CONTESTED ELECTIONS IN THE FIRST, SECOND, THIRD, FOURTH, AND FIFTH DISTRICTS OF THE STATE OF MISSISSIPPI

HEARINGS

BEFORE THE

SUBCOMMITTEE ON ELECTIONS

OF THE

COMMITTEE ON HOUSE ADMINISTRATION

HOUSE OF REPRESENTATIVES

EIGHTY-NINTH CONGRESS

FIRST SESSION

SEPTEMBER 13 AND 14, 1965

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EIGHTY-NINTH CONGRESS

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CONTENTS

LAWS AND COMMITTEE RULES

GOVERNING

CONTESTED-ELECTION CASES IN THE HOUSE OF REPRESENTATIVES

REVISED EDITION

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Prepared under direction of the Clerk of the House of Representatives

LAWS AND COMMITTEE RULES

GOVERNING

CONTESTED-ELECTION CASES IN THE HOUSE OF REPRESENTATIVES

RULES OF THE COMMITTEES ON ELECTIONS OF THE HOUSE OF REPRESENTATIVES

1. All proceedings of the committee shall be reported in the journal, which shall be signed by the clerk.

2. No paper shall be removed from the committee room without the permission of the committee, except for the purpose of being printed or used in the House.

3. Each contestant shall file with his brief an abstract of the record and testimony in the case. Said abstract shall, in every instance, cite the page of the printed testimony on which each piece of evidence referred to in his abstract is contained. If the contestee questions the correctness of the contestant's abstract, he may file with his brief a statement setting forth the particulars in which he takes issue with the contestant's abstract; and may file an amended abstract setting forth the correct record and testimony.

4. The time allowed for the argument before the committee, unless otherwise ordered, shall be divided as follows: The contestant or his counsel shall be limited to one hour in opening; the contestee or his counsel shall follow for a period not exceeding one hour and a half; and the contestant or his counsel shall be entitled to half an hour in closing.

5. No person shall be present during any executive session of the committee except members of the committee and the clerk.

6. All papers referred to the committee shall be entered on the House docket by the House docket clerk according to the number of the packages, and they shall be identified upon the docket.

7. Nothing contained in these rules shall prevent the committee, when Congress is in session, from ordering briefs to be filed and a case to be heard at any time the committee may determine.

8. The words "and without unnecessary delay" in the third line of section 127 of the Revised Statutes, as amended by the act of March 2, 1887, shall be construed to mean that all officers taking testimony to be used in a contested-election case shall forward the same to the Clerk of the House of Representatives within 30 days of the completion of the taking of said testimony.

9. The following rules shall not be altered or amended except by a vote of a majority of all the members of the committee.

THE LAWS GOVERNING CONTESTED ELECTIONS

Each House shall be the judge of the elections, returns, and qualifications of its own Members. Constitution, Art. I, sec. 5.

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. Rev. Stats. of the U. S., Title II, ch. 8, sec. 105.

TIME FOR ANSWER

Any Member upon whom the notice mentioned in the preceding section 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. Rev. Stats., sec. 106.

TIME ALLOWED 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 succeeding forty days, and the contestant may take testimony in rebuttal only during the remaining ten days of said period. Rev. Stats., sec. 107.

By the act of March 2, 1875 (*U. S. Statutes at Large, vol. 18, ch. 119, p. 398*), it is provided that sec. 107, R. S., 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.

NOTICE AND SERVICE OF DEPOSITIONS

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 Rev. Stats., sec. 108.

of any 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 can not 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.

TESTIMONY TAKEN AT SEVERAL PLACES AT SAME TIME

Rev. Stats., Title II, ch. 8, sec. 109.

Testimony in contested-election cases may be taken at two or more places at the same time.

WHO MAY ISSUE SUBPŒNAS

Rev. Stats., sec. 110.

When any contestant or returned member is desirous of obtaining testimony respecting a contested election, he may apply for a subpœna 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 register in bankruptcy [1] or notary public.

WHAT THE SUBPŒNAS SHALL CONTAIN

Rev. Stats., sec. 111.

The officer to whom the application authorized by the preceding section is made shall thereupon issue his writ of subpœna, directed to all such witnesses as shall be named to him, requiring their attendance before him, at some time and place named in the subpœna, in order to be examined respecting the contested election.

WHEN JUSTICES OF THE PEACE MAY ACT

Rev. Stats., sec. 112.

In case none of the officers mentioned in section one hundred and ten 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.

[1] The act providing for this officer was repealed by 20 Stat. 99.

DEPOSITIONS BY CONSENT

Rev. Stats., Title II, ch. 8, sec. 113.

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.

SERVICE OF SUBPŒNA

Rev. Stats., sec. 114.

Each witness shall be duly served with a subpœna, 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.

WITNESSES NEED NOT ATTEND OUT OF THE COUNTY

Rev. Stats., sec. 115.

No witness shall be required to attend an examination out of the county in which he may reside or be served with a subpœna.

PENALTY FOR FAILURE TO ATTEND OR TESTIFY

Rev. Stats., sec. 116.

Any person who, having been summoned in the manner above directed, refuses or neglects to attend and testify, unless prevented by sickness or unavoidable necessity, shall forfeit the sum of twenty dollars, to be recovered, with costs of suit, by the party at whose instance the subpœna 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.

WITNESSES OUTSIDE OF DISTRICT

Rev. Stats., sec. 117.

Depositions of witnesses residing outside of the district and beyond the reach of a subpœna 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.

PARTY NOTIFIED MAY SELECT AN OFFICER

Rev. Stats., sec. 118.

The party notified as aforesaid, his agent or attorney, may, if he sees 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.

DEPOSITIONS TAKEN BY PARTY OR AGENT

Rev. Stats., Title II, ch. 8, sec. 119.

At the taking of any deposition under this chapter, either party may appear and act in person, or by agent or attorney.

EXAMINATION OF WITNESSES

Rev. Stats., sec. 120.

All witnesses who attend in obedience to a subpœna, 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 subpœna, or, in case of his absence, by any other officer who is authorized to issue such subpœna, 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.

LIMITATION OF TESTIMONY

Rev. Stats., sec. 121.

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 one hundred and five and one hundred and six.

HOW TESTIMONY SHALL BE WRITTEN OUT AND ATTESTED

Rev. Stats., sec. 122.

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.

PRODUCTION OF PAPERS

Rev. Stats., sec. 123.

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 one hundred and sixteen. 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.

ADJOURNMENTS

The taking of testimony may, if so stated in the notice, be adjourned from day to day. Rev. Stats., Title II, ch. 8, sec. 124.

NOTICE, ETC., ATTACHED TO DEPOSITIONS

The notice to take depositions, with the proof or acknowledgment of the service thereof, and a copy of the subpœna, where any has been served, shall be attached to the depositions when completed. Rev. Stats., sec. 125.

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. Rev. Stats., sec. 126.

HOW TESTIMONY IS TO BE SENT TO CLERK OF HOUSE AND HOW OPENED

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. Sec. 127 of Rev. Stats., as amended by act of Mar. 2, 1887, U. S. Stats. L., 49th Cong., 2d sess., vol. 24, ch. 318 (p. 448).

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 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 Elections 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 Elections.

FEES OF WITNESSES

Rev. Stats. of the United States, Title II, ch. 8, sec. 128.

Every witness attending by virtue of any subpœna herein directed to be issued shall be entitled to receive the sum of seventy-five cents for each day's attendance, and the further sum of five cents for every mile necessarily traveled in going and returning. Such allowance shall be ascertained and certified by the officer taking the examination, and shall be paid by the party at whose instance such witness was summoned.

FEES OF OFFICERS

Rev. Stats., sec. 129.

Each judge, justice, chancellor, chief executive officer of a town or city, register in bankruptcy,[1] notary public, and justice of the peace, who shall be necessarily employed pursuant to the provisions of this chapter, and all sheriffs, constables, or other officers who may be employed to serve any subpœna or notice herein authorized, shall be entitled to receive from the party at whose instance the service shall have been performed such fees as are allowed for similar services in the State wherein such service may be rendered.

[1] The act providing for this officer was repealed by 20 Stat. 99.

ALLOWANCES FOR EXPENSES OF ELECTION CONTESTS

Act of Mar. 3, 1879, U. S. Stat. L., 45th Cong., 3d sess., vol. 20, ch. 182 (p. 400).

No contestee or contestant for a seat in the House of Representatives shall be paid exceeding two thousand dollars for expenses in election contests; and before any sum whatever shall be paid to a contestant or contestee for expenses of election contests, he shall file with the clerk of the Committee on Elections a full and detailed account of his expenses, accompanied by the vouchers and receipts for each item, which account and vouchers shall be sworn to by the party presenting the same, and no charges for witness fees shall be allowed in said accounts unless made in strict conformity to section one hundred and twenty-eight Revised Statutes of the United States.

HOUSE DOCUMENT NO. 284, MISSISSIPPI ELECTION CONTEST

A Motion That the Attempted Contest Against Each Individually Be Dismissed, or That Each Be Otherwise Relieved From Taking Further Notice of Such Matter

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MONDAY, SEPTEMBER 13, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS OF THE
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, D.C.

The subcommittee met at 8:30 o'clock a.m., in room H-329, U.S. Capitol, the Honorable Robert T. Ashmore (subcommittee chairman) presiding.

Present: Representatives Ashmore, Abbitt, Waggonner, Gibbons, Davis, Goodell, Curtin, Devine, Perkins, Burleson, ex officio, and Lipscomb, ex officio.

Also present: Julian Langston, clerk.

Mr. ASHMORE. The Subcommittee on Elections will come to order.

I note that we have at the present time five members of the subcommittee present whose names will be announced in a few moments.

This is the Elections Subcommittee of the Committee on House Administration of the U.S. House of Representatives. I am Robert T. Ashmore, chairman of the subcommittee.

Other members of the subcommittee present are:

Mr. Gibbons, Mr. Davis, Mr. Curtin, and Mr. Devine.

Ex officio members present are Mr. Omar Burleson, chairman of the full Committee on House Administration, and Mr. Glenard P. Lipscomb, ranking minority member of the Committee on House Administration.

At our executive meeting last week, September 8, I read a statement to the members of the subcommittee who were present, but no record was made at that time of our proceedings, and, therefore, I think it wise at this time to read that statement so we will have it in the printed record.

The statement is as follows:

MISSISSIPPI CONTESTED ELECTION CASES

The Elections Subcommittee has before it at this time the election contests of the Members from Mississippi. There are a total of five contests, all based on the same facts and claims, although in the Third District, represented by Mr. Williams, there is an additional factor which we will go into later. At this time my comments will include all five contests treated as a unit.

55-318 O—65——2

These contests were initiated and have proceeded under the contested election statute. The law provides certain periods of time for both the contestant and the contestee to develop their cases. These time periods for the most part were followed as prescribed. The notices of intention were served on the Members and answers were filed with the contestants. The 40-day period allowed the contestants to take testimony and the 40-day period allowed the contestees ran its course. A further 10-day period was allowed the contestants.

After the testimony was received by the Clerk of the House, he notified the contestants and contestees to appear before him at the Capitol to go over the testimony to determine what portions were to be printed. There was disagreement and the Clerk made the decision to print the official testimony, which consisted of little more than the notices of intention to contest and the answers. The Clerk did print all the testimony, unofficially, for the use of this committee.

When the printed material was returned to the Clerk, copies were sent to all parties, including this committee. Upon receipt of the printed testimony the contestants immediately filed their additional briefs, although allowed a 30-day period in which to accomplish this step. Then, upon receipt of the contestants' briefs the contestants had a 30-day period in which to file their briefs. This 30-day period expired September 2, 1965, and the contestants immediately filed a letter waiving their right to an additional 30-day period to reply to the contestees' brief.

Thus on September 2, 1965, all time periods allowed the principals had expired and it became possible for this subcommittee to go into these contests.

The contestees filed a motion to dismiss the contests. The basis for the motion is that the contestees from the first, second, and fifth districts were unopposed in the general election of November 3, 1964, and that the contestee from the fourth district was not opposed by the contestant. In each case the contestant was not a candidate for a seat in the House in the general election of November 3, 1964. Each contestee was duly certified, as the elected representative from the district involved.

The motion further states that the contestants, in each case, claim fewer votes in a mock election conducted from October 30 to November 2, 1964, than the contestees received in the general election.

Only the contestant from the second district was a candidate in the Democratic primary election, and received 621 votes as compared to 35,218 votes for the contestee.

The contestant from the fifth district was a candidate in the Democratic primary for a seat in the Senate against Senator John Stennis.

The motion cites the *Kirwan* and *Ottinger* cases, in which each contestant was found not to be a proper person to bring about a contest on the basis that the contestant was not a candidate for the seat.

In the Third Congressional District, represented by Mr. Williams, the situation is basically identical with the other four districts, with the exception that the notice of intention to contest did not bear a handwritten signature.

Following the meeting of September 8 of this committee, we have invited the principals and their attorneys of record in the Mississippi case to be here today to present argument.

I insert in the record, at this point, a letter dated August 30, 1965, from the Clerk of the House of Representatives, addressed to the Speaker of the House, and referred to the Committee on House Administration, by which the Clerk transmits a communication from Members of the First, Second, Fourth, and Fifth Congressional Districts of Mississippi, containing a motion to dismiss the attempted contests.

Hon. John Bell Williams, Third Congressional District of Mississippi, has associated himself with this motion.

(The letter referred to follows:)

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
OFFICE OF THE CLERK,
Washington, D.C., August 30, 1965.

The Honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: From the Honorable Thomas G. Abernethy, Member of Congress from the First District of Mississippi, the Honorable Jamie L. Whitten, Member of Congress from the Second District of Mississippi, the Honorable Prentiss Walker, Member of Congress from the Fourth District of Mississippi, and the Honorable William M. Colmer, Member of Congress from the Fifth District of Mississippi, the Clerk has received a motion that the attempted contest against each individually be dismissed, or that each be otherwise relieved from taking further notice of such matter.

The communication in this matter is being transmitted for referral to the appropriate committee of the House of Representatives.

Respectfully yours,

RALPH R. ROBERTS,
Clerk, U.S. House of Representatives.

Mr. ASHMORE. The principals who are present today are: Hon. Thomas G. Abernethy, First District of Mississippi; Hon. Jamie L. Whitten, Second District of Mississippi; Hon. John Bell Williams, Third District of Mississippi; Hon. Prentiss Walker, Fourth District of Mississippi; Hon. William M. Colmer, Fifth District of Mississippi.

On the other side, we have with us today the principals: Mrs. Augusta Wheadon, First District of Mississippi; Mrs. Fannie Lou Hamer, Second District of Mississippi; Mrs. Mildred Cozey, Third District of Mississippi; Mrs. Evelyn Nelson, Third District of Mississippi; Rev. Allen Johnson, Third District of Mississippi; Mrs. Annie Devine, Fourth District of Mississippi; Mrs. Victoria Gray, Fifth District of Mississippi.

The attorneys of record for this group are: Mr. Arthur Kinoy; Mr. William M. Kunstler; Mr. Benjamin E. Smith; Mr. Morton Stavis; Mr. William L. Higgs.

The Subcommittee on Elections, on September 8, 1965, directed that this meeting be confined to the motion to dismiss the attempted contests, House Document No. 284, which I will insert in the record now.

(House Document No. 284 follows:)

89TH CONGRESS, 1st Session } HOUSE OF REPRESENTATIVES { DOCUMENT No. 284

MISSISSIPPI ELECTION CONTEST

LETTER

FROM

CLERK, U.S. HOUSE OF REPRESENTATIVES

TRANSMITTING

A MOTION THAT THE ATTEMPTED CONTEST AGAINST EACH INDIVIDUALLY, BE DISMISSED, OR THAT EACH BE OTHERWISE RELIEVED FROM TAKING FURTHER NOTICE OF SUCH MATTER

AUGUST 31, 1965.—Referred to the Committee on House Administration and ordered printed with accompanying papers

LETTER OF TRANSMITTAL

HOUSE OF REPRESENTATIVES,
OFFICE OF THE CLERK,
Washington, D.C., August 30, 1965.

The Honorable the SPEAKER OF THE HOUSE OF REPRESENTATIVES.

SIR: From the Honorable Thomas G. Abernethy, Member of Congress from the First District of Mississippi, the Honorable Jamie L. Whitten, Member of Congress from the Second District of Mississippi, the Honorable Prentiss Walker, Member of Congress from the Fourth District of Mississippi, and the Honorable William M. Colmer, Member of Congress from the Fifth District of Mississippi, the Clerk has received a motion that the attempted contest against each individually, be dismissed, or that each be otherwise relieved from taking further notice of such matter.

The communication in this matter is being transmitted for referral to the appropriate committee of the House of Representatives.

Respectfully yours,

RALPH R. ROBERTS,
Clerk, U.S. House of Representatives.

IN THE HOUSE OF REPRESENTATIVES
OF THE
UNITED STATES
EIGHTY-NINTH CONGRESS

1. In the Matter of the Election of Thomas G. Abernethy, Member From the First District of Mississippi
2. In the Matter of the Election of Jamie L. Whitten, Member From the Second District of Mississippi
3. In the Matter of the Election of Prentiss Walker, Member From the Fourth District of Mississippi
4. In the Matter of the Election of William M. Colmer, Member From the Fifth District of Mississippi

IN THE HOUSE OF REPRESENTATIVES
OF THE
UNITED STATES

89TH CONGRESS

1.

In the Matter of the Election of Thomas G. Abernethy, Member from the First District of Mississippi.

2.

In the Matter of the Election of Jamie L. Whitten, Member from the Second District of Mississippi.

3.

In the Matter of the Election of Prentiss Walker, Member from the Fourth District of Mississippi.

4.

In the Matter of the Election of William M. Colmer, Member from the Fifth District of Mississippi.

Now comes the said Thomas G. Abernethy, Member of Congress from the First District of Mississippi; Jamie L. Whitten, Member of Congress from the Second District of Mississippi; Prentiss Walker, Member of Congress from the Fourth District of Mississippi; and William M. Colmer, Member of Congress from the Fifth District of Mississippi, each individually, and moves that the attempted contest against him be dismissed, or that he be otherwise relieved from taking further notice of such matter.

In support of his motion, said Thomas G. Abernethy would show that in the November 1964 election for Representative in Congress from the First District of Mississippi he was unopposed in the said election and that he received 60,052 votes, that he was duly certified as the duly elected representative in Congress from the said First District, certificate of election being filed with the Clerk of the House of Representatives, copy of said certificate being attached to this motion; and that Mrs. Augusta Wheaton, who filed notice of contest, was not a candidate in said election and, therefore, under the precedents of the House of Representatives, reaffirmed at this session, is not a proper person to contest said election.

In support of his motion, said Jamie L. Whitten would show that in the November 1964 election for Representative in Congress from the Second District of Mississippi he was unopposed in the said election, that he received 70,218 votes, that he was duly certified as the duly elected representative in Congress from the said Second District,

certificate of his election being filed with the Clerk of the House of Representatives, copy of said certificate being attached to this motion; that Mrs. Fannie Lou Hamer, who filed notice of contest, was not a candidate and, therefore, under the precedents of the House of Representatives, reaffirmed at this session, is not a proper person to contest said election; that said Mrs. Fannie Lou Hamer in a mock election held for four days, October 30 to November 2, 1964, claims to have received only 33,009 votes.

In support of his motion, said Prentiss Walker would show that in the November 1964 election for Representative in Congress from the Fourth District of Mississippi he was opposed only by former Congressman Arthur Winstead and received 34,684 votes while former Congressman Arthur Winstead received 27,843 votes, that he was duly certified as the duly elected representative in Congress from the said Fourth District, certificate of his election being filed with the Clerk of the House of Representatives, copy of said certificate being attached to this motion; that Mrs. Annie Devine, who filed notice of contest, was not a candidate and, therefore, under the precedents of the House of Representatives, reaffirmed at this session, is not a proper person to contest said election; that said Mrs. Annie Devine in a mock election held for four days, October 30 to November 2, 1964, claimed to have received only 9,067 votes.

In support of his motion, said William M. Colmer would show that in the November 1964 election for Representative in Congress from the Fifth District of Mississippi he was unopposed in the said election, that he received 83,120 votes, that he was duly certified as the duly elected representative in Congress from the said Fifth District, certificate of election being filed with the Clerk of the House of Representatives, copy of said certificate being attached to this motion; that Mrs. Victoria Gray, who filed notice of contest, was not a candidate in said election and, therefore, under the precedents of the House of Representatives, reaffirmed at this session, is not a proper person to contest the election; that said Mrs. Victoria Gray in a mock election held for four days, October 30 to November 2, 1964, claims to have received only 10,138 votes.

In further support of his motion the said Jamie L. Whitten would show that Mrs. Fannie Lou Hamer, who has filed a notice of contest against his election, was a candidate in the Democratic Primary election, at which time she received only 621 votes to 35,218 votes for Mr. Whitten; and, therefore, under the precedents of the House of Representatives the said Mrs. Fannie Lou Hamer for that additional reason is not a proper person to contest said election.

In further support of his motion said William M. Colmer would show that in the November 1964 election for Representative in Congress from the Fifth District of Mississippi the so-called contestant, Mrs. Victoria Gray, though not a candidate for Representative from the Fifth District of Mississippi was a candidate for the U.S. Senate in the Democratic primary against Senator John Stennis; and, therefore, under the precedents of the U.S. House of Representatives the said so-called contestant, Mrs. Victoria Gray, for that further reason is not a proper person to contest his said election.

The said Thomas G. Abernethy, Jamie L. Whitten, Prentiss Walker, and William M. Colmer each would further show that each of them was duly sworn in as a Member of Congress on the fourth day of January 1965, as shown by the Journal of the House of Representatives,

Page 4, and that each of them has been engaged and each is now engaged in the performance of the duties of said office, certificate of the Clerk of the House of Representatives to that effect being attached hereto.

In support of said motion the undersigned Thomas G. Abernethy, Jamie L. Whitten, Prentiss Walker, and William M. Colmer, each acting individually, would cite the Kirwan and Ottinger cases.

A. THE KIRWAN CASE

Locke Miller was a candidate for Congress against Representative Kirwan in the Democratic Primaries of 1940. Mr. Kirwan was nominated. Mr. Miller was not a candidate in the General Election but attempted to contest the seat. On these facts, the House resolved that it did "not regard the said Locke Miller as a person competent to bring a contest for a seat in the House and his notice of contest, served upon the sitting Member, Michael J. Kirwan, is hereby dismissed."

The entire language of the House Resolution appears at Page 929 of tne Congressional Record for the present session of Congress, where it was printed at the request of the Majority Leader, Mr. Albert.

B. THE OTTINGER CASE

This case was decided by a roll call vote of the House of Representatives on January 19, 1965, beginning at Page 929 of the Congressional Record. Mr. Frankenberry, who was not a candidate in the general election, sought to contest the seat of Representative Ottinger, who had been declared elected. Of this contest, Mr. Albert spoke as follows:

> The statutes under which this proceeding is initiated do not provide, and there is no case on record that we have been able to find to the contrary, that a person not a party to an election contest is eligible to challenge an election under these statutes.

Purported contestants in their brief go to great pains in an effort to explain away or distinguish the rule solemnly adopted by the House of Representatives on January 19, 1965. The following remarks of Mr. Albert and Mr. Burleson, sustained by the House of Representatives by a vote of 245 to 102, completely destroy any possible claim on the part of these contestants:

[Congressional Record, 89th Cong., Jan. 19, 1965, pp. 932-934]

Mr. ALBERT. In this case, if we followed the recommendations of the gentleman from New Hampshire, we would be opening up to anybody or to any number of individuals for valid or for spurious reasons, the right to proceed under these statutes, to contest the election of any Member of the House. These statutes place burdensome obligations on any contestee and should not be construed to open up the opportunity for just anyone to harass a Member of Congress or to impede the operations of the House.

Other remedies are available to the public generally and to Members of the of the House. Any individual or any group of individuals has a right to petition the Congress of the United States. Any Member of the House has a right to introduce a resolution at any time, calling for the investigation of any election. In the ordinary course of events, such a resolution would be referred to the Committee on House Administration, and thereafter to the Subcommittee on Elections, for proper investigation or hearings, as that committee or as the House might deem necessary under the circumstances.

Further than that, to construe this statute as the gentleman from New York would have us construe it would enable a Member to be challenged by any number of individuals, one challenging on one ground and another on another, one on the ground of citizenship or residence, another on the ground of excessive campaign expenditures, and so on ad infinitum.

If the contention of the gentleman is correct, there is no limit to the number of individuals who could contest any seat in this House, if the contest were brought in due time.

I wish to quote from the statute. I have already quoted from the precedent of the *Kirwan* case. I say to the gentleman that it was intended that this case be limited to those who participated in the election, to one of the candidates in the election.

I say that the Congress never intended to give unqualified authority, pell-mell, under this statute, to individuals, to good people or to bad people, to contest any Member's seat, for good reason or otherwise.

I say that this statue, which place a burden on the contested Member, is one which should be narrowly construed and which was narrowly construed in the *Kirwan* case.

This was never intended by this statute. There is nothing within the action which we are taking today which prevents any Member, as was done in the *Hays* case, from filing a resolution and having it submitted to the Committee on House Administration for investigation or for hearings. There is nothing in the resolution which I have offered today which will prevent any Member of this House from doing that or which will prevent any number of electors from the 25th U.S. Congressional District or any citizen therein from petitioning the Congress to proceed with an investigation. The question here is should we give the powers conferred by this statute to anyone but a candidate for a seat in the House? Surely, we would not do that when there are other methods of proceeding under election practices, laws, and customs, such as by memorial petition or resolution.

And then Mr. Burleson stated:

Mr. BURLESON. Mr. Speaker, the distinguished majority leader has clearly, and I think beyond reasonable doubt, stated the precedents and statutes correctly and as they have been applied historically by this House of Representatives.

More importantly, Mr. Speaker, should the people of the 25th District of the State of New York be denied proper representation in the Congress on this sort of allegation? It becomes a serious matter should that happen.

So I join the distinguished majority leader in this effort to clarify this matter and once and for all, so far as the House of Representatives is concerned, put it behind us.

The House of Representatives of course will take note of the fact that contests were attempted against all Members of the House of Representatives from the State of Mississippi; that a common brief of publication to which no signatures are affixed has been filed with the Clerk of the House against all the Representatives from Mississippi; that, in accordance with the requirements of the statute, the Clerk of the House of Representatives examined and ascertained as to the portions of the testimony to be printed and ruled 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 203, 209, 218, 221, 222, and 223 of title 2 of the United States Code as noted (p. III, Ruling of the Clerk).

In further support of their several motions, the undersigned Thomas G. Abernethy, Jamie L. Whitten, Prentiss Walker and William M. Colmer, each would point out that at Volume 91, Congressional Record, Page 1084, February 14, 1965, 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. Sumners, 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.

Wherefore the undersigned Thomas G. Abernethy, Jamie L. Whitten, Prentiss Walker, and William M. Colmer, each acting individually, respectfully submits that said attempted contest against him be dismissed or that he be otherwise relieved from taking further notice of such matter.

Respectfully submitted.

THOS. G. ABERNETHY,
Representative in the U.S. Congress from the First District of Mississippi.

JAMIE L. WHITTEN,
Representative in the U.S. Congress from the Second District of Mississippi.

PRENTISS WALKER,
Representative in the U.S. Congress from the Fourth District of Mississippi.

WILLIAM M. COLMER,
Representative in the U.S. Congress from the Fifth District of Mississippi.

CITY OF WASHINGTON,
District of Columbia, ss:

This day personally appeared before the undersigned Clerk of the U.S. House of Representatives the above-named Thomas G. Abernethy, Jamie L. Whitten, Prentiss Walker, and William M. Colmer, who stated on oath that the facts alleged in the foregoing motion are true and correct as therein set out.

Witness my hand and seal of this the 24th day of August, 1965.

[SEAL]

RALPH R. ROBERTS,
Clerk, U.S. House of Representatives.

OFFICE OF THE CLERK
HOUSE OF REPRESENTATIVES
Washington, D.C.

I, Ralph R. Roberts, Clerk of the House of Representatives, do hereby certify that the attached is a copy of the Certificate of Election for a term of 2 years, beginning on the 3d day of January, 1965, for the Honorable Thomas G. Abernethy from the First Congressional District, the Honorable Jamie L. Whitten from the Second Congressional District, the Honorable Prentiss Walker from the Fourth Congressional District, and the Honorable William M. Colmer from the Fifth Congressional District of the State of Mississippi, the original of which is on file in this office.

I further certify that the Honorable Thomas G. Abernethy, Jamie L. Whitten, Prentiss Walker, and William M. Colmer, on January 4, 1965, First Session, Eighty-ninth Congress, presented themselves at the bar of the House and took the oath of office prescribed by law, as evidenced in the Journal of the House on January 4, 1965, First Session, Eighty-ninth Congress.

In witness whereof, I hereunto affix my name and the Seal of the House of Representatives, in the city of Washington, District of Columbia, this twenty-fourth day of August, anno Domini one thousand nine hundred and sixty-five.

[SEAL]

RALPH R. ROBERTS,
Clerk, U.S. House of Representatives.

MISSISSIPPI EXECUTIVE DEPARTMENT, JACKSON

CERTIFICATE OF ELECTION FOR 2-YEAR TERM

To the CLERK OF THE HOUSE OF REPRESENTATIVES OF THE UNITED STATES:

This is to certify that on the third day of November, 1964, the qualified electors of the State of Mississippi duly chose as their Representatives in the House of Representatives of the United States for a term of two years, beginning on the third day of January, 1965, the following-named Representatives to represent them in and for the Congressional Districts from the State of Mississippi as set out below:

First Congressional District:
Thomas G. Abernethy, Okolona, Mississippi
Second Congressional District:
Jamie L. Whitten, Charleston, Mississippi
Third Congressional District:
John Bell Williams, Raymond, Mississippi
Fourth Congressional District:
Prentiss Walker, Mize, Mississippi
Fifth Congressional District:
William M. Colmer, Pascagoula, Mississippi

Witness, His excellency, our governor, Paul B. Johnson, and our seal hereto affixed at Jackson, this 10 day of November A.D., 1964.

[SEAL]

PAUL B. JOHNSON,
Governor.

Mr. ASHMORE. As a result, the following telegram was sent to the principals and their attorneys:

There will be a closed meeting of the Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives, Washington, D.C., room H-329, U.S. Capitol Building, scheduled to begin at 8:30 a.m., Monday, September 13, 1965. The purpose of this meeting is to consider in connection with the Mississippi contested elections House Document No. 284, 89th Congress, 1st session, entitled "A motion that the attempted contest against each individual be dismissed, or that each be otherwise relieved from taking further notice of such matter." The hearing will also include the Third District of Mississippi.

Principals and/or their attorneys of record are invited to attend to present argument for or against the motion to dismiss. All argument will be confined strictly to the motion to dismiss.

The proceedings insofar as time allotment will be governed by the provisions of the rules of the Committee on Elections of the House of Representatives. The contestees as the moving parties will have the right to make opening and closing arguments.

Under separate cover there is being mailed copies of laws and committee rules governing contested election cases in the House of Representatives and House Document No. 284, 89th Congress, 1st session.

Signed "Robert T. Ashmore, Chairman, Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives, Washington, D.C."

On September 9, 1965, the following telegram jointly signed by Messrs. Kinoy, Kuntsler, Smith, Stavis, and Higgs was received:

This will acknowledge receipt of your telegram of September 8. Contestants respectfully request hearing September 13 be open to representatives of press, Members of Congress, and the public. Committee rules forwarded to us by you do not provide for "closed" hearings, other than executive sessions which are limited by your own rules solely to members of committee and the clerk. September 13 hearing obviously not "executive session" as provided in your rules since contestants, contestees and attorneys have been invited to appear. Critical national public importance of issues involved in Mississippi election cases require open discussion of fundamental issues involved.

Contestants in addition request that the hearings on September 13 no—

and evidently this should be "not"—

be limited as your telegram indicates solely to contestees motion to dismiss the Mississippi cases but that full argument be heard at the September 13 hearing on the merits of the contests. Committee and sitting Mississippi Members have had more than ample time to consider and respond to serious issues here involved going to integrity of House. Contestants accordingly request that the committee at the Monday hearing hear argument on contestants' demand contained in notices of contest, and contestants' brief that the seats of the sitting Mississippi Members be vacated and that new elections be held in each congressional district under such conditions as will permit the full participation of Negro citizens of Mississippi in the selection of members to represent them in the House of Representatives.

Attorneys for contestants: Arthur Kinoy, William M. Kunstler, Benjamin E. Smith, Morton Stavis, William L. Higgs.

On the same day, 1965, a reply was sent to each signer, as follows:

Reference your joint telegram September 9. This will reaffirm arrangements set forth in my telegram to you of September 8 which are by direction of the Elections Subcommittee and must be followed with strict compliance.

ROBERT T. ASHMORE,
Chairman, Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives, Washington, D.C.

We are now ready to proceed with the arguments.

Mr. DAVIS. May I make a point that has to do with the proceeding prior to the beginning of the argument?

Mr. ASHMORE. Yes. Before you do, let me finish.

As the parties bringing the motion to dismiss before this committee, the Members from Mississippi will open with a time limit of 1 hour. Following this, the other group will have 1½ hours, then the Members will close the argument with a 30-minute time limit.

That is according to the time regulations set forth in the rules under which we operate.

Mr. DAVIS. As I started to say, it is true in all the States that I know about—I am quite sure it is true in 50 States—there is maintained a register of practicing attorneys. It is also true in most of the agencies, such as the Interstate Commerce Commission and the various Federal agencies, that before an attorney can appear before a commission, or an agency, he must be admitted to practice before the agency. That is true of the appellate courts and of course the Supreme Court. It is not true, however, that any such register is maintained by the House of Representatives.

I know there is not time this morning to make an independent investigation to determine what attorneys might be authorized to appear as attorneys, as professional attorneys, before a committee of the House, but I should like to suggest that an inquiry be made of each attorney present here this morning as to his qualifications—whether or not he is a graduate of an accredited law school, what bars he has been admitted to, if any, and whether or not he is in good standing and qualified to practice law in certain of the States.

Mr. ASHMORE. I think that is a wise suggestion, Mr. Davis, and therefore I will make that inquiry.

Mr. WAGGONNER. Setting forth the conditions of time as allocated under the rulings of this committee, am I to understand that the times prescribed are only time limits and may not necessarily be utilized in that allocated period of time? Can they waive their time and consume it later, or can it be waived and not used?

Mr. ASHMORE. Certainly if either of the parties wishes to waive any portion of their time, they may waive it. I do not think they would be able to use it at a later time. The parties on both sides will use their time, and be required to use their time, in their allotted period. The moving parties will move first and will have the opening argument and the closing argument. They will not be permitted to take more time than they are allowed, and the contestants will reply to the opening arguments. Contestees will have their full hour and a half time.

Will all attorneys stand representing any and all the people, contestants and contestees?

Mr. KUNSTLER. I am asking a preliminary question.

Does it mean you are going to put into effect Representative Davis' suggestion?

Mr. ASHMORE. Yes.

Mr. KUNSTLER. I want to make a most strenuous objection to this. I have appeared personally before committees of Congress and I am sure other attorneys in the room have, and I am sure Members at the table have appeared at committees of Congress. I have never yet heard such a request made, or granted, in any hearing which I have attended. I would say the same if any Congressman in this room can

make a statement that he has heard attorney's qualifications questioned at any committee of Congress. I would be very much surprised.

We object most strenuously to this and see no reason for it. We have signed papers as attorneys. There has been ample time to check everyone's qualifications if that had been desired by the names on the papers. We object most strenuously to this type of investigation of attorneys prior to a hearing. If any of us are lying as to our qualifications, we can be censored for that later, but there has been a thorough revealing of all the names. No names have been hidden from the very beginning of this challenge; therefore, I object most strongly.

Mr. ASHMORE. Objection is overruled.

We are simply trying to find whether or not people who represent themselves as attorneys are attorneys or not. If there is no question about being an attorney, you can answer what law school are you a graduate of and where are you permitted to practice.

Are you an attorney at law?

Mr. KUNSTLER. My name is William M. Kunstler; I am an attorney at law.

Mr. ASHMORE. A graduate of a law school?

Mr. KUNSTLER. Yes.

Mr. ASHMORE. Permitted to practice in what State?

Mr. KUNSTLER. In the District of Columbia, and in New York, the the U.S. Supreme Court, and a great many other circuit courts.

Mr. ASHMORE. That is all I want to know.

The gentleman standing.

Mr. MCCLENDON. I am B. B. McClendon, Jr., I am an attorney representing Congressman Prentiss Walker. I am a graduate of the Mississippi School of Law and I am licensed to practice law in the State of Mississippi and before the Federal courts.

Mr. ASHMORE. Other attorneys.

Mr. KINOY. I am Arthur Kinoy, attorney at law. I am licensed to practice in the State of New York and many Federal courts, and U.S. Supreme Court. I am an attorney for the contestants here.

Mr. SMITH. My name is Benjamin Smith, attorney at law. Member of the Louisiana Bar Association. I am a graduate of Tulane and permitted to practice before the U.S. Supreme Court and the court of appeals.

Mr. HIGGS. I am William Higgs, graduate of Harvard Law School, and member of the bar of the Supreme Court of the United States.

Mr. STAVIS. I am Morton Stavis, graduate of Columbia University School of Law, member of the bar of State of New York, Supreme Court of the United States, and a number of circuits throughout the United States.

Mr. ASHMORE. Are there any other attorneys now?

Mr. WAGGONNER. May I ask a question with regard to Mr. Higgs?

I understand he is not licensed to practice law, nor is admitted to the bar in any of the several 50 States, nor the District of Columbia.

Mr. KUNSTLER. I object.

You said if the attorneys were to state their qualifications—Mr. Higgs is a member of the bar of the United States in good standing, and I think that is ample qualification to appear before any congressional committee or the U.S. Supreme Court.

Mr. WAGGONNER. It might be ample qualification to appear, but still the question remains unanswered, and I would like an answer or a refusal to answer the question.

Mr. KUNSTLER. Mr. Chairman——

Mr. ASHMORE. What was the question, Mr. Waggonner?

Mr. WAGGONNER. Am I to understand from Mr. Higgs' answer that he is not licensed to practice law before any of the bars of the 50 States or the District of Columbia?

Mr. GOODELL. I think we ought to proceed with the hearing. I think we have had the qualifications presented now. I am not so sure anyone would have to be a lawyer to represent someone before this group. We have never had a ruling to that effect.

I think we ought to proceed and give them their time to present their case.

Mr. ASHMORE. I believe the gentleman you refer to, Mr. Higgs, stated he is a lawyer, and is licensed to practice before the U.S. Supreme Court.

Mr. HIGGS. Yes.

Mr. KUNSTLER. The bar of the U.S. Supreme Court.

Mr. ASHMORE. I think that is sufficient at this time.

Mr. KUNSTLER. I have some preliminary matters prior to getting into the hearing which go to the conduct of the hearing.

I assume that after contestees have presented their cases, we will then change seats. We are all crowded over here.

Mr. ASHMORE. You can have a seat at the table right now, if you like.

Mr. KUNSTLER. We have the whole group of contestants here, and the contestees have the other end of the table. They have the burden of going forward. I assume it is right they be there now, but I would suggest when they are finished there is no need for them to remain at the table and we need a place to spread our papers and talk to our clients.

Mr. ASHMORE. I will be glad to let you sit at the table now if you can find a seat.

Mr. ABERNETHY. We would be glad to make room for these attorneys now if they wish to move up here.

Mr. KUNSTLER. We are not asking for that now. It would be crowded. When they are finished we will take their places.

Secondly, Mr. Chairman, are there going to be transcripts furnished of the hearings to contestants and contestees? I would like to make that application.

Mr. ASHMORE. The committee will act on that.

Mr. KUNSTLER. I would like the record to indicate we have applied for a transcript.

Mr. ASHMORE. Right.

Mr. KUNSTLER. Lastly, I have a motion here—we would like to renew very strenuously, and I have copies for Mr. Langston to distribute, and copies for service, of a motion for an open hearing. I would like the record to indicate I have served contestees and Mr. McClendon, who is representing all contestees.

Are you just representing Mr. Walker?

I have given them six copies, one for each contestee and one for Mr. Walker.

Contestants maintain this is an extremely important hearing. We object very strenously to a closed session, which is not provided for in your rules as previously indicated in our telegram and set forth in our motion. Not only is it inconsistent with this subcommittee's rules, but with the Legislative Reorganization Act which is cited in the motion we have submitted.

People have come from Mississippi to witness all stages of this challenge, and the press is interested in the challenge. We feel it serves no useful purpose to shroud this hearing in a closed session which is neither executive or open, by a hybrid closed session.

We notice there are policemen all around the Capitol, and to get into this room you have to go through a rather elaborate procedure of being identified downstairs and then brought upstairs.

We move most strenuously in the interest of opening up this hybrid type of hearing to the public, and to the press, that the subcommittee rule on this motion that we have made in a very formal fashion to so do. We think it is a mistake to hide these hearings. We think they are important, both to the press and to the public in general, and the Washington Post editorial yesterday indicated that there is no reason whatsoever—and I have quoted the editorial in our motion—no reason whatsoever for putting a shroud around this hearing.

The Post said:

> This is the kind of a question that should be openly discussed in both candid and searching terms.

We feel most strongly that the subcommittee should rule on this, and rule favorably, and, if the room is not big enough to permit public and press, we should move to a room that can accommodate all concerned.

That is our motion, and we make it very formally now.

I think every member of the subcommittee, and the ex officio members, now have copies of this motion, and we introduce it for the record as well.

Mr. ASHMORE. Your motion is noted and overruled.

Members of the committee have determined what type of hearing we will hold, which we have full authority to do under the rules and regulations of the committee, and the rules of the House of Representatives of the United States.

A closed session is not unusual for this type of hearing. This is a hearing on a motion that is in the nature of a demurrer, a preliminary motion you might call it, a motion based on more or less legal-technical grounds.

The committee will proceed, and we will hear first from a member or members of the contestees who are the moving parties. They have made the motion, and the clerk will keep time. One hour will be allotted to the people making the motion, the contestees in this case, for their arguments. That means the arguments of all or any of the gentlemen. Those gentlemen will then have 30 minutes to reply to the contestants.

STATEMENT OF HON. WILLIAM M. COLMER, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. COLMER. Mr. Chairman, I am William M. Colmer, one of the alleged contestees here.

Mr. ASHMORE. Do you wish for the clerk to notify you when your time has expired, and if so, tell us how much time you wish to take.

Mr. COLMER. Mr. Chairman, I understand that we have an hour primarily.

Mr. ASHMORE. Right.

Mr. COLMER. I think it is understood here I might proceed as much as 5–10 minutes, or as much thereof as I see fit to use, and I have asked someone here to keep time.

Mr. Chairman, in view of the limitation of time and in order to get my statement in order as much as possible, I have prepared a statement which I should like to read, if I may.

Mr. ASHMORE. Yes.

Mr. COLMER. Mr. Chairman, members of the subcommittee, in view of the fact that the counsel for the Mississippi delegation in this alleged contest has been appointed by President Johnson as a member of the Fifth Circuit of the U.S. Court of Appeals and has assumed that position, we will present our own case.

It will be noted that Mr. McClendon, who was originally employed by our beloved Republican colleague here, not being in that position, is here present.

And while there are five separate contests, there is in fact but one issue. We will therefore discuss the purported contest en bloc.

HISTORICAL

It might be well to state in the beginning what happened in the 1964 election, which is here attempted to be challenged.

Mississippi held its primaries on June 2, 1964. In the Democratic primary held on that date, all five of Mississippi's House Representatives were, of course, up for renomination, as well as its junior Senator, John C. Stennis. All four of my colleagues, to wit, Thomas G. Abernethy, Jamie L. Whitten, John Bell Williams, and former Congressman Arthur W. Winstead, as well as myself and Senator Stennis, were renominated in that primary.

In that primary election, Congressman Abernethy, representing the First District, had no opposition and he, therefore, was duly declared the Democratic nominee.

Congressman Whitten was opposed on one Fannie Lou Hamer—and I should point out here, in view of the circumstances, that she is of the Negro race. Mr. Whitten was declared the Democratic nominee.

In the Third District, Congressman John Bell Williams was opposed by one J. M. Houston, also a member of the Negro race. Williams was declared the Democratic nominee.

In the Fourth District our former colleague, Arthur W. Winstead, was opposed by two opponents but received a majority of the votes and was declared the Democratic nominee.

In the Fifth, my district, I was opposed by three opponents, which is nothing unusual, two of whom were of the white race and one of the

Negro race. In this spirited contest I received a majority of the votes and was declared the Democratic nominee.

In the statewide race, Senator Stennis was opposed by one Victoria Jackson Gray, also of the colored race, and I believe one of the purported contestants here. Senator Stennis received an overwhelming majority of the votes and was declared the Democratic nominee for the Senate.

It might be interesting to note here that although Senator Stennis, running from the State at large for the office of Senator, was nominated but is not here contesting.

In the 1964 general election neither Congressmen Abernethy, Whitten, Williams, nor Colmer had an opponent. The four of us were, therefore, duly certified to the Clerk of the U.S. House of Representatives by the duly authorized Governor and secretary of state of Mississippi as the duly elected Representatives from the State of Mississippi, as witnessed by the Honorable Ralph Roberts, Clerk of the U.S. House of Representatives, as was also Hon. Prentiss Walker, a Republican, who had defeated former Congressman Arthur Winstead, the Democratic nominee, in the said election.

MOCK ELECTION

However, a self-styled "Freedom Democratic Party" group held what they were pleased to term "freedom elections" in the Second (Whitten), Fourth (Walker), and Fifth (Colmer) Districts. These were nothing but mock elections, tantamount to straw votes, and were held without any sanction of law and conducted over a period of 4 days, from October 30 to November 2. They were conducted by private individuals. No list or other data was filed with State authorities or, for that matter, has been filed in this alleged contest to show who participated therein, or whether they were qualified electors.

Under Mississippi law, one cannot be unsuccessful as a candidate in a primary and run later in the general election. Thus, both the said Hamer and Gray were estopped under the law from running in the general election even had they so desired.

Mr. ABERNETHY. Identify the districts.

Mr. COLMER. Hamer was in the Second District and Gray in the Fifth, or my district.

NO CONTEST WITHOUT A CONTESTANT

The one thing that I desire to emphasize and reemphasis before further discussion is that in order for there to be a legal contest in the House of Representatives, there must be a legal, bona fide contestant. The books are full of cases bearing out this fact. Even the old precedents relied on by the opposition here, if fully revealed, disclose that even in those cases there were contestants and the decisions, regarded by them as favorable, were reached upon other grounds such as fraud, riots, et cetera.

It will be noted from the notice of the intent of the opposition to contest the seats of the incumbents that they proceeded upon this theory. In other words, they elected to proceed under section 201, title 2, United States Code, requiring a legal contestant. That is

a contestant who had been unsuccessful in an election against a contestee. Certainly that is not the case here.

They subsequently attempted in their brief to change their procedure. But having made their selection, they are bound by it, although they now admit that they are not contestants in the light of the statute.

We repeat, there cannot be a contest without a bona fide contestant.

Time will not permit me to recite the many precedents substantiating this fact, but I do want to briefly call the committee's attention to two recent cases.

THE KIRWAN CASE

Locke Miller was a candidate for Congress against Representative Kirwan in the Democratic primaries of 1940. Mr. Kirwan was nominated. Mr. Miller was not a candidate in the general election but attempted to contest the seat.

On these facts, the House resolved that it did—

not regard the said Locke Miller as a person competent to bring a contest for a seat in the House and his notice of contest, served upon the sitting member, Michael Kirwan, is hereby dismissed.

The entire language of the House resolution appears at page 929 of the Congressional Record for the present session of Congress, where it was printed at the request of the majority leader, Mr. Albert, in connection with another case.

THE OTTINGER CASE

Mr. Chairman, there is a more recent case in this Congress, the most recent precedent of all, the so-called Ottinger case.

Subsequently and to wit, on January 19 this year, this principle was reiterated in this House.

In the Ottinger case a Mr. Frankenberry, who was not a candidate in the general election—incidentally, the same general election in which the Mississippi delegation was elected—sought to contest the seat of Representative Ottinger, who had been declared elected.

The House on a recorded vote last January upheld the contention of Mr. Ottinger that in view of the fact that Mr. Frankenberry had not been a candidate in the general election, he was not a fit person to contest the election, and Mr. Ottinger was seated.

With no desire to make comparisons by which Congressman Ottinger might suffer, I point out that the case against Mr. Ottinger was a stronger case than against the Mississippi delegation; for the record will disclose that there were charges amounting to violation of the election laws concerning the amount of money that could be expended and was expended.

In our case, not one suggestion of the faintest nature has ever been mentioned of irregularity or fraud in our election.

CLAIM ILLEGALITY IN MISSISSIPPI ELECTION LAWS

In their scattergun attempt to make a case against the Mississippi delegation, the charge was made that the Mississippi election laws under which the delegation was elected were illegal and unconstitutional in that they violated the "Compact of 1870," which "readmitted" Mississippi to the Union.

If this contention be justified, then it is common knowledge that every State in the Confederacy—Virginia, North Carolina, South Carolina, Georgia, Florida, Alabama, Louisiana, Texas, and Arkansas, as well as Mississippi—are in the same position.

Assuming that these States were out of the Union—*The Supreme Court of the United States in Texas* v. *White*, 1869, held that they never were out—for the sake of argument, all of the Representatives from these States in the Congress since 1870 must be considered also as illegally elected.

Do the proposed contestants here expect to unseat all of the present Members from these States if successful in the Mississippi case?

As a matter of fact, if this be true, then I have been serving illegally in this House since 1932, a total of 33 years. And the same goes for Congressmen Abernethy, Whitten, Williams, and Walker, who have a combined service of 67 years.

If this were followed to its logical conclusion, what effect would such a decision have upon the laws that have been enacted by the Congress while all of these Representatives and Senators from these States have been serving illegally over these many years?

COURTS ARE ARBITERS OF LEGALITY OF STATE LAWS

As a matter of fact, all of the precedents are to the effect that the courts are the proper tribunal to decide the legality of election laws.

The House without a debate in a South Carolina case (*Dantzler* v. *Leaver*, 2 Hinds, 1137, p. 742) upheld its Committee on Elections which said:

> The South Carolina constitution of 1895 contained educational and property qualifications. Contestant contended that even if he was not elected, the contestee should be unseated. The committee pointed out that Virginia, North Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Texas, and Arkansas were in identically the same position as South Carolina, and that if one were unseated for this reason, all Representatives from these States would likewise have to be unseated, and the seats would have to remain vacant until new constitutions could be adopted and new laws enacted.

The House agreed and seated the contestee.

There are numerous other precedents to the same effect, (*Houston* v. *Broocks*, 1 Hinds, 643, p. 854).

MOOT QUESTION

To be realistic and to blueprint the exact situation here, we assert that this whole question has become a moot one and is no longer worthy of consideration. In substantiation of this statement we remind the committee of the following facts:

(1) Congress has only this year passed the so-called voting rights bill, which in fact nullifies all of the election laws of the State of Mississippi—as well as other States—of which the purported contestants complained.

(2) The State of Mississippi has, by amending its constitution, repealed all of the laws affecting voting rights of which complaint here is made.

I would like to point out that while it is a matter of record while this was going on, while the State legislature was in session, these

same people who are complaining of the laws of Mississippi were demonstrating and complaining about the legislation that was repealed.

(3) To all intents and purposes, this purported contest was settled on January 4, 1965 (Congressional Record, p. 17), when the House on motion of the majority leader, Mr. Albert, by a roll call vote authorized the Speaker to administer the oath of office to the Members—here contested—of the Mississippi delegation.

The resolution so authorizing the Speaker was as follows:

Resolved, That the Speaker is hereby authorized and directed to administer the oath of office to the gentlemen from Mississippi, Mr. Thomas G. Abernethy, Mr. Jamie Whitten, Mr. John Bell Williams, Mr. William M. Colmer, and Mr. Prentiss Walker.

It would appear that those pushing this so-called contest apparently are following their usual role where they prefer the issue to the objectives they claim to seek.

FAR-REACHING IMPLICATIONS

Mr. Chairman, it is inconceivable that this House, notwithstanding all of the political pressure that has been, is being, and will be exercised by those who have conspired to deny the great State of Mississippi of its representation in the House of Representatives, will fail to withstand this type of an attack upon its Members and the dignity of the House itself.

Is it unreasonable to assume that if the efforts of this self-styled Freedom Democratic Party should prevail, the very stability of the House of Representatives as a dignified legislative institution will be undermined?

Is it unreasonable to assume that any group in any State, North, South, East or West, could challenge any Member or any State delegation if this precedent should be set?

Today it is the Freedom Democratic Party in Mississippi. Who can say that tomorrow it will not be the Ku Klux Klan, the Black Muslims, or any other organization in any other State of the Union who would be encouraged to do likewise?

Yes, it is conceivable that a conspiracy on a national level could disrupt and stop the functioning of the Congress if such a precedent was once established.

On January 19, discussing this matter in another case, the gentleman from Oklahoma, the distinguished majority leader, Mr. Albert, said, among other things, the following:

If the contention of the gentleman is correct, there is no limit to the number of individuals who could contest any seat in this House, if the contest were brought in due time.

I wish to quote from the statute. I have already quoted from the precedent of the Kirwan case. I say to the gentleman that it was intended that this case be limited to those who participated in the election, to one of the candidates in the election.

I say that the Congress never intended to give unqualified authority, pellmell, under this statute, to individuals, to good people or to bad people, to contest any Member's seat, for good reason or otherwise.

CONCLUSION

Finally, Mr. Chairman and members of the committee, we are asking you to uphold the dignity of the House; to stop the highly organized and burdensome harassment of your Mississippi delegation as well as the harassment of all of the Members of the House, by this well-organized, well-financed group conspiracy.

We respectfully but firmly request that these alleged contests be forthwith dismissed.

Mr. ASHMORE. Thank you, Mr. Colmer. I want the reporter to record that since we first started the hearing additional members of the committee have come in, Mr. Waggonner, Mr. Abbitt, and Mr. Goodell.

Mr. ABERNETHY. May we ask how much time he has used?

Mr. LANGSTON. He began at 9:20 and went to 10:43.

Mr. ASHMORE. If any member wishes to ask Mr. Colmer any questions, you are at liberty to do so and I hope we won't take too much time. The questioning should not come out of the time on either side when you are asking questions, I think. It would not be included in the time for argument.

Mr. Abbitt.

Mr. COLMER. I did not understand the ruling. The time would not come out of the allocation?

Mr. ASHMORE. Yes, sir. It will not be included in the allocated time.

Mr. GIBBONS. It will not be taken on your time.

Mr. ASHMORE. If the committee asks questions, it should not be taken from the allocated time.

Mr. ABBITT. Was a U.S. Senator elected in 1964?

Mr. COLMER. Yes; Senator John Stennis, who is now serving.

Mr. ABBITT. Is that election being contested?

Mr. COLMER. It is not.

Mr. ASHMORE. Are there any other questions?

Mr. GOODELL. Mr. Chairman, I have great respect——

Mr. COLMER. May I supplement that? Neither the electoral votes nor anybody else that was elected.

Mr. GOODELL. Mr. Chairman, as the gentleman from Mississippi knows, this issue of whether you have to be a candidate in order to contest an election has been discussed at some length in a variety of cases, some of which he mentioned. The gentleman did not mention the case of Mr. Dale Alford in which there was a challenge by an individual who was not a candidate for the seat. This House, in 1959, held hearings and finally made a decision around July 1959, after full hearings, with reference to the contested seat. There are other precedents, including the case of Mr. Richard S. Whaley, 63d Congress, 1913. As the gentleman is aware, I participated in a debate on this particular issue this year in the Ottinger case, and we submitted a brief that had been prepared by the Library of Congress Law Service Section, in which they came to the conclusion that you did not have to be a candidate in order to contest an election. I wonder if the gentleman has any comment on any of these cases or the brief.

Mr. COLMER. Yes. I wonder if the gentleman will believe me when I say that I am not as familiar with the case he referred to.

All I recall about it is that he was seated. I shall be glad to yield to my friend, Mr. Abernethy, but before I do, I recall the very able presentation of the views of the very distinguished gentleman from New York in the Ottinger case this year. But I also recall as I am sure does the gentleman that he found himself in that position when it was over that I found myself so many times in lawsuits, where it was decided against me. Therefore, it becomes a precedent for the thing we are contending.

Mr. GOODELL. The gentleman is saying we might have been right, but we lost and we better accept the decision of the court.

Mr. ABERNETHY. He answered the question. I would say this: In the Hays case there was a special resolution directing the committee to make an investigation.

Mr. ASHMORE. As chairman of the committee at that time, as I now have the honor of being, I wish to point out to the gentleman from New York that there is a definite distinction in the Dale Alford v. Brooks Hays case in regard to the type of procedure that was followed. Mr. Abernethy has answered the question but just to elaborate a little bit, in that case there was no attempt to contest the election of Brooks Hays under the statutory law which we are now following in this case, the difference being that under the statute when you bring a contest you must be, according to the precedents the gentleman just cited, a defeated candidate who participated in the election.

When you bring a contest in that regard, you follow the statute.

The Alford-Hays case was investigated at the direction of the House of Representatives, which passed a resolution, directing this subcommittee to make that investigation. Therefore, it did not have to follow the rules and regulations set forth in the contested election statute.

Mr. GOODELL. Mr. Chairman, I won't take the time here to get into a discussion that perhaps should come in our executive session, but let me just quickly quote two paragraphs and then we will drop it and go on with further argument. From the law brief submitted by the legislative attorney from the Library of Congress, he states at one point, "The language of section 201 is broad enough to embrace challenges made by any person as well as by a candidate who seeks a seat and there are precedents which indicate that the statute was intended to be interpreted broadly."

There are several other places I could quote. The conclusion of the brief is that the precedents would seem to indicate not only that a noncandidate but all be required to follow the procedures set forth in the statute. We can discuss this at greater length.

Mr. ABBITT. For curiosity did he cite the Alford case as a precedent?

Mr. GOODELL. That is one of the cases that is cited; there are others.

Mr. ABBITT. Did he cite it as a precedent for the conclusion he arrived at?

Mr. GOODELL. He cites these. Some he says are on all fours. He does not say they are all on all fours, no.

Mr. ASHMORE. We will proceed.

Mr. CURTIN. If I may ask one question, Mr. Colmer. Did you say that there were four persons contesting for the nomination in your district last spring?

Mr. COLMER. Yes, sir, including myself.

Mr. CURTIN. Were any of these present contestants among the congressional candidates at that primary election in 1964?

Mr. COLMER. Did I understand the gentleman's question correctly, was one of the present alleged contestants——

Mr. CURTIN. Yes; one of your opponents?

Mr. COLMER. Not one of my opponents.

Mr. CURTIN. That was for the Senate.

Mr. COLMER. She was a candidate for the Senate.

Mr. CURTIN. Thank you, sir.

Mr. COLMER. As I pointed out under the laws of Mississippi——

Mr. GOODELL. If the gentleman will yield, as I understand it, in the case of all of you except Mr. Walker, you had no opposition in the general election, is that correct?

Mr. COLMER. That is correct.

Mr. GOODELL. Mr. Walker was running against Mr. Winstead.

Mr. COLMER. That is right.

Mr. ASHMORE. Are there any more questions? If not, John Bell, did you indicate you were next?

STATEMENT OF HON. JOHN BELL WILLIAMS, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. WILLIAMS. Mr. Chairman, I am John Bell Williams. I represent the Third Congressional District of the State of Mississippi. I appear here in response to a telegraph received from the chairman of this committee under date of August 8, 1965, a copy of which I would like to have included in the record.

Mr. ASHMORE. You mean September?

Mr. WILLIAMS. I am sorry. This does say August 8, but it was September 8.

Mr. ASHMORE. The record shows it was September.

Mr. WILLIAMS. The chairman has a record of when he sent the wire. It was received on the same date. I would ask that this be included in the record, a copy of this telegram.

Mr. ASHMORE. Very well. That is the same telegram sent to all parties.

(The telegram follows:)

SEPTEMBER 8, 1965.

Hon. JOHN BELL WILLIAMS,
House of Representatives,
Washington, D.C.

There will be a closed meeting of the Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives, Washington, D.C., room H-329, U.S. Capitol Building, scheduled to begin at 8:30 a.m., Monday, September 13, 1965. The purpose of this meeting is to consider, in connection with the Mississippi contested elections, House Document No. 284, 89th Congress, 1st session, entitled "A motion that the attempted contest against each individual be dismissed, or that each be otherwise relieved from taking further notice of such matter." The hearing will also include the Third District of Mississippi.

Principals and/or their attorneys of record are invited to attend to present argument for or against the motion to dismiss. All argument will be confined strictly to the motion to dismiss.

The proceedings insofar as time allotment will be governed by the provisions of the rules of the Committee on Elections of the House of Representatives. The contestees as the moving parties will have the right to make opening and closing argument. The five contests will be treated in bank including the time allotment.

Under separate cover there is being mailed copies of laws and committee rules governing contested election cases in the House of Representatives and House Document No. 284, 89th Congress, 1st session.

(Signed) ROBERT T. ASHMORE,
Chairman, Subcommittee on Elections, Committee on House Administration, U.S. House of Representatives, Washington, D.C.

Mr. WILLIAMS. I quote from the telegram:

The purpose of this meeting is to consider in connection with the Mississippi contested elections House Document No. 284, 89th Congress, 1st session, entitled "A motion that attempted contest against each individual be dismissed, or that each be otherwise relieved from taking further notice of such matter." The hearing will also include the Third District of Mississippi.

Mr. Chairman, on September 8, 1965, prior to receiving the telegram which I mentioned a moment ago, I directed a letter to the chairman of this committee, a copy of which I will ask to be included in the record as an exhibit to my argument, in which I stated in the last paragraph:

That in order that I might be relieved of further unnecessary harassment I respectfully request that your committee take formal action leading toward dismissal of any alleged contest that might be pending against me or that I be otherwise relieved from taking further notice of such matter.

I ask, Mr. Chairman, that a copy of the entire letter be included in the record.

Mr. ASHMORE. Very well.

(The letter follows:)

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, D.C., September 8, 1965.

HON. ROBERT T. ASHMORE,
Chairman, Subcommittee on Elections, Committee on House Administration, House of Representatives, Washington, D.C.

DEAR MR. CHAIRMAN: Earlier this year an attempt was made to contest the election of all five Members of the House delegation from the State of Mississippi.

Under date of July 29, 1965, at page 17992 of the Congressional Record, there appeared a letter from the Honorable Ralph R. Roberts, Clerk, U.S. House of Representatives, directed to the Honorable, the Speaker, House of Representatives, laying before the House of Representatives the contests for seats in the House of Representatives from the First, Second, Fourth, and Fifth Districts of the State of Mississippi, respectively. It should be noted that Mr. Roberts' letter of transmittal omitted reference to a contest in the Third Congressional District, which I represent, but instead stated as follows:

"* * * and also transmit herewith original testimony, papers, and documents relating thereto, including the copy of the unsigned notice to contest the election held in the Third Congressional District of the State of Mississippi and related papers."

Since that date, I have received no further communications of any kind from the Clerk of the House of Representatives or the Committee on House Administration regarding any real or attempted contest of my election.

I have not been served with a copy of the purported contestants' brief in compliance with section 223, title II, United States Code.

In view of the premises, and in order that I might be relieved of further unnecessary harassment, I respectfully request that your committee take formal action leading toward dismissal of any alleged contest that might be pending against me, or that I be otherwise relieved from taking further notice of such matter.

Thanking you, I am,
Sincerely yours,

JOHN BELL WILLIAMS,
Member, U.S. Congress, Third Congressional District, Mississippi.

Mr. WILLIAMS. Mr. Chairman, I wish to express my appreciation to the committee for inviting me to make a presentation this morning, notwithstanding the fact insofar as I can determine that there are no formal proceedings of any kind pending before this committee against my election. The contested election statute which you have before you provides and, incidentally, the paragraph I have reference to begins on page 7 and carries over on page 8 of the laws and committee rules, a copy of which you have in front of you and states:

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 30 days a brief of the facts and the authorities relied on to establish his case. The Clerk shall forward by mail two copies—

I emphasize—

the Clerk shall forward by mail two copies of the contestant's brief to the contestee with like notice.

Now, Mr. Chairman, I have not received a copy of any brief or any other paper from the Clerk of the House of Representatives. The only notice that I have that anything having to do with the election in the Third Congressional District of the State of Mississippi might be before the committee is a copy of a letter from the Clerk of the House of Representatives which appeared in the Congressional Record under date of July 29, 1965, at page 17992, which was transmitted along with the material in the alleged contest in the Second, Third, and Fifth Districts of the State of Mississippi. I quote from the Clerk's letter. He said:

I also transmit herewith original testimony, papers, and documents relating thereto—

speaking of the aforementioned contests in the four districts—

including the copy of the unsigned notice to contest the election held in the Third Congressional District of the State of Mississippi.

Now, Mr. Chairman, it seems inconceivable to me that the Congress of the United States would take notice of unsigned papers presented in an attempt to unseat a Member of this body who has been duly and properly elected and legally certificated by the Governor of that State.

Mr. Chairman, I call your attention to the only precedent that I have been able to find which is directly in point with this case. That was in the case of *Dolliver* v. *Coad*, which was decided by this committee and subsequently by the House of Representatives on April 11, 1957, page 5502, Congressional Record, without amendment and without debate. House Resolution 230 reported by this very subcommittee and with an accompanying report submitted by the very distinguished chairman of this subcommittee, the Honorable Robert Ashmore, reads as follows:

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.

SEC. 2. That the unsigned paper by which attempt was made to give notice to contest the election of the returned Member from the Sixth Conressional District of the State of Iowa to the 85th Congress is not the notice required by the Revised Statutes of the United States, title II, chapter 8, section 105.

Mr. Chairman, in view of the fact that my case is directly in point with that, in view of the fact that there are no formal proceedings pending against me in this committee, but in further acknowledgement of the fact that I have been subjected to undue and unnecessary harassment which has interfered with the discharge of the duties which fall upon me as a Member of the House of Representatives, I am joining my colleagues in requesting that action be taken by this committee to dismiss any real or alleged contest that might be pending against me to relieve me of further notice thereof.

Mr. Chairman, I feel that under this precedent I am entitled to what might be termed a preemptory, of course, but I am asking that I be joined with my colleagues in the event this committee sees fit to report out a resolution of dismissal. If not, of course, then, Mr. Chairman, I ask that I be accorded the same consideration that was accorded in the case of Dolliver against Coad. With respect to the other matters which are mentioned in the motion to dismiss, the other issues, I, of course, join with my colleagues and subscribe to the arguments which they will present. But in order to avoid unnecessary duplication, Mr. Chairman, I shall not argue this case further, believing that this committee will perform its duty in my case, in particular, and I feel certain in the other cases, and discharge us from further notice or consideration in these alleged and purported contests.

Mr. ASHMORE. Thank you, Mr. Williams. Any questions?

Mr. ABERNETHY. May we inquire how much time was consumed?

Mr. LANGSTON. Twenty-seven minutes remaining. You have used 33 minutes.

Mr. ASHMORE. Next gentleman for the contestee's motion to dismiss, Mr. Walker.

Mr. WALKER. Mr. Chairman, I would like to express my appreciation to you and your distinguished committee for allowing us to come before you this morning. I won't take but 2 minutes of time. There are two or three things. I was the only one that was contested in the general election and I would like to tell you how it came about. No candidate attempted to qualify against me in the Republican primary. Therefore, there was not any contest in the Republican primary. Mr. Arthur Winstead, the incumbent, had two people running against him, Mr. J. O. Hollis and Mr. Tom Dunn. Mr. Arthur Winstead received 18,886 votes. Mr. Tom Dunn, 5,836, and Mr. Hollis, 5,819.

In the general election on November 3, I was opposed by the incumbent, Mr. Arthur Winstead, and in the general election I received 35,227 votes and my opponent received 28,057 votes. Mr. Winstead most graciously and honorably conceded the election to me. I think if there was anyone that had a challenge to my seat it would be Mr. Arthur Winstead.

One other thing, and I won't take any more time. I did notice earlier that Mrs. Annie Devine had challenged my seat. I notice in a brief filed by the alleged contestant, Mrs. Devine, no longer contends that she is entitled to a seat in the House of Representatives and in effect admits the illegality of a mock election. With that, I will close. I want to say as the colleagues ahead of me, I do not think there is anything that these people have to stand on and we will certainly pressure dismissing this.

Mr. ASHMORE. Thank you, Mr. Walker. Any questions?

Mr. GOODELL. Where was that statement made that you are referring to?

Mr. MCLENDON. Footnote on page 3 of the brief, also in the conclusion, page 116 of the brief. They are no longer contending that Mrs. Devine, the purported contestant, is entitled to be seated. That would apply also to the others. In other words, they are not contending that any of the alleged contestants are entitled to be seated.

Mr. ASHMORE. Any further questions? Who would appear next for the contestants?

STATEMENT OF HON. THOMAS G. ABERNETHY, A REPRESENTATIVE IN CONGRESS FROM THE STATE OF MISSISSIPPI

Mr. ABERNETHY. I will, Thomas S. Abernethy.

At the outset, I think we should fix our mind on that one point and I am glad Mr. Goodell asked the questions. There is no one in this room that is claiming title to the seats which we are now occupying except the sworn members of the delegation.

This contest was filed on December 4, 1964, the last day under the statute in which it could be filed. These contestants do not claim that they were denied the right to vote. In fact, they did vote. They do not claim they were denied the right to make the—they claim to be Democrats—they do not contend that they were denied the privilege to make the race in the primary as Democrats. In fact, some of them did run as Democrats. We can take knowledge of what the statutes of the State provide and I will cite it if it is necessary. All one has to do to be a candidate in the primary under the laws of my State is to dig down and put up $200, and they would not have any trouble getting it, and write a letter to the Secretary of the Democratic Executive Committee and his name or her name is on the ballot. As I pointed out, some of these people did run as Democrats and they were defeated. They are bound by the laws of my State and the statutes are available to have supported the nominee.

But they were not satisfied after they got licked, they went up east and hired some lawyers and came to this Congress in an attempt to unseat us. Why, I do not know. They are not claiming the seats. Unless it be, as Mr. Colmer pointed out, just to discommode the members of this delegation. What procedure did they elect to follow? They elected to come under chapter 7, title II of the United States Code.

It is an old axiom of law, as I am sure every lawyer in this room will agree, that once an individual chooses his course of action, he is bound by whatever the precedents thereunder might be. Precedents and the following of precedents is the one thing that has given us an orderly system of government so far as our courts are concerned. So Mr. Colmer pointed to these precedents and I shall point further to them. But before so doing, let me also call attention to what was not in the papers before the committee challenging the seat of these Members. We are not charged with any fraud. We are not charged with any cheating. There is not a contestant sitting here that will look you or me in the face that will say that I have been guilty of any fraud. They won't say that I have been guilty of any cheating. They won't say that I have been guilty of any vote buying. They

won't charge me with any misconduct. They do not charge this delegation with being a delegation which is unfit or incompetent.

They do not charge us with being corrupt, which is the usual course in a case of this kind. They do not charge us with being disqualified. What is their case? It just boils down, Mr. Chairman, and members of this committee, to the fact that through their counsel, for some reason I do not know, they do not want this State of ours, burdened as it is, to have a voice—for their benefit, too—in the Congress of the United States. If we can be displaced for the reasons, if they are reasons, for which they are being assigned here, they will empty this Chamber, as Mr. Colmer has said, of every Congressman from the Potomac to El Paso.

It was well pointed out that there were other people elected on November 3 in Mississippi. One of our Senators was elected that day. One of these so-called contestants saw fit to run against that Senator in the primary. She was defeated. She was bound as a Democrat under the laws of the State to have supported the Senator. They do not contest his seat. On that day electors were elected to vote for President of the United States. They were elected. These people participated in their election. Their votes were sent to this Congress. A joint session was held in the House of Representatives. Their votes were called out and they were counted. There were other people who were on the ballot that day in the same identical election running under the same identical circumstances. Their votes were counted. They were certified as elected, and they are holding public office today. But their seats or their positions are not challenged. So we made our answer to the complaint that was filed against us, and while I can anticipate, and I might be wrong, that counsel is going to make much of the fact, as they have done already in their brief, that we waived the positions presented to you by Mr. Colmer, and all the papers are before the committee, and in the answer of every member of this delegation in the very first paragraph we started out with this statement:

"In good faith, obedience to the provisions of" such and such, speaking of the law under which the so-called contests were brought, "we file answer." But we go further and say this, and I quote, "Reserving all rights to which he"—speaking of myself and each member spoke for himself—"is entitled," and then we proceed to make answer. Then in the third paragraph of my answer, which also appears in a similar paragraph of the other answers, I point to the fact, as I have just stated now, that these people were not candidates. Then on page 3 we specifically served notice upon these people that when this matter reached this committee we would do exactly that which we are doing right now; that is, we would present a motion and we would ask you to dismiss, and I quote from my answer which is comparable to the others. "You"—speaking of the contestants—"are hereby expressly notified that at the proper time on the grounds herein and above asserted the members elect will normally file a motion for the dismissal of your purported contest." Then, I say, "His rights"—speaking of myself—"my right to do so is expressly reserved, although answer is now made so as not to be in default of the statute," which required me to answer by the fourth day of January, which I did. So we anticipated what we would do. We served notice on them as to what we would do.

And at the proper time we did it. We counseled with this committee as to the proper time; that is, with the counsel for the committee. There was nothing before the committee until the matter was certified to the committee by the Clerk of the House. The entire issue was pending before the Clerk. All of it was in his hands, as the law requires. All the papers were in the hands of the Clerk. No one else had custody of the papers or the allegations or the answers or the so-called testimony. It was all in the hands of the Clerk. Then the Clerk on a particular day filed these papers with this group and in due course we filed our motion and so here we are.

Now, what is our motion? Our motion is that these contests should be dismissed because these people do not qualify as contestants. What is an election contest? I went back to the law books to see just what it was. In 95 U.S. there is a well defined definition as to what a contest it. Here is what it says: "It is a well-defined procedure by which one seeks to try title to the office involved." Let us repeat: "It is a well-defined procedure by which one seeks to try title to the office involved, claiming unto himself to have been elected."

That is an election contest. That is what was anticipated by the statute. I realize that my good friend from New York has had some trouble with this matter in his mind. I realize as a lawyer myself that there are times in my short experience as just nothing but a country lawyer, and a real country lawyer, I had some trouble with precedents, too. Many times when I was before the court, and when you gentlemen were before the courts, and many times when I was acting as a district attorney, the court or I, as district attorney, had a decision to make, the decision was that I had to follow certain precedents and I did not think well of them. This quite often happens with some of us, as it has with my friend from New York. I just felt that it was not exactly right. But the jurisprudence of this country and the soundness thereof and the fairness thereof and the justice thereof has been perpetuated on precedents that have been handed down since time immemorial, since the first law of this world was given to Moses on Sinai when he was handed the Ten Commandments which was the original code of this world. Now, Mr. Colmer cited the precedents.

How much time do I have, Mr. Clerk?

Mr. LANGSTON. Twelve minutes remaining, sir.

Mr. ABERNETHY. He has cited the precedents but let us take another look at them. Let us get them in our mind. Let us talk about the law. That is what we are here for. We are arguing what amounts to a demurrer. In the Kirwan case which took place in the House of Representatives in 1941, to be specific on January 10, I think—it was simple, it was short—and Mr. McCormack, the leader of the House, presented a resolution, House Resolution No. 54:

Whereas Locke Miller, a resident of the city of Youngstown, the 19th Congressional District thereof, has served notice of contest upon Michael Kirwan, a returned Member of his purpose to contest Mr. Kirwan's seat, and whereas it does not appear that the said Locke Miller was a candidate for election to the House of Representatives from the 19th Congressional District of Ohio—

just exactly what we have here—

but was a candidate for the Democratic nomination—

just exactly what we have sitting over here in two instances and the other participated in the primary—

the Democratic nomination from said district held in said district and Michael Kirwan was elected.

Bill Colmer was elected.
Jamie Whitten was elected.
John Bell Williams was elected.
Prentiss Walker was elected.
Tom Abernethy was elected.

Up to now we are on all fours with just what the leader presented to the House:

Resolved, That the House of Representatives does not regard the said Locke Miller as a person competent to bring a contest for a seat in the House and his notice of contest served upon sitting Members is hereby dismissed.

That was brought under these statutes. These statutes have not been amended since that day. The proceedings are identical. The rules are identical. The law is identical. How are you going to dismiss the Kirwan case and follow the precedent? Here is a photostatic copy of the resolution. There is another one that followed in 1944. At that time I happened to be chairman of one of the three committees of the House that handled this kind of contest, the old Elections Committee No. 1, and then No. 2 and No. 3. Elections Committee No. 2 presided over by Mr. Gossett, of Texas, presented a resolution to the House on May 5, 1944, in the case of Hardin Peterson from Georgia, House Resolution No. 534. The presentation is found on page 4074 of the Congressional Record. It is very short. It just said that the election contest shall be dismissed. It, too, was brought under this statute. What does the resolution say?

The Committee on Elections, having had consideration of the election contest by Edward McAvoy, contestant, against Hugh Peterson—

I said Hardin a moment ago—

First Congressional District of Georgia, submit the following unanimous report and recommended the adoption of the following resolution—

which was a simple dismissal. The record filed by the contestant in this case shows that he attempted to run for Congress—attempted to run—from the First District of the State of Georgia as an independent Republican, and there is no such political party in the State of Georgia.

How does that fit this so-called Freedom Democratic Party? No such party in the State of Georgia, and they voted in the regular Democratic primary. They ran in it as Democrats. You were all on my side. You ran on the same legend I did. I just won and you did not. The record further shows that the contestant's name did not appear on any ballot and he did not receive any votes. Out it went. It was brought under the same procedure that these gentlemen sitting over here brought this procedure against this delegation. The House threw it out. Why? Because they were not candidates. Let us go further. Give me my time.

Mr. LANGSTON. Seven minutes remaining.

Mr. ABERNETHY. On February 14, 1945, the next case, there was a matter before the House presented by Mr. Hatton Sumners who was chairman of the Judiciary Committee, one of the most able men to serve in this body. I never saw a more able man. He said—

Mr. Speaker, I ask unanimous consent to address the House and revise and extend my remarks.

The SPEAKER. Is there objection? No objection.

Comparatively recently a private citizen in Virginia has entered upon a course of conduct claiming he is contesting the seats of 71 Members of the House of Representatives.

This shows you what can be done under this thing unless it is handled as the precedents require it to be handled. This whole Congress can be completely disrupted. A colleague of mine the other day asked me to make some examination and write him a letter. I have written him the following:

Dear Colleagues: Supplementing the statement made to you over the telephone this morning with reference to notice to appear and give testimony in the proceeding at Roanoke, Va., proceeding by Mr. Plunkett, representing himself to contest the right of your seat I beg to advise that I have looked over a copy of the paper served upon you and other Members of the House of Representatives, under chapter 7, title II—

exactly what these gentlemen adopted to proceed under.

The House of Representatives under the Constitution, of course, is sovereign and independent with reference to the determination of the election and qualifications of its Members. No act of Congress could in the slightest degree affect the exclusiveness of power of the House of Representatives to determine with reference to those who are entitled to be a part of the membership. Section 7, title II referred to, therefore, is merely an act of comity on the part of the Congress for the purpose of aiding the House of Representatives—

it is for the purpose of aiding the House of Representatives—

to whatever degree the House of Representatives may see fit to avail itself thereof. But this alleged contestant, Moss A. Plunkett, does not even come within the provisions of this title.

That is what the judge said, an eminent member of this body, an eminent lawyer and an eminent Texan, by the way, closely associated with the law school of Southern Methodist University at Fort Worth.

Section 226 of chapter 7, title II, contains these words as a part of the first sentence, "No contestee"—quoting the law—"or contestant for a seat"—let us repeat it—"no contestee and no contestant for a seat in the House of Representatives shall be paid exceeding such and such." The contest contemplated by the Congress—they are not contesting for a seat. That is what this law is talking about, a seat. A person who is entitled to a seat. I told you what a contest was under the U.S. citations in the beginning. It is a contest for a seat. The try of a right to a seat. The contest contemplated by Congress in which it sought to give and by statute is a contest by a contestant, quoting the judge, and a contestee, further quoting the judge, for a seat in the House of Representatives. What did Mr. McCormack say? He was on the floor then as leader.

Mr. Speaker, would the gentleman yield? Would the gentleman from Texas advise the House how in his opinion this unreasonable situation should be met?

Mr. Sumners said, "By paying no attention to it," and that was the last of it. That ended it. Why? Because that was not a contest for a seat. These people attempted, this man attempted, to oust 71 Members of Congress. The only difference here is the number. Seventy-five then, five now. The chairman of this committee in the Hays and Alford case, and that was brought by resolution from the floor of the House of Representatives, it was an investigation and not a proceeding under this statute, the chairman of this committee himself in 1959, and I read—and this is good precedent, Mr. Chairman, it is your own words—"Mr. Hays"—Mr. Hays the defeated incumbent was

before the committee and he did not finish—Mr. Ashmore said, "Why did you think it best to bring it out as an investigation?" and that was what was going on in this committee at that time. It was an investigation. And I remember it well. "Why did you think to bring it out as an investigation rather than a full-blown contest as we usually do when the losing party wishes to have the case contested?"

The committee then was laboring under the—not laboring, but pursuing the same philosophy that we are pursuing today. Now, Mr. Colmer explained the Ottinger case. I do not have the time to go into it. We all remember the debate. There was debate on one side of the issue. There was debate on the other side of the issue. The conclusion was, and the precedent was set, that Mr. Ottinger's seat could not be contested by a man who was not a candidate. I won't go into the details. I wish I had the time. I think every man in this House is familiar with it. These people changed their course as was pointed out. They started out trying to claim these seats. It is in the papers. I am not talking outside of the record. They were going to come on the floor of the House and demand their seats. That is in the papers. But they abandoned that. Why did they abandon it? They abandoned it because they knew their cause was hopeless and they had no right to claim their seats. All they are asking for now is a disorganization of this House and throw my State out of this House and not allow it to have some voice. That is all they are asking for. The precedents are with this motion. The law is with this motion. There may be some things about it that some of us do not like, but this is a country of law, and it is a country of an organized society and it is a country of precedents, and we respectfully submit that these people had every opportunity they wanted to run as Democrats, and some of them did, and we ask you, as we think we have a right to, on the strength of the motion we filed to dismiss this contest.

Thank you very much.

Mr. ASHMORE. Are there any questions by any member of the committee?

Mr. CURTIN. I wonder if I could ask a question of Mr. Williams?

Mr. ASHMORE. Yes.

Mr. CURTIN. Mr. Williams, there is one thing I am puzzled about. This unsigned notice that you received.

Mr. WILLIAMS. No; these are unsigned papers, apparently, that have been filed with the clerk. As I understand it, there is not even a proof of service in the clerk's office or that has been submitted to this committee. However, Mr. Curtin, I have sought to find out what, if anything, is before this committee in my case. I am advised that nothing—I was advised by the staff that whatever might be before this committee is in sealed boxes. The only thing that I have to go on is the letter which was submitted by the Clerk of the House of Representatives to the Speaker, and which was in turn submitted by the Speaker to this committee.

Mr. CURTIN. When you say the unsigned papers, were, as far as you know——

Mr. WILLIAMS. I am referring to the testimony of the—not testimony, but the letter of the Clerk of the House of Representatives in transmitting this information to this committee by way of the Speaker.

Mr. ABERNETHY. If the gentleman would allow me to answer that

further, this is a notice. This is the so-called contest. This is the notice or comparable to a notice in the case of Thomas G. Abernethy. It bears the signature of Mr. Augusta Wheadon. What Mr. Williams is trying to say to you and the committee is that such a notice like this is pending with the Clerk—I use the word "against"—all of us except Mr. Williams. There is a blank piece of paper filed against Mr. Williams. Nobody signed it.

Mr. CURTIN. Does that mean the notice of intention to contest your seat is an unsigned notice as far as you know?

Mr. WILLIAMS As far as I know.

Mr. ASHMORE. In other words, Mr. Williams, you have received neither a signed nor unsigned one actually yourself, is that correct?

Mr. WILLIAMS. Mr. Chairman, I might as well go into this. On December 4, 1964, I was a patient in the veterans' hospital in the city of Jackson, Miss. December 4 happened to be my birthday. It was well known. It had been in the newspapers that I was a patient in the hospital. I had been there for some several weeks. My family, my wife, and my children were in Washington. My mother invited me to come home that evening to Raymond, which is 15 miles away, which is my hometown, that she would like to give me a birthday dinner that evening, if I could get a pass from the hospital. I got a pass from the hospital, a 24-hour pass, and went home. I went by my home which was vacant at the time, went on in the house, and made a pot of coffee. I had two friends with me who had driven me down from Jackson. We were going to have coffee together. One of them stepped outside—I told him to see if the boy had left the newspaper that day—he stepped outside and lying on the sidewalk in front of the house he found some papers. He brought those papers in. Those papers appeared to be an attempted notice of contest. I submit, Mr. Chairman, that is not proper service, and I have done so in my brief. I do not want to get outside of the motion here but since this has been brought up, I submit that is not proper service under all of the laws and under all of the precedents. But furthermore, Mr. Chairman, it is incumbent upon the contestants to prove that service was made. Therefore, I rest on that and the fact that there is neither a signed paper nor is there any proof whatsoever of service in my case.

Mr. GOODELL. Were these sidewalk papers signed?

Mr. WILLIAMS. Yes; they were signed. But I have no idea who signed them.

Mr. CURTIN. Thank you, Mr. Chairman. That is the only question I have.

Mr. ASHMORE. If there are no further questions from this contestee——

Mr. PERKINS. One further question I would like to address to Mr. Colmer. All of these people who are evidently trying to throw out the election, were they all candidates in the primary election?

Mr. COLMER. You are addressing that to me?

Mr. PERKINS. Yes; against the incumbents.

Mr. COLMER. No. All I know is in my own case as a matter of fact. But my understanding is that two of these candidates, or alleged contestants, rather, were candidates in the Democratic primary. One of them, Mrs. Gray——

Mr. PERKINS. Against incumbents.

Mr. COLMER. Mrs. Gray was a candidate for the U.S. Senate against Senator Stennis in the Democratic primary in June. Mrs. Hamer was a candidate against Mr. Whitten in the primary.

Mr. PERKINS. Mr. Whitten, did the alleged contestant who was the candidate against you in the primary, did she undertake in any way to contest your primary election under the laws of Mississippi and do the laws of Mississippi set out a procedure whereby any defeated candidate must file the contest actions?

Mr. WHITTEN. The statutes clearly provide for methods to contest. They did provide for other methods as far as being a candidate. I noted your question here. For the record, it is my understanding that in addition two of the so-called contestants being candidates in the primary, one was a candidate in the primary against a U.S. Senator. She dropped that and now is contesting the seat of Mr. Colmer of the fifth district. But it is my understanding that all five participated in the Democratic primary which carries with it under our statute an obligation to support the nominee and would disqualify you from running in a general election following that.

Mr. PERKINS. Your Mississippi statute so provides?

Mr. WHITTEN. Yes.

Mr. WILLIAMS. First, all three are qualified electors in my case. Two of the persons who are contesting me voted in the general election on November 3 in which I was unanimously elected to the Congress of the United States. So I would presume under the circumstances, since there were no votes cast against me, that I probably received the votes of these two people.

Mr. ASHMORE. Any further questions?

Mr. ABERNETHY. That happened to me, too.

Mr. ASHMORE. If not, we will now hear from the attorneys or the contestants as they wish, whose total time is one hour and a half.

Mr. KUNSTLER. May I suggest a 5-minute recess so we can regroup around the table?

Mr. ASHMORE. Surely.

(Short recess taken.)

Mr. ASHMORE. Is everybody back in? For the record, it has been suggested that I might inquire as to some of the people who are present just to be sure that there is no one here other than those who are requested to be here in the closed session. Is Mrs. August Wheadon here?

Mrs. WHEADON. Present.

Mr. ASHMORE. Fannie Lou Hamer?

Mrs. HAMER. Present.

Mr. ASHMORE. Mrs. Mildred Cozey?

Mrs. COZEY. Here.

Mr. ASHMORE. Mrs. Evelyn Nelson?

Mr. KUNSTLER. Not present.

Mr. ASHMORE. Rev. Allen Johnson?

Mr. JOHNSON. Yes.

Mr. ASHMORE. Mrs. Annie Devine?

Mrs. DEVINE. Here.

Mr. ASHMORE. Mrs. Victoria Gray?

Mrs. GRAY. Here.

Mr. ASHMORE. I believe that covers all of the contestants; is that correct?

(No response.)

Mr. ASHMORE. No one else here except the attorneys representing the contestants. Gentlemen, you may proceed as you like here in whatever order you desire. Give your name so the reporter will know who is doing the talking.

Mr. HIGGS. Thank you, Mr. Chairman.

Mr. ASHMORE. You have an hour and a half; you understand that?

Mr. HIGGS. Yes.

STATEMENT OF WILLIAM L. HIGGS, ATTORNEY AT LAW

Mr. HIGGS. Mr. Chairman and members of the subcommittee, Chairman Burleson and Mr. Lipscomb, first I would like to introduce the contestants so you may have them clearly in mind. On my right is Mrs. Wheadon from Columbus, Miss., the First Congressional District. Then Mrs. Fannie Lou Hamer, from the Second Congressional District, Mississippi. On my immediate left is Mrs. Victoria Gray from Hattiesburg, Miss., the Fifth Congressional District. Then Mrs. Cozey from the Third Congressional District. Mrs. Devine, from the Fourth Congressional District, Canton, Miss., and Rev. Allen Johnson of Jackson, Miss., also from the Third Congressional District.

Mr. ASHMORE. You have not given your name.

Mr. HIGGS. My name is Bill Higgs, excuse me. The contestants themselves will first appear and will give the facts relating to the motion to dismiss. I will introduce each one of them in order as they make their presentation. They will vary from about 5 to 10 minutes. At the end of their presentations all of the legal problems will be dealt with by Attorneys Kinoy and Morton Stavis, sitting behind him against the wall.

Mr. ASHMORE. Does he want a seat at the table?

Mr. STAVIS. I am perfectly comfortable.

Mr. ASHMORE. We will get you one if you want it.

Mr. STAVIS. Thank you so much.

Mr. HIGGS. First, Mrs. Victoria Gray.

Mr. WHITTEN. Mr. Chairman, could I be heard briefly at this point? I do this because I do not want to be in the position of interrupting later. But it is my understanding that this is not a trial de novo. It is not a matter of taking evidence, but the hearing today is on a motion to dismiss which in turn is tied to the pleadings and the evidence presently before the committee.

I make that mention at this point because I do not care to interrupt later. Is my understanding correct as to what is before the committee at this time?

Mr. ASHMORE. Yes, this is on the motion to dismiss and counsel, Mr. Higgs, stated that these contestants would talk on that motion, the motion to dismiss.

Mr. HIGGS. That is correct, Mr. Chairman. The first contestant, Mrs. Victoria Gray.

Mr. ASHMORE. You can be seated or stand up, Mrs. Gray.

Use your own discretion.

STATEMENT OF VICTORIA GRAY, FIFTH DISTRICT OF MISSISSIPPI

Mrs. GRAY. Mr. Chairman and members of the subcommittee, as has been noted, I am Mrs. Victoria Gray of Hattiesburg, Miss. I would like to point out that as a contestant I attempted to run as an independent candidate in the general elections of 1964, Fifth Congressional District, Mississippi. You gentlemen must know and realize that is truly an historical moment in which you are deeply, and I pray, responsibly involved. You will make a decision which may well influence and determine the right of the entire Negro population of Mississippi to fully participate in the American democracy. It is my sincere hope that you are cognizant of this fact, as you consider a motion to dismiss the challenge. The State of Mississippi has, when it was possible to do so, made some very wonderful contributions to this country. For example, she gave to the U.S. Senate its first Negro Senator who proved many times to be an asset both to his State and to the congressional body in which he served. This, I repeat, is one of the unprecedented contributions made by the State of Mississippi when there was a climate in which people could function in accordance to what they felt and believed.

The last Negro Congressman from Mississippi, a distinguished Member from this House, in presenting his case for a seat in the Congress on the floor of the House used these words which, ironically, as long ago as it was, are no less true today, almost a century later than they were in 1882:

> The impartial historian will record the fact that the colored people of the South have contended for their rights with a bravery and gallantry that is worthy of the highest commendation. Being unfortunately independent circumstances with the preponderance of the wealth and intelligence against them, yet they have bravely refused to surrender their honest convictions, even upon the altar of their personal necessities. They have said to those upon whom they were dependent, you may deprive me for the time being of the opportunity of making an honest living. You may take the bread out of the mouths of my hungry and dependent families. You may close the schoolhouse door in the face of my children. Yes, more, you may take that which no man can give—my life. But my manhood, my principles, you cannot have. Even when the flag of our country was trailing in the dust of treason and rebellion, when the Constitution was ignored and the lawfully chosen and legally constituted authorities of the Government were disregarded and disobeyed, although the bondsman's yoke of oppression was then upon their necks, yet they were the true and loyal to their Government and faithful to the flag of their country. They were faithful and true to you then. They are no less so today. And yet they ask no special favors as a class. They ask no special protection as a race. They feel that they purchased their inheritance when upon the battlefields of the country they won the freedom of liberty from the precious blood of their loyal veins. They asked no favors. They demand what they deserve and must have, an equal chance in the race of life. They feel that they are part and parcel of you, bone of your bone, flesh of your flesh. Your institutions are their institutions and your Government is their Government. You cannot consent to the elimination of the colored man from the body politic, especially through questionable and fraudulent methods without consenting to your own downfall and to your own destruction.

That House of 1882 agreed with Congressman Lynch and unseated the man that had been certified by the government of Mississippi. Now in this room almost a century later the same issues are being presented to you, the Subcommittee on Elections of the House of Representatives of the Congress of the United States of America. Almost exactly a hundred years ago Congress concluded that the Congress

had enacted laws and amendments to the Constitution and proposed amendments to the Constitution to secure the rights to vote for the Negro citizen of the South. This House then found it necessary to enforce those laws and amendments to the Constitution through barring Members of this body from the South elected in violation of these laws and the constitutional provisions. Mississippi, convinced in 1890 that this House was no longer enforcing the law of the land by protecting its illegally elected representatives, systematically adopted State laws and a State constitution almost totally disenfranchising the majority of Negroes of Mississippi, a majority of the total population of the States, and Mississippi was correct. This House was unequal to the challenge. The Mississippi Congress elected on the back of the Klan, murder, and in unconstitutional State laws were allowed to sit in this body and for the better part of the century the constitutional rights of the vote of the southern Negro was dead.

Mr. PERKINS. May I ask a question, Mr. Chairman?

Mr. ASHMORE. Yes, Mr. Perkins.

Mr. PERKINS. I would like to know from your statement, since you mentioned the contest of 1882, whether Lynch was the candidate for the Congress at that time in the primary election or in the general election.

Mrs. GRAY. He was certainly a contestant in the general election.

Mr. PERKINS. He was a candidate for Congress in the general election?

Mrs. GRAY. Yes, of course.

Mr. PERKINS. Were you a candidate for Congress in the general election?

Mrs. GRAY. In the beginning of my statement I mentioned that I attempted to run as an independent candidate in the general election of 1964 and I will talk about that in 1 minute.

Now, I would like to speak to you of my efforts to get on the ballot as a contestant opposing Congressman William Colmer of the Fifth Congressional District of Mississippi. I have complied with the requirements for the State board of election commissioners as was interpreted to my fellow petitioner and others by the secretary of state, Mr. Ladner, prior to the 40 days deadline according to Mississippi law.

Having so done, the Commission met on September 24, 1964, and at this time rejected the petition. Several days later, we were informed that if we would take our petitions—come and pick our petitions up and take them back to our respective counties or to the counties where people who had signed the petitions lived and have them certified by the circuit clerks in those counties, then file them again with the Election Commission, that they would accept these petitions.

By the time we received the information in the Fifth Congressional District, we had 5 days to attempt to get all of the signatures certified by the various circuit clerks. Unless you have had to deal with the circuit clerk in Mississippi, then you can't understand the near impossibility of getting the signatures certified in 5 days, or in any length of time.

However, even though there was absolutely nothing in the statute under which people qualified to become candidates could attempt to do so, would say that this had to be done—I mean all signatures have to be certified by the circuit clerk where we did in all good faith go back to the various circuit clerks and try to get these signatures certified.

I would like to tell you directly what happened to me in Forrest County, where I live, in the Fifth Congressional District. We went in to see Mr. Lynd and told him what the Secretary of State said should be done. He said he would do this, providing we would go back and rearrange the names of all the petitioners by precinct. This we did and returned with the petitions late that afternoon. We gave these to Mr. Lynd. He agreed that he would certify them. We asked for a receipt stating that he had received these petitions from us. This he refused to give us and immediately gave us back the petitions and said, "Bring them back tomorrow."

So "tomorrow" we carried them back.

It was agreed at that time that they would be ready, I believe on Thursday, October 1. So on October 1 we went down, picked up the petitions and went back to the office. We discovered once there that only 12 of our 68 signatures had been certified.

We went back to Mr. Lynd's office and asked why was this so. He said so far as he was concerned these were the only people who could be construed as qualified electors in Forrest County. We asked him what he meant by that.

Was he saying that the other people, the other people whose signatures were here were not registered voters?

Oh, no, he wasn't saying they were registered voters, but he was saying that many of them had not paid their poll taxes.

We then pointed out to him, you know, the 24th amendment. It was a Federal election and we didn't think this applied.

He said that so far as he was concerned the Mississippi laws were the ones by which he judged and Federal law had nothing to do with it so far as he was concerned, when dealing with those signatures.

Now, this gentlemen, is the reason why I say I attempted to run in the general election in 1964. But the thing that bothers me at this point is, how can one ever become a candidate when they are arbitrarily denied the right to have their names placed on the ballot, even though they have met the requirements that other candidates have been required to meet.

Mr. PERKINS. As I understand it, we have a statute in Kentucky which is identical to your statute in Mississippi, that when a person becomes a candidate in the primary election, he lifts up his hand and he states under oath that he will support all nominees in a general election, whether they are Democrats or whether they are Republicans, and without any discussion of the propriety of the statute, I take it that you were a candidate in the primary election and were defeated by Senator Stennis. Am I correct in that statement?

Mrs. GRAY. You are correct. However, I doubt seriously that I am in a position to make a legal argument as such, but I would like to mention the fact that there is hardly anybody who could say I didn't support Mr. Stennis in the election because I was not attempting to run against him at that time.

Mr. HIGGS. We will discuss the legal implications of that in our argument.

Mr. DEVINE. Mrs. Gray, do you now claim that you personally are entitled to the Fifth Congressional seat in the State of Mississippi?

Mrs. GRAY. I do not claim this.

Mr. WAGGONNER. Mr. Chairman, I would like to ask Mrs. Gray one or two questions.

Mr. ASHMORE. This time we are using in questioning you will be deducted from your hour and a half—I mean it will not be counted in the overall 1 hour and a half, is what I am trying to say.

Mr. WAGGONNER. Mrs. Gray, do you have any knowledge that Mr. Colmer was a party to the alleged efforts to exclude members of the Negro race from participation in the election?

Mrs. GRAY. I have no such knowledge, nor can I remember at any point that we have stated such.

Mr. WAGGONNER. Mrs. Gray, you allege that there have been efforts to exclude members of the Negro race and that because, as a member of the Negro race you cite as evidence the fact that you were not allowed to run. How do you account for the fact that another member of the Negro race did participate in this Fifth Congressional District primary election?

Mrs. GRAY. I say that I will tell you what happened to me in my attempt or effort to qualify and run as an independent candidate.

I further, you know, say—and I think you will find this to be true in a very few minutes—that not trying to prevent, you know, the Negro from using the ballot, but have very effectively prevented them from doing so for the better part of—for almost a century.

Mr. WAGGONNER. But you were an opponent of Senator Stennis in the Democratic senatorial primary?

Mrs. GRAY. Right.

Mr. GIBBONS. Did you vote in the general election in November?

Mrs. GRAY. Yes, I did.

Mr. GIBBONS. Were there any other names on the ballot besides your opponent's name?

Mrs. GRAY. None at all.

Mr. GIBBONS. Are you able to write in?

Mrs. GRAY. It is not valid in Mississippi.

Mr. MCCLENDON. I understood you to say that you did run in the primary?

Mrs. GRAY. Yes.

Mr. MCCLENDON. Did you have any difficulty in getting your name on the ballot in the primary?

Mrs. GRAY. No; I can't say that I did. However, there may be some reasons for that.

I rushed into the office of the secretary about 5 minutes before the deadline—5 o'clock p.m., and this wasn't much time to talk about it. My papers were in order and I had everything that was necessary. It just didn't leave much time.

Mr. MCCLENDON. What was the difference in your papers then and your papers in the general election or are they the same?

Mrs. GRAY. There is a difference and the fact remains that in, you know, the attempt to get on the ballot in the general election, that even though we met the requirements, that we just were not allowed——

Mr. McCLENDON. Now, when you filed as a candidate in the primary, did you have to state you were all Democratic nominees?

Mrs. GRAY. No; it didn't state that at all. It said that you would not further contest—that you would not attempt to contest—or run in the general election.

Mr. McCLENDON. For that particular office or for any Democratic office?

Mrs. GRAY. That particular office.

Mr. McCLENDON. In other words, you are not just applied to the particular office and you can't recall any primary?

Mrs. GRAY. To the best of my knowledge, this is true.

Mr. ASHMORE. Are there further questions?

Mrs. GRAY. I am not quite finished, Mr. Chairman.

This House has now played an indispensable role in acting again in the provisions of the Voting Rights Act of 1965, the machinery designed to secure the right to vote for millions of Negroes in the South. This subcommittee began at that moment of history in 1890, when it decided whether or not it would perform its constitutional duty to judge those elections in which the right to vote has been massively denied on account of race and color.

Gentlemen, as Negro contestant Lynch concluded his argument to the House in 1882, I would like to read further the following words:

> The colored man asks you in this particular instance to give effect to his ballots, not for his sake alone, but for yours as well. He asks you to recognize the fact that he has the right to assist you in defending, protecting, and upholding our Government and perpetuating our institutions. You must then, as I am sure you will, condemn the crimes against our institutions, against law, against justice, and against public morals that were committed in this case.

Of course, our appearance here today before this committee attests to the fact that Congress in the past failed to fulfill this responsibility, but I must say to you, do not be guilty of allowing history to repeat itself at this time.

I would say further to you, as you go into your executive session, that as it is said in the words of the fathers, do not underestimate the fact that the time is short, the hour is late, the matter is urgent. It is not incumbent upon you to complete the task, but neither are you free to desist from accepting your responsibility to report this challenge out in the light of the evidence here before the committee.

Thank you.

Mr. HIGGS. Now, Mrs. Annie Devine, of Canton, Miss., a contestant in the Fourth Congressional District.

STATEMENT OF MRS. ANNIE DEVINE, REPRESENTING FOURTH DISTRICT OF THE STATE OF MISSISSIPPI

Mrs. DEVINE. Mr. Chairman and members of the subcommittee, I am Mrs. Annie Devine of the Fourth District of the State of Mississippi. I am a child of Madison, Kans.

I come from a district with a Negro population of 34 percent. As the committee may recall in the election of 1964, there were two candidates certified by the Mississippi State Board of Election Commissioners to be on the ballot. These candidates were former Congressman Arthur Winstead, who was running for reelection, and is a present sitting Member.

The Republican candidate, Mr. Prentiss Walker, received 35,000 votes. Mr. Winstead received 18,000 votes and the other gentleman whose name I don't recall right now, received something like 5,000 votes. It must be understood there are approximately 56,000 eligible Negroes in the Fourth District eligible to vote and that we don't have to say the same thing over again, that Negroes have been denied the right to vote and that if I had been allowed to have my name on the ballot as a candidate, and Negroes in the Fourth District had been allowed to register and vote, I perhaps would have received the plurality and perhaps now would have been the Congresswoman from the Fourth District.

I would like to, for just one moment, mention something of the conditions around the Negroes' attempt to register and vote. Nobody has to remind you of Neshoba County. We don't need to try to relate the incidents that have followed since then, and even until now, that keep Negroes from even trying to register.

Of course, at this point, because of the presence of Federal registrars, in my county perhaps we have something like 4,800 Negroes registered.

Now, in Madison County where I reside, the registrar, who is very hostile, and who has at no time had any regard for court orders and has systematically and consistently refused to allow Negroes to register, even after the State passed the law that reviews the six-question form—Mr. Campbell even refused to use the six-question form.

We wrote a letter to the secretary of State, Mr. Patterson, informing him that Mr. Campbell would not use the six-question form and asked him to please send Mr. Campbell forms so that people could get registered.

Even after that happened, Mr. Campbell refused to register Negroes. So, when we keep talking about our qualifications and candidates, we are simply saying to you gentlemen, simply saying that you don't want to hear these things and you continue to condone the harassment of the Negroes in the part of the country where I reside.

As Mrs. Gray said, I did apply to the Secretary of State to get my name on the ballot. The same thing happened to Mrs. Gray and there again my registrar, Mr. Campbell, refused to certify all the qualified people whose names were on my petition.

Then what he did do was to strike out more than 100 names and he said when I questioned him about it, he said these people were just not qualified, and many of these people had paid poll tax and many of these people could vote, but Mr. Campbell said they were not qualified and, besides, I had to pay him a fee of $15 to get these names, the few names they did certify.

And so, gentlemen, if you are here today saying that you would like to have the challenge dismissed on the grounds that we are not qualified to bring the challenge, I am saying to you that that is pretty good to save face. It is very good to save face, but I have a question: What about the soul of this Congress, this committee, and what about the soul of this country, if there be such?

Someone said something, that, well, if this happens to the Congressmen from Mississippi, it could happen from the Potomac to the gulf.

I said if that is the condition that Congress is in now, maybe it is good that the doors are closed and people are not allowed in here to

hear the deliberations of this committee this morning. Maybe it is good because I think that if the people of this country heard Congressmen say that this seems to disrupt the Government, this corruption and this evil, and you are saying if you unseated me, me, when I am illegally seated in Congress and have condoned the murder and harassment for from 18 to 32 years, which is their tenure—Mr. Colmer—in this Congress—men who have consistently refused to recognize the fact that Negroes do not register, Negroes do not vote in the State of Mississippi, and that Mississippi for the last hundred years has not complied with Federal regulations.

It is good to save the face and that seems to me what this committee would like to happen here today, but, gentlemen, as Mrs. Gray said, it is late and America's soul needs to be considered.

Mr. ASHMORE. Any questions?

Mr. WAGGONNER. Mrs. Devine, you have argued, as did Mrs. Gray, that there have been systematic condoned efforts in Mississippi to exclude, from the ballot and from election contests, members of the Negro race.

I ask you specifically, do you have any knowledge in the instance of Mr. Walker, that Mr. Walker has been a party to this alleged exclusion?

Mrs. DEVINE. To say that Mr. Walker has not been a party to this alleged exclusion would be to say that we don't recognize the fact that Negroes have been excluded. Mr. Walker knows about 56,000 people in the Fourth District had nothing to do with his election.

Mr. WAGGONNER. To your knowledge has Mr. Walker ever served as an election official charged with the responsibility of certifying any individual to register or vote in the State of Mississippi?

Mrs. DEVINE. Well, perhaps I can't answer that question. Maybe I should ask a question. Who is responsible? We come to the Congress of the United States.

Mr. WAGGONNER. Mr. Chairman, I object to this procedure. I asked simply a question that can take an answer yes or no or refusal to answer and that will serve the purpose.

Mr. ASHMORE. Can you answer his question?

Mrs. DEVINE. I can't answer the question.

Mr. CURTIN. Mrs. Devine, were you a candidate at the primary?

Mrs. DEVINE. No, I was not.

Mr. GIBBONS. Mrs. Devine, in the primary were you a registered voter?

Mrs. DEVINE. Yes, I was.

Mr. GIBBONS. Did you vote in the primary?

Mrs. DEVINE. Yes.

Mr. GIBBONS. I assume you were a registered voter of either the Republican Party or the Democratic Party; is that right, to vote in the primary?

Mrs. DEVINE. You register with the Republicans or Democrats when you register? I am not in the knowledge of that.

Mr. MCCLENDON. We don't have it by parties.

Mr. GIBBONS. You voted in the Democratic primary; is that right?

Mrs. DEVINE. Yes.

Mr. DEVINE. Mrs. Devine, you, in your statement, said that had you been allowed to qualify as a candidate and had the 56,000 Negro

voters qualified to vote been permitted to register and vote that you perhaps would have been the seated Congresswoman from the Fourth District at this time.

Now, is it your contention, Mrs. Devine, that you are entitled to the seat from the Fourth District?

Mrs. DEVINE. No, I do not contend that.

Mr. ASHMORE. Are there further questions?

Mr. GOODELL. Mrs. Devine, when you referred to 56,000 eligible Negro voters, are those the Negro voters who are on the rolls?

Mrs. DEVINE. No.

Mr. GOODELL. They have not been registered?

Mrs. DEVINE. Many of them had not been registered at that time and quite a few of them aren't registered now.

Mr. GOODELL. Is that the total number of Negro voters in the population that meet the age and other requirements in the Fourth District?

Mrs. DEVINE. That is approximately the number in the Fourth District.

Mr. HIGGS. Could we have an idea of the time?

Mr. LANGSTON. Twenty-nine minutes have been used. You have 61 minutes remaining.

Mr. HIGGS. Mr. Allen Johnson, of the Third Congressional District.

STATEMENT OF REV. ALLEN JOHNSON, REPRESENTING THIRD CONGRESSIONAL DISTRICT, STATE OF MISSISSIPPI

Rev. JOHNSON. Mr. Chairman, members of the subcommittee and those assembled here, I am Allen Johnson. I am a citizen of Jackson, Miss. I am a registered voter and taxpaying citizen in Hinds County and the city of Jackson. I am a qualified voter.

I would like to run for public office. I have been interested in public life. I have had some experience in the State of Arizona. I could perhaps run from a congressional district.

The reason I have not done so in the Third Congressional District is that the district has been, for the last 3 years, the scene of much violence, terror and intimidation, fear and frustration.

The last person who ran in opposition to the Honorable John Bell Williams was the Reverend R. L. T. Smith. Reverend Smith, because of his running, has suffered much intimidation and has been threatened.

Mr. WAGGONNER. Mr. Chairman.

Mr. ASHMORE. Mr. Waggonner.

Mr. WAGGONNER. Mr. Chairman, I make a point of order. We were to hear in this hearing today that matter which was pertinent to the motion to dismiss and I submit that this is not pertinent.

Mr. ASHMORE. Mr. Waggonner, I realize what you have said is true and that most of what these contestants and people have said might be considered not directly related to the question at issue and might even be said not to be remotely connected therewith, or having any direct bearing or remote bearing on the question.

However, I think it wise to let these people give their statements as they wish to, in a brief manner, and use their time in that manner if they like.

Now, when it gets to the attorneys, you people know how to discuss a legal point and we will confine you to the question at issue, but I

am going to let these people go ahead, although, as I say, it might not even remotely be concerned with the direct point at issue.

You may proceed.

Mr. KINOY. Mr. Chairman, I would like to indicate for the record that the attorneys for the contestants hearing the presentation of the contestee States did not object to the discussion of many, many questions, including the political impact upon this Congress of granting the challenges. The contestees' argument ranged from the Potomac to Texas, Mr. Chairman, and we did not object. Therefore, I think the record should state that the contestants feel that what they are discussing is perhaps pertinent, if not more pertinent, to the matter before the committee than other material discussed.

Mr. ABERNETHY. Mr. Chairman, I would like to say in reference to that that we made reference to their contention that we should be unseated because of a compact and we did answer that. That is in the papers. It is a part of his complaint, and we stated if that was to be upheld by this Congress that it would unseat, and it would, every Member of the Congress from the Potomac to Texas. It is a simple statement of law.

Mr. GIBBONS. I suggest we allow Mr. Johnson to proceed and not deduct from the contestant side the discussion that has been taken up here.

Mr. WILLIAMS. Mr. Chairman, may I make this point: I would strenuously object and I think with propriety and rightness, to these attempts to give testimony which is repeated testimony of that testimony which already, I presume, appears in the record. The record of testimony, the record of evidence, the record with regard to facts, has already been made.

We do not have an opportunity to cross-examine these witnesses and therefore I submit, Mr. Chairman, that they confine themselves to the issues which were raised in the motion and not to the facts which are already before the committee.

Mr. WHITTEN. Mr. Chairman, I think it would be well to proceed.

Mr. GOODELL. Mr. Chairman, I think these people have come here in good faith and they should be accorded an opportunity to say what is on their minds. We will consider what is relevant to the technical points of this motion to dismiss but I think it is very, very unfortunate if there is any impression, whether intentionally or not, given to anybody that they are not going to have a free opportunity to say what they want to here in this hearing, and I certainly will object very strenuously if they are confined in any way.

Mr. ASHMORE. You are not going to have to object. I have already ruled that the people can go ahead and give their brief statements.

Reverend JOHNSON. Thank you, Mr. Chairman.

I would like to establish for the record's sake that anything I say is documented and we are merely trying to establish the fact that many of these persons were not contested because of fear and intimidation.

I referred to the Reverend Smith who ran last from the third district, and perhaps all of you know of Medgar Evers who served as a campaign manager for the Reverend Smith and you know of his subsequent murder in the Third District.

There are many things we could allege as to the reason why you do not have legal seating to participate in public life as of now, and this is one of the reasons we are trying to bring this challenge.

Just 3 weeks ago the Rev. Donald Thompson, a white Unitarian minister, a person who has long been interested in voting rights for everyone, was seriously wounded and shot as he made an attempt to enter his home.

I am also sure that you gentlemen are aware of the recent bombing of Jordan Metcalf merely because he sought to have more Negroes enrolled and registered to vote. His automobile was blown up during this drive. He is still on the critical list as of this time, as well as the Reverend Crawford, who is still in a Baptist hospital.

Because of the intimidations, because of the loss of jobs where persons have attempted to register, we have felt that as of now we have not had a sufficient number of our people registered that we might have a fair showing. An opportunity really to be elected and to serve. We would like to serve. We want to be a part of, we want to be involved. We want to be a part of our community. We have fought for it. I have bled, I have suffered, I have served as an officer in the Army and we would like to take an active part in public life, but as of now we do not have truly these opportunities in the third district and in other districts of our State.

One of the reasons I am so concerned about getting Negroes to register is because of what we commonly refer to as police brutality in our State. We might correct some of this wrong, for the very law that are protectors and the law officers that are protectors, often we need protection from these officers. We need an opportunity to dialog and to have conversations in our State for the advancement of our whole country.

Recently I led a businessmen's parade in the city of Jackson. I was beaten and struck in the face right on the street, merely because we wanted to be involved to uphold this town. These were the leading ministers and businessmen of the Third District of the city of Jackson. A peaceful demonstration, and here we were beaten and intimidated.

It was during this demonstration that this white man who struck me said, "You cannot walk on our street."

We have heard them say, "My State." We want to say "Our State."

We have fought for it, we have bled for it, we are concerned, our children are in it and we want to help it.

The reason that I signed the challenge was to give Negroes a chance for representation. We have qualified Negroes, some who could do a good job.

I think this is vital enough not to be dismissed on a technical motion. I think that you men here ought to realize that you do not want to disenfranchise Negroes. Here they are saying that they will take no further notice of this.

Now, this is the very thing we are arguing. You must take notice, you must be cognizant of the fact that Negroes are concerned. You can't dismiss this and say they will take no notice. That is our trouble. We have gone too long without being noticed. We have gone too long without being counted, as though we are saying that this need

not be dismissed, but you should give the whole committee and everybody an opportunity.

This subcommittee should not dismiss this challenge. We represent thousands and thousands of people who want to be heard, who want to feel that this Government is concerned about their welfare and their well being.

I believe that is all.

Mr. HIGGS. Mrs. Augusta Wheadon, of the First Congressional District, from Columbus, Miss.

STATEMENT OF MRS. AUGUSTA WHEADON, REPRESENTING FIRST CONGRESSIONAL DISTRICT, COLUMBUS, MISS.

Mrs. WHEADON. Mr. Chairman and members of the subcommittee, my name is Mrs. Augusta Wheadon and I am a citizen and a qualified voter in the First Congressional District in Mississippi. My home is Columbus, Miss. Columbus is on the Tombigbee River in the northeastern part of the State. Although, as a qualified voter and one of the few Negro citizens in the First District who have dared to attempt to participate in political processes, I would have liked to be a candidate for Congress from the First Congressional District. But during 1964, the election, I doubt whether there were as many as 300 registered voters in the entire congressional district. And to try to get the 200 there to get my name on the ballot by the time the registers were closed, I am sure there wouldn't have been enough to put my name on the ballot.

So I feel that as a citizen alone, I have the right to petition the Congress to redress the grievances done to the Negro citizens of my district by denying them the right to vote on account of their race and color.

I do not feel that this challenge should be dismissed. You ask me why I did not attempt to run in the election of November 1964? I ask you then, Do I have to risk my life to be a candidate for Congress in the United States of America?

Furthermore, the experiences of Mrs. Gray, Mrs. Hamer, and Mrs. Devine merely prove what I know to be the case, that no Negro will be allowed on the ballot in the congressional election of 1964.

In the State of Mississippi, intimidation, economic pressure, violence of all types is a way of life against Negroes who want to vote in Mississippi's First Congressional District, and in the State there are about 900,000 Negroes but still this Mississippi delegation was elected with just about 6 percent of the Negroes having voted in the 1964 election.

This kind of dismissal of these charges would seal the disillutionment of the Mississippi Negro from ever being able to receive justice in the system of American procedures.

The motion willfully ignores the issue of disenfranchisement of Mississippi Negroes. Some 400 or more Negroes from Mississippi are here in Washington, vitally concerned with these challenges.

In view of the many burnings, harassments, and murders of so many Negroes in Mississippi, attempting to register, I did not wish to risk my life to get certified to run against Mr. Thomas Abernethy, of the First Congresisonal District, but I did file notice of contest.

Negroes of Mississippi are afraid of physical violence, economic reprisals, losing jobs, and of not getting jobs as a result of such attempts because when Negroes go down to register, their names must be in the paper for a given time and that gives their employers a chance to know these Negroes are trying to register and you know what that means.

Then we have had an instance just a few weeks ago of Senator Reuss' son being examined in Clay County by an officer who suffered a fatal heart attack. They attempted to arrest him on a manslaughter charge. The Senator was able to exert so much pressure that these charges were dropped.

During the last few months, since so many of our churches are used as meeting places for the civil rights workers and for our political meetings, we have had over 40 churches bombed in the State of Mississippi. We feel that the Mississippi delegation, being elected with so few Negroes recognized, we feel that they are not elected.

Also in the last few weeks the COFO office was burned. Another burned in Tupelo, another burned in West Point. In the last few weeks one Negro who was making a plea to get more Negroes registered to vote, his home was shot into 32 times.

So, Mr. Chairman and members of this committee, as Negroes we feel that we have been loyal to this country. No Negro has ever struck down a flag or insulted a flag. No Negro has ever sold a secret to a foreign nation. Our Negroes, our fathers, brothers, and sons, have fought in the same foxholes with other races, and then when they returned to Mississippi they were not even allowed to register to vote.

For that reason I don't think this challenge should be considered.

Mr. WAGGONNER. Mrs. Wheadon, did you vote in the Democratic primary in Mississippi last year?

Mrs. WHEADON. I did.

Mr. WAGGONNER. Did you vote in the general elections last November 3?

Mrs. WHEADON. Yes, I did.

Mr. WAGGONNER. Mrs. Wheadon, you have argued as those who preceded you have argued, that effort has been made to exclude members of your race from being allowed to register to vote, to vote or to seek public office in Mississippi.

Do you have any firsthand knowledge that you can give to this committee that Mr. Abernethy, who presently serves the First Congressional District of Mississippi in the U.S. Congress, was a party to, had knowledge of these efforts to exclude and actually participated in these alleged exclusion efforts?

Mrs. WHEADON. I feel that Mr. Abernethy and the rest of the Mississippi delegation know what is going on in the State of Mississippi and they don't do anything to do away with the conditions. They just don't have any interest in it. That is how I feel about it.

Mr. HIGGS. Mr. Langston, could I ask you again?

Mr. LANGSTON. You have used 43 minutes. You have 47 remaining.

Mr. KINOY. Now, Mrs. Fannie Lou Hamer of the Second District.

STATEMENT OF MRS. FANNIE LOU HAMER, REPRESENTING SECOND CONGRESSIONAL DISTRICT, STATE OF MISSISSIPPI

Mrs. HAMER. Mr. Chairman and members of the subcommittee, my name is Fannie Lou Hamer, of Mississippi. I attempted to run for Congress as an interested candidate in the Second Congressional District of Mississippi. I too got the same treatment that Mrs. Gray and Mrs. Devine got, and some of the difference that I received in the Second Congressional District, whereas one man at Nesbit, Miss., went to get his name certified as a registrar, Mr. Williams, he was harassed and was told we wasn't doing anything but stirring up trouble.

In another case, Miss Penny Patch was working in Mississippi on voter registration and was told in Panola County that she could come back 5 days later, which would be too late to get me on the ballot as an independent candidate in the Second Congressional District.

She was told to come back because they had court for the next week.

Mr. Dave Jones, a secretary for the Student Non-Violent Coordinating Committee, did get some names and petitions to carry to the secretary of state to get my name on the ballot as the independent candidate. He was arrested on his way to Jackson. He was arrested by the State highway patrol. The names was taken from him and he was charged with some type of disorderly conduct.

One of the things before I read I would like to say: It is pretty bad when the people can't feel safe in going to what are called police officials or State highway patrols to be protected in the State of Mississippi, because I am standing here today—and I must say this before I continue—I am standing here today suffering with a permanent kidney injury and a blood clot in the artery from the left eye from a beating I got inside of the jail in Winona, Miss., because I was participating in voter registration, and these orders was ordered by a county deputy, a State highway patrol.

I want to say something else. When we go back home from this meeting here today, we stand a chance of being shot down, or either blown to bits in the State of Mississippi.

I want to read. You gentlemen should know that the Negroes make up 58 percent of the potential voters of the Second Congressional District. This means that if Negroes were allowed to vote freely, I could be sitting up here with you right now as a Congresswoman.

You also know that Negroes are not permitted to have, and have not been permitted for almost 90 years, to register and vote in this or any congressional district in Mississippi.

According to the latest figures compiled by the U.S. Commission on Civil Rights, less than 5 percent of the potential voters in my congressional district have been permitted to register and vote. In fact, in some of the counties in the Second Congressional District, not many Negroes are registered despite the fact that there are hundreds and thousands of Negroes over 21 years in those counties.

Just as one example, in Humphreys County where Negroes outnumber whites 2 to 1, not a single Negro out of 5,561 of voting age were on the rolls when these contested elections took place.

It is significant that one of the first Federal examiners sent into the South after signing out the voting rights bills in 1965 was Leflore County in the Second Congressional District.

I would like to point out that almost 72 percent of 10,274 white persons of voting age in that county are registered, whereas only 1 9/10 percent of the 13,567 Negroes over the age of 21 are on the voting rolls.

Since the arrival of the Federal examiner just a few weeks ago, more than 3,000 Negroes have managed to become registered voters. This reflects the eagerness of the Mississippi Negro to participate in the elective process.

This eagerness has so frightened officials of the State of Mississippi that the State attorney general has just started a lawsuit to keep the names of these newly elected—newly registered Negroes off of the voting roll.

I might add that the same suit will be brought wherever Federal examiners are sent throughout the State.

In addition to the attorney general's lawsuit, Mississippi is using the same violence and terror that it has used for generations to keep my people from voting. For example, within the last 2 weeks in my own community a man who has been seen around the MFDP worker was brutally murdered in his home. That man was murdered. My husband helped to dig his grave. They was ordered to bury him that night. They couldn't bury him because the undertaker couldn't make it, and less than 72 hours ago my brother was threatened over the telephone and he was told that they would get rid of him by 2 o'clock.

This is the price that we pay in the State of Mississippi for just wanting to have a chance, as American citizens, to exercise our constitutional right that we were insured by the 15th amendment.

By sweeping this challenge under the rug now and dismissing this challenge, I think would be wrong for the whole country because it is time for the American people to wake up. All we want is a chance to participate in the government of Mississippi, and all of the violence, all of the bombings, all of the people that have been murdered in Mississippi because they wanted to vote in the Second Congressional District, like Reverend Lee and all of the others who have been killed, there hasn't been one person convicted and done no time.

It is only when we speak what is right that we stands a chance at night of being blown to bits in our homes. Can we call this a free country, where I am afraid to go to sleep in my own home in Mississippi?

I am not saying that Mr. Whitten or the other Congressmen helps in that, but I am saying that they know this is going on and as long as they have let it happen—some have been in office 30-some years and never even bothered to run because they didn't have nobody to oppose them. But when we tried we have been treated like criminals and convicts. It is time for the American people in this country to wake up.

I might not live 2 hours after I get back home, but I want to be a part of helping set the Negro free in Mississippi.

Thank you.

Mr. WAGGONNER. Mr. Chairman, I have just two questions.

Mrs. Hamer, do I correctly understand that you were a Democratic primary opponent of Mr. Whitten in last year's congressional election?

Mrs. HAMER. That is right. I would like to answer this question too. I was a primary candidate. When we went up and asked the people who watched the polls just to see how many ballots I was getting, the people in the area where I exist now was told to stand 50 feet away and watch through a concrete wall.

Mr. WAGGONNER. One other question, Mr. Chairman.

Do I correctly, as well, understand that after having duly qualified and actually been a candidate in the Democratic primary, that you in turn sought to qualify and run as an independent in the November 3, 1964, general election for this same congressional seat?

Mrs. HAMER. I did.

Mr. WAGGONNER. What does the Mississippi law have to say about having been a candidate in a primary and then becoming a candidate in a general election?

Mrs. HAMER. My legal counsel will tell you that.

Mr. ABBITT. Mr. Chairman, for the record could we have that answer now?

Mr. ASHMORE. I don't know how long he would wish to elaborate on it.

Mr. KINOY. We will deal with it fully in our argument, Mr. Congressman.

Mr. HIGGS. That completes our statements.

Now Mr. Kinoy and Mr. Stavis will present the legal portion.

Mr. WAGGONNER. Mr. Chairman, the House is convening in another 3 minutes, I move the committee recess

Mr. ASHMORE. Mr. Waggonner, we have asked the floor leader to request permission for us to sit during the House debate.

Mr. WAGGONNER. Do we know that we will get that permission?

Mr. ASHMORE. I don't know, but I think we can proceed until we know.

Mr. GIBBONS. I would prefer to proceed, Mr. Chairman, unless we are required to be on the floor.

Mr. ASHMORE. We will now hear the discussion from the attorneys on the legal points as to why this issue should not be dismissed because the contestants do not qualify to bring such an action.

STATEMENT OF MORTON STAVIS, REPRESENTING CONTESTANTS

Mr. STAVIS. Thank you very much; Mr. Chairman and members of the committee, I am Morton Stavis.

Mr. Chairman, we have attempted to divide the treatment of the legal questions which are before the committee at this time.

We had understood that we were appearing here in response to a motion to dismiss and I refer to House Document No. 284, page 1, in which the motion is made that the attempted contest be dismissed or that he, the moving party, be otherwise relieved from taking further notice.

The ground asserted in the motion is basically the principle that since it appears that the contestants were not losing candidates in the general election, they do not have the right to proceed.

Mr. ASHMORE. Under the statute as they brought the action.

Mr. STAVIS. That is right.

The citation was made of the Kirwan case, the Ottinger case, and in the appendix to the answers and in the argument of Representative Abernethy, reference is made to the letter of Hatton Sumners. The telegram we received indicated the issue would be limited to the motion to dismiss and although we requested leave to argue the affirmative merits of our case, the chairman declined in that request.

Of course, Mr. Colmer's argument, as did Mr. Abernethy's, went far beyond the motion to dismiss, and while I will get to the motion to dismiss in 2 or 3 minutes, I think it is important that some of the points made by Mr. Colmer and Mr. Abernethy be dealt with precisely and immediately.

I have heard it argued, "What are they complaining about? Are they charging fraud? Dishonesty? Corruption? What are they here for?"

I thought the brief made it completely clear. What we are complaining about is the disenfranchisement of approximately half the population of the State of Mississippi. That is what this case is about, and it is an issue which has evoked the action of the Congress of the United States time and time and time again.

It is pointed out in my brief. Over 40 cases where sitting Congressmen were unseated on a demonstration of substantial disenfranchisement of the Negro people.

Let's scotch immediately the question that has been put by the honorable gentleman from Louisiana, in which he has asked, "Well, do you claim that the particular contestees were responsible for this?"

This is a question that has come up before in the House and the answer is not whether the contestees were responsible; the answer is, are they the beneficiaries of the system.

Do they claim their seats on a system based upon disenfranchisement?

The chairman of the Elections Committee in 1896 disposed of this argument when he said, "The difficulty is that a system exists, the principle of which is to disenfranchise the colored voters."

I also heard it suggested that this matter was settled on January 4 when the oath was administered to the five sitting Members of Congress.

Have we forgotten that on January 4 at the very time that the oath was administered on the motion of the majority leader, the honorable gentleman from Oklahoma, he himself said that the matter should be dealt with under the laws governing the contested election and, of course, that is exactly what happened.

But I want to move to the narrow question of the motion to dismiss because I think it is a question which excites the interest of many of the members of the committee. The argument is that this is cold stuff. It was dealt with on January 19 by the Congress in the Ottinger case, the Kirwan case. The gentleman from Texas, Mr. Sumners, everybody says there is nothing to it.

You have to be a losing candidate to be a contestant under the statute. Of course, I am aware of the powerful minority position taken by the gentleman from New York and fully supported by documentation from the Library of Congress.

With all due respect, we say that the issue of the Ottinger case, the issue of the Kirwan case, and the issue in the Virginia case, is not before this committee. What was the issue in those cases?

Mr. ASHMORE. I think we may as well stop right now. That is a quorum call which we have to answer. At least we all wish to answer. We shall stand by.

Mr. DEVINE. I suggest we recess for lunch.

Mr. ASHMORE. We will take a recess until 1:30. We will come back at 1:30 and if we then have permission to sit, we will proceed.

(Whereupon, at 12:10 p.m., the subcommittee was recessed, to reconvene at 1:30 p.m., the same day.)

HOUSE DOCUMENT NO. 284, MISSISSIPPI ELECTION CONTEST

A Motion That the Attempted Contest Against Each Individually Be Dismissed, or That Each Be Otherwise Relieved From Taking Further Notice of Such Matter

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TUESDAY, SEPTEMBER 14, 1965

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE ON ELECTIONS OF THE
COMMITTEE ON HOUSE ADMINISTRATION,
Washington, D.C.

The subcommittee met at 8:30 a.m., in room H-329, U.S. Capitol, Hon. Robert T. Ashmore (subcommittee chairman) presiding.

Present: Representatives Ashmore (presiding), Abbitt, Waggonner, Gibbons, Davis, Goodell, Curtin, Devine, Perkins, and Lipscomb, ex officio.

Also present: Julian Langston, clerk.

Mr. ASHMORE. The committee will be in order.

I understand we have 32 minutes left for the contestants.

Mr. Stavis was speaking, I believe. You had 37 minutes and you used 5 minutes.

Mr. ABERNETHY. May I, as representing myself, propound a question to one of the witnesses who testified yesterday?

Mr. SMITH. These people were not offered to the committee as witnesses, nor is what was said to be construed to be testimony as in contradiction to what the gentleman has said. I would be glad to answer questions.

Mr. ABERNETHY. Your name is Johnson, I believe. What was the name of the candidate that ran against Mr. Williams in the primary?

Mr. JOHNSON. R. L. T. Smith. Do you mean in 1962?

Mr. ABERNETHY. Yes. I believe you said that was the last colored man.

Mr. JOHNSON. From the Third District, that is right.

Mr. ABERNETHY. Are you not mistaken about that? Did not one J. M. Houston run in the primary last year against Mr. Williams?

Mr. JOHNSON. Not from my city. He was from Vicksburg, maybe.

Mr. ABERNETHY. That is part of the Third District.

Mr. JOHNSON. Probably so.

Mr. ABERNETHY. That is all I wanted to establish.

Mr. STAVIS. Mr. Kunstler is not here this morning. Unfortunately, he has a capital case he is trying in New York, and while he was excused by the court for yesterday, he had to go back and continue the trial of this case. He asked me to extend his apologies to the com-

mittee for not being able to be here for the continuance of the hearing.

Mr. Chairman and members of the committee, yesterday when we were interrupted by the rollcall votes, we had barely started our legal argument. We started dealing with the question that seems to have engaged the attention of so many members of the committee; namely, just what is the rule with respect to the requirement for the contestants who would utilize the procedures under the statute?

And the argument was made by our adversaries that this is all "cold turkey," that this is "all settled."

You just read the *Ottinger* case, the *Kirwan* case, the letter of Hatton Sumners, of Texas, and that is it—there is nothing left to this case. In fact, the argument is made—what are they going to do with these cases? How are they going to explain these away?

I am going to tell you what I have done with these cases, and I am sure what the members of the committee are going to do with these cases. We are going to read them. We are going to find out what they say, and when we read them, it becomes so painfully obvious that these cases which have been argued in support of the motion for dismissal have absolutely nothing to do with the Mississippi cases now in their present posture.

What does the *Ottinger* case hold?

The *Ottinger* case holds that where a motion to dismiss is made and pressed before the taking of depositions, if the contestant was not a losing candidate the House held then that he was not entitled to use the deposition procedure.

Let's get that clear. The *Ottinger* case arose on January 19. On that very morning depositions were scheduled in the Supreme Court of the State of New York. The majority leader rose on the floor of the House, moved to dismiss, and the dismissal meant that you could not take the depositions. That is what the *Ottinger* case is about. Because the whole point of the statutory procedure is that it gives to the contestant the right to use the deposition procedure without direction by the committee. You can go to any notary public, anywhere, get a subpena, collect your testimony and present it. And the *Ottinger* case said, we will stop you from doing that before you do it.

The *Kirwan* case does not speak about it, but it arose on January 10 of 1941 within the first week of the session and therefore, obviously arose before depositions were taken.

And if you read the third precedent, which is a letter from Hatton Sumners which appears in the Congressional Record of 1945, you will see that what was involved there was exactly the same problem—notices to take depositions were filed, and this is what the letter says—the whole of the letter should be read, not just the portion printed in the answering papers—this is Mr. Sumners' letter:

"Supplementing statement made to you over the telephone this morning with reference to notice to appear and give testimony in proceedings by Morse A. Plunkett, of Roanoke, Va.", and he said, "In my opinion, since they are not a contestant, you do not have to appear to take depositions." That is what every one of these precedents means—where a motion to dismiss was made and pressed before the taking of depositions, the House demanded that the contestant be a losing candidate.

What happened in this case, the Mississippi cases? Depositions were first noticed on January 18, 1965. The day before this House ruled on the *Ottinger* case. They commenced on January 25, 1964. Did the contestees know about the *Ottinger* case? They sure did. Not only did they know about the *Ottinger* case, they cited the *Ottinger* case in a statement made on January 25, 1965, and if you will look at page 2 of volume 1 of the record, you will see that Mr. Coleman asked the contestants not to proceed to the taking of depositions, and when the contestants refused his request and insisted on the taking of depositions, he said the following, and I quote:

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

Of course, Mr. Coleman was not entirely correct. There was a body then competent to pass on the question as to whether we had a right to take depositions, the House of Representatives which only 6 days earlier had sat and determined a motion in this respect.

Well, Mr. Coleman did not press that motion, and, what is more, at a subsequent time, 2 or 3 days later, in the record he acknowledged in these cases the right of the contestants to take these depositions. He said, and I am now quoting from page 1148 of volume 2 of the printed transcript:

We feel there is no legal basis whatsoever for this contest, or purported contest. Nevertheless—

and I am quoting chief counsel for the contestees—

nevertheless, under the terms of the Federal statute we concede the right of these purported contestants to take them, to try to develop the facts, and we have no desire in any way to suppress, or limit, the development of the facts in this case.

So the other side completely conceded the right to take depositions, and these depositions were taken with the fullest participation of the contestees. There are approximately 3,000 printed pages of depositions. They were held in approximately 50 sessions. There were 150 lawyers approximately on behalf of the contestants, approximately 50 lawyers on behalf of the contestees. In all but a very few of these depositions, the contestees appeared, cross-examined witnesses and have produced before this committee the most telling, mammoth record of disenfranchisement that has ever been presented to the House of Representatives.

Now, after all the depositions have been taken, completed, the record is made, we are prepared for argument, they present in support of a motion to dismiss a group of cases, all of which hold exclusively that if you move before the taking of depositions we may, if you are not a candidate, prevent you from proceeding to exercise that power.

I say to you that the effort to apply the *Ottinger* rule to this situation is an absurd tour de force, and has nothing to do with the cases in their present posture.

Now, the contestees deliberately, consciously, knowingly avoided putting the issue before the House, or the committee, the question presented by the *Ottinger* case, the *Kirwan* case, and Hatton Sumners

letter at the only time it was relevant; namely, before the taking of the depositions. They did it most consciously.

Mr. GIBBONS. Can we ask the clerk if he cannot silence the saw outside there.

Mr. STAVIS. I am grateful.

I have heard a lot of talk about changing horses in midstream, but this is precisely what the contestees have sought to do. What was their strategy? They did not want to present the issue of our right to take depositions at the early part of this challenge. Why?

I will tell you in a few minutes why—because they knew had they presented it then the House would not have supported their dismissal because this case is not the same as the *Ottinger* case for entirely different reasons. So they held back and they said, "Let's take the testimony. Let us see what comes out."

Now that the testimony is out, unanswered and unanswerable, they move on a motion to dismiss and cite cases which hold what—that we did not have the right to take the depositions if they had objected then.

Now, the strategy of the contestees was hardly a secret. It was fully reported in the press.

On January 28, in a newspaper in Jackson, Miss., it reported that the question of making a motion to dismiss in the Mississippi cases following the *Ottinger* case had been discussed with the Speaker of the House, and he counseled not to make the motion to dismiss because it would be defeated. And based upon that, the depositions proceeded and were taken.

I know I would love to be in a situation, and every lawyer in this room would love to be in a situation where you would walk in a courtroom and we know we have an objection to the jury, we know that we have an objection to the judge, and we just go in there and say "I have an objection to the jury and judge and I want to tell you I have the objection, I want to preserve my rights. Let's see what the testimony is, if I like the testimony, if it is good for my side, we will go ahead and let the judge and jury decide it, but if when all the testimony is in and it looks rough to me, I will disqualify the judge and the jury." And that is what this case is about.

The decision not to press the motion to dismiss to prevent the taking of the depositions before the depositions were taken was, as I say, a conscious determination. It was a conscious determination and made after consultation with the Speaker of the House. And why was that decision made?

First, because of the reasons that I have given you; namely, they really wanted to see what was going to come out on these depositions, but second, it is obvious that even if this motion to stop the taking of depositions had been made before the depositions had in fact been taken, the motion would have to have been denied because this is not the *Ottinger* case.

Let me move into that point. The *Ottinger* case, as every member of this committee knows, was a decision by the House on January 19, a divided decision of the House, and as the memorandum submitted from the Library of Congress shows, it was a decision at variance with many, many prior precedents of the House, and therefore, to put it mildly, it is a decision which has a somewhat shaky foundation.

The *Ottinger* case, however, involved the question of alleged excessive campaign expenditures. This case involves a question of massive disenfranchisement.

Now, assuming that innuendo, that the House would adopt as a firm rule of law the proposition that the deposition procedures are available only to a losing candidate, is it conceivable that the House would adopt the same rule in a case where the claim is disenfranchisement and prevention of the contestant from becoming a candidate?

One and the same thing. You are then saying that if the conspiracy of State officialdom is so complete as to prevent the contestant from even becoming a candidate, by golly, we will give you a special medal for really effective conspiracy. And what is that medal?

We would not even let the contestant utilize the statutes for contesting. If, on the other hand, the conspiracy is not quite sufficiently effective to prevent the party from becoming a candidate you can use the statutes. That is an absurdity that no rational body can sustain, and therefore, the difference in the nature of the complaints, the difference in the nature of the election complaints demonstrate conclusively that whatever may be rule in the *Ottinger* case; namely, that you had to be a losing candidate where you were charging specific expenditures, that could not be the situation where the losing candidate would say, "I could not even get on the ballot, and I am prepared to demonstrate I could not get on the ballot, and since I could not get on the ballot, what are you saying—they really kept me on the ballot. Now I have no forum and no opportunity to even present my case." That is why.

It is that difference between the *Ottinger* and the *Mississippi* cases which explains what the majority leader of this House did. There were two challenging cases before the House in this session, the *Ottinger* case and the *Mississippi* cases. Why did the majority leader deal with them so differently?

In the *Ottinger* case, it was the majority leader himself who January 19 moved to dismiss, and it was the majority leader himself on January 4 who with respect to the Mississippi cases said, "I refer them to the committee to be dealt with under the laws applicable for challenges, and these are the only laws."

Now, there is one last point that I would like to make and that is that we are not dealing in this case with a general proposition of disenfranchisement.

In respect to three of our contestants, we are dealing not only with that, but we are dealing with a specific complaint that they tried to get on the ballot, they complied with every State law, but as a result of trickery, violations of State law by State election officials, they were prevented from getting on the ballot.

There is something that has always mystified me about the printing in this case. We attached as exhibit to our notice of contest a copy of the petition to the State Board of Election Commissioners of Mississippi, which showed the efforts that the three candidates had made to get on the ballot and how they had been frustrated by illegal, conspiratorial trickery by State election officials. For some reason we do not understand, it was not printed when the Clerk printed up the notices of contest. The Clerk did print an appendix attached to the answers, but did not print this petition.

Now, if this petition is read, if the record is read, you will find that the State board of election commissioners in this case concocted, and I say "concocted," a special rule that not only did you have to have 200 names, but you had to go to the circuit registrars and get them to certify the 200 names. When they got to the circuit registrars, the circuit court registrars just were not there to certify them. They were in court, or they insisted that each particular person on the list come and have his own name certified, or they refused to entertain such applications until the week after the deadline. Every trick in the book was pulled to see to it that these people could not get on the ballot so that the argument could be made here—well, we ran in this election unopposed.

There was no one on the ballot opposed to us. Of course there was not. We could not get on the ballot. And it is precisely because those are the issues in this case that had the motion to dismiss been made, as I said, even prior to the taking of the depositions, the House would have been quick to recognize whatever the rule of the *Ottinger* case, it could not possibly be applied to this case here.

At this point, I would like to hand this over to Mr. Kinoy, my associate on this matter.

Mr. KINOY. May I ask what our time is?

Mr. LANGSTON. You have 10 minutes remaining.

Mr. KINOY. Mr. Chairman and members of the subcommittee, in the few minutes that I have left, I would like to attempt to dispose of several of the problems that were raised by the sitting Members in their argument. One of the sitting Members said the committee that this was the first available time in which this question of a motion to dismiss could come before the committee. I think one thing must be crystal clear to the committee, as Mr. Stavis has pointed out—the motion to dismiss deals solely with one question—are depositions procedures under the statute to be available to these contestants?

I suggest to the committee that this is one of the most incredible proceedings before the House of Representatives in the long years of the practice of this honorable committee.

Here, long after the deposition procedures are finished with the full participation of the sitting Members, then the contestees come before the committee and say "We want to get rid of this entire problem, we want to ge rid of this entire case, we want to be relieved of the duty and necessity under the Constitution of the United States of answering to the charge that we were elected without free open elections."

One of the sitting Members said "What do these contestants want here?"

I think it should be very clear to this committee that what these contestants want is what every contestant in the long history of this House has asked for in every election case; namely, free and open elections, free and open elections to Members of this House.

Can a single member of this committee say that on this record there were free and open elections in the State of Mississippi in the 1964 congressional elections?

Putting aside the sitting Members, every Member of this House, the President of the United States, the Supreme Court of the United States, the Civil Rights Commission, every responsible agency in this country knows that there were not free and open elections in the State of Mississippi in 1964 in the congressional elections.

Let's face what the issue is before this committee.

Now, they do not want to answer that charge. Therefore, they come to you now and they say "Ottinger"; they say "Ottinger." They say we should not have to take part in deposition proceedings. Incredible.

We should not take part in deposition proceedings. But, gentlemen, they have taken part in deposition proceedings. That is finished. The only issue in *Ottinger* is, Is the statutory deposition procedure available to a contestant?

That is all. Everybody has talked *Ottinger*, but no one has reminded this committee that the essence of the *Ottinger* case in the complaint is still pending before this committee. We discussed it with Representative Ottinger day before yesterday. The case against him is still here. The only thing that was decided by that motion to dismiss on January 19 was whether or not he should be required to answer to his subpena. That was all that was decided.

Sitting Members tell us that they have great confidence in the precedents of this House. Gentlemen, we have great confidence in the precedents of this House, and we ask you, we ask you to in justice apply the precedents of this House.

The honorable majority leader of this House said on January 19 when the *Ottinger* case was being debated that the only issue before the House, he assured the Members, the only issue before the House was the question as to whether the statutory procedures for taking depositions could be compelled against Ottinger. He said, "No," and the honorable minority Members opposed that position, and that was debated. But the sitting Members here tell us that there was no opportunity until now, they have to go through the whole deposition procedures, before they can raise this issue.

But who raised the issue on January 19? The honorable majority leader.

Why did he not come in with a resolution dismissing the Mississippi cases?

Now this committee must answer that question. Why did he not come in with a resolution? Why did not any one of the sitting Members? Why did not any one of you gentlemen raise a resolution, a privileged resolution, and the majority leader said on January 19, "Any one of you gentlemen could have raised the resolution."

There is not a single Member of this House, indeed, there is not a single American who was not aware of the pendency of the Mississippi cases on January 19. The honorable Members from New York raised on the floor—they said. "Why is not the procedure followed which is being followed in the Mississippi cases?"

That is the heart of this problem, because this House has voted that the statutory deposition procedures were available to these contestants. They voted it on January 4. The majority leader, Mr. Albert, made that amply clear.

What did he say? Mr. Cleveland pointed out to the House on January 19 that on January 4 the majority leader said in respect to the Mississippi cases these cases must proceed according to the law of contested elections; that is, the statutory deposition procedures must be followed. They were followed.

The Honorable Speaker knew they had to be followed. That is why the Honorable Speaker recommended to the Mississippi Members they not raise a motion to dismiss then.

Now, that was finished, settled, decided. The House voted. This was to proceed according to law of contested elections. And we proceeded along the law of contested elections for good reasons, as Mr. Stavis pointed out. There were ample reasons.

It would be astounding if the House of Representatives sitting as a court—and I remind you you are sitting as a court, you are judges in this case, you sit as a court of law, the cases of this committee say you sit as a court of highest general powers—it would be astounding if an American court were to apply in cases of total disenfranchisement a rule which said, if you could not be a contestant, if you could not be a candidate in the election because your people, your race, had been excluded from participating in the processes, this House will not give you the benefits of the statutory provisions for taking testimony.

I do not believe any single Member of this House would care to apply that rule to a disenfranchisement case, nor did the majority leader, nor did the Speaker of the House, nor did this House, and that is why they said that this case must proceed according to the law of contested elections, and it did so proceed.

Now we have 3,000 pages of testimony, 3,000 pages which show that never before in the history of this House has there been so fully proved and documented a case of total exclusion of Negro citizens. You know, this is the sort of situation in which it was not even necessary to have the 3,000 pages presented to this House. The fact in this case is, no honest American would disagree with the Negro citizens in Mississippi. This House is trying to remedy this for the future. They passed the voting rights bill, but this House has a duty and obligation it cannot escape. It has to clean its own house. It cannot say to all America, "Clean your house"; it cannot say to restaurant keepers and innkeepers, "Clean your house of discrimination and segregation" and refuse to clean its own house. That is the fact of this case.

The sitting Members do not want to face that. They have no answer, gentlemen. What are they going to say?

There was no discrimination, no exclusion?

It has been suggested here they did not personally participate in it. I suggest that is a very poor legal argument to advance because this committee has decided time and time again that the issue is not whether a sitting Member personally participated in the exclusion of voters from the voting process. It would be absurd for the House to take that position.

The issue is, "Was there a free and fair election in the 1964 Mississippi elections?"

If you gentlemen dismiss these cases, you are saying to the Negro people of Mississippi, you are saying to the Negro people of America, you are saying to all American citizens, "There is no forum. There is no arena, there is no place where the issue of the free and fair election of a Member of the House of Representatives can be litigated."

You gentlemen have a power under the Constitution. No one else can touch this issue. We cannot go to a court of law. It is ironic, however, the sitting Members have said to us all along, "You are in the wrong place, why do you not go to court? Why do you not go to the Mississippi courts? Why do you not go to the Federal courts?"

That is what the Constitution says. We are now before this court. We have made our case. The sitting Members have participated in

making that case, and you gentlemen have the duty and obligation to let us have the merits of this issue heard before the Congress of the United States.

Now, I would like to dispose of a few minor, and I regard them as totally minor, issues that were raised.

There is this astounding issue of the unsigned notice in the Third Congressional District. I think that has been put to bed by the question asked to Mr. Williams by Mr. Goodell yesterday. The simple fact of the matter is, of course, there was a signed notice of contest. Mr. Williams has admitted that before this committee. There was a signed notice of contest which Mr. Williams knew about.

Mr. Williams gave us a long story about how he found it on the floor or on the sidewalk. I do not have to tell any member of the committee sitting as judges that the issue there was—Did Mr. Williams know about this contest? The statute does not say that a signed notice has to go to the Clerk of the House. We have no obligation to send signed notices at all. It is a courtesy to the Clerk. The only thing that starts the statutory procedures running is notice to the sitting Member. He got that notice. He knew about it.

What is the proof of it? He answered. He filed an answer.

Did he in his answer raise the question he did not get a signed notice? No, he did not.

Someone has discovered that now long, long after the fact. I think it is unfortunate that the Clerk of the House of Representatives saw fit to take this astounding technical issue and try to make a distinction in the Third Congressional District. I am confident you gentlemen will dispose of that argument.

Mr. ASHMORE. Your time has expired.

Mr. KINOY. May I have 2 minutes?

We had a little difficulty in reorganization of our argument because of the long delays of yesterday.

Mr. ASHMORE. You may have 1 minute.

Mr. KINOY. One minute. Thank you. I appreciate that.

In the one moment I have, I would like to dispose of another peripheral issue, and that is the question as to whether or not individual contestants by participating in the primary elections in any way as voters, or in one case and only one case by participating as a primary candidate, have in any way waived their primary right to run for office in this House and to challenge the election. I only need 1 minute to answer that question because every single Congressman sitting here, and every lawyer, knows that no State can engrave additional qualifications on the Constitution of the United States for membership in this House.

The State of Mississippi, even if it had a rule, and it is interesting that the Supreme Court of Mississippi throws a great cloud on whether there is such a rule today, and whether there was such a rule, no State can say that a person cannot run for the office of Member in this House for any qualifications other than those stated in article 1.

Article 1 does not state that you must be 25 years old, a resident of the State, and you must not have participated in a primary election and, having been defeated, you may not run in the general election as a Member of this House. Maybe Mississippi can have that rule for its own State. I think it is unconstitutional for them. It cannot have

that rule for this House; for this House to give credence to that would be beneath the dignity of this House. It would undermine the status and dignity of each Member of this House.

I trust this committee will disregard the suggestions made on that score. All we can urge this committee is to not permit the fundamental issue of free elections in Mississippi raised by these fully contested cases to be swept under the rug now by sitting Members who have no answer to it, none whatsoever, who in effect have placed themselves at the mercy of this House and of this committee.

This committee owes it to itself and to the dignity and integrity of the House to give justice in these cases.

Mr. ASHMORE. Thank you.

We will now proceed to the reply argument of the contestees in the time left.

Mr. COLMER. Mr. Whitten will present the argument.

Mr. WHITTEN. Mr. Chairman, at the outset, I shall take 2 or 3 minutes.

When this matter started, I raised the question we had before us was a motion to dismiss. As I begin my argument, I think, in view of the wide range that I can fully understand was appropriate, many statements were made here which I cannot let go in the record.

In the first place, in my State, the records you have shown we have had a few unfortunate occurrences. Four of us here have been former prosecuting attorneys and I think we have a long record of standing for what is right. I know that all of us deplore the few individual terrible things that have happened in our State, but they are numerically mighty few compared to what we find in many, many areas of the country at this unfortunate time.

We do have quite a fine record of law enforcement that exceeds that most anyplace else. I do not mean to condemn the city in which we all happen to be sitting, but there has been more terrible crime here in numbers, and severity, than happens in any State over 3 or 4 years.

As we come to this argument, there are three or four things that I should call to your attention. Not a single case has been cited to you—and these are trained lawyers. Senator Eastland put the record in here showing how expert the lawyers in this instance are, a long record of trying cases that are highly controversial. We are up against experts in this instance.

You heard the petitioners here, and there again we are up against experts. I do not know whether you saw the lady from my district at the Democratic Convention or not, but she is something to see.

We come to two things that are very significant here. One is that each person in these cases stated to you gentlemen yesterday they participated fully in the Democratic primary. Two of them ran in that primary. The law of Mississippi, which I have before me, says that if you participate in a primary you are obligated to follow the primary and to support the Democratic nominees, and there is one exception, in the presidential election. They ran in the primary.

Now, another thing, and the answer is very easy. They say that the people were prevented from voting.

They allege those things in their pleadings and brief. They said Mr. Albert directed that this shall be done and that shall be done.

What Mr. Albert said is that it leaves open to others this right to proceed. But they had a mock election according to their own presentation. Their own statements say that for 4 days they opened their own election and everybody voted. And you see their own claim as to the number of votes. In my own case, the records speak for themselves. Two years ago Congressman Frank Smith and I ran, and Reverend Lindsay, an outstanding Negro professor at the college in Holly Springs, Miss., was a candidate. He did not get the Negro vote. Mr. Smith, my opponent, says he got the Negro vote and the records show it. In the primary, in my instance, the vote my opponent in the primary got is less than a fourth of the total Negro voters in Washington County alone, and in their mock election, which they allege everybody that was qualified participated.

Just look at the totals that they received.

Now two or three things here that perhaps you do not understand that I should digress to go into. Beginning with the end of the Civil War, the Federal Government passed all sorts of statutes providing for Federal control of just about everything in the way of elections. I do not pass on the wisdom or wisdom of those things, but in 1894 the Congress repelled all of those statutes and turned them back to the States. From that time on—here is the committee report and that citation—the courts have left these matters up to the States to determine. These matters have been handled by the various States of the country and in my State—may I tell you two or three things—you won't find the word "Negro" or "white" in the constitution nor in any of the statutes. You won't find where people who are registered are registered by race. Now I know folks have hearings and allegations and make charges, but I do say that for you. But what do we find here. We find five Members of Congress, four of us with long length of service, faced with what—a move on us by, as counsel says, 150 lawyers from throughout the United States, proceeding under a statute written in 1851. May I say to my friend from New York, I realize that he has had some problems with the Ottinger case.

Fortunately, counsel for these people have drawn the distinction which of course should leave you no embarrassment on those cases here because they said, and it is true, and I agree with the gentleman, there are several ways to raise the question of the seating of a Member. You are not limited to one. There are several ways. The Jefferson Manual says that, it is true. The Library of Congress certified it is true. But that being true, the statutory proceeding, having so many things involved in it, has been held different from the others, and as I say, counsel have not even claimed that there is a single instance where a noncandidate has been able to carry through on those procedures to a final vote. So what do we find here? We find this National Lawyers Guild, most of the Members have been associated with that organization, 150 of them, that move over the United States and have held hearings in as many as 8 States at the same hour, at the same time. Twelve different hearings—San Francisco; Palo Alto; Chicago, Ill.; Washington, D.C.; Howard University; New York City.

Now, since under those statutes they had those rights, you can see why the Congress would limit the use of that right to a contestant who claimed a seat. Otherwise, what in the world can we do? Governor Coleman unfortunately cannot be here. Allegations have been made

here that Governor Coleman should have said this, should have done that. He was confirmed to the court of appeals by a vote of 96 to 8. He will make an outstanding record there. But what Governor Coleman did do on our behalf, us knowing nothing about it, he filed a statement here reserving to us every right that we had and protesting that this was not really a contest; he did that at the outset.

Now, these gentlemen refer to how many lawyers we had. I do not know what in the world you would do if you had a call from your own district saying that they have hearings set tomorrow in five places in your district. In addition, San Francisco, Palo Alto, Chicago, New York. I guess you would do like I did. I called my friends and I said, "Can you get somebody to go down there and sit in to see what in the world they are trying to do?" And that is what we had. That is all we can have. I am saying to you that the Congress of the United States, the House of Representatives, has obligations to all the people, to candidates and noncandidates, to private citizens and to its own Members. But its primary obligation is to maintain and keep its ability to perform its own function as a legislative body coequal to the Senate of the United States and one of the three equally coordinated branches of this country. Thus it is that in these statutory proceedings they set out certain procedures, if you are going to give to the people these rights, they have to follow certain other things. I would like to point out several things here that I think are worthy of note, and I say to start with the Constitution leaves it clearly up to the House. The House can do anything. You can vote the Speaker out tomorrow. I do not question that. But the House knew it had to have some basic rules, sound rules, and what we are dealing with here is a sound rule. These people knew what they were doing. These 150 lawyers, with their long record of experience in these controversial cases throughout all the United States learned how to use the law and they selected the statute. Why? In choosing to proceed under title II, the contestants secured to themselves certain rights of procedure. Each so-called contestant had the right to apply for issuance of subpenas. To who, any judge of any court of the United States, any chancery or justice of the peace of any State, any recorder, any mayor.

By following the stautory procedure the so-called contestant had a right to have such officer to issue a return of his subpena directed to all such witnesses, requiring their attendance before some official at some time and place in order to be examined. By consent in writing the so-called contestants had the right to take depositions without notice and by certain written consent to take any deposition before any officer and by following such statutory proceeding any witness who failed to attend was subject to penalty.

So, of course, they moved under that and had these hearings all over the United States alleging at the ouset in three instances that they were entitled to be seated in our place instead.

Now, having proceeded and had the benefits of that statute, as I have enumerated, are they now to be permitted to drift off and now say that they are just attacking the overall election in Mississippi? Are they going to change in the middle of the game, having had all the fruits of proceeding under this statute, and try to get around the fact that the Congress, as Congressman Albert said, has never heard any

noncandidate for office to use the statute and to be heard. So they quit in the middle of the game. They ran into that. They have not cited you a single case. But what are they doing here? They are not attacking the election. In our State, and you may wonder about the vote in some instances, our Governor and our State officials do not run at the same time we do. The Congressmen and the judges are the only ones and the President in presidential years.

So the election by and large is not as big as it would be in the next year where the Governor and the supervisors and all the local officers run. We do not have that. But elected at this time was a U.S. Senator from Mississippi. The electors who voted in the presidential primary, judicial officers. They don't claim this was not an election. Having used all this to create disturbance, and that is what it was, in the papers all over the United States, the reputation of my State through the mention of these statutes which now they drop and want to say, "You ought to deal with this in another way." But I repeat again that election was held. The election is not attacked. Now in my State, as in many other States, all States, the Congress is the judge of the qualifications of its Members. But in every State they have requirements for what it takes to be an elector. In practically every State you cannot have two bites at the apple.

You cannot run in the primary and obligate yourself to support the primary nominee and then turn around and run again in November. My State is no different and I cited you the section, 3129, I believe it is, which says you are obligated to support the nominee. It also recites cases. But here is the certificate, which is a matter of public record, as to efforts to try to qualify, after having participated in the primary.

Now let me tell you again about this thing. They say you cannot meet it on its merits. I know I am digressing to a degree here, but I am in turn meeting the things that have been said here. But I repeat, each of these persons testified to you that they fully participated in the primary. Each told you that they fully participated in the general election. Each told you that in three districts they chose to have a 4-day election there where everybody voted and they gave you their claim of votes. It is not easy to get folks to vote. In our State it has not been particularly easy. As I say, the laws in our State have been upheld regularly by the Constitution until in the last few years when the Supreme Court began to take a different view and the Congress began to move into the picture, writing statutes. As they have been written, as you well know, and I can mention this because they come up with it in their brief, when the Congress passed a law—and this should be beside the point as far as this motion to dismiss, I should not have to say this but I do say it because it is in their brief—the Governor called the legislature together. He recommended to the legislature and the legislature repealed what—laws that theretofore had been in line with decisions of the court but were no longer in line with them, and the legislature repealed those laws and the people have proved the constitutional changes called for by action of the Congress.

You have read this doubtless in the paper in recent weeks where my State has cooperated more fully than most any other according to the press. There are lots of people that do not want to see this thing settle down. A record of the activities here will show that many of the clients of my lawyer friends on the other side have not been of the kind that want us to handle this thing properly.

Now, I want to go back and say that following the Reconstruction days, we had some terrible cases. I thought they probably would be cited here. You will find them in the briefs. But they were handled at a time that you had these Federal statutes and Federal control, and I believe that they will never have that anymore, but after an experience of that kind, the Congress itself in 1894 repealed all those statutes and in the report said, "We are turning it back to the States," and it was in the State's hands to handle these matters until the last few years.

As you know, my State is cooperating fully. Now we come back to the *Ottinger* case. As I pointed out earlier, the gentlemen for the so-called contestants have drawn a distinction there. I know that some of my friends here feel very strongly about it. But here is our situation. I can see that a man might have a mixed feeling about a case that came up at the opening of Congress—about whether to dismiss it then. In our case what do we have? You have here a case of a delegation, most of us with long length of service, moved in on by 150 lawyers from all over the United States, not a single one from Mississippi, dragged from pillar to post from San Francisco to New York, from Chicago all the way down. Where they have had these hearings and developed and used the statutes fully, and what—and the clerk in the discharge of his duties tells you that these so-called or this so-called testimony does not meet the requirements of the statute, does not meet the requirements of the evidence, and for that reason is not beneficially printed. Having been drawn around this long, why is it that we should not file a motion to dismiss?

I heard testimony here or statements made by counsel as to the majority leader. I know of no such statements by the majority leader, as he says. I know Mr. Albert on the floor of the House stated that in that action it did not take away these other rights. I saw nothing that he directed anybody to do anything. Statements have been made here by Speaker McCormack. I believe they quoted that from the paper. If so, I have no knowledge of that. I do know that Governor Coleman, as I say, who under the law now has no right to appear here and continue this case, reserved in the so-called answer which is in effect a motion to dismiss, protested that these were not proper contestants. I know that he reserved all the rights to move to dismiss and I know that we moved ourselves after he was no longer available to us to move just about as soon as you got this matter before you. Until then you had nothing to dismiss. I am not as astute as some of the leadership in the Congress and some other folks. I love them all. I do not have the same privileges that everybody does. Maybe I have all I deserve. That might be true of the rest of the delegates. But we followed the course that was available to us and we brought before you here our motion to dismiss. Let me tell you why. First as to the Congress, you have been good to us here. We have reached positions of seniority and to some key committees.

It was my lot to handle the first thing before Congress this year, the bill to maintain the stability of the Commodity Credit Corporation. I went to Jackson, Miss., 5 times in the first 3 or 4 weeks when I was supposed to be here under the prior obligation of the Congress to perform its function on account of 150 lawyers moving in on under these old statutes which they want to use half way and then quit, and say

no, we are just attacking the election. Right now the Public Works Subcommittee is meeting at 10 o'clock and I am on that committee. We are holding up agriculture appropriations.

Why do I mention that? I mention that to point out to you that we have an obligation in the Congress to everybody. But the first and the foremost is to let Members serve so it can perform its function. Jefferson's Manual, on page 121, and let me read it to you—we need to get back to fundamentals here sometime and realize the place that Congress as an institution should fill—what does it say as to why we have certain privileges.

This privilege from arrest, privilege, of course, against all process the disobedience to which is punishable by an attachment of the person; as a subpoena ad respondendum, or testificandum or a summons on a jury; and with reason because a Member has superior duties to perform in another place. When a Representative is withdrawn from his seat by summons, the 40,000 people whom he represents lose their voice in debate and vote, as they do on his voluntary absence. His State loses its voice in debate as it does on his voluntary absence. The enormous disparity of evil admits of no comparison.

My friends, having been dealt with by professionals and experts, don't you think we are entitled to have this dismissed now? You know the law just provides $2,000 to pay the expenses of trying to deal with a thing like this. Now I know I have said a lot of things. I have before me the testimony of the Attorney General of the United States and if you were to go into what they allege here and if you are going to accept the allegations as facts, which they allege, I point out that the Attorney General testified that according to his information—before the Judiciary Committee—the test would apply in Louisiana, Mississippi, Alabama, Georgia, South Carolina, Virginia, Alaska, and one county in Arizona, North Carolina. South Carolina and Virginia have other types of discrimination. Those were in that period when the Congress had given this back to the States fully and completely. I do say if you are going to go beyond how these folks proceeded, if you are going to look into all these things that happened since the Civil War, you would establish a precedent which would apply to many, many areas and in the establishment of it we might create problems that none of us want.

May I say, and this is not in the nature of testimony, you folks have lived with us for many years. There is not a man in this delegation who is not law abiding and does not deplore the few isolated—and when I say few, numerically few isolated bad cases—that happened in my State. But their numbers fade into insignificance as compared to the numbers that happen in any State in the Union. We just get a whole lot of adverse publicity and 150 lawyers can help you do it. When they can have hearings under a statute any place, any number, any time, and you are helpless to prevent it, what can you do, except to come to you, our colleagues and friends, and point out to you that the prime purpose of Congress is to perform and to act, and its prime obligation to its Members is to give them the treatment where they can be protected from this type of thing. We have asided with time and patience.

We asked our friends to go down and help. But we come here where it is acknowledged that they proceeded under the statute, they took all the advantages of the statute. Their clients are people who actively participated in the primary and general election and that

in itself proves to me that all this allegation about what they cannot do, they have disproved it by their own ability to do the things that they have said they have done. I know they tell you it is hard to go back and all that. You can ride over my State and you won't find any of the things you read about in the paper. You cannot find them. Yes, we are entitled to have this dismissed. Not a single case has been cited to you where this type of thing can be brought by a noncandidate under these statutes. They cannot have that right. You should preserve that right to somebody who had a right to the seat. If they do not have a right to seat you ought to leave them to go these other routes where they cannot drag you all over the country and where your committee can control the guidelines and rules and exercise some commonsense protection for your colleagues.

So this right to proceed under these statutes with all these things rightly is limited to the fellow who ran and has some claim to the seat. They used it, now they want to switch it. I think you can see through that. But I repeat again all you have got to do to realize when they are talking about the merits is when these folks actively took part in all these elections, when they participated in the primary, and then when they say themselves they held their own election and did not get enough votes to count, doesn't that mean something? Should I go over to Mike Kirwan's subcommittee and perform my function or should I be here tomorrow again? I do not blame this committee. Should this committee have to sit through, as we did yesterday with all the business in the House, to deal with things like this on and on and on? Certainly we should not. My friends, I could go a long, long way. I could cover more points, but you heard counsel limit themselves. They are smart lawyers, and they are experienced lawyers, as the records will show. They know to touch on that, and not a one has cited you a single case in support of their position. Isn't that odd?

Young lawyers, new lawyers, inexperienced lawyers, yes, but not folks like these. If they had it they would have done it. You know it and I know it. My friends, I hope you will act on this motion immediately and, let us say, not just for Jamie Whitten, let us say to the Congress that hereafter the National Lawyers Guild, the Ku Klux Klan, or any other 150 or 175 lawyers are going to move in here and disrupt the actions of Congress, because if you do not do that for us, next week, the week after, you can be faced with the same thing.

My friends, I do not know how to express it any better. It has been a long time since I practiced law. But I know when the other side does not cite a thing on its side, it is not there. And you do, too. You just heard it. I know when the contestants come in and say they actively participated in all these things, that speaks for itself. When they participated in the primary, under my State's laws and most of your States laws, they cannot run in the primaries and turn around and run again in November against the fellow who won. You cannot do it in most any State. When they go back to the constitutional requirement, all a fellow has to be is 25 years old and a citizen of his State.

Mr. ASHMORE. One minute.

Mr. WHITTEN. That is the constitutional provision. But, gosh, wouldn't we have a hell of a country, if you will excuse the expression, if nobody exercised any more care on who came to Congress to represent the people. We are glad to leave this matter in the hands of our colleagues. But in acting on our case, this is not a political matter for parties to jockey for position. It is something that we better set a stop order on for the orderly operation of the Congress for every Member and every delegation in both parties in the future. Thank you, gentlemen.

Mr. ASHMORE. Thank you.

Mr. SMITH. Mr. Chairman, I am aware that the committee sits here for the purpose of considering the motion of the gentleman——

Mr. WHITTEN. Mr. Chairman, I would like to object to reopening this matter, having had the argument.

Mr. SMITH. I am not going to argue.

Mr. ASHMORE. I want to hear what he has to say.

Mr. WHITTEN. I just want to interpose an objection. Thank you.

Mr. SMITH. I am aware that the committee sits to consider the motion to dismiss. However, now that the arguments are closed, and I do not intend to make an argument in connection with that, I would like to offer a motion on behalf of the contestants for the consideration of the committee, as it sees fit to so consider. It is a motion to report out to the House Committee on Administration a recommendation that the resolution to unseat all of the contestees therein be reported at once to the full House of Representatives.

Mr. ASHMORE. I think that is superfluous.

The committee will take the proper action.

Mr. SMITH. I would like to file it.

Mr. ASHMORE. You may file it. The hearing is closed. The committee will go into executive session.

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; IN THE MATTER OF THE CONTESTED ELECTION OF WILLIAM MEYERS COLMER IN THE FIFTH CONGRESSIONAL DISTRICT OF MISSISSIPPI

Now comes Mrs. Augusta Wheadon (First District), Mrs. Fannie Lou Hamer (Second District), Mrs. Mildred Cosey Mrs. Evelyn Nelson and Rev. Allen Johnson (Third District), Mrs. Annie Devine (Fourth District) and Mrs. Victoria Gray (Fifth District), hereinafter referred to as contestants, each individually, by their attorneys, and moves that the Mississippi contested elections of 1965, now pending before the Subcommittee on Elections of the Committee on House Administration, House of Representatives, 89th Congress, 1st session be immediately reported out to the Committee on House Administration with a recommendation that a resolution to unseat all of the contestees therein be then reported at once to the full House of Representatives.

In support of this motion, contestants would show the following:

1. Their contention that contestees were invalidly elected because of the unconstitutional, unlawful and illegal exclusion of the Negroes of Mississippi from participation in the electoral processes of that State have been fully substantiated by: (*a*) The depositions taken heretofore herein; (*b*) the President of the United States; (*c*) the Congress of the United States; (*d*) the Attorney General of the United States; (*e*) The Courts of the United States; (*f*) the United States States Commission on Civil Rights.

2. Contestees have neglected, failed or refused to offer any evidence to refute the merits of any of contestants' charges that the Negro citizens of Mississippi were unconstitutionally, unlawfully, and illegally excluded from participation in the electoral processes of that State.

3. Contestees have neglected, refused, or refused to serve and file any brief in opposition to that served and filed by contestants in the manner required by law.

4. Contestees, with the exception of John Bell Williams, have replied to contestants substantive charges solely by a motion to dismiss on the grounds that they lack standing to institute these contested election cases, a motion that is wholly and totally insupportable in both law and fact.

5. Contestee John Bell Williams has neither answered the merits of any of contestants' charges that the Negro citizens of Mississippi were unconstitutionally, unlawfully, and illegally excluded from participation in the electoral processes of the State nor served or filed a motion to dismiss these contested election cases.

6. Rule XI, section 24, Rules of the House of Representatives requires that "the Committee on House Administration shall make final report to the House in all contested-election cases not later than 6 months from the first day of the first regular session of the Congress to which the contestee is elected * * *." The wording of this rule was made effective on January 2, 1947 as a part of the Legislative Reorganization Act of 1946 (60 Stat. 812). While it is now patently impossible, because of delays not attributable to contestants, to meet the schedule imposed by this rule, its sense is that contested election cases should be reported to the House forthwith. There is no reason to delay further the reporting of the within contested election cases.

Wherefore, contestants above named, each acting individually, respectfully submits that the Mississippi contested election cases of 1965 should be immediately reported out to the Committee on House Administration with a recommendation that a resolution to unseat all the contestees therein be reported to the full House of Representatives forthwith.

ARTHUR KINOY,
WILLIAM M. KUNSTLER,
New York, N.Y.
Mr. BENJAMIN E. SMITH,
New Orleans, La.
MORTON STAVIS,
Newark, N.J.
WILLIAM L. HIGGS,
Washington, D.C.

SEPTEMBER 13, 1965.

Mr. GOODELL. Mr. Chairman, I think we should compliment both our colleagues, Mr. Stavis, Mr. Kinoy, and their group for a very good presentation. I think it has been very helpful to our subcommittee.

Mr. STAVIS. Thank you very much for your courtesy.

Mr. ASHMORE. You have done a good job on both sides. Now we have to try to crack the nut open to see what the proper conclusion is.

Mr. COLMER. Mr. Chairman, in view of what has been said, and I am certainly not going to open it up, on behalf of the delegation, we would like to express our appreciation for your very attentive consideration of our problem.

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 CASES IN THE FIVE CONGRESSIONAL DISTRICTS OF THE STATE OF MISSISSIPPI, EIGHTY-NINTH CONGRESS, FIRST SESSION.

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 203, 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

STATUTES AND PRECEDENTS OF LAW GOVERNING CONTESTED ELECTIONS CASES IN THE HOUSE OF REPRESENTATIVES

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. 338.)

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. 408; 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. 408.

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. 28, 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, 1878, 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, 1878, ch. 24, § 3, 17 Stat. 408.

Sec. 221. Notice attached to depositions.

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. 119, sec. 1, 18 Stat. 338; 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. Kirwan*. (See H. Res. 54, agreed to Jan. 10, 1941.

Secs. 209, 210, 211, 214, 216, 217, 218, 219, 221, 222, 223, 224, 225, and 226.

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. 285, 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 Supr's* 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 extrajudicially 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, 1963:

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. Kuns 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 735–736, pages 950–958:

Sec. 735. 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

AUGUSTA WHEADON v. THOMAS GERSTLE ABERNETHY

FROM THE

FIRST CONGRESSIONAL DISTRICT OF MISSISSIPPI

TESTIMONY FOR THE CONTESTANT

NOTICE OF INTENTION TO CONTEST THE ELECTION PURSUANT TO TITLE 2, UNITED STATES CODE, SECTION 201, AND/OR ARTICLE I, SECTION 5, OF THE CONSTITUTION OF THE UNITED STATES AND THE AMENDMENTS THERETO, OF THOMAS GERSTLE ABERNETHY, AS A MEMBER OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES FROM THE FIRST DISTRICT OF MISSISSIPPI

To THOMAS GERSTLE ABERNETHY, *Okolona, Miss.:*

The undersigned hereby notify you, pursuant to title 2, United States Code, sections 201–226 and/or article I, section 5 of the Constitution of the United States and the amendments thereto, 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 First Congressional District of Mississippi.

You, Thomas Gerstle Abernethy, were purportedly nominated by the "regular" Democratic Party of Mississippi before or at its primary election of June 2, 1964, hereinafter referred to as the "primary election," from which Negroes are and have been regularly and systematically excluded by illegal and unconstitutional registration procedures and by intimidation, harassment, economic reprisal, property damage, terrorization and violence, and purportedly elected at the general election of November 3, 1964, hereinafter referred to as "the general election," by a vote claimed to be 60,052 out of a total of 204,244 persons of voting age in this congressional district [1] an electorate from which Negroes were and are regularly and systematically excluded by the same methods, techniques, and devices indicated above.

I, Augusta Wheadon, am a Negro citizen of the State of Mississippi and a duly qualified elector residing in the First Congressional District of Mississippi and was such on June 2 and November 3, 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.

[1] Source, 1960 Report of the Census.

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	118,890
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 documents are 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 the district which have been collected in the record on appeal in *United States* v. *Mississippi*, *supra* (p. 415 et seq.), a document on file with the Clerk of the Supreme Court of the United States, or from sources as otherwise indicated, are as follows:

Chickasaw County:[1]	
6,366 eligible whites registered (46.5 percent)	3,054
3,054 eligible Negroes registered (0.03 percent)	1
Lowndes County:[1]	
16,460 eligible whites registered (50.5 percent)	8,312
8,312 eligible Negroes registered (1.1 percent)	95
Oktibbeha County:[2]	
8,423 eligible whites	(3)
4,952 eligible Negroes registered (2.5 percent)	128

[1] Registration figures from complaint in *United States* v. *Allen*, appendix A–1.
[2] Registration figures from complaint in *United States* v. *Henry*, appendix A–2.
[3] Substantial number registered.

The foregoing figures have a special significance in that 26.1 percent of the adult population of this district are Negroes, yet only 2.94 percent are permitted 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 title 2, United States Code, section 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

[3] Vol. 1, 1961 U.S. Commission on Civil Rights Report, pp. 272–277.

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.

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 prerequisite 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 commissioners. 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 qualifications 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 obligation 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 the 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 ap-

propriate 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 regis-

tered 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 paragraphs 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 applicants 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 five suits in respect to counties within the First 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. *Allen* (Chickasaw County).
United States v. *Henry* (Oktibbeha County).
United States v. *Mathis* (Benton County).
United States v. *Mississippi* (Lowndes County).
United States v. *Simpson* (Chickasaw County).

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

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 First 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 Organizations, 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 2 U.S.C. 201 et seq. Certain representative examples of these acts of terror and violence in this congressional district are as follows:

June 8, 1964: Five voter registration voters were severely beaten by a Mississippi highway patrolman near Columbus. One worker was struck in the face with a blackjack.

June 26, 1964: Seven voter registration workers were arrested for distributing literature without a permit in Columbus.

June 29, 1964: In Columbus, a restaurant owner who serves voter registration workers, was threatened for so doing.

June 29, 1964: Six carloads of whites drove up on the lawn of a home in which voter registration workers lived in Columbus.

July 8, 1964: Three voter registration workers were arrested on trespass charge after stopping at a gas station in Columbus for soft drinks. Bail was set at $500 to $1,000 each.

July 19, 1964: Two voter registration workers were detained in jail in Aberdeen after being picked up as suspicious strangers and refusing to be driven out of town and left on the highway by the police.

October 31, 1964: A local teenaged Negro freedom vote worker was shot at by a white man from a passing car in Aberdeen.

October 31, 1964: The Antioch Baptist Church, 7 miles south of Ripley, was burned to the ground. The church, site of an FDP rally the night before, has long been used for civil rights activities.

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.

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 2 U.S.C. 201 et seq.

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 14th and 15th 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 recognized, 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 30 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 First 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 U.S.C. 241–242; 42 U.S.C. 1971 et seq.; 42 U.S.C. 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 yoters by reason of the systematic exclusion of Negro citizens from the electoral process.

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.

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) Granting the undersigned Augusta Wheadon, 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 serve 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.

(Signed) AUGUSTA WHEADON.

STATE OF MISSISSIPPI,
County of Hinds, ss:

Personally appeared before me the undersigned authority in and for the county and State aforesaid the within named Augusta Wheadon, and 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 4th day of December 1964.

[SEAL] H. C. LATHAM,
Notary Public.

My commission expires May 27, 1967.

CERTIFICATE

UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

I, James P. Coleman, attorney at law, Ackerman, Miss., counsel for Representative Thomas G. Abernethy, of the First District of Mississippi, 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 deliver a true copy of the within answer of Thomas G. Abernethy to Mr. William M. Kunstler, attorney for Augusta Wheadon and Mr. Kunstler did receive the same from me and did in writing acknowledge service of same on the back page thereof.

Witness, my signature this the 4th day of January 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 THOMAS G. ABERNETHY FROM THE FIRST DISTRICT OF MISSISSIPPI

Answer of Thomas G. Abernethy

TO AUGUSTA WHEADON (address unknown):

In good faith obedience of the provisions of article 1, section 5, clause 2 of the U.S. Constitution and of sections 201–226 of title II, chapter 8, of the United States Code, Thomas G. Abernethy, the qualified, duly elected, certified, and commissioned Member-elect of the House of Representatives from the 1st 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 at any point in your purported written notice of contest name the county, city, town, post office, or street number of your usual place of abode. Your notice was purportedly notarized in Hinds County, which is in another congressional district. You wholly failed to comply with an indispensable rule of due process which requires any person who is seeking to invoke the aid of any tribunal to state his address and to state where he may be found for the service of answers or other process. You have not stated where you may be found for personal service of the answer required by section 202, title II, chapter 7 of the United States Code. You have thus, in effect, issued an unsigned notice of the kind expressly condemned by the House of Representatives in House Resolution 230, 85th Congress.

For this reason your purported contest should be dismissed.

2. Someone attempted to serve the purported notice of contest upon the Member-elect by sending it to his office (during his absence) in the hands of two individuals who placed it on a desk in the presence of Mrs. Abernethy but who at the same time refused to identify themselves by name or other designation whatsoever. It is submitted that this manner and method of purportedly serving a notice of contest is fatally defective as not constituting either personal or substituted service of notice. Moreover, it is per se beneath the dignity and notice of the House of Representatives.

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

3. By its own terms, your purported contest is not a contest. It cannot be considered one for the reason that you were not a candidate for Congress against Thomas G. Abernethy in either the primary or the general election. Your name did not appear on any ballot in any election nor do you claim to have received

any vote whatsoever in any election. See Report No. 1423, 78th Congress, 2d session, May 5, 1944. Indeed, Thomas G. Abernethy was unanimously nominated and unanimously elected.

A contest of an election is a well-defined procedure by which one seeks to try title to the office involved, claiming himself to have been elected. Since Thomas G. Abernethy was unanimously nominated and unanimously elected every qualified elector in the district assented to his election and same cannot now be contested (95 U.S. 360).

For this reason your purported notice should be dismissed.

4. 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.

5. 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 entitled. 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.

6. 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 hasassment 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 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 time 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 law suit, 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 note 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 Thomas G. Abernethy, 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, Augusta Wheadon, 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 31, 1964.

(Signed) THOS. G. ABERNETHY,
Member of Congress-elect, First District of Mississippi, House Office Building, Washington, D.C.

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

(Signed) JAMES P. COLEMAN,
Attorney at Law,
Ackerman, Miss.,
Counsel for the Member-elect, Thomas G. Abernethy.

THE UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

This day before the undersigned authority in and for the jurisdiction aforesaid personally appeared Thomas G. Abernethy, personally known to me to be a Member of Congress from the First 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) THOS. G. ABERNETHY.

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

[SEAL]

TRUMAN WARD,
Notary Public.

APPENDIX TO ANSWER

At 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. Sumners, 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, Thomas G. Abernethy, Member of Congress-elect, do hereby certify that on this, the 31st day of December 1964, I did mail postage prepaid true copies of the within and foregoing answer to the U.S. marshal for the northern district of Mississippi for the purpose of personally serving the same upon Augusta Wheadon and making return of such service if the said Augusta Wheadon can be found in said district which entirely encompasses the First Congressional District of Mississippi.

I do further certify that I am delivering true copies of said answer to the Clerk of the House of Representatives.

Witness my signature, this December 31, 1964.

(Signed) THOS. G. ABERNETHY,
Member of Congress-elect, 89th Congress.

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 Sin mons, 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.,
908 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.

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)	30
(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:	
4,842 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.

[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 13 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 908:

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 recognized, 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

entitled. 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. Martines 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.

CONTESTED-ELECTION CASE

OF

ANNIE DeVINE v. PRENTISS WALKER

FROM THE

FOURTH CONGRESSIONAL DISTRICT OF MISSISSIPPI

TESTIMONY FOR THE CONTESTANT

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

To PRENTISS WALKER, *Mize, 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 Fourth Congressional District of the State of Mississippi.

As a Republican, you, Prentiss Walker, were opposed at the general election of November 3, 1964, hereinafter referred to as "the general election" by Arthur Winstead, a Democrat. Winstead was 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, terrorism, and violence by winning its primary election of June 2, 1964, from which Negroes are likewise regularly and systematically excluded by a vote of 18,886 over 5,836 for Tom Dunn (white), and 5,819 for J. O. Hollis (white). You were purportedly elected at the general election by a vote claimed to be 35,227 out of a total of 145,838 persons of voting age in this congressional district.[1]

I, Annie DeVine, 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 on 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 from the Fourth 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 election I received a total vote of 9,067 while Arthur Winstead received only 4, and you received none. Accordingly, in addition to contesting your purported election, I will, upon the basis of the freedom election, claim the seat in Congress from the Fourth Congressional District of Mississippi.

I, Annie DeVine, am a Negro citizen above the age of 25 years, a citizen by birth of the United States and a resident for many years of the Fourth Congressional District of Mississippi. I am secretary of the Mississippi Freedom

[1] Source, 1960 Report of the Census.

Democratic Party, a member of its executive committee and 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	118,890
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 documents are 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 the district which have been collected in the record on appeal in *United States* v. *Mississippi*, *supra* (p. 415 et seq.), a document on file with the Clerk of the Supreme Court of the United States, or from sources as otherwise indicated, are as follows:

Clarke County:	
6,072 eligible whites (registered 83 percent)	5,000
2,988 eligible Negroes (registered 0.03 percent)	1
Jasper County:[1]	
5,327 eligible whites (registered 56 percent)	3,000
3,675 eligible Negroes (registered 0.02 percent)	9
Kemper County:	
3,113 eligible whites (registered 100 percent)	3,218
3,221 eligible Negroes (registered 0.9 percent)	30
Lauderdale County:	
27,806 eligible whites (registered 48 percent)	13,347
11,924 eligible Negroes (registered 18 percent)	2,109
Leake County:	
6,754 eligible whites (registered 88 percent)	5,927
3,397 eligible Negroes (registered 3.4 percent)	116
Madison County:	
5,622 eligible whites (registered 97 percent)	5,468
10,366 eligible Negroes (registered 1.1 percent)	121
Newton County:	
8,014 eligible whites (registered 71 percent)	5,700
3,018 eligible Negroes (registered 2.8 percent)	104
Rankin County:	
13,246 eligible whites (registered 90 percent)	12,000
6,944 eligible Negroes (registered 1.35 percent)	94

[1] Registration figures from the complaint in *United States* v. *Hosey*, app. B.

The foregoing figures have a special significance in that 34.4 percent of the adult population of this district are Negroes yet only 2.64 are permitted 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

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 United States Code, section 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.

"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; that is, 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

[3] Vol. 1, 1961, U.S. Commission on Civil Rights Report, pp. 272–277.

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 qualifications 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 legis-

lation 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 paragraphs 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 Representatives 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 13 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 of its citizens to vote without distinction of race or color. This legislative package of bills included the following:

"(*a*) House bill 900, amended section 3218 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 3282 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 bills 822 and 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 brought at least five suits in respect to counties within the Fourth 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* (Madison County).
United States v. *Coleman* (Lauderdale County).
United States v. *Edwards* (Rankin County).
United States v. *Hosey* (Jasper County).
United States v. *Ramsey* (Clarke County).

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

B. THE DETAILS OF 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 Fourth 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 Organizations, 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, United States Code, section 201 et seq. Certain representative examples of these acts of terror and violence in this congressional district are as follows:

November 2, 1963: Four voter registration workers were held by Rankin County police for interrogation. One of the workers was hit across the knuckles with a gun by an officer who placed a gun against his head and threatened to kill him.

January 5, 1964: A voter registration worker was beaten in the Canton jail.

April 19, 1964: A cross was burned in front of the First Union Baptist Church in Meridian. The church was being used for voter registration meetings.

May 29, 1964: A Canton Negro active in voter registration work was beaten by the police on church grounds. He was arrested and left on the concrete floor of the jail for half an hour before being given medical attention.

June 16, 1964: The Mount Zion Baptist Church near Philadelphia, long used for voter registration activities, was burned to the ground and three Negroes beaten by whites.

June 21, 1964: Three civil rights workers who were the advance guard of the Mississippi summer project, a major part of whose activities was to be voter registration, were shot to death in or near Philadelphia.

June 24, 1964: A car used by civil rights workers for voter registration in Canton was hit by a bullet.

June 28, 1964: Threatening phone calls were made throughout the night to a home in which voter registration workers lived in Canton.

July 23, 1964: A civil rights worker in Canton was struck five times with a wooden cane by a white man while canvassing for voter registration.

October 30, 1964: Four freedom vote volunteers were arrested in Meridian while distributing campaign leaflets.

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 8, 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 recog-

nized, 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 * * *." You were not "chosen * * * by the people," as required by the Constitution. More than 35 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 Fourth 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 U.S.C. 241–242; 42 U.S.C. 1971 et seq.; 42 U.S.C. 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 Annie DeVine Is the Only Lawfully Elected Representative to the Congress From the Fourth 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 constituting 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 Fourth 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 Representative from the Fourth 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 Annie DeVine as the only candidate who was elected as the lawful Representative from the Fourth Congressional District of Mississippi in a free American election according to the Constitution and laws of the United States, and

(3) Granting the undersigned Annie DeVine such other and further relief as may be just and equitable.

In accordance with title 2 U.S.C. § 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) ANNIE DEVINE.

DISTRICT OF COLUMBIA, ss:

Personally appeared before me the undersigned authority in and for the county and State aforesaid the within named Annie DeVine 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 A. 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., 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 Annie DeVine, purported contestant, a true copy of the within answer of Prentiss Walker 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 PRENTISS WALKER FROM THE FOURTH DISTRICT OF MISSIPPI

Answer of Prentiss Walker

To ANNIE DEVINE (whose address is not set forth in the purported notice):

In good faith obedience of the provisions of article 1, section 5, clause 2 of the U.S. Constitution and of sections 201–226 of title 2, chapter 8, of the United States Code, Prentiss Walker, the duly and legally qualified, elected, certified, and commissioned Member-elect of the House of Representatives from the Fourth Congressional District of Mississippi for the 89th Congress, as inhabitant of Mize, Smith County, Miss., whose present business address is room 409, Cannon House Office Building, Washington, D.C., reserving all rights to which he is entitled and without admitting that a contest exists or that jurisdiction exists, hereby answers your purported notice of intention to contest, as follows:

1. You did not at any point in your purported written notice of intention to contest name the county, city, town, post office, or street number of your present usual place of abode or the name or address of your attorney. Your notice was purportedly notarized in the city of Washington, District of Columbia. You wholly failed to comply with an indispensable rule of due process which requires any person who is seeking to invoke the aid of any tribunal to state his address and to state where he may be found for the service of answers or other process. You have not stated where you may be found for personal service of the answer required by section 202, title 2, chapter 7, of the United States Code. You have thus, in effect and for all practical purposes, issued an unsigned notice of the type expressly condemned by the House of Representatives in House Resolution 280, 85th Congress.

2. You failed to serve or cause to be served personally upon me notice in writing of an intention to contest my election, which notice was required to be served upon me within the 30-day period specified by section 201, chapter 7, title 2 of the United States Code. A failure to comply with the fundamental requirement of notice is fatally defective.

For this reason your purported notice should be dismissed.

3. By its own terms, your purported contest is not a contest. It cannot be considered one for the reason that you were not a candidate for Congress against Prentiss Walker in either the primary or the general election. Your name did not appear on any ballot in any election nor do you claim to have received any vote whatsoever in any election authorized by any laws. See Report No. 1423, 78th Congress, 2d session, May 5, 1944. Prentiss Walker was unopposed in his primary, and you did not attempt to become a candidate in any primary whatsoever. The only name appearing on any ballot as a candidate against Prentiss

Walker, was the name of Arthur Winstead, the incumbent who served in Congress for 22 years.

A contest of an election is a well-defined procedure by which one seeks to try title to the office involved, claiming himself to have been elected by receiving the largest number of votes. The only person with legal standing to contest this election before the House is the defeated incumbent, and instead of contesting same, he has conceded the election of Prentiss Walker.

For this reason your purported notice should be dismissed.

4. You allege no fraud, deceit, or conspiracy 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 election as certified in the official count.

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

5. Your purported notice fails to assert that you received a majority of the votes cast for said office; on the contrary you admit that I received the majority of the votes. It fails to assert that you in fact were elected to said office by any election authorized by law. It fails to assert that you were deprived of votes to which you were legally entitled or would have received. Indeed you carefully refrain from charging that a contest would establish that you or anyone else were lawfully elected to Congress in the November 3, 1964, election, but only contend that a private straw vote entitles you to be seated.

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

6. 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 Prentiss Walker, the duly elected Representative, 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. It is important to note that this purported contest is part of a publicly announced plan to attempt to contest the entire delegation representing the State of Mississippi based upon substantially the same vague and frivolous allegations. In 1945 a similar purported group contest was disposed of in the manner as shown by exhibit A attached hereto.

7. 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 requirements of the statute.

Now by way of further answer to the purported contest as to the various vague, indefinite and general allegations and conclusions of law and fact thereof, and without admitting that a contest exists, the Member-elect further says:

8. One ground for your 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.

9. 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 voting 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 United States 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.

10. You attempt to use the allegations of six lawsuits now pending in the appropriate courts 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 United States House of Representatives.

11. 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). Since Mississippi did not legally leave the Union, it could not be readmitted.

12. Another 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. But for the purpose of pleading he denies all of said allegations and, he demands strict proof of the same if the House of Representatives should take cognisance of your purported contest. It is further pointed out that nowhere do you say that Prentiss Walker, or any person acting for him, has in any manner participated in such "exclusion," if indeed it has taken place at all. You also allege that certain acts of violence have been committed against certain Negroes in the subject district to achieve the alleged "exclusion." The Member-elect has no personal knowledge of same and you do not say that he, or any person acting for him, has in any manner participated in any such violence. For the purpose of pleading, he denies all of said allegations and he demands strict proof of same if the House considers this as a contest and rules that it is material to the issue.

13. Another ground alleged in support of your purported contest deals with the allegation that you made certain efforts to become a candidate in the general election. You failed to comply with the laws of the State of Mississippi and specifically failed to file the necessary petition within the time required by law containing the signatures of not less than 200 qualified electors of the Fourth Congressional District. You also failed to present any evidence whatsoever of any kind or character to substantiate or prove that any such petition of nomination contained the required number of names of qualified electors of the subject congressional district. You also failed to request an opportunity to present any evidence in support of said alleged petition and failed to request the issuance of any subpenas, writs, or process of any kind or character in order to secure any evidence in proof of any facts alleged in said petition, and in general completely failed to present any evidence whatsoever in support of the alleged petition, and if you felt aggrieved by a decision on the part of the State board of election commissioners, that you failed and neglected to seek redress through the courts of Mississippi or those of the United States, and thereby acquiesced in the decision of the State board of election commissioners based upon your failure to submit evidence in support of your contentions and you are now estopped to complain of the subject decision before the House.

14. You do not claim to have received any votes in the November 8, 1964, general election. The only votes you allege that you received were in a private straw vote allegedly conducted on 4 days. This was not an election, and it constitutes an affront to the dignity of the House to even contend that any public opinion poll entitles one to be seated in the Congress of the United States. The frivolous nature of this purported contest is shown by the fact that you admit that Prentiss Walker received 35,227 votes in the general election, and you only contend that in a private public opinion poll that 9,067 would have favored you if you had been a candidate. Private polls or straw votes are not elections.

15. That in addition to the aforesaid reasons set forth, the purported notice does not constitute a contest because it does not specify particularly the grounds upon which you rely, but only sets forth vague and general allegations and conclusions and immaterial facts, which I reserved the right to move to strike at the appropriate time, but for the purpose of pleading, I demand strict proof of all allegations if the House considers this a contest and considers said matters material.

16. This Congressman-elect is qualified under the Constitution and laws of the United States and the State of Mississippi. He was duly and legally elected in a fair and valid election. He has been duly certified and the certificate of his election is on file with the Clerk of the House of Representatives; therefore, he submits that he is entitled to represent the Fourth Congressional District of Mississippi in the 89th Congress.

CONCLUSION

The Member-elect therefore contends that under the law and the precedents of the House of Representatives you, Annie DeVine, have wholly failed by your purported notice of contest to specify particularly any valid grounds of contest, that there is no valid contest, and you are entitled to no relief as a purported contestant.

Witness my signature this December 31, 1964.

(Signed) PRENTISS WALKER,
Member of Congress-elect, Fourth District of Mississippi.

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

(Signed) B. B. MCCLENDON, Jr.,
Attorney at Law,
903 Deposit Guaranty Bank Building, Jackson, Miss.,
Attorneys for Prentiss Walker.

THE UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA,
CITY OF WASHINGTON.

This day personally appeared before me the undersigned authority in and for the jurisdiction aforesaid, Prentiss Walker, personally known to me to be a Member-elect of Congress from the Fourth Congressional 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) PRENTISS WALKER.

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

[SEAL] THOMAS J. LANKFORD,
Notary Public.

My commission expires March 15, 1968.

EXHIBIT A

At 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. Sumners, long-time 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.'

"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."

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 em-

ployees 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 20

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.

CONTESTED-ELECTION CASE

OF

VICTORIA JACKSON GRAY v. WILLIAM MEYERS COLMER

FROM THE

FIFTH CONGRESSIONAL DISTRICT OF MISSISSIPPI

TESTIMONY FOR THE CONTESTANT

NOTICE OF INTENTION TO CONTEST THE ELECTION PURSUANT TO TITLE 2, UNITED STATES CODE, SECTION 201, OF WILLIAM MEYERS COLMER, AS A MEMBER OF THE HOUSE OF REPRESENTATIVES OF THE CONGRESS OF THE UNITED STATES FROM THE FIFTH DISTRICT OF MISSISSIPPI

To WILLIAM MEYERS COLMER, *Pascagoula, 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 8, 1964, to the House of Representatives of the United States from the Fifth Congressional District of the State of Mississippi.

You, William Meyers Colmer, were purportedly nominated by the "regular" Democratic Party in 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, terrorism, 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 83,120 out of a total of 244,955 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 by Rev. John Cameron, a Negro, 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 883 votes to your 30,398 votes. In the primary election two other white candidates, Edward Khayat and Ben Walley received 15,869 and 2,466 votes, respectively.

I, Victoria Jackson Gray, 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 on 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 from the Fifth Congressional District in the freedom election held in Mississippi from October 30 to November 2, 1964, in which said election

[1] Source: 1960 Report of the Census

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 election I received a total vote of 10,138 as against 0 for you. Accordingly, in addition to contesting your purported election I will upon the basis of the freedom election claim the seat in Congress from the Fifth Congressional District of Mississippi.

I, Victoria Jackson Gray, am a Negro citizen above the age of 25 years, a citizen by birth of the United States and a resident for many years of the Fifth Congressional District of Mississippi. I am a member of the executive committee of the Mississippi Freedom Democratic Party and as its national committeewoman attended the Democratic National Convention in Atlantic City in August of 1964. In addition, I am State supervisor of the Southern Christian Leadership Conference citizenship education program, and the director of the Hattiesburg voter registration program. In the primary election I was an unsuccessful candidate for a seat in the U.S. Senate.

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	118,890
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 documents are 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 the district which have been collected in the record on appeal in *United States* v. *Mississippi*, *supra* (p. 415 et seq.), a document on file with the Clerk of the Supreme Court of the United States, or from sources as otherwise indicated, are as follows:

Covington County:	
5,829 eligible whites registered (75 percent)	3,901
7,082 eligible Negroes registered (3.5 percent)	202
Forrest County:	
22,431 eligible whites registered (57 percent)	12,655
7,495 eligible Negroes registered (0.3 percent)	22
George County:	
5,276 eligible whites registered (67 percent)	3,510
580 eligible Negroes registered (1.7 percent)	10
Greene County:	
3,518 eligible whites registered (85 percent)	3,000
859 eligible Negroes registered (5 percent)	43

Jefferson Davis County:	
3,629 eligible whites registered (99 percent)	3,600
3,222 eligible Negroes registered (2.3 percent)	76
Lamar County:	
6,489 eligible whites registered (91 percent)	5,593
1,071 eligible Negroes registered (0 percent)	
Marion County:	
8,997 eligible whites registered (100 percent)	9,540
3,630 eligible Negroes registered (10 percent)	363

The foregoing figures have a special significance in that 20.8 percent of the adult population of this district are Negroes yet only 11.5 percent are permitted to vote.[2]

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 United States Code, section 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.

"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.

[2] Vol. 1, 1961 U.S. Commission on Civil Rights Report, pp. 272–277.

"(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 induct 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 constituton 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 qualifications 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 for Forrest County. At the hearing, the United States was permitted to inspect the registration application forms of 13 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 challege 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) The 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 beaf 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 four suits in respect to counties within the Fifth 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. *Daniel* (Jefferson Davis County).
United States v. *Green* (George County).
United States v. *Lynd* (Forrest County).
United States v. *Mikell* (Marion County).

Copies of some of the foregoing complaints are attached hereto as appendix B–1 through B–4.

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 Fifth 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 Organizations, 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, United States Code, section 201 et seq. Certain representative examples of these acts of terror and violence in this congressional district are as follows:

June 23, 1964: The Knights of Pythias Hall in Moss Point, the site of frequent voter registration rallies, was fire bombed.

July 2, 1964: Two voter registration workers in Gulfport were attacked and beaten by white men while canvassing for voter registration.

July 6, 1964: Shots were fired into a voter registration meeting in Moss Point, seriously injuring a local Negro woman. The shots came from a passing car filled with white people.

July 10, 1964: A Cleveland rabbi and two civil rights workers who were canvassing for voter registration in Hattiesburg were severely beaten by two white men. The rabbi was hospitalized.

July 25, 1954: The home of two Freedom Democratic Party leaders in Hattiesburg were bombed.

October 30, 1964: Two freedom vote workers were assaulted by a white taxi driver in Hattiesburg where they had come to participate in the mock election 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 14th and 15th 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 recognized, 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 provision 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, 21 years old and upward, who have resided in this State 6 months and in the county 1 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 8 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 22 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 Fifth 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 U.S.C.

241-242; 42 U.S.C. 1971 et seq.; 42 U.S.C. 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 VICTORIA JACKSON GRAY IS THE ONLY LAWFULLY ELECTED REPRESENTATIVE TO THE CONGRESS FROM THE FIFTH 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 Fifth 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 Representative from the Fifth 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 Victoria Jackson Gray as the only candidate who was elected as the lawful Representative from the Fifth Congressional District of Mississippi in a free American election according to the Constitution and laws of the United States, and

(3) Granting the undersigned Victoria Jackson Gray 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. VICTORIA JACKSON GRAY.

DISTRICT OF COLUMBIA, *ss:*

Personally appeared before me the undersigned authority in and for the county and State aforesaid the within-named Victoria Jackson Gray 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 A. 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 William M. Colmer, 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 Victoria Jackson Gray, purported contestant, a true copy of the within answer of William M. Colmer 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 WILLIAM M. COLMER, FROM THE FIFTH DISTRICT OF MISSISSIPPI

Answer of William M. Colmer

TO VICTORIA JACKSON GRAY:

In good faith obedience of the provisions of article 1, section 5, clause 2 of the U.S. Constitution and of sections 201–226 of title 2, chapter 8, of the United States Code, William M. Colmer, the qualified, duly elected, certified, and commissioned Member-elect of the House of Representatives from the Fifth 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 William M. Colmer in the general election of November 3, 1964. It is true that you qualified and participated as a candidate for the U.S. Senate 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. 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.

It is true that you did pretend to be a candidate for Congress in a mock election held in Mississippi from October 30 to November 2, 1964. You claim to have

received 10,138 votes in this so-called freedom election, while I, William M. Colmer, received 83,120 votes in the general election. 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 publicity gimmick for propaganda purposes. It is confidently asserted that if a seat in the House of Representatives of the United States may lawfully be conferred by an unofficial plebiscite, then all of the requirements and procedures 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 is 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 general 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 entitled. Indeed, you carefully refrain from charging that a contest would establish that you were lawfully elected to Congress other than to say you will claim a seat as the result of a straw vote.

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 procedures 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 William M. Colmer, 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, Victoria Jackson Gray, 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 31, 1964.

(Signed) WILLIAM M. COLMER,
Member of Congress-elect, Fifth 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, William M. Colmer.

THE UNITED STATES OF AMERICA,
DISTRICT OF COLUMBIA.

This day, before the undersigned authority in and for the jurisdiction aforesaid personally appeared William M. Colmer, personally known to me to be a member of Congress from the Fifth 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) WILLIAM M. COLMER.

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

[SEAL]

TRUMAN WARD,
Notary Public.

APPENDIX TO ANSWER

At 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. Sumners, 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, William M. Colmer, Member of Congress-elect from the Fifth District of Mississippi, do hereby certify that on this the 31st day of December 1964, I mailed postage prepaid to the U.S. marshal for the southern district of Mississippi, true copies of the within and foregoing answer for personal service upon Victoria Jackson Gray. She does not state her place of residence in her purported petition but she is believed to be a resident of Hattiesburg, Miss.

This December 31, 1964.

(Signed) WILLIAM M. COLMER.

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 em-

ployees 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.