NO. 22, ORIGINAL

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM 1965

STATE OF SOUTH CAROLINA

Plaintiff

v.

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

Defendant

AMICUS CURIAE BRIEF OF THE STATE OF ALABAMA

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Governor of Alabama

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INTEREST OF THE AMICUS CURIAE

Pursuant to the invitation and permission of this Court dated November 5, 1965, allowing any State to file a brief amicus curiae in this cause, the State of Alabama acting by and through its Governor, who is the Chief Executive Officer of said State and, as such, is charged by the Constitution and laws of said State with the responsibility and duty of maintaining the authority and jurisdiction of the State of Alabama and seeing that its laws are faithfully executed, herewith files its brief amicus curiae by and through the subscribing attorneys hereto, both of whom are members of the Bar of this Court, and who are Special Counsel for the State of Alabama acting as such pursuant to authority and instructions of the Governor of Alabama, Hon. George C. Wallace.

The Voting Rights Act presents a direct legislative and constitutional challenge to Alabama and its citizens of their

inherent and common law rights of citizenship which are constitutionally protected to them, and which are essential to the State as a sovereign political entity. This amicus curiae brief on behalf of the State by its Governor and Chief Executive Officer is to preserve and protect the rights and interests of Alabama, its citizenry and electorate from debasement and destruction through Federal legislative preemption of areas that are vital to self government, and, as such it is deemed to be in proper response to the invitational permission of the Court for interested States to file briefs amicus curiae, as well carrying out his above mentioned responsibilities and duties.

We interpret, and we hope rightfully so, that the exceptions stated in Rule 42 (5) of this Court, permits this brief, being less than twenty pages in the argument portion, to proceed without the formalities otherwise required. Accordingly, with permission of South Carolina we join in and adopt the "Statement" (p. 44 of the South Carolina brief in Original No. 22) and the "Summary of Argument" (pages 48-50 of said brief. However, argument will be changed in this brief so as to refer, where appropriate, to the impact of the Voting Rights Act upon Alabama rather than South Carolina.

ARGUMENT

THE ACT BEARS UNEQUALLY ON THE VARIOUS STATES OF THE UNION.

By means of formulae, carefully devised and written into the Act, it is an open secret that the Act was drawn to apply only to six southern states, part of a seventh one, and, incidentally, to Alaska and one county in Arizona. This unequal application of legislative power or action directly involves the reasonableness of classification. The Act says it shall apply to States or political subdivisions thereof which (1) maintained a voter qualification test or examination on November 1, 1964; and (2) in which less than 50%

of the persons of voting age residing therein on said date were registered to vote, or (3) that less than 50% of such persons voted in the presidential election of November 1964.

The only constitutional peg upon which this punitive legislation is attempted to be hung is the 15th Amendment, by claiming it is appropriate under Section 2 thereof. And, as to the punitive flavor, it is interesting merely to note, at this point, that enforcement of the Act is now limited to Alabama, Louisiana, and Mississippi, with a few Examiners being put in South Carolina after it filed this original action.

We think it undeniable that Congress must have a "rational basis" for the findings upon which the Act is predicated. To comply with this, the Act arbitrarily employs the 50% formulas as a classification standard conclusively showing citizens are denied voting rights protected by the 15th Amendment; but, in using such a formula it includes States where this assumed factual premise is simply non-existent: e.g., Alaska, where it is said the cold weather prevented a 50% turnout of the electorate in November 1964; and, Virginia, where the U. S. Civils Rights Commission reported (Vol. 1, p. 22) that Negroes encounter no significantly racially motivated impediments to voting, which undermines the constitutionally needed and falsely assumed factual foundation upon which the Act is based. Thus the 50% formulas for activation of the Act includes a State or States in which racial discrimination in exercising the right to vote is, as a matter of public record, nonexistent; and certainly Congress cannot suspend the electoral laws of a State, under the guise of enforcing the 15th Amendment, where there is no racial discrimination in voting. Legislation having such an effect is clearly without reasonable classification or rational justification. It is an arbitrary assumption of power not granted to the Federal Government.

Section 3 authorizes federal courts, whenever the Attor-

ney General institutes a proceeding under any statute to enforce the guarantees of the 15th Amendment, to appoint federal registrars and suspend the use of a literacy test, **but only after evidence and proof** that a State has used a literacy test or any other qualification to deny the right of a person to vote because of race or color. Such judicial findings in Alabama have already resulted in the appointment of federal voter referees and the registration of voters by federal courts and the suspension of the literacy test in counties where such findings were established.

In marked contrast, under Section 4 (b) Congress asserts the power to bypass both federal and state courts, and even the necessity for judicial determination of claimed violations of the 15th Amendment. Under the provisions of Section 4 Congress itself, independently of any judicial finding, abolishes literacy tests and other voter qualifications, one or more of which are applicable throughout the United States, solely upon a mere certification or determination that the formulae facts exist -and without an opportunity to rebut or review such determination.

It is axiomatic in matters of legislation that any classification within a statute must be rational and bear a reasonable relationship to the object and purpose of the statute.

In Alabama better than 50% of the persons of voting age are registered to vote. Yet, the statute is made applicable to Alabama by reason of the fact that the Director of the United States Census has determined that less than 50% of those persons of voting age who resided in Alabama did not vote in the General Election of 1964. This is a highly questionable finding of fact. There is no appeal from this finding.

The number of persons who vote in an election is not a reasonable classification. For example, the following are but a few of the factors which are **completely removed from any question of race** which might well reduce the

number of persons voting in a General Election below the 50% level:

(1) Elections are decided in primaries in single party States where less people vote in a general election because the conclusion is foregone; (2) lack of interest and issues; (3) rain, or other adverse weather conditions; (4) perhaps the most important, the fact that a large segment of the voting age population may deliberately remain away from the polls; and (5) many persons over 21 residing in Alabama, who, entirely apart from any racial matter, did not and could not vote, e.g.: many thousands of armed forces personnel and adults in their families who could not register, other thousands in penal institutions or who were disqualified by previous convictions; as well as those who were idiotic or absolutely illiterate.

The unreasonableness of the above standard can be illustrated by this hypothecation:

The leadership of a minority group in a State may deliberately boycott an election for the purpose of establishing the standard required under the statute. In this way, a relatively small minority of the State could succeed in invoking an asserted power in Congress to suspend voter qualifications in any state in the Union. Thus a small minority may succeed in depriving a vast majority of the people of their constitutionally protected political rights and judicial procedures.

The above 50% standard establishes the following proposition as law:

Congress of the United States has power to suspend voter qualifications in any state using any selected voter qualifications whatsoever if less than one-half the persons of voting age exercise the franchise in any specific election.

In summary, the 50% criteria is not a reasonable stand-

ard for legislative classification, and bears no remotely reasonable relationship to race or color.

The statutory criteria for determining violations of the 15th Amendment are illogical, arbitrary, discriminatory and violate every rule of reasonable classification.

Equal protection of the laws to the extent that the citizens of each state shall be entitled to all the privileges and immunities of citizens in the several states means that the arbitrary and irrational selection of states and citizens therein for a treatment different to that accorded the citizens of other states should be outlawed. Section 4 (b) of the Act involves a flagrant violation of constitutional standards of classification. It may properly express a current antipathy in some circles for the affected states, but by so doing it confers no legality.

> "This Union was and is a Union of States, equal in power, dignity and authority, each competent to exert that residuum of sovereignty not delegated to the United States by the Constitution itself. ..... there is to be found no sanction for the contention that any State may be deprived of the power constitutionally possessed by other States, as States. Coyle v. Smith, 221 US 559, 55L. ed. 853.

The Congress has assumed that because Alabama has a literacy requirement for its voters coupled with a doubtful, but irrefutable administrative finding, that less than 50% of the persons of voting age who resided therein did not vote in a certain presidential election, it is conclusive proof of widespread violations of the 15th Amendment. This is fantasy and bears no remote relation to the true facts, nor any real relationship to the race or color criteria of the 15th Amendment. This legislative assumption is of a jurisdictional nature, as it must exist before the Act can be applied to Alabama, yet it bears no reasonable relation to the negative criteria of the 15th Amendment. Congress has punitively and arbitrarily set up classifications under which

the Act may be invoked, without any requirement of judicial proof or procedure whereby such peremptory motivation can be judicially questioned; and such features contravene the constitutional guarantees of equality of treatment under the law.

> "Extraordinary conditions do not create or enlarge constitutional power. The Constitution established a national government with powers deemed to be adequate, as they have proved to be both in war and peace, but these powers of the National Government are limited by the constitutional grants. Those who act under these grants are not at liberty to transcend the imposed limits because they believe more or different power is necessary." Schecter Poultry Co. v. U.S. 295 U.S. 495, 79L. Ed. 1570.

THE ACT UNCONSTITUTIONALLY INVADES, USURPS AND DESTROYS ALABAMA'S RIGHT TO LEGISLATE UPON AND REGULATE SUFFRAGE AND VOTING QUALIFICATIONS, PROCEDURES AND RIGHTS.

Consideration of the constitutionality of the Act begins with the undeniable premise that the right to prescribe the qualifications of voters is one constitutionally vested exclusively within the province of the individual States, subject only to the limitations contained in the Federal Constitution forbidding qualifications based upon race (15th amendment), sex (19th amendment), and the payment of a poll tax in Federal elections (24th amendment). It is highly significant that all previous infringements upon the fundamental right of the States to prescribe voting qualifications have been by way of constitutional amendments, thereby attesting to the consistent judicial and congressional view that Congress may not invade the field of suffrage qualifications and regulations. This proposition is exceedingly well briefed by South Carolina in pages 58 to 64 of its original brief in this cause. This inherent sovereign

right of a State to prescribe suffrage qualifications would be destroyed should it be held, under the specious excuse of authorization by Section 2 of the 15th Amendment, that Congress has the right affirmatively to create an entirely new and Federal concept of suffrage qualifications, registration, procedures, and balloting. Any such holding would be but a mockery and illusion of constitutional guarantees.

When Alabama (and some nineteen other States) requires that a voter be able to read and write, it is exercising an inherent right of sovereignty that has never been delegated to the Federal Government, and Congress may not substitute its own beliefs and standards. The mere fact that nondiscriminatory voting qualifications may have been administered or applied in a racially discriminatory way does not ipso facto repeal vested constitutional rights or guarantees. Such a circumstance, as with all illegally administered law, is to be questioned, corrected and punished in and by the courts, -and not by an unconstitutional exercise of legislative power. For this Court to approve such a procedure would result in the validation of any law passed by Congress where it concludes that the end justifies the means.

> "The privilege to vote in any State is not given by the Federal Constitution, or by any of its amendments. It is not a privilege springing from citizenship of the United States. Minor v. Hapersett, 21 Wall. 162. It may not be refused on account of race, color or previous condition of servitude, but it does not follow from mere citizenship of the United States. In other words the privilege to vote in a State is within the jurisdiction of the State itself, to be exercised as the State may direct, and upon such terms as it may seem proper, provided, of course, no discrimination is made between individuals in violation of the Federal Constitution." Pope v. Williams, 193 U.S. 621, 623.

The 15th Amendment did not give Congress power to

prohibit discrimination on the grounds of education. This Act which, admittedly, abolishes literacy tests, nonetheless does just that; and this despite the fact that, historically, the United States Senate, after the 15th Amendment had been passed by the House, amended it to add prohibitions on the grounds of education, but this was defeated in the House; consequently the 15th Amendment prohibits only discrimination because of race or color. Thus, those who framed the 15th Amendment specifically refused to give Congress the power which it unconstitutionally asserts in this Act, i.e., the elimination of literacy or educational requirements in a number of States. The 15th Amendment does not give the right to vote to anyone; nor does it give to Congress the right to create within a State a class or group of voters who do not have the qualifications to vote prescribed by the State of their residence. Congress has no such right; suffrage matters are for the States alone to prescribe. The Act goes far beyond the negative power vested in Congress by Section 2 of the 15th Amendment. When, where or how was a right for an illiterate person to vote in State elections constitutionally placed under the legislative competence of the United States Congress? To say that alleged patterns of past discrimination placed it there, is sophistry of the highest order; for, as previously mentioned, illegal conduct is not the equivalent of a constitutional amendment.

> "No rights can be acquired under the constitution or laws of the United States, except such as the Government of the United States has the authority to grant or secure. All that cannot be so granted or secured are left under the protection of the States." U. S. v. Cruikshank, 92 U.S. 542, 23 L.Ed. 588, 591.

A parallel, judicially speaking, to the punitive legislation in question to wit: the Voting Rights Act, is found in the Act of Congress passed March 1, 1875, entitled "An Act to protect all citizens in their civil and legal rights," (commonly referred to as the Civil Rights Act) and the consti-

tutional validity of which was based on the legislative premise that it was authorized or permitted by the first two War Amendments (XIII and XIV), in that it was merely an act to implement the power and guarantees of these amendments, which is the same argument made by the Attorney General in the Congress and hearings on this Act in respect of the 15th Amendment. Such legislation and the contention as to its constitutional validity culminated in the Civil Rights Cases (109 U.S. 3, 27 L.Ed. 835, 3 S.Ct. 18, 27). The first and second sections of said Civil Rights Act were declared unconstitutional, as not being authorized by the 13th and 14th Amendments. Now, at this late date, a group of national legislators, who are as apparently punitively oriented as were the legislators in 1875, have enacted the Voting Rights Act under the guise and contention it is authorized and required by the last of the War Amendments, i.e., No. 15. Consequently it is both interesting and highly pertinent to see what the Supreme Court has said relative to the legislative power and competency vis-a-vis the claimed constitutional authority therefor.

> "Has Congress constitutional power to make such a law? . . . The power is sought first in the 14th Amendment (as it is in the 15th in the instant case). . . . It declares that 'No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States, etc.' . . . It is State action of a particular character that is prohibited . . . the last section of the Amendment invests Congress with power to enforce it by appropriate legislation. To enforce what? To enforce the prohibition. It does not invest Congress with power to legislate upon subjects which are within the domain of state legislation; but to provide modes of relief against state legislation or state action. It does not authorize Congress to create a code of municipal law (or, to paraphrase: 'a code of election law') for the regulation of private rights. . . . It would be to make Congress

> take the place of the State Legislatures and to supersede them. . . . It is absurd to affirm that, . . because the denial by a State to any persons of the equal protection of the laws is prohibited by the Amendment, therefore **Congress** may establish laws for their equal protection."

The principles enunciated in the foregoing opinion have been neither changed nor overruled by later Supreme Court decisions which have been directed towards judicially determined, not legislatively assumed, transgressions of the prohibitory features of the 14th Amendment. Nor are such principles vitiated by the specious argument that the existence of certain arbitrarily selected and statutorily irrebuttable statistical formulas are conclusive proof of State action contravening the prohibitory aspects of the 15th Amendment. The right of a State to conduct its own elections and to establish laws designed to insure fair and honest elections is a right of state sovereignty which preceded the United States Constitution, being the very foundation of a democratic society in the political, and not sociological, sense. The regulation of elections and the qualifications of the electorate is a necessary condition to any civilized society, and is essential to preserve the integrity of the democratic process. Absent such power and electorate integrity we would speedily reap the destructive forces of riots and anarchy. Consequently, we think particularly appropriate the words of the elder Justice Harlan in Ex parte Young, 209 U.S. 123, 182-3, 52 L.Ed. 714, 738, as follows:

> "The preservation of the dignity and sovereignty of the States, within the limits of their constitutional powers, is of the last importance, and **vital** to the preservation of our system of government. The courts should not permit themselves to be driven by the hardships, real or supposed, or particular cases to accomplish results, even if they be just results, in a mode forbidden by the fundamental law. The country

should never be allowed to think that the Constitution can, in any case, be evaded or amended by mere judicial interpretation, or that its behests be nullified by an ingenious construction of its provisions."

THE ACT VIOLATES CONSTITUTIONAL PROHIBITIONS AGAINST BILLS OF ATTAINDER AND EX POST FACTO LAWS.

The Act is in conflict with Article I, Section 9, Clause 3 of the Constitution by depriving Alabama of its recognized constitutional right to legislate with respect to the electoral process in Alabama. Because of the arbitrary and irrational assumption of past wrong doing as of November 1964, the State of Alabama is denied the right for five years to fix, change or regulate voter qualifications on a nondiscriminatory basis. This inflicts a penalty upon the citizenship of the entire State without judicial trial for statutorily presumed past malconduct. This results in a legislative straight jacket of an ex post facto nature, and is a situation which certainly fits the judicial definition of a bill of attainder. Article I, Sec. 9, Clause 3 of the Constitution is a limitation upon the powers of Congress. It does not particularize or limit its applications to persons. It is a flat prohibition against congressional action. Alabama cannot purge itself from this statutory attainder until it can show a remotely distant court that at no time within five years past has a single election official in Alabama violated, as to any one individual, acts or conduct prohibited by the 15th Amendment -an obvious impossibility. This deprivation and suspension of legislative and political rights with respect to State suffrage accents the vindictive nature of the Act.

"A bill of attainder is a legislative act which inflicts punishment without a judicial trial . . . those bills . . . may be directed against (individuals or) a whole class. . . . .

"Bills of this sort says Mr. Justice Story 'have been

most usually passed . . . in times of political excitements . . .' punishment-embraces deprivation or suspension of political or civil rights. . . . Any deprivation or suspension of political or civil rights . . . **for past conduct** is punishment. . . . These bills may inflict punishment absolutely . . . conditionally . . . To make the enjoyment of a right dependent upon an impossible condition is equivalent to an absolute denial of the right under any conditions, and such denial enforced for a past act, is . . . punishment imposed for that act.

"In (cases of bill of attainder) the legislative body in addition to its legitimate function, exercises the powers and office of judge . . . It pronounces upon the guilt of the party, without any of the forms of safeguards of trial; it determines the sufficiency of the proof produced. . . . It fixes the degree of punishment in accordance with its own notion of the enormity of the offense. . . .

"It (the constitutional prohibition) intended that the rights of the citizens should be secure against deprivation for past conduct by legislative enactment, **under any form,** however disguised." Cummings v. Missouri, 4 Wall, 277; 18 L.Ed. 356.

THE ACT IS NOT LEGISLATIVELY APPROPRIATE TO THE FIFTEENTH AMENDMENT.

The one absolute condition to the grant of legislative power under the 15th Amendment is that the legislation must be addressed to abridgements or denials of the right to vote on account of **race or color.** The Act asserts different and far greater powers. Under the guise of enforcing the 15th Amendment, and based upon a statutory irrebuttable and non-reviewable assumption the Act creates a new set of suffrage qualifications for Alabama; it provides

for drastic intrustion upon and taking over of the State's electoral process through mere administrative decision; it annuls State literacy requirements and tests; and it deprives the State of its sovereign legislative power. Just because this Court found that an Alabama legislative act redefining the corporate boundaries of Tuskegee (see Gomillion v. Lightfoot, 364 U.S. 339, 347) by its nature was violative of the 15th Amendment, would it then follow that Congress could, therefore, deprive the Alabama Legislature of all future power to create municipal corporations.

If Colorado or California were to enact a tax law, for instance, which was discriminatorily applied so as to deny someone within the State the equal protection of the laws, then, under the theory of the Voting Rights Act Congress would not only have the right to nullify the discrimination, but could say to that legislature, "You cannot enact any more tax laws until you prove you are not going to discriminate against people in the enforcement thereof."

By this Act Congress has asserted the power to suspend suffrage qualifications such as, not only the ability to read and write, but also achievement of an educational level; proof of good moral character; proof of age and residence; disqualification for crime; etc., which qualifications have no relation to race or color. As to some, if not all of the last mentioned items, far more white persons are affected than negroes; yet the claim is made that these qualifications may be suspended, regardless of race or color, by any classification of States Congress may arbitrarily choose. The result is hardly appropriate to a grant of power, the exercise of which must be confined solely to prevention of the denial or abridgement of the right to vote on account of race or color. The Act is obviously intrusive into far more and wider areas than fall within the scope of the negative authorizations of Section 2 of the 15th Amendment.

THE ACT IS VOID BECAUSE OF UNCONSTITUTIONAL DELEGATIONS OF POWER.

We think it fundamental that Congress may not authorize an executive officer, such as the Attorney General in this case, to exercise judicial powers. The Act confers upon the Attorney General and certain administrative officers authority to exercise powers which are essentially judicial, including the powers to make rules and regulations, and the arbitrary power to determine the applicability of the Act to certain States and to certain subdivisions of States. For instance, Section 6 confers upon the Attorney General power to appoint voting examiners **after** he has received certain complaints and believes or decides them to be meritorious and when "in his **judgment**" examiners are necessary to enforce the statutorily alleged guarantees of the 15th amendment. Before the passage of this Act, any such conclusion and authority was recognized to be a judicial function, as seen by the various Civil Rights Acts enacted on the theory of enforcing the guarantees of the 14th and 15th Amendments, which laws specifically vested the appointment of Federal voting officials in the courts after hearings and determinations of violations of the 15th Amendment. But, under this Act there is a brazen transfer of judicial authority to the minions of the Executive Department, the crudity of which is compounded by a specific provision that the exercise of the judgment or adjudication by the Attorney General that the 15th Amendment is being violated is not subject to judicial review. Article 1, Section 1, and Articles 3 and 4 of the 5th Amendment preclude the attempted delegations of power.

In delegating to the Attorney General and the Census Bureau Director the power to make ex parte factual certifications creating irrebuttable jurisdictional presumptions, not only does the Act run afoul previously mentioned constitutional barriers, but is an obvious effort to escape constitutional restrictions, and creates a situation which is denounced by this Court in Speiser v. Randall, 357 U.S., 513,

78 S. Ct. 1332, 2 L.Ed. 2d 1460. The vice of these jurisdictional presumptions, arising from delegated powers in the Act, is that they are irrebuttable conclusions, and may be used against persons who never have an opportunity to question them, even though the persons involved may be accused of serious crimes created by this same Act. Tot v. United States, 319 U.S. 463, 87 L ed 1519; Manley v. Georgia, 279 U.S. 1, 73 L ed 884.

THAT PORTION OF THE ACT WHICH PREVENTS PARTIAL COLLECTION OF THE ALABAMA POLL TAX IS VOID.

Alabama requires all persons, who are not exempt by statute, to pay a two years poll tax after registration as a prerequisite to voting. Section 10 (d) of the Act provides that no person, whether registered by the County Registrars or by Federal Examiners, shall be denied the right to vote if he tenders payment for the first or current year, "whether or not such tender would be timely **or adequate** under State law." This, in effect, abolishes half the poll tax requirements of Alabama. If Congress can abolish half this tax, it can abolish the entire tax. But, of course, it can constitutionally do neither, as even Congress has heretofore recognized it is necessary to amend the Federal Constitution to prohibit State poll taxes with respect to so called Federal elections. A poll tax requirement, as a matter of law, does not violate the 15th Amendment, for the $1.50 tax rests upon all voters alike. Breedlove v. Suttles, 302 U.S. 226, 82 L. ed. 252.

CONCLUSION

No person has an unqualified right to vote, and one of the essential attributes of political sovereignty is the right of a State to regulate its elective franchise. Congress has asserted, through passage of the Act, an unconstitutional prerogative which it applies to pre-selected targets through unlawful delegation of judicial powers and thereby restricts the exercise of sovereign power by the people in Alabama and the other States concerned. This doctrine of Federal legislative preemption knows no constitutional limits upon the fallacious rationale advanced in support of the Act, and, in the hands of emotionally motivated zealots spells an end to our constitutionally designed plan of dual sovereignty in the United States.

The Act is full of assumptions and presumptions which are arbitrary, illogical and irrational when related to the alleged constitutional premise of the Act, and which are not subject to any genuine right of judicial review; hence the result is atrociously bad legislation. It denies equal protection of the law under the pretense of providing such protection.

As asked in the debates on this law: is it moral (or legal) that a national law should apply one rule to one State and another to another, so as to require that Alabama's qualification for voters be abrogated, while the people of another State may uphold similar or more strict qualifications. Of course every citizen, white or colored, if he meets qualifications asked of all in a nondiscriminatory manner, has the right to vote; and the important thing is he has, or should have, this right regardless of whether 99% of his neighbors voted or only 25% voted, or whether he himself voted or did not vote in past elections. This Act seeks or effectuates compulsory voting, -an idea abhorrent to our basic concepts of individual freedom.

The Act is unconstitutional on its face as Congress has

no right to interfere with or abrogate literacy qualifications which may be required by the States; nor is there any constitutional provision which permits Congress to debase the electorate and place a national citizenship reward upon ignorance and illiteracy.

For the reasons shown in the excellent brief of South Carolina, and those hereinabove stated, the Act should be declared unconstitutional and void.

RESPECTFULLY SUBMITTED,

FRANCIS J. MIZELL, JR.

REID B. BARNES
Attorneys and Special Counsel
for the State of Alabama acting
by and through its Chief Executive
Officer, Hon. George C. Wallace,
as Governor of Alabama.

CERTIFICATE OF SERVICE

I, Francis J. Mizell, Jr., one of the Special Counsel for the State of Alabama, as aforesaid, and being duly qualified 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, Department of Justice, Washington D.C. 20530; also 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 of South Carolina, P. O. Box 1942, Columbia, South Carolina; and upon Honorables Richmond M. Flowers and Gordon Madison, Attorney General and Assistant Attorney General of Alabama, respectively, Montgomery, Alabama, by mailing each of them a copy, postage prepaid.

FRANCIS J. MIZELL, JR.,
Of Special Counsel for
the State of Alabama.