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## Reapportionment 201

Variances in population, size of new congressional districts can be substantial

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Every decade, following the census, Congress should be reapportioned to reflect population shifts. This is done by a consideration of the same single-member district concepts discussed in "Reapportionment and Redistricting 101" in the newspaper's May 24 edition. But in the truest sense, congressional reapportionment is quite different.

Congressional reapportionment is based on certain "counting" objectives. For example, the congressional reapportionment requires that the entire population be counted. This includes American citizens, legal aliens, illegal aliens, and individuals who are employed by the Department of Defense and are currently residing out of the country.

In search of the one man, one vote quest, the system ignores the following issues:

- Are the citizens of voting age?
- Are the citizens registered voters?
- Why are legal and illegal aliens considered in the count, if they are not covered by the "one man, one vote" allegory?
- Does the allocation of Department of Defense employees who are stationed out of the country skew the population toward jurisdictions with an ample supply of defense installations located within their borders?
- Who establishes and endorses the directives given to the Department of Commerce and the U.S. Bureau of Census?

These questions are answered in part by an examination of census objectives. Additionally, from the numbers gleaned from the decennial census, a different standard is applied for congressional reapportionment. In Mississippi, we have 1,873,740 registered voters out of 2,910,540 residents, 26.1 percent of whom are under the age of 18, and thus unable, based on age, to be able to vote.

The remainder of the unregistered voters are old enough to vote but have not, for various reasons, registered to vote in the state. This would include aliens but also individuals who are simply not engaged in the voting process.

The current method of apportioning seats in Congress was adopted in 1941 and uses a mathematical formula to assign a priority value to each House seat. Previous formulas which had been adopted simply divided the national or state populations by the number of congressional seats, so a state could have

fewer seats than its population warranted.

The Constitution requires that "representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state." This obligation has been enhanced by case law after 1962.

For example, in the 1964 case of *Westberry v. Sanders*, the Supreme Court held that the reapportionment resulting after each decennial census should be "as nearly equal as practicable" and thereafter, in *Kirkpatrick v. Priesler*, rejected an argument that small variations in population between congressional districts were de minimis (so minor as to be negligible), noting that "nothing is de minimis" and any variances must be determined to be unavoidable or justified as supporting an acknowledged and valid governmental policy.

In 1983, the Supreme Court reaffirmed its position in *Kilpatrick*, in the decision of *Karcher v. Daggett*, by noting that there is no level of population inequality among congressional districts that is too small, so long as the plan's challengers can show that the inequality could have been avoided.

However, once the challengers of the plan have demonstrated that a method exists to reduce the population inequality among congressional districts within the state, the state assumes the burden to prove that the drawing of the congressional district boundary lines was necessary to achieve a "legitimate state objective."

What qualifies as a legitimate state objective? *Karcher* recognizes several in its opinion in chief:

- Making districts compact
- Respecting municipal boundaries
- Preserving the cores of prior districts
- Avoiding contests between incumbents.

The opinion makes clear, however, that the state must demonstrate with specificity the relationship between the legitimate state objective and the deviation(s) in the proposed boundary lines.

The inability to particularly tie the proposal which creates an enhanced degree of inequality among and between districts to a legitimate state objective will result in discrediting the plan.

In Mississippi, congressional reapportionment is governed by state law, which requires the legislative committee charged with reapportionment to follow constitutional standards that may apply and to observe various denominated guidelines:

- Create compact districts composed of contiguous territories, with the boundary crossing governmental or political boundaries the least number of times; and
- Create districts that are structured, as much as possible, among county lines; and should county lines be fractured, then election district lines should be followed as nearly as possible.

In 1991, the Standing Joint Congressional Redistricting Committee adopted criteria which included the following:

- Any redistricting plan should not dilute minority voting strength;
- Any redistricting plan should seek to avoid a political gerrymander;
- District must be composed of contiguous territories; and

- Districts must be compact;
- Districts should cross county lines the least number of times possible, and if county lines are crossed, election precinct lines should be followed as much as possible.

Generally speaking, the average size of a congressional district will rise.

While the number of seats in the U.S. House has been constant at 435 since 1911, the population in the districts continues to rise as population increases.

For example, the average size of a congressional district as a result of the 2000 census was 646,952 (about 75,000 more than in the 1990 census), Montana's one seat represented 905,316 people, while Wyoming's one seat represented 495,304.

As a result of population shifts during the decades, congressional representation reflects regional population trends. For example, while Mississippi lost a seat, four other Southern states gained seven seats.

Thus, even though Mississippi lost a representative, Southern colleagues gained seats.

To the extent that there are regional issues for congressional contemplation, our interests will be supported as a result of the strength of our regional colleagues.

While the goal of apportionment is to produce the most equitable distribution of congressional seats possible, one can see that the variances are actually quite large.

This regularly calls into question the one man, one vote concept.

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