

STATE OF ALABAMA, ex rel	Ø	
C. ALTON WHITE, et al,	Ø	
PETITIONERS	Ø	IN THE CIRCUIT COURT OF
VS.	Ø	BALDWIN COUNTY, ALABAMA
HARRY D'OLIVE, AS JUDGE OF	Ø	AT LAW
PROBATE OF BALDWIN COUNTY, ALABAMA	Ø	CASE NO. 7149
RESPONDENT	Ø	

This cause coming on this day to be heard was presented on the verified petition, stipulation of the parties and answer of the Respondent, and petitioners' replication to respondent's answer. The Court having heard and considered the arguments of counsel is of the opinion that petitioners are entitled to the relief for which they pray.

It is the finding of this Court that Act No. 552, as set forth in Title 17, Section 145 (1) Code of Alabama, is not applicable in that the primary election which next preceded the general election of November 8, 1966, was the Democratic Party Primary, commonly referred to as the "Democratic Run-off Primary", held on May 31, 1966 in which Primary Election a total of 7,541 votes were cast in the race for the County Office of Commissioner, District No. 4, this being the County Office for which the largest number of votes were cast, and at said time the number of qualified voters of Baldwin County, Alabama as shown on the published list of qualified electors as required by Section 38, Title 17, Code of Alabama of 1940, published in the Spring of 1966, was 17,823. It therefore follows that Title 17, Section 145 (1) Code of Alabama of 1940 is inapplicable.

It is therefore Ordered, Adjudged and Decreed by this Court that the respondent, Harry D'Olive, as Judge of Probate of Baldwin County, Alabama, in causing the ballots to be printed for the general election to be conducted in Baldwin County, Alabama on November 8, 1966 include thereon the names of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman, as the candidates of the Republican Party for the office of Tax Assessor; Member, County Board of Education, District No. 2; County Commissioner,

District No. 2; and County Commissioner, District No. 4,  
respectively, of Baldwin County, Alabama.

It is further Ordered that the cost herein be taxed to  
petitioners.

Done this 7th day of September, 1966.

T. J. Mashburn  
T. J. MASHBURN, JUDGE OF CIRCUIT  
COURT OF BALDWIN COUNTY, ALABAMA

FILED

SEP 9 1966

CLERK  
REGISTER

THE STATE OF ALABAMA, ex rel C. Alton	)	
White, et al.,	)	IN THE CIRCUIT COURT
	)	
Petitioners,	)	OF BALDWIN COUNTY, ALABAMA
	)	
VS.	)	AT LAW. NO. 7149.
	)	
HARRY D'OLIVE, as Judge of Probate	)	
of Baldwin County, Alabama,	)	
	)	
Respondent.	)	
	)	
	)	

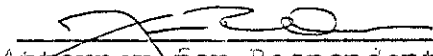
STIPULATION AND ANSWER TO PETITION FOR MANDAMUS

It is hereby stipulated and agreed by and between the Attorneys for the Petitioners and the Attorney for the Respondent, Harry D'Olive, as follows:

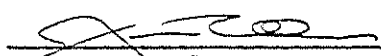
1. That Respondent admits all material allegations and averments contained in paragraphs one through seven both inclusive. The parties hereto further stipulate and agree that in the May 31, 1966 Democratic Run-off Election in the race for County Commissioner, District Number Four, there were a total of 7,541 votes cast and at such time the number of qualified voters in Baldwin County, Alabama, as shown on the published list of qualified electors as required by Section 38 Title 17 of the Code of Alabama of 1940, published in the Spring of 1966 was 17,823. It is further stipulated that the Run-off race for County Commissioner, District Number Four was the County race in which the largest number of ballots were cast.

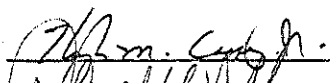
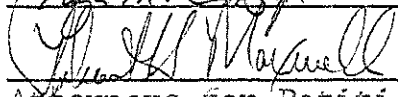
2. For answer to Paragraphs numbered 8 and 9 of the petition your respondent shows that he, as Judge of Probate of Baldwin County, Alabama, is prohibited from causing to be printed on the ballots to be used in Baldwin County in the general election to be held on November 8, 1966, the names of any candidates for County offices when such candidates were nominated

by any political party when the said political party could have called a primary election under Sections 336 and 337, Title 17 of the Code of 1940, but failed to do so and more than sixty percent of the qualified electors in the county participated in a primary election next preceding the general election. Respondent avers that the foregoing facts were and are co-existent in that the Republican Party of Baldwin County, Alabama, could have called a primary election under Sections 336 and 337, Title 17 of the Code of Alabama of 1940, but failed to do so and 11,960 qualified electors in Baldwin County, Alabama, participated in the primary election next preceding the general election to be held on November 8, 1966, and the number of qualified voters in Baldwin County, Alabama, as shown on the published list of qualified electors as required by Section 38, Title 17, of the Code of 1940 published in the Spring of 1966 was 17,823. Respondent denies that he has refused to have the names of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman, as the candidates of the Republican Party for the office of Tax Assessor, Member, County Board of Education, District 2; County Commissioner, District 2; and County Commissioner, District 4, respectively, of Baldwin County, but avers that he is prohibited from doing so by Title 17, Section 145 (1).

  
Attorney for Respondent.

ACCEPTED

  
Attorney for Respondent

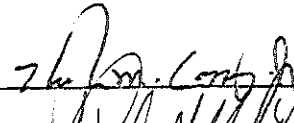
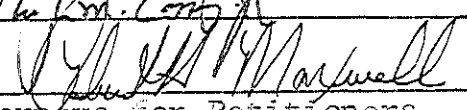
  
  
Attorneys for Petitioners

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STATE OF ALABAMA, ex rel C. Alton	)	IN THE CIRCUIT COURT OF
White, et al.,	)	
	)	BALDWIN COUNTY, ALABAMA,
Petitioners,	)	
	)	AT LAW. NO. 7149
VS.	)	
	)	
HARRY D'OLIVE, as Judge of Probate	)	
of Baldwin County, Alabama,	)	
	)	
Respondent	)	

REPLICATION

The Petitioners by way of replication to Respondent's answer to paragraphs numbered 8 and 9 of the original petition deny that 11,960 qualified electors participated in the primary election next preceding the general election to be held on November 8, 1966, and show unto the Court that on the contrary in the May 31, 1966 Democratic Primary Election for Baldwin County, Alabama, a total of only 7,541 votes were cast in the run-off race for the County office of Commissioner, District No. 4, this being the County office for which the largest number of votes were cast, and at said time the number of qualified voters of Baldwin County, Alabama, as shown on the published list of qualified electors as required by Section 38, Title 17, Code of Alabama of 1940, published in the Spring of 1966, was 17,823. Petitioners therefore aver that only 42.3% of the vote was cast pursuant to Title 17, Section 145 (1), and therefore Act 552 has no application.

  
  
 Attorneys for Petitioners

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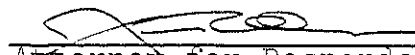
STATE OF ALABAMA, ex rel C. Alton	)		
White, et al,	)		
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Petitioners,	)	IN THE CIRCUIT COURT OF	
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VS.	)	BALDWIN COUNTY, ALABAMA	
	)		
HARRY D'OLIVE, as Judge of Probate	)	AT LAW	NO. 7149
of Baldwin County, Alabama,	)		
	)		
Respondent.	)		

ANSWER TO PETITION FOR MANDAMUS

Now comes the respondent in the above styled cause, by his attorney, and for answer to the petition heretofore filed in said cause says:

1. Respondent says that he does not have knowledge of all of the facts set forth in Paragraph 1 of the said petition and, therefore, cannot admit nor deny the averments of said paragraph.
2. Respondent admits the averments of Paragraph 2 of the petition.
3. Respondent admits the averments of Paragraph 3 of the petition.
4. Respondent admits the averments of Paragraph 4 of the petition.
5. Respondent does not have knowledge of all of the facts set forth in Paragraph 5 of the petition and, therefore, can neither admit nor deny the averments thereof.
6. Respondent admits the averments of Paragraph 6 of the petition.
7. Respondent admits the averments of Paragraph 7 of the petition.
8. For answer to Paragraphs numbered 8 and 9 of the petition your respondent shows that he, as Judge of Probate of Baldwin County, Alabama, is prohibited from causing to be printed on the ballots to be used in Baldwin County in the general election to be held on November 8, 1966, the names of any candidates for county offices when such candidates were nominated by any political party when the said political party could have called a primary

election under Sections 336 and 337, Title 17 of the Code of 1940, but failed to do so and more than sixty percent of the qualified electors in the county participated in a primary election next preceding the general election. Respondent avers that the foregoing facts were and are co-existent in that the Republican Party of Baldwin County, Alabama, could have called a primary election under Sections 336 and 337, Title 17 of the Code of Alabama of 1940, but failed to do so and 11,960 qualified electors in Baldwin County, Alabama, participated in the primary election next preceding the general election to be held on November 8, 1966, and the number of qualified voters in Baldwin County, Alabama, as shown on the published list of qualified electors as required by Section 38, Title 17, of the Code of 1940 published in the Spring of 1966 was 17,823. Respondent denies that he has refused to have the names of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman, as the candidates of the Republican Party for the offices of Tax Assessor, Member, County Board of Education, District 2; County Commissioner, District No. 2; and County Commissioner, District No. 4; respectively, of Baldwin County, but avers that he is prohibited from doing so by Title 17, Section 145(1).

  
Attorney for Respondent

Filed 9-7-66,  
J.A.M.

STATE OF ALABAMA ex rel C. Alton White, ) IN THE CIRCUIT COURT OF THE  
 Jason Kutack, Jerry Perkins, Max Fore- )  
 man, John S. Huffman, and John Robert- )  
 son; C. ALTON WHITE; JASON KUTACK; ) 28th JUDICIAL CIRCUIT  
 JERRY PERKINS; MAX FOREMAN; JOHN S. )  
 HUFFMAN; and JOHN ROBERTSON; )  
 Petitioners; ) OF ALABAMA  
 vs. )  
 HARRY d'OLIVE, as Judge of Probate of )  
 Baldwin County, Alabama, )  
 Respondent. ) CASE NO. 7149

TO ALICE J. DUCK, CLERK OF THE CIRCUIT COURT OF THE 28TH JUDICIAL CIRCUIT OF ALABAMA:--

The foregoing petition having been presented to and considered by me, it is hereby ORDERED that an alternative writ of mandamus, as prayed in the bill, issue to the respondent, Harry d'Olive, as Judge of Probate of Baldwin County, Alabama, and be made returnable before me on the 7<sup>th</sup> day of September, 1966, at 1:30 o'clock P.M., in the Courthouse at Bay Minette, Alabama.

Dated this 29<sup>th</sup> day of August, 1966.

J. H. Madibauer  
 JUDGE

FILED \_\_\_\_\_, 1966.

\_\_\_\_\_  
 Circuit Clerk

*I hereby accept service a copy of  
 the foregoing on the 29<sup>th</sup> day of  
 August 1966*

Harry d'Olive  
 Judge of Probate



ALTERNATIVE WRIT OF MANDAMUS

STATE OF ALABAMA ex rel C. Alton White, ) IN THE CIRCUIT COURT OF THE  
Jason Kutack, Jerry Perkins, Max Fore- )  
man, John S. Huffman, and John Robert- )  
son; C. ALTON WHITE; JASON KUTACK; ) 28th JUDICIAL CIRCUIT  
JERRY PERKINS; MAX FOREMAN; JOHN S. )  
HUFFMAN; and JOHN ROBERTSON; )  
Petitioners; ) OF ALABAMA  
vs. )  
HARRY d'OLIVE, as Judge of Probate of )  
Baldwin County, Alabama, ) CASE NO. 7149  
Respondent. )

TO: HARRY d'OLIVE, as Judge of Probate of Baldwin County, Alabama:--

Whereas C. Alton White, Jason Kutack, Jerry Perkins, Max Foreman, John S. Huffman, and John Robertson, as petitioners and as relators, have filed in this Court and presented to the Honorable T. J. Mashburn, Judge thereof, a petition for an alternative writ of mandamus commanding and ordering as hereinafter set forth, a copy of which petition is attached hereto, and the said Judge of said Court has ordered the issuance of the alternative writ so prayed for:

You are hereby ordered and commanded forthwith to print or cause to be printed on the ballots to be used in the general election of November 8, 1966, the names of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman as the candidates of the Republican Party for the offices of Tax Assessor; Member, County Board of Education, District No. 2; County Commissioner, District No. 2; and County Commissioner, District No. 4; respectively, of Baldwin County; or else appear before this Honorable Court in the Courthouse at Bay Minette, Alabama, on the 7 day of Sept, 1966, at 1:30 o'clock    M. and show cause why you should not do so.

Witness my hand on this the 29 day of Aug, 1966.

David L. Mashburn  
Clerk of the Circuit Court of the  
28th Judicial Circuit of Alabama

STATE OF ALABAMA )  
BALDWIN COUNTY )

TO THE SHERIFF OF BALDWIN COUNTY, ALABAMA:

You are hereby commanded forthwith to serve a copy of the foregoing alternative writ of mandamus upon Harry d'Olive as Judge of Probate of Baldwin County, Alabama.

Witness my hand this the 29 day of Aug, 1966.

David L. Mashburn  
Clerk of the Circuit Court of the  
28th Judicial Circuit of Alabama

I, \_\_\_\_\_, Sheriff of Baldwin County, Alabama, have executed the above summons by serving a copy of the foregoing alternative writ of mandamus personally on Harry d'Olive as Judge of Probate of Baldwin County, Alabama, on this the \_\_\_\_\_ day of \_\_\_\_\_, 1966.

STATE OF ALABAMA ex rel C. Alton White,	)	IN THE CIRCUIT COURT OF THE
Jason Kutack, Jerry Perkins, Max Fore-	)	
man, John S. Huffman, and John Robert-	)	
son; C. ALTON WHITE; JASON KUTACK;	)	28th JUDICIAL CIRCUIT
JERRY PERKINS; MAX FOREMAN; JOHN S.	)	
HUFFMAN; and JOHN ROBERTSON;	)	
	)	OF ALABAMA
Petitioners;	)	
vs.	)	
	)	
HARRY d'OLIVE, as Judge of Probate of	)	
Baldwin County, Alabama,	)	
Respondent.	)	CASE NO. _____

PETITION FOR MANDAMUS AND OTHER RELIEF

TO THE JUDGE OF SAID COURT, THE HONORABLE T. J. MASHBURN:--

Come now, C. Alton White, Jason Kutack, Jerry Perkins, Max Foreman, John S. Huffman, and John Robertson, each as relator on behalf of the State of Alabama and also in the individual capacities hereinafter specified, and, separately and severally, would show and represent unto your Honor the following:

1. Each of your individual relators and petitioners is over twenty-one years of age and is a resident and qualified elector of Baldwin County, Alabama, and a member of the Republican Party (and not the Democratic Party) in said county. C. Alton White brings this suit as relator on behalf of the State of Alabama, also in his individual capacity as a qualified elector of Baldwin County, and also in his individual capacity as the nominee of the Republican party for the office of Tax Assessor of said county; Jason Kutack brings this suit as relator on behalf of the State of Alabama, also in his individual capacity as a qualified elector of Baldwin County, and also in his individual capacity as the nominee of the Republican party for the office of member of the County Board of Education for said county, district no. 2; Jerry Perkins brings this suit as relator on behalf of the State of Alabama, also in his individual capacity as a qualified elector of Baldwin County, and also in his individual capacity as the nominee of the Republican party for the office of County Commissioner of said county, district no. 2; Max Foreman brings this suit as relator on behalf of the State of Alabama, also in his individual capacity as a qualified elector of Baldwin County, and also in his individual capacity as the nominee of the Republican party for the office of County Commissioner of said county, district no. 4; John S. Huffman brings this suit as relator on behalf of the State of Alabama, also in his individual capacity as a qualified elector of Baldwin County, and also in his individual capacity as presiding officer of the 1966 Republican convention for Baldwin County; and John Robertson brings this suit as relator on behalf of the State of Alabama, also in his individual capacity as a qualified elector of Baldwin County, and also in his individual capacity as Chairman of the Republican County Executive Committee of Baldwin County.

2. The respondent, the Honorable Harry d'Olive, is over twenty-one years of age, is a resident of Baldwin County, Alabama, and is sued in his capacity as Judge of Probate of Baldwin County, Alabama. Under section 186 of title 17 of the 1940 Code of Alabama, the duty of having the ballots printed for use in general elections in said county is principally upon the respondent in his capacity as said Judge of Probate.

3. A general election is to be conducted in Baldwin County on November 8, 1966; and in said election, among other offices, there is to be elected for said county a Tax Assessor, a member of the County

Board of Education (district no. 2), and two County Commissioners (districts no. 2 and 4). The Republican party is a political party in said state and county as defined in section 337 of title 17 of the 1940 Code of Alabama and has by county convention in Baldwin County, Alabama, conducted in all respects in conformity with law (as more fully appears in Exhibit A, which is attached hereto and hereby adopted and incorporated by reference as a part of this petition), duly nominated as candidates of said party for said general election C. Alton White for the office of Tax Assessor of said county, Jason Kutack for the office of member of the County Board of Education for said county (district no. 2), Jerry Perkins for the office of County Commissioner of said county (district no. 2), and Max Foreman for the office of County Commissioner of said county (district no. 4). None of said nominations have been withdrawn or in any wise rescinded.

4. In conformity with and in full compliance with the provisions of section 145 of title 17 of the 1940 Code of Alabama, a written certificate in proper form, duly signed by John S. Huffman and Leona Newman as Chairman and Secretary, respectively, of the 1966 Republican convention for said county, was, on June 9, 1966 (more than sixty days prior to said general election), filed with the respondent, Harry d'Olive, as Judge of Probate of said county; and in said certificate the names of C. Alton White, Jason Kutack, Jerry Perkins, and Max Foreman were certified as the candidates nominated by said convention for the county public offices as aforesaid; and attached to said certificate were statements by said candidates in compliance with the Alabama Corrupt Practices Act. (A copy of said certificate is attached hereto as Exhibit B, and is hereby adopted and incorporated by reference as a part of this petition.)

5. Continuously to date since for more than one year prior to May 3, 1966, C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman have been qualified electors and actual residents of Baldwin County and of the district if any from which or by which the offices for which they have been so nominated and certified is to be elected; and they possess all qualifications and requirements imposed by law for said respective offices. Petitioners and relators participated in the nomination process of the Republican Party; as members of the Republican Party and not members of the Democratic Party, they did not (and were not eligible to) participate in the Democratic Party primary elections of May 1966.

6. Section 165 of title 17 of the 1940 Code of Alabama provides that "in all elections held \* \* \* for all or any \* \* \* county \* \* \* officers, the voting shall be by official ballot printed and distributed as provided in this chapter, except when the form of the ballot is otherwise prescribed by law, and no ballot shall be received or counted in any election except it be provided as prescribed by law"; and section 148 in the same chapter of said title provides that "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"; and section 153 in the same chapter of said title provides that "there shall be \* \* \* but one form of ballot for all the candidates for public office, and every ballot shall contain the names of all candidates whose nomination for any office specified on the ballot have been duly made and not withdrawn." In the same chapter of said title, it is further provided, in section 186, that "the judge of probate for each county shall have printed, at the expense of the county, ballots \* \* \* necessary in the conduct of [the] election," and, in section 145, that

"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," and, in section 4, that "in the event the judge of probate of any county is unable, or neglects, fails, or refuses to perform the duties herein prescribed, the duties, responsibilities, penalty and authority of the judge of probate shall devolve upon the judge of the circuit court of the county." Furthermore, by way of penalty, it is provided in section 402 of said title that "any officer \* \* \* of any county \* \* \* whose duty it is by law to prepare and have printed ballots for any election authorized by law to be held \* \* \*, who shall wilfully or negligently fail to have printed on said ballots as required by law \* \* \* the names of all persons entitled to be printed thereon, \* \* \* shall be guilty of a misdemeanor", and it is provided in section 324 of said title that "any judge of probate or other officer on whom the duty of a judge of probate may have been temporarily devolved, who wilfully and knowingly neglects, fails, or refuses to perform any of the duties prescribed in this chapter, shall be guilty of a misdemeanor".

7. Notwithstanding said nominations, certification, and eligibility as prescribed by law, and notwithstanding the requirements and penalties as prescribed by law, all as aforesaid, the respondent, Harry d'Olive, as Judge of Probate of Baldwin County, has informed the petitioners that, unless ordered to do so by a court of competent jurisdiction, he refuses to have the names of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman, or any of them, printed on the ballots to be used in said county in the general election to be held on November 8, 1966. Petitioners are informed and believe, and upon such information and belief aver, that said refusal by the respondent is premised solely upon the provisions of Act No. 552 of the Regular Session of the Legislature of Alabama of 1947, approved October 2, 1947, and, in connection therewith, upon the number of qualified electors of Baldwin County as shown by the list thereof prepared by respondent and published in Spring 1966, and upon the number of votes proclaimed by officials of the County Executive Committee of the Democratic Party of Baldwin County as having been cast in certain county races in the May 3, 1966, primary election held by the Democratic party in said county.

8. Said refusal by the respondent, Harry d'Olive, in his capacity as Judge of Probate of Baldwin County, is erroneous in the following separate and several respects:

(a) Act No. 552 is not applicable in that the primary election which next preceded the general election of November 8, 1966, was the Democratic Party primary election held on May 31, 1966; and less than 60% of the qualified electors in Baldwin County (according to the list thereof published in Spring 1966) participated in said primary election according to the proclamations thereof made by officials of the County Executive Committee of the Democratic Party of said county.

(b) Act No. 552 is not applicable in that on March 4, 1966, the last date for deciding whether to accept or decline the primary election law for the year 1966, the latest primary elections whose voter participation could then be known were the Democratic Party primary elections held in May 1964; and in said May 1964 primary elections in Baldwin County no county race had the

participation of as much as 60% of the qualified electors in said county according to the proclamations thereof made by officials of the County Executive Committee of the Democratic Party of said county.

(c) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would have the effect of making nomination by primary elections a necessity and would violate thereby Section 190 of the Constitution of Alabama, which provides that "the legislature shall also make provision by law, not inconsistent with this article, for the regulation of primary elections and for punishing frauds at the same, but shall not make primary elections compulsory."

(d) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would have the effect of making nomination by primary elections a necessity and would violate thereby Amendment 41 to the Constitution of Alabama, which provides that "the legislature shall also make provision by law, not inconsistent with this article, for the regulation of primary elections and for punishing frauds at the same, but shall not make primary elections compulsory," which said amendment was adopted at a time when the legislature had already made provision for the nomination of candidates by the convention method as an acceptable alternative to the primary method of nomination.

(e) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would violate section 179 of the Constitution of Alabama, which provides that "all elections by the people shall be by ballot." This right is substantially impaired and denied if some of the duly nominated and certified candidates are shown on the ballot while others are not, nor is the privilege of casting a write-in vote the practical equivalent, particularly where voting machines are employed and a voter is allowed (by section 105 of title 17 of the 1940 Code of Alabama) only three minutes within the voting machine. The effect of Act No. 552, if so applied, is to make the general election one of form, and not of substance, as to county offices. This result is particularly odious to a democratic form of government as relates to the member of the Baldwin County Board of Education, district no. 2, inasmuch as the nominee of the Democratic party for such office was chosen without even a balloting during the primary election conducted by that party.

(f) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would by sanction of law in effect make the Democratic Party primary election determinative of the election of county officers and thereby violate Section 33 of the Constitution of Alabama, which provides that "the privilege of suffrage shall be protected by laws regulating elections", particularly so inasmuch as other laws of the state (viz, section 347 of title 17 of the 1940 Code of Alabama) limited participation in said Democratic primary election to qualified electors who were members of the Democrat party.

(g) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would by sanction of law in effect make the Democratic primary election determinative of the election of county officers and thereby violate Sections 177, 178, 181, 186, 187 and 188 of the Constitution of Alabama

and Amendments 55, 91, 96 and 207 to said Constitution, which said sections and amendments prescribe qualifications for the right to vote and grant suffrage to those meeting said qualifications, particularly so inasmuch as other laws of the state (viz, section 347 of title 17 of the 1940 Code of Alabama) limited participation in said Democratic party primary election to qualified electors who were members of the Democrat party.

(h) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would violate Section 22 of the Constitution of Alabama by making an exclusive grant of special privilege to nominated candidates of the Democratic party to have their names, but not those of their opponents, printed upon the ballots.

(i) Act No. 552 violates Section 45 of the Constitution of Alabama, which requires that the subject of a bill "shall be clearly expressed in its title" in that the title of said act, while reflecting that it would prohibit Judges of Probate from causing the names of candidates for county offices to be printed on ballots in general elections "under certain conditions", does not state even in summary fashion what those conditions would be.

(j) Act No. 552 violates Section 45 of the Constitution of Alabama, which provides that "no law shall be \* \* \* amended \* \* \* by reference to its title only, but so much thereof as is \* \* \* amended \* \* \* shall be re-enacted and published at length", in that it directly amends the provisions of section 145 of title 17 of the 1940 Code of Alabama and, if applied so as to prevent the Republican candidates from being listed on the ballot, also amends the provisions of sections 147, 153, and 402 of title 17 of the 1940 Code of Alabama, yet the portions of said sections so amended are not re-enacted and published at length.

(k) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would violate Section 108 of the Constitution of Alabama, which provides that "the operation of a general law shall not be suspended for the benefit of any individual \* \* \* or association," particularly inasmuch as the provisions of sections 145, 148 and 153 of title 17 of the 1940 Code of Alabama, general laws providing for the inclusion on the ballot of all duly nominated candidates, would by said Act, when so applied, be suspended for the benefit of individuals nominated by the Democratic Party and for the benefit of the Democratic Party, a voluntary association.

(l) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would violate Section 108 of the Constitution of Alabama, which provides that no individual or association shall be exempted from the operation of any general law, particularly so inasmuch as said Act does not also contain a provision prohibiting judges of probate from causing to be printed on the ballot for general elections the names of candidates for county office where nominated by primary election and where more than 60% of the qualified electors in said county either did not participate in said primary election or participated in a mass meeting, caucus, convention or other assembly of some other political party; and also inasmuch as persons nominated to fill vacancies in nominations are exempted from the provisions of said Act.

(m) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would violate Section 103 of the Constitution of Alabama, which provides that "the legislature shall provide by law for the regulation \* \* \* of \* \* \* associations \* \* \* so as to prevent them \* \* \* from \* \* \* preventing reasonable competition in any calling", inasmuch as said Act, if so applied, would in fact encourage a monopoly on all county offices by the Democratic party, a voluntary association, merely because the votes cast in one or more county races for the nomination of said party exceeded 60% of the number of qualified electors, even though less than a majority of the qualified voters may have participated in electing nominees of the Democratic Party for other county offices.

(n) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would be a special or private law as defined by Section 110 of the Constitution of Alabama and thereby would violate Section 104 of said Constitution, which prohibits the passage of a special or private law relating to the conduct of elections.

(o) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would be a special or private law as defined by Section 110 of the Constitution of Alabama and would thereby violate Section 105 of said Constitution, prohibiting such laws in any case which is provided for by a general law, inasmuch as the listing of all duly nominated candidates upon the ballot was already provided for by general laws, as aforesaid.

(p) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would have the effect of a special or private law indirectly enacted through partial repeal of the general law, section 145 of title 17 of the 1940 Code of Alabama, and thereby violate Section 105 of the Constitution of Alabama.

(q) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would be a special or private law as defined by Section 110 of the Constitution of Alabama and, the journals of the legislature not affirmatively showing due notice, it would violate Section 106 of the Constitution of Alabama.

(r) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would, in violation of the 14th Amendment to the Constitution of the United States, abridge the privileges of the petitioners and of other citizens of the United States who are qualified electors in Baldwin County, Alabama, and would deny to them the equal protection of the laws.

(s) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would, in violation of the 14th Amendment to the Constitution of the United States, deprive them of their liberties without due process of law, particularly so inasmuch as their rights to be listed on said ballot are being denied by virtue of the proclamation of election results made by officials of the Democratic Party, persons whose interests are naturally adverse to the interests of petitioners, and yet petitioners have no recourse under the laws of the State of Alabama to challenge or otherwise verify the veracity and accuracy of said proclamation.



(t) Act No. 552, if applied so as to prevent such Republican candidates from being listed on the ballot, would effectively deprive the qualified electors in Baldwin County from exercising their inherent rights as granted and recognized by Section 2 of the Constitution of Alabama, which provides "that all political power is inherent in the people, and all free governments are founded on their authority, and instituted for their benefit." Act No. 552, if so applied, would as a practical fact insure the successful candidacy, without further voting except as a matter of form, of the Democratic party candidate for Tax Assessor on the basis of his having received a favorable vote in the Democratic Party primary from 36.22% of the qualified electors of Baldwin County; of the Democratic party candidate for County Commissioner, district no. 2, even though the greatest number of votes received by him in the Democratic party primaries was only 30.36% of the qualified electors of Baldwin County; of the Democratic party candidate for County Commissioner, district no. 4, even though the greatest number of votes received by him in the Democratic party primaries was only 22.66% of the qualified electors of Baldwin County; and of the Democratic party candidate for County Board of Education, district no. 2, even though he has received not a single vote by any qualified elector of Baldwin County. It is impossible to determine how many, if any, of the persons who voted for any of said Democratic party nominees in the Democratic party primary elections will participate in the general election and in said general election will again vote for such nominees; it is impossible to determine how many, if any, of the persons who participated in the Democratic party primary elections but who did not vote for such nominees will participate in the general election and in said general election will vote for such nominees; and it is impossible to determine how many additional persons will have become qualified to vote in said general election by registration subsequent to said Democratic party primary elections.

9. The said refusal by the respondent, Harry d'Olive, as Judge of Probate of Baldwin County, Alabama, is in violation of the laws and constitution of the State of Alabama and of the United States, as aforesaid; causes great and continuing harm and injustice to your petitioners and relators; and furthermore will, if not corrected, be of great damage to the electorate of Baldwin County, Alabama, particularly in that (under the requirements of sections 165, 148 and 153 of title 17 of the 1940 Code of Alabama) the general election for November 8, 1966, cannot be held using the ballots which the respondent proposes to have printed; and there is no other adequate remedy available to petitioners and relators to correct said improper action; and your petitioners and relators would further show unto the Court that the relief hereinafter prayed for, if granted, should be promptly forthcoming in order to prevent the great and continuing injury and confusion.

WHEREFORE, the premises considered, your petitioners and relators pray that the Honorable Harry d'Olive, as Judge of Probate of Baldwin County, be made a party respondent to this petition, and that this Court issue its alternative writ of mandamus commanding the said respondent to have printed on the ballots to be used in the general election of November 8, 1966, the names of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman as the candidates of the Republican Party for the offices of Tax Assessor; Member, County Board of Education, District No. 2; County Commissioner, District No. 2; and County Commissioner, District No. 4; respectively of Baldwin County, Alabama; or to appear on a date, time and place set forth in such writ to show cause why he should not do so; and



Your petitioners and relators further pray that, upon a final hearing hereof, this Court will make said writ peremptory and permanent; and

Your petitioners and relators further pray for such other and further relief and for such other and further decrees or judgments as they may be entitled to receive under the foregoing allegations, as, for example, the assumption by your Honor as Circuit Judge under the provisions of section 4 of title 17 of the 1940 Code of Alabama of the responsibility for causing the ballots to be printed for said general election according to law and including thereon the names of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman as the candidates of the Republican Party for the offices of Tax Assessor; Member, County Board of Education, District No. 2; County Commissioner, District No. 2; and County Commissioner, District No. 4; respectively, of Baldwin County; or, by way of further example, if necessary, the approval by your Honor of the right of C. Alton White, Jason Kutack, Jerry Perkins and Max Foreman to withdraw their respective candidacies and then, if so elected by the Republican County Executive Committee of Baldwin County to fill the vacancies created by their own resignations, their right to have their names placed upon the ballot, the provisions of Act No. 552 being inapplicable by its own terms to candidates nominated to fill vacancies.

C. ALTON WHITE; JASON KUTACK; JERRY PERKINS; MAX FOREMAN; JOHN S. HUFFMAN; and JOHN ROBERTSON, Petitioners,

By

Theron C. Pointer, Jr.  
Attorney for Petitioners

STATE OF ALABAMA )  
BALDWIN COUNTY )

Before me, Donald M. McNeil, the undersigned Notary Public for said County and State, personally appeared John S. Huffman, who, being first duly sworn, deposes and says that he is one of the petitioners and relators in the foregoing petition; that he is conversant with the allegations contained in said petition and in Exhibits A and B thereto; and that said allegations are true and correct.

This the 11th day of August, 1966.

Subscribed and sworn to  
before me, this 11th day  
of August, 1966.

Donald M. McNeil  
Notary Public

John S. Huffman (L.S.)  
John S. Huffman

Petitioners' mailing addresses:

C. Alton White: P. O. Drawer B, Robertsdale, Ala.  
Jason Kutack, Hancock Road, Fairhope, Ala.  
Jerry Perkins, 601 Day Ave., Bay Minette, Ala.  
Max Foreman, P. O. Drawer 280, Foley, Ala.  
John S. Huffman, 204 Bay View, Fairhope, Ala.  
John Robertson, 556 Jan Drive, Fairhope, Ala.

Attorneys for Petitioners:

Theron C. Pointer, Jr.  
Robert H. Maxwell, Attorney, Ala.

Of Counsel for Petitioners:

Sam C. Pointer, Jr.  
807 Massey Building  
Birmingham, Alabama 35203

I hereby certify that on this the 29<sup>th</sup> day of August, 1966, I mailed a copy of the foregoing, by first-class U. S. mail, postage prepaid, to the Attorney General of the State of Alabama.

Philip H. Marshall  
Attorney for petitioners and relators.

*I hereby accept service of a  
copy of the foregoing this  
29 day of Aug - 1966 -*

*Harry D'O'Leary  
Judge of Probate*

FILED

AUG 29 1966

AUDRE A. DICK, CLERK  
REGISTER

## EXHIBIT A

As authorized by and in conformity with section 336 of title 17 of the 1940 Code of Alabama, the Republican Party of Alabama elected not to accept and come under the primary election law with respect to nominating candidates of such party for county offices in Baldwin County, Alabama, said action being taken by resolution adopted by its State Executive Committee on February 19, 1966, a copy of which resolution, duly certified by the Chairman and Secretary of said Committee, was filed with the Secretary of State of the State of Alabama on March 3, 1966, more than sixty days before the day fixed for holding the first primary election of 1966.

By said resolution, the State Executive Committee of the Republican Party of Alabama also authorized and empowered the Republican County Executive Committee of Baldwin County, Alabama, to determine whether candidates of such party for county offices of Baldwin County, Alabama, should be nominated by means of a county mass meeting or by means of a county delegated convention, and to issue an appropriate Call to implement said decision.

On April 5, 1966, the Republican County Executive Committee of Baldwin County, Alabama, as so authorized and empowered, determined to hold a county delegated convention for the purpose, among others, of nominating candidates of the party for county offices of Baldwin County, Alabama, and issued an appropriate Call therefor, the delegates thereto to be elected by beat meetings of Republican voters held on May 3, 1966, in conformity with the provisions of Article 2 of Chapter 2 of title 17 of the 1940 Code of Alabama.

Pursuant to said Call, said beat meetings were held on May 3, 1966, in conformity with the provisions of Article 2 of Chapter 2 of title 17 of the 1940 Code of Alabama, and the delegates so elected as said beat meetings did subsequently, on June 4, 1966, pursuant to said Call, convene and, among other business, elect John S. Huffman and Leona Newman as presiding officer and secretary, respectively, of said county convention and elect C. Alton White as nominee of the party for the office of Tax Assessor of Baldwin County, Alabama, Jason Kutack as nominee of the party for the office of member on the Baldwin County Board of Education, district no. 2, Jerry Perkins as nominee of the party for the office of County Commissioner of Baldwin County, district no. 2, and Max Foreman as nominee of the party for the office of County Commissioner of Baldwin County, district no. 4. Said elections were regular in every respect, and no contest has been instituted or suggested as to any of said elections.

EXHIBIT B

STATE OF ALABAMA  
BALDWIN COUNTY

June 9, 1966

Honorable Harry D'Olive  
Judge of Probate  
Baldwin County  
Bay Minette, Alabama

We, Jno. S. Huffman and Leona Newman, hereby certify that we were duly elected as Chairman and Secretary, respectively, of the Republican County Convention of Baldwin County, Alabama, held on June 4, 1966, at Robertsedale, Alabama, and that at said Convention the following persons were elected as the nominees of the Republican Party for the public offices shown opposite their names:

State Senate:	Robin Swift, Jr.
State Representative, Place 1:	Paul A. Terry
State Representative, Place 2:	James P. Nix
Tax Assessor:	C. Alton White
Board of Education:	Jason Kutack
County Commissioner, District 2:	Jerry Perkins
County Commissioner, District 4:	Max Foreman
State Executive Committee:	John A. Robertson

Attached hereto are the statements required by the Corrupt Practices Act for the above mentioned candidates.

This the 9th day of June, 1966.

Jno. S. Huffman /s/

Leona Newman /s/

Subscribed and sworn to before me  
this 9th day of June, 1966.

John A. Robertson /s/  
Notary Public