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# Inequality of votes in the elections for the Chamber of Deputies

*Voting inequality in the elections for the chamber of representatives*

Vinicius Carloni Cypriano

**SUMMARY**

Equality of votes is a political right provided for in the Federal Constitution, arising from the democratic principle, which imposes the notion that no citizen should have more votes than others, and that all votes should have the same weight. The proportionality between population and number of representatives, in turn, guarantees that votes will have the same weight, regardless of where citizens live in the national territory. However, the constitutional rules for distributing seats in the Chamber of Deputies among the federative units cause disproportionality between the representation of the states and the Federal District and their respective populations, which creates inequality in the value of citizens' votes based on their electoral domicile.

The objective of this article, therefore, is to present a general overview of this voting inequality in the Chamber of Deputies.

**Keywords:** Equality of vote; proportional representation; number of representatives per state; state benches.

**ABSTRACT**

Equality of votes is a political right provided for in the Federal Constitution, arising from the democratic principle, which imposes the notion that no citizen should have more votes than others, and that all votes should have the same weight. The proportionality between population and number of representatives, in turn, guarantees that votes will have the same weight, regardless of where citizens live in the national territory. However, the constitutional rules for distributing seats in the Chamber of Deputies among the federative units cause disproportionality between the representation of the states and the Federal District and their respective populations, which creates inequality in the value of citizens' votes based on their electoral domicile. The objective of this article, therefore, is to present an overview of this inequality of votes in the Chamber of Deputies.

**Keywords:** Equal voting; proportional representation; number of deputies per state; state delegations; integrity in legislation.

## 1. INTRODUCTION

The idea that all citizens are politically equal and that, therefore, they must have equal right to vote, without discrimination of any kind, is intrinsic to the democratic regime itself. In English-speaking countries, this conception that no citizen should have more votes than others, and that the votes of all participants in the electoral process must have the same weight, is summarized in the expression “one man, one vote”.

In the United States, the topic of equality is very present in public debate, especially in times of presidential elections. The media1 and legal literature2 often criticize the deleterious effects of the electoral college in the choice of the President of the Republic, insofar as it imposes different weights to the votes of citizens from different states.

The jurisprudence of the American Supreme Court itself is very fruitful with regard to justification and delimitation of the constitutional right to equal voting. This case law was outlined in several cases in which the Supreme Court ordered the complete reformulation of state representative systems, which privileged, with regard to the value of the vote, voters from certain parts of the states to the detriment of others.

This same intensity of debate about equality of vote, however, does not exist in Brazil, although the country has a substantial inequality of votes in elections parliamentarians. As will be better analyzed, this inequality arises from constitutional rules distribution of seats in the Chamber of Deputies among the federative units, which cause disproportionality in the number of deputies per state in the legislative house3 .

The purpose of this article, therefore, is to present, through a broad bibliographical review, the general overview of the origin and characteristics of voting inequality in elections in Chamber of Deputies due to the constitutional rules for distributing seats among the federative units.

The article is organized into three parts. In the first, the connection between the principle democratic, equality of vote and proportionality in state representation in the Chamber of Deputies. On Monday, the rules for distributing seats in the Chamber of Deputies will be presented. Deputies between the federative units, which mitigate the principles of equality of vote and proportionality of state representation. In the third, the dimension of the voting inequality in Brazil in parliamentary elections.

After the topics listed above, the text concludes, in which a brief summary of the work.



[1] In the American media, check out, as an example, the following article, published by The New York Times in 2020, which discusses the disparity in votes among voters in the American presidential elections: ASTOR, 2020.
[2] In legal literature, it is worth checking, as an example, LOOMIS; SCHUMAKER, 2002.
[3] This dysfunctionality of the representative system, very common in modern democracies, is called in the literature international “malapportionment”.

## 2. THE DEMOCRATIC PRINCIPLE, THE EQUAL VALUE OF THE VOTE AND THE PROPORTIONALITY IN STATE REPRESENTATION IN THE CHAMBER OF DEPUTIES

The Brazilian political regime inaugurated with the Federal Constitution of 1988 is based on democratic principle (SILVA, 2014). The preamble of the Federal Constitution itself states this clear, by proclaiming that "the representatives of the Brazilian people, gathered in the National Assembly Constituent Assembly", they decided to establish "a Democratic State" (BRAZIL, 1988). When stating their democratic vocation, which is perceptible throughout the text, the constitutional work expresses the requirement of full participation of all Brazilians, understood as politically equal, in the political life of the country (MORAES, 2019).

Popular sovereignty, an important corollary of the democratic principle, is proclaimed in art. 1st, sole paragraph, of the Federal Constitution: "All power emanates from the people, who exercise it through elected representatives or directly, under the terms of this Constitution" (BRAZIL, 1988). This device, in addition to stating that the people are the source and holder of the power exercised by the Brazilian State, also establishes that their participation in public affairs can occur through the formation of representative institutions or through instruments of direct democracy (SILVA, 2014).

The action of popular sovereignty is regulated by a normative framework provided for in Federal Constitution (SILVA, 2014). These are the political rights. In the definition of José Afonso da Silva, political rights are "the set of permanent legal norms" that enable "the right democratic process of people's participation in government" (2014, p. 348).

Equality of vote is precisely one of the political rights set out in the text constitutional, which solidifies the democratic conception that all citizens are political equals. In this sense, art. 14 of the Federal Constitution establishes that "popular sovereignty shall be exercised by universal suffrage and by direct and secret vote, with equal value for all" (BRAZIL, 1988) .4 constitutional text seeks to guarantee, with this device, that all citizens must have equal and effective opportunity to vote, and that all votes should have the same weight. Equality of vote,



4 In addition to being provided for in the constitutional text, this fundamental right to equal voting rights is also present in international treaties to which Brazil is a signatory. In this sense, the International Covenant on Civil and Political Rights of 1966 and the American Convention on Human Rights of 1969 state, respectively, in art. 25, paragraph "b", and in art. 23, paragraph "a", provisions with identical wording, that all citizens must have the right to "vote and to stand for election in periodic, genuine and equal elections held by universal and equal suffrage and by secret ballot" (UN, 1966; OAS, 1969).

therefore, it does not admit any discriminatory treatment, whether regarding voters or own effectiveness of their electoral participation (BRANCO; MENDES, 2020).

Violations of this fundamental right, in fact, can occur in a number of ways. equality of vote is infringed, for example, if the electoral system guarantees different numbers of votes to voters. This was the case in the United Kingdom until 1948, since electoral laws allowed that some voters, who met certain requirements, could vote more than once in the same election to the House of Commons, while the vast majority of voters could only vote once time (NORRIS, 1995). This assignment of different numbers of votes to election participants, for obviously, it is incompatible with the right to equal voting.

The right to equal voting is also violated when the weight given to the vote of some voters is different from the weight attributed to the votes of others (KELSEN, 2005). Take, for example, the case where two electoral districts, one with 10,000 voters and the other with 20,000 voters, elect a single representative each (KELSEN, 2005). In this context, the value of a person's vote in the first district is equivalent to twice the vote of a person in the second[5] . The inequality of weight of votes therefore arises if the proportion between the number of voters and the number of representatives to be elected is different from one electoral district to another (KELSEN, 2005).

Incidentally, the jurisprudence of the Supreme Court of the United States of America provides important contribution to the issue of equal voting. In several judgments from the 1960s, the The Supreme Court has ordered the reformulation of several state electoral systems, for violating the the right of citizens of the same state to have an equal vote. The precedents Americans are especially important for understanding not only the justification and delimitation of equality of vote, but also the cases in which the violation of this occurs right.

In Gray v. Sanders, voters in the state of Georgia challenged the state's election system. primaries used by the Democratic Party to define the party's candidates for state offices (USA, 1963). At the time, the primary elections in Georgia were similar to the American presidencies. In this system, the 189 counties of the state of Georgia were classified into three categories, according to population size, so that each county category



[5] Hans Kelsen (2005) points out that the weight of the vote, formulated mathematically, is a fraction whose denominator is the number of voters in a given electoral district and whose numerator is the number of representatives to be elected. In the example described, therefore, the value of a person's vote in the first district is 1/10,000, while that of a voter in the second district is 1/20,000.

was entitled to a certain number of voting units ("unit votes")6 (USA, 1963). The person whoever obtained the most popular votes in the county took all the voting units in that county locality (USA, 1963). In the end, the person who was chosen as the Democratic Party candidate was the one who obtain the largest number of voting units, regardless of the number of popular votes that had received (USA, 1963).

In Georgia's primary election system, there was no proportionality between the number of voting units assigned to each county and the respective population size. In this sense, the most populous counties in the state had, proportionally, fewer units of vote than less populous counties (USA, 1963). Fulton County, the most populous in the state of Georgia, in 1960, had 14.11% of the total population of the state, but had only 6 voting units in the primary elections, which corresponded to only 1.46% of the total of 410 units voting system (USA, 1963). The practical effect of this system was therefore to distort the value of the votes of citizens of Georgia, given that the number of popular votes required for obtained a voting unit varied considerably among the different counties of the state (USA, 1963).

The Supreme Court ruled in this case that the use of the voting unit system ("county-unit system") of Georgia was unconstitutional, in that it imposed greater weight on the rural vote than than the urban vote (USA, 1963). In this sense, he pointed out that the Equal Protection Clause ("Equal Protection Clause")7 requires that all who participate in an election must have an equal right to vote, regardless of their race, sex, occupation, income, or place of residence (USA, 1963). By discussing the issue of equality of vote, the Court raised an important question about the differentiation of the vote based on the territorial location of the voter:

> If a state in a state election were to give greater weight to the male vote than to the female vote, or greater weight to the white vote than to the black vote, no one could successfully argue that such discrimination was permissible. How, then, can a person receive twice or ten times the voting power of another person in a state election simply because he lives in a rural area or because he lives in the smallest rural county? (USA, 1963, p. 7)

6 The 3 largest counties in the state of Georgia, in terms of population, had 6 voting units; the next 30 counties in population ranking had 4 voting units; finally, the smallest counties had 2 voting units (USA, 1963)

7 The Equal Protection Clause, provided for in the 14th Amendment to the U.S. Constitution, was included in the constitutional text shortly after the end of the American Civil War, and guarantees equal protection of the laws to all citizens. Its purpose was, above all, to prevent discrimination against black populations by state legislation. The Clause determines, among other things, that "representatives shall be apportioned among the several States according to their respective numbers, computing the whole number of persons in each State, exclusive of Indians not taxed" (USA, 1789).

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Finally, the Supreme Court ruled, in this judgment, that the concept of political equality expressed in the Declaration of Independence8 , in Abraham Lincoln's Gettysburg Address9 and in the American Constitution could only mean one thing: one person, one vote (USA, 1963).

In the case of Wesberry v. Sanders, in turn, the discussion revolved around the legitimacy of the apportionment of seats in the Georgia state legislature (USA, 1964b). In the early 1960s, Georgia's electoral districts,10 although they had the same representation for the state legislature, had very different population numbers, so that the proportion of inhabitants per representative varied considerably between districts. In this context, for example, Georgia's 5th congressional district, the most populous in the state, had, in 1960, 823,680 inhabitants, while the 9th electoral district, the least populous, had only 272,154 inhabitants, both of which elected only one state congressman (USA, 1964b).

In this scenario, the congressman from the 5th Electoral District represented about three times the number of people from the 9th District congressman (USA, 1964b), which made the value of a vote voter from the 5th District had much less weight in the parliamentary election than that of a voter from the 9th District (USA, 1964b). Population disparities between electoral districts, therefore, deprived voters in more populous counties of the right to have their votes cast for the congressmen weighed in the same way as other Georgia voters (USA, 1964b).

The Supreme Court, in ruling on the case, found that the state law that defined the districts Georgia's electoral law was unconstitutional because it illegitimately expanded the value of votes cast some voters, while decreasing that of others (USA, 1964b). In this vein, the Court pointed out that, in result of the constitutional rule that establishes that the House of Representatives must be chosen by the people, the vote of a citizen should be worth, as far as possible, the same as that of any other another citizen in the state (USA, 1964b). Therefore, it was established that, for this rule to be fulfilled, electoral districts should be drawn so that they have approximately the same number of inhabitants:

> It would be extraordinary to suggest that in state elections the votes of residents of some parts of a state, such as the sparsely populated 9th District of Georgia, could

8 The Declaration of Independence states the idea that all people should have representation in the Legislative Branch (USA, 1776).
9 In this speech, Abraham Lincoln stated that the democratic regime is based on the idea of “government of the people, for the people, by the people” (USA, 1963).
10 Georgia's legislative elections, like most congressional elections in the United States, use a district electoral system, in which the state is divided into electoral districts, in a number equivalent to the number of legislative seats in dispute, each electing one of the representatives in the legislature. In this electoral system, the candidate who obtains the most votes in the district wins the electoral contest.

> have two or three times the value of the votes of people living in the most populous areas of the state, such as the 5th District around Atlanta. We do not believe that the framers of the Constitution intended to permit the discriminatory dilution of the value of votes by drawing districts containing widely varying numbers of residents.
> To say that a vote is worth more in one district than in another not only runs counter to our fundamental ideas of democratic government, but also sets aside the principle of a House of Representatives elected “by the people” (USA, 1964b, p. 4).

The US Supreme Court, therefore, established the understanding that state legislatures cannot draw the boundaries of electoral districts in a way that gives some voters a greater voice in choosing a congressman than others, under penalty of distorting the principle, enshrined in US Constitution, of equal representation for an equal number of people (USA, 1964a).

In Reynolds v. Simons, the Supreme Court again examined the issue of the distribution of legislative seats, this time in relation to the state of Alabama (USA, 1964a). At the time, the proportions between representation and population size of Alabama's electoral districts were considerably disparate. In the House of Representatives, for example, Bullock County, with 13,462 inhabitants, had 2 representatives, which corresponded to approximately 1 representative for every 6,732 inhabitants, while Jefferson County, with 634,864 inhabitants, had only 7 representatives, which corresponded to approximately 1 representative for every 90,709 inhabitants (USA, 1964a). The disproportion in the State Senate was even more manifest given that the County of Jefferson, with its more than 600,000 inhabitants, had only 1 senator, while the County Lowndes, which had only 15,417 inhabitants, also elected only one senator (USA, 1964a).

The Supreme Court upheld, in this case, the decision of the local Federal Court, which had instituted new territorial distribution (“reapportionment”) of the seats in the state legislature, taking into account the unconstitutionality of the representation that existed until then (USA, 1964a). At the time, the Supreme Court ruled that the Equal Protection Clause requires that the chairs of both houses of the Government State legislatures must be distributed territorially based on population size, so that each electoral district has an approximate number of inhabitants, although it is not absolute mathematical accuracy is required (USA, 1964a). The idea is that by assigning equal representation legislative to all citizens of the state, regardless of where they reside, the value of the vote is equalized. In this sense, the Supreme Court reaffirmed the understanding that the assignment of weights different votes based on the voter's place of residence is incompatible with the Constitution American:

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> Legislators represent people, not trees or acres. Legislators are elected by voters, not by farms, cities, or economic interests. As long as we adopt a representative form of government, and as long as our legislatures are instruments of government directly elected by the people, the right to elect legislators freely and unimpeded is the basis of our political system. It is hardly possible to make a constitutional claim that certain voters should be entirely barred from voting for members of the state legislature. And if a state were to provide that the votes of citizens of one part of the state should be worth twice, or five, or ten times as much as the votes of those in another part of the state, it would hardly be possible to claim that the franchise of residents of disadvantaged areas was not effectively affected. It would be extraordinary to suggest that a state is constitutionally authorized to pass a law providing that some of the voters of the state may vote twice, five, or ten times for their representatives, while voters living in another part of the state may vote only once. And it is inconceivable that a state law should provide that, in counting votes for legislators, the votes of citizens of the state are multiplied by two, five, or ten, while the votes of people in other areas are counted only at face value. Surely the effect of a districting scheme in the state legislature that gives the same number of representatives to unequal numbers of voters is identical. The overloading and overweighting of the votes of those who live here has the effect of diluting and underweighting the votes of those who live there. The resulting discrimination against these individual voters who live in disadvantaged areas is easily demonstrated mathematically. Their right to vote is simply not equal to the right to vote of those who live in a state-favored area. Two, five, or ten of them must vote before the effect of their vote is equivalent to that of their favored neighbor. To give different weights to the votes of citizens, by any method or means, merely because of where they live, hardly seems justifiable. One must always be aware that the Constitution prohibits both sophisticated and simple modes of discrimination (USA, 1964a, p. 16).

The Supreme Court also ruled that there is no factor that justifies control minority of the houses of the state legislature by citizens living in areas favored by poor territorial distribution of legislative seats (“malapportionment”):

> Logically, in a society ostensibly based on representative government, it seems reasonable that a majority of the people of a state should elect a majority of that state's legislatures. To conclude otherwise, to sanction minority control of state legislative bodies would mean a denial of the rights of the majority in a way that outweighs any possible violation of minority rights that might result.
>
> Since legislatures are responsible for enacting the laws by which all citizens are to be governed, they must be bodies that are collectively responsive to the will of the people. And the concept of equal protection, as traditionally understood, requires the uniform treatment of persons who stand in the same relation to the governmental action in question. In the distribution of legislative representation, all voters, as citizens of a state, stand in the same relation, regardless of where they live. Any suggested criteria for differentiating citizens are insufficient to justify discrimination in the weight of their votes unless it is relevant to the purpose of the territorial distribution of legislative seats. Since the achievement of fair and effective representation for all citizens is admittedly the basic purpose of the territorial distribution of legislative seats, we conclude that the Equal Protection Clause guarantees the equal opportunity of all voters to participate in the election of state legislators. Diluting the weight of votes on the basis of place of residence undermines the basic constitutional rights provided for in the Fourteenth Amendment as much as discrimination on the basis of race. [...] Our constitutional system provides amply for the protection of minorities by means other than the granting of majority control of state legislatures. And the democratic ideals of equality and majority rule, which have served this Nation so well in the past, are scarcely of less importance for the present or the future (U.S.A., 1964a, pp. 17-18).

As can be seen, each of the Supreme Court cases presented considerations different constitutional principles on the issue of equal value of votes. In Gray v. Sanders, the Supreme Court established the basic principle of equality of votes among citizens of the same state, as well as establishing that votes cannot be classified, constitutionally, based on place of residence of citizens. In turn, in Wesbery v. Sanders, the Supreme Court understood that the fundamental principle of representative government is that representation should be proportionate to the population size. Finally, Reynolds v. Sims ruled that there is no factor that justifies minority control of legislative houses by voters located in electoral districts favored.

The guidelines established by the US Supreme Court, in the three cases analyzed, can be summarized as follows: (i) the conception of political equality, arising from the very idea of democracy, implies the principle of equality of vote; (ii) all those who participate in an election shall have the right to equal vote regardless of their race, sex, occupation, income or place of residence residence; (iii) the dilution of the value of the votes of some voters is difficult to justify constitutionally; (iv) the attribution of different weights to votes based on the place of residence is discriminatory; (v) the violation of equality of vote is easily verifiable mathematically, by checking the proportion between the number of inhabitants per representative in the different electoral districts.

As can be seen from the case law established by the US Supreme Court, the right to equality in voting rights to all citizens is closely linked to the principle equal representation in the House for equal number of people"). After all, equality in the value of the vote can only be achieved if parliamentarians represent the same number of people. In this way, no voter needs to vote for two, five or ten times to have the same electoral weight as a person residing in another area of the state.

The principle of equal representation for an equal number of people, in fact, is not only applicable in the definition of electoral districts. The distribution of seats in the Federal Chamber among the states must also observe this principle of equal representation in order to maintain equality of vote between citizens of the various federative units. In this sense, the American Constitution establishes that representatives should be distributed among the different states according to the size of their respective populations, with at least one representative per state being guaranteed. (USA, 1789). Historically, in fact, the representation of the states in the US House of Representatives

US has remained strictly proportional to the size of their respective local populations (NOGUEIRA, 1997).

In Brazil, the Federal Constitution also states the principle of proportionality between representation of the states and the Federal District in the Chamber of Deputies and their respective populations11. This principle could be extracted directly from the constitutional provision that provides that the Chamber of Deputies must be composed "of representatives of the people" (BRAZIL, 1988). In However, the constitutional text, to leave no doubt, expressly establishes that "the representation by state and by the Federal District will be established by complementary law, proportionally to the population" (BRAZIL, 1988).

At this point, it is worth mentioning that, although closely linked, the principles of equality of vote and proportionality of state representation are not confused. Equality of vote is political right of each and every citizen, and reflects the idea that everyone should have the same number of votes, and votes must have the same weight in elections, regardless of race, sex, occupation, place of residence or any other factor of discrimination. In turn, the proportionality of state representation is the guiding principle for the distribution of seats in the Chamber between the federative units, which establishes that the number of inhabitants per Federal Deputy should be approximately the same in all states and the Federal District.

In the Brazilian case, as will be demonstrated throughout this work, equality of vote and proportionality of state representation are not strictly observed. The very The Federal Constitution restricts these principles by defining rules that limit the state representation, which ends up implying the absence of proportionality between the population size and the number of representatives to be elected in each federative unit.

## 3. REPRESENTATION IN THE CHAMBER OF DEPUTIES, THE PRINCIPLE OF PROPORTIONALITY OF STATE REPRESENTATION AND THE RULES FOR THE DISPROPORTIONAL ALLOCATION OF STATE BENCHES



11 This principle will be referred to, from now on, as the "principle of proportionality of state representation", although this rule is applicable to both the states and the Federal District.

Although the Chamber of Deputies is the legislative body representing the people, as states the constitutional text itself, the federative component, characteristic of the representation of the Federal Senate, was also considered in its composition. Thus, despite being the house of representation of the people, the representation of the Chamber does not only consider the population quantity in the distribution of seats among the federative units, given the existence of rules that benefit the representation of certain federative units to the detriment of others.

Electoral disputes for the Chamber of Deputies are held in each federative unit, through the proportional electoral system.12 In the design of the Federal Constitution of 1988, each state, federal territory and the Federal District represents an electoral district13. In this model, the seats in the Chamber are divided between the federative units, so that the number of seats up for grabs in each district. Once the elections have been held, the Electoral Court will determine valid votes in the federative unit and calculates, based on the rules established in the Code Electoral, the number of seats that each party is entitled to – which is proportional to the number of votes received – and the candidates elected.

The basic principle of the body of rules that structure the composition of the Chamber is, as seen previously, the proportionality of state representation. The idea is that the number of representatives of each federative unit must correspond, as closely as possible, to the its population. This principle, as already mentioned, is extracted from art. 45, §1°, of the CF/88 which provides that “the total number of Deputies, as well as the representation by State and by District Federal, will be established by complementary law, proportionally to the population” (BRAZIL, 1988).

The proportionality of state representation, however, is subject to restrictions due to the federative component. In fact, the CF/1988 established rules that imply the disproportionality in the distribution of seats in the Chamber of Deputies, in order to increase the weight representative of certain federative units to the detriment of others. Consequently, the principle equality of voting is also affected, as the votes of citizens of certain federative units now have greater weight than the votes of citizens from other locations.



[12] In the proportional electoral system, the number of seats occupied by each party is determined by the proportion of votes obtained (MACHADO, 2018). The proportional electoral system should not be confused with the principle of proportionality of representation. state in the Chamber. The first concerns the way in which seats will be distributed among parties and candidates in an election, while the second refers to the way in which the distribution of seats is organized among the federative units.

[13] Electoral district can be defined as the geographic space where a given election is contested (MACHADO, 2018).

The rules that imply disproportionality of state representation in the Chamber are provided for, above all, in art. 45 of the CF/88. The fundamental law points out, in §1° of this article, that the distribution of seats in the Chamber must be done in such a way that "none of those units of the federation [the states and the Federal District] has less than eight or more than seventy deputies" (BRAZIL, 1988). Then, in §2 of the same article, it states that "[e]ach Territory will elect four deputies" (BRAZIL, 1988).

As can be seen, the Constitution adopts a floor of 8 and a ceiling of 70 representatives per state. and the Federal District, in addition to establishing a fixed number of 4 representatives per territory, which ends up distorting the principle, expressed in the constitutional text itself, that representation must be proportional to the population of the states. After all, a strictly proportional is incompatible with minimum, maximum and fixed limits of representatives.

In addition to the limits of representatives, the form and frequency of updating the state representation in the Chamber were also defined in art. 45, §1°, of the CF/88, when establishing that the state benches must be updated by "complementary law, [...] carrying out the necessary adjustments in the year prior to the elections" (BRAZIL, 1988). With this, the constitutional text assigned to the National Congress the responsibility of reviewing, in each legislature, in the year prior to the parliamentary elections, the number of Deputies per state and Federal District.

The rules on state representation in the Chamber, however, are not only present in the main body of the Constitution. Indeed, the Act on Transitional Constitutional Provisions provides, in its art. 4°, §2°, which "ensures the irreducibility of the current representation of the states and the Federal District in the Chamber of Deputies" (BRAZIL, 1988). The inclusion of this rule is due to the concern of the constituents of Goiás with the decrease in the representation of the state of Goiás in the Chamber of Deputies as a result of the dismemberment of Tocantins (OLIVEIRA, 2004).
After all, with the division of the state of Goiás, there would be a considerable decrease in the population, with consequent reflection on the number of deputies. Thus, the elaboration of this device had the purpose of make the creation of the new state of Tocantins viable and guarantee the representation of Goiás.

The topology of this constitutional rule, in fact, is relevant for the interpretation of its scope. Although the aforementioned device does not expressly establish a limit to the legal effectiveness of the rule, it is Of course, as it is a transitory rule, it would not apply to all elections that might be held. carried out. The intention of the constituents, in reality, was that the norm would be applicable only

the first parliamentary election following the promulgation of the Constitution, in 1990 (OLIVEIRA, 2004). The Supreme Federal Court has even stated that the effectiveness of this transitional constitutional rule has been exhausted.14

As can be seen, therefore, the 1988 Constitution establishes 7 rules relating to state representation in the Chamber of Deputies: (i) proportionality in the distribution of seats between the federative units; (ii) the minimum number of 8 representatives per state and per District Federal; (iii) the maximum number of 70 representatives per state and the Federal District; (iv) the number fixed number of 4 deputies per federal territory; (v) the attribution to the National Congress of the responsibility to define the total number of Deputies and the size of state benches, by means of law complementary; (vi) the imposition of updating state benches in each legislature, in the year prior to the parliamentary elections; and (vii) the temporary impossibility of reducing the representation state in the Chamber of Deputies.

Note that, although it states the principle of proportionality in state representation in the Chamber, all other rules provided for in the Federal Constitution of 1988 imply, to a certain extent, form, in the inequality of the proportion of inhabitants per deputy between the federative units.

In this sense, the definition of a minimum number of deputies generates disproportionality because it over-represents the least populated federative units of the Federation. The seats that, for a strictly proportional distribution, would go to more populous states, but end up reverting to the less populous states in order to reach the minimum number stipulated in Constitution. Therefore, federative units are over-represented which, if a strict proportionality, would have a number lower than the constitutional minimum.

On the other hand, the stipulation of a ceiling of representatives per federative unit affects the proportionality because it under-represents the most populous states of the Federation. The vacancies that would be due to the most populous states, according to a criterion of strict proportionality, are limited to the constitutional ceiling, with the consequent redistribution of the surplus among the others federative units. In effect, states that, if the criterion is applied, are underrepresented



[14] In this sense, Justice Gilmar Mendes stated, in his vote in Direct Action of Unconstitutionality No. 4,947, that “[t]here is no doubt, and I am merely reviewing the matter so that it is clear, that the rule set forth in art. 4°, §2°, of the ADCT was no longer effective after LC 78/1993 and with the end of the legislative term following it, which began in 1995” (BRASIL, 2014a). This position was followed by the majority of the justices.

merely proportional, would have more representatives than the maximum number ceiling defined in Constitution.

Furthermore, the delimitation of a fixed number of Deputies per federal territory may both sub-represent, or over-represent this federative unit. As the number of representatives is invariable, it is possible that the territory will have a greater or lesser number of seats than it would be due according to a strictly proportional distribution criterion. However, it occurs that, Since 1988, Brazil no longer has federal territories, so this factor – the definition of a fixed number of representatives for the territories – does not contribute to the disproportionality of state representation in the Chamber of Deputies.

The impossibility of reducing state representation in the Chamber of Deputies is also factor that could cause disproportionality, as it prevents changes demographic changes of the population over time are reflected in the state benches. However, since it is a transitory rule, which was applicable only to the 1990 election, it does not have reflections on the distortion of the state representation of the Chamber today.

The frequency of the review of state benches, however, could be a factor that would contribute in maintaining a certain proportionality in representation in the Chamber of Deputies. It occurs, in However, that the attribution to the National Congress of the responsibility of defining the number of representatives per federative unit by complementary law makes it difficult to carry out reviews each legislature. After all, the modification of state benches directly interferes with the interests of congressmen themselves and, precisely for this reason, it entails a high political cost, which ends up hinder periodic updating.

It was precisely to discharge this responsibility of promoting the updating of state benches that the National Congress issued Complementary Law No. 78/1993, which assigned to the Superior Electoral Court the power to review, in the year prior to the elections, the number of Deputies by federative unit, based on demographic data provided by the Brazilian Institute of Geography and Statistics.15 Although it delegated the task of reviewing to the TSE, the LC did not define the methodology for calculating state benches.16 In addition, the LC determined that



[15] In this sense, art. 1 of LC No. 78/1993 states the following: “[p]roportional to the population of the States and the Federal District, the number of federal deputies will not exceed five hundred and thirteen representatives, provided by the Brazilian Institute of Geography and Statistics Foundation, in the year prior to the elections, the demographic statistical update of the units of the Federation” (BRASIL, 1993).
16 There are several methods of proportional distribution of representatives among the units of the Federation, such as, for example, Webster, Hamilton, Huntington Hill, Jefferson, D'Hondt and Adams.

the number of Federal Deputies should be changed to 512, and, with that, established that the number of representatives of the most populous state – read, São Paulo – should be increased to 70 seats,17 as already determined by the Federal Constitution of 1988.

It is also worth mentioning that the approval of this LC only occurred after the Supreme Court Federal recognize, within the scope of Injunction Order No. 219, reported by Minister Octávio Gallotti, the delay of the Legislative Branch in issuing an infra-constitutional norm that would redefine, based on in the constitutional rules of 1988, the number of deputies (BRAZIL, 1995). Thus, the movement legislative action only occurred after the STF determined that the National Congress should remedy the omission.

Based on LC No. 78/1993, the TSE issued Resolution No. 14,235/1994, which was limited to increase the representation of the State of São Paulo from 60 to 70 deputies. After that, the Court Superior Electoral Court spent a long period of time without carrying out a review of the state benches, although he was urged, on at least two occasions, to do so. [18] In these cases in which the review of the state benches was denied, the TSE maintained that it could not carry out the redistribution of state benches based on mere population estimates from the IBGE, as were data that did not guarantee effective legal security, which is why it would be necessary to wait the publication of the final quantities (BRAZIL, 2006, 2010).

After the release of the 2010 IBGE Census, however, the TSE initiated the procedure that culminated in the approval, after several public hearings, of Resolution No. 23,389/2013, which made the necessary changes so that the benches of the federated entities in the Chamber of Deputies maintained a greater proportion in relation to their respective local populations.19 To carry out the distribution of seats among the federative units, the TSE adopted, by analogy, the methodology of calculation provided for in the Electoral Code for the distribution of seats between parties in the elections proportional.

17 Until the 1988 Federal Constitution, São Paulo had 60 representatives. Although the 1988 constitutional text determined that the number of representatives should be increased to 70, there was no infra-constitutional normative act redefining the number of representatives. Thus, it was only with LC No. 78/1993 that the constitutional command was fulfilled, with the consequent increase in the number of representatives from São Paulo to the constitutional limit. 18 This is the case of Petitions No. 1,642, reported by Minister Caputo Bastos (BRASIL, 2006), and No. 2,970, reported by Minister Arnaldo Versiani (BRASIL, 2010).

[19] In this resolution, the Pará bench was the one that grew the most, gaining 4 seats. Ceará and Minas Gerais increased their benches in 2 seats each. In turn, Amazonas and Santa Catarina increased their respective benches by 1 federal deputy. The states of Paraíba and Piauí were the ones that suffered the greatest reduction, losing 2 federal deputies each. In addition, Pernambuco, Paraná, Rio de Janeiro, Espírito Santo, Alagoas and Rio Grande do Sul lost 1 federal deputy each.

It turns out that the National Congress, dissatisfied with the redistribution of seats among the states, approved Legislative Decree No. 424/2013, suspending, based on art. 49, V, of the CF/198820, the effects of the resolution. The TSE, however, when judging the Point of Order in Petition No. 95,457, ratified the resolution that redefined the number of Deputies, determining the application of the rules to following legislative election, understanding that the National Congress could not, through mere Legislative Decree, suspend the effects of Resolution No. 23,389/2013; it would be necessary, according to the understanding of the court, the elaboration of a complementary law for the purpose of removing the normative act from TSE (BRAZIL, 2014b).

Soon after, the issue regarding the definition of state benches reached the Supreme Court. Federal Court, through Direct Action of Unconstitutionality No. 4,947/DF. At the time, the The plenary, by majority, ruled unconstitutional the sole paragraph of art. 1° of Complementary Law No. 78/1993, on the grounds that the delegation of power to the TSE to update the benches state, without having defined the method of calculating the distribution of seats, violated the principle of legal reserve (art. 5°, II, of the CF) and the rule that attributed to the National Congress the competence to define the number of seats per state in the Chamber (art. 45, §1°, of the CF) (BRAZIL, 2014a).

Consequently, Resolution No. 23,389/2013 was also considered unconstitutional, as prepared based on the legal device considered null. Although the modulation was proposed effects of the decision, so that the TSE Resolution was applied to the 2014 elections, was not the necessary quorum has been reached, as provided for in art. 27 of Law No. 23,389/2013, so that this act normative, which revised the number of deputies per state and Federal District, never reached be applied.

The state benches in the Chamber of Deputies, therefore, remain unchanged since 1993. The demographic changes of the Brazilian population, over these almost thirty years, have not were considered to define the number of seats per federative unit. In effect, the distortion of the representation of the federative units in the Chamber of Deputies, which results from the own constitutional rules, is deepened by the lack of periodic updating of the benches state.



20 The Constitution establishes, in art. 49, V, that “[it] is the exclusive competence of the National Congress: [...] to suspend the normative acts of the Executive Branch that exceed the regulatory power or the limits of legislative delegation” (BRAZIL, 1988).

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At this point, it is worth mentioning that the constitutional rules of distortion in representation state, combined with the lack of review of the benches, lead, in concrete terms, to distortions in the system representative. In this regard, see the following table, which demonstrates the disparity between state population and number of representatives:

| States and Regions | Population | | Representation in the Chamber | |
|---|---|---|---|---|
| | Total Number | Percentage | Total Number | Percentage |
| Rondônia | 1,796,460 | 0.85% | 8 | 1.56% |
| Acre | 894,470 | 0.42% | 8 | 1.56% |
| Amazonas | 4,207,714 | 1.99% | 8 | 1.56% |
| Roraima | 631,181 | 0.30% | 8 | 1.56% |
| To | 8,690,745 | 4.10% | 8 | 1.56% |
| Amapá | 861,773 | 0.41% | 8 | 1.56% |
| Tocantins | 1,590,248 | 0.75% | 8 | 1.56% |
| North | 18,672,591 | 8.82% | 65 | 12.67% |
| Maranhao | 7,114,598 | 3.36% | 18 | 3.51% |
| Piauí | 3,281,480 | 1.55% | 10 | 1.95% |
| Ceara | 9,187,103 | 4.34% | 22 | 4.29% |
| Rio Grande do North | 3,534,165 | 1.67% | 8 | 1.56% |
| Paraiba | 4,039,277 | 1.91% | 12 | 2.34% |
| Pernambuco | 9,616,621 | 4.54% | 25 | 4.87% |
| Alagoas | 3,351,543 | 1.58% | 9 | 1.75% |
| Sergipe | 2,318,822 | 1.10% | | 1.56% |
| Bahia | 14,930,634 | 7.05% | 8 | 7.60% |
| North East | 57,374,243 | 27.09% | 39 | 29.43% |
| Minas Gerais | 21,292,666 | 10.06% | | 10.33% |
| Holy Spirit | 4,064,052 | 1.92% | | 1.95% |
| Rio de Janeiro | 17,366,189 | 8.20% | | 8.97% |
| São Paulo | 46,289,333 | 21.86% | | 13.65% |
| Southeast | 89,012,240 | 42.04% | 151 | 34.89% |
| Paraná | 11,516,840 | 5.44% | 53 | 5.85% |
| Santa Catarina | 7,252,502 | 3.42% | 10 | 3.12% |
| Rio Grande do South | 11,422,973 | 5.39% | 46 70 179 30 16 31 | 6.04% |
| South | 30,192,315 | 14.26% | 77 | 15.01% |
| Mato Grosso do South | 2,809,394 | 1.33% | 8 | 1.56% |
| Mato Grosso | 3,526,220 | 1.67% | 8 | 1.56% |
| Goias | 7,113,540 | 3.36% | 17 | 3.31% |
| Federal District | 3,055,149 | 1.44% | 8 | 1.56% |
| Midwest | 16,504,303 | 7.79% | 41 | 7.99% |
| Brazil | 211,755,692 | 100.00% | 513 | 100% |

Source: prepared by the authors based on population estimates from the Brazilian Institute of Geography and Statistics for 2020



From what can be seen in the table, the North, Northeast, Central-West and South regions are overrepresented in the Chamber, while the Southeast region is the only one underrepresented. In this context, the state of São Paulo is the most affected, as it has around 22% of the Brazilian population

and only 14% of the representation in the Chamber of Deputies. On the other hand, the states that have the minimum number of deputies, who constitute the main over-represented group in the Chamber of Deputies, have approximately 6% of the population and about 12% of the representation.21

Recently, the Supreme Federal Court recognized, within the scope of the Direct Action of Unconstitutionality by Omission No. 38/DF, the delay of the National Congress in promoting distribution of seats in the Chamber of Deputies, establishing a deadline of June 30, 2025 for that the omission be corrected, with the enactment of a complementary law on the subject. If the delay persists after the final deadline set, it will be up to the Superior Electoral Court, until October 1, 2025, to determine the number of federal deputies from each State and the Federal District for the legislature that will begin in 2027 (BRAZIL, 2023).

The Chamber of Deputies, in view of the decision of the Supreme Federal Court, approved the Project of Complementary Law 177/23, modifying the number of federal deputies from 513 to 531, and promoting the distribution of new representations to underrepresented states. The proposition aims, by increasing the number of deputies, to avoid the loss of representation of the states currently overrepresented and ensure the political proportionality provided for in the Federal Constitution. Until the at the present time, however, the project has not been approved by the Federal Senate, so that maintains the representation established since 1993.

In short, therefore, the federative component has effects on the composition of the Chamber of Deputies. As seen, the allocation of seats in the Chamber between the federative entities is carried out with based on the general rules set out in the 1988 Constitution, with complementary legislation being responsible for defining, specifically, the state benches. Despite providing for the principle of proportionality of state representation, the constitutional text itself establishes rules that mitigate this principle, in order to favor the federative component. In this sense, the Constitution establishes a ceiling and floor of representatives per state and Federal District and a fixed number of representatives per territory. In addition to constitutional rules, the lack of review by state benches is another factor that aggravates the distortion of the representative system.

**4. INEQUALITY OF VOTING DUE TO ELECTORAL ADDRESS**



21 The states of Acre, Amazonas, Amapá, Federal District, Mato Grosso, Mato Grosso do Sul, Rio Grande do Norte, Rondônia, Roraima, Sergipe and Tocantins have, together, 25,225,596 inhabitants and around 88 deputies.

The rules for the distribution of seats in the Chamber of Deputies provided for in the Constitution Federal of 1988 imply, as seen, the deviation from the idea of proportionality in representation state. The establishment of minimum and maximum limits of deputies per state and District Federal, combined with the lack of updating of state benches for a long period of time, induce the artificial increase in the representation of some states to the detriment of others.

The practical effect of this is that the value of a vote in elections for the Chamber of Deputies varies considerably depending on the electoral domicile.22 The Brazilian electoral system, due to distortion rules, makes the votes of citizens from different states of the Federation have different weights in the elections for the Chamber of Deputies.

The variation in the weight of the vote, in fact, is easily measured mathematically, by verifying the proportion between the population and the number of deputies of each federative unit:

| States and Regions | Proportion between inhabitants and number of deputies (inhabitants/deputy) |
|---|---|
| Rondônia | 224,558 |
| Acre | 111,809 |
| Amazonas | 525,964 |
| Roraima | 78,898 |
| To | 511.220 |
| Amapá | 107,722 |
| Tocantins | 198,781 |
| **North** | 287,271 |
| Maranhao | 395,255 |
| Piauí | 328,148 |
| Ceara | 417,596 |
| Rio Grande do Norte | 441,771 |
| Paraiba | 336,606 |
| Pernambuco | 384,665 |
| Alagoas | 372,394 |
| Sergipe | 289,853 |
| Bahia | 382,837 |
| **North East** | 379,962 |
| Minas Gerais | 401,748 |
| Holy Spirit | 406,405 |
| Rio de Janeiro | 377,526 |
| São Paulo | 661,276 |
| **Southeast** | 497,275 |
| Paraná | 383,895 |
| Santa Catarina | 453,281 |
| Rio Grande do Sul | 368,483 |
| South | 392.108 |
| Mato Grosso do Sul | 351,174 |
| Mato Grosso | 440,778 |
| Goias | 418,444 |
| Federal District | 381,894 |
| **Midwest** | 402,544 |
| **Brazil** | 412,779 |

[22] The electoral domicile defines the voter's voting location (MACHADO, 2018).

Source: prepared by the author, based on IBGE population estimates for 2020.

The Brazilian federative units, as can be seen from the table, have a proportion between population and representation in the Chamber are very different from each other. The inequality of votes in the Brazil arises precisely from the fact that the number of people represented by a deputy in the different federative units is not the same. After all, if the proportion between population and representation is different, so the number of people needed to elect a deputy is also disparate, which implies inequality of votes. In this sense, the greater the number of people represented by a single deputy, the lower the value of people's votes in that federative unit, and vice versa.

From the information collected in the table, it is possible to observe that a person from São Paulo, most populous state in the Federation and the most underrepresented in the Chamber of Deputies, needs vote about eight times until the effect of your vote is equivalent to that of a person from Roraima, the least populous and most overrepresented state. This is the most elucidative example of inequality, even because it demonstrates the biggest difference in the value of the vote in Brazil, but not is the only one. In the North Region, for example, an Amazonian must vote almost five times to have the same electoral weight as an Acrean. When comparing states from different regions, it is possible mention that a Santa Catarina resident needs to vote about twice to have electoral weight equal to that of a Rondonian. This disparity in the value of the vote, in reality, can be found in all comparisons between federative units, to a greater or lesser extent.

## 5. CONCLUSION

As mentioned in the introduction, this work sought to present, through a broad bibliographic review, an overview of the origin and characteristics of voting inequality in the elections to the Chamber of Deputies due to the constitutional rules for the distribution of chairs between the federative units. The work was then divided into three parts.

In the first part of the work, it was seen that the democratic principle, which expresses the requirement that all citizens should be understood as politically equal, led to the Constitution Federal to recognize equality of vote as a political right. It was also observed, from the analysis of the jurisprudence of the Supreme Court of the United States, that the realization of this right to equality of vote is only possible if there is proportionality between representation and population. In this

sense, in order to preserve the right to equality, the 1988 constitutional text provided for the proportionality as a guiding principle for the distribution of seats in the Chamber of Deputies between the federative units.

In the second part of the work, it was demonstrated that the distribution of seats in the Chamber of Deputies is held disproportionately to the population, which results in voting inequality in the legislative elections. It was also seen that this distortion in the state representation of the House of Representatives Deputies is due to the imposition of minimum and maximum limits of deputies per federative unit, combined with the lack of review of state benches for a long period of time.

In the third part, the intense voting inequality resulting from the rules of state representation in the Chamber of Deputies. From a table that presents the proportion between population and state representation, it was possible to observe that, in Brazil, the vote of some citizens can be worth up to eight times the vote of others, based on their electoral domicile.

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