

(31,199)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1925

No. 480

L. A. NIXON, PLAINTIFF IN ERROR,

*vs.*

C. C. HERNDON AND CHARLES PORRAS

IN ERROR TO THE DISTRICT COURT OF THE UNITED STATES FOR  
THE WESTERN DISTRICT OF TEXAS

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[fol. 1] [Caption omitted]

[fol. 2] **IN UNITED STATES DISTRICT COURT**

SUMMONS AND MARSHAL'S RETURN—Filed Aug. 23, 1924

UNITED STATES OF AMERICA,  
Western District of Texas, at El Paso:

The President of the United States to the Marshal of the Western District of Texas, Greeting:

You are hereby commanded to summon C. C. Herndon and Chas. Porras, each of whom is a resident citizen of the County of El Paso, Texas, in the Western District of Texas, if to be found therein, to be and appear before the Honorable District Court of the United States at a court to be holden in and for said District, at El Paso, Texas, on the first Monday, being the 6th day of October, A. D. 1924, and the first day of the next regular term of said court in course, to answer a petition and complaint exhibited and filed in said Court on the 31st day of July, A. D. 1924, in a suit numbered on the docket of said Court No. 994 at law, wherein L. A. Nixon is Plaintiff, and C. C. Herndon and Chas. Porras are Defendants.

The nature of Plaintiff's demand is as follows, to-wit: a suit to recover from said defendants alleged damages in the sum of \$5,000. Plaintiff alleges that he is a native citizen of the United States, and a qualified voter and elector in Precinct No. 9, in El Paso County, State of Texas, and a bona fide member of the Democratic party of said state; that on July 26, 1924, at a Democratic primary election held in said state and county, he presented himself at the polling place in said precinct and asked defendants Herndon and Porras, who were judge and associate judge of elections, respectively, in said precinct, for a ballot and to be permitted to vote; that said defendants refused to furnish him with a ballot or to permit him to vote, to his damage in the sum of \$5,000. Plaintiff prays judgment against said defendants in the sum of \$5,000, for costs of suit and such other relief as may be appropriate and just. For further details see attached copy of petition.

[fol. 3] And you will deliver to the Defendants C. C. Herndon and Chas. Porras, each, a true copy of this writ and the accompanying copy of Plaintiff's original petition.

Herein fail not, but have you then and there before said Court this writ, with your action thereon, showing how you have executed the same.

Witness the Honorable W. R. Smith, Judge of the District Court of the United States, for the Western District of Texas, and the seal of said District Court hereto affixed at El Paso, Texas, this 1st day of August, A. D. 1924. Issued same day.

(Signed) D. H. Hart, Clerk of said Court, by J. N. Phillips,  
Deputy. (Seal.)

[File endorsement omitted.]

Marshal's Return

Received this Citation at El Paso, Texas, Aug. 1st, 1924, and executed same at El Paso, Texas, by delivering to Chas. Porras, on August 13, and to C. C. Herndon, on August 14, 1924, a true copy of this writ, together with a certified copy of Plaintiff's original petition, as I am herein commanded.

(Signed) D. A. Walker, U. S. Marshal, Western District of Texas, by N. F. Work, Deputy.

Expenses:

Car fare.....	.36
Serving writs (2).....	\$4.00
	\$4.36
Total .....	\$4.36

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[fol. 4]            IN UNITED STATES DISTRICT COURT

No. 994. Law

L. A. NIXON

vs.

C. C. HERNDON and CHAS. PORRAS

ORDER GRANTING LEAVE TO AMEND PETITION—Filed Oct. 7, 1924

Upon application duly made in open court, it is ordered hereby that the plaintiff herein, be, and hereby is, granted leave to amend.  
Vol. 15, page 523.

[File endorsement omitted.]

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IN UNITED STATES DISTRICT COURT

[Title omitted]

AMENDED PETITION—Filed Oct. 15, 1924

Now in the above cause comes the plaintiff L. A. Nixon and leave of the court having first been obtained files this his First Amended Original Petition in lieu of and as a substitute for the original petition filed in this cause on the 31st day of July, A. D. 1924 and for cause of action alleges:

1. That plaintiff is, and at all times mentioned in this complaint [fol. 5] was, a citizen and resident of the City and County of El

Paso in the State of Texas; and sues herein on an action which arises under the constitution and laws of the United States and is brought to redress and enforce his right as a citizen of the United States to vote in the State of Texas and to redress the deprivation under the color of a law or statute of the State of Texas of rights and privileges secured to him by the Statutes and laws of the United States; to redress an injury which he sustained by reason of the acts of defendants in their official capacities discriminating against him by reason of his race and color, in violation of the constitution and laws of United States.

2. That each and all of the defendants are, and at all times mentioned in this complaint were residents of El Paso County, Texas.

3. That on the 26th day of July, A. D. 1924, there was held in the State of Texas and in the County of El Paso, in said State, a primary election for the nomination of candidates for offices upon the Democratic ticket; that prior to said date the defendant C. C. Herndon, was duly designated and appointed as Judge of Elections in and for Precinct No. 9 in El Paso County, Texas, and on said date qualified and acted as such; that on said date, to-wit: July 26, 1924, the defendant, Chas. Porras was duly designated and qualified and acted as Association Judge of Election in said Precinct No. 9.

4. That plaintiff upon said date, to-wit, July 26, 1924, was, and for more than a year prior thereto had been, a resident of said Precinct No. 9 in the City and County of El Paso; that he is a native citizen of the United States of America; that he was born in the State of Texas of parents who were citizens of the United States; that he is forty-one years of age, and subject to none of the disqualifications or disabilities provided by the Constitution of the State of Texas for an elector; that he has resided in the County of El Paso, State of Texas, for fourteen years last past, and that he duly paid his poll tax for the year 1923 in El Paso County, before the 31st [fol. 6] day of January, 1924, and that he was duly registered as a qualified voter in said Precinct No. 9 in said County, and his name was duly certified by the Tax Collector of said County as a qualified voter and elector in and for said Precinct No. 9 five days prior to said Primary election.

5. That on said 26th day of July, 1924, plaintiff presented himself at the polling place in said Precinct No. 9 and tendered his poll tax receipt for the year 1923, within the hours prescribed by law for the holding of said election, and requested of defendants, Herndon and Porras, that he be supplied with a ballot and permitted to vote in said election and that said defendants thereupon refused to permit plaintiff to vote or to furnish him with a ballot, and stated as reason therefor that Instruction No. 26, in the list of instructions furnished them by E. M. Whitaker, Chairman of the Executive Committee of the Democratic party in El Paso County, Texas, prohibited plaintiff from voting at said election, and that their refusal to permit him to vote was based upon said instructions, a copy of their

refusal being hereto attached, marked "Exhibit A" and asked to be considered as part of this complaint.

6. That plaintiff is informed and believes, and so alleges, that defendants refused to plaintiff his right to vote in said election by reason of said instruction No. 26, which was based upon an Act of the Legislature of the State of Texas, enacted in May 1923, at the First Called Session of the 38th Legislature of said State which is designated as Article 3093a, a portion of which is as follows:

"All qualified voters under the laws and constitution of the State of Texas, who *is a* bona fide member- of the Democratic party, shall be eligible to participate in any Democratic primary election, provided such voter- complies with all laws and rules governing party primary elections; however in no event shall a negro be eligible to participate in a Democratic party primary election held in the State of Texas and should a negro vote in a Democratic primary election, such ballot shall be void and election officials are herein directed to throw out such ballot and not count the same."

7. That said Act of the Legislature and said instruction of the [fol. 7] County Chairman of the Democratic Committee, based thereon, are inoperative, null and void, insofar as it provides that in no event shall a negro be eligible to participate in Democratic party primary elections held in the State of Texas, and that in the event a negro should vote in said primary election, his ballot shall be void and not be counted; that such provision is in violation of the Constitution and laws of the State of Texas and especially is in violation of Article Six of the Constitution of the State of Texas prescribing the qualifications of electors in the State of Texas, and *and* also of Section Nineteen of Article One of the Constitution of Texas, which provides:

"That no citizen of this state shall be deprived of life, liberty, property, privileges or immunities, or in any manner disfranchised except by the due course of the law of the land."

And of Section Twenty-nine of Article One of the Constitution of Texas, which declares:

"That everything in said Bill of Rights is excepted out of the general powers of government and shall forever remain inviolate, and all laws contrary thereto or to the following provisions shall be void."

That said instruction No. 26 and said act of the Legislature are violative of and contrary to the Constitution of the United States, and especially of the Fifteenth Amendment to said Constitution which provides:

"That the rights of citizens of the United States to vote shall be not denied or abridged by the United States or by any State on account of race, color and previous condition of servitude."

And also is contrary to the Statutes enacted by the Congress of the United States pursuant to said provision of its Constitution and especially of section 1979 of said Statutes and also of Section 2004 of said Statutes which provides:

“All citizens of the United States who are otherwise qualified by law to vote at said election by the people in any state, territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision, shall be entitled and allowed to vote [fol. 8] at such election, without distinction of race, color or previous condition of servitude; any constitution, law, custom, usage or regulation of any state or territory, or by or under its authority to the contrary notwithstanding.”

8. That plaintiff is a negro, as defined by the statutes of the State of Texas, and belongs to the colored race; that he is a bona fide member of the Democratic party of the State of Texas, and in every other respect, save that of his color, he is entitled to participate in all elections held within the State of Texas, whether for the nomination of candidates for office or otherwise, and that he offered to take the pledge to support the nominees of the Democratic primary at said election and to comply in every respect with the requirements of the laws of the State of Texas relating thereto; that he claims the privileges extended to him and guaranteed to him by the Constitution and laws of the United States and of the State of Texas.

9. That said election was for the purpose of selecting candidates for all precinct, county, district and state officers of the State of Texas, and for representatives in the Congress of the United States, and for United States senator, and that there were three candidates for United States senator upon the ballot, one of whom was to be nominated or selected as the nominee of the Democratic party at said primary election.

10. That plaintiff at said time was not subject to any of the disqualifications prescribed by the Constitution or statutes of the State of Texas as an elector, save and except that he was and is a negro, as defined by the Statutes of the State of Texas; that he possessed all the qualifications of an elector prescribed by Article 6 of the Constitution of the State of Texas, and all of the qualifications prescribed by Chapter 4 of Title 49 of the Statutes of the State of Texas pertaining to the qualification of voters, and all qualifications prescribed by Chapter 10a of Title 49, of the statutes of the State of Texas, relating to the election of United States senators by direct vote and that he was within any of the exceptions of said chapters of [fol. 9] said Title, and that said Chapter 4, by its terms as embraced in Article 2963-9 thereof, provides that such act shall apply to all elections in this State, general, special and primary, and that said Chapter 10a in Article 3174 L provides:

“The following provisions shall be held to apply to all primaries and elections for United States senator, whether special or general.”

Among such "following provisions" is Article 3174 WW stating the qualifications of a voter, all of which were possessed by this plaintiff.

11. That plaintiff is a bona fide member of the Democratic party and that he has voted as such for many years at all elections, both primary and general, and that he was on said date willing and ready to make an affidavit that he was and is a bona fide member of said party and that in the preceding general election held for the election of state officials in the State of Texas he voted for the nominees of the Democratic party and that he was entitled to vote, under the Constitution and laws of the United States and of the Constitution and laws of the State of Texas, embraced within the chapters above referred to, and especially by the provisions of Article 3174 WW of said Chapter 10a, which provides that upon making the affidavit, such as plaintiff was able in good faith and willing to do, that he shall be permitted to vote.

12. Plaintiff further alleges that the above mentioned and foregoing provisions of the Constitution and laws of the United States and of the Constitution and laws of the State of Texas were in force prior to and at the time of said primary election, on, to-wit: the 26th day of July, 1924, and prior to the enactment of the Legislature of the State of Texas in May 1923, which provided that a negro shall be ineligible to vote in a democratic primary, and that said act of the Legislature of May 1923, embraced in Article 3093a, insofar as it undertakes to declare a negro ineligible to vote in a democratic primary is contrary to the Constitution and laws of the United States and of the State of Texas, and that he claims all the rights, privileges [fol. 10] and immunities of a citizen of the United States and the State of Texas, as guaranteed to him by the Constitution and laws of the United States and of the State of Texas.

13. Plaintiff further says that said Article 3093a purports to be limited to primary elections for the nomination of officers by the Democratic party; that there are in the State of Texas two great political parties, the Democratic party and the Republican party; that by its terms, said act applies only to the Democratic party, and does not apply to the Republican party; that the effect of such act is to exclude all negroes from participation in the Democratic primaries, forcing them by implication to vote, if at all, only in a Republican primary; that said Act thereby discriminates as between the Democratic and the Republican parties and attempts by a legislative enactment to determine the party with which a negro shall affiliate and deprives him of his right as an American citizen to determine for himself his choice of parties; that such act is discriminatory, unjust, illegal and void and operates as an unwarranted, unjust and discriminatory interference with the free exercise of privileges of citizenship and suffrage enjoyed by the plaintiff, together with others of his race, similarly situated and conditioned in the State of Texas, contrary to the provisions, letter and spirit of the Constitution and

laws of the United States and the State of Texas. And by such restriction upon his freedom of choice to determine for himself the political party with which he shall affiliate abridges his rights and privileges as a citizen of the United States guaranteed to him by the Fourteenth amendment of the Constitution of the United States and infringes both in letter and spirit Section 2 of the Bill of Rights in the constitution of this state which announces that the faith of the people of Texas stands pledged to the preservation of a Republican form of government.

14. Plaintiff further alleges that in the event it should be construed that Article 3093a, which is quoted in the Sixth paragraph above, is not in violation of the constitution of the State of Texas or [fol. 11] the constitution or the laws of the United States, then plaintiff alleges that such construction would necessarily involve the conclusion by the court that a primary election, such as referred to in Article 3093a is not an election as the term is used in the constitution of the State of Texas which fixes the qualifications of persons who may participate in an election. And plaintiff alleges that if this construction be placed upon said Article 3093a then said act of the Legislature, to-wit, Chapter 32 of the First Called of Session of the 38th Legislature of the State of Texas enacted in May 1923, being Senate Bill No. 44 is null and void and in conflict with the constitution of the State of Texas, and especially of Section 35 of Article Three of said constitution which provides:

“That no bill (other than general appropriate bills) shall contain more than one subject which shall be embraced in its title.”

That said bill, to-wit: Senate Bill No. 44 in addition to Article 3093a which is copied in Paragraph 6th above embraced Article 3089a, which is as follows:

“All supervisors, judges and clerks of any election shall be qualified voters of the election precinct in which they are named to serve.”

That Article 3093a embraced in said bill relates to primary elections. Article 3089a embraced in the same bill relates to elections. If it be held that a primary election is not such an election as is provided for by the constitution of the State of Texas, then plaintiff alleges that there is a multiplicity of subjects embraced in said bill, to-wit, one Article relating to primaries and another article relating to elections and that said bill therefore is invalid as condemned by the terms of said Section 35 prohibiting plurality of subjects.

15. That the aforesaid action of the defendants herein was unlawful and unjustified and operated to plaintiff's damages in the sum of five thousand (\$5,000.00) dollars.

Wherefore, defendants having been duly served with summons in this cause, the plaintiff prays for judgment against the defendants, [fol. 12] jointly and severally for the sum of five thousand (\$5,-

000.00) dollars together with costs of this suit, and for such other and further relief as may be appropriate and just in the premises.

(Signed) Robert J. Channell, Fred C. Knollenberg, Attorneys  
for Plaintiff.

Sworn to by L. A. Nixon. Jurat omitted in printing.

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[File endorsement omitted.]

IN UNITED STATES DISTRICT COURT

[Title omitted]

[fol. 13] MOTION TO DISMISS—Filed Oct. 17, 1924

Now comes the defendants in the above entitled cause, and move the court to dismiss the Plaintiff's First Amended Original Petition filed in lieu of and as a substitute for his Original Petition filed in this cause on the 31st day of July, 1924, heretofore filed against them, and for grounds of dismissal set forth the following separate and several grounds, to-wit:

1. That the subject matter of the suit being political in its nature, this Court is without jurisdiction to determine the issues involved, or to award the relief prayed for.
2. That the plaintiff is not a proper party to maintain this suit.
3. That there is a failure to join necessary defendants.
4. Because the matter and things in the petition alleged are not sufficient to constitute a cause of action against them or either of them.
5. Because the matter and things in the petition alleged are not sufficient to constitute a cause of action against them, or either of them, nor can the Court, upon the matters and things alleged, grant the relief prayed for, nor any other relief.
6. That the Fourteenth and Fifteenth Amendments to the Constitution of the United States and the Statutes enacted by the Congress of the United States pursuant thereto, and Sections 2004 and 1979 thereof, do not, from the allegations in the petition, appear to have been violated.
7. That the petition shows that the primary election referred to was not an election within the meaning of the Constitution of the United States, or any laws pursuant thereto, or the Fourteenth and Fifteenth Amendments to the Constitution of the United States.
8. That said petition states no cause of action against defendants for damages for refusing a vote, for the reason that the Statutes and

[fol. 14] Laws of the State of Texas forbid the defendants to receive it.

9. That said petition states no cause of action against defendants for damages for refusing a vote, for the reason that the Statutes and Laws of the State of Texas forbid the defendants to receive it and that said Statutes and Laws are, in all respects, valid.

10. That the Constitution of the State of Texas and the Laws of the State of Texas, as set out in plaintiff's petition, do not, from the allegations in the petition, appear to have been violated.

(Signed) W. H. Fryer, Robert E. Cunningham, Attorneys  
for Defendants.

[File endorsement omitted.]

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IN UNITED STATES DISTRICT COURT

[Title omitted]

JUDGMENT AND ORDER SUSTAINING MOTION TO DISMISS—Filed.  
Dec. 3, 1924

On this 4th day of December, 1924, coming on to be heard the defendants' motion to dismiss plaintiff's suit, and same having at a prior day been submitted for decision upon typed arguments and briefs of authorities and agreed statement of facts, and having been duly considered, the court is of opinion that the motion is well taken and should be sustained.

It is therefore ordered and adjudged that defendants' motion to dismiss plaintiff's suit be and the same is hereby sustained and this [fol. 15] case dismissed, at plaintiff's cost, to which judgment the plaintiff then and there in open court excepted.

It is further ordered that, for the purpose of entry of this order, the marshal will open court *court* at the El Paso Division on December 4th, 1924, and after the record is made that the court be adjourned.

Ordered at San Antonio, Texas, this the 1st day of December, A. D. 1924.

(Signed) Du Val West, United States District Judge.

[File endorsement omitted.]

## IN UNITED STATES DISTRICT COURT

[Title omitted]

## PETITION FOR WRIT OF ERROR

To the Honorable Du Val West, District Judge:

The above named L. A. Nixon, feeling aggrieved by the order and decree rendered and entered in the above entitled cause on the 4th day of December, A. D. 1924, does hereby make application for a Writ of Error to the Supreme Court of the United States, for the reasons set forth in the Assignment of Errors filed herewith, and he prays that this, his Petition for Writ of Error, be allowed, and that citation be issued as provided by law, and that a transcript of the record proceedings and documents upon which said order and decree was based, duly authenticated, be sent to the Supreme Court of the United States, sitting at Washington, under the rules of said court [fol. 16] in such cases made and provided;

And your petitioner further prays that the proper order relating to the required security to be required of him be made.

(Signed) Robert J. Channell, Frederick C. Knollenberg, Attorneys for Plaintiff.

## IN UNITED STATES DISTRICT COURT

## ORDER ALLOWING WRIT OF ERROR—Filed Feb. 27, 1925

On this, the 28th day of Feb'y, A. D. 1925, upon consideration of the above application, it is hereby ordered that the Writ of Error as prayed be, and the same is hereby allowed, and that a certified transcript of the record and all proceedings in said cause be forthwith transmitted to the Supreme Court of the United States.

It is further ordered that the bond on the Writ of Error be fixed at the sum of Three Hundred and Fifty Dollars.

(Signed) Du Val West, Judge.

[File endorsement omitted.]

## IN UNITED STATES DISTRICT COURT

[Title omitted]

## ASSIGNMENT OF ERROR—Filed Feb. 27, 1925

Now comes the plaintiff in the above entitled cause, and files the following assignment of error upon which he will rely upon his

prosecution of Writ of Error in the above entitled cause from the [fol. 17] decree made by this Honorable Court on the 4th day of December, A. D. 1924.

## I

That the United States District Court for the Western District of Texas erred in sustaining the motion to dismiss interposed by the defendants to the amended complaint filed in said cause.

## II

The said District Court for the Western District of Texas erred in sustaining defendants' motion to dismiss and in dismissing said cause by its Order of December 4, 1924, for the following reasons, to-wit:

(a) This case involves the construction and application of the Constitution of the United States, and especially of the Fifteenth Amendment thereto.

(b) This is a case in which a law of the State of Texas is claimed to be in controvention of the Constitution of the United States.

(c) This is a suit for damages to redress the deprivation under color of law of a right and privilege secured by the laws of the United States, providing for equal rights of its citizens and of all persons within its jurisdiction.

(d) This is a suit for damages for being deprived of the right to vote, solely on account of race and color, and is based upon rights guaranteed by the Constitution and laws of the United States.

(e) The plaintiff was denied the right to vote in the democratic party primary election by the election judges in charge thereof, because of an instruction that no negro should be allowed to vote in said primary, which instruction was based upon an Act of the Legislature of the State of Texas which provides that no negro shall be allowed to vote in any democratic party primary election, and if he should vote, his ballot should be void and not be counted; which Act is in violation of the Constitution and laws of the United States and of the State of Texas, and discriminates against plaintiff solely [fol. 18] because of his race and color.

(f) Under the allegations of the complaint in this cause, plaintiff, at the time he presented himself at the polls, possessed every qualification of a voter which had been prescribed by the Constitution and laws of the State of Texas prior to that date, and that he was prevented from casting a ballot by the defendants herein solely upon the ground that he was a negro as defined by the Statutes of Texas, and belonged to the colored race.

(g) Under the Acts of Congress, and especially Sections 1979 and 2004 thereof, the defendants in this cause are liable in damages to the plaintiff for their act in depriving him of his right to vote.

## III

The petition in this cause having alleged that plaintiff possessed all the qualifications of a voter prescribed by the Constitution and laws of the State of Texas prior to the enactment of the Legislature denying a negro the privilege of casting a ballot in a democratic primary; and the Constitution and laws of the United States having by their own force expunged from said Act of the Legislature said proviso discriminating against the negro, the trial court erred in sustaining the motion and dismissing said cause.

## IV

The trial court erred in dismissing a complaint, the allegations of which upon the motion to dismiss are admitted, which clearly and unequivocally alleges damages in excess of the sum of Three Thousand (\$3,000) Dollars for the deprivation of rights and privileges guaranteed by the Constitution and laws of the United States and of the State of Texas, and of an act of discrimination against him for the sole reason that he belongs to the negro race.

## V

The trial court erred in sustaining a motion to dismiss which [fol. 19] admits the allegations of the complaint and advances no valid ground to escape liability fixed upon the defendants by the Statutes of the United States enacted in conformity with the Constitution thereof.

Wherefore, plaintiff in error prays that said Order and Decree be reversed, and that said District Court for the Western District of Texas be ordered to enter a Decree reversing and setting aside its said Order and Decree of December 4, 1924.

(Signed) R. J. Channell, Robert J. Channell, Frederick C. Knollenberg, Attorneys for Plaintiff.

[File endorsement omitted.]

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IN UNITED STATES DISTRICT COURT

WRIT OF ERROR—Filed March 4, 1925

UNITED STATES OF AMERICA, ss:

The President of the United States to the Honorable the Judge of the District Court of the United States for the Western District of Texas, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which is in the said District Court, before you, or some of you, between L. A. Nixon, Plaintiff, and C. C. Hern-

don and Charles Porras, Defendants, a manifest error hath happened, to the great damage of the said L. A. Nixon as by his complaint appears, we being willing that error, if any hath been, should be duly corrected and full and speedy justice done to the parties aforesaid in this behalf, to command you, if judgment be therein given, that then under your seal, distinctly and openly you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, District of Columbia, within thirty days from the date hereof, in the said Supreme Court of the United States, to be then and there held, and the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States should be done.

Witness the Honorable William Howard Taft, Chief Justice of the United States, the 28th day of February, in the year of our Lord one thousand nine hundred and twenty-five.

D. H. Hart, Clerk of the District Court of the United States  
for the Western District of Texas, by Flora L. Linker,  
Deputy Clerk. (Seal.)

Allowed this the 28th day of February, 1925. Du Val West,  
United States District Judge.

[File endorsement omitted.]

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CITATION—In usual form, showing service on W. H. Fryer et al.;  
filed March 4, 1925; omitted in printing

[fols. 20 & 21] BOND ON WRIT OF ERROR FOR \$350.00—Approved  
and filed March 4, 1925; omitted in printing

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[fol 22] IN UNITED DISTRICT COURT

[Title omitted]

PRÆCIPE FOR TRANSCRIPT OF RECORD—Filed Mar. 7, 1925

To D. H. Hart, Clerk of said Court:

Please take notice that the Plaintiff in error designates the following as the portions of the record in this cause which he hereby re-[fol. 23] quests be incorporated in the transcript on this appeal:

1. Citation in District Court.
2. Marshal's return on said Citation.

3. Order of court granting plaintiff's leave to amend.
4. Plaintiff's first amended original petition.
5. Defendants' motion to dismiss plaintiff's first amended original petition.
6. Order of the court sustaining defendants' said motion to dismiss.
7. Plaintiff's petition for writ of error.
8. Order of court allowing appeal.
9. Plaintiff's assignment of errors.
10. Citation on writ of error and defendants' acceptance of service thereof.
11. Bond on appeal and order of court approving same.
12. This præcipe.

Yours Respectfully, Fred C. Knollenberg, Robert J. Channell, Attorneys for Plaintiff in Error.

Copies to Messrs. W. H. Fryer and Robert E. Cunningham, Attorneys of Record for Defendants, First Natl. Bank Bldg., El Paso, Texas.

[File endorsement omitted.]

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[fol. 24] WRIT OF ERROR—Omitted; printed side page 19 ante

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[fols. 25 & 26] CITATION—Omitted; printed side page 19a ante

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[fol. 27] IN UNITED STATES DISTRICT COURT

CLERK'S CERTIFICATE

THE UNITED STATES OF AMERICA,  
Western District of Texas:

I, D. H. Hart, Clerk of the United States District Court for the Western District of Texas, hereby certify that the foregoing on twenty-seven pages is a true and correct transcript of proceedings had and orders entered in cause No. 994 at Law, entitled L. A. Nixon vs. C. C. Herndon and Charles Porras, as the same appear on file and of record in this office, and includes the original writ of error and citation in error at pages twenty-four and twenty-five.

And I do further certify that the said transcript embraces only such instruments and orders as are specified in the præcipe filed by the plaintiff in error, and that the defendants in error, though duly served with a copy of said præcipe have made no objection thereto.

Witness my official signature and the seal of said court hereto affixed at office in the City of El Paso, Texas, this 31st day of March, A. D. 1925.

D. H. Hart, Clerk, by J. N. Phillips, Deputy Clerk. (Seal of the U. S. District Court, Western Dist., El Paso, Texas.)

Endorsed on cover: File No. 31,199. W. Texas D. C. U. S. Term No. 480. L. A. Nixon, plaintiff in error, vs. C. C. Herndon and Charles Porras. Filed May 18, 1925. File No. 31,199.

(7524)