Apportionment of the New York State Senate

St. John's Law Review

Follow this and additional works at: https://scholarship.law.stjohns.edu/lawreview

This Recent Development in New York Law is brought to you for free and open access by the Journals at St. John's Law Scholarship Repository. It has been accepted for inclusion in St. John's Law Review by an authorized editor of St. John's Law Scholarship Repository. For more information, please contact selbyc@stjohns.edu.
mail check would seem unwise. Many of the authorities have specifically recommended that both these provisions be included, especially in the case of large cities. Many large cities which have adopted PPR have found it necessary to retain these provisions. Furthermore, it is generally conceded that the success of PPR depends, in large measure, on the inclusion of provisions which insure purging the lists of "dead wood." It is contended that the better course would be to leave these provisions in the statute, at least until PPR has had a sufficient test in New York City. Increasing from two to four years the period in which a person must vote to remain on the register is especially undesirable. As pointed out, this provision tends to increase voter participation. Its effectiveness in this regard would, of course, decrease with a lengthening of the permissible non-voting period. The experience in Philadelphia under a four-year period showed a marked increase in the amount of dead wood on the registers. Regardless of whether these proposals are enacted into law, however, the resulting registration law should prove a superior and more workable solution to New York State's registration problems.

**Apportionment of the New York State Senate**

*Introduction*

The State of New York is composed of 62 counties which range in citizen population from 2,595,187 (Kings County) to 4,055 (Hamilton County).\(^1\) Citizen population is the constitutional basis of legislative apportionment.\(^2\) The counties range in area from 22 square miles (New York County) to 2,772 square miles (Saint Lawrence County).\(^3\) The state Legislature is composed of a Senate with 58 members, and of an Assembly with 150 members. At this writing, the Senate is composed of 20 Democrats and 38 Republicans, while the Assembly contains 53 Democrats and 95 Republicans with two seats vacant. Of the Democrats in the Senate, all but one are elected from those counties comprising the City of New York, which counties also elect 49 of the Democratic Assemblymen.\(^4\) As is readily seen,

---

\(^1\) 1953 Leg. Doc. No. 98, Report, Joint Legislative Committee on Reapportionment, McKinney's Session Laws of New York 24, 31-32 (1954). All present day statistics are based on the 1950 federal census. See Appendix to this legislative note for population figures.

\(^2\) N.Y. Const. art. 3, § 4.

\(^3\) 1954 Legislative Manual of New York 424.

\(^4\) 1957 N.Y. Legislative Record and Index 1071, 1072-75.
there can be no realistic discussion of legislative apportionment and
districting in this state without a constant awareness of the struggle
between the "city Democrats" and "up-state Republicans." This situ-
ation is further complicated by the fact that New York City with .65%
of the total area of the state contains 52.3% of the citizen population.  

The present method of apportionment of the Senate, as contained
in Article III of the New York Constitution, consists in determining
the total number of Senators and in locating the districts from which
they are elected. To determine the number of Senators, the citizen
population of the state is divided by 50, the basic number of Senators
according to the Constitution, to arrive at a ratio. This ratio is the
norm by which the Legislature is to be guided in apportioning. And
at this time, it is 284,069. A Senate district with a citizen popula-
tion less than the ratio will be characterized as deficient for the pur-
poses of this legislative note. Its individual voter has an excess of
voting power. If the district's citizen population is over the ratio, it
will be called over-large. Its individual voter has an inferior voting
power.  

The next step in apportionment is to divide the ratio into the
citizen population of a county. If the result of this division is 3 or
more, the county is divided into that number of Senate districts. How-
ever, this entitlement is compared to the county's entitlement as
of 1894. If there is an excess, it is added to 50, to arrive at the total
number of Senators for the state. Today we have 58 Senators as a
result of the proportionate increases of Kings County and Queens and
Nassau Counties. But the above applies only to counties with 3
or more Senators, or, in other words, counties with a population over
852,207. To determine the entitlement of the smaller counties, the
entitlement of the "three or more" size counties is subtracted from
the total number of Senators. The result is then divided into the total

---


314 sq. miles

34,944 sq. miles

=.65%

Regarding comparison of New York City and State population, see note 88
infra.

4 1942 Leg. Doc. No. 57, Counsel's Report, Joint Legislative Committee
   on Reapportionment 8 (1942).

5 N.Y. Const. art. 3, § 4; 1953 Leg. Doc. No. 98, Report, Joint Legislative
   Committee on Reapportionment, McKinney's Session Laws of New York
   24, 27 (1954).

6 Ibid.

7 Ibid. Accord, Matter of Fay, 291 N.Y. 198, 212-13, 52 N.E.2d 97, 101-02
   (1943).

8 Ibid.

9 Ibid. Accord, Matter of Fay, 291 N.Y. 198, 212-13, 52 N.E.2d 97, 101-02
   (1943).

10 1953 Leg. Doc. No. 98, supra note 7.
population of the smaller counties to arrive at a second ratio, 195,859. This is quite different from the 284,069 required for the "three or more" counties. The second major step in apportionment, after arriving at these ratios and the total number of Senators, is to arrange or divide the counties into Senate districts, in accordance with these ratios and certain constitutional rules aimed against gerrymandering.

Although the mechanics seem different, the results of the "Brown Plan," currently used in the apportionment of the Assembly, are similar. The more populous counties must necessarily have over-large Assembly districts. The Assembly is limited to 150 members and a ratio is obtained by dividing the state citizen population by 150. This ratio is presently 94,690. However, according to the Constitution every county (treating Fulton and Hamilton as one) is entitled to at least one Assemblyman, irrespective of population. After all the counties receive an Assemblyman and those entitled to more get an additional one, a limited amount (73) is left to be apportioned to those counties which have the bulk of the state's population. A second ratio is then derived by totaling the citizen populations of the larger counties concerned, subtracting the number of citizens represented by the two ratios already used by each of those counties, and dividing the result by the number of Assemblymen left unassigned. This second ratio is 117,341 at this time. In other words, the smaller counties are guaranteed full representation, while the larger counties must get the additional representation warranted by their populations on the basis of a much higher ratio.

The purpose of this legislative note is to study the application of this double standard to the apportionment of the New York State Senate. The history, purpose, and value of the constitutional provi-

---


15 N.Y. Const. art. 3, § 5.


17 The total citizen population of Bronx, Kings, Queens, New York, Erie, Monroe, Nassau, Onondaga, Suffolk and Westchester is 10,459,675. 10,459,675 minus 1,893,800 (10 counties X 2 ratios) = 8,565,875 (remainder of unrepresented citizens). 8,565,875 / 73 (assemblymen left unassigned) = 117,341 (second ratio). See also 1953 Leg. Doc. No. 98, REPORT, JOINT LEGISLATIVE COMMITTEE ON REAPPORTIONMENT, MCKINNEY'S SESSION LAWS OF NEW YORK 24, 32-33 (1954).
sions which gave rise to the method briefly stated above will be
analyzed, as well as the apportionment of 1953.18

History to 1894

The Senate, which has roots in the Colonial Executive Council,
was a creature of the first Constitution of 1777.19 It consisted of 24
members who were elected by voters who possessed heavy property
requirements.20 The state was divided into four large Senate dis-
tricts, southern, middle, western and eastern, which were allowed
9, 6, 6, and 3 Senators respectively.21 There was provision for a
census, increase, and reapportionment "seven years from the termina-
tion of the present war"22 and the erection of new counties.23 In
1801 the Senate was restricted to 32 members, which provision re-
mained in force until 1894.24

By 1821, the population and affluence of the City of New York
(New York County) had greatly increased but its voting power was
severely restricted by the property requirements of the 1777 Consti-
tution. A proposal to extend suffrage to "every male citizen of the
age of twenty-one years ...."25 who complied with residence require-
ments, was bitterly contested by the leading spokesmen of the rural
areas. Chancellor Kent summed up their position with remarks that
have present significance.

It [New York] is rapidly swelling into the unwieldy population, and with
the burdensome pauperism, of an European metropolis. New-York is destined
to become the future London of America; and in less than a century, that city,
with the operation of universal suffrage, and under skilful direction, will govern
this state.26

Despite this opposition, the extension of suffrage was incorporated in
the Constitution of 1821.27

In the same Constitution the state was divided into 8 Senate
districts.28 The 1846 Constitution changed the unit of apportionment
to the single district. At that time, 32 districts containing ". . . as
nearly as may be, an equal number of inhabitants, excluding aliens,
and persons of color not taxed. . .".29 were erected, each of which was the constituency of a single Senator. Over the years the City of New York continued to increase at a greater rate than the rest of the state. Since the Senate was limited to 32 members, each gain in representation which the City received resulted in a corresponding loss by the rural areas.30 This trend continued and was culminated by the apportionment of 1892.31 The counties surrounding and including New York City were given 15 out of 32 Senators. This was further complicated by the partisan nature of the districting, which divided New York, Putnam, and Westchester Counties into 9 districts which were deficient by an average of 6,905 citizens.32 The up-state Republicans reacted vehemently and contested the statute's constitutionality in two lawsuits.33 The reaction to the 1892 apportionment and the continuing disproportionate increase in New York and Kings Counties, which were soon to merge with Queens and Richmond into greater New York,34 was in large measure expressed in Article III of the Constitution of 1894.

The Constitution of 1894

An express objective of the majority of the Committee on Legislative Organization and Apportionment of the Constitutional Convention of 1894 was to remedy "... the gross inequalities and injustice of the apportionment act of 1892." 35 This remedy, as it applied to the Senate, consisted mainly in attempting to restore rural representation to its 1846 position,36 raising the Senate membership to do so37 and restricting gerrymandering by framing precise rules38 for the creation of Senate districts.

Article III, section 4, of the Constitution of 1894 provided:

An enumeration of the inhabitants of the state shall be taken under the direction of the secretary of state, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the legislature at the first regular session after the return of every enumeration, that each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered

29 N.Y. Const. art. III, § 4 (1846); see id. § 3.
30 3 Lincoln, Constitutional History of New York 181, 190-91, 217 (1905).
31 Laws of N.Y. 1892, c. 397.
32 See 3 Lincoln, op. cit. supra note 30, at 189.
33 See Baird v. Board of Supervisors, 138 N.Y. 95, 33 N.E. 827 (1893); People ex rel. Carter v. Rice, 135 N.Y. 473, 31 N.E. 921 (1892).
34 See Laws of N.Y. 1897, c. 378.
35 III Revised Record of the Constitutional Convention of 1894, 344.
36 Id. at 347.
37 Ibid.
38 See 3 Lincoln, Constitutional History of New York 218 (1905).
until the return of another enumeration, and shall at all times, consist of contiguous territory; and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, and no block in a city enclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein adjoining such district. Counties, towns, or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

As is readily seen, these provisions are leveled against an apportionment which splits and weakens the strong areas of the opposition or concentrates them into fewer over-large districts. Prior to 1894 there were general constitutional measures for equality, contiguity, and the integrity of county lines, but it was felt that the earlier rules were an insufficient safeguard and that there should be a minimum of legislative discretion. The previous ban against crossing county lines except to embrace another whole county in one district, was extended to towns and blocks in cities. It will be observed, however, that this adherence to the county as the fundamental unit of apportionment, in connection with other provisions which will be discussed below, makes for inequalities between rural and city counties. It was attacked as giving undue importance to the counties which were originally "laid out simply as a convenient form of dividing equally the population of the State for purposes of local government." The rule against a district having a greater excess over its neighbor in the same county than the population of a bordering town or block was intended to reduce inequalities to a minimum. It will be observed, though, that this measure applies only to counties which contain two or more Senate districts.

Of great significance was the provision which provided that:

The ratio for apportioning senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty; and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

This provision proved a source of great controversy in later years.
The Senate was increased to 50 with a view of restoring them to their 1846 position, and the regulations concerning the increase of those counties having three or more Senators were designed to prevent the rural counties from being deprived of this representation by a disproportionate increase in city population. It was contended by the majority of the Committee that, in addition to locality considerations, a corresponding increase in the geographical area of the rural districts, caused by a decrease in their representation, would make for unintelligent representation. The minority, however, claimed that the constantly improving media of transportation and communication were rapidly obviating such difficulties.

Another important part of this Constitution was that expressly limiting the larger counties:

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one half of all the senators.

In 1894, the requirement of full ratios applied only to Kings and New York Counties. Now this provision applies to Kings, New York, Bronx, and Queens Counties. The main argument offered in favor of this rule was that the more populous counties had an unfair advantage, in that they were able to utilize their entire population in getting representation with very few fractions of the ratio left over. But the smaller counties, when combined or alone, often had accumulated fractions which they could not utilize to get representation. These fractions would be multiplied as Senate districts were erected throughout the state, and would never be used to gain representation. However, it should be observed that except for the equality clause, no minimum requirement was prescribed for the smaller counties. A glance at a map shows that the public waters restriction above was directed at the New York City area. Its supporters were motivated by the fear that


44 See III Revised Record, op. cit. supra note 41, at 1000, 1030; IV Revised Record, op. cit. supra note 41, at 37, 648.
45 See III Revised Record, op. cit. supra note 41, at 346-47.
46 See III Revised Record of the Constitutional Convention of 1894, 1007.
47 N.Y. Const. art. III, § 4 (1894).
48 At that time only New York and Kings had over 4 Senators. N.Y. Const. art. III, § 3 (1894).
49 Presently Kings has 9, Queens 5, New York 6, and Bronx County 4.
N.Y. State Law §§ 120-25.
50 See III Revised Record of the Constitutional Convention of 1894, 345; 3 Lincoln, Constitutional History of New York 212-13 (1905).
New York City (then the cities of Brooklyn and New York) would control the state. It was pointed out that these counties comprise only a tiny area of the state and felt that a “city majority” might form a community of interest acting without comprehension of or regard for upstate needs.\(^{51}\) It was also disputed that “… direct population, popular count, man for man, has ever been in this state the basis of representation. …”\(^{52}\) The restriction in question was vigorously attacked as discriminatory and undemocratic.\(^{53}\) Delegates from New York City protested it as giving “… proportionately the smallest representation where the greatest tax is collected, and the smallest representation where the population increases most rapidly.”\(^{54}\) Section 4, as just outlined, was adopted by the people and remains the fundamental law of the state with two minor exceptions.\(^{55}\) In 1931, the federal census was made to control.\(^{56}\) In 1945, an amendment was inserted allowing the division of towns having more than a full ratio. This has been applied specifically to Syracuse and Buffalo.\(^{57}\)

After the adoption of the 1894 Constitution, attempts to reapportion the state have had a stormy and often unsuccessful history. Of the six apportionment acts which escaped veto\(^ {58}\) all but one were attacked in the courts,\(^ {59}\) and two were held invalid.\(^ {60}\) In spite of the provision for decennial reapportionment, one act remained in effect for 26 years because of gubernatorial veto and the rejection by the people of the proposed 1938 constitutional reapportionment.\(^ {61}\)

\(^{51}\) See III Revised Record, op. cit. supra note 50, at 345-46.  
\(^{52}\) 3 Lincoln, op. cit. supra note 50, at 222.  
\(^{53}\) See III Revised Record, op. cit. supra note 50, at 1035, 1037.  
\(^{54}\) III Revised Record, op. cit. supra note 50, at 1011.  
\(^{55}\) N.Y. Const. art. 3, § 4.  
\(^{57}\) Approved by vote of people November 6, 1945. Approved by vote of people November 3, 1931.  
The 1906 reapportionment was assailed as unconstitutional in *Sherrill v. O'Brien*, on the grounds that the rules of contiguity and equality in Section 4, were violated by joining Richmond with Queens. The court distinguished the mandatory rules which must be followed strictly from those involving some discretion.

**[Mandatory Rules]**

1. [Senate districts] shall at all times consist of contiguous territory.
2. No county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county.
3. No town and no block in a city inclosed by streets or public ways shall be divided in the formation of senate districts.
4. Nor shall any district contain a greater excess in population over an adjoining district in the same county than the population of a town or block therein adjoining such district.
5. No county shall have four or more senators unless it shall have a full ratio for each senator.
6. No county shall have more than one-third of all the senators.
7. No two counties or the territory thereof as now organized, which are adjoining counties or which are separated only by public waters, shall have more than one-half of all the senators.

**[Rules involving some discretion]**

1. Each senate district shall contain, as nearly as may be, an equal number of inhabitants, excluding aliens.
2. Be in as compact form as practicable.
3. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

The court took the view that Richmond, due to its insular situation, is an exception to the mandatory rule of contiguity. However, pointing out that legislative discretion as to equality arises only from necessity, the court held the law invalid. Queens was entitled to a Senator without Richmond, and Richmond could have been joined more equitably with Nassau and Suffolk. Another ground for invalidation was that the rambling boundaries of the 13th district in New York County were grossly violative of the rule prescribing compactness. In 1907, another reapportionment was made joining Richmond to Rockland, but it was not contested until 1911. At that
time, an attempt to enjoin the boards of election from complying with
the 1907 apportionment was held barred by laches. An application
for mandamus to compel a return to the 1895 apportionment was also
denied on the grounds that the rule of contiguity had been observed
in respect to Richmond.

The 1907 statute increased the number of Senators to 51 by
giving another Senator to Kings County, according to the rules gov-
erning counties entitled to three or more Senators. The reapportion-
ment of 1916 retained this increase. It was contended in Matter of
Dowling that Section 4 by stating “the senate shall always be com-
posed of fifty members,” allowed only a temporary increase. It
was argued that in the apportionment following any increase the
Senate should again be reduced to 50. It was also asserted that the
additional Senator must be taken from the number of Senators ap-
portioned to the smaller counties. The defense contended that the
Constitution provided for determining the increase of the total mem-
bership by comparing the number of Senators to which a large county
is entitled in any apportionment with its allotment in the Constitution
of 1894. In other words, all increases in the entitlement of these large
counties are to be added to the original 50, and decreases can occur
when large county entitlement diminishes. The court thought that the
latter contention was more in harmony with the intendment of the
1894 Constitution, which was to protect rural representation. But
the act was declared invalid on other grounds. Districts in New York
County had blocks on their borders which contained less than one-half
of the difference between neighboring districts, a violation of the man-
datory rule against inequalities being greater than the population of
bordering towns and blocks. That part of the Dowling case which
approved the “permanent” increase doctrine was the center of con-
troversy prior to the proposed reapportionment of the 1938 Constitu-
tion and the reapportionment of 1943 which raised the Senate to 56.

Since 1894, Nassau County has been formed out of Queens County, with the remainder of Queens becoming part of greater New

\[68\] Laws of N.Y. 1907, c. 727.
\[69\] Laws of N.Y. 1916, c. 373.
\[70\] 219 N.Y. 44, 113 N.E. 545 (1916).
\[71\] N.Y. Const. art. 3, § 4.

\[73\] See 1942 Leg. Doc. No. 57, Counsel's Report, Joint Legislative Committee on Reapportionment 9-12 (1942).

\[74\] Laws of N.Y. 1898, c. 588.
York. To determine the total number of Senators, these two counties have been treated as a unit, and their present entitlement (7) has been compared with the 1894 figure (1). The increase (6) has been added to the Senate. Bronx County was erected substantially out of New York County in 1912, and their combined apportionment has also been compared to 1894. However, in 1943 New York County lost 3 Senators, 2 of them to the Bronx, the other apparently going to Suffolk. In the present apportionment the Bronx lost a Senator, which went to Onondaga County. Thus to date, they have lost 2 of their original 12 Senators.

Another problem which complicated the issue is City Home Rule. Disproportionate representation early gave rise to home rule sentiment, which may have been illustrated by the feelings of taxation without representation expressed in the 1894 Convention. A Home Rule measure, offered as a palliative in the 1915 Convention, was rejected. Home Rule finally became law in 1924, and generated a host of its own problems.

The Apportionment of 1953

The act of 1953 did little to improve the voting power of the larger counties. The act accords 25, or 43.1%, of the Senate districts to New York City and 33, or 56.9% to the rest of the state. The city comprises 52.3% of the citizen population, thus leaving a

---

75 Laws of N.Y. 1897, c. 378.
77 Laws of N.Y. 1912, c. 548.
82 See III Revised Record of the Constitutional Convention of 1894, 1011.
84 N.Y. Const. art. 9, § 11.
87 Ibid. I.e., Kings 9, New York 6, Queens 5, Bronx 4, and Richmond 1. Consult the appendix to this legislative note for population statistics.
88 7,438,340 (New York City Citizen Population) / 14,203,449 (State Total Citizen Population) = 52.3%
9.2% deficit in representation. Moreover, it may be observed that this includes Richmond, a Senate district which is deficient by 99,037 or 34.9% of a ratio. Furthermore, if we calculate the proportion of representation of the districts in the “three and over” counties, i.e., New York, Bronx, Kings, Queens, and Erie, it will be seen that they are over-large by an average of 17,109 or 6%. These counties have 57% of the state citizen population, and receive 46.5% of the Senate representation, a lag of some 10%. Some of this is made inevitable by the requirement of full ratios for four or more Senators. Much of it is due to the fact that under the Dowling doctrine, the smaller counties are guaranteed 31 of the Senate seats, which are apportioned on the basis of a second ratio which is formed by dividing their citizen population by 31.

In comparing the entitlements on the basis of the first ratio with 1894, Kings, Queens, and Nassau have a total increase of 8. Of this increment, Kings accounts for 2, and Queens and Nassau, as a unit, are responsible for 6. These being the only units affected by the doctrine of the Dowling case which have increased, 8 Senators are added to the original 50, making 58 districts. However, although Nassau as an individual county is entitled to only 2 Senators on the first ratio, it is entitled to 3 on the second ratio. Thus, Nassau is given its 3 Senators on the basis of second ratio, although it is evaluated on the basis of the first ratio in determining the total number of members of the Senate.

Those districts which are located in the same county are almost exactly equal in size, varying by no more than 6. But the provisions against crossing county lines and the requirement of full citizen ratios for counties with four or more Senators, necessarily cause great disparity in the average size of districts in different counties affected by

---

89 284,069 — 185,032 (Citizen Population of Richmond) = 99,037 or 34.9% of a first ratio.
90 New York, Bronx, Kings, Queens and Erie total 8,131,810 citizens and receive 27 Senators: — — = 301,178 (average district which is 17,109 or 6% over the first ratio)
91 8,131,810
93 Ibid.
94 655,690 (Nassau Citizen Population)
95 195,857 (second ratio)
these considerations. This disparity is dependent upon the size of the fractional remainder of the ratio in each county. Thus the Bronx with 1,378,181 citizens has a fractional remainder of 241,905 after four ratios have been used, causing its average district to be 344,545. But Kings, with 2,595,187 citizens, has a fractional remainder of 38,566 after nine ratios have been used, causing its average district to be 288,354. The startling fact may also be observed that in the Bronx, 344,547 citizens elect a Senator, while Onondaga County with 334,453 sends two Senators to Albany, one of which was taken from the Bronx by the present statute. The Bronx can also be contrasted with the 39th District (Essex, Saratoga, and Warren) with 146,666 and the 48th (Cayuga, Tompkins, and Tioga) with 156,716.

We have just seen that disparity is inevitable between the counties to which the first ratio is applied, in determining the size of their districts. It should also be noted that there is great disparity between the sizes of those districts which are formed on the second ratio out of the smaller counties. Those vary from the 1st District, Suffolk County, with 261,003 (33.4% over the second ratio) to the 39th District (Essex, Saratoga, and Warren) with 146,666 (25% below the second ratio). Using the second ratio as a norm, out of the 31 Senate districts concerned there are 7 districts varying by less than 5%, 6 between 5-10%, 8 between 10-20%, 4 between 20-30%, and 1 over 30%. Ten of the 18 districts varying by more than 10%, either are solitary counties or divisions thereof. Thus, to a certain extent, their variances are inevitable due to the rule against dividing counties and combining parts of them with others. Of the remaining 3, 7 are a group of deficient districts which form a wave-like curve
across the center of the state, not contiguous with any over-large districts which contain counties small enough to be re-assigned for purposes of equality.

From another light, 14 of the 31 districts on the second ratio are over-large. Eleven of the over-large districts are from those counties which are populous enough to contain at least one Senate district, while 12 of the deficient districts are composed of those counties which must be combined with others to form a Senate district. This shows that the 1953 statute results in giving the maximum of voting power to the citizens of the least populated areas. The aforementioned 12 districts are composed of 39 counties: 2,096,173 citizens (14.7% of the state population) which receive 20.7% of the Senate. The result is a voting power 41% greater than is warranted by population. Even from a broader perspective the same picture remains. Considering all the counties which must be joined with another county to form a Senate district, the following result obtains. A total of 47 counties must combine in order to form 15 districts (25.9% of the Senate) with a population of 2,742,531 (19.1% of the state). The result is a voting power of 35.6% more than is warranted by their population.

103 I.e., the 37th district (Rensselaer and Washington — 10%), the 39th district (Essex, Saratoga and Warren — 25%), the 41st district (Fulton, Hamilton, Herkimer and Montgomery — 12.4%), the 43d district (Jefferson, Lewis and Oswego — 7.2%), the 46th district (Madison, Cortland, Chenango and Otsego — 12.6%), the 48th district (Cayuga, Tompkins and Tioga — 20%) and the 50th district (Wayne, Ontario, Seneca, Yates and Schuyler — 10.2%).

104 I.e., the 1st, 2d, 3d, 4th, 30th, 31st, 32d, 33d, 34th, 36th, 42d, 51st, 52d and 58th Senate districts are over-large.

105 I.e., the 19th, 35th, 37th, 38th, 39th, 40th, 41st, 43d, 44th, 45th, 46th, 47th, 48th, 49th, 50th, 53d and 54th districts are deficient.

106 I.e., the 1st district (Suffolk + 33.4%), the 2d, 3d and 4th districts (Nassau + 11.6%), the 30th, 31st and 32d districts (Westchester + 2.4%), the 36th district (Albany + 19.5%), the 42d district (Oneida + 10.2%), the 51st and 52d districts (Monroe + 21.1%).

107 I.e., the 35th district (Columbia, Dutchess and Putnam — 1.7%), the 37th district (Rensselaer and Washington — 10%), the 38th district (Schenectady and Schoharie — 17.5%), the 39th district (Essex, Saratoga and Warren — 25%), the 40th district (Clinton, Franklin and St. Lawrence — 1.5%), the 41st district (Fulton, Hamilton, Herkimer and Montgomery — 12.4%), the 43d district (Lewis, Jefferson and Oswego — 7.2%), the 46th district (Madison, Cortland, Chenango and Otsego — 12.6%), the 48th district (Cayuga, Tompkins and Tioga — 20%), the 49th district (Steuben and Chemung — 9.8%), the 50th district (Wayne, Ontario, Seneca, Yates and Schuyler — 10.2%), the 53d district (Livingston, Allegeny, Wyoming, Genesee and Orleans — 2.3%). Total Population = 2,096,173.

Total Population = 2,096,173.

108 Ibid.

109 The 47 counties with their citizen population are: Allegheny (43,475), Cattaragus (76,993), Cayuga (69,037), Chautauqua (133,159), Chemung (85,989), Chenango (38,741), Clinton (52,443), Columbia (42,111), Cortland (36,786), Delaware (43,863), Dutchess (131,969), Essex (34,542), Franklin
The present statute was challenged on the ground that the boundary delineating the 8th Senate District, Queens County, divided a "block in a city inclosed by streets or public way." The defense was that the block boundaries had changed subsequent to the information received by the 1950 Census. The Court of Appeals apparently held, in a memorandum opinion, that the 1950 Census was controlling and that changes subsequent to 1950 could not be considered in the establishment of Senate district lines.

Conclusion

In appraising the present statute, it need only be said that it effectively carries out the intendment of the Constitution of 1894. With the present constitutional rules and county organization, it would be most difficult to effectuate a more representative Senate. The constitutional exhortation that the Senate districts contain "as nearly as may be an equal number of inhabitants," can only be an expression of noble sentiments or political theory as long as its neighboring provisions remain intact.

As has been shown, much of the disproportion has resulted from the observance of the county as a unit. A glance at the map, from the viewpoint of area and population, will show that there is no readily discernible pattern of county organization to form a basis for an equitable apportionment. It is submitted that county lines are the creature of the Legislature itself. The counties were not pre-existing sovereigns which exacted constitutional guarantees as did the original states in the federal system. They should not be the basis of representation unless they are at least roughly consonant to some norm of area and population.

Working within the present framework, there are two serious deficiencies which should be corrected. New York and Bronx Counties as a unit have lost two Senators since 1894. These went to Suffolk and Onondaga Counties, thus having the effect of not only

(43,919), Fulton (50,135), Genesee (46,690), Greene (28,082), Hamilton (4,055), Herkimer (59,693), Jefferson (83,539), Lewis (22,187), Livingston (39,692), Madison (45,624), Montgomery (57,610), Ontario (59,269), Orange (148,429), Orleans (29,306), Oswego (75,935), Otsego (50,689), Putnam (19,668), Rensselaer (129,995), Rockland (86,123), St. Lawrence (96,517), Saratoga (73,447), Schenectady (139,304), Schoharie (22,218), Schuyler (14,066), Seneca (28,254), Steuben (90,761), Sullivan (39,359), Tioga (29,826), Tompkins (57,853), Ulster (90,350), Warren (38,677), Washington (46,353), Wayne (56,662), Wyoming (32,275), Yates (17,461). See 1953 LEG. Doc. No. 98, REPORT, JOINT LEGISLATIVE COMMITTEE ON REAPPORTIONMENT, McKinney's Session Laws of New York 24, 32 (1954).


111 N.Y. Const. art. 3, § 4.

112 See II New York State Constitutional Convention, Revised Record 1320 (1938).
protecting the representation of the up-state counties but of increasing it. Over the same span, Kings and Queens Counties increased. It is submitted that decreases in the large counties should be given to those large counties which have expanded in entitlement, rather than expanding them by unnecessarily increasing the number of Senators. Also, inasmuch as full ratios are required for more than four Senators, some minimum standard applicable to all districts should be included to ensure at least a modicum of equality.113

Aside from partisan politics, it would seem that there are two aspects to this problem. A numerical minority representing the rural interests wishes to be protected from the possibility of a city (New York City) majority control. Another side of the coin would show a scheme designed to ensure the individual voter of one county greater voting power than the voter in another county. This is a basic problem of suffrage; whether one man's vote should be better, or at least more powerful than the other's. The problem is particularly important since the situation applies to both houses of the Legislature. Using the logic of Chancellor Kent, the minority should be protected. But possession of the advantage in one house would be sufficient, as in the United States Senate. However, protecting the minority should not take the form of putting the minority in power. It would follow, perhaps, that under our present system of political loyalties, putting one house on a popular basis might result in a deadlock between two houses with opposing political views. But partisan sentiment is transitory by nature, and should not be a controlling factor in drafting our fundamental law. Even if one were to concede that area considerations should prevail in the whole Legislature, the necessity of having two houses elected for the same term and on what amounts to a similar basis becomes questionable.114 The question of efficiency aside, a unicameral Legislature would be at least more economical.

113 A concurrent resolution was introduced this year by Assemblyman Sidney H. Asch (A. Int. No. 3512). It is a proposed amendment of Article III, sections 2, 4 and 5, and a repeal of Article III, section 3. It provides, inter alia, for a new basis of 58 members, assignment of the fractional remainders of counties, cities, and towns to other districts, derives a new ratio by dividing the state citizen population by 58 and applies it separately in Long Island, New York City and the rest of the state, and abolishes the requirement of full ratios for more than four Senators. Ibid.

APPENDIX

Schedule of Senate Districts and Counties Compared with the 1st and 2d Ratios *

<table>
<thead>
<tr>
<th>District Number</th>
<th>County</th>
<th>Citizen Population</th>
<th>1st Ratio 284,069</th>
<th>2d Ratio 195,859</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Suffolk (261,003)</td>
<td>261,003</td>
<td>- 23,066 (8.1%)</td>
<td>+ 65,144 (33.4%)</td>
</tr>
<tr>
<td>2</td>
<td>Nassau</td>
<td>218,554</td>
<td>- 65,505 (23.2%)</td>
<td>+ 22,705 (11.6%)</td>
</tr>
<tr>
<td>3</td>
<td>Nassau</td>
<td>218,562</td>
<td>- 65,507 (23.2%)</td>
<td>+ 22,705 (11.6%)</td>
</tr>
<tr>
<td>4</td>
<td>Nassau</td>
<td>218,564</td>
<td>+ 12,774 (4.5%)</td>
<td>+ 100,984 (51.5%)</td>
</tr>
<tr>
<td>5</td>
<td>Queens</td>
<td>296,843</td>
<td>+ 12,773 (4.5%)</td>
<td>+ 100,983 (51.5%)</td>
</tr>
<tr>
<td>6</td>
<td>Queens</td>
<td>296,842</td>
<td>+ 12,774 (4.5%)</td>
<td>+ 100,984 (51.5%)</td>
</tr>
<tr>
<td>7</td>
<td>Queens</td>
<td>296,843</td>
<td>+ 12,774 (4.5%)</td>
<td>+ 100,984 (51.5%)</td>
</tr>
<tr>
<td>8</td>
<td>Queens</td>
<td>296,844</td>
<td>+ 12,775 (4.5%)</td>
<td>+ 100,985 (51.5%)</td>
</tr>
<tr>
<td>9</td>
<td>Queens</td>
<td>296,842</td>
<td>+ 12,773 (4.5%)</td>
<td>+ 100,983 (51.5%)</td>
</tr>
<tr>
<td>10</td>
<td>Kings</td>
<td>288,355</td>
<td>+ 4,286 (1.5%)</td>
<td>+ 92,496 (47.6%)</td>
</tr>
<tr>
<td>11</td>
<td>Kings</td>
<td>288,355</td>
<td>+ 4,286 (1.5%)</td>
<td>+ 92,496 (47.6%)</td>
</tr>
<tr>
<td>12</td>
<td>Kings</td>
<td>288,358</td>
<td>+ 4,289 (1.5%)</td>
<td>+ 92,499 (47.6%)</td>
</tr>
<tr>
<td>13</td>
<td>Kings</td>
<td>288,354</td>
<td>+ 4,285 (1.5%)</td>
<td>+ 92,495 (47.6%)</td>
</tr>
<tr>
<td>14</td>
<td>Kings</td>
<td>288,355</td>
<td>+ 4,286 (1.5%)</td>
<td>+ 92,496 (47.6%)</td>
</tr>
<tr>
<td>15</td>
<td>Kings</td>
<td>288,353</td>
<td>+ 4,284 (1.5%)</td>
<td>+ 92,494 (47.6%)</td>
</tr>
<tr>
<td>16</td>
<td>Kings</td>
<td>288,352</td>
<td>+ 4,283 (1.5%)</td>
<td>+ 92,493 (47.6%)</td>
</tr>
<tr>
<td>17</td>
<td>Kings</td>
<td>288,352</td>
<td>+ 4,283 (1.5%)</td>
<td>+ 92,493 (47.6%)</td>
</tr>
<tr>
<td>18</td>
<td>Kings</td>
<td>288,353</td>
<td>+ 4,284 (1.5%)</td>
<td>+ 92,494 (47.6%)</td>
</tr>
<tr>
<td>19</td>
<td>Richmond</td>
<td>185,032</td>
<td>- 99,037 (34.8%)</td>
<td>- 10,827 (5.4%)</td>
</tr>
<tr>
<td>20</td>
<td>New York</td>
<td>299,290</td>
<td>+ 15,221 (5.4%)</td>
<td>+ 103,431 (53.0%)</td>
</tr>
<tr>
<td>21</td>
<td>New York</td>
<td>299,288</td>
<td>+ 15,219 (5.4%)</td>
<td>+ 103,429 (53.0%)</td>
</tr>
<tr>
<td>22</td>
<td>New York</td>
<td>299,288</td>
<td>+ 15,219 (5.4%)</td>
<td>+ 103,429 (53.0%)</td>
</tr>
<tr>
<td>23</td>
<td>New York</td>
<td>299,285</td>
<td>+ 15,216 (5.4%)</td>
<td>+ 103,426 (53.0%)</td>
</tr>
<tr>
<td>24</td>
<td>New York</td>
<td>299,290</td>
<td>+ 15,221 (5.4%)</td>
<td>+ 103,431 (53.0%)</td>
</tr>
<tr>
<td>25</td>
<td>New York</td>
<td>299,285</td>
<td>+ 15,216 (5.4%)</td>
<td>+ 103,426 (53.0%)</td>
</tr>
<tr>
<td>26</td>
<td>Bronx</td>
<td>344,547</td>
<td>+ 60,478 (21.2%)</td>
<td>+ 148,688 (75.8%)</td>
</tr>
<tr>
<td>27</td>
<td>Bronx</td>
<td>344,545</td>
<td>+ 60,476 (21.2%)</td>
<td>+ 148,686 (75.8%)</td>
</tr>
<tr>
<td>28</td>
<td>Bronx</td>
<td>344,542</td>
<td>+ 60,473 (21.2%)</td>
<td>+ 148,683 (75.8%)</td>
</tr>
<tr>
<td>29</td>
<td>Bronx</td>
<td>344,547</td>
<td>+ 60,478 (21.2%)</td>
<td>+ 148,688 (75.8%)</td>
</tr>
<tr>
<td>30</td>
<td>Westchester</td>
<td>200,560</td>
<td>- 83,509 (29.4%)</td>
<td>+ 4,701 (2.4%)</td>
</tr>
<tr>
<td>31</td>
<td>Westchester</td>
<td>200,560</td>
<td>- 83,509 (29.4%)</td>
<td>+ 4,701 (2.4%)</td>
</tr>
<tr>
<td>32</td>
<td>Westchester, Yonkers, etc.</td>
<td>200,562</td>
<td>- 83,507 (29.4%)</td>
<td>+ 4,703 (2.4%)</td>
</tr>
<tr>
<td>33</td>
<td>Orange (148,429) and Rockland (86,123)</td>
<td>234,552</td>
<td>- 49,517 (17.4%)</td>
<td>+ 38,693 (19.6%)</td>
</tr>
<tr>
<td>34</td>
<td>Delaware (43,863), Greene (28,082), Sullivan (39,359), Ulster (90,350)</td>
<td>201,654</td>
<td>- 82,415 (29%)</td>
<td>+ 5,795 (2.95%)</td>
</tr>
<tr>
<td>35</td>
<td>Columbia (42,111), Dutchess (131,969), Putnam (19,668)</td>
<td>193,748</td>
<td>- 90,321 (31.8%)</td>
<td>- 2,111 (1.7%)</td>
</tr>
<tr>
<td>36</td>
<td>Albany (234,068)</td>
<td>234,068</td>
<td>- 50,001 (17.6%)</td>
<td>+ 38,209 (19.5%)</td>
</tr>
<tr>
<td>37</td>
<td>Rensselaer (129,995), Washington (46,533)</td>
<td>176,348</td>
<td>-107,721 (37.8%)</td>
<td>- 19,511 (10%)</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>County</th>
<th>Population</th>
<th>Change</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Schenectady</td>
<td>161,522</td>
<td>-122,547</td>
<td>43.1%</td>
</tr>
<tr>
<td>Schoharie</td>
<td>146,666</td>
<td>-137,403</td>
<td>48.4%</td>
</tr>
<tr>
<td>Saratoga</td>
<td>192,879</td>
<td>-91,190</td>
<td>32.0%</td>
</tr>
<tr>
<td>Warren</td>
<td>171,493</td>
<td>-112,576</td>
<td>39.5%</td>
</tr>
<tr>
<td>Clinton</td>
<td>216,486</td>
<td>-67,583</td>
<td>23.7%</td>
</tr>
<tr>
<td>Franklin</td>
<td>181,661</td>
<td>-102,408</td>
<td>36.1%</td>
</tr>
<tr>
<td>St. Lawrence</td>
<td>167,226</td>
<td>-116,843</td>
<td>41.0%</td>
</tr>
<tr>
<td>Fulton</td>
<td>171,240</td>
<td>-112,829</td>
<td>39.6%</td>
</tr>
<tr>
<td>Hamilton</td>
<td>181,496</td>
<td>-102,573</td>
<td>36.0%</td>
</tr>
<tr>
<td>Herkimer</td>
<td>156,716</td>
<td>-127,353</td>
<td>45%</td>
</tr>
<tr>
<td>Montgomery</td>
<td>176,750</td>
<td>-107,319</td>
<td>37.8%</td>
</tr>
<tr>
<td>Oneida</td>
<td>175,712</td>
<td>-108,357</td>
<td>38.1%</td>
</tr>
<tr>
<td>Lewis</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Jefferson</td>
<td>191,438</td>
<td>-92,631</td>
<td>32.6%</td>
</tr>
<tr>
<td>Oswego</td>
<td>237,518</td>
<td>-46,551</td>
<td>16.4%</td>
</tr>
<tr>
<td>Eastern Onondaga</td>
<td>237,519</td>
<td>-46,550</td>
<td>16.4%</td>
</tr>
<tr>
<td>Western Onondaga</td>
<td>191,438</td>
<td>-92,631</td>
<td>32.6%</td>
</tr>
<tr>
<td>Madison</td>
<td>237,518</td>
<td>-46,551</td>
<td>16.4%</td>
</tr>
<tr>
<td>Cortland</td>
<td>237,519</td>
<td>-46,550</td>
<td>16.4%</td>
</tr>
<tr>
<td>Chenango</td>
<td>237,518</td>
<td>-46,551</td>
<td>16.4%</td>
</tr>
<tr>
<td>Otsego</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Broome</td>
<td>156,716</td>
<td>-127,353</td>
<td>45%</td>
</tr>
<tr>
<td>Cayuga</td>
<td>181,496</td>
<td>-102,573</td>
<td>36.0%</td>
</tr>
<tr>
<td>Tompkins</td>
<td>176,750</td>
<td>-107,319</td>
<td>37.8%</td>
</tr>
<tr>
<td>Tioga</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Steuben</td>
<td>175,712</td>
<td>-108,357</td>
<td>38.1%</td>
</tr>
<tr>
<td>Chemung</td>
<td>175,712</td>
<td>-108,357</td>
<td>38.1%</td>
</tr>
<tr>
<td>Wayne</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Ontario</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Seneca</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Yates</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Orleans</td>
<td>184,161</td>
<td>-99,908</td>
<td>35.1%</td>
</tr>
<tr>
<td>Eastern Monroe</td>
<td>237,518</td>
<td>-46,551</td>
<td>16.4%</td>
</tr>
<tr>
<td>Western Monroe</td>
<td>237,519</td>
<td>-46,550</td>
<td>16.4%</td>
</tr>
<tr>
<td>Livingston</td>
<td>191,438</td>
<td>-92,631</td>
<td>32.6%</td>
</tr>
<tr>
<td>Allegheny</td>
<td>191,438</td>
<td>-92,631</td>
<td>32.6%</td>
</tr>
<tr>
<td>Wyoming</td>
<td>191,438</td>
<td>-92,631</td>
<td>32.6%</td>
</tr>
<tr>
<td>Genesee</td>
<td>191,438</td>
<td>-92,631</td>
<td>32.6%</td>
</tr>
<tr>
<td>Orleans</td>
<td>191,438</td>
<td>-92,631</td>
<td>32.6%</td>
</tr>
<tr>
<td>Niagara</td>
<td>292,836</td>
<td>+ 8,767</td>
<td>3.1%</td>
</tr>
<tr>
<td>Erie</td>
<td>292,831</td>
<td>+ 8,762</td>
<td>3.1%</td>
</tr>
<tr>
<td>Cattaraugus</td>
<td>210,152</td>
<td>- 73,917</td>
<td>26.0%</td>
</tr>
<tr>
<td>Total New York State Citizen Population 14,203,449</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

† The New York Citizen Population is broken down:

New York City Citizen Population 7,438,340