ABSTRACT

Dodge & McCauley, Reapportionment: A Survey of the Practicality of Voting Equality, 43 U. Pitt. L. Rev. 527 (1982).

Reapportionment: A Survey of the Practicality of Voting Equality, examines the history of reapportionment through the vehicle of U.S. Supreme Court opinions. The authors begin with the Supreme Court's reluctance to delve into the "political thicket" of overseeing apportionment plans. This reluctance has early origins and continued well into the 1940s when the Court decided *Colegrove v. Green*, 328 U.S. 549 (1946). The Court there held that a suit regarding reapportionment raised a non-justiciable question, beyond their jurisdiction. This restrained view was ousted in a later case, *Baker v. Carr*, 369 U.S. 186 (1962), where it was held that reapportionment plans are reviewable by courts since a fundamental constitutional right is involved, i.e., the right to vote.[1]

The article next examines the standards used in testing the validity of a challenged plan. The standard as announced in *Gray v. Sanders*, 372 U.S. 368 (1963), is a one-person, one-vote approach; later cases have held this standard to apply to federal, state, and local districting contexts. Pursuant to this standard, the courts have fashioned mathematical formulas which require numerical equality as nearly as possible.[2]

The remainder of the article discusses how this standard has been applied differently to the federal, state and local areas. In congressional redistricting, for instance, the courts have not recognized a de minimis variance, so that these plans must adhere to the strict numerical equality standard. Thus, legislators have been admonished to look to total mathematical equality, although there has been a recognition that a small variance may be the result of uncontrollable factors. This hardline standard is more flexible when applied to state districting. In *Reynolds v. Sims*, 377 U.S. 533 (1964), it was held that state redistricting should meet the *Gray* standard; however, a minimal variance would be tolerated

1. U.S. CONST., amend. XV § 1 (1870).
2. Wesberry v. Sanders, 376 U.S. 1 (1964).

where it could be justified based on the geographical features, social, ethnic or cultural interests, or compactness or contiguity of the plan. The authors then survey the cases applying the *Reynolds* standard and analyze the variations held constitutional or unconstitutional within a number of states.

On the local level, the Court in *Avery v. Midland Co.*, 390 U.S. 474 (1968), held that the Equal Protection Clause applied to local government plans since they function more on a legislative than an administrative level. The cases discussed show that local redistricting plans are subject to an even more flexible rule than state plans. Substantial variations on the local level are allowed where experimentation regarding voting is done in good faith.

The authors devote one minor section of the article to vote dilution. Under this theory votes may be diluted, even though districts are equal, because their political strength is divided in drawing the district lines. In these cases the challenger must show that, under the totality of circumstances, a particular plan invidiously cancels out the complaining group's voting strength, thus permitting the group less opportunity to participate in the political process. The authors note that dilution analysis may no longer be accepted by the Court, pointing to *City of Mobile v. Bolder*, 446 U.S. 55 (1980), in support of this claim (six plurality opinions rejected the "totality of circumstances" analysis). The Court in *Bolder*, incidentally, upheld the challenged reapportionment plan on a finding that the plan was motivated by no discriminatory purpose. The article concludes by summarizing the various standards but without offering any solution to the vote dilution problem.

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