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Little Federal Model: One County, One Vote

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"*Under the Court's new decree, California could be dominated by Los Angeles and San Francisco; Michigan by Detroit*."[1]
- Illinois Senator Everett Dirksen

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1. MORRIS K. UDALL, CONGRESSMAN'S REP. (Dec. 11, 1964), http://speccoll.library.arizona.edu/online-exhibits/files/original/74147dc3693c32adb963c33cb60f0933.pdf (on file with the *University of the Pacific Law Review*); *see also* Reynolds v. Sims, 377 U.S. 533, 568 (1964) (requiring population as the basis for apportioning state legislative districts in both chambers of bicameral legislatures).

I. INTRODUCTION

T. Wright Dickinson is a rancher in Western Colorado who believes "a moral duty obligates him to protect his herd."[2] As a cattle rancher, one of his primary concerns is the state's reintroduction of wolves.[3] In November 2020, voters in Colorado enacted Proposition 114, which directs the Colorado Parks and Wildlife Commission to reintroduce grey wolves into Western Colorado.[4] Ranchers fear the wolves will injure or kill their livestock.[5] Some ranchers view this measure as an "imposition by wolf-friendly urban liberals" to attack agriculture and evict ranchers from public lands.[6] This is just one of many examples of the urban–rural divide.[7]

This urban–rural divide is not unique to Colorado ranchers.[8] On June 25, 2020, the California Air Resources Board ("CARB") enacted the Advanced Clean Trucks Rule ("ACT").[9] Beginning in 2024, the ACT will mandate a percentage of trucks sold in California must be zero emission vehicles ("ZEVs").[10]

Implementing the ACT in California's rural areas would be very costly for two reasons: (1) the lack of charging stations in the rural areas and (2) rural truck operators tend to purchase used vehicles that cost less than ZEVs.[11] Furthermore, the ACT also overlooks the likelihood of increased public safety power shutoffs

2. Bruce Finley, *In Western Colorado, Wary Ranchers Eye Wolves' Arrival and Fear Urban Voters Will Introduce More*, BOULDER DAILY CAMERA (July 26, 2020), https://www.dailycamera.com/2020/07/26/colorado-wolf-reintroduction-ranchers-ballot-measure (on file with the *University of the Pacific Law Review*).

3. *Id.*; *see* Aislinn Maestas, *An Introduction to Species Reintroduction*, NAT'L WILDLIFE FED'N (Feb. 9, 2011), https://blog.nwf.org/2011/02/an-introduction-to-species-reintroduction/ (on file with the *University of the Pacific Law Review*) (describing animal reintroduction as the process in which animals that are held and bred in captivity are released into the wild, in areas they once inhabited).

4. *Colorado Voters Adopt Proposition 114, Pave Way for Wolf Reintroduction*, DEFENDERS WILDLIFE (Nov. 5, 2020), https://defenders.org/newsroom/colorado-voters-adopt-proposition-114-pave-way-wolf-reintroduction (on file with the *University of the Pacific Law Review*).

5. *See Wolf Depredation Cases Escalate to Record Levels in Idaho*, IDAHO RANGELAND RES. COMM'N (July 24, 2018), https://idrange.org/press-release/wolf-depredation-cases-escalate-to-record-levels-in-idaho/ (on file with the *University of the Pacific Law Review*) ("[F]ederal authorities responded to a record 113 different sheep and cattle ranches in the 2018 state fiscal year to perform necropsies on wolf-livestock kills").

6. Finley, *supra* note 2.

7. *See id.* (describing how "wolf-friendly urban liberal" are imposing wolves onto the rural ranchers); *see also* Letter from Staci Heaton, Senior Regul. Aff. Advoc., Rural Cnty. Representatives of Cal. to Richard Corey, Exec. Officer, Cal. Air Res. Bd., 2 (May 21, 2020), https://legistarweb-production.s3.amazonaws.com/uploads/attachment/pdf/607769/Proposed_ACT_Regulations_Ltr_to_CARB_05212020__1_.pdf (on file with the *University of the Pacific Law Review*) (explaining how proposed regulation that may work in the urban cities is infeasibility in the rural counties of California).

8. *See* Heaton, *supra* note 7 (describing the infeasibility of implementing proposed regulations in the rural counties of California).

9. *Advanced Clean Trucks*, CAL. AIR RES. BD., https://ww2.arb.ca.gov/our-work/programs/advanced-clean-trucks (last visited Mar. 5, 2021) (on file with the *University of the Pacific Law Review*).

10. Advanced Clean Trucks Regulation, 43 Cal. Regulatory Notice Reg. 1458 (approved June 26, 2020) (to be codified at CAL. CODE REGS. tit. 13. § 1963.1).

11. Heaton, *supra* note 7, at 1.

("PSPS") due to increased chances of wildfires in rural areas.[12] A multi-day PSPS would disable all local government services and will immobilize all electric transportation.[13] Even if there were electric vehicle charging stations in rural areas, the lack of electricity would make the charging stations useless.[14]

Additionally, an Executive Order from California Governor Gavin Newsom mandates that by 2045, all medium- and heavy-duty trucks operated in California must be ZEVs.[15] However, the Executive Order mentions that any order mandating a location to exclusively use ZEVs must consider the feasibility of implementing the order in the location.[16] Nevertheless, even if rural areas are granted an exemption from the mandate for ZEVs, the mandate will limit the amount of non-electric trucks—adversely affecting rural areas.[17] In limiting the number of non-ZEVs local governments can sell in urban centers, the ACT and the Executive Order would limit the number of used vehicles rural government entities could purchase.[18]

Conflicts regarding the proper balance between rural and urban political representation are nothing new.[19] In 1964, the Supreme Court decided *Reynolds v. Sims*, which challenged the malapportionment of the Alabama Legislature.[20] The Court held that the apportionment of state legislatures cannot be based solely on geography but instead must be based on population.[21] As a result, states must apportion their legislators to represent people rather than counties or other geographic or political subdivisions.[22] The Court based this decision on the doctrine of "one person, one vote."[23] By making the population the sole basis for

12. *See id.* at 3 (detailing various utility companies employ of PSPS to limit the likelihood of wildfire ignitions from overhead powerlines).

13. *Id.*

14. *See id.* at 2 (explaining the difficulty in mandating electric vehicles in rural areas).

15. *Governor Newsom Announces California Will Phase Out Gasoline-Powered Cars & Drastically Reduce Demand for Fossil Fuel in California's Fight Against Climate Change*, OFF. GOVERNOR GAVIN NEWSOM, https://www.gov.ca.gov/2020/09/23/governor-newsom-announces-california-will-phase-out-gasoline-powered-cars-drastically-reduce-demand-for-fossil-fuel-in-californias-fight-against-climate-change/ (Sept. 23, 2020) (on file with the *University of the Pacific Law Review*).

16. *Id.*

17. Heaton, *supra* note 7, at 2.

18. *Id.*

19. *See* Sarah Goodyear, *Rebellion in California*, N.Y. DAILY NEWS (Feb. 9, 2016) https://web.archive.org/web/20170703181837/http://interactive.nydailynews.com/2016/02/state-of-jefferson-secessionists-california-gun-totin-rebels/ (on file with the *University of the Pacific Law Review*) (describing how rural residents claimed to be underrepresented even in 1941).

20. Reynolds v. Sims, 377 U.S. 533, 537 (1964).

21. *Id.* at 568.

22. *Compare Reynolds*, 377 U.S. at 568 (majority opinion) (requiring each individual citizen's vote to have equal weight); *with Reynolds*, 377 U.S. at 608–10 (Harlan, J., dissenting) (explaining that even into the 1960s, "all but 11 States recognized bases of apportionment other than geographic spread of population, and to some extent favored sparsely populated areas by a variety of devices, ranging from straight area representation or guaranteed minimum area representation," meaning that some states guaranteed counties at least one representative).

23. *Reynolds*, 377 U.S. at 558 (citing Gary v. Sanders, 372 U.S. 368, 381 (1963)).

apportioning representation in the legislature, *Reynolds* granted the more populous urban areas majority representation.[24] By granting the urban population greater representation, this decision also resulted in the dilution of rural representation.[25] Consequently, people in rural areas desire more representation, with some going as far as calling for a complete secession.[26]

With its opinion in *Reynolds*, the Supreme Court invalidated methods of apportionment in thirty-nine states.[27] Rather than allowing the individual states to decide the method of apportionment suitable for their constituents, the Court established a one-size-fits-all approach to apportionment—based solely on population.[28] This Comment proposes the Supreme Court should partially overrule *Reynolds* as it applies to the upper chamber of a bicameral state legislature.[29] The Supreme Court should allow the states to apportion legislative districts in the upper chamber to represent political or geographical subdivisions including counties, towns, or regions.[30] The Little Federal Model is a leading option that proposes allowing States to implement a form of apportionment analogous to the Federal Congress.[31] This proposal grants States with a bicameral legislature the right to apportion the upper chamber based on territory or political subdivisions—similar to the US Senate.[32] While the lower chamber would retain the one person, one vote requirement—similar to the US House of Representatives.[33]

Part II explains the inherent compromise inherent to a republican form of government—arguing that *Reynolds* disrupted that compromise.[34] Part III details *Reynolds*' resulting partiality in favor of the urban majority in the various states.[35] Part IV proposes partially overruling *Reynolds* to allow for the Little Federal Model.[36] Part V discusses the Supreme Court's interpretation of the Guarantee Clause as the basis for the Little Federal Model.[37] Part VI addresses the issue of fairness in apportioning representation.[38]

24. Goodyear, *supra* note 19.
25. *Id.*
26. *Id.*
27. *Reynolds*, 377 U.S. at 610 (Harlan, J., dissenting).
28. *Id.* at 610 (Harlan, J., dissenting).
29. *Infra* Part IV.
30. *Infra* Part IV.
31. *Id.*
32. *Id.*
33. *Id.*
34. *Infra* Part II.
35. *Infra* Part III.
36. *Infra* Part IV.
37. *Infra* Part V.
38. *Infra* Part VI.

II REPUBLICAN FORM OF GOVERNMENT—A BALANCING ACT

The Founders attempted to create a form of government in which tyrants would be unable to establish a foothold.[39] To create such a government, the Founders established a system of governance in which no individual could obtain such power as to trample on another's rights.[40] As a result, the Founders created a republican form of government.[41] To ensure that the individual states in the Union would respect and defend minority rights, the Founders enshrined the republican form of government in the United States Constitution.[42]

The Constitution's Guarantee Clause secures the individual states a republican form of government.[43] However, the Guarantee Clause only delegates this responsibility to the United States; it does not explain what a republican form of government specifically entails.[44] Section A discusses the Founders' intent regarding the Guarantee Clause and a republican form of government.[45] Section B expounds on the history of *Reynolds*.[46] Section C argues *Reynolds* created a democracy and not a republican form of government.[47]

A. Government by Representation

The Declaration of Independence declared that "all men are created equal . . . [and] are endowed by their Creator with certain unalienable Rights."[48] It stipulated that the purpose of government was to safeguard these unalienable rights of the people it governed.[49] The Declaration of Independence also stated that all governmental power originates with the people.[50] Consequently, the people must be directly or indirectly involved with government decision making.[51]

During the Constitutional Convention, some Founders voiced concerns about the people directly participating in government through direct democracy because majorities are easily misled.[52] The Founders also believed that a direct democracy

39. *See* THE FEDERALIST NO. 43 (James Madison) (stating that republican principles must create a government that is able to defend against aristocracies or monarchies).

40. THE FEDERALIST NO. 10 (James Madison).

41. *Id.*

42. U.S. CONST. art. IV, § 4, cl. 1.

43. *Id.*

44. *Id.*

45. *See infra* Section II.A.

46. *See infra* Section II.B.

47. *See infra* Section II.C.

48. *Declaration of Independence: A Transcription*, NAT'L ARCHIVES, https://www.archives.gov/founding-docs/declaration-transcript (last visited July 24, 2020) (on file with the *University of the Pacific Law Review*).

49. *Id.*

50. *Id.*

51. *See id.* (granting the people the power to determine the form and method of governing).

52. Max Farrand, *The Records of the Federal Convention of 1787, vol. 1*, ONLINE LIBR. LIBERTY 50 (1911), https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/1057/Farrand_0544-01_EBk_v6.0.pdf (on file

could result in the majority violating the personal security and private rights of the minority, when the majority is united in a common cause.[53] Violations of minority rights cause contention, which in turn leads to short-lived democracies with a violent end.[54] Furthermore, some Founders refused to believe that granting all citizens political equality would somehow actually make everyone equal.[55]

The Founders opted for an indirect democracy—which they referred to as a republic—where representatives of the people make the laws.[56] In a republican government, representation would resemble the general population as closely as possible.[57] Nevertheless, they understood that a representative body of government could become self-interested.[58] As a bulwark against an all-powerful, self-interested legislative assembly, the Founders proposed antidemocratic measures.[59] These measures included the creation of two separate and distinct legislative chambers.[60] Prior to the Seventeenth Amendment, state legislators elected the upper chamber, which represented the states; the people elected the lower chamber to represent their interests.[61]

The Founders feared that when the representative government resembles the general population, the majority could employ their power to endanger the minority's rights—establishing the "tyranny of the majority."[62] When a minority seeks to adversely affect the interests or rights of the majority, the majoritarian aspect of a republican government can hinder their plans.[63] However, when the majority seeks to adversely affect the interests or rights of the minority, the majoritarian aspect of a republican government enables their plans.[64]

Since the purpose of government is to guarantee and protect the people's rights, the Founders sought to protect individual rights while retaining the

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53. *Id.*; *see also* THE FEDERALIST NO. 10 (James Madison) ("When a majority is included in a faction, the form of popular government, on the other hand, enables it to sacrifice to its ruling passion or interest both the public good and the rights of other citizens").

54. *See* THE FEDERALIST NO. 10 (James Madison) (arguing how democracies are susceptible to implosion).

55. *See id.* (arguing that the primary objective of government is to guard the "different and unequal faculties of acquiring property" to protect against a uniformity of interests).

56. John Adams, *The Works of John Adams, vol. 4*, ONLINE LIBR. LIBERTY 132 (Sept. 2011), https://oll-resources.s3.us-east-2.amazonaws.com/oll3/store/titles/2102/Adams_1431-04_EBk_v6.0.pdf (on file with the *University of the Pacific Law Review*).

57. *Id.*

58. *Id.* at 133.

59. *See id.* (proposing a legislative assembly elected by and representing the general population in addition to a legislative assembly not representing the people).

60. U.S. CONST. art. 1, § 1.

61. *See* U.S. CONST. art. 1, § 2, cl. 1 (establishing the House of Representatives as the *only* branch representing the populace); *see also* U.S. CONST. art. 1, § 3, cl. 1, amended by U.S. CONST. amend. XVII (granting the State Legislatures the right to elect the Senators representing the States).

62. Evenwel v. Abbott, 136 S. Ct. 1120, 1138 (2016) (Thomas, J., concurring); THE FEDERALIST NO. 10 (James Madison).

63. THE FEDERALIST NO. 10 (James Madison).

64. *Id.*

majoritarian aspect of government.[65] Their attempts to balance the individual and majority interests resulted in many compromises, many of which were antidemocratic.[66] The resulting republican form of government entrusted power in the majority to further the common good while attempting to curb the majority's ability to violate the minority's rights.[67]

The Founders understood that the legislative branch would predominate in a representative republic.[68] Thus, the Founders sought to implement various checks and balances within the legislative branch.[69] One form of checks and balances was the bicameral legislature.[70] This bicameral legislature, which became the United States Congress, was the result of the Great Compromise.[71] This compromise resulted in a legislature with an upper chamber representing the states and a lower chamber representing the people.[72]

At the time of the founding, six out of the thirteen states apportioned both chambers by population.[73] Prior to *Reynolds*, thirty-nine states followed the Great Compromise in allowing apportionment of at least one chamber by methods other than population.[74] By allowing representation not based on population, the states

65. *Declaration of Independence*, *supra* note 48; THE FEDERALIST NO. 10 (James Madison).

66. *See* U.S. CONST. art. 1, § 2, cl. 1 (establishing the House of Representatives as the *only* branch representing the populace); *see also* U.S. CONST. art. 1, § 3, cl. 1, amended by U.S. CONST. amend. XVII (granting the State Legislatures the right to elect the Senators representing the States); U.S. CONST. amend. XII (establishing the method of indirectly electing the President through the Electoral College).

67. *Evenwel*, 136 S. Ct. at 1139 (Thomas, J., concurring); THE FEDERALIST NO. 10 (James Madison).

68. THE FEDERALIST NO. 51 (Alexander Hamilton).

69. *Id.*; *see also* Farrand, *supra* note 52, at 357 (describing the proposed compromise of balancing the interest of small states against the large states).

70. Farrand, *supra* note 52, at 50, 425.

71. *Id.* at 357.

72. *See* U.S. CONST. art. 1, §§ 2–3 (establishing the House of Representatives as representative of the people, while each State is guaranteed two Senators).

73. Grant M. Hayden, *The False Promise of One Person, One Vote*, 102 MICH. L. REV. 213, 218 (2003).

74. Reynolds v. Sims, 377 U.S. 533, 608–10 (1964) (Harlan, J., dissenting).

> The years following 1868, far from indicating a developing awareness of the applicability of the Fourteenth Amendment to problems of apportionment, demonstrate precisely the reverse: that the States retained and exercised the power independently to apportion their legislatures . . . Florida's Constitution of 1885 continued the guarantee of one representative for each county and reduced the maximum number of representatives per county from four to three. Georgia, in 1877, continued to favor the smaller counties. Louisiana, in 1879, guaranteed each parish at least one representative in the House. In 1890, Mississippi guaranteed each county one representative, established a maximum number of representatives, and provided that specified groups of counties should each have approximately one-third of the seats in the House, whatever the spread of population. Missouri's Constitution of 1875 gave each county one representative and otherwise favored less populous areas. Montana's original Constitution of 1889 apportioned the State Senate by counties. In 1877, New Hampshire amended its Constitution's provisions for apportionment, but continued to favor sparsely settled areas in the House and to apportion seats in the Senate according to direct taxes paid; the same was true of New Hampshire's Constitution of 1902.
>
> In 1894, New York adopted a Constitution the peculiar apportionment provisions of which were obviously intended to prevent representation according to population: no county was allowed to have more than one-third of all the Senators, no two countries which were adjoining or 'separated only by public waters' could have more than one-half of all the Senators, and whenever any county became

could mitigate the accumulation of power in the legislative branch—per the republican form of government.[75]

B. Evolution of "One Person, One Vote"

The United States Supreme Court undertook the question of political representation and political equality in a series of three cases: *Baker v. Carr*[76], *Wesberry v. Sanders*[77], and *Reynolds v. Sims*.[78] In *Baker*, a group of Tennessee voters contended that a Tennessee statute establishing the apportionment of the state's General Assembly violated the Fourteenth Amendment's Equal Protection Clause.[79] The District Court ruled in favor of Tennessee stating that apportionment was a political question and therefore a nonjusticiable issue for which the court could not grant relief.[80] However, the Supreme Court reversed this ruling and established that a challenge to a denial of equal protection does not raise a political nonjusticiable question.[81] Rather, allegations of a violation of equal protection "present[s] a justiciable constitutional cause of action" the courts can decide, though the Court did not resolve the underlying issue of apportionment.[82] Although the Court held that a challenge to the constitutionality of the apportionment of a state's legislative districts is a justiciable question, they did not determine an appropriate remedy.[83] Instead the Court remanded the case to the District Court.[84]

> entitled to more than three Senators, the total number of Senators was increased, thus preserving to the small counties their original number of seats. In addition, each county except Hamilton was guaranteed a seat in the Assembly. The North Carolina Constitution of 1876 gave each county at least one representative and fixed a maximum number of representatives for the whole House. Oklahoma's Constitution at the time of its admission to the Union (1907) favored small counties by the use of partial ratios and a maximum number of seats in the House; in addition, no county was permitted to 'take part' in the election of more than seven representatives. Pennsylvania, in 1873, continued to guarantee each county one representative in the House. The same was true of South Carolina's Constitution of 1895, which provided also that each county should elect one and only one Senator. Utah's original Constitution of 1895 assured each county of one representative in the House. Wyoming, when it entered the Union in 1889, guaranteed each county at least one Senator and one representative.

Id.

75. *See* THE FEDERALIST NO. 51 (Alexander Hamilton) (arguing for the division of the legislature into two separate, distinct, and independent bodies—as the legislative branch is the most powerful in a republic).

76. Baker v. Carr, 369 U.S. 186 (1962).

77. Wesberry v. Sanders, 376 U.S. 1 (1964).

78. Reynolds v. Sims, 377 U.S. 533 (1964).

79. *See* U.S. CONST. amend. XIV ("No State shall . . . deny to any person within its jurisdiction the equal protection of the laws."); *see also* Baker, 369 U.S. at 187–88 (challenging an apportionment statute alleging that plaintiffs' right to equal protection under the law was abridged "by virtue of the debasement of their votes").

80. *Baker*, 369 U.S. at 208–09.

81. *Id.* at 237.

82. *Id.*

83. *Id.*

84. *Id.*

In *Wesberry*, the Supreme Court considered the proportionality of congressional districts.[85] It held that the goal for creating districts for the House of Representatives must be "equal representation for equal numbers of people."[86] Although the plaintiffs included the Fourteenth Amendment in their challenge, the Court did not rely on the Fourteenth Amendment for its ruling.[87] Instead, it construed the phrase "by the People of the several States" as meaning that each person's vote must be equal in worth to another's.[88] Further, the Court quoted a passage by James Madison, stating that the phrase alludes to the doctrine of one person, one vote.[89]

Finally, after establishing apportionment of districts as a justiciable question and determining that one person, one vote applies to congressional districts, the Court took up the question of malapportionment in state legislative districts.[90] In *Reynolds*, the Court considered a challenge against the apportionment of the Alabama Legislature.[91]

The 1901 Alabama Constitution required the state legislature to reapportion the seats in the Alabama House of Representatives after every decennial census.[92] However, from 1911 until 1960, the Alabama Legislature failed to fulfill its duty and did not reapportion the seats.[93] The "residents, taxpayers and voters of Jefferson County, Alabama," contended that due to the population growth in certain counties, "they were denied 'equal suffrage in free and equal elections.'"[94] The Alabama Supreme Court held that the legislature failed in fulfilling its constitutional duty of reapportioning the seats.[95] However, it stated that the Constitution delegated reapportionment to the state legislature and therefore was not an area with which it could or would interfere.[96] Thus, the Alabama Supreme Court considered legislative apportionment a political question, which they left to the legislature to decide.[97]

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85. Wesberry v. Sanders, 376 U.S. 1, 2 (1964).

86. *Id.* at 18.

87. *See Wesberry*, 376 U.S. at 3, 8 (analyzing plaintiffs' three causes of action (1) a violation of the U.S. Constitution, art 1, § 2; (2) violation of the Equal Protection Clause of the Fourteenth Amendment; and (3) a violation of § 2 of the Fourteenth Amendment pertaining to the apportionment of the legislatures. Although the Court mentioned the Equal Protection Clause as being the dispositive factor in *Baker v. Carr*, in this case, it found a violation on the first cause of action and did not consider the other two); *id.* at 19 (Clark, J., concurring) (proposing to analyze this case under the Equal Protection Clause of the Fourteenth Amendment).

88. *Wesberry*, 376 U.S. at 7–8 (citing U.S. CONST. art. 1, § 2).

89. *Id.* at 18 (citing THE FEDERALIST NO. 57 (James Madison)).

90. Reynolds v. Sims, 377 U.S. 533, 537 (1964); *Wesberry*, 376 U.S. at 18; Baker v. Carr, 369 U.S. 186, 237 (1962).

91. *Reynolds*, 377 U.S. at 537.

92. *Id.* at 538.

93. *Id.* at 540.

94. *Id.* at 537, 540.

95. *Id.* at 540–41.

96. *Reynolds*, 377 U.S. at 540–41.

97. *Id.* at 541.

On appeal, the Federal District Court disagreed and stated that the Alabama Legislature had to reapportion its districts in accordance with its constitutionally mandated duty and the court-determined constitutional standard.[98] The Alabama Legislature proposed two reapportionment plans, both of which the District Court struck down and substituted with its own plan.[99] The District Court's plan adopted the apportionment of the Senate based on the Crawford–Webb Act and the House of Representatives based on the 67-Senator Amendment.[100] The Alabama Legislature appealed the decision to the Supreme Court, alleging that the District Court erred in ruling the two proposals unconstitutional.[101] Additionally, the legislature alleged that a federal court cannot determine the means of apportioning seats in a state legislature because that is a political question left to the states.[102]

In *Reynolds*, the Court reiterated its holdings in *Baker* and *Wesberry* while expounding on the definition of an Equal Protection Clause violation, as it pertains to apportionment of state legislative districts[103] It held that the right to vote is "a fundamental matter in a free and democratic society."[104] Consequently, the Court prohibited a dilution of one's voting power.[105] However, rather than limiting the requirement of equal representation of districts to one chamber—as in *Wesberry*—the Warren Court expanded this requirement to "both houses of a bicameral state legislature."[106]

C. Government by Majoritarianism

The republican form of government is one of compromise—balancing the desires of the majority with the rights of the minority.[107] However, *Reynolds* appears to favor the majority by disregarding the minority.[108] By requiring that both chambers of a state legislature be based on population, the Court ensured the minority would have little recourse in defending their rights.[109]

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98. *Id*. at 542–43.

99. *Id.* at 543–45, 552 (discussing the Alabama Legislature's two proposed plans (1) the 67-Senator Amendment forming a 106-member House of Representatives by giving each county one representative and apportioning the rest according to population, the Senate provided each county with one Senator; and (2) the Crawford–Webb Act providing for a 35-member Senate and a 106-member House of Representative apportioned roughly along the lines of the first proposal).

100. *Id.* at 552.

101. *Id.* at 552.

102. *Reynolds*, 377 U.S. at 554.

103. *Id.* at 561.

104. *Id*. at 561–62.

105. *Id*. at 562–62.

106. *Reynolds*, 377 U.S. at 568; *see* Wesberry v. Sanders, 376 U.S. 1, 7–8 (1964) (establishing the "one person, one vote" requirement for apportioning districts to only the seats comprising the lower chamber of Congress—the House of Representatives).

107. Evenwel v. Abbott, 136 S. Ct. 1120, 1139 (2016) (Thomas, J., concurring); THE FEDERALIST NO. 10 (James Madison).

108. *Reynolds*, 377 U.S. at 565.

109. *Id.* at 568; *see* THE FEDERALIST NO. 10 (James Madison) (describing how the majority is able to

Reynolds creates a strict form of a republican government in that it requires the majority to elect a majority of the representatives.[110] However, it undermines the balance the Founders sought by the Founders—balancing the desires of the majority with the rights of the minority.[111] In mandating a uniform method of

apportionment—based solely on population—*Reynolds* disrupted the balance the Founders viewed as inherent and essential to a republican form of government.[112]

III. DISREGARD OF MINORITY RIGHTS POST-*REYNOLDS*

As a result of *Reynolds*, Senator Everett Dirksen feared that the political power would shift to the majority in the urban centers and enable them to control the states.[113] Furthermore, the majority—now entrenched in control of the state—would be free to disregard the minority in rural areas.[114] Senator Dirksen believed that in disregarding the interest of the minority, the people in power would then propose policies favoring the urban centers and disfavoring the rural areas.[115] While at other times the majority-elected representatives would propose statewide one-size-fits-all legislation.[116]

Senator Dirksen also opined that *Reynolds* would allow self-serving party functionaries—who would not be answerable to the people—to control the state.[117] Section A discusses the first concern of the majority trampling the rights of the minority, which lead to calls for secession.[118] Section B details Senator Dirksen's second concern of an entrenched political class answerable only to itself, reproaching anyone who dares to question them.[119]

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sacrifice the minority's rights and the public good to further their interests).

110. *Id.* at 565.

111. THE FEDERALIST NO. 10 (Alexander Hamilton).

112. *Reynolds*, 377 U.S. at 565; *see* THE FEDERALIST NO. 10 (James Madison) (describing how a republican government must protect minority rights while allowing for majority common interest).

113. UDALL, *supra* note 1.

114. *Id.*

115. *See* SB 474, 2019 Leg., 2019–2020 Sess. (Cal. 2020) (as amended on June 19, 2020, but not enacted) (seeking to ban new development in high fire hazard zones or state responsibility areas, most of which are in rural areas).

116. *See* Erika D. Smith, *Column: This is the Only California County That's Coronavirus-Free. Masks are Optional*, L.A. TIMES (July 8, 2020, 5:00 A.M.), https://www.latimes.com/california/story/2020-07-08/coronavirus-mask-test-modoc-county-rural-california (on file with the *University of the Pacific Law Review*) (questioning the efficacy of a one-size-fits-all strategy for combatting the coronavirus with counties as disparate as Los Angeles and Modoc).

117. David E. Kyvig, *Everett Dirksen's Constitutional Crusades*, 95 J. ILL. ST. HIST. SOC'Y 68, 77 (2002).

118. *Infra* Section III.A.

119. *Infra* Section III.B.

A. Secessionist Movements in the Various States

The Supreme Court's decision in *Reynolds* invalidated the methods of apportionment and the apportionment of legislative districts in thirty-nine states.[120] Some apportionment methods included "straight area representation or guaranteed minimum area representation," while one complex scheme sought to "preserv[e] to the small counties their original number of seats."[121] These methods of apportionment were favorable to the less-populated areas of the state.[122] Consequently, the Supreme Court created a situation where state representatives predominantly represent the urban areas.[123]

Rural underrepresentation is an issue since urban residents electing the majority of the representatives "know little and care less about the lives of people out in the country."[124] Many people in rural areas think that urban residents even hold them in disdain.[125] This disregard from urban dwellers towards their rural counterparts leads many rural citizens to call for secession from the urban majorities.[126] The perceived disregard rural residents feel is universal throughout the various secessionist movements.[127] Another reason rural-dwellers call for secession is no "taxation without representation."[128] The desire to break away is not solely founded on taxation.[129] It also finds its basis in "regulation without representation."[130]

Many of the movements have not advocated for outright secession.[131] Some merely call for shifting the state lines while others seek to alter the state governance structure.[132] Subsection 1 chronicles the suggestions calling for complete succession and the founding of new states.[133] Subsection 2 explores the recommendations of altering state boundary lines rather than creating new

120. Reynolds v. Sims, 377 U.S. 533, 610 (1964) (Harlan, J., dissenting).

121. *Id.* at 609–10 (Harlan, J., dissenting).

122. *Id.* at 610 (Harlan, J., dissenting).

123. Glenn Harlan Reynolds, *Across the Country, Rural Communities Want to Secede from Their States. Here's Why*, USA TODAY (updated Feb. 26, 2020, 6:00 AM), https://www.usatoday.com/story/opinion/2020/02/26/across-country-rural-communities-secede-states-why-column/4851817002/ (on file with the *University of the Pacific Law Review*).

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. Reynolds, *supra* note 123.

130. *Id.*

131. *Id.*

132. *See* Valerie Richardson, *Secession Fever Spikes in Five States as Conservatives Seek to Escape Blue Rule*, WASH. TIMES (Feb. 19, 2020), https://www.washingtontimes.com/news/2020/feb/19/secession-fever-spikes-conservatives-seek-escape-b/ (on file with the *University of the Pacific Law Review*) (describing some counties seeking to join neighboring states and other counties aiming to start new entirely new states).

133. *Infra* Subsection III.A.1.

states.[134] Subsection 3 examines a New York secession movement's unique approach to rural underrepresentation.[135]

1. Proposed 51st State of America

In 1941, several counties in Northern California and Southern Oregon proposed seceding from their states to form the State of Jefferson.[136] The primary impetus for seceding was that both Sacramento and Salem were ignoring the rural residents along the border of the two states.[137] In December 1941, the proponents went as far as proclaiming independence.[138] However, the attack on Pearl Harbor and the subsequent war ended talks of secession.[139]

California amended its Constitution after the *Reynolds* decision.[140] Before 1968, each county in California could have no more than one senator, and each senator could not represent more than three counties.[141] However, the *Reynolds* ruling invalidated the method of apportionment in California's 1967 Constitution.[142] *Reynolds* removed the requirement tying representation in the California State Senate to the counties.[143] As a result, California counties today with large populations have many senatorial districts, while the rural counties comprise of only one.[144] The concentration of so many Senators in one county is one of the reasons people are once again advocating for the State of Jefferson.[145] As a result, rural residents decry that California is "governed by Los Angeles and San Francisco."[146]

The idea of the State of Jefferson predates the *Reynolds* decision—there was even a secession movement in Northern California in 1852.[147] However, the *Reynolds* decision not only revived the State of Jefferson movement, but also expanded it.[148] The original movement only encompassed parts of Southern

134. *Infra* Subsection III.A.2.

135. *Infra* Subsection III.A.3.

136. Goodyear, *supra* note 19.

137. *Id.*

138. *Id.*

139. *Id.*

140. *See* CAL. CONST. art. IV, § 6 (West 2021) (lacking discussion on apportionment).

141. *Id.*

142. *See id.* (granting each county at least one Senator).

143. *Id.*; Goodyear, *supra* note 19.

144. Goodyear, *supra* note 19; *see, e.g.*, CAL. STATE SENATE, SENATE COUNTIES REPRESENTED 1–3 (2021–22), https://www.senate.ca.gov/sites/senate.ca.gov/files/2021-22_senate_counties_represented.pdf (on file with the *University of the Pacific Law Review*) (listing Los Angeles County as having fifteen senators, while eleven rural counties in northern California have only one senator).

145. Goodyear, *supra* note 19.

146. *Id.*

147. *Id.*

148. Andre Byik, *Tehama County Supervisors Declare Support for State of Jefferson*, RED BLUFF DAILY NEWS (updated May 16, 2018, 9:36 AM), https://www.redbluffdailynews.com/2014/07/15/tehama-county-supervisors-declare-support-for-state-of-jefferson/ (on file with the *University of the Pacific Law Review*); OFF.

Oregon and Northern California; the new movement encompasses up to twenty-three counties and extends south of Sacramento.[149]

In addition to political underrepresentation, proponents of the State of Jefferson cite economic and environmental regulations as grievances worthy of secession.[150] In November 2015, California's Siskiyou County had an unemployment rate of 9.2 percent compared to 3.4 percent in San Francisco.[151] Siskiyou County residents fault the government for their woes, as the federal and state governments own and control almost 70 percent of the land in the county.[152] Environmental restrictions on logging and mining exacerbate these economic woes.[153]

The 1941 secessionist movement in Northern California and Southern Oregon was based on politicians in Sacramento and Salem ignoring the residents of the proposed State of Jefferson.[154] The current secessionist movement is based on Sacramento's overregulation of the State of Jefferson through environmental regulations, which has eliminated the industries the locals rely on.[155] A former miner stated, "California takes away our property, takes away our rights. That's a form of tyranny. If we govern ourselves, at least we're responsible to ourselves."[156] This is a textbook example of "regulation without representation."[157]

Currently, there is a proposal in Illinois for reverse secession.[158] Rather than seceding from Illinois, the proposal would force Chicago out of Illinois—establishing Chicago as a separate state.[159] According to Illinois State Representative Brad Halbrook—the author of the proposal—the current political system concentrates all of the power near Chicago.[160] Consequently, many Chicago politicians disregard the concerns of the rest of the state—the primary impetus for this proposal.[161] This estimation is in line with Senator Dirksen's prescient commentary.[162] "[W]ith *Reynolds v. Sims*, the major metropolitan areas, the large population centers, are going to control the rest of the state, and that's

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ST. JEFFERSON MOVEMENT, https://soj51.org/ (last visited Dec. 17, 2020) (on file with the *University of the Pacific Law Review*).

149. *Map*, OFF. ST. JEFFERSON MOVEMENT, https://soj51.org/ (last visited Dec. 17, 2020) (on file with the *University of the Pacific Law Review*).

150. Goodyear, *supra* note 19.

151. *Id.*

152. *Id.*

153. *Id.*

154. *Id.*

155. *See* Goodyear, *supra* note 19 (describing the current State of Jefferson proposal, which consists of twenty-three counties in California. However, some counties in Southern Oregon, formerly part of the State of Jefferson, have their own proposed secessionist movement, seeking to join Idaho); *Map*, *supra* note 149.

156. Goodyear, *supra* note 19.

157. Reynolds, *supra* note 123.

158. Richardson, *supra* note 132.

159. *Id.*

160. *Id.*

161. *Id.*

162. *Id.*

what's happened with Illinois . . . ."[163]

2. Modifying Boundaries Without Creating States

In Colorado, there is a secessionist movement to alter the Wyoming–Colorado border.[164] Rather than creating a new state, the proponents seek to move Weld County from Colorado to Wyoming.[165] A reason for the secessionist movement stems from the urban liberal-led social and environmental agendas emerging from Denver and Boulder counties.[166]

In 2018, Colorado voters overwhelmingly defeated Proposition 112, which proposed strict setback limits.[167] If enacted, the proposal would drastically and negatively impact the oil and gas industry by limiting developments to fifteen percent of non-federal land.[168] This ban on development would impact the Wattenberg Field in Weld County—"one of the top ten producing oil and gas fields in the country."[169] Then in 2019, the legislature in Denver disregarded the voice of the people by enacting Senate Bill 181 ("SB 181").[170] In enacting SB 181, legislators claimed that it was not identical to Proposition 112, and thus would not stifle the oil and gas sector in Colorado.[171] As a result of SB 181, various counties and locales implemented either moratoria or regulations on drilling—thereby achieving the result voters attempted to avert in defeating Proposition 112.[172]

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163. *Id.*

164. Dick Wadhams, *Wadhams: Weld County Secession to Wyoming may be Unlikely, but the Urban-Liberal Assault on Rural Colorado is Real*, DENVER POST (Feb. 4, 2021, 8:22 AM), https://www.denverpost.com/2021/02/04/weld-county-succession-unlikely-urban-liberal-assault-rural-colorado/ (on file with the *University of the Pacific Law Review*).

165. *Id.*

166. *Id.*

167. *Id.*; *see* Nora Olabi, *Study Shows Setback Petition Would Stop New Oil, Gas Development in Half the State*, WESTWORD (July 10, 2018, 5:34 AM), https://www.westword.com/news/colorado-oil-and-gas-conservation-commission-setbacks-would-ban-new-oil-gas-drilling-in-half-of-colorado-10507233 (on file with the *University of the Pacific Law Review*) (defining a setback limit as the distance an oil and gas developer must have between any proposed oil or gas development and certain structures. "Existing state regulations specify minimum setback requirements for oil and gas facilities at 350 feet for outdoor-activity areas like playgrounds, 500 feet for occupied buildings, and 1,000 feet for high-occupancy buildings like schools or hospitals." Proposition 112 sought to increase these setback limits to 2,500 feet from occupied buildings and public spaces for "exploration, drilling, production or processing and treatment of hydrocarbons as well as flowlines").

168. Olabi, *supra* note 167.

169. *Id.*

170. Wadhams, *supra* note 164.

171. *Id.*; *Colorado's Sweeping Oil and Gas Law: One Year Later*, GIBSON DUNN, 1, 2 (Apr. 30, 2020), https://www.gibsondunn.com/wp-content/uploads/2020/04/colorados-sweeping-oil-and-gas-law-one-year-later.pdf (describing SB 181 and its three major provisions: First, SB-181 granted local governments power to regulate future oil and gas development within their jurisdictions, including the power to preempt less restrictive statewide regulations promulgated by the Colorado Oil and Gas Conservation Commission ("COGCC") . . . Second, SB-181 altered the overall mission of state regulators. Previously, the COGCC was charged with a statutory mandate to "foster" development of oil and gas resources to achieve the "maximum efficient rate of production" . . . Third, SB-181 called for the restructuring and professionalization of the COGCC).

172. *See* GIBSON DUNN, *supra* note 171 at 1, 2 (describing the effects of SB 181 on the oil and gas sector).

The urban disrespect for rural famers was also on full display when Governor Jared Polis nominated an anti-meat activist to the Colorado Board of Veterinary Medicine.[173] This was after Governor Polis recanted his support for plant-based meats over livestock producers, who comprise seventy percent of Colorado's $7 billion agricultural industry.[174]

In Virginia, there is a similar proposal to transfer counties across state boundaries.[175] The issue of contention in Virginia is gun control.[176] After the Democrats took control of the state government in 2019, they enacted a myriad of gun control measures, including assault rifle bans.[177] Some counties responded by becoming "Second Amendment Sanctuaries," refusing to enforce gun control legislation.[178]

Just like in Colorado, the urban metropolis controls the rest of the Commonwealth of Virginia.[179] Due to the large increase of federal employees in the Northern Virginia metropolis, rural residents favoring gun rights have little prospect of reversing their electoral losses.[180] In response to rural underrepresentation, West Virginia invited any county from Virginia to leave the Commonwealth of Virginia in favor of West Virginia.[181]

3. A Unique Proposal from Upstate New York

The New York proposal is neither secession nor border readjustment; rather, it is a change in the system of governance.[182] The proposal seeks to create three self-governing regions and bypass the need for congressional approval in creating a new state.[183] Under this proposal, the autonomous regions would subsume most government functions: taxation, criminal justice, judiciary, education, and economic policy.[184] Further, each regional government would have an executive branch comprised of various executive officers, while the legislative branch of the state and regions would be held in common.[185] The regional senators and regional

173. Wadhams, *supra* note 164.

174. *Id.*

175. Richardson, *supra* note 132.

176. *Id.*

177. Kelly Mena, *West Virginia Republicans encourage conservative Virginia counties to 'Vexit,'* CNN (Feb. 9, 2020, 1:04 PM), https://www.cnn.com/2020/02/09/politics/west-virginia-republicans-push-vexit/index.html (on file with the *University of the Pacific Law Review*).

178. *Id.*

179. Richardson, *supra* note 132.

180. *Id.*

181. Mena, *supra* note 177.

182. Richardson, *supra* note 132.

183. *See* U.S. CONST. art. IV, § 3, cl. 1 (requiring congressional approval only for the admission or formation of new states, not for amending state constitutions); Richardson, *supra* note 132.

184. *Divide New York Plan*, DIVIDE NYS CAUCUS, INC., https://www.divideny.org/divide-new-york-plan.html (last visited Dec. 29, 2020) (on file with the *University of the Pacific Law Review*).

185. *Id.*

assembly members would also be members of the New York Senate and New York Assembly, respectively.[186] The proposal retains a token New York State Government to primarily oversee pensions, the National Guard, and a truncated judiciary.[187]

B. Political Retribution in Action

Concentration of power was another consequence of the *Reynolds* decision.[188] If power becomes concentrated in one or two regions, political operatives who manage to control a majority of the votes in those regions will control the state.[189] However, those same people who control the state will not be beholden to anybody but themselves.[190]

The response to the 2020 coronavirus pandemic was an example of both concerns—disregard for the interests of the rural areas and party leaders holding onto control.[191] California's responses to the pandemic under Governor Gavin Newsom is a great example of a one-size-fits-all solution, disregarding rural interests or concerns.[192]

To combat the pandemic, Governor Newsom ordered a statewide lockdown in March 2020.[193] Although, the rural Modoc County did not get its first coronavirus case until late-July 2020, it was still subject to the statewide lockdown.[194] Since Modoc County was already economically depressed before the pandemic, it defied Governor Newsom's order and reopened in May.[195] Before reopening, Modoc County Sheriff Tex Dowdy sent the Governor's Office a draft plan for reopening the county.[196] Rather than responding, the Governor's Office sent a letter "accusing

186. *Id.*

187. *Id.*

188. Kyvig, *supra* note 117, at 77.

189. *Id.*

190. *Id.*

191. *See* Kathleen Ronayne, *California Threatens 3 Counties' Aid as Reopening Begins*, U.S. NEWS & WORLD REP. (May 8, 2020, 10:13 PM), https://www.usnews.com/news/best-states/california/articles/2020-05-08/as-california-reopening-begins-newsom-says-expect-more-soon (on file with the *University of the Pacific Law Review*) (reporting on the California Governor threatening to cut funding to rural counties for refusing to follow his executive orders).

192. *See* CAL. EXEC. ORDER N-33-20, (Mar. 19, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf (on file with the *University of the Pacific Law Review*) (lacking provisions taking urban–rural distinctions into consideration).

193. CAL. EXEC. ORDER N-33-20, (Mar. 19, 2020), https://www.gov.ca.gov/wp-content/uploads/2020/03/EO-N-33-20-COVID-19-HEALTH-ORDER-03.19.2020-002.pdf (on file with the *University of the Pacific Law Review*).

194. John Antczak, *California's Remote Modoc County Has Its 1st COVID-19 Cases*, AP (July 29, 2020), https://apnews.com/article/nevada-health-california-virus-outbreak-public-health-522d134ca345f834229b976ba2fc8e33 (on file with the *University of the Pacific Law Review*).

195. Julia Sulek, *This One California County Has Zero Coronavirus Cases. What's Its Secret?*, TWIN CITIES PIONEER PRESS (July 13, 2020, 12:25 PM), https://www.twincities.com/2020/07/13/this-one-california-county-has-zero-coronavirus-cases-whats-its-secret/ (on file with the *University of the Pacific Law Review*).

196. *Id.*; *see Office of Emergency Services*, MODOC COUNTY SHERIFF'S OFF.,

officials of ignoring state orders and threatening to withhold disaster funds should their 'careless and hasty actions' cause an outbreak."[197]

In January 2021, the California State Auditor issued a report highlighting how the state allocated funds from the Coronavirus Relief Fund ("CRF").[198] The report confirmed that although the Governor's Office did not follow through on its threat to cut Modoc County's funding, rural counties received nearly half of what urban counties received.[199] Despite certain rural counties having higher rates of infection, they received only $102 per person compared to $190–197 per person in urban counties.[200]

The state's disdain does not stop at duly elected sheriffs but extends to small business owners and restauranteurs as well.[201] After requiring restaurant owners to follow stringent, costly guidelines and outdoor operations only, the State of California banned outdoor dining altogether—touting science as its guide.[202] Despite science supposedly guiding California's decision making, a judge in Los Angeles ruled the local outdoor dining ban "was not grounded in science, evidence, or logic."[203] California Health and Human Services Secretary Mark Ghaly

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https://www.modocsheriff.us/office-emergency-services (last visited Apr. 23, 2021) (on file with the *University of the Pacific Law Review*); (describing how the the Office of Emergency Services ("OES") is the countywide agency tasked with "provid[ing] a structure for emergency response that minimizes the loss of lives and the destruction of property, while maintaining governmental services during an emergency." OES is also the agency tasked with the Emergency Operations Plan, in response to emergencies.); *see also Governor Newsom Declares State of Emergency to Help State Prepare for Broader Spread of COVID-19*, OFF. GOV'R GAVIN NEWSOM (Mar. 4, 2020), https://www.gov.ca.gov/2020/03/04/governor-newsom-declares-state-of-emergency-to-help-state-prepare-for-broader-spread-of-covid-19/) (on file with the *University of the Pacific Law Review*) (establishing that as of March 2020 California was in a state of emergency); *see also* MODOC COUNTY EMERGENCY OPERATIONS PLAN, MODOC COUNTY OFF, EMERGENCY SERVICES, 1.5 (Feb. 14, 2017), https://www.modocsheriff.us/sites/g/files/vyhlif921/f/uploads/eop_section_1_basic_plan.pdf (on file with the *University of the Pacific Law Review*)(designating the duly elected Modoc County Sheriff, Tex Dowdy as the official in charge of the Modoc County Sheriff's Office' and the OES as the primary officla responsible for responding to emergencies""). Consequently, in drafting the reopening plan, Sheriff Dowdy was following established protocol and responding to the emergency declared by Governor Gavin Newsom).

197. Sulek, *supra* note 195.

198. ELAINE M. HOWLE, STATE HIGH RISK UPDATE—FEDERAL COVID-19 FUNDING 1 (Jan. 19, 2021), http://auditor.ca.gov/pdfs/reports/2020-610.pdf (on file with the *University of the Pacific Law Review*).

199. *Id.* at 4.

200. *Id.*

201. *See* Zach Weissmueller, *Los Angeles County Banned Outdoor Dining. There's Zero Evidence It Spreads COVID-19.*, REASON (Nov. 30, 2020, 2:00 PM), https://reason.com/video/2020/11/30/los-angeles-county-banned-outdoor-dining-theres-zero-evidence-it-spreads-covid-19/ (on file with the *University of the Pacific Law Review*) (explaining how restauranteurs expended large sums of money to follow government guidelines and expand outdoor dining to now even have outdoor dining banned).

202. Jacob Sullum, *California's Health Secretary Concedes There Is No Empirical Basis for the State's Ban on Outdoor Dining*, REASON (Dec. 11, 2020, 12:15 PM), https://reason.com/2020/12/11/californias-health-secretary-concedes-there-is-no-empirical-basis-for-the-states-ban-on-outdoor-dining/ (on file with the *University of the Pacific Law Review*); *see* Steve Almasy, et. al., *California Gov. Gavin Newsom Says Science, Not Political Will, Dictates When State Can Reopen*, CNN (April 14, 2020, 10:58 PM), https://www.cnn.com/2020/04/14/us/us-coronavirus-reopening-tuesday/index.html (on file with the *University of the Pacific Law Review*) (reiterating "[s]cience, not politics must be the guide" in determining when life gets back to normal).

203. Sullum, *supra* note 202.

acknowledged the statewide ban was likewise devoid of evidence and science on "the relative safety of outdoor dining."[204] Instead the ban "has to do with the goal of trying to keep people at home."[205]

The ban on outdoor dining cost restaurateurs tens—if not hundreds—of thousands of dollars.[206] However, this ban on outdoor dining did not prohibit all food services.[207] One restaurateur claimed, "a film production crew set up a food truck and tented dining area in the parking lot where she'd built her outdoor dining patio."[208] Since Governor Newsom declared film production an essential service, some reporters question the film industry's exemption.[209] Notably, the Governor granted the exemption in November after a "behested payment" from Netflix and a birthday dinner for its lobbyist—"at the famed French Laundry restaurant."[210]

IV. THE LITTLE FEDERAL MODEL

The republican form of government is inherently a balancing act—ensuring the majority's interests without infringing the minority's rights.[211] The Founders understood the importance of implementing checks and balances: ensuring the majority cannot threaten the minority's rights—even property rights under the guise of science or safety.[212] Before the decision in *Reynolds*, thirty-nine states sought to implement this balance through apportioning legislative districts on bases other than population.[213] *Reynolds* disrupted this balance by focusing solely on population.[214]

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204. *Id.*

205. *Id.*

206. Ashley Riegle, Marjorie McAfee, & Anthony Rivas, *LA Business Owners Fighting to Survive in Pandemic Feel Mix of Hope and Frustration*, ABC NEWS (Mar. 4, 2021, 3:38 PM), https://abcnews.go.com/US/la-business-owners-fighting-survive-pandemic-feel-mix/story?id=76256181 (on file with the *University of the Pacific Law Review*).

207. *Id.*

208. *Id.*

209. *Id.*; Jacob McLeod, *Donations 'Requested' by Newsom Exploded as His Emergency Powers Ballooned*, REASON (Feb. 18, 2021, 12:30 PM), https://reason.com/2021/02/18/donations-requested-by-newsom-exploded-as-his-emergency-powers-ballooned/ (on file with the *University of the Pacific Law Review*).

210. McLeod, *supra* note 209; *see Behested Payments Search: Increasing Transparency*, CAL. FAIR POL. PRAC. COMM'N, https://www.fppc.ca.gov/transparency/behested-payments.html (last visited Mar. 6, 2021) (on file with the *University of the Pacific Law Review*) (defining behested payments as a payment "made at the request, suggestion, or solicitation of, or made in cooperation, consultation, coordination, or concert with the public official; made for a legislative, governmental or charitable purpose; and [the payment] does not qualify as a gift (made for personal purposes) or a contribution (made for election-related activity) to the elected official").

211. THE FEDERALIST NO. 10 (James Madison).

212. *Id.*; *see also* Riegle, et al., *supra* note 206 (describing how the outdoor dining ban cost a restaurant owner over $500 million, while simultaneously allowing the entertainment industry to conduct outdoor dining in the same parking lot).

213. Reynolds v. Sims, 377 U.S. 533, 610 (1964) (Harlan, J., dissenting).

214. *Id.* at 568.

The United States Congress implemented this balance through a bicameral legislature in which each chamber is separate and distinct.[215] The upper chamber—the Senate—consisting of two members from each state, represented the states—prior to the Seventeenth Amendment.[216] The lower chamber—the House of Representatives—represents the people.[217] The distinction ensured Congress would consider issues other than those in large states.[218]

The Little Federal Model grants individual states autonomy to determine how to balance the majority's interests and the minority's rights.[219] It consists of bicameral state legislatures consisting of separate and distinct chambers representing different entities.[220] The lower chamber would represent the people.[221] The upper chamber would represent political and geographical subdivisions—regions, counties, cities, towns, etc.—based on an individual state's apportionment.[222] Since political subdivisions are not sovereign, but rather state-created governmental instrumentalities, the Little Federal Model would be analogous to Congress only in form and not reasoning.[223]

A method for establishing the balance inherent in a republican form of government is dividing the legislative branch into *separate and distinct* chambers.[224] The Little Federal Model divides the legislative branch into distinct chambers.[225] By allowing different regions and political subdivisions to have representation, the Little Federal Model ensures that both rural and urban residents have a voice in government.[226]

By seeking to ensure equal representation, *Reynolds* eliminated the representation and interests of the rural voters from the government.[227] The Little

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215. *See* U.S. CONST. art. 1, § 2 (establishing the House of Representatives as representative of the people); *see also* U.S. CONST. art. 1, § 3 (describing how the Senate represents the States).

216. *See* U.S. CONST. art. 1, § 3 (describing how the Senate represented the States).

217. *See* U.S. CONST. art. 1, § 2 (establishing the House of Representatives as representative of the people).

218. *See* Amanda Onion, *How the Great Compromise and the Electoral College Affects Politics Today*, HISTORY (Apr. 17, 2018), https://www.history.com/news/how-the-great-compromise-affects-politics-today (on file with the *University of the Pacific Law Review*) (emphasizing that equal distribution of power in the Senate is critical).

219. *See* THE FEDERALIST NO. 10 (James Madison) (explaining the government's role in balancing majority's interests without infringing the minority's rights).

220. *See* U.S. CONST. art. 1, § 2 (establishing the House of Representatives as representative of the people); *see also* U.S. CONST. art. 1, § 3 (describing how the Senate represents the States).

221. *See* U.S. CONST. art. 1, § 2 (establishing the House of Representatives as representative of the people).

222. *See* U.S. CONST. art. 1, § 3 (describing how the Senate represents the States).

223. *See* U.S. CONST. art. 1, §§ 2–3 (establishing the House of Representatives as representative of the people, while each State is guaranteed two Senators); Reynolds v. Sims, 377 U.S. 533, 575 (1964).

224. THE FEDERALIST NO. 51 (Alexander Hamilton).

225. *Id.*

226. *See* Gary Gregg, *Electoral College Keeps Elections Fair*, POLITICO (Dec. 5, 2012, 9:29 PM), https://www.politico.com/story/2012/12/keep-electoral-college-for-fair-presidential-votes-084651 (on file with the *University of the Pacific Law Review*) (explaining how direct democracy and "abolishing the [antidemocratic] Electoral College would mean ignoring every rural and small-state voter in our country").

227. Reynolds v. Sims, 377 U.S. 533, 565–566 (1964); *see also* Gregg, *supra* note 226 (explaining how direct democracy and "abolishing the [antidemocratic] Electoral College would mean ignoring every rural and

Federal Model would grant a voice to rural voters by ensuring statewide dispersal of state legislative districts rather than district concentration in large metropolitan urban areas.[228] In granting the rural areas representation in the upper house, the Little Federal Model would allow for more equitable laws for both urban and rural residents.[229]

V. NONJUSTICIABILITY DOCTRINE

The Supreme Court applied the Fourteenth Amendment's Equal Protection Clause in *Reynolds* to confirm the one person, one vote doctrine.[230] However, the result of applying the one person, one vote standard to both chambers resulted in an infringement on the rights of rural residents.[231] In attempting to protect the interests of the urban majority, *Reynolds* infringed on the rights of the rural minority, which is what the Founders sought to prevent.[232]

The Court has held that the consideration of the Guarantee Clause is a nonjusticiable political question.[233] One of the reasons the Court refuses to consider political questions under the Guarantee Clause is the lack of judicial standards courts could apply.[234]

In the case of the Little Federal Model, a state would decide the upper chamber of the legislature's apportionment based on local considerations.[235] As such, the standard for apportioning state legislatures would be different in each individual state, preventing the establishment of uniform judicial standards for apportionment.[236] Therefore, the Little Federal Model derives its authority from the Guarantee Clause because it involves the consideration of structuring a chamber of the legislature—an inherently political question.[237]

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small-state voter in our country").

228. *See* CAL. STATE SENATE, SENATE COUNTIES REPRESENTED 1–3 (2021–22), https://www.senate.ca.gov/sites/senate.ca.gov/files/2021-22_senate_counties_represented.pdf (on file with the *University of the Pacific Law Review*) (listing the various counties represented by the senators, approximately 22 of whom represent Los Angeles and the Bay Area).

229. *See* Wadhams, *supra* note 164 (describing how the legislative leadership center in Denver and Boulder disregarded the vote of the people in order to hamper the oil and gas industry—in rural Colorado).

230. *Reynolds*, 377 U.S. at 568.

231. *Supra* Part III.

232. THE FEDERALIST NO. 10 (James Madison).

233. Luther v. Borden, 48 U.S. 1, 42 (1849).

234. Baker v. Carr, 369 U.S. 186, 223 (1962).

235. *See* U.S. CONST. art. 1, § 3 (describing how the upper chamber was not based on representing the populace).

236. *See* Reynolds v. Sims, 377 U.S. 533, 608–10 (1964) (Harlan, J., dissenting) (describing various methods of apportioning representation).

237. *See Luther v. Borden*, 48 U.S. at 42 (explaining how questions of political rights should not be adjudicated in the courts).

VI. FAIRNESS IN LEGISLATIVE APPORTIONMENT

In *Reynolds*, the Court held that the goal of apportioning legislative districts is to achieve "fair and effective representation for all citizens."[238] The political ideal of fairness is for the "majority of the people of a State [to] elect a majority of that State's" representatives.[239] Nevertheless, the current reality of representation is inequitable because politicians who can control the votes gain the upper hand.[240] Furthermore, technology allows politicians to select individual voters for their elections, which is an inversion of the ideal of representation and cannot be considered fair.[241]

Every ten years, the state legislatures or state redistricting commissions redraw the legislative districts to align with shifts in population.[242] After the 2010 census, the North Carolina Republican Party redrew the congressional districts obtaining an advantage of 10–3 seats, after disfavoring them 6–7 for three election cycles.[243] The resulting gerrymandered districts were precise: the mapmakers split precincts and were able to select individual voters for the desired districts.[244] Governor Martin O'Malley of Maryland also participated in redrawing congressional districts for political purposes.[245] In one district, the Democratic Party needed to adjust the number of voters by 10,000.[246] So they shifted select precincts consisting of 360,000 voters out of the district.[247] In place of those precincts, they shifted a number of other precincts, consisting of 350,000 other voters.[248] The resulting district consisted of 66,000 fewer registered Republican voters and an additional 24,000 registered Democrats.[249]

The proposed Little Federal Model would eliminate partisan gerrymandering in the upper chamber since the boundaries of political subdivisions do not change

238. *Reynolds*, 377 U.S. at 565–566.

239. *Id.* at 565.

240. *See* John Hart Ely, *Confounded By Cromartie: Are Racial Stereotypes Now Acceptable Across The Board Or Only When Used In Support Of Partisan Gerrymanders?*, 56 U. MIAMI L. REV. 489, 505 (2002) (discussing how modern day computers can assist a political boss to undo one person, one vote reapportionment).

241. *See* Rucho v. Common Cause, 139 S. Ct. 2484, 2513 (2019) (Kagan, J. dissenting) (explaining how the technology can provide information about individual voter preferences); *see also* Ely, *supra* note 240 (discussing how modern day computers can assist a political boss to undo one person, one vote reapportionment).

242. *See* U.S. CONST. art. 1, § 2, cl. 3 (mandating the decennial census); *see also Reynolds*, 377 U.S. at 568 (granting states representation based on population).

243. Vann R. Newkirk II, *How Redistricting Became a Technological Arms Race*, ATLANTIC (Oct. 28, 2017), https://www.theatlantic.com/politics/archive/2017/10/gerrymandering-technology-redmap-2020/543888/ (on file with the *University of the Pacific Law Review*).

244. *See id.* ("Precincts are the lowest level at which aggregated official political data is available. . . . Since precincts as designated and created by towns and counties are the primary unit of elections administration.").

245. *Rucho v. Common Cause*, 139 S. Ct. at 2493.

246. *Id.*

247. *Id.*

248. *Id.*

249. *Id.*

every ten years.[250] As such, the proposal would ensure the people select their representative to the upper chamber, rather than the representatives selecting the voters.[251] By fixing the district to certain boundaries, the proposal would prevent the politicians or redistricting commissioners from shifting precincts to determine the composition of the district.[252]

Another concern with legislative apportionment is defining fairness.[253] Defining fairness would necessitate the reviewing court to answer purely political rather than legal questions.[254] Although the one person, one vote doctrine may seem objective and easier to apply—"as a matter of math"—defining it is not as straightforward as math.[255] The Supreme Court has yet to resolve if the one person, one vote doctrine requires equality of the voter-eligible population—each vote weights the same—or equality of the total population.[256] The Little Federal Model limits this second concern regarding definitions to the lower chamber.[257] The proposal would free the courts from attempting to adjudicate the equality of voters or population in the political subdivisions of the upper chamber.[258]

VII. CONCLUSION

Prior to *Reynolds*, an overwhelming majority of states rejected the notion that population should be the sole basis for equal representation.[259] Rather, states apportioned representation to counties and other area-based districts—favoring the

250. *See* U.S. CONST. art. 1, § 2, cl. 3 (mandating the decennial census); *see also* Reynolds v. Sims, 377 U.S. 533, 568 (1964) (granting states representation based on population).

251. *See* U.S. CONST. amend. XVII (granting states—a political entity— two Senators irrespective of population or time); *see also Rucho v. Common Cause*, 139 S. Ct. at 2513 (Kagan, J. dissenting) (explaining how modern, sophisticated technology allows politicians to know information about individual voter preferences, in drawing maps of new districts).

252. *See* U.S. CONST. art. 1, § 3 (setting representation based on a political entity); *see also Rucho v. Common Cause*, 139 S. Ct. at 2513 (explaining how moderns sophisticated technology was used in drawing specific districts).

253. *Rucho v. Common Cause*, 139 S. Ct. at 2499–2500 (citing Vieth v. Jubelirer, 541 U.S. 267, 291 (2004)).

254. *Id.* at 2500.

255. *Id.* at 2501; *see also* Evenwel v. Abbott, 136 S. Ct. 1120, 1134 (2016) (Thomas, J., concurring) (discussing the Court's lack of clarity when attempting to explain the one person, one vote principle).

256. *Evenwel*, 136 S. Ct. at 1133.

257. *See* U.S. CONST. art. 1, § 2 (limiting the representation of the people to the lower house); *see also* Reynolds v. Sims, 377 U.S. 533, 537 (1964) (attempting to adjudicate equality of representation in proposed legislative districts); *see also Evenwel*, 136 S. Ct. at 1133 (adjudicating the equality of districts produced by a uniform districting method).

258. *See Reynolds*, 377 U.S. at 537 (attempting to adjudicate equality of representation in proposed legislative districts); *see also Evenwel*, 136 S. Ct. at 1133 (adjudicating the equality of districts produced by a uniform districting method).

259. *Reynolds*, 377 U.S. at 608–10 (Harlan, J., dissenting) (listing states and their methods of apportionment).

less-populated rural areas.[260] However in 1964, the Supreme Court imposed a uniform method of legislative apportionment based solely on population.[261]

This one-size-fits-all solution shifted the political power to the dense urban areas—resulting in rural underrepresentation.[262] As a result, some states enacted laws favoring urban areas and disregarding rural areas.[263] The resulting taxation and regulation without representation gave rise to various secessionist movements.[264] In some cases, the secessionist movements pre-dated *Reynolds* and the ruling reinvigorated them, while in others the ruling was the primary impetus for secessionist fervor.[265]

To limit rural marginalization, this Comment proposes overruling *Reynolds*' application to the upper chamber of a bicameral state legislature and allowing states to implement the Little Federal Model.[266] This proposal would retain the population requirement for apportioning state legislative districts only for the lower chamber of a bicameral state legislature.[267] The states would have the option of apportioning the upper chamber based on means other than population.[268]

The Founders sought to create a government that would further the interest of the majority while protecting rights of the minority.[269] The Little Federal Model would allow states to find a method of balancing the competing interests of the majority and the rights of the minority.[270] In seeking that balance, the states would be able to better achieve the Founders' vision for a republican form of government.[271]

260. *Id.* at 610 (Harlan, J., dissenting).

261. *Id.* at 568.

262. Reynolds, *supra* note 123.

263. *Supra* Sections III.A.–III.B.

264. *Supra* Section III.A.

265. *Supra* Section III.A.

266. *Supra* Part IV.

267. *Supra* Part IV.

268. *Supra* Part IV.

269. THE FEDERALIST NO. 10 (James Madison).

270. *See* THE FEDERALIST NO. 51 (Alexander Hamilton) (explaining how forming separate and distinct legislative chambers limits protects the minority rights from infringement).

271. *See* THE FEDERALIST NO. 10 (James Madison) (explaining the government's role in balancing majority's interests without infringing the minority's rights).