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Into the Political Thicket: Baker v. Carr & the Origins of Judicial Reapportionment

Upon his retirement in 1969, Earl Warren stood as one of the great judicial figures in the history of the United States Supreme Court. The liberal Warren Court, which he headed from 1953 until 1969, was responsible for a titanic shift that had brought the protection and expansion of civil liberties to the forefront of the judiciary's responsibility. As one would expect of such as significant justice, Warren presided over some of the most important cases of the 20th century such as *Gideon v. Wainwright (1963)*, *Brown v. Board (1954),* and *Roe v. Wade (1973)*. However, when asked what the most significant case was of his time on the Supreme Court it was not *Brown* or *Roe*, but the relatively unknown *Baker v. Carr (1962)* the Earl Warren dubbed the most important case of his time with the court. Warren noted, "The reason I am of the opinion that *Baker v. Carr* is so important is because I believe so devoutly that, to paraphrase Abraham Lincoln's famous epigram, ours is a government of all the people, by all the people, and for all the people."[1] His assessment is in many respects accurate. *Baker v. Carr* stands as one of the most significant judicial developments in the nation's history. It brought about a national revolution just as certainly as *Brown* did, though with considerably less attention. As such, today all of us live in *Baker v. Carr's* shadow and almost none of us know of it. It resulted in the affirmation of a political principal that most Americans, regardless of political affiliation, will profess as the underpinning of our democracy, one person one vote. The 1962 case lead the Supreme Court to claim that it, as well as the judiciary at large, could not only hear cases of malapportionment, but

[1] Earl Warren, *The Memoirs of Earl Warren* (New York: Doubleday & Company 1977) 308

offer judicial resolution to those cases. Far from an abstract legal question, *Baker v. Carr* undercut the authority of rural dominated state legislatures and brought new social issues under the controls of the courts, thus heightening the power of the judiciary.

At first glance the court's ruling appears small. The opinion seems to deal only with abstract concepts. After all, the Supreme Court neither threw out a system of apportionment nor did it craft a new one in *Baker*. However its simple declaration that the judiciary could address this issue would launch a revolution that would see apportionment lawsuits launched in the majority of the states within a year.[2] These in turn would alter the manner in which the nation's governments were elected, shifting power to urban and suburban hands. All of this stemmed from *Baker v. Carr's* claim that the courts could address and resolve issues of legislative malapportionment. Ultimately, the case's significance deals with a caste of issues known as political questions.

The court has long held a convoluted stance in regards to malapportionment, for the subject cuts to the very heart of the court's stance on political questions and the role each branch of the federal government should hold in regards to the others. In *Federalist 51,* James Madison argues that the Constitution presented a detailed system of checks in balances which would maintain liberty and order in the new regime.[3] No branch of the government would be able to dominate the federal sphere so long as the judiciary, executive, and legislative branches contended for power. Though Madison himself concedes that the legislature is inclined to dominate the government in a democracy, the other two branches of government are designed to hold it in check. However, the *Federalist Papers* and the Constitution have provided scant guidance to the

[2] "Reapportionment—Its Status Today," *New York Times,* August 5, 1962
[3] "Federalist 51," Constitution Society, Accessed July 13, 2015, http://www.constitution.org/fed/federa51.htm

Court in its application of judicial review. Madison and the Framers left few guidelines on how the court was meant to apply the principle of judicial review with respect to the separation of powers and state sovereignty. Judicial reapportionment, the request of the plaintiffs in *Baker v. Carr*, appears clash with the tenants of state sovereignty and separation of powers. This in turn forces the Court to treat the issue with particular care.

The notion of judicial reapportionment was central to the court's growing role as a protector of civil liberties. The subject of judicial reapportionment, which appears relatively innocuous today, represents a threat to the balance of federal checks and balances by providing the court with oversight over Congress and how Congress chooses to have the state representatives apportioned. Furthermore, the notion that a small group of judges can dictate how a state ought to elect its representatives poses significant issues for a representative democracy in which the states are regarded as somewhat independent entities. As such, the Supreme Court has acknowledged that there is a class of issues which it is either not empowered or ill-suited to address. These issues, such as reapportionment, have been referred to by the court as political questions. These political questions primary concern issues of jurisdiction and justiciability. The former deals with issues that are not within the power of the court to address, while the latter concerns issues that the judiciary is ill-suited to address. However, both types delineate a set of problems that the judiciary cannot handle. In *Baker v. Carr*, the court embraced and claimed judicial reappointment, which previous seemed to be both outside the limits of the judiciary's influence and ill-suited for judicial resolution, as within its power. The result of its opinion sparked a legal and legislative revolution that quickly swept through the majority of the nation. *Baker v. Carr* broke the hold of malapportioned rural legislatures across the country to allow cities access to new funds and legislative power. Furthermore, it undercut the doctrine of political questions and

pushed a host of new issues into the sway of the judiciary, thus heightening the power of the court.

Perhaps the earliest articulation of this sphere of banned issues appeared in *Luther v. Borden (1848)*, which concerned two competing systems of government in Rhode Island. The plaintiffs brought suit claiming that Rhode Island's government, the same charter government that existed under the English Crown, was in violation of Article 4 of the United States Constitution, also know as the Guarantee Clause.[4] This clause mandated that each state hold a republican form of government. The plaintiffs alleged that the court ought to declare their rebellious state the rightful government of Rhode Island under the constitution. Chief Justice Taney saw the case as a political request for the court to chose between two competing governments in a state. Not inclined to enter what he deemed a political fracas, he argued that this was outside the court's power to rule upon and directed the parties to the legislative and executive branches of the federal government to make render a verdict.[5] This codified the doctrine of political questions; the notion that the judiciary is unable or unfit to hear a range of issues. While reapportionment did not ask the court to make so direct a choice as to choose which regime was the appropriate authority over a state, it asked a similar question. It demanded that the court make a ruling as to how that authority over state governments ought to be chosen. Though the impact does not appear as stark as simply choosing the appropriate authorities over a state, judicial reapportionment asked for the court to determine how power is granted at regional and federal levels. From the time of the founding, elected officials and the nation understood that the manner in which districts are drawn

[4] "Luther v. Borden," Justia: US Supreme Court, accessed July 11, 2015, https://supreme.justia.com/cases/federal/us/48/1/
[5] "Luther v. Borden," Justia: US Supreme Court, accessed July 11, 2015, https://supreme.justia.com/cases/federal/us/48/1/

alters if not decides the results of elections. As such, should the Court embrace the power to re-draw and reapportion districts, they may in some cases effective make the choice that Taney so dreaded in *Luther v. Borden.* As such, the judiciary distanced itself from reapportionment until the time of *Baker v. Carr*.

Tennessee, the state of origin for *Baker v. Carr*, was far from exceptional in its legislative condition. The *Baker* suit was but the latest in recent series of protests by urban residents against their state legislatures. Following World War II, the nation was becoming increasingly urban. From the time between the turn of the 20th century, when the Tennessee legislature first failed to reapportion, and *Baker v. Carr*, the nation's population had shifted from under 40% to 63% urban.[6] Such a massive shift had significant ramifications for the entire nation. One of the most pressing was the nationwide failure of state legislatures to adjust their apportionment schemes or simply to refuse to reapportion despite the population shift. Earl Warren noted, "This situation was not unique to Tennessee. It applied in some degree to most of the states of the Union; in fact, only two, as I recall had equitable representation."[7] As a result, urban residents in almost all of the nation's states were given inadequate representation and in many cases effectively disenfranchised.

This was very apparent in Tennessee. In 1901, when the legislature first decided not to reapportionment, the state's population was concentrated in the country. However by 1962, when the Supreme Court heard *Baker v. Carr*, the state had undergone a dramatic population shift. Shelby County, the first county to file suit, had nearly seven times more eligible voters than it

[6] "Population 1790-1990," United States Census Bureau, accessed July 24, 2015, http://www.census.gov/population/www/censusdata/files/table-4.pdf
[7] Earl Warren, *The Memoirs of Earl Warren*, (New York:Doubleday & Company 1977) 307

did in 1901. Similar increases were present in Knox, Montgomery, and Hamilton Counties. Collectively, Tennessee's ten largest counties would have been entitled to forty-five representatives had the legislature decided to reapportion; however, under the present system they were given only twenty. At the time of the suit, Shelby County sent ten officials to the Tennessee legislature. This would have been 20 or more if the state was reapportioned according to its constitutional formula. This was made all the more frustrating for urban areas by the overrepresentation of many of the state's rural counties. Twenty-three of Tennessee's counties elected twenty-five representatives, more than a quarter of the Tennessee House. This was despite the fact that based on population these counties would have been entitled to only two representatives.[8] The shift in Tennessee's population and the corresponding failure to reapportion its legislature left the voices of urban residents marginalized and created a legislature that was unreceptive to their needs.

Tennessee was not unique in its attitude toward its legislative apportionment. It, like the rest of the nation, had experienced a shift towards urbanization heightened by the expansion of the suburbs and birth of the baby boomers. However, Tennessee had not reapportioned its legislature for over half a century. This was made more peculiar by Tennessee's constitution, which called for a bicameral house with up to 99 representatives in the House and 33 senators. Both houses were supposed to be made based upon the number of eligible voters in each county. As the framers of Tennessee's constitution were well aware of the fact that the population of each county was likely to shift they mandated that districts be reapportioned every ten years.[9] Tennes-

[8] *Baker v. Carr*, 369 U.S. 186 (1962). Appellee's Brief. File Date: 3/17/1961, accessed July 17, 2015, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3909709780
[9] "Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

see would follow this mandate several times until 1901, when the state legislature chose to not reapportion at all. Successive legislatures for the next 50 years would also chose not to reapportion. The reason was hardly a mystery.

Decades before *Baker v. Carr* was filed, H.L. Mencken, the *Baltimore Sun's* mercurial columnist wrote, "The yokels hang on because old apportionments give them an unfair advantage."[10] Mencken was correct but the scope of his criticism ought to be enlarged in this instance. Malapportionment, much like gerrymandering today, is far from a southern problem. *Baker v. Carr* originated in Tennessee, but some of the most extreme instances of malapportionment came from the northern states like Illinois. To that end, the yokels were not a local but a national phenomenon. Older schemes of apportionment often favored rural areas, the underlying notion being that a state legislature ought to represent people from all sections of the state, even those small communities whose voices would be otherwise obscured. However, these apportionment schemes were not subsequently adjusted to accommodate for population shifts so rural communities could continue to dominate the legislature. The growing inequality of reapportionment was not something that just happened; It was the result of systematic discrimination on the part of rural legislatures on a national scale in order to preserve their power.

To Tennessee's legislature in particular, the writing on the wall was clear. In 1901, the legislature saw Tennessee's trend towards urbanization, and thus while cities still lacked the legislative clout to control the agenda, rural representatives moved to table apportionment indefinitely. This maneuver was pulled despite the fact that it contradicted the demands of Tennessee's own constitution. However, the people of Tennessee were left with no practical recourse to ad-

[10] Arthur Schlesinger Jr, Robert Kennedy and His Times, (Boston: Houghton Mifflin Company 1978) 396.

dress the situation. The legislature was clearly unwilling to address reapportionment as it would have been its representatives undoing. Should such a motion have passed, it would likely have deprived many legislatures of their jobs and would have resulted in a loss of influence and funding for their communities. The origins of *Baker v. Carr* were repeated across the nation from Los Angles to New York. State legislatures, while they still lay in rural hands, decided to forgo apportionment indefinitely so they retained control over the states. What resulted as a national system of marginalized urban voters left with little to no recourse to deal with a state legislature that was not representative of their state.

With the population shift from rural to urban areas, it is understandable that the two locales were in tension. Rural citizens understandably feared the loss of control of their state legislatures and the loss of influence that came with it. However, beneath this motive was a more profound cultural concern. The shift of power from rural to urban was more divisive than a simply shift in the dominant political party. Rural residents saw this shift as placing them under the control of what almost amounted to another culture. Gene Graham noted that some rural representatives were inclined to see themselves as torchbearers for the belief that county people simply made better citizens and as such better public officials.[11]

Urban residents were not inclined to see rural control of their legislatures in this manner and their lack of control in the legislatures was becoming increasingly aggravating. In 1901 when the reapportionment was first denied to Tennessee, its population was 2,020,616 of whom 487,380 were qualified to vote. In 1962, the year *Baker* was heard, Tennessee possessed 2,092,891 qualified voters almost four times as many as in 1901, the majority of whom added

[11] Gene Graham, One Man One Vote: Baker v. Carr and the American Levelers (Boston: Atlantic Monthly Press 1972) 29

their voices to urban areas, though not through increased representation.[12] Along with this increased population, Tennessee's cities had a variety of new needs, all of which required further funding from their state legislature. However, without the necessary representatives their calls fell on deaf ears.

Nowhere was this more apparent than in Shelby County. One of the state's largest urban areas, the county received only 8 representatives to the house and only 2 senators.[13] If the formula contained in the Tennessee constitution was applied to the 1950 federal census, Shelby County would received closer to fifteen representatives and six senators. The city felt particularly, angered that the legislature refused to honor the demands of Tennessee's constitution.[14] Many castigated the legislature for swearing to uphold the Tennessee constitution and then failing to carry out its required apportionment. The inequality of Tennessee's apportionment scheme became even more clear as the cities continued to grow. By the 1950s, 37% of Tennessee's population elected 20 of its 33 members senate, while 40% of Tennessee's population elected 63 of its 99 members house.[15] The residents of Shelby County, regarded this is an illicit attempt to marginalize their votes, made all the most degrading by the fact that it was done in violation of Tennessee's Constitution.

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[12]"Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

[13]"Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

[14] J.Z. Howard, "How Ghost of 1900 rules Tennessee of 1955," Memphis *Press-Scimitar*, February 7, 1955

[15]"Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

Such malapportionment brought with it a series of very real consequences to Shelby County in the form of reduced funding. At this point the state legislature allocated funding to areas of legislative power. Those areas of Tennessee that were over represented, typically received more funding as a result.[16] Shelby County and the urban areas suffered at the hands of the Tennessee's most recent education bill, which sent funds from the capital to each school district. Each district received $99.97 per child, with the exception of the state's 4 largest counties which received $63.67 per child.[17] This coordinated discrimination extended to things such as roads for which federal funding was dispensed with scant consideration for population and need. As such, though Shelby County and Tennessee's urban areas still received more funding than the surrounding rural communities, when one considers the amount of voting citizens of those areas and the services they required, Tennessee's cities suffered a targeted campaign at the hands of their neighbors who sought to improve their own communities with funding needed by cities.

The plan to redirect urban funds back into the county appeared foolproof as there was no recourse available for urban citizens. Tennessee's Constitution, unlike many, contained no provisions for initiative and referendum.[18] As such, though urban communities possessed the pure votes required to push for a upheaval of the apportionment scheme, the Constitution contained no provision that would allow them to do so other than their own malapportioned legislature. The rural-dominated legislature was unwilling to address apportionment for clear and self-serving

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[16] *Baker v. Carr*, 369 U.S. 186 (1962). Appellee's Brief. File Date: 3/17/1961, accessed July 17, 2015, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3909709780

[17] Gene Graham, *One Man One Vote: Baker v. Carr and the American Levelers* (Boston: Atlantic Monthly Press 1972) 30-32

[18] "Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

reasons. Consequently, Shelby County looked to the judiciary to address this issue; however, this appeared to be unlikely to succeed as the Supreme Court had closed this avenue recently.

Charles Baker, the namesake of *Baker v. Carr*, was a lifelong civil servant born in Tipton County Tennessee. He was raised and educated in Millington, a community on the outskirts of Memphis, until he left to become a naval artillery instructor for the course of World War II. After the war, he came home to run for a position as an Alderman of Millington, which he would hold for over twenty-two years. This began his lifelong devotion to local government. After serving for a time as an alderman, he ran and won election as the mayor of Millington. Upon his defeat in his subsequent campaign, he would turn to the Shelby County Quarterly Court, which he would sit upon for twenty-eight years. For twenty-one of those years he was elected chairman of the Quarterly Court.[19] In his time as a civil servant, Baker witnessed the population of Shelby County rise and its influence shrink. With the death of Boss Crump, Shelby County lacked a leader who could force the state government to address the the county's needs.[20] However, the population and requirements of the county continued to grow despite the state's neglect. Ultimately, Baker and the Quarterly Court agreed that their situation was fiscally untenable. Faced with a metropolis increasing demands and an unreceptive state legislature, the Quarterly Court decided they would have to sue to for reapportionment. Baker, as the chair of the court, was given the honor of being the named plaintiff in the suit. Though the suit named more than one defendant, Joe Carr, as Tennessee's Secretary of State, was dubbed the named defendant.

The solution Charles Baker and the Quarterly Court adopted was not novel to the nation or even to Tennessee. A similar suit had been launched as recently as 1956. *Kidd v. McCanless*

[19] Terry Keeter, "County Is Losing Baker's Steady Hand, Press-Scimitar, September 1, 1978
[20] Gene Graham, *One Man One Vote*, (Boston: Atlantic Monthly Press 1972) 119-120

was heard before the Supreme Court of Tennessee only 3 years before *Baker v. Carr* was brought to Nashville District Court. The *Kidd* suit, brought by residents of Washington and Davidson County, rested on similar grievances to the suit that Shelby County would launch several years later. It alleged discrimination against urban residents via the dilution of their votes for state legislature and requested that the court rule the present scheme of apportionment unconstitutional and devise a replacement.[21] The Tennessee Supreme Court, in a terse opinion, dismissed this as absurd. The State Supreme Court noted,

> It seems obvious and we therefore hold that if the Act of 1901 is to be declared unconstitutional, then the de facto doctrine cannot be applied to maintain the present members of the General Assembly in office. If the Chancellor is correct in holding that this statute has expired by the passage of the decade following its enactment then for the same reason all prior apportionment acts have expired by a like lapse of time and are non-existent. Therefore we would not only not have any existing members of the General Assembly but we would have no apportionment act whatever under which a new election could be held for the election of members to the General Assembly.[22]

To the Tennessee court, eliminating the apportionment statute undermined the present legislature. Collectively, this would leave the state of Tennessee at a dead end with no previous apportionment statute to fall back upon and no legislature to pass a new one, the previous legislature being the product of an unconstitutional apportionment scheme. The court's opinion stands out not for its keen legal reasoning, but for the political affiliation it reveals. The court's refusal to craft a new apportionment scheme and its insistence that throwing out the previous system of apportionment would destroy the state's government appears circumspect. When one examines it

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[21] "Kidd v. McCanless, 292 S.W.2d 40 - Supreme Court of Tennessee 1956," Google Scholar, accessed July 14, 2015, https://scholar.google.com/scholar_case?case=11337411698496224771&q=kidd+v.+McCandless&hl=en&as_sdt=6,43

[22]"Kidd v. McCanless, 292 S.W.2d 40 - Supreme Court of Tennessee 1956," Google Scholar, accessed July 14, 2015, https://scholar.google.com/scholar_case?case=11337411698496224771&q=kidd+v.+McCandless&hl=en&as_sdt=6,43

in light of *Baker v. Carr* and the successful manner in which the Nashville District Court presided over the creation of a new system of legislative appointment, the State Supreme Court's intransigence appears almost inane. The court's ruling appears to be the product of partisan affiliation. The court stubbornly insists the the plaintiff's contention was impossible. *Kidd v. McCanless* reveals the opposition to redistricting in Tennessee's government. As *Kidd* highlights, opposition was not limited to the state legislature; state courts could also represent an obstacle to those who would fight for reapportionment.

Though a lawsuit for reapportionment was not a new idea, it still appeared to remained Shelby County's best chance for overhauling the apportionment system. As the Tennessee court system had spoken recently in *Kidd v. McCanless*, the Shelby County Quarterly Court decided to sue in federal rather than state court. The suit stemmed from growing discontent in the city of Memphis felt by other districts in Tennessee. Charles Baker would later note that in particular it was the lack of funding from the state that sparked the suit.[23] The city of Memphis was tired of seeing funds flow from Nashville to overrepresented districts only see their share of tax revenue decline. The problem appeared that it would only increase as the population of Shelby County grew. However, hostility to judicial reapportionment was not limited to the Tennessee Supreme Court. The legislature of Tennessee, removed from the populist hands of the urban residents, would not undertake reapportionment which would turn against its own interests and the judiciary had shown in *Kidd* that it would not address an issue with such political impact, especially when that impact would disrupt the control of its legislature.

[23] Gene Graham, *One Man One Vote*, (Boston: Atlantic Monthly Press 1972) 18

Baker v. Carr, filed late in 1959, was drawn up when the Supreme Court appeared unfriendly to the cause of reapportionment. The court had recognized and admitted that malapportionment represented an ill for representative democracy and that plaintiffs bringing the claim forward had suffered a legitimate injury; however, the court viewed the plaintiff's request as outside their power to grant.[24] In the wake of *Luther v. Borden,* the court had expanded upon what it deemed issues outside its sphere. Reapportionment in particular possessed multiple characteristics that perturbed the court. It posed jurisdictional issues as the Constitution left it to Congress to determine how the districts were drawn in the states. Concerning justiciability, the feasibility of crafting a judicial remedy, reapportionment was a complex issue to which a mathematician might have been better suited than a judge. Finally, this issue appeared to be a political question. Reapportionment to the court merited this status as it possessed an immediate impact on the next election. Should the court mandate a new form of apportionment, it was clear that such action possessed political ramifications and threatened to introduce the specter of partisanship into the court's discourse. The court had attempted to make this clear not long before *Baker v. Carr* in the case *Colegrove v. Green (1946).*

Colegrove highlights the national nature of malapportionment. It came not out of the South but from Illinois. While the majority of the state is rural, much of the population is concentrated in Cook County, the county of Chicago. Cook County, much like Shelby County Tennessee, received more representation than its surrounding community; however, when one considered the number of residents it possessed far less representation than it deserved. As such, Co-

[24] "Colegrove v. Green, 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43

legrove, a Northwestern professor, filed suit claiming that the scheme of apportionment was invalid as it conflicted with the constitutional right to vote for one's congressman, and denied equal protection of the laws guaranteed by the 14th Amendment.[25]

The majority of the court, lead by Felix Frankfurter, was not inclined to look at the validity of their claims. Frankfurter held that issues constituted political questions and that jurisdiction was required before the court could truly access the merits of the petitioners claim. Regarding those issues, he contended that it was beyond the power of the Supreme Court or any court in the nation to order the reapportionment of a state legislature. He noted,

> Courts ought not to enter this political thicket. The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress. The Constitution has many commands that are not enforceable by courts because they clearly fall outside the conditions and purposes that circumscribe judicial action.[26]

Frankfurter saw this request as one of the many that lay outside the purview of the court. He held at best, the court could simply declare the current system in violation of the constitution. This could have proved far worse than the current system, as it would undermine the authority of Congress and the state legislatures. Furthermore, he saw within the Constitution a principle of voting inequality. He contended that districting was required so that minority voices could be heard. and that it was a national principle that minorities were afforded over representation so their opinions were not drowned out by sheer numbers. The petitioners presented a series of ills that they claimed were at odds with the constitution; however, in Frankfurter's view those ills were enshrined in the history and tradition of the nation. Inequality of representation was the

[25] "Colegrove v. Green, 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43
[26] "Colegrove v. Green, 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43

practice of the nation since its inception, evidenced in Rodger Sherman's Great Compromise. At the Constitutional Convention itself delegates embraced Sherman's Great Compromise which called for a bicameral legislature with a House apportioned based on population and a Senate in which all states were represented equally. To Frankfurter this along with the historic apportionment practices held in the colonies demonstrated that equal voting was not part of the nation's customers. In the face of this tradition and precedent, Frankfurter deemed to judicial intervention in elections as outside the court's jurisdiction and non-justiciable.

To this end, Frankfurter left the resolution of this matter to Congress, and ultimately to the public. He noted, that the Constitution presented many duties that depended on "the vigilance of the people in exercising their political rights."[27] Frankfurter, and the majority of the court, sided with the tradition and precedent in the face of legislative evils. In doing so they argued that they kept the court from a political scuffle. They saw the petitioner's cry as a tempting possibility to interject their own political philosophy into law; however, they felt that it was their duty to exercise restraint. To them the Constitution made allowances for unequal representation. Even if the court was to assume that it possessed the power to address an issue of reapportionment, the issue was one that was not suited to judicial resolution. Reapportionment was a issue of enormous complexity that the Court could not address without appearing partisan. As reapportionment posed an clear impact on any and all subsequent elections, judiciary was best suited to follow precedent and leave this issue to other branches of government and the public.

[27] "Colegrove v. Green," 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43

Though the court's opinion posed an obstacle to the cause of reapportionment, it was far from insurmountable. The court at the time of *Colegrove* was left weakened by the death of Chief Justice Harlan Stone; furthermore, Justice Robert Jackson was unable to take part in the verdict leaving the court with just seven justices. The opinion, split 4-3 in favor of dismissal, is emblematic of the social rift of the day. Justice Black, the author of the minority opinion, saw *Colegrove's* petition as within the court's jurisdiction. He noted, "I cannot imagine that an Act that would have apportioned twenty-five Congressmen to the State's smallest county and one Congressman to all others, would have been sustained by any court."[28] Black proved less concerned with legal formalism than with the social realities of the case. He argued that the apportionment scheme clearly would have been a violation of the Equal Protection Clause if it had held that votes cast by citizens of certain counties were to only count half as much as votes cast in more rural ones. This to Black was the exact ill created by the apportionment scheme. It did not matter that it was cloaked in the form of apportionment in favor of certain counties. The fact that it resulted in the dilution of the votes of urban residents was enough to constitute a violation of the 14th Amendment. To that end he referred the court to its recent decision in *United States v. Classic* in which the court prevented tampering with primary ballots under Article 1 Section 4.[29] Though the constitution did not speak of primaries, it was clear that new measures were necessary to protect the republican form of government that the Constitution demands. To Black, that logical extension was that the Fourteenth Amendment demanded that each state make an ef-

[28] "Colegrove v. Green," 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43
[29] "Colegrove v. Green," 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43

fort to apportion districts so that residents' voices were substantially equal. Black and the minority went so far as to endorse the petitioner's plea that future elections in Illinois be prohibited under the present system. They even recommended that elections be held strictly based on population if necessary.

Thus, the court was narrowly split at the time of *Colegrove*. Frankfurter restrained the court from intervening in this issue; however, it is notable that this view was not shared with the majority of the court. Though Frankfurter wrote for the majority, Justice Rutledge wrote a concurrence stressing that the court retained jurisdiction in this case. Rutledge agreed with Frankfurter that the court ought to dismiss Colegrove's plea; however, on the grounds that it was infeasible rather than outside the court power altogether.[30] As such, the court's stance on malapportionment was a patchwork of conflicting opinions. This was further complicated as Black and others saw the issue as not only within their jurisdiction but one that merited protection. The divide would continue and only grow as a issue nationally as the population of the country's metropolises swelled. With the death of Chief Justice Stone and the additions of Vinson, Clark and Minton, the court as well as society was changing. With the altered composition of society and the court came a new focus on a range of issues. *Colegrove* stands as a significant transition in the court's history. It had been only 8 years since Stone wrote in footnote four of *Carolene Products* that the court was changing its focus from cases of economic practice to those concern-

[30] "Colegrove v. Green, 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43

ing civil liberties.[31] The court was still in the process of a transition that would continue into the Warren Court years.

The Court would echo such divided sentiments in 1950 in the case of *South v. Peters (1950)*, in which Georgia's County system was upheld despite challenges under the 14th and 17th Amendments. Plaintiffs similar to those in *Colegrove* came from the most populous county of their state, Fulton County the seat of Atlanta. They brought forward similar allegations that the system of apportionment under Georgia's County rule violated their rights. The majority of the court dealt with the case with an unsigned per curium opinion citing cases like *McDougall v. Green* and *Colegrove v. Green*. However, Justices Douglas and Black, dissenters in *Colegrove*, continued to flesh out their objections to the majority opinion.[32]

Douglas' opinion focused in particular on the impact of the apportionment scheme on minority votes. He noted, "I suppose that if a State reduced the vote of Negroes, Catholics, or Jews so that each got only one-tenth of a vote, we would strike the law down." He argued that while the present scheme counted the votes of minority citizens, the effect was such that it effectually made their votes less signifiant than those of other citizens. Similar to Black's dissent in *Colegrove*, Douglas concerned himself less with legal procedure and more with the substantive effects that law had on voters. It matters not that disenfranchisement was cloaked in the guise of reapportionment that fact that its substantive impact was the dilution of a class of citizens' votes was sufficient to conflict with the Equal Protection Clause. While the court had not addressed

[31] "United States v. Carolene Products Company, Legal Information Institute, accessed July 17, 2015 https://www.law.cornell.edu/supremecourt/text/304/144, 2015,
[32] "South v. Peters," 339 US 276 - Supreme Court 1950, Google Scholar, accessed July 12, 2015, https://scholar.google.com/scholar_case?case=16122081507961949612&q=south+v.+peters&hl=en&as_sdt=6,43

this issue directly on an apportionment case. Douglas and Black saw their drive to revisit this issue as also grounded in a long line of the court's precedent. In particular, Douglas saw the court as empowered to protect the rights of African-Americans in the voting process.

In particular, Douglas looked to *Smith v. Allright (1944)* and *Nixon v. Herndon (1927)* for support to his argument in *South v. Peters*. *Smith v. Allright* threw out a Texas law barring Black voters from the Democratic Party primary, while *Nixon v. Herndon* eliminated the all white primary across the South.[33] When one examines each of these opinions they appear to conflict with the court's ruling in *Colegrove*. Based on Frankfurter's opinion in *Colegrove,* the answer would seemed to be to keep the court from delving into such a contentious issue. Frankfurter's solution in *Colegrove,* to leave the issue's resolution to Congress and the public, would have seemed as fit in this instance as it was when it was devised. However, the court saw racial exclusion as such a pernicious evil that it merited judicial intervention. Needless to say, rulings against racially exclusive voting laws were controversial; however, the court was convinced that voting rights of black Americans merited protection.

As such, *South v. Peters* and *Colegrove v. Green* solidified the court at an impasse that would hold until the time of *Baker*. The majority of the court, headed by Frankfurter, held that intrusion into apportionment posed such political controversy the court was best suited to leave the controversial issues to Congress and the public. The majority saw their reticence as rooted in traditions of the court's precedent ranging back to *Luther v. Borden* itself. Upon examination of their stance in light of *Smith v. Allright, Herndon v. Nixon*, and *United States v. Classic* it ap-

[33]"South v. Peters," 339 US 276 - Supreme Court 1950, Google Scholar, accessed July 12, 2015, https://scholar.google.com/scholar_case?case=16122081507961949612&q=south+v.+peters&hl=en&as_sdt=6,43

pears somewhat contradictory. The court had shown that it was wiling to intrude into electoral controversies as long as such intrusion was made to protect the voting rights of African-Americans. Though the Frankfurter argued that the resolution of the apportionment controversy was best left to other branches of that government, he and the court were willing to act alone despite opposition to protect a victimized minority.

The majority's stance, while questionable in retrospect, appeared all too logical at the time. Issues such as the all-white primary constituted a bar on African-Americans from the electoral process. While this was not necessarily voting, the court was clearly able to infer that primaries were so tied to the necessity of voting that it merited inclusion under the 15th Amendment's protection of African-Americans. Additionally, the expansion of voting protection, even in the absence of Congressional legislation, seemed merited in the face of southern opposition to black voting. Thus, the Frankfurter and the majority would have been able to rationalize that such an intrusion into the political sphere would be far more limited than the one they were asked to make in *Colegrove*. As such, the court post-*South v. Peters* had gradually begun to chip away at the political questions doctrine as it pertained to electoral political. The reality of race in America opened the court's eyes to the necessity of judicial guidance for states. The court accepted that this was necessary to protect African-Americans even if the court was forced to stand alone. However, the underlying notion that court ought not to allow states to disenfranchise segments of their population was still applied unevenly by the majority of the court for fear of the excessive entanglement with electoral controversy.

The court was only given about ten years to ponder this questions until it was forced to confront the reality of voter districting and apportionment in *Gomillion v. Lightfoot*. This case originated from Tuskegee, Alabama, which in fear of the growing African American population,

redrew the shape of the city. The city's electoral district, formerly shaped like a square, was now draw in what the justices termed, "a twenty-eight sided figure."[34] The impact of the figure was to reform the city so that only five of its 400 African-American voters were now residents of the city. This new scheme, which eliminated almost all African-Americans from the city, did not remove a single white voters from the city limits. The effect of this legislation the court acknowledged was to remove black residents from the city and effectively deprive them of their vote for city elections. This forced the court to consider whether in the use of its power to draw districts lines; a city could run afoul of the 14th or 15th Amendments.[35]

This pushed the boundaries that had developed through *Colegrove* and *Peters*. Douglas' fears enumerated with *South v. Peters*, were more closely fleshed out in plaintiff's case in *Gomillion*. Douglas had excoriated the court for falling to take action when state apportionment effectively reduced the strength of urban votes. Actions taken by the city of Tuskegee, while under the guise of city districting, effectively eliminated the vote from African-American citizens. *Colegrove* had appeared to establish the notion that city and state districting were outside the limits of the judiciary; however, *Gomillion* presented such an frank view of the abuses capable under districting that the court ruled 9-0 in favor of the plaintiffs.

Frankfurter, the advocate of restraint in *Colegrove*, wrote the majority opinion throwing out the ordinance under the 15th Amendment. He argued that the court had never granted local officials unlimited control of local districts. Central to his argument was that the Alabama au-

[34]"Gomillion v. Lightfoot," 364 US 339 - Supreme Court 1960, accessed July 5, 2015, https://scholar.google.com/scholar_case?case=16205188752802092445&q=gomillion+v.+lightfoot&hl=en&as_sdt=6,43
[35]"Gomillion v. Lightfoot," 364 US 339 - Supreme Court 1960, accessed July 5, 2015, https://scholar.google.com/scholar_case?case=16205188752802092445&q=gomillion+v.+lightfoot&hl=en&as_sdt=6,43

thorities had failed to give any cause for the bizarre form that Tuskegee now took. The only reason floated was the plaintiff's claim of racial discrimination. As the allegations were not contested Frankfurter end by noting that the conclusion the court was bound to accept was that the legislature was intended to exclude negro citizens from voting in municipal elections. As such, Frankfurter ruled that this violated the 15th Amendment. As the redistricting had simply eliminated African-Americans from the city Frankfurter grounded the court's opinion in the 15th Amendment rather than the 14th Amendment's Equal Protection Clause. While this case concerned city districting rather than state apportionment districts, the two cases concerned conflicting underlying principles. The notion that the government was bound to protect African-American voters from abuse by municipal authorities, appeared uncomfortably close to requiring the court to protect voters of any type from state discrimination. Although this case concerned the utter exclusion of black voter, it still suggested that the court was bound to intervene at least in some cases to protect voting rights.

The court headed by Frankfurter argued that it had never given unlimited license to states and cities to do as they pleased with districts. He noted, "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right."[36] This was to be the new doctrine of the court. *Colegrove's* policy of non-intervention was untenable in light of the complete exclusion of African-Americans. Frankfurter still urged restraint by attempting to differentiate this case from *Colegrove*. In *Gomillion,* the

[36] "Gomillion v. Lightfoot," 364 US 339 - Supreme Court 1960, accessed July 5, 2015, https://scholar.google.com/scholar_case?case=16205188752802092445&q=gomillion+v.+lightfoot&hl=en&as_sdt=6,43

plaintiffs were a protected minority whose votes had been completed excluded. *Colegrove* he argued had simply concerned residents whose votes were diluted. As such, Frankfurter saw the two issues as distinct. Cutting African-American residents out of Tuskegee posed a clear problem as they had simply been deprived of their voting rights. The situation in *Colegrove*, far more opaque to Frankfurter, concerned residents who were allowed to exercise their voting rights. Though those citizens might protest that their votes were given insufficient weight, this was an issue wholly distinct from that of *Gomillion*. This complain was not one grounded in the 14th or 15th Amendments but in the Guarantee Clause of the Constitution.

Gomillion v. Lightfoot altered the Court's stance on districting and as such on apportionment. The Court was now bound to at least consider claims of municipal and state malfeasance to disrupt voting rights, and while the Court only extended protection in this case to African-Americans whose votes were completely excluded, it was inescapable that the court was wearing away at the political questions doctrine as it pertained to voting rights. The ideological shift in the court was apparent not only from the outcome of *Gomillion* but the unanimous 9-0 outcome. Other members of the court like Douglas showed willingness to extend the court's range in *Gomillion* using the 14th Amendment. While this opinion was handed down after Charles Baker and the Shelby County Quarterly Court had filed their suit against the state of Tennessee, *Gomillion's* outcome illustrated that the court was still in flux regarding its stance on this issue. This set the stage for *Baker v. Carr* which was to be the next step to the court's previously restrained stance on judicial apportionment.

The plaintiffs lead by Charles Baker filed suit in Nashville's District Court, where they were to be heard by Judge William Miller. Miller was faced with an extraordinarily complex case involving several of the state's most populous counties as plaintiffs and some of its more

prominent officials as defendants. Judge Miller noted that the *Baker* suit was an extremely complex issue that concerned the separation of powers, judiciary's desire not to conflict with other branches of government, and the relationship between the federal government with the states. This was further complicated by the court's inconsistent rhetoric in *Colegrove* and *Gomillion*; furthermore, Judge Miller was forced to address the fact that the plaintiffs appeared to have suffered real injury. The reality that the Tennessee legislature's refusal to reapportion had deprived the plaintiff's votes of their weight was clear. The plaintiffs' rights were of particular concern as that the state had neither denied the charges of discrimination nor denied that the legislature was failing to comply with the state's own constitution. Judge Miller was left with a case with significant political ramifications and guidance from the Supreme Court that was conflicted if not muddled. What guidance the Supreme Court had given seemed to suggest that the issue was of such complexity that the high court in the nation deemed it infeasible to address. Faced with the suit's intricacy Judge Miller deemed that these issues merited further consideration before a three judge panel in Nashville that would hear and decide the case.

Said panel, comprised of Judge Miller along with Judges Boyd and Martin, issued its opinion half a year after Judge Miller's initial judgment. In a short per curium opinion, the court stated that the plaintiff alleged gross discrimination against their voting rights and further alleged that the legislature was in violation of the constitution. Concerning their claims and requested relief, a new election under judicial supervision, the District Court was dismissive. Relying primarily on Frankfurter's work in *Colegrove*, the panel stated that reappointment was inappropriate for the Tennessee judiciary as it was outside the jurisdiction of the judiciary. Like in *Colegrove,* the judges agreed that the plaintiff's rights were violated. The court noted, "the plaintiff's argument that the legislature of Tennessee is guilty of a clear violation of the state constitu-

tion and of the rights of the plaintiffs the Court entirely agrees. It also agrees that the evil is a serious one which should be corrected without further delay."[37] The district court open acknowledged that the actions of the Tennessee legislature were, in the court's opinion, a violation of the 14th Amendment. The district courtly was concerned not with the plaintiff's injury but with the remedy and its power to devise one.

The District Court deemed the correction outside its power to grant. Citing *Colegrove* and also *Kidd v. McCanless* the court viewed that it could not escape the compelling mandates established by precedent. The panel also appeared concerned primarily with the manner in which the ruling would impact state elections. Like Frankfurter they feared that resolution of this matter by a small group of unelected officials, themselves strangers to election procedure, would destroy the respect of the judiciary as well as the independence of the state government. Therefore, they considered *Baker's* plea to force a new election using the Federal Census of 1950 and the formula found the in the Tennessee constitution infeasible and outside of their jurisdiction. *Baker* despite the plaintiff's injury, apparent to the judges, was dismissed for want of jurisdiction.

Given the previous rulings *Kidd* and *Colegrove*, the District Court's avoidance of the suit is understandable. The Supreme Court itself treaded a dubious line with this issue. For a District Court to undermine not only their logic but the state government by ordering a new election would have been unthinkable, especially given the complications of an election supervised by the judiciary. All arms of the state of Tennessee, including the judiciary, seemed opposed to such an action. The Supreme Court had not even slightly opened the door to the possibility of redistrict-

[37] "Baker v. Carr," 179 F. Supp. 824 - Dist. Court, MD Tennessee 1959, accessed June 20th 2015, https://scholar.google.com/scholar_case?case=15071892315664655845&q=baker+v.+carr&hl=en&as_sdt=6,43

ing and reapportionment with *Gomillion* at the time *Baker v. Carr* was heard in Nashville. The District Court's restraint appears all too ordinary. The legal framework they operated in their ruling in did not allow for such a deviation from precedent, especially one that came at odds with the state government.

One inescapable fact that highlights the court's change in direction from *Colegrove* to *Gomillion* was the changing composition of the court. While Frankfurter's turn from advocate of restraint to author of the majority opinion strongly suggests that some of the court confronted and accepted the reality of local districting malfeasance, the personnel change that the court underwent is also inescapable. Between the time of *Colegrove* and *Gomillion,* the court's composition had radically altered. Stone, deceased at time of *Colegrove,* had been replaced with Earl Warren. Jackson, absent at the time of *Colegrove,* had been replaced by John Marshall Harlan. Of those who supported the *Colegrove* verdict, (Frankfurter, Rutledge, Reed, and Burton), only Frankfurter remained.[38] The other had been replaced by William Brennan, Potter Stewart, and Charles Whittaker. Whereas the dissenters in *Colegrove*: Black, Douglas, and Murphy, suffered only the loss of Murphy who had been replaced with Justice Clark.[39] As such, the shift in power favored the dissenters in *Colegrove* and fractured those who had sided with Frankfurter in *Colegrove*. The new court was far different than the one that Stone had overseen. The Warren Court charted one of the most ambitious paths in the courts history. Warren's court at the time of the suit had already made a name for seeking out controversial cases. William Brennan later re-

[38] Kermit Hall and Timothy Huebner, *Major Problems in American Constitutional History* (New York University at Albany State University of New York 2010) 579
[39] "Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

marked during a speech that his primary duty as a justice was to draw meaning from the constitution to resolve controversy.[40] This court actively sought out cases dealing with civil rights. It was no shock that it was this body that produced *Brown v. Board* or *Gomillion v. Lightfoot*. As such, while the petitioners in *Baker v. Carr* filed their brief before *Gomillion* and as such were unable to see the court grapple with this issue, *Brown v. Board* made it clear to them that this court was willing to undertake controversial issues to protect the rights of marginalized groups, despite such rulings undermined state authority.

When the appellants in *Baker v. Carr:* Shelby, (Hamilton, Davidson, and Knox Counties) presented their case to the Supreme Court, voter suppression, was an open secret. In the city of Memphis alone, droves of newspaper articles had documented the city's loss of influence in the state legislature and celebrated the Supreme Court's ruling when Baker was announced.[41] The Press-Scimitar noted, "Most Tennesseans now live in urban centers instead of on farms; older cities have grown and new cities have come into being — yet most of the members of our House and Senate are still elected from the rural regions, as they were in 1901. In short, Tennessee of today is ruled by the ghosts of a Tennessee that ceased to exist half a century ago".[42] In the wake of *Colegrove* the Supreme Court had been alerted that malapportionment was a national phe-

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[40] "Justice William J. Brennan Jr: Speech Given at the Text and Teaching Symposium, Georgetown University," Public Broadcasting: The Supreme Court and Democracy, http://www.pbs.org/wnet/supremecourt/democracy/sources_document7.html

[41] "Now Let the Legislature Do Its Duty: If It Doesn't, the Court Way is Open," *Memphis Press-Scimitar*, March 27, 1962. "Justices Reverse Earlier Stand," *Memphis Press-Scimitar*, March 26, 1962. Russ Daley, "Cities v. the Rural Areas-One Wants-the Other Has," *Memphis Press-Scimitar*, May 29, 1962. John Spence, "Here's How rural W. Tennessee 'to Be Had', *Memphis Press-Scimitar*, May 3, 1962. Associated Press, "Supreme Court Ruling Backs Tennessee's Big City Voters," *Memphis Press-Scimitar*, March 26, 1962, Milton Britten, "Tennessee Reapportionment Case Has Numerous Angles," *Memphis Press-Scimitar*, October 14, 1961, "A Tip of the Hat…", *Memphis Press-Scimitar*, January, 2, 1965

[42] "*Now Let the Legislature Do Its Duty: If It Doesn't, the Court Way is Open*," Press-Scimitar, March 27, 1962

nomenon provoking widespread criticism. The appellants therefore wished to not only present their injury but clearly established that the citizens of Tennessee had tried and exhausted every avenue to correct this without the influence of the court. The Tennessee Constitution, though it mandated reapportionment every ten years, contained no provision for the enforcement of this provision other than the legislature. Furthermore, its constitution lacked provisions for initiative and referendum, leaving the voter with no additional avenue for change.[43] The appellants stressed that members of the Tennessee House and Senate had introduced reapportionment bills; however, none had received more than 36 votes in the 99 members House nor more than 13 votes in the 33 member Senate.[44] At their most successful, the bills only garnered slightly more than 1/3 of the votes in either house of the legislature. The appellants clearly laid out that the cause of this was the 2/3 of both houses controlled by rural Tennessee districts which stood to lose money and representatives if apportionment legislature passed.

The plaintiffs noted, that unless assistance was provided from the Court, the malapportionment would only grow with the swelling city populations. As such, the financial discrepancies that had plagued Shelby County and other districts would only grow more pronounced in light of further population shifts. Collectively, the appellants presented a clear pattern of discrimination against urban residents. The motives of malapportionment were clear to the Court from the facts presented. Upon examining the state aid doled out by the Tennessee legislature, 23 counties received 57.9% more aid than they ought to receive if the aid were dole out per capita.

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[43]"Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

[44]*Baker v. Carr*, 369 U.S. 186 (1962). Appellee's Brief. File Date: 3/17/1961, accessed July 17, 2015, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3909709780

Consequentially, these 23 counties were those who held more representatives than they were allotted if Tennessee had been reapportioned under the formula contained in its constitution.[45] The urban plaintiffs knew that the court had a conflicted history with apportionment and as such devised a strategy predicated on showing the court the severity of the situation. Their plea rested on the Supreme Court's status as the only organ of government capable of granting them relief.

The amicus briefs filed more than anything else, illustrated the national significance of the case. Briefs were filed from organizations representing a variety of municipalities from across the nation. Law offices from coast to coast filed briefs protesting what they felt was an unconstitutional and more significantly un-American pattern of discrimination against their votes. The National Institution of Law officers, a group comprised of city attorneys, filed with the plaintiffs. Their brief, which drew evidence form cities such as Portland, Detroit, New York and Dallas, among others, shows that malapportionment was an issue of national significance. They noted, "The municipality of 1960 is forced to function in an horse and buggy environment where there is little political recognition of the heavy demands of an urban population".[46] Evidence drawn from across the nation showed districts worse than any present in Tennessee. Upstate New York, which contained a fraction of New York City's population, controlled the state's legislature. Similar stories were told regarding Vermont, which had not changed its system of reapportionment in 167 years. Along with malapportionment came a pattern of under and over funding in proportion to one's legislative clout. The city of Denver received $2.4 million from Colorado for education funding for 90,000 students; however, the same funding was provided to

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[45] *"Baker v. Carr,"* 369 U.S. 186 (1962). Appellee's Brief. File Date: 3/17/1961, accessed July 17, 2015, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3909709780

[46] "*Baker v. Carr,*" 369 U.S. 186 (1962). Amicus Brief. File Date: 7/22/1960. Accessed July 17, 2015, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3900997303

Jefferson county and its 18,000 students.[47] Malapportionment in favor of rural counties and fiscal chicanery were not limited to Tennessee, but present on a national stage.

Buried in these arguments and legalese of urban and rural advocates were two different notions of what the country was. Gene Graham noted that rural residents hung to their funding out of a notion that they, the inheritors of a Jeffersonian dream, were the most suited to rule the nation.[48] They were not alone in such sentiments. While urban residents requested equality of strength in their votes, it was clear that such a measure would put legislatures undoubtably under their control. The aforementioned National Institute of Law Officers argued that the modern city was kept in a horse and buggy environment. That statement suggests not only discontent with the present situation, but distaste with the class of individuals running the state legislatures. The urban cause, though appearing egalitarian, also reflected their belief that it was they, not their rural counterparts, that were best suited to lead the nation. Such a stance reflected America's post-war growth. As such, both parties, though they masked it in legalese, were firmly convinced not only they deserved the representatives they requested, but that such allotment was good for the nation. With the growth of urban centers, their advocates felt that it was time that the backwater rural legislatures vacate their post to make way for what they deemed was the new manner of American life. Similarly, rural residents and their representatives, continued to believe that their manner of life, in the pattern of Jefferson, raised the most fit representatives Thus, deeper than the egalitarian motives of the city and the cynical motives of the rural counties were two contradictory notions of what the nation was and who should govern it.

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[47] "*Baker v. Carr*," 369 U.S. 186 (1962). Amicus Brief. File Date: 7/22/1960. Accessed July 17, 2015, http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3900997303

[48] Gene Graham, *One Man One Vote: Baker v. Carr and the American Levelers* (Boston: Atlantic Monthly Press 1972) 29-31

The friends of the plaintiff were not limited to other urban centers. The federal government itself, lead by Solicitor General Archibald Cox, filed a brief in favor of the plaintiffs. This contains the most detailed analysis of apportionment as it pertained to the court's jurisdiction and feasibility. Cox and the state picked up upon and continued a fine rhetorical point made by the court in *Colegrove* and continued in *South v. Peters* as well as other cases. The point was that the court's stance on reapportionment was a political question was still contested. In *Colegrove*, Frankfurter wrote for a bare majority; however, Justice Rutledge, who voted with the majority, argued that apportionment was not wholly removed from the court's power. That is to say, Justice Rutledge argued that the requests made in *Colegrove* were within the court's jurisdiction and were simply incapable of judicial resolution.[49] This signified that the majority of the justices at the time of *Colegrove* believed that judicial apportionment could be implemented if the court was capable of welding that power appropriately. While Frankfurter argued that such power did not belong to the court and could not be utilized effectively, Rutledge and others argued that *Colegrove* was simply an instance in which the court was incapable of using this power appropriately.

Cox and the state department continued to follow this logic through the court's opinion in *South v. Peters* where the court argued that previously federal courts had "refused to exercise" their power concerning issues of reapportionment pertaining to electoral strength of state dis-

[49] "Colegrove v. Green, 328 US 549 - Supreme Court 1946, Google Scholar, accessed June 14, 2015, https://scholar.google.com/scholar_case?case=17702410845669078827&q=colegrove+v.+green&hl=en&as_sdt=6,43

tricts.[50] Collectively, this seems to suggest that precedent arrayed against Baker and the plaintiffs was the result of judicial restraint rather than jurisdictional issues. While issues of jurisdiction and justiciability may seem like word play, to some to members of the court they were of profound importance. It if had been previously ruled that this issue was outside of the court's jurisdiction the Warren Court would have had to strike out precedent to make a ruling for the plaintiffs. The reading of the cases that Cox presented to the court made it appear that it was judicial prudence that kept previous courts from ruling on this matter, leaving the Warren Court freer to wade into this issue.

Also of significance to Cox were the passage of two civil rights acts, that of 1957 and 1960. The former empowered federal courts to protect the civil rights of American citizens, including voting. Cox argued that the denial of anything resembling equality in the strength of voting power was in fact a denial of that right to vote that the courts had been explicitly empowered to protect.[51] As he saw it, the court had taken strides to do this under *Gomillion*. However, while the court claimed it protected the denial of voter rights in *Gomillion*, rather than its dilution, the case presented to the court in *Baker*, contained discrimination substantial enough that it fell under the protection afforded to citizens by the *Civil Rights Act of 1957*. This was particularly significant as Frankfurter in *Colegrove*, had left the responsibility toward the correction of malapportionment to Congress and the people. Cox's position argued that it was the responsibility of the court to enforce Congressional Civil Rights legislation. Thus, rather than appropriating pow-

[50] "South v. Peters," 339 US 276 - Supreme Court 1950, Google Scholar, accessed July 12, 2015, https://scholar.google.com/scholar_case?case=16122081507961949612&q=south+v.+peters&hl=en&as_sdt=6,43
[51] "*Baker v. Carr*," 369 U.S. 186 (1962), accessed July 17, 2015 http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3900992606

ers of the state and Congress, federal branches of government worked in conjunction to uphold the rights of citizens.[52]

The appellants noticeably took a very different aim at the case. Their argument like that of the city of Tuskegee in *Gomillion* hardly contested that discrimination took place or even that the apportionment scheme of Tennessee was meant to subjugate urban citizens. Rather, they took Frankfurter's line of thought in *Colegrove* and argued that it was a political question far outside the bounds of the court and that a ruling on such an issue would destroy or disrupt the government of Tennessee. Concerning the latter, the state of Tennessee cited *Kidd v. McCanless* in which the Tennessee Supreme Court struck down an appointment suit. The Supreme Court of Tennessee argued that removing an apportionment statute would deprive the public of the legislature and cause a collapse of the state government. The state of Tennessee argued that the Supreme Court ought to throw out the *Baker v. Carr* to avoid such a collapse. Should they chose not to it would deprive Tennessee of a legislature and a means of electing one. The court in turn would take little note of this argument. Warren and his colleagues showed that they were more than capable of devising a scheme of apportionment that would not destroy the Tennessee legislature, but rather hold its feet to the fire.[53] While the desperation of the defendants was understandable, their argument appear feeble. Later courts would see no obstacle in simply allowing state legislatures to devise new schemes of apportionment or mandating the systems on their

[52] "*Baker v. Carr*," 369 U.S. 186 (1962), accessed July 17, 2015 http://galenet.galegroup.com/servlet/SCRB?uid=0&srchtp=a&ste=14&rcn=DW3900992606
[53] "Reynolds v. Sims," 377 US 533 - Supreme Court 1964, accessed July 11, 2015 https://scholar.google.com/scholar_case?case=3707795010433249200&q=reynolds+v.+simms&hl=en&as_sdt=6,43

own.[54] Tennessee's arguments grounded in concerns of state sovereignty would hold little weight before the Warren Court, which would respond with a display of judicial power. Such an argument was bound to fail before a group of justices who were unafraid of using federal power to protect civil liberties.

The state of Tennessee's defense of the status quo was not limited to its insistence that it would destroy the state's authority. They also contended that the 14th Amendment did not protect the plaintiff's request. The right to vote, though protected by the Fourteenth Amendment, did not in their contention make any guarantee of voting strength. Since urban residents were able to case ballots and those ballots counted in elections their claim that they were denied equal protection under the laws was not valid. *Gomillion*, which denied voting opportunity was a violation of the 15th Amendment, but as voting was extended to all qualified citizens of Tennessee there was no conflict with either the 14th or 15th Amendment. The defendants identified another issue at the heart of the plaintiff's claim: that urban residents invoked the 14th Amendment, designed to protect federal rights, to protect a right guaranteed by the state constitution. The defendants portrayed this as fallacious reasoning. As the Court had shown that it would not intervene in *Colegrove*, needless to say the Court would not and could not intervene using the 14th Amendment in a state election, especially when the plaintiff's votes were counted.

The state of Tennessee made only marginal efforts to contest the claims that its system of apportionment deliberately disenfranchised urban residents. The majority of its brief focused not the the veracity of the claim of harm but of the impossibility of the appellant's forms of relief. In

[54] "Baker v. Carr," 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962, accessed July 18, 2015, https://scholar.google.com/scholar_case?case=6148406254966379515&q=baker+v.+carr&hl=en&as_sdt=6,43

Baker v. Carr, rural citizens saw the specter of urban control, a time in which the funding of their districts would be met out and decided in a distant assembly control by people they saw as fundamentally unlike them. The congregation of African-Americans in urban centers across the South only served to stoked these fears. As such, they failed to contest the harm suffered and clung to legal technicalities in the hopes that it would prevent the court from addressing this issue.

Baker v. Carr presented the Supreme Court with a wide range of issues and concerns. Judge Miller, when he was first presented the case alone in Nashville, noted that it concerned a variety of matters ranging from the relationship with other branches of government, the relationship between the federal government with the states, and the rights of the plaintiffs.[55] In this regard *Baker v. Carr* is illustrative of the Warren Court's stance on each of these issues. The Court, headed by William Brennan, found in favor of the plaintiffs by a vote of 6-2, with Justice Whittaker not participating. Frankfurter, once the leader in *Colegrove*, found himself writing the minority opinion joined only by Harlan.[56] What is inescapable is that of the seven justices added to the court post *Colegrove*, only Harlan sided with Frankfurter. All others who participated found themselves on the side of reapportionment. The personnel of the court undoubtably impacted the verdict; the concerns facing Judge Miller were simply viewed differently by the Warren Court. This court, unlike previous ones, sought out cases of contention. Furthermore, several of the issues pointed out by Judge Miller had ceased to be areas of conflict.

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[55] "Baker v. Carr," 175 F. Supp. 649 - Dist. Court, MD Tennessee 1959, accessed July 12, 2015, https://scholar.google.com/scholar_case?case=9937833705614397389&q=baker+v.+carr&hl=en&as_sdt=6,43

[56]"Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

At the time the case came before the Supreme Court, Archibald Cox, the Solicitor General, filed in favor of the plaintiffs and agreed on their behalf. His presence in the plaintiff's favor made it clear how the Attorney General, Robert Kennedy, and his brother sided on the issue. The Supreme Court was hardly operating in a vacuum when it rendered its verdict. Judge Miller's concern of conflict with other branches of government had evaporated. Far from coming into conflict with other branches of the federal government, *Baker v. Carr* reflected the court's work in coordination with other branches of the federal government. The issue united the judiciary and the sitting president who had once called malapportionment "The shame of the states."[57] Shortly after the *Baker v. Carr* ruling, President Kennedy issued a statement in which he said that equal representation for each ballot appeared to him to be the fundamental principal underpinning democracy.[58] This left it clear to the public that the judiciary was not acting alone in the matter. In this regard, *Baker* is the result of coordination with other branches of government rather than conflict.

The court's holding in *Baker* appears rather minimalist. No new elections were ordered, no schemes of apportionment were thrown out. *Baker v. Carr* simply established that judicial apportionment was within the court's jurisdiction and presented no issues of justiciability. Despite this minimalist holding, it sparked a revolution in the next few years. When the issue of apportionment had been raised, both to the Warren court and previous courts, one of the issues would be how the judiciary could develop and implement an apportionment scheme successfully. Frankfurter in particular warned that such action would destroy the legitimacy of the court.

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[57] "The Shame of the States," New York Times Magazine, accessed July 17, 2015, http://query.nytimes.com/gst/abstract.html?res=9804E5D61E3AE73ABC4052DFB3668383649EDE

[58] Arthur Schlesinger Jr, *Robert Kennedy and His Times*, (Boston: Houghton Mifflin Company 1978) 397-398

When *Baker* was before the Warren Court, the manner in which the court would resolve the issue was still of controversy to the justices. It was Brennan who cleverly decided that the court did not have to offer any new system at all. Brennan suggested that they simply declare that the court had jurisdiction and then remand the case back to Nashville to be reheard.[59] The court must have known that this would not be the end of this issue. However, Brennan's solution gave them time to observe how a court could craft a solution to the controversy without drawing itself into the poetical muck. Should the lower court fail, the Supreme Court's prestige was left untouched and it could resolve the issue in light of further experience.

This left Tennessee to be their judicial laboratory; however, in the time that the case came back to Nashville the apportionment situation in Tennessee changed. Following the court's ruling in *Baker v. Carr,* a session of the Tennessee Legislature was called and a new scheme of apportionment was passed. Once again this left the district court in the lurch. The Supreme Court had given scant guidance in its *Baker* ruling, the case was simply remanded. This left the district court with nothing but several context clues to craft a new scheme of apportionment. Herein lines the unsettling part of Brennan's solution, while he succeeded in shielding the Supreme Court from any potential embarrassment form a poorly crafted judicial solution, he left a lower court to put one together blindly. Their task was made more difficult as they were forced to evaluate not Tennessee's previous system of apportionment, which blatantly favored rural districts, but a new, less egregious scheme.

The District Court found its guiding principles in the *Baker v. Carr* conference of Justice Clark which called for a scheme which stated a rationally designed system of voter apportion-

[59] Peter Irons and Stephanie Guitton, *May it Please the Court,* (New York: The New Press 1993)

ment was required but not one which held all votes as mathematically equal. Following Clark's logic, the district court noted that it would apply the Equal Protection Clause to Tennessee's apportionment plan. If evidence of "invidious discriminations" were present then it would violate the 14th Amendment.[60] The new system that the court was set to weigh was in many respects similar to the previous one. It still retained the 99 member House and 33 member Senate. However, the provisions for apportionment had changed. The House was no longer apportioned based on the 1901 census. Instead the previous scheme had been replaced with one that allotted representatives based on population. However, several of the smaller districts were allowed to retain representatives even if they fell below the population that would seem to be required to receive a seat. Furthermore, the plan allowed for the formation of floterial districts which in turn were allotted minimal representation. As the House still retained a maximum number of representatives the result was some representation was pulled from the cities; however, overall this plan more heavily weighted the cities than the previous plan. The court deemed that this part of the system appeared to pass muster. It noted, "We find no basis for holding that the Fourteenth Amendment precludes a state from enforcing a policy which would give a measure of protection and recognition to its less populous governmental units."[61] The court found the principal of minority representation deeply rooted in American government. However, this provision came with a caveat which would appear upon examination of the Senate's apportionment scheme.

The Tennessee Senate unlike the House was not apportioned based on any semblance of population. It was the result of 33 new senatorial districts. The court noted that these districts

[60] "Baker v. Carr," 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962, accessed July 8, 2015, Baker v. Carr, 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962
[61]"Baker v. Carr," 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962, accessed July 8, 2015, Baker v. Carr, 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962

lacked any rhyme or reason. There was no consistency in size or the number of voters in each district. The only pattern found in what Justice Clark described as a "crazy quilt" was that districts middle Tennessee were more favored over those in the east and the west.[62] In light of this evidence the court deemed that the apportionment scheme devised for the senate was in fact arbitrary and a product of invidious discrimination. As such the court decided to throw out the new apportionment scheme based on the 14th Amendment.

In light of the minimal strides made post-*Baker,* the District Court decided it would not leave the legislature alone to reformulate the apportionment scheme. Unlike the Supreme Court, it decided to offer a set of guidelines which it urged the legislature to follow. It suggested to the Tennessee Assembly that whatever apportionment scheme was to be followed needed to have at least one chamber of its legislature apportioned strictly based on population. This was to be the minimum standard required by the 14th Amendment. The court noted, "Equal Protection requires that such condition be eliminated and that apportionment in at least one house shall be based, fully and in good faith, on number of qualified voters without regard to any other factor."[63] This was to be the baseline not just for Tennessee but for further apportionment cases outside the state or even before the Supreme Court. Due to Brennan's decision, it was left unclear as to what standards would be required to constitute a fair scheme. The district court wisely carved out a compromise that reflected the federal legislature. States retained the right, though it was severely curtained, to emphasize small communities; however, at least one section of the legislature had to be apportioned on population alone. The district court, having thrown out the current appor-

[62] "Baker v. Carr," 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962, accessed July 8, 2015, Baker v. Carr, 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962
[63] "Baker v. Carr," 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962, accessed July 8, 2015, Baker v. Carr, 206 F. Supp. 341 - Dist. Court, MD Tennessee 1962

tionment scheme, did not implement one of its own. Taking a page out of Brennan's book, they chose to let the legislature construct one under supervision. This provided a deft solution as it left the minutia of crafting a plan to a large body of elected officials. Even now the results of *Baker v. Carr* were clear, new issues had entered the purview of the judiciary. As evidenced by the actions of the district court of Nashville, now the judiciary retained powerful oversight over new functions of state government. While the District Court did not craft the new apportionment bill, the guidelines it sent with its opinion made it clear to the state legislature that the court was in control of whatever form the bill would take. In a few short months, *Baker* had pushed new social issues to the control of the courts at the expense of the state.

The court's holing in *Baker v. Carr* resulted in a tremendous change to the composition of the Tennessee Legislature. Shelby County had previously been allotted nine representatives and senators in total.[64] Following *Baker v. Carr* that number would jump to six senators and sixteen representatives, more than twice number previously apportioned to that county.[65] Similar changes to the apportionment of other Tennessee counties would transfer power from rural to urban hands. This story of *Baker's* impact was not unique to Tennessee. As of August 5, 1962, less than five months after the Supreme Court announced its opinion in *Baker v. Carr*, apportionment lawsuits were either ruled or underway in the majority of the states.[66] Before 1962 only two states in the union possessed legislatures that were compliant with the principle of one person one vote, following *Baker v. Carr*, each of those legislatures was subject to judicial review

[64] J.Z. Howard, "Background on One-Man, One-Vote Battle," *Memphis Press-Scimitar*, December 1, 1972
[65] "Baker v. Carr," 247 F. Supp. 629 - Dist. Court, MD Tennessee 1965, accessed July 24, 2015, https://scholar.google.com/scholar_case?case=11363019873262485075&q=baker+v.+carr&hl=en&as_sdt=6,43
[66] "Reapportionment—It's Status Today," *New York Times,* August 5, 1962

and revision.[67] When one considers the state of legislative apportionment before *Baker v. Carr,* and the size of the shift that *Baker* sparked it is no overstatement to say to *Baker v. Carr* started a judicial revolution.

Needless to say one individual who was not as pleased with the court's holding in *Baker v. Carr* was Felix Frankfurter. Frankfurter's issues, effectively those he argued in *Colegrove,* were that the court would damage its own reputation by stepping into an issue so close to the political fray, and for that reason previous courts had made it clear that this issue was ill-suited to judicial resolution and outside the court's limits. He invoked many of the same cases that Brennan did. However, while Brennan saw them as a lack of exercise of legitimate judicial power, Frankfurter saw them as a bar to the court's entry to this matter. *South v. Peters* and *Colegrove v. Green* were but two recent variations of an unbroken line of case law which lead to *Luther v. Borden* and the foundation of the political questions doctrine itself. To Frankfurter, the majority opinion jettisoned decades of precedent just to impose the justice's private notions of democracy and inject them into the constitutional discourse at the expense of the court.

Though the plaintiffs, Charles Baker and Shelby County, argued that the apportionment scheme violated their 14th Amendment rights, Frankfurter saw that as but a facade for a more fundamental claim, one grounded in the Guarantee Clause of the Constitution. Article 1 Section 4 of the constitution guarantees each state a republican form of government.[68] Frankfurter saw their discontent with their voting strength as a dispute with the very form of American government. He noted,

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[67] Earl Warren, *The Memoirs of Earl Warren* (New York: Doubleday & Company 1977) 308
[68] "The Constitution of the United States," Charters of Freedom, accessed July 18, 2015, http://www.archives.gov/exhibits/charters/constitution_transcript.html

> The notion that representation proportioned to the geographic spread of population is so universally accepted as a necessary element of alit between man and man that it must be taken to be the standard of a poetical equality preserved by the Fourteenth Amendment —that it is, in the appellants' words 'the basic principal of representative government—is to put it bluntly, not true. However desirable and however desired by some among the great thinker snap framers of our government, it has never bene generally practiced, today or in the past.[69]

The plaintiff's objection was grounded not in the Fourteenth Amendment for they were allowed to vote and their votes were counted, but in the strength of their votes. To Frankfurter, this signified a deeper issue. He saw *Baker's* challenge as a challenge to the underpinnings of American democracy, a populist wave of fervor attempting to take its principle of one man one vote and enshrine it in American democracy and law. While Frankfurter might have privately thought this principle was a beneficial one, it was beyond the power of the court to grant. When viewing the plaintiff's claim in light of an issue with the Guarantee Clause, Frankfurter saw a line of precedent leading to *Luther v. Borden* that established that it was outside the court's power to grant the plaintiff's wish. The results, which he famously referred to as the political thicket would in his mind to destroy the court by bringing it to Earth to participate in a populist political slugfest over state legislatures.

Baker v. Carr was but the boiling point for a long line of disputes concerning malapportionment. Ultimately, despite the court's line of precedent, the growth of the cities and their demands for new services made reapportionment inevitable. *Baker v. Carr* illustrates this. Rural legislatures across the country clung to control of legislatures in the hopes of retaining influence and the funding that it provided. However, such influence was only bound to last so long in a changing society in which wealth, prominence, and need were clustered in urban areas. Rural

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[69] "Baker v. Carr, 369 US 186 - Supreme Court 1962," Google Scholar, accessed June 20, 2015, https://scholar.google.com/scholar_case?case=6066081450900314197&q=baker+v.+carr&hl=en&as_sdt=6,43

forces, in hopes of retaining control, relied upon legal procedure that marked judicial reapportionment as an issue for the court to avoid. Championed by Felix Frankfurter, who respected his predecessors' fears of conflict with other branches of government and besmirching the court's reputation, rural interests prevailed for a time in preventing the passage of new apportionment legislation. However such legal formalism would prove scant defense against new social conditions and needs. The principle often paired with *Baker v. Carr,* though it only entered the judicial discourse afterwards, was one man one vote. The plaintiffs in *Baker*, urban citizens and cities across the nation, believed, like President Kennedy, that this principal ought to be reflected in American law. Perhaps more appropriately, they felt this principle of equal representation was already part of American culture and democracy. They simply had to force courts and state legislatures to reflect that. Frankfurter and others succeeded in emphasizing judicial restraint for a time out of a belief that one ought not to inject their own philosophy, beneficial though it might be, into a nation whose history clearly demonstrated that it did not support representational equality. To jettison the history of the nation and to make way for contemporary philosophy would be to legislate from the bench. However, despite Frankfurter's fears over the impact of *Baker v. Carr* on the court's reputation, the case did nothing but bolster regard for the court nationally. The principle of one man one vote proved hard to protest and in time the case was only built upon. What Frankfurter had failed to grasp was that the public, and to an extent branches of the federal government, longed for the activist court he dreaded. In the wake of *Brown v. Board,* society's opinion of the court swelled. The court, responding to the public, continued to draw meaning from the constitutional text to affect social change. In *Baker v. Carr*, society through its arm of the populist Warren Court, pushed aside abstract principles of law in favor of new commandments rooted in their cultural and social conditions. *Baker v. Carr* stands as a watershed

moment in the court's history in which new social issues were pushed to the forefront and the court was given a powerful new means to regulate the states. The change had already happened. Law merely responded to it.