Evenwell v. Abbott (578 US ___) (2016)*

Justice Ginsburg delivered the opinion of the Court.

Texas, like all other States, draws its legislative districts on the basis of total population. Plaintiffs-appellants are Texas voters; they challenge this uniform method of districting on the ground that it produces un-equal districts when measured by voter-eligible population.Voter-eligible population, not total population, they urge, must be used to ensure that their votes will not be devalued in relation to citizens' votes in other districts. We hold, based on constitutional history, this Court's decisions, and longstanding practice, that a State may draw its legislative districts based on total population.

I

A

[...] [State] schemes left many rural districts significantly underpopulated in comparison with urban and suburban districts. [...] The Court confronted this ingrained structural inequal-ity in *Baker v. Carr,* 369 U. S. 186 –192 (1962). Thatcase presented an equal protection challenge to a Tennessee state-legislative map that had not been redrawn since 1901. See also *id*., at 192 (observing that, in the meantime, there had been "substantial growth and redistribution" of the State's population). Rather than steering clear of the political thicket yet again, the Court held for the first time that malapportionment claims are justiciable. Id., at 237. [...]

Although the Court in *Baker* did not reach the merits of the equal protection claim, Baker's justiciability ruling set the stage for what came to be known as the one-person, one-vote principle. Just two years after *Baker*, in *Wesberry v. Sanders*, 376 U. S. 1 –8 (1964), the Court invalidated Georgia's malapportioned congressional map, underwhich the population of one congressional district was "two to three times" larger than the population of the others. Relying on Article I, §2, of the Constitution, the Court required that congressional districts be drawn with equal populations. *Id*., at 7, 18. Later that same Term, in *Reynolds v. Sims*, 377 U. S. 533, 568 (1964) , the Court upheld an equal protection challenge to Alabama's malapportioned state-legislative maps. "[T]he Equal Protection Clause," the Court concluded, "requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." *Ibid*. *Wesberry* and *Reynolds* together instructed that jurisdictions must design both congressional and state-legislative districts with equal populations, and must regularly reapportion districts to prevent malapportionment.[1]

Over the ensuing decades, the Court has several times elaborated on the scope of the one-person, one-vote rule. States must draw congressional districts with populations as close to perfect equality as possible. See *Kirkpatrick v. Preisler*, 394 U. S. 526 –531 (1969). But, when drawing state and local legislative districts, jurisdictions are permitted to deviate somewhat from perfect population equality to accommodate traditional districting objectives, among them, preserving the integrity of political subdivisions, maintaining communities of interest, and creating geographic compactness. See *Brown v. Thomson*, 462 U. S. 835 –843 (1983). Where the maximum population

*Note: This majority opinion has been edited from the original text by Travis Braidwood for classroom use. The full case text can be found here: < https://supreme.justia.com/cases/federal/us/578/14-940/opinion3.html >. Footnotes match those used in the original Supreme Court slip opinion.

[1]In *Avery v. Midland County*, 390 U. S. 474 –486 (1968), the Court applied the one-person, one-vote rule to legislative apportionment at the local level.

deviation between the largest and smallest district is less than 10%, the Court has held, a state or local legislative map presumptively complies with the one-person, one-vote rule. *Ibid*.[2] Maximum deviations above 10% are presumptively impermissible. Ibid. See also *Mahan v. Howell,* 410 U. S. 315, 329 (1973). [...]

Today, all States use total-population numbers from the census when designing congressional and state-legislative districts, and only seven States adjust those census numbers in any meaningful way.

B

Appellants challenge that consensus. After the 2010 census, Texas redrew its State Senate districts using a total-population baseline. At the time, Texas was subject to the preclearance requirements of §5 of the Voting Rights Act of 1965. [...] Once it became clear that the new Senate map, S148, would not receive preclearance in advance of the 2012 elections, the U. S. District Court for the Western District of Texas drew an interim Senate map, S164 [...]

The District Court, on remand, again used census data to draw districts so that each included roughly the same size total population. Texas used this new interim map, S172, in the 2012 elections, and, in 2013, the Texas Legislature adopted S172 as the permanent Senate map. [...] The permanent map's maximum total-population deviation is 8.04%, safely within the presumptively permissible 10% range. But measured by a voter-population baseline—eligible voters or registered voters—the map's maximum population deviation exceeds 40%.

Appellants Sue Evenwel and Edward Pfenninger live in Texas Senate districts (one and four, respectively) with particularly large eligible- and registered-voter populations. Contending that basing apportionment on total population dilutes their votes in relation to voters in other Senate districts, in violation of the one-person, one-vote principle of the Equal Protection Clause[.][5] [...]

II

The parties and the United States advance different positions in this case. As they did before the District Court, appellants insist that the Equal Protection Clause requires jurisdictions to draw state and local legislative districts with equal voter-eligible populations, thus protecting "voter equality," [...] To comply with their proposed rule, appellants suggest, jurisdictions should design districts based on citizen-voting-age-population (CVAP) data from the Census Bureau's American Community Survey (ACS), an annual statistical sample of the U. S. population. Texas responds that jurisdic-tions may, consistent with the Equal Protection Clause, design districts using any population baseline—including total population and voter-eligible population—so long as the choice is rational and not invidiously discriminatory. [...] Sharing Texas' position that the Equal Protection Clause does not mandate use of voter-eligible population, the United States urges us not to address Texas' separate assertion that the Constitution allows States to use alternative population baselines, including voter-eligible population. [...]

[2]Maximum population deviation is the sum of the percentage deviations from perfect population equality of the most- and least-populated districts. See *Chapman v. Meier*, 420 U. S. 1, 22 (1975) . For example, if the largest district is 4.5% overpopulated, and the smallest district is 2.3% underpopulated, the map's maximum population deviation is 6.8%.

[5]Apart from objecting to the baseline, appellants do not challenge the Senate map's 8.04% total-population deviation. Nor do they challenge the use of a total-population baseline in congressional districting.

In agreement with Texas and the United States, we reject appellants' attempt to locate a voter-equality mandate in the Equal Protection Clause. As history, precedent, and practice demonstrate, it is plainly permissible for jurisdictions to measure equalization by the total population of state and local legislative districts.

A

We begin with constitutional history. At the time of the founding, the Framers confronted a question analogous to the one at issue here: On what basis should congressional districts be allocated to States? The Framers' solution, now known as the Great Compromise, was to provide each State the same number of seats in the Senate, and to allocate House seats based on States' total populations. [See] U. S. Const., Art. I, §2, cl. 3 [and] The Federalist No. 54.[...]

When debating what is now the Fourteenth Amendment, Congress reconsidered the proper basis for apportioning House seats. [...] Framers of the Fourteenth Amendment considered at length the possibility of allocating House seats to States on the basis of voter population. [...]

In December 1865, Thaddeus Stevens, a leader of the Radical Republicans, introduced a constitutional amendment that would have allocated House seats to States "according to their respective legal voters"; in addition, the proposed amendment mandated that "[a] true census of the legal voters shall be taken at the same time with the regular census." Cong. Globe, 39th Cong., 1st Sess., 10 (1866). [...]

Voter-based apportionment proponents encountered fierce resistance from proponents of total-population apportionment. Much of the opposition was grounded in the principle of representational equality. [...]

The product of these debates was §2 of the Fourteenth Amendment, which retained total population as the congressional apportionment base. See U. S. Const., Amdt. 14, §2 [...]

But, as the Court recognized in *Wesberry*,[...] "The debates at the [Constitutional] Convention," the Court explained, "make at least one fact abundantly clear: that when the delegates agreed that the House should represent 'people,' they intended that in allocating Congressmen the number assigned to each state should be determined solely by the number of inhabitants." 376 U. S., at 13. [...] It cannot be that the Fourteenth Amendment calls for the apportionment of congressional districts based on total population, but simultaneously prohibits States from apportioning their own legislative districts on the same basis. [...]

[First,] appellants and their *amici*['s] [...] concerns included the perceived risk that a voter-population base might encourage States to expand the franchise unwisely, and the hope that a total-population base might counter States' incentive to undercount their populations, thereby reducing their share of direct taxes. *Wesberry*, however, rejected the distinction appellants now press. [...]

Second, appellants and Justice Alito urge, see post, at 5–6, the Court has typically refused to analogize to features of the federal electoral system—here, the constitutional scheme governing congressional apportionment—when considering challenges to state and local election laws. True, in *Reynolds*, the Court rejected Alabama's argument that it had permissibly modeled its State Senate apportionment scheme—one Senator for each county—on the United States Senate. "[T]he federal analogy," the Court explained, "[is] inapposite and irrelevant to state legislative districting schemes" because "[t]he system of representation in the two Houses of the Federal Congress" arose "from unique historical circumstances." 377 U. S., at 573–574. Likewise, in *Gray v. Sanders*, 372 U. S. 368 –372, 378 (1963), Georgia unsuccessfully attempted to defend, by analogy to the electoral college, its scheme of assigning a certain number of "units" to the winner of each county in

statewide elections.

Reynolds and *Gray*, however, involved features of the federal electoral system that contravene the principles of both voter and representational equality to favor interests that have no relevance outside the federal context. Senate seats were allocated to States on an equal basis to respect state sovereignty and increase the odds that the smaller States would ratify the Constitution. [...]

B

Consistent with constitutional history, this Court's past decisions reinforce the conclusion that States and localities may comply with the one-person, one-vote principle by designing districts with equal total populations. Quoting language from those decisions that, in appellants' view, supports the principle of equal voting power—and emphasizing the phrase "one-person, one-vote"—appellants contend that the Court had in mind, and constantly meant, that States should equalize the voter-eligible population of districts. [...] Appellants, however, extract far too much from selectively chosen language and the "one-person, one-vote" slogan.

For every sentence appellants quote from the Court's opinions, one could respond with a line casting the one-person, one-vote guarantee in terms of equality of representation, not voter equality. [See] *Reynolds* [...] 377 U. S., at 560–561. See also *Davis* v. *Bandemer*, 478 U. S. 109, 123 (1986) [...] *Reynolds*, 377 U. S., at 563 [...]See *Board of Estimate of City of New York v. Morris*, 489 U. S. 688 –694 (1989) [...] See also *Kirkpatrick*, 394 U. S., at 531[...].[12]

Moreover, from Reynolds on, the Court has consistently looked to total-population figures when evaluating whether districting maps violate the Equal Protection Clause bydeviating impermissibly from perfect population equality. [...] Appellants point to no instance in which the Court has determined the permissibility of deviation based on eligible- or registered-voter data. [...]

C

What constitutional history and our prior decisions strongly suggest, settled practice confirms. Adopting voter-eligible apportionment as constitutional command would upset a well-functioning approach to districting that all 50 States and countless local jurisdictions have followed for decades, even centuries. Appellants have shown no reason for the Court to disturb this longstanding use of total population. See *Walz v. Tax Comm'n of City of New York*, 397 U. S. 664, 678 (1970)[.] As the Framers of the Constitution and the Fourteenth Amendment comprehended, representatives serve all residents, not just those eligible or registered to vote. See *supra*, at 8–12. Nonvoters have an important stake in many policy debates—children, their parents, even their grandparents, for example, have a stake in a strong public-education system—and in receiving constituent services, such as help navigating public-benefits bureaucracies. By ensuring that each representative is subject to requests and suggestions from the same number of constituents, total-population apportionment promotes equitable and effective representation. See *McCormick v. United States*, 500 U. S. 257, 272 (1991) [...]

In sum, the rule appellants urge has no mooring in the Equal Protection Clause. The Texas Senate map, we therefore conclude, complies with the requirements of the one-person, one-vote

[12]Appellants also observe that standing in one-person, one-vote cases has rested on plaintiffs' status as voters whose votes were diluted. But the Court has not considered the standing of nonvoters to challenge a map malapportioned on a total-population basis. This issue, moreover, is unlikely ever to arise given the ease of finding voters willing to serve as plaintiffs in malapportionment cases.

principle.[15] [...]

* * *

For the reasons stated, the judgment of the United States District Court for the Western District of Texas is

Affirmed.

[15] Insofar as appellants suggest that Texas could have roughly equalized both total population and eligible-voter population, this Court has never required jurisdictions to use multiple population baselines. In any event, appellants have never presented a map that manages to equalize both measures, perhaps because such a map does not exist, or because such a map would necessarily ignore other traditional redistricting principles, including maintaining communities of interest and respecting municipal boundaries.