Baker v. Carr

MR. JUSTICE BRENNAN delivered the opinion of the Court.

This civil action was brought under 42 U.S.C. 1983 and 1988 to redress the alleged deprivation of federal constitutional rights. The complaint, alleging that by means of a 1901 statute of Tennessee apportioning the members of the General Assembly among the State's 95 counties, 1 "these plaintiffs and others similarly situated, [369 U.S. 186, 188] are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes," was dismissed by a three-judge court convened under 28 U.S.C. 2281 in the Middle District of Tennessee. 2 The court held that it lacked jurisdiction of the subject matter and also that no claim was stated upon which relief could be granted. 179 F. Supp. 824. We noted probable jurisdiction of the appeal. 364 U.S. 898 . 3 We hold that the dismissal was error, and remand the cause to the District Court for trial and further proceedings consistent with this opinion.

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

"Sec. 3. Legislative authority - Term of office. - The Legislative authority of this State shall be vested in a General Assembly, which shall consist of a Senate and House of Representatives, both dependent on the people; who shall hold their offices for two years from the day of the general election.

"Sec. 4. Census. - An enumeration of the qualified voters, and an apportionment of the Representatives in the General Assembly, shall be made in the year one thousand eight hundred and seventy-one, and within every subsequent term of ten years.

"Sec. 5. Apportionment of representatives. - The number of Representatives shall, at the several [369 U.S. 186, 189] periods of making the enumeration, be apportioned among the several counties or districts, according to the number of qualified voters in each; and shall not exceed seventy-five, until the population of the State shall be one million and a half, and shall never exceed ninety-nine; Provided, that any county having two-thirds of the ratio shall be entitled to one member.

"Sec. 6. Apportionment of senators. - The number of Senators shall, at the several periods of making the enumeration, be apportioned among the several counties or districts according to the number of qualified electors in each, and shall not exceed one-third the number of representatives. In apportioning the Senators among the different counties, the fraction that may be lost by any county or counties, in the apportionment of members to the House of Representatives, shall be made up to such county or counties in the Senate, as near as may be practicable. When a district is composed of two or more counties, they shall be adjoining; and no county shall be divided in forming a district."

Thus, Tennessee's standard for allocating legislative representation among her counties is the total number of qualified voters resident in the respective counties, subject only to minor qualifications. 4 Decennial reapportionment [369 U.S. 186, 190] in compliance with the constitutional scheme was effected by the General Assembly each decade from 1871 to 1901. The 1871 apportionment 5 was preceded by an 1870 statute requiring an enumeration. 6 The 1881 apportionment involved three statutes, the first authorizing an enumeration, the second enlarging the Senate from 25 to[369 U.S. 186, 191] 33 members and the House from 75 to 99 members, and the third apportioning the membership of both Houses. 7 In 1891 there were both an enumeration and an apportionment. 8 In 1901 the General Assembly abandoned separate enumeration in favor of reliance upon the Federal Census and passed the Apportionment Act here in controversy. 9 In the more than 60 years since that action, all proposals in both Houses of the General Assembly for reapportionment have failed to pass. 10 [369 U.S. 186, 192]

Between 1901 and 1961, Tennessee has experienced substantial growth and redistribution of her population. In 1901 the population was 2,020,616, of whom 487,380 were eligible to vote. 11 The 1960 Federal Census reports the State's population at 3,567,089, of whom 2,092,891 are eligible to vote. 12 The relative standings of the counties in terms of qualified voters have changed significantly. It is primarily the continued application of the 1901 Apportionment Act to this shifted and enlarged voting population which gives rise to the present controversy.

Indeed, the complaint alleges that the 1901 statute, even as of the time of its passage, "made no apportionment of Representatives and Senators in accordance with the constitutional formula . . ., but instead arbitrarily and capriciously apportioned representatives in the Senate and House without reference . . . to any logical or reasonable formula whatever." 13 It is further alleged [369 U.S. 186, 193] that "because of the population changes since 1900, and the failure of the Legislature to reapportion itself since 1901," the 1901 statute became "unconstitutional and obsolete." Appellants also argue that, because of the composition of the legislature effected by the 1901 Apportionment Act, redress in the form of a state constitutional amendment to change the entire mechanism for reapportioning, or any other change short of that, is difficult or impossible. 14 The complaint concludes that "these plaintiffs [369 U.S. 186, 194] and others similarly situated, are denied the equal protection of the laws accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes." 15 They seek a [369 U.S. 186, 195] declaration that the 1901 statute is unconstitutional and an injunction restraining the appellees from acting to conduct any further elections under it. They also pray that unless and until the General Assembly enacts a valid reapportionment, the District Court should either decree a reapportionment by mathematical application of the Tennessee constitutional formulae to the most recent Federal Census figures, or direct the appellees to conduct legislative elections, primary and general, at large. They also pray for such other and further relief as may be appropriate.

I.

THE DISTRICT COURT'S OPINION AND ORDER OF DISMISSAL.

Because we deal with this case on appeal from an order of dismissal granted on appellees' motions, precise identification [369 U.S. 186, 196] of the issues presently confronting us demands clear exposition of the grounds upon which the District Court rested in dismissing the case. The dismissal order recited that the court sustained the appellees' grounds "(1) that the Court lacks jurisdiction of the subject matter, and (2) that the complaint fails to state a claim upon which relief can be granted . . . ."

In the setting of a case such as this, the recited grounds embrace two possible reasons for dismissal:

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

Second: That, although the matter is cognizable and facts are alleged which establish infringement of appellants' rights as a result of state legislative action departing from a federal constitutional standard, the court will not proceed because the matter is considered unsuited to judicial inquiry or adjustment.

We treat the first ground of dismissal as "lack of jurisdiction of the subject matter." The second we consider to result in a failure to state a justiciable cause of action.

The District Court's dismissal order recited that it was issued in conformity with the court's per curiam opinion. The opinion reveals that the court rested its dismissal upon lack of subject-matter jurisdiction and lack of a justiciable cause of action without attempting to distinguish between these grounds. After noting that the plaintiffs challenged the existing legislative apportionment in Tennessee under the Due Process and Equal Protection Clauses, and summarizing the supporting allegations and the relief requested, the court stated that

"The action is presently before the Court upon the defendants' motion to dismiss predicated upon three [369 U.S. 186, 197] grounds: first, that the Court lacks jurisdiction of the subject matter; second, that the complaints fail to state a claim upon which relief can be granted; and third, that indispensable party defendants are not before the Court." 179 F. Supp., at 826.

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

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

The court went on to express doubts as to the feasibility of the various possible remedies sought by the plaintiffs. 179 F. Supp., at 827-828. Then it made clear that its dismissal reflected a view

not of doubt that violation of constitutional rights was alleged, but of a court's impotence to correct that violation:

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

In light of the District Court's treatment of the case, we hold today only (a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of [369 U.S. 186, 198] action is stated upon which appellants would be entitled to appropriate relief; and (c) because appellees raise the issue before this Court, that the appellants have standing to challenge the Tennessee apportionment statutes. 16 Beyond noting that we have no cause at this stage to doubt the District Court will be able to fashion relief if violations of constitutional rights are found, it is improper now to consider what remedy would be most appropriate if appellants prevail at the trial.

II.

JURISDICTION OF THE SUBJECT MATTER.

The District Court was uncertain whether our cases withholding federal judicial relief rested upon a lack of federal jurisdiction or upon the inappropriateness of the subject matter for judicial consideration - what we have designated "nonjusticiability." The distinction between the two grounds is significant. In the instance of nonjusticiability, consideration of the cause is not wholly and immediately foreclosed; rather, the Court's inquiry necessarily proceeds to the point of deciding whether the duty asserted can be judicially identified and its breach judicially determined, and whether protection for the right asserted can be judicially molded. In the instance of lack of jurisdiction the cause either does not "arise under" the Federal Constitution, laws or treaties (or fall within one of the other enumerated categories of Art. III, 2), or is not a "case or controversy" within the meaning of that section; or the cause is not one described by any jurisdictional statute. Our conclusion, see pp. 208-237. infra, that this cause presents no nonjusticiable "political question" settles the only possible doubt that it is a case or controversy. Under the present heading of "Jurisdiction [369 U.S. 186, 199] of the Subject Matter" we hold only that the matter set forth in the complaint does arise under the Constitution and is within 28 U.S.C. 1343.

Article III, 2, of the Federal Constitution provides that "The judicial Power shall extend to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority . . . ." It is clear that the cause of action is one which "arises under" the Federal Constitution. The complaint alleges that the 1901 statute effects an apportionment that deprives the appellants of the equal protection of the laws in violation of the Fourteenth Amendment. Dismissal of the complaint upon the ground of lack of

jurisdiction of the subject matter would, therefore, be justified only if that claim were "so attenuated and unsubstantial as to be absolutely devoid of merit," Newburyport Water Co. v. Newburyport, 193 U.S. 561, 579 , or "frivolous," Bell v. Hood, 327 U.S. 678, 683 . 17 That the claim is unsubstantial must be "very plain." Hart v. Keith Vaudeville Exchange, 262 U.S. 271, 274 . Since the District Court obviously and correctly did not deem the asserted federal constitutional claim unsubstantial and frivolous, it should not have dismissed the complaint for want of jurisdiction of the subject matter. And of course no further consideration of the merits of the claim is relevant to a determination of the court's jurisdiction of the subject matter. We said in an earlier voting case from Tennessee: "It is obvious . . . that the court, in dismissing for want of jurisdiction, was controlled by what it deemed to be the want of merit in the averments which were made in the complaint as to the violation of the Federal right. But as the very nature of the controversy was Federal, and, therefore, [369 U.S. 186, 200] jurisdiction existed, whilst the opinion of the court as to the want of merit in the cause of action might have furnished ground for dismissing for that reason, it afforded no sufficient ground for deciding that the action was not one arising under the Constitution and laws of the United States." Swafford v. Templeton, 185 U.S. 487, 493 . "For it is well settled that the failure to state a proper cause of action calls for a judgment on the merits and not for a dismissal for want of jurisdiction." Bell v. Hood, 327 U.S. 678, 682 . See also Binderup v. Pathe Exchange, 263 U.S. 291, 305 -308.

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

"The district courts shall have original jurisdiction of any civil action authorized by law 18 to be commenced by any person . . . [t]o redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States . . . ." 19 [369 U.S. 186, 201]

An unbroken line of our precedents sustains the federal courts' jurisdiction of the subject matter of federal constitutional claims of this nature. The first cases involved the redistricting of States for the purpose of electing Representatives to the Federal Congress. When the Ohio Supreme Court sustained Ohio legislation against an attack for repugnancy to Art. I, 4, of the Federal Constitution, we affirmed on the merits and expressly refused to dismiss for want of jurisdiction "In view . . . of the subject-matter of the controversy and the Federal characteristics which inhere in it . . . ." Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565, 570 . When the Minnesota Supreme Court affirmed the dismissal of a suit to enjoin the Secretary of State of Minnesota from acting under Minnesota redistricting legislation, we reviewed the constitutional merits of the legislation and reversed the State Supreme Court. Smiley v. Holm, 285 U.S. 355 . And see companion cases from the New York Court of Appeals and the Missouri Supreme Court, Koenig v. Flynn, 285 U.S. 375 ; Carroll v. Becker, 285 U.S. 380 . When a three-judge District Court, exercising jurisdiction under the predecessor of 28 U.S.C. 1343 (3), permanently enjoined officers of the State of Mississippi from conducting an election of Representatives under a Mississippi redistricting act, we reviewed the federal questions on the merits and reversed the District Court. Wood v. Broom, 287 U.S. 1 , reversing 1 F. Supp. 134. A similar decree of a District Court, exercising jurisdiction under the same statute, concerning a Kentucky redistricting act, was [369

U.S. 186, 202] reviewed and the decree reversed. Mahan v. Hume, 287 U.S. 575 , reversing 1 F. Supp. 142. 20

The appellees refer to Colegrove v. Green, 328 U.S. 549 , as authority that the District Court lacked jurisdiction of the subject matter. Appellees misconceive the holding of that case. The holding was precisely contrary to their reading of it. Seven members of the Court participated in the decision. Unlike many other cases in this field which have assumed without discussion that there was jurisdiction, all three opinions filed in Colegrove discussed the question. Two of the opinions expressing the views of four of the Justices, a majority, flatly held that there was jurisdiction of the subject matter. MR. JUSTICE BLACK joined by MR. JUSTICE DOUGLAS and Mr. Justice Murphy stated: "It is my judgment that the District Court had jurisdiction . . .," citing the predecessor of 28 U.S.C. 1343 (3), and Bell v. Hood, supra. 328 U.S., at 568 . Mr. Justice Rutledge, writing separately, expressed agreement with this conclusion. 328 U.S., at 564 , 565, n. 2. Indeed, it is even questionable that the opinion of MR. JUSTICE FRANKFURTER, joined by Justices Reed and Burton, doubted jurisdiction of the subject matter. Such doubt would have been inconsistent with the professed willingness to turn the decision on either the majority or concurring views in Wood v. Broom, supra. 328 U.S., at 551 .

Several subsequent cases similar to Colegrove have been decided by the Court in summary per curiam statements. None was dismissed for want of jurisdiction of the subject matter. Cook v. Fortson, 329 U.S. 675 ; Turman v. [369 U.S. 186, 203] Duckworth, ibid.; Colegrove v. Barrett, 330 U.S. 804 ; 21 Tedesco v. Board of Supervisors, 339 U.S. 940 ; Remmey v. Smith, 342 U.S. 916 ; Cox v. Peters, 342 U.S. 936 ; Anderson v. Jordan, 343 U.S. 912 ; Kidd v. McCanless, 352 U.S. 920 ; Radford v. Gary, 352 U.S. 991 ; Hartsfield v. Sloan, 357 U.S. 916 ; Matthews v. Handley, 361 U.S. 127 . 22

Two cases decided with opinions after Colegrove likewise plainly imply that the subject matter of this suit is within District Court jurisdiction. In MacDougall v. Green, 335 U.S. 281 , the District Court dismissed for want of jurisdiction, which had been invoked under 28 U.S.C. 1343 (3), a suit to enjoin enforcement of the requirement that nominees for state-wide elections be supported by a petition signed by a minimum number of persons from at least 50 of the State's 102 counties. This Court's disagreement with that action is clear since the Court affirmed the judgment after a review of the merits and concluded that the particular claim there was without merit. In South v. Peters, 339 U.S. 276 , we affirmed the dismissal of an attack on the Georgia "county unit" system but founded our action on a ground that plainly would not have been reached if the lower court lacked jurisdiction of the subject matter, which allegedly existed under 28 U.S.C. 1343 (3). The express words of our holding were that "Federal courts consistently refuse to exercise their equity powers in cases posing [369 U.S. 186, 204] political issues arising from a state's geographical distribution of electoral strength among its political subdivisions." 339 U.S., at 277 .

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

III.

STANDING.

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

The complaint was filed by residents of Davidson, Hamilton, Knox, Montgomery, and Shelby Counties. Each is a person allegedly qualified to vote for members of the General Assembly representing his county. 23 These appellants sued "on their own behalf and on behalf of all qualified voters of their respective counties, and further, on behalf of all voters of the State of Tennessee who [369 U.S. 186, 205] are similarly situated . . . ." 24 The appellees are the Tennessee Secretary of State, Attorney General, Coordinator of Elections, and members of the State Board of Elections; the members of the State Board are sued in their own right and also as representatives of the County Election Commissioners whom they appoint. 25 [369 U.S. 186, 206]

We hold that the appellants do have standing to maintain this suit. Our decisions plainly support this conclusion. Many of the cases have assumed rather than articulated the premise in deciding the merits of similar claims. 26 And Colegrove v. Green, supra, squarely held that voters who allege facts showing disadvantage to themselves as individuals have standing to sue. 27 A number [369 U.S. 186, 207] of cases decided after Colegrove recognized the standing of the voters there involved to bring those actions. 28

These appellants seek relief in order to protect or vindicate an interest of their own, and of those similarly situated. Their constitutional claim is, in substance, that the 1901 statute constitutes arbitrary and capricious state action, offensive to the Fourteenth Amendment in its irrational disregard of the standard of apportionment prescribed by the State's Constitution or of any standard, effecting a gross disproportion of representation to voting population. The injury which appellants assert is that this classification disfavors the voters in the counties in which they reside, placing them in a position of constitutionally unjustifiable inequality vis-a-vis voters [369 U.S. 186, 208] in irrationally favored counties. A citizen's right to a vote free of arbitrary impairment by state action has been judicially recognized as a right secured by the Constitution, when such impairment resulted from dilution by a false tally, cf. United States v. Classic, 313 U.S. 299 ; or by a refusal to count votes from arbitrarily selected precincts, cf. United States v. Mosley, 238 U.S. 383 , or by a stuffing of the ballot box, cf. Ex parte Siebold, 100 U.S. 371 ; United States v. Saylor, 322 U.S. 385 .

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

very essence of civil liberty certainly consists in the right of every individual to claim the protection of the laws, whenever he receives an injury." Marbury v. Madison, 1 Cranch 137, 163.

IV.

JUSTICIABILITY.

In holding that the subject matter of this suit was not justiciable, the District Court relied on Colegrove v. Green, supra, and subsequent per curiam cases. 29 The [369 U.S. 186, 209] court stated: "From a review of these decisions there can be no doubt that the federal rule . . . is that the federal courts . . . will not intervene in cases of this type to compel legislative reapportionment." 179 F. Supp., at 826. We understand the District Court to have read the cited cases as compelling the conclusion that since the appellants sought to have a legislative apportionment held unconstitutional, their suit presented a "political question" and was therefore nonjusticiable. We hold that this challenge to an apportionment presents no nonjusticiable "political question." The cited cases do not hold the contrary.

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

We hold that the claim pleaded here neither rests upon nor implicates the Guaranty Clause and that its justiciability is therefore not foreclosed by our decisions of cases involving that clause. The District Court misinterpreted Colegrove v. Green and other decisions of this Court on which it relied. Appellants' claim that they are being denied equal protection is justiciable, and if [369 U.S. 186, 210] "discrimination is sufficiently shown, the right to relief under the equal protection clause is not diminished by the fact that the discrimination relates to political rights." Snowden v. Hughes, 321 U.S. 1, 11 . To show why we reject the argument based on the Guaranty Clause, we must examine the authorities under it. But because there appears to be some uncertainty as to why those cases did present political questions, and specifically as to whether this apportionment case is like those cases, we deem it necessary first to consider the contours of the "political question" doctrine.

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

We have said that "In determining whether a question falls within [the political question] category, the approriateness under our system of government of attributing finality to the action of the political departments and also the lack of satisfactory criteria for a judicial determination are dominant considerations." Coleman v. Miller, 307 U.S. 433, 454 -455. The nonjusticiability of a political question is primarily a function of the separation of powers. Much confusion results from the capacity of the "political question" label to obscure the need for [369 U.S. 186, 211] case-by-case inquiry. Deciding whether a matter has in any measure been committed by the Constitution to another branch of government, or whether the action of that branch exceeds whatever authority has been committed, is itself a delicate exercise in constitutional interpretation, and is a responsibility of this Court as ultimate interpreter of the Constitution. To demonstrate this requires no less than to analyze representative cases and to infer from them the analytical threads that make up the political question doctrine. We shall then show that none of those threads catches this case.

Foreign relations: There are sweeping statements to the effect that all questions touching foreign relations are political questions. 31 Not only does resolution of such issues frequently turn on standards that defy judicial application, or involve the exercise of a discretion demonstrably committed to the executive or legislature; 32 but many such questions uniquely demand single-voiced statement of the Government's views. 33 Yet it is error to suppose that every case or controversy which touches foreign relations lies beyond judicial cognizance. Our cases in this field seem invariably to show a discriminating analysis of the particular question posed, in terms of the history of its management by the political branches, of its susceptibility to judicial handling in the light of its nature and posture in the specific case, and of the possible consequences [369 U.S. 186, 212] of judicial action. For example, though a court will not ordinarily inquire whether a treaty has been terminated, since on that question "governmental action . . . must be regarded as of controlling importance," if there has been no conclusive "governmental action" then a court can construe a treaty and may find it provides the answer. Compare Terlinden v. Ames, 184 U.S. 270, 285 , with Society for the Propagation of the Gospel in Foreign Parts v. New Haven, 8 Wheat. 464, 492-495. 34 Though a court will not undertake to construe a treaty in a manner inconsistent with a subsequent federal statute, no similar hesitancy obtains if the asserted clash is with state law. Compare Whitney v. Robertson; 124 U.S. 190 , with Kolovrat v. Oregon, 366 U.S. 187 .

While recognition of foreign governments so strongly defies judicial treatment that without executive recognition a foreign state has been called "a republic of whose existence we know nothing," 35 and the judiciary ordinarily follows the executive as to which nation has sovereignty over disputed territory, 36 once sovereignty over an area is politically determined and declared, courts may examine the resulting status and decide independently whether a statute applies to that area. 37 Similarly, recognition of belligerency abroad is an executive responsibility, but if the executive proclamations fall short of an explicit answer, a court may construe them seeking, for example, to determine whether the situation is such that statutes designed to assure American neutrality have [369 U.S. 186, 213] become operative. The Three Friends, 166 U.S. 1, 63 , 66. Still again, though it is the executive that determines a person's status as representative of a foreign government, Ex parte Hitz, 111 U.S. 766 , the executive's statements will be construed where necessary to determine the court's jurisdiction, In re Baiz, 135 U.S. 403 . Similar judicial action in the absence of a recognizedly authoritative executive declaration occurs in cases

involving the immunity from seizure of vessels owned by friendly foreign governments. Compare Ex parte Peru, 318 U.S. 578 , with Mexico v. Hoffman, 324 U.S. 30, 34 -35.

Dates of duration of hostilities: Though it has been stated broadly that "the power which declared the necessity is the power to declare its cessation, and what the cessation requires," Commercial Trust Co. v. Miller, 262 U.S. 51, 57 , here too analysis reveals isolable reasons for the presence of political questions, underlying this Court's refusal to review the political departments' determination of when or whether a war has ended. Dominant is the need for finality in the political determination, for emergency's nature demands "A prompt and unhesitating obedience," Martin v. Mott, 12 Wheat. 19, 30 (calling up of militia). Moreover, "the cessation of hostilities does not necessarily end the war power. It was stated in Hamilton v. Kentucky Distilleries & W. Co., 251 U.S. 146, 161 , that the war power includes the power `to remedy the evils which have arisen from its rise and progress' and continues during that emergency. Stewart v. Kahn, 11 Wall. 493, 507." Fleming v. Mohawk Wrecking Co., 331 U.S. 111, 116 . But deference rests on reason, not habit. 38 The question in a particular case may not seriously implicate considerations of finality - e. g., a public program of importance [369 U.S. 186, 214] (rent control) yet not central to the emergency effort. 39 Further, clearly definable criteria for decision may be available. In such case the political question barrier falls away: "[A] Court is not at liberty to shut its eyes to an obvious mistake, when the validity of the law depends upon the truth of what is declared. . . . [It can] inquire whether the exigency still existed upon which the continued operation of the law depended." Chastleton Corp. v. Sinclair, 264 U.S. 543, 547 -548. 40 Compare Woods v. Miller Co., 333 U.S. 138 . On the other hand, even in private litigation which directly implicates no feature of separation of powers, lack of judicially discoverable standards and the drive for even-handed application may impel reference to the political departments' determination of dates of hostilities' beginning and ending. The Protector, 12 Wall. 700.

Validity of enactments: In Coleman v. Miller, supra, this Court held that the questions of how long a proposed amendment to the Federal Constitution remained open to ratification, and what effect a prior rejection had on a subsequent ratification, were committed to congressional resolution and involved criteria of decision that necessarily escaped the judicial grasp. 41 Similar considerations apply to the enacting process: "The respect due to coequal and independent departments," and the need for finality and certainty about the status of a statute contribute to judicial reluctance to inquire whether, as passed, it complied with all requisite formalities. Field v. Clark, 143 U.S. 649, 672 , 676-677; see Leser v. Garnett, 258 U.S. 130, 137 . But it is not true that courts will never delve [369 U.S. 186, 215] into a legislature's records upon such a quest: If the enrolled statute lacks an effective date, a court will not hesitate to seek it in the legislative journals in order to preserve the enactment. Gardner v. The Collector, 6 Wall. 499. The political question doctrine, a tool for maintenance of governmental order, will not be so applied as to promote only disorder.

The status of Indian tribes: This Court's deference to the political departments in determining whether Indians are recognized as a tribe, while it reflects familiar attributes of political questions, 42 United States v. Holliday, 3 Wall. 407, 419, also has a unique element in that "the relation of the Indians to the United States is marked by peculiar and cardinal distinctions which exist no where else. . . . [The Indians are] domestic dependent nations . . . in a state of pupilage. Their relation to the United States resembles that of a ward to his guardian." The Cherokee Nation v. Georgia, 5 Pet. 1, 16, 17. 43 Yet, here too, there is no blanket rule. While [369 U.S.

186, 216] "`It is for [Congress] . . ., and not for the courts, to determine when the true interests of the Indian require his release from [the] condition of tutelage' . . ., it is not meant by this that Congress may bring a community or body of people within the range of this power by arbitrarily calling them an Indian tribe . . . ." United States v. Sandoval, 231 U.S. 28, 46 . Able to discern what is "distinctly Indian," ibid., the courts will strike down [369 U.S. 186, 217] any heedless extension of that label. They will not stand impotent before an obvious instance of a manifestly unauthorized exercise of power.

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

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

But it is argued that this case shares the characteristics of decisions that constitute a category not yet considered, cases concerning the Constitution's guaranty, in Art. IV, [369 U.S. 186, 218] 4, of a republican form of government. A conclusion as to whether the case at bar does present a political question cannot be confidently reached until we have considered those cases with special care. We shall discover that Guaranty Clause claims involve those elements which define a "political question," and for that reason and no other, they are nonjusticiable. In particular, we shall discover that the nonjusticiability of such claims has nothing to do with their touching upon matters of state governmental organization.

Republican form of government: Luther v. Borden, 7 How. 1, though in form simply an action for damages for trespass was, as Daniel Webster said in opening the argument for the defense, "an unusual case." 44 The defendants, admitting an otherwise tortious breaking and entering, sought to justify their action on the ground that they were agents of the established lawful government of Rhode Island, which State was then under martial law to defend itself from active insurrection; that the plaintiff was engaged in that insurrection; and that they entered under orders to arrest the plaintiff. The case arose "out of the unfortunate political differences which agitated the people of Rhode Island in 1841 and 1842," 7 How., at 34, and which had resulted in a situation wherein two groups laid competing claims to recognition as the lawful government. 45 The plaintiff's right to [369 U.S. 186, 219] recover depended upon which of the

two groups was entitled to such recognition; but the lower court's refusal to receive evidence or hear argument on that issue, its charge to the jury that the earlier established or "charter" government was lawful, and the verdict for the defendants, were affirmed upon appeal to this Court.

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

(2) No state court had recognized as a judicial responsibility settlement of the issue of the locus of state governmental authority. Indeed, the courts of Rhode Island had in several cases held that "it rested with the political power to decide whether the charter government had been displaced or not," and that that department had acknowledged no change. [369 U.S. 186, 220]

(3) Since "[t]he question relates, altogether, to the constitution and laws of [the] . . . State," the courts of the United States had to follow the state courts' decisions unless there was a federal constitutional ground for overturning them. 47

(4) No provision of the Constitution could be or had been invoked for this purpose except Art. IV, 4, the Guaranty Clause. Having already noted the absence of standards whereby the choice between governments could be made by a court acting independently, Chief Justice Taney now found further textual and practical reasons for concluding that, if any department of the United States was empowered by the Guaranty Clause to resolve the issue, it was not the judiciary:

"Under this article of the Constitution it rests with Congress to decide what government is the established one in a State. For as the United States guarantee to each State a republican government, Congress must necessarily decide what government is established in the State before it can determine whether it is republican or not. And when the senators and representatives of a State are admitted into the councils of the Union, the authority of the government under which they are appointed, as well as its republican character, is recognized by the proper constitutional authority. And its decision is binding on every other department of the government, and could not be questioned in a judicial tribunal. It is true that the contest in this case did not last long enough to bring the matter to this issue; and . . . Congress was not called upon to decide the controversy. Yet the right to decide is placed there, and not in the courts. [369 U.S. 186, 221]

"So, too, as relates to the clause in the above-mentioned article of the Constitution, providing for cases of domestic violence. It rested with Congress, too, to determine upon the means proper to be adopted to fulfill this guarantee. . . . [B]y the act of February 28, 1795, [Congress] provided, that, `in case of an insurrection in any State against the government thereof, it shall be lawful for

the President of the United States, on application of the legislature of such State or of the executive (when the legislature cannot be convened), to call forth such number of the militia of any other State or States, as may be applied for, as he may judge sufficient to suppress such insurrection.'

"By this act, the power of deciding whether the exigency had arisen upon which the government of the United States is bound to interfere, is given to the President. . . .

"After the President has acted and called out the militia, is a Circuit Court of the United States authorized to inquire whether his decision was right? . . . If the judicial power extends so far, the guarantee contained in the Constitution of the United States is a guarantee of anarchy, and not of order. . . .

"It is true that in this case the militia were not called out by the President. But upon the application of the governor under the charter government, the President recognized him as the executive power of the State, and took measures to call out the militia to support his authority if it should be found necessary for the general government to interfere . . . . [C]ertainly no court of the United States, with a knowledge of this decision, would have been justified in recognizing the opposing party as the lawful government [369 U.S. 186, 222] . . . . In the case of foreign nations, the government acknowledged by the President is always recognized in the courts of justice. . . ." 7 How., at 42-44.

Clearly, several factors were thought by the Court in Luther to make the question there "political": the commitment to the other branches of the decision as to which is the lawful state government; the unambiguous action by the President, in recognizing the charter government as the lawful authority; the need for finality in the executive's decision; and the lack of criteria by which a court could determine which form of government was republican. 48 [369 U.S. 186, 223]

But the only significance that Luther could have for our immediate purposes is in its holding that the Guaranty Clause is not a repository of judicially manageable standards which a court could utilize independently in order to identify a State's lawful government. The Court has since refused to resort to the Guaranty Clause - which alone had been invoked for the purpose - as the source of a constitutional standard for invalidating state action. See Taylor & Marshall v. Beckham (No. 1), 178 U.S. 548 (claim that Kentucky's resolution of contested gubernatorial election deprived voters of republican government held nonjusticiable); Pacific States Tel. Co. v. Oregon, 223 U.S. 118 (claim that initiative and referendum negated republican government held nonjusticiable); Kiernan v. Portland, 223 U.S. 151 (claim that municipal charter amendment per municipal initiative and referendum negated republican government held nonjusticiable); [369 U.S. 186, 224] Marshall v. Dye, 231 U.S. 250 (claim that Indiana's constitutional amendment procedure negated republican government held nonjusticiable); O'Neill v. Leamer, 239 U.S. 244 (claim that delegation to court of power to form drainage districts negated republican government held "futile"); Ohio ex rel. Davis v. Hildebrant, 241 U.S. 565 (claim that invalidation of state reapportionment statute per referendum negates republican government held nonjusticiable); 49 Mountain Timber Co. v. Washington, 243 U.S. 219 (claim that workmen's compensation violates republican government held nonjusticiable); Ohio ex rel. Bryant v. Akron Metropolitan Park District, 281 U.S. 74 (claim that rule requiring invalidation of statute by all

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

Just as the Court has consistently held that a challenge to state action based on the Guaranty Clause presents no justiciable question so has it held, and for the same reasons, that challenges to congressional action on the ground of inconsistency with that clause present no justiciable question. In Georgia v. Stanton, 6 Wall. 50, the State sought by an original bill to enjoin execution of the Reconstruction Acts, claiming that it already possessed "A republican State, in every political, legal, constitutional, and juridical sense," and that enforcement of the new Acts "Instead of keeping the guaranty against a forcible overthrow of its government by foreign invaders or domestic insurgents, . . . is destroying that very government by force." 50 Congress had clearly refused to [369 U.S. 186, 225] recognize the republican character of the government of the suing State. 51 It seemed to the Court that the only constitutional claim that could be presented was under the Guaranty Clause, and Congress having determined that the effects of the recent hostilities required extraordinary measures to restore governments of a republican form, this Court refused to interfere with Congress' action at the behest of a claimant relying on that very guaranty. 52

In only a few other cases has the Court considered Art. IV, 4, in relation to congressional action. It has refused to pass on a claim relying on the Guaranty Clause to establish that Congress lacked power to allow the States to employ the referendum in passing on legislation redistricting for congressional seats. Ohio ex rel. Davis v. Hildebrant, supra. And it has pointed out that Congress is not required to establish republican government in the territories before they become States, and before they have attained a sufficient population to warrant a [369 U.S. 186, 226] popularly elected legislature. Downes v. Bidwell, 182 U.S. 244, 278 -279 (dictum). 53

We come, finally, to the ultimate inquiry whether our precedents as to what constitutes a nonjusticiable "political question" bring the case before us under the umbrella of that doctrine. A natural beginning is to note whether any of the common characteristics which we have been able to identify and label descriptively are present. We find none: The question here is the consistency of state action with the Federal Constitution. We have no question decided, or to be decided, by a political branch of government coequal with this Court. Nor do we risk embarrassment of our government abroad, or grave disturbance at home 54 if we take issue with Tennessee as to the constitutionality of her action here challenged. Nor need the appellants, in order to succeed in this action, ask the Court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the Equal Protection Clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects no policy, but simply arbitrary and capricious action.

This case does, in one sense, involve the allocation of political power within a State, and the appellants [369 U.S. 186, 227] might conceivably have added a claim under the Guaranty Clause. Of course, as we have seen, any reliance on that clause would be futile. But because any reliance on the Guaranty Clause could not have succeeded it does not follow that appellants may not be heard on the equal protection claim which in fact they tender. True, it must be clear that the Fourteenth Amendment claim is not so enmeshed with those political question elements

which render Guaranty Clause claims nonjusticiable as actually to present a political question itself. But we have found that not to be the case here.

In this connection special attention is due Pacific States Tel. Co. v. Oregon, 223 U.S. 118 . In that case a corporation tax statute enacted by the initiative was attacked ostensibly on three grounds: (1) due process; (2) equal protection; and (3) the Guaranty Clause. But it was clear that the first two grounds were invoked solely in aid of the contention that the tax was invalid by reason of its passage:

"The defendant company does not contend here that it could not have been required to pay a license tax. It does not assert that it was denied an opportunity to be heard as to the amount for which it was taxed, or that there was anything inhering in the tax or involved intrinsically in the law which violated any of its constitutional rights. If such questions had been raised they would have been justiciable, and therefore would have required the calling into operation of judicial power. Instead, however, of doing any of these things, the attack on the statute here made is of a wholly different character. Its essentially political nature is at once made manifest by understanding that the assault which the contention here advanced makes it [sic] not on the tax as a tax, but on the State as a State. It is addressed to the [369 U.S. 186, 228] framework and political character of the government by which the statute levying the tax was passed. It is the government, the political entity, which (reducing the case to its essence) is called to the bar of this court, not for the purpose of testing judicially some exercise of power assailed, on the ground that its exertion has injuriously affected the rights of an individual because of repugnancy to some constitutional limitation, but to demand of the State that it establish its right to exist as a State, republican in form." 223 U.S., at 150 -151.

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

We conclude then that the nonjusticiability of claims resting on the Guaranty Clause which arises from their embodiment of questions that were thought "political," can have no bearing upon the justiciability of the equal protection claim presented in this case. Finally, we [369 U.S. 186, 229] emphasize that it is the involvement in Guaranty Clause claims of the elements thought to define "political questions," and no other feature, which could render them nonjusticiable. Specifically, we have said that such claims are not held nonjusticiable because they touch matters of state governmental organization. Brief examination of a few cases demonstrates this.

When challenges to state action respecting matters of "the administration of the affairs of the State and the officers through whom they are conducted" 55 have rested on claims of constitutional deprivation which are amenable to judicial correction, this Court has acted upon its view of the merits of the claim. For example, in Boyd v. Nebraska ex rel. Thayer, 143 U.S. 135 , we reversed the Nebraska Supreme Court's decision that Nebraska's Governor was not a citizen of the United States or of the State and therefore could not continue in office. In Kennard v. Louisiana ex rel. Morgan,92 U.S. 480 , and Foster v. Kansas ex rel. Johnston, 112 U.S. 201 , we considered whether persons had been removed from public office by procedures consistent with the Fourteenth Amendment's due process guaranty, and held on the merits that they had. And only last Term, in Gomillion v. Lightfoot, 364 U.S. 339 , we applied the Fifteenth Amendment to strike down a redrafting of municipal boundaries which effected a discriminatory impairment of voting rights, in the face of what a majority of the Court of Appeals thought to be a sweeping commitment to state legislatures of the power to draw and redraw such boundaries. 56

Gomillion was brought by a Negro who had been a resident of the City of Tuskegee, Alabama, until the municipal boundaries were so recast by the State Legislature [369 U.S. 186, 230] as to exclude practically all Negroes. The plaintiff claimed deprivation of the right to vote in municipal elections. The District Court's dismissal for want of jurisdiction and failure to state a claim upon which relief could be granted was affirmed by the Court of Appeals. This Court unanimously reversed. This Court's answer to the argument that States enjoyed unrestricted control over municipal boundaries was:

"Legislative control of municipalities, no less than other state power, lies within the scope of relevant limitations imposed by the United States Constitution . . . . The opposite conclusion, urged upon us by respondents, would sanction the achievement by a State of any impairment of voting rights whatever so long as it was cloaked in the garb of the realignment of political subdivisions. `It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.'" 364 U.S., at 344 -345.

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

"A statute which is alleged to have worked unconstitutional deprivations of petitioners' rights is not immune to attack simply because the mechanism employed by the legislature is a redefinition of municipal boundaries. . . . While in form this is merely an act redefining metes and bounds, if the allegations are established, the inescapable human effect of this essay in geometry and geography is to despoil colored citizens, and only colored citizens, of [369 U.S. 186, 231] their theretofore enjoyed voting rights. That was not Colegrove v. Green.

"When a State exercises power wholly within the domain of state interest, it is insulated from federal judicial review. But such insulation is not carried over when state power is used as an instrument for circumventing a federally protected right." 364 U.S., at 347 . 57

We have not overlooked such cases as In re Sawyer, 124 U.S. 200 , and Walton v. House of Representatives, 265 U.S. 487 , which held that federal equity power could not be exercised to

enjoin a state proceeding to remove a public officer. But these decisions explicitly reflect only a traditional limit upon equity jurisdiction, and not upon federal courts' power to inquire into matters of state governmental organization. This is clear not only from the opinions in those cases, but also from White v. Berry, 171 U.S. 366 , which, relying on Sawyer, withheld federal equity from staying removal of a federal officer. Wilson v. North Carolina, 169 U.S. 586 , simply dismissed an appeal from an unsuccessful suit to upset a State's removal procedure, on the ground that the constitutional claim presented - that a jury trial was necessary if the removal procedure was to comport with due process requirements - was frivolous. Finally, in Taylor and Marshall v. Beckham (No. 1), 178 U.S. 548 , where losing candidates attacked the constitutionality of Kentucky's resolution of a contested gubernatorial election, the Court refused to consider the merits of a claim posited upon [369 U.S. 186, 232] the Guaranty Clause, holding it presented a political question, but also held on the merits that the ousted candidates had suffered no deprivation of property without due process of law. 58

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

We have already noted that the District Court's holding that the subject matter of this complaint was nonjusticiable relied upon Colegrove v. Green, supra, and later cases. Some of those concerned the choice of members of a state legislature, as in this case; others, like Colegrove itself and earlier precedents, Smiley v. Holm, 285 U.S. 355 , Koenig v. Flynn, 285 U.S. 375 , and Carroll v. Becker, 285 U.S. 380 , concerned the choice of Representatives in the Federal Congress. Smiley, Koenig and Carroll settled the issue in favor of justiciability of questions of congressional redistricting. The Court followed these precedents in Colegrove although over the dissent of three of the seven Justices who participated in that decision. On the issue of justiciability, all four Justices comprising a majority relied upon Smiley v. Holm, but in two opinions, one for three Justices, 328 U.S., at 566 , 568, and a separate one by Mr. Justice Rutledge, 328 U.S., at 564 . The argument that congressional redistricting problems presented a "political question" the resolution of which was confided to Congress might have been rested upon Art. I, 4, Art. I, 5, Art. I, 2, and Amendment [369 U.S. 186, 233] XIV, 2. Mr. Justice Rutledge said: "But for the ruling in Smiley v. Holm, 285 U.S. 355 , I should have supposed that the provisions of the Constitution, Art. I, 4, that "The Times, Places and Manner of holding Elections for . . . Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations . . .'; Art. I, 2 [but see Amendment XIV, 2], vesting in Congress the duty of apportionment of representatives among the several states `according to their respective Numbers'; and Art. I, 5, making each House the sole judge of the qualifications of its own members, would remove the issues in this case from justiciable cognizance. But, in my judgment, the Smiley case rules squarely to the contrary, save only in the matter of degree. . . . Assuming that that decision is to stand, I think . . . that its effect is to rule that this Court has power to afford relief in a case of this type as against the objection that the issues are not justiciable." 328 U.S., at 564 -565. Accordingly, Mr. Justice Rutledge joined in the conclusion that the case was justiciable, although he held that the dismissal of the complaint should be affirmed. His view was that "The shortness of the time remaining [before forthcoming elections] makes it doubtful whether action could, or would, be taken in time to

secure for petitioners the effective relief they seek. . . . I think, therefore, the case is one in which the Court may properly, and should, decline to exercise its jurisdiction. Accordingly, the judgment should be affirmed and I join in that disposition of the cause." 328 U.S., at 565 - 566. 59 [369 U.S. 186, 234]

Article I, 2, 4, and 5, and Amendment XIV, 2, relate only to congressional elections and obviously do not govern apportionment of state legislatures. However, our decisions in favor of justiciability even in light of those provisions plainly afford no support for the District Court's conclusion that the subject matter of this controversy presents a political question. Indeed, the refusal to award relief in Colegrove resulted only from the controlling view of a want of equity. Nor is anything contrary to be found in those per curiams that came after Colegrove. This Court dismissed the appeals in Cook v. Fortson and Turman v. Duckworth, 329 U.S. 675 , as moot. MacDougall v. Green, 335 U.S. 281 , held only that in that case equity would not act to void the State's requirement that there be at least a minimum of support for nominees [369 U.S. 186, 235] for state-wide office, over at least a minimal area of the State. Problems of timing were critical in Remmey v. Smith, 342 U.S. 916 , dismissing for want of a substantial federal question a three-judge court's dismissal of the suit as prematurely brought, 102 F. Supp. 708; and in Hartsfield v. Sloan, 357 U.S. 916 , denying mandamus sought to compel the convening of a three-judge court - movants urged the Court to advance consideration of their case, "Inasmuch as the mere lapse of time before this case can be reached in the normal course of . . . business may defeat the cause, and inasmuch as the time problem is due to the inherent nature of the case . . . ." South v. Peters, 339 U.S. 276 , like Colegrove appears to be a refusal to exercise equity's powers; see the statement of the holding, quoted, supra, p. 203. And Cox v. Peters, 342 U.S. 936 , dismissed for want of a substantial federal question the appeal from the state court's holding that their primary elections implicated no "state action." See 208 Ga. 498, 67 S. E. 2d 579. But compare Terry v. Adams, 345 U.S. 461 .

Tedesco v. Board of Supervisors, 339 U.S. 940 , indicates solely that no substantial federal question was raised by a state court's refusal to upset the districting of city council seats, especially as it was urged that there was a rational justification for the challenged districting. See 43 So.2d 514. Similarly, in Anderson v. Jordan, 343 U.S. 912 , it was certain only that the state court had refused to issue a discretionary writ, original mandamus in the Supreme Court. That had been denied without opinion, and of course it was urged here that an adequate state ground barred this Court's review. And in Kidd v. McCanless, 200 Tenn. 273, 292 S. W. 2d 40, the Supreme Court of Tennessee held that it could not invalidate the very statute at issue in the case at bar, but its holding rested on its state law of remedies, i. e., the state view of [369 U.S. 186, 236] de facto officers, 60 and not on any view that the norm for legislative apportionment in Tennessee is not numbers of qualified voters resident in the several counties. Of course this Court was there precluded by the adequate state ground, and in dismissing the appeal, 352 U.S. 920 , we cited Anderson, supra, as well as Colegrove. Nor does the Tennessee court's decision in that case bear upon this, for just as in Smith v. Holm, 220 Minn. 486, 19 N. W. 2d 914, and Magraw v. Donovan, 163 F. Supp. 184, 177 F. Supp. 803, a state court's inability to grant relief does not bar a federal court's assuming jurisdiction to inquire into alleged deprivation of federal constitutional rights. Problems of relief also controlled in Radford v. Gary, 352 U.S. 991 , affirming the District Court's refusal to mandamus the Governor to call a session of the legislature, to mandamus the legislature then to apportion, and if they did not comply, to mandamus the State Supreme Court to do so. And Matthews v. Handley, 361 U.S. 127 , affirmed

a refusal to strike down the State's gross income tax statute - urged on the ground that the legislature was malapportioned - that had rested on the adequacy of available state legal remedies for suits involving that tax, including challenges to its constitutionality. Lastly, Colegrove v. Barrett, 330 U.S. 804 , in which Mr. Justice Rutledge concurred in this Court's refusal to note the appeal from a dismissal for want of equity, is sufficiently explained by his statement in Cook v. Fortson, supra: "The discretionary exercise or nonexercise of equitable or declaratory judgment jurisdiction . . . in one case is not precedent in another case [369 U.S. 186, 237] where the facts differ." 329 U.S., at 678 , n. 8. (Citations omitted.)

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

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

Reversed and remanded.