Supreme Court of the United States

In the Matter of:

SALLIE M. HADNOTT, et al.	
Appellants,	
vs.	
MABEL S. AMOS, et al.	
Appellees,	
vs.	
EDWARD F. MULDIN, et al.	
Appellee-Intervenor.	

Docket No. 647

1st argt

Place Washington, D.C.

Date October 18, 1968

ALDERSON REPORTING COMPANY, INC.

300 Seventh Street, S. W.

Washington, D. C.

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C O N T E N T S

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IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1968

Sallie M. Hadnott, et al Appellants, v. Mabel S. Amos, et al Appellees, and Edward F. Muldin, et al Appellee-Intervenor.	:	Case No. 647

Washington, D. C.,
Friday, October 18, 1968

The above-entitled matter came on for argument at 9:13 a.m.

BEFORE:

EARL WARREN, Chief Justice
WILLIAM O. DOUGLAS, Associate Justice
JOHN M. HARLAN, Associate Justice
WILLIAM J. BRENNEN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
ABE FORTAS, Associate Justice
THURGOOD MARSHALL, Associate Justice

APPEARANCES:

CHARLES MORGAN, JR., Esq.,
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[Appearances, continued:]

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Counsel for Appellees

P R O C E E D I N G S

MR. CHIEF JUSTICE WARREN: No. 647, Sallie M. Hadnott, et al, Appellants, versus Mabel S. Amos, et al, Appellees.

THE CLERK: Counsel are present.

MR. CHIEF JUSTICE WARREN: Mr. Morgan, you may proceed.

ORAL ARGUMENT OF CHARLES MORGAN, JR., ESQ.

ON BEHALF OF APPELLANTS

MR. MORGAN: Mr. Chief Justice, may it please the Court, we have behind us a copy of the Alabama ballot. As it appears in the record, this is a reproduction from the record, Exhibit G to the Amos deposition.

You will notice there are seven columns on the ballot with an eighth colum for the independents over here.

In column 1 you have eight electors only. Column 1 is Alabama Independent Democratic Party, a political party that was established in its certificate of incorporation states that the party shall have no members and secondly states in its certificate of incorporation the party shall run no candidates for office for local, state or national offices except for presidential electors.

This party has been described by Defendant Amos. Defendant Amos is herself a presidential elector candidate on column number 3 as a party within a party.

By voting on column 1 a voter casts his ballot for the Humphrey-Muskie ticket for president.

By voting column numbe4 3 he votes the straight Democratic ticket in the State of Alabama and thereby cases his ballot for George Cory Wallace for President.

Q How many electors are there in Alabama?

A Ten electors.

Q There are only 8 in column 1.

A No, sir, there are 10, and in this column, column 3 and column 7 and also column 5 which is the Republican Party.

In Alabama a voter if he votes the straight Democratic ticket votes for all the local nominees of the Democratic Party right down through Bull Connor and others all of the way down the line.

If he votes a straight Republic ticket, he votes, of course, for Mr. Nixon and Mr. Agnew, and all of the way down the line he votes for the Republican nominees.

If he votes this ticket, the National Democratic Party of Alabama, for appellants here, he votes a straight party ticket for electors pledged to Humphrey-Muskie unless disavowed by them and, of course,this has not occurred.

He also votes a straight party ticket down the line in those counties for which candidates appear for this party.

Q Those electors in that column are not the same as the candidates Humphrey-Muskie in column 3?

A No Humphrey-Muskie are in column 3. In column 1, no, they are not.

We have entered into a stipulation with the Chairman of this political party and under Alabama law a political party can replace vacancies which refill vacancies with others.

In the event Section 148 of the Alabama statute, Title 17, which prohibits people from appearing under more than one ballot emblem in the same election, that, in the event that is stricken down, these electors will be removed by the party, these will be retained, and these electors will then move over so there will be no dilution of the Humphrey-Muskie slate.

Q Can they be active?

A They can be if the courts allow them as a form of remedy in the District Court or if so instructed here. There is no physical problem with that.

Q We got this paper so recently I must say I don't have it in mind, but I understood there was some Alabama law to that effect.

A Section 148 simply prohibits them from appearing on the ballot twice and that is the principal statute, as I understand it, that would prevent them from being aggregate. We could trim that statute with this particular election. It is certainly unconstitutional in its application. It may not be unconstitutional on its face. Two states have held that

it is. One state, New York, has of course held that it is almost a precursor to the Voting Rights Act and has said that a party may nominate whoever it pleases and if they don't with draw, that is all right.

Q Which group is it that has filed an amicus brief with us?

A Well, none really. What you have there is intervention petition to consider from the local Citizens for Humphrey-Muskie. In there you will find the name in the intervention petition of one of the three co-chairmen, David J. Vann. David J. Vann is Chairman of this political party.

Q Edward F. Mauldin?

A Edward F. Mauldin says that these electors should be removed and these should be left on the ballot.

David J. Vann who is Chairman of this party says that in the event that statute is struck down or inapplicable, these electors would not withdraw from the place on this ballot here.

Q Say that again.

A Mr. Vann who is chairman of this party, who was represented in court and it is in the record, says that these parties will not withdraw these electors if placed on the ballot under this ticket.

Now, you have a second provision of the Alabama

statute which says that a person has the right to vote a straight party ticket. Two provisions of law would provide that. This is a Voting Rights' Act state, of course, and it has been determined as of November 1, 1964 to be such.

I don't think that it is too difficult to say that this ballot is fairly confusing, almost a test device of the high school literate person. If an illiterate person walks in, he can flip this lever here and then he would have to wander all across this ballot to find out whoever he wants. If these candidates are not on the ballot, he will find few if any Negroes except for maybe a few running for constables in a couple of counties.

This ticket under Title 7 has, of course, a substantial number of Negroe voters and candidates on it. They are not in every county in the State of Alabama. There are not very many Negroes in some counties of the State of Alabama. We started with, as I recall it, 23 counties. It was winnowed down in one way or another to 17 now.

We believe that under the Voting Rights Act, the 15th Amendment, and otherwise, folks have a right to vote a straight party ticket, and they have a right to have candidates on the ballot.

We also believe the record in this case clearly discloses the motive and the reason for the disqualification of this party in column number 7.

Now, this is not a separatist party; this is an integrated party.

Q (Inaudible)

A I think only in an ancillary way. We can test the others. Well, I am not making it directly but I am going to tie it back in a moment to the Garrett law under which we are disqualified and the Corrupt Practices Act under which they say we are disqualified--I can't understand that myself--and to tie this back to that to show the confusing nature of the ballot and then move it forward so that the whole procedure looks like a test of the device and certainly those statutes are.

Now, what we contend with respect to this ballot is that in the event this ticket is not on the ballot, the State Democratic Party which will be carried by the Wallace electors, ifat all, will then have tapped into the political system from which Negroes have been excluded for 100 years. the Negro vote, and we think the record amply discloses the way this whole procedure came about.

Q What was the form of interim order you initially got from the three-judge court? What did that put on this ballot that is not there now?

A Nothing; it put us on the ballot. It put this column 7 on the ballot.

Q Just the way it is?

A Yes, sir.

Q If you were entitled to relief which resulted in shifting that column electors, what would this mean. Would you have to do all of the voting machines and ballots over again?

A I really think not. You see, it is very confusing. As the Secretary of State stated herself, she didn't quite know when was the last day she could print ballots and depositions.

Q If that is the relief you want and could get it, is that the kind of change that would have to be made?

A I think if the ballots are already printed that would be the case, but I don't think the ballots have been printed.

Q What happened after you got your interim relief putting you on the ballot?

A They may have printed absentee ballots. The State would know more about that than I do, but I don't believe that they have. I believe that they are still waiting right now.

Q It is either new ballots for the first time, if you prevail, ballots which shift column 1 electors over to column 7.

A Yes, sir, and if that doesn't happen, we want the column 7 electors to stay on there as they are now. The

Vice President and Mr. Muskie have made no election not to appear on the ballot under this ticket.

Q Doesn't that mean if it just the way it is, with two separate sets of electors, that puts the Humphrey-Muskie ticket at a rather disadvantage?

A Yes, sir, in Alabama it would.

Q Because you can't activate the votes for them.

A The candidates' names don't appear on the ballot themselves. But what we contend, of course, is that that can be done and that it can be done quite simply and easily, and it could be done with an order in order to aggregate the votes. Any rights we have we would be willing to waive to go over that way. But we do think that certainly illiterate voters have the right to walk in and vote the straight party ticket if literate voters do.

Q I am speaking as a practical matter -- support of the parties you represent -- really what they want that their supporters be able to vote a straight ticket.

A They need two things. First of all, they need the right to vote a straight party ticket and, then, secondly, they need somebody to vote for, and the Secretary of State hasn't gien them that and neither does the District Court order.

Now, what happened was, along about August 14, the Secretary of State received some documents, the best

evidence of which according to the District Court was an affidavit from a blind man saying that he had not heard a mass meeting in the Madison County Courthouse. He relied upon this and said that this party could not appear on the ballot. On September 5th, she recanted and said the party could appear on the ballot and prior to that time in public statements and in the press.

Following that, on September 10th, she says, "No, you can't appear on the ballot except for two candidates."

By September 13th, of course, we filed suit. We were endeavoring at that time to get here by the time of Williams which you decided Tuesday.

Now, she is, of course, the Secretary of State, a Wallace-pledged elector. Seven of these presidential elector candidates on column 3 are the highest paid public officials there are. Two others are the wives of United States Senatorial candidates, and I have forgotten who the tenth one is.

Now, in this particular instance, she says, "No, you can't get on the ballot because you missed on that mass meeting. We took voluminous evidence in the District Court unanimously, and there is no question about this, that, no, Miss Amos, you deprived these people of their rights to equal protection under the law by depriving them of the right to appear on the ballot on the basis of that mass meeting, and you, Miss Amos, must pay one-half of the cost.

And she had aecond ground she denied them the right to appear on the ballot. She said they didn't comply with the Garrett law at 243 of the Alabama Legislature, and the Garrett law simply says this: "You must file a declaration of intention to run by March 1st. That is 250 days before the general election. It is made up of the . . . It just says I hereby declare myself as a candidate for such and such an office in such and such a county in such and such a county state-wide office, and certifies, you know, that I intend to become one.

Q In the case of the President and Vice President, what does it say.

A Well, one says apparently nothing in the State of Alabama. You see, we have not been able to vote a full ballot in the State of Alabama in the last five of the last six presidential elections. We have always had electors who were Democrats.

Q What was the declaration on the part of the Republican Party before March 1?

A They are electors who filed declarations of intentions.

Q To do what?

A To run for presidential elector.

Q But they don't have to identify any candidates whom they will support?

A No.

Q Obviously not because there weren't any.

Q Do they say a presidential elector pledged to support whoever the national convention--

A Not on the form they filed. It is my recollection that they don't but they could but I am not certain of that but I don't think that they do. They just simply file as Republican electors and folks assume that they will vote that way.

Now, the Democratic column 3 electors are selected differently. They run in the primary. They pledged to Wallace and ran in this State as Wallace-pledged electors, and this is the one State of the 50 that he appeared on the Democratic ticket and he appeared on third-party tickets elsewhere.

Now, what happens here is exactly parallel to Williams, exactly with respect to time except it is 250 days in Alabama, and 272 days in Ohio.

Now, the second problem with the declaration of intent statutes -- there are a lot of people who don't want to run for office. For instance, if you had had a declaration of intent statute nationally, Adlai Stevenson would not have been the Democratic nominee in 1953. He could not have qualified, if he was in fact drafted, and I believe he was.

Beyond that, there are a number of people---

Q This does not affect people like Adlai Stevenson or Hubert Humphrey. These are electors.

A Yes, but, you see, in Alabama, you have different systems. We are really concerned about the folks down the ballot, too, because we are running people for local and state offices in local county boards of revenue in places in the Black Belt areas and also other places.

We have a candidate for Congress running in a district in the Fifth Congressional District -- William McKinley Bryant. He is a Negro.

Now, you can look at it as two independent candidates. They are both white. Gibbs is white and Flowers is white. There is approximately a 30 percent Negro vote left in that district.

The day before yesterday, the Northern District of Alabama entered an order allowing college students to register in Tuscaloosa, Alabama, in that district. It is a very real matter for that congressional candidate who is a Negro in this election with respect to the prospect of being elected, and thereare others down the line, too, in other counties for Board of Education posts, the post on county commissioners and these folks, of course, are trying to seek a way into American life.

Q That is not the total ballot, is it?

A No.

Q You want to run 100 candidates?

A We counted 89 as I recall.

Q Of those 10 electors, the rest are for various state and local offices?

A Yes, sir.

Q As the matter is now standing, none of those is on the ballot?

A As matters now stand, they are under the order but they wouldn't be without the order. Two would be. For some reason, as the District Court says in its majority opinion, unexplained to them, they allowed William McKinley Blanch to run and Miss Copelan to run for a special election to run to fill a vacancy in the state legislature under the National Democratic Party of Alabama.

Q Absent this Court's order, the Democratic Party of Alabama will appear on the ballot?

A Two candidates any place, and we are not sure of that because we have been turned back over to the tender mercies of Mrs. Amos and 67 white probate judges of the State of Alabama for the majority opinion. We don't really know we we are with respect to it or where we will be with respect to the ballot with this Court if we go back to the Court opinion or the majority opinion down there and we don't know where we will be then.

Q Were those the only two reasons that the

Secretary of State gave?

A She had two -- one mass meeting was wrong, and the declaration of intent statutes. She made that quite clear.

Q The Garrett law you apparently had and that argument is not even in effect.

A Well, that is right and that is certainly under the Voting Rights Act and with---

Q You don't get to its constitutionality unless there is a law.

A There is no need to get to its constitutionality unless it complies with Section 5(b) of the Voting Rights Act.

Q Is that the same issue here as in the Whitley case?

A It is the same issue as stated here in the Bunton case. The others have reapportionment figured into them. Whitley does and in the Court and in the brief below, the case of Sellers versus Trussell has been cited by counsel and also cited by the court. The majority opinion is somehow authority for that.

Q [Inaudible]

A As Mr. Pollack stated the other day, Alabama has asked for approval of the Attorney General and only one statute and that one was in November of 1965 or 1966, I guess

it was. Since then, they have asked for none.

Q They have not asked for the Garrett law?

A They have not.

Q Passed in 1967?

A Passed in 1967, and, of course, your Bunton cases which does not involve reapportionment does not affect candidacy but this affects everybody in the case.

Q Secretary of State . . . Corrupt Practices Act . . . was that presented to this Court?

A That was presented in the Court after we were in the Court.

Let me give you the sequence of that as rapidly as I can.

We are in court. We are in Court on the 13th. We know we are not candidates. Now, the law says that we have to postmark our Corrupt Practices statement five days after the date of filing of the certificate of . . . .

September 5th comes. September 10th she announces publicly in the press that we are not candidates.

Now, I don't know that there is anything that we have to do beyond that such as file a notice when the Secretary of State says she is not going to put you on the ballot. We say she should first hold the period. Then, secondly, we went back in the District Court and what happens at that point is the District Court on the 16th as I recall it held

the hearing, said it would issue the order, get your candidates straight.

On the 17th, for the first time, the State Attorney General comes along and says, "Hark, none of your candidates have signed these declarations."

Now, 30 to 35 of them did it because they did file applications regardless of, you know, what has been stated here and they are contained on the same form. That is why everybody else filed them because the form was made out that way.

What happens then is we are in open court. They then raise that question and say none of your candidates can appearl, and we look up and say, "Okay, we are not candidates to the District Court. Enter the temporary restraining order."

No matter what you say, we couldn't have been.

We immediately filed in the Court a certificate of compliance and Judge Johnson says--and it is not our phrase; it is the defending Judge Johnson's phrase--they are disqualifying this whole slate by an afterthought and they are doing it by a document filed in Federal Court.

She started with two reasons. She lost on one of those. Now she has one new reason and she is applying the Corrupt Practices Act and it looks to us like a clearly YickWosituation because it has never been enforced by the State. While the District Court ruled with the majority, all

of them said it was constitutional on its face. It requires you to file within five days.

The majority says it is constitutional on its face and there was no unequal application. Judge Johnson said there is an unequal application under Yick Wo. He says that there has been proper enforcement constantly, that the pubic has never enforced this law, and public officials have never enforced this law.

Q The Court sustainted the Secretary of State on that?

A On the Garrett law and on that reason two to one, yes.

Q Was there evidence to the effect that the State had never enforced that law?

A We found no evidence that the State had ever enforced it; that private parties had always enforced it all the way through. Private parties would go in and file action against their opponent by and large, and their opponent would intervene, and he would go off.

Q [Inaudible]

A It was filed by me as counsel for all of those people and was mailed to every probate judge in the state within two days after the order was entered with every candidates' name..

I would like to reserve the rest of my time.

MR. CHIEF JUSTICE WARREN: Mr. Redden

ORAL ARGUMENT OF L. DREW REDDEN, ESQ.,

ON BEHALF OF APPELLEES

MR. REDDEN: Mr. Chief Justice, may it please the Court---

Q At the outset, tell us what the situation is with respect to the preparation and distribution of ballots.

A The probate judges in the various counties are charged with the preparation of the ballot in their particular county.

I think the Court will readily understand, as has been pointed out, this is not a complete ballot and the ballots will vary from county to county because of the fact that there are local and county offices up for election during 1968 so that on the ballot in each county you would have your state-wide offices. You would only have one of these candidates for Congress. We have eight congressional districts in the appropriate districts so that you would have a different ballot in each county.

Q Is there only one ballot?

A If I understand the question, there is only one ballot in each county.

Q But each one is different?

A Each one is different as it would be in any

State in the Union.

To answer your question, I would have to say that you would not have a uniform situation with reference to the degree of preparation of the ballot from county to county.

Q Do we have information on what each probate court judge did when the order came down?

A I have some hearsay information solely. Remember, that in portions of the State on voting machines these have been prepared in a great many cases, I am sure, following the District Court's order. In some other instances, the ballots are being printed by printers at the order of the probate judge. There is no uniformity right now. They are in various stages of preparation.

Q Is that to say to the extent that ballots are being prepared, whether they are printed ballots or voted on voting machines, they comply with that interim order and includes the column 7?

A No, sir, I would have to say a good many do not; that probably more do not than do.

We have made contact since the Court entered the order here with as many as we have been able to contact to advise them of the issues of this order and to have them to undertake to do whatever they can do with regard to trying to wait and trying to find a printer who can put

them in a position of compliance.

Really, we are getting very close to the election and I am sorry that I am unable to tell the Court precisely what the situation is in each county.

Q Eighty-two counties?

A Sixty-seven.

Might I state one thing at the outset. I have been requested by counsel for the intervenor who was not allotted any time for making a presentation simply to state to the Courtthat a brief has been filed on behalf of the intervenors, to state that the issues raised by the intervenors apply only to the presidential electors; not to the local offices; that they are in accord with the decision ofthe court below in favor of the appellees here but they desire me only to make the further representation to the court that they consider that their intervention raises issue which were not disclosed below because it was unnecessary to reach them because of the decision.

Q The Attorney General did not in the telegram sent to this court assert that it would be impossible to comply with the order if it were entered granting the relief requested?

A That is my understanding.

Q Are you now saying that compliance would be impossible?

A I would not represent that to the court. I would say the officials would make every effort to comply with any order of this court. I don't make an assertion that it is an impossibility.

I would like to reply directly to some of the points raised here.

In the first place, the Corrupt Practices Act of the State of Alabama has been the law of that State for 53 years. The two sections under attack by the appellants in this case have not had any substantial change throughout that long period of time. The portion with which they failed to comply was a provision of that law which states that within five days after the announcement of a candidacy that the candidate is required to file a designation of a committee to receive contributions to handle its funds. The rest of the law imposes a considerable obligation on those individuals. It may be the candidate himself, it may be persons he designates, but the law imposes a considerable obligation on them with reference to the receipt of funds, the disbursement of funds and ultimately the accounting for funds.

The second section they attack contains a mandatory provision if a candidate fails to comply with that provision his name will not appear on the ballot.

Now, it is that simple---

Q Mr. Redden, in Alabama do the candidates for

electors run a campaign that costs money?

A That costs money?

Q Yes.

A They frequently have, yes, sir.

Q I am talking about just for their one position as one of the electors.

A Generally I would say that the expenditure of funds has been on a concerted basis, if I understand the question.

Q But there is no question the Corrupt Practices Act does apply to a candidate to be an elector?

A No, sir, there is no question. There are provisions, of course, governing all offices with reference to the amount of money that can be expended in particular races for particular purposes. It does apply to them without any question.

But there was not compliance with this in the main.

As counsel have stated, there were some few who filed a form that was printed for this party. At the head of it, it contains the statement, "Declaration of Intent, Act No. 243, National Democratic Party of Alabama." It was a prepared form. Their chairman testified that he was aware of all of the requirements of the Garrett Act; that he was aware of the requirements of the Corrupt Practices Act; that he disseminated the information concerning the necessary

requirements to his county chairman and distributed the form and they simply did not comply.

Now, the complaint is made that the Secretary of State acted in disqualifying particular candidates as an afterthought. I point this out to the court, and what I say here supports, I think, not only the Corrupt Practices Act, but I would ask the court to consider it in relation to the Garrett law also.

You are being asked to consider the Garrett Act as an isolated piece of legislation, selected solely for the purpose of disqualifying candidates for office.

I submit to the court that this is not the situation. It is part of an integrated portion, statutes concerning declarations of candidacy and qualifications.

For example, for, I believe, 30 years, those persons who wished to qualify as candidates for parties conducting primaries have been required to do so by March 1st of the year of the election -- everyone. The only effect of the Garrett Act is to say that an independent candidate for office or a candidate for office of a party not conducting a primary must file a declaration of intent by the same day.

Now, this cannot be equated in my judgment with what this court struck down in Rhodes. There, a petition, as I recall the facts, containing 430,000 names would have had to be signed and presented by February 7, 90 days ahead of the

primary.

What has to happen here is that every person who desires to be a candidate for office in Alabama must by March 1 file a declaration of intent. It does not have to be supported; it is not a petition containing signatures. It is his statement and it applies to everyone.

Q When are the primaries held by the Democratic Party and the Republican Party?

A The first Tuesday in May.

Q So, in effect, the result of this would be it would make it impossible for someone to submit his name to one of the qualified parties if he is defeated later.

A Unless he was nominated from a convention that had chosen delegates on the primary election day.

Q You couldn't do that. As a practical matter, here is Mr. X and he says he is going to make a run for it to get the nomination of the Democratic Party or the Republican Party, and he fails, and then he wants to run as an independent or some other party nominates him. That is impossible under your law.

A I would say it would be one instance in which it would be possible. Let me carry a step further the statutory provision.

As I stated, everyone regardless of whether he desires to run as a candidate in a primary or non-primary party

must declare by March 1.

The statute further provides whatever form of nomination is utilized, that must be accomplished on the first Tuesday in May.

For example, Mr. Justice Fortas referred to the Democratic and Republican Parties conducting primaries. The fact is the Republican Party conducts primaries in only two or three counties. It nominates by mass meetings.

The law states they shall be oral rallies or caucuses, or whatever they are called, and the primary is held on the same date that the Republicans go through the mass meeting in their nomination procedure on that date.

I say there would be a real possibility for this reason, that a party might at that time that is on the first Tuesday in May elect its delegates to a state convention, for example, that would meet for the prupose of nominating candidates. I would have to acknowledge, I believe, that he probably would have lost his right to some degree to run for a county office. There would still be powers available to him and conceivably if they simply elected delegates to a nominating convention at the county level, that would still be open to him. That would be the degree to which they are open.

So, on May 7th, the nominations are made or delegates are elected to conventions. This is required of everyone.

There is no distinction. If a man is an independent candidate the petition it requires him to submit is not required to be submitted on March 2nd. It must be submitted by May 7th.

Q When was that legislation adopted?

A All of the legislation I am speaking of with the exception of the Garrett Act has been the law since 1947 or longer. Some of the statutes to which I have referred date back to 1931, I believe, as a date of origin.

Q What about the March provision?

A The March provision changing the date from May for those who were not candidates in a primary to March was enacted in 1967 effective in May perhaps of the following year.

Q There was no attempt to comply with Section 5 of the Voting Rights Act?

A It was not submitted, of course, and I am using this example showing that this is only a part of the law, but the Corrupt Practices Act, of course, had been the law, as I said, since 1915.

Going forward with the dates and actions synchronized, May 7th, the certifications of the nominations which were made on May 7th or by nominating conventions held subsequent to May 7th through delegates elected on that date must be submitted 60 days prior to the election.

One thing Mr. Morgan has pointed out is this: that

Mrs. Amos, the Secretary of State, he says, as an afterthought--as an afterthought--you also failed to comply with the Corrupt Practices Act of the State of Alabama.

I do make this observation to the Court. There were 67 other defendants in the case below. Every probate judge in the State of Alabama was made a defendant. The only people who were required to file with Mrs. Amos, the Secretary of State, at all were the candidates for state-wide office.

Now if we assume that it would be valid to state that Mrs. Amos as an afterthought said by the way you did not comply with the Corrupt Practices Act, which I submit she had a perfect right to do, that statement has not been made of the 67 probate judges. There is no contention they have said anything that estops them which says you must comply with that law or you cannot be on the ballot if you have not complied with the Corrupt Practices Act. It is just as simple as that.

Q If Alabama had not adopted the Garrett law, do I understand you to say by May 7th either party must on that date decide on conventions and then turn up with some means before the election---

A Must certify them.

Q If one is an independent, what does he do?

A The same thing.

Q So, if you did not have the Garrett Law or the

Garrett Act, that would be the procedure?

A That is the procedure because the Garrett Act applies just at one end.

Q May I ask this: did the appellant's party do anything?

A They state they had mass meetings on May 7th. There were meetings of five people, six people in various counties, and that really is not an issue here in this case that they made certain nominations.

We have 67 counties and, as counsel has stated to you, what they are stating, for example, with reference to the straight ticket argument is that these people have a right to have a straight ticket vote available to them. It is simply this: I pointed out there are 67 ballots in the State because there are 67 counties. There are only 17 counties, they acknowledge, in which they have any candidates whom they contend are qualified -- in 17 out of 50. In four of the others, there is only one, and in four others there are only two.

I point this out to make this observation to the Court. They are talking about straight ticket voting and the right to vote a straight ticket. They cannot vote a straight ticket for this party and really participate in this election as electors. If they did that and nothing else, then they would be casting their ballot for blank.

Q. Fifty out of 67 counties?

A Yes, sir, 50 out of 67 and substantially the other 17 because they are offering so few.

Q That would relate to all of the other ones?

A On; two in four more, and a couple more.

Let's follow this just a minute, the argument that there is a right to vote a straight ticket.

I do respectfully call the Court's attention to the statutes cited in the Appendix of our brief. They are referring to Title 17 of the Code of Alabama. It says, "The electors, if desired" -- I believe those are the words of the statute -- "may vote a straight ticket by marking it at the top of the ballot.

But reading 158, 159, 160 and 162, the next one says if he wants, he may vote a split ticket by marking in any fashion that he chooses.

The next one says in a case where he wants to vote a straight ticket, and there are blanks in the column of that party, he can vote the straight ticket, and then he can go and fill in those blanks, his ballot and his machine will still be open to vote for the candidates of other parties where the party that he wants to support supports all of the candidates, and this is provided for.

So, we state to the court that effective participation in this election would require that the vote under some other

labels, too.

I think that the ballot here is not unique. It is not even unusual. I guess the format of a ballot could vary from state to state, but there is no device here to confuse. I don't really understand the argument that says on the one hand you wouldn't let us on the ballot so our people can vote a straight ticket. Your ballot is so confusing.

I think the ballot itself is proof that it is pretty easy to get on a ballot in Alabama.

The Prohibition Party, for example, has candidates for presidential electors. They attacked the Alabama Independent Party for that. But it must be very easy to get on the ballot.

Now, what they are saying and what they said at the outset of this court in their argument was we want you to declare Section 148, Title 17 unconstitutional, and we want you to do it so that these candidates for election can withdraw and this party can thereby substitute these people over here so that they will be running under both columns. The reason you have to declare Section 148 constitutional is so that the voting can be aggregated here.

This proposal was made in the course of the trial of this case before a three-judge court in Montgomery. Counsel said we represent to the court that we are willing to do this on this condition, on condition that this court will

declare Section 148 unconstitutional, and on the further condition that these people whose names we are going to duplicate on this ballot and get over here will give their oath that they won't withdraw their candidacy which any candidate has a right to do under the law 20 days before the election.

This is nomination in open court. However liberal the Alabama laws may be -- and I submit they are liberal with reference to getting on our ballot -- there is no provision for that and I don't know if the laws of any other state---

Q Does the law of Alabama make it illegal to appear on a ballot twice?

A Yes. It states that the name of each candidate will be on the ballot once and only under one ballot.

Q Mr. Schwemm who has been admitted to this court was a nominee for the United States Senate. John Davis ran here for presidential election as president of the Alabama Public Service Commission and member of the Board of Education of Saint Clair County or some office of that type. What is the date of that law?

A This would be in the 1930's. It is not of new origin.

Q Any law here other than the one you just talked about is 1967?

A No, sir.

Q All the other laws were covered predating 1960?

A I would say all of those we are talking about are at least 20 yeas old and some of them are older. There may have been some minute changes in phraseology, but I am speaking of the substance of the law. I am sure the amount you can spend in political campaigns has recognized inflation and has been updated from time to time in recent years.

Q What do you say about the Garrett Law?

A I submit to the court it is an effect. It is not in my judgement a device. It comes within none of the definitions in my judgment of voting rights.

Q The language of Section 5 is whether it is a standard practice or procedure, not whether it is a device.

A With respect to voting.

I submit that it is not a standard within the broad term of procedure, yes, sir, certainly within a possible definition of that term, but it is a procedure of this nature. It is a procedure that has always been required and it is only part of an infinitesimal part of the established procedure that has been the law since the turn of the century really, and all it does it set a date on which it says everyone must conform to the Act.

Q That is the point . . . if we felt the Garrett Act fell within Section 5 and, therefore, it was not a law. . . so whatever other laws bear on the subject.. . would this party then be qualified?

A No, sir, for the reason they have not complied with the Corrupt Practices Act.

Q That would then be the only reason because they had not complied with the Corrupt Practices Act?

A There would be a question of individual qualifications where special educational qualifications and things of that sort are required in the case of individual candidates.

Q Or under 148?

A Or under 148 which would certainly eliminate Mr. Schwemm and others, and 148 prevents the representation that was made to the court in open court.

But the Corrupt Practices Act since 1915 said within five days of the announcement of the candidacy.

I wanted to point this out awhile ago and I am glad you returned me to it.

These people represent in mass meetings on May 7th that they nominated candidates. They gave no indication of who these people were that they nominated. The first said they were going to have a state convention on June 17 or 18. They ultimately had a meeting July 20.

Q Didn't the Secretary of State take that out of this case? I understood the Secretary of State challenged the fact that they had a mass meeting and then recanted and then changed her mind.

A No, the decision below stated there was no basis

for refusing to certify because of the lack of a mass meeting in Madison county.

Q Then it is out of this case.

A It is out of this case. I'm reciting a chronology for this reason that the last nominations made would have been made on July 7th and the earlier ones on May 7th. There was no certification of any candidates to the Secretary of State or to probate judges until certifications were mailed apparently almost to every one of them from Huntsville on September 4, 1968, arriving in the office of the probate judges and the Secretary of State on September 5, 1968, at the last possible moment.

Q Were they timely?

A They were within the 60 days -- just barely.

Q From what date would the Corrupt Practices Act apply within 5 days?

A This is the point I was getting to. If they maintained that there had been no announcement until that moment of candidacy established on May 7, for example, they did not comply because they did not file their designation of committee within five days of that time. If they maintain that even as to state-wide candidates nominated, they say on July 20, if they maintain that there was no announcement because they kept it apparently pretty quiet, that there was no announcement of those candidacies of those people

nominated on July 20th, until they filed these papers, they didn't satisfy it then.

The Supreme Court of Alabama has held in a case where a candidate declared or made public by filing this paper on May 3, the first Tuesday of the month, was nominated in that case, that that was the time of the announcement of his candidacy. That was the time of his announced candidacy when the time began to run for him.

I say it is only to assert that the things this party did were done relative to nominations either on May 7 or July 30 or September 5.

Q In the action of September 5, was the Corrupt Practices Act amplified or complied with?

A No, it was not. Remember, I have acknowledged at the outset there were a few who utilized the form printed by their party and distributed to them. There were a few who signed the designation of financial committee and filed it with the declaration of intent.

Q What do you say to the claim that there has been discriminatory enforcement of that provision?

A I say that is not correct, and I say that it is not supported by the record in this case.

I say further that the only testimony in this case with reference to its utilization and its enforcement is the stop of Judge Paul Meeks who is the judge of probate of

of Jefferson County, Alabama which is the most populace county in the State and has a population of approximately 800,000 people. Two thousand compliances were filed in his office for this election. They havenot fallen into disuse.

There are four decisions of the Supreme Court upholding the Act, construing it as necessary for elections in Alabama, and I submit this rule has been approved by the Fifth Circuit at least in a statement that this is a matter of state law after constitutional violation.

Q There have been people excluded from the ballot because of non-compliance?

A Yes, sir, and in addition to that there have been cases where a probate judge would request an opinion of the Attorney General concerning whether a particular person should be placed on a ballot.

Q Do you understand the party to make any claim that whichever date you have there has been any compliance?

A The only compliance they claim to have made is that in this lawsuit and about the 20th day of September, and this is as close as I can take it -- and I am sure counsel will correct it if I am wrong -- it would be no earlier than the 18th or 19th or 20th that there was an attempt in this case that Mr. Morgan as counsel for those individuals who were purported mechanics sent a document to the court and a document

to each probate judge, and I presume to the Secretary of State stating that as their attorney he was filing a statement that each one of them was appointing himself his committee to receive funds and that is the only attempt at compliance for those who did not use the form and the law requires this.

Q You would say that was done September 20th. That is out of time even dating these from September 5th; is that correct?

A Completely.

Q Which then would relegate if that were so, the appellants in the argument that this requirement has not been evenly applied and this is a denial of equal protection?

A That is the only thing.

Q As I understand it, if the restraining order stays in its present posture, you would have on your ballot two sets of presidential electors composed of different people but each of them pledged to Humphrey and Muskie?

A Two sets?

Q Yes, and then you would have a third set pledged to Wallace again in the presidential elections; is that right?

A Yes, and pledged to Nixon and Agnew and I don't know within the pledge.

Q I would like to ask you another question.

Assuming that the restraining order were modified so as to eliminate the electors of the ballots here, leave their candidates on the ballot for other offices. What effect would that have on the elections in the State? Could that be done? In other words, could you eliminate from the ballots the presidential electors?

A I can't say that it cannot be done. I can only represent to you that if it can be done, it will be an extremely difficult thing to accomplish. I would not want to answer you further than that because I don't have the knowledge to do so.

Q (Inaudible)

A Yes, sir, for this reason, if I may point this out. The uniform removal can be accomplished in other ways that are very simple whether you use a machine or a ballot, but the intersplicing would be difficult here or there.

The District Court ruled in favor of the defendant on the constitutional issue and said that were exercising their discretion to be free from deciding individual factors. Those have not been---

Q Just so I am clear about this, Mr. Redden, if as you suggested itmight be difficult to delete the electors now under the interim order to be on the ballots, of course, it would be much more difficult to substitute

other names, but even if you could substitute other names, I understand your argument is under Section 148 that that is prohibited because you cannot have the same name for more than one office, or would it be for the same office, but the office of elector, but would that violate Section 148?

A Yes, sir, it says the name cannot appear on the ballot but only one name and counsel says that have support from New York and California cases that that is constitutional.

Q When was this?

A I am guessing but I think it was in the 1930's. I could find it for you.

Q Mr. Morgan, may I ask you a preliminary question. When you contest the point that the statement was not filed for these presidential electors; namely, their committee or themselves as a committee for fund collection--

A Yes, sir, Mrs. Amos---

Q Wait just a minute.

Do you contest the point that such a statement was not filed within the five days after the first announcement of candidacy for these offices?

A Yes, sir.

Q Tell me why, and remember I talk in terms of the statute language for the announcement of the candidates.

A Herndon versus Lee is relied upon as the law

the majority opinion.

Herndon versus Lee says when the certificates are filed, that is the day on which the statutes begin to run.

Q That is not what the statute says.

A The statute says five days after the announcement of candidacy, which could be March 1.

Q This has been construed by theSupreme Court of Alabama to mean the filing of the certificate of nomination by either mass meeting or by convention held after mass meeting.

Q Do you concede that the required statement of the committee was not filed within five days after the filing of that certificate of nomination?

A (Mr. Morgan) We do concede it was not filed except with respect to certain candidates.

Q But you concede it was not filed within five days after that date?

A Yes, sir.

Q How do you justify that one?

A There was no need to file it. What Mrs. Amos stated is in our brief.

Q Just tell me briefly and simply.

A She told us she was not going to put us on the ballot.

Q In Herndon against Lee, in your submission, it

puts as the critical time the filing of the certificate of nomination; is that right?

A Yes, sir, which is September 6.

Q You never said anything about whether a person is going on the ballot or not?

A Nobody ever tried this. What she said on September 10 -- and the record is replete with it -- you are not going to be on the ballot anyway. To us, that renders the filing of anything nugatory and null.

We immediately came back and she said you are not going to be on the ballot. The first time the Court raised this question is in this Court.

Q Off hand, that makes some sense, doesn't it, that the named person who is going to be responsible for the law will respect in this election the collection of a political fund?

A If they have any campaign contributions, it is a mystery to me.

What happened then is we contend we did comply with the statute. If we didn't comply with the statute, you say Dane Mill and other cases including the Alabama Welfare case of last Term can be submitted, and the last tragic alternative is not to strike them from the ballot because, after all, they say after five days we have an Alabama case which says if you don't raise it by the election---

Q Mr. Morgan, what worries me is that five days after this September date, you did not file but you did file after that.

Now, if you were going to file, why did you not file within five days? That is the part that worries me.

A The court said on the 16th of September -- and it issued the order on the 17th -- that they were going to issue an order making us candidates. The state comes in and says we did not file it by the 10th which is the date Mrs. Amos said you don't have to file it. We told the court we would immediately file this statement when immediately placed on the ballot, indicating that the court for the temporary restraining order and then we filed the statement within two days. We think that is compliance.

Q Is that an argument, Mr. Morgan, that really is sought to be treated as if the date of filing was the date the court placed you on the ballot?

A The date of filing under Alabama law is the 5th but we say Mrs. Amos misinterpreted our statutory period when she said we couldn't get on.

A second contention is even with that, we have Alabama statutes that say if you don't even file the list of people before the election and if nobody catches you before the election, then it is so. It is mandatory after that. We think it is certainly in violation of the 15 because this

is the first time it has been applied.

Some point was made ith respect to this not being aimed at us but being amed at the Republicans. If I were hunting a target, I would say those who hold some substantial threat to Alabama officeholders -- I say even the Republicans have constitutional rights.

The Garrett Law was aimed directly at somebody in this case, and I would like to refer you to the Amos letter, which reads:

Hi Mabel--

Enclosed are the 150 party emblems--per your request. Please send the 150 back to me (the one which had the motto marked out).

Congratulations on your diligent efforts, which resulted in the disqualification of some liberals.

Regards

Bill Mori

Chairman of the Alabama Conservative Party

That letter is dated 3-25-68.

She did not answer that letter. We just contend all the way through here she did everything to comply with the law.

Finally, she says you can't be candidates after she

said you can be candidates, and then they come in with a statute which says it is unconstitutional.

Q Is it clear on the ballot of each of these two groups of electors with respect to Mr. Humphrey and Mr. Muskie?

A No, sir.

Q How does the voter find out?

A Often it is a mystery. I voted for John Kennedy in 1960. We had 11 electoral votes. Six of the eleven of my votes went off for Harry F. Byrd.

Q They are not pledged under Alabama law?

A They are unpledged.

Q Don't you live in Georgia?

A I still vote in Alabama. I own a house in Alabama.

Q You shouldn't vote there then.

Q Why don't you vote in both places?

Q What is the second column there?

A This second column here is the American Independent Party which would appear in 49 other states as George Wallace's Party but he captured this party and he wants to capture these people who would vote for this ticket to vote for these nominees, and he has this ticket over here to vote for Hubert Humphrey. We are asking illiterate voters be able to walk into a polling place -- the very people for

whom the Voting Rights Act was passed.

With respect to us keeping things quiet and not having nominees file declarations of intent, we started with 139 counties. They have been winnowed away to 89. There is a little evidence in here of the fact that somebody contacted some of our folks. It is not very easy to run for office sometimes in Alabama. Thank you.

(Whereupon, at 10:15 a.m. the oral argument was concluded.)
