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One Student, One Vote? Equal Protection & Campus Elections

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ONE STUDENT, ONE VOTE? EQUAL PROTECTION & CAMPUS ELECTIONS

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INTRODUCTION

The right to vote is one of the most basic democratic guarantees of a free society.[1] Indeed, the Supreme Court has long recognized voting as a fundamental right.[2] Although the U.S. Constitution does not explicitly confer the right to vote onto anyone,[3] once the state grants the right to vote, it generally cannot discriminate by denying voters equal access to the ballot box or full and effective participation in the political process.[4] Accordingly, the Supreme Court closely scrutinizes state action that deprives a person of a meaningful opportunity to vote.[5]

One way in which a state may deprive a person of a meaningful opportunity to vote is through vote dilution.[6] By placing a voter in a legislative district that contains more persons than other legislative districts, a state debases the value of that individual's vote by diminishing his voting power relative to voters in smaller districts. Accordingly, to address concerns about state districting having the effect of debasing one's vote, the Supreme Court recognizes challenges to

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[1] Reynolds v. Sims, 377 U.S. 533, 562–63 (1964).

[2] *See, e.g.*, Harper v. Va. State Bd. of Elections, 383 U.S. 663, 667 (1966) ("'Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.'" (quoting *Reynolds*, 377 U.S. at 561–62)).

[3] *See* United States v. Cruikshank, 92 U.S. 542, 555 (1875). Indeed, most constitutional provisions dealing with the right to vote are phrased in the negative, rather than granting an affirmative right to vote. *See, e.g.*, U.S. CONST. amend. XV ("The right of citizens of the Untied States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude."); U.S. CONST. amend. XIX ("The right of citizens of the United States shall not be denied or abridged . . . on account of sex.").

[4] *See* U.S. CONST. amend. XIV; *Reynolds*, 377 U.S. 533.

[5] *See Reynolds*, 377 U.S. at 565 (". . . [E]ach and every citizen has an inalienable right to full and effective participation in the political process . . . ."); SAMUEL ISSACHAROFF ET AL., THE LAW OF DEMOCRACY: LEGAL STRUCTURES OF THE POLITICAL PROCESS 112 (3d. ed. 2007) ("[S]omething more than simply casting a ballot for a series of state-prescribed candidates is necessary to define democratic legitimacy.").

[6] *Reynolds*, 377 U.S. at 555 & n.29.

election apportionment under the Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution.[7] The Court has interpreted that Amendment to require state districting to comply with the now-familiar maxim of "one person, one vote."[8] In short, applicable government units must ensure that their legislative districts contain virtually equal population.[9] Although the Supreme Court initially applied "one person, one vote" to statewide districting, the Court has subsequently extended the rule to certain local government bodies that exercise normal government functions.[10]

This Note considers the applicability of the "one person, one vote" principle to elected student government bodies at public universities. It focuses its analysis on the University of Georgia Student Government Association ("UGSGA") and the Michigan Student Assembly of the University of Michigan ("MSA"). UGSGA and MSA serve as effective representative examples of student government for purposes of this analysis because both organizations, like many other student governments, apportion their representatives based on existing, static academic boundaries.

In Part I, this Note discusses the history, scope, and current application of the "one person, one vote" principle. Then, Part II.A considers whether elected student governments at public universities might be sufficiently governmental to trigger "one person, one vote." Assuming they are, the Note then focuses on the apportionment schemes used by UGSGA and MSA to argue that these and similar schemes violate the Fourteenth Amendment. Finally,

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[7] *See id.* at 558.
[8] *See id*. at 577.
[9] *See id.* at 565 ("Full and effective participation by all citizens in state government requires . . . that each citizen have an equally effective voice in the election of member of members of his state legislature.").
[10] *See, e.g.*, Hadley v. Junior College Dist., 397 U.S. 50 (1970).

notwithstanding constitutional constraints, Part II.C argues that student government compliance with "one person, one vote" overlaps with good practice.

I. "ONE PERSON, ONE VOTE"

A. Justiciability of Apportionment Claims

In the early years of its apportionment jurisprudence, the Supreme Court dismissed for lack of jurisdiction Equal Protection claims against state apportionment, reasoning that such claims presented non-justiciable political questions.[11] In the 1946 case *Colgrove v. Green*, for example, registered Illinois voters alleged that Illinois' failure to reapportion its congressional districts resulted in districts that "lacked compactness of territory and approximate equality of population," thus denying them equal protection.[12] In dismissing their complaint, the Supreme Court declined to "enter the political thicket" and held that the injured Illinois voters "ask of this court what is beyond its competence to grant."[13] The Court reasoned that "[i]t is hostile to a democratic system to involve the judiciary in the politics of the people."[14] As such, any remedy for malapportionment, the Court opined, "ultimately lies with the people."[15]

But then, in the landmark case *Baker v. Carr*, the Court departed from *Colgrove* by permitting an Equal Protection claim against Tennessee's congressional apportionment scheme.[16] There, Tennessee registered voters alleged that Tennessee' failure to reapportion the state since 1901 denied them equal protection of the laws because subsequent population changes in the

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[11] *See, e.g.*, Colgrove v. Green, 328 U.S. 549, 556 (1946).
[12] *Id*. at 550–55.
[13] *Id.* at 557.
[14] *Id.* at 552–54.
[15] *Id.* at 554.
[16] 369 U.S. 186, 237 (1962) ("We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action . . . .").

state had resulted in "'debasement of their votes.'"[17] In permitting the claim, the Court, speaking though Justice Brennan, distinguished justicable *political cases* from non-justiciable *political questions*, opining a case falls into the latter category if it involves:

> [1] . . . a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of embarrassment from multifarious pronouncements by various departments . . . .[18]

Applying this standard, the Court held that the issues raised by the complaint did not fit into any of the enumerated non-justiciable political question categories and was thus "within the reach of judicial protection under the Fourteenth Amendment."[19] Although the complaint arose in a political context, the Court characterized the claim as one of individual rights under the Equal Protection Clause.[20] Because judicially manageable standards under the Equal Protection Clause are "well developed and familiar," the Court thought itself competent to determine whether this state action amounted to impermissible discrimination.[21]

B. Birth of "One Person, One Vote"

Soon after the Supreme Court entered the "political thicket" in *Baker v. Carr*, it considered an Equal Protection challenge to Alabama's failure to reapportion its legislative districts since 1900.[22] In *Reynolds v. Sims*, registered Alabama voters argued that the state's failure to reapportion resulted in serious discrimination and denied them "'equal suffrage in free

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[17] Baker v. Carr, 369 U.S. 186, 194 (1962) (quoting complaint).
[18] *Id.* at 217.
[19] *Id.* at 237.
[20] *Id.* at 226.
[21] *Id.*
[22] Reynolds v. Sims, 377 U.S. 533 (1964).

and equal elections . . . .'"[23] The Court, speaking through Chief Justice Warren, agreed, holding that the Fourteenth Amendment "requires both houses of a state legislature to be apportioned on a population basis."[24] In so holding, the Court re-affirmed its duty to act to protect voting rights, which it characterized as "individual and personal in nature."[25]

Reynolds thus introduced the "one person, one vote" principle to the constitutional law of state legislative apportionment.[26] Under this principle, the state must make an "honest and good faith effort to construct districts . . . as nearly of equal population as is practicable."[27] In adopting this principle, the Court reasoned that because legislators "represent people, not trees or acres," maintaining districts of unequal population necessarily overvalues the vote of voters living in smaller districts.[28] Just as it would be "extraordinary" to suggest a state could allow certain citizens to vote more times than other citizens, a state similarly cannot effectively give a citizen more voting power by maintaining unequal districting.[29] Ultimately, the Court opined, "[t]o the extent that a citizen's right to vote is debased, he is that much less a citizen."[30]

Notwithstanding the Court's commitment to population equality, *Reynolds* noted, "some deviations from the equal-population principle are constitutionally permissible" so long as the state maintains a basic standard of equality.[31] Under *Reynolds*, states may deviate from ideal numerical equality to pursue other legitimate interests, including ensuring voice to certain

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[23] *Id*. at 540 (quoting complaint).
[24] *Id*. at 576.
[25] *Id*. at 561.
[26] Another case, Wesberry v. Sanders, 376 U.S. 1 (1964), similarly applied the "one person, one vote" principle to congressional districting. *Wesburry* grounded its holding in U.S. CONST. art. 1, § 2. *Id*. at 7–8.
[27] *See Reynolds*, 377 U.S. at 577. The Court, however, noted that precise mathematical exactness may not be possible. *Id*.
[28] *Id*.
[29] *Id*.
[30] *Id.* at 567.
[31] *Id*. at 579; *see also* Mahan v. Howell, 410 U.S. 315, 342 (1973).

political subdivisions and providing for compact districts of contiguous territory.[32] But, the Court cautioned that the possibility of such deviations "does not mean that each local government unit or political subdivision can be given separate representation regardless of population."[33] Similarly, deviations based solely on history, economic or social interests, and geographic area are legitimate reasons to depart from strict equality of population.[34]

Although the constitutional command of *Reynolds* is quite clear—good faith effort to achieve near population equality—its precise boundaries were not immediately so clear.[35] Exactly how much may a state depart from precise mathematical equality? Through case law, though, a general principle has developed that states have more leeway when drawing state legislative districts rather than congressional districts.[36] With regard to congressional districts, the Court has enforced strict mathematical equality, striking down apportionment plans with rather small deviations.[37] Yet, with regard to state legislative districting, the Court has permitted states more flexibility.[38] As a general rule, state legislative redistricting plans with a maximum population deviation of 10% are considered presumptively valid, with 10% acting as a rough constitutional safe harbor.[39]

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[32] *Reynolds*, 377 U.S. at 579–80.
[33] *Id*. at 583.
[34] *Id*. at 579–80.
[35] *Compare, e.g.*, Karcher v. Daggett, 462 U.S. 725 (1983) (striking down districting plan that had a maximum deviation blow the census margin of error) *with, e.g.*, Brown v. Thomson, 462 U.S. 835 (1983) (upholding a plan with a maximum deviation of 89%).
[36] *See* Mahan v. Howell, 410 U.S. 315, 321 (1973).
[37] *See, e.g.*, Kirkpatrick v. Preisler, 394 U.S. 526 (1969) (less than 4%).
[38] *See, e.g.*, Mahan v. Howell, 410 U.S. 315 (1973) (16.4%).
[39] *See Brown*, 462 U.S. at 842. It should be emphasized that this constitutional safe harbor raises only a presumption of validity, and the Supreme Court has in fact rejected state legislative apportionment plans that fall within the safe harbor. *See* Cox v. Larios, 542 U.S. 947 (2004) (striking down plan with a 9.9% deviation because it was "blatantly partisan and discriminatory.").

C. Extension to Local Government

The Constitution does not require local governments to be elected,[40] yet once a local public body decides to hold elections, its electoral apportionment scheme might be subject to the equal population rule of *Reynolds v. Sims*.[41] In *Avery v. Midland County*, the Supreme Court extended *Reynolds* to cover certain local government elections.[42] In that case, the Court held that the "one person, one vote" principle applied to the election of the Commissioners Court of a Texas county because the Commission exercised "general responsibility and power for local affairs," including setting tax rates, calculating assessments and issuing bonds.[43]

Then, in *Hadley v. Junior College District*, the Supreme Court revisited the *Avery* standard in a challenge to the election process for trustees of a junior college board.[44] The Court extended *Avery* to cover those local government bodies that exercise "important government functions."[45] Although the powers of the junior college board were not as broad as those of the commissioners court in *Avery*, the Court nonetheless thought that the Board exercised important government powers because of its ability to levy certain taxes, issue limited bonds, and maintain authority over the administration of education.[46] Next, in *Board of Estimate of City of New York v. Morris*, the Court applied "one person, one vote" to the New York City Board of Estimate, striking down the City's electoral guarantee of representation to each of the city's five boroughs.[47] The Court held that the Board's government powers were "'general enough and

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[40] *See* Sailors v. Bd. of Ed. of Kent County, 387 U.S. 105, 108 (1967).
[41] *See* Avery v. Midland County, 390 U.S. 474 (1968); *see generally* Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339 (1993).
[42] 390 U.S. 474 (1968).
[43] *Avery*, 390 U.S. at 482–83.
[44] Hadley v. Junior College Dist., 397 U.S. 50 (1970).
[45] *Id*. at 54.
[46] *Id.* at 53–54.
[47] Bd. of Estimate of City of N.Y. v. Morris, 489 U.S. 688 (1989).

have sufficient impact'" to trigger the "one person, one vote" command of equal protection.[48] In arriving at this conclusion, the Court focused on the Board's authority to "formulate the city's budget . . . as well as the board's land use, franchise, and contracting powers . . . ."[49]

The Court then considered application of the "one person, one vote" principle to local government elections in *Ball v. James*.[50] There, the Court held that a system for electing directors of a water reclamation district in Arizona did not fall within the ambit of *Reynolds v. Sims*.[51] The Court characterized the Arizona water reclamation district as the "narrow, special sort" of local government body that does not have general government powers.[52] In so holding, the court thought particularly relevant that the district's authority was limited to water-related matters, and even in that sphere, its authority was fairly narrow.[53] In the aftermath of *Ball*, many lower courts have exempted single- and special-purpose government bodies from "one person, one vote."[54]

II. APPLICATION TO CAMPUS ELECTIONS

A. Applicability of "One Person, One Vote"

Admittedly, at first blush, the idea of applying "one person, one vote" to student government elections at public universities is curious, but upon closer examination the idea that

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[48] *Morris*, 489 U.S. 688 (citing *Hadley*, 397 U.S. 50).
[49] *Morris*, 489 U.S. at 696.
[50] Ball v. James, 451 U.S. 355 (1981).
[51] *Id*. at 371–72 .
[52] *Id*. at 370.
[53] *Id*. at 466 (reasoning that the district does not provide for "maintenance of streets, the operation of schools, or sanitation, health, or welfare services . . . .").
[54] *See, e.g.*, Benner v. Oswald, 444 F.Supp. 545 (M.D.Pa. 1978), *aff'd* 592 F.2d 174 (3d Cir. 1979), *cert. denied* 444 U.S. 832 (1979) (board of trustees); Wells v. Edwards, 347 F.Supp. 453 (D.C.La. 1972) (judicial elections); Humane Society v. N.J. State Fish & Game Council, 362 A.2d 20 (N.J. 1976) (state fish and game council); The Fla. Bar re Amendments to the Rules Regulating the Fla. Bar (Reapportionment), 518 So.2d 251 (Fla. 1987) (bar association)

these bodies exercise "important government functions" gains strength.[55] First, many student governments act under the auspices of the state and serve important public functions.[56] They often promote public safety,[57] build community relations,[58] and act to protect the environment.[59] Student governments also stand ready to defend student rights.[60] Although student governments do not exactly exercise the sort of governmental functions mentioned in *Ball*—"the maintenance of streets, the operation of schools, or sanitation, health, or welfare services"[61]—they do often address quality of life issues for students, including infrastructure maintenance, health and safety, and housing quality.[62] Student governments also have a rich tradition of representing

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[55] *See* Hadley v. Junior College Dist., 397 U.S. 50, 54 (1970).

[56] As a preliminary matter, in most cases, the state is sufficiently involved in student government at public universities to satisfy the state action requirement of the Fourteenth Amendment. *See, e.g.*, Sellman v. Baruch College of City Univ. of New York, 482 F.Supp. 475, 478-79 (S.D.N.Y. 1979). In *Sellman*, a federal court easily found that state action was present when the Baruch College student government acted, because it is a "creature of governmental agencies." *Id*. at 478. The Court reasoned that the student government receives funds that are collected by the state, its meetings are held on public property, the college and its students benefit from its activities, and its activities are supervised by the Board of Higher Education and other public employees of the college. *Id*. at 478-79.

[57] *See, e.g.*, About the Illinois Student Senate, University of Illinois, http://www.iss.uiuc.edu/ ("The Student Senate also focuses on bettering the campus environment for all students, by promoting health, safety, and participation on campus.") (last visited Apr. 28, 2008).

[58] *See, e.g.*, Student Senate Committee Overviews, Community Relations, University of Notre Dame, http://studentgovernment.nd.edu/SenateCommitteeApplication/committees.htm.

[59] *See, e.g.*, Press Release, University of Colorado at Boulder, CU Students Transition to Local Energy and Local Climate Protection Programs (Jan. 31, 2008), http://www.colorado.edu/news/releases/2008/33.html.

[60] *See, e.g.*, Scott Miller, *ISU Student Government to Fight Dress Code*, THE PANTAGRAPH, Aug. 30, 2007.

[61] *Cf.* Ball v. James, 451 U.S. 355, 366 (1981).

[62] *See, e.g.*, Jeremiah G. Coder, Note, *The Vote is In: Student Officer Campaigns Deserve First Amendment Protections*, 31 J.C. & U.L. 677, 699 (2005) ("Students elected to campus office make substantive decisions that have a genuine consequence for certain aspects of student life . . . ."); Campus Safety, Associated Students of Madison, http://www.asm.wisc.edu/cms/content/view/265/208 (describing student efforts to improve campus safety) (last visited April 28, 2008); Sahil Chaundry, State of the Undergraduate Student Government, University of Southern California Student Body President (describing student

student views on national and international matters.[63] Indeed, not too long ago, students, often acting through student governments, took a leading role in protesting the Vietnam War and South African apartheid.[64] Today, student elected bodies continue to provide an important means for students to achieve policy ends on issues ranging from the Iraq War,[65] to sustainability,[66] to the cost of higher education. In fact, the Arizona Students' Association was instrumental in drafting a state bill to curb the cost of textbooks.[67]

Second, many student governments at public universities wield significant public authority. Indeed, Wisconsin state statute guarantees students in its public universities the right to self-organization.[68] Some student bodies, for example, make important campus judicial appointments,[69] while others have exclusive control over chartering student organizations.[70] The most significant power of student governments, though, is often the power to assess a mandatory student activity fee as part of enrolled student tuition. The student governing authority ordinarily uses this fee to fund to campus organizations,[71] many of which serve important social and public

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governments efforts to improve the off-campus housing situation), http://usg.usc.edu/USG-President.html; Roseann Moring, *Condom Plan Still in Works*, THE MANEATER, July 11, 2007.

[63] *See, e.g.*, Ed Kompenda, *SGA Prepares for Lobby Day*, WESTERN COURIER, Feb. 27, 2008.

[64] *See* Philip G. Altbach & Robert Cohen, *American Student Activism: The Post-Sixties Transformation*, 61 J. HIGHER. ED. 32 (1990).

[65] *See, e.g.*, Menaka Fernando, *USAC Passes Resolution Condemning War with Iraq*, DAILY BRUIN, Nov. 27, 2002.

[66] *See, e.g.*, Anita Little, *USC Greeks Go Green, Install Recycling Bins in Houses*, DAILY TROJAN, Apr. 23, 2008 (Greek efforts to join sustainability movement aided by working with student government).

[67] Nicole Santa Cruz, *Student Based Textbook Legislation Heads to Ariz. Governor*, ARIZ. DAILY WILDCAT, Apr. 29, 2008.

[68] *See, e.g.*, WIS. STAT. § 39.09(5) (West 2007) (guaranteeing Wisconsin students the right to participate in campus governance through student organization).

[69] *See, e.g.*, MICHIGAN STUDENTS ASSOCIATION CONSTITUTION, Art. II.E & J.

[70] UNIVERSITY OF CINCINNATI STUDENT GOVERNMENT CONSTITUTION, Art. II, sec. 3, pt. a.

[71] *See, e.g.*, Rosenberger v. Rector and Visitors of the Univ. of Vir., et al., 515 U.S. 819 ("The Student Council [at the University of Virginia], has the initial authority to disburse [student activity] funds . . . .").

functions, including the provision of emergency medicine.[72] While the amount of the fee varies by institution, ability to assess this fee is nonetheless tantamount to the official power to tax.[73] The student government is compelling students to pay a fee into a public account under color of state authority.[74] Although one might argue that the power to assess an activity fee is not an actual tax because one is not required to enroll at the institution, this argument is flawed because, for instance, property taxes are official taxes even though one is not required to own real estate.[75]

Moreover, using the U.S. Constitution to limit student government action is not unprecedented, even though it has only had limited success.[76] In 2001, for instance, a federal court in *Welker v. Cicerone* ordered the reinstatement of a student to the legislative council of the Associated Students of the University of California, Irvine, after he was disqualified for violating its campaign finance rules.[77] The Court grounded its legal analysis in *Buckley v. Valeo*[78] because it found "no reason to distinguish between applying *Buckley* to state political elections and political elections at state universities."[79] Although *Welker* shows the willingness of some courts to subject student governments to the strict constitutional scrutiny, the Ninth Circuit abrogated the case six years later in *Flint v. Denison*.[80] *Flint* rejected an attack on student campaign

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[72] One survey found that 15% of collegiate-based emergency medical services were supervised by student government, and 20% received funding from student government. *See* Jonathan Fisher et al, *Collegiate-Based Emergency medical Services (EMS): A Survey of EMS Systems on College Campuses*, PREHOSPITAL AND DISASTER MEDICINE 91, 95 (2006).
[73] Bd. of Regents of Univ. of Wisc. Sys. v. Southworth, 529 U.S. 217, 241 (2000) (Souter, J., dissenting). *But see* Rosenberger v. Rector and Visitors of the Univ. of Vir., 515 U.S. 819, 841 (1995) (opining that student activity fee collection at the University of Virginia is not a tax for purposes of the First Amendment).
[74] *See, e.g.*, *Southworth*, 529 U.S. at 241 (Souter, J., dissenting).
[75] *Id*. at 241 & n. 7.
[76] *See, e.g.*, Flint v. Dennison, 488 F.3d 816 (9th Cir. 2007).
[77] Welker v. Cicerone, 174 F.supp.2d 1055 (C.D.Cal 2001), *abrogated by Flint*, 488 F.3d 816.
[78] 424 U.S. 1 (1976) (considering constitutionality of Federal Election Campaign Act of 1971).
[79] *Welker*, 174 F.supp.2d at 1065, *abrogated by Flint*, 488 F.3d 816.
[80] *Flint*, 488 F.3d 816.

finance regulation, holding *Buckley* inapplicable.[81] The Court reasoned that while student government has an impact on student lives, "it simply does not follow that [it] is akin to a political government."[82] The Court characterized student government as educational tool to introduce students to the "principles of representative government."[83] Since the university's "'primary purpose is *education*, not electioneering," the Court continued, "[c]onstitutional protections must be analyzed with due regard to that educational purpose."[84] The Eleventh Circuit applied a similar analysis in *Alabama Student Party v. Student Government Association of the University of Alabama*, where it upheld restrictions on distributing campaign literature.[85]

Although federal courts differ in their treatment of student governments, in the end what is clear is that many of the cases considering the intersection of campus elections and the Constitution have arisen in the First Amendment context. In this limited context, notwithstanding *Welker*, courts have deferred to and relied on the educational nature of student government to decline to intervene into student elections.[86] But this analysis is flawed. Cases like *Flint* and *Alabama Student Party* overlook the significant public function that student

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[81] *Id*. at 827.
[82] *Id*. ("The ubiquity with which political government is present to control facets of our lives is not—thank Heavens!—replaced by student government in student lives.").
[83] *Id*.
[84] *Id*. (quoting Ala. Student Party v. Student Gov't Ass'n of the Univ. of Ala., 867 F.2d 1344, 1346 (11th Cir. 1989)) (emphasis in original). The Court seemed to be deferring to the long-standing idea of academic freedom. *See generally* Regents of Univ. of Mich. v. Ewing, 474 U.S. 214, 226 (1985) ("Academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decision making by the academy.").
[85] 867 F.2d 1344.
[86] *See, e.g.*, Flint v. Dennison, 488 F.3d 816, 827 (9th Cir. 2007); *Ala. Student Party*, 867 F.2d at 1346.

governments fulfill in addition to their educational role.[87] As discussed earlier, this public function includes representing student interests in local, national and international matters, and assessing and collecting mandatory fees.[88]

Moreover, to the extent that the educational nature of student government is a reason for judicial restraint in the First Amendment area, this rationale falls apart in the Equal Protection context. Accepting that student governments are formed for the purpose of educating leaders and learning about democracy,[89] Equal Protection nonetheless stands are a guarantee of equal access to this type of education. Apportioning legislative districts in an unequal manner discriminates against students in larger districts by debasing and diluting their voting power.[90] It may discourage students in larger districting from participating and others from running for office because they would have to spread their message to more students than candidates in other districts. Unequal apportionment is not analogous to limits on campaign speech—that affect all participants in the process—because the inequality here is targeted at certain districts and deprives only those students of meaningful access to this political (or educational) opportunity.

B. Assessing Compliance with "One Person, One Vote"

To the extent student government apportionment must comply with "one person, one vote," present methods of apportionment raise serious constitutional concerns. Many student-governing bodies use existing, static academic boundaries to allocate representation and refuse to create districts that contain students from more than on such unit. By focusing more on boundaries than equality student governments ignore the Supreme Court's observation that

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[87] This includes representing students' interests in local, national, and international matters, and in some cases, funding emergency services on campus. *See generally infra* notes 55–85 and accompanying text.
[88] *Id*.
[89] *Flint*, 488 F.3d at 827.
[90] Reynolds v. Sims, 377 U.S. 533, 567 (1964).

"legislators represent people, not trees or acres."[91] Indeed, as explained below, egregious inequity in voting power has resulted from this practice.[92] Student voters in one University of Michigan student government district, for example, have over 15,000% more voting power than similarly situated students in other districts.[93]

The apportionment schemes that many student governments employ are similar to the scheme that the Supreme Court struck down in *Board of Estimate of City of New York v. Morris.*[94] In *Morris*, the Court rejected New York City's guarantee of representation to each of the City's five boroughs.[95] Finding that the maximum population deviation resulting from the plan to be 78%, the Court rejected any interest the City had in respecting natural and political boundaries and adopting its apportionment to the needs of a regional government.[96] Similarly, here, student governments would ostensibly argue an interest in having static academic unit representation to ensure that student interests in each unit are represented. But, the Supreme Court had made clear that even pursuing legitimate interests "does not mean that each local government unit or political subdivision can be given separate representation regardless of population."[97] Because many student governments have made districting so inflexible, one might infer that they have not made an "honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.[98]

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[91] *Reynold*s, 377 U.S. at 562.
[92] *See generally* Parts II.A.2(a)&(b); II.B.2.
[93] *See* Part II.A.2.b.
[94] 489 U.S. 688 (1989).
[95] *Id*. at 702.
[96] *Id*. at 702–03.
[97] *Reynolds*, 377 U.S. at 581.
[98] *Id*. at 577.

This is not to say that students do not think about 'one person, one vote,'—they do[99]—but, rather, history, short-sightedness of student representatives who will soon graduate, and lack of any judicial intervention might have entrenched a system at many institutions that violates "one person, one vote." Although the rhetoric of 'guaranteed' representation to each academic unit is powerful, it is plainly not permitted by the Constitution. True, political problems might arise if certain smaller groups are denied guaranteed representation,[100] but solutions to this problem exist.[101] Now, with that foundation, the analysis turns to apportionment schemes at the University of Georgia and the University of Michigan as representative examples of how current student government apportionment often leads to unequal voting power.

1. University of Georgia

The University of Georgia Student Government Association ("UGSGA") is the official student government of the University of Georgia.[102] UGSGA consists of both an executive and legislative branch, the latter being comprised of an elected Student Senate.[103] The Student Senate performs myriad functions, including lobbying state officials, bringing elected officials to campus to meet with students, providing funding to student organizations, appointing students to university committees, and even working to safeguarding students social security numbers.[104] In pursuit of its goals, the Student Senate holds annual elections. According to its Constitution, the

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[99] *See, e.g.*, E. Martin De Luca, Commentary, *Constitution Controversy*, DAILY TARGUM, Feb. 7, 2007; Kristin Shrewsbury, *SGA Begins to Wrap Things Up*, THE DAILY COLLEGIAN, May 7, 2001.

[100] *See, e.g.*, Ricahrd Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775 (1992).

[101] *See* Part II.C (discussing, *inter alia*, possibilities to create influence districts).

[102] UNIVERSITY OF GEORGIA STUDENT GOVERNMENT ASSOCIATION CONSTITUTION [hereinafter UGSGA CONSTITUTION].

[103] UGSGA CONSTITUTION, art. I.

[104] *See generally* UGSGA CONSTITUTION; SGA REPORT, STUDENT GOVERNMENT ASSOCIATION, Mar. 2007, http://www.ugasga.org/portal/content/view/75/127/.

student legislature "shall consist of . . . students representing the various schools and colleges, in proportion to respective enrollments . . . ."[105] This apportionment scheme, though, has led to egregious departures from "one person, one vote" because it refuses to create districts that span multiple academic boundaries and it allows graduate students to vote twice. Because graduate and non-graduate students are treated separately under the UGSGA apportionment scheme, the analysis takes them in turn.

With regard to non-graduate students, student who are enrolled in any of five specific UGA academic units have voting strength below mathematically ideal levels.[106] Those students include those voters enrolled in Arts and Sciences (-26.14%), Business (-20.56%), Education (-17.83%), Agriculture and Environmental Sciences (-12.90%), and Family and Consumer Sciences (-2.02%). At the expense of non-graduate students in those schools, non-graduate students in other schools are mathematically overrepresented on the UGSGA in terms of voting strength. For example, UGSGA's guarantee of representation to each school has resulted in the 49 non-graduates enrolled in Ecology having a 474.85% increase in their voting strength relative to what their voting strength would be under a "one person, one vote" model. Other non-graduate winners in this system include non-graduate voters in Public Health (128.33%), Forestry and Natural Resources (82.58%), Veterinary Medicine (76.97%), Environment and Design (69.75%), Journalism and Mass Communication (35.37%), Pharmacy (76.97%), Law (12.91%), and Public and International Affairs (2.48%).

As mentioned earlier, graduate students not only may vote for their academic unit representatives, but also may vote for four separately designated Graduate School

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[105] UGSGA CONSTITUTION, ART. IV.

[106] The author collected all data for this Note from publicly available sources. To prevent confusion and distraction, the Author omits footnote citations to this data, instead making all data compilations available in the appendices to this Note.

representatives. This double-representation has resulted in graduate students—across *every* academic unit—having more voting power than they would under a system committed to "one person, one vote." Graduate students benefiting the most from this duel representation are those in smaller and otherwise overrepresented academic units. For instance, the voting power of a graduate student enrolled in Ecology is 522.66% higher than it would be under a system comporting with ideal mathematical equality. Other upward departures in voting strength for graduate students—relative to a baseline "one person, one vote" model—are as follows: Public Health (175.05%), Forestry and Natural Resources (129.41%), Family and Consumer Sciences (116.57%), Social Work (123.80%), Veterinary Medicine (91.34%), Journalism and Mass Communication (82.19%), Pharmacy (74.79%), Law (59.73%), Public and International Affairs (49.30%), Family and Consumer Sciences (44.81%), Agriculture and Environmental Sciences (33.92%), Education (29%), Business (26.26%), and Arts and Sciences (20.69%).

2. University of Michigan

The Michigan Student Assembly ("MSA") is the central student government at the University of Michigan and was formed so that students could participate in university governance and address quality of life issues for students.[107] To that end, MSA has wide-reaching power. Not only does it make appointments to campus judiciary system and other important bodies,[108] but it also has the power "[t]o levy dues and provide for their collection equally amount all the students of the Ann Arbor Campus."[109] As of Fall 2007, MSA assessed each Michigan student a mandatory fee of $7.19 per term, resulting in nearly $280,000 in

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[107] MICHIGAN STUDENTS ASSOCIATION CONSTITUTION, preamble.
[108] *Id*. at Art. II.E & J.
[109] MICHIGAN STUDENTS ASSOCIATION CONSTITUTION, ART. II.B

receipts for the MSA.[110] To carry out its activities, MSA guarantees at least one elected representative to all colleges and schools that have at least one student in their "graduating unit."[111] The largest consequence of this scheme is that graduate students are not counted for apportionment purposes in the specific school in which they are enrolled.[112] Rather graduate students are only apportioned into the Rackham Graduate School because that school confers degrees upon all graduate students.[113]

Similar to the UGSGA,[114] MSA's insistence on representation based on static graduating unit boundaries, without the possibility of mixed-graduating unit districting, has lead to a system of unequal voting power. The most egregious example comes from School of Natural Resources and the Environment ("SNRE"). Because most of SNRE's enrollment is comprised of graduate students who do not count for apportionment purposes in that school,[115] only five students are eligible to vote for the SNRE representative. This small voting pool results in those five eligible voters having 15,123% more voting power than they would under a system comporting to "one person, one vote." Similarly, in the Public Policy School, because of the presence of graduate

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[110] Full Term Tuition and Fees for Fall 2007, Office of the Registrar, University of Michigan, http://www.umich.edu/~regoff/tuition/full.html

[111] *See generally* MICH. STUDENTS ASSOCIATION CONSTITUTION, art. V.A.

[112] Graduate students all receive their degrees from the Rackham Graduate School. This means that although graduate students are enrolled in academic units other than Rackham, they are only counted for apportionment purposes in the Rackham Graduate School. As a consequence, to determine total population for apportionment purposes in the Rackham School, we add the number of students exclusively enrolled in Rackham (614) to the other Rackham students enrolled elsewhere (6,185) to arrive at the total of 6,799. To determine the total voters in the other academic units, we take their total enrollment minus the enrolled Rackham students, who are not counted for apportionment purposes outside of Rackham. For example, the School of Information does not have a representative on the MSA because its entire enrollment is comprised of graduate students who are only counted for apportionment purposes in the Rackham Graduate School. *See generally* Table 2 in the Appendix.

[113] E-Mail from Michael L. Benson, Student General Counsel, Michigan Student Assembly (May 2, 2008, 2:28:59 EDT) (on file with author).

[114] *See supra* Part II.B,1.

[115] *See infra* note 112.

students who do not count for apportionment purposes, the remaining 48 eligible voters in that school have 1,485.78% the amount of voting power they would otherwise have under a system of ideal mathematical equality. Other winners under MSA's apportionment scheme are voters in Education (247.57%), Pharmacy (158.90%), Social Work (78.89%), Art & Design (72.99%), Architecture and Urban Design (76.61%), Public Health (40.44%), Dentistry (35.92%), and Nursing (25.40%). The losers under this scheme are voters in Law (-32.34%), Business (-21.37%), Medicine (-13.5%), Engineering (-12.84%), Music (-10.24%), LS&A (-8.42%), Kinesiology (-2.41%), and the Rackham Graduate School (-1.55%).

C. Benefits of Compliance with "One Person, One Vote"

Notwithstanding the constitutional command of "one person, one vote," student governments may want to adhere to equal-population districting as a matter of good policy. First, it may both increase voter-turnout and the effectiveness of student government initiatives by bolstering the appearance of democracy and legitimacy. Second, it guarantees all students equal access to their representatives. Third, it prevents student governments from intentionally diluting the voting strength of a target group. Fourth, it prevents the student government from inflicting an intangible, civic injury onto all student voters.[116] Indeed, unequal voting power seems un-American and undermines institutional commitments equal treatment of students. To paraphrase the Supreme Court, to the extent that a student's right to vote in campus elections is debased, the student is that much less an equal member of the campus community.[117]

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[116] *See* Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 HARV. J.L. & PUB. POL'Y 103, 103 (2000) ("A districting scheme so malapportioned that a minority faction is in complete control, without regard to democratic sentiment, violates the basic norms of republican government.").
[117] *See* Reynolds v. Sims, 377 U.S. 533, 567 (1964).

For the student districter, the costs of complying with "one person, one vote" are not burdensome and, in fact, some student governments have voluntarily decided adhere to it.[118] All it requires is for student government to divide the total number of eligible voters by the total number of elected representatives and create all districts of that size. Under such a scheme, student governments can ensure equal voting power across districts, while respecting—to the extent practicable—existing academic unit boundaries.[119] When it is possible to create districts composed of voters only from one academic unit, the student government would be permitted to do so. But, even when all voters from a certain academic unit would not fit into an equal-population district, the student government can group those 'excess' voters together in another district where they can exercise significant influence over the electoral outcome. Similarly, in the case of a small school without sufficient voters to constitute an entire district,[120] student government should not hesitate to group these students in districts with voters from other academic units because voters from the small school will either constitute a voting majority or constitute a sizable minority and be able to influence the outcome of the election.

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[118] *See, e.g.*, CONSTITUTION OF THE ASSOCIATED STUDENT GOVERNMENT OF TEXAS STATE UNIVERSITY, art. II, sec. 2 ("In reapportioning, the Election Commission shall . . . adhere[ ] as nearly as is practicable to the doctrine of "one person, one vote.").

[119] Note that "one person, one vote," especially in the case of local government, does not require mathematical exactness. Student distracters would have some flexibility to deviate from ideal mathematical equality to accommodate academic affiliations to some extent. For example, if the student government could only fit 98 of the 100 students in Academic Unit X into an equal population district, the government would likely be able to deviate from ideal equality to place the remaining students into the district. *See generally supra* Part I.B.

[120] *Cf.* Bd. of Estimate of City of New York v. Morris, 489 U.S. 688 (Staten Island).

CONCLUSION

Daniel Webster once remarked, "the right to choose a representative is every man's portion of sovereign power."[121] Echoing this sentiment, Supreme Court closely scrutinizes state action that deprives a voter of a *meaningful* opportunity to vote.[122] One way that a state may deprive a voter of such an opportunity is through the creation of legislative districts of unequal population. Accordingly, to prevent the state from debasing one's voting, Supreme Court has interpreted the Fourteenth Amendment to require states to comply with the now familiar maxim of "one person, one vote." While the Court initially applied this rule to congressional districting, it extended it to state legislative districting, and then to certain local governments units that exercise normal government functions.[123]

Within this constitutional framework, this Note contends that "one person, one vote" might apply to student government apportionment at public universities. Although the idea that student governments exercise important government powers might seem flimsy at first, upon closer analysis the idea gains strength. Student governments serve important public functions by advocating for student interests in local, national, and international affairs. They often play important roles on campus in recommending policies and appointing students to important committees. Perhaps the most important public function that many student governments serve, though, is assessing and collecting a student activity fee as a condition of enrollment. This fee, which is tantamount to an official tax, often supports student organizations and campus services like emergency medicine. Then, assuming the "one person, one vote" applies to student government elections, the Essay uses the University of Georgia Student Government Association

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[121] *Id*. at 693 (quoting Luther v. Borden, 48 U.S. (7 How.) 1 (1949) (statement of counsel)).
[122] *See Reynolds*, 377 U.S. 533.
[123] *See, e.g.*, Hadley v. Junior College Dist., 397 U.S. 50 (1970).

("UGSGA") and the Michigan Student Assembly of the University of Michigan ("MSA") as illustrations of how current methods of student government apportionment—namely by using inflexible academic boundaries—often leads to egregious departures from ideal mathematical equality.

In the end, whether or not "one person, one vote" limits student governments, good policy dictates that student governments be guided by equal population districting. Creating districts of equal population may encourage participation, guarantee equal representation, discourage discrimination, and prevent civic injury. Any negative consequence of breaking up single-academic unit representation, or the guarantee of representation to small units, can be mitigated by placing those displaced voters in districts where they might, as a group, exercise meaningful political influence. Student governments should not be afraid to create districts that span multiple academic units; it promotes full and effective democratic participation and complies with an important constitutional principle that has yet to be applied to college campuses.

APPENDIX: EMPIRICAL DATA TABLES

Table 1 – University of Georgia

Table 1

UNIVERSITY OF GEORGIA								
STRUCTURE		POPULATION			VOTING POWER COEFFICIENT		DEVIATION FROM IDEAL	
District	Reps	Non-Grad	Grad	Total	Grad	Non-Grad	% Non-Grad	% Grad
Agriculture & Environmental Sciences	2	1357	362	1719	0.0018	0.0012	-12.90%	33.92%
Arts & Sciences	16	14549	1668	16217	0.0016	0.0010	-26.14%	20.68%
Business	3	2210	617	2827	0.0017	0.0011	-20.56%	26.26%
Ecology	1	49	81	130	0.0083	0.0077	475.84%	522.66%
Education	5	2250	2305	4555	0.0017	0.0011	-17.83%	29.00%
Environment & Design	1	341	100	441	0.0029	0.0023	69.75%	116.57%
Family & Consumer Sciences	2	1404	124	1528	0.0019	0.0013	-2.02%	44.81%
Forestry & Natural Resources	1	248	162	410	0.0031	0.0024	82.58%	129.41%
Journalism & Mass Communication	2	1014	92	1106	0.0024	0.0018	35.37%	82.19%
Law	1	646	17	663	0.0021	0.0015	12.91%	59.73%
Pharmacy	1	520	65	585	0.0023	0.0017	27.96%	74.79%
Public Health	1	187	141	328	0.0037	0.0030	128.23%	175.05%
Public & International Affairs	2	1238	223	1461	0.0020	0.0014	2.48%	49.30%
Social Work	1	146	277	423	0.0030	0.0024	76.97%	123.80%
Veterinary Medicine	1	383	135	518	0.0026	0.0019	44.52%	91.34%
Biomedical & Health Sciences Institute	0	0	10	10	0.0006	0.0000		
Institute of the Faculty of Engineering	0	1	1	2	0.0006	0.0000		
Institute of Bioinformatics	0	0	15	15	0.0006	0.0000		
Graduate School	4	0	6395	6395	0.0006			
Total Reps	**44**	**26543**	**6395**					
Total Students	**32938**							
Ideal Coefficient	**0.0013**							

Enrollment Data http://irhst40.irp.uga.edu/ html/eFactbook/2007/ugafbk07.pdf

* Note: For apportionment purposes, UGA counts graduate students both in the Graduate School and the other various units in which they are enrolled.

Table 2 – University of Michigan

Table 2

UNIVERSITY OF MICHIGAN						
STRUCTURE		POPULATION			VOTING POWER COEFFICIENT	DEVIATION FROM IDEAL
District	Reps	Voters*	Total	Rackham		
Arch. & Urban Design	1	431	553	122	0.0023	76.61%
Business	3	2,904	2,990	86	0.0010	-21.37%
Education	1	219	546	327	0.0046	247.57%
Law	1	1,125	1,125	0	0.0009	-32.34%
Medicine	2	1,760	2,103	343	0.0011	-13.50%
Nursing	1	607	842	235	0.0016	25.40%
Rackham	8	6,799	6,799	614	0.0012	-10.44%
Public Health	1	542	833	291	0.0018	40.44%
Social Work	1	426	426	0	0.0023	78.68%
Art & Design	1	440	466	26	0.0023	72.99%
Dentistry	1	560	647	87	0.0018	35.92%
Engineering	6	5,240	7,103	1,863	0.0011	-12.84%
Kinesiology	1	780	822	42	0.0013	-2.41%
LS&A	19	15,792	17,604	1,812	0.0012	-8.42%
Music	1	848	978	130	0.0012	-10.24%
Pharmacy	1	294	366	72	0.0034	158.90%
Information	0	0	353	353		
Public Policy	1	48	199	151	0.0208	1485.78%
Nat. Resour. & Enviorn.	1	5	250	245	0.2000	15123.53%
Totals	51	38,820.00				
Ideal Coefficient	0.0013					

Enrollment Data http://www.umich.edu/~regoff/report/08wn101.pdf

* Note: Graduate students, even though enrolled in academic units other than Rackham, are only counted for apportionment purposes in the Rackham Graduate School. So, to determine total voters for apportionment purposes in the Rackham Graduate School, we add the number of students exclusively enrolled in Rackham (614) to the other Rackham Graduate School students enrolled elsewhere (6,185) to arrive at the total of 6,799. To determine the total voters in the other academic units, we take the total population minus the enrolled Rackham graduate students, who are not counted for apportionment purposes outside of Rackham.