

MOTION FILED

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No. ²⁴~~—~~¹, Original

In the Supreme Court of the United States

OCTOBER TERM, 1965

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF MISSISSIPPI, 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 MISSISSIPPI, 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 Mississippi submitted herewith.

NICHOLAS DEB. KATZENBACH,
Attorney General.

THURGOOD MARSHALL,
Solicitor General.

JOHN DOAR,
Assistant Attorney General.

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UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF MISSISSIPPI, DEFENDANT

COMPLAINT

The United States of America, plaintiff, alleges:

1. This action states a controversy between the United States and the State of Mississippi; 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 Mississippi, 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 Mississippi law registration is a prerequisite for voting in all elections. To qualify for registration and voting in Mississippi the applicant must be a citizen and not less than twenty-one years of age, must have resided in his precinct for one year and in the State for two years and must not have been convicted of any of certain enumerated crimes or been adjudged mentally incompetent. In addition, Section 244 of the Constitution of Mississippi and Sections 3209.6 and 3209.7 of the Mississippi Code, all as amended in 1965, require that an applicant for registration demonstrate his ability to read and write by completing a prescribed application form and Section 3235 of the Mississippi Code, as amended in 1965, provides that no person shall be permitted to vote in any election who is unable to read and write.

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 Mississippi 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 Mississippi 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 Leflore and Madison Counties, Mississippi, and, on August 18, 1965, the Attorney General made a like certification with respect to Jones and Jefferson Davis Counties, Mississippi.

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 Mississippi 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, nor have they required applicants to complete the application form prescribed in Section 3209.6 of the Mississippi Code.

9. On or about August 31, 1965, and on or about September 30, 1965, the examiners for the following counties certified the indicated number of persons as qualified voters and transmitted such lists to the re-

spective circuit or city clerks and registrars, transmitting copies to the Attorney General of the United States and to the Attorney General of the State of Mississippi:

	<i>August 31</i>	<i>September 30</i>
Leflore County-----	3, 594	1, 555
Madison County-----	3, 826	1, 158
Jones County-----	894	890
Jefferson Davis County-----	79	872

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

11. Between September 9 and September 13, 1965, the State of Mississippi filed in the Chancery Courts of each of the counties of Leflore, Madison, Jones and Jefferson Davis a bill of complaint against the circuit clerk and registrar of each county and the city clerk and registrar of each municipality therein. 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 respective registrars a list of persons certified by the examiners as eligible to vote, but who had not been required to comply with assertedly valid and nondiscriminatory requirements of State law. A copy of the bill of complaint relating to Leflore County is attached as Exhibit "B" to this complaint.

12. Between September 8 and 12, 1965, the Chancery Courts of each of the counties of Leflore, Jones and Jefferson Davis issued injunctions against the county and municipal registrars upon the basis of the bills for an injunction described in the preceding paragraphs. On September 24, 1965, after the Chancery Court of Madison County had failed to act on the State's application in that county, a Justice of the Mississippi Supreme Court ordered the Clerk of the Chancery Court of Madison County to issue an injunction against the county and municipal registrars in that county. 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 county and municipal registrars from giving effect to the list of eligible persons transmitted by the examiners. A copy of the writ of injunction issued by the Chancery Court of Leflore County is attached as Exhibit "C" to this complaint.

13. Each of the county and municipal registrars is complying with the writ of injunction issued by the Chancery 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 or municipality the names of the persons certified and transmitted to him by the examiners.

14. Unless restrained by order of this Court, the registrars of the counties and municipalities hereinabove mentioned will continue in their failure and refusal to place upon the official voting lists of their respective counties or municipalities 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 requirements of Mississippi law, and the State of Mississippi will continue to enforce and implement Section 244 of the Mississippi Constitution and Sections 3130, 3209.6, 3209.7 and 3235 of the Mississippi Code insofar as they require an applicant for registration or a prospective voter to demonstrate his literacy, 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 Section 244 of the Constitution of Mississippi and Sections 3130, 3209.6, 3209.7 and 3235 of the Mississippi Code, insofar as they require that an applicant for registration or voting

demonstrate his ability to read and write or his understanding or knowledge of any subject, or that he complete an application form, are contrary to, and their operation is suspended 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 Mississippi enjoining circuit and city clerks and registrars 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 Mississippi and its agents, including circuit and city clerks and registrars 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 circuit

and city clerks and registrars or other local election officials of the State of Mississippi 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 MISSISSIPPI

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. Are you a minister or minister's wife? _____ ☐ Yes ☐ No
 5. How long have you lived in Mississippi? _____
 6. How long have you lived at the above address? _____
 7. What is your election district? _____
 8. (a) Are you now registered to vote in Mississippi? _____ ☐ Yes ☐ No
(b) Are you now listed under the Voting Rights Act? _____ ☐ Yes ☐ No
 9. Are you a citizen of the United States? _____ ☐ 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 I am now in good faith a resident of this State, my election district, and my city or town (if any); that the information I have provided is true and correct to the best of my knowledge, information, and belief; and that I will faithfully support the Constitution of the United States and the State of Mississippi, and will bear true faith and allegiance to the same. So help me God.

In addition, if applicant is a minister or the wife of a minister of the Gospel in charge of an organized church, have him (or her) also swear to or affirm that fact. In such instances it shall be sufficient if the applicant

swears or affirms that he (or she) has resided for six months (instead of one year) in the election district or city or town.

Signature (or mark) of applicant _____

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

Examiner _____

United States Civil Service Commission

CSC Form 805-M
† 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, will he be 21 by the date of the next election? ☐ Yes ☐ No

Write in his date of birth. _____

5. If applicant shows that he has not lived in Mississippi for two years, will he have lived in Mississippi for two years by the date of the next election? ☐ Yes ☐ No

If yes, write in the date residence began _____

Former address _____

6. If applicant shows he that has not lived at his present address one year, will he by the date of the next election have:

Lived in the same election district for one year? ☐ Yes ☐ No

If applicant is a minister or minister's wife, for 6 months? ☐ Yes ☐ No

If yes, write in the date residence began _____

Former address _____

Lived in the same city, town, or village for one year? ☐ Yes ☐ No

If applicant is a minister or minister's wife, for 6 months? ☐ Yes ☐ No

If yes, write in the date residence began _____

Former address _____

8. (a) If applicant shows that he is now registered to vote in Mississippi, 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, was the conviction for bribery, burglary, theft, arson, perjury, forgery, embezzlement, bigamy, or obtaining money or goods under false pretenses?

☐ Yes ☐ No

If yes, answer the following questions:

Which crime? _____

When and where convicted? _____

Has right to vote been restored by the legislature? _____

If so restored, 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. _____

Notice of Ineligibility Issued—No. _____

Exhibit B

In the Chancery Court of Leflore County, Mississippi

No. 14735

THE STATE OF MISSISSIPPI, EX REL. JOE T. PATTERSON,
ATTORNEY GENERAL, COMPLAINANT

vs.

MRS. MARTHA LAMB, CIRCUIT CLERK AND REGISTRAR OF VOTERS OF LEFLORE COUNTY, MISSISSIPPI; MARION DICKENS, CITY CLERK AND REGISTRAR OF VOTERS OF GREENWOOD, MISSISSIPPI; MRS. MYRTLE STEELE, CITY CLERK AND REGISTRAR OF VOTERS OF ITTA BENA, MISSISSIPPI; AND A. H. BURNETT, CITY CLERK AND REGISTRAR OF VOTERS OF SIDON, MISSISSIPPI, DEFENDANTS

Bill for Injunction

COMES Now Joe T. Patterson, the duly elected, qualified and acting Attorney-General of the State of Mississippi, and, acting for and on behalf of said

sovereign State, exhibits this, its Bill for Injunction against Mrs. Martha Lamb, Circuit Clerk and Registrar of Voters of Leflore County, Mississippi, Marion Dickens, City Clerk and Registrar of Voters of Greenwood, Mississippi, Mrs. Myrtle Steele, City Clerk and Registrar of Voters of Itta Bena, Mississippi, and A. H. Burnett, City Clerk and Registrar of Voters of Sidon, Mississippi, and in support hereof would show the following facts:

I.

The defendant, Mrs. Lamb, is the duly elected Circuit Clerk of Leflore County, Mississippi, and is the duly appointed, qualified and acting Registrar of Voters of Leflore County, Mississippi. Each of the other defendants is the duly qualified and acting City Clerk and Registrar of Voters of the municipality respectively indicated.

II.

The defendant, Mrs. Lamb, is charged by law with the duty and responsibility of maintaining the registration and poll books of Leflore County and registering and entering thereon the names of all residents of said county who have complied with the laws of the State of Mississippi prerequisite to such registration and entry thereon. Each of the other defendants is charged with a similar duty with regard to the registration on the respective registration and poll books of each municipality of those qualified citizens who are residents of their respective municipalities and who have met the prerequisite State requirements for such registration.

III.

On August 7, 1965, the United States Civil Service Commission caused a series of rules and regulations to be published in the Federal Register under the title "Title 45—Public Welfare, Chapter VIII—Civil Service Commission, Part 801—Voting Rights Program." On August 10, 1965, the United States Civil Service Commission caused to be published in the Federal Register what was there designated as "Appendices A, B, C and D to Part 801—Voting Rights Program." Each and both of these publications were allegedly made under and pursuant to United States Public Law 89-110 approved August 6, 1965. True copies of this publication are attached hereto as Exhibits "1" and "2" respectively and are incorporated herein by reference.

IV.

On the same date the Attorney General of the United States, also purportedly acting under the same authority, published a notice in the Federal Register one minute prior to the publication which is Exhibit "2", a true copy of which notice is attached hereto as Exhibit "3" and incorporated herein by reference.

V.

Subsequent to the publications described in Paragraphs III and IV above, officials of the United States Civil Service Commission immediately established offices in the United States Post Office Building in Greenwood, Mississippi, and commenced to take applications from persons who appeared before them at that place in the manner and on the forms prescribed in said Exhibits "1" and "2".

VI.

On September 1, 1965, an official of the said Civil Service Commission delivered a covering letter addressed to each of the four defendants, together with an attached listing showing names, addresses, ages and voting precincts of persons stated to have been examined pursuant to the procedures set out in Exhibits "1" and "2" and found to be entitled to listing under the said Public Law 89-110. True copies of the cover letter sent to each defendant are attached hereto as Exhibits "4", "5", "6" and "7" and each is incorporated herein by reference. Complainant is informed and believes and on the basis of such information and belief avers and charges that the practice of such officials in preparing and delivering such listings to the Defendants will continue in the future.

VII.

Each and all of the Defendant Registrars of Voters are required under possible pain of Federal Criminal prosecution to place these illegally and improperly listed persons on the "official voting list" of their respective county and municipalities, which, if done, will be in violation of the civil and criminal statutes and the Constitution of the Complainant State and which are each and all valid and binding upon each and all of the Defendants. Each of the Defendants and all of them have threatened to improperly and illegally place the names of persons so listed by the said Civil Service Commission officials on the registration and poll books of their respective county and municipalities without requiring such persons to comply with valid non-discriminatory State requirements. Unless the Defendants are enjoined by this

Honorable Court, they will so act in violation of the laws of the Complainant State and if such violations occur, the Complainant State will be immediately and irreparably injured and damaged through the multiplied violation of its said civil and criminal laws, through the intimidation and coercion of the Defendant officials to breach and violate said laws, and through an illegal dilution of the individual voting rights of its citizens who are properly qualified under its laws as State electors.

VIII.

The listings made to the Defendant Registrars are long and voluminous and contain the names of thousands of individuals. The Complainant State has no plain or adequate remedy at law to protect it from the threatened acts of Defendants, and the aid of this Court of Equity and Conscience is necessary to prevent the threatened multiple irreparable injuries as set out in Paragraph VII next above.

WHEREFORE, PREMISES CONSIDERED, Complainant prays that a fiat issue requiring the Clerk to cite Defendants and each of them to be and appear before this Honorable Court on the earliest practicable day certain to then and there show cause, if any they can, why they and each of them should not be temporarily enjoined and prohibited from placing the name of any person listed in the manner and form hereinabove described on the registration or pollbooks of the respective county and municipalities of each said Defendant unless and until such person has first complied with the valid non-discriminatory laws of the State of Mississippi prerequisite to such registration

and that upon a final hearing this temporary injunction be made permanent and final.

Complainant prays for general relief.

THE STATE OF MISSISSIPPI

By JOE T. PATTERSON

Attorney General of the State of Mississippi.

STATE OF MISSISSIPPI

County of Hinds

Personally came and appeared before me, the undersigned authority in and for the jurisdiction aforesaid, JOE T. PATTERSON, personally known to me to be the duly elected, qualified and acting Attorney General of Mississippi, who being by me first duly sworn, states on oath that the matters, facts and things alleged in the foregoing Bill for Injunction as true are true and correct and those matters, facts and things alleged therein on information and belief he verily believes to be true.

JOE T. PATTERSON

Sworn to and subscribed before me on this the
 — day of September, 1965.

[SEAL]

Exhibit C

In the Chancery Court of Leflore County, Mississippi

No. 14735

THE STATE OF MISSISSIPPI, EX REL. JOE T. PATTERSON,
ATTORNEY GENERAL, COMPLAINANT

vs.

MRS. MARTHA LAMB, CIRCUIT CLERK AND REGISTRAR
OF VOTERS OF LEFLORE COUNTY, MISSISSIPPI; MARION
DICKENS, CITY CLERK AND REGISTRAR OF VOTERS
OF GREENWOOD, MISSISSIPPI; MRS. MYRTLE STEELE,
CITY CLERK AND REGISTRAR OF VOTERS OF ITTA BENA,
MISSISSIPPI; AND A. H. BURNETT, CITY CLERK
AND REGISTRAR OF VOTERS OF SIDON, MISSISSIPPI,
DEFENDANTS

Writ of Injunction

To: Mrs. Martha Lamb, Circuit Clerk and Registrar
of Voters of Leflore County, Mississippi; Marion
Dickens, City Clerk and Registrar of Voters of
Greenwood, Mississippi; Mrs. Myrtle Steele, City
Clerk and Registrar of Voters of Itta Bena, Mis-
sissippi; and A. H. Burnett, City Clerk and Reg-
istrar of Voters of Sidon, Mississippi

By Order of the Honorable Chancery Court of
Leflore, County, Mississippi, you and each of you and
your separate and collective deputies, officers, agents,
servants, employees, and attorneys, and those persons
in active concert or participation with them who

receive actual notice of this writ are hereby enjoined, prohibited and restrained from placing the name of any person or persons on the voter registration book or voter poll books kept and maintained in your respective offices who has not complied with the requirements of the laws of the State of Mississippi prerequisite to such registration and enrollment, notwithstanding any listing of the name of such person or persons by any examiner or agent of the government of the United States, pending further order of this Court.

WITNESS my hand and seal of office, this 8th day of September, 1965.

Chancery Clerk.

In the Supreme Court of the United States

OCTOBER TERM, 1965

No. —, Original

UNITED STATES OF AMERICA, PLAINTIFF

v.

STATE OF MISSISSIPPI, 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.



