In the

Supreme Court of the United States

Harris County Commissioners Court, et al.,

Appellants,

v.

Richard E. Moore, et al.,

Appellees.

No. 73-1475

Washington, D. C.
November 11, 1974

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HARRIS COUNTY COMMISSIONERS COURT, et al., Appellants,	:	
v.	:	No. 73-1475
RICHARD E. MOORE, et al., Appellees.	:	

Washington, D. C.,

Monday, November 11, 1974.

The above-entitled matter came on for argument at 11:56 o'clock, a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
WILLIAM O. DOUGLAS, Associate Justice
WILLIAM J. BRENNAN, JR., Associate Justice
POTTER STEWART, Associate Justice
BYRON R. WHITE, Associate Justice
THURGOOD MARSHALL, Associate Justice
HARRY A. BLACKMUN, Associate Justice
LEWIS F. POWELL, JR., Associate Justice
WILLIAM H. REHNQUIST, Associate Justice

APPEARANCES:

EDWARD J. LANDRY, ESQ., Senior Assistant County Attorney, 202 Harris County Courthouse, Houston, Texas 77002; on behalf of the Appellants.

C. ANTHONY FRILOUX, JR., ESQ., 1215 First National Life Building, Houston, Texas 77002; on behalf of Appellee Gene Zaboroski.

JOHN G. GILLELAND, ESQ., 723 Main Street, Suite 500, Houston, Texas, 77002; on behalf of the Appellees.

C O N T E N T S

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P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear arguments next in 73-1475, Harris County Commissioners against Richard E. Moore.

Mr. Landry, I think you may proceed whenever you're ready.

ORAL ARGUMENT OF EDWARD J. LANDRY, ESQ.,

ON BEHALF OF THE APPELLANTS

MR. LANDRY: Mr. Chief Justice, and may it please the Court:

This case is on appeal from a three-judge court decision of the Southern District of Texas, declaring, first, a Texas statute, Article 2351-1/2(c), unconstitutional and enjoining so much of a Commissioners Court redistricting order, which had the necessary effect under the statute of terminating the terms of office of five office holders, three of whom were Justices of the Peace and two Constables.

The facts of the case, briefly, are as follows:

On March 12, 1973, the Commissioners Court of Harris County appointed a committee of nine persons to study the redistricting of both the county's commissioner precincts, as well as its justice of the peace precincts.

That committee consisted of a county commissioner, who himself had served for ten years in the State Legislature and on the committee in the Legislature for the redistricting

measures whi had been taken by the Texas Legislature during his tenure in office. It also included a justice of the peace, a constable, a Republican, or a member of the Republican Party in the county, a member of the Democratic Party in the county, a Negro, a Mexican-American, and a woman, as well as another -- as well as a University of Houston professor who had some expertise in redistricting. And I might also add that the County Commissioner was the, and is the, a professor at the University of St. Thomas in Houston, and heads the Political Science Department.

After more than two months of study of the necessity for redistricting in Harris County, that committee recommended to the Commissioners Court a redistricting plan for the Commissioners Court, which the Commissioners Court implemented, and it met the strict requirements of Avery.

QUESTION: How large was the committee?

MR. LANDRY: The committee of nine, Your Honor.

QUESTION: Nine.

MR. LANDRY: Two weeks after that, it recommended a redistricting plan for the justices of the peace precincts, and the Commissioners Court, shortly thereafter, with a plan somewhat different from the plan recommended by the committee, and it was primarily authored by the Commissioner on the Commissioners Court and who had served on the committee, implemented the plan of redistricting of the justice of the

peace precincts.

Now, the justice of the peace precincts prior to the redistricting plan being put into effect had two justices in one precinct and one justice in each of the other precincts.

QUESTION: Incidentally, these are staggered terms, are they not?

MR. LANDRY: I beg your pardon, Your Honor?

QUESTION: They are staggered terms, are they not?

MR. LANDRY: Yes, Your Honor, they are. The --

QUESTION: Would some of them expire, in any event, on December 31 of this year?

MR. LANDRY: And some on December 31 of 1976, Your Honor.

QUESTION: Will the case as to them possibly become moot then?

MR. LANDRY: It will not become moot as to the recovery of the emoluments of the office from the time that they were ousted from office, pursuant to the redistricting, to the end of the term of the office.

QUESTION: The newer appointees have qualified and served, have they, and been paid?

MR. LANDRY: Yes, Your Honor, they have.

MR. CHIEF JUSTICE BURGER: We will resume there after lunch.

MR. LANDRY: Thank you, Your Honor.

[Whereupon, at 12:00 noon, the Court was recessed, to reconvene at 1:00 p.m., the same day.]

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AFTERNOON SESSION

[1:01 p.m.]

MR. CHIEF JUSTICE BURGER: You may continue, Mr. Landry.

ORAL ARGUMENT OF EDWARD J. LANDRY, ESQ.

ON BEHALF OF THE APPELLANTS -- Resumed

MR. LANDRY: Mr. Chief Justice, and may it please the Court:

The Commissioners Court order of redistricting, again, was passed by that Court on June 28, 1973, to become effective July 1, 1973.

The many reasons stated by the three Commissioners who formed the three-man majority in effecting this redistricting order, are detailed at page 5 of the Appellants' brief. Of course, the primary reason for the redistricting in question was the gross disparities existing between various precincts as they existed prior to the redistricting action in question.

And I would invite the Court's attention to Exhibits E and F of the Appellants' brief, which sets out, on page 58, the precinct map as it existed before the redistricting in question, and on page 59 the redistricting, or redistricted precincts after the order was passed.

The Court will note that in the precincts 4, 5, 6, and 7 there were population counts of 81,000, 6,900, 8,800, 11,976 for 4, 5, 6, and 7.

As a result of the redistricting and the attempt by the Commissioners to make the precincts more reasonably apportioned, it, of necessity, required the combining of these precincts to make up one precinct, and that is what happened in coming up with new Precinct 4, as the Court will note on the opposite page, page 59.

And there would be no problem, except that Article 2351-1/2(c), which is the statute in question here, provides that, following a redistricting, where you have such a situation just as this, where, as a result of combining precincts to form one precinct and you have an excess number or surplusage of either JP's or Constables, for the limited number of positions in the new precinct -- and in this case we had only two authorized JP's and one Constable.

We ended up, as a result of necessarily combining these various precincts to come up with a more reasonably apportioned precinct, with three Justices of the Peace to fill the two Justice positions and two Constables to fill the one Constable position.

As a result of that, the Commissioners Court, under the statute, Article 2355 -- first, 2351-1/2(c) declares these positions in the new precinct vacant as a result of that

factual situation, and as a result of that the Commissioners Court is authorized to fill those vacancies which it proceeded to do. It appointed one of the three Justices of the Peace of the former precincts to fill the one of the two new positions and one of the Constables to fill the one Constable position.

It reached outside of the area of the former Constables or Justices of the Peace to fill the other Justice position, and it chose a lawyer to do that with.

The Justice of the Peace of the former precinct that it chose to fill the other position was one with some sixteen and a half years' service as a Justice of the Peace of a former precinct.

Now, as a result of the effect of the statute and the effect of these facts, that meant that these five office holders, the appellees in this case, had their terms of office terminated. The two Constables, of course, had some two and a half years to run, until December 31, 1976; the three Justices of the Peace had until December 31 of this year in which to fill out their terms of office.

They, as a result of this action of redistricting and the effect of 2351-1/2(c), on the day the redistricting order was passed, filed suit in State District Court in Harris County, Texas. And on the following day -- I would amend that. One of the five individual officers filed suit, that was Appellee Moore.

On the following day, the District Court denied a temporary injunction, and without further prosecuting their remedy in the State Courts, they then filed suit in the Federal Court on July 20th of 1973. And --

QUESTION: Mr. Landry, do you think the real problem here is that these people were not allowed to fill out their terms, serve out their terms?

MR. LANDRY: I think that is solely their complaint, Your Honor.

QUESTION: If that had been done, do you think you would have no lawsuit?

MR. LANDRY: I think not whatever, but of course I cannot --

QUESTION: I should ask the other side, but how do you explain the difference between this statute and the one that concerns Commissioners as such, which specifically, as I recall it, permits them to serve out the term?

MR. LANDRY: I think that contention was answered, Your Honor, in the case of Whitmarsh v. Buckley, which is of course set out in our brief.

In Whitmarsh v. Buckley, the Court explained, in distinguishing the right of a Commissioner to continue to serve after a redistricting, which places his residence outside of the precinct from which he was elected, and a situation where there were school district trustees, who, by reason of

a de-annexation, had been placed outside of the school district. The Court of Civil Appeals in that case declared that there was a valid distinction, Commissioners are not precinct officers, they are not elected from the precinct in which they are to reside to represent only the people who reside in that precinct, they are elected to represent the people of the entire county.

Whereas, in this case, the Constable and the two Justices of the Peace of each precinct are elected to represent only the people in the particular precinct in which they are elected to serve.

QUESTION: Well, is that definitively determined as a matter of State law?

MR. LANDRY: Not with respect to the difference between Justices of the Peace and Constables, as opposed to County Commissioners, Your Honor.

QUESTION: Yes, that's what I mean.

MR. LANDRY: And of course that is one of the supporting bases upon which we feel that the District Court should have abstained in this particular case, to give the State Courts the opportunity to decide that very question, because one of the major contentions of the appellees in this case is that they are truly county officers under the State constitutional provision, Article 16, Section 14; and that as a result of being classed as county officers whose

residence need only be within the county as opposed to residents within a precinct, then, under 2351-1/2 they should not be confined to residency within the precinct and 2351-1/2 would be invalid or unconstitutional under State constitutional Article 16, Section 14.

QUESTION: And the result, if that were so, Mr. Landry, would be what, for these petitioners?

MR. LANDRY: They would be able to stay in office, Your Honor.

QUESTION: Yes?

MR. LANDRY: They would -- I would invite the Court to look at the precinct map again. We had Justices of the Peace, Precincts 5, 6, and 7, who were, in effect, ousted from office by effect of the statute.

Now, those individuals would simply go to the new precincts of those same numbers on the opposite page, and they would then be able to fill out their terms of office.

But that question has never been answered by a State Court --

QUESTION: Yes, but they would -- that would not satisfy the voters' claim in this case, would it? The voters are also -- this case also has its Party voters who claim that they voted to have these people as their Justices of the Peace for them, for that jurisdiction, and now --

MR. LANDRY: Well, that is one of the bases on which

the District Court found that the statute was unconstitutional, Your Honor, but we would submit --

QUESTION: And just keeping these people in office and giving them their pay and even allowing them to sit in the news precincts 5, 6, and 7 would not satisfy the voters' claim , would it?

MR. LANDRY: No, it would not. But the fact of the matter is if the District Court's view is correct with regard to that line of reasoning, you could never have a redistricting which changed the line to put a resident or citizen outside of the precinct, that in which he elected an officer. That's right.

QUESTION: Right.

QUESTION: Well, are you suggesting that the three-judge court, as to the voters' claim, in effect said their vote was frustrated by the application of the statute?

MR. LANDRY: I believe that that is what the three-judge court said, Your Honor.

QUESTION: Well, does that -- perhaps I should ask the other side, but would that mean that, for example, suppose there was a position and someone was elected to it, then the Legislature abolished the position, the voters again would be frustrated, wouldn't they?

MR. LANDRY: Well, in that case, I suppose the voters would be frustrated, but we submit that the State

definitely has that power within its own internal political structure.

QUESTION: And that this is no different in terms of the voters?

MR. LANDRY: That's correct. There is no contractual relationship between the voters and the officer, or, as far as that goes, between the officer and the State.

QUESTION: Do you think the three-judge court must have held that there was a federal right of these voters involved, some constitutional, federal constitutionally protected right of theirs to vote for State office?

MR. LANDRY: Well, I think what the court did --

QUESTION: They must have said that.

MR. LANDRY: I think the court said that the rights of the voters and the officers in question were intertwined and any jockeying of the rights of the officers was a jockeying of the rights of the voters.

QUESTION: While I have you interrupted, Mr. Landry, looking again at -- I just want to see how this statute operates.

Suppose, on the redistricting, there is a district in which none of the former JP's or Constables live, then what happens?

MR. LANDRY: Well, under the statute, Your Honor, that particular precinct has a vacancy or vacancies as to those

positions, and the Commissioners Court then proceeds to appoint.

QUESTION: Now, on where you have, as you do, as I understand, in the redistricted 4, you have places only for two JP's and one Constable?

MR. LANDRY: That is correct. As all of these new precincts are now, Your Honor.

QUESTION: Yes. And in 4 you have actually resident there how many JP's?

MR. LANDRY: Three Justices of the Peace and --

QUESTION: No, what happens --

MR. LANDRY: -- two Constables.

QUESTION: And two Constables. Now, do the resident JP's, the two resident JP's, they lose out, do they?

MR. LANDRY: Well, the --

QUESTION: Every one loses out?

MR.LANDRY: No, the three Justices of the Peace, Your Honor, for the two positions authorized --

QUESTION: Yes.

MR. LANDRY: -- obviously they all three cannot fill two positions.

QUESTION: Right.

MR. LANDRY: So the statute says that those three -- two positions are to be considered vacated.

QUESTION: That's what I mean. So none of the

resident -- it would only be if you had two JP's and one Constable living in the district after the redistricting, that this problem would not arise?

MR. LANDRY: That's correct. The statute would then require these two JP's, or entitled these two JP's to fill out their terms of office and would entitle, of course, the Constable to fill out his office.

QUESTION: Then I correctly read the three-judge court, do I, as saying that the reason there is an invidious discrimination here is between those situations --

MR. LANDRY: That's right.

QUESTION: -- where you have only three places to fill and only three people there, they get the jobs; whereas, if you have three places to fill and five people in the district, nobody gets the jobs?

MR. LANDRY: That's correct, Your Honor. The District Court held that because of this differing treatment, that that was invidious discrimination.

And we submit that the State does in fact have a compelling State interest which sustains this statute and this difference of treatment between officers in one precinct and officers in another.

QUESTION: Incidentally, are Justices of the Peace judicial officers under Texas law?

MR. LANDRY: They perform judicial duties, yes, Your

Honor. They handle trials, they have jurisdiction of cases in civil cases up to $200.

QUESTION: Do you think they are judicial officers under our cases?

MR. LANDRY: Your Honor, I'm going to have to frankly say I do not know the answer to that question.

QUESTION: Well, of course you know that we have not applied the Reynolds vs. Sims principles to election of judicial officers.

MR. LANDRY: I must have missed that case entirely, Your Honor. With regard to --

QUESTION: You may just not have -- you haven't run into any cases applying it, that's the thing of it.

MR. LANDRY: No, I have not. We have not. And we submit that the Reynolds v. Sims rule of the one-man/one-vote, of course, simply has no application in this kind of a precinct or this kind of a district.

QUESTION: Well, I'm suggesting that perhaps as to the Justices of the Peace. I don't know whether that would apply to Constables.

MR. LANDRY: Well, of course, Constables have jurisdiction outside of their precinct.

QUESTION: Yes.

MR. LANDRY: They can serve papers outside of their precinct, but the fact of the matter is, by law they are

required to reside within their precinct, as are the Justices of the Peace.

But we submit that the reason for the compelling State interest, which would sustain this kind of a statute and sustain the differing kinds of treatment between officers of the same class, is Texas's requirement of residency within the precinct. And that is the thing that distinguishes, of course, the different treatment between Justices of the Peace and Constables on the one hand, and County Commissioners on the other, following a redistricting of the precincts that --

QUESTION: Justice Blackmun asked you before lunch whether one or two of the --the terms of one or two of these may expire December 31. Are they eligible for reelection?

MR. LANDRY: They were eligible for the general election this year, Your Honor; in fact, one of the appellees in this case, Judge Zaboroski, ran this year after having been ousted as a result of the redistricting.

QUESTION: And did he win?

MR. LANDRY: No, sir, he did not.

Now, the two -- the three Justices of the Peace, of course, their terms end December 31 of this year, the two Constables have two more years following December 31 of this year.

QUESTION: What do you suppose the -- what did the

three-judge court mean by convenience redistricting?

MR. LANDRY: Well, that is the term set out in the constitutional Article -- State constitutional Article 5, Section 18, which is the authority, Your Honor, for the redistricting by a Commissioners Court of its county's justice precincts.

QUESTION: Well, why do they call -- has that got some special meaning, "convenience"?

MR. LANDRY: Well, the phrase, of course, is "for the convenience of the people", and I think probably this --

QUESTION: I see.

MR. LANDRY: -- Court went into great study and great deliberation of that phrase in Avery v. Midland County, and of course in Avery v. Midland County,

QUESTION: Well, they didn't -- we didn't zero in on the word "convenience" --

MR. LANDRY: Well, "convenience" of course, in terms of Justice of the Peace precincts, now that this Court has decided that one-man/one-vote applies to Commissioners Court, "convenience of the people" would include primarily, of course, population, and there's no question but that there was a compelling need to redistrict in this case in light of the gross disparities in population of the old precincts.

In addition to that, there would be the workload, or

the amount of services required by a particular area. For instance, in one precinct there may well be a greater crime rate, which would require greater workload of the Constable as well as the two Justices of the Peace.

There is, of course, the geography, the matter of square mileage. There are any number of factors which the Commissioners Court would consider in arriving at the shape and the size of the new precincts, of these kind of new precincts.

But, in addition to contending that the State does indeed have a compelling State interest to sustain the particular statute in question, that is, the precinct residency requirement of these various offices, and we of course cited and quoted from in our brief the case of Hadnott vs. Amos, an Alabama case involving Circuit Judges of that State, which this Court affirmed.

In addition to that compelling interest we would submit that the District Court should have abstained in this particular case for the reason that there are State constitutional questions, State constitutional considerations which, if decided by the Texas Supreme Court, would give all of the -- in the appellees' favor, would avoid the Federal constitutional question.

Thank you.

MR. CHIEF JUSTICE BURGER: Thank you, Mr. Landry.

Mr. Friloux.

ORAL ARGUMENT OF C. ANTHONY FRILOUX, JR., ESQ.,
ON BEHALF OF APPELLEE GENE ZABOROSKI

MR. FRILOUX: Mr. Chief Justice, and may it please the Court:

Might I just state one short comment in regard to the totality of the atmosphere of this redistricting order, Your Honors, and then get very specifically honing in on the constitutional question.

This redistricting order which took place by a three-two vote of a Democrat majority of three Democrats on the Commissioners Court, took place in quite an unusual set of circumstances.

There was a committee that has been mentioned by the counsel for the petitioner, who had supposedly met and they came up with seven or eight plans. Well, on the night or the eve of the date on which this order was passed, Commissioner Bass by himself, according to the testimony in the Appendices here, designed a new plan at night; did not inform the other Commissioners of it; walked into the court and presented it, and they passed it three-two to go into effect three days later.

I represent Judge Zaboroski, who was the only Republican Justice of the Peace selected at that time in Harris County since reconstruction days.

In our pleadings, when we decided to seek the forum proper to the relief which we felt we were entitled, we filed suit under both civil rights statutes, under those in Title 42, 1983, 1985, and Title 28.

We filed also for the dilution and the abasement of the vote of the class of voters within the respective precincts, and the unequal treatment of voters in the same class, and particularly for political discrimination against a minority party in a county habitually, traditionally, and to date controlled by the Democrat Party. And, even more fundamentally, the unusual and unbelievable circumstance at this time and place -- at this time and circumstance. The use of racial discrimination to create enclaves within a city, which is an admission in the deposition testimony in the Appendices that they were setting up these racial enclaves to assure that certain members of certain, and only certain, ethnic and racial groups would be able to be elected to office and to succeed themselves in office.

And of course, then, malapportionment. The precincts were not in fact brought back into line with any serious attempt at the Avery rule of one-man/one-vote, and the disparity is still as bad as it was.

QUESTION: Well, it isn't as bad as it was, is it?

MR. FRILOUX: Wasn't as bad, but it still is substantially out of line with, I think, our concepts as they

are evolving today, Your Honor.

QUESTION: But you didn't complain of it when it was more porrly apportioned than it is now.

MR. FRILOUX: I don't understand the question. We didn't complain --

QUESTION: Well, you said one of the grounds of your action for the three-judge district court was malapportionment.

MR. FRILOUX: Yes.

QUESTION: And yet you never complained of the even more poorly apportioned Justice districts that existed before the Commissioners took this action.

MR. FRILOUX: Your Honor, when I was employed in this case, I immediately complained about "as it now exists", but I think it's still significantly out of line with the intent and tenor of the Court's decisions in all of the cases requisite to apportionment.

QUESTION: But do you mean you asked that the redistricting be set aside?

MR. FRILOUX: I sure did, Your Honor. That was -- we asked that the redistricting be set aside on the basis that the statute was facially and in its application unconstitutional.

QUESTION: Under what -- oh, excuse me, go ahead.

QUESTION: I'm just trying to get this clear. I

thought all you were after was to get the appellees their jobs back.

MR. FRILOUX: Not at all, Your Honor. We're asking for damages for violation of civil rights, substantial damages; we're asking for damages based on the political discrimination under the Fifteenth Amendment. Our petition is quite extensive.

QUESTION: Well, I understand that, but it's all damages. You didn't ask that they be required to redo this plan on the one-man/one-vote basis, did you?

MR. FRILOUX: We've raised it, that it's unconstitutional because --

QUESTION: Did you ask for that remedy?

MR. FRILOUX: No, I didn't ask for the remedy that the Court issue an order ordering redistricting. I think that should be left to the Commissioners Court to do it as it historically has been done, Your Honor.

Now, in addressing myself to the question of --

QUESTION: What Federal constitutional significance do you think this disparity is?

MR. FRILOUX: It's a dilution of the vote, for one thing, Your Honor. It --

QUESTION: Well, what cases here would indicate that this so-called malapportionment of the JP districts would raise a federal question?

MR. FRILOUX: Perhaps I can answer it this way. First, the State has no obligation whatever upon itself to determine that these offices be done by election. They have an absolute right to have them appointed, or any manner which they presume, as I understand the law. In this case, having assumed and given to the citizens of this State the right to select these people by election, even though they had an option not to do so, at that point the Fourteenth Amendment protections would come into being.

And we say that when you have citizens in one precinct whose vote is not equally effective, whose vote is diluted, then you have the Fourteenth Amendment coming into play.

Now --

QUESTION: But your clients, if there had only been -- your clients were only two in number, JP's --

MR. FRILOUX: Yes, Your Honor.

QUESTION: -- and they both lived in district, redistricted 4, and you had another client, a single client that was a Constable and he lived in the redistricted 4, you wouldn't be here, would you?

MR. FRILOUX: Unless some other one who was thrown out had come to me, Your Honor.

QUESTION: No, no, I'm saying -- if those were your only clients --

MR. FRILOUX: Those people would not be here.

QUESTION: That's right.

MR. FRILOUX: Because they would not have been abused.

QUESTION: Right. And if that were the case, you would not have been seeking a redistricting, a redoing of the redistricting plan, would you?

MR. FRILOUX: That's right, because those particular people would not have complained, they had not been harmed.

But those who came under the alternate provisions would have been harmed, and they would have been here seeking this relief.

There's no way you can take this statute and look at it and justify the fact that people within the same class are treated differently, and office-holders within the same class are treated differently.

QUESTION: Justice White asked you a minute ago what cases from this Court you rely on to raise the federal question as to the districting requirements. What federal -- what cases of this Court do you rely on?

MR. FRILOUX: You mean in so far as asking them to redistrict, Your Honor?

QUESTION: Yes.

MR. FRILOUX: We did not ask for redistricting at this time.

QUESTION: Well, but you say there is a federal or

constitutional malapportionment claim, which I understand you are asserting; what cases of this Court do you rely on to support it?

MR. FRILOUX: I think the same, Avery, and I think Reynolds both, Your Honor, and I think the same ruling that applied to Commissioners would apply here, once the Fourteenth Amendment attaches.

If the Fourteenth Amendment protections exist, so that in truth and in fact the right to vote becomes absolute, then I think the right to have that vote counted equally follows in natural course.

Now, there have been no decisions on this level, as far as I can determine from the law. The Court has ruled definitively on the Commissioners Court.

Now, we are a sub-component -- a sub-political component of the State and the county. The State has seen fit to confer upon the citizens of that particular subdivision the right to vote as a method in which they will select those people who perform these particular duties, whether administrative, judicial, or legislative, on that level.

Once having done that, then we say that the Fourteenth Amendment protections come in, and when they come in I think they carry inherently with them, under these decisions, the fact that they should be counted equally. They should not be diluted. They should not be abrogated, as

this statute does. It allows those who vote for one man to have the benefit of this man serving in office. On the same time, at the same circumstance, it says to another group of people: We're sorry, but you voted for this man, he may still have two years to go -- as my client did -- in office; but we're not going to give you your choice, we're going to put this man that lives in the next precinct, who you never had a choice to vote for, in your precinct. And just absolutely destroy the vote in that case.

And in the third case, where everybody voted for him, and if they still lived within the district, all three of them were there, they declared everybody vacant and then appoint three new people who -- as they did in this case; most of these appointments were political appointees who were friends of this majority court.

Now, the statute -- and I'd like to address myself to the statute itself, because really the basic question is whether the statute itself; within its own provisions, sows -- has the seeds of its own destruction. And that is whether the provisions of the statute, on its face, is, and creates --

QUESTION: May I ask a dumb question?

MR. FRILOUX: Yes, sir.

QUESTION:Are Justices of the Peace judicial officers in Texas?

MR. FRILOUX: They perform judicial functions. They

are a county officer, Your Honor, and they do -- it's never been defined as a pure judicial office, it's not a court of record, but they do do judicial duties.

And I would think in a judicial construction of it it would probably be determined that it was judicial in nature.

QUESTION: And they are covered to the same extent as other elected officers, in so far as this Court is concerned?

MR. FRILOUX: Yes, Your Honor.

QUESTION: And the case being what?

MR. FRILOUX: In so far as judicial officers being covered?

QUESTION: Unh-hunh.

MR. FRILOUX: In regard to Fourteenth Amendment rights, Your Honor, I think the fact that the Commissioners Court, which is a court, would provide some, and the decisions which would return that case would provide some authority for it.

Now, I didn't anticipate this question, and I can't give you a specific decision of this Court which reaches down into this level and says that a Justice of the Peace, of the type we have in Texas, is covered by a Supreme Court decision which says that this must be so.

I don't think it's been met by this Court on this

level, and this is what I think we need to address ourselves to.

QUESTION: Now, you have used the term, Commissioners Court, two or three times; is this an actual court or is it something in the Southern sense, or the New England sense it's different from a judicial court?

MR. FRILOUX: Well, it's called the Commissioners Court. It sits as a court. Its decisions are appealable in a court manner, but it has legislative and administrative duties. It's a hybrid, Your Honor.

QUESTION: Does it actually decide litigated cases?

MR. FRILOUX: No, sir, but the District -- the County Judge himself does hear cases, but the court as an entity makes decisions, it does not sit in normal litigation type circumstances, albeit it's called a court.

But its primary duty is legislative-administrative. As I try to interpret it.

QUESTION: And in other States it's generally called the County Commissioners, isn't it?

MR. FRILOUX: Yes, Your Honor. I think this is an old historical term that's been used, and it's evolved.

QUESTION: In Texas and Missouri and maybe some other States called them the County Court.

MR. FILOUX: Right.

QUESTION: This is why, in Massachusetts, it's

referred to as the Supreme Judicial Court.

QUESTION: Yes.

MR. FRILOUX: Yes, Your Honor.

I need to --

QUESTION: If you would --

MR. FRILOUX: I have a very limited time, because of split argument, and I did want to address myself to one of the first questions asked as to my client and several others, as to whether the relief sought would become moot.

And I would call the Court's attention to the Texas Constitution itself, Article 5, Section 18, wherein it sets out the absolute authority and the mandate of authority to the Commissioners Court. And it provides in each precinct there shall be one elected Justice of the Peace and one Constable, each of whom shall hold his office for a four-year period.

It says for four years; and, comma, until his successor shall have been elected and qualified.

Now, in regard to whether or not this becomes moot, if this statute is found facially unconstitutional, then the office-holders unlawfully removed from office, who are still under the Constitution of Texas itself entitled to and/or the lawful office -- and they can remain in that position until the County Commissioners see fit, either to fill that vacancy or to provide an election as the Constitution says

at the next general election.

So it's not a moot question.

Now, the question of whether or not it should be remanded because of the nature of the office, Article 5, Section 24, is definitive, in my judgment. It says: removal of county officers.

In other words, the Constitution of the State of Texas, at its inception, defined who were county officers, and it says: county judges, county attorneys, clerks of the District and County Courts, Justice of the Peace, Constables, and other county officers, including Justices and Constables, may be removed -- and they set the method of removal.

And no where does the Constitution say that they can be removed by any other body, for any other purpose, than the constitutional reason.

And what we have here with the statute, setting by legislative edict, additional manners of removal. It also sets by legislative edict the manner in which the justices shall be left in office or taken out of office. None of which conforms to the removal section of the Constitution, and none of which is consistent with it, but rather incontravention of it.

Now, the primary objection to this statute on its face is that where three people of the same class, who are elected officials, my client who was removed from office,

Client B who remained by happenstance, because -- or by deliberation when the lines were drawn, which we must not ignore the political realities of life in this case; or, third, where two people who were there and remain but had to go out because two of them resided in a precinct where only one went, so they both were declared vacant.

So we have three people, all elected Justices of the Peace, under this order, who were treated in entirely different ways: one remains in office, two are removed.

And, of course, the same thing applies to the voters. There is no question that where the voters in one precinct vote for their man, and then find out that -- this could happen again next week, incidentally, they have the power to redistrict at any time; the only provision is that very, very general statement "for the convenience of the people".

And the reasons given in this case by the appellant, petitioner here, simply were after-the-fact reasons. They were specified publicly, but in truth and in fact they did little to accomplish what they wanted, except in two areas. They got the people they wanted in office; and they created the minority, ethnic enclaves of two groups that would politically help them in office; which is graphically reflected, and I don't think it can be controverted, in the Appendices of the depositions of the majority Commissioners.

Now, there is one other thing I'd like to call the Court's attention to -- my time is just about up -- and that is that the day before the three-judge court ruled, the Texas Attorney General, who is not here defending this case, even though it has Statewide application to every county in Texas, ruled in an advisory opinion, and it's only advisory, it does not have the standing of law, that Justices of the Peace and Constables elected to full-term are entitled to serve the entire four years, and a redistricting of their precincts by the County Commissioners Court, resulting in a Justice or Constable not living in his precinct, does not vacate his office.

Obviously they read the constitutional provisions I've addressed to the Court; also the rulings in relation to the Commissioners Court in an attempt to have equal treatment of officers within the same area. And we say because of these three variances, both as to voters and as to persons within the same class, that this statute, on its face, in itself, is unconstitutional, and would --

QUESTION: If the Attorney General takes that position, why isn't he here?

MR. FRILOUX: I don't know, Your Honor. We requested -- I think my co-counsel requested that he appear, and he declined.

QUESTION: Well, if the Attorney General's -- if that

opinion of the Attorney General should turn out to be the law of Texas, then you wouldn't have the same lawsuit you have now at all, would you?

MR. FRILOUX: Not in the future, Your Honor.

QUESTION: And doesn't that suggest that the District Court should have at least abstained, to find out what the law of Texas is?

MR. FRILOUX: No, because they have historically ignored, generally, the opinion -- these are advisory question-and-answer sessions. We could not get the relief sought, Your Honor, in a Texas court, in any type of reasonable or equitable time. They had no right to give us the relief under the Civil Rights Act. They had never addressed themselves or have never -- there are statutes which would have allowed the political discrimination Act to be brought up.

They have no declaratory act of a similar nature of the federal court to go directly to the Texas Supreme Court, albeit one of the respondents tried, and was denied where they had an opportunity and refused it. All they have is a right of mandamus to direct ministerial acts in those perfunctory tasks.

So we had to either come to Federal Court with substantial questions, with a chance for resolution, or stand by and go to the District Court -- it takes 16 months in

Houston to get a case heard -- go to the Court of Appeals, another four to six months; go to the Texas Supreme Court, hoping that somewhere within the next three to four years we might seek relief -- all of the time we had no equitable --

QUESTION: Well, but the District Court issued a decree on the hypothesis that the Texas law provided for one thing, and you've now just told us that that's far from clear.

MR. FRILOUX: What is that, Your Honor?

QUESTION: I don't see how any Federal Court can decide a case if the State law is unclear.

MR. FRILOUX: I don't think the statute -- our position is that the statute on its face is not unclear. It's --

QUESTION: Well, you just told us that the Attorney General of the State of Texas told us that it meant something quite different.

MR. FRILOUX: Well, this is an opinion, Your Honor, that I think the Attorney General felt that because -- and he gave it in the face of --

QUESTION: Right.

MR. FRILOUX: -- of the statute, I realize that. But -- simply, I wish he hadn't, because we had the matter in litigation. But he was not aware, I'm sure, of the fact that it was before a three-judge federal court.

Again, it has no legal bearing in the State of Texas.

and significantly, I guess, he's --

QUESTION: But the Attorney General's opinion wouldn't reach -- wouldn't solve the voters' claim, would it?

MR. FRILOUX: None whatsoever, Your Honor. It would have no -- it would only address itself to the limited question of, Could they stay in office? Now, these people --

QUESTION: Yes.

QUESTION: The tenure of the office-holders, not --

MR. FRILOUX: That's all. Would not address itself to the substantial questions in the voting.

QUESTION: Right.

MR. FRILOUX: Thank you, Your Honor.

MR. CHIEF JUSTICE BURGER: Mr. Gilleland.

ORAL ARGUMENT OF JOHN G. GILLELAND, ESQ.,

ON BEHALF OF THE APPELLEES

MR. GILLELAND: Mr. Chief Justice, and may it please the Court:

To further answer some of the questions that the Court apparently has in regard to whether or not the Texas law can solve some of the problems, I'd like to give the Court a brief history of the prior law, prior to 1965, when 2351-1/2(c) came into existence.

Article 5, Section 18, which is the State constitutional provision governing the Justice of the Peace and

the Constables and Commissioners, was adopted by the residents of the State of Texas in 1876. That Constitution is still in effect.

In 1895 we had a definitive decision by the Supreme Court of Texas interpreting Article 5, Section 18, on the matter of redistricting Justices of the Peace and Constables. I have cited the case in my brief, Your Honors, and that case is styled Rigsby v. Dowlen, of course decided by the Supreme Court of Texas.

Again, 1922, in a case styled Williams v. Castleman, the Supreme Court further interpreted Article 5, Section 18.

Now, both of these cases, both by the highest appellate court in the STate of Texas, concluded that when Justice of the Peace and Constable precincts are redistricted, when the old precincts cease to exist and the new order becomes effective, that the new offices come into existence vacant.

Now, then, to relieve some of the harsh effects of the Supreme Court decisions, interpreting Article 5, Section 18, the Legislature in 1965 passed 2351-1/2(c).

One problem that we have had, and we have had to resort to the Federal Court, is because of the prior rulings of the Supreme Court of the State of Texas.

If we were to attack in a State Court the provisions of 2351-1/2(c), which we would of necessity have to do, because

that's the tool that was used by the county in removing the appellees from office, assume that we were successful in our attack, challenging the constitutionality of 2351-1/2(c) before a Texas Court, the Supreme Court, then the doctrine of stare decisis would re-implement the decisions of Williams v. Castleman and the Rigsby case of 1895 in their interpretation of Article 5, Section 18, leaving the appellees in a worse position than they were prior to challenging 2351-1/2(c).

QUESTION: Now, the 1965 Act was just designed to ameliorate part of the consequences of those Texas constitutional decisions.

MR. GILLELAND: That is correct, Your Honor. So that is the main problem --

QUESTION: Wouldn't you have the same result -- why wouldn't that be the case if a three-judge court holds these Acts unconstitutional?

MR. GILLELAND: That we would have to challenge the --

QUESTION: I know, but why wouldn't -- if the 1965 legislation is unconstitutional, aren't you back at where you were before?

MR. GILLELAND: Your Honor, it would be my position that the declaratory judgment that we sought in the three-judge panel hearing, and that was subsequently issued by that court, was that any -- that 2351-1/2(c) was facially

unconstitutional. And of course its effect was to remove an elected official from office, and in the opinion of the Court it states specifically that any Act, or this particular Act, that would remove an elected official --

QUESTION: Yes, but under the old law, all of the offices were vacated.

MR. GILLELAND: That is correct, Your Honor.

QUESTION: So there wasn't any discrimination.

MR. GILLELAND: That is correct.

QUESTION: Wouldn't the three-judge district court have had to hold the Texas constitutional provisions invalid, too?

MR. GILLELAND: No -- would you repeat your question, sir?

QUESTION: Well, since the '65 Act was just to ameliorate some of the conceived hardships visited by the earlier Texas decisions interpreting the Texas Constitution, if the three-judge district court were going to restore your people to office, wouldn't it have had to hold those Texas constitutional provisions unconstitutional under the Federal Constitution?

MR. GILLELAND: Your Honor, I would probably agree with the Court that it would and should have gone further in its decision, I believe that that matter was attacked in the lower court; but the three-judge panel did not address itself

to all of the issues that were raised at that level, and they in fact concluded on two particular issues, with reference to equal protection and due process of the Fourteenth Amendment. One being that legislative classification, where you have one officer who stays in office simply because of where he lives after redistricting, and another is removed simply because of where he lives after redistricting, that that act in itself is invidious, and discriminatory.

And their second holding would be that the due process clause guarantees the right to vote, that the right to vote is a fundamental right, and that the Act which would cut short or abridge the right of the voter by cutting short the term of the office of the elected official violates the due process --

QUESTION: Then the due process theme of the three-judge district court would hold that the Texas constitutional provisions invalid, just as surely as it would the '65 legislative Act?

MR. GILLELAND: I see what the Court -- yes, sir. Just carrying it one step further in reasoning, it would, even though it wasn't specifically set out in the Court's order.

QUESTION: Now, what the order of the Court did was not to keep these people in office simply, but to absolutely enjoin the redistricting, didn't it?

MR. GILLELAND: Yes, sir. I don't recall the specific order, except I believe it said that Article 2351-1/2(c) was facially unconstitutional, and that they were enjoined in so far as removing these elected officials.

QUESTION: No, it didn't say anything of the kind. No, it didn't --

MR. GILLELAND: Maybe I'm wrong.

QUESTION: -- it was much broader. It said the order of the Commissioners Court of Harris County, Texas, of June 28, 1973 -- and that was the redistricting order. In other words, the redistricting order complained of is therefore permanently enjoined.

MR. GILLELAND: That is correct, Your Honor.

QUESTION: On page 35 of --

MR. GILLELAND: Yes. On page 40 of Appellee Moore's brief, Your Honor.

QUESTION: Right.

MR. GILLELAND: That is correct. They enjoined --

QUESTION: Didn't allow any redistricting at all.

MR. GILLELAND: Under the terms of 2351-1/2(c).

QUESTION: Well, under -- yes. Well, just didn't allow any redistricting --

MR. GILLELAND: That is correct.

QUESTION: -- any redistricting that would result, presumably, in the change of a residence of a magistrate or

a commissioner or JP.

MR. GILLELAND: Yes, sir.

Your Honor, if I may carry that argument one point further, on the matter of redistricting, we are not --

QUESTION: What the opinion says is --

MR. GILLELAND: No, sir, the --

QUESTION: The order says that.

QUESTION: But this says only in so far as defendant's order of January 30 undertakes to appoint other persons.

QUESTION: The Court speaks through its order. This order was entered, I suppose, wasn't it? This was --

MR. GILLELAND: Yes, it was entered, Your HOnor. That is --

QUESTION: At page 35, beginning on page 34.

MR. GILLELAND: Yes, sir.

QUESTION: The Court speaks through its order, I suppose, in Texas, as it does in most places.

MR. GILLELAND: Yes, sir, it does, Your Honor. And it would be my contention, should we seek to hold someone in contempt, it would be by virtue of the order and not the opinion.

QUESTION: Right. Right.

MR. GILLELAND: But the position of the appellees is not that we did not seek --

QUESTION: Who drafted the order of the Court?

MR. GILLELAND: Your Honor, as far as I know, Judge Singleton, who was the Presiding Judge of the three-judge panel, from the Southern District of --

QUESTION: Not counsel?

MR. GILLELAND: Sir?

QUESTION: Not counsel?

MR. GILLELAND: No, sir.

QUESTION: You didn't ask to submit an order?

MR. GILLELAND: No, sir.

QUESTION: It's certainly inconsistent with what the concluding paragraph of the opinion says, isn't it?

MR. GILLELAND: Yes, sir. I'm in agreement. I think that I was quoting the opinion rather than the order a moment ago.

QUESTION: Yes.

MR. GILLELAND: But for the Court's consideration, we are not challenging the redistricting as such. We will be the first to admit and stipulate that redistricting is needed.

QUESTION: Well, what the order does, it sets it aside.

MR. GILLELAND: Yes, sir, simply because the effect of that order is to remove elected officials from office, --

QUESTION: I know, but if we affirm, then that redistricting goes out the window, doesn't it?

MR. GILLELAND: That particular redistricting, Your Honor; but under Article 5, Section 18, the Commissioners Court of Harris County, Texas, would still have the authority to redistrict pursuant to any instructions that they might have.

QUESTION: Incidentally, may I ask -- your colleague argued the inconsistency between Section 24 of your State Constitution -- that's the removal section?

MR. GILLELAND: Yes, sir.

QUESTION: -- and Section 18. In those earlier -- in those earlier Texas Supreme Court decisions, was that supposed inconsistency argued, do you know, and decided?

MR. GILLELAND: Well, with reference to county officers, sir?

QUESTION: Well, the county officers, including Justices of the Peace.

MR. GILLELAND: Yes, sir.

Your Honor, as far as I know, under Texas law, including the statement Mr.Landry made to the Court, there is no requirement that an elected official reside in the precinct in which he is elected.

The only requirement is that the election code requires that you be there to be elected.

QUESTION: I'm afraid I haven't made myself clear. Section 24, as I understood your colleague, he argues that

there is an inconsistency that that's the only way you can remove a Justice of the Peace from office. In other words, for cause shown, being set forth in writing and the finding of truth by the jury.

MR. GILLELAND: Your Honor, that would be an inconsistency between 2351-1/2(c) and the constitutional --

QUESTION: No, it would be also an inconsistency between -- would it not -- Section 24 and Section 18? Independently of the statute.

MR. GILLELAND: Yes, sir, that is correct, Your Honor.

QUESTION: Well, what I'm asking is, in those early Supreme Court decisions, did they ever address that alleged inconsistency?

MR. GILLELAND: No, sir.

Thank you for the opportunity for appearing.

QUESTION: Mr. Gilleland, --

MR. GILLELAND: Yes?

QUESTION: -- let me ask you one question before you sit down.

About just what is going on in Harris County now, in connection with this. As I understand it, the three-judge district court judgment was entered January 30th, and on -- in 1974 -- on February 4th, 1974, Justice Powell granted a stay and the full Court, our full Court declined to set it

aside on February 19th.

Now, has anything happened to carry out the Commissioners Court's orders?

MR. GILLELAND: Yes, sir, Your Honor. Our election deadline was on February the 4th, the day that Justice Powell entered his order, and the boundaries as established by the redistricting order of the Court were permitted to carry through in our Democratic and Republican Primaries, and consequently we have now officials who have been elected at the General Election, as of last Tuesday, from the new boundaries.

QUESTION: Well, in other words, the district court's order was -- was stayed; was stayed. I see.

MR. GILLELAND: Yes, sir.

And so the effect of the staying order removed my officials again from office, who took office on the 1st and they were back out on the 4th.

QUESTION: Right.

MR. GILLELAND: Yes, sir.

QUESTION: But they have, and you have surviving a damage claim, don't you?

MR. GILLELAND: We hope we do, Your Honor. That question hasn't been --

QUESTION: Well, I mean, you asserted one.

MR. GILLELAND: We did assert one, Your Honor, but

it has been denied by the county. We've made demand on several occasions for it.

QUESTION: Did you have -- did you assert a damage claim -- a damages claim before the three-judge court?

MR. GILLELAND: Nc, sir, it has not been asserted, it is on file, a motion is on file, but the court has not ruled yet as to whether or not it will hear the issue of damages before the three-judge panel.

We expect the Court to address itself to that question in the near future.

QUESTION: But you think they -- if you win?

MR. GILLELAND: Yes, sir.

QUESTION: Yes.

QUESTION: Your complaint in the federal court did pray for damages?

MR. GILLELAND: Yes, sir.

Thank you.

MR. CHIEF JUSTICE BURGER: Do you have anything further, Mr. Landry?

REBUTTAL ARGUMENT OF EDWARD J. LANDRY, ESQ.,
ON BEHALF OF THE APPELLANTS.

MR. LANDRY: Yes, Your Honor.

I would just answer some of the contentions made by counsel for the appellees.

First, with respect to Mr. Friloux' charge that

this redistricting was bottomed on racial discrimination basis. I would submit that that is not consistent with this Court's decision in White v. Rejester, in which the Court upheld the ruling of the district court striking down multi-member districts in Texas on the ground that they suppressed minority participation in the political arena.

In this particular case, the Commissioners made no bones about the aim, as one of the objectives of this redistricting, to promote minority participation; and to that end they did in fact, in a precinct with some 35 percent Latin American population, appoint a Latin American Constable as well as two Justices of the Peace of Latin American extraction.

Also with regard to Precinct No. 7, which had a 58.4 percent black population, they appointed one Negro Constable and two Negro Justices of the Peace.

We would submit to the Court that that objective of many that are set out at page 5 of Appellants' Brief, is a laudable one on the part of the Commissioners Court.

With respect to Mr. Friloux and Mr. Gilleland's contentions that Article 5, Section 24 of the Constitution, that is the State Constitution, classifies these officers as county officers. That may well be true, but in the Whitmarsh v. Buckley case, which is a Court of Civil Appeals case, no writ history, the fact of the matter is there the Court

classed school district trustees as county officers, and yet they applied Article 1.05 of the Election Code to say that they were confined to residency within the school district, which was an area less in size than the county as a whole.

And whether or not these individuals are county officers, we would submit, is not a question for this Court to decide. It is a question truly for the Texas Courts to decide, as to whether or not these officers are county officers under the State Constitution, and whether or not they should be treated the same as the County Commissioners, in Section B of the statute.

QUESTION: May I ask, Mr. Landry, did you make any point before the three-judge court of the seeming broader order than the last paragraph of the opinion indicated would be entered?

MR. LANDRY: Your Honor, no, we did not. We of course had not been before the district court except to seek a stay of its order.

QUESTION: Oh, you weren't involved in the defense of that suit?

MR. LANDRY: Yes, we were, Your Honor. Maybe I misunderstood your question.

QUESTION: No, I -- reading this order, it's broader than the opinion indicated would be given to the plaintiffs

in this --

MR. LANDRY: That's correct. But, as I have said in answer to the question, we've only been before the court since the order, in an attempt to seek a stay.

QUESTION: And didn't argue that this is broader than what you said in the opinion --

MR.LANDRY: No, we did not, Your Honor.

But, of course, we argued that it, the order, was far overreaching when we sought the stay from Mr. Justice Powell.

QUESTION: Which came down first, the opinion or the order?

MR. LANDRY: The order came down on --

QUESTION: Then the opinion was followed -- didn't it?

MR. LANDRY: Yes, Your Honor. The order came down on January 30th, the opinion came down on February the 8th.

We, of course, have discussed at great length the seeming disparity. We have assumed that the order is to be read in the light of the court's opinion, and therefore the order is much tempered by the opinion, of course.

QUESTION: But the opinion followed, and you think that, in effect, modified the order, or not?

MR. LANDRY: Well, that's just our opinion, Your Honor.

QUESTION: Well, in any event, you didn't go to the court and say, Look, your opinion now is much narrower than the order, and we --

MR. LANDRY: Well, we haven't had to, Your Honor, in the light of Mr. Justice Powell's stay, and in, of course, the hope that this Court will provide us with the relief that we're seeking.

I would just close out with the following:

With regard to Article 2351-1/2, two United States District Courts have now abstained from deciding questions involving the construction of that statute, albeit both were Section (a) of the statute.

The Attorney General of Texas has now, with three different advisory opinions, declared either section (a) or section (c) unconstitutional under the State Constitution.

One Texas Court of Civil Appeals has actually applied the statute.

The statute is just begging for a definitive construction by the Texas Supreme Court, and we would submit that the proper disposition in this case would be for this Court to reverse the judgment of the District Court and remand the cause to that Court with the instructions to abstain from deciding the case on the ground of abstention.

QUESTION: The trouble with that, Mr. Landry, according to your brothers, is that there is no prompt way of

-- for getting a resolution, or construction under the Texas Courts; that your Harris County Courts are terribly behind and impeded, there's no provision for a declaratory judgment. We heard all this, as you did, from your brothers today.

Do you differ with them on this?

MR. LANDRY: I deffer very greatly, Your Honor. There certainly is declaratory judgment provisions in the Texas statutes. I don't know which Courts that my adversary counsel get -- encounter --

QUESTION: He represented to us professionally that this would be a very long procedure.

MR. LANDRY: There is no question that there may be some delay, but it is not an unreasonable delay.

QUESTION: Mr. Landry, a number of States now have statutes which permit certification from a Federal Court to their highest court of a State for the disposition of a question of State law. Does Texas have such a statute?

MR. LANDRY: Your Honor, I --

QUESTION: A uniform statute on the subject.

MR. LANDRY: -- I simply do not know the answer to the question.

QUESTION: Do you think this Court has inherent powers to certify to a State whether it has a statute of that kind or not? Or haven't you given it any thought?

MR. LANDRY: I have not given it any thought, Your

Honor, but I would certainly think that the Supreme Court of the United States would have that kind of power.

MR. CHIEF JUSTICE BURGER: Very well.

Thank you, Mr. Landry.

Thank you, gentlemen.

The case is submitted.

[Whereupon, at 1:57 o'clock, p.m., the case in the above-entitled matter was submitted.]

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