Do Voters Really Have Equal Protection?

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Most Americans assume that the election of the House of Representatives is fairly based on the geographic distribution of our population. Then how come the constitutionally mandated reapportionment of 2000 resulted in the fact that it takes only 35,000 votes in a California district to win a House seat, while it takes 100,000 votes to win a House seat in Indiana, Michigan or Mississippi?
The U.S. Supreme Court ruled in Reynolds v. Sims (the 1964 landmark case that dictated one person one vote for state legislatures) that "the Equal Protection Clause guarantees the opportunity for equal participation by all voters." The Court forbade "diluting the weight of votes because of place of residence."

As a result of the 2000 reapportionment, eight states gained at least one more House seat: California, Nevada, Arizona, Colorado, Texas, Florida, Georgia and North Carolina. Ten other states lost at least one seat: Oklahoma, Mississippi, Illinois, Wisconsin, Tennessee, Michigan, Ohio, Pennsylvania, New York and Connecticut.

None of these states lost a seat because of a declining population. In fact, they all increased their populations.

This redistribution of seats in the House of Representatives also shifted the balance of power for the 2004 presidential election. The number of votes each state has in the Electoral College exactly mirrors the size of its congressional delegation, so California and Florida will be even more important in 2004 than in 2000.

The reapportionment of the House of Representatives every ten years is required by the U.S. Constitution. Since the total number of seats is fixed at 435, it's a zero-sum process: one-state's gain must be another state's loss.

A new study just released by the Center for Immigration Studies explains what caused twelve congressional seats to be transferred from some states to other states. This shift in House seats was based on the 2000 census which counted the residence of persons -- not of voters.

The persons who were counted in the 2000 census included seven million illegal aliens and twelve million other non-citizens (legal non-citizens and temporary visitors who are mainly foreign students or guest workers). This count created new congressional districts with large non-voter populations.

When the Clinton Administration failed to enforce our federal immigration laws, and when Gray Davis's administration encouraged illegals to come to California in large numbers by nullifying the initiative that would have cut off state-financed social services (Proposition 187), the Democrats accomplished a change in the political landscape to benefit their candidates.

In California's 31st district, 43 percent of the residents are non-citizens, and in the 34th district, 38 percent are non-citizens. In Florida's 21st district, 28 percent of residents are non-citizens.

The non-citizens (hopefully) are non-voters. But their very presence gives enormous weight to the legitimate voters in those districts.

The Constitution does not require including non-citizens in the reapportionment count. In 1979 and 1988, the courts refused to hear a challenge to the practice of including illegal aliens in the census count for purposes of reapportionment.

Congress can define who meets the test of residency for the census count, and what procedures are used to do the counting. The only question is whether Congress has the will to make the needed changes.

The winners in this distortion are not the illegals or the non- citizens, but the citizen voters in the districts that have large populations of illegals and non-citizens. The current process makes the votes of some American citizens count for much more than citizens in districts where almost everyone is a U.S. citizen.

Reynolds v. Sims warned that "any alleged infringement of the right of citizens to vote must be carefully and meticulously scrutinized" even though this means "entering into political thickets and mathematical quagmires." Congress ought to address this issue long before the 2004 elections.

The recent California recall election didn't inflict us with the predicted post-election court challenges because, fortunately, the poll results were decisive. However, when we look at the famous red and blue map of the 2000 presidential election, we must assume that the 2004 election will be close, with the potential of producing legal wrangling.

In addition to dealing with the equal protection problems of reapportionment, Congress should make other changes to improve the integrity of the election process. Among these changes should be requiring proof of citizenship to vote, and banning foreign language ballots (since the law requires that immigrants be able to speak English in order to become a naturalized citizen).