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Special Supplement

AN ANNOTATED BIBLIOGRAPHY ON ELECTIONS

For the lawyer or law student who needs to draft a complaint in a hurry to redress an unconstitutional act by a government official, corporation, or private individual, the Meiklejohn Civil Liberties Library in Berkeley can provide copies of complaints in similar cases that have withstood demurrers or motions to dismiss. The Library is a unique collection of specialized legal and other materials relating to civil liberties, civil rights, due process of law, and the law of the poor. In addition to complaints, the Library collects briefs, memos, transcripts of hearings and trials, unreported court opinions, pamphlets by defense committees in public law cases, and other materials that arise out of such cases.

This special issue on the political process lists legal materials from old and new Meiklejohn Library files is being presented by THE BLACK LAW JOURNAL as a special service to our readers. The list was compiled by Sharon A. Butcher a third-year law student at UCLA School of Law.

501.Ala.6b *US v Democratic Comms* (Green and Sumter Cos) (SD Ala) May 3, 1966: Co officials prevented fed'l observers from viewing election procedures for filling office of Co commr. May 18, 1966: US Dept of Justice sued to require officials to allow fed'l observers to view election procedures. Je 6: DC entered order for new election in Greene Co.

Amnicus: Charles Morgan, Jr, Esq, Roger Baldwin Foundation of ACLU, 5 Forsyth St NW, Atlanta Ga 30303.

501.Ala.6c *Gilmore v Democratic Exec Comm* (Greene Co) (ND Ala) (370 F2d 919) (1966), 368 F2d 328 (1966), I RRLS 117) May 1966: Pls, Black candidates, sought temporary injunction: Def's conduct in primary election illegal because 1) 300 whites voted illegally, (2) illiterate black refused permission to carry sample ballots into voting booths, (3) nominees of Freedom Party refused candidate status. DC denied. Oct: Pls appealed on issue (3) only. Nov: CA 5 reversed, remanded. Feb 11, 1969: DC dismissed: Pls could not prove illegal voting; sample ballot ordinance uniformly applied.

NAACP Inc Fund, 10 Columbus Circle, NYC 10019.

501.Ala.20 *Gray v Main* (CA 5) (291 FSupp 998; 309 FSupp 207) May 3, 1966: Defs, Probate Judge, Bd of Registrars, conducted various discriminatory practices against Pls, black voters, poll watchers, candidates. Jy 5: Pls brought action in MD Ala to have election set aside, alleging: (1) non-resident whites illegally permitted to vote, (2) names of deceased persons appeared on poll lists, (3) fictitious whites permitted to cast absentee ballots, (4) names of qualified black voters omitted from poll lists, (5) illiterate blacks denied assistance, prevented, hindered from casting ballots, (6) black poll watchers excluded, harassed at polling places. Mar 28, 1968: DC refused to set aside primary, order new election: insufficient evidence state officials engaged in acts with purpose, effect of diluting voting strength of black voters, found voters' list used by Bd of Registrars contained numerous names of unqualified white voters; ordered Defs (1) to purge book with all names of persons absent from Co, non-existent, deceased, (2) prepare new current list of qualified voters with address of each, date of birth, race, sex, precinct place for voting; signed statement to effect such list does contain names of all persons on registration of Co, all other names having been duly, properly purged, to be filed with DC. Apr 26: Pl filed appeal in CA 5. Pending.

Solomon Seay, Esq, 205 20th St N, Birmingham 35210; NAACP Inc Fund.

501.Ala.25 *Barlow v Collins* (USSC) (398, 90 SCt 832 (1970)) Mar 11, 1968: US Dept of Agriculture adopted Reg allowing assignment of tenant farmers' subsidies to secure cash rents, under statute authorizing assignment "to finance making a crop." Dec 2: Plaintiff farmers sued Def-landowners to recover subsidies paid under assignment, enjoin retaliatory evictions, sued Def-USDA officials to invalidate Reg: (1) landowners evicted tenants, threatened eviction for litigating validity of assignment Reg, participating in h'gs, elections for reform of Stabilization and Conservation Service operation, (2) Reg exceeds statutory authority, (3) tenants assigned under coercion, evicted for failure to assign, (4) assignments prevented tenants from forming co-ops to buy supplies at reasonable prices, forced them to buy from landowners. CA 5 affirmed standing to sue, remanded to DC. Mar 3, 1970: USSC, Douglas, J, vacated, remanded: legislative intent that administrative regulatory acts by Secy of Agriculture subject to judicial review; judgments of CA, DC vacated, remanded to DC for h'g on merits.

Donald A Jelinek, Esq, then of Southern Rural Research Project, 897 First Ave, Selma, Ala 36701.

501.Ala.26 *Miles v Dickson* (CA 5) (387 F2d 716) Pls, black sharecroppers, attempted voter registration, aided rights workers; evicted by Def-white landowners. Jan 10, 1966: Pls filed class action for injunction. May: depositions taken. Je 15: MD Ala granted summary judgment for Defs on depositions, costs to Pls' attys under 28 USC §1927. Jy 5: motion for reargument denied. Jy 11: Pls appealed: fact issues existed; costs to counsel without h'g violates due process; Pls' reluctance to proceed indicates ignorance, intimidation, not vexatious litigation by counsel. Dec 19, 1967: CA 5 affirmed summary judgment; reversed costs.

Vernon Z Crawford, Esq, 1047 Davis Ave, Mobile 36108; Morton Stavis, Esq, 744 Broad St, Newark 07102; William M Kunstler, Arthur Kinoy, Esqs, 588 9th Ave, NYC 10034; Benjamin E Smith, Esq, 305 Baronne St, New Orleans 70112.

501.Ala.29 *Birmingham v Fields* (Birmingham Recorder's Ct, #42278) Def, black poll watcher, arrested: electioneering; convicted. On appeal, trial de novo; overruled. 1969: case continued subject to suit in fed'l ct.

NAACP Inc Fund, 10 Columbus Circle, NYC 10019.

501.Ala.30 *Hogue v Auburtin* (Perry Co) (SD Ala, NDiv) (291 FSupp 1003) Official

tally revealed 4,654 registered white voters, 3441 or less whites of voting age reside in Co. Aug 8, 1968: Pls, black voters, candidates, brought class action Bd of Co registrars for temporary restraining order cancelling holding of municipal election, injunction against Defs for failing to purge voter registration of names of fictitious, deceased, non-resident persons. Aug 13: motion for TRO denied: action brought too close to election date to permit evidentiary h'gs. Oct. 11: DC granted temporary injunction; ordered list purged of non-existent white registrants; all parties to submit report to Co judge by Oct 24, 1968.

NAACP Inc Fund, 10 Columbus Circle, NYC 10019.

501.Ala.31 *Hadnott v Amos* (Etowah, Marengo, Sumter, Green Cos) (USSC) (297 F Supp 309 (subpoena); 295 FSupp 1003 (1968); 393 US 815 (10-14-68), 394 US 358 (3-25-69)) Pl-Nat'l Democratic Party of Alabama (NDPA) named candidates, mostly black, for local and state offices for general election Nov 5, 1968. Ala state officials refused to include names of NDPA candidates on ballot, relying on Ala Corrupt Practices Act and Garrett Act. Pl sought injunction against enforcement of Ala statutes on fed'l constitutional grounds. Sept 18, 1968: 3-judge ct entered TRO enjoining Ala officials from using ballots omitting NDPA candidates. Oct 11: 3-judge ct dissolved on merits. NDPA sought interim relief from USSC pending appeal. Oct 14: USSC restored TRO pending oral argument. Nov 5: NDPA candidates won in 3 cos, lost in Greene Co where names omitted from ballot. Nov. 15: Pl filed motion in USSC to show cause why Greene Co election should not be set aside. Mar 25, 1969: USSC reversed, Douglas, J: (1) Ala Corrupt Practices Act unequally applied where NDPA candidates disqualified for failure to file designation of financial comm after primary, in addition to designation filed before primary, but white candidates not disqualified for similar failure; Pl thereby deprived of 1st and 15th Amdt rights; (2) Garrett Act, by requiring independent candidates to announce candidacy at same time as those running in primary, increases barriers to independent candidates seeking position on general ballot, bringing statute under §5, 1965 Voting Rights Act (42 USC §1973c); Def should have sought declaratory judgment from DC DC that such statute does not in effect abridge voting rights on account of race or color; Def did not do so, therefore Garrett Act unlawfully applied to disqualify NDPA candidates, (3) ordered that prevailing NDPA candidates in Etowah, Marengo and Sumter Cos be treated as duly elected officials; state,

local officials directed promptly to conduct new elections in Greene Co with NDPA candidates on ballot. White, J (Stewart, J) diss: matter should be remanded to 3-judge ct for interpretation of Ala law concerning constitutionality of Corrupt Practices Act.

Charles Morgan, Jr, Esq, 5 Forsyth St NW, Atlanta Ga 30303.

Appts' brief (USSC): MCLL.

And see *In re Herndon*, 501.Ala.31a.

501.Ala.31a *In re Herndon* (USSC) 295 F Supp 1003, 394 US 399) Facts: See *Hadnott v Amos*, 501.Ala.31. Herndon, Greene Co probate judge, was official responsible for omission of NDPA candidates from co ballot. Nov 15, 1968: NDPA filed motion in USSC to show cause why Herndon should not be held in contempt. Mar 25, 1969: USSC, per curiam, postponed h'g on motion pending timely proceedings in DC to determine whether Herndon's conduct constituted contempt of Sept 18 3-judge ct order. Douglas, J, diss: "There is probable cause to conclude that Judge Herndon knowingly and purposely evaded our order"; FRPC 42(b) provides that criminal contempt shall be prosecuted on notice.

Charles Morgan, Jr, Reber Boulton, Jr, Esqs, 5 Forsyth St NW, Atlanta, Ga 30303; Orzell Billingsley, Jr, Esq, Masonic Temple Bldg, 1630 4th Ave N, Birmingham, Ala 35203; Robert P Schwenn, Melvin Wulf, Eleanor Holmes Norton, Esqs, ACLU, 156 5th Ave, NYC 10010.

Louis F Claiborne, Atty Gen'l's Office, Washington, DC, as amicus curiae for US.

501.Ark.4 *Bynum v Burns* (Gould) (CA 8, #18704) Election officials allegedly gave faulty information to black candidates for office, then disqualified candidates for following advice. Pl, black candidate, sued for injunction to force Def to put his name on ballot. Oct 20, 1966: DC denied injunction. Pending appeal, Pl died. Case dismissed.

John Walker, Esq, 1034 B Wright Ave, Little Rock, Ark 72206; NAACP Inc Fund.

501.Calif.2 *Loredo v Reagan* (Kern Co Super Ct, #99255) 1894: during period of rampant xenophobia, English literacy requirement inserted in Calif Constitution directed at Chinese and Mexican native-born, as well as immigrants. May 22, 1967: Pls-Mexican-Americans literate in Spanish but not English, sued for declaratory judgment that requirement unconstitutional. Case dropped.

James D Lorenz, Jr, Don B Kates, Jr, Carol

Ruth Silver, Esqs, California Rural Legal Assistance, 335 Perkins St, McFarland, Calif 93250.

501.Calif.3 *Castro v California* (Calif Sup Ct) (79 CR 645) 1894: Calif Constitution amended to require literacy in English as prerequisite to voting. Pls, 2 Mexican-Americans, sued, challenging amdt. Dec 14, 1967: Super Ct dismissed. Jy 28, 1969: DCA affirmed: Pls did not prove amdt enacted for discriminatory purposes, "this court will not strike down an otherwise constitutional statute on the basis of alleged legislative motive." Mar 24, 1970: Calif Sup Ct unanimously reversed, invalidating English literacy requirement, at least as persons literate in Spanish who have political information available in Spanish news media; held English literacy requirement "cannot be applied, consistently with 14th Amdt, to California citizens, wherever resident, who are literate in Spanish and in all other respects qualified to vote . . . We add one final word. We cannot refrain from observing that if a contrary conclusion were compelled it would indeed be ironic that petitioners, who are the heirs of a great and gracious culture, identified with the birth of California and contributing in no small measure to its growth, should be disenfranchised in their ancestral land, despite their capacity to cast an informed vote."

Don B Kates, Jr, Gary Bellow, Carol Ruth Silver, James D Lorenz, Jr, Esqs, CRLA, 22 Martin St, Gilroy, Calif 95020.

Amici: Gerald L Rosen, Esq, for Am Jewish Comm, Los Angeles Chapter.

501.DC.2 *Powell v McCormack* (USSC) (266 FSupp 354, 395 F2d 577, 395 US 490) Jan 1967: House refused to seat Pl, black Congressman from Harlem, in 90th Congress pending investigation by House "Select Comm" of misconduct charges based on Pl's alleged misappropriation of public funds, citation for contempt by NY courts. Feb 23: Comm issued report: Pl met constitutional requirements for membership but guilty of misappropriation of funds; recommended Pl be sworn, seated as member of 90th Congress, be censured, fined \$40,000, deprive dof seniority. Mar 1: House rejected Comm resolution (222-202), passed amendment (248-176) calling for "exclusion" of Pl, declaration that his seat was vacant, then passed Comm resolution as amended 307-116 (equivalent to 2/3 vote). Pl brought action in DC DC claiming resolution unconstitutional, asked for injunction restraining Defs, Speaker, House Clerk, Sergeant of Arms, Doorkeeper individually and in their official capacities, from executing resolution, refusing to provide

Pl office space, perform other duties due Representative; pay salary, provide admission to House chamber. Apr 7: DC dismissed complaint "for want of jurisdiction of subject matter." 1968: CA DC affirmed. USSC granted cert. Apr 21, 1969: Defs argued in USSC: (1) case moot—Pl seated in 91st Congress following victory in special election to fill vacated seat, (2) Speech and Debate Clause (Art I, §6) bars judicial review of legislative action, (3) because 2/3 vote obtained, "exclusion" of Pl should be regarded as "expulsion" of Pl under power of Art I, §5 which grants House power to "expel" member by "concurrence of two-thirds," (4) Ct lacks subject matter jurisdiction: case does not arise under Constitution, House has "sole power" to determine qualifications of its members; hence case is "political question," "no-justiciable" because judicial review would violate "separation of powers" principle. June 16: USSC held (8-1), Warren, CJ: (1) Congress has power to "expel" member by 2/3 vote but does not have power to "exclude" Pl, duly elected by voters in his district, unless he is found ineligible under qualifications as expressly set forth in the Constitution; fact that resolution "excluding" Pl had 2/3 vote, a plurality great enough for "expulsion," cannot make House action an expulsion where Speaker had ruled that resolution contemplated exclusion proceeding and it was not established that 2/3 would have voted for expulsion, (2) case not rendered moot by Pl's being seated in subsequent session of Congress, (3) Pl's exclusion not "political question" but one "arising under" Constitution within fed'l jurisdiction, (4) Speech and Debate Clause (Art I, §6) although bar to action against individual Congressmen, no bar to review of constitutionality of House actions, or to action against House employees who acted pursuant to House orders. Douglas, J, conc. Stewart, J, diss.

Arthur Kinoy, Esq, 266 West End Ave, NYC 10023; Herbert O Reid, Esq, 15000 Newton St NE, Washington, DC 20017.

ACLU amicus brief (USSC): MCLL.

501.Ind.1 *US v Krupa* (Lake Co) (DC Ind, #4809) Co officials allegedly added fictitious, ineligible persons to voter rolls in white precincts; purged voting rolls to make it more difficult for blacks than white to retain or reinstate voting eligibility; sent letter to 5,000 voters requiring recipients to furnish current information to avoid being dropped from voter rolls. Nov. 3, 1967: US filed suit: Co officials in violation of 15th Amdt, equal protection clause of 14th Amdt; asked injunction to forbid denial of right to vote to any qualified person for failure to respond to letter from Def-

Krupa. Nov 6: DC granted preliminary injunction. Jan 1, 1968: Pls filed for permanent injunction. Apr 29: DC ordered Defs to purge voting lists of all names certified as ineligible, including 1,678 registrants whose letters were undeliverable, 1,124 persons who failed to respond in any way to written, published notification; such persons to be purged under §29-3418 Burns Ind statutes, as amended: any person so purged may reregister as permitted by Ind law.

James P Turner, Esq, US Dept of Justice, Washington, DC 20530.

501.La.25 *US v Post; Wyche v Post* (Tallulah) (WD La) (297 FSupp 46, 1 RRLS 118) Defs allegedly deprived qualified black voters of right to vote. Pl-Wyche, black candidate for Village Marshall, lost election: error on ballots, instruction for use of voting machines. Pls filed suit in companion cases under 1965 Voting Rights Act. Mar 10, 1969: DC held unknown number of black voters did not cast effective votes, not informed of change in voting procedure, erroneous instructions violated 1965 Voting Rights Act §2, §11a; declared election void; ordered new election within 90 days.

Donald Juneau, Richard Sobol, Esqs, 606 Common; R F Collins, N R Douglas, Esqs, 344 Camp St, all of New Orleans 70130.

501.Miss.20c *Mississippi Freedom Democratic Party v Sunflower Town Elections Bd* (CA 5) May 2, 1967: elections held for mayor and aldermen; all black candidates defeated though more blacks candidates defeated though more blacks voted than whites. Pls sued to have results invalidated: altho fed'l observers present, they reneged on agreement to allow MFDP leader to assist blacks in voting; blacks needing assistance had to tell local whites for whom they were voting. DC (ND Miss) held against Pl. CA 5 affirmed: election "was conducted in a completely fair, objective way . . . the results truly represent the will of the majority . . ."

NAACP Inc Fund

501.Miss.31 *Mississippi Freedom Democratic Party v Johnson* (SD Miss (299 FSupp 93, 1 RRLS 177) Nov 1966: voters approved admt to §271 of Miss Const permitting counties' consolidation if 2/3 of legislators agree. Pls brought class action for declaration that admt violates 14th, 15 Amdts, 1965 Voting Rights Act, reduces blacks' chances to seek, hold political office. Apr 30, 1969: DC held admt comes within §5, 1965 Act; must be fed'lly approved to begin operation, suc happroval required of "any sttae enactment which effects the election law of a covered state in even minor way"; held such enactment may operate

to subvert fed'l Act, deny voting rights on basis of race, color.

James Lewis, Armand Derfner, Lawrence Aschenbrenner, Esqs, 233 N Farish, Jackson 39201.

501.Miss.32 *Hamer v Ely* (Sunflower Co) (CA 5) (415 F2d 152; cd 90 SCt 372) May 2, 1967: Pls, black registered voters, ran candidates for mayor, 5 aldermen. Black registered voters outnumbered white registered voters 190-60. Black mayoral candidate lost 190-121, other black candidates lost by similar margins. Pls brought action to have election set aside: election commrs' refused to allow illiterate black to have voting assistance from black election officials. DC held against Pls. Apr 10, 1969: CA 5 affirmed: commrs' action not failure to provide "adequate assistance" to illiterates as required by 1965 Voting Rights Act, 42 USC §1973(c)(1); commrs' attitude "may have been shoddy" but did not justify the "drastic if not staggering" procedure of fed'l ct's voiding a state election. Nov 24: USSC denied cert.

Morton Stavis, Benjamin Smith, Esqs; Lawyers Constitutional Defense Comm, 233 N Farish St, Jackson 39201; Irving King, 105 W Adams, Chicago 60603.

And see *Campbell v Hamer*, 385 US 851 (1966).

501.Miss.32a *Whitley v Williams, Fairley v Patterson, Bunton v Patterson*

For facts and opinions, see companion case, *Allen v State Bd of Elections*, 501.Va.5.

501.Miss.33 *Mississippi Freedom Democratic Party, Nat'l Conference for New Politics v Eastland, Sourwine* (DC DC) 1964: MFDP organized to guarantee black Americans effective participation in nat'l, local politics. Aug 1-Sept 1, 1967: Defs, Defs' agents searched Pls' files, seized documents, threatened to harass those whose names were thus obtained. Pls sued for damages, declaratory and injunctive relief to prevent Defs from using stolen material, interfering with Pls; for return of material; for declaration that search, seizure unconstitutional; alleged since 1964 Defs conspired under color of law to deprive Pls of 1st, 4th, 13th, 14th, 15th Amdt rights. DC denied motions for discovery. Pending.

Philip J Hirschkop, Esq, 110 N Royal St, Alexandria 22314; Arthur Kinoy, William Kunstler, Esqs, 588 9th Ave, NYC 10034; William E. Miller II, Esq, 1072 Lynch St, Jackson, Miss

39203; Morton Stavis, Esq, 744 Broad St, Newark, NJ 07102.

Complaint: MCLL.

501.Miss.34 *Scrاندall v Cage* (Wilkinson Co Cir Ct) 1968: Pls filed petition contesting Nov 5 election results; charged irregularities. Mar 1969: trial set. Pending.

Lawyers' Comm for Civil Rights under Law, 233 N Farish St, Jackson, Miss 39201.

501.Miss.35 *Joliff v Wilkinson Co Bd of Supervisors* (Miss Sup Ct) Nov 1967: black PI elected to Def Bd. Mar 1968: PI convicted: obstruction of justice; removed from office. Miss Sup Ct reversed, reinstated PI in office. Jan 1969: PI filed salary claim for period illegally removed from Office. Mar 10: Cir Ct granted. Defs appealed to Miss Sup Ct. Pending.

501.Miss.36 *Adams v Ponder* (SD Miss, Jackson Div, #4216) Defs refused to place Pls' names, as independent candidates, on ballot. Pls filed suit: deprivation of rights under 42 USC §§1971, 1983, 1985. DC denied preliminary injunction. Feb 18, 1969: voluntarily dismissed.

Lawyers' Comm for Civil Rights under Law, 233 N Farish St, Jackson, Miss 39201.

501.Miss.37 *Smith v McClellan* (Holmes Co) (CA 5) More white adults registered in co than lived there. Pls filed suit to purge voter lists. DC (SD Miss) held against Pls. CA 5 affirmed.

NAACP-Inc Fund.

501.Miss.38 *Dennis v Gantz* (ND Miss, Greenville Div, #CC-68-53-K) Dec 10, 1967: Pls filed class action to enjoin discriminatory exercise of appointment power granted by Miss C§ 3374-65 for municipal election commrs, sued Defs as class: all Miss municipalities. Jan 27, 1968: DC held class action improper for any municipality except Pls', Defs' own. Je 16, 1969: DC denied relief: appointments are discretionary, not justiciable. Pending.

Lawyers' Comm for Civil Rights under Law, 233 N Farish St, Jackson, Miss 39201.

501.Miss.39 *Walker v James* (Grenada) (ND Miss, W Div, #WC 6812) City changed from ward system to at-large system after effective date of 1965 Voting Rights Act. Apr 4, 1968: Pls filed class action under Act to enjoin at-large election of city councilmen. DC overruled Defs' motion to dismiss, citing USSC decision in *Fairley v Patterson*, 501.Va.2, (89

S.Ct. 817); ordered briefs on whether issues controlled by *Fairley*. Je 12, 1969: DC granted injunctive relief; Grenada required to submit ordinance to US Atty Gen'l for review.

Lawyers' Comm for Civil Rights under Law, 233 N Farish St, Jackson, Miss 39201.

501.NC.5 *Gaston Co v US* (USSC) (288 FSupp 678, 1 RRLS 30; 395 US 285) Mar 1966: Co officials required under 1965 Voting Rights Act to suspend use of literacy test. Aug: Co sued for declaratory judgment: no "test" or "device" within meaning of Act used in past 5 yrs in discriminatory manner; Co entitled resume literacy test. Aug 16, 1968: DC dismissed. Je 2, 1969: USSC affirmed, Black, J: DC not clearly erroneous in holding Co had not met burden of proving its use of literacy test, "in the context of its historic maintenance of segregated and unequal schools, did not discriminatorily deprive Negroes of the franchise": (1) considering legislative history of 1965 Act, it is appropriate for ct to consider whether literacy test has effect of denying franchise on account of race or color where co or state has maintained segregated, unequal educational system, (2) recent strides toward integrating, equalizing school system; fair, impartial administration of voter registration tests, do not correct years of systematic educational deprivation: "impartial" administration of literacy test would only serve to perpetuate inequities in different form.

Louis F Claiborne, Esq, US Atty Gen'l's Office, Washington, DC.

501.NC6 *US v Pate* (ED NC, #5214-Cr) Je 1968: US accused Def, white man with rifle, of intimidating 2 persons, one white, one Indian, who were encouraging others to vote on non-discriminatory basis; US contended Def's actions constituted fed'l offense: interference with fed'lly protected right (18 USC §245(b) (5)); first such charge brought by US under Title I, 1968 Civil Rights Act. Dec 16: Def acquitted.

Department of Justice, Washington, DC 20530. Information filed in DC: MCLL.

501.SC.3 *US v Democratic Executive Comm, Bd of Registrars* (Columbia) (DC SC) Je 20, 1966: US alleged violations of 1957 Civil Rights Act, 1965 Voting Rights Act in June 14 primary, sought injunctions requiring: fed'l observers of entire election process and assistance given illiterate Negro voters, registration of voters listed by fed'l examiners, abandonment of race as criterion for voter assignment to 4 precincts. Dec 14, 1968: DC dismissed.

501.Va.5 *Allen v Bd of Elections* (Va); [with

Fairley v Patterson (Miss); *Bunton v Patterson* (Miss); *Whitley v Williams* (Miss)] (USSC) (268 FSupp 218, 281 FSupp 918, 282 FSupp 164, 296 F Supp 754, 393 US 544) 1965-66: Va, Miss amended state laws, regulations concerning election procedures. Pls brought actions in DCs, seeking declaratory judgments that amendments within scope of §5, Voting Rights Act of 1965, 42 USC §1973, requiring states to submit new voting laws, regs adopted after Nov 1, 1964 to Atty Gen'l for consideration, or DC for declaratory judgment that purpose, effect of new law, reg not to deprive any person of right to vote before such law, reg enforceable; injunction prohibiting further enforcement of laws, regs; new elections. DCs dismissed. Mar 3, 1969: USSC reversed, Warren, CJ: (1) USSC has jurisdiction; 3-judge cts properly convened below; (2) §5 to be interpreted broadly in light of legislative history, purpose of Act; (3) alterations in laws, regulations changing election of co supervisors from district to at-large voting, making previously elected office appointive, increasing difficulty of independent candidate to gain ballot position, changing write-in procedures all within scope of §5; (4) cases remanded to DCs for issuance of injunctions prohibiting further enforcement of laws, regs until states comply with §5; (5) elections will not be set aside; complex nature of issue of §5 coverage render states' noncompliance not necessarily deliberate defiance; merits of case not decided, laws may not be discriminatory. Harlan, J, concur, diss: (1) §5 covers only laws changing process by which voters register, ballots counted, not laws that arguably have "impact on Negro voting power"; only "at-large election" decision erroneous under this criterion; (2) states in other decision should have been ordered to comply immediately with §5, or hold new elections under pre-existing law. Marshall, Douglass, JJ, concur, diss: relief should be afforded as in Harlan, J's diss. Black, J, diss: §5 unconstitutional.

Norman C Amaker, Esq, 10 Columbus Circle, NYC 10019; Armand Derfner, Esq, 233 N Farish, Jackson, Miss 39201; Elliott C Lichtman, Esq, Washington, DC.

Stephen Pollack, Esq, of US Dept of Justice, Washington, DC, as amicus curiae.

And see *Whitley*, 501.Miss.32a.

501.Wash.1 *Mexican-American Federation v Naff* (ED Wash) (299 FSupp 587) Pls filed class action challenging Wash state Constitution, Art VI, requiring all voters "be able to read and speak the English language": violated 1965 Voting Rights Act ban of "any literacy test as a qualification for voting . . . unless . . .

such test is administered to each individual and conducted wholly in writing." May 2, 1969: DC dismissed, citing *Lassiter v Northhampton Co Bd of Elections* (4 RRLR 523); held "constitutional provision that a person otherwise eligible must speak and read the English language is a valid exercise of . . . Washington's power to determine the conditions under which the right of suffrage may be exercised . . . a simple inquiry by the registrar . . . "Can you read and speak English?" is not a test and could not conceivably result in discriminatory practices"; Pls did not prove discriminatory application.

Charles E. Ehlert, Esq, 2727 64th SE, Mercer Island, Wash 98040.

502. POLITICAL DISCRIMINATION

See *Carroll v Pres, Commrs of Princess Anne Co*, 61.49.

502.Ala.2 *Amos v Nat'l Democratic Party* (DC Ala) Def, racially integrated party sought to qualify candidates for presidential electors, Senate, House, state, local offices. Pl, Secy of State, sued to remove Def names from ballot; invoked Ala statute requiring parties declare intentions by Mar 1 of election yr. Oct 11, 1968: 3-judge ct upheld statute (2-1).

502.Calif *Westbrook, Adams v Mihaly; Larez v Shannon* (Calif Sup Ct, ##SF 22706, 22707, Sac 7854) Je 13, 1969: Pls filed suit challenging 2/3 majority vote rule for passage of municipal, school bonds: Calif Constitution, Art XI, §18, violates 14th Amdt, presents obstacle to interests of disfavored group within Calif communities. Pending.

John Moulds, Esq, Marysville, Calif; California Rural Legal Assistance, 1212 Market, San Francisco 94102. Amicus: ACLU NC, 503 Market, San Francisco 94105. Amicus brief: MCLL.

502.Calif.6 *Cleaver v San Francisco* (ND Calif, #49401) May 1968: Co registrar of voters allegedly advised precinct workers that write-in vote not permitted in primary election; voters allegedly told write-in votes would be voided; Peace and Freedom Party registrants turned away at polls. Je 12: Pl, P and F Party, sued charging all actions in violation 42 USC §§1971, 1983, 1985; demanded Secy of State certify Pl's nominees for Nov ballot. Je 26: Defs reported ballots preserved, forwarded to Secy of State. DC denied injunction; failure to prove enough voters turned away to make substantial difference. Damage question pending.

Stewart Weinberg, Esq, 45 Polk St, San Francisco 94102.

502.Calif.7 *California ex rel Jose Martinez v Lisher* (Santa Clara Co) (Santa Clara Super Ct, #217542) Feb 10, 1969: Pls filed complaint in quo warranto on behalf of Mexican-American organizations charging Def, San Jose City Councilman, with unlawful exercise of office in violation of City Charter §404, Calif Govt C §275: Def neither resident nor qualified registered elector of said city. Mar 24, 1969: Super Ct declared Def no longer council member; ineligible for appointment to council.

John E Thorne, Esq, 510 Third St, San Jose 95112.

Complaint, judgment: MCLL.

502.Ill.2 *Briscoe v Holzman* (Chicago) (ND Ill, #67C177) Chicago Election Bd allegedly summarily cut off 55 candidates from aldermanic primary ballot. Pl filed suit contending that removal of names is unconstitutional, petitions held invalid without fair h'g, use of ex parte evidence. Pl requested declaratory judgment, injunction. Cir Ct denied motion for preliminary injunction. Nov. 1969: awaiting trial.

David C Long, Esq, 19 S LaSalle; David Saunders, Esq, 33 S Clark St; John C Berghoff, Esq, 135 S LaSalle St, all of Chicago 60603.

502.Ill.3 *Moore v Ogilvie* (USSC) 293 FSupp 411, 394 US 814) 1935: Proviso added to Ill statute requiring that petition of 25,000 electors' signatures necessary to nominate independent candidates for general election include signatures of 200 electors from each of at least 50 cos. 1968: Pl filed nominating petition with 26,500 valid signatures; Def refused to certify Pl for general election, citing failure to comply with 1935 proviso. Pl sought declaratory relief. Oct 3: 3-judge ct dismissed. Mar 27, 1969: USSC reversed, Douglas, J: (1) although 1968 election over, issue continuing controversy, (2) justiciable controversy presented where "state makes classifications of voters which favor residents of some cos over residents of other cos", (3) under Ill statute, electorate in 49 of most populous cos, where 93.4% of voters reside, cannot form new political party, place candidates on ballot, yet 25,000 of remaining 6% electors properly distributed in remaining 53 cos can; law thus discriminates against resident of populous cos, lacks equality to which exercise of political rights is entitled under 14th amdt, (4) *MacDougall v Green* (335 US 281) overruled. Stewart, J (Harlan, J) diss.

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And see 503.

502.Minn.1 *Mitchell v Donovan* (USSC) (290 FSupp 642; 642; 300 FSupp 1145; 90 SCt 112) Sept 9, 1968: Def, Minn Secy of State, refused to accept Pl's nominating petition to be placed on ballot as presidential candidate of Communist Party on authority of Communist Control Act (50 USC §§841, 842). Sept 17: Pl sued in 3-judge ct for temporary, permanent relief requiring Def to file aforesaid nominating petition, to include name of Pl, together with Communist Party designation on Nov 5, 1968 ballot; also sought declaration that Communist Control Act unconstitutional: unlawful bill of attainder, unjustifiably infringed on 1st Amdt rights, rights to vote, run for office; Congress lacks power to establish qualifications for Presidential electors. Sept 23: US Atty submitted memorandum as amicus curiae, requesting DC to avoid constitutional question by finding Act inapplicable to individual candidates nominated by petition under state law because no right or privilege is thereby conferred on Communist Party. Oct 2: statutory 3-judge ct granted temporary injunction ordering Def to accept Pl's nominating petition, place name on ballot together with party designation; did not rule on merits of Pl's constitutional claim but noted Pl's brief raised "substantial doubts regarding the Act's applicability, constitutionality." Oct 10: After Nov election, Pl amended complaint; Communist Party would participate in future Minn elections, sought to have ct rule on Act's constitutionality for future. Defs moved to dismiss complaint; dismissed amended complaint as moot. Jan 12, 1970: USSC noted probable jurisdiction. Pending.

Lynn S Castner, Esq, Minn Civil Liberties Union, 295 Upper Midwest Building, Minneapolis 55401.

502.NY.11 *Green v New York Bd of Elections* (USSC) (259 FSupp 290; 380 F2d 445; cd 389 US 1048) Pl served jail term for felony: violation of Smith Act (341 US 494). Pl released, denied right to vote. Sept 28, 1966: Pl sued to be registered: denial of voting rights unconstitutional. DC (SD NY) dismissed. Jan 15, 1968: USSC denied cert.

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502.NY.12 *Ferguson v Lomenzo* (NY Sup Ct) Def, NY Secy of State, declared Pl's nominating petition for Nov 5, 1968 election void: Pl, Peace and Freedom Party candidate, did not file proper statement of consent. Je 15, 1968: Pl convicted: conspiring to murder civil rights leaders; awaiting sentencing. Oct 3: Sup Ct ruled for Pl: statement of consent marred only

by stenographic error; Pl qualified to serve under NY Elections C §147: "These are the only qualifications one must have to hold the office. The State . . . may not add to these qualifications nor prevent one having them from seeking the office by any prohibition, even the commission of a felony."

And see *Ferguson*, 30391.

502.Ohio.1 *Brockington v Rhodes* (USSC (90 SCt 206) 1968: Pl collected slightly over 1% of signatures of those who had voted in last gubernatorial election, then challenged Ohio law requiring signatures of 7% of qualified voters for independent candidacy as unreasonably high compared to 100 signatures required for party candidates, sought mandamus in Ct of Common Pleas to compel Def-Governor, to place his name on Nov 5, 1968 ballot. State cts denied writ. Oct 23: Ohio Sup Ct dismissed appeal: want of substantial constitutional question. Oct 30, 1969: Ohio amended statute to require only 4% of voters on petition. Nov 24: USSC, per curiam, held case moot: writ requested for particular election, not class action, Pl did not allege intent to run for office in future, or seek declaratory judgment as he might have; now impossible to grant limited relief sought; judgment of Ohio Sup Ct vacated, remanded for such proceedings as Sup Ct might deem appropriate.

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502.Ohio.2 *Socialist Labor Party v Rhodes* (USSC) (290 FSupp 983; 89 SCt 3, 4) Pls sued Ohio authorities to place Pl-Party candidates on voting machine and paper ballots for 1968 presidential election. DC held Party's membership too small to qualify for ballot position; limited relief to write-in voting. Sept 16, 1968: Stewart, J, as Circuit Justice, denied Pls' motion for injunction pending decision of full USSC. Pls moved to consolidate with *Williams v Rhodes*, 502.Ohio.3, or, in alternative, to set case for separate argument prior to USSC decision in *Williams*. Sept 23: Stewart, J, conferred with other members of Ct; set case for separate argument, but after completion of *Williams*.

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