STATE OF WISCONSIN CIRCUIT COURT BRANCH 1 OZAUKEE COUNTY

TIMOTHY ZIGNEGO, DAVID W. OPITZ, and FREDERICK G. LUEHRS, III,

Plaintiffs,

v.

Case No. 2019CV000449

WISCONSIN ELECTIONS COMMISSION, MARGE BOSTELMANN, JULIE GLANCEY, ANN JACOBS, DEAN KNUDSON, and MARK THOMSEN,

Code: 30701

Defendants.

NON-WISCONSIN AUTHORITIES CITED IN PROPOSED INTERVENOR-DEFENDANT LEAGUE OF WOMEN VOTERS OF WISCONSIN'S (1) BREIF IN SUPPORT OF ITS MOTION TO INTERVENE, AND (2) MOTION TO DISMISS

In accordance with Ozaukee County Circuit Court Rule 204.4(c), proposed Intervenor-Defendant League of Women Voters of Wisconsin (the "League") submits the following non-Wisconsin authorities cited in its: (1) Brief in Support of its Motion to Intervene, filed November 22, 2019; and (2) [Proposed] Motion to Dismiss.

Non-Wisconsin Authorities Cited in the League's Brief in Support of its Motion to Intervene

Non-Wisconsin Authorities Cited in the League's [Proposed] Motion to Dismiss

Dated: November 23, 2019 Respectfully submitted,

By: *Electronically signed by Atty. Douglas M. Poland*

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**Motions for Pro Hac Vice Admission to be Filed*

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Nader v. Brewer, 9th Cir.(Ariz.), July 9, 2008

112 S.Ct. 2059
Supreme Court of the United States

Alan B. BURDICK, Petitioner
v.
Morris TAKUSHI, Director
of Elections of Hawaii, et al.

No. 91–535.
|
Argued March 24, 1992.
|
Decided June 8, 1992.

Synopsis

Registered voter brought action against Hawaii Director of Elections and related parties, claiming that Hawaii's prohibition on write-in voting violated First and Fourteenth Amendments. The United States District Court for the District of Hawaii struck down prohibition and denied stay pending appeal. The Court of Appeals, 846 F.2d 587, reversed, and ordered District Court to abstain until state courts had determined whether Hawaii's election laws in fact permitted write-in voting. The District Court certified questions, and the Hawaii Supreme Court, 70 Haw. 498, 776 P.2d 824, ruled that write-in voting was prohibited. Thereafter, the District Court, 737 F.Supp. 582, Harold M. Fong, J., granted injunctive relief, and appeal was taken. The Court of Appeals for the Ninth Circuit, 937 F.2d 415,reversed, and voter petitioned for certiorari. The Supreme Court, Justice White, held that Hawaii's prohibition on write-in voting did not unreasonably infringe upon its citizens' rights under First and Fourteenth Amendments.

Court of Appeals affirmed.

Justice Kennedy filed dissenting opinion, in which Justices Blackmun and Stevens joined.

West Headnotes (6)

[1] **Constitutional Law**
Voting rights and suffrage in general

Constitutional Law
Voters, candidates, and elections

Election Law
Power to Restrict or Extend Suffrage

Not every law that imposes any burden upon right to vote must be subject to strict scrutiny; instead, rigorousness of inquiry into propriety of state election law depends upon extent to which challenged regulation burdens First and Fourteenth Amendment rights. U.S.C.A. Const.Amends. 1, 14.

383 Cases that cite this headnote

[2] **Constitutional Law**
Elections in general

Constitutional Law
Elections, Voting, and Political Rights

Election Law
Constitutionality and validity

When state election law subjects First and Fourteenth Amendment rights to "severe" restriction, regulation must be narrowly drawn to advance state interest of compelling importance, but when state election law imposes only "reasonable, nondiscriminatory restrictions" upon First and Fourteenth Amendment rights, state's important regulatory interests are generally sufficient to justify restrictions. U.S.C.A. Const.Amends. 1, 14.

515 Cases that cite this headnote

[3] **Constitutional Law**
Ballots and ballot access

Election Law
Insertion of Names; Write-in

Hawaii's ban on write-in voting imposed only limited burden on voters' rights to make free choices and to associate politically through the vote and, therefore, had only to further important regulatory interests to be upheld, in light of adequate ballot access afforded under Hawaii's election code. U.S.C.A. Const.Amends. 1, 14; HRSA §§ 11–61, 11–62, 12–2.5 to 12–7, 12–31.

142 Cases that cite this headnote

[4] **Election Law**
Insertion of Names; Write-in

Hawaii's interests in avoiding possibility of unrestrained factionalism at general election and in guarding against "party raiding" outweighed voter's limited interest in waiting until 11th hour to choose his preferred candidate and provided adequate justification for Hawaii's ban on write-in voting at general election.

39 Cases that cite this headnote

[5] **Constitutional Law**
Ballots and ballot access
Constitutional Law
Voters, candidates, and elections
Election Law
Insertion of Names; Write-in

When state's ballot access laws pass constitutional muster as imposing only reasonable burdens on First and Fourteenth Amendment rights, prohibition against write-in voting will be presumptively valid, since any burden on right to vote for candidate of one's choice will be light and normally will be counterbalanced by very state interests supporting ballot access scheme. U.S.C.A. Const.Amends. 1, 14.

348 Cases that cite this headnote

[6] **Election Law**
Power to Confer and Regulate

While no right is more precious in free country than that of having voice in election of those who make laws under which, as good citizens, we must live, right to vote is right to participate in electoral process that is necessarily structured to maintain integrity of democratic system.

37 Cases that cite this headnote

****2060** *Syllabus* *

Petitioner, a registered Honolulu voter, filed suit against respondent state officials, claiming that Hawaii's prohibition on write-in voting violated his rights of expression and association under the First and Fourteenth Amendments. The District Court ultimately granted his motion for summary judgment and injunctive relief, but the Court of Appeals reversed, holding that the prohibition, taken as part of the State's comprehensive election scheme, does not impermissibly burden the right to vote.

Held: Hawaii's prohibition on write-in voting does not unreasonably infringe upon its citizens' rights under the First and Fourteenth Amendments. Pp. 2062–2068.

(a) Petitioner assumes erroneously that a law that imposes any burden on the right to vote must be subject to strict scrutiny. This Court's cases have applied a more flexible standard: A court considering a state election law challenge must weigh the character and magnitude of the asserted injury to the First and Fourteenth Amendment rights that the plaintiff seeks to vindicate against the precise interests put forward by the State as justification for the burden imposed by its rule, taking into consideration the extent to which those interests make it necessary to burden the plaintiff's rights. *Anderson v. Celebrezze*, 460 U.S. 780, 788–789, 103 S.Ct. 1564, 1569–1570, 75 L.Ed.2d 547. Under this standard, a regulation must be narrowly drawn to advance a state interest ****2061** of compelling importance only when it subjects the voters' rights to "severe" restrictions. *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 705, 116 L.Ed.2d 711. If it imposes only "reasonable, nondiscriminatory restrictions" upon those rights, the State's important regulatory interests are generally sufficient to justify the restrictions. *Anderson, supra*, 460 U.S., at 788, 103 S.Ct., at 1570. Pp. 2062–2064.

(b) Hawaii's write-in vote prohibition imposes a very limited burden upon voters' rights to associate politically through the vote and to have candidates of their choice placed on the ballot. Because the State's election laws provide easy access to the primary ballot until the cutoff date for the filing of nominating petitions, two months before the primary, any burden on the voters' rights is borne only by those who fail to identify their candidate of choice until shortly before the primary. An ***429** interest in making a late rather than an

early decision is entitled to little weight. Cf. *Storer v. Brown*, 415 U.S. 724, 736, 94 S.Ct. 1274, 1281, 39 L.Ed.2d 714. Pp. 2064–2066.

(c) Hawaii's asserted interests in avoiding the possibility of unrestrained factionalism at the general election and in guarding against "party raiding" during the primaries are legitimate and are sufficient to outweigh the limited burden that the write-in voting ban imposes upon voters. Pp. 2066–2067.

(d) Indeed, the foregoing analysis leads to the conclusion that where, as here, a State's ballot access laws pass constitutional muster as imposing only reasonable burdens on First and Fourteenth Amendment rights, a write-in voting prohibition will be presumptively valid, since any burden on the right to vote for the candidate of one's choice will be light and normally will be counterbalanced by the very state interests supporting the ballot access scheme. Pp. 2067–2068.

937 F.2d 415 (CA9 1991), affirmed.

WHITE, J., delivered the opinion of the Court, in which REHNQUIST, C.J., and O'CONNOR, SCALIA, SOUTER, and THOMAS, JJ., joined. KENNEDY, J., filed a dissenting opinion, in which BLACKMUN and STEVENS, JJ., joined, *post*, p. 2068.

Attorneys and Law Firms

Arthur N. Eisenberg argued the cause for petitioner. With him on the briefs were *Steven R. Shapiro, John A. Powell, Mary Blaine Johnston, Carl Varady, Paul W. Kahn, Lawrence G. Sager, Burt Neuborne,* and *Alan B. Burdick, pro se.*

Steven S. Michaels, Deputy Attorney General of Hawaii, argued the cause for respondents. With him on the brief were *Warren Price III,* Attorney General, and *Girard D. Lau,* Deputy Attorney General.*

* Briefs of *amici curiae* urging reversal were filed for Common Cause/Hawaii by *Stanley E. Levin;* for the Hawaii Libertarian Party by *Arlo Hale Smith;* and for the Socialist Workers Party by *Edward Copeland* and *Eric M. Lieberman.*

A brief of *amici curiae* urging affirmance was filed for the State of Arizona et al. by *Frankie Sue Del Papa,* Attorney General of Nevada, and *Kateri Cavin,* Deputy Attorney General, and by the Attorneys General for their respective jurisdictions as follows: *Grant Woods* of Arizona, *Robert A. Butterworth* of Florida, *Richard P. Ieyoub* of Louisiana, *Lacy H. Thornburg* of North Carolina, *Susan Brimer Loving* of Oklahoma, *Mark Barnett* of South Dakota, *Paul Van Dam* of Utah, *Joseph B. Meyer* of Wyoming, and *Robert Naraja* of the Commonwealth of the Northern Mariana Islands.

James C. Linger filed a brief for Andrea Marrou et al. as *amici curiae.*

Opinion

***430** Justice WHITE delivered the opinion of the Court.

The issue in this case is whether Hawaii's prohibition on write-in voting unreasonably infringes upon its citizens' rights under the First and Fourteenth Amendments. Petitioner contends that the Constitution requires Hawaii to provide for the casting, tabulation, and publication of write-in votes. The Court of Appeals for the Ninth Circuit disagreed, holding that the prohibition, taken as part of the State's comprehensive election scheme, does not impermissibly burden the right to vote. 937 F.2d 415, 422 (1991). We affirm.

I

Petitioner is a registered voter in the city and county of Honolulu. In 1986, only one candidate filed nominating papers to run for the seat representing petitioner's district in the Hawaii House of Representatives. Petitioner wrote to state officials inquiring about Hawaii's write-in voting policy and received a copy of an opinion letter issued by the Hawaii Attorney General's Office stating that the State's election law made no provision for write-in voting. 1 App. 38–39, 49.

Petitioner then filed this lawsuit, claiming that he wished to vote in the primary and general elections for a person who had not filed nominating papers and that he wished to vote in future elections for other persons whose names might not appear on the ballot. *Id.*, at 32–33. The United States District Court for the District of Hawaii concluded that the ban on write-in voting violated petitioner's First Amendment right of expression and association and entered a preliminary **2062 injunction ordering respondents to provide for the casting and tallying of write-in votes in the November 1986 general *431 election. App. to Pet. for Cert. 67a–77a. The District Court denied a stay pending appeal. 1 App. 76–107.

The Court of Appeals entered the stay, *id.*, at 109, and vacated the judgment of the District Court, reasoning that consideration of the federal constitutional question raised by petitioner was premature because "neither the plain language of Hawaii statutes nor any definitive judicial interpretation of those statutes establishes that the Hawaii legislature has enacted a ban on write-in voting," *Burdick v. Takushi*, 846 F.2d 587, 588 (CA9 1988). Accordingly, the Court of Appeals ordered the District Court to abstain, see *Railroad Comm'n of Texas v. Pullman Co.*, 312 U.S. 496, 61 S.Ct. 643, 85 L.Ed. 971 (1941), until state courts had determined whether Hawaii's election laws permitted write-in voting. [1]

On remand, the District Court certified the following three questions to the Supreme Court of Hawaii:

> "(1) Does the Constitution of the State of Hawaii require Hawaii's election officials to permit the casting of write-in votes and require Hawaii's election officials to count and publish write-in votes?
>
> "(2) Do Hawaii's election laws require Hawaii's election officials to permit the casting of write-in votes and require Hawaii's election officials to count and publish write-in votes?
>
> "(3) Do Hawaii's election laws permit, but not require, Hawaii's election officials to allow voters to cast write-in votes and to count and publish write-in votes?" App. to Pet. for Cert. 56a–57a.

***432** Hawaii's high court answered "No" to all three questions, holding that Hawaii's election laws barred write-in voting and that these measures were consistent with the State's Constitution. *Burdick v. Takushi*, 70 Haw. 498, 776 P.2d 824 (1989). The United States District Court then granted petitioner's renewed motion for summary judgment and injunctive relief, but entered a stay pending appeal. 737 F.Supp. 582 (Haw.1990).

The Court of Appeals again reversed, holding that Hawaii was not required to provide for write-in votes:

> "Although the prohibition on write-in voting places some restrictions on [petitioner's] rights of expression and association, that burden is justified in light of the ease of access to Hawaii's ballots, the alternatives available to [petitioner] for expressing his political beliefs, the State's broad powers to regulate elections, and the specific interests advanced by the State." 937 F.2d, at 421. [2]

In so ruling, the Ninth Circuit expressly declined to follow an earlier decision regarding write-in voting by the Court of Appeals for the Fourth Circuit. See *ibid.*, citing *Dixon v. Maryland State Administrative Bd. of Election Laws*, 878 F.2d 776 (CA4 1989). We granted certiorari to resolve the disagreement on this important question. 502 U.S. 1003, 112 S.Ct. 635, 116 L.Ed.2d 653 (1991).

II

[1] Petitioner proceeds from the erroneous assumption that a law that imposes any burden upon the right to vote must be subject ****2063** to strict scrutiny. Our cases do not so hold.

***433** It is beyond cavil that "voting is of the most fundamental significance under our constitutional structure." *Illinois Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173, 184, 99 S.Ct. 983, 990, 59 L.Ed.2d 230 (1979). It does not follow, however, that the right to vote in any manner and the right to associate for political purposes through the ballot are absolute. *Munro v. Socialist Workers Party*, 479 U.S. 189, 193, 107 S.Ct. 533, 536, 93 L.Ed.2d 499 (1986). The Constitution provides that States may prescribe "[t]he Times, Places and Manner of holding Elections for Senators and Representatives," Art. I, § 4, cl. 1, and the Court therefore has recognized that States retain the power to regulate their own elections. *Sugarman v. Dougall*, 413 U.S. 634, 647, 93 S.Ct. 2842, 2850, 37 L.Ed.2d 853 (1973); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 217, 107 S.Ct. 544, 550, 93 L.Ed.2d 514 (1986). Common sense, as well as constitutional law, compels the conclusion that government must play an active role in structuring elections; "as a practical matter, there must be a substantial regulation of elections if they are to be fair and honest and if some sort of order, rather than chaos, is to accompany the democratic processes." *Storer v. Brown*, 415 U.S. 724, 730, 94 S.Ct. 1274, 1279, 39 L.Ed.2d 714 (1974).

Election laws will invariably impose some burden upon individual voters. Each provision of a code, "whether it governs the registration and qualifications of voters, the selection and eligibility of candidates, or the voting process

itself, inevitably affects—at least to some degree—the individual's right to vote and his right to associate with others for political ends." *Anderson v. Celebrezze*, 460 U.S. 780, 788, 103 S.Ct. 1564, 1569–1570, 75 L.Ed.2d 547 (1983). Consequently, to subject every voting regulation to strict scrutiny and to require that the regulation be narrowly tailored to advance a compelling state interest, as petitioner suggests, would tie the hands of States seeking to assure that elections are operated equitably and efficiently. See Brief for Petitioner 32–37. Accordingly, the mere fact that a State's system "creates barriers ... tending to limit the field of candidates from which voters might choose ... does not of itself compel close scrutiny." ***434** *Bullock v. Carter*, 405 U.S. 134, 143, 92 S.Ct. 849, 856, 31 L.Ed.2d 92 (1972); *Anderson, supra*, 460 U.S., at 788, 103 S.Ct., at 1569–1570; *McDonald v. Board of Election Comm'rs of Chicago*, 394 U.S. 802, 89 S.Ct. 1404, 22 L.Ed.2d 739 (1969).

Instead, as the full Court agreed in *Anderson*, 460 U.S., at 788–789, 103 S.Ct., at 1569–1570; *id.*, at 808, 817, 103 S.Ct., at 1580, 1584–1585 (REHNQUIST, J., dissenting), a more flexible standard applies. A court considering a challenge to a state election law must weigh "the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate" against "the precise interests put forward by the State as justifications for the burden imposed by its rule," taking into consideration "the extent to which those interests make it necessary to burden the plaintiff's rights." *Id.*, at 789, 103 S.Ct., at 1570; *Tashjian, supra*, 479 U.S., at 213–214, 107 S.Ct., at 547–548.

[2] Under this standard, the rigorousness of our inquiry into the propriety of a state election law depends upon the extent to which a challenged regulation burdens First and Fourteenth Amendment rights. Thus, as we have recognized when those rights are subjected to "severe" restrictions, the regulation must be "narrowly drawn to advance a state interest of compelling importance." *Norman v. Reed*, 502 U.S. 279, 289, 112 S.Ct. 698, 705, 116 L.Ed.2d 711 (1992). But when a state election law provision imposes only "reasonable, nondiscriminatory restrictions" upon the First and Fourteenth Amendment rights of voters, "the State's important regulatory interests are generally sufficient to justify" the restrictions. ****2064** *Anderson*, 460 U.S., at 788, 103 S.Ct., at 1569–1570; see also *id.*, at 788–789, n. 9, 103 S.Ct., at 1569–1570, n. 9. We apply this standard in considering petitioner's challenge to Hawaii's ban on write-in ballots.

A

[3] There is no doubt that the Hawaii election laws, like all election regulations, have an impact on the right to vote, *id.*, at 788, 103 S.Ct., at 1569–1570, but it can hardly be said that the laws at issue here unconstitutionally limit access to the ballot by party or independent candidates or unreasonably interfere with the right of voters to associate and have candidates of their choice placed on the ballot. Indeed, petitioner understandably does ***435** not challenge the manner in which the State regulates candidate access to the ballot.

To obtain a position on the November general election ballot, a candidate must participate in Hawaii's open primary, "in which all registered voters may choose in which party primary to vote." *Tashjian, supra*, 479 U.S., at 223, n. 11, 107 S.Ct., at 553, n. 11. See Haw.Rev.Stat. § 12–31 (1985). The State provides three mechanisms through which a voter's candidate-of-choice may appear on the primary ballot.

First, a party petition may be filed 150 days before the primary by any group of persons who obtain the signatures of one percent of the State's registered voters.[3] Haw.Rev.Stat. § 11–62 (Supp.1991). Then, 60 days before the primary, candidates must file nominating papers certifying, among other things, that they will qualify for the office sought and that they are members of the party that they seek to represent in the general election. The nominating papers must contain the signatures of a specified number of registered voters: 25 for candidates for statewide or federal office; 15 for state legislative and county races. Haw.Rev.Stat. §§ 12–2.5 to 12–7 (1985 and Supp.1991). The winner in each party advances to the general election. Thus, if a party forms around the candidacy of a single individual and no one else runs on that party ticket, the individual will be elected at the primary and win a place on the November general election ballot.

The second method through which candidates may appear on the Hawaii primary ballot is the established party route.[4] ***436** Established parties that have qualified by petition for three consecutive elections and received a specified

percentage of the vote in the preceding election may avoid filing party petitions for 10 years. Haw.Rev.Stat. § 11–61 (1985). The Democratic, Republican, and Libertarian Parties currently meet Hawaii's criteria for established parties. Like new party candidates, established party contenders are required to file nominating papers 60 days before the primary. Haw.Rev.Stat. §§ 12–2.5 to 12–7 (1985 and Supp.1991). [5]

**2065 The third mechanism by which a candidate may appear on the ballot is through the designated nonpartisan ballot. Nonpartisans may be placed on the nonpartisan primary ballot simply by filing nominating papers containing 15 to 25 signatures, depending upon the office sought, 60 days before the primary. §§ 12–3 to 12–7. To advance to the general election, a nonpartisan must receive 10 percent of the primary vote or the number of votes that was sufficient to nominate a partisan candidate, whichever number is lower. *Hustace v. Doi,* 60 Haw. 282, 289–290, 588 P.2d 915, 920 (1978). During the 10 years preceding the filing of this action, 8 of 26 nonpartisans who entered the primary obtained slots on the November ballot. Brief for Respondents 8.

Although Hawaii makes no provision for write-in voting in its primary or general elections, the system outlined above provides for easy access to the ballot until the cutoff date for the filing of nominating petitions, two months before the primary. Consequently, any burden on voters' freedom of choice and association is borne only by those who fail to identify *437 their candidate of choice until days before the primary. But in *Storer v. Brown,* we gave little weight to "the interest the candidate and his supporters may have in making a late rather than an early decision to seek independent ballot status." 415 U.S., at 736, 94 S.Ct., at 1282. [6] Cf. *Rosario v. Rockefeller,* 410 U.S. 752, 757, 93 S.Ct. 1245, 1249–1250, 36 L.Ed.2d 1 R (1973). We think the same reasoning applies here and therefore conclude that any burden imposed by Hawaii's write-in vote prohibition is a very limited one. "To conclude otherwise might sacrifice the political stability of the system of the State, with profound consequences for the entire citizenry, merely in the interest of particular candidates and their supporters having instantaneous access to the ballot." *Storer, supra,* 415 U.S., at 736, 94 S.Ct., at 1282. [7]

Because he has characterized this as a voting rights rather than ballot access case, petitioner submits that the write-in prohibition deprives him of the opportunity to cast a meaningful ballot, conditions his electoral participation upon the *438 waiver of his First Amendment right to remain free from espousing positions that he does not support, and discriminates against him based on the content of the message he seeks to convey through his vote. Brief for Petitioner 19. At bottom, he claims that he is entitled to cast and Hawaii required to count a "protest vote" for Donald Duck, Tr. of Oral Arg. 5, and that any impediment to this asserted "right" is unconstitutional.

Petitioner's argument is based on two flawed premises. First, in *Bullock v. Carter,* we minimized the extent to which voting rights cases are distinguishable from ballot access cases, stating that "the rights of voters **2066 and the rights of candidates do not lend themselves to neat separation." 405 U.S., at 143, 92 S.Ct., at 856. [8] Second, the function of the election process is "to winnow out and finally reject all but the chosen candidates," *Storer,* 415 U.S., at 735, 94 S.Ct., at 1281, not to provide a means of giving vent to "short-range political goals, pique, or personal quarrel[s]." *Ibid.* Attributing to elections a more generalized expressive function would undermine the ability of States to operate elections fairly and efficiently. *Id.,* at 730, 94 S.Ct., at 1279.

Accordingly, we have repeatedly upheld reasonable, politically neutral regulations that have the effect of channeling expressive activity at the polls. See *Munro,* 479 U.S., at 199, 107 S.Ct., at 539–540. Petitioner offers no persuasive reason to depart from these precedents. Reasonable regulation of elections *does not* require voters to espouse positions that they do not support; it *does* require them to act in a timely fashion if they wish to express their views in the voting booth. And there is nothing content based about a flat ban on all forms of write-in ballots.

The appropriate standard for evaluating a claim that a state law burdens the right to vote is set forth in *Anderson.* Applying that standard, we conclude that, in light of the adequate ballot access afforded under Hawaii's election code, the *439 State's ban on write-in voting imposes only a limited burden on voters' rights to make free choices and to associate politically through the vote.

B

[4] We turn next to the interests asserted by Hawaii to justify the burden imposed by its prohibition of write-in voting. Because we have already concluded that the burden is slight, the State need not establish a compelling interest to tip the constitutional scales in its direction. Here, the State's interests outweigh petitioner's limited interest in waiting until the eleventh hour to choose his preferred candidate.

Hawaii's interest in "avoid[ing] the possibility of unrestrained factionalism at the general election," *Munro*, 415 U.S., at 196, 107 S.Ct., at 538, provides adequate justification for its ban on write-in voting in November. The primary election is "an integral part of the entire election process," *Storer, supra*, 415 U.S., at 735, 94 S.Ct., at 1281, and the State is within its rights to reserve "[t]he general election ballot ... for major struggles ... [and] not a forum for continuing intraparty feuds." *Ibid.*; *Munro, supra*, 479 U.S., at 196, 199, 107 S.Ct., at 537–538, 539–540. The prohibition on write-in voting is a legitimate means of averting divisive sore-loser candidacies. Hawaii further promotes the two-stage, primary-general election process of winnowing out candidates, see *Storer, supra*, 415 U.S., at 735, 94 S.Ct., at 1281–1282, by permitting the unopposed victors in certain primaries to be designated office-holders. See Haw.Rev.Stat. §§ 12–41, 12–42 (1985). This focuses the attention of voters upon contested races in the general election. This would not be possible, absent the write-in voting ban.

Hawaii also asserts that its ban on write-in voting at the primary stage is necessary to guard against "party raiding." *Tashjian*, 479 U.S., at 219, 107 S.Ct., at 551. Party raiding is generally defined as "the organized switching of blocs of voters from one party to another in order to manipulate the outcome of the other party's primary election." *Anderson*, 460 U.S., at 789, n. 9, 103 S.Ct., at 1570, n. 9. Petitioner suggests that, because Hawaii conducts an open primary, this is not a cognizable interest. We disagree. ***440** While voters may vote on any ticket in Hawaii's primary, the State requires that party candidates be "member[s] of the party," Haw.Rev.Stat. § 12–3(a)(7) (1985), and prohibits candidates from filing "nomination papers both as a party candidate and as a ****2067** nonpartisan candidate," § 12–3(c). Hawaii's system could easily be circumvented in a party primary election by mounting a write-in campaign for a person who had not filed in time or who had never intended to run for election. It could also be frustrated at the general election by permitting write-in votes for a loser in a party primary or for an independent who had failed to get sufficient votes to make the general election ballot. The State has a legitimate interest in preventing these sorts of maneuvers, and the write-in voting ban is a reasonable way of accomplishing this goal. [9]

We think these legitimate interests asserted by the State are sufficient to outweigh the limited burden that the write-in voting ban imposes upon Hawaii's voters. [10]

***441** III

[5] Indeed, the foregoing leads us to conclude that when a State's ballot access laws pass constitutional muster as imposing only reasonable burdens on First and Fourteenth Amendment rights—as do Hawaii's election laws—a prohibition on write-in voting will be presumptively valid, since any burden on the right to vote for the candidate of one's choice will be light and normally will be counterbalanced by the very state interests supporting the ballot access scheme.

In such situations, the objection to the specific ban on write-in voting amounts to nothing more than the insistence that the State record, count, and publish individual protests against the election system or the choices presented on the ballot through the efforts of those who actively participate in the system. There are other means available, however, to voice such generalized dissension from the electoral process; and we discern no adequate basis for our requiring the State to provide and to finance a place on the ballot for recording protests against its constitutionally valid election laws. [11]

[6] "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live." *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S.Ct. 526, 534–535, 11 L.Ed.2d 481 (1964). But the right to vote is the right to participate in an electoral process that is necessarily structured to maintain the integrity of the democratic system. *Anderson, supra*, 460 U.S., at 788, 103 S.Ct., at 1569–1570; *Storer*, 415 U.S., at 730, 94 S.Ct., at 1279. We think that Hawaii's prohibition on write-in voting, considered as part of an electoral scheme that provides constitutionally sufficient ballot access, does

not impose an unconstitutional burden upon the First and Fourteenth Amendment rights of *442 the State's voters. **2068 Accordingly, the judgment of the Court of Appeals is affirmed.

It is so ordered.

Justice KENNEDY, with whom Justice BLACKMUN and Justice STEVENS, join, dissenting.

The question before us is whether Hawaii can enact a total ban on write-in voting. The majority holds that it can, finding that Hawaii's ballot access rules impose no serious limitations on the right to vote. Indeed, the majority in effect adopts a presumption that prohibitions on write-in voting are permissible if the State's ballot access laws meet constitutional standards. I dissent because I disagree with the presumption, as well as the majority's specific conclusion that Hawaii's ban on write-in voting is constitutional.

The record demonstrates the significant burden that Hawaii's write-in ban imposes on the right of voters such as petitioner to vote for the candidates of their choice. In the election that triggered this lawsuit, petitioner did not wish to vote for the one candidate who ran for state representative in his district. Because he could not write in the name of a candidate he preferred, he had no way to cast a meaningful vote. Petitioner's dilemma is a recurring, frequent phenomenon in Hawaii because of the State's ballot access rules and the circumstance that one party, the Democratic Party, is predominant. It is critical to understand that petitioner's case is not an isolated example of a restriction on the free choice of candidates. The very ballot access rules the Court cites as mitigating his injury in fact compound it system wide.

Democratic candidates often run unopposed, especially in state legislative races. In the 1986 general election, 33 percent of the elections for state legislative offices involved single candidate races. Reply Brief for Petitioner 2–3, n. 2. The comparable figures for 1984 and 1982 were 39 percent and 37.5 percent. *Ibid.* Large numbers of voters cast *443 blank ballots in uncontested races, that is, they leave the ballots blank rather than vote for the single candidate listed. In 1990, 27 percent of voters who voted in other races did not cast votes in uncontested state Senate races. Brief for Common Cause/Hawaii as *Amicus Curiae* 15–16. Twenty-nine percent of voters did not cast votes in uncontested state House races. *Id.*, at 16. Even in contested races in 1990, 12 to 13 percent of voters cast blank ballots. *Id.*, at 16–17.

Given that so many Hawaii voters are dissatisfied with the choices available to them, it is hard to avoid the conclusion that at least some voters would cast write-in votes for other candidates if given this option. The write-in ban thus prevents these voters from participating in Hawaii elections in a meaningful manner.

This evidence also belies the majority's suggestion that Hawaii voters are presented with adequate electoral choices because Hawaii makes it easy to get on the official ballot. To the contrary, Hawaii's ballot access laws taken as a whole impose a significant impediment to third-party or independent candidacies. The majority suggests that it is easy for new parties to petition for a place on the primary ballot because they must obtain the signatures of only one percent of the State's registered voters. This ignores the difficulty presented by the early deadline for gathering these signatures: 150 days (5 months) before the primary election. Meeting this deadline requires considerable organization at an early stage in the election, a condition difficult for many small parties to meet. See Brief for Socialist Workers Party as *Amicus Curiae* 10–11, n. 4.

If the party petition is unsuccessful or not completed in time, or if a candidate does not wish to be affiliated with a party, he may run as an independent. While the requirements to get on the nonpartisan ballot are not onerous (15 to 25 signatures, 60 days before the primary), the non-partisan ballot presents voters with a difficult choice. This is because each primary voter can choose only a single ballot *444 for all offices. Hence, a **2069 voter who wishes to vote for an independent candidate for one office must forgo the opportunity to vote in an established party primary in every other race. Since there might be no independent candidates for most of the other offices, in practical terms the voter who wants to vote for one independent candidate forfeits the right to participate in the selection of candidates for all other offices. This rule, the very ballot access rule that the Court finds to be curative, in fact presents a substantial disincentive for voters to select the nonpartisan ballot. A voter who wishes to vote for a third-party candidate for only one particular office faces a similar disincentive to select the third party's ballot.

The dominance of the Democratic Party magnifies the disincentive because the primary election is dispositive in so many races. In effect, a Hawaii voter who wishes to vote for any independent candidate must choose between doing so and

participating in what will be the dispositive election for many offices. This dilemma imposes a substantial burden on voter choice. It explains also why so few independent candidates secure enough primary votes to advance to the general election. As the majority notes, only eight independent candidates have succeeded in advancing to the general election in the past 10 years. That is, less than one independent candidate per year on average has in fact run in a general election in Hawaii.

The majority's approval of Hawaii's ban is ironic at a time when the new democracies in foreign countries strive to emerge from an era of sham elections in which the name of the ruling party candidate was the only one on the ballot. Hawaii does not impose as severe a restriction on the right to vote, but it imposes a restriction that has a haunting similarity in its tendency to exact severe penalties for one who does anything but vote the dominant party ballot.

Aside from constraints related to ballot access restrictions, the write-in ban limits voter choice in another way. Write-in ***445** voting can serve as an important safety mechanism in those instances where a late-developing issue arises or where new information is disclosed about a candidate late in the race. In these situations, voters may become disenchanted with the available candidates when it is too late for other candidates to come forward and qualify for the ballot. The prohibition on write-in voting imposes a significant burden on voters, forcing them either to vote for a candidate whom they no longer support or to cast a blank ballot. Write-in voting provides a way out of the quandary, allowing voters to switch their support to candidates who are not on the official ballot. Even if there are other mechanisms to address the problem of late-breaking election developments (unsuitable candidates who win an election can be recalled), allowing write-in voting is the only way to preserve the voters' right to cast a meaningful vote in the general election.

With this background, I turn to the legal principles that control this case. At the outset, I agree with the first premise in the majority's legal analysis. The right at stake here is the right to cast a meaningful vote for the candidate of one's choice. Petitioner's right to freedom of expression is not implicated. His argument that the First Amendment confers upon citizens the right to cast a protest vote and to have government officials count and report this vote is not persuasive. As the majority points out, the purpose of casting, counting, and recording votes is to elect public officials, not to serve as a general forum for political expression.

I agree as well with the careful statement the Court gives of the test to be applied in this case to determine if the right to vote has been constricted. As the Court phrases it, we must "weigh 'the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate' against 'the precise interests put forward by the State as justifications for the burden imposed by its rule,' taking into consideration ****2070** 'the extent to which those interests make it necessary ***446** to burden the plaintiff's rights.' " *Ante,* at 2063, quoting *Tashjian v. Republican Party of Connecticut,* 479 U.S. 208, 213–214, 107 S.Ct. 544, 547–548, 93 L.Ed.2d 514 (1986). I submit the conclusion must be that the write-in ban deprives some voters of any substantial voice in selecting candidates for the entire range of offices at issue in a particular election.

As a starting point, it is useful to remember that until the late 1800's, all ballots cast in this country were write-in ballots. The system of state-prepared ballots, also known as the Australian ballot system, was introduced in this country in 1888. See L.E. Fredman, The Australian Ballot: The Story of an American Reform ix (1968). Prior to this, voters prepared their own ballots or used preprinted tickets offered by political parties. Since there were no state-imposed restrictions on whose name could appear on a ballot, individuals could always vote for the candidates of their choice.

State-prepared ballots were considered to be a progressive reform to reduce fraudulent election practices. The pre-printed ballots offered by political parties had often been in distinctive colors so that the party could determine whether one who had sold his vote had used the right ballot. *Id.,* at 22. The disadvantage of the new ballot system was that it could operate to constrict voter choice. In recognition of this problem, several early state courts recognized a right to cast write-in votes. See, *e.g., Sanner v. Patton,* 155 Ill. 553, 562–564, 40 N.E. 290, 292–293 (1895) ("[I]f the construction contended for by appellee [prohibiting write-in voting] be the correct one, the voter is deprived of the constitutional right of suffrage; he is deprived of the right of exercising his own choice; and where this right is taken away there is nothing left worthy of the name of the right of suffrage—the boasted free ballot becomes a delusion"); *Patterson v. Hanley,* 136 Cal. 265, 270, 68 P. 821, 823 (1902) ("Under every form of ballot of which we have had any experience the voter has been allowed—and it seems to be agreed that he must be allowed —the privilege of casting his vote for any person for ***447**

any office by writing his name in the proper place"); and *Oughton v. Black,* 212 Pa. 1, 6–7, 61 A. 346, 348 (1905) ("Unless there was such provision to enable the voter, not satisfied to vote any ticket on the ballot, or for any names appearing on it, to make up an entire ticket of his own choice, the election as to him would not be equal, for he would not be able to express his own individual will in his own way").

As these courts recognized, some voters cannot vote for the candidate of their choice without a write-in option. In effect, a write-in ban, in conjunction with other restrictions, can deprive the voter of the opportunity to cast a meaningful ballot. As a consequence, write-in prohibitions can impose a significant burden on voting rights. See *Reynolds v. Sims,* 377 U.S. 533, 555, 84 S.Ct. 1362, 1378, 12 L.Ed.2d 506 (1964) ("The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government"). For those who are affected by write-in bans, the infringement on their right to vote for the candidate of their choice is total. The fact that write-in candidates are longshots more often than not makes no difference; the right to vote for one's preferred candidate exists regardless of the likelihood that the candidate will be successful. *Socialist Labor Party v. Rhodes,* 290 F.Supp. 983, 987 (S.D.Ohio) ("A write-in ballot permits a voter to effectively exercise his individual constitutionally protected franchise. The use of write-in ballots does not and should not be dependent on the candidate's chance of success"), aff'd in part, modified in part, *sub nom. Williams v. Rhodes,* 393 U.S. 23, 89 S.Ct. 5, 21 L.Ed.2d 24 (1968).

Based on the foregoing reasoning, I cannot accept the majority's presumption that write-in bans are permissible if the State's ballot **2071 access laws are otherwise constitutional. The presumption is circular, for it fails to take into account that we must consider the availability of write-in voting, or the lack thereof, as a factor in determining whether a State's ballot access laws considered as a whole are constitutional. *448 *Jenness v. Fortson,* 403 U.S. 431, 438, 91 S.Ct. 1970, 1974, 29 L.Ed.2d 554 (1971); *Storer v. Brown,* 415 U.S. 724, 736, n. 7, 94 S.Ct. 1274, 1282, n. 7, 39 L.Ed.2d 714 (1974). The effect of the presumption, moreover, is to excuse a State from having to justify or defend any write-in ban. Under the majority's view, a write-in ban only has constitutional implications when the State's ballot access scheme is defective and write-in voting would remedy the defect. This means that the State needs to defend only its ballot access laws, and not the write-in restriction itself.

The majority's analysis ignores the inevitable and significant burden a write-in ban imposes upon some individual voters by preventing them from exercising their right to vote in a meaningful manner. The liberality of a State's ballot access laws is one determinant of the extent of the burden imposed by the write-in ban; it is not, though, an automatic excuse for forbidding all write-in voting. In my view, a State that bans write-in voting in some or all elections must justify the burden on individual voters by putting forth the precise interests that are served by the ban. A write-in prohibition should not be presumed valid in the absence of any proffered justification by the State. The standard the Court derives from *Anderson v. Celebrezze,* 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), means at least this.

Because Hawaii's write-in ban, when considered in conjunction with the State's ballot access laws, imposes a significant burden on voters such as petitioner, it must put forward the state interests which justify the burden so that we can assess them. I do not think it necessary here to specify the level of scrutiny that should then be applied because, in my view, the State has failed to justify the write-in ban under any level of scrutiny. The interests proffered by the State, some of which are puzzling, are not advanced to any significant degree by the write-in prohibition. I consider each of the interests in turn.

The interest that has the best potential for acceptance, in my view, is that of preserving the integrity of party primaries *449 by preventing sore loser candidacies during the general election. As the majority points out, we have acknowledged the State's interest in avoiding party factionalism. A write-in ban does serve this interest to some degree by eliminating one mechanism which could be used by sore loser candidates. But I do not agree that this interest provides "adequate justification" for the ban. *Ante,* at 2066. As an initial matter, the interest can at best justify the write-in prohibition for general elections; it cannot justify Hawaii's complete ban in both the primary and the general election. And with respect to general elections, a write-in ban is a very overinclusive means of addressing the problem; it bars legitimate candidacies as well as undesirable sore loser candidacies. If the State desires to prevent sore loser candidacies, it can implement a narrow provision aimed at that particular problem.

The second interest advanced by the State is enforcing its policy of permitting the unopposed victors in certain primaries to be designated as officeholders without having to go through the general election. The majority states that "[t]his would not be possible, absent the write-in voting ban." *Ibid.* This makes no sense. As petitioner's counsel acknowledged during oral argument, "[t]o the degree that Hawaii has abolished general elections in these circumstances, there is no occasion to cast a write-in ballot." Tr. of Oral Arg. 14. If anything, the argument cuts the other way because this provision makes it all the more important to allow write-in voting in the primary elections because primaries are often dispositive.

Hawaii justifies its write-in ban in primary elections as a way to prevent party raiding. **2072 Petitioner argues that this alleged interest is suspect because the State created the party raiding problem in the first place by allowing open primaries. I agree. It is ironic for the State to raise this concern when the risk of party raiding is a feature of the open primary system the State has chosen. The majority *450 suggests that write-in voting presents a particular risk of circumventing the primary system because state law requires candidates in party primaries to be members of the party. Again, the majority's argument is not persuasive. If write-in voters mount a campaign for a candidate who does not meet state-law requirements, the candidate would be disqualified from the election.

The State also cites its interest in promoting the informed selection of candidates, an interest it claims is advanced by "flushing candidates into the open a reasonable time before the election." Brief for Respondents 44. I think the State has it backwards. The fact that write-in candidates often do not conduct visible campaigns seems to me to make it more likely that voters who go to the trouble of seeking out these candidates and writing in their names are well informed. The state interest may well cut the other way.

The State cites interests in combating fraud and enforcing nomination requirements. But the State does not explain how write-in voting presents a risk of fraud in today's polling places. As to the State's interest in making sure that ineligible candidates are not elected, petitioner's counsel pointed out at argument that approximately 20 States require write-in candidates to file a declaration of candidacy and verify that they are eligible to hold office a few days before the election. Tr. of Oral Arg. 13.

In sum, the State's proffered justifications for the write-in prohibition are not sufficient under any standard to justify the significant impairment of the constitutional rights of voters such as petitioner. I would grant him relief.

All Citations

504 U.S. 428, 112 S.Ct. 2059, 119 L.Ed.2d 245, 60 USLW 4459

Footnotes

* The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States v. Detroit Lumber Co.*, 200 U.S. 321, 337, 26 S.Ct. 282, 287, 50 L.Ed. 499.

1 While petitioner's appeal was pending, he became concerned that the Court of Appeals might not enter its decision before the September 1988 primary election. Accordingly, petitioner filed a second suit challenging the unavailability of write-in voting in the 1988 election. *Burdick v. Cayetano,* Civ. No. 99–0365. Coincidentally, petitioner's new suit was filed on the very day that the Ninth Circuit decided the appeal stemming from petitioner's original complaint. The two actions subsequently were consolidated by the District Court. 1 App. 142.

2 The Ninth Circuit panel issued its opinion on March 1, 1991. See *Burdick v. Takushi,* 927 F.2d 469. On June 28, 1991, the Court of Appeals denied petitioner's petition for rehearing and suggestion for rehearing en banc, and the panel withdrew its original opinion and issued the version that appears at 937 F.2d 415.

3 We have previously upheld party and candidate petition signature requirements that were as burdensome or more burdensome than Hawaii's one-percent requirement. See, *e.g.*, *Norman v. Reed,* 502 U.S. 279, 295, 112 S.Ct. 698, 708, 116 L.Ed.2d 711 (1992); *American Party of Texas v. White,* 415 U.S. 767, 94 S.Ct. 1296, 39 L.Ed.2d 744 (1974); *Jenness v. Fortson,* 403 U.S. 431, 91 S.Ct. 1970, 29 L.Ed.2d 554 (1971).

4 In *Jenness,* we rejected an equal protection challenge to a system that provided alternative means of ballot access for members of established political parties and other candidates, concluding that the system was constitutional because it did not operate to freeze the political status quo. 403 U.S., at 438.

5 In *Anderson v. Celebrezze,* 460 U.S. 780, 103 S.Ct. 1564, 75 L.Ed.2d 547 (1983), the Court concluded that Ohio's early filing deadline for Presidential candidates imposed an unconstitutional burden on voters' freedom of choice and freedom of association. But *Anderson* is distinguishable because the Ohio election scheme, as explained by the Court, provided no means for a candidate to appear on the ballot after a March cutoff date. *Id.,* at 786, 103 S.Ct., at 1568–1569. Hawaii fills this void through its nonpartisan primary ballot mechanism.

6 In *Storer,* we upheld a California ballot access law that refused to recognize independent candidates until a year after they had disaffiliated from a political party.

7 The dissent complains that, because primary voters are required to opt for a specific partisan or nonpartisan ballot, they are foreclosed from voting in those races in which no candidate appears on their chosen ballot and in those races in which they are dissatisfied with the available choices. *Post,* at 2069. But this is generally true of primaries; voters are required to select a ticket, rather than choose from the universe of candidates running on all party slates. Indeed, the Court has upheld the much more onerous requirement that voters interested in participating in a primary election enroll as a member of a political party prior to the preceding general election. *Rosario v. Rockefeller,* 410 U.S. 752, 93 S.Ct. 1245, 36 L.Ed.2d 1 (1973). Cf. *American Party of Texas, supra,* 415 U.S., at 786, 94 S.Ct., at 1308 ("[T]he State may determine that it is essential to the integrity of the nominating [petition] process to confine voters to supporting one party and its candidates in the course of the same nominating process").

If the dissent were correct in suggesting that requiring primary voters to select a specific ballot impermissibly burdened the right to vote, it is clear under our decisions that the availability of a write-in option would not provide an adequate remedy. *Anderson, supra,* 460 U.S., at 799, n. 26, 103 S.Ct., at 1575, n. 26; *Lubin v. Panish,* 415 U.S. 709, 719, n. 5, 94 S.Ct. 1315, 1321, n. 5, 39 L.Ed.2d 702 (1974).

8 Indeed, voters, as well as candidates, have participated in the so-called ballot access cases. *E.g., Anderson,* 460 U.S., at 783, 103 S.Ct., at 1567.

9 The State also supports its ban on write-in voting as a means of enforcing nominating requirements, combating fraud, and "fostering informed and educated expressions of the popular will." *Anderson,* 460 U.S., at 796, 103 S.Ct., at 1572–1573.

10 Although the dissent purports to agree with the standard we apply in determining whether the right to vote has been restricted, *post,* at 2069–2070, and implies that it is analyzing the write-in ban under some minimal level of scrutiny, *post,* at 2071, the dissent actually employs strict scrutiny. This is evident from its invocation of quite rigid narrow tailoring requirements. For instance, the dissent argues that the State could adopt a less drastic means of preventing sore-loser candidacies, *ibid.,* and that the State could screen out ineligible candidates through postelection disqualification rather than a write-in voting ban. *Post,* at 2072.

It seems to us that limiting the choice of candidates to those who have complied with state election law requirements is the prototypical example of a regulation that, while it affects the right to vote, is eminently reasonable. *Anderson, supra,* at 788, 103 S.Ct., at 1575. The dissent's suggestion that voters are entitled to cast their ballots for unqualified candidates appears to be driven by the assumption that an election system that imposes any restraint on voter choice is unconstitutional. This is simply wrong. See *supra,* at 2063–2064.

11 We of course in no way suggest that a State is not free to provide for write-in voting, as many States do; nor should this opinion be read to discourage such provisions.

End of Document

52 USC 20503: National procedures for voter registration for elections for Federal office
Text contains those laws in effect on November 22, 2019

From Title 52-VOTING AND ELECTIONS
Subtitle II-Voting Assistance and Election Administration
CHAPTER 205-NATIONAL VOTER REGISTRATION
Jump To:

§20503. National procedures for voter registration for elections for Federal office

(a) In general

Except as provided in subsection (b), notwithstanding any other Federal or State law, in addition to any other method of voter registration provided for under State law, each State shall establish procedures to register to vote in elections for Federal office-

(1) by application made simultaneously with an application for a motor vehicle driver's license pursuant to section 20504 of this title;

(2) by mail application pursuant to section 20505 of this title; and

(3) by application in person-

(A) at the appropriate registration site designated with respect to the residence of the applicant in accordance with State law; and

(B) at a Federal, State, or nongovernmental office designated under section 20506 of this title.

(b) Nonapplicability to certain States

This chapter does not apply to a State described in either or both of the following paragraphs:

(1) A State in which, under law that is in effect continuously on and after August 1, 1994, there is no voter registration requirement for any voter in the State with respect to an election for Federal office.

(2) A State in which, under law that is in effect continuously on and after August 1, 1994, or that was enacted on or prior to August 1, 1994, and by its terms is to come into effect upon the enactment of this chapter, so long as that law remains in effect, all voters in the State may register to vote at the polling place at the time of voting in a general election for Federal office.

(Pub. L. 103–31, §4, May 20, 1993, 107 Stat. 78 ; Pub. L. 104–91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11 , amended Pub. L. 104–99, title II, §211, Jan. 26, 1996, 110 Stat. 37 .)

References In Text

Upon the enactment of this chapter, referred to in subsec. (b)(2), means the date of enactment of Pub. L. 103–31, which was approved May 20, 1993.

Codification

Section was formerly classified to section 1973gg–2 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Amendment by Pub. L. 104–91 is based on section 116(a) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, which was enacted into law by Pub. L. 104–91.

Amendments

1996-Subsec. (b). Pub. L. 104–91, as amended by Pub. L. 104–99, substituted "August 1, 1994" for "March 11, 1993" wherever appearing.

Effective Date of 1996 Amendment

Section 116(b) of H.R. 2076, One Hundred Fourth Congress, as passed by the House of Representatives on Dec. 6, 1995, and as enacted into law by Pub. L. 104–91, title I, §101(a), Jan. 6, 1996, 110 Stat. 11 , as amended by Pub. L. 104–99, title II, §211, Jan. 26, 1996, 110 Stat. 37 , provided

that: "The amendments made by subsection (a) [amending this section] shall take effect as if included in the provisions of the National Voter Registration Act of 1993 [Pub. L. 103–31, see Tables for classification]."

52 USC 20507: Requirements with respect to administration of voter registration
Text contains those laws in effect on November 22, 2019

From Title 52-VOTING AND ELECTIONS
Subtitle II-Voting Assistance and Election Administration
CHAPTER 205-NATIONAL VOTER REGISTRATION
Jump To:

§20507. Requirements with respect to administration of voter registration

(a) In general

In the administration of voter registration for elections for Federal office, each State shall-

(1) ensure that any eligible applicant is registered to vote in an election-

(A) in the case of registration with a motor vehicle application under section 20504 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 20505 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except-

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of-

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 20504, 20505, and 20506 of this title of-

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) Confirmation of voter registration

Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office-

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.) [now 52 U.S.C. 10301 et seq.]; and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote, except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual-

(A) has not either notified the applicable registrar (in person or in writing) or responded during the period

described in subparagraph (B) to the notice sent by the applicable registrar; and then

(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office.

(c) Voter removal programs

(1) A State may meet the requirement of subsection (a)(4) by establishing a program under which-

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that-

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude-

(i) the removal of names from official lists of voters on a basis described in paragraph (3)(A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this chapter.

(d) Removal of names from voting rolls

(1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant-

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) Procedure for voting following failure to return card

(1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant-

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(i) or (A)(ii)(II), voting at the other locations described in subparagraph (A) need not be provided as options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) Change of voting address within a jurisdiction

In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) Conviction in Federal court

(1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 20509 of this title of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include-

(A) the name of the offender;

(B) the offender's age and residence address;

(C) the date of entry of the judgment;

(D) a description of the offenses of which the offender was convicted; and

(E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) Omitted

(i) Public disclosure of voter registration activities

(1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) "Registrar's jurisdiction" defined

For the purposes of this section, the term "registrar's jurisdiction" means-

(1) an incorporated city, town, borough, or other form of municipality;

(2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or

(3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

(Pub. L. 103–31, §8, May 20, 1993, 107 Stat. 82 ; Pub. L. 107–252, title IX, §903, Oct. 29, 2002, 116 Stat. 1728 .)

References in Text

The Voting Rights Act of 1965, referred to in subsec. (b)(1), is Pub. L. 89–110, Aug. 6, 1965, 79 Stat. 437 , which is classified generally to chapters 103 (§10301 et seq.), 105 (§10501 et seq.), and 107

(§10701 et seq.) of this title. For complete classification of this Act to the Code, see Tables.

CODIFICATION

Section was formerly classified to section 1973gg–6 of Title 42, The Public Health and Welfare, prior to editorial reclassification and renumbering as this section.

Section is comprised of section 8 of Pub. L. 103–31. Subsec. (h) of section 8 of Pub. L. 103–31 enacted section 3629 of Title 39, Postal Service, and amended sections 2401 and 3627 of Title 39.

AMENDMENTS

2002-Subsec. (b)(2). Pub. L. 107–252 inserted before period at end ", except that nothing in this paragraph may be construed to prohibit a State from using the procedures described in subsections (c) and (d) to remove an individual from the official list of eligible voters if the individual-

"(A) has not either notified the applicable registrar (in person or in writing) or responded during the period described in subparagraph (B) to the notice sent by the applicable registrar; and then

"(B) has not voted or appeared to vote in 2 or more consecutive general elections for Federal office".

Michigan Compiled Laws Annotated
Chapter 168. Michigan Election Law
Michigan Election Law (Refs & Annos)
Chapter XXIII. Registration of Electors (Refs & Annos)

M.C.L.A. 168.500b

168.500b. Forwarding application for registration to clerk of city or township; compensation of county clerks; obtaining additional information; transmittal of application; transmittal of change of address information

Currentness

Sec. 500b. (1) Not more than 5 business days after receipt of an application for registration, the county clerk shall forward the application for registration to the clerk of the city or township in which the applicant resides.

(2) Compensation to be paid county clerks for transmitting applications shall be appropriated by the legislature to the secretary of state for equitable distribution by the secretary of state to the county clerks. The city or township clerk shall obtain needed additional information on an application that is not completed properly or return to the secretary of state's election division an application needing additional information or not completed properly. An application received by the clerk of a city or township in which the applicant does not reside shall be transmitted promptly to the appropriate county clerk of the county in which the applicant resides. If the city or township clerk knows the city or township in which the applicant resides, the clerk shall inform the county clerk of the county in which the applicant resides and forward the application directly to the clerk of the city or township in which the applicant resides.

(3) The secretary of state may electronically transmit to the qualified voter file voter registration change of address information received from a registered elector who is changing the address on his or her operator's or chauffeur's license issued pursuant to the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or official state personal identification card issued pursuant to 1972 PA 222, MCL 28.291 to 28.300. The secretary of state is not required to transmit a paper copy of an elector's voter registration change of address information if the elector's signature is already captured or reproduced under section 307 of the Michigan vehicle code, 1949 PA 300, MCL 257.307, and has been transmitted to the qualified voter file. This subsection applies to address changes made within a city or township and to address changes made from 1 city or township to another city or township.

Credits

Amended by P.A.1989, No. 142, § 1, Imd. Eff. June 29, 1989; P.A.2005, No. 71, Imd. Eff. July 14, 2005.

M. C. L. A. 168.500b, MI ST 168.500b

The statutes are current through P.A.2019, No. 123, of the 2019 Regular Session, 100th Legislature. Some statute sections may be more current; see credits for details.

End of Document

Michigan Compiled Laws Annotated
Chapter 168. Michigan Election Law
Michigan Election Law (Refs & Annos)
Chapter XXIII. Registration of Electors (Refs & Annos)

M.C.L.A. 168.509o

168.509o. Statewide qualified voter file; establishment and maintenance; registered voters; powers and duties of secretary of state

Effective: May 3, 2018
Currentness

Sec. 509o. (1) The secretary of state shall direct and supervise the establishment and maintenance of a statewide qualified voter file. The secretary of state shall establish the technology to implement the qualified voter file. The qualified voter file is the official file for the conduct of all elections held in this state. The secretary of state may direct that all or any part of the city or township registration files must be used in conjunction with the qualified voter file at the first state primary and election held after the creation of the qualified voter file.

(2) Notwithstanding any other provision of law to the contrary, an individual who appears to vote in an election and whose name appears in the qualified voter file for that city, township, or school district is considered a registered voter of that city, township, or school district under this act.

(3) The secretary of state, a designated voter registration agency, or a county, city, or township clerk shall not place a name of an individual into the qualified voter file unless that individual signs an application as prescribed in section 509r(3).[1] The secretary of state or a designated voter registration agency shall not allow an individual to indicate a different address than the address in either the secretary of state's or designated voter registration agency's files to be placed in the qualified voter file.

(4) The secretary of state shall develop and utilize a process by which information obtained through the United States Social Security Administration's death master file that is used to cancel an operator's or chauffeur's license issued under the Michigan vehicle code, 1949 PA 300, MCL 257.1 to 257.923, or an official state personal identification card issued under 1972 PA 222, MCL 28.291 to 28.300, of a deceased resident of this state is also used at least once a month to update the qualified voter file to cancel the voter registration of any elector determined to be deceased. The secretary of state shall make the canceled voter registration information under this subsection available to the clerk of each city or township to assist with the clerk's obligations under section 510.[2]

(5) Subject to this subsection, the secretary of state shall participate with other states in 1 or more recognized multistate programs or services, if available, to assist in the verification of the current residence and voter registration status of electors. The secretary of state shall not participate in any recognized multistate program or service described in this subsection that requires this state to promote or adopt legislation as a condition of participation in that program or service. In addition, the secretary of state shall not participate in any recognized multistate program or service described in this subsection if the secretary of state determines that data of that program or service are not being adequately secured or protected. The secretary of state shall follow the procedures under section 509aa(5)[3] with regard to any electors affected by information obtained through any multistate program or service.

Credits

P.A.1954, No. 116, § 509*o*, added by P.A.1994, No. 441, § 1, Imd. Eff. Jan. 10, 1995. Amended by P.A.2018, No. 125, Eff. Dec. 31, 2018; P.A.2018, No. 126, Imd. Eff. May 3, 2018.

Notes of Decisions (1)

Footnotes

1 M.C.L.A. § 168.509r.

2 M.C.L.A. § 168.510.

3 M.C.L.A. § 168.509aa.

M. C. L. A. 168.509*o*, MI ST 168.509o

The statutes are current through P.A.2019, No. 123, of the 2019 Regular Session, 100th Legislature. Some statute sections may be more current; see credits for details.

End of Document

KeyCite Yellow Flag - Negative Treatment
Proposed Legislation

Minnesota Statutes Annotated
Elections (Ch. 200-212)
Chapter 201. Eligibility and Registration of Voters
Voter Registration Records; Maintenance and Verification

M.S.A. § 201.12

201.12. Proper registration; verification by mail; challenges

Effective: July 1, 2013
Currentness

Subdivision 1. Notice of registration. To prevent fraudulent voting and to eliminate excess names, the county auditor may mail to any registered voter a notice stating the voter's name and address as they appear in the registration files. The notice shall request the voter to notify the county auditor if there is any mistake in the information.

Subd. 2. Moved within state. If any nonforwardable mailing from an election official is returned as undeliverable but with a permanent forwarding address in this state, the county auditor may change the voter's status to "inactive" in the statewide registration system and shall transmit a copy of the mailing to the auditor of the county in which the new address is located. If an election is scheduled to occur in the precinct in which the voter resides in the next 47 days, the county auditor shall promptly update the voter's address in the statewide voter registration system. If there is not an election scheduled, the auditor may wait to update the voter's address until after the next list of address changes is received from the secretary of state. Once updated, the county auditor shall mail to the voter a notice stating the voter's name, address, precinct, and polling place, except that if the voter's record is challenged due to a felony conviction, noncitizenship, name change, incompetence, or a court's revocation of voting rights of individuals under guardianship, the auditor must not mail the notice. The notice must advise the voter that the voter's voting address has been changed and that the voter must notify the county auditor within 21 days if the new address is not the voter's address of residence. The notice must state that it must be returned if it is not deliverable to the voter at the named address.

Subd. 3. Moved out of state. If any nonforwardable mailing from an election official is returned as undeliverable but with a permanent forwarding address outside this state, the county auditor shall promptly mail to the voter at the voter's new address a notice advising the voter that the voter's status in the statewide voter registration system will be changed to "inactive" unless the voter notifies the county auditor within 21 days that the voter is retaining the former address as the voter's address of residence. If the voter's record is challenged due to a felony conviction, lack of United States citizenship, legal incompetence, or court-ordered revocation of voting rights of persons under guardianship, the county auditor must not mail this notice. If the notice is not received by the deadline, the county auditor shall change the voter's status to "inactive" in the statewide voter registration system.

Subd. 4. Challenges. If any nonforwardable mailing from an election official is returned as undeliverable but with no forwarding address, the county auditor shall change the registrant's status to "challenged" in the statewide voter registration system. An individual challenged in accordance with this subdivision shall comply with the provisions of section 204C.12, before being allowed to vote. If a notice mailed at least 60 days after the return of the first nonforwardable mailing is also returned by the postal service, the county auditor shall change the registrant's status to "inactive" in the statewide voter registration system.

Credits

Laws 1959, c. 675, art. 2, § 12. Amended by Laws 1973, c. 676, § 9; Laws 1981, c. 29, art. 2, § 14; Laws 1986, c. 444; Laws 1986, c. 475, § 3, eff. April 2, 1986; Laws 1990, c. 585, § 11, eff. May 4, 1990. Amended by Laws 1997, c. 147, § 5; Laws 1999, c. 132, § 6; Laws 2008, c. 165, § 1; Laws 2010, c. 201, § 4, eff. June 1, 2011; Laws 2013, c. 131, art. 2, § 10, eff. July 1, 2013.

M. S. A. § 201.12, MN ST § 201.12

Current with legislation effective through January 1, 2020 from the 2019 Regular and First Special Sessions.

End of Document

KeyCite Yellow Flag - Negative Treatment
Declined to Extend by Clemons v. U.S. Dept. of Commerce, N.D.Miss., July 8, 2010

84 S.Ct. 526
Supreme Court of the United States

James P. WESBERRY, Jr., et al., Appellants,
v.
Carl E. SANDERS, etc., et al.

No. 22.
|
Argued Nov. 18 and 19, 1963.
|
Decided Feb. 17, 1964.

Synopsis

Action, in the United States District Court for the Northern District of Georgia, by qualified voters to strike down Georgia statute prescribing congressional districts. The three-judge District Court, 206 F.Supp. 276, dismissed the complaint, and plaintiffs appealed. The Supreme Court, Mr. Justice Black, held that the complaint presented a justiciable controversy, and that apportionment of congressional districts so that single congressman represented from two to three times as many Fifth District voters as were represented by each of congressmen from other Georgia districts grossly discriminated against voters in Fifth District in violation of constitutional requirement that representatives be chosen by people of the several states.

Reversed and remanded.

Mr. Justice Clark dissented in part; Mr. Justice Harlan and Mr. Justice Stewart dissented.

West Headnotes (12)

[1] **Federal Courts**
Particular cases

Under circumstances, upon reversal of judgment dismissing complaint alleging unconstitutional disparity among congressional districts, Supreme Court would leave question of relief for further consideration and decision by district court. 42 U.S.C.A. §§ 1983, 1988; 28 U.S.C.A. § 1343(3); Code Ga. § 34–2301.

8 Cases that cite this headnote

[2] **Constitutional Law**
Apportionment, election, and discipline of members of legislature

Congressional apportionment cases are justiciable. U.S.C.A.Const. art. 1.

8 Cases that cite this headnote

[3] **Constitutional Law**
Apportionment, election, and discipline of members of legislature

Constitutional provision that times, places and manner of holding elections should be prescribed by states and Congress does not immunize state congressional apportionment laws which debase citizen's right to vote from power of court to protect constitutional rights of individuals from legislative destruction. U.S.C.A.Const. art. 1, § 4.

101 Cases that cite this headnote

[4] **Constitutional Law**
Justiciability

Constitutional Law
Apportionment, election, and discipline of members of legislature

Complaint alleging deprivation of constitutional rights through disparity in congressional districts was not subject to dismissal either on ground of want of equity or ground of nonjusticiability. 42 U.S.C.A. §§ 1983, 1988; 28 U.S.C.A. § 1343(3); Code Ga. § 34–2301; U.S.C.A.Const. art. 1, §§ 2, 4; Amend. 14, §§ 1, 2.

5 Cases that cite this headnote

[5] **United States**
Equality of representation and discrimination; Voting Rights Act

Georgia apportionment of congressional districts so that single congressman represented from two

to three times as many Fifth District voters as were represented by each of congressmen from other Georgia districts grossly discriminated against voters in Fifth District in violation of constitutional requirement that representatives be chosen by people of the several states. Code Ga. § 34–2301; U.S.C.A.Const. art. 1, § 2.

44 Cases that cite this headnote

[6] **United States**
Equality of representation and discrimination; Voting Rights Act

Constitutional command that representatives be chosen by people of the several states means that as nearly as practicable one man's vote in congressional election is to be worth as much as another's. U.S.C.A.Const. art. 1, § 2.

166 Cases that cite this headnote

[7] **United States**
Equality of representation and discrimination; Voting Rights Act

Those who framed the Constitution meant that no matter what mechanics of election, whether state wide or by districts, it was population which was to be basis of House of Representatives. U.S.C.A.Const. art. 1, § 2.

67 Cases that cite this headnote

[8] **United States**
Apportionment of Representatives; Reapportionment and Redistricting

Delegates to Constitutional Convention intended that, in allocating congressmen, number assigned to each state should be determined solely by number of state's inhabitants.

6 Cases that cite this headnote

[9] **United States**
Members of Congress; Senators and Representatives

Constitutional provision that representatives are to be chosen by people of the several states must be construed in light of its history. U.S.C.A.Const. art. 1, § 2.

7 Cases that cite this headnote

[10] **Election Law**
Ballots

United States
Regulation of Election of Members

Right to vote cannot be denied outright, and it cannot, consistently with constitutional provision that representatives should be chosen by people of the several states, be destroyed by alteration of ballots. U.S.C.A.Const. art. 1, § 2.

22 Cases that cite this headnote

[11] **Election Law**
Nature and source of right

No right is more precious in a free country than that of having a voice in the election of those who make laws; other rights, even the most basic, are illusory if right to vote is undermined.

243 Cases that cite this headnote

[12] **United States**
Equality of representation and discrimination; Voting Rights Act

That it may not be possible to draw congressional districts with mathematical precision is no excuse for ignoring Constitution's plain objective of making equal representation for equal numbers of people fundamental goal for House of Representatives. U.S.C.A.Const. art. 1, § 2.

139 Cases that cite this headnote

Attorneys and Law Firms

****527** ***2** Emmet J. Bondurant II, Atlanta, Ga., for appellants.

Frank T. Cash, Atlanta, Ga., for appellants, pro hac vice, by special leave of Court.

Paul Rodgers, Atlanta, Ga., for appellees.

Bruce J. Terris, Washington, D.C., for the United States, as amicus curiae, by special leave of Court.

Mr. Justice BLACK delivered the opinion of the Court.

[1] Appellants are citizens and qualified voters of Fulton County, Georgia, and as such are entitled to vote in congressional elections in Georgia's Fifth Congressional District. That district, one of ten created by a 1931 Georgia statute,[1] includes Fulton, DeKalb, and Rockdale Counties and has a population according to the 1960 census of 823,680. The average population of the ten districts is 394,312, less than half that of the Fifth. One district, the Ninth, has only 272,154 people, less than one-third as many as the Fifth. Since there is only one Congressman for each district, this inequality of population means that the Fifth District's Congressman has to represent from two to three times as many people as do Congressmen from some of the other Georgia districts.

*3 Claiming that these population disparities deprived them and voters similarly situated of a right under the Federal Constitution to have their votes for Congressmen given the same weight as the votes of other Georgians, the appellants brought this action under 42 U.S.C. ss 1983 and 1988 and 28 U.S.C. s 1343(3) asking that the Georgia statute be declared invalid and that the appellees, the Governor and Secretary of State of Georgia, be enjoined from conducting elections under it. The complaint alleged that appellants were deprived of the full benefit of their right to vote, in violation of (1) Art. I, s 2, of the Constitution of the United States, which provides that 'The House of Representatives shall be composed of Members chosen every second Year by the People of the several States * * *'; (2) the Due Process, Equal Protection, and Privileges and Immunities Clauses of the Fourteenth Amendment; and (3) that part of Section 2 of the Fourteenth Amendment which provides that 'Representatives shall be apportioned among the several States according to their respective numbers * * *.'

The case was heard by a three-judge District Court, which found unanimously, from facts not disputed, that:
'It is clear by any standard * * * that the population of the Fifth District **528 is grossly out of balance with that of the other nine congressional districts of Georgia and in fact, so much so that the removal of DeKalb and Rockdale Counties from the District, leaving only Fulton with a population of 556,326, would leave it exceeding the average by slightly more than forty per cent.'[2]

Notwithstanding these findings, a majority of the court dismissed the complaint, citing as their guide Mr. Justice Frankfurter's minority opinion in Colegrove v. Green, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432, an opinion stating that challenges to apportionment *4 of congressional districts raised only 'political' questions, which were not justiciable. Although the majority below said that the dismissal here was based on 'want of equity' and not on nonjusticiability, they relied on no circumstances which were peculiar to the present case; instead, they adopted the language and reasoning of Mr. Justice Frankfurter's Colegrove opinion in concluding that the appellants had presented a wholly 'political' question.[3] Judge Tuttle, disagreeing with the court's reliance on that opinion, dissented from the dismissal, though he would have denied an injunction at that time in order to give the Georgia Legislature ample opportunity to correct the 'abuses' in the apportionment. He relied on Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663, which, after full discussion of Colegrove and all the opinions in it, held that allegations of disparities of population in state legislative districts raise justiciable claims on which courts may grant relief. We noted probable jurisdiction. 374 U.S. 802, 83 S.Ct. 1691, 10 L.Ed.2d 1029. We agree with Judge Tuttle that in debasing the weight of appellants' votes the State has abridged the right to vote for members of Congress guaranteed them by the United States Constitution, that the District Court should have entered a declaratory judgment to that effect, and that it was therefore error to dismiss this suit. The question of what relief should be given we leave for further consideration and decision by the District Court in light of existing circumstances.

*5 I.

Baker v. Carr, supra, considered a challenge to a 1901 Tennessee statute providing for apportionment of State Representatives and Senators under the State's constitution, which called for apportionment among counties or districts 'according to the number of qualified electors in each.' The complaint there charged that the State's constitutional command to apportion on the basis of the number of qualified voters had not been followed in the 1901 statute and that the districts were so discriminatorily disparate in number of qualified voters that the plaintiffs and persons similarly situated were, 'by virtue of the debasement of their votes,' denied the equal protection of the laws guaranteed them by the Fourteenth Amendment.[4] The cause there of the

alleged 'debasement' of votes for state legislators—districts containing widely varying numbers of people—was precisely that which was alleged to debase votes for Congressmen **529 in Colegrove v. Green, supra, and in the present case. The Court in Baker pointed out that the opinion of Mr. Justice Frankfurter in Colegrove, upon the reasoning of which the majority below leaned heavily in dismissing 'for want of equity,' was approved by only three of the seven Justices sitting.[5] After full consideration of Colegrove, the Court in Baker held (1) that the District Court had jurisdiction of the subject matter; (2) that the qualified Tennessee voters there had standing to sue; and *6 (3) that the plaintiffs had stated a justiciable cause of action on which relief could be granted. [2] [3] [4] The reasons which led to these conclusions in Baker are equally persuasive here. Indeed, as one of the grounds there relied on to support our holding that state apportionment controversies are justiciable we said:

'* * * Smiley v. Holm, 285 U.S. 355, 52 S.Ct. 397, 76 L.Ed. 795; Koenig v. Flynn, 285 U.S. 375, 52 S.Ct. 403, 76 L.Ed. 805, and Carroll v. Becker, 285 U.S. 380, 52 S.Ct. 402, 76 L.Ed. 807, 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.'[6]

This statement in Baker, which referred to our past decisions holding congressional apportionment cases to be justiciable, we believe was wholly correct and we adhere to it. Mr. Justice Frankfurter's Colegrove opinion contended that Art. I, s 4, of the Constitution[7] had given Congress 'exclusive authority' to protect the right of citizens to vote for Congressmen,[8] but we made it clear in Baker that nothing in the language of that article gives support to a construction that would immunize state congressional apportionment laws which debase a citizen's right to vote from the power of courts to protect the constitutional rights of individuals from legislative destruction, a power recognized at least since our decision in Marbury v. Madison, 1 Cranch 137, 2 L.Ed. 60, in 1803. Cf. *7 Gibbons v. Ogden, 9 Wheat. 1, 6 L.Ed. 23. The right to vote is too important in our free society to be stripped of judicial protection by such an interpretation of Article I. This dismissal can no more be justified on the ground of 'want of equity' than on the ground of 'non-justiciability.' We therefore hold that the District Court erred in dismissing the complaint.

II.

[5] This brings us to the merits. We agree with the District Court that the 1931 Georgia apportionment grossly discriminates against voters in the Fifth Congressional District. A single Congressman represents from two to three **530 times as many Fifth District voters as are represented by each of the Congressmen from the other Georgia congressional districts. The apportionment statute thus contracts the value of some votes and expands that of others. If the Federal Constitution intends that when qualified voters elect members of Congress each vote be given as much weight as any other vote, then this statute cannot stand.

[6] [7] We hold that, construed in its historical context, the command of Art. I, s 2, that Representatives be chosen 'by the People of the several States'[9] means that as *8 nearly as is practicable one man's vote in a congressional election is to be worth as much as another's.[10] This rule is followed automatically, of course, when Representatives are chosen as a group on a statewide basis, as was a widespread practice in the first 50 years of our Nation's history.[11] It would be extraordinary to suggest that in such statewide elections the votes of inhabitants of some parts of a State, for example, Georgia's thinly populated Ninth District, could be weighted at two or three times the value of the votes of people living in more populous parts of the State, for example, the Fifth District around Atlanta. Cf. Gray v. Sanders, 372 U.S. 368, 83 S.Ct. 801, 9 L.Ed.2d 821. We do not believe that the Framers of the Constitution intended to permit the same vote-diluting discrimination to be accomplished through the device of districts containing widely varied numbers of inhabitants. To say that a vote is worth more in one district than in another would not only run counter to our fundamental ideas of democratic government, it would cast aside the principle of a House of Representatives elected 'by the People,' a principle tenaciously fought for and established at the Constitutional Convention. The history of the Constitution, particularly that part of it relating to the adoption of Art. I, s 2, reveals that those who framed the Constitution *9 meant that, no matter what the mechanics of an election, whether statewide or by districts, it was population which was to be the basis of the House of Representatives.

During the Revolutionary War the rebelling colonies were loosely allied in the Continental Congress, a body with authority to do little more than pass resolutions and issue requests for men and supplies. Before the war ended the Congress had proposed and secured the ratification by the States of a somewhat closer association under the Articles of Confederation. Though the Articles established a central government for the United **531 States, as the former colonies were even then called, the States retained most of their sovereignty, like independent nations bound together only by treaties. There were no separate judicial or executive branches: only a Congress consisting of a single house. Like the members of an ancient Greek league, each State, without regard to size or population, was given only one vote in that house. It soon became clear that the Confederation was without adequate power to collect needed revenues or to enforce the rules its Congress adopted. Farsighted men felt that a closer union was necessary if the States were to be saved from foreign and domestic dangers.

The result was the Constitutional Convention of 1787, called for 'the sole and express purpose of revising the Articles of Confederation * * *'[12] When the Convention *10 met in May, this modest purpose was soon abandoned for the greater challenge of creating a new and closer form of government than was possible under the Confederation. Soon after the Convention assembled, Edmund Randolph of Virginia presented a plan not merely to amend the Articles of Confederation but to create an entirely new National Government with a National Executive, National Judiciary, and a National Legislature of two Houses, one house to be elected by 'the people,' the second house to be elected by the first.[13]

The question of how the legislature should be constituted precipitated the most bitter controversy of the Convention. One principle was uppermost in the minds of many delegates: that, no matter where he lived, each voter should have a voice equal to that of every other in electing members of Congress. In support of this principle, George Mason of Virginia 'argued strongly for an election of the larger branch by the people. It was to be the grand depository of the democratic principle of the Govt.'[14]

James Madison agreed, saying 'If the power is not immediately derived from the people, in proportion to their numbers, we may make a paper confederacy, but that will be all.'[15] Repeatedly, delegates rose to make the same point: that it would be unfair, unjust, and contrary to common sense to give a small number of people as many Senators or Representatives as were allowed to much larger groups[16] — in short, as James Wilson of Pennsylvania *11 put it, 'equal numbers of people ought to have an equal no. of representatives * * *' and representatives 'of different districts ought clearly to hold the same proportion to each other, as their respective constituents hold to each other.'[17]

Some delegates opposed election by the people. The sharpest objection arose out **532 of the fear on the part of small States like Delaware that if population were to be the only basis of representation the populous States like Virginia would elect a large enough number of representatives to wield overwhelming power in the National Government.[18] Arguing that the Convention had no authority to depart from the plan of the Articles of Confederation which gave each State an equal vote in the National Congress, William Paterson of New Jersey said, 'If the sovereignty of the States is to be maintained, the Representatives must be drawn immediately from the States, not from the people: and we have no power to vary the idea of equal sovereignty.'[19] To this end he proposed a single legislative chamber in which each State, as in the Confederation, was to have an equal vote.[20] A number of delegates supported this plan.[21]

The delegates who wanted every man's vote to count alike were sharp in their criticism of giving each State, *12 regardless of population, the same voice in the National Legislature. Madison entreated the Convention 'to renounce a principle wch. was confessedly unjust,'[22] and Rufus King of Massachusetts 'was prepared for every event, rather than sit down under a Govt. founded in a vicious principle of representation and which must be as shortlived as it would be unjust.'[23]

The dispute came near ending the Convention without a Constitution. Both sides seemed for a time to be hopelessly obstinate. Some delegations threatened to withdraw from the Convention if they did not get their way.[24] Seeing the controversy growing sharper and emotions rising, the wise and highly respected Benjamin Franklin arose and pleaded with the delegates on both sides to 'part with some of their demands, in order that they may join in some accomodating proposition.'[25] At last those who supported representation of the people in both houses and those who supported it in neither were brought together, some expressing the fear that if

they did not reconcile their differences, 'some foreign sword will probably do the work for us.'[26] The deadlock was finally broken when a majority of the States agreed to what has been called the Great Compromise,[27] based on a proposal which had been repeatedly advanced by Roger *13 Sherman and other delegates from Connecticut.[28] It provided on the one hand that **533 each State, including little Delaware and Rhode Island, was to have two Senators. As a further guarantee that these Senators would be considered state emissaries, they were to be elected by the state legislatures, Art. I, s 3, and it was specially provided in Article V that no State should ever be deprived of its equal representation in the Senate. The other side of the compromise was that, as provided in Art. I, s 2, members of the House of Representatives should be chosen 'by the People of the several States' and should be 'apportioned among the several States * * * according to their respective Numbers.' While those who wanted both houses to represent the people had yielded on the Senate, they had not yielded on the House of Representatives. William Samuel Johnson of Connecticut had summed it up well: 'in one branch the people, ought to be represented; in the other, the States.'[29]

[8] The debates at the Convention make at least one fact abundantly clear: that when the delegates agreed that the House should represent 'people' they intended that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State's inhabitants.[30] The Constitution embodied Edmund Randolph's proposal for a periodic census to ensure 'fair representation of the people,'[31] an idea endorsed by Mason as assuring that 'numbers of inhabitants' *14 should always be the measure of representation in the House of Representatives.[32] The Convention also overwhelmingly agreed to a resolution offered by Randolph to base future apportionment squarely on numbers and to delete any reference to wealth.[33] And the delegates defeated a motion made by Elbridge Gerry to limit the number of Representatives from newer Western States so that it would never exceed the number from the original States.[34]

It would defeat the principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people—for us to hold that, within the States, legislatures may draw the lines of congressional districts in such a way as to give some voters a greater voice in choosing a Congressman than others. The House of Represenatives, the Convention agreed, was to represent the people as individuals, and on a basis of complete equality for each voter. The delegates were quite aware of what Madison called the 'vicious representation' in Great Britain[35] whereby 'rotten boroughs' with few inhabitants were represented in Parliament on or almost on a par with cities of greater population. Wilson urged that people must be represented as individuals, so that America would escape *15 the evils of the English system under which one man could send two members of Parliament to represent the borough of Old Sarum while London's **534 million people sent but four.[36] The delegates referred to rotten borough apportionments in some of the state legislatures as the kind of objectionable governmental action that the Constitution should not tolerate in the election of congressional representatives.[37]

Madison in The Federalist described the system of division of States into congressional districts, the method which he and others[38] assumed States probably would adopt: 'The city of Philadelphia is supposed to contain between fifty and sixty thousand souls. It will therefore form nearly two districts for the choice of Federal Representatives.'[39] '(N)umbers,' he said, not only are a suitable way to represent wealth but in any event 'are the only proper scale of representation.'[40] In the state conventions, speakers urging ratification of the Constitution emphasized the theme of equal representation in the House which had permeated the debates in Philadelphia. *16 [41] Charles Cotesworth Pinckney told the South Carolina Convention, 'the House of Representatives will be elected immediately by the people, and represent them and their personal rights individually * * *.'[42] Speakers at the ratifying conventions emphasized that the House of Representatives was meant to be free of the malapportionment then existing in some of the State legislatures—such as those of Connecticut, Rhode Island, and South Carolina—and argued that the power given Congress in Art. I, s 4,[43] was meant to be used to vindicate the people's right to equality of representation in the House.[44] Congress' power, said John Steele at the North Carolina convention, was not to be used to allow Congress to create rotten boroughs; in answer to another delegate's suggestion that Congress might use its power to favor people living near the seacoast, Steele said that Congress 'most probably' would 'lay the state off into districts,' and if it made laws 'inconsistent with the Constitution, independent judges will not uphold them, nor will the people obey them.'[45]

*17 Soon after the Constitution was adopted, James Wilson of Pennsylvania, by then an Associate Justice of this Court, **535 gave a series of lectures at Philadelphia in which, drawing on his experience as one of the most active members of the Constitutional Convention, he said:
'(A)ll elections ought to be equal. Elections are equal, when a given number of citizens, in one part of the state, choose as many representatives, as are chosen by the same number of citizens, in any other part of the state. In this manner, the proportion of the representatives and of the constituents will remain invariably the same.'[46]

[9] [10] [11] It is in the light of such history that we must construe Art. I, s 2, of the Constitution, which, carrying out the ideas of Madison and those of like views, provides that Representatives shall be chosen 'by the People of the several States' and shall be 'apportioned among the several States * * * according to their respective Numbers.' It is not surprising that our Court has held that this Article gives persons qualified to vote a constitutional right to vote and to have their votes counted. United States v. Mosley, 238 U.S. 383, 35 S.Ct. 904, 59 L.Ed. 1355; Ex parte Yarbrough, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274. Not only can this right to vote not be denied outright, it cannot, consistently with Article I, be destroyed by alteration of ballots, see United States v. Classic, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368, or diluted by stuffing of the ballot box, see United States v. Saylor, 322 U.S. 385, 64 S.Ct. 1101, 88 L.Ed. 1341. No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our Constitution leaves no room for classification of people in a way that unnecessarily abridges *18 this right. In urging the people to adopt the Constitution, Madison said in No. 57 of The Federalist:
'Who are to be the electors of the Federal Representatives? Not the rich more than the poor; not the learned more than the ignorant; not the haughty heirs of distinguished names, more than the humble sons of obscure and unpropitious fortune. The electors are to be the great body of the people of the United States. * * *'[47]

Readers surely could have fairly taken this to mean, 'one person, one vote.' Cf. Gray v. Sanders, 372 U.S. 368, 381, 83 S.Ct. 801, 809, 9 L.Ed.2d 821.

[12] While it may not be possible to draw congressional districts with mathematical precision, that is no excuse for ignoring our Constitution's plain objective of making equal representation for equal numbers of people the fundamental goal for the House of Representatives. That is the high standard of justice and common sense which the Founders set for us.

Reversed and remanded.

Mr. Justice CLARK, concurring in part and dissenting in part.

Unfortunately I can join neither the opinion of the Court nor the dissent of my Brother HARLAN. It is true that the opening sentence of Art. I, s 2, of the Constitution provides that Representatives are to be chosen 'by the People of the several States * * *.' However, in my view, Brother HARLAN has clearly demonstrated that both the historical background and language preclude a finding that Art. I, s 2, lays down the ipse dixit 'one person, one vote' in congressional elections.

On the other hand, I agree with the majority that congressional districting is subject to judicial scrutiny. This *19 Court has so held ever since **536 Smiley v. Holm, 285 U.S. 355, 52 S.Ct. 397, 76 L.Ed. 795 (1932), which is buttressed by two companion cases, Koenig v. Flynn, 285 U.S. 375, 52 S.Ct. 403, 76 L.Ed. 805 (1932), and Carroll v. Becker, 285 U.S. 380, 52 S.Ct. 402, 76 L.Ed. 807 (1932). A majority of the Court in Colegrove v. Green felt, upon the authority of Smiley, that the complaint presented a justiciable controversy not reserved exclusively to Congress. Colegrove v. Green, 328 U.S. 549, 564, and 568, n. 3, 66 S.Ct. 1198, 1208, 1209, 90 L.Ed. 1432 (1946). Again in Baker v. Carr, 369 U.S. 186, 232, 82 S.Ct. 691, 718, 7 L.Ed.2d 663 (1962), the opinion of the Court recognized that Smiley 'settled the issue in favor of justiciability of questions of congressional redistricting.' I therefore cannot agree with Brother HARLAN that the supervisory power granted to Congress under Art. I, s 4, is the exclusive remedy.

I would examine the Georgia congressional districts against the requirements of the Equal Protection Clause of the Fourteenth Amendment. As my Brother BLACK said in his dissent in Colegrove v. Green, supra, the 'equal protection clause of the Fourteenth Amendment forbids * * * discrimination. It does not permit the states to pick out

certain qualified citizens or groups of citizens and deny them the right to vote at all. * * * No one would deny that the equal protection clause would also prohibit a law that would expressly give certain citizens a half-vote and others a full vote. * * * Such discriminatory legislation seems to me exactly the kind that the equal protection clause was intended to prohibit.' 328 U.S. at 569, 66 S.Ct. at 1210, 90 L.Ed. 1432.

The trial court, however, did not pass upon the merits of the case, although it does appear that it did make a finding that the Fifth District of Georgia was 'grossly out of balance' with other congressional districts of the State. Instead of proceeding on the merits, the court dismissed the case for lack of equity. I believe that the court erred in so doing. In my view we should therefore vacate this judgment and remand the case for a hearing ***20** on the merits. At that hearing the court should apply the standards laid down in Baker v. Carr, supra.

I would enter an additional caveat. The General Assembly of the Georgia Legislature has been recently reapportioned * as a result of the order of the three-judge District Court in Toombs v. Fortson, 205 F.Supp. 248 (1962). In addition, the Assembly has created a Joint Congressional Redistricting Study Committee which has been working on the problem of congressional redistricting for several months. The General Assembly is currently in session. If on remand the trial court is of the opinion that there is likelihood of the General Assembly's, reapportioning the State in an appropriate manner, I believe that coercive relief should be deferred until after the General Assembly has had such an opportunity.

Mr. Justice HARLAN, dissenting.

I had not expected to witness the day when the Supreme Court of the United States would render a decision which casts grave doubt on the constitutionality of the composition of the House of Representatives. It is not an exaggeration to say that such is the effect of today's decision. The Court's holding that the Constitution requires States to select Representatives either by elections at large or by elections in districts composed 'as nearly as is practicable' of equal population places in jeopardy the seats of almost all the members of the present House of Representatives.

In the last congressional election, in 1962, Representatives from 42 States were elected from congressional districts.[1] In all but five of those Stataes, the difference between ***21** the populations of the ****537** largest and smallest district exceeded 100,000 persons.[2] A difference of this magnitude in the size of districts the average population of which in each State is less than 500,000[3] is presumably not equality among districts 'as nearly as is practicable,' although the Court does not reveal its definition of that phrase.[4] Thus, today's decision impugns the validity of the election of 398 Representatives from 37 States, leaving a 'constitutional' House of 37 members now sitting.[5]

***22** Only a demonstration which could not be avoided would justify this Court in rendering a decision the effect of which, inescapably as I see it, is to declare constitutionally defective the very composition of a coordinate branch of the Federal Government. The Court's opinion not only fails to make such a demonstration, it is unsound logically on its face and demonstrably unsound historically.

I.

Before coming to grips with the reasoning that carries such extraordinary consequences, it is important to have firmly in mind the provisions of ****538** Article I of the Constitution which control this case:

'Section 2. The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.

***23** 'Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative * * *.

'Section 4. The Times, Places and Manner of holding Elections for Senators and 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, except as to the Places of chusing Senators.

'Section 5. Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members * * *.'

As will be shown, these constitutional provisions and their 'historical context,' ante, p. 530, establish:
1. that congressional Representatives are to be apportioned among the several States largely, but not entirely, according to population;

2. that the States have plenary power to select their allotted Representatives in accordance with any method of popular election they please, subject only to the supervisory power of Congress; and

3. that the supervisory power of Congress is exclusive.

*24 In short, in the absence of legislation providing for equal districts by the Georgia Legislature or by Congress, these appellants have no right to the judicial relief which they seek. It goes without saying that it is beyond the province of this Court to decide whether equally populated districts is the preferable method for electing Representatives, whether state legislatures would have acted more fairly or wisely had they adopted such a method, or whether Congress has been derelict in not requiring state legislatures to follow that course. Once it is clear that there is no constitutional right at stake, that ends the case.

II.

Disclaiming all reliance on other provisions of the Constitution, in particular those of the Fourteenth Amendment on which the appellants relied below and in this Court, the Court holds that the provision in Art, I, s 2, for election of Representatives 'by the People' means that congressional districts are to be 'as nearly as is practicable' equal in population, ante, p. 530. Stripped of rhetoric and a 'historical context,' ante, p. 530, which bears little resemblance to the evidence found in the pages of history, see infra, pp. 541—547, the Court's opinion supports its holding only with the bland assertion that 'the principle of a House of Representatives elected 'by the People" would be 'cast aside' if 'a vote is worth more in one district than in another,' ante p. 530, i.e., if congressional districts within a State, each electing a single Representative, are not equal in population. The **539 fact is, however, that Georgia's 10 Representatives are elected 'by the People' of Georgia, just as Representatives from other States are elected 'by the People of the several States.' This is all that the Constitution requires. [6]

*25 Although the Court finds necessity for its artificial construction of Article I in the undoubted importance of the right to vote, that right is not involved in this case. All of the appellants do vote. The Court's talk about 'debasement' and 'dilution' of the vote is a model of circular reasoning, in which the premises of the argument feed on the conclusion. Moreover, by focusing exclusively on numbers in disregard of the area and shape of a congressional district as well as party affiliations within the district, the Court deals in abstractions which will be recognized even by the politically unsophisticated to have little relevance to the realities of political life.

In any event, the very sentence of Art. I, s 2, on which the Court exclusively relies confers the right to vote for Representatives only on those whom the State has found qualified to vote for members of 'the most numerous Branch of the State Legislature.' Supra, p. 538. So far as Article I is concerned, it is within the State's power to confer that right only on persons of wealth or of a particular sex or, if the State chose, living in specified areas of the State. [7] Were Georgia to find the residents of the *26 Fifth District unqualified to vote for Representatives to the State House of Representatives, they could not vote for Representatives to Congress, according to the express words of Art. I, s 2. Other provisions of the Constitution would, of course, be relevant, but, so far as Art. I, s 2, is concerned, the disqualification would be within Georgia's power. How can it be, then, that this very same sentence prevents Georgia from apportioning its Representatives as it chooses? The truth is that it does not.

The Court purports to find support for its position in the third paragraph of Art. I, s 2, which provides for the apportionment **540 of Representatives among the States. The appearance of support in that section derives from the Court's confusion of two issues: direct election of Representatives within the States and the apportionment of Representatives among the States. Those issues are distinct, and were separately treated in the Constitution. The fallacy of the Court's reasoning in this regard is illustrated by its slide, obscured by intervening discussion (see ante, p. 533), from the intention of the delegates at the Philadelphia Convention 'that in allocating Congressmen the number assigned to each State should be determined solely by the number of the State's inhabitants,' ante, p. 533, to a 'principle solemnly embodied in the Great Compromise—equal representation in the House for equal numbers of people,' ante, p. 533. The delegates did have

the former intention and made clear *27 provision for it.[8] Although many, perhaps most, of them also believed generally—but assuredly not in the precise, formalistic way of the majority of the Court[9]—that within the States representation should be based on populations, they did not surreptitiously slip their belief into the Constitution in the phrase 'by the People,' to be discovered 175 years later like a Shakespearian anagram.

Far from supporting the Court, the apportionment of Representatives among the States shows how blindly the Court has marched to its decision. Representatives were to be apportioned among the States on the basis of free population plus three-fifths of the slave population. Since no slave voted, the inclusion of three-fifths of their number in the basis of apportionment gave the favored States representation far in excess of their voting population. If, then, slaves were intended to be without representation, Article I did exactly what the Court now says it prohibited: it 'weighted' the vote of voters in the slave States. Alternatively, it might have been thought that Representatives elected by free men of a State would speak also for the slaves. But since the slaves added to the representation only of their own State, Representatives *28 from the slave States could have been thought to speak only for the slaves of their own States, indicating both that the Convention believed it possible for a Representative elected by one group to speak for another nonvoting group and that Representatives were in large degree still thought of as speaking for the whole population of a State.[10]

There is a further basis for demonstrating the hollowness of the Court's assertion **541 that Article I requires 'one man's vote in a congressional election * * * to be worth as much as another's,' ante, p. 530. Nothing that the Court does today will disturb the fact that although in 1960 the population of an average congressional district was 410,481,[11] the States of Alaska, Nevada, and Wyoming *29 each have a Representative in Congress, although their respective populations are 226,167, 285,278, and 330,066.[12] In entire disregard of population, Art. I, s 2, guarantees each of these States and every other State 'at Least one Representative.' It is whimsical to assert in the face of this guarantee that an absolute principle of 'equal representation in the House for equal numbers of people' is 'solemnly embodied' in Article I. All that there is is a provision which bases representation in the House, generally but not entirely, on the population of the States. The provision for representation of each State in the House of Representatives is not a mere exception to the principle framed by the majority; it shows that no such principle is to be found.

Finally in this array of hurdles to its decision which the Court surmounts only by knocking them down is s 4 of Art. I which states simply:
'The Times, Places and Manner of holding Elections for Senators and 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, except as to the Places of chusing Senators.' (Emphasis added.)

The delegates were well aware of the problem of 'rotten boroughs,' as material cited by the Court, ante, pp. 533—534, and hereafter makes plain. It cannot be supposed that delegates to the Convention would have labored to establish a principle of equal representation only to bury it, one would have thought beyond discovery, in s 2, and omit all mention of it from s 4, which deals explicitly with the conduct of elections. Section 4 states without qualification that the state legislatures shall prescribe regulations for the conduct of elections for Representatives and, equally without qualification, that Congress may make or *30 alter such regulations. There is nothing to indicate any limitation whatsoever on this grant of plenary initial and supervisory power. The Court's holding is, of course, derogatory not only of the power of the state legislatures but also of the power of Congress, both theoretically and as they have actually exercised their power. See infra, pp. 547—549.[13] It freezes upon both, for no reason other than that it seems wise to the majority of the present Court, a particular political theory for the selection of Representatives.

III.

There is dubious propriety in turning to the 'historical context' of constitutional provisions which speak so consistently and plainly. But, as one might expect when the Constitution itself is free from ambiguity, the surrounding history makes what is already clear even clearer.

**542 As the Court repeatedly emphasizes, delegates to the Philadelphia Convention frequently expressed their view that representation should be based on population. There were also, however, many statements favoring limited monarchy and property qualifications for suffrage and expressions of disapproval for unrestricted democracy.[14] Such expressions prove as little on one side of this case as they do on the

other. Whatever the dominant political philosophy at the Convention, one thing seems clear: it is in the last degree unlikely that most or even many of the delegates would have subscribed to the *31 principle of 'one person, one vote,' ante, p. 535.[15] Moreover, the statements approving population-based representation were focused on the problem of how representation should be apportioned among the States in the House of Representatives. The Great Compromise concerned representation of the States in the Congress. In all of the discussion surrounding the basis of representation of the House and all of the discussion whether Representatives should be elected by the legislatures or the people of the States, there is nothing which suggests *32 even remotely that the delegates had in mind the problem of districting within a State.[16]

The subject of districting within the States is discussed explicitly with reference to the provisions of Art. I, s 4, which the Court so pointedly neglects. The Court states: 'The delegates referred to rotten borough apportionments in some of the state legislatures as the kind of objectionable governmental action that the Constitution should not tolerate in the election of congressional representatives.' Ante, p. 534. The remarks of Madison cited by the Court are as follows: 'The necessity of a Genl. Govt. supposes that the State Legislatures will sometimes fail or refuse to consult the common interest at the expense of their local conveniency or prejudices. The policy of referring the appointment of the House of **543 Representatives to the people and not to the Legislatures of the States, supposes that the result will be somewhat influenced by the mode, (sic) This view of the question seems to decide that the Legislatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. Whether the electors should vote by ballot or viva voce, should assemble at this place or that place; should be divided into districts or all meet at one place, shd all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures. (sic) and might materially affect the appointments. *33 Whenever the State Legislatures had a favorite measure to carry, they would take care so to mould their regulations as to favor the candidates they wished to succeed. Besides, the inequality of the Representation in the Legislatures of particular States, would produce a like inequality in their representation in the Natl. Legislature, as it was presumable that the Counties having the power in the former case would secure it to themselves in the latter. What danger could there be in giving a controuling power to the Natl. Legislature?'[17] (Emphasis added.)

These remarks of Madison were in response to a proposal to strike out the provision for congressional supervisory power over the regulation of elections in Art. I, s 4. Supported by others at the Convention,[18] and not contradicted in any respect, they indicate as clearly as may be that the Convention understood the state legislatures to have plenary power over the conduct of elections for Representatives, Including the power to district well or badly, subject only to the supervisory power of Congress. How, then, can the Court hold that Art. I, s 2, prevents the state legislatures from districting as they choose? If the Court were correct, Madison's remarks would have been pointless. One would expect, at the very least, some reference to Art. I, s 2, as a limiting factor on the States. This is the 'historical context' which the Convention debates provide.

Materials supplementary to the debates are as unequivocal. In the ratifying conventions, there was no suggestion that the provisions of Art. I, s 2, restricted the power of the States to prescribe the conduct of elections conferred on them by Art. I, s 4. None of the Court's references *34 to the ratification debate supports the view that the provision for election of Representatives 'by the People' was intended to have any application to the apportionment of Representatives within the States; in each instance, the cited passage merely repeats what the Constitution itself provides: that Representatives were to be elected by the people of the States.[19]

In sharp contrast to this unanimous silence on the issue of this case when Art. I, s 2, was being discussed, there are repeated references to apportionment **544 and related problems affecting the States' selection of Representatives in connection with Art. I, s 4. The debates in the ratifying conventions, as clearly as Madison's statement at the Philadelphia Convention, supra, pp. 542—543, indicate that under s 4, the state legislatures, subject only to the ultimate control of Congress, could district as they chose.

At the Massachusetts convention, Judge Dana approved s 4 because it gave Congress power to prevent a state legislature from copying Great Britain, where 'a borough of but two or three cottages has a right to send two representatives to Parliament, while Birmingham, a large and populous manufacturing town, lately sprung up, cannot send one.'[20] He

noted that the Rhode Island Legislature was 'about adopting' a plan which would *35 'Deprive the towns of Newport and Providence of their weight.'[21] Mr. King noted the situation in Connecticut, where 'Hartford, one of their largest towns, sends no more delegates than one of their smallest corporations,' and in South Carolina: 'The back parts of Carolina have increased greatly since the adoption of their constitution, and have frequently attempted an alteration of this unequal mode of representation but the members from Charleston, having the balance so much in their favor, will not consent to an alteration, and we see that the delegates from Carolina in Congress have always been chosen by the delegates of that city.'[22] King stated that the power of Congress under s 4 was necessary to 'control in this case'; otherwise, he said, 'The representatives * * * from that state (South Carolina), will not he chosen by the people, but will be the representatives of a faction of that state.'[23]

Mr. Parsons was as explicit.

'Mr. PARSONS contended for vesting in Congress the powers contained in the 4th section (of Art. I), not only as those powers were necessary for preserving the union, but also for securing to the people their equal rights of election. * * * (State legislatures) might make an unequal and partial division of the states into districts for the election of representatives, or they might even disqualify one third of the electors. Without these powers in Congress, the people can have no remedy; but the 4th section provides a remedy, a controlling power in a legislature composed of senators and representatives of twelve states, without the influence of our commotions and factions, who will hear impartially, and preserve and restore *36 to the people their equal and sacred rights of election. Perhaps it then will be objected, that from the supposed opposition of interests in the federal legislature, they may never agree upon any regulations; but regulations necessary for the interests of the people can never be opposed to the interests of either of the branches of the federal legislature; because that the interests of the people require that the mutual powers of that legislature should be preserved unimpaired, in order to balance the government. Indeed, if the Congress could never agree on any regulations, then certainly no objection to the 4th section can remain; for the regulations introduced by the state legislatures will be the governing rule of elections, until Congress can agree upon alterations.'[24] (Emphasis added.)

In the New York convention, during the discussion of s 4, Mr. Jones objected to congressional power to regulate elections because such power 'might be so construed as to deprive the states of an **545 essential right, which, in the true design of the Constitution, was to be reserved to them.'[25] He proposed a resolution explaining that Congress had such power only if a state legislature neglected or refused or was unable to regulate elections itself.[26] Mr. Smith proposed to add to the resolution '* * * that each state shall be divided into as many districts as the representatives it is entitled to, and that each representative shall be chosen by a majority of votes.'[27] He stated that his proposal was designed to prevent elections at large, which might result in all the representatives being 'taken from a small part of the state.'[28] *37 He explained further that his proposal was not intended to impose a requirement on the other States but 'to enable the states to act their discretion, without the control of Congress.'[29] After further discussion of districting, the proposed resolution was modified to read as follows:

'(Resolved) * * * that nothing in this Constitution shall be construed to prevent the legislature of any state to pass laws, from time to time, to divide such state into as many convenient districts as the state shall be entitled to elect representatives for Congress, nor to prevent such legislature from making provision, that the electors in each district shall choose a citizen of the United States, who shall have been an inhabitant of the district, for the term of one year immediately preceding the time of his election, for one of the representatives of such state.'[30]

Despite this careful, advertent attention to the problem of congressional districting, Art. I, s 2, was never mentioned. Equally significant is the fact that the proposed resolution expressly empowering the States to establish congressional districts contains no mention of a requirement that the districts be equal in population.

In the Virginia Convention, during the discussion of s 4, Madison again stated unequivocally that he looked solely to that section to prevent unequal districting:

'* * * (I)t was thought that the regulation of time, place, and manner, of electing the representatives, should be uniform throughout the continent. Some states might regulate the elections on the principles of equality, and others might regulate them otherwise. This diversity would be obviously unjust. Elections are regulated now unequally is some states, particularly South Carolina, with respect to Charleston, *38 which is represented by thirty members. Should the people of any state by any means be deprived of the right of suffrage,

it was judged proper that it should be remedied by the general government. It was found impossible to fix the time, place, and manner, of the election of representatives, in the Constitution. It was found necessary to leave the regulation of these, in the first place, to the state governments, as being best acquainted with the situation of the people, subject to the control of the general government, in order to enable it to produce uniformity, and prevent its own dissolution. And Considering the state governments and general government as distinct bodies, acting in different and independent capacities for the people, it was thought the particular regulations should be submitted to the former, and the general regulations to the latter. Were they exclusively **546 under the control of the state governments, the general government might easily be dissolved. But if they be regulated properly by the state legislatures, the congressional control will very probably never be exercised. The power appears to me satisfactory, and as unlikely to be abused as any part of the Constitution.'[31] (Emphasis added.)

Despite the apparent fear that s 4 would be abused, no one suggested that it could safely be deleted because s 2 made it unnecessary.

In the North Carolina convention, again during discussion of s 4, Mr. Steele pointed out that the state legislatures had the initial power to regulate elections, and that the North Carolina legislature would regulate the first election at least 'as they think proper.'[32] Responding *39 to the suggestion that the Congress would favor the seacoast, he asserted that the courts would not uphold nor the people obey 'laws inconsistent with the Constitution.'[33] (The particular possibilities that Steele had in mind were apparently that Congress might attempt to prescribe the qualifications for electors or 'to make the place of elections inconvenient.'[34]) Steele was concerned with the danger of congressional usurpation, under the authority of s 4, of power belonging to the States. Section 2 was not mentioned.

In the Pennsylvania convention, James Wilson described Art. I, s 4, as placing 'into the hands of the state legislatures' the power to regulate elections, but retaining for Congress 'self-preserving power' to make regulations lest 'the general government * * * lie prostrate at the mercy of the legislatures of the several states.'[35] Without such power, Wilson stated, the state governments might 'make improper regulations' or 'make no regulations at all.'[36] Section 2 was not mentioned.

Neither of the numbers of The Federalist from which the Court quotes, ante, pp. 534, 535 fairly supports its holding. In No. 57, Madison merely stated his assumption that Philadelphia's population would entitle it to two Representatives in answering the argument that congressional constituencies would be too large for good government.[37] In No. 54, he discussed the inclusion of slaves in the basis of apportionment. He said: 'It is agreed on all sides, that numbers are the best scale of wealth and taxation, as they are the only proper scale of representation.'[38] This statement was offered simply to show that the slave *40 population could not reasonably be included in the basis of apportionment of direct taxes and excluded from the basis of apportionment of representation. Further on in the same number of the Federalist, Madison pointed out the fundamental cleavage which Article I made between apportionment of Representatives among the States and the selection of Representatives within each State:

'It is a fundamental principle of the proposed Constitution, that as the aggregate number of representatives allotted to the several States, is to be determined by a federal rule founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is to be exercised by such part of the inhabitants, as the State itself may designate. The qualifications on which the right of suffrage depend, are not perhaps the same in any two **547 States. In some of the States the difference is very material. In every State, a certain proportion of inhabitants are deprived of this right by the Constitution of the State, who will be included in the census by which the Federal Constitution apportions the representatives. In this point of view, the southern States might retort the complaint, by insisting, that the principle laid down by the Convention required that no regard should be had to the policy of particular States towards their own inhabitants; and consequently, that the slaves as inhabitants should have been admitted into the census according to their full number, in like manner with other inhabitants, who by the policy of other States, are not admitted to all the rights of citizens.'[39]

In the Federalist, No. 59, Hamilton discussed the provision of s 4 for regulation of elections. He justified Congress' power with the 'plain proposition, that every *41 government ought to contain in itself the means of its own preservation.'[40] Further on, he said:

'It will not be alledged that an election law could have been framed and inserted into the Constitution, which would

have been always applicable to every probable change in the situation of the country; and it will therefore not be denied that a discretionary power over elections ought to exist somewhere. It will, I presume, be as readily conceded, that there were only three ways, in which this power could have been reasonably modified and disposed, that it must either have been lodged wholly in the National Legislature, or wholly in the State Legislatures, or primarily in the latter, and ultimately in the former. The last mode has with reason been preferred by the Convention. They have submitted the regulation of elections for the Federal Government in the first instance to the local administrations; which in ordinary cases, and when no improper views prevail, may be both more convenient and more satisfactory; but they have reserved to the national authority a right to interpose, whenever extraordinary circumstances might render that interposition necessary to its safety.'[41] (Emphasis added.)

Thus, in the number of the Federalist which does discuss the regulation of elections, the view is unequivocally stated that the state legislatures have plenary power over the conduct of congresssional elections subject only to such regulations as Congress itself might provide.

The upshot of all this is that the language of Art. I, ss 2 and 4, the surrounding text, and the relevant history ***42** are all in strong and consistent direct contradiction of the Court's holding. The constitutional scheme vests in the States plenary power to regulate the conduct of elections for Representatives, and, in order to protect the Federal Government, provides for congressional supervision of the States' exercise of their power. Within this scheme, the appellants do not have the right which they assert, in the absence of provision for equal districts by the Georgia Legislature or the Congress. The constitutional right which the Court creates is manufactured out of whole cloth.

IV.

The unstated premise of the Court's conclusion quite obviously is that the Congress has not dealt, and the Court believes it will not deal, with the problem of congressional apportionment in accordance with what the Court believes to ****548** be sound political principles. Laying aside for the moment the validity of such a consideration as a factor in constitutional interpretation, it becomes relevant to examine the history of congressional action under Art. I, s 4. This history reveals that the Court is not simply undertaking to exercise a power which the Constitution reserves to the Congress; it is also overruling congressional judgment.

Congress exercised its power to regulate elections for the House of Representatives for the first time in 1842, when it provided that Representatives from States 'entitled to more than one Representative' should be elected by districts of contiguous territory, 'no one district electing more than one Representative.'[42] The requirement was later dropped,[43] and reinstated.[44] In 1872, Congress required that Representatives 'be elected by districts composed of contiguous territory, and containing as ***43** nearly as practicable an equal number of inhabitants, * * * no one district electing more than one Representative.'[45] This provision for equal districts which the Court exactly duplicates in effect, was carried forward in each subsequent apportionment statute through 1911.[46] There was no reapportionment following the 1920 census. The provision for equally populated districts was dropped in 1929,[47] and has not been revived, although the 1929 provisions for apportionment have twice been amended and, in 1941, were made generally applicable to subsequent censuses and apportionments.[48]

The legislative history of the 1929 Act is carefully reviewed in Wood v. Broom, 287 U.S. 1, 53 S.Ct. 1, 77 L.Ed. 131. As there stated:
'It was manifestly the intention of the Congress not to re-enact the provision as to compactness, contiguity, and equality in population with respect to the districts to be created pursuant to the reapportionment under the act of 1929.

'This appears from the terms of the act, and its legislative history shows that the omission was deliberate. The question was up, and considered.' 287 U.S., at 7, 53 S.Ct. at 2.

Although there is little discussion of the reasons for omitting the requirement of equally populated districts, the fact that such a provision was included in the bill as it was presented to the House,[49] and was deleted by the House after debate and notice of intention to do so,[50] ***44** leaves no doubt that the omission was deliberate. The likely explanation for the omission is suggested by a remark on the floor of the House that 'the States ought to have their own way of making up their apportionment when they know the number of Congressmen they are going to have.'[51]

Debates over apportionment in subsequent Congresses are generally unhelpful **549 to explain the continued rejection of such a requirement; there are some intimations that the feeling that districting was a matter exclusively for the States persisted.[52] Bills which would have imposed on the States a requirement of equally or nearly equally populated districts were regularly introduced in the House.[53] None of them became law.

*45 For a period of about 50 years, therefore, Congress, by repeated legislative act, imposed on the States the requirement that congressional districts be equal in population. (This, of course, is the very requirement which the Court now declares to have been constitutionally required of the States all along without implementing legislation.) Subsequently, after giving express attention to the problem, Congress eliminated that requirement, with the intention of permitting the States to find their own solutions. Since then, despite repeated efforts to obtain congressional action again, Congress has continued to leave the problem and its solution to the States. It cannot be contended, therefore, that the Court's decision today fills a gap left by the Congress. On the contrary, the Court substitutes its own judgment for that of the Congress.

V.

The extent to which the Court departs from accepted principles of adjudication is further evidenced by the irrelevance to today's issue of the cases on which the Court relies.

Ex parte Yarbrough, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274, was a habeas corpus proceeding in which the Court sustained the validity of a conviction of a group of persons charged with violating federal statutes[54] which made it a crime to conspire to deprive a citizen of his federal rights, and in particular the right to vote. The issue before the Court was whether or not the Congress had power to pass laws protecting *46 the right to vote for a member of Congress from fraud and violence; the Court relied expressly on Art. I, s 4, in sustaining this power. Id., 110 U.S. at 660, 4 S.Ct. at 156. Only in this context, in order to establish that the right to vote in a congressional election was a right protected by federal law, did the Court hold that the right was dependent on the Constitution and not on the law of the States. Indeed, the Court recognized that the Constitution 'adopts the qualification' furnished by the States 'as the qualification of its own electors for members of Congress.' **550 Id., 110 U.S. at 663, 4 S.Ct. at 158, 28 L.Ed. 274. Each of the other three cases cited by the Court, ante, p. 535, similarly involved acts which were prosecuted as violations of federal statutes. The acts in question were filing false election returns, United States v. Mosley, 238 U.S. 383, 35 S.Ct. 904, 59 L.Ed. 1355, alteration of ballots and false certification of votes, United States v. Classic, 313 U.S. 299, 61 S.Ct. 1031, 85 L.Ed. 1368, and stuffing the ballot box, United States v. Saylor, 322 U.S. 385, 64 S.Ct. 1101, 88 L.Ed. 1341. None of those cases has the slightest bearing on the present situation.[55]

*47 The Court gives scant attention, and that not on the merits, to Colegrove v. Green, 328 U.S. 549, 66 S.Ct. 1198, 90 L.Ed. 1432, which is directly in point; the Court there affirmed dismissal of a complaint alleging that 'by reason of subsequent changes in population the Congressional districts for the election of Representatives in the Congress created by the Illinois Laws of 1901 * * * lacked compactness of territory and approximate equality of population.' Id., 328 U.S. at 550—551, 66 S.Ct. at 1198. Leaving to another day the question of what Baker v. Carr, 369 U.S. 186, 82 S.Ct. 691, 7 L.Ed.2d 663, did actually decide, it can hardly be maintained on the authority of Baker or anything else, that the Court does not today invalidate Mr. Justice Frankfurter's eminently correct statement in Colegrove that 'the Constitution has conferred upon Congress exclusive authority to secure fair representation by the States in the popular House * * *. If Congress failed in exercising its powers, whereby standards of fairness are offended, the remedy ultimately lies with the people.' 328 U.S., at 554, 66 S.Ct. at 1200, 90 L.Ed. 1432. The problem was described by Mr. Justice Frankfurther as '(a)n aspect of government from which the judiciary, in view of what is involved, has been excluded by the clear intention of the Constitution * * *.' Ibid. Mr. Justice Frankfurter did not, of course, speak for a majority of the Court in Colegrove; but refusal for that reason to give the opinion precedential effect does not justify refusal to give appropriate attention to the views there expressed.[56]

**551 *48 VI.

Today's decision has portents for our society and the Court itself which should be recognized. This is not a case in which the Court vindicates the kind of individual rights that are assured by the Due Process Clause of the Fourteenth

Amendment, whose 'vague contours,' Rochin v. People of California, 342 U.S. 165, 170, 72 S.Ct. 205, 208, 96 L.Ed. 183, of course leave much room for constitutional developments necessitated by changing conditions in a dynamic society. Nor is this a case in which an emergent set of facts requires the Court to frame new principles to protect recognized constitutional rights. The claim for judicial relief in this case strikes at one of the fundamental doctrines of our system of government, the separation of powers. In upholding that claim, the Court attempts to effect reforms in a field which the Constitution, as plainly as can be, has committed exclusively to the political process.

This Court, no less than all other branches of the Government, is bound by the Constitution. The Constitution does not confer on the Court blanket authority to step into every situation where the political branch may be thought to have fallen short. The stability of this institution ultimately depends not only upon its being alert to keep the other branches of government within constitutional bounds but equally upon recognition of the limitations on the Court's own functions in the constitutional system.

What is done today saps the political process. The promise of judicial intervention in matters of this sort cannot but encourage popular inertia in efforts for political reform through the political process, with the inevitable result that the process is itself weakened. By yielding to the demand for a judicial remedy in this instance, the Court in my view does a disservice both to itself and to the broader values of our system of government.

*49 Believing that the complaint fails to disclose a constitutional claim, I would affirm the judgment below dismissing the complaint.

APPENDIX TO OPINION OF MR. JUSTICE HARLAN. *

State and Number Representatives **	Largest District	Smallest District	Difference Between Largest and Smallest Districts
Alabama (8)	.....	.....	.....
Alaska (1)	.....	.....	.....
Arizona (3)	663,510	198,236	465,274
Arkansas (4)	575,385	332,844	242,541
California (38)	588,933	301,872	287,061
Colorado (4)	653,954	195,551	458,403
Connectucut (6)	689,555	318,942	370,613
Delaware (1)	.....	.....	.....
Florida (12)	660,345	237,235	423,110
Georgia (10)	823,680	272,154	551,526
Hawaii (2)	.....	.....	.....
Idaho (2)	409,949	257,242	152,707

Illinois (24)	552,582	278,703	273,879
Indiana (11)	697,567	290,596	406,971
Iowa (7)	442,406	353,156	89,250
Kansas (5)	539,592	373,583	166,009
Kentucky (7)	610,947	350,839	260,108
Louisiana (8)	536,029	263,850	272,179
Maine (2)	505,465	463,800	41,665
Maryland (8)	711,045	243,570	467,475
Massachusetts (12)	478,962	376,336	102,626
Michigan (19)	802,994	177,431	625,563
Minnesota (8)	482,872	375,475	107,397
Mississippi (5)	608,441	295,072	313,369
Missouri (10)	506,854	378,499	128,355
Montana (2)	400,573	274,194	126,379
Nebraska (3)	530,507	404,695	125,812
Nevada (1)	.....	.....	.....
New Hampshire (2)	331,818	275,103	56,715
New Jersey (15)	585,586	255,165	330,421
New Mexico (2)	.....	.....	.....
New York (41)	471,001	350,186	120,815
North Carolina (11)	491,461	277,861	213,600
North Dakota (2)	333,290	299,156	34,134
Ohio (24)	726,156	236,288	489,868
Oklahoma (6)	552,863	227,692	325,171
Oregon (4)	522,813	265,164	257,649
Pennsylvania (27)	553,154	303,026	250,128
Rhode Idland (2)	459,706	399,782	59,924
South Carolina (6)	531,555	302,235	229,320
South Dakota (2)	497,669	182,845	314,824

Tennessee (9).....	627,019	223,387	403,632
Texas (23).....	951,527	216,371	735,156
Utah (2).....	572,654	317,973	254,681
Vermont (1).....	.....	.....	.....
Virginia (10).....	539,618	312,890	226,728
Washington (7).....	510,512	342,540	167,972
West Virginia (5).....	422,046	303,098	118,948
Wisconsin (10).....	530,316	236,870	293,446
Wyoming (1).....	.....	.....	.....

****552 *50** Mr. Justice STEWART.

I think it is established that 'this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable,'* and I cannot subscribe to any possible implication ****553** to the contrary which ***51** may lurk in Mr. Justice HARLAN'S dissenting opinion. With this single qualification I join the dissent because I think Mr. Justice HARLAN has unanswerably demonstrated that Art, I, s 2, of the Constitution gives no mandate to this Court or to any court to ordain that congressional districts within each State must be equal in population.

All Citations

376 U.S. 1, 84 S.Ct. 526, 11 L.Ed.2d 481

Footnotes

1 Ga.Code s 34—2301.

2 Wesberry v. Vandiver, D.C., 206 F.Supp. 276, 279—280.

3 'We do not deem (Colegrove v. Green) * * * to be a precedent for dismissal based on the nonjusticiability of a political question involving the Congress as here, but we do deem it to be strong authority for dismissal for want of equity when the following factors here involved are considered on balance: a political question involving a coordinate branch of the federal government; a political question posing a delicate problem difficult of solution without depriving others of the right to vote by district, unless we are to redistrict for the state; relief may be forthcoming from a properly apportioned state legislature; and relief may be afforded by the Congress.' 206 F.Supp., at 285 (footnote omitted).

4 369 U.S., at 188, 82 S.Ct. at 694, 7 L.Ed.2d 663.

5 Mr. Justice Rutledge in Colegrove believed that the Court should exercise its equitable discretion to refuse relief because 'The shortness of the time remaining (before the next election) makes it doubtful whether action could, or would, be taken in time to secure for petitioners the effective relief they seek.' 328 U.S., at 565, 66 S.Ct. at 1208, 90 L.Ed. 1432. In a later separate opinion he emphasized that his vote in Colegrove had been based on the 'particular circumstances' of that case. Cook v. Fortson, 329 U.S. 675, 678, 67 S.Ct. 21, 22, 91 L.Ed. 596.

6 369 U.S., at 232, 82 S.Ct. at 718, 7 L.Ed.2d 663. Cf. also Wood v. Broom, 287 U.S. 1, 53 S.Ct. 1, 77 L.Ed. 131.

7 'The Times, Places and Manner of holding Elections for Senators and 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, except as to the Places of chusing Senators. * * *' U.S.Const., Art. I, s 4.

8 328 U.S., at 554, 66 S.Ct. at 1200, 90 L.Ed. 1432.

9 'The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature.
'Representatives and direct Taxes shall be apportioned among the several States which may be included within this Union, according to their respective Numbers, which shall be determined by adding to the whole Number of free Persons, including those bound to Service for a Term of Years, and excluding Indians not taxed, three fifths of all other Persons. The actual Enumeration shall be made within three Years after the first Meeting of the Congress of the United States, and within every subsequent Term of ten Years, in such Manner as they shall by Law direct. The Number of Representatives shall not exceed one for every thirty Thousand, but each State shall have at Least one Representative * * *.' U.S.Const. Art. I, s 2.
The provisions for apportioning Representatives and direct taxes have been amended by the Fourteenth and Sixteenth Amendments, respectively.

10 We do not reach the arguments that the Georgia statute violates the Due Process, Equal Protection and Privileges and Immunities Clauses of the Fourteenth Amendment.

11 As late as 1842, seven States still conducted congressional elections at large. See Paschal, 'The House of Representatives: 'Grand Depository of the Democratic Principle'?' 17 Law & Contemp. Prob. 276, 281 (1952).

12 3 The Records of the Federal Convention of 1787 (Farrand ed. 1911) 14 (hereafter cited as 'Farrand').
James Madison, who took careful and complete notes during the Convention, believed that in interpreting the Constitution later generations should consider the history of its adoption:
'Such were the defects, the deformities, the diseases and the ominous prospects, for which the Convention were to provide a remedy, and which ought never to be overlooked in expounding & appreciating the Constitutional Charter the remedy that was provided.' Id., at 549.

13 1 id., at 20.

14 Id., at 48.

15 Id., at 472.

16 See, e.g., id., at 197—198 (Benjamin Franklin of Pennsylvania); id., at 467 (Elbridge Gerry of Massachusetts); id., at 286, 465—466 (Alexander Hamilton of New York); id., at 489—490 (Rufus King of Massachusetts); id., at 322, 446—449, 486, 527—528 (James Madison of Virginia); id., at 180, 456 (Hugh Williamson of North Carolina); id., at 253—254, 406, 449—450, 482—484 (James Wilson of Pennsylvania).

17 Id., at 180.

18 Luther Martin of Maryland declared
'that the States being equal cannot treat or confederate so as to give up an equality of votes without giving up their liberty: that the propositions on the table were a system of slavery for 10 States: that as Va.Masts. & Pa. have 42/90 of the votes they can do as they please without a miraculous Union of the other ten: that they will have nothing to do, but to gain over one of the ten to make them compleat masters of the rest * * *.' Id., at 438.

19 Id., at 251.

20 3 id., at 613.

21 E.g., 1 id., at 324 (Alexander Martin of North Carolina); id., at 437—438, 439—441, 444—445, 453-455 (Luther Martin of Maryland); id., at 490—492 (Gunning Bedford of Delaware).

22 Id., at 464.

23 Id., at 490.

24 Gunning Bedford of Delaware said:
'We have been told (with a dictatorial air) that this is the last moment for a fair trial in favor of a good Government. * * * The Large States dare not dissolve the confederation. If they do the small ones will find some foreign ally of more honor and good faith, who will take them by the hand and do them justice.' Id., at 492.

25 Id., at 488.

26 Id., at 532 (Elbridge Gerry of Massachusetts). George Mason of Virginia urged an 'accomodation' as 'preferable to an appeal to the world by the different sides, as had been talked of by some Gentlemen.' Id., at 533.

27 See id., at 551.

28 See id., at 193, 342—343 (Roger Sherman); id., at 461—462 (William Samuel Johnson).

29 Id., at 462. (Emphasis in original.)

30 While 'free Persons' and those 'bound to Service for a Term of Years' were counted in determining representation, Indians not taxed were not counted, and 'three fifths of all other Persons' (slaves) were included in computing the States' populations. Art. I, s 2. Also, every State was to have 'at Least one Representative.' Ibid.

31 1 Farrand, at 580.

32 Id., at 579.

33 Id., at 606. Those who thought that one branch should represent wealth were told by Roger Sherman of Connecticut that the 'number of people alone (was) the best rule for measuring wealth as well as representation; and that if the Legislature were to be governed by wealth, they would be obliged to estimate it by numbers.' Id., at 582.

34 2 id., at 3. The rejected thinking of those who supported the proposal to limit western representation is suggested by the statement of Gouverneur Morris of Pennsylvania that 'The Busy haunts of men not the remote wilderness, was the proper School of political Talents.' 1 id., at 583.

35 Id., at 464.

36 Id., at 457. 'Rotten boroughs' have long since disappeared in Great Britain. Today permanent parliamentary Boundary Commissions recommend periodic changes in the size of constituencies, as population shifts. For the statutory standards under which these commissions operate, see House of Commons (Redistribution of Seats) Acts of 1949, 12 & 13 Geo. 6, c. 66, Second Schedule, and of 1958, 6 & 7 Eliz. 2, c. 26, Schedule.

37 2 id., at 241.

38 See, e.g., 2 Works of Alexander Hamilton (Lodge ed. 1904) 25 (statement to New York ratifying convention).

39 The Federalist, No. 57 (Cooke ed. 1961), at 389.

40 Id., No. 54, at 368. There has been some question about the authorship of Numbers 54 and 57, see The Federalist (Lodge ed. 1908) xxiii-xxxv, but it is now generally believed that Madison was the author, see e.g., The Federalist (Cooke ed. 1961) xxvii; The Federalist (Van Doren ed. 1945) vi—vii; Brant, Settling the Authorship of The Federalist,' 67 Am.Hist.Rev. 71 (1961).

41 See, e.g., 2 The Debates in the Several State Conventions on the Adoption of the Federal Constitution (2d Elliot ed. 1836) 11 (Fisher Ames, in the Massachusetts Convention) (hereafter cited as 'Elliot'); id., at 202 (Oliver Wolcott, Connecticut); 4 id., at 21 (William Richardson Davie, North Carolina); id., at 257 (Charles Pinckney, South Carolina).

42 Id., at 304.

43 'The Times, Places and Manner of holding Elections for Senators and 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, except as to the Places of chusing Senators. * * *' U.S.C.onst. Art. I, s 4.

44 See 2 Elliot, at 49 (Francis Dana, in the Massachusetts Convention); id., at 50—51 (Rufus King, Massachusetts); 3 id., at 367 (James Madison, Virginia).

45 4 Id., at 71.

46 2 The Works of James Wilson (Andrews ed. 1896) 15.

47 The Federalist, No. 57 (Cooke ed. 1961), at 385.

* Georgia Laws, Sept. 1—Oct. 1962, Extra. Sess., pp. 7—31.

1 Representatives were elected at large in Alabama (8), Alaska (1), Delaware (1), Hawaii (2), Nevada (1), New Mexico (2), Vermont (1), and Wyoming (1). In addition, Connecticut, Maryland, Michigan, Ohio, and Texas each elected one of their Representatives at large.

2 The five States are Iowa, Maine, New Hampshire, North Dakota, and Rhode Island. Together, they elect 15 Representatives.

The populations of the largest and smallest districts in each State and the difference between them are contained in an Appendix to this opinion.

3 The only State in which the average population per district is greater than 500,000 is Connecticut, where the average population per district is 507,047 (one Representative being elected at large). The difference between the largest and smallest districts in Connecticut is, however, 370,613.

4 The Court's 'as nearly as is practicable' formula sweeps a host of questions under the rug. How great a difference between the populations of various districts within a State is tolerable? Is the standard an absolute or relative one, and if the latter to what is the difference in population to be related? Does the number of districts within the State have any relevance? Is the number of voters or the number of inhabitants controlling? Is the relevant statistic the greatest disparity between any two districts in the State or the average departure from the average population per district, or a little of both? May

the State consider factors such as area or natural boundaries (rivers, mountain ranges) which are plainly relevant to the practicability of effective representation?

There is an obvious lack of criteria for answering questions such as these, which points up the impropriety of the Court's whole-hearted but heavy-footed entrance into the political arena.

5 The 37 'constitutional' Representatives are those coming from the eight States which elected their Representatives at large (plus one each elected at large in Connecticut, Maryland, Michigan, Ohio, and Texas) and those coming from States in which the difference between the populations of the largest and smallest districts was less than 100,000. See notes 1 and 2, supra. Since the difference between the largest and smallest districts in Iowa is 89,250, and the average population per district in Iowa is only 393,934, Iowa's 7 Representatives might well lose their seats as well. This would leave a House of Representatives composed of the 22 Representatives elected at large plus eight elected in congressional districts.

These conclusions presume that all the Representatives from a State in which any part of the congressional districting is found invalid would be affected. Some of them, of course, would ordinarily come from districts the populations of which were about that which would result from an apportionment based solely on population. But a court cannot erase only the the districts which do not conform to the standard announced today, since invalidation of those districts would require that the lines of all the districts within the State be redrawn. In the absence of a reapportionment, all the Representatives from a State found to have violated the standard would presumably have to be elected at large.

6 Since I believe that the Constitution expressly provides that state legislatures and the Congress shall have exlusive jurisdiction over problems of congressional apportionment of the kind involved in this case, there is no occasion for me to consider whether, in the absence of such provision, other provisions of the Constitution, relied on by the appellants, would confer on them the rights which they assert.

7 Although it was held in Ex Parte Yarbrought, 110 U.S. 651, 4 S.Ct. 152, 28 L.Ed. 274, and subsequent cases, that the right to vote for a member of Congress depends on the Constitution, the opinion noted that the legislatures of the States prescribe the qualifications for electors of the legislatures and thereby for electors of the House of Representatives.

110 U.S., at 663, 4 S.Ct. at p. 158, 28 L.Ed. 274. See ante, p. 535, and infra, pp. 549—550.

The States which ratified the Constitution exercised their power. A property or taxpaying qualification was in effect almost everywhere. See, e.g., the New York Constitution of 1777, Art. VII, which restricted the vote to freeholders 'possessing a freehold of the value of twenty pounds, * * * or (who) have rented a tenement * * * of the yearly value of forty shillings, and been rated and actually paid taxes to this State.' The constitutional and statutory qualifications for electors in the various States are set out in tabular form in 1 Thorpe, A Constitutional History of the American People 1776—1850 (1898), 93—96. The progressive elimination of the property qualification is described in Sait, American Parties and Elections (Penniman ed., 1952), 16—17. At the time of the Revolution, 'no serious inroads had yet been made upon the privileges of property, which, indeed, maintained in most states a second line of defense in the form of high personal-property qualifications required for membership in the legislature.' Id., at 16 (footnote omitted).

Women were not allowed to vote. Thorpe, op. cit., supra, 93—96. See generally Sait, op. cit., supra, 49—54. New Jersey apparently allowed women, as 'inhabitants,' to vote until 1807. See Thorpe, op. cit., supra, 93. Compare N.J.Const.1776, Art. XIII, with N.J.Const.1844, Art. II, 1.

8 Even that is not strictly true unless the word 'solely' is deleted. The 'three-fifths compromise' was a departure from the principle of representation according to the number of inhabitants of a State. Cf. The Federalist, No. 54, discussed infra, pp. 546—547. A more obvious departure was the provision that each State shall have a Representative regardless of its population. See infra, pp. 540—541.

9 The fact that the delegates were able to agree on a Senate composed entirely without regard to population and on the departures from a population-based House, mentioned in note 8, supra, indicates that they recognized the possibility that alternative principles combined with political reality might dictate conclusions inconsistent with an abstract principle of absolute numerical equality.

On the apportionment of the state legislatures at the time of the Constitutional Convention, see Luce, Legislative Principles (1930), 331—364; Hacker, Congressional Districting (1963), 5.

10 It is surely beyond debate that the Constitution did not require the slave States to apportion their Representatives according to the dispersion of slaves within their borders. The above implications of the three-fifths compromise were recognized by Madison. See The Federalist, No. 54, discussed infra, pp. 546—547.

Luce points to the 'quite arbitrary grant of representation proportionate to three fifths of the number of slaves' as evidence that even in the House 'the representation of men as men' was not intended. He states: 'There can be no shadow of

question that populations were accepted as a measure of material interests—landed, agricultural, industrial, commercial, in short, property.' Legislative Principles (1930), 356—357.

11 U.S. Bureau of the Census, Census of Population: 1960 (hereafter, Census), xiv. The figure is obtained by dividing the population base (which excludes the population of the District of Columbia, the population of the Territories, and the number of Indians not taxed) by the number of Representatives. In 1960, the population base was 178,559,217, and the number of Representatives was 435.

12 Census, 1—16.

13 Section 5 of Article I, which provides that 'Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members,' also points away from the Court's conclusion. This provision reinforces the evident constitutional scheme of leaving to the Congress the protection of federal interests involved in the selection of members of the Congress.

14 I Farrand, Records of the Federal Convention (1911) (hereafter Farrand), 48, 86—87, 134—136, 288—289, 299, 533, 534; II Farrand 202.

15 'The assemblage at the Philadelphia Convention was by no means committed to popular government, and few of the delegates had sympathy for the habits or institutions of democracy. Indeed, most of them intrepreted democracy as mob rule and assumed that equality of representation would permit the spokesmen for the common man to outvote the beleaguered deputies of the uncommon man.' Hacker, Congressional Districting (1963), 7—8. See Luce, Legislative Pinciples (1930), 356—357. With respect to apportionment of the House, Luce states: 'Property was the basis, not humanity.' Id., at 357.

Contrary to the Court's statement, ante, p. 535, no reader of The Federalist 'could have fairly taken * * * (it) to mean' that the Constitutional Convention had adopted a principle of 'one person, one vote' in contravention of the qualifications for electors which the States imposed. In No. 54, Madison said: 'It is a fundamental principle of the proposed Constitution, that as the aggregate number of representatives allotted to the several States, is to be determined by a federal rule founded on the aggregate number of inhabitants, so the right of choosing this allotted number in each State is to be exercised by such part of the inhabitants, as the State itself may designate. * * * In every State, a certain proportion of inhabitants are deprived of this right by the Constitution of the State, who will be included in the census by which the Federal Constitution apportions the representatives.' (Cooke ed. 1961) 369. (Italics added.) The passage from which the Court quotes, ante, p. 535, concludes with the following, overlooked by the Court: 'They (the electors) are to be the same who exercise the right in every State of electing the correspondent branch of the Legislature of the State.' Id., at 385.

16 References to Old Sarum (ante, p. 533), for example, occurred during the debate on the method of apportionment of Representatives among the States. I Farrand 449—450, 457.

17 II Farrand 240—241.

18 Ibid.

19 See the materials cited in notes 41—42, 44—45 of the Court's opinion, ante, p. 534. Ames' remark at the Massachusetts convention is typical: 'The representatives are to represent the people.' II Elliot's Debates on the Federal Constitution (2d ed. 1836) (hereafter Elliot's Debates), 11. In the South Carolina Convention, Pinckney stated the the House would 'be so chosen as to represent in due proportion the people of the Union * * *.' IV Elliot's Debates 257. But he had in mind only that other clear provision of the Constitution that representation would be apportioned among the States according to populations. None of his remarks bears on apportionment within the States. Id., at 256—257.

20 II Elliot's Debates 49.

21 Ibid.

22 Id., at 50—51.

23 Id., at 51.

24 Id., at 26—27.

25 Id., at 325.

26 Id., at 325—326.

27 Id., at 327.

28 Ibid.

29 Id., at 328.

30 Id., at 329.

31 III Elliot's Debates 367.

32 IV Elliot's Debates 71.

33 Ibid.

34 Ibid.

35 Elliot's Debates 440—441.

36 Id., at 441.

37 The Federalist, No. 57 (Cooke ed. 1961), 389.

38 Id., at 368.

39 Id., at 369.

40 Id., at 398.

41 Id., at 398—399.

42 Act of June 25, 1842, s 2, 5 Stat. 491.

43 Act of May 23, 1850, 9 Stat. 428.

44 Act of July 14, 1862, 12 Stat. 572.

45 Act of Feb. 2, 1872, s 2, 17 Stat. 28.

46 Act of Feb. 25, 1882, s 3, 22 Stat. 5, 6; Act of Feb. 7, 1891, s 3, 26 Stat. 735; Act of Jan. 16, 1901, s 3, 31 Stat. 733, 734; Act of Aug. 8, 1911, s 3, 37 Stat. 13, 14.

47 Act of June 18, 1929, 46 Stat. 21.

48 Act of Apr. 25, 1940, 54 Stat. 162; Act of Nov. 15, 1941, 55 Stat. 761.

49 H.R. 11725, 70th Cong., 1st Sess., introduced on Mar. 3, 1928, 69 Cong.Rec. 4054.

50 70 Cong.Rec. 1499, 1584, 1602, 1604.

51 70 Cong.Rec. 1499 (remarks of Mr. Dickinson). The Congressional Record reports that this statement was followed by applause. At another point in the debates, Representative Lozier stated that Congress lacked 'power to determine in what manner the several States exercise their sovereign rights in selecting their Representatives in Congress * * *.' 70 Cong.Rec. 1496. See also the remarks of Mr. Graham. Ibid.

52 See, e.g., 85 Cong.Rec. 4368 (remarks of Mr. Rankin), 4369 (remarks of Mr. McLeod), 4371 (remarks of Mr. McLeod); 87 Cong.Rec. 1081 (remarks of Mr. Moser).

53 H.R. 4820, 76th Cong., 1st Sess.; H.R. 5099, 76th Cong., 1st Sess.; H.R. 2648, 82d Cong., 1st Sess.; H.R. 6428, 83d Cong., 1st Sess.; H.R. 111, 85th Cong., 1st Sess.; H.R. 814, 85th Cong., 1st Sess.; H.R. 8266, 86th Cong., 1st Sess.; H.R. 73, 86th Cong., 1st Sess.; H.R. 575, 86th Cong., 1st Sess.; H.R. 841; 87th Cong., 1st Sess.

Typical of recent proposed legislation is H.R. 841, 87th Cong., 1st Sess., which amends 2 U.S.C. s 2a to provide:
'(c) Each State entitled to more than one Representative in Congress under the apportionment provided in subsection (a) of this section, shall establish for each Representative a district composed of contiguous and compact territory, and the number of inhabitants contained within any district so established shall not vary more than 10 per centum from the number obtained by dividing the total population of such States, as established in the last decennial census, by the number of Representatives apportioned to such State under the provisions of subsection (a) of this section.
'(d) Any Representative elected to the Congress from a district which does not conform to the requirements set forth in subsection (c) of this section shall be denied his seat in the House of Representatives and the Clerk of the House shall refuse his credentials.'
Similar bills introduced in the current Congress are H.R. 1128, H.R. 2836, H.R. 4340, and H.R. 7343, 88th Cong., 1st Sess.

54 R.S. s 5508; R.S. s 5520.

55 Smiley v. Holm, 285 U.S. 355, 52 S.Ct. 397, 76 L.Ed. 795, and its two companion cases, Koenig v. Flynn, 285 U.S. 375, 52 S.Ct. 403, 76 L.Ed. 805; Carroll v. Becker, 285 U.S. 380, 52 S.Ct. 402, 76 L.Ed. 807, on which my Brother CLARK relies in his separate opinion, ante pp. 535—536, are equally irrelevant. Smiley v. Holm presented two questions: the first, answered in the negative, was whether the provision in Art. I, s 4, which empowered the 'Legislature' of a State to prescribe the regulations for congressional elections meant that a State could not by law provide for a Governor's veto over such regulations as had been prescribed by the legislature. The second question, which concerned two congressional apportionment measures, was whether the Act of June 18, 1929, 46 Stat. 21, had repealed certain provisions of the Act of Aug. 8, 1911, 37 Stat. 13. In answering this question, the Court was concerned to carry out the intention of Congress in enacting the 1929 Act. See id., 285 U.S. at 374, 52 S.Ct. at 402, 76 L.Ed. 795. Quite obviously, therefore, Smiley v. Holm does not stand for the proposition which my Brother CLARK derives from it. There was not the slightest intimation in that case the Congress' power to prescribe regulations for elections was subject to judicial scrutiny, ante, p. 535, such that this Court could itself prescribe regulations for congressional elections in disregard and even in contradiction of

congressional purpose. The companion cases to Smiley v. Holm presented no different issues and were decided wholly on the basis of the decision in that case.

56 The Court relies in part on Baker v. Carr, supra, to immunize its present decision from the force of Colegrove. But nothing in Baker is contradictory to the view that, political question and other objections to 'justiciability' aside, the Constitution vests exclusive authority to deal with the problem of this case in the state legislatures and the Congress.

** 435 in all.

* The populations of the districts are based on the 1960 Census. The districts are those used in the election of the current 88th Congress. The populations of the districts are available in the biographical section of the Congressional Directory, 88th Cong., 2d Sess.

* The quotation is from Mr. Justice Rutledge's concurring opinion in Colegrove v. Green, 328 U.S., at 565, 66 S.Ct. at 1208, 90 L.Ed. 1432.

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