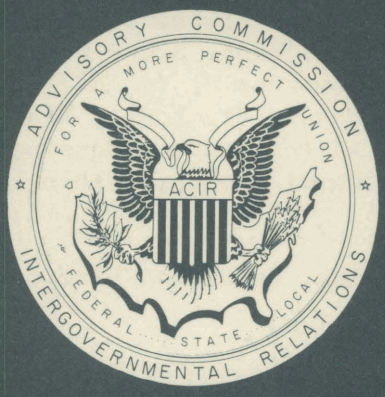
A COMMISSION REPORT

Apportionment of State Legislatures



ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

DECEMBER 1962
A–15 *

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS
Washington 25, D. C.

October 10, 1962

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A COMMISSION REPORT

APPORTIONMENT OF STATE LEGISLATURES

ADVISORY COMMISSION ON INTERGOVERNMENTAL RELATIONS

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*Implementing suggested State legislation added.

PREFACE

It was apparent to the Commission that the decision of the Supreme Court of the United States in Baker v. Carr might have a profound impact on the structure of State legislatures. The central position of State legislatures in the federal system indicated clearly that any changes in their structure would affect intergovernmental relations.

In approaching this complicated and controversial subject the Commission has attempted to present a picture of State legislatures as they existed when the decision in Baker v. Carr was rendered. Various possible approaches to reapportionment are analyzed from the point of view of their potential impact on the governmental process in general and intergovernmental relations in particular. Finally, the Commission suggests a series of guiding principles for use by public officials and State and Federal courts in the matter of apportionment of State legislatures.

The report was adopted at a meeting of the Commission held December 13, 1962.

Frank Bane
Chairman

WORKING PROCEDURES OF THE COMMISSION

This statement of the procedures followed by the Advisory Commission on Intergovernmental Relations is intended to assist the reader's consideration of this report. The Commission, made up of busy public officials and private persons occupying positions of major responsibility, must deal with diverse and specialized subjects. It is important, therefore, in evaluating reports and recommendations of the Commission to know the processes of consultation, criticism, and review to which particular reports are subjected.

The duty of the Advisory Commission, under Public Law 86-380, is to give continuing attention to intergovernmental problems in Federal-State, Federal-local, and State-local, as well as interstate and interlocal relations. The Commission's approach to this broad area of responsibility is to select specific, discrete intergovernmental problems for analysis and policy recommendation. In some cases, matters proposed for study are introduced by individual members of the Commission; in other cases, public officials, professional organizations, or scholars propose projects. In still others, possible subjects are suggested by the staff. Frequently, two or more subjects compete for a single "slot" on the Commission's work program. In such instances selection is by majority vote.

Once a subject is placed on the work program, a staff member is assigned to it. In limited instances the study is contracted for with an expert in the field or a research organization. The staff's job is to assemble and analyze the facts, identify the differing points of view involved, and develop a range of possible, frequently alternative policy considerations and recommendations which the Commission might wish to consider. This is all developed and set forth in a preliminary draft report containing (a) historical and factual background, (b) analysis of the issues, and (c) alternative solutions.

The preliminary draft is reviewed within the staff of the Commission and after revision is placed before an informal group of "critics" for searching review and criticism. In assembling these reviewers, care is taken to provide (a) expert knowledge and (b) a diversity of substantive and philosophical viewpoints. Additionally, representatives of the American Municipal Association, Council of State Governments, National Association of Counties, U. S. Conference of Mayors, U. S. Bureau of the Budget, and any Federal agencies directly concerned with the subject matter participate, along with the other "critics" in reviewing the draft. It

should be emphasized that participation by an individual or organization in the review process does not imply in any way endorsement of the draft report. Criticisms and suggestions are presented; some may be adopted, others rejected by the Commission staff.

The draft report is then revised by the staff in light of criticisms and comments received and transmitted to the members of the Commission at least two weeks in advance of the meeting at which it is to be considered.

In its formal consideration of the draft report, the Commission registers any general opinion it may have as to further staff work or other considerations which it believes warranted. However, most of the time available is devoted to a specific and detailed examination of conclusions and possible recommendations. Differences of opinion are aired, suggested revisions discussed, amendments considered and voted upon, and finally a recommendation adopted with individual dissents registered. The report is then revised in the light of Commission decisions and sent to the printer, with footnotes of dissent by individual members, if any, recorded as appropriate in the copy.

ACKNOWLEDGMENTS

The staff work for this report was conducted by Mr. Stuart Urbach, a staff member of the Commission. In developing the report, Mr. Urbach benefited greatly from the assistance and advice generously provided by numerous officials of State and local government, and private citizens and organizations concerned with State government.

The Commission desires to express its appreciation to Professor Hans W. Raade, editor of Law and Contemporary Problems for furnishing page proof of several articles of a symposium on The Electoral Process.

Wm. G. Colman,
Executive Director

Melvin W. Sneed,
Assistant Director,
Governmental Structure and Functions

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CHAPTER I

INTRODUCTION

Reason for the Study

On March 26, 1962, the Supreme Court of the United States rendered a decision which is having a far reaching impact on State government, on State-local relations, on Federal-State relations and Federal-local relations. The decision--Baker v. Carr 1/--held that the equal protection clause of the Fourteenth Amendment to the Constitution of the United States guarantees certain protections to the citizens of the several States with respect to the apportionment of State legislatures and that Federal, as well as State, courts may enforce these protections.

The significance of the decision was not that courts can review provisions for the apportionment of State legislatures, but that court review may be had against a criterion established by the equal protection clause. Prior to the Supreme Court decision, nearly half of the State supreme courts had exercised the right to review statutes apportioning seats in the State legislature. State court review was largely limited to declaring a specific apportionment act unconstitutional, although several State courts actually changed the boundaries of legislative districts or threatened to apportion if the legislature did not apportion in accordance with the provisions of the State constitution. 2/

At its ninth meeting in May, 1962, the Advisory Commission on Intergovernmental Relations decided to study the question of apportionment of State legislatures, in light of the potential impact the Baker v. Carr decision would have upon the vital role of the States in our federal system. While provisions of the United States Constitution limit State action affecting the National Government, the States, generally, have unrestricted power over local

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1/ 369 U.S. 186

2/ The Supreme courts of Alabama, Illinois, Kentucky, Massachusetts, Michigan, Minnesota, Missouri, Nebraska, New Jersey, New York, Ohio, Oklahoma, South Dakota, Virginia, Washington, and Wisconsin, are among those reaching this conclusion. See annotation in 2A.L.R1337 and Anthony Lewis, "Legislative Apportionment," Harvard Law Review, 71:1057, 1066-1070 (1958).

government, except insofar as they choose to limit or delegate such power in their own constitutions. Within these limitations the plenary power of State legislatures has a vital effect on governmental powers and functions at all levels of government.

With concern for these considerations, the Commission felt it should undertake an examination of the apportionment question, in the hope that the results would be of timely assistance to Governors, State legislatures, State and Federal courts, and the public in considering the apportionment problem and in meeting their respective responsibilities.

Scope of the Study

Representative government is not a static thing--it is an idea which, in the United States, reflects both our belief in the dignity of man and our abhorrence of mob rule, but since it is a general concept rather than an absolute principle, it has quite naturally been subject to change.

Such change requires continuing reevaluation of the implementation of our theories and ideas concerning democratic government to insure that they are adequate to meet the present and changing needs of society.

Chapter II deals with these factors in their application to State legislatures and an attempt is made to evaluate the impact of the present structure of State legislatures on various aspects of the governing process. The primary emphasis is on intergovernmental relations.

Chapter III is an evaluation of various factors which may be considered in developing an apportionment formula for a particular State legislature and possible effects of such a formula on the governing process. Again, the primary concern is placed on intergovernmental relations.

Chapter IV is devoted to the procedures involved in the apportionment process. The history of apportionment of State legislatures clearly indicates that procedures play an extremely important role in the matter.

Finally, in Chapter V, the Commission proposes certain guiding principles designed to assist Governors, State legislators and Federal and State courts in meeting their respective responsibilities in the apportionment process.

The Supreme Court in Baker v. Carr neither established an apportionment formula for State legislatures nor did it declare unconstitutional the actual apportionment of a particular State legislature. The court did say that the equal protection clause prohibits "invidious discrimination" in apportioning seats in a State legislature, and that a particular apportionment must represent a "rational policy." At the present time, neither students of government or of constitutional law nor the courts have agreed on how these Fourteenth Amendment standards are to be applied to the apportionment of State legislatures.

Some courts have held that the equal protection clause requires both houses of a bicameral State legislature to be apportioned on the basis of population. Other courts have held that the equal protection clause requires only one house of a bicameral legislature to be apportioned on the basis of population. Still other courts have held that neither house of a bicameral legislature must be based solely on population in order to satisfy the requirements of the equal protection clause. 3/ Obviously, this report cannot attempt to resolve a constitutional question on which various Federal and State courts have arrived at different answers, but the Commission hopes that the principles developed here may well be helpful to further and final disposition of the question.

3/ See Appendix I.

CHAPTER II

EVOLUTION OF REPRESENTATION AND THE STRUCTURE OF STATE LEGISLATURES

History of Representative Government as Applied to State Legislatures

In order to understand the present structure of State legislatures--as expressed both in constitutional provisions and in the often avoidance or ineffective implementation of those provisions--it is necessary to understand the theory of representative government, and to view its application at different times in history. As with any theory of government, the theory of representative government has been subject to constant change and modification in order to meet changing times and circumstances. Since this report is concerned solely with the basis of representation in State legislatures, the review of the general theory will be limited. 4/

The path of representative government has followed the changing interests of the community. Its history, for purposes of application to State legislatures, began with the struggle between the European kings and their subjects. The kings, in order to raise revenues and armies, had to have the assistance of the feudal lords. To obtain this assistance, various councils to the King were created--in England the council soon became the Parliament. Once established, the council or Parliament, began to appreciate its power with respect to the king. Slowly, the leverage gained by these lords developed into representative government. As Charles A. Beard has said:

> ...representative government began its career as an instrument of political power, in a given complex of social and economic circumstances, to serve the purposes of the ruling monarchs; and it has played a bewildering role, in form, spirit and authority for more than five hundred years. Flexibility has been its prime characteristic. 5/

4/ The brief historical review which follows necessarily oversimplifies the issues and conflicts in the development of representative government. For a comprehensive review of the history of representative government see Robert Luce, Legislative Principles (Houghton Mifflin Co., 1930) and Alfred de Grazia, Public and Republic (Alfred A. Knoph, Inc., 1951).

5/ Charles A. Beard and John D. Lewis, "Representative Government in Evolution," American Political Science Review, 26:223 (1932).

During the American colonial period profound changes were taking place in the governmental structure of England.

> The American colonies were founded in a century in which England developed highly significant ideas of representation. At the beginning of the 17th century, the power of the Throne in England was great. By the middle of the century, the Crown had been temporarily banished, and by the end of the century, Parliament had become supreme and modern "representative government" had begun. 6/

These developments had a strong impact on colonial America. The English development during the 17th century was concerned largely with the respective roles of the King and Parliament. It was not until this issue was resolved, or its conclusion clear, that attention was turned to the constitution and operation of the representative body.

Representative government in England was conceived at a time when nearly all wealth was measured by land. It was natural, therefore, for the first representatives to the King's Council or Parliament to be selected on the basis of land holdings, since it was from such land that the king hoped to obtain royal revenues. As commerce grew, the king found it expedient to grant charters to cities and towns. Such charters, in addition to dealing with taxing powers of the king, usually granted the town representation in the Parliament. Representation at this time was not based on population or any other criterion that might be related to population--it was based on town or feudal units.

As the power of Parliament grew and as it turned its attention to matters other than revenue and taxes, stirrings began to be heard. Were land and political subdivisions the appropriate criteria for determining representation in Parliament? It was not until the Reform Act of 1832 that England finally resolved the question of Parliamentary representation in favor of population. The struggle had lasted for nearly two centuries, and it was during this struggle that colonial America was settled.

6/ de Grazia, op. cit., p. 13.

American colonial legislatures were greatly affected by the matters at issue in England, but the heirs of English history were quicker to accept population as a basis of representation than was the mother country. As early at 1635 Massachusetts gave recognition to population in towns by establishing the following formula: 7/

No. of freeholders	No. of Representatives
0-10	0
10-20	1
20-40	2
over 40	3

Rhode Island gave similar recognition to population, but Connecticut provided for equal representations for each town. 8/ In view of this checker board pattern, Luce was able to say "Nowhere did representation bear any uniform relation to the number of electors. Here and there the factor of size had been crudely recognized." 9/

During the period from 1776 to 1790, the States of the emerging nation grappled with the problem of organizing their respective governments. The problem of legislative representation based on population (or one of its equivalents--qualified electors, taxable inhabitants, taxes paid, etc.) or political subdivision was one of many dealt with at great length. The question of the basis of representation at the State level was intertwined with numerous other issues (particularly qualifications for voting and qualifications for holding office), but we are not here concerned with these matters.

Mr. Luce gives to the Commonwealth of Pennsylvania, under its constitution of 1776, the distinction of being the first to adopt population--in this case taxable inhabitants--as the basis for legislative representation. The Pennsylvania constitution of 1776 also provided for a unicameral legislature. When a new constitution, adopted in 1790, established a bicameral legislature, Pennsylvania retained population as the basis of representation in both houses of its legislature. Following the lead of Pennsylvania, the States of Georgia (unicameral), New York, and South Carolina adopted population as the basis of representation. Massachusetts and New Hampshire modified population somewhat as the basis of representation in one of the houses of their bicameral legislature. The tradition of

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7/ Luce, op. cit., p. 337.

8/ Ibid., p. 340.

9/ Ibid., p. 342.

representation from the town was to be retained, but both States required a minimum number of "rateable polls" (qualified voters) for representation and provided for additional representation for the larger towns. In Massachusetts the ratios were: 150-175, one representative; 175-600, two representatives; 600, three representatives; and an additional representative for each 250 "rateable polls." New Hampshire adopted a similar formula.

Representation based on political subdivisions--counties--of the State developed in the middle Atlantic States. Delaware and New Jersey based representation in both houses of their legislatures on the county. Maryland, North Carolina and Virginia did the same but provided additional representation for certain specified cities. If the 1790 population figures of these five States are considered, it appears that representation based on counties did not differ greatly from the distribution of the State's population (Table I).

TABLE I

DISTRIBUTION OF COUNTIES BY POPULATION IN STATES
USING THE COUNTY AS THE BASIS OF REPRESENTATION IN 1790*

county population	Del.	N.J.	Md.**	N.C.	Va.
over 20,000	1	1	5	0	1
15-20,000	2	6	6	1	6
10-15,000	0	4	6	9	24
5-10,000	0	1	2	36	37
under 5,000	0	1	1	8	41

* Source: First Census of the United States: Return of the Whole Number of Persons, 1790.

**Baltimore City with a population of 13,503 is included as a separate county.

Closer analysis reveals that the disparity between population and representation was even less than that which appears in Table I for some of the five States. In Delaware the population of the most populous county was 20,488 while that of the least populous was 18,920. In New Jersey, with the exception of one county with a population of 2,571, the population range for 12 counties was between 8,248 and 20,153. The population distribution by counties in Maryland and North Carolina, while not as uniform as that of Delaware and New Jersey,

was sufficiently uniform so that representation based on the county permitted all interests to be reasonably represented in the State legislature. In Maryland county population ranged from 4,809 to 30,791; between these extremes were 15 counties with populations between 11,640 and 22,598. In North Carolina the range was between a high of 15,828 and a low of 3,071. Virginia had the greatest extreme--a low 951 and a high of 22,105. This variation of representation in the Virginia legislature caused Thomas Jefferson to criticize the Virginia constitution because "...among those who share the representation, the shares are unequal..." 10/

Connecticut and Rhode Island used the town for the basis of representation in one house of their bicameral legislatures; though in both States, size of towns was crudely recognized. Unfortunately, the 1790 census did not list town populations for Connecticut. The 30 towns of Rhode Island contained populations ranging from a low of 507 to a high of 6,716 and 24 of them had populations between 1,100 and 4,200. As with the States using the county as the basis of representation, the population differences between towns were relatively small in Rhode Island.

The next significant event was the passage of the Northwest Ordinance by the Congress under the Articles of Confederation on July 13, 1787. This ordinance provided the guide to the development of the American West. It is perhaps significant that this ordinance was enacted in the same year that the Constitutional Convention completed the final draft of the new Constitution of the United States for submission to the States for ratification, and it should be recalled that the Northwest Ordinance was adopted with each State having only one vote. With respect to representation in territorial legislatures the Ordinance said in Section 9:

> So soon as there shall be 5,000 free male inhabitants, of full age, in the district, upon giving proof thereof to the governor, they shall receive authority, with time and place, to elect representatives from their counties or townships, to represent them in the general assembly. Provided, that for every 500 free male inhabitants there shall be one representative, and so on, progressively with the number of free male inhabitants, shall the right of representation increase, until the number of representatives shall amount to 25; after which the number and proportion of representatives shall be regulated by the legislature.

10/ Ibid., p. 352.

While the basis of representation specified in the Northwest Ordinance may not be absolutely clear from a reading of its provisions, the subsequent actions of the States formed out of the Northwest Territory leaves little doubt as to their understanding of the basis for legislative representation. Table II indicates that the newly formed States clearly considered population to be the basis of legislative representation for both houses of their legislatures. Of the 20 States joining the union after ratification of the constitution and prior to the Civil War only two, Vermont and Florida, provided otherwise.

TABLE II

BASIS FOR REPRESENTATION IN STATE LEGISLATURES AS CONTAINED IN ORIGINAL STATE CONSTITUTIONS

Year of admission and no. of States	Both Houses popula-tion	Both Houses population with slight modification in one House	One House population One House subdivision	Both Houses subdivision	
				with modifi-cation	without modifi-cation
13 colonies	4[a]	2	2	3	2
3 to 1800	2			1[a]	
7 1801-1820	5	2			
3 1821-1840	1	2			
7 1841-1860	6		1[b]		
5 1861-1880	3[c]	1	1		
7 1881-1900	4[d]	1	1[e]		1
3 1901-1920	2[f]			1	
2 1921 to date		1	1[g]		
50	27	9	6	5	3

a. Georgia, Pennsylvania and Vermont adopted a unicameral legislature in their original constitutions and are included on the basis of the particular apportionment formula.

b. The Florida Senate, while based on counties, required newly organized counties to have the equivalent of the statewide ratio before being entitled to a senator.

c. The Colorado constitution provided for representation in both Houses of its legislature to be according to "ratios" fixed by law.

d. The Utah constitution was similar to that of Colorado

e. While the Idaho constitution gave one senator to each county, the original constitutional apportionment combined several counties to form senate districts.

f. The New Mexico constititution contained no provision for apportionment, but in allocating legislative seats it combined counties as well as giving more than one senator and/or representative to certain named counties.

g. The Hawaiian Senate is apportioned according to constitutionally specified districts which give some recognition to population and the House is apportioned according to population.

In summary, the original constitutions of 36 States required that representation be based completely, or almost so, on population. Subsequently, through constitutional amendment, often according legal status to institutionalized practices, this pattern was to change because of the growth of big cities.

The Structure of State Legislatures

Present Constitutional Apportionment Formulas

A summary of State constitutional provisions governing apportionment as of November 1, 1961, is included in Appendix A. Table III summarizes the data from Appendix A in a manner designed for comparison with the information contained in Table II.

TABLE III

CONSTITUTIONAL PROVISIONS FOR REPRESENTATION IN STATE LEGISLATURES AS OF NOVEMBER 1961*

	Column 1	Column 2	Column 3	Column 4	Column 5	
	Both houses population	Both houses population with slight modification in one house	Both houses population with significant modification in one house	One house population One house subdivision	Both houses subdivision with modification	Both houses subdivision without modification
50 States	15	9	12	7	7	

Certain factors relating to the classification set forth in Table III must be made before a comparison is undertaken.

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* Where population is qualified by permitting a county with one-half (for example Oregon) or two-thirds (for example Tennessee) of the State population ratio to send a representative to a particular legislative body, that qualification is not considered as modifying the population basis of representation. Thus, Oregon which provides a one-half ratio provision for representation in both houses of its legislature is placed in Column 1. Nebraska, with a unicameral legislature, based on population is also placed in Column 1. The placing of certain States in Column 2 or Column 3 presented certain difficulties which were resolved somewhat arbitrarily: For example, both Alabama and Iowa provide that its house of representatives shall be based on population, but each county is guaranteed one representative. Despite identical constitutional provisions, Alabama was included in Column 2, and Iowa is included in Column 3. The reason for this distinction is the relation between the size of the particular house and the number of representatives authorized in that body. The Alabama House has 106 members, and the State has 67 counties, while the Iowa House has 108 members and the State has 99 counties. In Iowa, only nine seats may be distributed on the basis of population, but in Alabama, 39 seats may be so distributed. In Alabama, if two counties contained 50 percent of the State's population, they might elect 38.7 percent of the membership of the body, but two similar counties in Iowa would elect at most 10.2 percent of the membership of the legislative body.

Pennsylvania limits house representation from any one city or county to one-sixth of the membership. The constitutions of New York and Rhode Island contain similar limitations on representation from single political subdivisions. These limitations at one time operated to limit the representation, if based on only on population, of the cities of Philadelphia, New York, and Providence. Now, shifts in population have neutralized the effect of such restrictions upon the relationship between population and representation, and they are unlikely to affect apportionment in these States in the future. In some States, such as Colorado and Hawaii, such restrictions would seriously affect the distribution of legislative seats.

States such as California, Illinois, and Michigan combine area and population as the basis for apportionment of senate seats. California provides that its senate, consisting of 40 members, shall be apportioned according to population, except that no single county shall have more than one senator (over a third of the State's population resides in one county), and no more than three of the State's 58 counties may be combined to form a senatorial district. The Illinois constitution divides the State into three districts--Chicago, the rest of Cook County, and the rest of the State--and apportions a specified number of senate seats to the respective districts. Area is a prime consideration in apportioning seats within the three districts. The assignment of seats to the three districts recognizes the population factor to some extent. The constitutionally specified senatorial districts in Michigan represent an apportionment somewhat similar to the combination of constitutional provision and actual practice in Illinois.

The extent to which the population factor is limited in apportionment of both houses varies greatly among the States. The Arkansas senate is apportioned permanently into districts based on the State's population in the 1950 census; its house, 100 members, is apportioned according to population, with each of 75 counties guaranteed one seat. 11/ The distinction between the Arkansas provisions and those of Pennsylvania and Rhode Island, discussed above are obvious. The effect of the Mississippi constitutional provisions

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11/ Based on the 1960 census figures, the apportionment provisions of the Arkansas constitution would not justify classifying Arkansas with the group of States whose constitutional provisions require apportionment of both houses of the State legislature in such a manner as to provide gross disparities between population and representation. However, despite the immediate situation Arkansas has been so classified because of the likely effect of future population growth.

is similar to that of the Arkansas provisions in that apportionment under the present constitutional formula could provide for representation substantially in accord with the State's population distribution; a future change in that distribution could result in significant differences between population and representation. 12/ Florida and Georgia, both having small senates and houses of representatives relative to the number of counties, limit the representation from single counties to one member in the senate, and guarantee each county one representative while at the same time limiting representation from the larger counties in the house. The combination of these requirements permits a small percentage of the State's population to elect a majority of representatives to both legislative bodies in these two States.

Certain significant differences appear between original and present State constitutional apportionment provisions. The original constitutional provisions of 36 States contained apportionment provisions based completely or substantially on population. At present only 24 constitutions contain such apportionment provisions. The original constitutions of three States based representation in both houses on political subdivisions, with no recognition of population differences--no State constitution contains such provisions today. A concept not found in original State constitutions--one house based on population and the second based on population with significant modification--now appears in the constitutions of 12 States.

12/ The constitutional provisions for apportionment of the Mississippi legislature provide a unique example of a basic problem in legislative apportionment. The State is divided in three large districts representing historical differences of interests and power. With the exception of the fact that each of 82 counties is guaranteed one representative in a 140 member house, seats in both houses are to be apportioned almost equally among the three districts and on the basis of population within the districts. At the present time, the population of, and number of counties within, the three districts are relatively equal, and within each district, the population distribution is such that apportionment of 58 house seats on the basis of population would permit representation substantially in accord with population. While this population distribution has been present through most of the history of the State of Mississippi there is no certainty that it will continue.

Composition of State Legislatures

A characteristic feature of most State legislatures is that a relatively small percentage of population elects a majority of the members. This characteristic has given rise to most of the litigation that has followed in the wake of Baker v. Carr.

The facts noted in numerous studies of representation in State legislatures are generally known, and it is unnecessary to repeat many of them here. To summarize, as of June 1, 1961, in only 11 States did 35 percent or more of the population elect a majority of the members to both houses of the State legislature; in only five of these States did the figure exceed 40 percent. On the other hand, there were at least seven States where less than 30 percent of the population elected a majority of the representatives to both houses of the legislature. Appendix B details data on the percentages necessary to elect a controlling majority in State legislative bodies and the population of the smallest and largest legislative districts in each State. In most instances where significantly less than a majority of a State's population can elect 50 percent or more of the legislators, it is the suburban or entire metropolitan areas which are underrepresented rather than the central city. 13/

The size of a legislature has an important bearing on the legislative process, and has particular implications for legislative apportionment. The membership of State senates ranges from 17 to 67, while the size of State houses of representatives ranges from 35 to 400. Without exception, State senates are the smaller bodies in the legislative branch of the State government. Size of the legislative body is particularly significant where representation is based on political subdivisions of the State. (The size and political control of State legislatures and the political affiliation of the Governor as of November 1, 1961, is contained in Appendix C.)

With the exception of three New England States--Connecticut, Rhode Island, and Vermont--all States which require recognition of political subdivisions in apportioning legislative seats utilize the county as the unit for this purpose. 14/ This requirement, when

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13/ Paul T. David and Ralph Eisenberg, Devaluation of the Urban and Suburban Vote (University of Virginia, 1961), pp. 12-13.

14/ As used here, recognition means granting at least one representative to each political subdivision of a given type within the State. In Louisiana the parish is used for this purpose.

applied to the number of applicable subdivisions in a particular State usually limits representation on a population basis, especially in a small legislative body or in a State with a large number of political subdivisions.

The constitutions of 28 States guarantee at least one representative to each county or town in the State. However, in only eight of these States is the county or town the only factor in apportionment. The other 22 States give some recognition to population while insisting that each designated political subdivision receive at least one seat.

Of the latter 22 States, 17 have over 75 counties. While these States give some recognition to population in apportioning additional seats in the house, given such a requirement, it is difficult to avoid great disparities between representation and population without having an unduly large legislative body. For example, if Georgia, with 159 counties, were to apportion seats in its house of representatives on the basis of population and still provide at least one representative from each county, its house would consist of over 2,600 members. On the other hand, although Alabama gives each county one representative in its house of representatives, this apportionment does not result in as serious a deviation from population representation as does a similar requirement in Iowa. (See footnote to Table III.) Yet, to give full effect to population would require over 300 members in the Alabama house instead of 106.

Party affiliation is of fundamental importance in the apportionment process. Of 74 legislative bodies, in 37 States, 15/ the Democratic Party has a majority in 38 bodies, the Republican Party has a majority in 35 bodies and in one body representation is equal (Appendix C). In only five of these States is party control limited to only one house. In 31 States one party controls both houses of the State legislature.

15/ For purposes of this analysis each house of the State legislature is considered a separate legislative body. In addition the 11 southern States and the two States with non-partisan elections are omitted. Information is as of November 1, 1961, as contained in Book of the States 1962-63, Council of State Governments (Chicago, 1962), p. 41.

The Apportionment Process in the States

While numerous State constitutional provisions place severe or minor limitations on the degree to which apportionment of legislative seats may be based on population, considerable latitude remains for the apportioning agencies to give greater weight to population than they have chosen to do. Of the total of 99 State legislative bodies, there are 16 which because of constitutional provisions may not be reapportioned periodically. Such limiting provisions either allocate a specified number of representatives to each political subdivision or establish permanent legislative districts. For eight additional legislative bodies, the constitutional requirements are so restrictive that the apportioning agency has very little discretion in apportioning seats in the legislature. The apportioning agencies of the remaining 75 legislative bodies possess considerable authority in the apportionment process within the limits of State constitutions. Many of these limits are explicit as to the standards the apportioning agency must follow.

The State legislature has sole responsibility for the periodic apportionment of legislative seats in 60 of the 83 legislative bodies for which permanent legislative districts are not established. As will be seen below, it is primarily because of the way this power has been exercised or ignored that much of the apportionment litigation has been initiated. Although there are some exceptions, State legislatures simply have not complied with their constitutional duties regarding apportionment.

To secure apportionment of legislative seats at constitutionally prescribed intervals in the 60 legislative bodies mentioned above would require action on the part of 34 State legislatures. Of these, 15 can be said to have apportioned legislative seats at regular intervals (every 10 years or less since 1940), while seven have not taken any apportionment action since 1930. The remaining 12 legislatures have acted on apportionment at irregular intervals since 1930. 16/

Of the 15 legislatures that have apportioned regularly, five--Idaho, Montana, Nevada, New Mexico and South Carolina--are limited by constitutional provisions to apportionment of seats in only one house of the legislature. In most instances these five legislatures have performed their limited responsibility. In two States--Georgia and Kansas--legislative authority is broad with respect to apportioning one house of the legislature on the basis

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16/ See Appendix A.

of population, but narrow with respect to the second house. In these States the legislatures acted creditably in exercising their limited responsibility, but very conservatively in exercising their broad responsibility. The Florida legislature is permitted only narrow authority in apportioning both houses. The final group of seven States--Maine, Massachusetts, New Hampshire, New York, Oklahoma, Virginia, and West Virginia--present significant variations. The New York and Oklahoma constitutions contain what many call severe limitations on apportionment according to population. Despite these limitations, the New York legislature has apportioned legislative seats according to its constitution while Oklahoma has not. Apportionment is based strictly on population in three (Massachusetts, New Hampshire, and Virginia) of the remaining five States (Maine and West Virginia are the exceptions) and the three State legislatures have done reasonably well in meeting their apportionment duties, though the three apportionments are being challenged in court. The limitations contained in the Maine and West Virginia constitutions are not particularly significant in view of the States' population distribution, and the Maine legislature has complied with its constitutional provisions while West Virginia has not.

Obviously and understandably State legislatures generally have had an extremely difficult time when confronted with apportionment legislation. It is essential to look briefly at some of the reasons for the difficulty. If we can understand the difficulties, it may then be possible to develop procedures that will eliminate or at least minimize them.

The major problem facing legislators in this matter, is that apportionment of legislative seats is a function of political power--political power in the most personal sense. Certainly apportionment is of major concern to political parties, the many interest groups in our society, the political subdivisions of the State, and the people generally, but to the State legislator, apportionment often represents a challenge to the interests of his constituents, to his tenure in office, and to his power to influence the policy decisions of the State. In a study of the problem in Illinois it was said that:

> Redistricting legislation is of basic concern to legislators because it is a kind of job specification which can be drawn to the special advantage or disadvantage of any member. Redistricting can insure continuity in office or can insure retirement, depending on the terms of the bill. No other

> legislation has quite the same direct effect on a legislative career, and with no other legislation do the demands, the proposals, the maneuvering, and the compromises emanate within the legislative body to the same extent. 17/

Steiner and Gove observed that "Redistricting proposals that dislodge a minimum number of sitting members, irrespective of party, will be favored over proposals that do not take into account sitting members." 18/ This conclusion is supported by numerous other studies.

While personal factors may play a primary or the primary role in legislative apportionment when the legislature itself is called upon to act, numerous other factors are involved. Second only to the personal factor is the problem of the so-called "urban-rural" conflict. In this context the issue is not one of determining the basis of representation, but of which "group" shall control the legislature of a State. The history of apportionment has shown that the States considered population to be the basic factor in the apportionment of legislative seats when their first constitutions were adopted. Around the turn of the present century, it became evident that significant shifts in legislative districts would be required in most States if population continued to be the primary or sole basis of representation. The possibility of shift coincided with the beginning of the real growth of big cities and urban areas. Up until that time most of the legislatures had been apportioned in accordance with constitutional mandates. For example, the last apportionment in Illinois, before its 1955 constitutional amendment, occurred in 1901. In 1901 Cook County contained 38.1 percent of the State's population and the county received 37 percent of the seats in each house of the legislature. That the start of the 20th century marked a turning point in apportionment, is attested to by numerous studies. 19/

17/ Gilbert Y. Steiner and Samuel K. Gove, The Legislature Redistricts Illinois (The Institute of Government and Public Affairs, University of Illinois, 1956), p. 5.

18/ Ibid., p. 31.

19/ See Gordon E. Baker, Rural Versus Urban Political Power (Doubleday & Co., Inc., 1955); Thomas Page, Legislative Apportionment in Kansas (Bureau of Government Research, University of Kansas, 1952); Edward H. Hobbs, "Legislative Apportionment," Yesterday's Constitution Today, edited by Hobbs (Bureau of Public Administration, University of Mississippi, 1960).

The pattern on which to challenge population as the basis of apportionment was developed in the States during the 19th century and followed in some respects the pattern used in England prior to 1832. While State constitutions called for apportionment according to population, in most instances they required that counties not be split when forming a legislative district. During this period it became the common practice to give each county one representative in at least one house of the State legislature. At that time there were few States with large centers of population in relation to the State's total population. In addition, many counties were unorganized. Since the State had the basic responsibility for elections, it was only logical to select the county as the basic unit through which to administer elections. The institutionalized practice of giving each county one representative in one house of a State legislature was given legal status in some State constitutions, such as Kansas and Iowa, and became the standard practice of legislatures in other States, including West Virginia.

While apportionment has produced serious inter-party conflict in some States, most observers have been unable to find clearly partisan political positions taken in this field. The following observations were made of two States--Michigan and New York--where apportionment certainly has been considered a partisan issue:

> Moreover, not all Democrats or Republicans share their own party's view on this issue--Democrats in the Upper Peninsula of the State would be likely to lose seats in a reapportionment, for example, and heavily populated and Republican Oakland County would probably gain some legislative seats. Thus, while party politics are clearly involved, this is not entirely a political party issue. 20/

> The position of Tammany legislators is illustrative of the politics of reapportionment in several States today where politicians of the city proper team up with rural county legislators to oppose redistricting along population lines because both

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20/ Herbert Garfinkel and L. J. Fein, Fair Representation: A Citizen's Guide to Legislative Apportionment in Michigan (Michigan State University, 1960), p. 1.

> are likely to lose some seats to the growing metropolitan area. 21/

This matter of intra- as opposed to inter-party rivalry in apportionment is even more apparent in States where one party has commanded the allegiance of a large majority of the voters for a long period of time. The problem is perhaps best summed up by Hobbs:

> In most States, legislative reapportionments are blocked by representatives whose counties are overrepresented. This is at least understandable, but in some States representatives from greatly underrepresented counties also secretly work in collusion with representatives from greatly overrepresented counties to block increased representation. The reasoning being that so long as a small number of representatives are elected in their districts the more important they become. It is a truism that power sharing is not often eagerly sought by politicians. 22/

Further, in regard to the frequency of apportionment, the constitutions of some States require apportionment more often than every 10 years. Such provisions were more common in constitutions of the 19th century. Hobbs, noting that Mississippi reapportioned its legislature on the average of every four and a half years during the 19th century, says: "The regular periodicity of reapportionment made them quite easy to effect since population changes were not given an opportunity to create vested interests in the status quo to the point where reassigning legislators became next to impossible." 23/

21/ Hugh A. Bone, "States Attempting to Comply with Reapportionment Requirements," Law and Contemporary Problems, 17:401 (Spring, 1952). New York did not reapportion its legislature between 1917 and 1941. The Democratic Party obtained control of both houses of the State legislature and the Governorship in the late 1930's. Despite the concerted efforts of the statewide party leaders, the Manhattan Democrats, joining with Republican legislators, were able to defeat any apportionment legislation. Manhattan opposition was based on the fact that it would lose representatives while other portions of Democratic New York City would gain representatives.

22/ Hobbs, op. cit., (footnote 19), p. 127.

23/ Ibid., p. 126.

In 14 States the responsibility for periodically apportioning the seats of 23 legislative bodies has been partially or completely removed from the jurisdiction of the legislature. 23-a/ Ohio, in its constitution of 1851, was first to adopt this approach. Most of the other States having such a procedure adopted it quite recently. Perhaps the most significant result of this development is that in most of the States having such procedures, the apportioning agency has complied with State constitutional apportionment requirements. The development and growth of non-legislative apportionment procedures have occurred because of dissatisfaction with the manner in which many State legislatures had dealt with their responsibilities.

The 14 States divide into two basic groups. The first, including California, Oregon, Illinois, South Dakota, Texas, Michigan, and North Dakota, provide for non-legislative action in the event that the legislature fails to act within a designated time. The other seven States--Alaska, Missouri, Ohio, Hawaii, New Jersey (statutory only), Arkansas, and Arizona--have removed the legislature completely from the apportionment process.

At least seven State constitutions--Alaska, Arkansas, Hawaii, New York, Oklahoma, Oregon, and Texas--specifically provide for court review of apportionment legislation or plans. In addition, a number of State courts have held that they may review apportionment proposals to insure that the provisions of the State constitution have been complied with. Most of these State court decisions were rendered long before Baker v. Carr. Among the States in which courts have reached this decision are Massachusetts, New Jersey, Virginia, Michigan, Illinois, Ohio, Washington, Colorado, Indiana, Kansas, and Kentucky. While these and other State courts have exercised the authority to review the constitutionality of State apportionment proposals, they have, except where a local government districting or a non-legislative body is involved, generally refused to direct the legislature to apportion according to the constitutional provisions of the State. The first exception to this practice was made not by the U. S. Supreme Court, but by the Supreme Court of New Jersey in Asbury Park Press Inc. v. Woolley. 24/

23-a/ On November 6, 1962, voters in three States approved proposals affecting apportionment procedures. In Colorado, members of a legislature that fails to apportion house seats according to the population formula in the constitution can be denied their salary or the opportunity to seek re-election. In North Carolina, the Speaker of the House was assigned responsibility to apportion house seats, and in Oklahoma an apportionment Commission was given the responsibility to apportion seats in the legislature.

24/ 161 Atl. 2d 705 (1960).

Effects of the Present Structure

The Urban-Rural Conflict

In determining the effects of "malapportionment" of State legislatures, it is necessary to define what constitutes malapportionment. In most simple terms, it is the granting of greater representation to rural or sparsely populated areas than they are either entitled to under the provisions of the State constitution or they would be entitled to if apportionment were based solely on population. Conversely, if population alone is considered, urban areas are underrepresented in State legislatures on either basis. If persons residing in rural and urban areas, assuming they can be divided into two separate groups, sought the same legislative goals there might be no issue raised by the fact that legislative seats are not apportioned according to population. While no absolute dichotomy of interests exists between urban and rural residents, there are apparently enough differences affecting enough interests to say that some type of a conflict exists. Whether this conflict can be analyzed in concrete terms when applied to specific issues is another question. There is no doubt that the conflict exists in the actual apportionment process. Even in the apportionment process, however, many instances have been noted where urban leaders have been less than forthright in their demands for more equal representation. Against this immediate qualification, it is obviously difficult to trace with any degree of precision the effects of the present systems of apportionment.

To quantify the extent of the underrepresentation of population in State legislatures (as shown in Appendix B) is one matter, but to determine what particular segment of the population actually is underrepresented in a particular State requires much more careful analysis. The 1960 Census revealed that 112.9 million individuals or 63.0 percent of the nation's population reside in the Standard Metropolitan Statistical Areas. 25/ While the residents of SMSA's

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25/ A Standard Metropolitan Statistical Area includes a central city or cities with a population in excess of 50,000 and the surrounding counties which form an integrated community with such city or cities. See U. S. Bureau of the Census, United States Census of Population 1960, United States Summary, Number of Inhabitants, PC (1), 1A (U.S. Government Printing Office, 1961), p. XXIV, for detailed definition.

are usually the people who are most underrepresented in State legislatures, they do not form a single homogenous group. On a national scale approximately half of these people reside outside the central cities. Appendix D shows the central city-suburban population distribution by States. In the present distribution of seats in many State legislatures it is the suburban area and not the city that is most underrepresented. In Maryland, for instance, the city of Baltimore has 30 percent of the State's population and it elects 20 percent of the members of the State senate, while the three largest counties, all within SMSA's, have 35 percent of the State's population but elect only 10 percent of the State senators. The potential impact of this population distribution will be explored below.

Effects on Intergovernmental Relations

The most often quoted statement concerning the effect of underrepresentation of urban areas in State legislatures was made by the earlier Kestnbaum Commission:

> Reapportionment should not be thought of solely in terms of a conflict of interests between urban and rural areas. In the long run, the interests of all in an equitable system of representation that will strengthen State government is far more important than any temporary advantage to an area enjoying overrepresentation.
>
> The problem of reapportionment is important... because legislative neglect of urban communities has led more and more people to look to Washington for more and more of the services and controls they desire....
>
> One result of State neglect of the reapportionment problem is that urban governments have by-passed the States and made direct cooperative agreements with the National Government...the multiplication of the National-local relationships tends to weaken the State's proper control over its own policies and its authority over its own political subdivisions. 26/

26/ Commission on Intergovernmental Relations, A Report to the President for Transmittal to the Congress (U. S. Government Printing Office, 1955), pp. 39-40.

While there can be little doubt that the past 30 years have seen an increasing national interest in matters that were once considered the basic responsibility of State and local governments, it is sometimes difficult to place all responsibility for this trend at the feet of State legislatures not apportioned according to population. As Harvey Walker has said:

> History has shown that despite the transfer of many State activities to Federal control, the tasks to be performed by the States have not declined, but have increased, new ones being added frequently in response to public demand. 27/

Although the above statements may be contradictory, the available facts certainly support both. The Federal Government is now involved in housing, sewerage treatment, airports, and numerous other programs directly affecting both State and local government. At the same time, the States have assumed larger roles in programs involving water resources, recreation, mental health, and education, among others. The extent of State government activities is attested to by the continuing increase in State taxation and expenditures during the past 20 years. 28/ To what extent the trend of federal participation is due to the growing complexity of our society is certainly an unanswered question at the present time. Ruth C. Silva has provided one answer:

> The multiplication of national-local relations does, of course, weaken the State's proper control over its own policies and its authority over its own political subdivisions. The (Kestnbaum) Commission correctly pointed out that the national government is often more responsive to urban needs, because urban interests are frequently more effectively represented in Congress than in their

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27/ Harvey Walker, "Myth and Reality in State Constitutional Development," State Constitutional Revision, ed. W. Brooke Graves (Public Administration Service, 1960), p. 9.

28/ See annual series, U. S. Bureau of the Census, Compendium of State Government Finances in 19__ (U. S. Government Printing Office).

> own State legislatures. The same shift in population which has made our State legislatures less representative has made the Congress more representative of urban areas. For, unlike most State legislatures, the national House of Representatives has been reapportioned after almost every decennial census. Moreover, since United States Senators are elected at large, they have become increasingly dependent on urban voters for their election to the Senate. 29/

The impact of the present apportionment of State legislatures on State-local and interlocal relations is also difficult to assess. During the latter half of the 19th century the city home rule movement began. Today many States have granted full or partial recognition to municipal home rule. But this solution to a problem of the 19th century and early 20th century may be inadequate today. Home rule was developed in order to permit cities to resolve their own problems without having to go to the State for assistance. At the time most of the residents and industry of urban areas were congregated within the territorial limits of the city itself; this is no longer true. This shift in population distribution within many metropolitan areas has meant that the central city no longer possesses the authority to resolve areawide problems, and since the views of the central city and its suburban area often are in conflict, they cannot reach agreement on a particular approach to the problem. This disagreement or conflict often is transferred to the State legislature. The 1955 apportionment of the Illinois house according to population shows this clearly:

> It is interesting that in the 1957 House, after reapportionment had placed all Cook County districts either completely inside or completely outside the city of Chicago, there were only four of the 332 contested roll calls displaying a cohesion of more than 67 percent for the combined Chicago-Cook County group which had a numerical majority in the House. 30/

29/ Ruth C. Silva, "Legislative Representation With Special Reference to New York," Law and Contemporary Problems, 27:409(Summer, 1962).

30/ David R. Derge, "Urban-Rural Conflict: The Case in Illinois," Legislative Behavior, A Reader in Theory and Research, ed. John C. Wahlke and Heinz Eulau (The Free Press, 1959), p. 227.

Derge also notes that disagreement within the delegation from the Chicago metropolitan area occurred more frequently than any other disagreement in the State legislature. Many have said that in most instances where the representatives of the urban area could agree among themselves as to what they want, the State legislature would be more than happy to give it to them.

Obviously this reflects only part of the picture. After indicating that 239 of 1,102 laws dealing with city government enacted by the Kansas legislature between 1911 and 1947 related only to Wichita, Topeka, and Kansas City, Page said:

> The legislature actually abdicates the general legislative function by yielding to any local government's request for a new or amended power as long as that power is narrow in scope and is made special for that unit alone. 31/

This statement leads to several observations. The fact that the power granted is usually narrow in scope means that it often may not be sufficient to resolve the problem that precipitated the appeal to the State legislature. Perhaps more important, it reveals a general disassociation on the part of some State legislators with the problems that may confront the city. A power, narrow in scope, frequently is granted without a full evaluation of its effect. The legislature in effect says: "It's your problem. You want this power. Okay--but don't bother us about it." This point is spelled out in detail by both Page and Derge.

One further point should be mentioned. In discussing the provisions of the Mississippi constitution guaranteeing each county one seat in the house, Hobbs says:

> Under present constitutional provisions county consolidation is made virtually impossible, since to consolidate may be to lose representation. 32/

County governments, established by the State legislature, were for the most part created during the 19th century, and structured to meet the problems of that century. Guaranteeing county representation in a legislature impedes county consolidation where such action might be necessary to resolve new problems or to provide more effective local government. This adverse effect on local government structure probably would occur most frequently in rural areas.

31/ Page, op. cit., (footnote 19), p. 136.

32/ Hobbs, op. cit., (footnote 19), p. 122.

Effects on Functional Programs

The 1960 and 1962 reports of the National Municipal League 33/ reveal that its observers find the greatest effect of present apportionment of State legislatures involves State grants-in-aid or the allocation of funds to local government, and labor and welfare matters. These observations are in accord with other studies 34/ as well as numerous comments made to the Commission staff during the preparation of this report. In some States none of these effects were noted; in others only some were noted. Perhaps the most significant factor about the functions listed as most affected by the present apportionment of State legislatures is that they involve problems closely tied to urban areas.

Effects on Political Parties

Available studies indicate that the present distribution of legislative seats does affect the political makeup of legislatures in some States. In order to assess this impact, it is necessary to determine whether the main strength of a political party is located in an area that is underrepresented in the State legislature, and to determine to what extent issues coming before the legislature are framed as party issues.

Taking the States as a whole, it is difficult to determine the overall effect of the present structure on the political composition of State legislatures. It is assumed by many that underrepresented cities outside the southern and border States are basically strongholds of the Democratic Party, but that the underrepresented suburbs in these States tend to support the Republican Party. In the southern and border States the Republican Party has tended to be strongest in the urban areas. In view of the fact that the urban area population of the nation is divided almost equally between the central city and the suburbs, it is difficult to arrive at any overall national concensus as to the party gaining or suffering most from present apportionment practices.

33/ National Municipal League, Compendium on Legislative Apportionment (New York, 1960 and 1962).

34/ Robert S. Friedman, "The Urban-Rural Conflict Revisited," Western Political Quarterly, 16:481 (1961); and Charles W. Shull, "Political and Partisan Implications of State Legislative Apportionment," Law and Contemporary Problems, 17:417 (Spring, 1952).

Detailed studies in two highly urban States, New York 35/ and Michigan 36/, would seem to indicate that people who vote for Democratic Party candidates are underrepresented in the State legislature. But other States with large urban populations, Massachusetts, Maryland, and Texas, present another situation. While detailed studies in the latter three States have not been made, there is a great disparity between votes received by Republican Party candidates for statewide office and the number of State legislative seats held by that party.

Two extensive studies on party voting in State legislatures conclude with the observation that party issues do not take up a significant portion of the business of State legislatures. 37/ This does not mean that important issues are not the subject of party conflict. The Jewell study also notes that the larger a State's population and the more urbanized the State is, the more issues coming before the legislature are likely to become issues of party conflict.

35/ David I. Wells, Legislative Reapportionment in New York State, (International Ladies Garment Workers Union, 1962).

36/ Garfinkel and Fein, op. cit., (footnote 20).

37/ Malcolm E. Jewell, "Party Voting in American State Legislatures," American Political Science Review, 49:773 (1955); and William J. Keefe, "Parties, Partnerships, and Public Policy in the Pennsylvania Legislature," American Political Science Review, 48:450 (1954).

CHAPTER III

FACTORS TO BE CONSIDERED, AND PROBLEMS INVOLVED, IN DEVELOPING A FORMULA FOR APPORTIONMENT OF A STATE LEGISLATURE

Constitutional Requirements for Legislative Apportionment

Population as the Constitutional Standard in One or Both Houses of a State Legislature

There is a difference of opinion as to how population should be measured as a factor in the apportionment of seats to one or both houses of the State legislature. While there may be other ways of measuring the population factor in an apportionment formula, State constitutions overwhelmingly have accepted United States census figures, with one or two relatively minor qualifications for this purpose. The most common exclusions are aliens, nontaxable Indians, and persons residing in certain institutions. Other measurements of population include qualified voters, registered voters, and actual voters. Each alternative measure has various advantages or disadvantages from the point of view of both theory and actual practice.

Most writers on apportionment, as well as the States themselves, have accepted straight population numbers as the logical and most practical population base from which to proceed. With the exception of persons residing in institutions, both the writers and the majority of States feel that there should be no other omissions when determining the census base of legislative apportionment. They argue that the nation's alien population has diminished since the immigration acts of the 1920's point that it is no longer of significance in the overall picture. In addition, aliens are no longer concentrated in relatively few areas. The case to include nontaxed Indians is based on the premise that there are relatively few Indians, and while some may be exempt from some taxes, they are not exempt from all State taxes.

Using registered or qualified voters as the basis for apportionment presents certain practical difficulties. How does the State determine the number of qualified voters? Texas, which uses qualified voters in apportioning State senate seats, has assumed that 85 percent of the population over 21 years of age is qualified to vote. The Texas approach, probably the only one possible without taking an actual count, in reality is a representation of straight population. While registered voters would be more indicative of participation in the governmental process, present procedures for determining this figure leave much to be desired.

Another possible criterion for population in an apportionment formula is actual voters. This measurement has several definite advantages. The figures are readily available, and, if thought desirable, could provide information that would permit apportionment more often than once every 10 years. 38/ Actual voters also give the most accurate picture of participation in the governing process. No one can deny that all qualified voters should be given an opportunity to vote, and to have their votes counted equally with other voters. But should one individual's vote receive greater weight because others in his legislative district have stayed away from the polls? This argument is countered by the advocates of straight population on the grounds that the legislator is the representative of all members of his district, and therefore the district should be determined by actual population. Another argument against use of actual voters is that there is no stability in this figure. On a national basis voter participation is greatest in presidential elections; therefore, if actual voters are used, should presidential, non-presidential, or an average of the two elections be used as the basis for apportionment? Perhaps the most significant argument raised against use of actual voters is the possibility of giving undue weight to a particular area where a highly controversial local issue will be decided at the polls. One writer says of these alternatives to actual population: "Employment of these modifications of the term 'population' tends to distort equalities of representation. Metropolitan areas which have highly mobile populations may well be penalized under a system that uses registered or qualified voters as the base." 39/

Recently, some writers have advocated the use of weighted votes by the legislators themselves in the legislative body as a means that

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38/ At present only four State constitutions call for reapportionment more often than once every 10 years. Arizona, which apportions according to votes cast for Governor, is the only State using actual voters as a basis for apportioning legislative seats. It should be remembered that the original constitutions of many States called for reapportionment at more frequent intervals than once every 10 years. The most frequent interval was five years and the State was directed to make a population census at 10 year intervals between the federal census.

39/ John H. Romani, "Legislative Representation," Salient Issues of Constitutional Revision, ed. John P. Wheeler (National Municipal League, 1961), pp. 36-37.

could provide representation for all interested groups, and at the same time properly reflect population differences. 40/ This method would permit all counties below a certain population to elect one member to the designated house of the legislature. Counties with larger populations could be divided into a predetermined number of permanent districts. Each legislator's vote would count in accordance with the weighting system used. Any of the above-mentioned population factors could be used as the base for a weighting system. In addition, it would be possible to use the actual votes cast for the individual legislator. Electronic equipment developments permit inexpensive use of weighted vote tellers in legislative bodies. In addition to adequately reflecting population, this system would permit each political subdivision or other unit to have a representative in the legislature to speak for its interests. This is a novel approach to representation, but some States may decide to experiment along these lines.

Any of the above measurements of population in the apportionment of one or both houses of a State legislature would appear to satisfy any Fourteenth Amendment requirement. However, one question always associated with a population standard is--to what extent can legislative districts deviate from the ratio obtained by dividing the total State's population by the number of legislators in the particular legislative body? Michigan, in its house of representatives, and Oregon, in both houses, are among the States which permit a county with one-half the State ratio to elect a member of the body. The Tennessee constitution provides a two-thirds ratio for the same purpose. In the Missouri senate, legislative districts may not deviate from the State ratio by more than 25 percent. One report on congressional apportionment recommended that deviations within a State's congressional districts not exceed 15 percent of the State's congressional ratio. 41/

Factors Which Have Been Considered in Addition to Population

The term "area" often is considered as a factor in apportionment. At least one State (Illinois) specifically uses area as a

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40/ Gordon E. Baker, State Constitutions: Reapportionment (National Municipal League, 1960), pp. 33-34; Robert H. Engle, "Weighting Legislators' Votes to Equalize Representation," Western Political Quarterly, 12:442 (1959); Gus Tyler, "What is Representative Government," The New Republic (July 16, 1962), p. 18.

41/ American State Legislatures, Report of the Committee on American Legislatures, ed. Belle Zeller (American Political Science Association, 1954).

factor in apportioning seats in a legislative body. 42/ In addition, the recent constitutional convention in Michigan proposed a formula for apportioning seats in the State senate on the basis of population and square miles. 43/ It is sometimes difficult to think of representation in terms of area or geography, since miles of desert, for example, cannot easily be equated with living human beings. To the extent that area or geography represent people with common interests, it is an understandable standard. In this report most of the factors involved in area representation are discussed below in connection with political subdivisions.

Second only to population, the political subdivisions of the State are the most common factor used in apportionment. Today, representation based in whole or in part on political subdivisions is supported for several reasons. First, and perhaps foremost, is that representation of the major political subdivisions of the State in at least one house of the legislature would be analogous to the federal system in the United States Congress, where each State is entitled to elect two senators. Another reason urged in support of political subdivisions is that they represent interests within the State that are different from those which would be represented by population, and that by permitting these two different interests to be dominant in different houses of a legislature will provide a desireable and necessary check and balance. It also is argued that representation based on political subdivisions is necessary in some States in order to prevent one densely populated area of the State from dominating the whole State government.

At present, New Hampshire is the only State that uses fiscal or economic factors as a base for apportionment. The senate of New Hampshire is apportioned according to "direct taxes" paid. Taxes paid, total personal income, assessed value of property, or other economic characteristics might be used for this purpose. One Mississippi legislator representing a wealthy underrepresented county is quoted as having said:

42/ Senate seats in Illinois are allocated to three basic districts, and within those districts the seats are apportioned according to area.

43/ A number of constitutional amendments proposing apportionment of legislative seats on a combination of area and population will be placed before the voters in November of 1962. The proposed Michigan constitution would apportion senate seats 80 percent on population and 20 percent on area. A Nebraska proposal using 70 percent and 20-30 percent respectively was approved by the voters of the State on November 6, 1962. Further action is necessary before the proposal becomes a part of the State constitution.

> Representation should have a direct bearing on taxation and public finance. Individual citizens who live in the wealthier counties--the counties from which the major portion of state revenues are derived--are generally disenfranchised by the present allocation of seats in the legislature. It borders on taxation without representation. 44/

While use of economic factors was considered acceptable earlier in our nation's history (New Hampshire, South Carolina, and Massachusetts used them at one time), it encounters much opposition today. Interestingly enough, as the apportionment of the New Hampshire senate reveals, direct taxes paid to the State will probably provide a distribution of legislative seats remarkably similar to that which would be provided by use of population. 45/

Alternative Formulas for Apportionment of State Legislatures

It has been said that "The heart of a legislative apportionment formula is the basis for representation. Representation may be based upon population, territory, political units, legal voters, taxpayers, other factors, or a combination of two or more of these." 46/

The apportionment formula is clearly the heart of the apportionment process, but the procedure or means should not obstruct the end which is sought. A formula is merely the device by which seats in the legislative body are allocated to accord representation to various interests in the community. The value judgments that must be made are what interests should be given an opportunity to elect members of the legislative body, and what balance, if any, should be accorded the interests so determined.

The purpose of the legislative body must also be considered when determining the apportionment formula. Legislative bodies in the United States are responsible for enacting the laws by which all the

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44/ Edward H. Hobbs, Legislative Apportionment in Mississippi (Bureau of Public Administration, University of Mississippi, 1956), p. 59.

45/ Representation based on occupational status is not discussed in this report. For a discussion of this method see Luce, op. cit., p. 276 et. seq.

46/ Oregon Legislative Council Committee, Legislative Reapportionment Do-It-Yourself Kit (June, 1961), p. 1.

citizens are governed. This is a responsibility that must be exercised with care, and responsive, over time at least, to the desires of the people. The importance of this responsibility cannot be overstated:

> Upon the success or failure of the legislative branch depends the future of responsible government. And a legislative body cannot succeed if it does not command public confidence. In a large measure confidence rests upon legislative personnel, its vision and sound judgment. But a legislature unexcelled in these respects will remain suspect unless the basis of representation is fair and reasonable. Proponents of area representation may, as a practical matter, justify area as a factor which must be considered in apportionment acts. But it can become a weight which, in large measure, excludes population as the democratic standard of apportionment. 47/

Population

The original constitutions of 27 States contained provisions apportioning all legislative seats according to population, and an additional nine constitutions provided for a slight modification of population in one house of the legislature. Today the constitutional provisions of 24 States contain similar apportionment formulas, although a number of these provisions have been evaded or disregarded by State legislatures. However, it is clear that population is still the predominant factor in apportionment of State legislatures. Population has predominated in constitutional apportionment formulas because:

> The idea on which democratic government is based is that the people should govern themselves. In order that each person may have an equal voice in his government, it is necessary that every person's vote have equal influence in the forming of government policy. 48/

47/ Report of the Constitutional Survey Committee, Legislative Apportionment in Oklahoma (State Legislative Council, 1948), p. 27.

48/ Minnesota Legislative Research Committee, Legislative Reapportionment (1954), p. i.

Meeting possible Fourteenth Amendment requirements is not the only problem to be resolved when apportioning according to population. The first question is what shall be the definition of population in the formula? The various alternatives have been discussed and it would appear that two--absolute population or actual voters--are the most practical alternatives. Absolute population figures are available from the Bureau of the Census at 10-year intervals. Certified final figures usually are available early in the year following that in which the census was taken, but they may not be available until relatively late in the legislative session. This may cause delay in reapportionment when the legislature is the apportioning body. Some States, including Connecticut and New Jersey, are currently using preliminary census data to apportion legislative seats. A strong argument for use of preliminary census data is that it permits a reasonable apportionment on the basis of population at the earliest possible time. Where census data are used as the basis, there is, of course, a 10-year period during which population shifts may undermine the apportionment. This cannot be avoided, but its impact can be reduced somewhat if apportionment is made during the year immediately following the census.

The problem of time-lag could be reduced if actual voters were used as the population factor. In this case accurate figures would be available immediately after each election. Use of voters as the population base would also permit a State to reapportion legislative seats more often than every 10 years if so desired. Whether use of actual voters as opposed to absolute population would result in a different pattern of representation would have to be determined on a State-by-State basis. 49/

The apportionment provisions must indicate how legislative districts are to be constituted, and also might indicate what population disparity is permissable among legislative districts. Most State constitutions contain provisions relating to these points. The most common provision requires that counties not be divided when creating a district. With respect to large cities or metropolitan areas, similar provisions prevent the splitting of a town, ward, or city block when forming a single-member legislative district. The common provision relating to population disparity is that districts be "as nearly equal as possible."

49/ Studies in New York and Illinois reveal that the urban voter constitutesa greater percentage of the voting population of the State than of the total population of the State. A similar study in Kansas brought forth contrary results.

Such constitutional provisions, particularly those relating to the splitting of county lines, have been subject to severe criticism. A California Legislative Committee has said:

> As long as changes are not made in reapportionment stipulations concerning county lines for assembly and congressional districts, the growth of semi-metropolitan counties is going to force greater inequality of population. More counties are going to fall in the category of having population that easily justifies one full district, but having surplus population not sufficient for two districts. Unless county lines are ignored, surplus populations cannot be attached to underpopulated counties or districts. 50/

Some States have resolved the districting problem in a different manner. Aside from the New England States, where town boundaries often serve as the boundary for legislative districts, the constitutions of the States of Alaska, Illinois, Indiana, Minnesota, Mississippi, Nebraska, South Dakota, Virginia, Washington, and Wisconsin, apparently do not prevent the dividing of counties when drawing legislative district boundaries. In these States county lines are usually used for this purpose. Oregon, Ohio, New Jersey, and other States have multi-member districts based on county lines, thus avoiding the necessity of creating legislative districts within a county. Legislative districts in the city of Portland, Oregon, are delineated by using census tract lines. This approach will be discussed in the next chapter.

Use of the boundaries of political subdivisions is designed to reduce the possibility of gerrymandering legislative districts. Within metropolitan areas having large concentrations of population, legislative districts must be formed within a county or city if single-member districts are to be used. It is difficult to devise a system of jurisdictional lines that will not permit the introduction of political considerations in this situation. A similar problem exists where a number of counties must be joined together to form a legislative district. The combining of counties could present a particular problem in those States where the population ratio for entitlement to a legislative seat is relatively large. This also will be discussed in the next chapter.

50/ Report of the Assembly Interim Committee on Election and Reapportionment (Assembly of California, 1961), p. 38. See also Zeller, op. cit., (footnote 41), p. 39; and Bureau of Government Research, Legislative Apportionment - 1960 (University of Oklahoma, 1960).

Some States have developed unique methods designed to reduce population disparities. Texas attaches surplus population to an adjoining county to form what is called a flotorial district; Ohio and New Hampshire permit the sending of a legislator to the State capitol for that portion of the time between apportionments that the jurisdiction's population equals one-fifth of the State ratio. 51/ In addition, several mathematical formulas have been developed to apportion seats among designated districts. Use of these formulas requires the establishment of permanent legislative districts, with a guarantee of one seat to each district. 52/

Use of a population formula for apportionment in both houses of a bicameral legislature would not, of itself, eliminate the usefulness of a two-house legislature. The possibilities for obtaining a different constituency for two houses apportioned according to population are many. For example, a different definition of population might be used for each house. Second, if the size of the legislative bodies varies significantly, the legislators in the smaller body will be responsible to a more diversified community. The terms of the members of one body could be longer than the terms of the other and expire at different times. These approaches, among others, utilized individually or in combination could provide a bicameral legislature apportioned strictly on the basis of population, in which each legislative body might look at proposed legislation quite differently.

51/ Assuming a county in Ohio has a population of 140,000 and the statewide ratio for the legislative body was one representative for each 100,000 people, the county would be entitled to one full-time representative and one additional representative in two of the five legislative sessions between apportionments.

52/ Five mathematical formulas have been developed to accomplish apportionment of legislative seats among districts where the number of seats available exceeds the number of districts. These formulas are, the method of: the smallest divisors; the harmonic mean; equal proportions; major fractions; the greatest divisors. The method of equal proportions is used to apportion seats in the United States House of Representatives (2 U.S.C. 2a) and has been incorporated as the constitutional requirement by the courts of at least two States--Arkansas and New Jersey--as the mathematical apportionment formula required by the State constitution. For details of the application of the various formulas see Anthony Ralston, A Fresh Look At Legislative Apportionment in New Jersey (State of New Jersey, 1960); and Laurence F. Schmeckebier, "The Method of Equal Proportions," Law and Contemporary Problems, 17:302 (Spring, 1952).

Population and Political Subdivisions

The possibility for different apportionment formulas based on combinations of population and political subdivisions is almost limitless. The analysis here is limited in applying this approach to only one house of a legislative body. The possibilities discussed could be used for one legislative body of a bicameral legislature with the second body apportioned according to population, or both houses could be apportioned according to the formulas discussed here.

The most common apportionment formula appearing in State constitutions that recognizes both population and area is one which guarantees each county one seat in the legislative body and apportions the remaining seats among the counties according to population. Twenty-five State legislative bodies--22 houses of representatives and three senates--are apportioned according to such a formula. In addition, three legislative bodies are apportioned according to a modification of this approach. The modification guarantees each county one seat in the legislative body and gives a limited number of counties with large populations additional seats. These formulas are designed to give each county an opportunity to have its views presented in the State legislature and at the same time reduce the representation of those counties having large populations. It does grant recognition of population to a small extent. The degree of such recognition varies from State to State. The variation often involves the relationships between the size of the legislative body and the number of counties within the State. The effect of this relationship was discussed earlier.

Ten legislative bodies are apportioned according to formulas that give varying weights to population and political subdivisions. The Texas, Florida, and Iowa senates are apportioned according to population, but no single county is permitted to elect more than one senator. The California constitution contains the same provision, but in addition no more than three counties may be joined together to form a legislative district. In the Kentucky senate no more than two counties may be joined together to form a senatorial district. Maine, Rhode Island, and Oklahoma limit the maximum number of seats that may be apportioned to an individual political subdivision, and New York has a complicated formula for apportionment of senate seats that permits greater representation from less populous counties. The election districts of an additional 10 legislative bodies are prescribed in State constitutions; in most of these instances a combination of population and area or political units is usually used in determining the districts.

The basic reason for the development of these formulas was to reduce the legislative strength of the large cities. Most of the formulas were developed during the period when urban population was concentrated in the central city where political control was often exercised by a tight political machine.

In discussing development of the New York apportionment formula during the 1894 State constitutional convention, Luce says that the rationale for limiting population as the basis of representation was:

> ...first, that territorial extension, variety and separation of interests required a representation not necessary when there was a condensation in the great centers of population; and, in the second place, that the great increase of effective force which comes from the election of a large number of representatives of one city--representatives who represent, not, in fact, their separate districts, but the whole city, representatives who are responsible to the same public opinion, and, in fact, represent but one combined interest of the citizens of that city--the great accumulation of power created by that combination so far outweighed the effective power of a great number of scattered representatives of widely divided centers of population, small centers of population, that a difference in the ratio...., went but a small way toward equalization. 53/

The Luce statement represents only a part of the rationale used in supporting recognition of factors other than population in apportionment. As a corollary to the contention that the interests of districts within a large population are identical, as far as State policy and legislation are concerned, is the position that the interests of the large rural areas of a State are different, and that each such area should be in a position effectively to present its views in the State legislature. 54/ Carrying this point one step further, it is contended that, if population were the only factor in an apportionment formula, these interests could be represented in the State legislature by legislators only if the size of the legislative body were unduly large. When

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53/ Luce, op. cit., p. 365.

54/ Op. cit., Report of the Assembly Interim Committee on Elections and Apportionment, p. 29; and A Partial Reapportionment of the House of Representatives Providing a Minimum of One Representative for Each County (New Mexico Legislative Council Service, 1953).

sparsely settled areas are combined it means not only that the representative cannot become familiar with the diverse interests and needs of his district, but that the district is so large in area that campaigns for office are too expensive. While it is conceded that these same problems may confront members of the United States House of Representatives, it is contended that the interests of these areas are usually similar in matters at the national level, but often in conflict on more local matters.

A further argument for apportioning seats of legislative bodies strictly on the basis of political units of the State, 55/ is that this is necessary in order to protect the rights and interests of the minority of the State's population from the potential tyranny of the majority. This contention is perhaps the weakest of all points raised by the proponents of modifications of population in State apportionment formulas. This argument has two basic weaknesses. First, the rights of minorities, of any kind, are protected by the Bill of Rights, and other constitutional provisions of both State and Federal constitutions. Second, if this position is valid, why should not all minorities be so protected? Baker asks, should not urban dwellers in predominantly rural States be permitted to elect a majority of representatives to one body of a bicameral legislature? 56/ Baker's question does not end the dilemma raised by this contention--how are other minority interests to be protected in the legislative process?

A final argument, and in a few States an especially persuasive one, is that apportionment strictly according to population can result in the domination of the entire legislature by a single city political machine and its leader. An analysis of this possibility appears later in this chapter.

It would seem that giving consideration to the variety of needs and interests of different areas of a State could well be a legitimate State policy upon which a rational plan for legislative representation might be based. The foregoing provides an indication of factors that

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55/ Eight legislative bodies are apportioned strictly according to political units of the State. These bodies are the senates of Arizona, Idaho, Montana, Nevada, New Jersey, New Mexico, and South Carolina, apportioned by counties, and the house in Vermont apportioned by towns. In three of these States--Arizona, Nevada, and New Jersey--over 70 percent of the State's population live in Standard Metropolitan Statistical Areas, but in the other five States less than 33 percent of the population live within such areas.

56/ Baker, op. cit., (footnote 40), p. 45.

might be considered as modifications of population in developing a rational plan of apportionment. If the Fourteenth Amendment requires nothing more than a rational apportionment plan that does not invidiously discriminate, a great deal of leeway is available to States to develop apportionment formulas best suited to their diverse needs.

The important point is that what may be rational and non-discriminatory in one State may not be so in another. For instance, it might be reasonable for Arizona and Illinois to limit the representation of their largest counties in the legislature, since one county in each of these States contains over 50 percent of the State's population. On the other hand, this type of provision might be completely unreasonable in States such as Mississippi and South Dakota, where no political subdivision contains such a significant percentage of the State's population. This example suggests a dilemma. Unless the Supreme Court of the United States holds that the Fourteenth Amendment requires the use of a specific apportionment formula, each State will have to evaluate its own individual system of apportioning legislative seats in light of the needs and interests of its own people. Some general guidelines for apportionment formulas undoubtedly will be developed, but such guides will still require thoughtful deliberation by legislative bodies and the people of the State when applying them in developing an apportionment formula.

A Federal System

The United States Congress consists of two legislative bodies. The basis for apportioning seats in both has remained the same since adoption of the Constitution in 1789. Seats in the House of Representatives are apportioned among the States on the basis of population, using a mathematical formula called the "method of equal proportions." 57/ Seats in the Senate are apportioned equally among the States, with each State having two senators. It is contended by some that the system for allocating seats in the Congress is applicable to individual States in apportioning the seats of a bicameral legislature.

It may well be that a strict "federal plan" of representation would produce a rational system of representation in the legislatures of some States. In this sense judgments based upon the specific situation that exists in an individual State must be evaluated against the

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57/ 46 Stat. 26, 2 U.S.C. 2a.

needs of that State. The important thing, however, is that apportionment of the United States Congress was based on a rationale which is not applicable logically to State legislatures; nevertheless, the concept has considerable traditional and emotional appeal.

It would seem apparent that the founding fathers had no intention of establishing a pattern for apportioning seats in State legislatures when they adopted the original Constitution. The same year in which the draft of the United States Constitution was approved for submission to the former colonies the then legislative body of the nation adopted the Northwest Ordinance, which provided for that apportionment of seats in the territorial legislatures according to population. 58/ As was noted earlier, all the States which were within the Northwest Territory apportioned the seats of both houses of their bicameral legislature on the basis of population in their first constitutions. In addition, at that time, there were only two States which apportioned seats in their legislature in the same manner in which seats in the Congress of the new nation were to be apportioned.

The philosophy upon which representation in the United States Congress was based was that the United States was a federation of independent sovereignties. Before the States would agree to relinguish a portion of their sovereignty they demanded certain protections. It was because of the protection demanded by both the large and the small States that the federal plan of representation was developed. This plan was a compromise between the positions taken by what were then thought of as "sovereign nations."

While there may be some justification for carrying the federal compromise to the States, this justification per se is not overriding. Only in the New England States does there appear to be any historical basis for the position that the State is a federation of units of local government. 59/ The concept of the State being a federation of counties in other parts of the nation has never been seriously considered. In only the original 13 States can it be contended that local units of government preceded the State government. The State and territorial governments were in existence before there were any counties or other legal forms of local government; the State created the county, the county did not create the State.

58/ Under the Articles of Confederation each State had one vote in the national legislative body.

59/ American State Legislatures, Report of the Committee on American Legislatures, op. cit., (footnote 41), p. 37; Luce, op. cit., p. 331, et. seq.

It can be argued with some force on the other hand that with the spread of municipal and county home rule, local units of government are becoming residuaries of "sovereignty" in a fashion somewhat comparable to the Federal-State relationship. For example, there is considerable sentiment in New York and other States for constitutional provisions reserving to local government all powers not delegated to, or assumed by, the State government.

Possible Effects of New Apportionment Formulas

From the discussion in Chapter II of the present composition of State legislatures, the fact that stands out is that urban areas, which are at present greatly underrepresented in State legislative bodies, would be more adequately represented if population were given greater recognition in apportionment. Just what effects new apportionment formulas or compliance with existing formulas would have on the functioning of State government are far from apparent. But it is feasible to suggest some things that will not occur. 60/

Effect on Composition of State Legislature

No question in legislative apportionment is of greater concern to politicians and citizens than what Baker v. Carr will mean to actual State programs. Before this question can be answered, it is necessary to determine the possible composition of State legislatures.

Perhaps the most significant feature of the relationship of population to apportionment of legislative seats is how the people from a small number of political units would be able to elect a majority of the legislative body. Obviously, the extent to which population will be modified as the apportionment factor will relate to this problem of control.

In 24 States the residents of Standard Metropolitan Statistical Areas would elect a majority of members to the State legislature, if population were the only factor in apportioning legislative seats (see Appendix D). But in only two States (Arizona and New York) would residents of the central cities of the Standard Metropolitan Statistical

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60/ This discussion is on the assumption of apportionment strictly on the basis of population. This is done for two reasons. First, apportionment on the basis of population only would cause the most significant change in the composition of State legislatures. And, second, if some other form of apportionment is permissable, it would be impossible to evaluate the effects of the numerous formulas that possibly might produce a rational plan.

Areas elect a majority of representatives to the legislature. In Arizona, it would require the cities of two SMSA's to elect a majority and in New York, the three largest SMSA central cities would be necessary. (Appendix E and F show respectively the population of the three largest counties and three largest cities in each State, and the percent of the State's population contained therein.)

In only five States (Hawaii, Nevada, Rhode Island, New York, and Arizona) do the three largest cities contain over 40 percent of the State's population. In 36 States the combined populations of each State's three largest cities constitute less than 30 percent of the State's total population. The danger of large cities controlling State legislatures if apportionment was based strictly on population only appears at this time to be extremely remote in most States. One additional point must be made concerning the population of large cities in view of some observations that will be made later. Two of the 36 States under the 30 percent figure would be above that figure if all cities within the State above 150,000 population were considered. These States are California (31.8%) and Texas (33.3%).

One problem that has concerned many who are interested in State government is the impact of a substantial number of representatives from one city in the delegation of the majority party in the State legislature. In some instances, the city may be in a position to control the majority party in the State legislature, even though it may not be in a position to control the legislature in an absolute sense. Examples of this potential situation are the impact of the Democratic Party leadership of New York City and Chicago on all the party's representatives in the State legislature. This matter is probably more acute in New York than in Illinois because the procedure for electing members of the Illinois House of Representatives almost guarantees one Democratic Party representative from each legislative district outside the city of Chicago. This problem can be of even greater impact in those States such as Ohio where all seats apportioned to a single county must be elected at large. Thus, the dominant political party in the county or central city of such county may have an extremely significant impact in the legislature.

The above type situation, as a practical matter, could occur only in those States where the population of a city constitutes a significant portion of the State's population. If apportionment were based strictly on population, a single city probably would have to have at least 25 percent of the State's population before this problem could possibly occur. Such a population center, if one party could "deliver the vote," could elect 50 percent of the majority party members

of a legislative body. As Appendix F shows, only in four States--Arizona (Phoenix, 33.7 percent), Colorado (Denver, 28.1 percent), Hawaii (Honolulu, 47.2 percent), and Maryland (Baltimore, 30.3 percent)--in addition to Illinois and New York would these conditions for central city political dominance of the State legislature be present. While these factors may have different political significance within each State, it is interesting to note that the mayors of the cities involved in the six States meeting the party control criteria set forth above are evenly split between the parties, though the Democratic Party elected the mayors in the three largest cities.

If apportionment were based strictly on population, a small number of counties would elect a majority of legislators in a significant number of States. In 15 States, three counties or less would elect over 50 percent of the State legislature. These 15 States, of course, include those with a small number of counties. If States with fewer than 15 counties were omitted, in only eight of the remaining 42 States would three or less counties elect a majority of the legislature.

These figures have significance beyond showing that in relatively few States would two or even three population centers be in a position to elect a majority of State legislators. These figures reflect a somewhat different view than that generated by the statement that over two-thirds of the nation's population live in urban areas. Certainly a majority of the nation's population now resides in urban areas, but this population is split evenly between central cities and suburbia. As a matter of fact, the nation's population is distributed fairly evenly--32.3 percent in central cities of Standard Metropolitan Statistical Areas; 30.7 percent outside the central city but within SMSA's; and 37.0 percent who do not live in SMSA's. The percentages differ greatly within individual States.

Effect on Legislative Policy

Mere indications of possible control of the legislative body if apportionment were based strictly on population does not indicate what, if any, change might occur thereby in State legislative policies and programs. In Illinois, the 1955 apportionment of legislative seats in the State house of representatives gave Cook County, including the city of Chicago, a majority of seats in that body. The experience in the Illinois legislature prompted the comment quoted on page 26,

indicating that great conflict exists within a single urban area. Observations of this type have been made in other States. 61/

In 1938, David O. Walter said:

> The urban-rural confict is rather one between the metropolitan cities and the rural areas than between all those places classed as urban in the federal census, and the rural areas. 62/

Mr. Walter made the distinction as early as 1938 that census definitions of urban areas leave much to be desired in the context of what demands people from a certain type of community make on the State legislature. Certainly the smallest urban area as defined by the Bureau of the Census--2,500 people--has completely different needs than does the city of 500,000. Even people living within cities included in SMSA's--ranging from just over 50,000 population to over 7,000,000 population--will want different things from the State legislature, and these differences are undoubtedly greater between the suburban community and the central city. Unfortunately, sufficient research has not yet been done on the matter to permit sound conclusions. The general trend is perhaps best expressed by Robert S. Friedman, who, after briefly reviewing social, economic, and cultural patterns in the nation, said:

> Present trends in the United States, find these interests rearranging themselves in such a way that within the foreseeable future the ability to describe conflict in terms of urban-rural difference, even superficially, will disappear. 63/

61/ Staff interviews with persons intimately connected with State and local government in such States as Pennsylvania, Ohio, North Carolina, California, and Minnesota, all agree that the bitterest conflict in the State legislature is between representatives of the central city and the suburban areas in matters affecting the local area. Often this conflict will be injected into other issues which do not affect the local situation.

62/ David O. Walter, "Reapportionment and Urban Representation," State Government, 11:30 (1938).

63/ Friedman, op. cit., (footnote 34), p. 485.

It was at one time contended that the urban or city dweller was not competent to govern himself properly. Appendix E shows the education achievements of the nation as a whole and the urban and rural population on a State-by-State basis. By and large, the urban resident has received a better education than the rural resident, though this is not uniform throughout the nation. One of the battle cries that led to the founding of this nation was "no taxation without representation." To the extent that per capita personal income is a reflection of who pays State taxes, Appendix H reveals that with the exceptions of Massachusetts, Rhode Island, and Connecticut, this figure is highest for urban dwellers. These arguments once used to justify overrepresentation of rural areas can no longer be sustained.

It is also interesting to note that during the 1950's a majority of the legislators in both houses of four States--Massachusetts, Oregon, Washington, and Wisconsin--were elected by over 40 percent of the population of these States. According to Bureau of the Census figures, over 50 percent of the population in each of these States resided in urban areas. Despite this, each of these States allocated certain State funds for education and highway purposes to local governments according to formulas that clearly benefited rural areas. 64/ Thus, urban represenatives appeared to recognize certain special needs of rural areas in States which apportioned legislative seats substantially in accord with population.

64/ U. S. Bureau of the Census, State Payments to Local Governments: 1957 Census of Governments (U. S. Government Printing Office, 1959).

CHAPTER IV

PROCEDURES TO ASSURE PERIODIC REAPPORTIONMENT

> Trite and banal as it may seem, the process of the apportionment of the members of the American State legislatures has political and partisan implications simply because these positions are representative and are also elective. Under these circumstances it would seem to be inevitable that there would be political significance at all stages of the apportionment process. 65/

Who Should Apportion Legislative Seats

Fourteen States have partially or completely removed the State legislature from the apportionment process. 65-a/ The reason some States have circumscribed the power of the legislature in this respect is because the legislature was not fulfilling its responsibility as detailed in the State constitution. Only through by-passing the legislature under certain circumstances, or eliminating it from the process completely, was it possible to insure periodic apportionment of legislative seats. While a few State legislatures have reapportioned seats periodically in accordance with the provisions of the State constitution during the present century, such action has tended to be more the exception than the rule.

Establishment of non-legislative apportioning bodies does not eliminate all the problems associated with apportionment. A possibility for reducing difficulties to a minimum is to provide for a completely automatic apportionment. The house of representatives in New Jersey (by statute), Ohio, and Missouri are apportioned in this manner. In these States each county is guaranteed one seat in the legislative body. New Jersey has 21 counties and a 60 member house, Ohio has 88

65/ Shull, op. cit. (footnote 34), p. 417.

65-a/ See footnote 23-a for results of November 1962 election proposals removing responsibility from the legislature.

counties and a 139 member house, and Missouri has 114 counties (plus the city of St. Louis) and a 157 member house. The remaining seats are apportioned among the counties according to a mathematical formula established by law. The Secretary of State in each State, as a purely ministerial task, certifies to each county how many representatives it is entitled to elect. In New Jersey and Ohio all representatives are elected at large in counties entitled to more than one representative; therefore, there is no necessity for drawing district lines--the only legislative district is the county. In Missouri the county governing body of counties entitled to more than one representative has the responsibility of drawing district lines for single-member legislative districts.

The Arizona house is apportioned according to votes cast at each gubernatorial election (every two years). A county is entitled to one representative for each 2,500 votes cast in the previous election, and the County Board of Supervisors establishes legislative districts within the county. In Arkansas (house) and Ohio (senate) a small group of officials designated in the State constitution are responsible for apportionment.

The apportionment responsibility for the Missouri senate is unique. The Governor appoints a 10 member commission (five from each of the two dominant political parties in the State). The commission apportions senate seats according to population, with a maximum allowed deviation of 25 percent from the factor obtained by dividing the State's population by the number of senate seats. Seven members must agree before the plan can go into effect. If they cannot agree, or if the plan is declared unconstitutional, all senators must be elected at large.

In those States where apportionment to counties or constitutional districts is just the first step in the apportionment process, or where legislative districts must be developed in accordance with a population formula, there is no possibility for so-called automatic apportionment. Regardless of who has responsibility for apportionment, the drawing of district lines involves political and policy questions:

> It is impossible to draw a representative-district boundary line without that line's having some political significance. The reapportionment process is by its very nature political....It is true whether it is done by the legislatures, reapportionment commission, governors, judges, or by the people voting on the subject in a popular election. The significant question is

> not whether there is politics in reapportionment, but rather, how much politics in relation to the other factors influencing the decision. 66/

The nature of the problem itself limits the alternatives that may be considered. Except where an automatic procedure is established, "The job of apportioning is one of compromise, of working out endurable and enduring (at least for a decade) arrangements though perhaps less perfect than might be hoped." 67/

Where the apportionment formula does not permit use of a strict mathematical formula that removes all possibility for the exercise of discretion by the apportioning body, that body must be one that can exercise the discretion in a manner that will achieve the desired ends of the apportionment process. Consistent with this view, no State has given the courts a primary role in the apportionment process. 68/ The courts are probably not the best equipped today to apportion seats in a legislative body, though they are equipped to determine whether a particular apportionment plan is consistent with the provisions of both the State and Federal constitutions. This distinction means that the courts do have a role to play in the apportioning procedure, but that role may well be a limited one. 69/ The courts rely upon the adversary proceeding to determine issues presented to them. Under such procedure it is difficult to achieve the give and take--the compromise--that is necessary when apportioning legislative seats.

Two States, Alaska and Hawaii, place the responsibility for apportioning seats in the State legislature in the hands of the Governor. Alaska provides for a board to advise the Governor on this matter, although the Governor is not bound by its advice. The

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66/ Ivan Hinderaker and Laughlin E. Waters, "A Case Study in Reapportionment--California, 1951," Law and Contemporary Problems, 17:440 (Spring, 1952), pp. 452-453.

67/ Bone, op. cit. (footnote 21), p. 392.

68/ This statement warrants some qualification. The Supreme Court of Arkansas is specifically authorized to revise the apportionment of house districts made by a board of designated State officials if their apportionment does not comply with the constitutional formula. The Supreme Courts of Alaska, Hawaii, and Oregon are specifically authorized to point out errors in any apportionment proposal and to direct the apportioning officer to correct same.

69/ Some exception to this rule may be made in States where courts are authorized to render advisory opinions.

apportionment provisions of the Hawaii and Alaska constitutions were written in explicit language to define clearly the exact responsibility of the Governor. Among the reasons for giving the Governor responsibility for apportioning was that the people could easily single him out for retribution at the polls in the event he failed to perform his duties under the constitution or performed them unfairly. In addition, while part of the Governor's apportionment duties in both States is discretionary, the State supreme courts are given authority to force the Governor to comply with his apportionment duties.

Seven States--California, Illinois, Michigan, North Dakota, Oregon, South Dakota, and Texas--provide a procedure to insure that the constitutional provision relating to apportionment will be complied with if the legislature refuses to perform its duties. With the exception of Oregon, these States establish a special board made up of designated State officials to carry out the apportionment provisions. In Oregon, the Secretary of State is given the responsibility to act in the event the legislature fails to act. The new Illinois apportionment provision contains an extra safeguard, if neither the legislature nor the board apportions as directed by the constitution then the whole State legislature must be elected at large. 70/

Extent of the Apportionment Power

The extent of the apportioning power, whether the apportioning body is legislative or non-legislative, is of great importance to many aspects of the apportionment process. Almost any attempt to secure an apportionment that closely relates representation to population involves a complicated process of drawing district lines.

In order to appreciate the varying degree of the authority of the apportioning bodies in the several States, it is necessary first to review the nature of single-member and multi-member legislative districts. While many assume that legislative representation in this country is based on single-member districts, this assumption is not completely accurate. In 1954, of 1,841 State senators, 221 were elected from multi-member districts. In the same year, of 5,762 seats in State

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70/ For a detailed discussion of apportioning procedures see Kenneth C. Sears, Methods of Reapportionment (University of Chicago Law School, 1953).

houses of representatives, 2,616 were elected from multi-member districts. 71/ Historically, multi-member districts were even more prevalent than they are today. One advantage of the multi-member district in legislative apportionment is that it eliminates or greatly reduces the need to draw numerous district lines, and facilitates putting legislative apportionment on a strictly automatic basis; for example, the house of representatives in New Jersey and Ohio. Some States, such as Michigan and Oregon, have modified these aspects of the automatic procedure somewhat. In Michigan, all counties entitled to elect less than five members to the house of representatives, must elect them at large. If a county is entitled to elect more than five members, the county governing body must divide the county into districts, based on population, that elect between two and five representatives. The Oregon procedure is similar to Michigan, except that it applies only to Multnomah County (Portland).

In Michigan and Oregon the legislature apportions legislative seats among the counties on the basis of population. Where a county is entitled to a numberof seats that warrants dividing the county in legislative districts, the responsibility for drawing the lines rests with the governing body of the county. In other States, including Arizona, Massachusetts, and New York, local governments play a similar role in the drawing of legislative district lines. In these three States, the local government acts after the legislature has apportioned house seats among the political subdivisions of the State.

The advocates of the single-member district contend that representatives elected from single-member districts are more responsive to the needs of the districts and less responsive to the demands of the party leaders. They contend that in Ohio and New Jersey, where as many as 10 to 20 legislative seats may be at issue in a particular body of the legislature in a single district, the people do not actually vote for individual legislators, but vote only for political parties. Since no State having multi-member districts, except Illinois, attempts to provide for minority representation from

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71/ Maurice Klain, "A New Look at the Constituencies: The Need for a Recount and a Reappraisal," American Political Science Review, 49:1105 (1955).

the district, small party pluralities at the polls may mean large party margins in the State legislature. 72/ One observer has expressed the opinion that the possibility of local party discipline in such instances has value where the second body of the State legislature is apportioned according to a formula based on a factor other than population.

To the extent that multi-member districts are not adopted by the State, or that large districts are divided into smaller districts as in Michigan, or that political subdivisions must be combined in forming districts, some body must have authority to draw district lines. This is the most politically significant step in the apportionment process after an apportionment formula has been agreed upon. The shift of a district line from one block to another, one ward to another, one town to another, one county to another, can make a difference as to which party will secure a majority of legislators in a State legislative body. Unless elections are conducted on the basis of large multi-member districts or fixed single-member districts, the process of drawing lines cannot be avoided. Such a process is always subject to the legitimate play of political forces seeking to gain an advantage from the way in which district lines are drawn.

Most State constitutions attempt to restrict this play by providing various limitations upon the way in which lines may be drawn. The most common is that a political subdivision--county, city, town--or some other permanent unit--a city ward or a city block--may not be divided when drawing district lines unless the particular unit is entitled to elect more than one member to the legislative body. These limitations, particularly the observance of county lines, have been criticized because they tend to distort the basis of representation if the apportionment formula indicates that apportionment be based strictly on population. In addition to honoring the boundaries of political subdivisions, State constitutions often require that legislative districts be compact, and that only contiguous areas may be joined together to form a legislative district.

72/ All legislative districts for seats in the house of representatives in Illinois are three-member districts. The voter is entitled to three votes for this office when he goes to the polls. These three votes can all be cast for one candidate. This method of voting has had the effect of guaranteeing the minority party one representative from each legislative district. In most instances two-one party representation has become so institutionalized that in many districts the parties rarely put up more than two candidates for the three positions.

The various restrictions are designed to accomplish two basic purposes. First, they are intended to reduce the influence of political factors in drawing legislative district lines. No criteria have been developed which can completely eliminate the political factors from the process of drawing legislative district lines. 73/ Second, these various limitations also tend to permit legislative districts to be made up of areas that have common or conflicting interests as the apportioning body may determine.

As was mentioned above, the county governing body of Multnomah, Oregon, has the responsibility for drawing the lines of multi-member districts within the county. These districts are to be as nearly equal as possible, but the district lines must follow the boundaries of census tracts. 74/ Census tracts permit yet another standard for drawing district lines within Standard Metropolitan Statistical Areas. They are small enough so that relative equality of population can be attained, and the information can be made available to the State in time to meet deadlines for completion of the apportionment process if the State so desires. 75/

73/ Reock has developed a mathematical formula to determine whether a legislative district is compact or not. The development of the formula is very interesting, but will not eliminate political considerations from the process of drawing of legislative district lines. See Ernest C. Reock, Jr., "A Note: Measuring Compactness as a Requirement of Legislative Apportionment," Midwest Journal of Political Science, 5:70 (1961).

74/ Census tracts are divisions within Standard Metropolitan Statistical Areas which "were generally designed to achieve some uniformity of population characteristics, economic status, and living conditions." Natural topographic features such as rivers, and hills, or man-made boundaries such as railroad tracks, superhighways, and industrial zones are used to determine tract lines. Most SMSA's are tracted at the present time. U. S. Bureau of the Census, United States Census of Population, 1960, United States Summary, Number of Inhabitants, PC(1); 1A (U. S. Government Printing Office, 1961), p. XXVIII.

75/ Officials at the Bureau of the Census have indicated that if the States desire to use tract information for the apportionment of State legislative seats following the 1970 census, preliminary tract information can be made available before the end of 1970.

Frequency of Apportionment

At present, 41 States provide for periodic apportionment every 10 years following the decennial census taken by the Federal Government. The constitutions of Colorado, Indiana, Kansas, and Ohio provide for periodic apportionment, based on population, more frequently than 10-year intervals. The constitutions of Vermont and Minnesota permit apportionment following both Federal and State censuses, and the Arizona house of representatives is apportioned after each gubernatorial election.

Historically, State constitutions provided for periodic apportionment of legislative seats at intervals of less than 10 years. The most frequent interval was five years. The State was usually directed to take a census between Federal censuses, and State legislative seats were to be apportioned after each census. In requiring apportionments at such frequent intervals, the writers of the constitutions recognized a most important point. Apportionments were to be made at such intervals as would prevent the development of a large imbalance in the relation between the basis of representation and the membership in the legislature. The existence of an imbalance tends to make subsequent reapportionments more difficult.

By the time the nation's population started shifting to urban areas at a rate that began causing concern for the basis of representation, most States had abandoned apportionments at intervals of less than 10 years. This situation permitted large discrepancies to appear between the constitutional basis of representation and the actual representation. The greater this difference became, the more legislators wanted to maintain the status quo, thus making apportionment according to constitutional standards by the legislature itself an extremely difficult product to achieve.

Arizona is the only State that apportions at less than 10 year intervals. It is unlikely that many States will follow the Arizona approach. Thus, the States will have to find some means to overcome the problem created by the lag in frequency of apportionments.

75/ Officials at the Bureau of the Census have indicated that if the States desire to use tract information for the apportionment of State legislative seats following the 1970 census, preliminary tract information can be made available before the end of 1970.

Initiative and Referendum 76/

Every State constitution (except that of New York where recognition is implicit by giving the people, at 20-year intervals, the right to vote on the question of convening a constitutional convention) explicitly provides that all power rests with the people of the State and/or that the people have the right to change the governmental structure of the State. In no aspect of the governmental process is this concept more important than in the apportionment of legislative seats. The make-up of the legislative branch of State government is crucial, of course, to the governmental process. The legislative branch, in enacting the laws, must give full recognition to the needs of all the people of the State. It cannot be only an extension of narrow interests which may at the moment represent the interest of a series of small legislative districts.

Thirteen State constitutions contain provisions permitting initiative procedures for the amendment of the State constitution itself. 77/ These are: Arizona, Arkansas, Colorado, California, Massachusetts, Michigan, Missouri, Nebraska, Nevada, North Dakota, Ohio, Oklahoma, and Oregon. In these States the people may at any time change the constitutional provisions for apportionment. In California and Michigan, on several occasions during the past 30 years, proposals to change the apportionment provisions of the State constitution have been on the ballot through the initiative procedure. On each occasion the people of the State had an opportunity to decide between two distinctly different formulas for the apportionment of the State legislature. Not everyone in the two States was happy with the results reached at the polls, but the people themselves made the determination.

76/ While the concept of initiative and referendum has far-reaching implications in the governmental process, the present discussion is limited to its impact on the problem of legislative apportionment.

77/ An additional seven States provide for initiative for passage of legislation and not constitutional amendments. This type of initiative has significance in apportionment, as it permits the people to substitute their judgment for that of the legislature in implementing the apportionment provisions of the State constitution. In Washington and Colorado, statutory initiatives have proved successful in securing reapportionments of the legislature when the legislature itself refused to comply with the apportionment provisions of the State constitution over an extended period of time.

The idea of "direct legislation" as embodied in initiative and referendum proposals raises questions of practical politics and political theory which need not be discussed here. But the concept of constitutional initiative or referendum in relation to the apportionment provisions of State constitutions is a matter that might be separated from the general proposition because of the consequences ensuing from Baker v. Carr. Also, it is completely feasible to provide for popular reaction to apportionment formulas and to reapportionments by constitutionally providing for a referendum vote in such instances.

CHAPTER V

PRINCIPLES FOR CONSIDERATION AND USE OF GOVERNORS, LEGISLATORS AND STATE AND FEDERAL COURTS

The preceding presentation of the operation and consequences of existing and possible future State apportionment formulas and practices will be of little consolation to any particular group. The very uncertainties concerning possible consequences of change undoubtedly have contributed materially to the maintenance of the status quo. Baker v. Carr has provided the stimulant for an extensive review of apportionment formulas and procedures by all those interested in the federal system of government in this country.

While the pattern revealed by this study is in some respects ambiguous, the Commission finds that certain conclusions must inevitably be reached; these conclusions, if followed, might require some States to change their apportioning procedures and require some States to change their apportioning formula. The Commission's conclusions and recommendations, in the form of guiding principles to appropriate officials, can be broken down into three categories. The principles outlined in A through C relate to various procedures designed to facilitate periodic apportionment of seats in State legislatures. The principle contained in D is directed toward setting forth a firm boundary between judicial and political responsibilities. The permissible limits of a formula for the apportionment of State legislatures are contained in principle E.

A. Apportionment of seats in State legislative bodies is a basic factor of representative government in the United States and hence provisions relating thereto should be clearly specified in State constitutions.*

The legislature represents the foundation of democratic government in the State. It is responsible for developing or approving the general policy of State government. It is responsible for finding common principles within which competing interests must operate. The legislature derives its authority to perform these functions from the people of the State. In order that State legislative bodies adequately reflect the needs and interests of the people of each individual State, each State should develop an apportionment formula that gives adequate representation to the diverse needs and interests of its people and at the same time satisfies the requirements imposed by the Fourteenth Amendment to the Constitution of the United States.

* See Appendix K for State Constitutional Amendment for recommendations A-C.

1. The apportionment formula for each body of the State legislature should be spelled out in clear and sufficient detail so that there can be no question as to the meaning of the formula. The Commission recommends that, where a legislative body is to be apportioned according to population only, the State constitution specify the extent to which legislative districts may represent different numbers of people in terms of a percent deviation, not to exceed 10 percent, from the number obtained by dividing the total population of the State by the number of representatives in the legislative body.*

The history of State legislative apportionment reveals that use of ambiguous or ill-defined words and phrases had caused extensive conflict and unnecessary delays in attempts to achieve periodic apportionment of legislative seats. "As nearly equal as possible" has been a particularly troublesome phrase. For this reason the Commission recommends that where population is the only factor in apportionment of legislative seats, the extent to which districts may deviate from each other be expressed in terms of a percentage, not to exceed 10 percent, of the total population divided by the number of seats in the legislative body. If the State's population is 2,000,000 and the number of seats in the legislative body is 40, each legislator would represent exactly 50,000 people if seats could be apportioned exactly according to population--this often is a practical impossibility. In this instance, if the constitutionally permitted percentage of deviation were 10 percent, as suggested by the Commission, all legislative districts would have to have a population between 45,000 and 55,000 people; if the percentage were 25, the population range of districts would be between 37,500 and 62,500 people. The Commission believes that one significant virtue of this recommendation is that it is simple to determine when the apportioning body has complied with the constitutional formula.

The Commission has singled out the phrase "as nearly equal as possible" for special consideration as it is the one that has caused the most difficulty in the most States, but it is not the only problem caused by constitutional language. Most other constitutional provisions of apportionment formulas relate to where and how district lines are to be formed. These provisions prohibit the splitting of local units of government to form legislative districts and require that only contiguous units of local government may be joined together to form a legislative district. Such provisions are designed to reduce the role of political considerations in the drawing of boundaries of legislative

* Some States may wish to substitute a requirement that a given percentage of the State's population, e.g., 45 percent must be in a position to elect a majority of the legislative body.

districts. Only one procedure has been developed that can eliminate the problem of drawing district lines. This procedure would base representation permanently on political subdivisions or on geographic areas which may or may not take population into consideration. Population may be a factor by permitting those units with larger populations to elect more than one legislator but by requiring all such legislators to be elected at large. Thus, the need to draw district lines after each apportionment is eliminated.

Constitutional requirements relating to district lines must be drafted with care to insure that they do not conflict with the provision relating to maximum population deviation. Conflicts may arise between a provision requiring that counties not be divided in making districts composed of more than one county and the maximum population deviation provision. The constitution should resolve this potential conflict before it actually arises. Possible solutions to the problem would be use of: (1) flotorial districts as in Texas and Tennessee; (2) additional representation in some, but not all, of the legislative sessions between apportionments as in Ohio or New Hampshire; or (3) political subdivisions smaller than the county for the determination of legislative districts. As noted earlier, a number of State constitutions do not require that county boundaries be followed in drawing legislative district lines, but the State apportioning body generally uses such boundaries for convenience. This conflict is most likely to arise in suburban counties (almost always within Standard Metropolitan Statistical Areas) where the population exceeds the requirements for one representative, but is not sufficient for two representatives. In such situations, joining portions of the suburban county with an adjoining county might be desirable. The suburban county could be divided along the lines of smaller political subdivisions of the county or along the lines of the census tracts within the county.

Regardless of what provisions are incorporated into the apportionment formulas of State constitutions, they should be clear enough that the apportioning body will have little difficulty in determining their application. Clarity is also necessary in order that the people may be in a position to evaluate the extent to which the apportioning body has met its responsibility and so that a court may easily decide if the State constitutional requirements have been complied with. To the extent that an apportionment formula attempts to balance certain conflicting interests within the State, it may not be possible to spell out its provisions with mathematical exactness. Despite this, States should make every effort to embody their apportionment formula in constitutional language that is clear and unambiguous.

2. The State constitution should specify the frequency of reapportionment.

Some State constitutions contain no provision relating to frequency of reapportionment, others specify frequencies ranging from two to 10 years, and still others permit the legislature to determine when reapportionment shall be undertaken. When a State has determined that reapportionment should be made periodically, the constitution should state the frequency at which such reapportionments are to be made and that frequency should be related to the availability of the official statistics required by the apportionment formula of the State. Some State constitutions with apportionment formulas based on population require reapportionments to be made every five or six years. When these provisions were originally included in State constitutions, the States were directed to make the necessary censuses that would provide the information to carry out the apportionment requirements.

Arizona is the only State that apportions legislative seats more frequently than once every 10 years. The frequency of Arizona apportionments is based on the frequency of gubernatorial elections--at the moment every two years--and the apportionment formula is based on actual votes cast at each election. Using the number of votes cast at a particular election permits frequent apportionments with a minimum of administrative delay.

3. The State constitution should specify the body or officer having a responsibility for apportioning seats in the State legislature. The Commission recommends that this responsibility be vested in the State legislature itself. It further recommends that a bipartisan or nonpartisan board or commission or other administrative officer or body be given responsibility to apportion legislative seats if the legislature fails to act within the time specified by the constitution, or when the legislature acts in a manner which is subsequently declared unconstitutional by a court of competent jurisdiction.

State legislative bodies have found it extremely difficult to meet constitutional requirements calling for periodic apportionment of legislative seats. Periodic apportionment of legislative seats is based on the premise that population shifts or changes in other factors in apportionment formulas require a reallocation of legislative seats to reflect more accurately the changing needs and interests of the State as a whole. Yet an individual legislator has a responsibility to his constituency--he must protect its interests. In addition, supporting a proposal that would reduce the representation of his constituency might well eliminate him from the legislative body. While this may be a reasonable position for an individual State legislator, the cumulative effect of such action is to nullify, in whole or in part, a constitutional requirement for periodic apportionment of legislative seats.

In order to eliminate this type of avoidance of State constitutional provisions, the Commission urges all States to provide for a bipartisan or nonpartisan board or commission or other administrative officer or body to apportion seats in the State legislature in the event that the legislature itself fails to make the apportionment at the time stated in the constitution or if a court of competent jurisdiction has declared that a particular apportionment does not comply with the provisions of the State constitution. In making this recommendation, the Commission fully recognizes that the primary responsibility for apportioning seats in the legislature is a responsibility of the legislature itself. The experience of States which have completely or partially removed the responsibility for apportionment from the hands of the legislature shows that it is possible to have periodic apportionments which comply with the terms of State constitutions. The biggest difficulty with procedures providing for a nonlegislative body to act if the legislature fails to do so, has been the authority of that body when the legislature provides only a token apportionment or otherwise does not completely comply with the constitutional apportionment formula. To eliminate this difficulty the apportioning body should be given authority to apportion legislative seats if the State supreme court (or a court of higher authority) declares that the legislative apportionment does not comply with the provisions of the State constitution.

The 14 States that have adopted provisions partly or completely removing the legislature from the apportionment process have placed this responsibility with different individuals or boards. While the Commission has no preference as to who, as an individual or as members of a board, should have this responsibility, it would like to offer one suggestion. The Commission feels that designation of members of a nonlegislative apportioning body is a matter that must be considered in the light of tradition of the individual State. But it suggests that in no case should a member of the highest court of the State be a member of such a body as that court may have to rule on the constitutionality of the apportionment plan developed by it.

B. <u>The people should have an opportunity at any time to react at the polls to the continuance or change of the formula apportioning seats in the State legislature</u>.

Constitutions are intended to provide a certain degree of stability to the institutions of the State. The provisions of State

constitutions are designed to last for many years, but the constitutions are not intended to shackle future generations.

These conflicting goals have been recognized in all State constitutions through the various provisions for amending the constitutions.

Except in States permitting constitutional initiative, prevailing provisions for amending State constitutions do not provide a reasonable opportunity to amend the provisions of the constitution relating to legislative apportionment because such amendments must be initiated by the legislature itself. Thus the legislature is in a position to block any proposed amendment if it so desires. The action of State legislators on such a constitutional amendment probably would be the same as their action, or inaction, regarding the periodic application of existing constitutional apportionment formulas. Several States, through use of the constitutional initiative, have been able to successfully meet this problem. However, there is no need for all States to adopt the constitutional initiative. The State constitution might provide that at specific intervals the question of the apportionment formula be placed on the ballot. Several State constitutions contain similar provisions for the calling of a constitutional convention. In addition, the legislature itself might be authorized to place apportionment proposals before the people under appropriate procedural safeguards.

The States that permit constitutional initiative or referendum do not in any way limit the constitutional provisions that may be amended by this procedure. The general issue of such direct action by the people was discussed at length many years ago. The Commission has no desire to raise the issue again. But the Commission feels that such a procedure can be an important factor in determining whether the rights of the citizens of the State have been protected when the State has a unique formula for apportioning seats in the State legislature.

C. The Commission recommends that State courts be constitutionally provided with appropriate jurisdiction and remedies to insure that State officials comply with their apportionment responsibilities.

Several State constitutions specifically authorize the State supreme court to review any challenged application of the apportionment provisions of the State constitution. Other State supreme courts have exercised this right without its being contained in the constitution both prior to and following the United States Supreme Court decision in Baker v. Carr. Regardless of the basis on which State courts have exercised the right to review the constitutionality of a particular apportionment, they have generally held that their powers are limited to declaring a particular apportionment constitutional or unconstitutional. Until recently they have generally refused to provide any remedy in those instances where the apportionment has been declared unconstitutional. The Commission urges all States to provide its highest court with appropriate jurisdiction to review apportionments made by the apportioning body or officer, whether legislative or nonlegislative, to insure that they comply with the apportionment provisions of the State constitution. In addition, the Commission recommends that such courts be provided with appropriate remedies to insure that if the apportioning body or officer refuses to act in accordance with the provisions of the constitution, the interests of the people will not suffer. In view of the limited experience courts have with the use of suggested remedies, the Commission does not feel it is in a position itself to make specific recommendations as to what remedial devices should be adopted. Such possible devices include: (a) requiring election at large; (b) issuance of writ of mandamus to the apportioning body or official; (c) enjoining the holding of elections for filling legislative seats; (d) nullification of acts of an unconstitutionally apportioned legislature; (e) enjoining of the payment of legislative salaries; and (f) declaring members of a legislature that fails to apportion properly to be ineligible for reelection.

The Commission feels that it is incumbent upon States to act promptly in this matter. The role of the State in the federal system depends largely on the confidence the people have in State legislatures. Where both State legislatures and State courts fail to insure that State constitutional provisions are complied with, State government suffers. The legislature must confer upon the State courts the necessary power to permit such courts to insure that apportionment provisions are complied with by the apportioning body of the State.

D. The actual apportionment of a State legislature, including as it must, many elements of negotiation and accommodation that do not lend themselves to adversary proceedings, should be

accomplished by the legislative or other specified nonjudicial body or officer. The Commission believes that State and Federal courts should confine their role to insuring that such nonjudicial body or officer promptly produce a reasonable apportionment meeting constitutional requirements, and urges both State and Federal courts to avoid, except in the most extreme circumstances, the prescription by judicial decree of specific apportionment formulas or the geographic composition of legislative districts.

The application of constitutional formulas for the apportionment of seats in a State legislature is no easy matter. There are many areas in which the apportioning body or officer must weigh factors which cannot be measured with any degree of mathematical certainty. There are factors in the apportionment formula which can be statistically verified, but these present little difficulty to any apportioning body, officer, or court.

Court procedures are adequate to permit the proper determination of any challenge to the application of the apportionment formula on the grounds that such application is not in accord with the provisions of the State constitution. Courts have already performed this function, even where the constitutional apportionment provisions were ambiguous and uncertain. Some recent developments in the apportionment field point the way toward reducing or eliminating much of this ambiguity and uncertainty. Use of the proposal limiting the degree of population disparity among legislative districts would eliminate a great many problems. Similarly, Chapter IV contains a discussion of approaches which would eliminate or reduce many other difficulties to court review. While the Commission does not specifically support any of the proposals relating to the drawing of district lines, States should continue to experiment in this area and eventually develop different approaches which will prove satisfactory.

Despite recent proposals, which if adopted by a State, would facilitate the determination of whether or not the apportioning body or officer has complied with the constitutional provisions relating to apportionment, a court is still not the proper body to do the actual apportioning. Except in those instances where apportionment of legislative seats has become automatic or semiautomatic--for example, the house of representatives of Ohio and New Jersey--the application of the constitutional provisions still permits a great deal of discretion to the apportioning body or officer. This discretion can best be exercised through the political processes of accommodation, negotiation and compromise. The adversary proceedings of a court of law are not conducive to the operation of such processes.

The Commission recognizes that there may be occasions where court action declaring the application of an apportionment formula unconstitutional, or declaring the formula itself unconstitutional, may not be sufficient to insure that the apportioning body or officer will perform its duties properly. The record of recent years, particularly in those States where the responsibility for apportionment has been completely or partially removed from the hands of the State legislature, indicates that the role of the courts in the apportionment process can be kept at a minimal level. It is incumbent upon the States themselves to adopt procedures which insure that actual apportionment is carried out by a constitutionally designated body or officer, and not the courts.

E. Basis of apportionment.

The preceding recommendations are directed toward improving the apportioning procedure. In the recommendation that follows, the Commission endeavors to resolve the question of the extent to which, if any, factors other than population may be used as the basis of apportionment. The Commission approaches this question not from the standpoint of constitutional law as such, but from the standpoint of legal, political, and philosophic needs of the nation.

"Equal protection of the laws" would seem to presume, and considerations of political equity demand, that the apportionment of both houses in the State legislature, be based strictly on population.*

The Fourteenth Amendment to the United States Constitution is an amendment designed for the protection of the people. It is not intended to protect political subdivisions, minority views, or any

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*Governor Smylie, joined by Governor Anderson, Supervisor Donnenwirth, Governor Hollings, Mr. Don Hummel, and Senator Newell, states: We would have preferred that the Commission adopt the following statement of principle:

"Equal protection of the laws" would seem to presume, and considerations of political equity demand, that the apportionment of both houses in the State legislature be based strictly on population, UNLESS THE PEOPLE DIRECTLY DETERMINE OTHERWISE.

particular form of governmental structure. The Fourteenth Amendment is concerned with one thing, and one thing only--that each person be treated equally in the eyes of the law of each and every State.

In applying the requirement that each person be treated equally in the eyes of State law to the question of apportionment of seats in the State legislature, only one interpretation is possible. That interpretation requires that each man's vote must count the same as every other man's vote. The State has no authority to classify people according to where they live--urban or rural areas--the type of work they do--laborer or banker--the type of education they have had--high school or college graduate--and authorize such classes to elect representatives to the State legislature in such a manner as to permit

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Our reasons follow:

As emphasized throughout this report, we are impressed with two facts: (1) the reappraisal of State legislative apportionment mandated by the courts, is one of the most significant developments in many years in the evolution of the federal form of government under the Constitution and will have profound effect upon the structure, policies, and operations of State government; and (2) all States (49 of them explicitly) provide in their constitutions that all power of the State resides in or is derived from the people. Consequently, we believe that since legislative apportionment is such a basic question of State government, the people, in the exercise of their constitutional power should have a major and direct voice in determining the future course of legislative apportionment and that the results of the exercise of this power by the people should be persuasive upon the courts, State and Federal alike.

We believe that considerations of equity, faith in the democratic process, and political discretion of a high order should lead Governors, legislators, and the judiciary to rely upon the people for determining

the vote of the members of any such class to have more weight in the election of State legislators than the members of any other class. Therefore, the Commission believes that population is the only fair and acceptable method of apportioning seats in the State legislature.

Assuming for the sake of discussion that the Fourteenth Amendment does not require the States to apportion solely on the basis of population, the history of representation in State legislatures and the theory of democratic government seem to demand that seats in State legislatures be apportioned according to population. The original constitutions of 36 States gave implicit recognition to this principle.

The government of the individual States is based on the theory of representative democracy. This means that legislative bodies must

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the general lines along which apportionment will proceed in the individual States. Some will say that this question is too important to be left to the people and that it would be better decided by legislators--or judges. The choice here often depends upon the point of view of the particular protagonist. We do not agree. The principles of democratic government are many, but at the fountainhead of our form of government is the fact that all power is derived from, and all power rests with the people. The people have the right to make mistakes in a democracy. Depending upon one's views, this is an asset or a liability of the democratic form of government. If one believes in democracy, one must accept the possibility that the people may make mistakes. However, the saving grace in a democracy is that the people have the means available to correct their own mistakes or the mistakes of their duly elected representatives. Of course, this county enjoys a system of representative government rather than a pure democracy. But it necessarily follows that the form and degree of "representativeness" must be determined by the people if the theory of representative government is to be practiced as well as preached.

mirror the views of the citizens within the jurisdiction. This does not justify policy-making bodies being set up in such a way that minority interests of any type are represented in any way other than as justified by their relative numbers. They remain a minority interest until such time as they convince a majority of the people that their view is the one that should prevail. The fact that this permits a majority to impose its will on the minority is of no consequence. Our form of government is based on the assumption that a majority of the people elect a majority of the legislators to enact laws and develop policies that the voters have supported.

Except to the extent that they are represented according to their numbers and that they have an opportunity to present their views to that body, minorities are not entitled to protection in the State

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We are inclined to believe that in a number of States, the people, if faced squarely with the pertinent issues involved in legislative apportionment, would decide in favor of an apportionment system based solely or predominantly upon population. We also are inclined to believe that in a number of other States, the people, for reasons of geography, or because of economic, partisan, or social differences, would decide that their legislatures should be based upon factors in addition to population. For example, the voters of Michigan and California in recent years, in statewide elections with "one man having one vote" decided unequivocally that they did not want their State senates based solely on population. Who can argue, when the majority of people of these States (including a large number of voters in the urban areas) have said that they prefer factors in addition to population to be taken into account in the apportionment

legislature. Protection of minority interests or views does not mean the minority should be in a position to veto the desires of the majority. The protection given minority views and interests should not be a veto power in the legislative process, since other adequate protections are offered by both Federal and State constitutions. If minority interests are permitted to control the legislative branch of State government so as to defeat the wishes of the majority, the nation is faced with one of three alternatives: (1) the eclipse of State government because the people will turn to a more broadly responsive National Government to obtain their needs; (2) the perpetuation of tyranny of a minority over the affairs of State government; or (3) the resort to precipitous or illegal means by the majority of the people whose desires have been frustrated.

The founders of this nation fully recognized that the nation and the States must be governed by the views of the majority of the

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of one house of their State legislatures, that these same people have been deprived of equal protection of the laws? On the other hand, we would question seriously whether equal protection of the laws has been afforded if the people of the State have prescribed for them without their affirmative consent, an apportionment system including factors other than population no matter how "rational" or "traditional" such a system may appear to be.

The policy enunciated here may be objected to on the ground that decisions by the electorate on a statewide basis may trample the rights of a minority and that under the Fourteenth Amendment, the people of the State have no more right to decide how their State legislature shall

voters. In enacting the Northwest Ordinance, the Congress affirmed the principle that representation in State and territorial legislatures was to be based on population. The new western States that entered the Union between 1790 and 1860 all apportioned seats in both houses of the State legislature according to population with but minor qualifications.

Some argue that the theory of checks and balances requires that if there are to be two houses of a legislature they must rest on different bases of apportionment. Obviously legislative bodies apportioned according to different formulas would be expected to consider issues in a different light. But this difference of viewpoint can be achieved even though both houses of a legislature are

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be apportioned than they have to decide that their public school systems shall be segregated according to race. We firmly reject this line of reasoning. We would agree, of course, that if in the process of deciding the question of State legislative apportionment, the people of the State adopted a plan that was patently discriminatory and with obvious oppression directed against particular segments of the State's population, the oppressed should be able to seek and should be given judicial relief. In essence, what we are saying is that a decision on State legislative apportionment arrived at by the electorate should be honored by the courts in the absence of compelling considerations to the contrary.

apportioned according to population. Members of the smaller legislative body would be responsible to a more diversified constituency. In addition, the term of members of one body could be longer than the term of the other and expire at different times.

Based on law--based on theory of democratic government--based on the history of representation in State government--the Commission reaches the inescapable conclusion that both houses of a State legislature should be apportioned strictly according to population.

Finally, the policy proposed here preserves one of the essential advantages of a federal system--namely, the role of the States as the "testing laboratories" of the governmental process, whereby innovation and experiment may be undertaken and later retained or rejected as the results dictate. Despite our 300 years experience, most would agree that there is still much to be learned and many improvements possible in the application of the theory of representative government. The policy proposed here would allow the people of any State, if they so decided, to experiment and innovate in the highly difficult field of legislative apportionment.

We recognize that the position taken here will not be popular with either the urban "population school" or the rural "area school." The position taken here holds to the "population" point of view unless the people decide to the contrary. It does not permit the foisting upon the people without their consent of anything substantially short of a population base for their legislatures. On the other hand, it does permit, if the people so determine, the adoption of a "federal plan," one house on population--one house on area, or any other combination that does not do evident violence to minority population groups.

The views of Senator Muskie: To the extent that the majority view reflects a political judgment that population should be the dominant and primary factor for determining the electoral districting of State legislative bodies, I can support the majority view. For it is my personal opinion that political experience argues strongly for legislative apportionment on a strict population basis. If, however, compelling evidence can be presented that such a formula will in a given set of circumstances breed inequity, then the use of factors other than population may be justified, but should be limited to the apportionment of only one House of a bicameral legislature. And even then the use of such other factors should be approved by the people in a statewide election. The use of such other factors would, of course, be subject to appropriate review by the courts.

To the extent that the majority statement implies, indeed asserts, a legal judgment that the Equal Protection Clause of the Fourteenth Amendment dictates that legislative apportionment in the States must be based solely and undeviatingly on population, I cannot support it. There are simply no decisions of the United States Supreme Court to support such a view. While it is true the opinion of the Court in Baker v. Carr sheds no light on the substantive requirements of "equal protection" in legislative apportionment cases, it is, nevertheless, of compelling significance that the five other opinions written in that case (three concurring and two dissenting) all express the view that the Equal Protection Clause has never been construed so as to guarantee either mathematical identity or universal equality.

As stated by Mr. Justice Douglas in his concurring opinion in Baker v. Carr, the traditional test in these cases has been whether a State has made "an invidious discrimination." The closest the Court has ever come to a requirement of absolute equality is to say that "equal protection of the laws" means the uniform treatment of persons standing in an identical relation to whatever governmental action is challenged, but a determination of whether the treatment is equal necessarily presupposes a determination concerning the nature of the relationship. With respect to legislative apportionment, this determination of relationship becomes exceedingly complex and so filled with subleties that it seems to me impossible to state a priori that the relationship will in all cases be elucidated by the single standard of population distribution.

It is, indeed, unfortunate that the majority view has been so phrased as to be an admixture of expressions of political aspiration and legal interpretation. For having chosen to support their political judgments, appealing as they may be, with an assertion of alleged constitutional mandate, the majority is then bound to abide by the precepts of

constitutional construction. However, the majority's statement by its very language ignores a cardinal principle of constitutional construction, that of avoiding absolute rigidity. Implicit in this principle is an acknowledgment of the lessons of history demonstrating that no individual or body of individuals is endowed with the all-encompassing genius to perceive in the present all of the conditions, circumstances, and problems which may confront the institutions of representative government in the future. This fact of history argues strongly for the enunciation of fundamental governing standards in terms sufficiently broad to assure that the essence of any given standard will be preserved when applied in a climate of circumstances not anticipated at the moment of authorship.

Had the majority followed either of two alternative courses, it could have avoided any serious challenge to the factual correctness of its assertion. On the other hand, the argument for apportionment based strictly on population could have been so phrased as to make it unmistakably clear that it was nothing more than the statement of a generally desirable political objective. Or, as the majority now does, the statement could have sought to delineate the substantive legal requirements dictated by the Equal Protection Clause, but employed less rigid terms that do not attempt to prejudge in the present all the circumstances which may affect legislative apportionment in the future. The majority followed neither of these alternatives, either of which I would have supported.

The views of Senator Mundt: On the matter of apportioning seats in the legislatures of the several States, I desire to associate myself with the views expressed by my colleague, Senator Edmund S. Muskie. Additionally, I wish to take this opportunity to call attention to the most serious example of electoral malapportionment in our entire structure of representative government; namely, the continued use of the so-called "general ticket system" for the election of the President and Vice President of the United States. Under this system the disparity in voter power reaches the extreme ratio of 15-1 when comparing the voting power of an elector in the State of New York with the voting power of an elector in a small State such as Delaware. The "general ticket system" gives rise to "invidious discrimination" against literally millions of voters in every presidential election, and I earnestly hope that prompt and appropriate steps will be taken to remedy this rank injustice.

The views of Congressman Fountain: I do not believe that the Fourteenth Amendment requires the apportionment of both Houses of a State legislature on a strict population basis. Moreover, a rigid interpretation of this kind would be undesirable in practice.

It is my view that "equal protection of the laws" presumes and political equity requires that population be treated as the basic and principal determinant for apportioning seats in a State legislature. However, it should be recognized that special conditions in some States may justify reasonable deviation from a strict population basis in the apportionment of one House of a bicameral legislature. Each State has an interest in insuring that its legislative body is constituted in such a way as to assure the various segments of the State's population an adequate voice in the legislative process.

I cannot subscribe to a principle which would deny to the people of any State the right, if a majority of the electorate so decides in a statewide election, to take into account relevant factors other than population in apportioning one House of their legislature.

It is important in a representative democracy such as ours that the States have the opportunity to experiment with reasonable proposals for insuring the adequate representation of all segments of the population. A rigid interpretation of the Fourteenth Amendment setting up one, and only one, standard of representation would surely inhibit the future development of the democratic process, since there is no guarantee that what some may say is an appropriate apportionment formula today will be appropriate tomorrow. There is still much to be learned in the application of the theory of representative democracy, and our legal framework should be sufficiently flexible to permit the necessary experimentation for achieving representative democracy in practice.

The views of Senator Ervin: I am strongly opposed to the proposal that both houses of State legislatures should be apportioned strictly on the basis of population.

CHAPTER VI

CONCLUDING OBSERVATIONS

Since its creation in 1959, this Commission has directed its attention to a variety of problems and issues of Federal-State-local relations which seemed to constitute significant present or potential friction points in the American federal system. Our endeavors have encompassed numerous subjects and many specific problems, a considerable number of which are extremely difficult and controversial. If there is a common thread connecting the conclusions and recommendations of the Commission across this range of issues, it is the conviction that State and local government and their relationships with each other must be strengthened if government at all levels is to meet successfully the challenges of the future. A majority of the problems examined during the past three years have involved the relationship between State and local government and the need for State action to guide, assist, and otherwise strengthen local government.

However, in this report we have been concerned with a problem central to the strength, integrity, and responsibility of State government itself. No single feature of State government has been so vulnerable to criticism by statesmen and scholars alike as the unrepresentative situation into which many State legislatures have permitted themselves to drift. Few, if any, thoughtful State officials will deny that the States have brought upon themselves the present degree of judicial intervention in the reapportionment process. Thomas Jefferson observed that the only way in which the States can erect a barrier against the extension of national power into areas within their proper sphere is "to strengthen the state governments, and as this cannot be done by any change in the Federal Constitution *** it must be done by the States themselves *** ." He explained: "The only barrier in their power is a wise government. A weak one will lose ground in every contest."

The Commission calls attention to the foregoing, not in condemnation, but in a spirit of understanding. Representation in a legislative body is a vital political interest of any constituency and cannot be surrendered lightly. The members of the Commission, particularly those of us coming from State legislatures, city councils, county boards, and the Congress, are painfully aware of the frequent dilemma facing a legislator in resolving conflicts of interest between his district on the one hand and the whole city, county, State, or nation on the other.

In conclusion, we should like to emphasize that the time for recrimination and indignant expressions of protest is past and the time for action is at hand. The more promptly and effectively all of us act, the less we need be concerned that the courts will be forced to do our job for us. We should not burden their overcrowded dockets with what is normally a nonjudicial function.

The Commission does not presume to have spoken any final words on this most important issue of intergovernmental relations. If any special attention is due what we have said it is because we speak as a collective body of local, State, and national officials, and representatives of the general public. In this collective and cooperative capacity, the Commission respectfully submits its views to the American people and to the respective legislative, executive, and judicial officials who are concerned with this problem. If the information and views contained in this report contribute to better public understanding of the complex and often contradictory factors involved in the reapportionment question, our efforts will have been worthwhile.

APPENDIX A
APPORTIONMENT OF LEGISLATURES
AS OF NOVEMBER 1, 1961

State	Citation: article and section of constitution	Basis of Apportionment		Frequency of required reapportionment		Apportioning agency	Dates of last two apportionments	
		Senate	House	Required every 10 years*	Other schedules for reapportioning			
Alabama	IV,50;IX, 197-203 XVIII,284	Population, except no district more than one member.	Population, but each county at least one member.	X	....	Legislature.	1901	1880
Alaska	VI,XIV	Area, with population factors; combination of house districts into four at-large districts and a varying number of minor districts.	Population (civilian). 19 districts.	X	....	Apportionment boards; its recommendations are reviewed, and confirmed or changed by the Governor.	1956	1953
Arizona	IV,2,1(1)	Districts specifically established by constitution. (two from each county)1/	Votes cast for Governor at last preceding general election, but not less than if computed on basis of election of 1930.	..	After every gubernatorial election (every two years).	No provision for Senate; redistricting for House by County Boards of Supervisors.	1958	1956
Arkansas	VIII,1-5; Amdmt. XLV.	Senate is fixed. (a)	Each county at least one member; remaining members distributed among more populous counties according to population.	X	....	Board of Apportionment (Governor, Secretary of State, and Attorney General). Subject to revision by State Supreme Court.	1961	1951
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.	X	....	Legislature or, if it fails, a reapportionment commission (Lieutenant Governor, Controller, Attorney General, Secretary of State, and Superintendent of Public Instruction). In either case, subject to a referendum.	1961	1951
Colorado	V,45-47	Population ratios.	Population ratios.	..	Every 5 years (b)	General Assembly.	1953	1933
Connecticut	III,3,4,5	Population, but each county at least one member.	Two members from each town having over 5,000 population; other, same number as in 1874.	Senate	....	General Assembly for Senate, no provision for House.	H-1876 S-1903	1818 ....
Delaware	II,2	Districts specifically established by constitution.	Districts specifically established by constitution.	..	....	No provision.	1897	....
Florida	VII,3,4	Population, but no county more than one member.	Three to each of five largest counties, two to each of next 18, one each to others.	X	....	Legislature.	H-1955	1945
Georgia	III,2; (Par. 1), 3 (Pars. 1,2).	Districts, but no senatorial district more than one member.	Population, i.e., 3 to each of 8 largest counties, 2 to each of next 30, 1 each to others.	X	....	General Assembly "may" change senatorial districts. Shall change House apportionments at first session after each U.S. census.	1961	1953

State	Citation: article and section of constitution	Basis of Apportionment		Frequency of required reapportionment		Apportioning agency	Dates of last two apportionments*	
		Senate	House	Required every 10 years*	Other schedules for reapportioning			
Hawaii	III,2,4	Districts specified by constitution.	Population, but each county at least one.	X	....	Governor.	1959	1958
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.	X	....	Legislature.	1951	1941
Illinois	IV,6,7,8	Fixed districts based on area.	Population.	House	Senate is fixed.	General Assembly, or, if it fails, a reapportionment commission appointed by the Governor.	1955	1901
Indiana	IV,4,5,6	Male inhabitants over 21 years of age.	Male inhabitants over 21 years of age.	..	Every six years.	General Assembly.	1921	1915
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.	X	....	General Assembly.	H-1927 S-1911	1921 1906
Kansas	II,2;X,1-3	Population.	Population, but each county at least one.	..	Every five years.	Legislature.	H-1961 S-1947	1959 1933
Kentucky	Sec. 33	Population.	Population, but no more than two counties to be joined in a district.	X	....	General Assembly.	1942	1918
Louisiana	III,2-6	Population.	Population, but each parish and each ward of New Orleans at least one member.	X	....	Legislature.	1921	1902
Maine	IV,Pt.I,2, 3;IV,Pt.II, 1	Population, exclusive of aliens and Indians not taxed. No county less than one nor more than five.	Population, exclusive of aliens. No town more than seven members, unless a consolidated town.	House(c)	....	Legislature.	H-1961 S-1961	1955 1951
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. (d)	..	....	Membership frozen for House; no provision for Senate.	1943	....
Massachusetts	Amdmt. LXXI	Legal voters.	Legal voters.	X	....	General Court (Legislature).	H-1947 S-1960	1939 1948
Michigan	V,2-4	Districts specifically prescribed by constitution.	Population. (e)	House	Senate is fixed.	Legislature or, if it fails, State Board of Canvassers apportions House. Senate is fixed.	1953	1943
Minnesota	IV,2,23,24	Population, exclusive of nontaxable Indians. (f)	Population, exclusive of nontaxable Indians.(f)	X	And after each census	Legislature "shall have power."	1959(g)	1913

State	Citation: article and section of constitution	Basis of Apportionment		Frequency of required reapportionment		Apportioning agency	Dates of last two apportionments	
		Senate	House	Required every 10 years*	Other schedules for reapportioning			
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.	X	....	Legislature "may."	1916	1904
Missouri	III,2-11	Population.	Population, but each county at least one member.	X	....	House: Secretary of State apportions among counties; county courts apportion within counties. Senate: by commission appointed by Governor.	1961	1951
Montana	V,4;VI, 2-6	One member from each county.	Population, but at least one member from each county.	X	Session following federal census.	Legislative Assembly.	1961	1951
Nebraska	III,5	Unicameral legislature--population excluding aliens.		..	From time to time, but no oftener than once every 10 years.	Legislature "may."	1935	1920
Nevada	I,13;IV,5	One member for each county.	Population.	X	....	Legislature.	1961	1951
New Hampshire	Pt.II,9, 11,26	Direct taxes paid.	Population. (h)	House	Senate--from time to time.	General Court.	H-1961 S-1961	1951 1915
New Jersey	IV,ii,1; IV,iii,1	One member from each county.	Population, but at least one member from each county.	X	....	For lower house, Governor apportions among counties; Secretary of State certifies to county clerks. (by statute) 1/	1961	1941
New Mexico	IV,3	One member from each county.	At least one member for each county and additional representatives for more populous counties.	X	....	Legislature "may."	1955	1949
New York	III,3-5	Population, excluding aliens. No county more than 1/3 membership, nor more than 1/2 membership to two adjoining counties.	Population, excluding aliens. Each county (except Hamilton) at least one member.	X	....	Legislature. Subject to review by courts.	1954	1944
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.	X	....	General Assembly.	H-1961 S-1941	1941 1921

State	Citation: article and section of constitution	Basis of Apportionment		Frequency of required reapportionment		Apportioning agency	Dates of last two apportionments	
		Senate	House	Required every 10 years*	Other schedules for reapportioning			
North Dakota	II,26,29, 32,35	Set by constitution, but somewhat reflects population.	Population, but each county or district entitled to one member.	X	....	Legislative Assembly, or if it fails, a special board composed of Chief Justice of Supreme Court, Attorney General, Secretary of State, and Majority and Minority leaders of House shall reapportion House.	1961	1931
Ohio	XI,1-11	(Population)1/	Population, but each county at least one member.	X(i)	Each biennium.(i)	Governor, Auditor, and Secretary of State, or any two of them.	1961	1951
Oklahoma	V,9-16.	Population.	Population, but no county to have more than seven members.(j)	X	....	Legislature.	1961	1951
Oregon	IV,6,7	Population.	Population.	X	....	Legislative Assembly, or failing that, Secretary of State. Reapportionment subject to Supreme Court review.	1961	1954
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.	X	....	General Assembly.	H-1953 S-1921	1921 1906
Rhode Island	XIII; Amdmt. XIX	Qualified voters, but minimum of one and maximum of six per city or town.	Population, but at least one member from each town or city, and no town or city more than 1/4 of total, i.e., 25.	..	....	General Assembly "may" after any Presidential election.	H-1930 S-1940	....
South Carolina	III,1-8	One member from each county.	Population, but at least one member from each county.	X	....	General Assembly.	1961	1952
South Dakota	III,5	Population.	Population.	X	....	Legislature, or failing that, Governor, Superintendent of Public Instruction, Presiding Judge of Supreme Court, Attorney General, and Secretary of State.	1961	1951
Tennessee	II,4-6	Qualified voters.	Qualified voters.	X	....	General Assembly.	(k)	1901
Texas	III,25-26a 28	Qualified electors, but no county more than one member.	Population,but no county more than seven representatives unless population greater than 700,000, then one additional representative for each 100,000.	X	....	Legislature or if it fails, Legislative Redistricting Board (Lieutenant Governor, Speaker of House, Attorney General, Comptroller of Public Accounts, and Commissioner of General Land Office).	1961	1951
Utah	IX,2,4	Population.	Population. Each county at leastone member,with additional representatives on a population ratio.	X	....	Legislature.	1955	1931
Vermont	II,13,18, 37	Population, but each county at least one member.	One member from each inhabited town.	Senate	Or after each State census.	Legislature apportions Senate; no provision for House.	H-1793(1) S-1941	 1931

State	Citation: article and section of constitution	Basis of Apportionment		Frequency of required reapportionment		Apportioning agency	Dates of last two apportionments	
		Senate	House	Required every 10 years*	Other schedules for reapportioning			
Virginia	IV,43	Population.	Population.	X	....	General Assembly.	1958	1952
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.	X	....	Legislature, or by initiative.	1957	1931
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. (3/5 ratio necessary for member) 1/	X	....	Legislature.	1950	1940
Wisconsin	IV,3-5	Population.	Population.	X	....	Legislature.	1951	1921
Wyoming	III,2-4	Population, but each county at least one member.	Population, but each county at least one member.	X	....	Legislature.	1931	1921

* Every 10 years, or after each federal census.
** Not in original source table.
Abbreviations: H-House; S-Senate.

(a) Amendment adopted November, 1956, "froze" the senatorial districts as then established. Future apportionment of the Senate will not be made.

(b) Required every five years after each federal and each state census.

(c) Constitutional provision "at most 10 years and at least five."

(d) In 1948, membership in House frozen at then existing levels.

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

(f) Section on Indians is still in constitution but is ineffective due to federal legislation.

(g) Effective in 1962.

(h) Amendment adopted in November, 1942, sets the membership of the House of Representatives at not more than 400 and not less than 375. It 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.

(i) At the reapportionment following the decennial census, a ratio is established to provide for fractional representation during the succeeding decade. Any county or senatorial district with a population larger than the minimum requirement for Representative or Senator, but not as large as required for an additional full Representative or Senator, is allotted fractional additional representation by adding a Representative or Senator for one to four of the legislative sessions during the decade.

(j) In practice no county has less than one member.

(k) In 1945 a flotorial district was changed to eliminate one county.

Footnotes - Appendix A (continued)

(1) Apportionment plan for House is provided in the constitution with no provision for reapportionment. House apportionment thus dates from adoption of constitution in 1793.

1/ Supplemental information is in Index Digest of State Constitutions.

Source: The Book of the States 1962-3, (Council of State Governments, 1962), pp. 58-62. For additional details, see Richard A. Edwards, ed., Index Digest of State Constitutions, (Legislative Drafting Research Fund, Columbia University), 1959, pp. 624-635.

APPENDIX B

STATE LEGISLATIVE APPORTIONMENT
(July 1, 1961)

State	SENATE				LOWER HOUSE			
	Average	Largest	Smallest	Percent Necessary to Control	Average	Largest	Smallest	Percent Necessary to Control
Ala.	93,278	634,864	15,417	25.1	30,818	104,767	6,731	25.7
Alas.[a]	11,308	57,431	4,603	35.0	5,654	6,605	2,945	49.0
Ariz.	46,506	331,755	3,868	12.8	16,277	30,438	5,754	N.A.
Ark.	51,036	80,993	35,983	43.8	17,863	31,686	4,927	33.3
Calif.	392,930	6,038,771	14,294	10.7	196,465	306,191	72,105	44.7
Colo.	50,113	127,520	17,481	29.8	26,984	63,760	7,867	32.1
Conn.	70,423	175,940	26,297	33.4	8,623	81,089	191	12.0
Del.	26,193	70,000	4,177	22.0	12,751	58,228	1,643	18.5
Fla.	130,304	935,047	9,543	12.3	52,122	311,682	2,868	14.7
Ga.	73,021	556,326	13,050	N.A.	19,235	185,422	1,876	N.A.
Hawaii	25,311	50,040	8,515	N.A.	12,407	15,163	7,044	N.A.
Idaho	15,163	93,460	915	16.6	10,590	15,576	915	32.7
Ill.	173,812	565,300	53,500	28.7	170,865	160,200	34,433	39.9
Ind.	93,250	171,089	39,011	40.4	46,625	79,538	14,804	34.8
Iowa	55,110	266,314	29,696	35.2	25,532	133,157	7,910	26.9
Kansas	54,465	343,231	16,083	26.8	17,428	68,646	2,069	18.5
Ky.	79,951	131,906	45,122	42.0	30,382	67,789	11,364	34.1
La.	83,513	248,427	31,175	33.0	31,019	120,205	6,909	34.1
Me.	28,508	45,687	16,146	46.9	6,418	13,102	2,394	39.7
Md.	106,920	492,428	15,481	N.A.	29,290	82,071	6,541	N.A.
Mass.	128,714	199,107	86,355	44.6	21,452	49,478	3,559	45.3
Mich.	200,682	690,259	55,806	29.0	71,120	135,268	34,006	44.0
Minn.	50,953	99,446	26,458	40.1	26,060	99,446	8,343	34.5
Miss.	44,452	126,502	14,314	34.6	15,558	59,542	3,576	29.1
Mo.	127,053	155,683	96,477	47.7	26,502	52,970	3,960	20.3
Mont.[a]	12,049	79,016	894	16.1	7,178	12,537	894	36.6
Nebr.	32,822	51,757	18,824	36.6	*			
Nev.	16,781	127,016	568	8.0	7,710	12,525	568	35.0
N.H.[a]	25,288	41,457	15,829	45.3	1,517	N.A.	N.A.	43.9
N.J.	288,894	923,545	48,555	19.0	101,113	143,913	48,555	46.5

State	SENATE				LOWER HOUSE			
	Average	Largest	Small-est	Percent Neces-sary to Control	Average	Largest	Small-est	Percent Neces-sary to Control
N.Mex.	29,719	262,199	1,874	14.0	14,394	29,133	1,874	27.0
N.Y.	287,626	366,000	207,000	36.9	111,882	150,000	15,000	38.2
N.C.[a]	91,123	272,111	45,031	36.9	37,968	82,059	4,520	27.1
N.Dak.	12,907	42,041	4,698	31.9	5,499	8,408	2,665	40.2
Ohio	288,073	439,000	228,000	41.0	70,850	97,064	10,274	30.3
Okla.	52,916	346,038	13,125	24.5	19,242	62,787	4,496	29.5
Oreg.	58,956	69,634	29,917	47.8	29,478	39,660	18,955	48.1
Pa.	226,387	553,154	51,793	33.1	53,902	139,293	4,485	37.7
R.I.	18,684	47,080	486	18.1	8,594	18,977	486	46.5
S.C.[a]	51,796	216,382	8,629	26.6	19,214	29,490	8,629	46.7
S.Dak.[a]	19,443	43,287	10,039	38.3	9,074	16,688	3,531	38.5
Tenn.	108,093	237,905	39,727	26.9	36,031	79,301	3,454	28.7
Texas	309,022	1,243,158	147,454	30.3	62,864	105,725	33,987	38.6
Utah	35,625	64,760	9,408	21.3	13,916	32,380	1,164	33.3
Vt.	12,996	18,606	2,927	47.0	1,585	33,155	38	11.6
Va.	99,174	285,194	51,637	37.7	39,669	142,597	20,071	36.8
Wash.	58,229	145,180	20,023	33.9	28,820	57,648	12,399	35.3
W.Va.	58,138	252,925	74,384	46.7	18,604	252,925	4,391	40.0
Wis.	119,780	208,343	74,293	45.0	39,528	87,486	19,651	40.0
Wyo.	12,225	30,074	3,062	26.9	5,894	10,024	2,930	35.8

* Unicameral legislature.

N.A. Not available.

a. Issues of the National Civic Review published by the National Municipal League indicate that these States apportioned seats in one or both houses after July 1, 1961 but prior to the United States Supreme Court decision in Baker v. Carr.

SOURCE: National Municipal League, Compendium on Legislative Apportionment, Second Edition (January, 1962).

APPENDIX C

COMPOSITION OF STATE LEGISLATURES[a/]

State	House of Representatives			Senate			No. of Counties	Party of Governor
	No. of Members	Democrats	Republicans	No. of Members	Democrats	Republicans		
Ala.	106	106	--	35	35	--	67	D
Alas.	40	22	18	20	13	7	24 (dist.)	D
Ariz.	80	52	28	28	24	4	14	R
Ark.	100	99	1	35	35	--	75	D
Calif.	80	46	33	40	28	11	58	D
Colo.	65	33	32	35	19	16	63	D
Conn.	294	115	179	36	24	12	8	D
Del.	35	19	16	17	11	6	3	D
Fla.	95	88	7	38	37	1	67	D
Ga.	205	203	2	54	53	1	159	D
Hawaii	51	33	18	25	11	14	5	R
Idaho	59	28	31	44	21	23	44	R
Ill.	177	88	89	58	27	31	102	D
Ind.	100	31	64	50	23	24	92	D
Iowa	108	30	78	50	15	35	99	R
Kans.	125	43	82	40	8	32	105	R
Ky.	100	80	20	38	30	8	120	D
La.	105	105	--	39	39	--	64 (par.)	D
Me.	151	40	111	33	3	30	16	R
Md.	123	116	7	29	26	3	23 (Balt.)	D
Mass.	240	154	84	40	25	15	14	R
Mich.	110	54	56	34	12	22	83	D
Minn.	135	nonpartisan		67	nonpartisan		87	R
Miss.	140	140	--	49	49	--	82	D
Mo.	157	100	57	34	28	6	114 (St. L.)	D
Mont.	94	40	54	56	38	17	56	R
Nebr.	----------			43	nonpartisan		93	D
Nev.	47	32	15	17	7	10	17	D
N.H.	400	137	258	24	6	18	10	R
N.J.	60	32	25	21	10	11	21	D
N.Mex.	66	59	7	32	28	4	32	R
N.Y.	150	66	83	58	25	33	62	R
N.C.	120	105	15	50	48	2	100	D
N.Dak.	115	41	72	49	21	28	53	D
Ohio	139	55	81	38	18	20	88	D

State	House of Representatives			Senate			No. of Counties	Party of Governor
	No. of Members	Democrats	Republicans	No. of Members	Democrats	Republicans		
Okla.	121	107	14	44	40	4	77	D
Oreg.	60	31	29	30	20	10	36	R
Pa.	210	109	101	50	25	25	67	D
R.I.	100	78	21	44	28	15	5	D
S.C.	124	123	--	46	46	--	46	D
S.Dak.	75	18	57	35	10	25	67	R
Tenn.	99	80	19	33	27	6	95	D
Texas	150	147	1	31	30	--	254	D
Utah	64	36	28	25	14	11	29	R
Vt.	246	52	190	30	7	23	14	R
Va.	100	95	5	40	37	3		D
Wash.	99	59	40	49	36	13	39	D
W.Va.	100	82	18	32	25	7	55	D
Wis.	100	44	55	33	12	20	72	D
Wyo.	56	21	35	27	10	17	23	D

a/ Number of Republican and Democratic legislators does not equal total membership of legislative body in some States because of third party members and vacancies.

SOURCE: The Book of the States, 1962-3 (Council of State Governments 1962), p. 41.

APPENDIX D

POPULATION OF STANDARD METROPOLITAN STATISTICAL AREAS IN 1960

State	State population	No. of SMSA's	Pop. of SMSA's	Percent SMSA pop. to state pop.	Pop. of SMSA central city	Percent SMSA central city to state pop.
U.S.	179,323,175	239*	112,885,178	63.0	58,004,334	37.3
Ala.	3,266,740	7	1,488,101	45.6	871,882	26.7
Alas.	226,167	--no SMSA--		--	--	--
Ariz.	1,302,161	2	929,170	71.4	652,062	50.1
Ark.	1,786,272	3	341,351	19.1	238,624	13.4
Calif.	15,717,204	10	13,590,821	86.5	5,458,871	34.7
Colo.	1,753,947	3	1,191,832	68.0	655,262	37.4
Conn.	2,535,234	9	1,966,427	77.6	945,331	37.3
Del.	446,292	1	307,446	68.9	95,827	21.5
D.C.	763,956	1	--	--	--	--
Fla.	4,951,560	7	3,246,826	65.6	1,268,966	25.6
Ga.	3,943,116	7	1,814,069	46.0	949,759	24.1
Hawaii	632,772	1	500,409	79.1	294,194	46.5
Idaho	667,191	--no SMSA--		--	--	--
Ill.	10,081,158	8	7,754,932	76.9	4,112,992	40.8
Ind.	4,662,498	8	2,241,307	48.1	1,400,812	30.0
Iowa	2,757,537	7	915,762	33.2	607,518	22.0
Kans.	2,178,611	3	813,804	37.4	374,182	17.2
Ky.	3,038,156	5	1,036,038	34.1	484,732	16.0
La.	3,257,022	5	1,627,157	50.0	1,059,927	32.5
Me.	969,265	2	190,950	19.7	137,819	14.2
Md.	3,100,689	2	2,425,346	78.2	939,024	30.3
Mass.	5,148,578	11	4,387,101	85.2	1,785,936	34.7
Mich.	7,823,194	10	5,720,692	73.1	2,570,259	32.9
Minn.	3,413,864	3	1,752,698	51.3	926,101	27.1
Miss.	2,178,141	1	187,045	8.6	144,422	6.6
Mo.	4,319,813	4	2,499,968	57.9	1,401,103	32.4
Mont.	674,767	2	152,434	22.6	108,208	16.0
Nebr.	1,411,330	2	530,043	37.6	430,119	30.5
Nev.	285,278	2	211,759	74.2	115,875	40.6
N.H.	606,921	2	107,637	17.7	88,282	14.5

State	State population	No. of SMSA's	Pop. of SMSA's	Percent SMSA pop. to state pop.	Pop. of SMSA central city	Percent SMSA central city to state pop.
N.J.	6,066,782	8	4,787,604	78.9	1,134,742	18.7
N.Mex.	951,023	1	262,199	27.6	201,189	21.2
N.Y.	16,782,304	7	14,352,693	85.5	9,356,289	55.8
N.C.	4,556,155	6	1,119,210	24.6	726,761	16.0
N.Dak.	632,446	1	66,947	10.6	46,662	7.4
Ohio	9,706,397	15	6,748,362	69.5	3,454,008	35.6
Okla.	2,328,284	3	1,021,610	43.9	647,635	27.8
Oreg.	1,768,687	2	890,978	50.4	423,653	24.0
Pa.	11,319,366	12	8,813,274	77.9	3,584,833	31.7
R.I.	859,488	2	740,819	86.2	288,499	33.1
S.C.	2,382,594	4	768,024	32.2	229,546	9.6
S.Dak.	680,514	1	86,575	12.7	65,466	9.6
Tenn.	3,567,089	4	1,632,747	45.8	910,234	25.5
Texas	9,579,677	21	6,072,706	63.4	4,484,035	46.8
Utah	890,627	3	600,770	67.5	314,092	35.3
Vt.	389,881	--no SMSA--		--	--	--
Va.	3,966,949	6	2,020,626	50.9	995,423	25.1
Wash.	2,853,214	4	1,800,945	63.1	886,674	31.1
W.Va.	1,860,421	4	575,137	30.9	251,024	13.5
Wis.	3,951,777	6	1,828,871	46.3	1,121,524	28.4
Wyo.	330,066	--no SMSA--		--	--	--

* Figure exceeds Bureau of Census determination of 213 Standard Metropolitan Statistical Areas as interstate SMSA's are included in figure for each affected State.

SOURCE: U.S. Bureau of the Census, United States Census of Population 1960, United States Summary, Number of Inhabitants, PC(1), 1A (U.S. Government Printing Office, 1961).

APPENDIX E

POPULATION OF THREE LARGEST COUNTIES AND RELATION TO TOTAL STATE POPULATIONS

State	Largest county	Second largest county	Third largest county	Total three largest counties	Percent of state pop. in largest counties
Ala.	634,864	314,301	169,210	1,118,375	34.2
Alaska (dists.)	82,833	43,412	10,070	136,315	60.3
Ariz.	663,510	265,660	62,673	991,843	76.2
Ark.	242,980	81,373*	70,174*	394,527	22.1
Calif.	6,038,771	1,033,011	908,209	7,797,991	50.8
Colo.	493,887*	143,742	127,520*	765,149	43.6
Conn.	689,555	660,315	653,589	2,003,459	79.0
Del.	307,446	73,195	65,651	(all)	100.0
Fla.	935,047	455,411	397,788	1,788,246	36.1
Ga.	556,326*	256,782*	188,299	1,001,407	25.4
Hawaii (Is.)	500,409	61,332	42,576	604,317	95.5
Idaho	93,460*	57,662*	49,342	200,464	30.0
Ill.	5,129,725*	313,459*	293,656*	5,736,840	56.9
Ind.	697,567	513,269	238,614	1,449,450	31.1
Iowa	266,315	136,899	122,482	525,696	19.1
Kansas	343,231	185,495*	143,792*	672,518	30.9
Ky.	610,947	120,700	131,906	863,553	28.4
La. (par.)	627,525	223,859	230,058	1,081,442	33.2
Maine	182,751	126,346	106,064	415,161	42.8
Md.[a]	939,024*	492,428*	357,395	1,788,847	57.7
Mass.	1,238,742*	791,329*	583,228	2,613,299	50.8
Mich.	2,666,297*	690,259*	405,804*	3,762,360	48.1
Minn.	842,854*	422,525*	231,588	1,496,967	43.8
Miss.	187,045	119,489	78,638	385,172	17.7
Mo.[a]	750,026*	703,532*	622,732	2,076,290	48.1
Mont.	73,418	79,016	46,454	198,888	29.5
Nebr.	343,490	155,272	35,757	534,519	37.9
Nev.	127,016	84,743	12,011	223,770	78.4
N.H.	178,161	99,029*	67,785*	344,975	56.8
N.J.	923,545	780,255	610,734	2,314,534	38.2
N.Mex.	262,199	58,948*	57,649*	379,796	39.9
N.Y.[a]	7,781,984*	1,300,171*	1,064,688	10,146,843	60.5
N.C.	272,111	246,520	189,428	708,059	15.5
N.Dak.	66,947*	48,677*	47,072	162,696	25.7
Ohio	1,647,895	864,121	682,962	3,194,978	32.9

State	Largest county	Second largest county	Third largest county	Total three largest counties	Percent of state pop. in largest counties
Okla.	439,506	346,038	90,803	876,347	37.6
Ore.	522,813	162,890	120,888	806,591	45.6
Pa.	2,002,512*	1,628,587	553,154*	4,184,253	37.0
R.I.	568,778*	112,619*	81,891	763,288	88.8
S.C.	216,382	209,776	200,102	626,260	26.3
S.Dak.	86,575	58,195	34,106	178,876	26.3
Tenn.	627,019	399,743	250,523	1,277,285	35.8
Texas	1,243,158	951,527	687,151	2,881,836	30.1
Utah	383,035	110,744	106,991	600,770	67.5
Vt.	74,425	46,719*	42,860*	164,004	42.1
Va.	304,869	275,002	219,958	799,829	20.2
Wash.	935,014	321,590	278,333	1,534,937	53.8
W.Va.	252,925	108,202	78,331	439,458	23.6
Wis.	1,036,041	222,095	158,249	1,416,385	35.8
Wyo.	60,149*	49,623	26,168*	135,940	41.2

a. Figure listed as largest county is population of largest city in the State.

* Denotes jurisdictions in the same Standard Metropolitan Statistical Area.

SOURCE: U.S. Bureau of the Census, United States Census of Population 1960, United States Summary, Number of Inhabitants, PC(1), 1A (U.S. Government Printing Office, 1961).

APPENDIX F

POPULATION OF THREE LARGEST CITIES AND RELATION TO TOTAL STATE POPULATION

State	Largest city	Second Largest city	Third Largest city	Total Three Largest cities	Percent of state pop. in three largest cities
Ala.	340,887	202,779	134,393	678,059	20.8
Alaska	44,237	13,311	9,074	66,622	29.5
Ariz.	439,170	212,892	33,772	685,834	52.7
Ark.	107,813	58,032	52,991	218,836	12.3
Calif.	2,479,015	740,316	573,224	3,792,555	24.1
Colo.	493,887	91,181	70,194	655,262	37.3
Conn.	162,178	156,748	152,048	470,974	18.6
Del.	95,827	11,404	7,319	114,550	25.7
Fla.	291,688	274,970	201,030	767,688	15.5
Ga.	487,455	149,245	116,779	753,479	19.1
Hawaii	294,194	25,966	25,622	345,782	54.6
Idaho	34,481	33,161	28,534	96,176	14.4
Ill.	3,550,404	126,706	103,162	3,780,272	37.5
Ind.	476,258	178,320	161,776	816,354	17.5
Iowa	208,982	92,035	89,159	390,176	14.1
Kansas	254,698	121,901	119,484	496,083	22.8
Ky.	390,639	60,376	62,810	513,825	16.9
La.	627,525	164,372	152,419	944,316	29.0
Maine	72,566	40,804	38,912	152,282	15.7
Md.	939,024	82,428	66,348	1,087,800	35.1
Mass.	697,197	186,587	174,463	1,058,247	20.6
Mich.	1,670,144	196,940	177,313	2,044,397	26.1
Minn.	482,872	313,411	106,884	903,167	26.5
Miss.	144,422	49,374	44,053	237,849	10.9
Mo.	750,026	475,539	95,865	1,321,430	30.6
Mont.	55,357	52,851	27,877	136,085	20.2
Nebr.	301,598	128,521	25,742	455,861	32.3
Nev.	64,405	51,470	18,422	134,297	47.1
N.H.	88,282	39,096	28,991	156,369	25.8
N.J.	405,220	276,101	143,663	824,984	13.6

State	Largest city	Second Largest city	Third Largest city	Total Three Largest cities	Percent of state pop. in three largest cities
N.Mex.	201,189	39,593	33,394	274,176	28.8
N.Y.	7,781,984	532,759	318,611	8,633,354	51.4
N.C.	201,564	119,574	111,135	432,273	9.5
N.Dak.	46,662	34,451	30,604	111,717	17.7
Ohio	876,050	502,550	471,316	1,849,916	19.1
Okla.	324,253	261,685	61,697	647,635	27.8
Ore.	372,676	50,977	49,142	472,795	26.7
Pa.	2,002,512	604,332	138,440	2,745,284	24.3
R.I.	207,498	81,001	68,504	357,003	41.5
S.C.	97,433	66,188	65,925	229,546	9.6
S.Dak.	65,466	42,399	23,073	130,938	19.2
Tenn.	497,524	170,874	130,009	798,407	22.4
Texas	938,219	679,684	587,718	2,205,621	23.0
Utah	189,454	70,197	36,047	295,698	33.2
Vt.	35,531	18,325	10,387	64,243	16.5
Va.	304,869	219,958	163,401	688,228	17.3
Wash.	557,087	181,608	147,979	886,674	31.1
W.Va.	85,796	83,627	53,400	222,823	12.0
Wis.	741,324	126,706	89,144	957,174	24.2
Wyo.	43,505	38,930	17,520	99,955	30.3

SOURCE: U.S. Bureau of the Census, United States Census of Population 1960, United States Summary, Number of Inhabitants, PC(1), 1A (U. S. Government Printing Office, 1961).

APPENDIX G

SELECTED YEARS OF SCHOOL COMPLETED BY PERSONS 25 YEARS OLD AND OVER, TOTAL STATE, URBAN AND RURAL, 1960

State	Percentage that have completed the following years of school--								
	8 years elementary			4 years high			4 or more yrs. college		
	Total	Urban	Rural	Total	Urban	Rural	Total	Urban	Rural
U.S.	17.5	16.3	20.6	24.6	25.7	21.9	7.7	8.9	4.7
Ala.	10.8	10.2	11.6	18.6	22.6	13.4	5.7	7.9	2.9
Alaska	10.6	10.0	11.1	32.3	36.3	29.5	9.5	11.4	8.2
Ariz.	14.6	14.7	14.1	25.3	26.9	20.0	9.1	9.7	7.1
Ark.	18.0	14.0	21.2	17.9	23.8	13.2	4.8	7.8	2.5
Calif.	13.7	13.2	16.5	28.3	28.8	25.2	9.8	10.3	7.0
Colo.	16.8	15.3	21.0	28.9	29.6	27.0	10.7	11.9	7.2
Conn.	18.8	19.1	17.4	25.5	25.0	27.1	9.5	8.8	12.1
Del.	15.5	14.7	17.2	25.0	25.7	23.4	10.1	11.7	6.7
D.ofC.	11.7	11.7	--	21.9	21.9	--	14.3	14.3	--
Fla.	14.6	14.4	15.4	25.1	26.2	21.6	7.8	8.5	5.5
Ga.	9.5	8.8	10.4	18.4	21.6	14.2	6.2	8.4	3.4
Hawaii	11.3	10.8	13.1	29.6	32.0	21.5	9.0	10.0	5.5
Idaho	20.2	17.5	22.8	28.9	29.7	28.1	7.2	9.8	4.8
Ill.	21.9	20.3	29.0	24.5	24.3	25.1	7.3	8.0	4.2
Ind.	21.0	19.3	23.8	28.1	27.1	29.8	6.3	7.2	4.6
Iowa	24.3	20.3	28.9	30.3	30.1	30.5	6.4	8.8	3.7
Kansas	21.8	18.0	27.4	29.3	29.5	29.0	8.2	10.1	5.2
Ky.	24.3	21.5	26.8	16.5	20.9	12.7	4.9	7.1	3.0
La.	9.9	10.6	8.5	18.9	21.4	14.3	6.7	8.4	3.6
Maine	20.6	18.5	22.9	29.1	28.9	29.3	5.5	6.2	4.7
Md.	13.8	14.1	12.9	22.7	23.1	21.7	9.3	10.2	6.7
Mass.	15.5	15.8	14.3	28.8	28.6	30.0	8.8	8.6	10.1
Mich.	19.4	17.5	24.8	26.0	26.2	25.6	6.8	7.6	4.4
Minn.	26.4	20.9	35.6	26.0	28.7	21.4	7.5	9.9	3.5
Miss.	13.7	10.9	15.5	17.3	23.2	13.4	5.6	9.0	3.3
Mo.	25.0	22.1	30.9	22.6	23.8	20.2	6.2	7.6	3.4
Mont.	21.6	18.8	24.4	28.1	29.7	26.4	7.5	9.7	5.3
Nebr.	23.1	17.9	29.2	30.3	31.5	28.9	6.8	9.4	3.7
Nev.	13.8	13.4	15.0	32.0	32.7	30.4	8.3	8.8	7.2
N.H.	21.9	21.7	22.1	27.2	26.6	28.0	7.1	6.8	7.6

State	Percentage that have completed the following years of school--								
	8 years elementary			4 years high			4 or more yrs. college		
	Total	Urban	Rural	Total	Urban	Rural	Total	Urban	Rural
N.J.	18.4	18.3	18.7	24.6	24.5	25.3	8.4	8.5	7.8
N.Mex.	12.2	11.5	13.6	24.8	27.7	19.0	9.8	11.8	5.7
N.Y.	18.8	18.6	20.1	24.0	23.8	25.2	8.9	9.1	7.4
N.C.	9.3	8.8	9.7	18.9	20.8	17.5	6.3	9.7	3.8
N.Dak.	30.4	23.1	34.3	21.9	25.8	19.8	5.6	9.9	3.3
Ohio	19.1	17.6	23.2	27.3	26.8	28.8	7.0	7.9	4.3
Okla.	17.9	15.1	22.5	22.9	25.7	18.4	7.9	10.0	4.3
Ore.	19.1	17.3	22.4	28.7	29.2	27.8	8.5	10.2	5.4
Pa.	20.4	18.3	26.2	25.5	25.8	24.8	6.4	7.1	4.6
R.I.	18.8	18.7	18.9	21.8	21.6	23.4	6.6	6.5	6.8
S.C.	9.0	8.7	9.2	17.0	20.1	14.6	6.9	10.1	4.4
S.Dak.	29.8	23.1	34.0	25.0	28.4	22.9	5.7	9.3	3.4
Tenn.	18.4	15.6	21.7	18.2	22.3	13.6	5.5	7.6	3.1
Texas	10.7	10.0	13.0	21.8	23.3	17.5	8.0	9.4	4.2
Utah	12.7	12.2	14.2	30.6	30.5	30.8	10.2	11.3	6.7
Vt.	23.9	19.4	26.8	26.0	28.0	24.7	7.3	8.7	6.4
Va.	8.6	9.0	8.0	20.7	24.1	16.3	8.4	11.4	4.4
Wash.	17.2	15.9	20.0	30.5	30.9	29.8	9.3	10.7	6.2
W.Va.	23.5	19.4	26.4	19.1	24.9	15.0	5.2	8.3	3.1
Wis.	24.9	21.4	31.5	26.2	28.0	23.0	6.7	8.4	3.5
Wyo.	17.3	14.9	20.6	31.1	32.2	29.5	8.7	10.9	5.6

SOURCE: U.S. Bureau of the Census, United States Census of Population: 1960. General Social and Economic Characteristics, Series PC(1)-C (U.S. Government Printing Office, 1961).

APPENDIX H

MEDIAN INCOME IN 1959 OF MALE PERSONS WITH INCOME, URBAN AND RURAL, BY STATE

State	Median income in 1959, by area--			
	State	Urban	Rural nonfarm	Rural farm
United States	$4,103	$4,532	$3,297	$2,098
Ala.	2,683	3,485	2,171	1,234
Alaska	4,079	6,083	3,024	4,989
Ariz.	4,069	4,398	3,038	2,470
Ark.	2,135	2,973	1,816	1,354
Calif.	4,966	5,156	3,614	3,516
Colo.	4,191	4,514	3,421	2,957
Conn.	4,963	4,917	5,208	3,413
Del.	4,456	5,033	3,569	2,777
District of Columbia	3,818	3,818	--	--
Fla.	3,306	3,485	2,839	2,190
Ga.	2,715	3,331	2,290	1,320
Hawaii	3,717	4,157	2,847	3,101
Ida.	3,841	4,327	3,758	3,005
Ill.	4,886	5,132	4,193	2,706
Ind.	4,389	4,684	4,236	3,017
Iowa	3,700	4,434	3,496	2,456
Kans.	3,891	4,467	3,306	2,565
Ky.	2,792	3,989	2,302	1,572
La.	3,042	3,542	2,308	1,354
Me.	3,265	3,619	3,027	2,253
Md.	4,448	4,844	3,510	2,524
Mass.	4,386	4,370	4,520	3,371
Mich.	4,848	5,111	4,388	2,943
Minn.	3,996	4,828	3,400	2,085
Miss.	1,807	2,768	1,629	948
Mo.	3,700	4,447	2,713	1,900
Mont.	3,905	4,412	3,560	2,969
Nebr.	3,481	4,321	3,051	2,407
Nev.	4,903	5,312	4,142	3,196
N. H.	3,837	4,002	3,674	2,670

State	Median income in 1959, by area--			
	State	Urban	Rural nonfarm	Rural farm
N.J.	$5,016	$5,070	$4,586	$3,050
N.Mex.	3,941	4,578	2,756	2,627
N.Y.	4,619	4,704	4,364	2,786
N.C.	2,538	3,196	2,483	1,326
N.D.	3,110	4,133	3,041	2,330
Ohio	4,767	4,990	4,471	2,762
Okla.	3,281	3,951	2,316	2,336
Ore.	4,436	4,699	4,246	3,235
Pa.	4,258	4,402	4,016	2,772
R.I.	3,811	3,794	3,942	3,040
S.C.	2,437	3,100	2,308	1,138
S.D.	2,968	4,046	2,693	2,160
Tenn.	2,625	3,403	2,319	1,329
Texas	3,394	3,827	2,447	2,034
Utah	4,529	4,716	4,126	3,368
Vt.	3,317	3,849	3,292	2,130
Va.	3,250	4,042	2,672	1,606
Wash.	4,626	4,965	4,094	3,324
W. Va.	3,395	4,292	3,003	1,787
Wisc.	4,398	5,013	3,865	2,420
Wyo.	4,386	4,831	4,177	3,011

Source: U.S. Bureau of the Census, United States Census of Population: 1960, General Social and Economic Characteristics, Series PC(1)-1C (U.S. Government Printing Office, 1961).

APPENDIX I

SUMMARY STATUS OF COURT CASES INVOLVING APPORTIONMENT OF STATE LEGISLATURES

/For details of court action see: Council of State Governments, Legislative Reapportionment in the States: A Summary of Action Since June 1960, (Chicago, September 14, 1962); National Municipal League, Court Decisions on Legislative Apportionment, Vols. I and II, (New York 1962); and The Municipal Attorney, a monthly publication of the National Institute of Municipal Law Officers./

As of November 1, 1962, the apportionment of at least 30 State legislatures has been challenged in State and/or Federal courts. In a number of instances suits were filed prior to the United States Supreme Court's decision in Baker v. Carr. 1/ Suits have been brought in State courts of 17 States and Federal courts of 23 States. Decisions speaking to the constitutionality of actual apportionments have been rendered in the courts of 12 States (Colorado, Idaho, Kansas, Maryland, Michigan, Mississippi, New Hampshire, Rhode Island, and Vermont, post Baker v. Carr, and Indiana, New Jersey, and Oregon pre Baker v. Carr). Federal courts in six States (Alabama, Florida, Georgia, New York, Oklahoma, and Tennessee) have rendered similar opinions.

The Supreme Court in Baker v. Carr held: "...only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to relief; and (c) that the appellants have standing to challenge the Tennessee apportionment statutes." 2/ While the court did not spell out specific standards for determining the constitutionality of State apportionment plans, it did say:

> Nor need the appellants...ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts, since enactment of the Fourteenth

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1/ 369 U.S. 186 (1962).

2/ 369 U.S. 186, 197-8.

> Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy but simply arbitrary and capricious action. 3/

Although judicial standards under the Fourteenth Amendment "are well developed and familiar," courts, both State and Federal, have not been consistent in applying them to apportionment of State legislatures. This inconsistency eventually will have to be resolved by the United States Supreme Court. As of November 1, 1962, various State and Federal District Courts appear to have adopted one of four possible standards for apportionment of State legislatures. One standard would require that both houses of a legislature be apportioned according to population. A second standard would require that one house be apportioned according to population, and that population be a factor in apportioning the second house. A third standard is that only one house be apportioned according to population. A final possible standard is that neither house of a legislature need be apportioned according to population. Deviations from population, in any of the above alternatives, presumably are based on a "rational plan" for the particular State.

Language from four Federal District Court opinions can be cited to support each of the four possible standards for apportionment of State legislatures. Supporting the first standard is:

> Under the Oklahoma Constitution, the principle of numerical equality is the rule, and any deviation is the exception. Jones v. Freeman, 193 Okla. 554, 146 P, 2d 564. We think this principle should also be our guideline in determining whether the equal protection of the laws has been honored in the State electorate process. 4/

Supporting the second standard is:

> One reason for the rule embodied in the Constitution of the State is to afford a measure of protection to governmental units or subdivisions of the State not having a sufficient number of voters to equal the full ratio but yet having a substantial interest in State legislative policy.

3/ 369 U.S. 186, 226.

4/ Moss v. Burkhart, 207 F. Supp. 885, 893 (U.S.D.C., W.D., Okla., 1962).

> Such a State plan for distribution of legislative strength, at least in one house of a bicameral legislature, cannot, in our opinion, be characterized as per se irrational or arbitrary. 5/

Supporting the third standard is:

> ..., we determine and hold that so long as the legislature of the State of Georgia does not have at least one house elected by the people of the State apportioned to population, it fails to meet constitutional requirements. 6/

Supporting the final standard is:

> The system is not irrational. It clearly gives weight to population with the State's counties which forms a basis for the ingredient of area, accessibility and character of interest. 7/

5/ Baker v. Carr, 206 F. Supp. 341, 345 (U.S.D.C., M.D., Tenn., 1962).

6/ Toombs v. Fortson, 205 F. Supp. 248, 257 (U.S.D.C., N.D., Ga., 1962).

7/ WMCA, Inc. v. Simon, 208 F. Supp. 369, 376 (U.S.D.C., S.D., N.Y., 1962). The court was reviewing the apportionment of the New York State legislature where seats in neither of the two houses of the State legislature is apportioned strictly on the basis of population, though population is a significant factor in the apportionment formulas of both houses.

APPENDIX J

POSSIBLE ALTERNATIVE FORMULAS FOR THE APPORTIONMENT OF STATE LEGISLATURES

The discussion below places emphasis on apportionment formulas presently used by some States. For purposes of illustration, two tables at the end of this appendix show how three possible apportionment formulas would operate in two hypothetical States. The hypothetical States were set up to represent what might be called typical States. State A, with few counties, contains one large city and several large counties in which reside a majority of the population. State B, with many counties, also contains one large city, but the majority of the State population is not concentrated in a small number of counties.

The presentation made here has obvious limitations. Not only is it possible to use one of the formulas discussed below for apportioning one house of the legislative body and a different formula for the second house, but it is also possible to combine various aspects of two or more of these formulas in the apportionment of one legislative body.

The three formulas used in the hypothetical apportionment are: (1) that contained in the Commission's Recommendations (both houses apportioned according to population with a maximum deviation of 10 percent from the State ratio; (2) the method of equal proportions; and (3) a combination of population and area as incorporated in the proposed Michigan constitution and as approved by the voters of Nebraska in November, 1962. The following discussion of alternative apportionment formulas highlights the impact they would have on the distribution of seats under the three formulas as applied to the hypothetical States.

The extent to which any of the formulas which modify population as the basis of apportionment may be used by an individual State is, of course, dependent on whether or not they satisfy the requirements of the Constitution of the United States.

I. BOTH HOUSES APPORTIONED STRICTLY ACCORDING TO POPULATION.

A. Definition of Population

In some instances the definition of the population factor--number of people, qualified voters, or actual voters--might result in the residents of particular subdivisions of the State electing a different number of representatives to the legislature. Experience has shown that these differences would be insignificant in most States. In addition, a particular type of area, e.g. urban or rural, might well participate in elections in different degrees in different States.

B. Strict Population

Regardless of which definition of the population factor is adopted by a State, it will be administratively impossible to insure that each legislator represents a constituency of the exact same size. The Commission has recommended that the variation in size of constituency be limited to 10 percent of the State ratio. A variation of this size would insure that at least 45 percent of the State's population elect one-half of the legislative body. In the hypothetical States it would require at least 45.9 percent of the population to elect 61 members of the 120 member house and 48.7 percent to elect 16 members of the 30 member senate. Different deviation figures, of course, would result in different percentages necessary to elect a majority of the legislative body, but in all instances if half the districts were at either extreme of the permissible deviation it would require 50 percent minus one-half of the permissible deviation to elect 50 percent of the members of the legislative body. Thus if the permissible deviation were 25 percent of the State ratio, it would be possible for 37.5 percent of the State's population to elect one-half the members of the legislative body.

A number of States permit counties with one-half the State ratio to elect members to the legislative body. If this were applied to the hypothetical States, the results would be as follows:

1. In State A the people residing in each jurisdiction would elect at least one member to the house and the people residing in jurisdictions 5, 6, and 9 would, in addition to those noted in Column 3, elect a member to the senate.

2. In State B the people of an additional 12 jurisdictions would elect one member to the house and the people of an additional seven jurisdictions would elect a member to the senate.

Use of the maximum permissible deviation of 10 percent with the one-half State ratio would be possible in State A without greatly disrupting the basic distribution of legislative seats and without significantly reducing the percent of the State's population that would elect a majority of the legislative body. Similarly, there would be relatively little difficulty in using the combined formula for apportionment of the house of State B, but the senate of State B would present some difficulty. In the latter instance, after apportioning seven seats to the jurisdictions with one-half the State ratio, the remaining 23 seats would have to be apportioned among 3,039,930 people. The ideal ratio for this distribution would be 132,217 people in each senatorial district. This ideal is so close to the maximum permissible deviation of 134,357 as to create great difficulties in drawing senatorial district lines.

C. Weighted Voting in the Legislature

Another formula that might be used to secure apportionment strictly according to population would be a weighting of the vote of individual legislators in the legislative body. Such a system would permit the people of each jurisdiction of the State to elect at least one member of the legislative body. The more populous jurisdictions could elect more than one member of the legislative body. The basis upon which a legislator's vote is weighted might be any of the factors mentioned above or the actual vote cast for the legislator in the election. Use of mechanical tallies of legislative votes would facilitate use of a weighted vote formula, but procedural matters, such as votes in committees, might present difficulties.

II. MODIFICATIONS OF POPULATION IN AN APPORTIONMENT FORMULA.

A. Based on Political Subdivisions

It is assumed that where limitations are placed on representation from the more populous counties, that seats to which they would otherwise be entitled will be distributed according to population but it is possible for the size of the legislative body to vary under a particular formula. (See Michigan and Missouri houses of representatives and New York senate.)

1. The residents of each political subdivision of a given type, e.g. the county, could be guaranteed the right to elect at least one representative to the legislative body. Additional members of the body would be apportioned among the subdivisions of the State according to population. A mathematical formula--the method of equal proportions--

is one of several formulas that have been developed to apportion legislative seats where the residents of each subdivision are entitled to elect at least one member of the legislative body. This formula is used for the apportionment of seats in the United States House of Representatives and for the apportionment of a number of State legislative bodies.

The method of equal proportions is applied to the hypothetical States in Column 4 of the accompanying tables. This formula could not be applied to the senate of State B, as that State contains more subdivisions than there are seats in the senate. The three legislative bodies--house and senate in State A and house in State B--show the effect of the relationship between the number of subdivisions and size of the legislative body when this formula is used. The larger the size of the legislative body in relation to the number of subdivisions, the more closely the apportionment will be to the actual population distribution. Thus, in State A, 48.8 percent of the State's population would elect a majority of the house, while only 27.6 percent would elect a majority in the senate. Approximately 43 percent of the population of State B would be able to elect a majority of the house under the method of equal proportions.

To the extent that residents of political subdivisions would represent different interests in the legislative process, an apportionment formula using the method of equal proportions would guarantee that such districts are represented in the legislature. But, as seen from the example, the extent to which use of such an apportionment formula will dilute the population factor in apportioning legislative seats will vary depending upon the size of the legislative body and the number of subdivisions guaranteed the right to elect at least one member to that body.

2. A State might apportion seats on the basis of population, but limit the number of subdivisions that can be joined together in forming legislative districts (e.g., senate of California, three, and senate of Kentucky, two). The extent to which this procedure will modify population as a factor in the apportionment formula again will depend on the size of the legislative body and the number of political subdivisions in the State. The percent of the State's population required to elect a majority of the legislative body under such a formula would be somewhere between the percentages necessary under strict population (Column 3) and the method of equal proportions (Column 4).

3. A State might limit the number of representatives that the people of a particular jurisdiction might elect to the legislative body. The limit might be expressed in terms of a percentage of the members of

the total body (e.g., one-third per county, New York senate) or a numerical limit (e.g., one per county, Iowa senate; five per county, Maine senate). The effects of limitations of this type would vary greatly from State to State. Thus, in the hypothetical States a one-third limit would affect the distribution of seats in State A, but not in State B. A limitation of less than 27.5 percent would be necessary to affect the distribution of seats in State B. The most common numerical limitation presently used by the States is a maximum of one member per county in the smaller of the two bodies of the legislature. The effects of a numerical limitation in States A and B can be easily ascertained from the tables.

4. A State might require progressively larger ratios for the people of its subdivisions to elect more than one representative to the legislative body. The formula for apportioning seats in the Missouri house is based partially on this approach, while the apportionment of seats in the Texas house is based on a modification of this approach. An example of such a formula as applied to the senate of State B might be as follows: (1) jurisdictions entitled to at least one senator may not be split; (2) in order to elect two senators a jurisdiction must have at least two times the State population ratio; and (3) for each senator over two, a jurisdiction must have one and one-half times the State ratio. As thus applied, jurisdictions 19b, 27, 30b, 38, 39, and 42 would elect the number of senators designated in Column 3 and would not be joined with other jurisdictions to elect additional senators, while jurisdiction 19a would elect four instead of six members of the State senate.

B. Based on Area or Geography

The two newest States, Alaska and Hawaii, were the first to specifically incorporate geographic features into a formula apportioning seats in a State legislative body. This was accomplished by dividing the States into districts based on the geographic features of the State, e.g., islands and mountain ranges. The residents of each district are entitled to elect a minimum number of representatives to the legislative body and the remaining membership is apportioned among the districts according to population.

The proposed new Michigan constitution and a proposal approved by the voters of Nebraska specifically incorporates square miles into the apportionment formula. The impact of this type of approach, using the formula proposed in Michigan, plus a 10 percent permissible deviation in States A and B, is shown in Column 7.

C. Based on Economic or Fiscal Characteristics

The only State using economic or fiscal characteristics in apportioning legislative seats is New Hampshire. Its senate is apportioned according to "direct taxes" paid. The actual distribution according to this formula is so close to the distribution that would be obtained by basing apportionment strictly on population as to cast doubt on the likelihood that the introduction of economic factors into apportionment formulas would be of value in many States. Since wealth, income, and economic activity generally tend largely to be concentrated in urban areas, it is questionable whether use of such factors is a practical alternative to population.

EXPLANATORY NOTE TO TABLES 1 AND 2

Three alternative apportionment formulas are applied to the distribution of seats in a legislature of two hypothetical States. The formulas used in the two tables are:

1. Strict population with a maximum deviation of 10 percent from the State ratio (Column 3);

2. The method of equal proportions (Column 4); and

3. A formula giving a weight of 20 percent to area and 80 percent to population and permitting no greater than a 10 percent deviation from the State ratio in determining legislative districts (Column 7).

The State ratios and permissible deviations therefrom are shown at the end of Columns 3 and 7. In the first instance these ratios are expressed in terms of population and, second, in terms of percentages. In applying these two formulas, the more populous jurisdictions within the hypothetical State could elect a varying number of representatives to the legislative body. The range of representatives from such jurisdictions is limited by the 10 percent deviation figure. The plus appearing in Columns 3 and 7 indicates that at least a portion of the particular jurisdiction will have to be combined with another jurisdiction to insure that the 10 percent deviation requirement is satisfied. Those jurisdictions not entitled to a representative will also have to be combined with other jurisdictions to satisfy the deviation requirement. The last line indicates the approximate minimum percentage of the total population of the State that would be required to elect a majority of the legislative body, assuming that the jurisdictions entitled to a range of representatives would be authorized to elect the minimum number--e.g., in State A, jurisdiction 17a would send 32 representatives to the house.

The apportionment formula presented in Column 8 was derived in the following manner. The percent of the State's area and population within each jurisdiction was determined (Column 6a and b respectively). The population percentage was then multiplied by four and added to the area percentage. This sum was then divided by five and appears in Column 6c. A State ratio was next obtained by dividing 100 by the number of representatives in the legislative body. Finally, the 10 percent deviation recommended by the Commission for strict population was applied to this ratio to determine the permissible limits on the size of individual legislative districts.

Column 4 shows the distribution of legislative seats under the method of equal proportions. Since the method of equal proportions cannot be applied unless each jurisdiction is to elect at least one representative, it has not been applied to the senate in State B.

The size of the legislative bodies in both hypothetical States is the same and they represent approximate averages of the size of State legislatures. At the present time, excluding Nebraska, the average State house has a membership of 120 and the average State senate a membership of 38.

STATE A - LEGISLATIVE APPORTIONMENT

(Legislative body - house 120, senate 30)

(1)	(2)	(3)		(4)		(5)	(6a)	(6b)	(6c)	(7)	
		10% deviation from state population ratios		Method of equal proportions		Area in square miles	Twenty percent area, eighty percent population			Twenty percent area, eighty percent population	
Jurisdiction	Population	House	Senate	House	Senate		Area	Population	Total	House	Senate
1	85,200	4	1	4	1	430	4.9482	3.2546	3.593	4	1
2	204,300	9-10	2+	9	2	420	4.8331	7.8043	7.210	8-9	2
3	16,400	--	--	1	1	610	7.0196	.6265	1.905	2+	--
4	20,100	1	--	1	1	220	2.5316	.7678	1.121	1+	--
5	53,700	2+	--	2	1	340	3.9125	2.0513	2.424	3	--
6	48,400	2+	--	2	1	400	4.6030	1.8489	2.400	3	--
7	34,200	1+	--	2	1	580	6.6743	1.3064	2.380	3	--
8	30,100	1+	--	1	1	640	7.3648	1.1498	2.393	3	--
9	73,500	3+	--	3	1	320	3.6824	2.8077	2.983	3+	--
10	40,300	2	--	2	1	740	8.5155	1.5395	2.935	3+	--
11	79,600	4	1	4	1	250	2.8769	3.0407	3.008	4	1
12	34,100	1+	--	2	1	400	4.6030	1.3026	1.963	2+	--
13	15,200	--	--	1	1	360	4.1427	.5806	1.293	1+	--
14	290,600	13-14	3+	13	2	520	5.9839	11.1009	10.078	11-13	3
15	300,100	13-15	3+	14	2	260	2.9919	11.4638	9,769	11-13	3
16	90,600	4	1	4	1	480	5.5236	3.4609	3,873	5	1+
17	1,100,000					500					
a) central city	750,100	32-38	8-9	34	5	80	.9206	28.6538	23.107	26-30	7
b) suburban county	349,900	15-17	4	16	3	420	4.8331	13.3662	11.660	13-15	3+
18	20,400	1	--	1	1	390	4.4879	.7793	1.521	2	--
19	42,600	2	--	2	1	510	5.8688	1.6273	2.476	3	--
20	38,400	1+	--	2	1	320	3.6824	1.4669	1.910	2+	--
Total	2,617,800	111-123+	23-4+	120	30	8,690	99.9998	99.9998	100.002	113-124+	21+
State ratio		21,815	87,260							.8333	3.3333
State ratio + 10%		23,997	95,986							.9166	3.6666
State ratio - 10%		19,634	78,534							.7500	3.0000
App. % of population electing majority of body		45.9	48.7	48.7	27.6					37.4	42.5

STATE B - LEGISLATIVE APPORTIONMENT

(Legislative body - house 120, senate 30)

(1)	(2)	(3)		(4)		(5)	(6a)	(6b)	(6c)	(7)	
		10% deviation from state population ratios		Method of equal proportions		Area in square	Twenty percent area, eighty percent population			Twenty percent area, eighty percent population	
Jurisdiction	Population	House	Senate	House	Senate	miles	Area	Population	Total	House	Senate
1	6,000	--	--	1		840	2.9432	.1637	.720	--	--
2	15,200	--	--	1		620	2.1724	.4148	.766	1	--
3	51,600	1+	--	2		850	2.9783	1.4082	1.722	2	--
4	19,430	--	--	1		620	2.1724	.5303	.859	1	--
5	102,640	3+	--	3		1,200	4.2046	2.8011	3.082	4	1
6	18,400	--	--	1		1,100	3.8542	.5021	1.173	1+	--
7	73,200	2+	--	2		940	3.2936	1.9977	2.257	3	--
8	20,300	--	--	1		320	1.1212	.5540	.667	--	--
9	26,400	--	--	1		830	2.9082	.7205	1.158	1+	--
10	82,600	3	--	3		460	1.6118	2.2542	2.126	2+	--
11	91,300	3	--	3		840	2.9432	2.4916	2.582	3	--
12	38,400	1+	--	1		240	.8409	1.0480	1.007	1+	--
13	8,900	--	--	1		360	1.2614	.2429	.447	--	--
14	33,200	1	--	1		480	1.6819	.9060	1.061	1+	--
15	26,400	--	--	1		220	.7708	.7205	.731	--	--
16	21,300	--	--	1		330	1.1563	.5813	.696	--	--
17	106,400	3+	--	3		480	1.6819	2.9037	2.659	3	--
18	38,400	1+	--	1		450	1.5767	1.0480	1.154	1+	--
19	1,010,000					320					
a)	741,000	23-26	6	22		90	.3153	20.2223	16.241	18-21	5
b)	269,000	9	2+	8		230	.8059	7.3412	6.034	7-8	2
20	8,200	--	--	1		840	2.9432	.2238	.768	1	--
21	24,900	--	--	1		830	2.9082	.6795	1.125	1+	--
22	37,400	1+	--	1		670	2.3476	1.0207	1.286	1+	--
23	9,100	--	--	1		870	3.0484	.2483	.808	1	--
24	18,300	--	--	1		430	1.5067	.4994	.701	--	--
25	42,600	1+	--	1		370	1.2964	1.1626	1.189	1+	--
26	125,100	4	1	4		1,200	4.2046	3.4140	3.572	4	1
27	204,300	7	1+	6		620	2.1724	5.5755	4.895	6	1+
28	20,100	--	--	1		840	2.9432	.5485	1.027	1+	--

STATE B - LEGISLATIVE APPORTIONMENT (continued)

(1)	(2)	(3)		(4)		(5)	(6a)	(6b)	(6c)	(7)	
		10% deviation from state population ratios		Method of equal proportions		Area in square	Twenty percent area, eighty percent population			Twenty percent area, eighty percent population	
Jurisdiction	Population	House	Senate	House	Senate	miles	Area	Population	Total	House	Senate
29	10,600	--	--	1		620	2.1724	.2893	.666	--	--
30	240,000					1,300					
a)	92,500	3	--	3		520	1.8220	2.5244	2.384	3	--
b)	147,500	5	1+	4		780	2.7330	4.0254	3.767	5	1+
31	84,000	3	--	3		230	.8059	2.2924	1.995	2+	--
32	20,600	--	--	1		420	1.4716	.5622	.744	--	--
33	3,400	--	--	1		360	1.2614	.0928	.327	--	--
34	48,900	1+	--	2		580	2.0322	1.3345	1.474	1+	--
35	111,200	4	1	3		370	1.2964	3.0347	2.687	3	--
36	45,600	1+	--	1		420	1.4716	1.2444	1.290	1+	--
37	20,100	--	--	1		820	2.8732	.5485	1.013	1+	--
38	149,600	5	1+	4		960	3.3637	4.0827	3.939	5	1+
39	142,300	5	1+	4		360	1.2614	3.8834	3.359	4	1
40	107,600	3+	--	3		820	2.8732	2.9365	2.924	3+	--
41	60,400	2	--	2		380	1.3315	1.6484	1.585	2	--
42	206,400	7	1+	6		560	1.9622	5.6328	4.899	6	1+
43	17,300	--	--	1		610	2.1374	.4721	.805	1	--
44	10,300	--	--	1		410	1.4366	.2811	.512	--	--
45	11,600	--	--	1		520	1.8220	.3166	.618	--	--
46	94,300	3	--	3		630	2.2074	2.5735	2.500	3	--
Total	3,664,270	105-108+	15+	120		28,540	100.0000	100.0000	100.000	105-109+	14+
State Ratio		30,536	122,142							.8333	3.333
State Ratio + 10%		33,589	134,357							.9166	3.666
State Ratio - 10%		27,482	109,928							.7500	3.000
App. % of population electing majority of body		45.9	48.7	42.9						38.0	43.0*

* Population of jurisdictions specifically allocated seats.

APPENDIX K

LEGISLATIVE APPORTIONMENT PROCEDURE

The United States Supreme Court decision in Baker v. Carr established the principle that Federal courts have jurisdiction to hear suits involving the apportionment of state legislatures. While the actual formulas for apportioning seats in the legislative bodies of a state is a matter of individual state concern, subject to whatever limits may be imposed by the United States Constitution, it is essential that state constitutions specifically provide procedures that will insure that the states themselves are in a position to comply with their constitutional requirements for periodic reapportionment of the legislature. The suggested constitutional amendment below is designed to insure compliance with apportionment provisions of the state constitution. The suggested amendment deals only with apportionment procedure and does not treat the substantive issues of the bases (population, political subdivision, etc.) of allocating state legislative seats.

The language is modeled after the provisions of the Oregon constitution, although it should be noted that at least 14 states have constitutional provisions which are designed to insure periodic apportionment of their state legislatures. Some of these states have removed responsibility for apportionment completely from the hands of the state legislature. Others have directed that an individual state official or a separate apportionment board undertake the apportionment only after the legislature itself has failed to enact an apportionment law or failed to apportion in accordance with the provisions of the state constitution.

Section 1 would spell out the formula for apportioning seats in the state legislature and the appropriate provisions should be inserted by each state. The formula should be as clear and as specific as possible in order to permit the State Supreme Court to determine easily whether the apportionment statute complies with the state constitutional formula.

Section 2 directs the state legislature to reapportion itself in the first legislative session immediately following the decennial census of the United States. It should be noted that several states still require reapportionment, based on population, at intervals which do not coincide with the decennial census. This is a carry-over from the 18th century when states themselves conducted censuses. Since state censuses are no longer taken, it is suggested that the timing of reapportionment be keyed to the Federal census.

Section 3 gives the State Supreme Court original jurisdiction to determine whether a reapportionment statute enacted by the legislature complies with the provisions of the state constitution. Any qualified voter of the state can bring this question before the court within 30 days after enactment of the reapportionment. If the court finds that the reapportionment does not comply with the constitution, the court shall direct either the named state official or the apportionment board to reapportion the legislature in accordance with the constitution. The court is also granted authority to review a reapportionment plan so prepared and if it is found that such plan does not comply with the constitution, the court is authorized to direct the named state official or apportionment board to make appropriate changes.

Section 4 authorizes the named state official or apportionment board to prepare a reapportionment of the state legislature where the legislature, by July 1st of the year of the legislative session following a decennial census, has not enacted reapportionment legislation. Here again, such an apportionment is subject to court review only if challenged by a qualified voter of the state.

Section 5 is to be used only if the state determines that an apportionment board, rather than a single state official, shall apportion seats in the event that the legislature itself fails to do so. It would create the apportionment board and determine its membership. Two alternatives are presented. The first would consist of named state officials. Most states that have apportionment boards follow this approach. It is important to note that members of the judiciary should not be members of an apportionment board. This recommendation is made because the State Supreme Court is granted jurisdiction over cases involving apportionment. The second alternative for membership on the apportionment board is modeled after the provisions of the Missouri constitution.

Section 6 would authorize the use of the initiative process, in addition to any other procedure that may exist in the constitution, for amendment of the formula for apportioning seats in the state legislature. At the present time no constitution authorizes constitutional initiative in this limited sense. A number of state constitutions have general provisions relating to constitutional initiative, but the desirability of providing general constitutional initiative is a question which must be considered in a different context. Here, it is enough to point out that the formula for apportioning seats in a state legislature is of such vital concern and significance in the democratic form of government, that the people, on their own, should have an opportunity to initiate changes therein.

Suggested Constitutional Amendment

Section 1. Apportionment of Senators and Representatives.

a. Senators (insert provisions for the apportionment of State Senators).

b. Representatives or Assemblymen (insert provisions for apportionment of House of Representatives or Assembly).

Section 2. Reapportionment Duty. The number of Senators and Representatives[1] shall, not later than /July 1st/ at the session of the legislature next following the decennial census conducted by the United States Government, be reapportioned according to the provisions of Section 1 of this Article by the legislature.

Section 3. Jurisdiction of /State Supreme Court/. Original jurisdiction is vested in the /State Supreme Court/[2] upon the petition of any qualified voter of the state filed with the /clerk of the Supreme Court/ within /30/ days after enactment of a reapportionment measure to review any measure so enacted. If the /Supreme Court/ determines that the measure complies with

1 If Section 1 requires only one house of the legislature to be reapportioned at regular intervals, an appropriate deletion should be made.

2 State court of last resort.

Section 1 of this Article it shall dismiss the petition by written opinion within /-30-/ days and the legislation enacted shall become operative upon the date of opinion. If the /-Supreme Court-/ determines that the measure does not comply with Section 1 of this Article said measure shall be null and void and it shall direct /-the named state official-/ /-the apportionment board-/ to prepare a reapportionment of the legislature in compliance with Section 1 of this Article and return same to the Supreme Court within /-30-/ days. The /-Supreme Court-/ shall review the reapportionment thus returned and, if it is in compliance with Section 1 of this Article, shall file it with the Governor within /-30-/ days and it shall become law upon the date of filing. If the /-Supreme Court-/ shall determine that the draft returned to it by the /-named state official-/ /-apportionment board-/ does not comply with Section 1 of this Article the Court shall return it forthwith accompanied by a written opinion specifying with particulars wherein the draft fails to comply with the requirements of Section 1 of this Article. The opinion shall further direct the /-named state official-/ /-apportionment board-/ to correct the draft in these particulars and in no others and file the corrected reapportionment with the Governor within /-30-/ days and it shall become law upon the date of filing.

Section 4. Failure of Legislature to Reapportion Itself. If the legislature fails to enact any reapportionment measure by /July 1st/ of the year of the session of the legislature next following a decennial census by the United States, the /named state official//apportionment board/ shall make a reapportionment of the legislature in accordance to the provisions of Section 1 of this Article. The reapportionment so made shall be filed with the Governor within /30/ days and shall become law, subject to /Supreme Court/ review, upon date of filing.

Original jurisdiction is hereby vested in the /Supreme Court/ upon petition of any qualified voter of the state filed with the /clerk of the Supreme Court/ within /30/ days after any reapportionment made by the /named state official/ /apportionment board/ has been filed with the Governor. If the Court determines that the reapportionment thus made complies with the provisions of Section 1 of this Article it shall dismiss the petition by written opinion within /30/ days and the reapportionment law shall become operative upon the date of the opinion. If the Supreme Court determines that the reapportionment does not comply with Section 1 of this Article, said reapportionment shall be null and void and the Supreme Court shall return it forthwith to the /named state official/

/apportionment board/ accompanied by a written opinion specifying with particulars wherein the reapportionment fails to comply with Section 1 of this Article. The opinion shall further direct the /named state official/ /apportionment board/ to correct the reapportionment in those particulars and in no others and file the corrected reapportionment with the Governor within /30/ days and it shall become law upon the date of filing.

/Section 5. Apportionment Board. There is hereby created an Apportionment Board consisting of /named state officials; do not include members of the judiciary/ /consisting of /two/ members appointed by the Chairman of the political party whose candidate for Governor in the last preceding gubernatorial election received the largest number of votes, /two/ members appointed by the Chairman of the political party whose candidate for Governor received the second largest number of votes at the last preceding gubernatorial election/ /and one member who shall be Chairman of the Apportionment Board, appointed by the aforementioned members/. /The Apportionment Board shall convene prior to July 10th of any year in which the legislature has failed to comply with its responsibility under Section 2 of this Article and reapportion the state legislature in accordance with the provisions of Section 1 of this Article. In such event the Apportionment Board shall within /30/ days

reapportion seats in the state legislature in accordance with the provisions of Section 1 of this Article and file a copy of such apportionment with the Governor. Such reapportionment shall become law, subject to /Supreme Court/ review, upon date of filing. In the event the /Supreme Court/ shall declare that a reapportionment law enacted by the legislature fails to comply with the provisions of Section 1 of this Article the /Apportionment Board/ shall convene within /10/ days after the decision of the Court and the /Board/ shall proceed to reapportion seats in the legislature as if no reapportionment action was taken by the legislature/.[3] /The /Secretary of State/ shall be secretary of the /Board/, and in that capacity shall furnish, under its direction, all necessary technical services./

Section 6. Right Reserved to the People. In addition to any authority the legislature possesses for initiating amendments to the constitution, the people reserve to themselves the power to propose changes in Section 1 of this Article. This power is

3 Some states may wish to include a provision here similar to that in the Michigan Constitution which reads as follows: "If a majority of the /Board/ cannot agree on a plan, each member of the /Board/, individually or jointly with other members, may submit a proposed plan to the /Supreme Court/. The /Supreme Court/ shall determine which plan complies most accurately with the constitutional requirement and shall direct that it be adopted by the /Board/ and /published/ as provided in this /article/."

reserved by the people and as set forth herein. Qualified and registered voters of state equal in number to at least /15/ percent of the total vote cast for all candidates for Governor at the last preceding general election at which a Governor was elected shall be required to propose any such amendment. A petition proposing such change shall set forth in full the proposed amendment and shall be filed with the /Secretary of State/ or such other person or persons as may hereafter be authorized by law to receive same. Every petition shall be certified to as having been signed by the required number of qualified and registered voters of the state. Upon receipt of any such petition the /Secretary of State/ or such other person or persons hereafter authorized by law shall canvass the petition to ascertain if such petition has been signed by the required number of qualified and registered voters and may in determining the validity thereof cause any doubtful signatures to be checked against the registration records by the clerk of any political subdivision in which said petition was circulated for properly determining the authenticity of such signatures. If a petition is filed with the /Secretary of State/ or such other person or persons hereafter authorized by law to receive same and if the canvass determines that the petition is legal and in proper form and has been signed by a required number of qualified and registered voters such proposed amendment shall be submitted to the people for approval or rejection at the next ensuing general election.

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