New York County Clerk's Index No. 102185/12

COURT OF APPEALS

OF THE

STATE OF NEW YORK

DANIEL MARKS COHEN, ET AL.,

Petitioners-Appellants,

– against –

GOVERNOR ANDREW M. CUOMO, ET AL.,

Respondents-Respondents.

BRIEF OF COMMON CAUSE NEW YORK AS AMICUS CURIAE IN SUPPORT OF PETITIONERS-APPELLANTS

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I. STATEMENT OF INTEREST OF AMICUS CURIAE

This case presents the question whether Chapter 16 of the Laws of 2012 ("Chapter 16"), which increases the size of the New York Senate from 62 to 63 seats by applying different counting methodologies to different counties in New York under the guise of applying Article III, Section 4 of the New York State Constitution ("Section 4"), resulting in the failure to take into account adequately and equally the population growth realized in the 2010 census in determining the appropriate size of the New York State Senate, violates the New York Constitution.

Amicus curiae has a substantial interest in this case and unique expertise with respect to issues of redistricting at issue on this appeal. Common Cause is a nonpartisan nonprofit advocacy organization founded in 1970 by John Gardner as a vehicle for citizens to make their voices heard in the political process and to hold their elected leaders accountable to the public interest. Common Cause is actively engaged in working to support fair, non-partisan redistricting throughout the country.

Common Cause/New York is the New York Chapter of Common Cause, and has been extensively involved in public education and advocacy regarding the redistricting process. Common Cause/NY submitted testimony regarding the demographic changes which should influence the redistricting process for each

region to the legislative task force charged with drawing the new districts, LATFOR, and testified at numerous hearings in both rounds of public hearings throughout the state. In December 2011, Common Cause/NY released the only set of statewide reform state and federal redistricting maps, which were widely hailed as a fair nonpartisan alternative to the legislature's plan by Newsday, the New York Times, the Daily News, the Syracuse Post Standard and others, and which were submitted to LATFOR. While questioning the validity of the Republican Senate Majority's announced determination to draw a 63 rather than a 62 district map, Common Cause/NY submitted both a 62 district proposed senate reform plan and a 63 district proposed senate reform plan and testified extensively at hearings throughout the state regarding the initial proposed redistricting plans.

Accordingly, Common Cause/NY has expertise that is relevant to the issues before this Court, and an interest in a fair outcome to the redistricting process in New York.

II. INTRODUCTION

This case involves an issue of first impression for this Court. It is an issue of crucial importance to the integrity of the electoral process in our State: whether the Legislature's simultaneous use of conflicting methodologies in applying the complex constitutional formula for Senate-size calculations to similarly situated regions during the redistricting process is constitutionally tolerable. The

underlying facts below are stark, and the Supreme Court's description of those facts as "disturbing" will not surprise this learned Court.

In the past two redistricting cycles, the Legislature opportunistically changed the methodology for applying the constitutional "full ratio"-counting formulas each time. It changed methodology only after—and not before—it had access to the federal census numbers. Each change had a specific result: it changed the size of the Senate, whereas the previously used methodology would not have resulted in a change. In 2002, the Legislature jettisoned the methodology this Court had found "more accurate" and consonant with constitutional purpose than the older approach, and reverted to that older approach because it determined, contrary to this Court's ruling, that it was "more consistent" with the Constitution. Now, in Chapter 16, the provision at issue in this case, it has adopted a mix-and-match of methodologies, using both the methodology it rejected in 2002—a methodology that (by necessary implication) it apparently believed was "less consistent" with the Constitution—and the pre-2002 methodology approved by this Court. Moreover, Chapter 16 married both methods together for the first time in any redistricting, applying a different formula to neighboring regions of the state. There is no historical reason to treat those regions differently, since each constituted a unitary territory for the purposes of allocating Senate seats in 1894 (the relevant year of comparison). If either method were used consistently in

Chapter 16, the number of Senate seats would not be 63. These facts are clear in the record and not subject to serious dispute between the parties.

The ironies are undeniable. This was all permitted to happen under the authority of Article III, Section 4 of the New York State Constitution, which was intended by the framers to *remove* politics from determining the size of the Senate. In passing the measure, the Legislature did not reference, adopt, or include any justification for using conflicting counting methods for similarly situated regions. The Legislature forced this provision on the Governor with an eleventh-hour threat of political deadlock to assure no meaningful public debate about the merits of the political "compromise" that gave it life. When debate came to the floor, the Majority cut permitted time in half without prior notice, and the entire minority conference refused to vote on the provision. Nonetheless, the entire Majority conference, which benefited from the change, enacted it. Yet, the Supreme Court's decision in this matter—without so much as mentioning this history—completely deferred to this legislative "process," citing a prior opinion of this Court that merely accorded "some flexibility" to the Legislature in redistricting calculations.

It is unfortunate that the Supreme Court lost the forest for the trees. Because the Supreme Court failed to fully assess and fairly weigh the serious constitutional issues—and showed a wholly unwarranted deference to a proffered, unsupported

justification for the conflicting counting methodologies—we believe reversal is required.

III. REDISTRICTING PROCESSES ARE UNIQUELY SUBJECT TO POLITICAL MANIPULATION IN NEW YORK

New York State is unique for its Legislature's power to control the size of its Senate and willingness to do so. Nearly half of all states—24 of 50—have a fixed number of senators that cannot be changed absent constitutional amendment. *See* Appendix A. Of the 26 states permitting changes, only seven have actually done so. *Id.* Among these, New York is the only state that has increased the size of its Senate twice in the past 30 years. *Id.* The other states have either maintained the same number of Senate seats or have fewer seats than they did 30 years ago. *Id.*

Most states do not allow their legislatures to control their own size for a simple reason: A system that allows a political body control over the democratic process of its own election is a system that lacks checks and balances and is at great risk for corruption and abuse. Of the three states without a numerical range or upper limit on the number of senators—New York, Minnesota, and West Virginia—New York's system is the most ripe for abuse. *Id.* Thus, in comparing New York to the other 49 states it is clear that instead of leading the country in stamping out abuses of power in its Legislature and fostering democracy, New York falls seriously behind. New York's system allows those in the Legislature to

maintain the status quo with an iron grip. This, in turn, destroys voter confidence and democracy.

Not surprisingly, voters have reacted with increasing cynicism as the system works to protect incumbents. A recent report by Citizens Union, a good-government group, found competition at the polls in New York to be at historic lows. This report found that an astonishing 96 percent of New York incumbents won reelection between 2002 and 2010, and 93 percent of incumbents won 'races' that were either uncompetitive or uncontested. The number of uncontested elections in New York has crept up from 1 percent in 1968 to 19 percent today. Citizens Union, *Reshaping New York: Ending the Rigged Process of Partisan Gerrymandering with an Impartial and Independent Redistricting Process* 3-4 (Nov. 2011). The corrosive effects of this on voter confidence are demonstrated by New York's fourth-worst voter turnout in the nation. In 2010, only 34.9 percent of New York's eligible voters cast a vote for governor, a consequence of the justifiable lack of belief of the state's citizens that their voices matter. *Id*. at 4. The report also noted that "the rigged system of redistricting is corrupting the spirit and reality of representative democracy in New York," and "it has become a form of collusion between the two parties[.]" *Id.* at 1.

The New York Legislature's attempt to alter the Senate's size to suit a particular party's advantage is another egregious manifestation of this "rigged" and

"collusive" process, one that produces discriminatory effects. Between 2000 and 2010, the population of New York State rose by over 2 percent, but the non-Hispanic white population fell by nearly 4 percent. The total population of the state only rose because of increases in minority populations. Lindsay Hixson, Bradford B. Helper & Myoung Ouk Kim, U.S. Census Bureau, *The White Population: 2010*, at 8 tbl. 4 (Sept. 2011). Despite this, the Senate has been enlarged by increasing the number of districts in the upstate region, where the 26 underpopulated districts contain a majority of the non-Hispanic white citizen voting-age population of New York State, producing a racially discriminatory impact. Instead of providing a beacon for democratic and fair representation, the political manipulation of the Legislature has made this state less pluralistic and democratic.

IV. THIS COURT SHOULD NOT TURN A BLIND EYE TO THE "PROCESS" THAT RESULTED IN CHAPTER 16 WHEN EVALUATING THE SUPREME COURT'S DECISION

The "final details" of Chapter 16—which will shape New York's Legislature for the next decade—were "negotiated behind closed doors" without a scintilla of transparency or accountability. The bills were then quickly voted on in late-night and early morning sessions in the Senate and Assembly, with virtually no debate, prompting Senate Democrats to walk out in protest and the Republican majority to pass Chapter 16 unopposed. *See, e.g.*, Carlos Gonzalez, *The Albany*

Correspondent: The Stench of Redistricting, Yonkers Trib. (Mar. 15, 2012), http://yonkerstribune. typepad.com/yonkers_tribune/2012/03/the-albany-correspondentthe-stench-of-redistricting-by-carlos-gonzalez.html (last visited Apr. 22, 2012). At least eight Senators who were planning to speak, including three African-American Senators (Senators John L. Sampson, Ruth Hassell-Thompson, and Andrea Stewart-Cousins), were not permitted to voice their views.

The legislative process at work here merits no deference from this Court. *See Larios v. Cox*, 300 F. Supp. 2d 1320, 1338 (N.D. Ga. 2004) ("[W]here population deviations are not supported by such legitimate interests but, rather, are tainted by arbitrariness or discrimination, they cannot withstand constitutional scrutiny."), *aff'd* 542 U.S. 947 (2004); *see also Hulme v. Madison Cnty.*, 188 F. Supp. 2d 1041, 1051 (S.D. Ill. 2001) (exploring history of a legislative redistricting change designed to "satisfy the political agenda" of a party). Not surprisingly, Chapter 16 is tailor-made to preserve the Majority's power over the Senate. As the *New York Times* observed, the proposed redistricting is designed to preserve the status quo by "keep[ing] Democrats in power in the Assembly and Republicans in charge of the State Senate for the next decade" and "depriv[ing] minority communities of their fair share of clout" by subdividing urban areas with a high percentage of minority residents. Editorial, *Albany's Cynical Mapmakers*, N.Y. TIMES, Feb. 4, 2012, at A20, *available at* http://www.nytimes.com/2012/02/04/opinion/albanys-cynical-

mapmakers.html. Following a joint investigation into "transparency, accountability and anti-corruption mechanisms in all 50 states" by the Center for Public Integrity, Global Integrity, and Public Radio International (nonpartisan investigative news organizations), *see* Caitlin Ginley, State Integrity Investigation, *50 states and no winners*, http://www.stateintegrity.org/state_integrity_investigation_overview_story (last visited Apr. 22, 2012), New York's redistricting process was given an "F" for its lack of transparency and accountability. *See* State Integrity Investigation, *Corruption Risk in New York*, http://www.stateintegrity.org/new_york (last visited Apr. 22, 2012).

The process by which Chapter 16 was passed violates fundamental precepts of New York law and could be found unconstitutional for that reason alone. *See* N.Y. CONST. art. I, § 9 (protecting the "rights of the people peaceably to assemble and to petition the government, or any department thereof"); N.Y. PUB. OFF. L. § 100 (providing that "[i]t is essential to the maintenance of a democratic society that the public business be performed in an open and public manner and that the citizens of this state be fully aware of and able to observe the performance of public officials and attend and listen to the deliberations and decisions that go into the making of public policy").

However, the trial court based its ruling on the premise that it is obliged to defer to the Legislature in matters regarding redistricting. The court below

misperceived its role in this controversy. The narrow issue presented here is a question of constitutional construction, which is a question for this Court to decide.

V. CHAPTER 16 IS UNCONSTITUTIONAL AND THE SUPREME COURT SHOULD BE REVERSED

No doubt because of the haste of the proceedings below, the Supreme Court failed to address several pertinent issues in its opinion. It failed to consider the purpose and intent of Section 4, which is to circumscribe the Legislature's discretion over ratio-counting rules. It failed to address the critical importance of this Court's directives in prior cases to assess the effect (putting aside intent) of potentially manipulative maneuvers under constitutional standards. And it failed to evaluate the evidence of improper purpose in the record, instead showing unwarranted deference to Respondents' bare and unsupported assertion of a proper purpose. Because the facts plainly show that the Legislature is playing "fast and loose" with the process, this Court should reverse the lower court's decision in this *de novo* review.

A. THE SUPREME COURT'S DEFERENCE WAS UNFOUNDED

Although restating the Legislature's purported reason for using two different counting formulas for neighboring county-pairs, the court refused to probe beneath that reason, citing *In re Schneider v. Rockefeller*, 31 N.Y.2d 420 (1972), for the proposition that the Legislature "should be accorded some flexibility" in such calculations. A-385. The court did not explain how much flexibility should be

accorded, or the circumstances that give rise to a need for greater judicial scrutiny. Misapplying the appropriate standard, the Supreme Court treated the issue as though *Schneider* meant counting methodologies were beyond judicial scrutiny. Obviously, *Schneider* did no such thing.

Federal and state cases spanning fifty years have firmly established the judicial duty to scrutinize legislative enactments that threaten to dilute the vote. This Court has never held—nor should it do so now—that vote-diluting manipulations are presumptively beyond judicial scrutiny. Instead, this Court's opinions are fully in accord with federal cases showing appropriate constitutional review. *See*, *e.g.*, *Larios*, 300 F. Supp. 2d at 1338 (holding a state legislative reapportionment plan violated the one person, one vote principle and noting that "forty years of Supreme Court jurisprudence have established that the creation of deviations for the purpose of allowing the people of certain geographic regions of a state to hold legislative power to a degree disproportionate to their population is plainly unconstitutional"); *Corbett v. Sullivan*, 202 F. Supp. 2d 972, 988 (E.D. Mo. 2002) (striking down various redistricting proposals that were overly influenced by partisan considerations); *Vieth v. Pennsylvania*, 195 F. Supp. 2d 672, 681 (M.D. Penn. 2002) (ruling that a redistricting plan that had a deviation in population of nineteen persons was unconstitutional). Make no mistake, the operation of Chapter 16 dilutes the vote through the operation of inconsistent counting rules that fail to

recognize population growth in one area but credit it in another, thus withholding Senate growth based on a nearly identical census change in a neighboring area.

As Appellants correctly point out, the very purpose of the formula calculating the Senate size in Section 4 was to reduce the opportunities for such mischief. The Framers of the 1894 Constitution, "in framing the apportionment rules, did make the Legislature a 'mechanical contrivance' in the distribution of representation, and left little room for the exercise of legislative discretion." 3 Charles Z. Lincoln, *The Constitutional History of New York* 218 (1906). The drafters took great pains to create a "complicated apportionment formula," which the Supreme Court described as "explicit and detailed," leaving room for "little discretion" on the part of subsequent legislatures. *See WMCA, Inc. v. Lomenzo*, 377 U.S. 633, 644, 646 (1964). The *WMCA* court made these specific findings about Section 4 only after conducting a thorough evaluation and analysis of its provisions, 377 U.S at 641-45, and its characterization of the provisions as leaving "little discretion" were flatly contradicted by the Supreme Court's approach in the instant case. The Supreme Court failed to appreciate, and never did acknowledge, its responsibility to determine whether the Legislature's decision to use two conflicting formulas for neighboring regions was "in conformity with the constitutional purpose." *See In re Fay*, 291 N.Y. 198, 217 (1943). The Supreme Court failed to appreciate that even *Schneider* required judicial scrutiny to

determine whether the Legislature's decision to use a different counting method in 1972 than it had in previous redistricting cycles was "consonant with the broad historical objectives underlying the provision for increasing the size of the Senate." *Schneider*, 31 N.Y.2d at 433.

Of course, the Supreme Court also failed to recognize that the principles underlying the Constitution are entirely consistent with many other redistricting cases, in which legislative choices received robust judicial scrutiny. Choices over redistricting rules, no matter how technical, must be made in good faith. *Karcher v. Daggett*, 462 U.S. 725, 730 (1983). Although courts have afforded legislatures more discretion when it comes to the placement of district boundaries, no such discretion applies to calculation of Senate size. And even line-drawing is subject to significant scrutiny and limitations. Courts have held that "[f]ull and effective participation by all citizens in state government requires . . . that each citizen have an equally effective voice in the election of members of his state legislature." *Reynolds v. Sims,* 377 U.S. 533, 565 (1964). As just one example, the U.S. Supreme Court declared New York City's system for apportioning representation of the Board of Estimate unconstitutional despite the City of New York's proffered reasons and explanations for the system. *Bd. of Estimate of City of New York v. Morris*, 489 U.S. 688, 703 (1989). Indeed, the Court flatly held that "the city's

proffered governmental interests do not suffice to justify" constitutional infractions. *Id*.

These cases demonstrate that—contrary to the Supreme Court's conclusion—a court can only assess whether an enactment works constitutional mischief after it fully evaluates the impact of, and purported reasons behind, the enactment. No enactment that potentially affects equal representation is "insulate[d]" from scrutiny. *See id*. at 692. This was the fundamental point in *Reynolds v. Sims*, where the Court declared that "our oath and our office" require the Court, for redistricting, to enter even "mathematical quagmires." 377 U.S. at 566. In undertaking this duty, the court must determine whether "there has been a faithful adherence to a plan of population-based representation," which permits "minor deviations" only if they are "free from any taint of arbitrariness." *Roman v. Sinock*, 377 U.S. 695, 710 (1964). Although various lower federal courts have applied these principles differently—sometimes striking down and sometimes upholding redistricting schemes that permit political manipulation through "minor deviations," *compare Cecere v. Cnty. of Nassau*, 274 F. Supp. 2d 308, 318-19 (E.D.N.Y. 2003) (small political manipulations permitted) *with Vigo Cnty. Republican Cent. Comm. v. Vigo Cnty. Comm'rs*, 834 F. Supp. 1080, 1086 (S.D. Ind. 1993) (small political manipulations not permitted)—the Supreme Court put this issue to rest in 1977, when it held that "even a legislatively crafted

apportionment with [small deviations] could be justified only if it were 'based on legitimate considerations incident to the effectuation of a rational state policy.'" *Connor v. Finch*, 431 U.S. 407, 418 (1977) (quoting *Reynolds*, 377 U.S. at 579).

This case is much simpler than all of the lower federal court cases cited above. *Reynolds* and its progeny generally involved issues related to line-drawing for district boundaries, which are complicated by local interests such as the historic integrity of those lines and other potentially permissible factors. No such interest is at play here. In this case, the issue is a matter of simple mathematical consistency: Can the Legislature define the term "ratio" using two conflicting formulas that count population growth differently? And, can it apply inconsistent methodologies when the *inconsistency itself* impacts the constitutionally significant definition of "ratio," thereby changing the number of Senate seats? There is no justification in law, fact, or common sense to permit the Legislature to use two different definitions for what constitutes a "ratio" in the same redistricting plan.

The standards guiding all of these cases—good-faith apportionment, free from taint of arbitrariness, based on rational state policy, more accurate procedures—all require judicial scrutiny of impact and motive. No matter how the standard has been tangled in the lower federal courts, this Court has consistently applied that same level of scrutiny. *See*, *e.g., Schneider*, 31 N.Y.2d at 430 ("If the Legislature plays fast and loose with [] constitutional requirements, it risks having

a districting plan set aside."). Indeed, this Court has never held that politically motivated redistricting choices, even technical ones, are beyond judicial scrutiny, especially when, as here, a particular choice has the dramatic effects of adding an additional seat to the Senate and depriving a region of a Senate seat altogether. The truth of this notion is evident not just from the litany of high court rulings but from the common-sense observation of a noted mathematician: "The essence of mathematics is not to make simple things complicated, but to make complicated things simple."[1]

The Supreme Court failed to appreciate this long history of exacting judicial scrutiny. Although it tied itself firmly to the "some flexibility" language of *Schneider*, it also seemingly read the most important language of *Schneider* out of the opinion: the Court's decision to uphold the provision at issue only because it was "more accurate," "reasonable," and "consonant with the broad historical objectives underlying the provision for increasing the size of the Senate." *Schneider*, 31 N.Y.2d at 433-34. For this reason alone, the Court should reverse.

B. THE SUPREME COURT FAILED TO SCRUTINIZE THE IMPERMISSIBLE EFFECT OF CHAPTER 16

The parties' submissions fundamentally disagree about the alleged purposes of the use of multiple counting methodologies. We believe the focus on this

[1] Stanley Gudder, John Evans Professor of Mathematics, University of Denver.

disagreement may be misplaced. Rather, this Court should focus on the *effect* of Chapter 16, thereby taking a narrower approach to the underlying issues.

After all, Chapter 16 made a legislative choice: it applies inconsistent counting methodologies in order to take into account population growth in one area but discount it in another. The effect of this choice is to treat identical census growth differently, which, in this case, changed the calculation of the Senate's size.

Regardless of the intent behind the choice, the Legislature's choice was neither "more accurate" (since it counted two populations using conflicting rules) nor "free from the taint of arbitrariness," and should be reversed under the precedents of this Court and the Supreme Court, including *Schneider*, *Reynolds*, *Board of Estimate*, and *Connor*. We believe the Court should adopt a sensible and bright-line rule that where the Legislature applies different census-counting formulas between regions, such a choice violates Section 4. This rule would proscribe such conduct regardless of the Legislature's intent—whether or not the Legislature acts in "good faith" or "play[ed] fast and loose with the rules." *See Schneider*, 31 N.Y.2d at 429-30; *In re Fay,* 291 N.Y. at 210-11 ("We must assume that increase in Senate representation was adopted after effect was given in good faith to each *limitation* upon the legislative function of reapportionment found in article III, section 4, of the Constitution.") (emphasis added).

C. THE SUPREME COURT FAILED TO SCRUTINIZE THE EVIDENCE OF IMPERMISSIBLE INTENT

The parties' submissions fundamentally disagree about the import and relevance of two memos contained in the record below. In the first of those memos, a lawyer for the Senate opined that the "new" formula "is more faithful to the Constitution" than the "old" formula (despite a ruling from this court that the old formula was constitutionally acceptable and "more accurate"). In the other, a legislative aide described, in unseemly ways, the political maneuvering behind the Majority's redistricting efforts. We do not believe this Court need weigh into the debate over the significance of these memos, as a narrower ground to decide exists.

As we argued above, this Court should not turn a blind eye to the larger context for Chapter 16. This includes, and is not limited to, New York's position as an outlier among its sister states, the long history of partisan redistricting in this State, the profound effect on voter confidence, and the specific manner in which Chapter 16 was forced on the Governor, with the threat of political deadlock, and then voted into law in the Senate only by the party benefitting from the inconsistent rationales.

Even if the Court were to feel constrained to leave this context unfactored in its decision, it should not ignore three important "dots" the Supreme Court failed to connect. First, Chapter 16 represents a change from prior methodologies. Second, the change came only after the Legislature learned the census figures. Third, the

basis of the change is explained nowhere in the law itself, nor is there any legislative history to explain it. Based on these facts, and based on the scrutiny required under *Schneider*, we believe the Court should hold as a matter of law that unexplained changes to counting formulas made after census-figures are known to the Legislature are, presumptively, "play[ing] fast and loose with the rules" and cannot be upheld as a good-faith application of constitutional limitations under Section 4. *See Schneider*, 31 N.Y.2d at 430. In other words, if the Legislature decides to change the rules in the middle of the game, it must do so explicitly in the law based on "rational state policy." *Connor*, 431 U.S. at 418.

VI. CONCLUSION

For the foregoing reasons, this Court should reverse the Supreme Court and declare Chapter 16 unconstitutional.

Dated: New York, New York
April 23, 2012

Respectfully submitted,

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APPENDIX A

APPENDIX A

STATE	Constitutional Clause Governing Senate Size	Senate Size Rules	Senate Size following 2010 Census	Senate Size following 2000 Census	Senate Size following 1990 Census	Senate Size following 1980 Census
Alabama	Art. VIII, §3	Not less than 1/4 nor more than 1/3 of the representatives	35	35	35	35
Alaska	Art. VI, §4	Exactly 20	20	20	20	20
Arizona	Art. IV, §1	Exactly 30	30	30	30	30
Arkansas	Art. VIII, §3	Exactly 35	35	35	35	35
California	Art. IV, §2	Exactly 40	40	40	40	40
Colorado	Art. V, §45	Up to 35	35	35	35	35
Connecticut	Art. III, §3	30 - 50	36	36	36	36
Delaware	Art. II, §2	Exactly 21	21	21	21	21
Florida	Art. III, §16	30 - 40 Districts	40	40	40	40
Georgia	Art. III, §2	Up to 56	56	56	56	56
Hawaii	Art. III, §2	Exactly 25	25	25	25	25
Idaho	Art. III, §2	30 - 35	35	35	35	42
Illinois	Art. IV, §1	Exactly 59	59	59	59	59
Indiana	Art. IV, §2	Up to 50	50	50	50	50
Iowa	Art. 3, §34	Up to 50	50	50	50	50
Kansas	Art. II, §2	Up to 40	40	40	40	40
Kentucky	Art. I, §35	Exactly 38	38	38	38	38
Louisiana	Art. III, §3	Up to 39	39	39	37	39
Maine	Art. IV, Part II, §1	31, 33 or 35	35	35	35	35
Maryland	Art. III, §2	Exactly 47	47	47	47	47
Massachusetts	Art. XIII	Exactly 40	40	40	40	40
Michigan	Art. IV, §2	Exactly 38	38	38	38	38
Minnesota	Art. IV, §1	Set by law to 67	67	67	68	68
Mississippi	Art. XIII, §254	Up to 52	52	52	52	52
Missouri	Art. III, §5	Exactly 34	34	34	34	34
Montana	Art. V, §2	40 - 50	50	50	50	50
Nebraska	Art. III, §6	30 - 50 (Unicameral)	49	49	49	49
Nevada	Art. 4, §5	Not Less than 1/3 or more than 1/2 of the Assembly	21	21	22	21
New Hampshire	Part II, Art. 25	Exactly 24	24	24	24	24
New Jersey*	Art. IV, §2	Exactly 40	40	40	40	40
New Mexico	Art. IV, §3	Exactly 42	42	42	42	42

APPENDIX A (CONT'D)

STATE	Constitutional Clause Governing Senate Size	Senate Size Rules	Senate Size following 2010 Census	Senate Size following 2000 Census	Senate Size following 1990 Census	Senate Size following 1980 Census
New York	Art. III, §2	Minimum of 50 plus additional Senators using 1894 equation	unknown	62	61	61
North Carolina	Art. II, §2	Exactly 50	50	50	50	50
North Dakota*	Art. IV, §1	40 - 54	47	49	49	53
Ohio	Art. XI, §2	Exactly 33	33	33	33	33
Oklahoma	Art. V, §9	Exactly 48	48	48	48	48
Oregon	Art. IV, §2	Up to 30	30	30	30	30
Pennsylvania	Art. II, §16	Exactly 50	50	50	50	50
Rhode Island	Art. VIII, §1	Exactly 38	38	50	50	50
South Carolina	Art. III, §6	Exactly 46 at one per County	46	46	46	46
South Dakota*	Art. XIX, §2	Exactly 35	35	35	35	35
Tennessee	Art. II, §6	Up to 33	33	33	33	33
Texas	Art. III, §2	Exactly 31	31	31	31	31
Utah	Art. IX, §3	18, but never to exceed 30	29	29	29	29
Vermont	Chp. II; §18	Exactly 30	30	30	30	30
Virginia	Art. IV, §2	33 - 40	40	40	40	40
Washington*	Art. II, §2	No Less than 1/3 and No More than 1/2 the House (21-49)	49	49	49	49
West Virginia	Art. VI, §2 (B, C); Art. VI, §4	Minimum of 24 increased using ratio equation	34	34	34	34
Wisconsin	Art. IV, §2	Not more than 1/3 and no less than 1/4 the Assembly (13 - 33)	33	33	33	33
Wyoming	Art. 3, §3	Minimum of 16 with One Senator per County	30	30	30	30