H8827

CONTESTED-ELECTION CASE

OF

FANNIE LOU HAMER

v.

JAMIE L. WHITTEN

FROM THE

SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI

EIGHTY-NINTH CONGRESS

U.S. GOVERNMENT PRINTING OFFICE

49-269 O WASHINGTON : 1965

THE RULING OF THE CLERK OF THE HOUSE OF REPRESENTATIVES WITH REFERENCE TO PRINTING THE TESTIMONY SUBMITTED TO HIM IN THE MATTER OF THE CONTESTED ELECTION CASE IN THE SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI, EIGHTY-NINTH CONGRESS

Ralph R. Roberts, Clerk of the House of Representatives, having given the required notice to all parties in the contested-election case of *Fannie Lou Hamer* v. *Jamie L. Whitten* to appear in his office on June 2, 1965, for the purpose of being present at the opening of the sealed packages of testimony and of agreeing upon the parts thereof to be printed, the attorneys of record of the contestant and the contestee being unable to agree on the portions of the manuscript to be printed; in fact, there being complete disagreement, the meeting was adjourned.

In accordance with the requirements of the statute, the Clerk proceeded to examine and to make the ascertainment as to the portions of the testimony to be printed and rules as follows:

The testimony in this matter is of such admixture of papers in relation to the five congressional districts in the State of Mississippi that it was impossible for the Clerk to determine to which congressional district the testimony applies. He finds that said testimony failed to comply with sections 208, 209, 218, 221, 222, and 223 of title 2 of the United States Code as noted:

Aberdeen, Monroe County, Miss., February 8, 1965; sections 209, 218, 221, 222, and 223

Aberdeen, Monroe County, Miss., February 9, 1965; sections 209, 218, 221, 222, and 223

Third Mount Olive Missionary Baptist Church, West Point, Clay County, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223

Starkville, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223

Greenwood, Holmes County, Miss., January 29, 1965; sections 209, 218, 221, 222, and 223

Greenwood, Holmes County, Miss., January 30, 1965; sections 209, 218, 221, 222, and 223

Greenwood, Holmes County, Miss., February 1, 1965; sections 209, 218, 221 222, and 223

Federal Building, Greenville, Washington County, Miss., January 30, 1965; sections 209, 218, 221, 222, and 223

Rust College, Holly Springs, Miss., February 2 and 3, 1965; sections 209, 218, 221, 222, and 223

Federal Building, Clarksdale, Miss., February 2, 1965; sections 209, 218, 221, 222, and 223

Federal Building, Clarksdale, Miss., February 2, 1965; sections 209, 218, 221, 222, and 223

Federal Building, Clarksdale, Miss., February 4, 1965; sections 209, 218, 221, 222, and 223

Federal Building, Clarksdale, Miss., February 5, 1965; sections 209, 218, 221, 222, and 223

Greenwood, Miss., February 5, 1965; sections 209, 218, 221, 222, and 223
Greenwood, Miss., February 6, 1965; sections 209, 218, 221, 222, and 223
Sunflower County Courthouse, Indianola, Miss., February 9, 1965; sections 209, 218, 221, 222, and 223
Batesville, Miss., February 9, 1965; sections 209, 218, 221, 222, and 223
Freedom House, Indianola, Miss., February 9, 1965; sections 209, 218, 221, 222, and 223
Batesville, Miss., February 10, 1965; sections 209, 218, 221, 222, and 223
Sunflower County Courthouse, Indianola, Miss., February 10–11, 1965; sections 209, 218, 221, 222, and 223
Glendora, Tallahatchie County, Miss., February 10, 1965; sections 209, 218, 221, 222, and 223
Glendora, Tallahatchie County, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223
Batesville, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223
Batesville, Miss., February 12, 1965; sections 209, 218, 221, 222, and 223
Rust College, Holly Springs, Marshall County, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223.
Rust College, Holly Springs, Marshall County, Miss., February 12, 1965; sections 209, 218, 221, 222, and 223
Natchez, Miss., January 28 and 29, 1965; sections, 209, 218, 221, 222, and 223
Jackson, Miss., January 30, 1965; sections 209, 218, 221, 222, and 223
Vicksburg, Miss., February 4, 1965; sections, 209, 218, 222, and 223
Pike County Courthouse, Magnolia, Miss., February 4, 1965; sections 209, 218 221, 222, and 223
Pike County Courthouse, Magnolia, Miss., February 4, 1965; sections 209, 218, 221, 222, and 223
Pike County Courthouse, Magnolia, Miss., February 5, 1965; sections, 209, 218, 221, 222, and 223
Pike County Courthouse, Magnolia, Miss., February 5, 1965; sections, 209, 218, 221, 222, and 223
Pike County Courthouse, Magnolia, Miss., February 5 and 6, 1965; sections 209, 218, 221, 222, and 223
Pike County Courthouse, Magnolia, Miss., February 6, 1965; sections 209, 218, 221, 222, and 223
Adams County Courthouse, Natchez, Miss., Febuary 8, 1965; sections 209, 218 221, 222, and 223
County Courthouse, Magnolia, Miss., February 8, 1965; sections 209, 218, 221, 222, and 223
Tylertown Miss., February 8, 1965; sections, 209, 218, 222, and 223
Magnolia, Miss., February 8, 1965; sections 209, 218, 221, 222, and 223
Magnolia Miss., February 9, 1965; sections 209, 218, 221, 222, and 223
Liberty, Amite County, Miss., February 10, 1965; sections 209, 218, 221, 222, and 223
Pike County Courthouse, Magnolia, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223
Jackson, Miss., April 1, 1965; sections 203, 209, 218, 221, 222, and 223
Jackson, Miss., April 2, 1965; sections 203, 209, 218, 221, 222, and 223
Jackson, Miss., April 2, 1965; sections 203, 209, 218, 221, 222, and 223
Jackson, Miss., April 2, 1965; sections 203, 209, 218, 221, 222, and 223
Jackson, Miss., April 2, 1965; sections 203, 209, 218, 221, 222, and 223
Jackson, Miss., April 3, 1965; sections 203, 209, 218, 221, 222, and 223
Jackson, Miss., April 3, 1965; sections 203, 209, 218, 221, 222, and 223

Meridian, Miss., February 4, 1965; sections 209, 218, 221, 222, and 223
Meridan, Lauderdale, County, Miss., February 5, 1965; sections 209, 218, 222, and 223
Canton, Miss., February 8, 1965; sections 209, 218, 221, 222, and 223
Canton, Miss., February 9, 1965; sections 209, 218, 221, 222, and 223
Brandon, Miss., February 10, 1965; sections 209, 218, 221, 222, and 223
Canton, Miss., February 10, 1965; sections 209, 218, 221, 222, and 223
Canton, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223
Canton, Miss., February 12, 1965; sections 209, 218, 221, 222, and 223
St. Paul's Methodist Church, Hattiesburg, Forrest County, Miss., February 10, 1965; sections 209, 218, 221, 222, and 223
St. Paul's Methodist Church, Hattiesburg, Forrest County, Miss., February 11, 1965; sections 209, 218, 221, 222, and 223
St. Paul's Methodist Church, Hattiesburg, Forrest County, Miss., February 12, 1965; sections 209, 218, 221, 222, and 223
Laurel, Miss., February 11, 1965; sections 203, 209, 218, 221, 222, and 223
Federal Post Office, Jackson, Miss., January 29, 1965; sections 209, 218, 222, and 223
Jackson, Miss., February 1, 1965; sections 209, 218, 222, and 223
Palo Alto, Calif., February 2, 1965; sections 209, and 222
San Jose, Calif., February 6, 1965; sections 209, 221, 222, and 223
Chicago, Ill., February 11, 1965; sections 209, 221, 222, and 223
San Francisco, Calif., February 8, 1965; sections 209, 218, 222
Detroit, Mich., February 10, 1965; sections 209, 221, and 222
Yale University, New Haven, Conn., February 10, 1965; sections 209, 221, 222, and 223
Yale University, New Haven, Conn., February 11, 1965; sections 209, 221, 222, and 223
Depositions taken at Washington, D.C., February 11, 1965; sections 209, 221, 222, and 223
New York, N.Y., February 11, 1965; sections 209, 222, and 223
Boston, Mass., February 12, 1965; sections 209, 222
Jackson, Miss., February 12, 1965; sections 209, 218, 221, 222, and 223
Newark, N.J., February 12, 1965; sections 209 and 222

Sec. 201. Notice of intention to contest

Whenever any person intends to contest an election of any Member of the House of Representatives of the United States, he shall within thirty days after the result of such election shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the Member whose seat he designs to contest, of his intention to contest the same, and in such notice, shall specify particularly the grounds upon which he relies in the contest. (R. S. § 105.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 1, 9 Stat. 568.

DERIVATION

R.S., sec. 107, from act of Jan. 10. 1873, ch. 24, sec. 1, 17 Stat. 408.

CODIFICATION

Section, except last sentence, was from R.S., sec. 107; last sentence was from act of Mar. 2, 1875.

Sec. 202. Time for answer

Any member upon whom the notice mentioned in section 201 of this title may be served shall, within thirty days after the service thereof, answer such notice, admitting or denying the facts alleged therein, and stating specifically any other grounds upon which he rests the validity of his election; and shall serve a copy of his answer upon the contestant. (R. S. § 106.)

Sec. 203. Time for taking testimony.

In all contested-election cases the time allowed for taking testimony shall be ninety days, and the testimony shall be taken in the following order: The contestant shall take testimony during the first forty days, the returned Member during the suceeding forty days, and the contestant may take testimony in rebuttal only during the remaining ten days of said period. This section shall be construed as requiring all testimony in cases of contested election to be taken within ninety days from the day on which the answer of the returned Member is served upon the contestant. (R.S., sec. 107; Mar. 2, 1875, ch. 119, sec. 2, 18 Stat. 388.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 2, 9 Stat. 568.

Section 204. Notice of depositions; service

The party desiring to take a deposition under the provisions of this chapter shall give the opposite party notice, in writing, of the time and place, when and where the same will be taken, of the name of the witnesses to be examined and their places of residence, and of the name of an officer before whom the same will be taken. The notice shall be personally served upon the opposite party or upon any agent or attorney authorized by him to take testimony or

cross-examine witnesses in the matter of such contest, if, by the use of reasonable diligence, such personal service can be made; but if, by the use of such diligence, personal service cannot be made, the service may be made by leaving a duplicate of the notice at the usual place of abode of the opposite party. The notice shall be served so as to allow the opposite party sufficient time by the usual route of travel to attend, and one day for preparation, exclusive of Sundays and the day of service. Testimony in rebuttal may be taken on five days' notice. (R. S. § 108.)

DERIVATION

Acts Jan. 10, 1873, ch. 24, §§ 1, 3, 17 Stat. 406; Feb. 19, 1851, ch. 11, § 6, 9 Stat. 569.

Sec. 205. Testimony taken at several places at same time.

Testimony in contested-election cases may be taken at two or more places at the same time. (R.S. § 109.)

DERIVATION

Act Jan. 10, 1873, ch. 24, § 1, 17 Stat. 406.

Sec. 206. Who may issue subpoenas.

When any contestant or returned Member is desirous of obtaining testimony respecting a contested election, he may apply for a subpoena to either of the following officers who may reside within the congressional district in which the election to be contested was held:

First. Any judge of any court of the United States.

Second. Any chancellor, judge, or justice of a court of record of any State.

Third. Any mayor, recorder, or intendent of any town or city.

Fourth. Any notary public. (R.S. § 110; June 7, 1878, ch. 160, 20 Stat. 99.)

DERIVATION

Acts Feb. 19, 1851, ch. 11, § 3, 9 Stat. 568, and Jan. 23, 1869, ch. 15, 15 Stat. 267.

ABOLITION OF OFFICES

Act June 7, 1878, abolished registers in bankruptcy who were originally authorized to issue subpoenas under this section.

Sec. 207. Contents of subpoena.

The officer to whom the application authorized by section 206 of this title is made shall thereupon issue his writ of subpoena, directed to all such witnesses as shall be named to him, requiring their attendance before him, at some time and place named in the subpoena, in order to be examined respecting the contested election. (R.S. § 111.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 3, 9 Stat. 568.

Sec. 208. When justices of the peace may act.

In case none of the officers mentioned in section 206 of this title are residing in the congressional district from which the election is proposed to be contested, the application thereby authorized may be made to any two justices of the peace residing within the district; and they may receive such application, and jointly proceed upon it. (R.S. § 112.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 10, 9 Stat. 570.

Sec. 209. Depositions by consent.

It shall be competent for the parties, their agents or attorneys authorized to act in the premises, by consent in writing, to take depositions without notice;

also, by such written consent, to take depositions (whether upon or without notice) before any officer or officers authorized to take depositions in common law, or civil actions, or in chancery, by either the laws of the United States or of the State in which the same may be taken, and to waive proof of the official character of such officer or officers. Any written consent given as aforesaid shall be returned with the depositions. (R.S., sec. 113.)

DERIVATION

Act of Jan. 10, 1873, ch. 24, sec. 3, 17 Stat. 408.

Sec. 210. Service of subpoena.

Each witness shall be duly served with a subpoena, by a copy thereof delivered to him or left at his usual place of abode, at least five days before the day on which the attendance of the witness is required. (R.S. § 114.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 4, 9 Stat. 569.

Sec. 211. Witnesses need not attend out of county.

No witness shall be required to attend an examination out of the county in which he may reside or be served with a subpoena. (R.S. § 115.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 4, 9 Stat. 569.

Sec. 212. Penalty for failure to attend or testify.

Any person who having been summoned in the manner above directed, refuses on neglects to attend and testify, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of $20, to be recovered, with costs of suit, by the party at whose instance the subpoena was issued, and for his use, by an action of debt, to any court of the United States, and shall also be liable to an indictment for a misdemeanor, and punishment by fine and imprisonment. (R.S. § 116.)

DERIVATION

Act. Feb. 19, 1851, ch. 11, § 5, 9 Stat. 569.

Sec. 213. Witnesses outside of district.

Depositions of witnesses residing outside of the district and beyond the reach of a subpoena may be taken before any officer authorized by law to take testimony in contested-election cases in the district in which the witness to be examined may reside. (R.S. § 117.)

DERIVATION

Act Jan. 10, 1873, ch. 24, § 2, 17 Stat. 408.

Sec. 214. Party notified may select officer.

The party notified as aforesaid, his agent, or attorney, may, if he see fit, select an officer (having authority to take depositions in such cases) to officiate, with the officer named in the notice, in the taking of the depositions, and if both such officers attend, the depositions shall be taken before them both, sitting together, and be certified by them both. But if only one of such officers attend, the depositions may be taken before and certified by him alone. (R.S. § 118.)

DERIVATION

Act Jan. 10, 1873, ch. 24, § 3, 17 Stat. 408.

Sec. 215. Depositions taken by party or agent.

At the taking of any deposition under this chapter, either party may appear and act in person, or by agent or attorney. (R.S. § 119.)

DERIVATION

Act Jan. 10, 1873, ch. 24, § 3, 17 Stat. 408.

Sec. 216. Examination of witnesses.

All witnesses who attend in obedience to a subpoena, or who attend voluntarily at the time and place appointed, of whose examination notice has been given, as provided by this chapter, shall then and there be examined on oath by the officer who issued the subpoena, or, in case of his absence, by any other officer who is authorized to issue such subpoena, or by the officer before whom the depositions are to be taken by written consent, or before whom the depositions of witnesses residing outside of the district are to be taken as the case may be, touching all such matters respecting the election about to be contested as shall be proposed by either of the parties or their agents. (R. S. § 120.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 7, 9 Stat. 569.

Sec. 217. Testimony, to what confined

The testimony to be taken by either party to the contest shall be confined to the proof or disproof of the facts alleged or denied in the notice and answer mentioned in sections 201 and 202 of this title. (R. S. § 121.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 9, 9 Stat. 569.

Sec. 218. Testimony, written out and attested.

The officer shall cause the testimony of the witnesses, together with the questions proposed by the parties or their agents, to be reduced to writing in his presence, and in the presence of the parties or their agents, if attending, and to be duly attested by the witnesses respectively. (R.S., sec. 122.)

DERIVATION

Act of Feb. 19, 1851, ch. 11, sec. 7, 9 Stat. 569.

Sec. 219. Production of papers

The officer shall have power to require the production of papers; and on the refusal or neglect of any person to produce and deliver up any paper or papers in his possession pertaining to the election, or to produce and deliver up certified or sworn copies of the same in case they may be official papers, such person shall be liable to all the penalties prescribed in section 212 of this title. All papers thus produced, and all certified or sworn copies of official papers, shall be transmitted by the officer, with the testimony of the witnesses, to the Clerk of the House of Representatives. (R. S. § 123.)

DERIVATION

Act Feb. 19, 1851, ch. 11, § 8, 9 Stat. 569.

Sec. 220. Adjournments

The taking of the testimony may, if so stated in the notice, be adjourned from day to day. (R. S. § 124.)

DERIVATION

Act Jan. 10, 1873, ch. 24, § 3, 17 Stat. 408.

Sec. 221. Notice attached to depositors.

The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpoena, where any has been served, shall be attached to the depositions when completed. (R.S., sec. 125.)

DERIVATION

Acts of Feb. 19, 1851, ch. 11, sec. 7, 9 Stat. 569, and Jan. 10, 1873, ch. 24, sec. 8, 17 Stat. 408.

Sec. 222. Copy of notice and answer to accompany testimony.

A copy of the notice of contest, and of the answer of the returned Member, shall be prefixed to the depositions taken, and transmitted with them to the Clerk of the House of Representatives. (R.S., sec. 126.)

DERIVATION

Act of Feb. 19, 1851, ch. 11, sec. 9, 9 Stat. 569.

Sec. 223. Testimony sent to the Clerk of House of Representatives; printing testimony; briefs.

All officers taking testimony to be used in a contested-election case, whether by deposition or otherwise, shall, when the taking of the same is completed, and without unnecessary delay, certify and carefully seal and immediately forward the same, by mail or by express, addressed to the Clerk of the House of Representatives of the United States, Washington, District of Columbia; and shall also indorse upon the envelope containing such deposition or testimony the name of the case in which it is taken, together with the name of the party in whose behalf it is taken, and shall subscribe such indorsement.

The Clerk of the House of Representatives, upon the receipt of such deposition or testimony, shall notify the contestant and the contestee, by registered letter through the mails, to appear before him at the Capitol, in person or by attorney, at a reasonable time to be named, not exceeding twenty days from the mailing of such letter, for the purpose of being present at the opening of the sealed packages of testimony and of agreeing upon the parts thereof to be printed. Upon the day appointed for such meeting the said Clerk shall proceed to open all the packages of testimony in the case, in the presence of the parties or their attorneys, and such portions of the testimony as the parties may agree to have printed shall be printed by the Public Printer, under the direction of the said Clerk; and in the case of disagreement between the parties as to the printing of any portion of the testimony, the said Clerk shall determine whether such portion of the testimony shall be printed; and the said Clerk shall prepare a suitable index to be printed with the record. And the notice of contest and the answer of the sitting Member shall also be printed with the record.

If either party, after having been duly notified, should fail to attend, by himself or by an attorney, the Clerk shall proceed to open the packages, and shall cause such portions of the testimony to be printed, as he shall determine.

He shall carefully seal up and preserve the portions of the testimony not printed, as well as the other portions when returned from the Public Printer, and lay the same before the Committee on House Administration at the earliest opportunity. As soon as the testimony in any case is printed the Clerk shall forward by mail, if desired, two copies thereof to the contestant and the same number to the contestee; and shall notify the contestant to file with the Clerk, within thirty days, a brief of the facts and the authorities relied on to establish his case. The Clerk shall forward by mail two copies of the contestant's brief to the contestee, with like notice.

Upon receipt of the contestee's brief the Clerk shall forward two copies thereof to the contestant, who may, if he desires, reply to new matter in the contestee's brief within like time. All briefs shall be printed at the expense of the parties respectively, and shall be of like folio as the printed record; and sixty copies thereof shall be filed with the Clerk for the use of the Committee on House

Administration. (R.S., sec. 127; Mar. 2, 1875, ch. 112, sec. 1, 18 Stat. 330; Mar. 2, 1887, ch. 318, 24 Stat. 445; Aug. 2, 1946, ch. 753, sec. 121, 60 Stat. 822.)

DERIVATION

Act of Jan. 10, 1873, ch. 24, sec. 4, 17 Stat. 409.

AMENDMENTS

1946—Act of Aug. 2, 1946, amended section substituting "Committee on House Administration" for "Committee on Elections".

Sec. 201

85TH CONGRESS
1ST SESSION

H. RES. 230

IN THE HOUSE OF REPRESENTATIVES, U.S.,
April 11, 1957.

The following resolution was agreed to:

RESOLUTION

Resolved, That it would be unwise and dangerous for the House of Representatives to recognize an unsigned paper as being a valid and proper instrument with which notice may be given to contest the seat of a returned Member.

2. That the unsigned paper by which attempt was made to give notice to contest the election of the returned Member from the Sixth Congressional District of the State of Iowa to the Eighty-fifth Congress is not the notice required by the Revised Statutes of the United States, Title II, chapter 8, section 105.

Sec. 201

89TH CONGRESS
1ST SESSION

H. RES. 126[1]

IN THE HOUSE OF REPRESENTATIVES, U.S.,
January 19, 1965.

The following resolution was agreed to:

RESOLUTION

Whereas James R. Frankenberry, a resident of the city of Bronxville, New York, in the Twenty Fifth Congressional District thereof, has served notice of contest upon Richard L. Ottinger, the returned Member of the House from said district, of his purpose to contest the election of said Richard L. Ottinger; and

Whereas it does not appear that said James R. Frankenberry was a candidate for election to the House of Representatives from the Twenty Fifth Congressional District of the State of New York, at the election held November 3, 1964: Therefore be it

Resolved, That the House of Representatives does not regard the said James R. Frankenberry as a person competent to bring a contest for a seat in the House and his notice of contest, served upon the sitting Member, Richard L. Ottinger, is hereby dismissed.

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[1] The House of Representatives, on Jan. 10, 1941, took identical action on the same question in the contested-election case of *Locke Miller* v. *Michel J. Kinsora*. (See H. Res. 54, agreed to Jan. 10, 1941.

Crawford, Statutory Construction Interpretation of Laws 1940 Ed.:

Sec. 262, pp. 519–523. Mandatory and directory or permissive words.

Ordinarily the words "shall" and "must" are mandatory, and the word "may" is directory, although they are often used interchangeably in legislation. This use without regard to their literal meaning generally makes it necessary for the courts to resort to construction in order to discover the real intention of the legislature. Nevertheless, it will always be presumed by the court that the legislature intended to use the words in their usual and natural meaning. If such a meaning, however, leads to absurdity, or great inconvenience, or for some other reason is clearly contrary to the obvious intention of the legislature, then words which ordinarily are mandatory in their nature will be construed as directory, or vice versa. In other words, if the language of the statute, considered as a whole and with due regard to its nature and object, reveals that the legislature intended the words "shall" and "must" to be directory, they should be given that meaning. Similarly, under the same circumstances, the word "may" should be given a mandatory meaning, and especially where the statute concerns the rights and interests of the public, or where third persons have a claim de jure that a power shall be exercised, or whenever something is directed to be done for the sake of justice or the public good,[8] or is necessary to sustain the statute's constitutionality.

Yet the construction of mandatory words as directory and directory words as mandatory should not be lightly adopted. The opposite meaning should be unequivocally evidenced before it is accepted as the true meaning; otherwise, there is considerable danger that the legislative intent will be wholly or partially defeated.

While the words "shall", "must" and "may" are the ones generally involved in determining whether a statute is mandatory or merely permissive, there are other words and expressions which create the same problem, and to which the same principles are equally applicable. For instance, chief among these less widely used words or expressions are "shall have the power", "shall be lawful", "shall be the duty", "may and shall", or "shall and may", and the words "authorized" and "ought".

Sec. 266, pp. 529–530. Statutes pertaining to official action.

As a general rule, a statute which regulates the manner in which public officials shall exercise the power vested in them, will be construed as directory rather than mandatory, especially where such regulation pertains to uniformity, order, and convenience, and neither public nor private rights will be injured or impaired thereby. If the statute is negative in form, or if nothing is stated regarding the consequences or effect of noncompliance, the indication is all the stronger that it should not be considered mandatory. But if the public interest or private rights call for the exercise of the power vested in a public official, the language used, though permissive or directory in form, is in fact peremptory or mandatory, as a general rule.[9]

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[8] *Smith* v. *City Comm.*, 281 Mich. 235, 274 N.W. 776; *Kansas City* v. *Case Threshing Mach. Co.* (Mo.), 87 S.W. (2) 195, "When a statute directs the doing of a thing for the sake of justice or the public good, the word 'may' is the same as the word 'shall'." *Rex & Regina* v. *Barlow* (Eng.), 2 Salk. 609, and quoted in *Rock Island County Sup'rs* v. *U.S. ex rel State Bank* (U.S.), 4 Wall. 435, 18 L. Ed. 419.

[9] *U.S.* v. *Caplinger* 276 N.S. 604.

Secs. 206, 214, 218, and 223.

66: Corpus Juris Secundum, section 8, page 619:

Sec. 8. Certificates and seals.

a. Certificates:

(1) In general.

(2) Requisites and sufficiency.

(1) In general: A certificate of a notary duly authenticated is evidence of those things to which the notary is authorized to certify. It may be contradicted or impeached by other competent evidence, but clear and convincing proof is required.

A certificate of a notary duly authenticated is evidence of those things to which the notary is authorized to certify, but, **when not so authorized or required by law, it carries no presumption or authenticity.** As to the admissibility and effect of certificates as evidence the lex fori governs, without respect to their requisites or the effect given to them by the law of the place where the notary was appointed, or his power under that law to make them.

2: Hind's, section 1064, page 579:

Sec. 1064. The Alabama election case of Aldrich v. *Robbins in the 54th Congress, February 20, 1896.*

The specifications of a notice of contest are required to give a reasonable degree of information but not to have the precision of pleadings in the courts.

A notary taking testimony in an election case under the Federal law has jurisdiction within the district, although State law may restrict his functions to a county.

The minority conclude:

The true test to apply to this question is: If a witness who had been sworn before this notary public were indicted for perjury or false swearing before him in this case where the oath was administered and the testimony given in Dallas or Calhoun counties, could he be convicted? He could not, in either State or Federal court.

Secs. 209, 214, 218, and 221.

Wigmore on Evidence, volume III:

Sec. 802, p. 211, Depositions, in general.

The term "deposition", which formerly was applied to include testimony orally delivered, is now confined in meaning exclusively to testimony delivered in writing, i.e., testimony which in legal contemplation does not exist apart from a writing made or adopted by the witness. It is virtually of two sorts, namely, testimony which has no legal existence until it is completed in writing—as, the ordinary deposition 'de bene' taken by a commissioner—and (in occasional use of the term) testimony which may first sufficiently exist orally, but upon being reduced to writing is regarded as exclusively or 'prima facie' contained in the writing—as, the oral examination taken before a magistrate on a preliminary criminal trial. What difference there is in the legal conclusiveness of the writing is noticed later (post, sec. 805).

So far as the present principle is concerned, the question is, What special rules arise for securing accuracy of narration because of the departure from the oral form and the reduction into writing? If the witness himself wrote the statement entire, no special question would arise. But in practice he usually does not, since the written form is peculiar to testimony delivered out of court before a commissioner authorized by the court to receive and transmit it, and

this commissioner is legally authorized to act and often does act as the transcriber of the oral utterance. Thus it is an intermediary who makes the writing which becomes the testimony, and thus it becomes specially necessary to secure that this writing shall represent precisely the statement for which the witness stands responsible.

The special elements of the situation which may thus be a source of error and must be guarded by special rules are three; namely,

the personality of the official writer,

the verbal accuracy of his transcription of the witness' utterance, and

the witness' deliberate and knowing indorsement of the transcription as completed.

These three may be considered in order.

Sec. 805, p. 217. Same: Reading over and signing.

(1) Since the writing is to stand as the witness' own words, and since there is always an indefinable coefficient of error in transcription, there should be given a final opportunity for correction by the reading over to or by the witness, of the writing as completed. It has been customary in statutes to make special provisions for this.

(2) The witness' signature may be regarded either as necessary to constitute the writing his by adoption, or as symbolically equivalent to a knowing assent to its tenor (thus dispensing with the reading over), or as an additional means of identifying the person of the witness. Whatever the legal theory, it is usually treated as a technical requirement indispensable under the statutes.

(3) Supposing that the technical requirements of a reading over and signing are not fulfilled, a difference then arises between a deposition in the strict sense (i.e., testimony taken 'de bene' before a mere commissioner for latter use in a trial) and testimony before a committing magistrate in criminal cases. In the former instance the testimony is exclusively to be found in the writing, because a deposition is the creature of the statute or order granting the judicial officer's authority, and thus, if the writing fails in the above requirements, it never becomes testimony, and there is no testimony of that witness (post. sec. 1331).

Wigmore on Evidence, volume IV, section 1331, page 653:

Sec. 1331. (d) Deposition taken "de bene esse"; Affidavit.

A deposition, in the narrow sense of the word; i.e., testimony given extra-judicially before a specially authorized officer for the purpose of subsequent use of a trial, stands upon a footing entirely different from that of the preceding sorts of testimony. In a deposition, the testimony is the writing taken down by the officer and signed by the deponent. The officer's writing is not his report of the witness' oral deposition; there is only one testimonial utterance—the writing.

It is on its face singular that this difference of theory should be so solidly established between a deposition in the narrow sense and the testimony before a committing magistrate, because in both cases the writing is commonly required to be signed by the witness.

Secs. 209 and 218.

Modern Federal Practice Digest, volume 23, Federal Civil Procedure; 1326 Stipulations:

District court, New York, 1941: If the parties desire to be relieved of such restraints as the Federal Rules impose and so stipulate in writing, depositions may be taken before any person, at any time or place upon any notice and in any manner; otherwise, depositions must be taken only in accordance with the rules. Federal Rules of Civil Procedure, rule 26(a), 29; 28 USCA.

Sec. 209.

Moore's Federal Practice, 1953:

Rule 81a. Applicability in general. F.R.C.P.

(2) In the following proceedings appeals are governed by these rules, but they are not applicable otherwise than on appeal except to the extent that the practice in such proceedings is not set forth in statutes of the United States and has heretofore conformed to the practice in actions at law or suits in equity. *U.S. ex rel. Bayarsky* v. *Brooks*, D.C.N.J. 1943, 51 F. Supp. 974.

Secs. 209 and 218.

6: Cannon's Precedents, section 164, pages 311–315:

Sec. 164. The New York election case of Frank v. *La Guardia, in the 68th Congress, Jan. 7, 1925.*

Stipulation by parties in the nature of an agreement cannot waive plain provisions of the statutes.

While constitutional provisions exempt the House from the operation of the law relating to the taking of testimony in election cases, such law is binding upon the parties thereto.

On March 1, 1923, the parties entered into stipulation as follows:

"It is stipulated by and between the parties hereto, through their respective attorneys and counsel, that the time limit as fixed by the rules of the House of Representatives and the statutes of the United States governing contested elections shall be deemed as directory and not mandatory, and that either party may have more than the period of time allotted and fixed therein within which to present his respective case in this proceeding, and both sides waive specifically any right to object that they may have under the law with respect to the time so fixed."

In repudiation of this stipulation the committee hold:

A stipulation by parties in the nature of an agreement can not waive the plain provision of the statutes.

The law providing for the taking of evidence has been held to be not binding upon the House. It has been correctly stated, "That the House possesses all the power of a court having jurisdiction to try to the question who was elected. It is not even limited to the power of a court of law merely but under the Constitution clearly possesses the functions of a court of equity also."

The law, however, is binding upon the parties, as evidenced by the use of the mandatory word "shall". The House alone, upon proper application, may grant a further extension of the time for taking evidence for cause shown as a matter of equity but not of right, or to protect the rights of the people of a district.

While the contestee's attorney joined in the stipulation to waive the requirements of the law, indeed, himself dictated it and was afterwards guilty of a breach of legal ethics when he raised the point of lack of diligence, nevertheless, it is incumbent upon the contestant to prosecute his case speedily. The contestee holds the certificate of election. His title can only be overturned upon satisfactory evidence that he was not elected. His seat in this body can not be jeopardized by the faults of others. It has been held that House has no right unnecessarily to make the title of a Representative to his seat depend upon the acts, omissions, diligence, or laches of others.

The controlling factors, however, in our minds in reaching the conclusion in this case, were the imperative necessity of safeguarding the printed rules

unanimously approved by the three election committees, a special rule of the House recently adopted the plain and explicit provisions of a law of Congress, and a long and unbroken line of the House precedents.

The rules of the election committees were carefully prepared and unanimously adopted by the three election committees.

They were prepared specifically to expedite the determination of election cases. The contestant's attorney admitted that he had not brought himself within these rules.

Resolved, That the Committee on Elections No. 2 shall be, and is hereby, discharged from further consideration of the contested-election case of *Henry Frank* v. *Fiorello H. La Guardia* from the twentieth congressional district of New York.

6: Cannon's Precedents, section 116, pages 211–212:

Sec. 116. The Illinois election case of Parillo v. Kunz in the 67th Congress, Jan. 14, 1923.

Contestant having ignored, without reason or excuse, the plain mandate of the law relative to time of taking testimony, was held to have no standing as a contestant before the House.

Testimony taken in contravention of law cannot legally be considered by the House.

Parties to contested election case may not by stipulation set aside explicit provisions of statutes relating thereto.

In the present case the contestant not only does not show due diligence but the record clearly shows that without any reason or excuse whatever he undertook by a series of stipulations to set aside and ignore the clear and explicit provision of the statute.

Your committee, therefore, finds that in this case the contestant deliberately ignored the plain mandate of the law without any reason or excuse, that he has offered no evidence which can legally be considered by your committee, and that he has no standing as a contestant before the House of Representatives.

Your committee, therefore, finds that the contestant, not having complied with the provisions of the law, governing contested-election cases, has no case which can be legally considered by your committee or by the House of Representatives.

Secs. 209 and 218.

1: Hind's Precedents, section 730, pages 941–942:

Sec. 730. The North Carolina election case of O'Hara v. *Kitchin in the 46th Congress, Feb. 17, 1881.*

All agreements by parties to an election case in contravention of the provisions of law should be in writing, properly signed, and made a part of the record.

In any case, if such agreements are to be regarded, they should be in writing, and signed by the parties or their attorneys. This is the practice of courts generally, and is founded on sound reasons.

We think it of great importance in election cases that parties should understand absolutely that all agreements in contravention of the statutes of the United States, in regard to the taking of testimony, to be considered at all, should be in writing properly signed, and made a part of the record itself.

1: Hind's Precedents, sections 785–786, pages 950–958:

Sec. 785. The South Carolina election case of Mackey v. O'Connor in the 47th Congress Dec. 21, 1881.

Sec. 736. It also appeared that there had subsisted between the original parties to the contest an agreement, signed by Mr. Mackey and by the attorney of Mr. O'Conner.

We find in the Journal of the House of Representatives December 21, 1881, that the Clerk of the House of Representatives was by special procedure relieved from further responsibility under the statute and the matter was referred to the Committee on Elections by direction of the following resolution; to wit:

"*Resolved*, That all of the testimony and all other papers relating to the rights of Members to hold seats on this floor in contested cases now on file with the Clerk of this House or in his possession, and all memorials, petitions, and other papers now in the possession of this House or under its control relating to the same subject not otherwise referred, be, and the same hereby are, referred to the Committee on Elections, and ordered to be printed."

On March 2, 1887, section 127 of the Revised Statutes of the United States was amended so as to include "express" as well as "mail" as a method of forwarding testimony to be used in contested election cases to the Clerk of the House of Representatives.

(Signed) RALPH R. ROBERTS,
Clerk, U.S. House of Representatives.

CONTESTED-ELECTION CASE

OF

FANNIE LOU HAMER v. JAMIE L. WHITTEN

FROM THE

SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI

TESTIMONY FOR THE CONTESTANT

NOTICE OF INTENTION TO CONTEST THE ELECTION ON NOVEMBER 3, 1964, PURSUANT TO TITLE 2, UNITED STATES CODE, SECTION 201, OF JAMIE L. WHITTEN, AS A MEMBER OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES FROM THE SECOND DISTRICT OF MISSISSIPPI

To JAMIE L. WHITTEN, *Charleston, Miss.:*

The undersigned hereby notifies you, pursuant to title 2, United States Code, sections 201–226, that I intend to and do contest your purported election on November 3, 1964, to the House of Representatives of the United States from the Second Congressional District of the State of Mississippi.

You, Jamie L. Whitten, were purportedly nominated by the "regular" Democratic Party of Mississippi from which Negroes are and have been regularly and systematically excluded by illegal and unconstitutional registration and election procedures, and by intimidation, harassment, economic reprisal, property damage, terrorization, and violence. You were purportedly elected at the general election of November 3, 1964, hereinafter referred to as "the general election," by a vote claimed to be 70,218 out of a total of 306,463 persons of voting age in this congressional district,[1] an electorate from which Negroes are regularly and systematically excluded by the same methods, techniques, and devices indicated above.

You were opposed in the "regular" Democratic Party primary election of June 2, 1964, hereinafter referred to as "the primary election," by the undersigned, who, because of the fact that Negroes were regularly and systematically excluded therefrom by intimidation, harassment, economic reprisal, property damage, terrorization, violence, and illegal and unconstitutional registration procedures, received only 621 votes to your claimed 35,218.

After the foregoing unlawful primary election, I, Fannie Lou Hamer, attempted, pursuant to section 3260 of the Mississippi Code of 1942, to place my name upon the ballot for the general election as an independent candidate, but the petitions filed in my behalf were illegally, unlawfully, and unconstitutionally rejected by the State Board of Elections of the State of Mississippi. My petition for reconsideration of the decision of the State board of elections, setting forth the illegality of its action, appears as appendix A.

I then ran as a candidate for the seat of Representative in the House of Representatives for the Second Congressional District in the freedom election held in Mississippi from October 30 to November 2, 1964, in which said election all citizens who had the qualifications required by Mississippi law were permitted to participate without intimidation or discrimination as to race or color. In that

[1] Source, 1960 Report of the Census.

election I received a total vote of 33,009 while you received only 59. Accordingly, in addition to contesting your purported election, I will, upon the basis of the freedom election, claim the seat in Congress from the Second Congressional District of Mississippi.

I, Fannie Lou Hamer, am a Negro citizen above the age of 25 years, a citizen by birth of the United States and a lifelong resident of the Second Congressional District of Mississippi. I am the vice chairman of the Freedom Democratic Party and I was one of its delegates to the National Democratic Convention at Atlantic City, N.J., in August of 1964.

The grounds upon which I am contesting your claim to a seat in the House of Representatives is that your purported election thereto was in violation of the Constitution and laws of the United States and is therefore void. Your purported election violates the Constitution and laws of the United States because Negroes throughout the State of Mississippi and including this congressional district were systematically and almost totally excluded from the electoral process by which you were purportedly elected. This exclusion was achieved:

(*a*) Through the use of statutes and procedures governing and regulating the registration of voters and primary and general elections, which statutes and procedures were unconstitutional on their face and discriminatorily applied, and

(*b*) The use of widespread terror and intimidation directed against the Negro citizens of the State of Mississippi and including this congressional district who were seeking to exercise their electoral franchise.

The figures which reveal the systematic and intentional exclusion of Negroes from the electoral process in the State of Mississippi are not subject to challenge. This deliberate program of exclusion of Negro citizens from the political processes of this State was instituted shortly after the Civil War and continues to this day. It has produced the following results:

1890:	
Registered white voters	118,870
Registered Negro voters	189,884
1961:	
Registered white voters, approximately	500,000
Registered Negro voters	23,801

For an authoritative history of the program which produced this exclusion see the brief for the United States and the appendix to the brief for the American Civil Liberties Union entitled "Restrictions on Negro Voting in Mississippi History," in *United States* v. *Mississippi*, No. 73, October term, 1964, Supreme Court of the United States, both of which are documents on file with the Clerk of the Supreme Court of the United States and are incorporated herein by reference.

The program of systematic and deliberate exclusion currently operative in this congressional district is sharply illustrated by comparing the number of white and Negro citizens of voting age with the numbers of both races registered to vote in representative counties in this district. The figures for the counties in this district which have been collected in the record on appeal in *United State* v. *Mississippi*, *supra* (p. 415 *et* seq.), a document on file with the Clerk of the Supreme Court of the United States and incorporated by reference herein, are as follows:

(1) Benton County:	
2,514 eligible whites registered (82.5 percent)	2,078
1,419 eligible Negroes registered (0.21 percent)	80
(2) Coahoma County:	
8,708 eligible whites registered (73 percent)	6,380
14,004 eligible Negroes registered (7.6 percent)	1,061
(3) De Soto County:	
5,338 eligible whites registered (75 percent)	4,030
6,246 eligible Negroes registered (0.18 percent)	11
(4) Grenada County:	
5,792 eligible whites registered (95 percent)	5,518
4,323 eligible Negroes registered (3.1 percent)	135
(5) Holmes County:	
4,773 eligible whites registered (74 percent)	3,530
8,757 eligible Negroes registered (0.09 percent)	8

(6) Leflore County:	
10,274 eligible whites registered (70 percent)	7,168
13,567 eligible Negroes registered (2 percent)	268
(7) Marshall County:	
4,342 eligible whites registered (96 percent)	4,162
7,168 eligible Negroes registered (0.8 percent)	57
(8) Panola County:	
7,639 eligible whites registered (69 percent)	5,309
7,250 eligible Negroes registered (0.028 percent)	2
(9) Quitman County:	
4,176 eligible whites registered (71.6 percent)	2,991
5,673 eligible Negroes registered (6 percent)	436
(10) Tallahatchie County:	
5,099 eligible whites registered (85 percent)	4,330
6,483 eligible Negroes registered (0.07 percent)	5
(11) Tunica County:	
2,011 eligible whites registered (71 percent)	1,436
5,822 eligible Negroes registered (0.72 percent)	42.
(12) Washington County:	
19,837 eligible whites registered (54.5 percent)	10,838
20,619 eligible Negroes registered (8.6 percent)	1,762

The foregoing figures have a special significance in that 52.4 percent of the adult population of this district are Negroes yet only 2.97 percent have been permitted to register to vote.[3]

A. THE DETAILS OF THE SYSTEMATIC AND DELIBERATE DISENFRANCHISEMENT AND EXCLUSION OF NEGROES FROM THE ELECTORAL PROCESS IN MISSISSIPPI BY ILLEGAL REGISTRATION AND ELECTION STATUTES AND PROCEDURES DIRECTED AGAINST THEM ARE AS FOLLOWS

The legislative and administrative techniques by which Negroes have been disenfranchised and excluded from the electoral process are exposed in the complaint filed by the U.S. Government in the case known as *United States* v. *Mississippi*, *supra*, now pending before the Supreme Court of the United States. The allegations in this complaint are herewith adopted and will be proved by testimony to be taken in this proceeding in accordance with 2 U.S.C. 201, et seq.

1. SECTION 244 OF THE MISSISSIPPI CONSTITUTION, THE "UNDERSTANDING OF THE CONSTITUTION" TEST

In respect to the illegality of section 244 of the Mississippi constitution, the Government of the United States charges in paragraphs 14 through 42, inclusive, of the complaint aforesaid, the following which is adopted herein:

14. Under the constitution and laws of Mississippi prior to 1890, all male citizens, except insane persons and persons convicted of disqualifying crimes, who were 21 years of age or over and who had lived in the State 6 months and in the county 1 month were qualified electors, and were entitled to register to vote.

15. At the time of the adoption of the Mississippi constitution of 1890, there were substantially more Negro citizens than white citizens who possessed these voter qualifications in Mississippi.

16. In 1890, a Mississippi constitutional convention adopted a new State constitution. One of the chief purposes of the new constitution was to restrict the Negro franchise and to establish and perpetuate white political supremacy and racial segregation in Mississippi.

17. A principal section of the Mississippi constitution of 1890 designed to accomplish this purpose was section 244, which required a new registration of voters in Mississippi beginning January 1, 1892, and established as a new prerequisite to voting that a person otherwise qualified be able to read any section of the Mississippi constitution, or understand the same when read to him, or give a reasonable interpretation thereof.

18. Since at least 1892, registration has been and is a prerequisite to voting in any election in Mississippi. Registration in Mississippi is permanent.

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[3] Vol. I, 1961 U.S. Commission on Civil Rights Report, pp. 272–277.

19. Since the adoption of the Mississippi constitution of 1890 the State of Mississippi by law, practice, custom, and usage has maintained and promoted white political supremacy and a racially segregated society.

20. By 1899, approximately 122,000 or 82 percent of the white males of voting age and 18,000 or 9 percent of the Negro males of voting age were registered to vote in Mississippi. Since 1899, a substantial majority of white persons reaching voting age in Mississippi have become registered voters. The percentage of Negroes registered to vote has declined.

21. During the period from 1899 to approximately 1952, white political supremacy in Mississippi was maintained and promoted by the following methods among others:

(*a*) Negroes were not allowed to register to vote.

(*b*) Literate Negroes were required to interpret sections of the Mississippi constitution.

(*c*) Negroes were excluded from Democratic primary elections. During this time, victory in the Democratic primary in Mississippi was tantamount to election.

22. In June 1951, a decision by the U.S. Court of Appeals for the Fifth Circuit emphasized the either-or elements of section 244 of the Mississippi constitution of 1890; i.e., that a person could register to vote in Mississippi if he could read or, if unable to read, understand or interpret a provision of the constitution.

23. By 1951, a much higher percentage of the Negroes of voting age in Mississippi were literate than in 1890.

24. In 1952 the Mississippi Legislature passed a joint resolution proposing an amendment to section 244 of the Mississippi constitution of 1890 which provided that as a prerequisite for registration to vote the applicant must be able both to and give a reasonable interpretation of any section of the Mississippi constitution. The proposed amendment was submitted to the voters in a general election. Failure by the voters to mark the amendment portion of the ballot was counted as a vote against the proposed amendment, and it was not adopted.

25. The Legislature of Mississippi did not meet in 1953. On April 22, 1954, during its regular session, the legislature passed another resolution to amend section 244 of the Mississippi constitution of 1890 to provide as prerequisites to qualification as an elector in Mississippi that a person be able to read and write any section of the Mississippi constitution and give a reasonable interpretation thereof to the county registrar and in addition that a person be able to demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. The proposed amendment also required persons applying for registration to make a sworn written application for registration on a form to be prescribed by the State board of election commissioner. Persons who were registered to vote prior to January 1, 1954, were expressly exempted from the new and more stringent requirements.

26. In 1954, at least 450,000 or 63 percent of the white persons of voting age in Mississippi were registered to vote. In 1954, approximately 22,000 or 5 percent of the Negroes of voting age in Mississippi were registered to vote.

27. The proposed amendment to section 244 of the Mississippi constitution of 1890 was designed to perpetuate in Mississippi white political supremacy, a racially segregated society, and the disfranchisement of Negroes.

28. Six days after the adoption of the resolution proposing the constitutional amendment as described in paragraph 25, the Mississippi Legislature, in anticipation of the U.S. Supreme Court decision on racial segregation in the public schools, created a 25-member legal educational advisory committee. The committee's duty was to seek means to maintain racial segregation in the public schools in the event that the Supreme Court held such segregation to be unlawful.

29. In 1954, after the Supreme Court had declared State operation of racially segregated schools unconstitutional, white citizens councils were formed in Mississippi. The purpose of these organizations was the maintenance of racial segregation and white supremacy in Mississippi. The first statewide project undertaken by these organizations was the attempt to induce the white voters of Mississippi to adopt the proposed amendment to section 244 of the Mississippi constitution of 1890.

30. In September 1954 an extraordinary session of the Mississippi Legislature was called to consider the recommendation of the Mississippi Legal Educational Advisory Committee that the Mississippi constitution be amended to empower

the legislature to abolish the public schools. The legislature passed a resolution proposing such an amendment.

31. On November 2, 1954, the proposed amendment to section 244 of the Mississippi constitution of 1890 was submitted to and adopted by the voters. Of the approximately 472,000 registered voters in Mississippi who were eligible to vote on this proposed amendment about 95 percent were white; fewer than 5 percent were Negro. The amendment was adopted in a State where the public education facilities were and are racially segregated, and where such facilities provided for Negroes were and are inferior to those provided for white persons.

32. On December 21, 1954, the proposed amendment to the Mississippi constitution authorizing the legislature to abolish the public schools was submitted to, and approved by, the voters.

33. In January 1955, another extraordinary session of the Mississippi Legislature was called for the purpose of inserting in the constitution the amendment to section 244 and the amendment to authorize abolition of the public schools. Both amendments were inserted during this session.

34. During the extraordinary session described in paragraph 33, the Mississippi Legislature adopted legislation implementing the amended section 244. In addition to requiring the interpretation test and the duties and obligations test as a voter qualification and exempting therefrom persons registered prior to January 1, 1954, the State board of election commissioners was directed to prepare a sworn written application form (which included the interpretation test and the duties and obligations test) and which county registrars were to be required to use in examining the qualifications of each applicant. The application forms were to be maintained as permanent public records.

35. The effect of the amendment to section 244 is to place the burden of more stringent requirements for registration on Negro citizens of voting age in Mississippi, the great majority of whom were not registered to vote. The white citizens of voting age, the great majority of whom were registered to vote, were not subjected to these requirements.

36. Since 1955 the defendant registrars as well as many other registrars in Mississippi have enforced the requirements of section 244, as amended, when Negroes have attempted to register to vote, by requiring Negroes to interpret sections of the Mississippi constitution and to demonstrate their understanding of the duties and obligations of citizenship on the form prescribed by the State board of election commissioners.

37. In 1960 approximately 500,000 or 67 percent of the white persons of voting age in Mississippi, and approximately 20,000 to 25,000, or 5 percent of the Negroes of voting age were registered to vote.

38. Section 244 of the Mississippi constitution of 1890, as amended, and its implementing legislation vest unlimited discretion in the county registrars of Mississippi to determine the qualification of applicants for registration to vote. These constitutional and statutory provisions impose no standards upon registrars for the administration of the constitutional interpretation test and the duties and obligations test. They enable and require the registrars of voters in Mississippi to determine without reference to any objective criteria:

(*a*) The manner in which these tests are to be administered;

(*b*) The length and complexity of the sections of the constitution to be read, written, and interpreted by the applicants;

(*c*) The standard for a reasonable interpretation of any section of the Mississippi constitution, and a reasonable understanding of the duties and obligations of citizenship;

(*d*) Whether the performance by the applicant in taking these tests is satisfactory.

39. The Mississippi constitution contains 285 sections. These sections vary in subject matter and complexity, ranging from such matters as the prohibition against imprisonment for debt to the legislative power to provide for ground rental or gross sum leases of the 16th section lands in the State.

40. There is no rational or reasonable basis for requiring, as a prerequisite to voting, that a prospective elector, otherwise qualified, be able to interpret certain of the sections of the Mississippi constitution.

41. The defendant registrars of voters, vested with the discretion described in paragraph 38, have used, are using, and will continue to use the interpretation test and the duties and obligations test to deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color. The existence of the interpretation test and the duties and obligations test as voter

qualifications in Mississippi, their enforcement, and the threat of their enforcement have deterred, are deterring, and will continue to deter otherwise qualified Negroes in Mississippi from applying for registration to vote.

42. Section 244 of the Mississippi constitution, as amended, is unconstitutional:

(*a*) Section 244 is vague and indefinite and provides no objective standards for the administration by the registrar of the interpretation test and the duties and obligations test.

(*b*) The adoption, enforcement, and continued threat of enforcement of a more stringent registration requirement following a period of racial discrimination in the registration of voters—a period during which an overwhelming percentage of white residents were permanently registered and thus forever exempted from this new stringent requirement and when an overwhelming percentage of Negro residents who possessed similar qualifications were illegally denied the right to register—makes the constitutional interpretation test and the duties and obligations test devices to perpetuate the discrimination which the 15th amendment was intended to eliminate.

(*c*) The history of section 244, as amended, the setting of white political supremacy and racial segregation in which it was adopted and is enforced, the discretion which it vests in Mississippi registrars of voters, the lack of any reasonable connection between the interpretation test and a capacity to vote render it invalid on its face as a device of discrimination in the registration of voters in Mississippi.

(*d*) In a State where public education facilities are and have been racially segregated and where those provided for Negroes are and have been inferior to those provided for white persons an interpretation or understanding test as a prerequisite to voting which bears a direct relationship to the quality of public education afforded the applicant violates the 15th amendment.

(*e*) There is no reasonable basis or legitimate State interest in requiring as a prerequisite to voting that applicants interpret certain sections of the Mississippi constitution.

2. THE STATUTORY REQUIREMENT OF GOOD MORAL CHARACTER AS A QUALIFICATION FOR VOTERS

In respect to the illegality of the Mississippi requirement of good moral character as a qualification for voters, the Government of the United States charges in paragraphs 45 through 53, inclusive, of the complaint aforesaid, the following which is adopted herein:

45. In 1960, the Mississippi Legislature passed a joint resolution to amend article XII of the constitution of 1890 to include a new section (241–A) which added the qualification of good moral character to the qualifications of an elector. On November 8, 1960, the proposed addition to article XII of the constitution was submitted to and adopted by the voters. Of the approximately 525,000 registered voters in Mississippi who were eligible to vote on this proposed amendment, about 95 percent were white; fewer than 5 percent were Negro. The amendment was adopted in a State where all State officials were white.

46. Section 241–A of the Mississippi constitution as enacted provided that the legislature shall have power to enforce the provisions of this section by appropriate legislation. No legislative provision was made until 1962 for any procedures to be followed by the registrars in determining the moral character of applicants.

47. Commencing in August 1960, the United States undertook steps throughout the State of Mississippi to obtain, inspect, and photograph voter registration records of certain Mississippi counties pursuant to the authority granted to the Attorney General of the United States by title III of the Civil Rights Act of 1960. Litigation resulted in certain of these counties commencing in January 1961. Such action was a matter of common knowledge throughout the State of Mississippi.

48. Commencing in July 1961, the United States undertook litigation against seven registrars in Mississippi for the purpose of obtaining injunctive relief to prevent the registrars from engaging in racially discriminatory acts and practices in the operation of their offices. This litigation is still pending and as of the date of filing this complaint, no permanent injunction has been issued against any registrar in the State of Mississippi. On April 10, 1962, the Circuit Court

of Appeals for the Fifth Circuit did issue an injunction pending appeal against the circuit clerk and registrar of Forrest County, Miss., Theron C. Lynd, enjoining Theron C. Lynd and the State of Mississippi and all persons in concert with them from engaging in discriminatory acts and practices based on race in the registration for voting in Forrest County, and specifically from:

(*a*) Denying Negro applicants the right to make application for registration on the same basis as white applicants;

(*b*) Failing to process applications for registration submitted by Negro applicants on the same basis as applications submitted by white applicants;

(*c*) Failing to register and to issue registration cards to Negro applicants on the same basis as white applicants;

(*d*) Denying Negro applicants the right to be registered by the same office personnel and with the same expedition and convenience as are being permitted to white applicants, and from failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or heretofore have given to white applicants under similar circumstances;

(*e*) Administering the constitutional interpretation test to Negro applicants by including as sections to be read and interpreted any sections other than those which at the time of the trial had been used for submission to white applicants;

(*f*) Requiring rejected Negro applicants to wait any different period before reapplying for registration than may be authorized under the laws of Mississippi and other than is required of white applicants.

49. The suits by the United States against registrars and the action taken by the court of appeals were matters of common knowledge throughout the State of Mississippi. The Legislature of Mississippi was in regular session during April and May 1962. During May the Mississippi Legislature adopted legislation implementing section 241-A of the constitution. Section 3235 of the Mississippi Code was amended to add the following:

"Except that any person registering after the effective date of this act shall be of good moral character as required by section 241-A of the Mississippi constitution."

At the same time, the Mississippi Legislature amended section 3209.6 of the Mississippi Code to require that the defendant State board of election commissioners in preparing the application forms to be used by the county registrars should include therein spaces for information showing the good moral character of the applicant in order that the applicant may demonstrate to the county registrar that he is a person of good moral character. In addition, the Mississippi Legislature enacted two new laws, one requiring publication of the names and addresses of all applicants who apply for registration to vote (H.B. 882, reg. sess. 1962) and the second providing a procedure by which qualified electors, by affidavit, could challenge the good moral character of any applicant for registration and for a hearing on any such challenge and for an appeal therefrom (H.B. 904, reg. sess. 1962), both hereinafter more fully described and challenged as invalid in plaintiff's fourth claim in this complaint.

50. The purpose and the effect of the good moral character requirement were and are:

(*a*) To subject the vast majority of Negro citizens of voting age in Mississippi to this additional requirement when they attempt to become registered voters; and to exempt the majority of the white citizens of voting age in Mississippi from this requirement since they are already registered voters.

(*b*) To provide an additional device with which registrars could discriminate against Negro citizens who seek to register to vote—a means of discrimination which would make detection more difficult.

51. Section 241-A of the Mississippi constitution of 1890, as amended, vests unlimited discretion in the registrars of voters to determine the good moral character of applicants for registration. This new requirement is vague and indefinite and neither suggests nor imposes standards for the registrar's use in determining good moral character. It enables and requires the registrars of voters in Mississippi to determine without reference to any objective criteria:

(*a*) What acts, practices, habits, customs, beliefs, relationships, moral standards, ideas, associations, attitudes and demeanor evidence bad moral character and what weight should be given to each.

(*b*) What is evidence of good moral character and what weight should be given to affirmative evidence of it, such as school record, church membership, military service, club memberships, personal, social and family relationships, civic interest, absence of criminal record.

(*c*) What periods of the applicant's life are to be examined for evidence relating to his character—whether the applicant's conduct during a remote period of his life is to be considered.

(*d*) What sources, if any, such as public records, public officials, private individuals—Negro and white—will be consulted in determining the character of the applicant; or whether the determination will be made on the basis of personal knowledge, impression, newspaper accounts, rumor or otherwise.

52. The existence of the character qualification in Mississippi, its enforcement, and the threat of its enforcement, in the absence of any objective criteria which apply to all voters, have deterred, are deterring, and will continue to deter qualified Negro citizens in Mississippi from applying to register to vote. The threatened use and the use by the defendant registrars of voters of the character requirement deprive and will deprive otherwise qualified Negro citizens of the right to register to vote without distinction of race or color.

53. Section 241-A of the Mississippi constitution is unconstitutional:

(*a*) It exempts most of the white persons of voting age from, and subjects most of the Negroes of voting age to, the requirement of good moral character.

(*b*) The legislative history of the character requirement, the setting of white political supremacy and racial segregation in which it was adopted and is enforced, the discretion which it vests in the registrars of voters and the lack of any reasonable, definite and objective standards by which good moral character is to be determined render it invalid as a device which facilitates and perpetuates racial discrimination in the registration of voters in Mississippi.

3. THE STATUTES OF MISSISSIPPI PROVIDING FOR THE DESTRUCTION OF REGISTRATION RECORDS

In respect to the illegality of the Mississippi statutes providing for the destruction of registration records, the Government of the United States charges in paragraphs 56 through 59, inclusive, of the complaint aforesaid, the following which is adopted herein:

56. In 1955, the Mississippi Legislature passed a statute requiring the defendant State board of election commissioners to prepare a series of registration application forms suitable for obtaining pertinent information with respect to the applicant's qualifications, including spaces to test the applicant's ability to read and write any section of the constitution of the State of Mississippi and give a reasonable interpretation thereof, and a space for the applicant to demonstrate to the county registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. (Sec. 3209.6 Mississippi Code.) This section also provided that application forms shall be numbered serially in the order of taking and a permanent record be made of the date each application was filed, the name of the applicant, and serial number; all such applications were required to be maintained as a permanent public record. The legislature further required that the registrars administer the oath provided by the Mississippi constitution.

57. In 1957, the Congress of the United States enacted the Civil Rights Act of 1957 which authorized the Attorney General of the United States to bring civil actions to protect the right to vote without distinction of race or color.

58. During the winter and spring of 1960, the Congress of the United States debated the question of whether additional legislation was necessary to protect the right of all citizens to register to vote at all elections without distinction of race or color. Included in the legislation considered at that time, and ultimately passed, was title III of the 1960 Civil Rights Act which requires that all records and papers relating to registration, the payment of poll taxes, or other acts requisite to voting in Federal elections be retained and preserved for a specified period and that they be made available to the Attorney General for inspection and copying. This provision was enacted into law in May of 1960. During the consideration by Congress of the proposed title III, the Mississippi Legislature was in session. During that session the Mississippi Legislature

passed a concurrent resolution (H. Con. Res. 36, reg, sess. 1960) commending the fight against the "vicious so-called civil rights bills." Shortly thereafter, the Mississippi Legislature amended section 3209.6 Mississippi Code, which formerly provided that the application forms remain a permanent public record, to provide, if no appeal from the registrar's decision was taken during the statutory 30-day appeal period, that the registrars were not required to retain or preserve any record made in connection with the application of anyone to register to vote.

59. The purpose and effect of the Mississippi statute described in the preceding paragraph (sec. 3209.6, as amended, which authorizes county registrars to destroy registration records) was to frustrate Federal protection in Mississippi of the right of citizens to vote without distinction of race, and to facilitate discrimination by county registrars against Negroes seeking to register to vote. Some registration application forms, including some forms received by defendant H. K. Whittington in Amite County, Miss., have been destroyed under the authority of this statute. This statute violates article VI of the Constitution of the United States in that the statute is in direct conflict with and contrary to the requirements of title III of the Civil Rights Act of 1960.

4. THE 1962 PACKAGE OF VOTER REGISTRATION STATUTES, INCLUDING THE REQUIREMENTS OF THE "PERFECT FORM," THE PUBLICATION OF THE NAMES OF THOSE SEEKING TO REGISTER, AND OTHER ILLEGAL AND HARASSING TECHNIQUES

In respect to the illegality of the 1962 package of voter registration statutes, including the requirements of the "perfect form," the publication of the names of those seeking to register, and other illegal and harassing techniques, the Government of the United States charges in paragraph 62 through 69, inclusive, of the complaint aforesaid, the following which is adopted herein:

62. In late 1961 and early 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 Mississippi primary elections. For the first time in many years Negroes were candidates for the office of Representative in the Congress of the United States. These facts were widely publicized and were matters of common knowledge throughout Mississippi.

63. Commencing in July 1961, the United States initiated litigation against seven registrars of Mississippi for the purpose of obtaining injunctive relief against the registrars prohibiting racially discriminatory acts and practices in the operation of their offices. The first hearing in one of the cases referred to above involving a motion for an injunction came on to be heard before the U.S. District Court for the Northern District of Mississippi in December 1961 in a case against the registrar and sheriff of Tallahatchie County. During the course of this hearing the United States attempted to subpena the pollbooks in the county as those books, by law, contain the race of all qualified voters. At that time, the United States explained to the court and counsel for the defendant State of Mississippi the difficult problem of establishing race identification of the thousands of persons on the registration rolls in any particular county.

64. In March 1962, a second hearing was held in the U.S. District Court for the Southern District of Mississippi on a motion for a preliminary injunction in an action by the United States against the registrar of voters of Forrest County. At the hearing, the United States was permitted to inspect the registration application forms of 18 Negroes and 6 white persons who had applied to be registered. Some of the Negro applicants were highly educated and their forms give every indication that they were qualified to vote. However, on some of these forms there were certain formal, technical, and inconsequential errors, such as the omission of the applicant's precinct in the oath recitation, the failure to sign the oath, or the failure to sign the application at a line below the minister's oath on page 3, although the applicant had subscribed and sworn to the application on another line clearly designated as the signature line. The testimony in this case indicated that white applicants for registration were either not required to fill out an application form or were assisted by the registrar, or his agents, in filling out the form with respect to his precinct and where the applicant was to sign his name on the form.

65. On April 10, 1962, as is more fully detailed in paragraph 48 of this complaint, the U.S. Court of Appeals for the Fifth Circuit granted an injunction pending appeal enjoining the registrar of voters of Forrest County, Miss., and the State of Mississippi from failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are

filled out and advising Negro applicants of such omissions as appear on their forms as they are now or heretofore have given to white applicants under similar circumstances. This decision of the circuit court of appeals and the terms of its injunction were widely publicized and were matters of common knowledge throughout Mississippi.

66. The legislature in Mississippi was in regular session during April and May 1962. During May, the Mississippi Legislature adopted a package of legislation affecting the registration of voters, the purpose and effect of which is to deter, hinder, prevent, delay, and harass Negroes and to make it more difficult for Negroes in their efforts to become registered voters, to facilitate discrimination against Negroes, and to make it more difficult for the United States to protect the right of all its citizens to vote without distinction of race or color. This legislative package of bills included the following:

(*a*) House bill 900, amended section 3213 of the Mississippi Code.

Prior to the amendment, that statute required that an applicant fill out the application form without assistance or suggestion from any person. The amendment added that the requirements of the statute were mandatory; that no application shall be approved or the applicant registered unless all blanks on the application form are "properly and responsively" filled out by the applicant, and that both the oath as such and the application form must be signed separately by the applicant.

(*b*) House bill 901.

Section 3232 was amended so as to eliminate the designation of race in the county pollbooks.

(*c*) House bill 905.

This statute amended section 3209.6 to require the defendant State board of election commissioners to make provision on the application form for the applicant to demonstrate good moral character and for the registrar to use the good moral character requirement in registering voters. This statute also retained the provision heretofore described in paragraph 58 permitting destruction of the application form.

(*d*) House bill 822 and House bill 904.

These statutes require that within 10 days of receipt of an application for registration the registrar must publish once each week for 2 consecutive weeks in a newspaper having general circulation in the county where the applicant applies, the name and address of each applicant who applies for registration. These statutes further provide that within 14 days after the date of the last publication of the name of the applicant, any qualified elector in the county may challenge both the good moral character of any applicant and any other qualification of any applicant to vote. Within 7 days after such affidavit of challenge is filed, the registrar notifies the applicant of the time and place for a hearing to determine the sufficiency of the affidavit of challenge. The date of the hearing may be changed by the registrar. At the hearing the registrar is authorized to issue subpenas to compel the attendance and testimony of witnesses whose testimony is transcribed, and the registrar may decide the sufficiency of the affidavit of challenge or "may take the matter under advisement just as a court may do." Strict rules of evidence shall not be enforced at the hearing, and witnesses may be examined by the applicant and his attorneys or by the challenger and his attorneys. Costs are taxed at such proceedings in the same manner as costs are taxed in the State chancery courts. Appeal is provided to the county board of election commissioners by the person against whom the registrar decided. In the event no challenge is filed, the good moral character of the applicant and any other required prerequisite for registration are "within a reasonable time" to be determined by the registrar.

(*e*) House bill 903:

This statute provides that if a registrar determines an applicant is qualified, he shall endorse the word "passed" on the application form, but the applicant is registered only upon his subsequent request made in person to the registrar. Under this statute, it is the applicant's responsibility to return to the registrar's office to determine whether he has passed or failed. This statute also provides that if the applicant is of good moral character but he has not otherwise complied with the registration requirements, the registrar endorses on the application the word "failed" without specifying the reasons therefor "as so to do may constitute assistance to the applicant on another application." If the applicant is otherwise qualified but not of

good moral character, it is so endorsed on the application form and the registrar shall state the reasons why he finds the applicant not to be of good moral character. If the applicant is not otherwise qualified and fails to demonstrate his good moral character, the registrar endorses on the application the word "failed" and may in his discretion also endorse the words "not of good moral character."

67. This package of legislation is unconstitutional:

(a) House bills 900 and 903.

(1) These statutes facilitate deprivation of the right to vote on account of race or color by establishing as grounds for disqualification any formal, technical, or inconsequential error or omission by the applicant on the application form.

(2) The purpose and the inevitable effect of these statutes, because they apply prospectively, are to exempt the majority of the white persons of voting age who are presently registered from these onerous requirements and to subject Negroes, few of whom are presently registered, to these requirements.

(3) The application form is converted into a hypertechnical and unreasonable examination. This use of the application form as a hypertechnical examination is an arbitrary and unreasonable restriction on the exercise of the right to vote and it bears no reasonable relationship to any legitimate State interest.

(4) These statutes vest unlimited discretion in the registrars to determine without reference to any objective standard whether an application form is filled out properly and responsively. There are no standards imposed on the registrars for determining which questions on the form elicit the essential facts and qualifications to entitle a person to register to vote.

(5) The requirement that the oath and signature on the application form be signed without assistance or suggestion is arbitrary and unreasonable and is a device to trap applicants into an omission which will serve as grounds for disqualification.

(6) The prohibition against informing applicants or allowing applicants to learn of the reason or reasons for their disqualification as voters is wholly unreasonable and arbitrary and is contrary to any legitimate State interest and is inconsistent with fundamental principles of democracy.

(b) House bills 822 and 904.

(1) These statutes which provide for publication of the names of applicants and the challenging of an applicant's qualifications for any reason by any qualified elector vest power and authority in white citizens who are the qualified electors in Mississippi, to harass Negroes, and to delay the registration of Negroes. No objective standard is provided to limit the grounds upon which such citizens may challenge the qualifications of applicants for registration.

(2) These statutes impose onerous, arbitrary, and unreasonable procedures on prospective electors who are challenged by requiring them to appear and possibly assume the cost of an administrative hearing before their qualifications to vote are determined.

(3) These statutes provide no objective standards whereby registrars may determine qualifications of prospective registrants who have been challenged.

(4) These statutes, being prospective, exempt white persons, a large majority of whom are presently registered to vote, and impose on virtually all of the Negro citizens of voting age in Mississippi, onerous procedural requirements as prerequisites to registration.

(5) These statutes vest the registrars of voters with unlimited power to forestall the registration of qualified Negro citizens by taking the matter under advisement.

(6) These statutes are arbitrary and unreasonable requirements on prospective electors and bear no reasonable relationship to any legitimate State interest.

(7) The purpose and effect of these statutes are to give the white community of Mississippi the legal right to pass initially upon the qualifications and character of Negro citizens who seek to become registered voters and to give the members of the white community the opportunity to harass and intimidate Negro applicants for registration whose names are publicized by operation of the statutes.

68. The history of racial discrimination in Mississippi, the legislative setting in which the statutes described in paragraph 66 were enacted, the lack of any reasonable or objective standards for the registration of voters, and the arbitrary character of these requirements which bear no reasonable relationship to any legitimate State interest render them invalid and in violation of 42 U.S.C. 1971, article I of the Constitution of the United States and the 14th and 15th amendments thereto.

69. Mississippi registrars of voters are required to apply these new and onerous requirements. The defendant registrars have applied such requirements. The existence of these onerous requirements, their enforcement and the threat of their enforcement have deterred, are deterring and will continue to deter otherwise qualified Negroes in Mississippi from applying to register to vote.

All the foregoing detailed charges with respect to the illegality and unconstitutionality of the registration and election machinery of the State of Mississippi will be proved in the proceedings herein.

In addition to the foregoing statewide litigation, the Department of Justice has also brought at least eight suits in respect to counties within the Second Congressional District, seeking, among other things, to obtain injunctive relief against the systematic, deliberate, and intentional exclusion of Negroes from all aspects of the elective process. These suits are as follows:

United States v. *Campbell* (Sunflower County).
United States v. *Clayton* (Marshall County).
United States v. *William Cox* (Tallahatchie County).
United States v. *Dogan* (Tallahatchie County).
United States v. *Duke* (Panola County).
United States v. *Leflore County*.
United States v. *McClellan* (Holmes County).
United States v. *Mississippi* (Coahoma and Leflore Counties).

Copies of some of the foregoing complaints are attached hereto as appendix B–1 through B–5.

In two of these suits, involving Panola and Tallahatchie Counties, all within this congressional district, there have been final and binding determinations by the U.S. Court of Appeals for the Fifth Circuit of discrimination against Negroes seeking to register to vote. See *United States* v. *Dogan*, 314 F. 2d 767 (1963) (opinion incorporated herein by reference); *United States* v. *Duke*, 332 F. 2d 759 (1964) (opinion herewith as app. C).

B. The Details on the Systematic and Deliberate Disenfranchisement and Exclusion of Negroes From the Electoral Process in Mississippi by Terrorism and Intimidation Directed Against Them Are as Follows

The widespread conspiracy in violation of the laws of the United States existing in Mississippi and in the Second Congressional District to utilize force, violence, and terroristic acts for the purpose of intimidating Negro citizens from exercising their right to register and vote is set forth in full in the complaint filed in the Federal action entitled *Council of Federated Organiztion, et al.* v. *Rainey, et al.*, No. 21795 in the Court of Appeals for the Fifth Circuit. The allegations in this complaint are adopted in full herein and will be proved by testimony to be taken pursuant to title 2, U.S.C., section 201 et seq. Certain representative examples of these acts of terror and violence in this congressional district are as follows:

September 10, 1962: Two young Negro women in Ruleville were seriously wounded when an unidentified gunman fired through the window of the home of one of the victim's grandparents who had been active in voter-registration work in that area.

February 28, 1963: Three voter registration workers were attacked with gunfire on U.S. Highway 82 just outside Greenwood. One worker was seriously wounded in the neck and the shoulder, and the car in which the young men were riding was punctured by 11 bullets.

March 6, 1963: Four civil rights workers were fired upon from a station wagon which pulled up beside their car as they were parked in front of the voter registration office in Greenwood.

March 26, 1963: Fire partially destroyed the interior of the voter registration office in Greenwood. Witnesses said they saw two white men fleeing the scene shortly before the fire was discovered.

April 12, 1963: Two white residents of Clarksdale threw a gasoline filled Molotov cocktail into the home of Aaron Henry, chairman of the Mississippi Freedom Democratic Party while he was entertaining Congressman Charles C. Diggs (Democrat, Michigan).

May 8, 1963: White men threw Molotov cocktails into the home of the first Negro to apply for registration as a voter in Holmes County during a voter-registration drive there. The Negro and four civil rights workers were arrested shortly thereafter on suspicion of arson.

June 8, 1963: Three bullets were fired into the Clarksdale home of Dr. Aaron Henry.

June 9, 1963: Fannie Lou Hamer and five other registration workers were arrested in Winona on their way home from a registration workshop in Charleston, S.C. They were held in the Winona jail for 4 days during which time they were severely beaten with nightsticks and fists by policemen and with leather straps by prison trustees under the direction of police officer.

October 30, 1963: A voter registration worker was arrested by Clarksdale police who slugged him and broke his glasses as he was being taken to jail.

November 2, 1963: Three shots were fired at a voter registration worker in Tate County as he drove away from a freedom vote poll site.

April 1, 1964: A Negro making his fifth attempt to register to vote in Greenwood was told by a white official to go home before he was arrested. As he was leaving the courthouse, a policeman told him, "If I catch you in that line, I will shoot your damn head off."

June 22, 1964: Four civil rights workers were arrested on vagrancy charges while engaged in voter registration work. After being held almost 4 hours, they were released.

June 25, 1964: Two civil rights workers handing out literature at a voter registration rally in Itta Bena were taken to the bus station by four white men who warned them, "If you speak in town tonight, you'll never leave here."

July 9, 1964: A civil rights worker was attacked by a white man in Greenwood while canvassing for voter registration. His attacker then followed him down the block and hit him several more times.

July 18, 1964: Two civil rights workers handing out voter registration leaflets in Batesville were accosted and assaulted by two white men. The beaten workers were then arrested by the local police.

July 21, 1964: A civil rights worker in Lexington was attacked by a white man who hit him in the face and body as he waited outside the courthouse to take part in a voter registration campaign.

July 22, 1964: A local Negro was arrested for forgery while passing out voter registration leaflets in Greenville. He was later released after being extensively questioned about civil rights activities.

July 23, 1964: While canvassing for voter registration in Durant, a civil rights worker was attacked by a white man who punched him several times after warning him to leave town.

July 25, 1964: While police stood by, a group of 10 to 15 voter-registration workers were harassed, threatened, and beaten by local whites in Greenwood.

July 25, 1964: A civil rights worker who was handing out Freedom Registration forms in Greenwood was jumped from behind and hit on the head.

July 26, 1964: A Batesville home in which five voter registration workers were living was tear gas bombed.

October 20, 1964: A man who identified himself as a constable threatened COFO workers in Lambert who were registering Negroes in the freedom vote campaign.

October 21, 1964: Registration workers in Marks were told by the police to leave town when they tried to register Negroes. Four white teenagers beat up and urinated on one worker.

October 24, 1964: A cafe in Itta Bena owned by a woman who placed FDP signs in her window and promised the use of her cafe as a polling place was burned.

October 24, 1964: Shots were fired into the home of Hartman Turnbow, of Tchula. He was a FDP delegate to Atlantic City.

October 26, 1964: A civil rights worker in Indianola was beaten by whites as he helped local Negroes to register. A 6-footer weighing at least 200 pounds pummeled the victim directly in front of the Sunflower County Courthouse.

October 29, 1964: Clubswinging police broke up an FDP rally in Indianola.

October 29, 1964: Two female freedom vote workers were threatened in a Glendora cafe by a gun-waving policeman. He told them he didn't want them in

town. He went on to curse them and said, "We still have grenades and we'll use them."

October 30, 1964: Two freedom vote volunteers in Curtis were placed under "citizen's arrest" by a local plantation owner and another armed white while canvassing for votes.

October 31, 1964: Police entered the Blake's Cafe in Greenwood, freedom vote polling place, and tore down campaign posters.

October 31, 1964: A cross was burned on the farm of one of the few registered Negroes in Sunflower who was very active in the freedom vote campaign.

The reign of terror directed against Negro citizens who seek to exercise their right to register and vote in Mississippi and this congressional district continues daily. The undersigned will fully prove each and every one of the above charges by public testimony at the proper time in the manner set down by title 2, United States Code, section 201 et seq.

I. The Purported Elections of June 2 and November 3, 1964, Are Void

1. The purported elections violate the 1870 compact between the State of Mississippi and the Congress of the United States readmitting Mississippi to representation in Congress

The act of February 23, 1870, readmitting Mississippi to representation in Congress reads in part as follows:

"An Act To Admit the State of Mississippi to Representation in the Congress of the United States

"Whereas the people of Mississippi have framed and adopted a constitution of State government which is republican; and whereas the legislature of Mississippi elected under said constitution has ratified the fourteenth and fifteenth amendments to the Constitution of the United States; and *whereas the performance of these several acts in good faith is a condition precedent to the representation of the state in Congress* [emphasis added]: Therefore,

"*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled*, That the said State of Mississippi is entitled to representation in the Congress of the United States: * * * *And provided further*, That the State of Mississippi is admitted to representation in Congress as one of the States of the Union, upon the following fundamental conditions: First, That the constitution of Mississippi shall never be so amended or changed as to deprive any citizen or class of citizens of the United States of the right to vote who are entitled to vote by the constitution herein recognised, except as a punishment for such crimes as are now felonies at common law, whereof they shall have been duly convicted under laws equally applicable to all inhabitants of said State: *Provided*, That any alteration of said constitution prospective in its effects, may be made in regard to the time and place of residence of voters."

This statute thus established a fundamental condition precedent for the readmission of the State of Mississippi to the Federal Union with the right of representation in Congress. This condition precedent was that the then existing constitutional qualifications to vote in the State of Mississippi would "never be amended or changed" so as to deprive any citizens of the right to vote.

The suffrage provisions of the Mississippi constitution of 1869 and which, by the terms of the above statute, were expressly never to be amended, read as follows:

"Sec. 2. All male inhabitants of this State, except idiots and insane persons, and Indians not taxed, citizens of the United States or naturalized, twenty-one years old and upwards, who have resided in this state six months and in the county one month next preceding the day of election, at which said inhabitant offers to vote, and who are duly registered according to the requirements of section three of this article, and who are not disqualified by reason of any crime, are declared to be qualified electors."

Under these suffrage provisions of the constitution of 1869, Negro citizens of Mississippi were afforded the full right to vote. In order to guarantee that the Negro citizens of this State would never in the future be deprived of the right to vote, Mississippi was required to enter into a solemn compact that the simple residential and citizenship suffrage requirements of the Mississippi constitution of 1869 never be altered.

Since 1890 the State of Mississippi has openly nullified this condition-precedent. It has arrogantly repudiated its solemn compact with the Congress of the United States by manipulating its constitution and laws so as to add qualifications for voting expressly forbidden by its fundamental agreement with the Congress. Thereby the State of Mississippi has frustrated and nullified the basic objective of the compact of 1870—the guarantee that Negro citizens of that State shall forever have full citizenship.

2. THE PURPORTED ELECTIONS VIOLATE ARTICLE I OF THE CONSTITUTION OF THE UNITED STATES

Article I, section 2 of the Constitution of the United States provides that "the House of Representatives shall be composed of Members chosen every second year *by the People* of the several states * * *" [italic supplied]. You were not "chosen * * * by the people" as required by the Constitution. More than 50 percent of this district's adult population have been systematically excluded from these purported elections.

Almost 100 years after the Civil War, it is too late to say that the "people" of the Second Congressional District of the State of Mississippi can be read to mean only the white race.

3. THE PURPORTED ELECTIONS VIOLATE THE 13TH, 14TH, AND 15TH AMENDMENTS TO THE CONSTITUTION OF THE UNITED STATES AND THE LAWS PURSUANT THERETO

The purported elections are in total violation of the Civil War amendments which provided the charter of freedom and equality for American Negroes. The Civil War amendments were designed for the specific purpose of guaranteeing that Negroes would be first-class citizens with every right to participate in the political life of the Nation. The 15th amendment specifically provides that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." By the continued deliberate and almost total exclusion of Negroes from the political life of the State, Mississippi has openly nullified the Civil War amendments.

Commencing in 1866 Congress has enacted many laws to enforce these amendments, most recently in the Civil Rights Act of 1964. These include: 18 United States Code 241–242; 42 United States Code 1971 et seq.; 42 United States Code 1981 et seq.; and the Civil Rights Acts of 1866, 1871, 1957, 1960, and 1964. All of these statutes have been violated in this congressional district, both in connection with the primary and general elections and with the registration of voters by reason of the systematic exclusion of Negro citizens from the electoral process.

II. THE UNDERSIGNED FANNIE LOU HAMER IS THE ONLY LAWFULLY ELECTED REPRESENTATIVE TO THE CONGRESS FROM THE SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI

In view of the long continued and substantially total exclusion of Negro citizens from the electoral processes in Mississippi the Negro citizens of that State and their white supporters constitute together a majority of the people of that State determined to hold in 1964 a free election in full compliance with the Constitution and laws of the United States and the 1870 compact with the Congress of the United States. Registration of voters was conducted prior to the election at which all persons having the qualifications for voting set forth in the 1870 compact with Congress were permitted to register. Thereafter an election was held from October 30, 1964, to November 2, 1964, at which election candidates were on the ballot for President and Vice President of the United States as well as for other Federal offices, including Representative from the Second Congressional District. At this election Lyndon B. Johnson and Hubert H. Humphrey received 63,839 votes for the office of President and Vice President of the United States in contrast to 52,538 votes received by these candidates at the purported "regular" election on November 3.

The registration and election procedures for the freedom election were the only fair registration procedures in Mississippi. Not only were they open to all "the people," white and black alike, in accordance with the Constitution of the United States, but they were the only procedures in Mississippi which met the State's own law as well as Federal law. Accordingly, the freedom election was

the only legitimate and valid election held. Therefore, the candidates elected thereby including the undersigned were the only ones running for public office in Mississippi who were elected by "the people" in accordance with the Constitution of the United States.

CONCLUSION

The Constitution of the United States provides that this House alone "shall be the judge of the elections, returns, and qualifications of its own Members." This notice of contest brings before this House most serious and substantial charges concerning the violation of the Constitution and laws of the United States, as well as the fundamental compact between the Congress and the State of Mississippi. These charges flow from the systematic and deliberate exclusion of Negro citizens from the political life of Mississippi. These are substantially the charges which have been recently made by the executive branch of the Government before the judicial branch in an effort to obtain the relief that the courts are authorized by the Constitution to give. Only this House can grant the relief this notice of contest demands—the denial of your claim to a seat in this House, and the seating of the undersigned as the only lawful Representatives from the Second Congressional District of Mississippi.

Accordingly you are hereby notified that I will request the Congress of the United States to exercise its power and duty under the Constitution by:

(1) Refusing to seat you as a Member thereof and declaring your purported election null and void in violation of the Constitution and laws of the United States, and

(2) Seating the undersigned Fannie Lou Hamer as the only candidate who was elected as the lawful Representative from the Second Congressional District of Mississippi in a free American election according to the Constitution and laws of the United States, and

(3) Granting the undersigned Fannie Lou Hamer such other and further relief as may be just and equitable.

In accordance with title 2, United States Code, section 201 et seq., the undersigned also serves notice that I will proceed at the proper time to take oral and written testimony which will substantiate each and every charge contained in this notice of contest. Furthermore, at the proper time the undersigned will appear in person before the House of Representatives to claim my rightful seat as a Member of that body in accordance with the law of the land.

(Signed) MRS. FANNIE LOU HAMER.

CITY OF WASHINGTON,
DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me the undersigned authority in and for the county and State aforesaid the within named Fannie Lou Hamer, who, after being by me first duly sworn, stated on oath that the matters and things set out in the foregoing notice of contest are true to the best of her knowledge, information, and belief.

Sworn to and subscribed before me this 3d day of December 1964.

[SEAL] HERBERT H. BUXBAUM,
Notary Public.

My commission expires March 14, 1968.

CERTIFICATE

THE UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

I, James P. Coleman, attorney at law at Ackerman, Miss., counsel for Representative Jamie L. Whitten, do hereby certify that on this the 4th day of January, 1965, on the U.S. Capitol Grounds in the District of Columbia, I did hand to Mrs. Fannie Lou Hamer, purported contestant, a true copy of the within answer of Jamie L. Whitten and she did receive the same from me in the presence of one of her attorneys, Mr. William M. Kunstler, and in the presence of Mr. Albert L. Embrey, Deputy Chief, Metropolitan Police, Washington, D.C.

Witness, my signature this day, January 4, 1965.

(Signed) JAMES P. COLEMAN.

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES

IN THE MATTER OF THE PURPORTED CONTEST OF THE ELECTION OF JAMIE L. WHITTEN FROM THE SECOND DISTRICT OF MISSISSIPPI

Answer of Jamie L. Whitten

TO FANNIE LOU HAMER:

In good faith obedience of the provisions of article I, section 5, clause 2 of the U.S. Constitution and of sections 201–226 of title 2, chapter 8, of the United States Code, Jamie L. Whitten, the qualified, duly elected, certified, and commissioned Member-elect of the House of Representatives from the 2d Congressional District of Mississippi for the 89th Congress, reserving all rights to which he is entitled, hereby answers your purported Notice of Intention to Contest, as follows:

1. You did not personally serve or cause to be personally served upon the Member-elect your purported written notice of contest. This is shown by the purported affidavits of service which you have voluntarily filed with the Clerk of the House of Representatives and which are now on file in that Office.

For this reason your purported contest should be dismissed.

2. By its own terms, your purported contest is not a contest. It cannot be considered a contest for the reason that you were not a candidate for Congress against Jamie L. Whitten in the general election of November 3, 1964. It is true that you qualified and participated in the Democratic primary which you now claim was void. You were in no way discriminated against, frustrated, or circumvented in your desire to be a candidate in the Democratic primary of June 2, 1964, and by the terms of your own purported notice of contest you received only 621 votes as against 35,218 for Jamie L. Whitten. You in no respect contested the validity of the primary election results.

Although section 3129 of the Mississippi Code of 1942, which has been on the statute books of the State of Mississippi since 1906, provides that candidates in the primary shall intend to support all nominees of such primary (except as to President and Vice President of the United States) you refused to abide by the will of the primary in which you had voluntarily participated and you did attempt to place your name on the ballot for the general election "as an independent candidate," immediately after you had represented yourself to be a member of the regular Democratic Party of Mississippi. You did not pursue and exhaust your legal remedies, if any, after the State board of elections, in due form, declined to put your name on the general election ballot as an independent candidate for the same office to which you had previously aspired as a Democrat.

It is true that you did pretend to be a candidate for Congress in the "freedom election" held in Mississippi from October 30 to November 2, 1964. The "freedom election" had no color, sanction, or authorization of law whatsoever. It can lay no claim to having been an election held pursuant to or in obedience of any law of any kind whatsoever. It was a completely unofficial action, and can only be taken as a publicity gimmick, for propaganda purposes. It is confidently asserted that if a seat in the House of Representatives of the United States may be conferred by an unofficial plebiscite at such time and at such place as an individual may choose, then all of the requirements and procedures concerning elections so respectfully adhered to for 175 years are down the drain; the stability of the House of Representatives as a constitutionally composed legislative arm of the Government of the United States would be no more. If your claim to a seat in the House of Representatives can be successfully sustained on unofficial meetings of volunteer participants, wholly outside the law, then it is obvious that from and after the election of 1964 the hundreds and thousands of groups of various kinds and characters may hereafter hold their independent and private plebiscites and have their spokesmen sworn into the House of Representatives of the United States.

3. You allege no fraud or deceit purported to have been practiced in the conduct of the election or in the count of the vote by either the Member-elect or any other person. Neither do you allege any fact which would change the result of the general election as certified in the official count.

For this reason your purported notice of contest should be dismissed.

4. Your purported notice fails to assert that you received a majority of the votes cast for said office; it fails to assert that you in fact were elected to said office; it fails to assert that you were deprived of votes to which you were legally

[illegible]. Indeed, you carefully refrain from charging that a contest would establish that you were lawfully elected to Congress.

For these reasons your purported notice of contest should be dismissed.

5. The Member-elect charges that any further proceedings herein would cause a great expenditure of time, effort, and money by public officials, and would only annoy and vex the respondent in the performance of his duties as a Member of the House of Representatives and would serve no useful purpose. On the other hand, it would set a precedent for all forms of future harassment and confusion, adversely affecting the stability and dignity of the House of Representatives.

While the allegations vary in minor detail, the truth is that substantially the same attack is being made on the entire delegation from the State of Mississippi. It is proposed that an entire State be deprived of its constitutional right to representation in the House. The effort is made to have a bill of attainder adopted against an entire delegation, something that we believe this House will never countenance.

You are hereby expressly notified that at the proper time, on the grounds hereinabove asserted, the Member-elect will formally file a motion for the dismissal of your purported contest. His right to do so is expressly reserved although answer is now made so as not to be in default of the statute.

Now answering the purported contest as to the various charges and allegations thereof, the Member-elect further says:

Your first ground for purported contest is that my election to the House of Representatives violated the Constitution and laws of the United States. You assert that the statutes and procedures governing and regulating elections in Mississippi were unconstitutional on their face and discriminatorily applied. Beginning with *Darby* v. *Daniel*, 168 F. Supp. 170 (1958) three-judge Federal courts have upheld the constitutionality of Mississippi registration and voter laws. As of this date, and particularly on the date of the 1964 general election, no court of competent jurisdiction has declared the Mississippi registration and voter laws to be unconstitutional. The constitutionality of any statute is presumed until the contrary has been lawfully adjudicated. Therefore, there is no merit in your contentions as to the legality and constitutionality of Mississippi statutes.

It is correct that there is presently pending in the Supreme Court of the United States a case known as *United States* v. *Mississippi*, No. 72, October term, 1964. You say a great deal about this litigation in your purported notice. The House of Representatives has many times held that the Supreme Court of the United States is the appropriate tribunal for the determination of such legal controversies. The Member-elect knows of no instance in which the House resolved itself into a tribunal to determine the constitutionality of State voter statutes. To the contrary, the House has many times formally decided that such issues are for the highest court of the State or for the Supreme Court of the United States. As a matter of the orderly procedure of the U.S. House of Representatives, its efficiency might be seriously impaired if it were to be called upon after every general election to decide the constitutionality of the election laws of the 50 States of the American Union.

You attempt to use the allegations of a particular lawsuit, now pending in the appropriate court, as grounds for an election contest. We submit that your assertions and charges should properly have been restricted to allegations and assertions which you were in position to assert and sustain in your own right. The mere allegations of other parties in other proceedings at other places cannot properly be transferred into a lawful contest for a seat in the U.S. House of Representatives.

In your purported notice of contest you attempt to place great emphasis on the allegation that the election laws of the State of Mississippi are unconstitutional and void because of an alleged compact between the State of Mississippi and the Congress of the United States when Mississippi was "readmitted" on February 23, 1870. This so-called compact is itself null and void for reasons many times stated by the Supreme Court of the United States (238 U.S. 347; 302 U.S. 277; 69 Miss. 898; 2 Hinds, secs. 1134, 1135; 1 Hinds, sec. 643).

Texas, Louisiana, Mississippi, Arkansas, Alabama, Florida, Georgia, South Carolina, North Carolina, and Virginia were subjected to the same, or substantially the same, compact. There is nothing to the contention of the purported contestant. But if there were, then the House would have to declare every House seat vacant in every one of these States. It is interesting to note

that if the purported contestant were right as to this compact, then no presidential elector, from Texas to Virginia, could cast a valid ballot in the electoral college. The House took due notice of this claim in the *South Carolina* and *Texas* cases of 1904 and 1906, and declined to go along with it.

The second ground alleged in support of your purported contest deals with "Systematic and deliberate disenfranchisement and exclusion of Negroes from the electoral process in Mississippi." The Member-elect answers all these allegations by simply saying that he has no personal knowledge as to the truth or falsity of such allegations. He demands strict proof of the same if the House of Representatives should take cognizance of your purported contest. It is further pointed out that nowhere do you say that Jamie L. Whitten, or any person acting for him, has in any manner participated in such "exclusion," if indeed it has taken place at all.

CONCLUSION

The Member-elect therefore contends that under the law and the precedents of the House, you, Fannie Lou Hamer, have wholly failed by your purported notice of contest to submit any valid grounds of contest and you are entitled to no relief as a purported contestant.

This December 30, 1964.

(Signed) JAMIE L. WHITTEN,
Member of Congress-elect, Second District of Mississippi, House Office Building, Washington, D.C.

(Signed) JOE T. PATTERSON,
Attorney General of Mississippi, New Capitol, Jackson, Miss.

(Signed) JAMES P. COLEMAN,
Attorney at Law,
Ackerman, Miss.,
Counsel for the Member-elect, Jamie L. Whitten.

THE UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

This day before the undersigned authority in and for the jurisdiction aforesaid personally appeared Jamie L. Whitten, personally known to me to be a Member of Congress from the Second District of Mississippi, who made oath that the statements of fact recited in the within and foregoing answer are true and correct to the best of his knowledge and belief and that all other recitations therein contained he verily believes to be true.

(Signed) JAMIE L. WHITTEN.

Sworn to and subscribed before me, on this the 31st day of December 1964.

[SEAL] TRUMAN WARD,
Notary Public.

My commission expires January 14, 1966.

APPENDIX TO ANSWER

At volume 91, Congressional Record, page 1084, February 14, 1945, the House had before it the efforts of a private citizen in Virginia to contest the seats of 71 Members of the House.

That great constitutional lawyer, the Honorable Hatton W. Summers, longtime chairman of the House Judiciary Committee, made the matter the subject of a letter which was printed in the Record in its entirety.

There, Mr. Sumners said the following:

"The contest contemplated by the Congress in which it sought to give aid by statute is a contest by a 'contestant' and 'contestee' for a seat in the House of Representatives.

"Even if this language were not incorporated in the statute commonsense and public necessity would preclude any notion that the Congress intended to put it within the power of any person so disposed to institute proceedings to oust many persons who happen to be Members of Congress, and require them to turn aside from the discharge of their public duties to appear and give testimony at the

summons of such a person *who had not even been a candidate for Congress and who could not therefore be a contestant for a seat in the Congress.*" [Emphasis added.]

"It seems to me to be not only the right but the duty of the Members of the House against whom this proceeding has been attempted not to turn aside from the discharge of their official duties to give attention in the slightest degree to that which the said Plunkett is attempting."

Whereupon, the following transpired:

"Mr. McCORMACK. Mr. Speaker, will the gentleman yield?

"Mr. SUMNERS of Texas. I yield to the gentleman from Massachusetts.

"Mr. McCORMACK. Will the gentleman advise the House how, in his opinion, this unreasonable situation should be met?

"Mr. SUMNERS of Texas. By paying no attention to it."

CERTIFICATE

I, Jamie L Whitten, Member of Congress in the 88th Congress and Member-elect for the 89th Congress, do hereby certify that on this the 31st day of December I have mailed postage prepaid two copies of the within answer to the U.S. marshal for the northern district of Mississippi with the request that one copy thereof be personally served upon Fannie Lou Hamer at her usual place of abode, Ruleville, Miss., and his official returns endorsed upon the other copy and returned to the Clerk of the House of Representatives.

This December 31, 1964.

(Signed) JAMIE L. WHITTEN,
Member of Congress-elect.

HOUSE OF REPRESENTATIVES, CONGRESS OF THE UNITED STATES, IN THE MATTER OF THE CONTESTED ELECTION OF THOMAS GERSTLE ABERNETHY, IN THE FIRST CONGRESSIONAL DISTRICT OF MISSISSIPPI; IN THE MATTER OF THE CONTESTED ELECTION OF JAMIE L. WHITTEN, IN THE SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI; IN THE MATTER OF THE CONTESTED ELECTION OF JOHN BELL WILLIAMS, IN THE THIRD CONGRESSIONAL DISTRICT OF MISSISSIPPI; IN THE MATTER OF THE CONTESTED ELECTION OF PRENTISS WALKER, IN THE FOURTH CONGRESSIONAL DISTRICT OF MISSISSIPPI; AND IN THE MATTER OF THE CONTESTED ELECTION OF WILLIAM MEYERS COLMER, IN THE FIFTH CONGRESSIONAL DISTRICT OF MISSISSIPPI

Appearances present in room 236, Post Office Building, Jackson, Miss., on Monday morning, January 25, 1965, at 9 a.m., were as follows:

For the contestants: William Consul Kunstler and Arthur Kinoy, 511 Fifth Avenue, New York City; Edward Stern, 690 Market Street, San Francisco, Calif.; George C. Martinez and Jack A. Berman, 1231 Market Street, San Francisco, Calif.; Benjamin E. Smith, 305 Baronne Street, New Orleans, La.; and Martin Stavis, 744 Broad Street, Newark, N.J.

Appearances for the Members of Congress: Hon. Joe T. Patterson, attorney general of Mississippi, by J. R. Griffin, assistant attorney general, Capitol, Jackson, Miss.; James P. Coleman, Ackerman, Miss., representing Messrs. Colmer, Whitten, Abernethy, and Williams; and B. B. McClendon, Jr., 903 Deposit Guaranty Bank Building, Jackson, Miss., representing Representative Prentiss Walker.

(This concluded the dictating of appearances and the proceedings continued as follows:)

Mr. COLEMAN. I would like to have counsel, if he agrees with it, to state into the record at this point the name of the officer who proposes to take these depositions, or before whom it is taken in order that we may designate ours.

Mr. STAVIS. The officer before whom it is proposed to take these depositions is William Miller, William Edward Miller II, notary public of the State of Mississippi. Mr. Miller, would you give your address for the record?

Mr. MILLER. Business address?

Mr. STAVIS. Yes.

Mr. MILLER. 1038 Dalton Street.

Mr. COLEMAN. The Members of Congress have designated as their representative under the statute to preside over the taking of these depositions, Mr. Homer Edgeworth, justice of the peace—what district——

Justice EDGEWORTH. District 5——

Mr. COLEMAN (continuing). District 5, Hinds County, Miss., whose office is located at 231 South Lamar Street, Jackson.

Mr. STAVIS. These depositions are being called pursuant to a notice to take depositions which was served the attorneys for the Members of Congress, noticing the taking of depositions of the following persons: Heber Ladner, Joe Patterson, Paul Johnson, Col. T. B. Birdsong, Ross Barnett, Earl Johnston, William Simmons, Richard Morphew, Andy Hopkins, and State Senator Hayden Campbell.

I will state for the record, excepting with respect to William Simmons, subpenas issued by Mr. Miller, the officer taking these depositions, were duly served.

The notices to take depositions called for the taking of the depositions, commencing this morning.

Thereafter, a conference was had between counsel for the contestants and counsel for the contestees, and it was stipulated that the time of the taking of the depositions would, by consent, be continued to Friday, January 29, 1965, beginning at 9 a.m., and that the place of the taking of depositions originally noticed for the Farish Street Baptist Church would be changed to the room where we are now sitting, which is room 236 of the U.S. Post Office Building in Jackson, Miss.

This stipulation was entered into, as I understand it, because the attorney general was required to be in Washington to argue the case of *United States* v. *Mississippi*, before the Supreme Court of the United States. Will you confirm this,

Mr. Coleman? As I understand it, Mr. Coleman, on behalf of the contestees, the attorney general has agreed that he will produce at the deposition all parties who are included in the notice to take depositions, who are presently officials or employees of the State of Mississippi, with the exception of the Governor, as to whom the contestees claim that he is immune from civil process, and as to Senator Hayden Campbell, as to whom the contestees claim that they have no control, he is not an employee of the State of Mississippi.

Mr. COLEMAN. He is an elected member of one of the three branches of the State government.

Mr. STAVIS. For the record, I want you to note that with respect to Senator Campbell and the other persons who are not employees of the State; namely, Mr. Morphew and Mr. Hopkins, we have served upon them amended subpenas advising them of the continued date of the taking of the depositions.

Mr. COLEMAN. Now comes William M. Colmer, Jamie L. Whitten, Thomas G. Abernethy, and John Bell Williams, Representatives in the Congress of the United States from the State of Mississippi, who were duly administered the oath as such by order of the House of Representatives on January 4, 1965, and object jointly and severally to the taking of any depositions whatsoever by the purported contestants in these cases for the following reasons:

(1) None of the purported contestants was a candidate for Congress whose name appeared on the general election ballot in the general election of November 3, 1964; the House of Representatives, on January 19, 1965, Congressional Record, pages 934–935, has ruled that the House does not regard one who was not a candidate in the general election as being competent to bring a contest for a seat in the House.

This is a rule of the House of Representatives which it has established under the prerogatives granted by the Constitution, and the taking of further depositions in these purported pending contests can constitute nothing but vain harassment of those Representatives who are now making this objection.

(2) We object on all other grounds raised in our written answers heretofore served on the purported contestants according to law, and we here readopt and reaffirm all grounds there stated without repetition of the same at this time.

We wish to state further into the record that we realize that there is no properly constituted authority at this time and place with the power to rule on these objections, and this will ultimately be for the determination of the proper committees of the House, as well as the House itself, but we reserve these objections and state our position in the record, in order that there will be absolutely no question of any waiver.

In view of the ruling of the House of Representatives just alluded to, in which it was categorically held by that House, by a vote of 244 to 101, that a person not a candidate is not a competent contestant, we respectfully ask the counsel for these purported contestants to dismiss their notices and to refrain from taking these depositions.

Mr. MCCLENDON. Now comes Prentiss Walker, sitting Congressman from the Fourth Congressional District of Mississippi, and hereby adopts all the objections set forth by Governor Coleman on behalf of the other four Congressmen of Mississippi, and further states that in the case of Congressman Prentiss Walker no contest or jurisdiction exists because the only person whose name was printed on the general election ballot was that of Arthur Winstead. He is the only person with legal standing to contest the election of Prentiss Walker, and Arthur Winstead is not one of the purported contestants. Therefore, no contest exists and no jurisdiction exists to take these depositions; and, further, the allegations in the purported contest do not allege any facts which are material or relevant to the validity of an election. He specifically reserved all rights set forth in his answer and by appearing here through counsel does not waive any of his rights to object before the committee of the House of Representatives, and gives notice that at the appropriate time he will make a motion before the committee of the House of Representatives to strike these depositions.

Mr. GRIFFIN. The attorney general, as counsel for all the five Congressmen, respectfully adopts the objections stated by Governor Coleman and Mr. McClendon.

Mr. STAVIS. I think we can all agree that the officers now holding the depositions should not have the authority to rule upon the motion, but just for the record, let me state that the precedent referred to by Mr. Coleman, namely, that involving Congressman Archer, of New York, is wholly inapplicable to the situation which we have here where the issues revolve about the denial of opportunities to vote, the denial of the opportunity to participate in an electoral system, the denial of an opportunity to become a candidate, an electoral system which is in violation of the 14th and 15th amendments to the Constitution of the United States, and an

electoral system which is in direct violation of the statute under which Mississippi claims representation in Congress; namely, the statute of 1870, and the ruling of the House in respect to Congressman Archer is not applicable to the situation here, and in due and proper course appropriate briefs and arguments will be presented to whatever committee of Congress may be considering the matter.

Mr. STAVIS. Now, excepting for a few other understandings that we arrived at, which I think should be placed on the record, I think we will be able to adjourn these hearings until Friday morning. I think we have agreed that with respect to the transcription of the depositions, that the matter will be handled as normally handled under the Federal Rules of Civil Procedure, that thereafter the stenographer will prepare a copy of the record, it will then be submitted to the witnesses for signature, and to the officer holding the depositions for certification.

Mr. COLEMAN. That has been agreed to.

Mr. STAVIS. That will obtain not only as to the depositions we are holding here but as well as other depositions that we are holding throughout the State.

Also, just for the record, we have given notice of depositions which we are holding in Madison County this coming Wednesday, and continued notices of the depositions will be served personally on Mr. McClendon and on the attorney general's office, and in view of Mr. Coleman's office being in Ackerman, as I understand it, he has consented to accept notice of the depositions by mail.

Mr. COLEMAN. That is correct.

(At this time the hearing was adjourned until 9 o'clock Friday morning.)

COURT REPORTER'S CERTIFICATE

STATE OF MISSISSIPPI,
County of Hinds:

I, Meta Nicholson, notary public of Hinds County, Miss., and official court reporter for the Oil and Gas Board of Mississippi, Jackson, Miss., certify to the best of my skill and ability I have reported the foregoing in shorthand and have faithfully typed up the same, and the foregoing pages, 1 through 10, both inclusive, are a true and correct copy to the best of my ability of the proceedings had and done in the case and at the time and place stated on the title page hereof. I further certify that I have no interest in the outcome. Witness my hand and seal this 27th day of January 1965.

[SEAL] (Signed) META NICHOLSON.

HOUSE OF REPRESENTATIVES, CONGRESS OF THE UNITED STATES, IN THE MATTER OF THE CONTESTED ELECTION OF THOMAS GERSTLE ABERNETHY, IN THE FIRST CONGRESSIONAL DISTRICT OF MISSISSIPPI; IN THE MATTER OF THE CONTESTED ELECTION OF JAMIE L. WHITTEN, IN THE SECOND CONGRESSIONAL DISTRICT OF MISSISSIPPI; IN THE MATTER OF THE CONTESTED ELECTION OF JOHN BELL WILLIAMS, IN THE THIRD CONGRESSIONAL DISTRICT OF MISSISSIPPI; IN THE MATTER OF THE CONTESTED ELECTION OF PRENTISS WALKER, IN THE FOURTH CONGRESSIONAL DISTRICT OF MISSISSIPPI; AND IN THE MATTER OF THE CONTESTED ELECTION OF WILLIAM MEYERS COLMER, IN THE FIFTH CONGRESSIONAL DISTRICT OF MISSISSIPPI

NOTICE OF DEPOSITION PURSUANT TO TITLE 2, UNITED STATES CODE, SECTION 204

To: JAMES P. COLEMAN,
Deposit Guaranty Bank Building,
Jackson, Miss.

B. B. MCCLENDON, Jr.,
903 Deposit Guaranty Bank Building,
Jackson, Miss.

JOE T. PATTERSON,
State Capitol Building,
Jackson, Miss.

Attorneys for Contested Members.

SIRS: Please take notice that, pursuant to title 2, United States Code, sections 201 et seq., depositions will be taken before Hon. William Edward Miller II, a notary public of the State of Mississippi, an officer duly authorized by law, on the 25th day of January 1965, at the Farish Street Baptist Church, 619 North Farish Street, Jackson, Miss., of the following persons, at the times indicated: William Koplit, 507½ North Farish Street.

IN THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES OF AMERICA IN THE MATTER OF THE ELECTION CONTEST AGAINST REPRESENTATIVES WILLIAM M. COLMER, JAMIE L. WHITTEN, THOMAS G. ABERNETHY, JOHN BELL WILLIAMS, AND PRENTISS WALKER, SITTING MEMBERS OF THE HOUSE FROM THE STATE OF MISSISSIPPI

STIPULATIONS

The contestants and contestees, by their respective attorneys of record, have agreed, and do now agree, as follows:.

The deposition on which the contestants gave notice on January 18, 1965, will not be taken at the Farish Street Baptist Church but will, by common consent of all the parties, be taken in room 236 on the second floor of the U.S. Post Office Building in Jackson, Miss.

Due to the necessary absence of Joe T. Patterson, of counsel for the contestees, no depositions will be taken on January 25, 1965, as originally noticed, but will begin at 9 a.m., Friday, January 29, 1965, and continue from day to day until completed according to law.

Further agreed and stipulated that contestees assume responsibility for the appearance on January 29, 1965, of all parties who are presently officials of or employees of the State of Mississippi, with the exception of the Governor, who is claimed immune to civil process, and Senator Hayden Campbell, who is an elected member of one of the three branches of the State government. Contestants will service notice of the change in date and place on all other prospective deponents named in the said notice of January 18, 1965.

Witness our signatures in the city of Jackson, Miss., on this, the 19th day of January A.D. 1965.

(Signed) WILLIAM KUNSTLER,
(Signed) ARTHUR KINOY,
(Signed) BEN. E. SMITH,
(Signed) MORTON LANE,
Attorneys for the Contestants.

(Signed) JOE T. PATTERSON,
Attorney for All Contestees.

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