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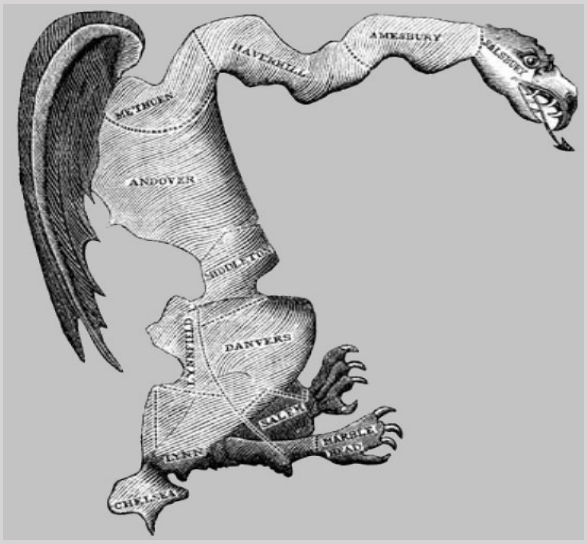
a cura di Lorenzo Spadacini

ENHANCING EFFECTIVENESS OF DEMOCRATIC REPRESENTATION

CONSTITUENCIES AND EQUALITY OF THE VOTE WITHIN DIFFERENT ELECTORAL SYSTEMS AND FORM OF GOVERNMENT



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Enhancing effectiveness of democratic representation
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within different electoral systems and form of government

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A CURA DI LORENZO SPADACINI

ENHANCING EFFECTIVENESS OF DEMOCRATIC REPRESENTATION
DISTRICTS AND EQUALITY OF THE VOTE WITHIN DIFFERENT ELECTORAL SYSTEMS AND FORM OF GOVERNMENT [*]

SUMMARY

[*] All contributions are subject to a peer review process according to the journal's regulations.

Daniele Casanova[*]

Drawing Electoral Districts and Ensuring Equal Representation: A Comparative Study of Electoral District in Italy and the United States[**]

SUMMARY: 1. Vote equality and determination of electoral districts. – 2. The Italian model: expansive thresholds established by the law and substantial discretion. – 3. The U.S. model: case-by-case evaluation, elevated discretion, and the important role of the Supreme Court for mathematical equality. – 4. Which model? Case-by-case evaluation or legislative range delimitation? A constitutionally oriented response. – 5. Conclusion. A new model for ensuring equality in the Italian constitutional System: low threshold established by law and minimal discretion.

ABSTRACT: ***This article aims to investigate the issue of vote equality and the determination of electoral districts, particularly those electing a single representative. Through an analysis of the current electoral legislation in Italy, this article seeks to highlight potential issues of constitutional illegitimacy in the criteria set by the legislature for delineating electoral districts. Subsequently, it compares the Italian model with the U.S. model, which, through a series of Supreme Court decisions, has seen greater protection of citizen equality. Finally, this article explores possible solutions for the Italian constitutional system and attempts to propose a different legislative model to facilitate compliance with the constitutional principle of vote equality.***

1. *Vote equality and determination of electoral districts*

The principle of the equality of the vote, expressly provided for by Article 48 of the Italian Constitution, has been framed by scholars into two different principles: the equality of the vote "on entry" and the equality of the vote "on exit".

As for the equality of the vote "on entry", it is synonymous with equality among voters when the right to vote is effectively exercised. From the perspective of the electoral process, this assumption implies that the minimum interpretation of the term "equality" is that each citizen should be entrusted with only one vote, or, in some cases (such as a mixed electoral system), an equal number of votes among all citizens.

Moreover, this principle dictates that each of these votes cannot assume a different value based on the subjective qualities of the voter. In this regard, the first limit stemming from the constitutional order would be the prohibition of employing instruments such as plural voting – that is, granting a voter the possibility to cast a

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greater number of votes compared to other voters – or multiple voting, allowing a voter to vote multiple times in different electoral districts[1].

The equality of the vote "on exit" pertains to a category where the voter's choice transcends the concept of mere "numerical value" and acquires the significance of "effective value", materializing as the equality of votes in electoral results. This second aspect has been the focal point of Italian electoral research and has given rise to significant divisions in legal doctrine. Scholars are divided between those who reject the existence of the constitutional principle of equality of the vote "on exit" in the legal system[2] and those, especially in the past, who believed that the principle articulated in Article 48 of the Constitution must be interpreted to ensure effective equality of votes at the conclusion of the electoral competition. This interpretation is closely tied to the constitutional necessity for adopting a proportional electoral system[3].

Beyond the dichotomy between equality "on entry" and equality "on exit", the consolidation of the constitutional principle of equality of the vote must also consider the opportunity for all citizens to possess an equal capacity for representation in Parliament, regardless of their place of residence within the national territory.

This is primarily influenced by the methods used to allocate seats in electoral districts and the criteria for determining such districts, based on the assumption that every electoral system is generally structured around a territorial division of the State.

For citizens to be fairly represented, it is essential that the allocation of seats in electoral districts guarantees equal opportunity for voters in different districts to be represented in Parliament before casting their votes. This ensures that some individuals do not have the potential to be represented by a greater number of deputies than others. In other words, it aims to avoid a situation where one elected representative could potentially represent a larger portion of the electorate than other representatives[4].

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[1] Regarding this minimum meaning of the equality of the vote, which translates into the impossibility of foreseeing forms of multiple or unequal voting, see E. GROSSO, *Art. 48*, in R. BIFULCO, A. CELOTTO, M. OLIVETTI (ed. by), *Commentario alla Costituzione*, v. I, UTET, Torino, 2006, 969 ff.

[2] See M. LUCIANI, *Il voto e la democrazia*, *Il voto e la democrazia*. *La questione delle riforme elettorali in Italia*, Editori Riuniti, Roma, 1991, 48 ff.

[3] See C. LAVAGNA, *Il sistema elettorale nella Costituzione italiana*, in *Rivista trimestrale di diritto pubblico*, n. 3, 849 ff.

[4] See A. ROUX, P. TERNEYRE, *Principio d'eguaglianza e diritto di voto*, 398. As highlighted by L. TRUCCO, *Contributo allo studio del diritto elettorale. I. Fondamenti teorici e profili normativi*, Giappichelli, Torino, 2013, 25, when assigning the same number of seats to districts with significant demographic differences or opting for an unequal distribution of seats in demographically equivalent districts, there is an issue concerning the equality of citizens. According to E. CATELANI, *Riforme costituzionali: procedere in modo organico o puntuale?*, in *Federalismi.it*, 2020, 21, the presence of substantial disparity in the representativeness of voters among various districts jeopardizes the effectiveness of the principle of the equality of votes. G. FERRARA, *Gli atti costituzionali*, Giappichelli, Torino, 2009, 28, also suggests that to ensure vote equality, the seat distribution should be organized so that each districts contains a similar number of voters, at least when the vote is cast.

In essence, when applying this principle to the delineation of electoral districts and the allocation of seats, it should entail that the numerical consistency of the population per seat is not excessively unequal. The underlying concept is that: to ensure equal representational capacity, each representative should represent the same number of citizens. For example, if one representative represents 100,000 citizens in a particular territory, the same ratio should apply to other elected representatives.

In this regard, a distinction is necessary between electoral districts that elect a single representative and electoral districts that elect multiple representatives.

For districts electing multiple representatives, it is not necessary for them to be composed of the same number of residents or voters. However, there must be a proportional distribution of representatives. For instance, if a district with 120,000 residents is entitled to elect three representatives and another district with 360,000 residents has the right to elect nine, there is no violation of the principle of equal treatment of voters. In both cases, there would be one representative for every 40,000 residents, even though one electoral district would have a population three times higher than the other.

This principle is well-defined in Article 56 of the Italian Constitution, which states that: «The number of deputies is four hundred, eight of whom are elected in the Foreign constituency» and «the allocation of seats among the constituencies, except for the number of seats assigned to the Foreign constituency, is carried out by dividing the number of inhabitants of the Republic, as resulting from the latest general population census, by three hundred ninety-two and distributing the seats in proportion to the population of each constituency, based on whole quotients and the highest remainders».

As can be seen from the table below – which shows the seats allocated in the last elections in October 2022 – the number of citizens per seat in Italian constituencies do not perfectly correspond.

Allocation of seats in Italian constituencies (Chambers of deputy 2022 election)			
Constituency	*Residents*	*Seats*	*Residents per seat*
Piemonte 1	2,247,780	15	149,852
Piemonte 2	2,116,136	14	151,153
Lombardia 1	3,805,895	25	152,236
Lombardia 2	2,088,579	14	149,184
Lombardia 3	2,175,099	14	155,364
Lombardia 4	1,634,578	11	148,598
Veneto 1	1,932,447	13	148,650
Veneto 2	2,923,457	19	153,866
Friuli-Venezia Giulia	1,220,291	8	152,536
Liguria	1,570,694	10	157,069
Emilia-Romagna	4,342,135	29	149,729
Toscana	3,672,202	24	153,008
Umbria	884,268	6	147,378
Marche	1,541,319	10	154,132
Lazio 1	3,622,611	24	150,942
Lazio 2	1,880,275	12	156,690
Abruzzo	1,307,309	9	145,257
Molise	313,660	2	156,830
Campania 1	3,054,956	20	152,748
Campania 2	2,711,854	18	150,659
Puglia	4,052,566	27	150,095
Basilicata	578,036	4	144,509
Calabria	1,959,050	13	150,095
Sicilia 1	2,365,463	15	157,698
Sicilia 2	2,637,441	17	155,144
Sardegna	1,639,362	11	149,033
Valle d'Aosta	126,806	1	126,906
Trentino-Alto Adige	1,029,475	7	147,068
Total	**59,433,744**	**392**	**151,617**

The table reveals, for instance, that the number of citizens per seat varies from 126,906 for the Valle d'Aosta constituency to 157,698 for the Sicilia 2 constituency. This variation, which might seem to somewhat violate the principle of equality, appears to be justified primarily by Article 56 of the Constitution.

Equally, in the United States, art. 1, sec 2 of the Constitution mandates that seats be distributed proportionally among the States based on the resident population. In this case as well, therefore, the population per seat is not perfectly coincident across all States. After the latest census (2020), the average population per federal representative is 761,169 inhabitants. At the state level, the distribution ranges from a

minimum of 542,704 inhabitants per representative in Montana to a maximum of 990,837 inhabitants per representative in Delaware[5].

In conclusion, Article 1, Section 2, and the XIV Amendment of the U.S. Constitution, along with Article 56 of the Italian Constitution, allow for such deviation through the provision of proportional seat distribution among States or electoral constituencies[6].

Returning to the Italian system, it is necessary to emphasize that when dealing with single-member electoral districts, the directive derived from Article 56 of the Constitution does not seem inherently sufficient to guarantee equality among voters.

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[5] See the report "*2020 Census Apportionment Results. Table 1. Apportionment Population and Number of Representatives by State*" prepared by United States Census Bureau (*census.com*).

[6] However, it would still be essential to open a discussion regarding the proportional electoral formula used to allocate seats to constituencies. In fact, there are proportional electoral formulas that can either advantage or disadvantage "larger" and "smaller" constituencies, implying that the adopted electoral formula is not inconsequential in terms of the final seat distribution. In this regard, one can think of significant debate that arose in the United States regarding the choice of a proportional formula to allocate seats to States based on population. From the perspective of the adopted mathematical formula, the United States has undergone evolution over time. Initially, when the number of representatives was not fixed in the Constitution but simply provided that "the number of representatives shall not exceed one for every thirty thousand [inhabitants]," Congress preliminarily set the population number for each representative. Once this number was established, the Jefferson method of the greatest divisors without recovering the remainders was initially used. Later (1840-1850), the Webster method of "principal fractions" was introduced, where seats were assigned based on whole quotients, with an additional seat when the remainder exceeded half of the quotient. Between 1850 and 1900, the Vinton (or Hamilton) method was employed. Since 1911, after the introduction of a fixed number of representatives (initially set at 433 with a 1911 Bill and 435 with the Reapportionment Act of 1929), other mathematical methods have been used. Initially, there was a return to Webster's principal fractions method. Since 1940, the Hill method of equal proportions has been introduced, which is the currently used mathematical method. With this formula, after assigning one seat to each state, the seats are distributed using the classic quotient method, and subsequently, an additional seat is anticipated through rounding according to the geometric mean of the remainders. For an analysis of the evolution, types of formulas adopted, and their potentially diverse implications for the number of seats assigned to states, see M. LI CALZI, *Aritmetica per la Costituzione: la ripartizione dei seggi al Senato*, in M. EMMER (ed. by), *Matematica e Cultura* 2008, Springer, Milano, 2008, 151 ff. Additionally, the work of G.G. SZIPRO, *La matematica della democrazia. Voti, seggi e parlamenti da Platone ai giorni nostri,* Bollati Boringhieri, Torino, 2013, 120 ff., provides insights into this topic. It is also interesting to note the analytical investigation conducted by R. CROCKER, *The House of Representatives Apportionment Formula: An Analysis of Proposals for Change and Their Impact on States*, in *Congressional Research Servic*e, 2016, 4 ff., where a compelling diagram illustrates the different number of seats that would have been allocated to federated states following the 2010 census if alternative mathematical methods experimented with throughout U.S. history had been used. This latter work empirically demonstrates that the mathematical formula is not entirely impartial, as certain states would be advantaged or disadvantaged in terms of the number of representatives to be elected to the U.S. House of Representatives. Due to this, following the 1990 census, the state of Montana attempted a judicial appeal. The Supreme Court, in *United States Department of Commerce v. Montana*, 503 U.S. 442 (1992), declared that the Hill method of equal proportions does not violate the Constitution. Furthermore, the Court emphasized that, based on numerous scientific studies cited, this method provides the fairest and most equitable distribution of seats among states.

Solely applying Article 56 would imply that, in the case of a national territory divided into single-member districts (equivalent to the seats in the Chamber of Deputies), these districts could be quite different from each other. In the scenario of a national territory divided into 392 single-member districts, the average for each district would be 151,517 inhabitants. With the proportional distribution and the highest remainders outlined in Article 56 of the Constitution, it would be possible – hypothetically – to establish an electoral district of approximately 226,000 inhabitants and another of about 76,500.

This would result in one district being three times larger in terms of population compared to the other. From this example, which illustrates the potential creation of significantly diverse electoral districts, Article 56 of the Constitution appears insufficient to correctly regulate the determination of electoral districts. It is necessary to reference other constitutional principles; these principles can only be the equality of the vote envisaged by Article 48 of the Constitution and the general equality principle outlined in Article 3 of the Constitution.

In the same way, even in the United States, to ensure a distribution of territory into single-member districts within individual States, it is not sufficient to rely solely on Article 1 of the Constitution[7]; it is also necessary to invoke the Equal Protection Clause in the XIV Amendment[8].

As mentioned in the introduction, from the principle of the equality of the vote – which in doctrine has been translated into the phrase “one man, one vote” or “one vote, one value” – it should follow that the numerical consistency of different electoral districts is not excessively unequal.

But how to determine the meaning of “not excessively unequal”? As you can see, there can be various models. The first, the Italian one, is accomplished by establishing a threshold set by law; the second, the U.S. model, involves granting discretion to the entity responsible for determining seats but, in this case, with close judicial oversight of this activity. However, what needs to be verified is whether these models (as they are actually adopted in the two States) are sufficient to ensure a correct and complete equality among voters.

[7] In which specific details are not provided regarding the geographical distribution of state territories or how single-member districts should be created.

[8] See paragraph 3.

2. *The Italian model: expansive thresholds established by the law and substantial discretion*

The Italian electoral system, introduced with Law No. 165 of 2017 and subsequent Law No. 51 of 2019[9], is a mixed electoral system. Under this system, 3/8 of the seats are allocated in single-member electoral districts (using the first-past-the-post system), while the remaining 5/8 are assigned through a proportional method calculated at the national level (for the Chamber of deputies) and at the regional level (for the Senate).

From a territorial distribution perspective, some seats are assigned within single-member districts, while the remaining seats are allocated within multi-member districts, which elect from 3 to 8 deputies each (for the Chambers of deputies) and from 2 to 8 senator (for the Senate).

All these districts, both single-member and multi-member, are established within 28 sub-national electoral constituencies (for the Chambers of deputy) and 20 regional constituencies (for the Senate). These constituencies are territorial spaces without candidates; they serve solely as spaces in which the single-member and multi-member districts are determined, with some relevance in the allocation of seats to political forces. In this sense, the constituency functions exclusively as a territorial space where seats are "transferred" following the national-level determination of the quantity of seats allocated to each political force. From here, the seats are then assigned in the various multi-member electoral districts within the constituency.[10]

The delimitation of electoral district boundaries is entrusted to the government, which, with the support of a Commission, is tasked with approving a legislative decree containing the determination of electoral districts. Regarding the identification of single-member and multi-member electoral districts, the law has established a series of criteria and guiding principles to instruct the government on the methods of determining the districts[11].

There are two categories of indications in the law.

Concerning "territorial" representation, the law established for the Chamber that in the delineation of single-member and multi-member districts, the coherence of each district must be ensured, considering the administrative units and, if necessary, local

[9] It has simply implemented the electoral law following the constitutional reform (Constitutional Law No. 1 of 2020) that envisaged the reduction in the number of parliamentarians (from 630 to 400 deputies and from 315 to 200 senators).

[10] For these aspects and their possible negative implications concerning voter equality and the unconstitutionality of the current electoral system, see M. PODETTA, *The Delimitation of Multi-Member Districts in Italy: Political and Territorial Mis-Representativeness*, in this issue.

[11] Regarding the procedure for the determination and approval of electoral districts, refer to L. SPADACINI, *Constitutional needs for the Italian process of drawing electoral districts: a more independent Commission, less partisanship, and greater transparency and participation*, in this issue.

systems[12]. Furthermore, consideration must be given to the economic, social, and historical-cultural homogeneity of the districts. Finally, it is envisaged that, as a rule, single-member and multi-member districts cannot divide municipal territory, except in cases where municipalities, due to their demographic size, include multiple districts within them[13].

As for the demographic component of districts, Law No. 165 of 2017 specifies that electoral districts should be formed in a manner ensuring that the demographic composition falls within a total population deviation of 20% compared to the average population of districts in the constituency.

This provision seems to be the most problematic; with this limit, electoral districts may contain significantly different population quantities.

According to the current electoral law, for example, for the 2022 election in the Lombardia 3 constituency (which roughly includes the provinces of Brescia and Bergamo), the average size of electoral districts is 435,020 inhabitants. A district of 348,016 and one of 522,024 could be constituted, with a difference of almost 200,000 inhabitants and a 50% increase from the smallest to the largest district.

Considering this situation, it appears challenging to believe that equality among residents located in different electoral districts within the same constituency is achieved[14].

The violation of the principle of equality seems even more evident when correlating districts placed in different electoral constituencies.

Indeed, as has been observed, Italian electoral legislation stipulates that the inequality among districts (20% either above or below the average population of districts) must be assessed based on the average population of the districts within the electoral constituency, not on the average population of constituencies nationwide.

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[12] Local systems are territorial units (610 areas) created purely for statistical purposes, aggregating the territory of municipalities based on daily commuting patterns between the place of residence and work for the population.

[13] In the delineation of electoral districts for the Senate election, the same characteristics are required, with the distinction that, for reasons not apparent, the requirements related to administrative units and local systems are absent in that case (see art. 3, sec, 3).

[14] In this regard, refer to M. COSULICH, *Il tramonto dell'eguaglianza (del voto). Considerazioni critiche sulla legge n. 165 del 2017*, in *Critica del diritto*, n. 2/2017, 30, which highlights that in this way, it is possible to define districts within the same constituency that differ by up to 40% of the population. The author considered that as a «marked – and unconstitutional – demographic disparity among single-member districts». Similarly, see S. TROILO, *Audizione presso la I Commissione permanente della Camera dei deputati in merito alla proposta di legge cost. A.C. n. 1585 e alla proposta A.C. n. 1616, concernenti la riduzione del numero dei parlamentari e conseguenti modifiche alla legislazione elettorale*, in *Forum di Quaderni costituzionali*, 2019, 9; A. APOSTOLI, *Il c.d. Rosatellum-bis. Alcune prime considerazioni*, in *Osservatorio costituzionale*, n. 3/2017, 3 ff.; L. SPADACINI, *La proposta di riforma elettorale all'attenzione del Senato: alcuni dubbi di illegittimità costituzionale*, in *Nomos*, n. 3/2017, 2 ff.; G. TARLI BARBIERI, *L'infinito riformismo elettorale tra aporie giuridiche e dilemmi costituzionali*, in *Federalismi.it*, n. 1/2018, 23.

This implies that, given the existing disparity among the averages of different constituencies, there can be a much greater distortion between an electoral district in one constituency (let's call it X) and one in another constituency (let's call it Y) than what is tolerated by the law within each individual constituency.

Based on the principles and guiding criteria outlined in the law, the smallest district in the Molise constituency could be comprised of 308,256 inhabitants, while the most populous district in the Piemonte constituency could consist of 539,467 inhabitants. This would result in a population disparity of approximately 75% from the smallest to the largest district – well beyond the range tolerated by the law between the least populous and most populous districts within the same constituency.

If these examples demonstrate a violation of the principle of equality, it is even more pronounced when considering certain "special" constituencies. This includes constituencies composed of a single electoral district (such as in the Molise and Valle d'Aosta constituencies) or the constituencies where the quota of elected representatives in single-member and multi-member districts differs from the rest of the national territory (as is the case in the Trentino-Alto Adige constituency, where 4 deputies are elected in single-member districts and 3 in multi-member districts).

In the above-mentioned Piemonte 1 constituency, one single-member district could have 539,467 inhabitants; in Valle d'Aosta the only district is composed of 126,806 inhabitants; and Trentino-Alto Adige's district could comprise 205,895 inhabitants. Consequently, there would be a deviation in population between the smallest and largest districts of approximately of 162% in the latter and 325% in the former.

Ultimately, one should question the reasonableness of a percentage deviation that does not consider the demographic composition of all electoral districts in the nation but only those within an additional territorial delineation (the electoral constituencies) whose boundaries are defined by the legislature.

If the equality of the vote concerns all voters, divided into different territorial components of the State, it is problematic to distinguish them based on a third subdivision of the territory, especially when, as in the current electoral legislation, it serves only as a "transmission link" between the national constituency (where the electoral formula is applied) and the multi-member and single-member districts (where candidates run for election), thus not having a distinct function of its own.

For this purpose, it should be noted that in other legal systems, such as the United States and the United Kingdom, the percentage of deviation refers to the districts within a single State or individual Nations, but in such cases, it is quite different. Those territories, indeed, are entities with their own autonomous legitimacy, history, homogeneity, etc., and they are not territories created solely for electoral purposes, as is the case with Italian constituencies.

In the Italian constitutional system, the allocation of districts within sub-national constituencies is inevitable for Senate elections. This is because representatives are

elected within each Region in accordance with Article 57 of the Constitution[15]. Consequently, the parameter of the average population of the districts within the regional constituency has its own intrinsic reasonableness. From this perspective, voters should be placed in a condition of parity "only" with other voters residing and voting in the same Region. While this solution is correct for the Senate election, it is, in any case, more problematic for the reasons mentioned, regarding the Chamber of Deputies.

In conclusion, there is a broader consideration concerning multi-member districts that goes beyond the scope of this work, particularly in relation to single-member districts.

For these as well, the "20% rule" and all the other criteria used in determining single-member districts are applicable. Additionally, these multi-member districts are formed through the aggregation of single-member districts.

In this case, the issue is not about the difference in population.

Firstly, in the presence of multi-member districts, the legislature should not be concerned with specifying a maximum percentage limit for the difference in the composition of multi-member districts. This is because the varied number of seats assigned should depend on their overall population[16].

Secondly, to ensure a better representation of citizens within a specific territory, the legislature should lean towards a system of identifying multi-member electoral districts that correspond to the entire territory of existing administrative entities within the State (such as regions or provinces, or unions of provinces).

This approach would, on the one hand, provide a certain weight to the representation of political communities already present in the state's territory. On the other hand, it could help avoid the risk of constituencies being formed in a way that could advantage a political force or intentionally discriminate against groups of citizens.

3. *The U.S. model: case-by-case evaluation, elevated discretion, and the important role of the Supreme Court for mathematical equality.*

In the United States, in the absence of a law establishing the structure of electoral districts, it has been the Supreme Court that, through its jurisprudence of electoral cases, explicitly affirmed that the requirement for electoral districts to be equal in terms of population deriving from the Equal protection Clause as stipulated in the Fourteenth Amendment.

[15]It expressly provides that «The Senate of the Republic is elected on a regional basis». Furthermore, it is established that no Region can have fewer than three representatives, and the Molise and Valle d'Aosta regions are each represented by a single senator.

[16] See paragraph 1.

From this perspective, it is interesting to analyze some judgments concerning electoral districts for federal and state elections to understand how the principle of equality has been interpreted and what exceptions may be applied to such a principle.

The initiation of the extensive U.S. case law occurred with the *Baker v. Carr*[17], in which the Supreme Court affirmed the justiciability of political electoral rights regarding the definition of electoral districts. In this judgment, the U.S. Supreme Court did not delve into the merits but only addressed the possibility that an alleged violation of the equality principle could find redress before the judicial power. After determining justiciability of legislative districting, the Court did not prescribe constitutionally-imposed criterion to follow in determining the districts, nor did it instruct the trial judge on the equitable remedy to use to resolve the dispute[18].

In this regard, the Court limited itself to stating that: «We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment»[19].

The opening to judicial recourse in electoral matters, inaugurated in 1962, led the Supreme Court to two significant rulings in the immediately following years. In the first ruling (*Wesberry v. Sanders*)[20], the Court directly challenged the legitimacy of the unequal demographic composition of individual state districts for the election of the federal House of Representatives.

In the case brought before the Court, which concerned the electoral districts for congressional elections in the State of Georgia, the petitioners alleged that in their district (Fifth Congressional District), the population was «two or three times» greater than the population in other districts within the State. In this ruling, the Court, while acknowledging the issue of legitimacy, did not primarily and exclusively rely on the violation of the Equal Protection Clause as stipulated in the Fourteenth Amendment.

In this case, the Supreme Court tied the illegitimacy of the electoral district design to the violation of the provision in Article I, Section 2 of the federal Constitution, which stipulates that the distribution of representatives in the U.S. House of Representatives must be made in proportion to the population residing in the States. Furthermore, the Supreme Court, through an examination of the debates leading to the approval of the U.S. Constitution, attempted to demonstrate that the Founding Fathers had intended to use the expression «chosen […] by the people» to ensure the equality of citizens in the election of representatives to the U.S. House of Representatives.

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[17] 369 U.S. 186 (1962). On the judgment, see the commentary by J.B. ATLESON, *The Aftermath of Baker v. Carr. An Adventure in Judicial Experimentation*, in *California Law Review*, v. 51/1963, 535 ff.

[18] G. BOGNETTI, *Malapportionment ideale democratico e potere giudiziario nell'evoluzione costituzionale degli Stati Uniti*, Giuffrè, Milano, 1966, 82.

[19] 369 U.S. 186, 237 (1962).

[20] 376 U.S. 1 (1964).

According to the justices, this equality cannot be limited to the distribution of representatives among the States (based on the population residing therein) but must necessarily be extended to the demographic parity within each territorial division within the federated State itself[21].

Although the line of reasoning employed by the justices primarily leveraged the first article of the U.S. Constitution, the most significant aspect of this ruling lies in providing a decisive interpretation of the relationship between representation and equality. According to the Supreme Court, equal representation for an equal number of people is «the fundamental goal for the House of Representatives»[22], because for the Founders the House of Representatives […] was to represent the people as individuals, and on a basis of complete equality for each voter»[23].

From this assertion, it does not necessarily follow that there must be perfect mathematical parity in every electoral district within an individual State (perhaps an unattainable goal). However, there is «no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people»[24].

The ruling imposes a significant limitation on the discretion of the legislature in electoral matters, which State legislatures had extensively abused via malapportionment until that moment[25]. There was a risk that the Court could declare numerous State legislation on the redrawing of electoral districts, which exhibited levels of inequality like those found in this initial case brought before the highest judicial body of the state, as illegitimate.

While in this decision, the Court seemed to underestimate the Equal Protection Clause provided by the XIV Amendment, in *Reynolds v. Sims*, also issued in 1964[26], the

[21] On this point, it is interesting to note the dissenting opinion of Justice Harlan, who presents a reading of the constitutional debates entirely different concerning both Article 1 of the second section of the U.S. Constitution and the Fourteenth Amendment. According to Justice Harlan, the combined provisions of the two would not encompass the issue of the distribution of seats in the electoral districts of each individual State. Similarly, some scholars have criticized this aspect of the Court's decision. For example, P.B. KURLAND, *Equal in Origin and Equal in Title to the Legislative and Executive Branches of the Government*, in *Harvard Law Review*, 1964, 146 f., strongly opposed the Supreme Court's approach, characterizing it as an attempt to "rewrite history" to support its decision.

[22] 376 U.S. 1, 18.

[23] 376 U.S. 1, 14.

[24] 376 U.S. 1, 18.

[25] In this regard, refer to the data concerning the percentages of malapportionment in different States in 1964 reported by G. SCHUBERT, C. PRESS, *Measuring Malapportionment*, in *The American Political Science Review*, n. 2/1964, 320 ff., which highlight cases of extreme inequality, especially concerning districts for the election of State's legislative assemblies. This issue was also emphasized by Justice Harlan, who, in Wesberry, explicitly stated, in dissent, that if the Supreme Court's conclusion were correct, electoral districts in most other States would be considered unconstitutional when evaluated using the same standard applied to the Georgia case.

[26] 377 U.S. 533 (1964). Also, consider the rulings issued on the same day, still concerning the distribution of seats for the elections of the legislative assemblies: the State of New York, *WMCA v. Lomenzo*, 377 U.S. 633 (see M. EDELMAN, *Democratic Theories and the Constitution*, State University of New York Press, Albany, 1984, 141 f.); the State of Maryland, *Maryland Committee for Fair*

Supreme Court anchored its decision directly to the principle of «equal representation for equal number of voters»[27]. The Equal Protection Clause of the XIV Amendment[28], was used to reject the territorial division of the State of Alabama, which only partially considered the population residing in the electoral districts. In fact, the state law specified that each county within the State had the right to at least one representative in the lower chamber of state legislature. And for the Senate, it was stipulated that no county could be divided into two separate electoral districts.

The essence of the decision can be expressed in the words used by Justice Warren in the majority opinion, who clearly indicated the line to follow regarding parliamentary political representation: «Legislators represent people, not trees or acres» and «Legislators are elected by voters, not by farms or cities or economic interests»[29].

The nature of electoral law and equality, according to the Supreme Court, should be traced back to an individual representation perspective that emerges only by «taking the equality of the rights of individuals as a reference point»[30]. The individual is the holder of the political right to vote. It is from this premise that the Supreme Court identified the scope of the principle of equality in the rules for the division of state territory: «The weight of a citizen's vote cannot be made to depend on where he lives [...]. A citizen, a qualified voter, is no more nor no less so because he lives in the city or on the farm. This is the clear and strong command of our Constitution's Equal Protection Clause». For these reasons, the population criterion is necessarily «the starting point for consideration and the controlling criterion for judgment in legislative apportionment controversies»[31].

Representation v. Tawes, 377 U.S. 656 (see C.A. ANZALONE, *Supreme Court Cases on Political Representation*, *1787-2001,* Routledge, New York, 2015, 159 ff.); the State of Virginia*, Davis v. Mann*, 377 U.S. 678 (see J. DINAN, *The Virginia State Constitution*, Oxford University Press, New York, 2014, 98); the State of Colorado, *Lucas v. Colorado General Assembly of the State*, 377 U.S. 713 and the State of Delaware, *Roman v. Sincock*, 377 U.S. 695 (see C.E. HOFFECKER, B.E. BENSON, *The Development of Costitutionalism in Delaware*, in G.E. CONNOR, C.W. HAMMONS (ed. by), *The Constitutionalism of American States*, University of Missouri Press, Columbia, 2008, 181). Specifically, in the mentioned case in the text and in the case of Delaware, the Supreme Court ruled out the possibility that the state Senate, if directly elected, could be represented in the same manner as the federal Senate, as the counties «*never have had those aspects of sovereignty which the States possessed when our federal system of government was adopted*» (*Roman v. Sincock*, 377 U.S. 695, 709).

[27] 377 U.S. 533, 560-561.

[28] In general, for the Equal Protection Clause, reference is made to the work of. W.D. ARIZA, *Enforcing the Equal Protection Clause: Congressional Power, Judicial Doctrine, and Constitutional Law*, New York University Press, New York, 2016.

[29] 377 U.S. 533, 662.

[30] G. CHIARA, *Titolarità del voto e fondamenti costituzionali di libertà ed eguaglianza*, Giuffrè, Milano, 2004, 189.

[31] 377 U.S. 533, 567-568. The Supreme Court, in its reasoning, added that this interpretation essentially stems from Lincoln's vision of democracy: «government of the people, by the people, [and] for the people».

In the matter of the ruling in *Reynold v. Sims*, the Supreme Court did not, however, demand from the States a perfect mathematical equality in the composition of state districts[32], but acknowledged the existence of legitimate reasons that can limit the principle of proportionality in the formation of the electoral district.

These purposes, which the legislature can reasonably pursue, may include maintaining the integrity of different political subdivisions or the need to establish compact and contiguous districts[33]. Population equality, however, cannot be constrained by considerations of a historical nature, economic interests of various cities and counties, or a social or political group. These are all reasons that fail to demonstrate the legitimacy of deviating from the principle of equal population in each electoral district because «Citizens, not history or economic interests, cast votes»[34].

Furthermore, in the rationale, the Supreme Court began to differentiate cases of electoral districting for State House of Representatives elections from that of the federal Congress. According to the judges, in State House of Representatives elections, where there are generally more electoral districts, the legislature is not precluded from using "political subdivision lines" (meaning following the boundaries of counties or cities) to a greater extent than what might be deemed permissible in designing districts for federal elections. In federal elections, the number of electoral districts is inevitably lower for each State[35].

While in the examined rulings, the Supreme Court did not specify any maximum limit of demographic deviation between districts, in the 1969 ruling *Kirkpatrick v. Preisler*[36], the Supreme Court introduced for the first time the concept of the "range of deviation" concerning the average population quotient within an electoral district[37]. The case pertained to the electoral districts for the U.S. House of Representatives election provided by the State of Missouri, which had been reformulated by the legislature based on the 1960 census. The demographic variation in the composition of the districts was minimal, reaching a maximum of 3.13% excess and 3.84% deficiency compared to the ideal population average for each district.

The main argument put forth by the Missouri legislature in defense of the redistricting plan was based on the notion that the population variance between

[32] On the contrary, the Court has stated that «We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement» (377 U.S. 533, 577).

[33] 377 U.S. 533, 570: «A consideration that appears to be of more substance in justifying some deviations from population-based representation in State legislatures is that of insuring some voice to political subdivisions, as political subdivisions». The decision was made without the judges conducting specific mathematical evaluations, as it was sufficient for declaring the illegitimacy that the legislator did not use only the parameter of population in determining the boundaries of the electoral districts.

[34] 377 U.S. 533, 578-580.

[35] 377 U.S. 533, 577.

[36] 394 U.S. 526 (1969).

[37] A. RUSSO, *Collegi elettorali ed eguaglianza del voto. Un'indagine sulle principali democrazie stabilizzate*, Giuffrè, Milano, 2008, 115.

districts was so minimal that it did not need justification, as it fell within the principle of "as nearly as practicable".

However, in its rationale, the Supreme Court interpreted its precedents differently. The Court stated that there is no level of demographic inequality, no matter how minimal, in the composition of districts that can be considered inherently legitimate. According to the Court, the "as nearly as practicable" principle cannot be assessed without regard to the circumstances of each case[38]. In this way, the Court rejected the idea that there could be a minimum threshold of inequality that is always deemed reasonable. Instead, the population imbalance in the composition of the State's electoral districts and its potential acceptable justifications must be evaluated on a case-by-case basis[39].

In the specific case addressed by the Supreme Court, the population variations among the various U.S. Congressional districts, though minimal, were not adequately justified by the state legislature. In fact, the State of Missouri justified its seat distribution plan by asserting that the electoral districts had been divided to represent various economic and social interests in the Congress. However, according to the Court, these interests cannot impact the principle of «equal representation for equal number of people». The Court emphatically restated that «[N]either history alone, nor economic or other sorts of group interests, are permissible factors in attempting to justify disparities from population-based representation»[40].

Ultimately, for the judges, the standard to assess the legitimacy of the distribution of electoral districts within States is not a fixed quantitative matter but rather a tool that «permits only the limited population variances which are unavoidable despite a good faith effort to achieve absolute equality, or for which justification is shown» [41].

The justifications that a state can adopt to legitimize such disparities are not explicitly mentioned by the Court. However, in the 1969 ruling *Wells v. Rockefeller*[42], the Supreme Court rejected the idea that equality could be limited to avoid dividing districts and "breaking up" socially, politically, or economically homogeneous territories[43].

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[38] 394 U. S. 526, 530.

[39] The Supreme Court, in fact, asserts that: «*The extent to which equality may practicably be achieved may differ from State to State and from district to district*» (394 U.S. 526, 530-531).

[40] 394 U.S. 526, 530-535.

[41] 394 U.S. 526, 531.

[42] 394 U.S. 542 (1969).

[43] 394 U.S. 542, 546. In this case, the State of New York in 1968 had divided the state into seven homogeneous regions to determine 36 of the 46 districts in which the State was to be divided. Each of these regions was then subdivided into districts with substantially identical populations. Overall, the most populous district contained 435,880 inhabitants (6.488% more than the average population), while the smallest district had 382,277 inhabitants (6.608% below the average), with a maximum distance between the two districts just over 13%. According to the Court, they did not achieve a minimal variation "as nearly as practicable" because the legislature did not demonstrate the necessity of resorting to the formation of the seven homogeneous regions, and it was therefore inconsequential that the districts within them had equal populations. Regarding the decision, M.E. JEWELL, *Commentary*, in

Building on these precedents, the 1983 ruling *Karcher v. Dagget* is not surprising[44]. In this case, the Supreme Court invoked the violation of the equality principle in the distribution of districts for the U.S. House of Representatives election carried out by the State of New Jersey following the 1980 census, with a maximum disparity of just 0.6984%[45]. The Court, while reaffirming that equal representation does not necessarily require identical populations in districts, upheld the District Court's ruling of illegitimacy, which had identified a lack of arguments against structuring the districts to make them even more equal. In this case as well, the Court admitted the possibility of deviating from the principle of perfect population parity for each district only if legislative policies are applied consistently[46] although it did not explicitly indicate the justifications for demographic disparities or when they should be deemed reasonable[47].

From the Supreme Court rulings, it is evident that the population criterion is the first, though not the only, principle in the matter of the distribution of electoral districts within a state[48]. The Court has underlined on multiple occasions the possibility of deviations from perfect numerical equality in district composition when other interests deserving protection are present. However, regarding the federal House of Representatives election, such protections have rarely been accepted by the judges as legitimate reasons for even minor deviations from demographic congruence between districts.

Conversely, the United States Supreme Court has adopted a less rigid stance when it comes to state legislative districting plans[49]. While the *Reynolds v. Sims* already indicated a difference in evaluating natural boundaries of districts for national

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N.W. POLSBY (ed. by), *Reapportionment in the 1970s*, University of California Press, Berkeley, 1971, 47, observes that «most curious part of the Court's opinion in the […] Wells cases in the refusal to permit deviations in population equality in order to follow county and municipal boundaries». This decision, in fact, raises an issue concerning the lack of balance between the administrative boundaries of local communities and an equal population within electoral districts.

[44] 462 U.S. 725 (1983). For a commentary on the decision, refer to W.B. POWERS, *Karcher v. Daggett: The Supreme Court Draws the Line on Malapportionment and Gerrymandering in Congressional Redistricting*, in *Indiana Law Review*, v. 17/1984, 631 ff.

[45] The most populous district was indeed composed of 527,472 inhabitants, while the least populous had 523,789 inhabitants.

[46] 394 U.S. 542, 548.

[47] See J. SUZUKI, *Constitutional Calculus: The Math of Justice and the Myth of Common Sense*, John Hopkins University Press, Baltimore, 2015, 88. On the commented judgment, also see R.M. SMITH, *Liberalism and American Constitutional Law*, Harvard University Press, London, 1985, 133 ff. and R.K. STAVINSKI, *Mandate of Equipopulous Congressional Districting: Karcher v. Dagge*tt, in *Boston College Law Review*, n. 2/1985, 563 ff.

[48] See R.W. BEHRMAN, *Equal or Effective Representation: Redistricting Jurisprudence in Canada and the United States*, in *The American Journal of Legal History*, n. 2/2011, 287.

[49] M. ALTMAN, *Traditional Districting Principles: Judicial Myths vs. Reality*, in *Social Science History*, n. 2/1988 160, believes that «In the courts, many types of districts have been attacked, but congressional districts have undergone particularly close recent scrutiny by the Supreme Court».

parliaments, a 1973 ruling, *Mahan v. Howell*[50], highlighted a clear distinction in the Court's approach towards determining state legislative districts in individual States.

The case involved the modification of a redistricting plan for the election of the state legislative districts in Virginia. The original plan contained a population deviation of 16% between the most populous and least populous districts. The district court, in response to the petitioners' request, had reduced the maximum percentile population deviation between the electoral districts of the state to 10%[51]. The significance of the Supreme Court's ruling lies in its assertion that the state court should not have applied the principles established in previous cases concerning US Congressional districts, particularly those adopted in *Kirkpatrick* and *Wells*[52].

According to the Supreme Court, the lower Court should have adhered to the principles outlined in *Reynolds v. Sims*. In this specific case, the 16% difference between the districts was deemed legitimate, as the legislature had sufficiently justified this discrepancy by the goal of not disrupting the administrative territories in the state, particularly by keeping counties and cities united. For the Supreme Court, these needs were considered a reasonable political objective and not in conflict with the Fourteenth Amendment. However, *Mahan v. Howell* did not overturn the one-man, one-vote principle but simply allows the Court greater flexibility in the scrutiny of legitimacy, including factors other than population[53].

The reasons that can legitimize a limitation of the equal population principle in the case of districts for the election of the State parliament are diverse. The Court had mentioned these reasons in a previous decision (*Swann v. Adams*)[54], reiterating that disparities between various districts can be justified by considerations of state policy, such as the integrity of political subdivisions, the maintenance of compactness and

[50] 410 U.S. 315 (1973).

[51] It should be noted that it is typical of decisions by U.S. jurists, regarding the identification of electoral district boundaries, to directly intervene by regulating the territorial division within the judgment. This possibility was expressly recognized by the Supreme Court in *Parsons v. Buckley*, 379 U.S. 359 (1965), in which the justices declared that if the state (in this case, Vermont) had not made efforts to implement a proper seat distribution in compliance with the principle of equality, the district court should have replaced the legislature in determining and designing the electoral districts. To further protect voter equality, the Supreme Court also introduced another method to ensure compliance by the legislature. In some rulings, judges have recognized the power of district courts to "sterilize" the powers of the State legislature to ordinary administration only, thus indirectly compelling the political power to act to restore the boundaries of electoral districts in accordance with the principle of one man, one vote. In this sense, the *Fortson v. Toombs*, 379 U.S. 621 (1965), in which the Supreme Court affirmed the effects of an injunction issued by the district court of Georgia, is noteworthy.

[52] The Supreme Court had already foreshadowed, albeit cautiously, this principle in the *Abate v. Mundt*, 403 U.S. 182 (1971).

[53] See C. HYLAND, *Constitutional Law - Mahan v. Howell - Forward or Backward for the One Man-One Vote Rule*, in *DePaul Law Review*, n. 4/1973, 934, who adds that «As in other reapportionment decisions, the Court looked at the particular facts in this case and refused to establish a single standard to be applied uniformly in all cases dealing with reapportionment».

[54] 385 U.S. 440 (1967).

contiguity in districts, or to preserve natural or historical boundaries present in the State[55].

Within the differentiation between congressional districts and state districts, a new line of Supreme Court jurisprudence emerged in 1973 with the *White v. Regester*[56]. In this case, the Court did not invalidate the redistricting plan for the Texas state legislature, which had a maximum deviation of 9.9% between the most populous and least populous district. The Supreme Court deemed the district court's declaration of illegitimacy, based on the appellants' failure to prove a violation of the equal protection clause, to be erroneous[57]. In this ruling, the burden of proof was reversed. Unlike previous cases where the state had to demonstrate compliance with the equality principle, here, the burden was on the appellants to prove a violation of the one-man, one-vote principle.

The Supreme Court seems to have treated cases differently. In *Mahan v. Howell*, the Court demanded a reasonable and justifiable explanation from the state to legitimize the 16% population imbalance in electoral districts. However, in subsequent cases, the Court resolved the issue in favor of the state without requiring the legislature to demonstrate the reasonableness of the demographic imbalances. This suggests the emergence of a "quantitative principle" in the Supreme Court to evaluate territorial division into electoral districts differently.

The Supreme Court has not denied this principle and has acknowledged, in subsequent decisions, to apply a different constitutional scrutiny for population disparities below 10%. The first mention of this principle is attributed to Justice Brennan, who drafted a joint dissenting opinion in 1973 for the cases *White v. Regester* and *Gaffney v. Cummings*[58]. In these opinions, Justice Brennan, opposing the decision,

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[55] 385 U.S. 440, 444. For a more in-depth commentary on the judgment by Italian doctrine, see I. CIOLLI, *Il territorio rappresentato. Profili costituzionali*, Jovene, Napoli, 2010, 118, note 104.

[56] 412 U.S. 755 (1973).

[57] See E.B. FOLEY, M.J. PITTS, J.A. DOUGLAS, *Election Law and Litigation: The Judicial Regulation of Politics*, Kluwer, New York, 2014, 197.

[58] See R.J. VAN DER VELDE, *One Person-One Vote Round III: Challenges to the 1980 Redistricting*, in *Cleveland State Law Review*, 1984, 588. The dissenting opinion drafted by Justice Brennan was also joined by Justices Douglas and Marshall. In *Gaffney v. Cummings*, 412 U.S. 772, the Supreme Court did not require the legislature to provide specific justifications to legitimize the disproportion in the composition of districts in the State of Connecticut, which was a maximum of 1.9% for House electoral districts and 7.8% for Senate districts. The justices were content with a justification aimed at ensuring greater political fairness between the two major political parties. According to the Supreme Court: «The record abounds with evidence, and it is frankly admitted by those who prepared the plan, that virtually every Senate and House district line was drawn with the conscious intent to create a districting plan that would achieve a rough approximation of the state-wide political strengths of the Democratic and Republican Parties, the only two parties in the State large enough to elect legislators from discernible geographic areas» (412 U.S. 735, 752). According to H.A. SCARROW, *Partisan Gerrymandering. Invidious or Benevolent? Gaffney v. Cummings and Its Aftermath*, in *The Journal of Politics*, n. 3/1982, 810 ff., the justification invoked by the legislature can be classified as a case of positive gerrymandering since the redrawing of districts aimed at promoting a "more equal" representation between political parties, albeit at the expense of the demographic proportionality of the districts.

cited a 1971 *Abate v. Mundt*[59], where the Court deemed constitutional a maximum disparity of 11.9% in the composition of districts for the election of the Board of Supervisors of Rockland County, New York[60], only after requesting reasonable justifications from the legislature[61]. According to Justice Brennan, it seems that for the majority of the Court, the quantity of disparity, identified by the judge as the 10% threshold, is significant[62].

Justice Brennan's words have left a mark in the subsequent Supreme Court's case law, which acknowledged a true "Ten-Percent Rule"[63]. This rule is not so much seen as a strict parameter to differentiate the legitimacy or illegitimacy of disparities but rather to shift the burden of proof between the parties.

However, it is only in a decision handed down in 1973, *Connor v. Finch*[64], concerning the distribution of districts for the election of the representative Assemblies of Mississippi, that an explicit reference to the 10% deviation appears in the majority opinion: «The maximum population deviations of 16.5% in the Senate districts and 19.3% in the House districts can hardly be characterized *as de minimis*; they substantially exceed the "under-10" deviations the Court has previously considered to be of *prima facie* constitutional validity only in the context of legislatively enacted

[59] 403 U.S. 182.

[60] Note that the Supreme Court, in the previous case *Hadley v. Junior College District of Metropolitan Kansas City*, 397 U.S. 50 (1970), had expanded the scrutiny of legitimacy to any type of "political" election, establishing that «whenever a state or local government decides to select persons by popular election to perform governmental functions, the Equal Protection Clause of the Fourteenth Amendment requires that each qualified voter must be given an equal opportunity to participate in that election». On the Court's openness to scrutinize the proper determination of electoral districts for any type of election, see S. INGBERG, *Elections*, in K. L. HALL, J. W. ELY, J. B. GROSSMAN (ed. by), *The Oxford Companion to the Supreme Court of the United States*, Oxford University Press, Oxford, 2005, 288 ff.

[61] *Abate v. Mundt*, 403 U.S. 182 (1971). In this case, which, however, does not concern a legislative assembly but a plural elective body with essentially coordinating functions between the County and the City, the Supreme Court held that the redistricting plan did not violate the equal protection clause. The decision was largely based on the long tradition of city-based elections that had characterized the entity in question. Additionally, the Court found that the redistricting plan presented by the State did not provide a proven advantage to some political interests or geographic areas.

[62] Presumably, the 10% threshold derives from the circumstance that in the case *White v. Regester*, a disproportion of 9.9% between the demographically largest and smallest district had been declared legitimate. The 10% threshold, therefore, simply arises from an observation that the justices made regarding the Supreme Court's applied practice and not from a reasoned argument based on a well-defined theoretical position. Here are Justice Brennan's words: «one can reasonably surmise that a line has been drawn at 10% deviations in excess of that amount are apparently acceptable only on a showing of justification by the State, deviations less than that amount require no justification whatsoever» (412 U.S. 755, 777).

[63] J.G. HEBERT, P.M. SMITH, M.E. VANDENBERG, M.B. DESANCTIS, *The Realist's Guide to. Avoiding the Legal Pitfalls*, ABA, New York, 2010, 9.

[64] 431 U.S. 407 (1977).

apportionments»[65]. In the case examined, however, according to the Court, the state legislature failed to sufficiently justify such demographic distortion, leading to the declaration of illegitimacy of the seat distribution within the State.

In a subsequent case in 1983 (*Brown v. Thomson*), however, the Court seems to give yet a new interpretation to its own precedents: «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. A plan with larger disparities in population, however, creates a *prima facie* case of discrimination and therefore must be justified by the State»[66], almost suggesting that below 10%, the population difference within districts is to be considered always and, in any case, constitutional.

This "Ten-percent Rule" has been applied in all subsequent cases of territorial subdivision for the purpose of electing state assemblies, where the attempts of the plaintiffs to demonstrate before the Supreme Court a violation of the equality principle when the disparity between districts was less than 10% have always been in vain[67].

There are, however, some rulings from district courts that have declared disparities of less than 10% illegitimate because the plaintiffs were able to demonstrate that the territorial division had been carried out arbitrarily and discriminatorily[68]. At the same time, it is virtually impossible for states to find justifications that would allow the Supreme Court to legitimize deviations exceeding 10%. For example, in the case *Chapman v. Meier*[69], the Court again declared the design of the districts for the election of the North Dakota Senate illegitimate. The trial judge, in 1965, had directly drawn up a plan for the distribution of districts following the declaration of illegitimacy two years earlier[70]. The judge had justified the divergences in the composition of the districts he had designed based on the territorial peculiarities of the State, divided by the Missouri River, and on the need to preserve existing political territories[71]. However, the Supreme Court deemed that these arguments were not convincing and sufficiently demonstrated to admit a population deviation that reached peaks exceeding 20%.[72].

[65] 431 U.S. 407, 418. For this reason, and since the legislature had failed to provide valid arguments to demonstrate that they had not violated the principle of equality, the Supreme Court declared the seat distribution plan illegitimate.

[66] 462 U.S. 835, 842-843 (1983). For this judgment see also at note 76.

[67] Indeed, there are no Supreme Court rulings that have declared as unconstitutional a case of inequality lower than 10%.

[68] In this regard, for example, the ruling of the District Court of Illinois, *Hulme v. Madison County* (188 F, Sup2d, 1041 of 2001), in which a maximum disproportion of 9.3% among districts was declared illegitimate.

[69] 420 U.S. 1 (1975).

[70] *See* C.A. ANZALONE, *Supreme Court Cases on Political Representation*, *1787-2001,* Routledge, New York, 2015, 219 ff.

[71] 420 U.S. 1, 24.

[72] 420 U.S. 1, 24.

In only one other case (apart from the previous Mahan), *Unger v. Manchin*[73], the Supreme Court has clearly allowed a demographic distribution exceeding 10% among electoral districts. In this ruling, the Supreme Court upheld a decision from the West Virginia District Court (*Deem v. Manchin*) [74]. The district judge had legitimized a deviation of 10.92% in the districts for the Senate election, referring in this case as well to justifications of continuity and territorial affinity and the possibility of keeping political subdivisions united[75].

Indeed, a strict interpretation of the "Ten-percent Rule" suggests that there is no theoretical limit beyond which the Supreme Court must declare the distribution of seats illegitimate. However, the Court itself has shown reluctance in admitting deviations beyond this threshold. This implies that general territorial reasons are not capable of significantly undermining proportionality in the composition of electoral districts – even for state elections – without negatively affecting what seems to be the constitutionally most relevant principle: voter equality achieved through an equal demographic composition of electoral districts[76].

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[73] 536. U.S. 935 (2002).

[74] *U.S. District Court for the Northern District of West Virginia*, 188 F. Sup2d 651, 656.

[75] See J.G HEBERT, P.M. SMITH, M.E. VANDENBERG, M.B. DESANCTIS, *The Realist's Guide to. Avoiding the Legal Pitfalls*, ABA, New York, 2010, 12.

[76] However, there is a decision of the Supreme Court that seems to contradict the rest of the case law. In the 1983 case *Brown v. Thomson* (462 U.S. 835), the Supreme Court appeared to depart from its previous rulings as it validated a redistricting plan in which there was an 89% difference in population between the most populous and least populous districts for the election of the Wyoming House of representative. This extreme inequality was due to the circumstance that the Wyoming Constitution mandated each county in the state to constitute an electoral district, even if, based on its population, it did not qualify for representation. This way, one county (Niobrara County) was entitled to one senator with only 2,924 inhabitants, compared to a state-wide average of 7,337 inhabitants per elected. To understand the reasons of the Court, it should be noted that the petitioners were not challenging a general improper delimitation of districts but aimed to have only the provision of the state constitution that granted representation to that small county with fewer than three thousand inhabitants declared illegitimate. Therefore, the Supreme Court did not properly delve into the issue of the practice of malapportionment but merely declared the allocation of that seat was not illegitimate. This is because, even if the representative from Niobrara County were eliminated and the county merged with another area, «the average deviation would be 13%, and the maximum deviation 66%» (462 U.S. 835, 836). The difficulty of aligning this decision with the previous jurisprudence is expressed even more openly by two justices in the concurring opinion. They admitted that if the redistricting plan had been challenged as a whole, they would have voted in favor of its illegitimacy because it implemented a disparity among voters in different districts that was certainly illegitimate (see. R.B. KEITER, *The Wyoming State Constitution*, Oxford University Press, Oxford, 2017, 122; N. REDLICH, J.B. ATTANASIO, J. K. GOLDSTEIN, *Understanding Constitutional Law*, LexisNexis, New York, 2012. 495). Scholars have justified this decision by arguing that such disparity was only permissible in Wyoming because its state constitution mandated the allocation of the seat to that county. Therefore, the deviation was deemed necessary to avoid depriving that territory of representation (see J.G. HEBERT, P.M. SMITH, M.E. VANDENBERG, M.B. DESANCTIS, *The Realist's Guide to. Avoiding the Legal Pitfalls*, ABA, New York, 2010. 10 f.; C.H. BACKSTROM, L. ROBINS, *The Supreme Court Prohibits Gerrymandering: A Gain or a Loss for the States?*, in *Publius: The Journal of Federalism*, n. 3/1986, 102). As a partial confirmation of this, it should be noted that, a decade later, the United States District Court for the District of Wyoming, in the *Gorin v. Karpan* (775 F. Sup. 1430)

For U.S. congressional elections, the Supreme Court has never legitimized discrepancies, even minimal ones motivated by maintaining pre-existing political boundaries within the state. In rulings related to state assemblies, however, the same Court, which had been hesitant to define an "always" legitimate quota in congressional district cases, eases this rigidity by easily legitimizing deviations below 10%.

The rigid "mathematical idealism" enforced by the Supreme Court has significantly influenced the actions of states in determining electoral districts. As evident from the table below, concerning the distribution of electoral districts carried out by states following the 2020 census, in no State electing more than one representative to Congress has a deviation greater than 1% been recorded between the most and least populated district. In 37 states, between the largest and smallest district is zero[77].

The flexibility demonstrated by the Court with the "Ten per-cent Rule" for the state legislative districts has allowed states greater leeway in identifying electoral districts for the election of those assemblies. This became evident in the redrawing of electoral districts following the latest census.

Population per seat for the election of the U.S House of Representatives, State House, and State Senate. Census of 2020						
State	*U.S House of rep.*		*State House*		*State Senate*	
	Ideal district	*Overall Range %*	*Ideal district*	*Overall Range %*	*Ideal district*	*Overall Range %*
Alabama	717,754	0	47,850	9.95	143,551	9.97
Alaska	*One deputy*		18,335	7.48	36,670	4.53
Arizona	794,611	0	238,383	8.89	238,383	8.89
Arkansas	752,881	0.09	30,115	6.85	86,044	5.49
California	760,066	0	494,043	9.88	988,086	9.87
Colorado	721,714	0	88,826	4.93	164,963	4.99
Connecticut	721,189	0	23,865	8.41	100,099	9.99
Delaware	*One deputy*		24,137	9.79	47,124	9.28

declared unconstitutional, for a violation of the Fourteenth Amendment, the disparity in population among districts following the 1991 census, which reached peaks of 83%, once again due to the constitutional guarantee of one representative per county. To do so, the District Court also deemed illegitimate the constitutional provision of Wyoming, wherein it mandated one representative for each county, as this provision would not allow for the full realization of the equality principle outlined in the Federal Constitution.

[77] The data is reported in the document "2020 Redistricting Deviation" published by the National Conference of State Legislatures (available on the organization's website). For confirmation that the process of delineating electoral districts has been influenced by previous judicial decisions, one can also refer to the data related to the electoral districts established following the 2000 census (document "Designing PL 94-171 Redistricting Data for the Year 2010 Census," curated by the U.S. Census Bureau) and the 2010 census (as indicated in the document "2010 Redistricting Deviation" curated by the National Conference of State Legislatures). In these documents, a similar situation can be observed concerning the last two censuses.

Population per seat for the election of the U.S House of Representatives, State House, and State Senate. Census of 2020						
State	*U.S House of rep.*		*State House*		*State Senate*	
	Ideal district	*Overall Range %*	*Ideal district*	*Overall Range %*	*Ideal district*	*Overall Range %*
Florida	769,221	0	179,485	4.75	538,455	1.92
Georgia	765,136	0	59,511	2.74	191,284	2.01
Hawaii	727,636	0.34	26,432	14.69	53,922	43.03
Idaho	919,553	0	52,546	5.84	52,546	5.84
Illinois	753,677	0	108,581	0.48	217,161	0.37
Indiana	753,948	0	67,855	1.90	135,711	3.92
Iowa	797,592	0.01	31,904	1.75	63,807	1.56
Kansas	734,470	0	23,503	7.53	73,447	7.35
Kentucky	750,973	0	45,058	9.71	118,575	9.94
Louisiana	776,293	0.01	44,360	9.80	119,430	9.87
Maine	681,180	0	9,022	9.83	38,925	9.45
Maryland	771,925	0	43,797	7.93	131,392	7.89
Massachusetts	781,102	0	43,937	9.82	175,748	9.97
Michigan	775,179	0.14	91,612	4.96	265,193	4.78
Minnesota	713,312	0	42,586	1.96	85,172	1.89
Mississippi	740,320	0	24,273	9.91	56,948	9.94
Missouri	769,364	0	37,760	5.98	181,027	5.89
Montana	542,113	0	10,827	7.17	21,654	6.98
Nebraska	653,835	0	40,031	9.01	*Absent*	
Nevada	776,154	0	73,919	4.69	147,839	3.95
New Hamp.	688,765	0	3,444	9.90	57,397	7.98
New Jersey	773,585	0	232,075	6.35	232,075	6.35
New Mexico	705,841	0	30,250	9.84	50,417	9.59
New York	776,971	0	134,626	9.97	320,537	3.85
North Car.	745,671	0	86,995	9.85	208,788	9.95
North Dakota	*One deputy*		8,288	9.87	16,576	9.97
Ohio	786,630	0	119,186	9.95	357,559	9.63
Oklahoma	791,871	0	39,202	4.08	82,487	4.87
Oregon	706,209	0	70,621	1.96	141,242	1.84
Pennsylvania	764,865	0	64,053	8.65	260,054	8.11
Rhode Island	548,690	0.22	14,632	9.75	28,878	12.92
S. Carolina	731,204	0	41,278	4.99	111,270	9.95
South Dakota	*One deputy*		12,667	14.34	25,333	12.81
Tennessee	767,871	0	69,806	9.90	209,419	6.17
Texas	766,987	0	194,303	9.98	940,178	6.13
Utah	817,904	0	43,622	8.69	112,814	3.56
Vermont	*One deputy*		4,287	16.65	21,436	4.69
Virginia	784,672	0	86,314	4.92	215,785	4.69
Washington	770,528	0	157,251	0.25	157,251	0.25
West Virginia	896,858	0.18	17,937	9.92	105,513	9.85
Wisconsin	736,715	0	59,533	0.76	178,598	0.57
Wyoming	*One deputy*		9,304	10.96	18,608	10.54

On that occasion, almost all states – excluding both legislative assemblies of Hawaii, South Dakota, Wyoming, Vermont state senate districts, and Rhode Island state senate districts[78] – formed electoral districts in such a way that the deviation between the most and least populated district is not more than 10%. This limit seems increasingly to be one that the Supreme Court deems consistent with the Constitution.

The decisions of the Supreme Court, particularly in rulings concerning congressional districting, have sometimes been criticized by scholars. This is because it has been argued that using political-administrative divisions, even at the expense of lesser demographic equality, would be entirely appropriate. This is especially to prevent the "gerrymandering", implemented to favor or disfavor a specific political force or social group[79], because requiring that electoral districts be perfectly coincident from a demographic perspective could indeed facilitate the creation of "fraudulent" electoral districts by the majority political force[80].

Furthermore, the Supreme Court has been criticized for consistently excluding from its equipopulation rulings the protection of social groups, especially minorities, which may deserve greater protection even at the expense of proportionality in the demographic composition of the district[81]. It should be emphasized that even in rulings favoring the protection of racial minorities, the Court has never allowed greater inequality to be granted to keep that minority cohesive. The parameters used have always been those of demographic equality and the territorial rationality of the electoral district. For example, an electoral district aimed at protecting a racial

[78] The case of Hawaii, where there is approximately a 14% disproportionality among the districts for the House election and 43% for the Senate, is justified by scholars due to the geographical peculiarity of the State, which is composed of many islands. On the Hawaii case, see M. MAY, G. MONCRIEF, *Reapportionment and Redistricting in the West*, in G. MONCRIEF (edit by), *Reapportionment and Redistricting in the West*, Lexington books, New York, 2011, 6. The high disproportionality among the districts, which has never been the subject of judicial appeals, is attributed to Hawaii's state constitution, which, for the distribution of seats, mandates the creation of four "island units" to which a minimum of two representatives in the Senate and three representatives in the House must be guaranteed (see A. LEE, *The Hawaii State Constitution*, Oxford University Press, New York, 2011, 110).

[79] In this regard, G.E. BAKER, *The Reapportionment Revolution. Representation, Political Power, and the Supreme Court*, Random House, New York, 1966, 269 ff. R.K. STAVINSKI, *Mandate of Equipopulous Congressional Districting: Karcher v. Dagge*tt, in *Boston College Law Review*, n. 2/1985, 598 ff., notws that the stringent scrutiny of legitimacy carried out by the Court in cases of congressional districts has the consequence of encouraging judicial appeals both concerning demographic composition and artifice in the delineation of the electoral district.

[80] Even the Supreme Court itself has proven to be attentive to the issue. In the 1964 case of *Reynolds v. Sims*, Justice Warren, in the majority opinion, warned that: «Indiscriminate district without any regard for political subdivisions or natural or historical boundary lines, may be little more than an open invitation to partisan gerrymandering» (377 U.S. 533, 578-579).

[81] See G. M. HAYDEN, *The False Promise of One Person, One Vote*, in *Michigan Law Review*, n. 2/2003, 213 ff., which criticizes (266) the approach of the Court, and in part also of the doctrine, for distinctly separating various issues related to electoral law without adopting a comprehensive approach to the issues concerning this right.

minority has been deemed illegitimate if it was not territorially compact[82] or so «irregular and bizarre in shape that it rationally cannot be understood as anything other than an effort to segregate voters based on race»[83].

In conclusion, in U.S. case law, the predominant goal is ensuring an equipopulous electoral districts. The protection of administrative boundaries and the representation of political communities or minorities are considered important but must be balanced while keeping the focus on the goal of demographic equality in electoral districts.

4. *Which model? Case-by-Case evaluation or legislative range delimitation? A constitutionally oriented response.*

From the analysis of cases in Italy and the United States, two models can be identified.

The first, the Italian model, is to establish by law a maximum limit of difference between electoral districts. If, as has been attempted to demonstrate, the limit imposed by the Italian legislature with Law 165/2017 seems to be unconstitutional because it is excessively high, there are other legal systems that employ the same mechanism but with different percentages.

This is the case in the United Kingdom, where the maximum deviation in electoral districts' demographic density (referring to voters, not the resident population) is set at 5% above or below the average demographic size of districts in each Home Nation.

In effect, the establishment of a tolerance threshold for demographic deviations in electoral districts is a common practice. This principle has also been adopted in some previous Italian electoral legislation, such as the predominantly majoritarian mixed electoral system of 1993, where a tolerance threshold of 10% in excess or deficiency was set concerning the average population of constituencies. In this regard, the Venice Commission, in its Code of Good Practice in Electoral Matters, has provided guidelines on the equality of votes and recommended that, in the case of electoral laws with single-member district, «The permissible departure from the norm should not be more than 10%, and should certainly not exceed 15% except in special circumstances (protection of a concentrated minority, sparsely populated administrative entity)».

The second model, the United States model, involves no legislative rule, case-by-case evaluation by the bodies responsible for forming districts, and significant influence from the Supreme Court, which has established strict equipopulation rules, especially for congressional districts.

Even though we are starting from two different models, it must be emphasized that the principle of equality suggests that, in determining single-member electoral districts, they should be constituted in a way that is as similar as possible. Additionally, in both models, it has been observed that in no case is the principle of equality

[82] *Bush v. Vera*, 517 U.S. 952 (1996)

[83] *Miller v. Johnson*, 515 U.S. 900 (1995).

interpreted as an absolute principle of demographic parity of electoral districts, as there may be other factors contributing to the allocation of seats.

Starting from these two premises, the question is as follows: how far can the possibility of partially derogating from the rule of "formal" equality in the demographic size of the district in favor of "internal" equality within electoral districts be pushed?

Essentially, it seems possible to argue that the limitation of the principle of an equal number of citizens per representative can only occur when other needs are involved, including certainly the principles of "territorial" representation identified by legislative rules and court decisions. These principles, under certain conditions, can lead to a limitation of the principle of an equal number of citizens in electoral districts.

Indeed, there emerges an interpretation of the equality principle that is not merely "formal" because it also involves equality among voters within the same electoral district. This allows a political community to be represented in Parliament, avoiding the exclusion of a part of that political community from representation. If this part were to merge into another district, it might be excluded from the possibility of having a "voice" in Parliament.

Even in the presence of these potential principles, it seems challenging to clearly define the point of discrimination between a disparity in the composition of districts that can be considered legitimate and one that should be deemed unconstitutional.

What seems to emerge from the Italian experience (and from the English one) is that the derogation from the principle of equality is considered permissible if it can be confined within a minimum and maximum level of disparity deemed acceptable by the legislature.

However, the tolerability levels are so heterogeneous (20% in one case and 5% in the other) that the issue arises of identifying what this limit is (assuming it can be identified) within which there is no violation of equality among citizens.

From this perspective, however, it is complex and perhaps unnecessary to make a prediction about the legitimacy of such a threshold. Evaluating the constitutionality, only in theory, of a numerical limit imposed by the law can lead to entirely ephemeral results. Essentially, what is meant is that setting a maximum threshold *ex lege* (however "small" it may be) might not be sufficient to ensure equality because the identification of a threshold, below which a particular territorial subdivision should be considered correct, would still be arbitrary.

This does not mean that the legislator cannot establish a limit beforehand, but this limit is not sufficient to guarantee respect for equality among voters.

In comparison, the U.S. model requires that compliance with the principle of equality for each territorial subdivision be evaluated on a case-by-case basis. This is why the point of reasonableness imposed by the U.S. Supreme Court, "as nearly as possible," to be assessed in the specific case, seems more consistent with a vision of equality among citizens.

Certainly, insisting that districts be "roughly" identical in population is sometimes an excessively formalistic demand of the equality principle: if elections occur at a time

distant from the collection of demographic data, the equality sought with "identical" districts is achieved only in theory. In fact, if the population and voters are constantly changing, what appears equal today may not be so in 5, 6, 7 years, etc.

Beyond this aspect, an example can be useful to specify what has just been argued. Let's consider the case where two single-member electoral districts must be drawn by merging the territory of four homogeneous municipalities in terms of politics, economics, and society, with respective numbers of citizens being 65,000/60,000/35,000 and 37,000. This is within a constituency where the average number of voters per district is 100,000, and the legislature has set a 5% tolerance, either above or below the average number of voters within the districts (or in which it has provided, according to the clause derived from the U.S. Supreme Court, that districts should be "as equal as possible").

<table>
<tr><td rowspan="2">Municipality A
60,000 inhabitants</td><td>Municipality B
35,000 inhabitants</td><td rowspan="2">Municipality D
65,000
inhabitants</td></tr>
<tr><td>Municipality C
37,000 inhabitants</td></tr>
</table>

The principle of territorial continuity of electoral districts in this scenario would allow only two alternatives for combining the municipal territories to form an electoral district, which are shown in the following table.

Case 1	
District	**Inhabitants**
A+B	97,000
C+D	100,000

Case 2	
District	**Inhabitants**
A+C	102,000
D+B	95,000

In the provided simple example, all possible combinations of merging municipal territories can adhere to the hypothetical 5% tolerance above or below the average. However, the combination A+B (-3%) and D+C (0) offers the best protection for the voter. Conversely, the alternative combination, despite producing a minimal gap (+2% and -5%), does not result in the least disparity in the composition of the two districts.

This example seems useful to demonstrate that it is not necessarily the position of a numerical limit, however small it may be, that ensures voters are placed in conditions of equality in the electoral process, but rather, a comprehensive evaluation is necessary.

At the same time, the example serves to demonstrate that determining districts "as similar as possible" is not necessarily the best solution.

Indeed, if the four municipalities were not all socially, economically, and politically homogeneous, it might provide greater assurance for voter equality if the union of the municipalities occurred in a different manner, even at the expense of the best mathematical equality.

Certainly, this operation becomes much more complex when it is necessary to arrive at the division of administrative territories, such as in our system regions, provinces, and municipalities, and even when it is necessary to proceed with their (partial) merger. The activity of breaking down the territory, however, is undoubtedly essential when a single administrative territory or their simple union is not sufficient to guarantee a correct realization of electoral equality: the need to keep the political community settled in a territory united cannot excessively impact the composition of the electoral district.

Even in these cases, a case-by-case evaluation would be preferable, allowing for an assessment of the specific situation of each electoral district and determining whether a certain deviation in the demographic composition of the electoral district is indeed reasonable or not. In other cases, it might be more useful for shaping political representation that unites a political community in a certain territory, for example, having a municipality included in one electoral district (thereby increasing the number of inhabitants in that district), rather than being placed in another district (with greater population equality) because it is more socially/politically/economically aligned with the territories on which the first electoral district rests. This operation, always to be evaluated case by case, should not, however, lead to an excessive difference between the population of one district and that of another, otherwise, a violation of the principle of equality would be entirely evident.

In conclusion, therefore, an ideal model could be one of a case-by-case evaluation, which does not have mathematical equality as its sole element but also considers factors of representativeness of voters located in a specific territory of the state.

5. *Conclusion. A new model for ensuring equality in the Italian Constitutional System: low threshold established by law and minimal discretion*

Considering the reflections presented in the previous paragraph, numerous issues emerge. The constitutional principles at stake are essentially two: the principle of equality and the principle of representativeness of the Parliament.

Nevertheless, one can attempt to hypothesize an “ideal” model that could be used in the Italian constitutional system to better ensure (certainly better than today!) the equality of citizens.

In this sense, the United States model seems impractical.

First, due to the extreme difficulty in imagining that the issue of redistricting could reach the Constitutional Court legislative rules are preferable.

Second, the U.S. model (especially for the U.S. House of Representative) can be criticized on several fronts[84] for being excessively focused on the formal idea of an equal number of inhabitants for each electoral district.

[84] See paragraph 3.

From this, the following Italian best practice could be hypothesized for drawing the single-member district[85]:

1. Establish a relatively low legal threshold (5% compared to the average of districts?), above which the determination is always unconstitutional.
2. Establish that, within this threshold, the rule should be to follow the principle that districts should be as equal as possible in terms of population, and any deviation from this principle must be justified by the homogeneity of the district, measured through:
    a. The necessity to avoid dividing a municipal territory or a neighborhood in large cities.
    b. The need to keep within a district the territories of municipalities in the same province.
    c. Other reasons of a political, economic, or social nature that can justify a greater homogeneity of the political community encompassed within the district.

To conduct a thorough analysis that considers all variables at play, two conditions are necessary.

First, the delineation of electoral districts, requiring careful evaluation for each district, should strive to be as balanced as possible. This can only be achieved through a process that involves an independent body as the main protagonist, ensuring that the activity is as impartial[86] as possible and, perhaps, more participatory, allowing citizens to express their opinions on their electoral constituencies.

Secondly, it is essential for the body responsible for determining the electoral districts to meticulously justify its choices, explaining the reasons behind its decisions and, if possible, presenting various available alternatives and the reasons why specific solutions were favored over others.

[85] For multi-member districts, on the other hand, there should be no rules for their determination, as they should correspond to existing administrative territories.

[86] See L. SPADACINI, *Constitutional needs for the Italian process of drawing electoral districts: a more independent Commission, less partisanship, and greater transparency and participation*, in this issue.