

When The Courts Don't Compute: Mathematics And Floterial Districts In Legislative Reapportionment Cases

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With each decennial census, the courts are asked to evaluate new state legislative reapportionment plans.¹ The 1990 census undoubtedly will be the impetus for further reapportionment disputes. These disputes will raise the traditional issues of "one person, one vote," racial gerrymandering, and the rationality of state policies, as well as the emerging question of partisan gerrymandering.² The courts, however, should consider another issue: the proper method of computing apportionment deviation in floterial districts.³

The United States Supreme Court has defined a floterial district as a "legislative district which includes within its boundaries several separate districts or political subdivisions which independently would not be entitled to additional representation but whose conglomerate population entitles the area to another seat in the particu-

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¹ See generally Van Der Velde, *One Person-One Vote Round III: Challenges to the 1980 Redistricting*, 32 *Clev. St. L. Rev.* 569 (1983-84) (discussing the evolution of one person, one vote in Supreme Court decisions); Weinstein, *Partisan Gerrymandering: The Next Hurdle in the Political Thicket?* 1 *J. L. & Pol.* 357 (1984) (discussing prior Supreme Court decisions that may apply to partisan gerrymandering).

² See Weinstein, *supra* note 1. Partisan gerrymandering is "the deliberate and arbitrary distortion of district boundaries and populations, for partisan or personal political purposes. . . ." *Kirkpatrick v. Preisler*, 394 U.S. 526, 538 (1969) (Fortas, J., concurring), quoted in *Karcher v. Daggett*, 462 U.S. 725, 786 (1983) (Powell, J., dissenting).

³ Floterial districts alternately are called "floterials," "floaters," or "flotorials." See, e.g., *Mahan v. Howell*, 410 U.S. 315, 319 (1973) (floterial); *Cosner v. Dalton*, 522 F. Supp. 350, 355 (E.D. Va. 1981) (floaters); *Kilgarlin v. Martin*, 252 F. Supp. 404, 418 (S.D. Tex. 1966) (floterials), *rev'd in part and remanded per curiam sub nom.*, *Kilgarlin v. Hill*, 386 U.S. 120 (1967).

lar legislative body being apportioned.”⁴ In other words, a floterial district “lays over” or “floats above” several distinct districts. By combining several underrepresented districts and providing them collectively with one or more floterial representatives, floterial districts are designed to reduce underrepresentation. For example, suppose that there are three counties, X, Y, and Z, each with a population of 40,000 and one representative. If the ideal population of a district is 30,000, then the counties individually are underrepresented because their populations exceed this ideal by 10,000 each. A floterial district encompassing the three counties would provide an additional “shared” representative for the “excess” 30,000 (10,000 excess from each of the counties).

Deviation from true voter equality in floterial districts may be calculated by two methods: the aggregate method and the component method.⁵ The United States Supreme Court has failed to recognize that the choice between these two methods has political consequences.⁶ Moreover, the Supreme Court’s treatment of floterial districts and the respective methods for measuring deviation from voter equality has led to confusion in state legislatures and the lower federal courts.⁷ This article first surveys case law on state reapportionment, describes floterial districts, and distinguishes between computational methods applicable to voting districts. Second, it is argued that the United States Supreme Court erroneously has ignored the implications of the difference between the methods of calculating voter equality among voting districts. Finally, it concludes that the component method of computation more accurately reflects the courts’ concern that “one person” has “one vote.”

I. Judicial History of Legislative Reapportionment: Two Conflicting Principles

When assessing the validity of state legislative reapportionment

⁴ *Davis v. Mann*, 377 U.S. 678, 686 n.2 (1964).

⁵ See *infra* notes 23-32 and accompanying text.

⁶ See *Mahan v. Howell*, 410 U.S. at 329 (“We decline to enter this imbroglia of mathematical manipulation and confine our consideration to the figures actually found by the [district] court and used to support its holding.”). See also *infra* text accompanying notes 36-47.

⁷ See *infra* text accompanying notes 43-52.

plans, courts have faced two conflicting principles.⁸ The first, stemming from the equal protection clause of the fourteenth amendment, is that of voter equality, or "one person, one vote." The second, embodied in many state constitutions, maintains that local political subdivisions are to be preserved throughout the apportionment process.⁹

The federal constitutional principle of "one person, one vote" was established in *Gray v. Sanders*,¹⁰ in which the United States Supreme Court said, "[t]he idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions."¹¹ A year later, in *Reynolds v. Sims*¹² the Court held that "one person, one vote" applied to state legislative reapportionment through the fourteenth amendment. The phrase "one person, one vote" implies that each person's vote must have the same weight as that of every other person. As the Supreme Court said in *Reynolds*, "[w]eighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable."¹³

While in *Reynolds* the Court applied the principle of "one person, one vote," it also recognized the need to allow flexibility for consideration of local circumstances:

So long as the divergences from a strict population standard are based on legitimate considerations incident to the effectuation of a rational state policy, some deviations from the equal-population principle are constitutionally permissible with respect to the appor-

⁸ For a full discussion of the cases, see Dodge & MacCauley, *Reapportionment: A Survey of the Practicality of Voting Equality*, 43 U. Pitt. L. Rev. 527 (1982); Dovenbarger, *Democracy and Distemper: An Examination of the Sources of Judicial Distress in State Legislative Apportionment Cases*, 18 Ind. L.J. 885 (1985); Grofman, *Criteria for Districting: A Social Science Perspective*, 33 UCLA L. Rev. 77 (1985); Guido, *Deviations and Justifications: Standards and Remedies in Challenges to Reapportionment Plans*, 14 Urb. Law. 57 (1982); Lee & Herman, *Ensuring the Right to Equal Representation: How to Prepare or Challenge Legislative Reapportionment Plans*, 5 U. Haw. L. Rev. 1 (1983); Van Der Velde, *supra* note 1.

⁹ See *infra* notes 16-18 and accompanying text.

¹⁰ 372 U.S. 368 (1963). The Court held that Georgia's use of a county unit system to count votes in statewide elections violated the equal protection clause of the fourteenth amendment. *Id.* at 376-81.

¹¹ *Id.* at 380.

¹² 377 U.S. 533 (1964), *reh'g denied*, 379 U.S. 870 (1964). The Court struck down both Alabama's current and proposed reapportionment plans as unconstitutional. *Id.* at 568-71.

¹³ *Id.* at 563.

tionment of seats in either or both of the two houses of a bicameral state legislature.¹⁴

Since *Reynolds* the courts have permitted states to deviate from strict application of "one person, one vote" to the extent necessary to achieve a "rational state policy."¹⁵ Thus far, courts primarily have used the "rational state policy" exception to uphold the maintenance of local political subdivisions in the reapportionment process.¹⁶ Many state constitutions require that state legislative districts respect boundaries of local subdivisions, especially counties.¹⁷ State constitutional restrictions of this sort generally allow several districts to be drawn within a county or several entire counties to be combined to form one district; however, part of one county cannot be added to part of another county to create a new legislative district.¹⁸

Just how much flexibility, which is to say deviation, from the "one person, one vote" principle is constitutionally permissible is a question with which the Supreme Court has wrestled for two decades.¹⁹ The Court has concluded that total deviations of less than ten percent are *de minimis* and therefore require no justification by the state.²⁰ Reapportionment plans with total deviations greater than ten percent must be justified on a case-by-case basis.²¹ With one exception,²² the Court has disallowed plans with total deviations above 16.4%, regardless of the justification.

¹⁴ *Id.* at 579.

¹⁵ See generally Lee & Herman, *supra* note 8, at 30-33.

¹⁶ See, e.g., *Mahan v. Howell*, 410 U.S. 315, 325 (1973) (validating a Virginia reapportionment plan: "[t]he policy of maintaining the integrity of political subdivision lines in the process of reapportioning a legislature . . . is a rational one."); *Connor v. Finch*, 431 U.S. 407, 419 (1977); *Chapman v. Meier*, 420 U.S. 1, 23 (1975); *Kilgarlin v. Martin*, 252 F. Supp. 404, 428 (S.D. Tex. 1966).

¹⁷ E.g., Idaho Const. of 1890, art. III, § 5 (a senatorial or representative district containing more than one county "shall be composed of contiguous counties, and no county shall be divided in creating such districts"); Tex. Const. art. III, § 26; Wyo. Const. art. III, § 3.

¹⁸ See, e.g., *Kilgarlin v. Hill*, 386 U.S. 120, 123 n.2 (1967) (presenting the Texas attorney general's interpretation of Tex. Const. art. III, § 26).

¹⁹ See generally Grofman, *supra* note 8, at 83.

²⁰ See *Connor v. Finch*, 431 U.S. 407, 430-33 (1977).

²¹ See Grofman, *supra* note 8, at 83; Dovenbarger, *supra* note 8, at 901-05.

²² *Brown v. Thomson*, 462 U.S. 835 (1983). The Court upheld a reapportionment plan with a total deviation of 89% when a sparsely populated Wyoming county was given its own representative. But see *infra* note 61 (quoting language in the opinion suggesting that the case should be limited to its facts).

II. Floterial Districts and Methods For Determining Deviation From Voter Equality

The Court in *Reynolds* not only recognized a need to permit some flexibility, but also made a subtle but important shift in its definition of "fair representation." The Court first said that "weighting the votes of citizens differently by any method or means, merely because of where they happen to reside hardly seems justifiable."²³ The Court thus defined "fair representation" in terms of the weight of each citizen's vote. Later in the opinion, however, it described the "one person, one vote" rule as the "equal population principle,"²⁴ thus defining "fair representation" in terms of the number of people represented by each representative (the population to representative ratio).

As a practical matter these two definitions often are synonymous. In single-member electoral districts, equal population does indeed mean that each individual's vote will have the same weight. For example, if there is one representative per district and each district contains 20,000 people, then each representative represents 20,000 people and each vote counts 1/20,000.²⁵ With either definition of fair representation, deviation from the ideal is zero and equality exists. Multi-member districts are more complex, but courts have treated single and multi-member districts alike as long as each voter casts a similar number of votes per elected representative. Thus, the situations where each voter among 20,000 casts one vote to elect one representative and where each voter among 100,000 casts five votes for five representatives are treated similarly.²⁶ Floterial districts, however, present a very different problem: because of the peculiar nature of floterial districts, the two definitions of "fairness" are not necessarily synonymous.

²³ *Reynolds v. Sims*, 377 U.S. 533, 563 (1964).

²⁴ *Id.* at 577.

²⁵ This ignores the fact (as the Court generally does) that not all 20,000 people in the district actually are eligible to vote. See generally Lee & Herman, *supra* note 8, at 8-14 (discussing population bases for state and local reapportionment plans).

²⁶ It has been argued, however, that multi-member districts submerge political, and especially racial, minorities, and that residents of smaller districts do not have as much voting power as residents of large multi-member districts. See Grofman, *Alternatives to Single-Member Plurality Districts: Legal and Empirical Issues*, 9 *Pol'y Stud. J.* 875; Lee & Herman, *supra* note 8, at 42-50.

The flotalial district sometimes is used as a means of accommodating the two conflicting principles of one person, one vote and of respecting the boundaries of state political subdivisions.²⁷ The device has been used for decades in Virginia, and was used for almost a century in Texas.²⁸ More recently, Tennessee, Indiana, Oregon, New Hampshire, and Idaho have employed flotalial districts.²⁹ In Idaho, seven flotalial districts elect a total of seven senators and fourteen representatives.³⁰ In New Hampshire, seventeen flotalial districts were created in the 1982 state reapportionment plan.³¹ These two definitions of fair representation correspond to two methods of computing variation (or deviation from the ideal) within flotalial districts. The equal population definition yields the "aggregate method," and the equal weight definition yields the "component method."³²

To understand how these two methods operate, recall our original example, in which the ideal district population is 30,000 and each of three counties X, Y, and Z has a population of 40,000.

²⁷ Recently, two political scientists argued that flotalial districts are particularly attractive alternatives to traditional districting devices because, in addition to accommodating both the "one person-one vote" guarantee and state constitutional prohibitions against dividing local political subdivisions, flotalials may protect against racial or political gerrymandering. Duncombe & Stewart, *Idaho's Unique Approach to State Legislative Apportionment: Statewide Flotalial Districts*, 58 *State Gov't* 96, 98 (1985) ("Flotalial districts make it possible to have a unified geographical district for racial minorities that are scattered over a large area, such as an Indian reserve comprising three or four counties."). This claim, however, may be too optimistic, for in some cases flotalials actually facilitate gerrymandering. See Hamilton, *Legislative Constituencies: Single Member Districts, Multi-Member Districts, and Flotalial Districts*, 20 *W. Pol. Q.* 321, 335 (1967).

²⁸ For a discussion of the history of the flotalial in Texas, see *Kilgarlin v. Martin*, 252 F. Supp. 404, 418 (1966), *rev'd in part and remanded per curiam sub nom. Kilgarlin v. Hill*, 386 U.S. 120 (1967).

²⁹ See Hamilton, *supra* note 27, at 321.

³⁰ Duncombe & Stewart, *supra* note 27, at 96. A 1986 amendment to the Idaho Constitution will reduce the size of the state legislature and prohibit the use of flotalials in subsequent reapportionment plans. The amendment passed largely because the public viewed it as a way to reduce the size of the state legislature. See *Idaho Daily Statesman*, Nov. 5, 1986, at 1C, col. 3. In 1984, state legislators opposed to flotalials had supported a constitutional amendment that in effect nullified a state constitutional provision requiring apportionment plans to follow county boundary lines. The 1984 amendment was defeated in a referendum vote. *Id.*

³¹ Duncombe & Stewart, *supra* note 27, at 96.

³² Computational methods have been referred to by names other than "aggregate" or "component." See, e.g., *Cosner v. Dalton*, 522 F. Supp. 350, 355-56 (E.D. Va. 1981) (referring to the aggregate method as the "traditional house method," and the component method as the "shared floater method"); *Howell v. Mahan*, 330 F. Supp. 1138, 1140 n.1 (E.D. Va. 1971), *aff'd in part, rev'd in part*, 410 U.S. 315 (1972), *modified*, 411 U.S. 922 (1973) (referring to the component method as the "Du Val method").

Each county has one legislative representative and 10,000 inhabitants above the ideal district population. One floterial legislator represents the excess 10,000 population from each of the three counties.

Proponents of the equal population to representative ratio view and the aggregate method of computation would conclude that the floterial representative represents the 30,000 people (10,000 from each of X, Y, and Z) who are "excess" over the ideal. Conversely, advocates of the equal weight definition and the component method would recognize that all eligible voters in the three counties may vote for the floterial representative; therefore, in reality he represents all 120,000 people in the three counties, as his representation is divided among the counties on the basis of their population. In the latter example, each county would be viewed as receiving $40,000/120,000$ or $\frac{1}{3}$ of that representation. Both the aggregate method and the component method hold that there is zero deviation in this example, but that is only because of the exact equality of the county populations here.

Now, suppose that there are two counties, County X with a population of 25,000 and County Y with 35,000. Suppose that the "ideal" district population is 20,000. County X has 5,000 people in excess of the ideal district population; County Y has 15,000 in excess. Each county is assigned one representative, and a floterial representative is assigned to the combined counties X and Y to represent the total 20,000 people in excess of the ideal.

The aggregate method holds that, since there are a total of three representatives for the 60,000 people in counties X and Y, each representative represents $60,000/3 = 20,000$ people, distributed as follows: the representative from X represents 20,000 of the people from county X; the representative from Y represents 20,000 of the people in county Y; the floterial representative represents the 5,000 excess people in county X and the 15,000 excess in county Y. With the aggregate method of computation, the deviation from the ideal population is zero. The component method holds that the people in county X provide all of the votes for representative X, and also provide $25,000/60,000$ of the votes for the floterial representative. The people of county X thus are represented by $1 + 25/60$ (or 1.417) representatives, and the people in county Y are represented by $1 + 35/60$ (or 1.583) representatives. To put this another way, the people in county X have 17,643 ($=25,000/1.417$) people per represen-

tative, while the people in county Y have 22,110 ($=35,000/1.583$) people per representative. The deviation from the ideal of 20,000 is $(17,643 - 20,000)/20,000 = -11.8\%$ for county X and $(22,110 - 20,000)/20,000 = 10.6\%$ for county Y. The total deviation between the two is $11.8 + 10.6 = 22.4\%$.

With the aggregate method, the representative is viewed as a basic indivisible unit — one who cannot be “divided up” among the underlying districts. Thus, to determine the number of voters represented by the flotalial representative, the population of the flotalial district simply is divided by the total number of delegates representing the district. Voter equality is seen to exist as long as the population to representative ratio is the same. To have each delegate representing the same number of people in this example, however, one must accept the fiction that the flotalial delegate represents only those 20,000 people who form the excess population in districts X and Y, despite the fact that he was elected from the votes of the 60,000 people in the two districts.

The component method looks at how many votes are cast by the individual voter. It assumes that the flotalial delegate represents the individuals in each underlying district roughly in proportion to each district's share of the whole flotalial district population. This is basically analogous to the “weight” an individual voter would have. It is much closer to the true meaning of “one person, one vote.”³³

Comparison of the results of the two computational methods as applied to actual cases points out substantial disparities. When used in New Hampshire, the aggregate method yielded maximum deviations of 13.74% while the component method produced deviations of 70%.³⁴ In the 1973 Virginia case, the results were 16.4% (aggregate) and 23.6% (component);³⁵ in Idaho, 9.65% (aggregate) and 41.3% (component).³⁶ The aggregate method yields the lower mea-

³³ Justice Harlan recognized this in *Baker v. Carr*, 369 U.S. 186, 343-44 (1961) (Harlan, J. dissenting):

It may of course be true that the flotalial representative's function is to represent the whole district. But can it be gainsaid that so long as elections within the district are decided not by a county unit system, in which each county casts one vote, but by dividing the total number of individual votes cast for each candidate, the concern of the elected representative will primarily be with the most populous counties in the district?

³⁴ *Boyer v. Gardner*, 540 F. Supp. 624, 627 (D.N.H. 1982).

³⁵ *Mahan v. Howell*, 410 U.S. at 319.

³⁶ *Hellar v. Cinarussa*, 682 P.2d 524, 527 (Idaho 1984). The court said “[a] population deviation

sure of deviation from equality for each of these cases (and for virtually all others).

When there is little population disparity between the counties included in the floterial district, the floterial is a reasonable and useful means of accommodating the relevant state and federal constitutional principles. When there is significant population disparity between counties, however, the aggregate method can mask substantial deviation from the "one person, one vote" principle.³⁷

III. The Court's Approach to Computational Methods

Although the question of the appropriate computational method has arisen in numerous cases, the Supreme Court has refused to address the issue. In each case, the Court has simply accepted lower court figures without regard to the computational method used to calculate those figures. State legislatures devising reapportionment plans generally apply the aggregate method because it invariably yields the lower measurement of deviation where the districts in question have unequal populations. The component method, however, was used by the federal district court in *Kilgarlin v. Martin*³⁸ when striking down Texas floterial districts as violative of the principle of *Reynolds v. Sims*.³⁹ The district court stated that "[i]n the final analysis, the sole authoritative guideline from the Supreme

of 9.65% is well within tolerable limits. The respondents argue, however, that the trial court erred in utilizing the 'aggregate' method of statistical analysis to arrive at population deviation of 9.65%, and that the proper statistical method is the component method, which yields a population deviation of 41.3%."

³⁷ In 1967, political scientist Howard Hamilton recognized that floterial districts were fundamentally different than the more common American electoral district arrangements and thus pose a conundrum.

This device has some serious weaknesses in addition to its gerrymandering potential. Inevitably, the floterial representative has more constituents than his colleagues. . . . And it makes invalid any comparison of the representation ratios of the floterial district with the other districts of a state, and will distort any mathematical measurement of the representativeness (population-wise) of the state's districts. . . . Heretofore, this may have been only a metaphysical question, but it surely is germane since the *Reynolds* ruling that districts must have strict population equality, and it may confound some state and federal courts.

Hamilton, *supra* note 27, at 336.

³⁸ 252 F. Supp. 404, 422 n.28 (S.D. Tex. 1966), *rev'd in part and remanded sub nom. Kilgarlin v. Hill*, 386 U.S. 120 (1967).

³⁹ *Id.* at 410.

Court is that of *Reynolds* . . . 'that the vote of any citizen must be approximately equal in weight to that of any citizen in the state.'"⁴⁰ The court concluded that the component method satisfied the *Reynolds* requirement "that each citizen's vote receive its proper weight."⁴¹

The Supreme Court reviewed *Martin* in *Kilgarlin v. Hill*.⁴² Without considering the district court's invalidation of the floterial districts, the Supreme Court invalidated the rest of the Texas apportionment plan that the district court had left intact.⁴³ Thus, *Martin* was partly reversed on grounds unrelated to the computational method used by the lower court. The fact that it was in part overturned, however, has obfuscated the district court's recognition that the component method is the appropriate technique for measuring deviation in floterial districts.

The Supreme Court's ruling in *Mahan v. Howell*⁴⁴ further confused matters. In that case, a federal district court struck down a Virginia reapportionment plan which the state, using the aggregate method, had calculated to have a maximum deviation of 16.4%.⁴⁵ The district court noted, however, that the actual deviation may have been greater than 16.4% since "[t]he Supreme Court has indicated approval of the [component] method of computing percentage deviation of floterial districts in *Kilgarlin v. Hill* . . ."⁴⁶ The district court did not endorse any particular computational technique due to its holding that, even if the aggregate method were applied, the statewide range of deviation would "not pass constitutional muster."⁴⁷ On appeal, the Supreme Court determined that the 16.4% variation was permissible,⁴⁸ but refused to examine the validity of

⁴⁰ *Id.* at 419 (quoting *Reynolds v. Sims*, 377 U.S. 533, 579 (1964)).

⁴¹ *Id.* at 422 n.28.

⁴² 386 U.S. 120 (1966).

⁴³ *Id.* at 122.

⁴⁴ 410 U.S. 315 (1972).

⁴⁵ *Howell v. Mahan*, 330 F. Supp. 1138 (E.D. Va. 1971), *aff'd in part and rev'd in part*, 410 U.S. 315 (1972).

⁴⁶ *Id.* at 1139-40 n.1 (citation omitted).

⁴⁷ *Id.*

⁴⁸ *Mahan v. Howell*, 410 U.S. at 329 ("The 16-odd percentage maximum deviation . . . is substantially less than the percentage deviations that have been found invalid in previous decisions of this court. While this percentage may well approach tolerable limits, we do not believe it exceeds them. Virginia has not sacrificed substantial equality to justifiable deviations.").

the aggregate method that yielded the 16.4% figure: “[w]e decline to enter this imbroglia of mathematical manipulation and confine our consideration to the figures actually found by the [district] court and used to support its holding. . . .”⁴⁹ By reversing the lower court and using the figures that the state derived from the aggregate method, the Court appears to have implicitly sanctioned that method.

The Supreme Court’s reluctance to directly address the respective computational techniques has led to application of the aggregate method in at least two other cases. First, in *Boyer v. Gardner*⁵⁰ a federal district court in New Hampshire used the aggregate method to find a maximum deviation of 13.74%.⁵¹ The plaintiff argued that the proper method is the component method,⁵² which produced deviation of more than 70%.⁵³ The district court’s refusal to adopt the component method appears to have stemmed from confusion caused by *Kilgarlin* and *Mahan*:

It will be seen that the component deviation figures are higher than the corresponding aggregate deviations. . . . [However], the Supreme Court has typically applied the aggregate method in examining the tolerable extent of variation in challenged apportionment plans. . . . While plaintiffs rely heavily on the lower court’s decisions to apply the component method in *Kilgarlin* and the Supreme Court’s failure to repudiate that method of calculation in its review of the panel’s decision, the Court’s silence in *Kilgarlin*, without more, cannot be interpreted as general approval of the component method of calculation.⁵⁴

Second, in *Hellar v. Cenarussa*⁵⁵ the Idaho Supreme Court approved a plan consisting of seven floterials.⁵⁶ Applying the aggregate method, there was a maximum deviation of 9.65%; while applying the component method, the deviation was 41.3%.⁵⁷ The Idaho court used the lower figure derived from the aggregate

⁴⁹ Id. at 319 n.6.

⁵⁰ 540 F. Supp. 624 (D.N.H. 1982).

⁵¹ Id. at 629.

⁵² Id. at 627.

⁵³ Id. at 627 n.6.

⁵⁴ Id. at 627 n.5.

⁵⁵ 682 P.2d 524 (Idaho 1984).

⁵⁶ Id. at 527.

⁵⁷ Id.

method of calculating derivation to determine the constitutionality of the plan.⁵⁸

IV. Conclusion

When properly invoked, the use of flotal districts allows states to accommodate both the "one person, one vote" principle and state constitutional protections of the integrity of political subdivisions. Flotal districts have been used extensively in some states,⁵⁹ and in the next round of reapportionment plans, more states are likely to consider using them.⁶⁰ Thus, the question of the proper method by which to compute deviation from equality in flotal districts is becoming increasingly important.⁶¹ This question has confounded many state and federal courts, as well as some state legislatures. The United States Supreme Court should provide more guidance because the aggregate method employed by the courts often masks substantial deviations from the "one person, one vote" principle.⁶² The choice between the two computational methods poses a signifi-

⁵⁸ Id.

⁵⁹ See supra text accompanying notes 28-29.

⁶⁰ See Duncombe & Stewart, supra note 27. Duncombe and Stewart say that court decisions in the 1980s and 1990s "may open a wider door for the concept of flotal districts," and that the use of statewide flotal districts may provide a solution to problems in states other than Idaho. Id. at 99.

⁶¹ It may be argued that the issue of computational method in flotal districts is irrelevant in light of *Brown v. Thomson*, 462 U.S. 835 (1983), in which the Supreme Court showed a willingness to permit states greater latitude in "pursuing rational state policy." Id. at 843. Language in *Brown*, however, suggests that the case should be narrowly construed. The Court stated:

this case presents an unusually strong example of an apportionment plan the population variations of which are entirely the result of the consistent and non-discriminatory application of a legitimate state policy. This does not mean that population deviations of any magnitude necessarily are acceptable. Even a neutral and consistently applied criterion such as use of counties as representative districts can frustrate *Reynolds'* mandate of fair and effective representation if the population disparities are excessively high.

Id. at 844-45. Justice O'Connor's concurring opinion emphasized that the only issue presented by the case was whether the "one person, one vote" principle allowed Wyoming to give a representative to one sparsely populated county, id. at 849 (O'Connor, J., concurring), while Justice Brennan's dissenting opinion stated that the Court's opinion was "empty of likely precedential value." Id. at 850 (Brennan, J., dissenting).

⁶² There are other problems inherent in the issue of computational methods and the concept of representation. For an elaboration of these issues, see G. Moncrief, *Flotal Districts, Reapportionment, and the Puzzle of Representation* (1988) (unpublished manuscript) (available from Boise State University Department of Political Science).

cant constitutional question about the meaning of fair representation that should be addressed and resolved by the Supreme Court.