

The Burger Court Opinion Writing Database

Karcher v. Daggett

462 U.S. 725 (1983)

Paul J. Wahlbeck, George Washington University
James F. Spriggs, II, Washington University in St. Louis
Forrest Maltzman, George Washington University



File

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

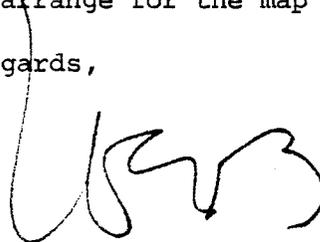
April 1, 1983

Re: 81-2057 - Karcher v. Daggett

Dear Bill:

I will leave it to you to arrange for the map for this opinion.

Regards,



Justice Brennan

Copies to the Conference

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Supreme Court of the United States
Washington, D. C. 20543

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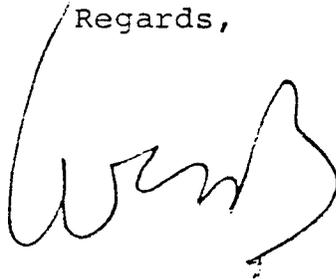
April 13, 1983

Re: No. 81-2057, Karcher v. Daggett

Dear Byron:

I join your April 5 dissent.

Regards,

A handwritten signature in dark ink, appearing to be 'W. White', written in a cursive style. The signature is positioned below the typed word 'Regards,'.

Justice White

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

June 13, 1983

Re: No. 81-2057, Karcher v. Daggett

MEMORANDUM TO THE CONFERENCE:

In light of the correspondence the above case will
go over until 82-65, Brown v. Thomson is ready.

Regards,

A handwritten signature in black ink, appearing to be 'W. R. B.', written over the typed word 'Regards,'.

70

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

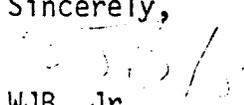
March 4, 1982

No. 81-2057 Karcher v. Daggett

Dear Chief,

As there appears to be a majority to affirm in this case,
I shall undertake to draft an opinion for the Court.

Sincerely,


WJB, Jr.

The Chief Justice

The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 16, 1983

No. 81-2057 Karcher v. Daggett

Dear John and Sandra:

I do not make a practice of circulating opinion drafts to only a few Justices. This case provides something of an exception, however, because the vote at Conference was so close and so tentative, and because your positions may be different from my own, which rests almost exclusively on a disinclination to disturb Kirkpatrick. Insofar as possible, I would like to write an opinion that expresses a set of views to which all who voted to affirm can assent. Could you take a look at this draft and let me know whether you could join something that takes this approach? I am open to any suggestions consistent with reaffirming the core principles of Kirkpatrick and Wesberry.

Sincerely,

WJB, Jr.

Justice Stevens

Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

March 21, 1982

No. 81-2057 Karcher v. Daggett

Dear Sandra:

Thank you for commenting so promptly on the draft I sent you. I am pleased that you think you will be able to concur in at least part of the opinion, and I am hopeful that we can work out whatever differences we have so that you might consider joining all of it. We really do not seem very far apart. I do not disagree with you that certain other justifications could be shown besides those which appellants alleged here. The first paragraph of part IV was meant to convey that state legislatures are free to decide what goals to pursue in reapportionment, and that any legitimate state objectives might justify small deviations if necessary.

Might the following changes address some of your concerns? I could insert the following sentence before the last sentence in the full paragraph on page 13: "Any number of legitimate, nondiscriminatory objectives might conceivably justify some variance, for instance, making districts compact, respecting political subdivisions, or avoiding contests between incumbent Representatives. Cf. Burns v. Richardson, 384 U.S. 73, 89, n. 16 (1966)." I could also amend the final sentence of footnote 4, so that it read: "Preserving political subdivisions intact, however, while perfectly permissible as a secondary goal, is not a sufficient excuse for failing to achieve population equality without the specific showing described infra, at 13."

I would like to circulate to the full Conference soon, but I hope you will not hesitate to express any further problems you have with this opinion.

Sincerely,


WJB, Jr.

Justice O'Connor

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: _____

pp: 7, 13

NE

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2057

ALAN J. KARCHER, SPEAKER, NEW JERSEY
ASSEMBLY, ET AL., APPELLANTS *v.*
GEORGE T. DAGGETT ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

[March —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by this appeal is whether an apportionment plan for congressional districts satisfies Art. I, § 2 without need for further justification if the population of the largest district is less than one percent greater than the population of the smallest district. A three-judge District Court declared New Jersey's 1982 reapportionment plan unconstitutional on the authority of *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969), and *White v. Weiser*, 412 U. S. 783 (1973), because the population deviations among districts, although small, were not the result of a good-faith effort to achieve population equality. We affirm.

I

After the results of the 1980 decennial census had been tabulated, the Clerk of the United States House of Representatives notified the Governor of New Jersey that the number of representatives to which the State was entitled had decreased from fifteen to fourteen. Accordingly, the New Jersey Legislature was required to reapportion the State's congressional districts. The State's 199th Legislature passed two reapportionment bills. One was vetoed by the Governor, and the second, although signed into law, occasioned sig-

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File

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

March 30, 1983

Re: No. 81-2057 -- Karcher v. Daggett

Dear Chief,

John Stevens and I think it would be helpful to add a four-color map to the Court affirmance in the above. I have explored the matter with Roland Goldstraw, and he has obtained estimates from the Government Printing Office. The following figures represent the cost of printing a sufficient number of maps for inclusion in all circulations, hand-downs, slip opinions, preliminary prints, and bound volumes of U.S. Reports, some 15,000 maps in all. If the maps were only included in the preliminary prints and bound volumes, the price would be 50-60% of the figures quoted below.

Legal size, black & white	\$4,075
Legal size, four-color	\$6,075
Large size (22" x 13"), black & white	\$5,900
Large size (22" x 13"), four-color	\$8,050

The legal size is probably the smallest size the map could be and still be reasonably legible. The large size is significantly more legible -- practically all municipalities can be identified. It is somewhat smaller than the maps in Mississippi v. Arkansas, 415 U.S. 289 (1974), and Keyes v. School District No. 1, 413 U.S. 189 (1973).

Is there any objection to authorizing the preparation of either the legal size or large size four-color map? My personal preference is for the large size.

Sincerely,



W.J.B.

The Chief Justice

Copies to the Conference

pp: 2, 5-9, 11, 13-18
Footnotes renumbered
& stylistic changes

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: Justice Brennan

Circulated: _____

Recirculated: ~~APR 12 1983~~

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2057

ALAN J. KARCHER, SPEAKER, NEW JERSEY
ASSEMBLY, ET AL., APPELLANTS v.
GEORGE T. DAGGETT ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

[April —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by this appeal is whether an apportionment plan for congressional districts satisfies Art. I, §2 without need for further justification if the population of the largest district is less than one percent greater than the population of the smallest district. A three-judge District Court declared New Jersey's 1982 reapportionment plan unconstitutional on the authority of *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969), and *White v. Weiser*, 412 U. S. 783 (1973), because the population deviations among districts, although small, were not the result of a good-faith effort to achieve population equality. We affirm.

I

After the results of the 1980 decennial census had been tabulated, the Clerk of the United States House of Representatives notified the Governor of New Jersey that the number of representatives to which the State was entitled had decreased from fifteen to fourteen. Accordingly, the New Jersey Legislature was required to reapportion the State's congressional districts. The State's 199th Legislature passed two reapportionment bills. One was vetoed by the Governor, and the second, although signed into law, occasioned sig-

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 

To: The Chief Justice
Justice White
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Brennan**

Circulated: _____

Recirculated: MAY 25 1983

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2057

ALAN J. KARCHER, SPEAKER, NEW JERSEY
ASSEMBLY, ET AL., APPELLANTS *v.*
GEORGE T. DAGGETT ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

[May —, 1983]

JUSTICE BRENNAN delivered the opinion of the Court.

The question presented by this appeal is whether an apportionment plan for congressional districts satisfies Art. I, § 2 without need for further justification if the population of the largest district is less than one percent greater than the population of the smallest district. A three-judge District Court declared New Jersey's 1982 reapportionment plan unconstitutional on the authority of *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969), and *White v. Weiser*, 412 U. S. 783 (1973), because the population deviations among districts, although small, were not the result of a good-faith effort to achieve population equality. We affirm.

I

After the results of the 1980 decennial census had been tabulated, the Clerk of the United States House of Representatives notified the Governor of New Jersey that the number of representatives to which the State was entitled had decreased from fifteen to fourteen. Accordingly, the New Jersey Legislature was required to reapportion the State's congressional districts. The State's 199th Legislature passed two reapportionment bills. One was vetoed by the Governor, and the second, although signed into law, occasioned sig-

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Supreme Court of the United States
Washington, D. C. 20543

U
CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 1, 1983

No. 81-2057 Karcher v. Daggett

MEMORANDUM TO THE CONFERENCE :

Here are some copies of the map we ordered to accompany the opinion in this case. Roland Goldstraw informs me that there are only enough copies for this one circulation. The rest are either needed for the opinions to be handed out when the case is brought down or being kept at GPO for inclusion in the advance sheets and bound volumes.

Sincerely,


WJB, Jr.

Supreme Court of the United States
Washington, D. C. 20543

M
CHAMBERS OF
JUSTICE Wm. J. BRENNAN, JR.

June 10, 1983

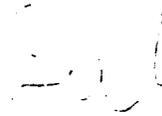
No. 81-2057

Karcher v. Daggett

Dear Chief,

I will have no more changes to make in the Court opinion to respond to Byron's latest circulation. Accordingly, I suggest that the opinion can be announced at Wednesday's session.

Sincerely,



The Chief Justice

Copies to the Conference

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

Circulated: APR 5 1983

Recirculated: _____

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2057

ALAN J. KARCHER, SPEAKER, NEW JERSEY
ASSEMBLY, ET AL., APPELLANTS *v.*
GEORGE T. DAGGETT ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

[April —, 1983]

JUSTICE WHITE, dissenting.

This case concerns the congressional reapportionment of New Jersey. The districting plan enacted by the New Jersey Legislature and signed into law by the Governor on January 19, 1982, P.L. 1982, cl. 1, reduced the number of congressional districts in the State from 15 to 14 as required by the 1980 census figures. The 14 congressional districts created by the Legislature have an average deviation of 0.1384% and a maximum deviation between the largest and smallest districts of 0.6984%. In other words, this case concerns a maximum difference of 3,674 individuals in districts encompassing more than a half million people. The New Jersey plan was invalidated by a divided District Court because these population variances were not "unavoidable despite a good faith effort to achieve absolute equality." Today, the Court affirms the District Court's decision thereby striking for the first time in the Court's experience a legislative or congressional districting plan with an average and maximum population variance of under 1%.

I respectfully dissent from the Court's unreasonable insistence on an unattainable perfection in the equalizing of congressional districts. The Court's decision today is not compelled by *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969) and

To: The Chief Justice
Justice Brennan
Justice Marshall
Justice Blackmun
Justice Powell
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice White**

- pp. 1, 5, 7, 9, 12, 15, 19
& stylistic changes throughout

Circulated: _____

Recirculated: JUN 10 1983

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2057

ALAN J. KARCHER, SPEAKER, NEW JERSEY
ASSEMBLY, ET AL., APPELLANTS *v.*
GEORGE T. DAGGETT ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

[June —, 1983]

JUSTICE WHITE, with whom THE CHIEF JUSTICE, JUSTICE
POWELL, and JUSTICE REHNQUIST join, dissenting.

This case concerns the congressional reapportionment of New Jersey. The districting plan enacted by the New Jersey Legislature and signed into law by the Governor on January 19, 1982, P.L. 1982, cl. 1, reduced the number of congressional districts in the State from 15 to 14 as required by the 1980 census figures. The 14 congressional districts created by the Legislature have an average deviation of 0.1384% and a maximum deviation between the largest and smallest districts of 0.6984%. In other words, this case concerns a maximum difference of 3,674 individuals in districts encompassing more than a half million people. The New Jersey plan was invalidated by a divided District Court because these population variances were not "unavoidable despite a good faith effort to achieve absolute equality." Today, the Court affirms the District Court's decision thereby striking for the first time in the Court's experience a legislative or congressional districting plan with an average and maximum population variance of under 1%.

I respectfully dissent from the Court's unreasonable insistence on an unattainable perfection in the equalizing of congressional districts. The Court's decision today is not com-

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 31, 1983

Re: No. 81-2057 - Karcher v. Daggett

Dear Bill:

Please join me.

Sincerely,


T.M.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 4, 1983

Re: No. 81-2057 - Karcher v. Daggett

Dear Bill:

Please join me.

Sincerely,

A handwritten signature in cursive script, appearing to read "Larry", with a long horizontal flourish extending to the right.

Justice Brennan

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

March 25, 1983

81-2057 Karcher v. Daggett

Dear Bill:

I will await further writing in this case.

As I indicated at Conference, in view of experience since Kirkpatrick - including the disparity between the Art. I, §2 cases and the equal protection cases - I am inclined to think that at least the two lines of cases should be brought down together.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

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Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

April 15, 1983

81-2057 Karcher v. Daggett

Dear Bill:

In my note of March 25, I advised that I would await further writing.

Although I agree generally with Byron, I now plan to write a short piece. In my view, the case should be re-manded for consideration of the factors you and Byron now both recognize as relevant. They appear to have been largely ignored, both by the legislature and the District Court.

Sincerely,



Justice Brennan

lfp/ss

cc: The Conference

May 16, 1983

81-2057 Karcher v. Daggett

Dear Bill:

Now that John has circulated his concurring opinion, I believe I am the only person "out" in this case.

Although I agree with much of what Byron and John have written, I still intend to write separately. As indicated at Conference, I cannot join in an affirmance of this case.

I will try not to hold you up much longer, but it will still be a while.

Sincerely,

Justice Brennan

Copies to the Conference

LFP/vde

JUN 8 1983

To: The Chief Justice
Justice Brennan
Justice White
Justice Marshall ✓
Justice Blackmun
Justice Rehnquist
Justice Stevens
Justice O'Connor

From: **Justice Powell**

Circulated: JUN 8 1983

Recirculated: _____

FIRST DRAFT

SUPREME COURT OF THE UNITED STATES

No. 81-2057

ALAN J. KARCHER, SPEAKER, NEW JERSEY
ASSEMBLY, ET AL., APPELLANTS *v.*
GEORGE T. DAGGETT ET AL.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF NEW JERSEY

[June —, 1983]

JUSTICE POWELL, dissenting.

I join JUSTICE WHITE's excellent dissenting opinion, and reaffirm my previously expressed doubt that "the Constitution—a vital and living charter after nearly two centuries because of the wise flexibility of its key provisions—could be read to require a rule of mathematical exactitude in legislative reapportionment." *White v. Weiser*, 412 U. S. 783, 798 (1973) (POWELL, J., concurring). I write separately to express some additional thoughts on gerrymandering and its relation to apportionment factors that presumably were not thought relevant under *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969).

I

The Court, following *Kirkpatrick*, today invalidates New Jersey's redistricting plan solely because various alternative plans, principally the one proposed by Professor Reock, had what the Court views as "appreciably smaller population deviations between the largest and smallest districts." *Ante*, at 3. Under all of the plans, the maximum population variances were under 1%. I view these differences as neither "appreciable" nor constitutionally significant. As JUSTICE WHITE demonstrates, *ante*, at 4-8 (dissenting opinion), the

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CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

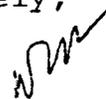
April 5, 1983

Re: No. 81-2057 Karcher v. Daggett

Dear Byron:

Please join me in your dissenting opinion.

Sincerely,



Justice White

cc: The Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 17, 1982

Re: 81-2057 - Karcher v. Daggett

Dear Bill:

Thank you for giving me a preview of your proposed opinion. Subject to the following thoughts, I am sure I can join what you have written.

1) I think it would be helpful in following some of the analysis in your opinion to append a copy of a map of the State, preferably showing the Congressional district boundaries in color.

2) I wonder if you might expand the description of the required showing in the last sentence of the first paragraph of Part IV, on page 13 of your draft. In addition to the factors already mentioned, perhaps you might add a reference to the degree to which the state's interests are served consistently by the plan as a whole.

3) I will probably write a few words myself in a separate opinion to express my views about the relevance of the bizarre shapes of the Congressional districts in this plan. In my view, the gerrymandered quality of the district map sheds some light on the question of good faith.

In all events, I think your proposed opinion is a fine one and I hope these comments will not cause you any significant concern.

Respectfully,



Justice Brennan

cc: Justice O'Connor

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

March 23, 1983

Re: 81-2057 - Karcher v. Daggett

Dear Bill:

Please join me. I am planning to write a short concurring opinion commenting on the gerrymander issue but I do not believe anything I say will be inconsistent with your opinion.

Respectfully,



Justice Brennan

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Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE JOHN PAUL STEVENS

June 10, 1983

Re: 81-2057 - Karcher v. Daggett
82-65 - Brown v. Thomson
82-131 - Jones & Laughlin Steel v.
Pfeifer

Dear Chief:

Like Sandra, I would much prefer to have Karcher come down on the same day as Brown v. Thomson. If you want another case to come down on Wednesday, Jones & Laughlin Steel v. Pfeifer is a possibility. I mention it only because you suggested it as tentative at conference and everyone else is now on board.

Respectfully,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 4, 1983

No. 81-2057 Karcher v. Daggett

Dear Chief,

My vote, which is still tentative, is to
affirm.

Sincerely,



The Chief Justice

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 18, 1983

No. 81-2057 Karcher v. Daggett

Dear Bill,

Like John, I appreciate the opportunity to review your draft opinion in this case.

You have adhered closely to Kirkpatrick and White in affirming. I tend ~~to~~ believe that certain other justifications could be shown in a Congressional reapportionment case for population variances in addition to anticipation of population shifts, and protection of minority voting rights. Arguably some variance could be justified in an attempt to achieve more compact districts or to preserve intact certain city, town, or political subdivision boundaries. Neither of those factors was present here, but I would not want to indicate they could never be considered.

I will at least concur in the judgment and possibly also in parts of sections III, IV and V of the draft.

Sincerely,



Justice Brennan

cc: Justice Stevens

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

March 22, 1983

No. 81-2057 Karcher v. Daggett

Dear Bill,

Your suggestions would be desirable in my view and would address some of my concerns. I am reluctant to give you my final decision on whether to join, however, until I see what type of approach the dissent will take. I hope you can let me remain uncommitted until then.

Sincerely,



Justice Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 8, 1983

No. 81-2057 Karcher v. Daggett

Dear Bill,

I agree with you that neither our prior cases nor good policy allows us to pick an arbitrary de minimus deviation--whether it be 1%, 2.3%, or 5%--below which the legislature has a "safe harbor. Further, I agree with you that, once the challengers have shown that the deviations were avoidable, the burden shifts to the State to justify the deviations, and that the State has not met that burden in this case. I continue to be troubled, however, by the tone of your general discussion in Part IV on the showing required to justify deviations. To be frank, I think your discussion only grudgingly acknowledges the existence of important state interests that need accomodation in the reapportionment process, and your test does not allow the flexibility of proof I think is required to justify otherwise overbearing scrutiny of minor deviations. As I indicated in my letter of March 22, I find the inserts on page 13 of your first draft helpful, but I think they could usefully be expanded.

I offer for your consideration the following changes.

1) Replace the sentences following the cite to Connor v. Finch on page 13 through the first sentence on the first full paragraph of page 14 with something like the following:

"At oral argument, appellants suggested that among the legislative policies reflected in the Feldman plan are the preservation of municipal boundaries, preservation of the cores of prior districts, and the avoidance of contests between incumbent Representatives. These are all legitimate State objectives, that on a proper showing could justify the minor deviations at issue here. Further, the State must be allowed flexibility in demonstrating how the fulfillment of legitimate objectives such as

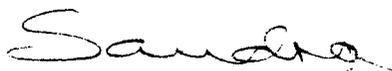
these required certain deviations from population equality, although the State cannot simply rely on general assertions without showing with some specificity a causal relation between a particular objective and deviations between particular districts. The degree of flexibility depends on the size of the deviations, the importance of the State's interests, the consistency with which the plan as a whole reflects those interests and the availability of alternatives that might substantially vindicate those interests yet approximate population equality more closely. By necessity, whether deviations are justified requires a careful determination on a case-by-case basis of all these factors. "The District Court properly found that the appellants did not justify the population deviations in this case. At argument before the District Court and on appeal here, appellants emphasize only one justification for the Feldman Plan's population deviations--preserving the voting strength of racial minority groups."

2) In footnote 9, or elsewhere, briefly show that the other justifications offered at oral argument were not presented below or are not supported by the record below.

3) Replace the last sentence of Section IV with: Therefore, the District Court's findings easily pass the "clearly erroneous test."

I am not wedded to this language, and feel that appropriate citations may improve upon it. I do feel strongly, however, that States must be given some flexibility in their attempts to justify small deviations from population equality. I hope we are not that far apart so that there may be an opinion for the Court.

Sincerely,



Justice Brennan

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

April 12, 1983

No. 81-2057 Karcher v. Daggett

Dear Bill,

Please join me in the second draft of
your opinion.

Sincerely,



Justice Brennan

Copies to the Conference

Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE SANDRA DAY O'CONNOR

June 10, 1983

Re: No. 81-2057 Karcher v. Daggett
No. 82-65 Brown v. Thomson

Dear Chief,

There are cross-references in our writing on these two cases, and it is my hope that they can be handed down on the same day. Otherwise, I will have to make changes which I would prefer not to have to make.

Sincerely,



The Chief Justice

Copies to the Conference