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, ET AL.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS

## STATEMENT OPPOSING JURISDICTION AND MOTION TO DISMISS OR AFFIRM

GEORGE F. BARRETT,
*Attorney General of Illinois,*
*Counsel for Appellees.*

WILLIAM C. WINES,
*Assistant Attorney General,*
*Of Counsel.*

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*Appellees*

## APPELLEES' STATEMENT MAKING AGAINST THE JURISDICTION OF THIS COURT, MOTION TO DISMISS THE APPEAL OR TO AFFIRM THE JUDGMENT OF THE DISTRICT COURT, AND BRIEF IN SUPPORT OF SUCH MOTION

Appellees respectfully present this statement making against this court's jurisdiction in the above entitled cause, which statement is as follows:

### Summary and Short Statement of the Matter Involved

On January 8, 1946, three inhabitants of Illinois, Kenneth W. Colegrove, Peter J. Chamales and Kenneth C.

Sears filed a complaint in the District Court of the United States for the Northern District of Illinois, Eastern Division against the Governor, Secretary of State and Auditor of the State of Illinois, as members *ex-officio* of the Illinois Primary Certifying Board.

By this complaint the plaintiffs asserted that the Illinois Congressional Reapportionment Act, which establishes congressional districts in Illinois, is in its present operation void both under the Illinois and Federal constitutions because, so the plaintiffs aver, it has resulted in inequalities in the proportions of populations in the various congressional districts so gross as to render it unconstitutional. The plaintiffs further asserted that, under the provisions of the Federal Congressional Apportionment Act (Nov. 15, 1941, C. 470, Sec. 2(A), 55 Stat 762, U. S C A. Title 2, sec. 2(b)), in the absence of a valid state congressional apportionment act, all congressmen from Illinois must be elected at large. They sought the District Court's vindication of these assertions by (1) injunction and (2) declaratory judgment.

A statutory three-judge court, composed of Judges Evans (of the Circuit Court of Appeals), Igoe (of the District Court) and LaBuy (of the District Court) was convoked under the provisions of section 266 of the Judicial Code (U. S C A Title 28, sec. 380)

The defendants filed, under special appearance, a motion to dismiss the suit for want of jurisdiction over their persons and over the subject matter.

**Grounds on Which the District Court's Jurisdiction Was Challenged**

The appellees challenged the District Court's jurisdiction on grounds which may be summarized as follows:

I

This court has held that equity has no jurisdiction to grant relief, by injunction or otherwise, in suits in which the sole or primary object is to control, affect or influence an election. It has further held that this is true even though the complaint shows a violation of the Civil Rights Act and even though the appellants invoke specifically the provisions of the Civil Rights Act authorizing equitable relief.

It has further held that where injunction will be foreborne, declaratory judgment will also be foreborne. (See *Brief, post.*)

The appellees contend that these holdings peremptorily dispose of this case. (See *Brief, post.*)

II

Since the appellees are sued in their official capacity and since the object of the proceedings is to govern and control state action with respect to elections, this suit is in substance one against the State of Illinois. Jurisdiction is therefore inhibited by the state's sovereign immunity

III

Related and similar to the doctrine of sovereign immunity but specifically recognized by the Supreme Court of the United States as logically distinct therefrom is the constitutional principle that although the Federal judiciary may enjoin unauthorized acts on the part of public officials, it may not affirmatively coerce state officers to perform official duties, even though the duties are specifically en-

joined by acts of Congress or the Constitution. This doctrine is distinct from the principle of sovereign immunity for it is applied even where the plaintiff is another state or the United States and where therefore no question of sovereign immunity could be presented. For this additional reason, jurisdiction is lacking. (See *Brief, post.*)

IV

Since this proceeding contemplated an adjudication by the District Court as to who may be elected to the House of Representatives, it sought to make that court and not the House of Representatives the tribunal for determining the validity of the election of congressmen in future elections. By section 5 of Article I of the Constitution of the United States, the power to determine the validity of elections to the House of Representatives is vested solely in that House. This court has held election proceedings in Congress to be judicial and not legislative and to be exclusive of all judicial proceeding in the courts. Since the District Court would have no jurisdiction to pass upon the validity of an election after the election was held, *a fortiori,* it could not in effect pass upon the validity of an election which has not been held. (See *Brief, post.*)

V

The appellants assert that the Illinois Congressional Reapportionment Act violates the constitution of the State of Illinois as well as the federal constitution and various congressional enactments. By the principle of Federal jurisprudence recently evolved in severe limitation of earlier decisions but now firmly established, where a litigant asserts that State legislative measures or the action of State officials violates both the State and Federal Constitutions, he must bring proceedings for the enforcement of

his alleged rights in the State courts and not in the Federal courts. This principle has been specifically applicable to cases involving civil rights.

If the appellants have any rights, they should pursue them in the courts of Illinois and not in this court. (See *Brief, post.*)

After the District Court's opinion was rendered, the appellees filed an additional motion to dismiss, suggesting the following ground:

VI

It appears on the record that, although this suit could have been brought at any time, it was in fact not brought until January 8, 1946. The last day for filing petitions in compliance with the view of the District Court is, under the Illinois Election Law, January 29, 1946, on which date the purported order in question was entered.

Although the appellees waived service of process, as a result of the appellants' unexcused failure to file this suit until a few days before the last day for filing petitions, many persons who seek, with the support of hundreds of thousands of citizens, to run for Congress at the most critical time in the country's history (some of whom have sat in Congress for many years) would have been unable to file petitions in accordance with the views of the appellants, if the appellants should succeed in eliciting the adjudication that they seek. To entertain this cause at so late a date would have been so great an abuse of judicial discretion as to amount to a transcension thereof.

The District Court dismissed the appellants' suit on January 29, 1946, by the judgment of which appellants seek review on this appeal.

**Motion to Dismiss This Appeal or, in the Alternative, to Affirm the Judgment Appealed from Without Further Briefs or Arguments.**

The appellees, for the reasons set forth in the foregoing statement of the **Grounds on Which the District Court's Jurisdiction Was Challenged,** *ante*, and argued in the brief in support of this motion, respectfully move and pray this court either to dismiss this appeal for want of jurisdiction, to dismiss it for want of a substantial federal question or to affirm the judgment appealed from without the filing of further briefs or the presentation of further arguments.

GEORGE F. BARRETT,
*Attorney General of the State of Illinois,*
*Attorney for Appellees.*

IN THE

# SUPREME COURT OF THE UNITED STATES

**OCTOBER TERM, 1945**

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# No. 804

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

*Appellants,*

VS.

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*Appellees*

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## BRIEF IN SUPPORT OF THE MOTION TO DISMISS OR AFFIRM

### Reference to Statement Making Against Jurisdiction for Statement of the Case

The case is stated and the issues are delineated in the **Statement Making Against the Jurisdiction of This Court,** *ante,* to which reference is made to avoid repetition of the substance thereof.

## ARGUMENT

### I

### Since This Case Involved Only Political Issues, the District Court Had No Power to Act

#### A

#### Equity Has No Power to Act, by Injunction or Declaratory Judgment

The doctrine that equity cannot interfere with elections or intervene in political matters is classical and fundamental. This is true even though the suit is brought under the Civil Rights Act and even though the appellants specifically invoke the provisions of that Act which authorize the granting of equitable relief.

It would be sufficient to cite as decisive of this proposition the case of *Giles* v. *Harris*, 189 U. S. 475. In that case, the plaintiff's bill of complaint disclosed a clear violation of the political rights of five thousand negroes. Provisions of the Civil Rights Act authorizing equitable relief were specifically invoked. Mr. Justice Holmes said, at page 486:

> "It seems to us impossible to grant the equitable relief which is asked. It will be observed in the first place that the language of sec. 1979 does not extend the sphere of equitable jurisdiction in respect of what shall be held an appropriate subject matter for that kind of relief. The words are 'shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.' They allow a suit in equity only when that is the proper proceeding for redress, and they refer to existing standards to determine what is a proper proceeding. The traditional limits of proceedings in equity have not embraced a

remedy for political wrongs. *Green* v. *Mills,* 69 Fed. Rep. 852."

The cases of *Green* v. *Mills,* 69 Fed. 852, and *Blackman* v. *Stone,* 17 Fed. Supp. 102, although not authoritative in this court, contain excellent compilations of other authorities, state and federal, sustaining this fundamental axiom of equity jurisprudence in its application to Civil Rights cases.

"Equitable relief in a federal court," this court said in its very recent opinion in *Guaranty Trust Company of New York* v. *York,* 326 U. S. 99, "is of course subject to restrictions: the suit must be within the traditional scope of equity as historically evolved in the English Court of Chancery."

Any order of the character sought by appellants would clearly transcend this limitation upon the jurisdiction of equity.

B

**The Declaratory Judgment Act Does Not Enlarge the Subject Matter of the District Court's Jurisdiction**

Appellants contended that the provisions of the Declaratory Judgment Act enlarged the scope of Federal jurisdiction in election matters. But in *Aetna Life Insurance Company* v. *Haworth,* 300 U. S. 227, this court sustained the constitutionality of the Declaratory Judgment Act on the ground that "the operation of the Declaratory Judgment Act is procedural only," that it did not and could not declare any matter to be a "case" or "controversy" within the limited purview of the Federal constitutional limitations on jurisdiction, and that, although a declaratory judgment need not contemplate immediate process, it must contemplate effective relief ultimately enforceable by judicial action.

And in *Great Lakes Company* v. *Huffman,* 319 U. S. 293, this court held that where the subject matter was such that equity could not protect the rights of the plaintiff by injunction *because of want of jurisdiction,* it lacked jurisdiction to enter a declaratory judgment.

It is of course quite clear that the subject matter of this suit is not within the purview of any remedy or action known to the common law.

Neither jurisdiction at law nor jurisdiction in equity extends to the elections and their superintendence

The entire philosophy of federal constitutional jurisprudence is that, as the federal judiciary is independent of elections, so elections must be independent of the federal judiciary.

This important principle will bear a moment's emphasis of the considerations upon which it is founded. Although the constitutional doctrine of "balance of power" usually refers to the independent supremacies of, respectively, the legislative, the executive and the judicial branches of government, or to the mutually limiting state and federal sovereignties, it is nevertheless based upon the profound realization that if any organ of the government could arrogate to itself prerogatives absolute in tenor without some reciprocal control, sovereignty would become autarchy This would be true even though a judicial dispensation of power over elections, and therefore over government, might be benign; for judicial power over the dynamics of representative government is *per se* repugnant to the very concept of representative government.

In many states, among them Illinois, courts do indeed exercise statutory power in election contest cases and perform the nonjudicial, or at most quasi-judicial function of superintending the final counting and making of election returns Thus such courts directly intervene in and in some measure control elections. But, reciprocally, the

judges are themselves elected and must, if they desire to retain their tenure, stand for reelections; so that the judicial and electoral process react mutually with each other.

But if the federal judiciary were to be allowed to control elections, without in turn being in any degree controlled by them, that equilibrium of power which distinguishes the sovereignty of a republic from the absolutism of an autarchy, would, at least in principle, be destroyed.

The principle that the federal judiciary is not amenable to the electorate has as its necessary corollary that the electorate shall not be subject to the judiciary.

## II

### This Proceeding Is One Against the State of Illinois and Is Therefore Inhibited by the Doctrine of Sovereign Immunity.

In praying relief against appellee officials of the State of Illinois, the appellants confused the well settled rule that, although natural persons, including public officials, can be *prohibited* from performing unconstitutional acts, and this is true even though they claim to act under the purport of official authority, the equally well settled rule is that suits, not to *restrain* but to *coerce* the acts of State officials are suits against the State. This principle results from the self-evident fact that a State acts only by the official acts of its officers and that hence such acts, when not only authorized but compelled by law, are acts of the State. (See *Governor of Georgia* v. *Madrazo,* 26 U. S. 110, *New York Guaranty Company* v. *Steele,* 134 U. S. 230, and *Cunningham* v. *Macon & Brunswick Railroad Company,* 109 U S. 446.)

Recently this Court held that a suit to compel the officials of the State of Indiana to refund taxes alleged to have been unconstitutionally collected from the plaintiff, a foreign

corporation, was a suit against the State. (*Ford Motor Company* v. *Department of Treasury of Indiana,* 323 U. S. 459.)

The appellants evidently distinguished between suits to compel State action in the form of making disbursement of money and suits to compel State action in the form of controlling an election. We do not perceive the distinction.

In this Court's very recent opinion in *Mine Safety Appliances Company* v. *Forrestal,* 326 U. S. —, 66 S. Ct. 219, this Court adhered to and perhaps even enlarged the scope of the rule that a suit seeking to coerce official action is a suit against the sovereign. In that case, the plaintiffs specifically prayed a *declaratory judgment* to the effect that the Under-Secretary of the Navy was unlawfully withholding funds, under the color of an unconstitutional act, which rightfully belonged to the plaintiffs.

The court held that, before injunctive or declaratory relief may be granted, the subject matter of the suit must be such that the public official is "*suable as an individual*" and that the government must "lack * * * interest in all cases where the suit is nominally against the officer as an individual." It was specifically held that, although the prayer for a declaratory judgment asks only that the Renegotiation Act "be held unconstitutional" it nevertheless contemplated judicial action against the sovereign.

We submit that the case last cited is absolutely decisive of the case at bar.

Appellees submit that the case at bar is either an attempt to bind the officers of the State of Illinois by judicial pronouncement in which case the court lacks jurisdiction because of the State's immunity to suit, or it is not an attempt to bind such officials in which case it presents no "case" or "controversy."

In order to show that the appellants really asked the District Court to stultify itself by doing a vain and futile

thing, we ask the following questions each of which admits of a categorical "yes" or "no" answer. We demonstrate that it is the questions, not the answers, that are significant; for whether they be answered "yes" or "no" the answers will be equally fatal to the appellants' case.

**1. Would the appellees be bound to abide by the decision of the federal courts in this case if the decision should be opposed to their own view of the constitutionality of the Illinois Congressional Apportionment Act?**

**If the answer to the above question is "Yes"**: If it is admitted that the judgment sought would be coercive, so that the appellees would be bound to substitute the judgment of the court for their own determination, then the suit is one to compel the appellees to perform an official duty. It would therefore effectively control the State. Such a suit is one against the State, and is prohibited.

**If the answer to the above question is "No"**: Then if no compulsion attaches to the judgment, it is not declaratory. It is merely advisory. If it is the duty of the appellees to interpret the law of Illinois as they understand it and not as the court understands it, then the proceeding seeks a mere *dictum*. It settles nothing.

**2. Is it intended to bind such state election officials as clerks and judges of election, county clerks, the Secretary of State, etc.?**

**If the answer to the above question is "Yes"**: Then the suit is obviously forbidden by sovereign immunity, *first*, because it is an attempt to bind the State government in violation of sovereign immunity to suit and, *second*, because the officials sought to be bound are neither impleaded nor represented in the case.

**If the answer to the above question is "No"**: Then the suit seeks, not a declaratory judgment, for it will settle

nothing, but a purely advisory judgment. It therefore presents no case or controversy.

**In short**: This is either an attempt to bind the election officials of the State of Illinois by judicial pronouncement, in which case the court lacks jurisdiction because of the State's immunity to suit, or it is not an attempt to bind such officials, in which case it presents no "case or controversy" because the parties who must be bound are not before the court and because an adjudication would be a futile nullity.

In *Giles* v. *Harris,* 189 U. S. 475, already cited (Point I, *ante*), as holding that equity will not intervene in election matters, Mr. Justice Holmes perceived this dilemma. He declared that if a decree could bind election officials, it would bind the State in violation of sovereign immunity; and if it did not bind such officials, it was an "empty form." He said, at page 488:

> "The Circuit Court has no power to bind the State. * * * Unless we are prepared to supervise the voting in that State * * * it seems to us that all that the plaintiff could get from equity would be an empty form."

## III

### The Appellees Are Immune to Coercion, by Process or Adjudication, in Respect to Official Action; and This Is an Immunity That Is Recognized As Distinct from the Sovereign Immunity of the State of Illinois.

A doctrine intimately related to, but nevertheless recognized by this Court as logically distinct from the principle of sovereign immunity is embodied in the rule that State officials may not be coerced by Federal judicial process.

That this is not a mere application of the doctrine of sovereign immunity appears from the fact that it is en-

forced even in cases where the plaintiff is another State or the United States, in which case no question of sovereign immunity can arise. In the case of *Kentucky* v. *Dennison,* 65 U. S. 66, the Governor of Ohio has refused to render a fugitive extradited from Kentucky. The plaintiff in an original *mandamus* suit in this Court was the State of Kentucky. Although Ohio would not be immune to suits by Kentucky, and although it appeared that the defendant's refusal to honor the extradition was in violation of Federal constitutional and statutory provisions, this Court said that he was immune to coercive process. An appropriate excerpt is quoted in the margin.*

See also *United States* v. *Clausen,* 291 Fed. 231, holding that even though a State official wrongfully refused to turn over property of an alien to the alien property custodian during the first World War, and even though the plaintiff in a suit to compel obedience to the law was the United States, the officer was exempt from judicial process.

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* "* * * The act does not provide any means to compel the execution of this duty, nor inflict any punishment for neglect or refusal on the part of the Executive of the State, nor is there any clause or provision in the Constitution which arms the Government of the United States with this power Indeed, such a power would place every State under the control and dominion of the General Government, even in the administration of its internal concerns and reserved rights **And we think it clear that the Federal Government, under the Constitution, has no power to impose on a State officer, as such, any duty whatever, and compel him to perform it; for if it possessed this power, it might overload the officer with duties which would fill up all his time, and disable him from performing his obligations to the State, and might impose on him duties of a character incompatible with the rank and dignity to which he was elevated by the State.**

"It is true that Congress may authorize a particular State officer to perform a particular duty, **but if he declines to do so, it does not follow that he may be coerced, or punished for his refusal."** (**Kentucky** v. **Dennison,** 65 U S 66, 107-108.) (Emphasis supplied.)

## IV

### This Court Is Asked to Exercise Jurisdiction Which Under the Constitution Appertains Only to the House of Representatives, Sitting Judicially and Not As a Legislature.

In *Barry* v. *United States ex rel. Cunningham,* 279 U. S. 597, the Supreme Court of the United States declared that a house of Congress, in determining the election and qualifications of its members, exercises powers which, since they require the ascertainment of facts and the application of law thereto, "are not legislative but judicial in character." (page 613.) It further holds, as Section 5 of Article II of the Constitution provides, that such judicial power is exclusive and imports the jurisdiction to "render a judgment which is beyond the authority of any other tribunal to review."

If the substantive theory of the appellants is well conceived, they have not only an adequate but exclusive remedy before the Lower House of Congress.

As many persons, otherwise qualified, as desire to do so can run for congressman at large. The twenty-six persons who receive the highest votes can present due certification of that fact to the Congress if they wish to claim that there are no duly constituted election districts in Illinois. That body can then, in the language of the Supreme Court in the *Cunningham* case, accomplish "the ascertainment of the facts" and apply the law, which the appellants say is clear, to the facts ascertained. (The *Cunningham* case, incidentally, holds that the Senate may compel the attendance of State officials by arrest, if such measure becomes necessary in order to elicit the facts.)

At that appropriate time, and in that appropriate forum, whose jurisdiction is constituted under constitutional auspices, the twenty-six persons who have received the

highest number of votes can, if they choose, press upon Congress the theory and arguments that the appellants seek to present to this Court.

Once it is appreciated that:

> (1) Any person, or any twenty-six persons, or any number of persons can run for congressman at large under the election machinery now in force, and
>
> (2) Any such person can secure, by compulsory process, if necessary, due certification of the number of votes that he received, and
>
> (3) The House of Representatives, sitting as a court can resolve any controversy which may arise between those who say that they were properly elected at large and those who say that they were properly elected from presently recognized districts,

it is immediately obvious that the appellants, or the twenty-six candidates who the appellants say should represent them, will have an adequate remedy, provided by the Constitution, for the vindication of the rights asserted by the present appeal, if as the appellants say, all congressmen from Illinois should be elected at large

V

**Since the Appellants Asserted Rights Under the State As Well As the Federal Constitutions, the Exercise of Jurisdiction Should Be Foreborne.**

In *Railroad Commission* v. *Pullman Company,* 312 U. S. 496, this court held that, even though important civil rights are involved, if the plaintiffs assert rights under both the State and Federal Constitutions, so that if the plaintiffs' claims of state constitutional rights are sustained, no federal question need be decided, federal courts of equity should remit the plaintiffs to their remedy in the state courts.

In the *Pullman Company* case, above cited, the plaintiffs charged discrimination by the State of Texas against colored Pullman porters, the plaintiffs asserting that such discrimination violated both the organic law of Texas and the Constitution of the United States. Although this court declared that the complaint of the Pullman porters undoubtedly tendered a substantial constitutional issue, it held that since the federal constitutional question was asserted concurrently with state constitutional questions, the lower courts should not have considered the case upon the merits but should have obeyed

> "a doctrine of abstention appropriate to our federal system whereby the federal courts, 'exercising a wise discretion' restrain their authority because of 'scrupulous regard for the rightful independence of the state governments' and for the smooth working of the federal judiciary * * *." (page 501)

Although the earlier cases recognized that if a plaintiff asserted rights under both the State and Federal Constitutions, the federal constitutional questions, if substantial, would sustain jurisdiction even though the case later turned in the federal courts upon questions of state constitutional or statutory law, this Court virtually, if not, indeed, explicitly repudiated this doctrine in *Chicago* v. *Fieldcrest Dairies,* 316 U. S. 168. In that case the plaintiffs assailed as unconstitutional an ordinance of the City of Chicago which in effect prohibited the sale of milk in paper containers The ordinance was charged to violate both the State and Federal Constitutions. Although the question involved was certainly substantial and interstate commerce was directly affected, this Court held that, since a decision on the plaintiffs' claims of state constitutional rights might render it unnecessary to consider their claims of violation of federal constitutional rights, the plaintiffs

should have been remitted to the state courts for the litigation of their contentions. This Court reached this conclusion notwithstanding the fact that both the District Court and the Circuit Court of Appeals entertained the cause upon the merits.

## VI

### The Exercise of Jurisdiction Should Have Been Foreborne Because, Without the Slightest Excuse, This Suit Was Filed So Late That If It Had Succeeded, It Would Necessarily Have Disenfranchised More Voters Than It Could Have Enfranchised.

The thesis of the present suit is that the Illinois Congressional Reapportionment Act has been held unconstitutional for many years. If that were true, the suit could have been brought at any time during those many years. But, although the appellants must have known that January 29, 1946, was the last day for filing petitions under the Illinois Primary Election Code (Illinois Revised Statutes, 1945, Chapter 46, par. 7-12, p. 1521), and although February 7, 1946, is the last day on which the Illinois State Primary Certifying Board can certify the names of petitioners seeking nomination for the office of congressman, the appellants did not file the suit until January 8, 1946.

The appellees waived service of process, appeared promptly, and asserted their defenses with all possible expedition and despatch. But the judgment was not pronounced until the last day for the filing of petitions. It could not have been pronounced more than a day or two earlier.

The result is, as the District Court must have known that it would be, that men who have sat in Congress for many years who have hundreds of thousands of supporters, and who had duly and diligently filed petitions seeking renomi-

nations, as well as other aspirants for the important office of member of Congress of the United States in the most critical period of the world's history, simply could not, nor could their constituents and supporters, circulate, obtain signatures to and file petitions in order to run for the office of Congressman at Large within the brief time that appellants chose to allow them.

Any friends of the appellants who knew that the suit was being filed could of course have filed such petitions at their leisure.

Although the appellants profess no motives other than those of civic virtue, the only possible result that could ensue if they succeeded in this proceeding would be that hundreds of thousands of electors would be deprived of the possibility of voting for men of their choice because of the very late date on which this suit was filed; for had it been filed earlier, all aspirants for Congress, admonished by a declaratory judgment (if valid), could have filed petitions to run at large. The electors of Illinois, unlike the appellants and their counsel, are not experts in election law. They could have had no premonition that a court of equity, might on the last day for the filing of petitions, frustrate the intent of every petitioner seeking nomination for the office of congressman of the United States.

## VII

### The District Court Correctly Held That, If This Cause Tendered Any Justiciable Issues, They Were Decided Conclusively and Adversely to Appellants by This Court's Decision in Wood vs. Broom, 287 U. S. 1.

Although we submit that the considerations heretofore developed categorically preclude any judicial action with

respect to the subject matter of this case, nevertheless the District Court clearly perceived and held that the case is indistinguishable from the case of *Wood* v. *Broom,* 287 U. S. 1. It would be a work of supererogation to argue this point on a motion to dismiss or affirm when the teachings of this court in *Wood* v. *Broom* are so clearly pertinent. That opinion requires no vindication on the part of the Attorney General of the State of Illinois.

We do, however, in brief reply to certain observations in appellants' jurisdictional statement, point out that in *Wood* v *Broom,* the plaintiffs relied, as appellants rely here, not only upon the Congressional Apportionment Act but upon the Fourteenth Amendment and the Civil Rights Act. Nevertheless they did not prevail.

A single sentence is sufficient to dispose of appellants' contentions in so far as they are predicated upon the Northwest Ordinance: the Northwest Ordinance can not be construed so as to give inhabitants of certain states rights in a congressional election other than or different from the rights of other inhabitants of the Union; and if it could be so construed, it would, to that extent, be unconstitutional. The same observation applies to the act admitting Illinois to the Union.

In so far as the appellants seek to distinguish this case from *Wood* v. *Broom* on the ground that the appellants invoke certain provisions of the Constitution of Illinois, it is sufficient to refer to Point IV, in which we demonstrated that the federal courts will not act, even if jurisdiction exists, in cases involving debatable points in state constitutional or statutory law.

## Conclusion

For the reasons indicated in the *Statement Making Against the Jurisdiction of This Court* and urged in this brief, appellees respectfully submit that the court should either dismiss this appeal or affirm the judgment appealed from without further briefs or arguments.

Respectfully submitted,

GEORGE F. BARRETT,
*Attorney General of the State of Illinois,*
*Attorney for Appellees.*

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