The New York Times
PRESENTS DECISION: Chief Justice Earl Warren, who announced Supreme Court ruling on apportionment of state legislatures.

HISTORIC DECISION

Both Houses Affected —Ruling Upsets 6 States' Districts

Excerpts from decision are on Pages 28 to 31.

By ANTHONY LEWIS
Special to The New York Times

WASHINGTON, June 15 — The Supreme Court held today that the districts in both houses of state legislatures must be "substantially equal" in population.

It was a decision of historic importance. Not since the school segregation cases 10 years ago had the Court interpreted the Constitution to require so fundamental a change in this country's institutions.

A 6-to-3 majority laid down the broad rule that both houses of state legislatures "must be apportioned on a population basis."

Only a handful of states meet that standard now. While the opinions gave no specific guide, it would not be surprising if 40 of the 50 states found their districts upset.

Suburbs Also Gain

The big gainers from redistricting will be the cities and especially now the fast-growing suburbs. Rural areas have long had many more seats in most state legislatures than their population would indicate.

The Court said there was no valid analogy between state legislatures and the Federal Congress, in which the Senate is based not on population but on two members for each state. Today's decision does not affect the United States Senate.

The specific provision in the Constitution for the Senate, the Court said, resulted from a compromise among the sovereign states that formed the Union. But counties and other subdivisions of states have never been sovereign, and states are subject to the Constitution's overriding requirement of equality.

Opinion by Warren

Chief Justice Earl Warren wrote for the majority. He was joined by Justices Hugo L. Black, William O. Douglas, William J. Brennan Jr., Byron R. White and Arthur J. Goldberg.

Justice John Marshall Harlan delivered an impassioned dissent. Extemporizing from the bench, he spoke of the "solemnity of this occasion" and warned against the Court's damaging itself by so sweeping a decision.

Justices Tom C. Clark and Potter Stewart did not accept the majority's reasoning. But they did agree, on narrower grounds, that some of the state legislative apportionments before the Court were unconstitutional.

The Court passed on six cases from Alabama, New York, Colorado, Maryland, Virginia and Delaware. It found the existing districts in all six legislatures unconstitutional.

Suits are pending in almost 40 states. Cases are awaiting

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The New York Times
Published: June 16, 1964

Supreme Court Holds States Must Apportion on a Basis of Equal Population

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action in the Supreme Court that come from Michigan, Florida, Washington, Ohio, Oklahoma, Illinois, Connecticut, Idaho and Georgia.

Just how soon change will have to come is not certain. But Chief Justice Warren's principal opinion, in the Alabama case, used language not friendly to long delays.

It would be "the unusual case," he said, in which a lower court would be justified in not taking steps to make sure that no further elections are held under an invalid apportionment.

He added, however, that courts "might" be justified in withholding immediate relief "under certain circumstances, such as where an impending election is imminent and a state's election machinery is already in progress."

Action in '64 Doubtful

The Chief Justice specifically directed the lower courts in the various cases to decide now whether the legislative districts must be revised before next fall's election. Some observers here doubted that there could be much action by then.

The groundwork for today's decision was laid two years ago, when the Supreme Court held for the first time that legislative districts were subject to judicial scrutiny. The Court did not then lay down any constitutional standards for districts.

Last February the Court held that Congressional districts must be based strictly on population. While that ruling dealt with a different provision of the Constitution, Chief Justice Warren said today that it laid down the "fundamental principle" of equal representation.

The clause of the Constitution at issue in the state legislative cases was the equal-protection clause of the 14th Amendment, providing that "no state shall . . . deny to any person within its jurisdiction the equal protection of the laws."

Burden Put on States

The Chief Justice said the issue was whether any principle justified departure "from the basic standard of equality among voters."

That effectively put the burden on the states to advance some reason.

The opinion immediately rejected the idea that apportionments based on area or some other concept aside from population did not adversely affect individual voters.

"Legislators represent people, not trees or acres," the Chief Justice said. "Legislators are elected by voters, not farms or cities or economic interests."

Inequitable districts have exactly the same effect, the opinion continued, as giving one person five or 10 votes and others just one.

"The resulting discrimination against those living in disfavored areas is easily demonstrable mathematically," the Chief Justice said. "Two, five or 10 of them must vote before the effect of their voting is equivalent to that of their more favored neighbor."

All voters stand in the same relation to their Government no matter where they live, the Chief Justice said, and so the equal protection clause requires that they be treated equally.

Equality Demanded

"To the extent that a citizen's right to vote is debased," the Chief Justice said, "he is that much less a citizen. The weight of a citizen's vote cannot be made to depend on where he lives.

"The equal-protection clause demands no less than substantially equal state legislative representation for all citizens, of all places as well as of all races."

The Chief Justice specifically said that both houses of a bicameral legislature must be based on population. To apply the rule to only one house, he said, would permit a minority veto in the other and lead to stalemate or frustration of the majority.

The opinion pointed out that it was not demanding "mathematical exactness," saying that it was a "practical impossibility" to have exactly identical districts.

Requests Honest Effort

"The equal protection clause requires," the Chief Justice said, "that a state make an honest and good faith effort to construct districts, in both houses of its Legislature, as nearly of equal population as is practicable."

Somewhat more "flexibility" might be allowed in state legislative than in Congressional districts, the opinion said.

For example, it said states could give emphasis to political subdivisions in drafting apportionments, maintaining county lines and basing representation to some extent on the subdivisions.

But the net result, the Court warned, could not be to distort the entire apportionment too far from a population standard. Specifically, every county could not be assured a seat, as is done in many states. In New York, for example, every county except Hamilton has at least one seat in the Assembly.

The New York case was brought by radio station WMCA, its president, R. Peter Straus, and four other residents of the New York metropolitan area. They were represented by Leonard B. Sand of New York.

Rural Areas Favored

They attacked the intricate formulas written into the New York Constitution for supporting the two houses. The formulas are based partly on population but give more weight to rural areas.

The result is that 37 per cent of the state's population can elect a majority in the Senate, 38 in the Assembly. And the Democrats are practically frozen out of control; they have had a majority in both houses only two years in this century.

Similar groups of urban voters brought the five other cases decided today. Their complaint was about the same—that their state apportionments gave an unfair advantage to the country slickers.

A three-judge Federal District Court had approved the New York apportionment, which was reversed today.

In Alabama, Virginia and Delaware, Federal trial courts had held the districts unconstitutional. In Maryland, the highest state court approved a new apportionment that cut rural control in the House but left it intact in the Senate.

The Colorado case presented one special problem, and the Federal District Court had found it decisive in upholding the apportionment.

Approved By Voters

There the voters approved, in a statewide referendum, a "little Federal" plan, making the House districts roughly equal in population but allowing 33 per cent of the people to elect a Senate majority. This plan carried in every county.

Chief Justice Warren found "no significance," legally, in the referendum vote or in the fact that in Colorado the voters can put an initiative petition on the ballot to change their apportionment at any time.

He emphasized that the right at stake here was the individual voter's right to have his vote counted equally with others', and he said:

"A citizen's constitutional rights can hardly be infringed simply because a majority of the people choose to do so."

The Chief Justice wrote a separate opinion in each of the six cases. Altogether, including various brief dissents and concurrences, there were 14 opinions totaling more than 50,000 words.

Right to Act Disputed

Justice Harlan's dissent took the view that the whole question of legislative apportionment was beyond judicial competence and not covered by the Constitution. He alone of the present members of the Court dissented from the decision of 1962 opening the issue to the courts.

The strong language used by Justice Harlan in his written opinion was more than matched by what he said from the bench shortly after noon today.

"In every accurate sense of the term," he said, the decision "involves the Court amending the Constitution.

"I wonder whether those who welcomed (the 1962 decision) as a healthy opening for change in what are admittedly outmoded apportionments might not have a second thought today and find the constitutional dose too strong."

Justice Harlan was especially concerned about the role in which the decisions cast the Court.

Notes 'Seeds of Trouble'

"The Constitution is not a panacea for every blot upon the public welfare," he said in his opinion. "Nor should this court, ordained as a judicial body, be thought of as a general haven for reform movements."

He added orally that "if the time comes when this Court is looked upon by well-meaning people—or worse yet by the Court itself, if that day ever comes—as the repository for all reforms, I think the seeds of trouble are being sown for this institution."

Justice Harlan's opinion closely examined the history of the 14th amendment and its ratification. It quoted comments from the amendment's sponsors that it would not affect states' power to regulate voting.

The opinion's conclusion from this history was that "the equal-protection clause was never intended to inhibit the states in choosing any democratic method they pleased for the apportionment of their legislatures."

But even more broadly than that, Justice Harlan objected to what he orally called the picture of the Supreme Court as "the supervisory power of state political systems."

Justices Stewart and Harlan took the position that the equal protection clause did put limits on legislative districting. But they said, generally, that an apportionment need only be "rational" rather than an arbitrary illogical "crazy-quilt."

The opinion for the two of them, by Justice Stewart, also condemned "any plan which could be shown systematically to prevent ultimate effective majority rule."

In a separate opinion, Justice Clark said at least one house must be based on population.

Applying these standards, Justices Stewart and Clark found the Alabama, Delaware and Virginia apportionments unconstitutional. The fault in Virginia, for example, was that a few urban areas were inexplicably short-changed while the statewide system was generally fair.

Justice Clark also found bad the Maryland apportionment, with its heavily rural-oriented Senate and a House still weighted somewhat against populons areas. Justice Stewart would have remanded this case for further hearings on whether the majority could ultimately control.

Both Justice Stewart and Clark found that the New York and Colorado districts passed muster. The Stewart dissent for the two of them was filed in this case, and it excoriated the strictly populated view of the majority.

"The Court's draconian pronouncement," Justice Stewart said, "which makes unconstitutional the Legislatures of most of the 50 states, finds no support in the words of the Constitution, in any prior decision of this Court or in the 175-year political history of our Federal Union.

"With all respect, I am convinced that these decisions mark a long step backward into that unhappy era when a majority of this Court were thought by many to have convinced themselves and each other that the demands of the Constitution were measured not by what it says but by their own notions of wise political theory."

A Friend of Court

The Solicitor General, Archibald Cox, argued in all the cases as a friend of the court. He urged that all the apportionments be found unconstitutional, but did not argue for the strict population test for both houses adopted today.

In the New York case, Irving Galt, assistant state solicitor general, represented the state. Mr. Sand was assisted on the brief by Max Gross of the Bronx.

In three Alabama cases, Charles Morgan Jr. and David J. Vann of Birmingham and John W. McConnell Jr. of Mobile represented complaining voters. Defending the apportionment were Richmond M. Flowers, the state Attorney General, and W. McLean Pitts of Selma.

Alfred L. Scanlan of Washington argued the Maryland case for the voters, and Robert S. Bourbon, assistant state attorney general, for the state. On his side as a friend of the court was Theodore I. Botter, first assistant attorney general of New Jersey.

Appearing for the Virginia voters were Edmund D. Campbell of Washington and Henry E. Howell Jr. of Norfolk. Assistant Attorney General Robert D. McIlwaine 3d and David J. Mays of Richmond were on the other side.

Vincent A. Theisen of Wilmington spoke for the Delaware voters, and Edward Bernays Wiener of Washington for the state.

The Colorado voters were represented by George Louis Creamer and Charles Ginsberg of Denver, and the state by Anthony F. Zarlengo, special assistant attorney general, and Stephen H. Hart of Denver.

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