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In the Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALABAMA, DEFENDANT

MOTION FOR LEAVE TO FILE COMPLAINT, COMPLAINT AND
MOTION FOR EXPEDITED CONSIDERATION

NICHOLAS deB. KATZENBACH,
Attorney General,

THURGOOD MARSHALL,
Solicitor General,

JOHN DOAR,
Assistant Attorney General.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. —, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALABAMA, DEFENDANT

MOTION FOR LEAVE TO FILE COMPLAINT

The United States of America asks leave of the Court to file its complaint against the State of Alabama submitted herewith.

NICHOLAS DEB. KATZENBACH,
Attorney General.

THURGOOD MARSHALL,
Solicitor General.

JOHN DOAR,
Assistant Attorney General.

OCTOBER 1965.

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STATE OF ALABAMA, DEFENDANT

COMPLAINT

The United States of America, plaintiff, alleges:

1. This action states a controversy between the United States and the State of Alabama; this Court accordingly has original jurisdiction under Article III, Section 2, Clause 2, of the Constitution and 28 U.S.C. 1251(b)(2).

2. The United States, acting through its Attorney General, brings this action to vindicate the supremacy of federal law; it invokes its inherent power and the specific authority conferred by the relevant provisions of the Civil Rights Acts of 1957 and 1960, now 42 U.S.C. 1971(c), and Section 12(d) of the Voting Rights Act of 1965.

3. The State of Alabama, directly and through its agents, as more particularly alleged hereinafter, is offering systematic resistance to the implementation of

the Voting Rights Act of 1965, and is, accordingly, the proper party defendant in this action.

4. Under Alabama law registration is a prerequisite for voting in all elections. To qualify for registration and voting in Alabama the applicant must be a citizen and not less than twenty-one years of age, must have resided in his precinct for three months, his county for six months, and in the State for one year, and must not have been convicted of a felony or of certain other enumerated crimes, or been adjudged mentally incompetent. In addition, Amendment 91 of the Constitution of Alabama, Sections 31 and 32 of Title 17 of the Code of Alabama and orders of the Alabama Supreme Court entered on July 21 and July 26, 1965, require that an applicant for registration demonstrate his ability to read and write any article of the Constitution of the United States in the English language and that he complete an application form and questionnaire without assistance.

5. On August 6, 1965, in accordance with Section 4(b) of the Voting Rights Act of 1965, the Attorney General made his determination under Section 4(b) of the Voting Rights Act of 1965, that the State of Alabama on November 1, 1964, maintained a test or device within the meaning of that Act, and, on the same day, the Director of the Census made his determination that less than 50 percentum of the persons of voting age residing in Alabama voted in the Presidential election of November 3, 1964. These determinations were published in the Federal Register on August 7, 1965 (30 F.R. 9897).

6. On August 9, 1965, in accordance with Section 6 of the Voting Rights Act of 1965, the Attorney General certified that in his judgment the appointment of examiners was necessary to enforce the guarantees of the Fifteenth Amendment to the Constitution of the United States in Dallas, Hale, Lowndes, and Marengo Counties, Alabama, and, on August 18, 1965, the Attorney General made a like certification with respect to Perry, and Wilcox Counties, Alabama.

7. Immediately thereafter examiners entered on duty in each of the counties and commenced examining applicants concerning their qualifications to vote, as required by Section 7(a) of the Voting Rights Act of 1965. These examiners have continued to perform their duties under the provisions of the Act until the present time.

8. Each of the examiners referred to in the preceding paragraph, in examining applicants concerning their qualifications for voting, has applied all valid laws of the State of Alabama other than those suspended under the provisions of Section 4(a) of the Voting Rights Act of 1965, using an application form, a copy of which is attached as Exhibit "A" to this complaint, and has listed only applicants who met those qualifications. The examiners have not required applicants to demonstrate their ability to read and write any article of the Constitution of the United States in the English language, nor have they required applicants to complete the application form and questionnaire prescribed by the Alabama Supreme Court.

9. On or about August 31, 1965, and on or about September 30, 1965, the examiners in the following counties certified the indicated number of persons as qualified voters and transmitted such lists to the respective county probate judges, the appropriate State official charged by law with the duty of placing the names of qualified electors on the registration list of the county, transmitting copies to the Attorney General of the United States and to the Attorney General of the State of Alabama:

	<i>August 31</i>	<i>Septem- ber 30</i>
Dallas County-----	3, 689	3, 014
Hale County-----	2, 600	643
Lowndes County-----	1, 005	500
Marengo County-----	2, 561	1, 524
Perry County-----	656	1, 772
Wilcox County-----	860	2, 330

10. At no time since the transmittal of the certified lists of eligible voters as described in the preceding paragraph has any of the probate judges placed the names of such eligible voters on the official voting list of his county.

11. On September 13, 1965, the State of Alabama filed in the Circuit Courts of each of the counties of Dallas, Hale, Lowndes, Marengo, Perry, and Wilcox, a bill of complaint against the probate judge of each county. All of these bills of complaint are in the identical form and language except for the names of the particular parties and locations involved. Each bill of complaint alleges that the examiners in the county have transmitted to the probate judge a list of persons certified by the examiners as eligible to vote, but who had not been required to demonstrate

their ability to read and write and who had not been required to complete an application form as prescribed by the Alabama Supreme Court. A copy of the bill of complaint relating to Dallas County is attached as Exhibit "B" to this complaint.

12. On September 13, 1965, the Circuit Court of each of the counties referred to in the preceding paragraph issued a writ of injunction against the probate judge of the county upon the basis of the bills of complaint described in the preceding paragraph. All of these writs of injunction were in the identical form and language except for the name of the particular parties and locations. Each writ enjoined the probate judge from giving effect to the list of eligible persons transmitted by the examiners. A copy of the writ of injunction issued by the Circuit Court of Dallas County is attached as Exhibit "C" to this complaint.

13. Each of the probate judges is complying with the writ of injunction issued by the Circuit Court of his county as described in the preceding paragraph, and each is failing and refusing to place on the official voting list of his county the names of the persons certified and transmitted to him by the examiners in his county.

14. Unless restrained by order of this Court, the probate judges of the counties hereinabove mentioned will continue in their failure and refusal to place upon the official voting lists of their respective counties the names of the eligible persons certified and transmitted by the examiners upon the ground that such listing of the names is inconsistent with the re-

quirements of Amendment 91 of the Alabama Constitution (1901), Sections 31 and 32 of Title 17 of the Code of Alabama and the orders of the Alabama Supreme Court of July 21, 1965, and July 26, 1965, and the State of Alabama will continue to enforce and implement the aforesaid provisions of State law, and will thereby prevent and interfere with the execution of the Voting Rights Act of 1965.

WHEREFORE plaintiff prays that this Court issue a declaratory judgment declaring that:

(a) Section 4 of the Voting Rights Act of 1965, insofar as it suspends the operation of literacy tests and devices as requirements for registration to vote is a valid exercise of the legislative power of Congress under Section 2 of the Fifteenth Amendment to the United States Constitution;

(b) The provisions of Sections 6 and 7 of the Voting Rights Act of 1965, insofar as they authorize the appointment of federal voting examiners to examine, list, and certify persons as eligible to vote and their performance of these duties, are a valid exercise of the legislative power of Congress under Section 2 of the Fifteenth Amendment to the United States Constitution;

(c) The provisions of Amendment 91 of the Constitution of Alabama, Sections 31 and 32 of Title 17 of the Code of Alabama, and the orders of the Supreme Court of Alabama of July 21, 1965, and July 26, 1965, insofar as they require that an applicant for registration demonstrate his ability to read and write or that he complete an application form without assistance, are contrary to, and their operation is sus-

pending by, Section 4 of the Voting Rights Act of 1965; and that

(d) The orders issued or which may be issued by the State courts of Alabama enjoining county probate judges or other local election officials from performing official duties pursuant to any provision of the Voting Rights Act of 1965 are null and void and without legal effect.

Plaintiff further prays that this Court enter an order enjoining the State of Alabama and its agents, including county probate judges and all local election officials, from:

(a) Failing to place upon the official voting lists of the respective counties and municipalities the names of all persons certified and transmitted by federal voting examiners as the names of persons eligible to vote; and

(b) Complying with or giving any force or effect to the writs of injunction entered against the county probate judges or other local election officials of the State of Alabama by the courts of that State enjoining said officials from giving full force and effect to

the lists of eligible voters transmitted to them by the examiners.

Plaintiff further prays for such other relief as the interest of justice may require.

NICHOLAS DEB. KATZENBACH,
Attorney General.

THURGOOD MARSHALL,
Solicitor General.

JOHN DOAR,
Assistant Attorney General.

OCTOBER 1965.

Exhibit A

Form approved
Budget Bureau No. 50-R359

APPLICATION TO BE LISTED UNDER THE VOTING RIGHTS ACT OF 1965

STATE OF ALABAMA

COUNTY OF _____

Instructions to the applicant: Please fill out this side of this form. If you need help in answering any question, the Examiner will help you.

1. Name _____
(First) (Middle) (Last)
 2. Age _____
 3. Address _____
(RFD or Street Number) (Street)
(City or Town) (State)
 4. How long have you lived in Alabama? _____
 5. How long have you lived at the above address? _____
 6. What is your precinct? _____ or ward? _____
 7. Are you now (1) on active duty in the Armed Forces of the United States or the Alabama National Guard, (2) an employee of the United States or the State of Alabama, or (3) a seaman or college student?----- ☐ Yes ☐ No
 8. (a) Are you now registered to vote in Alabama?----- ☐ Yes ☐ No
(b) Are you now listed under the Voting Rights Act?-- ☐ Yes ☐ No
 9. Are you a citizen of the United States and of the State of Alabama?----- ☐ Yes ☐ No
 10. Have you ever been convicted of a crime other than a traffic violation?----- ☐ Yes ☐ No
 11. Have you ever been declared legally insane by a court?_ ☐ Yes ☐ No
- Any willful false statement on this application is a Federal crime punishable by fine or imprisonment.*

STOP HERE. TAKE THE FORM TO THE EXAMINER

I do solemnly swear (or affirm) that the information I have provided is true and correct to the best of my knowledge, information, and belief. I do further personally swear (or affirm) that I will support and defend the Constitution of the United States and the Constitution of the State of Alabama; and that I do not believe in nor am I 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.

Signature (or mark) of applicant _____

Sworn to (or affirmed) and subscribed before me on this date _____

Examiner _____

United States Civil Service Commission

CSC FORM 805-A
† AUGUST 1965

DO NOT WRITE ON THIS SIDE—FOR USE BY EXAMINER

ADDITIONAL INFORMATION ITEMS

2. If applicant shows his age to be under 21, write in his date of birth _____

4. If applicant shows that he has not lived in Alabama for one year, will he have lived in Alabama for one year by the date of the next election? ☐ Yes ☐ No

If yes, write in the date residence began _____

Former Address _____

5. If applicant shows that he has not lived at his present address for six months, will he by the date of the next election have:

Lived in the same county for six months? ☐ Yes ☐ No

If yes, write in the date residence began _____

Former Address _____

Lived in his precinct or ward for three months? ☐ Yes ☐ No

If yes, write in the date residence began _____

Former Address _____

Lived in the same city or town for three months? ☐ Yes ☐ No

If yes, write in the date residence began _____

Former Address _____

7. If applicant answers yes, is his residence in Alabama and in his county for temporary purposes only? ☐ Yes ☐ No

If yes, write in his occupation _____

8. (a) If applicant shows that he is now registered to vote in Alabama, write in the county where he is registered _____

(b) If applicant shows that he is now listed under the Voting Rights Act, write in the county where he is listed _____ and certificate number if available _____

10. If applicant answers yes, name the crime _____

Where and when convicted? _____

Was the conviction for a disqualifying crime? ☐ Yes ☐ No

If a disqualifying crime, has applicant been pardoned with restoration of his right to vote? ☐ Yes ☐ No

If so pardoned, how and when? _____

11. If applicant answers yes, has he subsequently been declared legally sane or competent by a court? ☐ Yes ☐ No

If yes, when and by what court? _____

Certificate of Eligibility Issued-No. _____ Notification of

Ineligibility Issue—No. _____

Exhibit B

In the Circuit Court of Dallas County, Alabama,
in Equity.

No. 8449

STATE OF ALABAMA, EX REL, GEORGE C. WALLACE, AS
GOVERNOR OF ALABAMA, COMPLAINANT

vs.

HON. BERNARD REYNOLDS, AS JUDGE OF PROBATE OF
DALLAS COUNTY, ALABAMA, RESPONDENT.

BILL OF COMPLAINT

*To the Honorable Judge of said Court, in equity
sitting:*

I.

This is a suit by the State of Alabama in its own name, and is brought pursuant to the provisions of Title 7, Section 72, Code of Alabama 1940 (Recompiled 1958). The Governor of the State of Alabama has given written direction to the attorney of record for the bringing of this suit.

II.

Hon. Bernard Reynolds is over the age of twenty-one years and is a resident of Selma, Alabama. He is the duly elected Probate Judge of Dallas County, Alabama, and is acting in such capacity.

III.

Under the provisions of Title 17, Section 38, Code of Alabama 1940 (Recompiled 1958), the Judge of Probate is charged with the duty to make a correct alphabetical list of all electors registered by pre-

cinets or by districts or other subdivisions, which list shall be certified by him officially to be a full and correct list of the registered electors for each precinct, each district, each ward, or each other subdivision, respectively, as the same appears from the returns of the county board of registrars on file in his office. Under this provision of law, the Judge of Probate is under a duty to prepare and list and publish the names of the qualified electors of the county.

IV.

On or about, to wit, September 1, 1965, federal examiners appointed and acting pursuant to the provisions of Public Law 89-110 (Voting Rights Act of 1965) did certify and transmit to the Judge of Probate a so-called eligibility list containing the names of persons allegedly possessing the qualifications to vote as required by Alabama Law. Under the provisions of the so-called Voting Rights Act of 1965 (Public Law 89-110) the appropriate state or local election official is required to place the names of those persons certified by the federal examiners on the official voting list. The respondent Judge of Probate in this cause has been requested to place the names certified to him by the federal examiners on the official voting list.

V.

Complainant further avers that the persons whose names appear on said list certified to the Judge of Probate by the federal examiners were not required to demonstrate their ability to read and write any article of the Constitution of the United States in the English language, as required by Amendment 91 of the Constitution of Alabama, 1901, and other applicable provisions of Alabama Law. Complainant further avers that none of the persons whose names appear on said list certified to the Judge of Probate

by the federal examiners were required to complete an application form as prescribed by the Alabama Supreme Court by its Orders of July 21, 1965, and July 26, 1965.

Complainant further avers that the persons whose names appear on the list certified to the Judge of Probate by the federal examiners have not demonstrated that they meet the qualifications as prescribed by State Law, and there is no evidence submitted with the list certified to the Judge of Probate to enable the Judge of Probate to determine whether or not any of such persons does, in fact, possess the qualifications to vote under Alabama law. Complainant is informed and believes, and upon such information and belief avers that said federal voting examiners are registering and certifying persons as eligible to vote in this county: (a) without respect to the legal residence of such persons; (b) persons who can neither read nor write; (c) persons who, as convicted criminals, are disqualified from voting; and (d) persons who are mentally incompetent.

VI.

Complainant further avers that the information listed on the list furnished by the federal examiners to the Probate Judge does not give sufficient information as to the name, address, age, sex, and race of the persons, in order for the Judge of Probate to determine whether or not such person or persons has or have previously been listed on a voting list.

VII.

Complainant avers that the respondent Judge of Probate will, in fact, place upon the list of qualified electors in Dallas County the names of persons furnished to him by federal examiners if not enjoined.

VIII.

Complainant avers that irreparable harm will result directly from such actions by reason of the following facts.

(a) The listing of persons not properly identified by age, sex, race, color, full name and adequate address by the Judge of Probate makes it impossible for the Board of Registrars of Dallas County to perform their statutory duty of purging the list of voters of persons who have died, moved, who have been convicted of disqualifying crimes or who may have become insane.

(b) The listing of persons not properly identified as above described will result in the disruption and negation of the statutes of Alabama respecting the duties of election officials in that the challenge vote procedures cannot be carried out, in that such persons cannot under the provisions of the Public Law 89-110 be required to cast a challenge ballot, nor can they be required to provide witnesses for identification.

(c) If the names are listed by the Judge of Probate, such fact will disrupt and negate valid Alabama statutory provisions with respect to the contest of elections. Persons who cannot sign the voter lists provided in the separate election precincts of the State and who cannot be compelled to provide witnesses could vote many times in the same election as there is no way to prevent such actions.

(d) The elective process, including laws governing contests of elections and certifications of results could be seriously disrupted in that any person whose name is placed on the voting list pursuant to the provisions of Public Law 89-110 is authorized to obtain an injunction under the provisions of Section 11(e) of the Voting Rights Act of 1965.

(e) If the respondent in this case is not enjoined from listing such names, it will forever bar the boards of registrars of Dallas County from removing them by the legal process of purging the names of persons who have died, or removed from the county. The federal statute which requires the Judge of Probate to list such names also requires that no name so listed may be removed under any circumstances unless removed by a federal examiner.

(f) If the respondent is not enjoined, the entire elective processes of this county will be seriously impaired. Countless persons who can neither read the instructions on the ballot or voting machine will clog voting booths, thus delaying the normal elective procedures, for under this federal statute no election official may limit the time consumed by such person in casting a ballot.

IX.

There is no adequate remedy at law.

X.

Plaintiff offers to do equity.

WHEREFORE, the premises considered, complainant prays that this Honorable Court will cause process to be issued to the respondent, commanding him to appear and to plead, answer or demur within the time prescribed by law, and that the court will issue a temporary injunction and set the cause for a hearing on a permanent injunction, enjoining and restraining the respondent from:

(a) Placing the names of any person or persons which may be submitted to him or which have been submitted to him by federal examiners under the provisions of the Voting Rights Act of 1965, on any official voting list.

(b) Publishing any list of qualified electors which contains the name of any person or persons which have been submitted to him by federal examiners under the provisions of the Voting Rights Act of 1965.

(c) Issuing any certificate to any election official that any person or persons whose name appears on any list which may have been submitted to him by federal examiners under the provisions of the Voting Rights Act of 1965 has or have the necessary qualifications to vote under the laws of the State of Alabama.

Complainant prays for such other and further relief as the court may deem just and equitable in the premises.

FRANK MIZELL, JR.,
Attorney for the State of Alabama,
Pursuant to Title 7, Section 72,
Code of Alabama, 1940.

Filed Sept. 11th, 1965.

MARGUERITE H. HOUSTON,
Circuit Court of Dallas County, Register.

Exhibit C

In the Circuit Court of Dallas County, Alabama, in
equity

STATE OF ALABAMA, EX REL, GEORGE C. WALLACE, AS
GOVERNOR, COMPLAINANT

vs.

HON. BERNARD REYNOLDS, AS JUDGE OF PROBATE OF
DALLAS COUNTY, ALABAMA, RESPONDENT

WRIT OF INJUNCTION

THE STATE OF ALABAMA,

Dallas County

To Hon. Bernard Reynolds:

WHEREAS, the State of Alabama has exhibited its bill of complaint in equity, in the Circuit Court of Dallas County, and has obtained from the Honorable James A. Hare an order for the issuance of an injunction to enjoin you as hereinafter mentioned;

Now, therefore, you, the said Hon. Bernard Reynolds are hereby enjoined from:

(a) Placing the names of any person or persons which may be submitted to you or which have been submitted to you by federal examiners under the provisions of the Voting Rights Act of 1965, or any official voting list.

(b) Publishing any list of qualified electors which contains the name of any person or persons which have been submitted to you by federal examiners under the provisions of the Voting Rights Act of 1965.

(c) Issuing any certificate to any election official that any person or persons whose name appears on any list which may have been submitted to you by

federal examiners under the provisions of the Voting Rights Act of 1965 has or have the necessary qualifications to vote under the laws of the State of Alabama.

and this Injunction you are required to obey under the penalties of law, until the further order of this Court.

Witness my hand, this 11th day of September, 1965.

MARGUERITE H. HOUSTON,
Register.

ORDER

This cause being submitted to the Court upon application of the complainant for temporary writ of injunction as prayed for in the original bill herein, and upon consideration thereof the Court being of the opinion that the same should be granted:

It is, therefore, ordered, adjudged and decreed by the Court that the Register issue a temporary writ of injunction as prayed for in the original bill in this cause.

Done and ordered, this 11th day of September, 1965.

JAMES A. HARE,
Circuit Judge, in Equity Sitting.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. —, ORIGINAL

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF ALABAMA, DEFENDANT

MOTION FOR EXPEDITED CONSIDERATION

The United States of America respectfully moves the Court to expedite consideration of the cause and, to that end, to require any response to the attached motion for leave to file to be submitted by November 10, 1965.

NICHOLAS DEB. KATZENBACH,
Attorney General.

THURGOOD MARSHALL,
Solicitor General.

JOHN DOAR,
Assistant Attorney General.

OCTOBER 1965.



