367 MICH 176
SCHOLLE v. SECRETARY OF STATE.
ON REMAND.

1. CONSTITUTIONAL LAW—STATE SENATORS—EQUAL PROTECTION.
Provisions of State Constitution presently setting forth districts for election of State senators *held,* invalid prospectively as a denial of equal protection of law under the Constitution of the United States for lack of a rational basis for the invidiously discriminating apportionment made (US Const, Am 14; Mich Const 1908, art 5, §§ 2, 4, as amended in 1952).
2. SAME—SENATORIAL DISTRICTS—DISPARITY OF POPULATION.
Provisions of the Constitution of Michigan relative to arrangement of senatorial districts, as such provisions stood before adoption of amendments hereby declared invalid, prohibit an arrangement of such districts which would result in some districts having more than twice the population of others, per BLACK, KAVANAGH, SOURIS, and OTIS M. SMITH, JJ., such disparity of population being also offensive to the equal protection clauses of the State and Federal Constitutions, per BLACK and KAVANAGH, JJ. (US Const, Am 14; Mich Const 1908, art 2, § 1; art 5, §§ 2, 4, as amended in 1952).
3. SAME—APPORTIONMENT OF SENATORIAL DISTRICTS.
Legislation relative to apportionment of senatorial districts in accordance with the State Constitution as it stood before adoption of amendments hereby declared invalid, as construed to prohibit any district from having more than twice the population of any other district, may properly be enacted by a legislature which includes a *de facto* senate whose existence is continued for all valid purposes for balance of current term, but not thereafter (Const 1908, art 5, §§ 2, 4, as amended in 1952).*

4. OFFICERS—DE FACTO SENATORS.
Senators in the presently constituted State senate, although elected under provisions of the State Constitution that are invalid by reason of being a denial of equal protection of laws under the Constitution of the United States, are continued for the balance of their current term, but not thereafter, as *de facto* officers for all valid purposes (US Const, Am 14; Mich Const 1908, art 5, §§ 2, 4, as amended in 1952).*
5. ELECTIONS—STATE SENATORS.
The secretary of State, as chief election officer of the State, may not presently permit the election of State senators in the absence of valid legislation or constitutional provision authorizing him to do so. *
6. OFFICERS—DE FACTO SENATE.
The acts of the senate, created under an untouched provision of the Constitution, while continuing to function after constitutional provisions apportioning the senatorial districts are declared void as a denial of equal protection of law under the Fourteenth Amendment of the Constitution of the United States, are upheld as the acts of a *de facto* body (US Const, Am 14; Mich Const 1908, art 5, § 1; §§ 2, 4, as amended in 1952).*

7. ELECTIONS—STATE SENATORS—STATUTES—COURT ORDER.
The secretary of State is ordered to apply to the Supreme Court, in the event valid legislation is not adopted for holding of primaries and election of State senators within 33-day period allowed therefor, for instructions and orders enabling him to call and conduct a special State-wide primary election of candidates 62 days hence, and conduct a State-wide election of number of senators allowed by Constitution prior to adoption of invalid amendment (Const 1908, art 5, §§ 2, 4, as amended in 1952).*

8. SAME—STATE SENATORS—JURISDICTION OF SUPREME COURT.

The Supreme Court retains jurisdiction of proceeding wherein election of State senators in conformity to provisions of State Constitution as they stood prior to adoption of invalid amendments thereto is accomplished and complete disposition of the matter is adequately provided (US Const, Am 14; Mich Const 1908, art 5, §§ 2, 4, as amended in 1952).

9. COSTS—PUBLIC QUESTION—ELECTION OF STATE SENATORS.

No costs are allowed in proceeding involving the election of State senators, a public question being involved (US Const, Am 14; Mich Const 1908, art 5, §§ 2, 4, as amended in 1952).

Original petition for mandamus by August Scholle, in his own behalf as a citizen and elector in the twelfth Michigan senatorial district, and in a representative capacity as president of the Michigan State Council, AFL-CIO, against James M. Hare, Secretary of State, to command latter in the first instance, not to issue 1960 election notices or perform acts requisite to election of State senators under the present senatorial districting, praying that amendments to article 5, §§ 2 and 4, of the Constitution be declared invalid as violative of provisions of the Constitution of the United States, praying that said sections in respect to senate apportionment or districting be declared unamended, that the Court declare that no apportionment or districting act is extant, and further praying that the writ command defendant to declare and conduct senatorial elections on an at-large basis until an apportionment or districting act can be passed, and further praying that the Court retain jurisdiction pending reapportionment.

Frank D. Beadle, senator from the thirty-fourth district, and Albert K. Blashfield, a constituent of the thirty-third senatorial district, on their motion, joined as parties defendant. John W. Cummiskey, a constituent of the sixteenth senatorial district, John W. Fitzgerald, senator from the fifteenth district, and Paul C. Younger, senator from the fourteenth district, on their motion to be joined as parties defendant, permitted to intervene.

Prior judgment of Supreme Court of Michigan (360 Mich 1) dismissing petition vacated upon appeal to supreme court of the United States.

Submitted on remand July 2, 1962. (Docket No. 63, Calendar No. 48,580.) Writ of mandamus granted July 18, 1962. Amendments to Constitution 1908, art 5, §§ 2 and 4, declared violative of Fourteenth Amendment to Constitution of the United States and therefore invalid. Reference made to governor and legislature for reapportionment under previously existing constitutional provisions, the presently constituted senate being adjudged to be a continuing *de facto* body. Jurisdiction retained pending transition. Directions given as to conduct of elections for State senators.

On July 27, 1962, an order was issued by a justice of the supreme court of the United States to stay the senatorial redistricting order of the Supreme Court of Michigan pending the timely filing of a petition for writ of certiorari and a further stay pending the final disposal of the petition. Application for certiorari filed in the supreme court of the United States October 15, 1962.

Rothe, Marston, Mazey, Sachs & O'Connell (Theodore Sachs, of counsel), for plaintiff.

Frank J. Kelley, Attorney General, and *Eugene Krasicky,* Solicitor General, for defendant, concluding certain provisions violative of Federal Constitution and suggesting remedial measures.

Edmund E. Shepherd, for intervening defendants and intervenors.

Amicus Curiae: Creighton R. Coleman, in propria persona.

ON REMAND

KAVANAGH, J. As we approach determination of the merits, following vacation by the supreme court *(Scholle v. Secretary of State,* 369 US 429 [82 S Ct 910, 8 L ed 2d 1]), of the judgment entered here June 6, 1960 (360 Mich 1), each unmanageable member of the Court faces an arrogant and amply headlined threat of impeachment "if the senate districts are declared illegal."[1] This threat should neither hasten nor slow the judicial process.[2] It does call into play Marshall's grim words (quoted in *O'Donoghue v. United States,* 289 US 516, 532 [53 S Ct 740, 77 L ed 1356]):

"The judicial department comes home in its effects to every man's fireside; it passes on his property, his reputation, his life, his all. Is it not, to the last degree important, that he (the judge) should be rendered perfectly and completely independent, with nothing to influence or control him but God and his conscience? * * * I have always thought, from my earliest youth till now, that the greatest scourge an angry Heaven ever inflicted upon an ungrateful and a sinning people, was an ignorant, a corrupt, or a dependent judiciary."

Only an ignorant, a corrupt, or a dependent judge would cringe and pause before any such formidable threat. We choose instead to consider and execute the duty which has been cast here by the supremacy clause and the oath *all* judicial officers of Michigan have taken.

If the laws of Michigan, brought now to question again, do offend the right of thousands upon thousands of Michigan citizens to federally guaranteed equal protection, and the writer did so find more than 2 years ago, then this Court, loyal to its oath, should say so now; now that jurisdiction to say so has been specifically confirmed by the United States supreme court. Failing in such regard, another biennially extended election of members of the upper house will have come and gone under patently unconstitutional law; law so invidiously discriminatory that but feeble effort is and can be made to sustain it as against the current surge of national authority which, almost daily, arrives from a steadily increasing number of the States. Indeed, the position of these intervening defendants seems only to be that a little equality goes a long way and that too much equality goes too far.

The Supreme Court of Michigan did not ask for submission of this issue and its now unavoidable determination. Some of the veterans of the legislature, along with their predecessors, failed regularly to execute the constitutional oath each had taken to redistrict and reapportion under original section 4 of the fifth article of the Michigan Constitution (1908). They and they alone are responsible for justiciable presentation and consideration of the issue before this Court. Had they faithfully and decennially executed said section 4 the powers of this Court, and those of the United States supreme court, never could have been invoked; nor would those powers now be called to action. So much for any suggestion that the courts of this country are invading without warrant the processes and powers of a separate branch of government. What the courts do is no invasion; it is no more and no less than performance of their duty to guard vigilantly government by constitutional law.

Is it not true that this Court of last resort of a State, when it is called upon to determine the merits of a duly presented and manifestly decisive Federal question, sits for the required time as an inferior court of the United States? And is it not true that, for solution of the presented question, we are obliged to hold that the Constitution of the United States is controlling where, as found here, one of its provisions stands in conflict with provisions of a State Constitution? For answer see *Testa v. Katt,* 330 US 386, 390, 391 (67 S Ct 810, 91 L ed 967, 172 ALR 225), wherein *Claflin v. Houseman,* 93 US 130 (23 L ed 833),[3] was unanimously characterized as follows:

"The opinion of a unanimous court in that case was strongly buttressed by historic references and persuasive reasoning. It repudiated the assumption that Federal laws can be considered by the States as though they were laws emanating from a foreign sovereign. Its teaching is that the Constitution and the laws passed pursuant to it are the supreme laws of the land, binding alike upon States, courts, and the people, `any thing

in the Constitution or laws of any State to the contrary notwithstanding.' It asserted that the obligation of States to enforce these Federal laws is not lessened by reason of the form in which they are cast or the remedy which they provide."

Lest someone might suggest that we are not speaking in this context of State constitutional provisions and State statutes alike, we would refer them to the rule of *Standard Computing Scale Co. v. Farrell,* 249 US 571, 577 (39 S Ct 380, 63 L ed 780):

"For the protection of the Federal Constitution applies, whatever the form in which the legislative power of the State is exerted; that is, whether it be by a constitution, an act of the legislature, or an act of any subordinate instrumentality of the State exercising delegated legislative authority, like an ordinance of a municipality or an order of a commission. *Great Northern R. Co. v. Minnesota,* 238 US 340 (35 S Ct 753, 59 L ed 1337) ; *Home Telephone & Telegraph Co. v. Los Angeles,* 227 US 278, 286–288 (33 S Ct 312, 57 L ed 510) ; *State of Washington, ex rel. Oregon Railroad & Navigation Co., v. Fairchild.* 224 US 510 (32 S Ct 535, 56 L ed 863) ; *Grand Trunk Western R. Co. v. Railroad Commission of Indiana,* 221 US 400, 403 (31 S Ct 537, 55 L ed 786)."

The decision of the supreme court, reversing our majority decision and remanding the case for further consideration in the light of *Baker v. Carr,* 369 US 186 (82 S Ct 691, 7 L ed 2d 663), was handed down April 23, 1962. Accordingly, and at the beginning of the present term, the following order for resubmission was entered (June 5, 1962):

"In this cause a motion is filed by plaintiff for summary judgment or in the alternative to advance the cause for prompt hearing, and answers thereto having been filed by defendant and by intervening defendants, and due consideration thereof having been had by the Court, it is now ordered that the case be and the same hereby is ordered submitted for rehearing on July 2, 1962 at 10 o'clock in the forenoon of that date, such rehearing to be on present appendices and briefs as filed with our clerk augmented by the United States supreme court's opinion of April 23, 1962 in this cause,[4] and by such additional briefs as counsel may be advised to file on or before the oral arguments scheduled above."

In pursuance of such order the case was fully resubmitted. No further proof or pleading was offered. Neither was request made for submission of further proofs. Thus the case is before us on a record made more than 2 years ago; a record each then member[5] of the Court must have studied with painstaking care prior to consideration and review of the exhaustive opinions which appear between pages 1 through 125 of the 360th Michigan Report. It is false, then, to say that meager time has been allotted for proper consideration of the merits of this all important case. Doubtless no case submitted to this Court in modern times is known so well to the members who would protest that our determination of the merits should be delayed the more that they may study it the more; pointedly until that determination comes too late for legislative reapportionment of the senate and senatorial elections this year; likewise too late for direly pertinent advices the presently assembled constitutional convention should receive and heed before it, as imminently provided, passes for all time into the pages of history. By Magna Carta's fortieth grant, "To none will we sell, to none will we deny, or delay, right or justice."

Now that 2 years have intervened since the decision of this Court in the case of *Scholle v. Secretary of State,* 360 Mich 1, we ask ourselves: Are there any intervening facts, judicially noticeable or otherwise, that would change the former finding that the present senatorial districts of Michigan lack a rational, reasonable, uniform, or even ascertainable nondiscriminatory legislative purpose?

None has been suggested, and we find none. A comparison of the population growth using the 1950 and 1960 Federal censuses indicates that the disparities are growing with the population increase at an average of approximately 150,000 persons per year.

The absence of any semblance of design or plan in the present senatorial districts was recently acknowledged by D. Hale Brake, a Michigan lawyer and former State treasurer from 1943 through 1954, now a constitutional convention delegate, in an article entitled, "The Old and the New Constitutions—a Compari-

son and Appraisal" dated May 16, 1962, signed by Mr. Brake, Director, Education Division, Michigan Association of Supervisors, 319 V. Lenawee, Lansing 33, Michigan, and sent to the members of the association. Mr. Brake concluded with appropriate accuracy:

"Our present senate, of course, does not follow any plan. It is simply an arbitrary freezing in of various districts."

Having duly considered the additional briefs submitted, the oral arguments made by the parties and for the reasons set forth in detail in my opinion recorded in *Scholle v. Secretary of State,* 360 Mich 1, we hold plaintiff has been and is being deprived of the equal protection of the laws within the meaning of the Fourteenth Amendment to the United States Constitution, by the provisions of article 5 of the Michigan Constitution of 1908, as amended in 1952, by which plaintiff's vote for the office of State senator is invidiously unequal to the votes cast for State senator by other citizens of the State, the classification of citizens in the senatorial districts being arbitrary, discriminatory, and without reasonable or just relation or relevance to the electoral process. Sections 2 and 4 of article 5 of the Michigan Constitution of 1908, as amended in 1952, are therefore declared a violation of the Fourteenth Amendment of the United States Constitution and are void.

We turn then to a consideration of the provisions of article 5, sections 2 and 4 of the 1908 Constitution without the 1952 amendment,[6] to test the present senate apportionment in the light of adjudicated cases of the Michigan Supreme Court and the application thereto of the Fourteenth Amendment. We find our Court in *Giddings v. Secretary of State,* 93 Mich 1 (16 LRA 402), considering a similar action by citizens to declare statutory rearranging of the senate districts unconstitutional and void, where Justice GRANT, speaking for the Court, said (p 7) :

"It was never contemplated that 1 elector should possess 2 or 3 times more influence, in the person of a representative or senator, than another elector in another district. Each, insofar as it is practicable, is, under the Constitution, possessed of equal power and influence. Equality in such matters lies at the basis of our free government. It is guaranteed, not only by the Constitution, but by the ordinance of 1787, organizing the territory out of which the State of Michigan was carved."

Justice GRANT went on to say (p 8) :

"It (the Constitution) requires the exercise on the part of the legislature of an honest and fair discretion in apportioning the districts so as to preserve, as nearly as may be, the equality of representation."

Justice MCGRATH in a concurring opinion in *Giddings* said (p 13) :

"The purpose of the constitutional enactment is to secure as nearly as possible equality of representation. Any apportionment which defeats that purpose is vicious, contrary not only to the letter of the Constitution, but to the spirit of our institutions, and subversive of popular government. Power secured or perpetuated by unconstitutional methods is power usurped, and usurpation of power is a menace to free institutions."

The Court stated its conclusions as follows (p 9):

"1. The petition is properly brought into this Court by the relator.

"2.The Court has jurisdiction in the matter.

"3. The apportionment acts of 1891 [No 175] and 1885 [No 183] are unconstitutional and void.

"4. The writ of mandamus must issue, restraining the respondent from issuing the notice of election under the act of 1891, and directing him to issue the notice under the apportionment act of 1881, unless the executive of the State shall call a special session of the legislature to make a new apportionment before the time expires for giving such notice."

Fourteen years later, in the June term of 1906, this Court again had before it similar reapportionment acts according to which certain senatorial districts had more than double the population of others. The Court again ruled in accordance with *Giddings,* that such a disparity between districts made the acts unconstitutional. See *Williams v. Secretary of State,* 145 Mich 447.

It is to be noted that Justices Douglas, Black, and Murphy, dissenting in *MacDougall v. Green,* 335 US 281, 288 (69 S Ct 1, 93 L ed 3), stated:

"None would deny that a State law giving some citizens twice the vote of other citizens in either the primary or general election would lack that equality which the Fourteenth Amendment guarantees."

We would conclude, then, under the rule of *Williams* and *Giddings* as applied by our own Court, that any law of our State giving some citizens more than twice the votes of other citizens[7] in either the primary or general election would lack constitutional equality so as to void that law. Here, then, written in *Williams* and 48 years later by dissenting justices in the *MacDougall Case,* is a maximal standard by which the legislature and the constitutional convention may receive fair guidance. When a legislative apportionment provides districts having more than double the population of others, the constitutional range of discretion is violated. This is not to say that less than such 2 to 1 ratio is constitutionally good. It is to say only that peril ends and disaster occurs when that line is crossed.

We regard Michigan as fortunate for, unlike other States, we have in the *Williams* and *Giddings Cases* judicial interpretation in applying the identical constitutional phrases to which the legislative destiny of Michigan is now returned. We hope the legislature will act promptly to fill the void, and that its prompt action will eliminate need for a State-wide at-large primary and general election of State senators.

The *Williams Case,* the doctrine of which we now affirm, marks the outermost boundary of that constitutional discretion which, in 1908, the people awarded to the legislature in the name of local as well as national equal protection. Equal protection, in the context of this case, does not mean arithmetical equality. Section 2's restriction against division of a county and the stated exception to such restriction, alone would prevent such arithmetical equality. It does mean that equality which fairly approximates, by the standards of reasonable minds exercising fair discretion, that which should have been done decennially between 1908 and 1952 and must now be done to ensure that reasonably uniform right of governmental representation which came to life by impact of the Declaration of Independence. It means, too, that when any apportionment plan provides some elective districts having more than double the population of others, that plan cannot be sustained. And so we hold in final summation that the Fourteenth Amendment and our own corresponding pledge of the protection of equal laws (art 2, § 1)[8] do require that the senatorial districts of Michigan be so arranged as to be consistent with the foregoing maximum 2-to-1 ratio.

That is enough for decision of the present case. We may add, however, that other programs creating elective districts, whether on an area versus population basis, or gerrymandered as to shape or want of contiguity, or planned for purposes of invidious discrimination or iniquitous advantage, may some day be presented to this Court for test against the national and State equality clauses, but we do not pass on them at the present time. There could be no question, however, that they would have to meet the foregoing test set forth in the *Williams* and *Giddings Cases* and in *MacDougall v. Green, supra.* Perhaps they would be required to do more, but certainly not less.

Due consideration having been given to the foregoing conclusions and findings, and the Court being fully advised, it is now and here adjudged and ordered as follows:

(1) That present sections 2 and 4 of article 5 of the Constitution of Michigan (1908), referring specifically to those sections as ratified at the general election held November 4, 1952, do as charged by plaintiff offend and therefore do fall before the equality clause of the Fourteenth Amendment of the Constitution of the United States. Said sections 2 and 4 are consequently adjudged invalid, prospectively from and after the date hereof.

(2) That no legislation exists in Michigan, effected either by statute or constitutional provision, under or

by which candidates for the office of State senator may validly be elected for the biennial term commencing January 1, 1963.

(3) That the primary election of candidates for the office of State senator, scheduled now in the hitherto constituted 34 senatorial districts of Michigan, for conduct on August 7, 1962, be and the same is restrained and enjoined by force of this Court's writ of mandamus, which writ shall issue forthwith to the defendant secretary of State. The defendant secretary, as chief election officer of the State and supervisor of all local election officers in the performance of their duties,[9] will by timely regulation and instruction do and perform such acts as will ensure State-wide observance of the restraint directed by said writ.

(4) For the purpose of ensuring validity of all legislation which, being otherwise valid, may have been enacted into statute by the legislature prior to the date of this judgment; and for the further purpose of ensuring validity of legislation and joint resolutions (for submission of any proposed constitutional amendment) as may hereafter be enacted into statute or adopted by the legislature during the remainder of the year 1962; and for the further purpose of providing means for the enactment of valid new legislation during the present legislative session, comporting with original sections 2 and 4 of said article 5, and for the further purpose of providing means by which this judgment may receive prompt performance and clue execution, it is adjudged that the presently constituted senate shall, from this date and until December 31, 1962, but not thereafter, function as a *de facto* body and that the members of the senate elected as such for the current term shall, from this date and until December 31, 1962, but not thereafter, function as *de facto* officers for all valid purposes. Reference is pertinently made to the general rule that where the law creating a public office is declared void the acts of an officer continuing to function thereunder will, until he is legally succeeded, be upheld as the acts of a *de facto* officer. See *People v. Buckley,* 302 Mich 12; *People v. Russell,* 347 Mich 193; *Greyhound Corp. v. Public Service Commission,* 360 Mich 578.[10]

(5) That the governor and legislature be advised, respectfully by the judicial department, that legislation is urgently required under and in pursuance of original sections 2 and 4 of said article 5, by which 32 senatorial districts of Michigan are arranged according to the number of inhabitants of the State as shown by the most recent United States census of Michigan, and under and in pursuance of which candidates for the office of senator in each of such newly arranged districts may be nominated and elected for the coming biennial term.

(6) In event valid legislation, recommended aforesaid, is not enacted with necessary immediate effect on or before August 20, 1962, the defendant secretary will apply forthwith to this Court for such instructions and orders as will enable him to call and conduct a special State-wide primary election of candidates for the office of State senator on September 11, 1962, and as will enable him to call and conduct a State-wide election on November 6, 1962, of the necessary number of State senators, 32 in all, for such coming biennial term.

(7) That jurisdiction of this cause be and is retained indefinitely, pending further order or orders, until the transition from invalid sections 2 and 4 of said article 5, to original sections 2 and 4 of said article 5, is fully accomplished and complete disposition of the involved subject matter is adequately provided.

If necessary, additional appropriate writs will issue by the presently seated Court for due enforcement of the foregoing judgment.

No costs, a public question being involved.

BLACK, J., concurred with KAVANAGH, J.

SOURIS, J., concurred with KAVANAGH, J.

OTIS M. SMITH, J., concurred with SOURIS, J.

CARR, C. J., and DETHMERS and KELLY, JJ., dissenting.

ADAMS, J., did not sit.

REFERENCES TO HEADNOTES

[1, 2] 18 Am Jur, Elections § 16 *et seq.*
[3, 4, 6] 43 Am Jur, Public Officers § 470 *et seq.*
49 Am Jur, State Territories and Dependencies § 34.
18 Am Jur, Elections § 16 et *seq.*
[5] 49 Am Jur, State, Territories and Dependencies §§ 34, 54.
[7, 8] 18 Am Jur, Elections §§ 99-101.
[9] 14 Am Jur, Costs § 91.
18 Am Jur, Elections § 321.

ENDNOTES

* See final paragraph of page 179 as to stay granted by a justice of the supreme court of the United States.—REPORTER.

[1] Detroit Free Press, metropolitan edition, Friday, June 29, 1962, front page article, under headline "Threaten to Impeach Top Court."

[2] Today's effort to intimidate the Court finds its historic counterpart when, in Marshall's time, a "seethingly hostile" congress "closed down the supreme court for a year." That challenge of judicial independence, and the way it was handled ultimately by the Marshall court, is chronicled in Rodell's "Nine Men," pp 85—90 (Random House, New York 1955).

[3] This passage, taken from the *Claflin Case,* exposes the rule fully (p 137):

"The fact that a State court derives its existence and functions from the State laws is no reason why it should not afford relief; because it is subject also to the laws of the United States, and is just as much bound to recognize these as operative within the State as it is to recognize the State laws. The 2 together form 1 system of jurisprudence, which constitutes the law of the land for the State; and the courts of the 2 jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent."

[4] *Scholle v. Secretary of State,* 369 US 429 (82 S Ct 910, 8 L ed 2d 1).—REPORTER.

[5] Justice OTIS M. SMITH is the only presently participating Justice not then a member of the Court.

[6] Sections 2 and 4 of article 5 of the Michigan Constitution (1908) without the 1952 amendment read as follows:

"Sec. 2. The senate shall consist of 32 members. Senators shall be elected for 2 years and by single districts. Such districts shall be numbered from 1 to 32, inclusive, each of which shall choose 1 senator. No county shall be divided in the formation of senatorial districts, unless such county shall be equitably entitled to 2 or more senators."

"Sec. 4. At the session in 1913, and each tenth year thereafter, the legislature shall by law rearrange the senatorial districts and apportion anew the representatives among the counties and districts according to the number of inhabitants, using as the basis for such apportionment the last preceding United States census of this State. Each apportionment so made, and the division of any county into representative districts by its board of supervisors, made thereunder, shall not be altered until the tenth year thereafter."

[7] Ratio of representation under present senatorial apportionment: 1950 census approximately 7 to 1; 1960 census approximately 12 to 1.

[8] "The equality of rights protected by our Constitution is the same as that preserved by the Fourteenth Amendment to the Federal Constitution. *In re Fox's Estate,* 154 Mich 5." (Quotation from

Naudzius v. Lahr, 253 Mich 216, 222 [74 ALR 1189, 30 NCCA 179] followed in *Cook Coffee Co. v. Village of Flushing,* 267 Mich 131.)

[9] Pertinent sections of the Michigan election law as amended (CLS 1956, § 168.21, and CLS 1956, § 168.31, as amended by PA 1957, No 249 [State Ann 1956 Rev § 6.1021 and Stat Ann 1961 Cum Supp § 6.1031]).

[10] That part of the opinion of the *Greyhound Case* which dealt with the status of *de facto* officers was unanimous.