

States Rights/Powers

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I get regular emails from my state representatives. The most common theme is: the Willamette Valley controls the Senate, House and Governorship, and we can't do anything to stop them!

I believe I may shed some light on this predicament.

In the 1787 Constitutional Convention, the major sticking point was that the larger (most populated) states wanted to have a strictly popular form of representation while the least populated states wanted the states represented. In either case, the winner of that argument would control the new government. Connecticut delegate Roger Sherman proposed that we have a Senate with 2 senators each to represent the states (satisfying the smaller states) and the House of Representatives apportioned per population (satisfying the larger states). That was approved with Benjamin Franklin's Origination Clause, in that the House initiated all money bills. See Utah Senator Mike Lee's 2015 book, Our Lost Constitution, for the full story.

This bicameral system of government, a Constitutional Republic, was such a successful concept, that nearly every state adopted the same type of constitution: a House of Representatives apportioned by population and a Senate representing Counties. The concurrence of both least populated and the most populated areas would be required for a law to be made. This is a staple of the mixed form of government described by Polybius and formed by the Romans as a Republic (*Res Publica* "thing of the people").

However, in 1964, The Supreme Court decided a case originating in Alabama, *Reynolds v. Sims* (377 U.S. 533). It would transform 30 states from a republican form of government (as required in the Constitution, see below) into a democratic form of government in which a majority of the people make the laws.

Reynolds v. Sims righted a wrong in which apportionment in Alabama's House of Representatives, supposed to occur every 10 years, had not been done since the year 1900. This was apparently a racial issue purposefully done to deny a certain population representation. The Court was correct to rectify this "error" but Chief Justice Earl Warren went a step too far. He wrote that the Equal Protection Clause, "one man, one vote" requires equal legislative representation for all citizens, even in the Senate. His ruling forced the Senate to also be apportioned by population. Both houses represented the same interests. The Republic was drowned in a sea of Democracy.

In dissent, Justice John Marshall Harlan II criticized the Court, claiming it was imposing its own idea of "good government" on the states. Harlan further claimed that if *Reynolds* was correct, the U. S. Constitution's own provision for two senators from each state would be constitutionally suspect. If it was to be for the states, it should also be for the federal government.

Historically, there is no evidence that the term Equal Protection applied to political questions, like how a government chooses to allocate representatives.

The Supreme Court cannot write laws or amend the Constitution. I submit that this ruling unlawfully amended the constitution of the 30 states that modeled their constitution after the federal standard, taking away their rights guaranteed in the U. S. Constitution, Article IV, Section 4 "The United States shall guarantee to every state in this Union a Republican form of Government."

It can't get much clearer than that, and that is reinforced by the 10th Amendment "The powers delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people". So, our Republican form of state government was taken away and replaced with a democratic form of government. We no longer have a rule by law, but a rule by men.

A quote attributed to Benjamin Franklin “A democracy is where two wolves and a lamb vote upon what to have for dinner”.

This changed the political climate so much that rural areas of states are no longer represented. The State of Jefferson movement in California is based upon this exact notion, as they feel that their votes do not count, as whatever Los Angeles & San Francisco votes for, happens. They contend that LA County has 11 Senators, while 11 Northern Counties have only 1 Senator. The same situation prevails in Oregon (page 135 of the Oregon Blue Book). Senate District 29 in Eastern Oregon has 1 Senator for 6 ½ counties and District 30, also in Eastern Oregon, has 1 Senator to represent 7 ½ counties. Multnomah County has 9 Senators fully or partially representing that county.

I propose that we do one of two actions:

- 1) Litigate to overturn this ruling. We could probably get most rural counties in those 31 states to join in the suit.
- 2) Get a backbone and invoke states rights. We allowed this to happen in 1964 because the population was ignorant of the ramifications of the court overstepping their bounds, trampling on states choice of government.

An update; I contacted State House Minority Leader Carl Wilson (R-Grants Pass) with this paper. He took it to heart and submitted House Joint Resolution 6 (HJR 6) early in 2017. This bill would re-establish fair and balanced representation by changing the Oregon State Senate to having one senator for every county, instead of being apportioned by population (which is identical with the house and represents the same interests). But, he warned me “this bill won’t go anywhere, because they won’t like it up there”. He was right. It never even got out of committee!

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