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## Reapportionment—Extension of Equal Representation to the County Level—*State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, 132 N.W.2d 249 (1965)

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REAPPORTIONMENT—Extension of Equal Representation to the County Level—*State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, 132 N.W.2d 249 (1965).

# I. INTRODUCTION

Relators, residents of Wisconsin, filed a petition to have Wisconsin Statutes Annotated section 59.03(2) (1957) declared unconstitutional. Section 59.03(2) provides for the composition of county boards in counties with a population under 500,000 and containing more than one town. Such boards consist of (1) the chairman of each town board, (2) a supervisor from each city ward, and (3) a supervisor from each village.<sup>1</sup> The operation of this section resulted in unequal representation because the representation was based upon political units without regard to the number of people therein. One village with a population of 276 exercised equal voting power with another village of 18,276 population. The Supreme Court of Wisconsin held that section 59.03(2) violated both the equal protection clause of the fourteenth amendment to the United States Constitution and a provision of the state constitution.<sup>2</sup>

*State ex rel. Sonneborn v. Sylvester*<sup>3</sup> is the first case decided by a state court of last resort on the issue of equal representation for boards of governmental bodies below the level of the state legislature<sup>4</sup> since the United States Supreme Court held in

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<sup>1</sup> The words "town" and "village" as used in the statute are synonymous. See WIS. STAT. ANN. § 990.01 (1958). Therefore, a village would have one supervisor and the chairman of its town board on the county board.

<sup>2</sup> WIS. CONST. art. I, § 1: "All men are born equally free and independent, and have certain inherent rights; among these are life, liberty and the pursuit of happiness; to secure these rights, governments are instituted among men, deriving their just powers from the consent of the governed." NEB. CONST. art. I, § 1 is substantially the same as the Wisconsin provision and has been construed to require that every voter shall, so far as practicable, have an equal voice in the affairs of government. *State ex rel. Harte v. Moorhead*, 99 Neb. 527, 156 N.W. 1067 (1916).

<sup>3</sup> 26 Wis. 2d 43, 132 N.W.2d 249 (1965).

<sup>4</sup> *Id.* at —, 132 N.W.2d at 257. This statement, which is made by the court, must be qualified to an extent. *Glass v. Hancock County Election Comm'n*, 156 So. 2d 825 (Miss. 1963), *appeal dismissed and cert. denied*, 378 U.S. 558 (1964), a case decided before *Sonneborn*, involved similar issues but was decided on a different question. This case is more fully discussed *infra*. *Ellis v. Mayor & City Council of Balti-*

*Baker v. Carr*<sup>5</sup> that state malapportionment violates the equal protection clause of the federal constitution and presents a justiciable controversy. In so holding, the Supreme Court abandoned its previous position that malapportionment of state legislatures was a political question which only Congress or the President was competent to decide.<sup>6</sup> The subsequent decisions of *Gray v. Sanders*<sup>7</sup> and *Wesberry v. Sanders*<sup>8</sup> further implement *Baker v. Carr* with the additional principles of "one person, one vote" and equal population in all districts.<sup>9</sup> A series of decisions affecting six states established the further requirement of equal population in all districts for both houses of a bicameral legislature.<sup>10</sup> Shortly thereafter, this requirement was applied to several other states.<sup>11</sup> The holding in *Sonneborn* merely extends the principle

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more, 234 F. Supp. 945 (D. Md. 1964), *Johnson v. Genesee County, Michigan*, 232 F. Supp. 567 (E.D. Mich. 1964), *Simon v. Lafayette Parish Police Jury*, 226 F. Supp. 301 (W.D. La. 1964), and *Bianchi v. Griffing*, 217 F. Supp. 166 (E.D.N.Y. 1963) are all cases in the federal district court which involve issues similar to *Sonneborn*. These cases are also more fully discussed *infra*. See also *Mauk v. Hoffman*, 87 N.J. Super. 276, 209 A.2d 150 (1965) (recently holding county board of freeholders malapportioned).

<sup>5</sup> 369 U.S. 186 (1962).

<sup>6</sup> See *State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, —, 132 N.W.2d at 254 (1965); Dixon, *Reapportionment in the Supreme Court and Congress: Constitutional Struggle for Fair Representation*, 63 MICH. L. REV. 209, 210 (1964); Rudolph, *The Reapportionment Cases: A Conservative Defense of Individual Rights*, 43 NEB. L. REV. 854, 857 (1964); Note, 33 U. CINC. L. REV. 483, 497 (1964).

<sup>7</sup> 372 U.S. 368, 381 (1963).

<sup>8</sup> 376 U.S. 1, 18 (1964).

<sup>9</sup> See Kauper, *Some Comments on the Reapportionment Cases*, 63 MICH. L. REV. 243, 244 (1964); Rudolph, *supra* note 6, at 857; Weinstein, *The Effect of the Federal Reapportionment Decisions on Counties and Other Forms of Municipal Government*, 65 COLUM. L. REV. 21, 24 (1965).

<sup>10</sup> *Lucas v. Forty-fourth Gen. Assembly of Colo.*, 377 U.S. 713 (1964) (Colorado); *Roman v. Sincok*, 377 U.S. 695 (1964) (Delaware); *Davis v. Mann*, 377 U.S. 678 (1964) (Virginia); *Maryland Comm. for Fair Representation v. Tawes*, 377 U.S. 656 (1964) (Maryland); *WMCA, Inc. v. Lomenzo*, 377 U.S. 633 (1964) (New York); *Reynolds v. Sims*, 377 U.S. 533 (1964) (Alabama). For further discussion of these cases, see Dixon, *supra* note 6, at 209.

<sup>11</sup> *Hill v. Davis*, 378 U.S. 565 (1964) (Iowa); *Pinney v. Butterworth*, 378 U.S. 564 (1964) (Connecticut); *Hearne v. Smylie*, 378 U.S. 563 (1964) (Idaho); *Marshall v. Hare*, 378 U.S. 561 (1964) (Michigan); *Germano v. Kerner*, 378 U.S. 560 (1964) (Illinois); *Williams v. Moss*, 378 U.S. 558 (1964) (Oklahoma); *Nolan v. Rhodes*, 378 U.S. 556 (1964) (Ohio); *Meyers v. Thigpen*, 378 U.S. 554 (1964) (Washington); *Swann v.*

of equal representation to the county level. The purpose of this note will be to discuss the questions presented in *Sonneborn*, to reflect on the Supreme Court's probable attitude toward this case, and to examine the possible ramifications of the case in Nebraska.

## II. ARGUMENTS IN *SONNEBORN*

The county, respondent, made several contentions, two of which demonstrate the dissimilarities between government at the state and county level. The first contention was that the electorate need not be accorded the "one man, one vote" principle, since the composition and power of the county board of supervisors is *statutory* rather than *constitutional*.<sup>12</sup> The second contention was that the "one man, one vote" principle applies only to independent governmental entities that derive their power directly from the people governed, and that counties, unlike states, are not such entities.<sup>13</sup> The Supreme Court of Wisconsin did not accept the county's contentions. The court reasoned that while counties are created by the legislature without direct consent of the people, they are still legislative instruments of state government and should be directly representative. The court further reasoned that, since the composition of the legislature must conform to equal representation, it is only logical that the county—the arm or political subdivision of the legislature—should likewise be equally represented.<sup>14</sup>

## III. *SONNEBORN*—A FUTURE COURSE?

The holding in *Sonneborn* could be indicative of the future judicial policy in regard to reapportionment. The holding is substantiated by the prior cases of *Brouwer v. Bronkema*<sup>15</sup> and *Ellis v. Mayor and City Council of Baltimore*,<sup>16</sup> which have extended equal representation to local governmental bodies. *Brouwer* extended equal representation to a county board of supervisors in Michigan. The court there reasoned that a county board exercises legislative powers delegated to it by the state and must therefore be apportioned by the same standard as the state

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Adams, 378 U.S. 553 (1964) (Florida); *Beadle v. Scholle*, 377 U.S. 990 (1964) (Michigan). See also Dixon, *supra* note 6, at 209 n.1.

<sup>12</sup> *State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, —, 132 N.W.2d at 252 (1965).

<sup>13</sup> *Id.* at —, 132 N.W.2d at 253.

<sup>14</sup> *Id.* at —, 132 N.W.2d at 255.

<sup>15</sup> No. 1855, Cir. Ct. Kent County, Mich., Sept. 11, 1964.

<sup>16</sup> 234 F. Supp. 945 (D. Md. 1964).

legislature. *Ellis* extended equal representation to the city level of Baltimore, holding that voting districts not apportioned according to population violate equal protection of the laws.<sup>17</sup>

The opinions expressed in the above decisions are concurred in by the commentators.<sup>18</sup> One commentator has said:

The reapportionment decisions of the United States Supreme Court . . . are likely to have a profound effect on county and other forms of local government. There is every indication the . . . [one man, one vote] rule applies to county boards of supervisors, the bodies that usually exercise all of a county's legislative and, in many instances, much of its executive power, as well as to general purpose units of local government such as villages, towns, cities and boroughs.<sup>19</sup>

In addition, the Supreme Court has previously applied other federal constitutional rights at the city and county level.<sup>20</sup> In *Gomillion v. Lightfoot*,<sup>21</sup> the Supreme Court struck down a change of municipal boundaries designed to prevent Negroes from casting a majority of votes as a violation of the fifteenth amendment. It is arguable that deprivation of the right to vote in violation of the fifteenth amendment and discriminatory apportionment in vio-

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<sup>17</sup> The holding in *Sonneborn* is also supported by two cases that have not yet been decided on the substantive issue of whether equal representation actually applies at the local level. In *Bianchi v. Griffing*, 217 F. Supp. 166 (E.D.N.Y. 1963), it was contended that a county board of supervisors elected by unequal districts violates the principle of equal representation. A motion to dismiss was made on the grounds that no substantial federal question was raised and that the court lacked jurisdiction. The court denied the motion holding only that a justiciable issue was presented. The case is important, however, because the court recognizes that unequal representation at the county level presents a justiciable issue. In all likelihood, if the court determined the substantive issue, it would find that there was malapportionment contrary to the command of equal representation.

*Simon v. Lafayette Parish Police Jury*, 226 F. Supp. 301 (W.D. La. 1964) reaches a result similar to *Bianchi*. The court in *Simon* denied a summary judgment sought by the plaintiff who had brought suit to compel redistricting. The court did hold, however, that the plaintiff was entitled to a hearing on the merits. Again, as in *Bianchi*, the court did not reach the merits of the case.

<sup>18</sup> See Weinstein, *supra* note 9, at 21; Note, 33 U. CIN. L. REV. 483, 504 (1964).

<sup>19</sup> Weinstein, *supra* note 9, at 21.

<sup>20</sup> *Smith v. Allwright*, 321 U.S. 649 (1944) (cannot deny person right to cast ballot in primary election in his precinct because of race); *Myers v. Anderson*, 238 U.S. 368 (1915) (Grandfather Clause held void as to registration and suffrage in City of Annapolis).

<sup>21</sup> 364 U.S. 339 (1960).

lation of the fourteenth amendment should both be equally applied to the municipal situation.<sup>22</sup>

The authority discussed thus far supports the position that the Supreme Court of the United States will require equal representation at the local level. This position, however, does not stand unchallenged. One case in particular, *Johnson v. Genesee County, Michigan*,<sup>23</sup> stands for the proposition that the equal representation principle derived from the fourteenth amendment does not extend beyond the state level. *Johnson* is supported by convincing reasoning which approaches the reapportionment problem at the local level from a different perspective. The *Johnson* case does not involve an action to require the correction of a malapportioned county board. Rather, the action was brought to invalidate certain acts of a malapportioned county board, which, in the court's opinion, presented a narrower issue than mandatory correction of malapportionment. In refusing to invalidate the acts of the county board, the court, in rather strong dicta, asserted the position that equal representation does not extend to the local level.<sup>24</sup> The court pointed out that:

Under the prevailing view of the United States Supreme Court, as we have pointed out above, the composition of local units of government is held to be a state matter. Under the rule of stare decisis, this Court is not free to consider the subject of the apportionment of representation on local legislative bodies.<sup>25</sup>

The basis of this reasoning is that the Supreme Court has never used the fourteenth amendment to restrain the power of the state and its agencies over municipal corporations within its territories.<sup>26</sup>

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<sup>22</sup> Note, 33 U. CINC. L. REV. 483, 504 (1964).

<sup>23</sup> 232 F. Supp. 567 (E.D. Mich. 1964). See also 18 Sw. L.J. 749 (1964).

<sup>24</sup> See Weinstein, *supra* note 9, at 26 n.23.

<sup>25</sup> *Johnson v. Genesee County, Michigan*, 232 F. Supp. 567, 572 (E.D. Mich. 1964).

<sup>26</sup> *Id.* at 571. The fifteenth amendment has been so extended. See *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

There is one additional consideration that, at first impression, further strengthens the authority of the *Johnson* case. In the opinion of the *Johnson* case, the case of *Glass v. Hancock County Election Comm'n*, 156 So. 2d 825 (Miss. 1963), *appeal dismissed and cert. denied*, 358 U.S. 558 (1964) is referred to. In *Glass*, an action was brought to enjoin a county election commission from conducting any elections for certain county offices before the county was properly redistricted. The action was based on the recent Supreme Court decisions that malapportionment is a denial of equal protection. The injunctive relief was denied because an adequate remedy at law was available.

When considering the recent trend of Supreme Court decisions, the most logical conclusion that can be drawn is that the equal representation principle will be extended to the local level. Even though *Johnson* held for state control, the Michigan court there recognized that its decision might not stand. The court said: "It may well be that the time will come when the application of the Fourteenth Amendment will be extended that far [to the local level]."<sup>27</sup> Extension of equal protection to the local level may be a big step, but the Supreme Court's interest in equal rights for all individuals may indicate such an approach. Also, local governmental bodies are most often in direct contact with the people; thus there is a stronger reason for preserving the individual's full voting power.

#### IV. THE ULTIMATE EXTENT OF EQUAL REPRESENTATION

In the event the Supreme Court extends equal representation to the local level, the question arises as to the types of lower governmental units affected. [*Sonneborn, Brouwer, Bianchi, Johnson, Glass, Simon, and Damon* all deal with the county level, while *Ellis* is concerned with the city level.] One commentator has recently gone a step further and analyzed the situation in regard to several "special purpose units of government."<sup>28</sup>

Public authorities, such as public power districts, could be affected, but this is doubtful. Usually, fees of users, not taxes of voters, pay for the operation of the unit, and the problem of

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Though an appeal to the Supreme Court of the United States was dismissed and certiorari denied, it must be remembered that *Glass* does not concern whether reapportionment *will* apply; rather, the decision turns on *when* it should apply. The Board of Supervisors in the county admitted the need for reapportionment but merely desired to wait for a more propitious time. The unreliability of *Glass*, as an indication of the Supreme Court's attitude to local reapportionment, is further evidenced by the case of *Damon v. Lauderdale County Election Comm'rs*, Civil No. 1197-E, S.D. Miss., Oct. 21, 1964. The *Damon* case is a federal court case from the same jurisdiction as *Glass*. In the *Damon* case, the principles of the recent reapportionment cases were applied to the county level of government.

<sup>27</sup> *Johnson v. Genesee County, Michigan*, 232 F. Supp. 567, 572 (E.D. Mich. 1964). The court then referred to the recent Supreme Court decisions of June 15, 1964. See note 10 *supra*.

<sup>28</sup> Weinstein, *supra* note 9, at 34. The discussion in the text following this note is merely a résumé of Weinstein's discussion. The purpose of the résumé is to inform the reader of the types of governmental units that can possibly be affected by the equal representation principle.

equal representation does not arise. Special districts within one municipality, such as a sewage disposal district, could also be affected, but this is again doubtful. The problem with this second type of unit arises when municipal officials appoint the district board. The municipal officials are elected by persons from the entire municipality, while the members of the district board represent only the persons in their respective districts. The effect is that persons from the entire municipality have some control over districts of which they are not a part. One way to approach the problem is to analogize to a state department which serves only a limited area, such as a city, yet which is controlled by the governor, who is elected by the entire populace of the state. The logical assumption to be drawn is that these departments exist as a matter of necessity and convenience. Since these types of departments are acceptable at the state level, it follows that inter-municipal districts can likewise be justified. Further, the municipal district "tax" is levied only on persons in the district and is much like a user fee for special services, which is the exact situation of the public authorities discussed above. As no other persons are affected, the problem of equal representation is avoided. When dealing with regional districts comprising more than one municipality, such as water and sewage districts, the major problems are financing and discriminatory taxation. Very seldom does representation approximate population in these districts. The problem can again be rationalized, however, by regarding the tax as a user fee, since the service must be used by everyone. The equal representation problem is thus avoided, because all pay a fee for services rendered.

Only a general and indefinite conclusion can be drawn from the above discussion as to the effect of equal representation on lower governmental units. Counties and cities appear to be prime targets for the extension of equal representation. Other governmental units that perform fewer governmental functions occupy a decidedly more uncertain position. If their existence can be justified as a service supported by users' fees or as a department which, like certain state departments, exists for necessity or convenience, then the equal representation problem can possibly be avoided. The ultimate test, however, that would in all likelihood be used, is the test established in *Sonneborn*: (1) Does the unit exercise a legislative power and (2) is it composed of elective members?<sup>29</sup> If these two elements are present, it can be expected

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<sup>29</sup> *State ex rel. Sonneborn v. Sylvester*, 26 Wis. 2d 43, —, 132 N.W.2d at 256 (1965). This test is derived from the express holding of *Sonneborn* as follows: "We do not now decide every legislative function requires



that equal representation will be required.

## V. THE EQUAL POPULATION STANDARD

The test established by the Supreme Court in *Reynolds v. Sims* to assure equal representation is "substantial equality of population among the various districts" with "as nearly . . . equal population as is practicable."<sup>30</sup> One writer has pointed out that representation can still be allocated on not only the basis of population, but also by citizen population, number of registered voters, number of voters at a prior election, or on some similar basis.<sup>31</sup> The *Ellis* case, however, has held:

[A] careful reading of *Reynolds v. Sims*, and particularly its analysis of the foundation for the "one person, one vote" concept, makes clear that the basic constitutional protection is one of equal representation by population, and not equal representation by registered voters.<sup>32</sup>

According to the *Ellis* decision, population cannot mean registered voters. The *Ellis* case then refers to the case of *Wesberry v. Sanders*:

[Wesberry] then pointed out that the way this objective [one man's vote being worth as much as another's] was to be accomplished was to draw congressional districts in such a way that there shall be equal representation for equal numbers of people.<sup>33</sup>

It is clearly established in Nebraska that "population" is to be based on the number of people. The case of *Ludwig v. Board*

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representative-elective execution. We hold only that the principle of equal representation applies to a county board of supervisors when that board is given *legislative power* and is composed of *elective members*." (Emphasis added.)

Weinstein has established his own test in regard to the many limited purpose governing agencies. The test is comprised of three considerations: (1) How many functions does the entity have? (2) Is it designed to achieve an end appropriate for state government? (3) How close does representation affect population? Weinstein, *supra* note 9, at 32.

It is also important to remember when dealing with these tests that the Supreme Court has only held that an agency, *when controlled by voters*, must be controlled equally. Not every agency need be in the charge of elected officials. Weinstein, *supra* note 9, at 33.

<sup>30</sup> *Reynolds v. Sims*, 377 U.S. 533, 577 and 579 (1964).

<sup>31</sup> Weinstein, *supra* note 9, at 24. Weinstein also points out that the least defensible basis would be apportionment on the basis of votes cast or votes registered during some prior election.

<sup>32</sup> *Ellis v. Mayor and City Council of Baltimore*, 234 F. Supp. 945, 953 (D. Md. 1964).

<sup>33</sup> *Ibid.* (Emphasis added.)

of *County Comm'rs*<sup>34</sup> involved the redistricting of Douglas County commissioner districts under section 23-151 of the Nebraska Revised Statutes, which requires an equal division of the population of the county. The litigation in *Ludwig* involved the status of personnel quartered at Offutt Air Force Base. Although the personnel were not citizen population, the question was whether they were "population" for the purposes of section 23-151. The court held that the word population "embraces and includes *all persons* living in the county, regardless of their age, sex, business, occupation, or military or civilian service [including those living on Offutt Air Force Base]."<sup>35</sup>

The logical and safest conclusion to follow in future redistricting, is that equal population in all districts means an equal number of people in all districts. Even if the United States Supreme Court allows a qualified voter basis in reapportionment, there is no doubt that apportionment based on the number of people meets the requirements of equal representation.

It is also quite conclusively established that weighting, or the rational basis test of apportionment, which takes into account a variety of aspects such as land area and economic interests, is doomed.<sup>36</sup>

## VI. EFFECT OF SONNEBORN IN NEBRASKA

If *Sonneborn* is in fact followed by the United States Supreme Court the ramifications of the decision could seriously affect Nebraska. Illustrative of this problem is the apportionment of the Board of Regents of the University of Nebraska, which is presently apportioned according to the 1920 Congressional districts, and the Nebraska Railway Commission, whose district apportionment is still questionable.<sup>37</sup> It is doubtful that either of these agencies, and particularly the Board of Regents, can meet the standard of equal representation required by the federal constitution as it is construed by the United States Supreme Court. In addition to these two governmental districts, there are nearly 5000 other local governments operating in Nebraska.<sup>38</sup> To require

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<sup>34</sup> 170 Neb. 600, 103 N.W.2d 838 (1960).

<sup>35</sup> *Ludwig v. Board of County Comm'rs*, 170 Neb. 600, 618, 103 N.W.2d 838, 850 (1960). (Emphasis added.)

<sup>36</sup> *Reynolds v. Sims*, 377 U.S. 533 (1964).

<sup>37</sup> Rudolph, *supra* note 6, at 862 n.24.

<sup>38</sup> NEBRASKA BLUE BOOK 474 (1964). The Blue Book lists eighteen different categories of local government comprising 4,963 units. The primary

equal representation in all of these districts certainly presents a problem of significant magnitude.

The county commissioner districts in Nebraska afford an excellent example for a more complete analysis of the reapportionment problems in Nebraska. Not only is *Sonneborn* directly concerned with county board districts, thus making an excellent analogy, but many of the Nebraska districts are badly in need of reapportionment.<sup>39</sup> The Appendix shows a compilation of the county board districts in Nebraska and readily exposes the vulnerability of the Nebraska county boards.

There are two general types of counties in Nebraska: (1) the township counties, which have a county board comprised of seven supervisors, and (2) the precinct counties, which have a county board comprised of three (or five) commissioners.<sup>40</sup> According to section 23-151, the commissioners may redistrict the county districts at any session of the board when all commissioners are present; provided, there can be no alteration more often than once in four years. In all counties, except Lancaster County, the commissioners are nominated and elected by the electors of the re-

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governmental unit is the school district of which there are over 3000. In this list of local units, many districts such as the county commissioner districts, city sewage districts, and similar districts are not a part of the total districts reported. The many types of districts existing within each county and city unit are not reported. The number of potential districts vulnerable to reapportionment litigation would thus greatly exceed the reported 5000.

<sup>39</sup> It must be noted that the Nebraska county boards are not only subject to attack on federal grounds. NEB. REV. STAT. § 23-151 (Supp. 1963) provides: "Each county . . . shall be divided into three districts . . . comprising compact and contiguous territory and embracing, as nearly as may be possible, an equal division of the population of the county . . . ." Though the county boards can be affected either through *Sonneborn* or section 23-151, not every local unit is controlled by statutes similar to section 23-151, and therefore *Sonneborn* would have special relevance in regard to those units as it would be the only authority which could affect them.

<sup>40</sup> NEBRASKA BLUE BOOK 474 (1964). There are twenty-eight township counties and sixty-five precinct counties. Three counties, Douglas, Sarpy and Webster, have five commissioners rather than three. Five commissioners are required in Douglas County while all other commissioner counties, except Lancaster County, have an option of either three or five commissioners. NEB. REV. STAT. § 23-151 (Supp. 1963). The commissioner system is regulated by NEB. REV. STAT. §§ 23-148 to -158 (Reissue 1962). Section 23-151, as amended, is in the 1963 cumulative supplement. The supervisor system is regulated by intermittent sections of the statutes that govern counties under township organization. NEB. REV. STAT. §§ 23-201 to -299 (Reissue 1962).

spective districts.<sup>41</sup> Since Lancaster County is regulated in a different manner, it will serve as a useful example of the reapportionment problems in county commissioner (supervisor) districts.

The fact that Lancaster County commissioners are elected at large,<sup>42</sup> rather than by district as in the other counties, could have some bearing on the reapportionment problem, since there is no denial of equal representation when the whole county elects the commissioners. It is only when one district contains more people than another district that the problem of equal representation arises. Nevertheless, the primary elections in Lancaster County are still conducted on a district basis, and an equal representation problem could arise at the primary level rather than the actual election level.

There are no population figures available for the present county commissioner districts in Lancaster County.<sup>43</sup> The basis that has been used to redistrict in the past, and the only basis available today, is registered voters.<sup>44</sup> At present, the approximate number of registered voters in District One is 25,909; in District Two, 27,395; and in District Three, 17,816.<sup>45</sup> While these figures indicate substantial malapportionment, it must be remembered that a registered voter basis is a poor indication of the true population. This, in addition to the fact that District Three is composed of much of the western part of Lancaster County and a small part of Lincoln, which is largely tenement (noted for small voter registration), tends to discount the above figures. It must

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<sup>41</sup> NEB. REV. STAT. § 23-151 (Supp. 1963) provides, in part: "One commissioner shall be nominated and elected by each of said districts, but shall be elected by the qualified electors of the entire county in counties having a population in excess of one hundred thousand and less than three hundred thousand."

<sup>42</sup> *Ibid.*

<sup>43</sup> Census tracts based on the census taken in 1960 are available at the Lincoln City—Lancaster County Planning Department, but it is doubtful that the tracts will be of any assistance in ascertaining the present population of the districts, since the tract boundaries do not correspond with the present district boundaries. The tracts will be of greater benefit if used in setting up new districts, since new district boundaries can be made to parallel the present census tract boundaries.

<sup>44</sup> Present county commissioner, William Grossman, and former county commissioner, Russell Brehm, have been most helpful in dealing with the Lancaster County situation. From conversations with them, it has been learned that redistricting took place in 1950, 1954 and about 1958, and that the basis for such redistricting was, to their knowledge, registered voters.

<sup>45</sup> Figures obtained from Lancaster County Election Commissioner.

also be remembered that Lancaster County has grown from 155,272 in 1960, to an estimated 168,900 in 1963.<sup>46</sup> It is doubtful that this additional population has settled itself equally among the three districts.

Whatever the true situation in Lancaster County, it would be extremely difficult for anyone to bring an action to compel reapportionment, since the actual population figures, which must be proved to the court, are hard to ascertain. However, similar malapportionment situations exist in other counties, as shown in the Appendix, and there the population figures necessary for litigation are usually available.

## VII. CONCLUSION

At the present time, the United States Supreme Court has rendered no decision on equal representation at the local level. The most that can be done is to make suppositions as to the Supreme Court's probable attitude. All indications are that the Supreme Court will ultimately resolve this issue in favor of equal representation at the local government level.

The effect of such a decision in Nebraska is clear and forceful. The conclusion as to Nebraska, reflected in the discussion above and the Appendix, is that local government may well have to prepare for the malapportionment problem.<sup>47</sup>

*Budd B. Bornhoft, Jr. '66*

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<sup>46</sup> Figures obtained from Lincoln City—Lancaster County Planning Department. The 1963 estimate is not an official estimate.

<sup>47</sup> *Ellis v. Mayor and City Council of Baltimore*, 234 F. Supp. 945 (D. Md. 1964) is a typical case where election proceedings were hampered due to injunctions. Although *Sonneborn* does not affect election proceedings, a statute was there declared unconstitutional because of malapportionment. These two cases demonstrate that a variety of litigation can arise due to malapportionment.

## APPENDIX

## Prefatory Comment

The figures compiled in this appendix have been obtained through personal reply from a majority of Nebraska counties. The figures require preliminary explanation because several considerations and qualifications enter into their reliability. For this reason, the figures have been separated into two charts:

*Chart A.* The figures in Chart A need no qualification. They represent the actual district and county population and are the figures a court would require in a reapportionment suit.

*Chart B.* The figures in Chart B raise several problems and require qualification. As Chart B indicates, the majority of counties that reported did not have district population figures available. The basis of the figures in Chart B, therefore, is votes cast in the most recent election (except for Douglas, Lancaster and Pawnee Counties, where a *registered* voter basis is used rather than an *actual* vote basis). As pointed out in the text, a vote basis or a registered voter basis is not always a good indication of the true population of a given area. Many additional factors must be considered in analyzing the vote figures. The dates of the elections, when available, have been given because votes cast in a 1962 election may not be as heavy as votes cast in 1964, which was a national election year. Also, one district may have a very heated contest between two commissioner candidates that would draw more voters and thus give the impression, on a voter basis, that the district is larger than the other districts. Districts made up of rural and tenement areas do not usually have as heavy a voting record as urban areas, and this factor can make district figures misleading. Such factors as these compel caution when using these vote basis figures as representative of population.

Several counties have sent both population and voter figures for each district so that a comparison can be made as to the ratio between votes cast and the actual population. These counties appear in italics in both charts. Further, the total population of all the reported counties is given so that it can be compared to the total number of votes cast in each county. As this data demonstrates, the votes cast vary between one-third and one-half the actual population. The reader can thus approximate what the population of a district would be by comparing the votes cast, subject, of course, to the qualifications outlined above regarding the unreliability of a voter basis. NEB. REV. STAT. § 23-267 (Reissue 1962) provides for the ascertainment of population in districts by

multiplying the number of votes cast by five and using that product as the basis for redistricting. While this statute must be used when weighing the value of the figures in Chart B, its accuracy is doubtful. Seldom does population equal five times the number of votes cast; at least in the Nebraska commissioner districts. Further, the statute simply provides for apportionment on a voter basis which must again be subjected to those qualifications enumerated above.

Not all counties use district numbers when referring to precincts and townships; rather, those townships and precincts are referred to by name instead of number. For simplicity, all districts in this appendix are referred to by number rather than name.

Several county situations require brief comment, and they have been footnoted in the charts. Those counties that are not compiled in the charts either failed to reply or did not send usable district figures.

CHART A

County	Population of District	Population of County*	Actual Percentage of Representation	Desired Equal Representation Percentage
<i>Brown (C)**</i>		4,517		33.3
Dist. 1	956		21.2	
Dist. 2	2,843		62.9	
Dist. 3	718		15.9	
<i>Chase (C)</i>		4,317		33.3
Dist. 1	1,434		33.2	
Dist. 2	2,170		50.3	
Dist. 3	713		16.5	
<i>Custer (S)</i>		16,517		14.3
Dist. 1	2,260		13.7	
Dist. 2	1,250		7.6	
Dist. 3	4,401		26.6	
Dist. 4	1,999		12.1	
Dist. 5	2,818		17.1	
Dist. 6	1,519		9.2	
Dist. 7	2,270		13.7	
<i>Deuel (C)</i>		3,300		33.3
Dist. 1	1,800		54.5	
Dist. 2	300		9.1	
Dist. 3	1,200		36.4	
<i>Dodge (S)</i>		32,220		14.3
Dist. 1	3,750		11.6	
Dist. 2	3,800		11.8	

County	Population of District	Population of County*	Actual Percentage of Representation	Desired Equal Representation Percentage
Dist. 3	4,240		13.2	
Dist. 4	4,230		13.1	
Dist. 5	4,900		15.2	
Dist. 6	5,400		16.8	
Dist. 7	5,900		18.6	
Gage (S)		21,637		14.3
Dist. 1	2,631		12.2	
Dist. 2	5,084		23.5	
Dist. 3	3,356		15.5	
Dist. 4	4,073		18.8	
Dist. 5	2,232		10.3	
Dist. 6	2,445		11.3	
Dist. 7	1,816		8.4	
Harlan (S)		5,081		14.3
Dist. 1	440		8.7	
Dist. 2	613		12.1	
Dist. 3	516		10.2	
Dist. 4	1,528		30.1	
Dist. 5	1,275		25.1	
Dist. 6	333		6.6	
Dist. 7	376		7.4	
Johnson (C)		6,281		33.3
Dist. 1	1,521		24.2	
Dist. 2	2,548		40.6	
Dist. 3	2,212		35.2	
Merrick (S) <sup>1</sup>		8,363		14.3
Dist. 1	666		8.0	
Dist. 2	1,095		13.1	
Dist. 3	1,150		13.8	
Dist. 4	688		8.2	
Dist. 5	2,406		28.8	
Dist. 6	1,088		13.0	
Dist. 7	1,270		15.2	
Nance (S)		5,644		14.3
Dist. 1	1,351		23.9	
Dist. 2	533		9.4	
Dist. 3	538		9.5	
Dist. 4	1,475		26.1	
Dist. 5	600		10.6	
Dist. 6	397		7.0	
Dist. 7	750		13.3	
Otoe (C)		16,439		33.3
Dist. 1	8,969		54.6	
Dist. 2	4,388		26.7	
Dist. 3	3,082		18.7	



County	Population of District	Population of County*	Actual Percentage of Representation	Desired Equal Representation Percentage
<i>Phelps</i> (S)		10,993		14.3
Dist. 1	1,192		10.8	
Dist. 2	893		8.1	
Dist. 3	1,854		16.9	
Dist. 4	1,557		14.2	
Dist. 5	5,497		50.0	42.8
Dist. 6				
Dist. 7				
<i>Pierce</i> (C)		9,674		33.3
Dist. 1	3,234		33.4	
Dist. 2	3,417		35.3	
Dist. 3	3,023		31.2	
<i>Polk</i> (C)		7,210		33.3
Dist. 1	2,098		29.1	
Dist. 2	2,323		32.2	
Dist. 3	2,789		38.7	
<i>Red Willow</i> (C)		14,013		33.3
Dist. 1	1,285		9.2	
Dist. 2	2,843		20.3	
Dist. 3	9,885		70.5	
<i>Rock</i> (C)		2,554		33.3
Dist. 1	522		20.4	
Dist. 2	1,363		53.4	
Dist. 3	669		26.2	
<i>Saunders</i> (S)		17,044		14.3
Dist. 1	2,693		15.9	
Dist. 2	1,510		8.9	
Dist. 3	2,388		14.0	
Dist. 4	2,149		12.6	
Dist. 5	2,038		11.9	
Dist. 6	3,610		21.2	
Dist. 7	2,666		15.6	
<i>Seward</i> (C)		13,581		33.3
Dist. 1	4,531		33.4	
Dist. 2	4,703		34.6	
Dist. 3	4,347		32.0	
<i>Stanton</i> (C)		5,778		33.3
Dist. 1	1,525		26.4	
Dist. 2	2,210		38.2	
Dist. 3	2,043		35.4	
<i>Wayne</i> (C)		9,959		33.3
Dist. 1	6,109		61.3	
Dist. 2	1,743		17.5	
Dist. 3	2,107		21.2	

County	Population of District	Population of County*	Actual Percentage of Representation	Desired Equal Representation Percentage
York (C)		13,724		33.3
Dist. 1	3,605		26.3	
Dist. 2	6,173		45.0	
Dist. 3	3,946		28.8	

\* The population figure used in this column is the sum of the reported population figures in the district column. Most figures are the same as, or differ only slightly from, the official 1960 census figures as they appear in the 1964 Nebraska Blue Book. Only Gage, Phelps, Pierce, and Red Willow counties result in an unexplainable discrepancy between the figure in the chart and the official figure.

\*\* Those counties in italics appear in both charts. Commissioner counties are followed by (C), while supervisor counties are followed by (S).

#### CHART B

County	Total Vote of District	Total Vote of County	Population of County†	Actual Percent- age of Rep- resentation	Desired Equal Rep- resentation Percentage
Arthur (C)		355	680		33.3
Dist. 1 (1964)††	91			25.6	
Dist. 2 (1962)	194			54.6	
Dist. 3 (1962)	70			19.7	
Banner (C)		541	1,269		33.3
Dist. 1 (1964)	144			26.6	
Dist. 2 (1964)	230			42.5	
Dist. 3 (1964)	167			30.9	
Boone (C)		3,598	9,134		33.3
Dist. 1 (1964)	1,267			35.2	
Dist. 2 (1962)	1,467			40.8	
Dist. 3 (1962)	864			24.0	
Box Butte (C)		2,283	11,688		33.3
Dist. 1 (1964)	494			21.6	
Dist. 2 (1962)	202			8.8	
Dist. 3 (1962)	1,587			69.5	
Brown (C)†††		2,283	4,436		33.3
Dist. 1 (1960)	476			20.8	
Dist. 2 (1960)	1,515			66.4	
Dist. 3 (1960)	292			12.8	
Butler (S) <sup>2</sup>		1,784	10,312		33.3
Dist. 2 (1964)	604			33.9	
Dist. 4 (1964)	514			28.8	
Dist. 6 (1964)	666			37.3	

County	Total Vote of District	Total Vote of County	Population of County†	Actual Percent- age of Rep- resentation	Desired Equal Rep- resentation Percentage
<b>Cass (C)</b>		<b>6,745</b>	<b>17,821</b>		<b>33.3</b>
Dist. 1 (1964)	3,022			44.8	
Dist. 2 (1964)	1,565			23.2	
Dist. 3 (1964)	2,158			32.0	
<b>Cherry (C)</b>		<b>3,353</b>	<b>8,218</b>		<b>33.3</b>
Dist. 1 (1964)	2,207			65.8	
Dist. 2 (1962)	462			13.8	
Dist. 3 (1962)	684			20.4	
<b>Clay (S)</b>		<b>3,767</b>	<b>8,717</b>		<b>14.3</b>
Dist. 1	482			12.8	
Dist. 2	830			22.0	
Dist. 3	685			18.2	
Dist. 4	405			10.8	
Dist. 5	399			10.6	
Dist. 6	474			12.6	
Dist. 7	492			13.1	
<b>Dakota (C)</b>		<b>4,376</b>	<b>12,168</b>		<b>33.3</b>
Dist. 1 (1964)	3,196			73.0	
Dist. 2 (1964)	581			13.3	
Dist. 3 (1964)	599			13.7	
<b>Dawson (C)</b>		<b>4,787</b>	<b>19,405</b>		<b>33.3</b>
Dist. 1 (1964)	731			15.3	
Dist. 2 (1962)	1,527			31.9	
Dist. 3 (1962)	2,529			52.8	
<b>Deuel (C)</b>		<b>1,501</b>	<b>3,125</b>		<b>33.3</b>
Dist. 1 (1964)	846			56.4	
Dist. 2 (1964)	180			11.9	
Dist. 3 (1964)	475			31.6	
<b>Dixon (S)</b>		<b>3,677</b>	<b>8,106</b>		<b>14.3</b>
Dist. 1 (1964)	421			11.4	
Dist. 2 (1964)	453			12.3	
Dist. 3 (1964)	381			10.4	
Dist. 4 (1964)	591			16.1	
Dist. 5 (1964)	543			14.8	
Dist. 6 (1964)	769			20.9	
Dist. 7 (1964)	519			14.1	
<b>Douglas (C)<sup>3††††</sup></b>		<b>159,668</b>	<b>343,490</b>		<b>20.0</b>
Dist. 1	30,489			19.1	
Dist. 2	23,573			14.8	
Dist. 3	30,092			18.8	
Dist. 4	31,729			19.9	
Dist. 5	43,785			27.4	

County	Total Vote of District	Total Vote of County	Population of County†	Actual Percent- age of Rep- resentation	Desired Equal Rep- resentation Percentage
Fillmore (S) <sup>4</sup>		4,243	9,425		14.3
Dist. 1 (1964)	651			15.3	
Dist. 2 (1964)	586			13.8	
Dist. 3 (1964)	487			11.5	
Dist. 4 (1964)	641			15.1	
Dist. 5 (1964)	612			14.4	
Dist. 6 (1964)	719			16.9	
Dist. 7 (1964)	547			12.9	
Frontier (C)		1,904	4,311		33.3
Dist. 1 (1964)	529			27.8	
Dist. 2 (1964)	862			45.3	
Dist. 3 (1964)	513			26.9	
Furnas (C)		3,412	7,711		33.3
Dist. 1 (1964)	545			16.0	
Dist. 2 (1964)	932			27.3	
Dist. 3 (1964)	1,935			56.7	
Garden (C)		1,546	3,472		33.3
Dist. 1 (1964)	239			15.5	
Dist. 2 (1964)	832			53.8	
Dist. 3 (1964)	475			30.7	
Garfield (C)		911	2,699		33.3
Dist. 1	626			68.7	
Dist. 2	108			11.9	
Dist. 3	177			19.4	
Grant (C)		545	1,009		33.3
Dist. 1 (1962)	332			60.9	
Dist. 2 (1962)	96			17.6	
Dist. 3 (1964)	117			21.5	
Hall (S) <sup>5</sup>		14,447	35,757		14.3
Dist. 1 (1964)	2,035			14.1	
Dist. 2 (1964)	1,765			12.2	
Dist. 3 (1964)	2,133			14.8	
Dist. 4 (1964)	1,782			12.3	
Dist. 5 (1964)	1,683			11.6	
Dist. 6 (1964)	2,277			15.8	
Dist. 7 (1964)	2,772			19.2	
Hamilton (C)		3,914	8,714		33.3
Dist. 1 (1964)	1,809			46.2	
Dist. 2 (1964)	944			24.1	
Dist. 3 (1964)	1,161			29.7	
Hayes (C)		771	1,919		33.3
Dist. 1 (1964)	180			23.3	
Dist. 2 (1962)	278			36.1	
Dist. 3 (1962)	313			40.6	

## CASENOTE

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County	Total Vote of District	Total Vote of County	Population of County†	Actual Percent- age of Rep- resentation	Desired Equal Rep- resentation Percentage
Hitchcock (C)		1,730	4,829		33.3
Dist. 1 (1962)	548			31.7	
Dist. 2 (1962)	831			48.0	
Dist. 3 (1964)	351			20.3	
Holt (S)		5,760	13,722		14.3
Dist. 1	932			16.2	
Dist. 2	649			11.3	
Dist. 3	917			15.9	
Dist. 4	749			13.0	
Dist. 5	746			13.0	
Dist. 6	836			14.5	
Dist. 7	931			16.2	
Hooker (C)		490	1,130		33.3
Dist. 1 (1964)	417			85.1	
Dist. 2 (1964)	34			6.9	
Dist. 3 (1964)	39			8.0	
Jefferson (C)		4,152	11,620		33.3
Dist. 1 (1962)	869			20.9	
Dist. 2 (1964)	943			22.7	
Dist. 3 (1962)	2,340			56.4	
Kearney (S) <sup>6</sup>		3,150	6,580		14.3
Dist. 1	450			14.3	
Dist. 2	450			14.3	
Dist. 3	450			14.3	
Dist. 4	450			14.3	
Dist. 5	450			14.3	
Dist. 6	450			14.3	
Dist. 7	450			14.3	
Keith (C)		3,212	7,958		33.3
Dist. 1 (1964)	538			16.7	
Dist. 2 (1962)	2,345			73.0	
Dist. 3 (1962)	329			10.2	
Keya Paha (C)		814	1,672		33.3
Dist. 1 (1964)	300			36.9	
Dist. 2 (1964)	388			47.7	
Dist. 3 (1964)	126			15.5	
Kimball (C)		2,688	7,975		33.3
Dist. 1	363			13.5	
Dist. 2	2,025			75.3	
Dist. 3	300			11.2	
Knox (S)		5,245	13,300		14.3
Dist. 1 (1964)	735			14.0	
Dist. 2 (1964)	711			13.6	
Dist. 3 (1964)	656			12.5	

County	Total Vote of District	Total Vote of County	Population of County†	Actual Percent- age of Rep- resentation	Desired Equal Rep- resentation Percentage
Dist. 4 (1964)	720			13.7	
Dist. 5 (1964)	723			13.8	
Dist. 6 (1964)	934			17.8	
Dist. 7 (1964)	766			14.6	
Lancaster (C) ††††		71,120	155,272		33.3
Dist. 1	25,909			36.4	
Dist. 2	27,395			38.5	
Dist. 3	17,816			25.1	
Loup (C)		517	1,097		33.3
Dist. 1 (1964)	116			22.4	
Dist. 2 (1964)	283			54.7	
Dist. 3 (1964)	118			22.8	
McPherson (C)		274	735		33.3
Dist. 1 (1962)	92			33.6	
Dist. 2 (1962)	91			33.2	
Dist. 3 (1964)	91			33.2	
Madison (C) †		10,176	25,145		33.3
Dist. 1 (1962)	1,756			17.3	
Dist. 2 (1964)	7,176			70.5	
Dist. 3 (1962)	1,244			12.2	
Merrick (S)		3,000	8,363		14.3
Dist. 1 (1962)	266			8.9	
Dist. 2 (1962)	346			11.5	
Dist. 3 (1962)	398			13.3	
Dist. 4 (1962)	242			8.1	
Dist. 5 (1962)	989			33.0	
Dist. 6 (1962)	314			10.5	
Dist. 7 (1962)	445			14.8	
Morrill (C)		2,877	7,057		33.3
Dist. 1 (1964)	397			13.8	
Dist. 2 (1964)	1,237			43.0	
Dist. 3 (1964)	1,243			43.2	
Nemaha (C)		4,808	9,099		33.3
Dist. 1 (1964)	702			14.6	
Dist. 2 (1964)	2,423			50.4	
Dist. 3 (1964)	1,683			35.0	
Nuckolls (C)		3,567	8,217		33.3
Dist. 1 (1964)	1,886			52.9	
Dist. 2 (1964)	724			20.3	
Dist. 3 (1964)	957			26.8	
Pawnee (C) ††††		2,167	5,356		33.3
Dist. 1	658			30.4	
Dist. 2	1,060			48.9	
Dist. 3	449			20.7	

County	Total Vote of District	Total Vote of County	Population of County†	Actual Percent- age of Rep- resentation	Desired Equal Rep- resentation Percentage
<i>Phelps</i> (S)		4,411	9,800		14.3
Dist. 1 (1964)	502			11.4	
Dist. 2 (1964)	541			12.3	
Dist. 3 (1964)	469			10.6	
Dist. 4 (1964)	478			10.8	
Dist. 5 (1964)	2,421			54.9	42.8
Dist. 6 (1964)					
Dist. 7 (1964)					
<i>Platte</i> (S) <sup>8</sup>		9,531	23,992		14.3
Dist. 1 (1964)	1,115			11.7	
Dist. 2 (1964)	1,504			15.8	
Dist. 3 (1964)	1,479			15.5	
Dist. 4 (1964)	1,279			13.4	
Dist. 5 (1964)	1,150			12.1	
Dist. 6 (1964)	1,161			12.2	
Dist. 7 (1964)	1,843			19.3	
<i>Richardson</i> (C)		6,134	13,903		33.3
Dist. 1 (1964)	3,177			51.8	
Dist. 2 (1964)	1,170			19.1	
Dist. 3 (1964)	1,787			29.1	
<i>Saline</i> (C)		5,772	12,542		33.3
Dist. 1 (1964)	1,447			25.1	
Dist. 2 (1964)	2,853			49.4	
Dist. 3 (1964)	1,472			25.5	
<i>Sarpy</i> <sup>9</sup>	No district figures available.				
<i>Scotts Bluff</i> (C)		12,908	33,809		33.3
Dist. 1 (1964)	1,225			9.5	
Dist. 2 (1964)	8,786			68.1	
Dist. 3 (1964)	2,897			22.4	
<i>Sherman</i> (S)		1,357	5,382		14.3
Dist. 1 (1962)	274			20.2	
Dist. 2 (1964)	85			6.3	
Dist. 3 (1962)	245			18.1	
Dist. 4 (1964)	273			20.1	
Dist. 5 (1962)	192			14.1	
Dist. 6 (1964)	50			3.7	
Dist. 7 (1962)	238			17.5	
<i>Sioux</i> (C)		710	2,575		33.3
Dist. 1 (1962)	116			16.3	
Dist. 2 (1964)	174			24.5	
Dist. 3 (1962)	420			59.2	
<i>Stanton</i> (C)		1,668	5,783		33.3
Dist. 1 (1962)	441			26.4	
Dist. 2 (1962)	582			34.9	
Dist. 3 (1964)	645			38.7	

County	Total Vote of District	Total Vote of County	Population of County†	Actual Percent- age of Rep- resentation	Desired Equal Rep- resentation Percentage
Thayer (C)		3,951	9,118		33.3
Dist. 1 (1962)	1,277			32.3	
Dist. 2 (1962)	1,346			34.1	
Dist. 3 (1964)	1,328			33.6	
Thomas (C)		520	1,078		33.3
Dist. 1 (1964)	116			22.3	
Dist. 2 (1964)	276			53.1	
Dist. 3 (1964)	128			24.6	
Valley (S)		2,747	6,590		14.3
Dist. 1 (1962)	304			11.1	
Dist. 2 (1964)	402			14.6	
Dist. 3 (1962)	410			14.9	
Dist. 4 (1964)	613			22.3	
Dist. 5 (1962)	416			15.1	
Dist. 6 (1964)	294			10.7	
Dist. 7 (1962)	308			11.2	
Wheeler (C)		565	1,297		33.3
Dist. 1 (1964)	93			16.5	
Dist. 2 (1964)	118			20.9	
Dist. 3 (1964)	354			62.7	

† Population figure based on 1960 census as it appears in the 1964 Nebraska Blue Book.

†† The election year for each district has been indicated when available.

††† Those counties in *italics* appear in both charts. Commissioner counties are followed by (C), while supervisor counties are followed by (S).

†††† Registered voter basis is given rather than a votes cast basis.

<sup>1</sup> The figures for Merrick County represent the county situation prior to recent redistricting. No figures have been reported as to the present apportionment.

<sup>2</sup> Only those districts of Butler County which held an election in 1964 are reported. The county population figure includes all seven supervisor districts, which explains the large discrepancy between the total votes cast in the three districts and the population of the county.

<sup>3</sup> The County Board of Douglas County has reapportioned within the past couple of years based on the 1960 census figures. The census figures in the respective districts were quite close.

<sup>4</sup> Fillmore County was reapportioned in 1961 so as to more nearly equate the population in the districts.

<sup>5</sup> Hall County was redistricted in 1962 so that the City of Grand Island, with a population of approximately 25,000, had five supervisors, and the outlying area, with a population of approximately 10,000, had two supervisors.

<sup>6</sup> Kearney County was redistricted in 1965 based upon votes cast in the 1964 election.



- <sup>7</sup> The voter basis for Madison County indicates substantial malapportionment. As further proof, which is not subject to the caveats of a voter basis, District Two of Madison County encompasses the whole of the City of Norfolk plus some outlying area. The City of Norfolk alone has a population of 13,640, which, when compared to the county population of 25,145, demonstrates the malapportionment in Madison County.
- <sup>8</sup> Supervisor districts in Platte County were reapportioned in 1961 according to the 1960 census.
- <sup>9</sup> In 1960, Sarpy County was changed from a three commissioner form of government to a five commissioner form, and it was then divided into five districts according to population.