

From: **Tony Quinn** [REDACTED]

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**From Fox and Hounds Blog today
Redistricting Commission tries to repeal One Person,
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By Tony Quinn
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Mon, May 2nd, 2011

In one of its first acts, the new Citizens Redistricting Commission has decided to ignore the United States and California Constitutions by in effect repealing the historical "one person one vote" rule that has been law in America for 47 years.

They did this by telling their staff to draw districts that will clearly violate constitutional population standards. This is so their final maps can over represent liberal areas of California that are losing population, such as Los Angeles and the Bay Area, and then

under represent the more conservative inland areas of California that are growing.

In his famous "one person - one vote" ruling in 1964, Chief Justice Earl Warren said this was unconstitutional. "Legislators represent people, not trees or acres; legislators are elected by voters, not farms or cities." This is the heart of equal representation, districts must be equally populated. No one questioned this for 47 years until the Commission voted to ignore it last Thursday night.

At issue is how much population deviation is allowed between different districts. The Supreme Court has made it clear that in the case of congressional districts, no deviation is allowed; they must be as equal as you can make them. But the Supreme Court has allowed states to adopt a slightly different standard for state legislative districts.

In 1965, the California Supreme Court applied the new "one person one vote" standard in its famous *Silver v. Brown* decision. California legislative districts were allowed to deviate by no more than two percent

In 1973, in a case called *Legislature v Reinecke*, the Court further refined the standard: "Population of Senate and Assembly districts should be within one percent of the ideal except in unusual circumstances, and in no event should a deviation greater than two percent be permitted."

In 1981, the Attorney General was asked to opine on the new constitutional language that said districts should have "reasonably equal populations." The Attorney General said that districts must adhere to the *Reinecke* case standard. This was repeated by the Supreme Court Masters in 1991 when they drew new districts: "We have been directed by the Supreme Court to follow the *Reinecke* standards." In 2001, the legislature applied this standard to the current districts. In fact, the legislature tried to keep population deviations under 1,000 people, and in many cases the deviations were well under 1,000.

So you would think the law would be clear to the new Citizens Redistricting Commission, but you would be wrong. On April 28, the Commission voted to allow deviations up to five percent among legislative districts. A five percent deviation will amount to 46,567 people in Senate districts and 23,284 people in Assembly districts. That's a lot of folks. Apply this standard in a growth area like Riverside County and you can effectively disenfranchise 200,000 people.

So why would the Commission be doing this? The five percent deviation is the brainchild of Commissioner Maria Blanco, who is among the most left wing members of the Commission. Blanco's allies among liberal activist groups have discovered that they cannot maintain all the existing Democratic and inner urban legislators because of slow population growth. So they want a mechanism to under populate Los Angeles and the Bay Area at the expense of growing inland areas such as San Joaquin County, San

Bernardino County and Riverside County.

There is also a partisan aspect to all this. Most of the current Democratic seats are under populated; most of the current Republican seats are over populated. This scheme will deny political representation to areas of growth, generally Republican areas, and over represent areas of declining growth, generally Democratic.

But forget the partisan implications; the real issue is the cavalier disregard of the constitution and court precedence by this Commission. Not once in 47 years has any judge anywhere said California can have districts with this huge level of deviation. Equal population has meant equal population ever since Chief Justice Warren said so.

But Blanco manipulated nine of her colleagues into going along with this effort to nullify federal and state law. And this is not the only case. At a hearing last week their new attorney, a former justice of the state court of appeal, suggested that they divide the state into its natural geographic regions. Commissioner Vincent Barabba curtly dismissed this advice, but in fact it is very hard to meet the constitutional criteria if you do not respect the state's diverse geography. Again, the Commission seems almost contemptuous of the limitations placed on it by the constitution and a long body of redistricting law.

Will Commissioner Blanco's power grab work? Not likely. When communities realize they are being denied representation they will scream bloody murder. A plan that discriminates against hundreds of thousands of Californians in growing counties will not hold up in court. Does anyone expect the current California Supreme Court to throw out nearly half a century of its precedent that no one has ever questioned?

Sorry, Commissioner Blanco, but nullification of constitutional standards went out with the Civil War. You lose.

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