

Approved March 25, 1987

Date

MINUTES OF THE SENATE COMMITTEE ON LEGISLATIVE & CONGRESSIONAL APPORTIONMENT

The meeting was called to order by Senator Eric Yost at  
Chairperson

4:30 a.m./p.m. on March 24, 1987 in room 529-S of the Capitol.

Attendance of Members:

Members present:

Sen. Eric Yost (Chairman)  
Sen. Neil Arasmith  
(Vice-chairman)  
Sen. Richard Bond  
Sen. James Francisco  
Sen. Richard Gannon

Sen. Fred Kerr  
Sen. Don Montgomery  
Sen. Alicia Salisbury  
Sen. Jack Steineger  
Sen. Dan Thiessen

Members absent:

Sen. Mike Johnston

Committee staff present:

Arden Ensley, Revisor of Statutes  
Raney Gilliland, Legislative Research Department  
Marty Robison, Secretary to the Committee

Mary Galligan, KLRD  
Myrta Anderson, KLRD  
Robert Coldsnow, Legislative Counsel

Conferees appearing before the committee:

Linda Johnson, League of Women Voters of Kansas  
Marilyn Chapman, Sedgwick County Commissioner of Elections

Raney Gilliland, of the Research Department, briefed the Committee on the background of HB 2038, HB 2039, and HCR 5003, and summarized the interim study that was conducted in 1986. The reports and minutes from the interim committee are available for study.

The Revisor of Statutes, Arden Ensley, explained that the State Constitution mandates that State Legislative Districts be reapportioned in 1989. HCR 5003 allows the state to apportion Legislative districts in 1992 and every 10 years thereafter. Additionally, however, in order to comply with the mandates of Bacon v. Carlin, HCR 5003 also requires an apportionment in 1989. Ensley pointed out that Bacon v. Carlin also requires a new census, since the 1980 Federal census was specifically criticized by the Court as being too outdated. House Bill 2038 and House Bill 2039 would implement such a census, which would be administered by the Secretary of State's office.

In response to an inquiry from Sen. Steineger, Brent Anderson of the Secretary of State's office, indicated that it's difficult to estimate the exact cost of a State census, but stated that he thought it could be done by his office for much less than if the Federal Census Bureau conducted it.

Linda Johnson, League of Women Voters of Kansas, testified in favor of the bills as a package (Attachment 1). Marilyn Chapman, Sedgwick County Commissioner of Elections, spoke on House Bill 2039. She urged the bill be amended to assure that "proposed" precincts are established by January 1, 1988, but that these new precinct lines not become effective for voting purposes until 1989 (Attachment 2).

Senator Yost adjourned the meeting at 5:30 p.m. and announced the next meeting will be March 25 upon adjournment of the Senate.

# LWVK LEAGUE OF WOMEN VOTERS OF KANSAS

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Statement to the  
SENATE COMMITTEE ON  
LEGISLATIVE AND CONGRESSIONAL APPORTIONMENT  
by Linda R. Johnson, President,  
League of Women Voters of Kansas  
March 24, 1987

In reference to HB 2038, HB 2039, and HCR 5003:

I speak in support of the three pieces of legislation this committee is considering today.

The League of Women Voters of Kansas has been following the deliberations regarding legislative apportionment with a great deal of interest and a degree of vacillation. Like the legislature, we are caught between our concern for constitutional rights and economic realities; we are also attempting to balance our opposition to a state census and our recognition of the need for reapportionment.

The League of Women Voters of Kansas did enter a friend of the court brief in the 1983 case of Bacon v. Carlin because of our belief that the districts as currently drawn are now substantially unequal.

In testimony before the interim committee studying reapportionment issues, we stated in July that the legislature appeared to have no option but to establish a suitable data base and reapportion in 1989. As you all know, the three-judge federal panel which ruled in the Bacon case put the state on notice that reapportioning in 1989 on the basis of the 1980 census would not be acceptable; in the court's words, "in 1989, if the Kansas legislature attempts to implement its constitutional provision requiring reapportionment by reliance upon 1980 federal census figures or those figures updated by estimates, constitutional problems will arise." (Courts have not found estimated updates to be an acceptable data base for apportionment.)

At the same time, the United States Supreme Court has suggested that reapportionment once every ten years would be "a rational approach to readjustment of legislative representation" and has also stated that "reapportionment with less frequency would assuredly be constitutionally suspect." (Both in Reynolds v. Sims) We therefore suggested that the interim committee consider a state census on a one-time basis and also explore the possibility of contracting for a special census by the U.S. Census Bureau.

With the option of contracting for a federally-conducted census rapidly fading, the League decided to support a one-time

state census. We are firmly opposed to adopting a state census on a permanent basis.

The League of Women Voters of Kansas studied census procedures in 1975 and adopted a position favoring abolition of the state census in 1976. The League concluded from its study that the Kansas census could be more realistically described as 105 separate county censuses rather than one state-directed enumeration and that it was subject to greater amounts of error than was the federal census because of decentralized procedures and the relative lack of accuracy checks.

The major complaint against the Kansas census was the lack of standard procedures. The League surveyed Kansas counties to determine what method of enumeration they used and found that 43 relied primarily on a house-to-house canvass, 22 relied primarily on automobile registration figures, 6 used a combination of those two, and 30 relied primarily on other methods; the method used by 4 counties was not known. (Note the use of the word "primarily"; many counties combined methods, for instance employing a house-to-house canvass in cities while taking the census in rural areas from assessment registers.)

Decisions as to methodology, residency, etc., were left up to the 105 county assessors acting independently. While the state provided guidelines for determining residency, especially with regard to counting students and military personnel, in practice different definitions of residency were used. Some counties used the federal definition (counting people where they live and sleep most of the time), while others required evidence of intent to be a resident, such as registering to vote or the purchase of an automobile license.

Given the results of our study of the census, we supported abolition of the state census and have no choice but to oppose reestablishing it. We are also concerned about the cost of a state census. Estimates of the cost have varied, and I would not be surprised to see those estimates rise as plans for the census become more detailed. It will certainly be more expensive to do a really good job. We understand the concern of some members of the legislature that it seems irresponsible to spend millions of dollars on a census that will be used to reapportion one house of the legislature for one two-year term.

However, it seems clear that if the state attempts to postpone reapportionment beyond 1989, a lawsuit will be filed. Furthermore, even if a constitutional amendment is on the ballot in 1988 to permit the postponement, there is always the possibility that voters could reject the amendment. Therefore, the state must be ready to reapportion in 1989, and that means we must conduct the census in 1988. I cannot speak for the U.S. Supreme Court, but the language of the federal court ruling in the Bacon case seems quite clearly to rule out using the federal census as a basis for legislative apportionment in 1989.

The League favors utilization of federal census figures both for the redistribution of state tax monies to local governments and for legislative reapportionment, recognizing that some minor adjustments may occasionally be needed. We have no particular position on how to count students and military personnel, so long

as they are not systematically excluded from representation. While the federal courts have ruled that students and servicemen may not be denied the vote if they meet voter qualifications and that military personnel as a class may not be arbitrarily eliminated from the population base used to design a legislative apportionment scheme (Davis v. Mann, 1964), the U.S. Supreme Court has left it to state legislatures to decide how they should be counted. In the case of Burns v. Richardson, 1966, the Supreme Court declared that "We start with the proposition that the Equal Protection Clause does not require the States to use total population figures derived from the federal census as the standard by which this substantial population equivalency is to be measured....Neither in Reynolds v. Sims nor in any other decision has this Court suggested that the States are required to include aliens, transients, short-term or temporary residents, or persons denied the vote for conviction of crime, in the apportionment base by which their legislators are distributed and against which the Equal Protection Clause is to be measured. The decision to include or exclude any such group involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere." The League would prefer to see such a decision made in the form of legislation, however, rather than including in the state's constitution language detailing the methodology to be used in adjusting the federal census for use in apportionment.

We are pleased that the House has passed both HB 2038 and HCR 5003, and we hope that this committee will recommend that the Senate do the same. We believe that the state must at some point begin to use the federal census as a basis for reapportionment, and that will require the constitutional amendment to change the date of legislative apportionment. The League of Women Voters of Kansas supports these two bills as a package; passage of both bills is necessary to resolve the dilemma of legislative apportionment in Kansas. We have not addressed the question of precinct boundaries or the Block Boundary Suggestion Project per se in our studies. We certainly support the concept of establishing precincts that are as compact and contiguous as possible. If the Block Boundary Suggestion Project will enable the state to make more effective use of U.S. census data, then we hope the state will continue to participate in the project, and the League will support measures necessary to make U.S. census information usable and accurate for the state of Kansas. On that basis, we would urge you to support HB 2039.

We hope that the state of Kansas will learn from its past mistakes and conduct a 1988 state census in a more professional manner than previous state censuses. We would strongly urge the Secretary of State's office to choose one of the more centralized methods of taking the census. Mandating that counties do their own censuses or contracting with some counties could easily result in the same sort of decentralized, inaccurate census we had before. Guidelines must be strictly enforced, and training for the enumerators would be a good idea. Besides resolving the state's constitutional dilemma, we believe that a state census leading to reapportionment in 1989 will correct the inequalities in representation that currently exist, and that census must be done right. The state's apportionment scheme depends on an accurate, standardized statewide census.





SEDGWICK COUNTY, KANSAS

Commissioner of Elections

510 N. Main  
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March 24, 1987

RE: H.B. 2039

In order to make all of our jobs easier in the future, we are working to establish all of our precinct lines along visible ground features. This is something we all want and to which we are committed. However, I am concerned about the portion of this bill which will seriously affect the voters of Kansas, and particularly Sedgwick County, in 1988.

In its present form county election officers will be required to change all precinct lines which do not conform to federal census standards by January 1, 1988. Sedgwick County has approximately 175 precincts that will be affected. Many of these lines involve either a state representative or senate boundary -- or both. While most counties do not have this problem, Sedgwick County represents ten per cent of the precincts in the state with eighteen representative and six senatorial districts, in addition to sixteen city and five county commission district lines.

I suggest that "proposed" precinct lines for census purposes be submitted by January 1, 1988, but that current lines be allowed to remain the same for voting purposes until January 1, 1989.

Concern has been expressed that persons who are involved in a possible state census, and those involved in the federal census, might be confused if they are working with a map of "proposed" precincts; or that some county election officers might not comply with the January 1, 1988 deadline.

My concern is for the voters. Preliminary estimates indicate that approximately 85 precincts in Sedgwick County will be split between representative or senate districts, or both, for the 1988 elections. This will involve thousands of voters in this county alone.

Many split precincts would have a very small number of people eligible to vote for certain candidates in a precinct where the majority would be voting for other candidates. In such a situation, the ballot secrecy of the few voters would be compromised.

As you probably already know, voters can be notoriously uninformed despite our efforts. They come to the voting place to vote. Period. They expect to be directed to a voting machine with efficiency and with no waiting. Where there are split precincts, determining which person receives which ballot will take time and will cause confusion and long lines on election day. While we do our best to make sure that our 1,400 election board workers are well trained, they are volunteers who work on election day as a public service. The margin for error in this situation would be tremendous.

For these reasons I am urging that the bill be amended to assure that "proposed" precincts are established by January 1, 1988, and that these new precinct lines become effective for voting purposes by 1989. In this way each county can comply with the needs of the census while still having an option to select the time to convert its precincts for voting purposes. Attached is a copy of H.B. 2039 with the changes I am suggesting.

Thank you for your consideration.

Marilyn K. Chapman  
Commissioner of Elections

HOUSE BILL No. 2039

By Special Committee on Legislative Apportionment

Re Proposal No. 21

12-15

0045 Sec. 3. (a) Each county election officer shall provide and  
0046 maintain a suitable map or maps drawn to a scale no smaller than  
0047 1/2 mile to the inch in incorporated places and urban areas and no  
0048 smaller than one mile to the inch in rural areas and clearly  
0049 delineating all major observable features such as roads, streams,  
0050 and railway lines or other visible ground features which meet  
0051 the requirements of the federal bureau of the census for use as  
0052 census block boundaries and showing the current geographical  
0053 boundaries of each election precinct, representative district and  
0054 senatorial district in the county. A word description of the geo-  
0055 graphical boundaries shall be attached to each map. Such map,  
0056 with attached description, shall be a public record.

0057 (b) Each county election officer shall send a copy of each  
0058 map or maps with attached description to the secretary of state no  
0059 later than January 1, 1988. Such copies shall be public records.

0060 (c) The county election officer shall notify the secretary of  
0061 state in writing within 30 days following any changes in the  
0062 designation of polling places or changes in the boundaries or the  
0063 reorganization of election precincts and shall furnish a copy of  
0064 the map or maps showing the current geographical boundaries,  
0065 designation and word description of each new election precinct.

0066 Sec. 4. The secretary of state shall serve as the state liaison  
0067 with the federal bureau of the census on matters relating to the  
0068 tabulation of the population.

0069 Sec. 5. This act shall take effect and be in force from and  
0070 after its publication in the statute book.

0018 AN ACT relating to elections; concerning the establishment and  
0019 changing of election precincts; and prescribing certain powers  
0020 and duties of the state and county election officers in relation  
0021 thereto.

0022 *Be it enacted by the Legislature of the State of Kansas:*

0023 Section 1. Election precincts in all counties of the state shall  
0024 be established or changed by county election officers in such a  
0025 manner that:

0026 (a) Each election precinct as nearly as practicable shall be  
0027 composed of contiguous and compact areas having clearly ob-  
0028 servable boundaries using visible ground features which meet  
0029 the requirements of the federal bureau of the census and wholly  
0030 contained within any larger district from which any municipal,  
0031 township or county, school district or state officers are elected;  
0032 and

0033 (b) election precincts for election purposes shall be desig-  
0034 nated consecutively in the county by number or name, or a  
0035 combination of name and number.

0036 Sec. 2. No election precinct shall be created, divided, abol-  
0037 ished or consolidated or the boundaries thereof changed during  
0038 the period four months prior to each primary election and the  
0039 succeeding general election or between January 1 of any year  
0040 whose last digit is 8 and December 1 of any year whose last digit  
0041 is 0 unless required by the creation of a political subdivision or  
0042 alteration of a political subdivision by annexation, or unless  
0043 required to conform to a federal census block boundary estab-  
0044 lished by the federal bureau of the census.

*of proposed  
precincts*

*(c) such precincts shall become  
effective for voting purposes no  
later than January 1, 1989*