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In the

Supreme Court of the United States

UNITED STATES,

PETITIONER,

V.

BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL.,

RESPONDENT.

No. 76-1662

Washington, D. C.
October 11, 1977

Pages 1 thru 28

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IN THE SUPREME COURT OF THE UNITED STATES

UNITED STATES, Petitioner,	:	
v.	:	No. 76-1662
BOARD OF COMMISSIONERS OF SHEFFIELD, ALABAMA, ET AL., Respondents.	:	

Washington, D. C.

Tuesday, October 11, 1977

The above-entitled matter came on for argument at 10:05 o'clock a.m.

BEFORE:

WARREN E. BURGER, Chief Justice of the United States
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
JOHN P. STEVENS, Associate Justice

APPEARANCES:

DREW S. DAYS, III, ESQ., Assistant Attorney General, Department of Justice, Washington, D. C. 20530, for the Petitioner.

VINCENT J. McALLISTER, JR., ESQ., P.O. Drawer N, Sheffield, Alabama 35660, for the Respondents.

C O N T E N T S

P R O C E E D I N G S

MR. CHIEF JUSTICE BURGER: We will hear first this morning Number 76-1662, United States against Board of Commissioners of Sheffield, Alabama.

Mr. Days.

ORAL ARGUMENT OF DREW S. DAYS, III, ESQ.,

ON BEHALF OF THE PETITIONER

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

This case presents the question of whether all voting changes within a state designed under Section 4(b) of the Voting Rights Act of 1965 must be precleared under Section 5 of the same act.

The facts of the case are these: In August 1965, the State of Alabama was declared subject to Section 4 of the Voting Rights Act of 1965. In March 1975, the City of Sheffield, Alabama, notified the Attorney General that it was submitting to its electorate a referendum on the question of whether it should abandon its present three-member commission form of government and return to an aldermanic or mayor-council form like that which governed Sheffield until 1912.

The Attorney General responded within the appropriate 60 day period that he would not interpose an objection under Section 5 to the holding of the referendum which by that time had already carried, but stated that any voting changes made

in order to implement that referendum, approving the return to the mayor-council form, would be subject to preclearance.

The City of Sheffield's submission to the Attorney General of these proposed voting changes was completed in May 1976. In essence, Sheffield was prepared to go to a system in which a mayor and a nine-member council would govern. The city would be divided into four wards. The mayor and council president would be elected at-large, without any residence requirement. The other eight council members would be elected at large as well, two from each ward, under numbered post and residence requirements.

In July 1976, the Attorney General informed the city that he would not interpose an objection to the at-large system for electing the mayor and council president, but would object, under Section 5, to the arrangements for electing the eight council members. Thereafter, no declaratory judgment was sought by the City of Sheffield before a three-judge court here in the District of Columbia, as provided by the Act.

In August 1976, this action was commenced by the United States to enjoin elections scheduled by the City of Sheffield, pursuant to an arrangement for electing the eight council members to which the Attorney General had objected. A temporary restraining order was denied by a single court -- single judge court and the election was held.

In December of 1976, a three-judge court dismissed

the Government's complaint on the ground that the City of Sheffield was not a political subdivision, as defined by the Act, because it did not conduct registrations for voting. Therefore, the court held, it was not subject to the pre-clearance requirements of Section 5. It held additionally, one member dissenting, that even if the City of Sheffield were a political subdivision under the Act, the Attorney General waived his right to object to specific elements of the mayor-council form of government once he indicated he had no objection to the holding of the referendum itself.

The three-judge court was clearly correct in finding that the City of Sheffield was not a political subdivision as defined by the Act.

QUESTION: When the Attorney General responds to a Section 5 request, Mr. Days, does he ordinarily categorically affirm or disapprove, approve or disapprove, or does he sometimes say --

MR. DAYS: He does not.

QUESTION: -- there are just no objections.

MR. DAYS: In some cases he says there are no objections. In other cases request is made for additional information. In other cases we indicate, acting on behalf of the Attorney General, that there is not adequate information upon which the Attorney General can exercise his responsibilities under the Voting Rights Act.

In this particular case, having to do with the holding of a referendum, it is not unusual for the Attorney General to permit the city to go ahead with the referendum, reserving the right to see exactly what the impact of that referendum will be on voting rights, if in fact the referendum has carried.

We respectfully submit that the three-judge court erred, however, in including, based upon its determination that Sheffield was not a political subdivision alone, that the city was not required to submit voting changes under Section 5 for preclearance. Such a reading finds little support in the language of the statute itself in its original legislative history, in decisions of this Court, in the administrative practice of the Attorney General, and in the circumstances surrounding the extension of the '65 Act twice, in 1970 and in 1975.

The language of the statute, properly read, speaks in terms of geography, geographic factors, not functional terms. Section 4(b) indicates that the substantive provisions of the Act shall apply in any state which satisfies the provisions of 4(b), namely, that it maintained a test or device on a date specified in the Act and, secondly, that less than 50% of its voting age population was registered or voted on the date specified in the Act. Once that is established, then 4(a) requires that no citizen shall be denied the right

to vote in any state or local election because of his failure to comply with any test or device in that state. The preposition "in" as used in Sections 4(a) and 4(b) should reasonably be read to mean within the geographic confines of, in the absence of any evidence to the contrary. Reference to local as well as federal and state elections reflects the reach of the Act's provisions to all public elections held within a state, not just those conducted under direct state supervision.

Moreover, the language of Section 4(a) which describes how a state covered under the terms of 4(b), may terminate such coverage, requires the state to show that for an express period of time no denials or abridgments of the right to vote on account of race or color, through the use of such tests or devices, have occurred anywhere in its territory. The word "territory" is not defined in the Act, but it is commonly regarded as a geographic, not a functional, term.

Where a state meets the first requirement of Section 4(b), namely, it maintained a test or device, but does not satisfy the second, the entire state may not be subject to the provisions of 4(a). Under such circumstances, the Act reveals that a political subdivision of that state may be covered, however, as a separate unit. The use of the conjunctive phrase, "in any state or in any political

subdivision of a state" in 4(b) dictates such a reading. It is at this point that the definition of this separate unit, the political subdivision, becomes pertinent, for only one in which less than 50% of the voting age population has registered or voted on the specified date can be designated.

Section 14(c)(2) defines the political subdivision as any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish. The term shall include any other subdivision of a state which conducts registration for voting. Thus a county or parish or any other entity that supervises the conducting of elections which does not meet the less than 50% of the voting age population provision cannot qualify as a political subdivision for purposes of the Act.

QUESTION: You concede, I take it, Mr. Days, that Sheffield, Alabama, does not fall under that statutory definition of political subdivision.

MR. DAYS: We do concede that. It is not a political subdivision under the Act. But we submit that the term "political subdivision" has no operative significance under the Act unless it is tied to the percentage-triggering mechanism of 4(b).

As this Court has recognized, Congress intended through the enactment of the Voting Rights Act to rid the country of racial discrimination in voting. The Act, itself,

was designed not only to end discriminatory practices which Congress had found denied or abridged the right of citizens to vote on account of race or color, but also to reach new practices in the future that might have similar purpose or effect. Congress was urged by the Department of Justice to enact the 1965 legislation because it had concluded that powers given to it under earlier statutes to enforce the Fifteenth Amendment on a case by case basis had proven ineffective. This ineffectiveness had stemmed largely from the persistent creation of new stratigems to perpetuate racial discrimination in voting as soon as present tactics were outlawed. In response, Congress marshaled an array of potent weapons against this evil, with authority in the Attorney General to employ them effectively.

There is nothing in the legislative history of the 1965 Act to support the view that when a state was brought within its provisions Congress intended to include certain types of voting changes within that state from preclearance while excluding others. The reach was clearly designed to be geographic and to affect actions of the state, state being defined traditionally under the Fourteenth and Fifteenth Amendments to include any instrument of the state, such as cities or other governmental bodies. The legislative history of the Act also makes clear that the term "political subdivision" was defined in 14(c)(2) for very practical reasons.

In those situations where an entire state was not covered under 4(b), the only smaller geographic area for which the Director of Census could make a determination under the formulation of 4(b)(2), as to the percentage of voting age population that was registered and voting in the 1965 Presidential election, was the county or parish.

Although Congress has never explicitly addressed the issue presented in this appeal, Congress extended the Voting Rights Act in 1970 and in 1975 under circumstances that justify the conclusion that it understood the preclearance provisions of Section 5 of the Act to apply to all voting changes occurring within a state or political subdivision designated under Section 4(b).

First, Congress was aware of the fact that the Attorney General, the federal official charged with responsibility for administering the Act, had consistently interpreted it to require preclearance of all voting changes within covered states or political subdivisions, irrespective of whether the submitting authority supervised the conduct of registration for voting.

During the consideration of the 1970 extension, the failure of the City of Anniston, Alabama, in 1968 to obtain preclearance of a change in its electoral system was brought to the attention of Congress as an example of why an extension of the Act was required. Anniston, like Sheffield, does not

conduct registration for voting.

QUESTION: Is it clear, Mr. Days, from that colloquoy, the part of the legislative history you are relying on, that Congress focused on whether or not the particular subdivision conducted registration for voting?

MR. DAYS: It is not clear that Congress focused on that particular issue to determine whether the reach was going to be down below the county or parish level, but we think that the environment does indicate that Congress understood what the reach would be. There is nothing in the legislative history that specifically indicates that Congress was concerned with the city or school board level of election.

In 1975, my predecessor, J. Stanley Pottinger testifying in favor of further extension of the Voting Rights Act, informed Congress that Section 5 objections had been lodged against the cities of Birmingham, Talladega and Mobile in Alabama between 1970 and 1973, as well as against cities in a number of other states.

Between August 6, 1965, and May 1, 1977, the Attorney General has received more than 8,000 proposed changes by nonvoter registering political units.

QUESTION: Mr. Days, what is a local subdivision which is not a political subdivision as defined by the Act? It isn't a political subdivision, but is it the state?

Section 5 says that whenever a state or political

subdivision makes a change it is supposed to submit.

Now, if it is neither one of those, why is it required to submit or how does it even get to the Attorney General?

MR. DAYS: Well, the interpretation that we urge upon the Court is that once a state is covered then all political units --

QUESTION: I know it could be that it is covered for purposes of Section 4 but there might be a clearance procedure there going to court, but this Section 5 just says "whenever a state or political subdivision makes a change."

MR. DAYS: Well, I think it says --

QUESTION: You don't say the subdivision is a state, do you?

MR. DAYS: I do not, but --

QUESTION: Well, how does Section 5 apply to a non-political subdivision, unless it is the state?

MR. DAYS: I think that the interpretation of the term "state" as reaching to all governmental units that are creatures of the state is how that should be interpreted. We are not particularly concerned whether a city actually does the submitting. The state attorney general could do that.

QUESTION: For purposes of Section 5 then, the political subdivision is just irrelevant, I take it, if a state is covered.

MR. DAYS: That's exactly correct, Your Honor.

QUESTION: Then what meaning does the language, "political subdivision," have, Mr. Days?

MR. DAYS: I think its meaning is tied to the triggering mechanism under 4(b)(2). In other words, the Act is not designed to cover every political subdivision. It covers only political subdivisions within those states that have tests and devices and which meet the 50% or below 50% triggering mechanism.

One cannot understand the use of the phrase, "political subdivision," in 4(a), for example, merely by looking at 14(c)(2). One has to look to 4(b)(2) and that triggering mechanism to understand what it means. If one were to look at 14(c)(2) alone and then look at 4(a), the conclusion that one would have to reach is that any county or parish that conducted registration would be covered by the Act, even though it did not meet the below 50% triggering mechanism. In other words, 14(c)(2) is defined in part by the triggering mechanism of 4(b)(2).

QUESTION: I think a political subdivision can be covered even though the state in which it exists is not.

MR. DAYS: That is correct.

The three-judge court, itself, recognized that once a state was covered every political subdivision within the state would be covered as well. Of course, under those

circumstances, counties within the State of Alabama would not be specifically designated. They would come in along with the state designation. And it makes little sense, we submit, to suggest that subdivisions below the county or parish would not also be brought in under that logic.

I might say that over 700 of such changes submitted to the Attorney General from Alabama, under Section 5, have come from nonregistering units within that, such as cities.

The second thing that Congress was aware of was the fact that this Court had construed Section 5 to reach voting changes in covered states or political subdivisions that altered the election law in even a minor way, even where such changes did not relate directly to the registration process itself.

This Court's decisions in Allen were specifically mentioned in the testimony in legislative history of the 1970 extension. And the Perkins decision was much discussed in the proceedings leading up to the 1975 extension, particularly as it related to ending voting discrimination in Texas cities. Moreover, Congress was aware that the Attorney General had adopted a reading of Section 5 consistent with this Court's rulings in Allen and Perkins to reach changes involving redistricting, annexations, relocation of polling places and of election laws relating to numbered posts, staggered terms and candidate filing fees, at the state, county and city level.

We respectfully submit that the factors I have described demonstrate that the interpretation given Section 5 by the three-judge court exempting certain voting changes within states designated under Section 4(b) from preclearance requirement, depending on whether they supervise the conducting of registration for voting, is erroneous and should be reversed.

Over half of the submissions to the Attorney General since 1965 have been from non-registering governmental units. The intent of Congress to subject to Section 5 preclearance voting changes of governmental units that did not conduct registration is most clearly seen in the legislative history of the 1975 extension, for there the major focus of the testimony and debate over extending coverage to the State of Texas was that it would serve to check changes to at-large majority runoff systems by cities and school boards, governmental entities that do not conduct registration in the State of Texas.

If the court below was correct, then Congress which enacted the Voting Rights Act in 1965 and extended it twice, thinking that its provisions would eradicate the insidious and pervasive evil of discrimination in voting, devised a solution that missed the mark by half.

Your Honor, at this time, I would like to reserve additional time for rebuttal.

MR. CHIEF JUSTICE BURGER: Very well, Mr. Days.

Mr. McAlister.

ORAL ARGUMENT OF VINCENT J. McALISTER, JR., ESQ.,

FOR THE RESPONDENTS

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

"I speak tonight for the dignity of man and the destiny of democracy. I urge every member of both parties, Americans of all religions and of all colors, from every section of the country to join me in that cause. At times history and fate meet at a single time in a single place to shape a turning point in man's unending search for freedom. So it was at Lexington and Concord. So it was a century ago at Appomattox. So it was last week at Selma, Alabama."

From that lofty and noble beginning by President Johnson in March of 1965, the Voting Rights Act was presented to a Joint Session of Congress. Today, twelve and a half years later, I appear before you representing the City of Sheffield, Alabama, in a suit which we think is out of the shadows and perversion of that great Act.

Sheffield, Alabama, is a city of 13,000 people. We are located in Northwest Alabama, about 20 miles equal distance from Mississippi and Tennessee. We are on the banks of the Tennessee River, 40 miles upstream from Shiloh Landing, a part of the Muscle Shoals and Tennessee Valley Authority area.

Our town began in 1885 with a mayor-council form of government which we retained until 1912 when we changed to a commission form of government. The commission form remained in force from 1912 until 1975 when, as a result of a special referendum, the citizens elected to revert back to the mayor-council form.

The laws of the State of Alabama govern the creation, organization and function of cities in the state. The law requires that in cities of Sheffield's population that -- cities holding a mayor-council form of government -- that the councilmen be elected at-large and reside within the wards established.

The change in the form of government in Sheffield in 1975 was precipitated by voter apathy in the commission form, a desire to have a full-time mayor and the hope for more citizen involvement in local government.

In March of 1975, prior to the referendum, the mayor of the City of Sheffield wrote the Attorney General advising of the proposed referendum and the Attorney General replied that he did not interpose any objection to the referendum.

Let me stop at this point to emphasize that under Alabama law once you elect through a referendum and the citizens vote in the referendum to change the form of government, that sets in motion a chain of events that cannot be

stopped by the will or choice of any elected officials in the city. The city must then prepare for the change from the commission to the mayor-council. That involves qualifications of candidates, setting of election dates, establishing of the wards.

QUESTION: At the time you wrote to the Attorney General, you certainly must have thought that Sheffield was covered.

MR. McALISTER: Well, the Mayor wrote that letter.

QUESTION: Well, he thought that Sheffield was covered, didn't he?

MR. McALISTER: He thought that possibly it was covered.

QUESTION: Any doubt expressed in his communication?

MR. McALISTER: In his communication, he expressed, he said, "I don't think that we are covered; I am just writing you out of an abundance of precaution," in essence.

And we say at that particular point if the Attorney General had an objection,he knew what the laws of Alabama were as well as we did, and he knew that once the citizens voted to have a mayor-council form that we were bound under state law to have our election at-large. In other words, the candidates were to run at-large. That's what Alabama law required.

QUESTION: Now you are directing your argument now

to the second issue there, aren't you?

MR. McALISTER: That's right. I am.

QUESTION: Which we don't reach, if you are right on the first issue.

MR. McALISTER: That's correct.

So, we think that at that point if he had an objection to what we were doing, the time to object should have been right then, but to wait over a year later and come in and say "We approve everything else you've done, but we don't approve of your electing your candidates at-large," we think, you know, that was ridiculous. Let's object to that in the beginning if that's what you are objecting to.

QUESTION: May I come back to a point you made?

MR. McALISTER: Yes, sir.

QUESTION: Does Alabama law require that elections in Sheffield be at-large, once that vote was favorable in the referendum?

MR. McALISTER: Yes, sir.

QUESTION: No option whatever at the local level?

MR. McALISTER: No, sir.

Further, the Attorney General seeks to impose what we think is his will on the City of Sheffield through the force and power of the federal government, without any basis of law. There is a dangerous equation in this case to the way the Attorney General thinks with the law. At the risk of being

elementary, I would remind the Attorney General that it was out of that same Lexington and Concord that President Johnson referred to in 1965 that produced these words: "In the government of the Commonwealth of Massachusetts, the legislative, executive and judicial power shall be placed in separate departments to the end that it might be a government of laws and not of men."

The Voting Rights Act does not apply to Sheffield. It doesn't require any strained semantics or legal gymnastics to make it apply. The Act applies only to a state or a political subdivision that denies or abridges the right of a citizen to vote on account of race or color. A political subdivision is defined in the Act, and everybody admits that Sheffield does not fall within that definition.

QUESTION: Does the City of Anniston fall in that definition?

MR. McALISTER: No, sir.

QUESTION: Does any city in Alabama?

MR. McALISTER: No, sir. No city in Alabama registers voters.

QUESTION: All I am saying is: Has the Attorney General said that?

MR. McALISTER: I thought that the Solicitor General just said that.

QUESTION: That all of the cities are exempt from

the Act?

MR. McALISTER: He said that no city in Alabama registers voters and is not a political subdivision within the definition of the Act.

QUESTION: But did he say Anniston was included under the Act?

MR. McALISTER: I don't think so.

QUESTION: His position is that Sheffield is, too, Anniston, Sheffield, all of them are.

MR. McALISTER: His position is that every political unit in a state is within the Act.

QUESTION: A state -- in the State of Alabama.

MR. McALISTER: Yes, sir.

Of course, he doesn't say what a political unit is either.

QUESTION: Well, he says that, in effect, once a state is covered you look to the nature of the change, rather than to the type of political unit that's making it.

MR. McALISTER: Yes, but what kind of change?

QUESTION: Well, the kinds of change, I suppose, that have been decided in previous cases of this Court.

MR. McALISTER: In what kind of political unit? In other words, in a state or in a local community you might have an agricultural stabilization committee or a water drainage district. In our area we have a water district that might take

in two or three square miles or twenty square miles. I point out a kind of ridiculous example in my brief. How about a school election at a university, the University of Alabama? Is that a political unit? We don't know.

QUESTION: Does the university levy taxes?

MR. McALISTER: The University of Alabama?

QUESTION: Yes, sir.

MR. McALISTER: No, sir.

QUESTION: Well, then, it is not a political subdivision. Would you agree?

MR. McALISTER: No, sir. I don't know what the definition of a political unit is.

QUESTION: I thought your position was that the statute tells us what a political subdivision is.

MR. McALISTER: That's exactly right.

QUESTION: So we don't have to wonder under your submission.

MR. McALISTER: Yes, sir.

We say that the Act does not purport to apply to a city that does not register voters. And, again we point out that the aim of the 1965 Act was to register voters. And, again referring to President Johnson's speech, he says: "It (the bill) will provide for citizens to be registered by officials of the United States Government if the state officials refuse to register them."

The bill was introduced in the Congress in 1965, the following day, if we recall, that President Johnson made his speech. Mr. Katzenbach, the then Attorney General, appeared before the Congress and explained the Voting Rights Act to the committee that was handling the bill. He testified at length and I have quoted in my brief from his testimony before that committee. Mr. Katzenbach had no doubt in his mind how voter registration was conducted in the State of Alabama. He stated that he knew how it was conducted in the State of Alabama.

And we state this to the Court: How can a piece of legislation like the Voting Rights Act that was aimed at a particular state, Alabama, aimed by the President of the United States -- that triggered his speech, Selma, Alabama -- aimed by the Attorney General of the United States -- Mr. Katzenbach said he knew how voters were registered in Alabama -- and aimed by the Congress, why do we at this point have to end up, according to the argument of the Solicitor General, looking to some type of ambiguity in the Act to come forth with, the way the Attorney General has construed the Act and the subsequent re-enactments of the Act by the Congress?

It just doesn't make sense to us that an Act aimed at curing a particular wrong could end up to be so ambiguous. We say it is not ambiguous. We say it is clear. We say that

the construction that the Attorney seeks to place on the Act is clearly erroneous. The only justification for his argument -- and he makes it in the brief -- is that we need uniformity in the application of this Act. Also, he says, that the case by case process of solving voter problems is inefficient.

We would answer that this way. Oliver Flint, the black councilman in Alabama, Sheffield, that was elected in this at-large election, he doesn't appreciate the uniformity argument at all, and he would prefer the case by case method because he would be assured under that method of retaining his seat on the council.

Also, we state that the argument of the Attorney General fails completely under scrutiny. Section 4 of the Act, upon which Section 5 depends, deals exclusively with state and political subdivisions that use discriminatory tests or devices to deny persons the right to vote. You must be a voter registering state or political subdivision to have a test or device. Sheffield has none.

QUESTION: Well, a state is covered whether or not it does carry on a registering function. A state is simply covered. It's covered, isn't it?

MR. McALISTER: Yes, sir.

QUESTION: There is no test as to whether or not it registers voters, is there?

MR. McALISTER: Well, it says in 4 that the triggering

feature in 4 is a state or political subdivision that has tests or devices. Ordinarily the state legislature would have provided for the so-called tests or devices that were struck down.

QUESTION: So a state that has a test or device is covered, --

MR. McALISTER: Yes, sir.

QUESTION: -- and a political subdivision that has a test or device is covered and a state, everybody, presumably, knows what a state is.

MR. McALISTER: Yes, sir.

QUESTION: And this case involves the issue of what is a political subdivision.

MR. McALISTER: Yes, sir.

We also state that under the Act, in using our logic, it is completely sensible to apply it that way. Under Section 5 of the Act, if you recall, there is a procedure for a declaratory judgment in the District Court of Washington, D. C., by a state or political subdivision.

I think we could go into the District Court in Washington, D. C., and get dismissed because we are not a political subdivision and we can't get that declaratory judgment.

QUESTION: I doubt if the Attorney General would file a motion to dismiss --

MR. McALISTER: The court might on its own motion.

Further, our third point about the argument of the Attorney General is: We think it leads to absurd applications. I mentioned that before. He says political units and we say to apply this Act or seek to apply it to school elections, water districts, drainage districts, agricultural committees and others is a perversion of a good Act.

In conclusion, we say that the City of Sheffield is not covered by the Voting Rights Act and that the opinion of the district court should be affirmed.

Thank you.

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

Do you have anything further, Mr. Days?

REBUTTAL ORAL ARGUMENT OF DREW S. DAYS, III, ESQ.,

ON BEHALF OF THE PETITIONER

MR. DAYS: Yes, Mr. Chief Justice, just a few comments.

Counsel was asked whether Sheffield doubted its coverage under Section 5. I believe page 14 of the Appendix which contains the March 20th letter, indicates that Sheffield did not consider itself excluded from Section 5 coverage. There was merely some question about whether that specific change was subject to Section 5. Page 14 of the Appendix. The first time that the specific issue raised here was presented to the court was in the post-trial brief of the City of Sheffield.

QUESTION: How about the second paragraph of that letter on page 14, General Days, where it says -- of the Appendix -- "while it is doubtful that this proposition as to change of forms of municipal government is covered by the 1965 Voting Rights Act," don't you think there is some intimation in that language or of the position now taken by the Appellee here?

MR. DAYS: I would concede that there is some intimation but I think that read more exactly it refers to not whether the city itself is covered but whether this particular change is covered under Section 5 and requires preclearance.

QUESTION: That's what it says.

MR. DAYS: Now, insofar as the force of Alabama law is concerned, once a referendum of this kind takes place, I submit that the record reflects that there was a great deal of confusion as to exactly how Alabama law would come into play in this case. The city itself said it was returning to the form of government in existence in 1912. An opinion of the Attorney General of Alabama in 1968 seemed to indicate that a return to that form would require election by districts, not at-large. The Attorney General's opinion is in the Appendix at page 54.

And, therefore, there was some, we submit, reasonable doubt as to how the Alabama law would apply, whether the

law in force in 1976 would have any force and effect at all. Insofar as how far down Section 5 provisions reach, we think that there is some guidance on counsel's example of University of Alabama elections. First of all, this Court has spoken in such cases as Terry v. Adams about elections at which public issues are decided, that that's what the Fifteenth Amendment is designed to reach. Secondly, on page 26 of our brief, we quote a statement by Attorney General Katzenbach in which he responds to a question: "Would it cover an election for a school board?" And he responded: "Yes, it would, Mr. Chairman. Every election in which registered electors are permitted to vote would be covered by this bill."

And finally, the Act itself, in Section 14(b)(1), provides some guidance as to its reach because it talks about elections such as primary, special or general elections, and talks about candidates for public or party office and propositions for which votes are received in an election.

We submit that all these definitions give a fairly clear sense of the scope of Section 5, insofar as elections are concerned.

Thank you, very much.

MR. CHIEF JUSTICE BURGER: Thank you, gentlemen.

The case is submitted.

(Whereupon, at 10:44 o'clock, a.m., the case in the above-entitled matter was submitted.)