

**For the Michigan Independent Citizens Redistricting Commission (MICRC)**

**One Person, One Vote and Acceptable Population Deviations**

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The 14th Amendment’s equal protection clause as interpreted by the U. S. Supreme Court requires that each voter’s choice in exercising their franchise is weighted the same as each other voter’s choice. This interpretation has acquired a short-hand name: “One person, One vote.” This phrase codifies the legal mandate that in drawing election districts the population of each election district AND the population variance of ALL the districts (of the same body: state, county, city, etc.) combined must be so substantially equal as to not violate the principle of counting each person’s vote equally with all others votes.

The process starts with establishing an “ideal district population,” which is determined by dividing the total population of a jurisdiction by the number of districts to be drawn for that jurisdiction. For example, if a jurisdiction had a population of 4 million and elected ten office holders by districts, the average or “ideal” district population would be 400,000. If the line drawers instead create a districting plan that has five districts with a population of 380,000 each and five districts with a population of 420,000 each, the “deviations” across the districts would be -20,000 and +20,000, or minus 5 percent and plus 5 percent. The “average deviation” from the ideal would be 20,000 or 5 percent, and the “overall range” would be 40,000, or 10 percent.

Most courts have used what statisticians call this “overall range” to measure the population equality of a redistricting plan, though they have usually referred to it by other names, such as “maximum deviation,” “total deviation,” or “overall deviation.”

“Any number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives . . . . The State must, however, show with some specificity that a particular objective required the specific deviations in its plan, rather than simply relying on general assertions . . . . By necessity, whether deviations are justified requires case-by-case attention to these factors.”

*Karcher v. Daggett*, 462 U.S. 725 (1983)

The Court in *Karcher* and other cases stresses that absolute population equality across districts is not dispositive concerning the districts' constitutionality. Rather, a jurisdiction's providing appropriate justifications, such as Voting Rights Act compliance or 14<sup>th</sup> Amendment equal protection concerns for any deviations will outweigh the "mathematical certainty" that Chief Justice Earl Warren once derided. As Chief Justice Warren observed: "mathematical nicety is not a constitutional requisite" when drawing legislative plans. All that is necessary is that they achieve "substantial equality of population among the various districts." *Reynolds v. Sims*, 377 U.S. 533 (1964)

### **The Ten Percent Deviation Standard**

"Substantial equality of population" has come to mean that a legislative plan with an "overall range" of less than ten percent may survive an equal protection attack, unless there is proof of intentional discrimination within that range. *Gaffney v. Cummings*, 412 U.S. 735 (1973), *White v. Regester*, 412 U.S. 755 (1973), and *Reynolds v. Sims*, 377 U.S. 533 (1964)

However, redistricting plans within the "ten percent" standard are not immune from attack. The attacking plaintiffs must present compelling evidence that the plan ignores legitimate reasons for population disparities (such as VRA and 14<sup>th</sup> Amendment compliance) and creates the deviations solely for the benefit of certain persons to the constitutional detriment of others.

While ten percent is a good guideline, it is not a "safe harbor" ensuring the defeat of one person, one vote challenges. The case of *Larios v. Cox* is instructional here. In its decision invalidating a Georgia legislative plan with an "overall deviation" of 9.98%, the *Larios* court found that:

- Georgia had systematically under-populated districts in rural south Georgia and inner-city Atlanta and overpopulated districts in the suburban areas north, east, and west of Atlanta in order to favor Democratic candidates and disfavor Republican candidates;
- The plan systematically paired Republican incumbents while reducing the number of Democratic incumbents who were paired; and
- The plan ignored the traditional districting principles used in previous decades, such as keeping districts compact, not allowing the use of point contiguity, keeping counties whole, and preserving the cores of prior districts.

*Larios v. Cox*, 300 F. Supp. 2d 1320 (N.D. Ga. 2004), affirmed 542 U.S. 947 (2004).

In evaluating the legality of districts' population deviations, courts look for the answer to the following seminal question:

**Was the jurisdiction following a “rational policy” in making the choices that resulted in the particular plan being enacted?**

Answering this query, the Supreme Court has regularly held that “[a]ny number of consistently applied legislative policies might justify some variance, including, for instance, making districts compact, respecting municipal boundaries, preserving the cores of prior districts, and avoiding contests between incumbent Representatives” *Reynolds v. Sims*, 377 U.S. 533 (1964). *Mahan v. Howell*, 410 U.S. 315 (1973), *Brown v. Thomson*, **462 U.S. 835 (1983)**, and *Voinovich v. Quilter*, 507 U.S. 146 (1993), *Karcher v. Daggett*, 462 U.S. 725 (1983) and *Harris v. Arizona Independent Redistricting Commission*, 136 S. Ct. 1301, 194 L. Ed. 2d 497 (2016).