

C O N T E N T S

ARGUMENTS OF:

P A G E

Charles Morgan, Jr., Esq., on behalf of Appellants 1

L. Drew Redden, Esq., on behalf of Appellees 18

* * * *

1 IN THE SUPREME COURT OF THE UNITED STATES

2 October Term, 1968

3 -----X
4 Sallie M. Hadnott, et al :

5 Appellants, :

6 v. :

7 Mabel S. Amos, et al :

Case No. 647

8 Appellees, :

9 and :

10 Edward F. Muldin, et al :

11 Appellee-Intervenor. :

12 -----X
13 Washington, D. C.,

Friday, October 18, 1968

14 The above-entitled matter came on for argument at

15 9:15 a.m.

16 BEFORE:

- 17 EARL WARREN, Chief Justice
- 18 WILLIAM O. DOUGLAS, Associate Justice
- 19 JOHN M. HARLAN, Associate Justice
- 20 WILLIAM J. BRENNEN, JR., Associate Justice
- 21 POTTER STEWART, Associate Justice
- 22 BYRON R. WHITE, Associate Justice
- 23 ABE FORTAS, Associate Justice
- 24 THURGOOD MARSHALL, Associate Justice

25 APPEARANCES:

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Atlanta, Georgia

Counsel for Appellants

1 [Appearances, continued:]

2 L. DREW REDDEN, Esq.,
3 1033 Frank Nelson Building
4 Birmingham, Alabama

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Counsel for Appellees

P R O C E E D I N G S

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

3 THE CLERK: Counsel are present.

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

6 ORAL ARGUMENT OF CHARLES MORGAN, JR., ESQ.

7 ON BEHALF OF APPELLANTS

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

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

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

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

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

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

4 Q How many electors are there in Alabama?

5 A Ten electors.

6 Q There are only 8 in column 1.

7 A No, sir, there are 10, and in this column,
8 column 3 and column 7 and also column 5 which is the Repub-
9 lican Party.

10 In Alabama a voter if he votes the straight Demo-
11 cratic ticket votes for all the local nominees of the Demo-
12 cratic Party right down through Bull Connor and others all
13 of the way down the line.

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

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

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

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

1 A No Humphrey-Muskie are in column 3. In column
2 1, no, they are not.

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

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

13 Q Can they be active?

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

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

20 A Section 148 simply prohibits them from appear-
21 ing on the ballot twice and that is the principal statute,
22 as I understand it, that would prevent them from being aggre-
23 gate. We could trim that statute with this particular election.
24 It is certainly unconstitutional in its application. It may
25 not be unconstitutional on its face. Two states have held that

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

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

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

13 Q Edward F. Mauldin?

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

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

20 Q Say that again.

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

25 Now, you have a second provision of the Alabama

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

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

13 This ticket under Title 7 has, of course, a sub-
14 stantial number of Negro voters and candidates on it. They
15 are not in every county in the State of Alabama. There are
16 not very many Negroes in some counties of the State of Ala-
17 bama. We started with, as I recall it, 23 counties. It was
18 winnowed down in one way or another to 17 now.

19 We believe that under the Voting Rights Act, the
20 15th Amendment, and otherwise, folks have a right to vote a
21 straight party ticket, and they have a right to have candidates
22 on the ballot.

23 We also believe the record in this case clearly dis-
24 closes the motive and the reason for the disqualification of
25 this party in column number 7.

1 Now, this is not a separatist party; this is an in-
2 tegrated party.

3 Q (Inaudible)

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

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

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

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

25 Q Just the way it is?

1 A Yes, sir.

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

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

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

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

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

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

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

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

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

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

6 A Yes, sir, in Alabama it would.

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

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

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

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

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

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

Following that, on September 10th, she says, "No, you can appear on the ballot except for two candidates."

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

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

Now, in this particular instance, she says she can't get on the ballot because you rested on that mass meeting as total voluminous evidence in the District Court transcript, and there is no question about this, that, no, Miss Aron, you deprived these people of their rights to equal protection under the law by depriving them of the right to appear on the ballot on the basis of that mass meeting, and you, Miss Aron, was pay one-half of the cost.

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

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

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

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

A They are electors who filed declarations of intention.

Q To do what?

A To run for presidential elector.

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

1 A No.

2 Q Obviously not because there weren't any.

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

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

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

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

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

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

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

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

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

11 Now, you can look at it as two independent candi-
12 dates. They are both white. Gibbs is white and Flowers is
13 white. There is approximately a 30 percent Negro vote left
14 in that district.

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

24 Q That is not the total ballot, is it?

25 A No.

1 Q You want to run 100 candidates?

2 A We counted 89 as I recall.

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

5 A Yes, sir.

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

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

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

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

25 Q Were those the only two reasons that the

1 Secretary of State gave?

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

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

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

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

11 A There is no need to get to its constitution-
12 ality unless it complies with Section 5(b) of the Voting
13 Rights Act.

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

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

22 Q [Inaudible]

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

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

2 Q They have not asked for the Garrett law?

3 A They have not.

4 Q Passed in 1967?

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

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

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

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

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

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

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

1 the hearing, said it would issue the order, get your candi-
2 dates straight.

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

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

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

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

16 It's immediately filed in the Court a certificate
17 of compliance and Judge Johnson says--and it is not our
18 phrase: it is the defending Judge Johnson's phrase--they are
19 disqualifying this whole slate by an afterthought and they
20 are doing it by a document filed in Federal Court.

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

1 of them said it was constitutional on its face. It re-
2 quires you to file within five days.

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

9 Q The Court sustained the Secretary of
10 State on that?

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

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

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

20 Q [Inaudible]

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

25 I would like to reserve the rest of my time.

1 MR. CHIEF JUSTICE WARREN: Mr. Redden
2 ORAL ARGUMENT OF L. DREW REDDEN, ESQ.,

3 ON BEHALF OF APPELLEES

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

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

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

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

21 Q Is there only one ballot?

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

24 Q But each one is different?

25 A Each one is different as it would be in any

1 state in the Union.

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

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

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

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

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

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

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them in a position of compliance.

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

Q Eighty-two counties?

A Sixty-seven.

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

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

A That is my understanding.

Q Are you now saying that compliance would be impossible?

1 A I would not represent that to the court.

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

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

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

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

24 Now, it is that simple---

25 Q Mr. Redden, in Alabama do the candidates for

1 electors run a campaign that costs money?

2 A That costs money?

3 Q Yes.

4 A They frequently have, yes, sir.

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

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

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

12 A No, sir, there is no question. There are
13 provisions, of course, governing all offices with reference
14 to the amount of money that can be expended in particular
15 races for particular purposes. It does apply to them with-
16 out any question.

17 But there was not compliance with this in the main.

18 As counsel have stated, there were some few who
19 filed a form that was printed for this party. At the head
20 of it, it contains the statement, "Declaration of Intent,
21 Act No. 203, National Democratic Party of Alabama." It was
22 a prepared form. Their chairman testified that he was aware
23 of all of the requirements of the Garrett Act; that he was
24 aware of the requirements of the Corrupt Practices Act; that
25 he disseminated the information concerning the necessary

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

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

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

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

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

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

primary.

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

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

The first Tuesday in May.

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

Unless he was nominated from a convention of the independent delegates on the primary election day.

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

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

As stated, everyone regardless of whether he is a member of a party as a candidate in a primary or non-primary party

1 must declare by March 1.

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

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

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

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

24 So, on May 7th, the nominations are made or dele-
25 gates are elected to conventions. This is required of everyone.

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

4 Q When was that legislation adopted?

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

9 Q What about the March provision?

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

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

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

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

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

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

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

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

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

22 A Must certify them.

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

24 A The same thing.

25 Q So, if you did not have the Garret. Law or the

1 Garrett Act, that would be the procedure?

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

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

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

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

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

Q. Fifty out of 67 counties?

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

Q. That would relate to all of the other ones?

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

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

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

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

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

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

1 labels, too.

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

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

10 The Prohibition Party, for example, has candidates
11 for presidential electors. They attacked the Alabama Inde-
12 pendent Party for that. But it must be very easy to get on
13 the ballot.

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

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

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

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

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

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

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

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

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

24 A No, sir.

25 Q All the other laws were covered predating 1960?

1 A I would say all of those we are talking about
2 are at least 20 years old and some of them are older.

3 There may have been some minute changes in phraseology, but
4 I am speaking of the substance of the law. I am sure the amount
5 you can spend in political campaigns has recognized inflation
6 and has been updated from time to time in recent years.

7 Q What do you say about the Garrett Law?

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

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

13 A With respect to voting.

14 I submit that it is not a standard within the
15 broad term of procedure, yes, sir, certainly within a possible
16 definition of that term, but it is a procedure of this nature.
17 It is a procedure that has always been required and it is
18 only part of an infinitesimal part of the established pro-
19 cedure that has been the law since the turn of the century
20 really, and all it does it set a date on which it says every-
21 one must conform to the Act.

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

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

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

5 A There would be a question of individual quali-
6 fications where special educational qualifications and things
7 of that sort are required in the case of individual candidates.

8 Q Or under 148?

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

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

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

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

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

25 A No, the decision below stated there was no basis

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

3 Q Then it is out of this case.

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

13 Q Were they timely?

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

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

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

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

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

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

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

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

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

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

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

1 of Jefferson County, Alabama which is the most populace
2 county in the State and has a population of approximately
3 800,000 people. Two thousand compliances were filed in
4 his office for this election. They havenot fallen into
5 disuse.

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

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

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

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

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

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

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

A Completely.

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

A That is the only thing.

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

A Two sets?

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

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

I would like to ask you another question.

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

I can't say that it cannot be done. I can assure you that if it can be done, it will be an extremely difficult thing to accomplish. I would not want to say anything other than that because I don't have the knowledge.

(Inaudible)

Yes, sir, for this reason, if I may point out that the uniform removal can be accomplished in other ways, it is simple whether you use a machine or a hand. The intersolicing would be difficult here or there.

The District Court ruled in favor of the defendant on the national issue and said that were exercising their right to be free from deciding individual factors.

Just so I am clear about this, Mr. Redden, I suggested tonight be difficult to delete the electors under the interim order to be on the ballots, and it would be much more difficult to substitute

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

6 A Yes, sir, it says the name cannot appear on
7 the ballot but only one name and counsel says that have
8 support from New York and California cases that that is con-
9 stitutional.

10 Q When was this?

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

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

17 A Yes, sir, Mrs. Amos---

18 Q Wait just a minute.

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

22 A Yes, sir.

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

25 A Herndon versus Lee is relied upon as the law

1 the majority opinion.

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

4 Q That is not what the statute says.

5 A The statute says five days after the announce-
6 ment of candidacy, which could be March 1.

7 Q This has been construed by the Supreme Court
8 of Alabama to mean the filing of the certificate of nomination
9 by either mass meeting or by convention held after mass
10 meeting.

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

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

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

18 A Yes, sir.

19 Q How do you justify that one?

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

22 Q Just tell me briefly and simply.

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

25 Q In Herndon against Lee, in your submission, it

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

A Yes, sir, which is September 6.

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

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

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

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

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

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

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

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

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

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

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

A second contention is even with that, we have Alabama statutes that say if you don't even file the list of people before the election and if n body catches you before the election, then it is so. It is mandatory after that. We think it is certainly in violation of the 15 because this

1 is the first time it has been applied.

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

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

10 *El Mabel--*

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

14 *Congratulations on your diligent efforts,*
15 *which resulted in the disqualification of*
16 *some liberals.*

17 *Regards*

18 *Bill Mori*

19 *Chairman of the Alabama*
20 *Conservative Party*

21 That letter is dated 3-25-68.

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

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

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

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

6 A No, sir.

7 Q How does the voter find out?

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

11 Q They are not pledged under Alabama law?

12 A They are unpledged.

13 Q Don't you live in Georgia?

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

16 Q You shouldn't vote there then.

17 Q Why don't you vote in both places?

18 Q What is the second column there?

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

1 whom the Voting Rights Act was passed.

2 With respect to us keeping things quiet and not
3 having nominees file declarations of intent, we started with
4 139 counties. They have been winnowed away to 89. There
5 is a little evidence in here of the fact that somebody con-
6 tacted some of our folks. It is not very easy to run for
7 office sometimes in Alabama. Thank you.

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