

Vote-value Disparity in Regard to the House of Representatives and the House of Councillors

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Abstract

In election invalidation lawsuits concerning vote-value disparity, the Supreme Court has used criteria derived from a series of decisions on general elections for Members of the House of Representatives and regular elections for Members of the House of Councillors to determine the constitutionality of vote-value inequality. Supreme Court decisions in these lawsuits are based on the basic judgment criteria; however, their main points have changed over the past decade. For example, regarding the general election for Members of the House of Representatives, issues concerning the electoral district division provisions, which stipulate a one-seat quota system, have been discussed in relation to the regular elections for members of the House of Councillors, and there has been debate over prefectural electoral districts. In addition, the Diet revised the related laws in initiatives that were interspersed with these decisions. This study provides a chronological summary and commentary on Supreme Court decisions in election invalidation lawsuits concerning vote-value disparity and legislative measures in the Diet from 2009 to 2020.

Introduction

Regarding the imbalance of population per member between electoral districts (referred to as the “vote-value disparity”⁽¹⁾) in the 48th general election of Members of the House of Representatives held on October 22, 2017 (hereinafter referred to as the “2017

* The last date of access to online information in this paper is January 8, 2021.

⁽¹⁾ The word “格差” (kakusa, disparity) is used by newspaper reportings etc., whereas, the word “較差” (kakusa, range) is used by court, authorities, etc. This study uses the word “較差” when quoting from judgments and the word “格差” elsewhere.

General Election”), in its decision of December 19, 2018 (Supreme Court Reports (Civil Cases) vol. 72, no. 6, p. 1240; hereinafter referred to as the “2018 Decision”), the Grand Bench of the Supreme Court held that the imbalance was not an unconstitutional state. Prior to this decision, in an election invalidation lawsuit concerning vote-value disparity in a general election of Members of the House of Representatives (Public Offices Election Act (Act No. 100 of 1950), art. 204), the Supreme Court found that the 45th General Election held on August 30, 2009 (hereinafter referred to as the “2009 General Election”) was an unconstitutional state, resulting in similar determinations in the two subsequent general elections.

In the election invalidation lawsuit concerning the vote-value disparity of the 25th regular election for Members of the House of Councillors held on July 21, 2019 (hereinafter referred to as the “2019 Regular Election”), in its decision of November 18, 2020 (Saibansho Jiho no. 1756, p. 20; hereinafter referred to as the “2020 Decision”), the Grand Bench of the Supreme Court found that this disparity was not an unconstitutional state. This indicates that the Supreme Court determined that, following the 24th Regular Election held on July 10, 2016 (hereinafter referred to as the “2016 General Election”), the vote-value disparity in regular elections for Members of the House of Councillors did not constitute an unconstitutional state.

This study comments on the constitutional provisions concerning elections of Members of the House of Representatives and the House of Councillors and Supreme Court determination criteria that have accumulated in precedent, and provides an outline of recent Supreme Court judgments and the Diet’s response, among other matters.⁽²⁾

I Constitutional provisions and the Diet’s discretion regarding the electoral system

1 *Constitutional provisions*

The Constitution of Japan establishes provisions concerning the popular election system for both Houses, terms of office for members of both Houses, the election system for half of the members of the House of Councillors, and universal suffrage and equality in voting as fundamental principles of the election system, as shown below.

⁽²⁾ This paper is a revision of 佐藤令「衆議院及び参議院における一票の格差」『調査と情報—ISSUE BRIEF—』714号, 2011.6.9 (SATO Ryo, “Vote-value Disparity in Regard to the House of Representatives and the House of Councillors,” *Issue Brief*, no.714, 2011.6.9) and 江口正浩「衆議院及び参議院における一票の格差—近年の最高裁判所判決を踏まえて—」『調査と情報—ISSUE BRIEF—』953号, 2017.3.28 (EGUCHI Masahiro, “Vote-value Disparity in Regard to the House of Representatives and the House of Councillors: in light of recent Supreme Court decisions,” *Issue Brief*, no.953, 2017.3.28).

Composition of both Houses

Article 43. Both Houses shall consist of elected members, representative of all the people.

② The number of the members of each House shall be fixed by law.

Electoral system and terms of office

Article 45. The term of office of members of the House of Representatives shall be four years. However, the term shall be terminated before the full term is up in case the House of Representatives is dissolved.

Article 46. The term of office of members of the House of Councillors shall be six years, and election for half the members shall take place every three years.

Article 47. Electoral districts, method of voting and other matters pertaining to the method of election of members of both Houses shall be fixed by law.

Universal suffrage, equality in voting, secret ballots

Article 14. All of the people are equal under the law and there shall be no discrimination in political, economic or social relations because of race, creed, sex, social status or family origin.

②・③ (Omitted)

Article 15. The people have the inalienable right to choose their public officials and to dismiss them.

② All public officials are servants of the whole community and not of any group thereof.

③ Universal adult suffrage is guaranteed with regard to the election of public officials.

④ In all elections, secrecy of the ballot shall not be violated. A voter shall answer, publicly or privately, on the choice he has made.

Article 44. The qualifications of members of both Houses and their electors shall be fixed by law. However, there shall be no discrimination because of race, creed, sex, social status, family origin, education, property, or income.

2 The Diet's discretion concerning the establishment of the electoral system

The Constitution of Japan delegates the details of the electoral system to Article 47 and allows for legislative discretion on the establishment of the electoral system. When dividing the country into electoral districts, it is difficult to avoid population (number of eligible voters) per member disparity between the electoral districts. However, as the Supreme Court recognized, the Diet's discretion concerning the electoral system has certain limitations, given that the Constitution demands equality in vote value.⁽³⁾

⁽³⁾ 木下智史・只野雅人編『新・コンメンタール憲法 第2版』日本評論社, 2019, p.473 (KINOSHITA Satoshi and TADANO Masahito eds., *New Commentaries of the Constitution*, 2nd ed., Nippon Hyoron Sha, 2019, p.473).

II Determination criteria in lawsuits about vote-value disparity

1 *Factors causing vote-value disparity*

The factors causing vote-value disparity⁽⁴⁾ common in general elections of Members of the House of Representatives and regular elections for Members of the House of Councillors include population fluctuations.

Factors relating solely to the general elections of Members of the House of Representatives are that the Diet does not create one-member districts covering two or more prefectures and divide cities, counties, or other areas. Moreover, though adopting the one-seat quota system (see III.1(1)(i)) as the standard for division was previously considered a particular factor, amendments to abolish such stipulation have already been made (see III.1(1)(ii)).

A factor relating solely to regular elections for Members of the House of Councillors is that the quota is distributed in even numbers.

2 *The Supreme Court's determination framework*

In election invalidation lawsuits concerning vote-value disparity in national elections, the Supreme Court has generally made determinations under the following framework:⁽⁵⁾

① Examination of the unconstitutionality of vote-value inequality

The Supreme Court examines whether the inequality in vote values breached the constitutional requirement of suffrage equality. If significant inequality exists, it is in an “unconstitutional state.”

② Whether a reasonable period (a considerable period) has passed

Even if an election is found to be in an unconstitutional state, it is not immediately considered unconstitutional. An unconstitutional state under ① is determined unconstitutional if:

- in the case of the general elections of Members of the House of Representatives, it is not reduced within the reasonable period stipulated by the Constitution; or
- in the case of the regular elections for Members of the House of Councillors, the failure to take necessary measures to reduce the inequality results in the inequality continuing for a considerable period and exceeding the limits of the discretionary power of the legislation.

③ Determination of the effect of a judgment of unconstitutionality

Even if the division of an electoral district is found unconstitutional, the election is not

⁽⁴⁾On factors causing vote-value disparity, see SATO, *op.cit.* (2), pp.9-12; EGUCHI, *op.cit.* (2), pp.9-11 for details.

⁽⁵⁾KINOSHITA and TADANO eds., *op.cit.* (3), pp.473-483.

rendered invalid, owing to the “theory” of decisions made in public interest⁽⁶⁾.

3 *The Supreme Court’s determination criteria*

(1) On general elections of Members of the House of Representatives

These criteria generally follow the purport of the decision of the Grand Bench of the Supreme Court dated April 14, 1976 (Supreme Court Reports (Civil Cases) vol.30, no.3, p.223). The 2018 decision can be summarized as follows:

- The Constitution demands equality of the substance of suffrage, which is the equality of vote value.
- Equality of vote value is not an absolute standard that decides the mechanisms of the electoral system, but should be realized harmoniously in relation to other policy objectives and grounds that the Diet can legitimately take into account.
- Regarding elections for Members of both Houses, the Constitution holds that the number of members, electoral districts, method of voting, and other matters pertaining to the process of election should be fixed by law, and permits the Diet’s broad discretion regarding decisions on the mechanisms of the electoral system.
- In the context of adopting a system that conducts elections of Members of the House of Representatives with the country divided into a large number of electoral districts, when deciding the allocation of seats and dividing the electoral districts, part of the mechanisms of the electoral system, the Constitution should be considered as the most important and fundamental criteria, requiring that the number of voters or the population per member be kept as equal as possible; however, the Diet is permitted to allow for other elements, provided they are reasonable.
- When establishing a specific electoral district, the Diet may use cities, towns, villages, and other administrative divisions that subdivide a prefecture as a basic unit, considering each region’s area, population density, resident composition, traffic circumstances, geographical conditions, and various other elements, and appropriately reflect public opinion to manage the affairs of state; it is also necessary to pursue harmony to ensure the equality of vote value.
- The constitutionality of the electoral system is judged based on whether it can be considered reasonable as an exercise of the discretionary power granted to the Diet,

⁽⁶⁾ The “theory” of a decision made in public interest refers to the basic principle contained in Article 31 of the Administrative Case Litigation Act (Act No.139 of 1962). Given that the Public Offices Election Act stipulates that this article does not apply to litigation concerning the effect of elections, the Grand Bench of the Supreme Court in its decision of April 14, 1976 (Supreme Court Reports (Civil Cases), vol.30, no.3, p.223) invoked this concept and did not invalidate the election; it merely declared that it was unlawful.

even after comprehensively allowing for these circumstances. This is because the specific stipulations by the Diet for the mechanism of the electoral system breach the above-mentioned mandates of the Constitution, and exceed the limitations thereof, even when allowing for the above discretion, only when they cannot be altogether remedied.

(2) On the regular elections for Members of the House of Councillors

These criteria generally follow the purport of the decision of the Grand Bench of the Supreme Court dated April 27, 1983 (Supreme Court Reports (Civil Cases) vol.37, no.3, p.345). The 2020 decision can be summarized as follows:

- The Constitution demands equality of the substance of suffrage, which is the equality of the influence of each voter's vote in electing members; that is, equality of vote value.
- The Constitution entrusts the Diet with the decisions on how to fairly and effectively establish an electoral system reflecting the people's interests and opinions in the affairs of the state. Thus, the equality of vote value is not the only and absolute standard that decides the mechanisms of the electoral system. It is meant to be realized harmoniously in relation to other policy objectives and grounds that the Diet can legitimately allow for.
- Provided the specific provisions made by the Diet are reasonable as an exercise of its discretionary power, they will not be considered to have breached the Constitution, even if they require certain concessions in terms of the equality of vote value.
- The objective of the Constitution in adopting a bicameral system and creating differences in authority, terms of office of members, and other aspects between the House of Representatives and the House of Councillors is to make the Diet an organ that fairly and effectively represents the people by exhibiting characteristic functions of each House.
- Fixing the mechanisms of the electoral system (for Members of the House of Councillors, such as the system of electoral districts in prefectural units and the distribution in even numbers) cannot exceed the bounds of a reasonable exercise of the Diet's discretionary power.
- If it is determined that vote values have entered a significantly unequal state under the above mechanisms as a result of unceasing population fluctuations amid a period of intense social and economic changes, and the failure to take measures to redress it, despite it continuing for a considerable period, exceeds the limits of the Diet's discretionary power, it is appropriate to construe that the distribution provisions have breached the Constitution.

III Outline of recent Supreme Court decisions

1 *Outline of Supreme Court decisions and initiatives of the Diet*

The Supreme Court's basic determination criteria are summarized in II.3 above; however, the main points have changed based on specific decisions. This section outlines recent major decisions and provides a chronological commentary on the initiatives of the Diet.⁽⁷⁾

(1) Relating to the electoral system for Members of the House of Representatives

(i) 2011 Decision

In an election invalidation lawsuit pertaining to the 2009 General Election, the decision of the Grand Bench of the Supreme Court dated March 23, 2011 (Supreme Court Reports (Civil Cases) vol.65, no.2, p.755; hereinafter referred to as the "2011 Decision") found that the division of electoral district where the maximum disparity was 2.30-fold at election time was an unconstitutional state. Incidentally, the decision also called into question the unconstitutionality of the provisions of the division of the electoral district (the one-seat quota system).

- The one-seat quota system⁽⁸⁾ was the primary cause of the variation in vote values between electoral districts.
- The one-seat quota system naturally has temporal limitations regarding its reasonableness. At the time of the 2009 General Election, the electoral system was evaluated as operating stably, and the one-seat quota system was considered to have become unreasonable.
- The portion of the division standards in effect during the 2009 General Election that pertains to the one-seat quota system had reached a state that breaches the Constitution's demands for equality of vote value on the ground that it exerted effects not compatible with vote-value equality.
- Considering that the decision of the Grand Bench of the Supreme Court dated June 13, 2007, holds that the division standards and electoral district divisions incorporating the one-seat quota system are constitutional, the fact that the one-seat quota system was not abolished and the division provisions that assumed it were not rectified in the

⁽⁷⁾ For an outline of Supreme Court decisions and the initiatives taken by the Diet up to 2008, see SATO, *op.cit.*(2), pp.5-8.

⁽⁸⁾ This refers to the method of first distributing the quota of one to each prefecture when deciding the number of electoral districts in the zones in each prefecture. After this distribution, the remainder, arrived at by subtracting the number of prefectures from the quota of members in single-member districts, is distributed proportionally.

period leading to the 2009 General Election, cannot be used to claim that the issue was not rectified within the reasonable period demanded by the Constitution.

- It is necessary to enact legislative measures that fulfill the demand for vote-value equality within the reasonable period for the required reapportionment, owing to the nature of the matter, such as abolishing the one-seat quota system and amending the division provisions as rapidly as possible.

(ii) 2012 and 2013 Amendments

In November 2012, the Act Partially Amending the Public Offices Election Act and the Act for Establishment of the Council on the House of Representatives Electoral District for Emergency Reduction for the Population Range Between Electoral Districts for Members Elected from Single-Member Districts for the House of Representatives (Act No. 95 of 2012; hereinafter referred to as the “2012 Amendment”) was established. The main provisions of the Act include: ① abolish the one-seat quota system and ② reapportionment by removing one seat each from five prefectures without adding any further seats, in relation to the single-member districts for the House of Representatives. Incidentally, the supplementary provisions of the Act also provide that the division should be revised so that the maximum disparity is less than two-fold among other provisions.

In June 2013, a law to partially amend the 2012 Amendment, the Act Partially Amending the Public Offices Election Act and the Act for Establishment of the Council on the House of Representatives Electoral District for Emergency Reduction for the Population Range Between Electoral Districts for Members Elected from Single-Member Districts for the House of Representatives (Act No. 68 of 2013; hereinafter referred to as the “2013 Amendment”) was established. With the enactment of this act, provisions for the plan to remove one seat each from five prefectures without adding any further seats in the 2012 Amendment and the revision of electoral district divisions based thereon were implemented in July 2013.

(iii) 2013 Decision

The decision of the Grand Bench of the Supreme Court dated November 20, 2013 (Supreme Court Reports (Civil Cases) vol.67, no.8, p.1503; hereinafter referred to as the “2013 Decision”) found, in an election invalidation lawsuit pertaining to the 46th general election held on December 16, 2012 (hereinafter referred to as the “2012 General Election”), that the electoral district division where the maximum disparity was 2.43-fold at the time of the election was in an unconstitutional state.

- Considering that the 2012 General Election was held again under the electoral district division at issue, which had already reached a state breaching the Constitution’s

demand for vote-value equality in the 2009 General Election⁽⁹⁾ and the maximum range in the election reached 2.43-fold and widened even further than in the 2009 General Election, the electoral district division in the 2012 General Election must have been in a state that breaches the Constitution's demand for vote-value equality, as in the case of the 2009 General Election.

- On the issue of the range of vote values in general elections for members of the House of Representatives, the Grand Bench of the Supreme Court has to date conducted reviews according to the framework of determining: ① whether the distribution or electoral district division has reached a state that breaches the Constitution's demand for vote-value equality with respect to the disparity of vote value; ② whether it has reached the state discussed in ①, whether the quota distribution provisions or electoral district division provisions would be in breach of the Constitution's provisions if not reapportioned within the reasonable period required by the Constitution; and ③ whether the provisions were in breach of the Constitution's provisions and the court would declare the election unlawful without invalidating it.⁽¹⁰⁾
- By presenting certain determinations at each stage of the above framework on the electoral system's compatibility with the Constitution, the appropriate measures the Diet takes to reapportion it based on these determinations should be considered in alignment with the purport of the Constitution.
- The determination of the Grand Bench of the Supreme Court that the electoral district division standards and electoral district division, including the one-seat quota system, had reached a state breaching the Constitution's demand for vote-value equality was presented on March 23, 2011, and the Diet could have been aware of this state during this period.⁽¹¹⁾
- The 2012 General Election had to be held based on the previous quotas and electoral district divisions under the framework defined in the 2012 Amendment. However, the 2013 Amendment was established following a recommendation by the Council regarding the House of Representatives Electoral District⁽¹²⁾ by the end of the original terms of office, and the electoral district divisions were revised to keep within two-fold the population range between electoral districts, based on the 2010 Population

⁽⁹⁾ The House of Representatives was dissolved on the date that the 2012 Amendment was established, and the 2012 General Election was held one month later. Because revising the electoral district divisions in line with the substance of the 2012 Amendment requires a recommendation by the Council on the House of Representatives Electoral District and the promulgation of a separate law based on this, it was impossible to establish new electoral district divisions by the time of that general election.

⁽¹⁰⁾ This decision framework was presented almost identically in the decision of the Grand Bench of the Supreme Court dated November 25, 2015 (1(1)(iv)).

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⁽¹²⁾ The Council made a recommendation in March 2013 to revise 42 electoral districts in 17 prefectures, on the assumption of the plan to remove one seat each from five prefectures without adding any further seats.

Census results. The Diet's initiatives could not be considered inappropriate as an exercise of its power of legislative discretion based on the purport of the 2011 Decision, nor could it be concluded that the reasonable period demanded by the Constitution has passed.

- During the 2012 General Election, the issue could be considered rectified within the reasonable period demanded by the Constitution, and the electoral district division provisions at issue could not be considered to have breached the provisions of the Constitution, such as Article 14(1).

(iv) 2015 Decision

In an election invalidation lawsuit pertaining to the 47th General Election held on December 14, 2014 (hereinafter referred to as the "2014 General Election"), the decision of the Grand Bench of the Supreme Court dated November 25, 2015 (Supreme Court Reports (Civil Cases) vol.69, no.7, p.2035; hereinafter referred to as the "2015 Decision") found that the electoral district division, where the maximum disparity was 2.13-fold at the time of the election, was in an unconstitutional state.

- In the electoral district divisions for the 2014 General Election, the Diet did not redistribute for prefectures other than those subject to a reduction of the Members of Houses based on the plan to remove one seat each from five prefectures without adding any further seats and redistribute any seat based on the new electoral district division standards after the deletion of Article 3(2) of the Act for Establishment of the Council on the House of Representatives Electoral District (prior to the 2012 Amendment; Act No.3 of 1994; hereinafter referred to as the "AECHRED"), which included the one-seat quota system.
- The maximum range during the 2014 General Election reached 2.13-fold, with 13 electoral districts having a range of two-fold or more.
- This range of vote values demonstrates the failure to adjust an electoral system that aligned with the objectives of Article 3 of the AECHRED after the 2012 Amendment (Article 3(1) of the AECHRED before its amendment).
- In the 2014 General Election, the electoral district division must still be in a state that breaches the Constitution's demand for vote value equality.
- The maximum range at the 2014 General Election was reduced from that at the 2012 General Election, and an examination body established by the House of Representatives with the aim of further amendments continued to review the electoral system. The Diet's initiatives could not be considered inappropriate as an exercise of its discretionary legislative power based on the purports of the 2011 and 2013 decisions, nor could the reasonable period mandated by the Constitution be declared to have passed.
- The electoral district division during the 2014 General Election breached the Constitution's demand for vote-value equality, as in the 2012 General Election;

however, the issue could not be considered to have not been rectified within the reasonable period mandated by the Constitution, nor could the electoral district division provisions at issue be considered to breach the Constitution's provisions, such as Article 14(1).

(v) 2016 and 2017 Amendments

In May 2016, the Act Partially Amending the Act for Establishment of the Council on the House of Representatives Electoral District and the Public Offices Election Act (Act No. 49 of 2016; hereinafter referred to as the "2016 Amendment") was established. In relation to the single-member districts in the House of Representatives, this Act mainly provided for: ① the introduction of Adams's Method⁽¹³⁾ as the method of distributing the quota by prefecture; ② redistribution based on this method using the results of the population census every ten years⁽¹⁴⁾; ③ redistricting when the disparity between electoral districts is two-fold or greater owing to the results of the simplified population census every five years; and ④ reapportion by removing one seat each from six prefectures without adding any further seats. Furthermore, the Act's supplementary provisions provide that the electoral district division shall be revised so that the maximum disparity is less than two-fold, based on the results of the 2015 Population Census, over the five years until the next review.

In June 2017, a law to partially amend the 2016 Amendment, the Act Partially Amending the Act for Establishment of the Council on the House of Representatives Electoral District and the Public Offices Election Act (Act No. 58 of 2017; hereinafter referred to as the "2017 Amendment"), was established. With the enactment of this act, provisions for the plan to remove one seat from each of the six prefectures without adding any further seats in the 2016 Amendment, and the revision of electoral district divisions based on the results of the 2015 Population Census were implemented in July 2017.

(vi) 2018 Decision

In an election invalidation lawsuit pertaining to the 2017 General Election, the 2018 Decision found that the electoral district division, where the maximum disparity was 1.98-fold during the election, was constitutional.

- The maximum range at the 2017 General Election, which was held under the electoral

⁽¹³⁾ The method of dividing the population of each prefecture by a certain value and making the total of the numbers obtained by rounding up the decimal part of each quotient to the next integer equal to the quota of members elected from single-member districts for the House of Representatives. On Adams' s method, see 政治議会調査室・課『諸外国の下院の選挙制度』(調査資料2015-1-c 基本情報シリーズ22) 国立国会図書館調査及び立法考査局, 2016, p.40 (Politics and Parliamentary Affairs Research Service and Division, *Lower House Electoral Systems in Foreign Countries*, Research Materials 2015-1-c, Research and Legislative Reference Bureau, National Diet Library, 2016, p.40); EGUCHI, *op.cit.*(2), p.6 for details.

⁽¹⁴⁾ Adams's method will actually be applied from the results of the 2020 Population Census.

district division provisions following the 2016 and 2017 Amendments, was 1.98-fold, and there were no electoral districts with a two-fold or greater range.

- Considering the substance of legislative measures from the 2012 Amendment to the 2017 Amendment and the state of the range that was reduced because of them, the existence of prefectures with different quotas when distributed based on the electoral district division standards, including the one-seat quota system, and to each prefecture under Adams's Method cannot justify that the electoral district division breaches the Constitution's demand for vote-value equality.

The revisions to the electoral district divisions under the 2016 and 2017 Amendments should be considered reasonable exercises of the Diet's discretionary power, and the state in breach of the Constitution's demand for vote-value equality, as found by the 2015 Decision regarding the electoral district divisions in effect at the 2014 General Election, may be evaluated as resolved.

(2) Relating to the electoral system for Members of the House of Councillors

(i) 2009 Decision

In an election invalidation lawsuit pertaining to the 21st Regular Election held on July 29, 2007 (hereinafter referred to as the "2007 Regular Election"), the decision of the Grand Bench of the Supreme Court dated September 30, 2009 (Supreme Court Reports (Civil Cases) vol.63, no.7, p.1520; hereinafter referred to as the "2009 Decision") found that the distribution, where the maximum disparity was 4.86-fold at election time, was constitutional.

- The 2007 Regular Election was the first regular election for Members of the House of Councillors held after the Act Partially Amending the Public Offices Election Act (Act No. 52 of 2006), which allows the rectification of quotas by removing one seat from each of five prefectures and adding four seats; the maximum range of 4.86-fold during the election was a reduction from the maximum range of 5.13-fold at the 21st Regular Election.
- The Diet's failure to further revise the quota distribution provisions in the period until the 2007 Regular Election cannot be considered to exceed the limits of its discretionary power, nor can the quota distribution provisions at election time be considered a breach of the Constitution.
- The 4.86-fold range represents a state that remained significantly unequal from the perspective of vote-value equality. Therefore, it is necessary to reduce the range of vote values among voters in different electoral districts.
- Provided the current electoral system mechanisms are maintained, measures to transfer quotas between electoral districts alone are not likely to greatly reduce the maximum range. If the Diet seeks to do this, it is necessary to review the mechanisms

of the current electoral system.

- An electoral system that accurately reflects the people's will is the foundation of a democratic government. Considering the Constitution's requirements for vote-value equality, the Diet should promptly conduct an appropriate examination based on the importance of vote-value equality.

(ii) 2012 Decision

In an election invalidation lawsuit pertaining to the 22nd Regular Election held on July 11, 2010 (hereinafter referred to as the "2010 Regular Election"), the decision of the Grand Bench of the Supreme Court dated October 17, 2012 (Supreme Court Reports (Civil Cases) vol.66, no.10, p.3357; the "2012 Decision") found that the quota distribution where the maximum disparity was 5.00-fold during the election was in an unconstitutional state.

- As it is an election for Members of the House of Councillors, it is difficult to immediately find grounds for construing that the requirement for vote-value equality may have been disregarded.⁽¹⁵⁾
- The Constitution does not require prefectures to be used as electoral district units by Members of the House of Councillors.⁽¹⁶⁾
- The imbalance of vote values between electoral districts, which is shown by the range of 5.00-fold during the 2010 Regular Election, cannot be disregarded in view of the importance of vote-value equality and was in a state of significant inequality, to the extent that the issue of unconstitutionality arose.
- The Diet's failure to amend the quota distribution provisions in the period leading to the 2010 Regular Election cannot be considered to exceed the limits of its discretionary power, nor can the quota distribution provisions during the election be considered a breach of the Constitution.
- To enable a more appropriate reflection of the people's will, the Diet should not merely increase or decrease quotas in certain electoral districts, but must amend the current method of redistribution for each electoral district in prefecture units and take other legislative measures encompassing reviews of the current electoral system mechanisms, to resolve the inequality leading to the issue of unconstitutionality, as rapidly as possible.

(iii) 2012 Amendment

In November 2012, the Act Partially Amending the Public Offices Election Act (Act No.94 of 2012; hereinafter referred to as the "2012 POEA Amendment") was established. The Act rectifies the quotas in the electoral districts of the House of Councillors by

⁽¹⁵⁾ This decision framework was presented almost identically in the decision of the Grand Bench of the Supreme Court dated November 26, 2014 (1(2)(iv)).

⁽¹⁶⁾ This decision framework was presented almost identically in the decision of the Grand Bench of the Supreme Court dated November 26, 2014 (1(2)(iv)).

removing one seat from each of the four prefectures and adding four seats. Incidentally, the supplementary provisions of the Act provided that the Diet should continue to consider a fundamental reform of the electoral system with a view toward the regular election for Members of the House of Councillors in 2016.

(iv) 2014 Decision

In an election invalidation lawsuit pertaining to the 23rd Regular Election held on July 21, 2013 (hereinafter referred to as the “2013 Regular Election”), the decision of the Grand Bench of the Supreme Court of November 26, 2014 (Supreme Court Reports (Civil Cases) vol.68, no.9, p.1363; hereinafter referred to as the “2014 Decision”) found that the quota distribution where the maximum disparity was 4.77-fold during the election was in an unconstitutional state.

- The measures to remove four seats and add four seats in the 2012 POEA Amendment retained the current electoral system’s mechanisms and merely adjusted the quotas in certain electoral districts. The maximum range between electoral districts continued at approximately fivefold both before and after the amendment. Accordingly, the imbalance in vote values until the 2013 Regular Election was in a state of significant inequality to the extent that the issue of unconstitutionality arose at the 2010 Regular Election.
- With regard to the range of vote values in general elections for Members of the House of Councillors, the Grand Bench of the Supreme Court has conducted reviews according to a framework for determining: ① whether the imbalance of vote values between electoral districts under the quota distribution provisions has reached the state of significant inequality where the issue of unconstitutionality arises; and ② if it has reached this state, whether the distribution provisions would breach the Constitution on the basis that failure to rectify it within the period until the election exceeded the limits of the Diet’s discretionary power.
- Based on the court’s presentation of certain determinations under the above framework on the electoral system’s compatibility with the Constitution, the appropriate rectification measures the Diet takes prescribed based on these determinations should be construed as being predicted by the Constitution.
- The imbalance of vote values in elections for Members of the House of Councillors has reached a stage of significant imbalance, giving rise to the question of unconstitutionality and the determination of the Grand Bench of the Supreme Court that a review of the electoral system mechanisms was necessary to resolve the question presented on October 17, 2012; the Diet could have been aware of this state at this point.
- The 2013 Regular Election was held under a significant imbalance of vote values to an extent that gave rise to a question of unconstitutionality resembling that of the preceding election, despite it being held after the measures to add four seats and reduce

four seats. The 2012 POEA Amendment, however, was established in approximately nine months from the 2012 decision to the 2013 Regular Election, and the examination body of the House of Councillors considered reviews of the electoral system mechanisms. The Diet's initiatives could not be considered inappropriate as a method of exercising its discretionary power based on the objective of the 2012 Decision, nor could the failure to enact further amendments in the period until the election be considered to exceed the limits of the Diet's discretionary power.

- The distribution provisions at the time of the 2013 Regular Election could not be considered a breach of the Constitution.

(v) 2015 Amendment

In July 2015, the Act Partially Amending the Public Offices Election Act (Act No.60 of 2015; hereinafter referred to as the "2015 Amendment") was established; it was enacted in November of the same year. The Act reapportioned electoral districts for the House of Councillors by adding ten seats, including two integrated constituencies and removing ten seats. Incidentally, the Act's supplementary provisions provided that the Diet should continue to consider a fundamental reform of the electoral system with a view towards the regular election for Members of the House of Councillors in 2019 and ensure that a conclusion is reached.

(vi) 2017 Decision

In an election invalidation lawsuit pertaining to the 2016 Regular Election, the decision of the Grand Bench of the Supreme Court dated September 27, 2017 (Supreme Court Reports (Civil Cases) vol.71, no.7, p.1139; hereinafter referred to as the "2017 Decision") found that the distribution where the maximum disparity was 3.08-fold during the election was constitutional.

- The determinations on per-prefectural electoral districts evident in the 2012 and 2014 Decisions result from the view that fixing prefectures as electoral districts for Members of the House of Councillors is a factor causing the great and long-term imbalance in vote values and not because using prefectures as a unit when defining the area of each electoral district is not permitted because it is unreasonable.
- Vote-value equality in elections for Members of the House of Councillors is based on unique elements that require consideration when distributing quotas, such as the system of electing half the members defined in the Constitution, while still needing to be achieved in harmony with the purport of the Constitution pertaining to the bicameral system.
- The 2015 Amendment did not only adjust the quotas in certain electoral districts as the previous amendments did, but also included a review of the electoral system mechanisms that use prefectures as the integration of the constituencies by, for the first time since the establishment of the House of Councillors. This reduced the

maximum range between electoral districts during the 2016 Regular Election to 3.08-fold.

- The imbalance of vote values between electoral districts during the 2016 Regular Election cannot be considered a state of significant inequality to an extent where unconstitutionality arises, and the distribution provisions cannot be considered to breach the Constitution.

(vii) 2018 Amendment

In July 2018, the Act Partially Amending the Public Offices Election Act (Act No.75 of 2018; hereinafter referred to as the “2018 Amendment”) was established; it was enacted in October of the same year. The Act reapportions in the electoral districts of the House of Councillors by adding two seats.⁽¹⁷⁾

(viii) 2020 Decision

In an election invalidation lawsuit pertaining to the 2019 Regular Election, the 2020 decision found that the quota distribution, in which the maximum disparity was 3.00-fold at election time, was constitutional.

- The 2018 Amendment maintained the integrated constituencies from the 2015 Amendment and increased the electoral district quota by two. The maximum range between electoral districts at the time of the 2019 Regular Election, which was held under this amendment, was 3.00-fold.
- Provisions, such as the supplementary provisions of the 2015 Amendment, relating to a fundamental reform of the electoral system, were not included in the 2018 Amendment, and its supplementary resolutions do not explicitly mention range redress.
- Regarding elections for Members of the House of Councillors, it is difficult to find grounds for construction in which the requirement for vote-value equality may be disregarded. The obligation to achieve vote-value equality in harmony with the objective of the Constitution pertaining to the bicameral system was also noted in the 2017 decision. Although the legislature must ensure further rectification of ranges and debate the means necessary to maintain them, prevent them from increasing, and advance with initiatives as the population is expected to continue to fluctuate in the future, the 2018 Amendment does not seem to indicate any significant progress in these initiatives.
- However, considering that the history and contents of the 2018 Amendment and the

⁽¹⁷⁾ It should be noted that the bill for this Amendment had supplementary resolutions attached in the meeting of the Special Committee on Political Ethics and Election System on July 11, 2018, such as “Future reforms of the electoral system for the House of Councillors shall continue to be considered in line with the purport of the Constitution, based on the role and form of the House of Councillors,” among others.

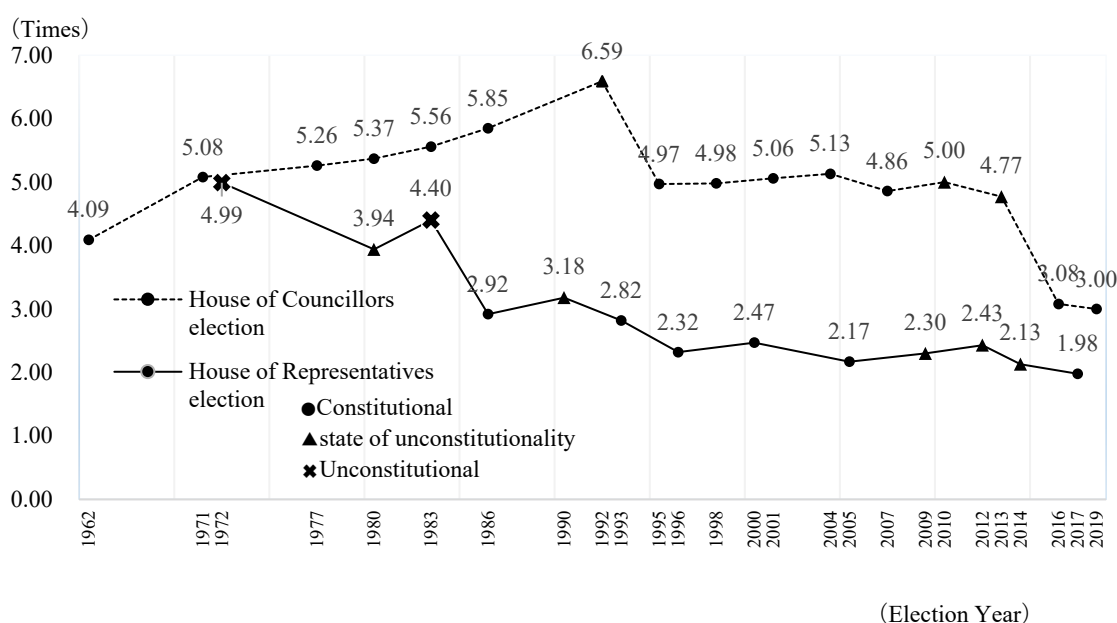
aspect of reform of the electoral system for the House of Councillors must be achieved gradually, it cannot be concluded that the legislature has lost an attitude oriented toward rectifying ranges during its consideration.

The imbalance in vote values between electoral districts at the time of the 2019 Regular Election cannot be considered to be in a state of significant inequality to the extent that the issue of unconstitutionality arises, and distribution provisions cannot be considered a breach of the Constitution.

2 Trends in Supreme Court decisions concerning vote-value disparity

The figure below shows the maximum disparity in elections for the House of Representatives and the House of Councillors, as well as the Supreme Court’s decisions concerning them. There is not necessarily a definite correlation between disparity in numerical terms and the Supreme Court’s determination of constitutional, unconstitutional, or unconstitutional states.⁽¹⁸⁾

Figure. Maximum disparity at elections for the House of Representatives and the House of Councillors and the Supreme Court decisions



Source: Created by the author.

⁽¹⁸⁾ For example, regarding the 2020 Decision, which determined that a disparity of 3.00-fold was constitutional, Kyoto University professor MORI Toru is reported to have “also pointed out that ‘the majority opinion of the Supreme Court does not demonstrate a definite assessment on a three-fold disparity’” (「留保付き合憲 続く不平等」『朝日新聞』2020.11.19 (“Constitutional with Reservations; Ongoing Inequality,” *Asahi Shimbun*, 2020.11.19).

Conclusion

As outlined in Section III.1, over the last decade, the Supreme Court has continued to render judgments concerning vote-value disparity that hold that vote-value equality is in an unconstitutional state for both general elections for the House of Representatives and regular elections for the House of Councillors. Moreover, recent decisions have demonstrated that it is not in an unconstitutional state, but is constitutional.

Regarding the House of Representatives, Adams's method was introduced to the distribution per prefecture in the 2016 Amendment. The 2018 decision used this legislative measure as it was taken as the basis for its determination.⁽¹⁹⁾ Distribution by Adams' method through the work of the Council on the House of Representatives Electoral District, based on the results of the 2020 Population Census, and elections are expected to be conducted thereafter using new electoral district divisions. Moreover, in relation to the House of Councillors, the 2012 and 2014 Decisions supposedly demonstrated a more in-depth determination of the redress of vote-value disparity.⁽²⁰⁾ The 2020 Decision demonstrated a determination of constitutionality, following the 2017 Decision, but at the same time, the majority opinion seeks "further redress of ranges." Movements concerning the redress of disparity⁽²¹⁾ merit continued attention.

⁽¹⁹⁾ 東川浩二「アダムズ方式の導入と衆議院議員小選挙区選挙の区割りの合憲性」『新・判例解説 Watch—速報判例解説—』（法学セミナー増刊）vol.25, 2019.10, pp.9-12 (HIGASHIKAWA Koji, "Introduction of Adams's Method and the Constitutionality of the Electoral District Division of Single-Member Districts for Members of the House of Councillors," *New Precedent Commentary Watch: Breaking Precedent Commentary* (Law Seminar Extra Issue), vol.25, 2019.10, pp.9-12).

⁽²⁰⁾ 新井誠「参議院議員選挙の都道府県選挙区制をめぐる最高裁判決の動向—最高裁平成二九年九月二七日大法廷判決を素材として—」『広島法学』42巻1号, 2018.7, pp.69-86 (ARAI Makoto, "An Analysis on a Supreme Court Decision about the Prefectural District-Based Electoral System for the House of Councillors in Japan," *The Hiroshima Law Journal*, vol.42, no.1, 2018.7, pp.69-86).

⁽²¹⁾ On the relationship between the legislative power and the juridical power as seen in Supreme Court decisions, see 棟居快行「選挙無効訴訟と国会の裁量—衆議院の選挙区割りをめぐる最高裁平成25年11月20日大法廷判決を素材として—」『レファレンス』766号, 2014.11, pp.5-27 (MUNESUE Toshiyuki, "Voters' Suit and the Discretion of the Diet: On the Supreme Court Decision of November 20, 2013," *The Reference*, no.766, 2014.11, pp.5-27).; 同「参議院議員定数配分をめぐる近時の最高裁判例—最高裁平成26年11月26日大法廷判決を中心として—」『レファレンス』774号, 2015.7, pp.1-30 (*id.*, "Recent Judgments of the Supreme Court of Japan on the Distribution of the Quorum for the House of Councillors: On the Supreme Court Decision of November 26, 2014," *The Reference*, no.774, 2015.7, pp.1-30), etc.

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