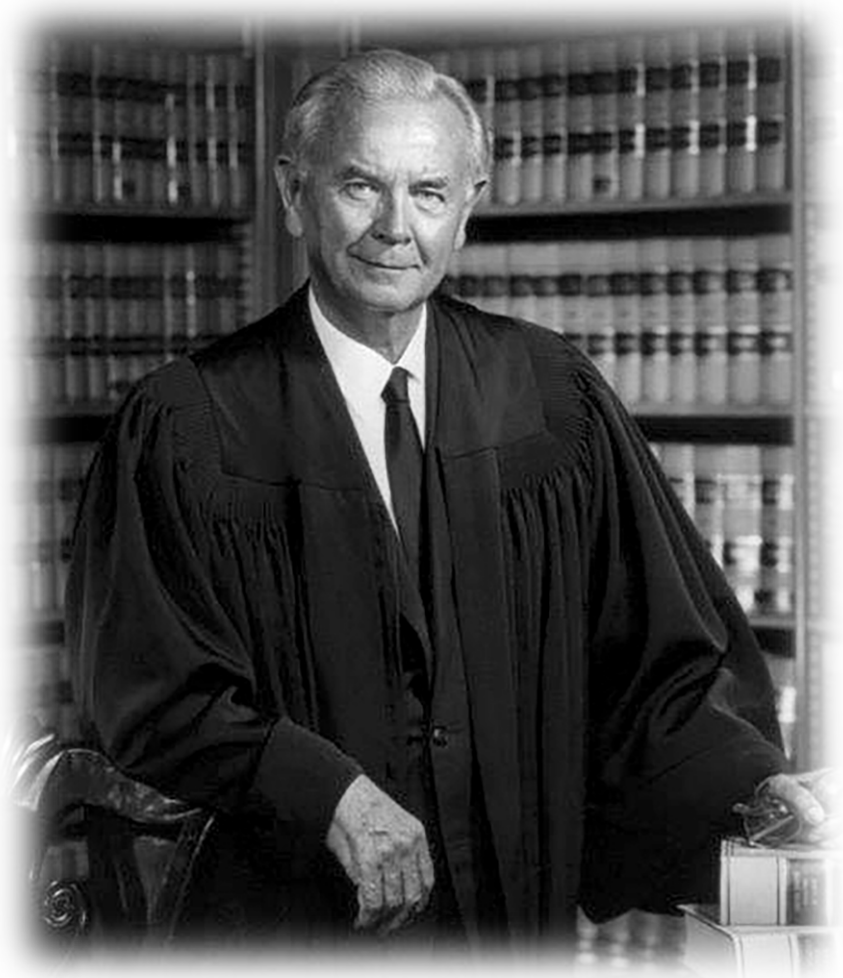
Cases that Shaped the Federal Courts

Baker v. Carr

1962



Justice William Breenan

Federal Judicial Center
2020

Central Question

Could a federal court hear a constitutional challenge to a state's apportionment plan for the election of state legislators?

Historical Context

Legislative apportionment—the division of a state into districts for purposes of representation in the state or national legislature—has been a frequent subject of legal and political controversy since the nation's founding. The way voters have been grouped into districts, and the number of representatives allocated to each district, has had a profound effect on the distribution of political power. Beginning in the colonial period, representatives were frequently apportioned among each unit of local government, such as a county or town, irrespective of population. The result was disproportionate representation in colonial legislatures of less-populated areas. At the Constitutional Convention, James Madison noted that many Americans suffered grossly unequal representation in their state legislatures. To prevent such inequities from being replicated on a national scale, Article I, Section 4 of the Constitution provided that—in addition to states' authority to regulate their congressional elections—Congress could legislate in this field as well, thereby imposing conditions on state apportionment plans. Congress occasionally exercised this power, first requiring in 1842 that U.S. representatives be elected by district, for example.

After the adoption of the Constitution, states' methods of apportionment for their own legislatures continued to differ widely from one another and changed frequently over time. Simple population numbers were often not the sole basis for apportionment, and in states employing strict town- or county-based apportionment, were not taken into account at all. The overrepresentation of some low-population geographic areas, such as coastal cities and towns, relative to more populous interior areas (the reverse of modern conditions), caused controversy in several states during the first half of the nineteenth century, frequently leading to compromises that gave population at least some weight in the apportionment process. The trend in the twentieth century, however, was back toward equal representation of counties or towns in at least one house of many state legislatures. Battles over the fairness of state legislative apportionment eventually found their way to the federal courts, where plaintiffs challenged the methods of some states as unconstitutional.

Legal Debates Before *Baker*

In 1932, the Supreme Court heard three similar cases regarding states' legislative apportionment for the U.S. House of Representatives: *Smiley v. Holm*, *Koenig v. Flynn*, and *Carroll v. Becker*. Plaintiffs in Minnesota, New York, and Missouri sued to enforce redistricting

plans that had been approved by the legislature, but not the governor, of each state. The Court held each of the laws to be invalid on the grounds that the authority of states to regulate elections for Congress, granted by Article I, Section 4 of the Constitution, did not include the ability to issue such regulations other than through the states' standard legislative practice. Because the constitutions of all three states required the governor's approval for the enactment of legislation, the redistricting plans could not be used. The trio of cases set a precedent that the Court would adjudicate the validity of state apportionment.

Soon afterwards, the Court heard *Wood v. Broom*, a challenge to Mississippi's redistricting plan for Congress. The plaintiff claimed that the plan violated a 1911 federal statute requiring that congressional districts be contiguous, compact, and as equal in population as possible. The Court denied the challenge, holding that the requirements in question had expired, having not been carried forward by a 1929 federal redistricting statute. Four justices, while concurring in the result, expressed the opinion that the Court should have dismissed the case "for want of equity"—declining to use its equitable powers to adjudicate the case—without a decision on the applicability of the 1911 statute.

The Court heard another redistricting challenge, this time regarding Illinois's plan for congressional elections, in 1946. In *Colegrove v. Green*, a plurality opinion (representing the outcome for which the majority voted but joined in its reasoning by fewer than a majority) written by Justice Felix Frankfurter proclaimed that the legal issue at hand was the same as that presented in *Wood*, which had been decided correctly. Nevertheless, the plurality agreed with the justices who would have dismissed the *Wood* case without deciding it. The Court should decline to rule on the statute's validity, said the justices, unless the controversy was "justiciable," i.e., appropriate for judicial resolution. The relief the plaintiffs sought, wrote Frankfurter, was "beyond [the Court's] competence to grant." Instead, the issue of the apportionment plan's legitimacy was "of a peculiarly political nature and therefore not meet for judicial determination."

The plurality based its decision on the fact that the Constitution had delegated to Congress responsibility for ensuring through legislation that state plans for congressional elections were adequate. As Frankfurter noted, the Court had "traditionally held aloof" from "matters that bring courts into immediate and active relations with party contests." "Courts ought not to enter this political thicket," he concluded. "The remedy for unfairness in districting is to secure State legislatures that will apportion properly, or to invoke the ample powers of Congress."

In dissent, Justice Hugo Black asserted that the case was justiciable and did not present "political questions." "Here we have before us a state law," he wrote, "which abridges the constitutional rights of citizens to cast votes in such a way as to obtain the kind of congressional representation the Constitution guarantees to them." The fact that elections

were "political" did not preclude the Court from enforcing the constitutional right to vote, he argued. Black concluded that the Court should have followed the precedent set by earlier cases such as *Smiley* in which it had ruled on the validity of state redistricting plans.

The Case

Baker v. Carr involved a 1959 challenge to Tennessee's apportionment plan for its state legislature, which was embodied in a 1901 statute. Although the state constitution called for reapportionment every ten years, no proposed plan had passed the legislature in nearly sixty years. The plaintiffs alleged that the substantial growth and redistribution of Tennessee's population during that time made the 1901 statute obsolete and without logical basis. The apportionment plan, they claimed, violated their right to equal protection of the laws under the Fourteenth Amendment "by virtue of the debasement of their votes." The matter was heard by a three-judge panel of the U.S. District Court for the Middle District of Tennessee, which dismissed the case on the grounds that it lacked jurisdiction over the subject matter and that the complaint had failed to state a claim upon which relief could be granted.

The district court based its decision on the plaintiffs having presented "a question of the distribution of political strength for legislative purposes." Supreme Court precedent based on *Colegrove* made clear, the court noted, that federal courts should not intervene in disputes over legislative apportionment. Although the district court agreed that the plaintiffs' rights had been violated, it held that "the remedy in this situation clearly does not lie with the courts." There were some constitutional rights, the court concluded, that were not susceptible to judicial enforcement. The plaintiffs appealed directly to the Supreme Court as was permitted by statute in three-judge panel cases.

The Supreme Court's Ruling

In March 1962, the Supreme Court voted 6–2 (with one justice not participating) to reverse the district court's order of dismissal and remand the case to the district court for further proceedings. Most of the Court's opinion, written by Justice William Brennan, was devoted to explaining why the case presented a justiciable controversy for which the district court could, if necessary, grant relief.

To begin, Brennan noted that a case involving alleged discrimination related to political rights did not automatically present a political question that would preclude relief under the Equal Protection Clause. Brennan recited a list of factors that would indicate the existence of a nonjusticiable political question. Included among them were the presence of an issue that the Constitution had delegated to another branch of government, and a question that could not be resolved without making a policy decision more appropriate for

Congress or the executive branch. The common thread tying each of the factors together was a concern for the separation of powers.

Brennan found none of the factors he had listed to be present in *Baker*. The issue, he wrote, was simply one of "consistency of state action with the Federal Constitution." The political question doctrine, he emphasized, was aimed at avoiding conflict between co-equal branches of the federal government and not between the federal government and the states. Because a decision about the validity of Tennessee's apportionment statute involved no decision to be made by Congress, it could properly be resolved by a federal court under the Equal Protection Clause.

Justices Felix Frankfurter and John Marshall Harlan each wrote dissenting opinions. Frankfurter, who had written the plurality opinion in *Colegrove*, believed that case should have governed the outcome in *Baker*. The case had stood for the importance of "avoiding federal judicial involvement in matters traditionally left to legislative policy making." It was the job of legislators, and not judges, he believed, to decide the role numerical equality should play in the drawing up of legislative districts. Frankfurter also noted the difficulty of granting relief in such a case (which the majority, by remanding the case to the district court, had not done). A case involving the "structure and organization" of a state government was a clear example of one to which the political-question doctrine applied, in Frankfurter's view. Justice Harlan's dissent asserted that the plaintiffs had failed to state a valid constitutional claim for which relief could be granted because the Equal Protection Clause did not require that all votes for a state legislature be weighed equally.

Aftermath and Legacy

After the district court received the case on remand, the attorney general of Tennessee moved to stay further proceedings in order to give the state legislature time to pass a new reapportionment statute. In June 1962, the legislature enacted reapportionments for both the state Senate and House of Representatives, both of which were then approved by the governor. The state then moved for summary judgment on the plaintiffs' lawsuit. The district court upheld the plan for the House of Representatives but found the Senate plan to be "utterly arbitrary and lacking in rationality." "Its only consistent pattern," the court wrote, "is one of invidious discrimination." Rather than simply declaring the 1962 law unconstitutional (thereby causing the state to revert to the 1901 law) or formulating an apportionment plan itself, the court elected to allow the legislature to attempt to fix the law's shortcomings at its 1963 session.

The Supreme Court's willingness to adjudicate controversies over legislative apportionment opened the floodgates to litigation challenging states' districting plans for state and federal elections. In *Gray v. Sanders* (1963), the Court struck down Georgia's county

unit voting system (in which each county was awarded a certain number of electoral votes) because it gave undue influence to rural areas. To comply with the Equal Protection Clause, the Court ruled, a plan must embody the principle "one person, one vote." A year later, in *Wesberry v. Sanders*, the Court applied this principle in holding that congressional districts must be equal in population to the greatest extent practicable. In 1964, the legislative apportionments of fifteen states were ruled unconstitutional. In these cases, which included *Reynolds v. Sims*, the Court held that both houses of state legislatures must be apportioned on a population basis—a decision that was strongly criticized by members of Congress, particularly Republicans and Southern Democrats who received more support in rural areas. The 1964 decisions ensured that the flood of litigation unleashed by *Baker* would continue.

Since the 1960s, the federal courts have continued to hear frequent lawsuits challenging states' reapportionment plans on constitutional grounds. Certain provisions of the Voting Rights Act of 1965 designed to ensure that the voting rights of racial minorities are not diluted have also given rise to extensive litigation. The twenty-first century saw a rise in litigation over "gerrymandering"—the drawing of district boundaries in unnatural ways, allegedly to dilute the votes of certain constituencies. Consistent with its decision in *Baker*, the Supreme Court has held that gerrymandering based on improper criteria, such as race, can be challenged under the Equal Protection Clause. Conversely, the Court has generally deemed cases based on gerrymandering purely for partisan advantage to present political questions and therefore to be nonjusticiable.

Discussion Questions

- Do you agree with the majority in *Baker* that the validity of states' legislative apportionment plans is a proper subject for resolution by a federal court? Why or why not?
- Does your view of *Baker* and related cases depend on whether the apportionment plan in question governs a state or a federal election? Why or why not?
- How do federal courts identify cases presenting "political questions"? Why should courts avoid deciding such questions?
- What types of disputes, if any, do you think are not appropriate for resolution in court?

Documents

Supreme Court of the United States, Opinion in *Colegrove v. Green*, June 10, 1946

Before Baker*, the most significant Supreme Court precedent on the justiciability of apportionment cases was* Colegrove v. Green. *There, Justice Felix Frankfurter famously declared that federal courts should avoid "the political thicket" of such cases. In his view, courts should remain as far away from party politics as possible, which meant declining to rule on the fairness of the state apportionment plans.*

We are of opinion that the appellants ask of this Court what is beyond its competence to grant. This is one of those demands on judicial power which cannot be met by verbal fencing about "jurisdiction." It must be resolved by considerations on the basis of which this Court, from time to time, has refused to intervene in controversies. It has refused to do so because due regard for the effective working of our Government revealed this issue to be of a peculiarly political nature and therefore not meet for judicial determination.

This is not an action to recover for damage because of the discriminatory exclusion of a plaintiff from rights enjoyed by other citizens. The basis for the suit is not a private wrong, but a wrong suffered by Illinois as a polity.… In effect this is an appeal to the federal courts to reconstruct the electoral process of Illinois in order that it may be adequately represented in the councils of the Nation. Because the Illinois legislature has failed to revise its Congressional Representative districts in order to reflect great changes, during more than a generation, in the distribution of its population, we are asked to do this, as it were, for Illinois.…

Nothing is clearer than that this controversy concerns matters that bring courts into immediate and active relations with party contests. From the determination of such issues this Court has traditionally held aloof. It is hostile to a democratic system to involve the judiciary in the politics of the people. And it is not less pernicious if such judicial intervention in an essentially political contest be dressed up in the abstract phrases of the law.…

The short of it is that the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House and left to that House determination whether States have fulfilled their responsibility. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people. Whether Congress faithfully discharges its duty or not, the subject has been committed to the exclusive control of Congress.…

To sustain this action would cut very deep into the very being of Congress. 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.

Document Source: *Colegrove v. Green*, 328 U.S. 549, 552–54, 556 (1946).

Supreme Court of the United States, Opinion in *Baker v. Carr*, March 26, 1962

In Baker*, the Court overruled* Colegrove*, holding that apportionment cases did not necessarily present nonjusticiable political questions. Justice William Brennan's opinion framed the political-question doctrine as a measure to ensure the independence of the coordinate branches of the federal government. The doctrine therefore did not prevent a federal court from ruling on the constitutionality of state action affecting political rights.*

We have said that "In determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." … The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution.…

Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.…

We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: The

question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking.…

This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the Guaranty Clause. Of course, as we have seen, any reliance on that clause would be futile. But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which in fact they tender. True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with those political question elements which render Guaranty Clause claims nonjusticiable as actually to present a political question itself. But we have found that not to be the case here.…

We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

Document Source: *Baker v. Carr*, 369 U.S. 186, 210–11, 217, 226–27, 237 (1962).

James Reston, "Rural Areas Facing Loss of Political Dominance," *The New York Times*, March 27, 1962

Journalist James Reston of the New York Times *reported on the* Baker *decision, making clear its practical consequences for American electoral politics. The willingness of federal courts to ensure that political representation was commensurate with population would benefit Democrats, whose base of power lay in the more populous cities, while weakening the influence of conservatives in sparsely populated rural areas.*

The Supreme Court's decision in the Tennessee reapportionment case is expected to shift the balance of political power gradually against the rural conservatives. The first reaction here was that the 6-to-2 decision authorizing voters to challenge the make-up of State Legislatures in Federal courts would probably do these things:

> Decrease the voting strength of rural conservatives in the many State Legislatures and increase the strength of city and suburban voters, who tend to be more sympathetic toward social change and government intervention.

> Increase, over all, the power of the Democratic party, which is better organized politically in the cities and is now engaged in a major drive to extend and strengthen its party organization in the suburbs.
>
> Expand the influence of the Federal courts as instruments of social change.

This expansion of the influence of the courts is in keeping with the trend of Federal judicial power in the last generation.

The Supreme Court, often the target of Presidential opposition for opposing social change, has increasingly led the fight for such change in recent years: First in the reorganization of the economic system under the antitrust laws; then in the reorganization of the public school system in the desegregation decision of 1954; and now in today's decision to take jurisdiction in the reorganization of the voting system in State Legislatures.

Document Source: James Reston, "Rural Areas Facing Loss of Political Dominance," *New York Times*, March 27, 1962, p. 1.

Supreme Court of the United States, Opinion in *Reynolds v. Sims*, June 15, 1964

In 1964, the Supreme Court advanced its apportionment jurisprudence with its decision in Reynolds v. Sims*, holding that states must apportion their legislative districts on a population basis to the greatest extent possible. In explaining the necessity for what came to be called the "one person, one vote" standard, the Court pointed out that "[l]egislators represent people, not trees or acres."*

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government. And the right of suffrage can be denied by a debasement or dilution of the weight of a citizen's vote just as effectively as by wholly prohibiting the free exercise of that franchise.

In Baker v. Carr, 369 U.S. 186, we held that a claim asserted under the Equal Protection Clause challenging the constitutionality of a State's apportionment of seats in its legislature, on the ground that the right to vote of certain citizens was effectively impaired since debased and diluted, in effect presented a justiciable controversy subject to adjudication by federal courts. The spate of similar cases filed and decided by lower courts since our decision in Baker amply shows that the problem of state legislative malapportionment is one that is perceived to exist in a large number of the States.…

A predominant consideration in determining whether a State's legislative apportionment scheme constitutes an invidious discrimination violative of rights asserted under the Equal Protection Clause is that the rights allegedly impaired are individual and personal in nature.…

Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system. It could hardly be gainsaid that a constitutional claim had been asserted by an allegation that certain otherwise qualified voters had been entirely prohibited from voting for members of their state legislature. And, if a State should provide that the votes of citizens in one part of the State should be given two times, or five times, or 10 times the weight of votes of citizens in another part of the State, it could hardly be contended that the right to vote of those residing in the disfavored areas had not been effectively diluted.… Of course, the effect of state legislative districting schemes which give the same number of representatives to unequal numbers of constituents is identical.… Weighting the votes of citizens differently, by any method or means, merely because of where they happen to reside, hardly seems justifiable.…

We hold that, as a basic constitutional standard, the Equal Protection Clause requires that the seats in both houses of a bicameral state legislature must be apportioned on a population basis. Simply stated, an individual's right to vote for state legislators is unconstitutionally impaired when its weight is in a substantial fashion diluted when compared with votes of citizens living in other parts of the State.…

By holding that as a federal constitutional requisite both houses of a state legislature must be apportioned on a population basis, we mean that the Equal Protection Clause requires that a State make an honest and good faith effort to construct districts, in both houses of its legislature, as nearly of equal population as is practicable. We realize that it is a practical impossibility to arrange legislative districts so that each one has an identical number of residents, or citizens, or voters. Mathematical exactness or precision is hardly a workable constitutional requirement.

Document Source: *Reynolds v. Sims*, 377 U.S. 533, 555–56, 561–63, 568, 577 (1964).

Abner J. Mikva, *University of Illinois Law Review*, 1995

Abner Mikva, a former U.S. representative, federal judge, and White House counsel, wrote in 1995 that Baker v. Carr *was the most significant opinion Justice William Brennan wrote in*

his long tenure on the Supreme Court. By allowing federal courts to ensure that apportionment plans complied with the Equal Protection Clause, Mikva asserted, Baker *had helped to rectify a grossly undemocratic state of affairs in which less populated rural areas were overrepresented in state legislatures and in Congress. The decision "worked a profound change in the distribution of political power across the country" and, in conjunction with the Voting Rights Act, brought more diversity to the ranks of elected officials.*

During his thirty-four years on the Supreme Court, one case stands out as Justice [William] Brennan's most important opinion.…

I rank *Baker v. Carr* above all of his other opinions.…

But to bolster my credibility, perhaps I should fall back on the great Chief Justice Earl Warren. When writing his memoirs, Earl Warren named *Baker v. Carr* as the most important case the Court had decided during his entire tenure as Chief Justice—even above *Brown v. Board of Education*.…

Why would Chief Justice Warren think this? Obviously, he believed strongly that *Brown v. Board of Education* was of "tremendous importance, and [that it] made a great impact on the life of the nation." But he also believed that the *Brown* decision should never have been necessary, because Congress ought to have passed remedial legislation under the Fourteenth Amendment a generation or more before Brown's integration provisions called for its enforcement. Also, in *Brown* the Court was partly correcting the problems it had caused in *Plessy v. Ferguson*.

In contrast, Earl Warren believed that through *Baker v. Carr*, the Supreme Court—when it alone could do so—had brought about massive, nationwide political reform where before prospects for change had been hopeless. Prior to the *Baker* decision in 1962, many states had not reapportioned their congressional or state legislative districts for decades, though the country's population had shifted dramatically from rural areas to the cities during the first half of the twentieth century. As a result, some rural districts included only hundreds of voters, while urban districts encompassed tens of thousands. "A single vote in Moore County[, Tennessee,] for instance, was worth nineteen votes in Hamilton County." Yet incumbent Tennessee legislators refused to enact redistricting that would erode their bases of power. Voters had no other practical opportunities available to them: Tennessee had no initiative or referendum, and only the legislature could call for a constitutional convention.

Enter Justice Brennan and *Baker v. Carr*. The Court held that "the question of whether people underrepresented in their government were being deprived of the equal protection of the laws was a justiciable one, subject to the jurisdiction of the courts." Through the door that *Baker* opened, the Court soon developed the "one man, one vote"

rule (a phrase that sounds somewhat quaint today) in *Reynolds v. Sims*, an opinion written by none other than Chief Justice Earl Warren. In the space of a few years, the "one-person, one-vote" standard covered the entire spectrum of representative government—federal, state, and local.

This simple rule—the Constitution requires that each person's vote count for no more or no less than another person's vote—worked a profound change in the distribution of political power across the country.… Under this rule, we have seen the eradication of numerical malapportionment, the enfranchisement of minority voters, and the erosion of discriminatory electoral systems. Today, we have a far more open and participatory political system than we had in 1962. Chief Justice Warren said it this way:

> 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. It is a representative form of government through which the rights and responsibilities of every one of us are defined and enforced. If these rights and responsibilities are to be fairly realized, it must be done by representatives who are responsible to all the people, not just those with special interests to serve.

I feel that way about *Baker v. Carr*, too. By taking courts into the "political thicket"—the phrase Justice Frankfurter used in 1946 in *Colegrove v. Green* when the Court ruled that it was "hostile to a democratic system to involve the judiciary in the politics of the people"—Justice Brennan helped to work a small revolution in this country. Just consider this simple statistic: In 1964, there were only 103 black elected officials throughout the country. In January of 1992, there were more than 7,500. Of course, the Voting Rights Act deserves a major portion of the credit for promoting minority voting rights. But the courts must enforce those rights, and *Baker v. Carr* provided the doctrinal foundation for federal courts' wielding the Equal Protection Clause in areas that previously had been deemed "political questions." And the Voting Rights Act itself was in part attributable to the intense attention *Baker v. Carr* brought to the subject of distribution of political power.

Document Source: Abner J. Mikva, "Justice Brennan and the Political Process: Assessing the Legacy of *Baker v. Carr*," *University of Illinois Law Review* 1995, no. 3 (1995): 684–87 (footnotes omitted).

Cases that Shaped the Federal Courts

This series includes case summaries, discussion questions, and excerpted documents related to cases that had a major institutional impact on the federal courts. The cases address a range of political and legal issues including the types of controversies federal courts could hear, judicial independence, the scope and meaning of "the judicial power," remedies, judicial review, the relationship between federal judicial power and states' rights, and the ability of federal judges to perform work outside of the courtroom.

- *Hayburn's Case* (1792). Could Congress require the federal courts to perform non-judicial duties?
- *Chisholm v. Georgia* (1793). Could states be sued in federal court by individual citizens of another state?
- *Marbury v. Madison* (1803). Could federal courts invalidate laws made by Congress that violated the Constitution?
- *Fletcher v. Peck* (1810). Could federal courts strike down state laws that violated the Constitution?
- *United States v. Hudson and Goodwin* (1812). Did the federal courts have jurisdiction over crimes not defined by Congress?
- *Martin v. Hunter's Lessee* (1816). Were state courts bound to follow decisions issued by the Supreme Court of the United States?
- *Osborn v. Bank of the United States* (1824). Could Congress grant the Bank of the United States the right to sue and be sued in the federal courts?
- *American Insurance Co. v. Canter* (1828). Did the Constitution require Congress to give judges of territorial courts the same tenure and salary protections afforded to judges of federal courts located in the states?
- *Louisville, Cincinnati, and Charleston Rail-road Co. v. Letson* (1844). Should a corporation be considered a citizen of a state for purposes of federal jurisdiction?
- *Ableman v. Booth* (1859). Could state courts issue writs of habeas corpus against federal authorities?
- *Gordon v. United States* (1865). Could the Supreme Court hear an appeal from a federal court whose judgments were subject to revision by the executive branch?
- *Ex parte McCardle* (1869). Could Congress remove a pending appeal from the Supreme Court's jurisdiction?
- *Ex parte Young* (1908). Could a federal court stop a state official from enforcing an allegedly unconstitutional state law?
- *Moore v. Dempsey* (1923). How closely should federal courts review the fairness of state criminal trials on petitions for writs of habeas corpus?

- *Frothingham v. Mellon* (1923). Was being a taxpayer sufficient to give a plaintiff the right to challenge the constitutionality of a federal statute?
- *Crowell v. Benson* (1932). What standard should courts apply when reviewing the decisions of executive agencies?
- *Erie Railroad Co. v. Tompkins* (1938). What source of law were federal courts to use in cases where no statute applied and the parties were from different states?
- *Railroad Commission of Texas v. Pullman Co.* (1941). When should a federal court abstain from deciding a legal issue in order to allow a state court to resolve it?
- *Brown v. Allen* (1953). What procedures should federal courts use to evaluate the fairness of state trials in habeas corpus cases?
- *Monroe v. Pape* (1961). Did the Ku Klux Klan Act of 1871 permit lawsuits in federal court against police officers who violated the constitutional rights of suspects without authorization from the state?
- *Baker v. Carr* (1962). Could a federal court hear a constitutional challenge to a state's apportionment plan for the election of state legislators?
- *Glidden Co. v. Zdanok* (1962). Were the Court of Claims and the Court of Customs Appeals "constitutional courts" exercising judicial power, or "legislative courts" exercising powers of Congress?
- *United States v. Allocco* (1962). Were presidential recess appointments to the federal courts constitutional?
- *Walker v. City of Birmingham* (1967). Could civil rights protestors challenge the constitutionality of a state court injunction, having already been charged with contempt of court for violating the injunction?
- *Bivens v. Six Unknown Named Agents* (1971). Did the Fourth Amendment create an implied right to sue officials who conducted illegal searches and seizures?
- *Northern Pipeline Construction Co. v. Marathon Pipe Line Co.* (1982). Did the Bankruptcy Reform Act of 1978 violate the Constitution by granting too much judicial power to bankruptcy judges?
- *Morrison v. Olson* (1988). Could Congress empower federal judges to appoint independent counsel investigating executive branch officials?
- *Mistretta v. United States* (1989). Could Congress create an independent judicial agency to guide courts in setting criminal sentences?
- *Lujan v. Defenders of Wildlife* (1992). Could an environmental organization sue the federal government to challenge a regulation regarding protected species?
- *City of Boerne v. Flores* (1997). Could Congress reverse the Supreme Court's interpretation of the Constitution through a statute purportedly enforcing the Fourteenth Amendment?