

scheme might not offend the basic standard of equality, but legislators have numerous important functions that have nothing directly to do with voting, such as participating in the work of legislative committees and party caucuses, debating on the floor, discussing measures with other legislators and executive agencies and the like. The assemblyman who in voting represents a one-sixth district can theoretically give each constituent six times as much representation in these other respects as the assemblyman who represents a full district.

This disparity of representation persists, even if the state is right in arguing that the assemblyman, with only one-sixth of the vote, will carry only one-sixth as much political weight when he engages in these other activities. Moreover, fractional districts are enjoyed mainly by the sparsely populated regions of the state.

Of the 47 per cent who cast fractional votes under Plan D, 37 are from counties too thinly inhabited to have any additional representation in the assembly. Of the 39 assemblymen who would cast fractional votes under Plan C, 34 are from counties too thinly inhabited to have any additional representatives.

None of the assemblymen with fractional votes under either plan are from New York City or Nassau County.

In view of the Supreme Court's concern for New York's traditional bias against voters living in the state's more populous counties, citing the case which had gone to the Supreme Court from New York, this imbalance makes fractional voting particularly vulnerable.

He goes on with other arguments and then sums it up this way: "Accordingly, we hold that Plans D and C violate the 14th Amendment of the U. S. Constitution, and therefore do not comply with the July 27 order of this Court."

That is a square holding and that was firmly affirmed by the Supreme Court. In the affirmance, which is in 382 US, it was affirmed pro curia with Mr. Justice Harlan writing a concurring opinion in which he noted that so far as he was concerned, it did not involve determination of a federal question, because Plan A, which was approved by the District Court, had been based on a matter of state law.

In other words, they found that that complied with the state constitution, and therefore Mr. Justice Harlan felt that the

federal question was not reached in their decision.

THE CHAIRMAN: Delegate Henderson, you have one half minute.

DELEGATE HENDERSON: I am sorry.

There are a few other cases in which it has been hinted that this matter is one that might be effective, if the proposition were merely that as a temporary measure. To avoid a first shot in reapportionment, it might be allowed to stand, but no court in this country has sustained it as a permanent part of the constitution.

THE CHAIRMAN: Does any other delegate desire to speak in opposition?

Delegate Grant?

DELEGATE GRANT: I join with our distinguished Chief Judge in his analysis.

However, there have been a few more cases brought up which indicate that the matter is still unsettled.

On the particular case to which he referred, there was a further proceeding in the Supreme Court the following year at which it was agreed by all parties that the question was moot, so not only was the federal question never reached, the case was dismissed for reason of its being moot. There was a recent case last year which arose in Virginia Beach. In this case it was a question of whether, although all the councilmen were elected city-wide, they were required to reside in the districts. The only applicable point here is the Supreme Court's reason for upholding this. They indicated that the value to the legislative body or the expertise of the people from various sections would offset any unfavorable influence which might come from their residing in only one section.

THE CHAIRMAN: Does any other delegate desire to speak in opposition to the amendment?

Delegate Gallagher?

DELEGATE GALLAGHER: Mr. Chairman, I wish you would record my time as one-half for the opposition and one-half for the affirmative because I would like the House to know what the actual impact of the proposal is on the counties and what counties are involved. I feel that they ought to have this before they vote.

THE CHAIRMAN: You may proceed.

DELEGATE GALLAGHER: Assuming