

The Burger Court Opinion Writing Database

Mahan v. Howell

410 U.S. 315 (1973)

Paul J. Wahlbeck, George Washington University

James F. Spriggs, II, Washington University

Forrest Maltzman, George Washington University



3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
THE CHIEF JUSTICE

January 26, 1973

Re: No. 71-364 - Mahan v. Howell
No. 71-373 - City of Virginia Beach v. Howell

Dear Bill:

Please join me.

Regards,

WEB

Mr. Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. DEPARTMENT OF JUSTICE

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WILLIAM O. DOUGLAS

February 7, 1973

Dear Bill:

Please join me in your concur
and dissent in 71-364, Mahan v. Howell.

W
William O. Douglas

Mr. Justice Brennan

cc: The Conference

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE WM. J. BRENNAN, JR.

January 5, 1973

RE: No. 71-364 - Mahan v. Howell

Dear Bill:

In due course I shall circulate a
dissent in the above.

Sincerely,

Bill

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSSBNOC 20 ADV 1 IN

Please join me
M

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

2nd DRAFT

SUPREME COURT OF THE UNITED STATES

From: Brennan, J.

Circulated: 2/6/73

Nos. 71-364 AND 71-373

Recirculated: _____

Joan S. Mahan, Secretary,
State Board of Elections,
et al., Appellants,
71-364 v.
Henry E. Howell, Jr., et al.
City of Virginia Beach,
Appellant,
71-373 v.
Henry E. Howell, Jr., et al.

On Appeals from the United
States District Court for
the Eastern District of
Virginia.

[February —, 1973]

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

I agree with the Court in No. 71-373, *City of Virginia Beach v. Howell*, that the joinder by the District Court of three senatorial districts in the Norfolk-Virginia Beach area to create one multimember senatorial district for the 1971 election was permissible under the special circumstances of this case. Cf. *Whitcomb v. Chavis*, 403 U. S. 124, 176-179 (1971) (DOUGLAS, J., concurring and dissenting); see *Fortson v. Dorsey*, 379 U. S. 433, 439 (1965); *Burns v. Richardson*, 384 U. S. 73, 88 (1966). I dissent, however, in No. 71-364, *Mahan v. Howell*, from the Court's action in setting aside the District Court's finding that the apportionment of the State House of Delegates violated the Equal Protection Clause of the Fourteenth Amendment.

The Court approves a legislative apportionment plan that is conceded to produce a total deviation of *at least*

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U. S. DEPARTMENT OF JUSTICE

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

3rd DRAFT

From: Brennan, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Nos. 71-364 AND 71-373

Recirculated: 2/15/73

Joan S. Mahan, Secretary,
 State Board of Elections,
 et al., Appellants,
 71-364 v.
 Henry E. Howell, Jr., et al.
 City of Virginia Beach,
 Appellant,
 71-373 v.
 Henry E. Howell, Jr., et al.

On Appeals from the United
 States District Court for
 the Eastern District of
 Virginia.

[February —, 1973]

MR. JUSTICE BRENNAN, with whom MR. JUSTICE DOUGLAS and MR. JUSTICE MARSHALL join, concurring in part and dissenting in part.

I agree with the Court in No. 71-373, *City of Virginia Beach v. Howell*, that the joinder by the District Court of three senatorial districts in the Norfolk-Virginia Beach area to create one multimember senatorial district for the 1971 election was permissible under the special circumstances of this case. Cf. *Whitcomb v. Chavis*, 403 U. S. 124, 176-179 (1971) (DOUGLAS, J., concurring and dissenting); see *Fortson v. Dorsey*, 379 U. S. 433, 439 (1965); *Burns v. Richardson*, 384 U. S. 73, 88 (1966). I dissent, however, in No. 71-364, *Mahan v. Howell*, from the Court's action in setting aside the District Court's finding that the apportionment of the State House of Delegates violated the Equal Protection Clause of the Fourteenth Amendment.

The Court approves a legislative apportionment plan that is conceded to produce a total deviation of *at least*

3

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

CHAMBERS OF
JUSTICE POTTER STEWART

January 10, 1973

71-364 - Mahan v. Howell
71-373 - Va. Bch. v. Howell

Dear Bill,

I am glad to join your opinion for the
Court in these cases.

Sincerely yours,

P.S.
1.

Mr. Justice Rehnquist

Copies to the Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

U.S. SUPREME COURT RECORDS

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE BYRON R. WHITE

January 10, 1973

Re: Nos. 71-364 and 71-373 - Mahan v. Howell

Dear Bill:

Please join me.

Sincerely,

Byron

Mr. Justice Rehnquist

Copies to Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

STANDARD ADVANCE

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

CHAMBERS OF
JUSTICE THURGOOD MARSHALL

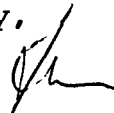
February 7, 1973

Re: Nos. 71-364 and 71-373 - Mahan v. Howell, etc.

Dear Bill:

Please join me.

Sincerely,



T.M.

Mr. Justice Brennan

cc: Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

LIBRARY OF CONGRESS

January 23, 1973

Re: No. 71-364 - Mahan v. Howell
No. 71-373 - City of Virginia Beach v. Howell

Dear Bill:

Pursuant to our telephone conversation of yesterday, I have put together and send to you herewith, before circulating it, a proposed concurrence. This, I think, will indicate what troubles me. I may be utterly confused and it may be that, in reality, I am referring to something which is insignificant. If I am misguided, please let me know.

I shall not send this down to the Printer until I have heard from you.

Sincerely,

HAB

Mr. Justice Rehnquist

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1973

Re: No. 71-364 - Mahan v. Howell
No. 71-373 - City of Virginia Beach v. Howell

Dear Bill:

Your circulation of January 29, particularly with its new footnote 12, sufficiently clarifies for me "the case of the missing servicemen," and I am glad to join your opinion.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

Copies to the Conference

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SSBDCNUC 50 ADV 1 IN

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

CHAMBERS OF
JUSTICE HARRY A. BLACKMUN

January 30, 1973

Re: No. 71-364 - Mahan v. Howell
No. 71-373 - City of Virginia Beach v. Howell

Dear Bill:

Your circulation of January 29, particularly with its new footnote 12, sufficiently clarifies for me "the case of the missing servicemen," and I am glad to join your opinion.

Sincerely,

H.A.B.

Mr. Justice Rehnquist

Copies to the Conference

P.S. (To Mr. Justice Rehnquist only) I am being picky, but I wonder whether, on the new material on page 16, the words "vote in" (7th line) should not be omitted. I am not at all sure that voting followed counting.

3
Supreme Court of the United States
Washington, D. C. 20543

CHAMBERS OF
JUSTICE LEWIS F. POWELL, JR.

January 5, 1973

Re: No. 71-364 Mahan v. Howell

Dear Bill:

Please note at the end of your opinion that I took no part in the consideration or decision of this case.

Sincerely,

Lewis

Mr. Justice Rehnquist

cc: The Conference

REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

SSRCNOC OF ADVANCE

Wait for WLB

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

From: Rehnquist, J.

2nd DRAFT

Circulated: 1/4/73

SUPREME COURT OF THE UNITED STATES

Nos. 71-364 AND 71-373

John S. Mahan, Secretary,
State Board of Elections,
et al., Appellants,
71-364 v.
Henry E. Howell, Jr., et al.

City of Virginia Beach,
Appellant,
71-373 v.
Henry E. Howell, Jr., et al.

On Appeals from the United
States District Court for
the Eastern District of
Virginia.

[January —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the Court.

Acting pursuant to the mandate of its newly revised state constitution,¹ the Virginia General Assembly enacted statutes apportioning the State for the election of

¹ Article II, § 6 of the Revised Virginia Constitution provides:

"Members of the House of Representatives of the United States and members of the Senate and of the House of Delegates of the General Assembly shall be elected from electoral districts established by the General Assembly. Every electoral district shall be composed of contiguous and compact territory and shall be so constituted as to give, as nearly as is practicable, representation in proportion to the population of the district. The General Assembly shall reapportion the Commonwealth into electoral districts in accordance with this section in the year 1971 and every ten years thereafter.

"Any such reapportionment law shall take effect immediately and not be subject to the limitations contained in Article IV, Section 13, of this Constitution."

pp 14, 15

Wait for
WJB

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

3rd DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated

Recirculated

1/10/73

Nos. 71-364 AND 71-373

John S. Mahan, Secretary,
State Board of Elections,
et al., Appellants,

71-364 v.

Henry E. Howell, Jr., et al.

City of Virginia Beach,
Appellant,

71-373 v.

Henry E. Howell, Jr., et al.]

On Appeals from the United
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[January —, 1973]

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"Any such reapportionment law shall take effect immediately and not be subject to the limitations contained in Article IV, Section 13, of this Constitution."

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REPRODUCED FROM THE COLLECTIONS OF THE MANUSCRIPT DIVISION

OFFICE OF THE CLERK OF THE SUPREME COURT

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

4th DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Revised: _____

Nos. 71-364 AND 71-373

Recirculated: 1/18/73

John S. Mahan, Secretary,
State Board of Elections,
et al., Appellants.

71-364 v.

Henry E. Howell, Jr., et al.

City of Virginia Beach,
Appellant,

71-373 v.

Henry E. Howell, Jr., et al.

On Appeals from the United
States District Court for
the Eastern District of
Virginia.

[January —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the
Court.

Acting pursuant to the mandate of its newly revised
state constitution,¹ the Virginia General Assembly en-
acted statutes apportioning the State for the election of

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proportion to the population of the district. The General Assembly
shall reapportion the Commonwealth into electoral districts in
accordance with this section in the year 1971 and every ten years
thereafter.

"Any such reapportionment law shall take effect immediately and
not be subject to the limitations contained in Article IV, Section 13,
of this Constitution."

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

CHAMBERS OF
JUSTICE WILLIAM H. REHNQUIST

January 24, 1973

Re: No. 71-364 - Mahan v. Howell
No. 71-373 - City of Virginia Beach v. Howell

Dear Harry:

I was unsuccessful in my effort to catch you before you left for Minnesota in order to give you my reaction to the suggestion contained in your proposed concurring opinion in these cases. I think you have spotted a point which I did not adequately treat in my proposed opinion, but in rereading the District Court's opinion I have now concluded that they did actually account for the 10,000 odd "missing" servicemen. Footnote 7 of the District Court's opinion, page 20 of the Appendix, contains the statement: "Upwards of 10,000 live off the base, but within the Fifth Senatorial District".

If this statement is correct, and I see no reason why we should not accept it, I would think that the 36,693 Naval personnel are fully accounted for by the District Court: 18,000 live outside of the Fifth Senatorial District, Appendix, page 20; 8,100 live on board the ships, Appendix, page 19; and 10,000 plus live off the ship but within the Fifth Senatorial District.

If I am right in this factual conclusion, I would think that the anomaly you refer to in your draft opinion does not exist. But I also think that my own draft opinion is

by no means clear on this point, and would therefore propose to add to it a new footnote 12 on page 15 immediately before the last sentence in the first partial paragraph commencing with the words: "Lacking survey data . . ." reading as follows:

"The District Court found that the remaining 10,000 odd servicemen lived off the base but within the Fifth Senatorial District."

I have prepared a new draft of the opinion with this change in it, and am circulating it. If you feel it does not adequately address the point you raised, I would be glad to work some more on it with you.

Sincerely,



Mr. Justice Blackmun

3, 7, 15, 16

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

5th DRAFT

From: Rehnquist, J.

SUPREME COURT OF THE UNITED STATES

Circulated: _____

Recirculated: 1/29/73

Nos. 71-364 AND 71-373

John S. Mahan, Secretary,
State Board of Elections,
et al., Appellants.

71-364 v.

Henry E. Howell, Jr., et al.

City of Virginia Beach,
Appellant.

71-373 v.

Henry E. Howell, Jr., et al.

On Appeals from the United
States District Court for
the Eastern District of
Virginia.

[January —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the
Court.

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tuted as to give, as nearly as is practicable, representation in
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accordance with this section in the year 1971 and every ten years
thereafter.

"Any such reapportionment law shall take effect immediately and
not be subject to the limitations contained in Article IV, Section 13,
of this Constitution."

Co —

3-14

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

From: Rehnquist, J.

6th DRAFT

Circulated: _____

SUPREME COURT OF THE UNITED STATES

Recirculated: 2/9

Nos. 71-364 AND 71-373

John S. Mahan, Secretary,
State Board of Elections,
et al., Appellants,

71-364 v.

Henry E. Howell, Jr., et al.

City of Virginia Beach,
Appellant,

71-373 v.

Henry E. Howell, Jr., et al.

On Appeals from the United
States District Court for
the Eastern District of
Virginia.

[January —, 1973]

MR. JUSTICE REHNQUIST delivered the opinion of the
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