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BAKER V. CARR, 369 U.S. 186 (1962)

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BAKER V. CARR, 369 U.S. 186 (1962)

Baker v. Carr, 369 U.S. 186 (1962) marked the U.S. Supreme Court's entry into the "political thicket" of apportionment and electoral politics that Justice Felix Frankfurter, in his opinion in *Colegrove v. Green*, 328 U.S. 549 (1946), warned the Court that it should avoid.

The plaintiffs in *Baker* filed suit alleging the violation of their voting rights pursuant to the equal protection clause of the Fourteenth Amendment. The alleged violation stemmed from Tennessee's continued use of a 1901 apportionment statute that, because of population shifts in Tennessee from 1901 to 1961, rendered state legislative districts malapportioned. The result of the malapportionment was the dilution the plaintiffs' votes in state legislative elections.

In response to a ruling by a three-judge panel from the U.S. District Court for the Middle District of Tennessee that the district court did not have subject-matter jurisdiction and that the plaintiffs had failed to state a claim for which relief could be granted, the Supreme Court held that the district court did have jurisdiction, that the plaintiffs had standing to challenge the Tennessee statute, and that the case was justiciable. The district court had subject-matter jurisdiction because the action nonfrivolously sought the vindication of substantial rights under the Constitution. The plaintiffs had standing because their claim focused directly on the dilution of their vote rather than on a more general claim that the Tennessee government had unconstitutionally failed to redistrict. The case presented a justiciable issue, rather than a nonjusticiable *political question*, because even though the case related to the political issue of apportionment, it stated a standard equal protection

claim subject to reasonable adjudication. After suggesting that political questions tend to relate to federal separation-of-powers issues rather than federalism issues, the Court stated a new standard for nonjusticiable political questions, limiting them to questions involving at least one of several conditions relating to the commitment of the issue to other political branches, the need for courts to make political decisions outside of their expertise or authority, and the lack of clear judicial standards for resolving the dispute. The Court explicitly declined to suggest an appropriate remedy for whatever violation might be proved at trial. Justices William O. Douglas, Tom Clark (1899-1977), and Potter Stewart also concurred separately.

Justices Frankfurter and John Harlan dissented. They distinguished voting-rights claims based on population imbalances, which they deemed nonjusticiable political questions, from voting-rights claims based on racial discrimination (and other characteristics), which had been deemed justiciable and remediable in *Gomillion v. Lightfoot*, 364 U.S. 339 (1960). The dissenters were concerned that the Supreme Court improperly inserted the federal judiciary into a political situation that afforded no standards for proper adjudication. They argued that given that the majority suggested that votes did not have to be weighted equally and that equipopulous districts were not constitutionally required, it was unclear how a court could find an equal protection violation based on vote dilution without impermissibly making political judgments.

Though the explicit holding of *Baker v. Carr* was narrow, the case ushered in a new era of direct judicial oversight over legislative apportionment. The *Baker* Court

did not hold that votes had to have equal value or that state legislative districts had to have equal populations. However, once the Court made clear that malapportionment could form the basis of a voting-rights claim, the one-person, one-vote requirement was arguably sure to follow. Indeed, in the wake of *Baker*, the Court decided *Gray v. Sanders*, 372 U.S. 368 (1963), *Wesberry v. Sanders*, 376 U.S. 1 (1964), and *Reynolds v. Sims*, 377 U.S. 533 (1964), all of which enshrined the one-person, one-vote principle in equal protection law and triggered the reapportionment battles that have raged since the 1960s.

SEE ALSO *Case or Controversy; Political Question Doctrine; Reynolds v. Sims*, 377 U.S. 533 (1964); *Warren Court*

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BALLARD V. UNITED STATES, 329 U.S. 187 (1946)

Throughout the early years of the twentieth century, many of the constitutional guarantees of equal participation in society that U.S. citizens now take for granted were just beginning to take shape. For women, however, the realization of many of these rights would take decades. This lag in achieving equality resulted in part from the vestiges of historical discriminatory policies established by the nation's male founders, leaders, and law writers. Much of the discriminatory bias derived from the conceptual relic known today as *romantic paternalism*, the notion that "the weaker sex" needed protection from life's many vicissitudes. As a result, women had been barred from making contracts, owning property, voting, and participating in many other basic and integral social functions, including jury service. Allowing them to engage in such activities, the logic went, would take them away from essential duties and obligations in the home.

It was not until 1946, in *Ballard v. United States*, 329 U.S. 187, that the right of jury service was guaranteed to American women, long after it had been granted to other groups, including former male slaves. As far back as 1880, the Court ruled in *Strauder v. West Virginia*, 100 U.S. 303

that a state law preventing African-American men from serving on juries violated the recently enacted Fourteenth Amendment to the U.S. Constitution.

The factual scenario leading to *Ballard* was benign enough—the indictment and conviction of individuals who conspired to use the federal mail system for fraud. Specifically, it involved the distribution of materials promoting an allegedly fraudulent religious movement. The case had already been to the Supreme Court two years earlier. But it took a second go-round for the Court to consider the alleged illegitimacy of the indictment and conviction of the defendants resulting from the "intentional and systematic exclusion of women from the jury panels."

There was no dispute on the factual question. Women *had* been barred from inclusion on both the grand jury, which indicted the defendants, and the petit jury, which tried the case and convicted them. The question for the Supreme Court in *Ballard* was whether that barring of women from jury service violated the principle that juries are intended to reflect "a cross section of the community," as the Court had noted four years earlier in *Glasser v. United States*, 315 U.S. 60 (1942). Such an infringement would not merely insult the women denied the opportunity to serve, it would skew the jury makeup enough to undermine the indictment and verdict.

By the time it heard oral arguments in *Ballard*, the Supreme Court had decided a number of cases involving the jury issue as it related to other groups in society. Earlier that term, in *Thiel v. Southern Pacific*, 328 U.S. 217 (1946), the Court held unconstitutional the exclusion of individuals from a jury for income-based reasons. In that case, the justices explained that while the American tradition of trial by impartial jury does not require representatives from every economic, social, religious, racial, political, and geographical group, "it does mean that prospective jurors shall be selected by court officials without systematic and intentional exclusion of any of these groups. . . . To disregard [this principle] is to open the door to class distinctions and discriminations which are abhorrent to the democratic ideals of trial by jury."

Justice William O. Douglas refined this further in writing for the Court in *Ballard*: "The systematic and intentional exclusion of women, like the exclusion of a racial group . . . or an economic or social class, deprives the jury system of the broad base it was designed by Congress to have in our democratic society." Indeed, he continued, "the injury is not limited to the defendant—there is injury to the jury system, the law as an institution, to the community at large, and to the democratic ideal reflected in the processes of our courts." The Court reasoned further that differences between men and women made it especially important to prohibit systematic exclusion of women from a jury, noting that neither