

September 2017

Creating Single-Member House Districts in West Virginia

Charles R. Russell

Steptoe & Johnson PLLC

Follow this and additional works at: <https://researchrepository.wvu.edu/wvlr>



Part of the [State and Local Government Law Commons](#)

Recommended Citation

Charles R. Russell, *Creating Single-Member House Districts in West Virginia*, 120 W. Va. L. Rev. (2017).
Available at: <https://researchrepository.wvu.edu/wvlr/vol120/iss1/8>

This Article is brought to you for free and open access by the WVU College of Law at The Research Repository @ WVU. It has been accepted for inclusion in West Virginia Law Review by an authorized editor of The Research Repository @ WVU. For more information, please contact ian.harmon@mail.wvu.edu.

CREATING SINGLE-MEMBER HOUSE DISTRICTS IN WEST VIRGINIA

*Charles R. Russell**

I.	INTRODUCTION.....	186
II.	ONE PERSON, ONE VOTE.....	186
III.	THE EVOLUTION OF MULTI-MEMBER DISTRICTS IN WEST VIRGINIA	188
	<i>A. Constitutional Authority</i>	188
	<i>B. Statutory Authority.....</i>	189
IV.	TRENDING IN OTHER STATES AND EVIDENCE OF SUPPORT IN WEST VIRGINIA.....	189
	<i>A. A Look to Other States</i>	190
	<i>B. Growing Support in West Virginia</i>	191
V.	CREATING A BETTER GOVERNMENT IN WEST VIRGINIA.....	192
	<i>A. Single-Member Districts Create More Accessible and More Accountable Delegates</i>	192
	<i>B. Single-Member Districts Will Decrease the Cost of Campaigns</i>	193
	<i>C. Single-Member Districts More Accurately Reflect the Composition of the State's Population</i>	194
VI.	APPROACHES TO CREATING SINGLE-MEMBER DISTRICTS IN WEST VIRGINIA.....	195
	<i>A. Amending the Constitution of West Virginia</i>	196
	<i>B. Amending the Code of West Virginia, 1931, as Amended</i>	197
	<i>C. Benefits of Amending the Constitution Instead of a Statutory Change.....</i>	197
VII.	CONCLUSION.....	198
VIII.	APPENDIX A: 2016 WINNING CAMPAIGN SPENDING	198

* Charlie Russell is an associate at the law firm of Steptoe & Johnson PLLC in Morgantown, West Virginia, where he focuses his practice in banking, real estate, and financial services. He is a 2017 graduate of the West Virginia University College of Law. He would like to thank the Honorable Charles S. Trump IV, Senator, for his insight and intellect relating to single-member districts and for contributing those same qualities to the West Virginia Legislature. Charlie would also like to thank the editors of Volume 120 for the countless hours and thankless work in preparing this Article for publication. Lastly, Charlie would like to thank his father, Dr. Richard W. Russell, for providing an appreciation of academic publication while maintaining a sense of practicality.

I. INTRODUCTION

West Virginia is one of just ten states that elects the members of its lower chamber of the legislature in multi-member districts. West Virginia needs single-member house districts because the lower house of a legislature should be the people's house: single-member districts will allow delegates to better represent their constituents and will better allow constituents to hold their delegates accountable. Additionally, single-member districts will decrease the costs of campaigning, thus making involvement in the political process more accessible. Lastly, single-member districts will more accurately reflect the composition of the state's population because multi-member districts have a tendency to disenfranchise certain groups, including not only racial and ethnic groups, but also political and social groups.

The impetus for this Article came from President David C. Hardesty, Jr.'s Lawyers & Legislation seminar taught at the West Virginia University College of Law.¹ The goal of this Article is not to provide in-depth exploration of the constitutionality of multi-member districts, but to provide an overview of how single-member districts will create better government in West Virginia. Along these lines, the Author's hope is that this Article may be used by a legislator or legislative counsel as an outline of what issues to address in a white paper, talking points, or an actual bill should he or she take on the task of proposing single-member districts.

This Article will begin by discussing the concept of "one person, one vote." Part III will provide a background of constitutional and statutory districting authority. Part IV will discuss the trends in other states to move away from multi-member districts as well as the growing support to do the same in West Virginia. Part V will analyze how single-member districts will create better government in West Virginia. Lastly, Part VI will argue that a constitutional amendment is the best means to provide for single-member districts, and it will provide a brief example of such an amendment.

II. ONE PERSON, ONE VOTE

"The conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote."²

¹ President David C. Hardesty, Jr., is President Emeritus and a Professor of Law at the West Virginia University College of Law. *West Virginia University College of Law*, <https://www.law.wvu.edu/faculty-staff/full-time-faculty/david-c-hardesty-jr> (last visited Sept. 7, 2017). President Hardesty was the 21st president and CEO of West Virginia University from 1995–2007. *Id.*

² *Gray v. Sanders*, 372 U.S. 368, 381 (1963).

In 1962, in *Baker v. Carr*,³ the United States Supreme Court opened the doors to litigating state apportionment of legislative districts. Prior to *Baker*, the Court refused to reach the merits in a number of cases relating to apportionment.⁴ In *Baker*, the Tennessee apportionment statute was challenged as a deprivation of equal protection under the Fourteenth Amendment.⁵ The Court found that the equal protection claim was a justiciable cause of action and that it could proceed in federal courts.⁶

In *Reynolds v. Sims*,⁷ the Supreme Court announced a landmark decision that the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution protects the right of all qualified voters to vote in state elections and to have their votes counted.⁸ In *Reynolds*, the redistricting plans for both houses of the Alabama legislature were called into question based upon differences in population of representatives' districts.⁹ The Court found that "the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable."¹⁰ More simply stated, "one man's vote . . . is to be worth as much as another's."¹¹ Finally, the Court opined on the importance of state government, writing,

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system.¹²

The Court specifically addressed multi-member districts in *Whitcomb v. Chavis*.¹³ In *Whitcomb*, a multi-member house district in Marion County, Indiana, was challenged as unconstitutional on the claim that it diluted certain

³ 369 U.S. 186 (1962).

⁴ Walter L. Carpeneti, *Legislative Apportionment: Multimember Districts and Fair Representation*, 120 U. PA. L. REV. 666, 666 (1972).

⁵ *Baker*, 369 U.S. at 187–88.

⁶ *Id.* at 209.

⁷ 377 U.S. 533 (1964).

⁸ *Id.* at 554.

⁹ *Id.* at 536–38.

¹⁰ *Id.* at 576. Population deviations of less than 10% are prima facie evidence of constitutionality. See *Connor v. Finch*, 431 U.S. 407, 418 (1977).

¹¹ *Reynolds*, 377 U.S. at 559.

¹² *Id.* at 562.

¹³ 403 U.S. 124 (1971).

black and poor persons living in a “ghetto.”¹⁴ The Court found that multi-member districts are not per se illegal under the Equal Protection Clause.¹⁵ However, the Court went on to say that multi-member districts cannot “unconstitutionally operate to dilute or cancel the voting strength of racial or political elements.”¹⁶

III. THE EVOLUTION OF MULTI-MEMBER DISTRICTS IN WEST VIRGINIA

This Part will provide a background for the provisions in the West Virginia Constitution dealing with districting of the House of Delegates as well as statutory information. It will also provide a brief history of the evolution of the West Virginia House of Delegates.

A. Constitutional Authority

The Constitution of West Virginia states that “[e]very citizen shall be entitled to equal representation in the government, and, in all apportionments of representation.”¹⁷ It further provides that House districts shall be apportioned as soon as possible after each census taken by the United States¹⁸ and shall remain unchanged until the next census.¹⁹ The Constitution, when ratified in 1872,²⁰ set forth that “[t]he Senate shall be composed of 24, and the House of Delegates of 65 members, subject to be increased according to the provisions hereinafter contained.”²¹ In regards to the election and apportionment of state senators, the Constitution provides that the 24 senators shall be elected from 12 senate districts.²² Thus, the Constitution speaks directly to electing senators from two-member districts. However, unlike the senate districts, the Constitution does not address the question of how many delegates will be elected from a particular house district.²³ Therefore, this Article will only focus on creating single-

¹⁴ *Id.* at 129.

¹⁵ *Id.* at 142.

¹⁶ *Id.* at 144.

¹⁷ W. VA. CONST. art. II, § 4.

¹⁸ *Id.* art. VI, § 10.

¹⁹ *Id.*

²⁰ John Edmund Stealey III, *The Constitutional Convention of 1872*, W. VA. ENCYCLOPEDIA (Dec. 8, 2011), <http://www.wvencyclopedia.org/articles/1570>.

²¹ W. VA. CONST. art. VI, § 2.

²² *Id.* art. VI, § 4. The Constitution gives the Legislature the authority to increase the number of senators. *Id.* art. VI, § 2. The current composition of the state senate is 34 senators hailing from 17 senate districts. W. VA. CODE ANN. § 1-2-1 (West 2017). Similarly, the Constitution also gives the Legislature the authority to increase the number the delegates. W. VA. CONST. art. VI, § 2.

²³ *See* W. VA. CONST. art. VI.

member house districts, as the framers of the Constitution already provided for two-member senate districts.

B. Statutory Authority

From the ratification of the Constitution until the 22nd Legislature, the House of Delegates was comprised of 65 members pursuant to the Constitution.²⁴ Beginning with the 22nd Legislature in 1893, the House of Delegates increased to 71 members.²⁵ Then, from 1903–1915, it was comprised of 86 members.²⁶ From 1916–1952, the House had 94 members.²⁷ The current number of delegates is now 100, which began with the 51st Legislature in 1953.²⁸

Prior to the last redistricting in 2011, the House of Delegates was comprised of 100 members from 58 districts, with 36 members coming from 36 single-member districts.²⁹ After the last redistricting in 2011, the Legislature amended section 1-2-2 of the West Virginia Code to reflect the reapportionment.³⁰ The current 100 members are elected from 67 districts.³¹ The members of the House of Delegates are currently elected from the following types of districts:

- 47 members are elected from 47 single-member districts,
- 22 members are elected from 11 two-member districts,
- 18 members are elected from 6 three-member districts,
- 8 members are elected from 2 four-member districts, and
- 5 members are elected from 1 five-member district.³²

IV. TRENDING IN OTHER STATES AND EVIDENCE OF SUPPORT IN WEST VIRGINIA

This Part will examine the national trend of states moving away from multi-member districts and discuss how West Virginia is in a minority of states that still use them. Also, support for this issue is growing in West Virginia, and this Part will observe that the issue may be ripe for implementation.

²⁴ Compare H.D. 11, 1st Sess., at 3–5 (W. Va. 1872), with H.D. 20, 1st Sess., at 2–3 (W. Va. 1891).

²⁵ H.D. 21, 1st Sess., at 4–5 (W. Va. 1893); 1891 W. Va. Acts 205.

²⁶ 1903 W. Va. Acts 319–20; 1901 W. Va. Acts 60.

²⁷ 1917 W. Va. Acts vii–viii; 1915 W. Va. Acts 271.

²⁸ 1953 W. Va. Acts xiii–xix.

²⁹ 2001 W. Va. Acts, 5th Extraordinary Sess. 2981–3026.

³⁰ W. VA. CODE ANN. §1-2-2 (West 2017).

³¹ *Id.* § 1-2-2(b)(67).

³² *Id.* § 1-2-2(b)(1)–(67).

A. *A Look to Other States*

Historically, the trend for state legislatures in the United States has been to move away from multi-member districts.³³ During the 1960s, more than two-thirds of the states elected members to their legislatures using multi-member districts.³⁴ Moreover, at one point in history, more than half of all the state legislators elected in the United States came from a multi-member district.³⁵ Today, only 10 states elect members of their legislatures from multi-member districts.³⁶

Most states that have multi-member districts in their lower houses elect two members from a single district.³⁷ Maryland elects three members from each of its house districts.³⁸ West Virginia and New Hampshire are the only states that elect more than three members from a single district.³⁹ The New Hampshire House of Representatives has 400 members from 204 districts,⁴⁰ and New Hampshire elects as many as 11 members from one district.⁴¹ Thus, West Virginia is in the minority of states that have multi-member districts. Not only that, but West Virginia also uses them in a fashion inconsistent with the states that do have them because the number of delegates from a multi-member district varies, and the number of delegates from a district can be quite large.⁴²

³³ Andrew Gripp, *Do Multi-Member Districts Improve Representation in State Legislatures?*, INDEP. VOTER PROJECT (Aug. 26, 2015), <http://ivn.us/2015/08/26/multi-member-districts-improve-representation-state-legislatures/>.

³⁴ *Id.*

³⁵ *Id.*

³⁶ *Id.*

³⁷ *State legislative chambers that use multi-member districts*, BALLOTPEDIA [hereinafter *Chambers*], https://ballotpedia.org/State_legislative_chambers_that_use_multi-member_districts (last visited Aug. 27, 2017).

³⁸ *Maryland General Assembly*, BALLOTPEDIA, https://ballotpedia.org/Maryland_General_Assembly (last visited Aug. 27, 2017).

³⁹ *Chambers*, *supra* note 37.

⁴⁰ *Id.*

⁴¹ *Id.*

⁴² Although the following is outside the scope of this Article, it is an interesting concept to ponder and something to consider when redistricting next occurs: West Virginia delegates represent significantly fewer people than do delegates in surrounding states. Tom Crouser, *Downsize the House of Delegates*, CHARLESTON GAZETTE-MAIL (Jan. 16, 2017), <http://www.wvgazettemail.com/daily-mail-columnist/20170116/tom-crouser-downsize-the-house-of-delegates-daily-mail>. For example, a West Virginia delegate represents about 18,000 people, but an Ohio delegate represents about 117,000. *Id.* In addition to creating single-member districts, West Virginia could also consider decreasing the number of delegates elected.

B. Growing Support in West Virginia

Redistricting is always a political football, but there is evidence of support for single-member districts in West Virginia. After the 2010 census, there was a movement to create single-member districts, culminating in House Bill 2367's introduction.⁴³ The bill died in committee.⁴⁴ This bill was introduced by a Republican in a Democrat-controlled legislature.⁴⁵ Single-member districts also had the backing of the Republican-leaning West Virginia Chamber of Commerce.⁴⁶ Moreover, single-member districts have also garnered the support of Democrats⁴⁷ and the press.⁴⁸ Thus, members from both political parties⁴⁹ have expressed interest and support in creating single-member districts.

Currently, redistricting appears to be on the radar for at least some members of the Legislature. Bills have been introduced to amend the Constitution to decide how redistricting committees should be determined.⁵⁰ One bill, introduced in the form of a House Joint Resolution, called for a constitutional amendment setting forth the criteria to establish a committee on redistricting.⁵¹ It was introduced in both 2016 and 2017.⁵²

⁴³ H.B. 2367, 80th Leg. (W. Va. 2011).

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ See White Paper, "Single-Member Districts": *One Person, One Vote in the West Virginia Legislature*, W. VA. CHAMBER OF COMMERCE, <http://www.wvchamber.com/external/wcpages/wcwebcontent/webcontentpage.aspx?contentid=1584> (last visited Sept. 10, 2017).

⁴⁷ Former Democratic governor and current U.S. Senator Joe Manchin was quoted as saying, "I believe the time has come for single-member districts. That delegate would be more attentive and know that area much better than they would in a multimember district. So, is it better service to the citizens and the taxpayers? Absolutely." Lawrence Messina, *Manchin, Heading to US Senate, Sees Few Loose Ends*, CHARLESTON GAZETTE-MAIL (Nov. 14, 2010), <http://www.wvgazettemail.com/News/201011140343>; Harvey Peyton, *Harvey Peyton: It's the Lines that Count, Not the Numbers*, CHARLESTON GAZETTE-MAIL (Oct. 28, 2016), <http://www.wvgazettemail.com/daily-mail-commentary/20161028/harvey-peyton-its-the-lines-that-count-not-the-numbers>.

⁴⁸ "We do believe single-member districts would increase accountability and allow more one-on-one interaction between delegates and the constituents . . . It is time West Virginia gets in line with most of the rest of the country." See White Paper, *supra* note 46 (quoting the BECKLEY REGISTER-HERALD).

⁴⁹ Charlotte Lane, *Charlotte Lane: Legislature Should Reconsider Single-Member Districts* (Daily Mail), CHARLESTON GAZETTE-MAIL (Oct. 20, 2016), <http://www.wvgazettemail.com/daily-mail-commentary/20161020/charlotte-lane-legislature-should-reconsider-single-member-districts-daily-mail>.

⁵⁰ See H.J. Res. 1, 83d Leg. (W. Va. 2017); H.J. Res. 21, 82d Leg. (W. Va. 2016).

⁵¹ *Id.*

⁵² *Id.*

In the meantime, while redistricting and reapportionment must wait until the next census, there is support to mitigate to some extent multi-member districts. Legislators have introduced bills to provide that candidates in multi-member districts must run in divisions.⁵³ Essentially, this means that a candidate has to declare the seat in the district for which he or she is running. For example, a two-member district will have two seats—Seat A and Seat B. Candidates are still elected from voters across the entire district, but only the top vote-getter in Seat A and the top vote-getter in Seat B will win, even if a challenger in Seat A received more votes than the winner of Seat B.

Accordingly, the political winds may be right to make this change. The growing support for single-member districts in West Virginia suggests that a switch to single-member districts may be practical in the near future.

V. CREATING A BETTER GOVERNMENT IN WEST VIRGINIA

Creating single-member house districts in West Virginia is but one piece of a complex puzzle to improve government in West Virginia. Section V.A will begin by discussing how single-member districts would allow delegates to better represent their constituents and would better allow constituents to hold their delegates accountable. Section V.B will then discuss how single-member districts would decrease the costs of campaigning, thus making involvement in the political process more accessible. Section V.C will discuss how single-member districts would more accurately reflect the composition of the state's population and explain how multi-member districts have a tendency to dilute the votes of minority groups.

A. *Single-Member Districts Create More Accessible and More Accountable Delegates*

After the 2010 census, West Virginia had a population of 1,852,994 people.⁵⁴ Dividing this number by the required 100 members to be elected to the House of Delegates yields that West Virginia would have 100 single-member districts composed of approximately 18,000 people. Instead, West Virginia has districts ranging from approximately 18,000 people in 47 districts to about 90,000 people in one district. More precisely, the 18th district is the lowest in population at 17,608 people, and the 51st is the highest in population at 93,135 people.⁵⁵

⁵³ S.B. 7, 83d Leg. (W. Va. 2017).

⁵⁴ *Guide to 2010 Census State and Local Geography—West Virginia*, U.S. CENSUS BUREAU, http://www.census.gov/geo/reference/guidestloc/st54_wv.html (last visited Aug. 27, 2017).

⁵⁵ LEGISLATURE OF W. VA., *MANUAL OF THE HOUSE OF DELEGATES AND SENATE*: 82ND LEGISLATURE 392–93 (2015).

The House of Delegates should be the people's house. Looking to its federal counterpart, the United States House of Representatives, congressmen and congresswomen are elected from single-member districts.⁵⁶ This is a system with which most voters are familiar, and it should be emulated at the state level. If a voter does not like the work of his or her representative, then the voter knows he or she can vote that representative out of office because that representative is the only one from a voter's congressional district. Far too many voters do not have this luxury when it comes to the West Virginia House of Delegates.

For example, the 51st House District is represented by five delegates.⁵⁷ If a voter strongly supports or disavors a particular delegate, or two or three, how does a voter cast his or her five votes? In the 51st District, there will likely be at least ten candidates on the ballot—five Democrats and five Republicans. The ballot will instruct the voter to “pick up to five.” Does the voter use all five votes? Does the voter only use three votes for the candidates he or she strongly supports? Does the voter vote for people he or she does not particularly know anything about in an attempt to pick the lesser of 10 evils? It can be quite confusing and troubling for a voter in a multi-member district to go into the voting booth. A voter simply does not know which delegate to hold accountable for prior bad votes, which delegate to reward for prior good votes, or which delegate to support for potential effectiveness.

Single-member districts will create smaller, local delegate districts, allowing delegates to be more accessible to their constituents. Under the ideal district comprised of about 18,000 people, a delegate is much more likely to make an appearance at a local civic club meeting, neighborhood association meeting, or local sporting event. Also, it would be much more likely that a constituent would run into a delegate shopping at the local grocery store or walking the dog around the community. However, in a district like the 51st, which encompasses approximately 90,000 people, it is unlikely for any of these informal happens-by to occur.

*B. Single-Member Districts Will Decrease the Cost of Campaigns*⁵⁸

Running a campaign in a multi-member district is more expensive than running a campaign in a single-member district. Decreasing the costs of campaigns is important to increase access to the political process.

In the 2016 election cycle, the average cost of winning campaigns in West Virginia's single-member districts was less than the cost of winning campaigns in multi-member districts. The average cost of a winning campaign in a single-member district was \$18,173.58. The average cost in a two-member

⁵⁶ U.S. CONST. art. I, § 2; see also *The House Explained*, U.S. HOUSE OF REPRESENTATIVES, <http://www.house.gov/content/learn/> (last visited Aug. 27, 2017).

⁵⁷ W. VA. CODE ANN. § 1-2-2(b)(51) (West 2017).

⁵⁸ See *infra* Appendix A for information supplied in this Part.

district was \$24,817.11. The average cost in a three-member district was \$31,242.28. The average cost in a four-member district was \$51,487.14. The average cost in the five-member district was \$38,443.84. The fact that the average winning cost in a four-member district is more expensive than the five-member district can largely be explained by the fact that one of the two four-member districts encompasses one of the wealthier Charleston neighborhoods.

In a single-member district, comprised of approximately 18,000 people, a campaign is cheaper because there is a smaller voter block to which a candidate must appeal. As of January 1, 2017, West Virginia had 1,225,653 registered voters⁵⁹—approximately 66% of the state's population. In a district of 18,000 people, approximately 12,000 will be registered to vote. West Virginia had about a 57% voter turnout in the 2016 general election.⁶⁰ A 57% voter turnout for 12,000 voters means that approximately 6,840 people would cast a ballot. In a single-member district, where it is winner take all, a candidate would only need 3,421 votes to win an election. It is far more likely that a candidate can convince 3,421 people to support him or her on a shoestring budget. In comparison, in a five-member district comprised of approximately 90,000 people, a candidate would have to spend money to convince 17,105 people.

Decreasing the cost of campaigns is important because it would allow more people the opportunity to get involved in the political process. This includes voters who may feel that their votes mean more in single-member districts because there are fewer voters. These voters may be more inclined to knock on doors for a candidate or attend a candidate forum because they feel that they can have an impact. Also, it increases the likelihood that people may decide to run for office because it is less expensive to be successful. Lastly, decreasing the costs of campaigns could decrease the influence of special interest groups and outside money. Single-member districts decrease the costs of campaigns, which will create better government in West Virginia.

C. Single-Member Districts More Accurately Reflect the Composition of the State's Population

Although multi-member districts are technically constitutional, they are not the best method of electing state representatives. However, multi-member districts can have the effect of diluting the voting power of minority groups.

Post-Reconstruction, local governments in the South moved to multi-member districts in order to dilute minority votes.⁶¹ Multi-member districts can

⁵⁹ *Voter Registration Totals, W. VA. SEC'Y STATE*, http://www.sos.wv.gov/elections/voterregistration/pages/voter_registration.aspx (last visited Aug. 27, 2017).

⁶⁰ *Id.*

⁶¹ Elisabeth R. Gerber, et al., *Minority Representation in Multimember Districts*, 92 AM. POL. SCI. REV. 127, 128 (1998).

deny minorities an equal opportunity to participate in the district's political processes,⁶² and, generally, minority candidates will lose an election in a multi-member district.⁶³ The denial to the political process does not only apply to racial minorities, especially given that West Virginia does not have a large racial minority population.⁶⁴ As of the 2010 census, West Virginia's population was nearly 94% white.⁶⁵ Thus, vote dilution of racial minorities in West Virginia is not as big of an issue as it might be in the Deep South. However, the problem of voter dilution extends beyond racial minorities to a broader class of interest groups. These interest groups can be political parties, labor organizations, religious affiliates, residents of a single county, or a localized group concerned with one specific issue, such as, hypothetically, "Neighbors against Corridor H." Interest groups must have more support in a multi-member district than in a single-member district.⁶⁶

For example, suppose an area has 10,000 registered Democrats and 8,000 registered Republicans. In a single-member district, a Democrat will likely be elected to represent these people. Now suppose, in a neighboring area, there are 14,000 registered Republicans and 4,000 registered Democrats. In a single-member district, a Republican will likely be elected to represent these people. Now combine these two areas to form a two-member district composed of 22,000 Republicans and 14,000 Democrats. In this multi-member district, two Republicans will likely be elected to represent these people and 10,000 Democrats will have their votes diluted. This is the effect of multi-member districts, and it is not limited to political parties.

Creating single-member districts in West Virginia will lead to better government because delegates will be more accountable and accessible, the cost of campaigns will decrease, and minority groups will have a greater chance of being represented in the legislature.

VI. APPROACHES TO CREATING SINGLE-MEMBER DISTRICTS IN WEST VIRGINIA

This Part will address the two ways to create single-member districts—amending the Constitution of West Virginia and amending the state code—while arguing that amending the Constitution is the best method. This Part further provides a sample provision of how simple such an amendment could be.

⁶² Case Comment, *Racial Vote Dilution in Multimember Districts: The Constitutional Standard after Washington v. Davis*, 76 MICH. L. REV. 694, 694 (1978) [hereinafter *Racial Vote Dilution*].

⁶³ *Id.* at 141.

⁶⁴ *Quick Facts: West Virginia*, U.S. CENSUS BUREAU, <http://www.census.gov/quickfacts/table/PST045215/54> (last visited Aug. 27, 2017).

⁶⁵ *Id.*

⁶⁶ *Racial Vote Dilution*, *supra* note 62, at 696.

A. Amending the Constitution of West Virginia

The first, and likely best, way to create single-member districts is to amend the Constitution. The Constitution of West Virginia may be amended by a proposal, introduced in either house, calling for such amendment.⁶⁷ The proposal to amend the Constitution must be read on three separate days and pass by a two-thirds vote in each chamber.⁶⁸ After passage, the Legislature will provide for how the amendment will be put forth to the people and at what time the people will vote on the amendment.⁶⁹ An amendment takes immediate effect upon a majority approval by the people of the state.⁷⁰ A proposal to amend the Constitution is introduced in the form of a joint resolution.⁷¹ The Legislature shall assign a title for the proposed amendment, provide a summary of the purpose of the amendment, and designate the election during which the amendment will be placed on the ballot.⁷² The Secretary of State must publish the amendment in a Class I legal advertisement in a newspaper in every county in which a newspaper is published.⁷³ The form of the ballot on which the amendment must appear is also provided by law.⁷⁴

One way to create single-member districts, is to amend Article 6, Section 7, of the Constitution. The Legislature could do this by adding a simple proviso to this section as follows: Provided, however, that beginning after the census in the year 2020, delegate districts shall be limited to one member. Depending on the timing of when the amendment is proposed, the constraint on when the amendment shall become effective could be unnecessary. Another way to do this would be to strike the language of Article 6, Section 7, and replace it with the following:

The state shall be divided into such a number of House of Delegate districts as there are members to be elected to the House of Delegates, as provided by law, each represented by a single delegate. Upon implementation of this section, delegate districts shall be arranged according to the provisions of section ten of this article. During the first election after implementation

⁶⁷ W. VA. CONST. art. XIV, § 2.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ W. VA. CODE ANN. § 3-11-1 (West 2017).

⁷² *Id.* § 3-11-2.

⁷³ *Id.* § 3-11-3.

⁷⁴ *Id.* § 3-11-4.

of this section, the provisions of section three of this article apply.⁷⁵

In addition to changing the language of this section of the Constitution, the proposal could also repeal some sections of the Constitution dealing with house districts as a housekeeping matter. These sections include Article 6, Sections 6, 8, and 9.⁷⁶ They were written to outline how districting would be done after ratification of the Constitution but have since become inapplicable due to the passage of time.

B. Amending the Code of West Virginia, 1931, as Amended

If amending the Constitution seems like too daunting of a task, the Legislature could provide for single-member districts by law. This would be done by amending section 1-2-2 of the West Virginia Code. As discussed above, the Legislature attempted this before the 2011 redistricting in House Bill 2367.⁷⁷ Section 1-2-2 is a long piece of code that breaks down every house district into voting blocks based on census data.⁷⁸ Thus, providing an accurate example of how this could be done in 2021 is impossible without the 2020 census data.

C. Benefits of Amending the Constitution Instead of a Statutory Change

In politics, as in all things, timing is everything. The Constitution of West Virginia constrains the Legislature to redistricting to “as soon as possible after each succeeding census.”⁷⁹ Thus, the Legislature cannot redistrict until after the 2020 census. Amending section 1-2-2 of the West Virginia Code likewise has an impractical effect. The next succeeding legislature could just amend that change in law. The same would be true for any succeeding legislature. West Virginia could be in a constant state of going back and forth between multi-member districts and single-member districts. This would lead to inefficiency and voter confusion. Therefore, to make a lasting, significant change, the Constitution of West Virginia should be amended to provide for single-member house districts.

⁷⁵ See H.J. Res. 18, 77th Leg. (W. Va. 2005). This resolution also concerns creating single-member senate districts, but, as discussed herein, this matter is outside of the scope of this Article.

⁷⁶ See *id.*

⁷⁷ See *supra* Section IV.B.

⁷⁸ W. VA. CODE. ANN. § 1-2-2 (West 2017).

⁷⁹ W. VA. CONST. art. VI, § 10.

VII. CONCLUSION

West Virginia is in the vast minority of states when it comes to electing members to its lower house of the state legislature. West Virginia should adopt single-member districts to create better government. Single-member districts will create cheaper elections, hold delegates more accountable, and give a voice to minority groups. Creating single-member house districts could be done by statutory change, but not until after the 2020 census. Given the growing support, the time is now to make this change permanent and amend the Constitution of West Virginia to provide that only one member may be elected from each house district.

VIII. APPENDIX A: 2016 WINNING CAMPAIGN SPENDING⁸⁰

2016 Election Cycle Winners: Single-Member Districts			
District	Candidate	Amount Raised	Amount Spent
2	Diserio	\$46,423.63	\$26,917.12
5	Pethtel	\$32,505.00	\$10,309.80
6	Romine	\$7,750.00	\$7,643.07
7	Harshbarger	\$7,300.00	\$8,838.94
8	Anderson	\$19,825.48	\$16,228.11
9	Hollen	\$4,792.00	\$4,338.64
11	Atkinson III	\$15,200.00	\$12,998.07
12	Westfall	\$32,120.00	\$29,097.11
14	Butler	\$19,525.00	\$17,687.93
15	Foster	\$21,186.52	\$3,288.80
18	Sobonya	\$32,775.00	\$34,529.98
20	Marcum	\$37,068.16	\$38,984.08
21	Dean	\$600.00	\$600.00
23	Miller	\$23,631.71	\$10,650.37
25	Paynter	\$3,587.64	\$2,319.82
26	Evans	\$8,885.00	\$6,886.93

⁸⁰ Data courtesy of the West Virginia Secretary of State. *See Candidates*, W. VA. SEC'Y STATE, https://cfrs.wvsos.com/#/candidate_list/8/-2/en (last visited Sept. 7, 2017).

29	Moye	\$34,209.90	\$22,346.30
30	Bates	\$36,530.00	\$22,885.20
31	Arvon	\$11,545.00	\$9,215.94
33	Hanshaw	\$30,010.63	\$24,199.28
34	Boggs	\$25,846.01	\$5,235.24
37	Pushkin	\$46,637.45	\$48,360.57
38	Foster	\$40,328.64	\$35,118.25
39	Walters	\$17,328.21	\$8,049.66
40	Armstead	\$92,570.60	\$53,885.12
41	Hill	\$13,300.00	\$6,295.40
44	Lynch	\$14,800.00	\$11,936.46
45	Hamilton	\$21,700.00	\$3,282.17
46	Martin	\$13,054.00	\$22,255.68
47	Wagner	\$5,450.00	\$3,074.28
49	Summers	\$22,551.57	\$15,364.53
52	Sypolt	\$11,302.78	\$11,942.28
53	Lewis	\$2,118.87	\$2,074.56
54	Evans	\$5,325.00	\$4,823.88
55	Sponaugle	\$23,822.00	\$7,995.50
56	Howell	\$19,045.14	\$6,601.07
57	Rowan	\$10,184.64	\$8,265.09
58	Cowles	\$44,131.48	\$5,089.09
59	Blair	\$13,114.48	\$4,443.73
60	Wilson	\$12,262.38	\$4,580.19
61	Barrett	\$20,520.32	\$22,409.80
62	Overington	\$17,370.06	\$15,539.67
63	Folk	\$10,822.22	\$11,350.18
64	Householder	\$31,756.00	\$31,290.20
65	Upson	\$31,660.64	\$36,117.88
66	Espinosa	\$32,175.00	\$10,181.42
67	Moore	\$132,573.09	\$132,679.73
	AVERAGE:	\$24,621.73	\$17,834.19
	MEDIAN:	\$19,825.48	\$10,650.37

2016 Election Cycle Winners: Two-Member Districts			
District	Candidate	Amount Raised	Amount Spent
1	McGeehan	\$14,795.00	\$12,818.26
1	Zatezalo	\$21,370.00	\$15,694.81
3	Fluharty	\$56,934.60	\$56,316.50
3	Storch	\$44,308.39	\$34,964.94
4	Canestraro	\$35,674.17	\$33,504.72
4	Ferro	\$40,102.32	\$17,960.20
13	Brewer	\$79,714.95	\$64,614.90
13	Higginbotham	\$13,974.01	\$8,059.93
17	Lovejoy	\$84,858.75	\$75,907.78
17	Rohrbach	\$48,716.70	\$24,900.08
19	Hicks	\$26,260.00	\$21,229.77
19	Thompson	\$14,175.00	\$20,464.78
22	Eldridge	\$25,775.00	\$25,638.25
22	Maynard	\$1,974.02	\$1,477.86
24	Phillips	\$40,213.28	\$28,104.57
24	Rodighiero	\$19,750.00	\$13,191.50
28	Cooper	\$6,800.00	\$9,545.00
28	O'Neal	\$97,142.62	\$24,933.78
42	Ambler	\$16,190.96	\$8,367.36
42	Baldwin	\$21,320.21	\$12,961.54
43	Isner	\$15,320.00	\$16,965.03
43	Hartman	\$22,375.00	\$20,354.82
	AVERAGE:	\$33,988.41	\$24,908.02
	MEDIAN:	\$24,075.00	\$20,409.80

2016 Election Cycle Winners: Three-Member Districts			
District	Candidate	Amount Raised	Amount Spent
10	Criss	\$5,950.00	\$4,458.01
10	Deem	\$9,350.00	\$36,296.20
10	Kelly	\$23,225.00	\$18,995.40

16	Hornbuckle	\$39,011.21	\$35,897.09
16	Miller	\$52,047.81	\$51,648.24
16	Romine	\$15,487.84	\$14,217.84
27	Ellington	\$30,211.70	\$3,325.14
27	Gearheart	\$17,762.99	\$13,162.61
27	Shott	\$65,807.13	\$35,540.47
32	Fast	\$10,255.00	\$13,329.75
32	Kessinger	\$27,933.98	\$26,484.69
32	Love	\$7,167.95	\$11,897.46
36	Robinson	\$180,210.62	\$169,211.56
36	Rowe	\$49,579.10	\$36,089.80
36	White	\$17,175.00	\$20,446.56
50	Caputo	\$68,011.90	\$28,868.66
50	Longstreth	\$37,456.22	\$27,881.48
50	Ward	\$1,950.00	\$577.79
	AVERAGE:	\$36,588.53	\$30,462.71
	MEDIAN:	\$25,579.49	\$23,465.63

2016 Election Cycle Winners: Four-Member Districts			
District	Candidate	Amount Raised	Amount Spent
35	Byrd	\$59,808.40	\$57,845.93
35	Capito	\$143,799.80	\$96,034.87
35	Lane	\$45,770.00	\$47,412.16
35	Nelson	\$155,005.55	\$62,905.38
48	Hamrick	\$28,970.00	\$27,702.59
48	Miley	\$74,837.00	\$63,702.97
48	Iaquinta	\$28,328.92	\$23,103.92
48	Queen	\$40,175.00	\$39,548.08
	AVERAGE:	\$72,086.83	\$51,487.14
	MEDIAN:	\$52,789.20	\$47,412.16

2016 Election Cycle Winners: Five-Member Districts			
District	Candidate	Amount Raised	Amount Spent
51	Fleischauer	\$111,042.32	\$76,681.42
51	Frich	\$31,299.68	\$20,204.30
51	Pyles	\$17,025.00	\$14,189.05
51	Williams	\$47,722.06	\$55,058.00
51	Statler	\$40,665.30	\$26,086.45
	AVERAGE:	\$49,550.87	\$38,443.84
	MEDIAN:	\$40,665.30	\$26,086.45