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From "One Town, One [or Two] Vote[s]" to "One Person, One Vote": The Impact of Reapportionment on Vermont, 1777-1992

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Reapportionment is dreaded by minority party legislators. Ironically, it bores many citizens. The apportionment process, however, brings about very significant political change in a state. Apportionment and reapportionment in a democratic society is the drawing and redrawing of state and congressional district lines to provide equal legislative representation for all citizens. Vermont is no exception. This activity, done every ten years after the results of the national census are made available, directly impacts a state's public policy determinations.

Who draws the political representation lines of a legislature determines who will hold power and who will lose power in the legislature. And legislative power, managed well, determines the direction of a state's public policy. As the U.S. Supreme Court said in 1983, no apportionment plan hammered out in a partisan political environment "is free from some political bias."[1]

The process of reapportioning a state legislature, even in Vermont, is a rough and tumble political one. It is heated and the fur flies. In such a controversial political environment, tempers flare. For example, Republican representative Ruth Stokes during the 1992 legislative session became very angry at a few fellow Republicans who voted with the Democrats in the House on a controversial district line change impacting a Springfield Republican, Patricia Welch. Said Ruth bitterly: "It's sad

that Vermont politics have evolved to this point. There's no excuse on God's green earth for a representative to oppose this amendment [that would overturn the Democrats' Springfield reapportionment strategy] save one: they owe their soul to [Speaker] Ralph [Wright]. It's gerrymandering of the most blatant kind."[2]

Apportionment politics in the Green Mountain state is to a large extent a consequence of the early Republic of Vermont's geography, demographics, and political values. In 1794 Samuel Williams wrote of Vermont that "we have no populous towns, seaports, or large manufactories to collect the people together. They are so spread over the whole country, forming small and separate settlements."[3] This eighteenth-century portrait of Vermont as a series of small and separated towns is still valid and frames any conversation about the history of reapportionment and politics in the Green Mountain state.

The glaciers gave Vermont thousands of hills and their valleys. "Vermont is a land of ups and downs. Valleys have streams, streams lead to good bottom land, and that brings farmers to the valleys," notes Frank Bryan, a political scientist at the University of Vermont. "Nearly everywhere a hill lies across the path of togetherness."[4] This geographic reality explains the unique nature of Vermont ruralism.

Furthermore, the operative political philosophy of eighteenth-century Vermonters was Jeffersonian. The first state constitution, written in 1777, reflected the then radical notion that all persons who paid taxes had equal rights and freedom. The document presented a view of legislative representation, one town, one vote, that was pure Vermont. Government was to be mistrusted, especially the executive branch, and so broad powers were given to the unicameral legislature, the General Assembly, with representation by town, while the governor's powers were severely limited.

Because of Vermont's unique geography and its commitment to Jeffersonian values, politically this meant, until 1965, that political representation in Vermont was based on the principle of one town, one vote—or briefly, two votes. Between 1778 and 1784, there were some towns that sent two delegates to the legislature. However, after October 1785 no town in either the Republic of Vermont or the state of Vermont had more than one delegate.

The 1777 Constitution called for representation in the House to be "persons most noted for wisdom and virtue" chosen by the "freemen of every town in the state." Through 1965 Vermont's unique ruralism was translated into a representation system based on localism; not conservatism, but localism. The old legislative arrangement in Vermont did reflect area and population. However, unlike almost every other state, the Vermont Senate, with its thirty members representing fourteen counties, was the chamber

that was loosely based on the population standard. The Vermont Senate was created in 1836 so that Vermont would have a bicameral legislature, a political structure that existed in every other state in the Union at that time as well as in the national Congress.

The Senate in Vermont was based on county representation, by population, with each of the fourteen counties guaranteed at least one of the thirty Senate seats. Since 1965 the thirty senators have been selected on a population basis from senatorial districts.

The Vermont House of Representatives, however, through 1965 was an area-based chamber. Initially, the 1777 Republic of Vermont Constitution, Chapter 2, Section 16, called for each town in the state with more than eighty taxable inhabitants to send two representatives to the House. Towns with fewer than eighty taxpayers sent one representative to the House. "In order that the Freemen of this State might enjoy the benefit of election, as equally as may be, each town within this State, that consists, or may consist, of eighty taxable inhabitants, within one septenary or seven years, next after establishing this Constitution, may hold elections therein and choose each, two representatives; and each other inhabited town may, in like manner, choose each, one representative, to represent them in General Assembly."

However, after 1785 no town in Vermont had more than one representative in the House. The 1777 two-representative model, also in the 1786 constitution, evidently was restored after the 1793 constitutional changes and then died after seven years. A 1924 constitutional amendment, which provided a mechanism for filling House vacancies, also deleted all references to the two delegate per town model: "In order that the freemen of the state may enjoy equally the benefit of election as equally as may be, each inhabited town in this state may, forever hereafter, hold elections therein and choose each one representative to represent them in the House of Representatives." In 1964 Vermont sent 246 representatives to the House—one from every town, however small, representing towns with populations that ranged from thirty-eight residents to thirty-five thousand. The average in the House was one representative for fourteen hundred citizens, with the median at one representative for fewer than eight hundred citizens. Through 1965 the political reality was that Vermont had the smallest representative to citizen ratio in the United States.

A New Model of Representation in Vermont after 1965

In 1965, due to a federal court order to reapportion on the basis of a radically different concept, the old era of political representation ended in Vermont. As former representative (and governor) Thomas Salmon recalled, "the prognosis was decidedly unclear on whether or not the General Assembly would agree to agree [with the federal court order]."[5]

However, meeting at a restaurant on the Barre-Montpelier Road, self-styled Young Turks, led by the newly re-elected (second term) Democratic governor Philip Hoff and the Republican Speaker of the House, Franklin Billings, formed an unprecedented bipartisan coalition of moderate Democrats and Republicans who agreed that the Vermont legislature had to reapportion the House in light of the federal court order. As Governor Salmon recollected, Hoff and Billings "spoke and essentially argued our legal and moral obligation to meet the mandate of the law."[6]

In 1965, over four agonizing months, a twenty-five person Blue Ribbon Legislative Reapportionment Committee of the General Assembly, appointed by Speaker Billings and ably led by Emory "Em" Hebard, a traditional conservative member from Glover, accomplished the Herculean task of reviewing dozens of reapportionment plans and coming up with a proposal that changed the representation concept from town equality to population equality.

During a final session on reapportionment on May 14, 1965, the assembly approved the plan, 163 to 62, which had, as a consequence, the immediate reduction of house legislators from 246 to 150. (As William Hill notes, the number 150 had been heard in Vermont prior to the 1965 reapportionment. The Vermont Council of Censors had at least three times proposed a House that consisted of 150 members.[7]) After 1965, population equality became the norm for both houses of the Vermont General Assembly.

Until the final vote, there was strong opposition from some legislators who wanted to maintain the "one town" representational concept and who were angry at federal judicial intrusion into the affairs of the state. For example, Representative Clark Hutchinson (R-Rochester), "a remarkable man, small and wiry of stature,"[8] spoke forcefully and eloquently on the floor. He gave a warning to his fellow legislators: "We know that there is such a thing as honor and the sanctity of an oath, and we intend to preserve it. We know that forced reapportionment is the loss of self-government, and we intend to vote against it now and forever."[9] He did vote against the reapportionment plan, but while he threatened to chain himself to his seat in protest, Hutchinson never carried out his threat.

A poignant moment came toward the end of the reapportionment debate when Vivian Tuttle, representing the tiny (thirty-eight persons) town of Stratton, stood on the floor of the House to vote in favor of the reapportionment bill that would effectively and formally disenfranchise her constituents and would end her political career.[10] Still another bittersweet moment came when sixty-six-year-old Frank Hutchins from Stannard, a town of 113, with tears running down his cheeks, addressed the issue of reapportionment. Steve Terry, then a reporter for the *Rutland Herald*,

wrote that Hutchins rose and spoke of the "change of an era," and said, crying, that "outsiders [have] come into this parlor and [have torn] us to pieces. I regret it. Don't forget Stannard."[11]

While there was a heartfelt fear on the part of some legislators that reapportionment would be the death of the small town in Vermont, the change took place on schedule. The 1974 Constitution, Sections 13 and 18, was amended to reflect the 1965 political activities: "In establishing representative [Section 13] [and Senate, Section 18] districts, which shall afford equality of representation, the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions."

The House was cut from 246 to 150 members. The Senate remained as before, that is, thirty members. Town representation in the House was replaced with seventy-two House districts, each sending representatives on the bases of another standard, population. Fifty-two of the seventy-two newly created House districts were made up of two or more towns. This representational change had a major impact on the politics of localism in Vermont. In 1986 the Vermont constitution was again amended to provide for a decennial reapportionment based on population, using the U.S. census as a guide.

After 1965 localism was less obvious and less intensive in Vermont. The old patterns were swept away by the newly reapportioned and redistricted ones. Large towns were divided into subdistricts, each electing one or more representatives on the basis of population. Conversely, small towns that once had their own representatives found themselves grouped with other small towns to form new legislative districts. For example, District 63 in 1965 consisted of nine towns whose voters selected one representative to act on behalf of the twenty-eight hundred people who lived in the nine towns spread over 290 square miles of hills, mountains, and valleys.

The impact was dramatic and lasting. Large towns under the new representational scheme based on population almost immediately dominated the newly created multi-town house districts. The new legislative arrangement also led to a shift in the balance between the eastern and western regions of Vermont. "East and West in Vermont," wrote historian Samuel B. Hand, "is as much a political as a geographic boundary and changed through history."[12] Before the reapportionment in 1965, representatives residing east of the Green Mountains outnumbered the legislators from west of the mountains. Today the situation has been reversed, and western representatives outnumber their eastern Vermont colleagues.

The 1965 change has led also to a change in the characteristics of Ver-

mont's citizen legislature. Fewer farmers but greater numbers of younger, college-educated, and Catholic members now work in the legislature.[13] There has been a greater commitment to professionalism as opposed to amateurism and, finally, the Democratic party in Vermont has been strengthened since 1965. Vermont, once a truly one-party state, has, as a result of reapportionment, had a two-party environment since 1965.

This legislative change has occurred with much sadness, especially in the small towns that once had their own representatives speaking for them in the House. Moving from town equality to population equality has led to concerns about adequate representation in the form of letters to legislators and to the Legislative Apportionment Board, created in 1986 and chaired by former legislator Frank Smallwood.[14] One letter said: "Bolton has little to do with Waterbury. . . . We would be swallowed up by Waterbury's almost 4,600 voters. Bolton has a west-directed tendency which has thrown it in with other towns in Chittenden County, in terms of jobs, schools, commerce, and personal relations."

Another letter reflected the impact of Vermont's unique geography on political representation and raised a similar complaint about common interests in a newly developed House district: "The towns of Pittsfield and Stockbridge which are to be added to the district are literally on the other side of the mountain from the towns of Chittenden and Mendon. Given the nature of the roads and assuming that one is traveling within the speed limit, it will take well over an hour to travel from the northeast corner to the northwest corner of the district. We are sure that this will inhibit whoever serves as representative from having the regular contact with his/her constituents that we have enjoyed under the present configuration."

A letter from the Grafton Town Board also reflected the fears of small towns in a newly reapportioned environment. "Grafton is a small town. . . . Placing it into a district with large towns such as Springfield and Rockingham will ensure that its small voice will not be heard. . . . There must be some way that small towns within the same county and supervisory union can be placed in the same district. Vermont is unique because it is filled with small towns that have important things to say. Let's not lose these small town voices by burying them in districts with large towns."

Another letter expressed the concern that flows out of a negative redistricting change due to population losses in the district. "Going from two reps to one would be a disadvantage to the town. . . . What if the individual became sick and could not attend several weeks of the session. There would be no representative from the district, whereas if we have

two representatives, at least we would have one representative [in attendance]."

Summing up all the concerns of these towns is the following brief message to a legislative board: "Woodbury and Hardwick are not even in the same county! In the new district the representative will have no interest in such a small drop in the much larger puddle."

Why The Change in Vermont: The "Reapportionment Revolution" in America

Why did these changes have to occur in Vermont in 1965? In 1962 there occurred a non-violent, almost silent revolution in America, the "Reapportionment Revolution."[15] The U.S. Supreme Court, under the leadership of Chief Justice Earl Warren, in a series of important decisions interpreted the Fourteenth Amendment of the U.S. Constitution as well as Article I of the Constitution to require that all state and congressional legislative districts, whatever their original representational purpose and regardless of the state constitutional instructions for area representation, had to reflect a population standard of "one person, one vote."

Baker v. Carr[16] was the 1962 opinion that led to dramatic political change in the American landscape. Earl Warren believed *Baker* was the most important decision of the court while he served as chief justice. It was more important, he said, than the 1954 watershed school segregation case, *Brown v. Board of Education*.[17] In cases that followed *Baker* in the early 1960s, Warren and the court told the nation that the general standard for reapportionment must be population and that the federal judges would monitor legislative apportionment to insure that all states did reapportion and redistrict in light of the one person, one vote principle.[18]

Since the turn of the twentieth century, in those states where the legislature was required to reapportion every ten years on the basis of population, legislators had failed to follow these instructions found in their state constitutions. The reason: to preserve political power for the rural legislators in the face of waves of immigration into America and the growth of the city. By 1920, more than 50 percent of Americans lived in cities, yet the legislatures, controlled by largely Protestant rural forces opposed to sharing power with Catholic, Jewish, and other new arrivals to America who lived in the urban centers, did not reapportion on the basis of population and of population shifts from rural to urban. The consequence, nationally, was that by the middle of this century there was extensive malapportionment in most of the states.[19] (Vermont's legal situation was quite different, as its constitution called for area—town—representation and the legislators faithfully followed the constitutional command.)

The U.S. Supreme Court in the 1960s was an active tribunal, especially committed to the values of fairness, liberty, and individual rights – political and social.[20] In *Baker*, the court noted that federal judges could hear cases dealing with reapportionment. In *Grey v. Sanders*, a 1963 Georgia opinion written by liberal Justice William O. Douglas, the court established the standard for federal judges – and for politicians across America: the Fourteenth Amendment meaning of political equality is nothing less than "one person, one vote."

The one person, one vote standard has been extended by the Supreme Court to cover most elections for local, state, and national legislators (except U.S. senators) and other public officials, including county commissioners, school district board members, college trustees, and even members of a city's financial board. Justice Hugo Black, another preeminent jurist who sat on the Supreme Court during these times, wrote for the court, in *Hadley v. Junior College District of Metropolitan Kansas City*,[21] a 1970 opinion involving elections for trustees of a junior college, that as a "general rule, whenever a state or town decides to select persons by popular election or perform government functions, then the one person, one vote standard must be followed."

While population became the standard for state legislative reapportionment, the Supreme Court has allowed deviation from the ideal, mathematically perfect, state legislative district. In 1973, in a Virginia case, *Mahan v. Howell*,[22] the court allowed a 16 percent (+ / − 8 percent deviation range) deviation when the legislature drew up new state legislative districts. In *White v. Register*,[23] a Texas case decided in 1973, the court concluded that deviations plus or minus 10 percent required no state justification. However, in *Connor v. Finch*,[24] a 1976 Mississippi redistricting case, the court ruled that deviations of 16.5 percent (above or below the population standard) in the Senate and 19.3 percent in the House violated the one person, one vote population equality standard. In 1983, in *Brown v. Thomson*,[25] a Wyoming case, the court majority indicated that a state redistricting plan with more than a 10 percent deviation (+ / −) is discriminatory on its face, unless the state can justify such a discrimination. (Vermont, by way of comparison, has not gone beyond plus or minus 8 percent in the Senate and about 10 percent (+ / −) in the House.) Furthermore, in almost two dozen states falling within the jurisdiction of the 1965 Voting Rights Act, as amended in 1982, reapportionment plans must take into account the percentage of the minority voters in that state and develop reapportionment plans that enhance the possibility of minority voters electing minority representatives to the legislature.[26]

For a long time, until 1986 to be precise, the Supreme Court determined that the "gerrymander" issue was beyond the realm of judicial

review—except for state legislative district lines that the court recognized as obviously racially motivated gerrymandering. This legal gerrymander is the legislative drawing of district lines consistent with the one person, one vote population standard—but with zigzag lines and as many as twenty-eight sides, (1) to preserve partisan political power in the legislature, (2) to safeguard incumbent seats in a legislature that has to redistrict, and (3) to create (gerrymander) districts in urban areas, consistent with the one person, one vote standard, that will maximize partisan majority party representation in the state house.

The name comes from a successful 1812 Massachusetts effort to preserve Republican political power in the state legislature by creating a zigzagged, salamander-shaped district populated mostly by members of the party in power to protect their majority in the legislature. The Massachusetts governor was Elbridge Gerry, so the political pundits of the day called such carving of district lines a "gerrymandered" district. It is a tactic used by both parties when in power to "either safeguard incumbents' seats or, more recently, to create districts in urban areas that will ensure the election of an ethnic or racial minority."[27]

In 1986, in *Davis v. Bandemer*,[28] the court said that ordinary, nonracial gerrymanders are now subject to federal judicial review but that for a plaintiff to succeed in overturning a legislative action that was defined as a gerrymander, there had to be a showing of discriminatory intent as well as an actual discriminatory effect (over a number of elections) on the minority party.

Vermont, like forty-five other states, was not immune to legal challenges to its reapportionment practice and operations. After *Reynolds v. Sims*[29] and other reapportionment decisions of the U.S. Supreme Court, federal courts began to issue orders forcing state legislators to reapportion and redistrict on the basis of the one person, one vote standard. Vermont was under a federal court order in 1965 to change its representational pattern to reflect one person, one vote. After the unprecedented bipartisan work of many of the Young Turks in 1965, Vermont's legislative redistricting pattern was validated in the 1965 U.S. District Court judgment, *Buckley v. Hoff*. Given the guidelines established by the court over the years regarding maximum allowable deviations from the ideal size of a legislative district as well as political gerrymanders, Vermont has very seldom had to go to federal court to defend and justify its legislative redistricting actions.

Reapportionment in Vermont since 1965, according to Frank Bryan, has served as a major catalytic agent; it has brought about many changes, both politically and systemically. Since 1965 and changes in legislative districting, the state's Democratic party, popular in the larger towns and

cities, has grown stronger.[30] Reapportionment as a structural variable has accounted for the growth of the minority party in the House. As a political force, reapportionment since 1965 has led to the growth in political power of the more populous areas of the state.

What does the Vermont reapportionment process look like today? In a 1986 constitutional change, Section 73 of the constitution addressed the process of reapportionment, by which the legislature created a five-person Legislative Apportionment Board. The governor, the chief justice of the Vermont Supreme Court, and the state Republican and Democratic parties select members to serve on the advisory board whose task is to present to the legislature redistricting recommendations after the board reviews the census data. The 1990 data led to the following ideal population sizes for legislative districting: Senate = 18,759; House = 3,752. The deviation percentages for the 1990s redrawing is + / − 8 percent for the Senate and 10 percent above and 9 percent below the ideal-sized House district. The board's basic goal was to provide the legislature, in May 1991, about a year before the legislature had to produce a redistricting map, with a statewide legislative design that ensured that presence of the one person, one vote principle in Vermont.

In drawing up the redistricting map for the 1990s, the board was guided by the Vermont Constitution and Vermont statutes listing criteria other than population that must be taken into consideration in a redistricting process. These include political subdivisions, geographic patterns, social interaction, trade, political ties and common interests, compactness, and contiguity.

In May 1991 the board's recommendations were given to the Government Operations Committees of the Senate and the House, both controlled by the Democratic party. These partisan groups then worked on the board's recommendations with a view toward strengthening the party holding voting power in the chamber. The committees had to bring their proposed redistricting map to the full chamber in the spring of 1992 in order for the two chambers to agree on a redistricting plan by the end of the legislative session.

In preparing the redistricting map for the 1990s, there were additional limits placed on the number of representatives elected from a district and a new task for town government in the reapportionment process. First, voters in a House district cannot elect more than two representatives to the legislature. If a district, based on the 1990 census data, is entitled to more than two representatives, that district must be subdivided into single member or two member districts—or a combination of single and two member districts.

Second, in 1991-1992, due to the passage of Act 116, towns had a role

to play in the redrawing of house district lines. Towns had to reaffirm or draw new lines if the census data called for district changes. If the towns were unable to recommend redraws, then the House was empowered to redraw the district lines. The instructions to the towns: if they were in a two member house district, they could leave the district as is and the two members would represent all in the district, or the town could divide the house district and create two single member districts. If a town had three or more representatives, then it was required to subdivide into a combination of single and two member districts. Act 116 also set standards for fair representation: subdistricts could not have more than a plus or minus 8 percent deviation from the ideal size of 3,752 and the local redistricters could not redraw a house district through a town if the town objected. If no town action, then the Democratic party-controlled Government Operations Committee would do the redistricting.

The 1991-1992 Reapportionment in Vermont: Counting Votes and Politics

Clearly, the House Government Operations Committee was involved in some major political fighting during the winter and spring of 1992. Representative Don Hooper, the chair of the committee, which had a seven to four Democratic majority, presented the committee's report in April 1992. There were a handful of controversial redistricting decisions in the report; they reflected the wishes and the will of the Democratic Speaker of the House, Ralph Wright.

For the very partisan Speaker, the purpose of the Government Operations Committee in the House was to protect Democrats and legislators who supported Wright. As Wright, who knows so well how to count votes, told the Democratic caucus at one point during the session: "Don't be squeamish about being partisan. Don't be weak-kneed about this [reapportionment matter]—not about this."[31]

The politics of redistricting in the house that led to flareups between Ruth Stokes and Wright involved controversial line drawing in a number of districts including Springfield, Shrewsbury, and Barre City. "We're getting shafted," exclaimed Springfield representative Theodore Lindgren (D), who voted against the Wright-sponsored redistricting.[32]

Springfield prior to the 1992 redistricting had sent three representatives to the House. Patricia Welch, one of the representatives whose district was targeted by Wright, said that she was "concerned that Springfield stay as a unit and keep three seats."[33] Because of population losses since 1980, Springfield had to lose one representative. The Government Operations Committee redrew the lines and brought the southern part of Springfield, Republican Patricia Welch's old district, into a new district including Rockingham, Windham, and Grafton, rather than place the

excised Springfield district in a new district only with the town of Rockingham.[34]

Had Welch's carved-up district been combined with Rockingham, there would have been three representatives campaigning for the two seats in that district; and the other two representatives were good Democrats and friends of Wright: Michael Obuchowski and Sean Campbell. Had she been put into that district, she might have defeated one of them. Said Wright: "I intend to protect my Democrats. You can protect one of your own," he said to the caucus, "or protect someone over there,"[35] he said, pointing to the Republican caucus. When the final vote came in the house, the Wright line drawing won, seventy-three to seventy-two, with three Republicans voting with the Democratic leader. For the Speaker, it was the "most partisan vote that I have ever seen."[36] That was the vote that led Ruth Stokes to exclaim, in anger and anguish, that the only reason some Republicans voted for that particular redistricting was because "they owed their soul to Ralph."[37]

One of the Republicans who voted with the Democrats on the Springfield district redrawing, Harold Weidman, was himself the beneficiary of some Wright redrawing involving the town of Shrewsbury. Weidman, who is Wright's political ally and roommate in Montpelier, is a representative from Wallingford. In 1991 the Apportionment Board recommended, due to population changes, that Shrewsbury be joined with Wallingford to form a new house district.[38] Wright, evidently hearing about a possible Democratic challenger from Shrewsbury who might jeopardize his friend Weidman's chances of retaining his seat, had the Government Operations Committee redraw district lines to put Shrewsbury in a new house district along with Ludlow and Plymouth. The committee also switched Mount Holly from Ludlow/Plymouth to form a new house district with Wallingford. The House, in a bitter floor fight preceding the vote, agreed to the political change in another close vote. Weidman, naturally, voted with the Democrats. He said of his action that "I don't always vote a straight party line. I vote, to the best of my knowledge, for the people back home."[39]

This partisan line drawing effort led Republican U.S. senator James Jeffords, who hails from Shrewsbury, to bring suit in state court arguing that the redistricting was politically biased. Jeffords claimed that the Democrats' intent "was to protect the incumbency of the representative from Wallingford, who also happens to be the roommate of the Speaker. The end result is to violate the constitutional rights of the residents of Shrewsbury."[40]

Barre City, also because of population losses since the 1980 census, had to go from three to two representatives in the House. The choice was

either drawing three new single member house districts, including Berlin, or one single member district in Barre and another two member district made up of a large section of Barre City (5,532) and a heavily outnumbered Berlin population (2,561). Berlin, in the effort to maintain some representation, opted for the three single member districts. The committee and Wright, wishing to retain the voting power of the Barre representatives, opted for the single member and two member district plan. The Wright plan was approved by the full house, seventy-four to seventy-one, in May 1992.

Litigation has begun in state court by representatives of these towns and a few others, including Richford and Montgomery. As of this time, decisions have not been rendered by the courts. Given precedents in the area of reapportionment, it will be difficult to set aside these new lines, however politically motivated the line drawers were.

Anything Goes, Just About, When Redistricting, Even in Vermont

Indiana's legislature is controlled by the Republicans. When the state faced reapportionment after the 1980 census, the Republican party leadership simply created a conference committee consisting of four voting conferees, all Republicans, and four non-voting advisors, all Democrats. The conferees, using a Republican consulting firm, drew up the redistricting plan for the Indiana legislature. The Democratic advisors were excluded from the map drawing and had no voting power on the committee. The chair of the committee said to the Democratic minority leader that he had "the privilege to offer a minority map. But I will advise you that it will not be accepted."[41] On the last day of the legislative session, the new district maps were introduced and passed, the vote along straight party lines.

The 1982 electoral result in Indiana: Democratic candidates for the House received, statewide, 52 percent of the votes cast, yet, because of the Republican redistricting plan that included gerrymandered districts, only 43 percent of the seats were captured by the Democrats. The losing Democrats went to court to challenge the validity of the political gerrymandering. While the U.S. Supreme Court in this case said that gerrymandering was a justiciable issue, the majority overturned the lower federal court's decision to set aside the Republican's redistricting plan because of the gerrymandering, claiming that there was not enough factual data to show actual injury to the Democrats.

Such a judicial response suggests that Vermont Speaker Wright's actions in 1992, if challenged in federal court, will probably be validated. After all, when he said to the members of the Democratic caucus in the spring of 1992 that gerrymandering was "politics, pure and simple. If the Republicans had the votes, they would have done it their way. They didn't,

we did,"[42] he was saying the same thing that the Republican leader in Indiana said – and that the U.S. Supreme Court accepts as political reality. No apportionment, the justices have said, is "free from political bias" and the federal courts can do nothing to rid the reapportionment process of politics.

In any litigation involving Vermont redistricting plans and maps, two questions are raised: Is the plan population based or within the legitimate deviation percentages? Is the plan free from a demonstrably proven discriminatory level of political bias? Given court precedents developed by the Warren, Burger, and Rehnquist courts, and the general hands-off policy of federal judges, there is little probability that the map redrawing by Wright and the Democrats will be set aside. And so counting noses and counting votes, followed by drawing new legislative district lines to maximize the power of the dominant party will continue, even in the Green Mountain state.

NOTE: On January 27, 1993, after this essay was written, the Vermont Supreme Court upheld the 1992 reapportionment plan.

NOTES

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[1] *Karcher v. Daggett*, 462 U.S. 725 (1983).
[2] Quoted in *Burlington Free Press*, 21 April 1992.
[3] Quoted in Gorton Carruth and Eugene Ehrlich, *The Harper Book of American Quotations* (New York: Harper and Row, 1988), 241.
[4] Frank M. Bryan, *Yankee Politics in Rural Vermont* (Hanover, N.H.: University Press of New England, 1974), 5.
[5] Letter, Thomas P. Salmon to Howard Ball, 24 September 1992, in possession of author.
[6] Ibid.
[7] Interviews by Howard Ball with Judge William Hill, August-September, 1992.
[8] Salmon to Ball, 24 September 1992.
[9] Steve Terry, "The Hoff Era," *Rutland Herald*, 24 December 1968.
[10] Salmon to Ball, 24 September 1992.
[11] Terry, "Hoff Era."
[12] Letter, Samuel B. Hand to Howard Ball, 3 August 1992, in possession of author.
[13] Frank Bryan, *Yankee Politics*, 182-83.
[14] Correspondence to Frank Smallwood, Chair, Legislative Reapportionment Board, 1991, 1992, in possession of Frank Smallwood.
[15] See, for example, Howard Ball and Philip Cooper, *Of Power and Right: Hugo Black, William O. Douglas and America's Constitutional Revolution* (New York: Oxford University Press, 1992).
[16] 369 U.S. 186 (1962).
[17] 347 U.S. 483 (1954).
[18] See *Grey v. Sanders*, 372 U.S. 368 (1963), *Wesberry v. Sanders*, 376 U.S. 1 (1964), *Reynolds v. Sims*, 377 U.S. 533 (1964).
[19] See, generally, Howard Ball, *The Warren Court's Conceptions of Democracy: An Evaluation of the Supreme Court's Apportionment Opinions* (Rutherford, N.J.: Fairleigh Dickinson University Press, 1971).
[20] See Ball and Cooper, *Of Power and Right*.
[21] 397 U.S. 50 (1970).

[22] 410 U.S. 315 (1973).
[23] 412 U.S. 755 (1973).
[24] 431 U.S. 407 (1977).
[25] 462 U.S. 835 (1983).
[26] See Howard Ball, "The Emergence of Racial Vote Dilution," *Publius: The Journal of Federalism* 16 (Fall 1986): 29-48.
[27] David M. O'Brien, *Constitutional Law and Politics* (New York: W. W. Norton, 1991), 677.
[28] 478 U.S. 109 (1986).
[29] 377 U.S. 533 (1964).
[30] See Bryan, *Yankee Politics*, 181, passim.
[31] Quoted in *Rutland Herald*, 21 April 1992.
[32] Quoted in *Rutland Herald*, 22 April 1992.
[33] Quoted in *Rutland Herald*, 9 April 1991.
[34] See *Rutland Herald*, 21 April 1992.
[35] Quoted in *Rutland Herald*, 21 April 1992.
[36] Quoted in *Rutland Herald*, 23 April 1992.
[37] Quoted in *Burlington Free Press*, 21 April 1992.
[38] See *Rutland Herald* and *Burlington Free Press* accounts, 20-23 April 1992.
[39] Quoted in *Burlington Free Press*, 23 April 1992.
[40] Quoted in *Rutland Herald*, 16 June 1992.
[41] Quoted in *Davis v. Bandemer*, 478 U.S. 109 (1986); dissenting, in part, opinion of Justice L. Powell.
[42] Quoted in *Rutland Herald*, 23 April 1992.