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## LEGISLATIVE REAPPORTIONMENT IN MICHIGAN

*There is no higher privilege granted to the citizen of a free country than the right of equal suffrage, and thereby to an equal representation in the making and administration of the laws of the land.*

*Giddings v. Secretary of State  
Michigan Supreme Court, June, 1892  
93 Mich. 1, p. 12-13*

Legislative apportionment--the process of dividing the state into districts for the election of state senators, state representatives, and U.S. congressional representatives--will be required with the completion of the 1980 decennial census. Since portions of the state constitution pertaining to the apportionment of the state legislature were declared unconstitutional by the U.S. Supreme Court in 1964, there are no clearly identifiable standards or guidelines to be followed in the reapportionment process. In addition, the constitution places the reapportionment responsibility in an eight-member apportionment commission, which in two previous attempts failed to adopt a plan and the state supreme court was forced to assume this responsibility.

There are no constitutional or statutory provisions in Michigan for reapportioning U.S. congressional districts. While this is normally the responsibility of the state legislature, in 1972 the federal district court ordered the current plan into effect. The reapportionment of congressional districts is of major importance at this time since Michigan is expected to lose one of its 19 congressional seats after the 1980 census which is expected to show a slower population growth in Michigan relative to other states.

Any attempt to design a workable apportionment process in Michigan will need to address both the issue of who should be responsible for reapportionment and what standards should apply to the reapportionment process. A constitutional amendment would have to be put before the voters by the November 1980 general election if it is to affect this decade's reapportionment process.

### Present Apportionment Provisions

The constitution of 1963 provides for a 38-member senate elected from single-member districts which were to be apportioned on the basis of population and area, with population receiving an 80 percent weight and area receiving a 20 percent weight. The house of representatives consists of 110 members elected from single-member districts which were to be apportioned on a modified population basis, with any county, or group of counties, entitled to a representative if its population were equal to seven-tenths of one percent of the state's population. The constitution provides that legislative districts are to follow county, city, and township boundaries where possible and to be compact, contiguous, and as uniform or square in shape as possible.

These provisions have never been fully implemented, however, because the provisions basing representation on a combination of population and area conflict with the "equal protection" provision of the United States Constitution under the U.S. Supreme Court "one person-one vote" ruling in 1964 (Reynolds v. Sims and companion cases). In those cases, the Court ruled that legislative districts must be apportioned as nearly as is feasible on a population basis, but it has not provided clear-cut guidelines as to the permissible amount of deviation from exact mathematical equality of population that is permissible or as to the effect of state constitutional requirements regarding the boundaries of districts (for example, compact; contiguous; follow county, city, township lines).

The Michigan constitution of 1963 provides that reapportioning the legislature is the responsibility of an eight-member bipartisan apportionment commission. Should the commission fail to adopt a reapportionment plan (as was the case in both 1964 and 1972), the state supreme court is to choose a plan from among those submitted by commission members which most nearly complies with constitutional requirements.

### Standards

Exact mathematical equality in the population of legislative districts is not a workable constitutional standard as a result of limitations imposed by the availability of population data and by geographical realities. As a result, any new apportionment provision might specify that districts be "as nearly equal in population as may be practicable" and establish specific standards or measures as to the permissible deviations from exact population equality. Various measures are currently being used by the courts to calculate deviations from equality of population between legislative districts. The courts have not laid down precise standards of permissible deviations and there have been relatively large variations among the various decisions (e.g., a 16.4 percent deviation between the most and the least populous district in Virginia was accepted in a recent (1973) United States Supreme Court decision).

While the present Michigan constitution calls for districts which are compact, contiguous, and follow local boundary lines to the extent possible, it does not spell out specific standards according to which these provisions might be enforced.

Compact. Compactness requirements are usually interpreted to mean that districts are to be as square as practicable. There are currently several standards which attempt to give meaning to the compactness requirement. The ultimate objective is to minimize the differences between the length and width of each district within the state.

Contiguous. Requirements for contiguity are relatively straightforward. Simply stated, a contiguous district is one in which a person can travel from any point in the district to any other point in the same district without leaving the district.

Local Boundaries. Standards are often developed to require that district perimeters respect local governmental boundary lines to the extent possible. Provisions normally require that each local unit be apportioned so that it has the largest possible number of complete districts within its boundaries before any part is joined to territory outside the boundaries of the local unit to form a district.

Since population and boundary standards may at times be mutually contradictory, it is important that standards be clearly defined and their order of importance identified.

## Process

The responsibility for drawing an apportionment plan can be assigned to the legislature, the executive, the judiciary, or an apportionment commission. The constitution of 1963 provides for an eight-member apportionment commission. Four members are selected by each of the two major political parties and the members represent four major geographical regions in the state. The apportionment commission was deadlocked in both 1964 and 1972 and, pursuant to the constitution, the Michigan supreme court selected an apportionment plan from among the plans submitted by the commission members.

Historically, apportionment has been a legislative function and currently 39 states provide for apportionment by the legislature. In two states the governor is responsible for apportionment, and nine states have apportionment commissions. Despite these provisions, the apportionment plans currently in effect in 15 states were designed or selected by the courts.

It is of interest to note that of the eight states with an apportionment commission in effect following the 1970 decennial census, the commission in Michigan was the only one which failed to adopt an apportionment plan. The reason for the success in other states is that commissions consist of an odd number of members, thereby eliminating a tie vote, or in the case of an even number, a constitutional provision to appoint an additional member in the case of a deadlock. In 1974, Colorado became the ninth state to provide for an apportionment commission.

## The Present Proposal

There is currently only one proposal (Senate Joint Resolution P and identical House Joint Resolution Y) pending before the state legislature to amend the apportionment provisions of the state constitution. The proposed amendment provides for the following:

- Sets specific population deviation standards for each type of legislative district.
- Requires that districts be formed from contiguous territory and sets specific limits on the number of local political boundaries that may be crossed.
- Allows any citizen to develop a reapportionment plan and submit it to the secretary of state.
- Requires the secretary of state to compute a compactness ratio for each legislative district based on a rather complex compactness formula.
- Places the responsibility with secretary of state to select an apportionment plan which best meets the standards set forth in the amendment.
- Requires the use of "interlocking" districts whereby two state senate districts are drawn directly from each congressional district and three house districts are drawn directly from each senate district.

Under this proposal, if Michigan is allocated 18 congressional seats following the 1980 census, the current 38 state senate seats would be reduced to 36 seats, while the house would be reduced from 110 to 108 seats.

### Conclusion

Only a few counties in Michigan are expected to experience an absolute decline in the number of inhabitants in 1980 as compared to 1970. It is estimated that the Wayne County population will decline by 275,000 to 300,000 persons, most occurring in the city of Detroit. This decline, combined with varying rates of increase in population in the remainder of the state, substantially alters the relative distribution of the population throughout the state and will result in significant changes in legislative districts for the 1982 election.

Any change in the apportionment provisions of the state constitution must be approved by the voters. An amendment can be placed on the ballot by either a joint resolution of the legislature (requires 2/3 approval of both houses) or an initiative petition. Petitions must be submitted to the secretary of state 120 days before the general election, in this case, by July 7, 1980, if the question is to appear on the November 4, 1980, ballot. There are currently no petitions in circulation to amend the apportionment provisions of the constitution. Action by the state legislature would be required by September 5, 1980, 60 days before the general election. Without timely action, it appears that the responsibility of reapportioning the state for the decade of the 1980s will, once again, be consigned to the state supreme court by default.

Legislative districting is a fundamental issue in representative government. The Michigan constitutional provisions regarding standards for districting are in violation of the federal constitution and the apportionment commission provided for in the constitution failed in both 1964 and 1972 to agree on a districting plan, thereby leaving the courts the problem of apportioning the state. In view of inadequacies in Michigan's basic law, an amendment to the state constitution would be required to provide for workable, constitutionally valid redistricting standards and process.

*Equal representation is so fundamental a principle in a true republic that no prejudices can justify its violation because the prejudices themselves cannot be justified.*

*Thomas Jefferson*