

MAKING THE VOTE COUNT

- I. ~~the~~ the microcosm of whole nation. We talk of nation.
- II. The movement to reapportion described. *Every device is used*
- III. The basic facts of apportionment and representative gov.
- IV. The present crisis in five crises:
 1. The crisis as simple political disorder. *costs to*
 2. The philosophical crisis (egal&mechanistic) *accuracy*
 3. Crisis of federalism
 4. Crisis of the Rule of Law
 5. Crisis of Court power
- V. This may be a watershed of the political and constitutional order.
- VI. The legal, federal, and rule of law aspects can be put aside to explain the political and philosophical
- VII. What is behind the drive for =pops districts?
Assertions and fallacies:
 1. To get rule by majority.
 2. To accomplish equality.
 3. To get better city government.
 4. To achieve better race relations
 5. To benefit a political party
 6. To benefit unions *(yes. But not of Michigan union industry)*
 7. To benefit a faction
 8. To get better government in general.

VIII. The reformulation of the problem:

What do we want from apportionment systems: Better representative government. And what is better rep.govt.?

1. Representation of communities. (responsible)
2. Representation of interests "
3. Representation of free groups of persons, individually choosing their side.

To sum up: Community apportionment
Functional apportionment
Free apportionment

IX. How would it work?

One House: 40-20-40 (100%) (one man-one vote)

Senate -- small council (3 areas, limited vote in each)
This should be the kind of goal towards which we should work
Other plans, such as the present Michigan one, should be weighed on this balance.

- X. Conclusion: society does not prosper or progress by the magic of slogans but by better organization, coming from the accurate analysis of ~~po~~ human behavior and possibilities. To make the vote count, ~~it~~ cannot be ~~made-equal~~ done by trying to make it equal. It counts by being made meaningful, and by being given a total direction to aim at.

No general set of goals that would be set for these cities. (Secretary, feel free, has side...)



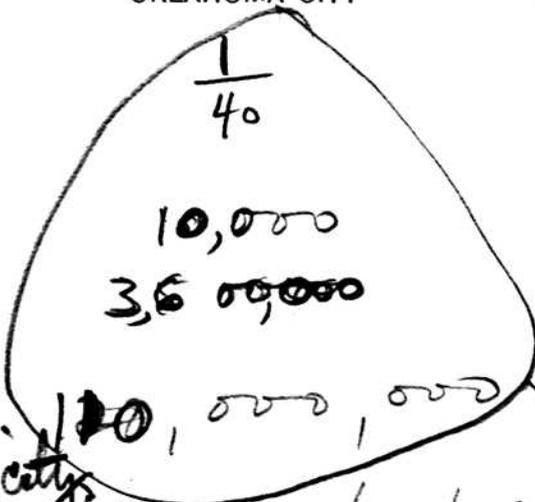
SKIRVIN HOTELS

BDW'Y AT PARK AVE.

OKLAHOMA CITY



Apportionment



GOALS
"IMAGE" of city

Political Activity & Leadership
"Its Measurement"
Lo - Medium - Hi

Small Number of activists

Network of society & activists

Applicable to all groups
GPS are greatly numerous today

∴ Probs of coordination



One Man - One Vote?
Making the Vote Count

Basis of Talk 27
Given in
Oklahoma City, OK
around 1964.

by Alfred de Grazia

Voting in itself is simple enough. You vote or you don't vote. But making the vote count is a problem with a thousand angles. One, and only one, of the angles has to do with apportionment and that particular angle is complicated enough and controversial enough to bring the American constitutional system to the ~~the~~ brink of disorder.

The story of a constitutional crisis now occurring, whose history a generation ^{hence} ~~is~~ will surely loom larger than the Cuban crisis of last year, goes back to a fact known to all persons who have ever been slightly interested in the subject. If a man compares the population of his State Senate or Assembly district with the population of the next, it is likely to be considerably larger ^{or} smaller. ~~There are two cases:~~ If a ^{big} city man, or suburbanite, his district is likely to be larger than the State average; if a town or country man, his district will be smaller. He may be inclined to say "So what?" Or he may not like it. If he doesn't like it, he has a good part of the American judiciary on his ~~side~~ side, but he may also find his instinctive reaction ^{is having a} ~~is~~ a number of consequences of dire portent for his view of mankind, the ~~rule of law~~ rule of law in America, and the federal system of government.

In April of last year, the Supreme Court handed down a now-famous decision, in the case of Baker v. Carr. Six justices wrote separate opinions, two of which were vigorous dissents. For sixty years Tennessee had not reapportioned the State legislature; the populations of the districts had changed;

Slide
of
Baker v.
Carr
Box

and the legislature had ignored the Tennessee Constitution which ~~he~~ commanded it to reapportion in accord ~~with~~ ^{largely} with population periodically. The Court declared that citizens of the State might bring such a case before ~~the~~ ~~the~~ ^{courts} on the question whether they who lived in the heavily populated districts might not be denied the equal protection of the laws guaranteed ~~them~~ by the Fourteenth Amendment. Whereupon the case was ~~sent~~ returned to the lower court for determination on its merits, and a ^{spectacular} spate of litigation on similar issues occurred throughout the country.

Without admitting it, the Court veered from a history of aloofness on questions of apportionment. It had long held them to be matters solely of State politics and law. Over the vociferous protests of Justices Frankfurter and Harlan, the Court now held that it had jurisdiction over State apportionment systems so far as the federal Constitution

The Court dealt harshly with the accepted notion that the question might be justiciable in the federal courts. ^{Furthermore, it} differences of the relative ^{"political" in nature.} indicated that it could see in the ~~populations~~ of legislative districts a possible violation of equal protection of the laws. Justice Stewart, in a concurring opinion, tried to keep the ~~the~~ ~~decision~~ ^{from} ~~involving~~ ^{ing} the population districting question, but, in the months ^{following,} ~~since~~ his words have been without visible effect.

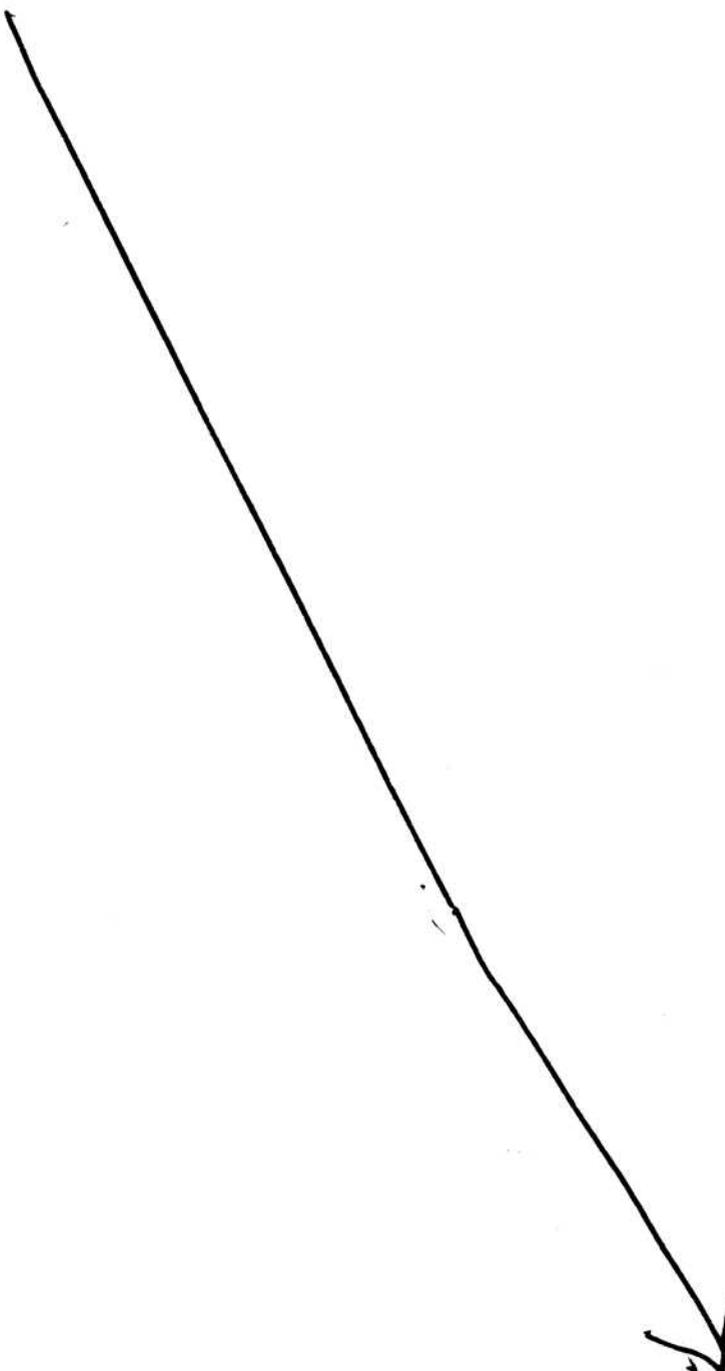
The ~~Courts~~ by the end of 1962 had forced apportionment along population lines in twelve States, ~~and~~ They were moving towards final decisions in five. And in three, they had resisted efforts to reapportion. ~~The~~ The variety of cases was bewildering. In Wisconsin, a legislature that

Slide of effects of B v C

had delayed periodic apportionment for a couple of years
 was narrowly escaped being disbanded by the court, ~~which~~
 In Michigan, the Senate elections were ~~almost~~ ^{completely disrupted}, under an
^{impossible} order of the State Supreme Court, and were ~~disrupted~~
 saved by the last minute intercession of Justice Stewart.
 These elections were based on an apportionment approved
 in ^a popular referendum of 1952 ^{where,} at the same time, ~~was~~ a
 system of apportionment asking an equal-districts set-up
 for both Senate and House was ^{decisively} rejected by the same popular
 electorate.

When [#] all the ramifications of Baker v. Carr [#] are
 exposed, the conclusion is inescapable; the courts are
 managing a veritable coup d'etat. They are seizing
 upon a doctrine of equal-populations districts held by
 some Americans and making it into the law of the land. They
 have begun to subject the legislatures of all the States
 to a uniform rule of basic apportionment. The implications,
 moreover, extend directly into the House of Representatives
 and Senate of the United States. And further, if apportionment ^{theories}
 can be read into the federal Constitution (as it has been in
 the extended interpretations being given to Baker v. Carr),
 no State Constitution ^{and} no State ~~institution~~ institution
 will be free from judicial amendment at will. ~~It~~ Law
 review writers, both for and against the courts ^{on the present issue,} are
 agreed that Baker v. Carr may rank with Marbury v. Madison ^{in effects}
^{upon} ~~judicial restructuring~~ the American governmental
 order. ^{literally} The courts can be tyrants: that is, they can ~~literally~~
 destroy the ~~rule~~ rule of law by extreme judicial law-making.
 They can be centralists by recklessly breaking down federalism.

Once all this is done, it is of little consolation to know that the judiciary does not have the capacity for ~~enduring~~ enduring paramouncy. For always behind the scenes stands the executive power, ~~whose~~ whose path, once cleared of the debris of federal decentralization and legislative checks and balances, lies clean and straight towards despotism.



in their present crusade
The courts have had ~~chiefly~~ historical misrepresentation, a vague myth of numerical equality, and a few notorious malapportionments as their allies. The public is apathetic, group pressures not heavy. Advocates of ~~reapportionment~~ reapportionment have ranged from diligent

housewives of the League of Women Voters to sophisticated lawyers and political science professors, Labor unions and municipal associations are ~~among~~ among the prominent backers of ~~change~~ change to equal-population districts. ~~An Oregon legislative committee,~~ An Oregon legislative committee, ~~was~~ faced with ~~heavy~~ heavy demand for information, put out an

"Apportionment Do-It-Yourself Kit". ~~The legislators cannot~~ *act otherwise* in many cases; so many people believe that apportionment is a mere matter of numbers and arithmetic. It is as if the employees of General ~~Electric~~ *Motors Corporation* discovered that there were half a hundred ~~GM~~ GM factories and ~~decided~~ decided that each should have an equal number of workers; then, not content with ~~suggesting~~ *merely* suggesting this as an idea, ~~they~~ they set themselves to apportioning the ~~quarter-million~~ quarter-million employees into equal districts.

The psychology and policy behind the movement to reapportion, and unfortunately behind the majority of ~~judicial~~ judicial opinions on the subject ~~are~~ are simple to the point of absurdity. To realize this, one must understand thoroughly the meaning of apportionment. Apportionment is the dividing of a State (or any other ~~jurisdiction~~ jurisdiction) into districts ~~so that the qualified~~ so that the qualified people of each district can elect one or more members to the legislature. The constitutional provisions regarding the apportionment formula are a primary power of the government and are initially adopted after a political debate on the merits of various systems. It is not a judicial question for the simple and basic reason that the structure of government is not a judicial question. There are different opinions and the final formula is a settlement of the conflicting ~~and~~ beliefs and interests involved.

Enduring and fundamental
Several ~~and~~ interests are involved in ~~State~~ State apportionments.

Malapportionment, however, is the refusal of a Legislature to apportion as commanded by its Constitution and I see no reason why this cannot be clearly distinguished as a case for judicial intervention.

This may be one of the restricted and useful meanings of Baker v. Carr.

First of all, men generally seek to represent communities in the apportionment. So they allot seats to existing governmental units, such as counties or towns. This is often done with ^{little} regard for the different numbers of people in each jurisdiction. The important motive is to see the natural community represented. This is the ancient "borough and shire" kind of representation that underlay the English Parliament from its earliest days to very recent times.

Second, functions are important, but since American apportionment has not been thought through since the nineteenth century, the kind of function most adequately provided for has been agriculture. That is, in an agricultural State, the functional or task-oriented basis of representation and apportionment is rather heavily tied to farming and these in turn are distributed around the territory equally. Hence both community representation and representation by territorial surveys of districts more or less of equal population can serve to represent the agricultural community fairly well.

However, a third kind of factor in apportionment is people in themselves. Here is where the danger lies. For people in themselves scarcely exist. They are members of various community and associational groups; the more active they are, the more likely they play their part as group members rather than individuals. They are connected with community councils, churches, unions, businesses, business associations, charities, planning associations, and, of course, political parties. Probably less than ^{five} per cent of Americans even know the name of their State ~~assemblymen~~ assemblymen. To say, therefore, that people and people alone--- that is, people as sheer numbers -- should be the sole or even largely the basis of the apportionment of seats in an assembly is not only ^(un)realistic, ~~but even dangerous to the block,~~ but even serves under present social conditions to the representation of anybody except a small group of politicians and their cohorts who operate as individual speculators in the political marketplace.

To understand this requires considering the biggest argument that the forces for reapportionment have advanced. The big cities, they say, who are ~~part of~~ ^{the heart of} the new metropolitan America, are cheated of their ~~just~~ ^{just} power and cannot ~~solve~~ solve their problems. Now in the first place, ~~city~~ city power depends only partly on its representation. The "worst" ^{apportioned} ~~represented~~ large city in the country ^{by equal-population standards,} has been Atlanta, Georgia, which is also one of the best-governed cities. A host of pressure groups in State legislatures ~~originate~~ originate in the cities. In one way or another they see to it that the cities, ~~or~~ or at least, certain groups in the cities such as welfare associations, business groups, labor unions, churches, and so on, get representation in one way or another, despite the apportionment system. Furthermore, it remains to be proven that the legislators who are not from the biggest city or cities of the State are hostile to the genuine improvement of the cities. Off hand, one would think so; I used to assume so; but a search for valid proof ^{over} has cast heavy doubt ~~on~~ the belief. I found, for example, that the City of Nashville, Tennessee had prepared elaborate charts showing that when all the smaller population districts were compared with all the bigger population districts, the smaller got a higher per capita share of education funds. ~~This was the sort of evidence argued in the Tennessee~~ This was the sort of evidence argued in the Tennessee apportionment case that ended in Baker v. Carr and the subsequent reapportionment of Tennessee. But I compared the ~~percentage~~ ⁱⁿ percentage of families ~~earning~~ earning under \$3000 a year in the various counties and discovered that the poorer the counties the more State education funds they received. Is not that a case for, rather than against, the existing system of apportionment? Are the big city advocates

Slide
of Nashville
chart

intending ~~to~~ discriminate ~~to~~ against the ~~smaller~~ cities and country? One would think so from some of the testimony and argumentation.

Whereupon one would have to admit that ~~the~~ the constitutional authorities in some States were probably correct in preventing any city of the State from commanding a majority of seats in the State legislature. This would be power compounded several times over, for the cities, easier to organize, more compact, and more likely to be commanded by a machine can do more with any majority of seats than might any combination of less urban counties. It would be of benefit to a party machine, not to the cities as a whole, it must be ~~insisted~~ insisted. The two are not the same. Cut a city up into equal population districts and you create bailiwicks managed by and for politicians -- this has long been the case and has not produced good government in American cities. To increase the number of such seats is not likely to improve the situation. It would worsen it.

The advocates of the big cities' problems are well-meaning but mistaken when they pursue the route of equal-population districts. You cannot arrange community, functional, or even free representation with such an apportionment, for the equal populations are only made possible by slicing up all natural social groups by survey instruments. Furthermore, they ignore population changes too.

~~The biggest cities have been~~ ^{they say} ~~entitled to more seats;~~ ^{it is said,} lacking them, they have suffered bad government, because ~~they are not~~ ^{they are not} able to swing their weight in the State legislatures.

But, lo and behold, ~~a number of~~ a number of the largest cities of the country are losing population relative to the rest of the State and particularly in relation to the suburbs. ^{therefore} therefore the same cities will shortly have the seats to which their population "entitles" them.

By the logic of the numberologists, when this point of time arrives, the ~~grave~~ grave problems of the metropolis will be solved. The cities will get their due; good government will flourish; ~~well-paid~~ well-paid teachers will teach, under the best of physical conditions; and all will escape from

*Slide Detroit
"I got 80% of
the seats by the
with the machine of
the great-district
crowd."*

rural bondage.

Another bogey man is rising to plague the cities, ^(however) The suburbs are the areas ~~with~~ with the most populous districts. They, in the terms of the numerologists, are the worst off of all. And, therefore, they will get the most seats under reapportionment by equal numbers. What will the distinguished new suburban legislators do? They will discriminate against the cities. They will oppose many a solution of city tax, planning, racial, recreational, educational, transportation, and public health problems. The city fathers will probably then go to the country representatives and seek to enlist them against the suburbs. The end result; ^{the} situation ^{will be} worse than ever.

If the advocates of numerical equality were once sobered from their ideological inebriation, they would realize these facts.

The problem of the metropolitan community ^{rests with} its total organization. ^{No major urban} Any solution of urban ~~ills~~ ^{problems} depends upon giving recognition in apportionment to the metropolitan community as a whole. I should ^{personally} prefer to

seek a solution of metropolitan problems with a delegation of ten members from the whole metropolitan district, chosen at large, than with a motley group of ⁶⁰ city ^{and suburban} legislators ~~chosen~~ chosen from meaningless but equal population districts. More than this is necessary in the long run. The enduring and most efficient ~~solution~~ apportionment would permit not only the representation of the metropolis as a whole but would reinforce that total representation of the city with persons elected by free constitutencies (that is, proportional representation) and by major interest groups within the city ~~based~~ based on natural neighborhoods and occupational groups.

The whole State should indeed be apportioned on these three bases ultimately ^{Structured} the community seats, the functional seats of the major economic social groupings of the State, and the free seats filled by whatever groups and personal groups can command a sizeable fraction of the public.

These are questions for deliberate ~~study~~, planning, and action. They cannot be ~~answered~~ ^{answered} by persons far removed from politics. They are problems for constitutional conventions, high-level civic groups, and farsighted political party councils. Meanwhile, to ~~press~~ ^{press} for mechanically constructed districting can only serve to accentuate the atomistic, save individual politicians faceless disorganization of modern society. Few will benefit, although benefits may be alleged and promised to many.

The ~~functions~~ tasks of State legislators are insufficiently known. If their work were more understood, people and courts would be less eager to sweep aside their organization and structure. There is absolutely

no evidence that the quality of legislators will be improved by the proposed large-scale redistricting. ^{Of legislative hacks there are many, but of men of ability too. No better breed can come out of a shifting of boundary lines to compose equal populations.} The legislators have the job of representing the State ~~as~~ as a whole and such groups as they belong to; they ~~must~~ have the task of planning legislation, of investigating the executive establishment, and of managing a complicated human organization to do all of these things. It would be most ~~unfortunate~~ unfortunate to wreck this operating structure for an abstract ~~idea~~ idea of unknown and ~~undesirable~~ ^{undesirable} consequences.

It is therefore all the more urgent ~~that~~ ^{for} the judiciary of the country ^{to} realize ~~that~~ ^{that} ~~the fact occurring and that they are~~ ^{The results intended for the cities will not occur} selling our birthright for a mess of potage. [^] They are taking one of the greatest legislative leaps in the history of American jurisprudence on behalf of ~~a misunderstood and~~ ^{(a misunderstood and} dangerous cause. Only the greatest and most urgent issues, ~~seen~~ seen and understood by an objective ~~consensus~~ consensus of legally ~~and~~ and socially informed persons should be the occasion for such a legislative leap.

When furthermore the interest to be profoundly weakened by that policy is the fundamental American institution of federalism, such action must be construed, without exaggeration, as a coup d'etat by the courts. The ~~legislature~~ American federal system rests on four pillars --- an independent election system, an independent judiciary,

an independent ~~power~~ power to tax, and an independent police power. To remove from the State constitutions and legislatures the right to determine the apportionment base of their representative system shatters a principal foundation of State government.

We must conclude that in the ~~year~~ year 1962, a revolution began in ~~the~~ of the American political structure.

~~the~~ traditional and fully legal structure ~~of~~ of State apportionment of legislatures, ~~was assaulted on baseless grounds,~~

developed into an assault on

~~as part of what has~~ ^{started as a proper} attack against illegal

excesses in malapportionment in several States. The courts arrogated to themselves the power to make legislation in the

largest sense. They further attacked the ^{legislative} foundation of ~~the~~ ~~legislative structure~~ federalism. ^{it} The ultimate

court decisions

~~are~~ confirming or retreating from this revolution

are about to occur. It would seem most fitting and proper therefore for all persons understanding the basic issues at stake ~~to~~ to

urge the State legislature to act by resolution and legislation in their own defense, ~~and~~ ^{to} organize within citizen groups

campaigns for petitions and actions

and to

engage

by personal conversation and action, ~~and~~

~~to~~ to frustrate what may turn out to be one of the most injurious

~~and~~ periods of American constitutional history.

Possible boxes that might run alongside the article "Making the Vote Count," by Alfred de Grazia

Slide
1. A gerrymander: This is malapportionment. It can be banned by a court, either State or ~~the~~ federal, when flagrantly discriminatory, as in the Tuskegee case.

2. How a computer could apportion a State (see mss, p. 4-5 of Chapter 1.

slide
3. Tennessee irrationality and New York rationality -- chart on p. 15 a Chap. III

4. Box comparing the Michigan electorate referendum on two contrasting apportionment proposals using material from pp 3 ff Ch.VI.

Slide
5. How the States are presently apportioned (p7, Ch.IV) (possibly plus statistics on how rapidly change is occurring normally and under forced draft) pp.8-12, ChIV.

etc.

6. Baker v Carr effect

7. Baker v Carr case

8. Nashville Chart

9. Detroit moves to "segment"

Making the Vote Count

U.S. Supreme Court
1850 to 1950 - 2 to

- I. What is apportionment?
 II. What is the movement to reorganization?
 III. ~~What~~ ~~are~~ the consequences: ---
 A. We are in the midst of a national crisis: over the subject of apportionment. It is a quintuple & quadruple crisis. That is what makes it important. Describe each.
1. It is a crisis of judicial power.
 2. It is a crisis of the rule of law.
 3. It is a crisis of federalism.
 4. It is a crisis of philosophy of government (pluralism, egalitarianism, traditional, mechanical theory of man)
 5. And it is a matter of fact crisis of State government in many places. (Shift of power, chaos)



- B. All together they add up to a critical ~~turn~~ overturning of the Constitutional order.
- C. What difference does it make? It makes a lot of difference. But since a great majority of people are not concerned about it, it seems to make little difference. What diff. it makes:

-
-
-

PR formula
 Mich. strip
 Pop. B suburbs
 1940-1950-1960
 over

D. Who backs apportionment?

Their fallacies

1. "Good for equality".

2. "Good for ~~the~~ cities".
 But cities have not been hurt
 And " will not improve

3. Good for a party, a class,
 a race.

4. Good for a clique or faction

E. New Means of Apportionment

1st House	1. Community Apportionment	40
	2. Functional Apportionment	20
	3. Free Apportionment	40

2nd House { Small Council at-large from
 3 areas of State elected by
 limited vote in each area.

$\frac{5}{5}$ Vote for 3
 $\frac{5}{5}$ " "
 $\frac{5}{5}$ " "

$$\frac{\text{No. of Votes needed}}{\text{Total Votes Cast}} = \frac{\text{Total Votes Cast}}{\text{no. of candidates to be elected}}$$

PR $\frac{2515}{4}$