

You should have before you Committee Recommendation LB-2, Committee Memorandum LB-2, and also the minority report.

Delegate Gallagher.

DELEGATE GALLAGHER: Mr. Chairman and ladies and gentlemen of the Convention:

I have the honor to present on behalf of the Committee on the Legislative Branch the report on LB-2.

As you will see from Debate Schedule No. 7, it would be appropriate to consider together sections 3.02, 3.03, and 3.03(a). These three sections pertain generally to legislative districts and the redistricting commission, and finally, the redistricting procedure.

In the ordinary course of events, constitutional provisions such as these would be termed at least partially as apportionment procedures, but because we did in LB-1 adopt single member districts, in reality the problem of apportionment is taken care of in that section, so that we deal primarily with the districting, rather than the apportionment procedure.

We have already determined, and it is set forth again in 3.02, that the State shall be divided into districts for election of members of the House, and into districts for election of members of the Senate. Each of the districts shall consist of adjoining territory and be compact in form. I call your attention to the two tests that are provided here, that is adjoining and compact. In the ordinary course of events it is more often said that a district shall be contiguous, rather than adjoining; however, the Committee and the Commission on the Constitution considered the use of the words and decided that adjoining was a stronger word, a more definitive word, with respect to whether or not something actually touches, and thought that it more aptly could be used rather than the word "contiguous."

The third test, above and beyond the test of compactness and adjoining, is that natural subdivisions and boundaries of political subdivisions shall be followed insofar as practicable. That has been a standard provision in most districting constitutional provisions and is designed to eliminate to some degree the element of gerrymandering.

We did not follow the example of New York, which had a specific Eleventh Commandment, which was, "Thou shalt not gerrymander." We thought that was per-

haps carrying do-good too far; that is, to eliminate the practice. I think what you will find significant is the next sentence, the number of persons represented by each senator shall be substantially equal, and the number of persons represented by each delegate shall be substantially equal. Here we departed from the language of the Commission text which provided that the population represented should be as equal as practicable in substance.

We did so after hearing testimony from some experts in the field to the effect that it was possible to so district the State that you could have exact mathematical precision in districting, so that you would have within less than a percentage point precisely equal, or substantially equal districts within the State. We felt that we wanted to avoid this particular approach because it would mean that any time an existing plan of redistricting were challenged, if someone could show that the State could be redistricted to affect 100th less of a deviation of a percentage point, that that would be sufficient to upset what was generally considered to be an acceptable redistricting plan.

Now, you will note on page 3 of the Committee Memorandum LB-2, beginning at line 41, that we have said the following—which I would ask that you consider not to be a part of this Committee Memorandum, because I am specifically disclaiming it at this time.

It says on page 3, line 41: "In order to illustrate the flexibility in redistricting which the phrase 'substantially equal' will permit, the Committee on the Legislative Branch has prepared two possible redistricting plans based on 1970 population estimates. These redistricting plans are included in Appendix A at the end of this report. Because both of these plans in Appendix A do exceed what the Committee felt it wanted to be the maximum deviation allowable, we are asking that lines 41 through 46 be considered not a part of the report, and neither redistricting plan be considered offered by the Committee."

I think that is fairly important. It is said that these two possible redistricting plans might be two impossible redistricting plans, and we want to avoid that.

Now, the Committee, in using the language "substantially equal", had to agree among itself as to what variations, what maximum variations from the ideal or the mean would comply with what it meant by the words "substantially equal."