



## A Brief History of Legislative Redistricting in Nebraska



**By Nancy Cyr, Research Director**

When it comes to legislative redistricting, Nebraska has enjoyed a relatively controversy-free history. Even then, in two out of the past six decades, the state has come up against judicial sanction for enacting unconstitutional legislative plans. Specifically, the 1960s is a turbulent time as the state struggles to comply with several federal and state court rulings relating to one person, one vote and population equality, while in the 1990s, dividing counties brings challenges to the state's legislative redistricting plans.

Following is a brief chronology of Nebraska's legislative redistricting efforts.

### **The beginning of the unicameral legislature—1934, 1935, and 1937**

Nebraska voters approve an amendment to the Constitution, submitted via the initiative process, authorizing the establishment of a unicameral legislature. Legislative terms are two years, and the Legislature is authorized to redraw district boundaries "from time to time," but not more often than every 10 years, using population figures from the most recent federal decennial census.

District boundaries are to follow county lines, except that a county can be divided into two or more districts when it "contains population sufficient to entitle it to two or more members of the Legislature." When a county is divided, the districts are to be "as nearly equal in population as may be and composed of compact and contiguous territory."

In 1935, legislation is enacted setting up a 43-district legislative plan to take effect in 1937.<sup>1</sup> According to an article from the February 1950 issue of the *National Municipal Review*, "[t]he 43 districts were rather equitably arranged on the basis of the population census of 1930."

And in 1937, the Nebraska Unicameral Legislature meets for the first time.

### **The turbulent 1960s**

As years pass, population shifts within the state result in growing population inequity among the legislative districts created in 1935. "By 1960 the most populous district had a population of 100,826 and the smallest was reported to be 18,824," according to an article in the spring 1978 edition of the Nebraska State Historical Society's journal, *Nebraska History*.

In response to this population disparity and recognizing the need to redraw legislative district boundaries, the



## The 1964 Supreme Court case *Reynolds v. Sims* established the doctrine of “one person, one vote.”

1961 Legislature adopts two proposed constitutional amendments relating to redistricting to be submitted to voters at the 1962 general election. One proposal establishes staggered four-year terms for legislators, and the other adds language loosening the county-line requirement.<sup>2</sup>

The amendment loosening the county-line requirement provides that county lines should be followed whenever practicable, but that other established lines could be used. More importantly for those representing areas which were losing population to the eastern end of the state, the amendment also provides that: “In such redistricting, primary emphasis shall be placed on population and not less than twenty percent nor more than thirty percent weight shall be given to area.”

At the federal level in 1962, in its landmark decision *Baker v. Carr*, the U.S. Supreme Court rules that legislative redistricting cases, though political in nature, are subject to judicial review and that plaintiffs can mount a challenge to redistricting plans based on provisions of the U.S. Constitution.<sup>3</sup>

In November 1962, Nebraska voters approve both constitutional amendments.

During the 1963 session, the Legislature enacts its first redistricting plan since 1935, using a formula that enables senators to give 20 percent weight to area in establishing legislative district boundaries. The plan also increases the number of legislative districts from 43 to 49.

The plan establishes legislative districts with populations ranging from a high of 35,757 in District 35 (Hall County) to

a low of 21,703 in District 43 (Sheridan, Cherry, and Brown counties).

In August 1963, a lawsuit is filed in federal district court challenging the constitutionality of the new plan based on the consideration given to “area” when drawing district boundaries.<sup>4</sup>

In June 1964, the U.S. Supreme Court hands down its ruling in *Reynolds v. Sims*, the case popularly known as the “one person, one vote” case.<sup>5</sup> The ruling’s primary impact is to establish that the 14<sup>th</sup> Amendment to the U.S. Constitution requires populations of legislative districts to be as equal as is practicable.

The next month, the U.S. District Court for the District of Nebraska holds that the portion of the 1962 amendment to the Nebraska Constitution allowing the Legislature to give consideration to area when redistricting is unconstitutional. The court holds that the offending provision violates the Equal Protection Clause of the 14<sup>th</sup> Amendment to the U.S. Constitution and directs the 1965 Legislature to create a new legislative plan using population as a basis, in accordance with *Reynolds v. Sims*.<sup>6</sup>

Accordingly, in March 1965, the Legislature enacts a new legislative redistricting plan that increases the number of legislative districts to 50. The largest district is still District 25 (Hall County) with a population of 35,757, while the smallest district is District 44 (Morrill, Garden, Deuel, Keith, Arthur, and Grant counties) with a population of 22,301. The new plan is submitted to the United States District Court for review.

In May, the court rules that the population variance of





more than 15 percent violates the Equal Protection Clause of the 14<sup>th</sup> Amendment.<sup>7</sup>

The court declines to create a redistricting plan, but directs the Legislature to adopt a constitutionally valid plan before adjournment of the 1965 regular session. Otherwise, the court states, all members of the Legislature will have to be nominated and elected at large during the 1966 elections.

In July 1965, the Legislature adopts its third redistricting plan, which divides the state into 49 legislative districts.

In September 1965, Senator Terry Carpenter, acting as a private citizen, files a petition with the Nebraska Supreme Court seeking a declaratory judgment as to the constitutionality of the plan. He argues that the plan is unconstitutional because it crosses county lines when establishing legislative districts, alleging that crossing county lines is not permitted pursuant to the U.S. District Court's 1964 ruling.

In January 1966, the Nebraska Supreme Court unanimously upholds the third legislative plan.<sup>8</sup> The court's decision is based on its holding that the provision of the 1962 amendment to the Nebraska Constitution that permits plans to cross county lines is valid. Specifically, the court stated:

**We therefore hold that Article III, section 5, of the Constitution of Nebraska, as amended in 1962, is a valid and subsisting part of the Constitution of the State of Nebraska, and in full force and effect . . . We also hold that the provisions of Article III, section 5, of the Constitution of Nebraska, require any apportionment of legislative districts to be based solely on population.<sup>9</sup>**

The following April, the U.S. District Court for the District of Nebraska rules that the population deviations in the plan are justifiable and do not violate the Equal Protection Clause of the U.S. Constitution.<sup>10</sup>

## 1970s and 1980s—the quiet decades

The next 20 years are relatively quiet on the redistricting front. In 1971, the Legislature passes LB 954, a redistricting



**State Senator Terry Carpenter**

plan based on population figures from the 1970 census, and in 1981 the Legislature passes LB 406, a redistricting plan based on population figures from the 1980 census. There are no constitutional challenges to either plan.

## 1990s—the question of crossing county lines

In 1991, the Legislature passes LB 614, a legislative plan that, among other things, divides Madison County between two legislative districts, each of which incorporates portions of other counties, as well. Madison County citizens challenge the constitutionality of the plan as it pertains to their county, arguing that the Nebraska Constitution requires the Legislature to follow county lines when a county has sufficient population to constitute a single legislative district, as is the case with Madison County.

Primary elections are held in odd-numbered legislative districts in May 1992. Two months later, in *Day v. Nelson*,<sup>11</sup> the Nebraska Supreme Court rules that (1) splitting Madison County between two legislative districts violates Article III, section 5, of the Nebraska Constitution, which states that “county lines shall be followed whenever practicable” during redistricting and (2) a county with a population sufficient to constitute a single legislative district must be kept whole.

In response, the Legislature holds a special session in August 1992 and passes LB 7, which reconfigures District 19 to include only Madison County. The non-Madison County portions of the original District 19 are split between two other legislative districts in the region.

As a result of LB 7, the top two vote getters in the May 1992 primary from the original District 19 are disqualified from proceeding to the general election because they both reside outside Madison County. One of them petitions the federal court to stop the implementation of LB 7, alleging that the new legislative plan violates her constitutional right to run for public office, as well as the voting rights of her supporters. The court rejects her arguments and denies the injunction, holding that she failed to establish a likelihood of success on the merits of the case.<sup>12</sup>

Meanwhile, Madison County residents gather signatures in order to get their names on the November general election



ballot for the new Legislative District 19 created via LB 7. Connie Day, one of the original Madison County plaintiffs, is elected to the Legislature.

Additionally, a group of residents of southwest Nebraska files suit in Lancaster County District Court seeking to have the 1991 plan declared unconstitutional. Plaintiffs allege the plan is defective because the Legislature failed to follow county lines in Red Willow County and otherwise failed to follow its own redistricting guidelines. No ruling is issued in the case, which is voluntarily dismissed.

Litigation continues. In March 1995, the Nebraska Supreme Court considers arguments similar to those the federal district court addressed in the 1992 challenge to LB 7. Plaintiffs include the second of the two winners of the 1992 District 19 primary election whose residence was drawn out of the district by LB 7, along with a similarly situated voter.

The Nebraska Supreme Court upholds LB 7 as constitutional, rejecting arguments that the bill prevents the plaintiffs from exercising their right to run for elected office and to vote. The court holds that LB 7 merely **delays** the plaintiffs' ability to vote and to run for office in their new district, and as such does not violate their constitutional rights.<sup>13</sup>

Sheridan County residents also challenge the constitutionality of the plan on the basis that the plan impermissibly divides Sheridan County into more than one legislative district. Plaintiffs argue that a county

cannot be divided unless its population exceeds the ideal district size. The suit also claims the Legislature's 1991 requirement that districts not deviate more than plus or minus two percent from the ideal district size is too restrictive. The Nebraska Supreme Court upholds the plan's constitutionality on both counts.<sup>14</sup>

### **A new century, more redistricting**

In 2001, the Legislature passes LB 852, a redistricting plan based on population figures from the 2000 census. One lawsuit is filed seeking to have it overturned.

The plaintiff alleges that the plan violates the county-line requirement in the Nebraska Constitution and the Legislature's own redistricting guidelines in that it unnecessarily creates at least five Douglas County districts that incorporate portions of adjoining counties. The plaintiff also argues that the Legislature acted in an arbitrary and capricious manner in violation of the due process clause of the Nebraska Constitution by violating its own guideline requiring that legislative districts be compact.

No ruling is issued in the case, which was dismissed without prejudice in 2003.

The Legislature passes LB 703 in 2011, a redistricting plan based on population figures from the 2010 census. Notably, no legislative districts within Douglas County cross county lines, and there is no constitutional challenge to the bill.

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## **End Notes**

1. Senate File Nos. 364 and 365
2. Laws 1961, LB 96, provides for staggered four-year terms, and Laws 1961, LB 217, provides that in legislative redistricting established lines other than county lines may be followed and that primary emphasis will be given to population with prescribed weight being given to area.
3. 369 U.S. 186 (1962).
4. *League of Nebraska Municipalities v. Marsh*, 232 F. Supp. 411 (1964).
5. 377 U.S. 533 (1964).
6. *League of Nebraska Municipalities v. Marsh*, 232 F. Supp. 411 (1964).
7. *League of Nebraska Municipalities v. Marsh*, 242 F. Supp. 357 (1965).
8. *Carpenter v. State of Nebraska*, 179 Neb. 628 (1966).
9. *Id.* at 635.
10. *League of Nebraska Municipalities v. Marsh*, 253 F. Supp. 27 (1966).
11. 240 Neb. 997 (1992).
12. *Carlson v. Nelson*, CV92-3300 (D. Neb.) (1993).
13. *Pick v. Nelson*, 247 Neb. 487 (1995).
14. *Hlava v. Nelson*, 242 Neb. 482 (1995).