

Constitutional Guarantee of Equal Voting Strength
Committee on the Financing and Effectiveness of the Vermont Education System in the 21st Century

14th Amendment: “The constitutional guarantee of equal voting strength and protection against dilution of the right to vote by disproportionate representation extend to the election of local school officials who exercise general governmental powers.” (*Barnes v. Board of Directors, Mount Anthony Union High School District (No. 14)*, 418 F. Supp. 845, 847 (Vt. 1975), citing *Hadley v. Junior College District*, 397 U.S. 50, 52 (1970))

- * The “constitutionally protected right to cast an equally weighted vote cannot be denied ... by a ... majority of a State’s electorate” or by “a properly apportioned legislature.” (*Leopold v. Young*, 340 F. Supp. 1014, 1017-18 (Vt. 1972))

Two-Part Test (proportional representation is required only if BOTH are met):

1. Elected Members: “The equal protection clause is **not violated** if a State chooses to select members of an official body **by appointment** rather than by election even though the officials appointed do not represent the same number of people.” (*Winburn v. Bennington-Rutland Supervisory Union*, 732 F. Supp. 29, 31 (Vt. 1990), cert. denied, 498 U.S. 941 (1990))

“**[R]estricting the class of people who may be appointed does not change appointment to election.**” (*Winburn*, at 32, quoting *Rosenthal v. Board of Education*, 385 F. Supp. 223, 226 (E.D.N.Y. 1974), aff’d without opinion, 420 U.S. 985 (1975))

- * Members of a regional school board were appointed “even though the local school boards were each required to choose the regional school board members from those serving on their ‘elected’ local school boards.” (*Winburn*, at 32)
- * The boards were considered to be “appointed” in *Rosenthal* and *Winburn* even though the statutes at issue permitted the total number of local school board members to be the same as the number selected to serve on the regional board.

“**[I]t does not follow that the power of removal is the test of whether a person is appointed or elected.**” (*Winburn*, at 32, quoting *Rosenthal*, at 226) The ability of the electorate to remove a regional board member by not re-electing the member to the local school board does not turn the appointment to the regional board into an election.

2. Essential Governmental Function: The board must also perform “‘important governmental functions within the districts [and possess] powers general enough [with] sufficient impact throughout the district to justify the conclusion that [the one person, one vote rule] should also be applied here.’” (*Barnes*, at 849, quoting *Hadley*, at 54)

Specific governmental functions include the power to levy and collect taxes, issue bonds, annex school districts, and acquire property by condemnation. Courts look to the general breadth of powers and not to whether the powers are administrative or legislative.

A regional board performs essential governmental functions even when:

- * The voters have the power to vote the sum necessary to maintain a school if the regional school board can decide how the voted funds are expended (*Barnes*)
- * A challenged legislative apportionment plan was approved by the electorate (*Barnes*, at 851)
- * The proportional share of a regional budget is sent to a local board to be incorporated into the local district’s overall school tax – because this has the practical effect of giving the regional board the authority to levy taxes (*Note: Rosenthal Appellate Court stated this on procedural issue, not on the merits*)