

The Burger Court Opinion Writing Database

Whitcomb v. Chavis

403 U.S. 124 (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

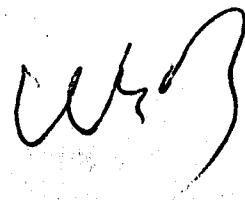
April 30, 1971

Re: No. 92 - Whitcomb v. Chavis

Dear Byron:

Please join me.

Regards,



Mr. Justice White

cc: The Conference

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

CHAMBERS OF
THE CHIEF JUSTICE

June 3, 1971

Re: No. 92 - Whitcomb v. Chavis

Dear Byron:

I am still with you.

Regards,

WFB

Mr. Justice White

cc: The Conference

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

2

SUPREME COURT OF THE UNITED STATES ^{At the} Douglas, J.

No. 92.—OCTOBER TERM, 1970

Circulated: 12-11

Recirculated: _____

Edgar D. Whitcomb, Governor
 of the State of Indiana,
 Appellant,
 v.
 Patrick Chavis et al.

On Appeal From the
 United States District
 Court for the Southern
 District of Indiana.

[December —, 1970]

Memorandum from MR. JUSTICE DOUGLAS.

The Indiana Constitution provides "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a

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

3

46

SUPREME COURT OF THE UNITED STATES *at* Douglas, J.

No. 92.—OCTOBER TERM, 1970

Circulated:

Recirculated: 12-15

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al.

On Appeal From the
United States District
Court for the Southern
District of Indiana.

[December —, 1970]

Memorandum from MR. JUSTICE DOUGLAS.

The Indiana Constitution provides "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a

to: The "Big" Justice
 Mr. Justice Black
 Mr. Justice Harlan
 Mr. Justice Brennan
 Mr. Justice Stewart
 Mr. Justice White
 Mr. Justice Marshall
 Mr. Justice Blackmun

4

From: Douglas, J.

SUPREME COURT OF THE UNITED STATES

Circulated:

No. 92.—OCTOBER TERM, 1970

Recirculated: 1-11

Edgar D. Whitcomb, Governor
 of the State of Indiana,
 Appellant,
 v.
 Patrick Chavis et al.

On Appeal From the
 United States District
 Court for the Southern
 District of Indiana.

[January —, 1971]

Memorandum from MR. JUSTICE DOUGLAS.

The Indiana Constitution provides that "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a

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

5

From: Douglas, J.

Circulated:

Received

1/18/71

SUPREME COURT OF THE UNITED STATES

No. 92.—OCTOBER TERM, 1970

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al.

On Appeal From the
United States District
Court for the Southern
District of Indiana.

[January —, 1971]

Memorandum from MR. JUSTICE DOUGLAS.

The Indiana Constitution provides that "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a

78

Chief Justice
Justice Black
Justice Harlan
Justice Brennan
Justice Stewart
Justice White
Justice Marshall
Justice Blackmun

6th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92.—OCTOBER TERM, 1970

2/17/71

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al.

On Appeal From the
United States District
Court for the Southern
District of Indiana.

[February —, 1971]

Memorandum from MR. JUSTICE DOUGLAS.

I

The Indiana Constitution provides that "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area

1 through
Chavis
7th DRAFT

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

SUPREME COURT OF THE UNITED STATES
From: Douglas, J.

No. 92.—OCTOBER TERM, 1970 *circulated.*

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al.

On Appeal From the
United States District
Court for the Southern
District of Indiana.

3/26/71

[March —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

The Indiana Constitution provides that “no county for Senatorial apportionment, shall ever be divided.” Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of “ghetto”:

“A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a racial, ethnic, or other minority group, most of whom

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

3-9-10

8th DRAFT

SUPREME COURT OF THE UNITED STATES

From: Douglas, J.

Circulated:

No. 92.—OCTOBER TERM, 1970

Recirculated: 3-20

Edgar D. Whitcomb, Governor
 of the State of Indiana,
 Appellant,
 v.
 Patrick Chavis et al.

On Appeal From the
 United States District
 Court for the Southern
 District of Indiana.

[April —, 1971]

MR. JUSTICE DOUGLAS, dissenting.

The Indiana Constitution provides that "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a racial, ethnic, or other minority group, most of whom

110
3
To: The Chief Justice
Mr. Justice Black
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun

9th DRAFT

SUPREME COURT OF THE UNITED STATES ^{Mr. Justice Douglas, Jr.}

No. 92.—OCTOBER TERM, 1970

Circulated:

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al.

On Appeal From the
United States District
Court for the Southern
District of Indiana.

Recirculated: 3-20

[April —, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The Indiana Constitution provides that "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The current legislative apportionment statutes in Indiana which implement that provision give Marion County eight senators, all elected at large. The statutes also give the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a racial, ethnic, or other minority group, most of whom

Chas J thought

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

10th DRAFT

SUPREME COURT OF THE UNITED STATES

No. 92.—OCTOBER TERM, 1970

From: Douglas, J.

Edgar D. Whitcomb, Governor
 of the State of Indiana,
 Appellant,

v.
 Patrick Chavis et al.

On Appeal From the
 United States District
 Court for the Southern
 District of Indiana.

Argued:

Decided:

6/3/71

[June 7, 1971]

MR. JUSTICE DOUGLAS, with whom MR. JUSTICE BRENNAN and MR. JUSTICE MARSHALL concur, dissenting.

The Indiana Constitution provides that "no county for Senatorial apportionment, shall ever be divided." Article 4, § 6. The legislative apportionment statutes in Indiana which implemented that provision gave Marion County eight senators, all elected at large. The statutes also gave the county 15 at-large representatives.

Marion County is the most populous in the State. It contains nine townships and includes the city of Indianapolis. On January 9, 1969, this lawsuit was commenced to require a subdivision of the multi-member districting practiced in Marion County. Certain voters contended that the multi-member district deprived them of equal protection of the laws because it diluted the voting rights of an identifiable racial minority within the county.

To determine if there was an identifiable minority within the county the District Court adopted the following definition of "ghetto":

"A primarily residential section of an urban area characterized by a higher relative density of population and a higher relative proportion of substandard housing than in the overall metropolitan area which is inhabited predominately by members of a racial, ethnic, or other minority group, most of whom

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Harlan, J.

No. 92.—OCTOBER TERM, 1970

Circulated: MAY 26 1971

Edgar D. Whitcomb, Governor
 of the State of Indiana,
 Appellant,
 v.
 Patrick Chavis et al.

Recirculated:
 On Appeal From the
 United States District
 Court for the Southern
 District of Indiana.

[June —, 1971]

Separate opinion of MR. JUSTICE HARLAN.

Earlier this Term I remarked on “the evident *malaise* among the members of the Court” with prior decisions in the field of voter qualifications and reapportionment. *Oregon v. Mitchell*, 400 U. S. 112, 218 (1970) (separate opinion of this writer).

Today’s opinions in this and two other voting cases now decided¹ confirm that diagnosis.

I

Past decisions have held that districting in local governmental units must approach equality of voter population “as far as is practicable,” *Hadley v. Junior College District*, 397 U. S. 50, 56 (1970), and that the “as nearly as practicable” standard of *Wesberry v. Sanders*, 376 U. S. 1, 7-8 (1964), for congressional districting forbade a maximum variation of 6%. *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969). Today the Court sustains a local governmental apportionment scheme with a 12% variation. *Abate v. Mundt, ante*.

¹ *Abate v. Mundt*, No. 71, *ante*, p. —; *Gordon v. Lance*, No. 96, *ante*, p. —.

STYLISTIC CHANGES THROUGHOUT.
SEE PAGES: 3-4, 7

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

SUPREME COURT OF THE UNITED STATES

No. 92.—OCTOBER TERM, 1970

From: Harlan, J.

Circulated:

JUN 4 1971

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al.

On Appeal From the
United States District
Court for the Southern
District of Indiana.

Recirculated

[June 7, 1971]

Separate opinion of MR. JUSTICE HARLAN.

Earlier this Term I remarked on "the evident *malaise* among the members of the Court" with prior decisions in the field of voter qualifications and reapportionment. *Oregon v. Mitchell*, 400 U. S. 112, 218 (1970) (separate opinion of this writer).

Today's opinions in this and two other voting cases now decided ¹ confirm that diagnosis.

I

Past decisions have held that districting in local governmental units must approach equality of voter population "as far as is practicable," *Hadley v. Junior College District*, 397 U. S. 50, 56 (1970), and that the "as nearly as is practicable" standard of *Wesberry v. Sanders*, 376 U. S. 1, 7-8 (1964), for congressional districting forbade a maximum variation of 6%. *Kirkpatrick v. Preisler*, 394 U. S. 526 (1969). Today the Court sustains a local governmental apportionment scheme with a 12% variation. *Abate v. Mundt*, *ante*.

¹ *Abate v. Mundt*, No. 71, *ante*, p. —; *Gordon v. Lance*, No. 96, *post*, p. —.

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

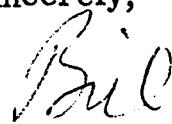
CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR. March 30, 1971

RE: No. 92 - Whitcomb v. Chavis, et al.

Dear Bill:

Please join me in your dissent in the
above.

Sincerely,



W.J.B. Jr.

Mr. Justice Douglas

cc: The Conference

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Frankfurter
Mr. Justice Harlan
Mr. Justice Holmes
Mr. Justice Stone
Mr. Justice White
Mr. Justice Willoughby
Mr. Justice Blackmun

1st DRAFT

SUPREME COURT OF THE UNITED STATES

Frances Stewart, J.

No. 92.—OCTOBER TERM, 1970

Circulated: Mar 31 1971

Recirculated:

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al. } On Appeal From the
United States District
Court for the Southern
District of Indiana.

[April —, 1971]

MR. JUSTICE STEWART, concurring in part and dissenting in part.

I join in Part I through VI of the Court's opinion holding that the multi-member districting scheme here in issue did not violate the Equal Protection Clause of the Fourteenth Amendment. I dissent from Part VII of the Court's opinion for the reasons expressed in my dissenting opinion in *Lucas v. Colorado General Assembly*, 377 U. S. 713, 744.

TM

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

1st DRAFT

From: White, J.

Circulated: 3-25-71

Recirculated:

No. 92.—OCTOBER TERM, 1970

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al. } On Appeal From the
United States District
Court for the Southern
District of Indiana.

[March —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

We have before us in this case the validity under the Equal Protection Clause of the statutes districting and apportioning the State of Indiana for its general assembly elections. The principal issue centers on those provisions constituting Marion County, which includes the city of Indianapolis, a multi-member district for electing state senators and representatives.

I

Indiana has a bicameral general assembly consisting of a house of representatives of 100 members and a senate of 50 members. Eight of the 31 senatorial districts and 25 of the 39 house districts are multi-member districts, that is, districts which are represented by two or more legislators elected at large by the voters of the district.¹ Under the statutes here challenged, Marion County is a multi-member district electing eight senators and 15 members of the house.

¹ We are concerned here only with the type of multi-member district deciding its election winners by a single or plurality vote with or without a run-off. Proportional representation, cumulative voting, or other devices aimed at securing representation of political minorities are not before us in this case. See n. 36, *infra*.

pp 2, 3, 4, 7, 11, 13, 14, 18,
19, 20, 35, 37, 38
& minor stylistic changes

Mr. Justice Black
Mr. Justice Douglas
Mr. Justice Harlan
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice Marshall
Mr. Justice Blackmun

From: White, J.

3rd DRAFT

Circulated:

SUPREME COURT OF THE UNITED STATES

Recirculated: 4-12-71

No. 92.—OCTOBER TERM, 1970

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al.

On Appeal From the
United States District
Court for the Southern
District of Indiana.

[April —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court.

We have before us in this case the validity under the Equal Protection Clause of the statutes districting and apportioning the State of Indiana for its general assembly elections. The principal issue centers on those provisions constituting Marion County, which includes the city of Indianapolis, a multi-member district for electing state senators and representatives.

I

Indiana has a bicameral general assembly consisting of a house of representatives of 100 members and a senate of 50 members. Eight of the 31 senatorial districts and 25 of the 39 house districts are multi-member districts, that is, districts which are represented by two or more legislators elected at large by the voters of the district.¹

¹ We are concerned here only with the type of multi-member district deciding its election winners by a single or plurality vote with or without a run-off. Proportional representation, cumulative voting, or other devices aimed at securing representation of political minorities are not before us in this case. See n. 36, *infra*.

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

From: White, J.

4th DRAFT

Circulated:-

Basinoulate

SUPREME COURT OF THE UNITED STATES

No. 92.—OCTOBER TERM, 1970

Edgar D. Whitcomb, Governor
of the State of Indiana,
Appellant,
v.
Patrick Chavis et al. } On Appeal From the
United States District
Court for the Southern
District of Indiana.

[June —, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court with respect to the validity of the multi-member election district in Marion County, Indiana (Parts I-VI), together with an opinion (Part VII), in which THE CHIEF JUSTICE, MR. JUSTICE BLACK, and MR. JUSTICE BLACKMUN joined, on the propriety of ordering redistricting of the entire State of Indiana, and announced the judgment of the Court.

We have before us in this case the validity under the Equal Protection Clause of the statutes districting and apportioning the State of Indiana for its general assembly elections. The principal issue centers on those provisions constituting Marion County, which includes the city of Indianapolis, a multi-member district for electing state senators and representatives.

I

Indiana has a bicameral general assembly consisting of a house of representatives of 100 members and a senate of 50 members. Eight of the 31 senatorial districts and 25 of the 39 house districts are multi-member districts, that is, districts which are represented by two or more

OFFICE OF THE CLERK

June 1, 1971

MEMORANDUM FOR SECRETARIES

RE: 92 WHITCOMB v. CHAVIS ET AL.

The attached correspondence is being distributed to the Court at the direction of Mr. Justice White.

One copy of each of the recently enacted statutes were attached to the Sendak letter. These are quite lengthy, so we did not make copies. Justice White has them.

ERS
Clerk

DEWITT, RICHARDS AND MANAHAN

ATTORNEYS AT LAW

609 UNION TITLE BUILDING
155 EAST MARKET STREET

INDIANAPOLIS, INDIANA 46204

CLIFFORD M. DEWITT
DEAN F. RICHARDS
JAMES MANAHANAREA CODE 317
TELEPHONE
632-3337

June 1, 1971

Mr. E. Robert Seavers
Clerk, United States Supreme Court
Supreme Court Building
Washington, D. C.

Re: Whitcomb v. Chavis, No. 92

Dear Mr. Seavers:

This letter is in response to your telephonic request of May 27, 1971. I was asked by you for my opinion as to whether (1) reapportionment legislation in Indiana subsequent to the oral argument in this cause has rendered the case moot, and (2) if not, what effect, if any, such legislation has had upon the case.

The answer to question number (1) is "no."¹ The answer to question number (2) is that the subsequent legislation has rendered it impossible to consider a case as being moot at this time. This is so for several reasons:

a. If this case is declared moot, Indiana's new reapportionment legislation will become unconstitutional under the Indiana Constitution. Indiana's new reapportionment legislation replaces Chapters 4 and 5 of the 1965 Acts (2nd Spec. Sess.) of the Indiana General Assembly with House Bill 1149 and Senate Bill 461 of the 1971 Session. The new legislation creates single-member districts for the Indiana House and Senate respectively. The single-member districting apportionment of the Indiana Senate has taken place in possible reliance upon the decision of the District Court in this cause since this new legislation is in conflict with Article 4, Section 6 of the Indiana Constitution which provides, in part, that ". . . no county, for senatorial apportionment, shall ever be divided."²

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

June 2, 1971

MEMORANDUM TO THE CONFERENCE

Re: No. 92 - Whitcomb v. Chavis

My reaction to the filings yesterday in this case is reflected in the attached substitution in the current circulation, namely, a replacement for footnote 1 and a replacement for the material beginning at the top of page 14 and ending with section III on page 15.

(3RW)

No. 92 Footnote 1

¶ 1/ As later indicated, shortly before announcement of this opinion, the Court was informed that the statutes at issue here will soon be superceded by new apportionment legislation recently adopted by the Indiana legislature and signed by the governor. That legislation provides for single-member districts throughout the State including Marion County. For the reasons stated below the controversy is not moot, and as will be evident, this opinion proceeds as though the state statutes before us remain undisturbed by new legislation.

Incorporates replacement pages

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

NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D.C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

From: White, J.

SUPREME COURT OF THE UNITED STATES

Recirculated: 6-4-71

No. 92.—OCTOBER TERM, 1970

Edgar D. Whitcomb, Governor
 of the State of Indiana,
 Appellant,
 v.
 Patrick Chavis et al.

On Appeal From the
 United States District
 Court for the Southern
 District of Indiana.

[June 7, 1971]

MR. JUSTICE WHITE delivered the opinion of the Court with respect to the validity of the multi-member election district in Marion County, Indiana (Parts I-VI), together with an opinion (Part VII), in which THE CHIEF JUSTICE, MR. JUSTICE BLACK, and MR. JUSTICE BLACKMUN joined, on the propriety of ordering redistricting of the entire State of Indiana, and announced the judgment of the Court.

We have before us in this case the validity under the Equal Protection Clause of the statutes districting and apportioning the State of Indiana for its general assembly elections. The principal issue centers on those provisions constituting Marion County, which includes the city of Indianapolis, a multi-member district for electing state senators and representatives.

I

Indiana has a bicameral general assembly consisting of a house of representatives of 100 members and a senate of 50 members. Eight of the 31 senatorial districts and 25 of the 39 house districts are multi-member districts, that is, districts which are represented by two or more

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

92—OPINION

WHITCOMB *v.* CHAVIS

37

“substantial equality” test of *Reynolds*. *Stout v. Bolling*: White, J.

torff, 249 F. Supp. 488 (SD Ind. 1965). Defendants do Circulated:

not argue that the 1969 variances were acceptable under

the *Reynolds* test, which has been considerably refined Circulated: JUN 5 1971

since that decision, see *Swann v. Adams, supra*. Rather,

they contend that because *Reynolds* indicated that decen-

nial reapportionment would be a “rational approach” to

the problem, a State cannot be compelled to reapportion

itself more than once in a 10-year period. Such a read-

ing misconstrues the thrust of *Reynolds* in this respect.

Decennial reapportionment was suggested as a presump-

tively rational method to avoid “daily, monthly, annual

or biennial reapportionment” as population shifted

throughout the State.⁴³ Here, the District Court did

not order reapportionment as a result of population shifts

since the 1965 *Stout* decision, but only because the dis-

parities among districts which were thought to be per-

missible at the time of that decision had been shown by

intervening decisions of this Court to be excessive.

We therefore reverse the judgment of the District Court and remand the case to that court for further proceedings consistent with this opinion.

It is so ordered.

MR. JUSTICE STEWART joins in Part I through VI of the Court’s opinion, holding that the multi-member districting scheme here in issue did not violate the Equal Protection Clause of the Fourteenth Amendment. He dis- sents from Part VII of the Court’s opinion for the reasons expressed in his dissenting opinion in *Lucas v. Colorado General Assembly*, 377 U. S. 713, 744.

⁴³ In any event, the Court was careful to note that “we do not mean to intimate that more frequent reapportionment would not be constitutionally permissible or practicably desirable.” 377 U. S., at 584.

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

March 29, 1971

Re: No. 92 - Whitcomb v. Chavis

Dear Bill:

Please join me in your dissent.

Sincerely,


T.M.

Mr. Justice Douglas

cc: The Conference

April 12, 1971

Re: No. 92 - Whitcomb v. Chavis

Dear Byron:

Subject to what may be forthcoming from
Justice Harlan, please join me.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference

June 3, 1971

Re: No. 92 - Whitcomb v. Chavis

Dear Byron:

The replacements proposed with your circulation of June 2 meet with my approval.

Sincerely,

H. A. B.

Mr. Justice White

cc: The Conference