Question of the Month: What kind of population variations among state legislative and U.S. congressional districts are legally permissible?

By Tim Anderson [1]
Tuesday, February 1, 2011 at 12:00 AM

As legislators go about the work of redrawing political maps, one fundamental rule guiding their decisions will be to keep the populations of political districts as equal as possible.

The once-a-decade task of redistricting is now in full swing in the Midwest, a region that will lose six seats in the U.S. Congress as the result of reapportionment and that, like the rest of the country, continues to see shifts in population from rural to metropolitan areas.

Some congressional and legislative districts will be lost, while others will grow or shrink in terms of geographic size.

As legislators go about the work of redrawing political maps, one fundamental rule guiding their decisions will be to keep the populations of political districts as equal as possible.

But there are different standards in place for how much population variance is allowed: Very little variation is allowed for congressional districts, while states are given more leeway when drawing legislative districts.

In 1964, the U.S. Supreme Court set a standard that still holds to this day: Congressional districts within a state should be as equal “as practicable.” The smallest of deviations can be challenged in court and must be justified by the state. For example, a U.S. Supreme Court ruling in the 1980s determined that a congressional redistricting plan in New Jersey was unconstitutional even though the population deviation was less than 1 percent. The court ruled that the state had not made a “good-faith effort” to maintain population equality.

The court has given states more flexibility when it comes to population variation among state legislative districts. Over the years, a series of court rulings led to the following general standard: Population deviations of less than 10 percent are generally acceptable and have “prima facie” constitutional validity. A challenger of these under-10-percent redistricting plans has the burden of proof in court. In turn, plans with population deviations of more than 10 percent are looked at more carefully by the courts, and the state must justify the variations.

However, this is just a general benchmark. For example, in one of the more important court judiciary
actions on redistricting in recent years, a plan in Georgia was ruled unconstitutional even though it had average population deviations of less than 10 percent. There was not a “permissible purpose” for the deviations, the court ruled.

In a 2008 report on redistricting, the Brennan Justice Center notes that “a few states have gone beyond these federal limits.” Minnesota and Iowa are among the states highlighted in the center’s report. In Minnesota, the maximum deviation between the biggest and smallest district is 2 percent. Iowa code limits the maximum deviation to 5 percent and states that the average deviation should be less than 1 percent.

State statutes and constitutional language vary in their specificity on population equality. In Illinois and Ohio, districts must be “substantially equal in population.” This type of language is most common in the Midwest. However, Michigan statute explicitly says that Senate and House districts “shall have a population not exceeding 105 percent and not less than 95 percent of the ideal district size.”

Another factor is legislative tradition.

In Wisconsin, for example, state legislative districts traditionally have been drawn with a population deviation of less than 1 percent, according to the Wisconsin Legislative Reference Bureau.

During the last round of redistricting in Kansas, two special House and Senate committees set a guideline that “deviations should not exceed plus or minus 5 percent of the ideal population.”
