NO. 22, ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1965

STATE OF SOUTH CAROLINA,

Plaintiff

versus

NICHOLAS deB. KATZENBACH,
Attorney General of
the United States,

Defendant

AMICUS CURIAE BRIEF OF STATE OF ALABAMA

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The State of Alabama with permission from the State of South Carolina desires to join in the briefs filed by the State of South Carolina in this case.

In addition, the State of Alabama files this amicus curiae brief for the court's consideration.

QUESTIONS TO BE CONSIDERED

1. Is there a denial of Fair Play or Due Process requirements by the provisions of Section 9 of the Voting Rights Act of 1965?

Under Section 7(b) of the act, the examiner certifies a list of applicants found qualified to the appropriate election official and to the Attorney General of the state at least once a month.

The act is silent as who may challenge the list.

The examiners in Alabama, by way of illustration, have certified thousands of Negroes who cannot read and write as qualified to vote.

State law provides that one must be able to read and write before being eligible or qualified to register and vote.

Two affidavits as to each person challenged must be submitted under Section 9 within the ten days provided as the time within which to challenge the eligibility of the person certified by the examiner as being qualified.

It is impossible for the office of the Attorney General of a state or the proper election officials mentioned in 7(b) of the act, or anyone else, to prepare the thousands of affidavits required before any challenge will be entertained. It is to be noted that the affidavits must be from people who have personal knowledge of the facts.

If thousands who cannot read and write have been certified as qualified by federal examiners in a month's time, one must secure twice that number of affidavits within ten days from persons who personally know that they cannot do so.

The above presents a procedure for challenging the acts of the federal examiners which is impossible under the mass examinations already conducted by the federal examiners.

When this is considered along with the appeal provisions to

the United States Court of Appeals appearing in Section 9, and Section 14(b) relative to jurisdiction only in district courts in the District of Columbia, it clearly appears that the affected states are intentionally being deprived of their rights, or those rights substantially impaired by means of procedures which do not meet Due Process or Fair Play requirements.

2. Does the act violate state power to fix the qualifications for registering and voting?

Again using the State of Alabama as an illustration, Section 181 of the Constitution of Alabama, as amended by Amendment 91, ratified December 19, 1951, provides in plain language that " . . . . No persons shall be entitled to register as electors except those of good character . . . ." Yet this provision of the State Constitution is nullified by 4(c)(3) of the Voting Rights Act of 1965, which also in plain words says a state may not require an elector to "possess good moral character." The Alabama courts have considered "good character" as "good moral character." *Opinion of the Justices,* 252 Ala. 351, 40 So.2d 849.

By way of further illustration, Section 181, supra, of the State's Constitution provides that one to become an elector must be able to read and write in the English language any article of the United States Constitution which may be submitted to him by the registrars.

The requirement that one must be able to read and write is always enforced, and some registrars require that an applicant read and write an article of the United States Constitution, as above provided. It is rare indeed for anyone who has no physical disability and who cannot read and write to be registered as an elector since the adoption of Amend-

ment 91, supra. If one be so registered by design or mistake, he may be purged from the lists under *United States v. Atkins*, 323 F.2d 733.

The defendant in this case construes and applies the act by his own admission as nullifying or suspending the state requirement that one must be able to read and write as a condition to becoming an elector. The result is that some twenty thousand persons who cannot read and write have been erroneously certified as qualified under state law in the State of Alabama.

The Voting Rights Act of 1965 and such procedure clearly violate the constitutional rights of states to prescribe the qualifications of their voters.

3. Some states affected by the Voting Rights Act of 1965 provide 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. Title 17, Section 33, Code of Alabama 1940. *Williams v. Wright*, 249 Ala. 9; *Hawkins v. Vines*, 249 Ala. 165.

State law requires in some states that such applicant must be able to read and write.

Is the said Voting Rights Act unconstitutional in authorizing federal examiners to register or certify applicants as qualified who cannot read and write, thereby violating the constitutional rights of states to fix voter qualifications?

4. Whether the Voting Rights Act of 1965 violates the constitutional rights of the plaintiff and other affected states and their inhabitants under Article I, Sections 2, 4 and 9; Article III; Article IV, Section 2; Fifth Amendment, Fif-

teenth Amendment, and Seventeenth Amendment to the Constitution of the United States?

5. Whether the Voting Rights Act of 1965 is applicable to the State of South Carolina and whether said act is unconstitutional as written or applied?

These latter two questions have been briefed, and forceful arguments presented by the states of South Carolina and Louisiana.

The State of Alabama likewise claims that said act is unconstitutional as written and as applied (See Response of Alabama, No. 23 Original).

A repetition of the reasons advanced serves no useful purpose, the arguments of South Carolina and Louisiana are more than adequate to show the unconstitutionality of the 1965 Act; cases are pending in federal courts in Alabama in which this state is a party; full factual proof will be there made.

In conclusion, the State of Alabama must ask one question. Does the Voting Rights Act of 1965 prohibit a state from requiring an applicant for registration to answer orally under oath whether he or she can read and write, such being a state requirement?

Respectfully submitted,

RICHMOND M. FLOWERS, As
Attorney General of the
State of Alabama

GORDON MADISON, As Assistant
Attorney General of the
State of Alabama

CERTIFICATE OF SERVICE

I, Gordon Madison, one of the attorneys of record for the State of Alabama and duly qualified and admitted to practice in the Supreme Court of the United States, hereby certify that I have on this the ____ day of December, 1965, served a copy of the foregoing Amicus Curiae Brief on Honorables Nicholas deB. Katzenbach, Attorney General; Thurgood Marshall, Solicitor General; and John Doar, Assistant Attorney General, Attorneys for Defendant, by mailing a copy, airmail, postage prepaid, to each of them at Department of Justice, Washington, D. C. 20530; and also by serving a copy as aforesaid upon Honorables Daniel R. McLeod, Attorney General of South Carolina, Wade Hampton Building, Columbia, South Carolina; David W. Robinson and David W. Robinson II, Special Counsel, P. O. Box 1942, Columbia, South Carolina, Attorneys for Plaintiff.

GORDON MADISON, As
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Alabama