The White Primary.—The Court displayed indecision, however, when it was called upon to deal with the exclusion of African-Americans from participation in primary elections. Prior to its becoming convinced that primary contests were in fact elections to which federal constitutional guarantees applied,[12] the Court had relied upon the Equal Protection Clause to strike down the Texas White Primary Law [13] as well as a later Texas statute that contributed to a similar exclusion by limiting voting in primary elections to members of state political parties as determined by the central committees of such parties.[14] When exclusion of African-Americans was thereafter perpetuated by political parties not acting in obedience to any statutory command, this discrimination was for a time viewed as not constituting state action and therefore as not prohibited by either the Fourteenth or the Fifteenth Amendments.[15] This holding was reversed nine years later when the Court declared that, where the selection of candidates for public office is entrusted by statute to political parties, a political party in making its selection at a primary election is a state agency, and consequently may not under the Fifteenth Amendment exclude African-Americans from such elections.[16] An effort by South Carolina to escape the effects of this ruling by repealing all statutory provisions regulating primary elections and political organizations conducting them was nullified by a lower federal court with no doctrinal difficulty,[17] but the Supreme Court, although nearly unanimous on the result, was unable to come to a majority agreement with regard to the exclusion of African-Americans by the Jaybird Association, a countywide organization that, independently of state laws and the use of state election machinery or funds, nearly monopolized access to Democratic nomination for local offices. The exclusionary policy was held unconstitutional but there was no opinion of the Court.[18]

Literacy Tests.—At an early date the Court held that literacy tests that are drafted so as to apply alike to all applicants for the voting franchise would be deemed to be fair on their face and in the absence of proof of discriminatory enforcement could not be said

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[12] United States v. Classic, 313 U.S. 299 (1941); Smith v. Allwright, 321 U.S. 649 (1944).

[13] Nixon v. Herndon, 273 U.S. 536 (1927).

[14] Nixon v. Condon, 286 U.S. 73 (1932).

[15] Grovey v. Townsend, 295 U.S. 45 (1935).

[16] Smith v. Allwright, 321 U.S. 649 (1944).

[17] Rice v. Elmore, 165 F.2d 387 (4th Cir. 1947), *cert. denied*, 333 U.S. 875 (1948); *see also* Baskin v. Brown, 174 F.2d 391 (4th Cir. 1949).

[18] Terry v. Adams, 345 U.S. 461 (1953). For analysis of the opinions, *see* "State Action," *supra*.