IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1945

No. 804

KENNETH W. COLEGROVE, PETER J. CHAMALES AND KENNETH C. SEARS,

Appellants,

vs.

DWIGHT H. GREEN, AS A MEMBER EX-OFFICIO OF THE PRIMARY CERTIFYING BOARD OF THE STATE OF ILLINOIS, EDWARD J. BARRETT, AS A MEMBER EX-OFFICIO OF THE PRIMARY CERTIFYING BOARD OF THE STATE OF ILLINOIS AND ARTHUR C. LUEDER, AS A MEMBER EX-OFFICIO OF THE PRIMARY CERTIFYING BOARD OF THE STATE OF ILLINOIS,

Appellees.

ON APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS, EASTERN DIVISION.

BRIEF OF BETTER GOVERNMENT ASSOCIATION, AN ILLINOIS CORPORATION NOT FOR PROFIT, AS AMICUS CURIAE.

ABRAHAM W. BRUSSELL,
Attorney for Better Government Association, Amicus Curiae.
135 S. LaSalle Street, Room 2254,
Chicago, Illinois.

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SUBJECT INDEX.

	PAGE
Preliminary Statement by B. G. A.	1
Summary of Argument	2-3
ARGUMENT	3
I. The Illinois statute arbitrarily discriminates against and disfranchises thousand of Illinois voters, including plaintiffs	3-16
A. Gross discrimination and disfranchisement exist among Illinois Congressional districts	3
B. Greatest discrimination among Congressional districts in United States is in Illinois	7
C. Congressional districts in other parts of United States	9
D. Futile to apply to Illinois Assembly	11
E. Futile to proceed in Illinois State Courts	13
II. The inequality, discrimination and disfranchisement violate essential nature of plaintiffs' constitutional rights	16-32
A. Essential nature of Federal rights to vote for Federal representatives includes substantial equality of voting power among voters among Congressional districts	16
1. Plaintiffs' rights to vote in Illinois primary are established by Federal Constitution	17
2. Substantial equality in voting powers is one of great purposes of Constitution	18
3. Historical background of Constitutional convention shows political equality in choice of Federal representatives was essential	19
4. Equality of representation is foundation of representative government	23

PAGE

5. Necessary implications of Constitutional provisions is that voting for representatives must be equal 25
6. Congressional practice recognized requirement of equality of representation 26
7. State Courts recognized that equality of voting power is essence of representative government 28
8. Plaintiffs' rights are vital 30

III. The Illinois statute violates the provisions of the Constitution of the United States 32-42

A. The statute abridges plaintiffs' privileges within meaning of 14th Amendment, Section 1 32

B. The statute denies plaintiffs the equal protection of the laws within the meaning of 14th Amendment, Section 1 36

C. The statute deprives plaintiffs of their liberty and property without due process of law within meaning of 14th Amendment 39

IV. The Federal judiciary has the judicial power to enforce plaintiffs' rights 43

A. Plaintiffs' rights are legal rights 43

B. A controversy exists within meaning of Article III, Section 2, Clause 1 of the Constitution 44

C. Suit is not against State sovereign within meaning of 11th Amendment 45

D. The District Court had jurisdiction to grant injunctive relief 47

E. The District Court had jurisdiction to grant a declaratory judgment 59

V. The balance of convenience is in favor of granting injunctive and declaratory relief to plaintiffs 62-67

PAGE

VI. The decision in Wood v. Broom, 287 U. S. 1 (1932), does not preclude plaintiffs from obtaining relief 67-73

A. The decision is not applicable to the facts in the case at bar 67

B. Under American doctrine of stare decisis, Wood v. Broom, being unsound, will be overruled by this court 71

Conclusion 73

TABLE OF CASES.

Abie Bank v. Weaver, 282 U. S. 765, 772 71

Aetna Life Ins. Co. v. Haworth, 300 U. S. 227, 241 61

Allgeyer v. Louisiana, 165 U. S. 578, 589 (1897) 42

Anderson v. Transandine, 289 N. Y. 9, 43 N. E. (2d) 502, 504 59

Anthony v. Burrow, 129 Fed. 783 (C. C. Kan. 1904) 52

Attorney General v. Suffolk County, 224 Mass. 598, 113 N. E. 581, 584, 585 ..... 29, 40

Breedlove v. Suttles, 302 U. S. 277, 283 ..... 17, 34

Brown v. Saunders, 159 Va. 28, 36, 39, 48; 166 S. E. 105, 109, 111 30

Carroll v. Somervell, 116 Fed. (2d) 918, 920 58

Cleveland Co. v. Kinney, 262 Fed. 980 (D. C. Minn. 1919) 52

Coleman v. Miller, 307 U. S. 433 58

Colgate v. Harvey, 296 U. S. 404 33

Cook v. Fountain, 3 Swanston 585, 600 (1672) 54

Corfield v. Coryell, 6 Fed. Cases 546 (Fed. Case No. 3230) (1823, C. C. Pa.) 32

Currin v. Wallace, 306 U. S. 1, 9 60

PAGE

TABLE OF CASES (continued).

Daly v. Madison County, 378 Ill. 357, 363, 364.....6, 12, 13, 72
Douglas v. Jeannette, 319 U. S. 157 (1943)..... 67
Dunbar v. City of New York, 251 U. S. 516, 519..... 71

Edwards v. California, 314 U. S. 160, 182..... 33
Ex Parte Siebold, 100 U. S. 371, 388..... 28
Ex Parte, Yarbrough, 110 U. S. 651, 661.....17, 33, 43
Ex Parte Young, 209 U. S. 123, 152, 155..... 46

Feinglass v. Reinecke, 48 Fed. Supp. 438 (D. C. Ill. 1942) 52
Fergus v. Kinney, 333 Ill. 437, 164 N. E. 655 (1928) 15
Fergus v. Marks, 321 Ill. 510, 152 N. E. 557 (1926) 14

Georgia v. Stanton, 6 Wall. 50, 75, 76, 77 (1867)..... 59
Giles v. Harris, 189 U. S. 475.....48, 50, 51, 53
Graves v. Schmidlapp, 315 U. S. 657, 665..... 71
Great Lakes v. Huffman, 319 U. S. 293, 301..... 61
Greene v. Louisville & I. R. R., 244 U. S. 499, 507.... 46
Greene v. Mills, 69 Fed. 852 (C. C. A., S. C. 1895).... 52
Grigsby v. Harris, 27 Fed. (2d) 942, 945 (D. C. Tex. 1928) 49
Grosjean v. Amer. Press, 297 U. S. 233..... 63

Hague v. C.I.O., 307 U. S. 496, 500, 508, 512..... 33, 63
Harrisonville v. Dickey Co., 289 U. S. 334, 338, n. 2.... 51
Hawke v. Smith, 235 U. S. 221..... 51
Hazel Atlas Co. v. Hartford Co., 322 U. S. 238, 248.... 57
Helvering v. Hallock, 309 U. S. 106, 121..... 71, 72
Hillsborough v. Cromwell, decided Jan. 29, 1946..... 60, 67

PAGE

TABLE OF CASES (continued).

Holloway v. Fed. Reserve Co., 21 Fed. Supp. 516, 518 57

Holmberg v. Armbrecht, opinion filed Feb. 25, 1946.... 57

Holmes v. Oldham, Fed. Case No. 6,643 (C. C., N. C. 1877) 52, 56

Huddleston v. Dwyer, 322 U. S. 232, 237..... 67

Hume v. Mahan, 1 Fed. Supp. 142, 146-149 (D. C. Ky. 1932) [Rev'd. in 287 U. S. 575]..... 48

Hurtado v. California, 110 U. S. 516, 535 (1884)..... 42

In Re Summers, 325 U. S. 561.....44, 45, 58, 61

International News v. Assoc. Press, 248 U. S. 215, 266 50

Johnson v. Clarke, 25 Fed. Supp. 285 (D. C. Tex. 1938) 52

Jones v. Campbell, 63 Fed. 2d 58..... 57

Keogh v. Neely, 50 Fed. 2d 685 (1931) (dismissed for want of jurisdiction, 284 U. S. 583)..... 15

Lane v. Wilson, 307 U. S. 268, 272..... 50

Leo Feist v. Young, 138 Fed. 2d 972..... 57

Louisville & N. R. R. v. Garrett, 231 U. S. 298, 303, 304 62

Love v. Griffiths, 266 U. S. 33..... 48, 49

Marbury v. Madison, 1 Cranch. 137 (1803)..... 66

Mayo v. Lakeland Canning Co., 309 U. S. 310..... 62

Madden v. Kentucky, 309 U. S. 83..... 33

McPherson v Blacker, 146 U. S. 1, 23, 24 48

Miller v. Ferro Carrill, 137 Maine 251; 18 Atl. 2d 688, 691 53

Minnesota v. Nat'l. Tea Co., 309 U. S. 551..... 62

PAGE

TABLE OF CASES (continued):

Missouri ex rel. Gaines v. Canada, 305 U. S. 337 (1938) 38

Moran v. Bowley, 347 Ill. 148 (1932) 12, 35, 42, 47, 72

Morgan v. Beloit, 7 Wall. 613, 619 54

New v. Oklahoma, 195 U. S. 252, 256 70

Nixon v. Herndon, 273 U. S. 536, 540 ..... 36, 41, 43, 50, 51, 53

Nixon v. Condon, 286 U. S. 73 ..... 37, 53

Olmstead v. United States, 277 U. S. 438, 470 64

Pennsylvania v. West Va., 262 U. S. 553, 610 51

Pennsylvania v. Williams, 294 U. S. 176, 185 57

People v. Blackwell, 342 Ill. 223, 173 N. E. 750 (1930) 15

People v. Clardy, 334 Ill. 160, 165 N. E. 638 (1929) 15

People v. District Court, 86 Pac. 87 59

People v. Hurlbut, 24 Mich. 44, 107, 9 Am. Rep. 103, 114-115 (1871) 42, 58

People v. Thompson, 155 Ill. 451, 475; 40 N. E. 307 (1895) 14

People v Tool, 86 Pac. 224, 229, 231 59

Pierce v. Society of Sisters, 268 U. S. 510, 535, 536 63

Radio Station WOW v. Johnson, 326 U. S. 120, 132 57

Ragland v. Anderson, 125 Ky. 141, 100 S. W. 865, 869 29

Railway Ass'n. v. Cossi, 326 U. S. 88, 93 60

Raymond v. Chicago Traction, 207 U. S. 20, 38 46

Reagan v. Farmers' Loan, 154 U. S. 362, 390 46

Russell v. Superior Journal, 47 Fed. Supp. 282 57

Schneider v. Schneider, 141 Fed. 2d 542 57

Slaughterhouse Cases, 16 Wall. 36 ..... 32, 33

PAGE

TABLE OF CASES (continued):

Smith v. Allwright, 321 U. S. 649, 661, 662 (1944) 17, 30, 33, 43, 47, 66, 72

Smyth v. Ames, 169 U. S. 466 (1898) 518, 519..... 46

Snowden v. Hughes, 321 U. S. 1, 11.....32, 38, 40

Southern Calif. R. R. v. Rutherford, 62 Fed. 796..... 57

So. Pacific R. R. v. Arizona, 325 U. S. 761, 769..... 43

Steele v. L. & N. R. R., 323 U. S. 192, 204, 226, 234.... 44

Sterling v. Constantin, 287 U. S. 378, 393, 394.....46, 62, 63

State ex rel. Parker v. Corcoran, 155 Kan. 714; 128 Pac. 2d 999..... 53

Sunday Lake Co. v. Township Wakefield, 247 U. S. 350, 352 (1918) 38

Thompson v. Central Ohio R. R., 6 Wall. 134, 137.... 54

Truax v. Corrigan, 257 U. S. 312, 331, 333.....20, 31, 38, 50

Truax v. Raich, 239 U. S. 33, 36..... .... 46, 63

Teft & Co. v. Munsuri, 222 U. S. 114, 119..... 70

Twining v. New Jersey, 211 U. S. 78, 96, 97..... 17, 33

The Edward, 1 Wheat. 261, 275, 276..... 70

Tigner v. State of Texas, 310 U. S. 141, 147..... 71

Union Pac. R. R. v. Rock Island R. R., 163 U. S. 564, 600, 601 56

United States v. Classic, 313 U. S. 299 (1941), 316, 329 .....17, 18, 28, 33, 34, 36, 39, 41, 43, 47

United States v. Mitchell, 271 U. S. 14..... 70

United States v. More, 3 Cranch. 159, 172..... 70

United States v. Mosely, 238 U. S. 383..... 17

Virginian R. R. v. System Fed., 300 U. S. 515, 552.... 57

Webb v. Portland Mfg. Co., 29 Fed. Cases No. 17322 57

PAGE

TABLE OF CASES (continued):

Webster v. Fall, 266 U. S. 507, 511 70

Weil v. Calhoun, 25 Fed. 865 (C. C. Ga. 1885) 52

West Coast Hotel v. Parrish, 300 U. S. 379, 399 71

Wesson v. Galef, 289 Fed. 621, 622 (D. C., N. Y. 1922) 52

West Va. Bd. of Education v. Barnette, 319 U. S. 624 ..... 63, 66

Wiley v. Sinkler, 179 U. S. 58, 64 ..... 17, 33, 48, 53

Wood v. Broom, 287 U. S. 1 (1932) 3, 12, 16, 28, 51, 62, 67, 72, 73

Wood v. State, 169 Miss. 790; 142 So. 747, 766 30

Z. & F. Assets Co. v. Hull, 114 Fed. 2d 464, 468 (Ct. App., Dist. Col.) 59

STATUTES.

Laws of Ill., 1901, p. 3 4

Laws of Ill., 1901, p. 6 (Ill. Rev. Stat. 1945, Chap. 46, Sec. 157, p. 1590) 14

Laws of Ill., 1931, p. 545 12

Laws of New York, 1942, Chap. 904; 1943, Chap. 587; 1944, Chap. 726 (McKinney's Consol. Laws of N. Y., Book 56, Sec. 110, p. 126) 8

United States Statutes at Large:

31 Stat. 933 (Act of Jan. 16, 1901, c. 93) 4

37 Stat. 13 4

46 Stat. 26 4

8 U. S. C. A., Sec. 43 ..... 44, 47

8 U. S. C. A., Sec. 41 (14) 47

PAGE

CONSTITUTIONS.

Art. I, Sec. 2, United States Constitution 25

Art. III, Sec. 2, Clause 1, United States Constitution 44

Fourteenth Amendment, United States Constitution:
Section 1 41
Section 2 ..... 35, 36

Illinois Constitution of 1870, Art. II, Sec. 18 ..... 12, 13, 72

Illinois Constitution of 1870, Art. IV, Sec. 6 13

LEGAL TEXTBOOKS AND ANNOTATIONS.

18 Amer. Jurisprudence 192, Sec. 17 47

18 Amer. Jurisprudence 197, Sec. 24 56

American Lawyers' Reports:
2 A. L. R. 1337, 1350 29
14 A. L. R. 295, 300, 305 57
33 A. L. R. 1379, 1384 56
43 A. L. R. 408 46
58 A. L. R. 588 56

3 Blackstone, "Commentaries" 109 57

Cooley, "Principles of Constitutional Law" (3rd ed. 1898) p. 263 ..... 41, 58

20 Corpus Juris, 60, n. 35, n. 36 ..... 41, 58

25 Corpus Juris, 978 58

29 Corpus Juris Secundum 24, n. 11, n. 12 ..... 41, 58

36 Corpus Juris Secundum 522 58

LEGAL PERIODICALS.

31 Amer. Bar Assoc. Journal 501 (Oct. 1945) "Stare Decisis" 72

64 Central Law Journal 402 (1907) 59

14 Columb. L. R. 287 (1914) 55

PAGE

LEGAL PERIODICALS (continued).

1 Geo. Wash. L. Rev. 119 (1932) 73

17 Green Bag 159 (1905) 59

29 Harv. L. Rev. 640, 681 (1916); Pound, "Equitable Relief Against Defamation and Injuries to Personality" 52

42 Harv. L. Rev. 1015, 1022 (1929); Chaffee, "Congressional Reapportionment" 64

57 Harv. L. Rev. 1, 3; Pound, "A Survey of Social Interests" 55

21 Ill. Bar J. 27 (Mar. 1933) 73

22 Ill. Bar J. 50 (Oct. 1933) 55

18 Iowa L. R. 400 (1933) 73

22 Ky. L. J. 417-26 (Mar. 1934) 16

31 Mich. L. Rev. 149, 164, 172 (1932); Bowman, "Congressional Redistricting" 37, 63, 73

17 Minn. L. Rev. 321 (1933) 73

10 N. Y. U. L. Q. R. 396 55

6 Univ. Chi. L. Rev. 296, 299, n. 26 (1939) 37

81 Univ. Pa. L. Rev. 343 (1933) 73

NON-LEGAL PERIODICALS.

25 Am. Pol. Sci. Rev. 634-649 (Aug. 1931) 16

27 Am. Pol. Sci. Rev. 58-63 (Feb. 1933) 16

National Municipal Review (Mar. 1938) 16

30 Nat. Mun. Rev. 73-9 (Feb. 1941) 16

NON-LEGAL TEXTBOOKS.

Barlow: "Advice to Privileged Orders" (1792) 20

Beard: "The Republic" (1943), pp. 34, 35 ..... 21, 25

PAGE

NON-LEGAL TEXTBOOKS (continued).

Beard: "The Rise of Amer. Civilization" (1940), Vol. I, p. 103 20

5 Encyc. of Social Sciences, 80 b, 81 b 24

Gettell: "Hist. of Amer. Political Thought" (1928), pp. 87, 125-126 ..... 20, 23

Greenbie: "American Saga" (1939), p. 1 19

Morrison and Commager, "Growth of Amer. Republic" (1937), Vol. I, p. 165 19

Parrington, "Main Currents in American Thought" (1930), Vol. I, pp. 237, 246 20

Schlesinger: "The Age of Jackson" (1945), 410, 416 65

Schmeckebier, Lawrence F., "Congressional Apportionment" (1941), p. 129 ..... 10, 16

Warren: "The Making of the Constitution" (1928), pp. 158, 211, 272, 288-292, 293, 296, 297 ..... 20, 21, 22, 23

Williams: "The Amer. Mind" (1937), pp. 233-239 20

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BRIEF OF BETTER GOVERNMENT ASSOCIATION, AN ILLINOIS CORPORATION NOT FOR PROFIT, AS AMICUS CURIAE.

Preliminary Statement.

This brief is filed by the Better Government Association, an Illinois corporation, not for profit, as *amicus curiae.* The Association, hereinafter referred to as B. G. A. was permitted to intervene in the same capacity in the hearings in the District Court (R. 37, 45) where it filed briefs and participated in oral argument The B. G. A. is composed of a number of civic minded citizens of Cook County, Illinois, most of whom reside in Chicago. Under its corporate charter B. G. A. is authorized to and does act in a non-partisan capacity in furthering civic measures which in the opinion of its members serve to improve and to better government in the State of Illinois. For many years past the B. G. A. has interested itself in the problem

of redistricting Congressional districts in Illinois. Representatives of the B. G. A. have appeared before the Illinois Assembly in an attempt to persuade the Assembly to pass legislation to redistrict the Congressional districts in Illinois to the end that the districts have substantial equality in voting power and representation in the United States' House of Representatives. Such appearances in the Illinois Assembly were non-partisan in character. As *amicus curiae* B. G. A. urged in the District Court and respectfully urges in this Honorable Court that the authorities support the appellants (plaintiffs) in this cause.

The appellants, plaintiffs below, shall hereinafter in this brief be referred to as plaintiffs. The appellees, defendants below, shall be referred to as defendants.

This brief by B. G A. as *amicus curiae* is limited to the Constitutional questions arising on the record.

SUMMARY OF ARGUMENT.

I. The Illinois Congressional Apportionment Act of 1901 arbitrarily discriminates against and disfranchises hundreds of thousands of Illinois voters, including plaintiffs. The discrimination in Illinois is greater than discrimination in other states. Attempts to seek relief in Illinois Assembly and in Illinois State Courts have been uniformly unsuccessful.

II. The inequality, discrimination and disfranchisement violate the essential nature of plaintiffs' constitutional rights. The essential nature of the constitutional right to vote for Federal representatives necessitates a substantial equality of voting power among voters in the Illinois Congressional districts.

III. The Ill. Congr. Apport. Act of 1901 violates the provisions of the United States' Constitution. It abridges plaintiffs' privileges, denies plaintiffs the equal protection of the laws, and deprives plaintiffs of their liberty and property without due process of law within the meaning of the 14th Amendment, Section 1.

IV. The Federal Judiciary has the judicial power to enforce plaintiffs' rights. The plaintiffs' rights are legal rights. The suit is a case or controversy within the meaning of the Constitution. The suit is not against the State sovereign within the 11th Amendment. The District Court had jurisdiction to grant equitable i.e. injunctive relief or declaratory relief or both.

V. The equities favor granting plaintiffs an injunction, declaratory relief or both.

VI. The decision in *Wood* v. *Broom,* 287 U. S. 1 (1932) does not preclude plaintiffs from obtaining relief. Strictly considered as a matter of *stare decisis* it is not a precedent because the facts are different than in case at bar. If a precedent it is unsound and should be overruled.

ARGUMENT.

I. The Illinois statute arbitrarily discriminates against and disfranchises hundreds of thousands of Illinois voters, including plaintiffs.

A. Gross discrimination and disfranchisement exist in Illinois Congressional districts.

Factually the Illinois 1901 Congressional Apportionment Act creates a gross inequality of population among Congressional districts in Illinois. This gross inequality factually amounts to arbitrary discrimination against and partial disfranchisement of hundreds of thousands of voters in Illinois, including the plaintiffs.

This statement of fact is conclusively proved by an examination of the incontrovertible statistics of the population of Illinois Congressional districts set out in the Appendices to this brief. Appendix A enumerates the population of the 25 Congressional districts of Illinois as found in the United States census from 1900 through 1940. Appendix B shows the mathematical relationships in terms of percentages between the various Congressional districts and the average sized Illinois district i.e., the district representing the division of Illinois into 25 *equal*

districts. These two Appendices portray the historical growth—or decline—of the district populations in absolute numbers and in comparative percentages.

Before examining the details of the statistics let us consider the number of representatives and the number of districts. The last division of the State of Illinois into Congressional districts was made in 1901 by the statute challenged in this case (Laws of Illinois, 1901, p. 3). At that time Illinois was entitled to 25 Congressmen, under the United States Congressional Apportionment Act of January 16, 1901, c. 93; 31 Stat 933. In 1911 Congress passed the Apportionment Act which based on the census of 1910 (37 Stat 13) allowed 27 Congressmen to Illinois. The state did not redistrict, i.e., did not provide any new Congressional districts for the two additional Congressmen. Instead the two additional Congressmen were elected at large. Congress failed to reapportion the membership of the House of Representatives after the census of 1920. Despite public clamor for action by Congress to reapportion, no action was taken until 1929. In 1929 Congress passed the statute providing for automatic apportionment of representatives among the several states in the event that Congress failed specifically to reapportion at the regular session following each decennial census (46 Stat. 26).

Reapportionments after the 1930 and 1940 census followed in 1931 and 1941 respectively under the automatic provisions of the law of 1929. The state had elected two Congressmen-at-large from a period of time following the 1910 census until the reapportionment in 1941 following the 1940 census. Under this "automatic" 1941 reapportionment the number of Illinois Congressmen was reduced from *27* to *26*. Accordingly in 1942 and 1944, Illinois elected 25 Congressmen from the 25 Congressional districts provided by the Illinois Congressional Apportionment Act of 1901, and *one* Congressman was elected-at-large.

The statistics of Appendices A and B show an enormous inequality of population among the 25 districts. The 1940 census figures for the various Congressional districts in Illinois indicate an extreme variation in population. Such variation has been progressively increasing since 1900 See Appendices A and B.

The variation between districts is most striking in the Congressional districts contained in Cook County, the Fifth District having a population of 112,116, and the Seventh District having a population of 914,053. In other words, one voter in the Fifth District has the voting power equal to that of more than eight voters in the Seventh District. Voters in the Sixth, Tenth and Second Districts have only a little less than a sixth of the voting power of voters in the Fifth District. A voter in the Third District has approximately only one-fifth the voting power of a voter in the Fifth District.

The average population of the Illinois districts in 1940 was 315,890. The smallest district was the Fifth, with a population of 112,116, and the largest was the Seventh, with a population of 914,053. Both of these districts are in Cook County. Similar extremes are found in other districts in Cook County, namely, the Sixth with a population of 641,719; the Tenth with a population of 625,359; the Second with a population of 612,641; and the Third with a population of 575,799.

Comparison of the figures of the other large population districts, the Seventh, Sixth, Tenth, Second and Third Districts may also be made with other low population districts in Cook County, namely, the Eighth with a population of 123,743, and the First with a population of 140,527.

But, extreme variation exists in the Illinois districts other than Cook County. The Eleventh has a population of 385,207. The Twentieth has a population of 162,528. Other substantial variations in population exist among the "downstate" districts, i.e., Districts 11 to 25, inclusive (see Appendix A).

If we compare the first 10 districts (Cook and Lake County) with Districts 11 to 25, inclusive ("downstate" Illinois) we see there is a striking discrimination against the voters in the Congressional districts found in Cook County (including Lake County), as compared to those found "downstate," i.e., the remainder of the state. The population of Cook County under the 1940 census was 4,063,342. Downstate had a population of 3,833,899. On the basis of mathematical percentages Cook County, with 51.4% of the population, was entitled to approximately thirteen and one-half Congressional districts, while downstate would be entitled to twelve and one-half Congressional districts. (That is on the assumption that the state would be divided into *26* districts.) But under the 1901 redistricting act, Cook County has approximately 9.8 districts, with the remainder of the state having approximately 15.2 districts out of *25* existing districts. Cook County, instead of receiving 51.4% of the Congressmen from Illinois, receives only approximately 37.5%.

Stated in terms of percentages, there are ~~seven~~ five districts in Cook and Lake County which have a population grossly in excess of the state average. Two districts have a population of more than twice the average for the state (Districts 6 and 7). Five districts have a population of approximately 50% more than the state average (Districts 2, 3, 6, 7 and 10). In the entire state there are twelve districts that have a population 25% below the state average: Five of those are in Cook County (Districts 1, 4, 5, 8 and 9), and seven are downstate (13, 14, 15, 17, 18, 20 and 24). Three of the Cook County Districts have a population which is more than 50% below the state average (Districts 1, 5 and 8).

Another analysis revealing the grossly disproportionate size of the 1940 population of the 25 Illinois Congressional districts is found in *Daly* v. *Madison County,* 378 Ill. 357, 360, 361 (1941).

The foregoing facts strikingly show that at the present time:

1. There is arbitrary and unbridled discrimination among the voters in the various Congressional districts contained in Cook County. A voter living in the Fifth Congressional District has the voting strength of over eight voters living in the Seventh District—just across the street from the Fifth District voter. Similarly, the mere fortuity of a street address would give the voter living in the Fifth District a voting strength of almost six voters in the Sixth, Tenth or Second Districts, and a voting strength of five times that of a voter living in the Third District. That is the factual situation with respect to inequality of the voters living in Cook County.

2. There is gross arbitrary discrimination between various voters in Illinois without regard to residence in Cook County or "downstate." Some of the state's smallest districts, i.e., most over-represented, are found in Cook County, and some of the larger districts, i.e, the most under-represented, are found downstate

3. Considered as a whole the voters of Cook County and Lake County, i.e., metropolitan Chicago area, have substantially less voting power in their choice of representatives in Congress than do the voters in downstate Illinois. Cook and Lake Counties together have approximately 53% of the population but have only 40% of the Congressmen, i.e., 10 out of 25. On the basis of population they are entitled to 14 of the 26 Congressmen.

B. Discrimination in Illinois is greater than discrimination in other states.

At the present time, inequality in voting power among the various Congressional districts, is *greater* in Illinois than in any other state of the United States. The statistics are found in Appendix C.

In 1941 the approximate normal district population in

the United States was 301,127 (i.e., 131,000,000 divided by 435, the membership of the House of Representatives) In 1941 there were 10 districts in the United States having a population greater than twice that of the average district population of 301,127. Of these 10 districts, 4 were in the Chicago area. That included the largest district, the Seventh. New York City had 5 and Cleveland had 1. The eleventh largest district was also a Chicago area district, namely, the Third.

The New York Legislature in 1942 enacted legislation which became effective in 1944, eliminated the gross inequalities in voting power in New York. See New York Laws 1942, Chap. 904, Sec. 3, effective January 1, 1944; Laws, 1943, Chap. 587, effective April 17, 1943; Laws, 1944, Chap. 726, effective April 10, 1944, found in McKinney's Consolidated Laws of New York, Book 56, Sec 110, at page 126. Accordingly at the present time there are only six extremely large districts in the United States, which are as follows:

7th Illinois District (Chicago)	914,053
22nd Ohio District (Cleveland)	698,650
6th Illinois District (Chicago)	641,719
10th Illinois District (Chicago)	625,359
2nd Illinois District (Chicago)	612,641
3rd Illinois District (Chicago)	575,799

The same inequality exists in the United States with regard to the small districts. In 1941 there were 11 Congressional districts having populations less than one-half the country's average of 301,127. Seven of these were in New York City and three in Chicago. The eleventh smallest was the district comprised by the entire State of Nevada, having a population of 110,247. After the 1942 redistricting in New York the four smallest districts in the United States are as follows:

State of Nevada	110,247
5th Illinois District (Chicago)	112,116
8th Illinois District (Chicago)	123,743
1st Illinois District (Chicago)	140,527

There are two other small Chicago districts, namely, the Ninth, with a population of 215,175, and the Fourth with a population of 223,304.

These statistics show that the Chicago area has the greatest variations in size of Congressional districts in the entire United States, having almost all of the very large and all of the very small Congressional districts.

C. Congressional districts throughout the country.

The 435 members of the House of Representatives are chosen from 41 states divided into districts and from 7 states electing all their representatives at large. As to districts there are 426 single member districts, three two-member districts, and in three states in addition to single member districts, an additional representative is elected from the state at large. Four entire states (Delaware, Nevada, Vermont and Wyoming) are included among the 426 districts, and each of these states is entitled to only one member. Three states (Arizona, North Dakota, and New Mexico) are entitled to two representatives, and in these states they are chosen from the state at large. The only states divided into districts that also elect a member at large are Connecticut, Illinois, and Ohio.

Appendix C reveals certain comparative data concerning the 41 states having Congressional districts The greatest disparity between population of the largest and smallest districts is to be found in Illinois. Illinois has both the largest and the smallest districts in the United States—that is of states that are districted. Nevada with 110,247 population is smaller than the Illinois Fifth District with 112,116 population. But the Constitution demands at least one representative for each state.

In general the greatest disparity between populations of the largest and smallest districts comes in states that have been most negligent in reapportionment. New Hampshire the only state in the Union whose reapportionment dates from an earlier year than that of Illinois is an

exception to this general rule. New Hampshire has had a stable population for some time, and the difference in population between its two Congressional districts is negligible.

An outstanding authority on Congressional apportionment, Lawrence F. Schmeckebier, "Congressional Apportionment" (1941) states, at p. 129:

> "In an ideal state apportionment each district should have the same population, which would be determined by dividing the population of the state by the number of representatives. This ideal can never be attained, but any apportionment which departs widely from it is inequitable. Several methods may be used for determining the extent of the variation, but it is believed that the best and simplest is the maximum relative departure from the average. This is obtained by dividing the average into the difference between the average population and the population of the district which shows the greatest departure either above or below the average."

Appendix C shows the 41 states ranked in accordance with Schmeckebier's method of determining variations. In Illinois where there are 25 districts, the average population is 315,890. The district having the greatest departure from the average has a population of 914,053. As the average is 315,890, the district with a population of 914,053 has a population of 598,163 in excess of the average. By dividing 598,163 (the difference) by 315,890 (the average) we obtain 189.4 per cent as the greatest relative departure.

Recognizing the impossibility of having districts exactly equal, Schmeckebier suggests that a 20 per cent deviation from the average would permit a fair and workable tolerance. Judged upon this basis, only 10 of the 41 states have an equitable division among the districts. But Illinois is by far the worst offender.

Another method, suggested by Mr. Schmeckebier, of judging variation between districts within the states, is in accordance with a plan recently suggested in Congress.

In 1939, Representative William Lemke of North Dakota introduced H. R. 5099, 76th Cong., 1st Session, which would have required all states to choose their representatives at large if the population of the largest district exceeded that of the smallest by more than 50 percent. According to this standard, under Appendix C, 17 states have a reasonable division, and 24 do not. Apply such a test to the situation in Illinois, and it is evident that the disparity between districts is much greater. Take the district with the largest population, 914,053, and subtract from it the population of the smallest district, 112,116. The difference is 801,937. By dividing 112,116 (population of the smallest district) into 801,937 (difference between the smallest and the largest) we get 715.3 per cent.

By both standards suggested, *supra,* the Illinois districts are by far the most unequal in the nation. In Illinois as in most other states the largest district comprises a part or all of the largest city of the state. This is true of 22 of the 41 states shown in Appendix C, and significantly enough, it is true of 9 of the first 10 states shown. From Appendix C the inference may be drawn that state legislatures have "weighted" the voting power so as to discriminate against large city dwellers in favor of rural communities and the small villages and towns

D. Historical background shows futility of attempts to persuade Illinois Assembly to perform its Constitutional duty to redistrict.

The people of the State of Illinois have consistently and unsuccessfully attempted to have the Illinois Assembly redistrict the state. Appendix F convincingly demonstrates that ever since 1919 and up to 1945 the Illinois Assembly has been requested to adopt redistricting acts, i.e, to apportion the State of Illinois, into the proper number of substantially equal Congressional districts. With the exception of the 1931 Assembly, all of these attempts met with failure. The Assembly has refused to act.

The history of the 1931 Act is illuminating. In 1931 the Illinois General Assembly passed an act which divided the state into 27 Congressional districts and eliminated the necessity of choosing two representatives-at-large (Laws of 1931, p. 545). Even under such statute there existed substantial inequalities between districts, the population ranging from 158,738 to 541,785 *This* statute was declared unconstitutional by the Illinois Supreme Court in 1932 in *Moran* v. *Bowley,* 347 Ill. 148, on the ground that it violated, first, the Act of Congress of 1911 requiring Congressional districts to be composed of compact and contiguous territory and to contain as nearly as practicable an equal number of inhabitants; and, second, on the ground that it violated the provisions of Article II, Section 18, of the Illinois Constitution of 1870 which required all elections to be free and equal.

However, the decision of this court in *Wood* v. *Broom,* 287 U. S. 1 (October 18, 1932) convinced the Illinois authorities that the decision of the Illinois Supreme Court in *Moran* v *Bowley, supra,* should be disregarded. Consequently, bills to redistrict were again introduced starting in the 1933 Assembly. The bills were rejected. And the action of the Assembly, in assuming that the 1901 Act was still in full force and effect, was confirmed by the decision of the Illinois Supreme Court in 1941 in *Daly* v *Madison County,* 378 Ill. 357. In that case the Illinois Supreme Court ruled that the decision in *Wood* v *Broom* "eliminates any question as to any duty being imposed upon the legislature to provide for the election of Congressmen from districts composed of contiguous and compact territory, and the preservation of equality as to the number of inhabitants contained therein, under the Federal statutes. That there was nothing in the 14th Amendment which would render invalid Congressional districts created by State legislation, on the ground that they are unequal in population, was settled by the decision of the Supreme

Court of the United States in *Wood* v. *Broom, supra*" (378 Ill. 363, 364). The Illinois Supreme Court refused to consider on the 1901 Act the contention previously decided in *Moran* v. *Bowley,* 347 Ill. 148, that the 1931 Statute violated the provisions of Article II, Section 18, of the Illinois Constitution of 1870, providing that all elections shall be free and equal, on the ground equity had no jurisdiction to enforce political rights.

Efforts were made at the various subsequent legislative sessions in Illinois up to and including the session in 1945, to enact redistricting legislation. All of these were uniformly unsuccessful.

As the record now stands, at least 19 formal redistricting bills were introduced in the Illinois Assembly. All but one failed to pass. Defeats were either on parliamentary technicalities, or failure to be reported out of committee, or on votes taken.

These failures in the past 26 years of legislative attempts paint a sordid picture. It is suggested that only one inference can be drawn from the conduct of the Illinois Assembly: It is extremely improbable that the Illinois Legislature will, of its own volition, pass a proper redistricting act.

E. Illinois citizens have sought relief in the courts but have failed so far.

References have previously been made to the attempt of the Illinois citizens to seek relief against the Illinois Apportionment Act of 1901 in the Illinois State courts. Under the decision in *Daly* v. *Madison County,* 378 Ill. 363, there is no hope for any favorable ruling by the state courts on the Illinois Apportionment Act of 1901.

There are decisions reporting upon an analogous problem in Illinois, namely, of the attempts to secure *Illinois Assembly reapportionment,* which is specifically commanded by the provisions of Article IV, Section 6 of

the Illinois Constitution of 1870, requiring apportionment every ten years for Senatorial districts.

The last division of the state into Senatorial districts was also made in 1901 (Laws of Illinois, 1901, p. 6). Ill. Rev. Stat. 1945, Chap. 46, Sec. 157, p. 1590. This Statute although entitled as referring to State Senatorial districts provides for Senatorial districts from which *both* State Senators and State Representatives are elected to the Illinois General Assembly. Several attempts have been made since that time to secure a reapportionment, and they too have not been successful.

After repeated failures on the part of the General Assembly to reapportion the state into state legislative districts certain Illinois citizens made some attempts by means of judicial action, to compel the *legislature* to reapportion against its will In 1895, the Illinois Supreme Court had said: "If the legislature should wholly neglect or refuse to pass an apportionment act after the lapse of ten years, and should leave in force an act under which the districts had become grossly unequal in population, the people would have no remedy, outside of a constitutional amendment, except to elect a General Assembly which would perform the duty." (*People* v. *Thompson,* 155 Ill. 451, 475, 40 N. E. 307 (1895)) So when the precise question was presented to the court in 1926, it held that "the judicial department of the State cannot compel by *mandamus* the legislature to perform any duty imposed upon it by law." As stated by the Illinois Supreme Court: "The duty to reapportion the State is a specific legislative duty imposed by the constitution solely upon the legislative department of the State, and it, alone, is responsible to the people for a failure to perform that duty." (*Fergus* v. *Marks,* 321 Ill 510, 152 N. E. 557 (1926).)

But this citizen kept up his struggle. In a subsequent case before the court in 1928, the petitioner alleged in his

bill that because of the failure to reapportion, the members elected did not constitute a legal or constitutional General Assembly, and sought to enjoin the payment of the salaries of the General Assembly. But the court denied relief, saying: The duty to reapportion is vested solely in the General Assembly; and "apart from a constitutional amendment, the people have no remedy save to elect a General Assembly which will perform that duty." (*Fergus* v. *Kinney,* 333 Ill. 437, 164 N. E. 655 (1928).) In 1929 the constitutionality of an act of the legislature was questioned because of the failure to reapportion legislative districts, but the Supreme Court held that it had no authority to declare that the General Assembly which passed the act was not a *de jure* legislative body. (*People* v. *Clardy,* 334 Ill. 160, 165 N. E. 638 (1929).) Subsequent *quo warranto* proceedings questioning the right of members of the General Assembly to hold office because of their failure to reapportion were likewise dismissed. (*People* v *Blackwell,* 342 Ill. 223, 173 N. E. 750 (1930).)

Illinois citizens have attempted to obtain relief in the Federal Courts. Suit was brought by a citizen of Illinois against the Federal Collector of Internal Revenue seeking an injunction to restrain the collection of the federal income tax levied upon plaintiff. Plaintiff contended that the refusal of the Illinois legislature to reapportion had deprived the State of Illinois of a republican form of government and that the failure of the Federal Government to enforce guarantee of the Federal Constitution relieved citizens of Illinois from the payment of the Federal income tax. This contention was held to be without merit by the Circuit Court of Appeals. (*Keogh* v. *Neely,* 50 F. (2d) 685 (1931).) On appeal this court dismissed the case for want of jurisdiction. (284 U. S. 583.) This lawsuit culminated in personal tragedy for this unsuccessful plaintiff Keogh. John W. Keogh, in a subsequent suit filed in the Circuit Court of Cook County argued

before Circuit Judge John Prystalski of Chicago that the Illinois Legislature was illegal. When the judge refused to listen, Mr. Keogh killed the opposing lawyer, and shot at the judge because "something drastic had to be done to awaken the people." Cited in David O. Walter, "Representation of Metropolitan Districts," *National Municipal Review,* March, 1938 Mr. Walter described this incident as follows: "Up to the present time this act of vicarious hara-kari has not had the intended effect." What was true in 1938 is still true in 1946.

The problem of "State redistricting" of Congressional districts is recognized as having a real National significance. Schmeckebier "Congressional Apportionment," at p. 128 (1941). Apportionment is a chronic problem. 30 Nat. Mun Rev. 73-9 (Feb. 1941) In the early 1930's the problem of Congressional redistricting was before state courts, and the federal courts, culminating in this Court's decision in *Wood* v. *Broom,* 287 U. S. 1 (Oct. 18, 1932). The life of the National Government had been touched by the controversies that raged in the States of Minnesota, New York, Mississippi and Kentucky See 25 Am. Pol. Sci. Rev. 634-649 (Aug. 1931); 27 Am. Pol. Sci. Rev. 58-63 (Feb. 1933); 22 Ky. L. J. 417-26 (Mar. 1934). The plaintiffs, citizens of the United States and of the State of Illinois, again have sought relief in the Federal Courts.

II.

The inequality, discrimination and disfranchisement violate the essential nature of plaintiffs' constitutional rights.

A. The essential nature of the Federal right to vote for Federal representatives necessarily demands a substantial equality of voting power among voters in the respective Congressional districts in Illinois.

The basic problem involved in this lawsuit is the determination of the source and nature of the rights that plaintiffs seek to protect.

1. **Plaintiffs' rights to choose Federal representatives by voting in the Illinois primary are established by the Federal Constitution.**

First, what is the source of these rights? After the decision in *U. S.* v. *Classic,* 313 U. S. 299 (1941), it is clear that the source of plaintiffs' rights to choose representatives in Congress is Article I, Section 2, of the United States Constitution Under the cases of *Ex parte Yarbrough,* 110 U. S. 651; 661; *Wiley* v. *Sinkler,* 179 U. S. 58, 64; *Twining* v. *New Jersey,* 211 U. S. 78, 97; and *U. S.* v. *Mosely,* 238 U. S. 383, it had seemed clear that the right of the people to choose Federal representatives was a right established by and guaranteed by the Federal Constitution. However, some doubt was introduced by the language in *Breedlove* v. *Suttles,* 302 U. S. 277, at 283, where this court in quoting from earlier cases, seemed to characterize the right to vote for representatives in Congress as "a right derived from the States." But this momentary doubt was soon removed.

In *U. S.* v. *Classic,* 313 U. S. 299 (1941), this Court held that qualified voters in Louisiana voting for Federal representatives in the primary were "secured by the Constitution," i.e., had a federal right under the Constitution to so vote, within the meaning of Sections 19 and 20 of the Federal Criminal Code, and that the acts of the defendants in altering and falsely counting the ballots of voters in the primary election violated this right secured to the voters by the Constitution within the meaning of such Federal Statutes. This Court was unanimous with regard to the source and nature of the right secured. The three Justices dissented on the question whether or not the Congress, in enacting Sections 19 and 20 of the Federal Criminal Code, had intended to protect the constitutional rights of the voters.

This decision made the law crystal clear. It was approved and followed by this Court in *Smith* v. *Allwright,* 321 U. S. 649 (1944). The court said:

"It may now be taken as a postulate that the right

> to vote in such a primary for the nomination of candidates without discrimination by the State, like the right to vote in a general election, is a right secured by the Constitution." 321 U. S. 661-662.

Accordingly, under the allegations of fact alleged in the complaint plaintiffs' rights to vote in the Illinois primary were established and guaranteed by the Federal Constitution.

2. Substantial equality in voting powers is one of great purposes of Constitution.

Second, what is the *nature* of this right secured and guaranteed by the Federal Constitution?

The reasoning and technique of this Court in arriving at its decision in *United States* v. *Classic,* 313 U. S. 299, cast light upon and help in the determination of the issues in the case at bar. The precise problem before this Court was whether the Federal Constitution protected the right to vote at a primary election since primaries were unknown in 1787. This Court recognized that the "right to choose" national officers must be considered as one of the "great purposes of the Constitution." The Court said:

> "Hence we read its words, not as we read legislative codes which are subject to continuous revision with the changing course of events, but as the *revelation of the great purposes* which were intended to be achieved by the Constitution as a continuing instrument of government * * *. If we remember that 'it is a Constitution we are expounding' we cannot rightly prefer, of the possible meanings of its words, that which will defeat rather than effectuate the constitutional purpose" 313 U. S. at 316. (Italics ours.)

It recognized that the Constitution should not be read with "stultifying narrowness" (313 U. S. 329). We submit that the analysis, reasoning and technique adopted by this court in *U. S.* v. *Classic, supra,* is squarely applicable to the issues in the case at bar. The application of such reasoning and analysis result in the conclusion that the right to choice and the right to participate in

the choice of representatives under the Federal Constitution includes substantial equality of representation and substantial equality among the qualified voters in Illinois in making such choice.

3 Historical background shows that political equality was one of the great purposes of the Constitution.

The historical background of the Constitutional Convention indicates that *one* of the great purposes of the Federal Constitution was the establishment of a democratic, i.e., representative, government based upon the political equality of all Americans. In the establishment of this principle the concept of equality as one of the natural rights of mankind played a great part.

When the Constitutional Convention met in 1787, the delegates brought to the convention the varied thinking of the 13 colonies. Flushed with enthusiasm, proud of their great victory against the strongest power in the world, the delegates fought for ideals as well as for economic security. At that time the doctrine of natural rights of man was a substantial reality in the daily lives of the inhabitants of the original colonies. It is historically erroneous to ignore the economic origins of the American Revolution. See Morrison & Commager: "The Growth of the American Republic" (1937), Vol. I, p. 165. It is similarly inadmissible to disregard the blazing slogans and epigrams of men such as Thomas Paine. Greenbie: "The American Saga" (1939) p. 1. The slogan, "No taxation without representation", coupled at the same time an admission that a government needed revenues, with a demand for recognition of the principle that Americans desired to establish a government of their own choice, by their own reason, and by their own free-will.

The thinking of the inhabitants of the 13 Colonies at the time of the convention, was permeated with the doctrines of natural rights. The system of Anglo-American jurisprudence with which they were familiar was tending

even at that early date to embody some of those natural rights under the existing law. The constitutional delegates, whether they were conscious of these impulses or not, intended to give expression to some of the "natural rights" when they formulated a constitution to set up a government to be accepted by the people. See Gettell, "History of American Political Thought" (1928), p. 87. Parrington: "Main Currents in American Thought" (1930), Vol. I, p. 237. Beard: "The Rise of American Civilization" (1940 ed), Vol. I, p. 103.

One of the principles of the doctrine of natural rights was that of equality. The doctrine of equality was acceptable and real to American thinkers. One of them, Joel Barlow, in his "Advice To The Privileged Orders," written in 1792 and addressed to the "privileged orders" in England, found the entire problem of mankind very simple, for he said:

> "Only admit the original unalterable truth, that all men are equal in their rights, and the foundation of everything is laid. * * * Their (Americans) deep-rooted and inveterate habit of thinking is, that all men are created equal in their rights, that it is impossible to make them otherwise; and that being their undisturbed belief they can have no conception how any man in his senses can entertain any other. This point once settled, everything is settled."

(Quoted in Williams, "The American Mind" (1937), at pp. 233-239) Joel Barlow was expressing the every-day life thinking of Americans. He was repeating the ideas of the Declaration of Independence that "all men are created equal" See also Parrington: "Main Currents in American Thought" (1930), Vol. I, p. 246.

This "basic principle of equality" was one of the essential ingredients in Anglo-American philosophy and society (*Truax* v. *Corrigan,* 257 U. S. 312, 331). It has played a role in shaping our social institutions. It still lives today. The recent decisions of this court striking down

state attempts at discrimination on the basis of race are modern expressions and adaptations of this principle.

With this background of equality as one of the natural rights of mankind, consider the work of the Constitutional Convention as shown by Warren "The Making of the Constitution" (1928). The Convention agreed that the government to be created was to be a government to be formed of and by the people. There was little or no difficulty that the national legislature should consist of two branches (*Warren, "The Making of the Constitution"* (1928), at p. 158). The next step offered difficulty, namely, the Randolph resolution that the members of the first branch of the national legislature ought to be elected by the people of several states. There was bitter debate on this resolution. The clashes were so violent that Benjamin Franklin feared the Convention would come to nought because of the impossibility of reconciling conflicting demands of those steeped in the doctrine of government by the people with those seeking government by state organizations. At one time there was proposed a legislature in which *both* branches were to be elected in proportion to the *populations* of the respective states—the House by the people, the Senate by the state legislatures. See *Warren,* at page 211. Nevertheless, a final compromise was reached. The larger states, which had been contending for the principle of government based solely upon population, i.e., the people, yielded in so far as the Senate was concerned. See *Warren,* pp. 272 *et seq.* But the attempts to substitute wealth as a basis for representation were defeated. Representation was to be based upon the population, i.e., the people. *Warren,* at pp. 288-292.

The line of cleavage in the Convention was a line of cleavage based upon the question of population. It was not between the large and the small states, but was between the Northern and the Southern states. *Warren,* at p. 293.

The Convention having established population as the basis for representation, it became important to provide for changes in the representation of states at regular intervals. It was recognized that unless a duty were imposed upon the national legislature, they would find a pretext to postpone changes and to keep the power. The various representatives urged that a duty should be imposed upon the legislature and that it should not be left at liberty. Randolph urged that it was "*inadmissible that a larger and more populous district of America should hereafter have less representation than a smaller and less populous district.* If a fair representation of the people be not secured, the injustice of the Government will shake it to its foundations." (Italics ours.) *Warren,* p. 296.

General Pinckney "foresaw that if the revision of the census was left to the discretion of the Legislature, it would never be carried into execution. The rule must be fixed and the execution of it enforced by the Constitution." *Warren,* at page 296.

An additional problem was created by the insistence of the Southern states upon the inclusion of negroes as part of the population. Here too a "working" compromise was reached by permitting inclusion of three-fifths of "all other persons." This compromise gave the Southern states an advantage. But the ideal of equality still persisted—the compromise was simply to prevent failure.

The subsequent adoption of the Fourteenth Amendment, Section 2, was a delayed move in the direction of the *democratic* ideal advanced in 1787 by the delegates from the Northern states, and opposed by those from the Southern states. Time and experience vindicated the democratic ideal. See Beard, "The Republic," (1943,) at p. 34.

But Warren concludes that notwithstanding such compromise, the only reason for establishing a census by the Constitution was to afford a basis for a decennial reapportionment of representatives. He states that "A fail-

ure of Congress to make an apportionment in accordance with this provision is a violation of the Constitution." *Warren,* at p. 297.

The reasons for establishing a constitutional duty on Congress to reapportion apply with equal validity to the necessity of redistricting within a State. As Randolph urged representation in the popular chamber national government had to be equal, and depended *solely* upon representation.

See also *Gettell, "History of American Political Thought,"* 1928, at pp. 125-126.

4. Equality of representation is foundation of representative government.

In creating a bicameral legislature, the Federal Constitution by compromise gave expression to conflicting but equally important principles of government: The Senate, "the body of elders" was created on the basis of two Senators for each State, regardless of the number of voters. But the number of representatives in the lower house, i.e., the "popular" house, was directly dependent upon the number of voters. The Constitution fathers, in view of the experience of other governments, felt that a national legislature so constituted would at the time give best expression to the necessities of wise representative government by the legislature and would also satisfy the fears of the States. The States were reluctant to give up the greater privileges of independence they held under the Articles of Confederation. Some States were determined to preserve their rights as separate States. Compromise was necessary. It was effectuated. But compromise could not fail to give equally important consideration and expression to the demands of the people, the true sovereign. In considering the demands of the people the convention could not overlook the protest against "taxation without representation." This principle lay at the

basis of the Declaration of Independence. It was the arbitrary enforcement of this principle by England that ignited the spark that burnt into the flame of the American Revolution. The desire of a people to govern itself made necessary and inevitable a government containing the House of Representatives based upon the people's choice.

The people were to choose representatives. The choice necessarily had to be upon an equal basis. The democratic purpose of our government would be defeated if one group, or class, or section of the country or portion of a State could choose "more" representatives than any other body of equal numbers. That was the government sought to be established. Equality of representation was inherent in the creation of and the provision for election of members to the House of Representatives.

One of the inherent principles of democracy is equality [5 Ency. of the Social Sciences, 80(b)]. The writer states

> "In many ways the analysis of de Tocqueville is the most outstanding performance of them all. He saw more clearly than anyone else that the inherent principle of democracy is equality and that its consequence must necessarily be the use of the state to minimize the differences betwen men."

The questions of the electoral machinery become urgent if the end of democracy is to be obtained. [5 Ency. of the Social Sciences, 81(b).]

One of the essential elements of a constitutional democracy is political democracy. Historically, political democracies were established before economic democracies. In social thinking it was political democracy that lighted the way. It is difficult to conceive of the other aspects of democratic life existing without the existence of a political democracy as the organ for carrying out all other democratic ideals.

A political democracy may include many or several elements. One of these elements is fixed and vital. It has

been described by a leading American historian in popular language as:

> "Fourth: In this process all voters are equal; that is, each one, without regard to intellectual, moral or economic qualifications, has one vote and no more; and in elections, as a rule, the candidate who receives the most number of votes, whether a majority or a plurality, is placed in office. All in all, democracy logically signifies equality in voting power, equality in the right to seek and hold office, and majority or plurality rule in elections."

Beard, "The Republic," (1943,) at p. 35.

5. The necessary implication of the express Constitutional provisions pertaining to the House of Representatives is that the voting for representatives must be "equal."

In Article I, Section 2, the Constitution provides that the House of Representatives shall be composed of members "chosen every second year by the people of the several states." Article I, Section 2, Clause 3, provides that "representatives shall be apportioned among the several States which may be included within the Union according to their respective numbers " The 1st clause of the 14th Amendment retains the "numbers" principle. (The particular manner of determining the respective numbers may have been changed by the 14th Amendment) But Section 3 of Article I goes on to provide that the number (i.e , of voters in the several States) should be determined by "actual enumeration," and the enumeration was *required* to be made "within three years after the first meeting of the Congress of the United States, and within every subsequent term of ten years, in such manner as they shall by law direct The number of representatives shall not exceed one for every 30,000, but each state shall have at least one representative."

The clause also provided that until enumeration would be made, the original thirteen States were allotted a specified number of representatives.

Consider this provision in the light of the great purposes of the Constitution. It is immediately clear that the choice of representatives was to be based upon the numbers of people. That was the basic factor. The maximum number of representatives at that time was not more than one for every 30,000 voters and a State had the minimum of one per State. In between those two limits the Constitution commands that numbers, and numbers alone, shall determine the choice among qualified voters of a State. The maximum total number of representatives for the entire country is, of course, fixed by the provisions of the Constitution. But the permanent principle for the election of representatives is still the same basic standard set up by the Constitution: the number of qualified voters in the State. Certainly it cannot be denied that the apportionment of representatives among the several States is, by the Constitution, dependent upon the number of voters in the respective States. There the principle of equality of voters, except for the minimum established by this Article, is fixed. The same great purposes that made this express provision applicable to the several States applies with equal validity to the problem of the Congressional districts within one State. Numbers within the respective districts is *the* basis for the choice of representatives. By the very nature of numbers equality of choice is presumed. One voter in one Congressional district must have substantially the same power of choice or participation as another voter in another Congressional district. To contend otherwise is to disregard the compulsion of the constitutional command to base choice of representatives upon "numbers."

6. Congressional practice recognized the requirements of equality of representation.

The historical consideration of the problem in so far as action by Congress is concerned leads to conflicting inferences. Until 1842 Congress enacted no legislation to

govern the States in the manner of their electing representatives to Congress. Some representatives were elected from the State at large. In some of the States the legislators divided the State into Congressional districts and the representatives were elected by these various districts. The first time Congress acted on this problem was by the Act of June 25, 1842, C. 47, Sec. 2 (5 Stat. 491). Section 2 of that Act required that representatives should be elected by districts composed of contiguous territory. No provision was made for equality of population within the district. In 1872, by the Act of February 2, 1872, C. 11, Sec 2 (17 Stat 28), Congress, in addition to requiring the Congressional districts to be contiguous, added the requirement that each district should contain as nearly as practicable an equal number of inhabitants. Similar provisions were adopted in the Act of February 25, 1882, C. 20, Sec. 3 (22 Stat. 5, 6), and by the Act of February 7, 1891, C. 116, Secs. 3, 4 (26 Stat. 735, 736). In 1901, by the Act of January 16, 1901, C. 93, Secs 3, 4 (31 Stat. 733, 734), Congress added the requirement that the district should be compact in addition to being contiguous and equal as nearly as might be practicable. In 1911, by the Act of August 8, 1911 (37 Stat. 14), the provision of the Act of 1901 was carried over into Section 3 of the 1911 statutes.

Due to the fact that Congress had from time to time failed to act after the taking of each census problems had arisen in the various States with regard to the election of representatives from the various Congressional districts. In 1929 Congress adopted an automatic apportionment statute which contained no requirement of "equal districts." At about that time the problem of redistricting became acute in several States, especially in States which had suffered losses of representation due to either decrease in population in that State or the greater increase in population in other States. The State legislatures having in some cases passed "gerrymandering" acts, aggrieved

electors took their problems to the various courts both State and Federal. The decision by this Court in *Wood* v. *Broom,* 287 U. S. 1 (Oct. 18, 1932), terminated reliance upon the 1911 Congressional Act.

Subsequent legislation by Congress has been silent on this specific issue, although various bills have been introduced into Congress. It may be inferred from this Court's opinion in *Wood* v *Broom,* 287 U. S 1, that the failure to reenact 1911 statute was an oversight.

What can be gathered from the history of Congressional action and inaction?

On the one hand it may be contended that Congress assumed that in the absence of Congressional legislation regulating the size and shape of electoral districts no Federal constitutional requirement existed, and that accordingly the States would be free to legislate on such matters as they in their unlimited discretion saw fit. On the other hand it may well be argued that in so far as the principle of equality of representation is concerned, Congress added nothing by its resolution of 1872 and dropped nothing by its failure to act after 1911. We think the view most in accord with the great purposes of the Constitution and best designed to effectuate the kind of government envisaged by the Federal Constitution is the latter view The first view, that equality of representation is a problem for the States, must necessarily fail to give due weight to the now uncontrovertible principle that the right to vote is established and guaranteed by the Federal Constitution (*United States* v. *Classic,* 313 U. S. 299).

In *Ex Parte Siebold,* 100 U. S 371, 388, this Court recognized that "The *due* and *fair* election of these representatives is of vital importance to the United States " (Italics ours.) Fair means equality of choice.

7. State Courts recognize that equality of voting power is the essence of representative government.

The history of State legislative redistricting acts in State Courts supports our contention that equality in

voting, i.e., equality in representation, is the basis of the kind of government created by the Federal Constitution. representative government.

Many of the cases are collected in a note in 2 A. L. R. 1337 in an Annotation entitled. "Inequality of population or lack of compactness of territory as invalidating apportionment of representatives" The discussion commences with the rule that "The principle of equality of representation lies at the foundation of representative government, and requires that no voter shall exercise, in the selection of the legislature, a greater voting power than other voters" (2 A. L. R. 1337) At p. 1350 are cited the cases where the requirement of equality has been held to have been violated and where the apportionment has been held in be unconstitutional

One of the leading cases is *Attorney General* v *Suffolk County Commrs.*, 224 Mass. 598, 113 N. E. 581 (1916) which cites the analogous authorities in the other states at 113 N. E. 584, n 3. The court said: "There can be no equality among citizens if the vote of one counts for considerably more than that of another in electing public officers." 113 N. E. at 585.

In another of the leading cases, *Ragland* v. *Anderson*, 125 Ky. 141, 100 S. W. 865, the court said:

* * *

> "Equality of representation is a vital principle of democracy. In proportion as this is denied or withheld, the government becomes oligarchical or monarchical. Without equality Republican institutions are impossible. Inequality of representation is a tyranny to which no people worthy of freedom will tamely submit. To say that a man in Spencer County shall have seven times as much influence in the government of the state as a man in Ohio, Butler or Edmonson is to say that six men out of every seven in those counties are not represented in the government at all. They are required to submit to taxation without representation. It was this kind of oppression which inspired that great struggle for freedom which began

> on Lexington Green in 1775 and ended at Yorktown in 1781. Equality of representation is the basis of patriotism. No citizen will, or ought to, love the state which oppresses him and that citizen is arbitrarily oppressed who is denied equality of representation with every other citizen of the commonwealth." 100 S. W. at 869.

Similar language is found in the case of *Wood* v. *The State*, 169 Miss. 790, 142 So. 747, where a dissenting justice emphasized that the principle of equality of representation lies at the very foundation of representative government, and is essential to preservation of our government (142 So. at 766).

See also the stirring language in *Brown* v. *Saunders*, 159 Va. 28, 36, 39, 48, 166 S. E. 105, 109, 111

8. Plaintiffs' constitutional rights to vote and choose representatives in Congress are living and vitally important rights.

The plaintiffs' constitutional rights are not being urged as abstract propositions.

This court has repeatedly emphasized the necessity for considering constitutional rights as vital, living problems in a working society rather than as theoretical, abstract conceptions. It is because plaintiffs' rights are so vital in our nation that this suit is now before the court.

Our nation is a constitutional democracy. The organic law of the nation cannot be "indirectly" avoided by the "form" adopted by State laws toward that end. *Smith* v. *Allwright*, 321 U. S. 649, 664. Yet that is what the Illinois statute brings about.

The right to vote for federal representatives is in substance a participation in national government. Participation in national government must be on an equal basis To hold otherwise is to deny our existence as a democracy. To hold otherwise is to deprive the voters of their constitutional rights. To hold that a voter in one Illinois Congressional district does not have the same right of

participation in the House of Representatives as a voter in another district is to make a mockery of our National Republic. Our system of government established for the world the principle that the people constitute the sovereign power. The power given to our national government was delegated to the national government by the people. The representatives chosen to exercise that power are still subject to the will of the people. The will of the people, in choosing these representatives, is expressed by the choice at the polls. This is not abstract choice for the choice of the representatives by the voters in Illinois, determines such practical and vital considerations as tax laws, regulation of labor relations, enactment of laws governing military affairs. The individual voter is affected almost in every walk of life and in most phases of his every-day dealings by his choice of a federal representative. His life, his property, his liberty, are directly dependent upon the exercise of his right to vote for federal representatives.

If a voter in one Congressional district carries only one-eighth of the influence upon his every-day existence that a voter in some other Illinois Congressional district effects upon his existence, can it be contended that the first individual is not being denied representative government?

The principle of equality, if denied among the several States, would most certainly affect the representative theory of our government. For example, suppose the State of Nevada has twice the number of representatives to which it is entitled on the basis of enumerated voters. Accordingly Nevada's representatives in the lower house of Congress would be affecting our national society to a degree two times that to which they are properly, i.e., equitably and constitutionally entitled The same reasoning applies with equal force and cogency to the plaintiffs, qualified voters of various districts within the State of Illinois. Cf. the "basic principle of equality" defined in *Truax* v. *Corrigan,* 257 U. S. 312, 331.

III.

The Illinois Congressional Apportionment Act of 1901 violates the provisions of the Constitution of the United States.

A. The statute abridges plaintiffs' privileges within meaning of Fourteenth Amendment, Section 1.

It is respectfully suggested that the right of a qualified voter to vote for Federal representative is one of the privileges of citizens of the United States which may not be abridged by the State of Illinois.

As an original problem it may well be argued that the Illinois Apportionment Act of 1901 is invalid within the meaning of Article I, Secs. 2 and 4 without regard to the 14th Amendment. But given the 14th Amendment such discussion would be academic.

We suggest that the privileges and immunities clause of the Fourteenth Amendment protects a qualified voter against an abridgement by the State of his right to vote for Federal Representatives. Under the *Slaughterhouse* cases, 16 Wall. 36, it is settled that the privileges and immunities clause of the Fourteenth Amendment, Section 1, is limited to privileges and immunities had by citizens as citizens of the *United States* as differentiated from citizens of the several States. See *Snowden* v. *Hughes*, 321 U. S. 1. But it is urged that the right to vote for federal representatives is a right had by plaintiffs as citizens of the United States.

In *Corfield* v *Coryell*, 6 Fed Cases 546 (Fed. Case No. 3230) [1823, C C. Penn.], at page 552 Justice Washington, in discussing the provision of the Constitution which provides that "The citizens of each State shall be entitled to all the privileges and immunities of citizens in the several States" purports to list the privileges deemed to be fundamental and to be included in such constitutional protection, then adds the following:

"* * * to which may be added, the elective fran-

chise, as regulated and established by the laws or a constitution of the state in which it is to be exercised."

The language of Justice Washington with respect to elective franchise was discussed in the *Slaughterhouse* case, 16 Wall. 36, 74, and also in *Twinning* v. *New Jersey,* 211 U. S. 78, 96. But in *Twinning* v. *New Jersey,* Mr. Justice Moody in listing the rights and privileges of national citizenship recognized by this court expressly includes, "* * * the right to vote for national officers. (*Ex Parte Yarbrough,* 110 U. S. 651; *Wiley* v. *Sinkler,* 179 U. S. 58) * * *." 211 U. S. 97.

Under the decisions of *U. S.* v. *Classic,* 313 U. S. 299, and *Smith* v. *Allwright,* 321 U. S. 649, the right of a qualified voter to vote for a Federal representative in the Illinois primary is one of the privileges of a citizen of the United States. In *Smith* v. *Allwright,* 321 U. S. 649, 661, this court refers to "Other precedents of this court forbid the abridgement of the right to vote."

In *Colgate* v. *Harvey,* 296 U. S. 404, Justice Stone dissenting, this court held that the right to engage in business or to make a lawful loan in any State other than that in which the citizen resides was one of the privileges of a citizen of the United States protected by the Fourteenth Amendment. However, in *Madden* v. *Kentucky,* 309 U. S. 83 (1940), *Colgate* v. *Harvey* was expressly overruled and the dissenting opinion of Justice Stone prevailed.

But more recently Mr. Justice Jackson, in a specially concurring opinion in *Edwards* v. *California,* 314 U. S. 160, at 182, suggested that the privileges and immunities clause prevented the State of California from abridging the right of a United States citizens to go from one State into another.

See also the opinion of Mr. Justice Roberts in the case of *Hague* v. *C. I. O.,* 307 U. S. 496, 500, 508, 512, where Mr. Justice Roberts in discussing the question of jurisdic-

tion based jurisdiction of the Federal Court on the ground that the conduct of city officials and ordinances adopted by the city had violated the rights of freedom of speech had by the Union members under the privileges and immunities clause of the Fourteenth Amendment.

In *Breedlove* v. *Suttles,* 302 U. S. 277, Mr. Justice Butler, in holding that the State may make payment of poll taxes a prerequisite of voting was not to deny any privilege or immunity protected by the Fourteenth Amendment, stated that:

> "The privileges and immunities protected are only those that arise from the Constitution and laws of the United States and not those that spring from other sources." 302 U. S. at 283.

After the decision in *U. S.* v *Classic,* 313 U. S. 299, establishing that the right to vote for Federal representatives in the State primary is one that arises from the Constitution, the reasoning in the quotation taken from Mr. Justice Butler's opinion would necessarily result in the conclusion that the Illinois redistricting law which factually abridges the right to vote, i.e., creates inequality of representation, is violative of the privileges and immunities protection of the Fourteenth Amendment.

A survey of the cases decided under the privileges and immunities clause reveals that the "Federal rights" protected by such clause are few in number. No U. S. Supreme Court decision holds that the Federal right to vote for representatives in the house is *not* such a privilege Under the reasoning in *United States* v. *Classic,* 313 U. S 299, it is submitted that such Federal right is a privilege of a citizen of the United States, and by the precise wording of the privileges and immunities clauses is entitled to constitutional protection against the attempts of a State to abridge it.

Does the Illinois Congressional Apportionment Act of 1901 as applied to the facts alleged in the complaint abridge plaintiffs' rights?

Under our analysis under II *supra,* it has been demonstrated that the right to vote means the right to equality of representation,—not perfect mathematical equality but substantial practical equality. Under the allegations of the complaint such equality does not exist. The enforcement of the 1901 redistricting law means that voters in the over-populated districts would be disfranchised. The Illinois Supreme Court so found in *Moran* v. *Bowley,* 347 Ill. 148, 162; 179 N. E. 526, 531. It is respectfully submitted that such disfranchisement violates the provisions of Section 1 of the Fourteenth Amendment, the organic law of our land.

Under Section 2 of the Fourteenth Amendment to the Federal Constitution it is first declared that representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. If this clause stood alone, then all of the contentions made under this heading up to this point would be applicable and would necessitate, according to our argument, the application of the principle of equality to the various Congressional districts in one State as is commanded in express terms by this clause the application of equality among several States. However, the second sentence of this clause of the Fourteenth Amendment provides that if the right to vote at any election for the choice of "representatives in Congress is denied to any of the male inhabitants * * * or in any way abridged * * * the basis of representation shall be reduced."

It is submitted that the provisions of Section 2 do not serve to render valid the action of the State of Illinois in attempting to enforce the provisions of a statute which would be held invalid under Section 1 of the Fourteenth Amendment. First, it was intended to apply to the several States in so far as apportionment of representatives among the several States was concerned. In so far as the total

number of representatives is concerned the number of voters in the State remain the same regardless of the Congressional districts created by the Illinois Legislature. Second, Section 2 considered in the light of the "great purposes" of the Constitution was not intended to deprive a qualified voter of his Federal right to vote for representatives to Congress. Section 2 was designed to and did create an additional "penalty" for denying or in any way abridging the right to vote to any male, 21 years of age and a citizen of the United States. The penalty was the proportionate reduction in representation.

B. The statute denies the plaintiffs equal protection of the laws within meaning of Fourteenth Amendment, Section 1.

We contend that the Illinois Redistricting Act of 1901 which defendants seek to enforce creates such gross inequalities in the Congressional districts as to deny to plaintiffs the equal protection of the laws guaranteed by Section 1 of the Fourteenth Amendment.

The contention that the equal protection of the laws guaranteed by the Fourteenth Amendment may be violated by a State's election laws was raised in *United States* v. *Classic,* 313 U. S. 299 at 329. But on the ground that the point was not specially considered or decided below this court refused to entertain the question.

In at least two other cases this Court has held that State legislation disfranchising voters because of race violated the equal protection clause of the Fourteenth Amendment.

In *Nixon* v. *Herndon,* 273 U. S. 536, in an action for damages brought by a negro against Texas election officials, this Court in an opinion by Mr. Justice Holmes characterized the question to which there was no doubt as to the answer, and held that a Texas statute which rendered negroes ineligible to participate in a Democratic primary election in Texas violated the equal protection

clause of the Fourteenth Amendment. The court found it unnecessary to consider the 15th Amendment.

In order to evade the foregoing decision in *Nixon* v. *Condon,* 286 U. S. 73, the State Executive committee of the Democratic Party in Texas adopted a resolution that white Democrats and none other might participate in the primaries of that party The plaintiff, a Negro, was refused the privilege of voting in a primary and brought suit for damages. This Court, in opinion by Mr. Justice Cardozo, held that the committee's action was State action and was invalid as being discriminatory action within meaning of equal protection clause of the Fourteenth Amendment.

These two cases though concerned with discrimination because of color formulate principles that effectively strike down the discrimination practiced by the State of Illinois under the terms of the Illinois Apportionment Act of 1901. It is difficult to conceive of any grounds that the defendants might advance as a basis for or justification of the arbitrary discrimination against the plaintiffs and hundreds of thousands of other voters in Illinois. It has been previously pointed out that some "reasons" for inequality in Congressional redistricting may be "simple inertia, a desire to satisfy present holders of Congressional seats to an effort to find the easiest way out." Bowman "Congressional Redistricting," 31 Mich. L. Rev. 149, 164 (1932).

But these "reasons" do not justify a denial of constitutional rights of substantial equality in voting power any more than "reasons" of color in erecting barriers of color. If "barriers of color" violate the equal protection clause "barriers" created by mere fortuity of street address within State of Illinois are subject to the same fate. 31 Mich L. Rev. 172.

To the same effect see 6 Univ. Chi. L. Rev., 296, 299, n. 26 (1939).

In *Snowden* v. *Hughes,* 321 U. S. 1, this Court in opinion by Mr. Chief Justice Stone, said (321 U. S. 11):

> "Where discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights." (Citing cases.)

It is a fundamental principle of our democratic government that every person within the jurisdiction of the State shall be treated equally in the application and enforcement of the laws of that State. This principle was adopted into the language of the Constitution by the provisions of the Fourteenth Amendment. The late Chief Justice Taft fully described the scope of this obligation of the several States of the Union in *Truax* v. *Corrigan,* 257 U. S. 312, 332, 333 (1921), where he said:

> "Our whole system of law is predicated on the general, fundamental principle of equality of application of the law. 'All men are equal before the law,' 'This is a government of laws and not of men,' 'No man is above the law,' are all maxims showing the spirit in which legislatures, executives and courts are expected to make, execute and apply laws. But the framers and adopters of this Amendment were not content to depend on a mere minimum secured by the due process clause, or upon the spirit of equality which might not be insisted on by local public opinion. They therefore embodied that spirit in a specific guaranty.
>
> The guaranty is aimed at undue favor and individual or class prejudice, on the one hand, and at hostile discrimination or the operation of inequality on the other. It sought an equality of treatment of all persons, even though all enjoyed the protection of due process. * * *"

See to the same effect the statement of Mr. Justice McReynolds in *Sunday Lake Iron Co.* v. *Township of Wakefield,* 247 U. S. 350, 352 (1918).

This principle was recently applied by this Court in *Missouri ex rel. Gaines* v. *Canada,* 305 U. S. 337 (1938).

It must be noted that in the *Gaines* case this court was

considering the problem of a "privilege." In the case at bar the plaintiffs rely on constitutional rights. Upon what grounds can the defendants attempt to "justify" the inequality of the Congressional Districts? The districts are unequal and are continuing to increase in inequality. The "disfranchisement" in the over populated districts is progressively increasing. If the allegiance to equality in our government, in our laws and in our courts is observed the Illinois Redistricting Act of 1901 which results in the gross inequalities alleged in the complaint must necessarily yield by virtue of the equal protection of the laws afforded to plaintiffs by the Fourteenth Amendment.

C. The statute deprives plaintiffs of their liberty and property without due process of law within meaning of the Fourteenth Amendment.

Under the allegations of the complaint the defendants in enforcing the Illinois 1901 Congressional Apportionment Act deprive plaintiffs of fundamental liberties without due process of law, in violation of the Fourteenth Amendment.

The plaintiffs' rights which defendants violate by enforcing the Illinois Apportionment Act of 1901, were rights which every duly qualified citizen must have under our representative form of government: the right of equality of opportunity to choose a representative of the Federal House of Representatives. That right is a fundamental *civil* right. Unless its existence is judicially recognized and protected a republican form of government is impossible. If no such right existed, then government by the will of the governed is impossible.

As a problem of legal logic the positive declaration by the U. S. Supreme Court in *United States* v. *Classic*, 313 U. S. 299, that the right to vote for federal representative is established and guaranteed by the Federal Constitu-

tion should be determinative of the problem now considered. In *Snowden* v. *Hughes,* 321 U. S. 1, this Court recognized that the Constitution protects "political rights," this Court saying, "Where discrimination is sufficiently shown, *the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights.*" 321 U. S. 11 (Italics ours.)

In *Attorney General* v. *Suffolk County, Commrs.,* 224 Mass. 598, 113 N. E. 581, in discussing the nature of the right to vote, the Court said:

> "The right to vote is a fundamental personal and political right * * * Unlawful interference with the right to vote, whether on the part of public officers or private persons, is a private wrong for which the law affords a remedy, although it may also have significant political results * * * Any act of the Legislature limiting or in any way interfering with this right would be invalid * * * *While the right to vote for members of the Legislature is in a sense a political right, it is also a precious personal right.* The duty of dividing the authorized number of representatives among the legal voters is in a sense political, yet so far as it affects, contrary to the Constitution, the rights of citizens, such an infringement is cognizable in the courts when presented in an appropriate proceeding between the parties * * * The circumstances that political considerations may be connected with rights affords no justification to courts for refusal to adjudicate causes rightly pending before them. Such a controversy, even though political in many of its aspects, is of judicial cognizance." 113 N. E. 584. (Italics ours.)

For further consideration of plaintiffs' rights as property rights or civil rights, see IV, D, 47, *infra.*

Such federal right may be technically a property right or a civil right or a political right that is recognized and protected by the courts. Authority can be advanced for all three of these arguments in view of the fact that in the

case at bar the right was created by the Federal Constitution and the abridgement is sought by the State of Illinois.

1. Cooley, Principles of Constitutional Law (3rd ed. 1898), speaking with reference to the then existing conception of State suffrage, stated:

> "*Suffrage*—Participation in the suffrage is not of right, but it is granted by the State on a consideration of what is most for the interest of the State. Nevertheless, the *grant makes it a legal right until it is recalled, and it is protected by the law as property is.* * * *" at page 263. (Italics ours.)

If such protection is afforded a State right of suffrage, can less weight be given to a right of federal suffrage?

It is recognized that generally the texts and the decisions hold that a political right is not technically property. But considering the fact that the objection to a suit on the ground that "* * * the subject matter of the suit is political is little more than a play upon words." (Justice Holmes in *Nixon* v *Herndon,* 273 U. S. 536), it is respectfully submitted that after the decision and under the reasoning in *United States* v. *Classic,* 313 U S. 299, that the federal right to vote for *federal* representative may not be extinguished or abridged by State without due process of law. The text law is: (1) that the right of suffrage is a "vested right" in the sense that the right cannot be taken away except by the power that conferred it (20 C. J. 60, n. 35; 29 C. J. S. 24, n 11); (2) that the right to vote for a federal representative is a property right in the sense that once it is conferred by the Federal Government the holder may not be deprived of it except by due process of law. (20 C. J. 60, n. 36; 29 C. J. S. 24, n. 12.)

2. At the very least the Federal right to vote for Federal representative is included within the "liberty" protected by the 14th Amendment, Section 1.

The whole history of the Fourteenth Amendment and its judicial construction supports our contention here. In *Allgeyer* v. *Louisiana,* 165 U. S. 578, 589 (1897), this Court

held that a right to enter into a contract was within the "liberty" protected by the due process clause.

Judge Cooley, speaking for the Supreme Court of Michigan in quoting from Justice Story's writings stated:

> "* * * Constitutional freedom means something more than liberty permitted; it consists in the *civil and political rights* which are absolutely *guaranteed, assured* and *guarded;* in one's liberties as a man and a citizen—his right to vote, his right to hold office, * * * his equality with all others who are his fellow citizens * * * *All these are guarded and protected* and not held at the mercy and discretion of any one man or of any popular majority." *People* v. *Hurlbut,* 24 Mich. 44 at 107, 9 Am. Rep. 103, 114, 115 (1871). (Italics ours.)

Such language shows that the Constitutional right to vote should be protected regardless whether it is property or liberty.

3. The arbitrary operation of the Illinois Apportionment Act of 1901 in creating and preserving inequality in choice of representation is a violation of due process of law.

The facts alleged in the complaint show the unjust inequalities in voting that flow out of the Application of the Illinois Apportionment Act of 1901. Our contention that such inequality in redistricting serves to effectually disfranchise a large number of voters, has been accepted by a finding of the Illinois Supreme Court in *Moran* v *Bowley,* 347 Ill. 148, 162, 179 N. E. 526, 531.

This Court has construed the "Due Process" clause as forbidding arbitrary and discriminatory action by state officials. *Hurtado* v. *California,* 110 U. S. 516, 535 (1884).

The Illinois Congressional Apportionment Act of 1901 serves to arbitrarily "classify" voters without any reasonable basis for such discrimination and inequality. The due process clause prevents the Illinois Legislature by State fiat from arbitrarily disfranchising the plaintiffs.

IV.

The Federal judiciary has the judicial power to enforce plaintiffs' rights.

A. The rights which plaintiffs claim are violated by defendants' conduct are legal rights.

The nature of plaintiffs' rights has been analyzed *supra* under II, at pages 17 and 30.

Commencing with *Ex parte Yarborough,* 110 U. S. 651, 663, 664 (1884), and culminating with *Smith* v. *Allwright,* 321 U. S. 649, 661 (1944), this Court has repeatedly held that the rights to vote for federal representatives are not only established by the Constitution but will be protected by the courts.

In *U. S.* v. *Classic,* 313 U. S. 299, this court pointed out, at page 314, that the "federal" right of the people to choose representatives was established and guaranteed by the Constitution, i.e., by Section 2 of Article I. This constitutional command was without restriction or limitation, and therefore, unlike the rights guaranteed by the Fourteenth and Fifteenth Amendments, was secure against the action of individuals as well as of the state (313 U. S., at p 315). Such establishment of a right *necessarily implies* the existence of a cause of action for a breach thereof.

The Constitution created a domain of federal rights. If the State—or any private person—attempted to invade that domain in attempting to abridge such right the State or the private person would be acting beyond its power. See *Nixon* v. *Herndon,* 273 U. S. 536, 540.

Under the reasoning of this court in *Southern Pacific R. R. Co.* v. *Arizona,* 325 U. S. 761, 769, it is possible the Illinois legislature was invalid, on the ground that it attempted to deprive plaintiffs of rights conferred upon them by Article I, Section 2 of the United States Constitution without necessity of determining whether or not Congress had acted in purporting to confer a cause of

action on plaintiffs for violation of such right. A decision to this problem is rendered unnecessary by the provisions of 8 U. S. C. A. Sec. 43, which provides that—

> "Every person who, under color of any statute * * * of any State or Territory, subjects, or causes to be subjected, any citizen of the United States * * * to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity or other proper proceeding for redress."

Even assuming that there is no specific penalty fixed by the United States statutes, it would follow that the statutory remedy so created by 8 U S. C. A., Sec. 43, would enable plaintiff to maintain his cause of action and have a judicial remedy for the right created by the Constitution. *Steele* v. *Louisville Natl. R. R.*, 323 U. S. 192, 204, 226, 234.

B. The defendants' contentions that plaintiffs' voting rights are subject to the provisions of the Illinois Congressional Apportionment Act of 1901 raises a controversy within the meaning of the United States Constitution.

The plaintiffs contend that the Illinois Apportionment Act of 1901 is unconstitutional, and seek to restrain the defendants, state officials, from enforcing the provisions of such unconstitutional act. This constitutes a controversy within the meaning of the Federal Constitution. In the recent case of *In re Summers,* 325 U. S. 561, this court held that the action by the Supreme Court of Illinois in denying the petition of an individual for an order for admission to practice law in Illinois was a judgment in a judicial proceeding which involved a case or controversy reviewable by this court under Article III, Section 2, Clause 1, of the Constitution of the United States Following the tests outlined in the *Summers* case, we find that in the instant case, the question respecting the Constitution has assumed "such a form that the judicial power is capable of acting on it." The plaintiffs seek a declaration

of their rights as they now stand There is an actual controversy over the issue whether or not the Illinois Congressional Apportionment Act of 1901, which the defendants seek to enforce, violates the plaintiffs' rights (guaranteed by the Constitution of the United States) to vote in the Illinois primary and subsequently in the Illinois general election for members of the Federal House of Representatives. The form of the proceeding in the case at bar, although not significant, nevertheless is traditionally one that has been recognized by this court as involving a case or controversy within the meaning of the Constitution, i.e., a suit to restrain defendants or State officials from enforcing the provisions of a statute which plaintiffs claim is unconstitutional. The nature and effect of a decision by this court clearly indicate that the instant proceeding is a case or controversy. If the statute is adjudged to be unconstitutional, an injunction will be granted the plaintiffs or they will be granted declaratory relief, declaring the rights of the parties to the lawsuit. The plaintiffs' rights will thus be vindicated; the defendants' duties will be formulated Such a decision will necessarily effect or control the primary election in April, 1946, and the general election in November, 1946. A decision in favor of the defendants would justify and protect the defendants in their positions hitherto taken and the positions to be taken in connection with the primary and general election. This analysis satisfies the requirements set up by this court in the opinion in *In re Summers,* 325 U. S. 561, at 567.

See *Ry. Ass'n.* v. *Cossi,* 326 U. S. 88 for other decisions showing that the instant case is a case or controversy within the meaning of the Constitution.

C. The suit to restrain State officials from enforcing an unconstitutional statute is not a suit against the State within the meaning of the Eleventh Amendment to the Constitution.

The complaint proceeds on the theory that the statute of 1901 is unconstitutional upon several grounds, and that

the enforcement of the provisions of such legislation by the defendants would be unconstitutional executive or administrative action by the state officials. Accordingly the complaint prays for relief against such "unconstitutional" action by defendants.

Smyth v. *Ames,* 169 U. S. 466 (1898) decided that "a suit against individuals for the purpose of preventing them as offices of a State from enforcing an unconstitutional enactment to the injury of the rights of the plaintiff, is not a suit against the State within the meaning of that (the 11th) Amendment." 169 U. S. 518, 519.

This fundamental principle is still the law. *Sterling* v. *Constantin,* 287 U. S. 378, 393, 394. *Truax* v. *Raich,* 239 U. S. 33, 36. *Ex Parte, Young,* 209 U. S. 123, 152, 155. *Greene* v. *Louisville & Interurban R. R.,* 244 U. S. 499, 507

This principle is not confined to the maintenance of suits for restraining the enforcement of statutes which as enacted by the state legislature are in themselves unconstitutional. If a valid law is administered in an "unconstitutional" manner suit may be maintained in an equity court against the state officers to restrain such illegal conduct without violating the provisions of the Eleventh Amendment. *Reagan* v. *Farmers' Loan,* 154 U. S. 362, 390. *Raymond* v. *Chicago Traction,* 207 U. S 20, 38. *Greene* v. *Louisville & Interurban R. R.,* 244 U. S. 499, 507.

In 43 A. L. R. 408 the cases are reviewed in an exhaustive note, discussing the problem of attack on the constitutionality of a statute under which a state officer acts as affecting the question whether action against the officer is to be deemed an action or a suit against the state.

The cases relied on by defendants deal with a suit against a state official which in substance seeks to compel such state official or a co-ordinate official of the defendant to pay moneys to the plaintiffs on behalf of the state These factors are lacking in the case at bar.

D. The District Court had jurisdiction to grant injunctive, i.e. equitable relief.

It is suggested that the complete answer to defendants' contention that relief should be denied to plaintiffs because an equity court has no jurisdiction to enforce political rights is found in recognition of true nature of the *rights* the appellants seek to enforce

After the decisions of this Court in *United States* v. *Classic,* 313 U. S. 299, 314, and *Smith* v. *Allwright,* 321 U. S. 629, 661, 662, it may be accepted as a postulate that the right to vote in the Illinois primary for the nomination of candidates for the House of Representatives, without discrimination by the State, is a right secured to the plaintiffs by the Federal Constitution.

Such Federal right is included within the rights, privileges and immunities under the Federal Constitution protected by the Civil Rights Act (8 U. S. C. Sec. 43). Under 28 U. S. C. A, Sec. 41, sub sec. 14, the District Court had jurisdiction to entertain suits for plaintiffs' claim that such rights had been violated.

This right to vote in the primary for Federal representation is protected against *discrimination* by the State. *Smith* v *Allwright*, 321 U. S 661, 662. In other words, the State may not disfranchise or partially disfranchise the voters. (This fact of partial disfranchisement was recognized by the Illinois Supreme Court in *Moran* v. *Bowley,* 347 Ill. 148, 162.) There must be substantial equality in voting as between voters in various congressional districts That is the nature of the right The principle of equality of representation lies at the foundation of representative government. This principle requires that no voter shall exercise a greater voting power than others in the selection of representatives to the legislature. 18 Am Jur. 192, Sec. 17.

The complaint charged that the defendants had discriminated against the plaintiffs by virtue of their attempt to enforce the provisions of the Illinois Congressional Appor-

tionment Act of 1901. It would seem clear that the plaintiffs could file an action at *law* in the Federal District Court seeking damages from individuals who sought to enforce the provisions of a state statute that in violation of the guarantees of the Federal Constitution sought to discriminate against plaintiffs in the exercise of their constitutional right to vote for national officers. *Wiley* v. *Sinkler,* 179 U. S. 58, 65.

Thus there exists a legal right and an action for damages for breach thereof This is not a case of intervening in a political matter. This is not an interference with an election. This is not a political issue. It is true that the exercise of plaintiffs' legal rights may have some impact upon the political life of the nation or of the state But all rights of citizens bear *some* relationship to the rights of other citizens, to their government, and to the functioning of their government See *McPherson* v. *Blacker,* 146 U S 1, 23, 24.

Giles v. *Harris,* 189 U S. 475, is strongly relied on by defendants as showing a lack of jurisdiction to enforce plaintiffs' rights in equity. But this decision does not control the facts in the case at bar. To avoid lengthening this already over-long brief we respectfully refer this Court to the able analysis of the facts, the criticism of the reasoning of Justice Holmes, and the dissenting Justices Brewer, Brown, (dissenting in two opinions) in the opinion in *Hume* v. *Mahan,* 1 Fed. Supp. 142, 146-149 (D. C Ky., Sept 3, 1932). Though the decision was reversed in *Mahan* v *Hume,* 287 U. S. 575, in a *per curiam* opinion, the reasoning of the District Court is persuasive because of its soundness and erudition

The decision in *Love* v. *Griffiths,* 266 U S. 33, shows that Justice Holmes did not regard equity as being without jurisdiction to enforce legal rights notwithstanding they might be of a political nature

In that case plaintiffs brought suit in a state court against the Democratic Executive Committee of Texas to

enjoin enforcement of a rule adopted by such Committee that Negroes would not be allowed to vote in the Democratic city primary election to be held on February 9, 1921. The defendants' demurrer was sustained; plaintiffs appealed; the Appellate Court deciding the case some months after election, held that the cause of action had ceased to exist and thereupon dismissed the appeal. In affirming the decision of the Appellate Court Justice Holmes did *not* decide the case on the ground that equity had no jurisdistion to entertain a suit to protect political rights, but passed on the *merits* of the ruling of the Texas Appellate Court. He said:

> "If the case stood here as it stood before the court the first instance, it would present a grave question of constitutional law, and we should be astute to avoid hindrances in the way of taking it up * * *. The bill was for an injunction that could not be granted at that time. There was no constitutional obligation to extend the remedy beyond what was prayed." 266 U. S., at 34.

In *Grigsby* v. *Harris*, 27 Fed. 2d 942 (D. C., Tex., 1928), Judge Hutcheson, after reviewing the decisions, approves of the distinction made by the cases where the plaintiffs' rights are only political and therefore extra-legal and those cases where there were legal rights "even though subject matter of that right be political." 27 Fed. 2d, at 944. Judge Hutcheson construes Justice Holmes' failure in *Love* v. *Griffiths*, 266 U. S. 33, to rely on the ground that equity had no jurisdiction over political rights as tending "to support the view that the Supreme Court of the United States in a proper case would agree with the holding of the Supreme Court of Texas in *Gilmore* v. *Waples*, that equity could grant relief." 27 Fed. 2d 945.

In *Nixon* v. *Herndon*, 273 U. S. 536, the decision by this court was that a complaint by a Negro charging Democratic primary election judges with violating his constitutional rights and refusing to permit him to vote at a primary election stated a cause of action within the jurisdiction of

the Federal District Court; that the defendants' objection that the subject matter of the suit was political and not within the jurisdiction of the court was not sustained, the court saying:

> "The objection that the subject matter of the suit is political is little more than a play upon words. Of course, the petition concerns political action, but it alleges and seeks to recover for private damage. That private damage may be caused by such political action, and may be recovered for in a suit of law, hardly has been doubted for over two hundred years (citing early English cases) and has been recognized by this court." 273 U. S., at p. 540.

In support of such statement Mr. Justice Holmes among others refers to *Giles* v. *Harris,* 189 U. S. 475, 485. But *Giles* v. *Harris* was a decision in equity. Such use by Mr Justice Holmes of the decision in *Giles* v. *Harris* can be explained *only* on the ground that in *Nixon* v. *Herndon* it was recognized that if a legal right exists that pertains to political subject matter, it will be enforced in equity as well as in a court of law. If a law court enforces a legal right pertaining to political matters, why should a court of equity refuse to enforce such legal right?

In *Lane* v. *Wilson,* 307 U. S. 268, at 272, this court recently pointed out that *Giles* v. *Harris* stood for a narrow proposal, namely that a court of equity will not seek to give specific performance of the legal right to vote. The case was considered one where the federal court was asked "to supervise the voting in that state by officers of the court" But equity will not conduct an election in order to permit the plaintiffs to vote. Similarly the doctrine of *Giles* v. *Harris* has been sharply limited to what the justices of this court characterize as "mere political rights" as shown by the dissenting opinions of Justice Brandeis in *International News* v. *Associated Press,* 248 U. S. 215 at 266, *Truax* v. *Corrigan,* 257 U. S. 312 at 314. Similarly in the dissenting opinion of Mr. Justice Brandeis in *Pennsylvania*

v. *West Virginia,* 262 U. S. 553 at 610, doubt was apparently expressed as to whether or not a "controversy" had existed in *Giles* v. *Harris.* In *Harrisonville* v. *Dickey, Co.,* 289 U. S. 334, 338, n. 2, *Giles* v. *Harris* is cited as casting light upon those classes of controversies where public interest has been deemed so strong that a general principle of non-interference by injunction has been adopted.

The decision in *Wood* v. *Broom,* 287 U. S. 1, may well indicate that the majority of this court were overruling *Giles* v. *Harris* in assuming jurisdiction and in passing on the merits.

In any event the long list of "voting rights" cases subsequent to *Giles* v. *Harris* indicates that this court clearly recognizes the fundamental importance of the citizen's right to vote for members of the House of Representatives. It is now clear that such right exists not only at the time of a general election but also at the time of a primary election. The traditional rule of equity that does not give a remedy for political wrongs is being gradually whittled away as the equity courts come to recognize, first, that absolute lip service to such a general statement leads to a stultification of a gradual development of equity courts. In *Nixon* v. *Herndon,* 273 U. S. 536, 540, Justice Holmes pointed out that the objection to a suit on the ground that the subject matter of the suit is political is "little more than a play upon words." This is in accordance with the traditional concept of equity.

In *Hawke* v. *Smith,* 253 U. S. 221, this court reversed the decision of the Ohio *State* courts which denied relief in an equity action seeking to enjoin a holding of a referendum on the adoption of an amendment to the Federal Constitution, on the ground that such referendum would be void in that the Federal Constitution required ratification to be by the state legislature and not by state referendum.

The earlier *nisi prius* decisions in the Federal courts adopted the anlaysis that an injunction would be denied

plaintiffs seeking to vindicate political rights, not on the ground that equity had no jurisdiction to enforce political rights, but rather on the specific ruling that in the particular case the plaintiffs' remedy at law was adequate. Such decisions were *Weil* v *Calhoun,* 25 Fed. 865 (C C. Ga. 1885); *Holmes* v. *Oldham,* Fed Cases No. 6, 643 (C. C, N. C., 1877); and see also *Johnson* v. *Clarke,* 25 Fed. Supp 285 (D. C. Tex., 1938).

The later District Court decisions were that an injunction should be denied on the ground that equity had no jurisdiction to enforce political rights. *Greene* v. *Mills,* 69 Fed. 852 (C. C. A, S. C., 1895); *Anthony* v. *Burrow,* 129 Fed. 783 (C. C, Kans., 1904); *Cleveland Co.* v. *Kinney,* 262 Fed. 980 (D. C, Minn., 1919).

But these latter cases have been explained as simply being authorities for the proposition that there were no torts involved, and hence, closely considered, present no question of concurrent jurisdiction by equity courts. Dean Pound, in his article, "Equitable Relief Against Defamation and Injuries to Personality," 29 Harv Law Review 640 (1916), explains the cases where equitable relief has been denied plaintiff seeking the same for alleged wrongful denial of political rights, citing among other cases, *Giles* v. *Harris,* by saying:

> "In these cases there was no tort, and hence there was no question of concurrent jurisdiction. But they repeat the dictum in *Gee* v. *Pritchard,* and also assert that only civil, as distinguished from political rights, are taken into account in equity." 29 Harv. Law Rev., at 681.

Justice Learned Hand pointed out in *Wesson* v. *Galef* if a plaintiff has a right to sue at law for damages, it has the right to sue in equity for an injunction, for the remedy is concurrent and the right is no creation of equity itself. 289 Fed. 621, at 622 (D. C., N. Y., 1922).

In *Feinglass* v. *Reinecke,* 48 Fed. Supp. 438 (D. C., Ill., 1942), plaintiffs' action for an injunction to compel

the defendants to cause to be printed the names of Communist candidates on the election ballots was impliedly decided by the court, not in denial of its jurisdiction to enforce political rights, but by balancing the conveniences and deciding against the plaintiffs, because even if the injunction were granted the time was too short to permit ballots to be printed so that the voters might vote on the issue.

A recent case which recognizes that political rights may be included within the term "civil rights," as the latter term is used in a Federal War Plant Workers' Housing Act, is *State ex rel Parker* v. *Corcoran,* 155 Kans. 714, 128 Pac. 2d 999.

It is well settled that the right to vote is a valuable right, capable of being measured in money, and that Federal courts as such, in a proper case, have jurisdiction to redress deprivation of this right. *Wiley* v. *Sinkler,* 179 U. S. 58; *Nixon* v. *Herndon,* 273 U. S. 536; *Nixon* v. *Condon,* 286 U. S. 73.

In *Giles* v. *Harris,* 189 U. S. 475, Justice Holmes said:

> "We have recognized, too, that the deprivation of a man's political and social rights properly may be alleged to involve damage to that man, capable of estimation in money."

The plaintiffs' remedy at law is not adequate to vindicate his right to participate in Congressional elections and to satisfy his right of equal representation in Congress. His remedy at law is not adequate to redress its deprivation. It is highly doubtful whether the plaintiff could maintain an action against the particular defendants for the damages, such as was the case in *Wiley* v. *Sinkler, Nixon* v. *Herndon,* and *Nixon* v. *Condon.* Consequently, unless plaintiff can obtain relief in equity, he is remedy-less. If one has a right secured by law which has been invaded and has no remedy at law to protect it, it would seem he is entitled to a remedy in equity.

In *Morgan* v. *Town of Beloit,* 7 Wall. 613, 619, the court said:

> " 'The power is reserved to a court of equity to act upon a principle often above mentioned, namely, that whenever there is a right it ought to be made effectual.' 1 Kaime's Principles of Equity 3. Where there is a right which the common law, from any imperfection, cannot enforce, it is the province and duty of a court of equity to supply the defect and furnish the remedy. *Quick* v. *Stuyvesant,* 2 Paige (N. Y.) 84, 92."

This court has said:

> "The absence of a complete and adequate remedy at law, is the only test of equity jurisdiction." *Thompson* v. *Central Ohio R. R.,* 6 Wall. 134, 137; *Payne* v. *Hook,* 7 Wall. 425, 430.

The cases involving the question as to jurisdiction in equity of a case which presents what may be termed a political matter are extremely numerous. There is considerable confusion on the subject among them. Many of the cases are squarely in conflict. A careful analysis of the cases relied on as denying jurisdiction will show that they concern matters which are purely political or matters where there is an adequate remedy at law. A political right may at the same time be a legal right even though some political rights may not be legal rights. If the legal right exists, it will be protected by the courts even though it may be a legal right in a political matter. In case such a legal right is invaded and if there is no adequate remedy at law to protect it, equity has jurisdiction to do so.

Going back to one of the "landmark" English chancery cases, in *Cook* v. *Fountain,* 3 Swanston 585, 600 (1672), Jessell, Master of the Rolls, said:

> "With such a conscience as is only *naturalis aet interna,* this court has nothing to do; the conscience by which I am bound to proceed is merely *civilis et politicalis,* and tied to certain measures; and it is infinitely better for the public that a trust, security

> or arrangement that is wholly secret, should miscarry than that we should lose their estates through the mere fancy or imagination of a chancellor. The rule of *nullus recedat e cancellaria sine remedio* was never meant of equity proceedings, but only of original writs when the case would bear one."

This quotation which has been asserted as the basis for the proposition that equity courts are bound by precedent nevertheless recognizes that equity does enforce not only matters *civilis* but *politicalis*.

The contention of defendants that relief should be denied to the plaintiffs because the matters involve political rights introduces a fallacy in the reasoning which strikes at the very basis of our entire legal system. If the decisions by this court in the voting cases have established that the right to vote for Federal representative, that the right to participate in the choice of representatives on substantially equal terms with other electors in the same state, is a legal right, then a state legislature has no power to invade those legal rights. As Dean Roscoe Pound stated:

> "Undoubtedly if certain legal rights were definitely established by the Constitution there would be a menace to the general security if the court which must ultimately interpret and apply the provisions of that instrument were to suffer a state legislature to infringe those legal rights on mere considerations of political expediency." Pound, "A Survey of Social Interests," 57 Harv. Law Rev. 1, at p. 3.

The doctrine that equity has no jurisdiction to enforce political rights is severely criticized by the following legal periodicals: 10 N. Y. U. L. Q. Rev. 396; 14 Colum. L. Rev. 287 (1914); 22 Ill. Bar J. 50 (Oct. 1933).

Instead of giving lip service to a rule that grew long before political rights were recognized as legal rights, we suggest that the sounder approach is the approach growing out of the original nature of equity courts, namely, that the jurisdiction of an equity court arises when the remedy at law is inadequate.

The following "classes" of equity decisions sustain

the contention that the Federal Equity Court has jurisdiction to grant equitable relief to the plaintiffs:

State equity courts holding that even an election may be enjoined where questions of boundaries of political subdivisions are put in issue by challenging the validity of the statute creating them. These courts are refusing to follow the contention that equity courts have no jurisdiction to enforce political rights. See cases collected in 33 A. L. R. 1384.

The cases which *deny* injunctive relief against an election on the ground that the remedy at law is adequate, imply that if the remedy at law is not adequate, injunctive relief would be granted. *Holmes* v. *Oldham,* Fed. Cas., No. 6, 643 (1877), which is minority view, and cases collected in 33 A. L. R. 1379.

The cases which recognize the right of a taxpayer to enjoin waste of public funds do so in rejecting the contention that equity has no jurisdiction over political rights. Cases collected in 58 A. L. R. 588.

The cases which recognize that validity of state apportionment acts may be inquired into by an equity court also reject the contention that equity has no jurisdiction over political rights. 18 Am. Jur. 197, Sec. 24.

This court has recognized that by the adaptation of old rules to new cases, jurisdiction of equity may be said to be constantly growing and expanding. *Union Pacific Railroad* v. *Chicago Rock Island & Pacific R. R. Co.,* 163 U. S. 564, 600, 601. In that case this court quoted with approval from Pomeroy, Eq. Jur., the proposition that equity has contrived its remedies "so that they shall correspond both to the primary right of the injured party, and to the wrong by which the right has been violated * * * and has always preserved the elements of flexibility and expansiveness so that new ones may be invented or old ones modified, in order to meet the requirements of every case, and to satisfy the needs of a progressive social condition in which

new primary rights and duties are constantly arising and new kinds of wrongs are constantly committed."

New situations call for new adaptation of judicial remedies. *Radio Station WOW* v. *Johnson,* 326 U. S. 120, 132. Other recent decisions illustrating the flexibility of equity in fashioning remedies are *Hazel-Atlas Co.* v. *Hartford Co.,* 322 U. S. 238, 248, and *Holmberg* v. *Armbrecht,* 14 LW 4190, No. 505, Oct. Term (1945), opinion filed Feb. 25, 1946.

And this Court also recently pointed out that equity goes further in giving and withholding relief in furtherance of public interest than when only private interests are involved. *Virginian R. R.* v *System Federation,* 300 U. S. 515, 552. *Pennsylvania* v. *Williams,* 294 U. S. 176, 185.

The familiar rule of Blackstone was: "It is a settled and invariable principle in the laws of England, that every right when withheld must have a remedy, and every injury its proper redress." 3 Blackstone Commentaries 109 Apparently the inferior federal courts follow the general principle that equity will not suffer a wrong to be without a remedy. *Webb* v. *Portland Mfg Co* , 29 Fed. Cases No. 17322; 3 Summer 189, *Schneider* v. *Schneider,* 141 Fed (2d) 542 (Ct. of Appeals, Dis. of Col), *Leo Feist* v. *Young,* 138 Fed. (2d) 972, *Jones* v. *Campbell Co.,* 63 Fed. (2d) 58 (C. C. A. 5), *Southern California R. R* v. *Rutherford,* 62 Fed. 796 (C. C. Cal.), *Russell* v. *Sup. Journal,* 47 Fed. Supp 282 (D. C. Wis.), *Holloway* v. *Federal Reserve Co* , 21 Fed. Supp. 516, 518 (D. C. Mo.).

The recognition of the expanding nature of equity jurisdiction to protect *personal* rights is evidenced by the cases, as collected in 14 A. L. R. 295, either by the statement that equity does at the present time recognize personal rights as shown by the cases cited at page 300, or else by the acceptance of the fact that personal rights do involve, at the very least, nominal property rights as shown by the cases cited at page 305.

In *Carroll* v. *Somervell,* 116 Fed. 2d 918, 920, the court refers to a "citizen deprived of civil right of voting."

Value may be predicated on political or social rights. 36 C. J. S. 522, 25 C. J. 978. Cf. *In re Summers,* 325 U S. 561.

Judge Cooley, both in his writings and in his decisions recognized that courts do protect such rights as the right to vote, regardless of whether it is called a legal right or a property right, or civil right. See Cooley's Principles of Constitutional Law (3d Ed. 1898), at page 263; *People* v. *Hurlbut,* 24 Mich. 44 at 107, Am. Rep 103, 114, 115.

It has also been recognized that the right of suffrage is a "vested right" in the sense that the right cannot be taken away except by the power that conferred it, and further, that the right to vote for a federal representative is a property right in the sense that once it is conferred by the Federal government the holder may not be deprived of it except by due process of law. 20 C. J. 60, Notes 35, 36; 29 C. J. S. 24, Notes, 11, 12.

Under the foregoing analysis and precedents a court of equity has the jurisdiction to grant equitable relief for the protection of plaintiffs' legal right to vote because plaintiffs' remedies at law are inadequate, the procedure of law to vindicate such legal rights would be inadequate, damages could not properly be estimated and award of damages would not compensate the plaintiffs for their loss In addition, relief in equity obviates a multiplicity of suits and avoids circuity of action.

The arguments advanced by defendants to sustain the oft repeated principle that equity has no jurisdiction to enforce political rights is analogous to the situation where it is contended that equity has no jurisdiction to enforce building contracts or to give specific performance for contracts for personal service. In both of these situations equity courts by so-called negative injunctions has protected the undoubted legal rights of parties seeking relief. Analogous relief should be granted in the case at bar.

There are certain "political questions" which will not be decided by equity courts on the ground that the court has no power to dispose of such questions. But these are cases where the judiciary, acting as *one* of three coordinate organs of the government, recognizes that the executive and the legislative branches are supreme in their fields. Such are *Coleman* v *Miller,* 307 U. S. 433, where the question was one of the efficacy of the ratification of the proposed Child Labor Amendment by the state legislatures in the light of previous rejections or attempted withdrawals of such amendment. This court ruled that such question was a political one pertaining to the political departments with ultimate authority in Congress in the exercise of its control over promulgation of the adoption of the amendment. The early case of *Georgia* v. *Stanton,* 6 Wall. 50, 75, 76, 77 (1867), clearly formulated the "political questions" that are outside the "power" of the judiciary. More modern application of *such* political questions are *Anderson* v. *Transandine,* 289 N. Y. 9, 43 N. E. 2d 502, 504; *Z & F. Assets Co.* v. *Hull,* 114 Fed. 2d 464, 468 (Ct. of App. D. C.); *Miller* v. *Ferro Carrill,* 137 Maine 251, 18 Atl. 2d 688, 691

Much of the language and opinions to the effect that equity courts will not take jurisdiction in political matters is due to the *"Tool Case"* in Colorado, where the Colorado Supreme Court tried to conduct elections by means of an injunction which specified the details of an election, including Supreme Court watchers. See *People* v. *Tool,* 86 Pac. 224, 229, 231, and *People* v. *District Court,* 86 Pac. 87. The decisions in this case aroused a national furor, as indicated by the comments in 17 *Green Bag* 159 (1905) and 64 Central Law Journal 402 (1907).

E. The District Court had jurisdiction to grant a declaratory judgment.

The plaintiffs' assertion of their rights was "antagonistic" to the rights—or privileges—claimed by defendants.

The defendants seek to enforce the Illinois Cong. Apport. Act of 1901. The plaintiffs seek to restrain defendants from so enforcing such statute claiming that such action by the defendants would violate plaintiffs' Constitutional rights. The controversy was definite and concrete touching on the legal relations of plaintiffs and defendants who had adverse interests. The defendants seek to enforce the Cong. Apport. Act of 1901. The plaintiffs seek to prevent such action. The decree of this court in favor of plaintiffs would be specific and would also be conclusive! The decree in substance would prevent defendants from enforcing the Cong. Apport. Act of 1901 That kind of decree is something more than "an opinion" advising what the law would be upon a hypothetical state of facts.

For an example of a case where plaintiff sought a declaratory judgment to effect that certain Federal Legislation was unconstitutional see *Currin* v. *Wallace,* 306 U. S. 1, 9.

The declaratory judgment act though not enlarging the District Court's jurisdiction enlarged the remedies.

The Federal declaratory judgment act was remedial. In the recent decision in *Hillsborough* v. *Cromwell,* decided January 29, 1946, No. 305 October Term, 1945, 14 L. W 1410, this court approved the granting of declaratory relief by the District Court which in substance adjudicated that under New Jersey State law the plaintiff's property could not properly be assessed by the defendant municipality.

In *Railway Ass'n* v. *Cossi,* 326 U. S. 88, on appeal to this court the question raised was whether a controversy existed under Article III of the Constitution. This court ruled that such controversy existed stating:

> "The conflicting contentions of the parties in this case as to the validity of the state statute presents a real, substantial controversy between parties having adverse legal interests, a dispute definite and concrete, not hypothetical or abstract. Legal rights as-

> serted by appellant are threatened with imminent invasion by appellees and will be directly affected to a specific and substantial degree by decision of the questions of law." 326 U. S. 93.

In *Great Lakes* v. *Huffman,* 319 U. S. 293, plaintiff sought a declaratory judgment as to the validity of the state unemployment tax statute. The decision was not that the court of equity had no jurisdiction to enter a declaratory judgment but was that the court of equity should properly not exercise its jurisdiction since the matter involved state taxation. The power of the court to grant declaratory relief should be exercised in analogy to an equity court passing upon requests for an injunction in similar circumstances, where the general rule is that since the federal equity court is loath to interfere with state fiscal policies, the appropriate exercise of the court's discretion warrants the denial of relief. See 319 U. S. at page 301.

The fundamental error in reasoning of defendants is based upon its misconception of the rights which plaintiffs seek to protect.

This court has stated the applicable rule as follows:

> "Where there is such a concrete case, admitting of an immediate and definitive determination of the legal rights of the parties in an adversary proceeding upon the facts alleged, the judicial function may be appropriately exercised although the adjudication of the rights of litigants may not require the award of process of the payment of damages (citing cases). And as it is not essential to the exercise of the judicial power that an injunction be sought, allegations that irreparable injury is threatened are not required." *Aetna Life Ins. Co.* v. *Haworth,* 300 U. S. 227, 241.

The form of the proceeding is not significant. It is the nature and effect which is controlling. *In Re Summers,* 325 U. S. 561, 567.

V.

The balance of convenience is in favor of granting injunctive relief to plaintiffs.

In accordance with traditional equity practice, each application for an injunction must be considered on its own merits. The rights of the conflicting parties, the interests of the public, the benefits to be gained by granting injunctive relief, the disadvantages that follow from such ruling, are factors that are considered and weighed by the chancellor. In the case at bar the District Court clearly indicated that considering all the interests involved and all factors properly applicable thereto, the court sitting as an equity court—would have granted injunctive relief *except* for the decision in *Wood* v. *Broom,* 287 U. S. 1.

Under VI, *infra,* we show that *Wood* v. *Broom* did not preclude the District Court from granting relief. But on this appeal the whole case is before this court, and this court can and will render such equity decree under all the circumstances as is proper to be rendered and which should have been rendered by the District Court under all the facts and circumstances. *Minnesota* v. *National Tea Co.,* 309 U. S. 551; *Mayo* v. *Lakeland Canning Co.,* 309 U. S. 310.

On this appeal the jurisdiction of this court extends to every question involved, whether state or federal law, and this court on appeal will rest its judgment on the decision of such of the questions as in its opinion effectively *dispose* of the case. *Sterling* v. *Constantin,* 287 U. S. 378, 393, 394; *L. & N. R. R.* v. *Garrett,* 231 U. S. 298, 303, 304.

In this court, as in the District Court, it is respectfully urged that the balance of convenience is in favor of the plaintiffs. The plaintiffs rely upon rights granted them by the Federal Constitution. These rights are substantial They concern plaintiffs' participation in national govern-

ment. Plaintiffs' well being, their liberty, their property and their entire social existence are affected by the exercise of these valuable rights. The injury suffered by plaintiffs as a result of defendants' denial or abridgement of such rights is a substantial injury. Plaintiffs' remedies at law are inadequate. Money damages cannot be estimated. Money damages could not compensate plaintiffs for the loss of such rights. To require plaintiffs to proceed at law would involve a multiplicity of actions.

As a problem of *stare decisis,* the precedents clearly support plaintiffs' claim to injunctive relief by the federal equity courts. *Hague* v. *C. I O.,* 307 U. S. 496; *Pierce* v *Society of Sisters,* 268 U. S. 510, 535, 536; *West Virginia Board of Education* v. *Barnette,* 319 U. S. 624; *Grosjean* v. *American Press Co.,* 297 U S. 233; *Sterling* v *Constantin,* 287 U. S. 378, 393, 403, 404; *Truax* v. *Raich,* 239 U. S. 33.

The defendants make no denial of the facts pleaded in the complaint. They admit the existence of this gross inequality and discrimination; they offer no justification or plea in bar. Nothing is offered in extenuation. The defendants' "defenses" resemble pleas in abatement in that they attempt to raise technical defenses to escape the effects of their admittedly anti-social conduct.

The State has been repeatedly asked to enact legislation. Its refusal so to do is wilful. It is more. It is a conscious and wilful disobedience of the oaths taken by the Illinois legislators to support the Constitution of the United States. This immoral conduct has been aptly characterized as "slick business." See Bowman, "Congressional Redistricting and Constitution," 31 Mich. Law Review, 149 at page 164 (1932).

The attacks by Illinois citizens in Illinois State courts upon the Illinois Legislature for failure to perform its constitutional duty are not to be regarded simply as isolated instances of disgruntled citizens. The unconstitutional refusal of a State legislature to perform its sworn

duty strikes deep into the fabric of our Government. As has been well said: "In a republic, laws gain their chief sanction from the consent of the governed As soon as the feeling becomes widespread that these laws are the result of the violation of the Constitution by those who are most clearly bound to respect it, the moral support of law will gradually weaken." Zechariah Chafee, "Congressional Reapportionment," 42 Harv. L. Rev., 1015, 1022 (1929).

This court has previously had occasion to refer to unlawful action by government officials which resulted in the invasion of constitutional rights of citizens of the United States. Among the many that might be quoted to this court are the notable condemnation of such illegal conduct in *Olmstead* v *U. S.*, 277 U. S. 438, where Mr. Justice Holmes, in dissenting opinion, vigorously denounced wire tapping as a "dirty business." 277 U. S. at 470. Mr Justice Brandeis, in the same case, 277 U. S. at 48[illegible] laid bare the ugly implications of illegal conduct by government officials. He said: "Decency, security and liberty alike demand that government officials shall be subjected to the same rules of conduct that are commands to the citizen. In a government of laws, existence of the government will be imperiled if it fails to observe the law scrupulously Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a law breaker, it breeds contempt for law, it invites every man to become a law unto himself; it invites anarchy."

Mr. Justice Brandeis was recording the facts of American history. In 1842, during a period when the ferments of Jeffersonian democracy in political thinking had been stirred even more by the crude vigor of Jacksonian democracy, the disqualification of citizens of Rhode Island from voting by virtue of property requirements and the improper apportionment of citizens in the Rhode Island Legislature, penalizing the growing indus-

trial towns to the advantage of the older villages led to the Dorrite affair in Rhode Island. The conclusion of a learned authority from this instance of revolution in American life was the same as the conclusion of Mr. Justice Brandeis, that vigorously pictured by the opinion of the District Court, and that engraved in American history by the bloody battle fields at Bunker Hill and Gettysburg, namely, "The pressure of history will work outside the law when legal paths are blocked; that is the lesson of the Dorr War." Schlesinger, "The Age of Jackson" (1945) at page 416, and at page 410.

Law in its ultimate aspects tends more and more to approximate morals, for law is justice. The very beginnings of equity is ascribed to the necessity of moral solutions of problems troubling the sovereign's subjects. The "chancellor's conscience" is not a literal phrase. The early English equity cases and writers were correct in concluding that the granting of equitable relief depended whether the cause appealed to the chancellor's conscience. In addition to precedents, to morals, to justice, there are practical public interests that call for the granting of injunctive relief: the practical functioning of our national government depends upon the execution of the general principles formulated at the constitutional convention.

Another principle bears strongly upon this issue: The consequence of a decision denying injunctive relief to plaintiffs. Whether this court wills it or not, such a decision would be seized and used by countless proponents of "slick business" to their own anti-social, and in many instances, unconstitutional ends. No matter what this court said in condemning the unconstitutional action of the Illinois Legislature, the practical effect of an adverse decision would serve to permanently and forever perpetuate the practice by the Illinois Legislature of arbitrary discrimination, gross inequality and substantial disfranchisement of the voters of Illinois. The struggle to penetrate the protective screen of "non-State action" that finally culminated in tri-

umph, *Smith* v. *Allwright,* 321 U. S. 661, 664, began shortly after the adoption of the Fourteenth Amendment. It lasted until 1944. That struggle was long and bitter. In some cases this court turned back. In the case at bar, if plaintiffs receive no relief then indeed this is their last resort.

In making this argument we are well aware that the problem of statecraft which this court is called upon to decide in the instant case is complicated. We recognize the many delicate adjustments that must be made in the relationships between the nation and the state, the judiciary and the legislative or executive bodies of government, the equity court versus the law court, legislation by the judicial as compared to the statutory enactment, the problems of precedent versus the necessity for growth and expansion Yet, in all of these fields the plaintiffs base their case upon principles that are inherent in the creation of our government. These principles continue to be essential in the preservation of our government. The principles advanced as a basis for denying relief, it is respectfully suggested, are inimical to the preservation of our national government and our national welfare. The principles may not be submitted to vote; they do not depend upon the outcome of elections. They are beyond the reach of officials. They are to be applied by the courts. *West Va. Bd.* v. *Barnette,* 319 U. S. 624, 638. This factor tips the scales on every problem of statecraft we have outlined above. In giving expression to these ideas we are simply following the paths that this court has hewed out, commencing with *Marbury* v *Madison,* 1 Cranch. 137 (1803), and which continues with numerous opinions that are filed at each term of this court. See *West Va. Bd* v *Barnette,* 319 U. S. 624, 668. (Justice Frankfurter, dissenting.)

Our argument does not seek a mandatory injunction It seeks to restrain action. No request is made for a judicial decree to compel the Illinois Legislature to act. The tra-

ditional "negative" injunction is known to equity in cases such as "specific performance," labor injunctions, contracts for personal services (*Lumley* v. *Gye* and *Lumley* v. *Wagner*), construction contracts, etc. Action that may be taken by a defendant seeking to remedy his predicament created by a negative injunction is not considered as *the* injunction. This is traditional equity practice. The District Court was "close" to the local problems. This "local practice" will be given due weight by this Court. *Hillsborough* v. *Cromwell,* decided Jan. 29, 1946; No. 305—Oct. Term, 1945, 14 LW 1410, 1411; *Huddleston* v. *Dwyer,* 322 U. S. 232, 237. The District Court believed that as an original problem the exercise of the Chancellor's conscience required the granting of injunctive relief.

The case at bar does not present the problems of *Douglas* v *Jeannette,* 319 U. S. 157 (1943). There the rights of the parties would be threshed out in state criminal proceedings, and the rights of the plaintiffs had been expressly formulated by the decision in *Murdock* v. *Penn.,* 319 U. S. 105, and related cases. In our case the relief requested, whether by way of injunctive relief or by declaratory judgment is involved solely in the questions presented in the instant case and in no other.

VI.

The decision in Wood v. Broom, 287 U. S. 1 (1932), does not preclude plaintiffs from obtaining relief.

A. Strictly considered as a matter of stare decisis, the case of Wood v. Broom, 287 U. S. 1 (1932), is not a precedent applicable to the issues in the case at bar.

Wood v. *Broom* is not a precedent because the facts are different than in the case at bar.

First, the plaintiff there was a candidate for election as representative, and apparently much, if not most of his claim to relief, was based upon his contention that he was entitled to have *his* name placed upon the election

ballot as a candidate from the state-at-large. See 287 U. S. 4, 5. Second, the plaintiff there sought to restrain the state officer defendants from taking proceedings for the *general* election of 1932. Third, the degree of inequality or discrimination was not the same, the districts ranging in size from 184,000 to 414,000. Fourth, the period of discrimination was not the same, in that the Mississippi Redistricting Act was passed in 1932 and suit was brought immediately thereafter during that same year, the decision of the district court being rendered September 1, 1932 (1 Fed. Supp. 134). Fifth, in that case no other relief was sought before the suit was brought in the Federal court. Sixth, the nature of the discrimination charged in the instant case is different from that charged in *Wood* v. *Broom*. Seventh, the decision in *Wood* v *Broom* was rendered *prior* to the decisions of this court which clearly established the concept that plaintiffs' rights to vote for Federal representatives were secured and guaranteed by the Federal Constitution, and before decisions rendered by this court, which delineated the protection to be afforded to such rights. Eighth, the decision in *Wood* v. *Broom* was rendered prior to the passage of the Federal Declaratory Judgment Act Ninth, the decision in *Wood* v. *Broom* was rendered prior to the decisions of this court clarifying and crystallizing the protection afforded by the Constitution under the equal protection clause of the Fourteenth Amendment.

The facts in the two cases being different, the reasoning in *Wood* v. *Broom* of both the majority and minority opinions must be construed in the light of the facts before the court. So considered, the decision is not a precedent.

In the second place, this court in the majority opinion carefully avoided deciding certain questions. Mr. Chief Justice Hughes said:

> "In this view, it is unnecessary to consider the questions raised as to the right of the complainant

> to relief and equity upon the allegations of the bill of complaint or as to the justiciability of the controversy, if it were assumed that the requirements invoked by the complainant are still in effect. See *Ex parte Bakelite Corp.,* 279 U. S. 438, 448. Upon these questions the court expresses no opinions." 287 U. S., at p. 8.

The headnote, as reported in 77 L. Ed. 131, construes the decision of this court on the narrow theory that where the ground upon which an injunction was granted below does not exist, this court on appeal will not consider the complainant's right to relief or other questions raised by lawsuit, i.e., a narrow holding that since the District Court limited plaintiff's right to relief to one theory, that theory being inaccurate in law, the decision of the District Court granting relief will be reversed and the cause remanded to the District Court, with directions to dismiss the complaint. This is simply following out the general assumption that the District Court had indicated by its action if the precise theory upon which relief was being granted did not exist, it, too, would dismiss the complaint.

It is true that Mr. Chief Justice Hughes recognized that the plaintiff claimed that the Mississippi Redistricting Act was invalid, on the ground that, among other grounds, it violated Article I, Section 4, and the Fourteenth Amendment to the United States Constitution. 287 U. S. 4. But it is further significant that no mention was made of this constitutional ground in the opinion. It must be assumed that by the express warning that this court was not expressing any opinion as to the right to relief in equity or as to the justiciability of the controversy that the majority of this court did not intend to decide the constitutional questions. Logically it may be argued that such express disclaimer by the majority did not prevent the court from doing that which it said it sought to avoid. Nevertheless, from the point of view of *stare decisis,* it

must now be taken that these questions pertaining to relief in equity and justiciability were *not* decided by this court in *Wood* v. *Broom.*

It could be reasonably contended that the action of the minority in stating their opinion that the decree should be reversed and the appeal dismissed for want of equity *is* sufficient authority to contend that the majority in opposing this theory was necessarily and logically deciding that the District Court should not dismiss the bill for want of equity. But even assuming that only the minority spoke concerning the equities, in this brief we have tried to show that this specific doctrine of the minority does not bar relief to these plaintiffs.

It is clear that the majority of the court did not discuss in its opinion propositions pertaining to plaintiffs' rights to relief in equity or to the justiciability of the controversy. It is well settled that where a proposition is not urged *or* discussed in the opinion of a reported case, the court is subsequently free to decide the proposition on what appears to be sound principles. *Louisville Trust* v. *Knott,* 191 U. S. 225, 236.

The mere fact that a point may be necessarily involved in a decision does not mean such decision is considered a precedent within the meaning of the doctrine of *stare decisis.* Of such a situation it has been said:

> "The most that can be said is that the point was in the case, if anyone had seen fit to raise it. Questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." *New* v. *Oklahoma,* 195 U. S. 252, 256; *Tefft & Co.* v. *Munsuri,* 222 U. S. 114, 119; *U. S.* v. *More,* 3 Cranch 159, 172; *The Edward,* 1 Wheat. 261, 275, 276; *Webster* v. *Fall,* 266 U. S. 507, 511; *U. S.* v. *Mitchell,* 271 U. S. 14."

In view of the fact that the majority of this court expressly disclaimed any intention to decide the questions

now raised in the case at bar, it is respectfully submitted that *Wood* v. *Broom* is no precedent within the meaning of the doctrine of *stare decisis*.

B. The American doctrine of stare decisis does not contemplate rigid adherence to or blind following of a decision which is clearly unsound and which is in violation of earlier well-established sound principles.

Under this heading we contend that as part of the American doctrine of *stare decisis* this court does not consider as precedents decisions which are clearly unsound and which clearly violate earlier well-established sound principles, and that such doctrine is peculiarly applicable to problems of constitutional law. As this court has put it, no constitutional rights can be based upon the error of a prior decision. *Dunbar* v. *City of N. Y.*, 251 U. S. 516, 519.

This court has rejected the doctrine of disability at self-correction. *Helvering* v. *Hallock*, 309 U. S. 106, 121.

If in view of experience subsequent to *Wood* v. *Broom* it has become evident that such decision is unsound, the doctrine of *stare decisis* does not preclude this court from examining the basis of such earlier decision. In *Abie Bank* v. *Weaver*, 282 U. S. 765, 772, this court held that a prior decision sustaining the validity of the bank guarantee law did not preclude the bringing of a subsequent suit to test the validity of assessments under that statute in the light of later actual experience.

The change in economic conditions warrants re-examination of prior decisions. *West Coast Hotel Co.* v. *Parrish*, 300 U. S. 379, 399. Time and circumstance may drain much of the vitality of earlier decisions. *Tigner* v. *State of Texas*, 310 U. S. 141, 147.

No interest which can be served by a rigid adherence to *stare decisis* is superior to the demands of a system of justice based on a considered and consistent application of the Constitution. *Graves* v. *Schmidlapp*, 315 U. S. 657, 665.

Stare decisis, though satisfying continuity, is not applied where it means collision with a proper doctrine more embracing in scope, intrinsically sounder and afforded by experience. *Helvering* v. *Hallock*, 309 U. S. 106, 119.

As this court recently stated, if convinced of a former error in decision on constitutional questions, this court is not constrained to follow precedent, especially where the decision claimed to be erroneous is application of a constitutional principle rather than an interpretation of the Constitution to extract the principle itself. *Smith* v. *Allwright*, 321 U. S. 649, 665, and many cases there cited.

See the learned article on Stare Decisis, 31 A. Bar Ass J., 501-509 (Oct. 1945).

It has been respectfully submitted that carefully and precisely considered the decision of *Wood* v. *Broom* is not applicable to the issues in the case at bar. However, it is recognized that courts have construed *Wood* v. *Broom* as being such a decision. Two instances have occurred in Illinois. The first was the decision in *Daly* v. *Madison County*, 378 Ill. 357, where the Illinois Supreme Court considered *Wood* v. *Broom* as an authority for the general proposition that no Federal rights under the Constitution existed warranting a claim by a citizen of the United States that he was entitled to have substantial equality of voting power with the residents of other districts in casting of votes for the election of members of the United States House of Representatives. But the influence of the decision in *Wood* v. *Broom* was even more regrettable in the sense that such decision simply misconstrued. The Illinois Supreme Court went on further to disregard its earlier decision in *Moran* v. *Bowley*, 347 Ill. 148, which had held that gross inequality in Congressional districts was a violation of the rights guaranteed to citizens of Illinois by the provisions of Article II, Section 18, of the Illinois Constitution, to the effect that elections should be free and equal.

In other words, the Illinois Supreme Court not only considered *Wood* v. *Broom* as a precedent in the question of Federal constitutional rights but apparently considered *Wood* v. *Broom* was a precedent in deciding rights under the Illinois Constitution.

The second example is the case at bar, where the learned Circuit Court of Appeals Judge and the two learned District Court Judges felt they were bound by the decision in *Wood* v. *Broom* to deny relief, even though, as implied in the opinion, they believed that all other questions of law were to be resolved in favor of the plaintiffs. The District Court felt that the only obstacle to relief was *Wood* v. *Broom*, which they followed only because being an inferior court they were so bound to do.

Legal periodicals have criticized the decision in *Wood* v. *Broom* on various grounds. All the text writers agreed that—as found by the District Court in the case at bar—the spectacle of legislatures ignoring and violating constitutional demands was morally and constitutionally revolting. In addition, they pointed out legal principles which condemn the decision or the reasoning, or both, of this court, in *Wood* v. *Broom*.

See 81 Univ. Pa. L. Rev. 343 (1933); 1 Geo. Wash. L. Rev. 119 (1932); 17 Minn. L. R. 321 (1933); 18 Iowa L. R. 400 (1933); 21 Ill. Bar. J. 27 (Mar 1933) and 31 Mich. L Rev. 149 (1932) at 168.

CONCLUSION.

The plaintiffs' rights spring from the Constitution of the United States. The operation of the Illinois Congressional Apportionment Act of 1901 serves to destroy these constitutional rights and brings about a serious injury to the national government envisaged by the Constitution. Discrimination, inequality and disfranchisement

seek to persuade the federal judiciary to avoid a decision "on the merits" and in such fashion to negate the Constitution in an attempt to perpetuate this growing evil, this denial of the Constitution. But the same wisdom that created constitutional rights of equality of representation provided for a judiciary that would protect these rights against illegal invasion. Constitutional supremacy calls for the solemn action of this Honorable Court to exercise its constitutional power and perform its constitutional duty of informing the State of Illinois that its statute creating gross inequality of voting power, working arbitrary discrimination and disfranchising the plaintiffs as well as hundreds of thousands of other voters among the Illinois Congressional districts, violates the organic law of the land.

ABRAHAM W. BRUSSELL,
Attorney for Better Government Association, Amicus Curiae,
135 So. LaSalle St., Rm. 2254
Chicago, Illinois.

APPENDICES

APPENDIX A.

Population of Congressional Districts in Illinois*

	1900	*1910*	*1920*	*1930*	*1940*
1	237,701	169,828	167,220	142,916	140,527
2	181,936	279,646	401,585	577,998	612,641
3	186,140	250,328	359,018	540,666	575,799
4	201,870	229,963	240,970	237,139	223,304
5	212,978	192,411	158,092	140,481	112,116
6	196,610	283,148	458,175	632,834	641,719
7	268,163	349,883	560,434	889,349	914,053
8	286,643	236,481	183,031	138,216	123,743
9	220,766	187,013	190,307	209,650	215,175
10	189,552	281,590	408,470	577,261	625,359
11	211,511	242,174	267,694	363,136	385,207
12	218,771	237,162	259,169	292,023	298,072
13	172,162	167,634	170,013	178,198	186,433
14	170,820	180,689	197,952	199,104	214,500
15	213,049	216,884	215,525	213,630	217,334
16	194,243	211,595	224,930	253,713	276,685
17	178,739	176,291	174,545	175,353	176,337
18	209,233	219,425	225,735	225,604	235,134
19	228,896	241,728	256,252	274,137	284,001
20	184,593	175,978	169,292	158,262	162,528
21	177,475	211,614	237,397	233,252	237,279
22	200,830	259,059	290,334	344,666	359,343
23	211,830	233,149	222,960	213,567	243,130
24	190,438	187,279	179,836	161,158	174,396
25	185,721	217,639	266,344	258,341	262,426
Total	4,821,550	5,638,591	6,485,280	7,630,654	7,897,241

*The first nine districts are entirely in Cook County The tenth district includes part of Cook County together with all of Lake County

APPENDIX B.

Mathematical Relationships of Illinois Congressional Districts

District	*1900*	*1910*	*1920*	*1930*	*1940*
1	+23.25%	−24.70%	−35 54%	−53.18%	−55.51%
2	−5.67	+23.99	+54.81	+89.37	+93 94
3	−3 49	+10.99	+38 40	+77.14	+82.28
4	+4 67	+1.96	−7.11	−22 31	−29.31
5	+10.43	−14 69	−39 06	−53 97	−64.51
6	+1 94	+25.54	+76.62	+107.33	+103.15
7	+39 04	+55 13	+116.04	+191 37	+189.36
8	+48.63	+4.85	−29 44	−54 72	−60.83
9	+14.47	−17 08	−26.64	−31 31	−31.88
10	−1.72	+24 85	+57 46	+89 13	+97.97
11	+9.67	+7 37	+3.19	+18 97	+21 94
12	+13.43	+5.15	− 09	−4 33	−5.64
13	−10.73	−25 68	−34 46	−41 62	−59.02
14	−11.43	−19 89	−23 69	−34 77	−32.10
15	+10 47	−3 84	−16.92	−30.01	−31.20
16	+.72	−6 18	−13 29	−16 88	−12.41
17	−7 32	−21 84	−32.71	−42 55	−44.18
18	+8.49	−2.71	−12 99	−26 09	−25.56
19	+18.68	+7 18	−1 22	−10 19	−10.09
20	−4.29	−21.98	−34.74	−48 15	−48.55
21	−7.98	−6.18	−8.49	−23.58	−24.89
22	+4.13	+14.86	+11.92	+12.92	+13.76
23	+9 84	+3 37	−14 05	−30 03	−23 03
24	−1 26	−16.97	−30.68	−47 20	−44.79
25	−3.70	−3 50	+2.67	−15.36	−16.92
Average (normal) size of district	192,862	225,544	259,411	305,225	315,890
Total population of Illinois	4,821,550	5,638,591	6,485,280	7,630,654	7,897,241

APPENDIX C.

Congressional Apportionments Among Various States

	State	Date of Last Reapportion ment	Population of Largest District	Population of Smallest District	Maximum Percentage Departure from Average	Percentage of Excess of Largest Over Smallest
1	Ill	1901	914,053	112,116	189 4	715.3
2	Ohio	1913	698,650	163,561	115 6	327.1
3	Md.	1902	534,568	195,427	76 1	174.1
4	Tex	1931	528,961	230,010	73 2	130.0
5	Mo	1933	503,738	214,757	73 0	134.6
6	Ga.	1931	487,552	235,420	56 1	107.1
7	Ark.	1901	423,152	177,476	51 9	138.5
8	S. D	1931	485,829	157,132	51.1	209.2
9.	Miss	1932	470,781	201,316	50.9	133.8
10.	Ind	1941	460,926	241,323	47.9	91.0
11	Penn	1943	441,518	212,979	47 3	107.4
12	Okla	1913	416,863	189,547	46.2	119 9
13.	Ala	1931	459,930	251,757	46 1	82.3
14	Wash	1931	412,689	244,908	42.6	58.0
15	Fla	1943	439,895	186,831	40 9	136.0
16.	Colo	1921	322,412	172,847	38 4	86.5
17	Calif	1941	409,404	194,199	36 3	110.8
18	Mich	1931	419,007	200,265	35 5	109.2
19	Tenn	1941	388,938	225,918	33.4	72.2
20.	Conn	1911	450,189	247,601	31.7	81.8
21.	Ky.	1934	413,690	225,426	30.8	84.0
22.	Ore	1941	355,099	210,991	30 2	68 3
23.	Kans	1941	382,546	249,574	27.4	45.0
24.	Wis.	1932	391,467	263,088	24.8	48.8
25	N J.	1931	370,220	226,169	24 6	63.7
26	Ia	1941	392,052	268,900	23 6	45.8
27.	La	1912	333,295	240,166	23 0	39 2
28.	N. Y.	1942	365,918	235,913	22 2	55.1
29	Va.	1934	360,679	243,165	21 6	43.9
30.	S C	1932	361,933	251,137	20 7	44.1
31.	N C	1941	358,573	239,040	20.5	50.0
32	W Va.	1934	378,630	281,333	19.4	34.6
33.	Mont	1917	323,597	235,859	18 6	37.2
34.	Idaho	1917	300,357	224,516	12 6	33.8
35.	Mass	1941	346,623	278,459	12 4	25 2
36.	Nebr	1941	369,190	305,961	12 2	20.7
37.	Minn	1933	334,781	283,845	9 3	17.9
38	Utah	1913	293,922	256,388	6 8	14.6
39	R I	1932	374,463	338,883	5 2	10.5
40.	Maine	1931	290,335	276,695	2 8	4.9
41.	N. H.	1881	247,033	244,491	0.5	1.0

APPENDIX D.

Ratio of Representation for Congressional Districts in Illinois

	1900	*1910*	*1920*	*1930*	*1940*
State Ratio for Congressmen Elected by Districts	192,862	225,544	259,411	305,225	315,890
Ratio for Congressmen Elected in Cook and Lake Counties	187,324	246,029	312,730	408,451	418,444
Ratio for Congressmen Elected in Downstate Counties	198,854	215,557	228,817	243,235	247,520

APPENDIX E.

Ratio of Representation for Congressional Districts in the United States

Census Year	*1900*	*1910*	*1920*	*1930*	*1940*
Number of Representatives in House of Representatives	357	391	435	435	435
Population of United States	75,994,575	91,972,266	105,710,620	122,775,046	131,669,275
Ratio of Population per Representative in Entire U S.	212,589	234,967	243,013	282,241	302,662

APPENDIX F.

Congressional Reapportionment Bills Introduced In Illinois Assembly.

H. J.—Indicates Illinois House Journal
S. J.—Indicates Illinois Senate Journal

1911

No bills introduced on subject.

1913

No bills introduced on subject.

1915

No bills introduced on subject.

1916 (Special Session)

No bills introduced on subject.

1917

No bills introduced on subject.

1919

March 19. By Mr. Cliffe, Senate Bill No. 277, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts and to establish the same, and to provide for the election of representatives therein, and to repeal an Act therein named."

Referred to the Committee on Reapportionment. S.J. p. 501.

May 14. Recommended do pass as amended. S.J. p. 962.

May 15. First reading. S.J. p. 963.

June 5. Second reading. Amended. S.J. p. 1211-12.

June 11. Recalled to second reading and amended. S.J. p. 1325.

June 12. Third reading. Passed 29-7. S.J. p. 1374.

June 12. Received by House. H.J. p. 1147.

June 16. Tabled on general motion that all Senate bills now on calendar, committees and on first reading be ordered to lie on the table. H.J. p. 1280.

1921

April 26. By Mr. Wright, Senate Bill No. 406, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts."

Referred to the Committee on Reapportionment. S.J. p. 769.

This bill was never reported out of committee. It was tabled on June 17 on a general motion laying all bills in committee on the table. S.J. p. 1527.

1923

No bills introduced on subject.

1925

No bills introduced on subject.

1927

No bills introduced on subject.

1928 (Special Sessions)

No bills introduced on subject.

1929

February 21. By unanimous consent, Mr. Juul introduced a bill, House Bill No. 259, a bill for "An Act to

apportion the State of Illinois into twenty-seven Congressional districts and to establish the same and to provide for the election of Representatives therein and to repeal an Act therein named."

The bill was taken up, read by title, ordered printed and referred to the Committee on Congressional Apportionment. H.J. p. 26.

This bill was never reported out of committee. It was tabled on a general motion tabling all bills not reported out of committee. H.J. p. 1173.

Feb. 21 By Mr. Huebsch, Senate Bill No. 157, a bill for "An Act to apportion the State of Illinois into twenty-seven Congressional districts and to establish the same and to provide for the election of Representatives therein and to repeal an Act therein named." Referred to Committee on Apportionment. S.J. p. 381.

April 10. Recommended do pass. S.J. p. 678.

April 11. First reading. S.J. p. 681.

May 7. Second reading. Amended and Postponed. S.J. p. 918-9.

May 8. Amendment offered and tabled. S.J. p. 950-1.

May 14. Amended. S.J. p. 1014.

May 15. Failed to pass. yeas 20, nays 19. S.J. p. 1045.

1931

H. B. 1165. Committee on Congressional Apportionment.

Reapportions the state into twenty-seven congressional districts. Repeals present Congressional Reapportionment Act.

May 21. Introduced. Recommended do pass. First reading. Without reference. H.J. p. 959-60.

June 10. Second reading. Amended. H.J. p. 1365-1370; 1379, 1383-1388.

June 11. Third reading. Passed. H.J. p. 1427.

June 11. Senate. First reading. Without reference S.J. p. 1477, 1486.

June 16. Second reading. Amended. S.J. p. 1514-1518.

June 17. Third reading. Passed. H.J. p. 1549.

June 17. House. Speaker's table. H.J. p. 1530.

June 18. House non-concurs in Senate amendments. H. J. p. 1542. Senate refuses to recede. Senate Conference Committee. S.J. p. 1594-1597. House Conference Committee appointed. H.J. p. 1544. Senate adopts Conference Committee report. S.J. p. 1619.

June 19. House adopts Conference Committee report. H.J. p. 1559-1585.

1932 (Special Sessions)

No bill introduced on the subject.

1933

May 31. By Mr. Ward, Senate Bill No. 709, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts, to provide for the election of representatives therein and to repeal an Act therein named."

By unanimous consent, on motion of Mr. Ward, the bill was taken up and read at large the first time and ordered to a second reading. Page 1134 (S.J.).

June 1. Second reading. Page 1160 (S.J.).

June 6. Motion to recall bill to second reading for purpose of amendment. Tabled. Page 1220 (S.J.).

June 22. Third reading. Failed to pass. Vote 20-19. Pages 1516-1517. (S.J.)

March 2. The House proceeding on the order of introduction of bills, the roll was called for that purpose, whereupon Mr. Lyons introduced a bill, House Bill No.

443, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts, to provide for the election of Representatives therein and to repeal the Act therein named."

The bill was taken up, read by title, ordered printed and referred to the Committee on Congressional Apportionment. Page 317 (H.J.).

June 16. Tabled on a general motion which tabled all bills in committees. Page 1579 (H.J.).

May 26. By unanimous consent, Mr. McClure introduced a bill, House Bill No. 1031, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts, to provide for the election of representatives therein and to repeal an Act therein named."

The bill was taken up, read by title, ordered printed and to lie on the Speaker's table. Page 1220 (H.J.).

May 31. Referred to Committee on Congressional Apportionment. Page 1233 (H.J.).

June 16. Tabled on a general motion which tabled all bills in committees. Page 1579 (H.J.).

1934 (Special Sessions)

No bill introduced on the subject.

1935

March 12. By unanimous consent, Mr. McClure introduced a bill, House Bill No. 603, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts, to provide for the election of representatives therein and to repeal an Act therein named."

The bill was taken up, read by title, ordered printed and referred to the Committee on Congressional Apportionment. Page 281 (H.J.).

June 21. Tabled on a general motion which tabled all bills in committees. Page 1491 (H.J.).

1936 (Special Sessions)

No bill introduced on the subject.

1937

February 24. By Mr. Ward, Senate Bill No. 145, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts, to provide for the election of representatives therein and to repeal an Act therein named."

Referred to the Committee on Reapportionment. Page 134 (S.J.).

1938 (Special Sessions).

No bill introduced on the subject.

1939

February 7. By Mr. Ward, Senate Bill No. 108, a bill for "An Act to apportion the State of Illinois into twenty-seven congressional districts, to provide for the election of representatives therein and to repeal an Act herein named."

Referred to the Committee on Reapportionment. Page 108 (S.J.).

June 6. Recommended do pass. First reading. Page 789 (S.J.).

June 7. Second reading. Page 819 (S.J.).

June 13. Third reading. Failed to pass. Vote 19-18. Page 903 (S.J.).

April 12. By unanimous consent, Messrs. Lund and Sprague introduced House Bill No. 668, a bill for "An Act to apportion the State of Illinois into twenty-six congressional districts and to establish the same, and to provide for the election of representatives therein, and to repeal an Act therein named."

The bill was taken up, read by title, ordered printed and referred to the Committee on Reapportionment. Page 380 (H.J.).

June 7. Notice of motion given to discharge committee from further consideration and have bill placed on calendar. Page 1192 (H.J.).

June 8. Motion to discharge committee made. Lost 4-80. Pages 1162 and 1163 (H.J.).

June 8. Tabled on a general motion which tabled all bills in committees. Page 1173 (H.J.).

1940 (Special Session)

No bill introduced on the subject.

1941

April 9. Mr. Gunning introduced Senate Bill No. 383, a bill for "An Act to apportion the State of Illinois into twenty-six Congressional districts and to establish the same, and to provide for the election of Representatives therein, and to repeal an Act therein named."

The bill was read by title, and, under the rules, referred by the President of the Senate to lay on the President's table. Page 313 (S.J.).

April 10. Bill ordered printed. Page 331 (S.J.).

May 15. Recommended do pass Page 645 (S.J.).

June 26. Tabled. Page 1437 (S.J.).

March 13. By unanimous consent, Mr. Luckey introduced House Bill No. 357, a bill for "An Act to apportion the State of Illinois into twenty-six Congressional districts and to establish the same, and to provide for the election of Representatives therein, and to repeal an Act therein named."

The bill was taken up, read by title, ordered printed and referred to the Committee on Reapportionment. Page 222 (H.J.).

April 30. Recommended do pass as amended. Page 526 (H.J.).

May 1. First reading. Page 561 (H.J.).

June 3. Second reading. Amended. Pages 1131-4 (H.J.).

June 5. Amended further Pages 1208-1212 (H.J.).

June 18. Third reading. Further consideration postponed. Page 1434 (H.J.).

June 19. Failed to pass. Vote 59-77. Page 1478 (H.J.).

1943

April 20. Mr. Butler introduced Senate Bill No. 310, a bill for "An Act to apportion the State of Illinois into twenty-six Congressional Districts, to provide for the election of Representatives therein, and to repeal the Act therein named."

The bill was read by title, ordered printed and, under the rules, referred by the President of the Senate to the Committee on Efficiency and Economy. Page 294 (S.J.).

June 25. Tabled on a general motion which tabled all Senate Bills in Committees (S.J.) Page 1253.

1945

S B. 68. SCHWARTZ.

Apportions the State of Illinois into 26 congressional districts, and repeals the Congressional Apportionment Act of May 13, 1901.

Feb .6. Introduced Committee on Efficiency and Economy.

June 27. Tabled.

S. B. 311. DALEY.

Apportions the State of Illinois into twenty-six Congressional districts and repeals the present Congressional Apportionment Act.

April 10. Introduced. Committee on Efficiency and Economy.

June 27. Tabled.

S. B. 324. BENSON.

Apportions the State of Illinois into twenty-six Congressional districts and repeals the present apportionment Act.

April 11. Introduced. Committee on Efficiency and Economy.

June 27. Tabled.

H. B. 221. VIRKUS and MCCABE.

Apportions the State of Illinois into 26 Congressional districts and repeals the present law on the subject.

March 7. Introduced. Committee on Reapportionment.

June 13. Recommended do pass as amended.

June 14. First reading.

June 21. Second reading. Tabled.