

[C APR 1966] 6

*Initial Whitley case
for foundation for funds.*

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF MISSISSIPPI
WESTERN DIVISION

THE MISSISSIPPI FREEDOM DEMOCRATIC PARTY, :
WILLIE THOMAS, BILL WASHINGTON, PEARL :
WASHINGTON, ELLA NORA MAYERS and :
L. T. HUBBARD, on their own behalf and :
on behalf of all others similarly :
situated, :

PLAINTIFFS

CIVIL ACTION

V.

NO. _____

THE DEMOCRATIC PARTY OF THE STATE OF :
MISSISSIPPI; BIDWELL ADAM, Chairman :
and Member of the Executive Committee of :
the Democratic Party of the State of :
Mississippi; BYRD P. MAILDIN, Secretary :
and Member of the Executive Committee of :
the Democratic Party of the State of :
Mississippi; HEBER LADNER, Secretary :
of State of the State of Mississippi and :
Secretary and a Member of the State Board :
of Election Commissioners, and Hon. PAUL :
B. JOHNSON, Governor of the State of :
Mississippi, and Chairman and Member of the :
State Board of Election Commissioners, :

DEFENDANTS.

C O M P L A I N T

1. (a) The Mississippi Freedom Democratic Party is a voluntary, unincorporated association of residents and citizens of the State of Mississippi interested in freely exercising their right to vote and to participate fully in the public life of that State.

(b) Plaintiffs are Negro citizens of the United States and the State of Mississippi who have attempted to register to vote and are duly qualified to register and vote but have been unconstitutionally and unlawfully prevented from so doing by officials of the State of Mississippi because of their race and color.

(c) Plaintiff THOMAS is a resident of Quitman County. Plaintiffs WASHINGTON and WASHINGTON are residents of Kemper County. Plaintiff MAYERS is a resident of Marion County and Plaintiff HUBBARD is a resident of Oktibbeha County.

2. This is a civil action brought by plaintiffs to stay the holding of the primary election of the Democratic Party of the State

6

Mississippi ("Primary Election") scheduled to be held on June 7, 1966 on the grounds that a substantial number of Negro citizens have been denied the right to register to vote.

3. The jurisdiction of this Court arises under the Constitution of the United States and under the laws of the United States and in particular Title 28 U.S.C. Section 1331 and 1343 and Title 42 U.S.C. Section 1971, 1981, 1983 and 1985 and the Voting Rights Act of 1965. The matter in controversy exceeds, exclusive of interest and costs, the sum of \$10,000.00.

4. The plaintiffs bring this action on their own behalf and on behalf of all other persons similarly situated pursuant to rule 23(a)(3) of the Federal Rules of Civil Procedure. The members of the class represented herein are so numerous as to make it impracticable to bring them all before the Court. The plaintiffs fairly insure the adequate representation of all. The character of the right sought to be enforced for the class is several and there are common questions of law and fact affecting the several rights and a common relief is sought.

5. (a) Defendant DEMOCRATIC PARTY OF THE STATE OF MISSISSIPPI is a political party registered as such with the Secretary of State of the State of Mississippi pursuant to Section 3107-01 of the Mississippi Code and as such, through its executive committee, agents, representatives and members conducts primary elections, pursuant to Section 3107-03 of the Mississippi Code proposes candidates and campaigns for elected offices in the State of Mississippi, including the offices of United States Senator and United States Congressman.

(b) Defendant BIDWELL ADAM is the Chairman of the State Executive Committee of the Democratic Party of the State of Mississippi and as such is the chief officer of that committee, charged with carrying out and effectuating the aims and goals of said Party, which include, inter alia, the supervision of primary elections, the proposal of candidates and the conducting of campaigns for elected offices in the State of Mississippi,

including the offices of U. S. Senator and U. S. Congressman and is designated as the recipient of names of candidates in the Democratic Primary for said offices and the placing of those names upon the primary election ballot pursuant to Sections 3118 and 3118.5 of the Mississippi Code.

(c) Defendant BYRD P. MAULDIN is the Secretary of the State Executive Committee of the Democratic Party of the State of Mississippi and as such is charged with carrying out and effectuating the aims and goals of said party which include, inter alia, the supervision of primary elections, the proposal of candidates and the conducting of campaigns for elected offices in the State of Mississippi, including the offices of United States Senator and United States Congressman and is designated as the recipient of the names and fees of candidates in the Democratic Primary for said offices, and the placing of the names of those candidates upon the primary election ballot, pursuant to Sections 3118, 3118.5, 3120 and 3121 of the Mississippi Code. This defendant resides at Pontotoc, Mississippi.

(d) Defendant HEBER LADNER is the Secretary of State of the State of Mississippi and is designated, pursuant to Section 3158 of the Mississippi Code, as the recipient of the Corrupt Practices Act affidavit of candidates for the U. S. Senate and House of Representatives as required by Title 14, Chapter 1, Article 2 of the Mississippi Code. In addition, he is the secretary and a member of the State Board of Election Commissioners of the State of Mississippi, which has general overall responsibility for the conduct of all elections in the State of Mississippi.

(e) Defendant PAUL B. JOHNSON is the Governor of the State of Mississippi. He is responsible under the laws of that State for commissioning all elective officials of the State, including the elective officials of all municipalities in the State. He is the Chairman of the State Board of Election Commissioners which Board has general overall responsibility for the conduct of all elections in the State of Mississippi.

6. (a) The population of the State of Mississippi, ^{new} as appears from the 1960 Census of the United States Government, consists of approximately 2,178,141 persons of whom 915,743 or 42% are members of the Negro race. Notwithstanding the fact that 42% of the population of the State of Mississippi is Negro, the white population of that state has by unlawful and unconstitutional means seized and retained all political power and has by such unlawful and unconstitutional means prevented the Negro people from participating in the administration of state and appropriate national affairs and in the selection of federal, state and local elected officials. This exclusion of Negro members from the political process has been achieved by the wholesale prevention of Negroes from registering to vote or from participating in primary or general elections, contrary to the provisions of the Fourteenth and Fifteenth Amendments to the Constitution of the United States and of 42 U.S.C. 1971, 1981, 1983 and 1985, such prevention having been achieved under color of laws of the state of Mississippi which on their face or in their discriminatory application are violative of such constitutional provisions and have deprived the Negro people of Mississippi, including these plaintiffs, of the privileges and immunities secured by the Constitution of the United States.

(b) In addition to the denial of the right to vote, segments of the white population of the State of Mississippi have, from time to time, under color of law and otherwise, by threats, terror and violence, effectively intimidated Negroes from even attempting to exercise their franchise, and such threats, terror and violence have been effective in that the number of Negro citizens of the State of Mississippi who have been permitted to register and vote is substantially less than the number of Negro citizens who are eligible to register to vote.

(c) Upon information and belief, so effective and complete has been the program of disfranchisement of the Negro

people of the State of Mississippi that as of November of 1964, the date of the last general election of federal elective officials only 6.7% of eligible Negroes were registered to vote in the State, notwithstanding that 42% of the population thereof were Negro.

7. The Attorney General of the United States has successfully suspended in the State of Mississippi the use of all "tests and devices" used as a prerequisite for voting or registering for voting on a finding that same has been used "for the purpose or with the effect of denying or abridging the right of Negro citizens⁷ of the United States to vote on account of race or color", pursuant to Title 42 U.S.C. Section 1973 (b) of the Voting Rights Act of 1965.

8.(a) Pursuant to Section 3(a) of the Voting Rights Act of 1965 thereof the Attorney General of the United States in or about August of 1965 and subsequent thereto designated Federal Voting Examiners for 23 of the 82 counties of the State of Mississippi. Following the designation of the said voting examiners numerous Negroes in the said 23 counties for the first time in almost 100 years were permitted to register to vote and have in fact so registered to vote. As of April 1, 1966, approximately 32,000 Negroes have registered in 18 counties,^{1/} and the number thereof is steadily increasing.

(b) The number of persons appearing on the registration rolls of said 18 counties prior to the designation of the aforesaid Federal Voting Examiners was approximately 157,627, of whom only 10,568 were of the Negro race.

^{1/} In April of 1966, Federal Voting Examiners were designated in Claiborne, Jasper, Rankin, Noxubee and Winston counties increasing the total to 23 counties. The last 5 counties are not considered in these figures.

(c) Upon information and belief by virtue of the registration permitted in said 18 counties under the Voting Rights Act of 1965, the newly registered Negroes under that Act as of April 1, 1966, are approximately as follows:

County	Cong. Dist.	Number of Eligible Negroes	Number Registered Before August 1965	Number Registered Since August 1965	% of Eligible Negroes Registered
Leflore	1	13,547	281	5,884	46
Jones	5	7,427	800	1,935	37
Jefferson	3	3,540	1	2,331	66
Warren	3	10,726	2,433	2,588	46
Benton	2	1,419	337	548	62
Coshoma	2	14,604	1,061	4,589	39
DeSoto	2	6,246	11	1,310	21
Clay	1	4,444	50	1,474	34
Humphreys	4	5,561	0	714	13
Holmes	4	8,757	20	3,856	44
Carroll	1	2,704	1	729	26
Jeff Davis	5	3,222	126	1,630	55
Hinds	3	36,138	5,156	6,184	31
Walthall	3	2,499	125	1,132	50
Simpson	4	3,186	--	661	21
Neshoba	4	2,565	200	613	32
Madison	4	10,366	450	5,498	57
Newton	4	3,018	104	740	28
TOTAL		139,969	11,156	42,416	38 %

(d) Said 18 counties are scattered throughout the State of Mississippi and one or more thereof are present in each of its five congressional districts.

(e) In the 64 counties of the State of Mississippi in which the Attorney General of the United States has failed or neglected to designate Federal Voting Examiners, (prior to April of 1966) the rate of the increase of the number of Negroes permitted to register to vote has been substantially and significantly lower than that present in the 18 counties in which such Federal Voting Examiners have been designated. The figures for representative counties scattered throughout the state's five congressional

6

districts as of December 23, 1965 are as follows:

County	Cong. Dist.	Number of Eligible Negroes	Number Regis- tered Before August 1965	Number Regis- tered Since August 1965	% of Eligible Negroes Registered
Covington	3	2,032	702	64	38
Forrest	5	7,495	337	364	9
Kemper	4	3,221	30	252	9
Montgomery	1	2,627	10	146	6
Tunica	2	5,822	38	338	6
Chickasaw	1	<u>3,056</u>	<u>69</u>	<u>322</u>	<u>13</u>
TOTAL		24,253	1,186	1,486	11 %

(f) Pursuant to Section 3130 of the Mississippi Code of 1942, as amended, in order to be eligible to vote in a primary election, a person must be a qualified elector at least 1 month "prior to the date set for the first primary election."

(g) The interval between the passage of the Voting Rights Act of 1965 (August 6, 1965) and the scheduled primary elections (June 7, 1966) has not been sufficient to permit a substantial number of Negro citizens to register to vote because, inter alia,

(1) Federal Voting Examiners have not been designated in more than 70% of the counties of the State of Mississippi;

(2) In the counties where Federal Voting Examiners have been designated, their activities have been restricted to urban centers therein;

(3) Acts of violence, intimidation, terrorism and economic retribution have deterred many Negroes from attempting to register to vote in all counties of the State of Mississippi.

9. The threatened holding of primary elections in the State of Mississippi on June 7, 1966, which, unless restrained by this Court, will continue to be based in most of the counties of the state upon a pattern and practice of practically total exclusion of Negro citizens from the registration and voting processes, will

6

deprive the plaintiffs and the classes they represent, the Negro citizens of the State of Mississippi, of their fundamental and inalienable right to full and effective participation in the selection of those federal officials expected to represent them in the national legislature. This fundamental right to seek elective office and to select legislators in a free and unimpaired fashion is a bedrock of our political system and is the primary means citizens have to exercise their inalienable right to full and effective participation in the political processes of their government. This is a right protected by the Constitution and in particular Article IV thereof and the Fourteenth and Fifteenth Amendments as well as the laws of the United States. It is a right which the national courts are committed to protect,

10. Unless this Court grants the relief prayed for herein, the holding of the Primary Election now scheduled for June 7, 1966 will result in the nomination of candidates for the office of the United States Senator and United States Representative for the State of Mississippi, who will have been selected by an electorate from which a large majority of Negro citizens have been systematically excluded from their right to register and vote because of their race and color, and they will thus hold their offices in open violation of the Constitution and laws of the United States unless these threatened illegal and unconstitutional primary elections of the Democratic Party of the State of Mississippi are restrained by this Court until such time as the Negro citizens of said state will have had a fair and free opportunity to qualify for participation therein.

11. Unless this Court grants the relief prayed for, the plaintiffs and the class of Negro citizens they represent, will suffer immediate and irreparable injury. Not only will they have been unconstitutionally denied a right to participate in the said primary elections without the imposition of unconstitutional, unlawful and illegal conditions, but they will have been

unconstitutionally, unlawfully and illegally prevented from selecting their federal officials. Those officials who are to be selected at the forthcoming primary and general elections will be responsible for representing the citizens of Mississippi in, among other things, the many Federal programs designed to meet the pressing economic and social problems of many of the citizens of the State of Mississippi, such as the Federal anti-poverty program, the urban renewal program and the public housing program.

12. Unless this Court grants the relief here prayed for, the plaintiffs and the Negro citizens of the State of Mississippi will be imminently threatened with six more years in the case of the office of United States Senator and two more years in connection with the office of United States Representative of unconstitutional, illegal, unlawful and improper representation by officials from whose selection they have been almost totally excluded and whose functions will continue to be performed in a manner wholly discriminatory to the Negro citizens of the State of Mississippi in violation of the Constitution and laws of the United States. The injuries which the Negro citizens of the State of Mississippi suffer and are threatened with for six more years in the case of the United States Senator and two more years in the case of the United States Representative, if these unconstitutional and illegal primary elections are permitted to be held, are immediate, substantial and irreparable. They require the prompt intervention of a federal court of equity.

13. Unless this Court grants the relief prayed for, the threatened primary elections now scheduled for June 7, 1966 will virtually nullify and render meaningless, in the area of federal political life in the State of Mississippi, the decrees and judgments of United States District Courts in the State of Mississippi, and in the Court of Appeals, 5th Circuit, in the following cases in which long standing patterns and practices

of racial discrimination in various counties of the State of Mississippi were found to exist:

<u>Case</u>	<u>County</u>
U.S. v. Mathis	Benton
U.S. v. Allen	Chickasaw
U.S. v. Ramsey	Clark
U.S. v. Lynd	Forrest
U.S. v. Ward	George
U.S. v. McClellan	Holmes
U.S. v. Hosey	Jasper
U.S. v. Clayton	Marshall
U.S. v. Duke	Panola
U.S. v. Campbell	Sunflower
U.S. v. Cox	Tallahatchie
U.S. v. Wood	Walthall

14. Unless this Court grants the relief prayed for, plaintiffs and the class they represent will lose the opportunity, for the first time since Reconstruction, of participating in a Primary Election in which there will be a choice of qualified candidates whose platforms advocate the cause of equality for Negroes as follows:

Reverend Clifton Whitley - United States Senate
Dock Drummond - United States Congress,
1st Congressional District
Ralthus Hayes - United States Congress
2nd Congressional District
Reverend Edwin King - United States Congress
3rd Congressional District
Reverend Clinton Collier - United States Congress
4th Congressional District
Lawrence Guyot - United States Congress
5th Congressional District

15. Unless the imminently pending primary elections are restrained and ordered rescheduled at a time as prayed for herein, the defendants will achieve their objective of freezing, for at least six more years in the case of the United States Senator and two more years in the case of United States Representative, this pattern and practice of excluding the Negro citizens of the State of Mississippi from any participation in the selection of their Representative to the National legislature. This would be an intolerable and unconstitutional result wholly in violation of the spirit and letter of the aforesaid decrees and judgments.

WHEREFORE, plaintiffs pray

1. That a permanent and temporary injunction issue enjoining and restricting the defendants, or some of them, their agents, representatives and attorneys, and all others acting in

6

concert with them from proceeding in any way with or from holding the primary elections of the Democratic Party of the State of Mississippi, presently scheduled for June 7, 1966.

2. That a judgment issue declaring that the primary elections of the Democratic Party of the State of Mississippi be held on a day to be set by the Court when it determines that the eligible Negro citizens of Mississippi have had reasonable time and opportunity to qualify to participate therein;

3. That the Court declare that any registered voter in the State of Mississippi who has registered at any time on or before a date to be fixed by the Court after it has determined that the eligible Negro citizens of Mississippi have had reasonable time and opportunity to register and vote, may vote in said rescheduled primary elections; and

4. For such other and further relief as may be proper and necessary, and that this Court retain jurisdiction of this cause pending and through the completion of the rescheduled primary elections of the Democratic Party of the State of Mississippi, so that further applications for relief may be made to the Court if required.

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