CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

AT

OCTOBER TERM, 1932.

WOOD, SECRETARY OF STATE OF MISSISSIPPI, ET AL. *v.* BROOM.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF MISSISSIPPI.

No. 424. Argued October 13, 1932.—Decided October 18, 1932.

1. The provisions of the Reapportionment Act of August 8, 1911, requiring that congressional election districts be of contiguous and compact territory and, as nearly as practicable, of equal populations, related only to the districts to be formed under that Act, and were not reënacted in the Reapportionment Act of June 18, 1929. P. 8.
2. Where a bill sought to compel state election officials to conform to an Act of Congress which the court found to be no longer in force, *held* that questions whether, if the Act were effective, the controversy would be justiciable and the plaintiff entitled to equitable relief, need not be considered. *Id.*

1 F. Supp. 134, reversed.

APPEAL from a decree of the District Court of three judges, which, on final hearing on bill and answer, permanently enjoined officers of the State of Mississippi from conducting an election of representatives in Congress, in pursuance of an Act of the legislature, which the decree declared to be invalid and unconstitutional.

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Messrs. J. A. Lauderdale and *Wm. H. Watkins,* Assistant Attorneys General of Mississippi, with whom *Mr. Greek L. Rice,* Attorney General, was on the brief, for appellants.

There is no equity on the face of the bill, because plaintiff had a plain, speedy, complete and adequate remedy at law, and because there is no probability of a multiplicity of suits.

There is no equity jurisdiction. The amount in controversy does not exceed $3,000.00. A federal court of equity has no jurisdiction to prevent the deprivation of a political right. *Ex parte Sawyer,* 124 U. S. 200; *Cleveland Cliff Iron Co.* v. *Kinney,* 262 Fed. 980; *Angelus* v. *Sullivan,* 246 Fed. 54, citing many other cases; *Taylor* v. *Kerchevak,* 82 Fed. 497; *Anthony* v. *Burrow,* 129 Fed. 783; *Ohio* v. *Hildebrandt,* 231 U. S. 565; 9 R. C. L. 987, § 10; 10 R. C. L. 342, § 92; 14 R. C. L. 375, § 77.

Sub-section 15 of § 24, Judicial Code, gives the federal courts jurisdiction to try the title to certain offices. However, members of Congress are especially excepted therefrom and the denial of the right to vote must be on account of race, color or previous condition of servitude. This section gives the court jurisdiction where certain political rights are involved. To give jurisdiction therein is to exclude jurisdiction in any other matters.

Under the facts stated in the bill, plaintiff is not entitled to have his name placed on the ballot as a candidate for Congress from the State at large.

The decree of this Court would be inefficacious.

Sec. 4, Art. 1, of the Constitution and the Act of Congress of 1911 are directory and not mandatory.

Congress, being the sole judge thereof, has construed the statute as not being mandatory but directory, and as an administrative matter, exclusively for the States.

1 Argument for Appellee.

An elector of a congressional district is not entitled under the Fourteenth Amendment to the Constitution to equality in representation with other districts throughout the State.

Since the appellee has brought his suit before a three-judge district court of the United States, the jurisdiction must rest upon the unconstitutionality of a state statute and not the alleged violation by the state statute of a federal statute.

There is complete compliance with the Fourteenth Amendment where there exists no inequality as to residents of the separate districts.

Messrs. Hugh V. Wall and *Cleon K. Calvert,* with whom *Messrs. J. H. Price, J. O. S. Sanders,* and *S. B. Laub* were on the briefs, for appellee.

One who is deprived of the right of equal suffrage in the choice of federal officers, when that right has been granted by a State, is deprived of a vested right under the Constitution of the United States and of one which equity, as administered in the federal courts, will protect. Cooley, Const. L., p. 248; *Gougar* v. *Timberlake,* 148 Ind. 41; *Ex parte Yarbrough,* 110 U. S. 651; *Wiley* v. *Sinkler,* 179 U. S. 58.

A qualified voter in a State, who is denied the right of equal representation by a state congressional redistricting act, may complain against the Act in equity in a federal court in his own name and person. *Smiley* v. *Holm,* 285 U. S. 355.

The Act of Congress of August 8, 1911 is a valid exercise of congressional power and is still in force.

The right to make reasonable qualifications for party membership is a political matter with which equity has naught to do. But the right to vote is a legal right that equity will protect.

Messrs. John R. Saunders, Attorney General, *Edwin H. Gibson* and *Collins Denny, Jr.,* Assistant Attorneys General, and *Albert V. Bryan,* by leave of Court, filed a brief on behalf of the Commonwealth of Virginia, as *amicus curiae.* In this it was argued that the provisions of the Act of 1911 as to the compactness, etc., of congressional election districts, and their equality in population, were no longer in force. The brief pointed out that those provisions, and like provisions in earlier Acts, had been persistently violated by the States, and contended that the subject was really one for the States to deal with free from any control by the federal courts.

Mr. Chief Justice Hughes delivered the opinion of the Court.

Under the reapportionment pursuant to the Act of June 18, 1929 (c. 28, 46 Stat. 21, 26, 27), Mississippi is entitled to seven representatives in Congress, instead of eight as theretofore. The Legislature of Mississippi, by an act known as House Bill No. 197, Regular Session 1932, divided the State into seven congressional districts. The complainant, alleging that he was a citizen of Mississippi, a qualified elector under its laws, and also qualified to be a candidate for election as representative in Congress, brought this suit to have the redistricting act of 1932 declared invalid and to restrain the defendants, state officers, from taking proceedings for an election under its provisions. The alleged grounds of invalidity were that the act violated Art. I, § 4, and the Fourteenth Amendment, of the Constitution of the United States, and § 3 of the Act of Congress of August 8, 1911 (c. 5, 37 Stat. 13). Defendants moved to dismiss the bill (1) for want of equity, (2) for lack of equitable jurisdiction to grant the relief asked, (3) because on the facts alleged the complainant was not entitled to have his name placed upon

the election ballot as a candidate from the State at large, and (4) because the decree of the court would be inefficacious. The District Court, of three judges, granted an interlocutory injunction, and after answer, which admitted the material facts alleged in the bill and set up the same grounds of defense as the motion to dismiss together with a denial of the unconstitutionality of the challenged act, the court on final hearing, on bill and answer, entered a final decree making the injunction permanent as prayed. Defendants appeal to this Court. U. S. C., Tit. 28, § 380.

The District Court held that the new districts, created by the redistricting act, were not composed of compact and contiguous territory, having as nearly as practicable the same number of inhabitants, and hence failed to comply with the mandatory requirements of § 3 of the Act of August 8, 1911. Sections 3 and 4 of that Act are as follows:

"Sec. 3. That in each State entitled under this apportionment to more than one Representative, the Representatives to the Sixty-third and each subsequent Congress shall be elected by districts composed of a contiguous and compact territory, and containing as nearly as practicable an equal number of inhabitants. The said districts shall be equal to the number of Representatives to which such State may be entitled in Congress, no district electing more than one Representative.

"Sec. 4. That in case of an increase in the number of Representatives in any State under this apportionment such additional Representative or Representatives shall be elected by the State at large and the other Representatives by the districts now prescribed by law until such State shall be redistricted in the manner provided by the laws thereof and in accordance with the rules enumerated in section three of this Act; and if there be no change in the number of Representatives from a State, the Representatives thereof shall be elected from the districts now

prescribed by law until such State shall be redistricted as herein prescribed."

The Act of August 8, 1911, as its title states, was an act "For the apportionment of Representatives in Congress among the several States under the Thirteenth Census," that is, the census of 1910. The first section of the act fixed the number of the House of Representatives and apportioned that number among the several States. Its second section related to the allotment of representatives to the territories of Arizona and New Mexico. The third and fourth sections expressly applied to the election of representatives to which the State was entitled "under this apportionment," that is, under the apportionment under the Act of 1911 pursuant to the census of 1910. Substantially the same provisions are found in prior reapportionments acts, the requirements as to compactness, contiguity, and equality in population in the new districts in which representatives were to be elected under the new apportionment being addressed in each case to the election of representatives "under this apportionment," that is, the apportionment made by the particular act. Act of June 25, 1842, c. 47, § 2, 5 Stat. 491; Act of February 2, 1872, c. 11, § 2, 17 Stat. 28; Act of February 25, 1882, c. 20, § 3, 22 Stat. 5, 6; Act of February 7, 1891, c. 116, §§ 3, 4, 26 Stat. 735, 736; Act of January 16, 1901, c. 93, §§ 3, 4, 31 Stat. 733, 734.

The Act of June 18, 1929, however, in providing for the reapportionment under the Fifteenth Census (none having been made under the Fourteenth Census) omitted the requirements as to the compactness, contiguity, and equality in population, of new districts to be created under that apportionment. It did not carry forward those requirements as previous apportionment acts had done. There was, it is true, no express repeal of §§ 3 and 4 of the Act of 1911 and, as the Act of 1929 did not deal with the subject, it contained no provision inconsistent with

the requirements of the Act of 1911. *Smiley* v. *Holm,* 285 U. S. 355, 373. No repeal was necessary. The requirements of §§ 3 and 4 of the Act of 1911 expired by their own limitation. They fell with the apportionment to which they expressly related. The inquiry is simply whether the Act of 1929 carried forward the requirements which otherwise lapsed. The Act of 1929 contains no provision to that effect. 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. The bill which finally became the Act of 1929 was introduced in the first session of the 70th Congress and contained provisions similar to those of §§ 3 and 4 of the Act of 1911. H. R. 11,725; Cong. Rec., 70th Cong., 1st sess., vol. 69, p. 4054. At the second session of the 70th Congress, the House of Representatives, after debate, struck out these provisions. Cong. Rec., 70th Cong., 2d sess., vol. 70, pp. 1496, 1499, 1584, 1602, 1604. The bill passed in the House of Representatives in that form (*id* p. 1605) and, although reported favorably to the Senate without amendment (*id.* 1711), did not pass at that session. The measure as to reapportionment was reintroduced in the Senate in the first session of the 71st Congress in the form in which it had passed the House of Representatives, and had been favorably reported to the Senate in the preceding Congress, that is, without the requirements as to compactness, contiguity, and equality in population, which had been deleted in that Congress. S. 312, 71st Cong., 1st sess., Cong. Rec. vol. 71, pp. 254, 2450. And when, after the passage of this bill in the Senate, it was before the House of Representatives, and an effort was made to amend

the bill so as to make applicable the requirements of § 3 of the Act of 1911 with respect to the districts to be created under the new apportionment, the amendment failed. The point of order was sustained that, as the pending bill did not relate to redistricting of the States by their legislatures, the amendment was not germane. Cong. Rec., 71st Cong., 1st sess., vol. 71, pp. 2279, 2280, 2363, 2364, 2444, 2445. The bill was then passed without the requirements in question. Cong. Rec., 71st Cong., 1st sess., vol. 71, p. 2458.

There is thus no ground for the conclusion that the Act of 1929 re-enacted or made applicable to new districts the requirements of the Act of 1911. That act in this respect was left as it had stood, and the requirements it had contained as to the compactness, contiguity and equality in population of districts, did not outlast the apportionment to which they related.

In this view, it is unnecessary to consider the questions raised as to the right of the complainant to relief in equity upon the allegations of the bill of complaint, or as to the justiciability of the controversy, if it were assumed that the requirements invoked by the complainant are still in effect. See *Ex parte Bakelite Corporation,* 279 U. S. 438, 448. Upon these questions the Court expresses no opinion.

The decree is reversed and the cause is remanded to the District Court with directions to dismiss the bill of complaint.

Reversed.

Mr. Justice Brandeis, Mr. Justice Stone, Mr. Justice Roberts, and Mr. Justice Cardozo are of opinion that the decree should be reversed and the bill dismissed for want of equity, without passing upon the question whether § 3 of the Act of August 8, 1911, is applicable. That question was not presented by the

pleadings or discussed in either of the opinions delivered in the District Court. 1 F. Supp. 134. It was not mentioned in the Jurisdictional Statement filed under Rule 12 or in the briefs of the parties filed here. So far as appears, all the members of the lower court and both parties have assumed that § 3 is controlling.

STEWART DRY GOODS CO. *v.* LEWIS ET AL.[1]

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR THE WESTERN DISTRICT OF KENTUCKY.

No. 27. Argued October 21, 1932.—Decided October 24, 1932.

A bill in equity to restrain the collection of state taxes under a statute alleged to violate the Federal Constitution should not be dismissed on bill and answer upon the ground that the statute affords an adequate legal remedy by payment under protest and action to recover, when the allegations of the bill put in doubt whether, if that remedy were pursued and the claim allowed, satisfaction of it could be secured certainly and within a reasonable time out of the fund designated by statute as the source of such payments. P. 10.

Reversed.

These were four suits by retail merchants seeking to enjoin collection of taxes on gross sales, measured by progressively increasing rates. All the bills invoked the due process and equal protection clauses of the Fourteenth Amendment, and in two of them it was claimed, also, that the tax operated as a direct burden on interstate commerce. By stipulation the cases were heard together and disposed of by one opinion of the three-judge District Court. The cases were treated as submitted upon bill and answer as well as upon plaintiffs' motion for prelim-

[1] Together with No. 28, *Levy et al.* v. *Lewis et al.*, and No. 29, *J. C. Penney Co.* v. *Same*, both from the Western District of Kentucky, and No. 30, *Kroger Grocery & Baking Co.* v. *Same*, from the Eastern District.