Overview of 2019, S.11 (limiting senatorial districts to a maximum of three members) and Misc. Reapportionment Issues

I. Overview of 2019, S.11 As Passed by Senate

2019, S.11 Passed by Senate would amend 17 V.S.A. § 1907 (re: periodic Senate reapportionment) to provide that – beginning with the General Assembly's next required legislative reapportionment, which by Vt. Const. Ch. II, § 73 is to occur during the 2021-2022 biennium – Senatorial districts shall have a maximum of three members.

The bill would require the Legislative Apportionment Board to propose a Senate reapportionment plan with not more than three members in each Senate district, and would provide in law that the final Senate plan enacted by the General Assembly is to adhere to that three-member maximum.

II. Vt. Const. and Caselaw Provisions Applicable to S.11

A. There is Not a Constitutional Limit on the Number of Members in a Senate District

Pursuant to Vt. Const. Ch. II, § 73, the General Assembly is required to reapportion House and Senate districts at the biennial session following the taking of the U.S. Census "in order to maintain equality of representation among the respective districts as nearly as is practicable."

Unlike the **House** – which by Vt. Const. Ch. II, § 13 limits House districts to one or two members – Vt. Const. Ch. II, § 18 contains no such limit on the number of members in a **Senate** district, and instead provides that each Senate district shall contain "one or more Senators . . . the number from each district to be established by the General Assembly."

B. SCOTUS and SCOV Have Upheld Multi-Member Districts

In <u>Whitcomb v. Chavis</u>, 403 U.S. 124, 142-144 (1971), the Supreme Court of the United States discussed the constitutionality of multi-member districts:

> "The question of the constitutional validity of multi-member districts has been pressed in this Court since the first of the modern reapportionment cases. These questions have focused not on population-based apportionment but on the quality of representation afforded by the multi-member district as compared with single-member districts. In [a 1964 U.S. S. Ct. case], we noted certain undesirable features of the multi-member district but expressly withheld any intimation 'that apportionment schemes which provide for the at large election of a number of legislators from a county, or any political subdivision, are constitutionally defective.' [citation omitted]. Subsequently, when the validity of the multi-member district, as such, was squarely presented, we held that such a district is not per se illegal under the Equal Protection Clause [citations omitted]. That voters in multi-member districts vote for and are represented by more legislators than voters in single member districts has so far not demonstrated an invidious discrimination against the latter. But we have deemed the validity of multi-member district systems justiciable, recognizing also that they may be subject to challenge where the circumstances of a particular case may 'operate to minimize or cancel out the voting strength of racial or political elements of the voting population.' [citation omitted]. Such a tendency, we have said, is enhanced when the district is large and elects a substantial proportion of the seats in either house of a bicameral legislature, if it is multi-member for both houses of the legislature or if it lacks provision for at-large candidates running from particular geographical subdistricts . . . But we have insisted that the challenger carry the burden of proving that multi-member districts unconstitutionally operate to dilute or cancel the voting strength of racial or political elements. We have not yet sustained such an attack."

In In re Senate Bill 177, 132 Vt. 282, 289-290 (1974), the Supreme Court of Vermont specifically discussed the six-member Chittenden senatorial district:

> "A separate objection was urged with respect to Chittenden County as a multi-member district. This is an area of concentrated population, by Vermont standards, and results in a county senatorial district with six senators. Since the inception of the Senate, with thirty members and no more than fourteen counties, multi-member districts were contemplated. ==Although the legislature, at some time, may deem it appropriate to change the senatorial district of Chittenden, or to vary county lines, it is not constitutionally required to do so under the facts before us [citing Whitcomb at 142-143]. Again, a demonstration of invidious discrimination must be made, and has not been, in this case.== Whatever this Court may believe about the wisdom of an alternative solution, our testing of this legislative function must be confined to its constitutional and statutory propriety, as already noted."

III. Misc. Reapportionment Overview

A. Equal Protection Clause

"No State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const., Amend. XIV, § 1.

B. Pre-1965 Vermont

- *House*: One town, one vote.

  o [former] Vt. Const. Ch. II, § 13: "In order that the freemen of the state may enjoy 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== . . ."

  o 246 representatives total

- *Senate*: County rule.

  - [former] Vt. Const. Ch. II, § 18: "The Senate shall be composed of thirty Senators . . . apportioned to the several counties, according to the population . . . and <mark>each county being given at least one Senator</mark> . . ."

C. Early 1960s SCOTUS Reapportionment Caselaw

- Judicial Review.   Legislative apportionment was not a political question exempt from judicial review. Baker v. Carr, 369 U.S. 186 (1962).

- Supremacy Clause. "When there is an unavoidable conflict between the Federal and a State Constitution, the Supremacy Clause of course prevails." Reynolds v. Sims, 377 U.S. 533, 584 (1964).

D. Early 1960s Vermont Reapportionment Caselaw

U.S. Dist. Ct. of Vermont held that both bodies of the Vermont General Assembly were malapportioned and that our Constitution's reapportionment provisions were in contravention to the Equal Protection Clause of the 14th Am. and therefore <mark>unconstitutional and void</mark>. Buckley v. Hoff, 234 F.Supp. 191 (1964).

- House: "Grossly malapportioned . . . [C]itizens of the state's larger communities are invidiously discriminated against because of the inequality of representation . . ." Id. at 197.

- Senate: "[I]mpossible to apportion the Senate in any way which will not result in at least a 5-1 disparity between the largest and smallest number of people represented per Senator." Id. at 197-98.

E. Current Vermont Reapportionment Requirements

- [Vt. Const. Ch. II, § 73](#) (Leg. decennial reapp. after Census; LAB; deadline; SCOV):

"The General Assembly shall establish senatorial districts within and including all of the state, and shall further establish representative districts within and including all of the state.

"At the biennial session following the taking of each decennial census under the authority of Congress, and at such other times as the General Assembly finds necessary, it shall revise the boundaries of the legislative districts and shall make a new apportionment of its membership in order to maintain equality of representation among the respective districts as nearly as is practicable. The General Assembly may provide for establishment of a legislative apportionment board to advise and assist the General Assembly concerning legislative apportionment. If the General Assembly fails to revise the legislative districts as required in this section, the Supreme Court in appropriate legal proceedings brought for that purpose may order reapportionment of the districts."

- [Vt. Const. Ch. II, § 13](#) (House: 150 members; 2-member max; reapp. standards):

"The House of Representatives shall be composed of one hundred fifty Representatives. The voters of each representative district established by law shall elect one or two Representatives from that district, the number from each district to be established by the General Assembly.

"In establishing representative 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."

- [Vt. Const. Ch. II, § 18](#) (Senate: 30 members; no max.; reapp. standards):

"The Senate shall be composed of thirty Senators to be of the senatorial district from which they are elected. The voters of each senatorial district established by law shall

elect <mark>one or more</mark> Senators from that district, the number from each district to be established by the General Assembly.

"In establishing senatorial districts, which shall afford equality of representation, <mark>the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions</mark>."

- 17 V.S.A. chapter 34A (periodic reapportionment).

F. Reapportionment Calculations

- <u>Total VT population</u>. Vermont's total population after 2010 census = **625,741** (2000 census = 608,827). Under our 2010 population:

- <u>House</u>: 625,741 divided by 150 Reps = [the ideal population, dependent on the number of members in a district]

  - 1-member = 4,172

  - 2-member = 8,344

- <u>Senate</u>: 625,741 divided by 30 Senators =

  - 1-member = 20,858

  - 2-member = 41,716

  - 3-member = 62,574

  - 4-member = 83,432

  - 5-member = 104,290

  - 6-member = 125,148

  - <u>Deviation Calculation</u>:

    o Actual population – Ideal Population = Deviation

    o Deviation / Ideal Population x 100 = Percentage Deviation

- Example:

    o 2002 Chittenden Senate District had 139,478 people under 2010 census figures

    o 139,478 (actual population) – 125,148 (ideal population) = 14,330 (deviation)

    o 14,330 (deviation) / 125,148 (ideal population) x 100 = **11.45%** (percentage deviation)

- Overall Deviation = Highest high deviation + Lowest low deviation (disregarding negative). *See*:

    o 2012 final Senate reapportionment [map and deviations](#)

    o 2012 final House reapportionment [map](#) and [deviations](#)

G. Timeframe

- July 1, 2020: Deadline to appoint seven-member Legislative Apportionment Board (LAB). [17 V.S.A. § 1904(b)](#).

- July 1, 2021: LAB deadline to:

    o Prepare tentative House proposal. [17 V.S.A. § 1905](#).

    o Submit its final Senate proposal to Senate. [17 V.S.A. § 1907](#).

- Aug. 1, 2021: Town deadline to respond to LAB tentative House proposal. [17 V.S.A. § 1905](#).

- Aug. 15, 2021: LAB deadline to submit its final House proposal to House. [17 V.S.A. § 1906](#).

- Mid-2022 Leg. Session: Enact initial House plan. *See* [2012, No. 74](#), enacted 2/28/12.

- "As soon as practical" thereafter, by April 1, 2022: BCAs may propose further House district divisions. [17 V.S.A. § 1906b(b) and (e)](#); [17 V.S.A. § 1906c(b) and (e)](#).

- Adjournment *Sine Die*: Deadline to enact final House and Senate districts. [Vt. Const. Ch. II, § 73](#). *See* [2012, No. 93](#), enacted 5/1/12.