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The first comprehensive treatment of "Apportionment in Oklahoma" for a given period appeared in Oklahoma Constitutional Studies (1950). Thereafter, in publications issued under title of Legislative Apportionment in Oklahoma (1951), "The Legislative Branch" in An Outline of Oklahoma Government (1954), Legislative Apportionment in Oklahoma (1956), and The Apportionment Problem in Oklahoma (1959), slight modifications were made in each successive study, the substance of all of which concerned the nature of the problem during the decade, 1950-1959. These investigations were followed by Legislative Apportionment (1960), which examined a state question in view of the preliminary census report, Legislative Apportionment in Oklahoma (1961), which focused on an application of an Attorney General's opinion based upon the last federal decennial census, and Apportionment Acts of the Legislature (1961), which evaluated three legislative apportionment proposals. As noted in The New Perspective of Legislative Apportionment in Oklahoma (1962), the last study of the subject produced under the auspices of the University of Oklahoma Bureau of Government Research, one will never be able to study legislative apportionment in Oklahoma without being indebted to the author of all of the preceding works, the late Dr. H. V. Thornton. That view is reiterated here, for although minimal reference will be made to these efforts of Professor Thornton, a variety of insights deduced therefrom have guided the general framework of this study.

To the director of this dissertation, Dr. Joseph C. Pray, the writer owes a like debt of gratitude, both for the benefit of his teaching and constructive criticism of the manuscript. To the extent that Professor Pray had expected the first and last words on the subject, this work falls short of the mark. This is because his late colleague had long before paved the way and, for reasons set forth in the final chapter, it is expected that more than a postscript will still need to be written. Meanwhile, if this research manages to partially fill the wide gap in knowledge and understanding of the problem, its purpose will have been served.

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CHAPTER I

INTRODUCTION

On March 26, 1962, in the landmark decision of Baker v. Carr, the U.S. Supreme Court determined that state legislative apportionment is a subject of jurisdiction and justiciability, and upon evidence of invidious discrimination, the judiciary may fashion a proper remedy.[1] Following a finding of such discrimination in Oklahoma, the Federal District Court for the Western District of Oklahoma decreed in Moss v. Burkhart of July 17, 1963, a reapportionment of the state legislature.[2] However, acting on the premise that should the decree be stayed the state would be without a constitutionally authorized legislative body, the Oklahoma Supreme Court intervened and, in Davis v. McCarty of January 10, 1964, prescribed a stand-by reapportionment order.[3] On February 6, 1964, however, U. S. Supreme Court Associate Justice Byron White stayed the decree of the Federal District Court, pending a review of appeals before the higher court.

What brought on this historic series of events relative to the apportionment of state legislatures? What brought on the reappraisal of

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[1] Baker v. Carr, 369 U.S. 186 (1962).

[2] Moss v. Burkhart, 207 F. Supp. 885 (1963).

[3] Davis v. McCarty, 388 P. 2d 480 (1964).

of legislative apportionment in Oklahoma? What do the United States and Oklahoma constitutions prescribe in this field? How have the Oklahoma Legislature and Oklahoma Courts reacted to the requisites of the state constitution? How have the people of the state responded to alternative systems of representation in their lawmaking assembly? Where do the orders of the Federal District Court and the Oklahoma Supreme Court coincide and differ? And what, after all is said and done, would be an appropriate remedy in Oklahoma? It is to answer these questions, among others, that this and subsequent chapters are designed to accomplish. Preliminary to these goals, however, some reflection is in order pertinent to the theories of representation, the alternative forms of apportionment, and the problem and its measurement.

Theories of Representation.

Political Theory is, fundamentally, a composite of exposition in quest of truth, a search for understanding, and a commentary on the spectrum of governmental values. As such, it does not embody proof of that alleged to be right, for, if so, mankind would not be troubled with the nature of the universe, the human race, the state and its government. It does, however, furnish a priceless guide to thought through the centuries, one feature of which concerns the manner in which man might best be governed. Accordingly, it is the purpose here to reflect, selectively and generally, upon these views, a fuller appreciation of which may be gleaned from the primary and secondary sources.[4]

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[4]In addition to the primary sources to be cited, attention is directed to the following secondary sources: George Sabine, A History of Political Theory, New York: Holt, Rinehart and Winston (rev. ed. 1961); John Hollowell, Main Currents in Modern Political Thought (rev. ed. 1963);

For the Western Hemisphere, recorded political ideals date back to the theory of the Greek City-State which provided the first democratic answer to the organization of a political system. To such an extent unparalleled to date, the practices of both direct and indirect democracy in the relatively small communities have merited the envy of democratic theorists, for truly each citizen was an equal of another. Reservations as to its form and effect, however, drew the attention of two famous Athenian critics. To Plato, as posited in the Republic, the best life could not be attained in the City-State but rather under the guidance of a philosopher-king, although as admitted in the Laws, the second best form of government would be achieved with a blend of democracy and monarchy. That which constituted the second best for Plato was deemed the superior by his student Aristotle, who, in Politics, described the ideal of a polity or constitutional government as citizen suffrage balanced by wisdom.

It is to the theorists of the universal community that we are further indebted for our heritage. The Stoics gave permanence to the natural law emphasis on individual worth under God, to the effect that one shall equal one in a world-wide community. Subsequently, Polybius amended Stoicism to point up the merit of a separation of powers, and Cicero offered the Republic as a testament to the attributes of a mixed constitution and natural law whereby all subject to the law should be equal before it. And Seneca, though cynical of the state, maintained that common equality should be shared by all men.

Francis Coker, Recent Political Thought, New York: Appleton, Century and Crofts (rev. ed. 1962); Vernon Parrington, Main Currents in American Thought, New York: Harcourt, Brace and Company (1930); and Alan Grimes, American Political Thought, New York: Holt, Rinehart and Winston (rev. ed. 1960).

With the dawn of Christianity there appeared a doctrine of salvation, and, although not a political theory, the proposition that all men are equal. In the ensuing debate over the role of Church and State, St. Ambrose contended that civil obedience is required of subjects and the emperor in turn was obliged to defend the true religion. St. Augustine was even more specific in the City of God maintaining that in religious affairs God and the Pope are to guide mankind and in civil affairs the Emperor is supreme. St. Gregory amended this philosophy with the assertion that a wicked ruler need not be respected, and John of Salisbury, in Policraticus, went one step further in defense of the universality of law and tyrannicide. Thereafter, it was left to St. Thomas Acquinas to Christianize Aristotle in Summa Theologia, maintaining that the ruler should be responsible to the people. In contrast, Dante Algieri, being of Aristotelian outlook, contended in The Monarch that as all are of one community the civil powers are not to bow to the religious, to which Marsiglio of Padua added in Defensor Pacis that as equal citizens of both church and state the theory of papal sovereignty is patently unsound. These contentions served as a prelude to the conciliar theory, whereby consideration of a General Council within the church pitted the claims of papal sovereignty against the principle of constitutional and representative government. Although failing to reform the church, or the nature of its authority, the issue served as a line of demarcation between past and present political theory.

With the advent of the Rennaissance there evolved a variety of theories relative to the national state. Nicolo Machiavelli's Prince summed up the resentment of the papal order with a plea for absolute

monarchy and state success at any cost, though acknowledging that government by the many is more stable and best where possible. To this view the leader of the Reformation, Martin Luther, later added in his 95 Theses that all men are common of the church and should have a common stake in it. And along with this quest of democratization within the church the Huguenot writers argued that the consent of the people, rather than monarchy, was the rightful basis of political power. Popular government, however, was not without its adversaries, as the theory of the Divine Right of Kings held that monarchial authority had religious sanction and was unalterably opposed to popular rights. Subsequently, Jean Bodin's Six Books on the Republic took sovereignty out of the theology in defense of the King's supremacy. Nevertheless, Johannes Althusius and Salaminius were influential in transmitting through time the theory of popular sovereignty and government by consent.

The relationship of man vis-a-vis the state and government was thereafter brought into sharper focus with a modernized law of nature, namely that there existed a contract by which society and government came into being. In response to this theme, Thomas More alluded to a community of classes rather than of individuals in Utopia, and Richard Hooker attested to political obligation premised upon common consent in The Laws of Ecclesiastical Polity. But it was left to three of the great modern philosophers to develop varying constructions of the nature of the social contract, the consequence of which led to diverse conclusions as to how man may best be governed. For Thomas Hobbes, as expressed in the Leviathan, the evil in man could best be suppressed with an absolute monarchy. To John Locke, the good in man could best be maximized in government by

the consent of each individual for himself, thus advocating in the Treatises on Government both political equality and majority rule. And in a position somewhat philosophically equidistant from the two, Jean Jacques Rousseau contended in the Discourses on Inequality and Social Contract that the general will should prevail above both the individual and majority wills, suggesting in effect that democratic processes be subjected to the rule of the wise.

In the Nineteenth Century, reaction against all versions of the contract theory steadily evolved. Among the German Idealists, Immanual Kant produced in the Critique of Pure Reason the view that man is an insignificant animal and responsible to the state, suggesting emphasis be given to the community as over and against humanity. Johann Fichte promoted this sentiment in The Science of Ethics, though focusing attention on the state as the highest will and its end being properly sought by way of dictatorial force. To synthesize these reactions, Georg Hegel promulgated the dialectic in The Philosophy of History, associated with which monarchy was considered indispensable toward an achievement of the highest form of the state. This orientation, of course, sparked the scientific socialism of Karl Marx's Capital, whereby the dialectic was applied to a theory of economic determinism and blossomed into an ideology of class conflict whose goal is a utopian classless society without need of a state or government. The Anarchists likewise evidenced little concern for the contract or the state. For them the liberty of man alone produced the good life. Thus William Godwin urged, in the Inquiry into Political Justice, a utilization of popular sovereignty preparatory to the demise of government, and Pierre Proudhon, in The Federal Principle, added that all

governments favor one class or another when all citizens should be kings. Subsequently, the French Royalists posited the views of the Catholic reactionaries. Whereas Joseph de Maistre pleaded in The Pope for papal supremacy over all things temporal and secular, Vicomte de Bonald reiterated the case of society above the individual in his Analytical Essay on the Natural Laws of the Social Order, and Hugues de Lammanais offered in the Reflections on the State of England and France a transition from papal supremacy to liberal and democratic theology premised upon the brotherhood of man under the sovereignty of God. And for the Monarchists, Henry Constant of Rebecque submitted that the King is the rightful representative of God on earth, although the popular assembly may be admitted among the government institutions of political authority.

In contrast, this period also produced theories of Conservatism and Individualism particularly applicable to democratic processes. In the Reflections on the French Revolution and A Philosophic Inquiry, Edmund Burke defended government of and by the few for the many, contending that institutions possess value and man is good and sovereign only when orderly and properly directed. But to modernize the principle of equality of natural law, Jeremy Bentham, as expressed in the Fragment on Government, asserted that the greatest happiness principle should be the measure of all things, that all value is inherent in man, and that one shall equal one. To synthesize what is otherwise dubbed the Utilitarian view, John Stuart Mill seconded Bentham in Representative Government and On Liberty, hailing one vote for one person, proportional representation, and a full hearing of minority views to prevent error by the majority.

On the modern European scene the traditional debates raged on, though without the religious fervor of medieval times. English Conservatism was promulgated in a Burkean vein by Hugh Cecil's Conservatism and Viscount Hailsham's The Conservative Case. Each work constituted an attack upon political equality in favor of an aristocracy, for as man was deemed not perfectable there was evident a need for wise guidance. English Idealists, in turn, were diverse in their views of government and representation for the betterment of mankind. Whereas Thomas Green pleaded for the community in which one can be the political equal of another, Francis Bradley urged a democratic socialism in which the nation would be above individualism, and Bernard Bosenquet took his cue from Rousseau as an advocate of the real or public will above the actual or private will. On another hand, English Liberalism was represented in L. T. Hobhouse's Liberalism and Roger Fulford's The Liberal Case. Each treatise posited a belief in the natural law emphasis on individual political equality, more specifically in the name of proportional representation. From English Socialism there likewise evolved a liberal perspective, as Sidney Webb, H. G. Wells and the Fabians promoted universal suffrage and popular sovereignty, to be exercised largely through group representation. Similarly, English Pluralism, as depicted in G. D. H. Cole's Guild Socialism, contemplated a functional representation of all associations in society.

Meanwhile, Catholic thought had taken on a new meaning in Portugal under the regime of Antonio Salazar, whereby corporatism based upon the principle of association (the smallest unit being the family) was effected and a hierarchy of functional representatives advised the philosopher-king. In France, there came the call to Syndicalism as enunciated in

Georges Sorel's Reflections on Violence, a school of socialism purporting to overthrow capitalism and all vestiges of atomistic democracy in favor of a hybrid of Anarchism, Marxism and Trade-Unionism. And in Germany and Italy, Fascism and National Socialism emerged as the political ideals in Adolph Hitler's Mein Kampf and Benito Mussolini's Fascism: Doctrine and Institutions. Their theories were comparable to the extent that they advocated assimilation of organized groups into and under the government, that the state utilize the rule of race or territory to further its ends, and that dictatorship be mellowed by functional representation to advance the cause of a chosen people.

Whereas European thought had covered a wide range of political inquiry, it was expected that in the "New World" the scope of such debate would be confined. For this reason, it is often maintained that America is a continent without a political theory, as all its political thought may be rationalized as having its origin elsewhere. In fact, American theory has been largely a corollary of that in England, at least as regards church-state relations, English-American relations, constitutional government, and the degree of democracy in a republic.

As regards the church and state vis-a-vis the subject and citizen, American thought had its English influence early through the New England Divines. Principal among them were John Cotton who, in the Tenet Washed and Made White, made clear an aristocratic conviction with the view that only the elected have any political rights, and John Winthrop who believed only church members have a right to vote and once the chosen few are elected they are responsible only to God. From the forerunners of the Revolution, however, came the strong democratic emphasis, as witnessed

by Thomas Hooker's view that sovereignty rests with all of the people expressed through their representatives, and reiterated in Roger William's Bloody Tenet Yet More Bloody. It was against this background that American revolutionary thought developed, based essentially upon the political dignity of all men, natural rights, and representative government. From John Wise it was heard that government should be premised upon the natural law principle of individual political equality, the social contract as construed by Locke, and the rule of the majority, although room may be made for a selected aristocracy. Benjamin Franklin too gave impetus to democratic thought with a plea for unlimited suffrage and a popularly elected unicameral lawmaking assembly. In addition, James Otis submitted in Rights of the British Colonists that government cannot act contrary to natural law rights, and these called for fair representation in legislative assemblies. And in Rights of Man and Common Sense, Thomas Paine defended the contract theory and reconstructed the principle of popular sovereignty as a theory of continuous affirmation by and for the people. Each of these themes well underscored the Declaration of Independence.

Following the adoption of the U. S. Constitution wherein the legislative assembly was based upon population and the political integrity of pre-existing states, the compromise leading to the creation of the federal republic did not thwart subsequent theoretical debates. In the era of Jeffersonian Democracy, for example, its namesake held to the belief that the rights of man are inherent in natural law and cannot be taken away either by society or the state, that majority rule is proper because men are basically reasonable, that government is best when least, and that a natural aristocracy is good and wise people will take advantage

of it. In sharper contrast, the namesake of the era of Jacksonian Democracy gave much greater emphasis to the equality of the common man, principal considerations among which included an extended suffrage, popular sovereignty, and equal votes as well as rights, with special privileges for none. To counter this trend in favor of a liberal democracy, the slavery controversy produced anti-national thought in John Calhoun's Disquisition on Government. Therein it was asserted that man has no natural rights and was simply born into and therefore subject to a given political system. This postulate led to his conviction that men are naturally unequal and that inequality coupled with pursuit for power explains progress. Therefore, to protect minorities, the principle of a concurrent majority was offered to amend the nature of federalism whereby state referendums may act as a check against national legislation.

Both by the Populist Movement and Wilsonian Progressivism, this view was later denounced in favor of a reassertion of Jacksonian Democracy. Whereas the Populists emphasized governmental correction of inequalities, that one should equal one, that fuller implementation be made of majority rule and that use of the initiative and referendum be extended, the Wilsonians urged a reversal of the trend of government away from the people by promoting the popular election of U. S. Senators, the initiative, referendum and recall, primary elections and proportional representation, all of which expressed a faith in the political equality of mankind.

From the foregoing survey it can be readily deduced that the theories of representation of the Western world are an immediate by-product of philosophies of government. By and large, the political theorists have directed their attention to the best of all possible governments

and some were no doubt influenced by expediency related to the problems of their times. In any event, it can be concluded that insofar as democratic theory is concerned, it rests on the premises of popular sovereignty, numerical political equality and majority rule. For the Greek City-States, as communities of small population, direct implementation of the theory was possible. For the American United-States, however, the demands of modern society and vast population prohibited like application. Therefore, the English modification of this heritage, transmitted under title of indirect or representative democracy, became the standard of reference for popular sovereignty. Consequently, aside from the compromise that brought the nation into being, it has been maintained in many quarters that public office holders should represent comparable numbers of people and any deviation therefrom has been described as a condition of over-representation or under-representation of constituency districts. This restatement of principle, however, should not be construed to suggest eager conformity, for American states have a history of practice to the contrary.[5]

This dichotomy of theory and practice in the United States has by no means escaped the attention of contemporary observers, as the subsequent contrast of thought will reveal. On the one hand, Professor Alfred de Grazia has defended past practices of American states and warned against the groundswell for change. American history, he contends, has been rummaged toward illustrating a sentiment for numerical equality among the people and the literature cannot be permitted to represent all that political science has to offer. Thus it is his contention that the

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[5]Alfred de Grazia, Public and Republic, New York: Alfred A. Knopf, Inc., 1951.

egalitarian or majoritarian doctrine in fact threatens the federal system, that representation formulae should account for functional and community interests as well as those of individual citizens, and that implementation of numerical equality would bring about conditions worse than those resulting from current practices.[6] This view was offered as a general dissent in a conference of research scholars and political scientists recently conducted by the Twentieth Century Fund. In reviewing the basic principle in question each of the other 15 participants concluded that the only legitimate basis of representation in a state legislature is people, and no matter how stated, it is the people who choose the representatives.[7] To challenge this deduction, philosopher-journalist Walter Lippman has more recently contended that the principle of popular sovereignty should be abandoned, for the people do not rule in fact and, if they so chose, they could not.[8] Finally, in a behavioral and much more sophisticated fashion, Professor Charles Gilbert has condensed under six titles the traditions of representation in modern American political theory: the idealist, utilitarian, rationalist, pragmatic, participatory, and populist.[9] And the foundation of each of these, in turn, may be found in the

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[6]Alfred de Grazia, Essay on Apportionment and Representative Government, Washington, D.C.: American Enterprise Institute, 1963.

[7]Twentieth Century Fund Conference, One Man-One Vote, New York: The Twentieth Century Fund, 1962.

[8]Walter Lippman, A Political Philosophy for Liberal Democracy, New York: Random House, 1963.

[9]Charles E. Gilbert, "Operative Doctrines of Representation," The American Political Science Review, Vol. LVII, No. 3, September, 1963.

broad spectrum of Western rather than solely American political thought.

In light of the foregoing overview of governmental forms and their implied patterns of representation, it is asserted that in contrast with many other Western values, and despite its critics, the republic of the United States was founded upon the principle of popular sovereignty as a national political philosophy. Nevertheless, although the government is purported to be one of and by the people, the constitutional framework does not fully reflect this principle, as evidenced by the nature of representation in the national legislative assembly. Likewise, state legislative assemblies have fallen short of the ideal, but without comparable justification. This has raised the critical question as to the proper composition of state legislatures in a representative democracy. Should each citizen be entitled to an equal voice in the formulation of public policy, or should residents of certain political sub-divisions exercise more influence? This is the focal point of current debate relative to legislative apportionment in the United States, and to appreciate the diversity of prospective solutions it is necessary to recognize the alternative forms for purposes of representation.

Alternative Forms of Apportionment.

Undoubtedly the most basic problem in American democratic governmental organization is that of selecting a proper system of apportionment to reflect that which is to be represented. To adopt Professor Harold Lasswell's definition of politics, it requires a determination as to who shall be represented, on what basis, when and how.[10] Is it appropriate

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[10]Harold Lasswell, Politics: Who Gets What, When and How, New York: McGraw-Hill, 1936.

in a representative democracy to apply the federal analogy to state legislatures; or should area, taxes, voters, groups, or perhaps population form the essential ingredient to determine who shall be represented?[11] To introduce such schemes as quotas and weighted ratios, on what basis should representatives be apportioned? When, or more specifically how often, should the matter be considered and reviewed? And how should the adopted system be implemented: by the legislative, executive or judicial branch, by selected groups, or the public at-large? Each of these inquiries raise fundamental problems that cannot go unnoticed or unmentioned. Therefore, brief attention will be given each in order of presentation.

As for "who" shall be represented, the federal analogy has been submitted to justify a recognition of state subdivisions as political entities. This is to suggest a parallel between Congress and the states, whereby each legislature should be composed of an upper chamber proportionate to the number of counties, and a lower chamber composed of one minimum member per county as modified by additions in proportion with population. This rationalization has been formulated on two premises -- that majority rule is not altogether desirable and that state governments are not essentially different from that of the national government -- assumptions which Professor Robert McKay concluded could scarcely be more false.[12] Not only must it be recognized that the United States is a federal government and the states unitary, but it follows that the position of counties

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[11]William J. D. Boyd, Patterns of Apportionment, New York: National Municipal League, 1962.

[12]Robert McKay, Reapportionment and the Federal Analogy, New York: National Municipal League, 1962.

within the state is not that of the state within the union. The 13 original states were responsible for the creation of the United States whereas the counties were created by the states. Therefore, as each state is not a federal union of sovereign counties, the claim to representation of the political subdivisions in the state legislature is without substantive justification.

Although most often mentioned in defense of the federal analogy, area or territorial representation, as such, has been advocated on occasion. In a broader sense this approach rests on assumed socio-economic, ecological and geographic factors that purport to distinguish some square miles of terrain from others, and therefore suggests that such form the basis of representation. Few of the proponents of areal consideration would condone utilization of square miles per se as the factor in point, for it is not space but the property therein that is the principal concern. Consequently, it is not facetious to point out that an assessment would be necessary to ascertain valuations of such criteria as industry, trees, bank clearances, cows or a multitude of other resources, none of which has been given serious systematic study as a condition of representation.[13] In any case, in addition to a criticism of the ambiguity of such criteria and its measurement, it is difficult to conceive a logical relationship as between area, however construed, and a democratic standard of apportionment.

This brings to bear an examination of the advisability of representation based upon taxes, whether assessed or paid. No doubt an

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[13]Maurice Merrill, "Blazes for a Trail Through the Thicket of Reapportionment," Oklahoma Law Review, Vol. 16, February, 1963, pp. 70-71; and Karl Krastin, "The Implementation of Representative Government in a Democracy," Iowa Law Review, Vol. 48, Spring, 1963, p. 553.

inversion of the colonial theme of no taxation without representation, no representation without taxation is a basis of representation subject to serious reservation. Although it is recognized that taxpayers are often distinguished from non-taxpayers in some elections, total application would approach the point of absurdity. Other than to note that some weight might be demanded by those most heavily taxed against those least taxed, it is inconceivable in the American tradition that the large number of citizens economically underprivileged should be disenfranchised for failure to have struck it rich.

A more persuasive argument has been made to the effect that voters, registered or turning out, should serve as an index to representation. Underlying this form of apportionment, however, is the assumption that those not registered or those who do not take advantage of the suffrage, are not worthy of representation. Such a scheme would affect untold numbers of citizens from all walks of life, but more particularly the young, inmates of penal or mental institutions, students of educational institutions, and many associated with military installations. Therefore, it would be acknowledged that representatives are not responsible to all of the residents of their districts, but rather the bare majority of voters registered, or even the minority who cast the ballot. Such a basis of representation can hardly be considered a reasonable implementation of representative democracy.

Another alternative is that of representation on a functional basis, by either socio-economic, occupational, religious or other groupings, and amended versions thereof. For example, it has been proposed by Professor de Grazia that bicameral legislatures be utilized with one house

based on communities (40 per cent), on functional representation (20 per cent), and on proportional representation (40 per cent), with the other house to serve as a glorified king's council.[14] Assuming on the one hand that all such categories are measurable and could be reviewed on occasion to reflect changes, it would be conceded that such a scheme could have served well the needs of medieval times. But again, this is the twentieth century and this is a nation of people dedicated to the proposition that sovereignty should rest in the people, not functional units balanced by an aristocracy.

Finally, there is the criteria of population as a determinent of representation. In recognition of the fact that it includes only people, that their numbers are measurable, that their representation is subject to periodic evaluation, and that it is the very essence of popular sovereignty, it is contended here that nothing short of this ideal can meet the democratic standard of political equality. As expressed by the President's Advisory Commission on Intergovernmental Relations:

> "Based on law -- based on theory of democratic government -- based on the history of representation in State government -- the Commission reaches the inescapable

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[14]Alfred de Grazia, Essay on Apportionment. . ., op. cit. Parenthetically, the method of proportional representation has often been alluded to as the best political science has to offer on the subject. Beyond a doubt, it can accurately reflect the complete spectrum of voter sentiment, particularly when applied via the Hare system, or use of the single transferable vote and quota. Experience with the method has been substantial abroad, both in national and local assemblies, and it has been implemented in many cities in the United States. However, constitutional, charter, and political considerations have prevented its widespread adoption. For a detailed account of the technique, see: George H. Hallett, Jr. and Clarence G. Hoag, Proportional Representation: The Key to Democracy, Washington, D. C.: The National Home Library Foundation, 1937.

> conclusion that both houses of a State Legislature should be apportioned strictly according to population."[15]

Associated with democratic representation is the principle that one shall equal one. This is, however, the ideal of political equality and, because of the practical necessity to employ administrative units of population to ascertain apportionments, it is well understood that only an approximation of the principle is possible. Stated in another fashion, substantial numerical equality should require that representation be of approximately equal constituencies, such that all citizens of all communities have comparable influence upon the formulation of public policy.

Once a determination is made as to the system of representation, or "who" shall be represented, consideration need be given a pertinent basis of apportionment, or "what" formula on which to allocate representatives. If factors other than population are utilized, values need be assigned each to fully reflect the theory of apportionment. Where population is the standard the scheme can be simple, although it can be made complicated by the adoption of quotas and weighted ratios which are consciously designed to subvert popular sovereignty.

Next, an apportionment should specify "when" the matter is to be considered and reviewed, for any grand design is subject to constantly changing criteria. To alter the federal analogy and area orientation, a state may consolidate counties; to upset the tax basis, valuations will fluctuate; to modify a voter premise, registration and performance will vary; to complicate a functional form, groups and associations will change;

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[15]President's Advisory Commission on Intergovernmental Relations, Apportionment of State Legislatures, Washington, D. C., 1962, p. 73.

and to amend a population basis, residency in representative districts will rise and fall. Therefore, the time of consideration and review would best be related to the availability of accurate criteria, and this may range alternately from two to ten years.

Finally, the "how" of legislative apportionment is of equal importance. It is conceivable that the task of implementation may be accomplished by either a legislative body, a chief executive or ex-officio executive board, a judicial group, communities of interest, or the people. For both political and practical reasons, none of the latter offer an ideal alternative. Elective officials can hardly be expected to affect their political demise or that of their close associates, and few among those affected can be considered interested in the mechanics and disinterested in the result. Consequently, it is submitted that any such group, either singly or in combination, may be charged with the responsibility, but the product of its efforts may be of dubious value unless measured against an objective standard, subject to judicial review and appropriate revision.

The Problem and Its Measurement.

The purpose of the foregoing pages has been to explore many of the theories of representation and their associated bases of apportionment, prefatory to a deduction that nothing short of popular sovereignty as expressed by individual political equality can approach the American value inherent in representative democracy. As applicable to state legislatures, and particularly that of Oklahoma, no proof has been offered that practice is to the contrary. But the detailed account in subsequent chapters should serve to erase any doubt. Preliminary to the ensuing

case study, however, an overview of the problem and the methodology employed to examine it are worthy of note.

From the first national census of 1790 through to the last of 1960 it is made clear that the population of the United States has steadily grown.[16] It is not the population explosion, however, that has caused the current controversy over representation, but rather its location and relocation and, notwithstanding constitutional directives, the failure of state legislatures to reflect it. This growth and movement of population over the decades has resulted in seriously disproportionate representation, and if not corrected will threaten all pretenses of democracy in America. Indicative of the nature of the problem, Appendix A depicts each Oklahoma Census, the totals of which reveal that unlike most other states its population has remained relatively static. But to relate the process of urbanization alone, it is of interest that rural residency (in cities and towns of less than 2,500 population) decreased from 81 per cent in 1910, to 74 per cent in 1920, to 66 per cent in 1930, to 63 per cent in 1940, to 51 per cent in 1950, and to 39 per cent in 1960. And, whereas during the past decade the state's population increased but 4.3 per cent, the state's most populous county increased 30.4 per cent. Yet, only infrequently since statehood has the state been reapportioned to afford a reasonable facsimile of equal political protection.

Given the problem, it remains to be determined which of the approaches in current methodology can best serve as an appropriate standard of measurement. Among the five major methods of analysis relative to

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[16]U. S. Bureau of the Census, Statistical Abstract of the U. S., Washington, D. C.: U. S. Government Printing Office, 1961.

measuring the extent to which state apportionment systems are inequitable,[17] two have been considered desirable for utilization herein. One, most widely used, is a technique designed to ascertain the deviation from the normal or average constituency. Accordingly, the average population represented by each legislator is found and compared with the actual population of each legislator's district. Thus, the deviation, as measured numerically and as a ratio, is deduced to reveal the degree of over-representation and under-representation of residents in each legislative district of the state. The other technique, also a popular standard, is designed to establish the population to which the majority of a legislative chamber is responsible. Accordingly, the population of each political subdivision is arranged to reflect the degree of representation from high to low, and appropriately divided to set off one group of districts from another. Thus, the distinction, as measured numerically and as a per cent, will reveal the degree of minority rule. Considered individually, each of these methods has a unique emphasis based upon the same criteria, but considered jointly, each serves to compliment the perspective of the other. Combined, they offer a standard of measurement whereby the closer the deviation to 1.00 and the closer the majority to 50.00, the more equitable is the system of apportionment for all residents of the state. As examined by this procedure, subsequent chapters will show the extent to which popular sovereignty in at least one state, is either a reality or a figment of our democratic heritage.

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[17]Alan Clem, "Problems of Measuring and Achieving Equality of Representation in State Legislatures," Nebraska Law Review, Vol. 42, No. 3, 1963, pp. 622-43.

CHAPTER II

OKLAHOMA IN HISTORICAL CONTEXT

It has been observed in the initial chapter that there exists much political thought in the United States and abroad, both past and present, which premises and seeks to justify that for purposes of representation in a legislative assembly "one shall equal one." For the practical implementation of the intent of this principle, however, it is here maintained that at best "one should and can closely approximate one."

Bearing this restatement in mind, it is desirable to ultimately ascertain how the Oklahoma Constitution and legislative enactments measured up to this standard. At present, however, it is beneficial to treat the more significant developments preceding Oklahoma's entry into the union of states.

On the subject of Oklahoma history and politics, both prior to and following statehood, there is much literature.[1] It is by no means

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[1] A selected bibliography would well include:

Blachly, Frederick F. and Oatman, Miriam E., Government of Oklahoma, Harlow Publishing Co., Oklahoma City, Oklahoma, 1929.

Corden, Seth K. and Richards, W. B. (Comp.), The Oklahoma Red Book, Vol. I, II, Democrat Printing Co., Tulsa, Oklahoma, 1912.

Dale, Edward Everett and Wardell, Morris L., History of Oklahoma, Prentice-Hall, New York, 1948.

Gittinger, Roy, The Formation of the State of Oklahoma, University of Oklahoma Press, Norman, Oklahoma, 1939.

intended here to reiterate such efforts, but rather to bring into focus only those events which bear upon the substance of this inquiry.

Indian Territorial Government.

It was in the year 1803 when, after James Monroe had labored almost six months to negotiate the Louisiana Purchase in Paris, the United States Senate approved the treaty for which President Thomas Jefferson had summoned it into special session.[2] It was from this annexed wilderness that was carved the current boundaries of the state of Oklahoma, less a portion of the "panhandle," that became known as Indian Territory destined to develop as two separate and distinct territories. The western half of Indian Territory was reasonably well organized by the year 1830, for the Indians had secured many years earlier this vast area for their respective tribes. The Five Civilized Tribes were, of course, the predominating people of the area, and it is of interest to note that they, in addition to some of their associates during the 19th Century had developed governments based on written constitutions.[3]

These developments, it is well known, did not come about solely in the midst of peaceful persuasion. For, almost from the date of the

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McReynolds, Edwin C., Oklahoma: A History of the Sooner State, University of Oklahoma Press, Norman, Oklahoma, 1954.

Scales, James Ralph, Political History of Oklahoma, 1907-1949, Unpublished Ph.D. dissertation, University of Oklahoma, Norman, Oklahoma, 1949.

Stewart, Dora Ann, Government and Development of Oklahoma Territory, Harlow Publishing Co., Oklahoma City, Oklahoma, 1933.

[2]A. L. Beckett, Know Your Oklahoma, Harlow Publishing Co., Oklahoma City, Oklahoma, 1930, p. 2; Leo Winters (Comp.), Directory and Manual of the State of Oklahoma, Oklahoma City, Oklahoma, 1961, p. 227.

[3]Albert H. Ellis, A History of the Constitutional Convention of The State of Oklahoma, Economy Printing Co., Muskogee, Oklahoma, 1923; Corden and Richards, op.cit., Vol. I, pp. 201-44.

Louisiana Purchase, the history of the state of Oklahoma is marred by the treatment of the Indian by the United States government. This unfortunate experience culminated at the conclusion of the Civil War when, after treaties with the Indians were terminated, it was demanded that the Five Civilized Tribes return to the national government the entire western portion of the Indian Territory theretofore their land.[4] This action served to facilitate Indian migration to the western part of Indian Territory. Thus, before the year 1870, there assembled in the embryo of Oklahoma 67 different tribes, and between the eastern holdings retained and the western holdings relinquished lay an area over which no one was given control -- an unassigned district that later became the heart of Oklahoma.[5]

Following these clarifications of the Indians' status and domicile, several attempts were made to officially organize the open spaces and its inhabitants as a territory under a unified Indian government. For example, the United States encouraged the Indians to form a territorial government by assembling the various tribal chiefs and drawing up a constitution. Accordingly, in 1870 at the so-called Muskogee Convention, this goal was sought and attained. As "The Constitution of the Indian Territory" is said to have reflected the composite governmental ideas of the leaders of the several tribes, it is germane to the context of this investigation to relate one portion of its provisions.[6] For its

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[4]Scales, op. cit., p. 9; Winters, op. cit., p. 227.

[5]Blachly and Oatman, op. cit., p. 3; Scales, op. cit., p. 9.

[6]Beckett, op. cit., pp. 120-121.

proposed legislative branch, the Convention and Constitution visualized a Senate and House of Representatives to constitute the law-making body. To secure representation in the Senate each nation with a population of 2,000 would be entitled to one member, and an additional member allotted for each increment of 2,000 or fraction greater than 1,000 population; provided, however, that nations with populations less than 2,000 may unite and be represented in the same ratio, except that three nations were to be guaranteed one member. For membership in the House of Representatives, the Constitution would have provided each nation one member, and an additional member for each increment of 1,000 population or fraction above 500. Suffice it to note that these Indians had an awareness of popular sovereignty as a condition of democratic government. Nevertheless, their efforts were in vain as Congress refused the Indian Constitution, and the tribal governments continued functioning without unity in the interim.

As this and similar efforts failed, the Indians developed instead of an officially organized territory, a general council of tribes to control its internal and external relations. It was stipulated by this group that the President of the General Council of the various tribes should be an appointee of the United States government, and in the treaty he was referred to as the "Governor of the Territory of Oklahoma."[7] This was the first use of "Oklahoma" as a name for Indian Territory.[8]

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[7]Gittinger, op. cit., p. 84.

[8]To the Rev. Allen Wright, principal Chief of the Choctaw Nation is attributed the name "Oklahoma." The source of the name is derived from two Choctaw words, "humma" meaning "red" and "okla" meaning "people." Although the region had been known as Indian Territory, the name "Oklahoma"

During the decade from 1879 through 1889 the various tribes of Indian Territory were enlarged by the continuous immigration of Indians from all parts of the country, until there were located in what is now Oklahoma 22 separate Indian reservations, although the earlier described central district remained virtually unoccupied.[9] Time and again, however, the whites, or "Boomers" as they were to be labelled, sought to settle the central sector and were continually repelled (although many managed to settle among the Indians in the eastern territory), as it was the federal government's position that the district was technically still a part of the Indian Territory. Agitation mounted with time for the opening of that sector of Indian Territory, and as a result Congress in 1885 passed legislation which authorized the government to negotiate for the purchase of the sector from those Indians who might establish ownership of it.[10]

In 1888, the influx of citizens of other territories and states was so great as to virtually produce a mass movement of a reported 38,500 "outlanders" residing among the Five Civilized Tribes in the eastern half of the present boundaries of the state of Oklahoma.[11] This rapid increase in "outlander" population served only to create chaos. As there was no law-making body in Indian Territory at the time (although the tribes were

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was not used by Congress until the adoption of the Organic Act for the formation of Oklahoma Territory in 1890. Winters, op. cit., p. 227.

[9]Gittinger, op. cit., p. 84.

[10]Blachly and Oatman, op. cit., pp. 4-6.

[11]Gittinger, op. cit., p. 177.

self-governed), the United States established a United States Court for Indian Territory whereupon Congress provided that certain Arkansas laws be enforced.[12]

Finally, by an act of Congress in 1889, an appropriation was passed to compensate the Indians for rights claimed in the unassigned (central) lands, and the President was authorized to open this land to settlement. This marked the beginning of a succession of laws by which the United States government gained complete control of what is now the western half of the state and opened it all to settlement. These events had an important bearing in the years to come, for when the constitution of the proposed state of Oklahoma was to be framed, this task was to be accomplished by people from many states, each with their unique experiences with government.[13]

Oklahoma Territorial Government.

In still a further, and perhaps more consequential, effort to lend stability of government to the western half of Indian Territory, Congress enacted in 1890 a law creating Oklahoma Territory.[14] Under the terms of the Organic Act, the new government was to be guided by 44 general provisions.[15] Of relevance to this inquiry, the new territory embraced all the land that was formerly Indian Territory, except those districts in the east occupied by the Five Civilized Tribes, seven small

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[12] Ibid., pp. 180-88 for a review of the complete judicial system.

[13] Blachly and Oatman, op. cit., p. 6.

[14] Ellis, op. cit., p. 4.

[15] See: Territory of Oklahoma, Session Laws of 1895, pp. 1-36, for full text of the original Organic Act.

reservations and the Cherokee Outlet, but including the three counties of the "panhandle" otherwise known as "No Man's Land."[16] Further, seven counties were established, each of which was to have representation in a legislative assembly constituting a 13 member Council or upper house and a 26 member House of Representatives; provided, however, that the apportionment of seats therein be made by the Governor (following a census to be taken of the several counties or districts) as nearly equal as practicable in the ratio of the respective populations.[17]

As a result of the Organic Act, Oklahoma Territory was formally and effectively organized and, despite the broad powers of Congress over the territory, the legislature exercised considerable authority over the internal affairs of the new government. By 1893, after securing agreement with the Indian tribes, the federal government opened for settlement several additional parcels of land, including the Cherokee Outlet, thus making Oklahoma Territory a compact body of land.[18] It was during the same year that Congress established the Dawes Commission. It was the purpose of this group to prepare Oklahoma and Indian territories for statehood by reconciling tribal memberships, laying plans for the allotment of lands, making provision for the sale of surplus land, and expediting the breakdown of tribal organization. In a series of subsequent acts, Congress authorized this Commission to act as well as recommend, and gave it the power to allot the lands upon the completion of the rolls of tribal

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[16] Ibid., pp. 1-3.

[17] Ibid., pp. 4, 5.

[18] Blachly and Oatman, op. cit., p. 7.

membership.[19] With the completion of the work of the Dawes Commission, it was only a question of time and circumstance until statehood was to be achieved. In 1898, Congress proceeded to abolish the tribal courts, bringing the Indians under the laws of the United States, and upon passage of another act in 1901, declaring all of the Indians in Indian Territory to be citizens of the United States, one million persons were brought under a national sovereignty.[20]

In retrospect, there was to exist in Oklahoma Territory eight sessions of the legislature or 17 years of experience under a provisional government extending over the years 1890-1906. The Organic Act, it will be recalled, was Republican-sponsored and that party's national administration remained in power for 13 years of Oklahoma's territorial existence. This resulted in the selection of principal officers for the area of like political affiliation, which political advantage was supplemented by vote of the people. To appreciate the political climate of that period, the following is a recapitulation of party alignments over the years.[21]

Senate			Session	House of Representatives		
Rep.	Dem.	Pop.		Rep.	Dem.	Pop.
6	5	2	1890	14	8	4
6	5	2	1892	13	9	4
7	1	5	1894	16	3	7
0	-- 13	--	1896	3	-- 23	--
8	4	1	1898	18	8	2
5	-- 8	--	1900	15	-- 11	--
7	6	0	1902	12	14	0
8	5	0	1904	15	11	0

[19] Ibid., p. 8.

[20] Gittinger, op. cit., p. 195.

[21] Adapted from an analysis of Oklahoma's political history by Scales, op. cit., pp. 2-6.

Sequoyah Constitutional Convention.

As a preface to the Oklahoma Constitutional Convention, it is desirable at this point to reflect upon another convention, second in prominence, held since the turn of the century in an effort to secure statehood. Indicative of the relevance of this meeting, which convened at Muskogee on August 21, 1905, to the specific subject under investigation, one of its Vice Presidents and later to be President of the Oklahoma Constitutional Convention (as well as the first Speaker of the House of Representatives and Governor), William H. Murray has written: ". . .no historian can properly review the provisions of the Oklahoma Constitution without considering the Sequoyah Convention . . . for some of the most important provisions of the Constitution derived their inspiration from the Sequoyah Constitution, notably: . . . the method of Legislative apportionment. . . ."[22]

Given this incentive for research, however, one will sooner or later be stymied in an effort to fully appreciate that "inspiration" for, as William H. Murray was later to relate while reflecting upon the Sequoyah Convention: "I once had the entire Record and minutes of that Convention; but my house caught fire and burned them up to my deep regret, at the loss of the accurate history these minutes disclosed. . . ."[23] Nevertheless, all is not lost, for through historians and the Sequoyah Constitution, it is possible to glean some understanding of the thinking of the delegates to this Muskogee assembly.

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[22]In letter to Joe N. Croom, Editorial Director, Times and Democrat, Okmulgee, Oklahoma, dated Sept. 29, 1927, p. 3, and now in the custody of the Oklahoma Historical Society.

[23]William H. Murray, Memoirs of Governor Murray and True History of Oklahoma, Meador Publishing Co., Boston, Mass., 1945, Vol. I, p. 314.

As one writer has observed: "The Muskogee convention, in attendance and interest, was the largest statehood gathering in the history of the movement. Fifteen of the twenty-six counties of Oklahoma Territory and more than fifty cities and towns of the Indian Territory were represented."[24] For purpose of clarification, this constitutional convention was to draft a constitution for a separate state to be formed from Indian Territory, and toward that end seven delegates and seven alternates were chosen by local convention on August 7, 1905 in each recording town of the 26 recording districts of the Indian Territory.[25] It is reported that during the convention: ". . . the delegates adopted the resolution that they were opposed to admitting Oklahoma Territory to statehood with any part of the Indian Territory annexed or with the understanding that it was to be gradually added. They were unalterably opposed to single statehood except upon absolute equality of representation, as based upon population."[26]

In any event, by September 8, 1905, just ten days after the convention was officially assembled, the draft of the constitution, which had been prepared by a committee of 50, was adopted. It was a very lengthy document containing approximately 35,000 words.[27] As for its underlying theory, William H. Murray was later to note that soon after he moved to Indian Territory he decided that the Populist theories

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[24]Stewart, op. cit.,pp. 364,365.

[25]Amos D. Maxwell, The Sequoyah Constitutional Convention, Meador Publishing Co., Boston, Mass., 1953, pp. 48, 52.

[26]Stewart, op. cit., pp. 364, 365.

[27]Dale and Wardell, op. cit., pp. 304,305; Maxwell, op. cit., pp. 75, 110.

were largely correct,[28] and judging from the finished product most of his colleagues were undoubtedly in accord with that doctrine.

Indicative of the thinking of the delegates, specifically as regards the subject of legislative apportionment, which was to have some influence upon the provisions of the Oklahoma Constitution, are the following excerpts from two Articles of the Constitution of the State of Sequoyah:

> "Article III. Legislative Department
> Sec. 2. The Senate shall consist of twenty-one members, one to be chosen from each senatorial district. . . .
> Sec. 3. The House of Representatives shall consist of ~~not~~ less than forty-eight, nor more than seventy-five members. . ."

> "Article XII. Boundaries and Divisions.
> Sec. 2. This State is hereby divided into (48) counties. . . .
> "Sec. 4. The State of Sequoyah is hereby divided into twenty-one Senatorial Districts. . .And one Senator shall be elected from each district.
> Sec. 5. From the limit of seventy-five members of the House of Representatives, each county of this State shall first have one member. Thereafter to justly give representation to such counties as have population in excess of their pro rata proportion of the population of the entire State, the excess number of Representatives making the grand total not above seventy-five shall be ascertained, then taking all counties of the State, the population of which is greater than the sum obtained by dividing the total population of the State by the total number of counties of the State and adding such excess population together, divide the total of such additions by the divisor, being the excess authorized membership of the House of Representatives, the quotient will be the ratio for additional representatives in such counties of excess population, and said excess representatives shall be allotted as follows:
> Any such county having an excess of population equal to one or more of such full ratio shall have an additional member of the House of Representatives for each such full excess ratio, or in case any such County shall have less than a full ratio or ratios, then its excess shall be multiplied by five, and if the sum so obtained equals one excess ratio such county shall have one additional member in the fifth term of the ensuing Federal Census decade. If the sum so obtained equals two full excess ratios, then such County shall have one additional member each in the fourth and fifth terms of the ensuing Federal Census decade. If the sum so obtained equals three full excess ratios then such County shall

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[28] Murray, op. cit., I, p. 308.

> have one additional member each in the first, second and third terms of the ensuing Federal Census decade. If the sum so obtained equals four full excess ratios then such County shall have one additional member each in the first, second, third, and fourth terms of the ensuing Federal Census decade; Provided, however, that in case the said excess ratio is less than the population of the County of this State having the smallest population, then the population of such least populous County shall in every instance hereinafter mentioned be treated as the true excess ratio.
>
> Provided, that until the next Federal Census is taken and published, the population as ascertained . . . by the Supreme Election Board (the Governor, the Attorney General and the Secretary of State) . . . shall . . . (be the basis of) . . . the apportionment for the ensuing decade.
>
> Sec. 7. For the purpose of determining the population of each and every separate county of this State . . . the vote cast in each and every county at the election for ratification or rejection of this constitution (is to) be multiplied by five and one-tenth, the product so obtained. . . to be the legal population of every such county and so to remain and be treated in all cases until the taking and publication of the next Federal Census."[29]

With reference to the foregoing provisions, Article XII, Section 5 provides the most outstanding similarity with the features which would be adopted as part of the fundamental law of the State of Oklahoma. Although additional analogies will be drawn with this document upon examining the relevant features of the Oklahoma Constitution, it is worth noting in passing that the Sequoyah Constitution anticipated "one senator to be chosen from each senatorial district,"[30] that "each county of this State shall first have one member"[31] in the House of Representatives, and that the method of apportionment for seats in the lower chamber would include the use of ratios and floats.[32] Further, it should not go unnoticed that

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[29]Corden and Richards, "Constitution of the State of Sequoyah," II, op. cit., pp. 626, 654-61.

[30]Ibid., Art. III, Sec. 2, and Art. XII, Sec. 4.

[31]Ibid., Art. XII, Sec. 5.

[32]A "float" is a part-time member of the Legislature as he is

population, as based upon each Federal census, was to be the sole factor in ascertaining the apportionment of legislative seats.[33] As for the provision intended to establish a "legal population" in the interim,[34] the convention was pressed for time, thereby necessitating such a scheme to facilitate the proper functioning of government prior to the next scheduled federal decennial census.

The election date for ratification of the constitution, and for judgment of the people of Indian Territory upon the proposed State of Sequoyah, was held on November 7, 1905. The result was a landslide, with 65,352 voting in favor of ratification and only 9,073 opposed.[35] Subsequently, however, it is reported that no hearing was held in Congress on the Sequoyah statehood bill, for the reason that the prevailing sentiment in Congress and in the White House was strongly against the admission of Indian Territory and Oklahoma Territory as separate states.[36] In any event, despite the failure encountered by the Indians to realize their ambition, there is no doubt that the Sequoyah Convention advanced the cause of statehood for both territories and well prepared the east to meet the west at the Oklahoma Constitutional Convention.

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elected from a county or district which has an excess of population over that required for regular representation, but not sufficiently enough to justify full-time membership. Thus he would serve the county or district as an extra representative for the appropriate term or terms in a given decennial period.

[33]Corden and Richards, "Constitution of the State of Sequoyah," op. cit., Art. XII, Sec. 5.

[34]Ibid., Art. XII, Sec. 7.

[35]Maxwell, op. cit., pp. 101, 102.

[36]Grant Foreman, A History of Oklahoma (Norman: University of Oklahoma Press, 1942), p. 313.

CHAPTER III

THE CONSTITUTIONAL CONVENTION

After more than a decade of debate as to whether Oklahoma and Indian Territories should be admitted separately or as a single state, President Theodore Roosevelt, aware of the futility of further delay, recommended joint statehood in his "State of the Union" address of December, 1905.[1] As a result, the Oklahoma Enabling Act, otherwise known as the Hamilton Statehood Bill,[2] was finally passed by Congress on June 14, 1906, and two days later was approved by the President. This marked the culmination of a protracted struggle for statehood that was generally received with satisfaction in both territories.[3]

Oklahoma Enabling Act.

Under the terms of the Oklahoma Enabling Act, it is of particular interest to note portions of two sections which prescribed:

> "That all male persons over the age of twenty-one years, who are citizens of the United States, or who are members of any Indian Nation or tribe in said Indian Territory and Oklahoma, and who have resided within the limits of said proposed State for at least

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[1] James D. Richardson, (ed.), Messages and Papers of the Presidents, Bureau of National Literature and Art, Washington, D. C., 1909, XI, p. 1178.

[2] Chairman Edward L. Hamilton of the House Committee on Territories is regarded as its author for it was he who introduced the Omnibus Statehood Bill on January 22, 1906.

[3] Corden and Richards, op. cit., I, pp. 27-39.

six months next preceding the election, are hereby authorized to vote for and choose delegates to form a constitutional convention for said proposed State; and all persons qualified to vote for said delegates shall be eligible to serve as delegates; and the delegates to form such convention shall be one hundred and twelve in number, fifty-five of whom shall be elected by the people of the Territory of Oklahoma, and fifty-five by the people of Indian Territory, and two shall be elected by the electors residing in the Osage Indian Reservation in the Territory of Oklahoma, and the governor, the chief justice, and the secretary of the Territory of Oklahoma shall apportion the Territory of Oklahoma into fifty-six districts, as nearly equal in population as may be, except that such apportionment shall include as one district the Osage Indian Reservation. . .and the Commissioner to the Five Civilized Tribes, and two judges of the United States Courts for the Indian Territory, to be designated by the President, shall constitute a board, which shall apportion the said Indian Territory into fifty-five districts, as nearly equal in population as may be, and one delegate shall be elected from each of said districts. . . ."[4]

"That the constitutional convention may by ordinance provide for the election of officers for a full State government, including members of the legislature and five Representatives to Congress, and shall constitute the Osage Indian Reservation a separate county, and provide that it shall remain a separate county until the lands in the Osage Indian Reservation are allotted in severalty and until changed by the legislature of Oklahoma, and designate the county seat thereof, and shall provide rules and regulations and define the manner of conducting the first election for officers in said county. . . ."[5]

Passage of the above act had been primarily the work of a Republican Congress, but its implementation was now to become the task of Democrats. Nominations of delegates, incidentally, could be made by conventions of any of the existing parties, or by petition. In fact, however, many districts had both unofficial primaries and nominating conventions, the choice of the primary being favored in every case.[6] Further, single-member districts were to be the rule in all elections,

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[4]Oklahoma Enabling Act, 34 Stat. 267, Sec. 2. Statutes at Large of the United States.

[5]Ibid., Section 21.

[6]Scales, op. cit., pp. 28-30.

except those of the Osage Reservation where both were to be elected at-large.[7]

Election of Delegates.

The campaign for delegates became one of national as well as state interest because its consequence would foretell the strength of the two principal political parties in Oklahoma. No sooner had the delegate districts been drawn than many people in both territories denounced the form in which the districting was done by those in authority,[8] and a wave of indignation erupted over an alleged gerrymander. The Democrats did not fail to take advantage of this dissatisfaction, but the Republicans were confident that they would carry the state and secure a majority at the convention.[9] Whether or not the alleged gerrymander had any basis in fact is difficult to ascertain because much of the population data was derived from estimates. Nevertheless, as the delegate districts were drawn by federal officeholders who owed their positions to Republican administrations, it is not surprising that the gerrymander charges were made by Democrats. For irrespective of what the truth may have been, it was good campaign material. Nevertheless, one investigator of this incident has observed:

> "It was alleged that certain districts were created to furnish a party stalwart with a ready-made constituency, and that many others were so drawn as to minimize the chances of prominent Democrats. There is little evidence of any such conspiracy. The districts were contiguous and the vote totals indicate that the districts were fairly equal -- each delegate represented about 13,000 people

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[7]McReynolds, op. cit., p. 314.

[8]Ellis, op. cit., p. 39.

[9]For detailed view of such districting, see Winters, op. cit., p. 125.

> -- this despite a rather hazy idea of the population furnished by local authorities. It is true that the boundaries . . . did not follow the county lines of Oklahoma Territory, but such a division would not have been equitable."[10]

In any event, on August 24, 1906, Governor Frank Frantz of Oklahoma Territory issued a proclamation for the election of delegates to the Oklahoma Constitutional Convention to be held on November 6, 1906, with the convention to open two weeks later.[11] Prior to and following this proclamation, the campaign was in full swing. In general, the Democratic candidates supported the party platform which favored the initiative and referendum, a mandatory primary, legislation that would protect the farmer and laboring man, an eight-hour work day, homestead exemption, curbing of monopolies, establishment of a Board of Arbitration and a Board of Charities, constitutional provision for all state officials, giving the Indians just and due compensation, and municipal ownership and control of public utilities.[12] Indicative of the Republican platform was that of Henry Asp, the leader of the party, who endorsed the Republican Party platform of 1900 and the administration of Governor Frantz, favored a Warehouse and Railroad Commission to be elected by the people and to possess the power of regulation, favored an employer's liability law, and opposed the practice of rebating and discriminating in freight rates as well as railroads owning or operating coal mines or engaging in any other business.[13] As

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[10] Scales, op. cit., pp. 30, 31.

[11] Irvin Hurst, The 46th Star: A History of Oklahoma's Constitutional Convention and Early Statehood, Semco Color Press, Inc., Oklahoma City, Oklahoma, 1957, p. 3.

[12] Ellis, op. cit., pp. 41-45.

[13] Oklahoma State Capitol, November 4, 1906, p. 1.

for the earlier influential Populists, there were none who sought political office as Populists as their philosophy had by this time been absorbed by the Democratic Party.[14]

As scheduled, the election of delegates to the Oklahoma Constitutional Convention was held on November 6, 1906. Much to the dismay of the Republican Party, of the 112 delegates chosen 98 were Democrats, one was an Independent (who was later instructed to affiliate with the majority), and only 13 were Republicans.[15] Moreover, it is ironic that each territory returned virtually the same number of Democrats and Republicans (49 and 6), with the Osage Indian Reservation providing two additional seats supporting the Democrats surprising victory. What brought about this resounding revolt against the Republican Party is debatable, but an objective analysis would no doubt take into account the experience of the territories with the national administration and Congress. As for the alleged gerrymander preceding the election, if the Republican officials had in fact made an effort in that direction, the results of the election would appear to indicate that it was a job not well done.

Organization of the Convention.

Pursuant to the August 24 proclamation of Governor Frantz, the delegates-elect convened in Guthrie, Oklahoma, on November 20, 1906, to begin the assigned work of the Oklahoma Constitutional Convention. To reflect upon the political atmosphere in which these men met, it will be

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[14]Scales, op. cit., p. 34.

[15]It should be observed that most historians have recorded these returns as 99-1-12, but the official count does not support their judgment; see Winters, op. cit., pp. 122-24.

recalled that during the prolonged quest for statehood the opponents of union advanced the thesis that Oklahoma Territory, having had a broader political experience, would be able to manipulate the machinery of government and thus dominate any state formed with the immature Indian Territory. This speculation, however, proved to be in error as it ignored the decades of representative government experienced by the tribes, together with their centuries of negotiation with white governments.[16] Indicative of the actual influence exerted prior to and at the convention, it was the delegation from Indian Territory that was decisive in the struggle for control, and as 34 of the Sequoyah Constitutional Convention members were elected, the pre-convention maneuvers found the eastern half of the proposed state well in command by opening day.[17]

The Oklahoma Constitutional Convention convened and immediately elected William H. Murray, the former Vice-President of the Sequoyah Constitutional Convention, as President. Numbered among the delegates were natives of 17 different states and two foreign countries; they ranged in age from 24 to 68 with the average being 43; and there were 47 farmers and 27 lawyers forming the "occupational" majority among the 112 members elected to draw up the Oklahoma Constitution.[18]

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[16]Scales, op. cit., p. 9. For an account of the many constitutions and treaties in which the Indians engaged themselves, see Corden and Richards, op. cit., and to appreciate their experience on the "local level," see Herschel V. Thornton, Oklahoma Municipal History - Indian Territory, an unpublished M.A. thesis, University of Oklahoma, 1929.

[17]Murray, op. cit., Vol. I, p. 319.

[18]Hurst, op. cit., p. 8.

The task before the convention was to prove to be an extremely difficult one. As one of the principal members was later to have observed: "When that body convened on the 20th day of November, 1906 . . . it had a stupendous task confronting it - two territories, dissimilar in governmental systems, in traditional sectionalism and political thought, in interest and vocations, were to be moulded into one harmonious unit for one purpose and political inspiration . . ."[19]

In addition, one Oklahoma historian has commented: "The proposed state had four times as many inhabitants as any other state had at the time of admission. No other convention was under the necessity of forming a commonwealth out of two distinct political units. . . . Other similar conventions dealt only with an organized territory or with part of a former state, except the convention of California; and the unorganized portion of Oklahoma had eight times as many inhabitants as California had when it was admitted into the Union."[20] Moreover, a pair of Oklahoma political scientists were to supplement the foregoing observations by noting that ". . . the presence of many Negroes in the new state meant that Oklahoma had to face not only the Indian problem but also the Negro problem."[21] Ironically, it is well to mention at this point that for a state that was to be labelled as the home of the "red man," the later to be revealed special census of 1907 indicated that far more Negroes than Indians resided in either territory.

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[19]Ellis, op. cit., "Introduction and Endorsement," by William H. Murray, written at Tishomingo, Oklahoma, April 13, 1921.

[20]Gittinger, op. cit., p. 256.

[21]Blachly and Oatman, op. cit., pp. 8,9.

Prior to examining in depth the convention developments as regard the subject of legislative apportionment, a few preparatory comments are in order. First, it became quite apparent that the assembly would not be able to complete its work within the prescribed 60 days. Second, and as a result, the convention was not to adjourn sine die until four days short of one year from its commencement. During this interim, the body met in three sessions. The first of these, at which most of the business was conducted, was the long session that covered the dates November 20, 1906, through March 15, 1907; the second was that of April 16 through 22; and the third, which was designed to meet President Theodore Roosevelt's objections to the constitution, was held during the week of July 10 through 16, 1907. Although no further meetings of the convention were held, President William H. Murray did not adjourn the assembly sine die until November 16, 1907.[22] Finally, it is imperative to recognize that a full and complete account of the various activities of the Oklahoma Constitutional Convention is nonexistent. Available are two official publications, each identical in form and content, known as the Journal and Proceedings.[23] Although useful in terms of relating the nature of the subject matter introduced and voted upon, they fail to afford the researcher an insight into the substance of debate on any given issue. As is to be expected, all of the intricacies of the fundamental laws were worked out in committee, and of these activities no record has been kept. However, some additional light is shed on the detail of the various

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[22] Journal of Constitutional Convention of Oklahoma (also printed as the Proceedings of the Constitutional Convention of the Proposed State of Oklahoma), held at Guthrie, Oklahoma, November 20, 1906, to November 16, 1907, Muskogee Printing Co., Muskogee, Oklahoma, n.d.

[23] Ibid.

constitutional proposals by the Proceedings and Debates.[24] Here again, however, one's optimism for securing desired answers -- particularly as regards legislative apportionment -- must be tempered with caution. For not only are approximately a dozen morning or afternoon sessions between November 20, 1906, and March 11, 1907, missing and unavailable, but in addition, all of the recorded debates after March 11, 1907, entailing 17 days of two sessions daily, are presumed to be permanently lost. Of this misfortune, one of the responsible parties has said:

> "These debates I kept for many years in a trunk filled with them. . . I 'loaned them' to the Historical Society. No one knew anything about these debates except the reporters . . . and myself. . . . What ought to have been done was to take each section of the Constitution, eliminate all of the unnecessary procedure and place under it the speeches made explanatory of the provision, and the speeches for and against it, until every section is thus explained, from the record and debates . . . because that method would be valuable for the libraries. I have heard from an Authority that since I deposited these Records in the Historical Society the proceedings for several days -- a week or more -- has disappeared. They were all there when I filed. Perhaps one 'person' did not want his position known. -- What else could it be?"[25]

In spite of these apparent obstacles, the following is nevertheless submitted as an accurate as possible account of the substantive deliberations of the convention on the subject of legislative apportionment, based upon a composite of the foregoing primary sources and information reported by the press.

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[24]The original copy of these papers has been preserved by the Oklahoma Historical Society. Of interest, moreover, the Proceedings and Debates of the Constitutional Convention was reproduced in an unpublished 4-Volume work by the Government Department of the University of Oklahoma under the auspices of the National Youth Administration, n.d.

[25]Murray, op. cit., II, pp. 73,74,99.

Sessions of November 20, 1906, through March 15, 1907.

Although the convention formally convened on November 20, 1906, and did much toward formulating the proposed constitution of the new state of Oklahoma, it accomplished little during its first three months in session as regards legislative apportionment. There is nothing unusual about this, however, for as the President of the assembly has written: ". . . until the Counties were cut and constitutionally established with the County Seats, we could not provide for the Legislature . . . Therefore, that question was considered first . . . Articles III, IV, V and VI, awaiting the action of the Committee on County Boundaries."[26]

However, two procedural actions and one substantive measure did evolve during that three-month span that are worthy of note. On the second day of the convention, the chairman of the Committee on Standing Committees recommended to the President the adoption of 45 standing committees, the 30th of which was to be the Committee on Legislative Apportionment, to consist of 15 members to be appointed by the President.[27] One week later the President made the appointments to the various standing committees, that on legislative apportionment to be composed of 12 members which included 11 Democrats and one Republican.[28] As for the

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[26] Ibid., p. 22.

[27] Recommendation of R. L. Williams (D) of District 108 (Durant) to William H. Murray (D) of District 104 (Tishomingo). Journal and Proceedings, op. cit., Session of Wednesday, November 21, 1906, 10:00 a.m., pp. 31,32.

[28] These included Charles H. Pittman (D) of District 11 (Enid), Chairman; D. S. Rose (D) of District 15 (Blackwell); E. O. McCance (D) of District 5 (Mutual); Joseph J. Curl (D) of District 57 (Bartlesville); J. J. Savage (D) of District 48 (McKnight); Walter D. Humphrey (D) of District 58 (Nowata); George W. Wood (D) of District 8 (Cherokee); Royal

substantive item, it was introduced as Constitutional Proposition Number 203, relating to legislative authority to divide the state into legislative districts; it was read by title and referred to the Committee on Legislative Apportionment early in December, 1906.[29] Of no consequence in terms of influencing the provisions finally adopted, this proposal is nevertheless of interest as it provided for: a legislature to be composed of a Senate and House of Representatives; the state to be divided into 10 legislative districts as nearly equal in population and as representative of different sociological interests and productive industries as possible, with no county to be divided in the formation of such districts; the legislature to have authority to redistrict the state after each United States census, making such districts conform in number and boundary to the congressional districts then in force; the Senate to be composed of one member and the House of Representatives of two members elected from each district, and if there be more than two counties in each district they be devised in such order as may be established by the legislature; and the members of both houses were to be elected every four years, and hold biennial sessions.[30] Indicative of the complexity of this proposal, for purposes of districting there would have been required a subjective analysis of sociological and economic "factors" to

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J. Allen (D) of District 93 (Duncan); James H. Chambers (D) of District 105 (Atoka); George M. Berry (D) of District 18 (Pawnee); E. F. Messenger (D) of District 82 (Holdenville); and Philip B. Hopkins (R) of District 75 (Muskogee). Journal and Proceedings, op. cit., Session of Wednesday, November 28, 1906, 2:00 p.m.; p. 52.

[29]This measure was authored by B. F. Lee (D) of District 110 (Hugo). Journal and Proceedings, op. cit., Session of Thursday, December 6, 1906, 10:00 a.m., p. 87.

[30]The Oklahoma State Capitol, December 8, 1906, p. 3.

be brought to bear upon and modify the population basis. Putting to one side the justification for inclusion of these specific "factors" as opposed to many others, one can imagine the turmoil that would likely ensue in a legislative assembly gathered to ascertain the meaning of "productive industries."

Although the Committee on Legislative Apportionment likely pondered over its obligation since its members were appointed in November, 1906, it was not until February, 1907, that the initial product of its efforts was formally made known to the convention and public. For it was on February 27, 1907, that its chairman, Charles H. Pittman, filed the significant Report number 56, which was read, referred to the Committee of the Whole, and ordered printed.[31] In addition to providing in Sections 1 through 5 a Senate of 41 members to be elected from 32 senatorial districts and a House of 105 Representatives, depicted respectively in Tables 1 and 2, [32] Section 6 added that:

> "The Legislature shall have the power at its first regular session, after each federal census, to reapportion the several counties of the state into representative and senatorial districts. When the senatorial districts embrace more than one county they shall be contiguous, and the districts shall be as nearly equal in population as may be, provided that each county shall always have one representative and that no county shall ever take part in the election of more than four representatives and two senators."[33]

Indicative of the dissatisfaction with the Report, two Democratic delegates voiced their opposition to the proposal, described as the

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[31] Journal and Proceedings, op. cit., Session of Wednesday, February 27, 1907, 1:30 p.m., p. 248.

[32] The Daily Oklahoman, February 28, 1907, p. 1.

[33] The Oklahoma State Capitol, March 1, 1907, p. 6.

TABLE 1
REPORT NUMBER 56 OF THE COMMITTEE ON LEGISLATIVE APPORTIONMENT
(Senate)

Counties (February 27,1907)	Dist.	Pop.	Sen.	Mar. 9 Revision		Mar. 11 Revision	
Adair, Delaware, Sequoyah	28	41,490	1				
Alfalfa, Woodward, Woods	2	46,182	1	Woodward, Woods (30,112)	1		
Atoka, Bryan, Coal	20	55,563	2				
Beaver, Cimar., Harper, Texas	1	43,828	1				
Beck., Dewey, Ellis, R. Mills	3	58,304	2				
Blaine, Major, Kingfisher	7	49,544	1	Alfalfa, Blaine, Major (47,604)	1		
Pittsburg	25	37,677	1				
Caddo, Grady	15	53,661	2				
Canadian, Oklahoma	14	75,959	2	Canadian, Kingfisher (38,120) Oklahoma (55,849)	1 1	Canadian, Oklahoma (75,959)	2
Carter, Love, Murray	18	49,484	2				
Cherokee, Mayes, Rogers	29	40,823	1				
Choctaw, McCurtain, Pushmataha	24	38,833	1				
Cleveland, Garvin, McClain	19	54,135	2				
Noble, Osage, Pawnee	10	46,642	1				
Comanche	16	31,738	1				
Moman,* Payne	11	40,387	1				
Craig, Nowata, Ottawa	30	38,235	1				
Pontotoc, Seminole	23	37,744	1				
Custer, Kiowa, Washita	6	62,732	2				
Tulsa, Washington	31	34,506	1				
Okmulgee, Wagoner	32	33,891	1				
Garfield	8	28,300	1				
Grant, Kay	9	42,395	1				
Greer	4	23,624	1				
Haskell, McIntosh, Muskogee	27	72,307	2				
Hughes, Okfuskee	22	35,540	1				
Jackson, Tillman	5	29,956	1				
Jefferson, Stephens	17	33,587	1				
Johnston, Marshall	21	31,816	1				
Latimer, LeFlore	26	34,018	1				
Lincoln, Pottawatomie	13	80,565	2			Kingfisher, Logan (48,721)	1
Logan	12	30,711	1				
	32		41	33	41	32	41

*Moman was the name initially assigned by the Committee on Counties and County Boundaries to the county now known as Creek; the name of the county was formally changed by the Constitutional Convention on the afternoon of April 19, 1907. See Journal and Proceedings, op. cit., p. 335.

TABLE 2

REPORT NUMBER 56 OF THE COMMITTEE ON LEGISLATIVE APPORTIONMENT
(House of Representatives)

County	Population	No.of Reps.	County	Population	No.of Reps.
Adair	9,115	1	Lincoln	37,293	2
Alfalfa	16,070	1	Logan	30,711	2
Atoka	12,113	1a	Love	11,134	1
Beaver	13,364	1	McClain	12,888	1
Beckham	17,758	1	McCurtain	13,198	1
Blaine	17,227	1	McIntosh	17,975	1
Bryan	27,865	2a	Major	14,307	1
Caddo	30,241	2b	Marshall	13,144	1
Canadian	20,110	1c	Mayes	11,064	1
Carter	26,402	2	Moman	18,365	1
Cherokee	14,274	1	Murray	11,948	1
Choctaw	17,340	1	Muskogee	37,467	2g
Cimarron	5,927	1	Noble	14,198	1
Cleveland	18,460	1c	Nowata	10,453	1
Coal	15,585	1d	Okfuskee	15,595	1
Comanche	31,738	2e	Oklahoma	55,849	3
Craig	14,955	1	Okmulgee	14,362	1
Custer	18,478	1f	Osage	15,332	1i
Delaware	9,876	1	Ottawa	12,827	1
Dewey	13,329	1	Pawnee	17,112	1j
Ellis	13,978	1	Pittsburg	37,677	2
Garfield	28,300	2	Payne	22,022	1j
Garvin	22,787	2	Pontotoc	23,057	1k
Grady	23,420	2b	Pottawatomie	43,272	3
Grant	17,638	1	Pushmataha	8,295	1
Greer	23,624	2	Roger Mills	13,239	1f
Harper	8,089	1	Rogers	15,485	1m
Haskell	16,865	1g	Seminole	14,687	1k
Hughes	19,945	1	Sequoyah	22,499	1
Jackson	17,087	1h	Stephens	20,148	1e
Jefferson	13,439	1	Texas	16,448	1
Johnston	18,672	1d	Tillman	12,869	1h
Kay	24,757	1i	Tulsa	21,693	1m
Kingfisher	18,010	1	Wagoner	19,529	1
Kiowa	22,247	2	Washington	12,813	1
Latimer	9,340	1	Washita	22,007	2
LeFlore	24,678	1	Woods	15,517	1
		93	Woodward	14,595	1

The following pairs of counties were to comprise flotorial districts, with each district to be entitled to elect one additional member to the House of Representatives:

(a) Atoka, Bryan	39,978	3 plus 1	(g) Haskell, Musk.	54,332	3 plus 1
(b) Caddo, Grady	53,661	4 plus 1	(h) Jackson, Till.	29,956	2 plus 1
(c) Canad.,Cleve.	38,570	2 plus 1	(i) Kay, Osage	40,089	2 plus 1
(d) Coal, Johnston	34,257	2 plus 1	(j) Pawnee, Payne	39,034	2 plus 1
(e) Comanche, Steph.	51,886	3 plus 1	(k) Pont., Sem.	37,744	2 plus 1
(f) Custer, R.Mills	31,717	2 plus 1	(m) Rogers, Tulsa	37,178	2 plus 1

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greatest Democratic proposition yet adopted.[34] Matthew J. Kane charged that the Committee on Legislative Apportionment had made a dismal failure in its proposal as it would not be fair to the people of the districts, and besides, the group had not consulted the delegates on the floor. As a result, he believed the plan to be worse than the Republicans ever made in any of their gerrymanders.[35] To this C. N. Haskell added that the provision that no county shall ever vote for more than four representatives and two senators was unjust, but his amendment to strike the provision was tabled.[36]

In light of these criticisms of Report number 56, a few explanatory comments are in order. On the basis of the population figures given in Tables 1 and 2, one may rapidly surmise a number of obvious inequities in representation. However, prior to examining the apparent disparities sensed by some of the convention delegates, it should be noted that the population figures given are those which were derived by the special census conducted later that year. Therefore, one cannot be too critical of the plan and its originators, because the distribution of senators and representatives to which each county or district would have been entitled was based upon estimates of population.

It should be pointed out, nevertheless, that even within the framework of all of the provisions of Report number 56, particularly those calling for a maximum of four representatives and two senators per county,

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[34] Ibid., p. 1.

[35] Ibid., Matthew J. Kane (D) of District 37 (Kingfisher).

[36] The Daily Oklahoman, March 1, 1907, p. 1. C. N. Haskell (D) of District 76 (Muskogee).

each county to be entitled to at least one representative, and the districts to be as nearly equal in population as may be, there is still sufficient evidence to suggest that such an apportionment of legislative seats would have proven strikingly discriminatory. For example, in the prospective application of the Senate formulae, each senator might have ideally represented 34,492 (1,414,177 ÷ 41) persons. But, had the plan been implemented, the following extreme cases would have brought to light the inadequacy of the proposal.

District	Population	Number
4 (Greer)	23,624	1
7 (Blaine, Major, Kingfisher)	49,544	1
.....	.....	...
18 (Carter, Love, Murray)	49,484 (24,742)	2
13 (Lincoln, Pottawatomie)	80,565 (40,282)	2

Thus, the senator representing District 7 would have represented more than twice the population as the senator from District 4, and the senators representing District 13 would have represented almost twice the population as the senators from District 18.

As for the plan applicable to the House of Representatives, each legislator might have ideally represented 13,468 (1,414,177 ÷ 105) persons. However, in keeping with the prescribed limitations on individual political equality (most pronounced in assuring each county a minimum of one member), there would have resulted 93 regular members of the legislature being elected from 75 counties and 12 "flotorial districts" (as distinguished from flotorial members) to be entitled to yet another representative. The following extremes are indicative of further disparities.

County	Population	Number
Cimarron	5,927	1
LeFlore	24,678	1
.....	.....	...
Washita	22,007	2
Pittsburg	37,677	2
.....	.....	...
Pottawatomie	43,272	3
Oklahoma	55,849	3
.....	.....	...
Jackson-Tillman	29,956	2+1
Kay-Osage	40,089	2+1
.....	.....	...
Atoka-Bryan	39,978	3+1
Haskell-Muskogee	54,332	3+1

Here again the inequities are evident, particularly as regards the differences in population as between those counties presumably entitled to equal treatment in securing representation even after the initial allocation.

In any event, twenty-four hours after the filing of Report number 56, George A. Henshaw, Chairman of the Committee of the Whole, to which the Report was referred, reported that the proposal had been taken into consideration and recommended that the same be adopted, ordered engrossed and passed to third reading and final passage in Committee of the Whole.[37]

Of the 440 constitutional propositions introduced at the convention, number 438 -- "A Proposition for a Complete Constitution, with Ordinances, Preamble, Bill of Rights, Form of Government and Schedule" -- was presented by Henry E. Asp and covered 44 pages, and although

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[37]Journal and Proceedings, op. cit., Session of Thursday, Feb. 28, 1907, 1:45 p.m., pp. 250-51. George A. Henshaw (D) of District 107 (Madill).

it was both the lengthiest and least significant of measures brought before the delegates, it managed to command their attention on March 5, 1907.[38] This proposal, which served more or less as an interlude in the development of the provisions that would govern legislative apportionment, is worthy of some consideration because it depicted the minority position on the issue.

Drafted by the 13 Apostles (Republican delegates), the lengthy document constituted an instrument which, when printed, did not take up as much space as the county boundaries provisions adopted.[39] Article II of the proposed Constitution of the State of Oklahoma dealt with the Legislative Department, and was comprised of 73 sections.[40] Sections 29 through 34 embodied the provisions relating to the apportionment of the state Senate. Envisioned was a Senate to be composed of 25 members, although that number may have been increased by the legislature not to exceed 30, with each senator to be elected for a term of four years. The legislature was thus authorized to fix the number of senators, and to divide the state into as many senatorial districts as there were to be senators, which districts were to be as nearly as may be equal in the number of inhabitants entitled to representation. Each district would have been entitled to one senator and no more, and be composed of compact and contiguous territory. The apportionment of the House of Representatives was provided for in Sections 36 through 39. The lower

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[38] Journal and Proceedings, op. cit., Session of Tuesday, March 5, 1907, 9:30 a.m. and 1:45 p.m., pp. 258-259; Ellis, op. cit., pp. 96,97. Henry E. Asp (R) of District 25 (Guthrie).

[39] The Oklahoma State Capitol, March 6, 1907, pp. 1-3.

[40] Ibid., March 7, 1907, p. 3.

chamber was to be composed of 50 members, provided that the legislature could increase that number to not more than 60, with each representative to be elected for a term of two years. Members of the House of Representatives were to be apportioned to and elected at-large from each senatorial district. Accordingly, it was provided that the legislature would, at its first regular session after the next federal census, proceed to fix by law the number of senators and representatives, and in 1915 as well as every tenth year thereafter cause an enumeration of all the inhabitants of the state, and at its first regular session after each federal or state enumeration reapportion the state into senatorial districts, provided that the legislature might, at any regular session, redistrict the state into senatorial districts and apportion senators or representatives.

When Henry E. Asp submitted the above as part of an entire constitution, it did not go without at least limited attention. Shortly after its introduction to the convention, delegate W. H. Kornegay moved that the proposition of Mr. Asp be printed. However, on the subsequent motion of delegate R. L. Williams, the motion of Mr. Kornegay was tabled. As the motion to print provoked discussion on the morning of March 5, 1907, the matter was to have gone over for one day under the rules.[41] However, no sooner had the afternoon session gotten underway that date than Samuel W. Hayes made the motion which was seconded, that the regular order of business be suspended and the motion to have printed

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[41] Journal and Proceedings, op. cit., Session of Tuesday, March 5, 1907, 9:30 a.m., p. 258. W. H. Kornegay (D) of District 59 (Vinita).

constitutional proposition number 438 of Mr. Asp be taken up. After much discussion, Mr. Haskell announced that in view of the fact that there were not any funds available for convention printing and its other necessary expenses, and in light of the fact that he knew seven months of hard work went into the preparation of proposition number 438 before the convention even assembled, and he himself found many good things in it, he would offer, on behalf of the New-State Tribune, to print 200 copies of it and present the same to the convention free of charge. A motion and second for acceptance having followed, Mr. Asp appreciated Mr. Haskell's generosity but proceeded to vehemently oppose such action being taken, favoring instead that the Republicans be permitted to assume the expense of the duplication to be done by the regular printers of the convention. Following an ensuing objection by Mr. Hayes, to the effect that the convention should bear the cost of printing the proposed Constitution, Mr. Pittman moved that the convention accept Mr. Haskell's offer and the motion prevailed.[42] Such was the fate of the Republican version of a "fair" constitution, and as it was a document bound in red, Democrats ridiculed its color and otherwise ignored its content.[43]

This Republican effort to make its presence and sentiment known, having temporarily diverted the attention of the delegates, did little

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[42]Journal and Proceedings, op. cit., Session of Tuesday, March 5, 1907, 1:45 p.m., pp. 258-259. Samuel W. Hayes (D) of District 85 (Chickasha). See also Proceedings and Debates, op. cit., Vol. IV, M-5-10, 11, 12 of Tuesday, March 5, 1907, 1:45 p.m., which records Charles L. Moore (D) of District 13 (Enid) rather than Mr. Pittman as having moved that the convention accept Mr. Haskell's offer to print the Republican version of a state constitution.

[43]Hurst, op. cit., p. 20.

toward modifying the intentions of the preponderant majority as regards the subject of legislative apportionment. Recognizing a few of the earlier described inequities, the convention set to work once again beginning on March 9, 1907, to partially remedy the situation. After consideration of the matter referred to it, the Committee of the Whole rose and J. Howard Langley, as Chairman of the Committee of the Whole, reported that his group had under consideration Report number 56, and recommended that the same be adopted, ordered engrossed and passed on third reading and final passage, as amended in the Committee of the Whole.[44] In essence, when the subject was reopened on the motion of Chairman Pittman of the Committee on Legislative Apportionment, four significant changes were made as regards the distribution of senatorial districts and seats. Instead of receiving two state senators in a district with Canadian County, Oklahoma County was allotted one senator to be elected at-large. Consequently, Canadian County was then joined with Kingfisher County in a new senatorial district. In addition, Alfalfa County was taken from the district comprising Woods, Woodward, and Alfalfa counties, and was combined with the earlier designed district of Blaine and Major counties. Finally, Kingfisher, which was formerly in a district with Blaine and Major counties, was placed with Canadian County in a new district having one senator. When all was said and done, however, the total number of state senators was to have remained at 41,[45] as depicted in Table 1.

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[44]Journal and Proceedings, op. cit., Session of Saturday, March 9, 1907, 1:30 p.m., p. 290. J. Howard Langley (D) of District 65 (Pryor Creek).

[45]The Daily Oklahoman, March 10, 1907, p. 2.

Obviously dissatisfied with their decision just two days earlier, the delegates to the convention faced up to the inadequate product of their work to date on March 11, 1907. During the morning session, R. L. Williams moved to reconsider Report number 56, and early in the afternoon session his motion prevailed. Accordingly, the convention resolved itself into a Committee of the Whole for further consideration of Report number 56. After due consideration of the matter referred to it, the Committee of the Whole rose and James H. Chambers, as Chairman of the Committee of the Whole, reported that the body had Report number 56 under consideration and recommended that it be adopted, ordered engrossed, and passed to third reading and final passage, as amended in Committee of the Whole. On motion, the report was adopted.[46] Through the persistent and effective work of interested delegates, the district composed of Oklahoma and Canadian counties with two senators, as provided in the original Report, was thus restored. This action made it necessary to again attach Kingfisher County to Logan County in one senatorial district, as noted in Table 1. This having been accomplished, it was believed that the problem of legislative apportionment had been settled.[47] And to augment this optimism Committee Report number 56 was placed on third reading for final adoption the following day, with the vote to adopt the same resulting in 70 ayes, 12 nays, and 29 absent. As a

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[46]Journal and Proceedings, op. cit., Sessions of Monday, March 11, 1907, 9:30 a.m. and 2:00 p.m., pp. 292, 294, 295. James H. Chambers (D) of District 105 (Atoka). For a detailed account of this development, see Proceedings and Debates, op. cit., Vol. IV, M-11-68, 69, 70, 79, 80, 81, 82 of Monday, March 11, 1907, 2:00 p.m.

[47]The Daily Oklahoman, March 12, 1907, p. 1.

result, President Murray announced the vote and declared that Report number 56 had thereby been finally adopted and made a part of the Constitution of the proposed State of Oklahoma.[48]

Indicative of the immediate resentment felt in some quarters, one newspaper reported that eight Democratic Oklahomans voted against the "Democratic-Socialist legislative gerrymander" which was carried by the Indian Territory votes, and if the constitution is adopted, the Indian Territory delegates will capture everything in sight from their Oklahoma Territory counterparts.[49] Similarly, delegate James A. Harris is reported to have called the apportionment "a most outrageous gerrymander." President Murray is said to have heard of the charge and, meeting Mr. Harris he said, "Mr. Harris, your gerrymander charge is very unfair. You should investigate before you speak so positively. The Republicans have been given at least six percent more representation than the facts justify." "Man alive!" Harris is said to have replied. "The way you fellows are setting this thing up, the Republicans won't elect a Legislature in fifty years!" To which President Murray replied calmly as he turned away, "If the Republicans ever hope to elect a state legislature as crooked as their territorial legislature, fifty years would be much too soon."[50]

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[48]Journal and Proceedings, op. cit., Session of Tuesday, March 12, 1907, 1:30 p.m., pp. 296,297.

[49]The Oklahoma State Capitol, March 13, 1907, pp. 1-3.

[50]Gordon Hines, "Alfalfa Bill": An Intimate Biography, Oklahoma Press, Oklahoma City, Oklahoma, 1932, p. 197. As a matter of fact, it should be noted that the Republican Party has never managed to secure a majority in the Oklahoma Legislature. James A. Harris (R) represented District 71 (Wagoner).

Thus came to an end the long session of the constitutional convention and the progress made during that period toward developing the fundamental law as regards legislative apportionment. Although but two short sessions of approximately one week each in duration remained, it will be seen that the proceedings of the last week of the convention sessions proved far more consequential in terms of drawing up districts and distributing legislative seats than was the product of the delegates' efforts during the many months of the long session.

Sessions of April 16, 1907, through April 22, 1907.

The first short session of the convention, held April 16 through 22, 1907, served principally as a final check and confirmation of the various provisions of the proposed constitution. Nothing, in short, developed during that week to modify in any manner the conclusions reached on legislative apportionment by the end of the preceding long session. Perhaps most significant was the announcement of President Murray on April 19 to the effect that he had the constitution as engrossed on parchment, together with the "Resolution Adopting the Constitution of the United States" and Ordinance "Accepting the Enabling Act," both of which were signed by the President and Secretary of the convention.[51] These were later read in full, corrections were made, and

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[51] Journal and Proceedings, op. cit., Session of Friday, April 19, 1907, 1:00 p.m., p. 334. It was also during this session that "Moman" was erased and inserted in lieu thereof was the name "Creek." The officers of the Oklahoma Constitutional Convention included in addition to President Murray, John McLain Young of Lawton, Secretary; Pete Hanraty (D) of District 90 (McAlester), Vice-President; and Albert H. Ellis (D) of District 14 (Orlando), Second Vice-President. For a complete list of officers and members, see Winters, op. cit., pp. 122-24, and Journal and Proceedings, op. cit., pp. 385-88.

roll call for final adoption was ordered. The roll call found 86 delegates voting in the affirmative, none in the negative, and 26 absent.[52]

As written by the Second Vice-President of the convention:

> "From the adjournment of the Convention on April 22, 1907, the campaign was on in dead earnest; and whenever or wherever citizens met, they engaged in campaigning for or against the Constitution. After the April 22nd adjournment of the Convention, President Murray offered to file with the Territorial Secretary, a certified copy of the Election Ordinance and of the Constitution, but the Secretary refused to accept certification and demanded the original parchment copies. President Murray refused to comply with the demand -- as the Convention had authorized him to retain possession. The Republicans charged that the Constitution could not be adopted by the people until it was filed with the Secretary of Oklahoma Territory; that the Secretary did not know whether the Convention had written, adopted and signed a Constitution (though the Secretary had seen the Constitution signed and had attested the signatures under the Great Seal of Oklahoma Territory on April 19, 1907). Certified copies of the Constitution and Ordinances was (sic) all that was required to be furnished to the President of the United States and to the Courts, and should have been sufficient for the Governor and the Secretary of Oklahoma Territory."[53]

The Democratic Party used the direct primary on June 11, 1907, to nominate its candidates for state and federal offices, and one week later held its State Convention in Oklahoma City. Endorsing the constitution as its platform, the party declared: "We submit to the people of Oklahoma the best State Constitution that has ever been written and in asking the suffrage of the patriotic citizenship of this State, we firmly stand upon the Constitution in its entirety as our platform."[54] To add luster to this gathering, William Jennings Bryan was called upon

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[52] Ibid., p. 339.

[53] Ellis., op. cit., p. 123.

[54] Ibid., p. 125.

to address the opening session of the convention held June 18, 1907, to ratify nominations, and remarked: "You have the best constitution today of any state in the Union, and a better constitution than the Constitution of the United States. This is not extravagant praise. All of the other states have stood as your models. I want to compliment the cornfield lawyers of Oklahoma . . . upon having puttied up all the holes shot in the constitutions of other states by trust and corporation lawyers."[55]

Although on the surface evidently proud of their overall achievement, the Democrats obviously suffered some pangs of conscience about their constitutional provisions on legislative apportionment. For only one week after the opening of the Democratic State Convention, President Murray issued the following proclamation:[56]

> "Whereas, Since the adjournment of the convention, criticism of the legislative apportionment has been made through the Republican press; and,
> "Whereas, the Republicans did not present any request, facts, or statistics at the making of said districts, and the Democratic majority at all times being desirous of making a fair apportionment upon the population of the state and correct errors if any were made.
> "Therefore, As president of the constitutional convention, I hereby constitute and appoint a committee to take testimony upon legislative apportionment, to consist of Flowers Nelson, Charles Moore, Roy Allen, J. F. King, J. H. N. Cobb, to meet in the city of Guthrie on the fifth day of July, 1907, and to take the testimony which may be submitted by any and all persons between said date and the convening of the convention as aforesaid, and the Hon. P. B.

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[55]Hurst, op. cit., p. 26.

[56]Journal and Proceedings, op. cit., p. 457; issued June 25, 1907. This interim committee was composed of four Democrats and one Republican: Flowers Nelson (D) of District 68 (Tulsa); Charles L. Moore (D) of District 13 (Enid); Roy J. Allen (D) of District 93 (Duncan); Joseph Francis King (D) of District 16 (Newkirk); and J. H. N. Cobb (R) of District 67 (Sapulpa).

> Hopkins, minority leader of the convention, the chairman of the Republican state committee, and all Republicans and other persons of the state are hereby requested to appear before said committee and to submit testimony, facts and statistics to disprove the fairness of the apportionment made by the convention with a view of correcting errors, if any be found, in said legislative apportionment."

This opportunity having been given the majority's antagonists to show cause why the adopted plan of apportionment should be changed, President Murray proceeded to write on June 28, 1907, an interesting letter to President Theodore Roosevelt, a large portion of which follows:

> "In view of the numerous criticisms of the Republican press of the Constitution for the proposed State of Oklahoma, and the claim that certain provisions must be eliminated as the price of Statehood, I address YOU PERSONALLY this letter, having, on, towit, May 13th, 1907, addressed a communication to the Honorable Attorney General requesting his opinion, and, whose reply was to the effect that such opinion can be given only upon your direction.
> "The Enabling Act, as you are aware, contains a greater number of restrictions and limitations upon the sovereignty of the citizenship of the proposed State than ever before required of a people in the history of the admission of states. Indeed it contains all the restrictions and limitations ever enjoined by Congress before in the formation of State Governments under the Federal Constitution, and more. In addition to the necessary and proper limitations that the Constitution shall not be repugnant to the Constitution of the United States, other restrictions are enjoined, towit: Limitations upon the power to tax certain property; the fixing of the State Capital at a certain point for a given period of years; the forming by Congress of the five Congressional Districts -- limitations never before required of any State. It is not our purpose to complain of the restrictions and limitations. We have accepted them all in good faith. Notwithstanding their acceptance, the daily Republican press is filled with numerous criticisms to the effect that the legislative apportionment is an 'outrageous gerrymander,' and that other un-named provisions of the Constitution are repugnant to your idea of statecraft and that their elimination is the price of statehood. While we do not yield the point that a State, in the exercise of its police powers or in the adoption of its economic policies,is either expected or required to frame a Constitution to suit either the Executive or Legislative branch of the United States, yet in view of the uncertainties of statehood which have wrought injuries to the business interests of this State, and in view of your authority

granted by the 'Enabling Act,' to withhold the proclamation granting us Statehood, and believing in the integrity of your promise to this people upon your trip through these Territories, and that you would not purposely further delay the blessings of self-government to one and a half million people, I, as President of the Constitutional Convention, respectfully request and solicit from you, an expression upon the Constitution, a copy of which is now on file with the Honorable Attorney General, and thus give us an opportunity to eliminate any provisions which will be necessary to secure Executive approval. In view of the fact that the Convention will be reconvened on the 10th day of July, as evidenced by a call, a copy of which I herewith send you, your expression of disapproval at this time would enable the convention to eliminate the objectionable provisions, if any, and would thus subserve the interests of every citizen in this State, irrespective of party, creed or color.

"It being human to err, we are prone to mistakes and shall be glad to accept your superior counsel and advice in the spirit in which I am sure that you would give it; for I am sure that it would be given in the spirit of friendly criticism and wholesome advice rather than such criticisms as have come through an interested corporate and partisan press as we have in this State who condemn us without pointing out the objections, and who persistently lead our citizens to believe that the promise from you that you will withhold Executive proclamation, without giving us the benefit of the knowledge, which they claim to possess, of the provisions objectionable to you.

"You will observe in the call which I herewith send you that the undersigned has appointed a committee to take and receive testimony and receive suggestions of any kind and all parties who attack the integrity and fairness of the legislative apportionment. The charge 'gerrymander' is easily made, but never in framing the Legislative Districts, (which in a measure was a guess, because of the rapid growth and increase of population of the different sections of our Territory) did the minority of the Convention make a request upon us. . . ."[57]

Because the public pronouncements of President Murray, on June 25 and 28, 1907, ring a note of dissatisfaction with criticism of the majority plan of apportionment, a few comments appear in order. On the one hand, one cannot be overly critical of the majority action on apportionment at that time, for as earlier noted, the delegates to the convention were at a disadvantage in drawing up the districts and assigning

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[57] Journal and Proceedings, op. cit., pp. 454-56.

legislative seats without verified population data at hand. A good estimate of the total population of the two territories they did have (using 1,500,000 as opposed to 1,414,177 reported in the special census taken later in the year), but the critical unknown factor is how the delegates viewed the county by county distribution of the total population. And if the majority made sincere and judicious use of all available information, President Murray was very much entitled to air his resentment of the destructive criticism. On the other hand, there is continuously suggested by the dissatisfied delegates and Republican press the proverbial fact that "figures do not lie, but liars do figure." Judging from the available facts, namely the apportionment adopted as of March 11, 1907, and the special census report issued later in the year, the Democrats were guilty of a little figuring and a little lying; more respectfully called the practice of "gerrymandering" in the modern era, presumably because it is now coupled with an acknowledged attempt to deceive. Lest one be left with the impression that the Democrats alone were responsible for inept calculations, it is well to point out at this time that serious doubt exists as to the validity of the special census conducted by Republican administrators later in the year. More to the point, in any event, there appears in President Murray's pronouncements an undue disregard of Henry Asp's famous but unsuccessful proposed constitution which embodied the Republican version of a complete fundamental law, including an equitable plan of apportionment.

Whether there was a direct relationship between President Murray's letter to President Roosevelt, and the need for an extensive survey of the number and location of people in the Indian and Oklahoma territories,

is not known. What was clear in June of 1907, or at least appeared to be clear, was the fact that the legislative apportionment as of that date distributed proportionately more seats in the southern part of the proposed state, to the discomfort of the Republicans principally situated along the Kansas border. One investigator of this situation observed that it was for this reason that President Roosevelt ordered a special census to be taken of the territories as of July 1, 1907.[58]

Sessions of July 10, 1907, through July 16, 1907.

While the taking of the special census had gotten underway, the second short and final session of the Oklahoma Constitutional Convention was held during the week of July 10 through 16, 1907. As earlier noted, it was during this week that the delegates purportedly assembled to meet President Roosevelt's objections to the proposed constitution. The climate of proposed activity was well anticipated, as evidenced by a brief analysis appearing in the press one day earlier:

> "It is now practically conceded that the legislative apportionment will be amended either by increasing the membership and distributing the added number among the supposed Republican sections of the state in the northern half, or by transferring flotorial districts from the southern to the northern half of Oklahoma . . . . The assurance has also been given that the restriction preventing any county from having more than four representatives or two senators, no matter what the population, will be eliminated."[59]

Pursuant to adjournment on April 22, 1907, subject to call by the President, the Constitutional Convention was called to order on July 10, 1907, on which day the delegates concerned themselves largely

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[58]Scales, op. cit., p. 49.

[59]The Daily Oklahoman, July 10, 1907, p. 1.

with procedural items, as directly or indirectly related to legislative apportionment. On motion of Samuel W. Hayes, the appointment since recess by President Murray of the Special Committee to Investigate An Alleged Gerrymander, to take testimony relative to the same and upon legislative apportionment, was confirmed. In addition, Gabe E. Parker was appointed a Special Committee of One to wait upon the Board of Census Enumerators and obtain any information that the board might furnish, as well as ascertain what information the board might desire from the convention. Then President Murray read the letter addressed by him to President Roosevelt during the recess, and read the latter's reply.[60] Curiously enough, neither the Journal and Proceedings, nor the Proceedings and Debates record the nature of Theodore Roosevelt's reply, and William H. Murray was later to write: "Then I addressed a rather persuasive letter to President Theodore Roosevelt, pleading with him to tell us what was wrong. In short, I wanted to put him on the defensive. That letter he did not answer."[61] Putting this mystery aside, it can nevertheless be assumed on the basis of the action that was to follow, that the President of the United States was not satisfied with a number of the provisions of the proposed constitution, including those on legislative apportionment, and that the delegates were made aware of the work cut out for them.

Following a unanimous vote of the delegates present to reconsider the vote by which the constitution was adopted,[62] it was on July 13, 1907,

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[60] Journal and Proceedings, op. cit., Session of Wednesday, July 10, 1907, 10:00 a.m., pp. 347,348. Gabe E. Parker (D) District 109 (Academy).

[61] Murray, op. cit., II, p. 57.

[62] Journal and Proceedings, op. cit., Session of Thursday,

that the convention began once again to give its attention to the substantive provisions on legislative apportionment. As a prelude to this and subsequent events, there appeared in the press one day earlier an apparent "scoop" on the intent of the convention. For, whereas one article noted correctly that a number of changes had been agreed upon which likely would increase the number of state senators to 44 and that of representatives to 109 (the additional senators and representatives to be divided equally between the territories so as to preserve the balance of power between the eastern and western half of the proposed state), another article spelled out in no uncertain terms the specifics of the proposed plan.[63]

Prior to depicting and analyzing the nature of the new and very consequential plan of apportionment, it is well to visualize the sequence of events leading to its presentation. On July 13, 1907, Joseph Francis King, on behalf of the committee appointed during recess to hear complaints upon the legislative apportionment, filed and read his report.[64] In essence, Mr. King reported that his committee had met in Guthrie on July 5, 1907, as directed, and for one full week had held daily sessions to hear any and all evidence on the issue. As a result, he noted, that no person appeared to give evidence relative to said apportionment, although a few did arrive to complain or offer suggestions, and they were mostly delegates to the convention. Of added significance, however,

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July 11, 1907, 9:00 a.m., pp. 348,349. The vote on motion of Joseph Francis King resulted in 72 ayes, 0 nays, and 40 absent.

[63]The Daily Oklahoman, July 12, 1907, pp. 1,4.

[64]Journal and Proceedings, op. cit., Session of Saturday, July 13, 1907, 10:00 a.m., p. 364.

the chairman of this, the so-called "kick" committee, went on to make clear that his group had in the interim gone over the last submitted plan of apportionment and would have changes to recommend. He observed that it was the consensus of his committee that the latest available population information would be the best basis of apportionment, allowing for a 67.25 per cent increase since the last (1900) official census, as occurred in Oklahoma Territory to apply as well to Indian Territory, thus giving both territories essentially the same population. Accordingly, he contended that the present plan written into the proposed constitution was a clear gerrymander, because the population figures offered by the Democratic caucus did not relate to his findings. Finally, this Democratic delegate expounded upon one critical point very much relevant to a proper implementation of any legislative apportionment based essentially upon population: "It is contended by some that in the apportionment of . . . districts this commission should take into consideration the votes cast at the . . . election for the nomination of candidates. . . . In many instances this would do confessedly great injustice -- evenly divided parties bring out the vote so that it is not a valid basis, and where one party is dominant the result is indifference to exercise the suffrage. Therefore . . . the premises and the conclusion are unsound."[65]

Immediately following the above discourse, the convention heard a motion and action upon the report by R. L. Williams (with an exhibit of the portion of the report by Joseph Francis King) in which

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[65]The Oklahoma State Capitol, July 14, 1907, p. 2; The Daily Oklahoman, July 16, 1907, p. 6.

was embraced the new proposal on legislative apportionment, that was ordered printed and placed upon the desks of all members.[66] Fundamental in this report was a series of basic propositions heretofore not contemplated, a concise account of which was reported as follows:

> "Future legislative apportionments in Oklahoma probably will be governed by the following provisions submitted to the constitutional convention by Delegate Williams, and modelled after the Ohio and New York automatic apportionment laws: the idea being to prevent gerrymanders.
> "The apportionment of the state for members of the legislature shall be made every ten years, and at the first session of the legislature after each decennial federal census.
> "The whole population of the state as ascertained by the federal census, or in such other manner as the legislature may direct, shall be divided by the number 100 and the quotient shall be the ratio of representation in the house of representatives for ten years next succeeding such apportionment.
> "Every county having a population equal to ½ of said ratio shall be entitled to one representative; every county containing said ratio and 3/4 over shall be entitled to two representatives, and so on, requiring after the first two an entire ratio for each additional representative; provided, that no county shall ever take part in the election of more than seven representatives.
> "When any county shall have a fraction above the ratio so large that being multiplied by 5 the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratios among the several sessions of the decennial period in the following manner: if there be only one ratio a representative shall be allotted to the fifth session of the decennial period; if there are two ratios a representative shall be allotted to the fourth and third sessions respectively; if three the third, second and first sessions; if four to the fourth, third, second and first sessions respectively.
> "Any county forming with another county or counties a representative district during one decennial year, if it has acquired sufficient population at a fixed decennial period, shall be entitled to an additional representative. If there shall be left in the district from which it shall have been separated a population sufficient for a representative, no such change shall be made except at the regular decennial period for the apportionment of representatives.

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[66] Journal and Proceedings, op. cit., Session of Saturday, July 13, 1907, 10:00 a.m., p. 364.

"If in fixing any decennial ratio a county, previously a separate representative district, shall have less than the number required by the ratio of the new ratio for a representative, such county shall be attached to a county adjoining it and become a part of such representative district.

"No county shall ever be divided in the formation of representative districts except to make two or more representative districts in such county. No town or ward in a city, where it constitutes only one voting precinct, shall be divided in the formation of representative districts, nor shall any representative district contain a greater excess in population over an adjoining district in the same county than the population of a town or block in a city constituting only one voting precinct adjoining such district.

"Counties, towns or wards in cities, constituting only one voting precinct, which from 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.

"At the time that each senatorial apportionment is made, the state shall be divided into 44 districts to be called senatorial districts, each of which shall elect one senator. Said districts shall be numbered from 1 to 44 and each of said districts shall contain as near as may be, an equal number of inhabitants. Such population to be ascertained by the next preceding federal census, or in such other manner as the legislature may direct, and shall be in as compact form as practicable and remain unaltered until the next decennial period, and shall at all times consist of contiguous territory.

"No county shall ever be divided in the formation of a senatorial district except to make two or more senatorial districts wholly in said county. No town, and no ward in a city, when constituting only one voting precinct, shall be divided in the formation of a senatorial district nor shall any senatorial district contain a greater excess in population over an adjoining district in the same county, than the population of a town or ward in a city constituting only one voting precinct therein adjoining such district.

"Towns and wards in cities constituting only one voting precinct which may, from their location, be included in either of two senatorial districts, shall be so placed as to make said district most nearly equal in number of inhabitants.

"Ascertaining the ratio of representation according to the federal census and attaching any county previously having a separate representative, but found to have less than the number required by the ratio of the new ratio to an adjoining county shall be entitled to and for what sessions of the legislature within the next decennial period, shall be done by the legislature and be presented to the governor for his approval in the same manner, just as other bills which may be passed by the legislature.

"An apportionment by the legislature shall be subject to review by the supreme court of the state at the suit of any citizen under such rules and regulations as the legislature may prescribe. And such

> court shall give all cases involving an apportionment precedent thereto over all other cases and proceedings, and if said court be not in session it shall convene promptly for the disposal of the same."[67]

Lest one familiar with the Oklahoma Constitution assume that the above quotation entails all of the fundamental provisions relevant to legislative apportionment in the state, he need be cautioned about reaching such an immediate conclusion. For although the statements represent the first confrontation of the delegates and the public with the provisions that by and large would find their way into the state constitution, a number of significant changes were yet to be made. For example, the allocation of a single float to the fifth session in the House was to be deleted, and an "except" clause as regards the apportionment of the Senate was to be added. (The Oklahoma Constitution and both the derivation and intent of the various sections on legislative apportionment will be the subject of the following chapter.)

In addition to the above provisions that were initially submitted by the aforementioned delegates Williams and King, a new plan of apportionment which, as provided in sections 11 through 14 of their proposal, was to result in the districting and allocation of legislative seats as depicted in Tables 3 and 4.[68]

With reference to Table 3, the apportionment of the Senate was designed to organize the 75 counties into 33 districts which would elect 44 senators. As compared with the plan earlier written into the constitution (Table 1, inclusive of the March 11 amendment), this proposal

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[67] The Daily Oklahoman, July 14, 1907, p. 3.

[68] Ibid., July 12, 1907, pp. 1,4.

TABLE 3

SPECIAL REPORT OF DELEGATES R.L. WILLIAMS AND J.F. KING
(Senate)

Counties	District	Population	No. of Sens.
Adair, Sequoyah	27	31,614	1
Alfalfa, Major	7	30,377	1
Atoka, Bryan, Coal	20	55,563	2
Beaver, Cimarron, Harper, Texas	1	43,828	1
Beckham, Dewey, Ellis, Roger Mills	2	58,304	2
Blaine, Kingfisher	16	35,237	1
Caddo, Grady	15	53,661	2
Canadian, Oklahoma	14	75,959	2
Carter, Love, Murray	18	49,484	2
Cherokee, Delaware, Ottawa	33	36,977	1
Choctaw, McCurtain, Pushmataha	24	38,833	1
Cleveland, Garvin, McClain	19	54,135	2
Comanche, Jefferson, Stephens	17	65,325	2
Craig, Mayes	29	26,019	1
Creek, Payne	10	40,387	1
Custer, Kiowa, Washita	6	62,732	2
Garfield	8	28,300	1
Grant, Kay, Osage	9	57,727	2
Greer	4	23,624	1
Haskell, McIntosh, Muskogee	28	72,307	2
Hughes, Okfuskee	22	35,540	1
Jackson, Tillman	5	29,956	1
Johnston, Marshall	21	31,816	1
Latimer, LeFlore	26	34,018	1
Lincoln, Pottawatomie	13	80,565	2
Logan	12	30,711	1
Noble, Pawnee	11	31,310	1
Nowata, Rogers	30	25,938	1
Okmulgee, Wagoner	32	33,891	1
Pittsburg	25	37,677	1
Pontotoc, Seminole	23	37,744	1
Tulsa, Washington	31	34,506	1
Woods, Woodward	3	30,112	1
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	33		44

TABLE 4
SPECIAL REPORT OF DELEGATES R.L. WILLIAMS AND J.F. KING
(House of Representatives)

County	Population	No. of Reps.	County	Population	No. of Reps.
Adair	9,115	1	Lincoln	37,293	2k
Alfalfa	16,070	1	Logan	30,711	3
Atoka	12,113	1a	Love	11,134	1
Beaver	13,364	1	McClain	12,888	1
Beckham	17,758	1	McCurtain	13,198	1
Blaine	17,227	1	McIntosh	17,975	1
Bryan	27,865	2a	Major	14,307	1
Caddo	30,241	2b	Marshall	13,144	1
Canadian	20,110	1b	Mayes	11,064	1
Carter	26,402	2	Murray	11,948	1
Cherokee	14,274	1	Muskogee	37,467	2j
Choctaw	17,340	1	Noble	14,198	1
Cimarron	5,927	1	Nowata	10,543	1
Cleveland	18,460	1d	Okfuskee	15,595	1
Coal	15,585	1c	Oklahoma	55,849	3d
Comanche	31,738	1e	Okmulgee	14,362	1
Craig	14,955	1f	Osage	15,332	1p
Creek	18,365	1	Ottawa	12,827	1
Custer	18,478	1h	Pawnee	17,112	1n
Delaware	9,876	1	Payne	22,022	1n
Dewey	13,329	1	Pittsburg	37,677	2i
Ellis	13,978	1	Pontotoc	23,057	1o
Garfield	28,300	2g	Pottawatomie	43,272	3k
Garvin	22,787	2	Pushmataha	8,295	1
Grady	23,420	2	Roger Mills	13,239	1
Grant	17,638	1g	Rogers	15,485	1f
Greer	23,624	2	Seminole	14,687	1o
Harper	8,089	1	Sequoyah	22,499	1m
Haskell	16,865	1j	Stephens	20,148	1e
Hughes	19,945	1i	Texas	16,448	1
Jackson	17,087	1	Tillman	12,869	1
Jefferson	13,439	1	Tulsa	21,693	1p
Johnston	18,672	1c	Wagoner	19,529	1
Kay	24,757	2	Washington	12,813	1
Kingfisher	18,010	1g	Washita	22,007	1h
Kiowa	22,247	2	Woods	15,517	1q
Latimer	9,340	1	Woodward	14,595	1q
LeFlore	24,678	1m			

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The following counties were to comprise flotorial districts, with each district to be entitled to elect one additional member to the House of Representatives.

(a) Atoka, Bryan	39,978	3 plus 1	(i) Hughes,Pitt.	57,622	3 plus 1
(b) Caddo,Canadian	50,351	3 plus 1	(j) Hask.,Musk.	54,332	3 plus 1
(c) Coal, Johnston	34,257	2 plus 1	(k) Lincoln,Pott.	80,565	5 plus 1
(d) Cleve.,Okla.	74,309	4 plus 1	(m) LeFlore,Seq.	47,177	2 plus 1
(e) Com., Steph.	51,886	2 plus 1	(n) Payne,Pawnee	39,134	2 plus 1
(f) Craig,Rogers	30,440	2 plus 1	(o) Pont.,Seminole	37,744	2 plus 1
(g) Gar.Grant,King.	63,948	4 plus 1	(p) Osage, Tulsa	37,025	2 plus 1
(h) Custer,Washita	40,485	2 plus 1	(q) Woods,Woodwd.	30,112	2 plus 1

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recommended an increase in the number of districts by one and in the number of senators by three. More important, however, the plan served to orient the thinking of the delegates in terms of more equality in senatorial representation, and each senator might have ideally represented 32,140 (1,414,177 ÷ 44) persons. As measured against this standard, the following extreme disparities are evident, but they nevertheless constitute an improvement over the plan which was at the time still a part of the proposed constitution.

District	Population	Number
4 (Greer)	23,624	1
1 (Beaver, Cimarron, Harper, Texas)	43,828	1
.....	.....	...
18 (Carter, Love, Murray)	49,484 (24,742)	2
13 (Lincoln, Pottawatomie)	80,565 (40,282)	2

Thus, the senators from Districts 1 and 13 were to represent nearly twice the population represented by the senators from Districts 4 and 18.

As for the plan applicable to the House of Representatives and shown in Table 4, it accounted for an increase of four members as contrasted with the earlier written apportionment. Each legislator under the new plan might have ideally represented 12,974 (1,414,177 ÷ 109) persons. However, again in keeping with the prescribed limitations on individual political equality (particularly evident by assuring each county a minimum of one member without proportionately greater representation for each of the larger counties), the 75 counties were to elect 93 regular members and 16 "floats." The following extremes evidence the

resulting inequities, but they too nevertheless provided for a lessening in the degree of disparities provided for in the tentative constitutional plan.

County	Population	Number
Cimarron	5,927	1
Wagoner	19,529	1
.....	.....	...
Kiowa	22,249	2
Carter	26,402	2
.....	.....	...
Woods, Woodward	30,112	2+1
Comanche, Stephens	51,886	2+1
.....	.....	...
Atoka, Bryan	39,978	3+1
Hughes, Pittsburg	57,622	3+1
.....	.....	...
Grant, Garfield, Kingfisher	63,948	4+1
Cleveland, Oklahoma	74,309	4+1

As related to the last described plan in apportioning the lower chamber, this proposal would have served to decrease the differences between counties entitled to regular members of the legislature, but it would not have treated with like attention those counties entitled to "floats." Nevertheless, an overall appraisal would result in deducing that the latter proposition would be appreciably more "representative" than that which the delegates earlier adopted under Report number 56, as amended.

Once again, it is worth repeating that the convention was not blessed with a thoroughly accurate account of county-by-county population in both Indian and Oklahoma territories. In fact, as earlier indicated and later to be further commented upon, there was doubt in some quarters that the results of the special census released later in the

year were themselves accurate. Therefore, it is with sympathy for the burdensome task of the delegates that the foregoing criticism, based upon the only available evidence, is made.

Forty-eight hours after the Williams-King proposal on legislative apportionment was presented, a motion of R. L. Williams was seconded to strike sections 9 to 16, inclusive of Article V of the proposed constitution, and insert in lieu thereof the provision for legislative apportionment, as reported by the Special (King "kick") Committee on Apportionment. The provisions proposed to be substituted for said sections were subsequently read three times and placed upon its final passage. When the roll was called the vote on the motion to amend was near unanimous, and President Murray proceeded to announce that said sections were therefore ordered stricken and the provisions proposed in the motion inserted in lieu of same.[69]

Although not indicated by the Journal and Proceedings of the convention, the amendment to the proposed constitution was not that embodied in the earlier described special report of delegates Williams and King. Rather, it entailed what, for lack of better identification, amounted to the King (and his special committee) Amendment to the Special Report of Delegates R. L. Williams and J. F. King. This amendment served not only to finally adopt the automatic apportionment provisions modeled after those of the constitutions of New York and Ohio, but also provided for a legislative apportionment, as depicted in Tables 5 and 6,

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[69] Journal and Proceedings, op. cit., Session of Monday, July 15, 1907, 9:30 a.m., p. 373. The vote on motion of R. L. Williams resulted in 67 ayes, 5 nays, and 40 absent.

TABLE 5

KING AMENDMENT
(Senate)

Counties	District	Population	No. of Sen.
Adair, Sequoyah	28	31,614	1
Alfalfa, Major	7	30,377	1
Atoka, Bryan, Coal	20	55,563	2
Beaver, Cimarron, Harper, Texas	1	43,828	1
Beckham, Dewey, Ellis, Roger Mills	2	58,304	2
Blaine, Kingfisher	16	35,237	1
Caddo, Grady	15	53,661	2
Canadian, Oklahoma	14	75,959	2
Carter, Love, Murray	18	49,484	2
Cherokee, Delaware, Ottawa	30	36,977	1
Choctaw, McCurtain, Pushmataha	24	38,833	1
Cleveland, Garvin, McClain	19	54,135	2
Comanche, Jefferson, Stephens	17	65,325	2
Craig, Mayes	29	26,019	1
Creek, Payne	11	40,387	1
Custer, Kiowa, Washita	6	62,732	2
Garfield	8	28,300	1
Grant, Kay, Osage	9	57,727	2
Greer	4	23,624	1
Haskell, McIntosh, Muskogee	27	72,307	2*
Hughes, Okfuskee	22	35,540	1
Jackson, Tillman	5	29,956	1
Johnston, Marshall	26	31,816	1
Latimer, LeFlore	21	34,018	1
Lincoln, Pottawatomie	13	80,565	2
Logan	12	30,711	1
Noble, Pawnee	10	31,310	1
Nowata, Rogers	33	25,938	1
Okmulgee, Wagoner	32	33,891	1
Pittsburg	25	37,677	1
Pontotoc, Seminole	23	37,744	1
Tulsa, Washington	31	34,506	1
Woods, Woodward	3	30,112	1
	33		44

*This plan of apportionment, as originally submitted, allocated one senator to the district composed of Haskell, McIntosh, and Muskogee counties. This was, however, done in error and the author of the proposal made the correction to read two senators for district number 27 prior to its adoption in convention. For an account of this problem, and the associated Republican criticism, see The Daily Oklahoman, July 14, 1907, p. 1.

TABLE 6
KING AMENDMENT
(House of Representatives)

County	Population	No. of Reps.	County	Population	No. of Reps.
Adair	9,115	1	Lincoln	37,293	2m
Alfalfa	16,070	1a	Logan	30,711	3
Atoka	12,113	1b	Love	11,134	1
Beaver	13,364	1	McClain	12,888	1
Beckham	17,758	1	McCurtain	13,198	1
Blaine	17,227	1	McIntosh	17,975	1
Bryan	27,865	2b	Major	14,307	1
Caddo	30,241	2p	Marshall	13,144	1
Canadian	20,110	1p	Mayes	11,064	1
Carter	26,402	2	Murray	11,948	1
Cherokee	14,274	1	Muskogee	37,467	2i
Choctaw	17,340	1	Noble	14,198	1
Cimarron	5,927	1	Nowata	10,453	1
Cleveland	18,460	1p	Okfuskee	15,595	1
Coal	15,585	1c	Oklahoma	55,849	4
Comanche	31,738	1d	Okmulgee	14,362	1
Craig	14,955	1e	Osage	15,332	1
Creek	18,365	1f	Ottawa	12,827	1
Custer	18,478	1g	Pawnee	17,112	1n
Delaware	9,876	1	Payne	22,022	1n
Dewey	13,329	1	Pittsburg	37,677	2j
Ellis	13,978	1	Pontotoc	23,057	1o
Garfield	28,300	2h	Pottawatomie	43,272	3m
Garvin	22,787	2	Pushmataha	8,295	1
Grady	23,420	2	Roger Mills	13,239	1
Grant	17,638	1a	Rogers	15,485	1e
Greer	23,624	2	Seminole	14,687	1o
Harper	8,089	1	Sequoyah	22,499	1k
Haskell	16,865	1i	Stephens	20,148	1d
Hughes	19,945	1j	Texas	16,448	1
Jackson	17,087	1	Tillman	12,869	1
Jefferson	13,439	1	Tulsa	21,693	1f
Johnston	18,672	1c	Wagoner	19,529	1
Kay	24,757	2	Washington	12,813	1
Kingfisher	18,010	1h	Washita	22,007	1g
Kiowa	22,247	2	Woods	15,517	1
Latimer	9,340	1	Woodward	14,595	1
LeFlore	24,678	1k			
		94			

The following counties were to comprise flotorial districts, with each district to be entitled to elect one additional member to the House of Representatives:

(a) Alfalfa,Grant	33,708	2 plus 1	(h) Gar.,Kingf.	46,310	3 plus 1
(b) Atoka, Bryan	39,978	3 plus 1	(i) Hask.Musk.	54,332	3 plus 1
(c) Coal, Johnston	34,257	2 plus 1	(j) Hughes, Pitt.	57,622	3 plus 1
(d) Comanche,Steph.	51,886	2 plus 1	(k) LeFlore,Seq.	47,177	2 plus 1
(e) Craig, Rogers	30,440	2 plus 1	(m) Lincoln,Potta.	80,565	5 plus 1
(f) Creek, Tulsa	40,058	2 plus 1	(n) Payne, Pawnee	39,134	2 plus 1
(g) Custer,Washita	40,485	2 plus 1	(o) Pont.,Sem.	37,744	2 plus 1
		15	(p) Caddo,Can.Clev.	68,811	4 plus 1

to remain in force until after the next federal census.[70]

The King substitute for the legislative apportionment theretofore in the proposed constitution was submitted as a just and fair plan for all, east and west, north and south in the proposed state. Although of no immediate consequence, it need be emphasized at this point that the substitute formula embodied the "except" clause regarding future Senate apportionments, thus qualifying the fixed number that may be elected to the upper chamber. This feature, a critical consideration many years later, will be elaborated upon in the following chapter. More important at the time, Section 11 provided for the temporary districting and allocation of seats in the state Senate. As may be observed by comparing Tables 3 and 5, the only difference in the proposal with that offered on July 13, 1907, was in the numbering of districts, as evidenced in the actual switching of districts 10 and 11, 21 and 26, 27 and 28, and 30 and 33. The number of districts thus remained at 33 and the number of senators which they were entitled to elect at 44. Sections 12 through 16, on the other hand, governed the apportionment of the House of Representatives and embodied a few modifications that may be observed by contrasting Tables 4 and 6. Whereas the July 13, 1907, proposal called for 93 regular and 16 flotorial members to be elected to the lower chamber, the new plan adopted provided for 94 regular and 15 flotorial members to be chosen. In effect, this was accomplished by increasing the representation of Oklahoma County by one and diminishing the number of flotorial districts by the same number, thus maintaining the total

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[70]The Daily Oklahoman, July 16, 1907, p. 6.

membership of the House of Representatives at 109. Finally, as compared with the apportionment stricken from the proposed constitution (depicted in Tables 1 and 2), the new plan as a whole diminished the representation from the southwestern portion of the proposed state and benefitted the northern portion,[71] but equally important, it removed the limit on the number of senators a county may elect and increased to seven the maximum number of representatives to which any county might be entitled.

Although the exception rather than the rule, dissatisfaction with the adopted plan of apportionment (as opposed to the fundamental criteria upon which future apportionments were to be made) was evidenced. Indicative of the milder reaction, delegates John M. Carr and James A. Harris complained that in their judgment a number of counties were obviously to be treated unfairly. However, when the roll on the motion to amend was called, Philip B. Hopkins was so vehemently opposed that he chose to explain his negative vote. Mr. Hopkins not only indicated his contempt for the star chamber during the last week, but stated that the Democrats were bound up by the caucus rule during the entire proceedings, discussing the merits of the amendments and apportionment behind closed doors, closely guarded to keep all persons not members of the majority from taking part in the work. Then, more in point, the delegate took the position that the convention should wait until the federal census being taken is completed before apportioning the state, believing thereby that all objections can be overcome by the facts placed before the delegates for their guidance.[72] These contentions no doubt embodied

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[71] Ibid.

[72] The Oklahoma State Capitol, July 16, 1907, pp. 1-2. John

more truth than fiction. Yet, with particular reference to the point made about the federal census, its completion was still a few months away, and inasmuch as it was directed by Republican officials there is reason to believe the predominantly Democratic convention would not have welcomed the findings with open arms.

The legislative apportionment problem having thus been resolved, it was on the following day that the convention, formally though not yet officially, finally adjourned. This end was not attained, however, before two important formalities were attended to. The first, and by all means the foremost, was a near unanimous vote of participating delegates that the Oklahoma Constitution, as enrolled on parchment, be adopted by the convention, and be submitted to the people of the proposed state of Oklahoma for their ratification or rejection.[73] The second, upon which the convention deliberated for most all of that final morning in session, was concerned with an extensive report on sections earlier ordered stricken from the proposed constitution, a portion of which acknowledged the nullification of the original sections 9 through 16, inclusive of the provision that each original county shall always have one representative.[74] Thereafter, the convention adjourned, subject to being convoked by the President of the assembly, a qualification not to be necessitated.

M. Carr (D) represented District 54 (Frederick), James A. Harris (R) District 71 (Wagoner), and Philip B. Hopkins (R) District 75 (Muskogee).

[73] Journal and Proceedings, op. cit., Session of Tuesday, July 16, 1907, 7:30 a.m., p. 375. The vote on this motion resulted in 72 ayes, 2 nays, and 38 absent.

[74] Ibid., pp. 377,378.

Analysis of Convention's Plans of Apportionment.

At this point, it is desirable to reflect upon the overall development of the convention's plans of apportionment. For guidance in this analysis, there is offered in Table 7 a recapitulation which depicts a series of averages of populations required to elect a given number of senators or representatives.

TABLE 7

RECAPITULATION OF THE CONVENTION'S PLANS OF APPORTIONMENT

Senators	Average Population	Representatives	Average Population
(Table 1)		(Table 2)	
1	37,020	1	14,387
2	62,523 (31,261)	2	27,984
		2+1	36,091
		3+1	48,732
(Table 3)		(Table 4)	
1	33,110	1	13,453
2	62,342 (31,171)	2	23,873
		2+1	38,696
		3+1	50,571
(Table 5)		(Table 6)	
1	33,110	1	13,385
2	62,342 (31,171)	2	23,783
		2+1	39,432
		3+1	49,560

From the above tabulations, deduced from each of the plans heretofore presented, it is evident that the delegates made a concerted effort

toward approaching equality of representation. For example, observe the succeeding differences in the population which was required to elect one or two senators; the convention reduced to a limited degree the average necessary to earn them. However, this should not be construed to mean that the objective established in Article V, sections 9, 9(a) and 9(b) of the constitution was attained, although as will be seen in the following chapter, the initial apportionment of the Senate as prescribed by Article V, section 11 would be heartwarming to the advocates of individual political equality.

As for the trend in the delegates' thinking on the apportionment of the House of Representatives, it is even more indicative of a conscious attempt to provide for equality of representation. If one will put aside the obvious inability to depart from guaranteeing each county at least one representative, one can thereafter appreciate the convention's effort to limit disparities. For example, they diminished the differences in the population which was required to elect one or two representatives, as well as to earn a flotorial member. Not only did the delegates reduce the population necessary to earn one or two regular members, but they subsequently increased the population required to secure a flotorial member. Although it is understood that significant disparities existed in terms of counties with like populations securing unlike numbers of representatives, the above averages nevertheless point up an effort to minimize the inequities. Again, this trend should not be construed to mean that the objective established in Article V, section 10(a) through (j) of the constitution was realized, but as will be seen in the following chapter, the initial apportionment of the House of

Representatives as prescribed by Article V, sections 12 through 16 was very much in accord with the thesis that "one should and can closely approximate one."

With the convention having adjourned, and having evidently met the requirements of the Enabling Act as well as many of the criticisms of the President of the United States, Governor Frantz of Oklahoma Territory formally acted to settle a personal feud with William H. Murray. In brief, President Murray had issued on June 13, 1907, an election proclamation to submit the proposed constitution to the qualified voters for ratification or rejection on August 6, 1907.[75] Almost immediately, a controversy raged over his authority to so order the election. After much legal maneuvering, Governor Frantz issued an identical proclamation on July 24, 1907, but setting instead the date of September 17, 1907.[76] The latter order was to prevail.

As noted earlier, the Democratic Party held its state convention beginning June 18, 1907. The Republicans held their convention at Tulsa beginning August 2, 1907, and used the traditional convention method to nominate candidates for state and federal offices. They vigorously denounced the Constitutional Convention, noting that: "After laborious effort they have submitted an instrument which denies to each citizen equal rights under the law with every other citizen; deprives the minority of their just proportion of representation; unfairly discriminates in favor of one locality against another; increases the burdens of taxation

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[75] Ibid., p. 399.

[76] Ibid., p. 460.

without compensating benefits; discourages industrial and commercial development; lessens the demand for labor and decreases wages; antagonizes capital and depreciates investments; repudiates public obligations and destroys public credit; and has already brought a blight upon the fair name of the proposed State."[77]

In an apparent effort to offset the prestige brought to the Democratic Convention by the presence of William Jennings Bryan, the Republicans brought to the proposed state an equally famous figure. On August 24, 1907, William Howard Taft addressed his political associates and asserted: "I don't think it is possible to amend it (the proposed constitution) in such a way as to correct its defects. It needs complete revision. I wouldn't do it, because I should be confident that there would be a new enabling act if you rejected this constitution."[78]

The words of this future President of the United States were to no avail. For on September 17, 1907, the eligible voters of the territories went to the polls and decisively sanctioned the product of the Constitutional Convention. The official count of the returns required nearly six weeks of work, but the vote was eventually recorded as 180,333 in favor of ratification and 73,059 for rejection.[79]

As for the special census which was nearing completion in the month of September, 1907, the following evaluation represents one attitude of the day:

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[77]Ellis, op. cit., p. 126.

[78]Hurst, op. cit., p. 31.

[79]Corden and Richards, op. cit., II, pp. 292,293; Hurst, op. cit., p. 31.

"The special census being taken in the new state is nothing more than a political poll in the interest of the republican party . . . .
"No unusual degree of intelligence is required to observe that in the localities known to be democratic the census is neglected to a great extent so far as the enumeration of democratic residents is concerned and the attention of the enumerators is given to a poll of the republican voters. Especial attention, it is also remarked, is given the poll of the negro voters.
"It is apparent that the government is paying for a republican poll of the new state being taken under the guise of a census enumeration. Many things connected with the special census work indicate this. . . .
"Oklahoma City has been particularly selected for attack in this fraudulent special census, information coming from the census headquarters that the enumeration gives the city a population of 24,700 which is more than 22,000 less than that shown by the latest city directory."[80]

Whether the intent was for good or evil is debatable, but the special census of 1907 is nonetheless official. Following is a detailed account of the findings of the enumerators,[81] which is supplemented by a county-by-county breakdown of populations for it and all succeeding federal census reports of Oklahoma in Appendix A.

	Tot.Pop.	White	Negro	Indian	Mongolian	Male	Female
Oklahoma Territory	733,062	688,418	31,511	13,087	46	390,232	342,830
Indian Territory	681,115	538,512	80,649	61,925	29	362,170	318,945
Total	1,414,177	1,226,930	112,160	75,012	75	752,402	661,775

Finally, on October 25, 1907, Governor Frantz took the official canvass of the September 17 election on the constitution to the national

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[80] The Daily Oklahoman, September 4, 1907, Editorial.

[81] Hurst, op. cit., p. 29.

capitol. Under the terms of the Enabling Act the President was required to act within 20 days; on November 16 Theodore Roosevelt issued the statehood proclamation.[82] Upon learning on that day that Oklahoma was the 46th State in the Union, William H. Murray assembled about two-thirds of the delegates of the Constitutional Convention to declare that body adjourned sine die. Thus, the Constitutional Convention had come to an end just four days short of a year since the members first met,[83] and 104 years after its acquisition by the United States as a part of the Louisiana Purchase, it was finally admitted into the Union.[84]

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[82] Journal and Proceedings, op. cit., pp. 462,463.

[83] Hurst, op. cit., p. 32.

[84] Gittinger, op. cit., p. 258.

CHAPTER IV

THE CONSTITUTION AND INITIAL LEGISLATIVE APPORTIONMENT

Constitutions, as with all human institutions, are the product of the tradition, environment, problems and needs of political communities. Accordingly, it is not surprising that those of the 50 states reflect dissimilarities. Each state constitution depicts a variety of provisions which necessarily result in a unique political structure. However, there are many general principles of constitutional government which have been applied in their inception. These principles, though varying in method of application, provide the common guidelines in the development of the fundamental laws.

Constitutional Principles.

The Oklahoma Constitution has for its foundation eight well known principles of state constitutions in the United States. The first of these is expressed in Article I, Section 1: "The State of Oklahoma is an inseparable part of the Federal Union, and the Constitution of the United States is the supreme law of the land." The second is that of the sovereignty of the people, otherwise referred to as the agency theory of government, whereby the people of the state are considered sovereign and the varied governments which they establish are but agencies under their control. This principle is made evident in Article II,

Section 1: "All political power is inherent in the people; and government is instituted for their protection, security, and benefit, and to promote their general welfare; and they have the right to alter or reform the same whenever the public good may require it: Provided such change be not repugnant to the Constitution of the United States." The third is that of natural rights, which finds its expression in Article II, Section 2 with the declaration that: "All persons have the inherent right to life, liberty, the pursuit of happiness, and the enjoyment of the gains of their own industry." The fourth is the separation of powers, whereby, in accordance with Article IV, Section 1: "The powers of the government of the State of Oklahoma shall be divided into three separate departments: The Legislative, Executive, and Judicial; and except as provided in this Constitution, the Legislative, Executive and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others." The fifth principle underlying the Oklahoma Constitution is embodied in the checks and balances system inherent in the division of powers. Indicative of its application in Articles V, VI and VII are the following examples: the election of the governor, members of the legislature and judges of the courts, each thus responsible to the electorate; the adoption of a bicameral legislature; the requirement that constitutional amendments be put to a vote of the people; provision for the initiative and referendum; the election of 18 state executive officers to act as a check upon the powers of the governor; the executive veto power; and the requirement that most executive department appointments secure the confirmation of the Senate. The sixth is

the principle of limited government, which is positively espoused in the bill of rights covering Articles I and II, and negatively, as in Article V, Section 46, in terms of what subject matter with which the government shall not concern itself. The seventh is of powers inherent in the state. This principle is made evident, as noted in Section 1 of Articles V, VI, and VII, by the provisions prescribing that the exercise of a given authority (legislative, executive and judicial, respectively) shall be vested in specific offices of the state government. Finally, the eighth principle is that of judicial supremacy which, as may be deduced from Article VII, Section 2, extends particularly to the Supreme Court's jurisdiction to take and rule upon the constitutionality of acts of the legislature and the state's political subdivisions.

Evaluations of the Oklahoma Constitution.

The Oklahoma Constitution, although admirable in terms of clearly reflecting the foremost of the general principles of state constitutions, is not a document without fault.

One examiner of all of the state constitutions has surmised: "Few contemporary state constitutions approximate the ideal. Most are lengthy documents, replete with statutory materials and unnecessary and unjustified restrictions on state government, cluttered with obsolete and sometimes inconsistent statements, badly written and illogically arranged. A blanket indictment of state constitutions cannot be sustained but most of them are subject to one or more of these criticisms."[1]

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[1]National Municipal League, Salient Issues of Constitutional Revision, 1961; Introduction by John P. Wheeler, Jr., Director, State Constitutional Studies Project, p. xii.

The Oklahoma Constitution, which was developed over a period of 129 days and put in force on November 16, 1907, is no exception to more than one of the above criticisms. The basic law comprised more than 45,000 words and was approximately seven times the length of the original Constitution of the United States. It contained much in the way of normally statutory provisions, it unnecessarily consumed dozens of pages to define county boundaries and restrict corporate activities, and as a result of time and progress, it continues to possess what many believe to be a number of obsolete statements.

For all of these shortcomings, however, the Oklahoma Constitution reflects admirable traits. According to one analysis, pure democracy was its aim.

> "Toward the commonly accepted theory of representative government the Convention's attitude was profoundly distrustful. Its suspicion of legislatures appears in the enormous mass of detailed instructions to future general assemblies with which it encumbered the organic law. On the positive side it expressed its belief in the people by establishing the initiative and referendum throughout the State, including municipalities and other subdivisions. . . . Lest these provisions make the Constitution unrepublican, the Convention inserted an authorization to the Legislature to repeal any law, on the assumption that it never would venture to tamper with a measure enacted by the people."[2]

To supplement this observation, Charles A. Beard was later to add:

> ". . . the constitution of the recently admitted state of Oklahoma possesses a unique interest, for its framers have searched with great assiduity among the fundamental laws and statutes of all the other states for the latest inventions known to American politics and have worked them into a voluminous treatise on public law -- a mosaic in which the glittering new designs of 'advanced

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[2] The Outlook, Vol. 87, No. 5., Outlook Company, New York, August 8, 1907, pp. 229, 230.

democracy' appear side by side with patterns of ancient English make."[3]

A pair of Oklahoma political scientists have well explained the reason for the development of this philosophy of "direct democracy."

> "For nearly a hundred years there had been an ever growing distrust in representative government as experienced through state legislatures. Legislatures had been branded from one end of the land to the other as corrupt, inefficient and unworthy of public trust. Various methods of reforming them had been tried; subjecting them to many constitutional limitations, taking away their control to a very large extent over the executive and judicial branches, giving the governor greater powers, including the veto power, and taking away the power of legislatures over large and important fields of legislation. The courts, acting under various federal and state constitutional provisions in declaring legislative acts null and void, had placed stern limiting hands upon the legislatures. Yet with all these well meaning attempts to hold the legislatures in the path of rectitude, they had continually gone from bad to worse. It was but a logical step for the people to place more trust in themselves. It is little wonder, then, that the men who framed the Oklahoma constitution, gathered as they were from many states, each of which had had bitter experience with its legislature, should have drawn up a constitution surcharged with disbelief in the legislature and filled with the spirit of direct popular control."[4]

Finally, it has been observed:

> "The Constitution is a document illustrating the changing political order. Quite irrespective of its merits, it reflects admirably many characteristic tendencies of the day. . . . the growing belief in the effectiveness of pure democracy,. . .Time alone, however, can show to what extent the Constitution will prove workable, and whether those of its provisions which undoubtedly are admirable in intention will fulfill the purpose of their framers."[5]

As is evident from the consensus of the foregoing commentary, the original Constitution of the State of Oklahoma, as with most

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[3]Charles A. Beard, "The Constitution of Oklahoma," Political Science Quarterly, Vol. 24, March, 1909, p. 95.

[4]Blachly and Oatman, op. cit., pp. 14,15.

[5]The Outlook, op. cit., pp. 229,230.

constitutions of the states in the union, has its assets and liabilities. What has not been said, however, is that the citizenry of the state has to date failed to remedy the inadequacies of its fundamental law. In addition, not all of the criticism levied can go unchallenged. Particularly is this true of its provision for legislative apportionment, as the subsequent analyses will reveal. Admirable as those provisions are, however, time has made clear the extent to which the intention of its framers has been ignored rather than fulfilled.

The Fundamentals of Legislative Apportionment.

As noted in the preceding chapter, the sources of the basic provisions on legislative apportionment in the Oklahoma Constitution are the constitutions of the states of New York and Ohio. To a lesser degree, although considered equally prominent from the perspective of at least one of the delegates from Indian Territory to the Constitutional Convention, there are evidences of the influence of the provisions of the ill-fated Sequoyah Constitution. These in turn, however, have their origin in the constitutions of the above states in addition to others. Because no one has written of these interrelationships, it is the purpose of this section to cite the pertinent provisions of the Oklahoma Constitution, compare the same with their source, and conjecture on the intent of the "Founding Fathers."

The fundamental provisions governing legislative apportionment, as distinguished from the initial plan of apportionment which will be the subject of the following section, are to be found in Article V,

Sections 9 and 10 of the Oklahoma Constitution.[6] Section 9, with sub-sections (a) and (b), govern the apportionment of the Senate, and Section 10, with sub-sections (a) through (j), govern the apportionment of the House of Representatives. (The following development of the pertinent provisions will treat each section in that order.)

Senate

Senate--Members--Election--Term

> Sec. 9. The Senate, except as hereinafter provided, shall consist of not more than forty-four members, whose term of office shall be four years: Provided, That one senator elected at the first election from each even numbered district shall hold office until the fifteenth day succeeding the regular state election in Nineteen Hundred and Eight, and one elected from each odd numbered district at said first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Ten: And Provided further, That in districts electing two senators, the two elected at the first election shall cast lots in such manner as the Legislature may prescribe to determine which shall hold the long and which the short term.

Although seemingly a meek introduction to the Senate provisions, the first three clauses of Section 9 are vitally important to an understanding of the intent of the "Founding Fathers" in the apportionment of the upper chamber. They prescribe a senate, except as hereinafter provided, to consist of not more than 44 members. Similarly, the Constitution of New York provided in Article III, Section 2: "The Senate shall consist of fifty members, except as hereinafter provided."[7] Ordinarily,

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[6] "Constitution of the State of Oklahoma," in Oklahoma Statutes, 1961, West Publishing Company, St. Paul, Minnesota, Vol. 1, pp. 64,65.

[7] Francis Newton Thorpe, American Charters, Constitutions and Organic Laws, 1492-1908, Vol. 5, Washington: Government Printing Office, 1909; "The Constitution of New York, 1894," Article III, Section 2, p. 2698.

the connection between the above Section and the latter statement in the Constitution of New York or any other state would serve to prove nothing. However, it should be recalled at this point that the delegates to the Oklahoma Constitutional Convention modeled the final apportionment provisions of the constitution after those of the states of New York and Ohio. Only brief attention to these constitutions will reveal that the delegates to the convention patterned the provisions of the Senate after those of New York and the House of Representatives after those of Ohio. Therefore, it is with a sound basis in fact and law that one need take care to observe that the above provision of the Oklahoma Constitution is not to be construed to necessarily limit to 44 the number of members of which the Senate must be composed. A thorough explanation of this crucial distinction will best be presented following an appreciation of the following sub-section.

Senatorial Districts

> Sec. 9. (a) At the time each senatorial apportionment is made after the year Nineteen Hundred and Ten the State shall be divided into forty-four districts, to be called senatorial districts, each of which shall elect one senator; and the Senate shall always be composed of forty-four senators, except that in event any county shall be entitled to three or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent. Said districts shall be numbered from One to Forty-four inclusive, and each of said districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct, and shall be in as compact form as practicable and shall remain unaltered until the next decennial period, and shall at all times consist of contiguous territory.

The obvious parallels in the Constitution of New York follow:

"The State shall be divided into fifty districts to be called senatorial districts, each of which shall choose one senator. The districts shall be numbered one to fifty, inclusive.[8]

"The ratio for apportioning the 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 a 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.[9]

"An enumeration of the inhabitants of this 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 until the return of any other enumeration, and shall, at all times, consist of contiguous territory."[10]

To substantiate the intent of the Oklahoma Constitution, two relevant considerations need be discussed at this point. First, it must be recalled that many of its creators were very much instrumental in shaping the provisions of the Sequoyah Constitution, and proposed that there be 21 senatorial districts, each of which would elect one senator.[11] No mention was made of an "except" provision, thereby making it quite clear that the proposed state Senate would have members elected from 21 separate and distinct districts and there would have been a total of 21 senators. The Oklahoma Constitution, as with that of New York, however, does make provision for a qualification which, for lack of a better

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[8] Ibid., Article III, Section 3, p. 2698.

[9] Ibid., Article III, Section 4, p. 2699.

[10] Ibid., Article III, Section 4, pp. 2698,2699.

[11] Corden and Richards, op. cit., "Constitution of the State of Sequoyah," Articles III, Section 2 and XII, Section 4.

description, will be alluded to as the "except" clause. And it is this that brings to bear the second consideration, namely, the deductions of "two who were there;" two principals who, incidentally, offer conflicting interpretations of the intent of the Oklahoma Constitutional Convention. Whereas the second Vice President has casually written: "The number of Senators to remain permanent,"[12] the President has observed: "The intention of the delegates of the 'Con-Con' was for the Legislature to do and act just as recited in the Constitution. . . . We realized with the rapid flow of people into the State, and to continue for the following years, it would be better to await the session of 1911, then to frame 44 districts, which districts would be 'permanent', with but one senator each. Thereafter if a county in population (were) to double a Senatorial quota, an extra Senator would be added to such county, as provided in the Constitution."[13]

It would be both unwise and unfortunate if one were to attempt an evaluation of the intent of the Oklahoma Constitutional Convention on the basis of opinions of two delegates a number of years after the event. For that matter, it would be futile to presume to ascertain that intent even on the basis of a limited number of selected debates, had they been carefully preserved. Therefore, it is submitted that although it is well to glean an appreciation of responsible attitudes, that alone is not sufficient toward ascertaining the intent of the whole assembly. To resolve this dilemna, it is suggested that one need analyze at length

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[12]Ellis, op. cit., p. 138.

[13]Murray, op. cit., II, p. 108.

the sources of the finished product. Accordingly, if one is to deduct the meaning of the pertinent provisions of the Oklahoma Constitution, one must look to the New York and Sequoyah constitutions for similarities and dissimilarities to conclude precisely where the burden of proof lies.

As can be seen above, the relevant portions of the New York and Oklahoma constitutions differ from the Sequoyah Constitution (depicted in Chapter II) to the extent that the former provide for the use of a set number of senate districts and a set number of senators, except that in event any county is entitled to three or more senators they are entitled to the same in addition to the specified number of senators and the whole number to that extent. Had the "Founding Fathers" of either New York or Oklahoma decided to limit the number of senators that may be elected, they could have done so without burdening themselves to qualify that decision with an "except" clause. This, on the other hand, was precisely the intent of the delegates to the Sequoyah Constitutional Convention, but, it is contended by the writer, not of the delegates to either the New York or Oklahoma constitutional conventions. As evidence of the intent in Oklahoma, it will be recalled that the report of delegates R. L. Williams and J. F. King, which was for some time a part of the temporary constitutional framework, stipulated a maximum of 44 members in the Senate. Thereafter, the King Amendment, or substitute formula, served to introduce and make permanent the "except" clause, thus leaving no doubt as to this qualification. Furthermore, it is clear that the ensuing phrase ". . . shall be given such county in addition to the forty-four senators. . ." means that a limit is not set either

on the number of senators a county may elect or on the total membership of the Senate.

As regards the quota to be derived, it is quite clear that the same is to be ". . . ascertained by the next preceding Federal census, or in such manner as the Legislature may direct. . . ." This provision, another of which was to cause much concern in years to come, can hardly be more precise. The apportionment of the Senate will be based upon population -- namely, numbers of people -- as ascertained either by the next preceding federal census or in such manner as the legislature may direct. Therefore, the prerogative lies with the legislature to use the federal census in ascertaining the state population, or it may order if it chose to do so, a state enumeration to be conducted either by public officials or even a private organization. Whichever the method, the accuracy of the tabulation is by all means important and subject to challenge, for the constitution is specific on which state population is to be ascertained, and that each senatorial district contain as near as may be an equal number of inhabitants.

Finally, there follows the concluding sub-section of Article V of the Oklahoma Constitution as relates to the apportionment of the Senate, followed by the parallel to be found in the New York Constitution, both of which are self-explanatory.

Counties or Cities Not Divided

> Sec. 9. (b) No county shall ever be divided in the formation of a Senatorial district except to make two or more senatorial districts wholly in such county. No town, and no ward in a city, when constituting only one voting precinct, shall be divided in the formation of a senatorial district, nor shall any senatorial district contain a greater excess in population over an adjoining district in the same county than the population of a town, or ward in a city,

> constituting only one voting precinct therein, adjoining such district. Towns, and wards in cities, constituting only one voting precinct, which may, from their location, be included in either of two senatorial districts, shall be so placed as to make such districts most nearly equal in number of inhabitants.
>
> ". . . 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 inclosed 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 of 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."[14]

House of Representatives

The origin of the provisions governing the apportionment of the lower chamber of the Oklahoma Legislature is, as earlier indicated, to be found in the Constitution of Ohio. To this general statement, a few qualifying remarks are necessary. Article V, Section 10 of the Oklahoma Constitution has, in addition, 10 sub-sections prefaced by the letters (a) through (j). Of this section and its subdivisions, 10 and (a) are Oklahoma products, (b) had its roots in the constitutions of both New York and Ohio, (c) through (g) were derived directly from the Ohio Constitution, (h) had its source in the Constitution of New York, (i) is another of the parallels with that of Ohio, and (j) had its origin in the Constitution of New York. Moreover, it will be noticed in the following citations from the Oklahoma Constitution that only Section 10 and the first eight subdivisions, namely (a) through (h), are specifically

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[14]Thorpe, op. cit., "The Constitution of New York, 1894," Article III, Section 4, pp. 2698,2699.

related to the apportionment of the House of Representatives. The remaining two provisions, namely (i) and (j), are checks and balances features relevant to apportionment acts of the legislature. When all of the foregoing is thus considered, it is evident that there is, as regards the apportionment of the lower chamber in the Oklahoma Constitution, a preponderance of reliance upon that of Ohio, although it remains important to distinguish the exceptions.

> House of Representatives - Members - Election -Term
> Section 10. The House of Representatives, until otherwise provided by law, shall consist of not more than one hundred and nine members who shall hold office for two years: Provided, That the representatives elected at the first election shall hold office until the fifteenth day succeeding the day of the regular state election in Nineteen Hundred and Eight: And, Provided, That the day on which state elections shall be held shall be fixed by the Legislature.
>
> Time and Place of Meeting
> (a) The first Legislature shall meet at the seat of government upon proclamation of the Governor on the day named in said proclamation, which shall not be more than thirty days nor less than fifteen days after the admission of the State into the Union.
>
> Periods of Apportionment
> (b) The apportionment of this State for members of the Legislature shall be made at the first session of the Legislature after each decennial Federal census.

With reference to the above provisions, there is nothing unique or complicated about such initial statements on the fundamental law relative to legislative apportionment.[15] However, the following series, taken almost verbatim from the Constitution of Ohio, provides the substance of this inquiry.

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[15] Ibid. See also Carl L. Meier, and John L. Mason, (comp.), Page's Ohio Revised Code, Annotated, "Constitution of Ohio, 1851," Article XI, Section 1, Cincinnati: The W. H. Anderson Company, Ohio, 1955, p. 532.

Ratio of Representation

(c) The whole population of the State as ascertained by the Federal census, or in such manner as the Legislature may direct, shall be divided by the number one hundred and the quotient shall be the ratio of representation in the House of Representatives for the next ten years succeeding such apportionment.[16]

Minimum and Maximum County Representation

(d) Every county having a population equal to one-half of said ratio shall be entitled to one representative; every county containing said ratio and three-fourth over shall be entitled to two representatives, and so on, requiring after the first two an entire ratio for each additional representative: Provided, That no county shall ever take part in the election of more than seven representatives.[17]

Flotorial System

(e) When any county shall have a fraction above the ratio so large that being multiplied by five the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratio among the several sessions of the decennial period. If there are two ratios, representatives shall be allotted to the fourth and third sessions, respectively; if three, the third, second and first sessions, respectively; if four, to the fourth, third, second and first sessions, respectively.[18]

Disposition of Small Counties

(f) Any county forming with another county or counties a representative district during one decennial period, if it has acquired sufficient population at a fixed decennial period, shall be entitled to an additional representative, if there shall be left in the district from which it shall have been separated a population sufficient for a representative. No such change shall be made except at the regular decennial period for the apportionment of representatives.[19]

(g) If in fixing any decennial ratio, a county previously a separate representative district shall have less than the

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[16]Meier and Mason, op. cit., "Constitution of Ohio, 1851," Article XI, Section 1, p. 532

[17]Ibid., Article XI, Section 2, pp. 532,533.

[18]Ibid., Article XI, Section 3, p. 533.

[19]Ibid., Article XI, Section 4, p. 534.

> number required by the ratio for a representative, such county shall be attached to a county adjoining it and become a part of such representative district.[20]

Because of the importance of each of these provisions, it is desirable to comment upon each in the order of its appearance.

Sub-section (c), which is an exact duplicate of that in the Ohio Constitution directs, as the earlier provision for the Senate, that the population of the state, as ascertained by the federal census or as otherwise determined by the legislature, is to be the starting point of apportionment. The method for deriving the ratio of representation is thereafter a simple mathematical procedure.

Sub-section (d), prescribing the minimum and maximum representation is, less the proviso, adopted from the Ohio Constitution. On this provision, however, an explanation is necessary. As noted, the minimum population required of a county for a full-time representative is one-half the ratio, the same being 1/200th of the state population; for two full-time representatives, one and three-fourths ratios are necessary. Thereafter, a full ratio or 1/100th of the state population is required for each additional representative, provided that no county will ever be entitled to elect more than seven. This provision, less the maximum limitation, was precisely that which existed in the Ohio Constitution prior to November 3, 1902, when, as a result of a constitutional amendment, the citizenry of that state overwhelmingly voted in favor of adding: "Provided, however, that each county shall have one representative."[21] Curiously enough, the Sequoyah Constitution would

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[20] Ibid., Article XI, Section 5, p. 535.

[21] Ibid., p. 533.

also have guaranteed each county at least one representative.[22] Obviously, the "Founding Fathers" of the 46th state in the Union were fully aware of the possibility of so qualifying the relevant provision of the Oklahoma Constitution, but chose instead to add the seven member per county maximum.

Incidentally, this provision to limit any county from taking part in the election of more than seven members to the House of Representatives was strenuously resisted in the statehood convention by a number of delegates from the cities. Of this debate and the ensuing result, the second Vice President of that assembly had concluded: ". . . it was wisely provided that no single county, however densely populated, should ever be able to dictate to the House of Representatives. It was an indirect way to protect the minority and the Convention desired that all of the people should rule in this State."[23] It is thus apparent, that for this delegate, minority control is synonomous with rule by all of the people!

Sub-section (c) of Article V, Section 10 of the Oklahoma Constitution differs from that of its source with respect to one sentence. The flotorial system is to be conducted as described, but it can be observed that the constitutional directive on the allocation of part-time representatives fails to specify in which session the first earned float would serve. As prescribed in the Sequoyah Constitution, the disposition of the initial float is precise; the representative is

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[22]Corden and Richards, op. cit., "Constitution of the State of Sequoyah," Article XII, Section 5.

[23]Ellis, op. cit., pp. 138,139.

to serve in the fifth session of the decennial period.[24] As regards the intent of the delegates to the Oklahoma Constitutional Convention, two deductions may be drawn. The first is that they were guilty of an oversight in the preparation of the provision. The second is that they left the allocation of the initial float optional; that is, to be allocated to any one of the five sessions of the decennial period, at the discretion of the legislature. In addition to this point, there is intrinsic in the application of the flotorial system a need to recognize that the fraction to be utilized in ascertaining the part-time representation to which any county may be entitled begins above the ratio or ratios. Therefore, consideration is only to be given such fractions above 1/100th of the state population (one ratio) and increments thereof (two, three or four ratios), which in turn is multiplied by five to determine how many floats a county deserves. No mention is made of any county earning five ratios because such would in fact entitle any county to one additional full-time representative.

Finally, sub-sections (f) and (g) are, in substance though not exactly in form, parallel to those found in the Constitution of Ohio. Of these stipulations, it is particularly significant to recognize that the latter provision directs that a county with a population below the one-half ratio (as explained above) will be attached to an adjoining county and form a representative district.

In contrast with most of the preceding fundamental law governing the apportionment of the lower chamber, two of the remaining three

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[24] Meier and Mason, op. cit., "Constitution of Ohio, 1851," Article XI, Section 3; Corden and Richards, op. cit., "Constitution of the State of Sequoyah," Article XII, Section 5.

provisions have their origin in the New York Constitution. It will be noticed, however, that only the first of these (which is perhaps the least discernible of these many similarities in earlier constitutions) is directly applicable to the technical guidelines in the implementation of an apportionment.

Restrictions on Division of Counties

> (h) No county shall ever be divided in the formation of representative districts except to make two or more representative districts in such county. No town, or ward in a city, where it constitutes only one voting precinct, shall be divided in the formation of representative districts, nor shall any representative district contain a greater excess in population over an adjoining district in the same county than the population of a town or ward in a city, constituting only one voting precinct adjoining such district. Counties, towns, or wards in cities, constituting only one voting precinct, which, from 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.[25]

Role of the Legislature and Governor

> (i) Ascertaining the ratio of representation according to the Federal census, or such other enumeration as the Legislature may provide, and attaching any county, previously having a separate representative but found to have less than the number required by the ratio, to an adjoining county; and determining the number of representatives each county or district shall be entitled to, and for what sessions of the Legislature within the next decennial period; and apportioning the Senators, shall be done by the Legislature and be presented to the Governor for his approval in the same manner as other bills which may be passed by the Legislature.[26]

Role of the Supreme Court

> (j) An apportionment by the Legislature shall be subject to review by the Supreme Court at the suit of any citizen, under such rules and regulations as the Legislature may

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[25]Thorpe, op. cit., "Constitution of New York, 1894," Article III, Section 5.

[26]Meier and Mason, op. cit., "Constitution of Ohio, 1851," Article XI, Section 11.

> prescribe. And such court shall give all cases involving apportionment precedence over all other cases and proceedings; and if said court be not in session, it shall convene promptly for the disposal of the same.[27]

With reference to the first of the latter provisions, sub-section (h) is a final and explicit statement in this series of deliberate quests for individual equality in representation. By adopting this provision the delegates to the Oklahoma Constitutional Convention took care to make use of even the smallest of local political organization units which, if circumstance so demanded it, could be manipulated to assure that representative districts would ultimately be as nearly equal as possible in terms of numbers of residents.

Sub-section (i) serves to clearly establish that it is the duty of the legislature to carry out the foregoing provisions, and it authorizes the Governor to consider that exercise of power as he would with other bills. For purposes of comparison, it is of interest to recall that the Sequoyah Constitution would have chosen to vest the authority to apportion in three offices of the executive branch, namely, the Governor, Attorney General and Secretary of State.[28]

To conclude this presentation of the nature and derivation of the fundamental law governing legislative apportionment in Oklahoma, it is evident that sub-section (j) specifies that a relevant act of the legislature is subject to review by the highest civil court in the state,

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[27]Thorpe, op. cit., "Constitution of New York, 1894," Article III, Section 5.

[28]Corden and Richards, op. cit., "Constitution of the State of Sequoyah," Article XII, Section 5.

but only upon the suit of a citizen and under the rules and regulations prescribed by the legislature.

Although these provisions may, at first sight, appear to be an accumulation of intricate guidelines, their application and prospective effectiveness should not go unnoticed. For not only do they represent a thorough set of statements on apportionment, but they are also workable in every detail. Moreover, the framers of the Oklahoma Constitution, by virtue of selecting the most equitable of provisions from the constitutions of New York and Ohio, obviously predicated their philosophy upon individual political equality. This orientation is made quite apparent in the provisions that the Senate will be apportioned on the basis of a quota to result in districts of near equal populations, and the House of Representatives will be apportioned on the basis of a ratio coupled with the use of a flotorial system. Of all of these provisions, based essentially upon population, only the restriction on the maximum number of representatives that a county may elect, and the minimum allocation of a representative for a half-ratio works directly against substantial numerical equality, a restraint which did not prove of consequence until the decennial apportionment act of 1931.

Constitutional Legislative Apportionment.

As earlier indicated, a clear distinction must be drawn between Oklahoma's fundamental law on legislative apportionment and the temporary, although constitutional, provisions governing the composition of the First, Second and Third Legislatures. Seemingly a paradox, this distinction is very much relevant in any effort to grasp the intent of the "Founding Fathers" as regards a limitation on the number to be

elected to either chamber of the legislature. The first statement of Article V, Sections 9 and 10 of the Oklahoma Constitution clearly specifies that the Senate and House of Representatives shall consist of 44 and 109 members, respectively, except as thereafter provided. It is submitted that the application of the subsequent provisions may, but not necessarily must, result in these figures. The succeeding provisions in either Section, as previously maintained, are indicative of prospective results quite to the contrary.

Furthermore, this vital consideration has been purposely reserved for discussion at this time because of its obvious relationship to the initial plan of apportionment prescribed by the framers of the Oklahoma Constitution. Much to the possible dismay of those who would argue that the limitation on the membership of either chamber is clear or even implied, it is here maintained that no such restraint was intended, for it was the constitutional plan, as prescribed in Article V, Sections 11 through 16, that resulted in a Senate of 44 members and a House of Representatives of 109 members -- to remain in force only until an apportionment by the legislature after the subsequent (1910) federal decennial census.[29]

With all the virtues of the permanent fundamental law on legislative apportionment written into the Oklahoma Constitution, it is regrettable, particularly for the precedent it might have set, that the framers of the document consciously failed to implement their own directives. As will be made evident in the following analyses of the initial

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[29]Article V, Section 11 of the Oklahoma Constitution.

apportionment of the legislature, the "Founding Fathers" had posited principles toward individual equality in representation, but they did not manage to put them in force in the fashion in which they were enunciated.

To elaborate, Article V, Section 11 spells out the apportionment that was to govern the Senate until otherwise provided in 1911. As depicted in Table 5 and analyzed hereafter in Table 8, the provisions prescribed 33 districts from which 44 senators were to be elected. Had the framers of the constitution observed their own specifications, they would have necessarily provided for 44 districts. Inasmuch as no county was entitled to three or more senators by reason of insufficient population, the "except" clause would not have proven applicable. Therefore, the 75 counties could have been apportioned the required minimum of 44 senators, as based upon a quota of 32,140 (1,414,177 ÷ 44) inhabitants per district and senator.

Although the temporary plan of apportionment for the Senate was developed without regard for the permanent fundamental law, it is noteworthy that had it been so the results would not have been substantially different. For whereas part of the discrimination as between some districts would have been reduced, the percentage increase in the number of people theoretically in a position to elect the majority would have been minimal. That the "Founding Fathers" developed an upper chamber apportionment whereby the majority of the membership was to be responsible to 46.8% of the people is nevertheless commendable, for Oklahomans were never again to date to be so well represented in the state Senate.

TABLE 8

CONSTITUTIONAL LEGISLATIVE APPORTIONMENT
(Senate)

Dist.	Pop.	No.of Senators	Pop.per Senator	Dist.	Pop.	No.of Senators	Pop.per Senator
4	23,624	1	23,624	28	31,614	1	31,614
18	49,484	2	24,742	26	31,816	1	31,816
33	25,938	1	25,938	17	65,325	2	32,662
29	26,019	1	26,019	32	33,891	1	33,891
15	53,661	2	26,830	21	34,018	1	34,018
19	54,135	2	27,067	31	34,506	1	34,506
20	55,563	2	27,781	16	35,237	1	35,237
8	28,300	1	28,300	22	35,540	1	35,540
9	57,727	2	28,863	27	72,307	2	36,153
2	58,304	2	29,152	30	36,977	1	36,977
5	29,956	1	29,956	25	37,677	1	37,677
3	30,112	1	30,112	23	37,744	1	37,744
7	30,377	1	30,377	14	75,959	2	37,979
12	30,711	1	30,711	24	38,833	1	38,833
10	31,310	1	31,310	13	80,565	2	40,282
6	62,732	2	31,366	11	40,387	1	40,387
	647,953 (46.8%)	23		1	43,828	1	43,828
					766,224 (53.2%)	21	

At the extreme, the population represented in District 4 had a relative weight of 1.9 times that of the population represented in District 1.

The initial plan of apportionment governing the House of Representatives may likewise be both criticized and commended. As spelled out in Article V, Sections 12 through 16 of the Oklahoma Constitution, the lower chamber was to consist of 109 members, but again only until a reapportionment by the legislature following the next decennial census. The prescribed distribution of seats to given counties is depicted in Table 6 and analyzed in Table 9. Note that this plan was also in conflict with the permanent fundamental law; every county was assured at least one member in the House, and neither the ratio nor flotorial systems were operative. Rather, in addition to the representative per county starting point, most, though not all counties with proportionately larger populations were given proportionately more representation, the result of which was that the majority of the lower chamber was responsible to 46.2% of the people. Although this plan too has proven the most equitable of all enacted since statehood, it necessitated an allocation of members not always related to county population, and utilized flotorial districts (adjoining different representative districts for the purpose of sharing an additional representative) rather than the flotorial system (assigning a member to an established representative district based upon excess population over the maximum required for regular members).

Therefore, the entirety of the Senate and House temporary plans of apportionment, be they constitutional or expedient, were basically contrary to the fundamental and permanent provisions of the Oklahoma Constitution. But it cannot be denied that in the process of its action

TABLE 9

CONSTITUTIONAL LEGISLATIVE APPORTIONMENT
(House of Representatives)*

County	Pop.	No. Rep.	Pop. per Rep.	County	Pop.	No. Rep.	Pop. per Rep.
Cimarron	5,927	1	5,927	Seminole	14,687	1o	14,687
Harper	8,089	1	8,089	Craig	14,955	1e	14,955
Pushmataha	8,295	1	8,295	Caddo	30,241	2p	15,120
Adair	9,115	1	9,115	Osage	15,332	1	15,332
Latimer	9,340	1	9,340	Rogers	15,485	1e	15,485
Delaware	9,876	1	9,876	Woods	15,517	1	15,517
Logan	30,711	3	10,237	Coal	15,585	1e	15,585
Nowata	10,453	1	10,453	Okfuskee	15,595	1	15,595
Mayes	11,064	1	11,064	Alfalfa	16,070	1a	16,070
Kiowa	22,247	2	11,123	Texas	16,448	1	16,448
Love	11,134	1	11,134	Haskell	16,865	1i	16,865
Garvin	22,787	2	11,393	Jackson	17,087	1	17,087
Grady	23,420	2	11,710	Pawnee	17,112	1n	17,112
Greer	23,624	2	11,812	Blaine	17,227	1	17,227
Murray	11,948	1	11,948	Choctaw	17,340	1	17,340
Atoka	12,113	1b	12,113	Grant	17,638	1a	17,638
Kay	24,757	2	12,378	Beckham	17,758	1	17,758
Washington	12,813	1	12,813	McIntosh	17,975	1	17,975
Ottawa	12,827	1	12,827	Kingfisher	18,010	1h	18,010
Tillman	12,869	1	12,869	Creek	18,365	1f	18,365
McClain	12,888	1	12,888	Cleveland	18,460	1p	18,460
Marshall	13,144	1	13,144	Custer	18,478	1g	18,478
McCurtain	13,198	1	13,198	Lincoln	37,293	2m	18,646
Carter	26,402	2	13,201	Johnston	18,672	1c	18,672
Roger Mills	13,239	1	13,239	Muskogee	37,467	2i	18,733
Dewey	13,329	1	13,329	Pittsburg	37,677	2j	18,838
Beaver	13,364	1	13,364	Wagoner	19,529	1	19,529
Jefferson	13,439	1	13,439	Hughes	19,945	1j	19,945
Bryan	27,865	2b	13,932	Canadian	20,110	1p	20,110
Oklahoma	55,849	4	13,962	Stephens	20,148	1d	20,148
Ellis	13,978	1	13,978	Tulsa	21,693	1f	21,693
Garfield	28,300	2h	14,150	Washita	22,007	1g	22,007
Noble	14,198	1	14,198	Payne	22,022	1n	22,022
Cherokee	14,274	1	14,274	Sequoyah	22,499	1k	22,499
Major	14,307	1	14,307	Pontotoc	23,057	1o	23,057
Okmulgee	14,362	1	14,362	LeFlore	24,678	1k	24,678
Pottawatomie	43,272	3m	14,424	Comanche	31,738	1d	31,738
Woodward	14,595	1	14,595		760,765 (53.8%)	54	
	653,412 (46.2%)	55					

At the extreme, the population represented in Cimarron County had a relative weight of 3.6 times that of the population represented in Comanche County.

*Letters designate counties entitled to share a flotorial member. For background on this development, see Table 4 and associated discussion.

the delegates to the Constitutional Convention did not lose sight of the principle of substantial numerical equality for an effective exercise of the suffrage privilege.

CHAPTER V

REAPPORTIONMENT OF THE HOUSE OF REPRESENTATIVES: A HALF CENTURY OF VACILLATION

As noted in the preceding chapter, the Oklahoma Constitution embodied two plans of legislative apportionment. One, a temporary arrangement, affected the First, Second and Third sessions of the Oklahoma Legislature (1907, 1909, and 1911, respectively). The other, the permanent constitutional reapportionment formula, was to be made effective at the first session of the legislature after each decennial federal census.[1] The application of the constitutional directives,[2] and the extent to which apportionments of the House of Representatives varied therefrom, are the focal points of this chapter. Suffice it to generalize at the outset that the House has vacillated from near complete observance of the fundamental law to near complete disregard of it.

As mentioned earlier, the state's fundamental law makes explicit a number of provisions for the reapportionment of the House of Representatives, which in turn make possible a mathematical evaluation of the degree to which these provisions have been observed. In the order of their appearance in the constitution, the provisions of Section

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[1] Oklahoma Constitution, Article V, Section 10(b).

[2] Ibid., Article V, Section 10(a)-(j).

10 of Article V that are germane for this purpose are as follows:

> "(c) The whole population of the State as ascertained by the Federal census, or in such manner as the Legislature may direct, shall be divided by the number one hundred and the quotient shall be the ratio of representation in the House of Representatives for the next ten years succeeding such apportionment."

As the legislature did not at any time during 1911-1961 choose to ascertain population by any method other than the federal census, the latter will properly be utilized to determine each decennial ratio of representation.

> "(d) Every county having a population equal to one-half of said ratio shall be entitled to one representative; every county containing said ratio and three-fourths over shall be entitled to two representatives, and so on, requiring after the first two an entire ratio for each additional representative: Provided, That no county shall ever take part in the election of more than seven representatives."

It should be noted that these directives relate solely to the procedure to be followed for a county to secure a "regular" member in the lower chamber.

> "(e) When any county shall have a fraction above the ratio so large that being multiplied by five the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratio among the several sessions of the decennial period. If there are two ratios, representatives shall be allotted to the fourth and third sessions, respectively; if three, the third, second and first sessions, respectively; if four, to the fourth, third, second and first sessions, respectively."

Otherwise known as the "flotorial system," these provisions afford a subtle and effective scheme approaching political equality. The term "ratio" is particularly noteworthy and should be understood to be the same as prescribed in subsection (c) above, meaning the population divided by the number one hundred. Moreover, it should be noted that no mention is made of the allocation to any given session of the decennial

period of the first float to which a county may be entitled. Although logic may dictate said float was probably intended to be allocated to the fifth session, it is nevertheless not clear and therefore has been treated, as will be seen, with discretion on the part of the legislature.

> "(g) If in fixing any decennial ratio, a county previously a separate representative district shall have less than the number required by the ratio for a representative, such county shall be attached to a county adjoining it and become a part of such representative district."

Although the intent here would appear to be beyond a reasonable doubt, it will become quite evident in the forthcoming pages that the legislatures since 1931 chose not to recognize it.

To ascertain the degree to which acts of the legislature have measured up to each of the foregoing provisions is the purpose of the ensuing analysis. In quest of this goal, a variety of facts and statistics are utilized, more specifically in the name of state statutes and district populations. In the Appendix, and designated B-1 through B-6, are the literal consequences of each reapportionment act for the House of Representatives from 1911 through 1961, respectively, including the population of each representative district and the sessions to which regular and flotorial members were allocated. Reference to these will be necessary to comprehend more fully the analysis of each act, particularly as regards the determination of regular and flotorial members per representative district, and the criticism thereof. Finally, an explanation is in order relative to the first six tables forthcoming. In order to minimize statistical presentations, and yet incorporate a sufficient number of analyses to justify an overview of representativeness in the lower chamber, a sample of each decennial apportionment was

taken in view of the number of members allotted each session and the representativeness of counties throughout each ten year period. Because the first session of each decennial apportionment proved more representative than either of the other four, it is employed as the unit of analysis. So as not to mislead one's orientation, it need be emphasized that this sampling technique is utilized solely for the purpose of ascertaining the percentage of the population to which the majority of the House of Representatives was responsible, and the degree to which each representative district was over-represented or under-represented.

Act of 1911 and the Oklahoma Constitution.

Unlike the framers of the Oklahoma Constitution, the members of Third Oklahoma Legislature made a most commendable attempt to abide by the state's fundamental law.[3] Pursuant with Section 10 (c) of Article V, the ratio of representation for the decennial period was determined to be 16,572 persons (1,657,155 ÷ 100), and the allocation of regular members of the House of Representatives in each of the five sessions, in accord with section 10 (d) of Article V, was properly determined from the following schedule:

Ratios	Population	Representatives
1/2 to 1 3/4	8,286 - 29,000	1
1 3/4 to 2 3/4	29,001 - 45,572	2
2 3/4 to 3 3/4	45,573 - 62,144	3
3 3/4 to 4 3/4	62,145 - 78,716	4
4 3/4 to 5 3/4	78,717 - 95,288	5
5 3/4 to 6 3/4	95,289 -111,860	6
6 3/4 and above	111,861 and above	7

As may be ascertained upon close examination of Appendix B-1, the only deviation from this schedule appears in Pittsburg County,

[3]See Appendix B-1 and Oklahoma Session Laws, 1911, pp. 266-271.

which was entitled to an additional member in the fifth session as its population merited three regular members throughout the decennial period.

With regard to the flotorial system, as presented in Section 10 (e) of Article V, it provides that a representative district may, in addition to its regular representatives, elect a "float" or "floats" in direct proportion to its excess of population over each full ratio of representation and multiples thereof. Accordingly, the excess population above each full ratio is multiplied by five (the number of sessions in a decennial period) and divided by the ratio (for the decennial period) in order to determine the number of floats to which a representative district is entitled. For the period in question, the ratio of representation was 16,572 and multiples thereof, and each representative district with a population in sufficient excess of such multiples was entitled to additional representation in one or more sessions of the decennium. To simplify an understanding of the operation of this scheme, one can readily determine the "float", if any, to which a district was entitled, by subtracting the excess population of any multiple of 16,572 and multiplying the product by five (to allot as many as four floats, but not to exceed the constitutional limit of seven total members for any given session). In such case, one need only ascertain each multiple of 16,572, subtract the same from the population of a given representative district, and the remainder can be related to the following schedule:

Excess Population	Floats
3,314	1
6,629	2
9,943	3
13,258	4

A comparison of the requisites of the flotorial system with the actual apportionment in Appendix B-1 reveals that the district of Beaver-Harper counties was denied one float, and Kiowa County three floats, to which each were entitled. In contrast, it will be found that Okfuskee County was awarded one float to which it was not entitled. As for the allocation of floats to given sessions, it can be observed that four, three, and two, respectively, were distributed as directed, and discretion was exercised in the allocation of one, as evident in its being distributed in the third, second and first sessions for different representative districts.

Relative to the provisions of Section 10 (g) of Article V, it is evident that this act of the legislature was in full compliance. Only the counties of Cimarron and Harper had populations below the one-half ratio of representation, and these were adjoined to Texas and Beaver counties, respectively.

As regards the effect of this initial reapportionment, it is made evident in Table 10. Ideally, each member of the session would represent 16,910 persons; instead, the majority group represented an average of 13,880 persons and the minority group 20,066 persons. More important, the majority was responsible to 41.88% of the people and the minority to 58.12%, a ratio of representativeness of all of the people which proved second only to the temporary plan of the Founding Fathers. Equally meaningful is the last column apart from each district headed by the symbol (#). It measures the degree of over-representation or under-representation, whereby the average number of persons per representative (1,657,155 ÷ 99 = 16,910) is divided by the number of

TABLE 10 -- SESSION OF 1913
General House Reapportionment for 1913-21
Pursuant with S.B. 243 of 1911 Legislature
(See Appendix B-1 for allocation of seats for biennium)

County	Pop.	No. Rep.	Pop.per Rep.	#
Okfuskee	19,995	2	9,997	1.69
Osage	20,101	2	10,050	1.68
Pushmataha	10,118	1	10,118	1.67
Love	10,236	1	10,236	1.65
McCurtain	20,681	2	10,340	1.64
Adair	10,535	1	10,535	1.61
Latimer	11,321	1	11,321	1.49
Harmon	11,328	1	11,328	1.49
Delaware	11,469	1	11,469	1.47
Marshall	11,619	1	11,619	1.46
Murray	12,744	1	12,744	1.33
Roger Mills	12,861	1	12,861	1.31
Garvin	26,545	2	13,272	1.27
Kay	26,999	2	13,499	1.25
Mayes	13,596	1	13,596	1.24
Atoka	13,808	1	13,808	1.22
Dewey	14,132	1	14,132	1.20
Nowata	14,223	1	14,223	1.19
Potta.	43,595	3	14,532	1.16
LeFlore	29,127	2	14,563	1.16
Bryan	29,854	2	14,927	1.13
Noble	14,945	1	14,945	1.13
Grady	30,309	2	15,154	1.12
Major	15,248	1	15,248	1.11
Ellis	15,375	1	15,375	1.10
McClain	15,659	1	15,659	1.08
Ottawa	15,713	1	15,713	1.08
Coal	15,817	1	15,817	1.07
Logan	31,740	2	15,870	1.07
Pittsburg	47,650	3	15,883	1.06
Greer	16,449	1	16,449	1.03
Garfield	33,050	2	16,525	1.02
Woodward	16,592	1	16,592	1.02
Johnston	16,734	1	16,734	1.01
Cherokee	16,778	1	16,778	1.01
Oklahoma*	85,232	1	17,046	.99
	693,992 (41.88%)	50	13,880	ave.

At the extreme, the population represented in Okfuskee Co. had a relative weight 2.8 times that of the population represented in Kiowa County.

County	Pop.	No. Rep.	Pop.per Rep.	#
Oklahoma*	85,232	4	17,046	.99
Pawnee	17,332	1	17,332	.98
Lincoln	34,779	2	17,389	.97
Craig	17,404	1	17,404	.97
Jefferson	17,430	1	17,430	.97
Washington	17,484	1	17,484	.97
Tulsa	34,995	2	17,497	.97
Woods	17,567	1	17,567	.96
Muskogee	52,473	3	17,581	.96
Rogers	17,736	1	17,736	.95
Caddo	35,685	2	17,842	.95
Blaine	17,960	1	17,960	.94
Alfalfa	18,138	1	18,138	.93
Tillman	18,650	1	18,650	.91
Grant	18,760	1	18,760	.90
Cim.-Tex.	18,802	1	18,802	.90
King.	18,825	1	18,825	.90
Cleve.	18,843	1	18,843	.90
Haskell	18,875	1	18,875	.90
Beckham	19,699	1	19,699	.86
Seminole	19,964	1	19,964	.85
Comanche	41,489	2	20,744	.82
McIntosh	20,961	1	20,961	.81
Okmulgee	21,115	1	21,115	.80
Beav-Harp.	21,820	1	21,820	.77
Choctaw	21,862	1	21,862	.77
Wagoner	22,086	1	22,086	.77
Stephens	22,252	1	22,252	.76
Custer	23,231	1	23,231	.73
Canadian	23,501	1	23,501	.72
Payne	23,735	1	23,735	.71
Jackson	23,737	1	23,737	.71
Hughes	24,020	1	24,040	.70
Pontotoc	24,331	1	24,331	.69
Sequoyah	25,005	1	25,005	.68
Washita	25,034	1	25,034	.68
Carter	25,358	1	25,358	.67
Creek	26,223	1	26,223	.64
Kiowa	27,526	1	27,526	.61
	963,163 (58.12%)	48	20,066	ave.
TOTAL	1,657,155	99	16,910	ave.

*As Oklahoma County's population overlaps the percentage which elected part of the majority and minority of the House membership, it has been divided in order to show the precise effect of the apportionment.

persons per representative in each district, to depict a condition of over-representation (if the figure is greater than 1.00) or under-representation (if the figure is less than 1.00). It is evident that whereas 35 districts were in varying degree over-represented, 39 districts were in varying degree under-represented, a condition which likewise was to grow progressively worse with time.

For the purpose of clarifying the distinction between the majority group of 50 Representatives and the minority group of 48 Representatives, and the total given as 99 Representatives, it need be indicated that the figure 99 includes a seat apportioned to now defunct Swanson County in this and all other sessions of the 1913-21 decennial period. Swanson County, created from portions of Kiowa and Comanche counties, by vote of the people and proclamation in 1909, managed to elect a member only in 1912 and 1914. As the result of a legal suit by the respective county officials, the Oklahoma Supreme Court upheld, in the Fall of 1911, a state district court order for dissolution of the newly created county.[4] Because inclusion of this county would serve only to distort the total apportionment for the decennial period, it was not figured in the computations. In addition, it is also noteworthy that only 76 of the present 77 counties are accounted for in the initial reapportionment, as Cotton County did not evolve until 1912. By ensuing special legislation, however, it was districted with Comanche County to share two representatives in 1913, two in 1915, three in 1917, one in 1919 (at which time each county elected another independently), and in 1921 each county elected one member apiece.

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[4]Corden and Richards, op. cit., II, p. 515.

Act of 1921 and the Oklahoma Constitution.

Clearly the model example of a reapportionment of the House of Representatives is that conducted by the Eighth Oklahoma Legislature which enacted a plan in flawless conformity with the state constitution.[5] In accord with Section 10(c) of Article V, the ratio of representation for the decennial period was ascertained to be 20,283 persons (2,028,283 ÷ 100), and the allocation of regular members of the lower chamber in each of the five sessions, pursuant with Section 10(d) of Article V, was properly determined from the following schedule:

Ratios	Population	Representatives
1/2 to 1 3/4	10,142 - 35,494	1
1 3/4 to 2 3/4	35,495 - 55,777	2
2 3/4 to 3 3/4	55,778 - 76,060	3
3 3/4 to 4 3/4	76,061 - 96,343	4
4 3/4 to 5 3/4	96,344 - 116,626	5
5 3/4 to 6 3/4	116,627 - 136,909	6
6 3/4 and above	136,910 and above	7

Likewise pursuant with the constitution was the allocation of floats, which were afforded for excess population over multiples of 20,283 persons, in accord with Section 10(e) of Article V and the following schedule:

Excess Population	Floats
4,057	1
8,113	2
12,170	3
16,226	4

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[5] See Appendix B-2 and O.S.L., 1921, pp. 69-72.

Unlike any experience with a reapportionment of the lower chamber, not one district was denied nor given a float to which it was or was not entitled. Moreover, as for the allocation of such floats, it is evident in Appendix B-2 that the distribution followed to the letter the constitutional directives, and once again discretion was exercised in the allocation of one, as evident in its distribution in all but the fifth session.

As in the preceding decennium, and relative to Section 10(g) of Article V, this act was also in full compliance. Again, only the counties of Cimarron and Harper had populations below the one-half ratio of representation, and these were adjoined to Texas and Beaver counties, respectively.

The effect of this reapportionment is made clear in Table 11. Ideally, each member of the session would represent 18,956 persons; instead, the majority group represented an average of 15,655 persons and the minority group 22,319. In this instance, the majority was responsible to 41.68% of the people and the minority to 58.32%, a ratio of representativeness of all of the people inferior only to the temporary plan of the framers of the constitution and the initial reapportionment. As for the measure of each county's population to the average of all, it is evident that whereas 39 districts were in varying degree over-represented, 34 districts were in varying degree under-represented, and two districts (the maximum among all analyses) were almost perfectly represented.

TABLE 11 -- SESSION OF 1923
General House Reapportionment for 1923-31
Pursuant with S.B. 339 of 1921 Legislature
(See Appendix B-2 for allocation of seats for biennium)

County	Pop.	No. Rep.	Pop. per Rep.	#
Roger Mills	10,638	1	10,638	1.78
Harmon	11,261	1	11,261	1.68
Ellis	11,673	1	11,673	1.62
Stephens	24,692	2	12,346	1.54
Major	12,426	1	12,426	1.53
Love	12,433	1	12,433	1.52
Dewey	12,434	1	12,434	1.52
Okfuskee	25,051	2	12,525	1.51
Hughes	26,045	2	13,022	1.46
Murray	13,115	1	13,115	1.45
McIntosh	26,404	2	13,202	1.44
Noble	13,560	1	13,560	1.40
Adair	13,703	1	13,703	1.38
Latimer	13,866	1	13,866	1.37
Delaware	13,868	1	13,868	1.37
Woodward	14,663	1	14,663	1.29
Marshall	14,674	1	14,674	1.29
Kingfisher	15,671	1	15,671	1.21
Greer	15,836	1	15,836	1.20
Blaine	15,875	1	15,875	1.19
Nowata	15,899	1	15,899	1.19
Woods	15,939	1	15,939	1.19
Grant	16,072	1	16,072	1.18
Alfalfa	16,253	1	16,253	1.17
Cotton	16,679	1	16,679	1.14
Lincoln	33,406	2	16,703	1.13
Mayes	16,829	1	16,829	1.13
Grady	33,943	2	16,971	1.12
Caddo	34,207	2	17,103	1.11
Cimar-Texas	17,411	1	17,411	1.09
Kay	34,907	2	17,453	1.09
Pushmataha	17,514	1	17,514	1.08
Rogers	17,605	1	17,605	1.08
Jefferson	17,664	1	17,664	1.07
Osage	36,536	2	18,268	1.04
Okmulgee	55,072	3	18,357	1.03
Coal	18,406	1	18,406	1.03
Custer	18,736	1	18,736	1.01
Garfield	37,500	2	18,750	1.01
McCurtain	37,905	2	18,952	1.00
Beckham	18,989	1	18,989	1.00
	845,360 (41.68%)	54	15,655	ave.
Pawnee	19,126	1	19,126	.99
Craig	19,160	1	19,160	.99
McClain	19,326	1	19,326	.98
Oklahoma	116,307	6	19,384	.98
Cleveland	19,389	1	19,389	.98
Haskell	19,397	1	19,397	.98
Cherokee	19,872	1	19,872	.95
Carter	40,247	2	20,123	.94
Johnston	20,125	1	20,125	.94
Bryan	40,700	2	20,350	.93
Ottawa	41,108	2	20,554	.92
Muskogee	61,710	3	20,570	.92
Creek	62,480	3	20,827	.91
Atoka	20,862	1	20,862	.91
Wagoner	21,371	1	21,371	.89
LeFlore	42,765	2	21,382	.89
Beav.-Harper	21,671	1	21,671	.87
Tulsa	109,023	5	21,805	.87
Jackson	22,141	1	22,141	.86
Washita	22,237	1	22,237	.85
Canadian	22,288	1	22,288	.85
Tillman	22,433	1	22,433	.85
Potta.	46,028	2	23,014	.82
Kiowa	23,094	1	23,094	.82
Seminole	23,808	1	23,808	.80
Pittsburg	52,570	2	26,285	.72
Comanche	26,629	1	26,629	.71
Sequoyah	26,786	1	26,786	.71
Washington	27,002	1	27,002	.70
Logan	27,550	1	27,550	.69
Payne	30,180	1	30,180	.63
Pontotoc	30,949	1	30,949	.61
Choctaw	32,144	1	32,144	.59
Garvin	32,445	1	32,445	.58
	1,182,923 (58.32%)	53	22,319	ave.
TOTAL	2,028,283	107	18,956	ave.

At the extreme, the population represented in Roger Mills County had a relative weight 3.0 times that of the population represented in Garvin Co.

Act of 1931 and the Oklahoma Constitution.

It is in sharp contrast with the foregoing reapportionments that all from the 1931 through 1961 acts entailed features which notoriously disregarded the state constitution. Passed by the Thirteenth Oklahoma Legislature,[6] this act set a precedent and distinct patterns of constitutional neglect, the effect of which was to prove increasingly contrary to the principle of political equality in succeeding decades. Had this reapportionment been properly conducted, the ratio of representation for the decennial period would have been determined as directed in Section 10(c) of Article V and found to be 23,960 persons (2,396,040 ÷ 100), and the allocation of regular members of the House of Representatives for the five sessions would have been prescribed pursuant with Section 10(d) of Article V and the following schedule:

Ratios	Population	Representatives
1/2 to 1 3/4	11,980 - 41,929	1
1 3/4 to 2 3/4	41,930 - 65,889	2
2 3/4 to 3 3/4	65,890 - 89,849	3
3 3/4 to 4 3/4	89,850 - 113,809	4
4 3/4 to 5 3/4	113,810 - 137,769	5
5 3/4 to 6 3/4	137,770 - 161,729	6
6 3/4 and above	161,730 and above	7

As can be ascertained upon careful scrutiny of Appendix B-3, there were significant discrepancies between the act and the standard, marked specifically by a conscious effort to enable certain districts to gain the second and third regular member without the requisite population of 1 3/4 and 2 3/4 ratios, as given below.

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[6]See Appendix B-3 and O.S.L., 1931, pp. 9-14.

Districts given unauthorized second representative:

Bryan	McCurtain
Carter	Ottawa
Comanche	Pontotoc
Garvin	Stephens

Districts given unauthorized third representative:

Creek	Pittsburg

Because no representative district qualified for four, five or six regular members, and both Oklahoma and Tulsa counties for the first time exceeded the minimum population required for the maximum of seven representatives (which each district was properly accorded), there was little room for further manipulation in this realm.

With regard to the flotorial system, the guidelines of Section 10(e) of Article V were likewise slighted, for all should have been allocated for excess population over multiples of 23,960 persons, and related to the following schedule:

Excess Population	Floats
4,792	1
9,584	2
14,376	3
19,168	4

Rather than adhere strictly to this formula it will be found in Appendix B-3 that the legislature overcompensated six districts with eight floats as indicated below.

Districts given one unauthorized float:

Beckham	Jackson
Hughes	Lincoln

Districts given two unauthorized floats:

Grady	Okmulgee

Moreover, as for the allocation of floats to given sessions, it can be

observed that although the permissive option was exercised in distributing one to varying sessions, the placement of both two and three floats was in direct conflict with the constitutional standard.

Again in great contrast with the predecessor legislatures, and their adherence to Section 10(g) of Article V, this act marked an end of two-county representative districts for decades to come. In this instance, eight counties failed to qualify as individual representative districts, as each population therein fell below the one-half ratio of representation. But the legislature, nevertheless, for the first and by no means the last time, ignored the constitutional provisions to attach the same to an adjoining county to form a representative district, and granted each county listed below at least one representative, regardless of population.

Districts given unauthorized initial representative:

Beaver	Harper
Cimarron	Latimer
Coal	Love
Ellis	Marshall

Thus began the practice to notoriously ignore the one-half ratio of representation feature of the state constitution which, when coupled with a reverence for the seven member limitation, accounts largely for the gross political disparities as between Oklahomans both at the polls and in the House of Representatives.

As regards the effect of this reapportionment, each of the foregoing exceptions to the constitutional criteria presuppose varying degrees of district and individual political inequality, and the same is borne out by Table 12. In all categories, this measurably

TABLE 12 -- SESSION OF 1933
General House Reapportionment for 1933-41
Pursuant with H.B. 269 of 1931 Legislature
(See Appendix B-3 for allocation of seats for biennium)

County	Pop.	No. Rep.	Pop. per Rep.	#	County	Pop.	No. Rep.	Pop. per Rep.	#
Cimarron	5,408	1	5,408	3.75	Mayes	17,883	1	17,883	1.14
Harper	7,761	1	7,761	2.62	Craig	18,052	1	18,052	1.12
Love	9,639	1	9,639	2.11	Okmulgee	56,558	3	18,853	1.08
Ellis	10,541	1	10,541	1.93	Rogers	18,956	1	18,956	1.07
Marshall	11,026	1	11,026	1.84	Ottawa	38,542	2	19,271	1.05
Latimer	11,184	1	11,184	1.82	Sequoyah	19,505	1	19,505	1.04
Beaver	11,452	1	11,452	1.77		911,264	60	15,188	ave.
Coal	11,521	1	11,521	1.76		(38.03%)			
Major	12,206	1	12,206	1.67	Pawnee	19,882	1	19,882	1.02
Murray	12,410	1	12,410	1.64	Greer	20,282	1	20,282	1.00
Johnston	13,082	1	13,082	1.56	Blaine	20,452	1	20,452	.99
Dewey	13,250	1	13,250	1.54	Carter	41,419	2	20,709	.98
Nowata	13,611	1	13,611	1.50	Creek	64,115	3	21,372	.95
Harmon	13,834	1	13,834	1.47	LeFlore	42,896	2	21,448	.95
Texas	14,100	1	14,100	1.44	McClain	21,575	1	21,575	.94
Grant	14,150	1	14,150	1.43	Muskogee	66,424	3	22,141	.92
Roger Mills	14,164	1	14,164	1.43	Potta.	66,572	3	22,191	.92
Jackson	28,910	2	14,455	1.40	Wagoner	22,428	1	22,428	.91
Okfuskee	29,016	2	14,508	1.40	Garfield	45,588	2	22,794	.89
Atoka	14,533	1	14,533	1.40	Osage	47,334	2	23,667	.86
Pushma.	14,744	1	14,744	1.38	Grady	47,638	2	23,819	.85
Adair	14,756	1	14,756	1.38	Choctaw	24,142	1	24,142	.84
Noble	15,139	1	15,139	1.34	Tillman	24,390	1	24,390	.83
Hughes	30,334	2	15,167	1.34	McIntosh	24,924	1	24,924	.81
Alfalfa	15,228	1	15,228	1.33	Cleveland	24,948	1	24,948	.81
Delaware	15,370	1	15,370	1.32	Kay	50,186	2	25,093	.81
Cotton	15,442	1	15,442	1.31	Caddo	50,779	2	25,389	.80
Garvin	31,401	2	15,700	1.29	Seminole	79,621	3	26,540	.77
Woodward	15,844	1	15,844	1.28	Tulsa	187,574	7	26,796	.76
Kingfisher	15,960	1	15,960	1.27	Custer	27,517	1	27,517	.74
Bryan	32,277	2	16,138	1.26	Logan	27,761	1	27,761	.73
Haskell	16,216	1	16,216	1.25	Washington	27,777	1	27,777	.73
Pontotoc	32,469	2	16,234	1.25	Canadian	28,115	1	28,115	.72
Stephens	33,069	2	16,534	1.23	Beckham	28,991	1	28,991	.70
Pittsburg	50,778	3	16,926	1.20	Washita	29,435	1	29,435	.69
Woods	17,005	1	17,005	1.19	Kiowa	29,630	1	29,630	.69
Comanche	34,317	2	17,158	1.18	Oklahoma	221,738	7	31,677	.64
McCurtain	34,759	2	17,379	1.17	Lincoln	33,738	1	33,738	.60
Jefferson	17,392	1	17,392	1.17	Payne	36,905	1	36,905	.55
Cherokee	17,470	1	17,470	1.16		1,484,776	58	25,600	ave.
						(61.97%)			
					TOTAL	2,396,040	118	20,305	ave.

At the extreme, the population represented in Cimarron County had a relative weight 6.8 times that of the population represented in Payne County.

unconstitutional act was substantially inferior to those of 1911 and 1921. At this time each member of the session might have ideally represented 20,305 persons; instead the members of the majority group were responsible to average constituencies of 15,188 persons and the members of the minority group were responsible to an average constituency of 25,600 persons. Statistically more relevant, the majority represented but 38.03% of the people as compared with the minority representation of 61.97% of the people. And equally meaningful, it is evident that the number of over-represented districts had grown to 47, whereas 29 were under-represented, with one district near perfectly represented.

Act of 1941 and the Oklahoma Constitution.

In general effect comparable to the 1931 act, the reapportionment law enacted by the Eighteenth Oklahoma Legislature in 1941 incorporated some distinguishing aspects due primarily to a different population base.[7] Had this reapportionment been carried out in compliance with Section 10(c) of Article V, the ratio of representation would have been set at 23,364 persons (2,336,434 ÷ 100), and the allocation of regular members of the lower chamber for each of the five sessions would have been based upon Section 10(d) of Article V and the following schedule:

Ratios	Population	Representatives
1/2 to 1 3/4	11,682 - 40,886	1
1 3/4 to 2 3/4	40,887 - 64,250	2
2 3/4 to 3 3/4	64,251 - 87,614	3
3 3/4 to 4 3/4	87,615 - 110,978	4
4 3/4 to 5 3/4	110,979 - 134,342	5
5 3/4 to 6 3/4	134,343 - 157,706	6
6 3/4 and above	157,707 and above	7

[7]See Appendix B-4 and O.S.L., 1941, pp. 39-43.

As may be readily determined upon examination of Appendix B-4, there were serious discrepancies between the act and the constitution, again underscored by an obvious effort to permit certain districts to gain the second and third regular member without the required population associated with 1 3/4 and 2 3/4 ratios, as listed below.

Districts given unauthorized second representative:

Bryan	Ottawa
Comanche	Pontotoc
Garvin	Stephens

Districts given unauthorized third representative:

Creek	Pottawatomie
Pittsburg	Seminole

Similar to the 1931 situation, no representative district qualified for four, five or six regular members, and both Oklahoma and Tulsa counties, more than before, exceeded the minimum population required for the maximum of seven members in the House of Representatives.

As for the operation of the flotorial system for this decade, the provisions of Section 10(e) of Article V were flaunted more than ever before, as all should have been allocated for excess population over multiples of 25,364 persons, and guided by the following schedule:

Excess Population	Floats
4,673	1
9,346	2
14,018	3
18,691	4

A review of Appendix B-4 will reveal that the legislature ignored the formula to the extent that it overcompensated nine districts with 15 floats and undercompensated two other districts by two floats as indicated

below.

Districts given one unauthorized float:

Hughes	Okfuskee
Kiowa	Washita

Districts given two unauthorized floats:

Beckham	Lincoln
Jackson	Grady

Districts given three unauthorized floats:

Okmulgee

Districts denied one authorized float:

Choctaw	Washington

Relative to the practice in the allocation of floats for this decennial period, it is again evident that the legislature exercised its option in distributing one to different sessions, while once more it disregarded the constitution in its method of distributing both two and three floats.

Similar to the action of the legislature in the previous analysis, the directives of Section 10(g) of Article V were disregarded in full, as evidenced by the fact that the following eight counties, diminishing population notwithstanding, failed to meet the one-half ratio of representation, and managed to secure status as a representative district with a member in each session.

Districts given unauthorized initial representative:

Beaver	Harper
Cimarron	Love
Ellis	Roger Mills
Harmon	Texas

With regard to the effect of this reapportionment, the above patterns of deviation from the constitutional criteria resulted in continuing inequities as evidenced in Table 13. As with the unconfirmed

TABLE 13 -- SESSION OF 1943
General House Reapportionment for 1943-51
Pursuant with H.B. 192 of 1941 Legislature
(See Appendix B-4 for allocation of seats for biennium)

County	Pop.	No. Rep.	Pop. per Rep.	#	County	Pop.	No. Rep.	Pop. per Rep.	#
Cimarron	3,654	1	3,654	5.42	Atoka	18,702	1	18,702	1.06
Harper	6,454	1	6,454	3.07	Bryan	38,138	2	19,069	1.04
Ellis	8,466	1	8,466	2.34	McClain	19,205	1	19,205	1.03
Beaver	8,648	1	8,648	2.29	Pushmataha	19,466	1	19,466	1.02
Texas	9,896	1	9,896	2.00	Comanche*	38,988	1	19,494	1.02
Harmon	10,019	1	10,019	1.98		902,522	60	15,042	ave.
Roger Mills	10,736	1	10,736	1.84		(38.63%)			
Jackson	22,708	2	11,354	1.74	Comanche*	38,988	1	19,494	1.02
Love	11,433	1	11,433	1.73	Pontotoc	39,792	2	19,896	1.00
Major	11,946	1	11,946	1.66	Seminole	61,201	3	20,400	.97
Dewey	11,981	1	11,981	1.65	Grady	41,116	2	20,558	.96
Latimer	12,380	1	12,380	1.60	McCurtain	41,318	2	20,659	.96
Marshall	12,384	1	12,384	1.60	Osage	41,502	2	20,751	.95
Coal	12,811	1	12,811	1.55	Tillman	20,754	1	20,754	.95
Cotton	12,884	1	12,884	1.54	Caddo	41,567	2	20,783	.95
Grant	13,128	1	13,128	1.51	Cherokee	21,030	1	21,030	.94
Okfuskee	26,279	2	13,139	1.51	Rogers	21,078	1	21,078	.94
Murray	13,841	1	13,841	1.43	Craig	21,083	1	21,083	.94
Alfalfa	14,129	1	14,129	1.40	Wagoner	21,642	1	21,642	.91
Greer	14,550	1	14,550	1.36	Carter	43,292	2	21,646	.91
Noble	14,826	1	14,826	1.34	Mayes	21,668	1	21,668	.91
Woods	14,915	1	14,915	1.33	Muskogee	65,914	3	21,971	.90
Jefferson	15,107	1	15,107	1.31	Beckham	22,169	1	22,169	.89
Stephens	31,090	2	15,545	1.27	Washita	22,279	1	22,279	.89
Garvin	31,150	2	15,575	1.27	Garfield	45,484	2	22,742	.87
Kingfisher	15,617	1	15,617	1.27	Kiowa	22,817	1	22,817	.87
Adair	15,755	1	15,755	1.26	LeFlore	45,866	2	22,933	.86
Nowata	15,774	1	15,774	1.26	Custer	23,068	1	23,068	.86
Johnston	15,960	1	15,960	1.24	Sequoyah	23,138	1	23,138	.86
Woodward	16,270	1	16,270	1.22	Kay	47,084	2	23,542	.84
Pittsburg	48,985	3	16,328	1.21	McIntosh	24,097	1	24,097	.82
Okmulgee	50,101	3	16,700	1.19	Logan	25,245	1	25,245	.78
Haskell	17,324	1	17,324	1.14	Canadian	27,329	1	27,329	.72
Pawnee	17,395	1	17,395	1.14	Tulsa	193,363	7	27,623	.72
Ottawa	35,849	2	17,924	1.10	Cleveland	27,728	1	27,728	.71
Payne	36,057	2	18,028	1.10	Choctaw	28,358	1	28,358	.70
Potta.	54,377	3	18,126	1.09	Hughes	29,189	1	29,189	.68
Creek	55,503	3	18,501	1.07	Lincoln	29,529	1	29,529	.67
Blaine	18,543	1	18,543	1.07	Washington	30,559	1	30,559	.65
Delaware	18,592	1	18,592	1.06	Oklahoma	244,159	7	34,880	.57
						1,433,912	58	24,723	ave.
						(61.37%)			
					TOTAL	2,336,434	118	19,800	ave.

At the extreme, the population represented in Cimarron County had a relative weight 9.5 times that of the population of Oklahoma County.

*As Comanche County's population overlaps the percentage which elected part of the majority and minority of the House membership, it has been divided in order to show the precise effect of the total apportionment.

unconstitutional act of 1931, that of 1941 resulted in disparities of almost equal proportions. In this sample, each member of the House of Representatives would ideally have been responsible to 19,800 persons; on the contrary, the members of the majority group represented an average of 15,042 persons and members of the minority group represented an average of 24,723 persons. Perceived from another perspective, the majority was responsible to 38.63% whereas the minority was responsible to 61.37% of the people. In terms of relative representativeness, it can be observed that 45 districts were in varying degree over-represented, one district near ideally represented, and the remaining 31 districts in varying degree under-represented.

Act of 1951 and the Oklahoma Constitution.

To a greater extent than either the 1931 or 1941 legislation, the act of 1951, passed by the Twenty-third Oklahoma Legislature,[8] was measurably less representative of all of the people of the state. If this reapportionment had been conducted pursuant with Section 10(c) of Article V, the ratio of representation would have been ascertained to be 22,334 persons (2,233,351 ÷ 100), and regular members assigned in each session of the decennial period in accord with Section 10(d) of Article V as figuratively depicted in the following schedule:

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[8]See Appendix B-5 and O.S.L., 1951, pp. 28-33.

Ratios	Population	Representatives
1/2 to 1 3/4	11,167 - 39,084	1
1 3/4 to 2 3/4	39,085 - 61,418	2
2 3/4 to 3 3/4	61,419 - 83,752	3
3 3/4 to 4 3/4	83,753 - 106,086	4
4 3/4 to 5 3/4	106,087 - 128,420	5
5 3/4 to 6 3/4	128,421 - 150,754	6
6 3/4 and above	150,755 and above	7

Reference to Appendix B-5 will reveal, more than in any prior legislation, that this measure notoriously neglected the above formula. Once again, favored treatment was afforded the districts that gained the second and third regular member without the necessary 1 3/4 and 2 3/4 ratios of representation, each of which is appropriately bracketed below.

Districts given unauthorized second representative:

Bryan	Grady	Ottawa
Caddo	LeFlore	Pontotoc
Carter	McCurtain	Stephens
Garvin	Osage	Washington

Districts given unauthorized third representative:

Creek	Pottawatomie
Pittsburg	Seminole

As with all such legislation since 1931, no representative district was entitled to four, five or six regular members, and both Oklahoma and Tulsa counties continued to be allotted the constitutional limit of seven members, irrespective of their great population growth.

The utter disregard of the flotorial system as prescribed in Section 10(e) of Article V was again very much in evidence. Had the allocations been properly determined they would have been made for excess population over multiples of 22,334 persons, and assigned in view of the

following schedule:

Excess Population	Floats
4,467	1
8,934	2
13,400	3
17,867	4

However, calculations based upon each district's population and actual allotments, as provided in Appendix B-5, reveal that the legislature ignored the above formula to the extent that it overcompensated ten representative districts with a total of 17 floats, as listed below.

Districts given one unauthorized float:
Kiowa Washita
Okfuskee Comanche
Districts given two unauthorized floats:
Beckham Hughes Jackson
Grady Okmulgee
District given three unauthorized floats:
Lincoln

Moreover, as during the latter two decades, the legislature continued to exercise its discretion in assigning one float to different sessions, and likewise persisted in disregarding the constitution with another haphazard allocation of both two and three floats.

Relative to the directives of Section 10(g) of Article V, namely that a county falling below the one-half ratio of representation be attached to an adjoining county to form a representative district, they were again ignored in face of 18 counties then in such category, each of which was awarded one regular member in each session.

Districts given unauthorized initial representative:

Alfalfa	Ellis	Latimer
Beaver	Grant	Love
Cimarron	Harmon	Major
Coal	Harper	Marshall
Cotton	Jefferson	Murray
Dewey	Johnston	Roger Mills

As for the effect of this reapportionment, the broadening of the gap between the constitution and those sworn to uphold it could only serve to render this and the subsequent plan something far less than a reasonable facsimile of political equality. As evidenced in the analysis of the first session of the decennial period in Table 14, each member might have ideally represented 18,157 persons; on the contrary, the members of the majority group were responsible to an average constituency of 12,162 persons and members of the minority group were responsible to an average constituency of 24,249 persons. As a direct consequence of this arrangement, the majority of members of the House of Representatives was responsible to 33.77% of the people, whereas the minority was responsible to 66.23% of the people. Coupled with this new low of the percentage which the majority represented was registered a new high of over-represented districts, as 57 were so classified as compared with 19 districts under-represented and one district near perfectly represented.

Act of 1961 and the Oklahoma Constitution.

By a substantial margin the most inequitable reapportionment of the House of Representatives was that enacted by the Twenty-eighth Oklahoma Legislature.[9] Unlike all prior legislation, however, it was

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[9]See Appendix B-6 and O.S.L., 1961, pp. 182-188.

TABLE 14 -- SESSION OF 1953
General House Reapportionment for 1953-61
Pursuant with H.B. 348 of 1951 Legislature
(See Appendix B-5 for allocation of seats for biennium)

County	Pop.	No. Rep.	Pop. per Rep	#
Cimarron	4,589	1	4,589	3.96
Harper	5,977	1	5,977	3.04
Ellis	7,326	1	7,326	2.48
Roger Mills	7,395	1	7,395	2.46
Beaver	7,411	1	7,411	2.45
Love	7,721	1	7,721	2.35
Coal	8,056	1	8,056	2.25
Harmon	8,079	1	8,079	2.25
Marshall	8,177	1	8,177	2.22
Okfuskee	16,948	2	8,474	2.14
Dewey	8,789	1	8,789	2.07
Latimer	9,690	1	9,690	1.87
Jackson	20,082	2	10,041	1.81
Cotton	10,180	1	10,180	1.78
Major	10,279	1	10,279	1.77
Hughes	20,664	2	10,332	1.76
Grant	10,461	1	10,461	1.74
Johnston	10,608	1	10,608	1.71
Alfalfa	10,699	1	10,699	1.70
Murray	10,775	1	10,775	1.69
Jefferson	11,122	1	11,122	1.63
Greer	11,749	1	11,749	1.55
Pushmataha	12,001	1	12,001	1.51
Noble	12,156	1	12,156	1.49
Nowata	12,734	1	12,734	1.43
Kingfisher	12,860	1	12,860	1.41
Haskell	13,313	1	13,313	1.36
Seminole	40,672	3	13,557	1.34
Pawnee	13,616	1	13,616	1.33
Pittsburg	41,031	3	13,677	1.33
Texas	14,235	1	14,235	1.28
Atoka	14,269	1	14,269	1.27
Creek	43,143	3	14,381	1.26
Woodward	14,383	1	14,383	1.26
Bryan	28,999	2	14,499	1.25
Potta.	43,517	3	14,506	1.25
Woods	14,526	1	14,526	1.25
McClain	14,681	1	14,681	1.24
Delaware	14,734	1	14,734	1.23
Garvin	29,500	2	14,750	1.23
Okmulgee	44,561	3	14,854	1.22
Adair	14,918	1	14,918	1.22
Blaine	15,049	1	15,049	1.21
Pontotoc	30,875	2	15,437	1.18
McCurtain	31,588	2	15,794	1.15
	754,138 (33.77%)	62	12,162	ave.
Ottawa	32,218	2	16,109	1.13
Washington	32,880	2	16,440	1.10
Osage	33,071	2	16,535	1.10
Wagoner	16,741	1	16,741	1.08
Stephens	34,071	2	17,035	1.07
Grady	34,872	2	17,436	1.04
Caddo	34,913	2	17,456	1.04
Tillman	17,598	1	17,598	1.03
Garfield	52,820	3	17,607	1.03
LeFlore	35,276	2	17,638	1.03
Washita	17,657	1	17,657	1.03
McIntosh	17,829	1	17,829	1.02
Carter	36,455	2	18,227	1.00
Craig	18,263	1	18,263	.99
Comanche	55,165	3	18,388	.99
Kiowa	18,926	1	18,926	.96
Cherokee	18,989	1	18,989	.96
Rogers	19,532	1	19,532	.93
Mayes	19,743	1	19,743	.92
Sequoyah	19,773	1	19,773	.92
Choctaw	20,405	1	20,405	.89
Cleveland	41,443	2	20,721	.88
Custer	21,097	1	21,097	.86
Beckham	21,627	1	21,627	.84
Muskogee	65,573	3	21,858	.83
Lincoln	22,102	1	22,102	.82
Logan	22,170	1	22,170	.82
Payne	46,430	2	23,215	.78
Kay	48,892	2	24,446	.74
Canadian	25,644	1	25,644	.71
Tulsa	251,686	7	35,955	.50
Oklahoma	325,352	7	46,479	.39
	1,479,213 (66.23%)	61	24,249	ave.
TOTAL	2,233,351	123	18,157	ave.

At the extreme, the population represented in Cimarron County had a relative weight 10.1 times that of the population represented in Oklahoma County.

premised upon a systematic scheme which, with two exceptions, totally ignored the fundamental law of the state. Only to the extent that the operation of the formula called initially for the determination of a ratio of representation (the population of the state divided by 100) did the act purport to abide by the state constitution. Thereafter, each county was designated a representative district and allocated members in the lower chamber in accord with the following schedule:

Ratio	Population	Representatives
0	0 - 23,283	1
1	23,284 - 46,566	2
2	46,567 - 69,849	3
3	69,850 - 116,415	4
5	116,416 - 162,981	5
7	162,982 - 209,547	6
9	209,548 and above	7

As is quite evident above, each representative district with less than the ratio of representation was given one member in the House of Representatives; each with more than one ratio and less than two was awarded two representatives; each with more than two ratios and less than three was granted three representatives; and each with more than three ratios but less than five ratios merited four representatives. Subsequently, a representative district, to qualify for additional representatives, had to establish excess population equal to two full ratios of representation for each successive member. Again, the legislature chose to abide by the fundamental law to the extent that no county or representative district could participate in the election of more than seven representatives in any session. This act in effect over-represented the districts below the one-half ratio of representation, under-represented

the districts entitled to more than four members of the lower chamber, and completely ignored excess population above multiples of the ratio and thus the flotorial system.

This reapportionment was conducted, as indicated above, in accordance with Section 10 (c) of Article V, for the ratio of representation was properly determined to be 23,283 persons (2,328,284 ÷ 100). There ends, other than for an observance of the maximum entitled, the comparison between the law and the constitution. Had the fundamental law of the state been followed, regular members would have been assigned in each session of the decennial period in compliance with Section 10(d) of Article V and the following schedule:

Ratios	Population	Representatives
1/2 to 1 3/4	11,642 - 40,744	1
1 3/4 to 2 3/4	40,745 - 64,027	2
2 3/4 to 3 3/4	64,028 - 87,310	3
3 3/4 to 4 3/4	87,311 - 110,593	4
4 3/4 to 5 3/4	110,594 - 133,876	5
5 3/4 to 6 3/4	133,877 - 157,159	6
6 3/4 and above	157,160 and above	7

Comparison of this with the preceding schedule shows no similarities whatever, and the contrasts between the latter and seats assigned (as depicted in Appendix B-6) reveals once more that preferential treatment was given the districts that gained the second and third regular member (each without the required 1 3/4 and 2 3/4 ratios of representation), as categorized below.

Districts given unauthorized second representative:

Bryan	Grady	Osage
Caddo	Jackson	Ottawa
Canadian	LeFlore	Pittsburg
Carter	McCurtain	Pontotoc
Creek	Okmulgee	Seminole
Garvin		Stephens

Districts given unauthorized third representative:

Cleveland	Kay
Garfield	Muskogee

As with each preceding reapportionment since 1931, no representative district was entitled to five or six regular members. However, in this instance, Comanche County for the first time qualified for four members, which were granted, and again Oklahoma and Tulsa counties secured the constitutional limit of seven members, their combined population now at 34% of that of the entire state notwithstanding.

Whereas most of the earlier acts flaunted in varying degree the operation of the flotorial system required by Section 10(e) of Article V, this act simply ignored it out of existence. Had allocations of floats been properly ascertained, they would have been given each district for excess population over multiples of 23,283 in accord with the following schedule:

Excess Population	Floats
4,657	1
9,313	2
13,970	3
18,626	4

As attention to this subtle and effective constitutional formula was abandoned, no representative districts were allotted unauthorized floats, and such action precludes a necessity to comment on an allocation of that which did not exist. However, it is noteworthy at this point that all

but a dozen counties were over-represented in this period, as evidenced by the analysis of the session in Table 15.

With regard to the constitutional provisions of Section 10(g) of Article V, it is more evident than ever that the same was totally disregarded, for in this act 26 counties had populations below the one-half ratio of representation and nevertheless were presented one regular member in each session.

Districts given unauthorized initial representative:

Alfalfa	Greer	Love
Atoka	Harmon	Major
Beaver	Harper	Marshall
Cimarron	Haskell	Murray
Coal	Jefferson	Noble
Cotton	Johnston	Nowata
Dewey	Kingfisher	Pawnee
Ellis	Latimer	Pushmataha
Grant		Roger Mills

Finally, the effect of this reapportionment, clearly the least constitutional and least representative of all of the people as compared with all the previous acts, is well depicted in the analysis of the first session of the decennial period provided in Table 15. At this time, each member of the House of Representatives would ideally have represented 19,402 persons; in contrast, those of the majority group represented an average of 11,251 persons whereas those of the minority group represented an average of 27,830 persons. Moreover, the majority group was responsible to only 29.48% of the people, whereas the minority group was responsible to 70.52% of the people. And again equally meaningful, it can be observed that a record 65 districts were over-represented while but 12 districts were under-represented.

TABLE 15 -- SESSION OF 1963
General House Reapportionment for 1963-71
Pursuant with H.B. 1033 of 1961 Legislature
(See Appendix B-6 for allocation of seats for biennium)

County	Pop.	No. Rep.	Pop.per Rep.	#	County	Pop.	No. Rep.	Pop.per Rep.	#
Cimarron	4,496	1	4,496	4.32	Caddo	28,621	2	14,310	1.36
Roger Mills	5,090	1	5,090	3.81	LeFlore	29,106	2	14,553	1.33
Ellis	5,457	1	5,457	3.56	Tillman	14,654	1	14,654	1.32
Coal	5,546	1	5,546	3.50	Grady	29,590	2	14,795	1.31
Harmon	5,852	1	5,852	3.32	Kiowa	14,825	1	14,825	1.31
Love	5,862	1	5,862	3.31	Jackson	29,736	2	14,868	1.30
Harper	5,956	1	5,956	3.26	Hughes	15,144	1	15,144	1.28
Dewey	6,051	1	6,051	3.21	Choctaw	15,637	1	15,637	1.24
Beaver	6,965	1	6,965	2.79		686,301	61	11,251	ave.
Marshall	7,263	1	7,263	2.67		(29.48%)			
Latimer	7,738	1	7,738	2.51	Wagoner	15,673	1	15,673	1.24
Major	7,808	1	7,808	2.48	Cleveland	47,600	3	15,867	1.22
Cotton	8,031	1	8,031	2.42	Osage	32,441	2	16,220	1.19
Grant	8,140	1	8,140	2.38	Craig	16,303	1	16,303	1.19
Jefferson	8,192	1	8,192	2.37	Kay	51,042	3	17,014	1.14
Alfalfa	8,445	1	8,445	2.30	Pittsburg	34,360	2	17,180	1.13
Johnston	8,517	1	8,517	2.28	Garfield	52,975	3	17,658	1.10
Greer	8,877	1	8,877	2.19	Cherokee	17,762	1	17,762	1.09
Pushmataha	9,088	1	9,088	2.13	Beckham	17,782	1	17,782	1.09
Haskell	9,121	1	9,121	2.13	Sequoyah	18,001	1	18,001	1.08
Atoka	10,352	1	10,352	1.87	Washita	18,121	1	18,121	1.07
Noble	10,376	1	10,376	1.87	Okmulgee	36,945	2	18,472	1.05
Murray	10,622	1	10,622	1.83	Logan	18,662	1	18,662	1.04
Kingfisher	10,635	1	10,635	1.82	Lincoln	18,783	1	18,783	1.03
Nowata	10,848	1	10,848	1.79	Stephens	37,990	2	18,995	1.02
Pawnee	10,884	1	10,884	1.78	Carter	39,044	2	19,522	.99
Okfuskee	11,706	1	11,706	1.66	Mayes	20,073	1	20,073	.97
Woods	11,932	1	11,932	1.63	Creek	40,495	2	20,248	.96
Blaine	12,077	1	12,077	1.61	Rogers	20,614	1	20,614	.94
Bryan	24,252	2	12,126	1.60	Muskogee	61,866	3	20,622	.94
Canadian	24,727	2	12,363	1.57	Pottawatomie	41,486	2	20,743	.94
McIntosh	12,371	1	12,371	1.57	Custer	21,040	1	21,040	.92
McClain	12,740	1	12,740	1.52	Washington	42,347	2	21,173	.92
McCurtain	25,851	2	12,925	1.50	Payne	44,231	2	22,115	.88
Adair	13,112	1	13,112	1.48	Comanche	90,803	4	22,701	.85
Delaware	13,198	1	13,198	1.47	Tulsa	346,038	7	49,434	.39
Woodward	13,902	1	13,902	1.40	Oklahoma	439,506	7	62,787	.31
Seminole	28,066	2	14,033	1.38		1,641,983	59	27,830	ave.
Pontotoc	28,089	2	14,044	1.38		(70.52%)			
Garvin	28,290	2	14,145	1.37					
Ottawa	28,301	2	14,150	1.37	TOTAL	2,328,284	120	19,402	ave.
Texas	14,162	1	14,162	1.37					

At the extreme, the population represented in Cimarron County had a relative weight 14.0 times that of the population represented in Oklahoma County.

Recapitulation of Analyses.

Consideration of each act of the legislature relative to the reapportionment of the House of Representatives is meaningful to all who need abide by it for the duration of a given decennial period. Perceived in isolation, however, each enactment offers but a portion of the history of legislative reapportionment of Oklahoma's lower chamber. It is fitting, therefore, that this recapitulation conclude with an overview of the subject.

To summarize all of the foregoing acts, including the membership in each decennial period, the number which served the first session thereof, the per cent electing the majority, the number of over-represented districts, the relative weight as between the most and least represented districts, and the total variance as a measure of the degree of district representation, is the purpose of the following table.

TABLE 16

COMPARATIVE ANALYSIS OF HOUSE APPORTIONMENTS, 1913-63

Year of Apportionment	Decennial Membership	First Session	Percent Electing Majority	Over-Rep. Districts	Relative Weight	Total Variance
1911	504	99	41.88	35	2.8:1	.54
1921	523	107	41.68	39	3.0:1	.60
1931	590	118	38.03	47	6.8:1	1.60
1941	589	118	38.63	45	9.5:1	2.43
1951	605	123	33.77	57	10.1 :1	1.79
1961	600	120	29.48	65	14.0:1	2.01

Note initially the total number of both regular and flotorial members serving each decennium in the House of Representatives and those

assigned in the first session, the sample used to derive subsequent calculations. Recognizing that there are five sessions per decennial period, it will be observed that three of the sample sessions in each period constitute exactly one-fifth of the corresponding total, and the remaining comparisons very nearly strike a similar average. In any event, abundantly clear in the last four columns is the extent to which malapportionment of the lower chamber has evolved. Beginning with the initial reapportionment act through to the last, the percentage of the people theoretically in a position to elect the majority decreased almost progressively with the passage of each successive act. Only the legislation of 1941 upset this trend, as evidenced by the fact that the majority of the members of the first session of that decennial period were responsible to .60 percent more of the people than were their predecessors a decade before. Inversely proportionate to this column are the final three columns, a consequence which is to be expected. There will be noted an almost successive increase in the number of overrepresented districts, the sole exception being in 1931. Equally meaningful is the column on relative weight which depicts the ratio between the largest and smallest population per representative in the various districts for that period. This gap has obviously broadened with time. As for the column designated total variance, it is a measure of political equality whereby the highest and lowest percentage of each district's relation to the overall average is subtracted therefrom and the product divided by two; as zero would suggest a perfect apportionment based upon population, the lower the figure the more representative of all the people is the act. By this criteria, it can be seen that the reapportionment

of 1941 was the least equitable, and whereas those which preceded it were commendable, those which followed were substantially as poor.

Designed to provide a handy reference to the year, session number, total apportionment, party affiliation of elected representatives, and the number of districts from which they were elected, is Table 17. Although largely self-explanatory, it should be noted that the membership of the House of Representatives has ranged from 92 to 123, that the Republican Party has had its difficulties in all but one session, that representative districts have ranged from 75 to 90, and that since the act of 1931 Oklahoma has utilized a standard 77 districts, having abandoned since 1913 the unconstitutional use of flotorial districts. Incidentally, flotorial districts should not be confused with the flotorial system, for whereas the former adjoined counties for such purpose, the latter is intended to afford representation for excess population to established representative districts.

Table 18 complements the foregoing to the extent that it lists, in appropriate brackets, the complete range or degree of county representation. Based upon the sample analyses of the first session of each decennial reapportionment, it was devised simply by averaging the percentage of each county's over-representation and under-representation. To appreciate more fully the nature of this table, it need be understood that it is unrelated to constitutional directives; rather, the counties were graded in relation to the average or the ideal percentage of 1.00 in each session. In contrast, here it can be observed that the average over-all is 1.28, and the relative weight as between most over-represented Cimarron County and most under-represented Oklahoma County is 5.49 to

TABLE 17

HOUSE SESSIONS, MEMBERSHIP, PARTY AFFILIATION AND REPRESENTATIVE DISTRICTS, 1907-63

Year	Legislative Session	Total Apportioned	Democratic	Republican	Regular Districts	Flotorial Districts
1907a	1st	109	92	17	75	15
1909b	2nd	109	68	41	75	15
1911c	3rd	109	83	26	75	15
1913d	4th	99	81	18	75	0
1915e	5th	98	76	17	75	0
1917	6th	111	85	26	75	0
1919	7th	104	74	30	75	0
1921f	8th	92	37	55	75	0
1923	9th	107	93	14	75	0
1925	10th	107	80	27	75	0
1927	11th	108	87	21	75	0
1929	12th	104	57	47	75	0
1931	13th	97	88	9	75	0
1933g	14th	118	112	5	77	0
1935h	15th	120	111	8	77	0
1937	16th	117	114	3	77	0
1939	17th	115	102	13	77	0
1941	18th	120	113	7	77	0
1943	19th	118	94	24	77	0
1945	20th	120	98	22	77	0
1947	21st	118	95	23	77	0
1949	22nd	115	104	11	77	0
1951	23rd	118	99	19	77	0
1953	24th	123	101	22	77	0
1955	25th	121	102	19	77	0
1957	26th	121	101	20	77	0
1959	27th	119	110	9	77	0
1961	28th	121	107	14	77	0
1963	29th	120	95	25	77	0

a Excludes both Cotton and Harmon counties which were not as yet created.
b Excludes both Cotton and Harmon counties which were not as yet created.
c Cotton County again encluded; apportionment for Swanson County included.
d Includes additional apportionment for Swanson County.
e Five members of the Socialist Party were elected to the House in this session.
f This was the only majority for the Republican Party among the 29 sessions.
g One Independent candidate was elected in this session.
h One Independent candidate was elected in this session.

Adapted from: DIRECTORY AND MANUAL OF THE STATE OF OKLAHOMA, 1963, pp. 166-190.

TABLE 18

RANGE OF REPRESENTATIVENESS,
BY COUNTY, 1913-63

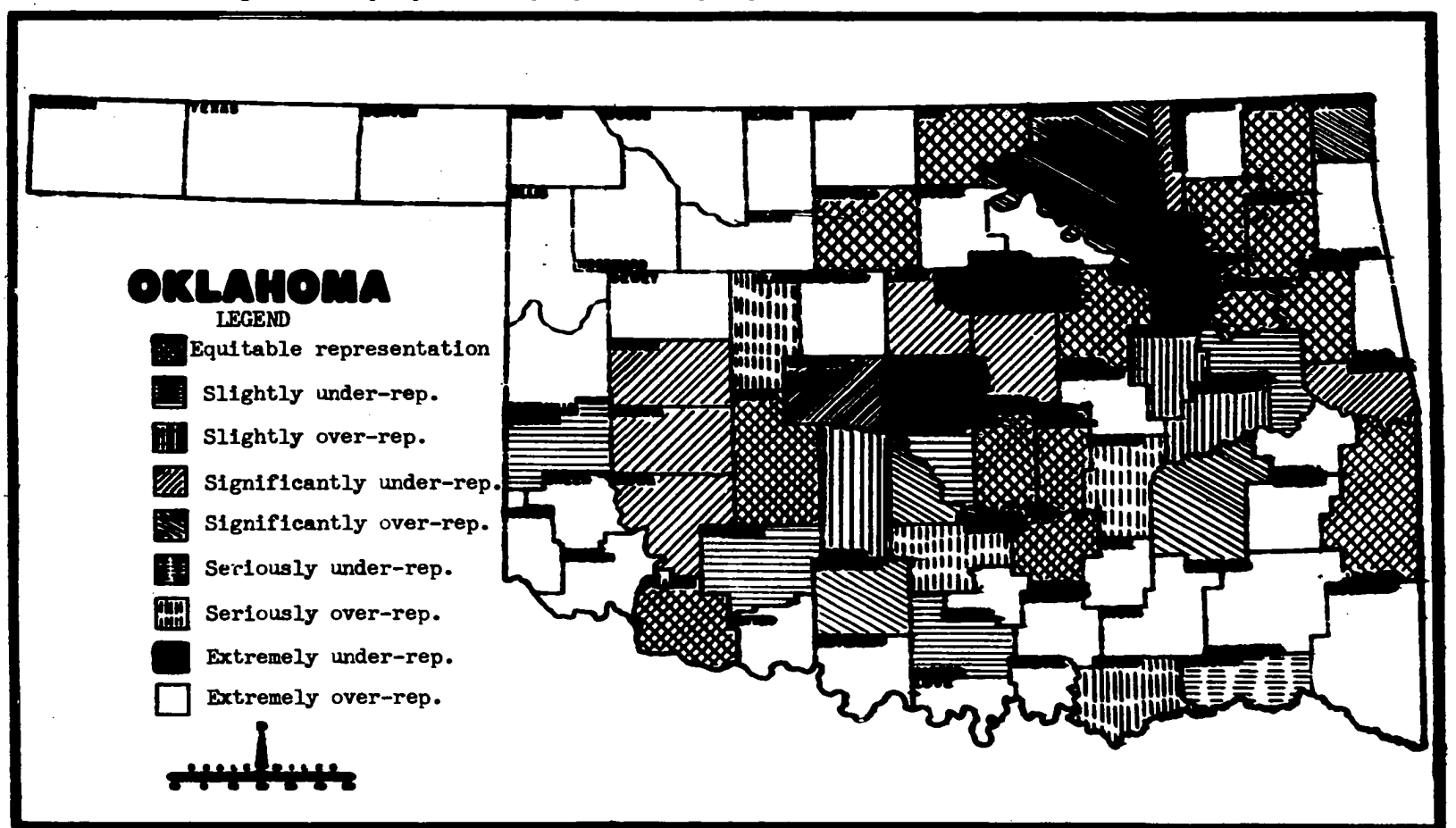
County	Average	County	Average
Cimarron	3.57	McIntosh	1.08
Harper	2.55	Grady	1.07
Ellis	2.17	Okmulgee	1.06
Love	2.11	(3)	
Roger Mills	2.11		
Beaver	2.10		
Harmon	2.03	Mayes	1.05
Dewey	1.87	Caddo	1.04
Coal	1.86	LeFlore	1.04
Marshall	1.85	Craig	1.03
Latimer	1.78	Pottawatomie	1.03
Major	1.70	Cherokee	1.02
Texas	1.68	Pontotoc	1.02
Okfuskee	1.65	Seminole	1.02
Cotton	1.64	Garfield	.99
Murray	1.56	Rogers	.99
Grant	1.52	Kay	.98
Alfalfa	1.47	Tillman	.98
Pushmataha	1.47	Creek	.97
Johnston	1.46	Wagoner	.97
Noble	1.43	(14)	
Jefferson	1.42		
Adair	1.39	Comanche	.93
Greer	1.39	Carter	.92
Nowata	1.39	Cleveland	.92
Delaware	1.32	Muskogee	.91
Kingfisher	1.31	Beckham	.90
Jackson	1.30	(5)	
Atoka	1.29		
Haskell	1.29	Canadian	.88
Woods	1.26	Kiowa	.88
Woodward	1.25	Sequoyah	.88
McCurtain	1.24	Lincoln	.87
Pawnee	1.21	Washita	.87
(34)		Logan	.86
		Custer	.85
Bryan	1.20	Washington	.85
Hughes	1.20	(8)	
Blaine	1.17		
Garvin	1.17	Choctaw	.84
(4)		(1)	
Stephens	1.15	Payne	.78
Osage	1.14	Tulsa	.70
McClain	1.13	Oklahoma	.65
Ottawa	1.11	(3)	
Pittsburg	1.11		
(5)			

one. Equally meaningful, it is well to note that 54 counties are above the ideal average, such that 23 counties have borne the brunt of a half century of political inequality in the House of Representatives. This disparity should serve also to emphasize that the voting strength of a county's delegation is relative to the total membership of the representative assembly.

The perennial existence of malapportionment in Oklahoma's lower chamber is a matter of common knowledge; the startling degree thereof among the 77 counties is not. Therefore, Figure 1, drawn from the last table, is provided to visually depict these distinctions and to classify counties accordingly, as indicated by the legend. Note that the categories of over-representation and under-representation are ascertained at increments equidistant from the average of each session heretofore analyzed. Although the geographic patterns are somewhat sporadic, it is evident that the extremely over-represented counties are located in most of the northwest and southeast, the counties most equitably represented largely in the east-central and northeast sectors, and the extremely under-represented counties are situated in the heart of two of the state's three standard statistical metropolitan areas. And as heretofore pointed up, this conscious discrimination as between residents of differing parts of the state has been due to over-representation of counties whose population consistently fell short of the ratios required for the first, second, and third regular members in the House of Representatives, not to mention a similar advantage in the distribution of flotorial members, and under-representation of counties whose population consistently exceeded the ratios required for more than three

Figure 1

Degrees of Equity and Inequity in County Representation in the House, 1913-1963*



*Based on calculations provided by county in Tables 10 through 15.

regular members and the figure required for additional flotorial representation.

Finally, a few comments are in order with regard to a technique of diffusion of political equality that is known as the nominating district. This electoral device was not employed by the framers of the Oklahoma Constitution in their initial plan of apportionment for the state (the temporary formula), nor was it prescribed as part of the permanent formula for subsequent reapportionments. It was, nevertheless, used on relatively few occasions in the acts governing the House of Representatives. This scheme has, of course, a great effect on party competition, for it tends to favor that with the normal state-wide majority as against the minority with only a local advantage. To implement this device, the party in power can go far to guarantee victory by simply designating a county (or key portion thereof) as the nominating district; the blunt fashion of the gerrymander, in contrast, is to district a strong minority county into a larger district favorable to the majority party. Although the nominating district technique has been to a much lesser extent practiced in the lower chamber, it will be seen that this impediment to individual political equality has been the rule rather than the exception in the equally malapportioned Oklahoma Senate.

CHAPTER VI

REAPPORTIONMENT OF THE SENATE: A HALF CENTURY OF DEFIANCE

The constitutional or initial apportionment of the Senate, as with the House of Representatives, was accomplished by the framers of Oklahoma's fundamental law.[1] The delegates to the Constitutional Convention allocated 44 senators among the original 33 districts comprised of then 75 counties. From each of 11 districts two senators were elected, and from each of the remaining 22 districts one senator was elected. Similar to its action for the House of Representatives, the apportionment devised by the Founding Fathers did not follow the formula developed elsewhere in the constitution, but as will be observed, it nevertheless constituted the second most equitable arrangement of the Senate experienced in the history of the state. Again as noted earlier, the constitutional plan was provided as a temporary measure, and was to affect the First, Second and Third sessions of the Oklahoma Legislature (1907, 1909, and 1911, respectively), after which the permanent constitutional reapportionment formula for the Senate was to be invoked at the first session of the legislature after each federal census.[2] The

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[1] Oklahoma Constitution, Article V, Section 11.

[2] Ibid., Article V, Section 9(a).

application of the constitutional directives,[3] and the extent to which the Senate varied therefrom, is herein the center of concern.

To generalize at the outset, the legislature has defied observance of the fundamental law to such degree that it has clearly ignored it. Although the legislature attempted a comprehensive Senate reapportionment on one occasion, it did not effect a valid general statute from statehood through to the present time. Unlike the experience of the House, the Senate was not reapportioned after 1910 or any subsequent decennial period; instead, the legislatures saw fit to pursue a policy of expediency in creating but three new districts and passing frequent piecemeal acts regarding nominating districts, neither of which were contemplated by the constitution.

As a forward, it is desirable to reiterate in part those portions of the Oklahoma Constitution germane to the reapportionment of the Senate. Prescribed in Section 9 of Article V, the pertinent directives read as follows:

> "(a) At the time each senatorial apportionment is made after the year Nineteen Hundred and Ten the State shall be divided into forty-four districts to be called senatorial districts, each of which shall elect one senator; and the Senate shall always be composed of forty-four senators, except that in event any county shall be entitled to three or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent. Said districts shall be numbered from One to Forty-four inclusive, and each of said districts shall contain as near as may be an equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct, and shall be in as compact form as practicable and shall remain unaltered until the next decennial period, and shall at all times consist of contiguous territory."

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[3] Ibid., Article V, Sections 9, 9(a) and 9(b).

Note particularly that the provision for 44 senators to be elected from 44 districts was to be the rule; the exception would evolve only at such time that a county became entitled to three or more senators, in which case they were to be afforded as an addition to the foregoing whole number of senators, not districts. Moreover, it need be stressed that the above sub-section makes very clear an anticipation of political equality at the polls; population as determined by the federal decennial census, or as might have been otherwise ascertained by a legislature, was to form the basis of the formation of districts and assignment of seats in the upper chamber. And such apportionment was not to be altered for the succeeding ten years. Again, as the legislature did not ascertain population by any manner other than the federal census, the latter will appropriately be utilized to determine each decennial senatorial ratio of representation.

> "(b) No county shall ever be divided in the formation of a Senatorial district except to make two or more senatorial districts wholly in such county. No town, and no ward in a city, when constituting only one voting precinct, shall be divided in the formation of a senatorial district, nor shall any senatorial district contain a greater excess in population over an adjoining district in the same county than the population of a town, or ward in a city, constituting only one voting precinct therein, adjoining such district. Towns, and wards in cities, constituting only one voting precinct, which may, from their location, be included in either of two senatorial districts, shall be so placed as to make such districts most nearly equal in number of inhabitants."

As no county was in fact divided in the formation of senatorial districts in the period 1907-1963, the larger portion of the above subsection will not prove relevant. Reasserted, however, and worthy of note, is the concluding portion which again underscores a presumption of equality as among and within senatorial districts.

These two provisions of the state constitution embody the criteria essential to an equitable reapportionment of the Senate. And as indicated, this chapter has been prepared to ascertain the degree to which acts of the legislature have measured up to them. In this effort, another set of facts and statistics are necessary, again specifically in the name of statutes and populations, upon which all subsequent calculations are based. In the Appendix, and designated C-1 through C-9, are the consequences of each piecemeal apportionment of the Senate, from 1913 through 1963, respectively, including the population of each senatorial district and the number of senators assigned thereto. As with the analysis of the House acts, reference to the Senate acts is urged to visualize more fully each forthcoming analysis and commentary thereon. Unlike the analyses relative to the lower chamber, however, those provided as to the upper chamber are all inclusive rather than a sampling of sessions in each decennial period.

Sessions of 1913-19 and the Oklahoma Constitution.

Unlike their action relative to the House of Representatives (respecting in large part the pertinent directives of the state constitution), the early Oklahoma Legislatures, like their successors, failed totally to implement the formulae respecting the Senate. This is evidenced by a complete omission of the Senate in the reapportionment act of 1911. Consequently, following the turn of the first decade of the twentieth century, the apportionment of the upper chamber was based upon the original (although presumed to be temporary) plan for the Senate, as amended by the entry of two new counties. This arrangement is categorized in Appendix C-1 and the effect thereof analyzed in Table 19.

TABLE 19 -- SESSIONS OF 1913-1919

SENATE

Dist.	Pop.	No.of Sens.	Pop.per Senator	#	Dist.	Pop.	No.of Sens.	Pop.per Senator	#
18	48,338	2	24,169	1.56	6	75,791	2	37,896	.99
4	27,777	1	27,777	1.36	13	78,374	2	39,187	.96
26	28,353	1	28,353	1.33	21	40,448	1	40,448	.93
20	59,479	2	29,740	1.27	17	81,171	2	40,586	.93
19	61,047	2	30,524	1.23	1	40,622	1	40,622	.93
29	31,000	1	31,000	1.21	5	42,387	1	42,387	.89
2	62,067	2	31,034	1.21	32	43,201	1	43,201	.87
12	31,740	1	31,740	1.19	30	43,960	1	43,960	.86
33	31,959	1	31,959	1.18	22	44,035	1	44,035	.86
10	32,277	1	32,277	1.17	23	44,295	1	44,295	.85
9	65,860	2	32,960	1.14	27	92,579	2	46,290	.81
15	65,994	2	32,997	1.14	25	47,650	1	47,650	.79
8	33,050	1	33,050	1.14	11	49,958	1	49,958	.75
7	33,386	1	33,386	1.13	31	52,479	1	52,479	.72
3	34,159	1	34,159	1.10	24	52,661	1	52,661	.72
28	35,540	1	35,540	1.06	14	108,733	2	54,367	.69
16	36,785	1	36,785	1.02		938,344 (56.62%)	21	44,683 ave.	
	718,811 (43.38%)	23	31,253 ave.						
			TOTALS: 1,657,155		44	37,662 ave.			

At the extreme, the population represented in District 18 had a relative weight 2.25 times that of the population represented in District 14.

Source: Original temporary apportionment of constitution, as amended by S.B. 357 of Oklahoma Legislature, 1913, and S. B. 18 of Oklahoma Legislature, 1917.
(See Appendix C-1 for counties comprising each District.)

Prior to an examination of the districting for this period, two explanations are in order. First, it need be noted that pursuant with statutory authority relative to the creation of new counties,[4] the counties of Harmon (in 1909) and Cotton (in 1912) were properly incorporated. Subsequently, the Third Oklahoma Legislature districted Harmon with Greer,[5] and the Fourth Oklahoma Legislature districted Cotton with Comanche, Jefferson and Stephens counties.[6] Neither action, however, affected the number of senators to which either district had been assigned. Secondly, the sum total of legislative activity respecting the Senate during this period amounted to the establishment of six nominating districts, an electoral scheme neither practiced by the Founding Fathers nor specified in the constitution as a permissive device in subsequent reapportionments. In 1913, the legislature divided District 13 into nominating districts composed of (1) Lincoln and (2) Pottawatomie counties. At the same time, it divided District 15 into nominating districts composed of (1) Grady and (2) Caddo counties.[7] Two sessions thereafter, in 1917, the legislature also divided District 14 into nominating districts composed of (1) Canadian and (2) Oklahoma counties.[8]

Regarding the effect of legislative inaction in terms of a complete reapportionment of the Senate, the constitutional districting

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[4]Oklahoma Session Laws, 1907, Ch. 26, and 1911, Ch. 20.

[5]O.S.L., 1911, p. 423.

[6]O.S.L., 1913, p. 750.

[7]O.S.L., 1913, S.B. 357, pp. 111-12.

[8]O.S.L., 1917, S.B. 18, pp. 4-5.

was observed for the three sessions between 1913-19. Based upon the subsequent decennial census, as opposed to the special census employed earlier to ascertain the effect of the temporary plan by the framers of the constitution, it is evident that the apportionment proved only slightly less equitable than the original. Nevertheless, it should not be overlooked that 33 districts were utilized, rather than the required 44, to which 44 senators would properly have been assigned. Since no county was entitled to three or more senators, that portion of the constitutional formula was not as yet relevant.

Had the fundamental law of the state been observed, the total population as divided by the required number of districts (1,657,155 ÷ 44) would have produced a senatorial ratio of 37,662. Although the same is shown as a total result in the table, one need be cautioned to recognize that such represents the ideal average population per senator, and not per district. That the legislature failed, on the one hand to meet the 44 district requirement, and on the other hand to utilize the senatorial ratio to determine the allocation of seats in the Senate, is clearly evident. As a result, the apportionment for this period constituted more an act of legislative defiance.

In any event, it is of interest that the effect of the plan proved only less equitable than that of the framers of the constitution and that of the following session. For example, each member in these sessions might ideally have represented 37,662 persons; in contrast, the majority group represented an average of 31,253 persons and the minority group 44,683 persons. More important, the majority was responsible to 43.38% of the people and the minority to 56.62%, again a ratio of

representativeness exceeded on but two occasions. Of equal significance, the last column apart from each district is again headed by the symbol (#). It measures the degree of over-representation and under-representation, whereby the average number of persons per senator (1,657,155 ÷ 44 = 37,662) is divided by the number of persons per senator in each district to depict the degree above and below the mean. It is apparent that whereas 17 districts were in varying degree over-represented, only 16 districts were in varying degree under-represented, a condition unparalleled in the history of senator apportionments and destined to grow worse with time.

Session of 1921 and the Oklahoma Constitution.

The first of a series of substantive piecemeal reapportionments of the Senate was enacted by the Seventh Oklahoma Legislature in 1919. In contrast with similar succeeding acts, however, that which it accomplished in view of an overall effect was not again to be repeated.

A non-constitutional if not unconstitutional effort, this act ignored the fundamental law to the extent that it not only failed to observe the pertinent formulae but was passed at an unauthorized time and in an unauthorized fashion.[9] Reapportionments, it will be recalled, are to follow each federal decennial census and be general rather than special enactments.

In any event, the action of 1919 served to create the first of three new senatorial districts. This was effected by detaching Osage

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[9]It should be observed at this point that the practice of piecemeal legislation was later to be ruled unconstitutional by the Oklahoma Supreme Court. This development is discussed in depth in Chapter VII.

and Washington counties from Districts 9 and 31, respectively, and combining the same to form District 34. Consequently, Grant and Kay counties were left to comprise District 9 whereas Tulsa County alone composed District 31.[10] In all, 44 senators were again authorized, for the member authorized for the new district was balanced by the loss of a senator in District 9, and the other counties and districts involved were unaffected in terms of representation in the Senate.

This modification may be observed in Appendix C-2, as analyzed in Table 20, each being appropriately based upon the 1910 federal decennial census (last succeeding) as it affected the 1921 session. Second in population equality only to the temporary plan of the framers of the constitution, it nevertheless must be recognized that this apportionment provided 44 senators be assigned to 34 rather than 44 districts. As no county would have been entitled to more than two senators, that portion of the Senate formulae did not yet prove germane.

If the fundamental law of Oklahoma had been followed, the total population as divided by the required number of districts (1,657,155 ÷ 44) would have again produced a senatorial ratio of 37,662. But again to the contrary, the legislature was not so guided, and although the result proved most commendable, the end of equitable representation in the Senate was not brought about by constitutional criteria.

A slight improvement over the preceding sessions of this decade, it can be seen that each member in this session might also have ideally represented 37,662 persons; in fact, the majority group was responsible

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[10] O.S.L., 1919, S.B. 387, p. 175.

TABLE 20 -- SESSION OF 1921

SENATE

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
18	48,338	2	24,169	1.56	6	75,791	2	37,896	.99
4	27,777	1	27,777	1.36	13	78,374	2	39,187	.96
26	28,353	1	28,353	1.33	21	40,448	1	40,448	.93
20	59,479	2	29,740	1.27	17	81,171	2	40,586	.93
19	61,047	2	30,524	1.23	1	40,622	1	40,622	.93
29	31,000	1	31,000	1.21	5	42,387	1	42,387	.89
2	62,067	2	31,034	1.21	32	43,201	1	43,201	.87
12	31,740	1	31,740	1.19	30	43,960	1	43,960	.86
33	31,959	1	31,959	1.18	22	44,035	1	44,035	.86
10	32,277	1	32,277	1.17	23	44,295	1	44,295	.85
15	65,994	2	32,997	1.14	9	45,759	1	45,759	.82
8	33,050	1	33,050	1.14	27	92,579	2	46,290	.81
7	33,386	1	33,386	1.13	25	47,650	1	47,650	.79
3	34,159	1	34,159	1.10	11	49,958	1	49,958	.75
31	34,995	1	34,995	1.08	24	52,661	1	52,661	.72
28	35,540	1	35,540	1.06	14	108,733	2	54,367	.69
16	36,785	1	36,785	1.02		931,624	21	44,363 ave.	
34	37,585	1	37,585	1.00		(56.22%)			
	725,531 (43.78%)	23	31,545 ave.						
			TOTALS:	1,657,155	44	37,662 ave.			

At the extreme, the population represented in District 18 had a relative weight 2.25 times that of the population represented in District 14.

Source: Note in Table 19, amended by S.B. 387 of Oklahoma Legislature, 1919. (See Appendix C-2 for counties comprising each District.)

to an average 31,545 persons and the minority to 44,363 persons. As a result, the majority represented 43.78% of the people and the minority 56.22%, a contrast exceeded only by the temporary constitutional plan. As for the degree of district representation, this concluding session of the decennial period differed little with the predecessor sessions, as evidenced by 17 districts having been over-represented, 16 districts under-represented, and one district in near perfect accord with the overall average.

Sessions of 1923-31 and the Oklahoma Constitution.

Comparable to the initial legislative inaction regarding senatorial apportionment at the turn of the first decade of the twentieth century, no mention of the Senate is to be found in the relevant act of 1921, and this was coupled with another effort with regard to nominating districts midway in the decennial period. But unlike the sessions heretofore reviewed, the road leading to gross inequalities in representation was paved during this period.

Also a complete departure from the guidance of the Oklahoma Constitution, the districting for this decade was merely a follow-up of that condoned in the last decade, amended to account for the subsequent federal decennial census and its effect upon the realities of senatorial representation at the time. Prior to commenting on the consequence of this development, however, it is desirable to note the nature of all legislative activity during this period respecting the Senate. In addition to the six nominating districts earlier created, four others were sanctioned in 1925: District 17 was divided into nominating districts comprised of (1) Stephens and Jefferson counties and (2) Cotton

and Comanche counties,[11] and District 27 was divided into nominating districts composed of (1) Muskogee and (2) Haskell and McIntosh counties.[12] This brought to 10 the total number of nominating districts utilized in the election process for the upper chamber.

As depicted in Appendix C-3 and examined in Table 21, the 1923-31 apportionment continued to provide for the election of 44 senators to serve 34 districts. In that no county was entitled to three or more senators in this, as all preceding sessions, the pertinent constitutional provision was still to be made applicable.

Pursuant to the fundamental law, the senatorial ratio, as determined by dividing the total population by the required number of districts (2,028,283 ÷ 44), should have been 46,098 and utilized for the purpose of districting counties on an equitable basis. This ratio, however, was not properly applied, and the heretofore reasonable degree of population equality was no longer afforded, principally due to the fact that the constitution was ignored, coupled with a substantial increase and relocation of population.

No longer, beginning with this session through 1963, were all of the people of Oklahoma to be reasonably represented in the upper chamber of their state legislature. As can be observed in the last mentioned table, each member of the Senate in this period might have ideally been responsible to 46,098 people, but the widening of the gap is evident in the fact that the majority group represented an average of

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[11] O.S.L., 1925, S.B. 2, pp. 1-2.

[12] O.S.L., 1925, S.B. 167, pp. 205-06.

TABLE 21 -- SESSIONS OF 1923-1931

SENATE

Dist.	Pop.	No.of Sen	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
2	53,734	2	26,867	1.72	20	79,968	2	39,984	1.15
4	27,097	1	27,097	1.70	28	40,489	1	40,489	1.14
12	27,550	1	27,550	1.67	17	85,664	2	42,832	1.08
7	28,679	1	28,679	1.61	5	44,574	1	44,574	1.03
3	30,602	1	30,602	1.51	9	50,979	1	50,979	.90
16	31,546	1	31,546	1.46	22	51,096	1	51,096	.90
6	64,067	2	32,034	1.44	25	52,570	1	52,570	.88
10	32,686	1	32,686	1.41	27	107,511	2	53,756	.86
18	65,795	2	32,898	1.40	23	54,757	1	54,757	.84
33	33,504	1	33,504	1.38	21	56,631	1	56,631	.81
15	68,150	2	34,075	1.35	34	63,538	1	63,538	.73
26	34,799	1	34,799	1.32	14	138,595	2	69,298	.67
19	71,160	2	35,580	1.30	30	74,848	1	74,848	.62
29	35,989	1	35,989	1.28	32	76,443	1	76,443	.60
8	37,500	1	37,500	1.23	24	87,563	1	87,563	.53
1	39,082	1	39,082	1.18	11	92,660	1	92,660	.50
13	79,434	2	39,717	1.16	31	109,023	1	109,023	.42
	761,374 (37.54%)	23	33,103 ave.			1,266,909 (62.46%)	21	60,329 ave.	
			TOTALS:	2,028,283	44	46,098 ave.			

At the extreme, the population represented in District 2 had a relative weight 4.06 times that of the population represented in District 31.

Source: Note in Table 20, as amended by S.B. 2 and S.B. 167 of Oklahoma Legislature, 1925.
(See Appendix C-3 for counties comprising each District.)

33,103 persons whereas the minority group represented an average of 60,329 persons. Consequently, the majority group was responsible to 37.54% of the people, while the minority group responsibility climbed to 62.46% of the people. As for the increasing disparity in the degree of district representation, at this time 21 qualified as over-represented and but 13 were under-represented.

Sessions of 1933-37 and the Oklahoma Constitution.

Members of these sessions of the Oklahoma Senate represented the state citizenry in a unique period: one of maximum population growth that preceded decades of its slow but sure decline, coupled with its continued relocation. In conjunction with this phenomenon, the constitutional directives relating to the upper chamber were again pigeonholed while the legislatures proceeded not only to endorse unauthorized piecemeal acts, but expanded the number of nominating districts and ignored another fundamental apportionment proviso not heretofore relevant.

With regard to the above generalizations, a few specific statements are in order. As evidenced in Appendix C-4, these sessions of the Senate were contemporary to the peak Oklahoma population of 2,396,040 persons, a figure unsurpassed in the history of the state and to decline with each succeeding decade. Equally important, however, is the fact that a general reapportionment was not forthcoming. Instead, the Thirteenth Oklahoma Legislature saw fit only to enact a piecemeal law which simply transferred Cherokee County from District 30 to District 28.[13] Although having the effect of equalizing the populations as between the

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[13]O.S.L., 1931, S.B. 156, p. 9.

respective districts, it was but an isolated example of an overall need. In addition to this action, the only other pertinent legislation during this period occurred during the subsequent session in which District 19 was divided into nominating districts composed of (1) Cleveland and McClain, and (2) Garvin counties.[14] This brought to 12 the total number of nominating districts utilized in Senate elections. As for the defiance of another fundamental constitutional provision, it can be observed that for the first time each of two counties became entitled to three or more senators. These were Oklahoma County (population: 221,738 ÷ 54,455), which was entitled to at least four senators, but was awarded but two to share with Canadian County in District 14, and Tulsa County (population: 187,574 ÷ 54,455), which was entitled to at least three senators, but was awarded but one as District 31. Nevertheless, the legislatures of this period chose not to conform with the fundamental law by awarding said counties a total of seven rather than three senators. Had this constitutional proviso been invoked, at least 49 senators should have been elected from 44 senatorial districts.

As it developed, the application of a succeeding federal decennial census proved to broaden the inequities among districts. Table 22 reflects these disparities in the plan of apportionment that continued to elect 44 senators from 34 districts. Properly ascertained, the senatorial ratio would have been set at 54,455 (2,396,040 ÷ 44), but the majority was responsible to an average of 35,747 and the minority to an average of 74,946 persons. Consequently, this practice found the majority

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[14] O.S.L., 1933, S.B. 396, p. 271.

TABLE 22 -- SESSIONS OF 1933-1937

SENATE

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
26	24,108	1	24,108	2.26	17	100,220	2	50,110	1.09
7	27,434	1	27,434	1.98	13	100,310	2	50,155	1.09
12	27,761	1	27,761	1.96	25	50,778	1	50,778	1.07
20	58,331	2	29,166	1.87	28	51,731	1	51,731	1.05
18	63,468	2	31,734	1.72	5	53,300	1	53,300	1.02
33	32,567	1	32,567	1.67	27	107,564	2	53,782	1.01
3	32,849	1	32,849	1.66	30	53,912	1	53,912	1.01
2	66,946	2	33,473	1.63	21	54,080	1	54,080	1.01
4	34,116	1	34,116	1.60	22	59,350	1	59,350	.92
10	35,021	1	35,021	1.55	9	64,336	1	64,336	.85
29	35,935	1	35,935	1.52	24	73,645	1	73,645	.74
16	36,412	1	36,412	1.50	34	75,111	1	75,111	.72
1	38,721	1	38,721	1.41	32	78,986	1	78,986	.69
19	77,924	2	38,962	1.40	11	101,020	1	101,020	.54
6	86,582	2	43,291	1.26	23	112,090	1	112,090	.49
8	45,588	1	45,588	1.19	14	249,853	2	124,927	.44
15	98,417	2	49,209	1.11	31	187,574	1	187,574	.29
	822,180 (34.11%)	23	35,747 ave.			1,573,860 (65.89%)	21	74,946 ave.	
			TOTAL:	2,396,040	44	54,455 ave.			

At the extreme, the population represented in District 26 had a relative weight 7.78 times that of the population represented in District 31.

Source: Note in Table 21, as amended by S.B. 156 of Oklahoma Legislature, 1931, and S.B. 396 of Oklahoma Legislature, 1933.
(See Appendix C-4 for counties comprising each District).

group responsible to 34.11% of the people, whereas the minority group responsibility had risen to 65.89% of the people. Similarly informative, the number of over-represented districts climbed to 25 and the number of under-represented districts was reduced to nine.

Sessions of 1939-41 and the Oklahoma Constitution.

In the concluding portion of the decennial period, these sessions are considered separately to account for the second of three substantive piecemeal apportionments that affected the overall composition of the Senate. The Sixteenth Oklahoma Legislature passed three significant districting alterations, but again at a time and in a fashion not in accord with the state constitution.

As noted in Appendix C-5, there was created in 1937, to affect these and subsequent sessions, new senatorial District 35. This was accomplished by detaching Atoka and Coal counties from Bryan, with which they had heretofore been combined, to form District 20. Atoka and Coal thereby constituted a new district, and Choctaw County, heretofore a part of District 24, was attached to Bryan County to form a realigned District 20. This had the effect also of reducing the composition of District 24 to McCurtain and Pushmataha counties.[15] Once again, this legislation did not follow a federal decennial census, nor can it be described as a general reapportionment, although as will be seen it did reduce slightly the inequities in the first three sessions of this decade.

Similar to the criticism offered in the preceding section, all constitutional directives were ignored, including that which would have

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[15]O.S.L., 1937, S.B. 93, p. 21.

entitled Oklahoma and Tulsa counties to four and three senators, respectively, the result of which would have produced a Senate of at least 49 members elected from 44 districts. In this instance, however, the above legislation amended in part the overall effect of the apportionment. As depicted in Table 23, the plan directed that 44 senators be elected from then 35 districts. Again, had the senatorial ratio been properly ascertained the figure 54,455 would have been utilized. That this ratio was not employed is made clear by the fact that the majority group was organized to represent an average of 36,496 persons and the minority group so aligned as to represent an average of 74,125 persons. The result of this inequity is borne out by the evidence that the same majority was responsible to 35.03% of the inhabitants of the state while the same minority was made responsible to 64.97% of the citizenry. In contrast with the earlier sessions of this decennial period, the latter sessions had an additional, or 26, districts over-represented and the number of under-represented remained at nine.

Sessions of 1943-51 and the Oklahoma Constitution.

The third and final substantive piecemeal apportionment of the senate, coupled with a variety of other redistricting acts, was endorsed by the Eighteenth Oklahoma Legislature. For the last time successful, these efforts, in contrast with those of the past, materially aided the cause of malapportionment in the upper chamber. Not only did they too conflict with the fundamental law of the state, in that they were partial rather than general laws, but they also served to establish the basis for a highly inequitable arrangement that was to further degrade the principle of political equality over two decades.

TABLE 23 -- SESSIONS OF 1939-1941

SENATE

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
26	24,108	1	24,108	2.26	17	100,220	2	50,110	1.09
35	26,054	1	26,054	2.09	13	100,310	2	50,155	1.09
7	27,434	1	27,434	1.98	25	50,778	1	50,778	1.07
12	27,761	1	27,761	1.96	28	51,731	1	51,731	1.05
18	63,468	2	31,734	1.72	5	53,300	1	53,300	1.02
33	32,567	1	32,567	1.67	27	107,564	2	53,782	1.01
3	32,849	1	32,849	1.66	30	53,912	1	53,912	1.01
2	66,946	2	33,473	1.63	21	54,080	1	54,080	1.01
4	34,116	1	34,116	1.60	20	56,419	1	56,419	.97
10	35,021	1	35,021	1.55	22	59,350	1	59,350	.92
29	35,935	1	35,935	1.52	9	64,336	1	64,336	.85
16	36,412	1	36,412	1.50	34	75,111	1	75,111	.72
1	38,721	1	38,721	1.41	32	78,986	1	78,986	.69
19	77,924	2	38,962	1.40	11	101,020	1	101,020	.54
6	86,582	2	43,291	1.26	23	112,090	1	112,090	.49
8	45,588	1	45,588	1.19	14	249,853	2	124,927	.44
15	98,417	2	49,209	1.11	31	187,574	1	187,574	.29
24	49,503	1	49,503	1.10		1,556,634 (64.97%)	21	74,125 ave.	
	839,406 (35.03%)	23	36,496 ave.						

TOTALS: 2,396,040 44 54,455 ave.

At the extreme, the population represented in District 26 had a relative weight 7.78 times that of the population represented in District 31.

Source: Note in Table 22, as amended by S.B. 93 of Oklahoma Legislature, 1937.
(See Appendix C-5 for counties comprising each District.)

In 1941, three bills were enacted into laws that brought about conditions of representation in the Senate sufficiently objectionable to affected minorities to prompt future appeals to the courts in an effort to restrain legislatures from comparable future action. Paramount among them was the creation of new District 36. This was accomplished by detaching the counties of Johnston and Murray from Districts 26 and 18, respectively, to form the additional district.[16] Simultaneously, Love County was detached from District 18 (leaving only Carter County to compose that district), and in turn attached to Marshall County (formerly aligned with Murray and Johnston counties) to form realigned District 26. These redistricting features may better be perceived by reference to Appendix C-6. The two other enactments approved in the 1941 session, to affect all subsequent sessions through 1963, related once more to the device of nominating districts. By way of one measure, it divided District 2 into nominating districts composed of (1) Dewey, Ellis and Roger Mills and (2) Beckham counties,[17] and via another measure it divided District 6 into nominating districts to be comprised of (1) Kiowa and Washita and (2) Custer counties.[18] These measures brought to 16 the total number of nominating districts utilized in Senate elections over the next twenty years.

Also worthy of note, although not germane to the status of Senate apportionments hereafter, are two additional acts passed in 1945

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[16] O.S.L., 1941, H.B. 458, p. 39.

[17] O.S.L., 1941, S.B. 167, p. 38.

[18] O.S.L., 1941, S.B. 275, pp. 38,39.

but subsequently ruled unconstitutional. These measures sought, on the one hand, to reduce District 9 and increase District 7 by the transfer of Grant County,[19] and on the other hand, to change the nominating districts in District 2 to (1) Dewey and Ellis and (2) Beckham and Roger Mills counties.[20] As will be related in detail in the following chapter, the Oklahoma Supreme Court finally observed that such piecemeal legislation was contrary to the fundamental law of the state.

Relative to the effect of the apportionment for this period, it is immediately evident in Table 24 that once again both Oklahoma and Tulsa counties, each with population multiples three or more times the senatorial ratio, were denied the additional senators to which they were entitled. The only counties ever affected by this proviso of the constitution, they should have had at least four and three senators, respectively, in each of these sessions, a consequence of which should have been a Senate of at least 49 members elected from 44 districts. To the contrary, 44 senators were elected from then 36 districts. Had the fundamental law been followed, a senatorial ratio of 53,101 would have been ascertained (2,336,434 $\div$ 44) and applied to the 77 counties to form the 44 districts. Again, the ratio was not made applicable, and although each member might have ideally represented 53,101 persons, the majority group was responsible to an average district of 33,753 persons while the minority group was responsible to an average district of 74,291 persons. This means, in effect, that the majority group represented

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[19] O.S.L., 1945, S.B. 119, p. 38.

[20] O.S.L., 1945, S.B. 104, p. 39.

TABLE 24 -- SESSIONS OF 1943-1951

SENATE

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
26	23,817	1	23,817	2.23	5	43,462	1	43,462	1.22
4	24,569	1	24,569	2.16	8	45,484	1	45,484	1.17
12	25,245	1	25,245	2.10	25	48,985	1	48,985	1.08
7	26,075	1	26,075	2.04	17	98,069	2	49,035	1.08
2	53,352	2	26,676	1.99	27	107,335	2	53,668	.99
1	28,652	1	28,652	1.85	30	54,441	1	54,441	.98
36	29,801	1	29,801	1.78	22	55,468	1	55,468	.96
3	31,185	1	31,185	1.70	21	58,246	1	58,246	.91
35	31,513	1	31,513	1.69	28	59,923	1	59,923	.89
10	32,221	1	32,221	1.65	9	60,212	1	60,212	.88
6	68,164	2	34,082	1.56	24	60,784	1	60,784	.87
16	34,160	1	34,160	1.55	20	66,496	1	66,496	.80
33	36,852	1	36,852	1.44	32	71,743	1	71,743	.74
19	78,083	2	39,042	1.36	34	72,061	1	72,061	.74
15	82,683	2	41,342	1.28	11	91,560	1	91,560	.58
13	83,906	2	41,953	1.27	23	100,993	1	100,993	.53
29	42,751	1	42,751	1.24	14	271,488	2	135,744	.39
18	43,292	1	43,292	1.23	31	193,363	1	193,363	.27
	776,321 (33.23%)	23	33,753 ave.			1,560,113 (66.77%)	21	74,291 ave.	
			TOTALS: 2,336,434		44	53,101 ave.			

At the extreme, the population represented in District 26 had a relative weight 8.12 times that of the population represented in District 31.

Source: Note in Table 23, as amended by S.B. 167, S.B. 275, and H.B. 458 of Oklahoma Legislature, 1941.
(See Appendix C-6 for counties comprising each District).

33.23% of the people, whereas the minority group represented the remainder or 66.77% of the people. This imbalance, moreover, was so distributed among the districts as to reduce, from the previous decade, the number of those over-represented to 22, and to increase to 14 the number of those under-represented.

Sessions of 1953-61 and the Oklahoma Constitution.

As the reapportionment act of 1951 makes no reference to any form of redistricting for the Senate, and no act of the legislature was to mention the subject until 1961, the plan of apportionment utilized in the preceding period governed each of these sessions as well. It will be found, however, that due to population shifts during the decade the disparities resulting from complete evasion of constitutional standards grew even worse.

Of significance, a review of Appendix C-7 reveals that the populations of the state's two largest counties had by this time reached such magnitude as to entitle Oklahoma and Tulsa to at least six and four senators, respectively. Moreover, these being the only counties and districts entitled to more than one senator, the Senate should have been composed of at least 52 members elected from 44 districts. Putting aside the fundamental law of the state, however, it is obvious in Table 25 that the Senate continued to be composed of 44 members elected from 36 districts.

Once more, instead of using the directed senatorial ratio of 50,758 (population of the state divided by the required number of districts), no pretense of political equality was made. As a result, whereas the figure constituted an ideal number of persons to which each senator might have been responsible, the majority group represented an average of but 28,592 and the minority group an average of 75,035 persons. Therefore, while

TABLE 25 -- SESSIONS OF 1953-1961

SENATE

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
26	15,898	1	15,898	3.19	25	41,031	1	41,031	1.24
4	19,828	1	19,828	2.56	19	85,624	2	42,812	1.19
7	20,978	1	20,978	2.42	24	43,589	1	43,589	1.16
36	21,383	1	21,383	2.37	21	44,966	1	44,966	1.13
12	22,170	1	22,170	2.29	30	46,952	1	46,952	1.08
35	22,325	1	22,325	2.27	27	96,715	2	48,358	1.05
2	45,137	2	22,569	2.25	20	49,404	1	49,404	1.03
10	25,772	1	25,772	1.97	8	52,820	1	52,820	.96
16	27,909	1	27,909	1.82	28	53,680	1	53,680	.95
6	57,680	2	28,840	1.76	17	110,538	2	55,269	.92
3	28,909	1	28,909	1.76	9	59,353	1	59,353	.86
1	32,212	1	32,212	1.58	32	61,302	1	61,302	.83
33	32,266	1	32,266	1.57	34	65,951	1	65,951	.77
13	65,619	2	32,810	1.55	23	71,547	1	71,547	.71
15	69,785	2	34,893	1.45	11	89,573	1	89,573	.57
18	36,455	1	36,455	1.39	14	350,996	2	175,498	.29
22	37,612	1	37,612	1.35	31	251,686	1	251,686	.20
5	37,680	1	37,680	1.35		1,575,727	21	75,035 ave	
29	38,006	1	38,006	1.34		(70.55%)			
	657,624 (29.45%)	23	28,592 ave.						
	TOTALS:		2,233,351		44	50,758 ave.			

At the extreme, the population represented in District 26 had a relative weight 15.83 times that of the population represented in District 31.

Source: Note in Table 24, as related to subsequent decennial census. (See Appendix C-7 for counties comprising each District.)

the former group of districts and senators were chosen to reflect the sentiments of 29.45% of the inhabitants of the state, the latter group had to speak for the remainder or 70.55% of the citizenry of the state. Not only had the degree of unequal district representation increased over the preceding period, but in addition, the number of over-represented districts reached an earlier high of 26, as the number of under-represented districts was plummeted to 10.

Session of 1963 and the Oklahoma Constitution.

Pressed by an ever-growing awareness of the population disparities existent in the apportionment of the Senate, the more effective influence of pressure groups in the negatively affected districts, and a knowledge that the Supreme Court of the United States might soon make the subject justiciable, the Twenty-eighth Oklahoma Legislature passed in 1961 the first comprehensive reapportionment measure affecting the Senate.[21] After serious consideration given at least a dozen proposals, alternately based upon county entity, area, geographic and economic factors, and permanent population, a plan evolved for the upper chamber to consist of 52 members to be elected from 44 districts. As explained in the act, these districts were to be created as nearly as may be according to the number of their inhabitants, but each district would at all times be entitled to no less than one senator, and where the district consists of four or more counties, two senators. Moreover, the act contained a population formula, shown below, although no reference was made to its application beyond the subsequent session.

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[21] O.S.L., 1961, S.B. 179, pp. 745-48.

District Classification	Senators
69,999 and below	1
(Qualified by provision that a senatorial district with two specific nominating districts was to be entitled to two senators)	
70,000 - 140,000	2
140,001 - 450,000	3
450,001 and above	4

Other than the obvious inequity that would affect the more populous counties and districts, it is of additional interest to note that only District 16 was to be divided into nominating districts, a district which curiously enough would have failed to qualify for two senators (population: 60,269), but for which the proviso was no doubt intended.

Depicted in Appendix C-8 and analyzed in Table 26, this plan had merit only in that it assured disbelievers that the legislature was aware of the constitutional guidelines governing the apportionment of the Senate. For the first time in a half century the state law-makers conceded to the requirement of 44 districts. However, this is the point at which observance of the fundamental law again ceased. If conducted properly, the senatorial ratio would have been ascertained to be 52,916 persons (2,328,284 ÷ 44) and the 77 counties combined to form 44 districts of near equal numbers of inhabitants. Expediency rather than constitutional procedure being the goal, the ratio was not employed, with the result that the majority group was to represent an average constituency of 24,188 persons and the minority group an average constituency of 67,007 persons. Consequently, the majority was to be responsible to 28.05% of the people and the minority to be responsible to 71.95% of the people.

Oklahoma and Tulsa county residents, for fifty years bearing the greater brunt of malapportionment, were again to serve in like capacity.

TABLE 26 -- ACT OF 1961

SENATE

Dist.	Pop.	No.of Sen	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
33	13,125	1	13,125	3.41	42	74,788	2	37,394	1.20
5	14,729	1	14,729	3.04	24	39,044	1	39,044	1.15
1	31,579	2	15,790	2.84	27	39,889	1	39,889	1.12
43	15,898	1	15,898	2.82	13	40,495	1	40,495	1.11
9	16,253	1	16,253	2.75	26	41,030	1	41,030	1.09
3	16,598	1	16,598	2.70	38	41,499	1	41,499	1.08
2	17,782	1	17,782	2.52	14	44,231	1	44,231	1.01
15	18,662	1	18,662	2.40	6	44,390	1	44,390	1.01
44	19,139	1	19,139	2.34	23	46,182	1	46,182	.97
7	21,040	1	21,040	2.13	25	47,600	1	47,600	.94
12	21,260	1	21,260	2.11	36	48,875	1	48,875	.92
34	21,492	1	21,492	2.08	22	98,834	2	49,417	.91
21	22,712	1	22,712	1.97	40	52,618	1	52,618	.85
17	24,727	1	24,727	1.81	10	52,975	1	52,975	.85
4	25,834	1	25,834	1.73	30	56,155	1	56,155	.80
29	26,850	1	26,850	1.67	11	59,182	1	59,182	.76
19	28,621	1	28,621	1.56	35	61,866	1	61,866	.72
20	29,590	1	29,590	1.51	39	346,038	3	115,346	.39
16	60,269	2	30,135	1.49	18	439,506	3	146,502	.31
41	31,462	1	31,462	1.42		1,675,197 (71.95%)	25	67,007 ave.	
8	32,946	1	32,946	1.36					
32	34,360	1	34,360	1.30					
31	34,939	1	34,939	1.28					
37	36,376	1	36,376	1.23					
28	36,844	1	36,844	1.22					
	653,087 (28.05%)	27	24,188 ave.						
			TOTALS: 2,328,284		52	44,775 ave.			

At the extreme, the population represented in District 33 would have had a relative weight 11.16 times that of the population represented in District 18.

Source: S.B. 179 of Oklahoma Legislature, 1961.
(See Appendix C-8 for counties comprising each District.)

Although the population of the counties entitled them to at least eight and six senators, respectively, they were to be content with three apiece. The figures nevertheless bear out the fact that the proposition would have been the least equitable experienced, both in light of the percentage of the people who might conceivably elect the majority and in view of the 33 districts that would have been over-represented as opposed to 11 districts under-represented.

Were it not for a blunder on the part of the House of Representatives, the foregoing plan would have added another poor facsimile of constitutional representation to the journal of the Senate apportionments. As it turned out, the measure is nothing more than an item of historical significance, for as will be elaborated upon in the following chapter, the Oklahoma Supreme Court ruled the act unconstitutional on the procedural grounds that the lower chamber did not pass it over the Governor's veto by the required three-fourths vote. Consequently, along with the judicial decision was an order to conduct the 1962 Senate elections under the laws in effect since 1941, a directive that should serve to remine one that in victory there is often defeat. Nothing more than the plan of apportionment endured for two decades, further amended by the succeeding federal decennial census revealing a mass movement to the urban centers, the apportionment for the 1963 session proved the least equitable arrangement in the Senate ever experienced by the citizenry of the state. Surpassing even the fondest wishes of the rural supporters of the ill-fated proposition above, representation in the 1963 session established record degrees of political inequalities.

Had the legislature sought to effect a constitutional apportionment for this decade, it is immediately apparent in Appendix C-9 and Table 27 that Oklahoma and Tulsa counties, each with a population multiple three or more times the senatorial ratio, would have been credited with the additional senators to which they were entitled. Still the only counties affected by the relevant provision of the state constitution, each should have been awarded at least eight and six senators, respectively, the result of which would have been a Senate of at least 54 members elected from 44 districts. Such not being the case, the upper chamber was again composed of 44 members elected from 36 districts. If the constitution had been followed, a senatorial ratio of 52,916 (2,328,284 ÷ 44) would have been determined and utilized to construct the 44 districts. As usual, the ratio did not serve as criteria for redistricting, with the result that the majority group represented an average of 24,784 persons and the minority group 83,727 persons, whereas all might have ideally been responsible to 52,916 persons. Consequently, the majority group represented a new low of 24.48% of the citizenry and the minority group a new high of 75.52%. Coupled with and a direct result of this great inequity is the fact that a new high of 28 over-represented districts was established as well as a new low of seven under-represented districts, while but one district managed to secure a near perfect relationship to the overall average.

Recapitulation of Analyses.

In recognition of the occasional complexity of perceiving a whole from its (statistical) parts, four additional tables are hereafter provided to summarize the nature and effect of all preceding acts

TABLE 27 -- SESSION OF 1963

SENATE

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
26	13,125	1	13,125	4.03	21	36,844	1	36,844	1.44
4	14,729	1	14,729	3.59	18	39,044	1	39,044	1.36
35	15,898	1	15,898	3.33	20	39,889	1	39,889	1.33
7	16,253	1	16,253	3.26	30	41,499	1	41,499	1.28
2	34,380	2	17,190	3.08	27	83,358	2	41,679	1.27
12	18,662	1	18,662	2.84	19	88,630	2	44,315	1.19
36	19,139	1	19,139	2.76	5	44,390	1	44,390	1.19
10	21,260	1	21,260	2.49	28	48,875	1	48,875	1.08
16	22,712	1	22,712	2.33	32	52,618	1	52,618	1.01
3	25,834	1	25,834	2.05	8	52,975	1	52,975	1.00
22	26,850	1	26,850	1.97	23	56,155	1	56,155	.94
6	53,986	2	26,993	1.96	9	59,182	1	59,182	.89
15	58,211	2	29,106	1.82	17	145,016	2	72,508	.73
13	60,269	2	30,135	1.76	34	74,788	1	74,788	.71
33	31,462	1	31,462	1.68	11	84,726	1	84,726	.62
1	31,579	1	31,579	1.68	14	464,233	2	232,117	.23
25	34,360	1	34,360	1.54	31	346,038	1	346,038	.15
24	34,939	1	34,939	1.51		1,758,260	21	83,727 ave.	
29	36,376	1	36,376	1.45		(75.52%)			
	570,024 (24.48%)	23	24,784 ave.						
			TOTALS:	2,328,284	44	52,916 ave.			

At the extreme, the population represented in District 26 had a relative weight 26.36 times that of the population represented in District 31.

Source: Note in Table 26, as related to subsequent decennial census. (See Appendix C-9 for counties comprising Districts.)

of the Oklahoma Legislature relative to the apportionment of the Senate.

To offer an orderly reference guide to all Senate redistricting efforts is the purpose of Table 28. In all, the legislature dealt with the subject in ten different sessions and its successful action affected 19 different senatorial districts. Three of these efforts regarded the creation of new districts and the remaining 16 concerned the establishment of nominating districts. As regards the former, the nature of the new districts has been well explored. But with reference to the electoral device of nominating districts, additional commentary is desirable. Although it is conceded that the practice can be put into effect in accord with both the letter and spirit of the Oklahoma Constitution, such has by no means been the case. To illustrate with the most recent law governing the subject, it has been observed that the state legislature has carved 16 nominating districts out of eight senatorial districts. Not underscored until this time, however, is the fact that this practice has been a serious impediment to a realization of political equality. As made clear in the following breakdown of senatorial districts, the varying population disparities as between nominating districts move from reasonable to unrealistic proportions.

TABLE 28

SENATE REDISTRICTING

Year	District	Nature of Alteration	Statutory Reference
1913	13	Nominating Districts: 1. Lincoln 2. Pottawatomie	O.S.L., 1913, S.B. 357, pp.111-12.
	15	1. Grady 2. Caddo	
1917	14	Nominating Districts: 1. Canadian 2. Oklahoma	O.S.L., 1917, S.B. 18, pp.4-5.
1919	34	New District: Osage & Washington	O.S.L., 1919, S.B. 387, p.175.
	31	Reduced to Tulsa	
	9	Reduced to Grant & Kay	
1925	17	Nominating Districts: 1. Stephens & Jefferson 2. Cotton & Comanche	O.S.L., 1925, S.B. 2, pp. 1-2.
	27	1. Muskogee 2. Haskell & McIntosh	Ibid., pp. 205-06, S.B. 167.
1931	30	Reduced by transfer of Cherokee	O.S.L., 1931, S.B. 156, p. 9.
	28	Enlarged by transfer of Cherokee	
1933	19	Nominating Districts: 1. Cleveland & McClain 2. Garvin	O.S.L., 1933, S.B. 396, p. 271.
1937	35	New District: Atoka & Coal	O.S.L., 1937, S.B. 93, p. 21.
	24	Reduced to McCurtain & Pushmataha	
	20	Combined Bryan & Choctaw	
1941	2	Nominating Districts: 1. Dewey,Ellis,& Roger Mills 2. Beckham	O.S.L., 1941, S.B. 167, p. 38.
	6	1. Kiowa & Washita 2. Custer	Ibid., pp. 38-39, S.B. 275.
	36	New District: Johnston & Murray	Ibid., p. 39. H.B. 458.
	18	Reduced to Carter	
	26	Combined Love & Marshall	
1945	2	Nominating Districts: (changed) 1. Dewey & Ellis 2. Beckham & Roger Mills	O.S.L., 1945, S.B. 104, p. 39.
	9	Reduced by transfer of Grant	Ibid., p. 38,
	7	Enlarged by transfer of Grant	S.B. 119.
1961	All 36	Complete Reapportionment	O.S.L., 1961, S.B. 179, pp. 745-48.

Note: All legislation after the 1941 Acts was either declared invalid by the Oklahoma Supreme Court or vetoed and sustained.

District	Nominating Districts	Population Difference
	Grady (29,590)	
15	Caddo (28,621)	969
	Beckham (17,782)	
	Dewey, Ellis, Roger Mills	
2	(16,598)	1,184
	Kiowa, Washita (32,946)	
6	Custer (21,040)	11,906
	Pottawatomie (41,486)	
13	Lincoln (18,783)	22,703
	Cleveland, McClain (60,340)	
19	Garvin (28,290)	32,050
	Muskogee (61,866)	
27	Haskell, McIntosh (21,492)	40,374
	Comanche, Cotton (98,834)	
17	Jefferson, Stephens (46,182)	52,652
	Oklahoma (439,506)	
14	Canadian (24,727)	414,779

It is apparent that only four nominating districts have populations of near equal size, that 10 are almost progressively imbalanced, and that the last two suggest nothing less than a travesty of justice in representation. That such an arrangement denies hundreds of thousands of citizens their full quota of representation in the Senate is hardly debatable, and from an electorate standpoint, it is likewise evident that most affected are not given the opportunity to participate in the complete election process. As a result, this would appear to be a restraint upon the suffrage privilege, and unsupported by the fundamental law of the state. So not only do inequities prevail in the routine assignment of senators to districts, but they are further compounded by the disparities inherent in the creation of nominating districts. Consequently, the more powerful branch of the state legislature (due primarily to its control of the election machinery and participation in state and local political appointments) has fully utilized this device

to reinforce the influence of minority interests, again at the expense of an overwhelming majority.

In order to reflect upon all preceding Senate apportionments, Table 29 offers a comparative analysis, specifically as related to the membership for the period, the per cent electing the majority, the number of over-represented districts, the relative weight as between the most and least represented districts, and the total variance as a measure of the degree of district representation.

TABLE 29

COMPARATIVE ANALYSIS OF SENATE APPORTIONMENTS, 1913-63

Period of Apportionment	Total Membership	Each Session	Percent Electing Majority	Over-Rep. Districts	Relative Weight	Total Variance
1913-19	220	44	43.38	17	2.25:1	.44
1921	44	44	43.78	17	2.25:1	.44
1923-31	220	44	37.54	21	4.06:1	.65
1933-37	132	44	34.11	25	7.78:1	.99
1939-41	88	44	35.03	26	7.78:1	.99
1943-51	220	44	33.23	22	8.12:1	.98
1953-61	220	44	29.45	26	15.83:1	1.50
1963	44	44	24.48	28	26.36:1	1.94

In contrast with a comparable compilation produced on the House of Representatives, note initially that the findings here are not based upon a sample survey, but depict the actual consequences of each apportionment period. As a result, it can be observed that the total membership column represents varying multiples of the membership in each session. Aside from this observation, a glance at the last four columns is sufficient to fully appreciate the extent to which malapportionment

of the upper chamber has evolved. Starting with the initial apportionment through to the last, it is clear that the percentage of the people theoretically in a position to elect the majority subsided almost steadily with the lapse of each period. Only in 1921 was there an exception to this unwritten rule, at which time the majority of the members of the Senate were responsible to .40 per cent more of the people than were their predecessors up to a decade before. Inversely proportionate to this column are the last three columns, a result that might have been anticipated. In the first of these summaries, one will observe a near successive increase in the number of over-represented districts, the only exception being in the 1943-51 period. Another comparison of interest, the next to last column on relative weight reveals the ratio as between the largest and smallest population per senator in the various districts for each period. As was noted with the House recapitulation, this gap too has broadened with time, although much more severely for the upper chamber. With regard to the last column, it is again utilized as a measure toward ascertaining the degree of political equality in a given plan of apportionment whereby the highest and lowest percentage of each district's relation to the overall overage is subtracted therefrom and the product divided by two. As zero would suggest a perfect apportionment based upon population, the lower the figure the more representative of all of the people is the act. By this criteria, it can readily be seen that the 1963 apportionment was the least equitable and, only with the slight exception during the 1943-51 period, has grown progressively worse with time.

Table 30 was prepared to provide a guide to the year, session number, total apportionment, party affiliation of elected senators, and the number of regular and nominating districts from which they were elected. As with the format provided on the House of Representatives, it too is largely self-explanatory, although two comments are in order. For the sessions of 1907-63, 44 members continually represented the people of the state. Also, it is of interest to observe that whereas the Founding Fathers did not utilize nominating districts, the legislature has made frequent use of the device, as evidenced by the cumulative increase in the number from 1915 through 1963.

Finally, Table 31 has been developed to complement the foregoing insights by listing, in appropriate brackets, the range of degree of district representation in the Oklahoma Senate. Based upon each of the actual apportionments effected for the upper chamber, it was devised by averaging the percentage of each district's over-representation and under-representation in each session. As cautioned in the presentation of a comparable analysis on the House of Representatives, it need be understood that the data is unrelated to constitutional directives. Rather, the districts are graded in relation to the average or ideal population per senator (1.00) in each session. In contrast, it can be deduced that the average overall is 1.30, and the relative weight as between most over-represented District 35 (Atoka and Coal counties) and most under-represented District 31 (Tulsa County) is 5.47 to one. It is of interest to observe that each of these statistics correlate highly with those comparable on the House of Representatives, as related in the preceding chapter. Of equal significance,

TABLE 30

SENATE SESSIONS, MEMBERSHIP, PARTY AFFILIATION AND SENATE DISTRICTS, 1907-63

Year	Legislative Session	Total Apportioned	Democratic	Republican	Regular Districts	Nominating Districts
1907	1st	44	39	5	33	0
1909	2nd	44	34	10	33	0
1911	3rd	44	31	13	33	0
1913	4th	44	36	8	33	0
1915a	5th	44	38	5	33	4
1917b	6th	44	38	5	33	4
1919	7th	44	34	10	33	6
1921c	8th	44	27	17	34	6
1923	9th	44	32	12	34	6
1925	10th	44	38	6	34	6
1927	11th	44	35	9	34	10
1929	12th	44	32	12	34	10
1931	13th	44	32	12	34	10
1933	14th	44	39	5	34	10
1935	15th	44	43	1	34	12
1937d	16th	44	44	0	34	12
1939	17th	44	43	1	35	12
1941	18th	44	42	2	35	12
1943	19th	44	40	4	36	16
1945	20th	44	38	6	36	16
1947	21st	44	37	7	36	16
1949	22nd	44	39	5	36	16
1951	23rd	44	40	4	36	16
1953	24th	44	38	6	36	16
1955	25th	44	39	5	36	16
1957	26th	44	40	4	36	16
1959	27th	44	41	3	36	16
1961	28th	44	40	4	36	16
1963	29th	44	38	6	36	16

a One member of the Socialist Party was elected to the Senate in this session.
b One member of the Socialist Party was elected to the Senate in this session.
c This was the peak year for the Republican Party, which did not command a majority of the Senate in any of the 29 sessions.
d A most unusual occurrance, if not unique, the Democratic Party managed to make a clean sweep of all seats in this session of the Senate.

Adapted from: DIRECTORY AND MANUAL OF THE STATE OF OKLAHOMA, 1963, pp. 152-65.

TABLE 31

RANGE OF REPRESENTATIVENESS,
BY DISTRICT AND COUNTY, 1913-63

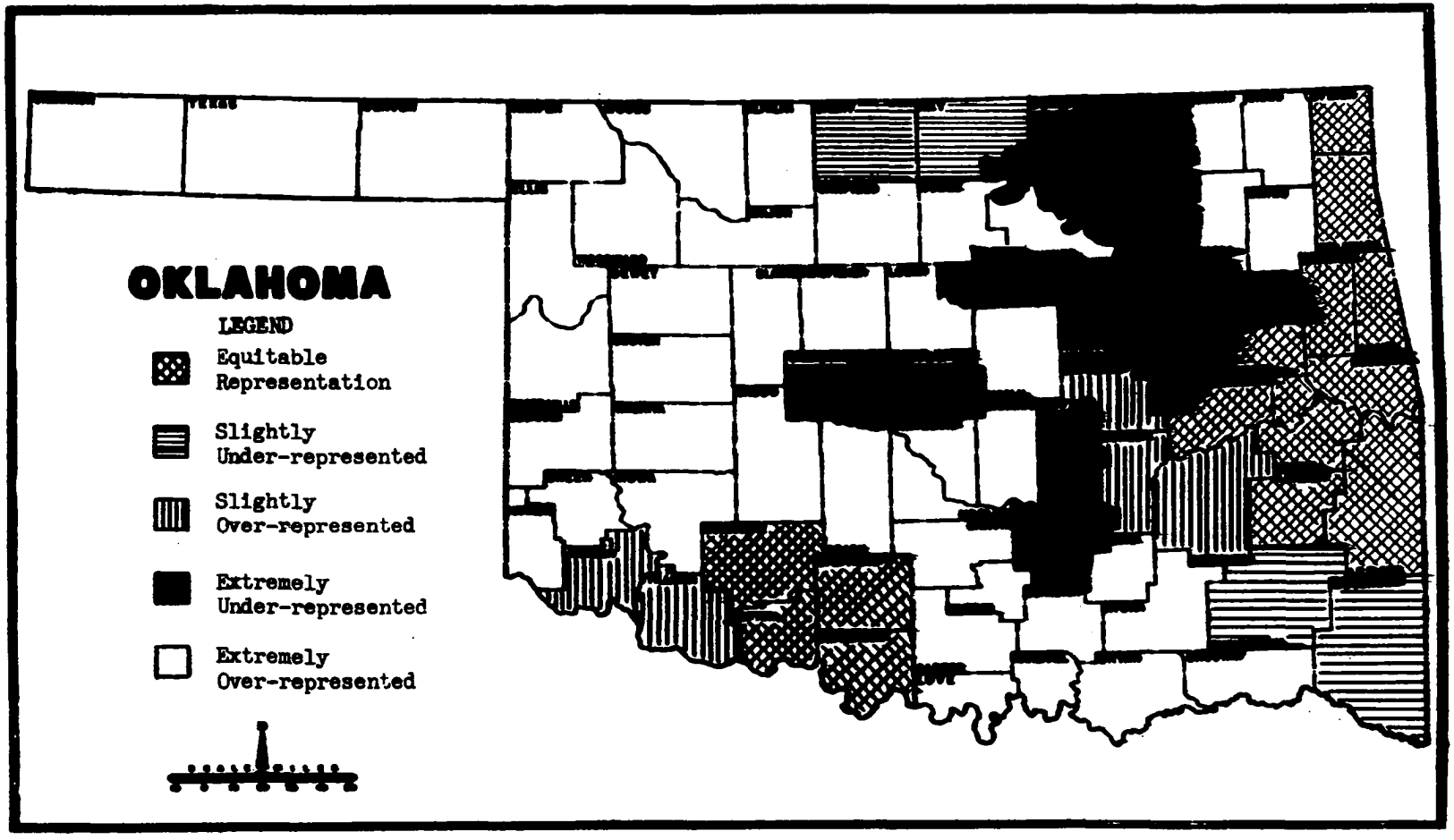
District	County	Average	District	County	Average
35	Atoka	2.35	22	Hughes	1.09
	Coal	2.35		Okfuskee	1.09
36	Johnston	2.30	5	Jackson	1.08
	Murray	2.30		Tillman	1.08
26	Love	2.24	25	Pittsburg	1.06
	Marshall	2.24		(5)	
4	Greer	1.99			
	Harmon	1.99	28	Adair	1.04
7	Alfalfa	1.94		Cherokee	1.04
	Major	1.94		Sequoyah	1.04
12	Logan	1.90	21	Latimer	1.02
2	Beckham	1.84		LeFlore	1.02
	Dewey	1.84	17	Comanche	.98
	Ellis	1.84		Cotton	.98
	Roger Mills	1.84		Jefferson	.98
10	Noble	1.62		Stephens	.98
	Pawnee	1.62	27	Haskell	.98
3	Woods	1.57		McIntosh	.98
	Woodward	1.57		Muskogee	.98
16	Blaine	1.53	30	Delaware	.96
	Kingfisher	1.53		Ottawa	.96
18	Carter	1.49		(14)	
33	Nowata	1.47			
	Rogers	1.47	24	McCurtain	.92
6	Custer	1.40		Pushmataha	.92
	Kiowa	1.40	9	Grant	.90
	Washita	1.40		Kay	.90
1	Beaver	1.37		(4)	
	Cimarron	1.37			
	Harper	1.37	32	Okmulgee	.79
	Texas	1.37		Wagoner	.79
29	Craig	1.35	34	Osage	.77
	Mayes	1.35		Washington	.77
8	Garfield	1.33	23	Pontotoc	.71
15	Caddo	1.30		Seminole	.71
	Grady	1.30	11	Creek	.61
19	Cleveland	1.29		Payne	.61
	Garvin	1.29	14	Canadian	.48
	McClain	1.29		Oklahoma	.48
13	Lincoln	1.23	31	Tulsa	.43
	Pottawotomie	1.23		(11)	
20	Bryan	1.21			
	Choctaw	1.21			
	(43)				

it is well to note that 53 counties (in 25 districts) are above the ideal average, such that 24 counties (in 11 districts) have actually suffered the consequences of a half century of political inequality in the Senate. Here again, it is of interest to reflect upon the comparable analysis of the House, as one will find another very high correlation.

To depict the degree of the varying disparities in senatorial representation as among the districts is the purpose of Figure 2. Drawn to reflect the data offered in the last table, it is intended to show the clear distinctions by classifications indicated by the legend. The categories of over-representation and under-representation are still ascertained at increments equidistant from the average of each session heretofore analyzed. By and large compact, it can be seen that the most equitably represented districts are located along the Arkansas border, the extremely under-represented districts geographically situated in the northeast and east-central, and the extremely over-represented districts found in the western sector of the state. But it should not be overlooked that to a remarkable extent the Senate picture necessarily excludes the ranges of 80-84, 85-89, 111-115, and 116-120. These exclusions alone substantiate one prevailing assumption, namely, that the degree of extreme disparities have been more prevalent in the Oklahoma Senate than the Oklahoma House of Representatives.

Figure 2

Degrees of Equity and Inequity in County Representation in the Senate, 1913-1963*



*Based on calculations provided by district in Tables 19 through 27.

CHAPTER VII

JUDICIAL CONSTRUCTION AND JUDICIAL REVIEW

It will be recalled from the Introduction that Baker v. Carr is unique in that it held a judicial remedy was to be made available in the courts where standards of the equal protection clause of the Fourteenth Amendment to the U. S. Constitution are disregarded. Theretofore, Oklahoma courts, as well as all other federal and state tribunals across the country, had adhered to the traditional rule of construction that the subject of legislative apportionment, as regards the claims under the Fourteenth Amendment, was nonjusticiable. This should not suggest, however, that earlier efforts to compel the Oklahoma Legislature to reapportion in accord with the state constitution were non-existent. To the contrary, both by way of inquiries of the Attorney General of Oklahoma and by way of litigation in federal and state courts in Oklahoma, many citizens have persistently sought the constitutional remedy in quest of some semblance of political equality. And although positive remedies were not afforded, negative remedies were forthcoming in some cases.

Because of the importance of legal antecedents, the purpose herein is to discuss such quasi-judicial and judicial developments relative to legislative apportionment in Oklahoma during the half century preceding the Tennessee case. Toward this end, it will be observed that

the following pages integrate, chronologically, both the opinions of the Oklahoma Attorney General and the decisions of U. S. and Oklahoma courts on the subject. A summary list of such opinions and decisions is provided in Appendixes D and E, respectively.[1]

The Formulative Years, 1923-43.

Inasmuch as litigation pertaining to legislative apportionment in Oklahoma was not brought before the courts until 1944 (after which time a deluge of redistricting cases ensued), and in view of far fewer disparities in representation existing in the legislature prior to the 1940 federal census, it would be expected that interest in the subject was negligible during the 37 years following statehood. Although concern was at a minimum, some of the official views elicited from the state's chief legal advisor indicate an early appreciation of a problem in process of being developed.

Files of the Attorney General of Oklahoma reveal that opinions of record have been maintained since January 1, 1923. Since that date through 1943, only six legal opinions were provided in response to as many inquiries relative to legislative apportionment. Two of these proved to be of a substantive nature, whereas the remainder dealt with routine points of information.

Credited as the first recipient of an apportionment opinion from the Attorney General is Representative D. A. Brumley who, on August 19, 1924, was advised simply that McIntosh County was entitled to no more

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[1] In this connection, it will be noted that each summary list contains a line of demarcation, the purpose of which is to separate the material utilized herein from that which will be discussed in Chapter IX.

than one member in the lower chamber for the 1924-26 session of the Oklahoma Legislature, the same being prescribed in the reapportionment act of 1921.[2] It was not until two and one-half years later that the next inquiry was forthcoming. This was from Representative C. R. Reeves relative to the legal standing of the legislature to redistrict at the time, having exercised that prerogative once before under the 1920 federal census. He was advised on March 17, 1927, that due to its action in 1921 the legislature did not possess authority in that session to reapportion or redistrict the state.[3] Comparable to the initial inquiry, the following year produced a response addressed to Representative J. B. Pomeroy regarding the number of members in the House due Lincoln County in the 12th session of the Oklahoma Legislature. On April 3, 1928, he was advised that the apportionment act of 1921 allotted but one member in said session (as opposed to two members in the first three sessions of that decennial period, during which time the county was divided into two nominating districts) with the result that such member would necessarily be nominated and elected from all of Lincoln County as one legislative district.[4]

The first substantive inquiry of the Office of the Attorney General can be attributed to Representative W. D. Grisso who, as Chairman of the House Committee on Legislative Apportionment, requested legal

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[2]Opinion of Attorney General of Oklahoma (by Edwin Dabney, Assistant Attorney General) to Hon. D. A. Brumley, August 19, 1924.

[3]Opinion of Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. C. R. Reeves, March 17, 1927.

[4]Opinion of Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. J. B. Pomeroy, April 3, 1928.

advice pertaining to:

> "(1) The method to be used to reapportion the House under the 1930 Federal Census, which placed the population of Oklahoma at 2,396,040.
> "(2) If an arbitrary and improper reapportionment act is passed by the Legislature will it be subject to review by the Supreme Court and, if so, will a county arbitrarily deprived of representation be entitled to a judgment granting it the representation to which it is entitled?
> "(3) What will be the result if the present Legislature fails to pass a reapportionment act?"

In the reply of March 13, 1931, he was referred to Section 10 of Article V of the state constitution, from which the respondent ascertained the appropriate ratio of representation and detailed the population categories necessary for regular members of the House up to the constitutional limit of seven. Likewise the first question was answered by specifying each population increment above a full ratio, ". . . or in excess of the minimum population required under the above table for two or more representatives. . ." necessary for a district to qualify for one or more floats. It need be noted here that nowhere in the fundamental law will one find the alternative method above quoted, and this construction of Section 10 of Article V was again to be a point of debate three decades later.[5] As for the allocation of the first float to which any district may be entitled (not specified in the constitution), it was recommended that it be allotted to the fifth session in order that representation during the five sessions be made as uniform as possible. On this point, it is worthy of comment that an allocation of the first float to the fifth session will not always make representation throughout a given

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[5]It should be recognized that the other alternative--to apply the flotorial system to population in excess of the "maximum" figure required for regular representatives--is provided in the Oklahoma Constitution and was later endorsed by the Oklahoma Supreme Court.

decennial period as uniform as possible; that is, such practice will not necessarily result in balancing the distribution throughout each session of a decade.

As for the second question posed above, attention was called to the last subsection of Section 10, Article V, relative to a review of the Oklahoma Supreme Court at the suit of any citizen, under such rules and regulations as the legislature may prescribe. The respondent was advised that this section has not been vitalized as contemplated and if a reapportionment act were passed which violated the provisions of the constitution, the same could be declared unconstitutional by the court, in which event the act of 1921 would continue in effect. Further, it was the opinion of the Attorney General that the court would not have authority to grant judgment increasing the membership of a county in the House of Representatives from that set forth in the act of 1921 to that to which it is entitled under the 1930 federal census. Again after the fact but very much in point, the court was to think and do otherwise a generation later.

To respond to the third and final question, it was the opinion of the state's chief legal officer that if the legislature failed to pass a reapportionment act for the ensuing decennial period, the members would be chosen pursuant with the act of 1921, unless and until a reapportionment law is passed during one of the succeeding legislative sessions of said decennial period.[6]

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[6]Opinion of Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. W. D. Grisso, March 13, 1931.

The second substantive inquiry of the office of the Attorney General was made by Representative D. E. Temple, who as Chairman of the House Committee on Legislative Redistricting, requested legal advice pertaining to:

> "(1) The method to be used in reapportioning under the 1940 federal census placing the population of Oklahoma at 2,336,434.
> "(2) Under Article V, Section 9(a), is it provided that a single county may have as many as two senators apportioned it without an increase in the present membership of 44?
> "(3) In case the Legislature deems it proper to allot to a county three or more State Senators, would they have authority so to do either by increasing or by not increasing the present membership of 44 Senators?"

In the reply of March 24, 1941, attention was directed to Sections 9, 9(a), and 9(b) of Article V of the Oklahoma Constitution. It was thereafter brought out that an examination of the constitutions of the various states revealed that that of New York, adopted in 1894 and in effect at the time of the adoption of the Oklahoma Constitution, contained provisions closely parallel to those which were set forth above. These provisions of the New York Constitution, it was noted, have been carried forward into the present fundamental law of that state. Accordingly, Sections 2 through 4 of Article 3, New York Constitution, were cited, the same being among those related in Chapter IV. For purposes of recollection, these regard the provisions for 50 senators, except as hereinafter provided; the state to be divided into 50 senatorial districts; and in event any county shall be entitled to three or more senators, such additional senators shall be given such county in addition to the 50 senators and the whole number of senators to that extent.

The similarities of constitutional provisions being established, the Attorney General cited In re Dowling, (219 N.Y. 44, 113 N.E. 545) wherein the Court of Appeals of New York held:

> "The intention of the people to limit by Constitution the number of senators to 50 is expressed in language that cannot be misunderstood as follows: The senate shall always be composed of 50 members. That limitation is, however, subject to the exception stated therein. The exception is given for one, and only one, purpose, and that is to prevent counties having 3 or more senators from obtaining a larger number of senators at the expense of the counties of the state not having 3 or more senators. It is, for that purpose, provided that if any county having 3 or more senators at the time of any apportionment, is entitled on the ratio prescribed, to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the 50 senators, and the whole number of senators shall be increased to that extent."

Utilizing the foregoing, the Attorney General went on to underscore the evident similarity of the provisions of the New York and Oklahoma constitutions. Upon a reapportionment, it was deduced, Section 9(a) expressly requires that the state be divided in 44 districts, each of which would elect one senator. No provision is made for any less number of districts or for any district to elect more than one senator. Provision is made, however, for any county which by virtue of its population might be entitled to more than two senators, such additional senator or senators to be given such county in addition to the 44 senators and the whole number (increased) to that extent. On the latter parenthesis, the chief legal officer acknowledged an interpretation of the word enclosed which does not appear in the section as printed and was presumed to have been evidently omitted by inadvertance. As for Section 9(b), it was recognized that the same permits the division of a county into two or more senatorial districts wholly in such county.

In conclusion, the opinion contended that it was the intent of the framers of the Oklahoma Constitution that the more populous counties, while they should be entitled to the number of senators properly apportioned to them by population, should not receive such number in excess of two at the expense of the smaller counties. In other words, two of the senators apportioned to such county should be included within the 44 contemplated for the entire state. Any additional senators given to such county should be added to the 44 members. It followed, therefore, that the ensuing outline was offered as a proper procedure in the apportionment of the Oklahoma Senate:

> "(A) Divide the total population of the state by 44.
> (B) Use the quotient thus obtained as the ratio by which to determine those counties entitled by population to three of more senators. (At least) two senators for each such county should be deducted from the 44. The remainder then obtained will constitute the number of senators and districts to be apportioned throughout the remainder of the state. These districts are to be, as nearly as reasonably possible, equal in population and in as compact form as practicable. They may be composed of one or more counties.
> (C) Those counties which have been found to be entitled to two or more senators are to be divided into districts accordingly, the provisions of Section 9(b) being observed in making such division."[7]

Although this construction is fully supported by the antecedents of the pertinent constitutional provisions, it will be observed in subsequent litigation that the same was to be endorsed but not implemented.

Period of Optimum Litigation, 1944-46.

Indicative of the ramifications of the 1940 federal census, which not only revealed substantial rural to urban migration during the

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[7]Opinion of Attorney General of Oklahoma (by Sam Lattimore, Assistant Attorney General) to Hon. D. E. Temple, March 24, 1941.

prior decade but was coupled with legislative inaction to respond to it, there evolved in this brief span of three years six civil suits and two additional requests for legal opinions.

First and foremost among the suits was that of Jones v. Freeman, wherein original mandamus was sought by Jenkin Lloyd Jones, Tulsa publisher, against Harold Freeman, Speaker of the House of Representatives, to test the validity of the legislative apportionment acts enacted since the adoption of the constitution.[8] Although the application for a writ to restrain compensation of legislators elected under allegedly invalid laws was denied, as was the plea for relief by holding the next elections pursuant with the fundamental law, the extent of the Oklahoma Supreme Court's deliberation in 1944 merits special attention. With regard to the constitutional criteria governing an apportionment of the lower chamber, the court acknowledged that the ratio is to be determined by dividing the whole population of the state by 100, that any county with less than half a ratio is to be attached to a county adjoining it to form a representative district, that each county having at least half a ratio is entitled to at least one member in the legislature, and that no county can ever take part in the election of more than seven representatives. In these respects, the court reiterated the clear constitutional guidelines and endorsed in large part, if not in full, the opinion of the Office of the Attorney General to the Hon. W. D. Grisso of March 13, 1931. As for the constitutional apportionment provisions governing the upper chamber, the court held that the state must be

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[8] Jones v. Freeman, 146 P. 2d 564 (1944).

divided into 44 senatorial districts, except that when a county is entitled to more than two senators the number of senators may be increased above 44 by such additional number. Further, it was noted that one senator may be elected from any senatorial district created by an apportionment act, except where a county is entitled to three or more senators, in which event the additional senators may be elected from separate districts or at-large in the county, as long as substantial equality prevails. Along these lines, it is apparent that the court endorsed in large part, if not in full, the opinion of the Office of the Attorney General to the Hon. D. E. Temple of March 24, 1941.

These analogies, although of interest, by no means suffice to reflect all of the meaningful aspects of this case. For, in addition, the court went on to declare that the constitution makes it the mandatory duty of the legislature to reapportion both houses on the basis of substantial equality after each decennial federal census, and so failing, such duty devolves upon each succeeding session until a valid act is passed. Moreover, it was acknowledged that whereas the Oklahoma Supreme Court has original jurisdiction in a test of the constitutionality of legislative apportionment acts, it may not make an apportionment. Consequently, it was construed that the constitutional provision directing the court to "review" is not self-executing, nor does it mean to "revise."

Finally, following an in-depth examination of the relevant act of 1941, the court made clear its disapproval of the method of allocation of seats in both chambers, but invoked the principle of separation of powers by declaring that it may neither compel the legislature to perform

its duty (or enjoin payment of legislative salaries), nor issue a writ of mandamus, for resulting injustices would be greater than those prevailing. However, the sentiment of the court was well asserted as follows:

> "The condition thus shown to exist is one of great concern. The principle of equality of representation lies at the very heart of responsible government. At the ballot box, in a representative democracy, each citizen is supposed to be, and should be, the equal of every other citizen, and all are entitled to approximately equal voice in the enactment of laws through elected representatives."

As a result of the foregoing judgment, Governor Robert S. Kerr immediately requested of the Office of the Attorney General an appropriate interpretation and advice as to his subsequent responsibility, if any. In the reply of August 1, 1944, it was brought to his attention that the application for writ of mandamus and other relief was denied, and on June 12, 1944, the U. S. Supreme Court dismissed not only the appeal, for want of jurisdiction, but also a writ of certiorari to review the case. Consequently, the decision of the Oklahoma Supreme Court became final. In addition, the Governor was advised that this was the first time a citizen of Oklahoma had seen fit to challenge the apportionments as made by the laws enacted since statehood and, in view of the facts stipulated in the case, it is assumed that the defects in the present laws will be corrected by the next legislature with a new and proper apportionment statute. In such event, it was urged that the principles enunciated by the court be observed. As for the role of the chief executive of the state, the Attorney General suggested incorporating attention to this problem in the Governor's message to the next regular session of the legislature.[9]

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[9]Opinion of Attorney General of Oklahoma (by Randell S. Cobb,

The only other formal communication in this period respecting legislative apportionment came about almost one year later and pertained to a rather routine point of information. It was from Representative H. C. Hathcoat who, on July 27, 1945, was advised that Beckham County will be entitled, for the ensuing general election and in accord with the act of 1941, to elect but one member of the lower chamber to serve in the third session of that decennium.[10]

In 1946, in contrast with its prior experience with the subject, the Oklahoma Supreme Court became the focal point of persistent litigation brought by citizens seeking varying kinds of relief in legislative representation. In the order of their appearance before the court, the first of these cases was that of Jones v. Cordell, wherein a 1945 statute relative to senatorial redistricting also was challenged by Jenkin Lloyd Jones, Tulsa publisher, in a civil suit against J. William Cordell, Secretary of the State Election Board of Oklahoma.[11] In this instance, however, relief was afforded the petitioner, in the form of a negative remedy. Briefly, it will be recalled from Table 28 in the last chapter that by way of Senate Bill 119 of the Oklahoma Legislature in 1945, it was intended that District 7 be enlarged and District 9 be reduced by the transfer of Grant County, and obviously such act constituted but a partial reapportionment. Consequently, suit was brought to have the act ruled unconstitutional, thereby enjoining the Election Board from carrying out the law. The Oklahoma Supreme Court, upon recognizing that

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Attorney General of Oklahoma) to Hon. R. S. Kerr, August 1, 1944.

[10]Opinion of Attorney General of Oklahoma (by Randell S. Cobb, Attorney General of Oklahoma) to Hon. H. C. Hathcoat, July 27, 1945.

[11]Jones v. Cordell, 168 P. 2d 130 (1946).

any citizen of the state is entitled to maintain an original action therein to test the constitutionality of legislative apportionment acts and to have enforcement of the judgment, declared that a reapportionment of the entire state for senatorial purposes must be accomplished by a single act. Therefore, the act in question was found to be invalid and, in its discretion, the court restrained the proper officials from conducting an election under an unconstitutional law. So ended, over a generation after the constitution was adopted, the practice of piecemeal redistricting in Oklahoma.

Similar in content and effect was the case of Grim v. Cordell, wherein another 1945 statute, this time relative to senatorial nominating districts, was challenged.[12] Again, relief was afforded the petitioner. Also as explained in the latter part of the preceding chapter, this litigation concerned Senate Bill 104, passed by the Oklahoma Legislature in 1945, directing that District 2 be redivided into nominating districts composed on the one hand of Dewey and Ellis counties, and on the other hand of Beckham and Roger Mills counties. In response to suit to have said act ruled unconstitutional, thereby once more enjoining the Election Board from carrying out the law, the court noted that it is the duty of the legislature to reapportion the state for senatorial purposes by one act at the next session following each federal census. For a proper reapportionment, the tribunal went on, the election of but one senator from each district should be provided, except as constitutionally specified for populous counties entitled to more

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[12] Grim v. Cordell, 169 P. 2d 567 (1946).

than two senators. By necessary implication, the court concluded, this excludes the right to do so by piecemeal legislation rearranging districts or creating nominating districts within districts. As a result, another piecemeal practice, as opposed to a general reapportionment by one act, was held invalid, this deduction likewise forthcoming upwards of four decades after the adoption of the state's fundamental law.

Next designed to press the court to come to grips with a critical set of features of the Oklahoma Constitution is Latting v. Cordell,[13] alternately cited as Hoyt v. Cordell, Bell v. Cordell, Briggs v. Cordell, and Temple v. Cordell. These were original actions for writ of mandamus by Lester D. Hoyt, Harlan B. Bell and Claud Briggs against J. William Cordell, Secretary of the State Election Board, and others, to require respondents to cause the name of each petitioner to be printed upon the official ballot for the next general election, as nominees of the Democratic Party for the office of State Senator from Oklahoma County. These actions presented identical questions involved in the civil suits of David E. Temple and William F. Latting against the Election Board, although the latter involved senatorial seats in Tulsa County. Consequently, all of the actions were consolidated and, unlike the two foregoing pleas, the writ requested was denied. Basically, the issue before the Oklahoma Supreme Court in this and the associated cases was the execution of the "except" clause construction of Jones v. Freeman, supra, regarding the constitutional criteria governing Senate reapportionments. On this matter, the court prefaced its decision by reiterating

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[13] Latting v. Cordell, 172 P. 2d 397 (1946).

that the duty of apportionment is mandatory and rests with the law-makers, a matter over which the judiciary has no jurisdiction. Reasserted in the following fashion was the court's judgment as to the meaning of the critical "except" clause:

> "We are of the opinion that the purpose of the exception clause was to increase the number of Senators in the more populated counties so that the larger counties could be given the number of Senators to which they were entitled without reducing the number of Senators to which the other parts of the state were entitled."

Therefore, the Oklahoma Supreme Court, fully cognizant of the effect of said construction by New York courts of the antecedent in the New York Constitution of 1894, held that the Oklahoma Senate should always be composed of 44 senators unless a county became entitled to more than two senators, in which case the additional senators should be given such county in addition to the 44 senators. However, petitioners were advised that this provision is not "self-executing" and requires legislation to put it into effect.

Of less consequence, but worthy of note, Shirley v. Cordell was the last Oklahoma case brought before the state's highest court in this brief span of time.[14] It again was a civil suit seeking to thwart the subsequent elections (more specifically, for the Senate) which were based upon the act of 1941 earlier deemed non-constitutional, if not unconstitutional, by the Oklahoma Supreme Court. In response, the court noted once more that in its discretion it can refuse to enjoin enforcement of the act of 1941, but to require that senators be elected from districts theretofore constitutionally created (plan of the framers of the

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[14] Shirley v. Cordell, 174 P. 2d 917 (1946).

fundamental law) would sanction even greater inequalities in representation.

Finally, it is of interest to observe that it was likewise during this period that the U. S. Supreme Court affirmed the separation of powers concept in the realm of congressional apportionment. This subject constituted a political question, in the four to three majority opinion in Colgrove v. Green, and as such it was beyond the jurisdiction of the court.[15] Therein, the court refused to consider an Illinois apportionment case on the grounds that the matter was non-justiciable, and thus began an era patterned after Associate Justice Felix Frankfurter's discourse of a political thicket that must not be penetrated by the courts.

Era of the Political Thicket, 1947-58.

After the litigation of 1946, it was to be six years before the Oklahoma Supreme Court was again to consider a suit on legislative apportionment. Thereafter, the court was to hear but two other relevant cases during this period, the sum total of which underscores the general sense of futility in seeking a judicial remedy to malapportionment. Meanwhile, the Office of the Attorney General of Oklahoma was more involved, as nine opinions were issued to clarify pertinent constitutional and statutory provisions.

Following a lapse of five years since the last construction rendered by the state's chief legal officer, an opinion was prepared for Representative C. G. Ozmun regarding the number of representatives to which Comanche County would be entitled under the 1950 federal decennial census. On December 16, 1950, he was advised that this was a matter

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[15] Colgrove v. Green, 328 U. S. 549 (1946).

necessarily to be determined by an apportionment act of the ensuing or some succeeding Oklahoma Legislature.[16] As a courtesy, the correspondent was sent a copy of the Grisso opinion of March 13, 1931, which analyzed the constitutional and statutory provisions of the state as to the apportionment of the House of Representatives, based on the 1930 federal census. His attention was directed to the principles of law set forth therein, whereby the legislature could enact a law making a proper apportionment of the lower chamber, based on the 1950 federal census. In addition, Representative Ozmun was apprised that the Grisso opinion was supported in principle by Jones v. Freeman, Jones v. Cordell, Grim v. Cordell, Latting v. Cordell and Shirley v. Cordell, supra.

Apparently a follow-up of the latter opinion, and designed to incorporate the 1950 federal census, the first Memorandum of the Attorney General on the manner of apportioning the Oklahoma House of Representatives was issued on January 30, 1951.[17] Unlike each of the foregoing opinions, this was self-initiated and not a formal response to a request of the Office. This analysis applied the last census to the principles earlier enunciated both in the opinions and court decisions. In no way did the principles vary from those submitted in the Grisso opinion, including that which maintained floats may be allotted for given increments of population in excess of full ratios of representation or ". . . in excess of the minimum population required. . ." Again, the latter

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[16]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. C. G. Ozmun, December 16, 1950.

[17]Memorandum of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) January 30, 1951.

alternative is not specified in the Oklahoma Constitution, and only the ratio and any multiple thereof may be utilized as the base factor in the operation of the flotorial system. In any event, the Memorandum otherwise provided useful tables to guide one in the allocation of regular and flotorial members in the lower chamber for that decennial period.

One year later, the first of the cases entertained by the Oklahoma Supreme Court during this period was brought forth in the name of Romang v. Cordell.[18] Therein, the court was concerned in certain respects with the validity of House Bill 348 of the 1951 Oklahoma Legislature, relating specifically to a reapportionment of the House of Representatives. Once more the court prefaced its decision by acknowledging that it has jurisdiction to determine whether or not such an enactment is in conformity with the state constitution, but as the duty is legislative in nature the court may not make an apportionment. Thus it was again construed that judicial review did not mean the judiciary may revise or devise and, although it was clear that the act violated the constitution, the writ of mandamus was denied for to rule otherwise would result in a need to revert to prior legislation and thus even greater inequalities. As for particulars, the court noted that the same objectionable provisions in prior apportionment acts prevailed in the last law and was subject, therefore, to the same criticisms discussed at length in case of Jones v. Freeman, supra. Inasmuch as none of the principles expressed or implied in the fundamental law were observed in the passage of the 1951 act, the tribunal believed it would serve no useful

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[18] Romang v. Cordell, 243 P. 2d 677 (1952).

purpose to repeat them or the legal foundation upon which they rest.

Almost as if prompted by serious doubt as to the unconstitutionality of piecemeal enactments, all three apportionment opinions rendered by the Attorney General in 1953 were concerned with precisely that subject. In reply to a request of Senator C. M. Wilson to draft a bill which will have the effect of giving Beckham County one instead of two representatives in the lower chamber at future sessions of the legislature, he was advised on January 20 that the Office was unable to draw such a bill with the desired effect.[19] In this connection, it was noted that the Oklahoma Supreme Court held in Jones v. Freeman, supra:

> "Once a valid law is enacted no further act may be passed by the Legislature until after the next Federal decennial census,"

and that in the later case of Jones v. Cordell, supra, it was held:

> "While they (members of the Constitutional Convention) did not so state, it is apparent that the entire state should be apportioned into proper senatorial districts by a single act. The proper reapportionment of the state, giving due effect to all of the various constitutional requirements, is at best a difficult and involved task, and one almost impossible to accomplish by piecemeal legislation. Each district is related to, and to some extent interdependent on, all the other districts, and to effect a proper law the whole scheme must be worked out at one time."

Therefore, Senator Wilson was advised that inasmuch as a general reapportionment law was enacted in 1951, following the 1950 federal census, and that said act was "treated" as valid in the case of Romang v. Cordell, supra, a subsequent act would prove contrary to the foregoing construction of the courts.

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[19]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. C. M. Wilson, January 20, 1953.

The second opinion in this period regarding the constitutionality of piecemeal apportionments evolved in the response of February 12 to Senator George Miskovsky pertaining to his request to draft a bill which would attach Logan County to Oklahoma County as a senatorial district, providing for nomination in Logan and election in Logan, Oklahoma and Canadian counties. Likewise, the state's chief legal counsel asserted that his Office would be unable to draw such a bill that constitutionally would have the effect desired.[20] To elaborate, such a measure would conflict with the fundamental law in that 43 rather than 44 senatorial districts would prevail, after which the court constructions related in the preceding Wilson opinion were cited to further advise against the intended proposal. Moreover, the Attorney General quoted the following portion of the opinion of the Oklahoma Supreme Court in Jones v. Cordell, supra:

> "Respondent says that in Jones v. Freeman we refused to enjoin an election under invalid laws, because to do so would have resulted in a greater inequality of representation than that already existing, and urge that we should do likewise here. But in Jones v. Freeman a different situation existed. The various invalid laws were of long standing and their constitutionality had never before been questioned in the courts. To have enjoined elections under all of them would have required the election to be held on the basis of the original apportionment made in the Constitution. So drastic a step, we thought, would have been contrary to the best interests of the state, and in our discretion we declined to take it. But we did not mean to intimate that we would refuse to strike down further invalid laws. Having pointed out in our former decision the constitutional requirements for valid legislative reapportionment laws, we think the public welfare will be best served by requiring laws enacted thereafter to conform to those requirements. . . Respondents are enjoined from proceeding under Senate Bill 119."

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[20]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. George Miskovsky, February 12, 1953.

The third inquiry of the Attorney General regarding a prospective piecemeal apportionment again came as a result of a request of Senator C. M. Wilson to examine the constitutionality of House Bill 1064 then in Senate Committee. With similar consistency, the ensuing opinion of May 14, 1953, advised of the germane citations in the Wilson opinion of January 20, the consequence of which was that, in the opinion of the Attorney General, House Bill 1064, if enacted would be invalid.

Thereafter, it was not until 1955 that the state's chief legal officer was next called upon to construe the intent of a portion of the Oklahoma Constitution. During this year, two opinions were forthcoming, each in response to inquiries of Senator A. L. Price, and each relative to a proper reapportionment of the State Senate. The initial communication was brought about by way of a request that a bill be drafted to vitalize the provisions of Article V, Section 9(a) of the Oklahoma Constitution, specifically as such deals with additional senators to certain counties. On March 18, Senator Price was advised that inasmuch as his inquiry included several suggested directives in the drafting of such legislation that are not in conformity with the state constitutional provisions, the opinion must necessarily clarify the fundamental law in question prior to responding to his request.[21] Accordingly, the Senator was apprised that Sections 9 and 11, Article V, relate to the "first election" of senators after statehood and the "original division" of the state into senatorial districts. Subsequently, the legislature was to reapportion for senate representation after each succeeding

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[21]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. A. L. Price, March 18, 1955.

federal census. However, the opinion continued, the legislature up until this time had failed to apportion the state into senatorial districts as required by Sections 9(a) and 9(b) of said Article V, and it is now its duty under said sections to apportion the state into such districts based on the 1950 federal decennial census. In addition:

> "It will be noted that Section 11, above referred to, originally divided the state into 33 senatorial districts. Since that time our state legislature, without passing a decennial apportionment act, has enacted certain 'piece-meal legislation'. . . (a) creating 3 additional senatorial districts, (b) changing the counties comprising several thereof, and (c) creating nominating districts in some of said districts. Our State Supreme Court in certain decisions, culminating in Shirley v. Cordell. . . while holding said 'piece-meal legislation' unconstitutional, refused, in the exercise of its official discretion, 'to enjoin the enforcement' of said legislation or 'to require that senators be elected from districts theretofore created and existing under the Constitution'."

In order to proceed hereafter in logical fashion, the Attorney General then cited in full the provisions of Sections 9(a) and 9(b), Article V of the Oklahoma Constitution, the same governing any reapportionment of the State Senate. With regard to these sections, the germane cases were next brought to bear. First, it was noted that on this subject the court in Jones v. Freeman, supra, held:

> ". . . thus article 5, section 9(a), of the Constitution provides that at the time of each senatorial apportionment after the year 1910, the state shall be divided into 44 senatorial districts, each of which shall elect one Senator and shall 'contain as near as may be an equal number of inhabitants.' It further provides that the Senate shall always be composed of 44 Senators, except that such members may be increased to the extent that single counties are entitled to more than two Senators. Article 5, section 9(b), provides that districts in counties entitled to two or more senators shall be so arranged 'as to make such districts most nearly equal in number of inhabitants' consistent with the duty not to divide towns or city wards constituting only one voting precinct.

> "Under the provisions of article 5, section 9(a), the state must be divided into at least 44 senatorial districts, each of which shall elect one Senator. The Senate may consist of more than 44 members only to the extent that single counties are entitled to more than two Senators. For example, if a reapportionment were made at the present time (1944), Tulsa County would be entitled to three Senators and Oklahoma County would be entitled to four Senators (based upon the 1940 Census). The Senate would thus consist of 47 members. At least two senatorial district should be created in each of Oklahoma and Tulsa Counties. The 75 remaining counties should be divided into 40 districts, each electing one Senator. Upon the question of the two additional Senators from Oklahoma County and the one additional Senator from Tulsa County must come from separate districts or may be elected from other districts or at large by the voters of the counties, the Constitution is not clear. Either method would be permissible, so long as substantial equality prevails."

Secondly, the opinion alluded to the following portion of the court's conclusion in Latting v. Cordell, supra:

> "We are of the opinion that the purpose of the exception clause was to increase the number of Senators in the more populated counties so that the larger counties could be given the number of Senators to which they were entitled without reducing the number of Senators to which the other parts of the state were entitled."

In consideration of all of the foregoing, the Attorney General saw fit to translate each construction into a formula, with which a valid senatorial district apportionment under the 1950 federal census should be in substantial conformity. Since the census in point revealed a population of 2,223,650 and the state is to be divided into 44 senatorial districts, it was observed that each senatorial ratio of representation amounts to 50,537 persons. Therefore, it followed from the above that Oklahoma County, with a 1950 population of 325,352, should be divided by metes and bounds into six senatorial districts, each with one senator, or divided by metes and bounds into two senatorial districts, each with one senator, the four additional senators

to which the county is entitled to be nominated and elected at-large, in which event the county itself would constitute a senatorial district. Each of the districts, the opinion went on, should contain as near as may be an equal number of inhabitants and be in as compact form as practicable. As for Tulsa County, with a 1950 population of 251,686, it was determined that it should be divided by metes and bounds into four senatorial districts, each with one senator, or divided by metes and bounds into two senatorial districts, each with one senator, the two additional senators to which it is entitled to be nominated and elected at-large, in which event the county itself would constitute a senatorial district. Again, the requirement that districts be of near equal number of inhabitants and in as compact form as practicable would have to be observed. As a consequence of this procedure, it was then deduced that the population of the state, less the population of Oklahoma and Tulsa counties, is 1,646,612, the same being the population of the other 75 counties of the state. Therefore, it was concluded that in light of the principles of law announced in the cases above, these 75 counties should be arranged into 40 senatorial districts, each with one senator, and each of these should contain as near as may be an equal number of inhabitants as well as be in as compact form as practicable.

From a state constitutional perspective, coupled with court construction, no argument contrary to the above procedure will long survive. The flexibility incorporated in the procedure attends well to that. However, although a premature criticism of this 1955 opinion, it is very much noteworthy that a "liberal" construction of the equal protection clause of the Fourteenth Amendment may not permit such

application as outlined above. This is noted at this point because as a result of such a formula it is impossible to provide such districts of near equal inhabitants. As will be elaborated upon in a later chapter, the mechanical fulfillment of this formula necessarily develops a double standard, or two separate and distinct senatorial ratios, and it can be maintained that even if the Fourteenth Amendment is not involved, such was by no means intended by the framers of the Oklahoma Constitution.

To return to the setting of the Price opinion, the receipt thereof evidently prompted another, for within the month the Attorney General was requested by the same Senator to prepare the best bill he can devise in line with the opinion given. This resulted in the reply of March 30, in which the question was not begged but further complicated.[22] He was advised on this occasion that the preparation of such a bill would require Oklahoma and Tulsa counties to be divided into from four to ten senatorial districts, and to do so would necessitate that the Office be furnished in writing a legal description of the several senatorial districts desired in each of said counties. To accomplish this, the opinion continued, will require not only an exercise of legislative judgment and discretion, but also a knowledge of the census coupled with the services of an experienced abstractor in each county. Moreover, the Senator was told that it would likewise be necessary for him to inform the Attorney General of the counties, either singly or jointly, that should form each of the 40 senatorial districts, and which of the new senatorial districts he would desire each of the 22 holdover senators to

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[22]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. A. L. Price, March 30, 1955.

represent. Indicative of the obvious complexity embodied in these counter-requests, this was the last opinion on legislative apportionment asked by Senator Price.

It was in 1956 that the judiciary re-entered the malapportionment scene in Oklahoma; in one instance with a decision rendered by the state Supreme Court, and in another by way of the first consideration given the subject by a special three-judge Federal Court. Although serving, in effect, simply to reassert a position of the Oklahoma Supreme Court, the case of State ex. rel. Tayrien v. Doggett is worthy of notation.[23] Therein, the tribunal again made clear that it will not issue a writ of prohibition, the result of which would nullify all laws passed by the legislature, when said assembly is not composed of members selected in accordance with the apportionment ratio set forth in the Oklahoma Constitution. The justification here, as before, was based upon the separation of powers concept, complemented by the fact that to so order to the contrary would result in an apportionment based upon the original constitutional formula, the execution of which would result in even greater inequalities of representation. Of more substantive concern was the development that year of the first test of Oklahoma's malapportionment problem before a special three-judge Federal Court.

In Radford v. Gary, action was brought against the Governor, State Legislature, and others, for a writ of mandamus, or mandatory injunction, to force an apportionment as required by the fundamental law

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[23] State ex. rel. Tayrien v. Doggett, 296 P. 2d 185 (1956).

of the state.[24] It was contended by plaintiff that the Oklahoma Legislature had, since 1910, failed and refused to reapportion the state in full compliance with the plain mandate of the Oklahoma Constitution. To explain the reason for this plea before a federal tribunal, it should be recognized that for the first time in Oklahoma, the U. S. Constitution was also relied upon in the course of litigation. As might have been anticipated in view of Colgrove v. Green, supra, the court determined that the contention that such failure allegedly operated to deprive the voter of equal protection of the laws guaranteed by the Fourteenth Amendment did not vest jurisdiction in a federal court. Consequently, the writ of mandamus or injunction against state officials, to compel compliance with the state constitution or to enjoin payment of salaries to members of the legislature elected from existing districts, was denied on the grounds that the subject constituted a political question. This decision evidently restrained subsequent litigation in this field, for five years were to pass before another effort was to be made to penetrate the so-called political thicket.

To conclude with the quasi-judicial construction developed in this era, two additional opinions relative to legislative apportionment were requested of the Attorney General. The first of these was elicited by Senator C. M. Wilson for review of 131 legislative enactments of the Twenty-sixth Oklahoma Legislature (1957), of which one, House Bill 918, concerned a reapportionment of the House of Representatives. In the reply of October 21, 1957, the respondent was directed to the opinion

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[24] Radford v. Gary, 145 F. Supp. 541 (1956).

of the Office to him dated January 20, 1953, specifically as regards the excerpts cited from Jones v. Freeman and Jones v. Cordell, supra.[25] In point were the views that once a valid law is enacted no further act may be passed until after the next census, and such acts must be general rather than piecemeal in content. As the court "treated" the 1951 act as valid in Romang v. Cordell, and being considered in light of the principles of law announced in the above cases, the chief legal officer advised that House Bill 918 was invalid.

The second opinion was sought by Representative R. Sparger relative to the possibility of having a bill drawn to divide Carter County into two nominating districts for the office of state representative, as well as a determination as to the constitutionality of such legislation. For exactly the same reasons specified in the preceding opinion, the Attorney General replied on May 28, 1958, that such a bill, if enacted, would be contrary to the Oklahoma Constitution.[26] Even though the bill would affect only the nomination of candidates and would not alter the number of representatives which the county would elect, the opinion concluded that it would affect the degree of choice exercised over the selection of the Representatives by the electors of the county (based upon the place of their residence within the county), and this would constitute an attempted partial reapportionment that would not be condoned by the courts.

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[25]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. C. M. Wilson, October 21, 1957, pp. 78-79.

[26]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. R. Sparger, May 28, 1958.

Prelude to a Reconstruction, 1959-62.

As evidenced by all of the foregoing legal opinions and judicial decisions, the role of the courts vis-a-vis legislative apportionment has been one of cautious construction and review. Their hesitancy to intervene in matters of legislative discretion is clear and unequivocal. Unfortunately, however, the Oklahoma Legislature, as with those in most states, failed to perceive fully the prospective consequence of continued violation of fundamental laws. And with this problem becoming increasingly greater across the nation, it was to become more and more evident that only the courts could intervene, directly or indirectly, to influence legislative reconsideration. To prompt such reconsideration required judicial reconstruction and, as will be seen, this period served as a prelude to that event.

Prefatory to a review of the seven cases brought before the courts in this time span, one of which did not originate in Oklahoma but proved to be most important, it is desirable to continue chronologically with the first of two additional opinions of the state's Attorney General. Requested by Senator Fred Harris, this inquiry sought a determination as to whether or not a law enacted by the Twenty-eighth Oklahoma Legislature (1959), apportioning the legislative assembly under the 1950 census, would be constitutional. In the reply of March 13, he was advised of the pertinent constitutional requirements as supplemented by a relevant court decision.[27] Noted were Section 10(b) of Article V, to the effect that an apportionment is to be made at the first session after each decennial

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[27]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) to Hon. Fred Harris, March 13, 1959.

census, and that portion of Jones v. Freeman, supra, in which the court asserted that if the legislature in said first session fails to perform the mandatory duty, it falls upon each succeeding session until a valid apportionment act is passed. Therefore, it was concluded, should the legislature in said session assembled enact a law based upon the 1950 federal census and be drawn in conformity with the Oklahoma Constitution, it would be valid and remain in effect until replaced by a similarly valid law next based on the 1960 federal decennial census.

Although not of direct concern in Oklahoma at the time, litigation was underway in mid-1959 in the distant state of Tennessee that was to prove of great consequence in partially, if not fully, penetrating the traditional political thicket of malapportionment. To become known, praised and condemned, as Baker v. Carr, supra, this case was convened before the three-judge U. S. District Court for the Middle District of Tennessee pursuant to an order of a district judge who, upon reviewing decisions of the highest court, found distinguishable features he felt may ultimately prove to be significant.[28] In essence, the plaintiffs therein contended that the apportionment act of 1901 establishing the present districting is invalid because the state constitution required an apportionment every ten years, that the consequence of malapportionment constituted an illegal seizure of property rights under the state tax laws, and only action by the court could afford disproportionately represented voters their due relief. In addition, and equally important, it need be noted that plaintiffs filed suit under the First

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[28]Baker v. Carr, 175 F. Supp. 649, 652.

Amendment (". . .right of the people. . .to. . .petition the government for redress of grievances") and Fourteenth Amendment (". . .nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws") to the U. S. Constitution. Nevertheless, the Federal District Court, fully cognizant of the Colgrove v. Green doctrine, ruled that it did not have jurisdiction over this political question. As a result, plaintiffs appealed to the U. S. Supreme Court which, in turn, honored the hearing of arguments on three occasions during 1961, prior to rendering its decision one year later.

Meanwhile, evidently sensitive to the possible implications of the Tennessee suit, similarly situated Oklahoma citizens instituted comparable litigation in 1961. In one case, Moss v. Burkhart, supra, the Federal District Court for the Western District of Oklahoma, likewise aware of the implications of Baker v. Carr, decided to hold it in abeyance pending a final determination of the U. S. Supreme Court. In another case, Martin v. Key, in which plaintiffs went beyond Moss v. Burkhart by seeking money damages in addition to declatory judgments and writs of injunction, the same federal court dismissed the claims, the result of which (as argued by the state's Attorney General) would be chaos and confusion, and necessitate a book rather than a ballot if the plea of elections at-large were prescribed.[29] Following this interlude of prospective federal judicial intervention or intercedence, one other case relative to legislative apportionment evolved during 1961,

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[29]Martin v. Key, W. D. Okla. 5211 (1961).

this before the Oklahoma Supreme Court. In Jones v. Winters only a single, though significant point of law had to be adjudicated. This concerned the authority of the court to strike down a legislative enactment reapportioning the State Senate, notwithstanding a gubernatorial veto.[30] The Supreme Court again claimed jurisdiction to ascertain the constitutionality of such acts, although here the decision turned on a procedural rather than substantive question. Senate Bill 179, properly passed by the upper chamber over the Governor's veto, was determined not to have secured the constitutional three-fourths vote necessary in the other house, by Section 58 of Article V, and was therefore declared invalid.

The second of the opinions of the Office of the Attorney General of Oklahoma in this period dealt with the apportionment of both the Senate and the House of Representatives, under the 1960 federal decennial census, and was issued as a general memorandum on August 1, 1961.[31] Following in full the guidelines of the initial memorandum of January 30, 1951, which, in turn, was based upon the opinion of the Office to Representative Grisso of March 13, 1931 (regarding the House of Representatives), and the opinion of the Office to Representative Temple of March 24, 1941, (regarding the Senate), this memorandum served solely to relate the census to judicial principles of law and construction of the Attorney General. Because this is the last all-inclusive opinion and has current relevance, consideration in some detail is desirable.

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[30] Jones v. Winters, 365 P. 2d 357 (1961).

[31] Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General) on Apportionment of State Legislature, August 1, 1961.

Relative to the House of Representatives, the opinion first calls attention to the provisions of Section 10 of Article V of the Oklahoma Constitution, after which it is determined that the ratio of representation should be fixed at 23,282.

> "Applying said ratio of representation to the provisions of Paragraph "d", Section 10, supra, the various counties of this state are entitled to representation in the House during all of the five sessions of the legislature of the next decennial period as shown by the following table:
>
> 1. Counties having at least one-half ratio but just under 1 3/4 ratios, to-wit: a population of not less than 11,641 nor more than 40,743 . . . 1 representative.
>
> 2. Counties having not less than 1 3/4 ratios but just under 2 3/4 ratios, to-wit: a population of not less than 40,744 nor more than 64,025 . . . 2 representatives.
>
> 3. Counties having not less than 2 3/4 ratios but just under 3 3/4 ratios, to-wit: a population of not less than 64,026 nor more than 87,307 . . . 3 representatives.
>
> 4. Counties having not less than 3 3/4 ratios but just under 4 3/4 ratios, to-wit: a population of not less than 87,308 nor more than 110,589 . . . 4 representatives.
>
> 5. Counties having not less than 4 3/4 ratios but just under 5 3/4 ratios, to-wit: a population of not less than 110,590 nor more than 133,871 . . . 5 representatives.
>
> 6. Counties having not less than 5 3/4 ratios but just under 6 3/4 ratios, to-wit: a population of not less than 133,872 nor more than 157,153 . . . 6 representatives.
>
> 7. Counties having not less than 6 3/4 ratios, to-wit: a population of not less than 157,154 . . . 7 representatives.
>
> "In addition to the foregoing a county may have during one or more but not all of the five legislative sessions of the next decennial period, an additional representative, same to be based on the following tables:
>
> (a) A county having a population of not less than 4,656 nor more than 9,311 in excess of the population required under the above table for one or more representatives shall be entitled to one additional representative during one but not more than one of the five legislative sessions. It is suggested that this additional representative be allotted to said fifth session in order that the representation during the five sessions be made as uniform as possible.
>
> (b) A county having a population of not less than 9,312 nor more than 13,967 in excess of the population required under the above tables for one or more representatives, shall be entitled to one additional representative during the third and fourth legislative sessions.

(c) A county having a population of not less than 13,968 nor more than 18,623 in excess of the population required under the above tables for one or more representatives, shall be entitled to one additional representative during the second, third, and fourth legislative sessions.

(d) A county having a population of not less than 18,624 in excess of the population required under the above tables for one or more representatives, shall be entitled to one additional representative during the first, second, third and fourth legislative sessions.

"A county having a population of less than 1/2 ratio, to-wit: a population of less than 11,641, is not entitled to be a representative district, but, as provided in the second paragraph of the syllabus of Jones v. Freeman, et al., 193 Okla. 554, 146 P. 2d 564,

'must be attached to a county adjoining it and become a part of such representative district. Const. Art. 5, sec. 10(g)'."

With regard to the foregoing procedure, a few comments are in order. First, and although seemingly trivial, the ratio of representation might have been set more accurately at 23,283 (2,328,284 ÷ 100), an increase of but one. As a consequence, however, the range of population required for regular members would be increased as follows:

Ratios	Population	Representatives
1/2 to 1 3/4	11,641 - 40,745	1
1 3/4 to 2 3/4	40,746 - 64,028	2
2 3/4 to 3 3/4	64,029 - 87,311	3
3 3/4 to 4 3/4	87,312 - 110,594	4
4 3/4 to 5 3/4	110,595 - 133,877	5
5 3/4 to 6 3/4	133,878 - 157,160	6
6 3/4 and above	157,161 and above	7

Likewise with regard to the population required for floats, the figures might more properly have been set in accord with the following schedule, being population in excess of each full ratio and multiples thereof:

Excess Population	Floats
4,657	1
9,313	2
13,970	3
18,626	4

Of no real consequence in the actual allocation of regular members of the House today, the first of the schedules above could make a discernible difference for some counties in the future. As for the schedule immediately preceding, it differs substantially from the construction of the Attorney General which has never been endorsed by the courts. At issue is Section 10(e) of Article V of the Oklahoma Constitution specifying:

> "When any county shall have a fraction above the ratio so large that being multiplied by five the result will be equal to one or more ratios, additional representatives shall be apportioned for such ratio among the several sessions of the decennial period."

Evidently, the Attorney General has construed the "ratio" to be the minimum population required to elect one or more regular members. In contrast, it can also be contended that the "ratio" is the same "ratio" of representation alluded to in earlier paragraphs of the constitution, thus 23,283 and progressive multiples thereof, and the population in excess of same would determine the number of floats to which a county or district is entitled. Finally, with regard to the suggestion that the first float be allocated to the fifth session, it would appear that this would be in order as it is supported by the comparable antecedent in the Sequoyah and Ohio constitutions.

Relative to the Senate, the opinion also draws attention to another provision of the Oklahoma Constitution, namely Section 9 of

Article V. Again, the Supreme Court construction of the "except" clause in Section 9(a), both in Jones v. Freeman and Latting v. Cordell, supra, is brought into consideration, from which the following formula was concluded.

> "Since under the 1960 official federal decennial census Oklahoma has a population of 2,328,284, and under Section 9(a) of Article 5, the state is basically divided into 44 senatorial districts, it will be found that the state has a population of 52,915 to a senatorial district. Therefore, under the above underscored exception clause of Section 9(a) and the principles of law announced in the Supreme Court decisions above cited,
>
> (a) Oklahoma County, with a 1960 population of 439,506, should be divided by metes and bounds in said apportionment act into 8 senatorial districts, each with 1 senator or divided by metes and bounds into 2 senatorial districts, each with 1 senator, the 6 additional senators to which said county is entitled to be nominated and elected at large, in which event the county, itself, will constitute a senatorial district. Each of said districts should contain 'as near as may be' an equal number of inhabitants and be 'in as compact form as practicable.'
>
> (b) Tulsa County, with a 1960 population of 346,038, should be divided by metes and bounds in said apportionment act into 6 senatorial districts, each with 1 senator, or divided by metes and bounds into 2 senatorial districts, each with 1 senator, the 4 additional senators to which said county is entitled to be nominated and elected at large, in which event the county, itself will constitute a senatorial district. Each of said districts shall contain 'as near as may be' an equal number of inhabitants and be 'in as compact form as practicable.'
>
> "The population of the State of Oklahoma (2,328,284) under the 1960 official federal decennial census, less the population of Oklahoma (439,506) and Tulsa (346,038) Counties, is 1,542,740, same being the population of the other 75 counties of the state. Therefore, under the provisions of Sections 9(a) and 9(b), supra, and the principles of law announced in said decisions, said 75 counties should be arranged in said apportionment act into 40 senatorial districts, each with 1 senator, and each should contain 'as near as may be' an equal number of inhabitants, and be 'in as compact form as practicable.'
>
> "Each of the senatorial districts created in said apportionment act (whether 46 or 54) should be consecutively numbered in said act beginning with the number '1'."

It is evident that legislative discretion is embodied in this formula, for it is not specified, with any precision, the proper number

of senators that may be elected from a proper number of senatorial districts. This should be an acceptable position, because, as the Oklahoma Supreme Court has declared, the Oklahoma Constitution is unclear on the matter. However, as will be developed in Chapter IX, there is much evidence to support the position that 44 districts were clearly intended, from which more than 44 senators might be elected. Of further substantive concern, it should be observed that the procedure outlined to allocate seats in other than the two most populous counties also presents a problem. In effect, it could require the utilization of a double standard, meaning two separate and distinct population ratios, toward ascertaining the number of senators to which a given district may be entitled. Oklahoma and Tulsa counties would be related to the proper ratio of 52,916 (2,328,284 ÷ 44), whereas the remaining districts, assuming two are assigned to each of Oklahoma and Tulsa, would be related to a ratio of 38,568 (2,328,284 - 785,544 or 1,542,740 ÷ 40).

Finally, in a fashion somewhat anti-climatic, three cases were decided by the Oklahoma Supreme Court early in 1962, all of which were considered prior to the March 26 verdict of the U. S. Supreme Court in Baker v. Carr, supra. The first of these, brought under the title of Jones v. Winters, concerned the constitutionality of House Bill 1033 passed by the Twenty-eighth session (1961) of the Oklahoma Legislature.[32] The court concluded that although the provisions of the apportionment act do not comply with the state's fundamental law, it is not empowered to make an appropriate reapportionment, nor will it enjoin the State

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[32] Jones v. Winters, 369 P. 2d 135 (1962).

Election Board from performing its ministerial duty when the result would be an even greater inequality of representation. Therefore, it was once again determined that a non-constitutional legislative act could not be held unconstitutional, due to mitigating circumstances beyond the control of the judiciary.

The second and third of the cases in point involved like pleas, namely a writ of mandamus to require the State Election Board to accept filings of certain candidates for the Oklahoma Legislature in the 1962 election. The distinction in the litigation pertained to the offices sought by plaintiffs; Brown v. The State Election Board being in behalf of potential candidates for the House of Representatives,[33] and Reed v. The State Election Board seeking authority to file for the State Senate.[34] Decided on the same date, these cases posed comparable constitutional questions. In response, the Oklahoma Supreme Court held to its non-constitutional view of the 1961 act reapportioning the House and the 1941 act reapportioning in part the Senate. It went on to make clear, however, that in its judgment a declaration of invalidity would serve only to disrupt Oklahoma government, leaving the state without a constitutional or legislative apportionment scheme. Moreover, the court again reasserted its inability to act so as to put an end to the existence of any coordinate branch of state government, rationalizing that any law, though defective, must be allowed to stand so long as such law is necessary for the preservation of all essential processes of state

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[33]Brown v. The State Election Board, 369 P. 2d 156 (1962).

[34]Reed v. The State Election Board, 369 P. 2d 156 (1962).

government. Thus the plea of unconstitutionality was denied, and the suggested remedy of weighted voting to compensate for the alleged inequities was determined to be incompatible with the Oklahoma Constitution.

In summary, three significant deductions can be made relative to all of the foregoing judicial construction and review. First, in nearly all instances the prior construction of the Office of the Attorney General of Oklahoma (more specifically of Mr. Fred Hansen, Assistant Attorney General), as regards legislative apportionment, has been endorsed by the Oklahoma Supreme Court. Secondly, it should have been observed that there are a few mechanical and substantive features in the implementation of the directives of the Oklahoma Constitution that through 1962 were not subject to detail consideration by the state's highest court. Although construed by the Attorney General, these features, specifically as regards the application of the flotorial system for the House and the possible utilization of a double standard or two ratios for the Senate, remained debatable points of law. And thirdly, the continued irrelevance of the U. S. Constitution, and the subsequent persistence of the state courts not to intercede, can hardly be overlooked. But as will be seen in the ensuing chapters, both the position of the Oklahoma Supreme Court and alternative solutions to the problem were yet to be reconsidered in light of a new perspective of legislative apportionment in Oklahoma and the nation.

CHAPTER VIII

THE VOICE OF THE PEOPLE

In addition to a recognition of the constitutional framework relative to legislative apportionment, legislative action and judicial reaction, an acquaintance with the periodic involvement of the public at-large is essential toward a full appreciation of the subject. For other than the opportunity to express their views through their elected state legislators, the people of Oklahoma have had since statehood the opportunity to promote or pass laws directly, through the initiative and referendum process. This recourse, or presumed remedy, is afforded by the Oklahoma Constitution, and was conceived as a means whereby the people might supercede legislatures which fail to act in accord with popular sentiment.

Constitutional Requirements for Initiative and Referendum.

Prior to examining apportionment proposals developed by these procedures, and the manner in which the Oklahoma electorate has responded to them, it is desirable to review the mechanics of the initiative and referendum. As provided in the fundamental law of the state:

> ". . . the people reserve to themselves the power to propose laws and amendments to the Constitution and to enact or reject the same at the polls independent of the Legislature, and also

reserve power at their own option to approve or reject at the polls any act of the Legislature.[1]

"The first power reserved by the people is the initiative, and eight per centum of the legal voters shall have the right to propose any legislative measure, and fifteen per centum of the legal voters shall have the right to propose amendments to the Constitution by petition. . . . The second power is the referendum, and it may be ordered . . . either by petition signed by five per centum of the legal voters or by the Legislature as other bills are enacted. The ratio and per centum of legal voters hereinbefore stated shall be based upon the total number of votes cast at the last general election for the State office receiving the highest number of votes at such election.[2]

"All elections on measures referred to the people of the State shall be had at the next election held throughout the State, except when the Legislature or the Governor shall order a special election for the express purpose of making such reference.[3]

"Any amendment or amendments to this Constitution may be proposed in either branch of the Legislature, and if the same shall be agreed to by a majority of all the members elected to each of the two houses, such proposed amendment or amendments shall . . . be. . . referred . . . to the people for their approval or rejection, at the next regular general election, except when the Legislature, by a two-thirds vote of each house, shall order a special election for that purpose."[4]

It is evident that the rights of initiative and referendum vest in the people of Oklahoma the power to participate directly in the law-making process. By way of the initiative, the people may propose and enact legislation; by way of the referendum, they may demand that acts of the legislature be submitted to them for their approval or disapproval. There are, however, important mechanical features that distinguish the implementation of each right. Pursuant with the above constitutional

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[1] Oklahoma Constitution, Article V, Section 1.

[2] Oklahoma Constitution, Article V, Section 2. Incidentally, the office of Presidential Elector is considered a state office (In re State Question No. 137, Referendum Petition No. 49, 244 P. 806, 1926).

[3] Oklahoma Constitution, Article V, Section 3.

[4] Oklahoma Constitution, Article XXIV, Section 1.

directives, the number of signatures necessary to qualify a proposition for an election depends upon its substance. If a constitutional amendment is proposed, the initiative petition must secure valid signatures equal to 15 per cent of the total votes cast at the last general election for the state office receiving the highest number of votes cast at such election. If a statutory enactment is sought, the petition must have valid signatures equal to eight per cent, whereas a referendum petition toward repudiating legislative action requires five per cent.

As for constitutional amendments, the state's fundamental law cannot be changed, revised or altered except upon approval of the state's eligible voters. This can be accomplished by means of the initiative, legislative referendum, or through a state constitutional convention.[5] With regard to statutory measures, an enactment of the legislature may, at the discretion of the lawmakers, be referred for public consideration, although most laws relative to state debts must be referred at a general election.[6] Other than the optional referendum, the protest referendum can be demanded upon presentation of proper petition. However, it need be noted that if the legislature has added the "emergency" clause to a statute, as it does often as a matter of course rather than necessity, a protest of the enactment is impossible, for by virtue of it the 90-day period prior to enforcement is abandoned and the measure has force and effect immediately upon passage. This practice, if no emergency actually exists, circumvents the intent of the constitutional provision

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[5] Oklahoma Constitution, Article XXIV, Section 2.

[6] Oklahoma Constitution, Article X, Sections 23-34.

and automatically forestalls recourse to the circulation of a protest petition and subsequent referendum.

Propositions offered by the initiative and referendum are normally voted upon at the next regularly scheduled state-wide election, although most measures approved by the people have been submitted at special elections. Of importance, the legislature can refer a measure to the voters in a regular election by a simple majority of both chambers; to call a special election on a given proposal requires a two-thirds majority of both chambers. In contrast, the Governor may refer an initiative proposal or protest referendum to a special election at his discretion, or designate a regular primary (but not the date of a general election) as a special election for such purpose.[7] As a result, the fate of a constitutional or statutory measure often depends upon its time of submission. In a general election, an initiative proposition must have a majority of all votes cast in the election, whereas in a special election, approval requires only a majority of all votes cast thereon. Consequently, the so-called "silent vote" automatically counts against a proposal offered at a general election but not against a proposal offered at a special election. Therefore, a measure submitted at a special election has far greater potential for passage, and the Governor and Oklahoma Legislature are in a position to influence the outcome simply by choice of election for referral. As will be observed, the mechanics prerequisite to the implementation of the voice of the people has had a bearing upon the status of legislative apportionment.

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[7] Oklahoma Constitution, Article 34, Section 25; Price v. Christian, 373 P. 2d, 1017 (1962).

During the course of the state's 57 year history, 186 initiatives and referendums have been brought to a vote of the people. In the period 1907-63, 107 of these were submitted as legislative referendums and 45 adopted, 16 as referendum petitions and 6 adopted, and 62 as initiative petitions of which 17 were adopted. Of the total, 141 were proposed as constitutional amendments and 54 approved, whereas but 16 of the remaining 45 proposed acts and resolutions were deemed acceptable by the people.[8] Among the efforts to amend the Oklahoma Constitution during this period, five state questions concerned legislative apportionment, three being brought about by initiative petitions, the other two being submitted by way of legislative referendums.

State Question No. 77: Initiative Petition No. 50.

The first public reappraisal of Oklahoma's constitutional provisions relative to legislative apportionment was prompted in 1914 when the eligible voters of the state were urged to consider the adoption of an amendment to reorganize their state legislature. As the highest number of votes cast for a state office in 1912 was 247,427, and the initiative petition contained the necessary valid signatures in amount of 37,114 or 15 per cent thereof, the electorate weighed the following proposition at the general election.

> "To amend the Constitution so as to reduce the Legislature to one body of eighty members, styled 'The House of Representatives' and one subordinate Legislative body, to be styled 'Commissioners', which with the Lieutenant Governor, shall succeed to all powers now conferred on the House of Representatives: to fix qualifications, compensations, privileges and powers thereof, and amending

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[8] Directory and Manual of the State of Oklahoma, 1963, op. cit., pp. 192-227.

Sections 3 and 53 of Article 5 and Sections 7 and 11 of Article 6 of the Constitution to conform thereto."[9]

This quest of a modified unicameral lawmaking body sought much more than the ballot title might suggest. In fact, the petition, as approved, would have amended seven rather than two sections of Article V of the state constitution. Section 1 was to provide for a House of Representatives of 80 members, one to be elected from each of 80 legislative districts, which were to be apportioned according to population. Of particular interest, the House would select 15 of its members to serve as Commissioners and constitute, during the recess of the House, a subordinate legislative body with much of the same legislative power. The Commissioners were to meet on the first Tuesdays of April and September of each year, with the Lieutenant Governor presiding and possessing a vote the same as any member. As a unit, they were to sit as long as necessary, although not during a session of the House, and all its enactments were to be subject to review at the ensuing regular or special session of the House. Failure of the House to ratify the acts of the Commissioners would negate them, or operate as a repeal. To accomplish the transition from the old order to the new, the first House was to be chosen from among the membership assembled in January, 1915, to wit: the House would choose 50 of its members and the Senate 30 of its members, as nearly as possible according to the political and geographical representation of parties and counties, under such regulations as each

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[9]Directory and Manual of the State of Oklahoma, 1963, op. cit., p. 197.

House would provide, and the 80 members would convene on the next succeeding day after the amendment became effective.

Section 17 provided that the qualifications of members of the House would be the same as those of the qualified voters of their district, and Section 21 set the salary of the legislators. Section 22 pertained to the various privileges from arrest, and Section 23 provided that no member could be appointed or elected to any other office of state during the term of the legislator or within two years thereafter. And Sections 3 and 53 would have required that no appropriation bill be passed either by the House or Commissioners during the last five days of their respective sessions, and that pending suits may be compromised upon the recommendation of the Attorney General with the approval of the Governor.

As indicated by the ballot title, two sections of Article VI were likewise to be amended. Section 7 was to direct that the Governor be authorized to convoke the legislature, or the Commissioners, on extraordinary occasions. At such sessions, no subject was to be acted upon other than that recommended by the chief executive. Finally, Section 11 would have provided that every bill or resolution passing the House or Commissioners be presented to the Governor for approval or veto, with a two-thirds vote of the members of the House required to override a Governor's reservations.

On November 3, 1914, State Question No. 77 was rejected. Although 94,686 eligible voters (38.04%) approved of the proposition, and 71,742 (28.82%) disapproved, the amendment was defeated. The reason for this result is, as explained above, that inasmuch as the measure was

considered at a general election, it required a clear majority of the total votes cast in the election, or 124,465 of 248,928. Thus, the silent vote, notwithstanding a majority of almost 23,000 in favor, brought about its demise, as it amounted to 82,500 (33.14%) votes otherwise cast.

State Question No. 243: Legislative Referendum No. 77.

The second effort at a constitutional amendment on legislative apportionment did not evolve for almost a quarter of a century when, in 1938, the first proposal referred by the Oklahoma Legislature was considered. As submitted by House Joint Resolution No. 27 of the 1936-37 session, the ballot title read as follows:

> "Shall the Constitution of the State of Oklahoma be amended by adding thereto an additional Section to be known as Section 1-A of Article 5, providing for the State Legislature, commencing in 1940, to be composed of seventy-seven members of the House of Representatives and thirty-four members of the Senate, each of whom shall receive an annual salary of, not to exceed the sum of Two Thousand Four Hundred Dollars, payable out of the State Treasury; providing for Legislative apportionments every ten years."[10]

A rather simple reapportionment scheme, this proposition sought to legitimize, by and large, the status quo of the time. Provision for 34 senatorial districts and 77 representative districts would not have seriously undermined the prevailing non-constitutional legislative apportionment practices. Besides, whereas each county would always be entitled to a single member in the House, the Senate would be composed of members elected from a like number of districts, a reapportionment of which

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[10] Directory and Manual of the State of Oklahoma, 1963, op. cit., p. 209; Oklahoma Session Laws, 1936-37, op. cit., pp. 560-61.

would be based upon any criteria the legislature might conceive. Whether the extraordinary discretion pertaining to a redistricting for the upper chamber was critical in the public's deliberations is debatable. But to be sure, the incorporation of a substantial legislative salary increase added to the issue.

The outcome of the election of November 8, 1938, left no doubt as to the sentiment of the people. State Question No. 243 was overwhelmingly rejected as 256,745 negative votes (47.74%) were cast, as contrasted with 92,264 positive votes (17.15%). Moreover, because the measure was considered on the date of a general election, the silent vote might also have adversely affected it. However, as 188,820 ballots (35.11%) were non-committal and 268,915 would have constituted a clear majority of the total of 537,829 votes cast in the election, the silent vote was of no consequence.

State Question No. 397: Initiative Petition No. 266.

Of more recent date, the third proposed constitutional amendment to govern legislative apportionment came about in 1960 as a result of the second successful initiative petition to bring the issue before the Oklahoma electorate. The number of signatures required to submit this alternative formula was 15 per cent of the total cast for the state office receiving the highest vote in 1958, or 80,826. Following is the proposition that the elegible voters were asked to decide.

> "Shall a Constitutional amendment providing for legislative apportionment by a commission composed of the Attorney General, State Treasurer and Secretary of State; one Representative per county and certain additional Representatives; forty-eight senatorial districts consisting of contiguous territory with a minimum variance of population between districts; legislative

terms; districting; original jurisdiction in State Supreme Court under prescribed conditions; elections complying with effective apportionments; amendment self-executing; related provisions; and replacing Sections ~~9(a)~~, ~~9(b)~~ ~~and~~ ~~16~~ ~~and~~ amending Sections 9 through 15 inclusive, Article V, Constitution of Oklahoma, be approved and adopted?"[11]

Although not substantively as great a departure from the Oklahoma Constitution as State Question No. 77, nor procedurally as ill-defined as State Question No. 243, this proposition presented a particularly difficult choice to the disproportionately represented citizens of the state. In reality, it posed an alternative between the more equitable but non-self-executing constitutional formula and the prevailing serious degree of malapportionment. So critical was this choice that it led to the demise of the state's first broadly based citizens group organized to see through the enforcement of the pertinent provisions of the fundamental law. Established in July, 1958, Oklahomans for Constitutional Representation, Inc., was a product of concerted interest displayed by citizens in Oklahoma City and Tulsa at two organizational meetings sponsored by the Oklahoma League of Women Voters. Its purpose was to educate the citizenry on the subject and to promote an apportionment of the legislature in accord with the constitutional provisions. The League of Women Voters and a significant number of other state and civic groups and individuals pledged their support to this goal. At the outset, the organization directed its attention to planning an initiative petition drive to accomplish its task. However, by the time the strategy was developed, and finances arranged, the people of Oklahoma had by a record

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[11] Directory and Manual of the State of Oklahoma, 1963, op. cit., p. 223.

vote elected a new Governor, J. Howard Edmondson. With the chief executive came a campaign pledge to resolve the long standing problem of malapportionment to the satisfaction of most citizens. State Question No. 397 was to be the remedy and, as a result, it was not long before internal dissention in the ranks of Oklahomans for Constitutional Representation developed, both against certain constitutional provisions and against certain features of the Edmondson petition, the consequence of which was that the citizens organization was disbanded.

The intent of Initiative Petition No. 266 was to amend seven sections of Article V of the Oklahoma Constitution. Section 9 was to provide that the Senate and House be separately apportioned by a Legislative Apportionment Commission composed of the Attorney General, Secretary of State and State Treasurer within 30 days after each federal decennial census. To guide the Commission in this responsibility, Section 10 directed that the state be divided into 48 senatorial districts (each to elect one senator), the same to be contiguous and formed in such fashion as to produce a minimum variance of population as between districts. The latter, a mathematical test to show inequalities in representation in the Senate, was to be utilized by determining the difference between the population of each district and 1/48th of the state's population, multiplying each of the differences by itself and totaling the 48 products. Of the plans complying with the amendment, that which provided the smallest total of the 48 products was to be adopted. As for the House of Representatives, Section 11 proposed that the same be composed of a minimum of 77 members, thus guaranteeing each county at least one member. To ascertain any number in addition thereto, the

population of the state was first to be divided by one hundred, and the quotient would be used as the ratio of representation. For each full ratio of population within any county, an additional member would be allotted up to a total of seven. Thereafter, a county, in order to secure additional members, would be entitled to one for each additional 1 1/2 ratios up to a total of 10 representatives, after which two full ratios would be required for additional members in the lower chamber.

Principle among the various features of Section 12 of this constitutional amendment was provision not to divide a county in the formation of a senatorial or representative district except to make two or more districts within such county, and authorization for the legislature to provide for nominating and election districts in either chamber. In event of controversy, Section 13 specified that any citizen may seek a review of any apportionment within 30 days of filing thereof by petitioning the Oklahoma Supreme Court with a plan more nearly in accord with the foregoing sections. Upon review, the court was empowered to determine the plan in greater compliance and, by appropriate writ, require the same to be enforced. Likewise upon petition, should a citizen allege failure of the Commission to act as directed, the court was vested with original jurisdiction to compel compliance. Finally, Section 14 would have directed the State Election Board to accept filings after each apportionment is finalized, and Section 15 would have made the amendments self-executing.

Unlike each of the preceding propositions, this was submitted to the Oklahoma electorate at a special election. As the predecessor proposals, however, it was rejected on September 20, 1960. Of the

536,528 ballots cast on State Question No. 397, 189,348 (35.29%) of the eligible voters favored its passage while 347,180 (64.71%) indicated their disapproval. As a result, the problem of malapportionment continued to prevail in Oklahoma, and the anxieties created by it was to prompt still other ill-fated efforts at constitutional revision in each of the next two years.

State Question No. 407: Legislative Referendum No. 136.

The fourth public consideration of a constitutional amendment on legislative apportionment was brought forth in 1961 when the second proposal referred by the Oklahoma Legislature was deliberated by the electorate. As submitted by House Joint Resolution No. 527 of the 1961 Session, the ballot title read as follows:

> "Shall a Constitutional amendment amending Section 10, Article V, of the Oklahoma Constitution to empower and direct the State Election Board to use a certain prescribed formula for each Federal Decennial Census to apportion membership in the House of Representatives; vesting original jurisdiction in Oklahoma Supreme Court to force said Board to make such apportionment; and repealing Sections 12, 13, 14, 15 and 16, Article V, of the Oklahoma Constitution, be approved by the people?"[12]

This proposal, concerned only with the House of Representatives, sought the adoption of a substitute constitutional formula premised once again upon each county being entitled to at least one member, the removal of the upper limit of seven, and making additional members progressively more difficult to earn. The apportionment for members of the lower chamber was to be made this time by the State Election Board within 30 days after promulgation by the Governor of each certified federal decennial

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[12]Directory and Manual of the State of Oklahoma, 1963, op. cit., p. 224; Oklahoma Session Laws, 1961, op. cit., p. 709-10.

census. To implement the formula the total population of the state was again to be divided by one hundred and the quotient used as the ratio of representation for the ensuing decade. Every county with a population less than a full ratio was to be assigned one representative; every county with a population above one but less than two ratios, two representatives; every county with a population above two but less than three ratios, three representatives; and every county with a population above three but less than four ratios, four representatives. After the first four representatives, a county would qualify for one additional member of the House on the basis of two full ratios of population. In event of failure of the State Election Board to apportion accordingly, the Oklahoma Supreme Court would have been vested with original jurisdiction to hear mandamus and other actions and subsequently force a proper apportionment.

Unlike the initial legislative referendum on the subject, State Question No. 407 was assigned for consideration at a special election. Thus, as with the Edmondson petition, the silent vote was not a factor, although to an even greater extent it was rejected. Of the 115,186 ballots cast on the proposition, 88,779 votes (77.07%) disapproved and but 26,407 (22.93%) favored the measure. Instrumental in this result, incidentally, was the second broadly based citizens organization in Oklahoma, united specifically for the purpose of enforcing the constitutional formula governing both the Senate and House of Representatives. Formed in April, 1961, the Citizens for Constitutional Reapportionment were incorporated for two purposes: to attain their primary goal by way of an initiative petition, and to accomplish that end with vehement opposition to House Joint Resolution No. 527. With regard to the latter,

they were evidently successful, but as regards the former, they were to fall short of the mark.

State Question No. 408: Initiative Petition No. 271.

The fifth and final proposed constitutional amendment on legislative apportionment submitted to the people from statehood through 1963 developed into a classic illustration of interest group conflict. Substantively, this proposition was the least complex of all, but as the issue was well defined and clearly understood, State Question No. 408 managed to attract the largest turnout on the subject to date.

In great contrast with comparable experience heretofore, Initiative Petition No. 271 was challenged politically and legally from its inception to conclusion.[13] To set off a most interesting series of events, Citizens for Constitutional Reapportionment filed on September 30, 1961, a notice of intent to submit to a vote of the people a constitutional amendment which would guarantee enforcement of the reapportionment formula in the state's fundamental law. Within the prescribed 90 days 219,686 signatures favoring such vote were secured and, on December 27 the petitions were filed with Secretary of State William Christian. This prompted, on January 5, 1962, a protest of sufficiency and validity by Oklahomans for Local Government, an organization largely composed of incumbent rural state senators which, in 1960 had much to do with the demise of State Question No. 397. Insufficiency of signatures on the new initiative petition was alleged on the grounds that it required 25 per cent rather than 15 per cent of the highest number of

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[13]For an account of the trials and tribulations of legislative apportionment from August, 1961, to August, 1962, see: League of Women Voters, Supplement to Reapportionment, Norman, Oklahoma, August, 1962.

votes cast for a state office in the last general election, inasmuch as the proposition was identical to that of Initiative Petition No. 266 considered less than two years earlier. In point was a provision of the state constitution prescribing that in event an initiative petition sought to re-submit within three years a question once defeated, it would necessitate the additional number of signatures.[14] This critical distinction is obvious when the number of signatures secured is compared with the 15 per cent (135,473) and 25 per cent (225,778) requirements. For good measure, moreover, the protestants also called for an examination of the validity of each and every signature.

On the matter of signature requirements, the Attorney General of Oklahoma ruled, within a week, that the petition in question was not the same as that of Governor Edmondson, as the former sought only to enforce the existing constitutional provisions whereas the latter sought to change substantially many sections thereof. Therefore, the 15 per cent requirement was deemed adequate. But as regards the second portion of the protest, or the validity of signatures, it resulted in litigation that effectively delayed public consideration of the measure and, as will be seen, saw to its defeat. Indicative of the advantage taken of a legitimate privilege, Oklahomans for Local Government pressed their claims not only before the Secretary of State, but also before a District Court, the Oklahoma Supreme Court, and a Referee appointed by the highest court, all over a period of six months. In the meantime, the protestants amended their complaints to challenge the form and language of the

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[14] Oklahoma Constitution, Article V, Section 6.

initiative petition and were granted additional time to secure the services of a handwriting expert.

Nevertheless, on March 20, 1962, the Secretary of State ruled the petition valid and the signatures sufficient in number. This prompted Governor Edmondson to plead with the state Supreme Court to consider the ensuing appeal without delay in order that the people may vote on the question as a special election at the May 28 runoff primary. However, a 30 day delay was soon thereafter granted protestants by the higher court and, upon designation of a referee, the review was extended yet another month. As a result, irregularities were alleged by the handwriting expert on approximately 9,000 signatures, or about 10 per cent of the "surplus" number contained in the petition. Consequently, on May 31, 1962, the Oklahoma Supreme Court upheld the ruling of the Secretary of State, declaring that the signatures were sufficient, but allowed the protestants still another 30 days to file on related questions of law.[15] Finally, on the following July 16, the state's highest court, upon reviewing the legal questions (particularly that which alleged the petition sought a vote on a measure identical with that offered two years before), ruled again in favor of the findings of the Secretary of State. However, on July 25th the court delayed until September 1, 1962, its decree in order to permit Oklahomans for Local Government adequate time to request that the U. S. Supreme Court set aside the order.

As a result of a series of unexpected developments during September, Oklahomans were at long last given the opportunity to prepare

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[15]National Municipal League, National Civic Review, Vol. LI, July, 1962, p. 376.

for a vote on State Question No. 408 at the subsequent general election. Following an earlier than anticipated clearance of the initiative measure by the Oklahoma Supreme Court, and a surprise withdrawal of all protests by Oklahomans for Local Government, the Governor proceeded to issue an unprecedented proclamation calling a special election on the issue at the date of the general election. This withdrawal was a well timed strategic maneuver on the part of opponents to have the proposition defeated by a combination of apathetic urban residents and the much concerned rural residents. This failing, it was expected that the opponents "ace in the hole" might prove to be a subsequent suit challenging the sufficiency of the vote cast and/or the legality of a special election having been called on the date of the general election. On the other hand, the counter-strategy of proponents of the measure was an obvious attempt to escape the negative influence of the silent vote, coupled with an effort to get the proposal before the people at a minimum of expense.[16]

All doubts of sufficiency and validity of the proposition having thus been resolved, the eligible voters of Oklahoma were free to consider the controversial question presented as follows:

> "Shall a constitutional amendment providing method for enforcement of the present constitutional formulae apportioning members of the House of Representatives and Senate; vesting this duty in the Attorney General, Secretary of State and State Treasurer acting ex-officio as a legislative apportionment commission; conferring original jurisdiction upon State Supreme Court to review any apportionment upon petition of any qualified elector under prescribed conditions; defining senatorial terms; requiring elections in accordance with apportionments; declaring amendment self-executing; repealing subsections, a, b, i and

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[16] Ibid., Vol. LI, November, 1962, pp. 567-68.

j, Section 10, and amending Sections 11-16 inclusive, Article V, Constitution of Oklahoma, be approved by the people?"[17]

As suggested, the foregoing proposition was by no means as complex in content as the earlier constitutional proposals to amend the legislative apportionment formulae. More than the preceding questions, the latter sought by petition to do precisely that which was stated in the ballot title. For once, an interested citizen had no need to comprehend the technical ramifications of a proposition; one either favored or disfavored an enforcement of the fundamental law of the state. Toward this end, six sections of Article V of the Oklahoma Constitution were to be amended. Section 11 would have exclusively vested the duty of apportioning the legislature in a Legislative Apportionment Commission composed of the Attorney General, Secretary of State and the State Treasurer. According to Section 12, the duty would be performed within 45 days following adoption of the amendment, and thereafter within 45 days after publication of each federal decennial census. Each order of apportionment was to be filed with the Secretary of State and attested by at least two members of the Commission. Section 13 would have permitted any qualified elector to seek a review of any apportionment within 30 days of said filing, by likewise filing (but with the Oklahoma Supreme Court) a plan more nearly in accord with the constitutional formulae. Upon review, the Supreme Court was to determine the "best" plan, same to be that which results in the minimum variance of population between districts. Moreover, upon petition alleging neglect of duty, the Supreme

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[17]Director and Manual of the State of Oklahoma, 1963, op. cit., p. 225.

Court was to be vested with original jurisdiction to compel the ex-officio body to make an apportionment as herein prescribed. Sections 14 through 16 simply attended to finality, acceptance of filings for office, and self-execution of the proposition along with the repeal of those sections in conflict.

As intimated earlier, organized pressure groups wasted no time in their efforts to properly educate the public. To well summarize the position of opponents, the Oklahoma Rural News issued a special edition dedicated solely to the subject.[18] Therein, the president of the Oklahoma Farmers Union urged a vote against State Question No. 408, reminding its members that they, in convention last December, voiced disapproval of legislative apportionment based solely on population. Once it is defeated, it was argued, a new proposal should be initiated that would base the membership of one house on population and the other on area or district. Likewise, the master of Oklahoma Grange warned against approval of the amendment, contending that if the state is to have population as the only basis to consider, there is no need for two houses. Moreover, it was asserted that the two-house system has certain checks and balances that are advantageous, and if the "federal plan" works well for the nation it can work well in the states. Any other scheme, the master concluded, would put the power of state government in the hands of a few counties that are controlled by power-hungry newspaper publishers and big city politicians.

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[18]Oklahoma Association of Electric Cooperatives, Oklahoma Rural News, Special Edition of October 19, 1962, pp. 1-4.

To these views were added those of the Oklahoma Farm Bureau. Although it was noted that the delegate body had not given specific direction on the question, it was made clear that the organization has long favored an apportionment patterned after the U. S. Congress, putting one house on a population basis and the other on area or political subdivisions. Finally, the Oklahoma Association of Electric Cooperatives urged a negative vote, maintaining that approval of the proposition would place the authority of reapportionment in a political commission, take it away from the elected representatives, result in a population plan, give the majority of power to a few counties, and eliminate the checks and balances protection provided in the bicameral legislature. A spokesman for the organization defended its position by contending that a negative vote would keep the power to reapportion in the hands of the people, allow the legislature an opportunity to reapportion on a fairer basis, retain the opportunity for the legislature to consider geography and historical boundaries as well as population as the basis of representation, and preserve a fair voice for rural people in state government. Indicative of the composite strength of these groups, their political and legal leadership was easily identifiable at the core of Oklahomans for Local Government.

Pitted against this formidable alliance were the Oklahoma League of Women Voters, the Oklahoma Association of Parents and Teachers, and Women for Representative Government. Likewise aware that divided they fall, their leadership was at the core of Citizens for Constitutional Representation, a group in addition composed of a variety of political and legal talents representing the interest of most urban centers of the

state. To counter the educational efforts of their adversaries, Citizens for Constitutional Representation maintained that State Question No. 408 would serve solely to designate a different group of elected officials to enforce the law on apportionment: a commission rather than the legislature. Also, it was argued, a favorable vote would have nothing to do with placing the power of state government in the hands of residents of a few counties alleged to be controlled by power-hungry publishers and politicians. Similarly, it was contended that the measure had nothing to do with reapportionment based only on population, as such is not the essence of the related provisions in the Oklahoma Constitution. Therefore, the campaign of the proponents was largely concentrated on the desirability of a guaranteed orderly enforcement of the fundamental law, vesting the responsibility in three state-wide elected officials rather than a 165-member legislature. In the long run, they were to win the battle but lose the war.

In keeping with a pledge to enable the citizenry to consider this constitutional amendment without the negative influence of the silent vote, Governor J. Howard Edmondson issued the proclamation mentioned just ten days before the scheduled general election, setting November 6, 1962 (the date of the general election) as a special election for this purpose. On said date a clear majority of the voters approved the proposition; 335,045 ballots (46.21%) were cast in its behalf and 273,287 (37.70%) were opposed. As a result, the Governor declared three days later that the measure had passed and was properly a part of the fundamental law of the state. Under ordinary circumstances the voice of the people might have prevailed. But as suggested earlier, there were

mitigating circumstances that developed before and after the election which prolonged the agony for all concerned with State Question No. 408.

On November 9, 1962, the same date on which the Governor filed with the Secretary of State his declaration of passage, there was instituted in the District Court of Oklahoma County a suit of 25 State Senators brought by their five attorneys (the political and legal mainstay of Oklahomans for Local Government) against the State Election Board and the Legislative Apportionment Commission.[19] The plaintiffs prayed a determination of the legal effect, if any, of the provisions contained in the proposition voted upon, and that the same be declared to have failed of adoption as required by the Oklahoma Constitution. This case was intended to settle the Governor's authority to set the date of a general election for the purpose of holding a special election. But to further complicate matters, two of the members of the Legislative Apportionment Commission (State Treasurer William Burkhart and Secretary of State William Christian) proceeded on the next day to direct a reapportionment of the state legislature pursuant with its authority under State Question No. 408. However, the plan ordered into effect was not that prescribed by the state constitution which, it will be recalled, specifies an upper limit of seven members per county in the House and at least 44 members to be elected from 44 districts in the Senate. Rather, it was a plan based upon substantial numerical equality that was selected by a Federal District Court on August 3, 1962, as an appropriate guideline for the legislature. As the circumstances surrounding, and details

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[19] Baldwin v. Fitzgerald, District Court of Oklahoma County, No. 158179.

involving, the litigation before the federal court in 1962-63 has been reserved for consideration in the next and final chapters, suffice it to note at this point that the suggested remedy in Moss v. Burkhart, supra, was based upon considerations of the Fourteenth Amendment. The consequence of that litigation was that the seven member ceiling on county representation in the House must be disregarded and that the Oklahoma Senate must consist of 44 senators elected from 44 districts. Therefore, prior to a final order and decree by the Federal District Court, the majority of the Legislative Apportionment Commission sought to implement it, and this incited additional litigation.

Of particular interest, it was the same (then Acting) Attorney General who, as the third member of the Legislative Apportionment Commission, recommended the model adopted by the federal court and yet refused to participate in the reapportionment order. His position, as stated in Baldwin v. Fitzgerald, supra, was that the measure failed to secure a majority or 362,488 of the 724,974 votes cast in the general election, which he believed is required for approval under Article V, Section 3 of the Oklahoma Constitution.[20] Asked two days following issuance of the Commission's order how he assessed the action of the majority, he replied:

> "As you have read in the papers, I have refused to join in their decree. Now, as you know, I am heartily in favor of the plan ordered (which I have helped work out with you and Professor Pray), but I am thoroughly convinced that the action of the Governor in setting a special election on the date of the General Election is without legal standing -- therefore, I, in my

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[20]National Municipal League, National Civic Review, op. cit., Vol. LII, January, 1963, p. 32.

capacity as Acting Attorney General, in good faith with the duties of this office, had to divorce my personal attitude on the broad question from the essence of this point of law.

"Besides, I do not think it right that a Governor should have the authority to sway the result of an initiative measure by selecting the date of the General Election and thereby automatically making the silent vote count in favor of a measure which he personally supports. This in effect permits him to swing at will 50,000 to 100,000 otherwise negative votes at a General Election. After all, a silent vote in the legislative process is a negative vote and should be the same in this case. In addition, I might add that I do not think that the Governor, whomever he might be, should involve himself in initiative efforts because it is designed to be that of the people and not of the chief executive of the state who should be impartial and simply carry out the law.

"So in general you can understand my position, which is agreed to by the incoming Attorney General, that the Governor's action was without basis in law and should be declared so, thus restraining the order of the Commission and leaving the matter of apportionment to the Legislature and the Federal District Court. When it gets to that court, I am confident and do assume that the guidelines offered earlier will prevail."[21]

To culminate the foregoing events, the suit initiated by Oklahomans for Local Government in the District Court of Oklahoma County was under consideration when, in an attempted effort to counter their jurisdiction, attorneys for State Treasurer William Burkhart sought hearing on motion that the Federal District Court uphold the reapportionment and order the State Election Board to conduct the next election as prescribed. The federal court declined soon thereafter, however, as the Oklahoma Supreme Court had meanwhile assumed jurisdiction over the lower court case. And finally, on December 22, 1962, the state's highest court ruled that the constitutional reapportionment petition failed of passage in the general election. In an 8-1 decision, the court held

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[21]Interview with Acting Attorney General Fred Hansen, November 12, 1962.

that the Governor had no authority to call a special election on the same day as the general election. Accordingly, the reapportionment order issued on November 11 by the majority of the three-man apportionment commission was nullified, and State Question No. 408 joined the ranks of its predecessor proposals as a rejected proposition.[22]

Recapitulation and Conclusion.

To summarize the reaction of the voters of Oklahoma to each of the foregoing initiatives and referendums is the purpose of Table 32. On no occasion did the people give majority approval to a proposed amendment on legislative apportionment. However, it is of interest to observe that whereas the propositions considered at special elections in 1960 and 1961 were overwhelmingly rejected, those considered at general elections were defeated by relatively narrow margins. In fact, had the silent vote not been a factor in the 1914, 1938 and 1962 elections, each measure would have been handily adopted.

This experience brings into focus the questionable merit of the initiative and referendum process as an adequate remedy to malapportionment. In theory, these alternatives offer an effective expression of the will of the people. In practice, however, it is submitted that both are subject to mitigating circumstances that tend to render their usefulness debatable. Whether viewed in behalf of, or in opposition to, a given proposition, the reasons for this contention are many. Principal among these are the legislative or pressure group controls over the nature of

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[22] Price v. Christian, op. cit.; and National Municipal League, National Civic Review, op. cit., Vol. LII, February, 1963, pp. 95-96.

TABLE 32

STATE QUESTIONS SUBMITTED TO THE PEOPLE:
INITIATIVES AND REFERENDUMS ON LEGISLATIVE APPORTIONMENT, 1907-63*

St.Q.	Form	Elec.	Year	Yes (%)	No (%)	Silent (%)	Total Vote	Necessary	Disposition
77	IP 50	Gen.	1914	94,686(38.04)	71,742(28.82)	82,500(33.14)	248,928	124,465	Rejected
243	LR 77	Gen.	1938	92,264(17.15)	256,745(47.74)	188,820(35.11)	537,829	268,915	Rejected
397	IP266	Spec.	1960	189,348(35.29)	347,180(64.71)	0	536,528	268,265	Rejected
407	LR136	Spec.	1961	26,407(22.93)	88,779(77.07)	0	115,186	57,594	Rejected
408	IP271	Gen.	1962	335,045(46.21)	273,287(37.70)	116,642(16.09)	724,974	362,488	Rejected

*Adapted from: DIRECTORY AND MANUAL OF THE STATE OF OKLAHOMA, 1963.

the proposal, the advantage wielded by greater financial support and better organization, and the need to court the chief executive for timely referral at a special election. In addition, it cannot be ignored that the people seldom decide the outcome, for only the registered voters participate, and it is the exception rather than the rule when a majority of them turn out to consider such questions. No doubt these remedies could function as safeguards of the people, but they are seriously limited in Oklahoma as effective popular controls over legislative indifference.

CHAPTER IX

THE NEW PERSPECTIVE

From statehood to 1962, it is evident that much more than a majority of Oklahomans were not afforded their share of constitutional representation, let along political equality, and every effort to remedy the wrongdoing had met with no success. Beginning in 1962 and developing through 1964, however, the plight of the disproportionately represented in Oklahoma, and elsewhere across the nation, was subject to an abrupt reconsideration. It is the purpose of this chapter to account for this historic new perspective, and particularly to describe its ramifications in Oklahoma. And as in previous chapters, the presentation once again requires attention to constitutions, court decisions, legislative acts, and a referendum.

Prefatory to an account of the cause and effect of the revitalization of the principle of political equality, appreciation of the consequence of apportionments in each of the 50 state legislatures as of January, 1962, is desirable. A product of a comprehensive nation-wide study, Table 33 depicts not only the ideal versus the actual largest and smallest populations per district in each Senate and House, but provides as well the percentage of the population to which the

TABLE 33

STATE SENATE LEGISLATIVE APPORTIONMENT

State	Average or "Ideal"	Largest	Smallest	% Nec. to Control	State	Average or "Ideal"	Largest	Smallest	% Nec. to Control
Ala.	93,278	634,864	15,417	25.1	Mont.	12,049	79,016	894	16.1
Alas.	11,308	57,431	4,603	35.0	Neb.	32,822	51,757	18,824	36.6
Ariz.	46,506	331,755	3,868	12.8	Nev.	16,781	127,016	568	8.0
Ark.	51,036	80,993	35,893	43.8	N.H.	25,288	41,457	15,829	45.3
Calif.	392,930	6,038,771	14,294	10.7	N.J.	288,894	923,545	48,555	19.0
Colo.	50,113	127,520	17,481	29.8	N.M.	29,719	262,199	1,874	14.0
Conn.	70,423	175,940	26,297	33.4	N.Y.	287,626	366,000	207,000	36.9
Dela.	26,193	70,000	4,177	22.0	N.C.	91,123	272,111	45,031	36.9
Fla.	130,304	935,047	9,543	12.3	N.D.	12,907	42,041	4,698	31.9
Ga.	73,021	556,326	13,050	N.A.	Ohio	288,073	439,000	228,000	41.0
Hawaii	25,311	50,040	8,515	N.A.	Okla.	52,916	346,038	13,125	24.5
Idaho	15,163	93,460	915	16.6	Ore.	58,956	69,634	29,917	47.8
Ill.	173,812	565,300	53,500	28.7	Pa.	226,387	553,154	51,793	33.1
Ind.	93,250	171,089	39,011	40.4	R.I.	18,684	47,080	486	18.1
Iowa	55,110	266,314	29,696	35.2	S.C.	51,796	216,382	8,629	23.6
Kansas	54,465	343,231	16,083	26.8	S.D.	19,443	43,287	10,039	38.3
Ky.	79,951	131,906	45,122	42.0	Tenn.	108,093	237,905	39,727	26.9
La.	83,513	248,427	31,175	33.0	Texas	309,022	1,243,158	147,454	30.3
Maine	28,508	45,687	16,146	46.9	Utah	35,625	64,760	9,408	21.3
Md.	106,920	492,428	15,481	N.A.	Vt.	12,996	18,606	2,927	47.0
Mass.	128,714	199,107	86,355	44.6	Va.	99,174	285,194	51,637	37.7
Mich.	200,682	690,259	55,806	29.0	Wash.	58,229	145,180	20,023	33.9
Minn.	50,953	99,446	26,458	40.1	W.Va.	58,138	252,925	74,384	46.7
Miss.	44,452	126,502	14,314	34.6	Wisc.	119,780	208,343	74,293	45.0
Mo.	127,053	155,683	96,477	47.7	Wyo.	12,225	30,074	3,062	26.9

(Continued, next page)

TABLE 33 (Continued)

STATE HOUSE LEGISLATIVE APPORTIONMENT

State	Average of "Ideal"	Largest	Smallest	% Nec. to Control	State	Average or "Ideal"	Largest	Smallest	% Nec. to Control
Ala.	30,818	104,767	6,731	25.7	Mont.	7,178	12,537	894	36.6
Alas.	5,654	6,605	2,945	49.0	Neb.	*	*	*	*
Ariz.	16,277	30,438	5,754	N.A.	Nev.	7,710	12,525	568	35.0
Ark.	17,863	31,686	4,927	33.3	N.H.	1,517	N.A.	N.A.	43.9
Calif.	196,465	306,191	72,105	44.7	N.J.	101,113	143,913	48,555	46.5
Colo.	26,984	63,760	7,867	32.1	N.M.	14,394	29,133	1,874	27.0
Conn.	8,623	81,089	191	12.0	N.Y.	111,882	150,000	15,000	38.2
Dela.	12,751	58,228	1,643	18.5	N.C.	37,968	82,059	4,520	27.1
Fla.	52,122	311,682	2,868	14.7	N.D.	5,499	8,408	2,665	40.2
Ga.	19,235	185,422	1,876	N.A.	Ohio	70,850	97,064	10,274	30.3
Hawaii	12,407	15,163	7,044	N.A.	Okla.	19,242	62,787	4,496	29.5
Idaho	10,590	15,576	915	32.7	Ore.	29,478	39,660	18,955	48.1
Ill.	170,865	160,200	34,433	39.9	Pa.	53,902	139,293	4,485	37.7
Ind.	46,625	79,538	14,804	34.8	R.I.	8,594	18,977	486	46.5
Iowa	25,532	133,157	7,910	26.9	S.C.	19,214	29,490	8,629	46.2
Kansas	17,428	68,646	2,069	18.5	S.D.	9,074	16,688	3,531	38.5
Ky.	30,382	67,789	11,364	34.1	Tenn.	36,031	79,301	3,454	28.7
La.	31,019	120,205	6,909	34.1	Texas	62,864	105,725	33,987	38.6
Maine	6,418	13,102	2,394	39.7	Utah	13,916	32,380	1,164	33.3
Md.	29,290	82,071	6,541	N.A.	Vt.	1,585	33,155	38	11.6
Mass.	21,452	49,478	3,559	45.3	Va.	39,669	142,597	20,071	36.8
Mich.	71,120	135,268	34,006	44.0	Wash.	28,820	57,648	12,399	35.3
Minn.	26,060	99,446	8,343	34.5	W.Va.	18,604	252,925	4,391	40.0
Miss.	15,558	59,542	3,576	29.1	Wisc.	39,528	87,486	19,651	40.0
Mo.	26,502	52,970	3,960	20.3	Wyo.	5,894	10,024	2,930	35.8

N.A. Not Available

* Unicameral

majority of each legislative chamber was responsible.[1] With reference to these readily observable figures, most of which are suggestive of invidious discrimination, it is of interest to note a summary of the prevailing practices in representation in state law-making assemblies.

> "Only six states have apportioned both houses of the state legislature so that it requires 40 per cent or more of the population to elect a majority of the legislators. . . Only 20 states have one house where it requires 40 per cent or more of the people to elect a majority. In six of these 20 states, the other chamber can be elected by 25 per cent or less . . . In thirteen states, one third of the population, or less, can elect a majority of both houses of the state legislature."[2]

In comparison, Oklahoma was not among the six states in the first category nor among the twenty states in the second category, but was among the thirteen states in which a majority of the legislators in both houses was responsible to less than one-third of the population.

As for the constitutional bases of legislative apportionments across the nation, the 99 chambers (Nebraska having a unicameral system since 1935) have been categorized as follows: 45 combined both population and geographic considerations, 32 used population, eight used population with weighted ratios, eight granted equal representation to each political subdivision, five had a numerically fixed constitutional apportionment, and one (the New Hampshire Senate) was based upon state tax payments.[3] In this regard, the Oklahoma Senate ranked among the 32

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[1]William J. D. Boyd (ed.), Compendium on Legislative Apportionment, 2d ed., New York, National Municipal League, 1962, pp. iii, iv.

[2]Ibid., p. i.

[3]Gordon E. Baker, State Constitutions: Reapportionment, New York: National Municipal League, 1960, p. 5.

with a population basis (not observed since statehood), and the Oklahoma House of Representatives was among the eight having a population basis with weighted ratios (ignored since 1921). Classified in another manner, 16 states functioned with an equivalent of the "federal" plan, nine utilized population in one house and qualified population in the other, 16 others based representation on qualified population in both houses, and the remaining nine states operated with unqualified population in both houses.[4] Within this arrangement, Oklahoma ranked among the nine states with a population basis in one house and qualified population in the other.

Consequently, it is clear that the problem of legislative apportionment has been national in scope. The source of this problem obviously rests in the great variety of state constitutional bases of representation in legislative assemblies, the substantial relocation of population, and the frequency as well as extent to which the respective fundamental laws have been observed. But perhaps most important, the affected citizens in most states, as in Oklahoma, had long sought remedial action, most of which had been futile.

The Reconstruction: Baker v. Carr.

Prompted by the complaint of eleven citizens in Tennessee, to the effect that their federal constitutional rights have been infringed upon as a result of legislative malapportionment, the relationship of the citizen vis-a-vis his state law-making assembly was once again brought into focus under title of Baker v. Carr, supra. At its inception, this

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[4]Paul David and Ralph Eisenberg, State Legislative Districting, Public Administration Service, Chicago, 1962, pp. 8-10.

case and cause was by no means unique; it was premised principally upon the Equal Protection Clause of the Fourteenth Amendment which federal courts had time and again chosen to ignore in light of the doctrine of Colgrove v. Green, supra. As was to be expected, the plea was dismissed by a three-judge Federal District Court for the Middle District of Tennessee, on the grounds that it lacked jurisdiction.[5] But the U. S. Supreme Court granted appeal and, on March 26, 1962, rendered it momentous decision.

In addition to holding the lower court dismissal in error and remanding the cause for retrial, six members of the higher court determined:

> "(a) that the court possessed jurisdiction of the subject matter;
> (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and
> (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the Tennessee apportionment statutes."[6]

Other than these holdings, it is of interest to note that the majority alluded to the 1901 statute in point as not in accord with the Tennessee Constitution, and in fact comprised an arbitrary and capricious apportionment of the legislature without reference to a logical or reasonable formula.[7]

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[5]Baker v. Carr, 175 F. Supp. 649, 652. Suit was brought by Tennessee resident and citizen Charles W. Baker against Secretary of State Joe C. Carr.

[6]Baker v. Carr, op. cit., pp. 188, 197-98..

[7]Ibid., p. 192.

Although that above quoted was the sole substantive determination of the court, additional insight as to its essence may be gleaned from the concurring and dissenting opinions. For example, Justice Douglas contended in his concurrence that universal equality is not to be considered the test under the Fourteenth Amendment, as the prohibition of the Equal Protection Clause goes no further than invidious discrimination which, in turn, would not discount weighting.[8] Likewise concurring, Justice Clark noted that disparities among voters (as opposed to population) might not constitute invidious discrimination, that the trouble is not in the Tennessee Constitution but rather in legislative failure to comply with it, that comparisons of voting strength of counties of like population produced a crazy quilt without rational basis, and that few contend mathematical equality is required by the Equal Protection Clause. Significant as it relates to the Oklahoma scene, he added that he would not consider judicial intervention if there were any other relief available to the people of Tennessee.[9] To further limit the optimism of advocates of the principle of political equality, Justice Stewart, while also concurring, observed that the court did not say or imply that state legislatures must be so structured as to reflect with approximate equality the voice of every voter.[10]

Coupled with these notes of skepticism, the dissenting views of Justice Frankfurter, in which Justice Harlan joined, are worthy of

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[8] Ibid., pp. 244-45.

[9] Ibid., pp. 253-54, 258.

[10] Ibid., p. 265.

consideration. They too underscored the permissiveness of weighting, suggesting further its application as regards geography, economics, urban-rural conflict, and other factors, maintaining that relief can only come through an aroused popular conscience that sears that of their representatives.[11] Disparaging of the majority disregard for judicial precedent in this field, they charged that the talk of debasement and dilution of the vote is circular, inasmuch as it is without an acceptable standard of reference as to the proper worth of the vote. They construed the plea of plaintiffs, and all similarly situated, as requesting the court to choose among competing bases of representation and ultimately among competing theories of political philosophy, to the end of establishing an appropriate frame of government for each state in the union.[12] In defense of their contention that the subject is political and therefore unfit for federal judicial action, they discoursed on the practices of legislative apportionment in Great Britain, the Colonies and the Union, the States at the time of ratification of the Fourteenth Amendment, and the States in the Twentieth Century.[13] Moreover, Justice Harlan added, in which Justice Frankfurter joined, that factors other than bare numbers are permissible in devising a system of representation (noting that the U. S. Senate is proof of that), that the states can best choose the system suited to the interests, temper and customs of its people, and only if an inequality is based on an imper-

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[11] Ibid., p. 269-70.

[12] Ibid., pp. 277, 301.

[13] Ibid., pp. 302-19.

missible standard can the court condemn it.[14] Finally, the appendix to the Harlan opinion will prove of interest to all statisticians in quest of proving disparities in representation. Therein the Justice deemed inadequate arithmetical formulas purporting to measure the rationality of apportionment. Such application, he contended, falls short of the mark because it fails to account for legitimate legislative policies, area of counties, the location of industry, and other economic, political and geographic considerations. There is nothing wrong with ignoring population and its shifts, the opinion concluded, if it is in the interest of stability, for in the long run an apportionment is only the product of legislative give-and-take and of compromise.[15]

Although comment on the varying views of the Baker opinion is reserved for the concluding chapter, an acknowledgement is in order relative to both academic and political assessments of the decision. By no means all inclusive, but among the foremost of the contemporary analyses, those noted below offer a wide diversity of views on the subject in a national context, ranging from scholarly inquiries into the pertinent constitutional law, through an evaluation of legal practitioners, to the prognostications of journalists and politicians.[16]

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[14] Ibid., pp. 331-35.

[15] Ibid., pp. 341-49.

[16] Charles Black, Perspectives in Constitutional Law, Foundations of Modern Political Science Series, Prentice-Hall, Inc., New Jersey, 1963, p. 17.

Eugene Cook, "Reapportionment Case," Georgia Municipal Journal, June, 1962, pp. 18-21.

Paul T. David and Ralph Eisenberg, Devaluation of the Urban and Surburban Vote, University of Virginia, Bureau of Public Administration, Vol. I, 1961; Vol. II, 1962.

Such evaluations, though enlightening, are not the principal concern here, and an official construction relative to the Oklahoma scene will be reviewed in forthcoming pages. It is pertinent that despite the apparent reservations of some of the majority in the Baker decision, a very recent account of the impact of the case reveals:

> "In 42 of the 50 (states), judicial, legislative or constitutional action is either pending or has been completed. . .
> "Federal or state court action calling for reapportionment has been begun or decided in 38 states. The box score on state action: decisions handed down in 17 states, cases pending in four; . . . on the federal front: decisions in 16 states, matters pending in 15."[17]

Alfred DeGrazia, Apportionment and Representative Government, American Enterprise Institute, Washington, D. C., 1963.

Robert Dixon, "Legislative Apportionment and the Federal Constitution," Law and Contemporary Problems, Duke University School of Law, 1962, Vol. XXVII, No. 3, pp. 329-89.

Karl Kratsin, "The Implementation of Representative Government in a Democracy," Iowa Law Review, 1963, Vol. 48, No. 3, pp. 549-77.

James Larsen, Reapportionment and the Courts, University of Alabama, Bureau of Public Administration, 1962.

Anthony Lewis, "Historic Changes in the Supreme Court," The New York Times Magazine, June 17, 1962, pp. 7-9, 38-40.

Maurice Merrill, "Blazes for a Trail Through the Thicket of Reapportionment," Oklahoma Law Review, 1963, Vol. 16, pp. 59-88.

Helen Miller, "The City Vote and the Rural Monopoly," The Atlantic Monthly, October, 1962, pp. 61-65.

Newsweek, "Bigger Vote for Big Cities," April 9, 1962, pp. 29-34.

Oklahoma City Times, April 7, 1964, p. 3. View of Archibald Cox, Solicitor General.

Norman Powell and Daniel Parker, Major Aspects of American Government, McGraw-Hill: New York, 1963, pp. 137-142.

Charles Rhyne, "The Reapportionment Case," Georgia Municipal Journal, May, 1962, pp. 16-19.

Charles Rhyne, "An End to Government by Minority: The Reapportionments Results of Baker v. Carr," Unpublished paper delivered September 8, 1962, before American Political Science Association and National Municipal League, Washington, D. C., 9 pp.

Gus Tyler, "Courts Versus Legislature," Law and Contemporary Problems, Duke University School of Law, 1962, Vol. XXVII, No. 3, pp. 390-407.

[17]Condensation of report of Attorney for Plaintiff in Baker v. Carr, Charles Rhyne, by Bruce Biossat of Washington NEA, Norman Transcript, April 12, 1964, p. 24.

Evidently, mere recognition of standing of citizens to sue, jurisdiction of the subject, and justiciability toward a remedy, has produced much reaction across the country. Nevertheless, the reaction should not be construed as uniformly or even largely in favor of the principle of political equality, for on the contrary, the remedial efforts have been more in the realm of pacification of the seriously underrepresented in the hope that protests and the U. S. Constitution will be satisfied. In general, court decisions favored apportionments on a qualified population basis, qualified to the extent that state constitutional restraints on the use of population (such as weighted ratios) have been left nominally undisturbed.

To return to Oklahoma's significant involvement in the aftermath of the obviously explosive U. S. Supreme Court decision, it was less than a month thereafter that the state's Attorney General released a meaningful memorandum construing the effect of Baker v. Carr, supra.[18] Other than noting that federal courts now had jurisdiction in this field and could grant appropriate relief on evidence of substantial or invidious discrimination, the chief legal officer made clear that the decision reversed, in effect, the principles of law announced in decisions of the highest court, including the political question at issue in Radford v. Gary, supra. Of more particular interest, the three most recent decisions of the Oklahoma Supreme Court (Jones v. Winters, Brown v. State Election Board, and Reed v. State Election Board, supra) were strongly

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[18]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General), April 20, 1962.

emphasized, to the extent that they acknowledged Section 1 of Article IV of the Oklahoma Constitution which provides:

> ". . . the Legislative, Executive, and Judicial departments of government shall be separate and distinct, and neither shall exercise the powers properly belonging to either of the others."

Accordingly, and pursuant with the prior construction, the Attorney General arrived at the conclusion that the judiciary of Oklahoma, notwithstanding the Baker decision and its relevance to the judiciary of the United States, was without authority to order legislative compliance with the state constitution or to devise, itself, an enforceable decree toward the same end.[19] In any event, the memorandum went on to examine the provisions of the Oklahoma Constitution as over and against the principles of law announced by the U. S. Supreme Court.[20] In this regard, it was determined that the upper limit of seven on the number of representatives a county might elect (Section 10 (d) of

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[19]Almost two years later, the Oklahoma Supreme Court was to act contrary to this construction.

[20]Incidentally, Baker v. Carr, supra, entailed considerations beyond the Tennessee predicament, and among the acknowledgements of casework and apportionment statistics were those involving Oklahoma. In addition to the participation of Governor J. Howard Edmondson and his attorney, Norman E. Reynolds, Jr., via briefs Amici Curiae in support of the appellants, mention of the state appears in the majority opinion on no less than four occasions and in the minority opinions on no less than six occasions. Whereas in all instances the majority concerned itself solely with litigation within the state, the minority referred to the state's constitution, litigation, and the consequence of reapportionments based upon the 1956 and 1959 studies of the University of Oklahoma Bureau of Government Research. Of no specific consequence other than to elaborate a point or support a contention, the Oklahoma references are not of themselves significant. Baker v. Carr, op. cit., pp. 187, 207, 236, 244, 253, 280, 312, 317-18, 319, 322.

Article V) would certainly constitute a substantial or invidious discrimination and therefore be invalid under the Fourteenth Amendment. Consequently, in relation to what could constitute a proper apportionment of the Oklahoma Legislature within the meaning of Sections 9 to 16 of Article V, attention was called to the detailed formula set forth in the Memorandum on Apportionment of the State Legislature of August 1, 1961, supra. The Attorney General viewed only the upper limit of seven as in conflict with the national law.

Prelude to a Guideline: Moss v. Burkhart.

Not prescribed in the majority or concurring opinions in Baker v. Carr, supra, was precisely what "equal protection" required in the realm of legislative apportionment. No doubt this clause of the Fourteenth Amendment placed emphasis upon the standard of political equality -- that one shall equal one -- and this was the solution that the U. S. Supreme Court ultimately sanctioned. In the case, the minority opinions chided the majority for not elaborating exactly what the U. S. Constitution required in this field. But two of the concurring opinions, while agreeing that numerical equality would be an appropriate standard, referred to the traditional, generalized test for not meeting the standard of equal protection of the laws: When a state has made an invidious discrimination, as it does when it selects a particular race or nationality for oppressive treatment, without facts reasonably conceived to justify it.[21]

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[21] Baker v. Carr, op. cit., pp. 724, 729; Joseph C. Pray and George J. Mauer, The New Perspective of Legislative Apportionment in Oklahoma, Bureau of Government Research, University of Oklahoma, 1962.

Outstanding among the recent federal and state court judgments which assessed the requirements of the Fourteenth Amendment was the Oklahoma corollary of the Tennessee case, that of Moss v. Burkhart, supra. Initiated in January, 1961, this Oklahoma apportionment suit was held in abeyance by the U. S. District Court for the Western District of Oklahoma pending the outcome of Baker v. Carr, supra, then on the docket of the U. S. Supreme Court. Within two weeks following the latter decision, the special three-judge federal court convened for the purpose of examining the merit of plaintiff's allegations, namely the unconstitutionality of existing Oklahoma apportionment statutes and the claim that said statutes deprived the petitioners of due process of law and equal protection of the law under the Fourteenth Amendment. As remedy, the suit earlier sought to restrain the State Auditor, State Treasurer and the Oklahoma Tax Commission from approving warrants drawn against appropriations of funds made by the Oklahoma Legislature until the lawmakers were apportioned in accord with the state constitution. Oklahoma City resident and citizen Harry Moss had prompted the litigation and, through his attorney Sid White, amended the suit just prior to the reconvening of the case, seeking to halt the ensuing May 1 regular primary election by restraining the State Election Board from certifying filings for the legislature. Designated to hear the suit were Alfred P. Murrah, Chief Justice of the U. S. 10th District Circuit Court of Appeals, and Judge Ross Rizley of the U. S. District Court for the Western District of Oklahoma, each of whom had denied plea for judicial intercedence in the 1956 litigation of Radford v. Gary, supra. They were joined by Judge Fred Daugherty, likewise of the U. S. District Court for the Western

District of Oklahoma. Representing defendants were Fred Hansen for the Attorney General of Oklahoma, attorneys for the Tax Commission, attorneys for Oklahomans for Local Government (who were allowed to intervene on behalf of defendants), and Norman Reynolds for Governor Edmondson who was made a party defendant.[22]

In its memorandum on motion for interlocutory relief the majority of the court held, on April 23, 1962, that it reluctantly declined immediate relief in the form of injunction to forbid the primary, as the election process was underway and restraint thereof would likely result in chaos coupled with interminable litigation. However, the court noted that the case would proceed and a determination would be made on the merits.[23] To this view one member of the court dissented, maintaining that relief as requested would comply with the intent and spirit of law announced by the U. S. Supreme Court. He argued that the sole question before the court was whether or not plaintiff's rights to substantial equality of representation would be violated if said election is held and, in the belief that such would be the result, he refused to put a judicial stamp of approval on holding further unconstitutional elections.[24]

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[22] The Daily Oklahoman, April 20, 1962, p. 1.

[23] Moss v. Burkhart, No. 9130 - Civil, 207 F. Supp. 885, "Memorandum of Facts and Conclusion of Law on Motion for Interlocutory Relief," by Judges Murrah and Daugherty, April 23, 1962; National Civic Review, op. cit., Vol. LI, June, 1962, p. 320. The Daily Oklahoman, April 24, 1962, p. 1.

[24] Ibid., Dissenting Opinion of Judge Ross Rizley.

Following the mid-April majority decision not to interfere with the holding of the May primary, the case was continued on June 12 at which time the court convened for the sole purpose of ascertaining whether malapportionment did in fact exist in Oklahoma and, if so, whether or not it had a rational basis. The principals in this setting, in addition to those above, were attorneys Delmer Stagner (for the State Treasurer), John Wagner and Robert Blackstock (for the State Election Board), and Leon Hirsh and Jim Rinehart (for the Intervenors). Called upon to testify as to the effect of the current statutes relative to the Oklahoma Constitution were Dr. Joseph Pray, Professor of Government at the University of Oklahoma, Ralph Sewell, assistant managing editor for the Daily Oklahoman and Oklahoma City Times, and the writer, then assistant director of the University of Oklahoma Bureau of Government Research.[25] Each in his own fashion contended that the existing statutes were seriously discriminatory against residents of the most populous counties, statistical proof of which was entered into the record as evidence.[26] As a result, the court entered, on June 19, a unanimous opinion based upon the stipulations, arguments, evidence and other facts of judicial notice, the more consequential of which follows.

> "On this record, the Court concludes that the existing apportionment of the offices of both houses of the Oklahoma Legislature is grossly and egregiously disproportionate, and without rational basis or justification in law or fact. We conclude that the apportionment of the Legislature of Oklahoma, under and by virtue

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[25]Tulsa Daily World, June 12, 1962, p. 1.

[26]Extracted from the study Legislative Apportionment in Oklahoma (1961) were pages 22, 28, 35 and 41; from Apportionment Acts of the Legislature, page. 11.

of its apportionment statutes is invidiously discriminatory against this plaintiff and his class of voters, and all such statutes are, therefore, unconstitutional and void.

"The Plaintiff and his class are entitled to appropriate equitable relief, which will substantially insure the numerical reapportionment of the Oklahoma Legislature, in a manner to accord the Plaintiff and his class the equal protection of the laws, guaranteed by the Fourteenth Amendment. The Court has not heard evidence on the appropriateness of the relief, and the matter is set for further hearing on the 31st day of July, 1962, for the purpose of determining the form of relief to be granted. Meanwhile, it seems desirable to note some of the suggested remedies, to which the Plaintiff may be entitled:

1. Reapportionment by the Legislature itself. This, of course, is the most desirable and the most efficacious, for, as we have said, the constitutional duty rests first and foremost upon the legislative body, whose duty it is to observe and comply with the supreme law of the land, as it is judicially construed and applied.

2. Initiative and Referendum. We, of course, have in mind the pending Initiative Petition as a possible available remedy, but the right asserted here cannot be made to depend upon the will of the majority. It is founded in the Federal Statute, which gives redress for the deprivation of civil rights, including the integrity of the ballot.

3. Reapportionment by Judicial intervention, either by some judicially devised formula or election at large until constitutional apportionment is achieved by legislative action. Neither of these alternatives are desirable, and will be resorted to only if the Legislature fails to constitutionally reapportion itself, so as to afford equal protection of the laws. In that connection, it should be noted that there is ample time for the Governor of this State to call the present Legislature into extraordinary session for the specific purpose of enacting a system of reapportionment laws, which will comply with the requirements of the equal protection of the laws. In this manner, the Legislators will be free to act, unencumbered and unentangled with the legislative problems which will confront the general session, convening early in 1963. If, therefore, the Legislature is in special session, or has been called before the date fixed herein for final judgment, the case will be continued until September 10, 1962, to await legislative action.

"If and when, in the course of this litigation, it becomes necessary to bring about constitutional reapportionment by direct judicial action it will be time enough to hear and consider any countervailing factors, which may enter into the

equation of reapportionment, based essentially upon population. Until that day, the judicial hand is stayed."[27]

Associated with the foregoing, there was entered on the same day the following decree.

"The Court is of the opinion that the existing statutes of the State of Oklahoma, relating to apportionment for the nomination and election of the members of both houses of the Oklahoma Legislature are invidiously discriminatory against the plaintiff and his class; hence, null and void.

"IT IS, THEREFORE, ORDERED, ADJUDGED AND DECREED that Title 14, Secs. 9-77, inclusive, 99 and 100 O.S. (1961), and Article 5, Section 11 of the Oklahoma Constitution, where presently operative, be, and they are hereby declared prospectively null and void, and inoperative for all future elections.

"IT IS FURTHER ORDERED that this cause be continued until July 31, 1962, for the effectuation of appropriate relief and final judgment."[28]

Taking last things first, it is well to appreciate that Title 14, Sections 9-77 include all of the Oklahoma statutory code relating to the apportionment of the Senate, and Article 5, Section 11 is that portion of the Oklahoma Constitution that prescribed the temporary apportionment of the upper chamber. Title 14, Sections 99 and 100, on the other hand, are those statutes governing the apportionment of the House of Representatives as set out in House Bill 1033, supra. Furthermore, it should not go unnoticed that these laws on legislative apportionment in Oklahoma were declared prospectively null and void and inoperative for all future elections.

The court made no secret of the fact that should it be obliged to act it would give great weight to the legislative apportionment

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[27]Moss v. Burkhart, op. cit., "Further Statement of Facts And Law On The Merits," June 19, 1962.

[28]Ibid., "Interlocutory Decree," June 19, 1962.

proposal of the Attorney General, represented by First Assistant Fred Hansen.[29] This proposal had been developed in event of judicial intervention, and was intended to be in conformity with the recent constructions of both the Oklahoma and U. S. constitutions. It would have eliminated the upper limit of seven representatives that any county might elect in the House (allocating to Oklahoma and Tulsa counties 18 and 14, respectively) and construed the "except" clause in the senatorial formula to provide an upper chamber of 54 members to be elected from 44 districts (two in each of Oklahoma and Tulsa counties and 8 and 6 senators, respectively).[30]

To round out, at this point, the last of the official views of the Attorney General of Oklahoma relative to the subject to date, two opinions were made part of the record during June, 1962. On the 21st day of the month, a reply was given Speaker of the House J. D. McCarty pursuant with prior oral conference on a prospective plan of apportionment in event a special session might be convoked by the Governor for the purpose of responding to the decision of the Federal District Court of June 19. The Speaker was advised that if the legislature is called into extraordinary session and fails to enact a proper reapportionment prior to September 10, the court would undoubtedly proceed to issue its order and decree reapportioning the state in conformity with the requirements of the Fourteenth Amendment. Accordingly, the

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[29] The Daily Oklahoman and Oklahoma City Times, June 19 and 20, p. 1.

[30] Analysis of Legislative Apportionment Proposal of First Assistant Attorney General, unpublished report of the University of Oklahoma Bureau of Government Research, June 25, 1962, 9 pp.

Attorney General appended a bill to thwart the necessity of federal judicial intervention, the substance of which prescribed an elimination of the upper limit of seven that any county might elect to the House (allocating to Oklahoma and Tulsa counties 18 and 14 members, respectively), and construed the "except" clause in the constitutional formula to provide a Senate of 54 members to be elected from 44 districts (two in each of Oklahoma and Tulsa counties and 8 and 6 senators, respectively.)[31] This guidance, it will be seen, was for naught as the cue was to be ignored. The second of the opinions was far less significant, as it amounted to no more than a response to a national survey of an interest group. In reply to the executive secretary of the Council of State Governments on June 28, the Attorney General answered the request for copies of: (a) each state and federal court decision concerning Oklahoma's legislative apportionment, (b) each opinion of the Attorney General on the subject since 1960, and (c) the status of pending action related to the matter. As regards the contemporary scene, the reply concluded, rather phophetically, that the legislature had not yet been called into special session, and such was not likely to be the case.[32]

To return to the suggested remedies of the court, lest it continue its intervening role on July 31, two subsequent and significant events require attention. The first of these evolved on July 9 when, after polling state legislators (by way of a questionnaire sent by registered mail) as to the likelihood of the legislature passing an

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[31]Opinion of the Attorney General of Oklahoma (by Fred Hansen, Assistant Attorney General), to Hon. J. D. McCarty, June 21, 1962.

[32]Ibid., to Mr. Herbert Wiltsee, June 28, 1962.

apportionment act affecting the 1962 elections in accordance with the court directive, the Governor announced that it was his considered opinion that the legislature could not reapportion to afford equal protection, and therefore he would not call a special session.[33] The second and previously discussed event arose as a result of two opinions of the Oklahoma Supreme Court. On July 16, that body upheld the validity of the initiative petition (State Question No. 408), but on July 25, it granted opponents of reapportionment adequate time to appeal its decision to the U. S. Supreme Court. Thus, the first two suggested remedies of the U. S. District Court were stymied and the matter was once again before that court on July 31; this time, however, with judicial notice taken of existing malapportionment in Oklahoma, and the stage set for consideration of a judicially contrived remedy. Indicative of the tenseness of the setting, one newspaper editorialized that the eyes of the nation were on this hearing, noting that Associate Justice of the U. S. Supreme Court Potter Stewart had, on the one hand, stayed the Michigan Supreme Court reapportionment order and, on the other hand, the first order of a U. S. District Court in this field was enforced in Alabama just a week previously.[34] Much more important, however, it was announced the day prior to the continuance of the Moss case that Acting Attorney General Fred Hansen had filed his brief in support of the Model "C" proposal developed by the University of Oklahoma Bureau of Government Research, a model which, incidentally, differed

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[33] The Daily Oklahoman, July 10, 1962, pp. 1-2.

[34] Oklahoma City Times, July 30, 1962, p. 22.

substantially with prior constructions of the state's chief legal officer.[35]

On July 31 and August 1, 1962, the special three-judge Federal District Court was greeted with a wide range of testimony from expert witnesses, political leaders, and other interested citizens, the product of which presented much latitude for the contrivance of an adequate remedy. To startle all contestants at the outset, however, the court chose to hear arguments why it should not defer action to the state courts, to the 1963 regular session of the Oklahoma Legislature, or to await the outcome of the initiative petition on a proposed reapportionment. In response, attorney Sid White contributed the view that the state courts have failed since statehood to respond to the urban cry and that the legislators in control of the state capitol could not be trusted. Mrs. P. T. Teska, President of the Oklahoma League of Women Voters added that in her judgment the proposed constitutional amendment was not an adequate remedy and, as for deferring to the legislature, she asked the court to take cognizance of its past action and present composition. In contrast, attorneys for the Oklahoma Farm Bureau (admitted as Intervenors) pleaded in favor of waiting for the results of the state-wide vote on reapportionment, whereas those representing Oklahomans for Local Government continually challenged the authority of the court to decree a reapportionment.[36]

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[35]The Tulsa Tribune, July 30, 1962, p. 1. This plan, unlike that earlier proposed by the Acting Attorney General, suggested a Senate of 44 members to be elected from 44 districts, and a House of Representatives to average 108 members through the decennial period.

[36]The Daily Oklahoman, August 1, 1962, p. 1.

As regards the substantive issue before the court, namely its alternatives in light of the Equal Protection Clause of the Fourteenth Amendment, the first day of hearings was focused on the testimony of Dr. Joseph Pray, who was examined and cross-examined by plaintiffs, defendants, and on occasion, the court. In essence, he submitted that the principle of political equality -- one shall equal one -- is the basic requirement of equal protection, and the population criteria meets that standard. Pressed to state to what extent any other rationale or "factors" might be employed in an apportionment, he replied that the history of American states on balance have disregarded numbers in part, but such experience does not contradict the necessity to apply the political equality aspect of equal protection to apportionment cases. This led attorney Leon Hirsh to criticize the use of the census, as advocated by the witness, noting that the same included children, students, military personnel, and inmates of mental and penal institutions. On this point, the expert witness responded that it is incorrect to argue "virtual" representation of such groups when virtual representation does not fit equal protection. Moreover, it is pertinent to note that counsel for plaintiff, Sid White, sought of the witness a good reason why his proposal of remedy -- a state-wide at-large election -- was not in order. He was reminded that such a scheme would prove detrimental to all minority groups.[37] In addition to this testimony, Mrs. Patience Latting, Legislative Chairman of the Oklahoma Congress of Parents and Teachers and an expert statistician, recommended that the court utilize the

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[37] Ibid.

method of standard deviation to determine which, among all the plans submitted, best met the equal protection standard. And although active in eliciting the critical information relative to proposed apportionment schemes, attorney Norman Reynolds reiterated the Governor's neutrality on the plans brought before the court.[38]

Relative to the aforementioned plans, they were the product of the principal exhibit accepted in evidence by the court, and were developed by two of the expert witnesses in the Moss case immediately following the June 19 decree of the federal court.[39] Prompted by an awareness of the multitude of alternative remedies, the participants undertook the study for the sole purpose of assembling in compact form the possible remedies in conformity with both the Oklahoma and U. S. constitutions. It was hoped that such research would serve in the deliberations of the court and better inform the public of the ramifications of the contemporary constitutional constructions. Respected throughout the analyses of House and Senate plans was the premise that constitutional discretions be exercised in favor of political equality to minimize political and arbitrary decisions. Likewise, it was believed that the Oklahoma Constitution provides a formula that can be an excellent instrument for apportionment, and only where its clauses run counter to the U. S. Constitution should they be disregarded. Consequently, each available alternative plan was evaluated in view of its rationale and effect.

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[38] Ibid.

[39] Joseph C. Pray and George J. Mauer, The New Perspective of Legislative Apportionment in Oklahoma, op. cit., pp. 29-49.

For the House of Representatives, three model proposals were presented. The first, designated as Model "A" suggested an average membership of 119 for the decennial period, the majority of which would be responsible on the average to approximately 39 per cent of the people. The rationale of this plan was that the upper limit of seven which a county might elect would be in conflict with the Fourteenth Amendment, that the state constitutional formula as regards requirements for regular members be extended, that each county population remnant for floats should be ascertained from the minimum figure required for regular members, and that the allocation of single floats be made in the fifth session. As a result, the districting and effect of this alternative was developed as shown in the three pages of Appendix F-1.

The second proposal, designated as Model "B", suggested an average membership of 88 for the decennial period, the majority of which would be responsible on the average to approximately 33 per cent of the people. The rationale of this approach was that the upper limit of seven would not be in conflict with the U. S. Constitution, that each county population remnant for floats be figured above a full ratio and multiples thereof, and that the allocation of single floats be made to maintain consistency both as regards membership and the percentage of the population represented. The districting and effect of this alternative is shown in the three pages of Appendix F-2.

Finally, there was offered under title of Model "C" a proposed average membership of 108 members for the decennial period, the majority of which would be responsible on the average to approximately 42 per cent of the people. Here the rationale was again premised on the upper

limit of seven to be in conflict with the Fourteenth Amendment, that the state constitutional formula as regards requirements for regular members be extended, that each county population remnant for floats be ascertained above a full ratio and multiples thereof, and that an allocation of all single floats be made to maintain consistency both as regards membership and the percentage of the population represented. This plan and its effect is shown in the three pages of Appendix F-3. Parenthetically, it is the latter proposal which former Oklahoma Supreme Court Chief Justice Thurman Hurst believed proper (Oklahoma and Tulsa counties being entitled to 19 and 15 members, respectively), and which the Attorney General had earlier disagreed (Oklahoma and Tulsa counties being entitled to 18 and 14 members, respectively). In a letter addressed to Mr. Hansen on June 5, 1962, Mr. Hurst wrote:

> "As you know I wrote the original opinion dealing with reapportionment, Jones v. Freeman, 146 P. 2d 564 (1943), and have been interested in the question ever since that opinion was written.
> "I notice that you say that in event the constitutional provision limiting any county to seven members is declared unconstitutional, Oklahoma County should have 18 representatives and Tulsa 14. As I figure it Oklahoma County should have 19 and Tulsa County 15. Under Article 5, Section 10(d) every county containing 1 3/4 ratio is entitled to two representatives and thereafter one for each full ratio. . ."[40]

The conflict in their constructions can be resolved by extending the state constitutional formula relative to population requirements for regular members, a consequence of which will prove the former Chief Justice to be correct. Moreover, Mr. Hurst made it a point to clarify his view on a proper apportionment of the Senate — 44 districts from which 54 senators should be elected. This proposition was in conformity with

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[40]Letter of Thurman Hurst to Fred Hansen, June 5, 1962.

the Attorney General's earlier plan, thus suggesting only a reservation relative to that offered on the House.

As regards the Senate, there was likewise presented three alternative proposals. The first for the upper chamber, designated Model "A", suggested 54 senators to be elected from 44 districts, a majority of whom would be responsible to 42 per cent of the people. The rationale of this plan followed the "except" clause construction of the Oklahoma Supreme Court to the effect that the membership might exceed 44, although the districts would properly be limited to 44. Thus a maximum of two senatorial districts per county was observed. This approach, noted earlier as having been endorsed by former Chief Justice Thurman Hurst and Assistant Attorney General Fred Hansen, is subject to severe criticism, however, in view of the fact that it necessarily employs a discriminatory double standard. For the most populous counties (Oklahoma and Tulsa) the figure 52,915 is utilized to ascertain their senatorial allotment, whereas for all other counties the figure 38,568 is used, a distinction explained in full in Appendix H. Consequently, this proposal, shown in form and effect in the two pages of Appendix G-1, has questionable merit in view of equal protection.

The second proposal, designated Model "B", offered 60 senators to be elected from 60 districts, a majority of whom would be responsible to 47 per cent of the people. Its rationale also flowed from the "except" clause construction of the highest state court, except that it would ignore the limitation of two senatorial districts per county. Although the provision for districts in excess of 44 is difficult to defend, it has the virtue of a single standard or the application of

38,568 to relate to all counties. The districting and effect of this approach is provided in the two pages of Appendix G-2.

Finally, there was presented via Model "C" the alternative of 44 districts from which 44 senators would be elected, a majority of whom would be responsible to 49 per cent of the people. This proposal embodied a rationale in direct conflict with the Oklahoma Supreme Court construction of the "except" clause, as it would not permit membership in addition to 44. While retaining the limited number of districts and senators, it would remove the maximum of two senatorial districts per county, and apply a single standard or 52,915 toward ascertaining the membership which any county or district is entitled. The form and effect of this alternative is shown in the two pages of Appendix G-3.

In addition to the foregoing prospective remedies, other proposed plans of legislative apportionment brought to the attention of the court are worthy of note. Other than that of the Attorney General alluded to earlier was one submitted in brief Amicus Curiae by the Oklahoma League of Women Voters, another in open court by former Representative Robert Ford, and yet another by Special Projects Committee Chairman G. D. Spradlin of the Council of Democratic Neighborhood Clubs. (The latter, an attorney, was allowed in the case as a friend of the court and later as an Intervenor on behalf of plaintiffs). All of these proposals, in one form or another, contained a rationale identical to the foregoing models. Thus the suggested remedies were by and large comparable, although fine distinctions had to be made prior to selection. Obviously, the models did not incorporate all conceivable applications of possible construction, but they did get at the mainstream

of contemporary thought in Oklahoma, or at least that of those interested in constitutional reapportionment. The defendants in the case in fact joined in the plea of plaintiffs, such that only certain Intervenors (principally Oklahomans for Local Government)opposed any remedial action, thereby making no positive proposal to the court.

To return to the setting of the litigation in Moss v. Burkhart, supra, of July 31 and August 1, 1962, the writer testified that population per se should be considered the principal factor in any scheme of state legislative apportionment and, if no other factors of rational basis are presented, then numerical equality should be the sole criteria. Moreover, the essence of the varying constructions and effects was explained and defended, as above, and it was maintained that strict adherence to the Oklahoma Constitution would appear discriminatory to plaintiff and his class. Thus, under the Fourteenth Amendment, Model "C" for both the House and Senate was stated to be the superior among all proposals then before the court. In comparable fashion Professor Joseph Pray explained both the shortcomings of the Oklahoma Constitution and the desirable features of Model "C" for each legislative chamber. Indicative of the complexity of the testimony, one reporter observed that Dr. Pray and the writer lectured:

> ". . . on principles, facts and interpretations, equal representation, population percentages, discrimination against voters, ratios, floats, decennial periods and model proposals, all too technical for some of the contestants. . . . They were co-authors of a new treatise on apportionment and they became the principal witnesses to explain it."[41]

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[41] Tulsa Daily World, August 2, 1962, p. 1.

To conclude with the nature of the testimony before the court, a parade of witnesses were called on the second day of hearings. State Senator Cleeta John Rogers, former state senator George Miskovsky and Representative Clyde Sare testified that the legislature is unlikely to act affirmatively in this field without specific court directives, if at all. Speaker of the House J. D. McCarty added that in his view the lower chamber could respond in accord with the state constitution, but he could not speak for the upper chamber. Mrs. W. C. Warren, President of Oklahoma Women for Representative Government thereafter asserted that the Speaker told her personally that he would not favor a constitutional reapportionment because he favored at least one representative for each county. Finally, State Senator Boyd Cowden ridiculed the Governor, noting that he chose not to answer the questionnaire relative to a special session because it sought a knowledge of his vote in advance, and as far as he was concerned the legislature would assume its responsibility under the Oklahoma or U. S. constitutions.[42] Thus ended the hearings and the court adjourned taking all it heard under advisement.

The Guideline.

The Federal District Court wasted no time in fashioning and issuing its decree. For within 48 hours of adjournment the majority of the court proceeded to clarify its earlier Interlocutory decree and provide the guidelines it believed essential to a proper apportionment of the Oklahoma Legislature.

". . . the scheduled general election, to be held on November 6, 1962, is not affected by the order of this Court entered on

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[42]The Daily Oklahoman, The Tulsa Tribune, August 2, 1962, p.1.

June 19, 1962, to the effect that the laws under which the present legislature of Oklahoma is apportioned are 'prospectively null and void and inoperative for all future elections.' The forthcoming November 6, 1962 election is not a 'future election' within the meaning of said Interlocutory Decree, but is an election under way and in being at the time said order was entered, the same having started with the filing period in February, 1962, and having continued through primary and runoff elections with the said general election remaining to be held to complete the election process. See: Gragg v. Dudley, 289 P. 254. Moreover, by reapportionment being necessarily prospective in nature and being accomplished for future effect, said Interlocutory Decree applies to the elections of 1964 and future elections, including any election that may follow the 1962 election which is now in progress and has been since February, 1962.

"With reference to a consideration of the remedies available to effect future reapportionment and the selection of a constitutionally acceptable remedy, the Court is of the opinion and decides that it defer action to the general session of the Oklahoma Legislature to be held in 1963, with a date to be fixed for final action in the matter by such Legislature and with positive guidelines or standards now being furnished said Legislature in the matter of discharging its responsibility to reapportion both houses of said Legislature for the 1964 and ensuing elections.

"The following guidelines or standards are established:

1. The Oklahoma Legislature will be reapportioned on the general principle of substantial numerical equality, to the end that each voter shall have approximately the same power and influence in the election of members of the two houses, which is in consonance with the intent and spirit of the Oklahoma Constitution and the equal protection clause of the Fourteenth Amendment of the United States Constitution.

2. The House of Representatives of the Oklahoma Legislature will be reapportioned in accordance with the provisions of the Oklahoma Constitution relating to such House, except the Court finds and declares that the seven member ceiling established in Section 10(d), Article 5, Oklahoma Constitution for populous counties results in invidious discrimination against the Plaintiff and his class, therefore violates the Fourteenth Amendment of the United States Constitution, and must be disregarded.

3. The said seven member ceiling being eliminated, Oklahoma and Tulsa Counties are entitled to 19 and 15 legislative seats, respectively, under proper reapportionment, under the 1960 Federal Census.

4. The Senate of the Oklahoma Legislature will be reapportioned in accordance with the provisions of the Oklahoma Constitution relating thereto. In this connection, however, the Court is brought face to face with an irreconcilable incongruity in Section 9(a) of Article 5, of the Oklahoma Constitution, with respect to the formula for apportioning the Senate. This incongruity is caused by the 'except' clause in Section 9(a) which creates a discrepancy between the total number of Districts and the total number of Senators. We resolve this incongruity in favor of equality or representation, which is mentioned three times in Sections 9(a) and 9(b), believing as we do that it is in consonance with the general principle of the Oklahoma Constitution, as construed by the Oklahoma Supreme Court in Jones v. Freeman, 146 P. 2d 564, and more nearly conforms to the equal protection clause of the Fourteenth Amendment to the United States Constitution. Applying this general principle of equality, the Oklahoma Senate will thus consist of 44 Districts and 44 Senators. Under the 1960 Federal Census, Oklahoma County is entitled to eight Senatorial Districts and Senators; Tulsa County, seven Senatorial Districts and Senators; and, Comanche County, two Senatorial Districts and Senators. Those Counties having multiple Senatorial Districts will be districted within themselves into the requisite number of Districts by legislative act, provided each such District shall contain as near as may be an equal number of inhabitants; shall be contiguous and compact as practicable.

5. The matter of forming legislative Districts, either House or Senate, among Counties is left to the discretion of the Legislature, under the pertinent provisions of the Constitution with respect to substantial numerical equality, compactness and contiguity. In this connection, the Memorandum and Suggested Order and Decree, filed in this Court on July 30, 1962 by the Honorable Fred Hansen, First Assistant and Acting Attorney General, is recommended as a most helpful treatise, and contains a Suggested Order and Decree which indicates a legislative apportionment for both houses, which has been studied by the Court, and which is believed to meet the desired standards.

"Five months hence, when the Legislature convenes, it must reapportion itself in accordance with the constitutional mandate, or be judicially reapportioned. We have withheld judicial reapportionment on the solemn word of the intervening legislators that once their constitutional duty is unequivocally and inescapably clear, they will discharge it with befitting honor and fidelity.

"Jurisdiction is retained in this case and the same is continued until the 8th day of March, 1963, at which time the case will be called, and if proper action has been taken by the Oklahoma State Legislature under the guidance afforded herein, the same will be affirmed and approved and this case dismissed. Failing this accomplishment, this Court will then order and decree reapportionment by judicial order, in conformity with the guidance herein furnished."[43]

A strong dissent was filed by Judge Ross Rizley. He believed the tribunal had gone out of its way to rationalize delays and advocated prompt redress of the grievances.

"The majority seem to take comfort in the words 'propsectively inoperative' and construe future elections not to mean the November election in 1962. They say further that by us refusing in our first opinion to enjoin the primary election, that we condoned the illegal and unconstitutional statutes, and they say that because the primary and general election is in fact all the same election, that we are obliged to recognize it as a legal election, notwithstanding that we have said the statutes under which it is being held are null and void.

"In my search of judicial decisions since the beginning, I am unable to find any decision of any court which says that by condoning a void and illegal statute or by condoning a wrong, you breathe legality into the statute and give a right to those who operate under it, even though it is wrong.

"In an endeavor to overturn the earlier opinion of this Court, entered herein on June 19th, the majority gives two legal reasons unsupported by authority. They say: (1) that the general election to be held in November, 1962 is not a future election; (2) that when we said in June that the statutes under which the legislature is apportioned are unconstitutional and void, they were just void in June and not in August and that we could control the operation of the Constitution. . . . The offices of the legislature were determined null and void. They no longer exist, and the decree of June 19th contemplated a sure and orderly correction of the situation. The majority has backed away from the strength of the earlier decree and is now taking a position where they sanction that which they condemned. It is an untenable

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[43]Moss v. Burkhart, op. cit., "Decree," August 3, 1962, by Alfred P. Murrah, Chief Judge, United States Court of Appeals, Tenth Circuit; and Fred Daugherty, United States District Judge.

> position, and in my opinion it is the unqualified duty of the Court to apportion. . . 'Justice delayed is justice denied.'
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> "Therefore, I see no justification for delaying the judicial hand and to the contrary I foresee only chaos as a result of this delay and further complications as a result thereof. This Court, has been fortunate in having a Chief Executive, a State Treasurer, an acting Attorney General and a State Election Board that have offered full cooperation. Who can dare say that their successors, who will be in office on March 8, 1963, will be as cooperative, much less cooperative at all?"[44]

Thus, notwithstanding the division among the members of the court on the means for adequate remedy, all were in accord as to the end. The distinction lay only in the timing. The court adopted Model "C" for both the House and Senate, the rationale of each being premised on the general principle of substantial numerical equality. Again, the upper limit of seven was deemed violative of the Fourteenth Amendment, and the "except" clause was considered an irreconcilable incongruity. And if the legislature failed to observe the guideline by March 8, 1963, the court warned that it would order it into effect.[45] Reaction to the decree was frequent and varied. Governor J. Howard Edmondson called the decision completely unrealistic and stated that he would not blame the legislature if it did not follow the guidelines. He was of the opinion that representation based totally on population is not equitable, that it may be proper in the Senate but every county should have one representative in the House. Former Governor Raymond Gary termed the referral wise, but also favored more emphasis on area or the political subdivision for membership in the lower chamber. Speaker of the House

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[44] Ibid., "Dissenting Opinion of Judge Rizley," August 8, 1962, by Ross Rizley, United States District Judge, For the Western District of Oklahoma.

[45] Ibid., "Decree," August 3, 1962; National Civic Review, op.

J. D. McCarty thought the decision correct in view of the circumstances, but he did not think the legislature could fulfill the directives.[46] Meanwhile, Oklahomans for Local Government served notice of their intent to appeal to the U. S. Supreme Court, as did the Oklahoma Farm Bureau, and in the wake of the decree a special committee of the House and Senate was assembled to plan legislative proposals on the subject for the Twenty-ninth session to convene on January 8, 1963.[47]

During the interlude between the August decree of the Federal District Court and the legislative session scheduled to convene the following January, the writer had opportunity to conduct the research preliminary to the preparation of this manuscript. One product of those months of investigation was a personal awareness of reservation as regards but one portion of the guideline of the court, namely that pertaining to the "except" clause in the constitutional senatorial formula. As a result, a draft of the contentions supporting this reservation was developed and brought to the Assistant Attorney General who, upon careful consideration of the arguments, reiterated his long standing opinion that the Oklahoma Constitution neither specifies nor implies that the membership of the Senate be restricted. Consequently, on February 6, 1963, under cover of a supplemental memorandum of Attorney General Charles Nesbitt and Assistant Attorney General Fred Hansen, the court was advised that since issuance of the principal exhibit in Moss v. Burkhart, supra, a

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cit., Vol. LI, October, 1962, pp. 504-05.

[46]The Daily Oklahoman, Tulsa Daily World, August 3, 4, 1962, p. 1.

[47]The Daily Oklahoman, August 31 and September 1, 1962, p. 1.

revised or alternate method of senate apportionment entitled Senate Model "B" Revised and a brochure in support thereof entitled Amicus Curiae Memorandum was prepared by the writer, and having been called to the attention of the Attorney General, it was believed it should be called to the attention of the court. Because the brief and plan in point had direct relevance to later litigation before the Oklahoma Supreme Court, it is desirable to comment upon each at this point.

To summarize the Memorandum, provided in full in Appendix H, it was contended that the Oklahoma Supreme Court made very clear the permissiveness of a Senate to be composed of a number of members in excess of 44, and that a careful review of constitutional antecedents supported that view. The federal court was reminded that it relied on this very same judicial construction and yet was giving serious consideration to striking down the "except" clause premised on the contrary view that it constituted an irreconcilable incongruity.

To elaborate, some discussion of the rationale of this alternative solution is in order. As depicted in Tables 34 and 35, Model "B" Revised prescribes a Senate of 60 members to be elected from 44 districts, the majority of whom would be responsible to 47 per cent of the people. In accord with state court construction, the "except" clause is retained in the formula, a maximum of two districts per county is utilized and, in the interest of substantial numerical equality, a single standard or 38,568 in made applicable to all county populations. Thus both in view of Oklahoma Supreme Court constructions and in view of Equal Protection requirements it was maintained, and is still believed, that "B" Revised (two per cent less representative of the population than would be the Senate under

TABLE 34

SENATE MODEL "B"
Revised

District Number	Counties in District	Number of Senators
1	Beaver, Cimarron, Ellis, Harper, Texas	1
2	Dewey, Roger Mills, Woods, Woodward	1
3	Alfalfa, Blaine, Grant, Major	1
4	Custer, Washita	1
5	Beckham, Greer, Kiowa	1
6	Harmon, Jackson	1
7	Cotton, Jefferson, Tillman	1
8-9	Comanche	2
10	Caddo	1
11	Canadian, Kingfisher	1
12	Kay	1
13	Garfield	1
14	Logan, Noble, Pawnee	1
15	Grady	1
16	Stephens	1
17	Atoka, Coal, Johnston, Love, Marshall	1
18	Carter	1
19	Murray, Pontotoc	1
20	Garvin, McClain	1
21	Cleveland	1
22-23	Oklahoma	11
24	Payne	1
25	Osage	1
26	Creek	1
27	Okmulgee	1
28	Lincoln, Okfuskee	1
29	Pottawatomie	1
30	Hughes, Seminole	1
31	Pittsburg	1
32	McCurtain, Pushmataha	1
33	Bryan, Choctaw	1
34	LeFlore	1
35	Haskell, Latimer, McIntosh	1
36	Muskogee	1
37	Cherokee, Wagoner	1
38-39	Tulsa	9
40	Washington	1
41	Nowata, Rogers	1
42	Craig, Mayes	1
43	Delaware, Ottawa	1
44	Adair, Sequoyah	1
		60

TABLE 35

SENATE MODEL "B"
Revised

Dist.	Pop.	No.of Senators	Pop.per Senator	Dist.	Pop.	No.of Senators	Pop.per Senator
10	28,621	1	28,621	18	39,044	1	39,044
34	29,106	1	29,106	4	39,161	1	39,161
35	29,230	1	29,230	33	39,889	1	39,889
15	29,590	1	29,590	14	39,922	1	39,922
28	30,489	1	30,489	22-23	439,506	11	39,955
7	30,877	1	30,877	26	40,495	1	40,495
44	31,113	1	31,113	20	41,030	1	41,030
41	31,462	1	31,462	5	41,484	1	41,484
25	32,441	1	32,441	29	41,486	1	41,486
37	33,435	1	33,435	43	41,499	1	41,499
31	34,360	1	34,360	40	42,347	1	42,347
32	34,939	1	34,939	30	43,210	1	43,210
11	35,362	1	35,362	24	44,231	1	44,231
6	35,588	1	35,588	8-9	90,803	2	45,401
42	36,376	1	36,376	21	47,600	1	47,600
3	36,470	1	36,470	12	51,042	1	51,042
27	36,945	1	36,945	13	52,975	1	52,975
2	36,975	1	36,975	36	61,866	1	61,866
1	37,036	1	37,036		1,237,590 (53.15%)	29	
17	37,540	1	37,540				
16	37,990	1	37,990				
38-39	346,038	9	38,449				
19	38,711	1	38,711				
	1,090,694 (46.85%)	31					

Total Population 2,328,284

46.85% of the people elect 31 Senators
53.15% of the people elect 29 Senators

At the extreme, the population represented in District 10 (Caddo) would have a relative weight 2.2 times that of the population represented in District 36 (Muskogee).

Model "C") is more defensible than the Senate proposal under Model "C". Therefore, the Federal District Court was urged to reconsider before implementation of its guideline and meanwhile advise the Senate of this option.[48]

Legislative Reaction to the Guidelines and Its Aftermath.

As a result of the March 8 deadline to reapportion or face federal judicial intervention, both houses of the Oklahoma Legislature passed, during February, 1963, measures purportedly responding to the Federal District Court directives. In fact, each chamber failed to meet both the letter and spirit of the guidelines set forth by the federal tribunal. Both predominantly Democratic houses concurred in the action of the other, although neither House Bill 586 nor Senate Joint Resolution 8 were approved with the emergency clause. Nevertheless, both enactments gained the endorsement of the state's first Republican Governor, Henry Bellmon.

Among the dozen proposals considered by the legislature which related directly or indirectly to the problem at hand, these bills were to constitute the focal point of judicial notice on March 8.[49] Actually, the House of Representatives took the initiative and passed the first reapportionment act since 1921 in general compliance with the Oklahoma Constitution. However, it fell substantially short of the guideline, as it

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[48] Moss v. Burkhart, op. cit., "Amicus Curiae Memorandum" of George Mauer, February 6, 1963.

[49] For those interested in the varying legislative responses under pressure of court order, see Senate Bill No. 46 and 140, Senate Concurrent Resolution No. 2 and 3, Senate Joint Resolution No. 4, 5, and 8, Senate Resolution No. 12, House Bill No. 586, House Concurrent Resolution No. 501, and House Joint Resolution No. 504 and 512.

retained the constitutional limit of seven representatives that a county might elect, instead of increasing that number to permit Oklahoma and Tulsa 19 and 15 members, respectively, which the court decreed they were entitled. As a result, it would have gradually reduced the membership to 91 by the end of the decade, and permitted the majority of legislators to be responsible to approximately 31 per cent of the people. As for the Senate version of fair representation, it followed later in the month and was premised in large part on its constitutional prerogative to use population as ascertained by the next preceding federal census or in such manner as the legislature may direct. According to the Resolution, the Senate was of the opinion that the census does not depict a true picture of population, to the extent that it includes the migratory, transient and temporary residents. Therefore, the upper chamber favored a reapportionment based upon "permanent population." In fact, the rationale of the plan was developed by use of the registration figures (which were multiplied by two) in all but Oklahoma and Tulsa counties, and use of the votes cast in the 1962 primary election in the two most populous counties (which were multiplied by three). As a result, Oklahoma and Tulsa counties were to have one-half of the representation deemed entitled to them by the court, and the Senate would be composed of 47 members to be elected from 47 districts, the consequence of which was that the majority would be responsible to 33 per cent of the people.[50]

On March 8, 1963, Moss v. Burkhart, supra, was reconvened, shortly after Associate Justice Byron White of the U. S. Supreme Court denied

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[50]The Daily Oklahoman, March 6, 1963, p. 1; The Norman Transcript, March 12, 1963, p. 6; and House Bill No. 586, Senate Joint Resolution No. 8.

application of Oklahomans for Local Government (more precisely of the 25 state senators) for a stay of further proceedings.[51] The litigation in this instance, as noted, was focused on the degree to which the Oklahoma Legislature had complied with the court guideline. Among the witnesses invited to testify were the principal authors of the legislative enactments. Representative Tom Tate explained the House measure and lauded its compliance with the state constitution, although he was taken to task regarding the allocation of floats for remnant population above the "minimum" figure required for regular members. Senator Walt Allen was called upon to explain the Senate measure and, when likewise taken to task regarding the members awarded the most populous counties, he bluntly acknowledged that was all his colleagues would condone. Finally, Dr. Joseph Pray and Mrs. Patience Latting again testified to the numerical inequities and constitutional shortcomings of the proposals before the court.[52] Thus ended the formal litigation before the federal tribunal, and the stipulations and testimony were taken under advisement.

One week after the conclusion of hearings it was announced by Judge Ross Rizley that the court had reached a decision following its final conference, and that Chief Justice A. P. Murrah was assigned to frame a unanimous decree.[53] Curiously, however, that opinion was not to be released for another year, and it is pertinent to note three developments during that interim. On June 12, 1963, all attorneys involved in

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[51] The Daily Oklahoman, March 8, 1963, p. 1.

[52] Ibid., March 9, 1963, p. 1; The Norman Transcript, March 8, p. 1 and March 10, 1963, p. 11.

[53] The Norman Transcript, March 18, 1963, p. 1.

the litigation were advised by the court that they had five days in which to file final arguments in support of their theories pertinent to the case.[54] On the next day the Oklahoma Legislature, just prior to adjournment, gave its stamp of approval, via Senate Joint Resolution 4, to a May 26, 1964, reapportionment referendum,[55] the subject of which will be discussed in the concluding section of the last chapter. Finally, it is enlightening to review the seven proposals or responses to the court's call for final arguments. Pursuant with his earlier conviction, the principal counsel for plaintiff, Sid White, urged a reapportionment at the court's discretion but initially to be held at-large. Attorney Norman Reynolds, no longer representing former Governor Edmondson who favored nothing more than his own remedy, favored Model "C" as did attorney Delmer Stagner. In contrast, newly elected Attorney General Charles Nesbitt clung to his sworn duty to defend the state constitution, and contended that neither of the recent acts of the legislature were invidiously discriminatory, nor is mathematical equality required by the U. S. Constitution. To this view the principal counsel for Oklahomans for Local Government, Leon Hirsh, added that the court should await a ruling of the Oklahoma Supreme Court relative to the constitutionality of the recent apportionment laws. Attorneys for the Oklahoma Farm Bureau contributed the view that adequate remedy is afforded by initiative and referendum. And for four late entered Negro Intervenors, attorney U. Simpson Tate attacked the recent legislative

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[54] The Daily Oklahoman, June 12, 1963, p. 4.

[55] Ibid., June 14, 1963, p. 12

enactments as unfair to members of his race, but offered no remedy.[56]

Amidst a setting of keen state and national interest, the long awaited day of final judgment -- in Moss v. Burkhart, supra,-- was set for July 17, 1963, at which time the court determined:

> ". . . We have examined the legislation with care, and have come to the conclusion that it does not afford the remedy which the Federal Constitution commands.
> "The House Bill purports to comply with the Oklahoma Constitution. It does not purport to comply with the guidelines set out in the August 3, 1962 Order of this Court. But, the legislation is not, for that reason, an unacceptable remedy for invidious discrimination. The Fourteenth Amendment requires precise equality among electors for state-wide offices, or for an office within an electoral district. . . . But, it does not demand precise political equality as between qualified voters, for the election of legislative representatives from different electorial districts. We know that there is 'room for weighting' and 'rough accommodation', within the framework of the equal protection clause of the Fourteenth Amendment. . . . We recognized then, as indeed we do now, that the equal protection clause requires only a rational basis for disparity in voting strength, for legislative representation. Throughout this litigation, however, we have proceeded upon the premise that the gross disparity and deliberate refusal to reapportion, in accordance with the plain mandate of the Oklahoma Constitution. . . is prima facie evidence of a hostile disposition to discriminate. And, we have called upon those who would support the disparity to show a rational basis for it.
> ". . .in this decade, an average of 31 per cent of the people would elect a majority of the lower house, i.e., a 2 per cent increase over the antecedent discriminatory laws. This result is brought about by adherence to the arbitrary ceilings on the number of representatives to be elected from the most populous counties . . . and through skillful manipulation of the floats . . .
> "The same invidious purpose is even more manifest in Senate Resolution No. 8, where the disparities between districts run the scale from 115,300 to 24,000, or a ratio of 4.73 to 1. No rational basis was shown for this disparity. The Resolution does not purport to comply with either the Oklahoma Constitution, or with this Court's guidelines for compliance with the equal protection

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[56] Ibid., June 18, 1963, p. 4. Bureau of Government Research, University of Oklahoma, Oklahoma Government Bulletin, Vol. 1, No. 2, June, 1963, p. 4.

clause of the Fourteenth Amendment. . . Senate Resolution No. 8 undertook to depart from the decennial Federal census, for what it called the 'permanent population standard,' for determining representation. In the first place, a double standard was used to arrive at the legislative apportionment. . . .In the second place, the proof shows that the apportionment in Oklahoma and Tulsa Counties is not truly based upon the erected standard. . . .Such gross disparity cannot be justified by 'historical precedents,' . . . .Nor, by the political, social and economic heterogeneity . . . .Senate Resolution No. 8 is a patch-work of political maneuvering and manipulation, to perpetuate the same invidious apportionment which prevailed under the antecedent laws.

"After careful consideration of all the exigencies, we have reluctantly decided to reapportion the Oklahoma Legislature by judicial decree, because we are convinced, from all that has transpired in this prolonged proceeding, that the Legislature, as now constituted, is either unable or unwilling to reapportion itself, in accordance with our concept of the requirements of the equal protection clause of the Fourteenth Amendment. . . . It may well be that the affirmative relief we grant is in excess of our judicial power. If so, we will know in due time. . . . Meanwhile, we shall proceed on the fundamental premise that equity is never impotent before the law.

"This brings us to the form of relief which is to be afforded, or more specifically, the form of Order for the remedy. . . .Of all the plans for reapportionment which have been urged upon us, as an appropriate remedy, we have been favored with a formula which approaches the ideal, to reapportion the Legislature 'as near as may be to the equal number of inhabitants' of each district. This plan, known in the proof here as Model C, is submitted by the Bureau of Government Research, of the University of Oklahoma. It represents the judgment of the Acting Attorney General of the State, when this matter was previously under consideration for appropriate remedy. It is an embodiment of the best thinking and contribution of the political scientists and statisticians, who have testified in this case, concerning the critical question of discrimination. We adopted it as our guideline in our August 3rd Order. . . .We now adopt it as the pattern for Final Judgment of this Court. . ."[57]

To become both heralded and condemned, the plan adopted by the court is the very same as alluded to in the Appendix under title of Model "C" for both the House and Senate, the rationale of which was explained earlier in detail. Not embodied in the alternative series of the Appendix,

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[57] Moss v. Burkhart, op. cit., "Memorandum of Decision and Final Judgment," July 17, 1963.

however, is the precise variance as between representative and senatorial districts, heretofore indicated by the symbol (#). Therefore, the same is provided relative to the plan adopted in Tables 36 and 37. In addition, it may have been recognized that in the Appendix each suggested remedy for a reapportionment of the House of Representatives was followed by an analysis of the effect in the first session only. As the effect of an implementation of the court order throughout the decennial period is otherwise unavailable, the extension of said plan is appended as I-1 through I-5. As might be expected, the reaction to the final judgment ran a complete gamut: some were analytical, concerned largely with the meaning of the decision; others were laudatory, commending the various participants; and still others were bitter, threatening witnesses with suit of punitive damages and planning an economic boycott of the big cities.[58]

Relative to Model "C" for the House and Senate, it was somewhat surprising to note that following its adoption many erroneous conclusions were drawn as to its substance. Use of the terms "strict population" and "pure population" were (and continue to be) prevalent in the news media, many persons had and gave the impression that the Oklahoma Constitution

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[58]For an extensive account of the varying reactions, see: Oklahoma City Times, July 17, 1963, pp. 1-2, 6, 20, and 33; The Norman Transcript, July 17, 1963, pp. 1-2; Tulsa Daily World, July 18, 1963, pp. 1-2, 60; The Daily Oklahoman, July 18, 1963, p. 4; Newsday of Long Island, N.Y., July 18, 1963, pp. 2, 4; Tulsa Daily World, July 20, 1963; The Purcell Register, July 25, 1963, p. 1; The Norman Transcript, July 25, and 26, 1963, pp. 1, 3; Tulsa Daily World, July 26, 1963, pp. 21,25: Oklahoma City Times, August 22, 1963, p. 13; The Norman Transcript, August 22, 1963, pp. 1-2; Oklahoma's Orbit of The Daily Oklahoman, September 1, 1963, pp. 12-13; and National Civic Review, op. cit., Vol. LII, September, 1963, pp. 446-47.

TABLE 36

FEDERAL DISTRICT COURT DECREE--HOUSE APPORTIONMENT

County	Pop.	No. Rep.	Pop. per Rep.	#
Okfuskee	11,706	1	11,706	1.82
Woods	11,932	1	11,932	1.79
McClain	12,740	1	12,740	1.68
Beav.-Harper	12,921	1	12,921	1.65
Adair	13,112	1	13,112	1.63
Love-Marsh.	13,125	1	13,125	1.63
Delaware	13,198	1	13,198	1.62
Dewey-Major	13,859	1	13,859	1.54
Pontotoc	28,089	2	14,044	1.52
Tillman	14,654	1	14,654	1.46
Greer-Har.	14,729	1	14,729	1.45
Kiowa	14,825	1	14,825	1.44
Hughes	15,144	1	15,144	1.41
Choctaw	15,637	1	15,637	1.37
Wagoner	15,673	1	15,673	1.36
Atoka-Coal	15,898	1	15,898	1.34
Osage	32,441	2	16,220	1.32
Cot.-Jeff.	16,223	1	16,223	1.32
Alfal-Grant	16,585	1	16,585	1.29
Lat.-Pushm.	16,826	1	16,826	1.27
Cherokee	17,762	1	17,762	1.20
Sequoyah	18,001	1	18,001	1.19
Washita	18,121	1	18,121	1.18
Cim.-Texas	18,658	1	18,658	1.14
Logan	18,662	1	18,662	1.14
Lincoln	18,783	1	18,783	1.14
Stephens	37,990	2	18,995	1.12
John.-Murray	19,139	1	19,139	1.12
Ellis-Wood.	19,359	1	19,359	1.10
Carter	39,044	2	19,522	1.09
Mayes	20,073	1	20,073	1.06
Creek	40,495	2	20,247	1.05
Rogers	20,614	1	20,614	1.04
Muskogee	61,866	3	20,622	1.04
Pottawatomie	41,486	2	20,743	1.03
Custer	21,040	1	21,040	1.02
Washington	42,347	2	21,173	1.01
Noble-Pawnee	21,260	1	21,260	1.00
Hask.-McIn.	21,492	1	21,492	.99
Payne	44,231	2	22,115	.97
Comanche	90,803	4	22,700	.94
Blaine-King.	22,712	1	22,712	.94
	993,255 (42.66%)	55	18,059	ave.
Beck-R.Mills	22,872	1	22,872	.93
Tulsa	346,038	15	23,069	.93
Oklahoma	439,506	19	23,132	.92
Cleveland	47,600	2	23,800	.90
Bryan	24,252	1	24,252	.88
Canadian	24,727	1	24,727	.86
Kay	51,042	2	25,521	.84
McCurtain	25,851	1	25,851	.83
Garfield	52,975	2	26,478	.81
Craig-Now.	27,151	1	27,151	.79
Seminole	28,066	1	28,066	.76
Garvin	28,290	1	28,290	.76
Ottawa	28,301	1	28,301	.75
Caddo	28,621	1	28,621	.75
LeFlore	29,106	1	29,106	.73
Grady	29,590	1	29,590	.72
Jackson	29,736	1	29,736	.72
Pittsburg	34,360	1	34,360	.62
Okmulgee	36,945	1	36,945	.58
	1,335,029 (57.34%)	54	24,723	ave.
TOTAL	2,328,284	109	21,360	ave.

At the extreme, the population represented in Okfuskee County would have a relative weight 3.14 times that of the population represented in Okmulgee County.

TABLE 37

FEDERAL DISTRICT COURT DECREE-SENATE APPORTIONMENT

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
25	44,231	1	44,231	1.20	8	54,317	1	54,317	.97
10-11	90,803	2	45,401	1.17	43	54,611	1	54,611	.97
16	47,600	1	47,600	1.11	17-24	439,506	8	54,938	.96
6	48,080	1	48,080	1.10	40	54,957	1	54,957	.96
29-35	346,038	7	49,434	1.07	38	55,050	1	55,050	.96
3	50,242	1	50,242	1.05	2	55,327	1	55,327	.96
27	51,042	1	51,042	1.04	4	55,523	1	55,523	.95
5	51,484	1	51,484	1.03	14	56,155	1	56,155	.94
12	52,169	1	52,169	1.01	39	56,715	1	56,715	.93
37	52,201	1	52,201	1.01	44	56,990	1	56,990	.93
36	52,618	1	52,618	1.01	41	57,255	1	57,255	.92
7	52,975	1	52,975	1.00	1	57,413	1	57,413	.92
28	53,195	1	53,195	.99	13	57,781	1	57,781	.92
26	53,701	1	53,701	.99	42	61,866	1	61,866	.86
9	54,213	1	54,213	.98		1,173,466 (50.40%)	21	55,879 ave.	
15	54,226	1	54,226	.98					
	1,154,818 (49.60%)	23	50,209 ave						
			TOTALS:	2,328,284	44	52,916 ave.			

At the extreme, the population represented in District 25 (Payne) would have a relative weight 1.4 times that of the population represented in District 42 (Muskogee).

was ignored by the court, and most everyone was confused about its future application in view of the prospective litigation. These illusions and complexities prompted a commentary of the writer toward some clarification, and the same is reiterated below as it serves not only to reflect upon the historic decision but also to provide a transition to subsequent events.

"1. Basis: Strictly Population or Otherwise?

Although it can be said that the prescribed reapportionment of the Senate is strictly on the basis of population, this is not true of the House of Representatives. Indicative of this fact is the significant difference in the per cent of population to which a majority of each chamber will be responsible. The reason for this development is that part of the Oklahoma Constitution (Article V, Section 10 d) which permits a county with one-half ratio of representation to be entitled to one full-time representative, and to a county with such ratio of population and three-fourths over, two representatives, and so on to infinity. Therefore, it should be made clear that although Model "C" is predominantly based upon population, it is not totally the case in the apportionment of the House of Representatives. Clearly, the formula for the latter chamber is slightly weighted in favor of the smaller counties or rural representative districts.

2. Relationship to Oklahoma Constitution?

This decision has the effect of eliminating or overriding two clauses in the state's fundamental law. On the one hand, it necessarily strikes that portion of Article V, Section 10 d, prescribing that no county may ever take part in the election of more than seven representatives. On the other hand, it necessarily strikes that portion of Article V, Section 9 (a), known as the "except" clause. It follows the provision for 44 senators to be elected from 44 districts, "except that in event any county shall be entitled to three or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent." It is of interest to note that the court did not explain in its final judgment the reason for the elimination of the latter of these clauses, but it need be recalled that in its August 3, 1962 decree it instructed the Legislature to disregard the upper limit on county representation in the House of Representatives, and alluded to the "except" clause as an

"irreconcilable incongruity." In any event, with the exception of the temporary emergency provision for elections to be held at-large within districts, the court has in fact left intact all other provisions on legislative apportionment in the Oklahoma Constitution.

3. Prospects for the Future?

As for the significance of the court's final judgment, it is undoubtedly the most far reaching to date and will have an indirect, if not direct, effect upon similar litigation across the country. Meanwhile, the big question yet to be answered is whether the decree will affect the 1964 elections or be delayed until 1966. And obviously more basic than this is whether the highest court in the land will ultimately uphold the substance of the decree. Should the expected appeal be filed in the 60 days following issuance of the judgment or 60 days following a ruling on a new trial, only Associate Justice Byron White can presently issue a "stay" to affect the former question; the latter will be resolved one day by the U. S. Supreme Court. Further, if these inquiries offer no particular challenge, perhaps one can then entertain the proper disposition of the 1963 apportionment acts of the legislature due to become law in mid-September, coupled with the status of the legislative referendum to establish a new constitutional formula on apportionment that is scheduled for a vote of the people at the next runoff primary election. In summary, it has become clear that Oklahoma has forged its way through the political thicket only to encounter what may prove to be an equally obstructive legal thicket."[59]

Indicative of the fashion in which the ensuing and equally complex litigation materialized, it was reported on July 23 that Attorney General Nesbitt had filed notice of appeal of the Moss judgment to test its correctness by questioning: (a) the court's authority to order a reapportionment; (b) whether the seven limitation on county representatives constitutes an invidious discrimination, and (c) if an ambiguous section -- the except clause -- results in an invidious discrimination.[60] It was to be almost two months later before said appeal was filed, prior to and after

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[59]Bureau of Government Research, University of Oklahoma, Oklahoma's Twenty-Ninth Legislative Session, August, 1963, pp. 41-42; National Civic Review, op. cit., Vol. LII, September, 1963, pp. 446-47.

[60]Oklahoma City Times, July 23, 1963, p. 1.

which Oklahomans for Local Government and the Oklahoma Farm Bureau likewise filed notice of appeal to thwart implementation of the judicial order.[61] Meanwhile, the legislative enactments scrutinized by the Federal District Court (House Bill 586 and Senate Joint Resolution 8) had become law on September 12, and counter motions to dismiss appeals were filed with the U. S. Supreme Court independently by attorneys Sid White, Delmer Stagner, G. D. Spradlin and Norman Reynolds.[62] They proved to no avail.

Review to "Minimum Remedy": Davis v. McCarty.

To culminate the latest installment of these legal battles to date, there was instituted in the Oklahoma Supreme Court in late October of 1963 an original action by William R. Davis, represented by attorney Edward M. Box, against Speaker of the House J. D. McCarty, and others, for a review of the acts of the Twenty-ninth session of the Oklahoma Legislature. On November 6, the court's very significant decision was rendered, finding that the last apportionment laws did not fully comply with the state constitution.[63] The particulars of this decision are of the utmost importance, as they concerned constructions of the fundamental law not heretofore made as explicit. As regards the House, it will be recalled that House Bill 586 was the first act passed by the lower chamber since 1921 that followed in general the Oklahoma Constitution. For the second

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[61] The Norman Transcript, September 18, 1963, p. 1; The Daily Oklahoman, September 19, 1963, p. 13.

[62] Oklahoma City Times, September 18, 1963, p. 13.

[63] Davis v. McCarty, In the Supreme Court of the State of Oklahoma, No. 40,496, 34 O.B.A.J. 2054, 388 P. 2d 480; Oklahoma City Times, November 6, 1963, pp. 1-2.

through fifth sessions during the remainder of the decennial period, it provided for 112, 107, 96 and 91 members, respectively, a majority of whom was to be responsible to approximately 31 per cent of the people. Of this reapportionment, as commendable an effort as it was, the court still managed to find two criticisms. On the one hand, the state's highest tribunal ruled, that for purposes of an apportionment based on four legislative periods rather than five, flotorial representation to which a district was denied for the first legislative period should be allowed at another time during the remaining four periods. On the other hand, and much more substantive a finding, the court held that flotorial representation for excess population must begin above a ratio equal to one or more fifths of a ratio, and that the remnant population is not to be considered for floats in any district which has less than a ratio. Therefore, the Oklahoma Supreme Court held for the first time that floats apply to excess population above a full ratio and multiples thereof.[64]

In regard to the Senate membership, the court proceeded from its earlier premise in Jones v. Freeman, supra, to the extent that the upper chamber shall consist of 44 members and that this number shall be increased when the population of any county entitled it to three or more senators. The court again reiterated that the additional number may be elected at-large within the county or from separate districts. However, it was noted that if either the number of senators or the number

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[64]In addition to upholding the state constitutional limit of seven members that a county may elect to the House, the rationale of this approach as regards the flotorial system paralleled precisely that discussed with reference to House Models "B", "B" Revised and "C".

of districts must yield, then the number of districts must yield in favor of the number of senators (citing In Re Fay, 291 N. Y. 198, 52 N.E. 2nd 97). Consequently, the tribunal reached the following conclusion.

> "From population figures obtainable from Jones v. Freeman, supra, it is now apparent that a greater population figure was required to authorize Senatorial representation in Oklahoma and Tulsa counties than was required in other senatorial districts in the state. It appears that we took the whole population of the state (1940 Federal Decennial Census) which was 2,336,434 and divided that figure by 44 to arrive at the population of a district (53,101). We then took that figure (53,101) and divided it into the populations of Oklahoma (244,159) and Tulsa (193,363) counties and concluded that these counties were entitled to 4 and 3 senators, respectively. We then subtracted the population of Oklahoma and Tulsa counties (437,522) from the total population of the state (2,336,434, supra) and determined that the state, excluding Oklahoma and Tulsa counties, had a population of 1,898,912. We then divided that population (1,898,912) by the number of senatorial districts authorized for the rest of the state (40) and determined that the average population in senatorial districts outside of Oklahoma and Tulsa would be 47,473. Thus the population of senatorial districts in Oklahoma and Tulsa counties was 53,101, and in the rest of the state was only 47,473.
>
> "In Jones v. Freeman, in order to equalize senatorial representation on a population basis, we should have first subtracted the total population of Oklahoma and Tulsa counties (437,522) from the total population of the state (2,336,434) and then divided the result (1,898,912 - population outside Oklahoma and Tulsa counties) by 40 in order to determine the population of senatorial districts. The result would have been that each senatorial district (or senator entitlement) in all parts of the state, including Oklahoma and Tulsa counties, would have a population of 47,473. If this had been done the population of Oklahoma county (244,159), when divided by 47,473, would have given it 5 senators; Tulsa county's population, 193,363, when divided by 47,473, would have given it 4 senators.
>
> "According to the Federal Census of 1960 the population of the State of Oklahoma is 2,328,284; after deducting the population of Oklahoma county (439,506) and Tulsa county (346,038), a total of 785,544, from the population of Oklahoma (2,328,284) the rest of the state will have a population of 1,542,740. When this number is divided by 40, each senatorial district, or senator entitlement, will contain a minimum population of 38,568½ By applying that population factor to Oklahoma and Tulsa counties we see that they are entitled to 11 and 9 senators respectively. Comanche county with a population of 90,803 is entitled to two senators, and no other county or county-group is entitled to more than one.

"The Journal of the Oklahoma Constitutional Convention, published by the Muskogee Printing Company pursuant to contract with Wm. H. Murray, President of the Convention, entitled "Proceedings of the Constitutional Convention for the Proposed State of Oklahoma held at Guthrie, Oklahoma," does not explain the lack of harmony between the number of senators authorized and the number of senatorial districts authorized for the state. It does disclose that on February 27, 1907, the Committee on Legislative Apportionment recommended for adoption reapportionment provisions containing no limit on the size of the senate or the number of districts. On March 12, 1907, these provisions (with amendments immaterial here) were adopted. However, on July 11, 1907, all provisions of the Constitution theretofore adopted, including the reapportionment provisions, were opened for further consideration. Two days later new provisions were offered which provided for forty-four districts, each electing one senator. These proposals were not adopted, but on July 15, 1907, the Convention adopted the provisions which appear in the Oklahoma Constitution, including the exception contained in Sec. 9(a), supra. See Proceedings of the Constitutional Convention, supra, pages 248, 296, 348, 364, and 373; see also The Daily Oklahoman, issues of February 27, March 10, March 12, July 12, and July 14, 1907; and the Oklahoma State Capitol, issue of March 1, 1907."[65]

*or as near thereto as other constitutional requirements will permit. (amended on November 15, 1963).

With regard to the foregoing construction the court admitted an error in its earlier methodology. The prior construction would have led the court to adopt a double standard (applying a population ratio of 52,915 to Oklahoma and Tulsa counties, and a population ratio of 38,568 to the remaining 75 counties of the state), whereas it chose instead to adopt a single standard (38,568 to all 77 counties). The result of this reaction to the new perspective of legislative apportionment in Oklahoma is precisely that shown earlier in Tables 34 and 35. Its rationale is discussed in relation thereto, and the more extensive supporting arguments are to be found in Appendix H.

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[65] Davis v. McCarty, op. cit., p. 4.

Relative to the court's interpretation of the constitutional provision permitting the number of senators in addition to 44, as opposed to the decree of the Federal District Court, two distinguished constitutional law professors' views were reported as follows:

> "Concerning the 'except'clause, Dr. Merrill (University of Oklahoma Research Professor Law Maurice Merrill) does not see anything irreconcilable about it.
> "He pointed to the phrase 'and the whole number to that extent in Section 9(a).'
> "'This was taken from the New York constitution which states 'and the whole number shall be increased to that extent.' Evidently the person at the constitutional convention who copied that clause made an error. But according to well settled rules of construction, the court (referring to the Federal District Court) should have been able to read those words in."
>
> "Dr. John Leek, constitutional law professor in the O. U. government department said:
> 'The overwhelming rule is for the U. S. Supreme Court to accept the construction of a state constitution or statutes by that state's highest court. I should think two prior rulings on this matter by the state court would be given added weight.'"[66]

The Oklahoma Supreme Court in its initial opinion in Davis v. McCarty, supra, dealt harshly with the substance of Senate Joint Resolution 8. It found that the proposition entailing 47 members to be elected from 47 districts based upon "permanent population" (whereby Oklahoma and Tulsa counties would be entitled to but four and three senators, respectively, and whereby the majority of the Senate would be responsible to 33 per cent of the people) was unauthorized by the state constitution. Despite the court's criticism of each legislative act, however, it again asserted its position that it will not declare most recent apportionment acts invalid where to do so would leave the state without a legislature.

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[66] Guffey's Executive Journal, Vol. I, No. 1, December 18, 1963, p. 9.

Therefore, the court chose not to grant affirmative relief, nor to hold the acts in question invalid. It did, nevertheless, retain jurisdiction in the cause pending the disposition of Moss v. Burkhart, supra.

As a direct consequence of the above litigation, five weeks were to pass before Attorney General Charles Nesbitt was to deduce the rules therein, relate the same to the Federal District Court decree, contrast the constructions of both courts to the 1963 acts of the legislature, and reactivate the proceedings before the Oklahoma Supreme Court. As the appellant pleaded earlier, the state's chief legal officer requested remedial action for the appellees, but to be effective if and only if the Model "C" judgment should be stayed, reversed or vacated. Application of the principles of law announced in the Davis case, it was contended, would avert chaotic conditions, for should a stay on applications pending be granted the state would be without a legislative apportionment in compliance with the Oklahoma Constitution.[67] Therefore, the Attorney General filed for a reapportionment decree from the state's highest court on November 16, 1963, and some detail of his analysis is important to recount here. Pertinent to the prospective apportionments for the House of Representatives, three significant contrasts were brought to light. First, it was observed that the Federal District Court decree dropped the flotorial representation which would have been allocated to the first session of the decennial period, whereas the Oklahoma Supreme Court ruled in favor of its inclusion over the last four sessions. As a result, the following distinctions were drawn.

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[67] Oklahoma City Times, December 16, 1963, p. 1.

County	Moss v. Burkhart	Davis v. McCarty
Carter	Two floats	Three floats
Creek	Two floats	Three floats
Garfield	No float	One float
Muskogee	Two floats	Three floats
Seminole	No float	One float
Stephens	Two floats	Three floats

Secondly, it was noted that the following differences were found with regard to the formation of legislative districts.

House Bill 586	Moss v. Burkhart
Atoka-Pushmataha	Atoka-Coal
Coal-Hughes	Beckham-Roger Mills
Dewey-Ellis-Roger Mills	Blaine-Kingfisher
Kingfisher-Major	Dewey-Major
Haskell-Latimer	Ellis-Woodward
Beckham	Haskell-McIntosh
Blaine	Latimer-Pushmataha
McIntosh	
Woodward	

And thirdly, the court was reminded that although the Federal District Court held the upper limit of seven to be violative of the Equal Protection Clause, the state's highest court made no such ruling.

Relative to a prospective apportionment of the Senate, the Attorney General simply, but pointedly, noted that the Federal District Court ordered a reapportionment of the upper chamber based upon 44 districts, each to elect one senator (eight allocated to Oklahoma County, seven to Tulsa County and two to Comanche County, with the balance of the state divided into 27 senatorial districts), thus ignoring the "extra senator" clause of Article V, Section 9(a) of the state constitution. In contrast, the state court was reminded that in its opinion of November 6, it interpreted the same section as requiring a Senate of 60 members,

allocating two districts to each of Oklahoma, Tulsa and Comanche counties (from which eleven, nine and two senators, respectively, should be elected), the balance of the state to be divided into 38 senatorial districts, thus carrying into effect the "extra senator" clause.

Accordingly, it was the recommendation of the Attorney General that the court order a reapportionment pursuant with its construction of the Oklahoma Constitution, but to follow as closely as possible the latest expression of legislative intent as embodied in House Bill 586 and Senate Joint Resolution 8. To guide the court in said determination there was appended a proposed apportionment of the House whereby a total of 44 floats allocated to 36 representative districts by House Bill 586 would be eliminated, thereby reducing each session to 91, 91, 90 and 90, respectively, for the remainder of the decennial period. In this connection, it was acknowledged that where a county was entitled to a single float it was arbitrarily allocated to one of the four sessions to equalize membership during the decade, where a county was entitled to two floats they were assigned to the fourth and third sessions, and where a county was entitled to three floats they were allocated to the fourth, third and second sessions. Similarly, there was appended a proposed apportionment of the Senate whereby 61 members (note, not 60) would be elected from 44 districts. To rationalize the latter recommendation, the state's chief legal officer acknowledged that some realignment of districts was necessary since the Senate enactment divided the state (exclusive of Oklahoma and Tulsa counties) into 40 districts, including but one for Comanche

County, whereas the rules of the Davis case would require two of the 40 for Comanche County.[68]

After almost one month of review of the plea of the Attorney General, the Oklahoma Supreme Court issued, on January 10, 1964, its Opinion and Conditional Order in Davis v. McCarty, supra. The plans of apportionment prescribed for the Senate and House are depicted in detail in Tables 38 and 40, and analyzed for their effect in Tables 39 and 41. For the Senate, 61 members were to represent 47 districts. But due to the holdover of 41 members to be joined by 21 to be elected, the Senate will in fact be composed of 62 members in 1965. For statistical analysis, this complication could not be included, and as a result the majority based upon 61 members will be responsible to 44.5 per cent of the people. As for the House of Representatives, the Thirtieth Session of the Oklahoma Legislature will be composed of 93 members elected from 62 districts with the majority responsible to 32.5 per cent of the people.

In its decision the tribunal initially took judicial notice of the fact that when a legislative apportionment fails to meet the test of substantial equality as prescribed by the Oklahoma Constitution a justiciable claim is presented, and an appropriate remedy is the "minimum remedy" which will remove the inequities. As stated by the Court:

> "The Baker case established, for the first time, that the courts are authorized to act when apportionment legislation fails to meet the apportionment standards prescribed by a state constitution. However, since Baker v. Carr gives us no guidelines as to what remedies may be applied by the courts, we have concluded that in selecting an 'appropriate remedy' we must select the 'minimum remedy' which will meet the test of substantial equality prescribed by our State Constitution.

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[68] Davis v. McCarty, op. cit., "Application for Reapportionment Decree," December 16, 1963.

TABLE 38

OKLAHOMA SUPREME COURT ORDER - SENATE APPORTIONMENT

District	Counties in District	Number of Senators
1	Beaver, Cimarron, Harper, Texas	1
2	Beckham, Greer, Harmon	1
3	Jackson, Tillman	1
4	Kiowa, Washita	1
5	Custer, Dewey, Roger Mills	1
6	Ellis, Woods, Woodward	1
7	Alfalfa, Grant, Major	1
8	Blaine, Canadian	1
9	Caddo	1
10	Comanche	2
11	Stephens	1
12	Grady	1
13	Kingfisher, Logan	1
14	Garfield	1
15	Kay	1
16	Payne	1
17	Oklahoma	2
18	Oklahoma (Plus 3 Senators elected	2
19	Oklahoma at-large, for total of 11)	2
20	Oklahoma	2
21	Cleveland	1
22	Garvin, McClain	1
23	Carter	1
24	Cotton, Jefferson, Love, Marshall	1
25	Atoka, Coal, Johnston, Murray	1
26	Pontotoc	1
27	Pottawatomie	1
28	Hughes, Seminole	1
29	Lincoln, Okfuskee	1
30	Creek	1
31	Noble, Osage, Pawnee	1
32	Washington	1
33	Tulsa	3
34	Tulsa	3
35	Tulsa	3
36	Okmulgee	1
37	Pittsburg	1
38	Bryan, Choctaw	1
39	McCurtain, Pushmataha	1
40	LeFlore	1
41	Haskell, Latimer, McIntosh	1
42	Muskogee	1
43	Adair, Sequoyah	1
44	Cherokee, Wagoner	1
45	Nowata, Rogers	1
46	Craig, Mayes	1
47	Delaware, Ottawa	1
		61

TABLE 39

OKLAHOMA SUPREME COURT ORDER -- SENATE APPORTIONMENT

Dist.	Pop.	No.of Sen.	Pop.per Senator	#	Dist.	Pop.	No.of Sen.	Pop.per Senator	#
7	24,393	1	24,393	1.56	33-35*	346,038	2	38,449	.99
26	28,089	1	28,089	1.36	23	39,044	1	39,044	.98
9	28,621	1	28,621	1.33	38	39,889	1	39,889	.96
40	29,106	1	29,106	1.31	17-20	439,506	11	39,955	.96
41	29,230	1	29,230	1.31	30	40,495	1	40,495	.94
13	29,297	1	29,297	1.30	22	41,030	1	41,030	.93
24	29,348	1	29,348	1.30	27	41,486	1	41,486	.92
12	29,590	1	29,590	1.29	47	41,499	1	41,499	.92
29	30,489	1	30,489	1.25	32	42,347	1	42,347	.90
43	31,113	1	31,113	1.23	28	43,210	1	43,210	.88
6	31,291	1	31,291	1.22	16	44,231	1	44,231	.86
45	31,462	1	31,462	1.21	3	44,390	1	44,390	.86
1	31,579	1	31,579	1.21	10	90,803	2	45,402	.84
5	32,181	1	32,181	1.19	21	47,600	1	47,600	.80
2	32,511	1	32,511	1.17	15	51,042	1	51,042	.75
4	32,946	1	32,946	1.16	14	52,975	1	52,975	.72
44	33,435	1	33,435	1.14	31	53,701	1	53,701	.71
37	34,360	1	34,360	1.11	42	61,866	1	61,866	.62
39	34,939	1	34,939	1.09		1,292,009 (55.49%)	30	43,067 ave.	
25	35,037	1	35,037	1.09					
46	36,376	1	36,376	1.05					
8	36,804	1	36,804	1.04					
36	36,945	1	36,945	1.03					
11	37,990	1	37,990	1.00					
33-35*	346,038	7	38,449	.99					
	1,036,275 (44.51%)	31	33,428 ave.						
	TOTALS:		2,328,284		61	38,169 ave.			

*As Districts' 33-35 population overlaps the percentage which elected part of the majority and minority of the Senate membership, it has been divided in order to show the precise effect of the apportionment.

At the extreme, the population represented in District 7 had a relative weight 2.5 times that of the population represented in District 42.

TABLE 40

OKLAHOMA SUPREME COURT ORDER--HOUSE APPORTIONMENT

Counties	(1965) 2nd Period	(1967) 3rd Period	(1969) 4th Period	(1971) 5th Period
Alfalfa-Grant	1	1	1	1
Atoka-Pushmataha	1	1	1	1
Beaver-Harper	1	1	1	1
Cimarron-Texas	1	1	1	1
Coal-Hughes	1	1	1	1
Cotton-Jefferson	1	1	1	1
Craig-Nowata	1	1	1	1
Dewey-Ellis-Roger Mills	1	1	1	1
Greer-Harmon	1	1	1	1
Haskell-Latimer	1	1	1	1
Johnston-Murray	1	1	1	1
Kingfisher-Major	1	1	1	1
Love-Marshall	1	1	1	1
Noble-Pawnee	1	1	1	1
Adair	1	1	1	1
Beckham	1	1	1	1
Bryan	1	1	1	1
Blaine	1	1	1	1
Caddo	2	1	1	1
Canadian	1	1	1	1
Carter	2	2	1	1
Cherokee	1	1	1	1
Choctaw	1	1	1	1
Cleveland	2	2	2	2
Comanche	4	4	4	4
Creek	2	2	1	1
Custer	1	1	1	1
Delaware	1	1	1	1
Garfield	2	2	3	2
Garvin	2	1	1	1
Grady	1	2	1	1

TABLE 40
(Continued)

Counties	(1965) 2nd Period	(1967) 3rd Period	(1969) 4th Period	(1971) 5th Period
Jackson	2	1	1	1
Kay	2	2	2	2
Kiowa	1	1	1	1
LeFlore	2	1	1	1
Lincoln	1	1	1	1
Logan	1	1	1	1
McClain	1	1	1	1
McCurtain	1	1	1	1
McIntosh	1	1	1	1
Mayes	1	1	1	1
Muskogee	3	3	2	2
Okfuskee	1	1	1	1
Oklahoma	7	7	7	7
Okmulgee	1	2	2	1
Osage	1	1	2	1
Ottawa	1	2	1	1
Payne	2	2	2	2
Pittsburg	1	2	2	1
Pontotoc	2	1	1	1
Pottawatomie	2	2	2	2
Rogers	1	1	1	1
Seminole	1	2	1	1
Sequoyah	1	1	1	1
Stephens	2	2	1	1
Tillman	1	1	1	1
Tulsa	7	7	7	7
Wagoner	1	1	1	1
Washington	2	2	2	2
Washita	1	1	1	1
Woods	1	1	1	1
Woodward	1	1	1	1
	93	93	88	84

TABLE 41

OKLAHOMA SUPREME COURT ORDER--HOUSE APPORTIONMENT

County	Pop.	No. Rep.	Pop. per Rep.	#
Okfuskee	11,706	1	11,706	2.14
Woods	11,932	1	11,932	2.10
Blaine	12,077	1	12,077	2.07
McIntosh	12,371	1	12,371	2.02
McClain	12,740	1	12,740	1.97
Beav.-Harper	12,921	1	12,921	1.94
Adair	13,112	1	13,112	1.91
Love-Marsh.	13,125	1	13,125	1.91
Delaware	13,198	1	13,198	1.90
Woodward	13,902	1	13,902	1.80
Pontotoc	28,089	2	14,045	1.78
Garvin	28,290	2	14,145	1.77
Caddo	28,621	2	14,311	1.75
LeFlore	29,106	2	14,553	1.72
Tillman	14,654	1	14,654	1.71
Greer-Har.	14,729	1	14,729	1.70
Kiowa	14,825	1	14,825	1.69
Jackson	29,736	2	14,868	1.68
Choctaw	15,637	1	15,637	1.60
Wagoner	15,673	1	15,673	1.60
Cot.-Jeff.	16,223	1	16,223	1.54
Alfal.-Grant	16,585	1	16,585	1.51
Dewey-Ellis-Roger Mills	16,598	1	16,598	1.51
Hask-Lat.	16,859	1	16,859	1.48
Cherokee	17,762	1	17,762	1.41
Beckham	17,782	1	17,782	1.41
Sequoyah	18,001	1	18,001	1.39
Washita	18,121	1	18,121	1.38
Kingf.-Major	18,443	1	18,443	1.36
Cim.-Texas	18,658	1	18,658	1.34
Logan	18,662	1	18,662	1.34
Lincoln	18,783	1	18,783	1.33
Stephens	37,990	2	18,995	1.32
John.-Mur.	19,139	1	19,139	1.31
Atoka-Push.	19,440	1	19,440	1.29
Carter	39,044	2	19,522	1.28
Mayes	20,073	1	20,073	1.25
Creek	40,495	2	20,248	1.24
Rogers	20,614	1	20,614	1.21
	755,716 (32.46%)	47	16,079	ave.
Muskogee	61,866	3	20,622	1.21
Coal-Hughes	20,690	1	20,690	1.21
Pottawatomie	41,486	2	20,743	1.21
Custer	21,040	1	21,040	1.19
Washington	42,347	2	21,174	1.18
Noble-Pawnee	21,260	1	21,260	1.18
Payne	44,231	2	22,116	1.13
Comanche	90,803	4	22,701	1.10
Cleveland	47,600	2	23,800	1.05
Bryan	24,252	1	24,252	1.03
Canadian	24,727	1	24,727	1.01
Kay	51,042	2	25,521	.98
McCurtain	25,851	1	25,851	.97
Garfield	52,975	2	26,488	.95
Craig-Nowata	27,151	1	27,151	.92
Seminole	28,066	1	28,066	.89
Ottawa	28,301	1	28,301	.88
Grady	29,590	1	29,590	.85
Osage	32,441	1	32,441	.77
Pittsburg	34,360	1	34,360	.73
Okmulgee	36,945	1	36,945	.68
Tulsa	346,038	7	49,434	.51
Oklahoma	439,506	7	62,787	.40
	1,572,568 (67.54%)	46	34,186	ave.
TOTAL	2,328,284	93	25,035	ave.

At the extreme, the population represented in Okfuskee County will have a relative weight 5.4 times that of the population represented in Oklahoma County.

From this point of departure the Court reiterated its view concerning the proper operation of the flotorial system, the proper implementation of the "except" clause, and the shortcomings of the 1963 acts of the legislature (as explained above relative to its opinion of November 6, 1963), after which it reached the following conclusion.

> "Consistent with the view that we should apply the 'minimum remedy'. . . this may be accomplished without disturbing in any way House Bill 586, except to remove flotorial representation unauthorized by the constitution; and without disturbing in any way Senate Joint Resolution No. 8, except to add senatorial representation to meet the test of substantial equality prescribed by our Constitution."

Consequently, as regards the House the court by and large respected the recommendation of the Attorney General as based upon its own recent construction, coupled with legislative intent. As will be recalled, House Bill 586 followed the state constitution (including the upper limit of seven on the number of representatives a county might elect), but due to legislative construction as to the application of floats it entailed dozens more than deserved by the representative districts. To remedy this error the court simply eliminated those not merited by the state constitution. As a result, whereas the Attorney General recommended the allocation of 362 seats over the remaining four sessions of the decennial period, the court reduced this number to 358, making slight adjustments as regards the allocation of floats in 11 representative districts, the effect of which 93, 93, 88 and 84 will serve in the second through fifth sessions, respectively.

Pertinent to the Senate, the "minimum remedy" of the court is much more complicated. Again, the purpose was to respect the Attorney General's recommendation as based upon the court's recent construction,

coupled with legislative intent. But indicative of the reaction of some uninformed observers, it has been alluded to as the "S.O.S. Plan," suggesting that it had been consciously designed to Save Our Senators. As will be recalled, Senate Joint Resolution 8 called for the creation of 47 senatorial districts from which 47 senators were to be elected, and pursuant with said law and the rules announced by the court, the state's chief legal officer urged the adoption of a plan whereby 61 members may be elected from 44 districts. The reason for 61 rather than 60 is evident when one recognizes that under the legislative act 39 senatorial districts were intended outside of Oklahoma, Tulsa and Comanche counties (each of these to be assigned four, three and one, respectively, with a like number of senators), instead of 38 senatorial districts. Thus when two senators and two senatorial districts are allotted Comanche County, as the court found to be required by the Oklahoma Constitution, the total becomes 41 senatorial districts outside of Oklahoma and Tulsa counties.

To further pursue this logic one need account for the court's prior conviction of substantial numerical equality (use of the ratio of 38,568 relative to all county populations), which requires that the population outside of Oklahoma and Tulsa counties (properly allotted eleven and nine members, respectively), or 1,542,740 be divided by 41 instead of 40. It is this methodology that distinguishes the court's order from that proposed by the Attorney General. Whereas the latter recommendation was for 61 senators to be elected from 44 districts, and other than for the above complication would have met the letter of the rules of the court, it failed to fully account for legislative intent. Evidently of the opinion that legislative intent is sacred, the Oklahoma Supreme Court

condoned 47 districts rather than the 44 it earlier determined to be required by the state constitution. And to divert further from its own construction, the court necessarily found itself up against a four year term in the upper chamber, to which half of the Senate members had been elected two years ago. As a result, the tribunal determined that the terms of senators theretofore elected would best be left undisturbed, and that at the ensuing election there be allocated the additional numbers to which the more populous counties are entitled. Thus there was authorized 63 senators (41 to be elected and 22 holdovers) to represent 47 senatorial districts in the 1965 session of the Oklahoma Legislature.

So as not to lose sight of the purpose of this decision the court concluded:

> "It is therefore the order of this Court that the directives mentioned in this opinion shall become effective if, and only if, the Order of Reapportionment heretofore entered in Moss v. Burkhart on July 17, 1963, should be reversed, vacated, or held ineffective for any reason."[69]

Likewise, it should not be overlooked that the court viewed its responsibility solely within the framework of the Oklahoma Constitution, and although not necessarily obvious, it constantly measured House Bill 586 up against Model "B" for the House and Senate Joint Resolution 8 up against Model "B" Revised for the Senate. Although the court "bent over backwards" in its minimum remedy approach to placate prior legislative enactments, it need be emphasized that the fundamental rationale of each plan nevertheless remains intact and, more clearly than ever before, prescribed the basic guidelines for future reapportionments. Thus the

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[69] Davis v. McCarty, op. cit., "Opinion and Conditional Order," January 10, 1964.

Supreme Court order can be recognized as one of convenience in the process of transition and, equally meaningful, one whereby the judicial hand, however rationalized, had been utilized to read "revise" into its authority to "review."

Immediately following the issuance of the Oklahoma Supreme Court's conditional order there was considerable confusion relative to the substantive as well as legal ramifications of the opinion. The news medias were quick to note the planned composition of the House (numerically depicted in the Order), but were without exception at a loss as to the planned composition of the Senate (not numerically depicted in the Order). The latter chamber's membership seemingly fluctuated between 60 and 61 for about a week before attorneys Norman Reynolds and Delmer Stagner brought the inaccuracies to light by filing a motion with the Federal District Court to stay the prospective reapportionment. They contended that the transitional plan would violate the equal protection of their clients, and also made clear that the plan for the Senate called for 63 members and not the 61 most were led to believe.[70] Within a week the federal tribunal responded by refusing to reject the state court order by way of a stay. In a brief statement, the Federal District Court refused to interfere with the decision of the state's highest court, and in reply to earlier motions to stay its decree, the court noted that it considered all the factors relevant and would not retract when more harm would come as a result.[71]

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[70]The Tulsa Tribune, January 15, 1964, p. 1. To further complicate matters and actually reduce the Senate to 62 members for the 1965 session, one member later resigned to seek a longer term in his district. The Norman Transcript, April 15, 1964, p. 2.

[71]Oklahoma City Times, January 20, 1964, p. 1; The Daily Oklahoman, February 6, 1964, p. 22.

Subsequently, on January 24, 1964, the filing of formal appeal of the Moss v. Burkhart decree was made to the U. S. Supreme Court by attorneys Jim Rinehart for Oklahomans for Local Government, Frank Carter for the Oklahoma Farm Bureau, and by Attorney General Charles Nesbitt, each requesting a stay thereof.[72] And two weeks later, Associate Justice Byron White of the U. S. Supreme Court, as administrative supervisor of the 10th Circuit, ordered the stay pending full court review of the three appeals.[73] On the very next day the Oklahoma State Election Board adopted and proceeded to implement the Oklahoma Supreme Court reapportionment order.[74] Not to forsake any last vestige of hope for more equitable representation, attorneys Reynolds and Stagner sought a reversal of the stay on February 8, 1964, urging for the Senate the substitution of Senate Model "B" Revised, only to learn within 48 hours that the U. S. Supreme Court refused to reverse the stay.[75] This brought to a close by far the most complex period in the Oklahoma debate over the composition of the state's lawmaking assembly. But the dawn of a new era was in prospect as the electorate prepared to weigh still another constitutional amendment on legislative apportionment, scheduled for a vote on May 26, 1964, while the state and nation awaited a final determination on the subject by the U. S. Supreme Court.

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[72] The Daily Oklahoman, January 24, 1964, p. 13.

[73] The Norman Transcript, February 6, 1964, pp. 1-2.

[74] The Daily Oklahoman, February 7, 1964, pp. 1-2.

[75] Ibid., February 8, 10, 1964, pp. 11.

CHAPTER X

FUTURE PROBLEMS AND PROSPECTS

In retrospect, it is evident in the foregoing chapters that legislative apportionment in Oklahoma, as in most other states in the union, has been the subject of a long and turbulent history.[1] Although created in the democratic tradition at the turn of the century and reasonably representative of all of the people of the state until 1930, the Oklahoma Legislature became increasingly responsible to a minority of the population through 1960. And despite a variety of legal and political efforts to seek a redress of the grievance, nothing was accomplished to correct the discriminatory and irrational pattern of decades of malapportionment.

Meanwhile, not only did the theory of popular sovereignty and the principle of numerical equality fall far short of realization, but the evolution of minority rule witnessed the rise of a serious urban-rural dichotomy. This unfortunate development was a direct outgrowth of disproportionate influence in the formulation of state policy which,

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[1] For a general account of the difficulties experienced in 17 other states, see: Malcolm E. Jewell, The Politics of Reapportionment, New York: Atherton Press, 1962.

upon translation into law, operated to the advantage of rural as over and against urban residents. To fully appreciate the "bread and butter" effect of malapportionment, and thus recognize another source of continued agitation, one need look no further than to the statutory enactments governing the formulae on allocations of state revenues to local units of government.[2] Indicative of the overall consequence of the formulae, an intensive study was conducted relative to the revenue collected by the Oklahoma State Tax Commission during Fiscal 1962, and included all state taxes, such as on gasoline, sales, income, gross production, auto licenses, alcoholic beverages and beer. Of the total state collections (in excess of $289 million), only <u>two</u> per cent (slightly above $6 million) was returned to the cities where two thirds of the state's population and tax-producers reside.[3] In a broader perspective, the complaints of actual damage attributable to such discrimination has been assessed as follows:

> "Specifically, the effect of rural dominance of the state legislature is revealed in formulas controlling the distribution of state aid for county roads and to a lesser extent, public schools. It is also apparent in legislative attitudes toward taxation or tax reforms. Rural influence opposes, generally, reorganization of state government, particularly county government, and the consolidation of weak school districts. And it has been almost totally indifferent to municipal problems. Generally, the dominant rural community is bent on maintaining the status quo, technological and other changes notwithstanding."[4]

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[2]For a detailed account of the various apportionments of taxes, see especially Chapter IV and the Appendix of Bureau of Government Research, <u>Oklahoma Government Finance</u>, Norman: University of Oklahoma, 1962.

[3]Report of Oklahoma Public Expenditures Council, August 17, 1962, in <u>The Daily Oklahoman</u>, March 26, 1964, p. 1.

[4]William J. D. Boyd (ed.), <u>Compendium on Legislative Apportionment</u>, "Oklahoma," New York: National Municipal League, 1962. Note also the comparable reaction of correspondents in each of the 49 other states.

Suffice it to note, therefore, that legislative apportionment in Oklahoma has ramifications of equity well beyond a mere allocation of seats in a law-making assembly. Although individual political equality is of fundamental concern, one cannot escape a recognition of the effects of a system of representation to the contrary.

Future Problems in Legislative Apportionment.

A. Moss v. Burkhart and Davis v. McCarty.

To complement all prior considerations relative to representation in the state's legislative assembly, there remain a number of problems that cannot be overlooked. As will be recalled from the discussion pertinent to Baker v. Carr, supra, it can be expected that constitutional formulae and statutory enactments that effect an invidious discrimination without rational basis will be stricken by the courts. This guideline merits special attention as regards the litigation that has transpired in Oklahoma to date, and particularly as it concerns the state constitution. It was the construction of the Federal District Court for the Western District of Oklahoma that the pertinent provisions of the state's fundamental law governing an apportionment of the House of Representatives was in only one respect contrary to equal protection. This, of course, concerned the upper limit of seven on the number of representatives a county may elect, and was deemed conducive to an invidious discrimination. No doubt a responsible judgment based on fact, it may also be added that the provision in point would well be considered unconstitutional on the grounds that the figure is arbitrary and not based upon a rational policy. Sidestepped in Moss v. Burkhart, supra, however, was the provision that permits a legislative district a representative for one-half ratio, two for

one and three-fourths ratios, three for two and three-fourths ratios, and presumably on ad infinitum. Clearly this feature effects a discrimination, but is it invidious? And what is the rational policy that supports it? These questions are for the moment unanswerable, but should one day require a response. It is on the pertinent provisions of the Oklahoma Constitution respecting an apportionment of the Senate, moreover, that the federal tribunal's construction had a serious shortcoming. Again as regards the "except" clause, the court was of the opinion that it constituted an "irreconcilable incongruity," and therefore should be disregarded. Other than the argument offered earlier to the contrary, would an implementation of the "except" clause, as interpreted, effect an invidious discrimination without rational basis? This question has been answered in the negative and, as a result, the provisions should not be disregarded on the presumption that it is violative of the Fourteenth Amendment or otherwise unworkable.

Similarly, the construction of the Oklahoma Supreme Court is open to criticism, but in this instance as regards the fundamental law as it pertains to the House rather than the Senate. With regard to the upper chamber, the state court was of the opinion that a proper implementation of the state constitution would permit the number of senators to exceed the required number of districts. This determination rendered in the initial decision in Davis v. McCarty, supra, should not be confused with the subsequent temporary stand-by order, for whereas the former can be supported by pertinent constitutional antecedents, the latter (a politically expedient alternative) cannot. In any event, the state tribunal ruled contrary to the federal court on the nature of the "except" clause,

and for the reasons stated above, its judgment is well founded in constitutional law. As regards its construction relative to the fundamental law requirements for a proper apportionment of the House, however, the court was shortsighted. In addition to likewise sidestepping the questionable invidiousness and rationality of the ratio system, the court evidently saw no conflict as between the maximum number a county may elect and the requirements of Equal Protection of the Laws. Once more, for the reasons stated above, the Oklahoma Supreme Court could hardly have respected its responsibility to scrutinize this constitutional provision in light of the guideline of the U. S. Supreme Court.

Consequently, in full view of the U. S. and Oklahoma constitutions, and based upon the clear expression of the courts in the cited cases, it is submitted that neither the Federal District Court nor the Oklahoma Supreme Court were entirely accurate or entirely in error in their respective judgments. With reservation only as to the constitutionality of the ratio system, it is contended that the Moss v. Burkhart construction relative to the House of Representatives (which eliminated an upper limit) and the Davis v. McCarty construction relative to the Senate (which made applicable the "except" clause) are the proper determinations in view of both laws of the land. Conversely, it is contended that the Moss decision drew an improper conclusion as regards the state Senate and the Oklahoma Constitution, and the Davis decision likewise misconstrued the requirement for the House in view of the U. S. Constitution.

B. Legislative Districting in the State and County.

An integral part of any apportionment scheme is the manner in which a state is divided into legislative districts for the purpose of

representation. Where one member is allotted a county or district it is commonly referred to as a single-member constituency; where two or more, a multi-member constituency. In the case of the former, it is the less problematic for it is applicable state-wide and considered relative to similarly situated political sub-divisions, whether based, for example, on the federal analogy or population. Advocates of its implementation point up the virtue of the short ballot and contend that the elected official is likely to be more responsive to the needs of all of the district. In the case of the multi-member constituency, it is not normally given the close attention it deserves, due largely to a lack of objective standards to apply within the district. As a result, the county or district is more often than not allotted members for election at-large. Advocates of this approach point up the shortcoming of the long ballot, but contend that it is outweighed by broader representation, a reduction of possible gerrymanders, and an elimination of the need to draw district lines.[5]

To provide an illustration of the difficulties that may be encountered in an application of either form of districting requires a closer acquaintance with this aspect of the recent standby reapportionment order of the Oklahoma Supreme Court. It may be recalled that the next or Thirtieth (1965) Session of the Oklahoma Legislature will be composed of a 62-member Senate and a 93-member House of Representatives. Of interest, though here of marginal relevance, a recent account of the membership in the various state legislatures is provided in Table 42.

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[5]President's Advisory Commission on Intergovernmental Relations, op. cit., p. 53.

TABLE 42

MEMBERSHIP IN STATE LEGISLATURES

Senate

Under 20 Members (2)	20-29 Members (8)	30-39 Members (19)	40-49 Members (11)	Over 50 Members (9)
Del. 17	Md. 29	La. 39	Mich. 34	Wash.49	Minn.67
Nev. 17	Ariz.28	Ohio 38	Me. 34	N.D. 49	N.Y. 58
	Wyo. 27	Ky. 38	Wis. 33	Miss.49	Ill. 58
	Utah 25	Fla. 38	Tenn. 33	S.C. 46	Mont.56
	H.I. 25	Conn. 36	W.Va. 32	R.I. 44	Ga. 54
	N.H. 24	S.D. 35	N.M. 32	Okla.44	Pa. 50
	N.J. 21	Colo. 35	Tex. 31	Ida. 44	N.C. 50
	Alas.20	Ark. 35	Vt. 30	Neb. 43	Iowa 50
		Ala. 35	Ore. 30	Mass.40	Ind. 50
		Mo. 34		Kan. 40	
				Cal. 40	

House

Under 50 Members (3)	50-99 Members (15)	100-149 Members (20)	150-199 Members (5)	Over 200 Members (6)
Alas. 40	Wash.99	Miss.140	Iowa 108	Ill.177	N.H.400
Nev. 37	Tenn.99	Ohio 137	Ala. 106	Mo. 163	Conn294
Del. 35	Fla. 95	Minn.135	La. 105	Me. 151	Vt. 246
	Mont.94	Kan. 125	Wis. 100	Tex.150	Mass240
	Cal. 80	S.C. 124	W.V. 100	N.Y.150	Pa. 210
	Ariz.80	Md. 123	R.I. 100		Ga. 205
	S.D. 75	Okla.120	Ky. 100		
	N.M. 66	N.C. 120	Va. 100		
	Colo.65	N.D. 115	Ind. 100		
	Utah 64	Mich.110	Ark. 100		
	Ida. 63				
	Ore. 60				
	N.J. 60				
	Wyo. 56				
	H.I. 51				

Source: Connecticut Public Expenditures Council, Inc., Bulletin of March-April, 1964, Vol. 16, No. 2, p. 4.

For the last session the total number in Oklahoma's respective chambers was either near or at the overall average. Whereas the range of Senates varied from 17 to 67, the state's 44 members was in close proximity to the average of 38. And whereas the range of Houses varied from 35 to 400, the state's 120 members constituted the average. In sharp contrast, however, and barring changes of similar magnitude in other states, Oklahoma's next upper chamber will be the second largest in the nation and its lower chamber will rank among the smaller one-third.

It is in regard to the last Senate apportionment, or more specifically that portion thereof that relates to districts within the state's most populous county, that a classic example is provided on the problem in point. For the 1965 session, Oklahoma County was allotted 11 senators and, as a result of the compromise with legislative intent, only four legislative districts. Therefore, it became evident that an assignment of single-member districts based upon a reasonable facsimile of numerical equality was impossible, and in turn required the utilization of both single and multi-member districts. Consequently, two senators were directed to be nominated and elected from each of four senatorial districts, with the balance or three members to be nominated and elected at-large within the county. Thus, it was assumed, some semblance of equality was instituted as between like senatorial districts, although a contrast as between each of the four regular and the three at-large districts could hardly come under the heading of equity. Moreover, a comparison of the population of the four senatorial districts also points up the shortcoming of the scheme, for whereas each quadrant might ideally have been composed of 109,876 residents, one district (No. 17) has

162,029 inhabitants, another (No. 18) has 67,399, still another (No. 19) 115,586, and the other district (No. 20) 94,492 persons.[6] To suggest expediency, a gerrymander, or simply lack of research, utilization of the census tracts would have produced a much more equitable arrangement of the districts. For example, an investigation was made of this problem months prior to the prospective implementation of Model "C", in which case eight districts and senators would have been allotted the state's most populous county. As a result, it was found that an apportionment within the county could have produced compact districts of 56,104, 54,941, 54,622, 54,674, 55,431, 53,164, 54,299 and 56,271 residents. Obviously, each of these might have been appropriately combined to form the numerical equality sought among the quadrants. In any event, this experience would tend to show cause for concern relative to districting within counties as well as between districts, for the broader goal of apportionment can well be distorted by its haphazard application. Further, equal protection criteria would appear to favor the single over multi-member districts, but constitutional requirements often prohibit its implementation.

C. Districts and the Contiguity of Counties.

Associated with the problem of legislative districting is that of bringing together contiguous counties to form them. In the 36 states where the legislature has this duty, as well as in the 14 states where another agent or agency of the state government assumes the responsibility, it is frequently noted that inescapable political and policy determinations

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[6]The Daily Oklahoman, February 21, 1964, p. 42.

must be made for which there is no alternative.[7] Although there is a modicum of truth in this contention, it would be fallacious to assume that the inherent evils cannot be substantially reduced. For example, a system has been developed whereby an unbiased method of districting could be made applicable in instances of discretion.[8] Such was the case, as explained above, relative to a prospective division of the state's most populous county into eight districts, and the figures provided are a product of an application of this method. To fully appreciate this design, following are the steps preliminary to the results.[9]

A. Divide the population of the county by eight (or other number of senatorial districts): 439,506 ÷ 8 = Quotient or 54,938.

B. Select a census tract at random to be known as the Random Tract.

C. Find the census tract which is farthest away from the one chosen at random, and begin constructing the first district by adding adjacent counties until the quotient is approximated. This is the Base Tract.

D. Add each census tract pursuant with these rules:
   a. Add tracts until the quotient is reached; each one added in turn shall be the one whose centroid is closest to the centroid of the Base Tract.
   b. When the quotient is reached (or surpassed), determine whether there is another contiguous tract, which if substituted for the last one added, would create a district whose population is nearer the quotient. If so, substitute it for the last one added.

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[7]President's Advisory Commission on Intergovernmental Relations, op. cit., p. 55.

[8]William Vickrey, "On the Prevention of Gerrymandering," Political Science Quarterly, Vol. LXXVI, No. 1, March, 1961, pp. 105-110.

[9]For an awareness of this method and advice relative to its application, the writer is indebted to Professor Oliver Benson, Director, University of Oklahoma Bureau of Government Research.

E. Return to the Random Tract and find the tract which is now the furthest away, omitting all those which lie in the district already created. Proceed in the same manner to create District Two, using however a new quotient: Population of County minus Population of District One divided by seven.

F. Proceed in the same manner until eight districts have been created.

G. One mechanical problem may arise: there may be a case where a tract will be left as an enclave, not assigned to any district. The special rule in this case will be to assign it to the adjacent district which has the smaller population, substituting for it the tract which can be added to another district, in such manner as to most nearly equalize population of all the districts.

Although it is recognized that many state constitutions do not prescribe numerical equality, it is nonetheless in order to note that this technique can similarly be applied to form legislative districts throughout a state. On the other hand, if a greater degree of sophistication is demanded, that too can be arranged by way of an elaborate scheme which only a computer can handle. For example, Table 43 numerically depicts each county in Oklahoma, and the total as well as the number of the county with which each is contiguous. On the premise that there may be sought the most equitable of all possible apportionments, a "program" could be developed to pursue every conceivable combination of counties in the formation of the desired number of districts. Indicative of the complexity of this task, two counties (Canadian and Pontotoc) are contiguous to eight other counties, one or more of which are contiguous to as many as seven additional counties, some combination of which would produce a near-perfect districting. But to approach perfection it would be necessary to consider each county and that adjoining it, that adjoining it, and so on, in view of an ideal ratio of population.

TABLE 43

CONTIGUOUS OKLAHOMA COUNTIES

1.	Adair	(3) 11,21,68	40.	LeFlore	(5) 31,39,45,64,68
2.	Alfalfa	(4) 24,27,47,76	41.	Lincoln	(6) 19,42,54,55,60,63
3.	Atoka	(6) 7,12,15,35,61,64	42.	Logan	(7) 9,24,37,41,52, 55,60
4.	Beaver	(3) 23,30,70			
5.	Beckham	(6) 20,28,29,38,65,75	43.	Love	(3) 10,34,48
6.	Blaine	(6) 8,9,20,22,37,47	44.	McClain	(6) 9,14,25,26,62,63
7.	Bryan	(4) 3,12,35,48	45.	McCurtain	(3) 12,40,64
8.	Caddo	(7) 6,9,16,20,26,38,75	46.	McIntosh	(6) 31,32,51,54,56,61
9.	Canadian	(8) 6,8,14,26,37,42,44, 55	47.	Major	(7) 2,6,22,24,37,76,77
			48.	Marshall	(4) 7,10,35,43
10.	Carter	(7) 25,34,35,43,48,50, 69	49.	Mayes	(5) 11,18,21,66,73
			50.	Murray	(4) 10,25,35,62
11.	Cherokee	(6) 1,21,49,51,68,73	51.	Muskogee	(6) 11,31,46,56,68,73
12.	Choctaw	(4) 3,7,45,64	52.	Noble	(7) 24,27,36,42,57 59,60
13.	Cimarron	(1) 70			
14.	Cleveland	(5) 9,26,44,55,63	53.	Nowata	(3) 18,66,74
15.	Coal	(5) 3,32,35,61,62	54.	Okfuskee	(7) 19,32,41,46,56, 63,67
16.	Comanche	(6) 8,17,26,38,69,71			
17.	Cotton	(4) 16,34,69,71	55.	Oklahoma	(6) 9,14,37,41,42,63
18.	Craig	(5) 21,49,53,58,66	56.	Okmulgee	(6) 19,46,51,54, 72,73
19.	Creek	(6) 41,54,56,59,60,72			
20.	Custer	(6) 5,6,8,22,65,75	57.	Osage	(5) 36,52,59,72,74
21.	Delaware	(5) 1,11,18,49,58	58.	Ottawa	(2) 18,21
22.	Dewey	(6) 6,20,23,47,65,77	59.	Pawnee	(5) 19,52,57,60,72
23.	Ellis	(5) 4,22,30,65,77	60.	Payne	(5) 19,41,42,52,59
24.	Garfield	(7) 2,27,36,37,42, 47,52	61.	Pittsburg	(7) 3,15,31,32,39, 46,64
25.	Garvin	(6) 10,26,44,50,62,69	62.	Pontotoc	(8) 15,25,32,35,44, 50,63,67
26.	Grady	(7) 8,9,14,16,25,44,69			
27.	Grant	(4) 2,24,36,52	63.	Pottawatomie	(7) 14,41,44,54,55, 62,67
28.	Greer	(4) 5,29,33,38			
29.	Harmon	(3) 5,28,33	64.	Pushmataha	(6) 3,12,39,40,45,61
30.	Harper	(4) 4,23,76,77	65.	Roger Mills	(4) 5,20,22,23
31.	Haskell	(6) 39,40,46,51,61,68	66.	Rogers	(6) 18,49,53,72,73,74
32.	Hughes	(6) 15,46,54,61,62,67	67.	Seminole	(4) 32,54,62,63
33.	Jackson	(4) 28,29,38,71	68.	Sequoyah	(5) 1,11,31,40,51
34.	Jefferson	(4) 10,17,43,69	69.	Stephens	(6) 10,16,17,25,26,34
35.	Johnston	(7) 3,7,10,15,48,50,62	70.	Texas	(2) 4,13
36.	Kay	(4) 24,27,52,57	71.	Tillman	(4) 16,17,33,38
37.	Kingfisher	(6) 6,9,24,42,47,55	72.	Tulsa	(7) 19,56,57,59,66, 73,74
38.	Kiowa	(7) 5,8,16,28,33,71,75			
39.	Latimer	(4) 31,40,61,64	73.	Wagoner	(6) 11,49,51,56,66,72
			74.	Washington	(4) 53,57,66,72
			75.	Washita	(4) 5,8,20,38
			76.	Woods	(4) 2,30,47,77
			77.	Woodward	(5) 22,23,30,47,76

And this pattern would necessarily have to be repeated many thousands of times. The result, however, would be an unbiased districting that might be made subject to revision only upon evidence of compelling reasons to the contrary.

Future Prospects in Legislative Apportionment.

A. State Question No. 416: Legislative Referendum No. 142.

To supplement all of the foregoing trials and tribulations since the advent of Baker v. Carr, supra, there was scheduled just prior to the completion of this manuscript still another public consideration of an alternative constitutional formula of legislative apportionment. Brought about by Senate Joint Resolution 4 of the Twenty-ninth Oklahoma Legislature, this proposition was submitted in the following form.

> "Shall a constitutional amendment repealing Sections 9 through 16, adopting Sections 9A, 10A, 11A, 11B, 11C, 11D, Article V, Oklahoma Constitution, apportioning Oklahoma into 19 one-county, and 29 two-county Senatorial Districts electing one Senator each; apportioning counties one State Representative for each one-per cent or fraction thereof, of State's population therein up to four Representatives, then one for each two-per cent; upon failure of Legislature, Reapportionment Commission shall apportion Legislature, with review by Oklahoma Supreme Court; and establishing two and four year terms of office for Representatives and Senators, respectively, be approved by the people?"

In contrast with the earlier format of review, the broad spectrum of most recent apportionments and proposals in Oklahoma may best be perceived in a brief comparative analysis.

SENATE

	Per cent to Elect Maj.	Total Number	Relative Weight	Total Variance
S.Q. No. 416	?	48	?	?
29th Session	24.5	44	26:1	1.94
St. Sup. Ct.	44.5	60	2.5:1	.47
Fed. Dist. Ct.	49.6	44	1.4:1	.17

HOUSE

	Per cent to Elect Maj.	Total Number	Relative Weight	Total Variance
S.Q. No. 416	31.5	126	8.9:1	1.83
29th Session	29.5	120	14:1	2.01
St. Sup. Ct.	32.5	93	5.4:1	.87
Fed. Dist. Ct.	42.7	109	3.1:1	.62

Other than the self-evident headings of the percentage of the population to which the majority would be responsible and the total membership of each chamber under each plan, it is well to reiterate that relative weight refers to the extreme inequity as between persons represented in different districts, and total variance is a test of equitableness whereby the lower the figure the more representative of all of the people is the plan. In general, it is once again quite clear that of all these alternatives, that decreed in Moss v. Burkhart, supra, is by far the superior in terms of approaching individual political equality, although as regards the State Senate that construed in Davis v. McCarty, supra, is not a distant second. Both products of the new perspective of legislative apportionment in Oklahoma in any event substantially outweigh that experienced for the last session of the Oklahoma Legislature and that submitted to the people by its members.

Relative to State Question No. 416, it was not clear, as indicated above, what was to be the precise effect for the Senate, other than that it was to be composed of 48 members. Its indeterminate nature was a result of a sentence embodied in the resolution of referral:

> "In apportioning the state Senate, consideration will be given to population, compactness, area, political units, historical precedents, economic and political interests, contiguous territory, and other major factors to the extent feasible."

Therefore, as regards the formation of the 29 two-county senatorial districts, the same could be rationalized as the majority of the Senate saw fit. It was nevertheless clear that the 19 one-county districts were to be the 19 most populous counties, ranging from Oklahoma (population: 439,506) through LeFlore (population: 29,106), each of which would elect one senator. Combined, the 19 senators would thus represent 1,527,601 (65.6% of the people), whereas the remaining 29 senators would represent but 800,683 (34.4% of the people) in the remaining 58 counties. At the extreme, if the counties of Ellis-Roger Mills were combined as a two-county senatorial district (population: 10,547), the population represented therein would have a relative weight 42 times that represented in Oklahoma County.

As for the House of Representatives, its apportionment was premised on a scheme familiar to the voters of Oklahoma. Each county was to have at least one representative plus an addition for each ratio up to four members; thereafter, two ratios were to be required for each additional member.[10] Table 44 depicts the product of this formula, resulting in a lower chamber of 126 members, a majority of whom would be responsible to 31.5 per cent of the people. Whereas 61 counties would be over-represented, 15 counties would be under-represented, and but one county approximates the overall average population per legislative district. Once again a substantial imbalance is readily apparent in that the majority group would be responsible to an average constituency of 11,464

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[10]See for example, House Bill No. 1033 and discussion pertinent to Table 15.

TABLE 44

STATE QUESTION #416--HOUSE APPORTIONMENT

County	Pop.	No. Rep.	Pop. per Rep.	#
Cimarron	4,496	1	4,496	4.11
Roger Mills	5,090	1	5,090	3.63
Ellis	5,457	1	5,457	3.39
Coal	5,546	1	5,546	3.33
Harmon	5,852	1	5,852	3.16
Love	5,862	1	5,862	3.15
Harper	5,956	1	5,956	3.10
Dewey	6,051	1	6,051	3.05
Beaver	6,965	1	6,965	2.65
Marshall	7,263	1	7,263	2.54
Latimer	7,738	1	7,738	2.39
Major	7,808	1	7,808	2.37
Cotton	8,031	1	8,031	2.30
Grant	8,140	1	8,140	2.27
Jefferson	8,192	1	8,192	2.26
Alfalfa	8,445	1	8,445	2.19
Johnston	8,517	1	8,517	2.17
Greer	8,877	1	8,877	2.08
Pushmataha	9,088	1	9,088	2.03
Haskell	9,121	1	9,121	2.03
Atoka	10,352	1	10,352	1.78
Noble	10,376	1	10,376	1.78
Murray	10,622	1	10,622	1.74
Kingfisher	10,635	1	10,635	1.74
Nowata	10,848	1	10,848	1.70
Pawnee	10,884	1	10,884	1.70
Okfuskee	11,706	1	11,706	1.58
Woods	11,932	1	11,932	1.55
Blaine	12,077	1	12,077	1.53
Bryan	24,252	2	12,126	1.52
Canadian	24,727	2	12,364	1.49
McIntosh	12,371	1	12,371	1.49
McClain	12,740	1	12,740	1.45
McCurtain	25,851	2	12,926	1.43
Adair	13,112	1	13,112	1.41
Delaware	13,198	1	13,198	1.40
Woodward	13,902	1	13,902	1.33
Seminole	28,066	2	14,033	1.32
Pontotoc	28,089	2	14,045	1.32
Garvin	28,290	2	14,145	1.31
Ottawa	28,301	2	14,151	1.31
Texas	14,162	1	14,162	1.30
Caddo	28,621	2	14,316	1.29
LeFlore	29,106	2	14,553	1.27
Tillman	14,654	1	14,654	1.26
Grady	29,590	2	14,795	1.25
Kiowa	14,825	1	14,825	1.25
Jackson	29,736	2	14,868	1.24
Hughes	15,144	1	15,144	1.22
Choctaw	15,637	1	15,637	1.18
Wagoner	15,673	1	15,673	1.18
Cleveland*	47,600	2	15,867	1.16
	733,708 (31.51%)	64	11,464	ave.
Cleveland*	47,600	1	15,867	1.16
Osage	32,441	2	16,221	1.14
Craig	16,303	1	16,303	1.13
Kay	51,042	3	17,014	1.09
Pittsburg	34,360	2	17,180	1.08
Garfield	52,975	3	17,658	1.05
Cherokee	17,762	1	17,762	1.04
Beckham	17,782	1	17,782	1.04
Sequoyah	18,001	1	18,001	1.03
Washita	18,121	1	18,121	1.02
Okmulgee	36,945	2	18,473	1.00
Logan	18,662	1	18,662	.99
Lincoln	18,783	1	18,783	.98
Stephens	37,990	2	18,995	.97
Carter	39,044	2	19,522	.95
Mayes	20,073	1	20,073	.92
Creek	40,495	2	20,248	.91
Rogers	20,614	1	20,614	.90
Muskogee	61,866	3	20,622	.90
Pottawat.	41,486	2	20,743	.89
Custer	21,040	1	21,040	.88
Washington	42,347	2	21,174	.87
Payne	44,231	2	22,116	.84
Comanche	90,803	4	22,701	.81
Tulsa	346,038	9	38,448	.48
Oklahoma	439,506	11	39,955	.46
	1,594,576 (68.49%)	62	25,719	ave.
TOTAL	2,328,284	126	18,478	ave.

*As Cleveland County's population overlaps the percentage which would elect part of the majority and minority of the House membership, it has been divided in order to show the precise effect of the apportionment.

At the extreme, the population represented in Cimarron County would have a relative weight 8.9 times that of the population represented in Oklahoma Co.

while the minority group would be responsible to 25,719 persons per district.[11]

In addition, the proposed constitutional amendment embodied three other features worthy of recognition, although but one offered a substantive departure from current practices. Most significant, the referendum called for the creation of a Reapportionment Commission to be composed of the Secretary of State, State Treasurer and Attorney General which, upon failure of the legislature to act in accordance with the law within 60 days after the next session convenes, would be charged with the responsibility. The reapportionment would be, as has always been a privilege, subject to suit by any citizen for review by the Oklahoma Supreme Court. And, as likewise has been established, the terms of representatives and senators, would continue to be two and four years, respectively.

Presented to the people a few months after the minimum remedy of prior inequities was ordered, the proposition did not fail to activate the perennial adversaries. Front and center once more were the Oklahoma League of Women Voters, Women for Representative Government, and the Leadership of the Oklahoma Congress of Parents and Teachers campaigning for its defeat, as over and against Oklahomans for Local Government, the Oklahoma County Commissioners Association, the Oklahoma Farm Bureau, the Oklahoma Association of Electric Co-operatives, and the Oklahoma Farmers Union, all campaigning for its passage.[12] To enhance the group conflict

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[11]Parenthetically, the news media has repeatedly reported that the House of Representatives would be composed of 128 members, based upon a study conducted by the Oklahoma Legislative Council, which allots 12 and 10 members to Oklahoma and Tulsa counties, respectively. As noted above, the figure should read 126, for the counties in point would be entitled to one less than otherwise determined.

[12]The Hartshorne Sun, May 14, 1964, p. 1; The Daily Oklahoman,

the last of the opinions of the Attorney General on the subject was forthcoming less than two weeks before the election when, in response to Senate President pro tempore Roy C. Boecher, Charles Nesbitt declared that the Model "C" decree on appeal to the U. S. Supreme Court would become moot upon passage of the proposition.[13] Thus, the battle lines once again clearly drawn, the eligible voters of the state frequented the polls on May 26, 1964, and, in the special election (unaffected by the silent vote), 277,097 ballots (55.59%) were cast in favor of the proposal while 221,325 (44.41%) were opposed. To the dismay of all advocates of individual political equality, the first and most discriminatory of all constitutional reapportionment propositions submitted to the people since statehood passed by a clear majority. Slightly more than one-half of the registered voters of the state exercised the suffrage privilege and, to explain the outcome, the proportionate turnout was far greater in the rural areas of the state. Only in six of the urban counties did the measure fail to carry.[14]

B. A Return to the Federal Courts.

No sooner had the outcome been announced that the new apportionment law, to be effective for the 1966 elections and the 1967 legislature, was promised prompt judicial attention. Attorney General Charles Nesbitt and Oklahoma City attorneys Norman Reynolds and Sid White immediately made

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May 15, 1964, p. 24; The Norman Transcript, May 17, 1964, p. 6.

[13] Oklahoma City Times, May 15, 1964, pp. 1-2. Opinion of the Attorney General of Oklahoma, to Hon. Roy C. Boecher, May 15, 1964.

[14] The Daily Oklahoman, May 27, 1964, p. 1; The Norman Transcript, May 29, 1964, p. 2.

known their intent to secure a speedy court test, either by adding the amendment to the record then before the U. S. Supreme Court or by instituting new litigation in the higher court or the Federal District Court for the Western District of Oklahoma.[15] In either instance, there is no doubt that the amendment compounded the legal confusion that hovered over the makeup of the state legislature, and was to be resolved in view of the requirements of the Fourteenth Amendment to the U. S. Constitution. But to further complicate matters there was introduced the intriguing question as to whether or not a majority of voters, by virtue of a state constitutional amendment, can license a discrimination in favor of one class of citizens as against another.

To bring the scope of the problem of legislative apportionment into its proper perspective at this time, federal courts have fashioned four standards for possible application.[16] In Baker v. Carr, supra, it will be recalled that the lower court action was reversed and remanded, but not before the U. S. Supreme Court aired its views. As pertinent to the Oklahoma predicament, it cannot be ignored that the court made clear that a constitutional or statutory apportionment may not effect an invidious discrimination without rational policy. Yet, members of the majority also made clear that there is "room for weighting" and "minor qualifications" to offset numerical equality, but again upon evidence of good cause. And one Justice went so far as to note that he would not

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[15] Ibid., and Oklahoma City Times, May 27, 1964, pp. 1,2.

[16] President's Advisory Commission on Intergovernmental Relations, op. cit., pp. A-22, 23.

consider judicial intervention if any other relief is available to the citizenry of the state. Accordingly, does State Question No. 416 effect an invidious discrimination without rational policy? Does it have room for weighting and minor qualifications for good cause? And as one of the 13 states with the initiative process, is it an adequate form of relief? Answers to questions such as these are vital and will be given further attention. Momentarily, it is of interest to recognize the result of Baker v. Carr on remand, and thus one of the primary possible standards for legislative apportionment. Upon review, it was the judgment of the Federal District Court for the Middle District of Tennessee that population must be the sole criteria in one chamber, and numerical equality must be a principal factor in the other chamber.[17]

In significant contrast with the Tennessee determination were the standards that evolved from deep south and eastern seaboard states. On the one hand, it was the considered opinion of the Federal District Court for the Northern District of Georgia, in Toombs v. Fortson, that only one House need be based upon population, leaving the basis for the other subject to the wishes of the legislature and the people.[18] On the other hand, the Federal District Court for the Southern District of New York decided, in WMCA, Inc. v. Simon, that neither chamber of a legislative assembly should be premised on population, thus leaving the basis for membership in both chambers subject to the wishes of the legislature

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[17] Baker v. Carr, op. cit., 341, 345.

[18] Toombs v. Fortson, 205 F. Supp. 248, 257, U.S.D.C., N.D. Georgia, 1962.

and the people.[19]

This brings to bear the other standard, that unequivocally concluded in Moss v. Burkhart, supra, that substantial numerical equality should prevail to govern the allocation of seats in both houses of the legislature.[20] Moreover, as regards State Question No. 416, the court took cognizance of its pending consideration by noting in one opinion:

> ". . . the right asserted here cannot be made to depend upon the will of the majority. It is founded in the Federal Statutes which gives redress for the deprivation of civil rights, including the integrity of the ballot;"[21]

and specifying in another opinion:

> ". . . its doubtfulness as a remedy . . . (for there is) nothing to indicate that consideration was given to these factors . . . (and it) progressively restricts representation in the most populous counties. . .
> "Moreover, there is nothing on the face of the proposed amendment to justify the gross disparity between electorial districts for both houses, as provided therein."[22]

C. Conclusion.

As this study is being drawn to a close, it is evident that many a significant stride was taken and effected since 1962 to upset the Oklahoma tradition of malapportionment over the past three decades. But with the passage of State Question No. 416 there was reinstituted a total pattern of inequality unsurpassed in the history of the state. Unlike

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[19]WMCA, Inc. v. Simon, 208 F. Supp. 369, 376, U.S.D.C., S.D. New York, 1962.

[20]Moss v. Burkhart, op. cit., 885, 893.

[21]Ibid., "Decree," June 19, 1962.

[22]Ibid., "Final Judgment," July 17, 1963.

the practices of the past, however, the possible implementation of minority rule in both houses had the sanction of the Oklahoma Constitution. It remained to be seen what would be sanctioned by the U. S. Constitution. Meanwhile, it is submitted that inasmuch as the Fourteenth Amendment was designed to protect people, the legitimization of the status quo provided by State Question No. 416 should not be condoned. It not only effects an invidious discrimination, and is without proof of rational policy, but it further goes well beyond "room for weighting" and "minor qualification of numerical equality." In fact, if upheld, it will bring an end to any reasonable facsimile of popular sovereignty and representative democracy as regards legislative apportionment in Oklahoma, and eventually every other state in the union. The Supreme Court of the United States thus had its work well cut out, and of the standards developed for its consideration, only that provided by the Federal District Court for the Western District of Oklahoma purported to be in accord with the democratic theory of our American heritage.

POSTSCRIPT

On June 15, 1964, two years after the landmark decision of Baker v. Carr, supra, the U. S. Supreme Court rendered the long awaited guideline for legislative apportionment in state law-making assemblies. Upon review of appeals relative to the constitutionality of apportionment schemes in six states, the court held that seats in both houses of state legislatures must be apportioned on a population basis.[1] In the decisions that ranged from 6-3 to 8-1, the view of the court was made most explicit in Chief Justice Earl Warren's majority opinion in the Alabama case:

> "We mean that the equal protection clause requires that a state make an honest and good-faith effort to construct districts in both houses of the legislature, as nearly of equal population as is practicable. . .
> "Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the state."[2]

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[1] Reynolds v. Sims, Docket Nos. 23, 27, 41 of U. S. Supreme Court, an 8-1 decision on appeal from Sims v. Frink, 205, 208 F. Supp. 245, 431 (Alabama); Lucas v. The 44th General Assembly, Docket No. 508, a 6-3 decision on appeal from Lisco v. Love, 208 F. Supp. 471 (Colorado); Roman v. Sincock, Docket No. 307, an 8-1 decision on appeal from Sincock v. Duffy, 207, 210, 215 F. Supp. 205, 395, 169 (Delaware); The Maryland Committee for Fair Representation v. Tawes, Docket No. 29, a 7-1 decision on appeal of case under same title, 180, 184 A. 2d 656, 715 (Maryland); WMCA, Inc. v. Lomenzo, Docket No. 20, a 6-3 decision on appeal from WMCA, Inc. v. Simon, op. cit., (New York); and Davis v. Mann, Docket No. 69, an 8-1 decision on appeal of case under same title, 213 F. Supp. 577 (Virginia). The New York Times, June 16, 1964, p. 31.

[2] Reynolds v. Sims, op. cit.; Oklahoma City Times, June 15, 1964, p. 1.

In 14 opinions embodying more than 50,000 words there thus came to an end the history of malapportionment in state legislatures, at least as regards the requisites under the Fourteenth Amendment to the U. S. Constitution.[3] And in its place has evolved the standard of substantial numerical equality which was first endorsed by a Federal District Court in the Oklahoma case of Moss v. Burkhart, supra. As for prospective implications of the decisions, they have been well summarized as follows:

> "Not since the school segregation cases 10 years ago had the court interpreted the constitution to require so fundamental a change in this country's institutions (and) . . . it would not be surprising if 40 of the 50 states found their Districts upset. Suits are already pending in almost 40 states. Cases are awaiting action in the supreme court that come from Michigan, Florida, Washington, Ohio, Oklahoma, Illinois, Connecticut, Idaho and Georgia."[4]

> ". . . it's a multimegaton bombshell in its practical applications, and the political fallout will be sifting down on most of the states for months to come."[5]

On the Oklahoma scene, the effect of the court decisions was viewed with varied reaction. State Senator Glen Ham, a co-author of State Question No. 416 -- the constitutional apportionment amendment approved by the people on May 26, 1964, -- emphatically summed up the position of those adverse to individual political equality:

> "We're going to fight this thing all the way through. We're going to try and convince them (the U. S. Supreme Court) that the people of Oklahoma want to run their own affairs, (and) that the majority ought to be able to run the state of Oklahoma without further intervention in states rights."[6]

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[3] The New York Times, June 16, 1964, p. 28.

[4] Ibid., pp. 1, 28-31.

[5] The Daily Oklahoman, June 16, 1964, p. 10.

[6] The Norman Transcript, June 15, 1964, p. 1.

From another perspective, Attorney General Charles Nesbitt observed that the ruling would appear to jeopardize the status of the new constitutional amendment, noting in particular the majority view expressed in the Colorado case:

> "An individual's constitutionally protected right to cast an equally weighted vote cannot be denied even by a vote of the majority of the state's electorate, if the apportionment scheme fails to meet the Federal Constitution's guarantee of equal protection."[7]

In view of this opinion the Attorney General noted that if the court holds strictly to the standard that both houses must be based upon population: ". . .we've got to recognize that the Oklahoma Senate under 416 is not based essentially upon population and that the House is open to serious question."[8] In point, it will be recalled, is the formula governing the apportionment of each chamber under the constitutional amendment. For the Senate, the county is the basic unit of representation and population is incidental to it, whereas for the House one member is allotted each county and additions thereto is predicated upon graduated ratios. This predicament led the Attorney General to assert that Oklahoma's legislative apportionment problem is far from settled, and to conclude that the decision could well mean the death of the amendment approved by the voters.[9] Consequently, the state's chief legal officer suggested that the Governor call a special session of the legislature to devise

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[7]Lucas v. The 44th General Assembly, op. cit.; The Norman Transcript, June 15, 1964, p. 2; The New York Times, June 16, 1964, p. 28.

[8]The Norman Transcript, June 15, 1964, p. 2.

[9]Ibid., pp. 1, 2.

a new legislative apportionment formula to submit to the voters in the forthcoming general election. This suggestion was premised on an assumption yet to be judicially resolved, that the new amendment repealed the prior provisions of the Oklahoma Constitution, and, if declared void, will leave the state virtually without a fundamental law on the subject.[10] Suffice it to say that this view is debatable, for that which is deemed unconstitutional may not supercede provisions whose constitutionality in face of the Fourteenth Amendment is yet to be considered by the U. S. Supreme Court.

To seek a judicial determination as to the validity of State Question No. 416, Norman Reynolds, one of two attorneys who had earlier challenged the new amendment in a Federal District Court suit, declared: "We will wage that this ruling substantiates our petition that 416 is unconstitutional." In conjunction with his intent to test the validity of the amendment, he was reported planning to stress the analagous circumstance ruled unconstitutional by the U. S. Supreme Court in the Colorado case. Therein, the voters of the state had approved in 1962 a plan premised on the federal analogy which carried in every county and was endorsed by the Colorado Legislature in 1963.[11]

On June 22, 1964, the last "decision Monday" prior to its summer recess, the U. S. Supreme Court responded to the nine other cases docketed, among which were appeals from Oklahoma by State Treasurer Cowboy Pink Williams, the Oklahoma Farm Bureau, and Don Baldwin and 22 other

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[10] The Daily Oklahoman, June 16, 1964, pp. 1,2.

[11] Oklahoma City Times and The Norman Transcript, June 15, 1964, p. 2; The New York Times, June 16, 1964, p. 28.

State Senators.[12] Although the Oklahoma case was not argued orally before the higher court and was not discussed in any detail, the U. S. Supreme Court upheld the final judgment of the U. S. District Court for the Western District of Oklahoma in a simple per curium decision:

> "The cases are remanded for further proceedings, with respect to relief, consistent with the views stated in our opinion in Reynolds v. Sims and in the other cases relating to state legislative apportionment. . . should that become necessary."[13]

This decision seemingly led the Oklahoma Attorney General to contradict his earlier view to the effect that State Question No. 416 repealed the prior provisions of the Oklahoma Constitution and, if declared void, would leave the state virtually without a fundamental law on the subject. For in contrast, Attorney General Charles Nesbitt was quoted after the latter decision to have said that if the constitutional amendment is invalidated then the courts must use the previous provisions of the constitution as a basis for reapportionment, as the repealing clause of the amendment would also be invalidated.[14] Moreover, he was reported to have observed that the special three-judge Federal District Court can now put into effect its Model "C" plan as the prior "stay" of that order was withdrawn, although he guessed that the case would not be heard until autumn.[15]

Consequently, the Attorney General proceeded on June 23, 1964, to ask the Federal District Court for the Western District of Oklahoma to

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[12] The Daily Oklahoman, June 23, 1964, p. 1.

[13] Ibid. Associate Justice John Marshall Harlan dissented in the Oklahoma order, as he did in the Alabama case, noting that in his view the subject was beyond judicial competence.

[14] Ibid.

[15] Ibid., p. 3; The Tulsa Daily World, June 23, 1964, p. 1.

delay judgment and await an apportionment by the 1965 Oklahoma Legislature, or its submission to a vote of the people a constitutional amendment embodying standards of equal protection imposed by the U. S. Supreme Court. In addition, he asked dismissal of the requests of attorneys Norman Reynolds and Delmer Stagner (in their suit of June 3, 1964) that injunction be granted halting an apportionment in conformity with State Question No. 416 on the grounds that it violates the Fourteenth Amendment and should be declared unconstitutional. These requests were viewed as premature by the Attorney General, as ". . . there have been no reapportionment laws enacted by the legislature or directly by the people under the provisions of State Question No. 416." Besides, he contended, the Federal District Court is without jurisdiction in the matter.[16]

In view of the U. S. Supreme Court decisions of June 15 and 22, 1964, it would appear that the assumption of the Attorney General regarding jurisdiction of the lower federal court will be wholly in error. Likewise, there is little doubt that the effect of State Question No. 416 would prove invidiously discriminatory to urban residents and will be deemed unconstitutional. Should such determinations ensue, there will remain a need for the Federal District Court to fashion an appropriate remedy, and this in turn will bring back into focus the constitutionality of the various provisions of Oklahoma's fundamental law as measured up against the equal protection requirements of the Fourteenth Amendment. Presumably, this has already been accomplished in view of the final judgment of the lower court in Moss v. Burkhart, supra, as affirmed by the

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[16]The Daily Oklahoman, June 24, 1964, p. 14.

higher court. However, it is submitted that it would behoove the Federal District Court to review its earlier decision in light of the subsequent Oklahoma Supreme Court and U. S. Supreme Court decisions on the subject. This is suggested because, in the first place, the state's highest court has since construed the "except" clause governing a Senate apportionment in a fashion opposed to that of the Federal District Court. Moreover, the antecedent to that clause was examined at length by the U. S. Supreme Court in WMCA, Inc. v. Lomenzo, supra, wherein the court acknowledged the intent to add to the original number assigned the Senate, as long as substantial numerical equality prevails.[17] Secondly, it should not go unnoticed that the ratio system in the Oklahoma Constitution as regards a House apportionment is clearly discriminatory. It remains to be clearly construed, however, whether that feature is invidiously discriminatory.

Of course, should it be determined that the provisions of the Oklahoma Constitution were automatically superceded by virtue of the passage of State Question No. 416, then Oklahoma will be virtually without a constitutional formula on the subject. In such case, the Federal District Court could fashion a reapportionment order, subject only to the political equality standard of the Fourteenth Amendment. Should that be the case, the "except" clause would be irrelevant as regards its Senate order, but the ratio system would still be in question for it forms the basis of its House order. On the other hand, should it be determined

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[17] WMCA, Inc. v. Lomenzo, op. cit.; The New York Times, June 16, 1964, pp. 29, 30. The New York apportionment scheme was ruled unconstitutional because of other constitutional features specifying an upper limit on the number of senators and representatives a district may elect. The "except" clause was not, however, considered repugnant to the Fourteenth Amendment.

that the provisions of the Oklahoma Constitution were not automatically superceded by the passage of State Question No. 416, and the constitutional amendment is declared null and void, it is submitted that the proper remedy in view of the recent U. S. Supreme Court decisions would be one based upon the Federal District Court's final judgment relative to the House of Representatives in Moss v. Burkhart, supra, (assuming the ratio system is upheld), and the initial decision of the Oklahoma Supreme Court as regards the Senate in Davis v. McCarty, supra. Only by way of the combined constructions can an apportionment be fashioned in accord with the political equality standards and related provisions of both the U. S. and Oklahoma constitutions.

BIBLIOGRAPHY

Books

Baker, Gordon E. State Constitutions: Reapportionment. New York: National Municipal League, 1960.

Beckett, A. L. Know Your Oklahoma. Oklahoma City: Harlow Publishing Company, 1930.

Blachly, Frederick F. and Oatman, Miriam E. Government of Oklahoma. Oklahoma City: Harlow Publishing Company, 1929.

Black, Charles. Perspectives in Constitutional Law. Foundations of Modern Political Science Series. New Jersey: Prentice-Hall, Inc., 1963.

Coker, Francis. Recent Political Thought. (rev. ed.) New York: Appleton, Century and Crofts, 1962.

Corden, Seth K. and Richards, W. B. (Comp.) The Oklahoma Red Book. Vol. I, II. Tulsa: Democrat Printing Co., 1912.

Dale, Edward Everett and Wardell, Morris L. History of Oklahoma. New York: Prentice-Hall, 1948.

de Grazia, Alfred. Public and Republic. New York: Alfred A. Knopf, Inc., 1951.

_____. Essay on Apportionment and Representative Government. Washington, D. C.: American Enterprise Institute, 1963.

Ellis, Albert H. A History of the Constitutional Convention of the State of Oklahoma. Muskogee: Economy Printing Co., 1923.

Foreman, Grant. A History of Oklahoma. Norman: University of Oklahoma Press, 1942.

Gittinger, Roy. The Formation of the State of Oklahoma. Norman: University of Oklahoma Press, 1939.

Grimes, Alan. American Political Thought. (rev. ed.) New York: Holt, Rinehart and Winston, 1960.

Hallett, George H., Jr. and Hoag, Clarence G. Proportional Representation: The Key to Democracy. Washington, D. C.: The National Home Library Foundation, 1937.

Hines, Gordon. "Alfalfa Bill": An Intimate Biography. Oklahoma City: Oklahoma Press, 1932.

Hollowell, John. Main Currents in Modern Political Thought. (rev. ed.), 1963.

Hurst, Irvin. The 46th Star: A History of Oklahoma's Constitutional Convention and Early Statehood. Oklahoma City: Semco Color Press, Inc., 1957.

Jewell, Malcolm E. The Politics of Reapportionment. New York: Atherton Press, 1962.

Lasswell, Harold. Politics: Who Gets What, When and How. New York: McGraw-Hill, 1936.

Lippman, Walter. A Political Philosophy for Liberal Democracy. New York: Random House, 1963.

Maxwell, Amos D. The Sequoyah Constitutional Convention. Boston: Meador Publishing Co., 1953.

McReynolds, Edwin C. Oklahoma: A History of the Sooner State. Norman: University of Oklahoma Press, 1954.

Murray, William H. Memoirs of Governor Murray and the True History of Oklahoma. Vol. I. Boston: Meador Publishing Co., 1945.

National Municipal League. Salient Issues of Constitutional Revision. State Constitutional Studies Project, 1961.

Parrington, Vernon. Main Currents in American Thought. New York: Harcourt, Brace and Co., 1930.

Powell, Norman and Parker, Daniel. Major Aspects of American Government. New York: McGraw-Hill, 1963.

Richardson, James D. (ed.). Messages and Papers of the Presidents. Vol. XI. Washington, D. C.: Bureau of Literature and Art, 1909.

Sabine, George. A History of Political Theory, (rev. ed.). New York: Holt, Rinehart and Winston, 1961.

Stewart, Dora Ann. Government and Development of Oklahoma Territory. Oklahoma City: Harlow Publishing Co., 1933.

Thorpe, Francis Newton. American Charters, Constitutions and Organic Laws, 1492-1908. Vol. 5. Washington, D. C.: U. S. Government Printing Office, 1909.

Articles and Periodicals

Beard, Charles A. "The Constitution of Oklahoma," Political Science Quarterly. Vol. 24 (March, 1909), p. 95.

Cook, Eugene. "Reapportionment Case," Georgia Municipal Journal. (June, 1962), pp. 18-21.

Clem, Alan. "Problems of Measuring and Achieving Equality of Representation in State Legislatures," Nebraska Law Review. Vol. 42, No. 3, (1963), pp. 622-43.

David, Paul and Eisenberg, Ralph. State Legislative Districting. Chicago: Public Administration Service, 1962.

Dixon, Robert. "Legislative Apportionment and the Federal Constitution," Law and Contemporary Problems, Duke University School of Law, Vol. XXVII, No. 3, (1962), pp. 329-89.

Gilbert, Charles E. "Operative Doctrines of Representation," The American Political Science Review, Vol. LVII, No. 3, (September, 1963).

Krastin, Karl. "The Implementation of Representative Government in a Democracy," Iowa Law Review, Vol. 48, No. 3, (Spring, 1963), pp. 549-77.

Lewis, Anthony. "Historic Changes in the Supreme Court," The New York Times Magazine, June 17, 1962, pp. 7-9, 38-40.

Merrill, Maurice. "Blazes for a Trail Through the Thicket of Reapportionment," Oklahoma Law Review, Vol. 16 (1963) pp. 59-88.

Miller, Helen. "The City Vote and the Rural Monopoly," The Atlantic Monthly, October, 1962, pp. 16-19.

National Municipal League. National Civic Review. New York: 1962-1963.

Newsweek. "Bigger Vote for Big Cities," April 9, 1962, pp. 29-34.

The Outlook. Vol. 87, No. 5, (August 8, 1907), New York: Outlook Company, pp. 29-34.

Tyler, Gus. "Courts Versus Legislatures," Law and Contemporary Problems, Duke University School of Law, Vol. XXVII, No. 3, (1962), pp. 390-407.

Rhyne, Charles. "The Reapportionment Case," Georgia Municipal Journal, (May, 1962), pp. 16-19.

Vickrey, William. "On the Prevention of Gerrymandering," Political Science Quarterly, Vol. LXXVI, No. 1, (March, 1961), pp. 105-110.

Public Documents

Directory and Manual of the State of Oklahoma. Oklahoma City, 1963.

Journal of the Constitutional Convention of Oklahoma. Muskogee: Muskogee Printing Co., n.d.

New York, Constitution (1894).

Office of the Attorney General. Opinions and Memorandum of the Attorney General of Oklahoma.

Ohio, Constitution (1851).

Oklahoma, Constitution.

Oklahoma, Session Laws.

U. S. Bureau of the Census. Statistical Abstract of the U. S., 1961.

U. S. Statutes at Large.

Publications

Boyd, William J. D. Patterns of Apportionment. New York: National Municipal League, 1962.

_____. Compendium on Legislative Apportionment. New York: National Municipal League, 1962.

Bureau of Government Research. Oklahoma Government Bulletin, 1963.

_____. Oklahoma Government Finance. University of Oklahoma, Norman, 1962.

_____. Oklahoma's Twenty-Ninth Legislative Session. University of Oklahoma, Norman. 1963.

David, Paul T. and Eisenberg, Ralph. Devaluation of the Urban and Suburban Vote. Vol. I, 1961; Vol. II, 1962. University of Virginia. Bureau of Public Administration.

Larsen, James. Reapportionment and the Courts. University of Alabama, Bureau of Public Administration, 1962.

McKay, Robert. Reapportionment and the Federal Analogy. New York: National Municipal League, 1962.

Pray, Joseph C. and Mauer, George J. The New Perspective of Legislative Apportionment in Oklahoma. University of Oklahoma, Bureau of Government Research, 1962.

Oklahoma League of Women Voters. Supplement to Reapportionment. Norman, Oklahoma. August, 1962.

President's Advisory Commission on Intergovernmental Relations. Apportionment of State Legislatures. Washington, D. C.: 1962.

Thornton, Herschel V. "Apportionment in Oklahoma," Oklahoma Constitutional Studies. Oklahoma Legislative Council, 1950.

_____. Legislative Apportionment in Oklahoma. University of Oklahoma, Bureau of Government Research, 1951.

_____. An Outline of Oklahoma Government. The Transcript Press, Norman, Oklahoma, 1954.

_____. Apportionment in Oklahoma. University of Oklahoma, Bureau of Government Research, 1956.

_____. The Apportionment Problem in Oklahoma. University of Oklahoma, Bureau of Government Research, 1959.

_____. Legislative Apportionment. University of Oklahoma, Bureau of Government Research, 1960.

_____. Legislative Apportionment in Oklahoma. University of Oklahoma, Bureau of Government Research, 1961.

_____. Apportionment Acts of the Legislature. University of Oklahoma, Bureau of Government Research, 1961.

Twentieth Century Fund Conference. One Man - One Vote. New York: The Twentieth Century Fund, 1962.

Newspapers

Guffey's Executive Journal. (Oklahoma City).

Newsday. (Long Island, New York).

Oklahoma City Times.

Oklahoma Rural News. (Norman). Published by the Association of Electric Co-Operatives.

Oklahoma State Capitol. (Oklahoma City).

The Daily Oklahoman. (Oklahoma City).

The Hartshorne Sun. (Hartshorne, Oklahoma).

The New York Times. (New York City, New York).

The Norman Transcript. (Norman, Oklahoma).

The Purcell Register. (Purcell, Oklahoma).

The Sunday Oklahoman. Oklahoma's Orbit Supplement (Oklahoma City).

The Tulsa Daily World.

The Tulsa Tribune.

Times and Democrat. (Okmulgee, Oklahoma).

Unpublished Material

Mauer, George. Analysis of Legislative Apportionment Proposal of First Assistant Attorney General. June, 1962.

Oklahoma University Department of Government. Proceedings and Debates of the Constitutional Convention. n.d.

Rhyne, Charles. "An End to Government by Minority: The Reapportionment Results of Baker v. Carr." Unpublished paper delivered September 8, 1962, before American Political Science Association and National Municipal League. Washington, D. C. 9 pp.

Scales, James Ralph. Political History of Oklahoma, 1907-1949. Unpublished Ph.D. dissertation. University of Oklahoma, 1949.

Thornton, Herschel V. Oklahoma Municipal History - Indian Territory. Unpublished M.A. thesis, University of Oklahoma, 1929.

A P P E N D I X

Appendix A

OKLAHOMA CENSUS*

County	1907	1910	1920	1930	1940	1950	1960
	1,414,177[a]	1,657,155	2,028,283	2,396,040	2,336,434	2,233,351	2,328,284
Adair	(I) 9,115	10,535	13,703	14,756	15,755	14,918	13,112
Alfalfa	(O) 16,070	18,138	16,253	15,228	14,129	10,699	8,445
Atoka	(I) 12,113	13,808	20,862	14,533	18,702	14,269	10,352
Beaver	(O) 13,364	13,631	14,048	11,452	8,648	7,411	6,965
Beckham	(O) 17,758	19,699	18,989	28,991	22,169	21,627	17,782
Blaine	(O) 17,227	17,960	15,875	20,452	18,543	15,049	12,077
Bryan	(I) 27,865	29,854	40,700	32,277	38,138	28,999	24,252
Caddo	(O) 30,241	35,685	34,207	50,779	41,567	34,913	28,621
Canadian	(O) 20,110	23,501	22,288	28,115	27,329	25,644	24,727
Carter	(I) 26,402	25,358	40,247	41,419	43,292	36,455	39,044
Cherokee	(I) 14,274	16,778	19,872	17,470	21,030	18,989	17,762
Choctaw	(I) 17,340	21,862	32,144	24,142	28,358	20,405	15,637
Cimarron	(O) 5,927	4,553	3,436	5,408	3,654	4,589	4,496
Cleveland	(O) 18,460	18,843	19,389	24,948	27,728	41,443	47,600
Coal	(I) 15,585	15,817	18,406	11,521	12,811	8,056	5,546
Comanche	(O) 31,738	41,489	26,629	34,317	38,988	55,165	90,803
Cotton	- ---	---c	16,679	15,442	12,884	10,180	8,031
Craig	(I) 14,955	17,404	19,160	18,052	21,083	18,263	16,303
Creek	(I) 18,365	26,223	62,480	64,115	55,503	43,143	40,495
Custer	(O) 18,478	23,231	18,736	27,517	23,068	21,097	21,040
Delaware	(I) 9,876	11,469	13,868	15,370	18,592	14,734	13,198
Dewey	(O) 13,329	14,132	12,434	13,250	11,981	8,789	6,051
Ellis	(O) 13,978	15,375	11,673	10,541	8,466	7,326	5,457
Garfield	(O) 28,300	33,050	37,500	45,588	45,484	52,820	52,975
Garvin	(I) 22,787	26,545	32,445	31,401	31,150	29,500	28,290

		1907	1910	1920	1930	1940	1950	1960
Grady	(O&I)	23,420	30,309	33,943	47,638	41,116	34,872	29,590
Grant	(O)	17,638	18,760	16,072	14,150	13,128	10,461	8,140
Greer	(O)	23,624	16,449	15,836	20,282	14,550	11,749	8,877
Harmon	-	--b	11,328	11,261	13,834	10,019	8,079	5,852
Harper	(O)	8,089	8,189	7,623	7,761	6,454	5,977	5,956
Haskell	(I)	16,865	18,875	19,397	16,216	17,324	13,313	9,121
Hughes	(I)	19,945	24,040	26,045	30,334	29,189	20,664	15,144
Jackson	(O)	17,087	23,737	22,141	28,910	22,708	20,082	29,736
Jefferson	(O&I)	13,439	17,430	17,664	17,392	15,107	11,122	8,192
Johnston	(I)	18,672	16,734	20,125	13,082	15,960	10,608	8,517
Kay	(O)	24,757	26,999	34,907	50,186	47,084	48,892	51,042
Kingfisher	(O)	18,010	18,825	15,671	15,960	15,617	12,860	10,635
Kiowa	(O)	22,247	27,526	23,094	29,630	22,817	18,926	14,825
Latimer	(I)	9,340	11,321	13,866	11,184	12,380	9,690	7,738
LeFlore	(I)	24,678	29,127	42,765	42,896	45,866	35,276	29,106
Lincoln	(O)	37,293	34,779	33,406	33,738	29,529	22,102	18,783
Logan	(O)	30,711	31,740	27,550	27,761	25,245	22,170	18,662
Love	(I)	11,134	10,236	12,433	9,639	11,433	7,721	5,862
McClain	(I)	12,888	15,659	19,326	21,575	19,205	14,681	12,740
McCurtain	(I)	13,198	20,681	37,905	34,759	41,318	31,588	25,851
McIntosh	(I)	17,975	20,961	26,404	24,924	24,097	17,829	12,371
Major	(O)	14,307	15,248	12,426	12,206	11,946	10,279	7,808
Marshall	(I)	13,144	11,619	14,674	11,026	12,384	8,177	7,263
Mayes	(I)	11,064	13,596	16,829	17,883	21,668	19,743	20,073
Murray	(I)	11,948	12,744	13,115	12,410	13,841	10,775	10,622
Muskogee	(I)	37,467	52,743	61,710	66,424	65,914	65,573	61,866
Noble	(O)	14,198	14,945	13,560	15,139	14,826	12,156	10,376
Nowata	(I)	10,453	14,223	15,899	13,611	15,774	12,734	10,848
Okfuskee	(I)	15,595	19,995	25,051	29,016	26,279	16,948	11,706
Oklahoma	(O)	55,849	85,232	116,307	221,738	244,159	325,352	439,506

		1907	1910	1920	1930	1940	1950	1960
Okmulgee	(I)	14,362	21,115	55,072	56,558	50,101	44,561	36,945
Osage	(O)	15,332	20,101	36,536	47,334	41,502	33,071	32,441
Ottawa	(I)	12,827	15,713	41,108	38,542	35,849	32,218	28,301
Pawnee	(O)	17,112	17,332	19,126	19,882	17,305	13,616	10,884
Payne	(O)	22,022	23,735	30,180	36,905	36,057	46,430	44,231
Pittsburg	(I)	37,677	47,650	52,570	50,778	48,985	41,031	34,360
Pontotoc	(I)	23,057	24,331	30,949	32,469	39,792	30,875	28,089
Pottawatomie	(O)	43,272	43,595	46,028	66,572	54,377	43,517	41,486
Pushmataha	(I)	8,295	10,118	17,514	14,744	19,466	12,001	9,088
Roger Mills	(O)	13,239	12,861	10,638	14,164	10,736	7,395	5,090
Rogers	(I)	15,485	17,736	17,605	18,956	21,078	19,532	20,614
Seminole	(I)	14,687	19,964	23,808	79,621	61,201	40,672	28,066
Sequoyah	(I)	22,499	25,005	26,786	19,505	23,138	19,773	18,001
Stephens	(O&I)	20,148	22,252	24,692	33,069	31,090	34,071	37,990
Texas	(O)	16,448	14,249	13,975	14,100	9,896	14,235	14,162
Tillman	(O)	12,869	18,650	22,433	24,390	20,754	17,598	14,654
Tulsa	(I)	21,693	34,995	109,023	187,574	193,363	251,686	346,038
Wagoner	(I)	19,529	22,086	21,371	22,428	21,642	16,741	15,673
Washington	(I)	12,813	17,484	27,002	27,777	30,559	32,880	42,347
Washita	(O)	22,007	25,034	22,237	29,435	22,279	17,657	18,121
Woods	(O)	15,517	17,567	15,939	17,005	14,915	14,526	11,932
Woodward	(O)	14,595	16,592	14,663	15,844	16,270	14,383	13,902

*Source: Directory and Manual of the State of Oklahoma, 1961, (comp.) by Leo Winters, Secretary, State Election Board, Oklahoma City, Oklahoma, pp. 218, 233-309.

(I): Indian Territory (O): Oklahoma Territory

[a] Of this total, 733,062 persons resided in Oklahoma Territory and 681,155 in Indian Territory: See Hurst, op.cit., p. 29.

[b] Formed from part of Greer County in June, 1909.

[c] Formed from part of Comanche County in September, 1912.

Appendix B-1

House of Representatives

County	Population	4th 1913	5th 1915	6th 1917	7th 1919	8th 1921
Adair	10,535	1	1	1	1	1
Alfalfa	18,138	1	1	1	1	1
Atoka	13,808	1	1	1	1	1
Beaver-Harper	21,820	1	1	1	1	1
Beckham	19,699	1	1	1	1	1
Blaine	17,960	1	1	1	1	1
Bryan	29,854	2	2	2	2	2
Caddo	35,685	2	2	2	2	2
Canadian	23,501	1	1	2	2	1
Carter	25,358	1	1	2	2	1
Cherokee	16,778	1	1	1	1	1
Choctaw	21,862	1	2	1	1	1
Cimarron-Texas	18,802	1	1	1	1	1
Cleveland	18,843	1	1	1	1	1
Coal	15,817	1	1	1	1	1
Comanche-Cotton	41,489	2	2	3	3	2
Craig	17,404	1	1	1	1	1
Creek	26,223	1	1	2	2	1
Custer	23,231	1	1	2	2	1
Delaware	11,469	1	1	1	1	1
Dewey	14,132	1	1	1	1	1
Ellis	15,375	1	1	1	1	1
Garfield	33,050	2	2	2	2	2
Garvin	26,545	2	2	2	1	1
Grady	30,309	2	2	2	2	2
Grant	18,760	1	1	1	1	1
Greer	16,449	1	1	1	1	1
Harmon	11,328	1	1	1	1	1
Haskell	18,875	1	1	1	1	1
Hughes	24,040	1	1	2	2	1
Jackson	23,737	1	1	2	2	1
Jefferson	17,430	1	1	1	1	1
Johnston	16,734	1	1	1	1	1
Kay	26,999	2	2	2	1	1
Kingfisher	18,825	1	1	1	1	1
Kiowa	27,526	1	1	1	1	1
Latimer	11,321	1	1	1	1	1
LeFlore	29,127	2	2	2	2	2

County	Population	4th 1913	5th 1915	6th 1917	7th 1919	8th 1921
Lincoln	34,779	2	2	2	2	2
Logan	31,740	2	2	2	2	2
Love	10,236	1	1	1	1	1
McClain	15,659	1	1	1	1	1
McCurtain	20,681	2	1	1	1	1
McIntosh	20,961	1	1	2	1	1
Major	15,248	1	1	1	1	1
Marshall	11,619	1	1	1	1	1
Mayes	13,596	1	1	1	1	1
Murray	12,744	1	1	1	1	1
Muskogee	52,743	3	3	3	3	3
Noble	14,945	1	1	1	1	1
Nowata	14,223	1	1	1	1	1
Okfuskee	11,995	2	1	1	1	1
Oklahoma	85,232	5	5	5	5	5
Okmulgee	21,115	1	1	2	1	1
Osage	20,101	2	1	1	1	1
Ottawa	15,713	1	1	1	1	1
Payne	23,735	1	1	2	2	1
Pawnee	17,332	1	1	1	1	1
Pittsburg	47,650	3	3	3	3	2
Pontotoc	24,331	1	1	2	2	1
Pottawatomie	43,595	3	3	3	2	2
Pushmataha	10,118	1	1	1	1	1
Roger Mills	12,861	1	1	1	1	1
Rogers	17,736	1	1	1	1	1
Seminole	19,964	1	1	2	1	1
Sequoyah	25,005	1	1	2	2	1
Stephens	22,252	1	2	1	1	1
Tillman	18,650	1	1	1	1	1
Tulsa	34,995	2	2	2	2	2
Wagoner	22,086	1	1	2	1	1
Washington	17,484	1	1	1	1	1
Washita	25,034	1	1	2	2	1
Woods	17,567	1	1	1	1	1
Woodward	16,592	1	1	1	1	1
Swanson	8,020	1	1	1	1	1
		99	98	111	104	92

State of Oklahoma, Session Laws of 1911, pp. 266-271.

Appendix B-2

House of Representatives

County	Population	9th 1923	10th 1925	11th 1927	12th 1929	13th 1931
Adair	13,703	1	1	1	1	1
Alfalfa	16,253	1	1	1	1	1
Atoka	20,862	1	1	1	1	1
Beaver-Harper	21,671	1	1	1	1	1
Beckham	18,989	1	1	1	1	1
Blaine	15,875	1	1	1	1	1
Bryan	40,700	2	2	2	2	2
Caddo	34,207	2	2	2	1	1
Canadian	22,288	1	1	1	1	1
Carter	40,247	2	2	2	2	2
Cherokee	19,872	1	1	1	1	1
Choctaw	32,144	1	1	2	2	1
Cimarron-Texas	17,411	1	1	1	1	1
Cleveland	19,389	1	1	1	1	1
Coal	18,406	1	1	1	1	1
Comanche	26,629	1	2	1	1	1
Cotton	16,679	1	1	1	1	1
Craig	19,160	1	1	1	1	1
Creek	62,480	3	3	3	3	3
Custer	18,736	1	1	1	1	1
Delaware	13,868	1	1	1	1	1
Dewey	12,434	1	1	1	1	1
Ellis	11,673	1	1	1	1	1
Garfield	37,500	2	2	2	2	2
Garvin	32,445	1	1	2	2	1
Grady	33,943	2	2	2	1	1
Grant	16,072	1	1	1	1	1
Greer	15,836	1	1	1	1	1
Harmon	11,261	1	1	1	1	1
Haskell	19,397	1	1	1	1	1
Hughes	26,045	2	1	1	1	1
Jackson	22,141	1	1	1	1	1
Jefferson	17,664	1	1	1	1	1
Johnston	20,125	1	1	1	1	1
Kay	34,907	2	2	2	1	1
Kingfisher	15,671	1	1	1	1	1
Kiowa	23,094	1	1	1	1	1
Latimer	13,866	1	1	1	1	1
LeFlore	42,765	2	2	2	2	2

County	Population	1923	1925	1927	1929	1931
Lincoln	33,406	2	2	2	1	1
Logan	27,550	1	1	1	2	1
Love	12,433	1	1	1	1	1
McClain	19,326	1	1	1	1	1
McCurtain	37.905	2	2	2	2	2
McIntosh	26,404	2	1	1	1	1
Major	12,426	1	1	1	1	1
Marshall	14,674	1	1	1	1	1
Mayes	16,829	1	1	1	1	1
Murray	13,115	1	1	1	1	1
Muskogee	61,710	3	3	3	3	3
Noble	13,560	1	1	1	1	1
Nowata	15,899	1	1	1	1	1
Okfuskee	25,051	2	1	1	1	1
Oklahoma	116,307	6	6	6	5	5
Okmulgee	55,072	3	3	3	2	2
Osage	36,536	2	2	2	2	2
Ottawa	41,108	2	2	2	2	2
Pawnee	19,126	1	1	1	1	1
Payne	30,180	1	1	2	2	1
Pittsburg	52,570	2	2	3	3	2
Pontotoc	30,949	1	1	2	2	1
Pottawatomie	46,028	2	3	2	2	2
Pushmataha	17,514	1	1	1	1	1
Roger Mills	10,638	1	1	1	1	1
Rogers	17,605	1	1	1	1	1
Seminole	23,808	1	1	1	1	1
Sequoyah	26,786	1	2	1	1	1
Stephens	24,692	2	1	1	1	1
Tillman	22,433	1	1	1	1	1
Tulsa	109,023	5	5	5	6	5
Wagoner	21,371	1	1	1	1	1
Washington	27,002	1	2	1	1	1
Washita	22,237	1	1	1	1	1
Woods	15,939	1	1	1	1	1
Woodward	14,663	1	1	1	1	1
		107	107	108	104	97

State of Oklahoma, Session Laws of 1921, pp. 69-72.

Appendix B-3

House of Representatives

County	Population	14th 1933	15th 1935	16th 1937	17th 1939	18th 1941
Adair	14,756	1	1	1	1	1
Alfalfa	15,228	1	1	1	1	1
Atoka	14,533	1	1	1	1	1
Beaver	11,452	1	1	1	1	1
Beckham	28,991	1	2	1	1	2
Blaine	20,452	1	1	1	1	1
Bryan	32,277	2	2	2	2	2
Caddo	50,779	2	2	2	2	2
Canadian	28,115	1	1	1	1	1
Carter	41,419	2	2	2	2	2
Cherokee	17,470	1	1	1	1	1
Choctaw	24,142	1	1	1	1	1
Cimarron	5,408	1	1	1	1	1
Cleveland	24,948	1	1	1	1	1
Coal	11,521	1	1	1	1	1
Comanche	34,317	2	2	2	2	2
Cotton	15,442	1	1	1	1	1
Craig	18,052	1	1	1	1	1
Creek	64,115	3	3	3	3	3
Custer	27,517	1	1	1	1	1
Delaware	15,370	1	1	1	1	1
Dewey	13,250	1	1	1	1	1
Ellis	10,541	1	1	1	1	1
Garfield	45,588	2	2	2	2	2
Garvin	31,401	2	2	2	2	2
Grady	47,638	2	2	3	2	3
Grant	14,150	1	1	1	1	1
Greer	20,282	1	1	1	1	1
Harmon	13,834	1	1	1	1	1
Harper	7,761	1	1	1	1	1
Haskell	16,216	1	1	1	1	1
Hughes	30,334	2	1	1	1	2
Jackson	28,910	2	1	2	1	1
Jefferson	17,392	1	1	1	1	1
Johnston	13,082	1	1	1	1	1
Kay	50,186	2	2	2	2	2
Kingfisher	15,960	1	1	1	1	1
Kiowa	29,630	1	1	1	1	2
Latimer	11,184	1	1	1	1	1
LeFlore	42,896	2	2	2	2	2

County	Population	1933	1935	1937	1939	1941
Lincoln	33,738	1	2	1	2	2
Logan	27,761	1	1	1	1	1
Love	9,639	1	1	1	1	1
McClain	21,575	1	1	1	1	1
McCurtain	34,759	2	2	2	2	2
McIntosh	24,924	1	1	1	1	1
Major	12,206	1	1	1	1	1
Marshall	11,026	1	1	1	1	1
Mayes	17,883	1	1	1	1	1
Murray	12,410	1	1	1	1	1
Muskogee	66,424	3	3	3	3	3
Noble	15,139	1	1	1	1	1
Nowata	13,611	1	1	1	1	1
Okfuskee	29,016	2	1	1	1	1
Oklahoma	221,738	7	7	7	7	7
Okmulgee	56,558	3	3	3	2	2
Osage	47,334	2	2	2	2	2
Ottawa	38,542	2	2	2	2	2
Pawnee	19,882	1	1	1	1	1
Payne	36,905	1	2	1	1	2
Pittsburg	50,778	3	3	3	3	3
Pontotoc	32,469	2	2	2	2	2
Pottawatomie	66,572	3	3	3	3	3
Pushmataha	14,744	1	1	1	1	1
Roger Mills	14,164	1	1	1	1	1
Rogers	18,956	1	1	1	1	1
Seminole	79,621	3	4	3	3	3
Sequoyah	19,505	1	1	1	1	1
Stephens	33,069	2	2	2	2	2
Texas	14,100	1	1	1	1	1
Tillman	24,390	1	1	1	1	1
Tulsa	187,574	7	7	7	7	7
Wagoner	22,428	1	1	1	1	1
Washington	27,777	1	1	1	1	1
Washita	29,435	1	2	1	1	1
Woods	17,005	1	1	1	1	1
Woodward	15,844	1	1	1	1	1
		118	120	117	115	120

State of Oklahoma, Session Laws of 1931, pp. 9-14.

Appendix B-4

House of Representatives

County	Population	19th 1943	20th 1945	21st 1947	22nd 1949	23rd 1951
Adair	15,755	1	1	1	1	1
Alfalfa	14,129	1	1	1	1	1
Atoka	18,702	1	1	1	1	1
Beaver	8,648	1	1	1	1	1
Beckham	22,169	1	2	1	1	2
Blaine	18,543	1	1	1	1	1
Bryan	38,138	2	2	2	2	2
Caddo	41,567	2	2	2	2	2
Canadian	27,329	1	1	1	1	1
Carter	43,292	2	2	2	2	2
Cherokee	21,030	1	1	1	1	1
Choctaw	28,358	1	1	1	1	1
Cimarron	3,654	1	1	1	1	1
Cleveland	27,728	1	1	1	1	1
Coal	12,811	1	1	1	1	1
Comanche	38,988	2	2	2	2	2
Cotton	12,884	1	1	1	1	1
Craig	21,083	1	1	1	1	1
Creek	55,503	3	3	3	3	3
Custer	23,068	1	1	1	1	1
Delaware	18,592	1	1	1	1	1
Dewey	11,981	1	1	1	1	1
Ellis	8,466	1	1	1	1	1
Garfield	45,484	2	2	2	2	2
Garvin	31,150	2	2	2	2	2
Grady	41,116	2	2	3	2	3
Grant	13,128	1	1	1	1	1
Greer	14,550	1	1	1	1	1
Harmon	10,019	1	1	1	1	1
Harper	6,454	1	1	1	1	1
Haskell	17,324	1	1	1	1	1
Hughes	29,189	1	2	2	1	1
Jackson	22,708	2	1	2	1	1
Jefferson	15,107	1	1	1	1	1
Johnston	15,960	1	1	1	1	1
Kay	47,084	2	2	2	2	2
Kingfisher	15,617	1	1	1	1	1
Kiowa	22,817	1	1	1	1	2
Latimer	12,380	1	1	1	1	1
LeFlore	45,866	2	2	2	2	2

County	Population	1943	1945	1947	1949	1951
Lincoln	29,529	1	2	1	2	2
Logan	25,245	1	1	1	1	1
Love	11,433	1	1	1	1	1
McClain	19,205	1	1	1	1	1
McCurtain	41,318	2	2	2	2	2
McIntosh	24,097	1	1	1	1	1
Major	11,946	1	1	1	1	1
Marshall	12,384	1	1	1	1	1
Mayes	21,668	1	1	1	1	1
Murray	13,841	1	1	1	1	1
Muskogee	65,914	3	3	3	3	3
Noble	14,826	1	1	1	1	1
Nowata	15,774	1	1	1	1	1
Okfuskee	26,279	2	1	1	1	1
Oklahoma	244,159	7	7	7	7	7
Okmulgee	50,101	3	3	3	2	2
Osage	41,502	2	2	2	2	2
Ottawa	35,849	2	2	2	2	2
Pawnee	17,395	1	1	1	1	1
Payne	36,057	2	2	1	1	1
Pittsburg	48,985	3	3	3	3	3
Pontotoc	39,792	2	2	2	2	2
Pottawatomie	54,377	3	3	3	3	3
Pushmataha	19,466	1	1	1	1	1
Roger Mills	10,736	1	1	1	1	1
Rogers	21,078	1	1	1	1	1
Seminole	61,201	3	3	3	3	3
Sequoyah	23,138	1	1	1	1	1
Stephens	31,090	2	2	2	2	2
Texas	9,896	1	1	1	1	1
Tillman	20,754	1	1	1	1	1
Tulsa	193,363	7	7	7	7	7
Wagoner	21,642	1	1	1	1	1
Washington	30,559	1	1	1	1	1
Washita	22,279	1	2	1	1	1
Woods	14,915	1	1	1	1	1
Woodward	16,270	1	1	1	1	1
		118	120	118	115	118

State of Oklahoma, Session Laws of 1941, pp. 39-43.

Appendix B-5

House of Representatives

County	Population	24th 1953	25th 1955	26th 1957	27th 1959	28th 1961
Adair	14,918	1	1	1	1	1
Alfalfa	10,699	1	1	1	1	1
Atoka	14,269	1	1	1	1	1
Beaver	7,411	1	1	1	1	1
Beckham	21,627	1	2	1	1	2
Blaine	15,049	1	1	1	1	1
Bryan	28,999	2	2	2	2	2
Caddo	34,913	2	2	2	2	2
Canadian	25,644	1	1	1	1	1
Carter	36,455	2	2	2	2	2
Cherokee	18,989	1	1	1	1	1
Choctaw	20,405	1	1	1	1	1
Cimarron	4,589	1	1	1	1	1
Cleveland	41,443	2	2	2	2	2
Coal	8,056	1	1	1	1	1
Comanche	55,165	3	3	3	2	2
Cotton	10,180	1	1	1	1	1
Craig	18,263	1	1	1	1	1
Creek	43,143	3	3	3	3	3
Custer	21,097	1	1	1	1	1
Delaware	14,734	1	1	1	1	1
Dewey	8,789	1	1	1	1	1
Ellis	7,326	1	1	1	1	1
Garfield	52,820	3	2	2	2	2
Garvin	29,500	2	2	2	2	2
Grady	34,872	2	2	2	3	3
Grant	10,461	1	1	1	1	1
Greer	11,749	1	1	1	1	1
Harmon	8,079	1	1	1	1	1
Harper	5,977	1	1	1	1	1
Haskell	13,313	1	1	1	1	1
Hughes	20,664	2	1	2	1	1
Jackson	20,082	2	1	2	1	1
Jefferson	11,122	1	1	1	1	1
Johnston	10,608	1	1	1	1	1
Kay	48,892	2	2	2	2	2
Kingfisher	12,860	1	1	1	1	1
Kiowa	18,926	1	1	1	1	2
Latimer	9,690	1	1	1	1	1
LeFlore	35,276	2	2	2	2	2

County	Population	1953	1955	1957	1959	1961
Lincoln	22,102	1	2	1	2	2
Logan	22,170	1	1	1	1	1
Love	7,721	1	1	1	1	1
McClain	14,681	1	1	1	1	1
McCurtain	31,588	2	2	2	2	2
McIntosh	17,829	1	1	1	1	1
Major	10,279	1	1	1	1	1
Marshall	8,177	1	1	1	1	1
Mayes	19,743	1	1	1	1	1
Murray	10,775	1	1	1	1	1
Muskogee	65,573	3	3	3	3	3
Noble	12,156	1	1	1	1	1
Nowata	12,734	1	1	1	1	1
Okfuskee	16,948	2	1	1	1	1
Oklahoma	325,352	7	7	7	7	7
Okmulgee	44,561	3	2	3	2	2
Osage	33,071	2	2	2	2	2
Ottawa	32,218	2	2	2	2	2
Pawnee	13,616	1	1	1	1	1
Payne	46,430	2	2	2	2	2
Pittsburg	41,031	3	3	3	3	3
Pontotoc	30,875	2	2	2	2	2
Pottawatomie	43,517	3	3	3	3	3
Pushmataha	12,001	1	1	1	1	1
Roger Mills	7,395	1	1	1	1	1
Rogers	19,532	1	1	1	1	1
Seminole	40,672	3	3	3	3	3
Sequoyah	19,773	1	1	1	1	1
Stephens	34,071	2	2	2	2	2
Texas	14,235	1	1	1	1	1
Tillman	17,598	1	1	1	1	1
Tulsa	251,686	7	7	7	7	7
Wagoner	16,741	1	1	1	1	1
Washington	32,880	2	2	2	2	2
Washita	17,657	1	2	1	1	1
Woods	14,526	1	1	1	1	1
Woodward	14,383	1	1	1	1	1
		123	121	121	119	121

State of Oklahoma, Session Laws of 1951, pp. 28-33.

Appendix B-6

House of Representatives

County	Population	29th 1963	-- 1965	-- 1967	-- 1969	-- 1971
Adair	13,112	1	1	1	1	1
Alfalfa	8,445	1	1	1	1	1
Atoka	10,352	1	1	1	1	1
Beaver	6,965	1	1	1	1	1
Beckham	17,782	1	1	1	1	1
Blaine	12,077	1	1	1	1	1
Bryan	24,252	2	2	2	2	2
Caddo	28,621	2	2	2	2	2
Canadian	24,727	2	2	2	2	2
Carter	39,044	2	2	2	2	2
Cherokee	17,762	1	1	1	1	1
Choctaw	15,637	1	1	1	1	1
Cimarron	4,496	1	1	1	1	1
Cleveland	47,600	3	3	3	3	3
Coal	5,546	1	1	1	1	1
Comanche	90,803	4	4	4	4	4
Cotton	8,031	1	1	1	1	1
Craig	16,303	1	1	1	1	1
Creek	40,495	2	2	2	2	2
Custer	21,040	1	1	1	1	1
Delaware	13,198	1	1	1	1	1
Dewey	6,051	1	1	1	1	1
Ellis	5,457	1	1	1	1	1
Garfield	52,975	3	3	3	3	3
Garvin	28,290	2	2	2	2	2
Grady	29,590	2	2	2	2	2
Grant	8,140	1	1	1	1	1
Greer	8,877	1	1	1	1	1
Harmon	5,852	1	1	1	1	1
Harper	5,956	1	1	1	1	1
Haskell	9,121	1	1	1	1	1
Hughes	15,144	1	1	1	1	1
Jackson	29,736	2	2	2	2	2
Jefferson	8,192	1	1	1	1	1
Johnston	8,517	1	1	1	1	1
Kay	51,042	3	3	3	3	3
Kingfisher	10,635	1	1	1	1	1
Kiowa	14,825	1	1	1	1	1
Latimer	7,738	1	1	1	1	1
LeFlore	29,106	2	2	2	2	2

County	Population	1963	1965	1967	1969	1971
Lincoln	18,783	1	1	1	1	1
Logan	18,662	1	1	1	1	1
Love	5,862	1	1	1	1	1
McClain	12,740	1	1	1	1	1
McCurtain	25,851	2	2	2	2	2
McIntosh	12,371	1	1	1	1	1
Major	7,808	1	1	1	1	1
Marshall	7,263	1	1	1	1	1
Mayes	20,073	1	1	1	1	1
Murray	10,622	1	1	1	1	1
Muskogee	61,866	3	3	3	3	3
Noble	10,376	1	1	1	1	1
Nowata	10,848	1	1	1	1	1
Okfuskee	11,706	1	1	1	1	1
Oklahoma	439,506	7	7	7	7	7
Okmulgee	36,945	2	2	2	2	2
Osage	32,441	2	2	2	2	2
Ottawa	28,301	2	2	2	2	2
Pawnee	10,884	1	1	1	1	1
Payne	44,231	2	2	2	2	2
Pittsburg	34,360	2	2	2	2	2
Pontotoc	28,089	2	2	2	2	2
Pottawatomie	41,486	2	2	2	2	2
Pushmataha	9,088	1	1	1	1	1
Roger Mills	5,090	1	1	1	1	1
Rogers	20,614	1	1	1	1	1
Seminole	28,066	2	2	2	2	2
Sequoyah	18,001	1	1	1	1	1
Stephens	37,990	2	2	2	2	2
Texas	14,162	1	1	1	1	1
Tillman	14,654	1	1	1	1	1
Tulsa	346,038	7	7	7	7	7
Wagoner	15,673	1	1	1	1	1
Washington	42,347	2	2	2	2	2
Washita	18,121	1	1	1	1	1
Woods	11,932	1	1	1	1	1
Woodward	13,902	1	1	1	1	1
		120	120	120	120	120

State of Oklahoma, Session Laws of 1961, pp. 182-188.

Appendix C-1

Senate
1913-1919 Based upon 1910 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	40,622	1
2	Beckham, Dewey, Ellis, Roger Mills	62,067	2
3	Woods, Woodward	34,159	1
4	Greer, Harmon	27,777	1
5	Jackson, Tillman	42,387	1
6	Custer, Kiowa, Washita	75,791	2
7	Alfalfa, Major	33,386	1
8	Garfield	33,050	1
9	Grant, Kay, Osage	65,860	2
10	Noble, Pawnee	32,277	1
11	Creek, Payne	49,958	1
12	Logan	31,740	1
13	Lincoln, Pottawatomie	78,374	2
14	Canadian, Oklahoma	108,733	2
15	Caddo, Grady	65,994	2
16	Blaine, Kingfisher	36,785	1
17	Comanche, Cotton, Jefferson, Stephens	81,171	2
18	Carter, Love, Murray	48,338	2
19	Cleveland, Garvin, McClain	61,047	2
20	Atoka, Bryan, Coal	59,479	2
21	Latimer, LeFlore	40,448	1
22	Hughes, Okfuskee	44,035	1
23	Pontotoc, Seminole	44,295	1
24	Choctaw, McCurtain, Pushmataha	52,661	1
25	Pittsburg	47,650	1
26	Johnston, Marshall	28,353	1
27	Haskell, McIntosh, Muskogee	92,579	2
28	Adair, Sequoyah	35,540	1
29	Craig, Mayes	31,000	1
30	Cherokee, Delaware, Ottawa	43,960	1
31	Tulsa, Washington	52,479	1
32	Okmulgee, Wagoner	43,201	1
33	Nowata, Rogers	31,959	1
		1,657,155	44

Initial constitutional apportionment as amended by:
State of Oklahoma, Session Laws of 1913, pp. 111-112
and Session Laws of 1917, pp. 4-5.

Appendix C-2

Senate
1921 Based upon 1910 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	40,622	1
2	Beckham, Dewey, Ellis, Roger Mills	62,067	2
3	Woods, Woodward	34,159	1
4	Greer, Harmon	27,777	1
5	Jackson, Tillman	42,387	1
6	Custer, Kiowa, Washita	75,791	2
7	Alfalfa, Major	33,386	1
8	Garfield	33,050	1
9	Grant, Kay	45,759	1
10	Noble, Pawnee	32,277	1
11	Creek, Payne	49,958	1
12	Logan	31,740	1
13	Lincoln, Pottawatomie	78,374	2
14	Canadian, Oklahoma	108,733	2
15	Caddo, Grady	65,994	2
16	Blaine, Kingfisher	36,785	1
17	Comanche, Cotton, Jefferson, Stephens	81,171	2
18	Carter, Love, Murray	48,338	2
19	Cleveland, Garvin, McClain	61,047	2
20	Atoka, Bryan, Coal	59,479	2
21	Latimer, LeFlore	40,448	1
22	Hughes, Okfuskee	44,035	1
23	Pontotoc, Seminole	44,295	1
24	Choctaw, McCurtain, Pushmataha	52,661	1
25	Pittsburg	47,650	1
26	Johnston, Marshall	28,353	1
27	Haskell, McIntosh, Muskogee	92,579	2
28	Adair, Sequoyah	35,540	1
29	Craig, Mayes	31,000	1
30	Cherokee, Delaware, Ottawa	43,960	1
31	Tulsa	34,995	1
32	Okmulgee, Wagoner	43,201	1
33	Nowata, Rogers	31,959	1
34	Osage, Washington	37,585	1
		1,657,155	44

See note in Appendix C-1, as amended by: State of Oklahoma, Session Laws of 1919, p. 175.

Appendix C-3

Senate
1923-1931 Based upon 1920 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	39,082	1
2	Beckham, Dewey, Ellis, Roger Mills	53,734	2
3	Woods, Woodward	30,602	1
4	Greer, Harmon	27,097	1
5	Jackson, Tillman	44,574	1
6	Custer, Kiowa, Washita	64,067	2
7	Alfalfa, Major	28,679	1
8	Garfield	37,500	1
9	Grant, Kay	50,979	1
10	Noble, Pawnee	32,686	1
11	Creek, Payne	92,660	1
12	Logan	27,550	1
13	Lincoln, Pottawatomie	79,434	2
14	Canadian, Oklahoma	138,595	2
15	Caddo, Grady	68,150	2
16	Blaine, Kingfisher	31,546	1
17	Comanche, Cotton, Jefferson, Stephens	85,664	2
18	Carter, Love, Murray	65,795	2
19	Cleveland, Garvin, McClain	71,160	2
20	Atoka, Bryan, Coal	79,968	2
21	Latimer, LeFlore	56,631	1
22	Hughes, Okfuskee	51,096	1
23	Pontotoc, Seminole	54,757	1
24	Choctaw, McCurtain, Pushmataha	87,563	1
25	Pittsburg	52,570	1
26	Johnston, Marshall	34,799	1
27	Haskell, McIntosh, Muskogee	107,511	2
28	Adair, Sequoyah	40,489	1
29	Craig, Mayes	35,989	1
30	Cherokee, Delaware, Ottawa	74,848	1
31	Tulsa	109,023	1
32	Okmulgee, Wagoner	76,443	1
33	Nowata, Rogers	33,504	1
34	Osage, Washington	63,538	1
		2,028,283	44

See note in Appendix C-2 as amended by: State of Oklahoma, Session Laws of 1925, pp. 1-2, 205-206.

Appendix C-4

Senate
1933-1937 Based upon 1930 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	38,721	1
2	Beckham, Ellis, Dewey, Roger Mills	66,946	2
3	Woods, Woodward	32,849	1
4	Greer, Harmon	34,116	1
5	Jackson, Tillman	53,300	1
6	Custer, Kiowa, Washita	86,582	2
7	Alfalfa, Major	27,434	1
8	Garfield	45,588	1
9	Grant, Kay	64,336	1
10	Noble, Pawnee	35,021	1
11	Creek, Payne	101,020	1
12	Logan	27,761	1
13	Lincoln, Pottawatomie	100,310	2
14	Canadian, Oklahoma	249,853	2
15	Caddo, Grady	98,417	2
16	Blaine, Kingfisher	36,412	1
17	Comanche, Cotton, Jefferson, Stephens	100,220	2
18	Carter, Love, Murray	63,468	2
19	Cleveland, Garvin, McClain	77,924	2
20	Atoka, Bryan, Coal	58,331	2
21	Latimer, LeFlore	54,080	1
22	Hughes, Okfuskee	59,350	1
23	Pontotoc, Seminole	112,090	1
24	Choctaw, McCurtain, Pushmataha	73,645	1
25	Pittsburg	50,778	1
26	Johnston, Marshall	24,108	1
27	Haskell, McIntosh, Muskogee	107,564	2
28	Adair, Cherokee, Sequoyah	51,731	1
29	Craig, Mayes	35,935	1
30	Delaware, Ottawa	53,912	1
31	Tulsa	187,574	1
32	Okmulgee, Wagoner	78,986	1
33	Nowata, Rogers	32,567	1
34	Osage, Washington	75,111	1
		2,396,040	44

See note in Appendix C-3, as amended by: State of Oklahoma, Session Laws of 1931, p. 9 and Session Laws of 1933, p. 271.

Appendix C-5

Senate
1939-1941 Based upon 1930 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	38,721	1
2	Beckham, Dewey, Ellis, Roger Mills	66,946	2
3	Woods, Woodward	32,849	1
4	Greer, Harmon	34,116	1
5	Jackson, Tillman	53,300	1
6	Custer, Kiowa, Washita	86,582	2
7	Alfalfa, Major	27,434	1
8	Garfield	45,588	1
9	Grant, Kay	64,336	1
10	Noble, Pawnee	35,021	1
11	Creek, Payne	101,020	1
12	Logan	27,761	1
13	Lincoln, Pottawatomie	100,310	2
14	Canadian, Oklahoma	249,853	2
15	Caddo, Grady	98,417	2
16	Blaine, Kingfisher	36,412	1
17	Comanche, Cotton, Jefferson, Stephens	100,220	2
18	Carter, Love, Murray	63,468	2
19	Cleveland, Garvin, McClain	77,924	2
20	Bryan, Choctaw	56,419	1
21	Latimer, LeFlore	54,080	1
22	Hughes, Okfuskee	59,350	1
23	Pontotoc, Seminole	112,090	1
24	McCurtain, Pushmataha	49,503	1
25	Pittsburg	50,778	1
26	Johnston, Marshall	24,108	1
27	Haskell, McIntosh, Muskogee	107,564	2
28	Adair, Cherokee, Sequoyah	51,731	1
29	Craig, Mayes	35,935	1
30	Delaware, Ottawa	53,912	1
31	Tulsa	187,574	1
32	Okmulgee, Wagoner	78,986	1
33	Nowata, Rogers	32,567	1
34	Osage, Washington	75,111	1
35	Atoka, Coal	26,054	1
		2,396,040	44

See note in Appendix C-4, as amended by: State of Oklahoma, Session Laws of 1937, p. 21.

Appendix C-6

Senate
1943-1951 Based upon 1940 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	28,652	1
2	Beckham, Dewey, Ellis, Roger Mills	53,352	2
3	Woods, Woodward	31,185	1
4	Greer, Harmon	24,569	1
5	Jackson, Tillman	43,462	1
6	Custer, Kiowa, Washita	68,164	2
7	Alfalfa, Major	26,075	1
8	Garfield	45,484	1
9	Grant, Kay	60,212	1
10	Noble, Pawnee	32,221	1
11	Creek, Payne	91,560	1
12	Logan	25,245	1
13	Lincoln, Pottawatomie	83,906	2
14	Canadian, Oklahoma	271,488	2
15	Caddo, Grady	82,683	2
16	Blaine, Kingfisher	34,160	1
17	Comanche, Cotton, Jefferson, Stephens	98,069	2
18	Carter	43,292	1
19	Cleveland, Garvin, McClain	78,083	2
20	Bryan, Choctaw	66,496	1
21	Latimer, LeFlore	58,246	1
22	Hughes, Okfuskee	55,468	1
23	Pontotoc, Seminole	100,993	1
24	McCurtain, Pushmataha	60,784	1
25	Pittsburg	48,985	1
26	Love, Marshall	23,817	1
27	Haskell, McIntosh, Muskogee	107,335	2
28	Adair, Cherokee, Sequoyah	59,923	1
29	Craig, Mayes	42,751	1
30	Delaware, Ottawa	54,441	1
31	Tulsa	193,363	1
32	Okmulgee, Wagoner	71,743	1
33	Nowata, Rogers	36,852	1
34	Osage, Washington	72,061	1
35	Atoka, Coal	31,513	1
36	Johnston, Murray	29,801	1
		2,336,434	44

See note in Appendix C-5, as amended by: State of Oklahoma, Session Laws of 1941, pp. 38-39.

Appendix C-7

Senate
1953-1961 Based upon 1950 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	32,212	1
2	Beckham, Dewey, Ellis, Roger Mills	45,137	2
3	Woods, Woodward	28,909	1
4	Greer, Harmon	19,828	1
5	Jackson, Tillman	37,680	1
6	Custer, Kiowa, Washita	57,680	2
7	Alfalfa, Major	20,978	1
8	Garfield	52,820	1
9	Kay, Grant	59,353	1
10	Noble, Pawnee	25,772	1
11	Creek, Payne	89,573	1
12	Logan	22,170	1
13	Lincoln, Pottawatomie	65,619	2
14	Canadian, Oklahoma	350,996	2
15	Caddo, Grady	69,785	2
16	Blaine, Kingfisher	27,909	1
17	Comanche, Cotton, Jefferson, Stephens	110,538	2
18	Carter	36,455	1
19	Cleveland, Garvin, McClain	85,624	2
20	Bryan, Choctaw	49,404	1
21	Latimer, LeFlore	44,966	1
22	Hughes, Okfuskee	37,612	1
23	Pontotoc, Seminole	71,547	1
24	McCurtain, Pushmataha	43,589	1
25	Pittsburg	41,031	1
26	Love, Marshall	15,898	1
27	Haskell, McIntosh, Muskogee	96,715	2
28	Adair, Cherokee, Sequoyah	53,680	1
29	Craig, Mayes	38,006	1
30	Delaware, Ottawa	46,952	1
31	Tulsa	251,686	1
32	Okmulgee, Wagoner	61,302	1
33	Nowata, Rogers	32,266	1
34	Osage, Washington	65,951	1
35	Atoka, Coal	22,325	1
36	Johnston, Murray	21,383	1
		2,233,351	44

See Note in Appendix C-6. Later census applied to Laws.

Appendix C-8

Senate

1961 Based upon 1960 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	31,579	2
2	Beckham	17,782	1
3	Dewey, Ellis, Roger Mills	16,598	1
4	Woods, Woodward	25,834	1
5	Greer, Harmon	14,729	1
6	Jackson, Tillman	44,390	1
7	Custer	21,040	1
8	Kiowa, Washita	32,946	1
9	Alfalfa, Major	16,253	1
10	Garfield	52,975	1
11	Kay, Grant	59,182	1
12	Noble, Pawnee	21,260	1
13	Creek	40,495	1
14	Payne	44,231	1
15	Logan	18,662	1
16	Lincoln, Pottawatomie	60,269	2
17	Canadian	24,727	1
18	Oklahoma	439,506	3
19	Caddo	28,621	1
20	Grady	29,590	1
21	Blaine, Kingfisher	22,712	1
22	Comanche, Cotton	98,834	2
23	Jefferson, Stephens	46,182	1
24	Carter	39,044	1
25	Cleveland	47,600	1
26	Garvin, McClain	41,030	1
27	Bryan, Choctaw	39,889	1
28	Latimer, LeFlore	36,844	1
29	Hughes, Okfuskee	26,850	1
30	Pontotoc, Seminole	56,155	1
31	McCurtain, Pushmataha	34,939	1
32	Pittsburg	34,360	1
33	Love, Marshall	13,125	1
34	Haskell, McIntosh	21,492	1
35	Muskogee	61,866	1
36	Adair, Cherokee, Sequoyah	48,875	1
37	Craig, Mayes	36,376	1
38	Delaware, Ottawa	41,499	1
39	Tulsa	346,038	3
40	Okmulgee, Wagoner	52,618	1
41	Nowata, Rogers	31,462	1
42	Osage, Washington	74,788	2
43	Atoka, Coal	15,898	1
44	Johnston, Murray	19,139	1
		2,328,284	52

Oklahoma Session Laws, 1961, Special Acts, pp. 745-748.

Appendix C-9

Senate
1963 Based upon 1960 Census

Dist. No.	Counties	Population	Senators
1	Beaver, Cimarron, Harper, Texas	31,579	1
2	Beckham, Dewey, Ellis, Roger Mills	34,380	2
3	Woods, Woodward	25,834	1
4	Greer, Harmon	14,729	1
5	Jackson, Tillman	44,390	1
6	Custer, Kiowa, Washita	53,986	2
7	Alfalfa, Major	16,253	1
8	Garfield	52,975	1
9	Kay, Grant	59,182	1
10	Noble, Pawnee	21,260	1
11	Creek, Payne	84,726	1
12	Logan	18,662	1
13	Lincoln, Pottawatomie	60,269	2
14	Canadian, Oklahoma	464,233	2
15	Caddo, Grady	58,211	2
16	Blaine, Kingfisher	22,712	1
17	Comanche, Cotton, Jefferson, Stephens	145,016	2
18	Carter	39,044	1
19	Cleveland, Garvin, McClain	88,630	2
20	Bryan, Choctaw	39,889	1
21	Latimer, LeFlore	36,844	1
22	Hughes, Okfuskee	26,850	1
23	Pontotoc, Seminole	56,155	1
24	McCurtain, Pushmataha	34,939	1
25	Pittsburg	34,360	1
26	Love, Marshall	13,125	1
27	Haskell, McIntosh, Muskogee	83,358	2
28	Adair, Cherokee, Sequoyah	48,875	1
29	Craig, Mayes	36,376	1
30	Delaware, Ottawa	41,499	1
31	Tulsa	346,038	1
32	Okmulgee, Wagoner	52,618	1
33	Nowata, Rogers	31,462	1
34	Osage, Washington	74,788	1
35	Atoka, Coal	15,898	1
36	Johnston, Murray	19,139	1
		2,328,284	44

See note in Appendix C-7. Later census applied to Laws.

Appendix D

Opinions of Attorney General of Oklahoma Relative to Legislative Apportionment

Date	Subject	Recipient
August 19, 1924	Representatives to which McIntosh County is entitled.	Hon. D. A. Brumley
March 17, 1927	Whether or not legislature may redistrict at the time.	Hon. C. R. Reeves
April 3, 1928	Representatives to which Lincoln County is entitled.	Hon. J. P. Pomeroy
March 13, 1931	Method for reapportioning House of Representatives.	Hon. W. D. Grisso
March 2, 1932	Number of legislators in state House and Senate.	Miss Lilly Reavis
March 24, 1941	Method for reapportioning Oklahoma Senate.	Hon. D. E. Temple
August 1, 1944	Validity of apportionment in view of court decision.	Hon. R. S. Kerr
July 27, 1945	Representatives to which Beckham County is entitled.	Hon. H. C. Hathcoat
December 16, 1950	Representatives to which Comanche County is entitled.	Hon. C. G. Ozmun
January 30, 1951	Memorandum to apportion House on 1950 Census.	General
January 20, 1953	Bill to give Beckham County one rather than two Representatives.	Hon. C. M. Wilson
February 12, 1953	Bill to attach Logan to Oklahoma County as Senatorial District.	Hon. G. Miskovsky
May 14, 1953	Bill relative to Representatives in Beckham County.	Hon. C. M. Wilson
March 18, 1955	Bill to vitalize Article V, Sec. 9(a), Oklahoma Constitution.	Hon. A. L. Price
March 30, 1955	Bill to redistrict the Senate pursuant with earlier opinion.	Hon. A. L. Price
October 21,1957	Review of 131 legislative enactments of 26th Session.	Hon. C. M. Wilson
May 28, 1958	Bill to divide Carter County into two nominating districts.	Hon. R. Sparger
March 13, 1959	Constitutionality of reapportionment on 1950 Census.	Hon. F. Harris
August 1, 1961	Memorandum to apportion legislature on 1960 Census.	General
April 20, 1962	Memorandum construing effect of Baker v. Carr.	General
June 21, 1962	Proposed law apportioning the Oklahoma Legislature.	Hon. J. D. McCarty
June 28, 1962	State and Federal Court decisions on legislative apportionment.	Mr. H. L. Wiltsee

NOTE: Official files of the Attorney General of Oklahoma reveal that opinions of record have been bound and maintained as of January 1, 1923. The foregoing are all official opinions of record from such date through January 1, 1964.

Appendix E

Court Decisions Relative To Legislative Apportionment in Oklahoma

Year	Case	Citation
1944	JONES v. FREEMAN	146 P. 2d 564
1946	LATTING v. CORDELL	172 P. 2d 397
1946	COLGROVE vs. GREEN	328 U.S. 549
1946	JONES v. CORDELL	168 P. 2d 130
1946	GRIM v. CORDELL	169 P. 2d 567
1946	SHIRLEY vs. CORDELL	174 P. 2d 917
1952	ROMANG v. CORDELL	243 P. 2d 677
1956	STATE ex. rel. TAYRIEN v. DOGGETT	296 P. 2d 185
1956	RADFORD v. GARY	145 F. Supp. 541
1961	JONES v. WINTERS	365 P. 2d 357
1961	MARTIN v. KEY	W. D. Okla. 5211
1962	JONES v. WINTERS	369 P. 2d 135
1962	BROWN v. STATE ELECTION BOARD	369 P. 2d 140
1962	REED v. STATE ELECTION BOARD	369 P. 2d 156
1962	BAKER v. CARR	369 U.S. 186
1962	MOSS v. BURKHART	207 F. Supp. 885
1964	DAVIS v. McCARTY	388 P. 2d 480

Appendix F-1

House Model "A"

Counties	(1963) 1st Leg. Period	(1965) 2nd Leg. Period	(1967) 3rd Leg. Period	(1969) 4th Leg. Period	(1971) 5th Leg. Period
Alfalfa-Grant	1	1	1	1	2
Atoka-Coal	1	1	1	1	1
Beaver-Harper	1	1	1	1	1
Beckham-Roger Mills	1	1	2	2	1
Blaine-Kingfisher	1	1	2	2	1
Cimarron-Texas	1	1	1	1	2
Cotton-Jefferson	1	1	1	1	1
Dewey-Major	1	1	1	1	1
Ellis-Woodward	1	1	1	1	2
Greer-Harmon	1	1	1	1	1
Haskell-McIntosh	1	1	2	2	1
Johnston-Murray	1	1	1	1	2
Latimer-Pushmataha	1	1	1	1	2
Love-Marshall	1	1	1	1	1
Noble-Pawnee	1	1	2	2	1
Nowata-Craig	2	2	2	1	1
Adair	1	1	1	1	1
Bryan	1	1	2	2	1
Caddo	2	2	2	1	1
Canadian	1	1	2	2	1
Carter	2	2	2	2	1
Cherokee	1	1	1	1	2
Choctaw	1	1	1	1	1
Cleveland	2	2	2	2	3
Comanche	4	4	4	4	4
Creek	2	2	2	2	1
Custer	1	1	2	2	1
Delaware	1	1	1	1	1
Garfield	2	2	3	3	2
Garvin	2	2	2	1	1
Grady	2	2	2	1	1

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Appendix F-1
(Continued)

Counties	(1963) 1st Leg. Period	(1965) 2nd Leg. Period	(1967) 3rd Leg. Period	(1969) 4th Leg. Period	(1971) 5th Leg. Period
Hughes	1	1	1	1	1
Jackson	2	2	2	1	1
Kay	2	2	3	3	2
Kiowa	1	1	1	1	1
LeFlore	2	2	2	1	1
Lincoln	1	1	1	1	2
Logan	1	1	1	1	2
McClain	1	1	1	1	1
McCurtain	2	2	2	1	1
Mayes	1	1	1	1	2
Muskogee	3	3	3	3	2
Okfuskee	1	1	1	1	1
Oklahoma	18	18	18	18	18
Okmulgee	2	2	2	2	1
Osage	2	2	2	2	1
Ottawa	2	2	2	1	1
Payne	2	2	2	2	2
Pittsburg	2	2	2	2	1
Pontotoc	2	2	2	1	1
Pottawatomie	2	2	2	2	2
Rogers	1	1	1	1	2
Seminole	2	2	2	1	1
Sequoyah	1	1	1	1	2
Stephens	2	2	2	2	1
Tillman	1	1	1	1	1
Tulsa	14	14	14	14	14
Wagoner	1	1	1	1	1
Washington	2	2	2	2	2
Washita	1	1	1	1	2
Woods	1	1	1	1	1
	118	118	127	117	114

House Model "A"

County	Pop.	No. Rep.	Pop. Per Rep.
Okfuskee	11,706	1	11,706
Woods	11,932	1	11,932
McClain	12,740	1	12,740
Beaver-Harper	12,921	1	12,921
McCurtain	25,851	2	12,925
Adair	13,112	1	13,112
Love-Marshall	13,125	1	13,125
Delaware	13,198	1	13,198
Craig-Nowata	27,151	2	13,575
Dewey-Major	13,859	1	13,859
Seminole	28,066	2	14,033
Pontotoc	28,089	2	14,044
Garvin	28,290	2	14,145
Ottawa	28,301	2	14,150
Caddo	28,621	2	14,310
LeFlore	29,106	2	14,553
Tillman	14,654	1	14,654
Greer-Harmon	14,729	1	14,729
Grady	29,590	2	14,795
Kiowa	14,825	1	14,825
Jackson	29,736	2	14,868
Hughes	15,144	1	15,144
Choctaw	15,637	1	15,637
Wagoner	15,673	1	15,673
Atoka-Coal	15,898	1	15,898
Osage	32,441	2	16,220
Cotton-Jeffer.	16,223	1	16,223
Alfalfa-Grant	16,585	1	16,585
Lat.-Pushm.	16,826	1	16,826
Pittsburg	34,360	2	17,180
Cherokee	17,762	1	17,762
Sequoyah	18,001	1	18,001
Washita	18,121	1	18,121
Okmulgee	36,945	2	18,472
Cimar.-Texas	18,658	1	18,658
Logan	18,662	1	18,662
Lincoln	18,783	1	18,783
Stephens	37,990	2	18,995
Johns.-Murray	19,139	1	19,139
Ellis-Woodwd.	19,359	1	19,359
Carter	39,044	2	19,522
Mayes	20,073	1	20,073
Creek	40,495	2	20,247
Rogers	20,614	1	20,614
	952,035 (40.9%)	60	
Muskogee	61,866	3	20,622
Pottawatomie	41,486	2	20,743
Custer	21,040	1	21,040
Washington	42,347	2	21,173
Noble-Pawnee	21,260	1	21,260
Hask.-McInt.	21,492	1	21,492
Payne	44,231	2	22,115
Comanche	90,803	4	22,700
Blaine-Kingf.	22,712	1	22,712
Beck-R.Mills	22,872	1	22,872
Cleveland	47,600	2	23,800
Bryan	24,252	1	24,252
Oklahoma	439,506	18	24,417
Tulsa	346,038	14	24,717
Canadian	24,727	1	24,727
Kay	51,042	2	25,521
Garfield	52,975	2	26,478
	1,376,249 (59.1%)	58	

Total Population 2,328,284

40.9% of the people elect 60 Rep.
59.1% of the people elect 58 Rep.

At the extreme, the population represented in Okfuskee County would have a relative weight 2.3 times that of the population represented in Garfield County.

Appendix F-2

House Model "B"

Counties	(1963) 1st Leg. Period	(1965) 2nd Leg. Period	(1967) 3rd Leg. Period	(1969) 4th Leg. Period	(1971) 5th Leg. Period
Alfalfa-Grant	1	1	1	1	1
Atoka-Coal	1	1	1	1	1
Beaver-Harper	1	1	1	1	1
Beckham-Roger Mills	1	1	1	1	1
Blaine-Kingfisher	1	1	1	1	1
Cimarron-Texas	1	1	1	1	1
Cotton-Jefferson	1	1	1	1	1
Dewey-Major	1	1	1	1	1
Ellis-Woodward	1	1	1	1	1
Greer-Harmon	1	1	1	1	1
Haskell-McIntosh	1	1	1	1	1
Johnston-Murray	1	1	1	1	1
Latimer-Pushmataha	1	1	1	1	1
Love-Marshall	1	1	1	1	1
Noble-Pawnee	1	1	1	1	1
Nowata-Craig	1	1	1	1	1
Adair	1	1	1	1	1
Bryan	1	1	1	1	1
Caddo	1	1	1	1	2
Canadian	1	1	1	1	1
Carter	2	2	2	1	1
Cherokee	1	1	1	1	1
Choctaw	1	1	1	1	1
Cleveland	2	2	2	2	2
Comanche	4	4	4	4	4
Creek	2	2	2	1	1
Custer	1	1	1	1	1
Delaware	1	1	1	1	1
Garfield	3	2	2	2	2
Garvin	1	1	1	1	2
Grady	1	1	1	2	1

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Appendix F-2
(Continued)

Counties	(1963) 1st Leg. Period	(1965) 2nd Leg. Period	(1967) 3rd Leg. Period	(1969) 4th Leg. Period	(1971) 5th Leg. Period
Hughes	1	1	1	1	1
Jackson	1	1	1	1	2
Kay	2	2	2	2	2
Kiowa	1	1	1	1	1
LeFlore	1	1	1	1	2
Lincoln	1	1	1	1	1
Logan	1	1	1	1	1
McClain	1	1	1	1	1
McCurtain	1	1	1	1	1
Mayes	1	1	1	1	1
Muskogee	3	3	3	2	2
Okfuskee	1	1	1	1	1
Oklahoma	7	7	7	7	7
Okmulgee	1	1	2	2	1
Osage	1	2	1	1	1
Ottawa	1	1	1	2	1
Payne	2	2	2	2	2
Pittsburg	1	1	2	2	1
Pontotoc	1	2	1	1	1
Pottawatomie	2	2	2	2	2
Rogers	1	1	1	1	1
Seminole	2	1	1	1	1
Sequoyah	1	1	1	1	1
Stephens	2	2	2	1	1
Tillman	1	1	1	1	1
Tulsa	7	7	7	7	7
Wagoner	1	1	1	1	1
Washington	2	2	2	2	2
Washita	1	1	1	1	1
Woods	1	1	1	1	1
	89	89	89	87	87

House Model "B"

County	Pop.	No. Rep.	Pop. Per Rep.
Okfuskee	11,706	1	11,706
Woods	11,932	1	11,932
McClain	12,740	1	12,740
Beaver-Harper	12,921	1	12,921
Adair	13,112	1	13,112
Love-Marshall	13,125	1	13,125
Delaware	13,198	1	13,198
Dewey-Major	13,859	1	13,859
Pontotoc	28,089	2	14,044
Tillman	14,654	1	14,654
Greer-Harmon	14,729	1	14,729
Kiowa	14,825	1	14,825
Hughes	15,144	1	15,144
Choctaw	15,637	1	15,637
Wagoner	15,673	1	15,673
Atoka-Coal	15,898	1	15,898
Osage	32,441	2	16,220
Cotton-Jeff.	16,223	1	16,223
Alfalfa-Grant	16,585	1	16,585
Lat.-Pushm.	16,826	1	16,826
Cherokee	17,762	1	17,762
Sequoyah	18,001	1	18,001
Washita	18,121	1	18,121
Cimar-Texas	18,658	1	18,658
Logan	18,662	1	18,662
Lincoln	18,783	1	18,783
Stephens	37,990	2	18,995
Johns-Murray	19,139	1	19,139
Ellis-Woodwd.	19,359	1	19,359
Carter	39,044	2	19,522
Mayes	20,073	1	20,073
Creek	40,495	2	20,247
Rogers	20,614	1	20,614
Muskogee	61,866	3	20,622
Pottawatomie	41,486	2	20,743
Custer	21,040	1	21,040
Washington	42,347*	2*	21,173
	771,584	45	
	(33.1%)		
Washington	42,347*	2*	21,173
Noble-Pawnee	21,260	1	21,260
Hask.-McInt.	21,492	1	21,492
Payne	44,231	2	22,115
Comanche	90,803	4	22,700
Blaine-Kingf.	22,712	1	22,712
Beck-R.Mills	22,872	1	22,872
Cleveland	47,600	2	23,800
Bryan	24,252	1	24,252
Canadian	24,727	1	24,727
Kay	51,042	2	25,521
McCurtain	25,851	1	25,851
Garfield	52,975	2	26,478
Craig-Nowata	27,151	1	27,151
Seminole	28,066	1	28,066
Garvin	28,290	1	28,290
Ottawa	28,301	1	28,301
Caddo	28,621	1	28,621
LeFlore	29,106	1	29,106
Grady	29,590	1	29,590
Jackson	29,736	1	29,736
Pittsburg	34,360	1	34,360
Okmulgee	36,945	1	36,945
Tulsa	346,038	7	49,434
Oklahoma	439,506	7	62,787
	1,556,700	44	
	(66.9%)		

Total Population 2,328,284
33.1% of the people elect 45 Reps.
66.9% of the people elect 44 Reps.

* As Washington County's population overlaps the percentage which would elect part of the majority and minority of the total House membership, it has been divided in order to show the precise effect of the model.

At the extreme, the population represented in Okfuskee County would have a relative weight 5.36 times that of the population represented in Oklahoma County.

Pontotoc and Osage meriting one float in this Session, they being among the ten counties receiving but one float which the constitution does not specifically allocate.

Appendix F-3

HOUSE MODEL "C"

Counties	(1963) 1st Leg. Period	(1965) 2nd Leg. Period	(1967) 3rd Leg. Period	(1969) 4th Leg. Period	(1971) 5th Leg. Period
Alfalfa-Grant	1	1	1	1	1
Atoka-Coal	1	1	1	1	1
Beaver-Harper	1	1	1	1	1
Beckham-Roger Mills	1	1	1	1	1
Blaine-Kingfisher	1	1	1	1	1
Cimarron-Texas	1	1	1	1	1
Cotton-Jefferson	1	1	1	1	1
Dewey-Major	1	1	1	1	1
Ellis-Woodward	1	1	1	1	1
Greer-Harmon	1	1	1	1	1
Haskell-McIntosh	1	1	1	1	1
Johnston-Murray	1	1	1	1	1
Latimer-Pushmataha	1	1	1	1	1
Love-Marshall	1	1	1	1	1
Noble-Pawnee	1	1	1	1	1
Nowata-Craig	1	1	1	1	1
Adair	1	1	1	1	1
Bryan	1	1	1	1	1
Caddo	1	1	1	1	2
Canadian	1	1	1	1	1
Carter	2	2	2	1	1
Cherokee	1	1	1	1	1
Choctaw	1	1	1	1	1
Cleveland	2	2	2	2	2
Comanche	4	4	4	4	4
Creek	2	2	2	1	1
Custer	1	1	1	1	1
Delaware	1	1	1	1	1
Garfield	3	2	2	2	2
Garvin	1	1	1	1	2
Grady	1	1	1	2	1

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Appendix F-3
(Continued)

Counties	(1963) 1st Leg. Period	(1965) 2nd Leg. Period	(1967) 3rd Leg. Period	(1969) 4th Leg. Period	(1971) 5th Leg. Period
Hughes	1	1	1	1	1
Jackson	1	1	1	1	2
Kay	2	2	2	2	2
Kiowa	1	1	1	1	1
LeFlore	1	1	1	1	2
Lincoln	1	1	1	1	1
Logan	1	1	1	1	1
McClain	1	1	1	1	1
McCurtain	1	1	1	1	1
Mayes	1	1	1	1	1
Muskogee	3	3	3	2	2
Okfuskee	1	1	1	1	1
Oklahoma	19	19	19	19	19
Okmulgee	1	1	2	2	1
Osage	1	2	1	1	1
Ottawa	1	1	1	2	1
Payne	2	2	2	2	2
Pittsburg	1	1	2	2	1
Pontotoc	1	2	1	1	1
Pottawatomie	2	2	2	2	2
Rogers	1	1	1	1	1
Seminole	2	1	1	1	1
Sequoyah	1	1	1	1	1
Stephens	2	2	2	1	1
Tillman	1	1	1	1	1
Tulsa	15	15	15	15	15
Wagoner	1	1	1	1	1
Washington	2	2	2	2	2
Washita	1	1	1	1	1
Woods	1	1	1	1	1
	109	109	109	107	107

House Model "C"

County	Pop.	No. Rep.	Pop.Per Rep.	County	Pop.	No. Rep.	Pop.Per Rep.
Okfuskee	11,706	1	11,706	Custer	21,040	1	21,040
Woods	11,932	1	11,932	Washington	42,347	2	21,173
McClain	12,740	1	12,740	Noble-Pawnee	21,260	1	21,260
Beaver-Harper	12,921	1	12,921	Hask.-McInt.	21,492	1	21,492
Adair	13,112	1	13,112	Payne	44,231	2	22,115
Love-Marshall	13,125	1	13,125	Comanche	90,803	4	22,700
Delaware	13,198	1	13,198	Blaine-Kingf.	22,712	1	22,712
Dewey-Major	13,859	1	13,859		993,255	55	
Pontotoc	28,089	2	14,044		(42.7%)		
Tillman	14,654	1	14,654	Beck-R.Mills	22,872	1	22,872
Greer-Harmon	14,729	1	14,729	Tulsa	346,038	15	23,069
Kiowa	14,825	1	14,825	Oklahoma	439,506	19	23,132
Hughes	15,144	1	15,144	Cleveland	47,600	2	23,800
Choctaw	15,637	1	15,637	Bryan	24,252	1	24,252
Wagoner	15,673	1	15,673	Canadian	24,727	1	24,727
Atoka-Coal	15,898	1	15,898	Kay	51,042	2	25,521
Osage	32,441	2	16,220	McCurtain	25,851	1	25,851
Cotton-Jeff.	16,223	1	16,223	Garfield	52,975	2	26,478
Alfalfa-Grant	16,585	1	16,585	Craig-Nowata	27,151	1	27,151
Lat.-Pushm.	16,826	1	16,826	Seminole	28,066	1	28,066
Cherokee	17,762	1	17,762	Garvin	28,290	1	28,290
Sequoyah	18,001	1	18,001	Ottawa	28,301	1	28,301
Washita	18,121	1	18,121	Caddo	28,621	1	28,621
Cimarron-Texas	18,658	1	18,658	LeFlore	29,106	1	29,106
Logan	18,662	1	18,662	Grady	29,590	1	29,590
Lincoln	18,783	1	18,783	Jackson	29,736	1	29,736
Stephens	37,990	2	18,995	Pittsburg	34,360	1	34,360
Johns.-Murray	19,139	1	19,139	Okmulgee	36,945	1	36,945
Ellis-Woodward	19,359	1	19,359		1,335,029	54	
Carter	39,044	2	19,522		(57.3%)		
Mayes	20,073	1	20,073				
Creek	40,495	2	20,247	Total Population	2,328,284		
Rogers	20,614	1	20,614				
Muskogee	61,866	3	20,622	42.7% of the people elect 55 Reps.			
Pottawatomie	41,486	2	20,743	57.3% of the people elect 54 Reps.			

At the extreme, the population represented in Okfuskee County would have a relative weight 3.14 times that of the population represented in Okmulgee County.

Pontotoc and Osage meriting one float in this Session, they being among the ten counties receiving but one float which the constitution does not specifically allocate.

Appendix G-1

Senate Model "A"

District Number	Counties in District	Number of Senators
1	Beaver, Cimarron, Harper, Texas	1
2	Beckham, Ellis, Roger Mills	1
3	Greer, Harmon, Kiowa	1
4	Jackson	1
5	Blaine, Dewey, Woodward	1
6	Custer, Washita	1
7	Cotton, Jefferson, Tillman	1
8	Alfalfa, Grant, Woods, Major	1
9	Caddo	1
10-11	Comanche	2
12	Garfield	1
13	Canadian, Kingfisher	1
14	Grady	1
15	Stephens	1
16	Kay	1
17	Logan, Noble	1
18-19	Oklahoma	8
20	Cleveland	1
21	Garvin, McClain	1
22	Carter	1
23	Osage, Pawnee	1
24	Payne	1
25	Lincoln, Okfuskee	1
26	Pottawatomie	1
27	Murray, Pontotoc	1
28	Atoka, Coal, Johnston, Love, Marshall	1
29	Creek	1
30	Hughes, Seminole	1
31	Bryan, Choctaw	1
32	Washington	1
33-34	Tulsa	6
35	Okmulgee	1
36	McIntosh, Pittsburg	1
37	McCurtain, Pushmataha	1
38	Nowata, Rogers	1
39	Cherokee, Wagoner	1
40	Muskogee	1
41	Latimer, LeFlore	1
42	Craig, Mayes	1
43	Delaware, Ottawa	1
44	Adair, Haskell, Sequoyah	1
		54

Senate Model "A"

Dist.	Pop.	No. of Senators	Pop. per Senator	Dist.	Pop.	No. of Senators	Pop. per Senator
2	28,329	1	28,329	44	40,234	1	40,234
9	28,621	1	28,621	29	40,495	1	40,495
17	29,038	1	29,038	21	41,030	1	41,030
3	29,554	1	29,554	26	41,486	1	41,486
14	29,590	1	29,590		977,111	28	
					(41.9%)		
4	29,736	1	29,736	43	41,499	1	41,499
25	30,489	1	30,489	32	42,347	1	42,347
7	30,877	1	30,877	30	43,210	1	43,210
38	31,462	1	31,462	23	43,325	1	43,325
1	31,579	1	31,579	24	44,231	1	44,231
5	32,030	1	32,030	10-11	90,803	2	45,401
39	33,435	1	33,435	36	46,731	1	46,731
37	34,939	1	34,939	20	47,600	1	47,600
13	35,362	1	35,362	16	51,042	1	51,042
8	36,325	1	36,325	12	52,975	1	52,975
42	36,376	1	36,376	18-19	439,506	8	52,975
41	36,844	1	36,844	33-34	346,038	6	54,938
35	36,945	1	36,945	40	61,866	1	61,866
28	37,540	1	37,540		1,351,173	26	
15	37,990	1	37,990		(58.03%)		
27	38,711	1	38,711	Total Population 2,328,284			
22	39,044	1	39,044				
6	39,161	1	39,161	41.97% of the people elect 28 Sen.			
31	39,889	1	39,889	58.03% of the people elect 26 Sen.			

At the extreme, the population represented in District 2 (Beckham, Ellis, and Roger Mills) would have a relative weight 2.2 times that of the population represented in District 40 (Muskogee).

Appendix G-2

Senate Model "B"

District Number	Counties In District	Number of Senators
1	Beaver, Cimarron, Ellis, Harper, Texas	1
2	Dewey, Roger Mills, Woods, Woodward	1
3	Alfalfa, Blaine, Grant, Major	1
4	Custer, Washita	1
5	Beckham, Greer, Kiowa	1
6	Harmon,Jackson	1
7	Cotton, Jefferson, Tillman	1
8-9	Comanche	2
10	Caddo	1
11	Canadian, Kingfisher	1
12	Kay	1
13	Garfield	1
14	Logan, Noble, Pawnee	1
15	Grady	1
16	Stephens	1
17	Atoka, Coal, Johnston, Love, Marshall	1
18	Carter	1
19	Murray, Pontotoc	1
20	Garvin, McClain	1
21	Cleveland	1
22-32	Oklahoma	11
33	Payne	1
34	Osage	1
35	Creek	1
36	Okmulgee	1
37	Lincoln, Okfuskee	1
38	Pottawatomie	1
39	Hughes, Seminole	1
40	Pittsburg	1
41	McCurtain, Pushmataha	1
42	Bryan, Choctaw	1
43	LeFlore	1
44	Haskell, Latimer, McIntosh	1
45	Muskogee	1
46	Cherokee, Wagoner	1
47-55	Tulsa	9
56	Washington	1
57	Nowata, Rogers	1
58	Craig, Mayes	1
59	Delaware, Ottawa	1
60	Adair, Sequoyah	1
		60

Senate Model "B"

Dist.	Pop.	No.of Senators	Pop.per Senator
10	28,621	1	28,621
43	29,106	1	29,106
44	29,230	1	29,230
15	29,590	1	29,590
37	30,489	1	30,489
7	30,877	1	30,877
60	31,113	1	31,113
57	31,462	1	31,462
34	32,441	1	32,441
46	33,435	1	33,435
40	34,360	1	34,360
41	34,939	1	34,939
11	35,362	1	35,362
6	35,588	1	35,588
58	36,376	1	36,376
3	36,470	1	36,470
36	36,945	1	36,945
2	36,975	1	36,975
1	37,036	1	37,036
17	37,540	1	37,540
16	37,990	1	37,990
47-55	346,038	9	38,449
19	38,711	1	38,711
	1,090,694 (46.85%)	31	

Dist.	Pop.	No.of Senators	Pop.per Senator
18	39,044	1	39,044
4	39,161	1	39,161
42	39,889	1	39,889
14	39,922	1	39,922
22-32	439,506	11	39,955
35	40,495	1	40,495
20	41,030	1	41,030
5	41,484	1	41,484
38	41,486	1	41,486
59	41,499	1	41,499
56	42,347	1	42,347
39	43,210	1	43,210
33	44,231	1	44,231
8-9	90,803	2	45,401
21	47,600	1	47,600
12	51,042	1	51,042
13	52,975	1	52,975
45	61,866	1	61,866
	1,237,590 (53.15%)	29	

Total Population 2,328,284

46.85% of the people elect 31 Sens.
53.15% of the people elect 29 Sens.

At the extreme, the population represented in District 10 (Caddo) would have a relative weight 2.2 times that of the population represented in District 45 (Muskogee).

Appendix G-3

Senate Model "C"

District Number	Counties in District	Number of Senators
1	Beaver, Cimarron, Harper, Texas, Woods, Woodward	1
2	Beckham, Ellis, Greer, Roger Mills, Washita	1
3	Harmon, Jackson, Tillman	1
4	Blaine, Caddo, Kiowa	1
5	Alfalfa, Custer, Dewey, Grant, Major	1
6	Kingfisher, Lincoln, Logan	1
7	Garfield	1
8	Canadian, Grady	1
9	Cotton, Jefferson, Stephens	1
10-11	Comanche	2
12	Carter, Love, Marshall	1
13	Atoka, Garvin, Johnston, Murray	1
14	Pontotoc, Seminole	1
15	McClain, Pottawatomie	1
16	Cleveland	1
17-24	Oklahoma	8
25	Payne	1
26	Noble, Osage, Pawnee	1
27	Kay	1
28	Nowata, Washington	1
29-35	Tulsa	7
36	Okmulgee, Wagoner	1
37	Creek, Okfuskee	1
38	Coal, Hughes, Pittsburg	1
39	Bryan, Choctaw, Latimer, Pushmataha	1
40	LeFlore, McCurtain	1
41	Cherokee, Haskell, McIntosh, Sequoyah	1
42	Muskogee	1
43	Adair, Delaware, Ottawa	1
44	Craig, Mayes, Rogers	1
		44

Senate Model "C"

Dist.	Pop.	No.of Senators	Pop.per Senator	Dist.	Pop.	No.of Senators	Pop.per Senator
25	44,231	1	44,231	8	54,317	1	54,317
10-11	90,803	2	45,401	43	54,611	1	54,611
16	47,600	1	47,600	17-24	439,506	8	54,938
6	48,080	1	48,080	40	54,957	1	54,957
29-35	346,038	7	49,434	38	55,050	1	55,050
3	50,242	1	50,242	2	55,327	1	55,327
27	51,042	1	51,042	4	55,523	1	55,523
5	51,484	1	51,484	14	56,155	1	56,155
12	52,169	1	52,169	39	56,715	1	56,715
37	52,201	1	52,201	44	56,990	1	56,990
36	52,618	1	52,618	41	57,255	1	57,255
7	52,975	1	52,975	1	57,413	1	57,413
28	53,195	1	53,195	13	57,781	1	57,781
26	53,701	1	53,701	42	61,866	1	61,866
9	54,213	1	54,213		1,173,466	21	
15	54,226	1	54,226		(50.40%)		
	1,154,818 (49.60%)	23					

Total Population 2,328,284

49.60% of the people elect 23 Senators
50.40% of the people elect 21 Senators

At the extreme, the population represented in District 25 (Payne) would have a relative weight 1.4 times that of the population represented in District 42 (Muskogee).

Appendix H

IN THE UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF OKLAHOMA

HARRY R. MOSS, Plaintiff,	)	
VS.	)	No. 9130
WILLIAM A. BURKHART, et al., Defendants.	)	

A M I C U S C U R I A E

M E M O R A N D U M

PRELIMINARY STATEMENT

Because there are facts or questions of law that have not been, nor is there reason to believe will be, presented by the parties to this case, this amicus curiae memorandum is submitted on motion for the Court's consideration.

In Moss v. Burkhart, 207 F. Supp. 885 (1962), the Court established as one guideline or standard the following:

> "The Senate of the Oklahoma Legislature will be reapportioned in accordance with the provisions of the Oklahoma Constitution relating thereto. In this connection, however, the Court is brought face to face with an irreconcilable incongruity in Section 9 (a) of Article 5, of the Oklahoma Constitution, with respect to the formula for apportioning the Senate. This incongruity is caused by the 'except' clause in Section 9 (a), which creates a discrepancy between the total number of Districts and the total number of Senators. We resolve this incongruity in favor of equality of representation, which is mentioned three times in Sections 9 (a) and 9 (b), believing as we do that it is in consonance with the general principle of the Oklahoma Constitution, as construed by the Oklahoma Supreme Court in Jones v. Freeman, 146 P.2d. 564, and more

> nearly conforms to the equal protection clause of the Fourteenth Amendment to the United States Constitution. Applying this general principle of equality, the Oklahoma Senate will thus consist of 44 Districts and 44 Senators. Under the 1960 Federal Census, Oklahoma County is entitled to eight Senatorial Districts and Senators; Tulsa County, seven Senatorial Districts and Senators; and, Comanche County, two Senatorial Districts and Senators. Those Counties having multiple Senatorial Districts will be districted within themselves into the requisite number of Districts by legislative act, provided each such district shall contain as near as may be an equal number of inhabitants; shall be contiguous and compact as practicable."

With reference to this portion of said Decree, it is urged that the ensuing contentions and supporting argument be taken into consideration prior to the disposal of the Oklahoma apportionment suit, whether the Legislature passes an acceptable plan to reapportion both houses, or, failing this accomplishment, the Court will then order and decree reapportionment by judicial order, in conformity with the guidance furnished.

The contentions are as follows:

1. There is not an "irreconcilable incongruity" in Section 9 (a) of Article 5, of the Oklahoma Constitution, with respect to the formula for apportioning the Senate.

2. Further that, the seemingly ambiguous provision in point, namely, the "except" clause, was never intended, nor must it necessarily result in, a discrepancy between the total number of districts and the total number of Senators.

3. Further that, the Senate may properly be reapportioned on the general principle of substantial numerical equality in consonance with the intent and spirit of the Oklahoma Constitution and the "equal protection" clause of the Fourteenth Amendment to the U. S. Constitution without requiring that its membership be limited to 44 Senators.

4. Further that, by no means a moot consideration, the "except" clause was not simply an afterthought, but was consciously adopted in order to permit the election of Senators in addition to the total prescribed when, and only when, any county became entitled to three or more Senators.

STATEMENT OF FACTS

To best establish a foundation for the above contentions, it is necessary to fully appreciate the relevance of the constitutional antecedents to the provision in question.

The starting point in such an effort is the Constitution of the proposed State of Sequoyah, for the relevant provisions on legislative apportionment in the Oklahoma Constitution derived their inspiration from the product of the Sequoyah Constitutional Convention. Although the proceedings and minutes of that convention were accidentally destroyed, it is sufficient here to take cognizance of the intent of that assembly as expressed in the Constitution for the proposed state. The Senate, as prescribed by Article 3, Section 2 and Article 12, Section 4, was to consist of 21 members to be elected from 21 Senatorial districts.

To bridge the gap, and set the stage for the meaningful relationship of that provision to the context of the present litigation, it is important to note that 34 delegates to the Sequoyah Constitutional Convention were among the 112 delegates later to be elected to the Oklahoma Constitutional Convention. Moreover, it is not trivial to recognize that said 34 delegates, although not constituting a majority of those who assembled at Guthrie to frame Oklahoma's fundamental law, did by all means

constitute a majority of the delegation from Indian Territory and exert great influence, as evidenced by their immediate success in securing for William H. Murray the convention's highest office. The point here being established is that over one-fourth of the Founding Fathers were experienced at constitution-making and had earlier ascribed to the proposition that a Senate should be composed of a set number of Senators, each to be elected from a separate district.

The influence of this nucleus of the delegation from Indian Territory to the Oklahoma Constitutional Convention was particularly made evident by their determined, though unsuccessful, effort to fashion the constitutional provisions on legislative apportionment in accord with their preconceptions and experience. To elaborate, three important developments leading to the adoption of the "except" clause are worthy of note.

First, it is well to recognize the original provisions on legislative apportionment written into the proposed Oklahoma Constitution. As noted in the Journal of Constitutional Convention of Oklahoma at page 248, there was filed on February 27, 1907, by the Chairman of the Committee on Legislative Apportionment, an Oklahoma Territory delegate, a report recommended for adoption. As printed in The Daily Oklahoman on February 28 at page 1, Sections 1 through 5 of said proposal prescribed a Senate of 41 members to be elected from 32 senatorial districts and a House of Representatives of 105 members, but only until an apportionment by the Legislature after the next federal census. Of more importance, and carried in the Oklahoma State Capitol of March 1 at page 6, were the provisions of Section 6 of this proposal:

> "The Legislature shall have the power at its first regular session, after each federal census, to reapportion the several counties of the state into representative and senatorial districts. When the senatorial districts embrace more than one county they shall be contiguous, and the districts shall be as nearly equal in population as may be, provided that each county shall always have one representative and that no county shall ever take part in the election of more than four representatives and two senators."

With regard to the foregoing sections, it need be emphasized that the number of senatorial districts and senators was to be temporary; that said districts were to be of near equal population; that no county was to be entitled to more than two Senators; and above all, that there was no mention of the "except" clause. Further, it is of interest to appreciate that although two subsequent amendments served to regroup nine counties to form different senatorial districts, as reported in The Daily Oklahoman of March 10 at page 2, and March 12 at page 1, the provisions for 41 Senators to be elected from 32 senatorial districts and all of Section 6 above, was made part of the proposed Oklahoma Constitution on March 12, 1907, as further noted in the Journal of Constitutional Convention of Oklahoma at pages 296, 297. Thus, as will be observed, the foregoing provisions had, for four months, constituted the fundamental law on legislative apportionment.

As recorded in the Journal of Constitutional Convention of Oklahoma at pages 348, 349, these provisions were, on July 11, opened for reconsideration by virtue of a unanimous vote of the delegates present. This action served as a preface to the second significant development in the formulation of the provisions on legislative apportionment in general and the "except" clause in particular. For it was on July 13, as noted in the Journal of Constitutional Convention of Oklahoma at page 364, that

the assembly was first apprised of a report which embraced nearly all of the provisions on legislative apportionment that would become a part of the Oklahoma Constitution. Prepared by an Indian Territory delegate, it was offered to be inserted in lieu of the relevant provisions earlier adopted. As can be seen in The Daily Oklahoman of July 12 at pages 1, 4, this proposition prescribed a Senate of 44 members to be elected from 33 senatorial districts and a House of Representatives of 109 members, until an apportionment is made at the first session of the Legislature after the next and subsequent decennial federal census'. More important, and quoted in full in The Daily Oklahoman of July 14 at page 3, is the text of the fundamental provisions submitted to govern future apportionments, modeled after New York and Ohio Constitutions. Specifically germane to this inquiry is the following section:

> "At the time that each senatorial apportionment is made, the state shall be divided into 44 districts to be called senatorial districts, each of which shall elect one senator. Said districts shall be numbered from 1 to 44 and each of said districts shall contain as near as may be, an equal number of inhabitants. Such population to be ascertained by the next preceding federal census, or in such other manner as the legislature may direct, and shall be in as compact form as practicable and remain unaltered until the next decennial period, and shall at all times consist of contiguous territory."

Compare the above with its constitutional antecedent, namely, Article 3, Sections 3, 4 of the Constitution of New York, 1894, as follows:

> "The State shall be divided into fifty districts to be called senatorial districts, each of which shall choose one senator. The districts shall be numbered one to fifty, inclusive. The ratio for apportioning the 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 a 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.

From the excerpts, one distinct contrast need be emphasized, namely, the inclusion of the "except" clause in the latter provision, and its exclusion from the former proposal. It is submitted that the "except" clause was not a simple omission, but a premeditated effort on the part of the sponsor of the proposal to fashion the apportionment of the Senate in accord with the experience of the majority of the delegates from Indian Territory, as expressed in the ill-fated Sequoyah Constitution. Accordingly, the proposition was offered the Oklahoma Constitutional Convention to base the future apportionment of the Senate on the given number of districts with a like number of Senators. Moreover, had this portion of the last cited proposal been adopted in convention, that part of the August 3 Decree of the Court, as cited above, would be unquestionable.

As all are aware, however, this was not the end result in the development of the provision in question, for its content, particularly as regards the "except" clause, differed with the adoption of Article 5, Section 9 (a) of the Oklahoma Constitution. It is submitted that the purpose of the final version was not to have a set number of districts and Senators, as would have been the case had the proposition of the Indian Territory delegate been adopted, but rather to permit the election of Senators in addition to 44 and from 44 senatorial districts.

As noted in the Journal of Constitutional Convention at page 373, it was on July 15, 1907, that the framers of the Oklahoma Constitution struck sections 9 through 16, inclusive of Article 5, and inserted in lieu

thereof the provisions for legislative apportionment, as reported by a Special Committee on Apportionment, chaired by a delegate from Oklahoma Territory. This action served to finally make the present provisions a part of the Oklahoma Constitution, with the apportionment of the Senate being patterned after the pertinent provisions of the Constitution of New York, 1894, and the apportionment of the House of Representatives patterned after the pertinent provisions of the Constitution of Ohio, 1851.

In brief, this convention amendment left undisturbed the proposal of the Indian Territory delegate to apportion the Senate among 33 districts to elect 44 Senators and to remain in force until a reapportionment is made after the next federal census. It also left nominally undisturbed that portion of the proposal considered by the convention, but not adopted, to apportion the House of Representatives among the 75 counties to elect 109 members, also to remain in force until a reapportionment is made after the next federal census. More important, however, the amendment served to strike the provision limiting any county to a maximum of 2 Senators and 4 Representatives, and inserted in lieu thereof the "except" clause and the maximum of 7 Representatives that a county might elect. In any event, of particular importance is the nature and meaning of the proviso in Article 5, Section 9 (a) of the Oklahoma Constitution hereafter cited:

> "At the time each senatorial apportionment is made after the year Nineteen Hundred and Ten the State shall be divided into forty-four districts to be called senatorial districts, each of which shall elect one senator; and the Senate shall always be composed of forty-four Senators, except that in event any county shall be entitled to three or more senators at the time of any apportionment such additional senators

> shall be given such county in addition to the forty-four senators and the whole number to that extent. Said districts shall be numbered from one to forty-four inclusive, and each of said districts shall contain as near as may be as equal number of inhabitants, such population to be ascertained by the next preceding Federal census, or in such manner as the Legislature may direct, and shall be in as compact form as practicable and shall remain unaltered until the next decennial period, and shall at all times consist of contiguous territory."

To bring into focus the germane portion of the section above and meaningly corroborate the intent of the framers of the Oklahoma Constitution as based upon the constitutional antecedents, it is necessary to depict and carefully examine the "except" clause in the relevant constitutions. Accordingly, Article 5, Section 9 (a) of the Oklahoma Constitution provides for 44 Senators to be elected from 44 senatorial districts:

> ". . .except that in event any county shall be entitled to three or more senators at the time of any apportionment such additional senator or senators shall be given such county in addition to the forty-four senators and the whole number to that extent." (Emphasis supplied).

Similarly, Article 3, Section 4 of the Constitution of New York, 1894, provides for 50 Senators to be elected from 50 senatorial districts:

> ". . .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 senational 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." (Emphasis supplied.)

It is quite evident by comparing the underscored portions of the respective constitutional "except" clauses that the Oklahoma version lacks the wording: ". . .of senators shall be increased. . . ." Therefore, it is not unrealistic to conclude that the inherent intent of the framers was to permit the total number of senators to be increased, though not districts, when ". . .any county shall be entitled to three or more senators."

ARGUMENT

As a preface to the ensuing argument, four pertinent facts are worthy of recapitulation. First, the framers of the Oklahoma Constitution obviously had varying views as regards the fundamental law to govern the apportionment of the Senate. But when examined in light of the propositions offered the Convention, there is a clear dichotomy between those delegates who proposed future apportionment based upon an equal number of districts and Senators, and otherwise. These perspectives are directly related to the territory represented; for whereas the delegates of Indian Territory sponsored propositions for future apportionments based upon an equal number of districts and Senators, those of Oklahoma Territory preferred flexibility in the prospective size of the Senate. Second, the origin of these perspectives can be traced to the delegates' respective experiences in constitution-making. Unlike the delegates from Oklahoma Territory who were novices in the art of drafting a fundamental law, a majority of the delegates from Indian Territory had one year earlier prepared a Constitution, the relevant portion of which called for a Senate to be comprised of a set number of districts to elect a like number of Senators. Third, the delegates to the Oklahoma Constitutional Convention had before them, at the time they adopted the present provisions, a proposition which would have apportioned the Senate among 44 Senatorial districts, each to elect one Senator. That they chose the present formula, inclusive of the proviso, is alone indicative of their intent, for all other provisions were quite similar. And fourth, should the preceding points not provide an adequate frame of reference for a logical conclusion, it is submitted that the most immediate constitutional antecedent to the "except" clause, namely, the

pertinent provision of the Constitution of New York, 1894, Article 3, Section 4, well establishes the meaning intended, and can stand on its own merits.

For these reasons it is contended that there was a deliberate effort on the part of the framers of the Oklahoma Constitution to incorporate the proviso in Article 5, Section 9 (a). This being documented, it remains to be shown why there is not an "irreconcilable incongruity" in this provision as between the number of senatorial districts and the total number of Senators, which in turn supports the contention that the Senate may properly be apportioned under existing constitutional law without requiring that its membership be limited to 44.

In fact, the "except" clause is fundamental in meeting the requirements of the Oklahoma Constitution and, it is submitted, its application will not prove a denial of the equal protection of the laws required by the Fourteenth Amendment to the United States Constitution. To make such an assertion without an adequate explanation would, of course, be to no avail. Therefore, the liberty need be taken to develop, as an example, an appropriate plan and substantiate its basis.

To establish the framework for such a proposal is not difficult, for the Oklahoma Supreme Court has well expressed the criteria to be observed.

In Jones v. Freeman, 193 Okl. 554, 146 P. 2d 564 (1944), there was announced the following principles of law:

> "Under the provisions of article 5, sec. 9 (a), the state must be divided into at least 44 senatorial districts, each of which shall elect one Senator. The Senate may consist of more than 44 members only to the extent that single counties are entitled to more than two Senators. For example, if a

> reapportionment were made at the present time, Tulsa County would be entitled to three Senators and Oklahoma County would be entitled to four Senators. The Senate would thus consist of 47 members. At least two senatorial districts should be created in each of Oklahoma and Tulsa Counties. The 75 remaining counties should be divided into 40 districts, each selecting one Senator. Upon the question of whether the two additional Senators from Oklahoma County and the one additional Senator from Tulsa County must come from separate districts or may be elected from other districts or at large by the voters of the counties, the Constitution is not clear. Either method would be permissible, so long as substantial equality prevails."

Although the above dicta is particularly relevant to the forthcoming analysis, it is well to acknowledge that the conclusion reached in Latting v. Cordell, 197 Okl. 369, 172 P. 2d 397 (1946), as follows, is to be equally respected.

> "We are of the opinion that the purpose of the exception clause was to increase the number of Senators in the more populated counties so that the larger counties could be given the number of Senators to which they were entitled without reducing the number of Senators to which the other parts of the state were entitled."

In essence, these Court opinions direct that the means toward accomplishing an apportionment for the Senate may vary within limits, as long as the end of substantial equality prevails. Population, and no other "factor," is to be employed in determining the number of Senators to which a county or district is entitled.

Accordingly, there is provided as an Appendix an example of a Senate apportionment that would be in full compliance with said criteria. Briefly, this plan conforms to the requirement that the state be divided into 44 senatorial districts, with the Senate to consist of more than 44 Senators only to the extent that counties are entitled to more than two Senators. Two senatorial districts would be created in those counties entitled to two or more Senators. To conduct the apportionment, the

population of those counties which would be entitled to three or more Senators is added (presently Oklahoma and Tulsa counties with a combined population of 785,544) and subtracted from the total population of the state (2,328,284), leaving 75 counties (combined population of 1,542,740) to be divided into 40 senatorial districts, each to elect one Senator.

Now, in order to provide reasonably equal protection of the laws, it need be observed that by dividing the remaining population of the 75 counties by the remaining number of districts (1,542,740 by 40), the product or ideal population per Senator is 38,568. Therefore, it is this figure that is the basis, or quota, for determining the number of Senators to which a county or district is entitled.

Such is the basis which underlies the results depicted in the Appendix. A single population standard is applied to all counties and the "except" clause is implemented. As a result, the Senate would be comprised of 60 Senators elected from 44 senatorial districts for the duration of the decennial period ending in 1972. But more important, the majority of the Senate would represent 46.85% of the people and, at the extreme, the population represented in one district would have a relative weight only 2.2 times that of the population represented in another.

Having attended to the development of a plan of Senate apportionment in strict compliance with the Oklahoma Constitution, as construed in the two cited opinions of the Oklahoma Supreme Court, it remains to be seen what likely objections may be raised to such a proposal, and how they may properly be countered.

Putting aside as irrelevant the fact that the Senate chambers can presently accommodate only 54 members, it can be expected that the following

portions of Article 5, Section 9 (a) would be submitted as contradictory to the method prescribed:

> ". . .the State shall be divided into forty-four districts, to be called senatorial districts, each of which shall elect one senator . . . (and)
> "Said districts shall be numbered from one to forty-four inclusive, and each of said districts shall contain as near as may be an equal number of inhabitants. . . ."

Similarly, the following part of Article 5, Section 9 (b) will likely be claimed as contrary to such a proposal:

> "No county shall ever be divided in the formation of a senatorial district except to make two or more senatorial districts wholly in such county."

In capsule form, the substance of the criticisms drawn from the above provisions are three in number: that each senatorial district must elect one Senator; that each senatorial district must contain as near as may be an equal number of inhabitants; and that more than two senatorial districts must be created in those counties entitled to elect three or more Senators.

To counter these assertions, it is necessary to return to the principles of law announced in Jones v. Freeman, supra. Therein, the Oklahoma Supreme Court clearly prescribed the method by which an apportionment of the Senate should be undertaken. Incorporating the "except" clause, the Court was quick to note that the Senate may be composed of a number of members in addition to 44. Moreover, it was of the opinion, as expressed in its own example of a proper apportionment: that each senatorial district need not necessarily elect one Senator; that each Senatorial district need not necessarily contain a near equal number of inhabitants; and that more than two senatorial districts need not

necessarily be created in the most populous counties. To be sure, it is not clear, in the Court's opinion, whether additional Senators must come from separate districts or be elected at large. Therefore, the Court rightly resolved that either method would be permissible, as long as substantial equality prevailed.

It is thus submitted that the plan exhibited in the Appendix, and explained above, provides substantial equality and is a proper exercise of all of the constitutional directives. This is not to say, however, that such a proposal, or a reasonable facsimile, is the only possible application of the pertinent provisions of the Oklahoma Constitution, as construed by the Oklahoma Supreme Court.

On the contrary, it is explicit in Jones v. Freeman, supra, that the additional Senators to which any county may be entitled may properly be elected from separate districts. Furthermore, proponents of this approach will argue that equal protection of the laws is denied where single membered districts and multiple membered districts are simultaneously used. The charge evidently made here is that an invidious discrimination evolves when a mixture of single and multiple membered districts is provided. For not only is there a clear disparity as between districts but, in addition, the inhabitants of the multiple membered districts are necessarily saddled with a long ballot which is not likewise the case in the single membered districts. As a result, the adherents to this school of thought would promote the adoption of 60 senatorial districts, from each of which one Senator is to be elected. This solution, however, runs counter to the example stressed in Jones v. Freeman, supra,

and ignores the constitutional requirement for 44 districts which immediately precedes and follows the "except" clause.

Finally, it is possible to view the alternatives from yet another perspective, as is apparently the position of the Court in Moss v. Burkhart, supra. By suggesting, at least, that each district must elect one Senator, that each district must be of near equal population, and that more than two senatorial districts must be created in the most populous counties, the Court has apparently concluded that the Senate should consist of 44 Senators to be elected from 44 senatorial districts. Is this all that ". . . is in consonance with the general principle of the Oklahoma Constitution, as construed by the Oklahoma Supreme Court in Jones v. Freeman . . ."? The answer is here alleged to be negative, for this approach not only neglects the "except" clause, but simultaneously ignores the example of a proper apportionment in the very case to which the Court has alluded. Moreover, as it would be naive to assume that the Court might not cling to the appropriateness of its guideline, it is hoped that the Court will not preclude the acceptance of other equally permissible applications of the relevant laws and judicial determinations, such as a Senate of 60 members to be elected from 44 senatorial districts.

CONCLUSION

It has been the purpose of the foregoing pages to show cause why it is believed that the contentions stated at the outset have a valid basis in fact and law. In summary:

1. The "except" clause was clearly intended to permit the composition of the Senate to exceed 44 Senators, the total thereof to be

elected from 44 senatorial districts.

2. There is no "irreconcilable incongruity" in Article 5, Section 9 (a) of the Oklahoma Constitution, for in addition to the clarifications evidenced in its constitutional antecedents, the Oklahoma Supreme Court has well reconciled the presumed ambiguity.

3. The "except" clause is of great consequence in the application of the associated provisions governing the apportionment of the Senate, and it can properly be implemented without resulting in a discrepancy between the total number of senatorial districts and the total number of Senators.

4. The Senate thus can be reapportioned on the general principle of substantial equality in consonance with the spirit of the Oklahoma Constitution and the Fourteenth Amendment without requiring that its membership be limited to 44 Senators to be elected from 44 senatorial districts.

For these reasons it is submitted that the guideline of the Court, as issued in its Decree of August 3, 1962, was unduly restrictive. Therefore, should the Court agree with these conclusions, it is hereby petitioned that the Court aware the Oklahoma Legislature of any deviation from its strict standard for the apportionment of the Senate that it would find acceptable. Further, should this plea be deemed not possible or impracticable, it is urged that the Court consider the same should it find itself forced, as of March 8, 1963, to undertake said responsibility.

Respectfully submitted,

GEORGE J. MAUER

February 8, 1963

Appendix I-1

House - 29th Session (1963)

County	Pop.	No. Rep.	Pop. per Rep.	County	Pop.	No. Rep.	Pop. per Rep.
Okfuskee	11,706	1	11,706	Custer	21,040	1	21,040
Woods	11,932	1	11,932	Washington	42,347	2	21,173
McClain	12,740	1	12,740	Noble-Pawnee	21,260	1	21,260
Beaver-Harper	12,921	1	12,921	Hask.-McIntosh	21,492	1	21,492
Adair	13,112	1	13,112	Payne	44,231	2	22,115
Love-Marshall	13,125	1	13,125	Comanche	90,803	4	22,700
Delaware	13,198	1	13,198		991,054	55	
Dewey-Major	13,859	1	13,859		(42.56%)		
Seminole	28,066	2	14,033	Blaine-Kingf.	22,712	1	22,712
Tillman	14,654	1	14,654	Beck.-R.Mills	22,872	1	22,872
Greer-Harmon	14,729	1	14,729	Tulsa	346,038	15	23,069
Kiowa	14,825	1	14,825	Oklahoma	439,506	19	23,132
Hughes	15,144	1	15,144	Cleveland	47,600	2	23,800
Choctaw	15,637	1	15,637	Bryan	24,252	1	24,252
Wagoner	16,673	1	15,673	Canadian	24,727	1	24,727
Coal-Atoka	15,898	1	15,898	Kay	51,042	2	25,521
Cotton-Jeff.	16,223	1	16,223	McCurtain	25,851	1	25,851
Alfalfa-Grant	16,585	1	16,585	Craig-Nowata	27,151	1	27,151
Latimer-Pushm.	16,826	1	16,826	Pontotoc	28,089	1	28,089
Garfield	52,975	3	17,658	Garvin	28,290	1	28,290
Cherokee	17,762	1	17,762	Ottawa	28,301	1	28,301
Sequoyah	18,001	1	18,001	Caddo	28,621	1	28,621
Washita	18,121	1	18,121	LeFlore	29,106	1	29,106
Cimarron-Texas	18,658	1	18,658	Grady	29,590	1	29,590
Logan	18,662	1	18,662	Jackson	29,736	1	29,736
Lincoln	18,783	1	18,783	Osage	32,441	1	32,441
Stephens	37,990	2	18,995	Pittsburg	34,360	1	34,360
Johnston-Murray	19,139	1	19,139	Okmulgee	36,945	1	36,945
Ellis-Woodward	19,359	1	19,359		1,337,230	54	
Carter	39,044	2	19,522		(57.44%)		
Mayes	20,073	1	20,073				
Creek	40,495	2	20,247	Total Population 2,328,284			
Rogers	20,614	1	20,614				
Muskogee	61,866	3	20,622	42.56% of the people elect 55 Reps.			
Pottawatomie	41,486	2	20,743	57.44% of the people elect 54 Reps.			

At the extreme, the population represented in Okfuskee County would have a relative weight 3.14 times that of the population represented in Okmulgee County.

Seminole and Garfield meriting one float in this session, they being among the ten counties receiving but one float which the Constitution does not specifically allocate.

Appendix I-2

House - 30th Session (1965)

County	Pop.	No. Rep.	Pop.per Rep.	County	Pop.	No. Rep.	Pop.per Rep.
Okfuskee	11,706	1	11,706	Custer	21,040	1	21,040
Woods	11,932	1	11,932	Washington	42,347	2	21,173
McClain	12,740	1	12,740	Noble-Pawnee	21,260	1	21,260
Beaver-Harper	12,921	1	12,921	Hask.-McIntosh	21,492	1	21,492
Adair	13,112	1	13,112	Payne	44,231	2	22,115
Love-Marshall	13,125	1	13,125	Comanche	90,803	4	22,700
Delaware	13,198	1	13,198	Blaine-Kingf.	22,712	1	22,712
Dewey-Major	13,859	1	13,859		993,255	55	
Pontotoc	28,089	2	14,044		(42.66%)		
Tillman	14,654	1	14,654	Beck.-R.Mills	22,872	1	22,872
Greer-Harmon	14,729	1	14,729	Tulsa	346,038	15	23,069
Kiowa	14,825	1	14,825	Oklahoma	439,506	19	23,132
Hughes	15,144	1	15,144	Cleveland	47,600	2	23,800
Choctaw	15,637	1	15,637	Bryan	24,252	1	24,252
Wagoner	15,673	1	15,673	Canadian	24,727	1	24,727
Coal-Atoka	15,898	1	15,898	Kay	51,042	2	25,521
Osage	32,441	2	16,220	McCurtain	25,851	1	25,851
Cotton-Jeff.	16,223	1	16,223	Garfield	52,975	2	26,478
Alfalfa-Grant	16,585	1	16,585	Craig-Nowata	27,151	1	27,151
Latimer-Pushm.	16,826	1	16,826	Seminole	28,066	1	28,066
Cherokee	17,762	1	17,762	Garvin	28,290	1	28,290
Sequoyah	18,001	1	18,001	Ottawa	28,301	1	28,301
Washita	18,121	1	18,121	Caddo	28,621	1	28,621
Cimarron-Texas	18,658	1	18,658	LeFlore	29,106	1	29,106
Logan	18,662	1	18,662	Grady	29,590	1	29,590
Lincoln	18,783	1	18,783	Jackson	29,736	1	29,736
Stephens	37,990	2	18,995	Pittsburg	34,360	1	34,360
Johnston-Murray	19,139	1	19,139	Okmulgee	36,945	1	36,945
Ellis-Woodward	19,359	1	19,359		1,335,029	54	
Carter	39,044	2	19,522		(57.34%)		
Mayes	20,073	1	20,073				
Creek	40,495	2	20,247	Total Population 2,328,284			
Rogers	20,614	1	20,614				
Muskogee	61,866	3	20,622	42.66% of the people elect 55 Reps.			
Pottawatomie	41,486	2	20,743	57.34% of the people elect 54 Reps.			

At the extreme, the population represented in Okfuskee County would have a relative weight 3.14 times that of the population represented in Okmulgee County.

Pontotoc and Osage meriting one float in this Session, they being among the ten counties receiving but one float which the constitution does not specifically allocate.

Appendix I-3

House - 31st Session (1967)

County	Pop.	No. Rep.	Pop.per Rep.	County	Pop.	No. Rep.	Pop.per Rep.
Okfuskee	11,706	1	11,706	Custer	21,040	1	21,040
Woods	11,932	1	11,932	Washington	42,347	2	21,173
McClain	12,740	1	12,740	Noble-Pawnee	21,260	1	21,260
Beaver-Harper	12,921	1	12,921	Hask.-McIntosh	21,492	1	21,492
Adair	13,112	1	13,112	Payne	44,231	2	22,115
Love-Marshall	13,125	1	13,125	Comanche	90,803	4	22,700
Delaware	13,198	1	13,198	Blaine-Kingf.	22,712	1	22,712
Dewey-Major	13,859	1	13,859		1,004,030	55	
Tillman	14,654	1	14,654		(43.12%)		
Greer-Harmon	14,729	1	14,729	Beck.-R.Mills	22,872	1	22,872
Kiowa	14,825	1	14,825	Tulsa	346,038	15	23,069
Hughes	15,144	1	15,144	Oklahoma	439,506	19	23,132
Choctaw	15,637	1	15,637	Cleveland	47,600	2	23,800
Wagoner	15,673	1	15,673	Bryan	24,252	1	24,252
Coal-Atoka	15,898	1	15,898	Canadian	24,727	1	24,727
Cotton-Jeff.	16,223	1	16,223	Kay	51,042	2	25,521
Alfalfa-Grant	16,585	1	16,585	McCurtain	25,851	1	25,851
Latimer-Pushm.	16,826	1	16,826	Garfield	52,975	2	26,478
Pittsburg	34,360	2	17,180	Craig-Nowata	27,151	1	27,151
Cherokee	17,762	1	17,762	Seminole	28,066	1	28,066
Sequoyah	18,001	1	18,001	Pontotoc	28,089	1	28,089
Washita	18,121	1	18,121	Garvin	28,290	1	28,290
Okmulgee	36,945	2	18,472	Ottawa	28,301	1	28,301
Cimarron-Texas	18,658	1	18,658	Caddo	28,621	1	28,621
Logan	18,662	1	18,662	LeFlore	29,106	1	29,106
Lincoln	18,783	1	18,783	Grady	29,590	1	29,590
Stephens	37,990	2	18,995	Jackson	29,736	1	29,736
Johnston-Murray	19,139	1	19,139	Osage	32,441	1	32,441
Ellis-Woodward	19,359	1	19,359		1,324,254	54	
Carter	39,044	2	19,522		(56.88%)		
Mayes	20,073	1	20,073				
Creek	40,495	2	20,247	Total Population 2,328,284			
Rogers	20,614	1	20,614				
Muskogee	61,866	3	20,622	43.12% of the people elect 55 Reps.			
Pottawatomie	41,486	2	20,743	56.88% of the people elect 54 Reps.			

At the extreme, the population represented in Okfuskee County would have a relative weight 2.77 times that of the population represented in Osage County.

Of the ten counties meriting but one float, none are included in this session.

Appendix I-4

House - 32nd Session (1969)

County	Pop.	No. Rep.	Pop.per Rep.	County	Pop.	No. Rep.	Pop.per Rep.
Okfuskee	11,706	1	11,706	Noble-Pawnee	21,260	1	21,260
Woods	11,932	1	11,932	Hask.-McIntosh	21,492	1	21,492
McClain	12,740	1	12,740	Payne	44,231	2	22,115
Beaver-Harper	12,921	1	12,921	Comanche	90,803	4	22,700
Adair	13,112	1	13,112	Blaine-Kingf.	22,712	1	22,712
Love-Marshall	13,125	1	13,125	Beck.-Rog.Mills	22,872	1	22,872
Delaware	13,198	1	13,198	Tulsa (3)	346,038*	15*	23,069
Dewey-Major	13,859	1	13,859		974,605	54	
Ottawa	28,301	2	14,150		(41.86%)		
Tillman	14,654	1	14,654	Tulsa (12)	346,038*	15*	23,069
Greer-Harmon	14,729	1	14,729	Oklahoma	439,506	19	23,132
Grady	29,590	2	14,795	Cleveland	47,600	2	23,800
Kiowa	14,825	1	14,825	Bryan	24,252	1	24,252
Hughes	15,144	1	15,144	Canadian	24,727	1	24,727
Choctaw	15,637	1	15,637	Kay	51,042	2	25,521
Wagoner	15,673	1	15,673	McCurtain	25,851	1	25,851
Coal-Atoka	15,898	1	15,898	Garfield	52,975	2	26,478
Cotton-Jeff.	16,223	1	16,223	Craig-Nowata	27,151	1	27,151
Alfalfa-Grant	16,585	1	16,585	Seminole	28,066	1	28,066
Latimer-Push.	16,826	1	16,826	Pontotoc	28,089	1	28,089
Pittsburg	34,360	2	17,180	Garvin	28,290	1	28,290
Cherokee	17,762	1	17,762	Caddo	28,621	1	28,621
Sequoyah	18,001	1	18,001	LeFlore	29,106	1	29,106
Washita	18,121	1	18,121	Jackson	29,736	1	29,736
Okmulgee	36,945	2	18,472	Muskogee	61,866	2	30,933
Cimarron-Texas	18,658	1	18,658	Osage	32,441	1	32,441
Logan	18,662	1	18,662	Stephens	37,990	1	37,990
Lincoln	18,783	1	18,783	Carter	39,044	1	39,044
Johnston-Murray	19,139	1	19,139	Creek	40,495	1	40,495
Ellis-Woodward	19,359	1	19,359		1,353,679	53	
Mayes	20,073	1	20,073		(58.14%)		
Rogers	20,614	1	20,614				
Pottawatomie	41,486	2	20,743	Total Population 2,328,284			
Custer	21,040	1	21,040	41.86% of the people elect 54 Reps.			
Washington	42,347	2	21,173	58.14% of the people elect 53 Reps.			

*As Tulsa County's population overlaps the percentage which would elect part of the majority and minority of the total House membership, it has been divided in order to show the precise effect of the model.

At the extreme, the population represented in Okfuskee County would have a relative weight 3.46 times that of the population represented in Creek County.

Ottawa and Grady meriting one float in this Session, they being among the ten counties receiving but one float which the constitution does not specifically allocate.

Appendix I-5

House - 33rd Session (1971)

County	Pop.	No. Rep.	Pop. per Rep.	County	Pop.	No. Rep.	Pop. per Rep.
Okfuskee	11,706	1	11,706	Haskell-McInt.	21,492	1	21,492
Woods	11,932	1	11,932	Payne	44,231	2	22,115
McClain	12,740	1	12,740	Comanche	90,803	4	22,700
Beaver-Harper	12,921	1	12,921	Blaine-Kingf.	22,712	1	22,712
Adair	13,112	1	13,112	Beck.-R.Mills	22,872	1	22,872
Love-Marshall	13,125	1	13,125	Tulsa (3)	346,038*	15*	23,069
Delaware	13,198	1	13,198		961,162	54	
Dewey-Major	13,859	1	13,859		(41.28%)		
Garvin	28,290	2	14,145	Tulsa (12)	346,038*	15*	23,069
Caddo	28,621	2	14,310	Oklahoma	439,506	19	23,132
LeFlore	29,106	2	14,553	Cleveland	47,600	2	23,800
Tillman	14,654	1	14,654	Bryan	24,252	1	24,252
Greer-Harmon	14,729	1	14,729	Canadian	24,727	1	24,727
Kiowa	14,825	1	14,825	Kay	51,042	2	25,521
Jackson	29,736	2	14,868	McCurtain	25,851	1	25,851
Hughes	15,144	1	15,144	Garfield	52,975	2	26,478
Choctaw	15,637	1	15,637	Craig-Nowata	27,151	1	27,151
Wagoner	15,673	1	15,673	Seminole	28,066	1	28,066
Coal-Atoka	15,898	1	15,898	Pontotoc	28,089	1	28,089
Cotton-Jeff.	16,223	1	16,223	Ottawa	28,301	1	28,301
Alfalfa-Grant	16,585	1	16,585	Grady	29,590	1	29,590
Latimer-Pushm.	16,826	1	16,826	Muskogee	61,866	2	30,933
Cherokee	17,762	1	17,762	Osage	32,441	1	32,441
Sequoyah	18,001	1	18,001	Pittsburg	34,360	1	34,360
Washita	18,121	1	18,121	Okmulgee	36,945	1	36,945
Cimarron-Texas	18,658	1	18,658	Stephens	37,990	1	37,990
Logan	18,662	1	18,662	Carter	39,044	1	39,044
Lincoln	18,783	1	18,783	Creek	40,495	1	40,495
Johnston-Murray	19,139	1	19,139		1,367,122	53	
Ellis-Woodward	19,359	1	19,359		(58.72%)		
Mayes	20,073	1	20,073				
Rogers	20,614	1	20,614				
Pottawatomie	41,486	2	20,743				
Custer	21,040	1	21,040				
Washington	42,347	2	21,173				
Noble-Pawnee	21,260	1	21,260				

Total Population 2,328,284

41.28% of the people elect 54 Reps.
58.72% of the people elect 53 Reps.

*As Tulsa County's population overlaps the percentage which would elect part of the majority and minority of the total House membership, it has been divided in order to show the precise effect of the model.

At the extreme, the population represented in Okfuskee County would have a relative weight 3.46 times that of the population represented in Creek County.

Caddo, LeFlore, Garvin, and Jackson each meriting one float in this session, they being among the ten counties receiving but one float which the constitution does not specifically allocate.