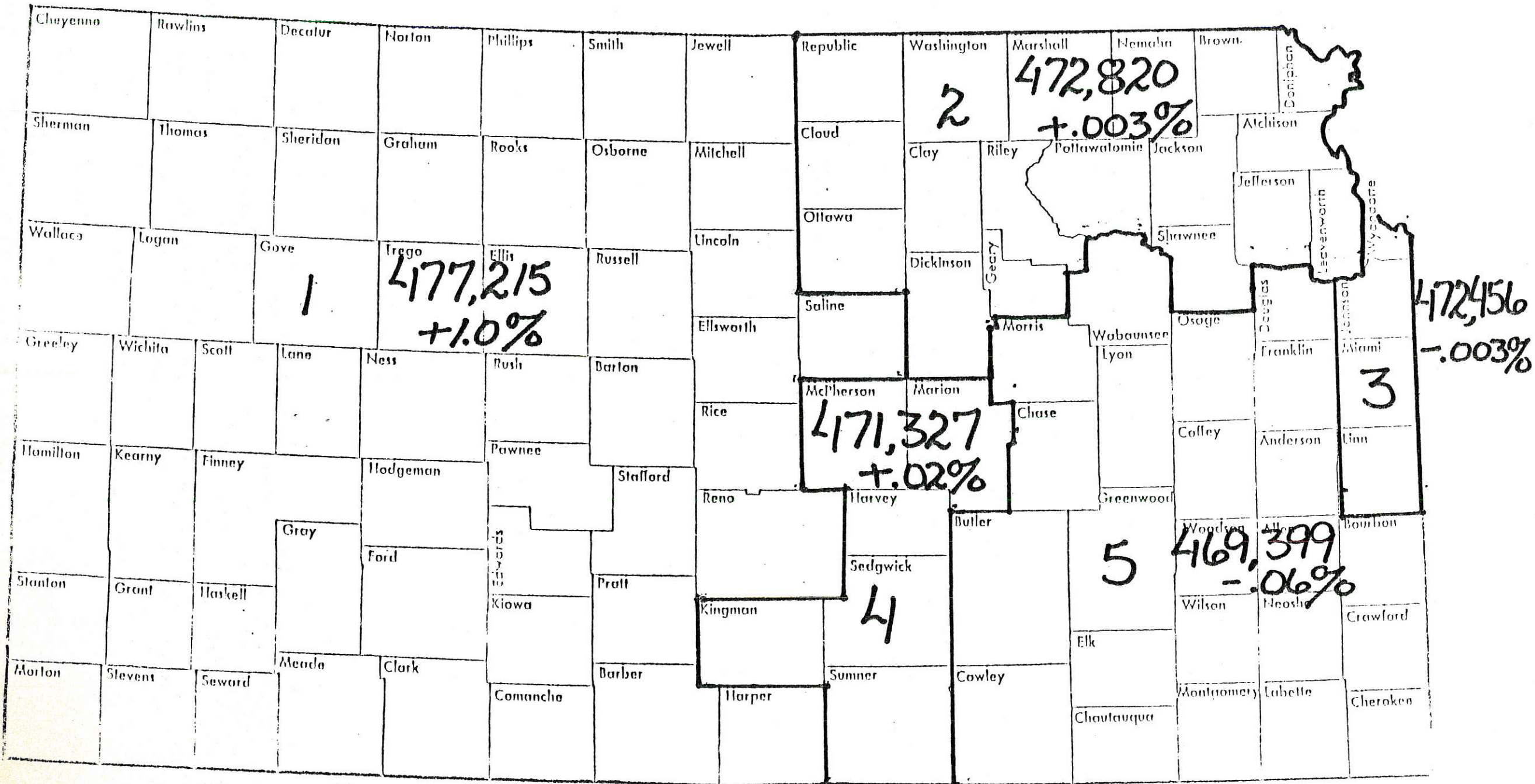
Best Wishes,

Kent Sallee

Kent Sallee

1013 S. Ash

McPherson, Kansas 67460



Attachment II

August 27, 1981

To: Russell Mills, Legislative Research Department
From: Robert A. Coldsnow, Legislative Counsel *RAC*
Re: Congressional Redistricting, United States District
Court Cases for the District of Kansas

Following our discussion regarding the minutes of the first joint meeting of the Reapportionment Committees, I reviewed the decisions of the federal courts in Kansas respective to congressional redistricting.

In two cases of which I am aware, both before three judge federal courts, the court in each case found that the evidence established that the Kansas Legislature had made a good faith effort to meet the constitutional standards, and that while mathematical perfection was not achieved, the Legislature had redistricted as nearly as practicable in its judgment and did not exceed permissible bounds of discretion in deviating from population equality.

In *Meeks v. Avery*, 251 F Supp 245 (1966) the 1965 congressional redistricting act (Laws 1965, Ch. 13) was under attack. The first issue was whether the Legislature should have used the 1960 federal census rather than the 1964 state census. The court noted that for redistricting purposes the state census was probably better suited than the federal census and was more up-to-date and approved the use of the state census. In this act there was a total variance ratio 1.035 to 1; the highest variance being 1.507% and the lowest variance 1.947% for a total variance of 3.454%. The ideal district population under the state census was 436,107 and under the federal census was 435,722. Under the federal census the total variance ratio would have been 1.165 to 1, with the highest variance of 5.357% and the lowest variance of 9.563% for a total variance of 14.920%.

The second case is *Jewell, et al v. Docking, et al*, Civil Action No. KC-3697, where the court filed an unreported memorandum decision March 26, 1974. This decision was affirmed by the U. S. Supreme Court in Case No. 74-552, March 3, 1975, 420 US 957, 43 L Ed 2d 435, 95 S Ct 1345. I have reviewed the Memorandum of Decision and the Appellants'-Plaintiffs' Jurisdictional Statement on Appeal filed

with the U. S. Supreme Court and the response thereto of the Appellee together with the Appellee's motion to affirm. In the court's decision, it notes the plaintiffs' alleged that the redistricting was constitutionally infirm because of an attempt by the Kansas Legislature to separate and segregate certain political and racial groups in Wyandotte County by dividing the county and placing each part into separate congressional districts; contending that this procedure diluted and stifled and distorted the voting influence, effect and voice of each citizen and voter in Wyandotte County and in particular stifles or dilutes the Negro vote or that of any minority group in Wyandotte County and invidiously discriminates against the Negro population and minority populations in Wyandotte County. The court noted the plaintiffs specifically alleged that their complaint does not challenge the numerical apportionment or population variances.

In spite of the fact the plaintiffs did not attack the population variances, the court, commencing on page five of its Memorandum of Decision, makes particular note of the population variances and the fact that the deviation between the high and low districts amounted to 1.503%. The court cited *Meeks* and took it as its guiding light for the validity of population variances of congressional redistricting in Kansas. On page six of the court's Memorandum of Decision, it states, "We think the evidence and the record before the Court demonstrates that the Legislature did make an honest and good faith effort to construct congressional districts as nearly of equal population as is practicable, and so find."

When the plaintiffs appealed they again presented only the questions revolving around the division of Wyandotte County between two congressional districts, and, in spite of the fact the trial court made a specific finding with respect to population variances and a special holding as to their validity, did not attack the decision and decree of the trial court with respect to population variances. In fact in the last paragraph of the Appellants' Jurisdictional Statement on Appeal stated, "What compounds and complexes this question is that these Appellants make a complaint not to the numbers within the Districts, but to the 'gerrymandering,' the discriminatory cartography of these laws." The U. S. Supreme Court affirmed in a memorandum without opinion.

I did not analyze the other congressional redistricting case, *Meeks v. Anderson*, 229 F Supp 271, because it was an attack on the 1961 redistricting prior to the U. S. Supreme Court's decisions regarding the federal courts' jurisdiction

over reapportionment matters. That redistricting plan had variations of over 35% as I recall.

Thus, since *Baker v. Carr* and *Wesberry* there are two federal district court cases in Kansas approving total population variances of 3.454% and 1.503%. Apparently, the U. S. Supreme Court was not willing to take up any issue that was not squarely presented to it and, therefore, nothing was said about the trial court's approval of the 1.503% variation in the 1974 case.