

The American Political Science Review

VOL. LVIII

DECEMBER, 1964

NO. 4

EQUAL PROTECTION AND THE URBAN MAJORITY*

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This year marks the tenth anniversary of the Supreme Court's decision in *Brown v. Board of Education*. On May 17, 1954, nine judges, sworn to defend a Constitution which guarantees equal protection of the laws, speaking for a country which declared its independence on the proposition that all men are created equal and which is fighting for moral leadership in a world predominantly populated by people whose skin color is other than white—these nine men unanimously concluded that segregated educational facilities are “inherently unequal.”

Most of the members of this audience can probably still recall their feelings when they heard what the Supreme Court had done. Even those who were in full sympathy with the holding must nevertheless have been awed by the responsibility the Supreme Court had undertaken and shaken by some doubts whether the judicial institution could engage in a controversy so charged with emotion and bitterness without running the risk of political defeat and possible permanent impairment of judicial power.

Ten years later, we know that they made the right decision. The decision was right because it got the United States on the right side of history at a crucial time in world affairs. By its action the Court raised a standard around which men of good will might rally. Under the Court's leadership the issue of racial segregation was forced on the American conscience. Segregation could persist only if it could be ignored; once the case for segregation had to be examined, it was lost. Without either the purse or the sword, the weakest of the three branches of government proved to be the only one with the conscience, the capacity, and

the will to challenge the scandal, the immorality, the social and economic waste, and the positive international dangers of racial discrimination. Eventually the Executive, through Presidents Kennedy and Johnson, and the Congress began to assume their responsibilities for achieving the broad purposes of racial equality. But if the Court had not taken that first giant step in 1954, does anyone think there would now be a Civil Rights Act of 1964?

Today, the Supreme Court stands with respect to the issue of legislative districting and apportionment where it stood in 1954 on the issue of racial segregation. Though the differences are substantial, I suggest that the similarities are even greater. Now, as then, the Court has taken sides in the crisis of our times. Where the Court in 1954 was demanding a social revolution, today it is presiding over a political revolution. Once again the Court has unlocked the explosive potentialities of the equal protection clause, staking its prestige and its reputation on its ability to remake the nation in the image of its constitutional concepts.

I

The Supreme Court has never been detached from the major political issues of the times. As Edward S. Corwin once said: “Constitutional law has always a central interest to guard.”¹ Under John Marshall the central interest was in the heroic task of legitimizing a strong national government. Under Roger Taney the Court's attachment was to narrower, more fragmented goals, principally the economic interests of the South and West. In the latter part of the nineteenth century the Court's role was to encourage the economic freedom which

¹ *The Constitution and What It Means Today* (Princeton, Princeton University Press, 1946), p. viii.

* Presidential address, American Political Science Association, Chicago, September 9, 1964.

a rapidly expanding economy demanded. In the New Deal period the Court was striving toward a balance of governmental power, strong enough to prevent depressions yet restrained enough not to threaten individual freedom.

When we come to the recent past, we stand in our own light and may not see what will be obvious from a longer perspective. But certainly a central focus of constitutional law since World War II has been on problems of what may be called "the urban majority." The census of 1920 revealed that rural America, which from the beginning of the nation had dominated American politics and social values, had become a minority. Since that time white, Protestant, rural America has been on the defensive, seeking to maintain in race, religion and politics its former superiority. Urban America, the new majority, has offered to the Negro the opportunity to escape from the bondage of rural peonage, as it had earlier permitted European immigrants to rise in economic and social status. Urban America has had to develop a tolerance which did not exist in rural America, so that various races and religions could live together in peace. Urban America has needed the political power which would make possible governmental recognition of its staggering problems of housing, transportation, recreation, juvenile delinquency, disease, and social disintegration.

Faced with this challenge, the rural minority could preserve its political power and its social system only by a denial of that equality which had been a major tenet of the American *credo*, though often 'honored in the breach' rather than the observance. Conversely, the drive of the urban majority required the assertion and the practice of equality in race, equality in religion, equality in political power. As Alan Grimes says in his thoughtful book on *Equality in America*, the urban majority has proved to be "a liberating force in American politics, redistributing freedom by equalizing the claims of the contestants." He continues:

American politics has always made a pragmatic adjustment to its immediate needs, tempering its idealism with expediency. Today, ironically, the imperatives of urban life are making expedient the fulfillment of the historic ideal of equality.²

II

The idea of equality indeed has roots deep in Western political thought. It reaches back

² *Equality in America: Religion, Race and the Urban Majority* (New York, Oxford University Press, 1964), p. x.

to the Greek and Roman Stoics and the Christian fathers, and was carried forward by seventeenth and eighteenth century political philosophers such as Hobbes and Locke. The Declaration of Independence announced the "self-evident" truth that "all men are created equal," but no language specifically reflecting egalitarian concern found a place in the Constitution. In fact, that document in several provisions accepted and guaranteed the institution of human slavery.

The idea of equality finally appeared in the Constitution when the Fourteenth Amendment was adopted in 1868, forbidding the states to deny to any person within their jurisdiction "the equal protection of the laws." This formulation was conceived primarily as a protection for the newly freed slaves. Justice Miller in *The Slaughter-House Cases*³ said that this was "the one pervading purpose" of the Civil War amendments. Speaking specifically of the equal protection clause, he doubted very much "whether any action of a State not directed by way of discrimination against the negroes as a class, or on account of their race, will ever be held to come within the purview" of the clause.

This expectation was doubly confounded. The Court proved very reluctant to use the equal protection clause as an instrument for the protection of the civil rights of the "newly made freemen," and at the same time eager to invent uses for it as a bar to business regulation. Robert J. Harris, in his fine study of the equal protection clause,⁴ located some 554 decisions of the Supreme Court up to 1960 in which this provision was invoked and passed upon by the Court. Of these, 426 (77 per cent) dealt with legislation affecting economic interests, while only 78 (14 per cent) concerned state laws allegedly imposing racial discrimination or acts of Congress designed to eliminate it.

The generally low regard in which the equal protection clause was held as late as 1927 is indicated by Justice Holmes's deprecatory characterization of equal protection in *Buck v. Bell* as "the usual last resort of constitutional arguments."⁵ It was not until the early 1930s that the Supreme Court "returned to the Constitution," as Harris puts it, and began the rehabilitation of the equal protection clause in a series of cases dealing with racial discrimination which finally led in 1954 to the epoch-making decision in *Brown v. Board of Education*.⁶

³ 16 Wall. 36 (1873).

⁴ *The Quest for Equality* (Baton Rouge, Louisiana State University Press, 1960), p. 59.

⁵ 274 U. S. 200 (1927).

⁶ 347 U. S. 483 (1954).

In the meantime there had been a tentative exploration on the Court of the possible application of the equal protection clause to legislative districting and apportionment. Serious complaints had accumulated in most of the states as to inequality of population in congressional and state legislative districts. Inequality resulted both from failure to redraw district lines as population changes occurred, and from provisions in many states basing legislative districts on factors other than population. The problem of unequal congressional districts was raised in the 1946 case of *Colegrove v. Green*,⁷ and three members of the Court asserted there for the first time that equal protection required the election of congressmen from districts generally equal in population. But there was no follow-up on this suggestion. Over the next fifteen years efforts to get the Court to intervene in other kinds of legislative election problems were met, in Harris' words, with "bland unconcern for equitable representation." Consequently it came as a considerable surprise in 1962 when the Court in *Baker v. Carr*⁸ by a 6 to 2 vote reversed the result of the *Colegrove* case and directed a federal court to hear a challenge to the constitutionality of Tennessee's legislative arrangements, where no reapportionment of seats in the state legislature had taken place since 1901.

While this decision did not indicate what standards the judiciary should apply in passing on complaints about legislative apportionment, that was soon to come. In 1963 the Court in *Gray v. Sanders*⁹ by a vote of 8 to 1 invalidated the Georgia county unit system of primary elections for statewide offices, a system deliberately designed to give control of the electoral process to rural minorities. The Court held:

Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment.

This was the Court's first approach to the rule of one-man-one-vote. *Gray v. Sanders* was not, of course, a legislative apportionment case. But in 1964 the Court held that the same principle covered election of representatives in Congress and the apportionment of seats in

the state legislatures. In *Wesberry v. Sanders*¹⁰ the Court by a vote of 6 to 3 applied the one-man-one-vote principle to the congressional districts of Georgia, holding that the Constitution had the "plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives." Four months later the rule of one-man-one-vote was responsible for holding unconstitutional the legislatures in no less than fifteen states, as the Court decided *Reynolds v. Sims*¹¹ and fourteen other cases by varying majorities of from six to eight justices. Probably more than forty state legislatures in all are vulnerable to challenge under the principle of *Reynolds v. Sims*.

III

The apportionment decisions have been bitterly criticized on many grounds, but there are two basic objections to the constitutional position asserted by the Court. First, it is argued that the equal protection clause has no relevance to and does not control matters of political representation, and consequently that there are no constitutional limits on legislative arrangements. Second, even if there are some limits, it is alleged that they are not judicially enforceable. So this is partly an argument about constitutional standards for apportionment systems, and partly an argument about the proper role of the courts.

Let us examine first the question of constitutional standards. Only Justices Frankfurter and Harlan on the recent Court contend that there are no constitutional limitations on legislative discretion in setting up apportionment arrangements. With Frankfurter's retirement, the Court's position is eight to one against Harlan on this score.

Six members of the Court majority say that the proper standard is one-man-one-vote. In *Wesberry v. Sanders* Justice Black derived the principle of equal congressional districts from certain of Madison's statements at the Constitutional Convention and in *The Federalist*, and from the provisions in Article I for the choosing of representatives "by the people of the several States." In *Reynolds v. Sims* Chief Justice Warren relied on general principles of representative government and majority rule to support the Court's conclusion that "the Equal Protection Clause guarantees the opportunity for equal participation by all voters in the election of state legislators." "Legislators represent people, not trees or acres," he said,

⁷ 328 U. S. 549 (1946).

⁸ 369 U. S. 186 (1962).

⁹ 372 U. S. 368 (1963).

¹⁰ 376 U. S. 1 (1964).

¹¹ 377 U. S. 533 (1964).

adding: "To the extent that a citizen's right to vote is debased, he is that much less a citizen."

Obviously the Court is here creating new law, just as it did in the *Brown* decision. The Court never likes to admit that it is creating new law. In *Brown* the Court had hoped that it could find some support for overruling its precedents in the "intention of the framers," some definite indication of concern with segregated education when the Fourteenth Amendment was adopted, and so it had asked counsel to undertake research on the historical background of the amendment. But no clear voice spoke from the past, and consequently the Court had to ground its interpretation of equal protection on the "present place" of public education in American life and present psychological knowledge and present standards of morality. In the same way the Court in *Reynolds v. Sims* relates equal protection to present concepts of representative government.

It is charged, however, that these are simply the concepts of a "particular political philosophy" which seems wise to the present majority of the Supreme Court, and without constitutional standing. Justices Stewart and Clark deny that the rule of one-man-one-vote can be logically or historically drawn out of the equal protection clause, and they contend that the rule is much too rigid in its effect on systems of representation. Holding every state to the one-man-one-vote rule, they say, would deny "any opportunity for enlightened and progressive innovation in the design of its democratic institutions." The goal of equal protection as they see it is a broader one, "to accommodate within a system of representative government the interests and aspirations of diverse groups of people, without subjecting any group or class to absolute domination by a geographically concentrated or highly organized majority."

This is a rather vague standard. How is one to judge whether it has been achieved? There are two tests, according to Stewart. First, the plan of representation must be "rational," in the light of the state's own characteristics and needs. Second, "the plan must be such as not to permit the systematic frustration of the will of a majority of the electorate of the State." Determining whether a state is meeting this test might seem to require the employment of whole cadres of political scientists, but Stewart suggests that a liberal arrangement for use of the initiative and referendum in approving or reviewing apportionment plans should be regarded as an acceptable guarantee against frustration of the basic principle of majority rule.

Application of this two-fold test led Stewart

and Clark to uphold the legislative apportionments of New York, Colorado, Illinois, and Michigan, all of which were condemned by the six-judge majority as violative of one-man-one-vote. In addition, Stewart, but not Clark, would have approved the Ohio apportionment. The Stewart-Clark standard gave the same result as one-man-one-vote in the ten other states which the Court considered in the spring of 1964.¹²

Which of these standards has the better claim to validity? The Stewart-Clark rule of rationality has the pragmatic merit of flexibility. It does not clamp down so strictly on the discretion the states have traditionally exercised in making representation decisions, and consequently it may be more politically acceptable.

By contrast, one-man-one-vote is a rigorous rule. But I believe that it comes closer to summarizing current notions of democracy in representation than any other. For example, the Twentieth Century Fund in 1962 assembled a conference of sixteen distinguished research scholars and political scientists to discuss the problems of legislative apportionment. With only one dissent, they concluded that "the history of democratic institutions points compellingly in the direction of population as the only legitimate basis of representation today."¹³

Moreover, the Court's one-man-one-vote rule may not be as rigorous as it sounds. Chief Justice Warren's opinion in *Reynolds v. Sims* specifically disclaimed the intention "to spell out any precise constitutional tests." All that the Court asked was that apportionments be "based substantially on population and the equal-population principle was not diluted in any significant way." He also granted that "a State can rationally consider according political subdivisions some independent representation in at least one body of the state legislature, as long as the basic standard of equality of population among districts is maintained." It therefore appears possible that one-man-one-vote may in practice be tempered by some of the same rationality which is the foundation of the Stewart and Clark approach.

IV

Fortunately for us, however, this comparison of the Court's two standards can be left to another occasion. For present purposes their similarity is more important than their differ-

¹² In four of these cases, however, Stewart voted to remand for further proceedings.

¹³ "One Man-One Vote," The Twentieth Century Fund, 1962, p. 4.

ences. The significant fact is that eight members of the Court, though disagreeing as to the standard, have agreed that the Court must assume responsibility for bringing legislative apportionments under the coverage of the equal protection clause. And the more lenient of the two standards is still strict enough to invalidate ten of the first fifteen state legislatures to which it has been applied.

The basic division on the Court, then, is not over standards but over the proper role of the Court in handling political questions. In *Colegrove v. Green*, Justice Frankfurter first made the argument that legislative districting and apportionment was a "political thicket" which courts must shun. When he lost this argument in *Baker v. Carr*, he had to develop a positive justification for inequality of voting and representation arrangements in order to continue his posture of judicial non-intervention. His argument was that population had never been the sole basis for representation systems, either in the past or the present, and so it could not be part of the concept of equal protection. He presented a long historical review of the various systems of representation, and wound up with the conclusion that there had been "a decided twentieth century trend away from population as the exclusive base of representation." Only twelve state constitutions, he reported, provided for a substantially unqualified application of the population standard for even a single chamber. This appeared to Frankfurter to constitute a conclusive case against one-man-one-vote.

Frankfurter is of course correct on the mathematics. There *has* been a trend away from population as the exclusive base of representation in state legislatures. Such a trend has manifested itself, for example, in the state of Illinois, which affords an interesting commentary on Frankfurter's statistics. The Northwest Ordinance of 1787, the Illinois Enabling Act of 1818, the Illinois Constitution of 1848, and the present Constitution of 1870 all provided for two houses based on population. From 1818 to 1901 both houses were re-districted fourteen times in conformity with population changes. In 1870 Cook County contained only 14 per cent of the state's population. But by 1900 it had grown to 38 per cent, and 1901 was the last reapportionment that could be put through the legislature, because the population growth of Cook County would have had to be recognized. Efforts to force remapping in the courts failed. Finally, in 1954 a compromise constitutional amendment was presented to the voters—the lower house to be re-districted every ten years on a population

basis, the senate to be drawn permanently with area the prime consideration to guarantee downstate control. The amendment was ratified by 87 per cent of Illinois voters.

This is a sample of how Frankfurter's trend was established. It is a trend resulting from rural legislators' persistent refusal to recognize state constitutional requirements and metropolitan expansion, and final acquiescence by city dwellers in permanent under-representation as the price of getting any reapportionment at all. Somehow Frankfurter's trend seems less impressive when put in this light. The principle of representation which his research has discovered is simply the principle that power holders do not willingly give up power.

Since Frankfurter did not recognize this as the operative principle of representation in the twentieth century, he did not have to defend it. But his colleague Justice Harlan did in fact do so in his several opinions. In *Baker v. Carr*, supplementing Frankfurter's dissent, he announced that he would not regard it as unconstitutional for a state legislature to conclude (a) "that an existing allocation of senators and representatives constitutes a desirable balance of geographical and demographical representation," or (b) "that in the interest of stability of government it would be best to defer for some future time the redistribution of seats in the state legislature," or (c) that "an electoral imbalance between its rural and urban population" would be desirable "to protect the State's agricultural interests from the sheer weight of numbers of those residing in the cities."

Bear in mind that in *Baker v. Carr* the legislature which was making these decisions was a legislature elected from districts drawn in 1901 and not subsequently revised, in defiance of the state constitution. So what Harlan was saying was that legislators representing the state as it was in 1901 could legitimately decide in 1962 that the 1901 balance of geography and demography had been preferable, that the political situation in the state would be more stable if the clock had been stopped in 1901, and that the rural interests as of 1901 could themselves decide, contrary to the state constitution, that they deserved protection against the cities and that it should take the form of keeping city representation in a minority.

Justice Harlan did not even stop with this. In the 1963 case of *Gray v. Sanders*, he was, alone on the Court, rash enough to argue that Georgia's county unit caricature of a representation system was not irrational. He said in its defense:

Given the undeniably powerful influence of a state governor on law and policy making, I do not see how it can be deemed irrational for a State to conclude that a candidate for such office should not be one whose choice lies with the numerically superior electoral strength of urban voters. By like token, I cannot consider it irrational for Georgia to apply its County Unit System to the selection of candidates for other statewide offices in order to assure against a predominantly 'city point of view' in the administration of the State's affairs.

The amazing doctrine here announced is that a state can rationally, and therefore lawfully, set up an electoral system under which the governor and other statewide officers must be chosen by the minority because if they represented the majority they might abuse the "legitimate interests" of the minority. By the same logic it could be argued that Negroes, who are in every state a minority more abused than rural interests ever were, could rationally be given the right to control the naming of public officials. Actually, Harlan suggests in his *Baker* dissent that he would accept as rational *any* legislative plan of allotting representatives short of throwing dice.

V

Justice Harlan would have been better advised not to try to find rational excuses for misrepresentation, and simply to confine himself to stating the case against judicial involvement in political questions. He does elaborate on Frankfurter's *Colegrove* reasoning, as in the following statement from the *Wesberry* case:

What is done today saps the political process. The promise of judicial intervention in matters of this sort cannot but encourage popular inertia in efforts for political reform through the political process, with the inevitable result that the process is itself weakened.

My response is that it is a naive, static view of politics which holds that if the courts do more, the legislature and executive will do less. If the courts act, it is quite possible that they will stimulate others to act. In fact, within four days after the *Wesberry* decision was handed down, the Georgia legislature, its political process not sapped but invigorated, passed a bill redistricting the state's congressional seats for the first time since 1931 and giving Atlanta the representation in Congress to which it was entitled by population.

The *Wesberry* decision also motivated the House Judiciary Committee to take up a long pending measure drafted by Representative Celler providing that congressional districts

must be composed of compact and contiguous territory, varying not more than 15 per cent from the average population of the state's congressional districts.¹⁴ Prospects for eventual passage of the bill are regarded as favorable. Representative William McCulloch (Rep., Ohio) was quoted as saying, when the bill was being considered in committee: "With hindsight, we probably would have been well-advised to have taken some action heretofore."¹⁵ Now that the Supreme Court has said that there is no defense for unequal congressional districting, everyone agrees and the districts are being made equal. But until the Supreme Court acted, there was no legislative action and no prospect of legislative action.

Justice Harlan puts his objection to judicial activism in a somewhat different way when he castigates the "current mistaken view . . . that this Court should 'take the lead' in promoting reform when other branches of government fail to act." Stated this broadly, Harlan's criticism must include the Court's historic accomplishment achieved by "taking the lead" in *Brown v. Board of Education*. The Court in 1954 could have decided that ending racial segregation was not a task for them—indeed, not a task for a court at all. The justices could have said, this is a job for Congress, which is specifically authorized by section 5 of the Fourteenth Amendment to enforce the equal protection clause by "appropriate legislation." They could have said, this is a job for the President, who has resources for marshalling opinion and providing the leadership and quite possibly the coercion that will be required to make equal protection a reality in many parts of the nation. The *Brown* Court could have said these things—but it did not. It took the lead.

Now, in 1964 the Court has taken the lead to achieve equality in the representative process at the state level. It has taken the lead in demanding that the naked power struggle, which up to the present has determined how state legislatures are composed, be subjected to the rule of law—specifically, equal protection of the laws. The Court has stirred the stagnant waters in the rotten boroughs. It has challenged the beneficiaries of the various systems of malapportionment and underrepresentation to justify if they can their privileged status. The Court has cut through the sophistry that to prevent the problems of rural minorities from being ignored, it is necessary to ignore the problems of urban majorities.

¹⁴ H. R. 2836, 88th Cong.

¹⁵ *New York Times*, March 19, 1964.

But stirring the waters is not enough, of course, and here is where Justice Harlan's reservations about judicial leadership have some relevance. Courts cannot lead unless some one will follow. The burden of achieving racial integration was too heavy for the courts to bear alone; they needed the executive and legislative assistance they have recently received. Just so the Supreme Court cannot expect to carry through a massive reform of American state legislatures unless there is substantial legislative support for the goals it has announced. It is true that some courts, when reapportionment deadlines imposed on state legislatures have not been met, have themselves carved up a state into legislative districts. But few can be happy to see courts assume such functions, for which they have so little qualification.

The Supreme Court, needing legislative support, must anticipate the possibility that this support may be less than complete. Many proposals for constitutional amendments have been put forward to modify in one respect or another the impact of the Supreme Court decisions on state legislatures. The principal proposal, backed by the Republican Party platform in 1964 and the Republican leadership in Congress, would accept the position that one house must be based on population, but would allow representation in the second house to take into account factors other than population if the people of the state approved in a referendum vote.¹⁶

¹⁶ In an effort to delay judicial enforcement of the Supreme Court reapportionment decisions until a constitutional amendment could be considered by Congress, several legislative measures were considered in the closing days of the 88th Congress. Senator Everett Dirksen sponsored H.R. 11380 as a rider to the Foreign Aid bill, providing that federal courts may not interfere with the election of state legislatures before January 1, 1966, and that they must allow states "a reasonable opportunity" to reapportion their legislative seats in regular legislative sessions, except in "highly unusual circumstances." Adoption of the rider was prevented by a filibuster, and eventually a compromise was approved in the Senate. It declared the "sense of Congress" that any order of a federal district court concerning apportionment of a state legislature could properly allow the legislature the length of time of its regular session plus thirty days, but no longer than six months, to apportion itself in accordance with the Constitution. House conservatives,

If such an amendment were to be adopted, it would be regarded as a rebuff to the Supreme Court. But its adoption would actually require most of the states to revise their legislative apportionments in the direction of greater equality of representation than now exists, and the Court, even with its mandate thus limited, would have been responsible for stimulating the political process to accomplish the most sweeping reform of state legislative composition in American history.

In a very real sense, then, the Court's decision in *Reynolds v. Sims* is not an order. It is an opinion offering itself for belief; it is a recommendation proposing action. The Court proposes, but politics disposes.

The Court was justified in taking the lead on reapportionment in state legislatures because no other channels of protest were open to an aggrieved citizenry. The Court was justified in concluding that the stalemate of legislative representation could be broken only by holding one-man-one-vote to be a constitutional mandate. In a nation which is seventy per cent urban, the Court is saying to rurally dominated legislatures that the way to regain the position and prestige the states once had is to establish contact with the real world of the second half of the twentieth century. The Court is opening the way for state legislatures, which all too often have seemed engaged in an organized conspiracy against the future, to play a positive role in dealing with the staggering problems of metropolitan America.

"Courts are not representative bodies," said Justice Frankfurter in his concurring opinion in *Dennis v. United States*.¹⁷ "They are not designed to be a good reflex of a democratic society." It is one of the strengths of the American system that this is not necessarily true. Not all elective institutions are representative, and not all representative institutions are elective. Students of public administration have demonstrated how much we rely on the representative character of the American civil service. Now *Brown* and *Baker* have again reminded us that judges who endeavor to speak for the constituency of reason and justice may truly represent the enduring principles of a democratic society.

angered at the mildness of H.R. 11380 as amended, forced its elimination from the Foreign Aid bill in conference, so the Eighty-eighth Congress adjourned without taking any action relating to the Court's apportionment decisions.

¹⁷ 341 U. S. 494 (1951).