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CONSTITUTIONAL PROVISIONS FOR LEGISLATIVE APPORTIONMENT AND REAPPORTIONMENT

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CONSTITUTIONAL PROVISIONS FOR LEGISLATIVE APPORTIONMENT AND REAPPORTIONMENT

The apportionment of members of state legislative bodies in a modern complex civilization presents a perplexing problem. According to one authority,[1] factors in the problem of apportionment which have provoked legal disputes include the basis of representation, the process of apportionment, the character of districts, the apportioning agent, the frequency of distributions, the relationships and correlations between representation in the lower and upper chambers, and the relation of the individual citizen to the apportionment process. Overshadowing all these factors is the cleavage between urban and rural areas.

Every one of the forty-eight state constitutions deals with the problem of apportionment in some fashion, stating more or less clearly the basis of representation and specifying or at least indicating the procedure for reapportionment. Occasionally the constitutions make the actual apportionment--more frequently, only of the senate. To a large extent the constitutions do not attempt to state the exact number of members for both houses of the legislature, and determination of the size of both houses, or at least of one house, is left to the legislature subject to constitutional restrictions.

Some state constitutions prescribe the maximum number of members of each house, delegating to the legislature the determination of the exact number within the maximum limit. Included among these states are Alabama, Florida, Indiana, Kansas, Louisiana, Nebraska, Oklahoma, Oregon, and Utah.

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[1] Shull, Charles W. "Legislative Apportionment and the Law." Temple University Law Quarterly, 1944. (Vol. 18). pp. 392-393.

In four states, Mississippi, North Dakota, South Dakota, and Virginia, the constitutions prescribe a maximum and a minimum number of members of each house, leaving to the legislature the power to fix the membership within these limits. In an equal number of states -- Iowa, Georgia, Maine, and Michigan -- a maximum or a minimum number, or both, is prescribed for one house by the constitution, and the precise number of members is fixed for the other.

The constitutions of California, Delaware, Illinois, Kentucky, Massachusetts, New Mexico, New York, and North Carolina fix specifically or by implication the exact number of senators and representatives which shall compose the two houses. In Texas the size of the senate is stated in the constitution, leaving to the legislature the power to determine the number in the lower chamber. In Arizona and West Virginia the number contained in the constitution may be changed by legislative action. The constitutions of Alabama, Idaho, Iowa, Nevada, Tennessee, Utah, Washington, Wisconsin and Wyoming merely prescribe that a certain proportion shall exist between the sizes of the two legislative houses.

A mere analysis of constitutional provisions for legislative apportionment in the various states will not necessarily give one a true picture of the status of legislative apportionment today. In most states, the legislature is the agency responsible for reapportionment, but in numerous instances the legislatures have failed to perform their constitutional duty, with the result that there is a considerable lag in legislative apportionment. Although the state legislatures are under mandatory constitutional duty to reapportion, the violation of such a duty does not confer power upon the courts to compel its performance.[2] State constitutions define the duty but withhold the sanction.

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[2]Chafee, Zechariah. "Congressional Apportionment." Harvard Law Review, 1942. (Vol. 42). p. 1018. (See note 29, infra.)

Basis of Apportionment.

The basis of legislative apportionment varies considerably among the states, depending in large part upon the political considerations of the local scene, with the result that the personnel of ninety-five legislative chambers[3] (senate and house) must be apportioned in accordance with almost ninety-five different patterns. If a generalization is attempted, two fundamental bases for apportioning legislative districts are used by the states--population and territorial units, but both of these bases are subject to many modifications in the various states.

In fifteen states[4] the legislative districts in both chambers of the legislatures are constructed upon equal population units without territorial modifications. This basis is also used for representation in Nebraska's unicameral legislature. In addition to these states, there are eleven states[5] where the senatorial districts are constructed upon equal population units, with some other basis of representation used for the lower chamber of the legislature. Representation in the lower chamber of the California and Montana legislatures is in accordance with equal population units and the upper chamber upon another basis. In nineteen states[6] neither the upper nor lower chamber districts are based on straight population units, but rather

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[3]Two for each of the 48 states except for Nebraska's unicameral legislature.

[4]Colorado, Illinois, Indiana, Massachusetts, Michigan, Minnesota, Nevada, New Mexico, North Dakota, Oregon, South Dakota, Tennessee, Virginia, Washington, Wisconsin.

[5]Arkansas, Georgia, Kansas, Kentucky, Louisiana, Mississippi, Missouri, North Carolina, Ohio, Oklahoma, Utah.

[6]Alabama, Arizona, Connecticut, Delaware, Florida, Georgia, Iowa, Maine, Maryland, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, South Carolina, Texas, Vermont, West Virginia, Wyoming.

are subject to some type of territorial or other modification.

The most common type of restriction upon the straight population basis of apportionment is the requirement that each county, regardless of population size, shall have at least one representative. Twenty states[7] incorporate such a provision for the apportionment of representatives in their lower chambers. Four states, Connecticut, Maine, Vermont, and Wyoming, make a similar provision for representation in their senates.

In the apportionment of senatorial districts of ten states, namely, Alabama, California, Florida, Idaho, Iowa, Maryland, Montana, New Jersey, South Carolina, and Texas, each county in the state is limited to not more than one senator. There are no states where this type of restriction is placed upon the representatives in the lower chamber. This restriction is expressed in the constitutions either by stating that no county shall have more than one senator or by giving one and only one senator to each county in the state. New York's constitution provides that no county may have more than one-third the membership in the state senate, nor can two adjoining counties elect more than one-half of the state senators.

Several of the New England states still use the unit of the town as a basis for legislative representation. This method is followed for lower chamber representation in Connecticut, Maine, New Hampshire, Rhode Island, and Vermont. Rhode Island also uses this basis for selection of state senators. In Vermont, the constitution grants to each inhabited town one representative regardless of size. The other states vary the number of representatives with the size of the town.

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[7]Alabama, Arizona, Arkansas, Florida, Georgia, Idaho, Iowa, Kansas, Louisiana, Mississippi, Missouri, New Jersey, New York, North Carolina, Ohio, Pennsylvania, South Carolina, Utah, West Virginia, Wyoming.

New Hampshire follows the rather unusual provision of apportioning its state senators from districts based upon the amount of direct taxes paid.

In some states, legislative apportionment is based upon the distribution of certain classes of persons, these persons being excluded in determining population districts. Five states, Maine, Minnesota, North Carolina, Washington, and Wisconsin, exclude Indiana that are not taxed. Maine, Nebraska, New York, and North Carolina exclude all aliens, while California excludes only those aliens who are ineligible for naturalization. Military personnel on active duty are not counted in South Dakota, Washington, and Wisconsin. Further restrictive provisions are found in Massachusetts, Rhode Island (senate only), Tennessee, and Texas (senate only) where only the registered voters are counted. Indiana includes only male inhabitants over twenty-one years of age in its population count, while in Oregon the constitution directs the count to be restricted to the white population. Arizona uses as a base the votes cast for governor at the last preceding general election.

In order to insure population as the basis of representation, most of the state constitutions contain provisions intended to prevent gerrymandering, the process of laying out legislative districts in such a way as to consolidate the opposition vote in as few legislative districts as possible, thus assuring a majority vote to one political party in most of the districts. These provisions usually require that the districts must be composed of "compact and contiguous territory";[8] population must be

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[8]Thirty-four of the constitutions require contiguity. Four specify that districts must be "convenient." Seventeen stipulate compactness, usually subject to the qualifying phrases, "as may be", "as possible", or "as practicable".

equal;[9] and counties, towns, wards, or other areas of government must not be divided.[10]

The use of a territorial unit, the county, as the basis for representation is perhaps the outstanding feature of the various state constitutions, the common provision being that no county may be divided, with some states allowing division where there are two or more districts within the county. The county constitutes the traditional basis for representation in our legislative bodies. For administrative convenience and simplicity it is probably desirable to follow county lines as far as possible in the formation of districts, and the art of gerrymandering becomes more difficult if certain definite rules are laid down.[11] But the trend today is away from the county as a unit of government; and except for the comparative convenience of adhering to county lines, the principal effect of retaining this mandate in our constitutions is to preserve the supremacy of the rural areas.[12]

Apportioning Authority

State constitutional provisions make the legislature responsible for reapportionment in forty-two states. However, in Connecticut, which is in-

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[9]Twenty-two constitutions particularly specify equality of population, most qualifying it with such phrases as "as nearly as may be" or "as nearly as practicable". In others equality is to be implied from the basis specified for apportionment ("according to population"), or from the reference to a federal or state census, or from methods stated for finding the electoral ratio.

[10]Commonly, no county may be divided (23 states), except when there are two or more districts within the county (10 states).

[11]Durfee, Elizabeth. "Apportionment of Representation in the Legislature: A Study of State Constitutions." Michigan Law Review. June 1945. (Vol. 43). p. 1096.

[12]Ibid.

cluded among these states, the duty applies only to senatorial districts since the lower chamber districts are specifically prescribed in the constitution. In five other states, Arizona, Arkansas, Maryland, Missouri, and Ohio, the constitutions provide for an agency other than the legislature. Delaware alone of all the states retains constitutional apportionment in the sense that the distribution and boundaries of the districts are established by the text of her fundamental law and can be changed only by constitutional amendment. Reapportionment in Delaware for both houses of the legislature has always been by constitutional revision, the latest being in 1897.[13] As the amending process in Delaware calls for action by two successive legislatures, in a sense legislative control of apportionment is preserved in that state.

In Arizona, the responsibility for reapportionment of the lower chamber of the legislature falls upon the county boards of supervisors, there being no such provision for reapportioning the senate as senatorial districts are specifically set forth in the constitution.[14] The constitution provides that representatives shall be elected, one for each 2,500 votes, or major fraction thereof, cast in such county for the office of governor in the last preceding general election as determined by the official canvass. Further, each county is to have at least one representative, and no county less representatives than it would have if its representation were computed on the basis of the total vote cast for governor in the general election of 1930. Any county entitled to a greater number of representatives

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[13] Walter, David O. "Reapportionment of State Legislative Districts." Illinois Law Review, 1942. (Vol. 37). p. 21.

[14] Arizona Constitution., Art. IV, Part 2, Sec. 1 (1).

by reason of the votes cast for the office of governor in the last preceding general election must be redistricted by the board of supervisors in such county not less than six months prior to each regular election for representatives. This provision is extraordinary in that it provides for an increase of representatives from a county but no decrease.[15] In counties entitled to but one representative, such representative is elected from the county at large. In the division of the county into as many legislative districts as there may be representatives to be elected, the districts must contain as nearly as possible "the same voting population" and must be compact in form and contiguous in territory. Before establishing such districts the board of supervisors is required to give at least thirty days' notice by newspaper publication.

A board of apportionment, consisting of the governor, secretary of state, and attorney general, is charged with the duty of reapportioning representatives and senators in Arkansas immediately following each federal census. In each instance the board must file its report with the secretary of state setting forth: (a) the basis of population adopted for representatives; (b) the basis for senators; (c) the number of representatives assigned to each county; and (d) the counties comprising each senatorial district and the number of senators assigned to each. After thirty days from such filing date, the apportionment becomes effective unless a proceeding

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[15] In Board of Supervisors of Maricopa County v. Pratt, 47 Ariz. 536, 57 P. (2d) 1220 (1936), the court held that the board is required by constitutional provision to redistrict legislative districts in the county on the basis of one representative for each 2,500 votes cast for governor only when, by reason of increase in votes cast in county at preceding general election, the county is entitled to greater number of representatives than it has, and is not required to redistrict where there is a decrease in votes.

for revision is instituted in the supreme court of the state within this period.[16]

Similarly in Ohio, the governor, secretary of state, and auditor, or any two of them, perform the task of determining the ratio of representation in both houses of the legislature. Very precise rules are laid down in the constitution to govern them in the performance of this duty.[17] Provision is made for a representation ratio arrived at by dividing the total population of the state by 100, for the lower chamber. Every county having one-half the ratio is entitled to one representative, and every county having the stated ratio plus three-fourths is entitled to two representatives, and so on. In the senate the ratio "forever hereafter" is to be ascertained by dividing the whole population of the state by thirty-five.

In Maryland it is the duty of the governor to arrange representation in the lower chamber of that state's legislature in accordance with a schedule of representation specified in the constitution, beginning with two members for each county of 18,000 or less. There is no provision for reapportioning the senate as the constitution specifies that there shall be one, and only one, senator from each county and from each of the six districts constituting the City of Baltimore.[18]

In the new constitution of Missouri, adopted in 1945, all responsibility for reapportionment is taken away from the legislature. Provision is made for a bipartisan commission appointed by the governor to establish senatorial districts, and reapportionment of representatives among the counties

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[16] Arkansas Constitution. Amendment 23.

[17] Ohio Constitution. Art. XI, Sec. 1-11.

[18] Maryland Constitution. Art. III, Sec. 2-5.

is left to the county courts upon certification by the secretary of state.[19]

Within ninety days after each federal census, the governor of Missouri is required to appoint the redistricting commission, consisting of ten members chosen in equal numbers from lists of ten names submitted by the state committees of the two political parties casting the highest vote for governor at the last preceding election. If either state committee fails to submit a list, the governor appoints five members of his own choice from the party of such committee.

The various parts of the state are represented on the basis of population in the senate of the Missouri legislature. In the lower chamber, the county is afforded recognition as the primary unit of representation, and population is given less weight than in the senate. The process of apportionment is accomplished according to precise rules set forth in the constitution.[20]

As provided in the constitutions of New York and Oklahoma, reapportionment action of the legislature is subject to review by the supreme court

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[19]Missouri Constitution. Art. III, Sec. 2, 3, 7-10.

[20]The quota for senatorial apportionment is determined by dividing the total population by thirty-four. The population of no district may vary from the quotient by more than twenty-five per cent. No county may be divided in the making up of districts composed of more than one county. Hence, each senatorial district consists of one county, a portion of one county, or a group of counties. For adoption, a redistricting plan must be approved by seven of the ten commission members. Failure to adopt a plan within six months after the appointment of the commission results in its discharge. In such case the senators to be elected at the next election are elected from the state at large, after which a new commission is appointed.

Representatives are to be apportioned among the counties on the basis of a ratio of representation arrived at by dividing the total population of the state by 200. Through the apportionment process, each county is allowed one representative and additional representatives according to the ratio of representation. Representation, however, is not wholly proportionate to population because the constitution prescribes the number of representatives which various multiples of the representation ratio shall permit. The follow-

of those states at the suit of any citizen. In Arkansas, original jurisdiction is vested in the supreme court to be exercised upon the application of any citizen to compel by mandamus the board of apportionment to perform its duties or to revise any arbitrary action of the board. The court may, if it so determines, substitute its own apportionment.

Alternative Apportioning Authority.

Only three states have constitutional provisions for alternative methods of reapportionment, other than the initiative, should the legislature fail to act. Two of these states, California and South Dakota, empower an ex officio commission of administrative officials to reapportion the legislative districts. The California commission is composed of the lieutenant governor, attorney general, secretary of state, and superintendent of public instruction, while that of South Dakota is comprised of five members, namely, the governor, secretary of state, attorney general, presiding judge of the supreme court, and superintendent of public instruction. Reapportionment action of these two commissions has the same force and effect as though made by the legislature, the acts of the California commission being subject to a referendum.

Florida has a unique scheme to stimulate legislative activity in apportionment. Article VII, Section 3, of its constitution provides that in

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[20]Footnote (cont'd.)

ing tabulation shows how this ratio is applied to the population of a county to determine the number of representatives to which it is entitled:

Number of Ratios	Number of Representatives
1 or less	1
2½	2
4	3
6	4

Above six ratios, one representative is allowed for each two and one-half additional ratios.

the event the legislature fails to reapportion at the stated time, it is the duty of the governor to call the legislature into special session where it is "mandatorily required to reapportion" and may not expire until reapportionment is effected, and "shall consider no business other than such reapportionment."

There remains the possibility of employing the initiative for reapportionment. This procedure has been used in three states, California, Colorado, and Washington, to bring about reapportionment of legislative districts when the legislatures in those states failed to act. After the 1920 census, three succeeding sessions of the California legislature failed to reapportion legislative districts.[21] In 1926 the citizenry initiated two measures, both providing for reapportionment by an ex officio commission of state administrative officers should the legislature fail to act, but proposing different bases for representation. The so-called "Federal Plan" of representation, where the districts of the lower chamber remained based on equal population units but each county, regardless of population, was restricted to not more than one senator, won substantial victory. As a result, the senatorial districts in California were allocated on the basis of not more than one district per county and not more than three counties per district, while the districts for lower chamber representation remained based on equal population units.

In Colorado the latest reapportionment by the legislature had been made in 1913.[22] Colorado's constitution specifies that (1) the legislature

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[21]Commonwealth Club of California. "The Legislature of California: Its Membership, Procedure, and Work." C. C. Young. San Francisco, January 1943. p. 54.

[22]Ibid., p. 72.

shall provide by law for an enumeration of the inhabitants of the state in the year 1885 and every ten years thereafter, and that (2) at the first session following such enumeration and also following an enumeration made by the authority of the United States, the legislature shall revise and adjust the apportionment for senators and representatives on the basis of such enumeration.[23] There was no reapportionment following the census of 1920 nor did the legislature act after the 1930 census. In 1932 the people of that state adopted a reapportionment plan by vote on an initiated measure. The Colorado legislature in 1933 attempted to pass a reapportionment bill which repealed the plan adopted by the people; however, the Colorado Supreme Court declared that this legislative measure was void and that the initiated one took effect.[24]

In the state of Washington, the initiative was successfully employed to reapportion the state after the legislature had failed to act since 1901. Although the Washington constitution had been amended in 1912 to provide for popular initiative, no attempt had been made to secure reapportionment by this means prior to 1930.[25] The procedure was challenged in the courts on the ground that the power and authority to apportion and district was vested in the legislature as provided in the constitution, and it did not involve an act of law making included within the power given to the people by the initiative amendment. Washington's Supreme Court, however, noted the continued failure of the legislature to observe the constitutional mandate and held

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[23]Colorado Constitution. Art. V, Sec. 45.

[24]Armstrong v. Mitten, 95 Colo. 425, 36 Pac. (2d) 757 (1934).

[25]Webster, Donald H. "Voters Take the Law in Hand." National Municipal Review. May 1946. p. 242.

that the method of districting and apportionment was accomplished by statute and was a fit subject for a law which could be enacted by initiative.[26]

Frequency of Apportionment.

State constitutional provisions concerning the frequency of apportionment vary with the different states, but the most common provision, being found in forty-two states, requires an apportionment after every federal census or every ten years. Some states still provide for a state census for this purpose, if for any reason the federal census is not taken, or if when taken, the same is not full and satisfactory. Indiana provides for reapportionment every six years, Kansas every five years, and Arizona six months before any general election when the votes cast for the office of governor in the preceding general election entitle a county to more representation. The constitutions of Idaho and Nevada state that apportionment action shall be "as provided by law"; however, no time period is established for this adjustment of legislative districts.

It cannot be assumed that the mere stipulation in state constitutions for reapportionment at prescribed intervals insures action. Within the period 1931-40 only twenty-three states had legislative apportionment, twenty-one of which had complete reapportionment of both chambers of the legislature.[27] Illinois has had no reapportionment in 40 years, and Minnesota's reapportionment is thirty years overdue. In Tennessee the reapportionment dates from 1905, and in Connecticut, Indiana, Louisiana, Michigan (senate only),

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[26] State ex rel. Miller v. Hinkle, 156 Wash. 289, 286 Pac. 839 (1930).

[27] Shull, Charles W. "Reapportionment: A Chronic Problem." National Municipal Review. February 1941. p. 77.

Pennsylvania, and Texas, reapportionment dates from the 1920's.[28]

Under most of the state constitutions the apportioning agency is the legislature itself. But unless the constitutions make specific provision for compelling the legislature to act, there is no way of forcing it to do so. It is immune from mandamus under the doctrine of separation of powers and the courts refuse to accomplish indirectly what they cannot do directly.[29]

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[28]Illinois Legislative Council. Research Department. "Reapportionment in Illinois." February 1945. (Publication No. 66). p. 13.

[29]In Fergus v. Marks, 321 Ill. 510, 152 N. E. 557 (1926), the court said: "...the judicial department of the state cannot compel by mandamus the legislative department to perform any duty imposed on it by law...." As stated by the court: "The duty to reapportion the state is a specific legislative duty imposed by the Constitution solely upon the legislative department of the state, and it alone is responsible to the people for a failure to perform that duty." The same tribunal, in Fergus v. Kinney, 333 Ill. 437, 164 N. E. 665 (1928), also held that it had no power to enjoin the payment of the salaries of members of the General Assembly on the plea that that body was illegally constituted. The duty to reapportion, the court held, is vested solely in the General Assembly: "...apart from a constitutional amendment, the people have no remedy save to elect a General Assembly which will perform that duty." Quo warranto proceedings questioning the right of members of the Illinois General Assembly to hold office because of their failure to reapportion were likewise dismissed in Fergus v. Blackwell, 342 Ill. 223, 173 N. E. 750 (1930). In another instance, in People v. Clardy, 334 Ill. 160, 165 N. E. 638 (1929), the validity of a specific act passed by the Illinois legislature was challenged because of the failure to reallocate members, but again the state supreme court held that it had no right to declare that the General Assembly which enacted the measure in question was not de jure a legislature. Another citizen of Illinois brought suit in the federal court, claiming exemption from income tax on the ground that the United States had failed to carry out its guarantee of a republican form of government in not compelling reapportionment in the state legislature. This suit was dismissed in Keogh v. Neely, 50 F. (2d) 685 (C.C.A. 7th, 1931), cert. den. 284 U. S. 683, 52 Sup. Ct. 39 (1931).

In State ex rel. Martin v. Zimmerman, 249 Wis. 101, 23 N. W. (2d) 610 (1946), an injunction was sought to prevent any elections to the state legislature on the ground that the 1931 reapportionment act became invalid at the end of the 1941 session of the legislature, and there was therefore no act in existence under which such elections could be held. The court dismissed the case for want of jurisdiction because the constitution speaks directly to the legislature with respect to reapportionment, and because to act favorably on the petition would be to prevent the only possible solution of the difficulty, a legislative reapportionment. The court also pointed out that it could not

Inequalities in Apportionment.

In many instances there are glaring inequalities of representation in the state legislatures. They may arise from the failure of the legislature to reapportion, or may spring from other causes beyond the legislature's control, as requirements enshrined in the state constitutions.

By far the greatest problem has been the urban-rural conflict over representation. A survey made in 1938[30] and based upon the 1930 federal census indicated that while there was a majority of urban population in twenty-one states, in only eleven of the states could that majority control the legislature. In the other ten, the rural dominance was due primarily to constitutional restrictions rather than to obsolete apportionments, although the general over-representation of rural areas was due in large part to obsolete apportionments. It was concluded that the ninety-six metropolitan districts, as defined by the Census Bureau, had "on an average only three-fourths of their proper representation in each house of the legislature."

The percentage of the state's population is selected metropolitan districts as compared with representation of these districts in the upper and lower chambers of the state legislatures is contained in the following table:

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[29]Footnore (cont'd.)

enforce such a decision, and that likelihood of its being obeyed was very slight.

Further, in Colegrove v. Green, 328 U. S. 549, 66 Sup. Ct. 1198 (1946), a complaint under the Federal Declaratory Judgment Act for a decree, declaring Illinois statutes apportioning the State of Illinois into congressional districts invalid in that such districts lacked compactness of territory and approximate equality of population, was dismissed for want of equity in that the issue was of a peculiarly political nature and therefore was not a fit subject of judicial determination.

[30]Walter, David O. "Reapportionment and Urban Representation." Annals of the American Academy of Political and Social Science. January 1938. (Vol. 195). pp. 11-20.

Representation of Metropolitan Districts in State Legislatures[31]

Metropolitan District of:	Per Cent of State's Population (1940)	Per Cent of Representation In Senate (1943)	Per Cent of Representation In House (1943)
Atlanta	14.2	3.9	2.9
Baltimore	57.5	27.6	38.3
Birmingham	14.4	2.9	6.6
Chicago	53.5	41.2	41.2
Denver	34.2	28.6	27.7
Detroit	43.7	25.0	20.0
Los Angeles	42.1	5.0	42.5
New York, New York	63.5	55.4	52.0*
New Jersey	76.7	38.1	70.0
Philadelphia	28.7	20.0	24.0
Portland, Oregon	35.4	26.7	28.3
Providence	94.5	61.4	84.0
St. Louis	29.1	20.6	14.7
San Francisco	20.7	15.0	22.5
Seattle	26.1	26.1	24.2
Wilmington	70.5	29.4	28.6

*As of 1944

Revised from David O. Walter, "Representation of Metropolitan Districts," 27 National Municipal Review (March, 1938). A metropolitan district is defined by the Census Bureau as follows: A central city or cities, plus all adjacent and contiguous civil divisions of not less than 150 inhabitants per square mile, and also, as a rule, those civil divisions of less density that are directly contiguous to the central cities, or are entirely or nearly surrounded by minor civil divisions that have the required density.

Another study was made of urban representation in state legislatures in 1945,[32] consisting of a comparison of the actual number of representatives residing in sixty-seven "large" cities in forty-four states with the number

[31] Illinois Legislative Council. Research Department. Op. cit., p. 27.

[32] MacNeil, Douglas H. "Urban Representation in State Legislatures." State Government. April 1945. pp. 59-61.

of representatives which would be accorded to each of these cities under an apportionment system based upon population, assuming the size of the legislature remained constant. Of the sixty-seven cities included in this particular study, forty-five received substantially less representation than an apportionment system based on population would furnish. Seventeen cities received representation proportionate to population. Five cities received more representation than their population would indicate as their quota. Under-representation of the largest city was indicated in thirty-one of the forty-four states studied, while only three states accorded greater representation to their chief city than an apportionment based upon population would provide. The extent of under-representation for the cities as a group was approximately twenty-nine per cent, i.e., the total number of legislators elected from these cities was less than three-fourths of the representation they would receive if population were the criterion used in apportionment.[33]

In a study of state legislatures just completed by the United States Conference of Mayors,[34] it was revealed that the fifty-nine per cent of the American population living in cities--84,000,000 persons--has but twenty-five per cent of the representation in the legislative bodies of the forty-eight states. And that fifty-nine per cent, it was pointed out, pays nine-tenths of all taxes--federal, state, and local. Some of the more flagrant examples of unequal representation cited in this study included Cleveland which possesses sixteen per cent of Ohio's population but has only seven per cent of the

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[33] Ibid., p. 60.

[34] The United States Municipal News. The United States Conference of Mayors. Washington, D. C., April 15, 1948. (Vol. 15, No. 8). p. 32. See graphic depiction of this study in "Government of the people, by the people, for the people?" (n.d.) by The United States Conference of Mayors.

representation in the lower chamber of that state's legislature, and New Jersey in which eight urban counties with four-fifths of the state's population are represented by eight senators, while thirteen rural counties have thirteen votes in the senate but only the remaining one-fifth of the population.

The under-representation of cities in state legislatures is accomplished in various ways. In some states the unit of representation in one house of the legislature is maintained with equal distribution of representation to each unit regardless of size. The result of such a constitutional provision may be illustrated by the upper chamber of the New Jersey legislature, mentioned above. A similar situation may be found in Connecticut.

In other states where population is partially used as a basis of apportionment, county or unit representation is also recognized. Such provisions in state constitutions favor the smaller counties, giving them more representation than their population, alone, justifies. It results in over-representation of the rural areas, which in effect is the same as under-representation of the urban areas.

A slightly different method of limiting the representation of urban areas is found in California. The forty members of the upper chamber of the legislature are apportioned on the basis of population, but no county, or city and county, may have more than one member, and no more than three counties can be placed in any district. Regardless of how large its population may be, a county can never have as much as three per cent of the total representation in the senate. As a result of this limitation, Los Angeles County, with a population of 2,785,643 or over forty per cent of the state population, elects one senator as does another senatorial district consisting

of Mono and Inyo Counties with a total population 9,923.[35] Thus the senator from Los Angeles represents 281 times as many people as the Mono-Inyo senator. The four largest counties--Los Angeles, San Francisco, Alameda, and San Diego--have over sixty per cent of the total state population but only ten per cent of the representation in the upper chamber of the state legislature.[36]

In Florida no county may have more than one senator or less than one representative. On the basis of the 1940 census, twenty-three per cent of the Florida population chooses twenty senators or fifty-three per cent of the upper chamber, and the same percentage chooses forty-nine representatives or fifty-two per cent of the lower chamber representation. The seven most populous counties of this state include a majority of the inhabitants, yet they select only seven senators out of thirty-eight and nineteen representatives out of ninety-five. Using the 1945 state census, nineteen per cent of the population elects a majority of the senate and twenty per cent elects a majority of the house, a decrease of four per cent and three per cent respectively from the 1940 figures.[37]

The constitution of Georgia, adopted in 1945, provides that the eight counties having the largest population shall elect three representatives each; the thirty counties having the next largest population, two each; and the remaining counties, one each. Under this provision, Echols County with

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[35]McHenry, Dean E. "Urban vs. Rural in California." National Municipal Review. July 1946. p. 352.

[36]Ibid., p. 353.

[37]Florida, University of. Bureau of Economics and Business Research, College of Business Administration. Economic Leaflets. "Apportionment in State Legislatures: Its Practice in Florida." J. E. Dovell. Gainesville, February 1948. (Vol. 7, No. 3).

a population of 2,964 is entitled to one representative and Fulton County, with 392,886, to three representatives. Were the same proportion to population maintained, however, Fulton County would have 132 representatives instead of three. Also in Georgia today the nine smallest counties have a total of only 39,487 people, yet they elect nine representatives, whereas Fulton County with its 392,886 people has only three representatives. This constitutional provision obviously results in disproportionate representation.[38]

The proportion of the population of Iowa represented by one-half of the legislators stands at thirty-four per cent for the upper chamber and thirty-two per cent for the lower chamber of the legislature. In Illinois the majority of the population is in Cook County which receives only nineteen of the fifty-one senators and fifty-seven of the 153 representatives. The population of Cook County in 1900 was 1,838,735; in 1940 it was 4,063,342.[39] Despite this population increase of over 2,000,000, the representation of the county remains the same as in 1901, the date of the last reapportionment action by the Illinois legislature.

A moiety clause in the constitution of Michigan aids in the rural domination of the lower chamber of that state's legislature. This provides that when any county or group of counties composing a legislative district has a moiety, or more than half of the ratio of population for one representative, it shall be given a member. Under this plan if a county or legislative district has the ratio of representation, it has one representative; but if another county or legislative district has half this number, or a

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[38] Kneier, Charles M. City Government in the United States. New York, rev. ed., 1947. p. 112.

[39] Ibid., p. 116.

moiety, it is also given one representative. As a result, Wayne County, with approximately forty per cent of the population of the state, received only twenty-seven out of the 100 representatives under a reapportionment made in 1943 rather than the thirty-eight members to which it would be entitled on the basis of its population.[40] The four most populous senatorial districts in Michigan elect one-eighth of the members of the upper house while the sixteen least populous elect one-half the members of that body.

The variation in Minnesota runs from a high of one representative for 64,250 people to a low of one for 7,254 in the lower chamber and, in the senate, a high of one senator for 128,501 to a low of 17,653. Nine urban Minnesota counties with a little less than half of the state population select about one-third of the members of the legislature.[41]

Missouri's apportionment plan, previously described, has the effect of limiting representation of large cities. Under the formula for representation in the lower chamber of the legislature, St. Louis City with a population of 816,048 in 1940 is entitled to eighteen representatives whereas, on the other hand, eighteen rural counties with a combined population of only 157,769 are also entitled to eighteen representatives. Under the 1940 census, St. Louis City, St. Louis County, and Jackson County (Kansas City) have forty-one per cent of the state's population but are entitled to only twenty-three per cent of the total number of representatives.[42]

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[40] Ibid., p. 113.

[41] Dorweiler, Louis C., Jr. "Minnesota Farmers Rule Cities." National Municipal Review. March 1946. p. 116.

[42] Brannon, Victor D. "Missouri's Apportionment Key." National Municipal Review. April 1946. p. 182.

In 1943 inroads upon rural dominance were made in New York which had not been redistricted for a quarter century.[43] New York City was given an increase from sixty-two to sixty-seven assemblymen and from twenty-two and one-half to twenty-five senators. But because of constitutional restrictions, this metropolis has only 44.6 per cent of the total legislative membership even though it has 54.5 per cent of the state's total population and 53.4 of the citizen population, the latter being the basis of apportionment in that state.

The Oklahoma constitution stipulates that no county shall ever elect more than seven members of the lower chamber of the legislature, regardless of its population. Further, any county having a population equal to one-half the ratio of representation is given one representative. On a strict quota or representation ratio, Oklahoma County would elect eleven members; Tulsa County would elect nine. The population of the former county is equal to the combined population of twenty-one small counties which elect twenty-one representatives. Seven small counties with a total population of 57,159 designate as many members of the lower chamber as either of the metropolitan centers--Oklahoma City with a population of 244,159, and Tulsa with 193,363. As a result, in Oklahoma, "any plea of the municipalities for sufficient powers, by which they may effect their orderly development, has little prospect of a particularly friendly reception by a legislature whose membership, disproportionately, is responsible to rural election units."[44]

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[43] Perkins, John A. "State Legislative Reorganization." American Political Science Review. June 1946. (Vol. 40, No. 3). p. 511.

[44] Thornton, H. V. "Oklahoma Cities Weakened." National Municipal Review. June 1946. p. 298.

In Rhode Island no town or city may have more than six senators, and no town or city may have more than one-fourth of the total membership of the lower chamber. Providence County has seventy-eight per cent of the total population of Rhode Island and sixty-eight per cent of the house members, but only forty-eight per cent of the senators.[45]

Constitutional provisions in Texas allow the use of the device referred to as "floaters", placing counties already fully represented into an additional district for the purpose of joining counties which are not otherwise contiguous, and, also, where counties are not already fully represented they may be joined with others for the purpose of an additional representative.[46] However, a constitutional amendment adopted in 1936 limits to seven the number of representatives from any one county unless the population exceeds 700,000, in which case one additional representative is allowed for each 100,000 population.[47] The maximum number of representatives for the lower chamber of the Texas legislature is set by the constitution at 150. If an apportionment were made on the basis of the 1940 census, each member of the house would represent 42,765 people. Dallas County has five representatives and shares in a "flotorial" member. These six represented a 1940 population of 443,923 as compared with ten which it would receive on a strict quota basis. The eleven metropolitan districts in Texas, as listed by the Bureau of the Census, had a total population of 2,041,165 in 1940. An apportionment based upon this census would allot, if strictly applied, a

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[45]Illinois Legislative Council. Research Department. Op. cit., p. 28.

[46]Walter, David O. "Reapportionment of State Legislative Districts." Op. cit., p. 25.

[47]MacCorkle, Stuart A. "Texas Apportionment Problem." National Municipal Review. December, 1945. p. 541.

total of forty-seven representatives. At present the districts in which these cities are included have a total of only thirty-three representatives, including "flotorial" members.[48]

Where counties or towns are given equality in representation, regardless of population, or where a limitation is placed upon the number of representatives from one county, the experience of the states indicates the impossibility of a mathematical distribution of legislative seats based upon population. Moreover, should reapportionment be based solely upon population, once the state is divided into districts the inescapable interval between the census and ensuing election causes some inequality even at the outset, for shifts in population as a result of births, deaths and migrations make the system of districts obsolete as soon as it is established. Finally, even assuming a static population, a practical obstacle is encountered in any attempt to equalize representation: It is not feasible to entirely disregard the pre-existing political subdivisions of the state and to set up the desired number of legislative districts purely on a basis of population.

It is apparent that shifts in population are not the chief cause of inequalities since in most states reapportionment is directed to be made at sufficiently frequent intervals to compensate for changes of population. The chief defect in the existing mechanism for apportionment devolves upon compelling action by the apportioning body, generally the legislature.

Several states have remedied this situation by vesting authority in an administrative board or commission to apportion either in the first instance or in case the legislature fails or refuses to carry out the constitutional mandate. However, unless this body is made amenable to mandamus

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[48] Ibid., p. 542.

by specific constitutional provision, in no other way can the duty of reapportionment be enforced. Without such a provision the courts may hold that mandamus would not lie, the function performed being legislative in nature, and there would thus be no more positive remedy than there is against the legislature.[49] To date, Arkansas is the only state to adopt such a provision, Amendment 23, Section 5, of the constitution reading: "Original jurisdiction (to be exercised on application of any citizen and taxpayer) is hereby vested in the Supreme Court of the State: (a) to compel by mandamus or otherwise the Board to perform its duties. . . ., and (b) to revise any arbitrary action of or abuse of discretion by the Board in making any such apportionment. . ."

The independent board or commission is probably more conducive to achieving a reapportionment than Florida's scheme of calling the legislature into special session which must sit until reapportionment is effected, since self-interest is removed or at least rendered less potent. The Missouri Constitution of 1945 incorporates a novel sanction to compel reapportionment. If a commission appointed for the purpose after each census does not redistrict the state within a specified time, the state senators are automatically elected at large at the next election.

There remains the use of the initiative to reapportion if the legislature fails to act. This method has been carried out in Colorado and Washington as well as California, but it is significant that in California even through the initiative it was possible to bring about representation

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[49] In State ex rel. Barrett v. Hitchcock, 241 Mo. 433, 146 S. W. 40 (1911), the Supreme Court of Missouri held that the governor, secretary of state, and attorney general, in so far as apportioning the state into senatorial districts was concerned, "were a Miniature Legislature, and consequently it could no more be compelled by mandamus to redistrict the state than the Legislature proper could be."

according to population in only one house of the legislature.

It has been suggested that districting and reapportioning be separated, and the legislature should have the power to redistrict as it now does, with the basis of representation being determined in the constitution.[50] The apportionment of representatives to these districts could then be vested in some administrative officer, according to the formula set out in the constitution. This duty would be purely ministerial and could be subject to court supervision.

Perhaps the problem of representation and apportionment is only one facet of the larger question of the proper place of the legislature on the governmental scene. A ham-strung legislature with powers narrowly delineated, attracting legislators of little ability, may inherit and continue petty jealousies which a body composed of more statesman-like legislators would not consider worth its while to recognize. Viewed in this perspective, it may well be as one writer states: "No apportionment scheme matters much unless the legislature is stripped of all petty, foolish limitations, is given an honest chance to be a real lawmaking body, made a coordinate branch of government in our states."[51]

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[50] Walter, David O. "Reapportionment of State Legislative Districts." Op. cit., p. 42.

[51] Shull, Charles W. "Reapportionment: A Chronic Problem." Op. cit., p. 79.

CONSTITUTIONAL PROVISIONS FOR APPORTIONMENT OF STATE LEGISLATURES

As of July 1, 1947

State	Citation: Art. & Sec. of Const.	Basis of Apportionment: Senate	Basis of Apportionment: House or Assembly	Apportioning Agency
Alabama.....	IV, 50; IX, 198-203	Population, except no county more than one member.	Population, but each county at least one member.	Legislature.
Arizona.....	IV, 2, 1 (1)	Prescribed by constitution.	Votes cast for governor at last preceding general election, but not less than if computed on basis of election of 1930.	No provision for Senate, redistricting for House by County Boards of Supervisors.
Arkansas.....	VIII, 1-5	Population.	Each county at least one member; remaining members distributed among more populous counties according to population.	Board of Apportionment (Governor, Secretary of State, and Attorney General). Subject to revision by State Supreme Court.
California....	IV, 6	Population, exclusive of persons ineligible to naturalization. No county, or city and county, to have more than one member; no more than three counties in any district.	Population, exclusive of persons ineligible to naturalization.	Legislature, or, if it fails, a Reapportionment Commission (Lieutenant Governor, Attorney General, Secretary of State, and Superintendent of Public Instruction). In either case, subject to a referendum.
Colorado.....	V, 45-49	Population.	Population.	Legislature.
Connecticut...	III, 3, 4; Amdts. II, XV, XVIII, XXXI	Population, but each county at least one member.	Prescribed by constitution: two members from each town having over 5,000 population; others, same number as in 1874.	General Assembly for Senate, no provision for House.

CONSTITUTIONAL PROVISIONS FOR APPORTIONMENT OF STATE LEGISLATURES--Continued

As of July 1, 1947

State	Citation: Art. & Sec. of Const.	Basis of Apportionment: Senate	Basis of Apportionment: House or Assembly	Apportioning Agency
Delaware.....	II, 2	Districts specifically established by constitution.	Districts specifically established by constitution.	No provision.
Florida.....	VII, 3, 4	Population, but no county more than one member.	Population, i. e., 3 to each of 5 largest counties, 2 to each of next 18, 1 each to others.	Legislature.
Georgia.....	III, 2; (Par. ii), 3 (Par. ii)	Population.	Population, i. e., 3 to each of 8 largest counties, 2 to each of next 30, 1 each to others.	Legislature "may" change Senatorial districts. Shall change House apportionment at first session after each U. S. census.
Idaho.....	III, 2, 4, 5; XIX, 1, 2	One member from each county.	Total House not to exceed 3 times Senate. Each county entitled to at least one representative, apportioned as provided by law.	Legislature.
Illinois.....	IV, 6, 7, 8	Population.	Population.	Legislature.
Indiana.....	IV, 4, 5, 6	Male inhabitants over 21 years of age.	Male inhabitants over 21 years of age.	Legislature.
Iowa.....	III, 34, 35	Population, but no county more than one member.	One to each county, and one additional to each of the nine most populous counties.	Legislature.
Kansas.....	II, 2; X, 1-3	Population.	Population, but each county at least one.	Legislature.
Kentucky.....	Art. 33	Population.	Population, but no more than two counties to be joined in a district.	Legislature.

CONSTITUTIONAL PROVISIONS FOR APPORTIONMENT OF STATE LEGISLATURES--Continued

As of July 1, 1947

State	Citation: Art. & Sec. of Const.	Basis of Apportionment: Senate	Basis of Apportionment: House or Assembly	Apportioning Agency
Louisiana.....	III, 2,5,6	Population.	Population, but each parish and each ward of New Orleans at least one member.	Legislature.
Maine.....	IV, Pt. 1,2, 3; IV, Pt. II, 1, 2	Population, exclusive of aliens and Indians not taxed. No county less than one nor more than five.	Population, exclusive of aliens and Indians not taxed. No town more than seven members, unless a consolidated town.	Legislature.
Maryland.....	III, 2, 5	One from each county and from each of six districts constituting Baltimore city.	Population, but minimum of two and maximum of six per county. Each of Baltimore districts as many members as largest county.	Governor for House; no provision for Senate.
Massachusetts.	Pt. II, Ch. I, Sec. II, Art I, Sec. III, Art.1; Amdt. LXXI	Legal voters.	Legal voters.	Legislature.
Michigan.....	V, 2-4	Population.	Population.[a]	Legislature.
Minnesota.....	IV, 2, 23, 24, Schbd. 10, 12	Population, exclusive of nontaxable Indians.	Population, exclusive of nontaxable Indians.	Legislature "shall have power."
Mississippi...	XIII, 254-256	Prescribed by constitution	Prescribed by constitution, each county at least one. Counties grouped into three divisions, each division to have at least 44 members.	Legislature "may."

CONSTITUTIONAL PROVISIONS FOR APPORTIONMENT OF STATE LEGISLATURES--Continued

As of July 1, 1947

State	Citation: Art. & Sec. of Const.	Basis of Apportionment: Senate	Basis of Apportionment: House or Assembly	Apportioning Agency
Missouri.....	III, 2-11	Population.	Population, but each county at least one member.	House, by county courts. Senate, by commission appointed by governor.
Montana.....	V, 4; VI, 2-6	One member from each county.	Population.	Legislature.
Nebraska.....	III, 5	Population, excluding aliens.	Population, excluding aliens.	Legislature "may."
Nevada.....	I, 13; XVII, 6	Population.	Population.	Legislature.
New Hampshire.	Pt.II, 9, 11, 26	Direct taxes paid.	Population.[b]	Legislature.
New Jersey....	IV, ii, 1; IV, iii, 1	One member from each county.	Population, but at least one member from each county.	Legislature.
New Mexico....	IV, (42)	Population.	Population.	Legislature.
New York.....	III, 3-5	Population, excluding aliens. No county more than 1/3 membership, nor more than $\frac{1}{2}$ membership to two adjoining counties.	Population, excluding aliens. Each county (except Hamilton) at least one member.[c]	Legislature. Subject to review by courts.
North Carolina	II, 4-6	Population, excluding aliens and Indians not taxed.	Population, excluding aliens and Indians not taxed, but each county at least one member.	Legislature.
North Dakota..	II, 29, 35; XVIII, 214	Population	Population.	Legislature.
Ohio.....	XI, 1-11	Population.	Population, but each county at least one member.	Governor, Auditor, and Secretary of State, or any two of them.

CONSTITUTIONAL PROVISIONS FOR APPORTIONMENT OF STATE LEGISLATURES--Continued
As of July 1, 1947

State	Citation: Art. & Sec. of Const.	Basis of Apportionment: Senate	Basis of Apportionment: House or Assembly	Apportioning Agency
Oklahoma.....	V, 9-16 (b)	Population.	Population, but no county to have more than seven members.	Legislature.
Oregon.....	IV, 6, 7	White population.	White population.	Legislature.
Pennsylvania..	II, 16-18	Population, but no city or county to have more than 1/6 of membership.	Population, but each county at least one member.	Legislature.
Rhode Island..	XIII; Amdt. XIX	Qualified voters, but minimum of 1 and maximum of 6 per city or town.	Population, but at least one member from each town or city, and no town or city more than $\frac{1}{4}$ of total, i.e., 25.	Legislature "may."
South Carolina.	III; 1-8	One member from each county.	Population, but at least one member from each county.	Legislature.
South Dakota..	III, 5; XIX, 2	Population, excluding soldiers and officers of U. S. Army and Navy.	Population, excluding soldiers and officers of U. S. Army and Navy.	Legislature, or failing that, Governor, Superintendent of Public Instruction, Presiding Judge of Supreme Court, Attorney General, and Secretary of State.
Tennessee.....	II, 4-6	Qualified voters.	Qualified voters.	Legislature.
Texas.....	III, 25-26a, 28	Qualified electors, but no county more than one member.	Population, but no county more than 7 representatives unless population greater than 700,000, then 1 additional representative for each 100,000.	Legislature.

CONSTITUTIONAL PROVISIONS FOR APPORTIONMENT OF STATE LEGISLATURES--Concluded

As of July 1, 1947

State	Citation: Art. & Sec. of Const.	Basis of Apportionment: Senate	Basis of Apportionment: House or Assembly	Apportioning Agency
Utah.....	IX, 2, 4	Population.	Population, but each county at least one member.	Legislature.
Vermont.....	II, 13, 18, 37	Population, but each county at least one member.	One member from each inhabited town.	General Assembly.
Virginia.....	IV, 43	Population.	Population.	General Assembly.
Washington....	II, 3, 6; XXII, 1, 2	Population, excluding Indians not taxed and soldiers, sailors and officers of U. S. Army and Navy in active service.	Population, excluding Indians not taxed and soldiers, sailors and officers of U. S. Army and Navy in active service.	Legislature, or by initiative.
West Virginia.	VI, 4-10, 50	Population, but no two members from any county, unless one county constitutes a district.	Population, but each county at least one member.	Legislature.
Wisconsin.....	IV, 3-5	Population, excluding Indians not taxed and soldiers and officers of U. S. Army and Navy.	Population, excluding Indians not taxed and soldiers and officers of U. S. Army and Navy.	Legislature.
Wyoming.....	III, 3; III-A, 2-4	Population, but each county at least one member.	Population, but each county at least one member.	Legislature.

a Any county with a moiety of ratio of population is entitled to separate representation.

b Amendment adopted in November, 1942, reduces the membership of the House of Representatives to not more than 400, and not less than 375, and requires for each representative additional to the first, twice the number of inhabitants required for the first, with the provision that a town or ward which is not entitled to a representative all of the time may send one a proportionate part of the time, and at least once in every 10 years. Rev. Laws, 1942, ch. 40; Sess. Laws, 1943, ch. 36.

c Laws, 1943, ch. 359; Laws, 1944, chs. 559, 725, 733 (new apportionment).

Adapted from The Council of State Governments, The Book of the States, 1948-49, pp. 120-123.

APPENDIX II

CONSTITUTIONAL PROVISIONS FOR FREQUENCY OF APPORTIONMENT OF STATE LEGISLATURES

Every five years. (Kan. X, 2.)
Every six years. (Ind. IV, 4.)
Every ten years. (Fla. VII, 2; Ill. IV, 6; Ky. 33; Mich. V, 4; Ohio XI, 1; Tenn. II, 4; Va. IV, 43.)
Decennially or when new county established; apportionment not to take effect until general election next succeeding. (S. C. III, 3,5.)
To be made after every United States census. (Ala. IX, 199, 200; Ark. Amend. No. 23, sec. 4; Ga. III, sec. III, II; Mo. III, 2, 7; N. J. III; Pa. II, 18; Tex. III, 28; W. Va. VI, 4; Wis. IV, 3.)
To be made after every United States census if necessary, but no oftener than once in ten years. (Neb. III, 5.)
To be made at first regular session after each United States census. (Cal. IV, 6; La. III, 2; Miss. XII, 256; N. M. IV, 41; N. C. II, 4, 5.)
To be made at first regular session after each enumeration made by the United States and after decennial enumeration by the state, but at no other time. (S. D. III, 5.)
May be made at session next after completion of United States census. (Conn. Amend. XXXI, 2.)
To be made at first session after each decennial enumeration of inhabitants made by state. (Mass. Amend. LXXI, LXXII.)
To be made at the first session after each decennial United States census or in such manner as the Legislature may direct. (Okla. V, 9a, 10 b, c.)
To be made after each enumeration of inhabitants made by state within every period of at most 10 years. (Me. IV, Pt. I, 2.)
To be made at session next following enumeration of inhabitants by United States or by state. (Md. III, 5; Ore. IV, 6.)
To be made after the last general census of the state, taken by authority of the United States or of state (lower house); from time to time (Senate). (N.H. Pt. II, 9, 24.)
To be made after each United States census or after census taken by state for purpose of such apportionment (Senate). (Vt. II, 18.)
To be made at first regular session after each United States census; if decennial census of United States omitted, delayed or incomplete, after a state census. If apportionment not made within time prescribed it may be made at a subsequent session occurring not later than the sixth year of such decade. (N. Y. III, 4, 5.)
To be made by Legislature after any new census taken by United States or by state (lower house); may apportion after any presidential election (Senate). (R. I. XIII, 1, XIX, 1.)
To be made at first regular session held after taking of decennial census by State and after United States census. (Colo. V, 45; Iowa III, 34, 36; Minn. IV, 23; Mont. VI, 2; Utah IX, 2; Wash. II, 3; Wyo. III, Apportionment 2.)
To be made after each decennial enumeration to be made by Legislature and also after each Federal census; and at any regular session, Legislature may redistrict state and apportion senators and representatives. (N. D. II, 35.)

To be made of any county not less than six months prior to regular election for representatives when votes therein cast for governor at the last preceding general election entitle county to a greater number of representatives. (Ariz. IV, Pt. 2, 1.)

No provision; enumeration of number of districts and legislators. (Del. II, 2.)

As may be provided by law. (Ida. III, 4; Nev. VII, 6.)

Adapted from New York (State), Constitutional Convention Committee, Problems Relating to Legislative Organization and Powers, Albany, 1938, (Vol. VII), pp. 227-229, and revised from state constitutions.

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*LRB - Legislative Reference Bureau
MRL - Municipal Reference Library
S Ct - Supreme Court Library
UH - University of Hawaii

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