Connecticut General Assembly

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Court Challenges to Connecticut Redistricting Plans

This report summarizes court decisions concerning challenges to Connecticut redistricting plans.

BACKGROUND

When the U.S. Supreme Court ruled on *Baker v. Carr in 1962*, it opened the door for numerous challenges nationally to the districting plans of state legislatures and Congressional districts alike, among them *Gray v. Sanders* (372 U.S. 368 (1963) and *Reynolds v. Sims* (377 U.S. 533 (1964)). In *Gray*, Justice Douglas wrote that "[t]he conception of political equality from the Declaration of Independence, to Lincoln's Gettysburg Address, to the Fifteenth, Seventeenth, and Nineteenth Amendments can mean only one thing—one person, one vote" (*Gray*, 381). In *Reynolds*, the U.S. Supreme Court held that the Equal Protection Clause requires states to construct legislative districts that are substantially equal in population. Further, it ruled that both houses of a bicameral state legislature must be districted on a population basis.

SUMMARY

In Connecticut, plaintiff Valenti sued to compel the state to redraw Senate district boundaries in 1962. The state had not completely redrawn its Senate districts since 1903. The court denied the request because the plaintiffs lived in a district that was over-represented and therefore were not harmed by any malapportionment. It specifically noted that it was not ruling on the merits of the request.

The next suit, *Butterworth v. Dempsey*, sought to overturn the districting plans of both the Senate and House of Representatives. The court found that both houses of the General Assembly were malapportioned and ordered the legislature to redraw its district boundaries and to create a constitutional convention to rewrite the state constitution to require redistricting decennially following the federal census. In order to give the legislature enough time to comply with its order, the court ordered the legislature that began sitting in 1963 to hold over until its successor took office in 1967.

The 1965 constitution established a reapportionment procedure. It gave original responsibility for redistricting to the legislature and set a deadline of April 1 in the year following the taking of the census. After the legislature failed to meet its deadline, the governor appointed members designated by the legislative leaders to a Reapportionment Commission, which also failed to meet its deadline. The constitution then required the speaker of the House of Representatives and the House minority leader to appoint two judges to an Apportionment Board. The two judges selected the third and final member. The board met its deadline, but the plan, called the "Saden plan," included some clerical errors.

Plaintiffs sued in Superior Court to correct the clerical errors and to compel the state election officials to use the plan in the 1972 elections. Intervenors asked the court to declare the plan invalid because it divided towns to form House districts. This, they claimed, violated the new constitution's "town integrity principle," which prohibits dividing a town to form House districts except to form a district wholly within a town. The court ruled that the redistricters used their best judgment to harmonize two conflicting redistricting requirements, the town integrity principle and another provision in the state constitution that requires redistricters to draw plans that are consistent with federal standards.

While this suit was pending, another suit was filed in federal court. The federal district court declared the Saden plan invalid and appointed a special master, Robert Bork, to prepare another plan (the "Bork plan"). On appeal, the U.S. Supreme Court stayed the district court ruling.

After the Connecticut Supreme Court upheld the Saden plan as passing state constitutional standards, its challenge in federal courts reached the U.S. Supreme Court. It had to resolve two issues: one, whether the population deviation among districts made a prima facie case of discrimination under the equal protection clause and two, whether the plan, if otherwise constitutional, was invalid because the redistricters tried to achieve political fairness. The court found that the plan's overall deviation, 2% in the Senate and 7.8% in the House, was constitutionally permissible. It found that the board, in attempting to achieve political fairness, considered election results rather than party registration. It concluded that attempting to achieve political fairness did not invalidate the plan and ruled it constitutional.

There were two other suits in the 1970s. In *Donnelly*, the congressional plan was challenged in federal court. The court found that all parties agreed that the plan adopted by the legislature and vetoed by the governor did not meet federal population standards. The court considered numerous proposed plans, and ruled in favor of one that had a very low overall population deviation but was based on the plan adopted by the legislature. In *Ajello*, the court rejected plaintiff's request to cancel the 1972 election because candidates did not have

enough time to run for office in the newly created districts. It found that effect of an abbreviated campaign did not adversely affect one group in favor of another.

There were only two suits following the adoption of the 1981 redistricting plan. They were joined in superior court because they challenged the plan on similar grounds. In *Logan*, the plaintiffs asked the court to declare the districting plan for the House of Representatives invalid because the plan violated the town integrity principle. The trial court upheld the plan. On appeal, the Supreme Court considered whether the plaintiffs had presented enough evidence to show a prima facie case that the plan violated the town integrity principle. The court found that the constitution requires redistricters to harmonize the town integrity principle with federal constitutional standards and that the plaintiffs must, in such a challenge, show more than that a better plan could be drafted. It ruled the plan constitutional.

There was only one suit following the 1991 redistricting plan. In *Fonfara*, the plaintiff challenged the plan for the House of Representatives because the plan violated the town integrity principle. The plaintiff asked the court to act as a "superlegislature" and to redraw the plan itself in a way that reduced the number of times town boundaries were cut. The court refused to redraw the plan. It found that the state constitution did not give it legislative powers for the purposes of redistricting. It also found that the burden of proving that the redistricters violated the town integrity principle is on the plaintiff.

The Reapportionment Commission failed to meet the deadline for drawing a redistricting plan for Congress in 2001. It sought, and received, an order from the Connecticut Supreme Court remanding the matter to the commission. The Court set December 21, 2001, as a deadline for the commission to complete its work.

COURT CHALLENGES IN THE 1960s

VALENTI V. DEMPSEY, 211 F.SUPP. 911 (1962)

The plaintiff attacked the existing districting plan and sought to have legislative districts redrawn based on population. The previous complete Senate redistricting took place in 1903 when the General Assembly created 35 senatorial districts. The General Assembly added a 36th district in 1941. There was no legal mandate requiring the legislature to periodically redistrict itself. In *Valenti,* the plaintiff asked the court for a preliminary injunction prohibiting the state from convening the 1963 General Assembly until the Senate was redistricted. The court denied the plaintiff's request. It found that the plaintiff lived in a Senate district that was over-represented and could not suffer

irreparable harm from the legislature's malapportionment. In denying the request, the court stated, "we wish to emphasize that we are not deciding, nor do we express any opinion, as to the merits of the action itself (*Valenti*, 913). The court characterized the redistricting puzzle as "probably the most difficult problem of our age" (*Valenti*. p. 913)

OLIVER BUTTERWORTH ET AL. V. JOHN DEMPSEY ET AL., 229 F. SUPP. 754 (1964)

When *Butterworth* was filed, the Connecticut Senate had 36 members and the House of Representatives had 294. Representation in the Senate and House of Representatives was based on town units. The court noted that the largest Senate district had 175,940 people and the smallest had 21,627. Towns generally had one or two representatives in the House. A town with more than 2,500 people had one representative unless it qualified for two because (1) its population was greater than 5,000 or (2) it had two representatives under the 1818 constitution. The court noted that the largest town, Hartford with 162,178 people, and the smallest town, Union with 383 people, each had two representatives. A group of urban and suburban Connecticut voters sought declaratory judgment that their constitutional rights under the equal protection clause were impaired by the method of apportionment in both houses of the General Assembly. They asked the court to prohibit the state from holding the 1964 general election, other than elections at large, until a constitutional redistricting plan was in place.

The court held that the apportionment of the Senate and House denied voters in under-represented districts the equal protection of the law. It granted the plaintiffs' motion for summary judgment. It subsequently ordered the General Assembly to adopt legislation to (1) adopt a temporary redistricting plan for use in the 1965 general election and (2) adopt legislation establishing a constitutional convention. The order required the convention to formulate, "as the first order of business," provisions for (1) districting the Connecticut Senate, (2) apportioning the Connecticut House of Representatives, (3) revising the districting plan decennially "on the basis of the most recent federal census or census data to insure continued compliance with the equal protection clause…"

PINNEY V. BUTTERWORTH, 378 U.S. 564 (1964)

The U.S. Supreme Court affirmed the decision of the federal district court and remanded the case for further proceedings concerning relief.

BUTTERWORTH V. DEMPSEY, 237 F.SUPP. 302 (1965)

The court noted that the U.S. Supreme Court had affirmed its judgment. In view of the fact that the legislature had met in special session but failed to enact the required legislation, the court amended its order to hold over the sitting legislature and to require a second special session. The special session had to convene by November 16, 1964 and adopt, by January 30, 1965, the legislation required by its previous order.

The court also entered orders on October 29, 1964 appointing a special master to develop a reapportionment plan to be used if the legislature and constitutional convention failed to comply with the order. The orders to the special master required the Senate plan to have (1) 36 contiguous districts, (2) as geographically compact districts as possible given federal equal population requirements, (3) districts with substantially equal populations, and (4) districts formed without regard to county borders. For the House of Representatives, the order required the special master to develop a plan with (1) 200 districts, (2) as geographically compact districts as possible given federal equal population requirements, (3) districts with substantially equal populations, and (4) districts containing more than one town to be composed of contiguous towns.

The legislature and the constitutional convention each complied with the court order. The court found no reason not to approve the constitutionality of the legislatively developed reapportionment plan on January 22, 1965. Accordingly, it authorized the sitting legislature to remain in office until its successor is elected at the regular election in 1966. It also suspended the special master's activities.

COURT CHALLENGES IN THE 1970S

MILLER V. SCHAFFER, 164 CONN 8 (1972)

The General Assembly failed to meet its constitutional deadline to adopt a redistricting plan following the 1970 census. Following the procedures established by the 1965 constitution, the governor then appointed a commission to adopt a plan. The commission likewise failed to meet its deadline. Following a since-repealed constitutional procedure, the house speaker and minority leader each appointed a judge to a three-member board. The two judges selected the third member. The board met its deadline and filed its plan with the secretary of the state. The plan, known as the "Saden plan," created a 36-member Senate and reduced the size of the House of

Representatives from 177 to 151. It had an overall deviation of 2% in the Senate and 7.8% in the House of Representatives.

The plan included some clerical errors. The plaintiffs sought a declaratory order in Superior Court seeking to correct the clerical errors and an order compelling the state's election officials to use it in the 1972 elections. The Superior Court made the sought-for corrections.

The court also found that the board divided towns to form House districts and that this violated the newly adopted constitution's town integrity principle. The principle prohibits redistricters from dividing towns to form House districts except to form a district wholly within a town. It was designed to preserve the tradition that the towns be assured a voice in the legislature. The court found that the state constitution simultaneously requires redistricters to establish districts that are consistent with federal standards. One of these standards requires redistricters to draw plans that are substantially equal in population. Although the board had divided towns to form house districts, the court concluded that the board exercised its best judgment in harmonizing the town integrity principle and federal standards. It ruled that the plan was constitutional.

After this suit was filed, another one was filed in federal district court seeking to invalidate the plan on both federal and state grounds. J. Brian Gaffney, an individual elector, intervened in defense of the Saden plan, asking the federal court to stay its proceedings pending the outcome of *Miller*. The federal court declined to stay its proceedings, declared the plan invalid, and appointed a special master, Robert F. Bork, to prepare another plan for the court (*Cummings v. Meskill,* 341 F.Supp. 139 (D.Conn)).

Gaffney appealed the decision to the U.S. Supreme Court, which stayed enforcement of the federal district court decision. The Connecticut Supreme Court, in view of the pending federal suit, considered only whether the contested Saden plan was constitutional on state grounds. It ruled that (1) the Superior Court had the authority to make corrections in the board's plan, (2) the Superior Court had the authority to act in this case because the federal court's contrary ruling had been stayed, (3) the number of town lines cut by the plan was not a per se indication of invalidity, (4) the board harmonized the town integrity principle with federal constitutional standards, and (5) the Superior Court properly ruled that the 1972 election should be held under the Saden plan.

***CUMMINGS V. MESKILL*, 341 F.SUPP. 139 (1972)**

The federal district court considered a challenge to the Saden plan based on the size of the population deviation between districts and on the acknowledged clerical errors in the plan. The defendants argued that errors could be corrected, the plan was constitutional, and the court should abstain until state court action was complete.

The court found that the House and Senate plans were developed giving principal weight to two factors, population equality and a partisan balance of strength in each house. In the House, the redistricters also attempted to minimize splitting towns to form districts. Under the Saden House plan, 70 districts were characterized as Democratic, 55 to 60 as Republican, and the balance as probable Democratic, swing Democratic, probable Republican, swing Republican, or swing. In the Senate 16 were characterized as Democratic, 12 as Republican, and the rest as probable or swing. The court noted that some districts had highly irregular and bizarre outlines. The court concluded that the population deviations were not justified by any sufficient state interest and that the plan denied equal protection of the law to voters in districts with larger populations. The court dismissed the argument that it should abstain pending the outcome of the state court litigation because resolution of the state constitutional issues would not resolve the federal equal protection issues. The court determined that it would appoint a special master to create a plan that would conform to both federal and state constitutional requirements.

***CUMMINGS V. MESKILL*, 347 F.SUPP. 1173 (1972)**

The district court denied a motion to stay its earlier decision. A stay would have permitted the Saden plan to be used for the 1972 election. The court found that (1) its special master had completed a plan, (2) he would file it with the court, and (3) there was enough time to implement the special master's plan to hold elections in the fall.

The U.S. Supreme Court granted a stay of the district court's judgment and remanded the case *(Gaffney V. Cummings, 407 U.S. 902 (1972)).*

On remand, the district court determined that the Saden plan was less objectionable than the existing 1965 plan and should be used for the 1972 election. It added that the plan remained constitutionally defective and could not be used in subsequent elections *(Cummings V. Meskill, 341 F.Supp. 1176 (1972)).*

GAFFNEY V. CUMMINGS, 412 U.S. 735 (1973)

The U.S. Supreme Court considered the challenge to the Saden plan to determine whether the population variations among the districts made a prima facie case of discrimination under the equal protection clause and whether an otherwise acceptable plan was invalidated because one of its purposes was to achieve political fairness between the parties.

The district court had ruled the plan unconstitutional. The Supreme Court stayed the court's judgment and allowed the 1972 elections to be held under the Saden plan.

The Supreme Court concluded that the numerical deviation from population equality did not make out a prima facie violation of the equal protection clause. In doing so, it distinguished between congressional and state legislative districting plans. Congressional plans may only have unavoidable limited variations despite good faith efforts to achieve absolute equality (*Kirkpatrick v. Preisler*, 394 U.S. 526, 531 (1969). State legislative plans, instead, must be as nearly of equal population as is practicable (*Reynolds v. Sims*, 377 U.S. 533, 579). The Court found that the board, in attempting to achieve political fairness, focused on election results, rather than party registration, to create a plan with what it believed to be a proportionate number of Democratic and Republican seats. The court stated, "It would be idle, we think, to contend that any political consideration taken into account in fashioning a reapportionment plan is sufficient to invalidate it" (*Gaffney*, 752). It concluded that the courts do not have the power to invalidate an otherwise constitutional plan because it seeks to provide "a rough sort of proportional representation in the legislative halls of the State" (*Gaffney*, 754).

DONNELLY V. MESKILL & LINDSAY V. MESKILL, 345 F.SUPP. 962 (1972)

The suits were brought to prohibit holding congressional elections under the plan drawn in 1964. The court found that all parties agreed that the 1964 plan did not meet constitutional requirements. The court considered numerous proposed alternatives: temporarily keeping the existing districts, adopting a legislative plan (Public Act 807, vetoed), modifying the legislative plan to minimize population deviations, a plan for absolute population equality, a plan cutting some town lines, a plan for near-absolute population equality without cutting town lines and disregarding compactness, and other plans chiefly based on the existing districts.

The court found that three of the alternative plans had very small population differences, possibly within the margins of error of the census data. One had a 0.2% deviation and did not cut any town lines. One had no deviation but cut five towns including one major city. The third plan had a 0.4% deviation and cut five towns. The third plan was based on the plan adopted by the legislature in Public Act 807. The court chose the third plan because it (1) was one of the three plans with very low overall deviation and (2) presented districts that were essentially those adopted by the legislature.

AJELLO V. SCHAFFER, 349 F.SUPP. 1168 (1972)

The suit was brought to prevent the election from being held on November 7, 1972. The court order in *Miller* had "telescoped" the election calendar to make an election on that date possible. The decision had been issued only 75 days before the scheduled election. The plaintiffs argued that this created a hardship for those running for election, especially in view of the fact that the reapportionment plan reduced the number of House districts from 177 to 151. They stated that this violated the equal protection clause. The court found that the plaintiffs failed to show that the abbreviated campaign treated some candidates or voters more harshly than it treated others. The court concluded that the plaintiffs were not denied equal protection. Further, the court concluded that subjecting voting rights and the right of candidates to run for office to reasonable, nondiscriminatory regulation does not violate the due process clause.

COURT CHALLENGES IN THE 1980S

JOHN J. LOGAN V. WILLIAM A. O'NEILL & JOHNSON V. O'NEILL, 187 CONN. 721 (1982)

Plaintiffs sought a declaratory judgment determining the validity of the General Assembly's redistricting plan for the state House of Representatives. They challenged the plan in superior court on several grounds, but the sole issue before the Supreme Court was whether the plaintiffs presented sufficient evidence at trial to establish a prima facie case that the plan violated the town integrity principle. It did not consider whether the plan actually violated the town integrity principle.

The court found that the General Assembly must consider several state constitutional principles when revising districts for the House of

Representatives. This dispute surrounds the need to harmonize two such principles. The constitution prohibits dividing towns to form House districts except to form districts wholly within a town and it requires districts to be consistent with federal constitutional standards. The court found that, "[a]s a practical matter, the federal one-person, one-vote principle…makes it impossible for a reapportionment plan to comply fully with the town integrity principle" (*Logan*, 727).

At trial, the plaintiffs asserted that the redistricting plan was unconstitutional because it divided more towns than necessary. The trial court granted the defendant's motion to dismiss because the plaintiffs failed to show that the redistricters did not consider the town integrity principle. The plan cut the boundaries of 54 towns. The plaintiffs, as evidence, attempted to show that it was possible to cut fewer boundaries. The Supreme Court considered the evidence offered and concluded that plaintiffs had to "show more than that a better plan could be drafted" (*Logan*, 740).

COURT CHALLENGE IN THE 1990S

FONFARA V. REAPPORTIONMENT COMMISSION, 222 CONN 166

In 1991 the General Assembly failed to adopt a plan by its deadline and a Reapportionment Commission was created, which adopted a plan. The plaintiffs challenged the redistricting plan for the House of Representatives. They claimed that (1) the state constitution requires the court to act as a "superlegislature" in reviewing the commission's plan and (2) the redistricting plan is unconstitutional because it unnecessarily violates the town integrity principle.

The court disagreed with the contention that the constitution vested the court with legislative powers for purposes of redistricting. The court held that its duty, when a plan has been written by a commission, is to determine whether there is any error. The court also determined that the burden of proof is on the plaintiff. The court reaffirmed its holding in *Logan* that challengers must demonstrate that town lines were cut for reasons other than to meet the federal equal population requirement or that the plan was not the best judgment in harmonizing conflicting constitutional requirements. The court found that the plaintiffs did not meet this standard.

COURT CHALLENGES IN THE 2000S

IN RE ESTABLISHMENT OF CONGRESSIONAL DISTRICTS OF THE STATE OF CONNECTICUT (NO. SC 16635)

The Reapportionment Commission was formed after the legislature failed to meet its deadline in 2001. The commission met its deadline for redistricting the Senate (November 26, 2001) and the House of Representatives (November 29, 2001), but did not adopt a Congressional plan on time. Secretary of the State Bysiewicz notified Chief Justice Sullivan by letter that the commission had not submitted a Congressional redistricting plan. On December 6, the commission petitioned the Supreme Court seeking additional time for the commission to adopt a Congressional redistricting plan (No. SC 16642). After hearing the petition on December 7, the court remanded the matter back to the commission and set December 21, 2001 as the deadline for the commission to adopt a Congressional plan. The commission met the deadline by submitting a plan on that date.

OTHER PETITIONS

The court also heard three other petitions on December 7. Paul Munns submitted a petition substantially the same as the commission's, which was dismissed as moot (No. SC 16635). Norman Primus submitted a lengthy list of issues in two petitions (No. SC 16641 and No. SC 16668). The court dismissed them because the issues raised were either moot or beyond the court's scope of review. Finally, the court dismissed as moot the request of Joseph Zdonczyk, on behalf of the Concerned Citizens Party, to intervene.

LIST OF CONNECTICUT STATE REDISTRICTING CASES

1960s

Valenti v. Dempsey, 211 F.Supp. 911 (1962)
Butterworth v. Dempsey, 229 F.Supp. 754 (1964)
Pinney v. Butterworth, 378 U.S. 564 (1964)
Butterworth v. Dempsey, 237 F.Supp. 302 (1964)

1970s

Miller v. Schaffer, 1964 Conn. 8 (1972)
Cummings v. Meskill, 341 F. Supp. 139 (1972)
Cummings v. Meskill, 347 F.Supp 1173 (1972)
Cummings v. Meskill, 347 F.Supp 1176 (1972)
Gaffney v. Cummings, 412 U.S. 735 (1973)

Donnelly v. Meskill, 345 F.Supp. 962 (1972)
Ajello v. Schaffer, 349 F.Supp. 1168 (1972)

1980s

Logan v. O'Neill 187 Conn 721 (1982)

1990s

Fonfara v. Reapportionment Commission 222 Conn 166 (1992)

2000s

In Re Establishment of Congressional Districts of the State of Connecticut (No. SC 16635, 2001)
In Re Actions of the Redistricting Commission (No. SC 16641, 2001)
In Re Petition of the Reapportionment Commission (No. SC 16642, 2001)
In Re Actions of the Redistricting Commission (No. SC 16668, 2001)

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