

BRIEF MEMORANDUM ON PRESENTATION OF PETITION CHALLENGING JUNE 5, 1962
DEMOCRATIC PRIMARY FOR CONGRESS, SECOND CONGRESSIONAL DISTRICT OF
MISSISSIPPI, AND ALSO CHALLENGING THE PRIMARY ELECTION ON ACCOUNT OF
FRAUD.

The following are alternative ways of proceeding, bearing in mind that there will be a petition with over sixty thousand (60,000) signatures of Negro citizens over the age of twenty-one years and residents of the second congressional district of the State of Mississippi. This petition will state that these Negro citizens would have voted for Merrill Lindsey had not their right to vote been denied and abridged. This number of signatures is in excess of the total number of votes cast for all three candidates in the primary. It is also known that the Mississippi legislature, immediately prior to the primary, repealed the law giving the candidate the right to appoint a fraction of the election officials. This was done after Reverend Lindsey had served notice of his intention to exercise these rights. In Coahoma County, Mississippi, Negro representatives of Reverend Lindsey were barred from watching the counting of the ballots, contrary to the state election law. Fear and intimidation of Negroes generally prevails throughout the district, except for one or two of the twenty-two counties. The State's discriminatory registration, voting and election laws are almost totally effective against possible Negro voting.

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1. The petition can be presented to the President of the United States requesting that he act under Section 2 of the Fourteenth Amendment, which reads as follows:

"Section 2. Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each State, excluding Indians not taxed. But when the right to vote at any election for the choice of electors for President and Vice-President of the United States, Representatives in Congress, the Executive and Judicial officers of a State, or the members of the Legislature thereof, is denied to any of the male inhabitants of such State, being twenty-one years of age, and citizens of the United States, or in any way abridged, except for participation in rebellion, or other crime, the basis of representation therein shall be reduced in the proportion which the number of such male citizens shall bear to the whole number of male citizens twenty-one years of age in such State."

This may also be done under Section 6 of Title 2, U.S.C., which reads as follows:

"Sec. 6. Reduction of Representation. Should any State deny or abridge the right of any of the male inhabitants thereof, being twenty-one years of age, and citizens of the United States, to vote at any election named in the amendment to the Constitution, article 14, section 2, except for participation in the rebellion or other crime, the number of

Representatives apportioned to such State shall be reduced in the proportion which the number of such male citizens shall have to the whole number of male citizens twenty-one years of age in such State."

Neither this section of the Fourteenth Amendment to the United States Constitution nor the above statute have been judicially interpreted. However, the Civil Rights Commission has made findings in its 1961 voting report to give the President of the United States basis to act by means of an executive order. This would also be based on the President's control over the census bureau which to a degree controls the figures upon which representation is based.

II. The petition would be presented to the Speaker of the House and to the Vice President of the United States as the President of the Senate to initiate enactment of legislation to enforce Section 2 of the Fourteenth Amendment.

III. The petition would be presented to the Speaker of the House so that the House of Representatives might itself enforce Section 2 of the Fourteenth Amendment.

IV. The petition would be presented along with the initiation of formal proceedings pursuant to Chapter 7 of Title 2, U.S.C. dealing with the contesting of elections. A notice of intention to contest must be filed as follows:

"Section 201. Notice of intention to contest. Whenever any person intends to contest an election of any Member of the House of Representatives of the United States, he shall, within thirty days after the result of such elections shall have been determined by the officer or board of canvassers authorized by law to determine the same, give notice, in writing, to the Member whose seat he designs to contest, of his intention to contest the same, and, in such notice, shall specify particularly the grounds upon which he relies in the contest."

The word "election" in Section 201 clearly means the general election on November 6, 1962, when Section 241a, as amended, of Title 2 and Section 7 of Title 2 of the United States Code are considered. Therefore, the notice could be filed at any time between November 6 and December 6, 1962. Further proceedings would then be taken pursuant to Chapter 7. The constitutional authority for this action in this manner is Section 5, clause 1, of Article I of the Constitution of the United States, which provides as follows:

"Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members, and a Majority of each shall constitute a Quorum to do Business; but a smaller Number may adjourn from day to day, and may be authorized to compel the Attendance of absent Members, in such Manner, and under such Penalties as each House may provide."