Remedy Gone Awry: Weighing in on Weighted Voting

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NOTES

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INTRODUCTION

The health of our republican form of government hinges on an equitable and proportional system of representation. In order to lay claim to legitimacy, a republican government must establish the means for electing representatives in such a way that all holders of the franchise are active and meaningful participants in the electoral process. In the latter half of the twentieth century, American jurists have understood this process as being one in which all voters have a comparable voice in selecting their representatives. Such a voice must be comparable on two distinct levels: first, when citizens select their representatives, and second, when the representatives shape policy in their respective assemblies.

The need for an accurate count was deemed so critical that the Founders mandated a census process in the Constitution. The Constitution states:

Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons.... The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct.

U.S. CONST. art. I, § 2, cl. 3; see also id. amend. XIV, § 2 (amending the Constitution to take into account the full citizenship of freed slaves).

1883
Constitution mandates that every ten years our nation attempt to count the people within its borders so that government can be adjusted to accurately reflect the needs and desires of the people.

The decennial census provides a method for determining the proper apportionment of representatives for the people. The census, however, is only the beginning of the process of establishing a fair apportionment. Once the people are counted, the responsibility for drawing and redrawing voting districts falls to legislatures. Although in some respects it is desirable for legislatures to shape voting districts, the possibilities for abuse are especially palpable in this setting. There have been numerous cases, for instance, in which the legislative apportionment process was used as a means of reducing the effective voting power of racial minorities. There have also been occasions in which the state legislature was unable to draw proper and fair voting districts. In both situations, the Fourteenth Amendment's Equal Protection Clause serves as the primary means of vindicating a citizen's rights, and the federal courts provide the appropriate forum. How the Fourteenth Amendment should be applied, however, is a significantly more ambiguous question.

This Note examines Korman v. Giambra, a case in which political deadlock threatened to diminish the fairness of New York's apportionment process. Instead of drawing district boundaries from the bench when the legislature failed to apportion the districts correctly, a federal district judge for the Western District of New York instituted a system of weighted voting. The result of the

6. See, e.g., Reynolds, 377 U.S. at 540-51 (describing the Alabama legislature's failure to reapportion legislative districts in response to the 1910 Census and each subsequent decennial census, the legislature's inability to adopt a constitutionally acceptable reapportionment plan prior to the 1962 elections, and the need for judicial intervention); Baker, 369 U.S. at 189-95 (discussing the Tennessee legislature's failure to reapportion in accordance with the decennial census after 1901 and recounting several aborted efforts at reapportionment).
7. U.S. CONST. amend. XIV.
9. Id.
weighted voting system was not a new electoral map reflecting population shifts, but a change in the relative power of each elected representative to reflect the disproportionate sizes of their constituencies.\(^\text{10}\)

In examining this temporary remedy, Part I explains the reapportionment situation that recently faced western New York and the weighted voting remedy devised by the court. Next, Part II reviews methods prior courts have used both to remedy and avoid equal protection violations in voting districts. In light of those more traditional methods, Part III then considers the weighted voting system with reference to “one person, one vote” principles,\(^\text{11}\) maintenance of racial equity, and efficiency. This analysis also considers the potential for application of weighted voting systems in other short-term and long-term scenarios. Although there may be uses for weighted voting in the short term, this Note argues that too many costs result from long-term use.

I. FACTUAL SCENARIO AND DESCRIPTION OF REMEDY

A. Getting to the Courthouse in Erie County

New York’s Erie County, which contains the City of Buffalo and its significant suburbs, had a seventeen-district legislative body in 2001 when the reapportionment dispute began. The New York State Constitution and the Erie County Charter require that the state and county legislatures readjust their legislative districts in accordance with population shifts made evident by the results of the federal census.\(^\text{12}\) The year 2001 was an election year for the Erie

\(^{10}\) Id. at *4.

\(^{11}\) Reynolds, 377 U.S. at 554-55; Gray v. Sanders, 372 U.S. 368, 376-81 (1963); see also Baker, 369 U.S. at 207-08 (“A citizen’s right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution.”).

County Legislature, and the reapportionment was scheduled to occur prior to the election. 13

Erie County legislators proposed various plans for reapportionment. 14 For the most part, the debate split along partisan lines, with a few independent Democrats attempting to preserve their interests by protecting the Party as a whole. 15 Ultimately, the Democratic majority in the legislature passed its plan by a vote of eleven-to-six. 16 Erie County Executive Joel A. Giambra, a Republican, vetoed the reapportionment plan. 17 The legislature was unable to muster the two-thirds vote required to override Giambra’s veto, due to some Democrats’ decision to vote with the Republicans. 18 Just prior to the 2001 elections, the county’s districts thus remained in their 1990 form.

Alan Korman, a county resident, filed suit in state court, asserting that the population shift and the failure to reapportion resulted in the dilution of his vote. 19 Giambra, the primary named

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15. Intra-party disputes within the local Democratic Party spilled into the reapportionment debate. Closed Process, Done Deal, BUFFALO NEWS, May 9, 2001, at B6, available at 2001 WL 6344555. The Democratic Party’s controlling faction attempted to maintain as many safe seats as possible within the county legislature, but the nature of demographic shifts was expected to cause losses somewhere for the Democrats. The controlling faction’s hope was to consolidate these losses so that they would be realized by the more moderate and independent rival faction of the Party. Id.
16. Anthony Cardinale, Amherst Residents Assail Remap Plan, BUFFALO NEWS, May 31, 2001, at B1, available at 2001 WL 6346715. Independent Democrats crossed party lines and voted with the Republicans, preventing the overriding of Erie County Executive Joel A. Giambra’s veto. The nature of the proposed districts was sufficiently unfavorable to the independent Democrats that the independents were pushed into opposing the reapportionment plan. Essentially, the controlling faction within the Democratic Party forced the independents to choose between self-preservation and party loyalty. Id.
defendant, removed the suit to the Western District of New York due to the federal constitutional questions presented.\textsuperscript{20} Korman based his equal protection challenge on population figures alone,\textsuperscript{21} as opposed to racial discrimination or rural-urban disproportionality (or even reverse discrimination), which were the underlying claims in many prior cases concerning equal protection and voting.\textsuperscript{22}

The 2000 Census indicated a population shift from the City of Buffalo and its immediate (or inner-ring) suburbs to the more distant suburban areas of Erie County.\textsuperscript{23} The shift continued a pattern in which predominantly middle-class Caucasian families relocated further and further away from the county's urban center.\textsuperscript{24} The result, over time, has been an increasing concentration of minorities in the City of Buffalo as the population of the city, relative to the county, has fallen.\textsuperscript{25} Concurrently, the City of Buffalo has become increasingly controlled by Democrats, whereas the suburbs tend to be controlled more by Republicans. Race issues aside, population shifts within the county merited reapportionment of the county legislature's districts.

\begin{itemize}
\item \textsuperscript{20} Id.
\item \textsuperscript{21} Id.
\item \textsuperscript{22} For examples of such equal protection challenges, see Miller v. Johnson, 515 U.S. 900 (1995) (addressing claim that Georgia's redistricting plan entailed racial gerrymandering); United States v. Hays, 515 U.S. 737 (1995) (holding that Louisiana citizens lacked standing because they did not live in the legislative district that was the focus of racial gerrymandering); Shaw v. Reno, 509 U.S. 630 (1993) (finding allegation that North Carolina's redistricting legislation was so irregular that it could only be the result of an attempt at racial segregation was sufficient to state a claim upon which relief could be granted); Baker v. Carr, 369 U.S. 186 (1962) (addressing claim that a Tennessee apportionment statute denied plaintiffs' equal protection); Gomillion v. Lightfoot, 384 U.S. 339 (1960) (holding a claim sufficient to state a cause of action that Alabama redistricting which removed all but four or five of the four hundred black voters from the city of Tuskegee, but none of the white voters, violated the Equal Protection and Due Process Clauses).
\item \textsuperscript{23} See CENSUS DATA, supra note 12.
\item \textsuperscript{24} See id.
\item \textsuperscript{25} See id.
\end{itemize}
B. Remedy

After argument, District Judge John T. Elfvin considered several proposals to redistrict, but decided not to adopt any of them. Instead of redrawing the district boundaries in accordance with one of the proposals or implementing a redistricting plan of his own, in August of 2001, he ordered that the legislative districts be frozen for the duration of the 2001 election and thereafter until the new government could agree on new districts or until March 15, 2002. The district boundaries under this order would remain the same as they had been since the reapportionment reflecting the results of the 1990 Census.

Judge Elfvin also ordered that each legislator elected in the November elections receive a weighted vote until the 2003 elections, the duration of his term. Each legislator’s vote would be proportionally weighted according to the fraction of Erie County’s population contained within the legislator’s district. The legislators’ weighted votes would be calculated to three decimal places, with the seventeen districts having seventeen total votes.

The results of the 2000 Census indicate that one-seventeenth of Erie County’s population is 55,898. A hypothetical district with a population of exactly 55,898 would, under the Korman formula, be represented by a legislator with exactly 1.000 vote in the legislature. One would calculate a legislator’s weighted vote by taking the 2000 Census population for his district and dividing it by the average of 55,898. According to the 2000 Census, the least populated district is the Third District, containing 44,334 persons. This district’s representative, therefore, would receive a weighted vote.

27. Id. at *4.
30. Id. at *4-5.
31. See Census Data, supra note 12; see also Korman, 2001 U.S. Dist. LEXIS 12818, at *4.
of 0.793. The most populous district is the Seventeenth District; its 61,227 citizens would be represented by a weighted vote of 1.192.

Although the mathematics behind the weighted voting system boils down to a simple calculation, the implementation of the system and how it would operate over time is significantly more complex. Judge Elfvin asserted that he would maintain jurisdiction over the matter and stated in his opinion that he would devise and implement his own reapportionment plan should the legislature fail to put a redistricting plan in place by March 15, 2002. Judge Elfvin left unclear whether such a judge-made plan would continue to strictly employ the weighting system, incorporate the weighting system into a larger hybrid mechanism, or simply redraw all of the district boundaries in such a way that the county would return to seventeen unweighted single-member districts and somehow meet constitutional muster.

The political reality at the time, however, did not appear to be any more conducive to reaching a legislatively and judicially acceptable compromise. Although Democrats continued to have a majority in the legislature, the weighted voting system served to diminish that majority. In particular, Democrats in the Second, Third, and Fifth Districts had their voting power reduced to 0.913, 0.793, and 0.888, respectively. Meanwhile, Republicans in the Sixteenth and Seventeenth Districts, had their voting power increased to 1.156 and 1.192, respectively. The Democratic majority, unable to push through its reapportionment plan prior to the election, found itself in an even weaker position than before, and would have to offer significant concessions in order to bring about a legislative solution. As a result of the November elections and use of the weighted voting system, the Republican Party hoped to put together a working majority in the legislature.

33. Id. at *5 n.3. For another case in which a district court demonstrated a willingness to pull back from the reapportionment process in favor of an acceptable legislative compromise, see Reynolds v. Sims, 377 U.S. 533, 587 (1964). Generally, courts will involve themselves in reapportionment disputes only so far as justice requires.
35. Id.
36. Charity Vogel, Power Play; The GOP and the County Executive Won Control of the Legislature; On Tuesday, Thanks to Albert DeBenedetti, A Dissident Democrat; Who Says
Judge Elfvin suggested that the primary motivation for the weighting system was the preservation of continuity in the election process and prevention of unduly burdensome confusion for voters and candidates alike. The need to avoid many of the reapportionment difficulties, especially those involving candidate residency requirements, arose because Korman brought the equal protection challenge so close to the 2001 elections. Redrawing district boundaries three months before the election could have resulted in chaos. Judge Elfvin deemed the possibility of confusion over weighted votes more acceptable than the chaos resulting from changing the districts in which candidates would seek election, and this Note will consider the implications of his decision.

II. FIRST PRINCIPLES AND PRIOR APPLICATION

Judge Elfvin's remedies starkly contrast with the methods that are normally used to handle a situation like that found in Erie County. This Part looks back to earlier cases and traditional court methods for resolving reapportionment disputes and related equal protection challenges.

A. Civil Rights: One Person, One Vote

If there is one principle at the core of the resolution of any dispute over voting rights or reapportionment, it is the principle of one person, one vote. First articulated in Baker v. Carr and further developed in subsequent cases, the principle mandates

Support for Joel A. Giambra Can Be Built Issue by Issue, BUFFALO NEWS, Nov. 8, 2001, at A1, available at 2001 WL 6362949 (noting that so long as dissident Democrat Albert DeBenedetti continued to align with Republicans and County Executive Giambra, a working majority of 8.502 votes in the seventeen-member legislature could be formed).


38. Id. As with many jurisdictions, Erie County has a requirement that legislators reside within the district that they represent. ERIE COUNTY CHARTER art. II, § 202.1, available at http://www.erie.gov/laws/eccode/ii.phtml (last visited Feb. 28, 2003). Reapportionment might have caused incumbents and challengers to be moved into different districts. Korman, 2001 U.S. Dist. LEXIS 12818, at *3.


that each voter have an equal voice in selecting one's state and local representatives, and thus, through those elected representatives, have an equal vote in shaping policy. One person, one vote principles must play a part in maintaining equal sizes of districts and in preventing gerrymanders that disenfranchise minorities.\footnote{Gomillion v. Lightfoot, 364 U.S. 339 (1960) (finding adequate grounds for an equal protection challenge against voting districts in Alabama, which removed black voters from the city of Tuskegee in order to minimize minority representation).} The principles, out of necessity, must be maintained on two levels: voter-to-voter (each vote must have equal weight in each contest) and district-to-district (each representative must have a weight appropriate to the size of his constituency to protect the weights of individual votes).\footnote{Reynolds v. Sims\footnote{Reynolds, 377 U.S. 533; Gray, 372 U.S. 368.} involved the reapportionment of Alabama's state legislature and three distinct plans to accomplish it. The first plan, already in place when the Supreme Court considered the issue, had representative districts with populations ranging from 6731 to 104,767 and senate districts' populations ranging from 15,417 to 634,864.\footnote{377 U.S. 533 (1964).} The second plan called for a state constitutional amendment, and yielded per-representative variances from 10,726 to 42,303 and provided one senator per county (with county populations ranging from 10,726 to 634,864).\footnote{Id. at 545-46.} The third plan was a standby measure, with per-representative populations varying from under 20,000 to more than 52,000 and senate district populations ranging from 31,175 to 634,864.\footnote{Id. at 543-44.} The three-judge district court panel held all three plans unconstitutional and ordered a temporary reapportionment that used the amendment's proposal concerning the representatives and the standby measure for the senate.\footnote{Id. at 544-45.} The Supreme Court affirmed the district court's ruling, allowing the temporary reapportionment as ordered.\footnote{Id. at 586-87.}}

The Court in Reynolds cited the principles of "one man, one vote" when it stated:

\textit{Reynolds v. Sims}\footnote{Id. at 587.} involved the reapportionment of Alabama's state legislature and three distinct plans to accomplish it. The first plan, already in place when the Supreme Court considered the issue, had representative districts with populations ranging from 6731 to 104,767 and senate districts' populations ranging from 15,417 to 634,864.\footnote{Id. at 545-46.} The second plan called for a state constitutional amendment, and yielded per-representative variances from 10,726 to 42,303 and provided one senator per county (with county populations ranging from 10,726 to 634,864).\footnote{Id. at 543-44.} The third plan was a standby measure, with per-representative populations varying from under 20,000 to more than 52,000 and senate district populations ranging from 31,175 to 634,864.\footnote{Id. at 544-45.} The three-judge district court panel held all three plans unconstitutional and ordered a temporary reapportionment that used the amendment's proposal concerning the representatives and the standby measure for the senate.\footnote{Id. at 586-87.} The Supreme Court affirmed the district court's ruling, allowing the temporary reapportionment as ordered.\footnote{Id. at 587.}
Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted. It would appear extraordinary to suggest that a State could be constitutionally permitted to enact a law providing that certain of the State's voters could vote two, five, or 10 times for their legislative representatives, while voters living elsewhere could vote only once. And it is inconceivable that a state law to the effect that, in counting votes for legislators, the votes of citizens in one part of the State would be multiplied by two, five, or 10, while the votes of persons in another area would be counted only at face value, could be constitutionally sustainable.49

Thus, disproportionately sized districts, be they as grossly dissimilar as those in Reynolds, or only as different as those in Korman, are a form of disenfranchisement. The Reynolds decision was only the beginning of a protracted reapportionment dispute. Given the disparate district sizes, more was needed to reach a set of constitutionally satisfactory districts.50

B. Multimember Districts

One often employed method of handling reapportionment issues is establishing multimember districts. Multimember districting combines several nearby communities into one larger pool that is

49. Id. at 562.
50. Id. at 586-87.
substantially larger than the average district. The voters of the pool elect several representatives, often through some form of cumulative voting.\textsuperscript{51}

Multimember districting is an easy solution to unconstitutional population variances across districts. Through establishing multimember districts, a region can combine any number of sparsely populated districts in such a way that their combination can elect a reduced set of representatives that squares with their size. For example, the combining of three smaller districts into one multimember district that elects two representatives ensures that voters in other more highly populated areas do not have diminished power vis-á-vis the voters in a population-diminished area. In short, multimember districts simplify numerical equal protection issues.

Although construction of multimember districts is a quick way to handle difficult reapportionment scenarios, the practice has been the subject of great controversy.\textsuperscript{52} It is unclear how multimember districting affects minorities. On the one hand, cumulative voting could help minorities in a majority-controlled district elect representatives that they might not otherwise be able to elect under the typical "winner-take-all" election scenario that occurs in single districts.\textsuperscript{53} At the same time, however, it is also possible that other interests in a large district could outvote a substantial minority population and leave those minorities effectively unheard.\textsuperscript{54} In addition, when there is more than one representative per pool, citizens might find it difficult to point to a particular legislator they can depend on to advocate for their concerns.

The controversy concerning multimember districts has resulted in a general decline in their usage. Though multimember districts


\textsuperscript{52} See Pamela S. Karlan, Undoing the Right Thing: Single-Member Offices and the Voting Rights Act, 77 Va. L. Rev. 1, 7 (1991) [hereinafter Karlan, Undoing the Right Thing] (noting that multimember districts were one method states use to dilute the impact of black voters).

\textsuperscript{53} Id. at 7-8. Through a lack of majority candidates or through strategic use of cumulative votes, a minority candidate may be elected.

\textsuperscript{54} Id.
may suffice as an interim solution in reapportionment conflicts, the costs of confusion and possibility of disenfranchisement associated with multimember districts are substantial. The Supreme Court itself has stated that multimember districts should be avoided whenever possible.\footnote{Because the practice of multimember districting can contribute to voter confusion, make legislative representatives more remote from their constituents, and tend to submerge electoral minorities and overrepresent electoral majorities, this Court has concluded that single-member districts are to be preferred in court-ordered legislative reapportionment plans unless the court can articulate a "singular combination of unique factors" that justifies a different result.}

\textit{C. Shaw v. Reno}\footnote{Connor, 431 U.S. at 415 (citations omitted).} and the Problem of Standing

One of the major procedural concerns in reapportionment cases in \textit{Shaw} and its progeny is standing.\footnote{See, e.g., Miller v. Johnson, 515 U.S. 900 (1995); United States v. Hays, 515 U.S. 737 (1995).} Simply put, a plaintiff from the wrong district is powerless to stop discriminatory reapportionment plans.\footnote{Hays, 515 U.S. at 745.} The plaintiff has to demonstrate not only the existence of an actual or imminent harm, but that the plaintiff feels the harm in some direct, personal sense. Showing that one resides within a gerrymandered or malapportioned district most readily accomplishes this.\footnote{As the Supreme Court stated: The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality \textit{vis-à-vis} voters in irrationally favored counties. A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution .... It would not be necessary to decide whether appellants' allegations of impairment of their votes by the 1901 apportionment will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it. If such impairment does produce a legally cognizable injury, they are among those who have sustained it.} When gerrymandering is involved, the issue of standing can be quite complex. A court must determine
precisely where on the electoral map the harm is being felt, a very complex question.

The situation in Erie County, however, avoids the maze of problems associated with standing. This is due to the basis of Korman's challenge: population. In civil rights-based challenges, there is often an isolated minority within the region that bears the brunt of the harm resulting from reapportionment. As such, a plaintiff must be found from within the isolated minority group in order to bring the challenge. Depending on the construction of "safe districts" or "majority minority districts," it may be possible to foil those efforts. In order to find an adequate plaintiff, challengers could be limited to an especially small part of an already isolated minority population.

Vote dilution challenges based upon unbalanced districts, however, seem to avoid most standing-related problems. If the population across districts is not comparable, living and voting in any of the diluted districts would serve as the basis for standing in an equal protection challenge.

The Korman-style challenge, however, should not be construed as a panacea for addressing all forms of discrimination and infringements upon voting rights. It is only of use to a resident of a large population district, left underrepresented by present district boundaries. The Korman-style challenge is unavailable to the resident of a smaller than average district, because the smaller district's "overrepresentation" is actually a benefit, not a standing-creating harm.

60. See Pamela S. Karlan, Still Hazy After All These Years: Voting Rights in the Post-Shaw Era, 26 CUMB. L. REV. 287, 290-91 (1996) (hereinafter Karlan, Still Hazy) (pointing out that in Hays the Supreme Court found that the plaintiffs lacked standing because they did not live in the gerrymandered district).

61. See Hays, 515 U.S. at 742-43 (listing the elements of standing); see also id. at 750-52 (Stevens, J., concurring); Shaw, 509 U.S. at 682-83 (White, J., dissenting). Justices Stevens and White, respectively, argue that even where district boundaries suggest gerrymandering, a minority voter in a majority-minority district may not have standing to challenge the constitutionality of voting districts because he does not suffer a legally cognizable injury as a result of the gerrymander.
III. COURTS AND LEGISLATURES

A. Drawing Districts

Reapportionment is understood by the courts to be a legislative function, and as with other powers and duties that fall within the legislative sphere, the courts afford the legislature a fair amount of deference. This deference reflects an acknowledgment of the many factors that come into play during the reapportionment process and a realization that the legislature has a unique competence as a result.

Reapportionment requires the gathering and assessment of a wide array of data from the census. The legislature must also take into account any special concerns rising out of the Voting Rights Act of 1965. The legislature then determines the value of using any number of geographic and local political boundaries in drawing district lines. At each step of the way, the legislature is engaged in the collection and evaluation of information. Serving as a fact-


63. As the Court stated in Connor:

We have repeatedly emphasized that "legislative reapportionment is primarily a matter for legislative consideration and determination," for a state legislature is the institution that is by far the best situated to identify and then reconcile traditional state policies within the constitutionally mandated framework of substantial population equality. The federal courts by contrast possess no distinctive mandate to compromise sometimes conflicting state apportionment policies in the people's name. In the wake of a legislature's failure constitutionally to reconcile these conflicting state and federal goals, however, a federal court is left with the unwelcome obligation of performing in the legislature's stead, while lacking the political authoritativeness that the legislature can bring to the task. In such circumstances, the court's task is inevitably an exposed and sensitive one that must be accomplished circumspectly, and in a manner "free from any taint of arbitrariness or discrimination."

Connor, 431 U.S. at 414-15 (citations and footnote omitted); see also Reynolds, 377 U.S. at 586.

64. 42 U.S.C. §§ 1973-1973bb-1 (2000) (including voting qualification procedures that deny or abridge a citizen's right to vote based on race or color or proof that members of a minority have less opportunity to participate in the political process than other nonminorities).
finder, in addition to representing the will of the people, the legislature has a unique competence within this sphere.

Although the legislature is given substantial deference in determining the size and shape of electoral districts, equal protection principles always limit its power in the districting process. Equal protection principles require that district populations vary in only minor ways so as not to dilute anyone's vote. In reviewing reapportionment plans crafted by legislatures, courts look to population variances as the primary constitutional concern.

Measurement of the gap between the largest and the smallest electoral districts within a region can be complex and troublesome for legislatures. In order to calculate population variance, the legislature must begin with average population per district, dividing the total population throughout the region by the number of districts. Erie County has a population of 950,265 over seventeen districts, resulting in an average population of 55,898. Next, the legislature takes the largest district and calculates, as a percentage of the average population, the difference in population between it and the average population. The same is done with the smallest district in the region, determining its difference from the average population. In Erie County, the Seventeenth District has a population of 66,625, roughly 19.2% larger than the average district. The Third District, by contrast, has a population of 44,334, roughly 20.7% smaller than the average district. Finally, the legislature adds the two percentages in order to calculate the total population variance, resulting in a variance of about 39.9% in Erie County.

Precedent suggests that courts should use ten percent as a cutoff value when looking at population variance across districts. So long as there is a population variance of less than ten percent, courts consider the legislature-crafted reapportionment plan to be

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65. *Reynolds*, 377 U.S. at 560-61 (stating that equal representation for equal numbers of people is a core principle of representative government).


69. *Id.*

70. *See Connor*, 431 U.S. at 418.
constitutional on its face.\textsuperscript{71} Only evidence of invidious discriminatory practices can overcome that prima facie finding.\textsuperscript{72} Aligning districts based on partisan interests does not alone rise to proof of invidious discrimination.\textsuperscript{73}

The Equal Protection Clause's interest in keeping population variances to a minimum is significant—other concerns, such as the preservation of geographical and political boundaries, are secondary to this principle. So long as the equal protection issues are handled properly by the legislature, courts will allow legislatures to use their discretion in determining whether significant geographical and political boundaries should be maintained.\textsuperscript{74}

Courts have even gone so far as to accept reapportionment plans that otherwise would be entirely unreasonable save for the fact that they maintained low population variances. One such example is \textit{Cline v. Robb},\textsuperscript{75} a case arising in the Eastern District of Virginia. In order to maintain a low population variance across House of Delegates districts, a reapportionment plan combined Middlesex County in the same district as Virginia's Eastern Shore. The two areas are divided by twenty miles across the Chesapeake Bay, and the overland route between the two areas consists of a two and one-half hour drive, costing ten dollars in tolls and passing through seven other districts.\textsuperscript{76} The federal court upheld the legislative plan in \textit{Cline} because the low population variance between districts demonstrated that the plan met the requirements of equal protection and because there was no finding of discrimination.\textsuperscript{77}

Courts will also respect political considerations that factor into the reapportionment process, as seen in a Connecticut reapportionment case, \textit{Gaffney v. Cummings}.\textsuperscript{78} The population

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\textsuperscript{71} See id. at 419-20; see also White v. Regester, 412 U.S. 755 (1973) (stating that the maximum variation between districts is 9.9%); Gaffney v. Cummings, 412 U.S. 735 (1973) (holding that minor deviations do not make out a prima facie case of invidious discrimination).
\textsuperscript{72} See Connor, 431 U.S. at 419-20.
\textsuperscript{73} Gaffney, 412 U.S. at 740-41.
\textsuperscript{74} See id. at 736 (addressing a Connecticut reapportionment plan); Cline v. Robb, 548 F. Supp. 128 (E.D. Va. 1982).
\textsuperscript{75} 548 F. Supp. 128 (E.D. Va. 1982).
\textsuperscript{76} Id. at 131 n.8.
\textsuperscript{77} Id. at 133-34.
\textsuperscript{78} 412 U.S. 735 (1973).
variances in *Gaffney* were under the ten percent cut-off, but in settling on its plan for reapportionment, the Connecticut legislature passed on other plans that would have resulted in even lower population variances. The Supreme Court upheld the Connecticut legislature’s reapportionment plan because it went far enough to satisfy equal protection concerns.\(^7\)

Two considerations, town boundaries and partisan interests, were the primary factors in guiding the Connecticut legislature's decision leading to *Gaffney*.\(^8\) The legislature sought to maintain the integrity of as many town boundary lines as possible, incorporating them into the drawing of district boundaries. There was also a desire within the legislature to craft district boundaries in a way that would secure a certain number of “safe seats” for each of the two main political parties. After satisfying equal protection concerns, the Connecticut legislature acted within its discretion in adopting its preferred plan.\(^9\)

Courts are very deferential to the legislature when reapportionment plans have a population variance of less than ten percent, and even the existence of a variance greater than ten percent does not necessarily doom a reapportionment plan.\(^2\) Landing above the ten percent cut-off merely alters courts’ presumptions and the burdens litigants must satisfy. Beyond the cut-off, the legislature must account for why the population variance is appropriate.\(^3\)

The legislature has the opportunity to introduce evidence of exigent circumstances that justify larger variances.\(^4\) Any number of factors, including political boundaries and the location of military bases, can provide adequate grounds for a substantial population variance in the legislature’s reapportionment plan.\(^5\)

*Mahan v. Howell*\(^6\) is one example of a case in which the Supreme Court allowed a population variance of 16.4%. Virginia wished to reapportion its House of Delegates in light of the extensive military
bases surrounding the Norfolk area. The difficult task of crafting adequate districts given the area's saturation of military personnel was only compounded by a quirk in the gathering of census data; census-takers used the location of a serviceperson's base in determining his residency. As a result, Virginia faced census data that reflected a military population officially residing at any number of Norfolk-area bases, even though this population actually resided in homes throughout the larger community. Another issue before the Court in Mahan was the fact that aside from the Norfolk area, a significant number of the House of Delegates voting districts were within a variance of five percent. The large variance value of 16.4% was brought about solely by the problem with counting military personnel. The Mahan Court was willing to overlook the large variance due to the rational policy justification for the population variance.

Population variance, though it is the preferred tool of the courts, can have a problematic application. As explained above, the method for calculating population variance is limited in scope, looking only at the largest district and the smallest district within a region. As such, a reapportionment plan covering a multitude of districts can hinge upon the sizes of only two districts.

**B. Different Standards of Review**

When designed by the legislature, reapportionment plans naturally receive greater leeway in population variances than court-ordered reapportionment plans. Although there is no explicitly mentioned "magic-number," like ten percent, that a court-ordered plan must achieve in terms of its variance, a difficult standard applies: Court-ordered plans are only allowed de minimis variance

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87. Id. at 330-31.
88. Id. at 330 n.11.
89. Id. at 319.
90. Id. at 329-30. The State wished to maintain the political subdivisions in a way that preserved naval voters' power over issues of naval concern pertinent in the Norfolk district. Id. at 320-25.
in population across districts.\textsuperscript{93} The Supreme Court best expressed this difference in standards, stating:

Although every state reapportionment plan is fraught with its own peculiar factual difficulties, it can hardly be said that this Court has given no guidance of general applicability to a court confronted with the need to devise a legislative reapportionment plan when the state legislature has failed. We have made clear that in two important respects a court will be held to stricter standards in accomplishing its task than will a state legislature: "[U]nless there are persuasive justifications, a court-ordered reapportionment plan of a state legislature must avoid use of multimember districts, and, as well, must ordinarily achieve the goal of population equality with little more than \textit{de minimis} variation."\textsuperscript{94}

The Court refused to hold that a 5.95\% variance was constitutional in a court-ordered reapportionment plan, illustrating its strictness in reviewing court plans.\textsuperscript{95}

Exigent circumstances can relax the standards faced by both legislative and court-ordered reapportionment plans, but legislatures might have an easier time demonstrating the existence of exigent circumstances.\textsuperscript{96} The entity crafting the plan has the burden of demonstrating the existence of exigent circumstances. With its fact-finding resources, the legislature has the most tools available for doing this.

\section*{IV. ADVANTAGES OF WEIGHTED VOTING}

\textbf{A. Addressing "One Person, One Vote"}

Judge Elfvin's opinion in \textit{Korman} began with a recognition of the one person, one vote principle, and a need for a remedy, when he wrote, "Because one person-one vote is a bedrock Constitutional

\begin{itemize}
\item \textsuperscript{93} \textit{Connor}, 431 U.S. at 414; \textit{Chapman}, 420 U.S. at 26-27.
\item \textsuperscript{94} \textit{Connor}, 431 U.S. at 414 (quoting \textit{Chapman}, 420 U.S. at 26-27).
\item \textsuperscript{95} \textit{Chapman}, 420 U.S. at 25-26.
\item \textsuperscript{96} \textit{Id.} at 26-27 ("[I]t is the reapportioning court's responsibility to articulate precisely why a plan of single-member districts with minimal population variance cannot be adopted.").
\end{itemize}
right of each and every citizen, the present geographic boundaries of the seventeen election districts comprising Erie County, the territory served by the Erie County Legislature, are askew and must be remedied. Any analysis of the weighted voting system must consider the extent to which weighted voting is able to satisfy one of the courts' most important concerns: one person, one vote.

Weighted voting is specifically designed to ensure that votes are not diluted by improperly sized districts. Pursuant to a weighted voting system, the drawing of district boundaries becomes moot and what is really determinative of power is not where people are situated, but how many people reside within a particular community. If one could assume that all voters had an independent assortment of beliefs concerning each and every policy issue, a system of weighted voting may remove the political process from pitfalls of the representative democracy and ensure that each policy view would receive its proper voice.

The weight of a representative's vote is directly tied to the population of his district. Thus, under weighted voting, larger districts are represented by more influential legislators due to the increased weight of their vote, and smaller districts are represented by legislators with a diminished voice. Weighted voting correlates population within a voting district to the representative's voting power with astounding precision. If reapportionment in light of population variance were only about making sure that votes not be mathematically diluted, weighted voting would appear to be an ideal constitutional solution.

B. Maintaining Geographic Boundaries and Desirable Districts

Weighted voting allows for the maintenance of geographic boundaries in voting districts. There is also a much greater sense of freedom accorded to the legislatures in crafting districts by

98. See Larry Alexander, Still Lost in the Political Thicket (or Why I Don't Understand the Concept of Vote Dilution), 50 VAND. L. REV. 327, 331-35 (1997). Alexander's qualm with vote dilution concerns its use in race-related equal protection challenges. Weighted voting allows for voting districts of varying sizes and, as a result, relieves some of the pressures that race can exert in the process of drawing districts.
relieving the pressure to maintain district populations within a tolerable degree of variance.

Pursuant to a system of weighted voting, cases such as Mahan and Cline would arise with less frequency because the legislature would no longer be under such heavy pressure to maintain district sizes. Instead of being so intent on minimizing population variances at the expense of geographic reasonableness, the legislature would be able to take geographic concerns into account when drawing district boundaries. Difficult decisions that lead citizens to question resulting odd district boundaries would become a rarity if more legislatures and courts employed weighted voting.

Weighted voting would even allow for the maintenance of minority voting districts without offending the Shaw v. Reno line of cases, as gerrymandering would no longer be necessary to create majority-minority districts. The weighted voting system allows for varying sizes of districts across a region, making it unnecessary for legislatures to draw difficult gerrymanders in order to insure that minorities would be able to elect minority representatives. Careful use of the weighted voting system, involving the creation of smaller, compact districts, is a better solution to ensuring that even an isolated minority population preserves its political interests.

V. DISADVANTAGES OF WEIGHTED VOTING

A. Limited Short-Term Application

Certain characteristics of a weighted voting scheme suggest that it can only be applied for short durations. The situation in Erie County is a novel one, so there is not much in terms of supporting scholarship or legal precedent. Indeed, most legal commentary on voting rights and reapportionment in light of population variance focuses its attention on traditional schemes. For instance, Professor

99. Weighted voting would allow for the crafting of districts of varying sizes. This could be used to craft several smaller majority-minority districts without triggering a Shaw-style challenge. For discussions of whether the Supreme Court, post-Shaw, is headed in the wrong direction, see generally Pamela A. Karlan, Loss and Redemption: Voting Rights at the Turn of the Century, 50 VAND. L. REV. 291 (1997); Karlan, Still Hazy, supra note 60; Karlan, Undoing the Right Thing, supra note 52. For rebuttals of Karlan’s position, see Alexander, supra note 98; Christopher L. Eisgruber, Democracy, Majoritarianism, and Racial Equity: A Response to Professor Karlan, 50 VAND. L. REV. 347 (1997).
Richard Pildes considers alternative solutions that might avoid a remedy as drastic as weighted voting, but most of his suggestions involve mutations from the older, established methods of handling reapportionment through judge-drawn redistricting or the establishment of multimember districts.\textsuperscript{100}

It is not clear whether courts evaluate permanent and temporary plans differently, but it seems that temporary plans might have a lower standard to meet, provided there are exigent circumstances.\textsuperscript{101} The outcome of \textit{Reynolds} suggests that a district court is afforded more latitude in crafting a reapportionment plan when there are severe equal protection problems with the current apportionment and proposed changes. In such emergency circumstances, the district court may adopt a temporary reapportionment plan that would otherwise fail to pass equal protection muster so long as it is the best present alternative and moves the electorate closer to achieving an eventual equilibrium compatible with equal protection.\textsuperscript{102}

\textit{Reynolds}, as discussed earlier, involved the reapportionment of Alabama's state legislative districts, and three distinct plans to accomplish it. None of the proposed redistricting plans were close to meeting constitutional muster. As a result, the three-judge

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\textsuperscript{100} Richard H. Pildes, \textit{Principled Limitations on Racial and Partisan Redistricting}, 106 YALE L.J. 2505 (1997). The multimember districts can be used to allow larger population areas to elect multiple representatives as opposed to having several smaller districts elect one representative each. On its face, the multimember district has the appeal of simplifying redistricting issues and preserving minority voices in legislatures by avoiding the standard winner-take-all system. The practical mechanics of multimember districts, however, might not be as clear cut as suggested.
\textsuperscript{102} As the Court stated in \textit{Reynolds}:

\begin{quotation}
[The lower court's ordered plan was intended only as a temporary and provisional measure and the District Court correctly indicated that the plan was invalid as a permanent apportionment. In retaining jurisdiction while deferring a hearing on the issuance of a final injunction in order to give the provisionally reapportioned legislature an opportunity to act effectively, the court below proceeded in a proper fashion. Since the District Court evinced its realization that its ordered reapportionment could not be sustained as the basis for conducting the 1966 election of Alabama legislators, and avowedly intends to take some further action should the reapportioned Alabama Legislature fail to enact a constitutionally valid, permanent apportionment scheme in the interim, we affirm the judgment below and remand the cases for further proceedings consistent with the views stated in this opinion.]
\end{quotation}
\end{flushright}
district court held that all three plans were unconstitutional and ordered a temporary reapportionment that was a hybrid of the proposals offered to the court. The Supreme Court affirmed the district court's ruling, allowing the temporary reapportionment due to the dire circumstances and the fact that only a temporary remedy was being offered. Weighted voting, when applied as a short-term solution, would likely pass constitutional muster. It provides an effective stop-gap measure for quickly bringing the distribution of legislative power among legislators in line with the size of their constituencies. Whether a weighted voting system used over the course of several years would withstand review at the appellate level, however, is far from clear.

B. Usurpation of the Legislature's Power

The crafting of election districts is a sensitive, political matter. The significance of particular geographic and demographic boundaries must be carefully considered when drawing district lines. Perhaps a particular river marks a definite shift of public interests, or perhaps noteworthy differences exist between two communities that share a common border. The legislature's duty is to seek out such significant demarcations and to factor them into the reapportionment process. The courts limited fact-finding powers hinder their ability to consider such factors. As such, the legislature receives deference from the courts, so long as district boundaries are not so skewed as to demonstrate obvious inequity.

Implementation of a weighted voting system takes the reapportionment process out of the hands of the legislature. Instead of relying upon the determinations of a competent fact-finder, the system uses a formula that is incapable of appreciating any form of subtlety. The reapportionment process, so long as it is within certain bounds, is supposed to be sufficiently nuanced to properly reflect the state of the electorate. Thus, a weighted voting system significantly diminishes the emphasis on the legislature in crafting district boundaries that appropriately reflect the make-up of the electorate.

103. Id. at 545-52.
104. Id. at 585-87.
106. Id. at 422.
community. Given the Supreme Court’s emphasis on the legislature’s role in the reapportionment process, it is unlikely that the courts will look favorably upon a permanent system that tends to mute the actions of the legislature in a reapportionment scenario.

C. Provincialism and Isolationism

Weighted voting could give rise to provincialism and the proliferation of disproportionate districts if continued over time. If population trends continue in the direction that brought about the need for a weighted voting system in Erie County, the fate of shrinking and growing districts would have to be determined. Lawmakers must address such issues as at what point a district becomes so small that it merits decommissioning and, alternatively, at what point a district becomes so unwieldy that it should be divided.

Unwillingness to “decommission” districts over time would allow an increase in the number of representatives in the legislature, possibly leading to a balkanization of interests as each minor community would have its own representative fighting for local interests.107 Larger districts could become equally problematic, especially given the winner-take-all system.108 The winner-take-all system could result in massive districts represented by representatives that were only able to achieve pluralities in their respective elections. A standard is needed to determine at what point it is necessary to absorb or abolish smaller districts and divide larger ones.


108. Under the winner-take-all regime, the fact that only one seat is to be occupied allows for only one view to triumph on any particular policy issue. As districts become larger and more diverse, potentially fewer viewpoints are reflected by the election of a particular candidate. The diversity of interests, furthermore, can lead to a surge in candidates that only serves to lower the amount of support required for victory, assuming a plurality-based election. This issue has been a definite concern in terms of race. See Karlan, Undoing the Right Thing, supra note 52, at 9; Stephen Wolf, Race Ipsa: Vote Dilution, Racial Gerrymandering, and the Presumption of Racial Discrimination, 11 NOTREDAMEJ.L. ETHICS & PUB. POL’Y 225, 227-29 (1997) (discussing the creation of minority-majority districts to counteract voter dilution of minorities). Even though most scholarship has considered the issue through the prism of race, similar problems of isolation could be faced by other types of minority groups.
Another serious concern is that the weighted voting system could affect the interpersonal relationships between the legislators. Each legislator normally has one vote, the same as any other of his colleagues. The weighted voting system changes that, giving some legislators more than one vote while reducing other legislators to less than one vote. There is a certain value to everyone at the table having an equal voice. Coalitions and compromise become expected and even necessary tools for advancing programs within the legislature. Weighted voting, however, would seriously affect the manner in which coalitions and compromises would come into existence. Legislators with an increased vote may become more desirable and influential in the practice of politics—their support for compromises becomes all the more critical. There would not be as great a need for compromise and coalition building with those legislators with a reduced vote.

This shift in the balance of power could have drastic effects on the lives of common citizens. Larger districts, because of their legislators' increased clout, would reap the benefits that come from every compromise brokered by their representative. Smaller districts, unfortunately, would rarely, if ever, receive such attention from the legislature as a whole. In short, the strength of a representative's voice may have a direct correlation to the well-being of that representative's district.

If the balance of power shifts under a system of weighted voting, it would shift in a way that disadvantages the districts that are already hurting. The most diminished legislators, after all, are the representatives of districts that have lost population relative to the region. In these districts, presumably something is already drawing residents away from that community. With so many aspects of a community's desirability hinging upon population and property taxes (education, police and fire protection, sanitation services, and recreation to name a few),109 studies suggest some correlation between population trends and the economic health of a community.110

110. Id. at 4 (describing how local businesses suffer as middle class consumers move out of cities causing poverty to become more geographically concentrated).
One can only imagine the increased incentive to leave if the community knows that its legislator had a diminished voice in securing programs and benefits from the legislature. Proponents of the weighted voting system would have to consider whether they want to risk further damaging districts that are already facing difficulties.

D. Census Problems

Another possible problem with the weighted voting system lies in the fact that it relies upon data from the census. Although the census is relied upon by all forms of reapportionment plans, weighted voting places a special emphasis on census data that goes beyond the reliance of other systems that take factors other than numbers into account. The only factor considered in establishing the weight of a legislator's vote is the population of the legislator's district, determined strictly through census data.

Congress has engaged in a significant amount of debate and controversy over the means of collecting data in the census process. The finer points of the census debate have been thoroughly addressed by other scholars, but it may be useful to provide a brief sketch of the debate to show how it affects weighted voting. The essence of the debate is that the process of gathering data for the census has systematic flaws that could undermine the very legitimacy of the census.

The census utilizes a number of different devices to gather information from the public. These devices range from mailings to neighborhood canvasses and study of public and private records.


113. Neighborhood canvasses are relatively straightforward in concept: workers for the census go door-to-door, taking information from residents. Stansbury, supra note 111, at 411. The obvious failures of the canvass are in not counting people who avoid neighborhood canvassers because they do not wish to be bothered and in counting the homeless, who do not have a home or residence to visit. See generally id. (describing methodology of census).
Although these methods can be rather effective in some communities, a definite concern exists about whether they function as well in other communities, particularly in neighborhoods with larger concentrations of minorities and poor persons. Studies suggest the census consistently undercounts minorities and the poor, especially in urban centers.

Some members of the academy have called for new methods in gathering census data, such as sampling. Sampling would use the information gathered from the current census data collection systems and estimate actual population by taking into account systemic problems with the census information gathering process. Despite all of the discussion of sampling, there does not appear to be much, if any, momentum in adopting sampling methods for the purpose of congressional apportionment in the near future.

All reapportionment schemes rely in some way on census data, as it is traditionally gathered. Weighted voting, however, makes the census data the end-all, be-all of crafting districts, and no leeway whatsoever is given for problems with the census. This process is distinguished from the normal legislative reapportionment process, in which the legislature can consider flaws of the census system, along with any other important factor, when drawing equitable districts.

Weighted voting, in short, claims to address one person, one vote considerations directly, but in so doing it employs data that is highly suspect. To the extent that any errors result from census data, the greatest effect will probably be felt by minorities and the poor. In Korman, the City of Buffalo raised the issue that it was mistreated by the 2000 Census. Judge Elfvin noted the City's
concern, but stated that it "is not being and need not be presently considered." If the City were justified in its concern over the 2000 Census data, then the system employed to rectify a perceived vote dilution may be itself unjustly diluting the votes of City residents.

VI. BALANCING THE COSTS AND BENEFITS

There are definite merits to employing a system of weighted voting, in both long-term and short-term scenarios. The politics of gerrymandering could be avoided entirely and political deadlock in the legislature would not stand to undermine the process of reapportionment. Voter confusion would be ameliorated, at least in terms of picking candidates: voters would not have to deal with complex map redrawings or the consolidation of districts that would pit incumbents against one another or squelch challenges. Weighted voting might also allow for the maintenance of convenient district boundaries, such as along town and village lines.

The Supreme Court has made it clear that reapportionment is a legislative function. So long as the principles of equal protection are followed, courts must defer to legislative determinations and fact-finding. Although state legislatures have a fair amount of discretion in the reapportionment process, district court plans to remedy legislative failures must meet significantly higher standards. The Supreme Court has held that the legislature's plans are prima facie constitutional if they have a variance of under ten percent, although district court plans must satisfy the de minimis standard.

Such standards alone could undermine the support for a weighted voting system. Census-related issues, including the problem of undercounting, should also factor into limiting the application of a weighted voting system.

Even if the concerns over usurping the legislature can be overcome, other reasons support avoiding the implementation of a weighted voting system. Courts will not likely want to implement a system that might polarize the electorate and isolate districts and

120. Id.
122. See id. at 414.
123. See id. at 418.
their representatives. Given these considerations, such weighted voting remedies like those employed by Judge Elfvin should be used sparingly, only after legislative efforts have failed, and then only temporarily.

**EPILOGUE AND CONCLUSION**

The results of the 2001 elections and subsequent events appear to have solved Erie County’s reapportionment troubles. As predicted, 2001 witnessed the election of seven Republicans to the Erie County Legislature and the re-election of dissident Democrat Albert DeBenedetti, allowing for the formation of a Republican working majority in the legislature.\(^{124}\) Republican support for the election of DeBenedetti to Chairman of the Erie County Legislature cemented the working majority of 8,502 votes.\(^{125}\)

The Erie County Legislature passed a reapportionment plan that reduced the legislature from seventeen to fifteen seats, and the plan was signed by County Executive Joel A. Giambra on March 15, 2002.\(^{126}\) This plan was formally adopted by referendum in the 2002 November elections.\(^{127}\) Thus, Erie County’s sortie into the uncharted water of weighted voting will be limited to one election cycle, just long enough to break the deadlock that prevented reapportionment. As an interim remedy, weighted voting in Erie County can be judged a success.\(^{128}\)

In a more general sense, weighted voting wins on some points, but loses on several others. In all likelihood, the weighted voting system would sustain challenges or appeals in the federal court system. In terms of the considerations with which equal protection jurisprudence is most concerned, weighted voting appears to meet

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constitutional muster. At least on its face, the system appears to be fair, whether it is scrutinized for purposes of racial equity or numerical equity.

Weighted voting may suffice as a viable solution in short-term situations as a means of escaping political deadlock. An essential ingredient in the successful voting system is to eliminate voter confusion whenever possible. The weighted voting system does that. Voters do not have to worry about whether their polling places have shifted, whether they have been assigned a new district, or whether they must select between new candidates or two incumbents.

The long-term costs, however, demand that weighted voting not be used as a remedy in protracted reapportionment battles, or as a legislative solution unless the situation is dire. There are too many side effects to a weighted voting system to justify its persistent use.

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