

***Judgment of Unconstitutionality on Municipal Ordinance
regarding Electoral Districts and Seats of City and Gun
Council of Chungcheongnam-Do***

[21-1(A) KCCR 592, 2006Hun-Ma240, 371(consolidated); March 26, 2009]

In this case, the Constitutional Court renders a decision of incompatibility with the Constitution on the 'Municipal Ordinance regarding Electoral Districts and Seats of City and Gun Council of Chungcheongnam-Do (revised by ordinance No. 3174 on December 30, 2005), Article 3, Appendix 2. The Court finds that the Electoral District Ga of Hongsung-Gun and the Electoral District Ga of Yesan-Gun are out of sixty percent variation limit and, therefore, all the Electoral districts of Hongsung-Gun and Yesan-Gun are unconstitutional. Incompatibility with the Constitution allows the lawmakers to legislate a new municipal ordinance before December 31, 2009. Until then, the existing ordinance will be valid. However, the violation of right to equality and voting rights does not occur in Electoral District Na of Dangjin-Gun because the variation is within 60 percent there.

Background of Case

Complainants are registered voters in the election for the 4th City council and Gun council of Chungcheongnam-Do scheduled on May 31, 2006. They are registered to vote in Dangjin-Gun Na, Hongsung-Gun Ga, Yesan-Gun Ga listed in the Appendix 2 of 'Municipal Ordinance regarding Electoral Districts and Seats of City and Gun Council of Chungcheongnam-Do (revised by ordinance No.3174 on December 30, 2005).

Complainants filed this case of constitutional complaints claiming that there are substantial disparities in population among different electoral districts which were approved by the above mentioned Appendix 2. They further claim that new electoral districts violate their constitutionally guaranteed voting rights and the right to equality by creating vote-value disparity.

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Provisions at Issue

Municipal Ordinance regarding Electoral Districts and Seats of City and Gun Council of Chungcheongnam-Do (revised by ordinance No.3174 on December 30, 2005).

Article 3 (Name, Districts Line and Apportionment of Electoral Districts and Seats of City and Gun Council) Name, Districts Line and Apportionment of Electoral Districts and Seats of City and Gun Council prescribed in Article 26 Section 2 of the Public Office Election Act is Appendix2 below.

Appendix 2

	Name	Apportionment	Districts Line
Dangjin-Gun	Dangjin-Gun Ga	3	Dangjin-Eup, Chungmi-Myun, Adihoji-Myun
	Dangjin-Gun Na	2	Godae-Myun, Seokmun-Myun, Songsan-Myun
	Dangjin-Gun Da	3	Hapduk-Eup, Myuncheon-Myun, Sunsung-Myun, Woogang-Myun
	Dangjin-Gun Ra	2	Shinpyun-Myun, Songak-Myun
Hongsung-Gun	Hongsung-Gun Ga	2	Hongsung-Eup
	Hongsung-Gun Na	3	Hongbuk-Myun, Keuma, Myun, Galsan-Myun, Guhang-Myun
	Hongsung-Gun Da	2	Kwangcheon-Eup, Hongdong-Myun, Changok-Myun

	Name	Apportionment	Districts Line
	Hongsung-Gun Ra	2	Eunha-Myun, Geolsung-Myun, Seobu-Myun
Yesan-Gun	Yesan-Gun Ga	2	Yesan-Eup
	Yesan-Gun Na	2	Daesul-Myun, Shinyang-Myun, Kwangsi-Myun
	Yesan-Gun Da	2	Daeheung-Myun, Eungbong-Myun, Shinam-Myun, Ohga-Myun
	Yesan-Gun Ra	3	Sapkyo-Eup, Deoksan-Myun, Bongsan-Myun, Goduck-Myun

Summary of Decision

The Constitutional Court, in a unanimous vote, holds that the issues on Hongsung-Gun council and Yesan-Gun council are incompatible with the Constitution and set a time limit for the application of the order until December 31, 2009.

1. Court opinion

A. The electoral districts of City, Gun and other local councils should be reasonably made under the principle of the equal vote-value by considering the following three factors: 1) the principle of population proportion; 2) regional representation of the council members; and 3) gross disparity of population between city and the rural area due to the concentration of population in city.

A specific electoral district's vote-value is measured by comparing its seat-to-population ratio with an average vote-value. Same as City and Do councils, constitutionally permitted variation limit for each

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electoral district of a Gun is plus-or-minus sixty (60) percent from the average seat-to-population ratio of a Gun.

B. Petitioner, AAA, BBB, CCC reside at electoral District Ga of Hongsung-Gun and electoral District Ga of Yesan-Gun. These two electoral districts' seat-to-population ratio is out of sixty percent variation limit and beyond the constitutionally allowed scope of discretion for local governments to make electoral districts. This variation violates the right to equality and voting rights of complainants. However, the violation does not occur in electoral District Na of Dangjin-Gun where petitioner DDD resides because the variation is within 60 percent limit there.

C. Further, due to the inseparability of electoral districts, every electoral district of Hongsung-Gun and Yesan-Gun are found unconstitutional. However, this Court renders a modified decision of Incompatibility with the Constitution which allows the legislators to revise a new municipal ordinance before December 31, 2009. Until then, the existing ordinance is valid.

2. Two Justices' concurring opinion

The best way to measure a vote-value is to compare the population of the biggest electoral district and the smallest electoral district of a Gun. It is the simplest way and satisfies the public benefit. If the population disparity of the above mentioned two electoral districts is more than 2 to 1, it shows gross inequality. Hongsung-Gun and Yesan-Gun has two districts with more than 2 to 1 of population disparity. These disparities are unconstitutional and yet they are found to be incompatible with the Constitution in order to avoid the disorder from legal vacuum. Dangjin Gun's case is different because it shows less than 200% of population disparity between two districts and therefore should be dismissed.

3. One Justice's concurring opinion

It satisfies the goal of subjective remedy through constitutional

adjudication to simply compare the population of compalinants' electroal district and the smallest voting district of a Gun. The standard should be stricter than that for regional local government and, therefore, a 3 to 1 standard is ideal. In Hongsung-Gun's and Yesan-Gun's cases, the population disparity between compalinants' districts and the smallest districts are more than 3 to 1. The majority opinion correctly finds these disparities unconstitutional and I join them with this concurring opinion.