ELECTION DISTRICT BOUNDARIES

by Ralph Romanelli

In America, states have a history of interpreting and implementing voting rights with a bias that undermines fair representation. States traditionally control the redrawing of voter districts of their residents. "The right to vote is fundamental, but the United States Constitution does not specifically mention it. Decisions about who could vote were left largely to the states" (Mauro at 321). State rural districts have traditionally had control of the state legislatures, and they would not willingly surrender that control to urban areas by implementing apportionment fairly. Constitutional amendments addressed voting rights specific to race and gender, but state apportionment implementations remained immune to federal or court oversight until the 1960s. Through judicial review, the United States courts have a role in overseeing state laws that strengthen or weaken the principle of "one person, one vote."

From its inception, the majority of the population in the United States lived on or near farms, giving rural districts control over the state legislatures. A population shift occurred over one hundred years ago (Annenberg). Spurred by the Industrial Revolution, people migrated to cities in search of work. By 1920, half the population moved to cities or urban counties (Annenberg). In many states, apportionment—"one of the most important functions of the decennial census" (US Census Bureau)—did not reflect this migration, giving less populated rural areas more state legislative voting power than the more populous cities (Annenberg). Rural elected officials had no incentive to enact apportionment in a way that would jeopardize their control of state legislatures. The result was sparsely inhabited rural state districts had the same voting power as urban districts that dwarfed them in population.

As a collective block, state rural districts set the state legislative agenda and could put their interests ahead of urban districts. State legislatures were not paying attention to urban issues, such as housing and welfare (Mauro at 325). By the early 1960s, there were startling examples of malapportionment. Los Angeles, California, had over 6 million voters, and another California district had 14 thousand voters, but they had the same legislative votes. Another example was in Vermont; one district had 36 people, while another had 35 thousand. That is a ratio of almost one thousand to one, but they had the same

voting power (Dickson at 66). Urban districts tried to use the courts to rectify this imbalance, but the courts refused to get involved in what was deemed political matters. As an example, in *Colegrove v Green* (328 U.S. 549 [1946]), the United States Supreme Court ruled that the courts should stay out of an Illinois dispute over legislative districts in which the disparity between districts was as high as 800,000 people. "Courts ought not to enter this political thicket," wrote Justice Felix Frankfurter (Mauro at 325). It was not until the 1960s, when the principle of "one person, one vote" emerged from a series of Supreme Court decisions, that populous areas around the country gained true representation in the state legislatures (Annenberg).

Between 1901 and 1961, the Tennessee Legislature resisted efforts to change its legislative districts. By 1960, two-thirds of the state representatives were being elected by one-third of the state's 3.6 million people (Mauro at 326). Voters from Memphis, Nashville and Knoxville went to federal court with a lawsuit against Joseph Carr, the Tennessee Secretary of State.

On April 19, 1961, *Baker v Carr* was argued before the United States Supreme Court (Annenberg). *"Baker v Carr,* 369 U.S. 186 (1962), was a landmark United State Supreme Court case that decided that redistricting (attempts to change the way voting districts are delineated) issues present justiciable questions, thus enabling federal courts to intervene in and to decide redistricting cases. The defendants unsuccessfully argued that redistricting of legislative districts is a 'political question,' and hence not a question that may be resolved by federal courts" *(Baker v Carr, Wikipedia).* The Court said that reapportionment has implications for the "equal protection of the laws" guaranteed to individuals by the Fourteenth Amendment to the Constitution, making reapportionment a topic the federal courts could address (Mauro at 325).

The *Baker v Carr* decision had a major impact on reapportionment throughout the United States. By the end of 1962, there were over 60 lawsuits, and 12 state legislatures met to reapportion districts in a more representative way (Mauro at 327). In addition, *Baker v Carr* reflects a "sea change" on the Court's path to greater activism. The view that the United States Supreme Court should stay away from the "political thicket," as expressed by Supreme Court Justice Frankfurter in 1946, was now usurped by Supreme Court Justice Brennan's view that they had a responsibility to vindicate constitutional rights, even in areas once thought of as off limits (Mauro at 327). Now, the United States Supreme Court could review cases from people affected by legislative apportionment, and many cases began to appear in the courts. One of next most important apportionment Supreme Court cases is *Gray v Sanders,* because of four words used in the decision which set a new standard.

"Gray v Sanders, 372 U.S. 368 (1963), was a Supreme Court of the United States case dealing with equal representation in regard to the American election system and formulated the famous 'one person, one vote' standard for legislative districting. *** Justice William O. Douglas wrote the majority opinion and said, 'The concept of political equality . . . can mean only one thing—"one person, one vote."' The court found that the separation of voters in the

same election into different classes was a violation of the 14th Amendment's guarantee of equal protection" *(Gray v Sanders, Wikipedia).* "The language of 'one man, one vote' set the stage for a future focus on both legislative and congressional reapportionment" ("Washington Secretary of State").

Gray v Sanders dealt with inequities in the primaries and did not specifically address the questions of disproportionate districts, but the language of "one person, one vote" in the majority decision set the stage for a future focus on both legislative and congressional reapportionment ("Washington Secretary of State").

With judicial review of apportionment cases in place and the standard of "one person, one vote" solidified, the malapportionment of state legislative districts was ready to be challenged. That challenge materialized with *Reynolds v Sims* in the United State Supreme Court.

"Reynolds v Sims, 377 U.S. 533 (1964) was a United States Supreme Court case that ruled that … state legislative districts had to be roughly equal in population. The case was brought on behalf of voters in Alabama … but the decision affected both northern and southern states that had similarly failed to reapportion their legislatures in keeping with changes in state population after its application in five companion cases in Colorado, New York, Maryland, Virginia, and Delaware" *(Reynolds v Sims, Wikipedia).*

"Citing the *Baker* case as a precedent, the Court held in *Reynolds v Sims* (1964) that both houses of bicameral legislatures had to be apportioned according to population. It remanded numerous other apportionment cases to lower courts for reconsideration in light of the *Baker* and *Reynolds* decisions. As a result, virtually every state legislature was reapportioned, ultimately causing the political power in most state legislatures to shift from rural to urban areas" *(Baker v Carr. Encyclopedia Britannica Online).*

Elected officials and the ruling party will use their position to stay in power at every level of government. The Supreme Court provided a necessary check and balance to what was a tilted scale for voter rights. The "one person, one vote" standard balanced the scale, and it is as relevant today as it was in the 1960s. The Supreme Court case *Evenwel v Abbott* was argued in 2015 and decided in 2016. The question posed to the Court was, "Does the Equal Protection Clause of the Fourteenth Amendment require that districting take into account the number of voters rather than the total population?" I won't tell you the outcome; research this case on your own to fully understand its implications and merits. But here is a small tease: at stake was a shift of political power back to rural legislative districts.

With two presidential elections in the last 16 years decided not by popular vote but by state electoral votes, is the "one person, one vote" standard violated? Should the states' electoral votes be winner take all? These and other "one person, one vote" questions will come before the Supreme Court very soon. No matter what your political affiliation is, aren't you grateful the Supreme Court decided in the 1960s that the courts ought to enter this political thicket?

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