

**Judgment of Unconstitutionality on Municipal Ordinance
regarding Voting Districts and Seats of City and Gun
Council of Chungcheongnamdo**

<2006 Hun-Ma 240, 371(consolidated); March 26, 2009>

In this case, the Constitutional Court renders a decision of Non-Conformity to the Constitution on the ‘Municipal Ordinance regarding Voting Districts and Seats of City and Gun Council of Chungcheongnamdo (Amended to municipal ordinance 3174 on December 30, 2005), Article 3, Appendix 2. The Court finds that the Voting District Ga of Hongsung-Gun and the Voting District Ga of Yesan-Gun are out of sixty percent variation limit and, therefore, all the voting districts of Hongsung-Gun and Yesan-Gun are unconstitutional. Non-Conformity to 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 Voting District Na of Dangjin-Gun because the variation is within 60 percent there.

Background of Case

Petitioners are registered voters in the election for the 4th City council and Gun council of Chungcheongnamdo 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 Voting Districts and Seats of City and Gun Council of Chungcheongnamdo (Amended to municipal ordinance 3174 on December 30, 2005).

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

[Summary of Decision]

The Constitutional Court, in an unanimous decision, holds that the issues on Hongsung-Gun council and Yesan-Gun council are not conform to the Constitution and set a time limit for the application of the order until December 31, 2009.

1. Majority opinion

A. The voting 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 voting 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 voting 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 Voting District Ga of Hongsung-Gun and Voting District Ga of Yesan-Gun. These two voting 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 voting districts. This variation violates the right to equality and voting rights of petitioners. However, the violation does not occur in Voting 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 voting districts, every voting district of Hongsung-Gun and Yesan-Gun are found unconstitutional. However, this Court renders a modified decision of Non-Conformity to the Constitution which allows the lawmakers to legislate a new municipal ordinance before December 31, 2009. Until then, the existing ordinance is valid.

2. Two Justices' separate opinion

The best way to measure a vote-value is to compare the population of the biggest voting district and the smallest voting district of a Gun. It is the simplest way and satisfies the public benefit. If the population disparity of the above mentioned two voting districts is more than 200%, it shows gross inequality.

Hongsung-Gun and Yesan-Gun has two districts with more than 200% of population disparity. These disparities are unconstitutional and yet they are found to be Non-Conformity to 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 separate opinion

It satisfies the goal of subjective remedy through constitutional adjudication to simply compare the population of petitioner's voting district and the smallest voting district of a Gun. The standard should be stricter than that for regional local government and, therefore, a 300% standard is ideal. In Hongsung-Gun's and Yesan-Gun's cases, the population disparity between petitioner's districts and the smallest districts are more than 300%. The majority opinion correctly finds these disparities unconstitutional and I join them with this separate opinion.