



The elephant in the voting booth: Opposing view

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In *Evenwel v. Abbott*, the Supreme Court treaded water. Instead of clarifying how states can draw voting districts to comply with the principle of “one person, one vote,” it punted: States have always used some version of “total population,” Justice Ruth Bader Ginsburg wrote, so they should be able to continue doing so.

In the absence of clear legal precedent, this historical approach rejected both the challengers’ suggestion that voting power should be equalized, and the U.S. government’s claim that states must always maintain “representational equality.” The status quo is unchanged, at least for now.

The eight-justice Supreme Court thus achieved rare unanimity in an election-law case, but it did so only by declining to address the elephant in the voting booth. The court failed to fill the hole in its jurisprudence: whether “one person, one vote” requires equalizing people or voters (or both) when crafting districts.

Accordingly, the ruling leaves open to the states the ability to experiment further in drawing district lines both for their own legislatures and federal House seats. As the majority opinion noted, some states already exclude aliens, non-permanent residents and other non-voting populations.

States such as Texas where total-population and eligible-voter distributions diverge — causing great disparities of eligible voters between districts — should indeed draw maps that try to ensure that each vote has the same weight. These new voter-equality-based districts, which we could see after the 2020 Census, would force the court’s hand.

Regardless of that future case, it’s important to heed Justice Samuel Alito’s concurring opinion, which explains why the “federal analogy” to the Constitution’s apportionment of House seats among states is inapposite to the question *Evenwel* posed about redistricting.

If states truly have the power to consider a variety of population measures in allocating legislative seats, they don’t have to create a system where the weight of your vote depends on where you live.

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