

Counting and Weighing of Votes.—In *Bush v. Gore*,¹⁹⁷⁷ a case of dramatic result but of perhaps limited significance for equal protection, the Supreme Court ended a ballot dispute that arose during the year 2000 presidential election. The Florida Supreme Court had ordered a partial manual recount of the Florida vote for Presidential Electors, requiring that all ballots that contained a “clear indication of the intent of the voter” be counted, but allowing the relevant counties to determine what physical characteristics of a ballot would satisfy this test. The Court held that the Equal Protection Clause would be violated by allowing arbitrary and disparate methods of discerning voter intent in the recounting of ballots. The decision was surprising to many, as a lack of uniformity in voting standards and procedures is inherent in the American system of decentralized voting administration. The Court, however, limited its holding to “the present circumstances,” where “a state court with the power to assure uniformity” fails to provide “minimal procedural safeguards.”¹⁹⁷⁸ Citing the “many complexities” of application of equal protection “in election processes generally,” the Court distinguished the many situations where disparate treatment of votes results from different standards being applied by different local jurisdictions.

In cases where votes are given more or less weight by operation of law, it is not the weighing of votes itself that may violate the 14th Amendment, but the manner in which it is done. *Gray v. Sanders*,¹⁹⁷⁹ for instance, struck down the Georgia county unit system under which each county was allocated either two, four, or six votes in statewide elections and the candidate carrying the county received those votes. Because there were a few very populous counties and scores of poorly populated ones, the rural counties in effect dominated statewide elections and candidates with popular majorities statewide could be and were defeated. But *Gordon v. Lance*¹⁹⁸⁰ approved a provision requiring a 60-percent affirmative vote in a referendum election before constitutionally prescribed limits on bonded indebtedness or tax rates could be exceeded. The Court acknowledged that the provision departed from strict majority rule but stated that the Constitution did not prescribe majority rule; it instead proscribed discrimination through dilution of voting power or denial of the franchise because of some class characteristic—race, urban residency, or the like—and the provision at issue in this case was neither directed to nor affected any identifiable class.

¹⁹⁷⁷ 531 U.S. 98 (2000).

¹⁹⁷⁸ 531 U.S. at 109.

¹⁹⁷⁹ 372 U.S. 368 (1963).

¹⁹⁸⁰ 403 U.S. 1 (1971).