

# The Burger Court Opinion Writing Database

*Abate v. Mundt*

403 U.S. 182 (1971)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
THE CHIEF JUSTICE

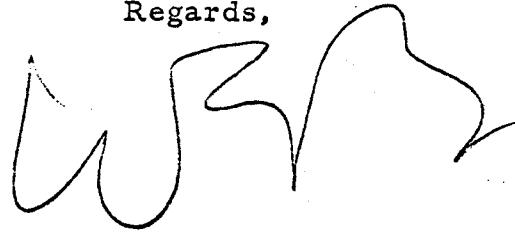
March 26, 1971

No. 71 - Abate v. Mundt

Dear Thurgood:

Please join me.

Regards,

A handwritten signature consisting of the letters "W", "B", and "R" in a cursive, flowing style.

Mr. Justice Marshall

cc: The Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE HUGO L. BLACK

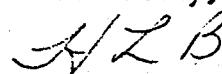
January 27, 1971

Dear Thurgood:

Re: No. 71 - Abate v. Mundt.

I agree.

Sincerely,



H. L. B.

Mr. Justice Marshall

cc: Members of the Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Marshall  
Mr. Justice Blackmun

1st DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: 2-4-11

No. 71.—OCTOBER TERM, 1970

Recirculated: \_\_\_\_\_

Samuel J. Abate, Etc., et al., Petitioners,  
v.  
Paul F. Mundt et al. } On Writ of Certiorari to  
the Court of Appeals of  
New York.

[February —, 1971]

MR. JUSTICE BRENNAN, dissenting.

The Court today reaffirms all of the principles of *Reynolds v. Sims*, 377 U. S. 533 (1964), and its progeny but refuses, for a combination of reasons unpersuasive to me, to apply those principles to this apportionment scheme. I believe that our recent decisions in *Avery v. Midland County*, 390 U. S. 474 (1968); *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969), and *Wells v. Rockefeller*, 394 U. S. 542 (1969), require reversal and I therefore dissent.

The Court holds that "a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality. *Reynolds v. Sims*, 377 U. S. 533, 578 (1964)." *Ante*, at \_\_\_. The Court's reliance on *Reynolds* is misplaced. We said there that "it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting." *Ibid.* But we warned that "[t]o do so would be constitutionally valid, *so long as* the resulting apportionment was one based substantially on population and the equal-population principle was not diluted in *any* significant way." *Ibid.* (Emphasis added.) Moreover, the Court did not at that point in time "deem it expedient to attempt to spell out any precise constitutional tests." We have done so since.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE JOHN M. HARLAN

April 8, 1971

Re: No. 71 -- Abate v. Mundt

Dear Thurgood:

I thought I should let you know that I have delayed returning on your proposed opinion, as I have in mind writing a separate composite opinion covering this case as well as Byron White's Whitcomb v. Chavis (No. 92), and the Chief Justice's Gordon v. Lance (No. 96), still to come. I am sorry that this will defer the announcement of your opinion.

Sincerely,



Mr. Justice Marshall

cc: Conference

May 26, 1971

No: No. 71 - Abate v. Maine

Dear Thurgood:

Would you please add at the foot of your  
opinion:

"MR. JUSTICE HARLAN concurs  
in the result for the reasons stated in his  
separate opinion in Whittemore v. Davis,  
 ante, \_\_\_ U.S. \_\_\_.

Sincerely,

J.M.H.

Mr. Justice Marshall

CC: The Conference

Circulated  
2-4-71

1st DRAFT

SUPREME COURT OF THE UNITED STATES

No. 71.—OCTOBER TERM, 1970

Samuel J. Abate, Etc., et al., Petitioners,  
v.  
Paul F. Mundt et al. } On Writ of Certiorari to  
the Court of Appeals of  
New York.

[February 1, 1971]

MR. JUSTICE BRENNAN, dissenting.

The Court today reaffirms all of the principles of *Reynolds v. Sims*, 377 U. S. 533 (1964), and its progeny but refuses, for a combination of reasons unpersuasive to me, to apply those principles to this apportionment scheme. I believe that our recent decisions in *Avery v. Midland County*, 390 U. S. 474 (1968); *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969), and *Wells v. Rockefeller*, 394 U. S. 542 (1969), require reversal and I therefore dissent.

The Court holds that "a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality. *Reynolds v. Sims*, 377 U. S. 533, 578 (1964)." *Ante*, at \_\_\_. The Court's reliance on *Reynolds* is misplaced. We said there that "it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting." *Ibid.* But we warned that "[t]o do so would be constitutionally valid, so long as the resulting apportionment was one based substantially on population and the equal-population principle was not diluted in *any* significant way." *Ibid.* (Emphasis added.) Moreover, the Court did not at that point in time "deem it expedient to attempt to spell out any precise constitutional tests." We have done so since.

*This should have been  
Print 2.*

*Circulated  
2-5-71*

3rd DRAFT

**SUPREME COURT OF THE UNITED STATES**

No. 71.—OCTOBER TERM, 1970

Samuel J. Abate, Etc., et al.,  
Petitioners, } On Writ of Certiorari to  
v. } the Court of Appeals of  
Paul F. Mundt et al. } New York.

[February —, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The Court today reaffirms all of the principles of *Reynolds v. Sims*, 377 U. S. 533 (1964), and its progeny but refuses, for a combination of reasons unpersuasive to me, to apply those principles to this apportionment scheme. I believe that our recent decisions in *Avery v. Midland County*, 390 U. S. 474 (1968); *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969), and *Wells v. Rockefeller*, 394 U. S. 542 (1969), require reversal and I therefore dissent.

The Court holds that “a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality. *Reynolds v. Sims*, 377 U. S. 533, 578 (1964).” *Ante*, at —. The Court’s reliance on *Reynolds* is misplaced. We said there that “it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting.” *Ibid.* But we warned that “[t]o do so would be constitutionally valid, so long as the resulting apportionment was one based substantially on population and the equal-population principle was not diluted in *any* significant way.” *Ibid.* (Emphasis added.) Moreover, the Court did not at that point in time “deem it expedient to attempt to spell out any precise constitutional tests.” We have done so since.

*Final*

# SUPREME COURT OF THE UNITED STATES

No. 71.—OCTOBER TERM, 1970

Samuel J. Abate, Etc., et al.,  
Petitioners,  
v.  
Paul F. Mundt et al. } On Writ of Certiorari to  
the Court of Appeals of  
New York.

[June 7, 1971]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS joins, dissenting.

The Court today reaffirms all of the principles of *Reynolds v. Sims*, 377 U. S. 533 (1964), and its progeny but refuses, for a combination of reasons unpersuasive to me, to apply those principles to this apportionment scheme. I believe that our recent decisions in *Avery v. Midland County*, 390 U. S. 474 (1968); *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969), and *Wells v. Rockefeller*, 394 U. S. 542 (1969), require reversal and I therefore dissent.

The Court holds that “a desire to preserve the integrity of political subdivisions may justify an apportionment plan which departs from numerical equality. *Reynolds v. Sims*, 377 U. S. 533, 578 (1964).” *Ante*, at [3]. The Court’s reliance on *Reynolds* is misplaced. We said there that “it may be feasible to use political subdivision lines to a greater extent in establishing state legislative districts than in congressional districting.” 377 U. S., at 578. But we warned that “[t]o do so would be constitutionally valid, *so long as* the resulting apportionment was one based substantially on population and the equal-population principle was not diluted in *any* significant way.” *Ibid.* (emphasis added). Moreover, the Court did not at that point in time “deem it expedient . . . to attempt to spell out any precise constitutional tests.” We have done so since.

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE POTTER STEWART

January 25, 1971

No. 71 - Abate v. Mundt

Dear Thurgood,

I should appreciate your adding the following at the foot of your opinion for the Court in this case:

MR. JUSTICE STEWART concurs in the judgment.

While I do not propose to write a concurring opinion, it is possible that, if somebody else does write one, I shall join it.

Sincerely yours,

P. S.

Mr. Justice Marshall

Copies to the Conference

Supreme Court of the United States  
Washington, D. C. 20543

CHAMBERS OF  
JUSTICE BYRON R. WHITE

March 4, 1971

Re: No. 71 - Abate v. Mundt

Dear Thurgood:

Please join me.

Sincerely,



Mr. Justice Marshall

Copies to the Conference

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun

1st DRAFT

**SUPREME COURT OF THE UNITED STATES**

From: Marshall, J.  
JAN 25 1971

No. 71.—OCTOBER TERM, 1970

Circulated:

Recirculated:

Samuel J. Abate, Etc., et al.,  
Petitioners, } On Writ of Certiorari to  
v. } the Court of Appeals of  
Paul F. Mundt et al. } New York.

[January —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case, petitioners challenge the constitutionality of a reapportionment plan proposed in response to both federal and state court findings of malapportionment in Rockland County, New York. The Court of Appeals for the State of New York upheld the plan. We affirm.

For more than 100 years, Rockland County was governed by a board of supervisors consisting of the supervisors of each of the county's five constituent towns. This county legislature was not separately elected; rather its members held their county offices by virtue of their election as town supervisors—a pattern which typified New York county government. The result has been a local structure in which overlapping public services are provided by the towns and their county working in close cooperation. For example, in Rockland County the towns adopt their own budgets and submit them to the county which levies taxes. These taxes are based on real property assessments established by the towns but equalized by the county board. Similarly, public services such as waste disposal and snow removal are provided through cooperative efforts among the municipalities. There is

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun

2nd DRAFT

**SUPREME COURT OF THE UNITED STATES**

Marshall, J.

No. 71.—OCTOBER TERM, 1970

Circulated:

FEB 9 1971

Recirculated:

Samuel J. Abate, Etc., et al.,  
Petitioners, } On Writ of Certiorari to  
v. } the Court of Appeals of  
Paul F. Mundt et al. } New York.

[February —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case, petitioners challenge the constitutionality of a reapportionment plan proposed in response to both federal and state court findings of malapportionment in Rockland County, New York. The Court of Appeals for the State of New York upheld the plan. We affirm.

For more than 100 years, Rockland County was governed by a board of supervisors consisting of the supervisors of each of the county's five constituent towns. This county legislature was not separately elected; rather its members held their county offices by virtue of their election as town supervisors—a pattern which typified New York county government. The result has been a local structure in which overlapping public services are provided by the towns and their county working in close cooperation. For example, in Rockland County the towns adopt their own budgets and submit them to the county which levies taxes. These taxes are based on real property assessments established by the towns but equalized by the county board. Similarly, public services such as waste disposal and snow removal are provided through cooperative efforts among the municipalities. There is

To: The Chief Justice  
Mr. Justice Black  
Mr. Justice Douglas  
Mr. Justice Harlan  
Mr. Justice Brennan  
Mr. Justice Stewart  
Mr. Justice White  
Mr. Justice Blackmun

3rd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Marshall, J.

No. 71.—OCTOBER TERM, 1970

Circulated: MAY 28 1

Recirculated:

Samuel J. Abate, Etc., et al.,  
Petitioners,  
v.  
Paul F. Mundt et al. } On Writ of Certiorari to  
the Court of Appeals of  
New York.

[June —, 1971]

MR. JUSTICE MARSHALL delivered the opinion of the Court.

In this case, petitioners challenge the constitutionality of a reapportionment plan proposed in response to both federal and state court findings of malapportionment in Rockland County, New York. The Court of Appeals for the State of New York upheld the plan. We affirm.

For more than 100 years, Rockland County was governed by a board of supervisors consisting of the supervisors of each of the county's five constituent towns. This county legislature was not separately elected; rather its members held their county offices by virtue of their election as town supervisors—a pattern which typified New York county government. The result has been a local structure in which overlapping public services are provided by the towns and their county working in close cooperation. For example, in Rockland County the towns adopt their own budgets and submit them to the county which levies taxes. These taxes are based on real property assessments established by the towns but equalized by the county board. Similarly, public services such as waste disposal and snow removal are provided through cooperative efforts among the municipalities. There is

February 1, 1971

Re: No. 71 - Abate v. Mundt

Dear Thurgood:

Subject to what is said in any concurring opinion which might be filed in this case, I would like to join your proposed opinion.

Sincerely,

H. A. B.

Mr. Justice Marshall

cc: The Conference