justiciable at all.[287] Then, in the late 1940s and early 1950s, the Court used the "political question" doctrine to decline to adjudicate districting and apportionment suits. This position, however, was later changed by *Baker v. Carr*.[288]

For the Court in *Wesberry*,[289] Justice Black argued that a reading of the debates of the Constitutional Convention conclusively demonstrated that the Framers had meant, in using the phrase "by the People," to guarantee equality of representation in the election of Members of the House of Representatives.[290] Justice Harlan, in dissent, argued that the statements on which the majority relied had uniformly been in the context of the Great Compromise—Senate representation of the states with Members elected by the state legislatures, House representation according to the population of the states, qualified by the guarantee of at least one Member per state and the counting of slaves as three-fifths of persons—and not at all in the context of intrastate districting. Further, he thought the Convention debates clear to the effect that Article I, § 4, had vested exclusive control over state districting practices in Congress, and that the Court action overrode a congressional decision not to require equally populated districts.[291]

The most important issue, of course, was how strict a standard of equality the Court would adhere to. At first, the Justices seemed inclined to some form of *de minimis* rule with a requirement that the State present a principled justification for the deviations from equality which any districting plan presented.[292] But in *Kirkpatrick v. Preisler*,[293] a sharply divided Court announced the rule that a state must make a "good-faith effort to achieve precise mathematical equality."[294] Therefore, "[u]nless population variances among congressional districts are shown to have resulted despite such [good-faith] effort [to achieve precise mathematical equality], the state must justify each variance, no matter how small."[295]

The strictness of the test was revealed not only by the phrasing of the test but by the fact that the majority rejected every prof-

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[287] Smiley v. Holm, 285 U.S. 355 (1932); Koenig v. Flynn, 285 U.S. 375 (1932); Carroll v. Becker, 285 U.S. 380 (1932); Wood v. Broom, 287 U.S. 1 (1932); Mahan v. Hume, 287 U.S. 575 (1932).

[288] 369 U.S. 186 (1962).

[289] Wesberry v. Sanders, 376 U.S. 1 (1964).

[290] 376 U.S. at 7–18.

[291] 376 U.S. at 20–49.

[292] Kirkpatrick v. Preisler, 385 U.S. 450 (1967), and Duddleston v. Grills, 385 U.S. 455 (1967), relying on the rule set out in Swann v. Adams, 385 U.S. 440 (1967), a state legislative case.

[293] 394 U.S. 526 (1969). *See also* Wells v. Rockefeller, 394 U.S. 542 (1969).

[294] Kirkpatrick v. Preisler, 394 U.S. 526, 530 (1969).

[295] 394 U.S. at 531.