SOURIS, J. *(concurring).* The facts may be found in the dissenting opinion of Mr. Justice KAVANAGH, reported at 360 Mich 1, on the occasion of our first consideration of this case. The principal issue presented for our determination then and now is whether the 1952 amendments to sections 2 and 4 of article 5 of the Constitution of 1908 offend the equality clause of the Fourteenth Amendment to the United States Constitution. By the 1952 amendments Michigan's senatorial districts were territorially described, each district to be represented by a single senator, and with no provision for subsequent rearrangement of the designated districts. Plaintiff claims that the senatorial districts thus constitutionally established in 1952 were and are unconstitutionally discriminatory against him in violation of the equality clause of the Fourteenth Amendment for the reason that the arrangement of districts was palpably irrational and arbitrary, indeed that it was deliberately designed to accomplish the discriminatory result achieved, to-wit, constitutional permanence of pre-existing grossly disproportionate senatorial representation of residents of some areas, in one of which plaintiff resides, in favor of residents of other areas.

Our prior opinions having created some confusion on appeal to the United States supreme court (see opinions on remand in *Scholle v. Secretary of State,* 369 US 429 [82 S Ct 910, 8 L ed 2d 1]), a brief summary of them may be of some value. On our first consideration of this case, only 3 of the members[13] of this Court held, in dissent, that the 1952 constitutional amendments invidiously discriminated against plaintiff and other residents of the State in violation of the equality clause and that the Court had the power and the duty to act. A fourth member of the Court agreed that there was unconstitutional discrimination, but he concluded that there was no judicial power to right that wrong. The remaining 4 Justices concluded that prior Federal cases[14] had considered similar claims of unconstitutional discrimination and rejected them, thereby compelling their holding that the senatorial district arrangement here involved was not repugnant to the Fourteenth Amendment as they conceived the United States supreme court to have construed it to that date. 360 Mich 106 and 124.[15] Five Justices of this Court having held either that the Court lacked the power to grant relief or that, under prior United States supreme court decisions, plaintiff was not entitled to relief, the petition for writ of mandamus was dismissed. Plaintiff appealed to the United States supreme court and now, on remand by mandate of supreme authority, 369 US 429 (82 S Ct 910, 8 L ed 2d 1), we again consider, but this time in the light of *Baker v. Carr,* 369 US 186 (82 S Ct 691, 7 L ed 2d 663), plaintiff's claim that the 1952 amendments violate his Federal constitutional right to equal protection of the laws.

Whatever doubts remain in the wake of the majority opinion by Mr. Justice Brennan in *Baker v. Carr* (see concurring and dissenting opinions therein and subsequent Federal and State cases[16]), it seems certain to me that it authoritatively disposed of all of the grounds articulated by our majority in previously denying this plaintiff the relief he seeks. There can be no continuing doubt that the controversy presented is justiciable and that the Federal cases read by some of my Brothers to grant constitutional immunity to inequalities of suffrage such as is here involved, do not so hold. Nor can there be any doubt, in the light of language contained not only in Mr. Justice Brennan's opinion for the majority *in Baker v. Carr* but also in other opinions filed in that case, both concurring and dissenting, that the traditional standards for determining the existence of discrimination in violation of the equality clause applicable to other claims of invidious discrimination will be applied by the supreme court in determining whether inequalities of suffrage such as plaintiff here asserts violate his rights to equal protection of the laws.

No Federal bar to relief now exists, if it ever did, assuming a majority of this Court finds, as I think we must, the existence of invidious discrimination against plaintiff. *Baker v. Carr, supra.* Nor does any State policy bar relief, for in this State the Court has been quick to strike down invidious discrimination in suffrage

cases such as this where violations of our State Constitution have been proved. *Board of Supervisors of Houghton County v. Secretary of State,* 92 Mich 638 (16 LRA 432); *Giddings v. Secretary of State,* 93 Mich 1 (16 LRA 402); and *Williams v. Secretary of State,* 145 Mich 447. We must be at least as quick when contempt for supreme law permeates any aspect of our electoral process such as has been proved convincingly to be the case here.

Too much already has been written concerning the details of the 1952 amendments and their effect upon the rights of our citizens to equality in the clambers of the State's senate. For these details, reference must be made to the earlier dissenting opinions of Mr. Justice KAVANAGH and Mr. Justice TALBOT SMITH, 360 Mich 1-84. In both opinions the "well developed and familiar"[17] judicial standards under the equality clause were applied and were found violated by the 1952 amendments. In 1960 Justices KAVANAGH and SMITH sought, but did not find, any rational basis for the arrangement of senatorial districts made by the 1952 amendments. Nor could they conceive of any recognizable basis upon which the classification could be justified. Mr. Justice SMITH put it this way:

"We have sought in vain to find some formula or formulae, even roughly approximate, competent to explain the groupings of counties and parts of counties into senatorial districts. It is impossible. The system, if such it is, defies explanation. Even the defendants in their briefs and appendices offer no more than the iteration and reiteration that this is representation by geographical area. But representation by geographical area, without more, is not enough. If it were, any gerrymander would be valid because the gerrymander always represents some geographical area, however grotesque." 360 Mich 1, at p 56.

However done, the result in 1960, based upon 1950 census figures, was grossly disproportionate representation in our State senate, the ratio of population of the smallest senatorial district to the largest being 1 to 6.5, and 2/3 of the members of the senate representing less than 1/2 the people in the State. Mr. Justice KAVANAGH concluded that the 1952 amendments were palpably arbitrary, discriminatory, and unreasonable. Mr. Justice TALBOT SMITH concluded:

"There is no recognizable unit employed in the classifications made. We have no more than an arbitrary division of the State into areas. At the best it is wholly capricious. At the worst, it is deliberate. In either event it is wholly indefensible." 360 Mich 1, at p 75.

Defendants' "iteration and reiteration that this is representation by geographical area" without specification of determinable basis therefor has given way on remand to intervenors' claim that the constitutional arrangement of senatorial districts "gives the more thinly-populated rural areas of the State a specific check upon the concentrated political power of densely-populated industrial urban centers." As a statement of result, none could quarrel with that. Based upon the 1960 census, the "specific check" of 1 thinly populated rural area upon the concentrated political power of a densely populated industrial urban center (in which plaintiff resides) is measured now by a ratio of population between the two of 1 to 12-1/2. That this is not an isolated example of disparity in senatorial representation is evident from the fact that 53% of the State's population is represented by only 10 of the 34 State senators, 29% of their number.

Whatever the result, the fact remains that neither the intervenors nor my Brothers who have written to dismiss plaintiff's petition has suggested *any* determinable basis for the classification here involved. Assuming *arguendo* the constitutional permissibility of the objective of the classification posited by the intervenors, that is not enough. There must also be some basis, rational, not arbitrary, for determining the classes; yet none has been even suggested.

The difficulty does not end at this point. In addition to a permissible objective of classification, and some rational, not arbitrary, basis therefor, I have always assumed that none would deny there were limits even then upon the discrimination between classes the equality clause would accommodate. Search as I have in

the briefs and in the opinions urging dismissal, I find not even tacit recognition of the existence of such limitation, let alone its discussion.

In short, Mr. Justice KAVANAGH and Mr. Justice TALBOT SMITH, with whom I concurred, on original decision of this case before *Baker v. Carr* and its Federal and State progeny (see footnote 14), applied the "well developed and familiar" judicial standards of the equality clause to the facts of the case and found the 1952 amendments to §§ 2 and 4 of article 5 of Michigan's Constitution invidiously discriminatory and void. But even after *Baker v. Carr* pointed the way to decision in this case on remand, briefs and opinions have been written which seem to deny the happening of judicial events since March 26, 1962. Indeed, in the teeth of the United States supreme court's remand of this case "for further consideration in the light of *Baker v. Carr"* (among the *holdings* in which is that plaintiffs' complaint stated a cause of action under the equality clause upon which they would be entitled to appropriate relief if the proofs sustain their allegations, allegations similar to those found here if the United States supreme court's statement of *Baker's Case* may he accepted as accurate),—in the teeth of such remand, 1 member of this Court begins his opinion by denial that there is presented here an equal protection of the laws problem.[18] The point is that meaningful application of the equality clause to the facts of this case requires discussion of the basis of the classification, its uniformity in application, its relevance to the objective of classification, and the limits of permissible discrimination. This the prior dissenting opinions did, and did well, even before *Baker v. Carr,* but no answers to their conclusions have yet been made or even attempted. That the standards applied in those dissents were the proper ones is clearly evident from the opinions in *Baker v. Carr.*

Mr. Justice Brennan established the standards for the majority of the court at 369 US 186, p 226:

"The question here is the consistency of State action with the Federal Constitution. * * * Nor need the appellants, in order to succeed in this action, ask the court to enter upon policy determinations for which judicially manageable standards are lacking. Judicial standards under the equal protection clause are well developed and familiar, and it has been open to courts since the enactment of the Fourteenth Amendment to determine, if on the particular facts they must, that a discrimination reflects *no* policy, but simply arbitrary and capricious action."

Mr. Justice Douglas, in his concurring opinion, at pp 244, 245, applied the "traditional test under the equal protection clause", citing *Skinner v. Oklahoma, ex rel. Williamson,* 316 US 535, 541 (62 S Ct 1110, 86 L ed 1655), and quoting from *Williamson v. Lee Optical of Oklahoma, Inc.,* 348 US 483, 489 (75 S Ct 461, 99 L ed 563), to the effect that "the prohibition of the equal protection clause goes no further than the invidious discrimination."

Mr. Justice Clark, at p 253, likewise cited *Williamson v. Lee Optical of Oklahoma, Inc., supra,* as well as *McGowan v. Maryland,* 366 US 420, 426 (81 S Ct 1101, 6 L ed 2d 393), in recognizing that all inequities of suffrage may not constitute invidious discrimination "if any state of facts reasonably may be conceived to justify it." At p 260 of his opinion, Mr. Justice Clark stated that "there is no requirement that any plan have mathematical exactness in its application. Only where, as here, the total picture reveals incommensurables of both magnitude and frequency can it be said that there is present an invidious discrimination." Later, on the next page, he pointed out that "the majority appears to hold, at least *sub silentio,* that an invidious discrimination is present, but it remands to the 3-judge court for it to make what is certain to be that formal determination."

The whole tenor of Mr. Justice Stewart's concurring opinion is based upon the applicability, to ultimate factual decision in the case of *Baker v. Carr,* of the traditional equality clause tests. See particularly his reference to *MacDougall v. Green, supra; McGowan v. Maryland, supra;* and *Metropolitan Casualty Insurance Co. v. Brownell,* 294 US 580, 584 (55 S Ct 538, 79 L ed 1070), all of which are found at pp 265, 266, of Mr. Justice Stewart's concurring opinion.

Mr. Justice Harlan's opinion, relying upon *McGowan v. Maryland, supra,* and *Williamson v. Lee Optical of Oklahoma, Inc., supra,* also recognized the applicability of the traditional equality clause test, but concluded "that the State action complained of could have rested on some rational basis", p 338.

What we have, then, from *Baker v. Carr* is confirmation that the "well developed and familiar" judicial standards under the equality clause are to be applied in cases such as this to determine the existence or nonexistence of invidious discrimination. Mr. Justice KAVANAGH'S opinion on original hearing, 360 Mich 1, beginning at p 26, refers to many Federal and State court cases applying such standards to a variety of invidious discrimination claims. It is not necessary to repeat his references here; we can, however, take the law from them. The lesson those cases teach us is that the Fourteenth Amendment requires substantial equality between citizens except where there exist differences justifying the classification of citizens, in which event there must be equality within the classes. Quoting from *Gulf, C. & S. F. R. Co. v. Ellis,* 165 US 150, 155 (17 S Ct 255, 41 L ed 666), the United States supreme court in *Hartford Steam Boiler Insurance Co. v. Harrison,* 301 US 459, 462 (57 S Ct 838, 81 L ed 1223), said:

"*Mere* difference is not enough: the attempted classification `must always rest upon some difference which bears a reasonable and just relation to the act in respect to which the classification is proposed, and can never be made arbitrarily and without any such basis.' "

As Mr. Justice TALBOT SMITH pointed out in his opinion on original hearing of this case, 360 Mich 1, at p 52, the classification must be rooted in reason, the distinctions made between classes must have "some relevance to the purpose for which the classification is made", quoting from *Walters v. City of St. Louis,* 347 US 231, 237 (74 S Ct 505, 98 L ed 660). See, also, *McGowan v. Maryland, supra,* 425.

There can be no doubt that application of these abstract principles to cases involving the electoral process will frequently present grave difficulties in their solution. There will be required close scrutiny of the object of classification into electoral districts, of the differences among our citizens based upon which their classification into electoral districts is sought to be justified, and of the relation between such asserted differences and the object of the classification.

Perhaps the most difficult problems will arise in attempting to determine what is the object of the classification and whether it is a legitimate objective within a permissible policy of the State. See *Williamson v. Lee Optical of Oklahoma, Inc.,* 348 US 483 (75 S Ct 461, 99 L ed 563). Prudence requires that we remind ourselves that we are still speaking only of the requirements of the equality clause of the Fourteenth Amendment. We are not at this point (because the facts of our case do not require it) addressing ourselves to the constitutional guarantee to every State of a republican form of government. Article 4, § 4, United States Constitution. See *Baker v. Carr* : New Light on the Constitutional Guarantee of Republican Government, Arthur Earl Bonfield, 50 Cal L Rev 245.

It seems hardly to be doubted that a State may have as a legitimate objective of classification, the effective representation of all its people in the legislative branch of government by legislators known, accessible, and responsive to their constituents' needs and that, so long as the districts in which the people are arranged have a reasonable and just relation to *that* purpose, the *minor* practical inequalities which *unavoidably* may result therefrom would not be violative of the rights guaranteed by the equality clause. No one has suggested, nor could anyone so suggest, that such was the purpose of the amendments. Even if we were to assume that was the purpose of the amendments, the wide disparity in the ratio of population between the most populous and the least populous districts (6.5 to 1 in 1952, over 12-1/2 to 1 today), a disparity neither minor nor unavoidable, would require our finding the amendments invidiously discriminatory in violation of the equality clause and, therefore, void.

As yet unresolved is the question whether a State may, as a matter of State policy, have as its objective in

classifying its people into electoral districts, the dilution of the voting strength of some in favor of others. That, it would seem from the public controversy which followed announcement of the decision in *Baker v. Carr,* is the significant question. And that was precisely the objective of the 1952 amendments to our Constitution, an objective not difficult to perceive. See Mr. Justice KAVANAGH'S opinion at 360 Mich 1, 40, and Mr. Justice TALBOT SMITH'S at 360 Mich 1, 57. Whether or not the objective was permissible, a decision which need not be reached here although it is assumed to be permissible in the current opinions for dismissal, the arrangement of the districts was made without any discernible or conceivable basis, let alone upon any rational basis, and for that reason cannot withstand plaintiffs constitutional attack.

Beyond the objective of affording to citizens effective representation in the legislature, it is difficult for me to conceive of any other legitimate State purpose for classification of citizens in their participation in the electoral process, a process inherently the equal right of each individual citizen. Perhaps there are such other legitimate objectives of classification which would constitutionally justify State denial of the citizen's right to a free and undiluted ballot, but if there are such, none has been suggested nor can any be imagined by me which would save the 1952 amendments from constitutional invalidity.

I agree with Mr. Justice KAVANAGH'S conclusion that today's declaration of invalidity of the 1952 amendments reinstates sections 2 and 4 of article 5 of the Constitution of 1908 as they existed prior to their attempted amendment. I also agree that the present senatorial districts cannot be sustained under the reinstated constitutional sections for the reason that their gross population disparities violate the reinstated requirement that they be arranged in accordance with population, as that requirement has been construed in *Giddings v. Secretary of State, supra,* and *Williams v. Secretary of State, supra.*

This brings me to the matter of relief. Mr. Justice KAVANAGH'S proposed judgment contemplates that the presently constituted senate may continue to function during the balance of the terms of its members, notwithstanding our declaration of invalidity of the constitutional provisions which arranged the districts within which its members were elected, on the theory that until succeeded by legally elected senators the present incumbents shall be entitled to serve as *de facto* officers. He also contemplates that the incumbent senators properly may participate in the enactment of laws by means of which the judgment of this Court may be effectuated, in other words, that the senate districts be rearranged in accordance with the provisions of reinstated sections 2 and 4 of article 5 of the Constitution of 1908 and means provided for the nomination and election of senators therefrom for the ensuing legislative term.

The Chief Justice, relying upon *Norton v. Shelby County,* 118 US 425 (6 S Ct 1121, 30 L ed 178), and citing *Carleton v. People,* 10 Mich 250; *People v. Payment,* 109 Mich 553; and *Kidd v. McCanless,* 200 Tenn 273 (292 SW2d 40), asserts that by our ruling that the 1952 amendments are void, "the senatorial districts created thereby become nonexistent" and, consequently, he concludes that the incumbents cannot act as *de facto* officers in the absence of *de jure* offices. Presumably, it would follow from his conclusion, there being no *de jure* nor *de facto* State senators following our judgment today, either that the full legislative power of the State resides exclusively in the house of representatives which may alone legally enact the necessary laws to effectuate the Court's judgment, or that the whole legislative process is suspended for lack of a validly existing senate. The prospect of an unicameral legislature, even for only the time it may take to establish new senatorial seats pursuant to the Constitution, presents a heady temptation for judicial experimentation. The other prospect, which one of my Brothers earlier[19] characterized as an "argument *in terrorem*", is not a practical possibility so long as this Court exercises responsibly its authority. I know of no constitutionally responsible court in the land which ever has, or would, countenance such a chaotic result,—and, certainly, there is no compelling reason for us to lead the way.

The *de facto* doctrine is another of our legal fictions by which the law manages somehow to preserve orderly governmental procedures when by some legal defect invalidating one's title to public office, his otherwise valid acts will be upheld by the courts. Otherwise, all who have business to

transact with public officials would be compelled to ascertain their status as *de jure* officials at pain of invalidity of acts done under color of title to office. The doctrine has a salutary effect, thus broadly stated, but its obvious beneficial effect has been limited by some courts which have said that the doctrine does not apply where there is no *de jure* office. *Norton v. Shelby County, supra,* relied upon by the Chief Justice, is such a case but, like others so limiting the doctrine, it involved a situation where an office was attempted to be created, by act subsequently declared invalid, to perform duties constitutionally delegated to another office. Limitation of the doctrine in such cases settles what is fundamentally a dispute between 2 contenders for public power—one a *de jure* and the other a *de facto* officer. In the absence of such conflict, where the only question is whether validity is to be given to the acts of a *de facto* officer whose office is found to have been illegally created, there appears to be no reason in logic or law to so restrict or otherwise limit application of the legally convenient *de facto* doctrine.

In *Norton,* the officers whose rights to office were being challenged were asserting powers constitutionally delegated to the justices of the peace of the county. There were *de jure* officers performing such duties whereas here there is no such conflict between warring contestants for public office. The factual distinction, in my view, is significant. In *Norton,* failure to find the usurpers to be *de facto* officers did not result in a failure of performance of any governmental office, let alone the legislative branch of government, as is the case here.

In the case now before us, it is not correct to say that the 1952 amendments which we here declare invalid created the senate, or the office of State senator, nor does the Chief Justice so say. He refers to the amendments as having created the senatorial districts and in this he is right. This distinction also is important in considering whether the refusal to apply the *de facto* doctrine in the *Norton* case has any applicability to our facts. Section 1 of article 5 of the Constitution of 1908, concerning the validity of which no challenge has been made, vests the legislative power of the State in a senate and house of representatives, subject to a reservation of some of such power to the people themselves. *That* is the valid constitutional provision which creates the senate, membership in which the incumbent senators claim to possess and the powers of which have been asserted continuously since 1953 under color of what was a presumptively valid constitutional arrangement of districts. I think no more is required to invoke the *de facto* doctrine to uphold the prior actions of the State senate and to afford it sufficient continuing status, at least until December 31, 1962, to preserve orderly government in this State and to provide a means by which the legislative branch of government can be organized next year as is required by our Constitution.

Lest it be thought what is here said is a novel departure from the law, reference should be made to the opinions in *Carleton v. People,* 10 Mich 250, cited by the Chief Justice as has been noted above. There, county officers were recognized as officers *de facto* who had been elected to fill offices which had not yet been legally created, the act creating such offices having been passed by the legislature without giving it immediate effect so as to become law before the election. In *Attorney General, ex rel. Dingeman, v. Lacy,* 180 Mich 329, the acts of a domestic relation's court judge of Wayne county were upheld by a unanimous court as the acts of a *de facto* officer after the legislative act creating the court was declared unconstitutional, the circuit court having been granted by the Constitution the jurisdiction attempted to be granted by the legislature to its newly created domestic relations court. Reference should also be made to the cases cited in 43 Am Jur, Public Officers, § 475, from which it appears that *Norton v. Shelby County, supra,* is not by any means universally followed by the various State courts. I see absolutely no reason in logic to follow it in this case, nor does our law, legislative or common, require that we do so.

The problem with which we deal is too complex for simple solution. I have tried in this opinion to suggest some of the factors which may be judicially considered in determining compliance in such

matters with the guarantees of equal protection provided by our own article 2 as well as the Fourteenth Amendment. Because the judicial problem is new, we must draw upon analogous situations in which such guarantees of equality have been applied. This can be, by the nature and magnitude of the problem, no more than a first effort at understanding it and recognizing its outer boundaries.

For reasons stated above, I join in Mr. Justice KAVANAGH'S disposition of this case.

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

ENDNOTES

[13]Two of the 8 Justices who participated in the first hearing of this case no longer are members of this Bench. One of them, Mr. Justice EDWARDS, wrote the controlling opinion and the other, Mr. Justice TALBOT SMITH, wrote one of the dissenting opinions

[14] *Colegrove v. Green,* 328 US 549 (66 S Ct 1198, 90 L ed 1432); *Cook v. Fortson,* 329 US 675 (67 S Ct 21, 91 L ed 596); *MacDougall v. Green,* 335 US 281 (69 S Ct 1, 93 L ed 3); *South v. Peters,* 339 US 276 (70 S Ct 641, 94 L ed 834) ; *Remmey v. Smith,* 342 US 916 (72 S Ct 368, 96 L ed 685); *Anderson v. Jordan,* 343 US 912 (72 S Ct 648, 96 L ed 1328) ; *Kidd v. McCanless,* 352 US 920 (77 S Ct 223, 1 L ed 2d 157); *Radford v. Gary* (WD Okla), 145 F Supp 541, affirmed 352 US 991 (77 S Ct 559, 1 L ed 2d 540); *Hartsfield v. Sloan,* 357 US 916 (78 S Ct 1363, 2 L ed 2d 1363); *Matthews v. Handley* (ND Ind), 179 F Supp 470, affirmed 361 US 127 (80 S Ct 256, 4 L ed 2d 180).

[15] If there be confusion in Washington concerning our prior opinions, candor compels our admission that it exists as well in Lansing. Our Chief Justice says today that the prior controlling opinion, with which he specially concurred, held only that the Court lacked jurisdiction and the issue raised was not justiciable. See pp 196, 197, *supra.* Mr. Justice Harlan read that opinion as I do, saying that it "did not so much as mention questions pertaining to the `jurisdiction' of the court, the `standing' of the appellant, or the `justiciability' of his claim." *Scholle v. Secretary of State,* 369 US 429, 432. He concluded, as do I, that the controlling opinion, and those who concurred in it, decided against plaintiff on the merits in accordance with their then current views of the United States supreme court's prior construction of the Fourteenth Amendment.

[16] *Caesar v. Williams* (April 3, 1962), 84 Idaho — (371 P2d 241); *Sims v. Frink* (DC Ala, April 14, 1962), 205 F Supp 245: *Scholle v. Secretary of State* (April 23, 1962), 369 US 429 (82 S Ct 910, 8 L ed 2d 1); *Maryland Commission v. Tawes* (April 25, 1962), 228 Md 412 (180 A2d 656); *Sanders v. Gray* (DC Ga, April 28, 1962), 203 F Supp 158, appeal granted June 18, 1962, *but* motion to advance denied, 370 US 921 (82 S Ct 1564, 8 L ed 2d 502); *Wisconsin v. Zimmerman* (Wis, May 23. 1962), 205 F Supp 673; *Maryland Commission v. Tawes* (May 24, 1962) Anne Arundel county circuit court, Maryland; *Toombs v. Fortson* (ND Ga, May 25, 1962), 205 F Supp 248; *W.M.C.A., Inc., v. Simon* (June 11, 1962), 370 US 190 (appeal from NY DC SD, 202 F Supp 741) (82 S Ct 1234, 8 L ed 2d 430); *Moss v. Burkhart* (Okla, June 19, 1962), 207 F Supp 885: *Baker v. Carr* (MD Tenn, June 22, 1962), on remand from 369 US 186, 206 F Supp 341.

[17] *Baker v. Carr,* 369 US 186, at p 226.

[18] Even after having earlier concurred in that portion of the prior controlling opinion that ends as follows :

"In the face of this history and this precedent, we find no way by which we can say that the classification we are concerned with herein is `wholly arbitrary,' and hence repugnant to the Fourteenth Amendment of the United States Constitution as the United States supreme court has construed it to this date." 360 Mich 1, at p 106.