One Person, One Vote
An Evolving Legal Concept

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Measuring Population Equality Among Districts

• Ideal Population

• Deviation

• Overall Range
Judicial Intervention in Redistricting Cases

Colegrove v. Green, 328 U.S. 549 (1946)

- “Courts ought not to enter this political thicket.”
  328 U.S. at 556.


- “…legislative redistricting cases are justiciable,” and “…this cause presents no nonjusticiability ‘political question.’”
  369 U.S. at 198-199.
EQUAL POPULATION STANDARD FOR CONGRESSIONAL DISTRICTS
Wesberry v. Sanders
376 U.S. 1 (1964)

• Population of congressional districts in the same state must be as nearly equal in population as practicable (mathematical equality).

• “…as nearly as is practicable one man’s vote in a congressional election is to be worth as much as another’s.” 376 U.S. at 7-8.
Kirkpatrick v. Preisler
394 U.S. 526 (1969)

- Congressional districts drawn by the Missouri General Assembly with 6% deviation failed to satisfy the “as nearly as practicable” standard set in *Wesberry*.

- “…adoption of fixed numerical standards which excuse population variances without regard to the circumstances to each particular case.” 394 U.S. at 530.
Kirkpatrick v. Preisler

- The justifications rejected included a desire to avoid fragmenting either political subdivisions or areas with distinct economic and social interests, considerations of practical politics, and even an asserted preference for geographically compact districts.

- Missouri failed to show systematic relationships between its congressional district population disparities and either of two other factors offered as justifications—varying proportions of eligible voters to total population and projected future population shifts among districts.
Karcher v. Daggett
462 U.S. 725 (1983)

• There is no population deviation among congressional districts that is too small to challenge, as long as those disputing the plan can show that the inequality between district populations could have been avoided. 462 U.S. at 733.

• Even though the congressional redistricting plan drawn by the New Jersey Legislature only had slight population differences (less than 1%: to be exact 0.6984 %), the Supreme Court held that they “were not the result of good-faith effort to achieve population equality.” 462 U.S. at 732.

• “…absolute population equality be the paramount objective of apportionment only in the case of congressional districts…” 462 U.S. at 732-733.
Karcher v. Daggett

“Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives... . The State must, however, show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions. The showing required to justify population deviations is flexible, depending on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests, and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires case-by-case attention to these factors.”
Hastert v. State Board of Elections
777 F. Supp. 634 (N.D. Ill. Nov. 6, 1991)

- Two sets of plaintiffs (Hastert and Rosebrook)
- The court adopts the Hastert plan (over the Rosebrook plan) for the following reasons:
  a) More precise mathematical equality:
     Hastert deviation -.00017%
     Rosebrook deviation - .00297%
  b) Best of circumstances analysis
EQUAL POPULATION STANDARD FOR LEGISLATIVE PLANS
Reynolds v. Sims
377 U.S. 533 (1964)

• 14th Amendment requires states to construct legislative districts that are substantially equal in population. The Supreme Court has not required the same degree of equality for state legislative districts.

• “…we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable” 377 U.S. at 577.

• “Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or political interests.” 377 U.S. at 562.
Reynolds v. Sims

• “[S]ome distinctions may well be made between congressional and state legislative representation. Since, almost invariably, there is a significantly larger number of seats in state legislative bodies to be distributed within a state than congressional seats, it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting while still affording adequate representation to all parts of the State.” 377 U.S. at 578.
Reynolds v. Sims

“A consideration that appears to be of more substance in justifying some deviations from population-based representation in state legislatures is that of insuring some voice to political subdivisions, as political subdivisions. Several factors make more than insubstantial claims that a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained. Local governmental entities are frequently charged with various responsibilities incident to the operation of state government. In many States much of the legislature's activity involves the enactment of so-called local legislation, directed only to the concerns of particular political subdivisions. And a state may legitimately desire to construct districts along political subdivision lines to deter the possibilities of gerrymandering.” 377 U.S. at 580-581.
Mahan v. Howell
410 U.S. 315 (1973)

- The court differentiated between congressional and legislative districting standards.
- The “maximum deviation” among the Virginia house districts was 16.4 percent.
- The Supreme Court held that the house districts did not exceed tolerable limits because it was justified by a rational state policy. 410 U.S. at 322.
Mahan v. Howell

• “We are not prepared to say that the decision of the people of Virginia to grant the General Assembly the power to enact local legislation dealing with the political subdivisions is irrational. And if that be so, the decision of the General Assembly to provide representation to subdivisions qua subdivisions in order to implement that constitutional power is likewise valid when measured against the Equal Protection Clause of the Fourteenth Amendment.”

• Court held that Virginia's “plan for apportionment of the House of Delegates may reasonably be said to advance the rational state policy of respecting the boundaries of political subdivisions.
Gaffney v. Cummings
412 U.S. 735 (1973)

• Connecticut Legislative plan had a “total maximum deviation” of 1.9% in the Senate and 7.8% in the House. Objectives used included “political fairness.”

• Supreme Court held that, “A political fairness principle that achieves a rough approximation of the statewide political strengths of the two major parties does not violate the Equal Protection Clause.” 412 U.S. at 735, 737.

• “…minor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State.” 412 U.S. at 745.
White v. Regester
412 U.S. 755 (1973)

• Texas House plan had a “total variation” of 9.9%. The Supreme Court held that the District Court was in error to rule that the 9.9% deviation made out a prima facie equal protection violation under the 14th amendment, absent special justification. 412 U.S. at 763.

• “Very likely, larger differences between districts would not be tolerable without justification ‘based on legitimate considerations incident to the effectuation of a rational state policy,’ but here we are confident that appellees failed to carry their burden of proof insofar as they sought to establish a violation of the Equal Protection Clause from population variations alone.” 412 U.S. at 764.

• *Dissent in the Gaffney and White opinions claim the majority has in effect established a 10% de minimis rule for legislative redistricting.
Brown v. Thompson
462 U.S. 835 (1983)

- Wyoming House plan had average deviation of 16% and had a maximum deviation of 89%. The Supreme Court upheld use of counties as legislative districts and ensuring each district had at least 1 representative as a substantial state concern to justify the deviations.

- Supreme Court stated, “As general matter, legislative apportionment plan with maximum population deviation under 10% falls within category of minor deviations, but plan with larger disparities in population creates prima facie case of discrimination and therefore must be justified by the state.” 462 U.S. at 843.

- Justice Powell: “The ultimate inquiry, therefore, is whether the legislature's plan “may reasonably be said to advance [a] rational state policy” and, if so, “whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits.” 462 U.S. at 843.
Brown v. Thompson

- Justice O'Connor said, “I have the gravest doubts that a statewide legislative plan with an 89 percent maximum deviation could survive constitutional scrutiny despite the presence of the State's strong interest in preserving county boundaries. I join the Court's opinion on the understanding that nothing in it suggests that this Court would uphold such a scheme.” 462 U.S. at 850.

- *Brown* has never been cited as an example for future line drawing

- **Note:** *Gaffney, White* and *Brown* show that when the deviation is under 10%, the challenger of the plan has the burden of proof.
Chapman v. Meier
420 U.S. 1 (1975)

- North Dakota Senate districts had a deviation of more than 20% and
- the state claimed the plan was defendable on various grounds, such as, “the absence of ‘electorally victimized minorities,’ in the fact that North Dakota is sparsely populated, in the division of the State caused by the Missouri River, and in the goal of observing geographical boundaries and existing political subdivisions.” 420 U.S. at 24.
- Justice Blackmun stated, “We find none of these factors persuasive here, and none of them has been explicitly shown to necessitate the substantial population deviation embraced by the plan.” 420 U.S. at 24.
Connor v. Finch
431 U.S. 407 (1977)

Mississippi State legislative plan had a “maximum deviation” of 16.5% in the Senate and 19.3% in the House. The U.S. Supreme Court held that the deviations “…substantially exceed the ‘under-10%’ deviations the Court has previously considered to be of prima facie constitutional validity only in the context of legislatively enacted apportionments.” 431 U.S. at 418.

• “The District Court failed here to identify any such ‘unique features’ of the Mississippi political structure as would permit a judicial protection…” 431 U.S. at 420
Voinovich v. Quilter  
507 U.S. 146 (1993)

- The total deviation for the Ohio House districts was 13.81% and the Senate districts deviation was 10.54%.

- The District Court held “the justification the Defendants advance for the total deviations in excess of 10% is appropriate for Equal Protection purposes, and has not been advanced without basis, for there is a state constitutional policy favoring the preservation of county lines…” 857 F.Supp. at 584.
Voinovich v. Quilter

- Justice O’Connor validated the 10-percent *de minimis* standard for state legislative districts established in *Gaffney* and *White*, quoting *Brown* that: “[M]inor deviations from mathematical equality among state legislative districts are insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State. Our decisions have established as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations. A plan with larger disparities in population, however, creates a prima facie case of discrimination, and therefore must be justified by the State.” 507 U.S. at 161.
Larios v. Cox

• Rural Georgia and inner city Atlanta had an average deviation of -4% and were Democratic leaning.

• The rest of Georgia (suburban) had an average deviation of +4% and were Republican leaning.

• The court found that the plan systematically under populated rural Georgia and inner city Atlanta while overpopulating the rest of Georgia.
Rodriguez v. Pataki  

- Average deviation of 29 “downstate” districts is +2.37% (overpopulated)

- Average deviation of the 24 “upstate” districts is -2.86% (underpopulated)

- The district court disagreed with the plaintiff’s allegations that the “downstate” districts received 2/3 less of a district and “upstate” districts received 2/3 of a district more.
Legislative Plans Drawn by a Court

• Chapman v. Meier, 420 U.S. 1 (1975)
• Connor v. Finch, 431 U.S. 407 (1977)

• “A court-ordered plan . . . must be held to higher standards than a State's own plan. With a court plan, any deviation from approximate population equality must be supported by enunciation of historically significant state policy or unique features.”

• “[U]nless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature . . . must ordinarily achieve the goal of population equality with little more than de minimis variation. Where important and significant state considerations rationally mandate departure from these standards, it is the reapportioning court's responsibility to articulate precisely why a plan . . . with minimal population variance cannot be adopted.” 420 U.S. at 26-27.
Burns v. Richardson
384 U.S. 73 (1966)

• The Supreme Court upheld Hawaii’s legislative redistricting based on the number of registered voters.

• The Court allowed the use of an alternative population base after finding that the results were not substantially different from results of a redistricting based on total citizen population.
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