

Title: Reynolds v. Sims 377 U.S. 533 (1964)

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## ***REYNOLDS v. SIMS 377 U.S. 533 (1964)***

Once the Supreme Court declared in *BAKER V. CARR* (1962) that legislative districting presented a justiciable controversy, lawsuits were filed in more than thirty states challenging existing legislative apportionments. Six of these cases were decided by the Court on the same day, and the Court held all six states' apportionments unconstitutional. The main opinion was written in *Reynolds v. Sims*, the Alabama case; all six opinions of the Court were by Chief Justice EARL WARREN, who believed until his death that *Reynolds* was the most important decision rendered by the Court during his tenure. The vote in four of the cases was 8–1, and in the other two, 6–3. Justice JOHN MARSHALL HARLAN dissented in all six cases, joined in two of them by Justices POTTER STEWART and TOM C. CLARK.

*Baker v. Carr* had been a response to decades of stalemate in the political process. Population shifts from rural areas to cities in the twentieth century had not been accompanied by changes in the electoral maps of most states. As a result, vast disparities in district populations permitted control of both houses of the typical state legislature to be dictated by rural voters. In Alabama, for example, Mobile County, with a population over 300,000, had three seats in the lower house, while Bullock County's two representatives served a population under 14,000. If JUDICIAL REVIEW normally defers to majoritarian democracy, here the premise for that deference was lacking; legislators favored by these apportionment inequalities were not apt to remedy them.

*Baker* had rested decision not on the GUARANTEE CLAUSE but on the EQUAL PROTECTION clause of the FOURTEENTH AMENDMENT. In the early 1960s, the Court had heightened the STANDARD OF REVIEW in equal protection cases only when RACIAL DISCRIMINATION was present; for other cases, the relaxed RATIONAL BASIS standard prevailed. Some Justices in the *Baker* majority had based their concurrence on the total arbitrariness of the Tennessee apportionment scheme there challenged. Justice WILLIAM O. DOUGLAS, concurring, had even said, "Universal equality is not the test; there is room for weighting." The *Baker* dissenters and academic critics had argued that the apportionment problem was unsuitable for judicial determination because courts would be unable to devise principled standards to test the reasonableness of the "weighting" Justice Douglas had anticipated; the problem belonged, they had said, in the category of POLITICAL QUESTIONS. The *Baker* majority had replied blandly: "Judicial standards under the Equal Protection Clause are well developed and familiar," and courts could determine that malapportionment represented "no policy, but simply arbitrary and capricious action." The suggestion was plain: departures from district population equality would be valid if they rested on legitimate policies.

*Reynolds* belied this suggestion. In a sweeping opinion that Archibald Cox called a *coup de main*, the Court discarded almost all possible justifications for departing from a strict principle of equal district populations and established for state legislative districts the ONE PERSON, ONE VOTE formula it had recently used in other electoral contexts. (See *GRAY V. SANDERS*; *WESBERRY V. SANDERS*.) The Court thus solved *Baker*'s problem of judicially manageable standards by resort to a mechanical test that left no "room for weighting"—and, not incidentally, no room for legislative evasion. The companion cases to *Reynolds* demonstrated the strength of the majority's conviction. *Maryland Committee for Fair Representation v. Tawes* (1964) rejected the "federal analogy" and imposed the population equality principle on both houses of a bicameral legislature, and *LUCAS V. FORTY-FOURTH GENERAL ASSEMBLY OF STATE OF COLORADO* (1964) insisted on the principle in the face of a popular REFERENDUM approving an apportionment that departed from it. In *Reynolds* itself the Court made clear that the states must keep their legislative apportionments abreast of population shifts as reported in the nation's decennial census.

In short, numbers were in, and a political theory of interest representation was out: "Citizens, not history or economic interests, cast votes." Justice Stewart, dissenting in two of the cases, took another view: "Representative government is a process of accommodating group interests through democratic institutional arrangements." Fairness in apportionment thus requires effective representation of the various interests in a state, a concern that the principle of district population equality either ignored or defeated. But Justice Stewart's premise—that equal protection required only an apportionment scheme that was rationally based and did not systematically frustrate majority rule—was rejected by the Court. Because voting "is a fundamental matter in a free society," the Chief Justice said, the dilution of the strength of a citizen's vote "must be carefully and meticulously scrutinized." *Reynolds* was the crucial decision in the line of equal protection cases developing the doctrine that voting is a FUNDAMENTAL INTEREST, whose impairment calls for STRICT SCRUTINY. (See *HARPER V. VIRGINIA BOARD OF ELECTIONS*; *KRAMER V. UNION FREE SCHOOL DISTRICT NO. 15*.)

The Court's disposition of the six REAPPORTIONMENT cases, and its memorandum orders in other cases in succeeding months, left little doubt that the Justices had learned a lesson from their experience in *BROWN V. BOARD OF EDUCATION* (1954–1955). Here there would be no ALL DELIBERATE SPEED formula to extend the time for compliance with the decision. Lower courts were expected to move quickly—and did move quickly—to implement the doctrine announced in *Reynolds*. Even so, politicians had some time to mount a counterattack. Thirty-two state legislatures requested the calling of a CONSTITUTIONAL CONVENTION to overturn *Reynolds*. Senator Everett Dirksen gained substantial support when he introduced a proposed constitutional amendment to the same end. Bills were offered in both houses of Congress to withdraw the federal courts' JURISDICTION over reapportionment cases. But all these efforts came to nothing. The jurisdictional bills failed; the Dirksen proposal did not pass either house; the constitutional convention proposal, which had been carried Page 2229 | [Top of Article](#) forward with little publicity, withered in the remaining state legislatures when it was exposed to political sunlight.

The reason for the politicians' protest was obvious to all: many of them anticipated losing their own seats, and many others foresaw reduced influence for certain interests that rural representatives had favored. The public, however, overwhelmingly approved the principle of

"one person, one vote" when the issue was tested in opinion polls; the politicians' counterattack failed because the people sided with the Court.

Academic criticism of the WARREN COURT has prominently featured *Reynolds* as a horrible example. The Court, the critics say, failed to write an opinion that reasoned from generally accepted premise to logically compelled conclusion. That is a telling criticism if, as HENRY HART was fond of saying, "reason is the life of the law." But reason is not the *life* of the law, or of anything else. It is a mental instrument to be used by judges and other humans along with their capacities for other ways of knowing: recognizing textures, patterns, analogies, relations that are not demonstrated by "if ... then" syllogisms but grasped intuitively and at once. Perhaps the public was more ready to accept "one person, one vote" than were the Warren Court's critics because people who are not lawyers understand that the Supreme Court's most important product is justice. Surely they understood that the *Reynolds* formula, for all its inflexibility, more truly reflected our national sense of political justice than did the "cancer of malapportionment"—the term is Professor Cox's—that preceded it.

It is, by definition, hard to justify innovation by reference to the conventional wisdom. The beginnings of judicial DOCTRINE, like other beginnings, may be more easily felt than syllogized. Ultimately, if constitutional intuitions are to be translated into constitutional law, coherent explanation must come to replace the vague sense of doing the right thing; consolidation is an essential part of the Supreme Court's task. Yet to deny the legitimacy of a decision whose underlying value premises are clear, on the ground that the decision does not follow deductively from what has gone before, is to deny the legitimacy of judicial creativity—and it is our creative judges whom we honor most.

*Reynolds v. Sims* did not remake the political world; it mostly transferred power from rural areas to the conservative suburbs of large cities. But the decision touched a deep vein of American political egalitarianism and gave impetus to a doctrinal development as important as any in our time: recognition of the values of equal citizenship as the substantive core of the Fourteenth Amendment.

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