

The Burger Court Opinion Writing Database

*Sixty-seventh Minnesota State Senate v.
Beens*

406 U.S. 187 (1972)

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 28, 1972

Re: No. 71-1024 - Sixty-Seventh Minnesota State Senate v. Beens
No. 71-1145 - Sixty-Seventh Minnesota State Senate v. Beens

Dear Harry:

Please join me in your per curiam.

Regards,



Mr. Justice Blackmun

Copies to the Conference

Supreme Court of the United States
Washington 25, D. C.CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

April 27, 1972

Dear Harry:

In the Minnesota Reapportionment Cases -- Nos. 71-1024 and 71-1145, please join me in your Per Curiam.


William O. Douglas

Mr. Justice Blackmun

CC: The Conference

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Blackmun
Mr. Justice Powell
Mr. Justice Rehnquist

2nd DRAFT

From: Stewart, J

SUPREME COURT OF THE UNITED STATES

Recirculated: Apr 28 1972

SIXTY-SEVENTH MINNESOTA STATE SENATE
v. RICHARD A. BEENS ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

Nos. 71-1024 and 71-1145. Decided May —, 1972

MR. JUSTICE STEWART, dissenting.

It is undisputed here that the apportionment of the Minnesota State Legislature violated the Equal Protection Clause of the Fourteenth Amendment. Thus it was incumbent upon the three-judge federal court to devise a constitutional reapportionment, unless and until the Minnesota Legislature and Governor could agree upon and enact a new and constitutional reapportionment of their own. The only question presented by this appeal is whether the three-judge court abused its equitable discretion by devising the reapportionment plan that it did—a plan that called for a reduction in the size of both houses of the state legislature.

There is no doubt that “[o]nce a right and a violation have been shown, the scope of a district court’s equitable powers to remedy past wrongs is broad, for breadth and flexibility are inherent in equitable remedies.” *Swann v. Charlotte-Mecklenburg Board of Education*, 402 U. S. 1, 15. At the same time “[t]he remedial powers of an equity court . . . are not unlimited.” *Whitcomb v. Chavis*, 403 U. S. 124, 161. In the reapportionment context, it is the duty of a court seeking to remedy an unconstitutional apportionment to right the constitutional wrong while minimizing disturbance of legitimate state policies.

In this case, the three-judge court appears conscientiously to have undertaken this task. It clearly recognized that the size of the houses of the Minnesota

HOOVER INSTITUTION
ON WAR, REVOLUTION AND PEACE
Sanford, California 94035-6000



NOTICE: THIS MATERIAL MAY
BE PROTECTED BY COPYRIGHT
LAW (TITLE 17, U.S. CODE)

or distributed without the specific authorization of the Hoover Institution Archives.

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

CHAMBERS OF
JUSTICE BYRON R. WHITE

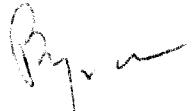
April 28, 1972

Re: No. 71-1024 - Sixty-Seventh Minnesota
State Senate v. Beens
No. 71-1145 - Sixty-Seventh Minnesota
State Senate v. Benns

Dear Harry:

I am with you all the way. Your per
curiam calmly, effectively and correctly
disposes of the issues in these cases.

Sincerely,



Mr. Justice Blackmun

Copies to Conference

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

April 28, 1972

Re: Nos. 71-1024 and 71-1145 - 67th Minnesota
State Senate v. Beens

Dear Harry:

Please join me in your per curiam.

Sincerely,


T.M.

Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

April 13, 1972

MEMORANDUM TO THE CONFERENCE

No. 71-1024 and No. 71-1145, each entitled Sixty-Seventh Minnesota State Senate v. Beens, appear on page 1 of the conference list for April 21. You may recall that on March 20 we granted a motion to consolidate these appeals, but denied a motion to expedite.

I have now received an application for temporary stay pending the disposition of these appeals. The primary concern expressed is over the three-judge court's substantial reduction, apparently sua sponte, of the size of the Minnesota Senate in connection with the court's reapportionment plan, and the forthcoming 1972 elections.

I see no need for me to act on this stay application before the conference of April 21. I therefore am referring it to the Conference and am asking the Clerk to include the stay application in a supplemental list for that day. If the appeals are summarily decided, that disposition automatically takes care of the stay application. If we note jurisdiction, then we must take some action on the stay application.

A copy of the motion papers is enclosed for each of you.

H. A. B.

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

MEMORANDUM TO THE CONFERENCE

Re: No. 71-1024 - Sixty-Seventh Minnesota
State Senate v. Beens
No. 71-1145 - Sixty-Seventh Minnesota
State Senate v. Beens

It was the sense of the Conference at its meeting April 21 that the three-judge Minnesota District Court's orders drastically reducing the size of the State's Senate and House should be summarily reversed. You will recall that the Chief Justice asked me to prepare a proposed opinion for that purpose. The attached is my feeble effort, formulated under some pressure.

I need not remind all of you that time is of the essence here. If something can be evolved which is acceptable to a majority, it should, I suppose, issue forthwith.

H. A. B.

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

1st DRAFT

SUPREME COURT OF THE UNITED STATES

From: Blackmun, J.

Circulated: 4/27/72

SIXTY-SEVENTH MINNESOTA STATE SENATE

v. RICHARD A. BEENS ET AL.

Recirculated: _____

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

Nos. 71-1024 and 71-1145. Decided May —, 1972

PER CURIAM.

These two appeals are taken by the Minnesota State Senate from orders of a three-judge federal District Court reapportioning the Minnesota Legislature. The appeals do not challenge the District Court's conclusion that the State is now malapportioned. And at this point they are not concerned with population variances or with other issues of the type customarily presented in reapportionment litigation. The controversy focuses, instead, on (1) the District Court's refusal to honor the Minnesota statute fixing the number of the State's legislative districts at 67 and (2), the court's proceeding, over the initial opposition of all parties (but upon the suggestion of two *amici*, the Lieutenant-Governor and a representative), to reduce the number of legislative districts to 35, the number of senators by almost 50%, and the number of representatives by nearly 25%. We conclude that this is an undue assumption of federal judicial power by the District Court. Accordingly, we summarily vacate the court's orders and remand the case for further proceedings promptly to be pursued.

I

The Minnesota Bicameral Legislature was last effectively apportioned in 1966. Exe~~c~~ Sess. Laws 1966, c. 1.¹

¹ This was the ninth general reapportionment in Minnesota since the adoption of the State's Constitution in 1857 (both versions). Initially there were 26 districts, 37 senators, and 80 representatives.

pp 1, 2, 7, 13
other stylistic changes

2nd DRAFT

(file copy)

To: The Chief Justice
Mr. Justice Douglas
Mr. Justice Brennan
Mr. Justice Stewart
Mr. Justice White
Mr. Justice Marshall
Mr. Justice Powell
Mr. Justice Rehnquist

From: Blackmun, J.

SUPREME COURT OF THE UNITED STATES

SIXTY-SEVENTH MINNESOTA STATE SENATE
Recirculated:
v. RICHARD A. BEENS ET AL.

ON APPEALS FROM THE UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF MINNESOTA

Recirculated: 4/28/72

Nos. 71-1024 and 71-1145. Decided May —, 1972

PER CURIAM.

These two appeals are taken by the Minnesota State Senate from orders of a three-judge federal District Court reapportioning the Minnesota Legislature. The appeals do not challenge the District Court's conclusion that the legislature is now malapportioned. And at this point they are not concerned with population variances or with other issues of the type customarily presented in reapportionment litigation. The controversy focuses, instead, on (a) the District Court's refusal to honor the Minnesota statute fixing the number of the State's legislative districts at 67 and (b) the court's proceeding, over the initial opposition of all parties (but upon the suggestion of two *amici*, the Lieutenant-Governor and a representative), to reduce the number of legislative districts to 35, the number of senators by almost 50%, and the number of representatives by nearly 25%. We conclude that the District Court erred in its rulings. Accordingly, we summarily vacate the court's orders and remand the case for further proceedings promptly to be pursued.

I

The Minnesota Bicameral Legislature was last effectively apportioned in 1966. *Sess. Laws 1966, c. 1.*¹ Sec-

Ex.

¹ This was the ninth general reapportionment in Minnesota since the adoption of the State's Constitution in 1857. Initially there were 26 districts, 37 senators, and 80 representatives. Minn. Const.

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

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

May 1, 1972

Re: 71-1024 - Sixth-Seventh Minnesota State
Senate v. Beens
71-1145 - Sixth-Seventh Minnesota State
Senate v. Beens

Dear Harry:

This will confirm, for the record, that I joined your fine opinion in the above cases.

This was conveyed to you verbally last week by the Chief Justice.

Sincerely,



Mr. Justice Blackmun

cc: The Conference

Supreme Court of the United States

Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

April 28, 1972

Re: 71-1024 - Sixty-Seventh Minnesota State
Senate v. Beens
71-1145 - Sixty-Seventh Minnesota State
Senate v. Beens

Dear Harry:

Count me aboard in these cases.

Sincerely,



Mr. Justice Blackmun

Copies to the Conference