Approved: March 20, 2003
Date

MINUTES OF THE SENATE ELECTIONS AND LOCAL GOVERNMENT.

The meeting was called to order by Chairperson Barbara P. Allen at 1:30 p.m. on February 13, 2003 in Room 245-N of the Capitol.

All members were present except: Senator Huelskamp

Committee staff present: Ken Wilke, Revisor of Statutes
Dennis Hodgins, Legislative Research
Mike Heim, Legislative Research
Nancy Kirkwood, Committee Secretary

Conferees appearing before the committee: Senator Christine Downey
Senator Derek Schmidt
Ron Thornburgh, Secretary of State
Tim Graham, 2002 Redistricting Staff Member

Others attending: See attached list.

Per Chairperson Allen's prior request, Jim Edwards, Governmental Relations Specialist with KASB, provided members' with the decision of District Judge Tracy Klinginsmith which relates to testimony given on February 12, 2003 on **SB 103.** This information was distributed to members prior to start of the committee, Jim Edwards did not appear in person. (Attachment 1)

Hearing on SCR 1607 - Constitutional revision establishing a commission to propose legislative, state board of education, and congressional districts.

Senator Downey provided testimony in support of **SCR 1607** (Attachment 2).

Senator Schmidt provided testimony in support of **SCR 1607** (Attachment 3). Various questions were presented and answered to clarify the structure of the Supreme Court Nominating Commission and the type of commission which would result from their nominations. Chairperson Allen requested Mary Galligan, Legislative Research, and Ken Wilke, Revisor of Statutes, to locate and provide all data regarding the current members of the Supreme Court Nominating Commission including who they are, how they were appointed and their backgrounds if possible. Questions regarding costs were also not answered yet, there was no fiscal note provided for this resolution.

Ron Thornburgh, Secretary of State provided testimony in support of **SCR 1607** (Attachment 4), focusing on the removal of the census data adjustment, a step which would eliminate unnecessary work and about $500,000.00 in costs.

Tim Graham, 2002 Redistricting Staff Member, based on his experience with last year's redistricting he provided neutral testimony on **SCR 1607** (Attachment 5).

There were no opponents present to testify.

Chairperson Allen informed committee they will meet next Tuesday, Wednesday, and Thursday.

Adjournment

The meeting adjourned at 2:28 p.m. The next meeting is scheduled for Tuesday, February 18, 2003.

SENATE
ELECTIONS AND LOCAL GOVERNMENT
GUEST LIST

Date Thurs, Feb 13

William Kidd Fast	
Twila Drybread	DOB
Brad Bryant	Sec. of State
Ron Thornburgh	" "

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY

DIANE DEBACKER, RICHARD FLANARY ELIZABETH J. MILLER, Plaintiffs, vs. RICK IRWIN REESE, PAUL HOLZ, AND ALAINA J. LAMBOTTE, INDIVIDUALLY AND AS THE RECALL COMMITTEE; SUSAN FIGGE, AS THE POTTAWATOMIE COUNTY ELECTION COMMISSIONER; BARRY WILKERSON, AS THE POTTAWATOMIE COUNTY ATTORNEY, AND ALL OTHER UNNAMED SPONSORS AUTHORIZED TO CIRCULATE PETITIONS FOR RECALL, Defendants	)	CASE NO. 02 CV 82

SUPPLEMENTAL
MEMORANDUM DECISION AND ORDER

This is in response to the motion for reconsideration filed by plaintiffs on November 12, 2002 and supplemental to the court's memorandum decision and order dated and filed on November 8, 2002. Having reviewed plaintiffs' motion for reconsideration and the recall committees' written response filed herein on November 15, 2002 the court further finds and concludes as follows:

There have been four cases of relevance to the issue now before this court that have reached the appellate court's of Kansas in which the Kansas appellate courts have interpreted and/or applied the provisions of K.S.A. 25-4302 and K.S.A. 25-4320(a)(2). They are Unger v. Horn, 240 Kan. 740(1987); Cline v. Tittel, 20 K.A.2d 695(1995); Baker v. Gibson, 22 KA.2d 36(1995); and, Reynolds v. Figge, 28 K.A.2d 635(2001).

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02-13-03
Attachment 1

In my decision dated November 8, 2002 I relied upon Unger, p. 744, for the proposition that "the merits of reasons stated as grounds for removal is for the electorate to determine, not the court." I believe that is consistent with Baker and Cline, both of which cited Unger for the proposition that "the truth or falsity of the grounds must still be determined by the electorate, not the county or district attorney (or trial court)." (Baker, p. 45; Cline, p. 703). I see no difference between the "merits" of an allegation and the "truth or falsity" of an allegation in the context of recall petitions.

My concern in these kinds of cases is that the rules established by appellate court interpretation of the pertinent statutes, particularly when applied to those cases alleging "incompetency", are difficult to reconcile. By way of illustration, in Cline the recall petition provided as follows:

> "The undersigned hereby seek the recall of Mark Kerr from the Board of Education of Unified School District 303, Ness County, Kansas on the grounds that:
>
> "In April 1993 the Board of Education voted to implement a wrestling program for Ness City High School and Ness City Junior High. Subsequently and with participation by Mark Kerr, contracts for wrestling coaches were approved in the sum of approximately $4,918; 12 wrestling meets for Ness City High School and 6 wrestling meets for the Junior High were scheduled with other schools; and wrestling supplies were purchased for the sum of approximately $9,190. Outlay for the wrestling program for the 93-94 school year will equal approximately $14,108.
>
> "At a special meeting of the board of Education on September 13, 1993, Board Member Mark Kerr voted to discontinue the wrestling program notwithstanding the commitments to coaches and other schools and the costs already incurred with his approval. The agenda for the September 13 meeting did not inform the public that discontinuance of the wrestling program would be considered by the Board.
>
> "Mark Kerr has ignored the plainly expressed desire of his constituents concerning the wrestling program. That, combined with his wasteful, arbitrary and secretive conduct as a member of the Board, demonstrates his incompetence to continue to serve."

In Cline the trial court, reversing the county attorney's finding, concluded that grounds for recall as stated in the petition were stated specifically enough to allow the elected officials to respond. The Court of Appeals affirmed the determination made by the trial court, and held that the duty of the county attorney in a recall action is limited to making a determination of whether one or more of the grounds required by K.S.A. 26-4302 is alleged and whether the facts in support thereof are described with particularity in not more than 200 words. In Baker the Court of Appeals was critical of its decision in Cline, likening it to the dissent in Unger, "that the electorate is capable of deciding whether the grounds for recall. . . meet the requirements of K.S.A. 25-4302", and went on to hold that "the grounds of incompetence. . . in K.S.A. 25-4302 (also) require the recall petition to show some nexus between the alleged conduct and the elected official's duties as prescribed by law." (p. 45). Baker did not however overrule Cline, and the Reynolds court, subsequent to Baker, cites Cline with approval as to the determination made in Cline that the allegations of the recall petition giving rise to that case were legally sufficient. (Reynolds, p. 643). I believe the Baker court's criticism of the Cline decision implies that if the court in Cline had required the county attorney (and trial court) to determine a nexus between the alleged conduct and the elected official's duties as prescribed by law, the recall petition in Cline would not have passed muster. Yet in Reynolds, the court utilizes the recall petition of the Cline case as an example of a recall petition that did in fact pass muster. When I read the recall petition underlying the Cline case I find it difficult to determine that it was "specific enough to tell those subject to the recall what board policies they violated" (a requirement set forth in Reynolds

p. 645). If my interpretation of Unger, Cline, Baker and Reynolds is correct, prosecutors and trial courts of this State face a dilemma when attempting to resolve recall petitions.

Kansas is in a state of financial crises. It is reasonable to assume that our courts may soon be facing an increase of these type of cases. The law needs clarity, either in the interpretation of current law, or by legislative amendment to existing statutes. School board members are volunteers. Schools are facing difficult times. Schools need board members who are capable and willing to make difficult decisions. If prosecutors and/or trial judges commit error in determining the sufficiency of recall petitions that permit recall elections to proceed on insufficient grounds, elected officials have no recourse. (K.S.A. 25-4302). This would have a chilling effect on the pool of volunteers willing to face the financial challenges to our public schools that lie ahead. Likewise, if error is committed in making that determination in a manner to preclude an election on a valid recall petition, the effect is to deny the electorate their constitutional right to recall their elected officials.

I have again reviewed the recall petitions in the case at hand. I have again compared them to the one that gave rise to the Cline case. I remain of the belief that the recall petitions herein are as specific as those approved in Cline and referred to as adequate in Reynolds. However, it is not, in my opinion, clear that the allegations of the subject recall petitions adequately show a "nexus between the conduct alleged and the elected officials' duties as prescribed by law", as required in Baker, with enough specificity "to tell those subject to the recall efforts what board policies they violated" as required by Reynolds. (p. 645).

Based upon the foregoing, I reaffirm the conclusion set forth in my memorandum decision dated November 8, 2002 that the recall petitions, after removing the allegations of "misconduct in office" meet the tests set forth in Unger and Baker. I further conclude, however, that the nexus between the conduct alleged and the board members duties as prescribed by law is not shown with enough specificity to tell the board members what board policies they violated as required by Reynolds. Therefore I must reverse my November 8, 2002 ruling and conclude that the recall petitions herein are legally insufficient.

Based upon the foregoing, it is Ordered that the recall petitions herein be and hereby are dismissed.

Judgment accordingly is entered effective upon the filing of this memorandum decision and order in the office of the clerk of this court. The filing hereof shall constitute the court's entry of judgment and no further journal entry is required.

Dated: November 18, 2002.

Tracy D. Klinginsmith
District Judge

cc: William K. Rork and John A. Fakhoury, Attorneys for Plaintiffs
William L. Frost, Attorney for Defendant Recall Committee
Barry Wilkerson, Pottawatomie County Attorney
John E. Lang, Pottawatomie County Counselor

IN THE DISTRICT COURT OF POTTAWATOMIE COUNTY

FILED THIS DAY

2002 NOV -8 P 3:49

JANE SMITH
CLERK OF DIST COURT
POTTAWATOMIE COUNTY
KANSAS

DIANE DEBACKER,
RICHARD FLANARY
ELIZABETH J. MILLER,
Plaintiffs,

vs.

RICK IRWIN REESE, PAUL HOLZ, AND ALAINA J. LAMBOTTE, INDIVIDUALLY AND AS THE RECALL COMMITTEE; SUSAN FIGGE, AS THE POTTAWATOMIE COUNTY ELECTION COMMISSIONER; BARRY WILKERSON, AS THE POTTAWATOMIE COUNTY ATTORNEY, AND ALL OTHER UNNAMED SPONSORS AUTHORIZED TO CIRCULATE PETITIONS FOR RECALL,
Defendants

CASE NO. 02 CV 82

MEMORANDUM DECISION AND ORDER

This is a second but separate action arising out of the Board of Education of Kaw Valley Unified School District 321's decision to consolidate St. Mary's High School and Rossville High School. In the previous case before this court, Case No. 02 C 59, it was determined that the Board of Education was vested with the authority to reorganize district attendance centers and that its action in doing so was lawful. No appeal was taken from that decision and the time to do so has now expired.

The matter now before the court is an appeal pursuant to K.S.A. 25-4331, by three of the Board members of U.S.D. #321, plaintiffs herein, who have been made the subjects of a recall election scheduled for December 3, 2002. Each petition for recall of the three board members allege as follows:

> "Said (member) are incompetent to serve in said office *and have committed misconduct in office.*"

> "On April 8, 2002 said board member voted with other members of the Board of Education to re-organize certain attendance centers of the District, including the consolidation of the St. Marys and Rossville High Schools into one facility located at Rossville. Such action also included the creation of a single middle school, located in what is presently St. Marys High School."
>
> "Said member voted to impose the above action upon the patrons of this district without providing the public adequate notice of the proposed action; without allowing adequate public input into the decision; without requiring any analysis of the relative costs and benefits of this action; and without determining the impacts such action will have upon the communities of St. Marys and Rossville. To undertake such drastic action without adequate notice to the public; without allowing adequate public input; and without a complete understanding of the costs, benefits and impacts of such action demonstrates a complete incompetence to serve as an elected representative of the patrons of this school district *and also amounts to misconduct in office.*"

This matter was presented to the court on November 6, 2002 and taken under advisement. The court, having reviewed the pleadings and memorandums filed herein, and having considered the evidence and arguments presented, finds and concludes as follows:.

The subject recall petitions were properly subscribed by the recall committee members before the county election officer of Pottawatomie County, Kansas.

The county attorney of Pottawatomie County, Kansas timely determined the sufficiency of the grounds stated in the petitions.

The plaintiffs timely filed this action for review of the county attorney's determination that the grounds stated in the petitions are sufficient.

Plaintiffs' contend the recall petitions are insufficient as a matter of law because they do not contain a sufficient nexus between the conduct alleged and a duty of the elected officials subjected to the recall, that they contain no allegation of unlawful behavior willful in character that treads upon the duties of the office of the elected

officials, and they fail to specify any statutes or resolutions regarding the duties, or portions of the responsibilities of the board members which have been violated. Plaintiffs rely upon Baker v. Gibson, 22 K.A.2d 36, and Unger v. Horn, 240 Kan. 740, in support of their position.

The Unger case determined that ". . . the recall statutes require specificity when stating the grounds for recall. The grounds stated in a recall petition must be specific enough to allow the official an opportunity to prepare a statement in justification of his or her conduct in office." (Syl. 2). The Baker opinion notes that "the plain meaning of K.S.A. 25-4302 suggests the grounds for recall must meet a minimum threshold – they are conviction of a felony, misconduct in office, incompetence or failure to perform duties prescribed by law."

The recall committee in the instant case alleges the plaintiffs "are incompetent to serve. . . and have committed misconduct in office", relying upon two of the grounds authorized by K.S.A. 25-4302 for recall. The Unger court found it necessary to define the phrase "misconduct in office" as "any unlawful behavior by a public officer in relation to the duties of his office, willful in character." The recall petitions in question are void of any allegation that would constitute "misconduct in office" in accordance with that definition. Further, it has been previously determined by this court in Case No. 02 C 59, on allegations essentially the same as those contained in the recall petitions now before the court, that the actions of the board members to reorganize attendance centers of the school district were lawful. Therefore, the court concludes that the allegation in each recall petition that the plaintiffs "have committed misconduct in office" is insufficient as a matter of law and that language should be stricken from the recall petitions.

The remaining ground contained in the recall petitions, that plaintiff's "are incompetent to serve" presents a different issue. "Incompetent" is a relative term defined in ROGET'S II EXPANDED EDITION as "lacking capability; lacking the qualities, as efficiency or skill, required to produce desired results." The Unger decision requires that the grounds stated in a recall petition be specific. It does not require that the grounds stated have merit, and it prohibits the trial court from passing upon the truth or falsity of the grounds stated. 240 Kan., p. 742. Unger requires only that the grounds stated be specific enough to allow the officials subjected to the recall an opportunity to prepare a statement in justification of the action taken by them. Baker requires "the recall petition to show some nexus between the alleged conduct and the elected officials duties as prescribed by law." "The merit of reasons stated as grounds for removal is for the electorate to determine, not the court." Unger, p. 744.

The term "incompetent" as a grounds for recall therefore pertains to a political issue for resolution by vote, not a legal question for court decision, and if the grounds stated are specific as required by Unger and show some nexus to the elected officials duties as required by Baker, the recall petitions must be determined legally sufficient. The court concludes that the recall petitions, after removing the allegations of "misconduct in office", meet the tests set forth in Unger and Baker and are therefore legally sufficient.

The election officer of Pottawatomie County, Kansas is therefore Ordered to strike from the recall petitions in this matter that language contained therein alleging misconduct in office. The court has italicized the offending language that is to be removed on pages one and two of this memorandum.

It is further Ordered that the balance of plaintiff's petition is denied, with costs taxed to plaintiffs.

Judgement accordingly is entered effective upon the filing of this memorandum decision and order in the office of the clerk of this court. The filing hereof shall constitute the court's entry of judgment and no further journal entry is required.

Dated: November 8, 2002.

Tracy D. Klinginsmith
Tracy D. Klinginsmith
District Judge

cc: William L. Frost, Attorney for defendant recall committee
William K. Rork and John A. Fakhoury, Attorneys for plaintiffs
Barry Wilkerson, Pottawatomie County Attorney
John E. Lang, Pottawatomie County Counselor

1-10

STATE OF KANSAS

CHRISTINE DOWNEY
SENATOR, 31ST DISTRICT
10320 N. WHEAT STATE RD.
INMAN, KANSAS 67546

STATE CAPITOL BUILDING, ROOM 126-S
TOPEKA, KS 66612-1504
(785) 296-7377

TOPEKA

SENATE CHAMBER

COMMITTEE ASSIGNMENTS
RANKING MINORITY MEMBER: EDUCATION
RANKING MINORITY MEMBER: AGRICULTURE
MEMBER: WAYS AND MEANS
NATURAL RESOURCES
LEGISLATIVE EDUCATIONAL PLANNING COMMITTEE
JOINT COMMITTEE ON CHILDREN'S ISSUES

Thank you for allowing me to testify on SCR 1607

The democratic process allows for much diversity. With 165 elected representatives we are guaranteed to have differences of perspective and opinion. The topic of SCR 1607 will garner much interest and discussion and no doubt everyone will have a different perspective based on their personal interactions during the redistricting process. If they kept the district boundaries they wanted and if their friends were happy with their districts, then these people will see no problem with the current process and indeed, may defend the current process as a "necessary legislative function". But I will assure you that legislators that ended up with convoluted boundary lines, districts with larger than necessary geographical areas, and legislators that have huge areas of new constituents do not have happy thoughts about the current redistricting process.

However, there is a much broader concern that is being completely ignored. SCR 1607 does not focus on pleasing legislators. It is being proposed to end the shameful exercise of creating districts for self-interest. It is intended to end the process of legislators choosing their constituents. It is about avoiding the purposeful "drawing-out" of potential challengers. It is about eliminating obvious gerrymandering to include better "fund-raising areas". It does not focus on solidifying majority party power nor does it seek to increase minority seats.

It does propose to provide an objective method for creating districts based on required constitutional guidelines - which in themselves are required in order to insure fairness to voters. Yes, voters; why not focus on their needs? What do voters need out of a redistricting process?

Citizens don't care a bit about whether or not this is an expected "legislative function" nor do they believe that "politics is a necessary part of the process". They are tired of the games. They are disenchanted with the legislative process, believing that we are unable to resolve even the simplest problems. They distrust government, unsure that we are acting in their best interests. They are incredulous over our inability to act in a timely manner on anything.

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Attachment 2

And what did we do last year using the current redistricting process? We proved them right ... on all accounts.

- We played games with maps and people without regard to citizens' best interests.
- We put politics first - not constituent interests.
- We advanced maps drawn to protect individual districts.
- We even proposed a map that stretched one Congressional district from border to border - east to west - and north to south!
-

In the process of drawing new maps, we alienated the public, damaged our own reputations, and strained personal relationships that were needed to deal with last years' serious budget problems. As a result of the intense focus on redistricting, our budget problems worsened and solutions were delayed, resulting in the longest legislative session in history, costing taxpayers an additional $226,237.00 in legislative pay and an additional $242,448.00 for support staff.

Perhaps, many believe the process is behind us and forgotten, but I guarantee you the public remembers and I believe trust and cooperation have been permanently lost among many legislators. That is a very serious "leftover". As we face even more critical budget situations this year, cooperation is needed more than ever.

It is time to look for alternatives. Twelve states have already made the switch to independent commissions. These states made the change because they too realized that conflicts of interest are inherent when you ask legislators to draw their own districts. Those states that have alternative processes decided to serve the public instead of themselves. They turned the map drawing process over to someone else because map drawing is a relatively simple project if you exclude politics.

This proposal is one example of the alternative possibilities - it may need many changes and we welcome your suggestions and questions, but please ask yourself this question: Did last year's strife improve our ability to work together and was the public well-served by our actions? The honest answer is - no. The process did not serve us well, so we ask for your support in seeking a better system built on integrity, cooperation, and constituents' best interest.

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District Office
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(620) 331-1800

Senator Derek Schmidt
15th District

Committee Assignments
Agriculture (Chairman)
Judiciary
Reapportionment
Natural Resources
Elections and Local Government
Legislative Post Audit

Message Only (800) 432-3924
During Session

Testimony on Senate Concurrent Resolution 1607 Proposing to Amend the Constitution to Reform the Process for Redistricting By Senator Derek Schmidt February 13, 2003

Madam Chairman, thank you for scheduling this hearing today on Senate Concurrent Resolution 1607. As you know, this is a bipartisan proposal from 16 senators to put a question on the ballot asking Kansas voters whether they want to change the process used to draw legislative, congressional, and state board of education district boundaries. It is in some regards similar to a proposal that passed the Senate a decade ago but stalled in the House of Representatives.

Our current reapportionment process is flawed in several regards:

- First, it is built upon an inherent conflict of interest. Legislators make difficult decisions all the time – that is the nature of the job – but this is one of the very few situations in which legislators are not only allowed but required to make decisions that directly affect each of us in a very personal manner. (Another is our own pay, and we have already delegated that to a commission.)

- Second, it puts the focus on the "game" of politics instead of on the real purpose of politics – which is to ensure that every Kansan's voice can be heard. Under the current process, reapportionment becomes first and foremost a game about the political life and death of politicians and only secondarily an exercise to ensure equal and effective representation for every Kansan.

- Third, the current process was never approved by Kansas voters. Yes, voters approved the constitutional provision upon which redistricting authority rests. But when they did so years ago, Kansans never foresaw the dominant role that evolving technology would come to play in the

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Attachment 3

reapportionment "game". Kansans never intended to approve a system for reapportionment in which a small group of politicians could huddle in a room and quite literally pick their constituents block-by-block – and run hundreds of different permutations through a computer program until the "perfect" blend of demographics and voting behavior is found. The reapportionment process we have today is much-evolved from the one voters actually approved years ago. We should ask the people of Kansas whether they want to retain this process or use another.

Our proposal no doubt has its own flaws, and we trust in the wisdom of the legislative process to improve it. But we believe its basic principles are sound:

- First, remove the reapportionment process from the legislative process. Roughly a dozen states have moved to some sort of process outside the legislature for drawing district lines, and the trend is in that direction. There is good cause. While politicians are inherently reluctant to give up any hold on power – and the ability to draw our own districts is the ability to wield enormous power – the states in which legislatures have loosened their grip on redistricting seem satisfied with the process, and their legislative rancor appears to be substantially diminished.

- Second, put in place safeguards to remove as much of the politics from reapportionment as possible. Of course, politics will always color reapportionment. But by making the people who craft the new maps a step removed from direct political wranglings and by putting in place protections to ensure that every citizen's voice counts equally whether he or she is a legislator, a congressman, or an interested resident of an affected community, it is possible to minimize the role that politics plays in the process.

- Third, put in place requirements for public input. Under our current process, public input is gathered only because legislative leaders choose to seek it – not because it is required. Too often, public hearings on reapportionment are merely "window dressing" to give the appearance that the legislature is responsive to the public on this issue while the real agenda of political survival for politicians is quietly pursued. By requiring a group other than elected politicians to gather information about community needs and desires, we believe communities of interest will have a stronger voice in the process.

- Fourth, leave the final decision in the hands of the legislature and the courts as it is today. This ensures that democratic accountability remains in place.

We understand that what we are asking is difficult: We are asking that the politicians who serve under the Capitol dome cede some of their most

coveted power. But, contrary to popular thinking around this building, not all wisdom resides in elected officials. Those of us serving in public office do not have a monopoly on the ability to draw legislative districts that are in the best interests of Kansans.

To the contrary, we have an inherent conflict of interest that diminishes our ability to fairly consider all options. The reapportionment process is one of the last smoke-filled room processes in Kansas government.

We believe this open-government reform is in the best interests of Kansas democracy, in the best interest of communities around our state, and in the best interest of the legislature as an institution.

But, ultimately, what we believe – or what you believe -- is not what counts. What we are asking is that this committee – and, eventually the entire legislature – trust the people of Kansans to decide whether reform is needed. Reapportionment should be about our constituents choosing us, not about us choosing our constituents. We trust Kansans to decide whether the current process is consistent with that fundamental purpose.

I urge you to advance Senate Concurrent Resolution 1607 and put this question on the ballot for the people of Kansas to decide.

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Senator Derek Schmidt
15th District

Committee Assignments
Agriculture (Chairman)
Judiciary
Reapportionment
Natural Resources
Elections and Local Government
Legislative Post Audit

Message Only (800) 432-3924
During Session

Schmidt-Downey Redistricting Reform Proposal

BACKGROUND

- Prior to a series of United States Supreme Court decisions in the 1960s, state legislatures were not required to conduct legislative reapportionment based on one-man-one-vote. So the process of having state legislatures redraw their own district boundaries is still fairly new for all 50 states. Most states have gone through this process fewer than half a dozen times in their history.

- Having legislators redraw their own districts without any significant constraints creates an inherent conflict-of-interest.

- Twelve states have recognized this and have established procedures outside the legislature to accomplish legislative redistricting (Alaska, Arizona, Arkansas, Colorado, Hawaii, Idaho, Ohio, Missouri, Montana, New Jersey, Pennsylvania, Washington). Six states have also established procedures outside the legislature to accomplish congressional redistricting (Arizona, Idaho, Hawaii, Montana, New Jersey, and Washington). Iowa has a unique non-partisan process. (Source: Redistricting Law 2000 by NCSL Redistricting Task Force).

OUR PROPOSAL

An Independent Commission ...

- During the legislative session before the redistricting year, establish an independent commission to make recommendations to the legislature for redrawing district boundaries. Our proposal is modeled on the Base Realignment and Closure Commission that Congress has successfully used for more than a decade to deal with another politically charged issue – the closure of excess military bases.

- Composition of 8-member commission (7 voting members and a non-voting chairman) should be broad. Pool of 25 nominees established by Supreme Court Nominating Commission. From that pool, one appointment each is then made by the Governor, the Chief Justice, the Chief Judge of the Court of Appeals, the Speaker, the Senate President, and the House and Senate Minority Leaders. Senate appointments must be approved by the Senate. House appointments must be approved by the House. Other appointments must be approved by concurrent resolution. Any positions not filled when the legislature adjourns in the '01 year would be appointed by the Chief Judge of the Court of Appeals and not subject to legislative approval. Commission chaired by the Secretary of State, who would be a non-voting member.

- No more than 4 commissioners may come from any one political party. At least one must come from each congressional district. Except judges, no current public office holder may serve nor any employee of the legislature or of Congress. No member of the commission shall be eligible for election to the legislature or the board of education for 2 years after service on the commission nor accept any appointment to any state office or position. Current or former judges would be allowed to serve (except Supreme Court Justices), and service on the commission would not restrict an individual's ability to be subsequently appointed to the bench in Kansas

- Independence of commission would be protected by establishing strict *ex parte* contact rules. In essence, the commission would be quasi-judicial in nature and could consider only information formally (and publicly) presented to it. No "backroom deals" would be allowed.

To Solicit Public Input ...

- Require Commission to conduct public hearings throughout the state, including at least one public hearing in each of the 10 State Board of Education Districts.

- Testimony from legislators, members of Congress, state board of education members, political party officials and activists, local officials, interested citizens, and all other persons would be treated with equal weight and courtesy. All would have the same opportunity for providing input to the commission through formal, public channels. "Back-channel" communication would be prohibited by law.

To Consider Only Limited, Mostly non-Political Factors ...

- Factors commission shall consider: Federal constitutional and statutory requirements, including one-person-one-vote and the requirements of the federal Voting Rights Act; preservation of political subdivisions; communities of interest; and avoiding placing two incumbents in the same district.

- Factors commission shall not consider: Voter registration and/or party affiliation data; voting patterns or historic voting behavior; may not purposely develop districts that favor or discriminate against any individual, political party or group.

To Recommend Maps to the Legislature for up-or-down consideration ...

- Commission recommendations would come to the legislature for an up-or-down vote without amendment. If the legislature twice rejects the commission's recommendation for a particular type of district, then the commission's third recommendation would be fully amendable in the legislature.

- In all cases, the final decision would still lie with the legislature, the governor and the courts – as it does under current law.

On a Strict Timetable that Ensures Redistricting Does Not Disrupt Election Dates ...

- Strict timeline would be established to ensure the legislature completes work on redistricting by May 1 -- early enough to avoid adverse effects on the primary election. If the legislature misses its deadline, the redistricting would automatically fall to the courts.

- An incentive for the legislature to complete its work on time would be established by allowing the commission to consider not placing incumbents together in the same district as one factor in the redistricting. If the legislature failed to produce a map and the matter fell to the courts, the court would be prohibited from considering the location of incumbents in drawing the new map.

KANSAS VOTERS SHOULD DECIDE WHETHER TO CHANGE THE PROCESS

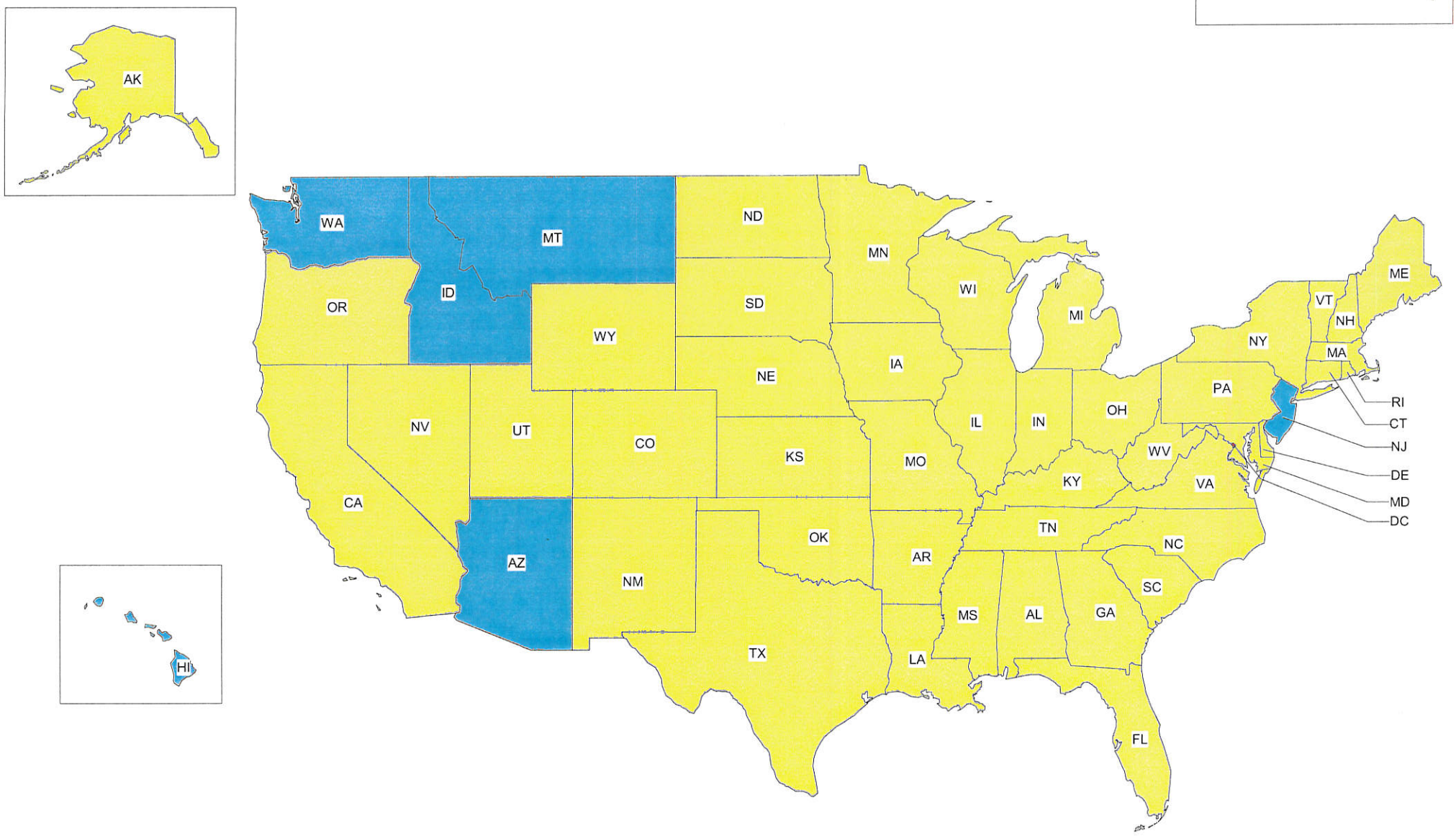
- By putting this proposed constitutional amendment on the ballot, citizens would have a chance to vote on whether the redistricting process used in 2002 should be repeated in 2012 or whether an independent commission should be established to present plans to the legislature.

PROPOSAL LARGELY PAYS FOR ITSELF

- The cost of the commission would be largely paid by eliminating the current constitutional requirement to recalculate census data and allow counting of military personnel and students at an address other than where they actually are on census day. The savings from eliminating this unnecessary procedure would be about $450,000, and that should offset much of the cost of operating the commission.

Redistricting Authority in Each State

Congressional Districts

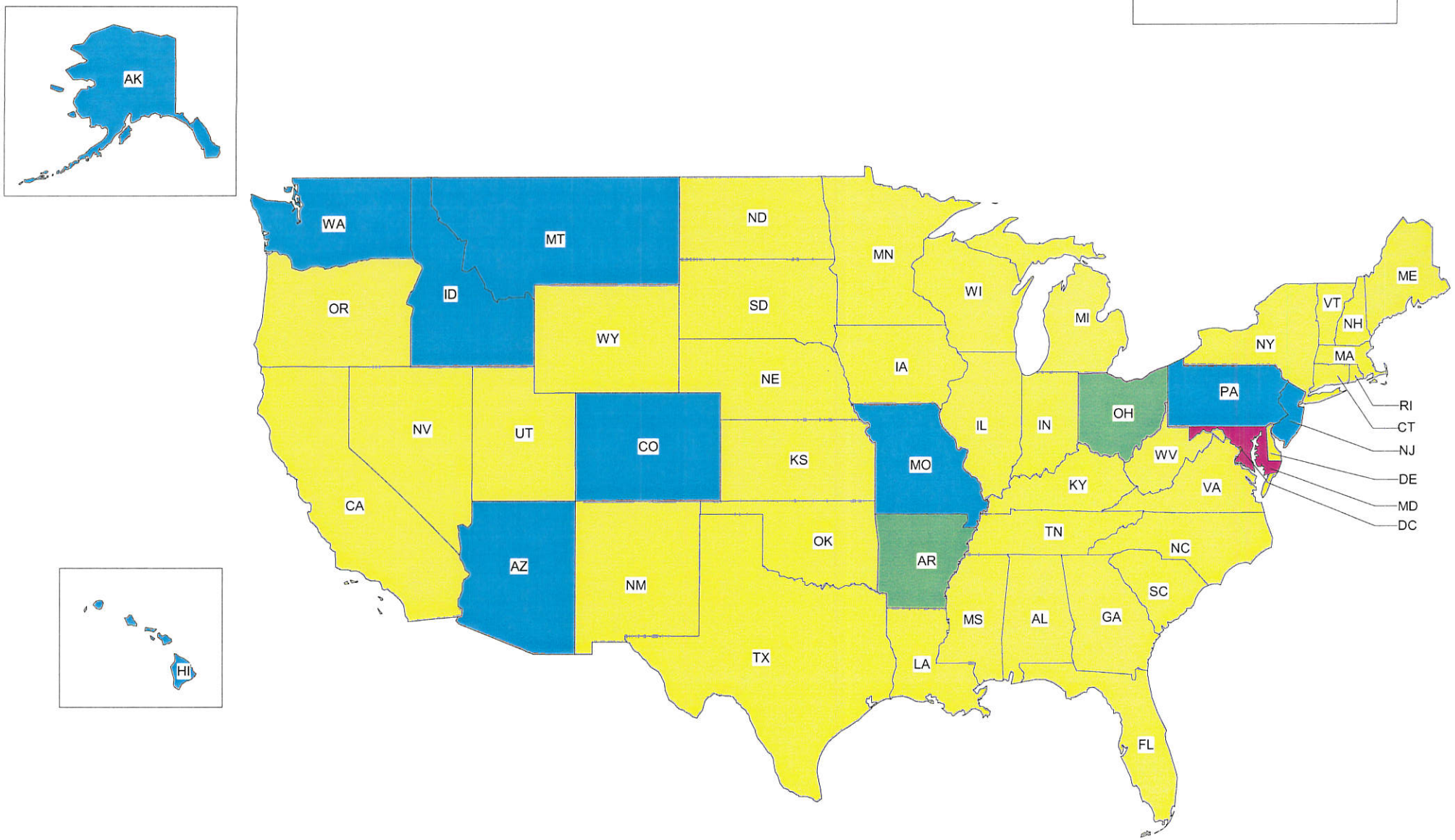


Source of information: **Redistricting Law 2000 by NCSL Redistricting Task Force**

Kansas Legislative Research Department Dec. 10, 2001 redist_authority_cong.wor

Redistricting Authority in Each State

State Legislative Districts



Source: **Redistricting Law 2000 by NCSL Redistricting Task Force**

Kansas Legislative Research Department Dec. 10, 2001 redist_authority_sld.wor

Appendix D
Redistricting Authority in Each State

State	Congressional Districts	State Legislative Districts
Alabama	L	L
Alaska	L	C
Arizona	C	C
Arkansas	L	B
California	L	L
Colorado	L	C
Connecticut	L	L
Delaware	L	L
Florida	L	L
Georgia	L	L
Hawaii	C	C
Idaho	C	C
Illinois	L	L
Indiana	L	L
Iowa	L	L
Kansas	L	L
Kentucky	L	L
Louisiana	L	L
Maine	L	L
Maryland	L	G/L
Massachusetts	L	L
Michigan	L	L
Minnesota	L	L
Mississippi	L	L
Missouri	L	C
Montana	C	C

Nebraska	L	L
Nevada	L	L
New Hampshire	L	L
New Jersey	C	C
New Mexico	L	L
New York	L	L
North Carolina	L	L
North Dakota	L	L
Ohio	L	B
Oklahoma	L	L
Oregon	L	L
Pennsylvania	L	C
Rhode Island	L	L
South Carolina	L	L
South Dakota	L	L
Tennessee	L	L
Texas	L	L
Utah	L	L
Vermont	L	L
Virginia	L	L
Washington	C	C
West Virginia	L	L
Wisconsin	L	L
Wyoming	L	L

Key:
L=Legislature
G=Governor
C=Commission
B=Board

Source: NCSL, 1999.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Update: 12/12/00 (psw)

Comments: peter.wattson@senate.leg.state.mn.us

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STATE OF KANSAS

Senate Committee on Elections and Local Government

Testimony on Senate Concurrent Resolution 1607

Secretary of State Ron Thornburgh

February 13, 2003

Madam Chairman and Members of the Committee:

Thank you for the opportunity to testify in support of Senate Concurrent Resolution 1607. I am in favor of this bill for two reasons: 1) The census adjustment is a waste of money and time, and 2) timeliness of redistricting.

My office spent a total of $438,526, almost half a million dollars, to conduct the census adjustment and there was very little impact on redistricting. Approximately 70 counties experienced + / – 100 person change in population based on the 2000 U.S. Census population versus the 2000 state adjusted population. The ideal population for a house district is 21, 378. The total change in statewide population based on the 2000 U.S. Census population versus the 2000 state adjusted population was -16,161. That is less than a house district's worth of difference spread over the entire state.

The U.S. Census and Kansas Census Adjustment are complex databases. As we merge and refine the information of the databases, inherent flaws in the process are highlighted. For instance, several blocks on the Fort Hays State University campus have a negative population because the U.S. Census allocated the dorms to the wrong census block. In addition, students required to complete racial information sometimes list their race and/or ethnicity differently on each survey, resulting again in skewed outcomes. This is not due to flawed census procedures, but flawed policy.

Kansas is the only state that conducts a state census adjustment and in my opinion it is at best a questionable use of much needed resources. Not only are we wasting state dollars but also employee time. Thousands of hours were spent contacting college students and military personal and the result amounted to less than a House district, a statistically insignificant difference in redistricting maps.

Last year redistricting was completed very late in the legislative session. That fact, coupled with the required Supreme Court review and a legal challenge to the congressional districts in federal court, meant that election officers' time for preparation for the election was severely reduced, and candidates were discouraged from running. Because of the late filing deadline many

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candidates had inadequate time to decide whether to run, to raise money and to organize their campaigns.

I urge the committee to consider adoption of SCR 1607 to improve the redistricting process through establishment of an independent redistricting commission and to end our state's policy of adjusting federal census population totals. Thank you again for allowing me to testify today in support of Senate Concurrent Resolution 1607.

February 13, 2003

SCR 1607
Testimony by Timothy Graham
Senate Democratic Redistricting

As a staff member that worked almost entirely on the issues of redistricting for the last two years I feel as if I'm qualified to make some suggestions regarding the implementation of any future redistricting process. If it is indeed the will of the Legislature to avoid all of the typical contentiousness that will likely be a part of the upcoming redistricting process, it is essential that legal doctrine, and fairness to ALL, be the guiding light in the future. I think the proposal before you deserves full attention. I commend Senators Schmidt and Downey for their intentions, and I think it is a big step in the right direction, I do however have some concerns with some of the language in the proposal.

- Concerns
  - The clause in which the Chief Justice and the Chief Judge of the Court of Appeals have appointments to the commission..
    - I don't know if I agree that the judicial branch should have any part in the process other than review. Redistricting should remain a function of the legislature.
  - The clause in which the board is comprised of 7 members with no more than 4 from any one political party.
    - This would always leave one party at a disadvantage and work against the spirit of a true non-partisan approach.
  - The clause that states saying any position not filled when the legislature adjourns in the 01 year would be appointed by the Chief Judge of the Court of Appeals and not subject to legislative approval.
    - Once again I don't know if I agree that the judicial branch should have any part in the process other than review. Redistricting should remain a function of the legislature.
  - The clause that states that if a plan is rejected twice the third plan is fully amendable by the legislature.
    - This leaves the process wide open for full political gamesmanship, only this time without caucus staff, possibly research staff, and way behind schedule.

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- Suggestions for the above concerns
  - The Commission should consist of an even number of voting members with no majority being members of any one political party.
    - This would insure full cooperation and design of a fair map.
  - Eliminate any confirmations process. Confirmations only benefit the majority party.
  - Do NOT allow the legislature any opportunity for amendments!!

- Other Suggestions
  - If it is the will of the Legislature to truly keep political factors out of the process, this bill should mandate that all meetings are completely open to the public, including ALL meetings that involve map conceptualization and meetings that involve computer generation of maps. And that all meetings are FULLY transcribed by a professional court reporter so that any lawsuit or claim citing any legal concerns can be fully defended.

In closing, I again want to commend Senators Schmidt and Downey for trying to make the redistricting process a better one. Last year's process was one that I think everyone can learn from. I encourage the members of this committee to start the debate of this issue off on the right foot by taking what was learned last year and applying it to this year. In the upcoming days, while the legislature decides whether it will or will not make changes in the way in which it redraws it's legislative boundaries, don't make the same mistake that was made last year when a select few closed out a majority of the Senate and assumed they would have the votes to impose a map that was very unpopular. Last year the process ultimately worked because the majority ruled but it only worked after everyone was brought to the table.