

Date of Hearing: July 15, 2015

ASSEMBLY COMMITTEE ON ELECTIONS AND REDISTRICTING

Sebastian Ridley-Thomas, Chair

SJR 13 (De León) – As Introduced June 8, 2015

SENATE VOTE: 36-0

SUBJECT: Voting: apportionment.

SUMMARY: Urges the United States (U.S.) Supreme Court to uphold the U.S. Constitution's principle of "one person, one vote" in the case of *Evenwel v. Abbott*. Specifically, **this resolution:**

1) Contains the following findings and declarations:

- a) "One person, one vote" has been an enshrined principle of the U.S. Constitution since it was articulated by Chief Justice of the U.S. Earl Warren in *Reynolds v. Sims* (1964) 377 U.S. 533, which was decided at the height of the Civil Rights movement;
- b) The U.S. Supreme Court, in *Reynolds v. Sims*, held that seats in both houses of a bicameral legislature must be apportioned equally on a population basis under the equal protection clause of the Fourteenth Amendment to the U.S. Constitution;
- c) Federal courts have consistently endorsed the use of total population, including those ineligible to vote, to determine equal apportionment since *Reynolds v. Sims*;
- d) Political districts across the nation were arbitrarily drawn and severely imbalanced before the Supreme Court of the U.S. affirmed the principle of "one person, one vote" in *Reynolds v. Sims*;
- e) Texas plaintiffs, led by Sue Evenwel, Titus County GOP Chairwoman, are attempting to disenfranchise California's immigrants and children by challenging the longstanding democratic principle of "one person, one vote" through their litigation in *Evenwel v. Abbott*;
- f) The legal theory proffered by the plaintiffs, that legislative districts must be drawn in a way that excludes children and noncitizens and instead be drawn based on the population of eligible voters, has never been endorsed by the U.S. Supreme Court;
- g) Sixty-three percent of California's population consists of citizens of voting age;
- h) California is deeply concerned with the recent decision of the U.S. Supreme Court to hear arguments in *Evenwel v. Abbott* and potentially disenfranchise 37 percent of the state's population;
- i) Not counting immigrants, whether with legal status or undocumented, as full persons for purposes of apportionment is reminiscent of the U.S. Constitution's infamous three-fifths

clause that did not view enslaved Black people the same as White people for purposes of apportionment;

- j) Overturning the long held precedent of "one person, one vote" would be tantamount to enshrining discrimination and prejudice in the law; and,
 - k) These plaintiffs seek to use the U.S. Supreme Court to turn back the clock on a half century of legal precedent and return to an unjust, unequal system of drawing legislative districts that would deprive immigrants and children of representation.
- 2) Urges the U.S. Supreme Court to uphold the U.S. Constitution's principle of "one person, one vote" and not deny California's children and immigrants equal protection under the law.

EXISTING LAW:

- 1) Requires seats in the U.S. House of Representatives to be apportioned among the states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed. (U.S. Constitution, Fourteenth Amendment, Section 2.)
- 2) Prohibits a state from making or enforcing any law which abridges the privileges or immunities of citizens of the U.S.; from depriving any person of life, liberty, or property, without due process of law; or from denying to any person within its jurisdiction the equal protection of the laws. (U.S. Constitution, Fourteenth Amendment, Section 1.)

FISCAL EFFECT: None. This resolution is keyed non-fiscal by the Legislative Counsel.

COMMENTS:

- 1) **Purpose of the Resolution:** According to the author:

I am deeply concerned with the U.S. Supreme Court's recent decision to revisit a long-standing principle of our constitution – "one person, one vote" – in the *Evenwel v. Abbott* case. This is a shocking development with dire implications for the political rights of millions of American residents.

Since it was first affirmed 51 years ago by Chief Justice Earl Warren's Supreme Court, "one person, one vote" has been a widely articulated and consistently upheld tenet of our nation's Constitution. Before that time, political districts across the nation were arbitrarily drawn and severely imbalanced – leaving millions underrepresented. Los Angeles County and its 6 million people, for example, had the equivalent voting power in our State Senate of a rural district with barely 14,000 people.

This challenge now is nothing more than a cynical and transparent effort to turn back the clock on decades of legal precedent and return an unjust, unequal system of redistricting that could greatly disadvantage diverse and urban communities and deprive millions of American residents, many of whom are either Latino or Asian, of political representation. Moreover, as noted in the U.S. District Court

ruling in question (*Evenwel v. Perry*), the plaintiffs rely primarily on a legal "theory never before accepted by the Supreme Court or any circuit court."

In California, overturning "one person, one vote" could lead to a system of political segregation that only counts three-fifths of our population and essentially ignores the rest. Californians believe that all people – not just adult registered voters – deserve equal protection under our laws and fundamental political representation.

Therefore, this measure is necessary to urge the Supreme Court of the United States to uphold the federal constitutional principle of "one person, one vote" and not deny California's children and immigrants equal protection under the law.

- 2) **"One Person, One Vote" and *Reynolds v. Sims***: As noted above, the Fourteenth Amendment to the U.S. Constitution prohibits a state from denying to any person within its jurisdiction the equal protection of the laws, among other provisions. This provision is commonly referred to as the Equal Protection Clause.

Prior to the 1960s, in many states, the seats in at least one of the houses of the state Legislature were established and based at least partially on geography, rather than strictly on a population basis. For example, although the districts in both houses of California's Legislature originally were based on population, in 1926, California voters adopted Proposition 28, which proposed a so-called "federal plan" of representation. Under that plan, the seats in the state Senate were apportioned largely based on geography, rather than by population. Proposition 28 provided that no county or city and county could contain more than one senatorial district, and no senatorial district could include more than three counties of small population. Assembly districts under Proposition 28 continued to be established based largely on population.

In 1962, the U.S. Supreme Court considered *Baker v. Carr* (1962) 369 U.S. 186, a case in which Tennessee voters alleged that the state's apportioning of seats in the General Assembly among the state's counties, and a failure to reapportion them subsequently notwithstanding substantial growth and redistribution of the state's population, resulted in a "debasement of their votes," and those voters were thereby denied the equal protection of the laws guaranteed them by the Fourteenth Amendment. In that case, the Court held for the first time that such allegations of a denial of equal protection presented a justiciable constitutional cause of action. Prior to *Baker*, courts generally had held that such controversies over the apportionment of state legislative seats presented a "political question" over which the courts did not have jurisdiction.

The following year, the U.S. Supreme Court first coined the phrase "one person, one vote" in the case of *Gray v. Sanders* (1963) 372 U.S. 368. That case concerned a Georgia law under which the winners of primary elections for statewide offices were determined based on a county unit system, where the candidate who received the most votes in each county received two votes for each representative to which the county was entitled in the lower House of Georgia's General Assembly. Because seats in the lower House were not apportioned based entirely on population, this system had the effect of giving voters in less-populated counties

greater influence in primary elections than voters in more populous counties. In its ruling in *Gray*, the U.S. Supreme Court found that the Equal Protection Clause requires that all voters who participate in an election have an equal vote in that election. In its decision, the court wrote:

How then can one person be given twice or ten times the voting power of another person in a state-wide election merely because he lives in a rural area or because he lives in the smallest rural county? Once the geographical unit for which a representative is to be chosen is designated, all who participate in the election are to have an equal vote—whatever their race, whatever their sex, whatever their occupation, whatever their income, and wherever their home may be in that geographical unit. This is required by the Equal Protection Clause of the Fourteenth Amendment. The concept of "we the people" under the Constitution visualizes no preferred class of voters but equality among those who meet the basic qualifications. The idea that every voter is equal to every other voter in his State, when he casts his ballot in favor of one of several competing candidates, underlies many of our decisions....

The 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.

Following *Gray*, in 1964, the U.S. Supreme Court squarely addressed the question of whether the Equal Protection Clause requires apportionment of state legislative seats to be based on population in *Reynolds v. Sims* (1964) 377 U.S. 533. In *Reynolds*, the Court held the apportionment of Alabama's legislature unconstitutional and ordered reapportionment consistent with the one person, one vote principle. As articulated in *Reynolds*, the only permissible basis for drawing districts under the Equal Protection Clause—for both houses of a bicameral state legislature—is population, not geographical area. Chief Justice Warren's majority opinion noted that, "Legislators represent people, not trees or acres. Legislators are elected by voters, not farms or cities or economic interests. As long as ours is a representative form of government, and our legislatures are those instruments of government elected directly by and directly representative of the people, the right to elect legislators in a free and unimpaired fashion is a bedrock of our political system."

Consistent with the *Reynolds* Court's holding that both houses of a state legislature must be apportioned by population, the Court has applied and upheld the one person, one vote principle on numerous occasions and extended it to all forms of local governments.

- 3) ***Evenwel v. Abbott***: In April 2014, two individuals in Texas filed a lawsuit in the U.S. District Court for the Western District of Texas challenging the state's senatorial districts that were adopted by the Legislature and the Governor. In that case, *Evenwel v. Perry* (2014), case number A-14-CA-335-LY-CH-MHS, the plaintiffs, Sue Evenwel and Edward Pfenniger, alleged that the state's senatorial districts violated the one person, one vote principle of the Equal Protection Clause. Although the plaintiffs acknowledged that the Senate districts were designed to have a relatively equal number of persons based on total population, they argued that the failure to establish districts that equalized both total population *and* voter population

was impermissible under the one person, one vote principle.

Notwithstanding the U.S. Supreme Court's determination in *Reynolds* that the Fourteenth Amendment requires that apportionment of districts be based upon population, the Court has never held which population, if any, is required to be used as the basis for apportionment. Instead, the U.S. Supreme Court explained in *Burns v. Richardson* (1966) 384 U.S. 73, "the decision to include or exclude any such group" in the population that is used as the basis for apportionment "involves choices about the nature of representation with which we have been shown no constitutionally founded reason to interfere." The Court found that "[u]nless a choice is one the Constitution forbids, the resulting apportionment base offends no constitutional bar, and compliance with the rule established in *Reynolds v. Sims* is to be measured thereby." (Internal citations omitted.)

In November 2014, the U.S. District Court for the Western District of Texas dismissed the *Evenwel* case, finding that the plaintiffs "failed to plead facts that state an Equal Protection Clause violation under the recognized means for showing unconstitutionality under that clause" and that the "Plaintiffs' proposed theory for providing an Equal Protection Clause violation . . . has never gained acceptance in the law." In May of this year, the U.S. Supreme Court agreed to hear the appeal in *Evenwel*. (The case is now titled *Evenwel v. Abbott*, to reflect the fact that Greg Abbott became the Governor of Texas between the time that the District Court issued its decision and the time that the U.S. Supreme Court agreed to hear the appeal of the case.) The U.S. Supreme Court will hear oral arguments in the case at its next term, which begins in the fall.

REGISTERED SUPPORT / OPPOSITION:

Support

American Civil Liberties Union of California
Asian Americans Advancing Justice – Sacramento
California Asian Pacific Islander Budget Partnership
California Immigrant Policy Center
California State Conference of the National Association for the Advancement of Colored People
California State Council of Service Employees International Union
Coalition for Humane Immigrant Rights of Los Angeles
Latino Coalition for a Healthy California
Los Angeles Center for Law and Justice
Mexican American Legal Defense and Educational Fund
United Farm Workers

Opposition

None on file.

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