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1992 WL 105910

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United States District Court, E.D. Missouri, Eastern  
Division.

Theodore J. FLETCHER, Virginia L. Gender,  
Dennis L. Beckley, Plaintiffs,  
Raye Robertson, Vicki Hunn, Hernandez Cuenca,  
Grant Keyes, Elizabeth Lou Heiman, John  
Fernandez and Howard McClellan,  
Plaintiff–Intervenors,

v.

Morton I. GOLDER, Vincent E. Shaw, Rainey J.  
Crawford, Mary C.P. Pincus, being the Members of  
and Constituting the Board of Election  
Commissioners of St. Louis County, Missouri,  
Defendants.

No. 91–2314C(7). | Feb. 24, 1992.

#### Attorneys and Law Firms

Gordon L. Ankney, Lawrence C. Friedman, Thompson &  
Mitchell, St. Louis, Mo. for plaintiffs.

Paul M. Brown, Coburn Croft & Putzell, St. Louis, Mo.,  
for Plaintiffs–Intervenors.

Curtis, Oetting, Heinz Garrett & Soule, Steven W.  
Garrett, Clayton, Mo., for defendants Golder, Crawford,  
Shaw and Pincus and Members of Board of Election  
Commissioners of St. Louis County.

#### Opinion

#### MEMORANDUM AND ORDER

HAMILTON, District Judge.

\*1 This matter is before the Court on Defendants’ Motion to Amend Judgment pursuant to Fed.R.Civ.P. 52(b). Plaintiffs filed a notice of appeal January 23, 1992. However, this Court retains jurisdiction to rule on a timely filed motion to amend or make additional findings of fact. *See Sanders v. Clemco Indus.*, 862 F.2d 161 (8th Cir.1988); *Baker Indus. v. Howard Elec. and Mechanical Inc.*, 794 F.2d 965 (5th Cir.1986), *cert. denied*, 479 U.S. 931 (1986); *Elgen Mfg. Corp. v. Ventfabrics, Inc.*, 314 F.2d 440 (7th Cir.1963).

Defendants filed this motion because of discrepancies

between the Court’s opinion describing the districts and the map attached as an appendix to the judgment. Both the Modified Williams Plan map (Joint Exhibit 5) and demographic statistics (Exhibit 6 to the Joint Stipulation Relating to Demographic Data) were submitted by the parties as representing the Modified Williams Plan. The map, however, contained several errors. First, VTD SL09 should be included in District 1. Second, VTD ML10 is not split between Districts 1 and 2 but should be wholly within District 1. Finally, VTD MR28 should be in District 2, not District 3. A listing of the VTDs included in Districts 1, 2, 3, and 4 (taken from Intervenors’ Ex. 20\*) is attached to this memorandum and an amended memorandum shall be filed herewith.

ACCORDINGLY,

IT IS HEREBY ORDERED that Defendants’ Motion to Amend Judgment is GRANTED.

Dated this 4th day of February, 1992

#### AMENDED MEMORANDUM AND ORDER

In this action Plaintiffs and Plaintiff–Intervenors seek judicial reapportionment of St. Louis County Council districts necessitated by the failure of the St. Louis County Council Reapportionment Commission to file timely a plan of reapportionment based upon the results of the decennial census of 1990.

#### I. PARTIES

Plaintiffs Ted Fletcher, Virginia L. Gender and Dennis L. Beckley who are citizens, residents and registered voters of St. Louis County, Missouri, filed this action pursuant to 42 U.S.C. §§ 1983 and 1988 alleging violation of their rights to the equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution and by Article I, § 2 of the Constitution of the State of Missouri.<sup>1</sup> Defendants, sued in their official capacities, are the members of the Board of Election Commissioners of St. Louis County. Plaintiffs seek, *inter alia*, to have this Court (1) declare that the present boundaries of the seven county council districts violate the requirements of the Constitution of the United States and of the State of Missouri and (2) divide St. Louis County into seven county council districts that are contiguous, compact and as nearly equal in population as may be.

Thereafter, and without objection, Plaintiff–Intervenors<sup>2</sup> (hereinafter Intervenors) entered this action pursuant to

Rule 24(a), Fed.R.Civ.P. They too allege violation of their rights under the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Constitution of the State of Missouri, and they seek the same relief as Plaintiffs. In addition, Intervenor request this Court to divide St. Louis County into seven county council districts consistent with requirements of Section 2 of the Voting Rights Act of 1965 as amended in 1982, 42 U.S.C.A. § 1973 (1991 Supp.).

## **II. THE FACTUAL CONTEXT**

**\*2** Article II, Section 2.035 of the St. Louis County Charter sets forth the procedure by which St. Louis County Council districts are reapportioned following a decennial census:

Within thirty days before June 1, 1981, and within thirty days before June 1 each tenth year thereafter and, in the event that a reapportionment has been invalidated by a court of competent jurisdiction, within sixty days after the judgment shall have become final, the central committee of St. Louis County of each of the two parties casting the highest vote for governor at the last preceding election shall, at a meeting duly called and held, nominate, by the vote of a majority of all the members of the Committee, two members of its party from each council district as nominees for reapportionment commissioners. Each nominee shall be a registered voter in the council district for which he is nominated and shall hold no other public office or employment. Each committee shall certify in writing to the county executive its list of nominees. Within thirty days thereafter the county executive shall appoint a commission consisting of one person from each district from each list to divide the county into the number of council districts established by this charter. If any party committee fails to certify a list within the time herein provided the county executive shall appoint a member of his own choice from each council district from the political party of the committee failing to make the nomination. Vacancies in the commission shall be filled by the county executive from the same political party and the same district as the previous members. The commission shall reapportion the council districts by dividing the population of the county by the number of council districts established by this charter so that the population of each district shall, as near as possible, equal that figure and so that each district shall be composed of contiguous territory as compact as may be. Not later than six months after the population of St. Louis County is reported to the president of the United States after each decennial census or six months after the appointment of the commission by the county executive, whichever is later, the commission shall file with the county clerk and with the office or officer charged with conducting elections in the county a final statement of the numbers and the boundaries of the districts together with a map of

the districts. The final statement must receive the affirmative vote of a majority plus one of all the members. At the next general election held at least nine months after the statement is filed and at general elections thereafter councilmen shall be elected according to such districts until a reapportionment is made as herein provided, but no reapportionment shall shorten the term of any councilman.

(Intervenor's Exhibit 3). Pursuant to the foregoing provision, a St. Louis County Council Reapportionment Commission (hereinafter Commission) was established in June, 1991, composed of seven Democrats and seven Republicans.<sup>3</sup> The Commission met on July 29, September 10, October 1, October 15, November 4, and November 14, 1991. In addition, it conducted public hearings at various locations in St. Louis County on August 17, 20, 22, and 27, 1991.

**\*3** A consistent topic of discussion both at the Commission's meetings and at its public hearings (except for the first which no member of the public attended) was the desirability of creating a minority district. Members of the general public and Commissioners alike favored such a district. (See *e.g.* Intervenor's Exs. 6, 7; Intervenor Ex. 5). Differences of opinion were expressed, however, with respect to what percentage black population was necessary to create an effective minority district, that is to say, a district "where an Afro-American has a truly meaningful chance to win." (Intervenor's Ex. 5—Minutes of October 15, 1991 meeting—statement by Chair Hammond). Theodore Hoskins of the Black Elected County Officials (hereinafter BECO) made reference to the "65% rule" which he linked to the Voting Rights Act. (Intervenor's Ex. 5—Minutes of August 22, 1991 public hearing). Others, such as Commission Chair Hammond, noted that a 65% minority population was a guideline, not a requirement; and Commissioner Koslovsky indicated that the Voting Rights Act did not require a minority district. (Intervenor's Ex. 5—Minutes of November 4, 1991 meeting). By unanimous vote, the Commission went on record that it would, to the best of the Commissioners' ability, comply with the requirements of the Voting Rights Act as interpreted by the federal courts. (Intervenor's Ex. 5—Minutes of September 10, 1991).

During its existence, the Commission was presented several reapportionment maps.<sup>4</sup> The Democratic members of the Commission presented two maps to the Commission. Intervenor's Exhibit 16, the original Democratic map, contained seven county council districts with an average population deviation of .80% from the "ideal" district population of 141,933 persons and a maximum deviation of 1.85%.<sup>5</sup> It also contained one district with a black majority population of 55.8%. The Commission did not vote on this plan. Joint Exhibit 2, the Democratic Plan II, contained seven county council districts with an average population deviation of .42%

from the “ideal” district population and a maximum deviation of .70%. It contained one district with a black majority population of 60.2%.<sup>6</sup> The Commission voted on this plan.

The Republicans also presented two maps to the Commission. The first map, Intervenor’s Exhibit 15, created seven county council districts with an average deviation of .48% from the “ideal” district population and a maximum deviation of 1.09%. It contained one district with a black majority population of 63.3%. The Commission did not vote on this map. Joint Exhibit 3, the second Republican map, created seven county council districts with an average deviation of .29% from the “ideal” district population and a maximum deviation of .68%. It contained one district with a black majority population of 62.4%. (Intervenor’s Ex. 17). The Commission voted on this plan. As originally submitted, the black majority district on the second Republican map was numbered District 4 and the District north of it was numbered District 1. Prior to a vote by the Commission, these numbers were reversed so that the black majority district became District 1 and the District to the north became District 4.<sup>7</sup>

\*4 BECO, through its Vice-President Errol Bush, also presented a map to the Commission. It contained a single district located in northeast St. Louis County having a black majority of approximately 65%. Because the BECO map described only a single district, not seven districts, Bush invited the Republican and Democratic Commissioners to add the other districts. Commissioner de Garcia thereafter submitted Joint Ex. 4, the BECO Plus map. In this plan, de Garcia adjusted the population deviation of the BECO map by adding VTDs and included the other six county council districts. The black majority district in the BECO Plus Plan was numbered District 4 and the district immediately north was numbered District 1. The BECO Plus map had an average deviation of .32% from the “ideal” population and a maximum deviation of .68%. Its black majority district had a 64.5% black population. (Intervenor’s Ex. 19). The Commission voted on the BECO Plus map.

Lottie Mae Williams, a black woman and mayor of Velda City, submitted a plan to the Commission that contained a black majority district with a black population of approximately 65%. Because Mayor Williams’ map, however, split VTDs and contained incorrect population totals, Commissioner de Garcia revised it. The result was the Modified Williams Plan, Joint Ex. 5. This plan, which Mayor Williams adopted, contained a black majority district, labeled District 4, having a 65.1% black population. It contained an average deviation of .31% from the “ideal” population and a maximum deviation of .64%. (Intervenor’s Ex. 20). The Commission voted on this plan.

At its final meeting on November 14, 1991, the Commission, with thirteen Commissioners present, voted on four of the maps: the second Republican Plan, the Democratic Plan II, the Modified Williams Plan and the BECO Plus Plan. Under the Charter nine votes were required to adopt a plan. No plan received more than seven favorable votes. The second Republican Plan was defeated by a vote of five in favor and eight opposed. The Democratic Plan II garnered six favorable votes and seven opposed, as did the Modified Williams Plan. A motion to accept the Modified Williams Plan with the elimination of two incumbents in the same district was also defeated by a vote of seven in favor and six opposed. Finally, the BECO Plus plan was defeated by a vote of five in favor and eight opposed.

On November 12, 1991, Plaintiffs filed this action. In addition to Intervenor, Theodore Hoskins, Errol Bush, BECO and the African American Voting Rights Legal Defense Fund, Inc. sought to intervene as Plaintiffs under Fed.R.Civ.P. 24(a). This Court denied the latter motion to intervene under Rule 24(a) or 24(b) on December 2, 1991.

Following an expedited discovery schedule, trial began on December 2, 1991. Both Plaintiffs and Intervenor presented evidence including the testimony of both lay and expert witnesses. Following trial, Plaintiffs and Intervenor filed briefs with the Court. Additional facts will be referred to in connection with the conclusions of law, *infra*.

### III. CONCLUSIONS OF LAW

\*5 This Court has jurisdiction over the subject matter of this action pursuant to 28 U.S.C. § 1343(a)(3) and 42 U.S.C. § 1988. *Reynolds v. Sims*, 377 U.S. 533 (1964); *Avery v. Midland County*, 390 U.S. 474 (1968).<sup>8</sup> Because an actual controversy exists between the Plaintiffs, Intervenor and the Defendants, this Court may declare the rights and legal relations of these parties pursuant to 28 U.S.C. § 2201 and grant further relief pursuant to 28 U.S.C. § 2202. Moreover, venue is proper in the Eastern District of Missouri pursuant to 28 U.S.C. § 1391(b).

Reapportionment is a legislative function. *Wise v. Lipscomb*, 437 U.S. 535, 539 (1978). The Supreme Court has recognized that the legislature is “best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality.” *Connor v. Finch*, 431 U.S. 407, 415–16 (1977). When, as here, however, a legislative body fails “to reapportion according to federal constitutional requisites in a timely fashion after having had an adequate opportunity to do so,” judicial relief becomes appropriate. *Reynolds v. Sims*, 377 U.S. at 586. A court, moreover, is held to a stricter standard in reapportionment than a legislative body.<sup>9</sup> *Connor v.*

Finch, 431 U.S. at 414.

#### A. CONSTITUTIONAL REQUIREMENTS

In *Reynolds v. Sims*, 377 U.S. 533 (1964), the Supreme Court recognized that every qualified resident has the constitutional right to a vote substantially equal in weight to the vote of every other resident in an election for state legislators. *Reynolds v. Sims*, 377 U.S. at 568. The concept of “one-person-one-vote” also applies to units of local government within a state. *Avery v. Midland County*, 390 U.S. at 480, 484–85. Particular circumstances and needs of a local community as a whole may at times justify departures from strict equality. *Abate v. Mundt*, 403 U.S. 182, 185 (1971). Less fundamental concerns, however, must be subordinated to the constitutional requirement of “one-person-one-vote.” *Kirksey v. Board of Supervisors*, 554 F.2d 139, 151 (5th Cir.1977), cert. denied, *Board of Supervisors v. Kirksey*, 434 U.S. 968 (1977).

Population is the starting point for consideration and the controlling criterion for judgment in apportionment

decisions. *Reynolds v. Sims*, 377 U.S. at 567. Population alone is the sole criterion of constitutionality in congressional reapportionment. *Mahan v. Howell*, 410 U.S. 315, 322 (1973). A legislative body reapportioning state legislative districts, however, has broader latitude. *Id.* A state legislative reapportionment plan having a maximum population deviation ranging up to ten percent falls within the category of minor deviations requiring no legislative justification. *Brown v. Thomson*, 462 U.S. 835, 842 (1983).

The population of St. Louis County has increased by two percent since the 1980 census. (Exhibit 1 to Joint Stipulation Relating to Demographic Data<sup>10</sup>). The current population as determined by the 1990 census is 993,529. *Id.* To equalize population, each district should have a population of 141,933. *Id.* The population distribution by current council district and the change needed to achieve equal population is as follows:

<b>Council</b>	<b>1990 Census</b>	<b>Change Needed to Achieve</b>	<b>Deviation from</b>
<b>District</b>		<b>Equal Districts</b>	<b>Equal Districts</b>
1	125,333	16,600	-11.70%
2	126,818	15,115	-10.65%
3	134,283	7,650	-5.39%
4	144,626	-2,693	+1.90%
5	139,997	1,936	-1.36%
6	146,503	-4,570	+3.22%
7	175,969	-34,036	+23.98%

Total 993,529

\*6 The maximum deviation of the current plan is 35.68%. The present apportionment scheme of St. Louis County therefore violates the Fourteenth Amendment to the United States Constitution and reapportionment is constitutionally mandated.

At trial, Plaintiffs urged adoption of the Democratic Plan II. This plan has a maximum deviation of 1.12% and an average deviation of .42%.<sup>11</sup> Intervenors presented three plans at trial: the Modified Williams Plan, the Republican Plan, and the BECO Plus Plan. Intervenors advocate adoption of the Modified Williams Plan. It has a maximum deviation of 1.13% and an average deviation of .31%.<sup>12</sup> The Republican Plan has a maximum deviation of 1.15% and an average deviation of .29%.<sup>13</sup> The BECO Plus Plan has a maximum deviation of 1.15% and an average deviation of .32%.<sup>14</sup> All four plans are well within the requirement of *de minimus* variation from equal population for a local governmental unit.

#### **B. FEDERAL STATUTORY CONSIDERATIONS**

The Voting Rights Act as amended in 1982 provides in pertinent part:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color....

42 U.S.C.A. § 1973(a) (1991 Supp.). A violation of the Voting Rights Act is established by showing that the “political processes leading to nomination or election ... are not equally open to participation” by the protected class in that “its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 42 U.S.C.A. § 1973(b) (1991 Supp.). The Voting Rights Act specifically provides that the act does not establish “a right to have members of a protected class elected in numbers equal to their proportion in the population.” 42 U.S.C.A. § 1973(b) (1991 Supp.). Evidence of discriminatory intent is no longer necessary to prove a violation; discriminatory results are sufficient proof. *Ketchum v. Byrne*, 740 F.2d 1398, 1403 (7th Cir.1984), *cert. denied*, *City Council of Chicago v. Ketchum*, 471 U.S. 1135 (1985).

A number of courts have concluded that more than a simple majority is required for historically disadvantaged minorities to have a practical opportunity to elect candidates of their choice. *E.g.*, *Ketchum v. Byrne*, 740 F.2d at 1413; *Kirksey v. Board of Supervisors*, 554 F.2d at 149–50; *Smith v. Clinton*, 687 F.Supp. 1361, 1362–63 (E.D.Ark.1988), *aff’d*, *Clinton v. Smith*, 488 U.S. 988 (1988); *Dillard v. Crenshaw County*, 649 F.Supp. 289, 298 (M.D.Ala.1986), *remanded on other grounds*, 831 F.2d 246 (11th Cir.1987). Courts have frequently used sixty-five percent as a guideline for the proportion of minority population reasonably required to ensure minorities a fair opportunity to elect a candidate of their choice. The sixty-five percent figure is derived by augmenting parity<sup>15</sup> five percent for the relative youth of the minority population, five percent for its low voter registration, and five percent for its low voter turnout.<sup>16</sup> *Ketchum v. Byrne*, 740 F.2d at 1415. The sixty-five percent population figure is a mere guideline. Contrary to Plaintiffs’ characterization of Intervenors’ argument concerning this figure, a sixty-five percent super-majority is not mandated by the Voting Rights Act. In fact, Intervenors’ expert Warren testified that, in his opinion, the particular circumstances of St. Louis County required 66%, not 65%, to facilitate black political participation.

\*7 Both Plaintiffs and Intervenors presented evidence concerning the black population in St. Louis County. Plaintiffs’ witness Hammond and Intervenors’ witness de Garcia testified that one goal of reapportionment is to insure that blacks have an opportunity to participate fully in the political process. Plaintiffs now argue that this is not a Voting Rights Act case. (Plaintiffs’ Reply Brief p. 4). Technically, Plaintiffs are correct that a violation of the Voting Rights Act has not been pleaded. Nor was a plan adopted and subject to review under the requirements of the Voting Rights Act. However, any plan adopted by the Court and implemented by the St. Louis County Election Board is subject to challenge under the Voting Rights Act. Therefore, the Court concludes that the requirements of the Voting Rights Act are essential considerations in the reapportionment of St. Louis County.

Plaintiffs contend that a super-majority of blacks in a district could result in packing, that is, an apportionment scheme that diminishes minority influence in other districts by allocating additional minority voters into a district that already contains a minority population sufficiently numerous to participate politically.<sup>17</sup> Because no proposed plan exceeds 65% by more than .1% and

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none even achieves the 66% endorsed by Intervenor's expert witness Warren, the Court concludes that packing is not an issue in this case.

The three maps proposed by Intervenor's have reversed the numbering of Districts 1 and 4 to allow for an earlier election in the minority district (current District 1 and the district numbered 4 on the Republican, Modified Williams, and BECO Plus Plans). Finding no legal basis for re-numbering the districts, this Court will retain the present District numbers on the reapportionment map it adopts.

Plaintiffs' proposed District 1 on the Democratic Plan II has 60.2% black population. Total black adult population is 55.81% in that district. (Plaintiffs' Ex. 5A). When further adjusted for voter turnout, Warren testified that the effective voter turnout for blacks in District 1 under the Democratic Plan II is 46.1%. The Modified Williams Plan's proposed District 1 (labeled 4 on the map) has 65.1% black population. The Republican Plan's proposed District 1 (labeled 4 on the map and exhibits) has 62.4% total black population. The BECO Plus Plan's proposed District 1 (labeled 4 on the maps and exhibits) has 64.5% total black population. The Modified Williams Plan provides the greatest opportunity for blacks to participate in the political process. While providing more than a simple majority, the Republican and Democratic Plan II maps fail adequately to address factors such as youthfulness and low voter turnout. The BECO Plus Plan addresses the factors requiring a super-majority but sacrifices other considerations, such as compactness, as will be discussed later. Thus, the plan that best provides blacks a meaningful opportunity to participate in the political process is the Modified Williams Plan.

### C. STATE CONSIDERATIONS

\*8 The Missouri Constitution and the St. Louis County Charter repeat the Federal Constitutional requirement that the districts be equal in population and add a requirement that they be "composed of contiguous territory as compact as may be." Mo. Const. Art. 3, § 2; St. Louis County Charter § 2.035. This requirement is meant to guard against the legislative evil of gerrymander. *Preisler v. Kirkpatrick*, 528 S.W.2d 422, 425 (Mo.1975).

In *Preisler v. Kirkpatrick*, the Missouri Supreme Court considered the constitutionality of senatorial districts after a challenge that they were not compact. The court recognized that uneven population density, the equal population goal, and the preservation of county lines may result in "districts that are not esthetically pleasing models of geometric compactness." *Id.* at 426. Similarly, in *Preisler v. Doherty*, the court noted that compactness must yield to secure greater equality of representation. *Preisler v. Doherty*, 284 S.W.2d 427, 434 (Mo. banc

1955). The plan as a whole must be considered for compactness, not a single district. *Cf. Preisler v. Kirkpatrick*, 528 S.W.2d at 426-7 (in reviewing apportionment plan, court held that even though two districts were not compact, the overall plan substantially complied with the compactness requirement).

The four maps presented to the Court for consideration all used existing Voter Tabulation District (hereinafter VTD) lines. Defendants requested the Court use these lines to facilitate implementation of the plan adopted. All evidence concerning population and census data was presented to the Court in terms of VTDs. The irregular shape and size of many of the VTDs make geometric compactness an unattainable ideal. While splitting VTDs might serve the goal of compactness, the Court lacks the population data to allow it to do so. Consequently, the Court finds the goal of following existing VTD lines legitimate and necessary.

Intervenor's presented evidence that compactness could be determined by measurement of the perimeters of all the proposed maps.<sup>18</sup> The Court finds no basis in the case law for this method of determining compactness. Typically courts have looked at the shape of all the districts in a proposed plan for evidence of "tentacle-like corridors" and "unreasonably irregular lines." *See Neal v. Coleburn*, 689 F.Supp. 1426, 1437 (E.D.Va.1988).

With respect to compactness, the Court will focus primarily on the two plans advocated by the parties: the Democratic Plan II and the Modified Williams Plan. The Court notes, however, that the BECO Plus Plan, although achieving the equal population objectives and providing blacks a meaningful opportunity to participate politically, fails to meet the requirement of compactness.<sup>19</sup>

Both the Democratic Plan II and the Modified Williams Plan contain irregular extensions of District 1 (4 on the Modified Williams Plan map) to the northwest that include VTDs NW04, A016, A026, A014, A006, A011. Similarly, in the northeast both the Democratic Plan II and the Modified Williams Plan extend northward to include VTDs SL08, SL09, SL11, SL13, and SL17.<sup>20</sup> District 1 (labeled 4 on the map) of the Modified Williams Plan appears less compact than the Democratic Plan II because of a long finger-like projection to the west that includes VTDs CC26, CC25, CC27, CC34, and CC13, areas containing large percentages of black population.<sup>21</sup> The long narrow shape of CC26 makes the district appear less compact. Additionally, the Modified Williams Plan excludes VTDs NO15, FE18, FE14, FE34, FE09, FE43, FE20, FE35, FE05, FE08, FE04 and FE02.<sup>22</sup> However, the contours of districts 2 and 3 on the Modified Williams Plan create more compact districts than those of the Democratic Plan II. The remaining districts in the Modified Williams Plan are either slightly more compact or roughly equal to the Democratic Plan II.

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Viewed as a whole, the Modified Williams Plan meets the goal of compactness. The Court considered modifications that would make District 1 more compact, but the density of population in bordering VTDs and the high percentage of whites in those VTDs meant sacrificing the goals of equal population and equal opportunity to participate in the political process to the goal of compactness.

\*9 Plaintiffs urged the Court to examine political considerations in apportionment. Plaintiffs cited a number of cases emphasizing the political nature of apportionment. However, in each instance cited by the Plaintiffs the Court was reviewing a plan adopted by a legislative body, not a court-drawn plan. *White v. Weiser*, 412 U.S. 783 (1973); *Gaffney v. Cummings*, 412 U.S. 735 (1973); *Burns v. Richardson*, 384 U.S. 73 (1966). Political compromise is the very nature of the legislative process. However, as the Supreme Court noted in *Connor v. Finch*, “federal courts ... possess no distinctive mandate to compromise sometimes conflicting state apportionment policies....” *Connor v. Finch*, 431 U.S. at 415. When the Court must act in the legislature’s stead, “the court’s task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner ‘free from any taint of arbitrariness or discrimination.’ ” *Id.* (quoting *Roman v. Sincock*, 377 U.S. 695, 710 (1964)). While legislatures may legitimately compromise based on partisan considerations, a court, where no legislative body has adopted a plan, should base its decision on the Constitution and the laws rather than become embroiled in partisan political questions. Therefore, this Court declined to consider Plaintiffs’ evidence concerning political competitiveness and evidence concerning the protection of incumbents.<sup>23</sup>

After careful review of the demographic data, the testimony, the exhibits (including each of the proposed

plans), and the arguments of counsel, this Court considered various other configurations not included in any proposed plan. This Court ultimately concluded that the Modified Williams Plan with current district numbers best satisfies the constitutional and statutory goals of apportionment.

Accordingly,

IT IS HEREBY ORDERED that the current St. Louis County, Missouri, council districts are declared in violation of the Fourteenth Amendment to the United States Constitution and Article I, Section 2 of the Constitution of Missouri.

IT IS FURTHER ORDERED that the apportionment plan adopted by the Court in this memorandum is declared to meet all federal and state constitutional requirements.

IT IS FURTHER ORDERED that said plan of reapportionment govern the election of members of the St. Louis County, Missouri, county council beginning with the 1992 election and continuing thereafter until St. Louis County, Missouri council districts are reapportioned in accordance with the law.

IT IS FURTHER ORDERED that the Defendants in the performance of their duties and functions be governed by and comply with the court adopted plan of apportionment.

IT IS FURTHER ORDERED that the period for filing a declaration of candidacy in the 1992 election shall be extended one week to terminate on April 7, 1992.

### Footnotes

- \* Districts 1 and 4 as reflected in Exhibit 20 are numbered 4 and 1 respectively in the Court adopted plan, consistent with the Amended Memorandum and Order.
- <sup>1</sup> Article I, Section 2 of the Constitution of the State of Missouri states  
[t]hat all constitutional government is intended to promote the general welfare of the people; that all persons have a natural right to life, liberty and the pursuit of happiness and the enjoyment of the gains of their own industry; that all persons are created equal and are entitled to equal rights and opportunity under the law; that to give security to these things is the principal office of government, and that when government does not confer this security, it fails in its chief design.
- <sup>2</sup> Intervenor, who are Raye Robertson, Vicki Hunn, Hernandez Cuenea, Grant Keyes, Elizabeth Lou Heiman, John Fernandez and Howard McClellan, are all citizens, residents and registered voters of St. Louis County. Intervenor Robertson, Keyes, and McClellan are black.
- <sup>3</sup> The Commission members were Frank Bild, Robert Buenger, Horacio de Garcia, Brian Fletcher, Daniel Gralike, Cary Hammond (Chair), James Hayes, Homer Johnston, Steven Koslovsky, Robert Levine, H.C. Milford (Vice–Chair), Betty Sims, Glennon Walsh, and Thomas Wehrle.
- <sup>4</sup> At the request of representatives of the St. Louis County Board of Election Commissioners, the maps presented to the Commission followed the boundaries of voter tabulation districts or VTDs. VTDs are units utilized by the Board of Election Commissioners that essentially follow precinct lines.

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Maximum deviation is equal to the sum of the percentage deviation of the district having the greatest population in excess of the “ideal” population and the percentage deviation of the district having the greatest population deficit below the “ideal”.

With one exception, the Democratic Plan II left the boundaries of voter tabulation districts (VTDs) intact. Clayton Township VTD # 17, however, was split between the Third and Fifth Council Districts. (Plaintiffs’ Ex. 5A).

Renumbering districts determines when county council members are elected. Pursuant to Article II, Section 2.040, of the St. Louis County Charter, council members from odd-numbered districts are elected for four year terms in even-numbered years having no Presidential election. Those members from even-numbered districts are elected in years having a Presidential election.

This cause of action does not require convention of a three judge panel because the reapportionment sought is not statewide. 28 U.S.C.A. § 2284(a).

In *Connor v. Finch*, a case involving reapportionment of the state legislature, the Court identified two ways Court-adopted plans are held to a higher standard: (1) Court-ordered plans must avoid use of multimember districts and (2) Court-ordered plans must achieve the goal of population equality with little more than *de minimis* variation. *Connor v. Finch*, 431 U.S. at 414, *citing*, *Chapman v. Meier*, 420 U.S. 1, 26–27 (1975). Furthermore, any deviation from approximate population equality must be supported by enunciation of significant state policy or unique features. *Id.* at 417.

The parties filed Exhibits labeled “Joint Stipulation Relating to Demographic Data.” They also filed Joint Exhibits 1, 2, 3, 4, and 5 (large maps showing the proposed plans). All references to the maps will be simply to Joint Exhibit (Number). All references to the demographic data will employ the full name “Joint Stipulation Relating to Demographic Data.”

***Democratic Plan II***

<b><i>Council District</i></b>	<b><i>1990 Census</i></b>	<b><i>+ or 68 Equal</i></b>	<b><i>Deviation from Equal Districts</i></b>
1	141,753	180	–0.13%
2	141,207	726	–0.51%
3	142,606	–673	+0.47%
4	141,535	398	–0.28%
5	142,723	–790	+0.55%
6	141,124	809	+0.57%
7	142,581	–648	+0.46%
Total	993,529		

***Modified Williams Plan***

<b><i>Council District</i></b>	<b><i>1990 Census</i></b>	<b><i>+ or – Equal</i></b>	<b><i>Deviation from Equal Districts</i></b>
1	141,819	114	–0.08%
2	141,250	–317	+0.22%
3	142,364	–431	+0.30%
4	141,415	518	–0.36%
5	142,728	–795	+0.56%
6	141,124	809	–0.57%
7	142,829	104	–0.07%



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Total 993,529

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***Republican Plan***

<b><i>Council District</i></b>	<b><i>1990 Census</i></b>	<b><i>+ or – Equal</i></b>	<b><i>Deviation from Equal Districts</i></b>
1	142,369	–436	+0.31%
2	142,209	–276	+0.19%
3	141,966	– 33	+0.02%
4	141,467	466	–0.33%
5	140,988	935	–0.66%
6	142,624	–691	+0.49%
7	141,896	37	–0.02%
Total	993,529		

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***BECO Plus Plan***

<b><i>Council District</i></b>	<b><i>1990 Census</i></b>	<b><i>+ or – Equal</i></b>	<b><i>Deviation from Equal Districts</i></b>
1	142,220	–287	+0.20%
2	141,997	– 64	+0.05%
3	141,291	642	–0.45%
4	142,503	–570	+0.40%
5	140,988	935	–0.66%
6	142,624	–691	+0.49%
7	141,896	37	–0.02%
Total	993,529		

- 15 The court in *Ketchum v. Byrne* said that the 65% guideline was derived by augmenting a simple majority. At trial Intervenor’s expert Warren testified that parity or 50% is the correct starting point.
- 16 The 65% figure is used by the Justice Department as a threshold population figure for finding impermissible retrogression of minority voting strength in redistricting matters reviewed under Section 5 of the Voting Rights Act. *James v. City of Sarasota*, 611 F.Supp. 25, 32 (M.D.Fla.1985).
- 17 In *Rybicki v. State Board of Elections*, the court described packing, “Blacks are unnecessarily concentrated in Commission Senate District 17, and the resultant ‘packing’ of black votes wastes such votes.” *Rybicki v. State Board of Elections*, 574 F.Supp. 1082, 1110 (N.D.Ill.1982). Blacks comprised 85% of the population in the district. *Id.* at 1110 n. 79.
- 18 Plaintiff-Intervenors took a linear measure around the perimeter of the districts. Using this method, Plaintiff-Intervenors argued that because the perimeter of the Republican plan equaled 336.4 miles and the Democratic Plan II equaled 338.1 miles, the Republican plan was more compact. De Garcia also compared District 2 on the Democratic Plan II and the BECO Plus Plan and concluded that District 2 was more compact in the BECO Plus Plan. The total perimeter of the Modified Williams Plan equaled 340.4 miles with an average perimeter of 48.6 miles. (Joint Exhibit 5). The average perimeter for the Democratic Plan II is 48.3 miles. (Joint Exhibit 2).
- 19 VTDs NO14, NO15, and NO20 are part of District 2 but are virtually surrounded by District 4 (District 1). A copy of the proposed map is included in the appendix. BECO Plus is the least compact of the four plans.

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- 20 The Modified Williams Plan includes SL10, excluded by the Democrat plan. VTD SL10 has a population of 807 and is 70% white and 29% black. (Exhibit 8 to Joint Stipulation Relating to Demographic Data p. 16).
- 21 VTD CC26 has a population of 263 and is 19% white and 81% black. VTD CC25 has a population of 909 and is 1% white and 98% black. VTD CC27 has a population of 183 and is 45% white and 53% black. VTD CC34 has a population of 743 and is 64% white and 32% black. VTD CC13 has a population of 2,223 and is 30% white and 68% black. (Exhibit 8 to Joint Stipulation Relating to Demographic Data pp. 2, 3).
- 22 VTD NO15 has a population of 1,694 and is 72% white and 27% black. VTD FE18 has a population of 2,463 and is 71% white and 28% black. VTD FE14 has a population of 988 and is 97% white and 3% black. VTD FE34 has a population of 1,535 and is 86% white and 14% black. VTD FE09 has a population of 525 and is 99% white and 1% black. VTD FE43 has a population of 2,309 and is 57% white and 43% black. VTD FE20 has a population of 763 and is 98% white and 2% black. VTD FE35 has a population of 1,321 and is 93% white and 6% black. VTD FE05 has a population of 2,268 and is 92% white and 7% black. VTD FE08 has a population of 2,830 and is 90% white and 10% black. VTD FE02 has a population of 632 and is 80% white and 19% black. VTD FE04 has a population of 1627 and is 91% white and 8% black. (Exhibit 8 to Joint Stipulation Relating to Demographic Data pp. 5, 12).
- 23 Plaintiffs also urged the Court to consider trends in population change. Trends may only be considered when they can be predicted with a high degree of accuracy. *Kirkpatrick v. Preisler*, 394 U.S. 526, 535 (1969). When population trends are considered, “[f]indings as to population trends must be thoroughly documented” and applied systematically, not in an *ad hoc* manner. *Id.* Plaintiffs’ proffered evidence concerning trends falls short of this stringent standard.