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BROWN ET AL. *v.* THOMSON, SECRETARY OF STATE OF WYOMING, ET AL.

APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF WYOMING

No. 82–65. Argued March 21, 1983—Decided June 22, 1983

[redacted]

The issue is whether the State of Wyoming violated the Equal Protection Clause by allocating one of the 64 seats in its House of Representatives to a county the population of which is considerably lower than the average population per state representative.

I

Since Wyoming became a State in 1890, its legislature has consisted of a Senate and a House of Representatives. The State's Constitution provides that each of the State's counties "shall constitute a senatorial and representative district" and that "[e]ach county shall have at least one senator and one representative." The senators and representatives are required to be "apportioned among the said counties as nearly as may be according to the number of their inhabitants." Wyo. Const., Art. 3, § 3.[1] The State has had 23 counties since 1922. Because the apportionment of the Wyoming House has been challenged three times in the past 20 years, some background is helpful.

In 1963 voters from the six most populous counties filed suit in the District Court for the District of Wyoming challenging the apportionment of the State's 25 senators and 61 representatives. The three-judge District Court held that the apportionment of the Senate—one senator allocated to each of the State's 23 counties, with the two largest counties having two senators—so far departed from the principle of population equality that it was unconstitutional. *Schaefer* v. *Thomson*, 240 F. Supp. 247, 251–252 (Wyo. 1964), supple-

[1] Article 3, § 3, of the Wyoming Constitution provides in relevant part: "Each county shall constitute a senatorial and representative district; the senate and house of representatives shall be composed of members elected by the legal voters of the counties respectively, every two (2) years. They shall be apportioned among the said counties as nearly as may be according to the number of their inhabitants. Each county shall have at least one senator and one representative; but at no time shall the number of members of the house of representatives be less than twice nor greater than three times the number of members of the senate."

mented, 251 F. Supp. 450 (1965), aff'd *sub nom. Harrison* v. *Schaefer*, 383 U. S. 269 (1966).[2] But the court upheld the apportionment of the State House of Representatives. The State's constitutional requirement that each county shall have at least one representative had produced deviations from population equality: the average deviation from the ideal number of residents per representative was 16%, while the maximum percentage deviation between largest and smallest number of residents per representative was 90%. See 1 App. Exhibits 16. The District Court held that these population disparities were justifiable as "the result of an honest attempt, based on legitimate considerations, to effectuate a rational and practical policy for the house of representatives under conditions as they exist in Wyoming." 240 F. Supp., at 251.

The 1971 reapportionment of the House was similar to that in 1963, with an average deviation of 15% and a maximum deviation of 86%. 1 App. Exhibits 18. Another constitutional challenge was brought in the District Court. The three-judge court again upheld the apportionment of the House, observing that only "five minimal adjustments" had been made since 1963, with three districts gaining a representative and two districts losing a representative because of population shifts. *Thompson* v. *Thomson*, 344 F. Supp. 1378, 1380 (Wyo. 1972).

The present case is a challenge to Wyoming's 1981 statute reapportioning its House of Representatives in accordance with the requirements of Art. 3, § 3, of the State Constitution. Wyo. Stat. § 28–2–109 (Supp. 1983).[3] The 1980 census

[2] An example of the disparity in population was that Laramie County, the most populous county in the State, had two senators for its 60,149 people, whereas Teton County, the least populous county in the State, had one senator for its 3,062 people. See *Schaefer* v. *Thomson*, 240 F. Supp., at 250, n. 3.

[3] Wyoming Stat. § 28–2–109 (Supp. 1982) provides in relevant part:

"(a) The ratios for the apportionment of senators and representatives are fixed as follows:

. . . . . .

placed Wyoming's population at 469,557. The statute provided for 64 representatives, meaning that the ideal apportionment would be 7,337 persons per representative. Each county was given one representative, including the six counties the population of which fell below 7,337. The deviations from population equality were similar to those in prior decades, with an average deviation of 16% and a maximum deviation of 89%. See 1 App. Exhibits 19–20.

The issue in this case concerns only Niobrara County, the State's least populous county. Its population of 2,924 is less than half of the ideal district of 7,337. Accordingly, the general statutory formula would have dictated that its population for purposes of representation be rounded down to zero. See § 28–2–109(a)(ii). This would have deprived Niobrara County of its own representative for the first time since it became a county in 1913. The state legislature found, however, that "the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the legislature than if each is guaranteed at least one (1) representative."[4] It therefore followed the

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"(ii) The ratio for the apportionment of the representatives is the smallest number of people per representative which when divided into the population in each representative district as shown by the official results of the 1980 federal decennial census with fractions rounded to the nearest whole number results in a house with sixty-three (63) representatives;

"(iii) If the number of representatives for any county is rounded to zero (0) under the formula in paragraph (a)(ii) of this section, that county shall be given one (1) representative which is in addition to the sixty-three (63) representatives provided by paragraph (a)(ii) of this section;

"(iv) If the provisions of paragraph (a)(iii) of this section are found to be unconstitutional or have an unconstitutional result, then Niobrara county shall be joined to Goshen county in a single representative district and the house of representatives shall be apportioned as provided by paragraph (a)(ii) of this section."

[4] The legislature made the following findings:

"It is hereby declared the policy of this state is to preserve the integrity of county boundaries as election districts for the house of representatives. The legislature has considered the present population, needs, and other

State Constitution's requirement and expressly provided that a county would receive a representative even if the statutory formula rounded the county's population to zero. § 28–2–109(a)(iii). Niobrara County thus was given one seat in a 64-seat House. The legislature also provided that if this representation for Niobrara County were held unconstitutional, it would be combined with a neighboring county in a single representative district. The House then would consist of 63 representatives. § 28–2–109(a)(iv).

Appellants, members of the state League of Women Voters and residents of seven counties in which the population per representative is greater than the state average, filed this lawsuit in the District Court for the District of Wyoming. They alleged that "[b]y granting Niobrara County a representative to which it is not statutorily entitled, the voting privileges of Plaintiffs and other citizens and electors of Wyoming similarly situated have been improperly and illegally diluted in violation of the 14th Amendment . . . ." App. 3–4. They sought declaratory and injunctive relief that would prevent the State from giving a separate representative to Nio-

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characteristics of each county. The legislature finds that the needs of each county are unique and the interests of each county must be guaranteed a voice in the legislature. The legislature therefore, will utilize the provisions of article 3, section 3, of the Wyoming constitution as the determining standard in the reapportionment of the Wyoming house of representatives which guarantees each county at least one (1) representative. The legislature finds that the opportunity for oppression of the people of this state or any of them is greater if any county is deprived a representative in the legislature than if each is guaranteed at least one (1) representative. The legislature finds that the dilution of the power of counties which join together in making these declarations is trivial when weighed against the need to maintain the integrity of county boundaries. The legislature also finds that it is not practical or necessary to increase the size of the legislature beyond the provisions of this act in order to meet its obligations to apportion in accordance with constitutional requirements consistent with this declaration." 1981 Wyo. Sess. Laws, ch. 76, § 3.

brara County, thus implementing the alternative plan calling for 63 representatives.

The three-judge District Court upheld the constitutionality of the statute. 536 F. Supp. 780 (1982). The court noted that the narrow issue presented was the alleged discriminatory effect of a single county's representative, and concluded, citing expert testimony, that "the 'dilution' of the plaintiffs' votes is de minimis when Niobrara County has its own representative." *Id.*, at 783. The court also found that Wyoming's policy of granting a representative to each county was rational and, indeed, particularly well suited to the special needs of Wyoming. *Id.*, at 784.[5]

We noted probable jurisdiction, 459 U. S. 819 (1982), and now affirm.

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[5] The District Court stated:

"Wyoming as a state is unique among her sister states. A small population is encompassed by a large area. Counties have always been a major form of government in the State. Each county has its own special economic and social needs. The needs of the people are different and distinctive. Given the fact that the representatives from the combined counties of Niobrara and Goshen would probably come from the larger county, i. e., Goshen, the interests of the people of Niobrara County would be virtually unprotected.

"The people within each county have many interests in common such as public facilities, government administration, and work and personal problems. Under the facts of this action, to deny these people their own representative borders on abridging their right to be represented in the determination of their futures.

"In Wyoming, the counties are the primary administrative agencies of the State government. It has historically been the policy of the State that counties remain in this position.

"The taxing powers of counties are limited by the Constitution and some State statutes. Supplemental monies are distributed to the counties in accordance with appropriations designated by the State Legislature. It comes as no surprise that the financial requirements of each county are different. Without representation of their own in the State House of Representatives, the people of Niobrara County could well be forgotten." 536 F. Supp., at 784.

II

A

In *Reynolds* v. *Sims*, 377 U. S. 533, 568 (1964), the Court held that "the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis." This holding requires only "that a State make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable," for "it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters." *Id.*, at 577. See *Gaffney* v. *Cummings*, 412 U. S. 735, 745–748 (1973) (describing various difficulties in measurement of population).

We have recognized that some deviations from population equality may be necessary to permit the States to pursue other legitimate objectives such as "maintain[ing] the integrity of various political subdivisions" and "provid[ing] for compact districts of contiguous territory." *Reynolds*, *supra*, at 578. As the Court stated in *Gaffney*, "[a]n unrealistic overemphasis on raw population figures, a mere nose count in the districts, may submerge these other considerations and itself furnish a ready tool for ignoring factors that in day-to-day operation are important to an acceptable representation and apportionment arrangement." 412 U. S., at 749.

In view of these considerations, we have held 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." *Id.*, at 745. Our decisions have established, as a general matter, that an apportionment plan with a maximum population deviation under 10% falls within this category of minor deviations. See, *e. g.*, *Connor* v. *Finch*, 431 U. S. 407, 418 (1977); *White* v. *Regester*, 412 U. S. 755, 764 (1973). A plan with larger

disparities in population, however, creates a prima facie case of discrimination and therefore must be justified by the State. See *Swann* v. *Adams*, 385 U. S. 440, 444 (1967) ("*De minimis* deviations are unavoidable, but variations of 30% among senate districts and 40% among house districts can hardly be deemed *de minimis* and none of our cases suggests that differences of this magnitude will be approved without a satisfactory explanation grounded on acceptable state policy"). The ultimate inquiry, therefore, is whether the legislature's plan "may reasonably be said to advance [a] rational state policy" and, if so, "whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits." *Mahan* v. *Howell*, 410 U. S. 315, 328 (1973).

B

In this case there is no question that Niobrara County's deviation from population equality—60% below the mean—is more than minor. There also can be no question that Wyoming's constitutional policy—followed since statehood—of using counties as representative districts and ensuring that each county has one representative is supported by substantial and legitimate state concerns. In *Abate* v. *Mundt*, 403 U. S. 182, 185 (1971), the Court held that "a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality." See *Mahan* v. *Howell*, *supra*, at 329. Indeed, the Court in *Reynolds* v. *Sims*, *supra*, singled out preservation of political subdivisions as a clearly legitimate policy. See 377 U. S., at 580–581.

Moreover, it is undisputed that Wyoming has applied this factor in a manner "free from any taint of arbitrariness or discrimination." *Roman* v. *Sincock*, 377 U. S. 695, 710 (1964). The State's policy of preserving county boundaries is based on the State Constitution, has been followed for decades, and has been applied consistently throughout the State. As the

District Court found, this policy has particular force, given the peculiar size and population of the State and the nature of its governmental structure. See n. 5, *supra;* 536 F. Supp., at 784. In addition, population equality is the sole other criterion used, and the State's apportionment formula ensures that population deviations are no greater than necessary to preserve counties as representative districts. See *Mahan* v. *Howell, supra,* at 326 (evidence is clear that the plan "'produces the minimum deviation above and below the norm, keeping intact political boundaries'"). Finally, there is no evidence of "a built-in bias tending to favor particular political interests or geographic areas." *Abate* v. *Mundt, supra,* at 187. As Judge Doyle stated below:

> "[T]here is not the slightest sign of any group of people being discriminated against here. There is no indication that the larger cities or towns are being discriminated against; on the contrary, Cheyenne, Laramie, Casper, Sheridan, are not shown to have suffered in the slightest . . . degree. There has been no preference for the cattle-raising or agricultural areas as such." 536 F. Supp., at 788 (specially concurring).

In short, this case presents an unusually strong example of an apportionment plan the population variations of which are entirely the result of the consistent and nondiscriminatory application of a legitimate state policy.[6] This does not mean

[6] In contrast, many of our prior decisions invalidating state apportionment plans were based on the lack of proof that deviations from population equality were the result of a good-faith application of legitimate districting criteria. See, *e. g., Chapman* v. *Meier,* 420 U. S. 1, 25 (1975) ("It is far from apparent that North Dakota policy currently requires or favors strict adherence to political lines. . . . Furthermore, a plan devised by [the Special Master] demonstrates that . . . the policy of maintaining township lines [does not] preven[t] attaining a significantly lower population variance"); *Kilgarlin* v. *Hill,* 386 U. S. 120, 124 (1967) *(per curiam)* (District Court did not "demonstrate why or how respect for the integrity of county lines required the particular deviations" or "articulate any satisfactory grounds for rejecting at least two other plans presented to the court, which re-

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.[7] "[A] State's policy urged in justification of disparity in district population, however rational, cannot constitutionally be permitted to emasculate the goal of substantial equality." *Mahan* v. *Howell*, *supra*, at 326. It remains true, however, as the Court in *Reynolds* noted, that consideration must be given "to the character as well as the degree of deviations from a strict population basis." 377 U. S., at 581. The consistency of application and the neutrality of effect of the

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spected county lines but which produced substantially smaller deviations"); *Swann* v. *Adams*, 385 U. S. 440, 445–446 (1967) (no evidence presented that would justify the population disparities).

[7] As the *Reynolds* Court explained:

"Carried too far, a scheme of giving at least one seat in one house to each political subdivision (for example, to each county) could easily result, in many States, in a total subversion of the equal-protection principle in that legislative body. This would be especially true in a State where the number of counties is large and many of them are sparsely populated, and the number of seats in the legislative body being apportioned does not significantly exceed the number of counties." 377 U. S., at 581.

See also *Connor* v. *Finch*, 431 U. S. 407, 419 (1977) ("[T]he policy against breaking county boundary lines is virtually impossible of accomplishment in a State where population is unevenly distributed among 82 counties, from which 52 Senators and 122 House members are to be elected").

This discussion in *Reynolds* is illustrated by the senatorial districts in Wyoming that were invalidated in 1963. Each county in the State had one senator, while the two largest counties had two. Because county population varied substantially, extremely large disparities in population per senator resulted. The six most populous counties, with approximately 65% of the State's population, had eight senators, whereas the six least populous counties, with approximately 8% of the population, had six senators. See *Schaefer* v. *Thomson*, 240 F. Supp., at 251, n. 5. The Wyoming House of Representatives presents a different case because the number of representatives is substantially larger than the number of counties.

nonpopulation criteria must be considered along with the size of the population disparities in determining whether a state legislative apportionment plan contravenes the Equal Protection Clause.

C

Here we are not required to decide whether Wyoming's nondiscriminatory adherence to county boundaries justifies the population deviations that exist throughout Wyoming's representative districts. Appellants deliberately have limited their challenge to the alleged dilution of their voting power resulting from the one representative given to Niobrara County.[8] The issue therefore is not whether a 16% average deviation and an 89% maximum deviation, considering the state apportionment plan as a whole, are constitutionally permissible. Rather, the issue is whether Wyoming's policy of preserving county boundaries justifies the additional deviations from population equality resulting from the provision of representation to Niobrara County.[9]

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[8] Counsel for appellants, who represent the state League of Women Voters, explained at oral argument: "[A] referendum had been passed by the League of Women Voters which authorized the attack of only that one portion of the reapportionment plan. It was felt by the membership or by the leadership of that group that no broader authority would ever be given because of the political ramifications and arguments that would be presented by the membership in attacking or considering . . . that broader authority." Tr. of Oral Arg. 8.

[9] The dissent suggests that we are required to pass upon the constitutionality of the apportionment of the entire Wyoming House of Representatives. See *post*, at 857–859 (BRENNAN, J., dissenting). Although in some prior cases challenging the apportionment of one legislative house the Court has addressed the constitutionality of the other house's apportionment as well, we never have held that a court is required to do so. For example, in *Gaffney* v. *Cummings*, 412 U. S. 735 (1973), we considered only the apportionment of the Connecticut General Assembly, noting expressly that the "Senate plan was not challenged in the District Court" and that "[a]ppellees do not challenge the Senate districts on the ground of their population deviations." *Id.*, at 739, n. 5. In this case, we see no reason why appellants should not be bound by the choices they made when filing this lawsuit.

It scarcely can be denied that in terms of actual effect on appellants' voting power, it matters little whether the 63-member or 64-member House is used. The District Court noted, for example, that the seven counties in which appellants reside will elect 28 representatives under either plan. The only difference, therefore, is whether they elect 43.75% of the legislature (28 of 64 members) or 44.44% of the legislature (28 of 63 members). 536 F. Supp., at 783.[10] The District Court aptly described this difference as "de minimis." *Ibid.*

We do not suggest that a State is free to create and allocate an additional representative seat in any way it chooses simply because that additional seat will have little or no effect on the remainder of the State's voters. The allocation of a representative to a particular political subdivision still may violate the Equal Protection Clause if it greatly exceeds the population variations existing in the rest of the State and if the State provides no legitimate justifications for the creation of that seat. Here, however, considerable population variations will remain even if Niobrara County's representative is eliminated. Under the 63-member plan, the average deviation per representative would be 13% and the maximum deviation would be 66%. See 1 App. Exhibits 22. These statistics make clear that the grant of a representative to Niobrara County is not a significant cause of the population deviations that exist in Wyoming.

Moreover, we believe that the differences between the two plans are justified on the basis of Wyoming's longstanding and legitimate policy of preserving county boundaries. See *supra*, at 841, n. 5, and 843–844. Particularly where there is no "taint of arbitrariness or discrimination," *Roman* v. *Sincock*, 377 U. S., at 710, substantial deference is to be accorded the political decisions of the people of a State acting

[10] Similarly, appellees note that under the 64-member plan, 46.65% of the State's voters theoretically could elect 51.56% of the representatives. Under the 63-member plan, 46.65% of the population could elect 50.79% of the representatives. See 1 App. Exhibits 32–33.

through their elected representatives. Here it is noteworthy that by enacting the 64-member plan the State ensured that its policy of preserving county boundaries applies nondiscriminatorily. The effect of the 63-member plan would be to deprive the voters of Niobrara County of their own representative, even though the remainder of the House of Representatives would be constituted so as to facilitate representation of the interests of each county. See 536 F. Supp., at 784; *id.*, at 786 (Doyle, J., specially concurring). In these circumstances, we are not persuaded that Wyoming has violated the Fourteenth Amendment by permitting Niobrara County to have its own representative.

The judgment of the District Court is

Affirmed.

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