Kentucky Law Journal

Volume 59 | Issue 2 Article 6

1970

Post-Census Redistricting--A Primer for State Legislators

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In one week in June, 1964, the Supreme Court declared that the legislatures of a third of the states were unconstitutionally apportioned. Since that time state legislators have been wrestling with head counts, existing political subdivisions, partisan considerations, and often-incompatible constitutions to arrive at apportionment plans which would pass constitutional muster. With the report of the 1970 decennial census, the struggle begins anew. Herewith, an inspection of the problems and some guidelines to assist the bewildered legislator.

With the completion of the decennial census of 1970,[1] state legislatures and other bodies[2] charged with the responsibility will be occupied during the coming year or at their next session with the business of redistricting[3] their state for the purpose of electing future representatives. Before the 1972 federal elections, they must also add, reduce, or change congressional districts to

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The author wishes to acknowledge the able research assistance of Donna H. Terry, second year law student.

[1] Most states have constitutional provisions requiring reapportionment of one or both (if bicameral) houses of the legislature every ten years, generally following the decennial census conducted by the federal government.

[2] Generally, legislatures themselves attend to the reapportionment process. However, in recent years, reapportionment has also been accomplished by courts, boards and commissions. *See Tables, Apportionment of Legislatures,* COUNCIL OF STATE GOVERNMENTS, BOOK OF THE STATES 82-83 (1970-71). By permission of the Council of State Governments, these tables are included as an appendix to this article.

[3] The terms *districting, redistricting, apportionment, and reapportionment* are often used interchangeably. In his majority opinion in *Reynolds* v. *Sims,* 377 U.S. 533 (1964), Chief Justice Warren frequently seems to use *apportionment* to refer to the process of creating state legislative districts and *districting* to define the act of making congressional districts. *See, e.g.,* 377 U.S. at 578. In this article the same application will be made unless the context clearly indicates otherwise. Further on the distinction see R. MCKAY, REAPPORTIONMENT: THE LAW AND POLITICS OF EQUAL REPRESENTATION 6 (1965).

conform to national population shifts revealed by the census.[4] For most, this will be the second such exercise since 1962[5] when the United States Supreme Court handed down its now famous decision in *Baker* v. *Carr*.[6]

As these bodies charged with the task of redistricting face the bell for Round Two of the quest for equal representation of the nation's citizens,[7] it seems timely that the developments of the past eight years be reviewed for the purpose of setting down some basic guidelines for them—a primer, so to speak, for the state legislator.[8]

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[4] Preliminary indications indicate that the following states will gain or lose congressional seats as indicated: California (+5); Florida (+3); Arizona, Colorado and Texas (+1); Pennsylvania and New York (−2); and Alabama, Iowa, North Dakota, Ohio, Tennessee, West Virginia and Wisconsin (−1). Except for those states which will have only one representative (Alaska, Delaware, Nevada, North Dakota, Vermont and Wyoming), all other states will undoubtedly have to make substantial changes in their congressional districts to reflect population shifts within the states.

[5] Only Massachusetts and Oregon have escaped the necessity of—or demand for—redistricting since 1960.

[6] 369 U.S. 186 (1962).

[7] The usual basis for apportionment is population. However, in Hawaii and Tennessee both the senate and house are apportioned on the basis of registered voters, as are the Massachusetts Senate and the Vermont House. A three judge federal panel has recently held that apportionment of a legislature on the basis of voter registration satisfies the Equal Protection Clause only if it produces districts not substantially different from those which would have resulted from a population basis. Klahr v. Williams, 313 F. Supp. 148 (D. Ariz. 1970).

[8] During the period under inspection, not only were the courts busy but the "one man-one vote" decree of the Supreme Court generated an active response on the part of the commentators as well. Their observations and conclusions make up as much a part of this lesson as do the decisions of the courts and serve as well to guide legislators in their task of reapportionment. A recent treatise and probably the most exhaustive study on the post-*Baker* era of reapportionment is R. DIXON, DEMOCRATIC REPRESENTATION: REAPPORTIONMENT IN LAW AND POLITICS (1968) (hereinafter cited as DIXON). Other excellent treatises and a collection of studies on the reapportionment process are R. CLAUDE, THE SUPREME COURT AND THE ELECTORAL PROCESS (1970); R. MCKAY, REAPPORTIONMENT: THE LAW AND POLITICS OF EQUAL REPRESENTATION (1965) (hereinafter cited as McKay; A. DE GRAZIA, APPORTIONMENT AND REPRESENTATIVE GOVERNMENT (1963); and THE POLITICS OF REAPPORTIONMENT (M. Jewell ed. 1962). An early monograph which predicted much of the Court's post-*Baker* considerations is P. DAVID & R. EISENBERG, STATE LEGISLATIVE REDISTRICTING (1962). Among the many articles on the subject are McKay, *Political Thicket and Crazy Quilts: Reapportionment and Equal Protection*, 61 MICH. L. REV. 645 (1963); McKay, *Courts, Congress and Reapportionment*, 63 MICH. L. REV. 299 (1964); Barber, *Partisan Values in the Lower Courts: Reapportionment in Ohio and Michigan*, 20 CASE W. RES. L. REV. 401 (1969); McKay, *Reapportionment: Success Story of the Warren Court*, 67 MICH. L. REV. 223 (1968); Irwin, *Representation and Election: The Reapportionment Cases in Retrospect*, 67 MICH. L. REV. 729 (1969); Dixon, *Warren Court Crusade for the Holy Grail of "One Man - One Vote,"* 1969 SUP. CT. REV. 219, and Elliott, *Prometheus, Proteus, Pondora, and Procrustes Unbound: The Political Consequences of Reapportionment*, 37 U. CHI. L. REV. 474 (1970). An exhaustive bibliography on the subject through 1965 is contained in R. MCKAY, *supra* at 476-85. REAPPORTIONMENT: THE LAW AND POLITICS OF EQUAL REPRESENTATION (1965).

I. *Turnabout—The Umbrageous Disposition*

The necessity of observing nice precisions in the redistricting of both state and federal representative districts cannot be attributed to *Baker* v. *Carr* for none were there given. Rather, it arises from the gloss put upon that decision two years later in the *Reapportionment Cases*,[9] principally Chief Justice Warren's majority decision in *Reynolds v. Sims*.[10] Nevertheless, the judicial overview[11] of the redistricting process does begin with *Baker* v. *Carr* when the courts deigned to intrude into what Justice Frankfurter termed the "political thicket",[12] an area previously off limits to federal courts.[13]

For one hundred seventy years the politicians elected to state legislatures were generally free[14] to act as they chose in estab-

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[9] The opinions handed down on June 15, 1964, in which the Supreme Court struck down legislative apportionment plans in six states are known as the *Reapportionment Cases*. They are Reynolds v. Sims, 377 U.S. 533 (1964) (Alabama); WMCA, Inc. v. Lomenzo, 377 U.S. 633 (1964) (New York); Maryland Comm. for Fair Representation v. Tawes, 377 U.S. 656 (1964) (Maryland); Davis v. Mann, 377 U.S. 678 (1964) (Virginia); Roman v. Sinock, 377 U.S. 695 (1964) (Delaware); and Lucas v. Forty-Fourth Gen. Assembly, 377 U.S. 713 (1964) (Colorado). One week later on June 22, 1964, the court in a series of per curiam orders invalidated nine other legislative districting plans on the basis of the *Reapportionment Cases*; Swann v. Adams, 378 U.S. 553 (1964) (Florida); Meyers v. Thigpen, 378 U.S. 554 (1964) (Washington); Nolan v. Rhodis and Sive v. Ellis, 378 U.S. 556 (1964) (Ohio); Williams v. Moss, 378 U.S. 558 (1964) (Oklahoma); Germano v. Kerner, 378 U.S. 560 (1964) (Illinois); Marshall v. Hare, 378 U.S. 561 (1964) (Michigan); Hearne v. Smylie, 378 U.S. 563 (1964) (Idaho); Pinney v. Butterworth, 378 U.S. 564 (1964) (Connecticut); and Hill v. Davis, 378 U.S. 565 (1964) (Iowa). For a discussion of the June 22 cases, see McKay, *supra* note 8, 147-60.

[10] 377 U.S. 533 (1964).

[11] Prior to *Baker* v. *Carr* the Supreme Court had on occasion intervened in the area of legislative apportionment despite the "political question" doctrine but on grounds other than those based on the fourteenth amendment announced by the majority in *Baker*. In *Gomillion* v. *Lightfoot*, 364 U.S. 339 (1959), the Court relied on the fifteenth amendment to invalidate a legislative redistricting plan including a gerrymander based on racial considerations.

[12] In *Colegrove* v. *Green*, 328 U.S. 549, 554 (1946) Justice Frankfurter likened the intrusion of the judiciary into the matter of legislative apportionment to entering a "political thicket."

[13] The finding by the *Baker* majority of justiciability of the subject matter, *viz.*, that a review of the constitutionality of legislative apportionment was not a "political question" provoked a vigorous (63 pages) dissent from Justice Frankfurter whose opinion in Colegrove v. Green, 328 U.S. 549 (1946) had been the modern pronouncement of such a doctrine.

[14] Although most state legislatures are required by their state's constitution to reapportion their legislative seats periodically, many legislators ignored such mandates and continued their existing plans decade after decade. For example, in the two landmark cases, *Baker* v. *Carr* and *Reynolds* v. *Sims*, touching off the reapportionment era, both the Tennessee and Alabama legislatures had not reapportioned the two houses of their legislatures since 1901 despite constitutional mandates to do so decennially.

lishing the boundaries of the representative districts from whence they were elected. Indeed, they were equally as free not to act at all if that were their whim.[15] No fear of judicial supervision of the division of their states among themselves could deter them in their deliberations because their actions were "political" and hence not reviewable by the courts. In *Baker*, Mr. Justice Brennan announced that the Court's hands-off policy with respect to political questions applied only to the "relationship between the [Federal] judiciary and the coordinate branches of the *Federal* government and not the federal judiciary's relationship to the States. . . ."[16] Since the "invidious discrimination"[17] inherent in malapportioned representative districts denied the underrepresented the equal protection of the law guaranteed by the Fourteenth Amendment, the federal courts were held not lacking in judicially manageable standards for assuming such protection; hence the matter of reapportionment (and redistricting) were properly matters for judicial supervision.[18]

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[15] *Id.*

[16] 369 U.S. 186, 210 (1962) (emphasis supplied). The "political question" doctrine as thus announced by Justice Brennan does not mean that *federal* districts which have been established by *state* legislatures are not subject to the overview asserted in *Baker* v. *Carr*. In *Wesberry* v. *Sanders*, 376 U.S. 1 (1964), the Supreme Court extended this "one man-one vote" principal to congressional districting by state legislatures using as a basis the requirements of Article 1, Section 2 of the U.S. Constitution; no "political question" deterred the court from reaching its conclusion.

[17] The term "invidious discrimination" employed by Justice Clark in his concurring opinion in *Baker* was used to illustrate the result of the malapportionment in the Tennessee legislature, *viz.*, that those protesting the malapportionment could not, as their opponents claimed, rectify the situation at the polls because they could never elect enough representatives under the existing system who would comply with the (state) constitutional mandate of decennial reapportionment on a population basis. The term has appeared frequently as a talisman in many of the cases involving legislative and congressional districting. Dixon defines "invidious discrimination" as

> discrimination of the kind constitutionally forbidden, [which] exists when two factors are shown: first, that a "classification" pattern in regard to a particular governmental activity or function, whether formally announced or not; and second, that the classification pattern has no underlying rational, ordering principle, consistently followed. DIXON, *supra* note 8, at 132.

[18] 369 U.S. 186, 226 (1962). Part of Justice Brennan's rejection of the "political question" doctrine rested on his assertion that because the discrimination resulting from malapportionment of the fourteenth amendment, the Court had judicially manageable standards to deal with such discrimination. Yet he had earlier stated:

> Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights

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Thus did the court venture into the political thicket feared by Mr. Justice Frankfurter in *Colegrove v. Green*[19] and make what he referred to in his dissent in *Baker* as an "umbrageous disposition" which would catapult the lower courts of the country into a mathematical quagmire.[20]

II. *Disenfranchisement of Trees, Acres, Pastures, History and Economic Interests*

Having asserted its role in the supervision of the business of legislative apportionment, the Court was not to be concerned with standards until two years later when it handed down the *Reapportionment Cases*.[21] In *Reynolds* v. *Sims*,[22] the Chief Justice on behalf of the Court majority established the basic rule: The Equal Protection Clause requires that seats in *both* houses of a bicameral state legislature be apportioned on a population basis.[23] A corollary of this primary tenent is that no basis exists in fact or in history for departing from the rule of apportionment on a population basis for one of two houses of a bicameral state legislature in reliance upon an analogy to the federal scheme making such allowance for the upper chamber.[24] The Chief Justice did

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are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial. *Id.* at 198.

It was this cavalier entry into the "political thicket" approach which led to Justice Frankfurter's most eloquent passage in his dissent and which has been most criticized by commentators, e.g., Dixon terms the decision in *Baker* as a "three legged stool with a crucial fourth leg left for further construction." DIXON, *supra* note 8, at 119.

[19] 328 U.S. 549 (1946).

[20] 369 U.S. 186, 267-68 (1962). Justice Frankfurter's concern for the adumbration of the basis for a legal calculus as a means of extricating the lower courts from the mathematical quagmire did not go unnoticed. Chief Justice Warren in his opinion for the Court majority in *Reynolds* v. *Sims* observed, "We are cautioned about the dangers of entering political thickets and mathematical quagmires." 377 U.S. 533, 566 (1964).

[21] *See* note 9 *supra.*

[22] 377 U.S. 533 (1964).

[23] *Id.* at 568.

[24] *Id.* at 575. The federal analogy is, of course, the allotment of seats in one house of a bicameral legislature on a basis other than population, e.g., one senate seat to each county regardless of population. The majority's opinion on this corollary provoked Justice Harlan's vigorous dissent which accused the majority of ignoring both the language and the history of the controlling provisions of the Constitution. He argued that the only limitation on state legislative apportionment was that imposed by the Republican Form of Government Clause (U.S. Const., Art IV, § 4). 377 U.S. 533, 591. On the Chief Justice's use of history on this point see DIXON, *supra* note 8, at 277-82.

assert, however, that the "concept of bicameralism is [not] rendered anachronistic and meaningless when the predominant basis of representation in the two state legislative bodies is required to be the same population".[25] Acknowledging that a prime reason for bicameralism is to insure mature and deliberate consideration of proposed legislative measures and to prevent precipitate action thereon, the Court listed some suggestions for making one body of a bicameral legislature politically different from the other. Included are such methods as the use of multi-member districts, different length of terms for members of the separate bodies, and different sized districts.[26]

As to mathematical precision in achieving apportionment on a population basis, the Court alluded that "minor inequities" might constitutionally be permitted to exist in one house if balanced off in the other;[27] that "mathematical exactness or precision is hardly a workable constitutional requirement";[28] and that "more flexibility" might be constitutionally permissible in state legislative apportionment than in congressional districting, particularly where the observance of political subdivision lines is an underlying consideration.[29] All variations, however, are subject

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[25] 377 U.S. 533, 576 (1964).

[26] *Id.* at 577.

[27] *Id.* at 577. At least one state has picked up the gauntlet on this point. In its 1966 Senate Reapportionment Act, the New Mexico legislature, after finding that its existing senate apportionment provisions presumably violated the Equal Protection Clause, also found that

> (E) Senatorial districts . . . are so created that, insofar as practical, each senator will represent an equal number of persons based upon the most recent federal decennial census for New Mexico and that the minor mathematical disparity which exists is reasonable in view of the difficulties inherent in the geographic distribution of population and the demographic and economic patterns of this large and sparsely populated state; and
>
> (1) Senatorial districts are created so that minor mathematical disparities in the senate compensate for minor mathematical disparities in the house.
>
> (2) One senatorial district in particular is under-represented in the Senate, and it should be noted that this senatorial district which is composed of Curry County, is the same geographical area which is the most over-represented geographical area in the house of representatives, and that this under-representation in one house compensates for the over-representation of the other. 1 NEW MEX. STAT. ANN. § 2-9-14, (Repl. Vol. 1970).

[28] 377 U.S. 533, 577 (1964).

[29] *Id.* at 578. The majority opinion suggests that the leeway thus afforded would permit the grouping of compact districts, thus discouraging partisan gerrymandering. Despite the flexibility promised, however, the Court appears to de-

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to the qualification that they must be incident to the effectuation of a rational state policy.[30]

Finally, as to the frequency of legislative reapportionment, the Court stated that decennial reapportionment appears to be a rational approach meeting the minimal requirements for periodic readjustment of legislative representation to account for population shift and growth. Anything less frequent would be "constitutionally suspect".[31]

Cognizance of the foregoing factors, then, serves as the starting point for any legislature preparing for periodic readjustment of its legislative districts as it approaches the Seventies and Round Two[32] of reapportionment and redistricting. The remainder of this review will examine how valid and how applicable have been the suggestions of the court in guiding legislatures[33] through the "mathematical quagmires".[34]

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mand mathematical precision first, with dispensation, if any, afforded on rational grounds. *See* Swann v. Adams, 385 U.S. 440 (1967).

[30] This qualification is stated at two points by Chief Justice Warren in the majority opinion in *Reynolds*, 377 U.S. 533 at 579 and at 581. In the first use it was used to qualify divergences from strict population equality. In the second, it was used to suggest that the *character* of the deviation might be suspect if population were submerged as the controlling consideration as in the case of a gerrymander. Justice Harlan in his dissenting opinion amplified the qualification, *Id.* at 623.

[31] *Id.* at 583-84.

[32] The analogy of the division of the reapportionment effort to the periods of a boxing match has been employed by some to define the post-*Baker* cases as Round One cases and the post-*Reynolds* cases are Round Two cases. *See* e.g., MCKAY at 5. Others treat the post-1970 census as Round Two. *See, e.g.*, DIXON at 3. The latter usage is made in this article.

[33] In a negative way, Justice Harlan sets forth a guide to legislators establishing legislative districts in his dissent in *Reynolds*. Among the factors which he says would be unconstitutional to consider are history, economic or other sorts of group interests, geographical considerations, desire to insure effective representation for sparsely settled areas, availability to access of citizens to their representatives, "unapproved" theories of bicameralism, occupation, attempts to balance urban and rural power, and preferences of a majority of voters in the states. 377 U.S. 533, 622-23. A suggested legislative approach has been made by one commentator, Thompson, *Problems of Legislative Representation: A Proposed Solution*, 6 WAKE FOREST INTRA. L. REV. 235 (1970).

[34] In his now famous predictions that supervision of the legislative apportionment process would entangle the courts in political thickets and catapult them into mathematical quagmires, Justice Frankfurter overlooked the fact that the legislators would be in the quagmires before the courts made the scene. Commentators, however, have seemed to enjoy the mudbaths which have opened up whole new fields of speculation. *See, e.g.*, the mathematical gymnastics of John Banzhaf in his discussions of weighted voting, *Weighted Voting Doesn't Work: A Mathematical Analysis* 19 RUT. L. REV. 317 (1965); *Multi-Member Electoral Districts—Do They Violate the "One Man, One Vote Principle*, 75 YALE L. J. 1309

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RULES AND OTHER TALISMANS

A. *Quality of Equality*

Except for the *Reapportionment Cases*,[35] there has been very little scrutiny at the Supreme Court level as to the permissibility of any departure from the ideal for reapportionment of state legislative districts: exact equality based on population. *Swann* v. *Adams*[36] and *Kilgarlin* v. *Hill*,[37] handed down in 1967, are the only state legislative reapportionment plans invalidated by the Supreme Court for impermissible deviations,[38] although several cases involving congressional redistricting have been struck down for this reason.[39] To the extent that it remains valid, Chief Justice Warren's observation in *Reynolds* that "more flexibility" would be allowed in state reapportionment than in congressional redistricting allows one to assume that the considerations for any variation found permissible in a congressional redistricting setting also would be valid in a state reapportionment situation; and that what barely fails to receive approval in a congressional case would not necessarily be fatal in a state case if otherwise rational in evolution.[40] Thus, the congressional cases, along with *Swann* and

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(1966); and *One Man, Votes: Mathematical Analysis of Voting Power and Effective Representation*, 36 GEO. WASH. L. REV. 808 (1968).

[35] *See* note 9, *supra* and accompanying text. Because they were handed down the same day the basic rules were given, the reapportionment cases other than *Reynolds* do not serve as a basis of evaluation because they do not represent a review of attempted compliances set forth therein.

[36] 385 U.S. 440 (1967).

[37] 386 U.S. 120 (1967).

[38] While the Court has reviewed other state legislative districting plans since the *Reapportionment Cases*, e.g., the Georgia and Hawaii plans in *Fortson* v. *Dorsey*, 379 U.S. 433 (1965), and *Burns* v. *Richardson*, 384 U.S. 73 (1966), respectively, were upheld. Only the Florida plan in *Swann* and the Texas plan in *Kilgarlin* have been invalidated.

[39] Wells v. Rockefeller, 394 U.S. 542 (1969); Kirkpatrick v. Preisler, 394 U.S. 526 (1969); Kirkpatrick v. Preisler, 385 U.S. 450 (1967); Duddleston v. Grills, 385 U.S. 455 (1967); and Wesberry v. Sanders, 376 U.S. 1 (1964).

[40] Professor Dixon suggests that none of the flexibility for state legislative districting suggested in *Reynolds* exists as a result of the interpretation made in *Swann*:

> . . . [T]he effect of *Reynolds* and *Swann* is to destroy any basis for using the term 'apportionment' to describe the process of setting up legislative seats of equal population. There is now simply a kaleidoscoped process of using the current population and the current number of legislative seats as the basis for creating a current, but temporary, set of equal population districts. DIXON, *supra* note 8, at 455. For a contrary view see MCKAY, *supra* note 8, at 221-22.

Kilgarlin, should be considered as furnishing minimum guidelines for the establishment of new state districts.

At this "relatively early stage of the reapportionment effort"[41] two precepts have been laid down by the Court in evaluation of legislative efforts to attain population equality in the districting process. The first of these is the "as nearly as practicable standard" pronounced in *Wesberry* v. *Sanders.*[42] The other is that the burden is on the state to present acceptable reasons for the variation among populations of various districts, a rule set out in *Swann* v. *Adams.*[43]

1. Hitting the Mark

In light of the two rules just stated, the starting point in achieving equality on a population basis for both state and congressional redistricting is to arrive at the size of the ideal district. This is determined by dividing the state population by the number of districts to be created. Presumably, the idea[44] is to then carve up the state so that each district, as nearly as practicable, has a population of the size of the ideal district. In the review of a redistricting case, the courts, after determining the ideal district size, have considered the "percentage of deviation" of each of the resulting districts from the state mean. In addition, the ratio of the largest district population to the smallest district population can be computed, a comparison which Mr. Justice White has labeled the "Citizen Population Variance" [hereinafter "CPV"].[45] By substituting the population of each of the districts for that of the largest district in the CPV fraction, the amount of dilution of voting strength of the voter in each district larger than the smallest may likewise be illustrated. In the two state and several Congressional redistricting cases where the Court has declared deviations to be unacceptable since the *Reapportionment Cases,* the following percentage of variation and CPV's have been found:

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[41] The chronology is that of Justice Fortas in his concurring opinion in Kirkpatrick v. Preisler, 394 U.S. 526 at 540 (1969).

[42] 376 U.S. 1, 7-8 (1964).

[43] 385 U.S. 440, 443-444 (1967).

[44] Assuming single member districts.

[45] Swann v. Adams, 385 U.S. 440 (1967). *See also* Kirkpatrick v. Preisler, 385 U.S. 450 (1967).

YEAR	STATE	RANGE OF PERCENT OF DEVIATION FROM MEAN				CPV	
State Cases		*House*		*Senate*		*House*	*Senate*
		Above	Below	Above	Below		
1967	Florida[46]	+15.3	−18.3	+10.6	−15.1	1.4	1.3
1967	Texas[47]	+11.6	−14.8	+10.7	−10.1	1.31	1.23
Congressional Cases		*Above*		*Below*			
1964	Georgia[48]	+108.9		−31.0		3.0	
1967	Indiana[49]	+7.2		−12.8		1.23	
1967	Missouri[50]	+64.6		−31.5			
1969	Missouri[51]	+3.1		−2.8		1.06	
1969	New York[52]	+6.45		−6.61		1.14[53]	

In each case where a districting plan has been found unacceptable, it has been on the basis that the state has failed to meet the burden of justifying variations from the mean. In *Wells* v. *Rockefeller*,[54] for example, there was a conscious effort by the New York Legislature to create sub-states within the state with near precise equality of population among the districts within the sub-states but nevertheless with the same appreciation by the legislature that on a statewide basis there was vast disparity in the size of districts. In the second Missouri case, the legislature did not attempt to achieve equality but apparently established districts on what it predicted in advance would be percentage deviation which the Court would accept—a mere two percent.[55]

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[46] Swann v. Adams, 385 U.S. 440 (1967).
[47] Kilgarin v. Hill, 386 U.S. 120 (1967).
[48] Wesberry v. Sanders, 376 U.S. 1 (1964). Although *Wesberry* actually preceded the *Reapportionment Cases*, it is included here to illustrate the range of improved, yet impermissible, deviation in congressional cases.
[49] Duddleston v. Grills, 385 U.S. 455 (1967).
[50] Kirkpatrick v. Preisler, 385 U.S. 450 (1967).
[51] Kirkpatrick v. Preisler, 394 U.S. 526 (1969).
[52] Wells v. Rockefeller, 394 U.S. 542 (1969).
[53] While the table above is illustrative of a few cases considered by the Supreme Court during the era under review. Professors Dixon and McKay have both compiled extremely detailed appendices covering all states from the *Baker* decision to their respective dates of publication. *See* MCKAY, *supra* note 8, at 275 *et seq.*; and DIXON, *supra* note 8, at 589 *et seq.*
[54] 394 U.S. 542 (1969).
[55] Kirkpatrick v. Preisler, 394 U.S. 526, 531 (1969).

One fatal flaw in the Missouri case may have been a concession by the legislative proponents of the state plan that much greater approximation at equality could have been attained by simply transferring political subdivisions of known population between contiguous districts.[56]

A particularly ominous passage in the second Missouri case is the Court majority's rejection of the proponents' argument that the population variances should be considered *de minimus* without the necessity of further justification. Mr. Justice Brennan for the Court declared

> The 'as nearly as practicable' standard requires that the state make a good faith effort to achieve precise mathematical equality [citing *Reynolds*]. Unless population variances among congressional districts are shown to have resulted despite such effort, the state must justify each variance, *no matter how small.*[57]

Justice White, whose opinion for the majority in *Swann* had apparently established the *de minimus* guideline, dissented vigorously, finding the new rulings, "unduly rigid and unwarranted" and suggesting as a rule of thumb that he would find satisfactory variations between the largest and smallest districts of no more than 10 percent to 15 percent absent unusual circumstances.[58]

Apart from the lessons, if any, that can be learned from the foregoing cases, the only other apparent license the court has given for constitutionally permissible deviations from a strict equality of population standard is that they must be "based on legitimate considerations incident to the effectuation of a rational state policy".[59] What is "rational", of course, is what Round One has been all about and what presumably will be resolved as Round Two cases come before the Court.

2. Multimember and Floterial Districts

Among the ways suggested by the Court for achieving political distinction between the two houses of a bicameral legislature

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[56] 394 U.S. at 529 (1969).

[57] 394 U.S. at 530-31 (1969), emphasis supplied.

[58] *Id.* at 533. Justice Fortas who concurred with the majority also believed the rejection of de minimus standards as inconsistent with the imperfection of man implicit in the "as nearly as practicable" standard. 394 U.S. at 538. *See Comment* 15 VILL. L. REV. 223 (1969).

[59] Reynolds v. Sims, 377 U.S. 533, 579 (1964).

were the creation of multimember and floterial districts.[60] There is no reason to believe that within the same state the use of such districts must be limited to one of two houses of a bicameral legislature. The suggestion, however, has been appealing to legislatures and even more so, although not necessarily approvingly, to the commentators.[61]

The creation of a multimember district is accomplished by selection of a geographical, political or other subdivision of a state containing, on a population basis, some multiple of the ideal district from which the appropriate number of representatives would then be elected at large. Since *Reynolds*, the Supreme Court has upheld the constitutionality of such means of achieving equality of representation.[62]

The principal reasons for the resort to multimember districts seem to be either circumvention of constitutional prohibitions against subdivision of counties into districts[63] or enhancement of majority party control within an area by increasing the likelihood that majority party candidates within the district will capture most, if not all, of the seats alloted to the multimember district.[64]

A "floterial" district is one which would include several separate districts, none of which, by themselves, would be entitled to additional representation; when, however, the combined population of the several districts is considered, the area would be

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[60] *Id.*

[61] *See generally* MCKAY, *supra* note 8, at 262-4; DIXON, *supra* note 8, at 476-84; Jewell, *Minority Representation: A Political or Judicial Question*, 53 KY. L. J. 267 (1965); and Comment, *Effective Representation and Multimember Districts*, 68 MICH. L. REV. 1577 (1970). "But the Equal Protection Clause does not require that at least one house of a bicameral legislature consist of single-member legislative districts (citing *Fortson*)." Burns v. Richardson 384 U.S. 73, 88 (1966).

[62] *E.g.*, Fortson v. Dorsey, 379 U.S. 433 (1965); and Burns v. Richardson, 384 U.S. 73 (1966).

[63] This is the legitimate use of multimember districts. See MCKAY, *supra* note 8, at 42, 263.

[64] The use of multimember districting to bury minorities, either political or racial, has drawn repeated criticism. *See generally* R. CLAUDE, THE SUPREME COURT AND THE ELECTORAL PROCESS 184-89, 199 (1970); DIXON, *supra* note 8, at 457 ("winner-take-all characteristic of multimember districts"), 471-74; Jewell, *Minority Represetnation: A Political or Judicial Question*, 54 KY. L. J. 267, 276-86 (1965) ("wasted votes"); Elliott, *Prometheus, Proteus, Pandora, and Procrustes Unbound: The Political Consequences of Reapportionment*, 37 U. CHI. L. REV. 474, 489 (1970) ("Constitutionally decent burial in multimember districts"); and *Comment*, 69 MICH. L. REV. 1577 (1970). Justice Douglas in his concurring opinion in Kilgarlin v. Hill, 386 U.S. 120, 126 (1967) criticized multimember districts because they allowed the majority to defeat the minority on all fronts.

entitled to an additional seat in the legislature.[65] Although generally condemned by observers, the use of floterial districts has received tacit judicial approval on a few occasions.

3. Weighted Voting

Some writers have suggested that the principle that one man's vote is equal to another's might be attained without the necessity of creating precisely equal districts by simply weighting the votes of each representative in the legislature according to the number of people he represents.[66] There has been no review of this method by the Court nor has the Court even suggested that such a plan might be constitutionally permissible.[67] Inspiration for such an apportionment scheme could be derived from the overall emphasis in the majority opinion in *Reynolds* and the specific reference therein to a citizen's right to cast an "adequately weighted" vote.[68] Whether the denial of the right of a citizen to cast an adequately weighted vote may be compensated for by his elected representative casting a disproportionately greater vote than legislators who represent fewer people has yet to be determined. Of those who have contemplated the possibilities of the weighted vote, the better view seems to be that which points out that representatives in the legislature do more than vote: they *represent* their constituents and the *representative character* of the voter's legislator ought to be protected against debasement as much as the quality of his vote.[69]

B. *Gerrymandering*

It would be naive to suggest that legislators in setting out to reapportion their state's legislative districts are thinking only in

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[65] In *Davis* v. *Mann*, 377 U.S. 678, 686 n.2 (1964), the court gives a definition and an example of how floterial districts might be used not only to increase the representation of a populous area but also to give voters in a contiguous area a voice in the legislature without having to create separate political subdivisions. The floterial district can also be used to stifle minorities in a manner similar to that used in multimember districting. *See* note 63 *supra*.

[66] *See* DIXON, *supra* note 8, at 516-20, 540-43; Banzhaf, *Weighted Voting Doesn't Work: A Mathematical Analysis*, 19 RUT. L. REV. 317 (1965); and Comment, *Equal Representation and the Weighted Voting Alternative*, 79 YALE L. J. 311 (1969).

[67] A weighted voting plan was suggested as a stop-gap measure in New York but rejected by the lower federal court in post-*Reynolds* districting litigation. WMCA v. Lomenzo, 238 F. Supp. 916 (S.D. N.Y. 1965). The judgment was subsequently vacated as moot by the Supreme Court following other resolution of New York's reapportionment. Lomenzo v. WMCA 384 U.S. 887 (1966).

[68] Reynolds v. Sims, 377 U.S. 533, 581.

[69] *See, e.g.*, Comment, *Equal Representation and the Weighted Voting Alternative*, 79 YALE L. J. 311, 318-319 (1969).

terms of achieving the ideal of mathematical exactness. Rather, the majority party members in the legislature will most likely be seeking to maintain or increase their party's advantage while trying to adhere to the objective requirements of *Reynolds* v. *Sims*. In this respect it seems clear that although the burden is on the state to present acceptable reasons for the variations among population of its several resulting districts,[70] the burden is on the opponent of a state districting scheme to establish that equally—or nearly so—apportioned districts were arrived at on the basis of other than legitimate considerations.[71] The historic result of a gerrymander is creation of a district containing a majority of voters of the creators' own political party.[72] More recently, with the increasing effectiveness of voting by other than political minority groups, attempts have been made to gerrymander districts so that minority voters therein are submerged within the district.[73]

While the Supreme Court has alluded to the possibility of a finding of irrationality of legislative purpose where political or racial considerations are the motivating factors,[74] it has yet to

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[70] See text at note 43, *supra*.

[71] Wright v. Rockefeller, 376 U.S. 52, 55-7 (1964). The Supreme Court in *Fortson v. Dorsey* asserted that "plaintiffs have a difficult burden to meet in attacking the constitutionality of this state statute," 379 U.S. 433 (1965). *See also* Burns v. Richardson, 384 U.S. 73 (1966). In all of these cases charges were made that racial minorities had either been concentrated in districts or submerged in multimember districts. The Court in each case accepted the legitimate reasons advanced by the proponents of the plans and rejected the contentions of the plaintiffs on the ground that insufficient evidence had been offered to support their claims of racial motivation. See DIXON, *supra* note 8, at 496.

[72] See JEWELL AND PATTERSON, THE LEGISLATIVE PROCESS IN THE UNITED STATES 70 (1966); and KEEFE AND OGUL, THE AMERICAN LEGISLATIVE PROCESS 82 (1964).

[73] *See, e.g.*, the allegations of plaintiffs in the cases cited in note 70, *supra*. *See also* R. CLAUDE, THE SUPREME COURT AND THE ELECTORAL PROCESS 82 (1970) and DIXON, *supra* note 8, at 463.

[74] *See* Fortson v. Dorsey, 379 U.S. 433 (1965). In rejecting a claim that multimember districts had been employed to thrust foreign senators on a Negro minority, Justice Brennan said:

> It might well be that, designedly or otherwise, a multimember constituency apportionment scheme, under the circumstances of a particular case, would operate to minimize or cancel out the voting strength of racial or political elements of the voting population. When this is demonstrated it will be time enough to consider whether the system still passes constitutional muster. *Id.* at 439.

In Burns v. Richardson, 384 U.S. 73 (1966) involving similar allegations, the Court, through Justice Brennan, again rejected plaintiffs' claims, and after citing the foregoing passage from *Fortson*, stated that:

> It may be that this invidious effect [of multimember district apportionment schemes] can more easily be shown if, in contrast to the facts in *Fortson*, districts are large in relation to the total number of legislators, if districts are not appropriately subdistricted to assure distribution of

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strike down a district created as the result of a political gerrymander. Even before *Baker* v. *Carr*, racially gerrymandered districts were found unconstitutional by the federal courts.[75] Nevertheless, it would appear in cases where racial or political gerrymandering is alleged that a heavy burden rests upon those attacking the legality of the districting plan and, absent any proof of specific legislative intent of partisan or racial bias, the court, or a majority of it, will not question legitimate reasons for the "dragon-like" results of redistricting efforts.[76]

C. *Other Tricks*

As in the case of gerrymandering, legislatures have attempted to deny representation to political or racial minorities by the use of various schemes. Apart from the legitimate reasons given for the resort to multimember districts, this device can effectively be employed to deny effective representation to minority interests by insuring, in a political context, that such districts contain a majority of voters of the party controlling the legislature at the time of reapportionment. In a racial context, such districts will

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(Footnote continued from preceding page)

> legislators that are resident over the entire district, or if such districts characterize both houses of a bicameral legislature rather than one. *Id.* at 88.

[75] Gomillion v. Lightfoot, 364 U.S. 339 (1960).

[76] The district need not be dragon-like. Professor Dixon contends *all* districting is gerrymandering. DIXON, *supra* note 8, at 462. The most mathematically exact district can be the result of a gerrymander; indeed, this is the dilemma that faces those attacking a districting plan on the basis of impermissible considerations. In *Fortson*, for example, the court's finding that the districts satisfied *Reynolds'* criteria that the "overriding objective must be substantial equality of population among the districts" (379 U.S. at 436) drew the following reservation from Justice Harlan, concurring:

> There is language in today's opinion unnecessary to the Court's resolution of this case, that might be taken to mean that the constitutionality of state legislative apportionments must, in the last analysis, always be judged in terms of simple arithmetic. . . . I desire expressly to reserve for a case which squarely presents the issue. The question of whether the principles announced in [the Reapportionment Cases] require such a sterile approach to the concept of equal protection in the political field. 379 U.S. at 439-40.

Generally the court has refused to draw inferences of unconstitutional considerations where more legitimate inferences were also present. Absent hard evidence, such as legislative reports or similar documentary proof, mere suspicions, no matter how valid, will not be accepted. On the gerrymander problem, generally, see MCKAY, *supra* note 8, at 458-99; R. CLAUDE, THE SUPREME COURT AND THE ELECTORAL PROCESS 83-88 (1970); Jewell, *Minority Representation: A Political or Judicial Question*, 53 KY. L. J. 267 (1965).

be drawn to contain a majority of voters from the predominant race.[77]

To ensure the effectiveness of such ploys and to decrease the possibility that the minority, whether political or racial, might achieve *some* representation by voting for candidates to fill less than all the seats to be elected, some states have provisions which require the invalidation of ballots which do not contain votes for the full slate of positions.[78] The continued toleration of such a practice seems doubtful and the wise legislator should not utilize it to dilute minority voting strength.

D. *Left-Over Problems*

1. Basis of Reapportionment

Another factor remains to be considered: what is the base for reapportionment? Is it the number of persons in the area to be represented—literally one man—one vote? Or may the base be the number of registered voters—a one voter—one vote approach? Without question the first base mentioned is not only permissible but is the base used for most reapportionment; but the Supreme Court has also approved the use of registered voters as a base for determining legislative districts, so long as such a base would not substantially deviate from population figures.[79]

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[77] *See* Comment, *Effective Representation and Multimember Districts*, 68 MICH. L. REV. 1577 (1970). The author uses a post-*Fortson* case from the federal court in Indiana, Chavis v. Whitcomb, 305 F. Supp. 1364 (S.D. Ind. 1969) *redistricting order per curiam*, 307 F. Supp. 1362 (S.D. Ind. 1969), *prob. juris. noted*, 397 U.S. 984 (1970), in which plaintiffs successfully challenged a multimember districting plan on the ground that ghetto residents had suffered a dilution in their voting strength, to illustrate the procedural problems inherent in such a proceeding. The case presents more forcefully the problems avoided by the Court in *Wright*, *Fortson* and *Burns* and should be the next significant case in the reapportionment effort.

[78] On this technique, *see* DIXON, *supra* note 8, at 483; and Jewell, *Minority Representation: A Political or Judicial Question*, 53 KY. L. J. 267, 285 (1965), both of whom cite Boineau v. Thornton 235 F. Supp. 175 (E.D.S.C. 1964), aff'd per curiam, 379 U.S. 15 (1964) in which a federal court in South Carolina dismissed a complaint attacking a state provision against "bullet" or "single shot" ballot.

[79] Burns v. Richardson, 384 U.S. 73 (1964): "We hold that the present apportionment (on the basis of registered voters) satisfies the Equal Protection Clause only because on this record it was found to have produced a distribution of legislators *not substantially different from that which would have resulted from the use of a permissible population basis*," 384 U.S. at 93. (emphasis supplied.) In Kirkpatrick v. Preisler, 394 U.S. 526 (1969), the Court rejected an argu-

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2. The Enigma of Representation

Finally, there is the most enigmatic issue of all that must be resolved. The purpose of insisting on one man—one vote is so that each legislator will represent, as nearly as possible, the same number of voters. Or, conversely, to assure each voter that he will have as much voice as the man in the next county or the other end of the state in choosing a representative to the legislature. But what is meant by "representation"? Is representation satisfied simply by election of one responsible to the majority of voters in a district? Or does it signify something more? Should different bodies or blocs of voters have representatives in the legislature and if so, where must the line be drawn as to definition or size of the group or bloc.[80]

The answer to the definition of representation is necessarily a moral one. There is no doubt that the overwhelming attitude toward the question is that legislators are representatives of the majority—usually a political party—of the voters. That they might also represent distinctive groups in the body politic is possible but, at this time, more than likely accidental. Perhaps more contemplative and deliberative legislative bodies can yet reach the answer to this riddle.

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ment seeking to justify population variances in congressional districting on consideration of percentage eligible voters among the total population. The court reserved the question of the validity of apportionment on an eligible voter base because it held that Missouri had not applied the consideration uniformly. In Klahr v. Williams, 313 F. Supp. 148 (D.C. Ariz. 1970), a three-judge federal district court citing *Burns* invalidated as an apportionment base a computer determined conversion of 1968 voter registrations to the 1960 census on a proportionate basis. The court did permit 1970 elections to be conducted under the plan because of lack of time to come up with a new plan, the immediate pendency of the report of the 1970 census which would permit new apportionment, and the fact that the plan found invalid more nearly approached the one man-one vote principle than the court's own earlier ordered plan. See n. 7 *supra* for present districting in state legislatures on a voter registration basis.

[80] Professor Irwin makes a searching inquiry of the theory and process of representation in his article *Representation and Election: The Reapportionment Cases in Retrospect,* 67 MICH. L. REV. 729 (1969). In like manner the "concept of effective representation" is the central topic of the author of the Comment, *Effective Representation and Multimember Districts,* 68 MICH. L. REV. 1577 (1970). Professor Dixon declares that one of the main themes of his thorough survey of the reapportionment era is "in reapportionment more is involved than the self-centered constitutional right of a voter to cast a vote which, at least in mathematical, nonfunctional terms, is weighted equally with votes of others throughout the districts which comprise the total legislative constituency. That 'more' to quote Chief Justice Warren in his basic reapportionment opinion of 1964 is 'fair and effective representation'." DIXON, *supra* note 8, at 17.

Parting Thoughts—Some Predictions

As legislatures approach Round Two, many will have safely weathered Round One and will have this prior experience to build on. Others will not have achieved a satisfactory post-*Baker* redistricting and will have to readjust their procedures to achieve a plan which will pass court review for constitutionality. Whatever their past successes, it now appears imperative that legislatures must act more carefully than ever before in striving for the reapportionment ideal of one man—one vote. The requirements of rationality seem more demanding than in the past and efforts to minimize the effectiveness of minority voters whether by single district gerrymander, submersion of them in multimember districts, or other yet-to-be-discovered devices will be subjected to more scrutiny than previously. More state constitutional limitations against splitting county or other political subdivisions in creating districts or limitations on the number of such subdivisions which may make up a district will fall.[81] Variances between districts will likely become suspect, and mathematical exactness will be demanded subject, however, to inspection for impermissible considerations.[82]

In all the trauma of legislative and congressional redistricting, however, legislators will find one area to be thankful for: they

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[81] An interesting argument advanced in support of minor population variance in Missouri's congressional redistricting plan struck down in Kirkpatrick v. Preisler, 394 U.S. 526 (1969), was that by drawing district lines along existing county, municipal or other political subdivision boundaries, the state was minimizing the opportunities for partisan gerrymandering. The court termed this argument "no more than a variant of the argument, already rejected, that considerations of practical politics can justify population disparities." *Id.* at 534. Several state constitutions contain provisions prohibiting joinder of part of one county to another county in the formation of legislative districts. It seems clear that these provisions must defer to the *Kirkpatrick* ruling when in conflict with the equal population standard. For provisions concerning house districts, see IOWA CONST. ART. III, § 37; IDA. CONST. ART. III, § 5; KY. CONST. § 33. For senatorial district provisions, see CAL. CONST. ART. IV, § 6; IDA. CONST. ART. III, § 5; TENN. CONST. ART. II, § 6; UTAH CONST. ART. IX, § 4. Editor's Note: Upton v. Begley, at Frankfort #364 E.D. Ky. Jan. 13, 1971 Fed. Ct. invalidated Ky. Const. § 33 which prohibited splitting of counties to form Legislative districts.

[82] The mathematical precision demanded by the court may not make gerrymandering more difficult, only more complex. Political professionals agree that computer systems are essential tools in the redistricting battles of the Seventies, and a multitude of data processing firms have sprung up to offer their services, for a fee, to parties and legislatures. A Democratic National Committee Official reports that "at least 20" political consulting firms have approached him with redistricting plans. *Redistricting Battles Will Shape House for Decade,* CONG. Q. VOL. XXVIII, No. 48, Nov. 20, 1970, Page 2822.

will not have to reapportion the districts of their representatives to the United States Senate.[83]

[83] It may seem humorous even to suggest that apportionment issues could ever be raised in the choosing of representatives elected on an at-large basis, but *see* Gray v. Sanders, 372 U.S. 368 (1963).

APPENDIX A-1

THE BOOK OF THE STATES
APPORTIONMENT OF LEGISLATURES*
SENATE

State	Present apportionment by	Year of most recent apportionment	Number of seats	Number of districts	Number of multimember districts (a)	Largest number of seats in district	Percent of deviation in actual vs. average population per seat: Greatest +	Greatest −	Average	Average population each seat (thousands)	Minimum percent of population necessary to elect majority: Present	1962
Alabama	L	1965	35	26	3	7	29	14	8	93	48	25
Alaska	B	1968	20	11	2	7	29	13	8	10	51	35
Arizona (b)	C	1966	30	8	5	15	7	16	3	43	52	13
Arkansas	B	1965	35	25	6	5	14	9	4	51	49	44
California	L	1965	40	40	0	1	13	15	7	393	49	11
Colorado	L	1967	35	35	0	1	7	6	2	50	50	30
Connecticut	L	1965	36	36	0	1	23	19	10	70	48	33
Delaware	L	1967	19	19	0	1	10	1	6	28	53	22
Florida	C	1967	48	17	12	9	5	5	2	103	51	12
Georgia	L	1968	56	38	7	8	13	19	5	70	49	23
Hawaii	Con	1968	26(c)	8	7	4	24	6	5	10(d)	51	23
Idaho	L	1966	35	35	0	1	19	15	10	19	47	17
Illinois	B	1965	58	58	0	1	7	7	3	174	50	29
Indiana	L	1965(e)	50	31	8	8	15	15	6	93	49	40
Iowa	Con	1969(f)	50	50	0	1	7	6	3	55	50	35
Kansas	C	1968	40	28	4	6	6	9	3	57	51	27
Kentucky	L	1963	38	38	0	1	51	22	12	80	47	42
Louisiana	L	1966	39	27	10	3	17	20	6	84	48	33
Maine	C	1967	32	32	0	1	9	10	4	30	51	47
Maryland	L	1965	43	16	14	7	18	16	7	72	47	14
Massachusetts	C	1960	40	40	0	1	8	14	4	63(g)	50	45
Michigan	C	1964	38	38	0	1	1	0	0	206	53	29
Minnesota	L	1966	67	67	0	1	25	13	5	51	48	40
Mississippi	C	1967	52	36	10	5	13	11	7	42	49	35
Missouri	B	1966	34	34	0	1	5	4	2	127	52	48
Montana	C	1965	55	31	11	6	17	21	8	12	47	16
Nebraska	L	1967	49	49	0	1	13	7	4	29	49	37
Nevada	L	1965	20	8	2	8	11	21	9	14	50	8
New Hampshire	L	1965	24	24	0	1	11	13	5	25	52	45
New Jersey	Con	1966	40	15	11	6	12	14	6	152	50	19
New Mexico	C	1966	42	42	0	1	29	28	13	23	46	14
New York	C	1966	57	57	0	1	9	6	4	285	49	41
North Carolina	L	1966	50	33	14	3	13	15	6	91	49	37
North Dakota	C	1965	49	39	5	4	10	12	5	13	47	32
Ohio	Con	1967	33	33	0	1	9	10	4	294	50	41
Oklahoma	C	1964	48	48	0	1	28	15	6	49	49	25
Oregon	L	1961	30	19	5	8	25	49	13	59	47	48
Pennsylvania	C	1966	50	50	0	1	10	9	4	226	50	33
Rhode Island	L	1966	50	50	0	1	19	12	8	18	50	18
South Carolina	L	1968	46	20	15	5	13	13	4	52	50	23
South Dakota	L	1965	35	29	3	4	16	17	9	19	47	38
Tennessee	Con	1966	33	33	0	1	16	14	6	108	49	27
Texas	L	1965	31	31	0	1	11	10	4	309	49	30
Utah	L	1965	28	28	0	1	16	34	15	32	48	21
Vermont	L	1965	30	12	10	6	23	23	9	13	49	47
Virginia	L	1964	40	33	5	4	18	13	9	99	48	38
Washington	L	1965	49	49	0	1	22	16	6	58	48	34
West Virginia	L	1964	34	17	17	2	34	31	12	55	47	47
Wisconsin	C	1964	33	33	0	1	14	16	7	120	48	45
Wyoming	C	1965	30	17	7	5	36	35	12	11	47	27

* The data for this table were adapted from *Apportionment in the Nineteen Sixties*, The National Municipal League, New York, New York and updated by the Council of State Governments for this edition.

Abbreviations: B—Board or Commission; C—Court; Con—Constitution; L—Legislature; N.A.—Not Available.

(a) 9 grouping of a floterial district and one or more individual districts is counted as a multimember district. Floterial districts are formed by combining two or more districts, at least one of which elects its own representative, into a larger (floterial) district for the election of one or more additional representatives. Floterial districts are used in Nevada, New Jersey, Oregon, Tennessee and Virginia.

APPENDIX A-2

LEGISLATURES AND LEGISLATION
APPORTIONMENT OF LEGISLATURES*
HOUSE

Present apportionment by	*Year of most recent apportionment*	*Number of seats*	*Number of districts*	*Number of multi-member districts (a)*	*Largest number of seats in district*	*Percent of deviation in actual vs. average population per seat*			*Average population each seat (thousands)*	*Minimum percent of population necessary to elect majority*		*State*
						Greatest +	*Greatest* −	*Average*		*Present*	*1962*	
C	1965	106	43	25	20	23	25	7	31	48	26	Alabama
B	1961	40	19	4	14	36	40	10	5	48	49	Alaska
C	1966	60	8	8	30	7	16	3	22	51	N.A.	Arizona
B	1965	100	44	27	13	14	15	6	18	48	33	Arkansas
L	1965	80	80	0	1	13	14	5	196	49	45	California
L	1967	65	65	0	1	13	12	5	27	54	32	Colorado
L	1965	177	177	0	1	38	35	13	14	44	12	Connecticut
L	1967	39	39	0	1	11	1	4	13	51	19	Delaware
C	1967	119	24	21	22	5	6	2	42	50	12	Florida
L	1968	195	118	47	7	25	24	8	20	43	22	Georgia
Con	1968	51	25	19	3	15	16	6	5(d)	47	48	Hawaii
L	1966	70	42	28	2	32	15	10	10	47	33	Idaho
B	1965	177	59	59	3	9	8	3	171	49	40	Illinois
L	1965	100	39	25	15	10	11	4	47	49	35	Indiana
Con	1969(f)	100	100	0	1	7	6	3	28	49	27	Iowa
L	1966	125	125	0	1	11	11	3	18	49	19	Kansas
L	1963	100	100	0	1	33	34	13	30	45	34	Kentucky
L	1966	105	49	28	7	21	17	8	31	47	34	Louisiana
L	1964	151	114	15	11	106	40	14	6	43	40	Maine
L	1965	142	29	20	22	36	29	6	22	48	25	Maryland
L	1967	240	175	56	3	36	33	10	22	48	45	Massachusetts
C	1964	110	110	0	1	1	3	1	71	51	44	Michigan
L	1966	135	120	15	2	13	26	6	25	47	35	Minnesota
C	1967	122	52	34	10	10	11	5	18	48	28	Mississippi
B	1966	163	163	0	1	9	10	3	27	49	20	Missouri
C	1965	104	38	27	12	25	25	6	6	48	37	Montana
....	.....	...	...	...	...	...	...	...	...	...	...	Nebraska
L	1965	40	11	5	16	19	22	10	7	48	35	Nevada
L	1965	400	193	116	7	63	31	9	1	46	44	New Hampshire
C	1969	80	39	39	3	10	16	10	76	48	47	New Jersey
L	1965	70	70	0	1	36	38	10	14	46	27	New Mexico
B	1966	150	150	0	1	9	10	3	108	49	33	New York
L	1966	120	49	41	7	14	14	7	38	48	27	North Carolina
C	1965	98	39	39	8	10	12	5	6	47	40	North Dakota
Con	1967	99	99	0	1	13	13	6	98	47	30	Ohio
C	1964	99	99	0	1	13	11	4	24	49	30	Oklahoma
L	1967	60	32	15	7	35	36	8	29	48	48	Oregon
C	1966	203	203	0	1	16	14	6	56	47	38	Pennsylvania
L	1966	100	100	0	1	19	10	7	9	49	47	Rhode Island
L	1961	124	46	29	11	53	55	10	19	46	46	South Carolina
L	1965	75	39	22	9	19	14	8	9	47	39	South Dakota
Con	1966	99	93	13	3	28	16	7	36	47	29	Tennessee
L	1967	150	80	18	15	31	30	12	73	45	39	Texas
L	1965	69	69	0	1	7	31	7	13	48	33	Utah
L	1965	150	72	36	15	11	14	4	1(d)	49	12	Vermont
L	1964	100	63	20	9	20	22	8	40	47	37	Virginia
L	1965	99	56	42	3	18	27	7	29	47	35	Washington
L	1964	100	47	21	14	46	38	10	19	46	40	West Virginia
C	1964	100	100	0	1	32	44	11	40	45	40	Wisconsin
L	1963	61	23	12	11	47	43	9	5	46	36	Wyoming

(b) The Legislature was directed by court order on July 22, 1969 to reapportion and redistrict prior to the 1970 elections.

(c) Effective Nov. 1970: the 8th Senatorial District will be allocated an additional senator. The two senators from this district will each be entitled to only ½ of a vote in the Legislature.

(d) Average number of registered voters per seat.

(e) A federal court panel reapportioned legislative districts in Dec. 1969. However, their plan has been appealed to the U.S. Supreme Court.

(f) Effective Nov. 1970.

(g) Average number of legal voters per seat.

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