

It is not to be resolved by abstract considerations, such as the fact that every official who purports to wield power conferred by a State is pro tanto the State. Otherwise, every illegal discrimination by a policeman on the beat would be State actions for purpose of suit in a Federal court.

The CHAIRMAN. Well, nobody can dispute that.

Mr. BLOCH. And on page 17, he says—

The CHAIRMAN. Just a minute. Nobody can dispute that statement. It must be of a type of action that can be attributed to the State—that the State would ordinarily do. It just cannot be some whimsy of some individual who claims to act for the State. But where registrars, who are supposed to accept names under certain conditions, refuse to act, or act arbitrarily, or act not in the best interests of the State, of course they are acting under color of State authority, beyond question. You don't doubt that, do you?

Mr. BLOCH. May I get into the record what he says here on page 17? This is short:

I am clear, therefore, that the action of the canvassing board taken as the plaintiff himself acknowledges in defiance of the duty of that board under Illinois law cannot be deemed the action of the State. Certainly not until the highest court of the State confirms such action, and thereby makes it the law of the State. I agree, in a word, with the court below that *Barney v. City of New York*, 193 U.S. 430, is controlling,

and citing other cases:

Neither the wisdom of this reasoning nor its holding has been impaired by a subsequent decision. A different problem is presented when a case comes here,

and so forth.

Now, that is why I answered some of the gentlemen over here as I did. It was in reliance on what Justice Frankfurter said in this specially concurring opinion in this case, and to what Chief Justice Fuller, speaking for a unanimous Court, had said in *Barney v. the State of New York*.

The CHAIRMAN. But Justice Frankfurter's opinion was not the opinion of the Court.

Mr. BLOCH. No, sir, it was not.

The CHAIRMAN. It was just his additional views.

Mr. BLOCH. I said it was a specially concurring opinion. It was not the main opinion. The main opinion affirmed the action of the lower court, just as Justice Frankfurter did, but they did it on a different basis, because there was some doubt in their minds whether *Barney v. the City of New York* was still the law.

But I hope Judge Frankfurter's view prevails.

Mr. MEADER. Mr. Chairman, I would like to ask the witness—is it fair to say, then, that action by the State legislature—a law passed by the legislature, or an adjudication by the State courts of the action of executive officials, is State action, but that action by officials in the executive branch of the Government, or by subdivision of the State government, is not State action unless it has been adjudicated by a court?

Mr. BLOCH. I would say this to that, Mr. Meader. I wouldn't want to answer it yes or no, that broad question, because I can illustrate very simply.

Suppose the State of X would tomorrow, its legislature would pass a law saying that no colored person could vote in its elections—no colored person could vote in the elections, and a colored person applied to vote, and the registrar said you cannot vote because the legislature