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Constitutional Law - Reapportionment

Andrew M. Schifinio

Dennis Gerard Long

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Once one looks away from the physical point where the accident occurs, and investigates the policy of both states' laws and the contacts with the issues and the parties, one begins to doubt the basic value of the ancient rule based upon the situs of the tort. Pennsylvania with its weightier contacts and strong public policy towards adequate relief should control, as against the prior *lex loci delicti* rule, developed in an age when all the contacts developed in one state consistently, which does not fit modern day circumstances.

JOHN W. MCGONIGLE

CONSTITUTIONAL LAW—Reapportionment—The Pennsylvania Reapportionment Act held unconstitutional.

Butcher v. Bloom, 415 Pa. 438, 203 A. 2d 556 (1964)

The courts of this land until recently, were hesitant to decide state legislature apportionment questions.¹ This subject was generally deemed political in nature, thus not properly one for judicial determination. In 1962, however, the United States Supreme Court said that dilution of citizens voting power caused by apportionment not substantially based on population presented a justiciable controversy for the federal courts.² Since then the judicial tribunals of the several states have been flooded with "apportionment" litigation—Pennsylvania has been no exception. In 1962 Pennsylvania taxpayers filed complaints in the Court of Common Pleas of Dauphin County challenging the constitutionality of the legislative apportionment law.³ The case was held over by the Common Pleas Court and adjudication of the issues was deferred until the legislature had a sufficient opportunity to enact new apportionment legislation at its next session. Subsequently, two new apportionment bills were enacted⁴ and signed into law. These two new apportionment laws were challenged by the plaintiffs by petitioning the Supreme Court of Pennsylvania to take jurisdiction of the case. The court granted the petition. Thus, the court was faced with a question involving

1. *Cook v. Fortson*, 329 U.S. 675 (1946); *Radford v. Gary*, 352 U.S. 991 (1957).

2. *Baker v. Carr*, 369 U.S. 186 (1962).

3. *Butcher v. Trimarchi*, 28 Pa. D. & C. 2d, 537 (1962). Act of May 10, 1921, P.L. 449, as amended, 25 P.S. §2201. Act of July 29, 1953, P.L. 956, 25 P.S. §2215.

4. Act of January 9, 1964, P.L. 3, 25 P.S. §2221 (Supp. 1963). Act of January 9, 1964, P.L. 4, 25 P.S. §2217 (Supp. 1963).

the very essence of representative democracy, namely the rights of the citizens of Pennsylvania in electing their legislature. "It presents one of the most important constitutional questions ever raised in the history of this Commonwealth."⁵

The court held that these 1964 acts were violative of the fourteenth amendment of the Constitution. The court based its decision upon the holdings of United States Supreme Court in the cases originating with *Baker v. Carr* and evolving through *Reynolds v. Sims*.⁶ The court relied primarily upon the *Reynolds* case which established the following rules: that both houses of a bicameral legislature must be substantially based on population;⁷ that diluting the weight of votes because of place of residence impairs basic constitutional rights under the fourteenth amendment just as much as invidious discrimination based upon factors such as race or economic status;⁸ that a state legislative districting scheme which gives the same number of representatives to unequal number of constituents cannot be constitutionally sustained;⁹ that the requirement of the fourteenth amendment is: ". . . no less than substantially equal state legislative representation for all citizens of all places."¹⁰

Pennsylvania's Reapportionment Acts do not meet the requirement of the fourteenth amendment as announced by the United States Supreme Court, and thus were declared invalid. The court's task was fulfilled by the constitutional determination of the Reapportionment Acts. It was required to do no more since the issues were determined and the case disposed of by this ruling. It is a generally accepted doctrine of constitutional law that constitutional questions will not be decided unless their determination is essential to the disposition of the case.¹¹ The disposition of this case was resolved by the Pennsylvania court's decision on the validity of the statutes. Further constitutional inquiry into matters not essential for and merely collateral to the disposition, could have and should have properly been restrained. However, the court felt inclined to gratui-

5. *Butcher v. Bloom*, 415 Pa. 438, 445 (1964).

6. *Reynolds v. Sims*, 377 U.S. 533, 84 S. Ct. 1362 (1964); *WMCA, Inc. v. Lomenzo*, 377 U.S. 633 (1964); *Maryland Committee for Fair Representation v. Tawes*, 377 U.S. 656 (1964); *Davis v. Mann*, 377 U.S. 678 (1964); *Roman v. Sincock*, 377 U.S. 695 (1964); *Lucas v. Forty-Fourth General Assembly of State of Colorado*, 377 U.S. 713 (1964).

7. *Reynolds v. Sims*, 84 S. Ct. 1362 (1964).

8. *Supra* note 7 at 1384.

9. *Supra* note 7 at 1382.

10. *Supra* note 7 at 1385.

11. *Commonwealth, to use of Dollar Saving & Trust Co., Trustee v. Picard*, 296 Pa. 120 (1929). *Altieri v. Allentown Officers' and Employees' Retirement Board*, 368 Pa. 176 (1951).

tously render a decision on the constitutionality of Article II, sections 16 and 17 of the Pennsylvania Constitution. The court said:

In order to prevent undue confusion on the part of those who are assigned the primary task of reapportionment, we feel compelled to discuss several provisions of the Constitution of Pennsylvania. . .¹²

Article II section 17 of the Pennsylvania Constitution provides:

The members of the House of Representatives shall be apportioned among the several counties, on a ratio obtained by dividing the population of the state as ascertained by the most recent United States census by two hundred. Every county containing less than five ratios shall have one representative for each full ratio; and an additional representative when the surplus exceeds a half ratio; but each county shall have at least one representative. Every county containing five ratios or more shall have one representative for every full ratio. Every city containing a population equal to a ratio shall elect separately its portion of the representatives allotted to the county in which it is located. Every city entitled to more than four representatives, and every county having over one hundred thousand inhabitants shall be divided into districts of compact and contiguous territory, each district to elect its proportion of representatives according to its population, but no district shall elect more than four representatives.

The Court said:

Indeed § 17, when considered as a whole, demands that boundaries of all political subdivisions be respected when not in conflict with the overriding population principle. It must be interpreted to require that counties with small populations, if necessary, be joined with other counties for the purpose of electing and sharing a representative. We hold that no provision of § 17 prohibits the division or combination of counties in the formation of districts where the population principle cannot otherwise be satisfied.¹³

In this case the Supreme Court of Pennsylvania made two major mistakes. As stated above, the constitutionality of the Pennsylvania Constitution should not have been discussed. The controversy of the case was already decided by ruling the Apportionment Acts unconstitutional. Secondly, the court's interpretation of the words

12. *Supra* note 5 at 462.

13. *Supra* note 5 at 465.

of the Pennsylvania Constitution was a complete disregard of the true meaning of the English language. Article II section 16 of the Pennsylvania Constitution provides:

The state shall be divided into fifty senatorial districts of compact and contiguous territory as nearly equal in population as may be, and each district shall be entitled to elect one Senator. Each county containing one or more ratios of population shall be entitled to one Senator for each ratio, and to an additional Senator for a surplus population exceeding three-fifths of a ratio, but no county shall form a separate district unless it shall contain four-fifths of a ratio, except when the adjoining counties are each entitled to one or more Senators, when such county may be assigned a Senator on less than four-fifths and exceeding one-half of a ratio; and no county shall be divided unless entitled to two or more Senators. No city or county shall be entitled to separate representation exceeding one-sixth of the whole number of senators. No ward, borough, or township shall be divided in the formation of a district. The senatorial ratio shall be ascertained by dividing the whole population of the State by the number of fifty.

The Court said:

We hold, therefore, that Article II § 16 of the Pennsylvania Constitution requires that senatorial reapportionment legislation must maintain the integrity of counties and other political subdivisions, in so far as possible, and must provide for compact districts of contiguous territory, subject always to the overriding objective and mandate that such districts shall be 'as nearly equal in population as may be'. We must emphasize that, if necessary, any political subdivision or subdivisions may be divided or combined in the formation of districts where the population principle cannot otherwise be satisfied. Furthermore, the number of senators per political subdivision may not be limited if such limitation violates the equal-population principle.¹⁴

The court's interpretation of section 17 is an unduly strained one. This construction renders the phrase "but each county shall have one representative" mere surplusage in the constitution. The court declares that this does not mean that each county shall have at least one exclusive representative; but rather a county may share a representative with one or more other counties. If this is the actual inter-

14. *Supra* note 5 at 464.

pretation, then the phrase is meaningless and useless in that without it each county would have one representative in the sense the court views it. The court is reading section 17 as if the phrase did not appear therein. A common sense interpretation of this sentence would produce the result that each county should have one representative exclusively.

The court also failed to consider the probable discrimination resulting from the ratio requirement promulgated in section 17. Here, the constitution states that counties with five or more ratios get an additional representative for an increase in population equal to one full ratio, whereas counties with less than five ratios get an additional representative for a population increase of one half ratio. This discrimination is brought into focus by considering that a county with 4.5 ratios and a county with 5.99 ratios both have five representatives.

In their interpretation of section 16 the court exercised an obvious disregard for the English language. The constitutional provision says that "no city or county shall be entitled to separate representation exceeding one-sixth of the whole number of Senators," without regard to population. The Pennsylvania Supreme Court declared that it means where population warrants more than one-sixth of the whole, any city or county may so have representation exceeding one-sixth of the whole. Further, the court calls attention to another of their own faulty interpretations by declaring, "we must emphasize that, if necessary, any political subdivision or subdivisions may be divided or combined in the formation of districts . . ." The court says this in face of the explicit statement in section 16 which states that, "no ward, borough, or township shall be divided in the formation of a district." This is not a case of interpretation or construction such as where a court will construe the word "carriage" as appearing in a traffic safety statute, to include automobiles and motorcycles. This is a case where the court is completely disregarding the words of the provision to the same extent as if in the above example the court would say the word carriage means shoes. A court cannot under the guise of construction impregnate words of the English language with any meaning it chooses in absolute disregard for the words themselves.

The court, in reviewing the reapportionment acts, properly declared them to be in violation of the fourteenth amendment of the federal constitution. This ruling decided the issues and disposed of the case. The court should have stopped here. On the contrary, the court felt compelled to discuss the constitutionality of Article II sections 16 and 17 of the Pennsylvania Constitution. Assuming, *arguendo*, that this consideration was justifiable under the circumstances, the court

did violence to the English language by attributing meanings to the provisions in total disregard for the words of the provisions. It seems that the Pennsylvania Supreme Court was more interested in upholding traditional political science principles in regards to stable constitutions, than in construing the constitution. Therefore, the case was properly settled by the court in ruling the Reapportionment Act of 1964 unconstitutional. The court should have gone no farther. Consideration of the Pennsylvania Constitution was wholly unwarranted in view of the well-established doctrine of avoiding constitutional issues whenever possible. Furthermore, the court, after assuming this unnecessary task, came to an unreasonable conclusion. If the court had to decide the validity of these sections of the Pennsylvania Constitution, it should have ruled them unconstitutional under any reasonable interpretation of the English language.

ANDREW M. SCHIFINO

DENNIS GERARD LONG

CONFLICT OF LAWS—Transfer under section 1404(a) of Judicial Code, a 1404(a) transfer from one federal court in one jurisdiction to federal court in another jurisdiction is a mere change of courtrooms, with law to be applied by what the first federal court would apply.

Van Dusen v. Barrach, 376 U.S. 612 (1964).

The Supreme Court in the case of *Van Dusen v. Barrach*¹ was presented with the problem of interpreting section 1404(a) of the Judicial Code.² The personal representatives of victims of a Massachusetts airplane crash instituted wrongful death actions in the Federal Court in the Eastern District of Pennsylvania. The defendants moved to transfer the action under section 1404(a) to the Federal Court in the District of Massachusetts. The Pennsylvania District Court granted the motion, even though the personal representatives had not qualified to sue in Massachusetts. This Court held that the transfer was justified irrespective of which state's substantive and conflict of law rules would control.³ Plaintiffs sought a writ of

1. 376 U.S. 612 (1964).

2. For the convenience of parties and witnesses, in the interest of justice, a district court may transfer any civil action to any other district or division where it might have been brought. 28 U.S.C. 1404(a).

3. *Popkin v. Eastern Air Lines*, 204 F. Supp. 426 (1962).