Kidd v McCauley 352/920 - Colegrove Anderson + Kidd v McA below 292 SW 240

OT ~~1960~~ 1961 No. ~~103~~ 6

BAKER VS. CARR

Appeal from DCt MD Tenn. [Martin, Boyd, Miller]

Timely

The Tennessee Constitution requires an enumeration of qualified voters and an apportionment every ten years of legislative representation on the basis of that count. The last attempt to reapportion legislators was made in 1901 and was done without a census. Appellants are qualified voters and challenged the existing legislative distribution which the DCt found to be " grossly disporportionate to the distribution of population in the state, a condition brought about by shifts or changes in population since 1901." Appellants asked the DCt to declare the 1901 apportionment-without-enumeration unconstituional and enjoin its enforcement, order an election at large without regard to counties and districts or order the election officials to hold an election in accord with the Tenn. constitution's provisions using the most recent federal census.

The DCt [Miller, J.] felt that a three-judge court should decide whether Colegrove v. Green 328 US 549 (1945) required a dismissal of the action. It did decide and held that:

> The question of the distribution of political strenght for legislative purposes has been before the Supreme Court of the United States on numerous occasions. From a review of these decisions there can be no doubt that the federal rule, as enunciated and applied by the Supreme Court, is that the federal courts, whether from a lack of jurisdiction or from the inappropriateness of the subject matter for judicial consideration, will not intervene in cases of this type to compel legislative reapportionment.

The Ct reviewed the remedies suggested by appellants and found all impractical.

Appellants see no distinction between their position as a mixed group of negroes and whites whose votes do not carry as much weight in the state legislature as they should, and that of petrs in Gomillion v. Lightfoot, No. 668 cert granted March 22, 1960 (attached hereto) who, as negroes, were gerrymandered out of municipal voting in Tuskegee by the state legislature.

Race however does not appear to be the root of the discrimination and, anyway, in Kidd v. McCanless, cert. denied 352 US 920 (1956), citing Colegrove v. Green, this Court has once already

#652 352 US 991

refused to review a dismissal (by the Tenn. Sup Ct) of a suit brought upon the same grounds.

I suggest you

AFFIRM
[redacted]

MTM 7/26/60

NATL INSTITUE OF MUNICIPAL LAW OFFICERS filed a brief Amici Curiae urging the sad state of affairs in states across the country where political control is still vested in rural hands in spite of decades of population growth in cities, and the widespread disregard of state constitutional provisions for reapportionment.

Same to b/v Colegrove etc

Also See 1457 Supp 541

Constitutional Convention

Congress can do it

gives to less populous counties power to block nomination

+ See our per curiam affirming 352/991

McDougall 335/281

Colegrove 328

Wood v Broom 287/1 went off on interpretation of Act of Congress -

Equality of population

Hughes - but Brandeis Stone Roberts + Cardoza would dismiss - no equity

C.J. Jurisdiction - same guide lines

Black: Would follow his dissent in Colegrove -

Wood v Broom 287/1 ✓ Stone Miss. 1932

Colegrove v Green 328/

Cook - Nelson Duckworth - Ga 329 - Ga

Colegrove v Barrett 330

MacDougall v Green 1948 335 - Ill Aff -

Cox v Peters 342 Ga

Reeney v Smith 342 Pa

Anderson v Jordan 343/912 Calif -

Kidd v McCanless 352/920 - Tenn -

Radford v Gary 352 Okla Aff cited Colegrove + Kidd

Hartsfield v Sloan 357 - Ga