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Reapportionment

REAPPORTIONMENT

N.Y. CONST. art. III, § 4

Such Districts shall be so readjusted or altered that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, . . . and shall at all times consist of contiguous territory, and no country shall be divided in the formation of a senate districts wholly in such country.

Wolpoff v. Cuomo[1102]
(decided June 30, 1992)

The petitioners, residents and registered voters of Bronx County, joined by additional registered voters from New York County,[1103] challenged the constitutionality of the New York Senate redistricting plan,[1104] claiming that it violated article III, section 4 of the New York State Constitution,[1105] which requires continuity, compactness, and integrity of counties in legislative districting and apportionment schemes.[1106]

The New York Court of Appeals upheld the constitutionality of the redistricting plan finding that it did not unduly depart from the state constitution's requirements regarding integrity of counties in legislative redistricting and apportionment

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1102. 80 N.Y.2d 70, 600 N.E.2d 191, 587 N.Y.S.2d 560 (1992).

1103. This is a consolidated action combining two separate actions. The first action, *Wolpoff v. Cuomo*, was brought in Supreme Court, Bronx County on May 8, 1992. Thereafter a similar action was brought in Supreme Court, New York County ten days later. *Id.* at 75-76, 600 N.E.2d at 192, 587 N.Y.S.2d at 561.

1104. 1992 N.Y. Laws 449-81, 540-70, 593-607.

1105. N.Y. CONST. art. III, § 4. This provision provides in pertinent part:

> [E]ach senate district shall contain as nearly as may be equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and . . . shall at all times consist of contiguous territory, and no county shall be divided in the form of a senate district except to make two or more senate districts wholly in such county.

Id.

1106. *Id.*; *Wolpoff*, 80 N.Y.2d at 75, 600 N.E.2d at 192, 587 N.Y.S.2d at 561.

schemes.[1107] Although the court found that the plan violated the technical mandates of the state's constitutional provision, it was upheld since it was drawn to comply with the federal mandates requiring apportionment on an equal population basis.[1108]

This is a consolidated action that was heard on appeal from two supreme court judgments declaring the Senate's redistricting unconstitutional. The actions arose out of the redistricting plan adopted by the New York Legislature that was approved by the governor and signed into law on May 4, 1992.[1109]

The plan, redistricting sixty-one state senate voting districts, created twenty-eight bi-county districts, and for the first time, established four pairs of bi-county districts whereby a single county was redistricted in such a way that two of its districts crossed county lines.[1110] The plan divided Bronx County into six senate districts, only two of which were fully contained within Bronx County. Two of the senate districts crossed county lines between Bronx and New York Counties, and another two crossed lines between Bronx and Westchester Counties.[1111] The population of the Bronx, however, was sufficient to support four self-contained districts.[1112]

It was undisputed that the redistricting plan technically violated the New York Constitution.[1113] However, the redistricting plan as enacted was within federal standards for population deviation

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1107. *Wolpoff*, 80 N.Y.2d at 79-80, 600 N.E.2d at 195, 587 N.Y.S.2d at 564.

1108. *Id.* at 80, 600 N.E.2d at 195, 587 N.Y.S.2d at 564; Federal Voting Rights Act, 42 U.S.C. §§ 1973 *et seq.* (1981). The Act states that a violation occurs if:

> based on the totality of the circumstances, it is shown that the political processes leading to nomination or election in the State . . . are not equally open to participation to members of a [protected] class of citizens . . . in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.

42 U.S.C. § 1973(b).

1109. 1992 N.Y. Laws 449-81, 540-70, 593-607.

1110. *Id.*

1111. 1992 N.Y. Laws 467-74

1112. *Wolpoff*, 80 N.Y.2d at 75, 600 N.E.2d at 192, 587 N.Y.S.2d at 561.

1113. *Id.* at 77, 600 N.E.2d at 194, 587 N.Y.S.2d at 563.

from the one-person-one-vote rule established in *Reynolds v. Simms*.[1114] While federal mandate permitted a 16.4% deviation, New York's plan had only a 4.2% deviation.[1115] Petitioners offered four alternate plans that maintain greater county integrity but had higher population deviations.[1116]

In the first action, *Wolpoff v. Cuomo*,[1117] plaintiffs brought suit in Supreme Court, Bronx County, contesting the constitutionality of the redistricting plan because it divided Bronx County into six distinct districts.[1118] Plaintiffs contended that the plan fragmented Bronx County into six Senate districts, only two of which were wholly contained within the county, although the county's population could readily support four self-contained Senate districts.[1119] The supreme court held that the New York Constitution's requirement that the integrity of the counties be respected was violated by the bi-county redistricting scheme.[1120] In the companion case, *Dixon v. Cuomo*,[1121] nine registered voters instituted a similar action in Supreme Court, New York County alleging that the redistricting plan was gerrymandering

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1114. *Id.* at 79, 600 N.E.2d at 194, 587 N.Y.S.2d at 563; *see* Reynolds v. Simms, 377 U.S. 533 (1964).

1115. *Wolpoff*, 80 N.Y.2d. at 79, 600 N.E.2d at 194, 587 N.Y.S.2d at 563.

1116. *Id.* The court noted that none of the alternate plans created bi-county districts. However, the court stated that each were in "technical" violation of the state's constitution. *Id.* at 75, 600 N.E.2d at 194, 587 N.Y.S.2d at 563.

1117. The Senate Majority Leader, Ralph Marino, one of the legislative defendants named as a party in this action, removed the action to the Federal District Court for the Southern District of New York pursuant to 28 U.S.C. § 1443(2) (1973). *Wolpoff*, 80 N.Y.2d at 76, 600 N.E.2d at 192, 587 N.Y.S.2d at 561. It was remanded back to the supreme court immediately thereafter. *See* Wolpoff v. Cuomo, 792 F. Supp. 964 (S.D.N.Y 1992). The district court held that the Eleventh Amendment prevented the court from maintaining jurisdiction over the plaintiff's claims because the plaintiff was seeking to enforce state laws against one of the state's officers. *Id.* at 968.

1118. *Id.* at 75, 600 N.E.2d at 192, 587 N.Y.S.2d at 561.

1119. *Id.*

1120. *Id.* at 76, 600 N.E.2d at 193, 587 N.Y.S.2d at 562.

1121. The Senate Majority Leader was not a named party to this action, but his motion to intervene was granted on the condition that he agree not to seek removal to the federal district court. *Id.* at 76, 600 N.E.2d at 193, 587 N.Y.S.2d at 562.

and violated article III, section 4 of the state constitution by creating districts that were neither compact or contiguous. As in *Wolpoff*, the *Dixon* court declared that the redistricting plan violated the state constitution.[1122]

The court of appeals began its analysis by considering the "vitality" of article III, section 4 in light of federal mandates, notably those stated in *Reynolds v. Simms*. It noted that in *Reynolds*, the Supreme Court held that the Equal Protection Clause[1123] requires that both houses of a state's legislature must be apportioned on an equal population basis.[1124] The court of appeals stated that its earlier decision in *In re Orans*[1125] recognized that basing redistricting plans solely on county lines would not save them from "running afoul" of *Reynolds*.[1126] However, *Orans* sought to continue, as far as possible, the "'historic and traditional significance of [the] counties in the districting process.'"[1127] The court of appeals also noted that the redistricting plan, which had to comport with the Federal Voting Rights Act,[1128] was found to be in compliance by the United States Department of Justice.

The court stated that the issue presented before it was not whether the redistricting plan violated the New York Constitution, since "such violations were inevitable if the legislature was to comply with federal constitutional requirements."[1129] Thus, the court looked at the balance struck by the Legislature in its attempt to comply with both the state and federal requirements. The test in evaluating whether the plan satisfies the New York State Constitution is whether the

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1122. *Id.*

1123. U.S. CONST. amend. XIV, § 1, cl. 4.

1124. *Wolpoff*, 80 N.Y.2d at 77, 600 N.E.2d at 193, 587 N.Y.S.2d at 562; *Reynolds*, 377 U.S. at 568.

1125. 15 N.Y.2d 339, 206 N.E.2d 854, 258 N.Y.S.2d 825 (1965).

1126. *Wolpoff*, 80 N.Y.2d at 77, 600 N.E.2d at 193, 587 N.Y.S.2d at 562 (citing *Orans*, 15 N.Y.2d at 351, 206 N.E.2d at 859, 258 N.Y.S.2d at 832).

1127. *Id.*, 600 N.E.2d at 193, 587 N.Y.S.2d at 562 (quoting *Orans*, 15 N.Y.2d at 352, 206 N.E.2d at 859, 258 N.Y.S.2d at 832).

1128. 42 U.S.C. §§ 1973 *et seq.* (1981)

1129. *Wolpoff*, 80 N.Y.2d at 77-78, 600 N.E.2d at 194, 587 N.Y.S.2d at 562-63.

legislature has "unduly departed" from the contiguity, compactness, and integrity mandates of the state constitution while simultaneously adhering to the federal requirements.[1130] A redistricting plan will be held constitutional if it substantially complies with the federal and state constitutions.[1131] Moreover, redistricting plans enjoy a presumption of constitutionality.[1132] This presumption is rebuttable "only when it can be shown beyond reasonable doubt that it conflicts with the fundamental law, and that until every reasonable mode of reconciliation of the statute with the Constitution has been resorted to, and reconciliation has been found impossible."[1133]

The Court discounted the four alternate plans submitted by petitioners, contending that it was not the judiciary's function to determine if the other plans were preferable to that of the legislature.[1134] Rather, it is the function of the legislature to balance the interests of the state with the federal mandates and devise an appropriate districting scheme and the court will not "second-guess the determinations of the Legislature."[1135]

The court concluded that the evidence presented by the petitioners did not operate to overcome the presumption of constitutionality of the redistricting plan.[1136] The court found that the respondents set forth enough evidence to support the technical violations of the New York Constitution.[1137] However, the plan divided counties in such a way that it minimized violations of the state constitution and concurrently complied with federal constitutional and statuary requirements.[1138] The plan was grounded in analysis of population trends and voting analysis of population trends and voting patterns in an effort to comply

1130. *Id.* at 78; 600 N.E.2d at 194, 587 N.Y.S.2d at 563.

1131. *Id.* (quoting Schneider v. Rockefeller, 31 N.Y.2d 420, 429, 293 N.E.2d 67, 72, 340 N.Y.S.2d 889, 896 (1972)).

1132. *Id.* (citing *In re* Fay, 291 N.Y. 198, 207 (1943)).

1133. *In re* Fay, 291 N.Y. 198, 207 (1943).

1134. *Wolpoff*, 80 N.Y.2d at 78-80, 600 N.E.2d at 194-95, 587 N.Y.S.2d at 563-63.

1135. *Id.* at 79, 600 N.E.2d at 195, 587 N.Y.S.2d at 564.

1136. *Id.*

1137. *Id.*

1138. *Id.*

with the Voting Rights Act.[1139] Since the legislative proposal was based on such careful analysis and complied with other federal mandates, it was upheld despite its technical violation and disrespect for the integrity of county lines.[1140]

The dissenting opinion written by Justice Titone found that the redistricting plan was a drastic departure from the requirements of the state constitution.[1141] Since at least four alternative plans were available, the division of counties under the adopted plan was "not dictated by practical necessity."[1142] Compliance with the federal mandates could be accomplished by plans other than the one fashioned and adopted by the legislature.[1143]

The dissenting opinion questioned the majority's reliance on *Schneider v. Rockefeller*[1144] as the guiding standard.[1145] A subsequent Supreme Court decision, *Manhan v. Howell*,[1146] established that deviations from the "one-person-one-vote" rule were permissible, even where such deviations were not minimized, where there was another state interest served by the proposed plan.[1147] One permissible state interest is the preservation of the integrity of political subdivisions.[1148] Under *Manhan*, the dissent explained, federal mandate does not require the maximization of equality at the expense of other local concerns.[1149]

1139. *Id.*

1140. *Id.*

1141. *Id.* at 82; 600 N.E.2d at 196, 587 N.Y.S.2d at 565 (Titone, J., dissenting).

1142. *Id.* at 82; 600 N.E.2d at 196, 587 N.Y.S.2d at 565 (Titone, J., dissenting).

1143. *Id.* (Titone, J., dissenting).

1144. 31 N.Y.2d 420, 293 N.E.2d 67, 340 N.Y.S.2d 889 (1972).

1145. *Wolpoff*, 80 N.Y.2d at 83-84, 600 N.E.2d at 197, 587 N.Y.S.2d at 566 (Titone, J., dissenting).

1146. 410 U.S. 315 (1973).

1147. *Wolpoff*, 80 N.Y.2d at 83, 600 N.E.2d at 197, 587 N.Y.S.2d at 566 (Titone, J., dissenting).

1148. *Id.* at 84, 600 N.E.2d at 197, 587 N.Y.S.2d at 566 (Titone, J., dissenting).

1149. *Id.* (Titone, J., dissenting).

In this case, Bronx County could support four wholly contained senate districts.[1150] If the districts were so drawn, there would be a deviation of 2% from the one-person-one-vote requirement, clearly a permissible deviation.[1151] Furthermore, the formation would advance the values of the Voting Rights Act by promoting minority representation.[1152]

The dissent expressed concern that the decision will be read as indicating that the New York Constitution "no longer represent[s] serious constraints on the critically important redistricting process."[1153] Since the legislature could have adopted a plan which complied with federal requirements and which more closely comported with the state constitutional requirements, the dissenting justices could not uphold the plan adopted by the state legislature.[1154]

Therefore, a redistricting plan enacted by the Legislature which technically violates the state's constitution will be upheld if it comports with federal requirements regarding voting districts and balances the respective interests of state and federal governments in legislative districting schemes. Although state districting schemes may not depart from the requirements of the Voting Rights Act and the "one-person-one-vote" mandate of *Reynolds v. Simms*, the State Constitution remains a vital restriction state, requiring that as must as possible, the integrity of county lines be respected in districting divisions. While departure from this constitutional mandate should be minimized, a plan which does not minimize county splitting will be upheld where state interests in representation on an equal population basis and minority representation are furthered by the proposed redistricting plan. The existence of reasonable alternative redistricting plans,

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1150. *Id.* at 84, 600 N.E.2d at 198, 587 N.Y.S.2d at 567 (Titone, J., dissenting).

1151. *Id.* at 84-85, 600 N.E.2d at 198, 587 N.Y.S.2d at 567 (Titone, J., dissenting).

1152. *Id.* at 85, 600 N.E.2d at 198, 587 N.Y.S.2d at 567 (Titone, J., dissenting).

1153. *Id.* (Titone, J., dissenting).

1154. *Id.* (Titone, J., dissenting).

however, will not operate to overcome the presumption of constitutionality which attaches to legislative redistricting plans.