Supreme Court of the United States

Memorandum

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Mr. Justice:

This is a recirculate. Of particular interest is the addition of a discussion as to prior legis attempts to re-apportion. See ft. note 10 page 5.

Appended to Rec. #5

2/2/62

Pages 5, 11, 12, 48

To: The Chief Justice
Mr. Justice Black
Mr. Justice Frankfurter
Mr. Justice Douglas
Mr. Justice Clark
Mr. Justice Harlan
Mr. Justice Whittaker
Mr. Justice Stewart

From: Brennan, J.

Circulated: _____

Recirculated: 2-2-62

SUPREME COURT OF THE UNITED STATES

No. 6.—October Term, 1961.

Charles W. Baker, et al., Appellants, v. Joe C. Carr, et al. | On Appeal From the United States District Court for the Middle District of Tennessee.

[February —, 1962.]

Mr. Justice Brennan delivered the opinion of the Court.

This civil action was brought under 42 U. S. C. §§ 1983 and 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that by means of a 1901 statute of Tennessee apportioning the members of the General Assembly among the State's 95 counties,[1] "these plaintiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes," was dismissed by a three-judge court convened under 28 U. S. C. § 2281 in the Middle District of Tennessee.[2] The court held that it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted. 179 F. Supp. 824. We noted probable jurisdiction of the appeal. 364 U. S. 898.[3] We hold that the dismissal was error, and remand the cause to the Dis-

[1] Public Acts of Tennessee, c. 122 (1901), now Tenn. Code Ann. §§ 3–101 to 3–109. The full text of the 1901 Act appears in an appendix to this opinion.

[2] The three-judge court was convened pursuant to the order of a single district judge, who, after he had reviewed certain decisions of this Court and found them distinguishable in features "that may ultimately prove to be significant," held that the complaint was not so obviously without merit that he would be justified in refusing to convene a three-judge court. 175 F. Supp. 649, 652.

[3] We heard argument first at the 1960 Term and again at this Term when the case was set over for reargument. 366 U. S. 907.

trict Court for trial and further proceedings consistent with this opinion.

The General Assembly of Tennessee consists of the Senate with 33 members and the House of Representatives with 99 members. The Tennessee Constitution provides in Art. II as follows:

> "Sec. 3. Legislative authority—Term of office.—The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people; who shall hold their offices for two years from the day of the general election.
>
> "Sec. 4. Census.—An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years.
>
> "Sec. 5. Apportionment of representatives.—The number of Representatives shall, at the several periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each; and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided that any county having two-thirds of the ratio shall be entitled to one member.
>
> "Sec. 6. Apportionment of senators.—The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the House of Representatives, shall be made up to such county or

> counties in the Senate, as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining; and no county shall be divided in forming a district."

Thus, Tennessee's standard for allocating legislative representation among her counties is the total number of qualified voters resident in the respective counties, subject only to minor qualifications.[4] Decennial reapportionment

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[4] A county having less than, but at least two-thirds of, the population required to choose a Representative is allocated one Representative. See also Tenn. Const., Art. II, § 6. A common and much more substantial departure from the number-of-voters or total-population standard is the guaranty of at least one seat to each county. See, *e. g.*, Kansas Const., Art. 2, § 2; N. J. Const., Art. 4, § 3, ¶ 1.

While the Tennessee Constitution speaks of the number of "qualified voters," the exhibits attached to the complaint use figures based on the number of persons 21 years of age and over. This basis seems to have been employed by the General Assembly in apportioning legislative seats from the outset. The 1870 statute providing for the first enumeration, Acts of 1870 (1st Sess.) c. 107, directed the courts of the several counties to select a Commissioner to enumerate "all the male inhabitants of their respective counties, who are twenty-one years of age and upward, who shall be resident citizens of their counties on the first day of January 1871; . . ." Reports compiled in the several counties on this basis were submitted to the General Assembly by the Secretary of State and were used in the first apportionment. Appendix to Tenn. S. J., 1871, 41, 43. Yet such figures would not reflect the numbers of persons qualified to exercise the franchise under the then-governing qualifications: (a) citizenship; (b) residence in the State 12 months, and in the county six months; (c) payment of poll taxes for the preceding year unless entitled to exemption. Acts of 1870 (2d Sess.) c. 10. (These qualifications continued at least until after 1901. See Tenn. Code Ann. § 1167 (1896; Supp. 1904).) Still, when the General Assembly directed the Secretary of State to do all he could to obtain complete reports from the counties, the Resolution spoke broadly of "the impossibility of . . . [redistricting] without the census returns of the voting population from each county . . . ." Tenn. S. J., 1871, pp. 46, 47, 96. The figures also showed a correlation with Federal Census figures for 1870. The Census reported 259,016 male citizens 21

in compliance with the constitutional scheme was effected by the General Assembly each decade from 1871 to 1901. The 1871 apportionment [5] was preceded by an 1870 statute requiring an enumeration.[6] The 1881 apportionment involved three statutes, the first authorizing an enumeration, the second enlarging the Senate from 25 to 33 members and the House from 75 to 99 members, and the third apportioning the membership of both Houses.[7] In 1891 there was both an enumeration and an apportion-

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and upward in Tennessee. Ninth Census of the United States, 1870, Statistics of the Population 635 (1872). The Tennessee Secretary of State's Report, with 15 counties not reported, gave a figure of 237,431. Using the numbers of actual votes in the last gubernatorial election for those 15 counties, the Secretary arrived at a total of 250,025. Appendix to Tenn. S. J., 1871, 41–43. This and subsequent history indicate continued reference to Census figures and finally in 1901, abandonment of a state enumeration in favor of the use of Census figures. See notes 7, 8, 9, *infra*. See also Williams, Legislative Apportionment in Tennessee, 20 Tenn. L. Rev. 235, 236, n. 6. It would therefore appear that unless there is a contrary showing at the trial, appellants' current figures, taken from the United States Census Reports, are apposite.

[5] Acts of 1871, c. 146.

[6] Acts of 1870 (1st Sess.), c. 107.

[7] The statute authorizing the enumeration was Acts of 1881 (1st Sess.), c. 124. The enumeration commissioners in the counties were allowed "access to the U. S. Census Reports of the enumeration of 1880, on file in the offices of the County Court Clerks of the State, and a reference to said reports by said commissioners shall be legitimate as an auxiliary in the enumeration required . . . ." *Ibid*, § 4.

The United States Census reported 330,305 male citizens 21 and upward in Tennessee. The Tenth Census of the United States, 1880, Compendium 596 (1883). The Tennessee Secretary of State's Report gave a figure of 343,817, Tenn. H. J. (1st Extra Sess.), 1881, 12–14 (1882).

The General Assembly was enlarged in accordance with the constitutional mandate since the State's population had passed 1,500,000. Acts of 1881 (1st Extra Sess.), c. 5; and see, *id.*, Res. No. 3; see also Tenth Census of the United States, 1880, Statistics of the Population 77 (1881). The statute apportioning the General Assembly was Acts of 1881 (1st Extra Sess.), c. 6.

ment.[8] In 1901 the General Assembly abandoned separate enumeration in favor of reliance upon the Federal Census and passed the Apportionment Act here in controversy.[9] In the more than 60 years since that action, all proposals in both Houses of the General Assembly for reapportionment have failed to pass.[10]

Between 1901 and 1961, Tennessee has experienced substantial growth and redistribution of her population. In 1901 the population was 2,020,616, of whom 487,380 were eligible to vote.[11] The 1960 Federal Census reports the State's population at 3,567,089, of whom 2,092,891 are

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[8] Acts of 1891, c. 22; Acts of 1891 (Extra Sess.), c. 10. Reference to United States Census figures was allowed just as in 1881, see *supra*, n. 7. The United States Census reported 402,476 males 21 and over in Tennessee. The Eleventh Census of the United States, 1890, Compendium (Part I) 781 (1895). The Tennessee Secretary of State's Report gave a figure of 399,575. I Tenn. S. J. 473–474 (1891).

[9] Acts of 1901, Sen. Jt. Res. No. 35; Acts of 1901, c. 122. The Joint Resolution said: "The Federal census of 1900 has been very recently taken and by reference to said Federal census and accurate enumeration of the qualified voters of the respective counties of the State of Tennessee can be ascertained and thereby save the expense of an actual enumeration . . . ."

[10] For the history of legislative apportionment in Tennessee, including attempts made since 1901, see Tenn. S. J. 1959, pp. 909–930; and "A Documented Survey of Legislative Apportionment in Tennessee, 1870–1957," which is attached as exhibit 2 to the intervening complaint of Mayor West of Nashville, both prepared by the Tennessee State Historian, Dr. Robert H. White. Examples of preliminary steps are: In 1911, the Senate called upon the Redistricting Committee to make an enumeration of qualified voters and to use the Federal Census of 1910 as the basis. Acts of 1911, S. J. Res. No. 60, p. 315. Similarly, in 1961, the Senate called for appointment of a select committee to make an enumeration of qualified voters. Acts of 1961, S. J. Res. No. 47. In 1955, the Senate called for a study of reapportionment. Tenn. S. J. 224 (1955); but see *id.*, at 1403. Similarly, in 1961, the House directed the State Legislative Council to study methods of reapportionment. Acts of 1961, H. J. Res. No. 65.

[11] Twelfth Census of the United States, 1900, Population (Part 1) 39 (1901); (Part 2) 202 (1902).

eligible to vote.[12] The relative standings of the counties in terms of qualified voters have changed significantly. It is primarily the continued application of the 1901 Apportionment Act to this shifted and enlarged voting population which gives rise to the present controversy.

Indeed, the complaint alleges that the 1901 statute, even as of the time of its passage, "made no apportionment of Representatives and Senators in accordance with the constitutional formula . . . , but instead arbitrarily and capriciously apportioned representatives in the Senate and House without reference . . . to any logical or reasonable formula whatever." [13] It is further alleged that "because of the population changes since 1900, and the failure of the legislature to reapportion itself since 1901," the 1901 statute became "unconstitutional and obsolete." Appellants also argue that, because of the composition of the legislature effected by the 1901 apportionment act, redress in the form of a state constitutional amendment to change the entire mechanism for reapportioning, or any other change short of that, is difficult or impossible.[14] The complaint concludes that "these plain-

[12] United States Census of Population: 1960, General Population Characteristics—Tennessee, Table 16 (1961).

[13] In the words of one of the intervening complaints, the apportionment was "wholly arbitrary, . . . and, indeed, based upon no lawfully pertinent factor whatever."

[14] The appellants claim that no General Assembly constituted according to the 1901 Act will submit reapportionment proposals either to the people or to a Constitutional Convention. There is no provision for popular initiative in Tennessee. Amendments proposed in the Senate or House must first be approved by a majority of all members of each House and again by two-thirds of the members in the General Assembly next chosen. The proposals are then submitted to the people at the next general election in which a Governor is to be chosen. Alternatively, the legislature may submit to the people at any general election the question of calling a convention to consider specified proposals. Such as are adopted at a convention do not, however, become effective unless approved by a majority of the

tiffs and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by

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qualified voters voting separately on each proposed change or amendment at an election fixed by the convention. Conventions shall not be held oftener than once in six years. Tenn. Const., Art. XI, § 3. Acts of 1951, c. 130, § 3, and Acts of 1957, c. 340, § 3, provided that delegates to the 1953 and 1959 conventions were to be chosen from the counties and floterial districts just as are members of the State House of Representatives. The General Assembly's call for a 1953 Constitutional Convention originally contained a provision "relating to the appointment [*sic*] of Representatives and Senators" but this was excised. Tenn. H. J., 1951, p. 784. A Resolution introduced at the 1959 Constitutional Convention and reported unfavorably by the Rules Committee of the Convention was as follows:

"By Mr. Chambliss (of Hamilton County), Resolution No. 12—Relative to Convention considering reapportionment, which is as follows:

"WHEREAS, there is a rumor that this Limited Convention has been called for the purpose of postponing for six years a Convention that would make a decision as to reapportionment; and

"WHEREAS, there is pending in the United States Courts in Tennessee a suit under which parties are seeking, through decree, to compel reapportionment; and

"WHEREAS, it is said that this Limited Convention, which was called for limited consideration, is yet a Constitutional Convention within the language of the Constitution as to Constitutional Conventions, forbidding frequent Conventions in the last sentence of Article Eleven, Section 3, second paragraph, more often than each six years, to-wit:

" 'No such Convention shall be held oftener than once in six years.'

"NOW, THEREFORE, BE IT RESOLVED, That it is the consensus of opinion of the members of this Convention that since this is a Limited Convention as hereinbefore set forth another Convention could be had if it did not deal with the matters submitted to this Limited Convention.

"BE IT FURTHER RESOLVED, That it is the consensus of opinion of this Convention that a Convention should be called by the General Assembly for the purpose of considering reapportionment in order that a possibility of Court enforcement being forced on the

virtue of the debasement of their votes." [15] They seek a declaration that the 1901 statute is unconstitutional and an injunction restraining the appellees from acting to conduct any further elections under it. They also pray

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Sovereign State of Tennessee by the Courts of the National Government may be avoided.

"BE IT FURTHER RESOLVED, That this Convention be adjourned for two years to meet again at the same time set forth in the statute providing for this Convention, and that it is the consensus of opinion of this body that it is within the power of the next General Assembly of Tennessee to broaden the powers of this Convention and to authorize and empower this Convention to consider a proper amendment to the Constitution that will provide, when submitted to the electorate, a method of reapportionment." Tenn. Constitutional Convention of 1959, The Journal and Debates, 35, 278.

[15] It is clear that appellants' federal constitutional claims rest exclusively on alleged violation of the Fourteenth Amendment. Their primary claim is that the 1901 statute violates the Equal Protection Clause of that amendment. There are allegations invoking the Due Process Clause but from the argument and the exhibits it appears that the Due Process Clause argument is directed at certain tax statutes. Insofar as the claim involves the validity of those statutes under the Due Process Clause we find it unnecessary to decide its merits. And if the allegations regarding the tax statutes are designed as the framework for proofs as to the effects of the allegedly discriminatory apportionment, we need not rely upon them to support our holding that the complaint states a federal constitutional claim of violation of the Equal Protection Clause. Whether, when the issue to be decided is one of the constitutional adequacy of this particular apportionment, taxation arguments and exhibits as now presented add anything, or whether they could add anything however presented, is for the District Court in the first instance to decide.

The complaint, in addition to the claims under the Federal Constitution, also alleges rights, and the General Assembly's duties, under the Tennessee Constitution. Since we hold that appellants have—if it develops at trial that the facts support the allegations—a cognizable federal constitutional cause of action resting in no degree on rights guaranteed or putatively guaranteed by the Tennessee Constitution, we do not consider, let alone enforce, rights under a State Constitution which go further than the protections of the Fourteenth Amendment. Lastly, we need not assess the legal significance, in reaching our conclusion, of the statements of the complaint that the

that unless and until the General Assembly enacts a valid reapportionment, the District Court should either decree a reapportionment by mathematical application of the Tennessee constitutional formulae to the most recent Federal Census figures, or direct the appellees to conduct legislative elections, primary and general, at large. They also pray for such other and further relief as may be appropriate.

I.

The District Court's Opinion and Order of Dismissal.

Because we deal with this case on appeal from an order of dismissal, precise identification of the issues presently confronting us demands clear exposition of the grounds upon which the District Court rested in dismissing the case. The dismissal order recited that the court sustained the appellees' grounds "(1) that the Court lacks jurisdiction of the subject matter, and (2) that the complaint fails to state a claim upon which relief can be granted, . . ."

In the setting of a case such as this, the recited grounds could be taken to embrace at least three distinct reasons for dismissal:

First: That the facts and injury alleged, the legal bases invoked as creating the rights and duties relied upon, and the relief sought, fail to come within that language of Article III of the Constitution and of the jurisdictional statutes which define those matters concerning which United States District Courts are empowered to act;

Second: That, although the matter is cognizable by the District Courts within the intendment of Article III and the jurisdictional statutes, the court can determine without further proceedings that nothing is alleged which, if proved, would establish that the 1901 statute departs

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apportionment effected today under the 1901 Act is "contrary to the philosophy of government in the United States and all Anglo-Saxon jurisprudence. . . ."

from any standard for state legislative action laid down by the Constitution of the United States;

Third: That, although the matter is cognizable and facts are alleged which might establish a departure from an applicable standard, the court will not proceed because the matter is for other reasons considered unsuited to judicial inquiry or adjustment.

Of these three possible grounds of dismissal, we treat only the first as "lack of jurisdiction of the subject matter." The second and third we consider to result in a "failure to state a claim upon which relief can be granted;" and, for the sake of convenience, we distinguish between them by denominating the second as turning on the question whether a "cause of action" is stated, and the third as involving the "justiciability" of the subject matter.

The District Court's dismissal order recited that it was issued in conformity with the court's *per curiam* opinion. The opinion reveals that the court did not question that a "cause of action" was stated, but rested its dismissal upon lack of subject-matter jurisdiction and nonjusticiability without attempting to distinguish between these grounds. After noting that the plaintiffs challenged the existing legislative apportionment in Tennessee under the Due Process and Equal Protection Clauses, and summarizing the supporting allegations and the relief requested, the court stated that

> "the action is presently before the Court upon the defendants' motion to dismiss predicated upon three grounds: first, that the Court lacks jurisdiction of the subject matter; second, that the complaints fail to state a claim upon which relief can be granted; and third, that indispensable party defendants are not before the Court." 179 F. Supp., at 826.

The court proceeded to explain its action as turning on the case's presenting a "question of the distribution of political strength for legislative purposes." For,

> "from a review of [numerous Supreme Court] . . . decisions there can be no doubt that the federal rule, as enunciated and applied by the Supreme Court, is that the federal courts, whether from a lack of jurisdiction or from the inappropriateness of the subject matter for judicial consideration, will not intervene in cases of this type to compel legislative reapportionment." 179 F. Supp., at 826.

The court went on to express doubts as to the feasibility of the various possible remedies sought by the plaintiffs. 179 F. Supp., at 827–828. Then it made clear that its dismissal in no wise reflected a view that no cause of action was stated:

> "With the plaintiffs' argument that the legislature of Tennessee is guilty of a clear violation of the state constitution and of the rights of the plaintiffs the Court entirely agrees. It also agrees that the evil is a serious one which should be corrected without further delay. But even so the remedy in this situation clearly does not lie with the courts. It has long been recognized and is accepted doctrine that there are indeed some rights guaranteed by the Constitution for the violation of which the courts cannot give redress." 179 F. Supp., at 828.

In light of the District Court's treatment of the case, the only issues presently before us are (a) whether the court possessed jurisdiction of the subject matter; (b) whether the matter was justiciable; and (c) because appellees raise the issue before this Court, whether the appellants have standing to challenge the Tennessee apportionment statutes.[16] Beyond noting that we cannot say the District Court will be unable to fashion relief

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[16] *Bailey* v. *Patterson*, 368 U. S. 346, indicates that standing can of course be raised for the first time before this Court.

We need not reach the question of indispensable parties because the District Court has not yet decided it.

if violations of constitutional rights are found, it is improper at this stage of these proceedings to consider what remedies might be available if appellants prevail at the trial.

II.

Jurisdiction of the Subject Matter.

The District Court was uncertain whether our cases withholding federal judicial relief rested upon a lack of federal jurisdiction or upon the inappropriateness of the subject matter for judicial consideration—what we have designated "nonjusticiability." The distinction between the two grounds is significant. In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded. In the instance of lack of jurisdiction the cause either does not "arise under" the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Art. III, § 2), or is not a "case or controversy" within the meaning of that section; or the cause is not one described by any jurisdictional statute. Our conclusion, see pp. 21–49, *infra*, that this cause presents no nonjusticiable "political question" settles the only possible doubt that it is a case or controversy. Under the present heading of "Jurisdiction of the Subject Matter" we hold only that the matter set forth in the complaint does arise under the Constitution and is within 28 U. S. C. § 1343.

Article III, § 2 of the Federal Constitution provides that "the judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made under their Authority; . . ." It is clear that the cause of action is one which "arises under" the Federal

Constitution. The complaint alleges that the 1901 statute effects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment. Dismissal of the complaint upon the ground of lack of jurisdiction of the subject matter would, therefore, be justified only if that claim were "so attenuated and unsubstantial as to be absolutely devoid of merit," *Newbury Port Water Co.* v. *Newbury Port*, 193 U. S. 561, 579, or "frivolous," *Bell* v. *Hood*, 327 U. S. 678, 683.[17] That the claim is unsubstantial must be "very plain." *Hart* v. *Keith Vaudeville Exchange*, 262 U. S. 271, 274. Since the District Court obviously and correctly did not deem the asserted federal constitutional claim unsubstantial and frivolous, it should not have dismissed the complaint for want of jurisdiction of the subject matter. And of course no further consideration of the merits of the claim is relevant to a determination of the court's jurisdiction of the subject matter. We said in an earlier voting case from Tennessee: "It is obvious . . . that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right. But as the very nature of the controversy was Federal, and, therefore, jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that the action was not one arising under the Constitution and laws of the United States." *Swafford* v. *Templeton*, 185 U. S. 487, 493. "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." *Bell* v. *Hood*, 327 U. S. 678, 682. See also *Binderup* v. *Pathe Exchange*, 263 U. S. 291, 305–308.

[17] The accuracy of calling even such dismissals "jurisdictional" was questioned in *Bell* v. *Hood*. See 327 U. S., at 683.

Since the complaint plainly sets forth a case arising under the Constitution, the subject matter is within the federal judicial power defined in Art. III, § 2, and so within the power of Congress to assign to the jurisdiction of the District Courts. Congress has exercised that power in 28 U. S. C. § 1343 (3):

> "The district courts shall have original jurisdiction of any civil action authorized by law [18] to be commenced by any person . . . to redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . . ." [19]

An unbroken line of our precedents sustains the federal courts' jurisdiction of the subject matter of federal constitutional claims of this nature. The first cases involved the redistricting of States for the purpose of electing Representatives to the Federal Congress. When the Ohio Supreme Court sustained Ohio legislation against an attack for repugnancy to Art. I, § 4, of the Federal Constitution, we affirmed on the merits and expressly refused to dismiss for want of jurisdiction "in view . . . of the

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[18] 42 U. S. C. § 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof 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."

[19] This Court has frequently sustained District Court jurisdiction under 28 U. S. C. § 1343 (3) or its predecessors to entertain suits to redress deprivations of rights secured against state infringement by the Equal Protection and Due Process Clauses of the Fourteenth Amendment. *Douglas* v. *Jeannette*, 319 U. S. 157; *Stefanelli* v. *Minard*, 342 U. S. 117; cf. *Nixon* v. *Herndon*, 273 U. S. 536; *Nixon* v. *Condon*, 286 U. S. 73; *Snowden* v. *Hughes*, 321 U. S. 1; *Smith* v. *Allwright*, 321 U. S. 649; *Monroe* v. *Pape*, 365 U. S. 167; *Egan* v. *Aurora*, 365 U. S. 514.

subject-matter of the controversy and the Federal characteristics which inhere in it . . . ." *Ohio ex rel. Davis* v. *Hildebrant*, 241 U. S. 565, 570. When the Minnesota Supreme Court affirmed the dismissal of a suit to enjoin the Secretary of State of Minnesota from acting under Minnesota redistricting legislation, we reviewed the constitutional merits of the legislation and reversed the State Supreme Court. *Smiley* v. *Holm*, 285 U. S. 355. And see companion cases from the New York Court of Appeals and the Missouri Supreme Court, *Koenig* v. *Flynn*, 285 U. S. 375; *Carroll* v. *Becker*, 285 U. S. 380. When a three-judge District Court, exercising jurisdiction under the predecessor of 28 U. S. C. § 1343 (3), permanently enjoined officers of the State of Mississippi from conducting an election of Representatives under a Mississippi redistricting act, we reviewed the federal questions on the merits and reversed the District Court. *Wood* v. *Broom*, 287 U. S. 1, reversing, 1 F. Supp. 134. A similar decree of a District Court, exercising jurisdiction under the same statute, concerning a Kentucky redistricting act was reviewed and the decree reversed. *Mahan* v. *Hume*, 287 U. S. 575, reversing, 1 F. Supp. 142.[20]

The appellees refer to *Colegrove* v. *Green*, 328 U. S. 549, as authority that the District Court lacked jurisdiction of the subject matter. Appellees misconceive the holding of that case. The holding was precisely contrary to their reading of it. Seven members of the Court participated in the decision. Unlike many other cases in this field which have assumed without discussion that there was jurisdiction, all three opinions filed in *Colegrove* discussed the question. Two of the opinions expressing the views of four of the Justices, a majority, flatly held that there was jurisdiction of the subject matter. MR. JUSTICE

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[20] Since that case was not brought to the Court until after the election had been held, the Court cited not only *Wood* v. *Broom*, but also directed dismissal for mootness, citing *Brownlow* v. *Schwartz*, 261 U. S. 216.

BLACK joined by MR. JUSTICE DOUGLAS and Mr. Justice Murphy stated: "It is my judgment that the District Court had jurisdiction . . . ," citing the predecessor of 28 U. S. C. § 1343 (3), and *Bell* v. *Hood, supra.* 328 U. S., at 568. Mr. Justice Rutledge, writing separately, expressed agreement with this conclusion. 328 U. S., at 564, 565, n. 2. Indeed, it is even questionable that the opinion of MR. JUSTICE FRANKFURTER, joined by Justices Reed and Burton, doubted jurisdiction of the subject matter. Such doubt would have been inconsistent with the professed willingness to turn the decision on either the majority or concurring views in *Wood* v. *Broom, supra.* 328 U. S., at 551.

Several subsequent cases similar to *Colegrove* have been decided by the Court in summary *per curiam* statements. None was dismissed for want of jurisdiction of the subject matter. *Cook* v. *Fortson,* 329 U. S. 675; *Turman* v. *Duckworth, ibid.; Colegrove* v. *Barrett,* 330 U. S. 804; [21] *Tedesco* v. *Board of Supervisors,* 339 U. S. 940; *Remmey* v. *Smith,* 342 U. S. 916; *Cox* v. *Peters,* 342 U. S. 936; *Anderson* v. *Jordan,* 343 U. S. 912; *Kidd* v. *McCanless,* 352 U. S. 920; *Radford* v. *Gary,* 352 U. S. 991; *Hartsfield* v. *Sloan,* 357 U. S. 916; *Matthews* v. *Handley,* 361 U. S. 127.[22]

Two cases decided with opinions after *Colegrove* likewise plainly imply that the subject matter of this suit is within District Court jurisdiction. In *MacDougall* v. *Green,* 335 U. S. 281, the District Court dismissed for want of jurisdiction, which had been invoked under 28

[21] Compare *Boeing Aircraft Co.* v. *King County,* 330 U. S. 803 ("the appeal is dismissed for want of jurisdiction"). See *Coleman* v. *Miller,* 307 U. S. 433, 440.

[22] *Matthews* did affirm a judgment that may be read as a dismissal for want of jurisdiction, 179 F. Supp. 470. However, the motion to affirm also rested on the ground of failure to state a claim upon which relief could be granted. Cf. text following, on *MacDougall* v. *Green.* And see text, p. 49.

U. S. C. § 1343 (3), a suit to enjoin enforcement of the requirement that nominees for state-wide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties. This Court's disagreement with that action is clear since the Court affirmed the judgment after a review of the merits and concluded that the claim was without merit. In *South* v. *Peters*, 339 U. S. 276, we affirmed the dismissal of an attack on the Georgia "county unit" system but founded our action on a ground that plainly would not have been reached if the lower court lacked jurisdiction of the subject matter, which allegedly existed under 28 U. S. C. § 1343 (3). The express words of our holding were that "federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." 339 U. S., at 277.

We hold that the District Court has jurisdiction of the subject matter of the federal constitutional claim asserted in the complaint.

III.

Standing.

A federal court cannot "pronounce any statute, either of a State or of the United States, void, because irreconcilable with the Constitution, except as it is called upon to adjudge the legal rights of litigants in actual controversies." *Liverpool Steamship Co.* v. *Commissioners of Emigration*, 113 U. S. 33, 39. Have the appellants alleged such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions? This is the gist of the question of standing. It is, of course, a question of federal law.

The complaint was filed by residents of Davidson, Hamilton, Knox, Montgomery, and Shelby Counties. Each is a person allegedly qualified to vote for members of the General Assembly representing his county.[23] These appellants sued "on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who are similarly situated . . . ." [24] The appellees are the Tennessee Secretary of State, Attorney General, Coordinator of Elections, and members of the State Board of Elections; the members of the State Board are sued in their own right and also as representatives of the County Election Commissioners whom they appoint.[25]

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[23] The Mayor of Nashville suing "on behalf of himself and all residents of the City of Nashville, Davidson County, . . ." and the Cities of Chattanooga (Hamilton County) and Knoxville (Knox County), each suing on behalf of its residents, were permitted to intervene as parties plaintiff. Since they press the same claims as do the initial plaintiffs, we find it unnecessary to decide whether the intervenors would have standing to maintain this action in their asserted representative capacities.

[24] The complaint also contains an averment that the appellants sue "on their own behalf and *on behalf of all other voters* in the State of Tennessee." (Emphasis added.) This may be read to assert a claim that voters in counties allegedly over-represented in the General Assembly also have standing to complain. But it is not necessary to decide that question in this case.

[25] The duties of the respective appellees are alleged to be as follows:

"Defendant, *Joe C. Carr*, is the duly elected, qualified and acting Secretary of State of the State of Tennessee, with his office in Nashville in said State, and as such he is charged with the duty of furnishing blanks, envelopes and information slips to the County Election Commissioners, certifying the results of elections and maintaining the records thereof; and he is further ex officio charged, together with the Governor and the Attorney General, with the duty of examining the election returns received from the County Election Commissioners and declaring the election results, by the applicable provisions of the Tennessee Code Annotated, and by Chapter 164 of the Acts of 1949, inter alia.

"Defendant, *George F. McCanless*, is the duly appointed and acting Attorney General of the State of Tennessee, with his office in

We hold that the appellants do have standing to maintain this suit. Our decisions plainly support this conclusion. Many of the cases have assumed rather than

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Nashville in said State, and is charged with the duty of advising the officers of the State upon the law, and is made by Section 23–1107 of the Tennessee Code Annotated a necessary party defendant in any declaratory judgment action where the constitutionality of statutes of the State of Tennessee is attacked, and he is ex-officio charged, together with the Governor and the Secretary of State, with the duty of declaring the election results, under Section 2–140 of the Tennessee Code Annotated.

"Defendant, *Jerry McDonald*, is the duly appointed Coordinator of Elections in the State of Tennessee, with his office in Nashville, Tennessee, and as such official, is charged with the duties set forth in the public law enacted by the 1959 General Assembly of Tennessee creating said office.

"Defendants, *Dr. Sam Coward, James Alexander*, and *Hubert Brooks* are the duly appointed and qualified members constituting the State Board of Elections, and as such they are charged with the duty of appointing the Election Commissioners for all the counties of the State of Tennessee, the organization and supervision of the biennial elections as provided by the Statutes of Tennessee, Chapter 9 of Title 2 of the Tennessee Code Annotated, Sections 2–901, et seq.

"That this action is brought against the aforenamed defendants in their representative capacities, and that said Election Commissioners are sued also as representatives of all of the County Election Commissioners in the State of Tennessee, such persons being so numerous as to make it impracticable to bring them all before the court; that there is a common question of law involved, namely, the constitutionality of Tennessee laws set forth in the Tennessee Code Annotated, Section 3–101 through Section 3–109, inclusive; that common relief is sought against all members of said Election Commissions in their official capacities, it being the duties of the aforesaid County Election Commissioners, within their respective jurisdictions, to appoint the judges of elections, to maintain the registry of qualified voters of said County, certify the results of elections held in said County to the defendants State Board of Elections and Secretary of State, and of preparing ballots and taking other steps to prepare for and hold elections in said Counties by virtue of Sections 2–1201, et seq. of Tennessee Code Annotated, and Section 2–301, et seq. of Tennessee Code Annotated, and Chapter 164 of the Acts of 1949, inter alia."

The question whether the named defendants are sufficient parties remains open for consideration on remand.

articulated the premise in deciding the merits of similar claims.[26] And *Colegrove* v. *Green, supra,* squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue.[27] A number of cases decided after *Colegrove* recognized the standing of the voters there involved to bring those actions.[28]

These appellants seek relief in order to protect or vindicate an interest of their own, and of those similarly

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[26] *Smiley* v. *Holm, supra* ("'citizen, elector and taxpayer' of the State"); *Koenig* v. *Flynn, supra* ("'citizens and voters' of the State"); *Wood* v. *Broom, supra* ("citizen of Mississippi, a qualified elector under its laws, and also qualified to be a candidate for election as representative in Congress"); cf. *Carroll* v. *Becker, supra* (candidate for office).

[27] Mr. Justice Rutledge was of the view that any question of standing was settled in *Smiley* v. *Holm, supra;* MR. JUSTICE BLACK stated "that appellants had standing to sue, since the facts alleged show that they have been injured as individuals." He relied on *Coleman* v. *Miller,* 307 U. S. 433, 438, 467. See 328 U. S. 564, 568.

Commentators have suggested that the following statement in MR. JUSTICE FRANKFURTER's opinion might imply a view that appellants there had no standing: "This is not an action to recover for damage because of the discriminatory exclusion of a plaintiff from rights enjoyed by other citizens. The basis for the suit is not a private wrong, but a wrong suffered by Illinois as a polity." 328 U. S., at 552. See Jaffe, Standing to Secure Judicial Review: Public Actions, 74 Harv. L. Rev. 1265, 1298 (1961); Lewis, Legislative Apportionment in the Federal Courts, 71 Harv. L. Rev. 1057, 1081–1083 (1958). But since the opinion goes on to consider the merits, it seems that this statement was not intended to intimate any view that the plaintiffs in that action lacked standing. Nor do the cases cited immediately after the above quotation deal with standing. See especially *Lane* v. *Wilson,* 307 U. S. 268, 272–273.

[28] *MacDougall* v. *Green, supra* ("the 'Progressive Party,' its nominees for United States Senator, Presidential Electors, and State offices, and several Illinois voters"); *South* v. *Peters, supra* ("residents of the most populous county in the State"); *Radford* v. *Gary, supra* ("citizen of Oklahoma and resident and voter in the most populous county"); *Matthews* v. *Handley, supra* ("citizen of the State"); see also *Hawke* v. *Smith (No. 1),* 253 U. S. 221; *Leser* v. *Garnett,* 258 U. S. 130; *Coleman* v. *Miller,* 307 U. S. 433, 437–446.

situated. Their constitutional claim is, in substance, that the 1901 statute constitutes arbitrary and capricious state action, offensive to the Fourteenth Amendment in its irrational disregard of the standard of apportionment prescribed by the State's Constitution or of any standard, effecting a gross disproportion of representation to voting population. The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality *vis-à-vis* voters in irrationally favored counties. A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, cf. *United States* v. *Classic*, 313 U. S. 299; or by a refusal to count votes from arbitrarily selected precincts, cf. *United States* v. *Mosley*, 238 U. S. 383, or by a stuffing of the ballot box, cf. *Ex parte Siebold*, 100 U. S. 371; *United States* v. *Saylor*, 322 U. S. 385.

It is not necessary to decide whether appellants' allegations of impairment of their votes by the 1901 apportionment will, ultimately, entitle them to any relief, in order to hold that they have standing to seek it. If such impairment does produce a legally cognizable injury, they are among those who have sustained it. They are asserting "a plain, direct and adequate interest in maintaining the effectiveness of their votes," *Coleman* v. *Miller*, 307 U. S., at 438, not merely a claim of "the right, possessed by every citizen to require that the Government be administered according to law . . . ." *Fairchild* v. *Hughes*, 258 U. S. 126, 129; compare *Leser* v. *Garnett*, 258 U. S. 130. They are entitled to a hearing and to the District Court's decision on their claims. "The very essence of civil liberty consists in the rights of every individual to claim the protection of the law, whenever he receives an injury." *Marbury* v. *Madison*, 5 U. S. (1 Cranch) 137, 180.

IV.

JUSTICIABILITY.

In holding that the subject matter of this suit was not justiciable, the District Court relied on *Colegrove* v. *Green, supra,* and subsequent *per curiam* cases.[29] The court stated: "From a review of these decisions there can be no doubt that the federal rule . . . is that the federal courts . . . will not intervene in cases of this type to compel legislative reapportionment." 179 F. Supp., at 826. We understand the District Court to have read the cited cases as compelling the conclusion that since the appellants sought to have a legislative apportionment held unconstitutional, their suit presented a "political question" and was therefore nonjusticiable. We hold that this challenge to an apportionment presents no nonjusticiable "political question." The cited cases do not hold the contrary.

Of course the mere fact that the suit seeks protection of a political right does not mean it presents a political question. Such an objection "is little more than a play upon words." *Nixon* v. *Herndon,* 273 U. S. 536, 540. Rather, it is argued that apportionment cases, whatever the actual wording of the complaint, can involve no federal constitutional right except one resting on the guaranty of a republican form of government,[30] and that complaints based on that clause have been held to present political questions which are nonjusticiable.

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[29] *Cook* v. *Fortson,* 329 U. S. 675; *Turman* v. *Duckworth, ibid.*; *Colegrove* v. *Barrett,* 330 U. S. 804; *MacDougall* v. *Green,* 335 U. S. 281; *South* v. *Peters,* 339 U. S. 276; *Remmey* v. *Smith,* 342 U. S. 916; *Anderson* v. *Jordan,* 343 U. S. 912; *Kidd* v. *McCanless,* 352 U. S. 920; *Radford* v. *Gary,* 352 U. S. 991.

[30] "The United States shall guarantee to every State in this Union a Republican Form of Government, and shall protect each of them against Invasion; and on Application of the Legislature, or of the Executive (when the Legislature cannot be convened) against domestic Violence." U. S. Const., Art. IV, § 4.

We hold that the claim pleaded here neither rests upon nor implicates the Guaranty Clause and that its justiciability is therefore not foreclosed by our decisions of cases involving that clause. The District Court misinterpreted *Colegrove* v. *Green* and other decisions of this Court on which it relied. Appellants' claim that they are being denied equal protection is justiciable, and if "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." *Snowden* v. *Hughes*, 321 U. S. 1, 11. To show why we reject the argument based on the Guaranty Clause, we must examine the authorities under it. But because there appears to be some uncertainty as to why those cases did present political questions, and specifically as to whether this apportionment case is like those cases, we deem it necessary first to consider the contours of the "political question" doctrine.

Our discussion, even at the price of extending this opinion, requires review of a number of political question cases, in order to expose the attributes of the doctrine—attributes which, in various settings, diverge, combine, appear, and disappear in seeming disorderliness. Since that review is undertaken solely to demonstrate that neither singly nor collectively do these cases support a conclusion that this apportionment case is nonjusticiable, we of course do not explore their implications in other contexts. That review reveals that in the Guaranty Clause cases and in the other "political question" cases, it is the relationship between the judiciary and the coordinate branches of the Federal Government, and not the federal judiciary's relationship to the States, which gives rise to the "political question."

We have said that "in determining whether a question falls within [the political question] category, the appropriateness under our system of government of attributing finality to the action of political departments and also the

lack of satisfactory criteria for a judicial determination are dominant considerations." *Coleman* v. *Miller*, 307 U. S. 433, 454–455. The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution. To demonstrate this requires no less than to analyze representative cases and to infer from them the analytical threads that make up the political question doctrine. We shall then show that none of those threads catches this case.

Foreign relations: There are sweeping statements to the effect that all questions touching foreign relations are political questions.[31] Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature;[32] but many such questions uniquely demand single-voiced statement of the Government's views.[33] Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis

[31] *E. g.*, "The conduct of the foreign relations of our Government is committed by the Constitution to the Executive and Legislative—'the political'—Departments of the Government, and the propriety of what may be done in the exercise of this political power is not subject to judicial inquiry or decision." *Oetjen* v. *Central Leather Co.*, 246 U. S. 297, 302.

[32] See *Doe* v. *Braden*, 57 U. S. (16 How.) 635, 657; *Taylor* v. *Morton*, Fed. Cas. No. 13,799 (C. C. D. Mass.) (Mr. Justice Curtis), affirmed, 67 U. S. (2 Black) 481.

[33] See *Doe* v. *Braden*, 57 U. S. (16 How.) 635, 657.

of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences of judicial action. For example, though a court will not ordinarily inquire whether a treaty has been terminated, since on that question "governmental action . . . must be regarded as of controlling importance," if there has been no conclusive "governmental action" then a court can construe a treaty and may find it provides the answer. Compare *Terlinden* v. *Ames*, 184 U. S. 270, 285, with *Society for the Propagation of the Gospel in Foreign Parts* v. *New Haven*, 21 U. S. (8 Wheat.) 464, 492–495.[34] Though a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute, no similar hesitancy obtains if the asserted clash is with state law. Compare *Whitney* v. *Robertson*, 124 U. S. 190, with *Kolovrat* v. *Oregon*, 366 U. S. 187.

While recognition of foreign governments so strongly defies judicial treatment that without executive recognition a foreign state has been called "a republic of whose existence we know nothing," [35] and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory,[36] once sovereignty over an area is politically determined and declared, courts may examine the resulting status and decide independently whether a statute applies to that area.[37] Similarly, recognition of belligerency abroad is an executive responsibility, but if the executive proclamations fall short of an explicit answer, a court may construe them seeking,

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[34] And see *Clark* v. *Allen*, 331 U. S. 503.

[35] *United States* v. *Klintock*, 18 U. S. (5 Wheat.) 144, 149; see also *United States* v. *Palmer*, 16 U. S. (3 Wheat.) 610, 634–635.

[36] *Foster & Elam* v. *Neilson*, 27 U. S. (2 Pet.) 253, 307; and see *Williams* v. *Suffolk Insurance Co.*, 38 U. S. (13 Pet.) 415, 420.

[37] *Vermilya-Brown Co.* v. *Connell*, 335 U. S. 377, 380; *De Lima* v. *Bidwell*, 182 U. S. 1, 180–200.

for example, to determine whether the situation is such that statutes designed to assure American neutrality have become operative. *The Three Friends*, 166 U. S. 1, 63, 66. Still again, though it is the executive that determines a person's status as representative of a foreign government, *Ex parte Hitz*, 111 U. S. 766, the executive's statements will be construed where necessary to determine the court's jurisdiction, *In re Baiz*, 135 U. S. 403. Similar judicial action in the absence of a recognizedly authoritative executive declaration occurs in cases involving the immunity from seizure of vessels owned by friendly foreign governments. Compare *Ex parte Peru*, 318 U. S. 578, with *Mexico* v. *Hoffman*, 324 U. S. 30, 34–35.

Dates of duration of hostilities: Though it has been stated broadly that "the power which declared the necessity is the power to declare its cessation, and what the cessation requires," *Commercial Trust Co.* v. *Miller*, 262 U. S. 51, 57, here too analysis reveals isolable reasons for the presence of political questions, underlying this Court's refusal to review the political departments' determination of when or whether a war has ended. Dominant is the need for finality in the political determination, for emergency's nature demands "a prompt and unhesitating obedience," *Martin* v. *Mott*, 25 U. S. (12 Wheat.) 19, 30 (calling up of militia). Moreover, "the cessation of hostilities does not necessarily end the war power. It was stated in *Hamilton* v. *Kentucky Distilleries & W. Co.*, 251 U. S. 146, 161, that the war power includes the power 'to remedy the evils which have arisen from its rise and progress' and continues during that emergency. *Stewart* v. *Kahn*, 11 Wall. 493, 507." *Fleming* v. *Mohawk Wrecking Co.*, 331 U. S. 111, 116. But deference rests on reason, not habit.[38] The question in a particular case may not seriously implicate considerations of finality—*e. g.*, a public program of importance

[38] See *Home Building & Loan Assn.* v. *Blaisdell*, 290 U. S. 398, 426.

(rent control) yet not central to the emergency effort.[39] Further, clearly definable criteria for decision may be available. In such case the political question barrier falls away: "A Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. . . . [It can] inquire whether the exigency still existed upon which the continued operation of the law depended." *Chastleton Corp.* v. *Sinclair*, 264 U. S. 543, 547–548.[40] Compare *Woods* v. *Miller Co.*, 333 U. S. 138. On the other hand, even in private litigation which directly implicates no feature of separation of powers, lack of judicially discoverable standards and the drive for even-handed application may impel reference to the political departments' determination of dates of hostilities' beginning and ending. *The Protector*, 79 U. S. (12 Wall.) 700.

Validity of enactments: In *Coleman* v. *Miller, supra*, this Court held that the questions of how long a proposed amendment to the Federal Constitution remained open to ratification, and what effect a prior rejection had on a subsequent ratification, were committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial grasp.[41] Similar considerations apply to the enacting process: "the respect due to coequal and independent departments," and the need for finality and certainty about the status of a statute contribute to judicial reluctance to inquire whether, as passed, it complied with all requisite formalities. *Field* v. *Clark*, 143 U. S. 649, 672, 676–677; see *Leser* v. *Garnett*, 258 U. S. 130, 137. But it is not true that courts will never delve into a legislature's records upon such a quest: If the enrolled statute lacks an effective date, a court will not

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[39] Contrast *Martin* v. *Mott, supra.*

[40] But cf. *Dakota Central Tel. Co.* v. *South Dakota*, 250 U. S. 163, 184, 187.

[41] Cf. *Dillon* v. *Gloss*, 256 U. S. 368. See also *United States* v. *Sprague*, 282 U. S. 716, 732.

hesitate to seek it in the legislative journals in order to preserve the enactment. *Gardner* v. *The Collector*, 73 U. S. (6 Wall.) 499. The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder.

The status of Indian tribes: This Court's deference to the political departments in determining whether Indians are recognized as a tribe, while it reflects familiar attributes of political questions,[42] *United States* v. *Holliday*, 70 U. S. (3 Wall.) 407, 419, also has a unique element in that "the relation of the Indians with the United States is marked by peculiar and cardinal distinctions which exist no where else. . . . [The Indians are] domestic dependent nations . . . in a state of pupilage. Their relations to the United States resembles that of a ward to his guardian." *The Cherokee Nation* v. *Georgia*, 30 U. S. (5 Pet.) 1, 16, 17.[43] Yet, here too, there is no blanket rule.

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[42] See also *Fellows* v. *Blacksmith*, 60 U. S. (10 How.) 366, 372; *United States* v. *Old Settlers*, 148 U. S. 427, 466; and compare *Doe* v. *Braden*, 57 U. S. (16 How.) 635, 657.

[43] This case, so frequently cited for the broad proposition that the status of an Indian tribe is a matter for the political departments, is in fact a noteworthy example of the limited and precise impact of a political question. The Cherokees brought an original suit in this Court to enjoin Georgia's assertion of jurisdiction over Cherokee territory and abolition of Cherokee government and laws. Unquestionably the case lay at the vortex of most fiery political embroilment. See 1 Warren, The Supreme Court in United States History (Rev. ed.), 729–779. But in spite of some broader language in separate opinions, all that the Court held was that it possessed no original jurisdiction over the suit: for the Cherokees could in no view be considered either a State of this Union or a "foreign state." Chief Justice Marshall treated the question as one of *de novo* interpretation of words in the Constitution. The Chief Justice did say that "the acts of our government plainly recognize the Cherokee nation as a state, and the courts are bound by those acts," but here he referred to their existence as "a state, as a distinct political society, separated from others." From there he went to "a question of much more difficulty . . . . Do the Cherokees constitute a foreign state in the sense of the constitution?" *Id.*, at 16. Thus, while the Court

While "'It is for [Congress] . . . , and not for the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage.' . . . it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe . . . ." *United States* v. *Sandoval*, 231 U. S. 28, 46. Able to discern what is "distinctly Indian," *ibid.*, the courts will strike down any heedless extension of that label. They will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power.

It is apparent that several formulations which vary slightly according to the settings in which the questions

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referred to "the political" for the decision whether the tribe was an entity, a separate polity, it held that whether being an entity the tribe had such status as to be entitled to sue originally was a judicially soluble issue: criteria were discoverable in relevant phrases of the Constitution and in the common understanding of the times. As to this issue, the Court was not hampered by problems of the management of unusual evidence or of possible interference with a congressional program. Moreover, Chief Justice Marshall's dictum that "it savours too much of the exercise of political power to be within the proper province of the judicial department," *id.*, at 20, was not addressed to the issue of the Cherokees' status to sue, but rather to the breadth of the claim asserted and the impropriety of the relief sought. Compare *Georgia* v. *Stanton*, 73 U. S. (6 Wall.) 50, 77. The Chief Justice made clear that if the issue of the Cherokees' rights arose in a customary legal context, "a proper case with proper parties," it would be justiciable. Thus, when the same dispute produced a case properly brought, in which the right asserted was one of protection under federal treaties and laws from conflicting state law, and the relief sought was the voiding of a conviction under that state law, the Court did void the conviction. *Worcester* v. *Georgia*, 31 U. S. (6 Pet.) 515. There, the fact that the tribe was a separate polity served as a datum contributing to the result, and despite the consequences in a heated federal-state controversy and the opposition of the other branches of the National Government, the judicial power acted to reverse the State Supreme Court. An example of similar isolation of a political question in the decision of a case is *Luther* v. *Borden*, 48 U. S. (7 How.) 1; see *infra*.

arise may describe a political question, although each has one or more elements which identifies it as essentially a function of the separation of powers. Prominent on the surface of any case held to involve a political question is found a textually demonstrable constitutional commitment of the issue to a coordinate political department; or a lack of judicially discoverable and manageable standards for resolving it; or the impossibility of deciding without an initial policy determination of a kind clearly for nonjudicial discretion; or the impossibility of a court's undertaking independent resolution without expressing lack of the respect due coordinate branches of government; or an unusual need for unquestioning adherence to a political decision already made; or the potentiality of embarrassment from multifarious pronouncements by various departments on one question.

Unless one of these formulations is inextricable from the case at bar, there should be no dismissal for nonjusticiability on the ground of a political question's presence. The doctrine of which we treat is one of "political questions," not one of "political cases." The courts cannot reject as "no law suit" a bona fide controversy as to whether some action denominated "political" exceeds constitutional authority. The cases we have reviewed show the necessity for discriminating inquiry into the precise facts and posture of the particular case, and the impossibility of resolution by any semantic cataloguing.

But it is argued that this case shares the characteristics of decisions that constitute a category not yet considered, cases concerning the Constitution's guaranty, in Art. IV, § 4, of a republican form of government. A conclusion as to whether the case at bar does present a political question cannot be confidently reached until we have considered those cases with special care. We shall discover that Guaranty Clause claims involve those elements which define a "political question," and for that reason and no other, they are nonjusticiable. In particular, we

shall discover that the nonjusticiability of such claims has nothing to do with their touching upon matters of state governmental organization.

Republican form of government: Luther v. *Borden*, 48 U. S. (7 How.) 1, though in form simply an action for damages for trespass was, as Daniel Webster said in opening the argument for the defense, "an unusual case." [44] The defendants, admitting an otherwise tortious breaking and entering, sought to justify their action on the ground that they were agents of the established lawful government of Rhode Island, which State was then under martial law to defend itself from active insurrection; that the plaintiff was engaged in that insurrection; and that they entered under orders to arrest the plaintiff. The case arose "out of the unfortunate political differences which agitated the people of Rhode Island in 1841 and 1842," 48 U. S., at 34, which had resulted in a situation wherein two groups laid competing claims to recognition as the lawful government.[45] The plaintiff's right to recover depended upon which of the two groups was entitled to such recognition; but the lower court's refusal to receive evidence or hear argument on that issue, its charge to the jury that the earlier established or "charter" government was lawful, and the verdict for the defendants, were affirmed upon appeal to this Court.

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[44] 48 U. S., at 29. And see 11 The Writings and Speeches of Daniel Webster 217 (1903).

[45] See Mowry, The Dorr War (1901), and its exhaustive bibliography. And for an account of circumstances surrounding the decision here, see 2 Warren, The Supreme Court in United States History (Rev. ed.), 185–195.

Dorr himself, head of one of the two groups and held in a Rhode Island jail under a conviction for treason, had earlier sought a decision from the Supreme Court that his was the lawful government. His application for original habeas corpus in the Supreme Court was denied because the federal courts then lacked authority to issue habeas for a prisoner held under a state court sentence. *Ex parte Dorr*, 44 U. S. (3 How.) 103.

Chief Justice Taney's opinion for the Court reasoned as follows: (1) If a court were to hold the defendants' acts unjustified because the charter government had no legal existence during the period in question, it would follow that all of that government's actions—laws enacted, taxes collected, salaries paid, accounts settled, sentences passed—were of no effect; and that "the officers who carried their decisions into operation [were] answerable as trespassers, if not in some cases as criminals." [46] There was, of course, no room for application of any doctrine of *de facto* status to uphold prior acts of an officer not authorized *de jure*, for such would have defeated the plaintiff's very action. A decision for the plaintiff would inevitably have produced some significant measure of chaos, a consequence to be avoided if it could be done without abnegation of the judicial duty to uphold the Constitution.

(2) No state court had recognized as a judicial responsibility settlement of the issue of the locus of state governmental authority. Indeed, the courts of Rhode Island had in several cases held that "it rested with the political power to decide whether the charter government had been displaced or not," and that that department had acknowledged no change.[47]

(3) Since "the question relates, altogether, to the Constitution and laws of [the] . . . State," the courts of the United States had to follow the state courts' decisions unless there was a federal constitutional ground for overturning them.

(4) No provision of the Constitution could be or had been invoked for this purpose except Art. IV, § 4, the Guaranty Clause. Having already noted the absence of standards whereby the choice between governments could be made by a court acting independently, Chief Justice

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[46] 48 U. S., at 39.

[47] *Ibid.*

Taney now found further textual and practical reasons for concluding that, if any department of the United States was empowered by the Guaranty Clause to resolve the issue, it was not the Judiciary:

> "Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and . . . Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts.
>
> "So, too, as relates to the clause in the above-mentioned article of the Constitution, providing for cases of domestic violence. It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee. . . . [B]y the act of February 28, 1795, [Congress] provided, that, 'in case of an insurrection in any State against the government thereof, it shall be lawful for the President of the United States, on application of the legislature of such State or of the executive (when the legislature cannot be convened), to call forth such number of the militia of any other State or States, as may be applied for, as he may judge sufficient to suppress such insurrection.'

> "By this act, the power of deciding whether the exigency had arisen upon which the government of the United States is bound to interfere, is given to the President. . . .
>
> "After the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision was right? . . . If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy, and not of order. . . .
>
> "It is true that in this case the militia were not called out by the President. But upon the application of the governor under the charter government, the President recognized him as the executive power of the State, and took measures to call out the militia to support his authority if it should be found necessary for the general government to interfere; . . . [C]ertainly no court of the United States, with a knowledge of this decision, would have been justified in recognizing the opposing party as the lawful government; . . . In the case of foreign nations, the government acknowledged by the President is always recognized in the courts of justice. . . ." 48 U. S., at 42–44.

Clearly, several factors were thought by the Court in *Luther* to make the question there "political": the commitment to the other branches of the decision as to which is the lawful state government; the unambiguous action by the President, in recognizing the charter government as the lawful authority; the need for finality in the executive's decision; and the lack of criteria by which a court could determine which form of government was republican.[48]

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[48] Even though the Court wrote of unrestrained legislative and executive authority under this Guaranty, thus making its enforce-

But the only significance that *Luther* could have for our immediate purposes is in its holding that the Guaranty Clause is not a repository of judicially manageable standards which a court could utilize independently in order to identify a State's lawful government. The Court has

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ment a political question, the Court plainly implied that the political question barrier was no absolute: "Unquestionably a military government, established as the permanent government of the State, would not be a republican government, and it would be the duty of Congress to overthrow it." 48 U. S., at 45. Of course, it does not necessarily follow that if Congress did not act, the Court would. For while the judiciary might be able to decide the limits of the meaning of "republican form," and thus the factor of lack of criteria might fall away, there would remain other possible barriers to decision because of primary commitment to another branch, which would have to be considered in the particular fact setting presented.

That was not the only occasion on which this Court indicated that lack of criteria does not obliterate the Guaranty's extreme limits: "The guaranty is of a republican form of government. No particular government is designated as republican, neither is the exact form to be guaranteed, in any manner especially designated. Here, as in other parts of the instrument, we are compelled to resort elsewhere to ascertain what was intended.

"The guaranty necessarily implies a duty on the part of the States themselves to provide such a government. All the States had governments when the Constitution was adopted. In all the people participated to some extent, through their representatives elected in the manner specially provided. These governments the Constitution did not change. They were accepted precisely as they were, and it is, therefore, to be presumed that they were such as it was the duty of the States to provide. Thus we have unmistakable evidence of what was republican in form, within the meaning of that term as employed in the Constitution." *Minor* v. *Happersett*, 88 U. S. (21 Wall.) 162, 175–176 (1874). There, the question was whether a government republican in form could deny the vote to women.

In re Duncan, 139 U. S. 449 (1891), upheld a murder conviction against a claim that the relevant codes had been invalidly enacted. The Court there said:

"By the Constitution, a republican form of government is guaranteed to every State in the Union, and the distinguishing feature of that form is the right of the people to choose their own officers for

since refused to resort to the Guaranty Clause—which alone had been invoked for the purpose—as the source of a constitutional standard for invalidating state action. See *Taylor & Marshall* v. *Beckham (No. 1)*, 178 U. S. 548 (claim that Kentucky's resolution of contested gubernatorial election deprived voters of republican government held nonjusticiable); *Pacific States Tel. Co.* v. *Oregon*, 223 U. S. 118 (claim that initiative and referendum negated republican government held nonjusticiable); *Kiernan* v. *City of Portland*, 223 U. S. 151 (claim that municipal charter amendment *per* municipal initiative and referendum negated republican government held nonjusticiable); *Marshall* v. *Dye*, 231 U. S. 250 (claim that Indiana's constitutional amendment procedure negated republican government held nonjusticiable); *O'Neill* v. *Leamer*, 239 U. S. 244 (claim that delegation to court of power to form drainage districts negated republican government held, "futile"); *Ohio ex rel. Davis* v. *Hildebrant*, 241 U. S. 565 (claim that invalidation of state reapportionment statute *per* referendum negates republican government held nonjusticiable);[49] *Mountain Timber Co.* v. *Washington*, 243 U. S. 219 (claim that workmen's compensation violates republican government held nonjusticiable); *Ohio ex rel. Bryant* v. *Akron Metropolitan Park District*, 281 U. S. 74 (claim that rule requiring invalidation of statute by all but one justice of state court negated

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governmental administration, and pass their own laws in virtue of the legislative power reposed in representative bodies, whose legitimate acts may be said to be those of the people themselves; but, while the people are thus the source of political power, their governments, National and State, have been limited by written constitutions, and they have themselves thereby set bounds to their own power, as against the sudden impulses of mere majorities." 139 U. S., at 461. But the Court did not find any of these fundamental principles violated.

[49] But cf. *Hawke* v. *Smith (No. 1)*, 253 U. S. 221; *National Prohibition Cases*, 253 U. S. 350.

republican government held nonjusticiable); *Highland Farms Dairy* v. *Agnew*, 300 U. S. 608 (claim that delegation to agency of power to control milk prices violated republican government, rejected).

Just as the Court has consistently held that a challenge to state action based on the Guaranty Clause presents no justiciable question so has it held, and for the same reasons, that challenges to congressional action on the ground of inconsistency with that clause present no justiciable question. In *Georgia* v. *Stanton*, 73 U. S. (6 Wall.) 50, the State sought by an original bill to enjoin execution of the Reconstruction Acts, claiming that it already possessed "a republican State, in every political, legal, constitutional, and juridical sense," and that enforcement of the new Acts "instead of keeping the guaranty against a forcible overthrow of its government by foreign invaders or domestic insurgents, . . . is destroying that very government by force." [50] Congress had clearly refused to recognize the republican character of the government of the suing State.[51] It seemed to the Court that the only constitutional claim that could be presented was under the Guaranty Clause, and Congress having determined that the effects of the recent hostilities required extraordinary measures to restore governments of a republican form, this Court refused to interfere with Congress' action at the behest of a claimant relying on that very guaranty.[52]

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[50] 73 U. S., at 65, 66.

[51] The First Reconstruction Act opened: "Whereas no legal State governments . . . now exists [*sic*] in the rebel States of . . . Georgia [and] Mississippi, . . .; and whereas it is necessary that peace and good order should be enforced in said States until loyal and republican State governments can be legally established: . . ." 14 Stat. 428. And see 15 Stat. 2, 14.

[52] In *Mississippi* v. *Johnson*, 71 U. S. (4 Wall.) 475, the State sought to enjoin the President from executing the Acts, alleging that his role

In only a few other cases has the Court considered Art. IV, § 4, in relation to congressional action. It has refused to pass on a claim relying on the Guaranty Clause to establish that Congress lacked power to allow the States to employ the referendum in passing on legislation redistricting for congressional seats. *Ohio ex rel. Davis* v. *Hildebrandt, supra.* And it has pointed out that Congress is not required to establish republican government in the territories before they become States, and before they have attained a sufficient population to warrant a popularly elected legislature. *Downes* v. *Bidwell,* 182 U. S. 244, 278–279 (dictum).[53]

We come, finally to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present.

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was purely ministerial. The Court held that the duties were in no sense ministerial, and that although the State sought to compel inaction rather than action, the absolute lack of precedent for any such distinction left the case one in which "general principles . . . forbid judicial interference with the exercise of Executive discretion." 71 U. S., at 499. See also *Mississippi* v. *Stanton,* 154 U. S. 554; and see 2 Warren, The Supreme Court in United States History (Rev. ed.), 463.

For another instance of congressional action challenged as transgressing the Guaranty Clause, see *The Collector* v. *Day,* 78 U. S. (11 Wall.) 113, 125–126, overruled, *Graves* v. *O'Keefe,* 306 U. S. 466.

[53] On the other hand, the implication of the Guaranty Clause in a case concerning congressional action does not always preclude judicial action. It has been held that the clause gives Congress no power to impose restrictions upon a State's admission which would undercut the constitutional mandate that the States be on an equal footing. *Coyle* v. *Smith,* 221 U. S. 559. And in *Texas* v. *White,* 74 U. S. (7 Wall.) 700, although Congress had determined that the State's government was not republican in form, the State's standing to bring an original action in this Court was sustained.

We find none: The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home [54] if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action.

This case does, in one sense, involve the allocation of political power within a State, and the appellants might conceivably have added a claim under the Guaranty Clause. Of course, as we have seen, any reliance on that clause would be futile. But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which in fact they tender. True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with those political question elements which render Guaranty Clause claims nonjusticiable as actually to present a political question itself. But we have found that not to be the case here.

In this connection special attention is due *Pacific States Tel. Co.* v. *Oregon*, 223 U. S. 118. In that case a corporation tax statute enacted by the initiative was attacked ostensibly on three grounds: (1) due process; (2) equal

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[54] See, *infra*, p. 48, considering *Kidd* v. *McCanless*, 352 U. S. 920.

protection; and (3) the Guaranty Clause. But it was clear that the first two grounds were invoked solely in aid of the contention that the tax was invalid by reason of its passage:

> "The defendant company does not contend here that it could not have been required to pay a license tax. It does not assert that it was denied an opportunity to be heard as to the amount for which it was taxed, or that there was anything inhering in the tax or involved intrinsically in the law which violated any of its constitutional rights. If such questions had been raised they would have been justiciable, and therefore would have required the calling into operation of judicial power. Instead, however, of doing any of these things, the attack on the statute here made is of a wholly different character. Its essentially political nature is at once made manifest by understanding that the assault which the contention here advanced makes it [*sic*] not on the tax as a tax, but on the State as a State. It is addressed to the framework and political character of the government by which the statute levying the tax was passed. It is the government, the political entity, which (reducing the case to its essence) is called to the bar of this court, not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State, republican in form." 223 U. S., at 150–151.

The due process and equal protection claims were held nonjusticiable in *Pacific States* not because they happened to be joined with a Guaranty Clause claim, or

because they sought to place before the court a subject matter which might conceivably have been dealt with through the Guaranty Clause, but because the Court believed that they were invoked merely in verbal aid of the resolution of issues which, in its view, entailed political questions. *Pacific States* may be compared with cases such as *Mountain Timber Co.* v. *Washington*, 243 U. S. 219, wherein the Court refused to consider whether a workmen's compensation act violated the Guaranty Clause but considered at length, and rejected, due process and equal protection arguments advanced against it; and *O'Neill* v. *Leamer*, 239 U. S. 244, wherein the Court refused to consider whether Nebraska's delegation of power to form drainage districts violated the Guaranty Clause, but went on to consider and reject the contention that the action against which an injunction was sought was not a taking for a public purpose.

We conclude then that the nonjusticiability of claims resting on the Guaranty Clause which arises from their embodiment of questions that were thought "political," can have no bearing upon the justiciability of the equal protection claim presented in this case. Finally, we emphasize that it is the involvement in Guaranty Clause claims of the elements thought to define "political questions," and no other feature, which could render them nonjusticiable. Specifically, we have said that such claims are not held nonjusticiable because they touch matters of state governmental organization. Brief examination of a few cases demonstrates this.

When challenges to state action respecting matters of "the administration of the affairs of the State and the officers through whom they are conducted" [55] have rested

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[55] *Boyd* v. *Nebraska ex rel. Thayer*, 143 U. S. 135, 183 (Field, J., dissenting).

on claims of constitutional deprivation which are amenable to judicial correction, this Court has acted upon its view of the merits of the claim. For example, in *Boyd* v. *Nebraska ex rel. Thayer*, 143 U. S. 135, we reversed the Nebraska Supreme Court's decision that Nebraska's Governor was not a citizen of the United States or of the State and therefore could not continue in office. In *Kennard* v. *Louisiana ex rel. Morgan*, 92 U. S. 480, and *Foster* v. *Kansas ex rel. Johnston*, 112 U. S. 201, we considered whether persons had been removed from public office by procedures consistent with the Fourteenth Amendment's due process guaranty, and held on the merits that they had. And only last Term, in *Gomillion* v. *Lightfoot*, 364 U. S. 339, we applied the Fifteenth Amendment to strike down a redrafting of municipal boundaries which effected a discriminatory impairment of voting rights, in the face of what a majority of the Court of Appeals thought to be a sweeping commitment to state legislatures of the power to draw and redraw such boundaries.[56]

Gomillion was brought by a Negro who had been a resident of the City of Tuskegee, Alabama, until the municipal boundaries were so recast by the State Legislature as to exclude practically all Negroes. The plaintiff claimed deprivation of the right to vote in municipal elections. The District Court's dismissal for want of jurisdiction and failure to state a claim upon which relief could be granted was affirmed by the Court of Appeals. This Court unanimously reversed. This Court's answer to the argument that States enjoyed unrestricted control over municipal boundaries was:

> "Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution. . . . The opposite conclusion, urged upon us

[56] *Gomillion* v. *Lightfoot*, 270 F. 2d 594, relying upon, *inter alia*, *Hunter* v. *Pittsburgh*, 207 U. S. 161.

> by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. 'It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.'" 364 U. S., at 344–345.

To a second argument, that *Colegrove* v. *Green*, *supra*, was a barrier to hearing the merits of the case, the Court responded that *Gomillion* was lifted "out of the so-called 'political' arena and into the conventional sphere of constitutional litigation" because here was discriminatory treatment of a racial minority violating the Fifteenth Amendment.

> "A statute which is alleged to have worked unconstitutional deprivations of petitioners' rights is not immune to attack simply because the mechanism employed by the legislature is a redefinition of municipal boundaries. . . . While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of their heretofore enjoyed voting rights. That was not *Colegrove* v. *Green*.
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> "When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." 364 U. S., at 347.[57]

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[57] The Court's opinion was joined by MR. JUSTICE DOUGLAS, noting his adherence to the dissents in *Colegrove* and *South* v. *Peters*, *supra*; and the judgment was concurred in by MR. JUSTICE WHITTAKER, who wrote that the decision should rest on the Equal Protection Clause rather than on the Fifteenth Amendment, since there had been not

We have not overlooked such cases as *In re Sawyer*, 124 U. S. 200, and *Walton* v. *House of Representatives*, 265 U. S. 487, which held that federal equity power could not be exercised to enjoin a state proceeding to remove a public officer. But these decisions explicitly reflect only a traditional limit upon equity jurisdiction, and not upon federal courts' power to inquire into matters of state governmental organization. This is clear not only from the opinions in those cases, but also from *White* v. *Berry*, 171 U. S. 366, which, relying on *Sawyer*, withheld federal equity from staying removal of a *federal* officer. *Wilson* v. *North Carolina*, 169 U. S. 586, simply dismissed an appeal from an unsuccessful suit to upset a State's removal procedure, on the ground that the constitutional claim presented—that a jury trial was necessary if the removal procedure was to comport with due process requirements—was frivolous. Finally, in *Taylor and Marshall* v. *Beckham (No. 1)*, 178 U. S. 548, where losing candidates attacked the constitutionality of Kentucky's resolution of a contested gubernatorial election, the Court refused to consider the merits of a claim posited upon the Guaranty Clause, holding it presented a political question, but also held on the merits that the ousted candidates had suffered no deprivation of property without due process of law.[58]

Since, as has been established, the equal protection claim tendered in this case does not require decision of any political question, and since the presence of a matter affecting state government does not render the case nonjusticiable, it seems appropriate to examine again the reasoning by which the District Court reached its conclusion that the case was nonjusticiable.

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solely a denial of the vote (if there had been that at all) but also a "fencing out" of a racial group.

[58] No holding to the contrary is to be found in *Cave* v. *Newell*, 246 U. S. 650, dismissing a writ of error to the Supreme Court of Missouri, 272 Mo. 653, 199 S. W. 1014; or in *Snowden* v. *Hughes*, 321 U. S. 1.

We have already noted that the District Court's holding that the subject matter of this complaint was nonjusticiable relied upon *Colegrove* v. *Green*, *supra*, and later cases. Some of those concerned the choice of members of a state legislature, as in this case; others, like *Colegrove* itself and earlier precedents, *Smiley* v. *Holm*, 285 U. S. 355, *Koenig* v. *Flynn*, 285 U. S. 375, and *Carroll* v. *Becker*, 285 U. S. 380, concerned the choice of Representatives in the Federal Congress. *Smiley*, *Koenig* and *Carroll* settled the issue in favor of justiciability of questions of congressional redistricting. The Court followed these precedents in *Colegrove* although over the dissent of three of the seven Justices who participated in that decision. On the issue of justiciability, all four Justices comprising a majority relied upon *Smiley* v. *Holm*, but in two opinions, one for three Justices, 328 U. S., at 566, 568, and a separate one by Mr. Justice Rutledge, 328 U. S., at 564. The argument that congressional redistricting problems presented a "political question" the resolution of which was confided to Congress might have been rested upon Art. I, § 4, Art. I, § 5, Art. I, § 2, and Amendment XIV, § 2. Mr. Justice Rutledge said: "But for the ruling in *Smiley* v. *Holm*, 285 U. S. 355, I should have supposed that the provisions of the Constitution, Art. I, § 4, that 'The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . .'; Art. I, § 2 [but see Amendment XIV, § 2], vesting in Congress the duty of apportionment of representatives among the several States 'according to their respective Numbers'; and Art. I, § 5, making each House the sole judge of the qualifications of its own members, would remove the issue in this case from justiciable cognizance. But, in my judgment, the *Smiley* case rules squarely to the contrary, save only in the matter of degree. . . . Assuming that that decision is to stand, I think . . . that its effect is to

rule that this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable." 328 U. S., at 564–565. Accordingly, Mr. Justice Rutledge joined in the conclusion that the case was justiciable, although he held that the dismissal of the complaint should be affirmed. His view was that "The shortness of the time remaining [before forthcoming elections] makes it doubtful whether action could, or would be taken in time to secure for petitioners the effective relief they seek. . . . I think, therefore, the case is one in which the Court may properly, and should, decline to exercise its jurisdiction. Accordingly, the judgment should be affirmed and I join in that disposition of the cause." 328 U. S., at 565–566.[59]

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[59] The ground of Mr. Justice Rutledge's vote to affirm is further explained in his footnote 3, 328 U. S., at 566: " 'The power of a court of equity to act is a discretionary one. . . . Where a federal court of equity is asked to interfere with the enforcement of state laws, it should do so only "to prevent irreparable injury which is clear and imminent." ' *American Federation of Labor* v. *Watson*, 327 U. S. 582, 593 and cases cited."

No constitutional questions, including the question whether voters have a judicially enforceable constitutional right to vote at elections of congressmen from districts of equal population, were decided in *Colegrove*. Six of the participating Justices reached the questions but divided three to three on their merits. Mr. Justice Rutledge believed that it was not necessary to decide them. He said: "There is [an alternative to constitutional decision] in this case. And I think the gravity of the constitutional questions raised so great, together with the possibilities for collision [with the political departments of the Government], that the admonition [against avoidable constitutional decision] is appropriate to be followed here. Other reasons support this view, including the fact that, in my opinion, the basic ruling and less important ones in *Smiley* v. *Holm*, *supra*, would otherwise be brought into question." 328 U. S., at 564–565. He also joined with his brethren who shared his view that the issues were justiciable in considering that *Wood* v. *Broom*, 287 U. S. 1, decided no constitutional questions but "the Court disposed of the cause on the ground that the 1929 Reapportionment Act, 46 Stat. 21, did not carry forward

Article I, §§ 2, 4 and 5 and Amendment XIV, § 2 relate only to congressional elections and obviously do not govern apportionment of state legislatures. However, our decisions in favor of justiciability even in light of those provisions plainly afford no support for the District Court's conclusion that the subject matter of this controversy presents a political question. Indeed, the refusal to award relief in *Colegrove* resulted only from the controlling view of a want of equity. Nor is anything contrary to be found in those *per curiams* that came after *Colegrove*. This Court dismissed the appeals in *Cook* v. *Fortson* and *Turman* v. *Duckworth*, 329 U. S. 675, as moot. *MacDougall* v. *Green*, 335 U. S. 281, was not an apportionment case involving allegedly arbitrary inequalities in the legislative representation assigned to similarly situated units. Rather, it concerned legislation assuring "diffusion of political initiative," so that a minimum number of that State's counties would have at least some role in the nomination of candidates for state-wide office, since election to such offices would be by majority of the popular vote cast state-wide. And it presented an even graver problem of proximity to the election date, than had *Colegrove*. See 335 U. S., at 286 (Rutledge, J., concurring). The Court's decision there was only that in that case equity would not act to void the State's requirement that there be at least a minimum of support for its Governor, etc., over at least a minimal area of the State. Problems of timing were critical in *Remmey* v. *Smith*, 342 U. S. 916, dismissing for want of a substantial federal question a three-judge court's dismissal of the suit as prematurely brought, 102 F. Supp. 708; and in *Hartsfield* v. *Sloan*, 357 U. S. 916, denying mandamus sought to compel the convening of a three-judge court—movants

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the requirements of the 1911 Act, 37 Stat. 13, and declined to decide whether there was equity in the bill." 328 U. S., at 565; see also, *id.*, at 573. We agree with this view of *Wood* v. *Broom*.

urged the Court to advance consideration of their case, "inasmuch as the mere lapse of time before this case can be reached in the normal course of . . . business may defeat the cause, and inasmuch as the time problem is due to the inherent nature of the case . . . ." *South* v. *Peters*, 339 U. S. 276, like *Colegrove* appears to be a refusal to exercise equity's powers; see the statement of the holding, quoted, *supra*, p. 17. And *Cox* v. *Peters*, 342 U. S. 936, dismissed for want of a substantial federal question the appeal from the state court's holding that their primary elections implicated no "state action." See 208 Ga. 498, 67 S. E. 2d 579. But compare *Terry* v. *Adams*, 345 U. S. 461.

Tedesco v. *Board of Supervisors*, 339 U. S. 940, indicates solely that no substantial federal question was raised by a state court's refusal to upset the districting of city council seats, especially as it was urged that there was a rational justification for the challenged districting. See 43 So. 2d 514. Similarly, in *Anderson* v. *Jordan*, 343 U. S. 912, it was certain only that the state court had refused to issue a discretionary writ, original mandamus in the Supreme Court. That had been denied without opinion, and of course it was urged here that an adequate state ground barred this Court's review. And in *Kidd* v. *McCanless*, 200 Tenn. 273, 292 S. W. 2d 40, the Supreme Court of Tennessee held that it could not invalidate the very statute at issue in the case at bar, but its holding rested on its state law of remedies, *i. e.*, the state view of *de facto* officers,[60] and not on any view that the norm for legislative apportionment in Tennessee is not numbers of qualified voters resident in the several counties. Of course this Court was there precluded by the adequate state ground, and in dismissing the appeal, 352 U. S. 920,

[60] See also *Buford* v. *State Board of Elections*, 206 Tenn. 480, 334 S. W. 2d 726; *State ex rel. Sanborn* v. *Davidson County Board of Election Comm'rs*, No. 36, 391 Tenn. Sup. Ct., Oct. 29, 1954 (unreported); 8 Vand. L. Rev. 501.

we cited *Anderson, supra,* as well as *Colegrove.* Nor does the Tennessee court's decision in that case bear upon this, for just as in *Smith* v. *Holm,* 220 Minn. 486, 19 N. W. 2d 914, and *Magraw* v. *Donovan,* 163 F. Supp. 184, 177 F. Supp. 803, a state court's inability to grant relief does not bar a federal court's assuming jurisdiction to inquire into alleged deprivation of federal constitutional rights. Problems of relief also controlled in *Radford* v. *Gary,* 352 U. S. 991, affirming the District Court's refusal to mandamus the Governor to call a session of the legislature, to mandamus the legislature then to apportion, and if they did not comply, to mandamus the State Supreme Court to do so. And *Matthews* v. *Handley,* 361 U. S. 127, affirmed a refusal to strike down the State's gross income tax statute—urged on the ground that the legislature was malapportioned—that had rested on the adequacy of available state legal remedies for suits involving that tax, including challenges to its constitutionality. Lastly, *Colegrove* v. *Barrett,* 330 U. S. 804, in which Mr. Justice Rutledge concurred in this Court's refusal to note the appeal from a dismissal for want of equity, is sufficiently explained by his statement in *Cook* v. *Fortson, supra:* "The discretionary exercise or non-exercise of equitable or declaratory judgment jurisdiction . . . in one case is not precedent in another case where the facts differ." (Citations omitted) 329 U. S., at 678.

We conclude that the complaint's allegations of a denial of equal protection present a justiciable constitutional claim and cause of action upon which appellants are entitled to a trial and a decision. The right asserted is within the reach of judicial protection under the Fourteenth Amendment.

The judgment of the District Court is reversed and the cause is remanded for further proceedings consistent with this opinion.

Reversed and remanded.

APPENDIX.

The Tennessee Code Annotated, provides for representation in the General Assembly as follows:

"3–101. *Composition—Counties electing one representative each.*—The general assembly of the state of Tennessee shall be composed of thirty-three (33) senators and ninety-nine (99) representatives, to be apportioned among the qualified voters of the state as follows: Until the next enumeration and apportionment of voters each of the following counties shall elect one (1) representative, to wit: Bedford, Blount, Cannon, Carroll, Chester, Cocke, Claiborne, Coffee, Crockett, DeKalb, Dickson, Dyer, Fayette, Franklin, Giles, Greene, Hardeman, Hardin, Henry, Hickman, Hawkins, Haywood, Jackson, Lake, Lauderdale, Lawrence, Lincoln, Marion, Marshall, Maury, Monroe, Montgomery, Moore, McMinn, McNairy, Obion, Overton, Putnam, Roane, Robertson, Rutherford, Sevier, Smith, Stewart, Sullivan, Sumner, Tipton, Warren, Washington, White, Weakley, Williamson and Wilson. [Acts 1881 (E. S.), ch. 5, § 1; 1881 (E. S.), ch. 6, § 1; 1901, ch. 122, § 2; 1907, ch. 178, §§ 1, 2; 1915, ch. 145; Shan., § 123; Acts 1919, ch. 147, §§ 1, 2; 1925 Private, ch. 472, § 1; Code 1932, § 140; Acts 1935, ch. 150, § 1; 1941, ch. 58, § 1; 1945, ch. 68, § 1; C. Supp. 1950, § 140.]

"3–102. *Counties electing two representatives each.*—The following counties shall elect two (2) representatives each, to wit: Gibson and Madison. [Acts 1901, ch. 122, § 3; Shan., § 124; mod. Code 1932, § 141.]

"3–103. *Counties electing three representatives each.*—The following counties shall elect three (3) representatives each, to wit: Knox and Hamilton. [Acts 1901, ch. 122, § 4; Shan., § 125; Code 1932, § 142.]

"3–104. *Davidson County.*—Davidson county shall elect six (6) representatives. [Acts 1901, ch. 122, § 5; Shan., § 126; Code 1932, § 143.]

"3–105. *Shelby county.*—Shelby county shall elect eight (8) representatives. Said county shall consist of eight (8) representative districts, numbered one (1) through eight (8), each district co-extensive with the county, with one (1) representative to be elected from each district. [Acts 1901, ch. 122, § 6; Shan., § 126a1; Code 1932, § 144; Acts 1957, ch. 220, § 1; 1959, ch. 213, § 1.]

"3–106. *Joint representatives.*—The following counties jointly, shall elect one representative, as follows, to wit:

"First district—Johnson and Carter.

"Second district—Sullivan and Hawkins.

"Third district—Washington, Greene and Unicoi.

"Fourth district—Jefferson and Hamblen.

"Fifth district—Hancock and Grainger.

"Sixth district—Scott, Campbell, and Union.

"Seventh district—Anderson and Morgan.

"Eighth district—Knox and Loudon.

"Ninth district—Polk and Bradley.

"Tenth district—Meigs and Rhea.

"Eleventh district—Cumberland, Bledsoe, Sequatchie, Van Buren and Grundy.

"Twelfth district—Fentress, Pickett, Overton, Clay and Putnam.

"Fourteenth district—Sumner, Trousdale and Macon.

"Fifteenth district—Davidson and Wilson.

"Seventeenth district — Giles, Lewis, Maury and Wayne.

"Eighteenth district—Williamson, Cheatham and Robertson.

"Nineteenth district—Montgomery and Houston.

"Twentieth district—Humphreys and Perry.

"Twenty-first district—Benton and Decatur.

"Twenty-second district—Henry, Weakley and Carroll.

"Twenty-third district—Madison and Henderson.

"Twenty-sixth district—Tipton and Lauderdale. [Acts 1901, ch. 122, § 7; 1907, ch. 178, §§ 1, 2; 1915, ch. 145, §§ 1, 2; Shan., § 127; Acts 1919, ch. 147, § 1; 1925 Private, ch. 472, § 2; Code 1932, § 145; Acts 1933, ch. 167, § 1; 1935, ch. 150, § 2; 1941, ch. 58, § 2; 1945, ch. 68, § 2; C. Supp. 1950, § 145; Acts 1957, ch. 220, § 2.]

"3–107. *State senatorial districts.*—Until the next enumeration and apportionment of voters, the following counties shall comprise the senatorial districts, to wit:

"First district—Johnson, Carter, Unicoi, Greene, and Washington.

"Second district—Sullivan and Hawkins.

"Third district—Hancock, Morgan, Grainger, Claiborne, Union, Campbell, and Scott.

"Fourth district—Cocke, Hamblen, Jefferson, Sevier, and Blount.

"Fifth district—Knox.

"Sixth district—Knox, Loudon, Anderson, and Roane.

"Seventh district—McMinn, Bradley, Monroe, and Polk.

"Eighth district—Hamilton.

"Ninth district—Rhea, Meigs, Bledsoe, Sequatchie, Van Buren, White, and Cumberland.

"Tenth district—Fentress, Pickett, Clay, Overton, Putnam, and Jackson.

"Eleventh district—Marion, Franklin, Grundy and Warren.

"Twelfth district—Rutherford, Cannon, and DeKalb.

"Thirteenth district—Wilson and Smith.

"Fourteenth district—Sumner, Trousdale and Macon.

"Fifteenth district—Montgomery and Robertson.

"Sixteenth district—Davidson.

"Seventeenth district—Davidson.

"Eighteenth district—Bedford, Coffee and Moore.

"Nineteenth district—Lincoln and Marshall.

"Twentieth district—Maury, Perry and Lewis.

"Twenty-first district—Hickman, Williamson and Cheatham.

"Twenty-second district—Giles, Lawrence and Wayne.

"Twenty-third district—Dickson, Humphreys, Houston and Stewart.

"Twenty-fourth district—Henry and Carroll.

"Twenty-fifth district—Madison, Henderson and Chester.

"Twenty-sixth district—Hardeman, McNairy, Hardin, Decatur and Benton.

"Twenty-seventh district—Gibson.

"Twenty-eighth district—Lake, Obion and Weakley.

"Twenty-ninth district—Dyer, Lauderdale and Crockett.

"Thirtieth district—Tipton and Shelby.

"Thirty-first district—Haywood and Fayette.

"Thirty-second district—Shelby.

"Thirty-third district—Shelby. [Acts 1901, ch. 122, § 1; 1907, ch. 3, § 1; Shan., § 128; Code 1932, § 146; Acts 1945, ch. 11, § 1; C. Supp. 1950, § 146.]"

Today's apportionment statute is as enacted in 1901, with minor changes. For example:

(1) In 1957, Shelby County was raised from 7½ to 8 representatives. Acts of 1957, c. 220. See also Acts of 1959, c. 213. The 1957 Act, § 2, abolished the Twenty-seventh Joint Representative District, which had included Shelby and Fayette Counties. We have been unable to discover any current statute giving Fayette a House seat.

(2) In 1907, Marion County was given a whole seat instead of sharing a joint seat with Franklin County. Acts of 1907, c. 178. Acts of 1915, c. 145, repealed that change, restoring the *status quo ante*. And that reversal was itself reversed, Acts of 1919, c. 147.

(3) James County was in 1901 one of five counties in the Seventh State Senate District and one of the three in the Ninth House District. It appears that James County no longer exists but we are not advised when or how it was dissolved.

(4) In 1945, Anderson and Roane Counties were shifted to the Sixth State Senate District from the Seventh, and Monroe and Polk Counties were shifted to the Seventh from the Sixth. Acts of 1945, c. 11.