

## Louisiana Law Review

---

Volume 29 | Number 3  
April 1969

---

# Constitutional Law - Reapportionment of Local Government Units

Sally Brinkley

---

### Repository Citation

Sally Brinkley, *Constitutional Law - Reapportionment of Local Government Units*, 29 La. L. Rev. (1969)  
Available at: <https://digitalcommons.law.lsu.edu/lalrev/vol29/iss3/7>

This Note is brought to you for free and open access by the Law Reviews and Journals at LSU Law Digital Commons. It has been accepted for inclusion in Louisiana Law Review by an authorized editor of LSU Law Digital Commons. For more information, please contact [kreed25@lsu.edu](mailto:kreed25@lsu.edu).

## NOTES

### CONSTITUTIONAL LAW—REAPPORTIONMENT OF LOCAL GOVERNMENT UNITS

Petitioner, a taxpayer and voter in Midland County, Texas, sued in state court to force the redistricting of the Midland County Commissioners Court. The court had been created in the Texas Constitution which provided that it should have general governmental powers over the entire county. The court itself was composed of a county judge, elected at large, and four members, chosen from districts whose populations were, respectively, 67,906; 852; 414; 828.<sup>1</sup> Petitioner, a resident voter of the largest district, alleged that the disparity in population in the districts resulted in an unconstitutional dilution of his vote which violated his rights under the Equal Protection Clause of the United States Constitution. The state trial court ruled for petitioner and ordered adoption of a new plan of districting based on population. The Texas Court of Civil Appeals reversed.<sup>2</sup> Its decision was overturned by the Texas Supreme Court,<sup>3</sup> which ruled that the existing districting scheme was impermissible, but that factors other than population could be considered in redistricting.<sup>4</sup> This decision was, in turn, reversed by the United States Supreme Court, which *held*, local governmental units with general governmental powers over an entire geographic area cannot be apportioned among single member districts of substantially unequal population. *Avery v. Midland County, Texas*, 390 U.S. 474 (1968).

#### *History of Reapportionment Cases*

The fourteenth amendment to the United States Constitution prohibits the states from denying persons within their jurisdictions equal protection of the laws.<sup>5</sup> But the prohibition is not absolute. It precludes states from establishing arbitrary and unreasonable classifications, but they may classify persons differently if the classifications are rational means of attaining legitimate state objectives and if all those who stand within the

---

1. The first district contained the City of Midland. The other three districts were rural.

2. 397 S.W.2d 919 (Tex. Civ. App. 1965).

3. 406 S.W.2d 422 (Tex. 1966).

4. *Id.* at 428. The Texas Supreme Court said factors such as the number of qualified voters, land areas, geography, miles of county roads and taxable values could also be considered in making a constitutional districting plan.

5. U.S. Const. amend. XIV, § 1.

same class are treated similarly.<sup>6</sup> The Supreme Court interpreted the prohibition to extend to any action by a state, its agencies,<sup>7</sup> or instrumentalities.<sup>8</sup>

In *Baker v. Carr*<sup>9</sup> the Court held that a federal district court had jurisdiction over disputes concerning apportionment of state political units and ordered a remand for a determination of whether or not the Tennessee legislature had violated the fourteenth amendment by failing to reapportion itself. Other cases challenging existing apportionment schemes followed in rapid succession. In *Gray v. Sanders*,<sup>10</sup> Georgia's county unit system was challenged. Under this system the winner of a majority of the counties was the winner of the election, irrespective of the popular vote. In striking down this procedure Justice Douglas said: "Once the geographical unit for which a representative be chosen is designated, all who participate in the election are to have an equal vote."<sup>11</sup> The following year, reapportionment of districts on a population basis was extended to federal congressional districts within a state.<sup>12</sup> The Court in *Reynolds v. Sims*<sup>13</sup> extended the reapportionment concept to both houses of a state legislature. The majority in that decision held apportionment on a population basis was required in both houses of a bicameral legislature by the equal protection clause. The Court made it quite clear that equality of population was the determinative factor in districting, although conceding that "mathematical exactness or precision is hardly a workable constitutional requirement."<sup>14</sup>

### *The Avery Decision*

In the great majority of cases decided after *Reynolds v. Sims*, the highest state courts have applied its principles to local governmental units.<sup>15</sup> The Court upheld this state court practice

---

6. *Williamson v. Lee Optical*, 348 U.S. 483 (1955); *Skinner v. Oklahoma*, 316 U.S. 535 (1942); *Dominion Hotel, Inc. v. Arizona*, 249 U.S. 265 (1919).

7. *Shelley v. Kraemer*, 334 U.S. 1 (1948).

8. *Cooper v. Aaron*, 358 U.S. 1 (1958).

9. 369 U.S. 186 (1962). Prior to this decision the Court had refused to accept jurisdiction in cases involving reapportionment of state political units. This refusal was based upon the rationale that the question presented was a political one and not justiciable. *South v. Peters*, 339 U.S. 276 (1950); *MacDougall v. Green*, 335 U.S. 281 (1948); *Colegreve v. Green*, 328 U.S. 549 (1946).

10. 372 U.S. 368 (1963).

11. *Id.* at 379.

12. *Wesherry v. Sanders*, 376 U.S. 1 (1964).

13. 377 U.S. 533 (1964).

14. *Id.* at 577.

15. *Miller v. Board of Supervisors*, 63 Cal.2d 343, 405 P.2d 857, 46 Cal. Rptr. 617 (1965); *Montgomery County Council v. Garrott*, 243 Md. 634, 222 A.2d 164 (1966); *Seaman v. Fedourich*, 16 N.Y.2d 94, 209 N.E.2d 787, 262 N.Y.S.2d 591 (1965).

in *Avery*.<sup>16</sup> States must insure that general local governmental units to which they have delegated law-making power are elected by persons having equally effective votes. However, all local units are not within the scope of the present ruling. The Court distinguished between units with general responsibility and power and special units.<sup>17</sup> The former alone come within the *Avery* holding. To be general units, they must meet what the writer sees as two tests: (1) they must have "power to make a large number of decisions having a broad range of impacts,"<sup>18</sup> and (2) the decisions must affect all of the constituents of the unit.<sup>19</sup>

The instant case holds that "no substantial variation from equal population in drawing districts"<sup>20</sup> is permissible. As the dissenters point out,<sup>21</sup> this seems to leave the legislature little discretion in constructing or reconstructing local districts. The Court rejects the other possible bases for districting listed by the Texas Supreme Court,<sup>22</sup> but it does state the Constitution does not impose a "uniform strait-jacket"<sup>23</sup> which would prohibit local experimentation. The majority decision specifically reaffirms two previous decisions in which the Court has declined to impose a strict one man-one vote requirement—*Sailors v. Board of Education* and *Dusch v. Davis*.<sup>24</sup> In *Sailors* the Court approved a plan in which districts of unequal population elected

16. 390 U.S. 474 (1968).

17. *Id.* at 483.

18. *Id.* at 474. The Texas Supreme Court found that the legislative functions of the Commissioners Court were negligible. But the United States Supreme Court stated that most local units could not be categorized as legislative, administrative, or judicial. It found that the functions of the Texas unit did meet the test quoted in the text. The unit had power to tax, issue bonds, budget the county's funds, and maintain roads and buildings. In his dissent, Justice Fortas stressed the extremely limited nature of these powers. *Id.* at 502-04.

19. "Were the Commissioners Court a special purpose unit of government assigned the performance of functions affecting definable groups of constituents more than other constituents, we would have to confront the question whether such bodies may be apportioned in ways which give greater influence to the citizen most affected by the organization's functions. That question, however, is not presented by this case. . . ." *Id.* at 483-84. The Court said that while the work of the Commissioners Court did concentrate on rural affairs, most of their decisions affected all the citizens of the county. In his dissent, Justice Fortas agreed that the one man—one vote principle should apply to governmental units whose impact is evenly felt by all its constituents. But he argued that the Commissioners Court was not such a unit. Practically speaking, he said, its impact was much greater on its rural constituents than on its urban ones. *Id.* at 507.

20. *Id.* at 485.

21. *Id.* at 492, 493, 509.

22. See note 4 *supra*.

23. *Avery v. Midland County, Texas*, 390 U.S. 474, 485 (1968).

24. *Sailors v. Board of Education*, 387 U.S. 105 (1967); *Dusch v. Davis*, 387 U.S. 172 (1967).

(at large) individual school boards to represent each district. The elected school boards each appointed one delegate to a biennial meeting at which a five man county board was elected. In upholding the selection of the county board, the Court stressed the appointive nature of the plan and the very limited administrative powers exercised by the board. In *Dusch* the Court upheld an electoral system in which seven members of a county governing board were elected at large but were required to be residents of certain districts. The remaining four members were elected with no residence requirement. The Court said that members represented *all* of the county, not just the district of their residence. From the holdings in these cases it seems that although the Court may allow some other factors to be considered in unusual cases of districting, even in such unusual cases the population factor must be controlling, and anything other than slight deviations from it will not be tolerated.<sup>25</sup>

The immediate effect of this decision will be felt swiftly across the United States. Considering county governing bodies alone, it is estimated that of the 1,900 which are elected by districts, 1/2 to 2/3 are malapportioned.<sup>26</sup> Heretofore, the image these county governmental units have projected has been rural and anachronistic. Those constituents living in the densely populated and underrepresented areas of the county have been unable to exercise the influence to which their numbers entitle them; and consequently, they have turned to sub-units, such as municipal governments, to achieve their programs. The reapportionment of the county body should increase the importance of the county as a general governmental unit at the expense of the independent subunits, as it becomes more responsive to the needs of *all* its people.<sup>27</sup> The change in voter influence will result in policy changes as more emphasis is placed on urban and suburban needs, such as improved police and fire protection and improved educational and recreational facilities.<sup>28</sup> As urban interests on the county boards increase, city-county cooperation should improve and more movements to consolidate county and

---

25. Slight deviations based upon legitimate considerations of rational state policy are allowable. *Reynolds v. Sims*, 377 U.S. 533, 579 (1964). This does not include historical, economic, and geographical considerations. *Lucas v. Forty-Fourth Assembly of Colorado*, 377 U.S. 713, 738 (1964).

26. Grant & McArthur, "One Man—One Vote" and County Government: Rural, Urban, and Metropolitan Implications, 36 GEO. WASH. L. REV. 760, 766 (1968).

27. *Id.* at 768.

28. *Id.* at 767.

city governments should develop to prevent duplication of services.<sup>29</sup>

As a result of the *Avery* decision, experimentation with electoral methods other than single member districts may increase. The apportionment problem can be eliminated by the use of at-large elections in which all the constituents vote on all the members of the elected body. There are no districts so there can be no malapportionment of them. But at-large elections present another problem—possible discrimination against minority interests which may often be unable to elect even one representative in this system. There are other alternative electoral systems which may be tried.<sup>30</sup>

These include:

(1) Representatives elected from large multi-member districts. This method, though subject to the one man one vote principle, allows greater flexibility than single member districts because traditional district lines may be maintained while the number of representatives per district can be increased or decreased as population varies;

(2) Some representatives elected at-large and others from equally apportioned districts. This combines the advantages of both systems;

(3) Representatives elected at-large but with resident district requirements probably assuring representation to important factions in the community. This was the plan upheld in *Dusch v. Davis*;

(4) Proportional representation. The various parties or groups are elected in proportion to the number of votes they receive. Although this assures minority representation on the governing body, it weakens the traditional two-party system and has been abandoned in almost every American jurisdiction which has tried it;

(5) Representatives chosen by a weighted voting system. Unequal districts are used but each representative casts

---

29. *Id.* at 774. There could also be a decline in city annexation of suburbs in large metropolitan areas as the suburbs look to stronger, more responsive county governments. *Id.* at 775. All of these increased demands on the country unit should accelerate the modernization of county administration. *Id.* at 767. These results of reapportionment will vary in intensity around the country as particular state laws and voter attitudes towards the changes moderate or accelerate them.

30. Jewell, *Local Systems of Representation: Political Consequences and Judicial Choices*, 36 GEO. WASH. L. REV. 790, 805 (1968).

votes in proportion to the population within his district. These various systems of voting have not been approved or invalidated by the Supreme Court at the present time. Any utilization of them presumably must at least comply with the principle underlying *Avery*—each individual's vote should be of equal weight.

*Avery's Application in Louisiana*

The Louisiana police jury system is clearly within the type of county (parish) unit ordered reapportioned in *Avery*. Police juries are composed of members elected from districts within the parishes.<sup>31</sup> Many of their powers are general in nature and extend over the entire parish which the jury serves. For instance, the juries have the power to draw their own district lines, levy property taxes within set millage limits, and pass ordinances concerning trespassing, places of public entertainment, livestock control, and maintenance of parish buildings and roads.<sup>32</sup>

Already there has been some application of the ruling in the instant case to Louisiana police juries. Lafayette Parish has been ordered to present a plan to correct the "gross dilution" of the weight of individual votes in Ward Three which contains the city of Lafayette.<sup>33</sup> This ward has 65% of the total population and six jurors. The other nine wards have one juror each. The federal district court referred the police jury to the guidelines set for the state legislature in *Bannister v. Davis*<sup>34</sup> and to the *Dusch* decision<sup>35</sup> for assistance in redistricting.

---

31. For the election of police juries parishes are divided into from five to twelve wards. LA. R.S. 33:1224 (1950). The voters in each district vote for the jurors to represent their wards. As the population in the ward increases additional jurors may be added. After the population of the parish exceeds 175,000, no new jurors may be added. LA. R.S. 33:1222, 1223 (1950). Malapportionment results from failure to add extra jurors as the population in a ward increases or from failure to redraw district lines as the population shifts or increases.

32. LA. R.S. 33:1236 (1950).

33. *Simon v. Landry*, 286 F. Supp. 60 (W.D. La. 1968).

34. 263 F. Supp. 202 (E.D. La. 1966). The following guidelines are set forth by the court: (1) Districts should be compact; (2) Boundaries of existing political subdivisions should remain intact if possible; (3) Total population, not voting or citizen population, should be used as a base; (4) Fractional and weighted voting systems should not be used; (5) If possible, multi-member, multi-parish districts should be avoided; (6) There should be no gerrymandering of districts.

Three methods for testing the fairness of an existing or proposed apportionment scheme are indicated: the population variance test (the ratio between average population per representative in the most over-represented voting district and the most under-represented district), the maximum detrimental deviation from the average percentage (the ratio between population per representative in the most under-represented district and the average population per representative), and the minimum controlling factor test (the ratio between the population of the minimum number of districts needed to elect a majority and the total population).

35. 387 U.S. 112 (1967).

The reapportionment of the police juries will likewise affect the reapportionment of parish school boards since parishes with police jury systems choose school boards from identical districts.<sup>36</sup> The legislature may change this procedure, but *Avery* must be complied with if the school boards are to continue to have broad general powers and are to be elected from districts. Also affected by *Avery* will be malapportioned city councils and other municipal bodies elected from districts.<sup>37</sup> However, the greatest number of local units are appointive or for special purposes or both and they should be unaffected.<sup>38</sup>

### Conclusion

The *Avery* decision is the latest in the logical progression of reapportionment decisions beginning with *Baker v. Carr*. Whether it will be the latest remains to be seen. There are few governmental entities which have escaped the attention of the Supreme Court in this area. The only local units excluded from the *Avery* holding are those not chosen from districts, those that are appointive, and those established for special purposes. Each of these categories presents problems that are apt to be litigated. At large elections will be tested for what some consider an unconstitutional dilution of minority votes. The exemption of appointed bodies from the reapportionment principle is thought unwise by some writers,<sup>39</sup> and if, in an effort to circumvent *Avery*, important general governing bodies are made appointive, the practice will likely be tested. As for the special purpose category, the term is so vague and the definition of general unit so broad that many local units considered special purpose could be categorized as general and brought within the instant holding. In addition, the Court may decide to face the problem of partisan gerrymandering of districts, a related area which it has so far refused to enter for many of the same reasons it so long refused to consider reapportionment cases.<sup>40</sup>

Sally Brinkley

---

36. LA. R.S. 17:52 (1950). The *Sailors* case is not controlling here since that case involved a special fact situation—a school board of limited powers which was not directly elected.

37. An example in Louisiana is the aldermen in the Mayor-Alderman Plan, as provided for in LA. R.S. 33:321-481 (1950).

38. For example, water districts, drainage and sewerage districts, planning, and zoning commissions.

39. Jewell, *Local Systems of Representation: Political Consequences and Judicial Choices*, 36 GEO. WASH. L. REV. 790, 796 (1968).

40. See note 10 *supra*. However, the Court has outlawed gerrymandering of districts on the basis of race. *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).