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JOHN F. DAVIS, CLERK

**In the
Supreme Court of the United States**

OCTOBER TERM, 1965

STATE OF LOUISIANA,

Plaintiff,

v.

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

Defendant.

**MOTION FOR LEAVE TO FILE COMPLAINT,
COMPLAINT, AND MOTION FOR
EXTENSION OF TIME.**

✓ JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

✓ HARRY J. KRON, JR.,
Assistant Attorney General,
State of Louisiana,
State Capitol,
Baton Rouge, Louisiana.

X THOMAS W. McFERRIN, SR.,
✓ SIDNEY W. PROVENSAL, JR.,
Special Counsel.

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

Defendant.

MOTION FOR LEAVE TO FILE COMPLAINT

The STATE OF LOUISIANA, by its Attorney General and its Special Counsel, asks leave of the Court to file its Complaint against Nicholas deB. Katzenbach, Attorney General of the United States, submitted herewith, for the reasons stated therein and in the attached supporting brief.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

HARRY J. KRON, JR.,
Assistant Attorney General,
State of Louisiana.

THOMAS W. McFERRIN, SR.,
SIDNEY W. PROVENSAL, JR.,
Special Counsel

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STATE OF LOUISIANA,

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

Defendant.

MOTION FOR EXTENSION OF TIME
TO ARGUE

The STATE OF LOUISIANA respectfully moves the Court to extend the time for argument in the case of *South Carolina v. Nicholas deB. Katzenbach* until such time as a proper trial Court has determined facts touching upon the constitutionality of Sections 4, 5, 6, 7, 8, 9, 11, 12, 13, 14 and 15 of the Voting Rights Act of 1965. In the alternative, the State of Louisiana respectfully moves the Court to extend the time for argument in the case of *South Carolina v. Nicholas deB. Katzenbach* until such time as a Master to be

appointed by this Court hears the testimony and reports his findings to this Honorable Court.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

HARRY J. KRON, JR.,
Assistant Attorney General,
State of Louisiana.

THOMAS W. McFERRIN, SR.,
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Plaintiff,
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NICHOLAS deB. KATZENBACH,
Attorney General of the
United States,
Defendant.

COMPLAINT

The STATE OF LOUISIANA, by its Attorney General, brings this action in equity against the defendant and for its cause of action states:

1. That the plaintiff is a Sovereign State of the United States of America.

2. That the defendant is a resident and citizen of a State other than the plaintiff and is presently serving as the Attorney General of the United States.

3. That the jurisdiction of this Court is invoked under Article III, §2, Clause 1 & 2 of the Constitution of the United States.

4. The defendant filed a motion for leave to file a complaint in the Supreme Court of the United States against the State of Louisiana, Number 25 Original, filed on October 21, 1965. This Honorable

Court rejected, without responsive pleadings filed, the right of the defendant to institute such proceedings; but, at the same time, decided to hear the case entitled "*State of South Carolina v. Nicholas deB. Katzenbach*, Number 22 Original, October Term, 1965.

5. The State of Louisiana does not actually desire to file these proceedings for the reason that she is entitled to have her day in a trial Court to determine facts as will be hereinafter set forth. The State of Louisiana, however, does file these proceedings because this Honorable Court has determined that it will hear Number 22, Original, and the State of Louisiana is fearful that the adjudication of that case, solely on a question of law, narrowly drawn, would be detrimental to the interest of the State of Louisiana, and

6. The facts which the State of Louisiana intends, desires, and is entitled to establish are as follows:

- a. Does the Voting Rights Act of 1965 apply to Louisiana?
- b. If the Act is applicable to Louisiana, it is solely because the white registered voter in New Orleans did not vote. Over sixty (60%) percent of the eligible Negroes in New Orleans were registered to vote on November 1, 1964, and ninety (90%) percent of them did vote but, the white registrant did not vote. Fifty (50%) percent of the whites were registered and less than forty (40%) per-

cent of these voted. They did not vote because of a lack of interest in the candidates in the Presidential Election of 1964. Many persons in Louisiana felt that the Presidential Election of 1964 was a foregone conclusion, that President Johnson would win by a landslide, and they did not care to cast a *dissenting* vote. They were correct in their belief. 48,000 persons actually went to the polls that day to vote and deliberately did not vote for Presidential Electors.

The facts under which the triggering clause operated to place Louisiana under the Act were not brought about by race or color, discrimination, or denial of rights granted by the 15th Amendment.

- c. The Director of the Bureau of Census, The Civil Service Commission and the Attorney General of the United States are abusing the arbitrary discretion given to them by Section 6. Examiners were sent to political subdivisions by the Attorney General for reasons other than as set forth in the Act, to areas where there has been no discrimination in voting for periods in excess of 3 and 5 years, where the registration process was supervised by the Federal Judiciary and where the Attorney General has admitted utmost cooperation.
- d. The Agencies of the United States Government are deliberately ignoring the qualifications of voters, according to State law not inconsistent with the Act, in determining voter eligibility. The Civil Service Commission, their Exam-

iners and the Attorney General of the United States are abusing the powers granted to them by the Act. The Act is not only unconstitutional as written, it is unconstitutional as applied by the Agents and Agencies of the Government.

- e. The Act was deliberately drawn to select certain States to come under it *and* to exclude others.
- f. The Act does not apply equally to the States of the United States, particularly the triggering clause thereof.

Congress provided in the Voting Rights Act of 1965 that it applies to those States that did not vote fifty (50%) percent of its adult population and which require literacy as a pre-requisite to voting in 1964. In so doing, Congress provided that in the States not requiring literacy, only fifty (50%) percent of the adult population need vote. But, in those States requiring literacy as a pre-requisite to voting, a greater percentage is required. In Louisiana, on November 1, 1964, twenty-one (21%) percent of the adult population were illiterates and ineligible to vote; therefore, seventy-one (71%) percent of the adult population is required by the Act to vote in Louisiana. Louisiana, with the highest rate of illiteracy, must vote a larger percentage of its eligible voters to make up for the 397,539 illiterate persons who were not eligible to vote.

- g. That on November 3, 1964, there were 1,893,000 persons over twenty-one (21) years of age residing in the State of Louisiana accord-

ing to the Bureau of Census. Said Census determined that on that day 896,000 persons actually voted in the Presidential Election; however, in truth and fact, in excess of 942,256 persons voted in said election. There were 1,201,785 persons registered to vote in Louisiana on November 3, 1964.

Included in the Census population were 3,172 persons confined as felons in the State Penitentiary System, 36,000 persons residing in Louisiana only as members of the Armed Forces, 6,540 persons who were inmates of Insane Asylums, and 397,530 persons who were illiterates.

7. There is presently pending before a 3-Judge District Court in the Eastern District of Louisiana, a suit entitled "*United States of America v. State of Louisiana, et al*", Civil Action #2866, wherein the above set forth factual determinations will be raised as well as the constitutionality of the Voting Rights Act of 1965, in its entirety.

8. The State of Louisiana suggests that in the event that this Honorable Court does not stay or delay the proceedings of the State of South Carolina to a time to permit an adjudication on the factual issues above set forth, then, in that event, the State of Louisiana, in the alternative, prays the Court to appoint a master to hear these factual issues and delay the proceedings of South Carolina until such time as that master has determined the factual issues necessary for a proper determination of the constitutionality of the Act.

9. The State of Louisiana alleges that the Voting Rights Act of 1965 is unconstitutional as written and as applied, in the following particulars, to-wit:

- a. The Act is an attempt by the Congress of the United States to provide voter qualifications in controvention of Article 1, Section 2, and the 10th, 14th and 17th Amendments to the Constitution of the United States which reserve to the State of Louisiana the exclusive proper authority and right to establish, prescribe and administer fair and reasonable and non-discriminatory laws relative to the qualification of voters within the State of Louisiana.
- b. The Act creates an unconstitutional un rebuttal presumption constituting a bill of attainder and an ex post facto law in controvention of Article 1, Section 9 of the Constitution.
- c. The Act denies to the State of Louisiana the right to subpoena and provide witnesses as a matter of right in that such Act, requires the State of Louisiana to go to the District of Columbia, a distance of over 1,000 miles, in order to seek relief from the provisions of the Act.
- d. The Act is not applicable to all States alike. Those States requiring literacy on November 3, 1964, were required by the Act to vote a higher percentage in that election than those States not requiring literacy. Of the States requiring literacy, Louisiana is particularly penalized by virtue of the fact that it had on November 3, 1964, the highest illiteracy rate of all of the States.

- e. The Act violates and conflicts with Articles 3 and 4 and the 5th Amendment of the Constitution of the United States in that the Act proports to delegate to and vest in certain administrative offices judicial power and authority to make rules and regulations, and the power to arbitrarily determine the applicability of the Act to certain states without judicial review.
- f. The Act provides that the Director of the Bureau of Census is authorized to, and he did make, an arbitrary and erroneous determination that the State of Louisiana voted less than fifty (50%) percent of the persons of voting age residing therein in the Presidential Election of 1964.
- g. The Act provides that the Attorney General of the United States is authorized to certify the need for Federal Examiners in the State of Louisiana, which such certification is not reviewable, and further that the Civil Service Commission shall appoint examiners to the areas certified by the Attorney General. The said certification, insofar as Louisiana is concerned, was improper and the examiners placed in Louisiana, from other States, arbitrarily assumed the authority that the said Act does not grant to them, further they did, in fact, abuse the authority that is provided for in the Voting Rights Act of 1965.
- h. It will allow members of the House of Representatives to be chosen by electors in each state having the qualifications prescribed by the Civil Service Commission, as interpreted and

applied by Federal Examiners, and not necessarily possessing the qualifications requisite for electors of the most numerous branch of the State Legislature, as legislated by authorized State legislatures.

- i. The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time establish, but is not to be placed in a "Hearing Officer" appointed by and responsible to the Civil Service Commission whose findings can only be reversed if found to be clearly erroneous.
- j. All citizens of each state are entitled to all privileges and immunities of citizens in other states, and are not to have their right to vote diluted or infringed upon because they reside in a state where less than 50 per centum of the persons of voting age voted in the presidential election of 1964 and where a test or device was maintained on November 1, 1964.
- k. The power exercised here by the United States Congress has not been delegated to it, and its exercise will infringe upon rights reserved to the people, and to the State.
- l. Public Law 89-110 is not appropriate legislation preventing a denial or abridgement of the citizens right to vote by any state because it sets up arbitrary and unreasonable standards of application and unreasonable and unwarranted procedures for relief from its application.
- m. It will allow members of the Senate of the

United States to be chosen by electors in each state having the qualifications prescribed by the Civil Service Commission, as interpreted and applied by Federal Examiners, and not necessarily possessing the qualifications requisite for electors of the most numerous branch of the State Legislature, as legislated by authorized States Legislatures.

- n. Public Law 89-110 does not maintain a "separation of powers" in that it delegates functions to certain branches of our government that are rightly reserved to other branches.

10. That as a part of her Sovereign responsibility, the plaintiff is charged with maintaining and preserving a representative government for her inhabitants, including fair and reasonable election procedures and qualifications and prerequisites for the registration and voting of her citizens, in procedures for the selection of its governing officials and the resolution of major governmental issues, in the interest of better government for her inhabitants, all as confirmed and charged by her Constitution and laws and those of the United States of America.

11. That, as recognized and expressly provided by the Constitution of the United States, it is within the peculiar and special and exclusive province of the plaintiff to prescribe and maintain reasonable and lawful registration and voting procedures, in the interest of establishing a qualified and informed electorate to achieve the fairest and most capable government, and governing officials for her inhabitants. That, in this capacity, the plaintiff is *parens patriae* of her citizens

as to all sovereigns to prevent the destruction or dilution of these processes by unconstitutional and unlawful means, federal or otherwise.

12. That, purporting to act under authority of the Fifteenth Amendment, of the Constitution of the United States, the Congress of the United States enacted, and the President of the United States approved, on August 6, 1965, the "Voting Rights Act of 1965", Public Law 89-110, 89th Congress, S-1564, (herein-referred to as the "Act") which attempted to restrict and limit the powers of the plaintiff and certain other Sovereign States. That, in enacting and ratifying this Act, the Congress and the President of the United States specifically recognized and charged that the functions of regulating, maintaining and preserving reasonable voting and registration procedures fell within the particular and special province of the Sovereign States and that the Sovereign States, as such, had a justiciable interest in all questions arising under said Act or resulting from its enactment, falling within the area of voting and registration of their citizenry.

13. That, this Court has recently recognized and established, in litigation involving other Sovereign States, that the plaintiff is charged with the duty and function of preserving to her inhabitants their right to participate in her governmental affairs and those of the United States government under an election system designed to insure equal and fair participation by her electorate, as constitutionally and lawfully determined; and that the plaintiff, as a Sovereign State, is further charged with the prevention of any dilution or

discrimination in the fair or equal participation of said electorate under its election system by any unconstitutional and unlawful means. That the Congress, under the Fifth Amendment of the Constitution of the United States, is constitutionally without power to enact legislation having the effect of diluting and weakening the weight or value of the vote of her constitutionally selected electorate, which this Court has recently specifically prohibited the Sovereign States from doing, under the Fourteenth Amendment to the Constitution of the United States.

14. That, this action is brought by the plaintiff as a Sovereign State in her quasi-sovereign capacity to preserve to her inhabitants the most capable and just representative government through her election procedures; as *parens patriae* to her citizens and inhabitants, to preserve and maintain fair and reasonable registration and voter qualifications and procedures, to insure a qualified electorate, the most capable and just government for her inhabitants, and to prevent the dilution of the vote of said electorate; as a Sovereign State charged by the Congress and the Executive Branch of the United States government under the Act with respect to her voting and registration procedures and whose justiciable interest is therein recognized by the Congress of the United States; and as a Sovereign State directed by this Court to prevent unconstitutional dilution of, or discrimination in, the right of her lawfully qualified electorate to participate in her governmental affairs.

15. That, in her recent history, the plaintiff's

citizens have selected their governmental officers, federal, state and local, in a one-party primary (Democratic) system, with said officials so nominated receiving no substantial opposition in plaintiff's General Elections, with the result that many of the plaintiff's citizens had never consistently participated in her General Elections, which fact materially affected the number and percentage of plaintiff's citizens who participated in the Election of November 3, 1964.

16. That, on August 7, 1965, the defendant sought to invoke the provisions of the Act with respect to plaintiff, her political subdivisions, officials and inhabitants, as shown by letter dated August 7, 1965, signed by defendant and, on August 9, 1965, the defendant caused Federal Examiners to be sent to certain Parishes of the State of Louisiana to perform illegal activities in said Parishes.

17. The Act, as applied by the defendant, is unconstitutional. Defendant is using the said Act in a dictatorial manner by failing to comply with State law not inconsistent with the Act.

WHEREFORE, plaintiff prays:

1. That a decree be entered judging the Act, particularly §§ 4, 5, 6, 7, 8, 9, 11, 12, 13 and 14 in violation of the Constitution of the United States as drawn and applied to the plaintiff, her political subdivisions, officials and inhabitants.

2. That a decree be entered permanently enjoining and prohibiting the defendant from enforcing or attempting to enforce the Act, particularly §§ 4, 5, 6, 7,

8, 9, 11, 12, 13 and 14 with respect to the plaintiff, her political subdivisions, officials and inhabitants.

3. For such other and further relief as this Court may deem proper and necessary.

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

HARRY J. KRON, JR.,
Assistant Attorney General,
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NICHOLAS deB. KATZENBACH,
Attorney General of the
United States,

Defendant.

MOTION FOR EXPEDITED CONSIDERATION

The STATE OF LOUISIANA respectfully moves the Court to expedite consideration of this cause to the effect that it require any response to the attached motion for leave to file be submitted by December 14, 1965. (See order of this Honorable Court on same type of motion in Originals 23, 24, and 25, October Term, 1965.)

JACK P. F. GREMILLION,
Attorney General,
State of Louisiana.

HARRY J. KRON, JR.,
Assistant Attorney General,
State of Louisiana.

THOMAS W. McFERRIN, SR.,
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