



**STATE OF VERMONT**  
OFFICE OF LEGISLATIVE COUNSEL

**MEMORANDUM**

To: Senate Committee on Education  
From: Legislative Counsel  
Date: April 8, 2025  
Subject: Introduction to Legal Principles re Apportionment of School Wards

This memorandum serves to memorialize the oral testimony provided to the Senate Committee on Education by Legislative Counsel on March 20<sup>th</sup>, 2025. The following information is intended to provide Committee members with an introduction to relevant terminology, legal principles, and, to an extent, practical considerations relating to apportionment of school wards.

**I. Basic Terminology**

Throughout this memorandum, the terms “apportionment,” “reapportionment,” and “redistricting<sup>1</sup>” are treated synonymously. These all mean, in essence, the organizing of groups of voters so that those voters will have the same power in representation within a set boundary.

The term “franchise” means a right, specifically, the right to vote.

**II. Basic Legal Principles of Apportionment**

**A. The Equal Protection Clause & ‘One Person, One Vote’**

The Equal Protection Clause of the Fourteenth Amendment of the U.S. Constitution provides for the core principle in apportionment: ‘one person, one vote.’<sup>2</sup> That is, that voters equally and fairly have the same power in voting as anyone else within that political

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<sup>1</sup> To avoid ambiguity between the terms “redistricting” and “districts,” the use of “redistricting” in this memorandum will be avoided, unless “redistricting” is the appropriate term given the context. As currently proposed, districts will contain apportioned wards; the districts, themselves, will not be apportioned vis-à-vis each other. The term “ward” will instead be used as the de facto political subdivision, again, unless “district” is the proper designation.

<sup>2</sup> *Reynolds v. Sims* *Reynolds v. Sims*, 377 U.S. 533, 568 (1964) applied this principle to states in general, while *Buckley v. Hoff* (234 F. Supp. 191, 200 (D. Vt. 1964)) and *Parsons v. Buckley* (379 U.S. 359, 362 (1965)) applied the principle to Vermont in particular.

boundary.<sup>3</sup> The principle of ‘one person, one vote’ was the antidote to the problem of vote dilution. Vote dilution is when different people have drastically different power in representation depending on where they live.<sup>4</sup> Another way to put it is, drawing lines so that areas with drastically uneven populations have the same voting power.

‘One person, one vote’ and the Equal Protection Clause apply to the apportionment of educational wards in particular because education has been deemed a basic governmental function and, as such, there must be equal and proportional representation on bodies that decide educational matters.<sup>5</sup>

It should be noted, however, that despite the above, ‘one person, one vote’ need *not* apply in all electoral constructions, only where different populations will be voting to have different representatives in a shared governmental body.<sup>6</sup> For example, wards whose representatives are elected at-large or when all decision makers in a body are appointed by an established elected body or officer (the Legislature, Governor, etc.).

## **B. When Apportionment and Reapportionment are Needed**

Wards must be apportioned and reapportioned—the maps must be redrawn—under various circumstances: whenever new political subdivisions are created that will require elected representation (unless those political subdivisions will have representatives elected at-large); every 10 years when the official decennial census data is published revealing how the population distribution over geographies has changed<sup>7</sup>; and sometimes through litigation and resulting court order.<sup>8</sup>

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<sup>3</sup> See *Reynolds*, 377 U.S. at 568 (holding “[t]he Equal Protection Clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races”).

<sup>4</sup> As the court in *Reynolds* (377 U.S. at 533) put it:

Overweighting and overvaluation of the votes of those living here has the certain effect of dilution and undervaluation of the votes of those living there. The resulting discrimination against those individual voters living in disfavored areas is easily demonstrable mathematically. Their right to vote is simply not the same right to vote as that of those living in a favored part of the State. Two, five, or 10 of them must vote before the effect of their voting is equivalent to that of their favored neighbor.

<sup>5</sup> See *Barnes v. Bd. of Directors, Mount Anthony Union High Sch. Dist. (No. 14)*, 418 F. Supp. 845, 849 (D. Vt. 1975) (applying the ‘one person, one vote rule’ to apportionment of the Mount Anthony Union School District because its “functions are patently general enough and have a sufficient impact on the residents” despite the “fact that the voters have the authority to approve the budget and authorize various transactions, such as the purchase or lease of land and the borrowing of money”).

<sup>6</sup> See *City of St. Albans v. Nw. Reg'l Plan. Comm'n*, 167 Vt. 466, 469 (1998) (holding “[a] state or local government . . . may select some government officials by appointment, and where appointment is permissible, the ‘one person, one vote’ doctrine does not apply”) (citing *Sailors v. Board of Educ. of County of Kent*, 387 U.S. 105, 111 (1967)).

<sup>7</sup> VT Const., Ch. II, § 73 [Manner of apportionment of the General Assembly] states: “At the biennial session following the taking of each decennial census under the authority of Congress, and at such other times as the General Assembly finds necessary, it shall revise the boundaries of the legislative districts and shall make a new apportionment . . . .”

<sup>8</sup> See *League of United Latin Am. Citizens v. Perry*, 548 U.S. 399, 447 (2006) (using ‘Gingles factors’ (*Thornburg v. Gingles*, 478 U.S. 30, 50–51 (1986)) to determine that Texas’ redistricting was

### C. How to Apportion in Compliance with ‘One Person, One Vote’

When apportioning and reapportioning—drawing maps—certain factors must be considered and satisfied to be in compliance with the constitutionally required principle of ‘one-person, one vote.’

Wards must have reasonably similar numbers in population. Courts have differing tolerances to deviations from equal populations depending on the office at issue. “Districts” for U.S. House of Representatives must strictly adhere to equal populations (“as nearly as practicable”<sup>9</sup>) with under 1% variance,<sup>10</sup> while state and local wards have more flexibility with under 10% variance,<sup>11</sup> so long as deviating from equal populations is “necessary to achieve some legitimate state objective.”<sup>12</sup> (Note that courts look to equal distribution of populations rather than the number of eligible votes or other groups like students.<sup>13</sup>)

Other factors must be considered, such as ensuring that the wards are “compact” and “contiguous.”<sup>14</sup> Depending on the type of ward or district, some regard can be made for existing political subdivisions, natural or historical boundary lines,<sup>15</sup> grouping communities of ‘common interest,’<sup>16</sup> and protecting incumbents.<sup>17</sup> Other factors, however, like shared history or economics, and ‘common interests’ cannot, alone, justify a deviation from equal populations in apportionment.<sup>18</sup>

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unconstitutional political gerrymandering and a violation of § 2 of the Voting Rights Act’s vote dilution provisions)

<sup>9</sup> *Karcher v. Daggett*, 462 U.S. 725, 730 (1983) (citing *Reynolds* at 577).

<sup>10</sup> See *Tennant v. Jefferson Cnty. Comm’n*, 567 U.S. 758, 764 (2012) (holding an apportionment plan with a variance of 0.79% did not violate the one-person-one vote principle).

<sup>11</sup> See *Gaffney v. Cummings*, 412 U.S. 735, 751 (1973) (upholding an 8% variance between state house districts and stating that the work of “local legislatures or of those organs of state government selected to perform [reapportionment] . . . should not be invalidated under the Equal Protection Clause when only minor population variations among districts are proved”).

<sup>12</sup> *Karcher*, 462 U.S. at 725.

<sup>13</sup> See *Evenwel v. Abbott*, 578 U.S. 54, 73 (2016) (holding “adopting voter-eligible apportionment as constitutional command would upset a well-functioning approach to districting that all 50 States and countless local jurisdictions have followed for decades, even centuries”).

<sup>14</sup> *Reynolds*, 377 U.S. at 578.

<sup>15</sup> *Id.* at 578-579.

<sup>16</sup> 17 V.S.A. § 1903(b) establishes additional criteria for apportioning legislative districts: “(1) preservation of existing political subdivision lines; (2) recognition and maintenance of patterns of geography, social interaction, trade, political ties and common interests; [and] (3) use of compact and contiguous territory.” See *In re Reapportionment of Towns of Hartland, Windsor & W. Windsor* (160 Vt. 9, 9 (1993)) for an application of these factors to six reapportioned legislative districts.

<sup>17</sup> *Karcher*, 462 U.S. at 783.

<sup>18</sup> *Reynolds*, 377 U.S. at 579–80 (holding “[b]ut neither history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation”).

Other requirements being met, it should be noted that apportionment permits lumping in small towns with large towns, so long as smaller towns have an “opportunity to influence the election or secure the attention of the winning candidate.”<sup>19</sup> Also, non-racial, political gerrymandering is permitted.<sup>20</sup>

Courts have held that an adopted reapportionment map or plan does not have to be the “best plan” for each ward, but need only conform with the constitutional and statutory criteria.<sup>21</sup> A second plan that is more equally apportioned or more compact than a proposed first plan would not have to be substituted for the first if that first plan was equal, compact, and continuous ‘enough’ to be in conformity with the established legal criteria.

#### **D. Possible Electoral Constructions**

Numerous electoral constructions are legally permissible, including, but not limited to, ward representatives being elected at-large, or in single-member wards, or in multi-member wards, or in both single-member and multi-member wards, either adjacent or overlapping, or also including lesser-known floterial wards.<sup>22</sup>

Numerous mechanics and voting systems are also legally permissible. Election winners can be determined by traditional plurality-majority voting, ranked-choice voting, proportional representation, etc. Constituent variations exist, too, with currently three Vermont municipalities (Montpelier, Winooski, and Burlington) permitting non-citizens to vote in local elections.<sup>23</sup>

### **III. Legislative Redistricting**

The General Assembly has made available various materials and resources regarding its most recent [“2022 Reapportionment \(Redistricting\)”](#) including details on the reapportionment process. Relevant statutory requirements for the periodic reapportionment of *legislative districts* are found in [17 V.S.A. Chapter 34a](#).

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<sup>19</sup> *In re Town of Woodbury*, 2004 VT 92, ¶ 28.

<sup>20</sup> *See Rucho v. Common Cause*, 588 U.S. 684, 711–12 (2019) (holding “A permissible intent—securing partisan advantage—does not become constitutionally impermissible, like racial discrimination, when that permissible intent ‘predominates’”).

<sup>21</sup> *In re Town of Woodbury*, 2004 VT 92, ¶ 15 (stating “[t]he Legislature, however, is not obligated to implement the best plan for each district[, r]ather, it needs to devise a plan that is in conformity with the constitutional and statutory criteria”) (citing *Hartland*, 160 Vt. at 42; *Gaffney v. Cummings*, 412 U.S. 735, 750–51, (1973)).

<sup>22</sup> “The term ‘floterial district’ is used to refer to 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 entire area to another seat in the particular legislative body being apportioned.” *Davis v. Mann*, 377 U.S. 678, 686–87 n.2 (1964) (citing *Baker v. Carr*, 369 U.S. 186, 256 (1962)).

<sup>23</sup> *See generally Ferry v. City of Montpelier*, 2023 VT 4, ¶ 53 (discussing that the Vermont Constitution does not prohibit the General Assembly from authorizing noncitizen voting in municipal elections).

The reapportionment process for legislative districts is of limited applicability to school wards apportionment because school wards would not have the same strictures imposed by the Vermont Constitution on legislative districts.<sup>24</sup> However, the legislative reapportionment process is an instructive and useful example because the basic legal principles preserved in the U.S. Constitution's Equal Protection Clause and 'one person, one vote' principle are still applicable (*see* section II.A. above).

#### **IV. Practical Considerations in Apportionment**

##### **A. Features of Apportionment**

The apportionment process in general, as gleaned from past legislative reapportionments, has various non-legal qualities that should be considered prior to establishing a process for apportioning school wards:

- i. Apportionment is time-consuming. The [2022 Reapportionment Timeline](#) for legislative districts began in earnest (and late) in August 2021, with the Legislative Apportionment Board beginning its review of 2020 Census data, and concluded on April 6, 2022, when Act 89, reapportioning the House of Representatives and the Senate, was signed by the Governor.
- ii. Apportionment involves intense data analysis, which will require additional resources and specialized staff and software.
- iii. Apportionment can be controversial and political and may result in litigation.
- iv. Apportionment, while ultimately the duty of the General Assembly to codify any boundaries, can have analyses conducted and recommendations produced by any form of entity, whether it be by a standing committee or special committee, composed of legislators, non-legislators, or a combination of both.

##### **B. Miscellaneous Practical Considerations in Apportionment**

To provide a better idea of some of the considerations that must be made in apportionment, below is a non-exhaustive sampling of items:

- i. What should be the involvement of boards of civil authority and clerks?
- ii. Should existing political subdivisions be split and, if so, how? e.g. different sides of the street are different districts. How should issues like voter confusion, checklist errors (*see* the recent Benning-1 issue), and the location of polling places be resolved?
- iii. When should school ward elections be?

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<sup>24</sup> *See* [VT Const. Ch. II § 13](#) ( . . . In establishing representative districts, which shall afford equality of representation, the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions.) and [§18](#) ( . . . In establishing senatorial districts, which shall afford equality of representation, the General Assembly shall seek to maintain geographical compactness and contiguity and to adhere to boundaries of counties and other existing political subdivisions.)

- iv. How should existing elections and election systems overlap? That is, Statewide, county, regional, and local elections.
- v. What will be the timing of school district reapportionment? Will it interfere with legislative district reapportionment?
- vi. What geographic considerations should be made in apportioning school wards in a State with rural areas with terrain that stymies travel?
- vii. Are there different communities of interest than are considered for purposes of legislative reapportionment?