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No. 21,839

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, APPELLANT

v.

CHARLES E. FORD, ET AL., APPELLEES

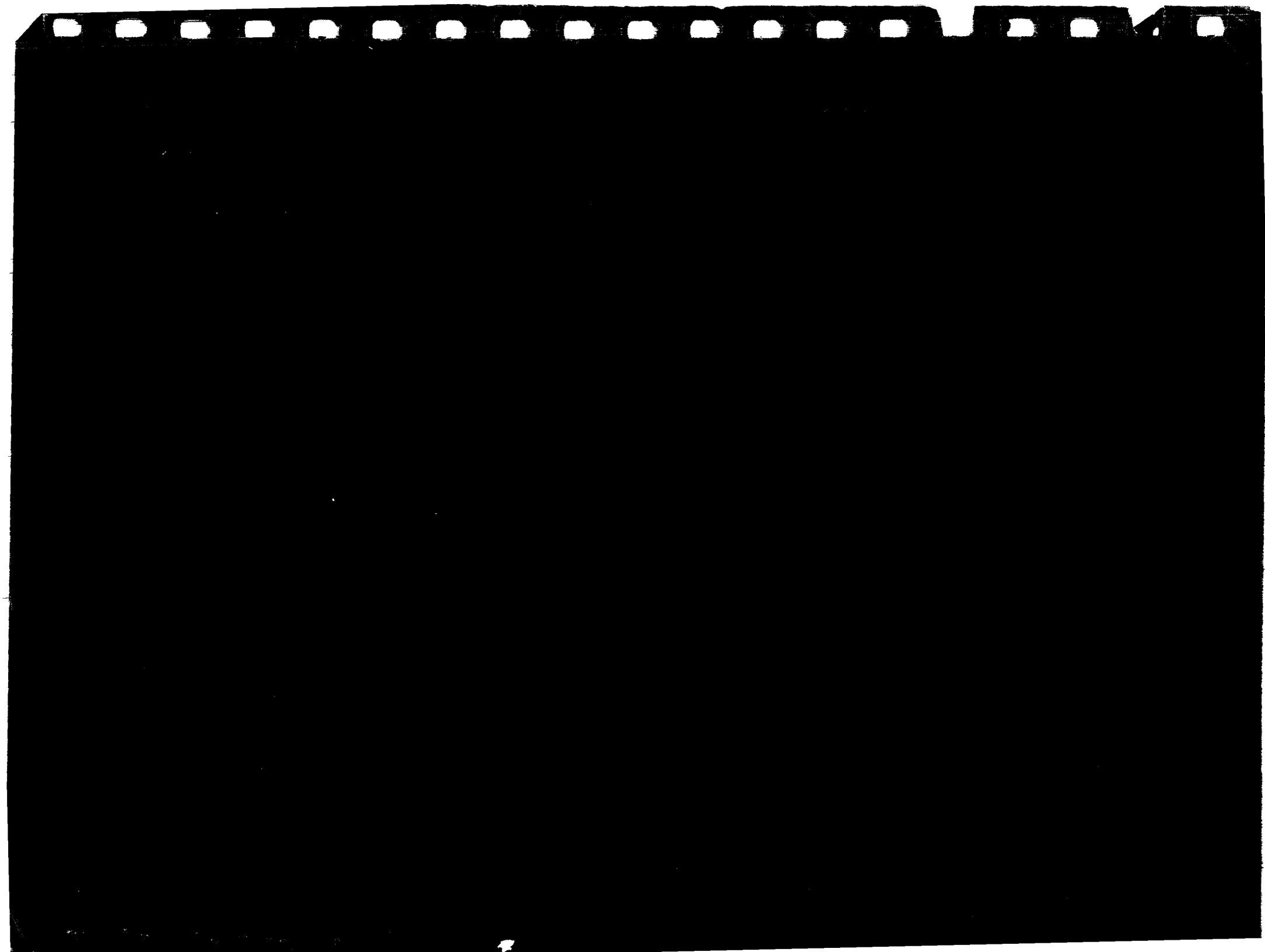
ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA

BRIEF AND APPENDICES
FOR APPELLANT

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BRIEF AND APPENDICES
FOR APPELLANT

STATEMENT OF THE CASE

I

The Pleadings and Procedure

On June 15, 1962, the Attorney General,
acting in the name of the United States, filed a
complaint in the District Court for the Southern

(1)

District of Alabama against Roswell Doggett, Raymond F. Lee, Katie Keahey, Registrars of Choctaw County, Alabama, ^{1/} and the State of Alabama, under 42 U.S.C. 1971, as amended by Part IV of the Civil Rights Act of 1957 (71 Stat. 637) and Title VI of the Civil Rights Act of 1960 (74 Stat. 90) (R. 4). The complaint alleged that appellees, in conducting registration for voting, had engaged in racially discriminatory acts and practices which included but were not limited to (R. 5):

- (a) Applying different and more stringent registration requirements and standards to Negro applicants than to white applicants for registration in determining whether or not such applicants are qualified to register and to vote;
- (b) Using the application form and questionnaire as an examination or test for Negro applicants but not for white applicants;
- (c) Refusing to register qualified Negro applicants;
- (d) Failing to notify Negro applicants of the rejection of their applications and the specific reasons for such rejection.

^{1/} Raymond F. Lee and Katie Keahey have both served as members of the Choctaw County Board of Registrars continuously since November, 1959. From that date to the present three different persons have acted as the third member of the Board. E.J. Barber served from

(continued on following page)

The complaint further alleged that the above described acts and practices deprived Negro citizens of their right to register to vote without distinction of race or color; that these deprivations were pursuant to a pattern and practice (R. 6); and that, unless restrained, appellees would continue to engage in such acts and practices. The prayer of the complaint was for a finding that the acts and practices described were racially discriminatory and constituted deprivations of the right secured by 42 U.S.C. 1971(a) and that such deprivations were pursuant to a pattern and practice; for the issuance of a preliminary and permanent injunction restraining appellees from engaging in certain acts and practices (R. 6); for an order granting freezing relief (R. 6-7); for an order placing upon the current voter registration rolls all Negroes who

1/ (continued from preceding page)

November, 1959 to August, 1961 when he was replaced by Roswell Doggett. Roswell Doggett served until November, 1962 and was replaced by C.E. Ford. Mr. Ford was substituted as a defendant by order of the district court on February 14, 1963, pursuant to Rule 25(d) of the Federal Rules of Civil Procedure.

applied for registration and who possessed, at the time of their applications, the qualification requirements applied by the defendants to white applicants who were registered^{2/} (R. 7); for additional orders and relief as would insure, for the future, the fair, equal, and non-discriminatory administration of registration procedures and standards in the County, and for the costs and disbursements of the action^{3/} (R. 7).

A hearing on the merits was conducted on February 20, 1963 (R. 16-300).^{4/} On October 29, 1963,

2/ The preliminary injunction proposed by the United States (R. 306-15) included, inter alia, a request for an order that forty-nine specified Negroes be placed upon the voter registration rolls of Choctaw County.

3/ Appellees filed a motion to dismiss the complaint on July 2, 1962, on various grounds, including the ground that the State could not be made a party-defendant in this case (R. 8-10). This motion was denied by the district court on November 13, 1962 (R. 11-12). On November 19, 1962, appellees filed their answer in which, inter alia, they denied each allegation of the complaint described above (R. 12-13).

4/ On March 19, 1963, the United States moved the District court for leave to file its Trial Brief as part of the record herein (R. 300-01). This brief, with tables attached -- part of the original record before this Court -- contains a summary and explanation of the extensive documents and testimony that constitute the evidence in this case; the United States' proposed findings of fact and conclusions of law; and a proposed permanent injunction. The proposed permanent injunctive relief is identical to the United States' proposed preliminary injunction which does appear in the printed record (R. 306-15).

the United States filed a Request for Judgment pointing out that the complaint had been filed sixteen and one-half months previous, that important elections were to be held in Choctaw County, Alabama, in December, 1963, and in the spring and fall of 1964, and that voters, in order to qualify to vote in the 1964 elections would have to pay their poll taxes between October 1, 1963 and February 1, 1964 (R. 301-03).^{5/} This request was renewed on March 30, 1964 (R. 303-04). On April 7, 1964, the United States filed a Proposed Preliminary Injunction and a Notice that it would move for such injunction on April 15, 1964 (R. 306-15). On April 13, 1964, however, the district court entered its findings of fact, conclusions of law and an order granting in part and denying in part the permanent injunctive relief sought by the United States (R. 316-21). See pp. infra.

II

The Findings of Fact and Conclusions of Law

The district court found (R. 318):

During the tenure of the current Board of Registrars, that is from November,

^{5/} The district court never disposed of this request.

1959 to the trial of this suit on February 20, 1963, the board engaged in racially discriminatory practices in conducting the registration of voters in Choctaw County, the more prominent being:

a. Permitting of assistance to be given to applicants of the white race and the refusal of such assistance to applicants of the Negro race during periods of registration.

b. Failing to disclose to rejected Negro applicants the reasons for their rejection.

c. Failing to notify Negro applicants within a reasonable time as to whether or not their application has been approved.

In its "conclusions of law" the district court held that 42 U.S.C. 1971(a) forbids any distinctions based upon race or color in the voting process, including registration. The court held further that under 42 U.S.C. 1971(c) the State of Alabama may be properly joined as a party defendant but that since "full and complete relief can be afforded here without enjoining the State, and that on the strength of United States v. Atkins, 5 Cir. 1963, 323 F. 2d 733, and United States v. Ramsey, 5 Cir. 1964, No. 20596, the State of Alabama is hereby dismissed as a party defendant" (R. 319).

III

The Decree

On April 13, 1964, the district court entered an order permanently enjoining the board of registrars

from (R. 320):

1. Engaging in any act or practice intended to result or the probable effect of which would be to result in racial discrimination in the registration for voting in Choctaw County.

2. Rejecting applicants for errors or omissions in the questionnaire when other answers or information reveal that the applicant is qualified.

3. Using the questionnaire as an examination or test, unless the Registrars present to the Court and propose to use a definite set of standards for the grading of questionnaires, which said standards shall meet with the approval of the Court as complying with state and federal law.

4. Rejecting applicants for lack of good character, not evidenced by convictions for crimes specified in the Constitution or laws of Alabama, without giving the applicant notice and an opportunity for a hearing.

5. Failing to pass on each application for registration within a reasonable time.

6. Failing to notify in writing each applicant of the action taken on his application . . . within a reasonable time, and if rejected, the specific . . . reasons for his rejection.

IV

Alabama Registration Requirements

A. Under the Constitution of Alabama registration, which is a prerequisite to voting in any election (Ala. Const. §178) is conducted by the county board of registrars, consisting of three persons^{6/} who are appointed by the Governor, state auditor, and state commissioner of agriculture and industries acting as a board of appointment. Ala. Const. §186, Title 17, §21 Code of Alabama (Recomp. 1958). Registration is permanent (Title 17, §6, Code of Alabama; see also Ala. Const. §187), and a person once registered is not required to reregister unless he has moved from one county to another (Title 17, §36, Code of Ala.) or has been purged from the rolls pursuant to statutory provisions.

B. The qualifications which must be possessed by each person desiring to register are set forth in Title 17, §32 of the Alabama Code. These qualifications

^{6/} But the duties of each board may be carried out by a majority of two members (Title 17, §34, Code of Alabama).

are: (1) the applicant must be over 21 years of age; (2) he must have resided in the State one year, in the county six months, and in the precinct or ward for three months immediately preceding the election at which he offers to vote;^{7/} and (3) he must be able to "read and write any article of the Constitution of the United States in the English language which may be submitted to [him] by the board of registrars." In addition, the statute declares that "no persons shall be entitled to register . . . except those who are of good character who embrace the duties and obligations of citizenship under the Constitution of the United States and under the Constitution of Alabama."

C. Section 31 of Title 17, Code of Alabama, provides that the Board may "examine, under oath or affirmation all applicants for registration," and may

^{7/} The residence requirements are contained in section 178 of the Alabama Constitution, which is incorporated by reference into Title 17, §32 of the Alabama Code. The residence requirement mentioned above, has been in effect since November 16, 1962. Prior to that time, the residence requirement was that the applicant live in the state for two years, the county for one year, and the precinct for three months.

"take testimony touching the qualifications of such applicants."^{8/} And section 31 also declares:

In order to aid the registrars to judicially determine if applicants to register have the qualifications to register to vote, each applicant shall be furnished by the board a written questionnaire, which shall be uniform in all cases with no discrimination as between applicants, the form and contents of which questionnaire shall be prescribed by the Supreme Court of Alabama The questionnaire shall be so worded that the answers thereto will place before the registrars information necessary or proper to aid them to pass upon the qualifications of each applicant. The questionnaire shall be answered in writing by the applicant, in the presence of the board without assistance. (Emphasis added). 9/

8/ See also Title 17, §33, Code of Alabama, which provides that "any person making application to the Board of Registrars for registration who fails to establish by evidence to the reasonable satisfaction of the board of registrars that he or she is qualified to register, may be refused registration." And §53 provides that "the Board of registrars may make such rules and regulations as it deems proper for the receipt of applications for registration and the accomplishing in as expedient a manner as possible the registration of those entitled to register, but no person shall be registered until a majority of the board of registrars has passed favorably upon such person's qualification."

9/ Continuing, the statute provides that:

There shall be incorporated in such answer an oath to support and defend the Constitution of the United States and the Constitution of the State of Alabama and

(continued on following page)

Pursuant to this statute the Registrars in Choctaw County, during the period involved in this case and thereafter until January 14, 1964, utilized the questionnaire which was prepared by the Alabama Supreme Court and which is reproduced in Appendix B.^{10/}

D. On August 26, 1964, the Supreme Court of Alabama, pursuant to its authority under section 31 of Title 17, Code of Alabama, ordered the boards of registrar throughout the State to use a new application form.^{11/} See Appendix C, infra. This form is the one currently in use throughout Alabama, including Choctaw County.

9/ (continued from preceding page)

a statement in such oath by the applicant disavowing belief in or affiliation at any time with any group or party which advocated the overthrow of the government of the United States or the State of Alabama by unlawful means. The answers and oath shall be duly signed and sworn to by the applicant before a member of the Board.

^{10/} The form of the questionnaire for the period involved in this case, and thereafter until January 14, 1964, has been constant, except that on March 29, 1960, the order of the questions was revised by the Supreme Court of Alabama.

^{11/} This form is a revised version of a form prescribed by the Court on January 14, 1964. Revision of its form was prompted by passage of the Civil Rights Act of 1964. See Appendix C.

Part I of the current form contains questions addressed to the requirements of age and residence and to eliciting information concerning the applicant's sex, race, previous registration, education and military experience. Unlike the application in use during the period of record in this case, the registrars write in the answers to these questions. Part II contains seventeen questions seeking information as to the requirements of citizenship, lack of insanity, and criminal conviction, and other information such as employment, residence voucher references, past residences, marriage status and previous unsuccessful applications for registration. This part is filled out by the applicant.

Part III of the application introduces a new registration procedure in Choctaw County not present during the period of record in this case. Each applicant is required to take an examination consisting of the following:^{12/} (1) four questions seeking factual information in the field of government; (2) written excerpts from the United States Constitution which are

^{12/} There are one hundred prescribed sets of examinations from which the registrar chooses one to administer to the applicant.

read to the applicant by the registrar and which he must copy on a form, and (3) four questions designed to determine the applicant's comprehension and interpretation of the excerpts previously read to him.^{13/}

Part IV contains the oath to be signed by the applicant; Part V, a space for writing by the board, and Part VI, a space for the supporting witness, which requirement continues unchanged.

V

The Evidence

A. Background - General

Choctaw County is located in Southwestern Alabama. An office for voter registration is maintained in the courthouse of Butler, the County seat. The matter of determining from the applicant's answers whether he is qualified is left to the discretion of the registrars.^{14/} So too is the making of regulations for the receipt of applications and for the accomplishment

^{13/} After the applicant copies the excerpts of the Constitution that are read to him by the registrar, he is given a copy of these sections so that he may refer to them to answer the four prescribed questions.

^{14/} Title 17, §31, Alabama Code, quoted at p. 10 supra. Neither the state constitution, statutes nor the application form prescribes standards or rules for making this determination.

of the registration of those entitled to register.^{15/}

The Choctaw County Board of Registrars has never adopted any formal or written regulations or standards relating to the registration procedures or the grading of application forms.^{16/}

The voting age population of Choctaw County by race, as of the 1960 census, was 5,192 whites and 3,982 Negroes (PX 3)^{17/}. The list of registered voters in Choctaw County maintained by the Judge of Probate shows that as of February 5, 1963, there were 3,697 white persons and 176 Negroes registered to vote^{18/} (PX 1).

15/ Title 17, §53, Alabama Code.

16/ The testimony of registrars, Keahey and Lee indicates this to be so (R. 220-64). See the decree of the district court enjoining the use of the questionnaire section of the application form as a test "unless the Registrars present to the Court and propose to use a definite set of standards for the grading of questionnaires" (R. 320). The two registrars who testified at the trial stated that the Board follows certain informal procedures. See pp. 33-4, infra.

17/ Finding of Fact No. 6 of the district court made on April 13, 1964 (R. 318). The prefix "PX" refers to the exhibits introduced into evidence by the United States. Appellees introduced no exhibits. A description of the United States' exhibits is set out in Appendix D to this brief.

18/ Finding of Fact No. 6 (R. 318).

The current board of registrars has been in office since November, 1959.^{19/} Of the 176 Negroes who are currently registered, 137 were registered prior to November 9, 1959, including 5 who registered prior to 1952.^{20/} Between November 9, 1959 and February 6, 1963, the registrars registered 782 white applicants and rejected 2 applications filed by white applicants. During this same period, the registrars registered 42 Negroes and rejected 260 applications filed by Negroes.^{21/} Thus, the current board of registrars has accepted more than 99% of all applications filed by white persons while rejecting 86% of the applications filed by Negroes.^{22/}

B. White Registration

Twenty-four white applicants testified at the trial, and nine exhibits were introduced providing evidence

^{19/} Finding of Fact No. 2 of the district court (R. 316). See n. 6, p. 8, supra.

^{20/} Finding of Fact No. 6 of the district court (R. 318).

^{21/} Finding of Fact No. 7 of the district court (R. 318).

^{22/} A chart in Appendix E shows the action of the current board broken down into five periods -- November 9, 1959 - December 31, 1959; 1960; 1961; 1962; January 1, 1963 - February 5, 1963.

as to the standards and the procedures employed by the registrars for white applicants.

1. White applicants were freely given assistance by the registrars, and were permitted by the registrars to receive assistance from third persons, in the filling out of their applications. Such assistance was received at every stage of the application process. This is confirmed by the court below which found that one of the "more prominent" racially discriminatory practices in which the current board of registrars engaged was "permitting of assistance to be given to applicants of the white race and the refusal of such assistance to applicants of the Negro race during periods of registration" (R. 318).

Of the twenty-four white applicants whose testimony was introduced by the United States at the trial, ^{23/} twenty-three received substantial assistance

^{23/} Ten of these whites testified personally, while the testimony of 14 was stipulated to by the parties and appears in the record at pp. 266-99. This stipulated testimony also appears in the record as Plaintiff's Exhibits 5 and 6. All 24 whites successfully applied and were registered during the period between November 9, 1959 and February 20, 1963.

in filling out their forms, either from one or more of the registrars directly,^{24/} or from third persons^{25/} with the full knowledge of the registrars.

24/ See testimony of Mary Busby (R. 270-72); Gladys McIllwain (R. 284-86); John McInnis (R. 267-69); Mary Pruitt (R. 291); Charlene Polson (R. 297); Lamar McIllwain (R. 192); Robert Toomy (R. 121-22); Milton Sikes (R. 96); Albert Boney (R. 292); Oliver Buchanan (R. 58-9); Fannie Dixon and Joseph Dixon (R. 277-78); Fred Skelton (R. 76-7); Bennie Busby (R. 104-5); Wilma Jackson (R. 294-95); James Newton (R. 177-78); Jerry Davis (R. 275).

25/ See testimony of Mary Busby (R. 271-73); M. Pruitt (R. 291); C. Polson (R. 297); B. Long (R. 282); A. Boney (R. 292); F. and J. Dixon (R. 277); Earl Pardue (R. 51); F. Skelton (R. 74-5); Julius Lewis (R. 296); William Moore (R. 170-71); Billy Trawick (R. 299); W. Jackson (R. 294-95); J. Davis (R. 275); R. Hearn (R. 279).

Many of the whites who testified specified some of the questions with which they were helped.^{26/}

For example, several of the white applicants testified that they were supplied the answer to question 20, which requires an essay on the duties and obligations of citizenship.^{27/} Most of their applications contain

^{26/} See testimony of Milton Sikes (qs. 9,17) (R. 96); J. Lewis (qs. 5b, 20) (R. 296); G. McIllwain (qs. 19, 20,21) (R. 285-86); B. Busby (q. 20) (R. 104); J. Davis (q. 20) (R. 275); W. Moore (q. 20) (R. 170-71); W. Jackson (qs. 2, 19,20) (R. 294-95); A. Boney (q. 5) (R. 292); R. Toomy (q. 20) (R. 121-22); R. Hearn (q. 20) (R. 279); M. Sikes (q. 20) (R. 96); B. Long (qs. 20, 5) R. 282); J. McInnis (qs. 21,19,2,5,) (R. 267-68); C. Polson (qs. 5,20) (R. 297); M. Pruitt (qs. 19,20,21,5) (R. 291).

Numbers to questions from the application form, cited above and elsewhere in this brief, refer to the numbering on the application form contained in Appendix B. Although the questions on the form remained the same until January 14, 1964, the order in which they appear has not been constant.

^{27/} See testimony of B. Long (R. 282, see PXA-1316); B. Busby (R. 104, see PXA-1388); J. Davis (R. 275, see PXA-526); R. Hearn (R. 279, see PXA-939); M. Sikes (R. 96, see PXA-1946); J. McInnis (R. 267, see PXA-1720); J. Lewis (R. 296); G. McIllwain (R. 286); R. Toomy (R. 121-22); C. Polson (R. 297). (All application forms are part of plaintiff's exhibit "A" and are separately numbered).

an essentially identical answer. Betty Long testified that (R. 282):

I then asked the registrar, what would be the best way to word the answer and he said 'to defend the Constitution of the United States and the State of Alabama.' I then added that to my answer. 28/

The registrars further assisted white applicants by making certain that such applicants complied with the requirement that the application form be signed. 29/

28/ Betty Long further testified that she was also assisted by both her husband and the registrar on three aspects of q. 5 and that someone else filled in part of the answer to q. 21 (R. 282-83). With all this assistance, it is not surprising that Betty Long's accepted form (PXA-1316) contains no errors or omissions. Her form is therefore not included as one of the 190 accepted forms of white applicants containing errors or omissions. See p. 23, infra in part 2 of this section. The same is true of the forms of the following whites who also testified. M. Sikes (PXA-1946); E. Pardue (PXA-1670); R. Hearn (PXA-939); J. Lewis (PXA-1272); B. Trawick (PXA-2214).

29/ See testimony of B. Long (R. 281); M. Busby (R. 271); C. Polson (R. 297). Ninety-nine percent of all white applicants signed the main oath on the application form. This oath is in fine print and has beneath it an unidentified line apparently intended as a signature line. In addition, there is a supplemental oath which follows immediately with a clearer indication that the applicant's signature is necessary. See Appendix B. The fact that

(continued on following page)

In addition, white applicants testified that they were **advised** to change certain incorrect answers to correct ones or were otherwise assisted after submitting their forms to be graded.^{30/}

The registration records themselves attest to the assistance rendered white applicants after they had filled out their forms. This occurred most often in connection with questions 19 and 20(a), two questions

29/ (continued from preceding page)

99% of all whites did sign this main oath together with the direct testimony of assistance of the three white applicants, above, and the fact that 45.7% of all applications of Negroes are missing the applicant's signature (with no evidence that Negroes were assisted by the registrars in filling in signatures at the time they submitted their applications; see pp. 26-7, 29-31, *infra*), indicates that the registrars made sure that every white applicant signed this oath if he were willing to do so.

30/ The following testified that they were advised to change answers: C. Polson (R. 297); G. McIllwain (qs. 20a, 19)(R. 286); W. Jackson (qs. 2,19) (R. 295); J. McInnis (qs. 2,5,19,21) (R. 267-68, see PXA-1403); M. Pruitt (q. 19) (R. 291, see PXA-1752).

The following testified that answers on their forms were written in or changed by a registrar or some other person after they had submitted their forms to be graded: J. Davis (q. 20) (R. 275); Hearn (q. 20) (R. 279); B. Long (q. 21) (R. 283).

involving the applicant's loyalty to country and state, and demanding a "yes-no" answer. On these two questions alone, 90 accepted white applicants changed one or both of their answers from an incorrect to a correct answer. ^{31/}

31/ The following 61 accepted white applications contain changes in the answer to q. 19: PXA-727, 235, 440, 612, 6, 1388, 2056, 445, 1798, 1136, 1554, 2356, 2364, 347, 452, 202, 510, 1025, 1521, 2071, 2221, 805, 872 (all in 1960); 1805, 363, 1208, 193, 1024, 2382, 1061, 2051, 1097, 1407, 2347, 2379, 436, 747, 1159 (all in 1961); 242, 1186, 1403, 1459, 1730, 1522, 187, 1752, 419, 1261A, 1734A, 1739A, 40A, 48A, 1822A, 2042B, 501A, 2121A, 1650B, 1582A, 1863A, 1308A (all in 1962); 1643A (in 1963). No accepted application filed by a Negro has this change.

The following 36 accepted white applications contain changes in the answer to q. 20(a): PXA-1512, 1626, 265, 847, 72, 1388, 445, 1591, 1171, 1554, 2257, 483, 1391, 1442, 805, 47 (all in 1960); 1795, 1354, 1097, 1904, 1245, 2112, 138, 1671, (all in 1961); 327, 1459, 866, 1124A, 1135A, 1478A, 2167A, 1822A, 2050A, 2140A, 1308A (all in 1962); 1289 in 1963. Only one accepted application filed by a Negro contains this change.

2. The evidence further demonstrates that white applicants were accepted who were illiterate or semi-literate and/or whose applications contain ^{32/} errors or omissions.

^{32/} The following table presents the formal educational achievements of white and Negro applicants whose applications were filed between November 9, 1959 and February 20, 1963. This information is derived from the application forms in evidence in this case. Forms not containing the relevant information have been categorized as "unknown."

	<u>White</u>		<u>Level of</u>	<u>Negro</u>	
	<u>Accepted</u>	<u>Rejected</u>	<u>Education</u>	<u>Accepted</u>	<u>Rejected</u>
	160	0	College Grad. & Some College	17	44
	462	0	10-12	9	45
	113	1	7-9	12	59
	32	0	6th Grade & Below	4	57
	<u>15</u>	<u>1</u>	<u>Unknown</u>	<u>0</u>	<u>55</u>
Totals:	<u>782</u>	<u>2</u>		<u>42</u>	<u>260</u>

Several white witnesses who were successfully registered, testified that they read or write little or not at all.^{33/}

Despite all the assistance given to white applicants by the registrars and others, 190 (25%) of the accepted applications of whites filed with the current board contain errors and omissions.^{34/} This includes six applications which lack a signature to the main oath contained at the top of page 3 of the form.

^{33/} See testimony of Earl Pardue (R. 53); Fred Skelton (R. 75); Joseph Dixon (R. 30).

^{34/} See, e.g., the application of Betty Washington. She failed to answer q. 3; failed to answer the question relating to membership in subversive organizations (q. 16); answered "no" to the question relating to bearing arms for one's country (q. 17); answered affirmatively to question 19; and failed to sign the oath on page 3 of the form (PXA-2325). Of the white applicants who testified, 7--all of whom were assisted in filling out their forms (see ns. 24, 25, p. 17, supra) had perfect application forms; the other 17, including R. Ratcliffe who testified that he did not receive assistance, had forms containing errors or omissions that were inconsequential or technical.

3. White applicants were helped by the registrars to secure supporting witnesses to fill out the section of the form entitled "Examination of Supporting Witness." The table in Appendix F demonstrates that about fifty per cent of all white persons who applied with the current board were vouched for by state officials working in the courthouse. J. A. Christopher, the Circuit Clerk, vouched for 117 white applicants and no Negro applicants. In fact, none of these officials vouched for a Negro during this period. White applicant Betty Long, who was vouched for by James Christopher, testified (R. 283):

I do not know who wrote the answer 'James Christopher, Butler, Alabama' in answer to question [21-- the references question], and I don't recall if it was on the application when I turned it in or not.

John McInnis, who was vouched for by Mr. Bruister,^{35/} testified (R. 268):

The wom[a]n then asked me if I knew Mr. Br[ui]ster or anyone else at the Court house. I do not know

^{35/} Bruister, the Tax Collector, vouched for 38 whites and no Negroes.

who wrote Mr. Br[ui]ster's name on line [21]. . . . I don't remember Mr. Br[ui]ster signing the form.

4. White registration was stimulated by the direct solicitation of white registrants by the registrars.

In the Fall of the odd numbered years, the registrars visit the precincts or wards to register applicants. They meet to take applications at places such as homes, stores and community centers. Registrar Lee testified that such meetings are always at homes, stores and centers owned and frequented by whites only (R. 257-59).

R. Toomy testified that Lee personally told him he would register people on October 24, 1961 at the home of Mr. Williamson, a white man (R. 120-21, 125). Toomy and three other whites applied successfully that day. No Negroes applied.

R. Hearn testified that he applied to register at Smith's store on October 27, 1961. Smith's store is owned by a white woman and is in a white community. Mrs. Smith, the owner, filled in the answer to question 20 on Hearn's form and served as his supporting witness (R. 279-^{36/}80).

^{36/} Two whites applied successfully on that day; no Negroes applied.

C. Negro Attempts at Registration

Fifteen Negro applicants testified at ^{37/} trial and nine exhibits were introduced providing evidence as to the standards of qualification and the procedures employed by the registrars for Negro applicants.

1. As the district court found (R. 31 , during the period between November, 1959 and February 20, 1963, Negro applicants were not assisted by the current board of registrars in filling out their forms nor were they permitted to give assistance to or receive assistance from other persons. Twelve Negroes testified ^{38/} that they received no assistance. Some of these stated

^{37/} These are the same nine exhibits mentioned in p. 9 supra. These exhibits are described in Appendix to this brief.

^{38/} See testimony of Quenton Horn (R. 288-9); Clara Dickinson (R. 148 - applied five times); Louise Dixon (R. 65-7); Gladys Harrison (R. 183, 185 - two times); Verna Kirksey (R. 197, 199, 201 - four times); Martin Ruffin (R. 289 - three times); Lugene Matthews (R. 161 - three times); Oliver Pringle (R. 213 - 18 times); Laura Underwood (R. 82, 84 - three times); Vernon Underwood (R. 151-52); Jessie Washington (R. 129, 133 - three times); Henry Williams (R. 290). The three other Negroes who testified were not asked whether they were assisted in filling out their forms.

that they were specifically told not to talk to anyone regarding their applications.^{39/} The application forms of Negroes contain no suggestion of assistance by the registrars. There are few answers crossed out or changed on their forms.

2. The evidence overwhelmingly shows that Negro applicants were rejected for inconsequential and technical errors or omissions on their application forms.^{40/} All of the Negroes who testified (and many other Negro applicants whose applications are in evidence) submitted forms which indicate that they qualify for registration under the Alabama constitutional and

^{39/} See testimony of Q. Horn (R. 288-89); O. Pringle (R. 213), H. Williams (R. 290).

^{40/} Although the district court did not explicitly make such a finding of fact, paragraphs 2 and 3 of its decree implies that the court concluded that the evidence showed this to be so (R. 320). These paragraphs provide that the registrars are enjoined from "rejecting applicants for errors or omissions in the questionnaire when other answers or information reveal that the applicant is qualified" and "using the questionnaire as an examination or test, unless the Registrars present to the Court and propose to use a definite set of standards for the grading of questionnaires."

statutory requirements, i.e., their applications indicate that they meet the age, residence, literacy requirements, that they are of good character and that they embrace the duties and obligations of United States and State citizenship. Yet, their applications are rejected for the same errors or omissions committed by many white applicants who were successfully registered. See p. 23, supra.

Many of these Negro applicants were rejected for errors or omissions which did not even involve the qualifications for registration mentioned above. Others were rejected for errors or omissions which, while involving the prescribed qualifications, were technical in that other information given by them

41/ During the period involved in this case there was no question directed at reading and writing words from the United States Constitution. But the forms referred to above indicate on their face that the applicants are literate.

42/ Lucille Blonks (PXA-4017); Jim Everett (4011); Sarah Fail (4071); Eddie Gaines (4077); Emm Harrison (4090, 4091); Mack Holcombe (4106); Frank Johnson (4141); Oliver Pringle (4207); Martin E. Efin (4234); Minnie Taylor (4244); Curvin Wallace (4257).

applicants on their forms made it clear that they in fact met these qualifications.^{43/} For example, Edna Jordan omitted to state the date she became a bona fide resident of her County and precinct in answer to questions 5(a) and (b) but at other places on her form she stated that she was presently living at Pennington, Alabama and had lived there continuously for the past five ^{44/} years.

Every Negro applicant who failed to sign the oath on the form was rejected. Many of them, however, signed their names on other lines in the oath section of the form, and signed the supplemental oath in the next section of the form and also answered correctly

^{43/} Theodore Brooks (PX-4019); Jim Everett (4056); Malet Gray (4086); Josephine Hampton (4087); Willie Hampton (4089); Oscar Holcombe (4112); Tilman Howard (4123); Ruth Irvin (4124); Edna Jordan (4158); Green Keeton (4162); A. C. McGrew (4175); Marie Mason (4185); Lugene Matthews (4186, 4187); Lurenia Parker (4197); Oliver Pringle (4212); Thaldo Roberts (4225); Lorine Turner (4252); Vernon Underwood (4256); Curvin Wallace (4258).

^{44/} Pennington, Alabama is in Choctaw County and in only one voting precinct, precinct no. 1.

the six questions in the questionnaire touching on ^{45/}loyalty. Mellie Dickinson, a teacher for twenty years in Choctaw County, was one of those Negroes who failed to sign the main oath and whose application was rejected. She testified that she had overlooked the signature line (R. 42-43). However, she signed the supplemental oath and made no other errors or omissions except for omitting to state the name and residence of her spouse in answer to question 2(a). Likewise, Raymond Dothard (PXA-4048) and Ethel Ezell (PXA-4069) were rejected for failing to sign the oath but submitted otherwise perfect forms.

There is no evidence that the failure to sign the oath was ever brought to the attention of Negro

^{45/} These are questions 15, 16, 17, 18, 19, 20(a). Among the rejected Negro applicants who omitted to sign the main oath but whose forms indicate that they meet the qualifications under the State Constitution and statutes are the following: Levord Adams (PXA-4001); Arthur Crowell (4037); Mellie Dickinson (4044-4045); Lucille Blonks (4016); Sylvia Dothard (4050); Emma Harrison (4092); Quentin Horn (4119); Ellis Jackson (4129); Green Keeton (4159, 4160); Lugene Matthews (4188); Elmira Moss (4192, 4193); Mae Tanks (4240); Richard Tartt (4242); Clara Dickinson (4039, 4040, 4041); Edward Knighton (4169); Oliver Pringle (4200, 4203, 4214, 4217); Laura Underwood (4255).

applicants. Although the registrars testified that when an applicant is given his application form a check mark is placed by the oath and the applicant is advised by the registrar to sign it (R. 227-29), plaintiff's exhibit A shows that on forty-eight Negro applications with unsigned oaths there were no such check marks. There are also unsigned applications of Negroes with check marks but the record does not disclose whether the Negroes who completed such applications were advised by the registrar of the omission.^{46/}

3. Unlike white applicants,^{47/} there is no evidence that Negro applicants were assisted by the registrars in any way to procure supporting witnesses. Rather, Negro applications have been rejected for failure to procure a supporting witness.^{48/}

^{46/} Indeed the evidence as a whole strongly suggests that Negroes were not advised of the omission whether or not their forms contain check marks. See, for example, testimony of Mellie Dickinson on cross-examination by the defendants (R. 43), and see pp. 26-7, supra, where the failure to assist Negroes is discussed. See also pp. 19-20, supra, for a discussion of this aid afforded whites in completing the oath.

^{47/} See pp. 24-5, supra.

^{48/} PXA-4188 (Lugene Matthews), PXA-4076 (Eddie Gaines). The registrars testified that they do not pass on applications until after the supporting witness has signed his portion of the application (R. 229-34).

Not one of the state officials at the courthouse, who collectively served as supporting witnesses for about fifty per cent of white applicants, served as a supporting witness for a Negro applicant.

4. There is no evidence that the board of registrars has ever gone into Negro neighborhoods, stores, homes or community centers, etc. when on circuit. There is no evidence that any Negro who has applied has done so anywhere but at the courthouse in Butler. All those Negroes who testified as to where they applied, stated they did so at Butler.^{49/}

^{49/} The evidence also shows that applications of whites were graded in their presence but this practice was not followed with respect to Negroes, nor were Negroes advised whether or not their applications had been approved. If a Negro inquired as to the specific reason for rejection, he was not told. These discriminatory practices were proscribed by the district court which enjoined the registrars from failing to pass on each application, and failing to notify in writing each applicant of the results of his application, within a reasonable period of time, and if rejected, from failing to disclose to the applicant the specific reason(s) for his rejection (R. 320).

D. Other Testimony

Katie Keahey--one of the registrars of Choctaw County since November, 1959, and continuously since 50/ then,--testified that she has been asked the meaning of certain questions on the application by both Negroes and whites and "I would explain it as good as I knew how" (R. 228). She said that she lets the two male registrars do most of the actual grading of applications (R. 230, 235). As far as she knows all rejections are the result of either not meeting the standard required by the board in filling out the form or being convicted of a disqualifying crime (R. 243). Upon examination by the State, she stated that she has not made any distinction between applicants on the basis of race or color and that her records reflect this fact. 51/ (R. 263-64). She said that the board would help any applicant, Negro or white, on a matter that was not vital (R. 264).

Raymond Lee,--a registrar of Choctaw County since November, 1959, and continuously since 52/ then testified that

50/ Finding of Fact No. 2 (R. 316).

51/ It is not clear what records were being referred to. In any event, the State did not seek to introduce such records into evidence.

52/ Finding of Fact No. 2 (R. 316).

the standard of the board is to reject the applicant if he errs on those questions which the board considers "more important" (R. 250), citing certain specific examples (R. 252-55) including question 20(a) (R. 254-55). In answer to several other specific questions dealing with standards of the board, Lee stated he would not know what to do because the situation had never arisen (R. 252-53, 255). When presented with a rejected Negro application containing no mistakes except for omitting the answer to question 3 of the Supplemental Application, Lee could not explain why such application had been rejected (R. 255-56). Lee testified that the board, when on circuit, had met only in houses, stores, etc. owned and frequented by whites (R. 259). Upon examination by the State, Lee stated that he had never conducted any registration upon the basis of race (R. 261) and that he would help Negroes on questions he did not consider to be vital, including that one seeking the applicant's precinct number (R. 262).

SPECIFICATION OF ERRORS

1. The district court erred in failing to make a specific finding in the exact terms prescribed by 42 U.S.C. 1971(e), that the discrimination against Negroes in the voter registration process in Choctaw County was pursuant to a "pattern or practice."

2. The district court erred in refusing to enjoin the registrar from imposing requirements on current Negro applicants for registration that were not imposed on the vast majority of whites who were registered during the period of discrimination.

3. The district court erred in refusing to order the registration of forty-nine Negroes whose completed applications showed them to be as qualified as whites whose applications for registration were accepted.

4. The district court erred in dismissing the State of Alabama as a party to this case.

5. The district court erred in failing to tax the costs incurred in the proceeding therein against the defendants.

6. The district court erred in failing to order the Board of Registrars of Choctaw County to submit periodically a report as to their progress in processing applications for registration, and in failing to order the Board to preserve all applications for registration in Choctaw County and other relevant records and make these records available for inspection and photographing by agents of the United States at all reasonable times.

FEDERAL STATUTORY PROVISIONS INVOLVED

The pertinent federal statutory provisions involved in this case are set forth in Appendix A.

ARGUMENT

I

The district court erred in failing to make a specific finding in the exact terms prescribed by 42 U.S.C. 1971(e), that the discrimination against Negroes in the voter registration process in Choctaw County was pursuant to a "pattern or practice."

In its finding of fact, the district court found that (R. 318):

8. During the tenure of the current Board of Registrars, that is, from November, 1959 to the trial of this suit on February 20, 1963, the defendants engaged in racially discriminatory practices in conducting the registration of voters in Choctaw County, the more prominent being:

- a. Permitting of assistance to be given to applicants of the white race and the refusal of such assistance to applicants of the Negro race during periods of registration.
- b. Failing to disclose to rejected Negro applicants the reasons for their rejection.
- c. Failing to notify Negro applicants within a reasonable time as to whether or not their application has been approved.

This finding by Judge Thomas is a finding of pattern or practice of discrimination within the meaning of 42 U.S.C. 1971(e). United States v. Mayton, 335 F. 2d 153 (C.A. 5, 1964); United States v. State of Mississippi (Walthall County), No. 21212 (C.A. 5, December 28, 1964).^{53/} In Mayton, Judge Thomas had found that:

since at least 1959 the defendants have engaged in acts and practices which have had the purpose and effect of depriving Negroes of their right to register without distinction of race or color (quoted by this Court in United States v. Mayton, 335 F. 2d 153, 158 (C.A. 5, 1964)).

This Court held that this finding of Judge Thomas constituted a finding of a pattern or practice. It referred to the legislative history of section 1971(e) and said that "the words pattern or practice were not intended to be words of art" but "have their generic meanings." (Mayton, supra, p. 158, 159).

^{53/} This last cited case was a voting case brought by the United States under 42 U.S.C. 1971(a) against the registrars of Walthall County and the State of Mississippi. It is to be distinguished from United States v. Mississippi, 229 F. Supp. 925 (S.D. Miss. 1964, three-judge court), probable jurisdiction noted, 377 U.S. 988, cited elsewhere in this brief. Hereinafter the Walthall County case decided by this Court on December 28, 1964, will be referred to as United States v. Mississippi (Walthall County).

This holding in Mayton certainly applies to Judge Thomas' finding in the instant case. The same word "practices," in its plural form, was used. The practices covered a similar period of three to four years. Moreover, the finding of fact here goes on to specify "the more prominent" of these practices in language which absolutely negates any suggestion that the discrimination was "an isolated or accidental or peculiar event." (Mayton, supra, p. 159).

In United States v. Mississippi (Walthall County), this Court held that (slip opinion, p. 7):

a finding of a pattern or practice is either warranted or not according to the facts, not what they were called. Where, as here, the court found a continual course of conduct constituting the policy of the registrar, which is discriminatory, this was tantamount to a finding of a pattern or practice within the definition of the statute so as to call into play the procedural benefits arising under Section 1971(e). We dealt with this fully in United States v. Mayton, 5 Cir., 335 F. 2d 153, where at page 158, we said: 'the words pattern or practice are not words of art. No magic phrase need be said to set in train the remedy provided in §1971(e).' See also the legislative history discussed at page 159.

In Mississippi (Walthall County), however, this Court went beyond its holding in Mayton. After holding that the findings of fact of the district court constituted

a finding of a pattern or practice as a matter of law, this Court concluded "that the trial court erred in not finding a pattern or practice of discrimination on the record before us" (slip opinion, p. 7).

Thus, this Court indicated that it is not sufficient for a district court to find facts sufficient to constitute a pattern or practice as a matter of law. Although, as this Court held in Mayton, the "magic words" need not be used in order "to call into play the procedural benefits arising under section 1971(e)" (Mississippi (Walthall County), slip opinion, p. 7), nonetheless it is the duty of the district court to use such words so as to indicate clearly to members of the affected class whether the special remedy is available to them.

In the instant case, we think that this Court should disapprove of the failure of the court below to make the finding in the exact terms prescribed by the statute, even though failure to do so in no way prevents the invocation of subsection (e). A finding in haec verba would serve the ends of clearly informing Negro citizens not learned in the law of their right to apply to the court for an order qualifying them to vote, and would otherwise reduce the possibility of confusion about whether a pattern or practice has in fact been found.

II

The District Court Erred in Denying
the Freezing Relief Sought by the
United States

A. Freezing relief is both necessary and appropriate here. The evidence, discussed at pages 13-34 of this brief, clearly shows the pattern and practice of systematic discrimination against Negroes attempting to register during the period involved here. It indicates that the procedures and standards employed by the board with respect to Negroes have been far different from those employed with respect to whites. Such a situation clearly calls for relief against the sudden and unprecedented application of the strict constitutional, statutory and state judicial requirements of Alabama law, by the "freezing in," for a reasonable period of time, of those procedures and standards used by the current board in the successful registration of 99.8 percent of all white applicants who applied during the period involved here. United States v. Duke, 332 F. 2d 759 (C.A. 5, 1964); United States v. Mississippi (Walthall County), No. 21212 (C.A. 5, December 28, 1964). As this Court said in Duke (332 F. 2d at 768) (citing the dissenting opinion of Judge Rives in United States v. Ramsey, 331 F. 2d 824 (C.A. 5, 1964)):

While theoretically applicable to all, these new requirements primarily affect those who bore the brunt of previous discrimination and tend to maintain the position of advantage which one class has already obtained over the other. See United States v. Louisiana, E.D. La. 1963, 225 F. Supp. 353, at pp. 391-398 (three-judge court); United States v. Atkins, 5 Cir., 1963, 323 F. 2d 733, 743-45; cf. United States v. Dogan, 5 Cir., 1963, 314 F. 2d 767.

This Court then explained the procedure to be followed to prevent the perpetuation of discriminatory conditions (332 F. 2d at 768):

The obvious way to avoid such an unfair and inequitable result is by applying the principle of "freezing".... An appropriate remedy therefor should undo the results of past discrimination as well as prevent future inequality of treatment. A court of equity is not powerless to eradicate the effects of former discrimination The only effective relief here is by applying the principle of freezing the registration standards that were in effect when the great majority of the white citizens were registered.

Even prior to its decisions in the Duke and Mississippi (Walthall County) cases, this Court had recognized that relief of the nature sought by the appellant is appropriate under the Civil Rights Act of 1957. United States v. Dogan, 314 F. 2d 767 (C.A. 5, 1963); United States v. Lynd, 301 F. 2d 818 (C.A. 5, 1962), cert. denied, 371 U.S. 893; United States v. Atkins, 323 F. 2d 733 (C.A. 5, 1963); United States v. Ramsey,

331 F.2d 824, 838 (C.A. 5, 1964). Additional support can be found in Lane v. Wilson, 307 U.S. 268 (1939); Guinn v. United States, 238 U.S. 347 (1915); United States v. Louisiana, 225 F. Supp. 353 (E.D. La. 1963); United States v. Penton, 212 F. Supp. 193 (M.D. Ala. 1962) and United States v. Parker, 1741-N (M.D. Ala., December 17, 1964).

B. There is no suitable alternative. Even in United States v. Duke, supra, where the new registrar promised, at the trial, to purge all of the persons illegally registered from the rolls^{54/}, this Court found purging to be impracticable. United States v. Duke, supra, p. 768. See also United States v. Mississippi (Walthall County), supra, slip opinion p. 9; United States v. Ramsey, supra, and United States v. Louisiana, 225 F. Supp. 353 (1964). It is no less impracticable in this case. In the first place, the removal of improperly registered whites would erase only one part of the discrimination. Whites, registered during the period involved here, who did meet the requirements of state law would not be purged. Yet Negroes who also met the requirements of state law and were, nevertheless,

^{54/} There has been no such promise made by the current board of registrars of Choctaw County.

improperly rejected, would now have to reapply under new and more onerous standards. The same is true of a substantial body of potentially eligible Negroes who were inhibited from applying in the face of prevailing discriminatory practices and the experience of others.^{55/} Secondly, as this Court recognized in Duke (332 F. 2d 759 at 768), as a practical matter, no accurate list of illegally registered white applicants can be drawn. Because of the great amount of assistance rendered whites in the completing of their applications, it would be impossible to tell, from looking at their applications, which of the 782 successfully registered applicants did not in fact meet the strict requirements of Alabama law.^{56/}

^{55/} This deterrent effect has been consistently noticed by the lower federal courts. See United States v. Manning, 215 F. Supp. 272, 288 (W.D. La.); United States v. Clement, 231 F. Supp. 913, 915 (W.D. La.); United States v. Fox, 211 F. Supp. 25, 32 (W.D. La.), affirmed, 334 F. 2d 449 (C.A. 5); United States v. Duke, 332 F. 2d 759, 763 (C.A. 5).

^{56/} Moreover, a true purge remedy would necessitate giving the United States the right to show that certain white registrants who should have been purged were not. This procedure would place a great burden on the United States to discover and show to the court that these registrants were indeed registered in contravention of state law. Furthermore, if due process requires that an individual who is purged have an opportunity to be

(continued on following page)

Above all, purging is an unsatisfactory remedy as it does not correct the federal wrong-racial discrimination - which is the sole basis for a lawsuit under 42 U.S.C. 1971(c), but merely rectifies violations of state law.

What we are seeking here is to afford Negroes the same opportunities that were heretofore granted to whites. This can be done only by granting freezing relief to Negroes.

Thus, the admonition in United States v. Atkins, supra, at p. 744, that the freezing principle should be used "only if there were no other alternatives by which justice could be reached" and that purging of those persons illegally registered might be such an alternative is not factually relevant.

56/ (continued from preceding page)

heard, large numbers of persons registered in violation of state law could not be removed from the polls without endless litigation. In United States v. Louisiana, 225 F. Supp. 353, 358 (E.D. La. 1962), the three-judge district court in discussing appropriate remedies said "that it is impractical, if not impossible, and in any event it would create hardships and generate endless litigation and dislocate registration offices, if a wholesale attempt were made to purge the rolls of white persons improperly registered."

C. The permanent, affirmative relief granted by the district court does not reduce the necessity of "freezing relief" in this case.^{57/} Freezing relief is necessary in this case despite the fact that the district court permanently enjoined the registrars from "rejecting applicants for errors or omissions in the questionnaire when other answers or information reveal that the applicant is qualified." (R. 320, paragraph 2 of the district court's order). Although this relief was necessary, it is not adequate for the following reasons:

1. The relief granted does not take account of the fact that white applicants were greatly assisted in the filling out of their applications during the

^{57/} To be sure, the district court ordered that registrars refrain from using the questionnaire as an examination or test unless specific grading standards are developed which are approved by the court (R. 320). But even if complied with, this order only temporarily suspends the use of the questionnaire as an examination or test, i.e., until approved standards are adopted. Moreover, this order, even were it unconditional and fully complied with, is deficient for many of the same reasons as the other relief granted by the court and discussed above. In any event, the board, without having submitted such proposals, has been using the new application form (prescribed on August 26, 1964) which contains the tests on government, constitutional interpretation and writing constitutional excerpts from oral dictation. (The United States has recently filed with the district court an application for an order to show cause against the board in Choctaw County for non-compliance with this part of the court's order. United States v. Ford, #2829 (S.D. Ala., November 16, 1964).

period between November 9, 1959 and February 20, 1963 and that Negro applicants should have a similar opportunity to be assisted at least as to understanding what type of information a particular question is seeking.

2. The relief granted does not take account of the fact that certain requirements for registration were not imposed on white applicants and that Negro applicants should have this similar advantage. Thus, white applicants did not have to show they met the "good character" qualification, that they embraced the duties and obligations of citizenship or that they were able to read and write from the constitutions. See supra, pp. 18-21, 23. More significantly, white applicants did not have to meet the standards now prescribed by Part III of the application form. As we show infra, it is especially necessary to afford relief against this new and onerous requirement.

3. The relief granted fails to reach the numerous discriminatory practices not directly related to the grading of questionnaires. The freezing relief we request, see pages 47-50 infra, will give necessary relief to Negro applicants with relation to signing the oath, board solicitation of applicants and discriminatory vouching by other state officials.

4. The relief granted continues to permit the board of registrars to exercise vast discretion.

The registrars may determine what other answers or information required by the written form reveal that the applicant is qualified and what standards these other answers or information must meet to successfully provide such information. This discretion makes possible the continuation of discriminatory practices and the denial to Negroes of the opportunity they deserve to apply under conditions similar to those experienced by whites during the discriminatory period.

D. The freezing relief requested. We submit that the full freezing relief which this Court granted in Duke, supra, is necessary and appropriate in this case. Obviously, however, there are some different circumstances in the instant case which require certain qualifications and additions to the relief granted in Duke if the purpose and function of freezing relief is to be accomplished here. These qualifications and additions are as follows:

1. The order should enjoin the defendants from requiring Negroes to meet the new and more onerous requirements of the current application form. As we have shown, on August 26, 1964, a new application form was prescribed for use in Alabama. Part III of this form contains questions on government and constitutional interpretation and requires that the applicant write from dictation excerpts from the United States

Constitution. Requirements of this nature were not imposed upon white persons registered during the period of discrimination. Just as in Duke, where this Court enjoined the registrars from requiring Negroes to answer certain questions that were not required of whites,^{58/} so here it is appropriate to enjoin use of those portions of the new forms that impose requirements whites did not have to meet. In Duke, quoting from the opinion in United States v. Louisiana, 225 F. Supp. 353, 393 (E.D. La., 1963), pending an appeal in the United States Supreme Court, No. 67, this Court said (332 F. 2d at 768-769):

The cessation of prior discriminatory practices cannot justify the imposition of new and onerous requirements, theoretically applicable to all, but practically affecting primarily those who bore the brunt of previous discrimination. An appropriate remedy therefore should undo the results of past discrimination as well as prevent future inequality of treatment. A court of equity is not powerless to eradicate the effects of former discrimination. If it were, the State could seal into permanent existence the injustices of the past. **(emphasis added).**

^{58/} Here too, during the period of discrimination, certain questions on the old form were used in a discriminatory manner against Negroes. See pp. 16-21, 23, 26-31.

The above principle is not new but goes back to Guinn v. United States, 238 U.S. 347 (1915) and Lane v. Wilson, 307 U.S. 268 (1939) where entirely new constitutional or statutory requirements which were not in existence during the discriminatory period were invalidated. See also United States v. Dogan, 314 F. 2d 767 (C.A. 5, 1963), United States v. Parker, 1741-N (M.D. Ala., December 17, 1964).^{59/}

^{59/} In the Parker case -- previously captioned United States v. Penton, 212 F. Supp. 193 (M.D. Ala., 1962) -- the United States moved for additional freezing relief to enjoin Part III of a predecessor of the application form prescribed on August 26, 1964. This predecessor form, prescribed on January 14, 1964, also contained a Part III with four questions on government, a reading test and a test in which the applicant had to write several words given him by the registrar and taken from the Constitution. See Appendix C. The district court concluded that each of the new tests did constitute "different and more stringent standards" and enjoined their use by the registrars of Montgomery County. The district court stated that this conclusion is made inevitable by the evidence that no such tests were used during the discriminatory period (Memorandum Opinion, p. 6). The court said (p. 6):

Prior to July 2, 1964, . . . applicants were required to read aloud and write from dictation excerpts from the United States Constitution in order to prove that they were literate; during the period of discrimination, . . . no such tests were used. Such testing, by the use of questions on government, provides a new and different subject of examination and provides questions of a different type not before used.

2. The order should provide that failure to sign the oath provided for on the application form be called to the attention of Negro applicants. ^{60/}

3. The order should provide that when the board of registrars travels throughout the County to solicit applications for registration pursuant to state law, it should conduct the registration at places easily accessible to members of both races and that appropriate public notice be given, within a reasonable time, of the places where and the times during which registration will be held in the precincts.

4. The order should provide that the defendants--the registrars and the State of Alabama--instruct their agents to refrain from discriminating against Negro applicants with respect to the supporting witness requirement of the application. ^{61/}

60/ As we have shown, pp. 19-20, 29-31 supra, the requirement to sign the oath on the application form in use during the period of discrimination involved in this case was used as a discriminatory device to disqualify Negro applicants. To be sure, the application form now prescribed in Alabama more clearly indicates where the oath is to be signed, and only one signing of an oath is required. Nevertheless, since some Negro applicants may still unwillingly omit to sign the oath and since, during the period of discrimination, the registrars made certain that white applicants signed the oath, Negro applicants are now entitled to similar assistance.

61/ As we have shown, supra pp. 24-5, 31-2, the evidence demonstrates that this requirement has been used as a

(continued on following page)

E. The Civil Rights Act of 1964 also requires the granting of "freezing" relief in this case. We have shown above that freezing relief is required under the 1960 Civil Rights Act, pointing out that this Court granted such relief in Duke, supra, which it decided before the 1964 Civil Rights Act was passed. It should be pointed out, however, that the 1964 Act also requires that freezing relief be granted in this case. It makes no difference that the district court tried and decided this case below before the passage of the new Act, for it is clear that on appeal this Court must apply the law in effect at the time of its appellate decision. United States v. Alabama, 362 U.S. 602 (1960); Ziffrin v. United States, 318 U.S. 73, 78; Hines v. Davidowitz, 312 U.S. 52, 60 (1941); Vandenbark v. Owens-Illinois, 311 U.S. 538, 541 (1941); Carpenter v. Wabashky Co., 309 U.S. 23, 27 (1940); Standard Oil Co. v. Kansas, 128 F. 2d 728 (C.A. 5, 1942). In United States v. Alabama, supra, the Supreme Court held that the congressional amendment to 42 U.S.C. 1971(c) authorizing 1971(a) actions to be brought against

61/ (continued from preceding page)
device to curtail Negro registration. The evidence also strongly suggests a tacit agreement between registrars and other state officials in the courthouse that the registrars will send qualified white applicants, only, to such officials who will serve as supporting witnesses for the applicants if they have known them for the requisite period of time.

a State applied to that case although the action was instituted and the case decided below before its passage. The Court said (362 U.S. at 604): "Under familiar principles, the case must be decided on the basis of law now controlling, and the provisions of §601(b) are applicable to this litigation." See also Hamm v. City of Rock Hill, 33 U.S.L. Week 4079 (December 14, 1964), where the Supreme Court applied Title II of the 1964 Civil Rights Act retroactively to abate convictions obtained prior to its passage.

The freezing relief we seek would conform the registrar's practice to the requirements of the new civil rights act.^{62/}

1. Use by the registrars of Part III of the new application form violates section 101(a)(2)(A).

That section provides:

No person acting under color of law shall--(A) in determining whether any individual is qualified under

^{62/} Although Title I of the 1964 Civil Rights Act deals only with registration to vote in federal elections, the registrars in Choctaw County conduct only one registration process applicable to both federal and state elections. An applicant is either accepted or rejected for registration to vote in both federal and state elections, and only one list, of "qualified voters" is maintained by the probate court. Therefore, the requirements of the Civil Rights Act of 1964 extend to the one and only registration process in Choctaw County.

State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by state officials to be qualified to vote (emphasis added)

This is a "freezing" provision. It prohibits registrars from using any standard, practice or procedure with respect to Negroes different from those used with respect to whites who "have been" registered. Clearly, were the registrars of Choctaw County to use any portion of Part III of the new form, which contains "standards" and "procedures" not even in existence when whites were successfully registered by the current board, it would violate this proscription. This is so whether or not the state elects to purge from its voting rolls those white applicants who were registered in violation of state law. In short, under the 1964 Act the freezing remedy, and not a purge, is the appropriate remedy for vindication of the federal right involved.

To be sure, this statute says only that in determining qualifications to vote under state law or laws, a registrar must not apply different standards, practices or procedures "under such law of laws" (emphasis added). Thus if a wholly new qualification law should be enacted prescribing a novel qualification for registration,

this statute would not prevent the application of such a new **requirement to future applications**. But that limitation is not apposite here. The Alabama legislature has passed no new laws, nor has the state constitution been amended so as to **add any qualifications to those required** of whites who "have been" registered. The new application form was prescribed by judicial order of the Supreme Court of Alabama and establishes new ways in which to prove that applicants possess the old and unamended qualifications.

In short, Part III of the new form establishes new "standards" and "procedures" under unchanged "laws" of Alabama. Under section 101(a)(2)(A), of the 1964 Civil Rights Act it is just such standards and procedures-- methods of testing the qualifications of an applicant-- that may not be changed. Since the qualification laws have not themselves been changed, the registrar's application of new standards and procedures "under such law or laws" violates section 101(a)(2)(A) of Title I.

2. The dictation-writing test of Part III of the new form also violates section 101(a)(2)(C). That section provides:

No person acting under color of law shall--
(C) employ any literacy test as a
qualification for voting in any Federal

election unless (i) such test is administered to each individual and is conducted wholly in writing"

(emphasis added)^{63/}

Oral dictation plainly contravenes this provision.^{64/}

3. The freezing relief we seek would also require the registrar to give assistance where necessary to an applicant filling out the questionnaire and the oath (contrary to the state law which provides that it must be completed without assistance). This, too, would conform the registrar's practice to section 101(a)(2)(A) of Title I of the 1964 civil rights law. Since the board of registrars of Choctaw County assisted successfully registered whites to answer questions on the questionnaire and made certain that such whites signed the oath, it would violate the proscription of the statute for the registrars to refuse to apply this same "practice" or "procedure" to Negro applicants.

^{63/} Title I defines a "literacy test" as "any test of the ability to read, write, understand, or interpret any matter." Section 101(a)(3)(B).

^{64/} Even if Part III of the new form were not a "different" "standard" and "procedure" not applied to whites who were found qualified to vote, section 101(a)(2)(C)(ii) would require that a certified copy of the constitutional interpretation test of Part III (a "literacy test" within the meaning of Title I) be furnished to Negro applicants making timely requests.

4. The freezing relief we seek would also require the registrars to effectively solicit the registration of Negro residents of Choctaw County at the time they visit the precincts in the fall of the odd-numbered years, and would also require the registrars to cease applying the supporting witness requirement in a discriminatory manner. This relief, too, would conform the registrar's practice to section 101(a)(2)(A), since we are merely asking the court to order the registrars to engage in "practices" and "procedures" with respect to Negroes similar to those engaged in with respect to whites "found to be qualified to vote."

III

The district court erred in failing to order the registration of specific Negro applicants for registration whose applications showed them to be as qualified as whites whose applications were accepted.

In its complaint, the plaintiff requested that all Negroes shown to be possessed of the qualifications required of white applicants during the period involved here be placed upon the rolls (R. 7). The plaintiff's proposed injunction repeated this request, specifying forty-nine named Negroes who were alleged to possess such qualifications (R. 310-311, 312-315). The proposed injunction also requested that these named persons be placed upon the voting rolls of Choctaw County "unless, however, within the ten-day period

defendants by affidavit, show to the Court that any such persons should not be placed upon the rolls by reason of death, removal from the county, conviction of a disqualifying crime or subsequent registration" (R. 310).

A. The District Court erred in failing to grant this request. In State of Alabama v. United States, 304 F. 2d 583 (C.A. 5, 1962), aff'd per curiam, 371 U.S. 37 (1962), this Court specifically recognized the right of the United States to obtain such relief.^{65/}

The application forms of the Negroes involved are each signed by a supporting witness. The forms clearly show that each Negro meets the citizenship, age

^{65/} In the opinion of this Court in United States v. Fox, 334 F. 2d 449 (C.A. 5, 1964) there is found the statement: "Only if a pattern or practice is found is the court empowered to declare persons entitled to vote who have been deprived of voting rights on account of race or color." Whatever this Court may have meant by that statement, it clearly could not have meant that the pattern or practice remedy conferred by the Civil Rights Act of 1960 precluded the remedy of placing Negro applicants directly on the rolls without requiring them to reapply after the injunctive order, for this Court dealt directly with the point in State of Alabama v. United States, supra, holding that the 1960 Act did not limit the relief sought there. The Fox decision clearly does not purport to overrule the prior decision in State of Alabama v. United States and thus is inapposite to the question involved here. In any event, the district court, here, found that there was a pattern or practice of discrimination. See n., pp. 36-8 supra.

and residence qualifications,^{66/} and is not disqualified from registration under Title 17, §15, Alabama Code. Moreover, the forms indicate that every such Negro is literate. A list of each such Negro applicant, the exhibit number of one or more of his or her applications filed with the current board between November, 1959 and February 20, 1963, and are contained in Appendix G.

Plainly, if these forty-nine applicants had not been Negroes, they would have been registered at the time they applied, and to now require them to make another trip to the registrar's office, even under the pattern **or practice**, and freeze relief, would in itself be discriminatory. They would be required to do something which no white person who applied at the time that they did is required to do.

The granting of this relief is important, not only because it will end years of unjust denial of the franchise to the particular persons concerned, but also

^{66/} Insofar as the residence qualification is concerned, several of these applicants omit answers or parts of answers to questions seeking information concerning residence. But each applicant supplies information and answers at other places on the form indicating clearly that he fulfills the qualification. White applicants with similar omissions have had no trouble registering to vote in Choctaw County.

because it is likely to offset -- at least to begin to offset -- the intense discouragement which many Negroes in Choctaw County must have felt when these persons, and others like them, were discriminatorily denied the franchise. See United States v. Duke, supra, p. 765; and United States v. Manning, supra, p. 288.^{67/}

IV

The district court erred in dismissing the complaint as to the State of Alabama

The district court admitted that "under the provisions of 42 U.S.C. 1971(c) the State of Alabama may be properly joined as a party defendant" (R. 319). Nevertheless, the court dismissed the complaint as to the State on the ground that "full and complete relief can be afforded here without enjoining the State" (R. 319).

1. The ruling of the district court is contrary to the numerous cases under the Civil Rights

^{67/} It is clear--not only by reason of the Fifteenth Amendment but also by virtue of Section 101(a)(2)(A) of the 1964 Act (quoted supra, pp. 52-3) **that the standards to be applied to the named Negroes by the district court are the "freezing" standards, i.e., those which were applied to whites who were registered during the period when these Negroes applied.**

Acts of 1957 and 1960 arising in this Circuit in which injunctions have been issued against the State as well as against local officials.^{68/}

2. Moreover, for the reasons set out below, it is apparent that here, full and complete relief cannot be afforded without enjoining the State. These reasons distinguish this case from both United States v. Atkins, 323 F. 2d 733 (C.A. 5, 1963) and United States v. Ramsey, 331 F. 2d 824 (C.A. 5, 1964).

68/ See, e.g., United States v. Alabama, 304 F. 2d 583 (C.A. 5, 1962), affirmed, 371 U.S. 37; United States v. Cartwright, 230 F. Supp. 873 (M.D. Ala. 1964); United States v. Clement, 231 F. Supp. 913 (W.D. La. 1964); United States v. Crawford, 229 F. Supp. 898 (W.D. La. 1964); United States v. Dogan, 314 F. 2d 767 (C.A. 5, 1963); United States v. Duke, 332 F. 2d 759 (C.A. 5, 1964); United States v. Hines, No. 63-609 (N.D. Ala. Sept. 17, 1964); United States v. Lynd, 301 F. 2d 818 (C.A. 5, 1962), cert. denied, 371 U.S. 893; United States v. Lynd, 321 F. 2d 26 (C.A. 5, 1963), cert. denied, 375 U.S. 968; United States v. Manning, 205 F. Supp. 172 (W.D. La. 1962); United States v. Katherine Ward, 222 F. Supp. 617 (W.D. La. 1963), appeal pending No. 21235; United States v. Wilder, 222 F. Supp. 749 (W.D. La. 1963); United States v. Mississippi (Walthall County), No. 21212 (C.A. 5, December 28, 1964). See also United States v. Louisiana, 225 F. Supp. 353 (E.D. La. 1963), probable jurisdiction noted, 377 U.S. 987.

a. Freezing relief is necessary and appropriate in this case. See pp. 40-47, supra. In United States v. Duke, supra, and again in United States v. Mississippi (Walthall County), supra, this Court held that where such relief is awarded, the state should be bound by the injunctive order. For, as the freezing principle contemplates the temporary suspension of state statutes regulating registration, the state's presence is essential to assure that the order will become fully effective (332 F. 2d at 770; slip opinion, pp. 9-10).

b. In the present case, moreover, not only has the district court specifically found that the registrars had discriminated against Negro applicants, and that this discrimination had been pursuant to a pattern and practice, but in the period since the court's order was entered, the United States has filed with the district court an application for an order for the registrars to show cause why they should not be held in contempt of this order. (United States v. Ford, No. 2829 (S.D. Ala., November 16, 1964). This is in contrast to Atkins, supra, where the district court found that the incumbent Board of Registrars had not engaged in racially discriminatory practices but on the contrary had "made every effort to comply with the letter and spirit of the law, and had taken the necessary steps to eliminate the

discrimination which was the basis of the suit against its predecessors." 323 F. 2d at 736. Where it appears that the registrars have not discriminated and are proceeding in good faith to eliminate the effects of prior discrimination, the federal courts, for reasons of federal-state comity, might appropriately refrain from enjoining the State despite the language of Sec. 601(b) because such an order might not be necessary to secure relief from discrimination. But where, as here, the registrars have consistently discriminated and have not complied with the court's orders, it is essential to effective relief for the State to be bound by the injunction. For the State exercises great control over the registrars and their actions.^{69/}

c. The State is an especially appropriate and necessary party in this case because, as part of the freezing relief, the district court should, as we have contended (supra, p. 50), direct the State to

^{69/} In Alabama, the local Board of Registrars is a State agent. It is appointed by a State board of appointment and may be removed at will by this State board, 17 Ala. Code Secs. 21, 22; it is paid entirely by the State, Ibid. Sec. 241(1), and it applies a registration form prepared by the State, Ibid. Sec. 31.

restrain its agents, state officials (other than the board of registrars) with offices in the courthouse at Butler, from discriminating in the vouching for registration applicants.

d. Like the State of Mississippi in Duke, the State of Alabama here has not merely looked the other way while the registrars have flagrantly disregarded its laws, but, faced with impressive statistics showing a very low number of Negroes registered to vote in Choctaw County, the State has prescribed a series of new and more onerous requirements which make it more difficult for any unregistered person to become registered, and very easy for registrars to continue to deny registration to those whom they do not wish to register.^{70/}

3. The result of not enjoining the State is to permit the State to abandon its responsibilities for the inequitable situation created by the discriminatory acts of officials responsible for administering

^{70/} These new and more onerous requirements are reflected in "Part III" of a new application form prescribed by the Supreme Court on August 26, 1964, described at pp. 11-13, 47-8, supra, and reproduced in Appendix C.

its voting laws. The initiative to correct the effects of long years of discrimination should not be left solely to the federal courts and federal agencies but should be shared by the State whose responsibility it largely is. Nor can this initiative be effectively exercised solely by registrars who are individuals responsive to the pressures and prejudices of the community in which they live, without the support and approval of the official "body politic."

V

The district court abused its discretion in failing to tax the costs incurred in the proceeding against the defendants

In its complaint, the United States prayed that the district court "grant the costs and disbursements of this action" (R. 7). The district court failed to grant this relief.

Rule 54(d) of the Federal Rules of Civil Procedure provides in pertinent part:

(d) Costs. Except when express provision therefor is made either in a statute of the United States, or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs. . . .

Here, the United States requested and secured a finding of discrimination by the defendant board of registrars pursuant to a pattern or practice (R. 318, see pages 3,6, 36-8, supra). The United States further requested and secured a permanent injunction enjoining the board from engaging in racially discriminatory acts or practices in the voter registration process of Choctaw County, and from engaging in certain other specified acts in this process (R. 318).

It has been held consistently that a plaintiff is a "prevailing party" within the meaning of Rule 54(d) if he obtains a judgment against the defendant, even if he prevails on only a portion of his claim or claims. Brown v. Consolidated Fisheries Co., 18 F.R.D. 433, 435 (D. Del. 1955); Hines v. Perez, 242 F.2d 459, 466 (C.A. 9, 1957) ("A plaintiff recovering is 'the prevailing party', entitled to costs, even though he failed to sustain all his claim."); S.A. Hirsh Manufacturing Co. v. Childs, 157 F. Supp. 183, 184 (W.D. Pa. 1957); Ryan v. Arabian American Oil Co., 18 F.R.D. 206, 207 (S.D.N.Y. 1955).

Although the district court has the discretionary power, under Rule 54(d), to depart from the general rule of taxing costs to the prevailing party,

this Court and other United States Courts of Appeals have uniformly held that this discretion is not unlimited and that there must be some justifiable ground forming the basis for its exercise. In Globe Indemnity Co. v. Puget Sound Co., 154 F.2d 249 (C.A. 2, 1946), the district court's refusal to tax costs against the losing party was reversed. In discussing the discretionary power of the district court, the court of appeals said (at p. 251):

But it is a discretion which, in the absence of special circumstances, should be exercised in accordance with the usual practice The district court's opinion does not disclose what considerations prompted the denial of allowance . . . of the costs In the absence of special circumstances we think this item should have been allowed.

See also Lichter Foundation v. Welch, 269 F.2d 142, 146 (C.A. 6, 1959); McKnight v. Akins, 192 F.2d 674 (C.A. 6, 1951); Northern Indiana Oil Co., 192 F.2d 139, 142 (C.A. 7, 1951); Chicago Sugar Co. v. American Sugar Refining Co., 176 F.2d 1 (C.A. 7, 1949), cert. denied, 338 U.S. 948; Chemical Bank & Trust Co. v. Prudence-Bonds Corp., 207 F.2d 67, 77-8 (C.A. 2, 1953), cert. denied, 347 U.S. 904. Cf. Yedlin v. Lewis, 320 F.2d 35, 36 (C.A. 5, 1963).

Here, there was no justifiable ground for the failure of the court below to award costs to the United States. This was simply a suit properly brought by the United States to vindicate federal voting rights flagrantly and continuously violated by agents of the State of Alabama and for which violation the State, itself, bears a heavy responsibility. Any order taxing costs against the defendants should include the State. See United States v. Fox, 211 F. Supp. 25 (E.D. La. 1962); United States v. Cartwright, 230 F. Supp. 873 (M.D. Ala. 1964); United States v. Penton, 212 F. Supp. 193 (M.D. Ala. 1962); United States v. Parker, No. 1741-N (M.D. Ala. 1964)^{71/}. Taxing costs against the board of registrars only may well have the effect of denying costs to the prevailing party. We pointed out in our brief in United States v. Katherine Ward, No. 21, 235 (C.A. 5) that when formal demand by letter was made on the registrar to pay the costs pursuant to the district court's order in that case, her attorney responded that it would be impossible for the registrar to comply with the demand (pp. 40-1 of Appellant's brief).

^{71/} The published reports of Cartwright and Penton, and the memorandum opinion of Parker do not include the decrees which specifically taxed costs against the State of Alabama.

VI

The district court erred in failing to order the Board of Registrars to submit periodic reports, and to preserve and make available to the United States all relevant records pertaining to voter registration in Choctaw County.

The district court found, and the evidence overwhelmingly shows that the current board of registrars in Choctaw County has engaged in various discriminatory acts and practices in the voter registration process extending over a period of several years. Certainly, the basic concomitant to injunctive relief in such a situation is the assurance to the court and to the United States that there will be an effective means of policing the activities of the registrars in the registration process.^{72/}

For this purpose, it is essential that the registrars submit periodic reports to the court and the United States, and that they also make available to the United States their voter registration records.

In United States v. Duke, 332 F.2d 759, 771 (C.A. 5, 1964) and United States v. State of Mississippi

^{72/} As we have shown supra, n. 57, p. 45, there is presently pending in the district court a contempt proceeding in which the members of the Board of Registrars of Choctaw County are charged with violating the decree of the district court.

(Walthall County), No. 21,212 (C.A. 5, Dec. 28, 1964), slip op. p. 12, the trial court had failed to grant this relief. In each case this Court, on appeal, specifically held that:

[t]he trial court should . . . require that the defendant registrar and his successor file a monthly report with the Clerk of the trial court with a copy to be mailed to the plaintiff's counsel monthly showing the names and dates of application for registration during the previous monthly period and the race of the applicant, the action taken on the application and, if the application is rejected, the specific reason or reasons for such rejection [the first report shall cover the period from the date of the last application form presented at the trial].

In each case, this Court further ordered the trial court to

retain jurisdiction of the case in order to make certain that the registration records [of the county] are made available to attorneys or agents of the United States at all reasonable times [in the registrar's office] for the purpose of inspection, copying and photographing.

The United States is entitled to similar relief here. In addition, we submit that the Board should be required, specifically, to preserve their voter registration records, so as to insure their availability.

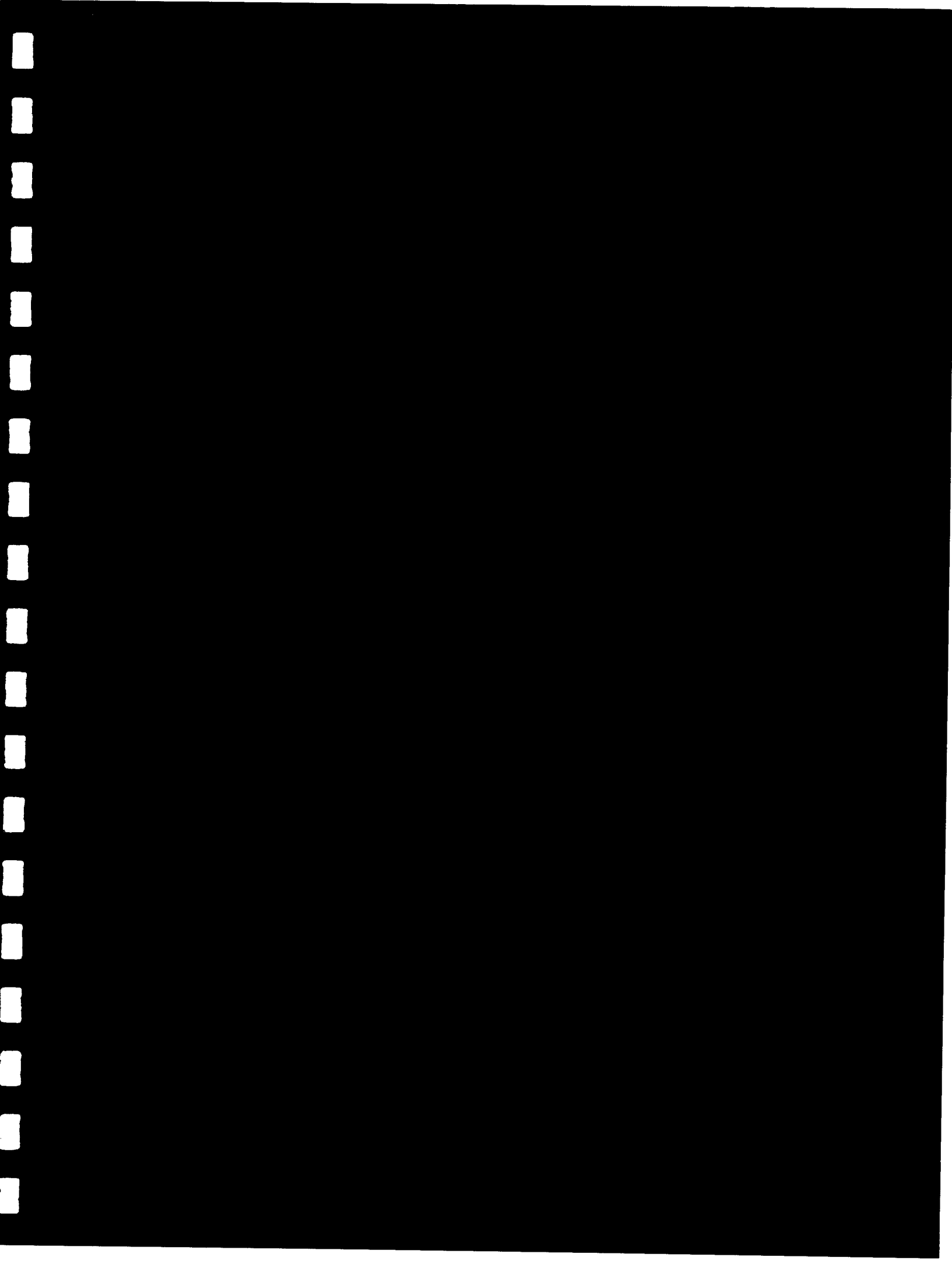
For the foregoing reasons, it is respectfully submitted that the district court be reversed and the district court be directed to grant the relief sought herein.

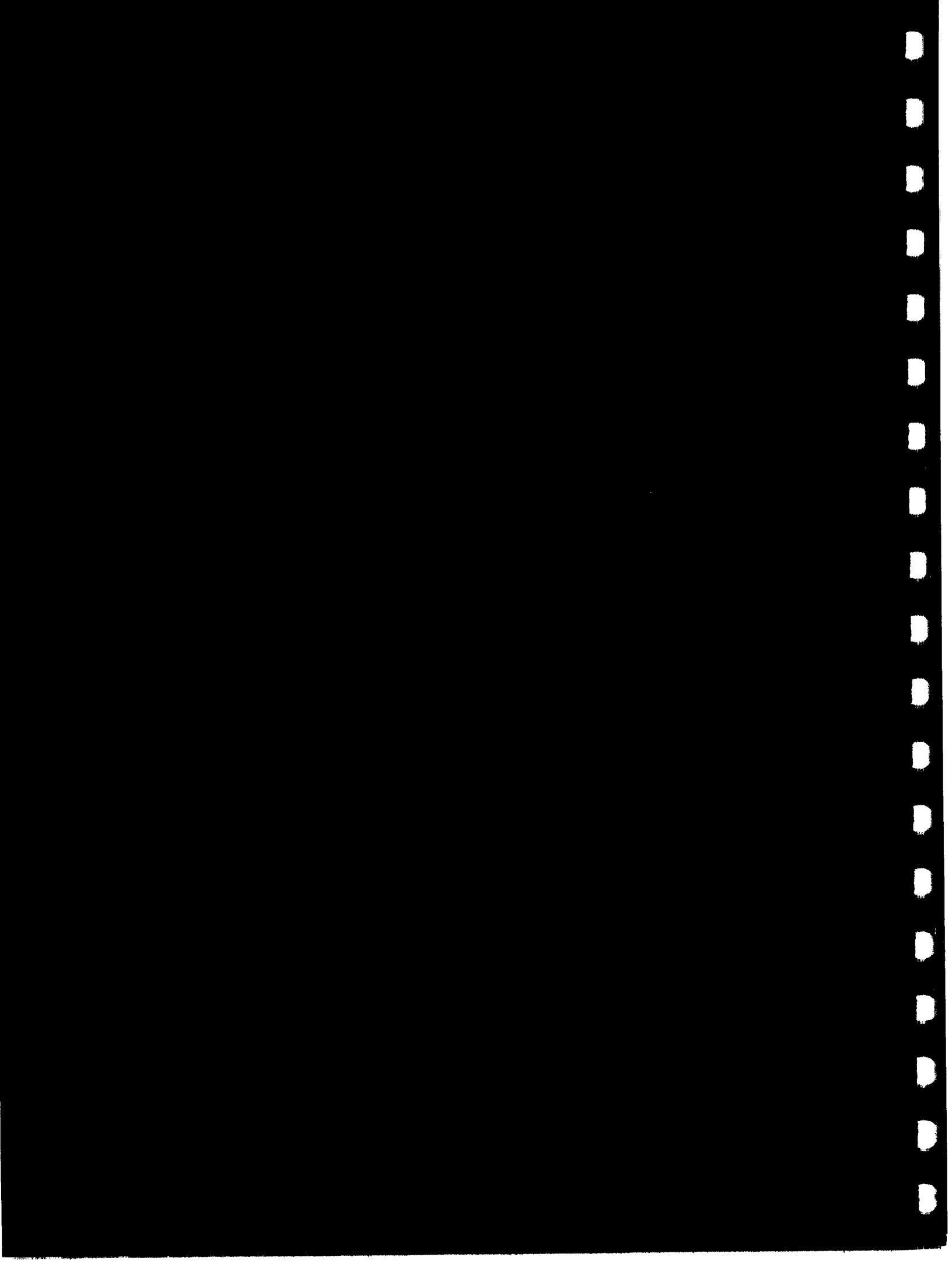
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JANUARY 1965.





APPENDICES

Index to Appendices

Appendix A

Federal Statutory Provisions Involved

Appendix B

Application form used by Board of Registrars in Choctaw County During the Period Between November, 1959 and February 20, 1963 and Thereafter Until January 14, 1964

Appendix C

1. Order of January 14, 1964 by the Supreme Court of Alabama Prescribing a New Application Form to be Used by the Boards of Registrar Throughout the State
2. Order of August 26, 1964 by the Supreme Court of Alabama Revising the Application Form Prescribed on January 14, 1964

Appendix D

Description of Exhibits Introduced Into Evidence by the United States

Appendix E

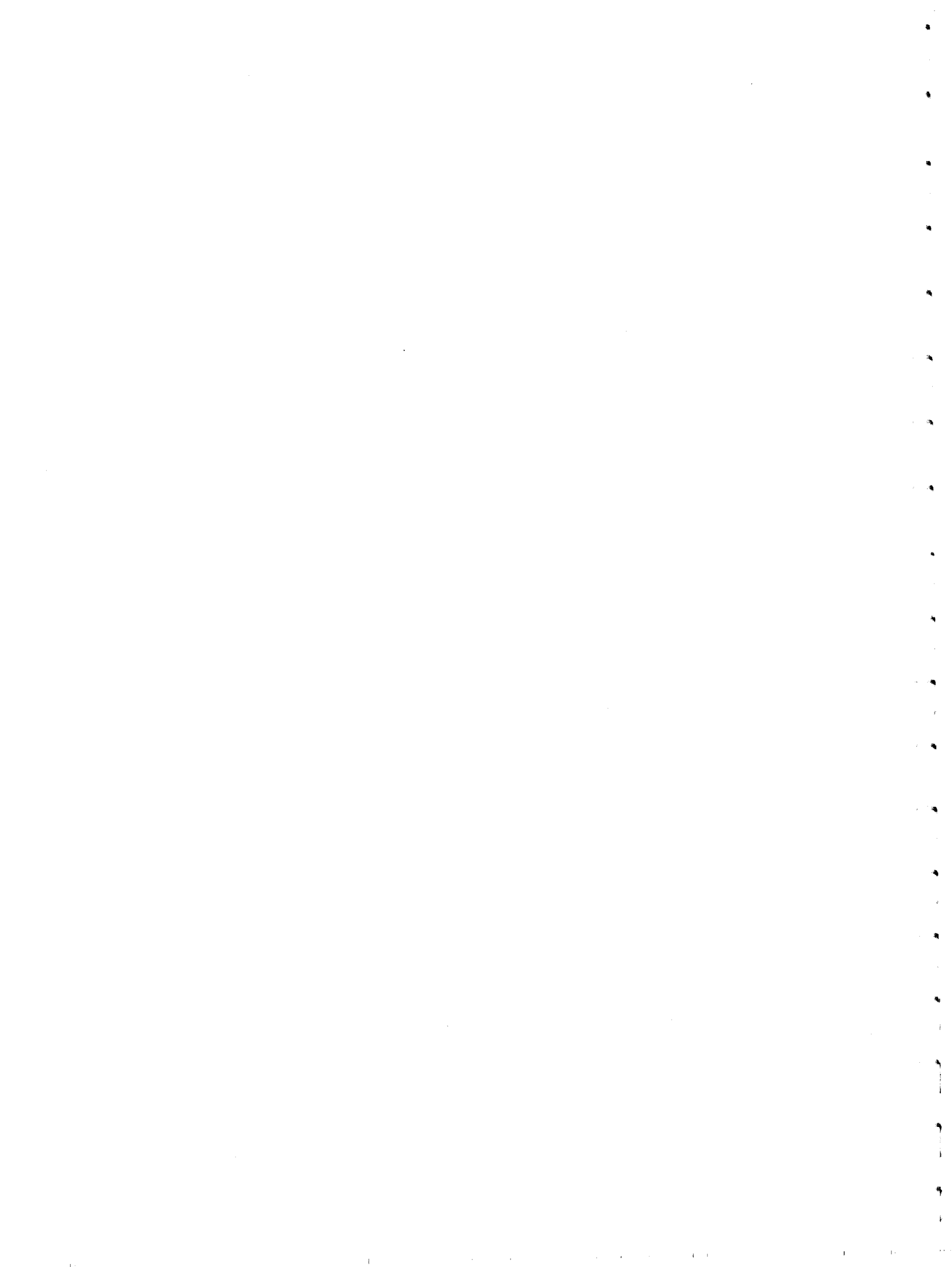
Accepted and Rejected Applications of White and Negro Applicants Filed With the Board of Registrars of Choctaw County Between November, 1959 and February 5, 1963

Appendix F

Courthouse Personnel Who Were Supporting Witnesses From November 9, 1959 to February 5, 1963

Appendix G

List of the Forty-Nine Negro Applicants and the Exhibit Number of One or More of His or Her Applications Filed with the Board Between November, 1959 and February 20, 1963



APPENDIX A

Federal Statutory Provisions Involved

42 U.S.C. 1971(a) provides:

All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding.

42 U.S.C. 1971(c) provides:

Whenever any person has engaged or there are reasonable grounds to believe that any person is about to engage in any act or practice which would deprive any other person of any right or privilege secured by subsection (a) or (b) of this section, the Attorney General may institute for the United States, or in the name of the United States, a civil action or other proper proceeding for preventive relief, including an application for a permanent or temporary injunction, restraining order, or other order. In any proceeding hereunder the United States shall be liable for costs the same as a private person. Whenever, in a proceeding instituted under this subsection any official of a State or subdivision thereof is alleged to have committed any act or practice constituting a deprivation of any right or privilege secured by subsection (a) of this section, the act or practice shall also be deemed that of the State and the State may be joined as a party defendant and, if, prior to the institution of such proceeding,

(i)

such official has resigned or has been relieved of his office and no successor has assumed such office, the proceeding may be instituted against the State.

42 U.S.C. 1971(e) provides, in pertinent part:

In any proceeding instituted pursuant to subsection (c) of this section in the event the court finds that any person has been deprived on account of race or color of any right or privilege secured by subsection (a) of this section, the court shall upon request of the Attorney General and after each party has been given notice and the opportunity to be heard make a finding whether such deprivation was or is pursuant to a pattern or practice. If the court finds such pattern or practice, any person of such race or color resident within the affected area shall, for one year and thereafter until the court subsequently finds that such pattern or practice has ceased, be entitled, upon his application therefor, to an order declaring him qualified to vote, upon proof that at any election or elections (1) he is qualified under State law to vote, and (2) he has since such finding by the court been (a) deprived of or denied under color of law the opportunity to register to vote or otherwise to qualify to vote, or (b) found not qualified to vote by any person acting under color of law. Such order shall be effective as to any election held within the longest period for which such applicant could have been registered or otherwise qualified under State law at which the applicant's qualifications would under State law entitle him to vote.

Notwithstanding an inconsistent provision of State law or the action of any State officer or court, an applicant so declared to vote shall be permitted to vote in any such election.

* * * *

(ii)

When used in this subsection, the word 'vote' includes all action necessary to make a vote effective including but not limited to, registration or other action required by State law prerequisite to voting, casting a ballot, and having such ballot counted and included in the appropriate totals of votes cast with respect to candidates for public office and propositions for which votes are received in an election; the words 'affected area' shall mean any subdivision of the State in which the laws of the State relating to voting are or have been to any extent administered by a person found in the proceeding to have violated subsection (a) of this section; and the words 'qualified under State law' shall mean qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

Section 101(a)(2) of the 1964 Civil Rights Act provides:

No person acting under color of law shall--
(A) in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote;

(B) deny the right of any individual to vote in any Federal election because of an error or omission on any record or paper relating to any application, registration, or

other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election; or

(C) employ any literacy test as a qualification for voting in any Federal election unless (i) such test is administered to each individual and is conducted wholly in writing, and (ii) a certified copy of the test and of the answers given by the individual is furnished to him within twenty-five days of the submission of his request made within the period of time during which records and papers are required to be retained and preserved pursuant to title III of the Civil Rights Act of 1960 (42 U.S.C. 1974-74e; 74 Stat. 88): Provided, however, That the Attorney General may enter into agreements with appropriate State or local authorities that preparation, conduct, and maintenance of such tests in accordance with the provisions of applicable State or local law, including such special provisions as are necessary in the preparation, conduct, and maintenance of such tests for persons who are blind or otherwise physically handicapped, meet the purposes of this subparagraph and constitute compliance therewith.

Section 101(a)(3) of the 1964 Civil Rights Act provides:

For purposes of this subsection--

(A) the term 'vote' shall have the same meaning as in subsection (e) of this section [1971].

(B) the phrase 'literacy test' includes any test of the ability to read, write, understand, or interpret any matter.

(iv)

APPENDIX B

Application Form Used by Board of Registrars in Choctaw County During the Period Between November, 1959 and February 20, 1963 and Thereafter Until January 14, 1964.

APPLICATION FOR REGISTRATION, QUESTIONNAIRE AND OATH

I, _____ do hereby apply to the Board of Registrars of _____ County, State of Alabama, to register as an elector under the Constitution and laws of the State of Alabama, and do herewith submit answers to the interrogatories propounded to me by said Board.

Name of Applicant

QUESTIONNAIRE

1. State your name, the date and place of your birth, and your present address: _____

2. Are you married or single: _____ (a) If married, give name, residence and place of birth of your husband or wife, as the case may be: _____

3. Give the names of the places, respectively, where you have lived during the last five years; and the name or names by which you have been known during the last five years: _____

4. If you are self-employed, state the nature of your business: _____

(a) If you have been employed by another during the last five years state the nature of your employment and the name or names of such employer or employers and his or their addresses: _____

5. If you claim that you are a bona fide resident of the State of Alabama, give the date on which you claim to have become such bona fide resident: _____ (a) When did you become a bona fide resident of _____

County: _____ (b) When did you become a bona fide resident of _____ Ward or precinct _____

6. If you intend to change your place of residence prior to the next general election, state the facts: _____

7. Have you previously applied for and been denied registration as a voter: _____ (a) If so, give the facts: _____

8. Has your name been previously stricken from the list of persons registered: _____

9. Are you now or have you ever been a dope addict or an habitual drunkard: _____ (a) If you are or have been a dope addict or an habitual drunkard, explain as fully as you can: _____

10. Have you ever been legally declared insane:..... (a) If so, give details:.....

11. Give a brief statement of the extent of your education and business experience:.....

.....
.....
.....

12. Have you ever been charged with or convicted of a felony or crime or offense involving moral turpitude:..... (a) If so, give the facts:.....

.....

13. Have you ever served in the Armed Forces of the United States Government:..... (a) If so, state when and for approximately how long:.....

14. Have you ever been expelled or dishonorably discharged from any school or college or from any branch of the Armed Forces of the United States, or of any other country:..... (a) If so, state the facts:.....

.....

15. Will you support and defend the Constitution of the United States and the Constitution of the State of Alabama:.....

16. Are you now or have you ever been affiliated with any group or organization which advocated the overthrow of the United States Government or the government of any State of the United States by unlawful means:..... (a) If so, state the facts:.....

.....
.....

17. Will you bear arms for your country when called upon by it to do so:..... (a) If you answer no, give reasons:.....

.....
.....

18. Do you believe in free elections and rule by the majority:.....

19. Will you give aid and comfort to the enemies of the United States Government or the government of the State of Alabama:

.....

20. Name some of the duties and obligations of citizenship:.....

.....
.....
.....

(a) Do you regard those duties and obligations as having priority over the duties and obligations you owe to any other secular organization when they are in conflict:.....

21. Give the names and post office addresses of two persons who have present knowledge of your present bona fide residence at the place as stated by you:.....

.....
.....

OATH

STATE OF ALABAMA COUNTY

Before me,, a registrar in and for said county and state, personally appeared

....., an applicant for registration as

an elector, who being by me first duly sworn deposes and says: I do solemnly swear (or affirm) that the foregoing answers to the interrogatories are true and correct to the best of my knowledge, information and belief. I do further solemnly swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; that I do not believe in nor am I affiliated with, nor have I been in the past affiliated with any group or party which advocated or advocates the overthrow of the government of the United States or of the State of Alabama by unlawful means.

Sworn to and subscribed before me in the presence of the Board of Registrars this the day of, 19.....

Member of the Board of Registrars for County

SUPPLEMENTAL APPLICATION FOR REGISTRATION, AND OATH

STATE OF ALABAMA COUNTY

Before the Board of Registrars in and for said State and County, personally appeared

....., an applicant for registration who being by me,
(Full name of applicant)

....., a member of said Board, first duly sworn as follows: "I do solemnly
(Any member present may administer oath)

swear (or affirm) that in the matter of the application of
for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testifies as follows:

My name is, and I have heretofore executed the "Application for Registration, Questionnaire and Oath" submitted to me by the above-named Board of Registrars.

In addition to the information given on said "Application for Registration, Questionnaire and Oath," I depose and state as follows:

1. I was previously registered in the following State and County in the years named

(If applicant has never been registered in Alabama or any other state, he should so indicate.)

2. I have never been convicted of any offense disqualifying me from registering.

(Board should call applicant's attention to Section 182, Constitution, and Title 17, Section 15, Code of Alabama 1940. If applicant cannot make foregoing statement, facts shall be ascertained and registration refused, unless fully pardoned and right to vote restored.)

3. My present place of employment is

4. I know of nothing that would disqualify me from being registered at this time.

REMARKS

(Signed)
(Name of Applicant)

Sworn to and subscribed before me this the day of, 19.....

(Member of County Board of Registrars)

ACTION OF THE BOARD

STATE OF ALABAMA _____ COUNTY

Before the Board of Registrars in session in and for said State and County personally appeared _____, (Name of Applicant)

who executed the foregoing application in the manner and form therein stated. The Board having further examined said applicant under oath, touching his qualifications under Section 181, Constitution of Alabama, 1901, as amended, and having fully considered the foregoing Application for Registration, Questionnaire, and Oath, and Supplemental Application for Registration, and Oath as executed, adjudges said applicant entitled to be registered and he was duly registered on this the _____ day of _____, 19____, in _____ precinct (or ward) in said county.

(Signed) _____ Chairman

(Signed) _____ Member

(Signed) _____ Member

(Note: The act of actually determining an applicant entitled to be registered is judicial. A majority of the Board must concur. A majority must be present. The power cannot be delegated. Each member present must vote on each application. Not until this is done may a certificate be issued the applicant.)

EXAMINATION OF SUPPORTING WITNESS

STATE OF ALABAMA _____ COUNTY

Before the County Board of Registrars in and for said State and County personally appeared

_____, (Name of Witness), who being first duly sworn as follows: "I solemnly swear (or affirm) that in the matter of the application of _____ for registration as an elector, I will speak the truth, the whole truth, and nothing but the truth, so help me God," testifies as follows:

My name is _____, My occupation is _____, I reside at _____, My place of business or employment is at _____,

The name of my employer is _____ I am a duly registered, qualified elector in _____ precinct (or ward) in _____ County in the State of Alabama. I have known the applicant

_____ (Give Applicant's name) for _____ years (or months). He is a bona fide resident at _____ and to my knowledge has resided thereat for the past _____ years (or months). I know of no reason why he is disqualified from registering under the Constitution and laws of Alabama enacted in pursuance thereof.

Space for further remarks

(Signed) _____

Sworn to and subscribed before me in the presence of the Board of Registrars this the _____ day of _____, 19____.

(Signed) _____ (Member of the Board)

Note: This application blank, when duly executed, on the final preparation of the "lists" of persons registered, must be delivered by the Board of Registrars to the Probate Judge of the County, whose duty it is to safely preserve it and all accompanying papers. See Title 41, Section 141, Code of Alabama, 1940.

APPENDIX C

1. Order of January 14, 1964 by the Supreme Court of Alabama Prescribing a New Application Form to be Used by the Boards of Registrar Throughout the State.

IN RE: APPLICATION FOR REGISTRATION QUESTIONNAIRE AND OATH,

SUPPLEMENTAL ORDER

WHEREAS, heretofore on the 29th day of March, 1960, this Court prescribed the form and content of a questionnaire and oath to aid the members of boards of registrars, all as set forth in the order made and entered on the date aforesaid; and

WHEREAS, the Legislature of Alabama has enacted Act No. 92, approved July 26, 1961, Acts of Alabama, 1961, Vol. I, page 107; which provides for the filing of twelve sets of questions so that a different questionnaire may be used each month;

NOW, THEREFORE, in compliance with Section 181 of the Constitution of Alabama of 1901, as amended, and said Act No. 92, it is ordered by the Supreme Court of Alabama, as follows:

The questionnaire, omitting Insert Part III which is to be inserted as hereinafter provided for, shall be as follows:

APPLICATION FOR REGISTRATION,
QUESTIONNAIRE AND OATHS

PART I

(This is to be filled in by a member of the Board of Registrars or a duly authorized clerk of the board. If applicant is a married woman, she must state given name by which she is known, maiden surname, and married surname, which shall be recorded as her full name.)

Full Name: _____

 Last First Middle
Date of Birth: _____ Sex _____ Race _____

Residence Address: _____

2.

Mailing Address: _____

Voting Place: Precinct _____ Ward _____ District _____

Length of Residence: In State _____ County _____

Precinct, ward or district _____

Are you a member of the Armed Forces? _____

Are you the wife of a member of the Armed Forces? _____

Are you a college student? ____ If so, where _____

Have you ever been registered to vote in any other state or

in any other county in Alabama? ____ If so, when and

in what state and county and, if in Alabama, at what

place did you vote in such county? _____

Highest grade, 1 to 12, completed _____ Where _____

Years college completed _____ Where _____

PART II

(To be filled in by the applicant in the presence
of the Board of Registrars without assistance.)

I, _____, do
hereby apply to the Board of Registrars of _____
County, State of Alabama, to register as an elector under
the Constitution and laws of the State of Alabama and do
herewith submit my answers to the interrogatories propounded
to me by the board.

(Signature of Applicant)

1. Are you a citizen of the United States? _____

2. Where were you born? _____

3. If you are a naturalized citizen, give number appearing
on your naturalization papers and date of issuance _____

3.

4. Have you ever been married? _____ If so, give the name, residence and place of birth of your husband or wife _____

Are you divorced? _____

5. List the places you have lived the past five years, giving town or county and state _____

6. Have you ever been known by any name other than the one appearing on this application? _____ If so, state what name _____

7. Are you employed? _____ If so, state by whom. (If you are self-employed, state this.) _____

8. Give the address of your present place of employment _____

9. If, in the past five years, you have been employed by an employer other than your present employer, give name of all employers and cities and states in which you worked _____

10. Has your name ever been stricken for any reason from any list of persons registered to vote? _____ If so, where, when, and why? _____

11. Have you previously applied for and been denied registration as a voter? _____ If so, when and where? _____

4.

12. Have you ever served in the Armed Forces? _____

If so, give dates, branch of service, and serial number.

13. Have you ever been dishonorably discharged from military service? _____

14. Have you ever been declared legally insane? _____ If

so, give details _____

15. Give names and addresses of two persons who know you and can verify the statements made above by you relative to your residence in this state, county and precinct, ward or district _____

16. Have you ever seen a copy of this registration application form before receiving this copy today? _____ If

so, when and where? _____

17. Have you ever been convicted of any offense or paid any fine for violation of the law? _____ (Yes or No) If so, give the following information concerning each fine or conviction; charge, in what court tried, fine imposed, sentence, and, if paroled, state when, and if pardoned, state when. (If fine is for traffic violation only, you need write below only the words "traffic violation only.")

5.

(Remainder of this form is to be filled out only as directed by an individual member of the Board of Registrars.)

PART III

Part III of this questionnaire shall consist of one of the forms which are Insert Part III as herein below set out. The insert shall be fastened to the questionnaire. The questions set out on the insert shall be answered according to the instructions therein set out. Each applicant shall demonstrate ability to read and write as required by the Constitution of Alabama, as amended, and no person shall be considered to have completed this application, nor shall the name of any applicant be entered upon the list of registered voters of any county until after such Inserted Part III of the questionnaire has been satisfactorily completed and signed by the applicant.

PLEASE INSERT PART III HERE

PART IV

Oaths

STATE OF ALABAMA

_____ COUNTY

Before me, _____
a registrar in and for said county and state, personally appeared _____,
an applicant for registration as an elector, who being first duly sworn deposes and says:

"I do solemnly swear (or affirm) that the foregoing answers to the interrogatories are true and correct to the best of my knowledge, information and belief. I do further

6.

personally swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; that I do not believe in nor am I affiliated with any group or party which advocated or advocates the overthrow of the United States or the State of Alabama by unlawful means. I do further solemnly swear (or affirm) that in the matter of this application for registration I have spoken the truth, the whole truth and nothing but the truth, so help me God."

(Signature of Applicant)

Sworn to and subscribed before me this the ____ day of _____, 19 ____.

(Signature of Board Member)

Explanation and Remarks

(Board members interviewing applicants may place here any special explanations, such as of residence status, or other remarks for purposes of clarification. If person is blind or is otherwise physically handicapped to such an extent that he cannot fill out this application form, the circumstances are to be recorded here, along with an explanation of the method used to determine if the person is, in fact, literate and can spell words and recognize those spelled to him, or can read large block letters and words in the case of persons with sight handicaps. _____

7.

PART V

Action of the Board

STATE OF ALABAMA

_____ COUNTY

The applicant, _____,
appeared before the board of registrars for said state and
county in a regular session and executed the foregoing appli-
cation in the manner prescribed by law. The Board, having
further examined said applicant under oath, touching his
qualifications under Section 181, Constitution of Alabama,
as amended, and having fully considered the foregoing appli-
cation for registration, questionnaire and oaths, adjudges
said applicant entitled to be registered and he was duly
registered this the ____ day of _____, 19 ____.

Signed: _____
Chairman

Member

Member

(NOTE: The act of actually determining an applicant entitled
to be registered is judicial. A majority of the Board must
concur. A majority must be present. The power cannot be
delegated. Each member must vote on each application. Not
until this is done may a certificate be issued the applicant.)

The Applicant, _____,
due to failure to meet the requirements of state law for
registration as an elector, is hereby rejected on this the
____ day of _____, 19 ____.

Signed: _____
Chairman

Member

Member

8.

PART VI

Examination of Supporting Witness

(The witness shall be placed under oath to tell the truth, the person administering the oath being a Board member or other person authorized to administer oaths and acting under the direction of the Board.)

Name of Witness _____

Address _____

Place of Voting _____

"I have known the applicant _____

_____ for ____ years and ____ months and I

have personal knowledge that his place of residence is _____

and that he has resided in the State of Alabama at least one year and in _____ County for at least six months."

Signature of Witness

Sworn to and subscribed before me this the ____ day
of _____, 19 ____.

(Person Administering Oath)

Date _____

Insert Part III shall be in twelve different forms
as follows:

INSERT PART III (1)

(The following questions shall be answered by the applicant
without assistance.)

1. What city is the capital of the United States? _____
2. How many states are there in the United States? _____

- 9.
3. How many senators from each state are in the United States Senate? _____
4. The president of the United States is elected for a term of how many years? _____
-

INSTRUCTIONS "A"

The applicant will complete the remainder of this questionnaire before a Board member and at his instructions. The Board member shall have the applicant read any one or more of the following excerpts from the U. S. Constitution using a duplicate form of this Insert Part III. The Board member shall keep in his possession the application with its inserted Part III and shall mark thereon the words missed in reading by the applicant.

Excerpts from the Constitution

1. "The powers not delegated to the United States by the constitution, nor prohibited by it to the states, are reserved to the states respectively, or to the people."
2. "The judicial power of the United States shall not be construed to extend to any suit in law or equity, commenced or prosecuted against one of the United States by citizens of another state, or by citizens or subjects of any foreign state."
3. "Representatives shall be apportioned among the several states according to their respective numbers, counting the whole number of persons in each state, excluding Indians not taxed."
4. "The congress shall have power to lay and collect taxes on incomes, from whatever source derived, without

X X

One of the foregoing forms of Insert Part III shall be used each month, the same form being used for all persons who apply for registration during the same month. During the following month a different form shall be used in like manner.

IT IS FURTHER ORDERED that the Supreme Court of Alabama have and retain the right and authority to amend, change, and alter said questionnaire and oath when deemed by the Court expedient to do so.

IT IS FURTHER ORDERED that this Supplemental Order be spread upon the Minutes of this Court and that a copy of this Order be filed with the Secretary of State of the State of Alabama.

25.

Promulgated and Adopted this the 14th day of

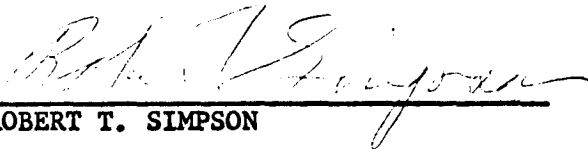
January, 1964.




J. ED LIVINGSTON, CHIEF JUSTICE



THOMAS S. LAWSON



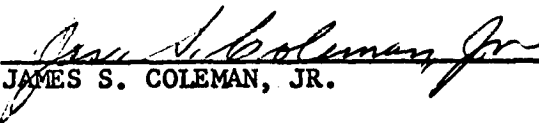
ROBERT T. SIMPSON



JOHN L. GOODWYN



PELHAM J. MERRILL



JAMES S. COLEMAN, JR.



ROBERT B. HARWOOD

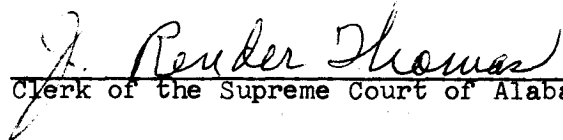
Associate Justices

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that the foregoing pages are a true and correct copy of those matters appearing on pages 119 through 123, both inclusive, and on page 131 of the Minutes of the Supreme Court of Alabama, with certain parts of the order omitted as requested and indicated.

WITNESS, J. Render Thomas, Clerk of the Supreme Court of Alabama, at the Judicial Building, this the 4th day of December, 1964.


Clerk of the Supreme Court of Alabama

2. Order of August 26, 1964 by the Supreme Court of Alabama Revising the Application Form Prescribed on January 14, 1964.

IN RE: APPLICATION FOR REGISTRATION QUESTIONNAIRE AND OATHS,

SUPPLEMENTAL ORDER

WHEREAS, heretofore on the 14th day of January, 1964, this Court prescribed the form and content of a questionnaire and oaths to aid the members of boards of registrars, all as set forth in the order made and entered on the date aforesaid; and

WHEREAS, since said date, the Congress of the United States has enacted and the President has approved the "Civil Rights Act of 1964," which forbids the giving of any oral test to applicants who seek to register to vote; and

WHEREAS, the validity of said provision of said act of the Congress has not been determined; and

WHEREAS, said questionnaire heretofore prescribed by this Court did provide for the giving of an oral test to applicants who seek to register to vote; and

WHEREAS, this Court deems it proper and advisable to change said questionnaire so as to avoid conflict with said Act of the Congress.

NOW, THEREFORE, in compliance with Section 181 of the Constitution of Alabama of 1901, as amended, it is ordered by the Supreme Court of Alabama, as follows:

That paragraph of said order made on the 14th day of January, 1964, under the heading: "PART III," which begins: "Part III of this questionnaire shall consist," and ends "satisfactorily completed and signed by the applicant," is hereby amended to read as follows:

PART III

Part III of this questionnaire shall consist of one of the forms which are Insert Part III as herein below set

2.

out. The completed insert shall be fastened to the questionnaire. The insert shall be completed according to the instructions therein set out. No person shall be considered to have completed this application, nor shall the name of any applicant be entered upon the list of registered voters of any county until after such Insert Part III has been satisfactorily completed and signed by the applicant. The Board of Registrars shall provide a loose-leaf book with one of each of said forms of Insert Part III placed in said book. Applicant shall open said book at random. The form appearing where applicant opens the book is to be used by applicant.

X X

That part of said order of the 14th day of January, 1964, which begins:

"Insert Part III shall be in twelve different forms as follows:";

and ends:

". . . . During the following month a different form shall be used in like manner.";

shall be amended to read as follows:

Insert Part III shall be in one hundred different forms as set out in the Exhibit "A" in this order.

X X

In all respects, other than the changes hereby made in Insert Part III, aforementioned order of the 14th day of January, 1964, remains in full force and effect.

3.

IT IS FURTHER ORDERED that the Supreme Court of Alabama have and retain the right and authority to amend, change, and alter said questionnaire and oaths when deemed by the Court expedient to do so.

IT IS FURTHER ORDERED that this Supplemental Order be spread upon the Minutes of this Court and that a copy of this Order be filed with the Secretary of State of the State of Alabama.

Promulgated and Adopted this the 26th day of

August, 1964.


ED LIVINGSTON, CHIEF JUSTICE


THOMAS S. LAWSON


ROBERT T. SIMPSON


JOHN L. GOODWYN


PELHAM J. MERRILL


JAMES S. COLEMAN, JR.


ROBERT B. HARWOOD

Associate Justices

EXHIBIT "A"

INSERT PART III (1)

INSTRUCTION "A"

Immediately after this insert has been selected, applicant shall turn it over and write on the back as instructed by the Board member. The Board member shall read aloud to the applicant, from a duplicate form of this Insert Part III, one or more of the excerpts from the Constitution which appear below, and the applicant shall write on the back hereof that part of the Constitution which is thus read to him. This shall be done before applicant completes any other part of the insert. Applicant is not to be allowed to copy, from the insert or elsewhere, that part of the Constitution which is read to him, but shall write the words read to the applicant by the Board member.

INSTRUCTION "B"

(After complying with Instruction "A," applicant will complete remainder of insert. Applicant shall answer the following questions in writing and without assistance:)

1. A proposed change in the state constitution is called a proposed _____.
2. Which of the following is a right guaranteed by the bill of rights?
____ public education
____ employment
____ voting
____ trial by jury

INSERT PART III (1)

3. Name one person now a member of the governing body of this county. _____
 4. The federal census of population is taken each five years. (True or False) _____
-

EXCERPTS FROM THE CONSTITUTION

Part 1. In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the state and district wherein the crime shall have been committed, which district shall have been previously ascertained by law, and to be informed of the nature and cause of the accusation; to be confronted with the witnesses against him; to have compulsory process for obtaining witnesses in his favor, and to have the assistance of counsel for his defense.

Part 2. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any state on account of sex.

Congress shall have power to enforce this article by appropriate legislation.

Part 3. The terms of the President and Vice President shall end at noon on the 20th day of January, and the terms of Senators and Representatives at noon on the 3d day of January, of the years in which such terms would have ended if this article had not been ratified; and the terms of their successors shall then begin.

Part 4. The congress shall have power:

To make rules for the government and regulation of the land and naval forces.

INSERT PART III (1)

INSTRUCTION "C"

(After applicant has read, not aloud, the foregoing excerpts from the Constitution, he will answer the following questions in writing and without assistance:)

1. If a person is indicted for a crime, name two rights which he has. _____
 2. Who, if otherwise qualified, was given the right to vote by passage of the amendment shown in Part 2, above? _____
 3. A United States Senator elected at the general election in November takes office the following year on what date? _____
 4. A President elected at the general election in November takes office the following year on what date? _____
-

I hereby certify that I have received no assistance in the completion of this citizenship and literacy test, that I was allowed the time I desired to complete it, and that I waive any right existing to demand a copy of same. (If for any reason the applicant does not wish to sign this, he must discuss the matter with the board of registrars.)

Signed: _____
(Applicant)

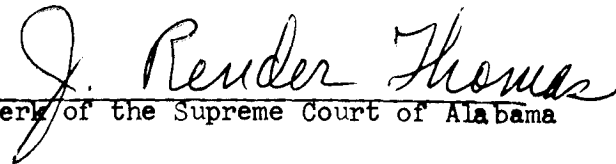
(REMAINDER OF ORDER IS OMITTED BY REQUEST.)

STATE OF ALABAMA

COUNTY OF MONTGOMERY

I, J. Render Thomas, Clerk of the Supreme Court of Alabama, do hereby certify that foregoing is a true and correct copy of those matters appearing on pages 381 through 382, both inclusive, of the Minutes of the Supreme Court of Alabama. The remainder of order is omitted by request.

WITNESS, J. Render Thomas, Clerk
of the Supreme Court of Alabama,
at the Judicial Building, this
4th day of December, 1964.


Clerk of the Supreme Court of Alabama

APPENDIX D

Description of Exhibits Introduced Into Evidence by the United States

EXHIBIT NUMBER A - This exhibit consists of applications for registration filed with the Choctaw County Board of Registrars. These applications are arranged in the record in three drawers according to whether the application was accepted or rejected by the Board. The accepted applications are arranged alphabetically according to the race of the applicants. All rejected applications are arranged alphabetically. Each application has a plaintiff's Exhibit A number on the upper right hand corner of the application form and the forms are numbered as follows:

1. Accepted applications filed by white persons from January 1, 1952 to February 5, 1963 - 1 through 2436.
2. Accepted applications filed by Negroes from January 1, 1952 to February 5, 1963 - 3001 through 3212.
3. Rejected applications filed by white persons and Negroes from November 9, 1959 to February 5, 1963 - 4001 through 4267.

EXHIBIT NUMBER B - This exhibit consists of (1) ten registration books which cover nineteen consecutive years of registration in Choctaw County through February 5, 1963. Each book includes the name, residence, and race of the persons who registered to vote in Choctaw County during this period; (2) one Poll Tax Payment Book covering the period from 1954 through 1959. This book includes the name and race of persons who paid poll taxes during the period covered; (3) one book containing a list of persons purged from the voter rolls during 1962. These twelve books have been bound into one volume with the pages numbered consecutively.

EXHIBIT NUMBER 1 - This exhibit sets forth the names, addresses and dates of registration of registered voters by race. This information was obtained from books maintained by the Probate Judge of Choctaw County.

EXHIBIT NUMBER 2 - This exhibit consists of a copy of the Qualified Voters List for Choctaw County, Alabama as printed in The Choctaw Advocate newspaper published on April 12, 1962.

EXHIBIT NUMBER 3 - This exhibit consists of census figures on the population of Choctaw County which is

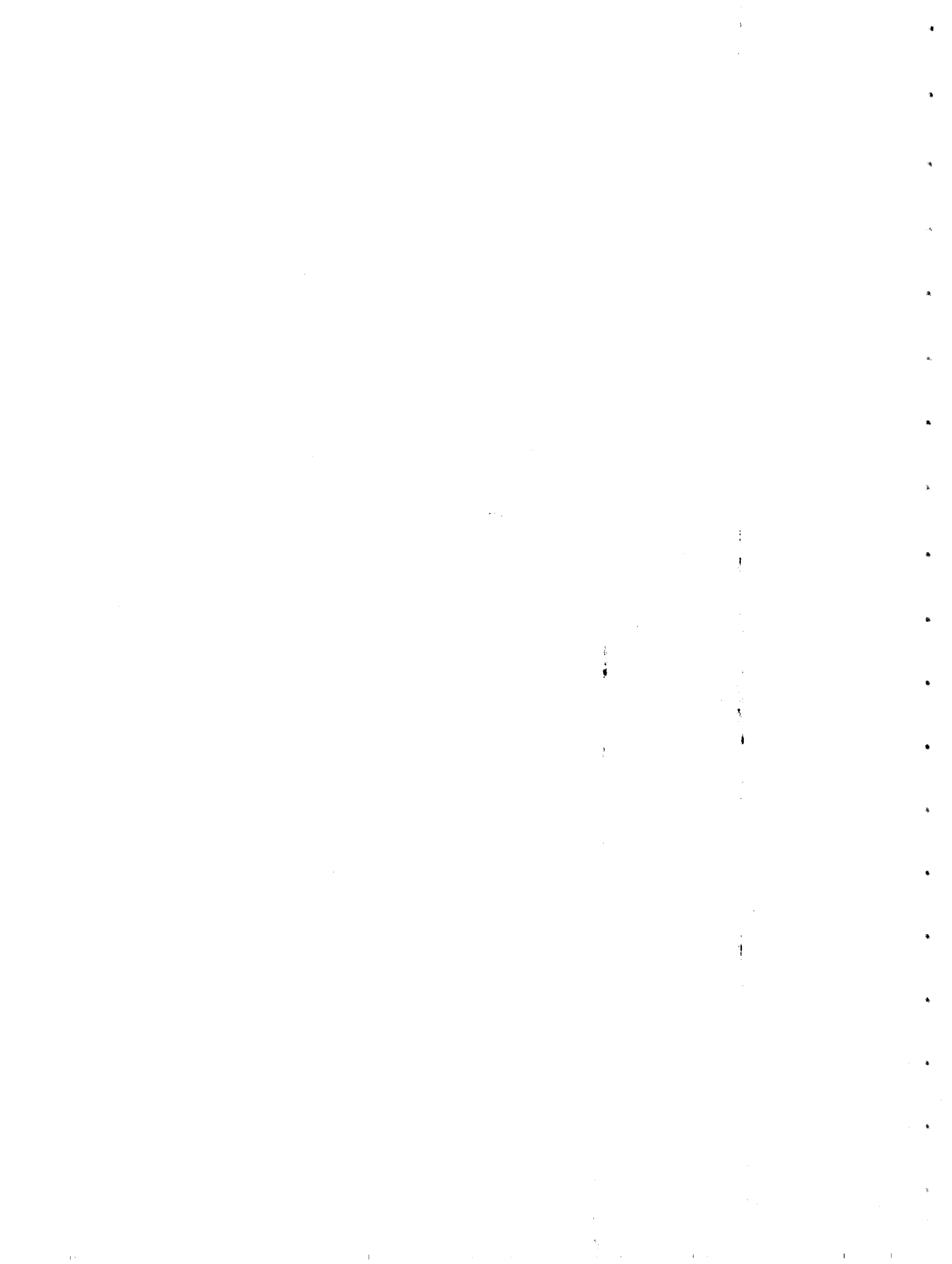
over 21 years of age, by race, as of April 1, 1960. These figures were certified by the Director of the Bureau of the Census of the United States.

EXHIBIT NUMBER 4 - This exhibit consists of two affidavits and two statements identifying 106 rejected applicants as Negroes. This race identification was stipulated by the parties.

EXHIBIT NUMBER 5 - This exhibit consists of the signed statements of seven white voters summarizing their registration experiences in Choctaw County. The parties stipulated that these statements represent the testimony of these seven persons had they been called to testify.

EXHIBIT NUMBER 6 - This exhibit consists of the statements of eight white persons and four Negroes summarizing their registration experiences in Choctaw County. The parties stipulated that these statements represent the testimony of these twelve persons, if they had been called to testify.

EXHIBIT NUMBER 7 - This exhibit consists of the statements of seven Negroes identifying 21 rejected applicants as Negroes. This race identification was stipulated by the parties.



APPENDIX E

Accepted and Rejected Applications of
White and Negro Applicants Filed with
the Board of Registrars of Choctaw
County Between November, 1959 and
February 5, 1963. 1/

		Total Applied		Accepted		Rejected		Percent Rejected	
		<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
1959 Nov. 9 to Dec. 31	<u>W</u> <u>N</u>	11	3	11	1	0	2	0	66.6
1960	<u>W</u> <u>N</u>	332	20	332	1	0	19	0	95.0
1961	<u>W</u> <u>N</u>	196	115	195	17	1	98	.5	85.2
1962	<u>W</u> <u>N</u>	212	118	212	23	0	95	0	80.5
1963 (to Feb.5)	<u>W</u> <u>N</u>	32	0	32	0	0	-	0	-
Date Un- Known	<u>W</u> <u>N</u>	1	46	0	0	1	46		
Totals	<u>W</u> <u>N</u>	784	302	782	42	2	260	.2	86.0

1/ This Table has been computed from figures obtained by counting the accepted and rejected application forms filed with the Board of Registrars between November 9, 1959 and February 5, 1963. In addition, there are four applications rejected by the Board, which were submitted by persons whose race cannot be determined from existing records. These four applications are not included in this chart. They were filed by Carlton Boykin (Pl. Ex. A-4018), Elmer P. Covington (Pl. Ex. A-4034); Robert J. Jenkins (Pl. Ex. A-4135) and Shirley R. Jenkins (Pl. Ex. A-4136).

APPENDIX F

Courthouse Personnel Who Were Supporting Witnesses From November 9, 1959 to February 5, 1963.

Total Applicants During Period	<u>W</u> 784	<u>N</u> 302
Total Applicants Vouched For By Courthouse Personnel	388	0
Percentage	49.4	0

<u>Names of Supporting Witnesses & Their Positions</u>	<u>Number of Applicants Vouched For</u>	
	<u>W</u>	<u>N</u>
Allen, M. D. (Sec'y. Board of Educ.)	6	0
Allen, W. C. (Sup't., Bd. of Educ.)	26	0
Bruister, F. B. (Tax Collector)	38	0
Christopher, J. A. (Circuit Clerk)	117	0
Cowan, E. W. (Clerk - FHA)	8	0
Cox, T. C. (Deputy Sheriff)	5	0
Cummings, F. M. (Probate Clerk)	15	0
Devours, R. B. (Ass't. County Agent)	5	0
Evans, R. (Supervisor, Bd. of Educ.)	3	0
Ford, C. (Tax Collector)	46	0
Gilmore, W. (Circuit Solicitor)	13	0
Littlepage, C. E. (Sheriff)	6	0
Littlepage, J. K. (Deputy Sheriff)	4	0
McDowell, W. K. (Tax Assessor)	14	0

McPhearson, R. E. (Probate Judge)	14	0
Martin, H. (US) Veterans' Office)	22	0
Martin, J. E. (Game Warden)	3	0
Miller, M. (Clerk, Tax Assessor)	3	0
Phillips, H. (Tax Assessor)	18	0
Thrash, C. A. (Clerk - Tax Assessor)	9	0
Turner, D. N. (Clerk - County Court)	3	0
Wiggs, C. E. (Probate Clerk)	15	0
Totals	<u>388</u>	<u>0</u>

APPENDIX G

List of the Forty-Nine Negro Applicants
and the Exhibit Number of One or More
of His or Her Applications Filed with
the Board Between November, 1959 and
February 20, 1963.

<u>Name of Applicant</u>	<u>Exhibit Number(s) of Application(s)</u>
1. Levord Adams	A-4001
2. Lucille Blonks	A-4016, 4017
3. Theodore Brooks	A-4019
4. Gertrude M. Carter	A-4028, 4029
5. Arthur Crowell, Jr.	A-4037
6. Alice Dickinson	A-4038
7. Mellie Dickinson	A-4044
8. Louis Dixon	A-4046
9. Sylvia L. Dothard	A-4049
10. Jim Everett	A-4058
11. Sarah Fail	A-4071
12. Beatrice Ford	A-4074
13. John L. Ford	A-4075
14. Eddie Gaines	A-4077
15. Malet Gray, Jr.	A-4086
16. Josephine Hampton	A-4087
17. Willie Hampton	A-4089
18. Emma Harrison	A-4091
19. Mock Holcombe	A-4106
20. Oscar Holcombe	A-4112, 4113
21. Quentin Horn	A-4119
22. Susie Howard	A-4122
23. Tilman Howard	A-4123
24. Ruth Irvin	A-4124
25. Ellis Jackson, Jr.	A-4127
26. Minnie James	A-4134
27. Frank Johnson	A-4141
28. Goldie Johnson	A-4143
29. Norman Johnson	A-4151
30. Edna Jordan	A-4158
31. Green Keeton	A-4162
32. A. C. McGrew	A-4175
33. Marie Mason	A-4185
34. Lugene Matthews	A-4187
35. Elmira Moss	A-4192

36.	Lurenia Parker	A-4197
37.	Oliver Pringle	A-4207
38.	Lucinda Roberts	A-4224
39.	Thaedo Roberts	A-4225
40.	John L. Ruffin	A-4230
41.	Martin Ruffin	A-4234
42.	Mae Ola Tanks	A-4240
43.	Richard Tartt	A-4242
44.	Minnie Taylor	A-4244
45.	Lorine Turner	A-4252
46.	Vernon Underwood	A-4256
47.	Curvis Wallace	A-4257, 4258
48.	Jessie Washington	A-4261
49.	Henry Williams	A-4264

CERTIFICATE OF SERVICE

I hereby certify that a copy of the Brief and Appendices for Appellant has been served by official United States mail in accordance with the rules of this Court to each of the attorneys for appellees addressed as follows:

Honorable Richmond Flowers
Attorney General
State of Alabama
Montgomery, Alabama

Honorable Gordon Madison
Assistant Attorney General
State of Alabama
Montgomery, Alabama

Honorable Leslie Hall
Assistant Attorney General
State of Alabama
Montgomery, Alabama

Wyman Gilmore, Circuit Solicitor
First Judicial Circuit
Butler, Alabama

Dated: January 7, 1965

/s/ HAROLD H. GREENE
HAROLD H. GREENE
Attorney,
Department of Justice,
Washington, D.C. 20530

