

PUBLIC HEARING
before
SENATE STATE GOVERNMENT, FEDERAL & INTERSTATE RELATIONS &
VETERANS' AFFAIRS COMMITTEE
on
SENATE CONCURRENT RESOLUTION NO. 84

Held:
May 6, 1982
Assembly Chamber
State House
Trenton, New Jersey

MEMBERS OF COMMITTEE PRESENT:

Senator Wynona M. Lipman (Chairman)
Senator Herman T. Costello

ALSO:

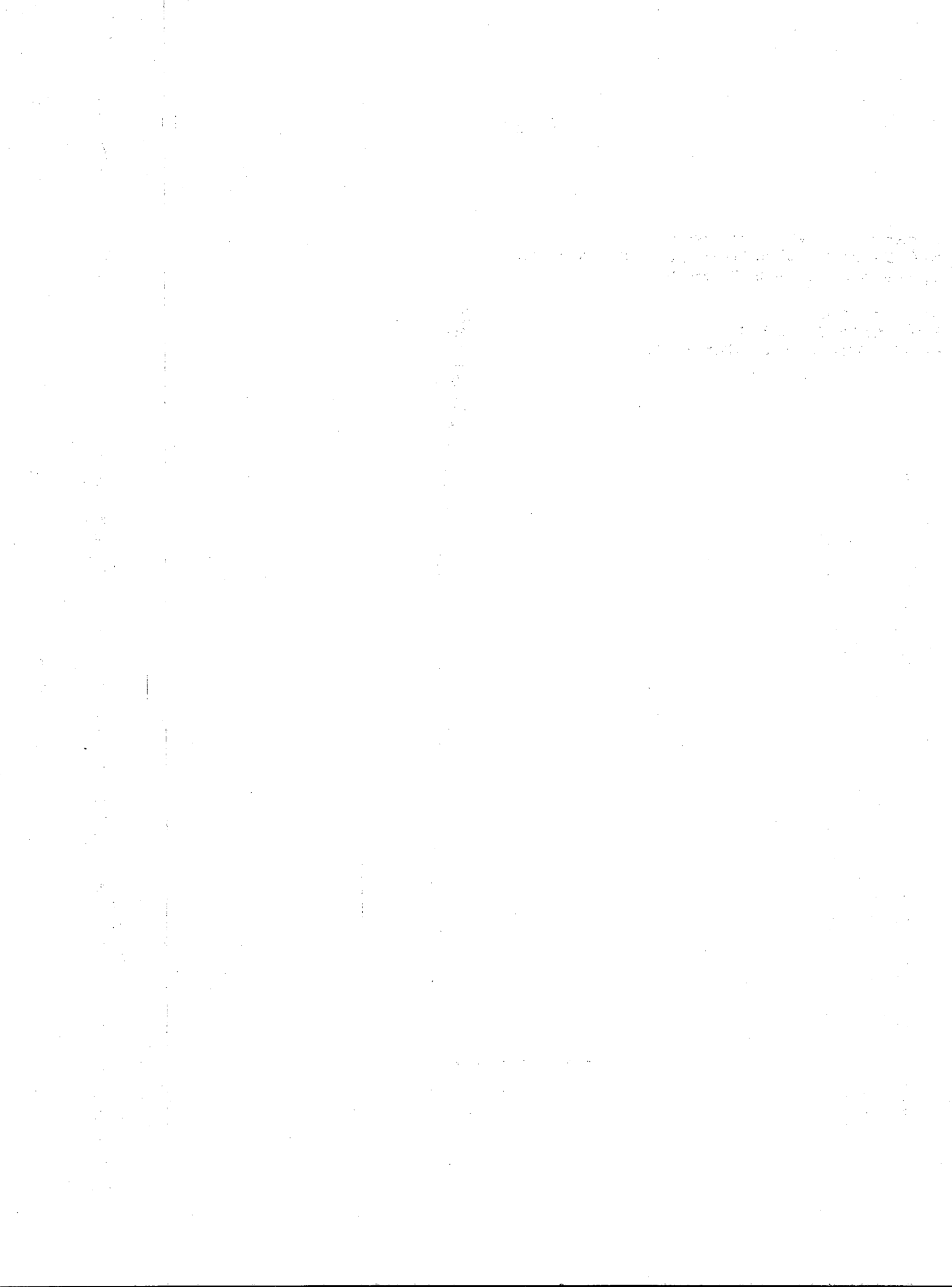
Joseph P. Capalbo, Research Associate
Office of Legislative Services
Aide, Senate State Government, Federal & Interstate Relations & Veterans'
Affairs Committee

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I N D E X

	<u>Page</u>
Senator Steven Perskie New Jersey State Senate, 2nd District Sponsor of Legislation	1
Jo-Ann Oser Executive Director Common Cause, New Jersey	2

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SENATE CONCURRENT RESOLUTION No. 84

STATE OF NEW JERSEY

INTRODUCED MARCH 1, 1982

By Senator PERSKIE

Referred to Committee on State Government, Federal and
Interstate Relations and Veterans Affairs

A CONCURRENT RESOLUTION proposing to amend Article IV, Sections
II and III, of the State Constitution, and providing a schedule
therefor.

1 BE IT RESOLVED *by the Senate of the State of New Jersey (the*
2 *General Assembly concurring)*:

1 1. The following proposed amendment to the Constitution of the
2 State of New Jersey is hereby agreed to:

PROPOSED AMENDMENT

3 a. Amend Article IV, Section II, of the Constitution to read as
4 follows:

5 [1. The Senate shall be composed of 40 senators apportioned
6 among Senate districts as nearly as may be according to the number
7 of their inhabitants as reported in the last preceding decennial
8 census of the United States and according to the method of equal
9 proportions. Each Senate district shall be composed, wherever
10 practicable, of one single county, and, if not so practicable, of two
11 or more contiguous whole counties.

12 2. Each senator shall be elected by the legally qualified voters of
13 the Senate district, except that if the Senate district is composed of
14 two or more counties and two senators are apportioned to the dis-
15 trict, one senator shall be elected by the legally qualified voters of
16 each Assembly district. Each senator shall be elected for a term
17 beginning at noon of the second Tuesday in January next following
18 his election and ending at noon of the second Tuesday in January
19 4 years thereafter, except that each senator, to be elected for a term

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in the above bill
is not enacted and is intended to be omitted in the law.

Matter printed in italics *thus* is new matter.

Matter enclosed in asterisks or stars has been adopted as follows:

*—Senate committee amendment adopted March 8, 1982.

20 beginning in January of the second year following the year in which
21 a decennial census of the United States is taken, shall be elected
22 for a term of 2 years.

23 3. The General Assembly shall be composed of 80 members.
24 Each Senate district to which only one senator is apportioned shall
25 constitute an Assembly district. Each of the remaining Senate
26 districts shall be divided into Assembly districts equal in number
27 to the number of senators apportioned to the Senate district. The
28 Assembly districts shall be composed of contiguous territory, as
29 nearly compact and equal in the number of their inhabitants as
30 possible, and in no event shall each such district contain less than
31 80% nor more than 120% of one-fortieth of the total number of
32 inhabitants of the State as reported in the last preceding decennial
33 census of the United States. Unless necessary to meet the foregoing
34 requirements, no county or municipality shall be divided among
35 Assembly districts unless it shall contain more than one-fortieth
36 of the total number of inhabitants of the State, and no county or
37 municipality shall be divided among a number of Assembly districts
38 larger than one plus the whole number obtained by dividing the
39 number of inhabitants in the county or municipality by one-fortieth
40 of the total number of inhabitants of the State.

41 4. Two members of the General Assembly shall be elected by the
42 legally qualified voters of each Assembly district for terms begin-
43 ning at noon of the second Tuesday in January next following their
44 election and ending at noon of the second Tuesday in January 2
45 years thereafter.]

46 1. *The Senate shall be composed of 40 senators. One senator*
47 *shall be elected by the legally qualified voters of each legislative*
48 *district for a term beginning at noon of the second Tuesday in Janu-*
49 *ary next following his election and ending at noon of the second*
50 *Tuesday in January 4 years thereafter, except that each senator*
51 *to be elected in a year immediately preceding a year in which a fed-*
52 *eral decennial census is taken shall be elected for a term of 2 years*
53 *and each senator to be elected at the expiration of that 2-year term*
54 *shall likewise be elected for a 2-year term.*

55 2. *The General Assembly shall be composed of 80 members. Two*
56 *members of the General Assembly shall be elected by the legally*
57 *qualified voters of each legislative district for a term beginning at*
58 *noon of the second Tuesday in January next following their election*
59 *and ending at noon of the second Tuesday in January 2 years there-*
60 *after.*

61 3. *The legislative districts shall be composed of contiguous terri-*
62 *tory, as nearly compact and equal in their number of inhabitants*

63 *as practicable. No municipality shall be divided among legislative*
64 *districts unless it shall contain more than one-fortieth of the total*
65 *number of inhabitants of the State, and each legislative district*
66 *shall be so drawn as to adhere to as many county and municipal*
67 *lines as practicable.*

68 b. Amend Article IV, Section III, of the Constitution to read
69 as follows:

70 1. After [the next and every subsequent decennial census of the
71 United States] *each federal decennial census*, the [Senate districts
72 and Assembly districts] *40 legislative districts shall be established*,
73 and the senators and members of the General Assembly shall be
74 apportioned among them,] by an Apportionment Commission con-
75 sisting of 10 members, five to be appointed by the chairman of the
76 State committee of each of the two political parties whose candi-
77 dates for Governor receive the largest number of votes at the most
78 recent gubernatorial election. Each State chairman, in making such
79 appointments, shall give due consideration to the representation of
80 the various geographical areas of the State. Appointments to the
81 commission shall be made on or before November 15 of the year
82 in which [such] *the census is taken and shall be certified by the*
83 Secretary of State on or before December 1 of that year. The com-
84 mission, by a majority of the whole number of its members, shall
85 certify the establishment of [Senate and Assembly] *legislative*
86 districts [and the apportionment of senators and members of the
87 General Assembly] to the Secretary of State within 1 month of
88 the receipt by the Governor of the [official] decennial census [of
89 the United States] for New Jersey, or on or before [February]
90 March 1 of the year following the year in which the census is taken,
91 whichever date is later.

92 2. If the Apportionment Commission fails so to certify [such]
93 *the establishment [and apportionment] of legislative districts to*
94 the Secretary of State on or before the date fixed or if prior thereto
95 it determines that it will be unable so to do, it shall so certify to
96 the Chief Justice of the Supreme Court of New Jersey and he shall
97 appoint an eleventh member of the commission. The commission
98 so constituted, by a majority of the whole number of its members,
99 shall, within 1 month after the appointment of [such] *the eleventh*
100 member, certify to the Secretary of State the establishment of
101 [Senate and Assembly] *legislative districts [and the apportion-*
102 *ment of senators and members of the General Assembly].*

103 3. [Such] *The establishment [and apportionment] of legislative*
104 *districts shall be used thereafter for the election of members of the*
105 *Legislature and shall remain unaltered until the following federal*

106 decennial census [of the United States] for New Jersey shall have
 107 been received by the Governor.

1 2. When this proposed amendment to the Constitution is finally
 2 agreed to, pursuant to Article IX, paragraph 1 of the Constitution,
 3 it shall be submitted to the people at the next general election
 4 occurring more than 3 months after such final agreement and be
 5 published at least once in at least one newspaper of each county
 6 designated by the President of the Senate and the Speaker of the
 7 General Assembly and the Secretary of State, not less than 3
 8 months prior to said general election.

1 3. This proposed amendment to the Constitution shall be sub-
 2 mitted to the people at said election in the following manner and
 3 form:

4 There shall be printed on each official ballot to be used at such
 5 general election, the following:

6 a. In every municipality in which voting machines are not used,
 7 the following legend shall immediately precede the question:

8 If you favor the proposition printed below make a cross (X),
 9 plus (+) or check (✓) in the square opposite the word "Yes." If
 10 you are opposed thereto make a cross (X), plus (+) or check (✓)
 11 in the square opposite the word "No."

12 b. In every municipality the following question:

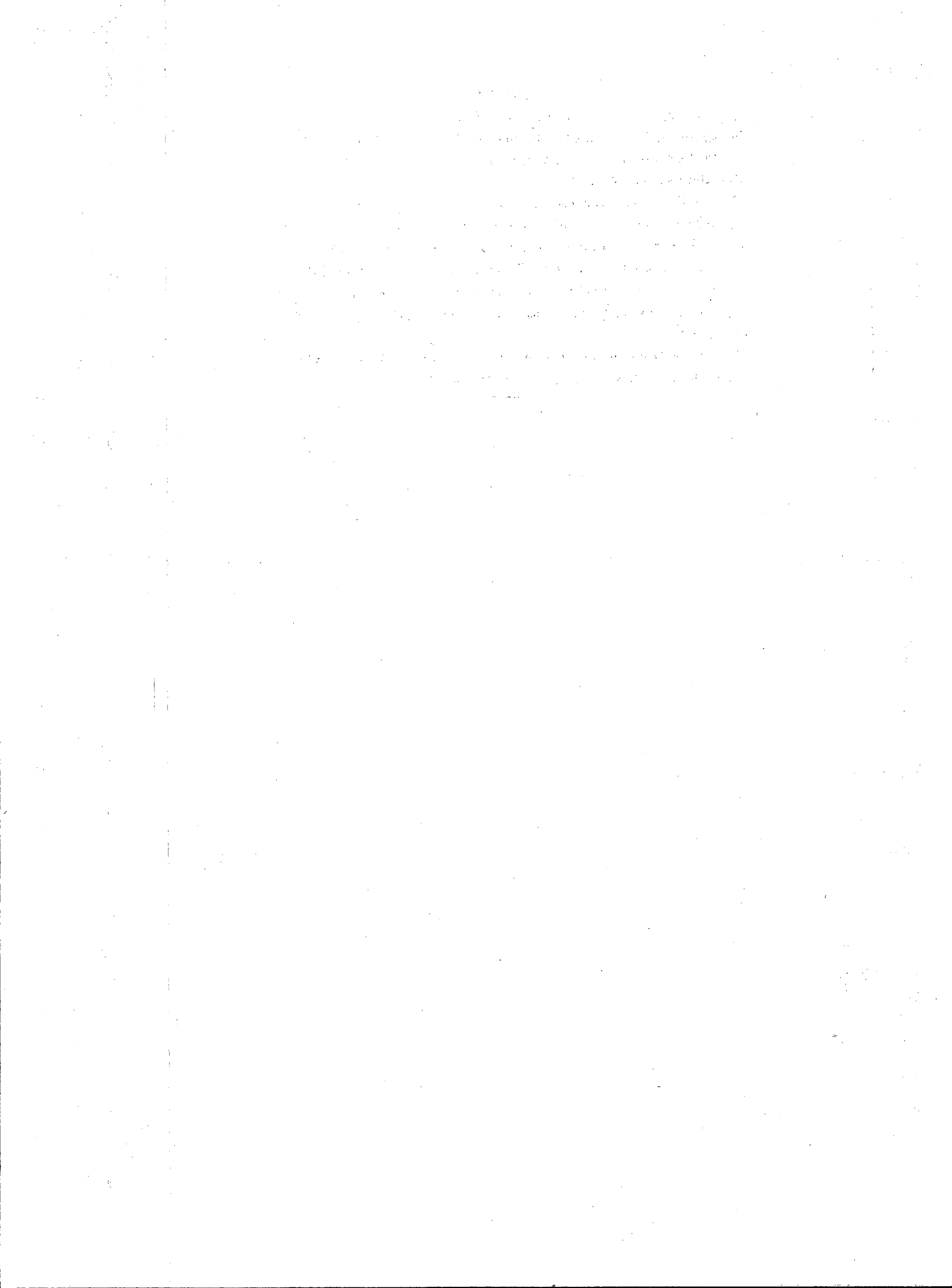
	Yes.	<p style="text-align: center;">AMENDS PROVISIONS CONCERNING THE ELECTION OF LEGISLATORS</p> <p>Shall the amendment of Article IV, Sections II and III, of the State Constitution, agreed to by the Legislature, providing standards for population equality, preservation of political subdivision boundaries, contiguity, and compactness for the drawing of legislative districts, and providing that the members of the Senate be elected at each gubernatorial election, be approved?</p>
	No.	<p style="text-align: center;">INTERPRETIVE STATEMENT</p> <p>*Adoption of this amendment would revise the legislative apportionment provisions of the State Constitution. The current language has been declared by the State Supreme Court to be in violation of the Federal Constitution. Also, beginning in 1993, State senators would be elected at each gubernatorial election every 4 years; at present, these elections only coincide every other decade.*</p> <p>*Adoption of this amendment would provide that, beginning in 1993, State senators would be elected at each gubernatorial election every 4 years; at present these elections coincide every other decade. In addition, this amendment revises the Legislative apportionment provisions of the State Constitution and would be applicable subsequent to December 31, 1982. The current language has been declared by the State Supreme Court to be in violation of the Federal Constitution.*</p>

SCHEDULE

13 1. This constitutional amendment shall, if approved, be applica-
14 ble to any establishment of legislative districts for use subsequent
15 to December 31, 1982, and to terms for the State Senate beginning
16 after December 31, 1993.

17 2. Until this amendment is applicable to terms for the State
18 Senate, each senator shall be elected for a term beginning at noon
19 of the second Tuesday in January next following his election and
20 ending at noon of the second Tuesday in January 4 years there-
21 after, except that each senator to be elected for a term beginning
22 in January of any year ending in 2, shall be elected for a term of
23 2 years.

1 3. As used in this amendment, federal decennial census means a
2 federal census taken in a year ending in zero.



SENATE STATE GOVERNMENT, FEDERAL AND
INTERSTATE RELATIONS AND VETERANS
AFFAIRS COMMITTEE

STATEMENT TO

SENATE CONCURRENT RESOLUTION No. 84
with Senate committee amendments

STATE OF NEW JERSEY

DATED: MARCH 8, 1982

The sponsor's statement below satisfactorily explains the provisions of the bill.

This concurrent resolution amends the provisions of the State Constitution concerning the election of legislators. The State Supreme Court in *Scrimminger v. Sherwin*, 60 N.J. 483 (1972), declared previous apportionment standards in the Constitution for acceptance of population deviations and recognition of county lines to be in violation of the Federal Constitution under the one-person, one vote principle. In *Davenport v. Apportionment Commission*, 65 N.J. 125 (1974), the court suggested that new constitutional provisions for apportionment would seem to be in order.

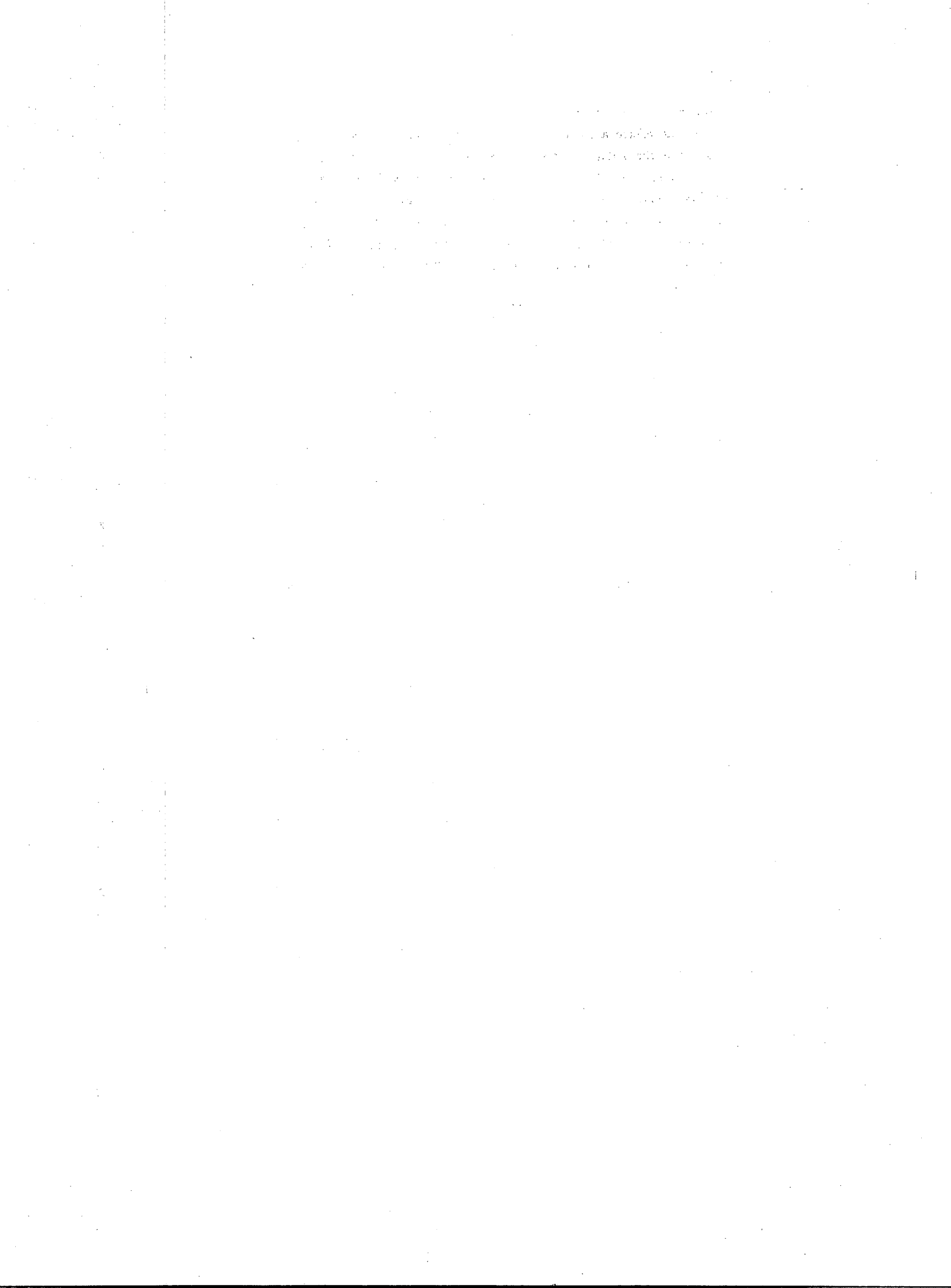
Under this amendment, 40 Legislative districts each elect one senator and two members of the General Assembly. Standards for population equality, preservation of political subdivision boundaries, contiguity, and compactness are established.

The amendment also provides that members of the Senate are to be elected at each gubernatorial election. Currently, in every other decade senators are elected half-way through a Governor's term. The 1980's is such a decade, and under this constitutional amendment this pattern will continue through the 1991 election. Beginning in 1993, however, the election of senators and the Governor will coincide.

The following chart of terms of office illustrates this change:

COMMITTEE AMENDMENTS

The committee amended the "Interpretive Statement" which will appear on the ballot if the resolution passes both houses. The amendment changes the order of the sentences describing what the proposed constitutional amendment will accomplish so that the description of the timetable for the election of State senators after 1993 precedes the sentence noting that the constitutional amendment changes the language of the State Constitution to implement the ruling of the State Supreme Court.



SENATOR WYNONA M. LIPMAN (Chairman): Good morning, ladies and gentlemen. We are here today to take testimony on Senate Concurrent Resolution No. 84, which amends the State Constitution concerning the election of legislators. The State Supreme Court, in Scrimminger v. Sherwin, 60 New Jersey 483, 1972, declared previous apportionment standards in the Constitution, which accepted population deviations and recognition of county lines, to be in violation of the Federal Constitution under the one-person, one-vote principle.

This Resolution provides for the establishment of 40 legislative districts, each electing one member of the Senate and two members of the General Assembly. The legislative districts shall be as nearly compact and equal in their number of inhabitants as may be practicable. They shall be composed of contiguous territory and drawn so as to adhere to as many county and municipal lines as possible. No municipality shall be divided among legislative districts unless it contains more than one-fortieth of the total number of inhabitants of the State.

SCR-84 also provides that members of the Senate be elected at each gubernatorial election. Currently, in every other decade, Senators are elected half-way through a Governor's term. The 1980's is such a decade and, under this constitutional amendment, this pattern will continue through the 1991 election. Beginning in 1993, however, the election of Senators and the Governor will coincide.

The Committee amended the "Interpretive Statement", which will appear on the ballot if the Resolution passes both Houses. The Amendment changed the order of the sentences describing what the proposed constitutional amendment will accomplish so that the description of the timetable for the election of State Senators after 1993 precedes the sentence noting that the constitutional amendment changes the language of the State Constitution to implement the ruling of the State Supreme Court.

Appearing this morning to speak on SCR-84 is the sponsor of the Resolution, Senator Perskie.

SENATOR STEVEN PERSKIE: Madam Chairman, good morning. Your statement pretty much describes, comprehensively, the proposed amendment and Resolution. I would note that one of the purposes you have described here is, first, to eliminate from the constitution language that the courts have already held to be improper and invalid. Last year's Reapportionment Commission proceedings were held up a bit while the Reapportionment Commission went to court to obtain a declaratory judgment that the work of the Reapportionment Commission was not to be bound by language that is in this constitution now. One of the purposes of this amendment is to remove from the constitution that offending language.

We have substituted language that is in keeping with the standards that the courts have found appropriate -- that is, we have districts that are as nearly compact and equal in population as practicable; that they be composed of contiguous territory; and that as many municipal lines and county lines as practicable be recognized, with the understanding that no municipality be divided, unless it must, to meet that standard.

The other change is one that we tried to do in a separate constitutional amendment some years ago -- it passed the Senate but it did not pass the Assembly -- and that is to ensure that Senate elections and Gubernatorial elections occur at the same time. The purpose for that -- or the theory behind that -- is to provide some effective means of having a common philosophical or political background between the Legislature and the Executive. We have designed that change so that

it will not be effective for a while, for the very simple, practical reason that to do otherwise would mean that we would contort the present scheme for the 1980's. And, it is frankly my concern that if we try to do that, we would compromise the political viability of getting this resolution passed. So, we won't do it for the 1980's. We don't need to do it for the 1990's because, as you have pointed out, it comes back into "sync" in 1993. So, this will take care of the problem in futurity.

There are a number of other suggestions that have been made from time to time with respect to amendments to this article. There are two in particular that I, personally, would like to see. One is for a single-member Assembly District, and one is for a staggered Senate term. I haven't included either of those suggestions in this Resolution, again for the very simple reason that I believe we should start this process with the simplest and most basic items. I believe that these two changes that this Resolution embodies are essentially non-controversial and broadly acceptable.

I would hope that as we continue the process over this decade of looking to review this before the next reapportionment of 1991, we could consider the questions of single-member Assembly districts and staggered terms. Those will be a lot more difficult and will probably take a little more time to develop a consensus for than is required to put this question on the ballot.

Do you have any questions?

SENATOR LIPMAN: Senator Costello, do you have any questions?

SENATOR COSTELLO: I have no questions. Steve has explained this once before.

SENATOR LIPMAN: Yes, before our Committee. We think it is a very good amendment. It is technical but it shouldn't be controversial; it should pass both Houses.

SENATOR PERSKIE: I hope so. We are going to try to schedule it for a Senate vote for the next session, on the 17th, I think.

SENATOR LIPMAN: Yes. As you know, this came out of our Committee with a unanimous vote, I think. Thank you, Senator Perskie.

SENATOR PERSKIE: I think there are some other witnesses.

SENATOR LIPMAN: Yes. We have Jo-Ann Oser from Common Cause.

J O-A N N O S E R: Good morning. I would like to thank the members of this Committee for giving New Jersey Common Cause the opportunity to testify here this morning. We commend the sponsor, Senator Perskie, and the members of this Committee for taking the leadership in bringing this measure before the Legislature.

Since 1977, reapportionment has been a top national Common Cause priority. In the past several years, we have witnessed major changes in the constitutional standards in states such as California, Minnesota, Iowa, and Arkansas, and we think that it is an appropriate time for the Legislature and the voters of New Jersey to adopt a constitutional amendment establishing standards to guide the Apportionment Commission in its efforts to divide the state into legislative districts.

The Common Cause model constitutional amendment seeks to provide more specific definitions of reapportionment standards than are found in most state constitutions. This is done by providing population and compactness standards against which to judge reapportionment plans. To accomplish this, our model provides six criteria for the Commission to follow in drawing lines.

1. The model amendment provides that districts in each house shall have a "population as nearly equal as is practicable," based on the Federal census, and establishes certain population parameters to give definition to this requirement. For state legislative districts, the average deviation of all the districts from the average population must not exceed two percent.

2. The model constitutional amendment requires that district lines be drawn to coincide with the boundaries of political subdivisions to the extent consistent with the requirement of substantial population equality.

3. The model requires districts to be composed of convenient contiguous territory.

4. The amendment provides that districts be compact. The aggregate length of all district boundaries must be as short as practicable, consistent with the constitutional requirements of substantial population equality and maintenance of political subdivision boundaries. In no case shall the aggregate length of all boundaries of all districts be in excess of five percent greater than the shortest possible aggregate length of a plan consistent with the other criteria.

5. The proposed amendment requires that no district be drawn for the purpose of favoring any political party, incumbent legislator, or other group. Our standards do not require that the Commission draw district lines without access to political data, such as party registration, past voting behavior, or demographics. Plans drawn in a blind or neutral way might have results that are anything but fair or neutral. It is important that the Commission be able to check its work against a standard of political fairness.

The amendment forbids the drawing of district lines for the purpose of diluting the voting strength of any racial minority group.

In light of our model, we believe that SCR-84 provides a good starting point. While it contains nearly all of our language, it unfortunately lacks the definable standards by which to measure population equality and compactness. The language of this amendment could be greatly improved by setting a formula for population deviation. The Common Cause model suggests a deviation of two percent. This figure was selected to provide the flexibility necessary to allow the Commission to comply with the other five criteria. The proposed amendment calls for "compact" districts. Yet, without specific guidelines, this requirement is meaningless. The Common Cause model provides an enforceable compactness standard without using any unnecessarily rigid or mathematical formulas. The model's compactness standard is a comparative one based on the plan's aggregate boundary lengths.

We are pleased with the strict adherence to municipal boundaries. Under this proposed amendment, the only municipalities which would be split would be Newark and Jersey City, which is the way it is in this plan. We think this is an important improvement as state legislatures consider a great deal of legislation affecting the power and organization of local governments. It is only natural for these entities to have their own representation in the Legislature.

Given the population distribution of New Jersey, and the disparity in county populations, we urge this Committee to include language which will guide the Commission in deciding what conditions would justify the crossing of county lines. The wording of the proposed amendment is extremely vague on this point.

We are hopeful that this Committee will give careful consideration

to standards which have been suggested. These standards have been designed to ensure fair and effective legislative representation. The establishment of fair district lines through an equitable reapportionment process will help to restore competition -- the lifeblood of a democratic society -- to our electoral process. Thank you.

SENATOR LIPMAN: One minute, Jo-Ann. Did you attend the committee meeting at which this bill was heard?

MS. OSER: No, I did not.

SENATOR LIPMAN: You did not.

MS. OSER: I was not there.

SENATOR LIPMAN: You didn't know the bill was being considered? I am suggesting that it might have been a good thing to have a few of those amendments at that time.

MS. OSER: I realize that, and I apologize.

SENATOR LIPMAN: Unfortunately, the sponsor has just left. He has a copy of your testimony though doesn't he?

MS. OSER: Yes, he does.

SENATOR LIPMAN: I trust he will be so guided.

MS. OSER: Okay.

SENATOR LIPMAN: It has yet to go on the agenda of the Senate. They seem to be good amendments, but they must be acceptable to the sponsor.

Senator, do you have any questions?

SENATOR COSTELLO: No.

MS. OSER: I think it is very important to have some standards by which to guide the Commission. And, when you are having language that is compact, if you have some standards to apply to that it helps.

SENATOR COSTELLO: I was going to comment on that, in a sense. On page three, it says "given the population distribution of New Jersey." You are urging the Committee to include language which will guide the Commission in deciding what conditions would justify the crossing of county lines. I suspect that no matter what we do we are not going to satisfy everyone. It will always be contested -- the language, or whatever. But, by and large, it was a good presentation.

I am delighted to hear you support this.

SENATOR LIPMAN: Yes. I'm glad to hear you like it. That may be a point -- to provide some guidance. We will speak to the sponsor about it. A City such as Newark has enough population for perhaps two districts, or one and a partial district. Yet, we have three legislators elected from Newark. That is a good point.

MS. OSER: That's right. And, the way the current amendment reads is, when you start breaking up counties, you have a reason for breaking up counties. The current wording of this, and one of the things that concerns Common Cause, is that it doesn't have that wording for-- You can break up counties when they have a population of more than one-one/fortieth of the State. So, you could come into a situation, particularly in the southern part of the State, where you are breaking up counties and you don't have any guidelines for which to break up counties, because there is no population standard that is applied.

SENATOR LIPMAN: Yes. All right, thank you very much for your testimony.

Are there other persons to be heard on this Resolution? If not, then we will close this hearing, and thank you all for coming.

(hearing concluded)