ONE STUDENT, ONE VOTE? EQUAL PROTECTION & CAMPUS ELECTIONS

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INTRODUCTION

The right to vote is one of the most basic democratic guarantees of a free society.[1] Indeed, the Supreme Court has long recognized voting as a fundamental right.[2] Although the U.S. Constitution does not explicitly confer the right to vote onto anyone,[3] once a state grants the right to vote, it generally cannot discriminate by denying voters equal access to the ballot box or full and effective participation in the political process.[4] Accordingly, the Supreme Court closely scrutinizes state action that deprives a citizen of a meaningful opportunity to vote.[5]

One way in which a state may deprive a citizen of a meaningful

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1. Reynolds v. Sims, 377 U.S. 533, 562–63 (1964).

2. *See, e.g.*, Harper v. Va. State Bd. of Elections, 383 U.S. 663, 667 (1966).

> Undoubtedly, the right of suffrage is a fundamental matter in a free and democratic society. Especially since the right to exercise the franchise in a free and unimpaired manner is preservative of other basic civil and political rights, any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized.

Id. (quoting *Reynolds*, 377 U.S. at 561–62).

3. *See* United States v. Cruikshank, 92 U.S. 542, 555 (1875). Indeed, most constitutional provisions dealing with the right to vote are phrased in the negative, rather than granting an affirmative right to vote. *See, e.g.*, U.S. CONST. amend. XV, § 1 ("The right of citizens of the United States to vote shall not be denied or abridged . . . on account of race, color, or previous condition of servitude."); U.S. CONST. amend. XIX ("The right of citizens of the United States to vote shall not be denied or abridged . . . on account of sex.").

4. *See* U.S. CONST. amend. XIV, § 2; *Reynolds*, 377 U.S. 533.

5. *See Reynolds*, 377 U.S. at 565 ("[E]ach and every citizen has an inalienable right to full and effective participation in the political process . . . ."); SAMUEL ISSACHAROFF ET AL., THE LAW OF DEMOCRACY: LEGAL STRUCTURES OF THE POLITICAL PROCESS 112 (3d ed. 2007) ("[S]omething more than simply casting a ballot for a series of state-prescribed candidates is necessary to define democratic legitimacy.").

opportunity to vote is through vote dilution.[6] By placing a voter in a legislative district that contains more persons than other legislative districts, a state debases the value of that individual's vote by diminishing his voting power relative to voters in smaller districts.[7] Accordingly, to address concerns about state districting having the effect of debasing one's vote, the Supreme Court recognizes challenges to election apportionment under the Equal Protection Clause of the Fourteenth Amendment to the U.S. Constitution.[8] The Court has interpreted that Amendment to require state districting to comply with the now-familiar maxim of "one person, one vote."[9] In short, applicable government units must ensure that their legislative districts contain virtually equal population.[10] Although the Supreme Court initially applied "one person, one vote" to statewide districting, the Court has subsequently extended the rule to certain local government bodies that exercise normal government functions.[11]

This Note considers the applicability of the "one person, one vote" principle to elected student government bodies at public colleges and universities. It focuses its analysis on the University of Georgia Student Government Association ("UGSGA") and the Michigan Student Assembly of the University of Michigan ("MSA"). UGSGA and MSA serve as effective representative examples of student government for purposes of this analysis because both organizations, like many other student governments, apportion their representatives based on existing, static academic boundaries.

In Part I, this Note discusses the history, scope, and current application of the "one person, one vote" principle. Then, Part II.A considers whether actions of elected student governments at public colleges and universities constitute state action, and whether these student bodies are sufficiently governmental to trigger "one person, one vote." Assuming they are, Part II.B then focuses on the apportionment schemes used by UGSGA and MSA to argue that these and similar schemes violate the Fourteenth Amendment. Finally, notwithstanding constitutional constraints, Part II.C argues that student government compliance with "one person, one vote" overlaps with good practice.

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6. *Reynolds*, 377 U.S. at 555 & n.29.

7. Bd. of Estimate v. Morris, 489 U.S. 688, 694 (1989).

8. *Reynolds*, 377 U.S. at 558.

9. *See id.* at 577.

10. *See id.* at 565 ("Full and effective participation by all citizens in state government requires . . . that each citizen have an equally effective voice in the election of members of his state legislature.").

11. *See, e.g.*, Hadley v. Junior Coll. Dist., 397 U.S. 50 (1970).

I. "ONE PERSON, ONE VOTE"

A. Justiciability of Apportionment Claims

In the early years of its apportionment jurisprudence, the Supreme Court dismissed for lack of jurisdiction equal protection claims against state apportionment, reasoning that such claims presented non-justiciable political questions.[12] In the 1946 case *Colgrove v. Green*,[13] for example, registered Illinois voters alleged that Illinois' failure to reapportion its congressional districts resulted in districts that "lacked compactness of territory and approximate equality of population," thus denying them equal protection.[14] In dismissing their complaint, the Supreme Court declined to "enter this political thicket" and held that the injured Illinois voters "ask[ed] of this Court what is beyond its competence to grant."[15] The Court reasoned that "[i]t is hostile to a democratic system to involve the judiciary in the politics of the people."[16] As such, any remedy for malapportionment, the Court opined, "ultimately lies with the people."[17]

But then, in the landmark case *Baker v. Carr*,[18] the Court departed from *Colgrove* by permitting an equal protection claim against Tennessee's congressional apportionment scheme.[19] In *Baker*, registered Tennessee voters alleged that Tennessee's failure to reapportion the state since 1901 denied them equal protection of the laws because subsequent population changes in the state resulted in "debasement of their votes."[20] In analyzing the claim, the Court, speaking though Justice Brennan, distinguished justiciable *political cases* from non-justiciable *political questions*, opining that a case falls into the latter category if it involves:

> [1] . . . a textually demonstrable constitutional commitment of the issue to a coordinate political department; or [2] a lack of judicially discoverable and manageable standards for resolving it; or [3] the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or [4] the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or [5] an unusual need for unquestioning adherence to a political decision already made; or [6] the potentiality of

12. *See, e.g.*, Colgrove v. Green, 328 U.S. 549, 556 (1946).
13. *Id.*
14. *Id.* at 550–55.
15. *Id.* at 552, 556.
16. *Id.* at 553–54.
17. *Id.* at 554.
18. Baker v. Carr, 369 U.S. 186 (1962).
19. *Id.* at 237 ("We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action . . . .").
20. *Id*. at 194.

> embarrassment from multifarious pronouncements by various departments . . . .[21]

Applying this standard, the Court held that the issues raised by the complaint did not fit into any of the enumerated non-justiciable political question categories and was thus "within the reach of judicial protection under the Fourteenth Amendment."[22] Although the complaint arose in a political context, the Court characterized the claim as one of individual rights under the Equal Protection Clause.[23] Because judicially manageable standards under the Equal Protection Clause are "well developed and familiar," the Court thought itself competent to determine whether this state action amounted to impermissible discrimination.[24]

B. Birth of "One Person, One Vote"

Soon after the Supreme Court entered the "political thicket" in *Baker v. Carr*, it considered an equal protection challenge to Alabama's failure to reapportion its legislative districts since 1900.[25] In *Reynolds v. Sims*,[26] registered Alabama voters argued that the state's failure to reapportion resulted in serious discrimination and denied them "equal suffrage in free and equal elections."[27] The Court, speaking through Chief Justice Warren, agreed, holding that the Fourteenth Amendment "requires both houses of a state legislature to be apportioned on a population basis."[28] In so holding, the Court re-affirmed its duty to act to protect voting rights, which it characterized as "individual and personal in nature."[29]

Reynolds thus introduced the "one person, one vote" principle to the constitutional law of state legislative apportionment.[30] Under this

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21. *Id.* at 217.
22. *Id.* at 237.
23. *Id.* at 226.
24. *Id.*
25. Reynolds v. Sims, 377 U.S. 533 (1964).
26. *Id.*
27. *Id.* at 540.
28. *Id.* at 576.
29. *Id.* at 561.
30. Another case, Wesberry v. Sanders, 376 U.S. 1 (1964), similarly applied the "one person, one vote" principle to congressional districting. *Wesberry* grounded its holding in Article One of the U.S. Constitution. *Id.* at 7–8. Note, however, that the Supreme Court has rejected the so-called federal analogy. In *Wesberry* and *Reynolds*, the states attempted to defend their malapportioned districts by analogizing to the federal system, where U.S. Senate apportionment is not based on population. *Id.* at 27 n.9; *Reynolds*, 377 U.S. at 573–77. But, as the Court noted,

> The inclusion of the electoral college in the Constitution, as the result of specific historical concerns, validated the collegiate principle despite its inherent numerical inequality, *but implied nothing about the use of an analogous system by a State in a statewide election.* No such specific accommodation of the latter was ever undertaken, and therefore no validation

principle, the state must make an "honest and good faith effort to construct districts . . . as nearly of equal population as is practicable."[31] In adopting this principle, the Court reasoned that because legislators "represent people, not trees or acres," maintaining districts of unequal population necessarily overvalues the vote of voters living in smaller districts.[32] Just as it would be "extraordinary" to suggest a state could allow certain citizens to vote more times than other citizens, a state similarly cannot effectively give a citizen more voting power by maintaining unequal districting.[33] Ultimately, the Court opined, "[t]o the extent that a citizen's right to vote is debased, he is that much less a citizen."[34]

Notwithstanding the Court's commitment to population equality, *Reynolds* noted, "some deviations from the equal-population principle are constitutionally permissible" so long as the state maintains a basic standard of equality.[35] Under *Reynolds*, states may deviate from ideal numerical equality to pursue other legitimate interests, including ensuring voice to certain political subdivisions and providing for compact districts of contiguous territory.[36] But the Court cautioned that the possibility of such deviations "does not mean that each local governmental unit or political subdivision can be given separate representation, regardless of population."[37] Similarly, deviations based solely on history, economic or social interests, and geographic area are not legitimate reasons to depart from strict equality of population.[38]

Although the constitutional command of *Reynolds* is quite clear—good faith effort to achieve near population equality—its precise boundaries were not immediately so clear.[39] Through case law, though, a general principle has developed that states have more leeway when drawing state legislative districts rather than congressional districts.[40] With regard to congressional districts, the Court has enforced strict mathematical equality,

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of its numerical inequality ensued.

Id. at 574–75 (quoting Gray v. Sanders, 372 U.S. 368, 378 (1963)) (emphasis added).

31. *See Reynolds*, 377 U.S. at 577. The Court, however, noted that mathematical precision might not be possible. *Id.*

32. *Id*. at 562; *see also* Bd. of Estimate v. Morris, 489 U.S. 688, 698 (1989) (noting that voters in smaller districts are "shortchanged").

33. *Reynolds*, 377 U.S. at 562.

34. *Id*. at 567.

35. *Id*. at 579; *see also* Mahan v. Howell, 410 U.S. 315, 342 (1973).

36. *Reynolds*, 377 U.S. at 579–80.

37. *Id*. at 581.

38. *Id*. at 579–80.

39. *Compare, e.g.*, Karcher v. Daggett, 462 U.S. 725 (1983) (striking down districting plan that had a maximum deviation below the census margin of error), *with, e.g.*, Brown v. Thomson, 462 U.S. 835 (1983) (upholding a plan with a maximum deviation of 89%).

40. *See Mahan*, 410 U.S. at 321.

striking down apportionment plans with rather small deviations.[41] Yet with regard to state legislative districting, the Court has permitted states more flexibility.[42] As a general rule, state legislative redistricting plans with a maximum population deviation of 10% are considered presumptively valid, with 10% acting as a rough constitutional safe harbor.[43]

C. Extension to Local Government

The U.S. Constitution does not require local governments to be elected,[44] yet once a local public body holds elections, its electoral apportionment scheme might be subject to the equal population rule of *Reynolds v. Sims*.[45] Beginning in the late 1960s, the Supreme Court began to apply the "one person, one vote" rule to certain local governments that exercised "general responsibility and power for local affairs."[46] In determining which governments exercise this sort of plenary authority, the Court considers the ability of the government to affect a wide array of citizens and the nature of its authority, including its ability to tax.[47]

In *Avery v. Midland County*,[48] for example, the Court applied "one person, one vote" to the Commissioners Court of Midland County, Texas because that elected entity set tax rates, issued bonds, had discretion to spend its funds, and affected all citizens by maintaining buildings, administering welfare services, and determining school districts.[49]

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41. *See, e.g.*, Kirkpatrick v. Preisler, 394 U.S. 526 (1969) (striking down a plan with less than 4% deviation).

42. *See, e.g.*, *Mahan*, 410 U.S. 315 (upholding a plan with 16.4% deviation).

43. *See Brown*, 462 U.S. at 842. It should be emphasized that this constitutional safe harbor raises only a presumption of validity, and the Supreme Court has in fact rejected state legislative apportionment plans that fall within the safe harbor. *See* Cox v. Larios, 542 U.S. 947 (2004) (striking down plan with a 9.9% deviation).

44. *See* Sailors v. Bd. of Educ., 387 U.S. 105, 108 (1967).

45. *See* Avery v. Midland County, 390 U.S. 474 (1968); *see generally* Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339 (1993).

46. *Avery*, 390 U.S. at 483. The Supreme Court has used a number of variations to describe the nature of a local government that is subject to "one person, one vote." *See, e.g.*, Bd. of Estimate v. Morris, 489 U.S. 688, 696 (1989) ("powers are general enough and have sufficient impact throughout the district . . . ." (quoting Hadley v. Junior Coll. Dist., 397 U.S. 50, 54 (1970))); *id.* at 53 ("important government functions"); *Avery*, 390 U.S. at 483 ("power to make a large number of decisions having a broad range of impacts . . . .").

47. *Cf.* Salyer Land Co. v. Tulare Lake Basin Water Storage Dist., 410 U.S. 719, 729 (1973) (holding that "one person, one vote" did not apply to a water reclamation district that had "no towns, shops, hospitals, or other facilities designed to improve the quality of life within the district boundaries" and no "fire department, police, buses, or trains"). Note, however, that the Court's jurisprudence in this area of the law is not always clear. *See generally* Briffault, *supra* note 45.

48. *Avery*, 390 U.S. 474.

49. *Id.* at 482–84.

Similarly, in *Hadley v. Junior College District*,[50] the Supreme Court extended "one person, one vote" to a junior college board because—even though such an entity was "further removed from the traditional core functions of local government"[51]—it nonetheless had the ability to levy certain taxes, issue bonds, and maintain authority over the administration of education, including the collection of fees and discipline of students.[52] Likewise, in *Board of Estimate of City of New York v. Morris*,[53] the Court applied "one person, one vote" to the New York City Board of Estimate, striking down the City's electoral guarantee of representation to each of the City's boroughs.[54] The Court held that the Board's governmental powers were "general enough and have sufficient impact" to trigger the "one person, one vote" because it had fiscal responsibilities, including calculating utility and tax rates, and management and administrative authority over various city functions such as contracting.[55]

But the Court's gradual extension of "one person, one vote" to local governments is not without limitation.[56] Indeed, courts have exempted so-called "proprietary" and "special-purpose" governmental units from "one person, one vote."[57] In this regard, the Court will defer to local judgments about apportionment if the local government's duties are "so far removed from normal governmental activities and so disproportionately affect different groups."[58] In *Salyer Land Co. v. Tulare Lake Basic Water Storage District*,[59] for instance, the Supreme Court dealt with such a government unit in a public water district.[60] Although the district did exercise some typical governmental powers, it had "relatively limited authority" because its primary purpose was to provide water to farmers in a

50. *Hadley*, 397 U.S. 50.

51. *See, e.g.*, Briffault, *supra* note 45, at 356.

52. *Id.* at 353–54.

53. Bd. of Estimate v. Morris, 489 U.S. 688 (1989).

54. *Id.*

55. *Id.* at 696 (quoting *Hadley*, 397 U.S. at 54).

56. *See Avery*, 390 U.S. at 483–84 (suggesting an exception for a "special-purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents"); *Hadley*, 397 U.S. at 56 (noting "that there might be some case in which a State elects certain functionaries whose duties are so far removed from normal governmental activities and so disproportionately affect different groups that a popular election in compliance with *Reynolds* . . . might not be required . . . .").

57. *See, e.g.*, Benner v. Oswald, 444 F. Supp. 545 (M.D. Pa. 1978), *aff'd* 592 F.2d 174 (3d Cir. 1979) (board of trustees); Wells v. Edwards, 347 F. Supp. 453 (M.D. La. 1972) (judicial elections); The Fla. Bar re Amendments to the Rules Regulating the Fla. Bar (reapportionment), 518 So.2d 251 (Fla. 1987) (bar association); Humane Society, Inc. v. N.J. State Fish & Game Council, 362 A.2d 20 (N.J. 1976) (state fish and game council).

58. *See Hadley*, 397 U.S. at 56.

59. 410 U.S. 719 (1973).

60. *Id.* at 728–29.

limited area.[61] Similarly, in *Ball v. James*, the Court held that a water reclamation district election did not fall within the ambit of *Reynolds v. Sims* because the district was the "narrow, special sort" of local government body that does not have general governmental powers.[62] The Court reasoned that the district's authority was limited to water-related matters and, even in that sphere, its authority was fairly narrow.[63]

II. APPLICATION TO CAMPUS ELECTIONS

A. Applicability of "One Person, One Vote"

1. State Action Requirement

Against this backdrop, the analysis now turns to student government at public colleges and universities. First, it is well established that the Fourteenth Amendment only applies to state action.[64] That means that private actors are generally not subject to the equal protection constraints of the Constitution. Thus, since the "one person, one vote" rule of *Reynolds v. Sims* is grounded in the Fourteenth Amendment, the *Reynolds* rule only applies to student governments at public institutions if state action is present. To begin, then, the analysis must determine whether the Fourteenth Amendment applies at all before it can determine whether *Reynolds* and its progeny cover student governments at public colleges and universities.

In most cases, the state is sufficiently involved in student government at public colleges and universities to satisfy the state action requirement of the Fourteenth Amendment.[65] Student governments, unlike individual student officers,[66] or derivative student organizations funded by the student

61. *Id.* at 723.

62. Ball v. James, 451 U.S. 355, 370 (1981).

63. *Id.* at 366 (reasoning that the district does not provide for "maintenance of streets, the operation of schools, or sanitation, health, or welfare services").

64. *E.g.*, Shelley v. Kraemer, 334 U.S. 1, 13 (1948) ("[T]he action inhibited by the first section of the Fourteenth Amendment is only such action as may fairly be said to be that of the States. That Amendment erects no shield against merely private conduct, however discriminatory or wrongful.").

65. *See, e.g.*, Gay & Lesbian Stud. Ass'n v. Gohn, 850 F.2d 361, 365–66 (8th Cir. 1988) (holding that student government was a state actor because, inter alia, the University retained final authority over student funding decisions); Uzzell v. Friday, 625 F.2d 1117 (4th Cir. 1980) (holding implicitly that student government is subject to equal protection challenge); Sellman v. Baruch Coll., 482 F. Supp. 475, 478–79 (S.D.N.Y. 1979); Arrington v. Taylor, 380 F. Supp. 1348, 1359 (M.D.N.C. 1974).

66. *Cf.* Husain v. Springer, 494 F.3d 108 (2d Cir. 2007) (affirming dismissal of First Amendment claims against student government officers because those officers were not state actors to the extent state law did not compel them to act in a specific manner); Mentavlos v. Anderson, 249 F.3d 301 (4th Cir. 2001) (holding that individual cadets at public military college did not act under color of state law for purposes of

government,[67] are "creature[s] of governmental agencies," expressly chartered and overseen by a public body.[68] In *Sellman v. Baruch College of City University of New York*,[69] for instance, a federal district court found that the Baruch College student government was a state actor, reasoning that it receives state funds, holds meetings on public property, benefits students and the college, and is supervised by public officials.[70] Similarly, in *Uzzell v. Friday*,[71] the Fourth Circuit implicitly held that the state action requirement was satisfied and allowed an equal protection claim to proceed against regulations governing the composition of the University of North Carolina's student government.[72] Likewise, in *Arrington v. Taylor*,[73] a federal district court held that the student government at the University of North Carolina at Chapel Hill is a state actor, reasoning as follows:

> The Student Government occupies and operates on premises owned by the University, and thus by the State; the Student Government is organized as and performs the functions of a governmental body; the Student Government derives its authority from the University; the Student Government receives direct and indirect financial assistance from the University.[74]

2. Nature of Student Government

Assuming most student governments at public colleges and universities satisfy the state action requirement of the Fourteenth Amendment, the analysis must now determine whether these bodies exercise "important government functions" so as to subject them to a "one person, one vote" challenge.[75] Admittedly, equating student government with political government seems curious because student governments, at first blush, do not appear analogous to the political units treated by *Avery* and its progeny. Upon closer examination of the nature of student government and the relevant factors identified by the Supreme Court, however, the idea of applying "one person, one vote" to student government gains strength.

Student governments exercise broad and important governmental

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§ 1983 claim).

67. *Cf.* Leeds v. Meltz, 85 F.3d 51, 53–56 (2d Cir. 1996) (holding that student publication's rejection of advertisement did not constitute state action where school provided only limited funding and disclaimed any right to control).

68. *Sellman*, 482 F. Supp. at 478; *see also, e.g.*, WISC. STAT. § 39.09(5) (West 2007).

69. *Sellman*, 482 F. Supp. 475.

70. *Id.* at 478–79.

71. 625 F.2d 1117 (4th Cir. 1980).

72. *See id.*

73. 380 F. Supp. 1348 (M.D.N.C. 1974).

74. *Id.* at 1359.

75. *See* Hadley v. Junior Coll. Dist., 397 U.S. 50, 54 (1970).

functions, including promoting public safety,[76] building community relations,[77] and protecting the environment.[78] Although student governments do not often have authority over some traditional governmental functions identified in *Ball* such as maintenance of streets and sewage systems,[79] they do often address quality of life issues for students—including health, safety, and housing quality—in addition to collecting student fees.[80] Moreover, many student governments at public institutions act under the auspices of the state and serve important public functions.[81] Some student bodies, for example, make important campus judicial appointments,[82] while others have exclusive control over chartering student organizations.[83] In fact, Wisconsin state statute guarantees students in its public universities the right to self-organization.[84] Additionally, as in *Hadley*, many student governments have significant control over the administration of education in the form of advising college and university officials, serving on college and university policy boards, and handling student discipline.[85]

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76. *See, e.g.*, Illinois Student Senate, About the Illinois Student Senate, http://www.iss.uiuc.edu/main/index.php?option=com_content&task=view&id=21&Itemid=88 (last visited Oct. 27, 2008) ("The Student Senate also focuses on bettering the campus environment for all students, by promoting health, safety, and participation on campus.").

77. *See, e.g.*, Community Relations, University of Notre Dame, Student Senate Committee Overviews, http://studentgovernment.nd.edu/SenateCommitteeApplication/committees.htm (last visited Oct. 27, 2008).

78. *See, e.g.*, Press Release, University of Colorado at Boulder, CU Students Transition to Local Energy and Local Climate Protection Programs (Jan. 31, 2008) (on file with the author), *available at* http://www.colorado.edu/news/releases/2008/33.html.

79. *Cf.* Ball v. James, 451 U.S. 355, 366 (1981).

80. *See, e.g.*, Jeremiah G. Coder, Note, *The Vote Is In*: *Student Officer Campaigns Deserve First Amendment Protections*, 31 J.C. & U.L. 677, 699 (2005) ("Students elected to campus office make substantive decisions that have a genuine consequence for certain aspects of student life . . . ."); Roseann Moring, *Condom Plan Still in Works*, THE MANEATER (Columbia, Mo.), July 11, 2007, *available at* http://www.themaneater.com/stories/2007/7/11/condom-plan-still-works/; Associated Students of Madison, Campus Safety, http://www.asm.wisc.edu/cms/content/view/265/208 (describing student efforts to improve campus safety) (last visited Oct. 27, 2008); Sahil Chaundry, University of Southern California Student Body President, State of the Undergraduate Student Government (Feb. 5, 2008), http://usg.usc.edu/USG-President.html (describing student governments efforts to improve the off-campus housing situation).

81. Arrington v. Taylor, 380 F. Supp. 1348, 1359 (M.D.N.C. 1974) (noting that the student government "is organized as and performs the functions of a government body").

82. *See, e.g.*, MICHIGAN STUDENT ASSEMBLY CONST., art. II, E & J, *available at* http://www.msa.umich.edu/downloads/Constitution.pdf.

83. UNIV. OF CINCINNATI STUDENT GOVERNMENT CONST. art. II, § 3, pt. a.

84. *See, e.g.*, WIS. STAT. § 39.09(5) (2007) (guaranteeing Wisconsin students the right to participate in campus governance through student organization).

85. *See* Hadley v. Junior Coll. Dist., 397 U.S. 50, 53–54 (1970).

Additionally, student governments, like many non-student local political governments, represent their student constituents' interests in a broad array of local, national, and international matters.[86] Not too long ago, students, often acting through student governments, took a leading role in protesting the Vietnam War and South African apartheid.[87] Today, mirroring the activities of other local political governments, student elected bodies continue to provide an important means for students to achieve policy ends on issues ranging from the Iraq War, to sustainability, to the cost of higher education.[88] In fact, the Arizona Students' Association recently was instrumental in drafting a state legislative bill to curb the cost of textbooks.[89]

The most significant power of student governments, though, is often the power to assess and collect a mandatory student activity fee as part of enrolled student tuition. The ability to assess this fee is tantamount to the official power to tax.[90] Indeed, student government is compelling students to pay a fee into a public account under color of state authority.[91] The fee is authorized by an arm of the state and will be used for public purposes by members of the academic community. Although one might argue that the power to assess an activity fee is not an actual tax because one is not required to enroll at the institution, this argument is flawed because, for instance, property taxes are official taxes even though one is not required to own real estate.[92]

It is this power to tax for general governmental purposes—recognized in *Avery*, *Hadley*, *Ball*, and other cases—that often defines a public body.[93] When combined with the broad and important functions of student

86. *See, e.g.*, Ed Kompenda, *SGA Prepares for Lobby Day*, WESTERN COURIER (Moline, Ill.), Feb. 27, 2008; Scott Miller, *Students Want to Break Code*, THE PANTAGRAPH (Bloomington, Ill.), Aug. 30, 2007, at C1.

87. *See* Philip G. Altbach & Robert Cohen, *American Student Activism*: *The Post-Sixties Transformation*, 61 J. HIGHER EDUC. 32 (1990).

88. *See, e.g.*, Menaka Fernando, *USAC Passes Resolution Condemning War with Iraq*, DAILY BRUIN (L.A., Cal.), Nov. 27, 2002; Anita Little, *USC Greeks Go Green, Install Recycling Bins at Houses on The Row*, DAILY TROJAN (L.A., Cal.), Apr. 23, 2008 (describing Greek efforts to join sustainability movement aided by student government).

89. Nicole Santa Cruz, *Student Based Textbook Legislation Heads to Ariz. Governor*, ARIZ. DAILY WILDCAT, Apr. 29, 2008.

90. Bd. of Regents v. Southworth, 529 U.S. 217, 241 (2000) (Souter, J., dissenting); Rosenberger v. Rector & Visitors of the Univ. of Va., 515 U.S. 819, 873–74 & n.3 (1995) (Souter, J., dissenting). *But see id.* at 873 (opining that student activity fee collection at the University of Virginia is not a tax for purposes of the First Amendment). *Cf.* George v. Uninsured Employers Fund (*In re George*), 361 F.3d 1157, 1160–61 (9th Cir. 2004) (defining taxation).

91. *See, e.g.*, *Southworth*, 529 U.S. at 241 (Souter, J., dissenting).

92. *Id.* at 241 & n.7.

93. *See, e.g.*, Ball v. James, 451 U.S. 355, 366 (1981); Hadley v. Junior Coll. Dist., 397 U.S. 50, 53 (1970); Avery v. Midland County, 390 U.S. 474, 483 (1968).

governments described above, student governments' power to tax and spend for the general student welfare through the student activity fee separates student government from the "narrow, special sort" of governments discussed in *Ball*.[94] Unlike the water districts in *Salyer* and *Ball* that primarily benefit landowners and farmers, the activities of student government do not primarily benefit any subset of the student population; rather, they benefit all students. Indeed, through their activities, student governments act on behalf of students in a broad array of matters and often collect a mandatory fee in pursuit of this mission. To that end, the student governing authority ordinarily uses this fee to fund campus organizations,[95] many of which serve important social and public functions, including ensuring student safety through the provision of emergency medicine.[96]

3. Deference to the College or University?

Although using the U.S. Constitution to limit student government action is not unprecedented,[97] one must be mindful of the traditional latitude that courts afford educational institutions to manage their affairs, including student government.[98] In the First Amendment context, for instance, courts are especially reluctant to interfere with student government, subject to a viewpoint neutral qualifier.[99] To that end, in *Flint v. Denison*,[100] the Ninth Circuit rejected an attack on student campaign finance regulation, holding *Buckley v. Valeo*[101] inapplicable.[102] Reversing an earlier case,[103] *Flint*

94. *Ball*, 451 U.S. at 370.

95. *See, e.g.*, *Rosenberger*, 515 U.S. at 824 ("The Student Council [at the University of Virginia], has the initial authority to disburse [student activity] funds . . . .").

96. One survey found that 15% of college- and university-based emergency medical services were supervised by student government, and 20% received funding from student government. *See* Jonathan Fisher et al., *Collegiate-Based Emergency Medical Services (EMS)*: *A Survey of EMS Systems on College Campuses*, PREHOSPITAL AND DISASTER MED., Mar.–Apr. 2006, at 95.

97. *See, e.g.*, Uzzell v. Friday, 625 F.2d 1117 (4th Cir. 1980) (equal protection); Welker v. Cicerone, 174 F. Supp. 2d 1055 (C.D. Cal. 2001) (free speech), *abrogated by* Flint v. Dennison, 488 F.3d 816 (9th Cir. 2007).

98. *See, e.g.*, Ala. Student Party v. Student Gov't Ass'n. of Univ. of Ala., 867 F.2d 1344, 1345 (11th Cir. 1989).

99. Bd. of Regents. v. Southworth, 529 U.S. 217, 220 (2000).

100. 488 F.3d 816.

101. 424 U.S. 1 (1976) (considering the constitutionality of Federal Election Campaign Act of 1971).

102. *Flint*, 488 F.3d at 827.

103. The earlier case is *Welker v. Cicerone*, 174 F. Supp. 2d 1055 (C.D. Cal. 2001), *abrogated by Flint*, 488 F.3d 816. In *Welker*, a federal district court ordered the reinstatement of a student to the legislative council of the Associated Students of the University of California, Irvine, after he was disqualified for violating its campaign finance rules. *Welker*, 174 F. Supp. 2d at 1067. The court grounded its legal analysis in *Buckley v. Valeo*, 424 U.S. 1, finding "no reason to distinguish between applying

reasoned that even though student government has an impact on student lives, "it simply does not follow that [it] is akin to a political government."[104] The court characterized student government as an educational tool to introduce students to the "principles of representative government."[105] Since the institution's "primary purpose is *education*, not electioneering," the Court continued, "[c]onstitutional protections must be analyzed with due regard to that educational purpose."[106] The Eleventh Circuit applied a similar analysis in *Alabama Student Party v. Student Government Association of the University of Alabama*,[107] when it upheld restrictions on distributing campaign literature over a First Amendment challenge.[108]

As the forgoing describes, many of the cases considering the intersection of campus elections and the Constitution have arisen in the First Amendment context. In this regard, courts have often deferred to and relied on the educational nature of student government to decline to intervene in student elections.[109] Although the consequences of cases like *Flint* and *Alabama Student Party* may extend beyond the First Amendment, these cases do not necessarily preclude an equal protection challenge to student legislative apportionment that debases—intentionally or otherwise—a student's right to vote in a student election at a public college or university. Indeed, not only might the level of deference afforded to colleges or universities differ from that afforded to K-12 institutions,[110] but an over reliance on cases like *Flint* and *Alabama Student Party* overlooks the significant public function that student governments fulfill *in addition* to their educational role.[111]

To the extent that the educational nature of student government is a

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Buckley to state political elections and political elections at state universities." *Welker*, 174 F. Supp. 2d at 1065.

104. *Flint*, 488 F.3d at 827 ("The ubiquity with which political government is present to control facets of our lives is not—thank Heavens!—replaced by student government in student lives.").

105. *Id.*

106. *Id.* (quoting Ala. Student Party v. Student Gov't Ass'n of the Univ. of Ala., 867 F.2d 1344, 1346 (11th Cir. 1989)) (emphasis in original). The court seemed to be deferring to the long-standing idea of academic freedom. *See generally* Regents v. Ewing, 474 U.S. 214, 226 (1985) ("Academic freedom thrives not only on the independent and uninhibited exchange of ideas among teachers and students, but also, and somewhat inconsistently, on autonomous decision-making by the academy itself.").

107. 867 F.2d 1344.

108. *Id.*

109. *See, e.g.*, *Flint*, 488 F.3d at 827; *Ala. Student Party*, 867 F.2d at 1346.

110. *See generally* Coder, *supra* note 80.

111. This public function includes representing students' interests in local, national, and international matters, assessing and collecting mandatory fees, and in some cases, funding emergency services on campus. *See generally supra* text accompanying notes 64–96.

reason for judicial restraint in the First Amendment area, this rationale falls apart in the equal protection context. Accepting that student governments are formed for the purpose of educating leaders and learning about democracy,[112] equal protection nonetheless stands as a guarantee of equal access to this type of education. Apportioning legislative districts in an unequal manner discriminates against students in larger districts by debasing and diluting their voting power.[113] Unequal apportionment is not analogous to limits on campaign speech, which affect all participants in the process because the inequality here is targeted at student voters in certain districts. Consequently, malapportioned districts deprive certain voters of meaningful and equal access to the political (or educational) opportunity that is student government.

Although little case law exists in the area of equal protection and campus elections, at least one federal appellate court has permitted an equal protection claim against a student government election scheme. In *Uzzell v. Friday*, two white students at the University of North Carolina at Chapel Hill brought an equal protection claim against the University based on a provision of the student government constitution that required "up to two minority race students be appointed to the student legislature . . . if a like number of such students is not elected . . . ."[114] The court first determined that the students had standing, reasoning that the student constitution denies them, based on their race, an equal opportunity to compete in the election.[115] The court went on to hold that the challenged student constitution provision, both on its face and in its application, violated the Equal Protection Clause because it amounted to purposeful discrimination by the state without sufficient justification.[116]

B. Assessing Compliance with "One Person, One Vote"[117]

To the extent student government apportionment must comply with "one person, one vote," present methods of apportionment raise serious

112. *Flint*, 488 F.3d at 827.

113. Reynolds v. Sims, 377 U.S. 533, 567 (1964).

114. Uzzell v. Friday, 592 F. Supp. 1502, 1505 (M.D.N.C. 1984) (citing the STUDENT CONST. OF THE UNIV. OF N.C. AT CHAPEL HILL, art. I, § 1.D), *on remand from* 625 F.2d 1117 (4th Cir. 1980).

115. *Uzzell*, 592 F. Supp. at 1514. The court's mention of a denial of equal opportunity to compete evenly with other candidates for student government is similar to that of one of the appellate panels to review this case during a complicated procedural history. *See* Uzzell v. Friday, 591 F.2d 997, 999 (4th Cir. 1979) ("[T]he presence of one or more unelected members on the [student government] dilutes the representative character of the legislative body."), *aff'd in part, vacated in part, and remanded*, 625 F.2d 1117 (4th Cir. 1980).

116. *Uzzell*, 592 F. Supp. at 1516–23.

117. The author collected all data for this Note from publicly available sources. To prevent confusion and distraction, the Author omits footnote citations to this data, instead making all data compilations available in the appendices to this Note.

constitutional concerns. Many student-governing bodies use existing, static academic boundaries to allocate representation and refuse to create districts that contain students from more than one such unit. By focusing more on boundaries than equality, student governments ignore the Supreme Court's admonition that "legislators represent people, not trees or acres."[118] Indeed, as explained below, egregious inequity in voting power has resulted from this practice.[119] Student voters in one University of Michigan student government district, for example, have over 15,000% more voting power than similarly situated students in other districts.[120]

The apportionment schemes that many student governments employ are similar to the scheme that the Supreme Court struck down in *Board of Estimate of City of New York v. Morris*.[121] In *Morris*, the Court rejected New York City's guarantee of representation to each of the City's five boroughs.[122] Finding that the maximum population deviation resulting from the plan to be 78%, the Court rejected any interest the City had in respecting natural and political boundaries and adopting its apportionment to the needs of a regional government.[123] Similarly, here, student governments would ostensibly argue an interest in having static academic unit representation to ensure that student interests in each unit are represented. But, the Supreme Court has made clear that even pursuing legitimate interests "does not mean that each local government unit or political subdivision can be given separate representation regardless of population."[124] Because many student governments have made districting so inflexible, one might infer that they have not made an "honest and good faith effort to construct districts . . . as nearly of equal population as is practicable."[125]

This is not to say that students do not think about "one person, one vote,"—they do[126]—but, rather, history, short-sightedness of student representatives who will soon graduate, and lack of any judicial intervention might have entrenched a system at many institutions that violates "one person, one vote." Although the rhetoric of *guaranteed* representation to each academic unit is powerful, it is plainly not permitted by the Constitution. True, political problems might arise if certain smaller

118. *Reynold*s, 377 U.S. at 562.
119. *See generally* Part II.A.2(a)–(b), II.B.2.
120. *See* Part II.A.2.b.
121. 489 U.S. 688 (1989).
122. *Id.* at 702.
123. *Id.* at 702–03.
124. Reynolds v. Sims, 377 U.S. 533, 581 (1964).
125. *Id.* at 577.
126. *See, e.g.*, E. Martin De Luca, Commentary, *Constitution Controversy*, DAILY TARGUM (New Brunswick, N.J.), Feb. 7, 2007; Kristin Shrewsbury, *SGA Begins to Wrap Things Up*, THE DAILY COLLEGIAN (University Park, Penn.), May 7, 2001.

groups are denied guaranteed representation,[127] but solutions to this problem exist.[128] Now, with that foundation, the analysis turns to apportionment schemes at the University of Georgia and the University of Michigan as representative examples of how current student government apportionment quite often leads to unequal voting power.

1. University of Georgia

The University of Georgia Student Government Association ("UGSGA") is the official student government of the University of Georgia.[129] UGSGA consists of both an executive and legislative branch, the latter being comprised of an elected Student Senate.[130] The Student Senate performs myriad important functions, one of which is to participate in the assessment and disbursement of the mandatory student activity fee. To that end, the UGSGA appoints students to a committee that advises the University on all student fees, and then another committee, comprised in part by students, distributes the funds.[131] In pursuit of its general mission, the Student Senate holds annual elections for its legislature, which consists of students representing "each of the individual schools and colleges . . . in proportion to the student enrollment within the school or college."[132] This apportionment scheme, though, has led to egregious departures from "one person, one vote" because it refuses to create districts that span multiple academic boundaries and it allows graduate students to vote twice. Because graduate and non-graduate students are treated separately under the UGSGA apportionment scheme, the analysis takes them in turn.

With regard to non-graduate students, students who are enrolled in any of five specific UGA academic units have voting strength below mathematically ideal levels. Those students include the voters enrolled in Arts and Sciences (-26.14%), Business (-20.56%), Education (-17.83%), Agriculture and Environmental Sciences (-12.90%), and Family and Consumer Sciences (-2.02%). At the expense of non-graduate students in those schools, non-graduate students in other schools are mathematically overrepresented on the UGSGA in terms of voting strength. For example, UGSGA's guarantee of representation to each school has resulted in the 49 non-graduates enrolled in Ecology having a 474.85% increase in their voting strength relative to what their voting strength would be under a "one person, one vote" model. Other non-graduate winners in this system

127. *See, e.g.*, Richard Briffault, *Voting Rights, Home Rule, and Metropolitan Governance: The Secession of Staten Island as a Case Study in the Dilemmas of Local Self-Determination*, 92 COLUM. L. REV. 775 (1992).

128. *See* Part II.C (discussing, inter alia, possibilities to create influence districts).

129. UNIV. OF GA. STUDENT GOV'T ASS'N CONST. [hereinafter UGSGA CONST.].

130. UGSGA CONST. art. I.

131. Univ. of Ga. Bd. of Regents Policy § 704.021.

132. UGSGA CONST. art. IV, § 3, para. B.

include non-graduate voters in Public Health (128.33%), Forestry and Natural Resources (82.58%), Veterinary Medicine (76.97%), Environment and Design (69.75%), Journalism and Mass Communication (35.37%), Pharmacy (76.97%), Law (12.91%), and Public and International Affairs (2.48%).

As mentioned earlier, graduate students not only may vote for their academic unit representatives, but also may vote for four separately designated graduate school representatives. This double-representation has resulted in graduate students—across *every* academic unit—having more voting power than they would under a system committed to "one person, one vote." Graduate students benefiting the most from this duel representation are those in smaller and otherwise overrepresented academic units. For instance, the voting power of a graduate student enrolled in Ecology is 522.66% higher than it would be under a system comporting with ideal mathematical equality. Other upward departures in voting strength for graduate students—relative to a baseline "one person, one vote" model—are as follows: Public Health (175.05%), Forestry and Natural Resources (129.41%), Family and Consumer Sciences (116.57%), Social Work (123.80%), Veterinary Medicine (91.34%), Journalism and Mass Communication (82.19%), Pharmacy (74.79%), Law (59.73%), Public and International Affairs (49.30%), Family and Consumer Sciences (44.81%), Agriculture and Environmental Sciences (33.92%), Education (29%), Business (26.26%), and Arts and Sciences (20.69%).

2. University of Michigan

The Michigan Student Assembly ("MSA") is the central student government at the University of Michigan and was formed so that students could participate in University governance and address quality of life issues for students.[133] To that end, MSA has wide-reaching power. Not only does it make appointments to the campus judiciary system and other important bodies,[134] but it also has the power "[t]o levy dues and provide for their collection equally among all the students of the Ann Arbor Campus."[135] As of Fall 2007, MSA assessed each Michigan student a mandatory fee of $7.19 per term, resulting in nearly $280,000 in receipts for the MSA.[136] To carry out its activities, MSA guarantees at least one elected representative to all colleges and schools that have at least one

133. MICH. STUDENTS ASSEMBLY CONST. pmbl.

134. *Id.* at art. II, §§ E & J. *Cf.* Hadley v. Junior Coll. Dist., 397 U.S. 50, 53–54 (1970).

135. MICH. STUDENTS ASSEMBLY CONST. art. II, § B.

136. Office of the Registrar, University of Michigan, Full Term Tuition and Fees for Fall 2007, http://www.umich.edu/~regoff/tuition/full.html (last visited Oct. 27, 2008).

student in their "degree granting unit."[137] The largest consequence of this scheme is that graduate students are not counted for apportionment purposes in the specific school in which they are enrolled.[138] Rather, graduate students are only apportioned into the Rackham Graduate School because that school confers degrees upon all graduate students.[139]

Similar to the UGSGA,[140] MSA's insistence on representation based on static graduating unit boundaries, without the possibility of mixed-graduating unit districting, has led to a system of unequal voting power. The most egregious example comes from the School of Natural Resources and the Environment ("SNRE"). Because most of SNRE's enrollment is comprised of graduate students who do not count for apportionment purposes in that school,[141] only five students are eligible to vote for the SNRE representative. This small voting pool results in those five eligible voters having 15,123% more voting power than they would under a system comporting to "one person, one vote." Similarly, in the Public Policy School, because of the presence of graduate students who do not count for apportionment purposes, the remaining 48 eligible voters in that school have 1,485.78% the amount of voting power they would otherwise have under a system of ideal mathematical equality. Other winners under MSA's apportionment scheme are voters in Education (247.57%), Pharmacy (158.90%), Social Work (78.89%), Art & Design (72.99%), Architecture and Urban Design (76.61%), Public Health (40.44%), Dentistry (35.92%), and Nursing (25.40%). The losers under this scheme are voters in Law (-32.34%), Business (-21.37%), Medicine (-13.5%), Engineering (-12.84%), Music (-10.24%), LS&A (-8.42%), Kinesiology (-2.41%), and the Rackham Graduate School (-1.55%).

137. *See generally* MICH. STUDENTS ASSEMBLY CONST. art. V, § A.

138. Graduate students all receive their degrees from the Rackham Graduate School. This means that although graduate students are enrolled in academic units other than Rackham, they are only counted for apportionment purposes in the Rackham Graduate School. As a consequence, to determine total population for apportionment purposes in the Rackham School, we add the number of students exclusively enrolled in Rackham (614) to the other Rackham students enrolled elsewhere (6,185) to arrive at the total of 6,799. To determine the total voters in the other academic units, we take their total enrollment minus the enrolled Rackham students, who are not counted for apportionment purposes outside of Rackham. For example, the School of Information does not have a representative on the MSA because its entire enrollment is comprised of graduate students who are only counted for apportionment purposes in the Rackham Graduate School. *See generally* Table 2 in the Appendix.

139. E-mail from Michael L. Benson, Student General Counsel, Michigan Student Assembly, to Michael A. Zuckerman, J.D. Candidate, Cornell Law School (May 2, 2008, 2:28:59 EDT) (on file with author).

140. *See supra* Part II.B.1.

141. *See supra* note 138.

C. Benefits of Compliance with "One Person, One Vote"

Notwithstanding the constitutional command of "one person, one vote," student governments should adhere to equal-population districting as a matter of good policy. Not only may compliance increase voter-turnout and the effectiveness of student government initiatives by bolstering the appearance of democracy and legitimacy, but it also will guarantee all students equal access to their representatives. Because each elected student representative would serve an equal number of constituent voters, voters across every academic unit would have an equal opportunity to both influence their representatives and access their representative's resources. Adherence may also increase the number of student candidates for office because students who were formerly in large districts would no longer have to target their campaign to a larger pool of voters than similarly situated candidates. Furthermore, adherence to "one person, one vote" prevents student governments from intentionally diluting the voting strength of a target group.[142] It also prevents student governments from inflicting an intangible, civic injury onto all student voters.[143] Moreover, unequal voting power seems un-American and undermines institutional commitments to equal treatment of students. To paraphrase the Supreme Court, to the extent that a student's right to vote in campus elections is debased, the student is that much less an equal member of the campus community.[144]

For the student districter, the costs of complying with "one person, one vote" are not unduly burdensome. In fact, some student governments have voluntarily decided to adhere to it.[145] All that compliance requires is for student government to divide the total number of eligible voters by the total number of elected representatives and create only districts of that size. Under such a scheme, student governments can ensure equal voting power across districts, while respecting—to the extent practicable—existing academic unit boundaries.[146] When it is possible to create districts

142. *Cf.* Uzzell v. Friday, 625 F.2d 1117 (4th Cir. 1980).

143. *See* Michael W. McConnell, *The Redistricting Cases: Original Mistakes and Current Consequences*, 24 HARV. J.L. & PUB. POL'Y 103, 105 (2000) ("A districting scheme so malapportioned that a minority faction is in complete control, without regard to democratic sentiment, violates the basic norms of republican government.").

144. *See* Reynolds v. Sims, 377 U.S. 533, 567 (1964).

145. *See, e.g.*, ASSOCIATED STUDENT GOV'T CONST. OF TEX. STATE UNIV. art. II, § 2.

146. Note that "one person, one vote," especially in the case of local government, does not require mathematical exactness. Student districters would have some flexibility to deviate from ideal mathematical equality to accommodate academic affiliations to some extent. For example, if the student government could only fit 98 of the 100 students in Academic Unit X into an equal population district, the government would likely be able to deviate from ideal equality to place the remaining two students into that district. *See generally supra* Part I.B.

composed of voters only from one academic unit, the student government would be permitted to do so.

Even when all voters from a certain academic unit would not fit into an equal-population district, the student government can group those 'excess' voters together in another district where they can exercise significant influence over the electoral outcome. Similarly, in the case of a small school without sufficient voters to constitute an entire district,[147] student government should not hesitate to group these students in districts with voters from other academic units because voters from the small school will either constitute a voting majority or constitute a sizable minority and be able to influence the outcome of the election. For this reason, deconstructing academic unit districts, even though many of the students have developed unique group characteristics, is not troublesome—those students, as described immediately above, would remain clustured together and positioned to influence electoral outcomes.

CONCLUSION

Daniel Webster once remarked, "[T]he right to choose a representative is every man's portion of sovereign power."[148] Echoing this sentiment, the Supreme Court closely scrutinizes state action that deprives a voter of a *meaningful* opportunity to vote.[149] One way that a state may deprive a voter of such an opportunity is through the creation of legislative districts of unequal population. Accordingly, to prevent the state from debasing one's voting power, the Supreme Court has interpreted the Fourteenth Amendment to require states to comply with the now familiar maxim of "one person, one vote." Even though the Court initially applied this rule to congressional districting, it extended it to state legislative districting, and then to certain local governmental units that exercise normal government functions.[150]

Within this constitutional framework, this Note contends that "one person, one vote" might apply to student government apportionment at public colleges and universities. Although the idea that student governments exercise important governmental powers might seem flimsy at first, upon closer analysis the idea gains strength. Student governments serve important public functions by advocating for students' interests in local, national, and international affairs. They often play important roles on campus in recommending policies and appointing students to important committees. Perhaps the most important public function that many student governments serve, though, is assessing and collecting a student activity

147. *Cf.* Bd. of Estimate v. Morris, 489 U.S. 688 (1989).
148. *Id.* at 693 (quoting Luther v. Borden, 48 U.S. 1 (1849) (statement of counsel)).
149. *See Reynolds*, 377 U.S. 533.
150. *See, e.g.*, Hadley v. Junior Coll. Dist., 397 U.S. 50 (1970).

fee as a mandatory condition of enrollment. This fee, which is tantamount to an official tax, often supports student organizations and campus services like emergency medicine. Then, assuming the "one person, one vote" applies to student government elections, this Note uses the UGSGA and the MSA as illustrations of how current methods of student government apportionment—namely by using inflexible academic boundaries—often lead to egregious departures from ideal mathematical equality.

In the end, whether or not "one person, one vote" limits student governments, good policy dictates that equal population districting guide student governments. Creating districts of equal population may encourage participation, guarantee equal representation, discourage discrimination, and prevent civic injury. Any negative consequence of breaking up single-academic unit representation, or the guarantee of representation to small units, can be mitigated by placing those displaced voters in districts where they might, as a group, exercise meaningful political influence. Student governments should not be afraid to create districts that span multiple academic units; it promotes full and effective democratic participation and complies with an important constitutional principle that has yet to be applied to public college and university campuses.

Table 1: University of Georgia

STRUCTURE		POPULATION			VOTING POWER COEFFICIENT		DEVIATION FROM IDEAL	
District	Reps	Non-Grad	Grad	Total	Grad	Non-Grad	% Non-Grad	% Grad
Agriculture & Environmental Sciences	2	1357	362	1719	0.0018	0.0012	-12.90%	33.92%
Arts & Sciences	16	14549	1668	16217	0.0016	0.0010	-26.14%	20.68%
Business	3	2210	617	2827	0.0017	0.0011	-20.56%	26.26%
Ecology	1	49	81	130	0.0083	0.0077	475.84%	522.66%
Education	5	2250	2305	4555	0.0017	0.0011	-17.83%	29.00%
Environment & Design	1	341	100	441	0.0029	0.0023	69.75%	116.57%
Family & Consumer Sciences	2	1404	124	1528	0.0019	0.0013	-2.02%	44.81%
Forestry & Natural Resources	1	248	162	410	0.0031	0.0024	82.58%	129.41%
Journalism & Mass Communication	2	1014	92	1106	0.0024	0.0018	35.37%	82.19%
Law	1	646	17	663	0.0021	0.0015	12.91%	59.73%
Pharmacy	1	520	65	585	0.0023	0.0017	27.96%	74.79%
Public Health	1	187	141	328	0.0037	0.0030	128.23%	175.05%
Public & International Affairs	2	1238	223	1461	0.0020	0.0014	2.48%	49.30%
Social Work	1	146	277	423	0.0030	0.0024	76.97%	123.80%
Veterinary Medicine	1	383	135	518	0.0026	0.0019	44.52%	91.34%
Biomedical & Health Sciences Institute	0	0	10	10	0.0006	0.0000		
Institute of the Faculty of Engineering	0	1	1	2	0.0006	0.0000		
Institute of Bioinformatics	0	0	15	15	0.0006	0.0000		
Graduate School	4	0	6395	6395	0.0006			
Total Reps	**44**	**26543**	**6395**					
Total Students	**32938**							
Ideal Coefficient	**0.0013**							

Enrollment Data http://irhst40.irp.uga.edu/ html/eFactbook/2007/ugafbk07.pdf

* Note: For apportionment purposes, UGA counts graduate students both in the Graduate School and the other various units in which they are enrolled.

Table 2: University of Michigan

STRUCTURE		POPULATION			VOTING POWER COEFFICIENT	DEVIATION FROM IDEAL
District	Reps	Voters*	Total	Rackham		
Arch. & Urban Design	1	431	553	122	0.0023	76.61%
Business	3	2,904	2,990	86	0.0010	-21.37%
Education	1	219	546	327	0.0046	247.57%
Law	1	1,125	1,125	0	0.0009	-32.34%
Medicine	2	1,760	2,103	343	0.0011	-13.50%
Nursing	1	607	842	235	0.0016	25.40%
Rackham	8	6,799	6,799	614	0.0012	-10.44%
Public Health	1	542	833	291	0.0018	40.44%
Social Work	1	426	426	0	0.0023	78.68%
Art & Design	1	440	466	26	0.0023	72.99%
Dentistry	1	560	647	87	0.0018	35.92%
Engineering	6	5,240	7,103	1,863	0.0011	-12.84%
Kinesiology	1	780	822	42	0.0013	-2.41%
LS&A	19	15,792	17,604	1,812	0.0012	-8.42%
Music	1	848	978	130	0.0012	-10.24%
Pharmacy	1	294	366	72	0.0034	158.90%
Information	0	0	353	353		
Public Policy	1	48	199	151	0.0208	1485.78%
Nat. Resour. &	1	5	250	245	0.2000	15123.53%
Totals	51	38820				
Ideal Coefficient	0.0013					

Enrollment Data http://www.umich.edu/~regoff/report/08wn101.pdf

* Note: Graduate students, even though enrolled in academic units other than Rackham, are only counted for apportionment purposes in the Rackham Graduate School. So, to determine total voters for apportionment purposes in the Rackham Graduate School, we add the number of students exclusively enrolled in Rackham (614) to the other Rackham Graduate School students enrolled elsewhere (6,185) to arrive at the total of 6,799. To determine the total voters in the other academic units, we take the total population minus the enrolled Rackham graduate students, who are not