"Landslide Lyndon" in the Supreme Court (1948)

John Q. Barrett[*]

Lyndon Baines Johnson of Texas, born 100 years ago, met Robert H. Jackson in Washington in the 1930s, when Jackson was a prominent and rising New Deal official. Johnson admired Jackson and courted him.

Lyndon Johnson became a United States Representative in 1937. In winter 1941, Rep. Johnson sent Jackson, then Attorney General of the United States, Jackson's own photograph with this letter requesting an autograph:

> My dear Bob:
>
> It is my ambition some day to be able to write as beautiful a hand as you do.
>
> How, I ask, shall I ever be able to realize such a laudable ambition, with no script to copy from?
>
> Surely you would not deprive an American boy of his inalienable right, would you?
>
> I didn't think so. I was sure I had you summed up right.
>
> When the autographed photograph arrives, I shall frame it, and put it on the wall right across from my desk,

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For a selected archive of Jackson List posts, see my homepage at www.law.stjohns.edu. To subscribe to the Jackson List, which does not display recipient identities or distribute their email addresses, send a note to barrettj@stjohns.edu.

> where I can see it every day, and be in a position to do my practicing.
>
> With every good personal wish,
>
> Sincerely,
>
> /s/
>
> Lyndon B. Johnson[1]

Less than two months later, Texas's senior United States Senator died suddenly. Rep. Johnson entered the race for the seat and soon obtained President Franklin Roosevelt's all-but-explicit support.[2]

Johnson was, however, a long shot to win the replacement election. He faced 27 other candidates, including Texas's attorney general, nationally prominent Rep. Martin Dies, and Texas's governor.

At the Department of Justice in late May 1941, an assistant wrote privately to Jackson that Roosevelt Administration—and, implicitly, Jackson's own—support for Johnson should stay behind the scenes:

> From confidential sources, I have been advised as follows relative to the senatorial election in Texas: [Governor] W. Lee O'Daniel will win; Lyndon Johnson will finish a poor third.
>
> The [special] election is a month away, however, and with a lot of effective work Johnson might come through.
>
> It seems to me that it would be a serious mistake for the Administration to take an open and public stand in the

[1] Rep. Lyndon B. Johnson to Attorney General Robert H. Jackson, Feb. 18, 1941. I am grateful to Judge Michael E. Keasler for providing a copy of this letter.

[2] My text regarding Johnson's 1941 defeat and his 1948 campaign, litigation and election relies on, in addition to sources cited below, four thoroughly-researched accounts: 2 ROBERT A. CARO, THE YEARS OF LYNDON JOHNSON: MEANS OF ASCENT 3-4, 169 & 301-84 (1990); LAURA KALMAN, ABE FORTAS: A BIOGRAPHY 200-02 (1990); ROBERT DALLEK, LONE STAR RISING: LYNDON JOHNSON & HIS TIMES, 1908-1960, 207-24 & 327-42 (1991); and ROGER K. NEWMAN, HUGO BLACK: A BIOGRAPHY 373-76 (1994).

> matter. Johnson himself is personally popular, makes a good appearance, and with a little activity of the right kind could be made into a formidable candidate.[3]

This prediction proved to be entirely accurate. Johnson campaigned ferociously, led the vote count after polls closed on June 28th, and was declared, unofficially, the winner. But late, probably fraudulent counted votes gave Governor "Pappy" O'Daniel a very narrow official victory.

* * *

Johnson won reelection to his House seat in 1942, 1944 and 1946. In 1948, he chose not to seek reelection. Instead, he made another run for the Senate.

Lyndon Johnson's 1948 opponent in the Democratic Senate primary election—in solidly Democratic Texas, *de facto* the real election—was the man who had succeeded O'Daniel as governor, Coke Stevenson. For Johnson, the 1948 election experience and results mirrored, in reverse image, what he had been through in 1941. On primary election day (Saturday, August 28, 1948), unofficial returns narrowly favored his opponent, Stevenson. Six days later, "corrected" returns, including some from ballot boxes that produced particularly suspicious vote totals, gave Johnson the victory by 87 out of approximately one million votes. (He soon, in a radio address, dubbed himself "Landslide Lyndon.")

Stevenson claimed fraud and continued to fight. His investigators dug into the details of suspect vote "corrections." They sought, first at the county level, then before the State Democratic Party executive committee, and then before the full State Party convention, to reverse the revised results that had put Johnson over the top. Each effort failed. The Party certified Johnson as its Senate primary winner and general election candidate.

[3] Memorandum from Matthew F. McGuire to Attorney General Jackson, May 23, 1941, *in* Robert H. Jackson Papers, Library of Congress, Manuscript Division, Washington, D.C. ("RHJ LOC"), Box 91.

So Stevenson commenced federal litigation. The case ultimately reached the Supreme Court, which included, as an Associate Justice since summer 1941, Johnson's friend Robert H. Jackson.

Coke Stevenson's lawyers initially won a huge court victory. They persuaded a Federal District Judge to enjoin Texas's secretary of state from printing general election ballots listing Johnson as the Democratic Party candidate, and to appoint a special master to investigate possible vote fraud.

Johnson's lawyers challenged that decision. They asked a single judge of the United States Court of Appeals for the Fifth Circuit to stay the District Judge's order on the ground that he lacked jurisdiction over a state election matter. The Circuit Judge denied this request. He ruled that he individually lacked power to act and declined to call the Circuit Court, then in recess, into emergency session. Johnson would have to wait, the Circuit Judge ruled, for a regular court session on October 4th.[4] Given Texas's October 3rd ballot printing deadline, that probably would be too late for Johnson's name to appear before voters in November.

Johnson's lawyers turned to Washington, where his large legal team was based. It included, in public and private roles, many former New Dealers who were Johnson's and other Democrats' former colleagues, political allies and/or personal friends: Abe Fortas, Thurman Arnold, Paul Porter, former Texas governor James Allred, Alvin Wirtz, Hugh Cox, Thomas Corcoran, James Rowe, Francis Biddle and Joseph Rauh.[5] The Johnson lawyers asked United States Supreme Court Associate Justice Hugo L. Black, the Circuit Justice for the Fifth Circuit, to vacate the District Court order.

Justice Black agreed to hear oral argument. On the morning of Tuesday, September 28, 1948, Johnson and Stevenson attorneys argued before Justice Black (and the newspapermen he invited to attend) for four hours in his chambers.

That afternoon, Justice Black, ruling orally, stayed the District Court's temporary injunction. He invoked what he called the universal

[4] *See Texas Vote Writ Stands*, N.Y. TIMES, Sept. 25, 1948, at 7.

[5] *See, e.g.*, *Johnson Requests Justice Black To Stay Ballot Ban*, WASH. POST, Sept. 28, 1948, at 11.

rule that there must be clear statutory authorization before a federal court may interfere with a state election. "It would be a drastic break with the past," Black said,

> to permit a Federal judge and the Federal courts to go into the business of conducting a contest over elections held in a state.
>
> I think it is impossible to interpret present statutes that Federal courts may go into a state and suspend its process of electing a Senator or Governor.
>
> There is no statutory justification of a Federal court enjoining the steps of an election. I am going to grant a stay until the full Supreme Court has an opportunity to consider the matter, if it wants to consider it.[6]

The next day, Wednesday, September 29th, Justice Black signed a formal stay order.[7] It effectively authorized Texas to print general election ballots listing Lyndon Johnson as the Democratic Party candidate for Senate. Within hours, Texas's secretary of state certified Johnson's name for ballot printing.[8]

* * *

Stevenson was not done fighting. On Saturday, October 2, 1948, his lawyers filed a motion asking the full Supreme Court to vacate Justice Black's stay order. Stevenson's lawyers argued that a single Supreme Court Justice lacked jurisdiction and power to enter a stay order, and that Justice Black thus had "erroneously and improvidently" ruled in Johnson's favor.[9]

Johnson's lawyers, led by Fortas, responded swiftly. They filed a motion asking the full Court to affirm Justice Black's authority and order,

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[6] Lewis Wood, *Texas Ballot Writ Is Stayed By Black*, N.Y. TIMES, Sept. 29, 1948, at 22.

[7] Order, No. ____, *Johnson v. Stevenson* (Sept. 29, 1948). A carbon copy of this Order, located in the Wiley B. Rutledge Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 176, is reproduced at the end of this file.

[8] *Texas Secretary of State Certifies Johnson's Name*, WASH. POST, Sept. 30, 1948, at 15.

[9] *Ballot Ruling Is Challenged*, WASH. POST, Oct. 3, 1948, at M12.

and/or independently to stay the Federal District Court's temporary injunction against printing Johnson's name on the ballot, and also to bar it from resuming its investigation of alleged vote fraud and adjudicating Stevenson's ultimate, and still undecided, request for a permanent injunction against printing ballots with Johnson's name.

On Monday, October 4th, the Supreme Court took the bench at noon for the brief "First Monday" public session that marked the end of its summer recess and commenced its new Term. The Stevenson and Johnson attorneys formally presented the motions that they had filed. Chief Justice Vinson said only that their motions would be received.[10] Privately, the motions were listed, with many other pending petitions and motions, for discussion by the Justices at their private Conference that afternoon.

Justice Jackson, probably working over the weekend of October 2-3 and continuing on the morning of Monday, October 4th, read the contending Stevenson and Johnson motions. Jackson then, as he often did, thought further by writing longhand, editing himself as he wrote, a draft opinion setting forth his views.[11]

Jackson's draft opinion took two positions. First, he viewed the matters that were before the full Court—each side's motion in a dispute seeking summary, temporary action preventing ballot printing because of possible primary election vote fraud—as now, on October 4th, moot. It was simply too late for the Supreme Court to accomplish anything more than causing Texas to use a general election ballot that listed no Democratic Party candidate for Senate. For this reason, Jackson wrote that Stevenson's motion to vacate Justice Black's order should be denied.

Jackson's second, and lengthier, analysis concerned Johnson's motion to prevent the District Court from conducting further proceedings, including fact-gathering about alleged primary election fraud, in connection with Stevenson's motion for a permanent injunction. On this

[10] *See* JOURNAL OF THE SUPREME COURT, Oct. 4, 1948, at 2; Marshall Andrews, *High Court Asked to Settle Senate Fight in Texas*, WASH. POST, Oct. 5, 1948, at 9.

[11] Handwritten draft opinion by Justice Robert H. Jackson, No. ____, *Johnson v. Stevenson*, undated (approx. Oct. 3, 1948). Jackson's secretary then prepared a typed version of his draft opinion. *See* Typed draft opinion by Justice Robert H. Jackson, No. ____, *Johnson v. Stevenson*, undated (approx. Oct. 4, 1948). Both of these documents, which are in RHJ LOC, Box 157, Folder 7, are reproduced at the end of this file.

issue, Jackson's draft canvassed recent Supreme Court decisions that recognized federal rights and exercised federal judicial power in the realm of state elections, including to frustrate the consummation of election frauds. Based on these decisions, Jackson wrote that Stevenson's lawsuit was not frivolous, and that Johnson's request that the full Supreme Court prohibit the District Court from finding and disclosing the facts should also be denied.

Justice Jackson's law clerk James M. Marsh worked on the Stevenson and Johnson motions at least briefly and probably reviewed Jackson's draft opinion. In one page of cryptic notes,[12] maybe written just to himself but perhaps shared with Jackson, Marsh listed four arguably relevant Supreme Court decisions that Jackson had not mentioned in his draft. Marsh's notes seem to recommend a fuller, or an alternative, Jackson opinion. Marsh thought that Jackson should state, in two distinct sections, that the District Court probably lacked jurisdiction to hear Stevenson's complaint, and that Justice Black had lacked jurisdiction to grant Johnson's stay request. Marsh's notes also suggest the need to research statutes on the full Court's jurisdiction.

Jim Marsh's notes appear to conclude, candidly if not temperately, by recording his own view of what was happening in fact in this election case: Marsh referred to Justice Black as "Justice thief."[13]

The paper trail apparently ends there. In Conference on the afternoon of October 4th, the Justices considered and agreed unanimously to deny both Stevenson's and Johnson's motions.[14] Justice Jackson did not have his draft opinion printed for distribution to his colleagues and he seems not to have mentioned his initial, arguably not well-developed ideas about these matters outside of his own chambers—Jackson's secretary wrote "not used" on the typed version of his draft opinion.[15]

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[12] Notes, no title, author or date, *in* RHJ LOC, Box 157, Folder 7. These notes, which I know to be James M. Marsh's by his handwriting, are reproduced at the end of this file.

[13] *Id.*

[14] *Cf. Supplemental List No. 2 For Conference – Week of Oct. 4, 1948*, at 23 (Justice Douglas's copy of the Conference List showing two *Johnson v. Stevenson* motions for discussion on Oct. 4, 1948, with his check mark indicating that these matters were addressed in Conference), *in* William O. Douglas Papers, Library of Congress, Manuscript Division, Washington, D.C., Box 175.

[15] *See supra* note 11 and the reproduction of this document that is at the end of this file.

On October 5, 1948, the Supreme Court announced that that it was denying both motions.[16] On November 2nd, the voters of Texas overwhelmingly elected Lyndon B. Johnson to the United States Senate.

* * *

Justice Jackson's unused draft opinion in *Johnson v. Stevenson* remained in his Supreme Court files. They now reside in the Library of Congress and belong to the American people. They—we—also "own" Lyndon Johnson, in his significant legacy,[17] in our history, at his presidential library in Austin, Texas,[18] and particularly in the 2008 political year that is LBJ's centennial.[19]

The fate of the inscribed photograph that Bob Jackson surely sent to Lyndon Johnson in 1941 is unknown.

[16] *See* JOURNAL OF THE SUPREME COURT, Oct. 5, 1948, at 3; *Johnson v. Stevenson*, 335 U.S. 801 (1948); *Johnson Wins Plea for Texas Ballot*, N.Y. TIMES, Oct. 6, 1948, at 21. On October 7, 1948, a panel of the United States Court of Appeals for the Fifth Circuit reversed the District Court's temporary injunction and ordered Stevenson's lawsuit dismissed. *See Johnson v. Stevenson*, 170 F.2d 108 (5th Cir. 1948), *cert. denied*, 336 U.S. 904 (1949).

[17] *See, e.g.*, Robert A. Caro, *Johnson's Dream, Obama's Speech*, N.Y. TIMES, Aug. 28, 2008, at A27, *available at* www.nytimes.com/2008/08/28/opinion/28caro.html?_r=1&oref=slogin.

[18] The website of the Lyndon Baines Johnson Presidential Library and Museum is www.lbjlib.utexas.edu.

[19] The "LBJ 100" website is www.lbj100.org.

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Tr.
(for Conf.)

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1948

LYNDON B. JOHNSON, in his individual capacity, and V. F. STRIEGLER, County Judge of Blanco County, Texas, and FRANK SHELLEY, Sheriff of said County, and C. H. STEVENSON, County Clerk of said County, in their official capacity as members of and constituting the Election Board of said County and as representatives of the Election Boards of the other Counties of Texas as a class,	)	No. _____
Petitioners,	)	
vs.	)	
COKE R. STEVENSON, Respondent.	)	

O R D E R

This cause came on to be heard before me on the Petitioners' motion for a stay of a temporary injunction issued by the United States Court for the Northern District of Texas, Fort Worth Division, and for a stay of other proceedings in the said District Court, and after hearing argument by counsel for the Petitioners and Respondent, it is

ORDERED, that the temporary injunction issued by the United States District Court for the Northern District of Texas, Fort Worth Division, on September 23rd, 1948, in the case entitled Coke R. Stevenson v. Lyndon B. Johnson, et al., Civil No. 1640, be and the same hereby is stayed, and that the said temporary injunction is and shall be of no force and effect, until further order of the Supreme Court.

(SIGNED) HUGO L. BLACK
Associate Justice of the
Supreme Court of the United States.

September 29, 1948.

Approved as to form:

(SIGNED) ALVIN J. WIRTZ
Counsel for Petitioners

(SIGNED) DAN MOODY
Counsel for Respondent

~~All that is before this Court is an application by each side of an election contest for two to summary and temporary relief. In my opinion the The respondent asks that we vaca[te]~~

Johnson

v.

Stevenson

All that now is before this Court is an application by each side of ~~an election~~ a controversy over a primary election for summary and temporary ~~an issue~~ relief ~~which if granted must be summarily decided~~, ~~or~~ without trial of the merits, ~~and is styled temporary but is really far reaching in appeal~~. In my opinion the only issues we ~~can~~ could properly ~~now~~ decide at the present stage of the case are moot because no matter how we might decide them it is too late to be ~~eff~~ be ~~eff~~ practically effective and the other issues ~~can~~ should properly await regular procedures.

The District Court granted ~~an~~ a temporary injunction the practical effect of which was to ~~take~~ remove Johnson's name off from the ~~ballot~~ November election ballot as the candidate of the Democratic party. On September 29th Mr Justice Black granted ~~an order~~ a stay of that injunction the practical effect of which was to place Johnson's name on the ballot as the Democratic candidate. ~~No one questions that it is now his case~~ The issues are first laid before ~~this Court~~ us at a time too late, no matter how this Court might ~~or should~~ decide them, to be carried into effect under the laws governing the election.

The ultimate effect an order could now have would be to keep ~~any name~~ the ballot from legally carrying the name of any Democratic candidate.

Hence I think the motion ~~to~~ of respondent to ~~reconsider~~ vacate the order of Mr. Justice Black should be denied because the subject matter of that order, although through no fault of respondent, has become moot and academic.

Johnson ~~asks~~ however, ~~that~~ the stay order of Mr. Justice Black be broadened, not only to stay the temporary injunction issued by the District Court but also to prevent ~~any~~ further proceedings in the trial court which it is alleged "proposes to proceed to take evidence and determine the issues for purposes of a final injunction" and it is said that the District Court may enter a final injunction and in any event that "if the District Court proceeds to take evidence and consider the issuance of a final injunction the uncertainty and confusion caused thereby may induce various of the 254 county election boards in Texas to refrain from putting on the ballots the name of Lyndon B. Johnson."

~~His ask Seek an order by this~~

~~He orders which~~ Johnson asks of this Court, and order which would prevent any inquiry by the trial court into the charges of fraud. The election was close, out of nearly one million votes cast ~~the~~ Johnson's plurality over Stevenson was 87 votes. It is alleged that fraudent returns from two counties falsely accredited to Johnson more than this number of votes and that in another County the returns showing 4622 votes for Johnson and 40 for Stevenson were also fraudulent ~~on their face~~. On these facts it is asserted that Stevenson's federal right to be the candidate of his party for United States Senator has been denied, and the federal right of electors to vote for him as such has been denied by fraud.

To forbid the District court to take evidence on such charges would be justified only if on the face of the papers in the complaint there is no cause of action, or no jurisdic

in the Court. ~~Even so it is questionable whether the present procedure, in view of the pending status of pending cases in the two Courts below would be proper.~~

Johnson says the subject matter, before is within its the sole and exclusive jurisdicto. The Senate ~~of the United States, which~~ The Constitution makes "the Judge of the Elections, Returns and Qualifications of its own Members." Art I Sec 5. and and that no property or civil right protected by the laws of the United States is involved.

It was until recently The law ~~Law~~ of the Constitution as laid down by this Court that federal power did not reach primary elections to chose candidate for Senator to be voted for in the general election Newberry v United State 256 U.S. 232 But in 1940 this Court expanded ~~the scope of federal~~ concept of federal power and held "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a State to cast their ballots and have them counted at Congressional elections" United States v Classic 313 U.S. 299. And in 1944 the Court held that the federal right to vote includes a federal right to an honest count of the votes United State v Saylor 322 U.S. 385

Of course the foregoing decisions were in proceedings ~~to~~ in Federal Court to punish election frauds. But federal justice is not limited to punitive measures and it may be that federal court measures to prevent fraud, or frustrate its consummation are also authorized under the general principles of our jurisprudence. As this Court has also declared "~~But it is established practice for this~~

pg 684 quote & cite.

~~Court to sustain the jurisdiction of federal courts~~
~~to issue injunctions to protect rights safeguarded~~
~~by the Constitution~~" ~~not~~ Bell vs Hood 327 U.S. 678

in view of the foregoing decision that
I do not think, ~~we can say~~ that the
plea to the Federal Court to prevent or frustrate
a fraud in chosing a candidate for the
United States Senate is a frivolous one.
Whether it is ~~well founded~~ a sound one
should be decided in regular course, after
the facts are disclosed and the case fully argued.
The motion for an order that would prevent
the disclosure of the facts should be denied.

No. _____, October Term, 1948.

LYNDON B. JOHNSON, in his individual capacity and
V. F. STRIEGLER, County Judge of Blanco County, Texas, and
FRANK SHELLEY, Sheriff of said County, and C. H. STEVENSON, County Clerk of said County, in their official capacity as members of and constituting the Election Board of said County and as representatives of the Election Boards of the other Counties of Texas as a class,
Petitioners,

v.

COKE R. STEVENSON.

By Mr. Justice Jackson.

All that now is before this Court is an application by each side of a controversy over a primary election for summary and temporary relief, without trial of the merits. In my opinion, the only issues we could properly decide at the present stage of the case are moot, because no matter how we might decide them it is too late to be practically effective, and the other issues should properly await regular procedures.

The District Court granted a temporary injunction, the practical effect of which was to remove Johnson's name from the November election ballot as the candidate of the Democratic Party. On September 29th, Mr. Justice Black granted a stay of that injunction, the practical effect of which was to place Johnson's name on the ballot as the Democratic candicate. The issues, no matter how this Court might decide them, are first laid before it at a time too late to be carried into effect under the laws governing the election. The utmost effect our order could now have would be to keep the ballot from legally carrying the name of any Democratic candidate. Hence I think the motion of

respondent to vacate the order of Mr. Justice Black should be denied because the subject matter of that order, although through no fault of respondent, has become moot and academic.

Johnson, however, asks that the stay order of Mr. Justice Black be broadened to stay not only the temporary injunction issued by the District Court, but also to prevent any further proceedings in the trial court which it is alleged "proposes to proceed to take evidence and determine the issues for purposes of a final injunction," and it is said that the District Court may enter a final injunction, and in any event that "if the District Court proceeds to take evidence and consider the issuance of a final injunction, the uncertainty and confusion caused thereby may induce various of the 254 county election boards in Texas to refrain from posting or printing on the ballots the name of Lyndon B. Johnson."

Thus Johnson asks of this Court an order which would prevent any inquiry by the trial court into the charges of fraud. The election was close; out of nearly one million votes cast, Johnson's plurality over Stevenson was 87 votes. It is alleged that fraudulent returns from two counties falsely accredited to Johnson more than this number of votes and that in another County the returns showing 4,622 votes for Johnson and 40 for Stevenson were also fraudulent. On these facts it is asserted that Stevenson's federal right to be the candidate of his party for United States Senator has been denied and the federal right of electors to vote for him as such has been denied by fraud.

To forbid the District Court to take evidence on such charges would be justified only if on the face of the papers there is no cause of action in the plaintiff or no jurisdiction in the Court.

The Constitution makes the Senate "the Judge of the Elections, Returns and Qualifications of its own Members." Art. I, ~~Sec.~~ § 5, and Johnson says the subject matter therefore is within its sole and exclusive jurisdiction and that no property or civil right protected by the laws of the United States is involved.

It was until recently the law of the Constitution as laid down by this Court that federal power did not reach primary elections to choose candidates for Senator to be voted for in the general election. Newberry v. United States, 256 U. S. 232. But in 1940, this Court expanded this concept of federal power and held, "Obviously included within the right to choose, secured by the Constitution, is the right of qualified voters within a state to cast their ballots and have them counted at Congressional elections." United States v. Classic, 313 U. S. 299. And in 1944, the Court held that the federal right to vote includes a federal right to an honest count of the votes. United States v. Saylor, 322 U. S. 385.

Of course, the foregoing decisions were in proceedings in Federal Court to punish election frauds. But federal justice is not limited to punitive measures and it may be that Federal Court measures, to prevent fraud or frustrate its consummation, are also authorized under the general principles

of our jurisprudence. As this Court has also declared: "That the issue thus raised has sufficient merit to warrant exercise of federal jurisdiction for purposes of adjudicating it can be seen from the cases where this Court has sustained the jurisdiction of the district courts in suits brought to recover damages for depriving a citizen of the right to vote in violation of the Constitution. And it is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution and to restrain individual state officers from doing what the 14th Amendment forbids the State to do. Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief. And it is also well settled that where legal rights have been invaded, and a federal statute provides for a general right to sue for such invasion, federal courts may use any available remedy to make good the wrong done." Bell v. Hood, 327 U. S. 684.

I do not think, in view of the foregoing decision, that the plea to the Federal Court to prevent or frustrate a fraud in choosing a candidate for the United States Senate is a frivolous one. Whether it is a sound one should be decided in regular course, after the facts are disclosed and the case fully argued. The motion for an order that would prevent the disclosure of the facts should be denied.

what about Smith v. Allwright

321 - US - 649

* " " Grovey v Townsend - 321 - US - 1

" " Screws - 325 - 91,
145

" " Colegrove - 328 - 549
550
574

(Black dissent
Douglas Murphy)

— DC probably had no jurisdiction
— (a) to hear complaint, but certainly not to
— (b) issue injunction

— But Black, J. had no jurisdiction to issue stay —.

— Distinguish between A + B — also check attitude on jurisd. of this Ct + fashion thing.