



The John C. Stennis Institute of Government
At Mississippi State University

Policy Matters: Reprising Reapportionment & Redistricting

01/11/2010
Doc Id 2010-60-1

by Lydia Quarles, JD, Senior Policy Analyst

Two thousand and ten (2010): a decennial year and the year that the decennial census occurs. There will be a “census day” designated this spring, and within nine (9) months of “census day” the precise apportionment population count will be delivered to President Obama.

In preparing for the 2010 census count and the coming apportionment possibilities, it is advisable to reprise the issues of reapportionment and redistricting covered by the Stennis Institute last year before new information on these general issues is provided. While the Stennis Institute Technical Briefs are available online (www.sig.msstate.edu), the following briefs will be reprised herein:

- Reapportionment & Redistricting 101, published February 2009;
- Reapportionment & Redistricting 201: Congressional Reapportionment, published February 2009;
- Reapportionment & Redistricting 301: Legislative Redistricting, published February 2009.

About the Institute

Elected to the United States Senate in 1947 with the promise to “plow a straight furrow to the end of the row,” John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

Reapportionment & Redistricting 101

A Historical Perspective

How will the nation's population migration of the decade of 2000 (2000-2009) affect the shape and contour of the United States Congress? How will the state's population variations during this decade contribute to the redistricting of Mississippi's state houses? Obviously, Mississippi has little control over the population shifts that will mandate the scope of Congressional reapportionment. As a state which is not significantly populous when considering the nation as a whole (Mississippi was ranked in the 2000 census as the 31st most populous state, well into the lower half; early projections suggest that by 2030 Mississippi will be the 33rd most populous state in the nation.), the changes that occur in our population are only peripheral to the changes that will be made nationwide. However, the decade of substantial intra-state population change has a critical impact on legislative redistricting. Consider, for example, Katrina migrations, lost manufacturing jobs, economic growth in Lee, De Soto and Pearl River County, as well as the Golden Triangle area. These factors, along with many others, will shape the face of the Mississippi legislature for the decade commencing 2010.

Communal interest in the results of the decennial census, Congressional reapportionment and state legislative redistricting, along with the lesser acknowledged redistricting tasks associated with municipal annexation or the occasional change in the municipal form of government, was virtually non-existent before the 1960s in this country. Prior to the decade of the 1960s, the courts of this land consistently held that reapportionment and redistricting were the exclusive domain of the legislative branch. Considering any issues raised by reapportionment and redistricting a "political question" resulting in deference being given to the legislative branch by the judicial branch, courts simply did not engage in the task of directing or rectifying legislative reapportionment or redistricting.

About the Institute

Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

The landmark case of *Baker v. Carr*, 369 U.S. 186 (1962) changed all that. In *Baker v. Carr* the United States Supreme Court abandoned its historic policy of intervening in Congressional reapportionment and state legislative redistricting by recognizing that “every voter has a right to have his vote counted equally with every other voter’s.” In so doing, the Court established the vote and a citizen’s right to have his vote be viewed and counted on a par with other citizens as right which was delivered by the equal protection clause of the 14th Amendment to the U. S. Constitution and, what’s more, that the equal protection clause created a justiciable cause of action for which relief or remedy could be afforded by the judicial branch of government. The Baker decision was followed in 1963 by the United States Supreme Court decision that unit voting systems are unconscionable *per se*, requiring all states which aligned voting districts along geographic lines (e.g., county lines) without regard to the population content of the district to reassess the methodology for developing voting districts. *Grey v. Sanders*, 372 U.S. 368 (1963).

Fundamentals

Reapportionment refers to an allocation of seats among various units; Americans reapportion the available seats in the United States Congress after every decennial census. [13 U.S.C. § 141 (a)] **Redistricting** refers to the redrawing of boundaries of election districts, required to be done by the state legislatures after every census and required intermittently on a municipal level as a result of annexations of territory or changes in forms of government which require a different number of selectmen, etc. [13 U.S.C. § 141 (b)].

The fundamental aim of reapportionment or redistricting is to give effect to the “one man, one vote” principle. While a nationally recognized concept of individual equality to which citizens generally give deference and the concept that Alexis de Tocqueville found uniquely American, the task of making it possible that my vote counts just as much as yours, or that our votes in Mississippi are just as relevant to national policy-making as the votes of our friends in Alabama,

About the Institute

Elected to the United States Senate in 1947 with the promise to “plow a straight furrow to the end of the row,” John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

California, New York or Washington state, for instance, is not an easy one. In fact result of the attempt to equalize the value of the vote between one citizen and another is largely illusory, in the sense that population flux is constant – within our state and within the nation – and census results are frozen in time – “census day”. It is like suggesting that a financial statement dated 12/31/2009 accurately reflects the financial position of yourself or your enterprise on any other day of the preceding year. It may adequately reflect it; it does not accurately do so. Nor does reapportionment or redistricting. There will never be a moment in which my vote may count precisely as much as yours, or that our Mississippi votes may count precisely as much as the vote of our friends in Alabama, California New York or Washington state. For example, while seven (7) states were authorized only one (1) seat in the United States Congress as a result of the 2000 census, the most populous of the seven (7) was Montana with a population of 905,316 while the least populous was Wyoming with a population of 495,304. Nevertheless, this result is reflective of the attempt to assure the equality of vote concept to the fullest extent possible with reference to developing American jurisprudence.

Reapportionment Methodology

In single member districts, as represented by federal Congressional districts and legislative districts in Mississippi, the first issue posed by reapportionment or redistricting, after the census count is delivered, is this: What is the total population? From that point, other questions devolve. What is the total number of districts? When you divide the total population by the total number of districts, what is the ideal population for each district?

This methodology is based on bodies rather than voters. Why? If the concept is to make my vote count as much as yours, shouldn't only voters be counted? Or at least individuals of voting age? Or registered voters? Or individuals who are eligible to be voters?

About the Institute

Elected to the United States Senate in 1947 with the promise to “plow a straight furrow to the end of the row,” John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

The established policy which has created the methodology used in state redistricting and federal reapportionment counts total population. The state's population includes the state's "resident population" which is counted by census, together with all of the state's military and civilian personnel employed by the federal government and their dependents who are abroad on April 1 of the census year. "Resident population" is comprised of all persons counted in the census, including legal immigrants (citizens and non-citizens) and illegal aliens who either mail their census form back or whose presence in the United States was recorded by a Census Bureau employee in a census interview.

In the case of federal Congressional reapportionment, the total population of the country, as determined by the census, is divided by 385. This number seems to confuse many – and that is understandable. While all of us seem to be familiar with the fact that each state is allocated two (2) U. S. Senators, we may forget the fact that each state is also allocated one (1) U. S. Congressman. Thus the number 385 is the number of remaining Congressmen to be allocated among the states after the census. (The total number of the U. S. congressional delegation is established at 435; 435 minus 50 leaves 385. So the number of congressional seats to be apportioned among the states based on population is that number 385. While the number 435 can be changed by legislation, it has not been changed since 1941 and pundits do not anticipate a change in the near future.) From the number which is determined by the Census Bureau to be the "ideal" population for each federal Congressional district, the Secretary of Commerce makes a recommendation to the President as to the relative number of congressional seats to be aligned to the 50 states for the coming decade. In 2000, the average population of a congressional district was 646,952; in 1990 the average population was 572,466. In 1900, the average population of a congressional district was 193,167.

As we recall, Mississippi lost a congressional seat as a result of the 2000 census and reapportionment of congressional seats, as did nine (9) other states. Two (2) of the nine (9) lost two (2) seats: New York and Pennsylvania. Although loss of congressional representation is not

About the Institute

Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

the only reason that litigation commences as a result of the census, it is one of the reasons. After the results of the 2000 census, 150 lawsuits were filed. The result of this litigation means that ultimate results may be deferred as justiciable issues travel through the judicial system.

Redistricting Methodology

Legislative redistricting works on essentially the same principle. The “ideal” district population is gleaned by dividing the census population by the number of districts. Extant districts are then redrawn in order to create legislative districts that are as close to the “ideal” in population as possible, perpetuating the illusion that each of us has a vote which carries as much weight in our statehouse as the vote of our friends and kin in other districts.

Obviously, redrawing extant districts (or creating new ones, for that matter) which closely compare with the “ideal” district population is a difficult task, which turns not on the “ideal” population but with an acceptable deviation. The first step in this process is to determine the “absolute deviation”. The absolute deviation is an expression which describes the difference between the extant district’s actual population and the “ideal” expressed by a plus (+) or a minus (-). Therefore, if Mississippi’s determined “ideal” district would have a population of 5,000 and House District 43 had a population of 5,050, the absolute deviation of House District 43 would be +50. Relative deviation is expressed in percentages.

In order to determine how a state legislature’s many districts would be realigned, one must identify each absolute mean deviation and each relative mean deviation, as well as the state absolute mean deviation and relative mean deviation. The range of deviations is the difference in population between the largest and smallest district expressed in number of people or in percentage points. The legislature then performs the process of voter weight equalization. In Mississippi, this herculean task is undertaken by members of two legislative committees, the

About the Institute

Elected to the United States Senate in 1947 with the promise to “plow a straight furrow to the end of the row,” John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

Joint Legislative Committee on Legislative Reapportionment and the Joint Legislative Committee on Congressional Redistricting.

Census Count Objectives

The current method of apportioning seats in the U. S. Congress was adopted in 1941 and uses a mathematical formula to assign a priority value to each seat in the U. S. House of Representatives. [2 U.S.C. § 2] The formula uses the state's population divided by the geometric mean of the state's current number of seats and the next seat [the square root of $n(n-1)$]. This formula distributes seats so that "leftover" fractions of excess population are factored into the apportionment.

Article I, Section 2 of the U.S. Constitution combines with § 2 of the 14th Amendment to the Constitution to require that "[r]epresentatives shall be appointed among the several states according to their respective numbers, counting the whole number of persons in each State." This obligation has been enhanced by case law after 1962. For example, in the case of *Westberry v. Sanders*, 376 U.S. 1 (1964), the Supreme court held that the reapportionment resulting after each decennial census should be "as nearly equal as practicable" and thereafter, in *Kirkpatrick b. Priesler*, 394 U.S. 526 (1969), rejected an argument that small variations in population between congressional districts were *de minimis*, noting that "nothing is *de minimis*" and any variances must be determined to be unavoidable or justified as supporting an acknowledged and valid governmental policy. This concept was reaffirmed in the case of *Karcher v. Daggett*, 462 U.S. 725 (1983) when the Supreme Court noted that there was no level of population inequality among congressional districts that is too small, so long as the plan's challenge can show that the inequality could have been avoided.

A challenger to a reapportionment plan must merely demonstrate that a method exists by which the state could reduce the population inequality among congressional districts within the state.

About the Institute

Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

When that is done, the burden then shifts to the state to demonstrate, if it can, that the drawing of the congressional district boundary lines as it proposed was necessary to achieve a “legitimate state objective.” *Karchner* identifies several legitimate state objectives, although the list is, no doubt, not totally inclusive. The objectives recognized by the Court in *Karchner* are:

- Compact districts
- Preservation of municipal boundaries
- Preservation of the cores of prior districts
- Avoiding contests between incumbents.

The opinion places the burden upon the state to demonstrate with specificity the relationship between the legitimate state objective and the deviation(s) in the proposed boundaries. The plan will be discredited if the proposal creating the enhanced degree of inequality cannot be tied to a legitimate state objective.

The Mississippi legislature establishes its own manner of congressional reapportionment, recognizing that standards for reapportionment include the following:

- Compact districts composed of contiguous territories crossing governmental boundaries the fewest possible times
- Districts structured, as much as possible, along county lines and, if county lines must be fractured, election district lines followed as nearly as possible. [Miss. Code Ann. § 5-3-101 (1972)]

Mississippi’s Joint Congressional Redistricting Committed also adopted (in 1991) elements for consideration in addition to the statutory elements stated immediately above. These include the following:

- Any redistricting plan should not dilute minority voting strength.
- Any redistricting plan should seek to avoid a political gerrymander.
- Any district must be composed of contiguous territories.
- All districts must be compact.
- Districts should cross county lines the least number of times possible.

About the Institute

Elected to the United States Senate in 1947 with the promise to “plow a straight furrow to the end of the row,” John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

While this strict *de minimis* standard is required for the state legislative drawing of its own legislative boundaries, the standard for federal redistricting of congressional seats is, as previously discussed, a more relaxed standard: a 10% *de minimis* rule for compliance with standards of equity within voting districts.

We are required, at this time of the decennial census process, to familiarize ourselves with these rarefied concepts in order to contemplate the years ahead.

About the Author

LYDIA QUARLES, J.D., SENIOR POLICY ANALYST

Lydia Quarles is a Senior Policy Analyst at the John C. Stennis Institute of Government, Mississippi State University. She received her Juris Doctorate from Cumberland School of Law, Samford University, and her MA and BA from Mississippi University for Women, in 1972 and 1971 in political science and communication. After over a dozen years in the private practice of law in Alabama and Mississippi, she joined the Mississippi Workers' Compensation Commission as an Administrative Judge in 1993. Eight years later, in 2001, she was appointed Commissioner of the agency. In 2006, she resigned to join the Stennis Institute. Quarles remains active in bar work, and currently chairs the Women in the Profession Committee, a standing committee of the Mississippi Bar. She is a fellow of the Mississippi Bar Foundation, a recipient of the Mississippi Bar's Distinguished Service Award, and was recently honored by the American Bar Association for her lifetime contribution to Administrative Law and Regulatory Practice by receipt of the Mary C. Lawton Award which recognized her contributions to the Mississippi Workers' Compensation Commission in the areas of alternative dispute resolution and access for Hispanic labor. Quarles serves as a member of the Mississippi School for Math and Science Foundation Board and parliamentarian of Mississippi's First Alumnae Association. Quarles has been named one of Mississippi's 50 Leading Business Women by the Mississippi Business Journal; the Journal recognized her service to the State as a Commissioner as well as entrepreneurial skills developed in her property management business in Starkville, Spruill Property Management, LLC. Quarles, who is not a full-time employee of the Institute, also engages in the private practice of law and owns and directs a consulting business, WPF, LLC. She may be contacted at lydia@wpf-adr.com.

Mississippi State University does not discriminate on the basis of race, color, religion, national origin, sex, age, disability, sexual orientation, group affiliation, or veteran status.

About the Institute

Elected to the United States Senate in 1947 with the promise to "plow a straight furrow to the end of the row," John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

About the Institute

Elected to the United States Senate in 1947 with the promise to “plow a straight furrow to the end of the row,” John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.

About the Institute

Elected to the United States Senate in 1947 with the promise to “plow a straight furrow to the end of the row,” John C. Stennis recognized the need for an organization to assist governments with a wide range of issues and to better equip citizens to participate in the political process. In 1976, Senator Stennis set the mission parameters and ushered in the development of a policy research and assistance institute which was to bear his name as an acknowledgment of his service to the people of Mississippi.