

**NO. 23, ORIGINAL**

Office-Supreme Court, U.S.  
**FILED**  
NOV 5 1965  
JOHN F. DAVIS, CLERK

**IN THE**  
**SUPREME COURT OF THE UNITED STATES**

**OCTOBER TERM, 1965**

---

**UNITED STATES OF AMERICA, PLAINTIFF**

**V.**

**STATE OF ALABAMA, DEFENDANT**

---

**RESPONSE OF STATE OF ALABAMA TO MOTION  
FOR LEAVE TO FILE COMPLAINT**

**RICHMOND M. FLOWERS**  
Attorney General

**GORDON MADISON**  
Assistant Attorney General

State Administrative Building  
Montgomery, Alabama

Attorneys for Defendant  
State of Alabama



NO. 23, ORIGINAL

---

IN THE

**SUPREME COURT OF THE UNITED STATES**

OCTOBER TERM, 1965

---

UNITED STATES OF AMERICA, PLAINTIFF

V.

STATE OF ALABAMA, DEFENDANT

---

**RESPONSE OF STATE OF ALABAMA TO MOTION  
FOR LEAVE TO FILE COMPLAINT**

Amendment 91, Constitution of Alabama 1901, provides in pertinent part that "those who can read and write any article of the Constitution of the United States in the English language which may be submitted to them by the board of registrars," meet the literacy requirement for registration and voting in Alabama. The Amendment is set forth in full herein:

"The following persons, and no others, who, if they are citizens of the United States over the age of twenty-one years and have the qualifications as to residence prescribed in section 178 of this article, shall be qualified to register as electors provided they shall not be disqualified under section 182 of this Constitution: those who can read and write any article of the Constitution of the United States in the English language which may be submitted to them by the board of registrars, provided, however, that no persons shall be entitled to register as electors except those who are of good character and who embrace the duties and obligations of citizenship under the Constitution of the United States

and under the Constitution of the state of Alabama and provided, further, that in order to aid the members of the boards of registrars, who are hereby constituted and declared to be judicial officers, to judicially determine if applicants to register have the qualifications hereinabove set out, each applicant shall be furnished by the board of registrars 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 and be filed by such court with the secretary of state of the state of Ala<sup>b</sup>ama, which questionnaire shall be so worded that the an<sup>s</sup>wers thereto will place before the boards of registrars information necessary or proper to aid them to pass upon the qualification of each applicant. Such questionnaire shall be answered in writing by the applicant, in the presence of the board without assistance, and 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 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, which answers and oath shall be duly signed and sworn to by the applicant before a member of the county board of registrars. Such questionnaire and the written answers of the applicant thereto shall be filed with the records of the respective boards of registrars. The board may receive information respecting the applicant and the truthfulness of any information furnished by him. Those persons who have registered as electors under the Alabama Constitution of 1901 shall not be required to register again. Provided, further, that if solely because of physical handicaps the applicant is unable to read or

write, then he shall be exempt from the above stated requirements which he is unable to meet because of such physical handicap, and in such cases a member of the board of registrars shall read to the applicant the questionnaire and oaths herein provided for and the applicant's answers thereto shall be written down by such board member, and the applicant shall be registered as a voter if he meets all other requirements herein set out."

Under the Amendment, one must also be of good character in order to be eligible for registration.

There was no valid literacy requirement prior to the adoption of the Amendment on December 19, 1951.

The requirement that one must be able to read and write has been applied alike to the races in Alabama. Only a small percentage of illiterates of either the white or Negro race has been placed upon the registration rolls contrary to state law since December 19, 1951.

Under *U. S. v. Atkins*, 323 Fed.<sup>2d</sup> 733, these may be removed by the federal court upon motion of the United States.

In addition, *U. S. v. Atkins*, provides for notice and an opportunity to be heard before rejection for bad character.

The State's constitutional provision relating to good character has attempted to be nullified by the Voting Rights Act of 1965.

In addition, examiners appointed under said Act in Alabama have been certifying as qualified persons who cannot read or write; state law has been ignored and violated by the examiners.

The State of Alabama claims that said Voting Rights Act of 1965 is unconstitutional as invading the powers of this state and for other reasons; that it is being applied and executed in an unlawful manner; that both on its face and as administered it is unconstitutional and void.

The State of Alabama claims that it has a legal right to assert fully in this case and to request determination of all constitutional questions relating to said act both as to unconstitutionality on its face and as administered.

If the court will permit presentation and full consideration of these matters, the State does not object to the Supreme Court taking the case and settling the matter. It does object to a partial and limited consideration.

The application form for registration in Alabama is not a test; by the express provision of said constitutional Amendment 91, it is an aid only to the registrars in determining state qualifications.

This case involves far more than the use of tests in the registration process. It involves the right of Congress and the Attorney general of the United States to nullify valid state requirements for registration, and particularly the requirement that one must be able to read and write before becoming a registered voter.

The Attorney General of the United States under express direction to the examiners has caused those who cannot read or write to be certified as qualified contrary to state law and *Lassiter v. Northhampton Board of Elections*, 360 U. S. 1072.

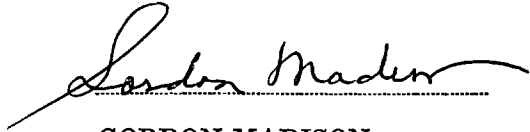
In this day and age of voting machines, the ability to read and write becomes most important.

RICHMOND M. FLOWERS  
Attorney General

GORDON MADISON  
Assistant Attorney General  
Attorneys for Defendant  
State of Alabama

**CERTIFICATE OF SERVICE**

I, Gordon Madison, one of the attorneys of record for the defendant 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 5 day of November, 1965, served a copy of the foregoing Response of State of Alabama to Motion for Leave to File Complaint on Honorables Nicholas deB. Katzenbach, Attorney General; Thurgood Marshall, Solicitor General; and John Doar, Assistant Attorney General, by mailing a copy, airmail, postage prepaid, to each of them at Department of Justice, Washington, D. C., 20530.

A handwritten signature in cursive script, reading "Gordon Madison", written over a horizontal dotted line.

GORDON MADISON  
Assistant Attorney General  
of Alabama











