

# One Person, One Vote?

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2014 Election voting poll. Diego M. Radzinski

For half a century, Americans thought they knew what the iconic phrase "one person, one vote" meant: Government representatives were supposed to be apportioned among them based on the total populations of the districts they represented.

In other words, if there were 1,000 residents in a given jurisdiction, each 100 persons would have essentially one representative. But that formula is suddenly up for grabs as a result of *Evenwel v. Abbott*, a case recently heard by the U.S. Supreme Court.

The case, out of Texas, challenges that formula as used to apportion seats in the Texas State Senate. The challengers say the system benefits non-voters as opposed to eligible voters, and denies the latter equal protection of the laws. According to the challengers, rural districts often have many more eligible voters than urban areas, which tend to have larger numbers of undocumented immigrants and children. They want to weight the system in favor of eligible voters, although they are a bit vague as to exactly how they would implement the plan. For example, would they only count registered voters? And would there be any stopping point—say a 20 percent deviation, as opposed to a 50 percent deviation, between population and voters?

At its root, the question is: Do representatives represent people or voters? In legal terms, it is the difference between voter equality and representational equality. At another level, however, the question is: Does it really make a difference? While under a representational system, a representative is representing a lot of non-voters; in a practical sense, he or she has to be cognizant of the fact that elections are decided by voters and not by children or undocumented immigrants or prisoners, who, in most states, are counted as residents of the district in which the prison is located.

Practically, it is clear that changing the formula would have a huge impact on political power, by limiting representation from urban areas and increasing the number of districts with small minority populations. In states like Texas, it would be a boon for the Republican Party.

However, the decision should have no bearing on congressional representation, since that is governed by the U.S. Constitution, which says that the House of Representatives shall be apportioned among the states "counting the whole number of persons in each state" as determined by the decennial census. That provision does not apply to state and local offices, although most states have adopted the representational model since the U.S. Supreme Court first ruled on congressional apportionment.

However, the Supreme Court has also allowed Hawaii to discount the many military personnel temporarily stationed there when apportioning its own legislature.

Further complicating the issue now before the court is the absence of any recognized source of reliable information as to a state's demography other than the census, which counts population, not eligible voters. No state has a registry of eligible voters.

The Supreme Court has a variety of options in deciding the case of *Evenwel v. Abbott*. It could (1) find, as the U.S. government appears to argue as a friend-of-the-court, that equal protection of the laws requires the states to follow a representational model similar to congressional apportionment, with maybe some modification for the Hawaii situation; (2) leave it to each state to decide for itself which model to follow, as seems to be suggested by the Hawaii case; (3) hold that voter equality is mandatory and require local governments to apportion governing bodies on the basis of the numbers of eligible (or even registered) voters in each jurisdiction; or (4) reconsider what has been the generally accepted meaning of "one person, one vote" for the past half-century, and start a new revolution in electoral representation. g

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