

tion would again introduce extreme distortions as the larger counties increased in population, as had occurred under the limitations of the 1867 apportionment. Baltimore County with a 1960 population of 492,428 would soon have reached the maximum of ten delegates so that further growth would not have been accorded any recognition. Conversely, fourteen of the State's twenty-three counties were under 50,000 population and so would have been the beneficiaries of the most favorable representation ratios but still could have increased their representation with minimum population increases.⁷⁷

COURT-ORDERED REAPPORTIONMENT

With the complete failure of repeated attempts to secure even mild reforms in the progressively worsening malapportionment of the State, the issue passed from the legislative to the judicial forum. Suit was brought in the Circuit Court of Anne Arundel County challenging the apportionment of both houses of the legislature as being in violation of the equal protection clause of the Fourteenth Amendment.⁷⁸ The complaint was dismissed by Circuit Judge Duckett without leave to amend. On appeal, the Maryland Court of Appeals reversed the order of the Circuit Court and remanded the case for a hearing on the merits⁷⁹ after considering the relevance of *Baker v. Carr*.⁸⁰ The

Circuit Court after hearing argument did not pass on the validity of the apportionment in the Senate but did hold that the apportionment of the House of Delegates invidiously discriminated against the people of Baltimore, Montgomery, and Prince George's counties and that the provisions of Article III, Section 5, of the Maryland Constitution, apportioning the House of Delegates, were unconstitutional. The court did not grant injunctive relief, as it had been requested to do, stating that the Maryland legislature had power both to reapportion the House and to propose a constitutional amendment for reapportionment.

A week later the legislature, in special session, enacted a "stopgap" reapportionment.⁸¹ This legislation added 19 delegates to the House: 7 were given to Baltimore County, bringing its total to thirteen; 4 each were given to Prince George's and Montgomery counties, bringing their totals to ten; 1 to Anne Arundel County for a new total of seven; 2 to the third district of Baltimore City for a new total of eight; and 1 to the fifth district of Baltimore City for a new total of seven. Under this new apportionment a delegate from Baltimore County would represent an average of 37,879 persons compared to 6,487 persons represented by a delegate from Caroline County. Such distortions in the ratios of representation permitted 36 per cent of the State's total population to elect a majority of the House of Delegates.

It will be recalled that the Circuit Court after hearing argument refrained

⁷⁷ These counties were Calvert, Caroline, Cecil, Charles, Dorchester, Garrett, Howard, Kent, Queen Anne's, Saint Mary's, Somerset, Talbot, Wicomico, and Worcester.

⁷⁸ "No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."

⁷⁹ 228 Md. 412, 180 A.2d 656 (1962).

⁸⁰ 369 U.S. 186 (1962). *Baker v. Carr* held the question of whether state legislative districts were in violation of the equal protection clause of the Fourteenth Amendment was justiciable in the federal courts.

⁸¹ MD. CODE ANN. art. 40, § 42 (1964 Supp.). This statute was to expire on January 1, 1966, unless a constitutional amendment was submitted to the voters, and rejected, in the 1964 elections, in which case the statute was to continue in force until January 1, 1970.