Court Agrees to Hear Ala. Election Bias Case

The Supreme Court agreed yesterday to consider next month a contempt motion against an Alabama election official accused of ignoring court orders placing black candidates on the ballot.

It scheduled oral argument for Jan. 21 on the contempt issue and on the claim of the National Democratic Party of Alabama to a constitutional right to ballot status in the Nov. 5 election.

The NDPA obtained a temporary Supreme Court ruling that put 89 local candidates on the ballot, but the Court directive was not followed by Probate Judge J. Dennis Herndon in Green County, where voting drives among Negroes have been intense.

The Justice Department has moved in lower courts to set aside the County's election because six Negro county board and school board candidates were off the ballot. But it has not joined with NDPA attorney Charles Morgan Jr. in a Supreme Court motion to cite Judge Herndon for contempt.

NDPA backed both the political organization of former Gov. George C. Wallace and Democrats loyal to the national ticket in suing for ballot status. Their case was one of several in the high court brought by independents against established political parties.

In another such case, Democrats who tried to get Sen. Eugene J. McCarthy (D-Minn.) on the presidential ballot in Illinois persuaded the Justices to hear their case.

They complied with the State's requirement for 25,000 signatures, but their petition failed to include 200 names from each of 50 different counties. The Court sustained this requirement in 1948, but that was long before reapportionment decisions that said voting power must not depend on where the voter lives.

Without the state law, the McCarthyites could easily have obtained the needed signatures without leaving Chicago, which has half the State's voters. Illinois officials say they have an interest in insuring actual statewide support for independent candidates before placing them on the ballot.

In other action:

Fair Trial and Free Press

The Court refused without comment to consider lifting the rules on publicity governing the Jan. 7 trial of Sirhan Sirhan, accused slayer of Sen. Robert F. Kennedy.

Los Angeles District Attorney Evelle J. Younger petitioned the high court to scrutinize what he called a "gag" order on trial news. He said the ban on out-of-court statements by attorneys and other restrictions gave no weight to rights of free speech and press or the public's right to information. Pretrial intervention by higher courts in such matters is very rare.

Death Penalty

The Court refused to consider statistical evidence which, according to the NAACP Defense Fund, establishes a prima facie case that racial discrimination is responsible for the high proportion of death sentences imposed against Negroes for raping white women.

But the Court did agree to weigh two other issues in the case of condemned rapist William L. Maxwell of Garland County, Ark. His attorneys argue that it is unconstitutional to let juries impose capital sentences without judicial guidelines.

The lawyers also contend that defendants like Maxwell must not be forced to choose between offering mitigating evidence to the jury and keeping silent under the privilege against self-incrimination. They attack the procedure in Arkansas and most other states by which the jury decides guilt and sentence at the same time.

Concurrent Sentences

The Court ordered reargument on March 24 of the case of accused burglar James D. Benton of Prince Georges County, Md. The case was initially argued only last Thursday.

It limited reargument to an issue not raised by Benton, who claims he was twice placed in jeopardy for larceny. The new issue is one that criminal lawyers have argued about for more than 25 years —whether courts should refuse to consider an appeal against conviction on one count of an indictment when a concurrent sentence on another count is conceded to be valid.

The Court's order told lawyers to argue whether the "concurrent sentence doctrine" has withered away under recent decisions. Maryland invoked the doctrine against Benton, who is currently contesting a larceny conviction for which he received a five-year sentence but not a burglary conviction for which he received a concurrent 15-year term.