

Supreme Court Rejects Conservatives' Electoral-District Method

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The U.S. Supreme Court on Monday upheld the longstanding practice of using total population in drawing equal legislative districts, embracing the "one-person-one-vote" doctrine and frowning on a different approach that could have recast thousands of electoral maps.

But the 8-0 opinion by Justice Ruth Bader Ginsburg in *Evenwel v. Abbott* did not rule out the possibility that states could use voting population or other controversial metrics as a basis for equalizing districts in the future—methods that critics say would shift political power from urban to rural populations.

Ginsburg's significant caveat drew mixed reactions from both sides in the political debate over redistricting, and suggested the possibility that it was added late in the court's deliberations to produce a majority on the court.

Common Cause President Miles Rapoport, for example, applauded the ruling as affirming "one of our most fundamental values as Americans: that every person counts." But his statement suggested that the ruling did not settle the controversy. "We now turn our attention to the states to monitor and combat any effort to deprive millions of young people, non-citizen residents, and other non-voters of constitutional protections."

Ilya Shapiro of the Cato Institute on the other hand, criticized the ruling for "declining to address the elephant in the voting booth," namely whether one approach or the other is constitutionally required.

"The ruling leaves open to the states the ability to experiment further with populations considered in drawing district lines both for their own legislatures and federal House seats," Shapiro said.

The ruling came in the case of *Evenwel v. Abbott*, a challenge by two Texas voters who fought the state's use of total population for redistricting. The challengers said legislative districts instead should be drawn so they contain roughly equal numbers of eligible voters.

Critics said that districts drawn on the basis of voter population would give more power to rural and Republican areas with more eligible voters, and less clout to urban areas, which may have

more residents who are not eligible to vote—namely children, undocumented immigrants, and disenfranchised current and former inmates.

Edward Blum, whose organization The Project on Fair Representation launched the litigation against the Texas redistricting method, said he was disappointed with the ruling. Still, he said, "the issue of voter equality in the United States is not going to go away ... It is our hope that now given the choice, jurisdictions will create voting districts that equalize only some metric of citizen population."

Ginsburg's ruling was clear in its disapproval of using numbers other than total population in crafting equal districts. "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," Ginsburg wrote. "Appellants have shown no reason for the court to disturb this longstanding use of total population."

Ginsburg continued, "Nonvoters have an important stake in many policy debates ... 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."

But towards the end of her opinion, Ginsburg said that because Texas had equalized the population of its Senate districts, "we need not and do not resolve whether, as Texas now argues, states may elect to draw districts to equalize voter population instead."

By leaving open the possibility of using the population of voters as a redistricting measure in the future, Ginsburg may have won over the court's conservative justices. Conservative Samuel Alito Jr. wrote a concurrence suggesting he would welcome a future case testing alternate methods.

"Whether a state is permitted to use some measure other than total population is an important and sensitive question that we can consider if and when we have before us a state districting plan that, unlike the current Texas plan, uses something other than total population as the basis for equalizing the size of districts," Alito wrote.