Ala

Supreme Court of the United States

OCTOBER TERM, 1962.

No. 308-23

B. A. REYNOLDS, AS JUDGE OF PROBATE OF DALLAS COUNTY, ALABAMA AND FRANK PEARCE, AS JUDGE OF PROBATE OF MARION COUNTY, ALABAMA,

Appellants,

versus

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., AND GEORGE PEACH TAYLOR AND OTHERS SIMILARLY SITUATED, ET AL.,

Appellees.

On Appeal from the United States District Court for the Middle District of Alabama, Northern Division.

JURISDICTIONAL STATEMENT.

THOMAS G. GAYLE,
1104½ Water Avenue,
Selma, Alabama,
JOSEPH E. WILKINSON, JR.,
310 Broad Street,
Selma, Alabama,
McLEAN PITTS,
15 Broad Street,
Selma, Alabama,
RANKIN FITE,

SUBJECT INDEX.

TABLE OF CASES CITED

STATUTES AND CONSTITUTIONAL PROVISIONS

IN THE
SUPREME COURT OF THE UNITED STATES.

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JURISDICTIONAL STATEMENT.

Appellants, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, two of the probate judges who as a class were defendants in the Court

below and against whom a decree was rendered, appeal from the judgment of the three-judge United States District Court of the Middle District of Alabama, Northern Division, entered on July 25th, 1962, adjudging and decreeing certain statutes of the State of Alabama, relating to the reapportionment of the Legislature of Alabama to be unconstitutional and void, and reapportioning the Legislature of Alabama by Judicial Decree, and in ordering and enjoining these appellants and the other defendants in said suit from taking any action that would hinder or obstruct the Court's decree in apportioning the Legislature, and appellants submit this statement to show that the Supreme Court of the United States has jurisdiction of the appeal and that a substantial question is presented.

OPINION BELOW.

The opinion of the District Court for the Middle District of Alabama, Northern Division, is not yet reported. Copies of the opinion, findings of fact, conclusions of law and all judgments of said Court entered in the cause are attached hereto as Appendix I.

JURISDICTION.

(a) This suit was brought under U. S. C. Title 42, Sections 1983, 1988 and 28 U. S. C. Section 1343 (3) and Section 2281 to have certain statutes and acts of the Legislature relating to the reapportionment of the Legislature of Alabama declared unconstitutional, and for injunctive relief. The judgment of the District Court was entered on July 25th, 1962 and notice of

appeal was filed in that Court on August 17th, 1962. The jurisdiction of the Supreme Court by direct appeal is conferred by Title 28, U. S. C., Sections 1253 and 2101; also Section 2281.

(b) The following decisions sustain the jurisdiction of the Supreme Court to review the judgment on direct appeal in this case: *Palmetto Fire Ins. Co. v. Conn.*, 272 U. S. 295, 47 S. Ct. 88; *Oklahoma Gas and Electric Co. v. Oklahoma Packing Co.*, 292 U. S. 386, 54 S. Ct. 732; *Ex parte Public National Bank*, 278 U. S. 101, 49 S. Ct. 43; *Ex parte Collins*, 277 U. S. 565, 48 S. Ct. 585.

QUESTIONS PRESENTED.

1. Ought the three-judge District Court to have exercised jurisdiction in this cause?

2. Were the appellees in this cause denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by the failure of the Legislature to reapportion itself on a strictly population basis?

3. Does the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) constitute "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States?

4. Is a "little federal system" in a state legislature constitutional, or must both the senate and house be apportioned strictly according to population?

5. Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the Legislature is to be submitted to the people of the state?

6. Is Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment", proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

7. Is the Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States?

8. Was the Court from the evidence in this cause justified in apportioning the Legislature of Alabama by Judicial Decree?

9. Was the apportionment by Judicial Decree in this cause an equitable apportionment of the Legislature of Alabama?

10. Does Article IV of the Constitution of the United States prohibit a Federal Court from asserting power and authority over a state legislature?

11. How rapidly should the Courts move to remedy Legislature malapportionments?

12. Does the Federal District Court have Constitutional power to reapportion the Legislature of Alabama by affirmative action?

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED.

The following Sections of the Alabama Constitution of 1901 prescribe the number of members of the Senate and House of Representatives of the Legislature of Alabama and method of apportioning the members of the Legislature among the Counties of the State:

> Section 50. The Legislature shall consist of not more than thirty-five Senators, and not more than one hundred and five members of the House of Representatives, to be apportioned among the several districts and counties as prescribed in this Constitution; provided that in addition to the above number of Representatives each new county hereafter created shall be entitled to one Representative.

Section 197. The whole number of Senators shall be not less than one-fourth, or more than one-third of the whole number of Representatives.

Section 198. The House of Representatives shall consist of not more than one hundred and five members unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the House of Representatives shall be apportioned by the Legislature among the several counties of the State, according to the number of inhabitants in them respectively, as ascertained by the decennial census of the United States, which apportionment when made shall not be subject to alteration until the next session of the Legislature after the next decennial census of the United States shall have been taken.

Section 199. It shall be the duty of the Legislature at its first session after the taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Representatives, and apportion them among the several counties of the state, according to the number of inhabitants in them respectively; provided, that each county shall be entitled to at least one Representative.

Section 200. It shall be the duty of the Legislature at its first session after taking the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of Senators and to divide the State into as many Senatorial districts as there are Senators, which

districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one Senator, and no more; and such districts when formed, shall not be changed until the next apportioning session of the Legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the Legislature may be attached to Senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other.

Section 201. Should any decennial census of the United States not be taken, or if when taken, the same, as to this state, be not full and satisfactory, the Legislature shall have power at its first session after the time shall have elapsed for the taking of said census, to provide for an enumeration of all the inhabitants of this State, upon which it shall be the duty of the Legislature to make the apportionment of Representatives and Senators as provided for in this article.

Section 284. . . . Representation in the Legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendment.

Sections 42 and 43 of Art. 3 of the Constitution of 1901 and Section 44 of Art. 4 read as follows:

Section 42. The powers of the government of the State of Alabama shall be divided into three distinct departments, each of which shall be confided to a separate body of magistracy, to wit:

> Those which are legislative, to one; those which are executive, to another; and those which are judicial, to another.
>
> Section 43. In the government of this state, except in the instances in this Constitution hereinafter expressly directed or permitted, the legislative department shall never exercise the executive and judicial powers, or either of them; the executive shall never exercise the legislative and judicial powers, or either of them; the judicial shall never exercise the legislative and executive powers, or either of them; to the end that it may be a government of laws and not of men.
>
> Section 44. The legislative power of this state shall be vested in a legislature, which shall consist of a senate and a house of representatives.
>
> All of the foregoing appear in Volume One of the Alabama Code of 1940.

The following statutes were declared unconstitutional in this suit:

Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment" propose an amendment to the Constitution of Alabama relating to Legislative apportionment as passed in the 1962 Special Session of the Legislature of Alabama, which reads as follows:

> An Act, proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section 1.* The following amendment to the Constitution of Alabama 1901 is pro-

posed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: *Proposed Amendment 1.* The Legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The County of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the

United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. *Section 2.* An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. *Section 3.* Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the notice shall be posted at each courthouse and post office.

Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill" passed in the 1962 Special Session of the Legislature of Alabama and approved by the Governor of the State of Alabama on July 12th, 1962 is as follows:

An Act, to fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison, fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shelby; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount

and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston. In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such district shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4, the counties of Calhoun, Etowah, Madison and Tuscaloosa 3 each, the counties of Bald-

win, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each, and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be held in November, 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

Also Sections 1 and 2 of Title 32 of the 1940 Code of Alabama which are as follows:

(1) *House of Representatives.* The house of representatives of the legislature consists of one hundred and six members, distributed among the several counties as follows; The counties of Autauga, Baldwin, Bibb, Blount, Cherokee, Chilton, Choctaw, Clay, Cleburne, Coffee, Colbert, Conecuh, Coosa, Covington, Crenshaw, Cullman, Dale, DeKalb, Escambia, Fayette, Franklin, Geneva, Greene, Houston, Lamar, Lawrence, Limestone, Macon, Marion, Marshall, Monroe, Pickens, Randolph, Shelby, St. Clair, Washington, and Winston shall each elect one representative. The counties of Barbour, Bullock, Butler, Calhoun, Chambers, Clarke, Elmore, Etowah, Hale, Henry, Jackson, Lauderdale, Lee, Lowndes, Madison, Marengo, Morgan, Perry, Pike, Russell, Sumter, Talladega, Tallapoosa, Tuscaloosa, Walker and Wilcox shall each elect two representatives. The counties of Dallas and Mobile shall each elect three repre-

sentatives. The county of Montgomery shall elect four representatives; and the county of Jefferson shall elect seven representatives.

(2) *Senatorial Districts.* The senate of the legislature shall consist of thirty-five members, and the state is divided into thirty-five senatorial districts, as follows: First, Lauderdale and Limestone; second, Lawrence and Morgan; third, Blount, Cullman and Winston; fourth, Madison; fifth, Jackson and Marshall; sixth, Etowah and St. Clair; seventh, Calhoun; eighth, Talladega; ninth, Chambers and Randolph; tenth, Tallapoosa and Elmore; eleventh, Tuscaloosa; twelfth, Fayette, Lamar and Walker; thirteenth, Jefferson; fourteenth, Pickens and Sumter; fifteenth, Autauga, Chilton and Shelby; sixteenth, Lowndes; seventeenth, Butler, Conecuh, and Covington; eighteenth, Bibb and Perry; nineteenth, Choctaw, Clarke and Washington; twentieth, Marengo; twenty-first, Baldwin, Escambia and Monroe; twenty-second, Wilcox; twenty-third, Dale and Geneva; twenty-fourth, Barbour; twenty-fifth, Coffee, Crenshaw, and Pike; twenty-sixth, Bullock and Macon; twenty-seventh, Lee and Russell; twenty-eighth, Montgomery; twenty-ninth, Cherokee and DeKalb; thirtieth, Dallas; thirty-first, Colbert, Franklin and Marion; thirty-second, Greene and Hale; thirty-third, Mobile; thirty-fourth, Clay, Cleburne and Coosa; thirty-fifth, Henry and Houston.

The following federal statutes are involved:

U.S.C., Title 42, Sections 1983, 1988 and 1343 are as follows:

"Section 1983. Civil action for deprivation of rights. Every person who, under color of any

statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured in any action at law, suit in equity or other proper proceeding for redress."

"Section 1988. Proceedings in vindication of civil rights. The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, . . ."

"Section 1343. Civil rights.

The district courts shall have original jurisdiction of any civil action authorized by law to be commenced by any person:—

(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom, or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States."

STATEMENT.

The appellees, as individuals and as voters and taxpayers of the State of Alabama, on their behalf and others similarly situated, sued Bettye Frink, as Secretary of State of the State of Alabama, the sixty-seven Probate Judges of the State, and other officials who

are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of the members of the Alabama Legislature. The suit alleged a denial of the equal protection of the law as preserved under the Fourteenth Amendment to the Constitution of the United States because of the failure of the Legislature of Alabama to reapportion legislative districts on the basis of population as provided by the State Constitution. Included among the defendants in the suit are the appellants, B. A. Reynolds as Judge of Probate of Dallas County, Alabama and Frank Pearce as Judge of Probate of Marion County, Alabama, who are charged with certain duties pertaining to the nomination and election of members of the Legislature from their respective counties.

Appellees in their said suit prayed for a declaration of rights pursuant to 28 U. S. C. Sec. 2201 and that the apportionment of the Legislature as established under Secs. 1 and 2 of Title 32 of the Alabama Code of 1940, as amended and Secs. 202 and 203 of Article 9 of the Constitution of Alabama 1901 be declared void and invalid as being contrary to the duty of the State of Alabama to reapportion the Legislature, and because of the failure to reapportion the Legislature in accordance with the present population of the state; that each of the defendants named in the complaint who had duties to perform in connection with the nomination and election of members of the Legislature be enjoined and restrained from exercising such duties until such time as the Legislature of Ala-

bama reapportions itself in accordance with the applicable provisions of the Constitution of Alabama; they further prayed that the Court should require the next primary and general elections for members of the Alabama Legislature be held on an at-large basis.

On March 29th, 1962, appellees filed a motion for preliminary injunction praying that the defendants be enjoined from failing or refusing to prepare the necessary ballots to be used in the Democratic Primary Election in May, and in the general election in November, 1962, in such a manner as would require the election of members of both the House of Representatives and the Senate of the State of Alabama on an at-large basis, and to take whatever further action was necessary to insure that all candidates for party nomination for election to the Legislature run at large throughout the State.

By its order dated March 30th, 1962, the application for interlocutory injunction was assigned for hearing on April 14th, 1962 and was thereafter continued until July 16th, 1962. In the order dated April 14th, 1962 the Court made the following remarks:

> "We remain of the same opinion that was expressed in the order setting the application for hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in

the complaint; and no ruling before the primary elections of May 1962 appears essential.

"The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a.m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

"For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in *Baker v. Carr,* No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes."

On June 28th, 1962 the appellees amended their complaint by asking in their prayer for relief that the Court enter an order provisionally reapportioning the house of representatives of Alabama and provisionally redistricting the senate of Alabama and in such order start with existing apportionment of the members of the house of representatives and existing senatorial districts, alter or consolidate some of them, and award the seats thus released to those counties suffering

discrimination. On the same day certain intervening plaintiffs amended the prayer for relief in their complaint by asking the Court to require that the members of the house of representatives of the State of Alabama be elected in the November general elections according to a plan which they submitted to the Court in their amendment.

After the Court's order of March 29th, 1962, the Governor of Alabama called a special session of the Legislature to consider reapportioning the legislature of Alabama and on July 12th, 1962 the legislature passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment", this proposed constitutional amendment being subject to ratification of the voters of Alabama in an election to be held in November, 1962. On the same date the Governor of Alabama signed into law the "Crawford-Webb Bill", which was to take effect in the event the voters of Alabama refused to ratify the proposed "67-Senator Amendment". Both of these acts provided for the reapportionment of the legislature of the state of Alabama. Some nine days later and on July 21st, 1962 the District Court filed its opinion in this case, and on July 25th, 1962, thirteen days after the passage of said reapportionment statutes by the Alabama legislature, filed its decree in this case, and declared said statutes unconstitutional and by its decree proceeded to reapportion the legislature of Alabama.

THE QUESTIONS PRESENTED ARE SUBSTANTIAL.

The suit in this case is patterned after the suit brought by voters of the state of Tennessee and decided by this Court in *Baker v. Carr,* 82 S. Ct. 691. In the Tennessee case the plaintiffs, as in this case, claimed that they were denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the disbasement of their vote. A three judge District Court dismissed the complaint and held that it lacked jurisdiction of the subject matter. On appeal in *Baker v. Carr* this Court reversed the case and held that the District Court did have jurisdiction and remanded the case for trial. Mr. Justice Brennan delivered the opinion of the Court and Mr. Justice Douglas, Mr. Justice Clark and Mr. Justice Stewart wrote concurring opinions, Mr. Justice Frankfurter and Mr. Justice Harlan Dissented.

As pointed out by Mr. Justice Stewart in his concurring opinion on p. 736:

> "The Court today decided three things and no more:
>
> "'(a) that the court possessed jurisdiction of the subject matter; (b) that a justiciable cause of action is stated upon which appellants would be entitled to appropriate relief; and (c) * * * that the appellants have standing to challenge the Tennessee apportionment statutes.' p. 699.
>
> "The complaint in this case asserts that Tennessee's system of apportionment is utterly ar-

> bitrary—without any possible justification in rationality. The District Court did not reach the merits of that claim, and this Court quite properly expresses no view on the subject. Contrary to the suggestion of my Brother HARLAN, the Court does not say or imply that 'state legislatures must be so structured as to reflect with approximate equality the voice of every voter.' p. 772. The Court does not say or imply that there is anything in the Federal Constitution 'to prevent a State, acting not irrationally, from choosing any electoral legislative structure it thinks best suited to the interests, temper, and customs of its people.' p. 773. And contrary to the suggestion of my Brother DOUGLAS, the Court most assuredly does not decide the question, 'may a State weigh the vote of one county or one district more heavily than it weighs the vote in another?' " p. 724.

The factual situation considered by the Court in *Baker v. Carr* is different from the one considered by the District Court in this case in the following respects.

Under the Tennessee Constitution, (Secs. 5 and 6) the apportionment of the house and senate was to made among the several counties or districts according to the number of qualified voters in each.

In Alabama the apportionment of the legislature is based on a population rather than a voter basis, and the number of seats in the house are limited to 106 and each one of the 67 counties of the state is entitled to at least one representative. Sections 197, 198 and

199 Alabama Constitution 1901. The apportionment of the state senate is limited to 35 senators and is divided into senatorial districts according to population and the constitution provides that "no county shall be divided into two districts, and no district shall be made up of two or more counties not contiguous to each other." Sec. 200 of the Constitution of Alabama 1901.

Unlike the Tennessee Legislature which had not acted on reapportionment since the year, 1901, the Alabama Legislature while this suit was pending in an extraordinary session called by the Governor passed two acts, one of which was Act Number 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment". This act proposed an amendment to the Constitution of Alabama relating to legislative apportionment which was to be submitted to a vote of the people and was declared by the lower Court to be an unconstitutional proposal within the meaning of the Equal Protection Provisions of the Fourteenth Amendment to the Constitution of the United States.

The other act being Act Number 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill", was likewise declared by the District Court to be an unconstitutional act within the meaning of the Equal Protection Clause of the Constitution.

Both of said acts were declared to be, "void, invalid, and ineffective to the extent that they attempt to

correct the denial of plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of Alabama." unconstitutional, in our opinion both of said acts were constitutional and valid reapportionment acts of the Legislature as we will subsequently point out in this statement.

While the Court declared both of the aforesaid acts

After declaring said acts unconstitutional, the lower Court then assumed the duties of the Legislature, mapped the political structure of the state, and apportioned the Legislature by Judicial Decree according to its own views, all of which was hurriedly done in a period of some thirteen days.

In Alabama nomination in the Democratic Primary is tantamount to election, and the District Court's Decree reapportioning the Legislature was entered subsequent to the Democratic Primary in May and prior to the General Election to be held in November, 1962.

In *Baker v. Carr,* the District Court was not called on to "re-map" the state, or to hurriedly provide relief in the face of an impending election, and in that case appellants suggested a step-by-step approach, which did not involve an assumption by the District Court of legislative duties or responsibilities. (taken from page 20 of appellant's brief in *Baker v. Carr.*)

Should the Court have declared invalid a proposed amendment to the Constitution of Alabama which by the act of the legislature was to be submitted to a vote of the people of the state?

The proposed 67-Senator Act which was to be submitted to a vote of the people of the state was framed after the Federal System of government—namely one senator in each county of the state. The District Court in its decree accepted as completely satisfactory the provisions of this act as it relates to House reapportionment by the method of equal proportion. We will therefore discuss the merit of the 67-Senator Amendment as it relates to senatorial redistricting.

It is at once essential to recognize the basic issue involved here. It relates solely to the right of a state to structure its Legislature in accordance with provisions which it considers in the best interest of the state at large.

In declaring the proposed 67-Senator Amendment invalid, the District Court concluded as a matter of law that the people of this state cannot by Constitutional amendment or by Constitutional convention alter the basic structure of its Legislature. If unit representation in the Senate is invidious *per se*, then it would be futile to resort to convention to so provide.

In at least nine states today county or town units are given equal representation in the Legislative branch regardless of the number of each unit's inhabitants.

Among fourteen states it is required that there be one Senator for each district or else limit a district to one Senator.

There are twenty states in which each county or town unit is entitled to one representative in the Lower House. See Appendix 2 hereto attached.

If the 67-Senate provision is not invidious *per se,* can it be said that it is invidious as being based on no rational policy? In this connection we would point out that there is nothing in the Federal Constitution to prevent a state acting not irrationally from choosing any electorial Legislative structure it thinks best suited to the interest, temper, and customs of its people. *McDougall v. Green,* 335 U. S. 281, in which the Court observed that to "assume that political power is a function exclusively of numbers is to disregard the practicalities of government, and reaffirmed by *South v. Peters,* 339 U. S. 276.

It may be said that it results in gross inequality but even gross inequality may be justified if based upon a permissible state policy and is not arbitrarily and capriciously applied.

If it can be determined that the 67-Senate Amendment rests upon a permissible policy the function of the Federal judiciary ends upon such determination. We refer to Appendix 4 indicating the manner in which seven counties characterized by industrialization and fifty per cent or better of their population is

represented by single or contiguous cities. It is submitted that such concentration of Legislative power into the hands of the industrial community of this state to the extent of forty-one representatives represents a potential power of control in the House of Representatives such as to prevent submission of Constitutional amendments to the people. The power thus represented when exercised as a "stranglehold" can be sufficiently disruptive and obstructive as to prevent, if not in fact control, the distribution of revenues and the removal of agricultural tax exemptions to the detriment of all the people of Alabama.

Unless the people of Alabama are permitted to structure their Legislature in a manner to provide protection from the domination of a handful of cities, then the Court has as a matter of law asserted final authority and control over matters which properly should remain for Legislative and not judicial determination.

The Supreme Court of Alabama in Opinion of Justices 61 So. 2d 881, (1955), by a divided Court, held that notwithstanding the provisions of 284 of the Constitution the people could "legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.'"

It is respectively submitted that the 67-Senator Act was a valid and constitutional act of the Legislature and should be submitted to a vote of the people.

Should the District Court have declared unconstitutional the Crawford-Webb Act of the Legislature?

With *Baker v. Carr* in mind, let us now examine the method of apportionment of the Alabama Legislature employed in this act.

It will be observed by reference to Appendix 3, hereto attached, that the House apportionment provided by the Crawford-Webb Act is the method of smallest divisors with this minor exception two seats, which would ordinarily be apportioned to Jefferson County and one seat which would ordinarily be apportioned to Mobile County, have instead been apportioned one each to Russell, Cullman and Colbert Counties.

While the method of apportionment employed in the Crawford-Webb Act is not stated in the act, nor need it have been so stated, it is nevertheless obvious. The classifications used were reasonable, logical, rational and were designed to carry out unquestioned state policy of allocating State Legislative power in a manner to prevent unwholesome concentration of power. The population classifications upon which the Crawford-Webb Act is based, are as follows:

After providing one representative to each county, as provided for in the Constitution, the balance of

thirty-nine House seats were apportioned according to population by classification:

Counties 45,000— 90,000	1 additional seat
Counties 90,000—150,000	2 additional seats
Counties 150,000—300,000	3 additional seats
Counties 300,000—600,000	5 additional seats
Counties 600,000 and over	11 additional seats

An apportionment based on the method of smallest divisors is an apportionment by known and accepted standards and even though biased in favor of small counties, such bias is consistent with and in furtherance of unquestioned state policy. This policy is clearly indicated by the separate provision of the Alabama Constitution designed to protect the small counties by the original apportionment of one to each county and by the additional provision of the Constitution limiting one county to a single Senatorial district.

Disparities in population as may appear are inherent in any and all mathematical methods of apportionment. The sole question is the degree of disparity and whether or not such disparity can be justified on the basis of state policy, and thus avoid the onus of invidiousness.

The minor deviations in the Crawford-Webb Act from an apportionment under the method of smallest divisors is justified and equitable and based upon legislative judgment concerning the best method of guaranteeing protection against concentration of political power in the Alabama Legislature.

Many states are apportioned under provisions which put definite limitations upon the number of Representatives, of Senators, as the case may be, from any one political unit. We refer the Court to the dissenting opinion of Justice Frankfurter in *Baker v. Carr,* in which a tabulation in made from the *Book of the States 1962-63* of apportionment methods previously employed throughout the United States.

What is involved in this suit is an abstract question of political power concerning the structure and organization of the Alabama Legislature. It would be utterly impossible to argue the wisdom of the state policy with respect to allocation of power without making of the Court a forum for political debate.

Test for Invidiousness.

While the United States Supreme Court may not have established guide lines in some respects, it seems to us that it did speak clearly in *Baker v. Carr* on the following points:

1. That gross population variations are not invidious *per se.*

2. That such discriminations are not invidious if they can be shown to conform to a rational state policy designed to protect the rural interests of the state from domination by other segments of the economy.

3. That to constitute "invidiousness" any discrimination based on population must equate "no policy" or else be totally irrational as to defy any

conceivable state of facts upon which to justify the discrimination.

It is respectively submitted that when the above test is applied the Crawford-Webb Act was a valid and constitutional act of the Legislature and should not have been declared unconstitutional by the District Court.

Many questions are presented in this case which were not considered by the Court in *Baker v. Carr.* More is involved here than the rights of parties litigant. The very foundation of State Government is at stake. If this decision is allowed to stand, then the State of Alabama and its sister states are not sovereign states. We believe that substantial questions of public importance are presented in this case. The questions presented are substantial. The Court should grant oral argument to the end that the judgment of the lower Court be reversed and pertinent Alabama Statutes be held constitutional and valid.

Respectfully submitted,

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I, Thomas G. Gayle, one of the attorneys for the Appellants, B. A. Reynolds, as Judge of Probate of Dallas County, Alabama, and Frank Pearce, as Judge of Probate of Marion County, Alabama, and a member of the Bar of the Supreme Court of the United States, hereby certify that on the 10 day of October, 1962, I served copies of the foregoing Jurisdictional Statement on the several Appellees thereto, by mailing copies in duly addressed envelopes, with first class postage, prepaid, to their respective attorneys of record as follows:

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APPENDIX

APPENDIX No. 1.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

CIVIL ACTION No. 1744-N.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated,

Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP,

Intervening Plaintiffs,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama,

Defendants.

Rives, Circuit Judge, and Thomas
and Johnson, District Judges.

Plaintiffs and the plaintiff-intervenors, as citizens of the United States and of the State of Alabama, and as taxpayers and duly qualified and registered voters in said State and in the Counties of Jefferson and Mobile, jointly and severally bring this action in their own behalf and in behalf of all other voters in the State of Alabama who are similarly situated. The defendant Bettye Frink is sued in her capacity as Secretary of State for the State of Alabama and as a State constitutional official, who is charged with certain duties and responsibilities concerning the election of members of the Alabama Legislature. The defendants Hammonds, Sankey and Meeks are the duly elected, qualified and acting probate judges of Lowndes, Montgomery and Jefferson Counties, respectively. They are sued in their official capacity as constitutional officers for the State of Alabama and as representatives of all the probate judges of Alabama, who are charged by law with performing and exercising certain duties and powers in connection with the nomination and election of members of the Alabama Legislature. The defendants Grenier and Mayhall are the duly elected, qualified and acting Chairmen of the Alabama State Republican Executive Committee and of the Alabama State Democratic Executive Committee, respectively. They are made defendants in their official capacity as Chairmen of the Executive Committees of said political parties, who are charged by law in the State of Alabama with performing certain

duties and functions in connection with the selection, nomination and election of members of the Alabama Legislature. The defendants Hooper and Rains are the duly elected, qualified and acting Secretaries of the Alabama State Republican Executive Committee and the Alabama State Democratic Executive Committee, respectively. Each is sued in his official capacity as an officer of the political party as indicated and is charged by the law of Alabama with performing certain functions and duties in connection with the selection, nomination and election of the Alabama legislators. The defendant MacDonald Gallion is the duly elected, qualified and acting Attorney General of the State of Alabama, who is charged by the law of the State of Alabama with performing certain duties and functions in connection with the nomination and election of members of the Alabama Legislature.

The plaintiffs[1] bring this action in their own behalf and in behalf of all registered and qualified voters similarly situated, for a declaration of their rights concerning the apportionment of representatives and senators among the counties of the State of Alabama and for such relief as may be proper to assure them, and all other voters of the State of Alabama that are similarly situated, free and equal suffrage and equal protection of the laws which plaintiffs claim have been for many years denied them by the defendants and their predecessors in office. The plaintiffs say that this Court has jurisdiction of this cause and that

[1] The term "plaintiffs" will be used throughout this opinion to include the original plaintiffs and all intervening plaintiffs.

they have a right to institute this cause under 17 Stat. at Large 13 and 16 Stat. at Large 144; 42 U. S. C. §§ 1983 and 1988, as follows:

> "§ *1983. Civil action for deprivation of rights.* Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress."
>
> * * *
>
> "§ *1988. Proceedings in vindication of civil rights.* The jurisdiction in civil and criminal matters conferred on the district courts by the provisions of this chapter and Title 18, for the protection of all persons in the United States in their civil rights, and for their vindication, ..."

The plaintiffs, as citizens of the United States and of the State of Alabama, base their claim that they are denied the equal protection of the law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes, since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself since 1900. Plaintiffs say that the failure of the Alabama Legislature to reapportion itself vio-

lates §§ 198, 199 and 200 of the Alabama Constitution of 1901.[2]

In our order of March 30, 1962, setting for hearing the application for interlocutory injunction we indicated our tentative but unanimous opinion that no injunction was required prior to the primary elections, then set for May, 1962, in order for citizens of the State represented by the plaintiffs in this case to be accorded any constitutional rights asserted in time for the exercise of such rights at the general election in November, 1962. In that order we expressed the further view that there was time for the Legislature of Alabama to comply with its duty prescribed by the Constitution of 1901 of the State of Alabama, and that no action on the part of this Court which was not absolutely essential for the protection of any constitutional rights asserted in the complaint should be taken before the Legislature of Alabama had had a further reasonable but prompt opportunity to comply with its duty. The application for interlocutory injunction was assigned for hearing for April 14, 1962.

On that date we reiterated the same views in continuing the application for interlocutory injunction and resetting it for hearing on July 16, 1962. In that order, for the guidance of counsel and for such aid as we might be, we made certain additional remarks to which we now adhere, as follows:

> "We remain of the same opinion that was expressed in the order setting the application for

[2] See Appendix "A."

hearing, viz: until the Legislature has had a further reasonable but prompt opportunity to comply with its duty under Sections 199 and 200 of the Constitution of Alabama, this Court should take no action not absolutely essential for the protection of the constitutional rights asserted in the complaint; and no ruling before the primary elections of May 1962 appears essential.

"The application for interlocutory injunction pertains to the conduct of both the primary elections of May 1962 and the general election of November 1962. That application is therefore continued and re-set for hearing at 10 o'clock a. m. on Monday, July 16, 1962. The hearing cannot be set for a much later date because, if this Court is to act effectively, some action must be taken in ample time before the general election of November 1962.

"For the guidance of counsel and for such aid as we may be in solving the troublesome but important subject of this litigation, we make the following additional remarks:

"(1) Under the opinion of the Supreme Court of the United States in *Baker v. Carr,* No. 6, October Term, 1961, decided March 26, 1962, it seems clear to us that: (a) this Court has jurisdiction of the present action; (b) the complaint as amended states a justiciable cause of action; (c) the plaintiffs have standing to challenge the Alabama apportionment statutes.

"(2) We have no disposition to discourage the introduction of evidence by any party, and in the ordinary case our opinion as to whether the plaintiffs will be entitled to appropriate relief should

await the introduction of evidence. However, we take judicial notice of the same facts which are well known to the Justices of the Supreme Court of Alabama and to the people of this State, as expressed on two different occasions in opinions of the Justices.

> " 'We judicially know that the population of the various counties of this state has changed during the years which have intervened since the Constitution of 1901 was adopted, so that the representation as provided in §§ 1 and 2 of Title 32, Code 1940, cannot be said to be on a population basis.'

"Opinion of the Justices of the Supreme Court of Alabama, No. 117, August 14, 1950, 47 So. 2d 714, 717.

> " 'We know, and the people of this State know, that our Constitution says that it *shall* be the duty of the legislature to reapportion the legislature according to population after each decennial census and that this constitutional mandate of the Constitution of 1901 has never been complied with.'

"Opinion of the Justices of the Supreme Court of Alabama, No. 143, July 11, 1955, 81 So. 2d 881, 887.

"(3) The controlling constitutional formula which runs throughout the Constitution of Alabama is thus expressed in the last sentence of Section 284 of said Constitution: 'Representation in the legislature shall be based upon population, and such basis of representation shall not be changed by constitutional amendments.' See also

Sections 198 to 201, inclusive. If that formula is met, then there can be no valid objection under the equal protection clause or any other part of the Constitution of the United States, which is, of course, the supreme law of the Land, binding alike on this Court and on the Legislature of Alabama (Article VI, Clauses 2 and 3 of the Constitution of the United States). It is necessary that any action taken by the Legislature comply with constitutional standards, and it is important that such standards be met not halfheartedly but fully, because once there has been a legislative reapportionment, unless it so completely fails to meet constitutional standards that it must be set aside by court order, it will not be subject to alteration until the next session of the Legislature after the decennial census in 1970 (Constitution of Alabama, Section 198).

"(4) In the event that the Legislature of Alabama complies with its duty before the next hearing, and this Court can so find, then no further action will be needed in this case and the case can be dismissed. If the Legislature does not act, or if its action does not meet constitutional standards, then we will be under a clear duty to take some action in time to take effect before the general election of November 1962. Such action, however, should be held to the minimum that is necessary for the citizens of Alabama to be accorded their constitutional rights.

"(5) To that end, it is fair to advise the parties of our present thinking that we would then follow the plan suggested in the concurring opinion of Mr. Justice Clark in *Baker v. Carr, supra:*

> " 'One plan might be to start with the existing assembly districts, consolidate some of them, and award the seats thus released to those counties suffering the most egregious discrimination. Other possibilities are present and might be more effective. But the plan here suggested would at least release the strangle hold now on the Assembly and permit it to redistrict itself.'
>
> "(6) While retaining jurisdiction, we could then defer further decision or action to afford the newly elected Legislature full opportunity to heed the constitutional mandate to reapportion. When that has been done the duty resting on us will be at an end and the case can be dismissed."

On July 12, 1962, an Extraordinary Session of the Legislature of Alabama passed a proposed constitutional amendment, commonly referred to as the "67-Senator Amendment,"[3] this proposed constitutional amendment being subject to the ratification of the voters of the State of Alabama in an election to be held in November, 1962. On the same date, the Governor of the State of Alabama signed into law the "Crawford-Webb Bill,"[4] as passed by the Alabama Legislature, which has been referred to as a "stand-by" legislative act to take effect in the event the voters of the State of Alabama refuse to ratify the proposed "67-Senator Amendment," or this Court refuses to accept said "67-Senator Amendment" as ef-

[3] Officially known as Senate Bill 29 and attached hereto as Appendix "B."

[4] Officially known as House Bill 59 and attached hereto as Appendix "C."

fective action that complies with federal constitutional requirements as laid down in *Baker v. Carr,* 369 U. S. 186. The final submission on the motion for interlocutory injunction was on July 16, 1962. This submission was upon the pleadings—a part of which were verified, the affidavits and exhibits thereto, the oral testimony and certain exhibits thereto, and the briefs and arguments of the parties.

It has been generally conceded throughout this litigation by all the parties that the present apportionment of both Houses of the Legislature of the State of Alabama constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment. The invidiousness of the situation is demonstrated by Appendix "D" to this opinion, this appendix listing each of the 67 counties in the State of Alabama, the population of each county in 1901 when the Legislature was last reapportioned, the present population of each county, and the representatives authorized from each county to the Alabama House of Representatives; and by Appendix "E" listing the 35 senatorial districts, the population of each district in 1900 and the population of each district in 1960—each senatorial district in Alabama being authorized one representative to the Senate.

Upon this submission, it becomes our duty: (1) to determine whether those Acts comply with constitutional standards and (2) in the event we are forced, however reluctantly, to find that they do not comply with the guaranty of the equal protection of the laws,

then to decide what remedies are available to and should be utilized by this Court.

In proceeding to the performance of that duty we would make a few preliminary comments. It is not our function or desire to criticize the present or preceding legislatures for any failure to heed the clear mandate both of the Constitution of the United States and of the Constitution of Alabama. Nor would we criticize the Alabama courts for refusing to afford relief prior to *Scholle v. Hare,* 1962, 369 U. S. 429 (see *Waid v. Pool,* 225 Ala. 441, 51 So. 2d 869), or even since that decision (see *Ex parte Rice,* .... Ala. ...., May, 1962). However, in the light of the constitutional principles announced in *Baker v. Carr, supra,* such failures on the parts of the legislative and judicial departments of the State have left the plaintiffs no alternative but to ask the federal courts to protect the constitutional rights of the citizens of Alabama.

Each of the cases which has arisen since *Baker v. Carr, supra,* has agreed that the test of compliance with the guaranty of the equal protection of the laws is whether the inequality in voting power is a result of "invidious discrimination." *Sanders v. Gray,* 203 F. Supp. 158 (April, 1962); *Toombs v. Fortson,* C. A. No. 7883, N. D. Ga., May 25, 1962; *Moss v. Burkart,* No. 9180, W. D. Okla., April 30, 1962 and June 19, 1962. In *Sanders v. Gray, supra,* Judge Bell considered the test rather fully, and arrived at the conclusion that the Supreme Court has now adopted the test urged by Mr. Justice Douglas in his dissenting opinion in *South*

v. Peters, 1950, 339 U. S. 276, 281, that there shall be no inequality in voting power by reason of invidious discrimination.[5]

Judge Bell continued to formulate a test for invidiousness on a consideration of all relevant factors such as rationality or irrationality of state policy, whether or not the system is arbitrary, whether or not the system has a historical basis in our political institutions—federal or state, the presence or absence of political remedy, and the delicate relationship between the federal and state governments under the Constitution.

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[5] In the course of that opinion the Justice had commented that, "The creation by law of favored groups of citizens and the grant to them of preferred political rights is the worst of all discriminations under a democratic system of government." 339 U. S. at 279. In like vein, Professor James E. Larson of the Bureau of Public Administration of the University of Alabama begins his recent work on "Reapportionment and the Courts" with such statements as:

"Any citizen, if asked, would in all probability admit to a sense of outrage at the suggestion that his vote be counted for less in the election of legislative representatives than the vote of any other citizen. The principle that a vote cast be counted of equal value to any other is so fundamental to our understanding of democracy as to pass unchallenged. Yet, in practice, the system of legislative representation in one American state after another shows a tenacious disregard for this rudimentary requirement of political equality."

and

"In a democracy, any action or condition which affects the right to vote is an important matter. It is puzzling, therefore, that unequal representation in the state legislature is not a subject to grip the interest and stir the emotions of the public. Aggrieved citizens no longer rise in force to march on state capitals with the complaint that lack of adequate representation is a cause of sufferings which are 'tedious and beyond the patience of a Job to endure.' Drift of taxing power to Washington, apathy, sophistication, and some cynicism about state government have made such displays out of place and in bad taste. Yet state legislatures today stand as a monumental denial of the principles to which we are committed."

This Court has reached the conclusion that neither the "67-Senator Amendment," nor the "Crawford-Webb Act" meets the necessary constitutional requirements. We find that each of the legislative acts, when considered as a whole, is so obviously discriminatory, arbitrary and irrational that it becomes unnecessary to pursue a detailed development of each of the relevant factors of the test.

While it is true that this Court is not here primarily concerned with the constitutionality of any of the proposed action of the Legislature as measured by Alabama constitutional standards and requirements, this Court is here concerned with whether or not the Alabama Legislature, in taking the action defendants now propose to this Court as "effective legislation," has complied with the constitutional standards required by the Constitution of the United States. In addition, this Court recognizes that there are State constitutional standards to be applied and failure to apply those State constitutional standards by this Court, after it has already taken jurisdiction in this case, will amount to a failure to recognize the principles laid down by the Supreme Court of the United States in *Louisville & Nashville Railroad Co. v. Garrett,* 231 U. S. 298 and followed in *Wofford Oil Co. v. Smith,* 263 F. 396.

The pertinent portion of § 284 of the Constitution of Alabama is as follows:

> ". . . Representation in the legislature shall be based upon population, and such basis of repre-

> sentation shall not be changed by constitutional amendments."

This provision in § 284 has never been considered by the courts of the State of Alabama in an adversary proceeding. This Court is informed that during the interval provided by this Court in its order of April 14, 1962, the Legislature refused to inquire of the Supreme Court of the State of Alabama whether this provision in the Constitution of the State of Alabama could be changed by constitutional amendment as the "67-Senator Amendment" proposes. This section of the Constitution of the State of Alabama has been treated, however, by several Justices of the Supreme Court of Alabama in nonadversary proceedings as follows:

(1) *In re Opinion of Justices,* No. 116, 47 So. 2d 713 (1950), where three of the present members of the Alabama Supreme Court, plus one member now deceased,[6] stated:

> "The official proceedings of the Constitutional Convention of 1901 (see Vol. 3, Official Proceedings, Constitutional Convention of 1901, pages 3906-3924) clearly disclose the purpose of the convention to withhold from the legislature the authority to propose amendments to the organic law which would effectively *change the basis of representation in the legislature.* Unquestionably, the above quoted provision of section 284, supra, withholds from the legislature the power and authority to initiate amendments to the Constitu-

[6] Justices Brown, Livingston, Lawson and Simpson.

> tion which would have the effect of changing the basis of representation in the legislature to other than a population basis."

(2) *Opinion of the Justices,* No. 148, 81 So. 2d 881, (1955), where four of the Alabama Supreme Court Justices, only two of whom are now on the Court,[7] stated:

> "Surely it is self evident that with the ultimate sovereignty residing in the people, they can legally and lawfully remove any provision from the Constitution which they previously put in or ratified, even to the extent of amending or repealing one of the sections comprising our Declaration of Rights, even though it is provided that they 'shall forever remain inviolate.' "

In the same opinion three of the Alabama Supreme Court Justices, all of whom are presently members of that Court,[8] stated:

> "The only way that the people can amend or change the last sentence of Section 284, supra, is through a constitutional convention. It cannot be done by constitutional amendment."

The manifest uncertainty of the legality of the proposed constitutional amendment, as measured by State standards and as demonstrated by the above-quoted opinions of the Justices of the Supreme Court of Alabama, forces this Court to the conclusion that the

[7] Justices Simpson, Stakely, Merrill and Mayfield.
[8] Justices Livingston, Lawson and Goodwyn.

Legislature may not have complied with the State Constitution in the passage of such an Act.

That portion of the proposed constitutional amendment providing a senator for each of the 67 counties of the State if approved by the voters would serve to make the discrimination in the Senate even more invidious than at present. Under the proposed amendment, senators elected by 20% of the State population could effectively block any proposed legislation, and senators elected by 14% of the population could prevent the submission of any future proposal to amend the Constitution of the State of Alabama. The present control of the Senate by members representing 25.1% of the people of Alabama would be reduced to control by members representing 19.4% of the people of the State. The 34 smallest counties, whose total population is less than that of Jefferson County, would have a majority of the total membership of the Senate. The only conceivable rationalization of this provision is that it is based on political units of the State and is analogous to the requirement of the Constitution of the United States that the Senate "shall be composed of two Senators from each State." Article I, Section 3, Clause 1, superseded by Amendment 17. The analogy cannot survive the most superficial examination into the history of the requirement of the Federal Constitution and the diametrically opposing history of the requirement of the Alabama Constitution that representation shall be based on population. Nor can it survive a comparison of the different political natures of states and counties. It has been

held repeatedly in Alabama that a county derives its power from the State; that a county is but a governmental agency, possessing no power and subject to no duty not originating from the law by which it is created and in which its functions are defined. The Alabama courts have said that a county is nothing more than an involuntary political or civil division of the State, created by statute to aid in the administration of government; that whatever power the county possesses, or whatever duty it is required to perform, originates solely in the statutes creating it, or in the statutes declaring its power and duty. *Askew v. Hale County,* 54 Ala. 639; *State v. Butler,* 225 Ala. 191, 142 So. 531; *Tuscaloosa County v. Alabama Great Southern R. R. Co.,* 227 Ala. 428, 150 So. 328; *Montgomery v. State,* 228 Ala. 296, 153 So. 394; *Moore v. Walker County,* 236 Ala. 688, 185 So. 175.

In a previous order we indicated our view that the controlling or dominant provision of the Alabama Constitution on the subject of representation in the Legislature was the last sentence of § 284 heretofore quoted. To some extent that thought is emphasized separately as to the House by §§ 198 and 199 and as to the Senate by § 200, but at the same time diluted by other and somewhat conflicting requirements. As to the House, it is provided that each county shall be entitled to one representative and that the total shall be not more than 105 plus the number of new counties subsequently created, so that the total membership of the House is now 106, of which 67 are distributed one to each of the 67 counties, leaving only 39 to be apportioned

among the several counties according to the number of inhabitants in each. As to the Senate, it is provided by § 197 that, "The whole number of senators shall be not less than one-fourth or more than one-third of the whole number of representatives." At present the number of senators is the maximum, 35. Section 200 provides for "as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more." It further provides that, "No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

If what we have called the controlling or dominant provision that representation shall be based upon population should be met completely in both Houses, then, without doubt, the State would accord to every person the equal protection of the laws in compliance with the Fourteenth Amendment. It is difficult to determine how far that overriding requirement of the Federal Constitution can be met and also comply with each of the more detailed requirements of the Alabama Constitution. Certainly an earnest effort must be made to meet all such requirements, and it is only in the event that proves impossible that the Supremacy Clause of the Federal Constitution would cause any irreconcilable and conflicting requirement of the State Constitution to give way. Such a result must appear necessary beyond a reasonable doubt before any of the requirements of the State Constitution can be ignored. The result is that we must approach

the task of finding a remedy for the existing invidious discrimination within the framework of each of the detailed requirements of the Alabama Constitution.

Those requirements make it obvious that in *neither* the House nor the Senate can representation be based strictly and entirely upon population. There must be differences in the values of votes from the several counties in each House of the Legislature. In *Toombs v. Fortson, supra,* that court concluded that it must apply the "invidious discrimination" test "in determining whether the plaintiffs' rights under the equal protection clause have been violated by a system of legislative representation in either or both of the chambers of the State Legislature in such manner or to such a degree as to constitute invidious discrimination as to them."

In that case the court further stated that ". . . we do not find any authoritative decision by the Supreme Court that causes us to require that in order to give the plaintiff his constitutional rights the state legislature must be constituted of two Houses, both of which are elected according to population." It conceded, however, that there was some basis for that argument in the light of *Scholle v. Hare, supra,* especially when consideration is given to Mr. Justice Douglas's dissenting opinion in *MacDougall v. Green,* 335 U. S. 281, at pages 287, 289. See also *The Maryland Committee for Fair Representation, et al. v. Tawes, Governor,* No. 13920 Equity, from the Circuit Court for Anne Arundel County, Md., filed June 28, 1962. In the present case that doubtful question is further complicated by the detailed requirements of the

Alabama Constitution which, as has been said, make it impossible for the representation in *either* House to be based strictly and entirely upon population. The result may well be that representation according to population *to some extent* must be required in *both* Houses if invidious discrimination in the legislative systems as a whole is to be avoided. Indeed, as has also been observed, it is the policy and theme of the Alabama Constitution to require representation according to population in both Houses as nearly as may be, while still complying with more detailed provisions. So long as only extremely partial representation according to population can be achieved in the House, we do not believe that the principle of representation according to population can be completely abandoned in the Senate, as would be done under the "67-Senator Amendment." The provision that the Senate shall consist of a senator from each of the 67 counties, in our opinion, in the light of the other provisions of the Alabama Constitution governing representation in the Legislature, would result in invidious discrimination and a denial of the equal protection of the laws. Compare *Brewer v. Gray*, Fla. 1956, 86 So. 2d 799. These reasons are in addition to those heretofore given in this opinion.

The proposed reapportionment of the Senate in the "Crawford-Webb Act" is a step in the right direction, but an extremely short step. It does correct a few of the most glaring discriminations by eliminating such single county senatorial districts as Lowndes with a population of 15,417, Wilcox with a population of 18,739, Barbour with a population of 24,700, and Marengo with a

population of 27,098, and puts those small counties into multiple county districts. It makes Etowah, with a population of 96,980, into a single county district. The Act embodies some other improvements on the present system of representation in the Senate. On the other hand, this piece of legislation keeps the control of the Alabama Senate in 27.6% of the people of the State of Alabama. This represents an improvement of only 2.6% over the present control of 25.1%. The vote of a citizen of the Bibb and Perry senatorial districts would be worth twenty times that of a citizen in the Jefferson senatorial district. The vote of a citizen in the 6 smallest senatorial districts would be worth fifteen or more times that of a citizen in the Jefferson senatorial district. In 22 districts, a citizen would have eight or more times as much representation as a citizen residing in the Jefferson district. Other isolated variations are: Lauderdale (population 61,622) is given one-half a senator by being placed with Limestone (population 36,513), making a district of over 98,000 people. This is opposed to Pickens (population 21,882) and Lamar (population 14,271), having one-half a senator each, with a total population of 36,153. To aggravate this, Colbert (population 46,506), Franklin (population 21,988) and Marion (population 21,837), having a total population of over 90,000, are given one-third a senator, while Henry (population 15,286), Hale (population 19,537), Bibb (population 14,357), Perry (population 17,358), Bullock (population 13,462), Lowndes (population 15,417), Marengo (population 27,098) and Sumter (population 20,041), all in the Black Belt area, are each placed in two-county senatorial districts and thereby given one-half a senator. An analysis of the "Crawford-Webb Act"

as it proposes to reapportion the Alabama Senate is attached hereto as Appendix "F." In summary as to the Senate, at best the "Crawford-Webb Act" represents a slight improvement over the present system of representation.

The "Crawford-Webb Act" as it concerns the Alabama House of Representatives is totally unacceptable. The proposed allocation of seats in the House adopts the Alabama constitutional requirement of one per county, with the remaining 39 seats allocated in a manner showing that no rational reapportionment plan was followed.[9] For instance, each representative from Jefferson County (12 total) and Mobile (6 total) must represent over 52,000 citizens. The Black Belt counties of Bullock, Lowndes, Autauga, Perry, Hale, Greene, Wilcox and Henry, all have representatives speaking for less than 20,000 citizens.

The Legislature itself must have recognized that the provisions of the "Crawford-Webb Act" for representation in the House were not fair or reasonable when it proposed in the "67-Senator Amendment" a reapportionment of the House of Representatives, based upon reason, with a rational regard for known and accepted standards of apportionment. The "67-Senator Amendment" proposes to apportion the seats in the House of Representatives according to the "Equal Proportions Method." (See footnote 9, *supra.*) It is an endeavor to equalize the

[9] See "A Survey of Methods of Reapportionment in Congress," by Edward V. Huntington, Department of Mathematics, Harvard University, Senate Document No. 304, 76th Congress, Third Session.

representation between counties in the House of Representatives of a fixed size by reducing as much as possible the percentage difference between the representation of each county. This Court accepts and adopts as a part of its order that portion of the proposed "67-Senator Amendment" that relates to the reapportionment of the Alabama House of Representatives. This action will increase the representation of 6 counties as follows: Jefferson from 7 to 17; Mobile from 3 to 8; Calhoun from 2 to 3; Etowah from 2 to 3; Madison from 2 to 3; and Tuscaloosa from 2 to 3. It will decrease the representation of 19 counties as follows: Dallas from 3 to 2; the following each from 2 to 1: Jackson, Chambers, Tallapoosa, Hale, Perry, Sumter, Marengo, Wilcox, Lowndes, Elmore, Butler, Pike, Lee, Russell, Barbour, Henry, Clarke and Bullock. It will result in apportioning the House seats (106) as follows: Jefferson—17 (population 634,864); Mobile—8 (population 314,301); Montgomery—4 (population 169,-210); Calhoun—3 (population 95,878); Etowah—3 (population 96,980); Madison—3 (population 117,348); Tuscaloosa—3 (population 109,047); Dallas, Lauderdale, Morgan, Talladega and Walker—2 each; the remaining counties—1 each.

As a permanent piece of legislation the "Crawford-Webb Act" would remain in effect not subject to alteration until the next decennial federal census. See §§ 198 and 200 of the Constitution of Alabama of 1901. The Attorney General of Alabama so argues in his brief, as follows: ". . . if the constitutional amendment is defeated, the statutory bill, if constitutionally sound, will be effective and cannot be changed before the next Federal

Census." Because any legislative reapportionment is not subject to change over such a long period, we called attention in our order of April 14, 1962 to the importance of constitutional standards being met "not halfheartedly but fully." As a piece of permanent legislation the provisions of the "Crawford-Webb Act" both as to the Senate and as to the House are totally unacceptable.

Those provisions are unacceptable for the further reason that the effective date of the Act is postponed until the general election to be held in November 1966, so as to await the approval or disapproval by the voters of the "67-Senator Amendment." Such postponement was unnecessary because, as we have already held, the portion of that proposed amendment providing a senator for each of the 67 counties, if approved by the voters, would itself be unconstitutional. No good reason is shown, therefore, why the plaintiffs and others like situated should be thus postponed in the exercise of their rights to the equal protection of the laws, nor why this Court should not now take some steps which may enable the Legislature elected in November 1962 to provide for a fair and proper reapportionment.

The changes resulting from the present order of this Court, unlike those which would result from a permanent Act of the Legislature, will be subject to change by the newly elected Legislature. As indicated in our order of April 14, such changes should be held to the minimum necessary to release the strangle hold on the Legislature and permit it to reapportion itself.

The duty to reapportion rests on the Legislature. This Court acts in the matter reluctantly because of the long-continued default and total inability of the Legislature to reapportion itself. Even under such circumstances, we think that a federal court, in the light of its delicate relationship with a state legislature, should, so far as is possible, accept such parts of the Acts of the Legislature as have any merit in framing the order of the Court. For the purpose of the order of the Court to release the strangle hold on the Legislature and permit it to reapportion itself, such parts of the Acts of the Legislature need not meet the standard of constitutionality required of a permanent Act of reapportionment.

We have no hesitancy in accepting as a part of this Court's order the provisions of the proposed "67-Senator Amendment" relating to the House of Representatives. The real difficulty comes as to the Senate. The proposed reapportionment of the Senate in the "Crawford-Webb Act," unacceptable as a piece of permanent legislation, may not even break the strangle hold. The only alternatives, however, which have been suggested or which appear to be subject to approval by the application of mathematical or judicial as distinguished from political standards, would result in very drastic reapportionment, and would probably place 9 counties having over half the population of the State in control of the Senate. Several senators would have to be allotted to Jefferson County and more than one to Mobile County and to Montgomery County. If the provisions of the State Constitution do not permit a single county to be divided into more than one senatorial district, such restriction

would have to be held in conflict with the overriding requirement of equal protection of the laws provided by the Federal Constitution. We are not yet convinced of such conflict beyond a reasonable doubt. Despite our doubts as to their sufficiency, we therefore accept, in framing our order, that part of the "Crawford-Webb Act" providing for the reapportionment of the Senate.

It is this Court's intention that the changes relating to the House of Representatives provided in the proposed "67-Senator Amendment" and those relating to the Senate provided in the "Crawford-Webb Act" should go into effect at the general election to be held in the State in November 1962, and with the Legislature as provisionally reapportioned by this Court taking office immediately after said election. It is this Court's further intention to retain jurisdiction of this case and defer any hearing on plaintiffs' motion for a final injunction until the Legislature, as provisionally reapportioned by this order, has an opportunity to provide for a true reapportionment of both Houses of the Alabama Legislature. The Court hopes that the moderate steps taken by this order may be enough to break the strangle hold. They certainly will not suffice as any permanent reapportionment. If they should prove insufficient to break the strangle hold, the Court remains under the solemn duty to relieve the plaintiffs and other citizens like situated from further denial of the equal protection of the laws. That much must be accomplished before there can be a final disposition of this case.

In order to effectuate this opinion the Court will issue an appropriate order.

Done this the 21st day of July, 1962.

(S.) RICHARD T. RIVES,
United States Circuit Judge,

(S.) DANIEL H. THOMAS,
United States District Judge,

(S.) FRANK M. JOHNSON, JR.,
United States District Judge.

APPENDIX "A".

"Sec. *198*. The house of representatives shall consist of not more than one hundred and five members, unless new counties shall be created, in which event each new county shall be entitled to one representative. The members of the house of representatives shall be apportioned by the legislature among the several counties of the state, according to the number of inhabitants in them, respectively, as ascertained by the decennial census of the United States, which apportionment, when made, shall not be subject to alteration until the next session of the legislature after the next decennial census of the United States shall have been taken."

* * *

"Sec. *199*. It shall be the duty of the legislature at its first session after the taking of the decennial census of the United States in the year nineteen

hundred and ten, and after each subsequent decennial census, to fix by law the number of representatives and apportion them among the several counties of the state, according to the number of inhabitants in them, respectively; provided, that each county shall be entitled to at least one representative."

* * *

"Sec. *200*. It shall be the duty of the legislature at its first session after taking of the decennial census of the United States in the year nineteen hundred and ten, and after each subsequent decennial census, to fix by law the number of senators, and to divide the state into as many senatorial districts as there are senators, which districts shall be as nearly equal to each other in the number of inhabitants as may be, and each shall be entitled to one senator, and no more; and such districts, when formed, shall not be changed until the next apportioning session of the legislature, after the next decennial census of the United States shall have been taken; provided, that counties created after the next preceding apportioning session of the legislature may be attached to senatorial districts. No county shall be divided between two districts, and no district shall be made up of two or more counties not contiguous to each other."

APPENDIX "B".

S. 29.

By Mr. Gaither

Enrolled, An Act, Proposing an amendment to the Constitution of Alabama relating to legislative apportionment. BE IT ENACTED BY THE LEGISLATURE OF ALABAMA: *Section 1.* The following amendment to the Constitution of Alabama 1901 is proposed and shall become valid as a part thereof when approved and proclaimed as prescribed by law: *Proposed Amendment 1.* The legislature of Alabama shall consist of a senator for each county and 106 members of the house of representatives, to be apportioned among the several counties as herein prescribed; provided, that in addition to the above number of representatives each new county hereafter created shall be entitled to at least one representative. 2. At the general election in 1966, and every four years thereafter, a senator shall be elected by the qualified electors of each county in the state. 3. At the general election in 1966, and every four years thereafter, until the house of representatives is reapportioned as herein provided, the qualified electors of each county in the state shall elect such number of representatives as may be apportioned to the county as follows: The county of Jefferson shall have and elect seventeen representatives; the county of Mobile shall have and elect eight representatives; the county of Montgomery shall have and elect four representatives; the counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the counties of Dallas, Lauderdale, Morgan, Talladega and Walker

shall each have and elect two representatives; and the remaining counties of the state shall each have and elect one representative. 4. On the first day, or within one week thereafter, of the regular session of the legislature in 1971, and every fifth regular session thereafter, the clerk of the house of representatives shall transmit to the secretary of state a statement showing the whole number of persons in each county under the most recent decennial census of the United States, and the number of representatives to which each county will be entitled under an apportionment of the then existing number of representatives by the method known as the method of equal proportions, no county to receive less than one representative. 5. In Section 284 of this Constitution as amended, strike out the last sentence thereof and insert the following sentence: Representation in the house of representatives of the legislature shall be based upon population. 6. Article IX (sections 197-203) of this Constitution is hereby expressly repealed. *Section 2.* An election upon the proposed amendment is ordered to be held on the date of the general election next succeeding the final adjournment of the current session of the Legislature. The election shall be held in accordance with the provisions of Sections 284 and 285 of the Constitution of Alabama, as amended, and Chapter 1, Article 18, Title 17 of the Code of Alabama 1940. *Section 3.* Notice of the election and of the proposed amendment shall be given by proclamation of the Governor, which proclamation shall be published once a week for four successive weeks next preceding the day appointed for the election in a newspaper in each county of the State. In every county in which no newspaper is published, a copy of the

notice shall be posted at each courthouse and post office.

(S.) ALBERT BOUTWELL,
President and Presiding Officer of the Senate.

No. 93, Received Jul. 13, 1962, Time: 2:20 P.M. Secretary of State.

(S.) VIRGIS M. ASHWORTH,
Speaker of the House of Representatives.

2-29-MS

Senate 6-20-62

I hereby certify that the within Act originated in and passed the Senate, as amended.

Senate 7-12-62

I hereby certify that the within Act originated in and passed the Senate, as amended by Conference Committee Report.

J. E. SPEIGHT,
Secretary.

House of Representatives Passed 7-10-62, as amended. Passed 7-12-62, as amended by Conference Committee Report.

By: Mr. Gaither.

APPENDIX "C".

Bevill, Shumate, Gilchrist, Hanby, Oden

H. 59.

Enrolled, An Act, To fix the number of senators and representatives in the legislature, divide the state into senatorial districts, and apportion the senators and representatives among the several districts and counties.

BE IT ENACTED BY THE LEGISLATURE OF ALABAMA:

Section 1. The senate of the legislature shall be composed of 35 senators representing 35 senatorial districts, each district to elect one senator and no more.

Section 2. The state is hereby divided into 35 senatorial districts as follows:

First, the counties of Lauderdale and Limestone; second, the counties of Lawrence and Morgan; third, the counties of Cullman and Winston; fourth, the county of Madison; fifth, the counties of Jackson and Marshall; sixth, the county of Etowah; seventh, the county of Calhoun; eighth, the county of Talladega; ninth, the counties of Randolph and Chambers; tenth, the counties of Elmore and Tallapoosa; eleventh, the county of Tuscaloosa; twelfth, the counties of Fayette and Walker; thirteenth, the county of Jefferson; fourteenth, the counties of Pickens and Lamar; fifteenth, the counties of Autauga, Chilton and Shel-

by; sixteenth, the counties of Monroe and Wilcox; seventeenth, the counties of Butler, Covington and Conecuh; eighteenth, the counties of Bibb and Perry; nineteenth, the counties of Clarke, Choctaw and Washington; twentieth, the counties of Marengo and Sumter; twenty-first, the counties of Baldwin and Escambia; twenty-second, the counties of Blount and St. Clair; twenty-third, the counties of Dale and Geneva; twenty-fourth, the counties of Barbour and Pike; twenty-fifth, the counties of Coffee and Crenshaw; twenty-sixth, the counties of Bullock and Macon; twenty-seventh, the counties of Lee and Russell; twenty-eighth, the county of Montgomery; twenty-ninth, the counties of Cherokee and DeKalb; thirtieth, the counties of Dallas and Lowndes; thirty-first, the counties of Colbert, Franklin and Marion; thirty-second, the counties of Greene and Hale; thirty-third, the county of Mobile; thirty-fourth, the counties of Coosa, Clay and Cleburne; thirty-fifth, the counties of Henry and Houston.

In districts consisting of more than one county, the senators shall not be elected for more than one term consecutively from any one county in the district, but shall reside in and be elected alternately and in turn from each of the counties within such district. The first senator to be elected in such districts shall reside in the county having the largest population, except where that county had the last preceding senator. It is provided, however, that any senator in office on the effective date of this enactment shall be eligible to succeed himself as a member of the Senate, any other provision of this paragraph to the contrary notwithstanding.

Section 3. The house of representatives of the legislature shall consist of 106 members distributed

among the several counties of the state as follows:

The county of Jefferson shall have and elect 12, the county of Mobile 6, and the county of Montgomery 4; the counties of Calhoun, Etowah, and Madison and Tuscaloosa 3 each; the counties of Baldwin, Colbert, Cullman, Dallas, Houston, Lauderdale, Lee, Marshall, Morgan, Russell, Talladega and Walker 2 each; and the remaining counties 1 each.

Section 4. This Act shall take effect for the election of senators and representatives at the general election to be held in November 1966, and shall be effective thereafter until the legislature is reapportioned according to law.

Section 5. The provisions of this Act are severable. If any part of this Act is declared invalid or unconstitutional, such declaration shall not affect the part which remains.

(S.) VIRGIS M. ASHWORTH,
Speaker of the House of Representatives,

(S.) ALBERT BOUTWELL,
President and Presiding Officer of the Senate.

Approved July 12, 1962. Time: 10:37 A.M.

(S.) JOHN PATTERSON,
Governor.

House of Representatives

July 10, 1962

I hereby certify that the within Act originated in and was passed by the House June 26, 1962 as amended.

OAKLEY MELTON, JR.,
Clerk.

Senate	7/7/62	Amended and Passed
House	7/10/62	Concurred in Senate Amendment

No. 91, Received Jul. 12, 1962, Time: 10:45 A.M., Secretary of State.

APPENDIX "D".

REPRESENTATION BY COUNTIES: (1901-1960)

		1901			1950			1960	
	County	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pe
1.	Autauga	17,915	1	17,915	18,186	1	18,186	18,739	1	
2.	Baldwin	13,194	1	13,194	40,997	1	40,997	49,088	1	
3.	Barbour	35,152	2	17,576	28,892	2	14,446	24,700	2	
4.	Bibb	18,498	1	18,498	17,987	1	17,987	14,357	1	
5.	Blount	23,119	1	23,119	28,975	1	28,975	25,449	1	
6.	Bullock	31,944	2	15,972	16,054	2	8,027	13,462	2	
7.	Butler	25,760	2	12,880	29,228	2	14,614	24,560	2	
8.	Calhoun	34,874	2	17,437	79,539	2	39,769	95,878	2	
9.	Chambers	32,554	2	16,277	39,528	2	19,764	37,828	2	
10.	Cherokee	21,096	1	21,096	17,634	1	17,634	16,303	1	
11.	Chilton	16,522	1	16,522	26,922	1	26,922	25,693	1	
12.	Choctaw	18,136	1	18,136	19,152	1	19,152	17,870	1	
13.	Clarke	27,790	2	13,895	26,548	2	13,274	25,738	2	
14.	Clay	17,099	1	17,099	13,929	1	13,929	12,400	1	
15.	Cleburne	13,206	1	13,206	11,904	1	11,904	10,911	1	
16.	Coffee	20,972	1	20,972	30,720	1	30,720	30,583	1	
17.	Colbert	22,341	1	22,341	39,561	1	39,561	46,506	1	
18.	Conecuh	17,514	1	17,514	21,766	1	21,766	17,762	1	
19.	Coosa	16,144	1	16,144	11,766	1	11,766	10,726	1	
20.	Covington	15,346	1	15,346	40,373	1	40,373	35,631	1	
21.	Crenshaw	19,668	1	19,668	18,981	1	18,981	14,909	1	
22.	Cullman	17,849	1	17,849	49,046	1	49,046	45,572	1	
23.	Dale	21,189	1	21,189	20,828	1	20,828	31,066	1	
24.	Dallas	54,657	3	18,219	56,270	3	18,757	56,667	3	
25.	DeKalb	23,558	1	23,558	45,048	1	45,048	41,417	1	
26.	Elmore	26,098	2	13,049	31,649	2	15,824	30,524	2	
27.	Escambia	11,320	1	11,320	31,443	1	31,443	33,511	1	
28.	Etowah	27,360	2	13,680	93,892	2	46,946	96,980	2	
29.	Fayette	14,132	1	14,132	19,388	1	19,388	16,148	1	
30.	Franklin	16,511	1	16,511	25,705	1	25,705	21,988	1	

APPENDIX "D"—(Continued)

REPRESENTATION BY COUNTIES: (1901-1960)

		1901			1950			1960	
	County	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's	Pop. Per Rep.	Total Pop.	No. Rep's
37.	Jefferson	140,420	7	20,060	558,179	7	79,740	634,864	7
38.	Lamar	16,084	1	16,084	16,441	1	16,441	14,271	1
39.	Lauderdale	26,548	2	13,274	54,179	2	27,089	61,622	2
40.	Lawrence	20,124	1	20,124	27,128	1	27,128	24,501	1
41.	Lee	31,826	2	15,913	45,073	2	22,536	49,754	2
42.	Limestone	22,387	1	22,387	35,766	1	35,766	36,513	1
43.	Lowndes	35,650	2	17,825	18,018	2	9,009	15,417	2
44.	Macon	23,126	1	23,126	30,561	1	30,561	26,717	1
45.	Madison	43,702	2	21,851	72,903	2	36,451	117,348	2
46.	Marengo	38,314	2	19,157	29,494	2	14,747	27,098	2
47.	Marion	14,494	1	14,494	27,264	1	27,264	21,837	1
48.	Marshall	23,289	1	23,289	45,090	1	45,090	48,018	1
49.	Mobile	62,739	3	20,913	231,105	3	77,035	314,301	3
50.	Monroe	23,666	1	23,666	25,732	1	25,732	22,372	1
51.	Montgomery	72,044	4	18,011	138,965	4	34,741	169,210	4
52.	Morgan	28,820	2	14,410	52,924	2	26,462	60,454	2
53.	Perry	31,782	2	15,891	20,439	2	10,219	17,358	2
54.	Pickens	24,402	1	24,402	24,349	1	24,349	21,882	1
55.	Pike	29,172	2	14,586	30,608	2	15,304	25,987	2
56.	Randolph	21,647	1	21,647	22,513	1	22,513	19,477	1
57.	Russell	27,082	2	13,541	40,364	2	20,182	46,351	2
58.	Shelby	23,684	1	23,684	30,362	1	30,362	32,132	1
59.	St. Clair	19,425	1	19,425	26,687	1	26,687	25,388	1
60.	Sumter	32,710	2	16,355	23,610	2	11,805	20,041	2
61.	Talladega	35,772	2	17,886	63,639	2	31,819	65,495	2
62.	Tallapoosa	29,674	2	14,837	35,074	2	17,537	35,007	2
63.	Tuscaloosa	36,146	2	18,073	94,092	2	47,046	109,047	2
64.	Walker	25,162	2	12,581	63,769	2	31,884	54,211	2
65.	Washington	11,134	1	11,134	15,612	1	15,612	15,372	1
66.	Wilcox	35,630	2	17,815	23,476	2	11,738	18,739	2
67.	Winston	9,554	1	9,554	18,250	1	18,250	14,858	1

APPENDIX "E".

SENATORIAL DISTRICTS

(one Senator per district)

District	Total Population			Counties
	1900	1950	1960	
1	48,946	89,945	98,135	Lauderdale and Limestone
2	48,944	80,052	84,955	Lawrence and Morgan
3	50,522	96,271	85,879	Blount, Cullman and Winston
4	43,702	72,903	117,348	Madison
5	53,797	84,078	84,699	Jackson and Marshall
6	52,749	120,579	122,368	Etowah and St. Clair
7	34,874	79,539	95,878	Calhoun
8	35,773	63,639	65,495	Talladega
9	54,201	62,041	57,305	Chambers and Randolph
10	55,774	66,723	65,531	Elmore and Tallapoosa
11	36,147	94,092	109,047	Tuscaloosa
12	55,378	99,598	84,630	Fayette, Lamar and Walker
13	140,420	558,179	634,864	Jefferson
14	57,112	47,959	41,923	Pickens and Sumter
15	57,121	75,470	76,564	Autauga, Chilton and Shelby
16	35,651	18,018	15,417	Lowndes
17	58,621	91,377	77,953	Butler, Conecuh and Covington
18	50,281	38,426	31,715	Bibb and Perry
19	57,060	61,312	59,180	Choctaw, Clarke and Washington
20	38,315	29,494	27,098	Marengo
21	48,180	98,172	104,971	Baldwin, Escambia and Monroe
22	35,631	23,476	18,739	Wilcox
23	40,285	46,727	53,376	Dale and Geneva
24	35,152	28,892	24,700	Barbour
25	69,812	80,309	70,479	Coffee, Crenshaw and Pike
26	55,070	46,615	40,179	Bullock and Macon
27	58,909	85,437	96,105	Lee and Russell
28	72,047	138,965	169,210	Montgomery
29	44,654	62,682	57,720	Cherokee and DeKalb
30	54,657	56,270	56,667	Dallas
31	52,346	92,530	90,331	Colbert, Franklin and Marion
32	55,193	37,314	33,137	Greene and Hale
33	62,740	231,105	314,301	Mobile
34	46,449	37,599	34,037	Clay, Cleburne and Coosa
35	36,147[1]	65,196	66,004	Henry and Houston
35	1,828,697[2]	3,061,743	3,266,740[3]	

APPENDIX "F".

SENATE DISTRICTS PROVIDED IN "CRAWFORD-WEBB ACT" SHOWING POPULATION VARIATIONS

Districts	Population	Variation[1]
(Under Represented)		
Jefferson	634,864	+ 541,529
Mobile	314,301	+ 220,966
Montgomery	169,210	+ 75,875
Madison	117,348	+ 24,013
Tuscaloosa	109,047	+ 15,712
Lauderdale Limestone	98,135	+ 4,800
Etowah*	96,980	+ 3,645
Lee Russell	96,105	+ 2,770
Calhoun	95,878	+ 2,543
(Over Represented)		
Colbert Franklin Marion	90,331	— 3,004
Lawrence Morgan	84,955	— 8,380
Jackson Marshall	84,699	— 8,636
Baldwin Escambia*	82,599	— 10,736
Butler Conecuh Covington	77,953	— 15,382
Autauga Chilton Shelby	76,564	— 16,771
Lowndes Dallas*	72,084	— 21,251
Fayette Walker*	70,359	— 22,976
Henry Houston	66,004	— 27,331
Tallapoosa Elmore	65,531	— 27,804
Talladega	65,495	— 27,840
Cullman Winston*	60,430	— 32,498
Choctaw Clarke Washington	59,180	— 34,155
Cherokee DeKalb	57,720	— 35,615
Chambers Randolph	57,305	— 36,030
Dale Geneva	53,376	— 39,959
St. Clair Blount*	50,837	— 42,496
Barbour Pike*	50,687	— 42,648
Marengo Sumter*	47,139	— 46,196
Coffee Crenshaw*	45,492	— 47,843
Wilcox Monroe*	41,111	— 52,224
Pickens Lamar*	36,153	— 56,182
Bullock Macon	40,179	— 53,156
Clay Cleburne Coosa	34,037	— 59,298
Greene Hale	33,137	— 60,198
Bibb Perry	31,715	— 61,620

[1] Variation from Perfect District of 93,335.
* New districts created by this Act.

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION.

CIVIL ACTION No. 1744-N.

M. O. SIMS, FRED A. BEAM, WYLIE JOHNSON, G. R. SOUTHARD, MILES S. LEE, PAUL FRIEDMAN, WILLIAM LINDSAY WILLIAMS, WILLIAM P. SHAW, JR., PRENTICE W. THOMAS, RICHARD D. TANNEHILL, PAUL M. BYRNE, DAVID R. BAKER, CHARLES MORGAN, JR., and GEORGE PEACH TAYLOR, for themselves jointly and severally, and for all others similarly situated,

Plaintiffs,

R. E. FARR, MARSHALL MEADOWS, JACK HOPPING, JACK RYAN, MAX W. MORGAN, DAVID J. VANN, ROBERT S. VANCE, RICHARD P. HUMPHREY, JR., JOHN W. McCONNELL, JR., JOSEPH N. LANGAN, WILLIAM M. WILLIAMS, JR., and GARET VAN ANTWERP,

Intervening Plaintiffs,

versus

BETTYE FRINK, Secretary of State of the State of Alabama; HARRELL HAMMONDS, Judge of Probate of Lowndes County, Alabama; JOHN A. SANKEY, Judge of Probate of Montgomery County, Alabama; J. PAUL MEEKS, Judge of Probate of Jefferson County, Alabama; JOHN GRENIER, Chairman of the Alabama State Republican Executive Committee; PERRY O. HOOPER, Secretary of the Alabama State Republican Executive Committee; ROY MAYHALL, Chairman of the Alabama State Democratic Executive Committee; H. G. RAINS, Secretary of the Alabama State Democratic Executive Committee; MacDONALD GALLION, Attorney General of the State of Alabama,

Defendants.

DECREE.

Pursuant to and in accordance with the opinion of this Court filed herein on July 21, 1962, and for the purpose of effectuating that opinion, it is the ORDER, JUDGMENT and DECREE of this Court:

(1) That the plaintiffs, as citizens of the United States and of the State of Alabama, are denied the equal protection of law accorded them by the Fourteenth Amendment to the Constitution of the United States by virtue of the debasement of their votes since the Legislature of the State of Alabama has failed and continues to fail to reapportion itself as required by law.

(2) That the present apportionment of both Houses of the Legislature of the State of Alabama (which apportionment is pursuant to Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama) constitutes "invidious discrimination" in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

(3) That Act No. 93, Senate Bill 29, commonly referred to as the "67-Senator Amendment," proposing an amendment to the Constitution of Alabama relating to legislative apportionment as passed in the 1962 Special Session of the Legislature for the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional proposal within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(4) That Act No. 91, House Bill 59, commonly referred to as the "Crawford-Webb Bill," passed in the 1962 Special Session of the Legislature and approved by the Governor of the State of Alabama on July 12, 1962, be and the same is hereby declared to be an unconstitutional Act within the meaning of the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States.

(5) That Act No. 93, Senate Bill 29 (commonly referred to as the "67-Senator Amendment") and Act No. 91, House Bill 59 (commonly referred to as the "Crawford-Webb Bill"), both having been passed by the 1962 Special Session of the Legislature for the State of Alabama, and each void, invalid and ineffective to the extent that they attempt to correct the denial of the plaintiffs' rights, said denial arising from the debasement of plaintiffs' votes in violation of the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States.

It is the further ORDER, JUDGMENT and DECREE of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Pro-

bate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama; Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clark County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Colbert County, Alabama; Loyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of

Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Green County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County, Alabama; R. J. Westbrook, Judge of Probate of Marengo County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama; Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama;

J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Probate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; John G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, be and each is enjoined and restrained from furnishing forms for nominations, from receiving nominations, petitions and papers, from certifying nominations, nominees, or elections, and from any other act necessary to the holding of elections, including primary elections, for members of the Alabama Legislature in districts as established by Article 9, §§ 202 and 203 of the Constitution of Alabama of 1901 and §§ 1 and 2, Title 32, Code of Alabama, except in accordance with the order and opinion of this Court filed herein on July 21, 1962 and except and in accordance with the apportionment of the Alabama Legislature as hereinafter specifically set out.

It is the further ORDER, JUDGMENT and DECREE of this Court:

(1) That the membership of the House of Representatives for the State of Alabama, effective on the day

after the general election to be held in November, 1962, be and the same is hereby apportioned as follows:

The County of Jefferson shall have and elect seventeen representatives; the County of Mobile shall have and elect eight representatives; the County of Montgomery shall have and elect four representatives; the Counties of Calhoun, Etowah, Madison and Tuscaloosa shall each have and elect three representatives; the Counties of Dallas, Lauderdale, Morgan, Talladega and Walker shall each have and elect two representatives; and the remaining counties of the State of Alabama shall each have and elect one representative.

(2) That the Senate of the State of Alabama be and the same is hereby apportioned as follows:

First District: The Counties of Lauderdale and Limestone.

Second District: The Counties of Lawrence and Morgan.

Third District: The Counties of Cullman and Winston.

Fourth District: The County of Madison.

Fifth District: The Counties of Jackson and Marshall.

Sixth District: The County of Etowah.

Seventh District: The County of Calhoun.

Eighth District: The County of Talladega.

Ninth District: The Counties of Randolph and Chambers.

Tenth District: The Counties of Elmore and Tallapoosa.

Eleventh District: The County of Tuscaloosa.

Twelfth District: The Counties of Fayette and Walker.

Thirteenth District: The County of Jefferson.

Fourteenth District: The Counties of Pickens and Lamar.

Fifteenth District: The Counties of Autauga, Chilton and Shelby.

Sixteenth District: The Counties of Monroe and Wilcox.

Seventeenth District: The Counties of Butler, Covington and Conecuh.

Eighteenth District: The Counties of Bibb and Perry.

Nineteenth District: The Counties of Clarke, Choctaw and Washington.

Twentieth District: The Counties of Marengo and Sumter.

Twenty-first District: The Counties of Baldwin and Escambia.

Twenty-second District: The Counties of Blount and Saint Clair.

Twenty-third District: The Counties of Dale and Geneva.

Twenty-fourth District: The Counties of Barbour and Pike.

Twenty-fifth District: The Counties of Coffee and Crenshaw.

Twenty-sixth District: The Counties of Bullock and Macon.

Twenty-seventh District: The Counties of Lee and Russell.

Twenty-eighth District: The County of Montgomery.

Twenty-ninth District: The Counties of Cherokee and DeKalb.

Thirtieth District: The Counties of Dallas and Lowndes.

Thirty-first District: The Counties of Colbert, Franklin and Marion.

Thirty-second District: The Counties of Greene and Hale.

Thirty-third District: The County of Mobile.

Thirty-fourth District: The Counties of Coosa, Clay and Cleburne.

Thirty-fifth District: The Counties of Henry and Houston.

(3) That the apportionment of the Alabama Legislature, both the House of Representatives and the Senate, as herein ordered and directed, shall be effective upon the filing of this decree, with the terms of office of the new legislative seats herein created to commence on the day after the general election to be held in November, 1962.

(4) That the officials heretofore elected to either the House of Representatives or the Senate for the State of Alabama from counties and/or senatorial districts that are herein altered, changed or eliminated, shall continue to serve as such elected officials until the expiration of the terms of office of said senators and representatives on the day after the general election to be held in November, 1962.

(5) That the seats—both in the House of Representatives and the Senate for the State of Alabama—that are herein ordered to be eliminated, not be refilled after the present terms of office, of said presently elected officials to said offices, expire in November, 1962.

It is the further ORDER, JUDGMENT and DECREE of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the

Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee (in those counties and districts where said political parties desire to select and nominate candidates); MacDonald Gallion, Attorney General of the State of Alabama; and each of the probate judges in the State of Alabama as hereinafter named, their agents, employees, and successors in office, be and each is hereby, separately and severally, DIRECTED and ENJOINED to select and nominate—either by primary as authorized by House Bill 130, signed into law on July 23, 1962, or by political-party committee action that may be authorized by the laws of the State of Alabama—and provide for the election in the general election to be held in November, 1962, of the members of the House of Representatives and members of the Senate for the State of Alabama as follows and not otherwise:

(1) *Autauga County:* Judge of Probate, James A. Rice, Prattville; one House member and, with Shelby and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(2) *Baldwin County:* Judge of Probate, W. R. Stuart, Bay Minette; one House member and, with Escambia County, one Senate member for the Twenty-first Senatorial District.

(3) *Barbour County:* Judge of Probate, George Edward Little, Clayton; one House member and, with Pike County, one Senate member for the Twenty-fourth Senatorial District.

(4) *Bibb County:* Judge of Probate, G. H. Stacy, Centerville; one House member and, with Perry County, one Senate member for the Eighteenth Senatorial District.

(5) *Blount County:* Judge of Probate, W. F. Maynor, Oneonta; one House member and, with Saint Clair County, one Senate member for the Twenty-second Senatorial District.

(6) *Bullock County:* Judge of Probate, Fred D. Main, Union Springs; one House member and, with Macon County, one Senate member for the Twenty-sixth Senatorial District.

(7) *Butler County:* Judge of Probate, James T. Beeland, Greenville; one House member and, with Conecuh and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(8) *Calhoun County:* Judge of Probate, G. Clyde Brittain, Anniston; three House members and one Senate member for the Seventh Senatorial District.

(9) *Chambers County:* Judge of Probate, O. D. Alsobrook, LaFayette; one House member and, with Randolph County, one Senate member for the Ninth Senatorial District.

(10) *Cherokee County:* Judge of Probate, Charles A. Formby, Centre; one House member and, with DeKalb County, one Senate member for the Twenty-ninth Senatorial District.

(11) *Chilton County:* Judge of Probate, Jerald Clark White, Clanton; one House member and, with Autauga and Shelby Counties, one Senate member for the Fifteenth Senatorial District.

(12) *Choctaw County:* Judge of Probate, Richard Edwin McPhearson, Butler; one House member and, with Clarke and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(13) *Clarke County:* Judge of Probate, W. Cecil Johnson, Grove Hill; one House member and, with Choctaw and Washington Counties, one Senate member for the Nineteenth Senatorial District.

(14) *Clay County:* Judge of Probate, G. W. Pruet, Ashland; one House member and, with Cleburne and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(15) *Cleburne County:* Judge of Probate, Thomas Jefferson Baber, Heflin; one House member and, with Clay and Coosa Counties, one Senate member for the Thirty-fourth Senatorial District.

(16) *Coffee County:* Judge of Probate, J. Oscar English, Elba; one House member and, with Crenshaw County, one Senate member for the Twenty-fifth Senatorial District.

(17) *Colbert County:* Judge of Probate, M. Gresham Hale, Tuscumbia; one House member and, with Franklin and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(18) *Conecuh County:* Judge of Probate, Loyd G. Hart, Evergreen; one House member and, with Butler and Covington Counties, one Senate member for the Seventeenth Senatorial District.

(19) *Coosa County:* Judge of Probate, Mac Thomas, Rockford; one House member and, with Clay and Cleburne Counties, one Senate member for the Thirty-fourth Senatorial District.

(20) *Covington County:* Judge of Probate, Leland G. Enzor, Andalusia; one House member and, with Butler and Conecuh Counties, one Senate member for the Seventeenth Senatorial District.

(21) *Crenshaw County:* Judge of Probate, John M. McSwean, Luverne; one House member and, with Coffee County, one Senate member for the Twenty-fifth Senatorial District.

(22) *Cullman County:* Judge of Probate, Graf Hart, Cullman; one House member and, with Winston County, one Senate member for the Third Senatorial District.

(23) *Dale County:* Judge of Probate, Kirke Adams, Ozark; one House member and, with Geneva County, one Senate member for the Twenty-third Senatorial District.

(24) *Dallas County:* Judge of Probate, Bernard A. Reynolds, Selma; two House members and, with Lowndes County, one Senate member for the Thirtieth Senatorial District.

(25) *DeKalb County:* Judge of Probate, J. Frank Croley, Fort Payne; one House member and, with Cherokee County, one Senate member for the Twenty-ninth Senatorial District.

(26) *Elmore County:* Judge of Probate, W. M. (Willie) Cousins, Wetumpka; one House member and, with Tallapoosa County, one Senate member for the Tenth Senatorial District.

(27) *Escambia County:* Judge of Probate, Reo Kirkland, Brewton; one House member and, with Baldwin County, one Senate member for the Twenty-first Senatorial District.

(28) *Etowah County:* Judge of Probate, Wiley J. Hickman, Gadsden; three House members and one Senate member for the Sixth Senatorial District.

(29) *Fayette County:* Judge of Probate, Clyde C. Cargile, Fayette; one House member and, with Walker County, one Senate member for the Twelfth Senatorial District.

(30) *Franklin County:* Judge of Probate, W. W. Weatherford, Russellville; one House member and, with Colbert and Marion Counties, one Senate member for the Thirty-first Senatorial District.

(31) *Geneva County:* Judge of Probate, R. S. Ward, Geneva; one House member and, with Dale County, one Senate member for the Twenty-third Senatorial District.

(32) *Greene County:* Judge of Probate, James Dennis Herndon, Eutaw; one House member and, with Hale County, one Senate member for the Thirty-second Senatorial District.

(33) *Hale County:* Judge of Probate, Robert K. Greene, Greensboro; one House member and, with Greene County, one Senate member for the Thirty-second Senatorial District.

(34) *Henry County:* Judge of Probate, Theodore R. Ward, Abbeville; one House member and, with Houston County, one Senate member for the Thirty-fifth Senatorial District.

(35) *Houston County:* Judge of Probate, Carl E. Sellers, Dothan; one House member and, with Henry County, one Senate member for the Thirty-fifth Senatorial District.

(36) *Jackson County:* Judge of Probate, Robert I. Gentry, Scottsboro; one House member and, with Marshall County, one Senate member for the Fifth Senatorial District.

(37) *Jefferson County:* Judge of Probate, J. Paul Meeks, Birmingham; seventeen House members and one Senate member for the Thirteenth Senatorial District.

(38) *Lamar County:* Judge of Probate, Victor C. Paul, Vernon; one House member and, with Pickens County, one Senate member for the Fourteenth Senatorial District.

(39) *Lauderdale County:* Judge of Probate, Estes R. Flynt, Florence; two House members and, with Limestone County, one Senate member for the First Senatorial District.

(40) *Lawrence County:* Judge of Probate, Isaac Johnson, Jr., Moulton; one House member and, with Morgan County, one Senate member for the Second Senatorial District.

(41) *Lee County:* Judge of Probate, Ira H. Weissinger, Opelika; one House member and, with Russell County, one Senate member for the Twenty-seventh Senatorial District.

(42) *Limestone County:* Judge of Probate, Mason Clifton Freeman, Athens; one House member and, with Lauderdale County, one Senate member for the First Senatorial District.

(43) *Lowndes County:* Judge of Probate, Harrell Hammonds, Hayneville; one House member and, with Dallas County, one Senate member for the Thirtieth Senatorial District.

(44) *Macon County:* Judge of Probate, William Varner, Tuskegee; one House member and, with Bullock County, one Senate member for the Twenty-sixth Senatorial District.

(45) *Madison County:* Judge of Probate, Ashford Todd, Huntsville; three House members and one Senate member for the Fourth Senatorial District.

(46) *Marengo County:* Judge of Probate, R. J. Westbrook, Linden; one House member and, with Sumter County, one Senate member for the Twentieth Senatorial District.

(47) *Marion County:* Judge of Probate, Frank Pearce, Hamilton; one House member and, with Colbert and Franklin Counties, one Senate member for the Thirty-first Senatorial District.

(48) *Marshall County:* Judge of Probate, Jesse Epps Corbin, Guntersville; one House member and, with Jackson County, one Senate member for the Fifth Senatorial District.

(49) *Mobile County:* Judge of Probate, Vernol R. Jansen, Mobile; eight House members and one Senate member for the Thirty-third Senatorial District.

(50) *Monroe County:* Judge of Probate, Eugene T. Millsap, Monroeville; one House member and, with Wilcox County, one Senate

member for the Sixteenth Senatorial District.

(51) *Montgomery County:* Judge of Probate, John A. Sankey, Montgomery; four House members and one Senate member for the Twenty-eighth Senatorial District.

(52) *Morgan County:* Judge of Probate, T. C. Almon, Decatur; two House members and, with Lawrence County, one Senate member for the Second Senatorial District.

(53) *Perry County:* Judge of Probate, David S. Lee, Marion; one House member and, with Bibb County, one Senate member for the Eighteenth Senatorial District.

(54) *Pickens County:* Judge of Probate, R. B. Harris, Carrollton; one House member and, with Lamar County, one Senate member for the Fourteenth Senatorial District.

(55) *Pike County:* Judge of Probate, Ben Reeves, Troy; one House member and, with Barbour County, one Senate member for the Twenty-fourth Senatorial District.

(56) *Randolph County:* Judge of Probate, Stell Benefield, Wedowee; one House member and, with Chambers County, one Senate member for the Ninth Senatorial District.

(57) *Russell County:* Judge of Probate, J. Shannon Burch, Phenix City; one House member and, with Lee County, one Senate member for the Twenty-seventh Senatorial District.

(58) *Saint Clair County:* Judge of Probate, Hoyt B. Hamilton, Ashville; one House member and, with Blount County, one Senate member for the Twenty-second Senatorial District.

(59) *Shelby County:* Judge of Probate, Conrad M. Fowler, Columbiana; one House member and, with Autauga and Chilton Counties, one Senate member for the Fifteenth Senatorial District.

(60) *Sumter County:* Judge of Probate, Wilbur Elisha Dearman, Livingston; one House member and, with Marengo County, one Senate member for the Twentieth Senatorial District.

(61) *Talladega County:* Judge of Probate, William F. Killough, Talladega; two House members and one Senate member for the Eight Senatorial District.

(62) *Tallapoosa County:* Judge of Probate, Charles C. Adams, Dadeville; one House member and, with Elmore County, one Senate member for the Tenth Senatorial District.

(63) *Tuscaloosa County:* Judge of Probate, David M. Cochrane, Tuscaloosa; three House members and one Senate member for the Eleventh Senatorial District.

(64) *Walker County:* Judge of Probate, Nelson U. Allen, Jasper; two House members and, with Fayette County, one Senate member for the Twelfth Senatorial District.

(65) *Washington County:* Judge of Probate, John G. Kimbrough, Chatom; one House member and, with Choctaw and Clarke Counties, one Senate member for the Nineteenth Senatorial District.

(66) *Wilcox County:* Judge of Probate, William Dannelly, Camden; one House member and, with Monroe County, one Senate member for the Sixteenth Senatorial District.

(67) *Winston County:* Judge of Probate, Loyd H. McDonald, Double Springs; one House member and, with Cullman County, one Senate member for the Third Senatorial District.

It is the further ORDER, JUDGMENT and DECREE of this Court that the apportionment of the Alabama Legislature as herein ordered remain in effect without change, except by order of this Court, until the Legislature of the State of Alabama reapportions itself in accordance with the equal protection provisions of the Fourteenth Amendment to the Constitution of the United States, which nothing in this decree shall prevent it from doing; such action of the Legislature, when taken, being subject to review by this Court.

It is the further ORDER, JUDGMENT and DECREE of this Court that Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican

Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; MacDonald Gallion, Attorney General of the State of Alabama; James A. Rice, Judge of Probate of Autauga County, Alabama; W. R. Stuart, Judge of Probate of Baldwin County, Alabama; George Edward Little, Judge of Probate of Barbour County, Alabama; G. H. Stacy, Judge of Probate of Bibb County, Alabama; W. F. Maynor, Judge of Probate of Blount County, Alabama; Fred D. Main, Judge of Probate of Bullock County, Alabama; James T. Beeland, Judge of Probate of Butler County, Alabama; G. Clyde Brittain, Judge of Probate of Calhoun County, Alabama; O. D. Alsobrook, Judge of Probate of Chambers County, Alabama; Charles A. Formby, Judge of Probate of Cherokee County, Alabama; Jerald Clark White, Judge of Probate of Chilton County, Alabama; Richard Edwin McPhearson, Judge of Probate of Choctaw County, Alabama; W. Cecil Johnson, Judge of Probate of Clarke County, Alabama; G. W. Pruet, Judge of Probate of Clay County, Alabama; Thomas Jefferson Baber, Judge of Probate of Cleburne County, Alabama; J. Oscar English, Judge of Probate of Coffee County, Alabama; M. Gresham Hale, Judge of Probate of Calhoun County, Alabama; Loyd G. Hart, Judge of Probate of Conecuh County, Alabama; Mac Thomas, Judge of Probate of Coosa County, Alabama; Leland G. Enzor, Judge of Probate of Covington County, Alabama; John M. McSwean, Judge of Probate of Crenshaw County, Alabama; Graf Hart, Judge of Probate of Cullman County, Alabama; Kirke Adams, Judge of Probate of Dale

County, Alabama; Bernard A. Reynolds, Judge of Probate of Dallas County, Alabama; J. Frank Croley, Judge of Probate of DeKalb County, Alabama; W. M. (Willie) Cousins, Judge of Probate of Elmore County, Alabama; Reo Kirkland, Judge of Probate of Escambia County, Alabama; Wiley J. Hickman, Judge of Probate of Etowah County, Alabama; Clyde C. Cargile, Judge of Probate of Fayette County, Alabama; W. W. Weatherford, Judge of Probate of Franklin County, Alabama; R. S. Ward, Judge of Probate of Geneva County, Alabama; James Dennis Herndon, Judge of Probate of Greene County, Alabama; Robert K. Greene, Judge of Probate of Hale County, Alabama; Theodore R. Ward, Judge of Probate of Henry County, Alabama; Carl E. Sellers, Judge of Probate of Houston County, Alabama; Robert I. Gentry, Judge of Probate of Jackson County, Alabama; J. Paul Meeks, Judge of Probate of Jefferson County, Alabama; Victor C. Paul, Judge of Probate of Lamar County, Alabama; Estes R. Flynt, Judge of Probate of Lauderdale County, Alabama; Isaac Johnson, Jr., Judge of Probate of Lawrence County, Alabama; Ira H. Weissinger, Judge of Probate of Lee County, Alabama; Mason Clifton Freeman, Judge of Probate of Limestone County, Alabama; Harrell Hammonds, Judge of Probate of Lowndes County, Alabama; William Varner, Judge of Probate of Macon County, Alabama; Ashford Todd, Judge of Probate of Madison County, Alabama; R. J. Westbrook, Judge of Probate of Marengo County, Alabama; Frank Pearce, Judge of Probate of Marion County, Alabama; Jesse Epps Corbin, Judge of Probate of Marshall County, Alabama; Vernol R. Jansen, Judge of Probate of Mobile County, Alabama;

Eugene T. Millsap, Judge of Probate of Monroe County, Alabama; John A. Sankey, Judge of Probate of Montgomery County, Alabama; T. C. Almon, Judge of Probate of Morgan County, Alabama; David S. Lee, Judge of Probate of Perry County, Alabama; R. B. Harris, Judge of Probate of Pickens County, Alabama; Ben Reeves, Judge of Probate of Pike County, Alabama; Stell Benefield, Judge of Probate of Randolph County, Alabama; J. Shannon Burch, Judge of Probate of Russell County, Alabama; Hoyt B. Hamilton, Judge of Probate of Saint Clair County, Alabama; Conrad M. Fowler, Judge of Probate of Shelby County, Alabama; Wilbur Elisha Dearman, Judge of Probate of Sumter County, Alabama; William F. Killough, Judge of Probate of Talladega County, Alabama; Charles C. Adams, Judge of Probate of Tallapoosa County, Alabama; David M. Cochrane, Judge of Probate of Tuscaloosa County, Alabama; Nelson U. Allen, Judge of Probate of Walker County, Alabama; John G. Kimbrough, Judge of Probate of Washington County, Alabama; William Dannelly, Judge of Probate of Wilcox County, Alabama; and Loyd H. McDonald, Judge of Probate of Winston County, Alabama, take the necessary and appropriate action within the time prescribed by the laws of the State of Alabama to put into effect the apportionment of the Alabama Legislature as herein ordered. Said officials and each is separately and severally enjoined and restrained from taking any action that will hinder or obstruct, or tend to hinder or obstruct the effectuation of this Court's action in apportioning the Legislature of the State of Alabama as herein set out.

It is the further ORDER, JUDGMENT and DECREE of this Court that jurisdiction of this cause be and the same is hereby retained for the purpose of issuing any and all additional orders that may become necessary or appropriate in the judgment of this Court.

It is further ORDERED that the United States Marshal for this district serve personally, or cause to be served personally, a copy of the opinion of this Court filed herein on July 21, 1962, and a copy of this order and decree, on each of the following:

Bettye Frink, Secretary of State of the State of Alabama; John Grenier, Chairman of the Alabama State Republican Executive Committee; Perry O. Hooper, Secretary of the Alabama State Republican Executive Committee; Roy Mayhall, Chairman of the Alabama State Democratic Executive Committee; H. G. Rains, Secretary of the Alabama State Democratic Executive Committee; and MacDonald Gallion, Attorney General of the State of Alabama.

It is further ORDERED that the United States Marshal for this district serve or cause to be served by certified mail a copy of the opinion of this Court entered herein on July 21, 1962, and a copy of this order and decree on the judge of probate for each county in the State of Alabama.

The costs incurred in this proceeding are hereby ORDERED to be and they are taxed against the defendants, for which execution may issue.