In The

Supreme Court of the United States

OCTOBER TERM, 1968

NO. 647

SALLIE M. HADNOTT; REVEREND WILLIAM McKINLEY BRANCH; JACK DRAKE; JOHN HENRY DAVIS; ROBERT P. SCHWENN; THOMAS WRENN; DR. JOHN L. CASHIN, JR.; and THE NATIONAL DEMOCRATIC PARTY OF ALABAMA, a corporation, for themselves jointly and severally, and for all others similarly situated,

Appellants,

v.

MABEL S. AMOS, as Secretary of the State of Alabama; EDWARD A. GROUBY, as Judge of Probate for Autauga County, Alabama; and all other Judges of Probate of the State of Alabama, jointly and severally, who are similarly situated; ALBERT P. BREWER, as Governor of the State of Alabama; MacDONALD GALLION, as Attorney General of the State of Alabama, and their successors in each office,

Appellees,

EDWARD F. MAULDIN, as Chairman of Alabama Citizens for Humphrey-Muskie, for himself and all other persons similarly situated,

Appellee-Intervenor,

and,

JAMES DENNIS HERNDON, Judge of Probate of Greene County, Alabama,

Defendant.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA AND IN THE MATTER OF CONTEMPT OF COURT BY JAMES DENNIS HERNDON.

APPELLEES' BRIEF AND APPENDIX

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OPINION BELOW

The opinion of the United States District Court for the Middle District of Alabama has not yet been reported, but a copy thereof is set forth in the Appendix hereto at Page ~~1a~~ 33 et seq.

JURISDICTION

Appellants' brief sets forth the grounds on which they seek to invoke the jurisdiction of this Court. Appellees merely point to the statement in the opinion below that the three-judge court, exercising its discretion, decided only the substantial issues concerning the Constitution of the United States. No position is taken herein concerning the matter of James Dennis Herndon, who is separately represented in the contempt proceeding.

QUESTIONS PRESENTED

Appellees take the position that the statement in Appellants' brief of the questions presented for review contains unnecessary detail. Portions thereof, particularly under Questions 3 and 4, are confusing. Further, Questions 3 and 4 appear to assume an unequal application of the statutes involved adverse to Appellants. Where the question of equality of application arises in this case, it is a question of fact. To the extent that such question was resolved by the Court below, it was resolved contrary to the contention or assumption of Appellants expressed in this section.

Appellees are defending on the merits solely, and will not respond to Question No. 7, involving only the contempt proceedings against James Dennis Herndon.

STATEMENT OF THE CASE

Counsel for Appellees have not had a complete copy of the record in this case available in the preparation of their brief. References to various of the depositions which were admitted into evidence will be made by citation of the surname of the deponent and the page of the deposition. Appellants will not undertake a complete statement of the case,

but will only call to the attention of the Court such matters as they deem necessary in correcting inaccuracies or omissions in the statements submitted by Appellants.

Dr. John Cashin, Jr., and others, began to discuss the possibility of their political party in Alabama during the 1964 Democratic Convention, deciding that they would work toward the end that in 1968 they would have candidates on the ballot (Cashin 209). They continued working through 1965 and 1966, but "really started picking up steam in 1967" (Cashin 210-212, 247). Dr. Cashin, now Chairman of the party, was Vice Chairman from the inception. Alvis Howard was the original Chairman. Cashin, Howard, and others, "made attempts" to charter the party "as far back as September of 1967," but actually incorporated it on January 12, 1968 (Cashin 8). Dr. Cashin's activity in the party was statewide. He was aware of the requirements of the Garrett Act with reference to the filing of Declarations of Intent to become a candidate for office, where the individual was running under the auspices of a political party not holding a primary election, and knew that the law required the filing of such Declaration of Intent by March 1, 1968 (Cashin 16). He caused party members to be advised of this fact, sending a communication out from the state office to all county chairmen. There also was information given concerning this fact at the January 27 meeting (Cashin 17). Dr. Cashin also was aware of the requirements of the Corrupt Practices Act of the State of Alabama, and the party had forms printed entitled at the top "Declaration of Intention, Act 243—National Democratic Party of Alabama" (Cashin 18). This form also contained a section whereby the candidate could designate himself or others as his committee to receive campaign contributions under the Corrupt Practices Act, and the entire form was printed some time in January

1968 (Cashin 19). Dr. Cashin has a personal awareness that a great many of the candidates who were named in the Certificates of Nomination filed on behalf of the National Democratic Party of Alabama (hereinafter sometimes referred to as N.D.P.A.) did not file these documents (Cashin 21). For example, although the verified complaint originally filed in this action alleges that the ten candidates of the N.D.P.A. for the position of presidential elector had filed a compliance with the Garrett Act (on the form containing the Corrupt Practices Act statement), it appears that only four of the persons actually nominated by the party for this position filed such documents, and each of these four filed his declaration for a different numbered position than that in which the Certificates of Nomination filed with the Secretary of State ultimately showed him to have been nominated (Cashin 105-110).

Although local and district candidates of the N.D.P.A. purportedly were nominated at mass meetings held at various locations on May 7, 1968, the primary election day, and statewide candidates were nominated at a convention on July 20, 1968, many of the persons whose names were submitted as nominees actually did not know of their nomination until long thereafter (Cashin 238-239). Further, it appears that no Certificate of Nominations of local or district candidates were filed with the Probate Judge of any county or with the Secretary of State at any time between May 7, 1968, and the July 20 convention (Cashin 251). It likewise appears to be the case that all certificates that were filed with the various Judges of Probate and with the Secretary of State were filed about September 4 or September 5, 1968, a bare sixty days before the general election (Cashin 251-253, 170-172; Meeks 8-15).

The Probate Judge of Jefferson County, Alabama, re-

ceived in his office alone approximately 2000 Declarations of Intention and Designation of Finance Chairman under the Corrupt Practices Act in connection with the 1968 election (Meeks 22).

There is no testimony in the record of noncompliance with the Garrett Act and the Corrupt Practices Act by other parties, or any testimony to the effect that these acts are not observed by those charged with the enforcement or execution of the election laws. While Dr. Cashin did testify that he had been told that the Corrupt Practices Act was treated casually, he also reiterated his awareness of its requirements and testified that he would suppose "that everyone obeyed the law." (Cashin 250).

Mr. Robert Schwenn, the N.D.P.A. candidate for presidential elector and for the United States Senate, is presented by Appellants as proof of their contention that Code of Alabama, Title 17, Section 148, is not observed in its requirement that the name of each candidate shall appear but one time on the ballot, and under only one emblem. It appears very clearly from his testimony, however, that Mr. Schwenn's double appearance was on the ballot during a Democratic Primary, which uses this vehicle to elect its party officers and to nominate its candidates for public office. He was a candidate in the Democratic Primary for County Judge, and he was a candidate for member of the Madison County Democratic Executive Committee in 1966. He was, by the way, elected to the County Democratic Executive Committee, a position which he still holds, in spite of his nomination for two posts by the N.D.P.A. (Schwenn 48-49). He also is Chairman of the Madison County Executive Committee of the N.D.P.A., and a member of its State Executive Committee (Schwenn 6). He participated in the regular Democratic

Primary on May 7, 1968, when that party nominated its candidate for the United States Senate (Schwenn 7).

Dr. Cashin estimates that the membership of his party throughout the State of Alabama "is in the neighborhood of 2,000 people — or better, 2,000 or 3,000." This estimate is based on the fact that they had 5,000 membership cards printed, and they have fewer than 1,000 left. He assumes that they weren't just thrown away (Cashin 243). The N.D.P.A. list of candidates submitted by its counsel to the court below reflects that it claims no candidates for local office in 50 of Alabama's 67 counties. It presents only one local candidate in each of four counties and only two in four others (Letter September 18, 1968, to Court from counsel for Plaintiffs). About September 20, 1968, counsel for Appellants undertook to file a statement with the Judges of Probate of the various counties and with the Secretary of State declaring the candidate himself the person to receive campaign contributions pursuant to Code of Alabama, Title 17, Section 274. None of these designations were signed by the candidate involved, and would have been received in the various locations no earlier than September 20, 1968 (R. 246). Exhibits A through S to Appellees' answer were separately offered below (R. 291-397); and they, along with Defendants' Exhibit 2 below (R. 278), reflect the failure of Appellants' candidates to comply with the requirements of law in their filing with the various Judges of Probate, while the various exhibits to the deposition of Mrs. Mabel Amos, Secretary of State, reflects the same deficiencies with reference to candidates for State offices, including presidential elector (Amos).

SUMMARY OF ARGUMENT

Appellees note that Appellants' brief and argument bear a marked resemblence to the brief submitted on their behalf

when this case was argued before this Court in October, 1968. Appellees' brief, likewise, will have the same degree of identity with their former brief. It is to be recalled that a motion was made for the advancement of consideration of this matter on the merits upon original submission. This motion was not resisted by Appellees, and all parties proceeded to the October hearing directing their attention toward the merits of this matter. The true merits have not changed.

Appellees' brief will not attempt to reply to those arguments of Appellants directed to the matter of the contempt proceeding against James Dennis Herndon. This is not a matter within the merits of this cause as originally constituted, and it presents an issue in which Herndon is separately represented.

The Alabama Corrupt Practices Act, Code of Alabama, Title 17, Sections 268-286, requires candidates for public office to file with designated officials, within five days after the announcement of their candidacy, a designation of a committee to receive and disburse all monies raised in the campaign. The statutory penalty for a failure of compliance is a prohibition against the name of the defaulting candidate being placed upon the ballot. This requirement is mandatory where the issue is raised before the election in Alabama. Appellants failed to comply with this Act, and are disqualified as candidates. This legislation is not subject to the Voting Rights Act of 1965, 42 U. S. C., Sections 1971-73p. It is not unconstitutional on its face, and is not shown to have been unequally applied to Appellants.

The Garrett Act, Code of Alabama, Title 17, Section 145(3), merely has the effect of requiring independent candidates for public office, or party candidates whose parties

do not conduct primary elections to file their declaration of intent to become candidates by the same date required of candidates who are members of parties conducting political party primaries, i.e., March 1, immediately preceding the primary election. Most of the statutes relating to primary elections and other nomination procedures have existed in Alabama since the early or mid-1930s. The Garrett Act imposes no new qualifications, but it systematizes the existing law by requiring all individuals who seek to become candidates for public office to manifest their intention to do so by the same deadline date. This Act is equally applied to all candidates, whether they are independents or political party candidates. It is not shown to have been unequally applied to the Appellants. The law is not unconstitutional on its face. The finding of the court below was to the effect that it is not facially unconstitutional, and that there was no showing that it had been applied discriminatorily as to these Appellants. Likewise, the three-judge court held that the provisions of the Garrett act are not subject to the Voting Rights Act of 1965.

Code of Alabama, Title 17, Section 125, provides that the appointment of polling place officials shall be made from the list presented by the two political parties having received the highest number of votes in the State in the next preceding regular election, if each of said parties presents a list. When its validity is separately considered, it is apparent that the section is constitutional. Other provisions of Alabama law give ample protection to independent candidates and smaller political parties in their desire to secure a fair and free election. Polling place officials are necessarily limited in number, but other provisions authorize watchers and representatives of candidates and parties adequate to assure that their interests are protected.

Appellants attack Code of Alabama, Title 17, Section 148, which requires that the name of each candidate shall appear but one time on the ballot and under only one emblem. The weight of judicial authority in this country is to the effect that such restrictions in State law are valid. It is apparent in the record in this case that there was no inequality in the application of this law to Appellants. The fact that they were unable to reach an accord with the Alabama Independent Democratic Party in determining upon one slate of candidates for Presidential Elector for both parties does not render the statute invalid.

Appellants' argument that rights guaranteed to them by the Constitution have been violated by their inability to vote an effective straight ticket as "guaranteed" by the provisions of Code of Alabama, Title 17, Sections 97, 157, is without merit. It would have been impossible for adherents of the NDPA to have participated fully in the election by voting only for candidates of that party. In most counties they had no local candidates, and in others, only a few. In fact, straight ticket voting is only one option given to the voter in Alabama. The applicable statutes allow every combination of voting possible on any ballot. In fact, Code of Alabama, Title 17, Section 161, authorizes any voter to vote a straight ticket for the candidates of one party, and to vote for other candidates anywhere on the ballot for positions in which his straight ticket contains no nominees. N.D.P.A. members had the right to vote a straight ticket for any candidates of that party whose names were properly placed on the ballot. The right of the voter to mark his ballot in a particular fashion, however, cannot entitle him to demand that candidates who fail to qualify shall have their names placed on the ballot in order to accommodate his desires.

ARGUMENT

The Corrupt Practices Act

Appellants complain of the intricate format of the Alabama ballot, which we shall touch upon later, and yet assert that the Alabama law imposes almost insurmountable barriers to securing position on that ballot. It must appear that, if the ballot presents any difficulty to the voter, it is because of the proliferation of parties and candidates thereon. [There were, in fact, seven political parties, plus independent candidates, on the 1968 ballot]. This alone seems to testify to some degree that satisfaction of the Alabama law by prospective candidates and their parties is not the most difficult task.

The Alabama Corrupt Practices Act, Code of Alabama, Title 17, Sections 268-286, is a venerable piece of legislation which has existed in substantially its present form since 1915. Appellants train their guns on Sections 274 and 275. The first of these requires candidates, within five days after the announcement of candidacy for any office, to file with the Secretary of State or the Probate Judge, as appropriate, a designation of committee to receive and disburse all monies raised in the campaign. Various requirements are imposed on the person or persons, including the candidate, acting as such committee. The latter section expressly provides that the failure to make such designation is a corrupt practice within the meaning of that Act, and the name of the candidate failing to make the declaration shall not be allowed to go upon the ballot.

It is apparent that Appellants' candidates, state and local, failed to satisfy the requirements of the Corrupt Practices Act. A mere handful of such designations was received.

It is now complained that Appellees have lost the right to defend this action by asserting the disqualification of any of these candidates, on the ground that its use as a disqualifying factor by Mrs. Mabel Amos, the Secretary of State, was "an afterthought." If this argument could be valid in any case, its complete lack of merit here is demonstrated by a reading of Section 274. It is only the candidates for State office who are required to file the designation of committee with the Secretary of State. This would include the candidates for presidential elector, United States Senate, and Alabama Public Service Commission. Candidates for County office file with the Judge of Probate of the county involved, while candidates for district or circuit office file with the Judges of Probate of each county embraced in the district or circuit. The 67 Probate Judges of the State of Alabama were defendants in this action. Appellants attribute to them no action which would estop them to assert the provisions of this section to disqualify candidates failing to comply. Indeed, when it is remembered that no certifications of candidacy were given to the Secretary of State or the Probate Judges until the last possible moment, Appellants acted at their peril that they might not have complied with all the mandatory provisions of the law. The disqualification is not an act of discretion on the part of the Probate Judge or the Secretary of State. If a candidate fails to satisfy the requirements of the Act, his name "shall not be allowed to go upon the ballot at such election." It appears that almost all of Appellants' certifications were filed simultaneously in the various offices, on September 5, 1968. It is odd that a party whose leadership disseminated to its members its knowledge of the requirements of the Garrett Act and the Corrupt Practices law and which claims to have nominated its local candidates on May 7, 1968, and its state candidates on July 20, 1968, withheld filing its certifications of nomination until

September 5, 1968, when almost all of them were mailed from Huntsville, Alabama. If it be maintained that they had a right to do this, it at least must be acknowledged that state and local officials charged with the execution of the law are given a reasonable time to do their duty. Mrs. Amos' notification of disqualification of the state candidates was given without delay. Her failure to list every reason why particular candidates might not be qualified cannot create in Appellants a constitutional right to assert that the same law which applies to all other candidates does not apply equally to them. In the brief for the United States as *amicus curiae,* reference is made to the "deceptive silence by officials" in connection with the failure of Appellants to satisfy the requirements of the Corrupt Practices Act. This overlooks rather completely a pertinent fact revealed by the record. It is clear, as pointed out in our Statement of the Case, that the various certifications of nomination filed with the Secretary of State and the Probate Judges throughout the State by the N.D.P.A. were filed almost simultaneously, with most of them being mailed from Huntsville, Alabama, and being received in the respective offices concerned about September 5. This was approximately 60 days before the general election, and was at the very last minute allowed by Alabama law for the ultimate certification. This political party claims to have nominated these same people for local positions on May 7, and for statewide positions in a convention on July 20, 1968. There was a silence here which perhaps the party had a right, for its own purposes, to maintain until approximately September 5. Appellees do not necessarily call it "deceptive." It is, however, rather amazing that the argument is now presented that the State and local officials involved, apparently maliciously, refrained from contacting the persons who mailed the respective certifications, or the persons named therein, and advising them that they must hurry and file a compliance with the

Corrupt Practices Act. Remember, that the record demonstrates that the N.D.P.A. leadership was aware of the requirements of the Act and had circulated the form to its members. Further, the record amply demonstrates the adequate legal advice available to the members of this party regarding the requirements of qualifying as a candidate. Appellants attempt to rely upon the fact that there are only three attorneys in Greene County, Alabama, in the Herndon matter, carrying their argument over into the argument on the merits of this case, in an effort to demonstrate that appellants were, somehow, discriminated against. It appears, as previously stated, that rather eminent Counsel were involved with the leadership of this party, and that they also were involved in giving to the leadership the advice necessary to appropriate qualification. The fact that this was not accomplished by any substantial number of the purported candidates cannot be laid at the doorstep of the Secretary of State or of the Probate Judges. The doctrine of estoppel simply does not fit here.

The three-judge court below was unanimous in its finding that the Corrupt Practices Act is not unconstitutional on its face. The majority held that it is not demonstrated to have been unequally applied. In fact, the only direct testimony in the case concerning the application of the law in this election is found in the testimony of Mrs. Amos and of Probate Judge Meeks, who stated that approximately 2,000 such declarations were filed in Jefferson County, Alabama, alone. There is no question but that these sections are mandatory before elections in Alabama. *Vickery v. King*, 202 So. 2d 148 (1967), 210 So. 2d 415 (1968); *Jones v. Phillips*, 279 Ala. 354, 185 So. 2d 378 (1966); *Owens v. Heartsill*, 279 Ala. 359, 185 So. 2d 382 (1966).

The fact that some candidates for the United States

House of Representatives were involved does not impair the efficacy of the Alabama statutes. The Federal Corrupt Practices Act is explicit in this regard. 2 U.S.C.A. §254 reads as follows:

> "This chapter and Section 208 of Title 18 shall not be construed to annul the laws of any State relating to the nomination or election of candidates, unless directly inconsistent with the provisions of this chapter and Section 208 of Title 18, or to exempt any candidate from complying with such State laws."

It is obvious that the aim of the Corrupt Practices Act is to impose certain limitations on campaign expenditures and to prohibit certain practices which are therein declared to be corrupt. Individual candidates and their supporters are the subjects of this legislation. It does not tend to promote one political party or group at the expense of another, and it clearly has no racial connotations. The statute is explicit, as are the decisions of the highest court of the State of Alabama, construing it. These decisions are binding in the absence of a Federal constitutional question, *Gilmore v. Greene County Democratic Executive Committee,* 370 F. 2d 919 (5th Cir. 1966), and this case presents no constitutional ground for declaring the statute or its application to the candidates of N.D.P.A. to be invalid. What they actually seek is a declaration by this Court that this law does not apply to them.

As an "afterthought," Appellants, in their second amendment to the complaint, undertook to maintain that the Corrupt Practices Act violates the Voting Rights Act of 1965, 42 U.S.C.A., §1973. The mere reading of §1973(b) makes it apparent that the requirement that the candidate designate

a finance committee is not a "test or device" prerequisite for voting or registration thereunder. Since the law was in effect for almost 50 years before November 1, 1964, it is not subjected to the test of §1973(c), although it would surely pass that test.

Finally, Appellants argue that, assuming the State's legitimate interests in prohibiting transactions of the type envisaged by the Corrupt Practices Act, it still must take the "least drastic alternative" to achieve its lawful end. This Court is asked to equate decisions like *Dean Milk Co. v. City of Madison,* 340 U.S. 349 (1951) and *King v. Smith,* 392 U.S. 309 (1968) with the facts of the instant case and the statute under consideration. The analogy will not fit. This case deals with the events required by valid legislative enactments to occur within the restricted time frame of an election campaign period. It is common to election laws of the various states that certain acts are required of candidates. They must file qualifying papers of some type, they customarily must pay a fee in some amount, and they must comply with corrupt practices laws. Obviously there must be some limitation of time. Appellants complain that they cannot decide when the time began to run for them. The fact is that they can be given the benefit of any starting point, and they didn't comply with the statute. A few of them filed designations of committee with their declarations of intent shortly before March 1, 1968. No others of their group ever filed a compliance with the Act until the blanket attempt by counsel about September 20. They did not file within five days of their nominations on May 7 at the "mass" meetings; they did not file within five days of nomination at the July 20 convention; and they did not file within five days of the certifications of candidacy descending simultaneously on the Secretary of State and the various judges of probate. They simply

must contend that they were not required to file at all. They ask this Court to excuse them *from a compliance required of* all other candidates. Failing this, they ask the Court to select some other "alternative" as a penalty. As the opinion below points out, disqualification is a common feature of the Corrupt Practices Acts of the various states for such omission. To deprive the state of the power to keep from its ballot one who does not comply with the laws relating to his qualification to be placed thereon is to make a shambles of the law. If it is to be done with regard to this requirement, it could be done with regard to any. The argument of Appellants merely is that these candidates are the candidates for whom certain voters would have voted had they been on the ballot and that a rejection of them from the ballot is a deprivation of the right to vote, in spite of their non-compliance with the law. The fact is that no one could have prevented the candidates of the N.D.P.A. from complying with the Corrupt Practices Act, had they undertaken to do so. Their party printed forms for them and encouraged their use. The officials of the State of Alabama received all that were filed. It is not contended that there was any attempted compliance that was aborted by an evil hand. They simply failed to try to comply with a valid law, and that law prohibits their being placed on the ballot. The decisions cited herein reflect the uniform interpretation and enforcement of that Act given by the Alabama courts, and the decision below is due to be upheld.

The Garrett Act

Appellants attack the Garrett Act, Code of Alabama, Title 17, §145(3), as if it is a statute unrelated to other election laws, devised solely for the purpose of denying them ballot position. This is a misconception. Since 1931, Title 17,

§348, has required that any person desiring to submit his name as a candidate in a primary election shall, by March 1, file his declaration of candidacy with the appropriate official of the party conducting the primary. All parties conducting primary elections have, since 1931, been required to hold them on the first Tuesday in May of election years. Title 17, § 340. Political parties may nominate by "mass meetings, beat meetings, or other meetings," or by convention. Since 1947, all meetings of any type for the purpose of nominating party candidates, or for selecting delegates to conventions to nominate candidates, have been required by law to be held on the same day as the primary elections—the first Tuesday in May of the election year. Title 17, §§ 413-416. Alabama law also provides for the placing of names of independent candidates on the ballot, where such candidates for local office present a written petition signed by 25 qualified electors, and where candidates for State or Federal office present a petition signed by at least 300 qualified electors. These petitions must be presented to the appropriate official by the first Tuesday in May, and this has been the law since 1935. Title 17, §145. Political parties are required to hold primaries if they cast, in the last preceding election, at least twenty per cent of the vote in the state or county, unless such party files with the Secretary of State its election not to do so at least sixty days before the date of the primary. Title 17, §§ 336-337. This election, in effect, must be made by March 1.

Since the requirement of Title 17, § 348, long has been that one desiring to be a candidate in the primary must file his declaration of candidacy by March 1, the effect of the Garrett Act, Title 17, §145(3), merely is to place all other candidates on the same footing. It requires that candidates of parties not holding primaries and independent candidates

must file a declaration of intent by March 1 with the Judge of Probate or the Secretary of State, as appropriate. The same starting time applies, therefore, to all candidates, by whatever means they are nominated, and whatever party emblem or independent label they may bear. The public purpose served by this legislation is that aspirants for office are impelled in their decisions to become candidates by their desire to seek and serve in particular offices. No group or individual has the opportunity to defer his decision and later make a choice based upon the weakness of the opposition in a particular race. Appellants emphasize that the March 1 date is approximately eight months prior to the general election day. The point is that it is only sixty days prior to the first Tuesday in May. It is not contended by Appellants that May 7, for example, is too early a date to require a party to make the actual selection of its nominees, whether by mass meeting or primary, although the actual import of their argument seems to be that any requirement which prevents a noncomplying member from being on the ballot is too severe and discriminatory. At any rate, it cannot reasonably be maintained that it is necessarily arbitrary and invalid for the law of a state to require that those people who seek nominations on a particular date declare their intention approximately sixty days beforehand. The law doesn't require merely that some do it. All are required to do so. This is another statutory provision that was well known to the leadership of the N.D.P.A. They had their form printed to cover it. They encouraged compliance. They simply did not get candidates.

Appellees feel that the decision of this Court on October 7, 1968, in *Williams v. Rhodes,* 89 S. Ct. 5 (1968), tends to uphold the validity of the Garrett Act, and, in fact, tends to demonstrate rather forcibly the reasonable nature of the

entire Alabama statutory scheme with reference to the acquisition of ballot position. Justice Black emphasized for the majority that, in its view, the State of Ohio had "made it virtually impossible for a new political party, . . . to be placed on the State ballots. . . ." It appears that the statutes there under attack would impose tremendous difficulty on a new party, although it might be of tremendous size, and on old parties, if they happen to have a very small number of members. The new party was required to secure petitions signed by qualified electors totaling fifteen percent of the number of ballots cast in the last preceding gubernatorial election. These petitions were required to be filed by February 7, 1968. Following this, the law still required a primary election to be conducted by the new political party, and apparently the only voters qualified to participate in such a primary would be those who had never voted before. Appellees maintain that the early filing deadline for the petitions was merely one of a bundle of burdens that this Court found to be constitutionally obnoxious in the Ohio case. As it applied to the Ohio American Independent Party, the requirement was that it file more than 433,100 signatures on petitions by February 7, and that it subsequently conduct a primary election conforming to a detailed and rigorous standard.

As stated, the Garrett Act puts every candidate, whether independent, member of a party holding a primary, or member of a party nominating in some other fashion, on an equal basis. It appears that the Ohio statutes tended to perpetuate whatever party balances previously existed, and erected formidable barriers against the creation of new parties or the launching of independent candidacies. That law also apparently prevented the casting of write-in ballots, while Alabama law makes provision therefor. Title 17, §155. Neither the Garrett Act nor any other provision of Alabama law requires any earlier starting time for one group than another. It

does not compel a political party or an independent candidate to demonstrate inordinate strength or great likelihood of winning before a name may be placed upon a ballot. It requires no demonstration of support from county to county, throughout congressional districts or otherwise, as a condition precedent to ballot position. In short, the statutes demonstrate the ease with which political parties and independent candidates may be placed upon the Alabama ballot, and the Garrett Act creates no additional obstacle. Except for a handful of counties in which the Republican Party holds primary elections, the Democratic Party is the only party conducting primaries in the state. Its candidates declare their intent by March 1 to the appropriate party officers. The candidates of all other parties, and there were six others on the Alabama ballot, filed declarations of intent before March 1. The N.D.P.A. maintains that this rule should not apply to it.

Appellees perceive that there is a material difference in the issues raised in an attack on the Garrett Act and the issues raised in three cases submitted to this Court on October 15, 1968. *Fairley v. Patterson,* 282 F. Supp. 164 (S.D. Miss. 1967), involved a legislative change from district to at-large voting for certain county officers; *Bunton v. Patterson,* 281 F. Supp. 918 (S.D. Miss. 1967) involved a legislative enactment making certain offices appointive which formerly had been elective and *Whitley v. Williams,* No. 1174 (S.D. Miss. 1967), imposed several new requirements on independent candidates in general elections. Appellants maintain that *Sellers v. Trussell,* 253 F. Supp. 915 (M.D. Ala. 1965) is a comparable case. We find it very difficult to equate an act extending a term of office with one merely requiring every candidate for every office to declare his intention by a certain date. The decision below that the

Garrett Act is not a "voting qualification or prerequisite to voting" or a "standard, practice or procedure with respect to voting" within the meaning of the Voting Rights Act of 1965, 42 U.S.C.A., §1973c, is eminently correct. Finally, it is important to note here, as in the discussion of the Corrupt Practices Act, that the N.D.P.A. candidates, obviously acting in concert, withheld all their certifications of nominations from filing with the Secretary of State and the various Probate Judges until the last moment, submitting names at that time which were in many instances different from the names of those few individuals who had filed declarations of intent. They knew the requirement of the law. They had the advice of counsel. They printed the form, and they belatedly submitted the names of many persons who had no knowledge until that time that this party claimed that they were its nominees. The right of suffrage and of political candidacy is subject to the imposition of non-discriminatory state standards. Reasonable qualifications and restrictions may be imposed, even upon the N.D.P.A. This act serves a legitimate purpose and is due to be upheld.

Appellants make the point that some of their candidates satisfied the provisions of both the Garrett Act and the Corrupt Practices Act. Indeed, some may have. They make this point with particular reference to the candidates who were omitted from the ballot in Greene County, being six candidates for local office. It is worth noting that any compliance that they undertook was compliance as candidates for nomination in the primary election of the regular Democratic Party of Alabama. Presumably, they filed declarations of intent to become candidates in that primary, and designations of themselves to serve as their committees for financial contributions and disbursements, prior to March 1, 1968, in the Probate Office. They designated themselves as members

of the regular Democratic Party of Alabama, seeking to bear its banner as its nominees in the general election. On the same date that it held its primary election—May 7, 1968—they state that they were either participating in or, at least, nominated by a mass meeting of the N.D.P.A. as candidates for those identical offices. (Affidavits of Burton, Knott, Means and Morrow, Appellant's brief, Appendix 27a-36a). Appellees make no point that it was improper for these individuals to seek to become the candidate of two different parties in this fashion, since no statute prevented this type of hedging against loss in one contest or the other. The law, however, is clear in that it requires the individual seeking such a route to identify himself and to advise the appropriate official the name of his finance committee for the stated purpose. The fact is, that when these six individuals submitted their names to the voters of Greene County in the primary, they lost. The further fact is that every qualified voter in Greene County was eligible to vote in the Democratic Primary in which these individuals lost. Appellants acknowledge this. They call Alabama a "no party" state.

The point is that it is very easy to be a political candidate in Alabama and to be placed upon the ballot. This is true whether the individual seeks ballot position as an independent, or whether a party seeks to have its slate placed upon the ballot. The attack upon both the Corrupt Practices Act and the Garrett Act results from the facts that these individuals failed to comply, and they now must maintain that these statutes are unconstitutional in order to prevail. Appellees invite a comparison of the Alabama law with the statutes stricken down in *Williams v. Rhodes,* supra. Candidates for any office as independents can secure ballot position by filing petitions with a very reasonable number of names, far less than one percent of the qualified voters within the electoral area. Political parties may nominate by mass meet-

ings requiring no particular number of persons and having no special format. The primary election procedure itself imposes the most stringent requirements, but it also is available to larger political parties. The point of all this is that it is not a fiction, as the Alabama ballot demonstrates. If this were fictitious, there would not be seven political parties and a group of independent candidates on the ballot. The Appellants are cast in the role, as to the Garrett Act, of having to contend that a law requiring every person who desires to be a candidate, by whatever method, to file his declaration of intent by March 1, should not apply to them. Long-established parties secure no exemption from this requirement. Venerable office holders seeking reelection must comply. No valid reason has been presented, it seems to us, why members of the N.D.P.A. should be excluded. It is remarked that this must occur approximately 250 days before the general election. The point is that it is only 60 days before the date on which all candidates must be nominated, whether by primary or by mass meeting. In the same context, and as a final reference to the Corrupt Practices Act, it is apparent that its accomplishment also is easy, and was as available to Appellants as to any others. It is interesting to note that Appellants stoutly maintain that they should not be compelled to comply with this Act; that the State is estopped from insisting upon compliance; and that they have substantially complied. This "substantial compliance" occurred by a telegram or other communication sent by counsel (who has no right to sign a designation of committee for a candidate), to the various Probate Judges and to the Secretary of State, *after the event* upon which they now rely as constituting an estoppel. If they didn't think that they had to comply, and if they didn't feel that they were in default, why the hurried abortive attempt at compliance?

THE SELECTION OF ELECTION OFFICIALS

In their shotgun attack on Alabama's election laws, Appellants maintain that Code of Alabama, Title 17, §125 illegally discriminates against the candidates of the N.D.P.A. in its provision that the appointment of polling place officials shall be made from the lists presented by the two political parties having received the highest number of votes in the state in the next preceding regular election, if each of said parties presents a list. Presumably, if this provision is constitutionally obnoxious, this Court should somehow find a way for the N.D.P.A. candidates to be placed in the ballot. The two matters actually do not relate. The remedy, in the event of such a finding, obviously would be that some representatives of each party would be required to be designated as polling officials. This, in the words of appellants, would be a less "drastic alternative."

The number of polling officials is limited by law. In the event of numerous parties, all obviously cannot be represented within their number. This does not, however, mean that Appellants or any other party would be deprived under Alabama law of representation at the polls, and that they would thereby be compelled to subject themselves, without any protection, to the evil motives assumed by Appellants for all those who do not agree with them politically. This position overlooks the provisions of Title 17, §126, which grants to all other parties and candidates the right to have watchers at the polls throughout the election and during the count and recapitulation of the ballots following the closing of the polls. The watchers are the special representatives of the party or candidate, while the polling officials represent the public.

Appellants then cite, as being of particular importance, Title 17, §176, with reference to assistance granted to illiter-

ate or handicapped voters. They point to the role of the polling place inspector in such assistance. We point to the fact that this statute provides that the elector requiring assistance "may have the assistance of any person he may select." He may bring that person to the voting place with him.

The contention that the requirement that electors may not remain in the polling place for more than five minutes is bad, likewise is without foundation. This provision represents an obvious effort to enable all electors to vote and to prevent any slowdown at the polls. It must be remembered that the elector having his ballot for five minutes, or being for that period of time in the voting machine booth, marks his ballot or pulls his lever with the assistance of "any person he may select."

THE REQUIREMENT THAT THE NAME OF EACH CANDIDATE SHALL APPEAR BUT ONE TIME ON THE BALLOT, AND UNDER ONLY ONE EMBLEM.

Appellants seem to base their argument that Code of Alabama, Title 17, §148, is unconstitutional on the fact that there were discussions between the N.D.P.A. and the Alabama Independent Democratic Party seeking a possible rapport between these groups with reference to the selection of candidates for presidential elector. An accord was not reached, apparently due at least in part to the fact that the N.D.P.A. wanted to bind members of the Alabama Independent Democratic Party to support the candidates of the N.D.P.A. for local office. Later, when this case was presented to the three-judge court below, counsel for Appellants represented to the court that Appellants were willing to withdraw their candidates for elector and run the Alabama Independent Democratic Party candidates for elector under the N.D.P.A.

emblem, with the result that these same individuals would be listed in two places on the ballot. A special condition of the representation was that Alabama Independent Democratic Party candidates for elector not withdraw their names from the N.D.P.A. list prior to the election, and that the Court would declare Title 17, §148, unconstitutional, with the result that the votes received by these individuals under both columns would be accumulated.

Appellees observe that, although the Alabama statutes are very liberal in allowing parties and independent candidates to secure ballot position, there is no provision for nominations to be made by Counsel in court. At any rate, the course of dealing between the Alabama Independent Democratic Party and the N.D.P.A. points up the fact that these groups were unable to reach an agreement at any point, and the N.D.P.A. now seeks to have the State of Alabama and its officials charged with the execution of its election laws bear the blame.

It might be noted in passing that Appellants have, at every opportunity, emphasized the fact that the candidates for presidential elector nominated by the regular Democratic Party were pledged to support George C. Wallace in the general election. Somehow, these are supposed to be magic words in their behalf. It seems rather obvious that no purpose of those persons who were his supporters could be served by denying N.D.P.A. elector candidates ballot position. The rather apparent effect of their being on the ballot was to dilute the vote of the Humphrey-Muskie ticket, since both the electors of the Alabama Independent Democratic Party and those of the N.D.P.A. had indicated that they would vote for that ticket. Under the provisions of Title 17, §148, these votes were not accumulated. In fact, these electors were

different people on the different slates, and the vote was cast for electors. If a Wallace purpose were being served by Appellees, they would, in this state of affairs, have encouraged the presence of N.D.P.A. electors on the ballot. The plain fact is that Appellees were not attempting to serve the purpose of any candidate or group. They were public officers performing their public duty. They had no ax to grind with the N.D.P.A. Appellants emphasize the fact that many of the persons expected to support their candidates, if on the ballot, were Negroes. This Court knows that Negroes have registered in Alabama in very substantial numbers in recent years, and are qualified electors. If, as Appellants maintain, the alleged establishment in Alabama, and the individual Appellees particularly, were fearful of such vote in the presidential election, this would merely be more reason why their selfish interest would have been served in having the N.D.P.A. remain on the ballot. The impassioned argument of Appellants simply does not fit the facts.

Appellants acknowledge that they have found no federal adjudications of the constitutionality of a statute like Title 17, §148. They cite some California and New York state court decisions in support of their position, but acknowledge that this is the minority view.

The following statement appears at 78 A.L.R. 398:

"Most of the controversy in the courts on the present question centers around the constitutionality of statutes having for their object the prevention of duplication of a candidate's name on the official ballot. Except in California and New York (the decisions in which have been liberally criticized by some of the other courts), the constitutionality of statutes prohibiting the placing of a

candidate's name more than once upon the official ballots seems to have been uniformly sustained."

THE RIGHT TO VOTE A STRAIGHT TICKET

Appellants contend that the provisions of Code of Alabama, Title 17, §§ 97, 157, were violated, and that this violation is unconstitutional, by the failure to place the "full slate" of N.D.P.A. candidates on the ballot. This "full slate" should be examined briefly. As pointed out in our statement of the case, Appellants nominated no candidates for local office in fifty of Alabama's sixty-seven counties. In four others they nominated only one local candidate. In four others only two local candidates were nominated. This statement should be modified to read that they acknowledge that they had no qualified candidates except these. Had all the N.D.P.A. candidates remained on the ballot, the voting of a straight ticket would, in most instances, have amounted only to voting for some candidates for elector, United States senator and member of the Alabama Public Service Commission. It would have been necessary for the voter, if he desired to participate fully in the election, to vote for other candidates for other positions, with the exception of candidates for Congress in some districts.

The fact is that the option to vote a straight party ticket is only one of several options which Alabama Law ordains for Alabama voters. While Title 17, §157 provides a means for straight ticket voting "if the elector desires to vote a straight ticket," §158 gratifies his wishes if he "desires to vote for a candidate not on his party ticket"; §159 accommodates him if he "desires to vote for candidates on different tickets" when two or more are to be elected to the same office; §160 accommodates him if he "desires to vote a split ticket"; §161 enables him to vote a straight ticket and to

vote for other officers when his straight ticket does not contain names of all officers; and §162 enables him to vote by write-in for persons whose names do not appear on the ballot.

Alabama law creates no "classification of people" of the type under consideration in *Wesberry v. Sanders,* 376 U.S. 1 (1963). Appellants' reliance on *Hopper v. Britt,* 203 N. Y. 144, 96 N. E. 371 (1911), demonstrates the weakness of their position. There was a classification in that case. A statute apparently denied the right to straight ticket voting to parties which had not received a certain specified minimum number of votes in the previous election. Alabama law has no such restriction. The right to vote a straight ticket, or in any other manner, is equally open to all qualified voters. It was open to members of the N.D.P.A. here to vote for any candidates of that party who might be qualified to have their names placed on the ballot. The point is, however, that the right of the elector to vote in a particular fashion cannot be maintained to cause the repeal of every law establishing conditions precedent for qualification as a candidate on the ballot.

The argument that the Voting Rights Act of 1965 was violated by the failure to place N.D.P.A. candidates on the ballot, thereby depriving certain voters of the right to vote a straight ticket *for these candidates* is specious. If the name of a prospective candidate is kept from the ballot for a valid reason, the fact that state law gives a voter options as to the manner in which he casts his ballot can't dictate that the disqualified candidate automatically is qualified, or that the state has, somehow, violated the Voting Rights Act of 1965 for failure to qualify him. The statutory provisions under attack have been the law of Alabama for a long time. The form of ballot is not unique, or even unusual. A greater

number of candidates, an increase in the number of parties, always will add to the length and complexity of a ballot. This condition creates no invalidity in the law of a state. Of course, complete simplicity of the ballot can exist in a police state, where the electors always vote a straight ticket, since there is only one. The efforts of Appellants to build, by argument, a conspiracy to deprive the N.D.P.A. of ballot position does not fit the facts. Their contentions with respect to straight ticket voting are, perhaps, the weakest of all.

CONCLUSION

Appellants attempt to have this Court focus on such matters as the Wallace candidacy for president and the failure of the N.D.P.A. and the Alabama Independent Democratic Party to reach an accord, in an effort to secure ballot position for individuals who have failed to meet the requirements of valid laws, equally enforced. The thing that they actually seek is a declaration that the law does not apply to them. They ask this Court to strike down in the twinkling of an eye at a very late date, every statute with which they failed to comply. They deferred filing their certifications of nomination to the point where any refusal of public officials to certify nominees for ballot position would be given judicial test under the pressure of time. The fact remains, however, that the wholesale accusations of devious motives and improper actions on the part of Appellants are not borne out, and the statutes under attack are manifestly non-discriminatory, serving a purpose legitimately within the power of the state to serve.

The decree appealed from upholds the constitutionality of these statutes, does not find them to have been applied in an unconstitutional manner and finds that they do not violate

the Voting Rights Act of 1965. It does not decide what the opinion refers to as "the various factual disputes of the parties which do not relate to those federal constitutional questions, and the various issues purely of state law."

The decree appealed from is due to be affirmed.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned, a member of the Bar of the Supreme Court of the United States, hereby certifies that I have served a copy of the foregoing Brief of Appellees on Honorable Charles Morgan, Jr., 5 Forsyth Street, N. W., Atlanta, Georgia 30303, Honorable Orzell Billingsley, Jr., 1630 Fourth Avenue, North, Birmingham, Alabama 35203, and Honorable George W. Dean, Jr., P. O. Box 248, Destin, Florida, Attorneys for Appellants, and upon Honorable Erwin N. Griswold, Solicitor General of the United States, Department of Justice, Washington, D. C., Attorney for *amicus curiae,* and Honorable Perry W. Hubbard, P. O. Box 2427, Tuscaloosa, Alabama 35401, Attorney for James Dennis Herndon, by mailing the same to them at their respective offices, postage prepaid.

This the 15th day of January, 1969.

Of Counsel for Appellees

APPENDIX

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF ALABAMA, NORTHERN DIVISION

SALLIE M. HADNOTT, ET AL., Plaintiffs,	)	
vs.	)	CIVIL ACTION
MABEL S. AMOS, as Secretary of State of the State of Alabama, ET AL., Defendants.	)	NO. 2757-N

Before GODBOLD, Circuit Judge, JOHNSON and PITTMAN, District Judges.

PER CURIAM:

This suit is an effort to secure places for more than 100 candidates of the National Democratic Party of Alabama (NDPA) on the ballots to be used in the general election to be held in Alabama on November 5, 1968. Numerous provisions of the election laws of Alabama are challenged as unconstitutional on their faces, applied in an unconstitutional manner, and in conflict with the Voting Rights Act of 1965, 42 U.S.C.A., § 1973-73p. A three-judge district court has been convened under 28 U.S.C.A. § 2281. Notice of suit has been given to the Attorney General and Governor of Alabama, 28 U.S.C.A. § 2284(2).

We hold that the plaintiffs properly bring this suit as a class action, and that the defendant Edward A. Grouby properly represents a class of defendants composed of the Judges of Probate of all counties in Alabama. The plaintiffs'

motion to file a second amendment to their complaint is granted.

To minimize the difficult problems which this controversy creates for public officials, candidates, and voters and to protect the interests of all insofar as possible this court entered a temporary restraining order on September 18, 1968, which is still in effect, directing that the NDPA candidates be certified by the Secretary of State as candidates, or included as candidates by Judges of Probate, as appropriate for the particular office sought.[1] The case is now submitted to us for decision on the application for a temporary injunction and on the merits for a final decree. We have considered the pleadings, many depositions of witnesses, voluminous documents, and other evidence, numerous briefs, and oral arguments by counsel.

This court, acting through a single judge, and through three judges, has not been reluctant to protect constitutional rights relating to the voting process.[2] Once this three-judge

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[1] In Alabama ballots are printed by each county for use in that county only, under the supervision of the county Judge of Probate. He must cause to be printed upon the ballot the names of all candidates who have been put in nomination and certified to him not less than 60 days previous to the day of election. Certificates of nomination for persons to be voted on state-wide, or by an entire Congressional district, judicial circuit or senatorial district, for any state or federal office, must be filed with the Secretary of State, who certifies to the Judges of Probate of the respective counties affected the names of such nominees and the offices for which nominated. Certificates of nomination for offices to be voted on by a single county are filed directly with the Judge of Probate of the county. Ala. Code (1958), Tit. 17, §§ 145, 168.

[2] **E.g.,** United States v. Alabama, 252 F. Supp. 95 (M.D. Ala. 1966) (three-judge court); Sims v. Baggett, 247 F. Supp. 96 (M.D. Ala. 1965) (three-judge court); United States v. Parker, 236 F. Supp. 511 (M.D. Ala. 1964); United States v. Cartwright, 230 F. Supp. 873 (M.D. Ala. 1964); United States v. Penton, 212 F. Supp. 193 (M.D. Ala. 1962); Sellers v. Wilson, 123 Supp. 917 (M.D. Ala. 1954).

court acquired jurisdiction of the present case by reason of an injunction being sought against enforcement of state statutes on substantial federal constitutional grounds, we acquired jurisdiction over all the claims raised in the case, state and federal.[3] But it does not follow that because a constitutional issue concerning voting or elections is properly presented to the court it necessarily should decide every contention and issue not of a federal constitutional nature which all the parties may raise about the election. This court, exercising its discretion, decides only the substantial issues concerning the Constitution of the United States. *United Mine Workers v. Gibbs*, 383 U.S. 715, 16 L.Ed. 2d 218 (1966).

2. The Corrupt Practices Law

Plaintiffs attack as unconstitutional on the face and as applied to them and their class the provisions of Tit. 17 §§ 274-275, Ala. Code (1958).[4] These sections are part of a

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[3] **E.g.**, Florida Lime & Avocado Growers, Inc. v. Jacobsen, 362 U.S. 73 (1960).

[4] "§ 274. **Committee to receive, expend, audit and disburse money or funds contributed.** — Within five days after the announcement of his candidacy for any office, each candidate for a state office shall file with the secretary of state, and each candidate for a county office or the state house of representatives shall file with the judge of probate of the county, and each candidate for a circuit or district office, including the state senate, shall file with the judge of probate of each county which is embodied in said circuit or district, a statement showing the name of not less than one nor more than five persons elected to receive, expend, audit, and disburse all moneys contributed, donated, subscribed, or in any way furnished or raised for the purpose of aiding or promoting the nomination or election of such candidate, together with a written acceptance or consent of such persons to act as such committee, but any candidate, if he sees fit to do so, may declare himself as the person chosen for such purpose. If the statement required herein shall have been postmarked at any United States post office not later than midnight of the fifth day after the announcement of his candidacy, the candidate shall be deemed to have complied with the requirements of this section as to filing such state-

comprehensive state Corrupt Practices Law enacted by the Alabama legislature in 1915. Section 272 establishes the maximum amounts that various candidates may spend in their races. Section 277 requires that contributions made for or on behalf of the candidate be made to the committee named under § 274. Under § 279 the Committee must, within 30 days after the election, file (with the Secretary of State or the Judge of Probate, depending on the office sought) an itemized sworn statement of expenditures and contributions. Under § 281 these are public documents, open to inspection by any citizens. If the post-election statement is not made the candidate may not be certified as nominated or elected even though otherwise successful. Tit. 17, § 281.

The state has a legitimate interest in seeking to supervise spending in political campaigns. We have no illusions about the Corrupt Practices Law working perfectly. The

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ment within five days after the announcement of his candidacy. Such committees shall appoint one of their number to act as treasurer, who shall receive and disburse all moneys received by said committee; he shall keep detailed account of receipts, payments and liabilities. The said committee or its treasurer shall have the exclusive custody of all moneys contributed, donated, subscribed, or in any wise furnished for or on behalf of the candidate represented by said committee, and shall disburse the same on proper vouchers. If any vacancies be created by death or resignation or any other cause on said committees, said candidate may fill such vacancies, or the remaining members shall discharge and complete the duties required of said committee as if such a vacancy had not been created. Non candidate for nomination or election shall expend any money directly or indirectly in aid of his nomination or election except by contributing to the committee designated by him as aforesaid. (1915, p. 250; 1959, p. 1036, appvd. Nov, 13, 1959).

"§ 275. **Candidate acting as own committee.** — Any person who shall act as his own committee shall be governed by the provisions of this article relating to committees designated by candidates. Failure to make the declaration of appointment or selection by any candidate as herein required is declared to be a corrupt practice, and in addition the name of such candidate so failing shall not be allowed to go upon the ballot at such election. (1915, p. 250.)"

proliferation of committees other than those named by the candidate himself is a fact of political life in Alabama. But the requirement that the candidate himself designate a committee is an appropriate and reasonable means by which the state may seek to achieve a legitimate end.[5]

Plaintiffs claim that disqualification of the candidate is an excessively harsh penalty for violation of § 274, and therefore an unconstitutional deprivation of due process of law, because less drastic alternatives are available, citing *Dean Milk Co. v. City of Madison,* 340 U.S. 349, 95 L.Ed. 329 (1951), *Sherbert v. Verner,* 374 U.S. 398, 10 L.Ed. 2d 965 (1963) and *Griswold v. Connecticut,* 381 U.S. 479, 14 L.Ed. 2d 510 (1965). Section 275 provides for two penalties when the candidate fails to designate his finance committee —the failure is declared a corrupt practice, and his name "shall not be allowed to go upon the ballot." One guilty of a corrupt practice is guilty of a misdemeanor and must be fined not more than $500 and also may be imprisoned at hard labor for not more than six months. Tit. 17, § 332. Disqualification of the candidate is a direct and readily available means of securing compliance. But the remedy of refusing the candidate a place on the ballot has been employed repeatedly.[6] We cannot accept the argument of plaintiffs that a criminal penalty is an alternative so much more desirable that it renders unconstitutional the remedy of denial of

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[5] In Bottomly, John S., **Corrupt Practices in Political Campaigns,** 30 Boston Univ. L. Rev. 331 (1950) the corrupt practices statutes of most of the states were tabulated. At that time 36 states authorized non-criminal sanctions of denial of a place on the ballot or disqualification for or denial of the office, for various violations of their corrupt practices statutes. Eleven states are shown as authorizing denial of a place on the ballot.

[6] E.g., Herndon v. Lee, 281 Ala. 61, 199 So. 2d 74 (1967); Jones v. Phillips, 279 Ala. 354, 185 So. 2d 378 (1966); Owens v. Heartsill, 279 Ala. 359, 185 So. 2d 382 (1966); **cf.** McCutcheon v. Thomas, 261 Ala. 688, 75 So. 2d 649 (1954); Rep. of Atty. Gen. of Ala., 1934-36, p. 611.

a place on the ballot, or that alone it is even an effective alternative. The undesirability of criminal action as the sole remedy is shown by the present case. The great majority of the NDPA candidates seek relatively minor local offices, are candidates for the first time, and are claimed to be in most instances unfamiliar with election laws and of procedures required of them, and in some instances unaware of their nominations. The suggestion that all of them are to be exposed to criminal action is not tenable.

Nor can we accept the contention that it is constitutionally impermissible to enforce the penalty of denial of a place on the ballot unless the candidate is guilty of fraud or intent to defraud. This misconceives the purpose and effect of the finance committee requirements, which provide for a publicly designated agency through whose hands funds are received, disbursed and audited, and whose statements are filed and open for public inspection. The emphasis is on the spotlight of available public scrutiny.[7]

The Alabama courts uniformly, though at times reluctantly,[8] have enforced violations of §§ 274-275 as mandatory if raised in a direct proceeding prior to the election. *Herndon v. Lee, supra; Jones v. Phillips, supra; Owens v. Heartsill, supra; cf. Garrett v. Cunningham, supra,* though only directory if raised after the election. Section 275 has not been amended since its enactment in 1915. Both sections were reenacted in 1940. Section 274 was amended in 1959 to clarify the filing of committee designations by candidates for the state legislature and the measurement of the five-day

[7] In Jones v. Phillips, **supra,** the Alabama Supreme Court noted that "corrupt" as used in the Corrupt Practices Act did not brand the candidate who failed to comply as personally corrupt in the generic sense of evil or fraudulent. **Accord,** Vickery v. King, 281 Ala. 303, 202 So. 2d 148 (1967).

[8] **See** Jones v. Phillips, 185 So. 2d at 381.

period. The mandatory penalty was not changed. "This [the requirement of filing the appointment of a finance committee] was just as much a part of his qualification as a candidate as was the paying of his qualification fee to the proper chairman of his party." *Jones v. Phillips*, 185 So. 2d at 380.

When the Secretary of State declined to certify to the Judges of Probate NDPA candidates who filed nominations in her office she did not assert failure to comply with the Act as one of her motivations. Her motivation is irrelevant to a judicial determination of whether the Act is constitutional on its face.

The court holds that §§ 274-275 are not unconstitutional on their faces.

No unconstitutional application of the Corrupt Practices Law by selective enforcement has been proved with respect to the NDPA candidates, for filings with the Secretary of State or filings with the Judges of Probate. Selective enforcement could arise from back-dating committee designations filed late or from failure by the Secretary of State or the Judges of Probate to deny certification or a place on the ballot to candidates other than the plaintiffs' class who either did not file or filed late. As to the former, there is no evidence of any practice in the offices of the Secretary of State or any one of the 67 Judges of Probate of accepting late filings as timely. The evidence as to the Secretary of State is that filing dates are carefully watched and late filings not accepted.

As to the latter—selective application of the penalty—we are asked to infer that there is enforcement with an uneven hand by the fact that in this lawsuit the defendant

state officers assert that members of the plaintiff class are not entitled to a place on the ballot because of failure to comply with § 274. This misconceives both the duties of this court and the facts. The plaintiffs seek an affirmative injunctive order requiring that their class be put on the ballot. As a prerequisite to that relief at the hands of the court they must show that they are qualified to be on the ballot. From the beginning this court has made it clear that if it, rather than state officers, was to be an instrumentality for placing names on the ballot, then in the discharge of that duty it wanted to order no names put on—if it ordered any—except those of qualified candidates. The actions of the parties are not the measure of the court's own obligation to enforce laws, if valid, that are for the benefit not of the parties or a few public officers but of the public at large.[9]

Turning to the facts, designations of finance committees are filed with the Secretary of State or Judges of Probate.[10] There is no substantial evidence of lack of compliance by other candidates with §§ 274-275 in this or any other election, nor of any custom or practice by state officers at state or county level, of not acting thereon. All, or most, of the handful of reported cases in the Alabama Supreme Court are suits brought by candidates or voters to force the public officer concerned to deny a place on the ballot to a non-

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[9] To that end at the hearing on temporary restraining order the court directed defense counsel to notify plaintiffs' counsel of any reasons other than those raised in this suit and known to the defendants why any members of the plaintiffs' class did not qualify for the offices sought.

[10] The offices sought by a great majority of the NDPA candidates are such that they deal with Judges of Probate in election matters, including filing in the appropriate county probate offices the designations of finance committees. The Secretary of State is a candidate for presidential elector, which causes us to examine her acts with unusually careful scrutiny. The Judges of Probate are not such candidates.

complying candidate. But the extent of enforcement, or lack of enforcement, by routine administrative action which reaches neither courts nor newspapers, or by legal action in the circuit courts, is not proved, either as to the office of the Secretary of State or as to any one or more of the 67 Judges of Probate. There is no evidence of practice, consistent or otherwise, or that this is the first time the Corrupt Practices Law has been invoked at either state or county level.[10a] We We cannot find a law unconstitutional on the presumption, unproved assumption, or guess, with respect to other non-complying candidates, in this or other years, that the Secretary of State and the Judges of Probate have followed a consistent practice of not performing their duties.

The requirements of §§ 274-275 do not violate the Voting Rights Act of 1965, 42 U.S.C.A. § 1973. The requirement of designating a finance committee is not a "test or device" prerequisite for voting or registration under § 1973(b). We need not decide whether it is a "standard, practice, or procedure with respect to voting" under § 1973(c), because it was in existence before November 1, 1964.[11]

Therefore, the court declares that §§ 274 and 275 of Tit. 17 are not unconstitutional on their faces, are not proved to be unconstitutional in their application, and are not violative of the Voting Rights Act of 1965.

3. The Constitutionality of the Garrett Act

The Garrett Act, Act No. 243 of the Alabama legislature, 1967 Special Session, adopted May 11, 1967, prohibits the cannot infer selective enforcement under these circumstances.

[10a] The Reports of the Attorney General of Alabama reveal that from time to time Judges of Probate have sought his official opinion with respect to non-compliance and putting names on the ballot. Rep. of Att'y. Gen. of Ala. 1934-36, p. 611; Jan.-Mar. 1940, at 360.

[11] See cases cited in text at note 14, **infra.**

Secretary of State (for state, district and federal offices) from certifying and the Judge of Probate (for county offices) from causing to be printed on the ballots for a general election the name of a candidate who does not file a declaration of intention to become a candidate for such office on or before the first day of March of the year in which the general election is held. If the declarant is a candidate for nomination by a political party he must designate the party whose nomination he seeks; otherwise he must state that he will be an independent candidate for the office.

The requirement of the statement of intent must be viewed in context as a part of the complete Alabama electoral process.

Alabama provides for nomination of candidates to run in the general election by primary, party convention, mass meetings, and petitions. Also the ballot in the general election is required to provide space for write-in ballots for any other persons for whom the voters desire to cast ballots. Tit. 17, § 155.[11a]

The first Tuesday in May is a key date in all the processes of nomination for which Alabama law provides. Primary elections are held on the first Tuesday in May. Tit. 17, § 340.[12] If a party nominates by mass meeting it must hold its meeting on the first Tuesday in May at or in the vicinity of a polling place. Tit. 17, §§ 413-414. One nominated by petition must

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[11a] None of these procedures is new, all having been in effect for many years.

[12] A party which cast more than twenty per cent of the vote in the last general election in the state, or in the county, must hold a state, or county, primary unless it files with the Secretary of State its election not to do so at least 60 days before the date of the primary. A choice so made may not be changed until after the next general election. Tit. 17, § 336-337.

file his petition with the Secretary of State or Judge of Probate, as appropriate, before the first Tuesday in May. Tit. 17, § 145. Delegates to the convention of a party which will nominate by convention are chosen at meetings on the first Tuesday in May. Tit. 17, §§ 413-414.

One desiring to be a candidate in the primary must file his declaration of candidacy with his party by March 1. Tit. 17, § 348. This keys in with the requirement of §§ 336-337, referred to above, that a party which by reason of its voting strength is within the primary law must act by 60 days before the first Tuesday in May if it wishes to use another method of nomination.

Prior to the Garrett Act there necessarily was considerable prenomination activity before the first Tuesday in May, which required or tended to require commitment of intent before that date though not necessarily on the same day and not in all instances as early as March 1. The candidate who sought nomination by primary declared with his party by March 1 and historically was campaigning until early May. Those seeking nomination by mass meetings would have to seek support for votes also to be cast on the first Tuesday in May but cast in a mass meeting rather than by a primary ballot, and one seeking nomination by petition would have to obtain the required signatures in order to file the petition on time. And the person seeking nomination by convention would have to find, and elicit support for, favorable delegates who would be chosen at mass meetings held on the first Tuesday in May.

The Garrett Act adds to this nominating system the requirement that all candidates state their intent by March 1, by filing a statement of intent (except for one seeking nomination by primary, and his declaration with his party serves in lieu of the statement of intent).

The Alabama electoral system does not reserve the ballot for established major parties and exclude minor ones. There are seven parties on the November general election ballot.[13] This general election ballot is neither unique nor even unusual. No certain number of persons is required to constitute a party. No particular formality of organization is required. There need not be a statewide organization or affiliation with a national party or national convention. To be nominated by petition as an independent candidate for a state or federal office one needs only 300 signatures, for a county or municipal office only 25 signatures. Tit. 17, § 145.

Thus the Garrett Act is not a part of a pervasive system or scheme to keep minor parties and independents off the ballot and reserve the political domain for the two major parties.

There is no evidence that enactment of the Garrett Act was in any degree racially motivated or directed at NDPA. The only evidence before us tends to show what is generally accepted as the reason for its enactment, that it was intended to correct what the legislature viewed as an inequity against a party nominating by primary (presently only the Democratic Party statewide; there are Republican primaries in some counties), arising from the fact that primaries nominting by other methods could hold back deciding upon candidates and selectively choose and place their candidates against the nominees or potential nominees by primary who appear most vulnerable.

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[13] Alphabetically they are: Alabama Independent Democratic Party, American Independent Party of Alabama, Democratic Party, Prohibition Party, Republican Party, The Alabama Conservative Party, The National Democratic Party of Alabama. Five are running full slates of ten candidates for presidential electors. One is running a partial slate.

Viewed in the framework of the total Alabama electoral system the establishment of a fixed time of March 1, 60 plus days from May 7, for all candidates to commit themselves is not constitutionally impermissible. Certainly there is no constitutional right vested in voters or candidates that all parties and candidates begin the formal electoral process with the same starter's gun. But there is no constitutional prohibition against a state legislature's requiring by reasonable means, as an incident to what it deems fair, orderly and effective election machinery, that all candidates must begin the formal election process by a fixed date.

Plaintiffs appear to contend that time alone is an independent vice which makes March 1 a constitutionally impermissible date, bearing in mind especially the length of time from March 1 until November. If time were unrelated to orderly, fair, and nonexclusory nominating procedures, or were a part of an overall exclusory system or scheme, the argument would have more force. Plaintiffs rely on *Williams v Rhodes* and *Socialist Labor Party v. Rhodes,* Cir. No. 68-224 and 68-225 (S.D. Ohio, Aug. 29, 1968), decided by a three-judge district court in Ohio on August 29, 1968, argued to the Supreme Court on October 7, 1968. Those cases were concerned with Ohio election laws. By a series of legislative enactments Ohio had changed its previous election laws (allowing nomination by primary and by petition, and allowing write-in votes) so as to effectively eliminate from its electoral processes all minority parties and independent candidates and also abolish write-in ballots, thereby keeping the political arena for the Democratic and Republican parties. Only presidential electors were involved. In connection with its discussion of the impossibility of qualifying independent candidates for presidential electors, and against the backdrop of impossibility of getting a minority party on the ballot, the

court described as unreasonable the requirement that a petition for nomination to state office as an independent must be filed 90 days before the primary election. The time element was a part of an overall system, exclusory in purpose and exclusory in effect.

Those political groups in Alabama more formally and more permanently organized and familiar with election procedures will find compliance with the statement of intent law easier than those who are not. But this difference alone presents no constitutional infirmity. The same problem will exist with regard to any requirements of the election laws regardless of the details of the electoral machinery provided by the state.

Some of the advantages of early and clear-cut declarations of intent are demonstrated by this case, especially in view of the time problem of sending absentee ballots to persons in the military service. When this suit was filed there still was widespread confusion over which offices some of the NDPA candidates were seeking and whether some of them could qualify for those offices for reasons unrelated to this suit. As a result of the initial hearing before this court on issuance of a temporary restraining order a number of NDPA candidates were conceded to be not qualified and were dropped as claimants for places on the ballots. The uncertainties have been reduced but not eliminated.[14] The state and the voters have an interest in a procedure which properly

[14] The NDPA leadership knew of the requirements of the Garrett Act prior to March 1, 1968, and advised party members of the necessity of compliance. The NDPA state headquarters notified county chairmen to have members file statements of intent. Some did and some did not. NDPA was advised by counsel, and its counsel either obtained or prepared for NDPA use statement of intent forms (which included designation of a finance committee) which were distributed to party representatives throughout the state.

observed may tend to filter out some of the mistakes, pitfalls and misunderstandings early rather than late.

The Garrett Act is not a "voting qualification or prerequisite to voting" or a "standard, practice or procedure with respect to voting" within the meaning of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973c. *See Whitley v. Johnson,* 12 Race Rel. L. Rep. 2031 (S.D. Miss. 1967) (three-judge court); *Bunton v. Patterson,* 281 F. Supp. 918 (S.D. Miss. 1967); *Fairley v. Patterson,* 282 F. Supp. 164 (S.D. Miss. 1967).[15] *Compare Sellers v. Trussell,* 253 F. Supp. 915 (M.D. Ala. 1966) (three-judge court).

Therefore, the Court declares that the Garrett Act, Act No. 243 of the Alabama Legislature, 1967 Special Session, is not unconstitutional on its face, is not proved to be unconstitutionally applied, and is not in violation of the Voting Rights Act of 1965.

4. The disqualification of candidates by the Secretary of State on the ground of failure to conduct a mass meeting in Huntsville.

The Secretary of State declined to certify to the Judges of Probate the names of most of the NDPA candidates required to be voted on by the entire state, or by a congressional district, judicial circuit or senatorial district. Her asserted grounds were two, failure to comply with the Garrett Act, which we have dealt with above, and the possession by her of information indicating that NDPA had not held a mass meeting in Huntsville May 7, 1968. (Huntsville was one of many places throughout the state at which NDPA was seek-

[15] These cases have been consolidated and set for argument before the Supreme Court, with questions of jurisdiction postponed until the hearing on the merits. 36 U.S.L. Week 3334, 3383, 3473 (1968).

ing to hold mass meetings on May 7.) The information consisted of a letter from two residents of Huntsville who had no personal knowledge of whether the mass meeting was held, accompanied by affidavits of two persons containing "evidence" of the most slender nature, largely circumstantial and in part hearsay, attempting to negative the certification that the meeting had been held.

The matter furnished the Secretary of State authorized her to make inquiry to ascertain if the statute had been complied with. *Kinney v. House,* 243 Ala. 393, 10 So. 2d 167 (1942); Report of Attorney General of Alabama, 1934-36, at 4. Instead she directed NDPA to show cause why it should not be removed from the ballot, and, after it had filed various supplemental data, declined to certify its candidates, with two exceptions.[16]

The refusal to certify candidates on the basis of the letter and affidavits was a violation of basic principles of equal protection, due process and essential fairness. This is so with regard to candidates certified as nominated at the Huntsville meeting and those nominated at the state convention as well. The same documents were, along with failure to file statements of intent, the basis for the refusal of the Secretary of State to certify candidates nominated at the state conventions of NDPA, held on July 20, 1968.

We do not decide the complex factual issues of whether mass meetings, including the Huntsville meeting, were held and whether candidates purportedly nominated at such meetings were validly certified. We do hold that the action of the Secretary of State in denying certification to NDPA candidates, insofar as it was based on alleged failure to hold the

[16] Why there were two exceptions is not made clear to this court.

Huntsville meeting, was unconstitutional. We also hold that the alleged failure to hold the Huntsville meeting cannot be the basis for any Judge of Probate denying a place on the ballot to any NDPA candidate, if the only evidence supporting such basis is the letter and affidavits above described. Those documents do no more than give cause for inquiry by Judges of Probate or the Secretary of State as the case may be. They may not alone be the cause of denial of a place on the ballot.

5

We find no merit in the claims that Tit. 17, § 148, providing that the name of a candidate may appear on the ballot only one time and under one party emblem, is unconstitutional and in violation of the Voting Rights Act of 1965. Nor do we find any constitutional infirmity in Tit. 17, § 125, relating to appointment, under designated circumstances, of election officials from the two political parties having received the highest number of votes at the last election.

6

The Attorney General and the Secretary of State have duties with respect to the general election, and they and the Governor have duties regarding the vote of persons elected as presidential electors. These three state officers are candidates for presidential electors. Plaintiffs claim that a situation of adverse interest is created which violates the Constitution of the United States and § 280 of the Constitution of Alabama, which forbids the holding of two state offices for profit at the same time. We perceive no violation of the United States Constitution. The office of presidential elector is a state office. *Ray v. Blair*, 343 U.S. 214, 96 L.Ed. 894 (1952), *Re Green*, 134 U.S. 377, 36 L.Ed. 951 (1890); *Walker*

v. United States, 93 F. 2d 383 (8th Cir.), *cert. denied*, 303 U.S. 644 (1938). Whether § 280 of the Alabama Constitution has been infringed is a matter of state law.

Having disposed of the substantial federal constitutional questions we decline to decide the various factual disputes of the parties which do not relate to these federal constitutional questions, and the various issues purely of state law.

Pursuant to Rule 52, Fed. R. Civ. P., this opinion constitutes the findings of fact and conclusions of law of the court. Judgment will be entered accordingly.

DONE this the 10th day of October, 1968.

JOHN GODBOLD
UNITED STATES CIRCUIT JUDGE
VIRGIL PITTMAN
UNITED STATES DISTRICT JUDGE

HADNOTT VS. AMOS
CIVIL ACTION NO. 2757-N
JUDGE FRANK M. JOHNSON, JR., dissenting.

I must respectfully dissent from the majority's holdings that the Corrupt Practices Law was not applied unconstitutionally to the NDPA in this case and that the Garrett Law is constitutional on its face, and, therefore, from the conclusion that some or all of the NDPA candidates are not entitled to a place on the November ballot.

I. THE CORRUPT PRACTICES LAW

I fully concur in the majority's holding that the Alabama Corrupt Practices Law is constitutional on its face. The law

is a reasonable approach to a difficult problem. Although disqualification of the candidate for noncompliance is a drastic remedy, the legislature might well conclude that such a remedy is necessary to foster voluntary compliance.

The best of laws, however, can be invoked in an unworthy manner. Here, it was invoked strictly as an afterthought. As the majority concedes:

> "When the Secretary of State declined to certify to the Judges of Probate NDPA candidates who filed nominations in her office, she did not assert failure to comply with the Act as one of her motivations. Her motivation is irrelevant to a judicial determination of whether the Act is constitutional *on its face.*" (Emphasis added.)

The Corrupt Practices Act has not fallen into disuse. Nor, as the cases cited by the majority indicate, has the remedy of disqualification. In all these cases, however, the Act was invoked by opposing candidates or by concerned voters. Alabama State officials having adopted a consistent practice of relying on party and public policing and enforcement of this Act, it is not tolerable for this Court to allow these officials to make their first foray in the enforcement direction against a small, new, and almost surely impecunious group of candidates seeking to form a new party in Alabama. This is particularly true when the defendant officials who are taking such action are candidates for Presidential electors on the ballot of an opposing party. Whether or not a formal conflict of interest, this circumstance, when conjoined with those above, justifies the inference that the Corrupt Practices Act, fair on its face, has been:

> "applied and administered by public authority with an evil eye and an unequal hand, so as practically to make

unjust and illegal discrimination between persons in similar circumstances. . . ." *Yick Wo v. Hopkins,* 118 U.S. 356, 373-74 (1886).

In this vital area of the right to vote and to run for office, the courts must not hesitate to exercise their judicial duty to ensure an evenhanded application of the Alabama election laws.

II. THE GARRETT LAW

The Garrett Law requires that candidates for office file a declaration of intention to run on or before the first day of March of the year in which the general election is held.

Although a state might reasonably require a candidate to file sufficiently in advance of the election to permit administrative preparations, defendants do not contend that such a purpose *would require eight months' notice.* Indeed, as the majority recites, it is generally accepted that the Garrett Law:

> "was intended to correct what the legislature viewed as an inequity against a party nominating by primary (presently only the Democratic party), arising from the fact that parties nominating by other methods could hold back deciding upon candidates and selectively choose and place their candidates against the potential nominees by primary who appear most vulnerable."

Protection of one political party from another political party is not a permissible object of legislation. Even if it be thought permissible, it would scarcely justify the adverse impact which this statute has on the right to an effective vote for the candidate of one's choice. Here, the process of

choice of candidates is cut off at an unreasonably early date. The candidates who seek relief from this Court find themselves in almost precisely the situation George C. Wallace found himself in by reason of an Ohio law that required a petition for nomination to state office (presidential electors) be filed at least 90 days before the primary election rather than the general election. In an action by these Wallace electors a three-judge Federal Court sitting in the Southern District of Ohio,[1] stated:

> "This is an unreasonable requirement. The time is now past when petitions for the nomination of independent candidates for presidential electors supporting George C. Wallace could be filed, even ninety days before the November election.
>
> "Plaintiffs concede that the State has a legitimate interest in, and a right to, an effective and efficient electoral process, thus giving the State the right to impose reasonable restrictions for legitimate purposes, after due consideration of cost, convenience and administrative burdens. On the other hand defendants have conceded that the Ohio Election Laws, as they now stand, do constitute an impairment, though it was termed 'insubstantial', of plaintiffs' right to vote. In this context the judicial focus must be centered upon ascertaining whether this impairment is constitutionally permissible.
>
> "We begin with the principle that
>
> > " 'No right is more precious in a free country than that of having a voice in the election of those who

[1] **Socialist Labor Party, et al. v. Rhodes, et al.**, U.S.D.C. S.D. Ohio. Civil Action No. 68-224; opinion not yet published but rendered and filed August 29, 1968.

> make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined. Our constitution leaves no room for classification of people in a way that unnecessarily abridges that right.' *Wesberry v. Sanders,* 376 U.S. 1, 17-18.

Also, it is clear that the right of suffrage is subject only to the imposition of state standards which are not discriminatory. *Harper* v. *Virginia Board of Elections,* 383 U.S. 663 (1966), and *Gray v. Sanders,* 372 U.S. 368 (1963). The United States Supreme Court has recognized the power of the state to impose reasonable qualifications and restrictions, but has declared that these had to be established on a non-discriminatory basis and that the classifications drawn into the statutes had to be reasonable in light of their purpose. *Carrington* v. *Rash, supra.* 'We deal here with matters close to the core of our constitutional system.' *Carrington* v. *Rash, supra,* at page 96. The right to choose that courts have been so zealous to protect means at the least that states may not casually deprive a class of individuals of the vote or the right of an individual to seek political office because of some remote administrative benefit to the state.

"The attention of this Court has been centered on whether the Ohio Election Laws, to the extent that these laws prevent the qualification of political parties and their candidates for ballot position, satisfy the tests of 'necessity,' 'equality,' and 'reasonableness.' As evidenced both on the face of these statutes as well as in their operational effect, the restrictions imposed do not meet these tests. These restrictions are violative of the equal pro-

tection clause of the Fourteenth Amendment and are thus constitutionally impermissible.

"We conclude that to the extent that the Ohio Election Laws impose unreasonable restrictions on the qualifications of political third parties, restrict minority participation in Ohio's electoral process, prevent candidates for president and vice-president from qualifying as independents and deprive plaintiffs of their right of suffrage, either by denial of ballot position or effective write-in, they are unconstitutional and void."

If the Equal Protection Clause of the Fourteenth Amendment to the Constitution of the United States is invoked to protect the interests of presidential electors seeking to run as candidates for George C. Wallace's Third Party in the State of Ohio, it can be and must be applied to protect the interests of these Negro and white candidates in the State of Alabama. Indeed, the Alabama Election Law now under scrutiny by this Court that the majority holds is not unconstitutional in its application or on its face requires a declaration of candidacy some eight months prior to the general election. To me, this is constitutionally unreasonable and therefore impermissible. I, therefore, dissent.

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

SALLIE M. HADNOTT, ET AL., Plaintiffs,	)	
vs.	)	CIVIL ACTION
MABEL S. AMOS, as Secretary of State of the State of Alabama, ET AL., Defendants.	)	NO. 2757-N

Before GODBOLD, Circuit Judge, JOHNSON and PITTMAN, District Judges

DECREE

The court having entered its memorandum opinion containing its findings of fact and conclusions of law, it is, therefore,

CONSIDERED, ORDERED, ADJUDGED and DECREED as follows:

1. Tit. 17, §§ 274-275, Code of Ala. (1958), a part of the Alabama Corrupt Practices Law, is not unconstitutional on its face, has not been proved to be unconstitutionally applied, and does not violate the provisions of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973-73p.

2. The Garrett Act, Act No. 243 of the Alabama legislature, 1967 Special Session, is not unconstitutional on its face, has not been proved to be unconstitutionally applied, and does not violate the provisions of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973-73p.

3. The refusal by Mabel S. Amos, Secretary of State of the State of Alabama, to certify NDPA candidates insofar as it was based upon the letter and the affidavits described in the opinion of the court, was a violation of equal protection of the laws and of due process, as guaranteed by the Fourteenth Amendment to the Constitution of the United States.

4. The alleged failure of NDPA to hold a mass meeting in Huntsville, Alabama, on May 7, 1968, may not be the basis for any Judge of Probate denying a place on the ballot to any NDPA candidate, if the only evidence supporting such basis is the letter and affidavits described in the opinion of the court.

5. Tit. 17, § 125, Code of Ala. (1958), is not unconstitutional on its face, is not proved to be unconstitutionally applied, and is not in violation of the Voting Rights Act of 1965, 42 U.S.C.A. § 1973-73p.

6. Tit. 17, § 148, Code of Ala. (1958), is not unconstitutional on its face, is not proved to be applied in an unconstitutional manner, and does not violate the Voting Rights Act of 1965.

7. The prayers for temporary and permanent injunctions are denied. The temporary restraining order entered on September 18, 1968, is dissolved.

Costs are taxed one-half against the plaintiffs and one-half against the defendant Mabel S. Amos, Secretary of State of the State of Alabama.

DONE this the 10th day of October, 1968.

JOHN GODBOLD
UNITED STATES CIRCUIT JUDGE
VIRGIL PITTMAN
UNITED STATES DISTRICT JUDGE

§ 125. (442) (352) (1595) Political parties furnish lists from which appointments are made.—Each political party or organization having made nominations may, by the chairman of its state or county executive committee or nominees for office, furnish the appointing board a list of not less than three names of qualified electors from each voting place, and from each of said lists an inspector and clerk shall be appointed for each voting place; provided, that where there are more than two lists filed, the appointments shall be made from the lists presented by the two political parties having received the highest number of votes in the state in the next preceding regular election, if each of said parties present a list.

§ 126. (443) (353) Watchers; how appointed and their duties.—Each political party or organization having candidates nominated may, by the chairman of the county executive committee or nominees for office or beat committeeman, name a watcher who shall be permitted to be present at the place where the ballots are cast from the time the polls are opened until the ballots are counted and certificates of the result of the election signed by the inspectors. The said watcher shall be permitted to see the ballots as they are called during the count. The watcher shall be sworn to faithfully observe the rule of law prescribed for the conduct of elections.

§ 145. (462) (372) (1606) Names of candidates placed on ballots; certificate of nomination.—The probate judge of each county shall cause to be printed on the ballots to be used in their respective counties, the names of all the candidates who have been put in nomination by any caucus, convention, mass meeting, primary election, or other assembly of any political party or faction in this state, and certified in writing

and filed with him not less than sixty days previous to the day of election. The certificate must contain the name of each person nominated and the office for which he is nominated, and must be signed by the presiding officer and secretary of such caucus, convention, mass meeting, or other assembly, or by the chairman and secretary of the canvassing board of such primary election.

In case of a person to be voted for by the electors of the whole state or of an entire congressional district, judicial circuit, or senatorial district for any state or federal office, the certificate of nomination must be filed in the office of the secretary of state not less than sixty days before the day of election; and the secretary of state must thereupon immediately certify to the judge of probate of each county in the state, in case of an officer to be voted for by the electors of the whole state, and the judges of probate of the counties composing the circuit or district, in case of an officer to be voted for by the electors of a circuit or district, upon suitable blanks to be prepared by him for that purpose, the fact of such nomination and the name of the nominee or nominees and the office to which he or they may be nominated.

The judge of probate shall also cause to be printed upon the ballots, the name of any qualified elector who has been requested to be a candidate for any county or municipal office by written petition signed by at least twenty-five electors qualified to vote in the election to fill said office, when such petition has been filed with him before the first Tuesday in May in the year in which a state-wide primary election is held.

The secretary of state shall also certify to the judge of probate of the several counties, as the case may be, the name

of any qualified elector who has been requested to be a candidate for any state or federal office by written petition signed by at least three hundred electors qualified to vote in the election to fill said office provided such petition is filed with the secretary of state before the first Tuesday in May in the year in which a state-wide primary election is held. The judge of probate shall cause to be printed upon the ballots, the name, or names, of such qualified elector or electors, as the case may be.

Provided, however, that the judge of probate of the several counties in this state are hereby prohibited from causing to be printed on the ballot to be used in their respective counties, the name of any independent candidate for any state, county, or federal office who has not filed his declaration to become such a candidate before the first Tuesday in May in the year in which a state-wide primary election is held. (1935, pp 237, 894; 1945, p. 76, appvd. June 9, 1945.)

§ 145 (2). Electing or nominating two or more members of legislature at same time; numbering of places; procedure in primary.—In all primary and general elections for members of the legislature wherein two or more of such members are to be nominated or elected at the same time, each of such places to be filled shall be designated by number. In case candidates for two or more of such offices are to be nominated in a primary each of said places to be filled shall be numbered, and each candidate for such office in the announcement of his candidacy shall designate the number of the office for which he is a candidate; the same person shall not be a candidate for or be permitted to file his declaration for more than one of such places; no ballot shall be counted for any candidate except for the place and number for which he announced in his declaration filed with the

legally constituted authorities designated to receive and file his declaration of candidacy. (1965, p. 599, § 1, appvd. Aug. 16, 1965).

§ 145 (3). Name of candidate not to be certified or placed on ballot unless declaration of candidacy filed on or before March 1 of election year; exceptions.—(1) The secretary of state is hereby prohibited from certifying to the judges of probate of the several counties and such judges of probate are prohibited from causing to be printed on the ballots for a general election the name of any candidate for a state, district or federal office who does not file a declaration of intention to become a candidate for such office with the secretary of state on or before the first day of March of the year in which such general election is held. Such declaration shall include a statement designating the political party whose nomination for such office the person seeks; or if such person is not a candidate for nomination by a political party, then such declaration shall state that such person will be an independent candidate for the office. Provided, however, this section shall not apply to the printing on the ballot of the names of persons nominated by political parties to fill vacancies in such parties' nominations for state, district or federal offices when the vacancy occurs after March first of the year in which a general election is held; and the name of every candidate nominated by a political party to fill any such vacancy shall be printed upon the ballot for the general election, if such name is duly certified by the party, within the time prescribed by law, as such party's nominee.

(2) The judges of probate of the several counties are hereby prohibited from causing to be printed on the ballots for any general election in their respective counties the names of any candidate in such election for a county office who does

not file a declaration of intention to become a candidate for such office with him on or before the first day of March of the year in which such general election is held. Such declaration shall include a statement designating the political party whose nomination for such office the person seeks; or if such person is not a candidate for nomination by a political party, then such declaration shall state that such person will be an independent candidate for the office. Provided, however, this section shall not apply to the printing on the ballot of the names of persons nominated by political parties to fill vacancies in such parties, nominations for county offices when the vacancy occurs after March first of the year in which a general election is held; and the name of every candidate nominated by a political party to fill any such vacancy shall be printed upon the ballot for the general election, if such name is duly certified by the party, within the time prescribed by law, as such party's nominee.

(3) Qualification on or before the first day of March of an election year as a candidate for nomination in a primary election as a political party's candidate in the general election shall for the purposes of enforcing this section be deemed a filing of a declaration of intention to be a candidate for such office in the general election within the meaning of such term as used in this section.

(4) The provisions of this section are supplemental. It shall be construed in pari materia with other laws regulating elections; however those laws or parts of laws which are in direct conflict or inconsistent herewith are hereby repealed. (1967, Ex. Sess., No. 243, appvd. May 11, 1967.)

§ 146. Designating certain officers by number.—In all primary and general elections of associate justices of the supreme court of Alabama, justices of the court of appeals

of Alabama, judges of the circuit courts and associate members of the public service commission wherein two or more of such justices, judges or officers are to be elected, at the same time, each of such places to be filled shall be designated by number. (1927, p. 409.)

§ 147. Announcements and ballots to contain number of office sought.—Every candidate for the offices mentioned in the preceding section shall in the announcement of his candidacy designate the number of the office for which he is a candidate and the ballots of such election shall be numbered accordingly. (1927, p. 409.)

§ 148. (463) (373) (1607) Ballots; how printed.—The ballots printed in accordance with the provisions of this chapter shall contain the names of all candidates nominated by caucus, convention, mass meeting, primary election, or other assembly of any political party or faction, or by petition of electors and certified as provided in section 145 of this title, but the name of no person shall be printed upon the ballots who may, not less than twenty days before the election, notify the judge of probate in writing, acknowledged before an officer authorized by law to take acknowledgments, that he will not accept the nomination specified in the certificate of nomination or petition of electors. The name of each candidate shall appear but one time on said ballot, and under only one emblem. (1909, p. 277.)

§ 153 (1). Designation of different offices of same classification.—Whenever nominations for two or more offices of the same classification are to be made, or whenever candidates are to be elected to two or more offices of the same classification, at the same primary, general, special or municipal election, each office shall be separately designated by number on the official ballot as "Place No. 1," "Place No.

2," "Place No. 3," and so forth; and the candidates for each place shall be separately nominated or elected, as the case may be. In the case of primary elections, the designations required herein shall be made by the state executive committee of the political party holding the election. Each candidate for nomination for such office shall designate in the announcement of his candidacy, and in his request to have his name placed on the official primary ballot, the number of the place for which he desires to become a candidate. The name of each qualified candidate shall be printed on the official ballot used at any such election beneath the title of the office and the number of the place for which he is seeking nomination or election. No person shall be a candidate for more than one such place. Provided, however, that this provision shall not apply to counties having a population of 500,000 or more according to the last or any subsequent federal census except as to judicial officers and members of congress. (1961, Ex. Sess., p. 2235, § 1, appvd. Sept 15, 1961.)

§ 157. (471) (381) (1622) To vote a straight party ticket.—If the elector desires to vote a straight ticket, that is, for each and every candidate for one party for whatever office nominated, he shall mark a cross mark (x) in the circle under the name of the party at the head of the ticket.

§ 159. (473) (383) To vote for two or more candidates on different tickets.—When two or more candidates are to be elected to the same office and he desires to vote for candidates on different tickets for such office, he may make a cross mark (x) before the names of the candidates for whom he desires to vote on the other ticket, and must also erase an equal number of names of candidates on his party ticket for the same office for whom he does not desire to vote.

§ 160. (474) (384) To vote a split ticket.—If the elector desires to vote a split ticket, that is, for candidates of differ-

ent parties, he may make a cross mark (x) in the voting space before the name of each candidate for whom he desires to vote on whatever ticket he may be.

§ 161. (475) (385) When straight ticket does not contain names of all officers.—If the ticket marked in the circle for a straight ticket does not contain the names of candidates for all offices for which the elector may vote, he may vote for candidates for such offices so omitted by making a cross mark (x) before the names of candidates for such offices on other tickets, or by writing the names, if they are not printed, upon the ballot in the blank column under the title of the office.

§ 162. (476) (386) To vote for person whose name is not on ballot.—If the elector desires to vote for any person whose name does not appear upon the ballot, he can so vote by writing the name in the proper place on the blank column.

§ 274. (588) Committee to receive, expend, audit and disburse money or funds contributed.—Within five days after the announcement of his candidacy for any office, each candidate for a state office shall file with the secretary of state, and each candidate for a county office or the state house of representatives shall file with the judge of probate of the county, and each candidate for a circuit or district office, including the state senate, shall file with the judge of probate of each county which is embodied in said circuit or district, a statement showing the name of not less than one nor more than five persons elected to receive, expend, audit, and disburse all moneys contributed, donated, subscribed, or in any way furnished or raised for the purpose of aiding or promoting the nomination or election of such candidate, together with a written acceptance or consent of such persons to act

as such committee, but any candidate, if he sees fit to do so, may declare himself as the person chosen for such purpose. If the statement required herein shall have been postmarked at any United States post office not later than midnight of the fifth day after the announcement of his candidacy, the candidate shall be deemed to have complied with the requirements of this section as to filing such statement within five days after the announcement of his candidacy. Such committee shall appoint one of their number to act as treasurer, who shall receive and disburse all moneys received by said committee; he shall keep detailed account of receipts, payments and liabilities. The said committee or its treasurer shall have the exclusive custody of all moneys contributed, donated, subscribed, or in any wise furnished for or on behalf of the candidate represented by said committee, and shall disburse the same on proper vouchers. If any vacancies be created by death or resignation or any other cause on said committees, said candidate may fill such vacancies or the remaining members shall discharge and complete the duties required of said committee as if such a vacancy had not been created. No candidate for nomination or election shall expend any money directly or indirectly in aid of his nomination or election except by contributing to the committee designated by him as aforesaid. (1915, p. 250; 1959, p. 1036, appvd. Nov. 13, 1959.)

§ 275. (589) Candidate acting as own committee.—Any person who shall act as his own committee shall be governed by the provisions of this article relating to committees designated by candidates. Failure to make the declaration of appointment or selection by any candidate as herein required is declared to be a corrupt practice, and in addition the name of such candidate so failing shall not be allowed to go upon the ballot at such election. (1915, p. 250.)

§ 336. Election by party as to whether it will come within primary law.—A primary election, within the meaning of this chapter, is an election held by the qualified voters, who are members of any political party, for the purpose of nominating a candidate or candidates for public or party office. Primary elections are not compulsory. A political party may, by its state executive committee, elect whether it will come under the primary election law. All political parties are presumed to have accepted and come under the provisions of the primary election law, but any political party may signify its election not to accept and come under the primary election law by filing with the secretary of state, at least sixty days before the date herein fixed for the holding of any general primary election, a statement of the action of its state executive committee, certified by its chairman and secretary, which statement shall contain a copy of the resolution or motion adopted declining to accept and come under the primary election law. If a political party declines to accept and come under the primary election law it shall not change its action and accept and come under the primary election law until after the next general election held thereafter. The state executive committee of a political party may determine from time to time what party officers shall be elected in the primary; provided, candidates for all party offices shall be elected under the provisions of this chapter unless the method of their election is otherwise directed by the state executive committee of the party holding the election. (1931, p. 73.)

§ 337. What are political parties within meaning of chapter.—An assemblage or organization of electors which, at the general election for state and county officers then next preceding the primary, cast more than twenty percent of the entire vote cast in any county is hereby declared to be a

political party within the meaning of this chapter within such county; and an assemblage or organization of electors which, at the general election for state officers then next preceding the primary cast more than twenty percent of the entire vote cast in the state, is hereby declared to be a political party within the meaning of this chapter for such state. (1931, p. 73.)

§ 340. Date of elections.—If any primary elections are held at the expense of the state or counties, except special primary elections, they shall be held on the first Tuesday in May, 1940, and on the first Tuesday in May every two years thereafter, and, when necessary, as hereinafter provided, a second primary shall, be held on the fourth Tuesday next thereafter following said primary election. The second primary election shall be held by the same election officers, who held the first primary election, and be held at the same places the first primary election was held. No primary shall be held by any political parties for the nomination of candidates except as herein provided. Primary elections herein provided for shall be held at the regular polling places established for the purpose of holding general elections. (1931, p. 73; 1939, p. 823.)

§ 344. Certification of names of candidates by chairman.—The chairman of the state executive committee of each party entering a primary election shall, not less than fifty-five days prior to the date of holding the election, certify to the secretary of state the names of all candidates for nomination to federal, state, circuit, and district offices, the state senate and house of representatives, and all other candidates except candidates for county offices. The chairman of the county executive committee of each party entering the primary election shall, not less than fifty-five days prior to the

date of holding the election, certify to the probate judge the names of all candidates for nomination to county offices. The secretary of state shall, not less than forty-five days prior to the date of holding the primary election, certify to the probate judge of every county in which the election is to be held the names of the opposed candidates for nomination to federal, state, circuit, and district offices, the state senate and house of representatives, and all other opposed candidates, except candidates for county offices. The probate judge of each county shall have the ballots prepared for the primary election. If a legally qualified candidate for nomination to an office is unopposed when the last date for certifying candidates has passed, his name shall not be printed on the ballots to be used in the primary election, and he shall be the nominee of the party with which he has qualified for the office. The probate judge shall have the ballots so printed that the names of the opposing candidates for any office to be voted for by the voters of more than one county shall, as far as practicable, alternate in position upon the ballot so that the name of each candidate shall occupy, with reference to the name of every other candidate for the same office, first position, second position, and every other position, if any, upon an equal number of ballots. When printed, the ballots shall be distributed impartially and without discrimination by the probate judge. (1931, p. 73; 1947, p. 444, appvd. Oct. 9, 1947; 1956, 1st Ex. Sess., p. 209, appvd. Feb. 24, 1956.)

§ 348. Filing declaration of candidacy.—Any person desiring to submit his name to the voters in a primary election shall, not later than March first, next preceding the holding of such primary election, file his declaration of candidacy in the form prescribed by the governing body of the party with the chairman of the county executive committee if he be a

candidate for a county office, and with the chairman of the state executive committee, if he be a candidate for any office except a county office, and in like manner, and not later than March first, next preceding the holding of such primary election, pay any assessments that may be required to be paid by him. (1931, p. 73, 1945, p. 689, appvd. July 6, 1945.)

§ 413. (674) Mass meetings or beat meetings held.—When any political party shall desire to hold any mass meeting, beat meeting, or other meeting of the voters of such party for the purpose of nominating any candidate or candidates for public office, to be voted for in a general election in Alabama or for the purpose of selecting delegates, or other representatives to any convention which may select such candidates for public office, or when any such party shall desire to hold such mass meeting, beat meeting, or other meeting of the voters of such party for the purpose of selecting committeemen, representatives or other party officers of such party; all of such meetings shall be held at the times and places set out in the succeeding section, and at no other times or places. (1915, p. 622.)

§ 414. (675) When and where such meetings held.—All such meetings shall be held in a hall, room, or open place at or in the immediate vicinity of the voting place of the respective precinct or voting district and on the first Tuesday in May in even-numbered years. The general public is privileged to attend such meetings, but not to participate. (1915, p. 622; 1947, p. 34, appvd. July 11, 1947.)

§ 415. (676) Special elections and vacancies which are excepted from article.—This article shall not apply where a special election is called for the election of a public officer, for which said party has no candidate, or where by death,

resignation, or otherwise, a vacancy has occurred in any nomination made by such party; and this article shall not apply to municipal elections. (1915, p. 622.)

§ 416. (3957) Mass meeting, beat meeting, unlawfully held.—Any person or persons who shall hold, attend or participate in the holding of any meeting for the purpose of nominating a candidate or candidates for public office, to be voted for at any general election in Alabama, or for the purpose of electing delegates or other representatives to any convention which may select such candidates for public office, at any time or place other than as provided for in article 2 of this chapter, relating to mass meetings or beat meetings, or who shall otherwise violate the laws of this state regulating mass meetings or beat meetings, shall be guilty of a misdemeanor. (1915, p. 622.)