

Arizona State Legislature v. Arizona Independent Redistricting Commission

Summary by Amy Howe, SCOTUSblog

<http://www.scotusblog.com/2015/06/independent-redistricting-commission-survives-challenge-in-plain-english/>

Fifteen years ago, Arizona voters took a drastic step to deal with partisanship in drawing the lines for federal congressional districts: they passed an amendment to the state constitution that transferred the redistricting power from the state legislature, which had previously controlled it, to an independent commission. Perhaps it comes as no surprise that the legislature objected to being cut out of the process and filed a lawsuit, which went all the way to the U.S. Supreme Court. The legislature alleged that tasking the commission with redistricting violates the U.S. Constitution's Elections Clause, which provides that the "Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof" – because the phrase "the Legislature" can only refer to the official body that makes laws for the state.

Yesterday the Supreme Court rejected the legislature's argument, in a decision that will be welcomed by many not only in Arizona, where the independent redistricting commission can continue to operate, but also in other states (including California) that also use commissions for redistricting. Let's talk about the ruling in *Arizona State Legislature v. Arizona Independent Redistricting Commission* in Plain English.

Justice Ruth Bader Ginsburg wrote the Court's opinion, which was joined by Justices Anthony Kennedy, Stephen Breyer, Sonia Sotomayor, and Elena Kagan. Dictionaries in print around the time that the Constitution was drafted, the Court pointed out, defined the word "legislature" as "the power that makes laws." And in Arizona, the power to make laws rests not only with the official body of elected representatives, but also with the voters themselves, who have the power under the state constitution to pass laws and constitutional amendments through initiatives – just as they did in this case.

Defining "legislature" in this way is, the Court reasoned, also consistent with what the Court described as "the fundamental premise that all political power flows from the people," and "the core principle of republican government . . . that the voters should choose their representatives, not the other way around." And as a practical matter, this interpretation (unlike the legislature's) leaves a whole host of other voter initiatives, ranging from Ohio's ban on straight-ticket voting along party lines to a California law establishing permanent voter registration, in place.

Last week in *King v. Burwell*, Chief Justice John Roberts wrote for the Court in holding that the Affordable Care Act's reference to health-insurance exchanges "established by the State" also includes health-insurance exchanges established by the federal government. But in this case, in a dissent joined by Justices Antonin Scalia, Samuel Alito, and Clarence Thomas, he took a narrow view of the word "Legislature." He argued that, when the Constitution was drafted, the word "Legislature" referred only to the official body of elected representatives – an understanding that is reflected in the Constitution's many references to a state's "Legislature." And in particular, Roberts emphasized, the entire purpose of the Seventeenth Amendment was to allow the people in each state – rather than the state "Legislature" – to elect senators. "What chumps," he observed sarcastically. "Didn't they realize that all they had to do was interpret the constitutional term 'the Legislature' to mean 'the people'?"

Evenwel v. Abbott

Summary by Lyle Denniston, SCOTUSblog

<http://www.scotusblog.com/2015/05/major-test-on-voter-equality-set-for-review/>

The Constitution has been understood for the past half-century to require that no individual's vote count more at election time than anyone else's. The Supreme Court agreed on Tuesday, for the first time, to clarify how that concept of equality is to be measured, when legislatures are drawing up election districts.

The Court took on a case challenging the 2011 redistricting of the thirty-one seats in the Texas Senate, focusing on what measure of population should be used to judge whether the "one-person, one-vote" mandate has been met. That mandate originated in *Reynolds v. Sims* in 1964. The new case of *Evenwel v. Abbott* will be heard and decided next Term.

The Justices' move into the Texas Senate redistricting case comes fourteen years after Justice Clarence Thomas, in *Chen v. City of Houston* in May 2001, was the sole member of the Court who went on record in favor of sorting out "what measure of population should be used for determining whether the population is equally distributed among the districts."

The usual choice considered by legislatures is to make districts more or less equal by dividing up shares of the state's total population, or, as an alternative, to draw lines based upon some measure of the voting members of the population — such as the numbers actually registered to vote.

Two Texas voters, who wound up in state senate districts where they say their votes will count less than the votes in another district even though each of those districts has about the same total number of people, argued that this contradicts the "one-person, one-vote" guarantee of voter equality. Their votes would have counted equally, they contended, if the legislature instead had used voting-age population as the measure.

The voters, Sue Evenwel, who lives in Titus County in Senate District 1, and Edward Pfenninger, who lives in Montgomery County in District 4, said their votes were diluted because of the disparity between the two measures as applied to those districts, where more of the people vote proportionally. Both districts are rural. Other, more urban districts have proportionally fewer registered voters, so the redistricting plan based on actual population is said to give those who do vote more weight — that is, fewer of them can control the outcome.

"A statewide districting plan that distributes voters or potential voters in a grossly uneven way," the two voters told the Court, "is patently unconstitutional under *Reynolds v. Sims* and its progeny."

The voters do not argue that legislatures should be forbidden ever to use total population as the districting measure, but only when it results in the kind of disparity, compared to a plan based on voters' numbers, that resulted in Texas.

At the theoretical core of this dispute is the theory of representation that a legislature should follow. Texas, supported by the lower court in the new cases, argued that this is a question of how to define democracy, a question that it said should be left to the people's elected representatives, and not decided by the courts. The state also contended that the Supreme Court had said explicitly in a 1966 decision (*Burns v. Richardson*) that the choice of population measure was a matter for legislatures.