QUOTES FROM THE MAINE CONSTITUTION, STATUTES, THE 2013 COMMISSION REPORT, AND SUPREME JUDICIAL COURT OPINIONS, RE: APPORTIONMENT STANDARDS

(draft 08-11-2021)

[The quotes include only those portions of a law or opinion that state specific, general standards for apportionment. Any editing is indicated by brackets. Lengthy paragraphs that are quoted are separated by issues addressed.]

The Maine Constitution

Art. 4, pt. 1, § 2 [House]:

The number of Representatives shall be divided into the number of inhabitants of the State exclusive of foreigners not naturalized according to the latest Federal Decennial Census or a State Census previously ordered by the Legislature to coincide with the Federal Decennial Census, to determine a mean population figure for each Representative District.

Each Representative District shall be formed of contiguous and compact territory and shall cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts.

Whenever the population of a municipality entitles it to more than one district, all whole districts shall be drawn within municipal boundaries. Any population remainder within the municipality shall be included in a district with contiguous territory and shall be kept intact.

Art. 4, pt. 2, § 2 [Senate]:

[T]he Legislature which shall convene in the year 2021 and every tenth year thereafter, shall cause the State to be divided into districts for the choice of a Senator from each district, using the same method as provided in Article IV, Part First, Section 2 for apportionment of Representative Districts. [*The referenced method is the standards quoted above.*]

Art. 9, § 24 [Congressional Districts]:

In making such a reapportionment, the commission shall ensure that each congressional district is formed of compact and contiguous territory and

crosses political subdivisions the least number of times necessary to establish districts as equally populated as possible.

Art. 9, § 25, ¶ 1 [County Commissioner Districts]:

A. The apportionment commission shall divide the number of commissioners in each county into the number of inhabitants of the county, excluding foreigners not naturalized, according to the latest Federal Decennial Census or a state census previously ordered by the Legislature to coincide with the Federal Decennial Census, to determine a mean population figure for each county commissioner district.

Each county commissioner district must be formed of contiguous and compact territory and must cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts.

Whenever the population of a municipality entitles it to more than one district, all whole districts must be drawn within the municipal boundaries. Any population remainder within the municipality must be included in a district drawn to cross the municipal boundary as long as the population remainder within the municipality is contiguous to another municipality or municipalities included in the district.

Any county that already meets the standards and guidelines for equally populated districts, as established by this section, this Constitution and the Constitution of the United States, need not be reapportioned.

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Maine Statutes

21-A M.R.S. § 1206 [Congressional Districts]:

[T]he commission shall ensure that each congressional district is formed of compact and contiguous territory and crosses political subdivisions the least number of times necessary to establish districts as equally populated as possible.

21-A M.R.S. § 1206-A [State Legislative Districts]:

When reapportioning districts, where possible, the Legislative Apportionment Commission shall attempt to form functionally contiguous and compact territories. For purposes of this section, a "functionally contiguous

and compact territory" is one that facilitates representation by minimizing impediments to travel within the district. Impediments to travel include, but are not limited to, physical features such as mountains, rivers, oceans and discontinued roads or lack of roads.

The commission shall recognize that all political subdivision boundaries are not of equal importance and give weight to the interests of local communities when making district boundary decisions.

21-A M.R.S. § 1207 [Interpretation by Secretary of State]:

Where a road, street, waterway, boundary of a tract, boundary of a block group or boundary of a block is used as a boundary of an election district, the boundary line lies at the center of the street or road, at the thread of the waterway or at the boundary of the tract, block group or block, unless otherwise noted.

When a description refers to a bridge or railroad line, the district boundary lies at the center of the bridge or railroad tracks.

When a description refers to a railroad spur, it refers to the principal spur in the area.

When a description uses the word "ocean," the district boundary line lies coincident with the legal boundary of the particular community along or within the Atlantic Ocean.

When an election district includes a particular unorganized territory, it includes that unorganized territory as described in the United States Census for 1990, whether the territory is organized or unorganized on the effective date of this chapter.

Unless otherwise noted, a district that names a municipality includes all of the municipality.

30-A M.R.S. § 61 [County Commissioner Districts]:

There shall be a board of commissioners for each county consisting of a chairman and 2 other persons. Each of the commissioners of a county must represent one of the commissioner districts established by law for the commissioner's county. [*Note: Larger numbers of commissioner districts for five counties are addressed by 30-A M.R.S. § 66-B.*]

30-A M.R.S. § 65(1) [County Commissioner Districts]:
A.   The apportionment commission shall divide the number of commissioners in each county into the number of inhabitants of the county, excluding foreigners not naturalized, according to the latest Federal Decennial Census or a state census previously ordered by the Legislature to coincide with the Federal Decennial Census, to determine a mean population figure for each county commissioner district.

Each county commissioner district must be formed of contiguous and compact territory and must cross political subdivision lines the least number of times necessary to establish as nearly as practicable equally populated districts.

Whenever the population of a municipality entitles it to more than one district, all whole districts must be drawn within the municipal boundaries.

Any population remainder within the municipality must be included in a district drawn to cross the municipal boundary as long as the population remainder within the municipality is contiguous to another municipality or municipalities included in the district.

Any county that already meets the standards and guidelines for equally populated districts, as established by this section, the Constitution of Maine and the Constitution of the United States, need not be reapportioned.

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2013 Unanimous Apportionment Commission Report
[for Senate, House, and County Commissioner Districts]
[pages 5-6]

Redistricting Criteria

The Unanimous Report of the Commission uses the following criteria in recommending the attached apportionment plan.

Equal Population

The population of the electoral districts shall be as nearly equal as practicable (21-A MRSA 1206). The population deviation between electoral districts shall

not exceed that deemed permissible by the United States Supreme Court under Article 1 Section 2 of the United States Constitution as established in Wesberry v. Sanders, Kirkpatrick v. Preisler 394 U.S. 526 (1969) and Karcher v. Daggett, 462 U.S. 725 (1983).

Compactness and Contiguity

21-A MRSA 1206 provides that districts shall be formed of contiguous and compact territory. All districts must be of adjoining territory. However, contiguity of legal boundaries by water shall be permissible.

Displacement

Per the criterion laid out in the Report of the 1993 Apportionment Commission and the Maine Supreme Judicial Court's 2003 Apportionment Order the Commission will attempt to avoid displacing voters and municipalities from their historical districts to the extent possible. The avoidance of disruption allows communities to maintain their existing lines of accountability and cooperation and minimizes the disruption to voters.

Political Subdivisions

21-A MRSA 1206 requires that electoral districts cross political subdivision lines the least number of times necessary to comply with the requirements of one person-one vote. Due to the state's population demographics and geography, and the important and unique roles of municipalities and counties in the political process, including the administration of elections, the Commission shall use reasonable efforts to protect the integrity of municipal and county boundaries.

Geographic Size and Travel Impediments

Per the criterion laid out in the Maine Supreme Judicial Court's 2003 Apportionment Order the Commission also considered geographic size as a criterion and attempted to minimize the travel burdens created by excessively large districts to the extent practicable.

Terms

The following terms are used in the apportionment plan:

AbsoluteDeviation: The number by which a given district is higher or lower than the ideal district.

RelativeDeviation: The percent by which a given district is higher or lower than the ideal district.

AbsoluteMeanDeviation: The sum of all absolute deviations (ignoring plus or minus signs) divided by the number of districts.

IdealDistrict: The total State population divided by the number of districts allowed.

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Maine Supreme Judicial Court Opinions

***In re 2003 Apportionment of the State Senate and United States Congressional Districts*, 2003 ME 86, 827 A.2d 844. [Court Reapportionment of Senate and Congressional Districts]:**
[Re: Congressional Districts] [¶16] . . . the Court has crafted a new configuration that would reduce the added square miles and travel challenges that resulted from the Court's proposed plan, while at the same time fulfilling the Court's responsibility to minimize divisions of counties, municipalities, and communities of interest. We have done so by dividing only one county, Kennebec, and dividing it in such a way that no municipalities are divided and communities of interest are kept together.

[¶19] The Final Plan for the Senate has the following characteristics:

Relative Mean Deviation:	0.97%	
Population overall range:		3.57%
Roeck compactness:	.4	
Towns splits:	4	
(Biddeford, Portland, Scarborough, Westbrook)		
Districts with one county:	23	
Districts with two counties:	8	
Districts with three counties:	4	

[¶20] The Final Plan for the Congressional Districts has the following characteristics:

Relative mean Deviation:	0.00%
Population overall range:	.01
Absolute population range:	-12 to 11
Roeck compactness:	0.43
County splits:	1

***In re 2003 Legislative Reapportionment of the House of Representatives*, 2003 ME 81, 827 A.2d 810 [Appeal from House Reapportionment]:**

[¶8] When the Legislature reaches agreement on a decennial reapportionment, the resulting law establishing the new districts is entitled to a strong presumption of validity. *See In re 1983 Legislative Apportionment of House, Senate, & Cong. Dists.*, 469 A.2d 819, 827 (Me. 1983).

[¶9] . . . We will not alter the Legislature's chosen apportionment unless the Legislature failed to comply with constitutional norms, *see Karcher v. Daggett,* 462 U.S. 725, 740 (1983), or was motivated by impermissible discriminatory intent in making the compromises necessary to harmonize state and federal standards, *In re 1983 Legislative Apportionment*, 469 A.2d at 827.

[¶10] The foremost principle guiding reapportionment is the requirement that each person receive equal access to representation. *See Chapman v. Meier,* 420 U.S. 1, 22 (1975). Any apportionment plan must comply with Federal Constitutional mandates, including the "one person, one vote" principal of the Equal Protection Clause of the Fourteenth Amendment. *See id.* at 23 (acknowledging "that some leeway in the equal population requirement should be afforded states in devising their legislative reapportionment plans"). Thus, state legislatures must "'make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable.'" *In re 1983 Legislative Apportionment*, 469 A.2d at 826 (quoting *Reynolds v. Sims*, 377 U.S. 533, 577 (1964)).

[¶13] . . . Apportionment legislation does not become invalid because it takes into account political considerations or is politically motivated. *See Davis v. Bandemer*, 478 U.S. 109, 138-39 (1986) (plurality opinion) (disagreeing with the analysis that "the intentional drawing of district boundaries for partisan ends and for no other reason violates the Equal Protection Clause in and of itself"); *Gaffney v. Cummings,* 412 U.S. 735, 752-53 (1973) ("[I]t would be idle, we think, to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it. . . . The reality is that districting inevitably has and is intended to have substantial political consequences."); *Burns v. Richardson*, 384 U.S. 73, 89, n.16 (1966) ("The fact that district boundaries may have been drawn in a way that minimizes the number of contests between present incumbents does not in and of itself establish invidiousness."); *In re Legislative Districting of the State,* 805 A.2d 292, 297 (Md. 2002) (concluding that if a plan does not violate constitutional requirements, the fact that it was formulated "to preserve communities of interest, to promote regionalism, to help or injure incumbents or political parties, or to achieve other social or political objectives, will not affect its validity"); *In re Reapportionment of Hartland,* 624 A.2d 323, 337 (Vt. 1993) ("As long as constitutional and statutory criteria regarding redistricting are adhered to . . . creating districts to avoid contests between incumbents is a legitimate consideration. . . .").

In re 1993 Apportionment: Final Order, SJC-93-229 (June 29, 1993, & Errata, June 30, 1993) [Court Reapportionment]:
[No quotes articulating general standards for apportionment, just references to changes from prior plans.]

In re Apportionment of 1993: Preliminary Order, SJC-93-229 (June 15, 1993) [Court Reapportionment]:
 [page 2] The Maine Constitution requires us to make each district contiguous and as compact as possible and to subdivide municipalities and counties as little as possible (i.e., "shall cross political subdivision lines the least number of times necessary . . .").

In re 1983 Legislative Apportionment of House, Senate, and Congressional Districts, 469 A.2d 819 (Me. 1983) [Appeal from Legislative Apportionments]:
826 The Equal Protection Clause of the federal constitution requires that the seats in both houses of a bicameral state legislature be apportioned

on a population basis. A state must "make an honest and good faith effort to construct districts . . . as nearly of equal population as is practicable." *Reynolds v. Sims*, 377 U.S. 533, 568, 577, 12 L. Ed. 2d 506, 84 S. Ct. 1362 (1964). The Supreme Court of the United States has recognized, however, that honest and good faith efforts will not always result in absolute equality of population between districts. *De minimis* deviations are unavoidable. *See Swann v. Adams*, 385 U.S. 440, 444, 17 L. Ed. 2d 501, 87 S. Ct. 569 (1967). "Mathematical exactness or precision is hardly a workable constitutional requirement." *Reynolds v. Sims*, 377 U.S. at 577. Deviations from equality that go beyond even those that are unavoidable have been tolerated when they can be justified as the product of a rational state policy. *See Brown v. Thomson*, 462 U.S. 835, 852, 77 L. Ed. 2d 214, 221, 103 S. Ct. 2690 (1983); *Mahan v. Howell*, 410 U.S. 315, 325, 35 L. Ed. 2d 320, 93 S. Ct. 979 (1973); *Reynolds v. Sims*, 377 U.S. at 579. For example, the Court has recognized that deviations from equality are permissible where necessary to effectuate legitimate state policies such as maintaining the integrity of political subdivisions or providing for electoral districts of compact and contiguous territory. *Id.* at 578.

In applying these principles, the Supreme Court has held, as a general matter, [8] that an aggregate deviation [9] of less than 10% in an apportionment plan is "insufficient to make out a prima facie case of invidious discrimination under the Fourteenth Amendment so as to require justification by the State." *Brown v. Thomson*, 462 U.S. at 842, 103 S. Ct. at 2695-96, 77 L. Ed. 2d at 221-22 (quoting *Gaffney v. Cummings*, 412 U.S. at 745). A plan with a larger aggregate deviation creates a prima facie case of discrimination that must be justified by the state. In the latter situation the reviewing court must inquire "whether the legislature's plan 'may reasonably be said to advance [a] rational state policy' and, if so, 'whether the population disparities among the districts that have resulted from the pursuit of this plan exceed constitutional limits'." *Brown v. Thomson*, 462 U.S. at 843, 77 L. Ed. 2d at 222 (quoting *Mahan v. Howell*, 410 U.S. at 328). The Court has upheld apportionment plans containing aggregate deviations in excess of 10% where it has found those

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[8] An apportionment plan with only minor deviations may still be invalid if it masks or is a result of impermissible discriminatory intent. *See Gaffney v. Cummings*, 412 U.S. at 751.

[9] Aggregate deviation is the sum of the absolute values of the percentages by which the populations of the most underrepresented district and the most overrepresented district vary from the population of the "ideal" district. The population of the "ideal" district is obtained by dividing the population of the state by the total number of districts to be created.

deviations to be the result of a state's rational objective of preserving the integrity of political subdivisions.

827 We shall not intervene in the apportionment process unless we are convinced that the Legislature failed to use proper judgment or was in fact motivated by impermissible discriminatory intent in making the compromises necessary to harmonize state and federal standards. *See Logan v. O'Neill*, 448 A.2d [1306, 1314-15 (Conn. 1982)]. Since an apportionment law is entitled to the same presumption of validity as any other legislative enactment, it is incumbent upon petitioners to make the required showing.

827-828 According to the 1980 federal census data that provided the basis for the apportionment of both the House and the Senate, the population of Maine was 1,125,030. The apportionment plan proposed a Senate of 35 members elected from single-member districts. The "ideal" senatorial district would therefore contain a population of 32,144 persons.   The districts contained in the apportionment law range from a low of 30,550 to a high of 33,171, with deviations from the ideal of -4.959% and +3.194%, respectively, for an aggregate deviation of 8.153%. Because this aggregate deviation falls within the range considered to be *de minimis* under the federal constitution, and because petitioners make no allegation that the reapportionment of the senatorial districts results from any discriminatory intent, we conclude that petitioners have failed to establish a prima facie case under federal law with respect to the Senate plan.

828-829 The enacted apportionment plan for the House of Representatives creates the constitutionally mandated 151 districts. When this figure is divided into the state's population, a population of 7,451 is obtained for the "ideal" district. The House districts contained in the apportionment law range from a low of 6,936 to a high of 7,884, with deviation from the ideal of -6.91% and +5.81%, respectively, for an aggregate deviation of 12.72%. Because this aggregate deviation exceeds the *de minimis* level established by federal law, the burden shifts to respondents to show that this deviation in the House districting is the product of the Legislature's implementation of a rational state policy. We find, however, that respondents have successfully carried that burden; they have established that this aggregate deviation "may reasonably be said to advance [the] rational state policy" of respecting municipal boundaries as required by the Maine Constitution. *Brown v. Thomson*, 462 U.S.

at 843, 103 S. Ct. at 2696, 77 L. Ed. 2d at 222 (quoting *Mahan v. Howell*, 410 U.S. at 328).

829   In attempting to hold aggregate deviation within tolerable limits and at the same time give meaning to the provision of the state constitution that requires districts to "cross political subdivisions lines the least number of times necessary," the reapportionment plan adopted by the Legislature reflected a judgment that the preservation of city and town boundaries was of greater importance than preservation of county boundaries. Respondents present three justifications for that judgment: (1) the strict adherence to county boundaries required by the Maine Constitution prior to 1975 has been removed; (2) cities and towns, unlike counties, enjoy home rule; and (3) elections are conducted on a municipal basis, not a county basis. We find the judgment reflected in chapter 93 to be not only a rational one, but also one that is peculiarly legislative in character and therefore worthy of judicial deference.

830 Although the aggregate deviation in the House apportionment exceeds the federal *de minimis* limit, respondents have established to our satisfaction that this deviation "may reasonably be said to advance the rational state policy of respecting" municipal boundaries whenever possible. *Mahan v. Howell*, 410 U.S. at 328. Respondents' district-by-district analysis also shows that other state constitutional requirements, including the requirement that districts be formed of compact and contiguous territory and the requirement that -- in towns or cities of greater than ideal size -- whole districts be drawn within municipal boundaries, were applied properly and in good faith.

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[There were no Maine Supreme Judicial Court opinions addressing reapportionment in 2011-2013. The remaining Maine Supreme Judicial Court Opinions reviewing or doing redistricting preceded the 1975 amendment to the Maine Constitution setting standards governing apportionment and creating the Apportionment Commission. As a result of the constitutional amendment setting standards for apportionment and evolution of standards for apportionment in decided opinions, no quotes from opinions before 1975 are included here.]