



WYOMING LEGISLATIVE SERVICE OFFICE

Memorandum

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TO Subcommittee on Legislative Apportionment

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SUBJECT Legal Research: Constitutional Apportionment of Legislators

Wyoming Session Law, Chapter 156, Constitutional Apportionment of Legislators (hereinafter referred to as “the Act”), requires that the Management Council of the Wyoming Legislature “assign a committee of the Legislature to study apportionment of the Legislature as provided by this act during the 2025 interim.”¹ The Act further provides that the assigned committee shall hold meetings in Wyoming to take input on apportionment options and report its findings to the Management Council by December 1, 2025. Via email ballot on April 25, 2025, the Management Council approved funding for the Joint Corporations, Elections, and Political Subdivisions Interim Committee to study the Act and report back. As a result of the preceding, this Subcommittee was formed by the Chairmen of the Joint Committee.

The Act generally provides, through legislative findings, that the Wyoming Legislature make a good faith effort to develop and adopt into law a legislative district plan that: 1) meets the substantially similar population requirements the federal courts have found are required by the Equal Protection Clause of the Fourteenth Amendment to the Wyoming Constitution; and 2) follows county lines and provides each county in Wyoming with a senator and a representative pursuant to the requirements of Article 3, Section 3 of the Wyoming Constitution.

This memorandum is intended to serve as a primer on the legal questions surrounding the Subcommittee's task and the history of how these two constitutional provisions (one federal, one state) have been interpreted and applied in Wyoming throughout statehood.

The analysis below is provided by the Legislative Service Office and is not binding on any individual legislator or committee, either house, the entire legislature or any court.

Wyoming's Historical Redistricting Approach

The Wyoming Constitution is subject to the requirements of the United States Constitution. If a provision of the Wyoming Constitution is found to violate the United States Constitution by a court

¹ 2025 Wyo. Sess. Laws, Ch. 156, Sec. 3 (originally 2025 SF 174, Section 3).

of competent jurisdiction, the Wyoming provision is invalid.² The federal courts and ultimately the United States Supreme Court is the final arbiter of whether a state law violates the United States Constitution. Until the 1960s, Wyoming's redistricting plans required each county constitute at least one senate and one house district. Article 3, Section 3 of the Wyoming Constitution provides, among other things, that "[e]ach county shall constitute a senatorial and representative district[.]" However, Article 3, Section 3 can no longer be read in isolation. After the 1960 census, a federal district court invalidated a portion of Wyoming's 1963 redistricting plan, finding it created severe population disparities, specifically, counties representing 65 percent of the population had only eight senators, while those counties representing 8 percent of the population had six senators.³

The court deemed strict adherence to Article 3, Section 3 "wholly unreasonable, untenable and impractical" as it would result in "a legislature substantially in excess of 300 members."⁴ Concluding the 1963 plan constituted "invidious discrimination," the court ruled it violated the Fourteenth Amendment's Equal Protection Clause.⁵ After this decision, redistricting plans in Wyoming continued to mandate each county be its own House district, and the 1981 plan survived a direct challenge in the United States Supreme Court.⁶

Shift from County-Based Districting

The redistricting landscape shifted again after a federal district court found Wyoming's 1991 Legislative Reapportionment Act unconstitutional under the Equal Protection Clause due to population deviations of 83 percent in the House and 58 percent in the Senate, without sufficient justification.⁷ The court directed the Legislature to disregard the Article 3, Section 3 requirement for county-based districting and set a deadline to enact a plan complying with federal law, warning otherwise, the court itself would reapportion the state legislative districts.⁸

In 1992, the Legislature responded by passing a new redistricting plan that no longer strictly followed county boundaries and maintained population deviations below 10 percent.⁹ A federal district court later confirmed it satisfied constitutional requirements of substantial equality among

² Wyo. Const. Art. 1, Sec. 37 and Art. 21, Sec. 24 both provide, "The State of Wyoming is an inseparable part of the federal union, and the constitution of the United States is the supreme law of the land."

³ *Schaefer v. Thomson*, 240 F. Supp. 247 (D. Wyo. 1964).

⁴ *Id.* at 252.

⁵ *Id.* at 253.

⁶ *Brown v. Thomson*, 462 U.S. 835 (1983).

⁷ *Gorin v. Karpan*, 775 F. Supp 1430, 1445 (D. Wyo. 1991).

⁸ *Id.* at 1445–46. "Wyoming Const. art. III, § 3, which constitutes each county an election district and requires that each county be represented by at least one representative, is inconsistent with the application of the "one person, one vote" principle under circumstances as they presently exist in Wyoming. Consequently, the Wyoming State Legislature may disregard this provision when reapportioning either the Senate or the House of Representatives."

⁹ 1992 Wyo. Sess. Laws, Ch 1.

districts.¹⁰ The 2002 Redistricting Act retained this structure—nested House and Senate districts with deviations under 10 percent—and went unchallenged.¹¹

Similarly, the 2012 Redistricting Act followed the same approach but was challenged in state court for failing to minimize county splitting in violation of Article 3, Section 3 and equal protection principles.¹² In a 2015 opinion, however, the court rejected the claim, noting that no provision of the Wyoming Constitution required minimizing county splits, especially given the "one person, one vote" mandate. The court also ruled the plaintiffs presented no evidence that county-based districts conferred different electoral rights compared to those drawn without strict county lines.¹³

Current Legislative Districts

The current legislative districts do not adhere to the requirements of Article 3, Section 3, which mandates each county shall constitute a house and senate district. This deviation stems from the United States Supreme Court's interpretation of the Equal Protection Clause of the Fourteenth Amendment. For the past 60 years, the Supreme Court has consistently upheld the principle of "one person, one vote" as a cornerstone of implementing legislative districts. This phrase reflects the principle that United States Constitution imposes full protections on state actions impacting voting and legislative redistricting through the Equal Protection Clause of the Fourteenth Amendment.¹⁴ The concept of "one person, one vote" has been described by the United States Supreme Court as meaning that "as nearly as is practicable one man's vote in a congressional election is to be worth as much as another's."¹⁵

In furtherance of this principle, the United States Supreme Court held when drawing state legislative boundaries "the overriding objective must be substantial equality of population among the various districts, so that the vote of any citizen is approximately equal in weight to that of any other citizen in the State."¹⁶ The Court has expounded on that standard over the years. In *Evenwel v. Abbott*, decided in 2016, the Supreme Court set out a succinct formulation on state legislative district deviation and the one-person, one-vote principle:

[W]hen drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political

¹⁰ *Gorin v. Karpan*, 788 F. Supp. 1199, 1201 (D. Wyo. 1992).

¹¹ See 2002 Wyo. Spec. Sess. Laws, Ch 1.

¹² *Hunzie v. Maxfield*, No. 179-562 (Wyo. Dist. Ct., Laramie Cnty., Nov. 30, 2015); 2012 Wyo. Sess. Laws, Ch. 8.

¹³ *Hunzie*, No. 179-562, at 12.

¹⁴ Section 1 of the Fourteenth Amendment to the United States Constitution provides:

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; 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.

¹⁵ *Wesberry v. Sanders*, 376 U.S. 1, 7-8 (1964).

¹⁶ *Reynolds v. Sims*, 377 U.S. 533, 579 (1964).

subdivisions, maintaining communities of interest, and creating geographic compactness. *Where the maximum population deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. Maximum deviations above 10% are presumptively impermissible.*¹⁷

The current was adopted by the Legislature in the 2022 session.¹⁸ This redistricting plan is codified at Wyoming Statute 28-2-116 through 28-2-119. The plan provides for 62 house districts, and 31 senate districts which are based on substantially similar populations, but also to recognize county boundaries, communities of interest, common economic interests and historical representative practices in Wyoming.¹⁹ The plan provides for all 62 house members to stand for election every two years and for senators to serve for four-year terms, pursuant to Article 3, Section 2 of the Wyoming Constitution.

Compliance with the Article 3, Section 3 of the Wyoming Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution

Wyoming could, in theory, implement a redistricting plan that complies with both the requirements of Article 3, Section 3 of the Wyoming Constitution and the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution. If the smallest county—Niobrara with 2,467 residents at the 2020 census—was apportioned one senator, and each Senate district represented no more than 10 percent over 2,467 residents, the Wyoming Senate would need at least 213 members to meet the proportional requirements. The Wyoming House would then need at least 426 members.²⁰ In *Gorin v. Karpan*, decided in 1991, the United States District Court for the District of Wyoming recognized that such an outcome would not provide for a functioning legislative system and directed the legislature to disregard the provisions of Article 3, Section 3 in future reapportionments.²¹

Weighted or Fractional Voting

In the redistricting cases discussed above, the United States District Court for the District of Wyoming acknowledged the challenges of maintaining county-based legislative districts in states with relatively few counties and significant population variances—such as Wyoming—without creating disproportionately large legislatures. One proposed alternative is the adoption of a weighted or fractional voting system to preserve county-based apportionment. Although courts have upheld forms of weighted voting for local governmental bodies and for temporary reapportionment, no state legislature currently employs such a system.²²

In the 1960s and early 1970s, federal courts rejected weighted voting systems for state legislatures.

¹⁷ 136 S. Ct. 1120, 1124 (2016) (citations omitted and emphasis added).

¹⁸ 2022 Wyo. Sess. Laws, Ch. 112.

¹⁹ See W.S. 28-2-116(e)(i).

²⁰ Article 3, Section 3 of the Wyoming Constitution also requires the House of Representatives to have at least twice the number of members as the Senate.

²¹ *Gorin v. Karpan*, 775 F. Supp. at 1445.

²² See generally, *Revisiting Weighted Voting*, 72 Buffalo Law Review 1.

Federal courts in New York,²³ Hawaii,²⁴ Nebraska,²⁵ and Louisiana²⁶ found such systems violated equal protection principles by creating unequal representation of constituents in non-voting legislative activities. The cited activities include serving on and chairing legislative committees, participation in party caucuses, debating on the floor of the legislature, having influence with and upon fellow legislators, discussing measures with executive agencies, etc.

In New Mexico,²⁷ New Jersey,²⁸ and Oklahoma,²⁹ courts determined that weighted voting would violate state constitutional provisions implicitly requiring each legislator to cast a single, equal vote. There are similar constitutional requirements in the Wyoming Constitution. For example, Article 3, Section 25 provides that, "[n]o bill shall become a law except by a vote of a majority of all the members elected to each house, nor unless on its final passage the vote taken by ayes and noes, and the names of those voting be entered on the journal."

However, some courts have upheld weighted voting in local governments. For example, the Delaware County Supervisors weighted voting system allocating votes by town population was upheld by the United States Court of Appeals for the Second Circuit, stating this method of local governance "preserves not only traditional boundaries and local allegiances, but assures that no voter is effectively disenfranchised."³⁰

Apportionment in the United States Congress

Questions sometimes arise about why the allocation of two United States Senators to each state complies with the requirements of the United States Constitution while basing state legislative districts solely on county boundaries is deemed unconstitutional. This disparity arises because the

²³ *WMCA, Inc. v. Lomenzo*, 238 F. Supp. 916, 927 (S.D.N.Y. 1965) (proposed apportionment plans in New York granting assemblymen fractional votes would result in disparity of representation in the non-voting aspect of the state assembly).

²⁴ *Burns v. Gill*, 316 F. Supp. 1285, 1301 (D. Haw. 1970) (Hawaii legislature's plan apportioning representation by island utilizing weighed voting struck down).

²⁵ *League of Neb. Municipalities v. Marsh*, 209 F. Supp. 189, 195 (D. Neb. 1962) (declining to mandate a weighted legislative voting plan finding it gives rise to unlimited speculation as to committee appointments, the allotment of time in debate and the effect of the voices to be heard).

²⁶ *Bannister v. Davis*, 263 F. Supp. 202, 209 (E.D. La. 1966) (disapproving fractional and weighted voting systems as overlooking legislators' personal influence, committee service, and constituent access).

²⁷ See *Revisiting Weighted Voting*, supra, at 19-25 for discussion of unreported 1963 case, *Cargo v. Campbell* (weighted voting implicitly barred by state constitutional provisions requiring a majority of "members" to approve amendments and other measures).

²⁸ *Jackman v. Bodine*, 43 N.J. 491, 492-93 (1964) (senate resolution providing for weighted voting by rule invalid under U.S. and New Jersey state constitution).

²⁹ *Brown v. State Election Bd. of Okla.*, 1962 OK 36, ¶ 33 (weighed or fractional voting incompatible with provisions of the Oklahoma Constitution prescribing voting requirements for the state legislature).

³⁰ *Roxbury Taxpayers All. v. Del. Cty. Bd. of Supervisors*, 80 F.3d 42, 49 (2d Cir. 1996); see also *Franklin v. Krause*, 32 N.Y.2d 234, 236 (1973), appeal dismissed, 415 U.S. 904 (1974) (weighted voting plan for the Nassau County Board of Supervisors constitutional as it balanced local representation and preserved traditional government units).

Seventeenth Amendment to the United States Constitution specifically authorizes the U.S. Senate's equal apportionment for each state.³¹

The “Great Compromise” or “Connecticut Plan” at the Constitutional Convention was a recognition of the sovereign authority of each state and the rights for those sovereigns to have equal suffrage in the upper chamber.³² However, a distinction lies in the fact that a county is not a sovereign government like a state.³³ A county is a political subdivision of a state that only has the duties and authorities granted by the state.³⁴

For the past 60 years, courts have consistently held that whenever a state constitution requires apportionment by county in a way that undermines substantially equal population, “one person, one vote” prevails:

We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would . . . run counter to our fundamental ideas of democratic government [.]³⁵

Conclusion

In summary, the Equal Protection Clause of the Fourteenth Amendment mandates that seats in both chambers of a state legislature be allocated based on population, ensuring that each vote holds substantially equal weight. Strict adherence to the Wyoming Constitution’s mandate would necessitate a legislature with over 700 hundreds of members—an outcome deemed “wholly unreasonable” by federal courts. Alternative systems, such as weighted or fractional voting, may be theoretically plausible to maintain county boundaries and address disparities in representation,

³¹ The Seventeenth Amendments to the United States Constitution provides in relevant part:
The Senate of the United States shall be composed of two Senators from each State, elected by the people thereof, for six years; and each Senator shall have one vote.
The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures.

³² See U.S. Senate, Equal State Representation, available at:
<https://www.senate.gov/about/origins-foundations/senate-and-constitution/equal-state-representation.htm>.

³³ “Accordingly, counties have no sovereignty independent from that of the state, and the only power available to them is the power that has been delegated to them by the state.” *Bd. of Trs. of Laramie Cty. v. Bd. of Cty. Comm’rs of Laramie Cty.*, 2020 WY 41, ¶ 12, 460 P.3d 251, 256 (quoting *Seherr-Thoss v. Teton Cty. Bd. of Cty. Comm’rs*, 2014 WY 82, ¶ 24, 329 P.3d 936, 946 (Wyo. 2014)); “As an arm of the state, the county has only those powers expressly granted by the constitution or statutory law or reasonably implied from powers granted.” *Id.* (quoting *Ford v. Bd. of Cty. Comm’rs of Converse Cty.*, 924 P.2d 91, 95 (Wyo. 1996)).

³⁴ “[C]ounties, cities, and towns ‘are but subdivisions of the State, deriving even their existence from the legislature.’” *Id.* (quoting *Carter v. Bd. of Cty. Comm’rs of Laramie Cty.*, 518 P.2d 142, 144 (Wyo. 1974)).

³⁵ *Reynolds v. Sims*, 377 U.S. 533, 563-64, 84 S. Ct. 1362, 1382 (1964).

but federal and state courts have rejected their application to state legislatures due to conflicts with equal protection principles and state constitutional provisions.

Potentially, Wyoming could adopt constitutional amendments similar to Idaho and Colorado which require that during the redistricting process, counties and other political subdivisions are kept as whole as possible.³⁶ While such an approach would not likely provide for each county to be represented by its own senator or representative, counties would be kept as intact as possible during the redistricting process while the Legislature still adheres to the requirements of the United States Constitution.

A final option is to call for an Article V Convention of the States to amend the United States Constitution to allow states to redistrict based on counties or other “communities of interest” principles and not have hard and fast population equity requirements.³⁷ Admittedly, such an approach is unlikely to yield results any time soon, if ever.

³⁶ Colo. Const. Art. V, Section 47(2) provides in part:

(2) Except when necessary to meet the equal population requirements of section 46, no part of one county shall be added to all or part of another county in forming districts.

Article III, section 5, of the Constitution of the State of Idaho provides in part:

A senatorial or representative district, when more than one county shall constitute the same, shall be composed of contiguous counties, and a county may be divided in creating districts only to the extent it is reasonably determined by statute that counties must be divided to create senatorial and representative districts which comply with the constitution of the United States.

³⁷ Article V of the United States Constitution provides:

The Congress, whenever two thirds of both houses shall deem it necessary, shall propose amendments to this Constitution, or, on the application of the legislatures of two thirds of the several states, shall call a convention for proposing amendments, which, in either case, shall be valid to all intents and purposes, as part of this Constitution, when ratified by the legislatures of three fourths of the several states, or by conventions in three fourths thereof, as the one or the other mode of ratification may be proposed by the Congress; provided that no amendment which may be made prior to the year one thousand eight hundred and eight shall in any manner affect the first and fourth clauses in the ninth section of the first article; and that no state, without its consent, shall be deprived of its equal suffrage in the Senate.