

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19023

RALPH D. ABERNATHY, et al.,
Appellants,

vs.

JOHN PATTERSON, Individually
and as GOVERNOR OF
ALABAMA, et al.,

Appellees.

NOTICE

TO: Steiner, Crum & Baker
1109-25 First National Bank
Building
Montgomery 1, Alabama

Robert P. Bradley
State Capitol
Montgomery 4, Alabama

PLEASE TAKE NOTICE that we are filing with the Clerk of the Court of Appeals for the Fifth Circuit a motion to stay the mandate in the above cause, for presentation to the Court, in order to permit the filing of a Petition for a Writ of Certiorari, a copy of said motion being served on you herewith.

Said motion is being mailed to the Clerk on this day, November 15, 1961, and should reach the Clerk for filing not later than November 17, 1961.

/s/ Charles S. Conley
/s/ Eugene Cotton
/s/ Richard F. Watt
Attorneys for Appellants

Charles S. Conley
530 South Union Street
Montgomery 4, Alabama

Cotton, Fruchtman & Watt
105 West Adams Street
Chicago 3, Illinois

STATE OF ILLINOIS)
) SS
COUNTY OF COOK)

BETTIJO McLAUGHLIN, being first duly sworn, deposes and says that she served the above Notice together with a copy of the Motion therein referred to upon Steiner, Crum & Baker and Robert P. Bradley by enclosing true copies of same in envelopes addressed to

Steiner, Crum & Baker
1109-25 First National Bank
Building
Montgomery 1, Alabama

Robert P. Bradley
State Capitol
Montgomery 4, Alabama

as above, postage prepaid and by depositing same in the U. S. Mail Chute at 105 West Adams Street, Chicago, Illinois, at 5:00 o'clock P.M. on November 15, 1961.

SUBSCRIBED and sworn

to before me this _____

day of _____, 1961.

Notary Public

IN THE
UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

NO. 19023

RALPH D. ABERNATHY, et al.,
Appellants,

vs.

JOHN PATTERSON, Individually
and as GOVERNOR OF
ALABAMA, et al.,
Appellees.

MOTION TO STAY MANDATE PENDING
FILING OF PETITION FOR WRIT OF
CERTIORARI

The Appellants, RALPH D. ABERNATHY, J. E. LOWERY, S. S. SEAY, SR., and FRED L. SHUTTLESWORTH, by their attorneys, Charles S. Conley, Eugene Cotton, and Richard F. Watt, move the Court for an order staying the issuance of the mandate in this cause for a period of thirty (30) days to and including Thursday, December 21, 1961, in order to permit Appellants to prepare and file in the United States Supreme Court a Petition for Writ of Certiorari to review the judgment of this Court entered on October 31, 1961. In support of their motion, Appellants represent to the Court as follows:

1. On October 31, 1961, this Court entered its judgment affirming the order of the trial court dismissing Appellants' Complaint.

2. Under Rule 32 of the Rules of this Court, the mandate will issue at any time after twenty-one (21) days from the date

of decision on October 31, 1961; thus in the ordinary course of events the mandate would issue at any time after November 21, 1961.

3. Appellants have decided to prepare and file in the United States Supreme Court a Petition for a Writ of Certiorari, and thereby to seek review of this Court's judgment.

4. Under the provisions of §2101 of Title 28, United States Code, Appellants have a period of ninety (90) days from October 31, 1961, in which to file their Petition, but Appellants intend, if at all possible, to file such a Petition on or before December 21, 1961.

WHEREFORE, Appellants respectfully move this Court, pursuant to the provisions of Rule 32 of this Court's Rules, to stay the mandate in this cause to and including December 21, 1961.

November 15, 1961

/s/ Charles S. Conley

/s/ Eugene Cotton

Charles S. Conley
530 South Union Street
Montgomery 4, Alabama

/s/ Richard F. Watt

Cotton, Fruchtman & Watt
105 West Adams Street
Chicago 3, Illinois

DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|----------------------------|---|----------------|
| RALPH D. ABERNATHY, et al. |) | |
| | : | |
| Plaintiffs, | : | |
| VS. |) | Civil Action, |
| | : | File No. _____ |
| JOHN PATTERSON, et al. | : | |
| | : | |
| Defendants. |) | |

ORDER TO SHOW CAUSE

The plaintiffs having filed a verified complaint with affidavits and having moved for an order directing the defendants to show cause why they should not be enjoined and restrained temporarily, and pending the final hearing in this matter, from proceeding with the sale of plaintiffs' personal and real property scheduled to be sold at public auction commencing Tuesday, February 21, 1961, and it further appearing that no notice can be served in accordance with the rules to bring on this matter within sufficient time to prevent immediate and irreparable injury to the property rights of the plaintiffs and their rights under the Constitution of the United States referred to in the complaint attached hereto, and it appearing that no request for this relief has been made before to this Court, and good cause appearing, it is on this day of February, 1961,

ORDERED that the defendants show cause before this Court on the day of , 1961 at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard, why an order should not issue pendente lite enjoining and restraining the defendants, their agents, servants and employees, or attorneys who may be designated to preside in their stead, from:-

a) Proceeding with the execution of the judgments, the garnishment of salaries, and the sale of the personal and real

property of the plaintiffs herein, referred to in the complaint, and from

b) Proceeding in any manner whatsoever with the actions now pending in the Circuit Court of Montgomery, Alabama entitled "Frank Parks v. New York Times Company, a Corporation, et al." and "John Patterson v. New York Times Company, a Corporation, et al."; and it is further

ORDERED that pending the return of this order to show cause the defendants, their agents, servants, employees and attorneys be and they hereby are enjoined and restrained from proceeding with the execution of the judgments, the garnishment of salaries, and the sale of the personal and real property of the plaintiffs, and from taking further steps with respect to the execution of said judgments referred to in the complaint; and it is further

ORDERED that, due and sufficient reason having been shown, service may be made of this order and the papers attached hereto upon the defendants herein on or before .M. on the day of , 1961; and it is further

ORDERED that, this order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, shall expire ten (10) days from the date hereof unless within the time so fixed this order for good cause shown is extended for a like period.

Judge, District Court of the United
States for the Middle District of
Alabama

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action
File No. _____

RAIPE D. ABERNATHY, J.E. LOWERY,
S.S. BEAY, SR., and FRED L.
SHUTTLESWORTH,

Plaintiffs,

v.

JOHN PATTERSON, individually and as
Governor of Alabama, EARL JAMES,
individually and as Mayor of Mont-
gomery, L.B. SULLIVAN, individually
and as Commissioner of Police of
Montgomery, FRANK PARKS, individ-
ually and as Commissioner of Public
Affairs of Montgomery, MAC SIM
BUTLER, individually and as Sheriff
of Montgomery County, RAY D. BRIDGES,
individually and as Sheriff of
Mobile County, HOLT A. McDOWELL,
individually and as Sheriff of
Jefferson County, and WILMER SHIELDS
individually and as Sheriff of
Marengo County,

Defendants.

ORDER TO SHOW CAUSE

Law Offices:
CHARLES S. CONLEY
530 South Union Street, Suite A
Montgomery 4, Alabama

DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|-----------------------------|---|----------------|
| RALPH D. ABERNATHY, et al., |) | |
| | : | |
| Plaintiffs, | : | Civil Action, |
| VS. |) | |
| | : | File No. _____ |
| JOHN PATTERSON, et al., | : | |
| | : | |
| Defendants. |) | |

AFFIDAVIT

STATE OF ALABAMA }
COUNTY OF MONTGOMERY) ss.:

RALPH D. ABERNATHY, being duly sworn deposes and says:

1. He is one of the plaintiffs in the above entitled action.
2. That this action is brought to enjoin the defendants, their agents, servants, employees, attorneys and other divers persons from acting under their authority from the further levies, executions and garnishments; and to enjoin further proceedings brought against the New York Times, Company, a Corporation, et al. by the defendants which are presently pending in the Circuit Court of Montgomery County, Alabama, which were instituted by the defendants John Patterson and Frank Parks, as well as other relief as set forth in the complaint.
3. Deponent is presently threatened with immediate, imminent and irreparable injury and harm in that his automobile in which he owns a one half equity is scheduled to be sold Tuesday, February 21st, 1961 pursuant to an execution to be conducted in Montgomery County. In addition, the sale of other real property of which deponent and other plaintiffs in the above entitled action of which plaintiffs have an interest is similarly threatened with immediate, imminent and irreparable injury.

RALPH D. ABERNATHY

Sworn to and subscribed before
me this day of
1961

NOTARY PUBLIC

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action
File No. _____

RALPH D. ABERNATHY, J.E. LOWERY,
S.S. BEAY, SR., and FRED L.
SHUTTLESWORTH,

Plaintiffs,

v.

JOHN PATTERSON, individually and as
Governor of Alabama, EARL JAMES,
individually and as Mayor of Mont-
gomery, L.B. SULLIVAN, individually
and as Commissioner of Police of
Montgomery, FRANK PARKS, individ-
ually and as Commissioner of Public
Affairs of Montgomery, MAC SIM
BUTLER, individually and as Sheriff
of Montgomery County, RAY D. BRIDGES,
individually and as Sheriff of
Mobile County, HOLT A. McDOWELL,
individually and as Sheriff of
Jefferson County, and WILMER SHIELDS
individually and as Sheriff of
Marengo County,

Defendants.

AFFIDAVIT OF RALPH D. ABERNATHY

Law Offices:
CHARLES S. CONLEY
530 South Union Street, Suite A
Montgomery 4, Alabama

DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RALPH D. ABERNATHY, et al.)
 Plaintiffs, :
VS.)
 Civil Action,
JOHN PATTERSON, et al. :
 File No. _____
 Defendants.)

ORDER TO SHOW CAUSE

The plaintiffs having filed a verified complaint with affidavits and having moved for an order directing the defendants to show cause why they should not be enjoined and restrained temporarily, and pending the final hearing in this matter, from proceeding with the sale of plaintiffs' personal and real property scheduled to be sold at public auction commencing Tuesday, February 21, 1961, and it further appearing that no notice can be served in accordance with the rules to bring on this matter within sufficient time to prevent immediate and irreparable injury to the property rights of the plaintiffs and their rights under the Constitution of the United States referred to in the complaint attached hereto, and it appearing that no request for this relief has been made before to this Court, and good cause appearing, it is on this day of February, 1961,

ORDERED that the defendants show cause before this Court on the day of , 1961 at 10 o'clock in the forenoon or as soon thereafter as counsel may be heard, why an order should not issue pendente lite enjoining and restraining the defendants, their agents, servants and employees, or attorneys who may be designated to preside in their stead, from:-

a) Proceeding with the execution of the judgments, the garnishment of salaries, and the sale of the personal and real

property of the plaintiffs herein, referred to in the complaint, and from

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ORDERED that pending the return of this order to show cause the defendants, their agents, servants, employees and attorneys be and they hereby are enjoined and restrained from proceeding with the execution of the judgments, the garnishment of salaries, and the sale of the personal and real property of the plaintiffs, and from taking further steps with respect to the execution of said judgments referred to in the complaint; and it is further

ORDERED that, due and sufficient reason having been shown, service may be made of this order and the papers attached hereto upon the defendants herein on or before .M. on the day of , 1961; and it is further

ORDERED that, this order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, shall expire ten (10) days from the date hereof unless within the time so fixed this order for good cause shown is extended for a like period.

Judge, District Court of the United
States for the Middle District of
Alabama

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action
File No. _____

RALPH D. ABERNATHY, J.E. LOWERY,
S.S. SEAY, SR., and FRED L.
SHUTTLESWORTH,

Plaintiffs,

v.

JOHN PATTERSON, individually and as
Governor of Alabama, EARL JAMES,
individually and as Mayor of Mont-
gomery, L.B. SULLIVAN, individually
and as Commissioner of Police of
Montgomery, FRANK PARKS, individ-
ually and as Commissioner of Public
Affairs of Montgomery, MAC SIM
BUTLER, individually and as Sheriff
of Montgomery County, RAY D. BRIDGES,
individually and as Sheriff of
Mobile County, HOLT A. McDOWELL,
individually and as Sheriff of
Jefferson County, and WILMER SHIELDS
individually and as Sheriff of
Marengo County,

Defendants.

ORDER TO SHOW CAUSE

Law Offices:
CHARLES S. CONLEY
530 South Union Street, Suite A
Montgomery 4, Alabama

Order to Show Cause
Denial
2/20/61

C.S.E.

DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

| | | |
|----------------------------|---|----------------|
| RALPH D. ABERNATHY, et al. |) | |
| Plaintiffs, | : | |
| VS. |) | Civil Action, |
| JOHN PATTERSON, et al. | : | File No. _____ |
| Defendants. |) | |

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The plaintiffs having filed a verified complaint with affidavits and having moved for an order directing the defendants to show cause why they should not be enjoined and restrained temporarily, and pending the final hearing in this matter, from proceeding with the sale of plaintiffs' personal and real property scheduled to be sold at public auction commencing Tuesday, February 21, 1961, and it further appearing that no notice can be served in accordance with the rules to bring on this matter within sufficient time to prevent immediate and irreparable injury to the property rights of the plaintiffs and their rights under the Constitution of the United States referred to in the complaint attached hereto, and it appearing that no request for this relief has been made before to this Court, and good cause appearing, it is on this day of February, 1961,

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ORDERED that, this order, pursuant to Rule 65 of the Federal Rules of Civil Procedure, shall expire ten (10) days from the date hereof unless within the time so fixed this order for good cause shown is extended for a like period.

Judge, District Court of the United
States for the Middle District of
Alabama

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

Civil Action
File No. _____

RALPH D. ABERNATHY, J.E. LOWERY,
S.S. SEAY, SR., and FRED L.
SHUTTLESWORTH,

Plaintiffs,

v.

JOHN PATTERSON, individually and as
Governor of Alabama, EARL JAMES,
individually and as Mayor of Mont-
gomery, L.B. SULLIVAN, individually
and as Commissioner of Police of
Montgomery, FRANK PARKS, individ-
ually and as Commissioner of Public
Affairs of Montgomery, MAC SIM
BUTLER, individually and as Sheriff
of Montgomery County, RAY D. BRIDGES,
individually and as Sheriff of
Mobile County, HOLT A. McDOWELL,
individually and as Sheriff of
Jefferson County, and WILMER SHIELDS
individually and as Sheriff of
Marengo County,

Defendants.

ORDER TO SHOW CAUSE

Law Offices:
CHARLES S. CONLEY
530 South Union Street, Suite A
Montgomery 4, Alabama

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

**RALPH D. ABERNATHY, J. E.
LOWERY, S. S. SEAY, SR.,
AND FRED L. SHUTTLESWORTH,**

Plaintiffs,)

CIVIL ACTION NO. 1683-N

vs.)

JOHN PATTERSON, individually and as Governor of Alabama, EARL JAMES, individually and as Mayor of Montgomery, L. B. SULLIVAN, individually and as Commissioner of Police of Montgomery, FRANK PARKS, individually and as Commissioner of Public Affairs of Montgomery, MAC SIM BUTLER, individually and as Sheriff of Montgomery County, RAY D BRIDGES, individually and as sheriff of Mobile County, HOLT A. MCDOWELL, individually and as sheriff of Jefferson County, and WILMER SHIELDS, individually and as Sheriff of Marengo County,

Defendants.)

ORDER

Petitioners, by complaint filed February 20, 1961 and by motion for a preliminary injunction filed March 1, 1961, seek to have this Court issue an injunction restraining John Patterson, individually and as Governor of Alabama, Earl James, individually and as Mayor of Montgomery, L. B. Sullivan, individually and as Commissioner of Public Safety of Montgomery, Frank Parks, individually and as Commissioner of Public Affairs of Montgomery, Mac Sim Butler, individually and as Sheriff of Montgomery County, Holt A. McDowell, individually and as Sheriff of Jefferson County, and Wilmer Shields, individually and as Sheriff of Marengo County, from proceeding with trials presently pending before the Circuit Court of Montgomery County, Alabama, and instituted by the defendants John Patterson and Frank Parks; from levying upon plaintiffs' property, real and personal, which has already been attached, as well as all future levies; and from engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth

**IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION**

**RALPH D. ABERNATHY, J. B.
LOWERY, S. S. GRAY, SR.,
AND FRED L. SHUTTLESWORTH,**)

Plaintiffs,)

CIVIL ACTION NO. 1683-N

vs.)

**JOHN PATTERSON, individually and
as Governor of Alabama, EARL
JAMES, individually and as Mayor
of Montgomery, L. B. SULLIVAN,
individually and as Commissioner
of Police of Montgomery, FRANK
PARKS, individually and as
Commissioner of Public Affairs
of Montgomery, MAC SIM BUTLER,
individually and as Sheriff
of Montgomery County, RAY D
BRIDGES, individually and as
sheriff of Mobile County, HOLT
A. MCDOWELL, individually and
as sheriff of Jefferson County,
and WILMER SHIELDS, individually
and as Sheriff of Marengo County,**)

Defendants.)

ORDER

Petitioners, by complaint filed February 20, 1961 and by motion for a preliminary injunction filed March 1, 1961, seek to have this Court issue an injunction restraining John Patterson, individually and as Governor of Alabama, Earl James, individually and as Mayor of Montgomery, L. B. Sullivan, individually and as Commissioner of Public Safety of Montgomery, Frank Parks, individually and as Commissioner of Public Affairs of Montgomery, Mac Sim Butler, individually and as Sheriff of Montgomery County, Holt A. McDowell, individually and as Sheriff of Jefferson County, and Wilmer Shields, individually and as Sheriff of Marengo County, from proceeding with trials presently pending before the Circuit Court of Montgomery County, Alabama, and instituted by the defendants John Patterson and Frank Parks; from levying upon plaintiffs' property, real and personal, which has already been attached, as well as all future levies; and from engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE
DISTRICT OF ALABAMA, NORTHERN DIVISION

RALPH D. ABERNATHY, J. E.)
LOWERY, S. S. SEAY, SR.,)
AND FRED L. SHUTTLESWORTH,)

Plaintiffs,)

CIVIL ACTION NO. 1683-N

vs.)

JOHN PATTERSON, individually and)
as Governor of Alabama, EARL)
JAMES, individually and as Mayor)
of Montgomery, L. B. SULLIVAN,)
individually and as Commissioner)
of Police of Montgomery, FRANK)
PARKS, individually and as)
Commissioner of Public Affairs)
of Montgomery, MAC SIM BUTLER,)
individually and as Sheriff)
of Montgomery County, RAY D)
BRIDGES, individually and as)
sheriff of Mobile County, HOLT)
A. MCDOWELL, individually and)
as sheriff of Jefferson County,)
and WILMER SHIELDS, individually)
and as Sheriff of Marengo County,)

Defendants.)

ORDER

Petitioners, by complaint filed February 20, 1961 and by motion for a preliminary injunction filed March 1, 1961, seek to have this Court issue an injunction restraining John Patterson, individually and as Governor of Alabama, Earl James, individually and as Mayor of Montgomery, L. B. Sullivan, individually and as Commissioner of Public Safety of Montgomery, Frank Parks, individually and as Commissioner of Public Affairs of Montgomery, Mac Sim Butler, individually and as Sheriff of Montgomery County, Holt A. McDowell, individually and as Sheriff of Jefferson County, and Wilmer Shields, individually and as Sheriff of Marengo County, from proceeding with trials presently pending before the Circuit Court of Montgomery County, Alabama, and instituted by the defendants John Patterson and Frank Parks; from levying upon plaintiffs' property, real and personal, which has already been attached, as well as all future levies; and from engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth

DRAFT

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RALPH D. ABERNATHY, J. E. LOWERY,)
S. S. SEAY, SR., and FRED L.
SHUTTLESWORTH, *

Plaintiffs, (

VS. *

JOHN PATTERSON, individually and)
as Governor of Alabama, EARL
JAMES, individually and as Mayor*
of Montgomery, L. B. SULLIVAN,
individually and as Commissioner(
of Public Safety of Montgomery,
FRANK PARKS, individually and as*
Commissioner of Public Affairs
of Montgomery, MAC SIM BUTLER,)
individually and as Sheriff of
Montgomery County, HOLT A. *
McDOWELL, individually and as
Sheriff of Jefferson County, and(
WILMER SEIELDS, individually and
as Sheriff of Marengo County. *

Defendants.)

Civil Action

File No. _____

MOTION FOR A PRELIMINARY INJUNCTION

Come the Plaintiffs, RALPH D. ABERNATHY, J. E. LOWERY,
S. S. SEAY, SR., and FRED L. SHUTTLESWORTH, and move this Honorable
Court for a preliminary injunction in the above entitled cause
enjoining the defendants, JOHN PATTERSON, et. al., their agents,
servants, employees, and attorneys and all persons acting in concert
with them from:

(a) Proceeding with trials presently pending before the
Circuit Court of Montgomery County, Alabama and which were instituted
by the defendants, John Patterson and Frank Parks.

(b) Levying upon plaintiffs' property, both real and
personal which has already been attached, as well as all future
levies.

(c) Engaging in a conspiracy designed to deter and pro-
hibit the plaintiffs from exercising rights guaranteed by the First
and Fourteenth Amendments of the Constitution of the United States

with respect to freedom of speech, press, assembly, and right to petition for redress of grievances, and the right to free worship.

Grounds in support of said Motion are as follows:

1. Plaintiff Ralph D. Abernathy is a resident of Montgomery County, Alabama and president of the Montgomery Improvement Association, an organization functioning in the City of Montgomery devoted to the achievement of equality of treatment for members of the Negro race under the Constitution of the United States and through the Christian and non-violent approach.

2. Plaintiff, J. E. Lowery, is a resident of the City of Mobile, Alabama, and president of the Alabama Civic Affairs Association, an organization functioning in Mobile, Alabama devoted to similar aims as those described above.

3. Plaintiff, S. S. Seay, Sr., is a resident of Montgomery County, Alabama, and is executive secretary of the Montgomery Improvement Association.

4. Plaintiff, Fred L. Shuttlesworth, is a resident of Birmingham, Alabama, and is founder and president of the Alabama Christian Movement for Human Rights, an organization located in Birmingham, Alabama similar in purpose to those described above.

5. Each of the plaintiffs herein is over the age of twenty-one years, and a citizen of the United States. Each belongs to the class of persons commonly designated and referred to as Negroes.

6. Defendant John Patterson is governor of the State of Alabama. Said defendant has filed an action in the Circuit Court of Montgomery County, Alabama seeking damages against the plaintiffs and the New York Times Company in the amount of One Million Dollars.

7. Defendants, L. B. Sullivan, Earl D. James, and Frank W. Parks are City officials and members of the Board of Commissioners of the City of Montgomery, Alabama. Each filed in the Circuit Court of Montgomery County, Alabama a Civil Action for damages

against the plaintiffs herein and the New York Times Company in the amount of Five Hundred Thousand Dollars.

8. Defendants, Mac Sir Butler, Ray D. Bridges, Holt A. McDowell, and Wilmer Shield are respectively sheriffs of Montgomery, Mobile, Jefferson, and Marengo counties. As such it is their duty to execute and return the process and orders of the Courts of record of the State of Alabama.

9. In pursuance of their objective to advance the equality of treatment of members of the Negro race through Christian and non-violent Constitutional means, plaintiffs, their supporters, and others with whom they have been associated sought to rely on the utilization of educational processes, the various media of press and speech, the right to assembly, and the right to petition for redress of grievances and the peaceful assertion of constitutional rights, which rights are privileges flowing from national citizenship.

10. In or about February, 1960, and continuously thereafter, several of the defendants and divers other co-conspirators, the names of whom are to the plaintiffs presently unknown, entered into a conspiracy, individually and under the authority of their offices, to prevent the plaintiffs from accomplishing their objectives as aforesaid; to deprive plaintiffs of the equal protection of the laws; to deprive them of their rights, privileges, and immunities secured by the Constitution and laws of the United States and to deprive the plaintiffs of their rights to access to a free press, free speech, and peaceful assembly, as well as the right to petition for redress of grievances guaranteed to them under the first Amendment of the Constitution of the United States.

11. On or about March 29, 1960, supporters of the plaintiff and the movement for equality of which they are leaders, on their own, and pursuant to their own responsibility, utilizing the channel of a free press, inserted in the New York Times, a newspaper of national and international reputation, a paid advertisement signed by approximately 64 prominent Americans from all walks of life, a copy of which advertisement is annexed to the Complaint

heretofore filed herein as Exhibit B. This advertisement expressed the opinions, criticisms and comments of these prominent Americans of the developments in the City of Montgomery and the State of Alabama, as described above, for the purpose of:

(a) Educating the general public on important social and political issues in the free market place of ideas;

(b) Soliciting support for the defense of the Reverend Martin Luther King, Jr., a leader of the movement in which the plaintiffs participate as active leaders, in a then pending criminal prosecution brought by the State of Alabama against the Reverend Dr. King;

(c) Soliciting support for the plaintiffs herein and their supporters in their peaceful activities for the enforcement of their right to vote, as guaranteed by the Fifteenth Amendment to the Constitution of the United States.

(d) Soliciting support for the Negro students of the City of Montgomery, the Negro citizens of that city, and the plaintiffs herein, in their peaceful efforts to end segregation and achieve the constitutional promise of equality before the law.

12. Pursuant to the aforesaid conspiracy, defendants contrived and planned, under the color of law and utilizing their official positions as well as the judicial machinery of the State, actions in libel against the New York Times Company, a foreign corporation and the plaintiffs herein.

13. Plaintiffs were fraudulently joined in said actions for the purpose of deterring them and their supporters as set forth above, from utilizing their constitutional rights and in particular their right to access to a free press, and for the purpose of preventing removal of said causes from the Circuit Court of Montgomery County, Alabama, a tribunal wherein a policy custom and usage of enforced segregation of the races is enforced and pursued, to the United States District Court. Joinder of the plaintiffs herein in the afore mentioned actions in the Circuit Court of Montgomery County, Alabama, constitutes an unconstitutional

use of the judicial machinery of the State of Alabama to the detriment and irreparable injury of the plaintiffs.

14. As a result of said fraudulent actions, fraudulent judgments, without any basis in law or fact, have been awarded to the defendants Sullivan and James in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each, and which judgments represent the highest ever awarded in libel actions in the State of Alabama. Because of said fraudulent and extraordinarily high judgments, plaintiffs are required under Alabama Law to post supersedeas bonds in the amount of ONE MILLION DOLLARS (\$1,000,000) each, thereby making it absolutely impossible for the plaintiffs to avail themselves of the rights usually afforded to other citizens under the Alabama statute to obtain a stay of execution pending their exercise of the statutory right to appeal.

15. Plaintiffs are unable financially to post supersedeas bonds in the amount of TWO MILLION DOLLARS, (\$2,000,000) in order to stay execution pending appeals in the two cases which have been tried. By virtue of not being able to post the bonds required, the plaintiffs have been subjected to continuous harassments with respect to the modest personal and real property in which several have a mere equity. Plaintiffs are in addition thereto subjected to preparation for further trials in the Parks and Patterson cases, which are still pending in the Circuit Court of Montgomery County, Alabama.

16. Unless defendants are enjoined from executions, garnishments, and sale of plaintiffs' properties pending outcome of said appeals; and unless defendant are enjoined from further prosecution of trials pending before the Circuit Court of Montgomery County, Alabama as aforesaid, plaintiffs, and each of them, will suffer immediate and irreparable loss of property both real and personal, in addition to the immediate and irreparable injury to the exercise of constitutionally protected rights; as more fully appears in the verified complaint filed herein; which complaint is incorporated herein by reference and made a part of this Motion as

if herein set forth in full.

17. Plaintiffs have no plain, adequate and complete remedy at law which can protect plaintiffs' property rights as well as their rights of freedom of expression, of press and assembly other than recourse this Honorable Court.

18. Unless this court grants plaintiffs the relief prayed for plaintiff's will be further relegated to a segregated court system and continue to suffer immediate and irremediable harm to their personal and property rights. Plaintiffs have not and cannot, under the present segregated organization of the Alabama State Courts receive a fair and impartial trial. Recourse to such a system would afford plaintiffs no adequate remedy at law consistent with the guarantees of the Federal Constitution.

19. The granting of a preliminary injunction by this Honorable Court, though essential to the protection of plaintiffs' personal and property rights will in no way be detrimental to defendants.

WHEREFORE, Plaintiffs respectfully pray:

1. That this Learned Court enter a preliminary injunction

(a) Enjoining the defendants herein, their agents, servants, employees, attorneys, and all persons acting in concert with them from proceeding in any manner whatsoever with the libel action in the Circuit Court of Montgomery County, Alabama, entitled, "Frank Parks vs. The New York Times Company, a corporation, et. al.", and John Patterson vs. The New York Times Company et. al..

(b) Restraining each of the defendants named herein, their agents, servants, employees, attorneys, and all persons acting in concert with them from engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth Amendments with respect to freedom of speech, press, assembly, the right to petition for redress of grievances, and the right to free worship.

2. That this Learned Court enter a declaratory judgment declaring the judgments heretofore awarded to defendants L. B. Sullivan and Earl James in the Circuit Court of Montgomery County, Alabama, to be null and void.

Respectfully submitted:

Charles S. Conley
530 South Union Street, Suite A
Montgomery 4, Alabama

Vernon Z. Crawford
570 Davis Avenue
Mobile, Alabama

Solomon S. Seay, Jr.
29 North McDonough Street
Montgomery, Alabama

Attorneys for Defendants

By _____

DRAFT

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RALPH D. ABERNATHY, J. E. LOWERY,) S. S. SEAY, SR., and FRED L. SHUTTLESWORTH, *

Plaintiffs, (

VS. *

JOHN PATTERSON, individually and) as Governor of Alabama, EARL JAMES, individually and as Mayor* of Montgomery, L. B. SULLIVAN, individually and as Commissioner(of Public Safety of Montgomery, FRANK PARKS, individually and as* Commissioner of Public Affairs of Montgomery, MAC SIM BUTLER,) individually and as Sheriff of Montgomery County, HOLT A. * McDOWELL, individually and as Sheriff of Jefferson County, and(WILMER SHIELDS, individually and as Sheriff of Marengo County. *

Defendants.)

Civil Action

File No. _____

MOTION FOR A PRELIMINARY INJUNCTION

Come the Plaintiffs, RALPH D. ABERNATHY, J. E. LOWERY, S. S. SEAY, SR., and FRED L. SHUTTLESWORTH, and move this Honorable Court for a preliminary injunction in the above entitled cause enjoining the defendants, JOHN PATTERSON, et. al., their agents, servants, employees, and attorneys and all persons acting in concert with them from:

(a) Proceeding with trials presently pending before the Circuit Court of Montgomery County, Alabama and which were instituted by the defendants, John Patterson and Frank Parks.

(b) Levying upon plaintiffs' property, both real and personal which has already been attached, as well as all future levies.

(c) Engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States

with respect to freedom of speech, press, assembly, and right to petition for redress of grievances, and the right to free worship.

Grounds in support of said Motion are as follows:

1. Plaintiff Ralph D. Abernathy is a resident of Montgomery County, Alabama and president of the Montgomery Improvement Association, an organization functioning in the City of Montgomery devoted to the achievement of equality of treatment for members of the Negro race under the Constitution of the United States and through the Christian and non-violent approach.

2. Plaintiff, J. E. Lowery, is a resident of the City of Mobile, Alabama, and president of the Alabama Civic Affairs Association, an organization functioning in Mobile, Alabama devoted to similar aims as those described above.

3. Plaintiff, S. S. Seay, Sr., is a resident of Montgomery County, Alabama, and is executive secretary of the Montgomery Improvement Association.

4. Plaintiff, Fred L. Shuttlesworth, is a resident of Birmingham, Alabama, and is founder and president of the Alabama Christian Movement for Human Rights, an organization located in Birmingham, Alabama similar in purpose to those described above.

5. Each of the plaintiffs herein is over the age of twenty-one years, and a citizen of the United States. Each belongs to the class of persons commonly designated and referred to as Negroes.

6. Defendant John Patterson is governor of the State of Alabama. Said defendant has filed an action in the Circuit Court of Montgomery County, Alabama seeking damages against the plaintiffs and the New York Times Company in the amount of One Million Dollars.

7. Defendants, L. B. Sullivan, Earl D. James, and Frank W. Parks are City officials and members of the Board of Commissioners of the City of Montgomery, Alabama. Each filed in the Circuit Court of Montgomery County, Alabama a Civil Action for damages

against the plaintiffs herein and the New York Times Company in the amount of Five Hundred Thousand Dollars.

8. Defendants, Mac Sir Butler, Ray D. Bridges, Holt A. McDowell, and Wilmer Shield are respectively sheriffs of Montgomery, Mobile, Jefferson, and Marengo counties. As such it is their duty to execute and return the process and orders of the Courts of record of the State of Alabama.

9. In pursuance of their objective to advance the equality of treatment of members of the Negro race through Christian and non-violent Constitutional means, plaintiffs, their supporters, and others with whom they have been associated sought to rely on the utilization of educational processes, the various media of press and speech, the right to assembly, and the right to petition for redress of grievances and the peaceful assertion of constitutional rights, which rights are privileges flowing from national citizenship.

10. In or about February, 1960, and continuously thereafter, several of the defendants and divers other co-conspirators, the names of whom are to the plaintiffs presently unknown, entered into a conspiracy, individually and under the authority of their offices, to prevent the plaintiffs from accomplishing their objectives as aforesaid; to deprive plaintiffs of the equal protection of the laws; to deprive them of their rights, privileges, and immunities secured by the Constitution and laws of the United States and to deprive the plaintiffs of their rights to access to a free press, free speech, and peaceful assembly, as well as the right to petition for redress of grievances guaranteed to them under the first Amendment of the Constitution of the United States.

11. On or about March 29, 1960, supporters of the plaintiff and the movement for equality of which they are leaders, on their own, and pursuant to their own responsibility, utilizing the channel of a free press, inserted in the New York Times, a newspaper of national and international reputation, a paid advertisement signed by approximately 64 prominent Americans from all walks of life, a copy of which advertisement is annexed to the Complaint

heretofore filed herein as Exhibit B. This advertisement expressed the opinions, criticisms and comments of these prominent Americans of the developments in the City of Montgomery and the State of Alabama, as described above, for the purpose of:

(a) Educating the general public on important social and political issues in the free market place of ideas;

(b) Soliciting support for the defense of the Reverend Martin Luther King, Jr., a leader of the movement in which the plaintiffs participate as active leaders, in a then pending criminal prosecution brought by the State of Alabama against the Reverend Dr. King;

(c) Soliciting support for the plaintiffs herein and their supporters in their peaceful activities for the enforcement of their right to vote, as guaranteed by the Fifteenth Amendment to the Constitution of the United States.

(d) Soliciting support for the Negro students of the City of Montgomery, the Negro citizens of that city, and the plaintiffs herein, in their peaceful efforts to end segregation and achieve the constitutional promise of equality before the law.

12. Pursuant to the aforesaid conspiracy, defendants contrived and planned, under the color of law and utilizing their official positions as well as the judicial machinery of the State, actions in libel against the New York Times Company, a foreign corporation and the plaintiffs herein.

13. Plaintiffs were fraudulently joined in said actions for the purpose of deterring them and their supporters as set forth above, from utilizing their constitutional rights and in particular their right to access to a free press, and for the purpose of preventing removal of said causes from the Circuit Court of Montgomery County, Alabama, a tribunal wherein a policy custom and usage of enforced segregation of the races is enforced and pursued, to the United States District Court. Joinder of the plaintiffs herein in the afore mentioned actions in the Circuit Court of Montgomery County, Alabama, constitutes an unconstitutional

use of the judicial machinery of the State of Alabama to the detriment and irreparable injury of the plaintiffs.

14. As a result of said fraudulent actions, fraudulent judgments, without any basis in law or fact, have been awarded to the defendants Sullivan and James in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each, and which judgments represent the highest ever awarded in libel actions in the State of Alabama. Because of said fraudulent and extraordinarily high judgments, plaintiffs are required under Alabama Law to post supersedeas bonds in the amount of ONE MILLION DOLLARS (\$1,000,000) each, thereby making it absolutely impossible for the plaintiffs to avail themselves of the rights usually afforded to other citizens under the Alabama statute to obtain a stay of execution pending their exercise of the statutory right to appeal.

15. Plaintiffs are unable financially to post supersedeas bonds in the amount of TWO MILLION DOLLARS, (\$2,000,000) in order to stay execution pending appeals in the two cases which have been tried. By virtue of not being able to post the bonds required, the plaintiffs have been subjected to continuous harassments with respect to the modest personal and real property in which several have a mere equity. Plaintiffs are in addition thereto subjected to preparation for further trials in the Parks and Patterson cases, which are still pending in the Circuit Court of Montgomery County, Alabama.

16. Unless defendants are enjoined from executions, garnishments, and sale of plaintiffs' properties pending outcome of said appeals; and unless defendant are enjoined from further prosecution of trials pending before the Circuit Court of Montgomery County, Alabama as aforesaid, plaintiffs, and each of them, will suffer immediate and irreparable loss of property both real and personal, in addition to the immediate and irreparable injury to the exercise of constitutionally protected rights; as more fully appears in the verified complaint filed herein; which complaint is incorporated herein by reference and made a part of this Motion as

if herein set forth in full.

17. Plaintiffs have no plain, adequate and complete remedy at law which can protect plaintiffs' property rights as well as their rights of freedom of expression, of press and assembly other than recourse this Honorable Court.

18. Unless this court grants plaintiffs the relief prayed for plaintiff's will be further relegated to a segregated court system and continue to suffer immediate and irremediable harm to their personal and property rights. Plaintiffs have not and cannot, under the present segregated organization of the Alabama State Courts receive a fair and impartial trial. Recourse to such a system would afford plaintiffs no adequate remedy at law consistent with the guarantees of the Federal Constitution.

19. The granting of a preliminary injunction by this Honorable Court, though essential to the protection of plaintiffs' personal and property rights will in no way be detrimental to defendants.

WHEREFORE, Plaintiffs respectfully pray:

1. That this Learned Court enter a preliminary injunction

(a) Enjoining the defendants herein, their agents, servants, employees, attorneys, and all persons acting in concert with them from proceeding in any manner whatsoever with the libel action in the Circuit Court of Montgomery County, Alabama, entitled, "Frank Parks vs. The New York Times Company, a corporation, et. al.", and John Patterson vs. The New York Times Company et. al..

(b) Restraining each of the defendants named herein, their agents, servants, employees, attorneys, and all persons acting in concert with them from engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth Amendments with respect to freedom of speech, press, assembly, the right to petition for redress of grievances, and the right to free worship.

2. That this Learned Court enter a declaratory judgment declaring the judgments heretofore awarded to defendants L. B. Sullivan and Earl James in the Circuit Court of Montgomery County, Alabama, to be null and void.

Respectfully submitted:

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530 South Union Street, Suite A
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29 North McDonough Street
Montgomery, Alabama

Attorneys for Defendants

By _____

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RALPH D. ABERNATHY, J. E. LOWERY,)
S. S. SEAY, SR., and FRED L. *
SHUTTLESWORTH, *

Plaintiffs, (

VS. *

JOHN PATTERSON, individually and)
as Governor of Alabama, EARL JAMES, *
individually and as Mayor of *
Montgomery, L. B. SULLIVAN, indi- (
vidually and as Commissioner of (
Public Safety of Montgomery, FRANK *
PARKS, individually and as Commis- *
sioner of Public Affairs of Montgomery, *
MAC SIM BUTLER, individually and as)
Sheriff of Montgomery County, HOLT A. *
McDOWELL, individually and as Sheriff *
of Jefferson County, and WILMER (
SHIELDS, individually and as Sheriff (
of Marengo County, *
 *
Defendants.)

Civil Action

File No. _____

MOTION FOR A PRELIMINARY INJUNCTION

Come the Plaintiffs, RALPH D. ABERNATHY, J. E. LOWERY, S. S. SEAY, SR., and FRED L. SHUTTLESWORTH, and move this Honorable Court for a preliminary injunction in the above entitled cause enjoining the defendants, JOHN PATTERSON, et. al., their agents, servants, employees, and attorneys and all persons acting in concert with them from:

(a.) Proceeding with trials presently pending before the Circuit Court of Montgomery County, Alabama and which were instituted by the defendants, John Patterson and Frank Parks.

(b.) Levying upon plaintiffs' property, both real and personal which has already been attached, as well as all future levies.

(c.) Engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States with respect to freedom of speech, press, assembly, and right to petition for redress of grievances, and the right to free worship.

Grounds in support of said Motion are as follows:

1. Plaintiff, Ralph D. Abernathy is a resident of Montgomery County, Alabama and president of the Montgomery Improvement Association, an organization functioning in the City of Montgomery devoted to the achievement of equality of treatment for members of the Negro race under the Constitution of the United States and through the Christian and non-violent approach.

2. Plaintiff, J. E. Lowery, is a resident of the City of Mobile, Alabama, and president of the Alabama Civic Affairs Association, an organization functioning in Mobile, Alabama devoted to similar aims as those described above.

3. Plaintiff, S. S. Seay, Sr., is a resident of Montgomery County, Alabama, and is executive secretary of the Montgomery Improvement Association.

4. Plaintiff, Fred L. Shuttlesworth, is a resident of Birmingham, Alabama, and is founder and president of the Alabama Christian Movement for Human Rights, an organization located in Birmingham, Alabama similar in purpose to those described above.

5. Each of the plaintiffs herein is over the age of twenty-one years, and a citizen of the United States. Each belongs to the class of persons commonly designated and referred to as Negroes.

6. Defendant John Patterson is governor of the State of Alabama. Said defendant has filed an action in the Circuit Court of Montgomery County, Alabama seeking damages against the plaintiffs and the New York Times Company in the amount of One Million Dollars.

7. Defendants, L. B. Sullivan, Earl D. James, and Frank W. Parks are City officials and members of the Board of Commissioners of the City of Montgomery, Alabama. Each filed in the Circuit Court of Montgomery County, Alabama a Civil Action for damages against the plaintiffs herein and the New York Times Company in the amount of Five Hundred Thousand Dollars.

8. Defendants, Mac Sim Butler, Ray D. Bridges, Holt A. McDowell, and Wilmer Shield are respectively sheriffs of Montgomery, Mobile, Jefferson, and Marengo counties. As such it is their duty to execute and return the process and orders of the Courts of record of the State of Alabama.

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10. In or about February, 1960, and continuously thereafter, several of the defendants and divers other co-conspirators, the names of whom are to the plaintiffs presently unknown, entered into a conspiracy, individually and under the authority of their offices, to prevent the plaintiffs from accomplishing their objectives as aforesaid; to deprive plaintiffs of the equal protection of the laws; to deprive them of their rights, privileges, and immunities secured by the Constitution and laws of the United States and to deprive the plaintiffs of their rights to access to a free press, free speech, and peaceful assembly, as well as the right to petition for redress of grievances guaranteed to them under the first Amendment of the Constitution of the United States, as incorporated in the Fourteenth Amendment thereof.

11. On or about March 29, 1960, supporters of the plaintiff and the movement for equality of which they are leaders, on their own, and pursuant to their own responsibility, utilizing the channel of a free press, inserted in the New York Times, a newspaper of national and international reputation, a paid advertisement signed by approximately 64 prominent Americans from all walks of life, a copy of which advertisement is annexed to the Complaint heretofore filed herein as Exhibit B. This advertisement expressed the opinions, criticisms and comments of these prominent Americans of the developments in the City of Montgomery and the State of Alabama, as described above, for the purpose of:

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12. Pursuant to the aforesaid conspiracy, defendants contrived and planned, under the color of law and utilizing their official positions as well as the judicial machinery of the State, actions in libel against the New York Times Company, a foreign corporation and the plaintiffs herein.

13. Plaintiffs were fraudulently joined in said actions for the purpose of deterring them and their supporters as set forth above, from utilizing their constitutional rights and in particular their right to access to a free press, and for the purpose of preventing removal of said causes to the United States District Court from the Circuit Court of Montgomery County, Alabama, a tribunal wherein a policy, custom, and usage of enforced segregation of the races is enforced and pursued. Joinder of the plaintiffs herein in the aforementioned actions in the Circuit Court of Montgomery County, Alabama, therefore constitutes and unconstitutional use of the judicial machinery of the State of Alabama to the detriment and irreparable injury of the plaintiffs, in depriving them of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution and, Title 42, United States Code, Sec. 1983, 1985 (3).

14. As a result of said fraudulent actions, fraudulent judgments, without any basis in law or fact, have been awarded to the defendants Sullivan and James in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each, and which judgments represent the highest ever awarded in libel actions in the State of Alabama. Because of said fraudulent and extraordinarily high judgments, plaintiffs are required under Alabama Law to post supersedeas bonds in the amount of ONE MILLION DOLLARS (\$1,000,000) each, thereby making it absolutely impossible for the plaintiffs to avail themselves of the rights usually afforded to other citizens under the Alabama statute to obtain a stay of execution pending their exercise of the statutory right to appeal.

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County, Alabama, entitled, "Frank Parks vs. The New York Times Company, a corporation, et. al.", and John Patterson vs. The New York Times Company, a corporation, et. al.," as the above actions relate to the plaintiffs herein.

(b.) Restraining each of the defendants named herein, their agents, servants, employees, attorneys, and all persons acting in concert with them from engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth Amendments with respect to freedom of speech, press, assembly, and right to petition for redress of grievances, and the right to free worship.

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