

STATE OF NEW YORK

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IN THE MATTER

OF

THE REAPPORTIONMENT OF THE STATE OF  
NEW YORK INTO NEW SENATE AND ASSEMBLY  
DISTRICTS, PURSUANT TO JOINT RESOLU-  
TION ADOPTED BY THE LEGISLATURE  
OF THE STATE OF NEW YORK

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COUNSEL'S REPORT

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Report to Joint Legislative Committee  
on Reapportionment

BY

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Counsel

Albany, New York, March 13, 1935



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We should reapportion on a true and accurate basis and without regard to local or partisan advantage. Reapportionment should adhere scrupulously to the principle of fair representation. I shall not countenance any attempt to deprive a locality of its just rights in the legislative chambers at Albany or at Washington, no matter how difficult or objectionable it may be for any section now having more than its proper number of representatives to reduce that number. It is my hope that the members of your honorable bodies will not endeavor either to preserve for a political party any unfair advantage by the continuation of the existing inequitable districts, or on the other hand, to gain any unfair advantage by manipulation of boundaries or gerrymandering of districts. We should carry out reapportionment in strict accordance with the provisions of the Constitution.

The members of your honorable bodies and I can succeed this year, I am sure, in working out a fair and just legislative and congressional reapportionment—one that honestly enforces for all sections of the State alike the principle of equal representation."

## II

### Data for the Apportionment

In 1931, the Constitution was amended so as to provide that thereafter reapportionments of the State into Senate and Assembly districts should be based upon the *federal* census, commencing with the federal census of 1930. All prior apportionments in this State have been based upon *state* enumerations. No Senate or Assembly apportionment has heretofore been made in this State based upon a federal census. The pertinent constitutional provision reads as follows:

#### Article III, Section 4:

"Except as herein otherwise provided, the federal census taken in the year nineteen hundred thirty and each federal census taken decennially thereafter shall be controlling as to the number of inhabitants in the State or any part thereof for the purposes of the apportionment of members of assembly and readjustment or alteration of senate and assembly districts next occurring, in so far as such census and the tabulation thereof purport to give the information necessary therefor. The Legislature, by law, shall provide for the making and tabulation by State authorities of an enumeration of the inhabitants of the entire State to be used for such purposes, instead of a federal census, if the taking of a federal census in any tenth year from the year nineteen hundred thirty be omitted or if the federal census fails to show the number of aliens or Indians not taxed. If a federal census, though giving the requisite

information as to the State at large, fails to give the information as to any civil or territorial divisions which is required to be known for such purposes, the Legislature, by law, shall provide for such an enumeration of the inhabitants of such parts of the State only as may be necessary, which shall supercede in part the federal census and be used in connection therewith for such purposes. The Legislature, by law, may provide in its discretion for an enumeration by State authorities of the inhabitants of the State, to be used for such purposes, in place of a federal census, when the return of a decennial federal census is delayed so that it is not available at the beginning of the regular session of the Legislature in the second year after the year nineteen hundred thirty or after any tenth year therefrom or if an apportionment of members of assembly and readjustment or alteration of senate districts is not made at or before such a session."

The 1930 federal census had been completed prior to the adoption of the amendment in 1931, and the reports prepared and published by the Director of the Census did not give the tabulations needed to make a reapportionment under the rigid rules of Article III of the Constitution. In 1934, the Civil Works Administration of the federal government allocated funds for the purpose of having CWA workers prepare the segregations and tabulations that were required. The results were forwarded to the Secretary of State of New York in the spring of 1934; but they were received too late to be used in making an apportionment last year.

When your Committee was organized, the Secretary of State turned these tabulations over to us. Using this data as a basis, we prepared large-scale "master maps" for each of the larger cities and counties of the State, and upon these maps have entered in each block the census area, tract and "key number," as well as the total population and the total number of inhabitants, excluding aliens. Without these master maps, no intelligent effort to draft a reapportionment statute could have been made.

In making these maps we discovered hundreds of errors in the census tabulations, some serious, others relatively unimportant. From time to time, as these errors were disclosed, we referred them to the Census Bureau. That Bureau has now corrected all the errors we found in the course of our work and has certified such corrections to us.

Chapter 65 of the Laws of 1935, which took effect on March 1, 1935, provides:

"In cases where the population of this state or a municipality or other subdivision thereof, or a portion of such a municipality or subdivision, is required to be determined according to the latest federal or state census or enumeration preceding the time as of which such population is to be ascer-

tained, a certificate of the director or other officer in charge of the census of the United States, attested by the secretary of the interior or the secretary of commerce, as to such population as shown by such federal census, or of the secretary of state as to such population as shown by such state enumeration, whichever is appropriate, shall be received as conclusive evidence thereof."

Following its enactment we procured from the Director of the Census, a certificate, duly attested by the Secretary of Commerce, certifying to the tabulations as corrected, upon which the annexed bill is based. A copy of this certificate is hereto annexed, marked "Exhibit D."

A summary statement of the census tabulations is hereto annexed marked "Exhibit E." It shows the total population, and the total number of inhabitants, excluding aliens (denominated "citizen"), of each county of the State.

### III

#### Previous Reapportionments

The Constitution of the State prohibits a redistricting which would assure every citizen fair and equal representation, as demanded in the platforms of the two major parties. It has frequently been pointed out by successive Governors and editorial writers that the Constitutional Convention of 1894 purposefully drew constitutional provisions as to Senate and Assembly redistricting which would never permit city districts to be represented in the Senate or Assembly by their fair ratio and which would always make it necessary to give an overwhelming balance of power to smaller groups of citizens residing in rural districts. Constitutional provisions, both as to Senate and Assembly, start with glittering generalities prescribing a rule of fairness, and then follow these abstract statements with concrete rules that nullify the generalities which went before.

In addition, the Constitution prescribes a great variety of intricate and complicated rules which make it difficult for a Legislative Committee to attempt redistricting with a consciousness that the bill it drafts will be within the Constitution, and equally difficult for lawyers to advise, and for courts to interpret. In fact, as will be shown, no apportionment since the Constitutional Convention of 1894 has yet been held to be constitutional, although four Legislative reapportionments have been made,—in 1906, 1907, 1916 and 1917.

*The Court of Appeals has never sustained or approved any of them.*

(1) The 1906 apportionment was passed under Governor Higgins, with Hon. James W. Wadsworth as Speaker of the Assembly, and Senator John Raines President *pro tem* of the Senate. It was

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should be passed which would transfer the power to change or alter these salaries to the governing body of the City of New York. The present practice of salary fixing from Albany is indefensible and should be stopped.

#### STATE CENSUS

The Constitution of the State requires the Secretary of State to make a census of our population every ten years in order to apportion the districts for the election of Senators and Assemblymen. The State Constitution directs that census to be taken midway in a ten-year period between similar work done by the Federal government. I am of the opinion that this State could use the figures of the Federal census for the purpose of legislative apportionment just as well as those of a separate State census. I have no knowledge that the State census has ever served any other purpose and it is exceedingly costly. At your last session for the purpose of making an enumeration of the State you appropriated \$1,200,000. By an amendment to the Constitution the necessity for a State enumeration may well be done away with.

#### DIRECT PRIMARIES

After a long and bitter struggle the rank and file of the political parties in this State won for themselves the privilege of nominating their candidates by direct primary.

The principle of direct nominations is either right or wrong. I believe it to be right and I am unable to see how we can justify two different systems for different set of officials.

I, therefore, recommend that the Election Law be amended to restore the direct nominating system for all elected officials.

#### UNJUST DISCRIMINATION AGAINST WOMEN IN THE LAW

A study of statutes for the protection of the health and well-being of women in the home and in industry clearly indicates that we are in the forefront of the commonwealths of the country and securely committed to such statutes as a matter of general State policy. Without departing in the slightest degree from this fixed policy we can, in view of the place now occupied by women in business as well as in public life, prepare ourselves to remove from the laws all unjust discrimination against women. This I believe should be done by specific amendment to existing statutes and I so recommend.

#### POPULAR CONSTITUTIONAL INITIATIVE

The recent overwhelming decision of the people at the polls to bring about reorganization of the government by constitutional amendment demonstrates that the present method for amendment of the Constitution removes that document too far from the immediate control of the people themselves. As far as the public

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## TRAINING CAMPS

The training camps of the National Guard are examples for the other states in the Union and have been referred to by Federal authority as the best camps in this country, if not in the world, for the training of soldiers. This interest on the part of the people of the State in their National Guard has awakened interest in the men themselves and at a later date I will send to your Honorable Bodies a full and complete report of the Major General, dealing in detail with the condition of the National Guard.

## POLITICAL INSTRUMENTALITIES

Improvement of our political machinery for establishing government has not kept pace with administrative reorganization. We are too apt to thrust it into the background to await attention at some time of less pressure. But these functions are important in a democracy and successful government may suffer by their neglect. Some of our present methods are inadequate, some are out of step with modern thought on the subject, and all that I here mention should receive consideration at this time.

## CENSUS

Last year I recommended an amendment to the Constitution making it unnecessary for the State to take its own census for purposes of reapportionment and to put the State in a position to avail itself of the Federal census. While it is true that the next census will not be taken for a number of years, now is the time to remedy this very palpable defect in our system while the matter is fresh in the minds of our people. I, therefore, renew my recommendation that the Constitution be so amended as to permit the State to take advantage of the Federal enumeration and make unnecessary the costly, wasteful proceeding we went through a year ago.

## DIRECT PRIMARY

The State of New York at the present time employs a double method for the selection of candidates by political parties for public office. Both methods cannot be right. I believe in the direct primary. I believe in leaving the choice squarely in the hands of the enrolled members of the party. For that reason, I recommend that conventions be abolished by law and that provision be made for the direct nomination of all candidates for public office.

## CORRUPT PRACTICE ACT

Candidates for public office today are required to file in the office of the Secretary of State, after election, a statement of the amount of money contributed to their various campaign funds, the names of persons making contributions, and a detailed account of the expenditure of these funds. If this is intended to



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selecting candidates. You cannot compromise with a principle. It is either right or wrong. It cannot be said to be half right and half wrong.

I believe in leaving the choice of candidates to the enrolled members of the party and for that reason I recommend the complete abolition of the convention system and a return to the direct nominating system for all candidates for public office.

#### CORRUPT PRACTICE ACT

The sanctity of the ballot box is the cornerstone of representative democratic government. Nothing threatens its safety more than the corrupt use of money in elections. New York owes a duty to itself to stand in the forefront of the commonwealths of the country in its determination to get an honest expression at the polls. At the present time our Corrupt Practice Act provides for a statement of the amount of money contributed to various campaigns and the names of those making the contributions as well as a detailed account of the expenditure of these funds, but the law provides that it be published after election when interest in the election has practically died out. What benefit it is after election is more than I could ever understand. If the information is of any benefit at all, it should be published before election, to the end that the people may know what individual or groups, if any, are particularly interested in the election of a given candidate. I recommend legislation to bring this about.

#### CENSUS

→ This is the third successive year that I recommend an amendment to the Constitution to make it unnecessary for the State to take its own census for purposes of reapportionment. The State should avail itself of the Federal census. Having received the Federal enumeration the State may thereafter make such tabulation of it as will meet the needs of the organizations and social agencies of the State that require the statistics. Conducting an independent State enumeration is, to my way of thinking, a costly and unnecessary performance and it is nothing more or less than a duplication of the work of the Federal government along this same line.

This amendment should be passed this year, in time to permit the State to avail itself of the 1930 Federal census. It is unreasonable to think that by an organization thrown together over night the State can make as good a job of an enumeration as can the Federal government with a bureau organized and functioning continually for that purpose. Economy and common sense suggest that this recommendation be carried out.

#### INTEREST IN CONSTITUTIONAL AMENDMENTS

During the last ten years we have practically remade our Constitution. Many of the proposals of the Constitutional Convention when submitted in bulk met defeat. Separately submitted, after intelligent discussion, they have since been adopted.

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Bills carrying out the above projects will be found under recommended allotment of the public improvement bonds.

From appropriations made under the provisions of chapter 520 of the laws of 1927, these being moneys appropriated under the provisions of the constitutional bond issue, there remains an unexpended balance of \$180,000 of the appropriation made for patient and employee accommodations. The representatives of Kings Park State Hospital and the commissioner of mental hygiene have presented to me the necessity for an assembly hall at this institution. I would therefore recommend that \$125,000 be appropriated from this balance to provide for this assembly hall.

The following tabulated statements appear in the order mentioned:

- a—Summary of the budget showing the estimated available resources and the appropriations recommended.
- b—Summary of recommendations of appropriations for 1929-1930.
- c—Summary of appropriations made in 1928.
- d—Summary of departmental requests for 1929-30 appropriations.
- e—General summary contrasting
  - (a) 1928 appropriations with requests.
  - (b) 1928 appropriations with recommendations.

In Part II of this document the request of each agency is summarized, contrasted with the appropriations made in 1928, and the recommendations are reconciled with the amounts so appropriated.

In Part III of this document the recommendations are transmitted in appropriation form.

In Part IV of this document the allotment of public improvement bonds is recommended in bill form.

In Part V of this document are summarized the receipts and expenditures of moneys not appropriated by the Legislature or not paid into the treasury, as prescribed by chapter 232 of the laws of 1928.

This completes the transmission to your Honorable Bodies the facts and figures required of me in conformity with the Constitution.

(Signed) FRANKLIN D. ROOSEVELT  
*Governor*

**Recommending Abolition of State Enumeration and Suggesting  
Use of Federal Census Figures**

STATE OF NEW YORK — EXECUTIVE CHAMBER

February 21, 1929

*To the Legislature:*

I desire to renew the recommendation made in three successive years by my predecessor for an amendment to the Constitution abolishing the State enumeration and that legislation be enacted

for the purpose of making available the federal census to be taken in 1930 for purposes of reapportionment in the senate and assembly districts. The enumeration was taken in the year 1915 at a cost of \$465,000, while the State enumeration of 1925 cost \$1,200,000, and was not only left incomplete but was accompanied by grave public scandals. Reapportionment was made in 1917 upon the basis of the figures obtained by the 1915 enumeration. No reapportionment has been made upon the basis of the figures taken nearly four years ago.

A careful study has already been made of the use of the federal census in place of the State enumeration for reapportionment purposes by the commissioner appointed to investigate the Department of State in relation to the State enumeration of 1925. It appears from his study that the use of the federal census is wholly practicable for this purpose. What is now needed is:

1. A concurrent resolution for a constitutional amendment abolishing the State enumeration.

2. Negotiations between a New York State Committee and the Federal Census Bureau to make arrangements for the use of the federal census for our purposes.

You have before your Honorable Bodies at this time for consideration a proposed concurrent resolution well designed to effect this purpose. Machinery should immediately be set in motion for the repeal of the constitutional provision requiring another State enumeration in 1935. The enumeration as taken has become political, extravagantly expensive and useless for any practical purpose.

(Signed) FRANKLIN D. ROOSEVELT

NOTE.—Committee appointed to confer with Federal Director of Census. See Page 305.

#### Suggesting Changes in Taxation to Relieve Inequalities and Recommending Enactment of Gasoline Tax Measure

STATE OF NEW YORK — EXECUTIVE CHAMBER

February 25, 1929

##### *To the Legislature:*

On January 28, 1929, I transmitted to your Honorable Bodies the first constitutional State budget and in that document I stated that by a supplemental message I would suggest changes in taxation.

These changes are in my judgment made necessary because of certain inequalities in the tax burden under existing laws.

For some time it has been increasingly evident that the law covering the methods of paying for county highways in the State highway system bear very unequally and unjustly on the great majority of counties. This is because, regardless of property values, and regardless of density of population, the local cor-