

Judicial Power and Democracy (II)

August Scholle v. James M. Hare, Secretary of State (1962)

367 Mich. 176

Scholle v. Hare began its life as 360 Mich. 1, a 1960 Michigan Supreme Court case in which August Scholle, as a citizen and as president of the Michigan State Council, AFL-CIO, petitioned via writ of mandamus to have the Secretary of State, James M. Hare, prevent the upcoming State Senate election. Scholle believed that a 1952 amendment to the State Constitution, which reapportioned State Senatorial districts, was violative of the Fourteenth Amendment to the U.S. Constitution. By creating districts with very unequal populations, Scholle believed that citizens in more populous districts were being denied an equal protection of the laws. Essentially, their votes were worth less than the votes of those in less populous districts.

The original *Scholle v. Hare* was dismissed. Three Justices sided with the plaintiff, while another Justice believed that there was inequality but that the court lacked the authority to change it, and four Justices sided with the defendant, finding no inequality in the situation. The case was appealed to the U.S. Supreme Court, and in light of a more recent case, *Baker v. Carr*, 369 U.S. 186, was sent back to the Michigan Supreme Court on remand. *Baker v. Carr* clarified that the Supreme Court did in fact have the authority to remedy such an error, so the U.S. Court gave the case back to the Michigan one in light of this new information.

In the second *Scholle v. Hare*, 367 Mich. 176, the Michigan Supreme Court found that the amendment to the Michigan Constitution did in fact violate the Fourteenth Amendment to the U.S. Constitution. Justice Kavanagh, joined by Justice Black, wrote the plurality opinion, Justice Souris wrote a concurring opinion that was joined by Justice Smith, and Justice Black wrote a concurring opinion as well. Chief Justice Carr and Justices Dethmers and Kelly each wrote a dissenting opinion, and signed each other's.

In the plethora of opinions, it was decided that any reapportionment that resulted in a 2-1 disparity of district populations was unconstitutional because it did not offer voters equal protection of the law. The State Senate at the time was therefore unconstitutional, but Justice Kavanagh allowed them to exist as *de facto* officers until a new election could be held.

The dissenting members of the court had many reasons for not supporting this decision. They thought that as long as every voter could cast a vote for their senator, there was equal protection, and that the majority decision would in fact make the U.S. Senate appointments unconstitutional, which would be absurd. They further concluded that the *de facto* Senator solution would not work, because the decision left no office for such Senators to hold, and that the decision would result in the destruction of the legislative branch until the next election could be held. But in his concurrence, Justice Souris found that the *de facto* doctrine was created specifically to nullify the doomsday scenario described by the dissenting Justices.