large to require justification but nonetheless be justifiable and legally sustainable. It is now time to recognize . . . that minor deviations from mathematical equality among state legislative districts are insufficient to make out a *prima facie* case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State."[1936] This recognition of a *de minimis* deviation, below which no justification was necessary, was mandated, the Court felt, by the margin of error in census statistics, by the population change over the ten-year life of an apportionment, and by the relief it afforded federal courts by enabling them to avoid overinvolvement in essentially a political process. The "goal of fair and effective representation" is furthered by eliminating gross population variations among districts, but it is not achieved by mathematical equality solely. Other relevant factors are to be taken into account.[1937] But when a judicially imposed plan is to be formulated upon state default, it "must ordinarily achieve the goal of population equality with little more than *de minimis* variation," and deviations from approximate population equality must be supported by enunciation of historically significant state policy or unique features.[1938]

Gerrymandering and the permissible use of multimember districts present examples of the third major issue. It is clear that ra-

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ther consideration the rejection of a deviation in excess of 10% intended to preserve political subdivision boundaries). In Brown v. Thomson, 462 U.S. 835 (1983), the Court held that a consistent state policy assuring each county at least one representative can justify substantial deviation from population equality when only the marginal impact of representation for the state's least populous county was challenged (the effect on plaintiffs, voters in larger districts, was that they would elect 28 of 64 members rather than 28 of 63), but there was indication in Justice O'Connor's concurring opinion that a broader-based challenge to the plan, which contained a 16% average deviation and an 89% maximum deviation, could have succeeded.

[1936] Gaffney v. Cummings, 412 U.S. 735, 745 (1973). The maximum deviation was 7.83%. The Court did not precisely indicate at what point a deviation had to be justified, but it applied the *de minimis* standard in White v. Regester, 412 U.S. 755 (1973), in which the maximum deviation was 9.9%. "Very likely, larger differences between districts would not be tolerable without justification . . . ." Id. at 764. Justices Brennan, Douglas, and Marshall dissented. *See also* Brown v. Thomson, 462 U.S. 835, 842 (1983): "Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within [the] category of minor deviations [insufficient to make out a *prima facie* case]."

[1937] Gaffney v. Cummings, 412 U.S. 735, 748 (1973). By contrast, the Court has held that estimated margin of error for census statistics does not justify deviation from population equality in congressional districting. Karcher v. Daggett, 462 U.S. 725 (1983).

[1938] Chapman v. Meier, 420 U.S. 1, 27 (1975). The Court did say that court-ordered reapportionment of a state legislature need not attain the mathematical preciseness required for congressional redistricting. Id. at 27 n.19. Apparently, therefore, the Court's reference to both "*de minimis*" variations and "approximate population equality" must be read as referring to some range approximating the *Gaffney* principle. *See also* Connor v. Finch, 431 U.S. 407 (1977).