

The controlling facts cannot be disputed. It appears from the record that 37% of the voters of Tennessee elect 20 of the 33 Senators while 40% of the voters elect 63 of the 99 members of the House. But this might not on its face be an "invidious discrimination," *Williamson v. Lee Optical Co.*, 348 U. S. 483, 489 (1955), for a "statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan v. Maryland*, 366 U. S. 420, 426 (1961).

(1)

However an examination of the apportionment picture in

Tenn. reveals a Topsy of gigantic proportions. ~~See charts attached~~

~~charts show it to be nothing less than a crazy quilt~~
← on p. ____ In addition to the wide disparity of voting strength as between the large and small counties, as pointed out by the other opinions, there is a glaring inequality in population between counties having the same representation.

This is shown in detail in the chart attached, which clearly

example:

demonstrates the crazy quilt the state has SEWN.

Moore County has a representation of two⁵ with a population (2,340) of only one-eleventh of Rutherford County (25,316) with the same representation; Decatur County (5,563) has the same representation as Carter (23,302) though the latter has four times the population; Gibson with some 30,000 people has a representation of five while Blount County with about the same population has only 1.6; Fayette County (population 13,577) has the same representation (3) as Sullivan County (population 55,712); likewise Loudon County (13,624), Houston (3,084), and Anderson County (33,990) have the same representation, i. e., 1.25 each.

G. TO NEXT PAGE

⁵"Total representation" indicates the combined representation in the state senate (33 members) and the state house of representatives (99 members) in the Assembly of Tennessee. Assuming a county has one representative, it is credited in this calculation with 1/99. Likewise, if the same county has one-third of a senate seat it is credited with another 1/99, and thus such a county, in our calculation, would have a "total representation" of two; if a county has one representative and one-sixth of a senate seat, it is credited with 1.5/99, or 1.50. It is this last figure that I use here in an effort to make the comparisons clear.

THE 1950 RATHER THAN THE 1960 CENSUS OF VOTING POPULATION IS USED. THIS AVOIDS THE CHARGE THAT, 1960 use of TABULATIONS MIGHT NOT HAVE ALLOWED SUFFICIENT TIME FOR THE STATE TO ACT. HOWEVER, THE 1960 PICTURE IS MORE IRRATIONAL THAN THE 1950 ONE.

~~The 1950 census is used, this is done to avoid the charge even though in 1960~~
The pattern seem even more irrational, it is because it is believed the state's reapportionment machinery might not have had reasonable opportunity to react to the more recent 1960 figures.

In view of the detailed study that the Court has given this problem it is unfortunate that a decision is not reached on the merits. The majority appears to hold, at least sub silencio, that an invidious discrimination is present but it remands to the three judge court for it to ~~determine~~ make that formal determination.

It is true that Tennessee has not filed a formal answer. However, it has filed voluminous papers and made extended argument supporting its position. At no time has it been able to contradict the appellant's factual claims; it has offered no rational explanation for the present apportionment; indeed, it has indicated there are none known to it. ~~Out of the materials~~ ^{before} ~~the three~~ In fact, the case provided to the point ~~below~~ that the three judge court that it was able to find an invidious discrimination factually present, and the state has not contested that holding here. In view of all this background I doubt if anything will be gained ^{by the State} on the remand, other than time. Nevertheless, my position in litigation involving a state as a party, has consistently been that we should move slowly, ^{giving} ~~and give~~ deference to its sovereignty, to the end that its rights be fully protected. However, ~~a~~ in the judgment remanding the ~~case for trial on the merits.~~

~~My writing has been with a view of ^{indicating} ~~establishing~~ but some modus operandi upon which the trial court might proceed.~~

In fairness, I did think that Tennessee was entitled to have my idea of what it faces ^{on the facts} and the trial court some light as to how it might proceed.

In my view the decision today is in keeping with the highest traditions of the Court. ~~I am certain that in passing through~~ Its chief function being to protect national rights, its decision here supports the proposition for which our forefathers fought and many died, namely ^{fair} representation in the affairs of government. That is the keystone upon which ^{our} government was founded and lacking which no republic can survive. ~~National respect depends more on~~ ~~what it is than that the exercise of~~ Self-restraint and discipline in constitutional adjudication has no sanctity where ^{where} national rights are ^{so} clearly infringed ~~and here~~ and ^{and here for scores of years cried} ~~literally~~ cry out for recognition and sanction. National respect ^{for the courts} ~~depends more on the performance of~~ ~~that high duty imposed by the constitution~~ strict enforcement of national rights than on ~~any~~ ^{more} for the courts is ^{through} ~~enhanced~~ ~~by~~ their protection ~~rather~~ ~~than~~ ~~by~~ their condemnation.

2

(placing their disparity) ~~and~~ ~~are~~ within a desirable political balance.

But it is said that in this illustration all of the underrepresented counties contain municipalities of over 10,000 population and they ^{therefore should be included} ~~come~~ under the "urban" classification. But ⁱⁿ ~~by~~ so doing ~~the~~ one is caught ^{up} in his own ~~gins~~ ~~traps~~ for straight jacket for ~~many~~ ^{many} of the following counties have ~~two~~ municipalities ~~over~~ with a population exceeding 10,000, still ~~their representation~~ is the same invidious discrimination is present between them:

For example:

COUNTY	POPULATION	REPRESENTATION
GRUNDY	6540	0.95
CHESTER	6391	2.00
CUMBERLAND	9593	0.63
CROCKETT	9676	2.00
COFFEE	13406	2.00
FAYETTE	13577	3.00

Likewise ^{no} counties with ^{no} municipalities of over 10,000 population suffer ~~no~~ a similar ~~disparity~~ ^{disparity} & discrimination:

COUNTY	POPULATION	REPRESENTATION
Carters	23,303	1.10
Murray	24,556	2.25
Washington	36,967	1.99
Madison	37,295	3.50

Take the four LARGER counties:-

County	Population	Representation
KNOX		
HAMILTON		
STEELE		
DAVIDSON		

(3)

This could not ~~be~~ be an effort to give a desirable political balance between ~~either~~ rural and urban populations, ~~or metropolitan districts as well~~. Since discrimination is present between counties of like population the plan is neither consistent nor rational. It discriminates ~~vertically as well as horizontally~~ ^{creating gross} ~~between rural areas and metropolitan areas~~ ^{disparities} ~~and between rural and metropolitan areas~~. ~~But leaving wide disparity vertically~~ still maintaining the wide vertical disparity already pointed out as between rural ^{and} urban ~~and metropolitan~~.

between rural areas and metropolitan areas
 ✓ Copy from p. 9

It is also insisted that the representation ^{formulae} used above (see p. 5) is "patently deficient" because "it eliminates from consideration the relative voting power of the counties joined together in a single election district." This is a strange claim coming from those who rely entirely on the ~~argument~~ proposition that "the voice of every voter" ^{need not} ~~does not~~ have "approximate equality." Indeed, representative government, as they say, is not one of "bare numbers." The system of ~~present~~ ^{system} electoral districts in our ~~representative~~ government has never ~~thought there~~ been one where the electoral representatives ^{is} ~~are~~ splintered between the counties of his district. His function is, as it always has been, ~~under~~ ^{system} to represent the whole district. ~~I don't say that we must use~~ ~~staves~~ ~~to divide lines~~ To use a ^{mathematical} formulae - or as ~~other~~ it otherwise is described, "a table of logarithms" - that carves up the representatives (as is suggested '15 to Moore County) not only runs counter to the premise that representative government is not based on "bare numbers" but is contrary to our whole scheme of republican government.

However, I shall meet the charge ~~on its own merits~~

FN 6

* Of course this was not the case in the Ga county unit system, South v. Peters, supra, or the Illinois initiative plan, Mac Dougall v. Green, supra, where recognized political units having independent significance were given minimum political weight.

4

on its own ^{ground} and, ~~by illustration of its own~~ by use of its own "adjusted 'total representation'" formulae, show that it is located. For example, compare ~~some~~ ^{some} urban areas, ~~not, but by the~~ ~~method~~ of like populations, using that formulae:

County	Population	Representation
Washington	36967	2.64
Madison	37245	4.86
Carter	23303	1.52
Greene	23649	2.09
Mauzy	24556	3.82
Coffee	13406	2.14
HAMBLEN	14090	1.18

And now, using the same formulae, compare ^{some} the so-called "rural" areas of like population:

County	Population	Representation
Trowdale	3351	1.10
Lewis	3413	0.40
Stewart	5238	1.57
Cheatham	5263	0.72
Chester	6391	1.36
Grundy	6540	0.68
Smith	8731	2.05
Union	8767	0.40

and

and, for counties with similar representation, but ~~with~~ ^{with} gross differences in ~~total~~ population, take:

County	Population	Representation
Sullivan	55712	4.08
Mauzy	24,556	3.82
Blount	30,353	2.11
Coffee	13,000	2.14

(5)

These cannot be "distorted effects" for ^{here} the same formulae proposed by the dissenters ^{is} used and the result is even "a crazier" guilt.

The truth is that although this case has been here for two years and has had over six hours argument (three times the ordinary case) ~~with~~ the state nor the dissenters, have come up with any rational basis for Tennessee's apportionment statute. ~~To my mind it is no one. Is it not fair to say that if there was any plausible ground for it to rest on that someone would have come up with it?~~

- and has been most carefully considered over and over again by us in conference and individually - ~~over and over~~ no one, not even

No one - except the dissenters in their "adjusted total representation" formulae² - contend that mathematical equality among voters is required by the Equal Protection Clause. But certainly there must be some rational pattern to a State's districting. ~~I cannot discover~~ The discrimination here does not fit any pattern - as I have said, it is but a crazy guilt. Like the District¹, I conclude that ~~the~~ "Tennessee is guilty of a clear violation of the state constitution and of the [federal] rights of the plaintiffs."