

IN THE UNITED STATES DISTRICT COURT FOR THE
SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	CIVIL ACTION NO. <u>3312</u>
	)	
	)	
STATE OF MISSISSIPPI; ROSS R.	)	
BARNETT, JOE T. PATTERSON,	)	
HEBER A. LADNER, as members	)	
of the MISSISSIPPI STATE BOARD	)	<u>C O M P L A I N T</u>
OF ELECTION COMMISSIONERS;	)	
H. K. WHITTINGTON, Circuit Clerk	)	
and Registrar of Amite County;	)	
MRS. PAULINE BASLEY, Circuit	)	
Clerk and Registrar of Claiborne	)	
County; J. W. SMITH, Circuit	)	
Clerk and Registrar of Coahoma	)	
County; MRS. MARTHA TURNER LAMB,	)	
Circuit Clerk and Registrar of	)	
Le Flore County; T. E. WIGGINS,	)	
Circuit Clerk and Registrar of	)	
Lowndes County; WENDELL R. HOLMES,	)	
Circuit Clerk and Registrar of	)	
Pike County,	)	
	)	
Defendants.	)	

The United States of America, plaintiff, alleges
that:

FIRST CLAIM

1. This Court has jurisdiction of this action
under 42 U.S.C. 1971(d), 28 U.S.C. 1345, and 28 U.S.C.
2281.

2. The State of Mississippi is joined as a party defendant also pursuant to §601(b) of the Civil Rights Act of 1960.

3. Ross R. Barnett, Joe T. Patterson and Heber A. Ladner are members of the Mississippi State Board of Election Commissioners by virtue of their official positions as Governor, Attorney General and Secretary of State, respectively. The State Board of Election Commissioners is an agency of the defendant State of Mississippi. The offices of said defendants are in the state capitol, Jackson, Mississippi.

4. H. K. Whittington is the Circuit Clerk and Registrar of Voters of Amite County. His office is in Liberty, Mississippi.

5. Mrs. Pauline Basley is the Circuit Clerk and Registrar of Voters of Claiborne County. Her office is in Port Gibson, Mississippi.

6. J. W. Smith is the Circuit Clerk and Registrar of Voters of Coahoma County. His office is in Clarksdale, Mississippi.

7. Mrs. Martha Turner Lamb is the Circuit Clerk and Registrar of Voters of Le Flore County. Her office is in Greenwood, Mississippi.

8. T. E. Wiggins is the Circuit Clerk and Registrar of Voters of Lowndes County. His office is in Columbus, Mississippi.

9. Wendell R. Holmes is Circuit Clerk and Registrar of Voters of Pike County. His office is in Magnolia, Mississippi,

10. Registrars of voters in Mississippi, includ-

ing the defendant registrars are agents of the Mississippi State Board of Election Commissioners and of the State of Mississippi; they administer and enforce the Mississippi constitutional and statutory provisions which set out the requirements and procedures for the registration of voters.

11. All registrars of voters in the State of Mississippi since at least 1892 have been white citizens.

12. In the counties of the defendant registrars, the statistics on voting age population of Negro and white persons and the approximate voter registration of each race are as follows:

	WHITE		NEGRO	
	Voting Age Population	Registration	Voting Age Population	Registration
Amite	4449	3295	2560	1
Coahoma	8708	8376	14604	1371
Claiborne	1688	1440	3969	138
Lowndes	16460	5869	8362	63
Le Flore	10274	9803	13567	258
Pike	12163	9989	6936	124

13. The right to vote is essential to a republican form of government. It is secured by §§2 and 4 of Article I of the Constitution of the United States and by the Fourteenth, Fifteenth, and Seventeenth Amendments thereto.

14. Under the Constitution and laws of Mississippi prior to 1890, all male citizens, except insane persons and persons convicted of disqualifying crimes, who were

21 years of age or over and who had lived in the State six months and in the county one month were qualified electors, and were entitled to register to vote.

15. At the time of the adoption of the Mississippi Constitution of 1890 there were substantially more Negro citizens than white citizens who possessed these voter qualifications in Mississippi.

16. In 1890, a Mississippi Constitutional Convention adopted a new State Constitution. One of the chief purposes of the new constitution was to restrict the Negro franchise and to establish and perpetuate white political supremacy and racial segregation in Mississippi.

17. A principal section of the Mississippi Constitution of 1890 designed to accomplish this purpose was Section 244, which required a new registration of voters in Mississippi beginning January 1, 1892, and established as a new prerequisite to voting that a person otherwise qualified be able to read any section of the Mississippi Constitution, or understand the same when read to him, or give a reasonable interpretation thereof.

18. Since at least 1892, registration has been and is a prerequisite to voting in any election in Mississippi. Registration in Mississippi is permanent.

19. Since the adoption of the Mississippi Constitution of 1890 the State of Mississippi by law, practice, custom, and usage has maintained and promoted white political supremacy and a racially segregated society.

20. By 1899, approximately 122,000 or 82% of the white males of voting age and 18,000 or 9% of the Negro males of voting age were registered to vote in Mississippi. Since 1899, a substantial majority of white persons reaching voting age in Mississippi have become registered voters. The percentage of Negroes registered to vote has declined.

21. During the period from 1899 to approximately 1952, white political supremacy in Mississippi was maintained and promoted by the following methods among others:

- (a) Negroes were not allowed to register to vote.
- (b) Literate Negroes were required to interpret sections of the Mississippi Constitution.
- (c) Negroes were excluded from Democratic primary elections. During this time, victory in the Democratic primary in Mississippi was tantamount to election.

22. In June 1951, a decision by the United States Court of Appeals for the Fifth Circuit emphasized the either-or elements of Section 244 of the Mississippi Constitution of 1890, i.e., that a person could register to vote in Mississippi if he could read or, if unable to read, understand or interpret a provision of the Constitution.

23. By 1951, a much higher percentage of the Negroes of voting age in Mississippi were literate than in 1890.

24. In 1952 the Mississippi Legislature passed a joint resolution proposing an amendment to Section 244 of the Mississippi Constitution of 1890 which provided that as a prerequisite for registration to vote the applicant must be able both to read and give a reasonable interpretation of any section of the Mississippi Constitution. The proposed amendment was submitted to the voters in a general election. Failure by the voters to mark the amendment portion of the ballot was counted as a vote against the proposed amendment, and it was not adopted.

25. The Legislature of Mississippi did not meet in 1953. On April 22, 1954, during its regular session, the Legislature passed another resolution to amend Section 244 of the Mississippi Constitution of 1890 to provide as prerequisites to qualification as an elector in Mississippi that a person be able to read and write any section of the Mississippi Constitution and give a reasonable interpretation thereof to the county registrar and in addition that a person be able to demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. The proposed amendment also required persons applying for registration to make a sworn written application for registration on a form to be prescribed by the State Board of Election Commissioners. Persons who were registered to vote prior to January 1, 1954, were expressly exempted from the new and more stringent requirements.

26. In 1954, at least 450,000 or 63 percent of the white persons of voting age in Mississippi were registered to vote. In 1954 approximately 22,000 or five percent, of the Negroes of voting age in Mississippi were registered to vote.

27. The proposed amendment to Section 244 of the Mississippi Constitution of 1890 was designed to perpetuate in Mississippi white political supremacy, a racially segregated society, and the disfranchisement of Negroes.

28. Six days after the adoption of the resolution proposing the constitutional amendment as described in paragraph 25, the Mississippi legislature, in anticipation of the United States Supreme Court decision on racial segregation in the public schools, created a 25-member Legal Educational Advisory Committee. The Committee's duty was to seek means to maintain racial segregation in the public schools in the event that the Supreme Court held such segregation to be unlawful.

29. In 1954, after the Supreme Court had declared state operation of racially segregated schools unconstitutional, white citizens councils were formed in Mississippi. The purpose of these organizations was the maintenance of racial segregation and white supremacy in Mississippi. The first statewide project undertaken by these organizations was the attempt to induce the white voters of Mississippi to adopt the proposed amendment to Section 244 of the

Mississippi Constitution of 1890.

30. In September 1954 an extraordinary session of the Mississippi Legislature was called to consider the recommendation of the Mississippi Legal Educational Advisory Committee that the Mississippi Constitution be amended to empower the legislature to abolish the public schools. The Legislature passed a resolution proposing such an amendment.

31. On November 2, 1954, the proposed amendment to Section 244 of the Mississippi Constitution of 1890 was submitted to and adopted by the voters. Of the approximately 472,000 registered voters in Mississippi who were eligible to vote on this proposed amendment about ninety-five percent were white; fewer than five percent were Negro. The amendment was adopted in a state where the public education facilities were and are racially segregated, and where such facilities provided for Negroes were and are inferior to those provided for white persons.

32. On December 21, 1954, the proposed amendment to the Mississippi Constitution authorizing the legislature to abolish the public schools was submitted to, and approved by, the voters.

33. In January 1955, another extraordinary session of the Mississippi Legislature was called for the purpose of inserting in the Constitution the amendment to Section 244 and the amendment to authorize abolition of the public schools. Both amendments were inserted during this session.

34. During the extraordinary session described

in paragraph 33, the Mississippi Legislature adopted legislation implementing the amended Section 244. In addition to requiring the interpretation test and the duties and obligations test as a voter qualification and exempting therefrom persons registered prior to January 1, 1954, the State Board of Election Commissioners was directed to prepare a sworn written application form (which included the interpretation test and the duties and obligations test) and which county registrars were to be required to use in examining the qualifications of each applicant. The application forms were to be maintained as permanent public records.

35. The effect of the amendment to Section 244 is to place the burden of more stringent requirements for registration on Negro citizens of voting age in Mississippi, the great majority of whom were not registered to vote. The white citizens of voting age, the great majority of whom were registered to vote, were not subjected to these requirements.

36. Since 1955 the defendant registrars as well as many other registrars in Mississippi have enforced the requirements of Section 244, as amended, when Negroes have attempted to register to vote, by requiring Negroes to interpret sections of the Mississippi Constitution and to demonstrate their understanding of the duties and obligations of citizenship on the form prescribed by the State Board of Election Commissioners.

37. In 1960 approximately 500,000 or 67 percent

of the white persons of voting age in Mississippi, and approximately 20,000 to 25,000, or 5 percent of the Negroes of voting age were registered to vote.

38. Section 244 of the Mississippi Constitution of 1890, as amended, and its implementing legislation vest unlimited discretion in the county registrars of Mississippi to determine the qualifications of applicants for registration to vote. These constitutional and statutory provisions impose no standards upon registrars for the administration of the constitutional interpretation test and the duties and obligations test. They enable and require the registrars of voters in Mississippi to determine without reference to any objective criteria:

(a) The manner in which these tests are to be administered;

(b) The length and complexity of the sections of the Constitution to be read, written and interpreted by the applicants;

(c) The standard for a reasonable interpretation of any section of the Mississippi Constitution, and a reasonable understanding of the duties and obligations of citizenship;

(d) Whether the performance by the applicant in taking these tests is satisfactory.

39. The Mississippi Constitution contains 285 sections. These sections vary in subject matter and complexity--ranging from such matters as the prohibition against imprisonment for debt to the legislative power to provide for ground rental or gross sum leases of

the sixteenth section lands in the State.

40. There is no rational or reasonable basis for requiring, as a prerequisite to voting, that a prospective elector, otherwise qualified, be able to interpret certain of the sections of the Mississippi Constitution.

41. The defendant registrars of voters, vested with the discretion described in paragraph 38, have used, are using, and will continue to use the interpretation test and the duties and obligations test to deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color. The existence of the interpretation test and the duties and obligations test as voter qualifications in Mississippi, their enforcement, and the threat of their enforcement have deterred, are deterring and will continue to deter otherwise qualified Negroes in Mississippi from applying for registration to vote.

42. Section 244 of the Mississippi Constitution, as amended, is unconstitutional:

- (a) Section 244 is vague and indefinite and provides no objective standards for the administration by the registrar of the interpretation test and the duties and obligations test.
- (b) The adoption, enforcement and continued threat of enforcement of a more stringent registration requirement following a period of racial discrimination in the registration of voters--a period during which an overwhelming percentage of white residents

were permanently registered and thus forever exempted from this new stringent requirement and when an overwhelming percentage of Negro residents who possessed similar qualifications were illegally denied the right to register--makes the constitutional interpretation test and the duties and obligations test devices to perpetuate the discrimination which the Fifteenth Amendment was intended to eliminate.

- (c) The history of Section 244, as amended, the setting of white political supremacy and racial segregation in which it was adopted and is enforced, the discretion which it vests in Mississippi registrars of voters, the lack of any reasonable connection between the interpretation test and a capacity to vote render it invalid on its face as a device of discrimination in the registration of voters in Mississippi.
- (d) In a state where public education facilities are and have been racially segregated and where those provided for Negroes are and have been inferior to those provided for white persons, an interpretation or understanding test as a prerequisite to voting, which bears a direct relationship to the quality of public education afforded the applicant violates the Fifteenth Amendment.
- (e) There is no reasonable basis or legitimate state interest in requiring as a prerequisite

to voting that applicants interpret certain sections of the Mississippi Constitution.

43. The defendants and their agents, unless restrained by order of this Court, will continue to enforce Section 244, as amended, and its implementing statutory provisions as qualifications for registration to vote.

SECOND CLAIM

44. Plaintiff realleges paragraphs 1 through 34, and 37 of this Complaint.

45. In 1960, the Mississippi Legislature passed a joint resolution to amend Article XII of the Constitution of 1890 to include a new section (241-A) which added the qualification of good moral character to the qualifications of an elector. On November 8, 1960, the proposed addition to Article XII of the Constitution was submitted to and adopted by the voters. Of the approximately 525,000 registered voters in Mississippi who were eligible to vote on this proposed amendment, about 95 percent were white; fewer than 5 percent were Negro. The amendment was adopted in a state where all state officials were white.

46. Section 241-A of the Mississippi Constitution as enacted provided that the Legislature shall have power to enforce the provisions of this Section by appropriate legislation. No legislative provision was made until 1962 for any procedures to be followed by the registrars in determining the moral character of applicants.

47. Commencing in August 1960, the United States

undertook steps throughout the State of Mississippi to obtain, inspect and photograph voter registration records of certain Mississippi counties pursuant to the authority granted to the Attorney General of the United States by Title III of the Civil Rights Act of 1960. Litigation resulted in certain of these counties commencing in January 1961. Such action was a matter of common knowledge throughout the State of Mississippi.

48. Commencing in July 1961, the United States undertook litigation against seven registrars in Mississippi for the purpose of obtaining injunctive relief to prevent the registrars from engaging in racially discriminatory acts and practices in the operation of their offices. This litigation is still pending and as of the date of filing this complaint, no permanent injunction has been issued against any registrar in the State of Mississippi. On April 10, 1962, the Circuit Court of Appeals for the Fifth Circuit did issue an injunction pending appeal against the Circuit Clerk and Registrar of Forrest County, Mississippi, Theron C. Lynd, enjoining Theron C. Lynd and the State of Mississippi and all persons in concert with them from engaging in discriminatory acts and practices based on race in the registration for voting in Forrest County, and specifically from::

- (a) Denying Negro applicants the right to make application for registration on the same basis as white applicants;
- (b) Failing to process applications for registration submitted by Negro applicants on the same basis as applications submitted by white applicants;

- (c) Failing to register and to issue registration cards to Negro applicants on the same basis as white applicants;
- (d) Denying Negro applicants the right to be registered by the same office personnel and with the same expedition and convenience as are being permitted to white applicants, and from failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or theretofore have given to white applicants under similar circumstances;
- (e) Administering the constitutional interpretation test to Negro applicants by including as sections to be read and interpreted any sections other than those which at the time of the trial had been used for submission to white applicants;
- (f) Requiring rejected Negro applicants to wait any different period before reapplying for registration than may be authorized under the laws of Mississippi and other than is required of white applicants.

49. The suits by the United States against registrars and the action taken by the Court of Appeals were matters of common knowledge throughout the State of Mississippi. The Legislature of Mississippi was in

regular session during April and May, 1962. During May the Mississippi Legislature adopted legislation implementing Section 241-A of the Constitution. Section 3235 of the Mississippi Code was amended to add the following:

"Except that any person registering after the effective date of this Act shall be of good moral character as required by Section 241-A of the Mississippi Constitution."

At the same time, the Mississippi Legislature amended Section 3209.6 of the Mississippi Code to require that the defendant State Board of Election Commissioners in preparing the application forms to be used by the county registrars should include therein spaces for information showing the good moral character of the applicant in order that the applicant may demonstrate to the county registrar that he is a person of good moral character. In addition, the Mississippi Legislature enacted two new laws, one requiring publication of the names and addresses of all applicants who apply for registration to vote (H.B.882, Reg. Sess. 1962) and the second providing a procedure by which qualified electors, by affidavit, could challenge the good moral character of any applicant for registration and for a hearing on any such challenge and for an appeal therefrom (H.B. 904, Reg. Sess. 1962), both hereinafter more fully described and challenged as invalid in plaintiff's Fourth Claim in this Complaint.

50. The purpose and the effect of the good moral character requirement were and are:

- (a) To subject the vast majority of Negro citizens of voting age in Mississippi to

this additional requirement when they attempt to become registered voters; and to exempt the majority of the white citizens of voting age in Mississippi from this requirement since they are already registered voters.

- (b) To provide an additional device with which registrars could discriminate against Negro citizens who seek to register to vote -- a means of discrimination which would make detection more difficult.

51. Section 241-A of the Mississippi Constitution of 1890, as amended, vests unlimited discretion in the registrars of voters to determine the good moral character of applicants for registration. This new requirement is vague and indefinite and neither suggests nor imposes standards for the registrar's use in determining good moral character. It enables and requires the registrars of voters in Mississippi to determine without reference to any objective criteria:

- (a) What acts, practices, habits, customs, beliefs, relationships, moral standards, ideas, associations, attitudes and demeanor evidence bad moral character and what weight should be given to each.
- (b) What is evidence of good moral character and what weight should be given to affirmative evidence of it, such as school record, church membership, military service, club memberships, personal, social and family relationships, civic interest, absence of criminal record.

- (c) What periods of the applicant's life are to be examined for evidence relating to his character -- whether the applicant's conduct during a remote period of his life is to be considered.
- (d) What sources, if any, such as public records, public officials, private individuals -- Negro and white -- will be consulted in determining the character of the applicant; or whether the determination will be made on the basis of personal knowledge, impression, newspaper accounts, rumor or otherwise.

52. The existence of the character qualification in Mississippi, its enforcement, and the threat of its enforcement, in the absence of any objective criteria which apply to all voters, have deterred, are deterring, and will continue to deter qualified Negro citizens in Mississippi from applying to register to vote. The threatened use and the use by the defendant registrars of voters of the character requirement deprive and will deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color.

53. Section 241-A of the Mississippi Constitution is unconstitutional:

- (a) It exempts most of the white persons of voting age from, and subjects most of the Negroes of voting age to, the requirement of good moral character.
- (b) The legislative history of the character requirement, the setting of white political

supremacy and racial segregation in which it was adopted and is enforced, the discretion which it vests in the registrars of voters and the lack of any reasonable, definite and objective standards by which good moral character is to be determined render it invalid as a device which facilitates and perpetuates racial discrimination in the registration of voters in Mississippi.

54. The defendants and their agents, unless restrained by order of this Court, will continue to enforce Section 241-A and its implementing statutory provision as a qualification for registration to vote.

THIRD CLAIM

55. Plaintiff realleges paragraphs 1 through 34, 37, and 45 through 49 of this Complaint.

56. In 1955, the Mississippi Legislature passed a statute requiring the defendant State Board of Election Commissioners to prepare a series of registration application forms suitable for obtaining pertinent information with respect to the applicant's qualifications, including spaces to test the applicant's ability to read and write any section of the Constitution of the State of Mississippi and give a reasonable interpretation thereof, and a space for the applicant to demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. (Sec. 3209.6 Miss. Code.) This section also provided that application forms shall be numbered serially in the order of taking

and a permanent record be made of the date each application was filed, the name of the applicant, and serial number; all such applications were required to be maintained as a permanent public record. The Legislature further required that the registrars administer the oath provided by the Mississippi Constitution.

57. In 1957, the Congress of the United States enacted the Civil Rights Act of 1957 which authorized the Attorney General of the United States to bring civil actions to protect the right to vote without distinction of race or color.

58. During the winter and spring of 1960, the Congress of the United States debated the question of whether additional legislation was necessary to protect the right of all citizens to register to vote at all elections without distinction of race or color. Included in the legislation considered at that time, and ultimately passed, was Title III of the 1960 Civil Rights Act which requires that all records and papers relating to registration, the payment of poll taxes, or other acts requisite to voting in federal elections be retained and preserved for a specified period and that they be made available to the Attorney General for inspection and copying. This provision was enacted into law in May of 1960. During the consideration by Congress of the proposed Title III, the Mississippi Legislature was in session. During that session the Mississippi Legislature passed a concurrent resolution (H.C.R. 36, Reg. Sess. 1960) commending the fight against the "vicious so-called Civil Rights Bills." Shortly thereafter, the Mississippi

Legislature amended Section 3209.6 Mississippi Code, which formerly provided that the application forms remain a permanent public record, to provide, if no appeal from the registrar's decision was taken during the statutory thirty-day appeal period, that the registrars were not required to retain or preserve any record made in connection with the application of anyone to register to vote.

59. The purpose and effect of the Mississippi statute described in the preceding paragraph (Section 3209.6, as amended, which authorizes county registrars to destroy registration records) was to frustrate federal protection in Mississippi of the right of citizens to vote without distinction of race, and to facilitate discrimination by county registrars against Negroes seeking to register to vote. Some registration application forms, including some forms received by defendant H. K. Whittington in Amite County, Mississippi, have been destroyed under the authority of this statute. This statute violates Article VI of the Constitution of the United States in that the statute is in direct conflict with and contrary to the requirements of Title III of the Civil Rights Act of 1960.

60. The defendants and their agents, unless restrained by order of this Court will continue to destroy voter registration records in violation of the Constitution of the United States and the Civil Rights Act of 1960.

FOURTH CLAIM

61. Plaintiff realleges paragraphs 1 through 34, 37, 45 through 49, and 56 through 58 of this Complaint.

62. In late 1961 and early 1962, Negro citizens and organizations conducted a voter registration drive in Mississippi for the purpose of increasing the number of Negroes eligible to vote in the 1962 Mississippi primary elections. For the first time in many years Negroes were candidates for the office of representative in the Congress of the United States. These facts were widely publicized and were matters of common knowledge throughout Mississippi.

63. Commencing in July 1961, the United States initiated litigation against seven registrars of Mississippi for the purpose of obtaining injunctive relief against the registrars prohibiting racially discriminatory acts and practices in the operation of their offices. The first hearing in one of the cases referred to above involving a motion for an injunction came on to be heard before the United States District Court for the Northern District of Mississippi in December 1961 in a case against the registrar and sheriff of Tallahatchie County. During the course of this hearing the United States attempted to subpoena the poll books in the county as those books, by law, contain the race of all qualified voters. At that time the United States explained to the Court and counsel for the defendant State of Mississippi the difficult problem of establishing race identification of the thousands of persons on the registration rolls in any particular county.

64. In March 1962, a second hearing was held in the United States District Court for the Southern District of Mississippi on a motion for a preliminary injunction in an action by the United States against the registrar of voters of Forrest County. At the hearing, the United States was permitted to inspect the registration application forms of thirteen Negroes and six white persons who had applied to be registered. Some of the Negro applicants were highly educated and their forms give every indication that they were qualified to vote. However, on some of these forms there were certain formal, technical and inconsequential errors, such as the omission of the applicant's precinct in the oath recitation, the failure to sign the oath, or the failure to sign the application at a line below the minister's oath on page 3, although the applicant had subscribed and sworn to the application on another line clearly designated as the signature line. The testimony in this case indicated that white applicants for registration were either not required to fill out an application form or were assisted by the registrar, or his agents, in filling out the form with respect to his precinct and where the applicant was to sign his name on the form.

65. On April 10, 1962, as is more fully detailed in paragraph 48 of this Complaint, the United States Court of Appeals for the Fifth Circuit granted an injunction pending appeal enjoining the registrar of voters of Forrest County, Mississippi, and the State of Mississippi from failing or refusing to give to

Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or heretofore have given to white applicants under similar circumstances. This decision of the Circuit Court of Appeals and the terms of its injunction were widely publicized and were matters of common knowledge throughout Mississippi.

66. The Legislature in Mississippi was in regular session during April and May 1962. During May, the Mississippi Legislature adopted a package of legislation affecting the registration of voters, the purpose and effect of which is to deter, hinder, prevent, delay and harass Negroes and to make it more difficult for Negroes in their efforts to become registered voters, to facilitate discrimination against Negroes, and to make it more difficult for the United States to protect the right of all its citizens to vote without distinction of race or color. This legislative package of bills included the following:

- (a) House Bill 900, amended Section 3213 of the Mississippi Code:

Prior to the amendment, that statute required that an applicant fill out the application form without assistance or suggestion from any person. The amendment added that the requirements of the statute were mandatory; that no application shall be approved or the applicant registered unless

all blanks on the application form are "properly and responsively" filled out by the applicant and that both the oath as such and the application form must be signed separately by the applicant.

(b) House Bill 901:

Section 3232 was amended so as to eliminate the designation of race in the county poll books.

(c) House Bill 905:

This statute amended Section 3209.6 to require the defendant State Board of Election Commissioners to make provision on the application form for the applicant to demonstrate good moral character and for the registrar to use the good moral character requirement in registering voters. This statute also retained the provision heretofore described in paragraph 58 permitting destruction of the application form.

(d) House Bill 822 and House Bill 904:

These statutes require that within 10 days of receipt of an application for registration the registrar must publish once each week for two consecutive weeks/ⁱⁿa newspaper having general circulation in the county where the applicant applies, the name and address of each applicant who applies for registration. These statutes further provide that within 14 days after the date of the last publication of the name of the applicant, any qualified elector in the

county may challenge both the good moral character of any applicant and any other qualification of any applicant to vote. Within 7 days after such affidavit of challenge is filed the registrar notifies the applicant of the time and place for a hearing to determine the sufficiency of the affidavit of challenge. The date of the hearing may be changed by the registrar. At the hearing the registrar is authorized to issue subpoenas to compel the attendance and testimony of witnesses whose testimony is transcribed and the registrar may decide the sufficiency of the affidavit of challenge or "may take the matter under advisement just as a court may do." Strict rules of evidence shall not be enforced at the hearing and witnesses may be examined by the applicant and his attorneys or by the challenger and his attorneys. Costs are taxed at such proceedings in the same manner as costs are taxed in the State chancery courts. Appeal is provided to the county board of election commissioners by the person against whom the registrar decided. In the event no challenge is filed, the good moral character of the applicant and any other required prerequisite for registration are "within a reasonable time" to be determined by the registrar.

(e) House Bill 903:

This statute provides that if a registrar

determines an applicant is qualified he shall endorse the word "passed" on the application form but the applicant is registered only upon his subsequent request made in person to the registrar. Under this statute, it is the applicant's responsibility to return to the registrar's office to determine whether he has passed or failed. This statute also provides that if the applicant is of good moral character, but he has not otherwise complied with the registration requirements, the registrar endorses on the application the word "failed" without specifying the reasons therefor "as so to do may constitute assistance to the applicant on another application." If the applicant is otherwise qualified, but not of good moral character, it is so endorsed on the application form and the registrar shall state the reasons why he finds the applicant not to be of good moral character. If the applicant is not otherwise qualified and fails to demonstrate his good moral character, the registrar endorses on the application the word "failed" and may in his discretion also endorse the words "not of good moral character."

67. This package of legislation is unconstitutional:

(a) House Bills 900 and 903:

(1) These statutes facilitate deprivation of the right to vote on account of race or color by establishing as grounds for

disqualification any formal, technical, or inconsequential error or omission by the applicant on the application form.

(2) The purpose and the inevitable effect of these statutes, because they apply prospectively, are to exempt the majority of the white persons of voting age who are presently registered from these onerous requirements and to subject Negroes, few of whom are presently registered, to these requirements.

(3) The application form is converted into a hypertechnical and unreasonable examination. This use of the application form as a hypertechnical examination is an arbitrary and unreasonable restriction on the exercise of the right to vote and it bears no reasonable relationship to any legitimate state interest.

(4) These statutes vest unlimited discretion in the registrars to determine without reference to any objective standard whether an application form is filled out "properly and responsively." There are no standards imposed on the registrars for determining which questions on the form elicit the "essential facts and qualifications to entitle a person to register to vote."

(5) The requirement that the oath and signature on the application form be signed

without assistance or suggestion is arbitrary and unreasonable and is a device to trap applicants into an omission which will serve as grounds for disqualification.

(6) The prohibition against informing applicants or allowing applicants to learn of the reason or reasons for their disqualification as voters is wholly unreasonable and arbitrary and is contrary to any legitimate state interest and is inconsistent with fundamental principles of democracy.

(b) House Bills 822 and 904.

(1) These statutes which provide for publication of the names of applicants and the challenging of an applicant's qualifications for any reason by any qualified elector vest power and authority in white citizens who are the qualified electors in Mississippi, to harass Negroes, and to delay the registration of Negroes. No objective standard is provided to limit the grounds upon which such citizens may challenge the qualifications of applicants for registration.

(2) These statutes impose onerous, arbitrary and unreasonable procedures on prospective electors who are challenged by requiring them to appear and possibly assume the cost of an administrative hearing before their qualifications to vote are determined.

(3) These statutes provide no objective standards whereby registrars may determine qualifications of prospective registrants who have been challenged.

(4) These statutes, being prospective, exempt white persons, a large majority of whom are presently registered to vote, and impose on virtually all of the Negro citizens of voting age in Mississippi, onerous procedural requirements as prerequisites to registration.

(5) These statutes vest the registrars of voters with unlimited power to forestall the registration of qualified Negro citizens by taking the matter under advisement.

(6) These statutes are arbitrary and unreasonable requirements on prospective electors and bear no reasonable relationship to any legitimate state interest.

(7) The purpose and effect of these statutes are to give the white community of Mississippi the legal right to pass initially upon the qualifications and character of Negro citizens who seek to become registered voters and to give the members of the white community the opportunity to harass and intimidate Negro applicants for registration whose names are publicized by operation of the statutes.

68. The history of racial discrimination in Mississippi, the legislative setting in which the statutes

described in paragraph 66 were enacted, the lack of any reasonable or objective standards for the registration of voters, and the arbitrary character of these requirements which bear no reasonable relationship to any legitimate state interest render them invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto.

69. Mississippi registrars of voters are required to apply these new and onerous requirements. The defendant registrars have applied such requirements. The existence of these onerous requirements, their enforcement and the threat of their enforcement have deterred, are deterring and will continue to deter otherwise qualified Negroes in Mississippi from applying to register to vote.

70. The defendants and their agents, unless restrained by order of this Court, will continue to enforce and threaten to enforce the new registration requirements as described in paragraph 66, the effect of which has been and is to deprive otherwise qualified Negro citizens in Mississippi of their right to register to vote without distinction of race or color.

WHEREFORE, plaintiff prays that pursuant to the provisions of 28 U.S.C. 2281, a District Court of three judges be convened in accordance with the procedures set forth in 28 U.S.C. 2284, and that said Court:

1. Adjudge, declare and decree that the provisions of Section 244 of the Constitution of Mississippi, as amended, and the statutes implementing said Section 244,

as amended, are invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto;

2. Adjudge, declare and decree that the provisions of Section 241-A of the Constitution of Mississippi and its implementing statutes providing for a character test as a prerequisite to registering to vote are invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto;

3. Adjudge, declare and decree that the following Mississippi statutes are invalid and in violation of 42 U.S.C. 1971, Article I of the Constitution of the United States and the Fourteenth and Fifteenth Amendments thereto:

- (a) H.B. 900
- (b) H.B. 903
- (c) H.B. 822
- (d) H.B. 904

4. Adjudge, declare, and decree that Section 3209.6 of the Mississippi Code as amended, providing for the destruction of application forms is invalid as being in conflict with Title III, Civil Rights Act of 1960, and in violation of Article VI of the Constitution of the United States.

5. Make a finding that the defendant county registrars have deprived Negro citizens of the right secured by 42 U.S.C. 1971(a); and that such deprivations have been and are pursuant to a pattern and practice of racial discrimination.

6. Issue a preliminary and permanent injunction enjoining the defendants, their agents, employees and successors, and all persons in active concert or participation with them from:

- (a) Enforcing and giving any further effect to any of the Constitutional and statutory provisions described in paragraphs 1 through 4 of the prayer of this Complaint;
- (b) Engaging in any act which would deprive any citizen in the State of Mississippi of the right to register and the right to vote without distinction of race or color;
- (c) Engaging in any acts which would delay, prevent, hinder, discourage, or harass Negro citizens, on account of their race or color, from applying for registration and becoming registered voters in the State of Mississippi;
- (d) Using the application form as an examination or test for Negro applicants, and to use such application form only as such form has been used in registering white applicants;
- (e) Using any interpretation or understanding test which bears a direct relationship to the quality of public education afforded Negro applicants.

7. Order said defendants to register as a voter any Negro applicant for registration who possesses the following qualifications for registering to vote and none of the disqualifications as set forth in the

Mississippi Constitution of 1890:

- (a) He is a citizen not less than 21 years of age;
- (b) He has been a resident of the state, county and election district for the period prescribed by Mississippi law;
- (c) He is able to read;
- (d) He has not been convicted of any disqualifying crimes enumerated in the Constitution and laws of Mississippi and is not insane.

8. Grant such additional relief as justice may require, together with the costs and disbursements of this action.

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Attorney General

BURKE MARSHALL,
Assistant Attorney General

ROBERT HAUBERG,
United States Attorney

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