

1965

United States v. Mississippi (p. 710-1275)

United States. Supreme Court

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[fol. 928] ANSWER TO INTERROGATORY NUMBER 18(A) AS TO THE FACTS UPON WHICH THE UNITED STATES WILL RELY TO PROVE THE ASSERTION CONTAINED IN PARAGRAPH 66 OF THE COMPLAINT THAT THE PURPOSE OF EACH OF THE FOLLOWING ACTS OF THE LEGISLATURE OF MISSISSIPPI OR ANY ONE OR COMBINATION OF THEM IS TO DETER, PREVENT, DELAY AND HARASS NEGROES AND/OR TO MAKE IT MORE DIFFICULT FOR NEGROES IN THEIR EFFORTS TO BECOME REGISTERED VOTERS, TO FACILITATE DISCRIMINATION AGAINST NEGROES, AND/OR TO MAKE IT MORE DIFFICULT FOR THE UNITED STATES TO PROTECT THE RIGHT OF ALL ITS CITIZENS TO VOTE WITHOUT DISTINCTION OR DISCRIMINATION BASED ON RACE OR COLOR.

H. B. 900, Reg. Sess., 1962

H. B. 901, Reg. Sess., 1962

H. B. 905, Reg. Sess., 1962

H. B. 822, Reg. Sess., 1962

H. B. 904, Reg. Sess., 1962

H. B. 903, Reg. Sess., 1962

The facts upon which the United States will rely to prove the assertion contained in Paragraph 66 of the Complaint that the purpose of each of the Acts listed in the preceding paragraph, of the Legislature of Mississippi or any one or combination of them is to deter, prevent, delay and harass Negroes and/or to make it more difficult for Negroes in their efforts to become registered voters, to facilitate discrimination against Negroes, and/or to make it more difficult for the United States to protect the right of all its citizens to vote without distinction or discrimination based on race or color is as follows:

Plaintiff will rely on the record of all litigation brought by the United States under 42 U.S.C. 1971 and Title III of the 1960 Civil Rights Act within the State of Mississippi since 1960 as proof of notice to the State of Mississippi and its legislature that the United States government intended to enforce the command of the Fifteenth Amendment within the State of Mississippi.

[fol. 929] 1. Governor Ross Barnett, in a speech to a joint

session of the Mississippi Legislature on January 3, 1962, stated:¹

Since you met here in 1960, the so-called "Justice" Department of our own government has invaded certain counties and municipalities of our State and has become an active party to the harassment of our elected officials and of our people. The United States Attorney General has been directly responsible for the filing of federal lawsuits against certain duly-elected officers of this State under the now rather moth-eaten misnomer of "Civil Rights." He would create turmoil in our State. During the past year, our State has been made a regular racetrack for so-called "Freedom Riders." These questionable characters, coming to us from violence-plagued areas of the nation, have made repeated and deliberate attempts to inflame our people. They have deliberately violated our laws. They have refused to obey law enforcement officers. They came into our State to breach the peace, and hundreds of them succeeded in doing so. Our public officials and law enforcement officers are to be commended for the manner in which they have handled these law violators from other states. Our Sovereignty Commission has done a most effective job, too, in working closely with our officials and our peace officers.

* * * * *

We must protest every invasion. We must fight every inch of the way. We must let the entire nation know that we are proud of our conservative position and that we will not become a part of the blind mob that is rushing our nation into international, one-world Socialism—or worse.

2. In 1962 Negro citizens and organizations conducted a voter registration drive in Mississippi for the purpose of increasing the number of Negroes eligible to vote in the 1962 primary elections.

¹ P62-23. *Journal of the Senate of the State of Mississippi, 1962.* p. 19-20.

[fol. 930] 3. In 1962 Negroes were candidates for the office of representative to the Congress of the United States for the first time since Reconstruction.²

4. The Mississippi Legislature, during 1962, proposed and/or in some instances passed laws relating to candidates for office:

a. Under the Constitution of 1890, any qualified elector was eligible for public office.³ A Constitutional amendment adopted by the Legislature gave the Legislature authority to specify additional qualifications for holding office.⁴ This amendment was ratified by the electorate of Mississippi in the general election of 1962.

b. Another bill adopted by both Houses provided that all individuals comprising governing authority of municipalities be elected through a city-wide vote rather than by individual wards.⁵

The *Tupelo Daily Journal*, on March 2, 1962 discussed this measure:⁶

[fol. 931] The Senate Thursday adopted a provision aimed at preventing the election of Negroes to city boards of aldermen.

Under the bill, which now goes to the House, aldermen would be picked in city-wide votes rather than in ward elections.

Sen. Bill Caraway of Leland, author of the measure,

² P62-24. *The Tylertown Times*. Tylertown, Walthall, Mississippi. May 31, 1962. Also, according to the *Jackson Daily News*, 1954 was the first year since Reconstruction that (a) Negroes had served on a Washington County, Mississippi jury; (b) Negroes had run for any public office in Jefferson Davis County, Mississippi. *The Jackson Daily News*, Jackson, Mississippi. April 13, 1954 and April 27, 1954.

³ P62-1. Mississippi Constitution of 1890. Article 12, Section 250.

⁴ P62-3. Mississippi Laws, 1962. Ch. 640.

⁵ P62-4. Mississippi Laws, 1962. Ch. 537.

⁶ P62-25. *The Daily Journal*. Tupelo, Mississippi. March 2, 1962.

said wards in a few Mississippi cities may soon have enough Negro voters to swing elections.

c. Formerly the county political executive committees were required to appoint precinct managers from among supporters of all the candidates, whenever possible.⁷ House Bill 443 (Ch. 565) eliminated this requirement.⁸

The *Morning Advocate*, on May 11, 1962, observed:⁹

The Mississippi Senate approved a bill Thursday to help prevent Negro poll workers serving in primary elections.

The House-passed bill was put through the Senate in the absence of reporters, who were out while the chamber met in a executive session. The bill was called up and passed before newsmen could re-enter the chamber.

"The less you say about it to the press the better," one Senator was heard to remark.

The bill permits county executive committees to name poll managers, removing a feature that the managers must be selected from among the backers of leading candidates.

On March 1, 1962 the *Delta Democrat-Times* stated:¹⁰

[fol. 932] Mississippi law is constantly changing to ward off racial integration threats.

One law undergoing such a change now concerns appointment of persons to manage voting precincts during elections.

The present law carries a provision that county Democratic executive committees equally distribute precinct manager posts among supporters of all candidates for the chief offices to be filled.

The House of Representatives, mindful that two

⁷ P62-2. Mississippi Code of 1942. § 7505.

⁸ P62-5. Mississippi Laws, 1962, Ch. 565.

⁹ P62-26. *The Morning Advocate*, Baton Rouge, Louisiana. May 11, 1962.

¹⁰ P62-27. *The Delta Democrat-Times*. Greenwood, Mississippi, March 1, 1962.

Negroes are running for Congress, voted overwhelmingly Wednesday afternoon to delete the provision and the Senate is expected to follow suit.

No reason was given for the deletion during House discussion, but it was generally known that it stemmed from the candidacies of Negroes Robert Smith of Jackson and Theodore Trammell of Clarksdale.

d. Senate Bill 1580 (Ch. 566) proposed increased qualifying fees for candidates for political party nominations and certain general elections candidates.¹¹

e. House Bill 991 would have increased the number of petitioners needed to place a candidate's name on the ballot when he was not nominated by a political party.¹²

f. Senate Bill 1706 (Ch. 567) required candidates in primary elections to qualify 60 days before the primary.¹³

g. Senate Bill 1943 provided for the nomination of county and county district officers by convention rather than by popular primary elections.¹⁴

[fol. 933] h. Senate Bill 2093 provided that the participant in a primary election cannot oppose the party nominee in the general election or sign the petition of an opponent.¹⁵

Although not all of these measures were enacted in Mississippi law, they indicate a desire by members of the Mississippi Legislature to tighten requirements for candidacy for public office and to provide for stricter supervision of candidates by party executive committees.

5. During the 1962 Session, the Mississippi Legislature also attempted to implement, with four bills, the 1960 amendment to Section 264 of the Constitution which eliminated

¹¹ P62-6. Mississippi Laws, 1962, Ch. 566.

¹² P62-16. H.B. 991. Passed in House, May 11, 1962. Did not pass in Senate.

¹³ P62-7. Mississippi Laws, 1962, Ch. 567.

¹⁴ P62-17. S.B. 1943, Introduced in Legislature, March 27, 1962. Did not pass.

¹⁵ P62-18. S. B. 2093. Introduced in Senate. April 19, 1962. Did not pass.

the requirement that a grand or petit juror be a qualified elector.¹⁶

6. On April 10, 1962, The United States was granted a temporary injunction by the Court of Appeals prohibiting Theron C. Lynd, Circuit Clerk and Registrar of Forrest County, Mississippi, from discriminating against Negro applicants for application.¹⁷

[fol. 934] On April 17, 1962 a series of registration laws was introduced into the Mississippi House of Representatives.

A comparison of the findings of fact and the orders in the Lynd case with the bills introduced into the Legislature immediately following shows the following:

Finding of Fact: Many white applicants were not required to fill out application forms; other white applicants were given assistance in filling out applications; others were not rejected for filling out the form incorrectly.¹⁸

Order: The registrar must give Negroes the benefit of the same type of assistance he gives to white persons.¹⁹

¹⁶ a-P62-8. Mississippi Laws, 1962. Ch. 308;

b-62-19. H.B. 720. Passed in House, May 24, 1962, Did not pass in Senate;

c-P62-20. S. B. 1536. Introduced in Senate, January 15, 1962, Did not pass;

d-P62-21. S. B. 2009. Introduced in Senate, April 10, 1962, Did not pass.

¹⁷ P62-28. *United States v. Lynd*, 301 f. 2d 818 (5th Cir. 1962) (Reh. den. 5/21/62).

¹⁸ P62-29. *United States v. Lynd*, 301 f. 2d 821. (5th Cir. 1962) (Reh. Den. 5-21-62)

¹⁹ P62-28 and P62-30. *United States v. Lynd*, 301 f. 2d 818, 823 (5th Cir. 1962) (Reh. Den. 5-21-62)

Legislative Action: One bill was introduced which required that all blanks on the application form be correctly and completely filled out, and that no assistance be given to applicants by the registrar.²⁰

Finding of Fact: Negroes were not given the cause or reason for the rejection of their applications for registration.²¹

[fol. 935]

Legislative Action: A bill was introduced which provided that the registrar not give reasons for rejection to applicants except that when the rejection was solely for lack of "good moral character," this fact might be written on the rejected application form.²²

Finding of Fact: Obviously qualified Negroes were rejected, including six with bachelor's degrees and three with master's degrees.²³

Legislative Action: Several bills were introduced to change the qualifications for voters. The 1960 amendment to Section 244 of the Mississippi Constitution was implemented by inserting a good moral character requirement into laws regarding eligibility to vote in general and primary elections.²⁴ It was further implemented by changing the application form to provide a space for the determination of moral charac-

²⁰ P62-9. Mississippi Laws, 1962. Ch. 570.

²¹ P62-29. *United States v. Lynd*, 301 f. 2d 821 (5th Cir. 1962) (Reh. Den. 5-21-62)

²² P62-10. Mississippi Laws, 1962. Ch. 571.

²³ P62-29. *United States v. Lynd*, 301 f. 2d 821 (5th Cir. 1962) (Reh. Den. 5-21-62).

²⁴ P62-11. Mississippi Laws, 1962. Ch. 575.

**Legislative
Action:**

ter.²⁵ Another bill required the publication of names and addresses of all applicants for registration.²⁶

[fol. 936] One bill permitted third parties to challenge the good moral character of any applicant, after the publication of his name. This bill also provided that the registrar would arrange and conduct a hearing to determine the moral character of challenged applicants.²⁷

Finding of Fact: Negroes whose applications were rejected were required to wait six months before re-applying, although there was no statutory basis for this requirement.²⁸

**Legislative
Action:**

A bill which would establish a six-month waiting period was introduced and passed in the senate.²⁹

In its investigations and litigation in Mississippi, the United States was using Mississippi poll books to help discover patterns of racial discrimination in voting.

A bill included in the 1962 package legislation removed from the Mississippi poll books the column indicating the race of the voter.³⁰

²⁵ P62-12. Mississippi Laws, 1962. Ch. 569.

²⁶ P62-13. Mississippi Laws, 1962. Ch. 572.

²⁷ P62-22. Mississippi Laws, 1962. Ch. 573.

²⁸ P62-29. United States v. Lynd, 301 f. 2d 821 (5th Cir. 1962) (Reh. Den. 5-21-62).

²⁹ P62-22. S. B. 1927.

³⁰ P62-15. Mississippi Laws, 1962. Ch. 574.