



# The Court Legacy

The Historical Society for the United States District Court  
for the Eastern District of Michigan ©2013

Vol. XX, No. 2  
November 2013

## The Michigan Alien Registration Law of 1931 and the *Arrowsmith* Case

By Thomas A. Klug

[The Editors wish to thank Judge Avern Cohn for suggesting both the subject and author of this article – Part 1.]

### The Eyes of the Country are Again on Detroit!”<sup>1</sup>

On May 29, 1931, Michigan Governor Wilbur M. Brucker signed into law a controversial measure that gave aliens (that is, non-citizens) residing in the State sixty days to register with the Commissioner of Public Safety, who headed the Michigan State Police. At the Commissioner’s discretion, aliens could be photographed and fingerprinted. Aliens complying with the registration requirements acquired a “certificate of legal residence,” but not every alien could qualify for one. The law denied the vital document to any alien who could not verify they had entered the United States legally or who “came within the classification ‘Undesirable alien.’” Without a certificate of legal residence, no alien could legally work, do business, or reside in Michigan.<sup>2</sup>

The law also barred employers from providing work to an unregistered alien, and it prohibited anyone from engaging in business with such a person. A violation of the law constituted a misdemeanor, punishable by a fine of up to \$100 or ninety days in jail, or both. Furthermore, an alien caught without a certificate was “subject to deportation” – implying an element of cooperation between State officials and federal immigration authorities charged with enforcing the laws of the United States.<sup>3</sup>

Supporters of what was commonly known as the Cheeny Registration Act (after Representative Charles W. Cheeny, who had introduced the measure into the State House the previous month) insisted that it was a necessary and proper method of protecting the people of Michigan from crime, unemployment, and political subversion associated with illegal and undesirable aliens. In their view, the law was a simple case of Michigan exercising its sovereign police powers to maintain “the economic, industrial, and political welfare of this state.”<sup>4</sup>

Opponents of the measure, on the other hand, condemned it as dangerous, extreme, and reactionary. As an effort at political repression, they argued, the law made all immigrants (aliens and naturalized citizens alike) into criminal suspects. Not even native-born citizens were safe, since in practice the law would enable the police to arrest anybody they suspected did not have a certificate of residence – and native-born citizens naturally had no reason to possess one – and detain them until they were satisfied that the person was a legal resident of the State. By practically compelling all people to carry papers to prove their legal right to live and work in Michigan, and allowing police to stop and confront people and demand to see their papers, the law had a potentially chilling effect on political life in Michigan. According to the law’s opponents, it all smacked of the methods of the Czarist autocracy from which so many Eastern European immigrants had fled. And finally, according to critics, Michigan’s alien registration act was blatantly

unconstitutional, as it contradicted various federal court rulings since the mid-1870s that had recognized the exclusive control of Congress over immigration and aliens. These arguments and issues quickly came to a head in the press and in the streets, as well as in the courtroom. The latter ultimately proved to be the most decisive arena in the struggle over Michigan’s alien registration law.

On June 1, George Arrowsmith, a British-born alien and building contractor, entered a suit in equity against Michigan’s Governor, Attorney General, and Commissioner of Public Safety in the United States District Court for the Eastern District of Michigan.

Three more litigants soon joined with Arrowsmith, all of them represented by attorneys Theodore Levin, Nathan Milstein, Fred M. Butzel, and former Michigan Circuit Judge Patrick H. O’Brien. Max J. Kohler of New York City, a well-known immigration attorney and expert on the subject of alien registration, served as advisory counsel. On July 1, a hearing took place before a special three-judge panel consisting of District Judges Ernest A. O’Brien and Charles C. Simons, along with Circuit Judge Arthur C. Denison of the United States Sixth Circuit Court of Appeals – and five months later the Court issued its long-awaited decision in the case of *Arrowsmith v. Voorhies*.<sup>5</sup>



Theodore Levin

This essay will examine a number of questions surrounding Michigan’s alien registration law. How did it become law in the first place? Who was behind the Cheeny Act, and why did they pursue it? How did Arrowsmith and other plaintiffs manage to bring suit in the Eastern District of Michigan, given that the 11th Amendment to the U.S. Constitution forbade suits against states in federal courts? What legal grounds did Arrowsmith have to seek a court order to restrain the State from enforcing the law? Could a state enact a law that regulated aliens (such as requiring that they register with a state agency) and pass it off as a legitimate exercise of the State’s police powers? While admitting that the federal government held exclusive sway over

immigration, could Michigan nevertheless have justified its registration law as a helpful way for the State to cooperate with the enforcement of federal immigration policies?

In short, what was the constitutional relationship between the federal government and the states on questions relating to immigration and aliens? What role, if any, did states have in these matters? The recent controversy over Arizona’s immigration law (SB 1070), which included alien registration, suggests that some of the issues raised in the *Arrowsmith* case of 1931 remain relevant in our own times.<sup>6</sup>

### The Origins of a Bill

A variety of alien registration schemes have appeared throughout American history. Resistance to them can be found throughout American history, as well. “Opposition to laws permitting invasion of personal liberties of law-abiding individuals, or singling out aliens as particularly dangerous and undesirable groups, is deep-seated in this country,” noted the United States Supreme Court in 1941. “Hostility to such legislation in America stems back to our colonial history, and champions of freedom for the individual have always vigorously opposed burdensome registration systems.”<sup>7</sup>

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Published periodically by The Historical Society for the United States District Court for the Eastern District of Michigan, Office of the Clerk, Room 216, Theodore Levin United States Courthouse, Detroit, MI 48226-2797.

Membership benefits include the Newsletter, voting privileges, and the Annual Meeting. The Historical Society has extended the benefits of membership to members of the Eastern District of Michigan Chapter of the Federal Bar Association.

Papers are encouraged to be submitted to the Newsletter editor for consideration as MS Word (preferred) or WordPerfect documents to mayerjohn3373@yahoo.com or m.ellen.dennis@gmail.com.

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The earliest federal alien registration measure went back to the dawn of the Republic when the ruling Federalists enacted the Alien and Sedition Acts in a blatant political attack on their Democratic-Republican rivals. One of the laws, the Naturalization Act of 1798, attempted to dilute the voting base of the Democratic-Republicans by dramatically increasing the U.S. residency requirement for the naturalization of aliens from five to fourteen years.<sup>8</sup> To put added pressure on immigrants, the Act also mandated that “all white persons, aliens” register with a federal district court. In exchange for providing basic information (name, gender, age, nationality, citizenship, “condition or occupation,” and place of residence in the United States) and paying a fee of fifty cents, an alien received a “certificate of such report and registry.” An alien failing to register could be punished with a two dollar fine and possibly an indefinite stay in “the common goal” until the person satisfied the registration requirement.<sup>9</sup>

By comparison with later alien registration efforts, this one from the late 18th century was relatively mild. For example, it did not require annual registration, nor did it explicitly require aliens to carry registration documents with them at all times. But like all alien registration systems it cast a pall of suspicion over the foreign born, and the connection of alien registration with the oppressive and unpopular Alien and Sedition Acts ruined its political legitimacy for many years.

When President Chester Arthur vetoed the first bill to exclude Chinese laborers presented to him in 1882, the main reason was the length of the exclusion (20 years), but he also skewered the bill’s registration provisions as a violation of the treaty between China and the United States. The president likewise condemned the proposed registration of a relatively small number of Chinese aliens as a fundamental threat to the liberty of U.S. citizens. “I may invite the attention of Congress,” wrote Arthur, “to the fact that the system of personal registration and passports is undemocratic and hostile to the spirit of our institutions. I doubt the wisdom of putting an entering wedge of this kind into our laws. A nation like the United States, jealous of the liberties of its citizens, may well hesitate before it incorporates into its policy a system which is fast disappearing in Europe before the progress of liberal institutions.”<sup>10</sup>

Liberal sentiments did not long hold off harsh treatment of the Chinese. A few months later, President Arthur signed into law the next Chinese Exclusion bill presented to him that prohibited the immigration of Chinese laborers to the United States for ten years. Controlling Chinese immigration soon developed its own momentum. U.S. officials ultimately clamped down on the entire Chinese population living in the United States in an effort to distinguish those legally present in the country from illegal Chinese immigrants.<sup>11</sup> In 1892, Congress passed the Geary Act which renewed the ban on the immigration of Chinese laborers for another ten years. More significantly, it also required “all Chinese laborers” residing in the United States to register with the Collector of Internal Revenue of the U.S. Treasury Department. A registrant had to provide name, age, place of residence, occupation, and any other descriptive information deemed necessary by officials.<sup>12</sup>

The McCreary Amendment of November 1893 added photographic identification – the first such statutory duty in U.S. history. Historian Anna Pegler-Gordon has documented the link during the late 19th century between photography and criminality, and argues that the photographic requirement reinforced beliefs about Chinese illegality that rendered all Chinese criminal suspects.<sup>13</sup>

Under the Geary Act, a registered Chinese laborer received a “certificate of residence” by which he established his right “to remain in the United States.” (A duplicate copy was kept with the Collector of Internal Revenue.) Failure or refusal to comply with the Act, or to be found within the United States without the document, constituted *prima facie* evidence of unlawful presence in the country and subjected the Chinese alien to arrest and deportation by federal officials.

One implication of the law was that Chinese laborers – indeed, every Chinese adult – had better possess and carry a certificate of residence to ward off sudden arrest. According to the law,

those arrested could challenge their detention in federal court, but the alien had the burden of proving “to the satisfaction of a judge” his “lawful right to remain in the United States.” A person who lost his certificate could be given “reasonable time” to obtain a new one, while a judge could grant a certificate to a person who convincingly showed he was unable to procure one due to accident, sickness, “or other unavoidable cause,” provided he brought forth “at least one credible white witness” to testify he was a U.S. resident at the time of the passage of the Act.<sup>14</sup>

The Chinese collectively resisted the Geary Act.<sup>15</sup> They demonstrated, refused to register, and also tested the constitutionality of the law – one that Senator John Sherman of Ohio warned “inaugurates in our system of government a new departure, one, I believe, never before practiced.”<sup>16</sup> Their hopes, however, fell short on the legal front.<sup>17</sup> In 1893, in the case of *Fong Yue Ting v. United States*, the U.S. Supreme Court for the first time sustained the constitutionality of federal alien registration. The Court expanded on the emerging plenary power doctrine that held that in a world of independent states and as an inherent act of national sovereignty, a government had nearly unchallenged power “to exclude or to expel aliens.” Consequently, the Court reasoned, “Congress, having the right, as it may see fit, to expel aliens of a particular class, or to permit them to remain, has undoubtedly the right to provide a system of registration and identification of members of that class within the country, and to take all proper means to carry out the system which it provides.”<sup>18</sup>

Three justices dissented in *Fong Yue Ting*, including Justice David Brewer, who focused on the dangerous implications of the government’s awesome power over aliens. While declaring that the statute at hand was “directed only against the obnoxious Chinese,” Brewer went on to ask, “[W]ho shall say it will not be exercised tomorrow against other classes and other people?” If fundamental constitutional protections “can be thus ignored in order to get rid of this distasteful class,” argued Brewer in a classic version of the slippery-slope argument, “what security have others that a like disregard of its provisions may not be resorted to?”<sup>19</sup>



Max J. Kohler

Others soon picked up on Brewer’s concerns. Indeed, the 1892 Chinese Exclusion Act became a worrying touchstone for later critics of alien registration. Max Kohler, for example, frequently cited it in warning about similar exclusion, deportation, and registration laws for European immigrants. He knew first-hand the practical impact of the anti-Chinese measures. After graduating from Columbia University with a degree in law in 1893, Kohler devoted the next

four years to serving as Assistant U.S. Attorney in New York City where he came face-to-face with Chinese deportation proceedings.

Kohler shared conventional views about the problems of the smuggling of Chinese into the United States and the dishonesty of Chinese witnesses in court, but those difficulties paled before the contemptible behavior of overzealous, corrupt, and “oftentimes unscrupulous petty officials” who preyed upon legally vulnerable Chinese immigrants and residents.<sup>20</sup> Alien registration, in other words, spawned arbitrary governmental power and despotism, and there was no reason to think that these evils would be confined to the marginalized Chinese resident population.

By the start of the new century, American immigration authorities had a long list of people they sought to keep out of the country: Chinese laborers, the Japanese (starting in 1907), and a host of undesired Europeans (the diseased, the insane, the unproductive poor, criminals, prostitutes, and anarchists). But they were fighting a losing battle, particularly along the borders with Canada and Mexico where, as Marcus Braun observed in 1909, a mere 300 officers and employees of the U.S. Immigration Bureau vainly struggled to check surreptitious entries. No border in the world, even the heavily militarized frontiers of Czarist Russia, could stem the flow of people. The solution, according to Braun, was a

comprehensive alien registration law “such as obtain in every European country with the exception of England, and obtain particularly in Asiatic countries.”

According to Braun, every alien should have to present a passport with a photograph when entering the United States. Passports would be stamped upon arrival, and aliens would have to carry the document on their person. They would also “be required to register their residence with the local police,” and “notify promptly” the authorities of any change of residence. “The enactment of such a law,” Braun argued, backed up by “very severe” punishment, “would not only keep out inadmissible Orientals, but would keep out other undesirable aliens also.”<sup>21</sup> Braun’s vision of alien registration may not have provided many operational details, but it did reveal an acceptance of the stark logic of combatting unwanted immigrants through stepped up police surveillance within the borders of the United States.

The First World War did much to normalize and extend the practice of alien registration in the United States beyond the resident Chinese population. In late 1917, President Woodrow Wilson ordered the Attorney General to register all German male nationals over the age of fourteen. Registration was extended to females six months later. These “alien enemies” had to provide numerous items of information about themselves, the circumstances of their immigration, previous military training (if any), and the names of family members. Each person was photographed and fingerprinted, and issued an alien registration card. Failure to carry the card on their person at all times made them liable, “among other penalties, to arrest and detention for the period of the war.” In addition, they had to make periodic reports to the authorities and comply with all regulations when they changed their residence, occupation, or traveled within the United States.<sup>22</sup>

Suggestions to extend registration to cover *all* aliens in the country, even those from countries allied with the United States, floundered in part due to considerations of the immense cost of building and maintaining such an extensive system. Representative George Edmonds of Pennsylvania personally favored a general registration of aliens as a way to achieve “proper surveillance, peace, and order” throughout the land, but he also pointed to the political obstacles. “This is a new proposition for this country,” he noted, “and it seems to me it would create a good deal of comment if you start to register all aliens....I think it would cause considerable adverse comment, for the simple reason that when people come here from other countries they have the idea that this is a free country and they do not want to feel that the police are getting after them.”

The registration and surveillance of non-citizens by law enforcement officers naturally made immigrants feel like suspects or criminals and contradicted the very ideals of American liberty that bolstered the continued loyalty of immigrants to the government. For that reason, Edmonds argued, only a limited registration measure – one restricted to enemy aliens for the period of the war emergency – made practical political sense.<sup>23</sup> As it turned out, only Germans aliens were subjected to registration during the war (and not, for example, the wider range of nationalities that made up the Austro-Hungarian Empire that was also at war with the United States).

During the nativist 1920s, the registration of America’s aliens frequently came before Congress as a panacea for a host of problems. The immigration restriction acts of 1921 and 1924 for the first time capped the number of immigrants annually allowed into the country and had a dramatic effect on the migration streams from southern and eastern Europe. But the continued entry of immigrants through the porous northern and southern borders generated a new illegal alien problem, especially in the flourishing industrial area around Detroit where alien smugglers did a brisk business.<sup>24</sup>

The creation of the U.S. Border Patrol in 1924 was one response to a border crisis that American politicians had largely created through their restrictive immigration laws. The universal registration of aliens logically complemented a determination to harden the borders.

James Davis, the Secretary of Labor during most of the decade, with charge over the Immigration Service, proposed registration as an essential tool to fight alien smuggling and for deporting aliens unlawfully present in the country. Patriotic groups supported Davis, as did some trade unionists. Frank Martel, president of the Detroit Federation of Labor, argued strenuously for the registration of all aliens – those newly arriving and those already in the country – as a way to reduce unfair competition in the labor market between legitimate American workers and “bootlegged aliens” entering across the Canadian border. “What is there about the registration of aliens who are in this country that we are afraid of?” asked Martel, rather provocatively, at the American of Federation of Labor’s convention in Toronto in 1929.<sup>25</sup>

Alien registration also found favor among the dedicated foes of Communist subversion. U.S. Attorney General A. Mitchell Palmer, aided by the Justice Department’s General Intelligence Unit headed by J. Edgar Hoover, took the lead in suppressing left-wing radicals in the aftermath of the First World War. By the mid-1920s, however, the federal government withdrew from political policing after the exposure of nefarious activities on the part of counter-intelligence operatives.

States and local units of government attempted to fill the void left by the federal government with clumsy state criminal syndicalism and anti-red flag laws. So, too, did organizations of employers embroiled in their own battles with radicals. When a reorganized Communist Party in 1926 began to form party cells and disseminate underground shop papers within Detroit’s automobile factories, the Employers’ Association of Detroit brought in Jacob Spolansky, an experienced anti-Communist who had worked under Hoover, to locate, identify, and expel the reds. Spolansky’s work pleased industrialists, but he cautioned that removing a handful of Communists was an ephemeral victory, given the Communist Party’s entrenchment within the neighborhoods and organizations of Detroit’s foreign born.

By 1929, Detroit’s Communists numbered around 600, with half of them embedded in the factories. Party members could count on numerous sympathizers among the thousands of members of ethnic fraternal groups and workers’ clubs in the orbit of the party. For professional anti-Communists like Spolansky, the lesson was clear: only a reconstituted and sustained federal commitment to fighting political subversion, armed with all the necessary tools, including universal alien registration, could drive the Communists out of American life.<sup>26</sup>

Throughout the decade of the 1920s, an alliance of the foreign-born organizations, liberal politicians, civil libertarians, and trade unionists successfully blocked alien registration bills put before Congress. Registration, they feared, would criminalize aliens and breed hostility toward the foreign born instead of assisting in their Americanization. Registration would also subject aliens to arbitrary police power and the machinery of political and economic repression. With the ever-present threat of deportation hanging over the heads of aliens, employers would have a much easier time controlling foreign-born workers or using them to bust the strikes and unions of other workers. In 1929, the American Federation of Labor’s Executive Council surprisingly announced it would support the registration of new arrivals, but it drew the line at the kind of broad registration measure favored by Secretary of Labor Davis that included the photographing and fingerprinting of aliens.<sup>27</sup> Critics like Max Kohler, however, cautioned that even the slightest compromise created an “opening wedge” for universal alien registration and the launching of “a man-hunting crusade throughout the country.” Kohler summed up the views of many when he warned that registration “on the pattern of our Chinese exclusion laws...will challenge the rights of millions of inoffensive alien residents, cause them to be viewed with suspicion, dislike, and hatred, and in fact, do them no good, but only harm, and expose them to deportation, and boundless extortion, blackmail, and other injuries.”<sup>28</sup>

The catastrophe set off by the Great Depression improved the prospects of passing alien registration legislation. On March 6, 1930, coordinated Communist-led protests around the world against mass unemployment heightened fears among many of radical subversion. In Michigan, the cities of Kalamazoo, Grand Rapids, Muskegon and Hamtramck saw unemployment rallies. In downtown Detroit, some 3,600 police officers, including mounted and motorcycle units, battled a crowd of Communist demonstrators and sympathizers, as well as interested onlookers, numbering between 50,000 and 100,000. Police in Flint and Pontiac kept things quiet through the use of extralegal means against Communist leaders. The assistant prosecuting attorney for Pontiac, Charles L. Wilson, later testified how police made up flimsy reasons to arrest a dozen Communists a week before the appointed day of protest. “We took them to jail, one in each jail of the different towns – and we have 15 towns here – and we kept them there, separated, and they did not have any demonstration.”<sup>29</sup>

The vitality and apparent strength of the Communists convinced the U.S. House of Representatives to establish the Special Committee to Investigate Communist Activities in the United States, chaired by Representative Hamilton Fish, Jr., of New York. From early June until mid-November, the Fish Committee held hearings across the United States, all designed to play up the sense of a growing Communist conspiracy while emphasizing the inadequacy of existing legal methods for dealing with the menace. On July 25-26, the committee held two days of hearings in Detroit listening to corporate executives, police chiefs and detectives, Father Charles Coughlin of Royal Oak (who denounced Ford Motor Company’s business ties with the Soviet Union), and Jacob Spolansky. Armed with a collection of documents, Spolansky showed that the Communist Party in the Detroit district had grown to between 1,500 and 2,000 members, that party cells in factories and the City had greatly multiplied, and that the party continued to enjoy deep support within the neighborhoods of the 406,000 foreign-born persons who made up 26% of the City’s population. Spolansky and other witnesses cited particularly strong ties between the Communist Party and Slavic, Hungarian, and Russian Jewish immigrants. According to Spolansky, 90 percent of party leaders were native born, but roughly the same percentage of rank-and-file members were immigrants.<sup>30</sup>

The implication of the testimony presented to the Fish Committee was that the battle against subversion required special attention to the Communist Party’s base among the foreign born, and radical leaders anticipated the worst from Congress. In October, Tony Gerlach, secretary of the Provisional Committee for the Protection of the Foreign Born, warned that the Fish Committee had once again inspired Congress to try once again to pass alien registration, fingerprinting, and deportation legislation. For Gerlach, it was all part of an offensive by the capitalists to divide the working class and then smash its organizations.<sup>31</sup> Phil Raymond, a prominent Communist leader in Detroit and a former candidate for mayor, likewise warned of bills before Congress to photograph, fingerprint, and establish police surveillance over the foreign born “as if they were criminals.”<sup>32</sup>

Due to determined political opposition within Congress, however, no national alien registration law emerged at this time. When the Fish Committee issued its recommendations on January 17, 1931, it called for “enlarging the authority” of the Federal Bureau of Investigation to conduct operations against Communists in the United States; strengthening the immigration laws to prevent Communists from entering the United States and to deport alien Communists; amending the naturalization laws to forbid the naturalization of Communists and to revoke the citizenship of naturalized Americans who were Communists; banning Communist publications from the mail; and declaring illegal the Communist Party so as to prohibit its participation in elections. Curiously, the Fish Committee did not include alien registration among its fourteen recommendations.<sup>33</sup>



Wilbur M. Brucker

The fixation on the affairs of Congress unavoidably obscured from view critical developments taking place at the state level. In late 1930, the Union League of Michigan picked up the mantle of anti-communism and launched its own investigation of the Red menace. This staunchly Republican civic and social men's organization numbered some one thousand members, each committed to "absolute and unqualified loyalty to the Government of the United States of America."<sup>34</sup> Its ranks included some of the most important corporate executives and directors in the State. Also a member was Wilbur Brucker, the State's Attorney General who decisively won the election in November for Governor. Brucker had campaigned to sharply reduce spending by the State and also to combat rampant criminal activity. "Law enforcement and sound kitchen economy," said the new Governor, "such as would enable Michigan to get back to first principles of government, will be the constant purpose of my administration."<sup>35</sup> Before long, the Union League of Michigan would hand Brucker a vigorous anti-Communist agenda with alien registration as its centerpiece.

For two months the Union League of Michigan's fifteen-member Subversive Activities Committee provided a platform for speakers to herald the dangers of communism. Jacob Spolansky, a member of the committee, addressed the group and its assembled guests twice. In a speech entitled "The Red Trail in America," Spolansky detailed a worldwide communist plot emanating from Moscow. In "Underground Bolshevism," delivered on January 9, 1931, with Governor Brucker in attendance, Spolansky dramatically brought the peril close to home. "There are Communist nuclei in every shop in this city," he said. "Newspapers, mimeographic publications, are being distributed daily – thousands of copies in every shop of this city. The membership in the City of Detroit is close to ten thousand, with a possible sympathetic following close to fifty thousand, men and women working day and night to undermine the confidence of the people in their own governmental institutions."<sup>36</sup>

On February 24, 1931, the Subversive Activities Committee presented its findings and a batch of recommendations. The latter included a call for "the enactment of adequate laws and the enforcement thereof" by the U.S. Congress *and* by "the legislatures of the respective states." The proposed laws read very much like the list formulated by the Fish Committee a month earlier, including the immediate deportation of alien Communists, the denaturalization of naturalized citizens affiliated with Communist Party, and a ban on the Party's placement on election ballots. The Michigan group, however, went much further when it advocated "that native American citizens, members of the Communist Party, be disenfranchised and dispossessed of every right of citizenship." And – the committee's very first recommendation – it called for the registration of all aliens.<sup>37</sup>

After obtaining the approval of the Union League of Michigan's Council on Public Affairs, the report and recommendations of the Subversive Activities Committee were adopted on March 3 by the organization's board of directors. The board also "empowered" the committee to take steps to bring its recommendations into effect.<sup>38</sup> Five weeks later, on April 10, Representative Charles Cheeney of Chesaning quietly introduced a bill – House Bill No. 520 – into the Michigan Legislature.<sup>39</sup> Thus was hatched Michigan's very brief experiment with alien registration.

### A Bill Becomes Law

Many of the details of what happened during those five weeks (March 3-April 10, 1931) are unknown. For example, it is not clear why Cheeney, a first term representative from the 2nd House District in Saginaw County, was the bill's sponsor, although he was a member of the House Committee on the Judiciary to which the bill was referred.<sup>40</sup> The *Detroit Free Press* later reported that the bill was drafted by a committee of the Union League of Michigan,

"after a series of conferences held last winter in Detroit with representatives of the U.S. immigration bureau."<sup>41</sup>

It is frustrating that none of the available sources indicate the person or persons who may have written House Bill No. 520 or what model, if any, was used for constructing the legislation. Michigan employers were prominent members of the Union League of Michigan. Chester M. Culver, general manager of the Employers' Association of Detroit, was a member of the League's Subversive Activities Committee, and Hal H. Smith, the legal counsel for the Michigan Manufacturers' Association, was on the League's Board of Directors.<sup>42</sup> Therefore, it is more than odd how sections 12 and 14, the portions of the bill that punished employers for hiring unregistered aliens, became part of the text. There was not even an escape clause for employers (for example, holding employers liable only if they "knowingly" employed illegal aliens).

Several things about the bill are better known. First, as the preceding analysis has shown, the measure was aimed at Michigan's Communists and their base among the State's foreign born, which at this time numbered 840,268 persons, nearly half of whom were not U.S. citizens. (In Detroit, by comparison, roughly three out of five foreign-born persons were not naturalized.)<sup>43</sup> Second, the fingerprints of the Union League of Michigan were visible all over the bill. The *Detroit News* stated that the bill "actually originated with the Union League Club of Detroit," which it identified as "a wealthy Republican organization." According to the *News*, the bill's "swift journey through the legislature was engineered by W.D. Edenburn," who was both the manager of the Michigan Automotive Trade Association (and therefore the chief lobbyist for Michigan's automobile dealers) and a director of the Union League of Michigan.<sup>44</sup> And third, the supporters of the bill moved quietly after its introduction, with little fanfare and no public hearings. Their campaign by stealth, the manner in which the bill silently rested in the House, only to be "sneaked through the legislature" toward the end of its session, likely reflected the proponents' sense of the controversial nature of the measure.<sup>45</sup>

On May 11, HB 520 reached the floor of the House of Representatives for its third and final reading. It passed by a vote of 82 to 9, with 9 members abstaining. Leaders of organized labor in the House divided over the bill. Frank B. Wade, secretary and business agent for the bricklayers' union in Flint, and former President of Michigan Federation of Labor, voted for it. But his fellow Republican in Detroit, Charles E. Bartlett, cast a negative vote. An electrician by trade and treasurer of the International Brotherhood of Electrical Workers, Bartlett also served on the legislative committees of the Detroit Federation of Labor and the Michigan Federation of Labor. With four terms of office behind him, Bartlett joined with just three other members of the 21-member Wayne County House delegation to oppose the bill.<sup>46</sup>

The bill arrived at the Senate on May 11, and three days later the chairman of the Committee on the Judiciary, Senator Herbert J. Rushton of the 30th District in the Upper Peninsula, reported HB 520 without amendment and recommended its passage. On the following Monday, May 18, the Senate voted to pass the bill 23 to 3, with 5 abstentions. Casting a vote in opposition was George Sadowski, a Democratic activist from Detroit with strong Polish and working-class support, who had won a special election at the end of January to gain his seat, making him the sole Democrat in the chamber. He was joined by Charles A. Roxborough, Jr., a Detroit Republican, co-founder of the Great Lakes Mutual Insurance Company, and the lone African American in the Senate.<sup>47</sup>

On its final vote, the Senate added a clause to give the bill immediate effect, and the House gave its necessary two-thirds approval the same day.<sup>48</sup> HB 520 (officially House Enrolled Act No. 176) now needed only the Governor's signature to become law. This was a stunning development. John L. Zurbrick, the district director of the U.S. Immigration Service in Detroit,

reportedly welcomed Michigan's compulsory alien registration as a supplement to federal laws. So, too, did Senator Chester Howell of Saginaw. "This legislation is badly needed in Michigan," exclaimed Howell. "Communists are threatening even now to march to Lansing from Detroit, Pontiac, and Flint to create a demonstration. This bill will give the police authority to deal with the situation in a proper manner."<sup>49</sup>

It was only with the bill on its way to the Governor that critics awakened to HB 520. Having long anticipated alien registration from Congress, opponents suddenly found themselves fighting a belated rearguard battle at the State level. The Detroit branch of the American Civil Liberties Union (ACLU) met on May 19 and wired Governor Brucker to demand a public hearing on the bill. The ACLU's national office also sent a telegram, arguing that the bill would discriminate against aliens and lead to the registration of the entire population.<sup>50</sup> The next day, Max Kohler wrote to Brucker setting forth both constitutional and public policy objections and urged him to veto the bill.<sup>51</sup>

However, a discordant note was struck at the regular meeting of the Detroit Federation of Labor on May 20. After discussing the bill, the consensus of opinion, according to the *Detroit Labor News*, was that it "would be a good thing, and should have no opposition raised against it." The delegates reasoned that because citizens had to register their births and marriages and register in order to vote, it was not a special hardship to require aliens to register, as well. They particularly liked the employers' sanctions component of the bill. Faced with an unprecedented unemployment crisis and enthralled with the idea of fines or jail time for employers who hired illegal aliens, the spokesmen for organized labor in Detroit overlooked the anti-radical and anti-union agenda of the framers of the legislation.<sup>52</sup>

Despite a late effort by Senator Sadowski to have the Senate recall the bill, the measure officially came to Governor Brucker on May 21.<sup>53</sup> That gave him up to ten days to act on the bill – and on scores of others that reached him at the end of May. He could either sign the bill or veto it. The other option was that he could decide to do nothing. Under normal conditions, just letting the bill sit would lead to its automatic enactment at the end of the ten days. But the legislature adjourned on May 22, and under the Michigan Constitution a decision by the governor not to act when the legislature was out of session had the same effect as a veto. Thus ensued a complicated period where opponents attempted to convince Brucker to veto (or at least not sign) the bill and proponents pressed for its enactment, where the Attorney General's office split over what to recommend to the Governor, and where the Governor appeared to hesitate about what to do politically with "the hottest thing tossed to [him] by the 1931 legislature."<sup>54</sup>

"The bill excited little comment during its passage through the legislature," commented a correspondent for the Lansing Bureau of the *Detroit News*, "but since its final adoption on Monday it has become a subject of widespread interest throughout the State."<sup>55</sup> An agitated public bombarded Governor Brucker's office with letters and telegrams, and the letter sections of the newspapers also came to life on the subject of the Cheeny bill. Louis Yale Borkon, editor of the *Detroit Jewish Guide*, typified the views of many when he warned of the institution of a "tyrannical passport system" in which "innocents would become victims of this law and fall prey to the designs of any unscrupulous public officer or employer."<sup>56</sup> Fred Doran, on the other hand, favored strict implementation of the Cheeny bill. "There are thousands of aliens here who are a menace to the community," he warned, "and they should be rounded up and hustled out of here as quickly as possible." Himself a naturalized citizen, Doran insisted that "a man or woman who does not consider it worthwhile to become a citizen should not be permitted to remain here."<sup>57</sup>

Meanwhile, the Detroit chapter of the ACLU took steps to oppose the bill. It filed a formal written protest with Governor Brucker

denouncing the bill as "vicious and un-American," and it announced it was taking steps to convene a meeting of "all foreign groups in the City." Beyond that, the chapter's executive board headed by Caroline Parker prepared to take legal action to thwart the bill if signed by Brucker.<sup>58</sup> It seems that it was Parker and the local ACLU leadership that pulled together the core of the legal team of liberal attorneys represented by Patrick J. O'Brien, Theodore Levin, and Nathan Milstein.

At the time, the 63-year old O'Brien was chairman of the Detroit ACLU's legal committee.<sup>59</sup> Before moving to Detroit in 1922, he had served ten years as a Judge of the 12th Circuit Court in Michigan's Upper Peninsula. An active Democrat, O'Brien ran for the Michigan Supreme Court in 1926 and Congress in 1930, failing both times.

For his part, Levin (age 34), aided by Milstein (age 24, and just two years out of law school), had practiced immigration law for several years. Levin had experience in dealing with the U.S. immigration bureaucracy, which gave him invaluable connections with foreign-born groups.



Fred M. Butzel

Joining the ensemble was 54-year old Fred M. Butzel, a corporate attorney, a well-regarded philanthropist, and a director of the Detroit Urban League. He had practiced law with his brother Henry before the latter was appointed to fill an opening in the Michigan Supreme Court in 1929. The *Detroit Times* reported that Fred Butzel became involved as a representative of Detroit manufacturers who opposed the law because "some of their employees are specialists and would rather resign than submit to registration and fingerprinting."<sup>60</sup>

By May 27, Levin and Milstein reportedly had a bill of complaint ready to present in court to block the enforcement of the Cheeny bill should the Governor sign it. That same day, the pair traveled with Butzel to meet personally with Governor Brucker in Lansing. They advised Brucker of the practical difficulties of the prospective law. Due to the dismal condition of federal immigration records, for example, thousands of aliens who had entered the country legally would not be able to secure the documentation needed to comply with the State's registration requirements and would thus be exposed to arrest and dismissal from work. They outlined for Brucker "numerous unconstitutional features of the bill," and they presented him with "an exhaustive legal brief" citing federal laws and U.S. Supreme Court decisions clearly showing that Congress possessed exclusive power over immigration. Butzel may have brought up the opposition of certain manufacturers to the bill. Brucker probably was aware by this time of the objections of the Michigan Manufacturers Association to making it a misdemeanor for an employer to hire an unregistered alien. John Lovett, the group's general manager, complained "that an employer has no way of knowing that certain aliens, particularly Canadians, are not American citizens." This issue appears to have struck a nerve with Brucker.<sup>61</sup>

The Governor very likely had an early warning about the Cheeny bill since he was a member of the Union League of Michigan and its prestigious nine-member Advisory Council. As an officer of the law, though, he found himself at the end of May faced with signing a bill that he knew suffered from serious constitutional problems. Brucker assured Levin, Milstein, and Butzel that he would not sign (therefore, effectively veto) the bill if it was unconstitutional. The Governor then sought political cover by throwing the whole matter to Attorney General Paul W. Voorhies for a legal opinion.<sup>62</sup>

With the political hot potato now in his lap, Voorhies met to confer with his assistants on the evening of May 27. He put to them two basic questions from the Governor. First, did the Cheeny bill unconstitutionally interfere with the powers of the federal government over immigration and aliens? Second, were those portions of the bill valid that made it a misdemeanor to employ or enter into a contract with an alien who did not possess a certificate of legal residence?<sup>63</sup>

The Governor said that he would wait for an opinion from Voorhies before making a decision, but one never materialized. The problem was that Attorney General's office sharply disagreed over the Cheeney bill. Assistant Attorney General Charles Rubiner, for example, prepared a long (some say 22-page) opinion that found the bill unconstitutional. Others on the staff agreed with him, but not Assistant Attorney General Kit F. Clardy. According to reports, Clardy maintained that "the section prohibiting the employer from hiring unregistered aliens is invalid," thus addressing the Governor's concern about disturbing the right of manufacturers to hire and fire employees at their discretion. But Clardy argued that even if the courts deemed portions of the bill unconstitutional, enough of it would survive (for example, the registration mandate) "to make it a workable law."<sup>64</sup>

The *Detroit Times* claimed that Brucker met with Voorhies and his staff for several hours and sided with Clardy in the debate. Favoritism possibly played a role, as Clardy was known as "a close personal friend of the Governor." Another report, however, indicated that both Clardy and Rubiner were "some of [Brucker's] favorite counselors." Also impossible to overlook was persuasion by Clarence S. Ayres, an insurance executive, chairman of the Governor's Advisory Finance and Accounting Council, the chairman of Brucker's campaign finance committee, and president of the Union League of Michigan that had created the Cheeney bill and pushed it through the legislature to the Governor's desk.<sup>65</sup>

On Friday, May 29, Governor Brucker signed into law Public Act No. 241 of 1931 requiring the prompt registration of aliens in the State of Michigan. In a statement issued afterwards, Brucker tried to calm the nerves of the law-abiding non-citizens of the State. "While all who are not citizens of the United States are required to register," he remarked, "only those who are here illegally need be concerned. Those aliens who are here legally need do nothing beyond registering. Nothing in the bill reflects in the slightest upon anyone here lawfully." Toward undesirable aliens seeking to overthrow the government, however, Brucker portrayed the law as "the application of a common-sense attitude of self-preservation." "We should support any gesture in the direction of purging our State and our country of these men who carry on this subversive activity," he insisted. "If compelling them to register or get out of our State will help the situation, then we should favor this course."<sup>66</sup>

Brucker acknowledged in his statement that the "Attorney General has indicated that some questions of constitutionality may be raised on certain provisions." This understated the serious divisions within the Attorney General's office and the likelihood that the law had fatal constitutional flaws. Instead, Brucker adopted Clardy's view, declaring "that at least that part of the act may stand which compels registration."

In further justifying his decision to sign the law, Brucker relied on the legitimacy conveyed by "the almost unanimous vote by which the Legislature adopted the bill," which demonstrated "the widespread feeling that the law is necessary." Brucker did not speculate how things would have turned out if legislative hearings and a full public debate had taken place over the Cheeney bill. "In view of the principle involved," concluded Brucker as he looked forward to the next phase of the struggle over the law, "the executive should not overthrow the entire act because of possible defects in features relating only to enforcement."<sup>67</sup>

### The Law Defended and Challenged

The signing of Michigan's alien registration law by the Governor unleashed a storm for and against the measure. Many people cheered the Act as a forceful approach to fighting rampant lawlessness. "It will help clear our country of undesirable aliens, criminals, racketeers, bootleggers, and murderers from other countries," wrote "True American" to the *Detroit News*. According to another supporter, "the registration bill is directed against undesirable aliens, and all good citizens should be heartily in favor of such a bill....Back up this bill and help drive out the crooks."

Some viewed aliens as likely suspects who should be treated as potential lawbreakers. Homer Seldenright held that "fingerprinting will not harm the aliens if they always expect to obey the laws of the country." Ferd Ketterer likewise saw no problem with the law: "If I were an alien and intended to commit no crime it would not bother me one bit to be fingerprinted." John Hosmer shared similar thoughts. "Aliens who are law abiding," he wrote, "need have no fear or be ashamed to register if they entered this country legally."

Other supporters of the law defended it as a proper method of social defense. John Belch revealed that his mother would have to register under the law, but noted that "all countries in Europe have laws of this nature for the protection of their own citizens. So why should not this country have one for the good of its citizens?" The editors of the *Detroit Free Press* embraced a similar idea, insisting that states had a legitimate right to defend themselves from unlawful and undesirable aliens when the federal government, which had the lead in this field, neglected to protect them. Whether any of this was constitutional, they thought, was a matter for the courts to decide, but they urged Michigan officials to establish the "moral right" of the State to defend itself.<sup>68</sup>

Some of the other supporters of the law favored a registration policy even more ambitious than the Michigan Act, reflecting a longing for a well-ordered society marked by a high level of police surveillance. "We need and should have a complete registration of all persons within our borders, not of Michigan alone but of every state and of every person, regardless of place of birth," opined G. Johnson. "Such registration would show us plainly who are the undesirables. There's no reason why we should not all submit to registration." The "universal fingerprinting of residents of the United States, citizens or aliens, sooner or later is bound to come," wrote another person. "I am strongly in favor of having every inhabitant of the United States registered once every year and every person should be in possession of an identification card," declared "A Citizen." "This is not to persecute aliens, but to detect bandits and robbers, who are not aliens."<sup>69</sup>

Universal registration at least addressed one of the dilemmas articulated by a few critics of the alien registration law – that citizens would have no protection from arrest. "Where every policeman can stop and question about registration cards, must he take the citizen's word that he was born here, or naturalized?" asked Alice Frank. "No," she answered. "Citizens will be arrested and then you will find that this bill has teeth that hurt the citizens as well as the aliens." The implication was obvious to "American," who wrote, "if this law is upheld we will all have to have some kind of a registration card, citizenship papers, or birth certificate in our possession, or we may go to jail and stay there until we can prove who were are." He made no brief for aliens who had entered the country illegally, "but if we cannot get them without registering, well, let's have all register, citizens as well as non-citizens."<sup>70</sup>

Steadfast opponents of the alien registration law emphasized the repressive and exploitative aims of its backers. Senator George Sadowski was one of the first to aggressively denounce the measure in the newspapers. In a lengthy letter published in the *Detroit News*, Sadowski identified the "Michigan Republican Plutocratic Octopus" (that is, the Union League of Michigan) as the sponsor of what he called "the most vicious, un-American, and despotic piece of legislation that was ever introduced in this country." The law, he thought, partly functioned as "a sop to that bigoted and narrow-minded crowd that love to pose in the guise of 100 per cent Americanism and enjoy themselves most when imposing misery on their fellowman." It stigmatized all foreign-born people, including naturalized citizens, whose names or accents reflected the countries of their birth. "It is indeed difficult enough for a man with a foreign sounding name to obtain employment in times like these without throwing additional obstacles in their path," he reminded the law's advocates. However, the "main purpose of the bill," according to Sadowski, "is to strike a blow upon the laboring class in Michigan – regardless whether they be citizens or aliens."

The law targeted the fundamental constitutional rights of working people of free speech and assembly. “Under this bill,” Sadowski warned, “the State police, together with the City police, could break up any labor meeting by harassing and seizing any person on the grounds that he may be an unregistered alien. In this way they would take from labor the only weapon that they now possess to solve their miserable situation.”<sup>71</sup>

The Detroit Federation of Labor, however, did not see things the same way as Sadowski. At the regular weekly meeting of the DFL on June 3, Richard Kroon, a delegate from the left-wing Painters Union Local No. 37, pressed for a vote on the alien registration law. The result was that an “overwhelming majority” of the delegates representing 34 different local trade unions lined up in favor of the statute. Most of them agreed with DFL President Frank Martel’s contention that the law would greatly benefit American workers by penalizing employers who hired illegal aliens. The fact that, according to Martel, the Employers’ Association of Detroit opposed the Act (due to its sensitivity toward Canadian commuters and the hiring privileges of employers) was more than enough reason for organized labor to endorse it. Martel expressed no particular concern for aliens. He felt they did not deserve “special privileges,” and those residing in the U.S. legally had nothing to fear from the law because, as he put it, “the government is fair.”

Rabbi Leon Fram of Temple Beth El was stunned by the DFL “giving aid and comfort to the czarism, terror, blackmail and extortion which compose the text of Michigan’s recently enacted Alien Registration Bill. Only a primitive jungle hatred of the alien could have inspired that bill.” Expressing grave disappointment in Martel and other leaders of organized labor, Fram declared, “That men can approve of such a law, who in all other relations in life are known as liberal and broad-minded, shows that they have become victims of a psychological complex. They have reverted to the infantile fear of the ‘bogey-man.’”<sup>72</sup>

Meanwhile, as debate swirled, State officials proceeded toward the implementation of the registration act. The day after the Governor signed the bill, the chief of the Michigan State Police, Oscar Olander, announced that it would take about a week for Ira Marmon, the head of the State Bureau of Police Identification, to work out all the administrative details required to enforce the statute. Olander keenly realized that the State could not do this job by itself, and so he solicited support from other law enforcement agencies. John Zurbrick, for instance, assured him of cooperation from federal immigration officials and publicly denied that aliens would have to wait long to obtain records needed to register under the State’s new law. “The [immigration] service is equipped to get this information out quickly,” he said, although he foresaw difficulties aligning state-ordered deportations with federal immigration law.<sup>73</sup>

Olander also made plans to confer with James Watkins, the new Commissioner of the Detroit Police Department. Given that 48 per cent of Michigan’s foreign born (and 56 per cent of the State’s aliens) lived in Detroit, it was critical for Olander to enlist the City’s police force as an active and reliable ally in implementing a contentious and intrusive registration scheme. Mayor Frank Murphy of Detroit was caught in a political bind. A liberal and friend of the foreign born, Murphy was faced with a new and repressive State law that his police department was obliged to enforce. Word on the first day of June that an injunction had temporarily stopped the law in its tracks gave Murphy a welcome opportunity to slow things down. To buy additional time, and to be seen as a friend of the Detroit taxpayer during a period of severe budget austerity, he asked corporation counsel, Clarence Wilcox, to prepare an opinion on the constitutionality of the law. “A great deal of time and money will be necessary to comply with the provisions of the act,” Murphy declared, and “I don’t want to spend taxpayer’s money if the law is unconstitutional and the money would be wasted.” The mayor raised an important point.

It does not appear that anybody in support of the Act had thought through the budgetary implications. This was not the time for new spending initiatives. With the austerity-minded Brucker in mid-June announcing a cut in the State budget of \$2 million over the next two years, including a \$33,000 reduction in the Public Safety Department, it is difficult to see how the State could find the funds to register 415,000 aliens in Michigan, establish and maintain a massive card file system, and enforce the Act.<sup>74</sup>

Detroit-area Communists responded energetically to the new law – calling it “the most vicious anti-labor, strike-breaking, terror measure, thus far devised by the enemies of the working class in the campaign to enforce the hunger and wage-cutting policies of the American ruling class.” It was through the mass action by workers in the streets that they expected to defeat it. On June 3, the executive committee of the Council for the Protection of the Foreign Born, a Communist Party-related organization, met to begin building a huge demonstration at Grand Circus Park in downtown Detroit on June 19, to be followed by a mass meeting at Olympia Arena. Activists over the next two weeks reached out to organizations of Lithuanians, Slovaks, Russians, Germans, Croatians, Ukrainians, Macedonians, Italians, Greeks, Poles, Finns, Germans, and African Americans. Efforts to enlist the support of sympathizers and liberals appeared to bear fruit. Attorney Maurice Sugar – a respected labor and civil rights lawyer, characterized by his biographer as a friend of the Party and a bridge between the radical left and liberals – agreed to speak on the legal dimensions of the registration act.

Sugar’s main emphasis, as he recalled, “was upon the role being played by persons in public office who reflected the will and carried out the designs of the industrialists and big business; and how these elements met the crisis of unemployment. My conclusion was that the ultimate solution of our economic and social problems could come only through the launching of a political party of the workers – a Labor Party.” The advertising flyer also promised a speech by liberal attorney (and former judge) Patrick H. O’Brien, now with the ACLU. The rally organizers, however, had little use for what they called “the fascist leaders” of the American Federation of Labor or “stool pigeons” like Frank Martel of the DFL who spent their time actively “helping the bosses.”<sup>75</sup>

The principal draw for the mass meeting at Olympia Arena was William Z. Foster, the head of the American Communist Party. Organizers no doubt were pleased that Foster’s speech linked a number of disparate events – the Scottsboro trial in Alabama, a miners’ strike in Pennsylvania, and the alien registration law in Michigan – as all part of a single scheme by industrialists “to reduce the workmen to a state of slavery.” The turnout, however, was disappointing. The *Detroit News* reported an estimated 2,000 persons in Grand Circus Park and around 3,500 at Olympia. Perhaps the record-high temperature of 94 degrees that day had something to do with it, but unquestionably the numbers were a far cry from the crowd of 100,000 that planners had once envisioned.

Moreover, it does not appear that Patrick O’Brien spoke at either venue. This possibly reflected the growing rift taking place at the national level between the American Civil Liberties Union and the International Labor Defense, the Communist Party’s legal front. The ACLU considered the ILD’s injection of economic and social issues into cases and trials as detrimental to their joint work. As the ACLU saw it, it sought to win cases and in the process protect civil liberties; the ILD wanted to use the legal terrain to push a political agenda. Going forward, therefore, the ACLU would exclusively handle its own cases. This growing distance between the two organizations, which reflected two fundamentally different strategies in approaching the law, may explain why O’Brien did not speak at the June 19 demonstration. But in trying to reach out to liberals like O’Brien, it certainly did not help that Communist leaders like John Schmies in his speech at Olympia denounced in the same breath Republican Governor Brucker and Mayor Frank Murphy,

a popular liberal Democrat, as both working hand-in-hand with industrialists to crush workers, although such ultra-left rhetoric was typical of “Third Period” Communism.<sup>76</sup>

The ACLU’s national office believed that Michigan’s alien registration act “grew out of the failure of the backers of alien registration to get a bill out of Congress.” On June 15, the ACLU Board of Directors authorized a “special appeal for funds” to support the fight of the Detroit branch. By this time, in fact, the Detroit branch had assumed “the leading fight against the new law” for more than a couple of weeks. Caroline Parker and the Detroit ACLU had already assembled the necessary legal talent in the lead up to the enactment of the law. The battle waged by the ACLU’s attorneys would be a steady and solid legal fight, within the parameters of the law, fought with filings, briefs, and arguments in the courtroom, not in the streets.<sup>77</sup>

But it was not just liberals who distanced themselves from confrontational extra-legal tactics. Detroit’s Jewish leaders calculated that the wisest way for their threatened community to oppose Michigan’s dreadful alien registration law was to entrust prominent Jewish attorneys – Levin, Milstein, Butzel, and Kohler – with the fight. This was an effort that Philip Slomovitz, editor of the *Detroit Jewish Chronicle*, characterized as an “appeal to reason” rather than to “hysterical mass demonstrations in the streets.” “It is a spectacular battle, but a very quiet one,” he wrote in an article published in a variety of Jewish newspapers the same day (June 19) that the Communists deployed militant tactics to defy the law. Slomovitz, and presumably key Jewish leaders in Detroit, applauded the avoidance of “mass protest and indignation meetings” that they feared would only provoke “similar counter-protests by the reactionaries who are as strongly inclined to fight to a bitter finish in order that the bill might become law.”<sup>78</sup>

### Preliminary Legal Moves

On June 1, 1931, attorneys Levin, Milstein, O’Brien, and Butzel filed a bill of complaint on behalf of George Arrowsmith in the United States District Court for the Eastern District of Michigan against Governor Brucker, Attorney General Voorhies, and Commissioner of Public Safety Olander.<sup>79</sup> This marked the moment when legal action began in earnest against Michigan’s alien registration law.

Born in Lancashire, England, the British-born Arrowsmith came to the United States around 1918 to live with his brother in the village of Wayne, located some 20 miles west of downtown Detroit. In 1931, the 45-year old immigrant was recently married, a carpenter by trade, and a building contractor.<sup>80</sup> He was also an alien, and the registration law applied to him as both an alien and as a potential employer of alien workers.

How Arrowsmith came into contact with the Detroit chapter of the American Civil Liberties Union is not known, but in a letter to the *Detroit News* Arrowsmith mentioned that the ACLU had “encouraged” him “enter this fight.” A photograph published in the *Detroit Free Press* on June 2 showed Arrowsmith signing the bill of complaint as Parker and O’Brien of the ACLU looked over his shoulder. They found in George Arrowsmith a willing and active collaborator. “I firmly believe that this bill is a gross invasion of fundamental human rights,” Arrowsmith wrote in his letter to the *News*. “I am in the fight to stay,” he vowed, but he acknowledged that it was likely to be a “very expensive” fight and, therefore, he urged “liberty-loving persons in sympathy with our cause” to donate money to the ACLU.<sup>81</sup>

In the twelve-page complaint, Arrowsmith’s attorneys asked the District Court to use its power as a court of equity to declare the Michigan alien registration law “unconstitutional, usurpatory and void”; forbid State officials from enforcing the statute against Arrowsmith “and persons similarly situated on behalf of whom this bill is brought”; and grant a restraining order and preliminary (sometimes called an “interlocutory”) injunction, pending a final hearing, enjoining Michigan officials from enforcing the law in question.

To achieve their primary goal of persuading the Court to order the State to stop the implementation of the law, Arrowsmith’s complaint had to convince the Court of three things. First, it had to address the question of why a federal court should have jurisdiction in the matter. The case could not be left to a State court, they argued, primarily because the dispute between George Arrowsmith, a “person of foreign birth” and a British subject, and the State of Michigan involved “the Constitution, Treaties and Laws of the United States.”<sup>82</sup>

Second, and related to the first point, Arrowsmith’s attorneys had to demonstrate that the alien registration law violated the U.S. Constitution. This was critical, for lurking beneath the text was an understanding that the 11th Amendment to the Constitution prohibited “any suit in law or equity” in United States courts against states or officers of states. However, the U.S. Supreme Court in *Ex Parte Young* (1907) had held that a state did not have immunity to violate the Constitution, and that in attempting to enforce an unconstitutional law an officer of a state was not acting in his capacity as an officer of the state, but rather as an individual who could be sued in federal court.<sup>83</sup>

For Levin and his colleagues to bring their case into federal court, therefore, it was imperative that they convince the court of the many ways in which Michigan Public Act No. 241 offended the Constitution. Seven full pages of Arrowsmith’s bill of complaint were taken up by constitutional arguments. They principally detailed the ways in which the Michigan act violated Article 1, section 8, clause 3 of the Federal Constitution (“The Congress shall have the power...to regulate commerce with foreign nations, and among the several states, and with the Indian tribes”) and clause 4 (“The Congress shall have the power...to establish a uniform rule of naturalization”); Article I, section 9 (“No bill of attainder or ex post facto law shall be passed”); Article 1, section 10 (“No state shall...pass any...ex post facto law, or law impairing the obligation of contracts”); and the 14th Amendment, section 1 (“No state shall deprive any person of life, liberty, or property, without due process of law...nor deny to any person within its jurisdiction the equal protection of the laws”).

Third, and most importantly, the bill of complaint had to persuade the court to exercise its equitable power to block the enforcement of the act rather than allow the measure to go forward and have George Arrowsmith, presuming he got arrested for violating the law, try to fight it at trial. The attorneys for Arrowsmith had to show that allowing an unconstitutional law to proceed for just a short while would threaten him and his property with immediate and irreparable harm.

This was the whole point of section V of the complaint where it maintained that Arrowsmith’s livelihood came from hiring himself out to be employed and from employing other “persons of foreign birth.” Moreover, he was married, owned property within the state, had “good moral character,” and enjoyed a “reputation in the conduct of said business for stability and integrity.” The implication was that the alien registration law threatened to damage his contractual relationships, his standing in the community, and therefore his ability to earn a living. It was futile for Arrowsmith to attempt to fight the Act through regular legal means, including at a trial, because even if he succeeded he would lose much of what he held dear. Allowing the normal legal process to play out would be unfair to Arrowsmith. It was situations like this that the court’s equitable power was meant to address.

Arrowsmith’s complaint came before Ernest A. O’Brien, the newest of the four judges on the Eastern District, who joined the bench in March 1931. It no doubt was a sign of good fortune for the plaintiff that the 51-year old O’Brien was also the Court’s first Roman Catholic judge and a leader in Detroit’s Catholic community. In the early 1920s, O’Brien served on the executive committee of the Educational Liberty League, led by Bishop Michael Gallagher that helped defeat a proposed amendment to

the State constitution, championed by nativists, that would have effectively abolished parochial school education in Michigan. At the time, Catholics made up about 40 per cent of the population of Detroit, but just 20 per cent of the State-wide population, so the campaign to defend private religious education required a broad mobilization of support beyond practicing Roman Catholics. With immigrants and aliens again under fire during the early years of the Great Depression, presumably O'Brien carried onto the bench his political experiences and a broad understanding of the anxieties of the foreign born.<sup>84</sup>

O'Brien received and read the complaint, accepted the argument that Arrowsmith would suffer "great, immediate, and irreparable injury" if the alien registration law went into effect, and on that same day he issued an order temporarily restraining the Governor, Attorney General, and Commissioner of Public Safety from enforcing the law. He also issued a show cause order requiring the named officials to demonstrate at a hearing in court why a preliminary injunction should not issue *pendente lite* (that is, while litigation over the law took place). O'Brien then set a hearing date of June 9, which was remarkably soon considering the Court's sizeable backlog of criminal and civil cases.<sup>85</sup>

O'Brien's injunction had an immediate impact on the implementation of the registration law. The next day, the *Detroit News* reported that Commissioner of Public Safety Olander had dropped plans to enforce the law upon the advice of Deputy Attorney General Emerson Boyles. "Technically, we perhaps are restrained from enforcing this act only in the case of Mr. Arrowsmith," noted Boyles, "but in matters of this kind it is the State's policy not to attempt to enforce the statute against anyone when it cannot enforce it against all." Nobody realized it at the time, but this moment marked the end of the Cheeney Act, which had an effective life of no more than forty-eight hours.<sup>86</sup>

Taking no chances, Levin and his associates filed a second suit on June 3, this time on behalf of Detroit-based Polonia Publishing Company, publisher of the *Polish Daily Record (Rekord-Codzienny)*.<sup>87</sup> The bill of complaint mirrored the one for Arrowsmith, but with much more emphasis placed on the fact that the plaintiff was a Michigan corporation and an employer of persons of foreign birth. One of them was 53-year old Adolf Pasterz, a feature writer and a Polish-born alien. The company insisted that Pasterz was "essential" to its continued operation as a newspaper. The bill of complaint stated that Pasterz had "advised" his employer that he "refuse[d] to submit to and recognize as law" the Cheeney Act, and that he refused to register as required under the "alleged statute." The law, of course, did not permit the company to hire an alien who did not possess a certificate of residence. Faced, therefore, with the loss of a valuable employee that would cause it to suffer "great and irreparable damage," and believing that the registration law was "not in truth and in fact law," Polonia Publishing Company petitioned for relief from the Court. Once again Judge O'Brien responded by issuing a temporary injunction on behalf of the aggrieved plaintiff and another show cause order to Brucker, Voorhies, and Olander.<sup>88</sup>

As the Court hearing approached, the parties agreed to a continuance in the Arrowsmith and Polonia cases until a new hearing date set for July 1. The restraining orders issued by Judge O'Brien remained in effect over the following three weeks, during which time both sides prepared in earnest. The Court, likewise, had to make preparations. The upcoming hearing would not take place before O'Brien alone. In the aftermath of the U.S. Supreme Court's *Ex Parte Young* decision in 1907, which had the potential to overturn the constitutional relationship between states and the federal government, Congress established Section 266 of the U.S. Judicial Code. Whenever a plaintiff brought suit against a state in federal court, the law required that a panel of three federal judges had to hear the case – two district judges and either a judge of the court of appeals or a justice of the Supreme Court.<sup>89</sup>

Scheduled to join O'Brien in presiding over the Arrowsmith and Polonia hearing, therefore, was Judge Charles C. Simons of the District Court for the Eastern District of Michigan, and Judge Arthur C. Denison of the Sixth Circuit Court of Appeals. Simons was practicing law in Detroit when President Warren Harding nominated him to fill a new seat on the district court in 1923. In 1931, the 55-year old Simons was one of only thirteen Jewish federal judges in the United States. Arthur Denison, age 71, had served on the Court of Appeals for twenty years. Prior to his appointment to the Court by President William Howard Taft, Denison had a private practice in Grand Rapids specializing in patent law and work for the Michigan Central Railroad.

Undoubtedly the connections that O'Brien and Simons had with Roman Catholic and Jewish life in America gave them a measure of appreciation for the conditions facing the foreign-born in an era of rampant nativism. Denison possessed a similar awareness of the plight of immigrants in the United States. Attorney Nathan Milstein later praised Denison for recognizing that the country's "immigration statutes are very drastic and deal arbitrarily with human liberty." According to Milstein, Denison frequently "found it necessary to remind Immigration Authorities that aliens are human beings and as such have rights in any country in which they are domiciled...."<sup>90</sup>

In mid-June, the attorneys for Arrowsmith and Polonia Publishing Company filed amended bills of complaint. They put forth a half dozen new arguments and added numerous references to the Federal Civil Rights Act and to various provisions of the Constitution of the State of Michigan.<sup>91</sup> The federal act referred to was the Enforcement Act of 1870, which had enabled federal authorities to crackdown on the Ku Klux Klan in the Reconstruction South. Section 16 of the Act was of particular value to the present cases. It established "that all persons" within the jurisdiction of the U.S. had the same right in every state "to the full and equal benefit of all laws...as is enjoyed by white citizens," and also "shall be subject to like punishment, pains, penalties...."<sup>92</sup>

About a week later, on June 22, Levin and the other attorneys filed two more suits, one on behalf of Francesco Dimeglio, an Italian immigrant who lived in Detroit, and the other for John Petrowsky, a 37-year old worker at the Packard Motor Car Company and a resident of the northern suburb of East Detroit. As a barber and, hence, an employer, Dimeglio faced the same difficulty in hiring aliens as noted in the complaints of Arrowsmith and Polonia Publishing Company. His problems with the registration law, however, went much deeper. In 1931, he was an alien and clearly subject to the statute, but it was impossible for him to comply with the registration requirements because he came to the United States in 1923 without documents and there was no record of his entry into the country. The Immigration Act of 1917 provided that an alien who entered the United States outside a recognized port of entry or without inspection was at risk for deportation for three years following the unlawful entry. With the Immigration Act of 1924 Congress removed any time limit on deportability for most immigration law offenses, including unlawful entry. Dimeglio's illegal entry eight years earlier in 1923 meant that in 1931 he was not at risk for deportation under federal law. The Cheeney Act of 1931, however, did not recognize any federal statute of limitations. Hence, unable to register under the Cheeney Act, Dimeglio found himself threatened with the loss of livelihood, arrest, and removal from the State by Michigan officials.<sup>93</sup>

The same law also endangered John Petrowsky. According to his complaint, he came to the United States with his family in May, 1897, and long believed that he had become a citizen as a child through his father's naturalization. Petrowsky continued to assert his naturalized citizenship status as late as the United States Census of 1930. At some point he discovered the truth (exactly when we are not told) "that he was not a citizen of the United States" but instead a citizen of Poland and, therefore, an alien living in the U.S.

He claimed that when he wrote to federal immigration authorities about the matter they replied that they had no record of his entry to the country. Thus, just like Dimeglio, John Petrowsky was an alien who could not prove to Michigan officials his right to be lawfully present in the United States. This made him potentially a criminal in the eyes of Michigan's new alien registration regime.<sup>94</sup>

The registration statute, according to Levin and his co-counsel, primarily interfered with the business relationships and contracts of George Arrowsmith and the Polonia Publishing Company, but it would appear that they had some doubt as to the strength of these litigants' standing in court. Perhaps this explains why they continued to work throughout June to produce the right kind of plaintiffs to challenge the Act. They found in Dimeglio and Petrowsky individuals whose liberty and livelihood were put at serious risk by the law, and who were poised to suffer direct, immediate, and irreparable harm should the court fail to block the State from enforcing it.

Once again, Judge O'Brien issued show cause and restraining orders and he folded Dimeglio and Petrowsky into the cases already scheduled for the hearing on July 1, which promised to be a very busy day. Three days earlier, on June 19, the defendants (represented by Attorney General Voorhies and Assistant Attorney General Kit Clardy) had moved to dismiss the bills of complaint by George Arrowsmith and the Polonia Publishing Company. Objecting to "the many irregularities, insufficiencies and errors" in the submissions, the defendants briefly cited sixteen grounds for dismissal of the suits. The very first was their blatant assertion that the Court did not have jurisdiction to entertain the cause of action demanded by the plaintiffs. Other objections included the claim that the plaintiffs failed to present "a substantial federal question," disclose "any violation" of the U.S. or Michigan constitutions, or present "sufficient fact" to show that they would be injured or damaged by the enforcement of the statute. Nor, argued the defendants, did the plaintiffs show that they were affected by "the claimed unconstitutional provisions" of the law in question. They were not members of a class "directly affected by provisions of the bill," and they failed to provide facts to support a cause of action or a claim of relief through a court of equity. In short, Voorhies and Clardy declared that Arrowsmith and the Polonia Publishing Company had not established constitutional or factual grounds to contest the statute, the plaintiffs were not the right parties to bring suit assuming such grounds actually existed, and the suits themselves were premature. For these reasons, the defendants pleaded with the Court to dismiss the suits and dissolve the restraining orders. O'Brien postponed ruling on their motion until the upcoming hearing.<sup>95</sup>

[Ed. Note: This article will be concluded in the next issue of *The Court Legacy*.]

## End Notes

1. The phrase comes from Philip Slomovitz, "The Fight against the Alien Registration Bill," *The Canadian Jewish Chronicle* (June 19, 1931), 21. The precedent Slomovitz had in mind was the 1927 civil trial in the U.S. District Court for the Eastern District of Michigan of Aaron Sapiro against Henry Ford for libel over Ford's publication of anti-Semitic articles in the *Dearborn Independent*. For more on the suit and trial, see David Gardner Chardavoyne, *The United States District Court for the Eastern District of Michigan: people, law, and politics* (Detroit: Wayne State University Press, 2012), 187-89.
2. Since the act did not specify gender or age, therefore it applied to males and females of any age.
3. Public Act No. 241, in *Public Acts of the Legislature of the State of Michigan Passed at the Regular Session of 1931* (Lansing: Franklin DeKleine Co., 1931), 418-21.
4. Section 1 of Michigan Public Act No. 241 of 1931.
5. *Arrowsmith v. Voorhies*, Atty. Gen. of Michigan, et al., 55 F. (2d) 310 (1931).
6. On June 25, 2012, the United States Supreme Court struck down much of the Arizona law, including the alien registration provision, in *Arizona, et al., v. United States*, 567 U.S. \_\_\_\_.
7. Majority opinion by Justice Hugo Black in *Hines v. Davidowitz*, 312 U.S. 52, 70 (1941).
8. Section 1 of the Naturalization Act of 1798, 1 U.S. Statutes at Large 566.
9. Sections 4 and 5 of the Naturalization Act of 1798, 1 U.S. Statutes at Large 567-68. Following the victory of the Democratic-Republicans in the election of 1800, Congress repealed the act and its alien registration component.
10. Arthur's veto language appears in Max Kohler, "Why Registration of Aliens is Inadvisable," testimony before hearing of U.S. House of Representatives, Committee on Immigration and Naturalization, January 5, 1923, in Max J. Kohler, *Immigration and Aliens in the United States* (New York: Bloch Publishing Co., 1936), 350.
11. Erika Lee, *At America's Gates: Chinese Immigration during the Exclusion Era, 1882-1943* (Chapel Hill, NC: University of North Carolina Press, 2003), 40-43.
12. Section 7 of An Act to Prohibit the Coming of Chinese Persons into the United States, 27 Stat. 25 (1892).
13. McCreary amendment, 28 Stat. 7 (1893); Anna Pegler-Gordon, "Chinese Exclusion, Photography, and the Development of U.S. Immigration Policy," *American Quarterly* 58 no. 1 (March 2006), 55-59.
14. Sections \_\_\_\_, 27 Stat. 25.

15. Lucy E. Salyer, *Laws as Harsh as Tigers: Chinese Immigrants and the Shaping of Modern Immigration Law* (Chapel Hill, NC: University of North Carolina Press, 1995), 46-47.
16. Sherman quoted in Brewer's dissent, *Fong Yue Ting v. United States*, 149 U.S. 698, 743.
17. Salyer, *Laws as Harsh as Tigers*, 47-53.
18. *Fong Yue Ting v. United States*, 149 U.S. 698, 713-14 (1893).
19. Justice Brewer in *Fong Yue Ting v. United States*, 149 U.S. 743; Salyer, *Laws as Harsh as Tigers*, 53-54.
20. Kohler, "Why Registration of Aliens is Inadvisable" (1923), in Kohler, *Immigration and Aliens in the United States*, 340, 356, and 358-60.
21. Marcus Braun, "How Can We Enforce Our Exclusion Laws?" *The Annals of the American Academy of Political and Social Science*, 34 no. 2 (September 1909): 140-42.
22. Presidential Proclamation of November 16, 1917, 40 US Stat. 1716-18; registration was extended to women in Presidential Proclamation of April 19, 1918, 40 US Stat 1772-73. For an example of an alien registration card, see the one issued to John Kranz of Brooklyn, New York, at <http://wellsgenealogy.wordpress.com/2010/08/> (viewed June 22, 2012).
23. U.S. Congress, House, Committee on Immigration and Naturalization, *Hearings before the House Committee on Immigration and Naturalization on H.R. 20936, A Bill Providing for the Registration of Aliens*, February 28, 1917, 64th Cong., 2d sess. (Washington, D.C.: GPO, 1917), 1, 18-20, 23.
24. "Smuggling aliens over the line: some tricks of the trade," *Literary Digest* 95 (October 1, 1927): 50-54.
25. Martel's comment appears in Thomas A. Klug, "Labor-Market Politics in Detroit: The Curious Case of the 'Spolansky Act' of 1931," *The Michigan Historical Review*, vol. 14 no. 1 (Spring 1988): 12-13.
26. Klug, "Labor-Market Politics in Detroit," 13-18.
27. Klug, "Labor-Market Politics in Detroit," 12.
28. Kohler, "Why Registration of Aliens is Inadvisable" (1923), in Kohler, *Immigration and Aliens in the United States*, 342, 361.
29. Klug, "Labor-Market Politics in Detroit," 19, 21; U.S. Congress, House, Special Committee on Communist Activities in the United States, *Investigation of Communist Propaganda, Hearings Before a Special Committee to Investigate Communist Activities in the United States*, 71st Cong., 2d sess., 1930, Part 4: 132.
30. Population of the foreign born in Detroit based on 15th Census of the United States: 1930. Population (Washington, D.C.: GPO, 1933), II: 463.
31. Flyer, "To All Working Class Organizations" from the secretary of the Provisional Committee for the Protection of the Foreign Born (Detroit), October 1930, Communism folder, Box 1, Metro Detroit AFL-CIO Collection, Archives of Labor and Urban Affairs, Wayne State University, Detroit, Michigan.
32. Flyer, Communism 1931 folder, Box 2, Detroit Mayors' Papers, Burton Historical Collection, Detroit Public Library, Detroit, Michigan.
33. "Fish Report Asks Outlawing of Reds as National Menace," *New York Times* (January 18, 1931), 1, 14.
34. This was the sole condition of membership in the Union League of Michigan. See Report of the Committee on Subversive Activities, February 27, 1931, Bulletin of the Union League of Michigan, vol. 1 no. 13, p. 6, in Union League of Michigan folder, Box 3, Maurice Sugar Collection, Archives of Urban and Labor Affairs, Wayne State University. For additional background on the Union League of Michigan, see Klug, "Labor Market Politics in Detroit," 21-22.
35. "Brucker Gives Key to Policies," *Detroit News* (January 10, 1931), 11.
36. Jacob Spolansky, "The Red Trail in America," address of December 19, 1930, Bulletin of the Union League of Michigan, vol. 1 no. 3; and Spolansky, "Underground Bolshevism," address of January 9, 1931, Bulletin of the Union League of Michigan, vol. 1 no. 4, both in Bulletin of the Union League of Michigan folder, Box 10, Henry B. Joy Collection, Michigan Historical Collections, Bentley Historical Library, University of Michigan, Ann Arbor, Michigan. Spolansky's claim that there were "ten thousand" party members in Detroit was a gross exaggeration.
37. Report of the Committee on Subversive Activities, February 27, 1931, Bulletin of the Union League of Michigan, vol. 1 no. 13, p. 6, in Union League of Michigan folder, Box 3, Maurice Sugar Collection, WSU.
38. Report of the Committee on Subversive Activities, February 27, 1931.
39. *Journal of the House of Representatives of the State of Michigan*, session of 1931, I: 662.
40. The membership of the House Committee on Judiciary appears in *Michigan Manual*, 1931-32.
41. *Detroit Free Press* (May 30, 1931), 4.
42. Report of the Committee on Subversive Activities, February 27, 1931.
43. 15th Census of the United States: 1930. Population (Washington, D.C.: GPO, 1933), II: 425, 446, and 463.
44. "Alien Registry Bill is Passed. Measure Sponsored by the Union League Club of Detroit Goes to Governor" *Detroit News* (May 19, 1931), 36; "Alien Registry to be Rushed," *Detroit News* (May 30, 1931), 2.
45. The "sneaked through the legislature" comment was made by attorney Fred Butzel; see "Alien Registry Now Enjoined," in *Detroit News* (Jun 1, 1931), 1.
46. *Journal of the House of Representatives of the State of Michigan*, session of 1931, II: 1200-01. Wade and Bartlett in *Michigan Manual*, 1931-32.
47. *Journal of the Senate of the State of Michigan, 1931 regular session*, 906, 1047; Sadowski and Roxborough in *Michigan Manual*, 1931-32; party composition of the Senate and House in the 56th Legislature in "Former State Legislatures, 1835-2008," *Michigan Manual* 2009-10, III-192.
48. *Journal of the House of Representatives*, II: 1364.
49. Zurbrick and Howell quoted in "Alien Registry Bill is Passed," *Detroit News* (May 19, 1931), 36.
50. "Fails to Block Bill to List Aliens Here," *Detroit News* (May 21, 1931), 8; American Civil Liberties Union, Weekly Press Bulletin #457 (May 21, 1931), *American Civil Liberties Union records and Publications* (Glen Rock, NJ: Microfilm Corporation of America, 1977), reel 3.
51. Max Kohler to Hon. Wilbur M. Brucker, May 20, 1931, in Kohler, *Immigration and Aliens in the United States*, 389-91.
52. "Labor Delegates Approve Bill to Register Aliens. Believe Measure will do Much to Prevent Bootlegging of Cheap Labor into Country," *Detroit Labor News* (May 22, 1931), 1.
53. "Alien Measure is Upheld," *Detroit News* (May 21, 1931), 23; *Journal of the House of Representatives*, II: 1481.
54. "Activities in the Michigan State Capitol," *Detroit News* (May 30, 1931), 14; "Alien Registry to be Rushed," *Detroit News* (May 30, 1931), 36; *Constitution of the State of Michigan* (1908), Article V, section 36.
55. "Alien Registration Measure is Upheld," *Detroit News* (May 21, 1931), 23.
56. *Detroit News* (May 24, 1931), 15.
57. *Detroit News* (May 26, 1931), 17.
58. "Alien Registration to be Basis of Suit," *Detroit News* (May 26, 1931), 37.
59. "Aliens Block Registration," *Detroit Free Press* (June 2 1931), 1.
60. Open Fight on Enforcement of Alien Registry. Firms' Heads Take Lead in Battle," *Detroit Times* (May 30, 1931), 3.
61. "Detroit Injunction Plea Waits Signing of Bill," *Detroit News* (May 28, 1931), 13; "Alien Registry to be Rushed," *Detroit News* (May 30, 1931), 2; "Alien Listing Law Assailed," *Detroit News* (May 31, 1931), 1.
62. "Conference Studies Alien Registration," *Detroit News* (May 28, 1931), 13; Philip Slomovitz, "The Fight against the Alien Registration Bill," *The Canadian Jewish Chronicle* (June 19, 1931), 1.
63. "Alien Registration Ruling Requested," *Detroit News* (May 27, 1931), 41; "Conference Studies Alien Registration," *Detroit News* (May 28, 1931), 13; and Maurice Sugar, "Michigan Passes the 'Spolansky Act,'" *The Nation* (July 8, 1931), 33.
64. "Conference Studies Alien Registration," *Detroit News* (May 28, 1931), 13; "State Drops Plans to Enforce the Law," *Detroit News* (June 2, 1931), 12; "Alien Registry to be Rushed," *Detroit News* (May 30, 1931), 2; Sugar, "Michigan Passes the 'Spolansky Act,'" 33.
65. Detroit Times cited and quoted in Sugar, "Michigan Passes the 'Spolansky Act,'" 32-33; Slomovitz, "The Fight Against the Alien Registration Bill," *The Canadian Jewish Chronicle* (June 19, 1931), 1; "Alien Registry to be Rushed," *Detroit News* (May 30, 1931), 2.
66. "Alien Registry to be Rushed," *Detroit News* (May 30, 1931), 2.

67. "Alien Registry to be Rushed," *Detroit News* (May 30, 1931), 2.
68. Letters to the editor, *Detroit News*, (June 19), 24; (June 24), 8; (July 1), 4; (June 14, 1931), 8; editorial, *Detroit Free Press* (June 1, 1931), 6.
69. Letters to the editor, *Detroit News* (June 10), 17; (June 5), 18; and (June 24, 1931), 8.
70. Letters to the editor, *Detroit News* (June 14), 8; and (June 21, 1931), 6.
71. Sadowski's letter to the editor in *Detroit News* (May 31, 1931), 10.
72. "Registration of Aliens Favored by Federation. Martel Sees no Reason for Opposition to Law," *Detroit Labor News* (June 5, 1931), 1, 4; minutes of meeting of June 5 [sic], 1931, DFL Minutes, Metro Detroit AFL-CIO Collection, WSU. For Rabbi Fram's statement and the DFL's response, see "The Rabbi Rants," *Detroit Labor News* (June 19, 1931), 4. Also see "Fram Attacks Alien Measurers," *Detroit Free Press* (June 14, 1931), 4.
73. *Detroit Free Press* (May 30, 1931), 4; "Alien Registry Now Enjoined," *Detroit News* (June 1, 1931), 27.
74. Sidney Fine, *Frank Murphy: the Detroit Years* (Ann Arbor: University of Michigan Press, 1975), 178-79; "Alien Registry Now Enjoined," *Detroit News* (June 1, 1931), 27; "Brucker Cuts State Budget," *Detroit Free Press* (June 18, 1931), 18; *15th Census of the United States: 1930. Population* (Washington, D.C.: GPO, 1933), II: 425, 446.
75. Minutes of meeting of executive committee, Council for the Protection of the Foreign Born, June 3, 1931, and flyer for June 19, 1931 rally, in Communism folder, Box 1, Metro Detroit AFL-CIO Collection, WSU; "Communists Rally to Hear Foster," *Detroit News* (June 19, 1931), 45. On Sugar, see Christopher H. Johnson, *Maurice Sugar: Law, Labor, and the Left in Detroit, 1912-1950* (Detroit: Wayne State University Press, 1988); "The Foreign Born are Reds," page 23, Sugar autobiographical manuscript, part 23, box 118, Maurice Sugar Collection, Archives of Labor and Urban Affairs, Wayne State University, Detroit, Michigan.
76. "Reds Denounce New Alien Law," *Detroit News* (June 20, 1931), 5; "Heat Wave," *Detroit Free Press* (June 20, 1931), 1; ACLU Annual Report (to June 1931), p. 39, in *ACLU Records and Publications, 1917-1975* (Glen Rock, NJ: Microfilming Corporation of America, 1977), reel 87; and Third Period in <http://www.marxists.org/glossary/events/t/h.htm#third-period>.
77. ACLU Daily News Release for December 10, 1931; ACLU Monthly Bulletin for Action, June 1931; minutes of ACLU Board of Directors meeting, June 15, 1931; ACLU Weekly Press Bulletin No. 459, June 4, 1931, in *ACLU Records and Publications, 1917-1975*, reel 3.
78. Slomovitz's analysis, "The Fight against the Alien Registration Bill," was disseminated by the Jewish Telegraphic Agency and appeared on June 19, 1931, as page-one stories in *The Canadian Jewish Chronicle* (based in Montreal, Quebec) and *The Ohio Jewish Chronicle* (out of Columbus, Ohio). On the calculations of Jewish leaders in responding to the law, see Libby Garland, "Fighting to be Insiders: American Jewish Leaders and the Michigan Alien Registration Law of 1931," *American Jewish History* 96 no. 2 (June 1910) 109-140.
79. See Bill of Complaint, George Arrowsmith vs. Wilbur M. Brucker et al., US District Court for the Eastern District of Michigan, Southern Division, Case in Equity No. 4798, in Civil Case Files, Civil Records, US district Court, Eastern District of Michigan, Southern Division, Record Group 21 (Records of District Courts of the United States), National Archives at Chicago. I would like to thank Professor Libby Garland for providing me with copies of this and many other documents in the Arrowsmith case file held at the National Archives at Chicago. (Hereafter, Arrowsmith, title of document, National Archives.)
80. On George Arrowsmith, see the 14th Census of the United States: 1920 and the 15th Census of the United States: 1930, in Ancestry.com; and, while a resident of Edmonton, Alberta, his signed attestation in 1916 for the Canadian Over-Seas Expedition Force in the Soldiers of the First World War-CEF database maintained by Library and Archives Canada.
81. "Aliens Block Registration," *Detroit Free Press* (June 2, 1931), 1, 16; George Arrowsmith, letter in the *Detroit News* (June 19, 1931), 24;
82. Arrowsmith Bill of Complaint (section IV), National Archives.
83. *Ex Parte Young*, 209 U.S. 123 (1907).
84. "Ernest Aloysius O'Brien" in Biographical Directory of Federal Judges. On the Catholic campaign to defend parochial schools Leslie Woodcock Tentler, *Seasons of Grace: A History of the Archdiocese of Detroit* (Detroit: Wayne State University, 1990), 445-49, and JoEllen McNergney Vinyard, *For Faith and Fortune: The Education of Catholic Immigrants in Detroit, 1805-1925* (Urbana, IL: University of Illinois Press, 1998), 220-44. On O'Brien's role, see Vinyard, 283 n. 25, and Chardavoyne, 183.
85. Arrowsmith Temporary Restraining Order and Order to Show Cause, June 1, 1931, National Archives. Senior Judge Arthur J. Tuttle in 1930 reported that the Eastern District's calendar of criminal cases was behind one year, and the civil calendar two years. See Chardavoyne, 182.
86. "State Drops Plans to enforce the Law," *Detroit News* (June 2, 1931), 12. No person ever registered under the Michigan Alien Registration Act, or was arrested, tried, convicted, or deported as a result of it. Historian Rachael Ida Buff, therefore, is incorrect when she writes that the act "was mostly used to deport Mexican Americans, many of whom were actually American citizens, from the Detroit area." See Buff, ed., *Immigrant Rights in the Shadow of Citizenship* (New York University Press, 2008), 14.
87. Clarence M. Burton et al., *The City of Detroit, Michigan, 1701-1922* (Detroit: S.J. Clarke, 1922), I: 832.
88. "State Frames Alien Answers," *Detroit News* (June 4, 1931), 1; Bill of Complaint and Order to Show Cause, June 3, 1931, Polonia Publishing Company vs. Wilbur M. Brucker et al., US District Court for the Eastern District of Michigan, Southern Division, Case in Equity No. 4816, in Civil Case Files, Civil Records, US district Court, Eastern District of Michigan, Southern Division, Record Group 21 (Records of District Courts of the United States), National Archives at Chicago.
89. Act of June 18, 1910, 36 Stat. 557, established Section 266 of the US Judicial Code. On Section 266, see Joseph C. Hutcheson, Jr., "A Case for Three Judges," *Harvard Law Review* 47 no. 5 (March 1934): 795-826.
90. Simons and Denison in Biographical Directory of Federal Judges; list of Jewish federal judges in Harry Schneiderman, ed., *The American Jewish Year Book 5692* (Philadelphia: The Jewish Publication Society of America, 1931), 264; Denison in Dwight Goss, *History of Grand Rapids and its Industries* (Chicago: C.F. Cooper, 1906), II: 784-85. Nathan Milstein's comments were made in January 1932 in his testimonial on behalf of judge Denison following the latter's retirement from the court of appeals; posted by Professor Jeff Lipshaw, "Scenes from a Lawyer's Life," December 25, 2007, at [http://lawprofessors.typepad.com/legal\\_profession/lipshaw/page/2](http://lawprofessors.typepad.com/legal_profession/lipshaw/page/2) (accessed March 13, 2013).
91. The amended bills of complaint were filed in June 13 (for Arrowsmith) and June 16 (for Polonia Publishing Company); see amended bills of complaint, National Archives.
92. Act of May 31, 1870, 16 Stat. 140; section 16 now appears as section 1981 of Title 42 of the US Code.
93. Bill of Complaint, filed June 22, 1931, Francesco Dimeglio vs. Wilbur M. Brucker et al., U.S. District Court for the Eastern District of Michigan, Southern Division, Case in Equity No. 4825, in Civil Case Files, Civil Records, U.S. District Court, Eastern District of Michigan, Southern Division, Record Group 21 (Records of District Courts of the United States), National Archives at Chicago. On unlawful entry and deportability under federal law, see section 19, 39 Stat. 874 (1917); section 14, 43 Stat. 153 (1924); and Mae M. Ngai, *Impossible Subjects: Illegal Aliens in the Making of Modern America* (Princeton, NJ: Princeton University Press, 2004), 59-60.
94. Bill of Complaint, filed June 22, 1931, John Petrowsky vs. Wilbur M. Brucker et al., U.S. District Court for the Eastern District of Michigan, Southern Division, Case in Equity No. 4826, in Civil Case Files, Civil Records, U.S. District Court, Eastern District of Michigan, Southern Division, Record Group 21 (Records of District Courts of the United States), National Archives at Chicago. See also John Petrowsky (Petrowsky) in the 15th Census of the United States: 1930, East Detroit, Macomb, Michigan, and John Petrowsky in Social Security Death Index, both in [www.ancestry.com](http://www.ancestry.com). In the 1930 Census, Petrowsky is recorded as having immigrated to the United States in 1899, but he maintained he arrived in May, 1897, in the bill of complaint.
95. Motion to Dismiss of the Defendants, filed June 20, 1931, and notice to plaintiffs' attorneys dated June 19, 1931, in Arrowsmith and Polonia Publishing Company, National Archives. Using the same boiler plates, the defendants filed identical motions to dismiss in the cases of Dimeglio and Petrowsky on July 2, the day after the hearing.

*The Historical Society*  
*U. S. District Court*  
*Theodore Levin U.S. Courthouse*  
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