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The Honorable William A. Craven, Member of the California Senate, has requested an opinion on the following questions:

1. With regard to the provisions of California Constitution, article XXI, pertaining to reapportionment of congressional and legislative districts,

A. what are the criteria which must be considered in establishing boundary lines?

B. what is the meaning of 'reasonably equal" in connection with the population of all districts of a particular type?

C. what is the meaning of "contiguous" with respect to the boundaries of every district?

D. what is the meaning of "geographical integrity" with regard to any city or county, and any geographical region?

E. to what extent may compliance with one criterion justify infringement of another criterion; specifically, would an effort to comply with competing criteria warrant impairment of contiguity or geographical integrity?

2. May a county containing a population less than that required for one senatorial district be divided into two such districts in combination with other counties?

3. Would a greater number of infringements of the geographical integrity of a county containing a population in excess of that required for three senatorial districts be permitted than if the county contained a lesser population?

4. May a senatorial district be wholly separated by a body of water where neither portion is an island or where one portion is an island?

5. The northern coast geographical region comprised of whole counties, excluding Marin County, would fall far short of required population for one senatorial district, Marin County contains less than half the population required for one district. The inclusion of Marin County within the northern coast geographical region would exceed the required population by 100,000. The combination of a portion of Marin County containing a population of 100,000 with San Francisco would exceed the required population by 170,000. The combination of a portion of San Francisco containing a population of 170,000 with San Mateo County, containing a population close to but less than that required, would exceed the required population by nearly 170,000. The combination of a portion of San Mateo County containing a population of nearly 170,000 with Santa. Clara County would provide the population required for one district. Based on the assumptions provided, may senatorial districts be established as indicated?

6. The combination of Santa Barbara and Ventura Counties constitute a geographical region but would exceed the required population for one senatorial district by 230,000. May a portion of Ventura County containing a population of 230,000 be divided into two segments, each in combination with a portion of Los Angeles County, to comprise two districts? The population of Orange County exceeds that required for three senatorial districts by 116,600. May a portion of Orange County containing a population of 116,600 be divided into two segments, each in combination with a portion of Los Angeles County, to comprise two districts?

7. The combination of San Bernardino and Riverside Counties would exceed the required population for one senatorial district. The population of San Diego County exceeds that required for three senatorial districts. The combination of San Bernardino, Riverside, San Diego, Imperial, and Inyo Counties would provide the population required for six districts which could be situated as follows: three within San Diego County, one within Riverside County, one within San Bernardino County, and one of combined portions of San Diego, Riverside, and San Bernardino, and all of Inyo and Imperial Counties, which would constitute a geographical region. May senatorial districts be established as indicated?

CONCLUSIONS

1. With regard to the provisions of California Constitution, article XXI, pertaining to reapportionment of congressional and legislative districts,

A. the Legislature in establishing boundary lines must consider numerical equality of population, contiguity of districts, geographical integrity of cities, counties, and geographical regions, and ethnic and political communities of interest to the extent required to preclude invidious discriminatory design; the Legislature must also consider the effect of any plan upon the electoral franchise of racial and language minority groups in those four counties which are subject to the constraints of section 5 of the Voting Rights Act of 1965, as amended.

B. the term 'reasonably equal" in the context of state legislative districting refers to substantial equality of population of districts of a particular type, in light of legitimate considerations incident to the effectuation of a rational state policy; consideration of such other relevant factors and interests important to an acceptable representation and apportionment arrangement should not result in the deviation from ideal numerical equality, except in unusual circumstances, by more than one percent, and in no event by more than two percent. The term "reasonably equal" in the context of congressional districting refers to absolute numerical equality, except as to those variances which are unavoidable despite a good faith effort to achieve that standard, or for which justification is shown.

C. the term "contiguous," with respect to the boundaries of every district, means that the district should constitute an integral unit not segregated or divided by intervening territory.

D. the term 'geographical integrity" refers to the organic unity of cities, counties, and geographical regions.

E. the impairment of contiguity would be warranted only to the extent required to comply with population parity; the impairment of geographical integrity would be warranted only to the extent required to comply with population parity or other constitutional criterion.

2. A county containing a population less than that required for one senatorial district may be divided into two such districts in combination with other counties.

3. A greater number of infringements of the geographical integrity of a county containing a population in excess of that required for three senatorial districts would not be permitted than if the county contained a lesser population.

4. A senatorial district may be wholly separated by a body of water where neither portion is an island or where one portion is an island.

5. Assuming compliance with population parity, and in the absence of an unacceptable impact upon the fair and reasonable apportionment of the whole state, senatorial districts may be established as indicated.

6. In the absence of any basis for justification, neither a portion of Ventura County containing a population of 230,000 nor a portion of Orange County containing a population of 116,600 may be divided into two segments, each in combination with a portion of Los Angeles County, to comprise two districts.

7. Assuming compliance with population parity, and in the absence of an unacceptable impact upon the fair and reasonable apportionment of the whole state, senatorial districts may be established as indicated.

ANALYSIS

Prior to the June 3, 1980 primary election, article TV, section 6, of the California Constitution established the membership and criteria for redistricting of the Legislature, as follows:

> "For the purpose of choosing members of the Legislature, the State shall be divided into 40 Senatorial and 80 Assembly districts to be called Senatorial and Assembly districts. Such districts shall be composed of contiguous territory, and Assembly districts shall be as nearly equal in population as may be. Each Senatorial district shall choose one Senator and each Assembly district shall choose one

member of Assembly. The Senatorial districts shall be numbered from 1 to 40, inclusive, in numerical order, and the Assembly districts shall be numbered from 1 to 80 in the same order, commencing at the northern boundary of the State and ending at the southern boundary thereof. In the formation of Assembly districts no county, or city and county, shall be divided, unless it contains sufficient population within itself to form two or more districts, and in the formation of Senatorial districts no county, or city and county, shall be divided, nor shall a part of any county, or of any city and county, be united with any other county, or city and county, in forming any Assembly or Senatorial district. The census taken under the direction of the Congress of the United States in the year 1920, and every 10 years thereafter, shall be the basis of fixing and adjusting the legislative districts; and the Legislature shall, at its first regular session following the adoption of this section and thereafter at the first regular session following each decennial Federal census, adjust such districts, and reapportion the representation so as to preserve the Assembly districts as nearly equal in population as may be; but in the formation of Senatorial districts no county or city and county shall contain more than one Senatorial district, and the counties of small population shall be grouped in districts of not to exceed three counties in any one Senatorial district; provided, however, that should the Legislature at the first regular session following the adoption of this section or at the first regular session following any decennial Federal census fail to reapportion the Assembly and Senatorial districts, a Reapportionment Commission, which is hereby created, consisting of the Lieutenant Governor, who shall be chairman, and the Attorney General, State Controller, Secretary of State and State Superintendent of Public Instruction, shall forthwith apportion such districts in accordance with the provisions of this section and such apportionment of said districts shall be immediately effective the same as if the act of said Reapportionment Commission were an act of the Legislature, subject, however, to the same provisions of referendum as apply to the acts of the Legislature.

"Each subsequent reapportionment shall carry out these provisions and shall be based upon the last preceding Federal census. But in making such adjustments no persons who are not eligible to become citizens of the United States, under the naturalization laws, shall be counted as forming a part of the population of any district. Until such districting as herein provided for shall be made, Senators

and Assemblymen shall be elected by the districts according to the apportionment now provided for by law."

Article IV, section 27, of the California Constitution established criteria for redistricting for purposes of congressional representation:

> "When a congressional district shall be composed of two or more counties, it shall not be separated by any county belonging to another district. No county, or city and county, shall be divided in forming a congressional district so as to attach one portion of a county, or city and county, to another county, or city and county, except in cases where one county, or city and county, has more population than the ratio required for one or more representatives in Congress; but the Legislature may divide any county, or city and county, into as many congressional districts as it may be entitled to by law. Any county, or city and county, containing a population greater than the number required for one congressional district shall be formed into one or more congressional districts, according to the population thereof, and any residue, after forming such district or districts, shall be attached by compact adjoining assembly districts, to a contiguous county or counties, and form a congressional district. In dividing a county, or city and county, into congressional districts no assembly district shall be divided so as to form a part of more than one congressional district, and every such congressional district shall be composed of compact contiguous assembly districts."

Article XIII, section 17, provided for redistricting for purposes of representation on the State Board of Equalization.

At the June 3, 1980 primary election, the people approved Proposition 6, Assembly Constitutional Amendment 53, Statutes 1978, resolution chapter 78, amending article XIII, section 17, repealing article IV, sections 6 and 27, *supra*; and adding the provisions set forth below. Specifically, article IV, section 6, was added as follows:

> "For the purpose of choosing members of the Legislature, the State shall be divided into 40 Senatorial and 80 Assembly districts to be called Senatorial and Assembly Districts. Each Senatorial district shall choose one Senator and each Assembly district shall choose one member of the Assembly."

Article XXI was added to provide in its entirety:

> "In the year following the year in which the national census is taken under the direction of Congress at the beginning of each decade, the Legislature shall adjust the boundary lines of the Senatorial, Assembly, Congressional, and Board of Equalization districts in conformance with the following: standards:
>
> "(a) Each member of the Senate, Assembly, Congress, and the Board of Equalization shall be elected from a single-member district.
>
> "(b) The population of all districts of a particular type shall be reasonably equal.
>
> "(c) Every district shall be contiguous.
>
> "(d) Districts of each type shall be numbered consecutively commencing at the northern boundary of the state and ending at the southern boundary.
>
> "(e) The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of this section.

In connection with the presentation of Proposition 6 on the June 1980 ballot, the official title and summary prepared by the Attorney General was set forth in pertinent part as follows:

> "REAPPORTIONMENT. LEGISLATIVE CONSTITUTION AL AMENDMENT. Repeals, amends, and restates various provisions of the Constitution relating to reapportionment of Senate, Assembly, congressional, and Board of Equalization districts Eliminates provisions previously judicially invalidated. Eliminates requirement that only persons eligible to become citizens be counted in equalizing populations in legislative districts. Sets forth in a new article the standards to which the Legislature is required to conform in adjusting the boundaries of these districts each decade. These standards include requirements for single-member districts, reasonably equal population districts, contiguousness of a district, a consecutive numbering system, and respecting the geographical integrity of cities and counties."

The analysis by the Legislative Analyst was set forth in pertinent part:

"Background:

"State Senate, assembly, congressional and Board of Equalization districts are reapportioned every ten years, after each census. The California Constitution contains provisions regulating the process by which this reapportionment is made. Some of these provisions have been declared invalid by the California Supreme Court as violating the one-person, one-vote rule. Specifically, the court ruled against provisions which:

"1. Prohibit the division or unification of counties when forming Assembly and Senate districts if such legislative action violates the one-person, one-vote rule.

"2. Prohibit a county from containing more than one Senate district and prohibit Senate districts from containing more than three counties.

"3. Require near equal population in Assembly districts but not in Senate districts.

"4. Direct a special commission to reapportion legislative districts in the event the Legislature fails to do so in a timely manner.

"Proposal:

"This measure repeals the provisions in the Constitution governing congressional and legislative reapportionment, including those provisions found invalid by the State Supreme Court. It also eliminates an existing constitutional provision which prohibits, for legislative reapportionment purposes, the counting of persons who are not eligible for United States citizenship. The proposition establishes the following standards for redistricting State Senate, Assembly, congressional and Board of Equalization districts:

"1. Each district shall have only one representative.

"2. The population of all districts of a particular type shall be reasonably equal.

"3. All districts shall be adjoining.

"4. Districts shall be numbered consecutively beginning in the northern part of the state.

"5. Where possible, the geographical region of a city or county shall not be divided among different districts."

Finally, the ballot arguments in favor of Proposition 6 were presented as follows:

"The reapportionment language in California's Constitution has never been changed to conform to the 1965 ruling of the U.S. Supreme Court ordering equal representation for equal numbers of people. The California Supreme Court has also declared many of our Constitution's provisions on reapportionment invalid. When California went through reapportionment following the 1970 census the process was clouded by these outdated provisions.

"Now, to prepare for an orderly redistricting after the 1980 census, it is essential to update our Constitution.

"Proposition 6 is a fair, carefully considered proposal.

"It removes all invalidated reapportionment provisions from the Constitution.

"It inserts simple, clear instructions to the Legislature on how to redraw Assembly, Senate, congressional, and Board of Equalization districts.

"It requires all districts to be reasonably equal in population.

"It requires preservation of the integrity of cities, counties, and geographic regions.

"It removes the reference to 'persons who are not eligible for citizenship'—a reference which is an unfortunate holdover from a time in history when California blatantly discriminated against the Chinese in this state.

"This measure passes both houses of the Legislature in 1978 with strong support from both parties.

"Vote YES to give California a Constitution with a workable reapportionment article.

. . . . . .

"Proposition 6 would establish reasonable rules for redrawing boundaries for legislative and congressional districts after each census.

"From past experience, we know what could happen with next year's reapportionment. Without the restrictions in Proposition 6, California could end up with districts that are confusing, unfair and unrepresentative. Proposition 6 will block forces in the Legislature from gaining unfair dominance by one political party or insuring reelection for particular incumbents.

"Proposition 6 would reduce abuses by requiring the Legislature to follow these rules:

"*Respect city and county boundaries*. This rule would prevent the irrational division of cities for purely partisan purposes. It would help protect minority communities from being carved up just to dilute their votes. And it would help maintain local control by giving cities and counties effective representation in the Legislature.

"Single-member districts. Many states elect several legislators at once from large consolidated districts. Because multimember districts are so large, they reduce the influence of individual voters and increase the costs of elections. Proposition 6 would prohibit multimember districts in California.

"Equal population. California's Constitution should clearly state that wide variations in population can never again distort out representative process.

"Contiguous districts. Proposition 6 would require that districts be composed of adjacent territory and not widely separated areas. It would also help deter odd-shaped districts which join distant communities only by corridors along beaches, highways and

waterways.

> "Do not be misled by smokescreen arguments on the issue of counting aliens for reapportionment. Proposition 6 will have absolutely no effect on whether aliens, illegal or otherwise, are counted for this purpose.
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> "Proposition 6 offers Californians an unprecedented opportunity to eradicate the kinds of political reapportionment 'deals' that divide communities and discourage healthy competition in our elections.
>
> "Please vote YES on Proposition 6."

The following segment appeared in the rebuttal to the arguments against Proposition 6:

> "Proposition 6 clearly states that the requirement for equal population (subsection (b)) cannot be watered down by the requirement that city and county boundaries be respected (subsection (e)). City and county boundaries can be ignored *only if necessary* to comply with the equal population requirement. That is how Proposition 6 will prevent cities and minority communities from being arbitrarily divided to gain partisan advantage or to draw 'safe' districts for incumbents."

The first inquiry requires identification of those criteria which must be considered in establishing boundary lines in connection with reapportionment of congressional and legislative districts. In *Legislature v. Reinecke* (1972) 6 Cal. 3d 595, (1972) 7 Cal. 3d 92, (1973) 9 Cal. 3d 166, (1973) 10 Cal. 3d 396, the California Supreme Court, as a result of the Legislature's failure to adopt a reapportionment plan, appointed a team of Special Masters to draft a plan which was substantially adopted by the court. The Masters listed seven criteria, and the reasons for each, which governed their deliberations (Report and Recommendations of Special Masters on Reapportionment, 10 Cal. 3d 408, 4 10–4 14):

> "Having considered the oral and written presentations, pertinent provisions of the Constitution of the United States and the Constitution and Statutes of California, the case law expressed in judicial decisions, and authoritative sources in the field of political science, the following are recommended as the criteria to be used in

formulating plans for reapportionment of legislative districts in California:

"1. As required by the federal Constitution, the districts in each plan should be numerically equal in population as nearly as practicable, with strict equality in the case of congressional districts (*White v. Weiser* (1973) 412 U.S. 783, 790 [37 L. Ed. 2d 335, 343, 93 S. Ct. 2348, 2352]), and reasonable equality in the case of state legislative districts (*White v. Regester* (1973) 412 U.S. 755, 763 [37 L. Ed. 2d 314, 323, 93 S. Ct. 2332, 2338]; *Gaffney v. Cummings* (1973) 412 U.S. 735, 740–751 [37 L. Ed. 2d 298, 304–311, 93 S. Ct. 2321, 2325–2330]; *Mahan v. Howell* (1973) 410 U.S. 315 [135 L. Ed. 2d 320, 93 S. Ct. 979]). The population of senate and assembly districts should be within 1 percent of the ideal except in unusual circumstances, and in no event should a deviation greater than 2 percent be permitted."

"Although a greater percentage variation has been permitted in the' reapportionment plans of other states (see *Regester*, *Gaffney* and *Mahan*, *supra*) the populations of districts in such states were relatively small. Legislative districts in California are large, so that even a 1 percent or 2 percent variance in population affects a large number of persons.[1][5] The variance in the number of persons more directly relates to the practical attainment of numerical equality than does a percentage figure, and districts can be formulated in California pursuant to other criteria recommended without deviating from the ideal by more than 1 percent, except in unusual circumstances.

"2. The territory included within a district should be contiguous and compact, taking into account the availability and facility of transportation and communication between the people in a proposed district, between the people and candidates in the district,

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[1][5] The ideal site of legislative districts in *Regester*, *Gaffley* and *Mahan* ranged from 46,485 to 74,645. The ideal California assembly district has a population of 249,661 and a senate district, twice as much. In this connection it is worth noting that one reason advanced by the U.S. Supreme Court in *White v. Weiser, supra,* 412 U.S. 783, 790 [37 L. Ed. 2d 335, 343, 93 S. Ct. 2348, 2352], for requiring stricter population equality standards for congressional districts was because an ideal congressional district generally had a much larger population than a typical legislative district. California state legislative districts are, perhaps, the only exception to this generalization."

and between the people and their elected representatives.

"3. Counties and cities within a proposed district should be maintained intact, insofar as practicable. (See Cal. Const., art. IV, § 6; *Silver v. Brown* (1965) 63 Cal. 2d 270, 279 [46 Cal. Rptr. 308, 405 P. 2d 132].)

"4. The integrity of California's basic geographical regions (coastal, mountain, desert, central valley and intermediate valley regions), should be preserved insofar as practicable.

"5. The social and economic interest common to the population of an area which are probable subjects of legislative action, generally termed a community of interests' (*Cf*. Gov. Code, $ 25001) should be considered in determining whether the area should be included within or excluded from a proposed district in order that all of the citizens of the district might be represented reasonably, fairly and effectively.[2][6] Examples of such interests, among others, are those common to an urban area, a rural area, an industrial area or an agricultural area, and those common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process.

"Most of the people making oral or written presentations urged consideration of the foregoing criteria in formulating proposed reapportionment plans. Many presentations were made urging adherence to the criteria of maintaining the integrity of counties and cities, and deploring needless division thereof in the formation of districts. It is clear that in many situations county and city boundaries define political, economic and social boundaries of population groups. Furthermore, organizations with legitimate political concerns are constituted along local political subdivision lines. Therefore, unnecessary division of counties and cities in reapportionment districting should be avoided.

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[2][6] In Reynolds v. Sims (1964) 377 U.S. 533, 565–568 [12 L Ed. 2d 506, 529-53l, 84 S. Ct. 1362, 1384], the Court said: "[T]he achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment."

"6. State senatorial districts should be formed by combining adjacent assembly districts, and, to the degree practicable, assembly district boundaries.

"Cogent reasons exist for the formation of senate districts from assembly districts. If assembly districts are formed logically and in compliance with the criteria recommended herein, then senate districts created by combining such districts are also likely to comply. This is particularly so if such an eventual pairing is kept in mind when forming the various legislative districts. The resulting legislative districts will be more comprehensible to the electorate and the task of administering elections would be considerably simplified, thus saving money and insuring greater accuracy.

"Similarly, use of assembly district boundaries to the degree feasible in formation of congressional districts will promote all of these advantages, obviously, it is impossible to make all congressional district lines congruent with assembly district lines, since there are 43 congressional districts and 80 assembly districts, but in larger counties it is possible to use common boundaries in a substantial number of instances.

"7. The basis for reapportionment should be the 1970 census. (Cal. Const., art. IV, § 6; *Silver v. Brown, supra*, 63 Cal. 2d 270, 279.) In counties for which the United States Census Bureau has established census tracts, such tracts should be used as the basic unit for district formation, with division of such tracts being made only when necessary for population equality or to improve substantially compliance with other recommended criteria.

"Census tracts are the basic unit used by the census Bureau for measuring the characteristics of the population. Tracts average approximately 4,000 persons in size, and an effort has been made by the Census Bureau to make them homogeneous as to social characteristics and to use prominent natural or manmade geographical features as boundaries.[3][7] Thus, following, rather than disregarding,

[3][7] See the explanation of the United States Bureau of Census on the development of census tracts in Appendix A of each PHC(1) publication on Standard Metropolitan Statistical Areas (e.g., PHC(1)-190 relating to San Jose, California)."

census tracts will aid in establishing natural, well defined legislative districts and will aid in obtaining valid pertinent socio-economic data about such districts.[4][8]

"The use of whole census tracts makes it difficult to comply literally with another recommended criterion, that of maintaining the integrity of city boundaries. Some cities have exceedingly irregular boundaries with an odd assortment of 'fingers' and 'peninsulas' jutting out from the basic part of the city. In many such cases, the boundaries as of the date of the census do not reflect the present boundaries or what they are likely to be during the balance of the decade. Often census tract boundaries do not correspond exactly with the boundaries of such cities.[5][9] In such instances, census tract boundaries which preserve the bulk of the city in one district have been followed even though it resulted in trimming off small peninsulas or other such extensions of territory. This has been done only where the population affected was relatively small.

"As to all of the recommended criteria, their applicability, priority and scope, other than population equality, depend on circumstances indigenous to the area under consideration. To the extent required by the federal Constitution, population equality controls."

The Supreme Court noted broad agreement that the first five criteria were appropriate, and also concurred with the Masters that the sixth and seventh criteria were appropriate. (10 Cal. 3d at p. 402.)

We now proceed to examine those criteria which, under current law, are *required* to be considered by the Legislature. While other criteria not in conflict with the Constitution and laws of this state and of the United States may be "appropriate"

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[4][8] Moreover, the population data available on the computer used by the Masters was on a census tract basis It is possible to divide the population within census tracts by reference to various Census Bureau publications, maps and computer printouts. The nature of such maps and publications is such, however, that it is often a very time consuming process to divide a tract requiring numerous hand calculations with attendant numerous possibilities for error. To calculate, describe and check the relatively few census tract divisions contained in the plans recommended herein required dozens of hours of staff time."

[5][9] In many instances, a single census tract has small portions of two cities within it."

for consideration, the following discussion pertains, in accordance with the scope of the inquiry, to those criteria which *must* be considered. Of primary significance are the standards or constraints prescribed by the Constitution of the United States, and by the California Constitution to the extent of consistency.

The right to equal participation in congressional elections is guaranteed under article I, section 2, of the United States Constitution. (*White v. Weiser* (1973) 412 U.S. 783, 790; *Kirkpatrick v. Preisler* (1969) 394 U.S. 526.) The right of the electorate to the equal protection of the laws in legislative elections is assured under the Fourteenth Amendment to the Constitution of the United States. (*Silver v. Brown* (1965) 63 Cal. 2d 270, 279–282; *Gaffney v. Cummings* (1973) 412 U.S. 735; *Mahan v. Howell* (1973) 410 U.S. 315.) Article XXI, section 1, subdivision (b), of the California Constitution provides with regard to congressional and legislative elections that the population of all districts of a particular type shall be "reasonably equal." Thus, numerical equality of population is a criterion which must be considered by the Legislature in establishing boundary lines in connection with reapportionment of congressional and legislative districts. A more precise definition of this criterion is discussed below.

Article XXI, section 1, subdivision (c), of the California Constitution provides with regard to congressional and legislative districts that every district shall be "contiguous." This requirement does not present any perceived conflict with any federal constitutional standard. Hence, contiguity is a criterion which must be considered. It is noted, however, that the second criterion of the Special Masters employs the term "contiguous and compact." Although former article IV, section 6, of the California Constitution pertaining to legislative districts did not contain the word "compact," former article IV, section 27, regarding congressional districts provided in part that" . . . every such congressional district shall be composed of compact contiguous assembly districts." The word "compact" does not appear, in conjunction with the word "contiguous" or otherwise, in article XXI of the California Constitution. While the analysis by the Legislative Analyst describes Proposition 6 as providing that all districts shall be "adjoining," the ballot argument in favor of the constitutional amendment suggests that it would " . . . require that districts be composed of adjacent territory and not widely separated areas. It would also help deter odd-shaped districts which join distant communities only by corridors along beaches, highways and waterways." However, we do not perceive such language as a clear indication of intent to include compactness as a mandatory independent consideration. Nor has compactness or attractiveness ever been held to constitute an independent federal constitutional standard. (*Gaffney v. Cummings*, *supra*, 412 U.S. at p. 752, n. 18; *Cf. Reynolds v. Sims* (1964) 377 U.S. 533, 578–579.)

The concerns of the third and fourth criteria of the Special Masters have been combined in article XXI, section 1, subdivision (e), of the California Constitution, providing that the geographical integrity of any city, county, or geographical region shall be respected to the extent possible without violating the requirements of any other subdivision of section 1. To the extent, therefore, that the integrity of cities, counties, and regions does not conflict with any federal constitutional standard or other requirement of section 1, subdivisions (a) through (d), of the California Constitution, it must be considered.

The fifth, sixth, and seventh criteria of the Special Masters find no counterpart in article XXI of the California Constitution. In our view, neither the sixth criterion providing for senatorial districts comprised of combined adjacent assembly districts and for. co-terminous assembly and congressional districts, nor the seventh prescribing the utilization of national census tracts as the basic units for district formation, are mandated by the state or federal constitution.

The fifth criterion warrants further examination. The Special Masters found that in addition to those political, economic, and social interests which may N defined in many instances by city and county boundaries, consideration should be given to such interests common to the population of an area such as an urban, rural, industrial, or agricultural area, and to those interests common to areas in which the people share similar living standards, use the same transportation facilities, have similar work opportunities, or have access to the same media of communication relevant to the election process, which are probable subjects of legislative action in order that all of the citizens of a district might be represented reasonably, fairly and effectively. In their report (10 Cal. 3d at p. 412, n. 6) the statement of the Supreme Court in *Reynolds v. Sims*, *supra*, 377 U.S. 533, 565–568 was cited: "[T]he, achieving of fair and effective representation for all citizens is concededly the basic aim of legislative apportionment." However, while consideration of these concerns may be appropriate," as determined by the California Supreme Court in *Legislature v. Reinecke*, *supra*, 10 Cal. 3d at p. 402, the identification and consideration of each such community of interest which is a probable subject of legislative action' is not compelled by the state or federal constitution. (*Cf. Whitcomb v. Chavis* (1971) 403 U.S. 124, 156.)

Nevertheless, certain common interests including ethnic (race, color, religion, creed, national origin, ancestry) and political (partisan) interests have been the subject of judicial cognizance. It is manifest both with respect to ethnic minorities (*White v. Regester* (1973) 412 U.S. 755, 765, 769; *Whitcomb v. Chavis* (1971) 403 U.S. 124, 149; and *cf Wright v. Rockefeller* (1964) 376 U.S. 52; *Gomillion v. Lightfoot* (1960) 364 U.S. 339) and political minorities (see *Gaffney v.*

Cummings (1973) 412 U.S. 735, 754; and *cf. Mobile v. Bolden* (1980) 446 U.S. 55, 86, Stevens, J., concurring) that a districting plan may not be devised to invidiously discriminate against such groups by means of minimizing or cancelling out the voting strength of such ethnic or political elements. (*Gaffney v. Cummings*, *supra*, at pp. 751, 754; *Whitcomb v. Chavis*, *supra*, at p. 143; *Burns v. Richardson* (1966) 384 U.S. 73, 88–89.) However, while districts may be established to fairly reflect racial (*United Jewish Organizations, Inc. v. Carey* (1977) 430 U.S. 144, 160–161) and political minority (*Gaffney v. Cummings*, *supra*, at pp. 751–754) voting strength, nothing in the cases suggests the existence of any right of proportional representation of any such group in the legislative chambers. (*White v. Regester*, *supra*, at p. 766; *Whitcomb v. Chavis*, *supra*, at pp. 149, 156; *Mobile v. Bolden*, *supra*, at pp. 75–79; and *cf. WMCA v. Lomeuzo* (S.D.N.Y., 1965) 238 F. Supp. 916, 925–926, affd. 382 U.S. 4.)

While, under constitutional standards, violation of the Fourteenth or Fifteenth Amendments,[6][1] or of section 2 of the Voting Rights Act of 1965[7][2] (Act, *post*), must be predicated upon a showing of discriminatory purpose (*Mobile v. Bolden*, *supra*, 446 U.S. at pp. 60–63: " . . . in the absence of such an invidious purpose, a State is constitutionally free to redraw political boundaries in any manner it chooses"), violation of section 5,[8][3] of the Act, as amended, may be established,

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[6][1] Section 1 of the Fifteenth Amendment provides:

"The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude."

[7][2] Section 2 of the Act, 42 United States Code section 1973, provides:

"No voting qualification or prerequisite to voting, or standard. practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote on account of race or color."

[8][3] Section 5 of the Act, 42 United States Code section 1973c, provides:

Whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the first sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1964, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the second sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1,

with respect to a covered state or political subdivision, if the changed law or practice has the purpose or *effect* of denying or abridging the right to vote on account of race or color or membership oi a language minority group.[9][4](*City of Rome v. United*

1968, or whenever a State or political subdivision with respect to which the prohibitions set forth in section 1973b(a) of this title based upon determinations made under the third sentence of section 1973b(b) of this title are in effect shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: *Provided*. That such coalification, prerequisite. standard, practice or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made Neither an affirmative indication by the Attorney General that no objection will be made, nor the Attorney General's failure to object, nor a declaratory judgment entered under this section shall bar a subsequent action to enjoin enforcement of such qualification, prerequisite standard, practice, or procedure In the event the Attorney General affirmatively indicates that no objection will be made within the sixty-day period following receipt of a submission, the Attorney General may reserve the right to reexamine the submission if additional information comes to his attention during the remainder of the sixty-day period which would otherwise require objection in accordance with this section Any action under this section shall be heard and determined by a court of three judges in accordance with the provisions of section 2284 of Title 28 and any appeal shall lie to the Supreme Court.

[9][4] 42 United States Code section 1973b(f)(2) provides:

"No voting qualification or prerequisite to voting, or standard, practice, or procedure shall be imposed or applied by any State or political subdivision to deny or abridge the right of any citizen of the United States to vote because he is a member of a language minority group."

States (1980) 446 U.S. 156, 172: "By describing the elements of discriminatory purpose and effect in the conjunctive, Congress plainly intended that a voting practice not be precleared unless both discriminatory purpose and effect are absent.") Section 5 of the Act prohibits a state or political subdivision subject to section 4 of the Act[10][5] from enforcing "any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect" on November 1, 1964, November 1, 1968, or November 1, 1972, as the case may be, unless it has obtained a declaratory judgment from the District Court for the District of Columbia that such change "does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in the contravention of the guarantees set forth in section 1973b(f)(2) of this title" or has submitted the proposed change to the Attorney General and the Attorney General has not interposed an objection within a prescribed period.

Section 5 of the Act applies to legislative reapportionment plans. (*United Jewish Organizations, Inc. v. Carey*, *supra*, 430 U.S. 144, 157; *Beer v. United States* (1976) 425 U.S. 130, 133; *Georgia v. United States* (1973) 411 U.S. 526.) Any change, therefore, of boundaries in effect on an applicable historical date, that "would lead to a retrogression in the position of racial minorities" or members of a language minority group in designated political subdivisions, "with respect to their effective exercise of the electoral franchise," would contravene the purposes of the Act. (*City of Rome v. United States*, *supra*, at p. 185; *United Jewish Organizations, Inc. v. Carey, supra*, at p. 159; *Beer v. United States*, *supra*, at p. 141.)

In our view, therefore, the Legislature in establishing boundary lines in connection with reapportionment of congressional and legislative districts must consider numerical equality of population, contiguity of districts, geographical integrity of cities, counties, and geographical regions, and ethnic and political communities of interest to the extent required to preclude invidious discriminatory design. The Legislature must also consider the effect of any plan upon the electoral franchise of racial and language minority groups in those four counties which are subject to the constraints of section 5 of the Voting Rights Act of 1965, as amended.

The next inquiry (1B) concerns the meaning of the term "reasonably equal" in the context of California Constitution, article XXI, section 1, subdivision (b), providing that the population of all districts of a particular type shall be reasonably equal. Inasmuch as the determination as to what may be reasonable in terms of

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[10][5] 42 United States Code section 1973b. While the State of California is not subject to section 4, and hence not covered by section 5, four California counties are designated.

numerical equality inherently involves consideration of other criteria in any given case, we are presented here with the converse of inquiry lE, i.e., the extent to which compliance with other criteria including contiguity (art. XXI, § 1, subd. (c)) or geographical integrity (art. XXI, § 1, subd. (e)) would warrant impairment of numerical equality.

As previously noted, the right to equal participation in congressional elections is guaranteed under article I, section 2, of the United States Constitution, while the right to equal participation in legislative elections is assured under the Fourteenth Amendment. The report of the Special Masters, hereinabove set forth, substantially adopted by the California Supreme Court in *Legislature v. Reinecke*, *supra*, 10 Cal. 3d at pp. 410–414 concluded that the districts in each plan should be numerically equal in population as nearly as practicable, with strict equality in the case of congressional districts, and reasonable equality in the case of state legislative districts. It was further observed that while a greater percentage variation has been permitted by the United States Supreme Court in the reapportionment plans of other states,[11][6] the population of districts in such states were relatively small as compared with the population of districts in this state, so that even a one or two percent variance affects a large number of persons. Since "[t]he variance in the number of persons more directly relates to the practical attainment of numerical equality than does a percentage figure, and districts can be formulated in California pursuant to other criteria recommended without deviating from the ideal by more than one percent, except in unusual circumstances," it was determined that apart from such circumstances the population of senate and assembly districts should be within one percent of the ideal and in no event in excess of two percent. (*Id*., at p. 41 1.) We perceive no basis for expectation that an interpretation of article XXI, section 1, subdivision (b), by the California Supreme Court would significantly depart from the rationale and formula adopted in *Reinecke*.

Inherent in the foregoing analysis is the paramount constitutional objective of substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the state. (*Reynolds v. Sims*, *supra*, 377 U.S. at p. 579; *Gaffney v. Cummings*, *supra*, 412 U.S. at p. 744.) Nevertheless, mathematical exactness or precision is not the constitutional imperative. (*Id*., at p. 577), and conformance with other criteria including contiguity (art. XXI, § 1, subd. (c)) and geographical integrity (art. XXI, § 1, subd. (e)) is not precluded, even though some deviation within acceptable limits

[11][6]What is constitutionally permissible in one state may be unsatisfactory in another, depending upon the particular circumstances of the case (*Swann v. Adams* (1967) 385 U.S. 440, 445.)

from ideal numerical equality may result. It may be observed in this regard, however, that not all of the other criteria have been treated with equal dignity. Illustrative is the discussion in *Reynolds v. Sims*, *supra*, 377 U.S. at pp. 578–58 1 (fns. omitted):

> "A State may legitimately desire to maintain the integrity of various political subdivisions, insofar as possible, and provide for compact districts of contiguous territory in designing a legislative apportionment scheme. Valid considerations may underlie such aims. Indiscriminate districting, without any regard for political subdivision or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering.
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> "History indicates, however, that many States have deviated, to a greater or lesser degree, from the equal-population principle in the apportionment of seats in at least one house of their legislatures. So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature. But neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify,' disparities from population-based representation. Citizens, not history or economic interests, cast votes. Considerations of area alone provide an insufficient justification for deviations from the equal-population principle. Again, people, not land or trees or pastures, vote. Modern developments and improvements in transportation and communications make rather hollow, in the mid-1960's, most claims that deviations from population-based representation can validly be based solely on geographical considerations. Arguments for allowing such deviations in order to insure effective representation for sparsely settled areas and to prevent legislative districts from becoming so large that the availability of access of citizens to their representatives is impaired are today, for the most part, unconvincing.
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> "A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according

> political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entitles are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a State may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering. However, permitting deviations from population-based representation does riot mean that each local governmental unit or political subdivision can be given separate representation, regardless of population. Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal-population principle in that legislative body. This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties. Such a result, we conclude, would be constitutionally impermissible. And careful judicial scrutiny must of course be given, in evaluating state apportionment schemes, to the character as well as the degree of deviations from a strict population basis. But if, even as a result of a clearly rational state polity of according some legislative representation to political subdivisions, population is submerged as the controlling consideration in the apportionment of seats in the particular legislative body, then the right of all of the State's citizens to cast an effective and adequately weighted vote would be unconstitutionally impaired."

As it applies to state electoral districting, therefore, the proper equal protection test is not framed in terms of 'governmental necessity," but instead in terms of a claim that a state may "rationally consider."[12][7] (*Legislature v. Reinecke, supra*, 10 Cal. 3d at p. 405; *Gaffney v. Cummings*, *supra*, 412 U.S. at pp. 742, 749; *White v. Regester*, *supra*, 412 U.S. at pp. 763–764; *Mahan v. Howell*, *supra*, 410 U.S. 315.) Consequently, the term "reasonably equal" in the context of state legislative

[12][7] Any such proferred policy resulting in a disparity in district population is not justified unless such policy objectives are furthered by the plan (*Mahan v. Howell, supra*, 410 U.S. at p. 326), and are free from any taint of arbitrariness or discrimination. (*Roman v. Sincock* (1964) 377 U.S. 695. 710.)

districting refers to substantial equality of population of districts of a particular type, in light of legitimate considerations incident to the effectuation of a rational state policy; consideration of such other relevant factors and interests important to an acceptable representation and apportionment arrangement should not result in the deviation from ideal numerical equality, except in unusual circumstances, by more than one percent, and in no event by more than two percent.

The command of article I, section 2, of the federal Constitution that congressional representatives be chosen "by the People of the several States" was elucidated in *Wesberry v. Sanders* (1964) 376 U.S. 1, and reiterated in *Kirkpatrick v. Preisler* (1969) 394 U.S. 526, 527–528, to permit only those population variances among congressional districts that "are unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown." (*Id*., at p. 531; *White v. Weiser*, *supra*, 412 U.S. at p. 790; and see *Wells v. Rockefeller* (1969) 394 U.S. 542, 546.) *In Kirkpatrick v. Preisler*, *supra*, at pages 530–531, the court expounded:

> "We reject Missouri's argument that there is a fixed numerical or percentage population variance small enough to be considered *de minimis* and to satisfy without question the 'as nearly as practicable' standard. The whole trust of the 'as nearly as practicable' approach is inconsistent with adoption of fixed numerical standards which excuse population variances without regard to the circumstances of each particular case. The extent to which equality may practicably be achieved may differ from State to State and from district to district. Since 'equal representation for equal numbers of people [is] the fundamental goal for the House of Representatives,' *Wesberry v. Sanders*, *supra*, at 18, the 'as nearly as practicable' standard requires that the State make a good-faith effort to achieve precise mathematical equality. See *Reynolds v. Sims*, 377 U.S. 533, 577 (1964). Unless population variances among congressional districts are shown to have resulted despite such effort, the State must justify each variance, no matter how small.
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> ". . . . . .
>
> "Equal representation for equal numbers of people is a principle designed to prevent debasement of voting power and diminution of access to elected representatives. Toleration of even small deviations detracts from these purposes. Therefore, the command of Art. I, § 2, that States create congressional districts which provide equal representation for equal numbers of people permits only the limited population variances which are

unavoidable despite a good-faith effort to achieve absolute equality, or for which justification is shown."

The court rejected numerous purported justifications: that variances were necessary to avoid fragmenting areas with distinct economic and social interests and thereby diluting the effective representation of those interests in Congress; that the reasonableness of variances must be viewed in the context of legislative interplay and compromise; that variances are justified if they necessarily result from an attempt to avoid fragmenting political subdivisions; and that variances were a consequence of an attempt to ensure that each district would be geographically compact. (*Id*., at pp. 533–536.) The court indicated, however, that justification might be established upon a showing that the percentage of eligible voters among the total population differed significantly from district to district, or that a disparity resulted from an attempt to account for projected population shifts. (*Id*., at pp. 534–535.) The term 'reasonably equal" in the context of congressional districting, therefore, refers to absolute numerical equality, except as to those variances which are unavoidable despite a good-faith effort to achieve that standard, or for which justification is shown.

Inquiries 1C and 1D require a definition of the terms "contiguous" with respect to the boundaries of every district, and 'geographical integrity" with regard to any city or county, or any geographical region. A constitutional amendment should be construed in accordance with the natural and ordinary meaning of its words (*Amador Valley Joint Union School Dir. v. State Bd. of Equalization* (1978) 22 Cal. 3d 208, 244–245; *Fields v. Eu* (1976) 18 Cal. 3d 322, 327) Where doubts and ambiguities remain, well settled rules of construction are appropriately applied. (*State Board of Education v. Levi*; (1959) 52 Cal. 2d 441, 462.) Literal language may be disregarded to avoid absurd results and to fulfill the apparent intent of the framers. (*Amador Valley Joint Union High School Dist. v. State Bd. of Equalization, supra*.) Interpretive constructions which render some words surplusage must be avoided. (*Fields v. Eu*, *supra*, at p. 328.) In addition, when, as here, the enactment follows voter approval, the ballot summary and arguments and analysis presented to the electorate in connection with a particular measure may be helpful in determining the probable meaning of uncertain language. (*Amador Valley Joint Union High School Dir. v. State Bd. of Equalization, supra*, at p. 246.)

California Constitution, article XXI, section 1, subdivision (c), provides simply that "Every district shall be contiguous." To *what* must "every" district be contiguous? To any one other district? To one or more districts of the same

type?[13][8] At any given point? For what distance? Must it be adjoining or nearby?[14][9] The term "contiguous" is one of enormous contextual variability (*Cf.* 26 Ops. Cal. Atty. Gen§ 69, 70 (1955).) The term has been defined as follows (Webster's Third New Internat. Dict. (1961), p. 492). la: touching along boundaries often for considerable distances, b: next or adjoining with nothing similar intervening; c: nearby, close, not distant; d: continuous, unbroken, uninterrupted, touching or connected throughout. If the term "contiguous district" is to be understood in reference to other districts, it provides no standard at all and is rendered surplusage, not only because of the absence of further specification, but also because the division of the whole state into districts[15][10] would necessarily result in "contiguous districts" in that sense. As so interpreted, the term would also defy common sense and logic since a district contiguous in part, or even at all points, with one or more other districts could nevertheless be utterly fragmented and divided into multiple non-adjoining parts.[16][11] In our view, therefore, the term is properly understood not in reference to other districts but in reference to itself; specifically, *every* district (i.e., of *any type*) must be "continuous, unbroken, uninterrupted, touching or connected throughout." This interpretation explains the absence of any reference in article XXI, section 1, subdivision (c), to other districts, i.e., "of a particular type" or "of each type," the deletion of the term 'compact" in conjunction with "contiguous assembly districts" in former article IV, section 27, as an independent standard, and is consistent with the more apparent significance of the term in former article IV, section 6, which required legislative districts to be 'composed of contiguous territory," and with the ballot argument in favor of Proposition 6, that districts would be "composed of adjacent territory *and not widely separated areas*" and that odd-shaped districts would be deterred. This interpretation, that a district should be adjoining to itself as an integral unit, is also consistent with the proferred rationale of the Special Masters in *Legislature v. Reinecke*, *supra*, 10 Cal. 3d at p. 411 (albeit in respect of the term "contiguous and compact"):

> "The territory included within a district should be contiguous and compact, taking into account the availability and facility of transportation and communication between the people in a proposed district, between the people and candidates in the district, and between the people and their elected representatives."

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[13][8] Neither the words "all districts *of a particular type*" (subd. (b)) not "districts of *each type*" (subd. (d)) appear in subdivision (c).

[14][9] *Cf.* 61 Ops. Cal. Atty. Gen. 299, 301 (1978).

[15][10] California constitution, article IV, section 6.

[16][11] No other provision of article XXI requires geographical integrity of a *district*.

In *Schneider v. Rockefeller* (1972) 293 N.E. 2d 67, 72, 31 N.Y. 2d 420, it was similarly concluded that "contiguous territory" within the meaning of the New York Constitution pertaining to the apportionment of legislative districts, means 'territory touching, adjoining and connected, as distinguished from territory separated by other territory."[17][12] In another context, pertaining to the formation of a highway district, the words 'contiguous territory" referred to lands situated within the outside boundaries of the district, and prohibited the organization of a district composed of two or more tracts of country segregated by intervening territory which is excluded therefrom. (*Huggins v. Link* (1915) 152 P. 1052, 1053. 28 Idaho 185.) The term "contiguous," therefore, with respect to the boundaries of every district, means that the district should constitute an integral unit nor segregated or divided by intervening territory.

California Constitution, article XXI, section 1, subdivision (e), provides that "The geographical integrity of any city, county, or city and county, or of any geographical region shall be respected . . . ." The term "integrity" in a physical sense, connotes the quality or state of being complete or undivided (Webster's Third New Internat. Dict. (1961), p. 1174.) Subdivision (e), therefore, refers to the organic unity of political subdivisions and of the coastal, mountain, desert, central valley and intermediate valley regions. (*Cf. Legislature v. Reinecke*, *supra*, 10 Cal. 3d at p. 412.)

We are next asked, specifically, to what extent compliance with other criteria would warrant impairment of contiguity or geographical integrity. It is not feasible, of course, to scan the universe of "other criteria" which may be appropriately considered under any given circumstances. Viewed abstractly, and bearing in mind that reapportionment is primarily a political and legislative process (*Gaffney v. Cummings*, *supra*, 412 U.S. at p. 749; *Silver v. Reagan* (1967)67 Cal. 2d 452, 458; *Silver v. Brown* (1965)63 Cal. 2d 270, 280), the discussion is necessarily confined to fundamental precepts. An attempt to adhere to nonconstitutional criteria may not result in impairment of constitutional criteria, including contiguity and geographical integrity. The remaining constitutional criterion, on the other hand, is population parity.

As previously noted, substantial equality of population among the various districts is the overriding constitutional objective. (*Reynolds v. Sims*, *supra*, 377

[17][12] In like context a contiguous district has been defined as "one in which a person can go from any point within the district to any other point without leaving the district," or one in which "no part of the district is wholly physically separate from any other part." (*Commonwealth ex rel. Specter v. Levin* (1972) 293 A. 2d 15.

U.S. at p. 579.) A plan which does not comply with this criterion, as defined, is constitutionally deficient. Hence, any other objective not of federal constitutional magnitude in derogation thereof (i.e., precluding compliance), including contiguity and geographical integrity, must be subordinated to the extent required to achieve constitutional sufficiency of the plan. This is primarily significant in the case of congressional districting, "where population equality appears now to be the preeminent, if not the sole, criterion on which to adjudge constitutionality." (*Chapman v. Meter* (1975) 420 U.S. 1, 23.)

We have, nevertheless, expressed the view that none of the California constitutional criteria are inherently inconsistent with either the state or federal parity standard. We reiterate, particularly with respect to legislative districting, that mathematical exactness in terms of population is not required. Something less than the ideal, in order to accommodate other rational state policies, may be constitutionally appropriate. Among these rational state policies are such considerations "as the integrity of political subdivisions, the maintenance of compactness and contiguity in legislative districts or the recognition of natural or' historical boundary lines." (*Swann v. Adams* (1967) 385 U.S. 440, 444; *Chapman v. Meter*, *supra*; 420 U.S. 1; *Reynolds v. Sims*, *supra*, 377 U.S. 533.)

Finally, by the express terms of article XXI, section 1, subdivision (e), geographical integrity "shall be respected to the extent possible without violating the requirements of any other subdivision of this section," including subdivisions (b) and (c). It is concluded, therefore, that impairment of contiguity would be warranted only to the extent required to comply with population parity; impairment of geographical integrity would be warranted only to the extent required to comply with population parity or other constitutional criterion. Assuming that all constitutional criteria have been satisfied, the configuration of districts and consideration of appropriate nonconstitutional concerns are purely political questions.

The remaining inquiries, beginning with question two are presented as pure abstractions, the resolution of which, in the absence of specific detailed averments, is impracticable in categorical terms.[18][13] The second inquiry is whether a county containing a population less than that required for one senatorial district may be divided into two such districts in combination with other counties. Contemplated is a violation of geographical integrity. Geographical integrity of a county is a constitutional criterion which may be impaired only to the extent required to comply

[18][13] The absence of any issue, for example, relating to racial, language, or political minority voting strength is assumed.

with any other constitutional criterion. Even in the absence of such other constitutional considerations, however, while it is envisioned that a county containing a population less than that required for one district may be wholly included within a district, it is also conceivable (and the inquiry suggests) that its division would facilitate the preservation of geographical integrity of other counties. Hence, it is concluded only that a county containing a population less than that required for one senatorial district may, under appropriate circumstances, be divided into two such districts in combination with other counties.

Question three is whether a greater number of infringements of the geographical integrity of a county containing a population in excess of that required for three senatorial districts would be permitted than if the county contained a lesser population. Geographical integrity of a county is a constitutional criterion which may be impaired only to the extent required to comply with any other constitutional criterion or to enhance the geographical integrity of other counties, cities, or regions. Apart from the application and effect of such constitutional criteria, the geographical integrity of a county, regardless of its population, may not be impaired. Hence, a greater number of infringements of geographical integrity of a county is not permitted by virtue of its population.

Question four is whether a senatorial district may be wholly separated by a body of water where neither portion is an island or where one portion is an island. Contiguity is a constitutional criterion requiring that every district constitute an integral unit not segregated or divided by intervening territory. However, contiguity is not necessarily violated because a part of a district is divided by water. (*Schneider v. Rockefeller*, *supra*, 293 N.E. 2d at p. 72.) Further, contiguity may be impaired to the extent required to comply with population parity. Hence, a senatorial district may be wholly separated by a body of water where neither portion is an island or where one portion is an island.

The remaining inquiries, presenting specific propounded configurations, are nevertheless abstract insofar as they are described other than in the context of an entire plan. Innumerable configurations can be constructed for particular sectors of the state when considered in isolation. The ultimate consideration, however, must be the impact and effect upon the goal of fair and reasonable apportionment of the state as a whole. (*Cf. Legislature v. Reinecke*, *supra*, 10 Cal. 3d 396, appen. pp. 417–418.)

The fifth inquiry is whether senatorial districts may be established in accordance with the following presentment:

"The northern coast geographical region comprised of whole counties, excluding Marin County, would fall far short of required population for one senatorial district. Marin County contains less than half the population required for one district. The inclusion of Marin County within the northern coast geographical region would exceed the required population by 100,000. The combination of a portion of Marin County containing a population of 100,000 with San Francisco would exceed the required population by 170,000. The combination of a portion of San Francisco containing a population of 170,000 with San Mateo County, containing a population close to but less than that required, would exceed the required population by nearly 170,000. The combination of a portion of San Mateo County containing a population of nearly 170,000 with Santa Clara County would provide the population required for one district." (See attachment A, diagram "a.")

This configuration preserves the geographical integrity of the northern coast region, excluding a portion of Marin County containing a population of 100,000, and of the whole counties therein situated, and of the county of Santa Clara. The impairment of geographical integrity of Marin, San Francisco (the division of which is compelled by its own population), and San Mateo Counties, none of which are divided more than once, may be viewed by the Legislature as a reasonable means of achieving population parity. No violation of contiguity is perceived by force of the combination of portions of Marin and San Francisco Counties. Assuming compliance with population parity, and in the absence of an unacceptable impact upon the fair and reasonable apportionment of the whole state, it is concluded that senatorial districts may be established as indicated.

The sixth inquiry is whether a portion of a county adjoining Los Angeles County, which portion contains a population less than half of that required for one senatorial district, may be divided into two segments, each in combination with a portion of Los Angeles County, to comprise two districts. (See attachment A, diagram "b.") Geographical integrity of a county may be impaired only to the extent required to comply with other constitutional criteria or to preserve the geographical integrity of other counties or regions. In the absence of any basis for justification, a portion of a divided county, which portion contains a population less than that required for one senatorial district, may not be further divided.

The seventh inquiry is whether senatorial districts may be established in accordance with the following presentment.

> The combination of San Bernardino and Riverside Counties would exceed the required population for one senatorial district. The population of San Diego County exceeds that required for three

> senatorial districts. The combination of San Bernardino, Riverside, San Diego, Imperial, and Inyo Counties would provide the population required for six districts which could be situated as follows three within San Diego County, one within Riverside County, one within San Bernardino County, and one of combined portions of San Diego, Riverside, and San Bernardino, and all of Inyo and Imperial Counties, which would constitute a geographical region. (See attachment A, diagram "c.")

This configuration preserves the geographical integrity of a geographical region and of the counties of Inyo and Imperial. The impairment of geographical integrity of San Bernardino, San Diego (the division of which is compelled by its own population), and Riverside Counties, none of which are divided more than once, may be viewed by the Legislature as a reasonable means of achieving population parity. Assuming a compliance with population parity, and in the absence of an unacceptable impact upon the fair and reasonable apportionment of the whole state, it is concluded that senatorial districts may be established as indicated.

ATTACHMENT A

STATE OF CALIFORNIA

DIAGRAM

(next page)

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ATTACHMENT A