Supreme Court, U. S.
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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972

No. 72-129

NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, *etc., et al.*,

Appellants,

—v.—

NEW YORK, *et al.*

ON APPEAL FROM THE UNITED STATES DISTRICT COURT FOR THE DISTRICT OF COLUMBIA

REPLY BRIEF

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REPLY BRIEF

ARGUMENT

Adequacy of Government Investigation

The United States urges in its brief that applicants for intervention did not contend in the District Court that the Department of Justice's investigation was inadequate. (United States brief pp. 18, 33). The Points and Authorities filed by applicants in support of their motion to intervene, set out in the appendix hereto, urged:

> The second criterion [warranting intervention] is the failure [of] the Attorney General to discharge his responsibilities . . . to investigate the relevant facts. The most important factor to be considered in judg-

> ing whether literacy tests discriminate on the basis of race or color is whether there are differences in the literacy rates of whites and non-whites, particularly if they are [due] to unequal or discriminatory public education. Applicants have alleged just such differences, inequality and discrimination in their proposed [answer], but it appears from the affidavit of Mr. Norman that the United States at no time inquired whether similar facts to those found in *Gaston County* might have existed in New York at the time when today's illiterate non-white adults were children. The factual investigation vaguely described in Mr. Norman's affidavit falls far short of the thorough investigation in Apache County. . . . The United States has declined to make a meaningful investigation into the relevant facts. . . . (Appendix, p. 2ra)

The allegations referred to in the proposed answer concerning illiteracy and unequal education claim discrimination against minority children in both the schools of New York and the schools in southern states from which many had emigrated. (Pp. 65a-66a) The proposed answer also urged that non-whites were deterred from seeking to register. (P. 65a) These are, of course, the very types of discrimination which prompted Congress to pass the Cooper Amendment and which applicants urge on appeal. In their Points and Authorities in support of the Motion to Alter Judgment, applicants again renewed their criticism of the adequacy of the government's investigation.

> It is even more apparent from the papers in this case that the United States has been derelict in its fact finding responsibility. . . . It is clear from the record in this action that the United States, which inquired with such diligence into literacy rates and educational discrimination when sued by Gaston County in 1966,

made absolutely no such inquiry when sued by the state of New York in 1971. (Pp. 89a-90a)

Applicants' proposed answer, together with their Points and Authorities, gave appellees "fair notice" of the defenses applicants sought to assert and the inadequacies which they claimed tainted the government's investigation, *Conley* v. *Gibson,* 355 U.S. 41, 47 (1957), and all the allegations of applicants' proposed pleading must be deemed to be true. *Kaufman* v. *Wolfson,* 137 F. Supp. 479 (S.D. N.Y., 1956). The inadequacy of the Justice Department's investigation was clearly urged as a ground for intervention in the District Court and can and should be considered on appeal.[1]

The United States maintains that applicants' basic grievance with the Department's investigation and consent to

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[1] Subsequent to the filing of applicants' brief in this Court, counsel was advised by the United States that Justice Department records indicated that government attorneys had met with two of the applicants in 1972. When investigation by counsel for applicants confirmed that this meeting had taken place, counsel for applicants and the United States agreed upon the following statement:

> "Appellants' counsel recently discovered that Justice Department attorneys met with appellants Stewart and Fortune in January, 1972 during the course of their investigation; although the Justice Department attorneys recall informing Stewart and Fortune that this case was pending, neither Stewart nor Fortune can remember being so informed."

Applicants maintain that this meeting did not constitute any legally relevant notice, that it did not involve anything which might be characterized as an interview, that it does not justify the government's statements to applicants' counsel in March and April, 1972, and that it cannot be resorted to at this late date to support the adequacy of the investigation described to the District Court in Norman's affidavit of April 3, 1972.

The brief of the United States correctly states that Mr. Eric Schnapper, counsel for applicants, was not employed by the NAACP Legal Defense Fund between the date on which this action was filed and March 9, 1972. United States brief p. 35.

the exemption is that 'they do not agree with the Attorney General's conclusion about what the public interest demands in this case," (United States brief p. 19), and that they merely wish to assert "a different theory of the public interest" (United States brief p. 29). This argument suggests, for otherwise it is unintelligible, that the United States consented to the exemption below because it thought an exemption was in the public interest. If that was the basis for the government's position in the District Court, it was patently erroneous, for section 4 of the Voting Rights Act gives the Attorney General no such discretion to approve exemptions "in the public interest." The United States can only consent to an exemption if it knows of no evidence of discrimination in the use of literacy tests; it cannot disregard such evidence or refuse to look for it because of its view of the public interest. The Attorney General did urge in 1970 that it would not be in the public interest to extend section 5 until 1975, but Congress rejected this view. The United States can no more undermine Congress's decision by repealing section 5 piecemeal through exemptions "in the public interest," than it could decline to carry out the express mandates of this Court. Compare *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Company,* 376 U.S. 651 (1967).

Applicant's Interest

The United States argues that applicants' pending section 5 action does not give them a sufficient interest in the outcome of this case because it is "merely derivative." The United States does not explain the legal relevance or significance of labeling an action as "derivative" or even "merely derivative," and Rule 24 draws no distinction between intervention to protect "merely derivative" legal interests and intervention to protect other interests. To describe applicants' section 5 action as derivative is merely

to affirm applicants' claim that they are entitled to intervene as of right because they will be bound by the result in this case. As the United States urged in *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, "The claim to intervention of right is obviously strongest where the applicant seeks to protect a property interest or a *cause of action.*" (Brief of appellee in No. 4, 1966 Term, p. 61) (Emphasis added). The thrust of the United States' argument appears to be that applicants' interest in the outcome of the case is "not different" from that of the Attorney General. (United States brief, pp. 25-28). But under Rule 24 an applicant's interest need not be different from that of the parties, but only a "direct, substantial, legally protectable interest in the proceedings." (United States brief, p. 24 n. 20).

New York's literacy test

New York urges that the differences in literacy rates between whites and non-whites, and the inferior education provided the latter, are irrelevant in this case because under New York's literacy test potential voters are exempted from the tests if they had completed more than 6 grades of school. (New York brief, p. 18). This allegation has no bearing on the propriety of intervention, but should be considered at a hearing on the merits of the exemption claim which has yet to be held in this case. The record, however, shows that the proportion of non-whites who had completed less than 5 years of school was between 3.3 and 14.3 times higher than the corresponding rate among whites. (Pp. 83a-86a). The proportion of children between 7 and 13 who had dropped out of school has been higher among non-whites than among whites for half a century. (P. 80a). Substantially more non-white than white children have been more than one grade behind in

school. (P. 81a). This situation is not comparable to that in Gaston County (see New York brief p. 18), it is far worse.[2]

Timeliness of the New York action

Appellees make repeated reference to the fact that applicants' section 5 action in the Southern District of New York was filed on the same day as their motion to intervene. Brief of United States 8, 18, 25, 26; Brief of New York 14. Neither appellee, however, goes so far as to suggest that the section 5 action was not filed in good faith, would not have been filed but for the developments in this case, or would have had a different legal effect if filed earlier. The undisputed record in this case shows that the section 5 action dealt with two reapportionment laws, one of which had been enacted only 10 days earlier on March 28, 1972 (P. 58a). Counsel for applicants informed Justice Department attorneys on March 23 and 29, 1972, that they intended to file the section 5 action. On April 3, 1972, counsel was informed by a Justice Department attorney that the Department had no objection to the institution of such a section 5 action (Pp. 49a-50a). That action was commenced 4 days later. In the meantime, however, the

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[2] The record in this case demonstrates conclusively the discrimination in the schools of New York over the last half century which gave rise to this difference in literacy rates. The literacy tests would also have discriminated on the basis of race even if the differences in literacy were not the result of state actions. This is the position taken by the United States during the oral argument in this Court of *Gaston County* v. *United States*:

> Q. I beg your pardon, Mr. Claiborne, but suppose that there had been no history of segregation in the public schools. Suppose that there was just a great many more Negro illiterates for the economic or social reasons that you have been talking about, would it nonetheless follow that you could not apply a literacy test?
>
> A. Mr. Justice, I would so argue if it were necessary.

United States took steps which necessarily doomed the section 5 action to which they had no objection by consenting to the exemption at issue. Applicants' right to intervene in this case should not be controlled by the fact that, in a race to the courthouse of which only the government was then aware, the United States filed its consent in the District Court for the District of Columbia three days before applicants filed their complaint in the Southern District of New York.

Timeliness of Motion to Intervene

Appellees maintain that the motion to intervene was properly denied because it was not timely as required by Rule 24. United States brief pp. 30-32, 41-46; New York brief pp. 8-12. Applicants urge that appellees must establish three things to prove that intervention is untimely, none of which has been shown in this case.

First, those opposing intervention must establish that intervention could have been obtained at an earlier date. In this case neither New York nor the United States are prepared to suggest that applicants would or should have been permitted to intervene prior to April 4, 1972.

Second, those opposing intervention must establish that the applicants knew at an earlier date than that on which intervention was sought that intervention was necessary to protect their interests. In this case neither New York nor the United States have urged that applicants or their counsel knew or were even "on notice" prior to April 4, 1972, that the United States would consent to an exemption or that the Department was conducting such an inadequate investigation as was first revealed on that date.

Applicants urge that where, as here, intervention is sought because of nonfeasance by the United States—its failure to defend the action and its failure to conduct an

investigation of the relevant facts—intervention cannot be sought until that nonfeasance occurs and becomes public knowledge. As the United States has cogently stated, "The existence of an adverse interest can ordinarily be determined in advance of trial. Bad faith, collusion or nonfeasance cannot. But these occur infrequently, and, where they are present, the proceedings are so tainted that justice requires that they not be accorded finality." (Brief of appellee in *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, October 1966 Term, No. 4, p. 30).

Third, those opposing intervention must establish that the applicants, by delaying their motion to intervene, had unreasonably prejudiced the rights of one of the parties. In this case appellees urge that the motion was untimely because, had it been granted in April of 1972, it would have prevented New York from obtaining an exemption at that time. Without such an exemption New York would have had to comply with section 5 before putting its new district lines in effect in the primary elections then scheduled for late in June, 1972. This argument is unpersuasive for several reasons.

Any threat of possible prejudice to New York arose not from the date when intervention was sought, but from the granting of intervention *at any time*. The only way in which New York could have obtained an exemption in April 1972 was if the United States, as the only defendant, consented to it. Had applicants been permitted to intervene on December 4, 1972, the day after this action was commenced, New York would have been prevented from receiving an exemption on April 13, 1972, as surely as if applicants' motion of April 7 had been granted. Thus the injury of which New York complains has nothing whatever to do with the timeliness of applicants' motion for intervention.

As of April, 1972, New York was undeniably in the awkward position of wanting to hold primary elections a mere two months later in new districts which had not been cleared by the Justice Department, a problem from which the state sought to extricate itself by obtaining an exemption from section 5. This problem, however, was the result of a long series of unexplained delays by the United States and New York. When the Cooper Amendment became law on June 22, 1970, both appellees knew that section 5 would apply to the three counties of New York and that any redistricting therein would have to be approved by the Justice Department prior to the 1972 primary elections, then a full *two years* away. The United States inexplicably waited nine months to publish in the Federal Register the required determinations applying section 5 to New York. New York, in turn, delayed another eight months before suing for an exemption. Even though time was by then clearly running out, New York agreed to let the United States take another three months to file its answer in this case. Appellants' brief p. 37. Similarly, the United States did not supply New York with corrected 1970 census data for its redistricting until October 15, 1971. New York then consumed three months enacting the boundaries of 210 assembly and senate districts, and an incomprehensibly longer five and one half months enacting the boundaries of 39 congressional districts. New York brief p. 10. Thus it came to pass that in April 1972, eighteen months after the passage of the Cooper Amendment, New York, with the consent of the United States, asked the District Court to exempt it from the Voting Rights Act without the least semblance of an adversary evidentiary hearing on the ground that such a hearing would unreasonably delay the proceedings. Applicants should not be penalized for the unwarranted delays by appellees prior to the motion for intervention.

To the difficulties created by appellees' delays in this case there was readily available a solution far less drastic than wholesale and permanent repeal of section 5's protections. The Justice Department regulations regarding section 5 submissions expressly provide for accelerated consideration of such submissions upon request under appropriate circumstances. 36 Fed. Reg. 18189-190.[3] In this case, however, New York never sought to invoke this special procedure and the Department never suggested it do so. Nor did New York exercise its option to sue in the District Court for the District of Columbia for approval of its redistricting and ask that court for accelerated handling of such a case. Accelerated consideration of New York's reapportionment under section 5, not complete exemption from that section, was the appropriate remedy for the problems New York faced in early 1972, a remedy which New York neither exhausted nor even sought.

New York could also have asked the District Court to grant the motion to intervene only on condition that applicants agree not to press their New York action until after the completion of the 1972 elections. The District Court has an inherent power to set appropriate conditions in granting or denying motions under the Federal Rules of

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[3] § 51.22 Expedited consideration.

When a submitting authority demonstrates good cause for special expedited consideration to permit enforcement of a change affecting voting within the 60-day period following submission (good cause will, in general, only be found to exist with respect to changes made necessary by circumstances beyond the control of the enacting or submitting authorities), the Attorney General may consider the submission on an expedited basis. Prompt notice of the request for expedited consideration will be given to interested parties registered in accordance with § 51.13. When a decision not to object is made within the 60-day period following receipt of a submission which satisfies the requirements of § 51.10(a), the Attorney General may reexamine the submission if additional information comes to his attention during the remainder of the 60-day period which would require objection in accordance with § 51.19.

Civil Procedure. Compare *Dimick* v. *Schedt,* 293 U.S. 474 (1935); 6 Moore's Federal Practice ¶59.05[3]. If New York were correct in its contention that unconditional intervention would have reasonably prejudiced its interests, the imposition of such a condition would have constituted ample protection for the state.

Both New York and the United States urge that applicants should have sought intervention prior to April 7, 1972, in the light of an article in the *New York Times* on February 6, 1972 (p. 48, col. 3, United States Brief p. 42, New York Brief pp. 8-9). New York further asserts, for the first time in this case, that the American Civil Liberties Union had requested a copy of the complaint after this article appeared but declined to intervene "after studying the papers." (New York brief, p. 9).

The *New York Times* article and a letter from the Civil Liberties Union detailing its activities regarding this case are set out in the appendix hereto. The letter from the Civil Liberties Union states they concluded that intervention would be premature in February 1972 since the Justice Department had not yet determined its position. Although the state Attorney General's office was aware of their interest and had informed them that the Justice Department had yet to determine its position, that office did not inform the Civil Liberties Union when Justice did take a position or when judgment was entered in favor of New York. (Pp. 6ra-7ra). The Civil Liberties Union is not a party to this action, and any actual notice to them is not binding upon applicants.

The *Times* article does not state that the United States had consented to the exemption or had concluded there was no evidence of discrimination. Nor does the article suggest that the United States was conducting any investigation or was considering agreeing to the exemption.

After reporting an announcement on February 5, 1972 by the Attorney General that he had filed this action, the action having actually been commenced 2 months earlier, the article quotes several public officials and others as asserting this action had been "quietly filed" to "cover up voter discrimination." (P. 5ra). One of the state's critics was quoted as contending the literacy tests had been applied discriminatory, and "that people in black and Puerto Rican areas had been deterred from registering by various means, including a lack of Spanish-speaking inspectors" (P. 4ra). Two months after this article appeared the Justice Department filed an affidavit stating its investigation revealed "no allegation" of discrimination in the use of literacy tests. (P. 41a). The article quoted the Attorney General as stating he had sued in open court rather than using "an alternative procedure to ask the United States Attorney General for exemption." (P. 5ra). No such alternative procedure exists under the Voting Rights Act. The state Attorney General is further quoted as explaining that he had chosen not to invoke this non-existent alternative in order to avoid "charges of political influence."

In the face of Attorney General Katzenbach's testimony that intervention in exemption cases would be possible even under the restrictive pre-1966 version of Rule 24, the United States properly concedes that intervention in such cases is not precluded by section 4(a). United States brief, pp. 15 n. 13, 17, 21. The government, however, proceeds in the remainder of its brief to set standards for intervention which can never be met. The United States first makes it clear that no person could ever have the requisite interest to justify the intervention. The government concludes that neither protection of a section 5 action or retention of the benefits of coverage by the Act gives an applicant the needed type of interest in the outcome of an exemption

proceeding, and does not suggest any other interest which might suffice. Further the United States urges that neither its refusal to defend this action nor its failure to investigate the relevant facts constitute inadequate representation. By this standard the Attorney General could consent without investigation to exempt for each of the southern states covered by the 1965 Act without "inadequately representing" the black citizens affected. Similarly, while urging that intervention after the government's default is too late, the United States has not clearly relinquished its position in *Cascade Natural Gas, supra,* p. 8, that intervention before such non-feasance would be too early. If, as Attorney General Katzenbach testified, intervention is at times proper in section 4 cases, then there must be some conceivable person who has a sufficient interest in the case, some conceivable conduct which would constitute inadequate representation, and some time to seek intervention which is neither too early nor too late.

This case does not involve, as the United States has objected in other litigation, an attempt by applicants to "wrest control of the litigation" from the government. Compare Brief of Appellee in *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.,* No. 4, October 1966 Term p. 31. The United States has adopted a position of neutrality on the merits of this case; the government has indicated on the one hand that it would not oppose judgment granting the exemption, and it has not indicated it would support such an exemption.[4] The United States in the District Court did not object to applicants assuming control of the defense of this case. On appeal the United States is willing to defend the decision of the District Court, but

[4] In its brief in *Apache County* v. *United States,* D.D.C. No. 292-66, p. 10, n. 5, the United States not only consented to an exemption and opposed intervention, but stated that if intervention were granted it would support plaintiff's claims on the merits.

the government does not go so far as to urge it would have been reversible error for the District Court to have permitted intervention. Under these circumstances applicants maintain that any presumption against intervention on the side of the United States suggested in *Cascade, Apache County,* or *Trbovich,* in all of which the government opposed intervention at the district court level, are inapplicable to this case.

Having earlier urged, as in *Cascade Natural Gas Corp. v. El Paso Natural Gas Co.,* that the courts in intervention cases should presume that the United States is fulfilling its responsibilities and trust that it is adequately representing affected members of the public, the government now advocates the contrary attitude for those private parties whose interests are involved. A private party must not presume or trust that the United States will inform him of litigation vital to his interests; rather, he must scrutinize daily the pages of all the newpapers in his area lest, as here, the government hold him "on notice" because of a brief article appearing on page 49 in only one of several papers on a single day. Compare United States brief pp. 10, 42, 46. If a private party learns of such litigation, he must not presume or trust that the United States will defend his interests. On the contrary, he must assume that his government will be guilty of collusion or nonfeasance and seek to intervene at once; if he puts his faith in the Department of Justice until and unless he has substantial reason to doubt the adequacy of their representation, he will be accused of "sitting by" and "doing nothing." United States brief, pp. 19, 42, 46. And if such a citizen or organization learns that the United States is conducting an investigation, they are not to assume the vast resources of the federal government will uncover relevant evidence, even evidence so readily obtainable as census reports (see

pp. 79a-87a), published court decisions (see pp. 78a-79a) or law review articles (see p. 82a), nor can they presume that the United States will remember legal theories advanced by it a year or two earlier (see Appellants' brief, pp. 30-36). Such parties must, simultaneous with the government's investigation, conduct their own investigation and present the results to the Justice Department or else be precluded from presenting evidence as intervenors. United States brief pp. 10, 19, 34, 36, 42, 46.[5] We submit that interested parties, no less than the courts, are entitled to assume until shown otherwise that the United States is adequately representing both interested parties and the general public.

The United States takes great umbrage at applicants' allegations that its investigation was seriously inadequate and its consent erroneous, United States brief, pp. 18, 28, 32, 35, and characterizes applicants' contentions as "serious accusations". (United States brief, p. 32). But applicants did not seek to intervene, and have not pursued this appeal, to cast aspersions on anyone. Applicants recognize the salutory role the Department of Justice has played in protecting the civil rights of minority groups over many years and under several presidents. But the Department of Justice can be wrong. We submit that that is the case here. Applicants ask only that this Court reverse the judgment of the District Court and permit them to defend this action at a hearing on the merits.

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[5] Attorney General Katzenbach, by contrast, urged only that private parties bring evidence to the Attorney General if and *after* intervention were denied. United States brief p. 44, n. 44. New York and apparently the United States appear to question whether applicants ever "had any" evidence of discrimination. New York brief, p. 18, United States brief, p. 42. Applicants submit that the evidence in the record and presented to the District Court, including census data, court decisions, and several extensive studies of New York public schools is far more detailed and persuasive than that found sufficient to defeat an exemption in *Gaston County* v. *United States.*

CONCLUSION

For the foregoing reasons the judgment below should be reversed.

Respectfully submitted,

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APPENDIX

APPENDIX

Points and Authorities

UNITED STATES DISTRICT COURT

DISTRICT OF COLUMBIA

Civil Action No. Civ. 2419-71

NEW YORK STATE, on behalf of New York, Bronx and Kings Counties,

Plaintiff,

—against—

UNITED STATES OF AMERICA,

Defendant,

N.A.A.C.P., etc., et al.,

Applicants for Intervention.

The only previous case in which a private party sought to intervene to prevent a state or subdivision from winning exemption from the Voting Rights Act under section 4 thereof is *Apache County* v. *United States,* 256 F. Supp. 903 (D.D.C. 1966).

The Court in *Apache County* set out two criterion the meeting of either of which would wararnt such intervention. The first criterion was the pendency of an action by the applicants to enforce their individual or private rights, such as under 42 U.S.C. § 1983, on which the section 4 action would be legally binding. Such an action is now pending in the United States District Court for the South-

ern District of New York, *N.A.A.C.P., etc., et al.* v. *New York City Board of Elections.*

The second criterion is the failure to the Attorney General to discharge his responsibilities to protect the public interest and to investigate the relevant facts. The most important factor to be considered in judging whether literacy tests discriminate on the basis of race or color is whether there are differences in the literacy rates of whites and non-whites, particularly if they are do to unequal discriminatory public education. *Gaston County* v. *United States,* 395 U.S. 285 (1969). Applicants have alleged just such differences, inequality and discrimination in their proposed complaint,* but it appears from the affidavit of Mr. Norman that the United States at no time inquired whether similar facts to those found in *Gaston County* might have existed in New York at the time when today's illiterate non-white adults were children. The factual investigation vaguely described in Mr. Norman's affidavit falls far short of the thorough investigation in *Apache County* of possible discriminatory applications of literacy tests, and the actual investigations held in this case never included a request for information from applicants, whom the United States knew to be vitally interested in this matter.

This Court is required under the Voting Rights Act to make a determination of fact that New York has not within the last 10 years used any test or device with the purpose or the effect of denying the right to vote on account of race or color. The United States has declined to make a meaningful investigation into the relevant facts and will not present to this Court any information regarding such usages. Applicants for intervention should be permitted to

* This is a typographical error. The accompanying proposed pleading was technically an answer not a complaint, and it was so labeled.

intervene and to offer evidence of such usages to this Cou
so that it can properly discharge its statutory duties.

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Attorneys for applicants

Extract From New York Times Dated February 6, 1972

THE NEW YORK TIMES, SUNDAY, FERBUARY 6, 1972

LEFKOWITZ ACTS TO BAR VOTING WATCH

State Attorney General Louis J. Lefkowitz said yesterday that he had moved in Federal Court in Washington to have the state exempted from potential Federal supervision over registration and voting in Manhattan, the Bronx and Brooklyn.

Mr. Lefkowitz said he had acted in line with procedures of the Voting Rights Act of 1970, and asserted that the exemption was needed to let the state go ahead with legislative and Congressional reapportionment laws and any other changes involving voting rights.

Discrimination Seen

The state's suit was attacked in a statement yesterday by the Rev. H. Carl McCall, chairman of the Citizens Voter Education Committee; Representative Herman Badillo and Borough Presidents Percy E. Sutton of Manhattan and Robert Abrams of the Bronx.

The four critics declared Federal intervention was needed to end what they called "gross and systematic discrimination in New York."

The 1970 law provides Federal supervision of voting procedures in any county in a state if fewer than 50 per cent of eligibles voted in the 1968 Presidential election. Such requirements have led to use of Federal registrars in the South.

Mr. McCall contended that the former literacy tests had been "applied discriminatorily" here and that people in black and Puerto Rican areas had been deterred from registering by various means, including a lack of Spanish-speaking inspectors.

Extract From New York Times Dated February 6, 1972

The four critics declared that the state petition for exemption had been "quietly filed" in what they called an attempt by the State Attorney General to "cover up voter discrimination."

Mr. Lefkowitz said the four "owe me a public apology." He said the suit had been filed in open court instead of an alternative procedure to ask the United States Attorney General for exemption, which he said might have led to charges of political influence.

He said that he was "ready to show that our literacy test was not used for the purpose of abridging anyone's right to vote for race or color" and that leaders in the city had made special efforts, including extra registration periods and places, to bring out prospective voters.

Letter From New York Civil Liberties Union Dated January 26, 1973

NYCLU

New York Civil Liberties Union, 84 Fifth Avenue,
New York, N.Y. 10011. Telephone 924-7800

Burt Neuborne,
Staff Counsel

January 26, 1973

Eric Schnapper, Esq.
NAACP Legal Defense and Educational
Fund, Inc.
10 Columbus Circle
New York, New York 10019

Dear Mr. Schnapper:

I have received your letter dated January 19, 1973, in which you request information concerning the American Civil Liberties Union's receipt of a copy of the amended complaint in *NAACP* v. *New York.*

Shortly after the appearance of a story in the *New York Times* in February 1972, describing the filing of a suit by New York State to remove itself from the pre-clearance provisions of the Voting Rights Act, I telephoned Mr. George Zuckerman to request a copy of New York's complaint and the Justice Department's answering papers. Mr. Zuckerman immediately forwarded a copy of New York's amended complaint to me and informed me that the Justice Department had requested a lengthy adjournment to consider its position. Since the Justice Department had not yet determined its position in the matter, we deemed consideration of intervention premature.

Letter From New York Civil Liberties Union
Dated January 26, 1973

I heard nothing further concerning the matter, either from New York State or in the press, until May 1972, when the New York State Attorney General's office produced a copy of the unreported consent decree in *NAACP* v. *New York,* in response to my argument in *Socialist Labor Party* v. *Rockefeller,* 72 Civ. 2049 that certain modifications in the New York State Election Law had been enacted in violation of the pre-clearance requirements of the Voting Rights Act.

My office had no notice that the Justice Department consented to the entry of judgment in *NAACP* v. *New York.*

Sincerely yours,

/s/ Burt Neuborne
Burt Neuborne

cc: George Zuckerman

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