DATE: MARCH 26, 1992

FROM: ROBERT L. QUELLER

RE: APPORTIONMENT IN MICHIGAN

The attached speech by Fred Headen of our Lansing office on reapportionment in Michigan updates to March 17, 1992, our Council Comments No. 1002 and Report No. 303 which were published in December 1991.

While the State and Federal courts will resolve the current problem of reapportionment following the 1990 Census, Fred notes in his speech that the underlying problem has been with us since 1964. The Legislature has failed to resolve the problem in 28 years, but there are alternative means available to citizens to establish a process for reapportionment that provides standards and assigns responsibility for performing the function.

"WHERE REAPPORTIONMENT STANDS TODAY"

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REMARKS BEFORE THE
AMERICAN SOCIETY FOR PUBLIC ADMINISTRATION
(MICHIGAN CAPITOL AREA CHAPTER)
17 March 1992
LANSING, MI

I must confess that I have been awaiting the start of this evening's program with some anxiety. Two months ago I was asked to address the Okemos Kiwanis Club. That was the first time I had attended a Kiwanis meeting and I discovered upon my arrival that they begin each meeting by singing songs. And of course as a guest on that particular occasion I was asked to sing along. Since my singing abilities are no better than Congress' ability to balance the federal budgets I thank you for not asking me to put them on display again.

It is an honor to appear before you this evening because your organization and the organization for which I work share a common bond: a commitment to the study and improvement of government and to its effective and economical administration. That common bond dates back to December of 1939 when members of the Governmental Research Association met at the Wardman Park Hotel in Washington. D.C. and organized the American Society for Public Administration. The role your organization plays today is as vital as it was 52 years ago.

I have been asked to talk about reapportionment in Michigan and what it means to you. The nice thing about the topic of reapportionment is that when you are asked to speak on it, you seldom have to bother updating what you said the last time you spoke on it. This is because no matter how much time may elapses probably not much will have changed. In fact, when we did our most recent study on reapportionment which was published this past December we found that nothing had changed since we had last looked at the issue in 1983.

I would like to do three things this evening, each of them rather briefly. First, to define for you the nature of the problem; second, to update you on where the matter stands in the courts; and finally to suggest why the reapportionment process, or more accurately the lack of a process, should be of concern to you.

First, the problem.

That which is necessary for a proper reapportionment process is deceptively simple. You really need only two ingredients: Someone to conduct reapportionment and objective standards for them to follow. And therein lies the problem. The process in Michigan lacks both ingredients. Let me begin with the absence of standards.

The Importance of Standards

The purpose of standards is to ensure that reapportionment is conducted in a fair and constitutional manner. Each of Michigan's four constitutions dating back to 1835 has contained

reapportionment standards. The conventions that wrote those constitutions and the voters who ratified them believed, as of right they should have, that because reapportionment is fundamental to our form of government. It should be governed by standards contained in the state's fundamental law.

In fact, if one looks at Article 4 of the present state Constitution -- the legislative branch -- Article one finds the most elaborate and detailed reapportionment provisions concerning the state Legislature. The problem is that those provisions -- with the exception of those which specify the number of seats in each house and the term of office -- are invalid and have been for the last 28 years.

Those invalid provisions required the Legislature to be apportioned on the dual basis of population and land area. For examples the state Senate was to be reapportioned on the basis of a formula that was weighted 80 percent by population and 20 percent by land.

The present state Constitution was adopted in 1963 and took effect on January 1, 1964. Six months later, the United States Supreme Court decided **Reynolds v Sims.** The **Reynolds** decision stands for the proposition that we generally refer to as "one person-one vote." The Court held that both houses of a bicameral legislature must be apportioned on a population basis. "Legislators," said the Court, "represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests."

In order to appreciate just how malapportioned many state legislatures were at the times consider the following: the Alabama Legislatures which was at issue in **Reynolds,** had 105 house districts that ranged in population from 6,731 people to nearly 105,000 -- a ratio of 15 to 1. And there were 35 senate districts that ranged in population from l5,4l7 people to more than 634,000 -- a ratio of 41 to 1.

Nor was this problem of malapportionment limited to Alabama, or to the South for that matter. During the 1950s for example, the least-populous senate district in Michigan consisted of 4 entire counties (Baraga, Houghton, Keweenaw, and Ontonogon). The population of that district was 61,008 people. By comparison, the most-populous senate district, comprised of only a portion of Wayne County, contained over 544,000 people.

As a result of the **Reynolds** decision, after the 1960 and 1970 censuses, the state Supreme Court in effect substituted the one person-one vote standard for the invalid standards in the state Constitution. After the 1980 census, however, the Court established several standards of its own after recognizing that states could depart from the one person-one vote concept to achieve other objectives, for example, to preserve local political boundaries.

The standards established by the state Supreme Court in 1982, often referred to as the "Apol standards," require that legislative districts be contiguous, compact, and break as few local boundaries as possible. They also permit a maximum deviation of 16.4 percentage points between the least- and most populous districts. Unfortunately, these court-established standards are subject to changing majorities of the Court. As such, they do not provide the degree of permanence as would standards that are part of the Constitution.

The Responsibility for Reapportionment

The second problem I referred to earlier is that the state Constitution does not assign responsibility for conducting reapportionment to any official. One of the now-invalid provisions of the state Constitution established an eight member reapportionment commissions with four members selected by each of the two major political parties. While the 1961 state Constitutional Convention did much admirable work, it must candidly be stated that the reapportionment commission was not well conceived. The fact that members of the commission were selected by political parties made it impossible for them to compromise on so political a matter as reapportionment. Furthermore, since the commission had an even-numbered membership, there was no way for it to resolve a deadlock.

So, it is not surprising that the commission failed to agree after the 1960 census, after the 1970 census, or after the 1980 census. In each instance, the commission submitted various plans to the state Supreme Court. Finally, in 1982, the Supreme Court abolished the commission (proving, perhaps, that there really is justice after all). The Court concluded that since the standards in the state Constitution were invalid, the commission must be invalid as well because the voters had never intended the commission to function without standards.

The demise of the reapportionment commission meant that reapportionment was once again the responsibility of the Legislature and this has proven problematic for two reasons. First, there is an inherent conflict of interest. "No persons'' cautioned Madison in **Federalist No. 10,** "is allowed to be a Judge in his own cause because his interest would certainly bias his Judgment and, not improbably, corrupt his integrity."

It was in the same vein that Dr. John Hannah, who served as a delegate to the 1961 Constitutional Convention, observed:

> It is totally unrealistic to expect a legislature to redistrict and reapportion seats in its own body. Redistricting inevitably involves the possible denial of seats to members of the existing legislature.
>
> Wholly aside from the political implications involved, the personal relationships alone work to delays subvert, or prevent prompt and equitable reapportionment of itself by the legislature.

The second, and more practical reason why the Legislature should not be left to reapportion itself is that it has proven incapable of doing so. For example. the Legislature worked on reapportionment throughout most of 1991, but failed even to report a plan out of committee. Which leads me to that update concerning where the matter stands in the courts.

By January of this year, it was apparent that the Legislature was hopelessly deadlocked on the reapportionment issue. So, the state Supreme Court reluctantly entered the fray and established a three-judge panel to resolve the matter. The Democratic and Republican parties each submitted one plan to the Judicial panel and two legislators each submitted partial plans. The panel rejected all four of these plans and drew its own, which it submitted to the State Supreme Court on February 20th. Two weeks ago, the Court heard oral arguments on the plan.

Those individuals who testified, including eight legislators fell roughly into three camps: those who urged the Court to adopt the plan, those who urged the Court to reject the plant and those who urged the Court to modify the plan in certain respects and then adopt it. The Court set no date for a decision. To further complicate matters even after the state Supreme Court does order a plan into effect, it may be challenged in federal court as in violation of the federal voting rights act, but that is another story.

The Legislature also failed to agree upon a congressional reapportionment plan. As a result, that matter as well is being resolved by the courts. Michigan will be losing two of its 18 congressional seats. (Presently, 11 seats are held by Democrats and seven by Republicans.) The Democratic Party has taken the position that each party should forfeit one seat. Apparently thinking this an honor they could decline, the Republican Party has taken the position that Democrats should forfeit both seats. A panel of three federal Judges heard testimony in that case most of last week.

So, this is where the matter stands today: since 1964, no valid language in the state Constitution concerning reapportionment standards and since 1982, none that assigns responsibility for reapportionment to any state official. As a results after each census the courts have been placed in the inappropriate position of having to rescue the Legislature from Its own failure to address this important issue in a rational manner.

Why should any of this be of concern to you or me? Let me suggest one reason. When Benjamin Franklin emerged from the Pennsylvania statehouse on September 17, 1787, at the conclusion of the federal Convention, a citizen asked him, "Dr. Franklin, what type of government have you given us?" And Franklin replied, "We have given you a republic, if you can keep it."

One of the two hallmarks of republican government – that's republican with a small "r" -- is its representative character. And that is why reapportionment is so fundamental. It is the process by which the districts are established from which the people -- you and I -- elect the individuals who govern us, in Congress and in the Legislature; individuals whose actions, or inaction affect our daily lives. As the United States Supreme Court said in **Reynolds v Sims:**

> As long as ours is a representative form of government, and legislators are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.

The problems I have touched upon this evening concerning the absence of a reapportionment process cannot be wished away. To the contrary, those problems reappear every 10 years with the tedious inevitability of an unloved season. Furthermore, the same considerations that render the Legislature incapable of reapportioning itself also make it unlikely that the Legislature will either supply suitable standards or that the Legislature will assign the responsibility for reapportionment to an impartial agent. It is increasingly apparent that these problems will persist until they are addressed by voters.

I note in this regard -- and I do so merely to inform and not to advocate any particular course of action -- that the state Constitution requires that every 16 years the question of its general

revision by constitutional convention be placed on the statewide ballot. That question will next be put to voters in November 1994. If a convention is called, establishing a reapportionment process should certainly be among the matters considered.

Of course, voters in Michigan need not await the calling of a convention in order to propose amendments to the state Constitution. In fact, since the present state Constitution was adopted in 1964, voters have proposed amendments to it on 11 occasions; interestingly enough, none of the proposals has dealt with reapportionment. Perhaps, this is because the confusion and incivility which accompanies reapportionment need be suffered only once every ten years, and that despite existing imperfections, reapportionment does in fact occur. Whatever the reason, the voters may wish to consider establishing a more sedate and orderly process that what we now have.

Thank you.