Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 134 (Tr. Div. 1984)

IN RE SIMER ERIICH, et al.,
Petitioners,

v.

REPUBLIC OF PALAU REAPPORTIONMENT COMMISSION
Respondent,

and

REPUBLIC OF PALAU,
Real Party in Interest.

CIVIL ACTION NO. 99-84

Supreme Court, Trial Division
Republic of Palau

Memorandum decision
Decided: September 21, 1984

BEFORE: MAMORU NAKAMURA, Chief Justice

The petitioners filed this action seeking review of the 1984 Reapportionment and Redistricting Plan. The Court took jurisdiction of the matter pursuant to Article IX, Sec. 4(c) of the Constitution of the Republic of Palau. Trial on the matter was held on September 18-19, 1984, at the conclusion of which the Court took the matter under advisement.

I. BACKGROUND

The legislative functions of the Republic of Palau (Republic) are placed in the Olbiil Era Kelulau (OEK) which consists of two houses, the House of Delegates and the Senate. The House of Delegates is composed of one delegate from each state, the Senate members being elected on the basis of population.

Under Article IX, of the Constitution, a Reapportionment Commission determines the number of Senate seats as well as the location and boundaries of the senatorial districts. A Reapportionment Commission is to be constituted every eight years not less than 180 days before the next general election. The commission is responsible for the drafting of a "reapportionment or redistricting" plan which becomes law upon publication.

Upon the petition of any voter within 60 days after ⊥135 the promulgation of the plan, the Supreme Court has "original jurisdiction to review the plan and to amend it to comply with the requirements of [the] Constitution". Article IX, Section 4(c).

Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 134 (Tr. Div. 1984)

On May 25, 1984, the current Reapportionment Commission (Commission) was established pursuant to the 1984 Reapportionment Act, Republic of Palau Public Law (RPPL) 1-64. Under the Act, the Commission was to reapportion and redistrict the existing Senate electoral districts (previously established under Article XV of the Constitution) and establish the number of Senate seats "based on population" using the following criteria:

(1) The 1980 census and the most recent and available census or population figures of the Republic of Palau shall be used;

(2) No citizen shall be denied the equal protection of the laws;

(3) Consideration shall be given as to the cost or expense of operating the Olbiil Era Kelulau and the Senate;

(4) No purposeful orientation shall be given to political incumbents. (RPPL 1-64, § 4.)

On July 5, 1984, the Commission published the "1984 Senate Reapportionment Plan" (1984 Plan or Plan). The Plan set the number of Senate Seats at 14, the Senators to be elected among three Senatorial Districts which were defined as follows:

(1) The First Senatorial District is composed of Kayangel, Ngarchelong, Ngaraard, Ngiwal, Melekeok, Ngchesar, and Airai, and has three (3) Senators;

(2) The Second Senatorial District is composed of Koror with three (3) subdistricts as follows:

(a) Subdistrict A of the Second Senatorial District is composed of Ngermid, Ngerkesoaol, Ngerchemai, and Iyebukel, and has three (3) Senators;

(b) Subdistrict B of the Second Senatorial District composed of Idid, Meketii, Ikelau, and Ngerbeched, and has three (3) Senators;

(c) Subdistrict C of the Second Senatorial District is composed of Dngeronger, Medalaii, and Meyuns, and has three (3) Senators;

⊥136

(3) The Third Senatorial District is composed of Ngardmau, Ngaremlengui, Ngatpang, Aimeliik, Peleliu, Angaur, Sonsorol and Tobi and has two (2) Senators.

On July 17, 1984, the Governors of the States of Aimeliik, Ngeremlengui, Ngatpang, Ngardmau and Ngarchelong filed a petition challenging the validity of the Plan on the ground that the Commission is improperly constituted, that the Plan violates the equal protection clause of Article IV, Section 5 of the Constitution, that the Plan violates RPPL 1-64 and that the census data on which the Plan was based does not accurately reflect the population of the Republic.

Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 134 (Tr. Div. 1984)

On July 20, 1984, the Court issued a notice to the effect that a petition challenging the Plan had been filed and that all interested persons wishing to file a petition in support of or in opposition to the Plan or briefs amicus curiae do so on or before September 4, 1984. In addition, the Notice set a pre-trial conference for September 14, 1984. The Notice was duly published on July 26, 1984.

On August 21, 1984, the Court issued an Order setting the time for hearing on all petitions at 9:00 a.m., on September 17, 1984; the pre-trial conference was rescheduled to be held at 8:30 a.m., prior to the trial.

On September 4, 1984, several citizens of the Republic filed two separate petitions alleging that the Plan is invalid on the grounds that the census data used does not accurately reflect the voting residence of Palauans, that the Plan fails to consider the "probable migration and movement" of population when the capital is relocated, and that the census data does not reflect voters residing outside of the Republic.

On September 4, 1984, Respondent and Real Party in Interest filed a Motion to Dismiss Petitions or for Summary Judgment and Judgment on the Pleadings. The motion was heard on September 17, 1984, at 8:30 a.m., and the Court denied the motion. A pre-trial conference was held on the same date at 10:00 a.m., and the issues to be litigated were narrowed to the following:

1. Whether the Reapportionment Plan as published by the Reapportionment Commission, meets the requirements of the Equal Protection Clause of the Palau Constitution and RPPL 1-64;

2. Whether the Reapportionment Commission used the appropriate census;

⊥137

3. Whether the Reapportionment Commission considered future population shifts in the preparation of the Reapportionment Plan.

Trial on the matter was held on September 18-19, 1984, the Court announcing its Judgment on this day, September 21, 1984. The reasons for the decision are discussed below.

II. FUTURE POPULATION SHIFTS

Article XIII, Section 11 of the Constitution provides that within ten (10) years of the effective date of the Constitution, the OEK shall designate a location in Babeldaob as the permanent capital; the provisional capital to remain in Koror. The petitioners[1] argue that as the reapportionment commission is only constituted every eight years, the 1984 Plan is fatally flawed in its failure to consider future population shifts attributable to the eventual relocation of the capital.[2] The Court rejects this argument.

---

[1] The Court refers to the three sets of petitioners in this action collectively as "petitioners."

[2] Petitioners assume that a reapportionment/redistricting plan can only be adopted once

The United State Supreme Court[3] addressed the issue of the effect of projected population shifts in the development of reapportionment[4] plans in *Kirkpatrick v. Priesler*, 394 U.S. 526, 89 S. Ct. 1225 (1969). Justice Brennan, writing for the Court, held that projected population trends may be considered in developing reapportionment plans only if the shifts "can be ⊥138 predicted with a high degree of accuracy", are "thoroughly documented" and are applied in a "systematic, not an *ad hoc*, manner." 89 S.Ct. at 1231. These guidelines are well founded and are applicable to the facts before the Court.

Petitioners are unable to present sound statistical data on which the Commission could have relied. The location for the site of the future capital is yet to be selected; therefore, any projected movement of the population is at best speculative. Moreover, Gerard P. Goosens, a General Statistician with the United Nations, and petitioners' own witness, testified that even given the location of the future government seat, prediction of population shifts would be "very difficult" and would at best be a "rough estimate." Accordingly, the Court does not find the Plan invalid because of its failure to consider such projected movements.

III. CENSUS DATA

Petitioners assert that the census data which forms the basis of the 1984 Plan conflicts with voter registration statistics and does not include voters residing outside of Palau. Petitioners are, in effect, arguing that representation should be based not on the resident populations of the senatorial districts, but on the "traditional populations," the number of people who consider the district their family or traditional home; Judge Hefner referred to this as the "home area rule." *Bedor v. Remengesau*, 7 TTR 317, 321 (Tr. Div. 1976). The argument is not rejected lightly. Palauans, through custom and tradition, petitioners argue, maintain strong ties to their home villages, the family land. At election time, a citizen will normally return to his or her traditional home and there cast a vote. Accordingly, the traditional population of a village is not accurately reflected in a census, or resident population, survey. Petitioners suggest that other data, such as voter registration lists, be used to determine population statistics for purposes of reapportionment.

Petitioners are essentially arguing a question of policy. They believe that the "home area rule" is the better method of representation for the Republic. While much may be said for the adoption of such a system for Palau, the Court concludes that the Constitution and RPPL 1-64 mandate an apportionment plan which is based on actual residence.

---

every eight years. The Court makes no determination on the validity of this assumption.

[3] The Courts of the Republic, of course, are not bound by the decisions of Courts of the United States. However, due to the well developed case law on the subject of reapportionment, the Court looks to these decisions for guidance.

[4] Reapportionment refers to the reallocation of the number or legislators among the same districts. Redistricting refers to the redefinition of the district boundaries while retaining the same number of legislators. *See* Constitutional Convention, Comm. on the Leg., Stand. Comm. Rpt. No. 22, at 8 (March 2, 1979). The Court refers to both methods as reapportionment for convenience.

Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 134 (Tr. Div. 1984)

Article IX, Section 4 of the Constitution requires that the reapportionment plan be based "on population." The notes of the Constitutional Convention support the Republic's argument that this language was intended to mean resident ⊥139 population. The Committee on the Legislature in its support of the Section creating the reapportionment commission noted that "[t]his plan will allow for not only increases in population, but also for large shifts in population location as means of travel and communication improve." Constitutional Convention, Comm. on the Leg., Stand. Comm. Rpt. No. 22 at 8 (March 2, 1979). Again, in a subsequent report, the Committee felt "strongly" that the commission was needed as it provided for flexibility in the senate composition to adopt "to the general population growth and relocation of the populus as no mere apportionment schedule could." Constitutional Convention Committee on the Leg., Stand. Comm. Rpt. No. 46, at 3 (March 12, 1979). Were the Delegates to the Convention contemplating a "home area" system, they would not have been concerned with population shifts as family village identifications do not change, no matter what the movement of the resident population; it follows that the Delegates intended that representation be based on the resident population.

Additionally, the language of RPPL 1-64 convinces the Court that representation was to be based on actual residence. Section 4 of the Act repeats the Constitution's directive that the reapportionment plan be based "on population" and adds that the Commission should use as data "[t]he 1980 census and the most recent census or population figures." Mr. Goosens testified, upon questioning by the Court that the term census refers to "a process of . . . population evaluation" and measures "all persons in a country . . . at [a] certain date." Moreover, the term was used by the Congress of Micronesia to mean resident population. *See* Fifth Congress of Micronesia, First Reg. Sess., P.L. 5-38 (1973). The Court assumes that the OEK used the term's generally accepted meaning. In addition, there were only two census surveys conducted in 1980; each one of these enumerated the population based on residence. Thus, it is reasonably inferred that the drafters of RPPL 1-64, like the framers of the Constitution, intended that Senate representation be based on a district resident population and not on traditional village association.

Petitioners also challenge the Commission's decision not to use the data compiled by the United States Bureau of the Census. As noted earlier, RPPL 1-64 mandates the use by the Commission of "1980 census and the most recent and available census or population figures of the Republic." Two census surveys were conducted in 1980, one in March by the Palau Community Action Agency (PCAA) and the other in September by the United States Bureau of the Census (Bureau). Petitioners argue that as the data compiled by the Bureau are the "most recent", the Commission was under a statutory mandate to use the Bureau's figures. The Republic contends, on the other ⊥140 hand, that, in light of the existence of two census reports dated 1980, the language in ambiguous, leaving the Commission with the discretion to select the most appropriate survey.

A review of the legislative history makes it clear that the 1980 decennial census conducted by the Bureau was in fact the survey meant to be used in the formulation of a reapportionment plan. In the discussion of the bill on the Senate floor, Floor Leader Toribiong

Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 134 (Tr. Div. 1984) expressed his concern that the language (as it currently reads) referred to "too many census reports" which would require that "the Commission . . . decide which one of those census reports should be followed in the reapportionment." He proposed that the language of Section 4(e)(1) be amended to read, "The 1980 official census," with the remaining language deleted. This would prevent the Commission from having the "chance to drift back and forth between the census reports from the government, from the Palau Community Action Agency and others." The Floor Leader then commented that in his understanding, "the last census taken was in 1980 by the United States Bureau of Census" and "[t]hat should be the most accurate census." The Senate, OEK, Seventh Reg. Sess. *Sixteenth Day Journal* (July 27, 1983) at 141. After some discussion, none of which contradicted the Floor Leader's statement regarding the meaning of "1980 census", the amendment was put to a vote and adopted.[5] Under RPPL 1-64 then, the Commission was required to use the Census Bureau data; the use of the PCAA figures subjects the 1984 Plan to serious question.

Under Art. IX, Sec. 4, it now becomes the duty of the Court to draft a reapportionment plan which adheres both to mandates of RPPL 1-64 and to the requirements of the Constitution. The Court first examines the doctrine of equal protection as it applies in the reapportionment context. From this the Court can develop a series of goals which, in addition to precise mathematical equality, properly can be considered in the development of a reapportionment plan for the Republic.

IV. EQUAL PROTECTION

Equal Protection in the context of representation in government means that all persons must be represented equally. ⊥141 *See* A. Lee and P. Herman, Ensuring the Right to Equal Representation: How to Prepare or Challenge Legislative Reapportionment Plans, 5 Univ. of Haw. L. Rev. 1, 2 (1983) (hereinafter cited as Equal Representation). Thus the slogan "one person-one vote" coined by the late Justice Douglas of the United States Supreme Court in *Gray v. Sanders*, 372 U.S. 368, 381, 83 S.Ct. 801, 809 (1963), is a bit misleading in that equal representation does not apply only to voters, but to all persons within the government's jurisdiction.

"Ideal" representation occurs, then, when each representative, in this case each Senator, represents the same number of people. Of course, this ideal is practically impossible to achieve. "Mathematical exactness or precision is hardly a workable constitutional requirement." *Reynolds v. Sims*, 377 U.S. 533, 577, 84 S.Ct. 1362, 1390 (1964). Constitutional inquiry focuses on the deviation or that degree to which the plan in question varies from "mathematical precision."[6]

---

[5] The oral amendment to the bill perhaps due to oversight, was never properly recorded and does not appear in the second draft. See Senate Bill No. 421, SD2. Nor is the amendment reflected in RPPL 1-64. Nevertheless, this does not change the fact that the Bureau's data was clearly intended to be used.

[6] See the Appendix for an explanation of the statistical terms used in the evaluation of reapportionment plans.

Eriich v. Reapportionment Comm'n, 1 ROP Intrm. 134 (Tr. Div. 1984)

The United States Supreme Court has a well developed body of case law regarding the concept of equal protection as it relates to apportionment plans.[7] The doctrine has evolved along two parallel branches. Article 1, Section 2 of the United States Constitution commands that the Representatives to the House are to be chosen "by the people of the several States." In the lead case on Congressional representation, *Wesberry v. Sanders*, 376 U.S. 1, 84 S.Ct. 526 (1964), the Court interpreted this language to mean that representational equality must be achieved "as nearly as is practicable." 84 S.Ct. at 530. Subsequently, the Court, rejecting the argument that there is a fixed percentage population deviation small enough to be considered "*de minimis*" held that the Wesberry standard "requires that the State make a good-faith effort to achieve precise mathematical equality." *Kirkpatrick v. Priesler*, 89 S.Ct. at 1229. Unless deviations "are shown to have resulted despite such effort, the State must justify each variance, no matter how small." *Id*. The Court did not find "legally acceptable" the State's attempted justification that the variances resulted from the State's attempt "to avoid fragmenting political subdivisions by drawing congressional ⊥142 district lines along . . . political subdivision boundaries." 89 S.Ct. at 1230.

In 1983, the Supreme Court reaffirmed its demanding standards regarding equal protection challenges to congressional seat reapportionment plans in *Karcher v. Daggett*, U.S. 103 S.Ct. 2653 (1983), wherein the Court rejected as unacceptable, a plan with a maximum deviation of .698%.

The Court did not find that the State had adequately justified the deviations. Thus, it is clear that reapportionment plans for congressional seats will be closely scrutinized requiring the State to show "with some specificity" that a state objective "required the specific deviations in the plan." 103 S.Ct. at 2663.

A different standard has developed regarding reapportionment plans for state legislative seats. In *Reynolds v. Sims*, 377 U.S. 533, 84 S.Ct. 1362 (1964), the Supreme Court, recognizing that distinctions exist between congressional and state representation, held that a State "may legitimately desire to maintain the integrity of various political subdivisions . . . and provide for compact districts of contiguous territory in designing a legislative reapportionment scheme." 84 S.Ct. at 1390. "[S]ome deviations . . . are constitutionally permissible", the Court held, so long as they are based on "legitimate considerations incident to the effectuation of a rational state policy," 84 S.Ct. at 1391, and are "free from any taint of arbitrariness or discrimination." *Roman v. Sincock*, 377 U.S. 695, 84 S.Ct. 1449 (1964).

Two distinctions are immediately apparent in the Court's review of state reapportionment schemes, differences which have followed through to the present. First, certain deviations are acceptable; "*[d]e minimis* variations are unavoidable." *Swann v. Adams*, 385 U.S. 440, 87 S.Ct. 569 (1967). "[M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a *prima facie* case of invidious discrimination under the Fourteenth Amendment." *Gaffney v. Cummings*, 412 U.S. 735, 93 S.Ct. 2321 (1973). In 1983, the Supreme Court stated that "as a general matter", an apportionment plan "with a maximum

[7] See fn. 3, *supra* wherein the Court states that decisional law of the United States Courts is used for guidance only.

deviation under 10% will not establish a *prima facie* case." *Brown v. Thomson*, U.S., 103 S.Ct. 2690, 2696 (1983).

Second, the Supreme Court accords special deference to State justifications based on the preservation of political boundaries. "The policy of maintaining the integrity of political subdivision lines in the process of reapportioning a ⊥143 state legislature . . . is a rational one." *Mahan v. Howell*, 410 U.S. 315, 93 S.Ct. 979 (1973). The desire to guarantee a traditional subdivision minimal representation is a "substantial and legitimate" concern. *Brown v. Thomson*, 103 S.Ct. at 2696. Unlike the close scrutiny to which attempted justification of deviation in congressional seat reapportionment plans are subject, a state can justify deviations in state seat reapportionment plans if "it can reasonably be said" that the state policy asserted in justification "is, indeed, furthered" and the resulting variations are "within tolerable limits." *Mahan v. Howell*, 93 S.Ct. at 986 (emphasis added).

Petitioners urge the adoption of the more rigorous standard; this invitation the Court declines to accept. While the federal analogy would appear, at first glance, to be appropriate here, there are other, more persuasive reasons for following a more lenient standard.

The history and nature of the Palauan nation demands that national governmental decisions respect the culture and traditions of the Palauan states. Unlike the political subdivisions of the States of the United States which are often traditionally regarded as "subordinate government instrumentalities" created to assist in efficient administration of the government, *Reynolds v. Sims*, 84 S.Ct. at 1388, the states of Palau represent formerly independent and separate villages each with their own culture and history. That these people have come, through time, to agree to form a Palauan nation does not erase their heritage. Traditional differences between the states will remain and are to be respected. The protection of the culture is guaranteed by the Constitution in several sections. The Preamble asserts that the people "renew [their] heritage." In the legal system, statutes and traditional law are equally authoritative. Article V, Section 2. Additionally, structure and organization of the state governments "shall follow . . . traditions of Palau." Article XI, Section 1. Also, the Palauan language is designated the national language. Article XIII, Section 1.

The *Wesberry/Karcher* line of cases does not offer a standard whereby traditional political subdivisions are adequately recognized and must be rejected. Yet, the *Reynolds/Brown* standard has become too rigid, relying more on numerical niceties than on a proper balancing approach to reapportionment concerns. Therefore, the Court draws from each line to develop a standard for the Republic, a standard which encourages maximal equality while allowing for the expression of legitimate concerns of Palauan custom and tradition. Accordingly, in the review of a reapportionment plan under the ⊥144 equal protection clause, the Court must initially examine the existing deviations to determine whether they can be reduced. This is normally the petitioner's burden;[8] however, here the Court must undertake the task because of the unique

[8] At trial, petitioners contended that they should not be placed under any burden of proof in this matter. Relying on Article IX, Section 4(d) which, "upon the petition of any voter", gives the Supreme Court "original jurisdiction to review the plan and to amend it to comply with" the Constitution, they argue that once a petition is filed, the Supreme Court has an affirmative duty

status of the case. If the deviations are indeed reducible, the Court must then review the other concerns which the government has argued should be considered in the drafting of the plan to determine whether these factors represents legitimate national interests. Third, the Court must strike a balance between deviations from mathematical equality and the advancement of the asserted state interests. The burden as to the legitimacy ⊥145 of these factors and as to the tolerability of the balance struck is normally on the Republic. In defense of its original plan, the Republic put forth several justification for the variances inherent in the plan. The Court will now turn to these considerations to determine whether they may again used in the drafting of a new plan.

The Commission defends its plan and the inherent deviation on several grounds. First, the Commission operated under the assumption that no State could be broken up into smaller divisions which could then be combined with divisions of other states to form a senatorial district. Second, the plans considered by the Commission would all take into consideration the historical boundaries such as the "east-west split." *See Report*, at § VII, p. 2. Aside from these general considerations, the Commission specifically rejected an 11 member plan under which deviations were reduced, because it necessitated a division of Koror into several districts which were not compact and contiguous. Also, the Commission felt that a reduction of the number of Senators from the current 18 to 11 would be "too drastic"; the members believed that as the Republic was still in its infant stages, it should bring about change slowly, gradually and in a methodical manner.

Under the test stated above, the Court must first examine the rationales to determine whether they can justify any deviation from mathematical precision. The Court finds that the considerations reflect legitimate national concerns and may be used to justify some deviations

---

to review and amend the plan to conform it to Constitutional requirements. This argument proves too much. The Supreme Court would invariably be placed with the burden of searching the plan for infirmities and left with the task of arriving at a balance between absolute equality and the preservation of legitimate interests. This is a task for which this Court is not best equipped and which is better performed elsewhere. Moreover, the affirmative duty argument put forth does not seem to have been the intent of the framers.

The purpose of the cited language was to ensure that any challenge to a plan was heard first by the Supreme Court and not by an inferior tribunal; this was done in an effort "to save citizens and the courts tedious hours of litigation and appeals." Constitutional Convention, Comm. on the Leg., Stand. Comm. Rpt. No. 22 at 9 (March 22, 1979). In addition, the phrase "shall have original jurisdiction" was taken to be "non-mandatory as to the Supreme Court's review but to refer to the Court where the petition for review is first brought only." Constitutional Convention, Comm. on Style and Arr., Stand. Comm. Rpt. No. 60, at 2. The Supreme Court was to have "sole jurisdiction to address the petition, review the plan, and if necessary, amend the plan." Stand. Comm. Rpt. No. 22, *supra*, at 9. Thus it appears that the language was intended to vest jurisdiction, otherwise adequately asserted, in this Court. It was not intended to have this Court act as a super-commission to substitute its judgment for that of the Commission. Accordingly, the Court does not believe that normal rules regarding the burden of proof do not apply here.

from absolute equality. The desire to protect the integrity of the states is reasonable. The notes of the Constitutional Convention indicate that the OEK was set up in such a way so that the interests of all the states not adequately accommodated in the House would be accommodated in the Senate. *See* Constitutional Convention, *Forty-Seventh Day Summary Journal* at 5-6. Also, Delegate Toribiong defined redistricting to mean "that any particular municipality such as Koror could within itself subdivide into smaller senatorial districts according to the number of its senators. *See Fiftieth Day Summary Journal*, at 3 (emphasis added). These concerns of the Commission are legitimate and well-supported.

Similarly, the recognition of traditional boundaries such as the "east-west split" reflected in the rejection of districts which include states from both coasts of Babeldaob is reasonable. This division is well recognized in the Palauan culture. *See, e.g.*, Constitutional Convention Proposal No. 70, 80, 157 the proposals under which Senators would be elected by district, all of which recognized the east-west division).

⊥146 The desire to maintain compact and contiguous districts is logical and has also been recognized by the United States Supreme Court. *See, e.g.*, *Reynolds v. Simms*, 84 S.Ct. at 1390.

Lastly, in considering various plans the Commission expressed a reluctance to reduce the Senate by a number which was considered "too drastic." The Constitution leaves the number of Senate seats to the sole discretion of the Commission. The Commission's statements that it thought it wise to proceed methodically and with care convinces the Court that the action was not arbitrary. Under the test developed above, the justifications must be balanced with the resulting deviations. Thus, while a particular consideration may justify a small deviation, it may not outweigh larger variances; however, when considered along all other factors, larger deviations may be acceptable. In this light, the Court concludes that the decision not to reduce the Senate to 11 members, in conjunction with other factors taken into consideration, sufficiently justifies the additional deviation which results from the adoption of the 14 member plan.

V. PLAN REVISION

In undertaking to draft a reapportionment plan based on the U.S. census figures, the Court has considered the following criteria, each of which may play a part in the balance with mathematical precision:

1. Integrity of the States;

2. respect for traditional divisions such as the "east-west split";

3. desire to maintain compact and contiguous districts;

4. adherence to the OEK's and the Commission's stated desire to reduce the senate operating costs by reducing the number of Senators;

5. reluctance to bring about drastic change;

In addition the Court has taken into consideration an additional concern:

6. avoidance of large multi-member districts.

⊥147 Although they satisfy the "one person-one vote" principle, multi-member districts have the inherent tendency to dilute the votes of political minorities. In such districts, "the majority interests are amply represented -- the majority elects all of the at-large legislators -- and minority interests are left with little or no actual representation." *Equal Representation, supra*, at 42. *See also, Sablan v. Northern Mariana Islands Board of Elections*, Civ. Action 83-9014 (D.N.M.I. (App. Div.) (Sept. 30, 1983) (review of federal court statements regarding at-large elections). Due to the actual population figures of the states and to the paramount concern for minimal deviations, multi-member districts were a necessary part of any plan, however larger districts of this type were purposely avoided.

These consideration at hand, the Court undertook the tedious task of drafting a reapportionment plan based on the Bureau's census data. Due to the consideration of not effecting drastic change, only plans with as low as 12 and as high as 18 seats were considered. After working through the computation and testing every conceivable combination of states and hamlets, the plan with the lowest maximum deviation which did not run afoul of the other criteria is the same plan as that developed by the Commission. This should probably come as little surprise as the Bureau's figures differed only to a slight and, (later discovered) insignificant degree. Although the maximum deviation using the Bureau's figures rose slightly to 23.8% from 19.8%, it still remained the lowest of the plans which remained faithful to the other considerations. The Court concludes that this resulting deviation remains within acceptable limits when balanced against the nation's other important interests.

One remaining detail is addressed. At the trial on this matter, the counsel for the Republic, during his summation, suggested that should a new plan be drafted, the Court consider renumbering the election districts to eliminate confusion and to remain consistent with RPPL 1-67. Upon review of § 10 of RPPL 1-67, it becomes evident that under the Commission's numbering system, it is conceivable that a Senator from Koror could represent a district in which he or she does not reside; a situation clearly unintended. Accordingly, the Court's plan is renumbered to read as follows:

The Senate, until the next reapportionment or redistricting plan is made, shall be composed of fourteen (14) senators to be popularly elected as follows:

⊥148

1. The First Senatorial District shall be composed of Kayangel, Ngarchelong, Ngaraard, Ngiwal, Melekeok, Ngchesar, and Airai, and shall have three (3) Senators;

2. the Second Senatorial District shall be composed of Ngermid, Ngerkesoaol, Ngerchemai, and Iyebukel and shall have three (3) Senators;

3. the Third Senatorial District shall be composed of Idid, Meketii, Ikelau, and Ngerbeched, and shall have three (3) Senators;

4. the Fourth Senatorial District shall be composed of Dngeronger, Medalaii, and Meyuns, and shall have three (3) Senators;

5. the Fifth Senatorial District shall be composed of Ngardmau, Ngeremlengui, Ngatpang, Aimeliik, Peleliu, Angaur, Sonsorol and Tobi and shall have two (2) Senators.

In closing, the Court commends the members of the Commission for a job well done. It is apparent that they approached their task meticulously and undertook considerable effort to devise a reapportionment plan which was both acceptable and workable. The result is a plan which adheres to the valued principles of equal protection while remaining faithful to the time-honored customs and traditions of the Palauan nation.

⊥149 APPENDIX

The Court adds here a brief explanation of the mathematical calculations involved in arriving at deviation figures. Senatorial District 2 and 5 of the Revised Reapportionment Plan are used for illustration.

a) Ideal population per senator----------

$$\frac{\text{total population}}{\text{number of senators}} = \frac{12{,}172}{14} = 869$$

b) Deviation from Ideal----------

$$\frac{\text{actual population per senators-ideal population x 100=\% deviation}}{\text{ideal population}}$$

i) 2nd District-

-actual population per senators = $\frac{2312}{3} = 771$

-deviation = $\frac{771-869}{869} = 0.113 \times 100 = 11.3\%$

ii) 5th District-

-actual population per senator = $\frac{1956}{2} = 978$

-deviation = $\frac{978-869}{869} = +.125 \times 100 = 112.5\%$

c) Maximum deviation = greatest deviation above ideal - greatest deviation below ideal = 12.5% - (-11.3) = 23.8%