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## CONGRESSMAN'S REPORT

By Morris K. Udall

### **The Tennessee Apportionment Case--Will It Affect Arizona?**

The United States Supreme Court has been a center of controversy throughout the history of our country. Once or twice in every decade a decision will have such an impact that it becomes a landmark in our political history.

The recent Tennessee apportionment decision undoubtedly is such a case; it is certain to be a focus of controversy in the months ahead.

Many people have asked me about this decision and, especially, how it might affect Arizona. In my opinion it will have no impact on the composition of our state legislature; it may eventually have some application to the way our state is divided into congressional districts.

#### **The Situation in Tennessee**

Tennessee's constitution requires both its House and Senate seats to be divided among counties on the basis of population. The constitution commands the legislature to make a new division of seats every 10 years.

In 1901, the seats were properly divided on the basis of the largely rural population of that day. Since 1901, Tennessee has had tremendous population growth, mostly in the cities. But despite the plain command of the state's constitution, the legislature has refused to reapportion itself.

As a result of the legislature's inaction, 60 per cent of the state senators are elected by 37 per cent of the voters; 64 per cent of the state representatives are elected by 40 per cent of the voters.

Putting it another way: the 3,084 people of Houston County have the same legislative representation as the 33,990 people of Anderson County.

This rural composition of the Tennessee legislature is reflected to some degree in the way the legislature has carved up the state into its nine congressional districts: 4 congressmen represent rural areas having 1.3 million people. Thus the cities are represented by one congressman for every 475,000 people, the rural areas by one congressman for every 260,000 people.

#### **Scope of the Decision**

In a long line of prior decisions the U. S. Supreme Court had always refused to interfere in apportionment cases, holding that these were "political" rather than judicial wrongs to be remedied by ballot rather than by court action.

These old decisions are now rejected and U.S. District Courts can now hear such cases and decide whether city voters are being denied "equal protection of the law" under the Fourteenth Amendment of the U. S. Constitution.

#### No Effect on the Arizona House of Representatives

It is an axiom of politics that no legislator will vote himself out of office. The framers of the Arizona constitution unlike those in Tennessee, wisely recognized this and placed the duty of reapportioning the Arizona House in administrative hands. Every four years the Secretary of State simply counts the vote for governor in the last election and divides the the 80 House seats among the counties. (The single limitation to this "divvying up" according to votes for governor is a stipulation that each county shall have at least one representative). No state House of Representatives is more fairly apportioned than ours.

#### The Arizona Senate

Arizona's present Senate representation was established by a 1952 constitutional amendment. Previously, Maricopa, Pima, Cochise, Gila, and Yavapai counties had two senators each, the other 9 counties had one each. The constitutional amendment of 1952 adopted the "federal principle" -- that is, senators were apportioned on the basis of geography rather than population. Thus, Mohave County with 7, 000 residents has two senators as does Maricopa with 663,000.

While many people object to such a system, there appears to be nothing in the Tennessee case which denies the right of a state to establish it. Of course, Arizona voters could establish a different system if they chose.

#### Arizona Congressional Districts

While the Tennessee case did not deal with congressional districting, the reasoning of the opinions suggests that suits might be filed attacking the way a state divides up its federal representation. The U.S. Constitution requires that seats in the U.S. House of Representatives be apportioned by population. If the Supreme Court can tell states how to apportion state legislatures, one might argue an even greater right for the court to require proper popular representation in the federal legislature.

By action of our state legislature, Arizona's congressional districts after 1962 will be divided as follows:

<u>District</u>	<u>Counties</u>	<u>Population</u>	<u>%of State Pop.</u>
1	Maricopa	663,500	51%
2	Cochise, Pima, Pinal, Santa Cruz, Yuma	440,500	33.8%
3	Apache, Coconino, Gila, Graham, Greenlee, Mohave, Navajo, Yavapai	198,000	15.2%

## Enforcement

One of the big unanswered questions about the decision is whether--and how-- it can be enforced. What means will federal courts use to force state legislatures to reapportion themselves? Any progress is likely to be slow and spotty following the pattern of the 1954 school segregation decision. This is the heart of the problem. Chief Justice Marshall once made a decision (*Worcester v. Georgia*) which President Jackson refused to accept. Old Hickory threw down a challenge in these words: "Well, John Marshall has made his decision: now let him enforce it". The course of events following this historic decision will be interesting to