AMERICAN CONSTITUTIONALISM
VOLUME II: RIGHTS AND LIBERTIES
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Supplementary Material

Chapter 9: Liberalism Divided—Democratic Rights/Voting/Reapportionment

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Reapportionment Scorecard (1969–1980)

Hadley v. Junior College Dist. of Metropolitan Kansas City, Mo. (1970)

> Elections for members of a school board must respect the principle, one person, one vote.
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> This Court has consistently held in a long series of cases, that in situations involving elections, the States are required to insure that each person's vote counts as much, insofar as it as practicable, as any other person's. We have applied this principle in congressional elections, state legislative elections, and local elections. The consistent theme of those decisions is that the right to vote in an election is protected by the United States Constitution against dilution or debasement. While the particular offices involved in these cases have varied, in each case a constant factor is the decision of the government to have citizens participate individually by ballot in the selection of certain people who carry out governmental functions. Thus in the case now before us, while the office of junior college trustee differs in certain respects from those offices considered in prior cases, it is exactly the same in the one crucial factor—these officials are elected by popular vote.

Abate v. Mundt (1971)

Local apportionment plan that had some districts deviate from equality by as much as 11.9 percent are constitutional when they reflect a long tradition of overlapping functions between the county and more local units, and are not biased toward any political interest or region.

> In assessing the constitutionality of various apportionment plans, we have observed that viable local governments may need considerable flexibility in municipal arrangements if they are to meet changing societal needs, . . . and that a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality. . . . These observations, along with the facts that local legislative bodies frequently have fewer representatives than do their state and national counterparts and that some local legislative districts may have a much smaller population than do congressional and state legislative districts, lend support to the argument that slightly greater percentage deviations may be tolerable for local government apportionment schemes.

Whitcomb v. Chavis (1971)

> State legislative districts with variance greater than 25% are unconstitutional.

> Th[e] evidence . . . showed that Senate district 20, with one senator for 80,496, was overrepresented by 13.68% while district 5, with one senator for 106,790, was underrepresented by 14.52%, for a total variance of 28.20% and a ratio between the largest and smallest districts of 1.327 to 1. The house figures were similar. The variation ranged from one representative for 41,449 in district 39 to one for 53,003 in district 35, for a variance of 24.78% and a ratio of 1.279 to 1. These variations were in excess of, or any nearly equal to, the variation of 25.65% and the ratio of 1.30 to 1 which we held excessive for state legislatures in *Swann v. Adams* (1967).

Sixty-Seventh Minnesota State Senate v. Beens (1972)

Federal district court may not significantly change the number of state legislators when implementing a reapportionment plan.

> We do not disapprove a court-imposed minor variation from a State's prescribed figure when that change is shown to be necessary to meet constitutional requirements. And we would not oppose the District Court's reducing, in this case, the number of representatives in the Minnesota house from 135 to 134, as the parties apparently have been willing to concede. That action would fit exactly the 67-district pattern. But to slash a state senate's size almost in half and a state house's size by nearly one-fourth is to make more than a mere minor variation. If a change of that extent were acceptable, so, too, would be a federal court's cutting or increasing size by 75% or 90% or, indeed, by prescribing a unicameral legislature for a State that has always followed the bicameral precedent.

Mahan v. Howell (1973)

Deviations of 16.4% are acceptable for state legislative districts when doing so respects longstanding city and county boundaries.

> We conclude, therefore, that the constitutionality of Virginia's legislative redistricting plan was not to be judged by the more stringent standards that *Kirkpatrick v. Preisler* (1969) and *Wells v. Rockefeller* (1969) make applicable to congressional reapportionment, but instead by the equal protection test enunciated in *Reynolds v. Sims* (1964). . . . We reaffirm its holding 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.' . . . We likewise reaffirm its conclusion that '(s)o long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the apportionment of seats in either or both of the two houses of a bicameral state legislature.'

Gaffney v. Cummings (1973)

States may deviate slightly from perfect equality when drawing state legislative districts when doing so will promote fairness between the major political parties.

> [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.

White v. Weiser (1973)

Congressional districts with deviations less than 1% from perfect equality are unconstitutional when greater mathematical equality could have been attained.

> Keeping in mind that congressional districts are not so intertwined and freighted with strictly local interests as are state legislative districts and that, as compared with the latter, they are relatively enormous, with each percentage point of variation representing almost 5,000 people, we are not inclined to disturb *Kirkpatrick v. Preisler* (1969) and *Wells v. Rockefeller* (1969).

White v. Regester (1973)

State legislative districts with deviations from perfect equality of less than 10% are not prima facie unconstitutional.

> Insofar as the District Court's judgment rested on the conclusion that the population differential of 9.9% from the ideal district between District 3 and District 85 made out a prima facie equal protection violation under the Fourteenth Amendment, absent special justification, the court was in error. It is plain from *Mahan v. Howell* (1973) . . . and *Gaffney v. Cummings* (1973) . . . that state reapportionment statutes are not subject to the same strict standards applicable to reapportionment of congressional seats. *Kirkpatrick v. Preisler* (1969) did not dilute the tolerances contemplated by *Reynolds v. Sims* (1964) with respect to state districting. . . . For the reasons set out in *Gaffney v. Cummings*, . . . we do not consider relatively minor population deviations among state legislative districts to substantially dilute the weight of individual votes in the larger districts so as to deprive individuals in these districts of fair and effective representation.

Chapman v. Meier (1975)

Courts should prefer single-member districts when reapportioning a state legislature.

> One advantage [of single membered districts] is obvious: confusion engendered by multiple offices will be removed. Other advantages perhaps are more speculative: single-member districts may prevent domination of an entire slate by a narrow majority, may ease direct communication with one's senator, may reduce campaign costs, and may avoid bloc voting. Of course, these are general virtues of single-member districts, and there is no guarantee that any particular feature will be found in a specific plan. Neither the District Court majority nor appellee, however, has provided us with any suggestion of a legitimate state interest supporting the abandonment of the general preference for single-member districts in court-ordered plans.

Town of Lockport, New York v. Citizens for Community Action at Local Level, Inc. (1977)

State may require county charters to be approved by a majority of voters within and without city limits.

> The equal protection principles applicable in gauging the fairness of an election involving the choice of legislative representatives are of limited relevance, however, in analyzing the propriety of recognizing distinctive voter interests in a 'single-shot' referendum. In a referendum, the expression of voter will is direct, and there is no need to assure that the voters' views will be adequately represented through their representatives in the

legislature. The policy impact of a referendum is also different in kind from the impact of choosing representatives instead of sending legislators off to the state capitol to vote on a multitude of issues, the referendum puts one discrete issue to the voters. That issue is capable, at least, of being analyzed to determine whether its adoption or rejection will have a disproportionate impact on an identifiable group of voters.

Connor v. Finch (1977)

Court ordered reapportionments of state legislative districts may not deviate as substantially from perfect equality as legislative apportionments.

> Recognition that a State may properly seek to protect the integrity of political subdivisions or historical boundary lines permits no more than "minor deviations" from the basic requirement that legislative districts must be "as nearly of equal population as is practicable." . . . The question is one of degree. In *Chapman v. Meier* (1975), however, it was established that the latitude in court-ordered plans for departure from the Reynolds standards in order to maintain county lines is considerably narrower than that accorded apportionments devised by state legislatures, and that the burden of articulating special reasons for following such a policy in the face of substantial population inequalities is correspondingly higher.

Wise v. Lipscomb (1978)

A legislative reapportionment plan done under court order is judged by the standards for judging legislative reapportionments, not the stricter standards for judicial reapportionments.

> [T]he body governing Dallas validly met its responsibility of replacing the apportionment provision invalidated by the District Court with one which could survive constitutional scrutiny. The Court of Appeals therefore erred in regarding the plan as court imposed and in subjecting it to a level of scrutiny more stringent than that required by the Constitution.