INDEX

ABORTIONS. See also **Constitutional Law**, III, 3, 5; VI; **Social Security Act**, 3.

State funding—Medical necessity.—Since it is not unreasonable for a State to insist upon a prior showing of medical necessity to insure that its money is being spent only for authorized purposes, District Court erred in invalidating Connecticut requirements of prior written request by pregnant woman and prior authorization by Connecticut Department of Social Services for abortions. Although similar requirements are not imposed for other medical procedures, such procedures do not involve termination of a potential human life. Maher v. Roe, p. 464.

ACCESS TO BALLOT. See **Constitutional Law**, III, 4.

ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS. See **Civil Rights Act of 1964**, 1.

ADMINISTRATIVE PROCEDURE. See **Investment Company Act of 1940.**

ADMISSIBILITY OF IDENTIFICATION EVIDENCE. See **Constitutional Law**, II, 1.

AFFIRMATIVE DEFENSES TO MURDER. See **Constitutional Law**, II, 2, 4.

AID TO EDUCATION. See **Constitutional Law**, III, 1.

AID TO FAMILIES WITH DEPENDENT CHILDREN. See **Social Security Act**, 1.

AID TO FAMILIES WITH DEPENDENT CHILDREN-UNEMPLOYED FATHERS. See **Social Security Act**, 2.

AIRLINE STEWARDESSES. See **Intervention.**

ALIENS. See **Constitutional Law**, III, 1.

AMOUNT IN CONTROVERSY. See **Jurisdiction**, 1.

APPLE INDUSTRY. See **Constitutional Law**, I; **Jurisdiction**, 1; **Standing to Sue.**

ASSOCIATIONAL STANDING. See **Standing to Sue.**

ATTORNEY GENERAL'S OBJECTION TO REAPPORTIONMENT PLAN. See **Voting Rights Act of 1965**, 2.

AUTHENTICATED
U.S. GOVERNMENT
INFORMATION
GPO

AUTOMOBILE THEFT. See **Constitutional Law**, V, 1.

BANKS.

Preliminary injunction against mortgage foreclosure.—Title 12 U. S. C. § 91, which prohibits an "attachment, injunction, or execution" from being issued against a national bank or its property before final judgment in any state or local court, when read in context, merely prevents prejudgment seizure of bank property by creditors and does not apply to a mortgagor-debtor's action seeking a preliminary injunction to protect its real property from wrongful foreclosure. Third National Bank v. Impac Limited, Inc., p. 312.

"BEST INTERESTS OF THE CHILD" AS JUSTIFYING NONDISCLOSURE OF ILLEGITIMATE CHILD'S FATHER. See **Social Security Act**, 1.

BURDEN OF PROVING AFFIRMATIVE DEFENSE TO MURDER. See **Constitutional Law**, II, 2, 4.

BURDEN ON INDEPENDENT CANDIDATES' ACCESS TO BALLOT. See **Constitutional Law**, III, 4.

BURDENS ON INTERSTATE COMMERCE. See **Constitutional Law**, I.

CAPITAL PUNISHMENT. See **Constitutional Law**, II, 3; III, 2; IV.

CERTIORARI.

Improvident grant—Failure to present question.—Where petitioner's counsel informed this Court at oral argument that petitioner's sole claim of constitutional deprivation resulting from her minor son's being shot and killed by respondent police officer was one based on *her* personal liberty and not one of pecuniary loss such as would be covered by Colorado's wrongful-death statute, but that contention was neither alleged in her complaint (which included claims based on wrongful-death statute and a claim under 42 U. S. C. § 1983), presented in her petition for certiorari, nor fairly subsumed in question that was presented as to whether wrongful-death statute's limitation on damages controlled in a § 1983 action, writ of certiorari is dismissed as improvidently granted. Jones v. Hildebrant, p. 183.

CHANGES IN DEATH PENALTY STATUTE. See **Constitutional Law**, III, 2; IV.

CIVIL RIGHTS ACT OF 1964. See also **Intervention.**

1. *Accommodation to employee's religious needs—Employer's reasonable efforts.*—Petitioner airline, which made reasonable efforts within framework of its seniority system to accommodate religious needs of respondent employee, whose religious beliefs prohibit him from working on Satur-

CIVIL RIGHTS ACT OF 1964—Continued.

days, did not violate Title VII of Act, and each of Court of Appeals' suggested alternatives would have been an undue hardship within meaning of statute as construed by Equal Employment Opportunity Commission guidelines. Trans World Airlines, Inc. v. Hardison, p. 63.

2. *Courts' discretionary remedial power—Equal Employment Opportunity Commission's delay in bringing suit.*—Courts do not lack discretionary remedial power if, despite procedural protections accorded a Title VII defendant under Act, EEOC's delay in bringing suit, after conciliation efforts have failed, significantly handicaps defense. Occidental Life Insurance Co. v. EEOC, p. 355.

3. *Equal Employment Opportunity Commission enforcement actions—Subjection to state statutes of limitations.*—EEOC enforcement actions are not subject to state statutes of limitations. Though a congressional intent to apply a local limitations period has been inferred in instances where a federal statute creating a cause of action fails to specify such a period, state limitations periods will not be borrowed if their application would not comport with federal statute's underlying policies. Occidental Life Insurance Co. v. EEOC, p. 355.

4. *Equal Employment Opportunity Commission's power to file suit—Effect of § 706 (f)(1).*—Section 706 (f)(1) of Act imposes no limitation upon EEOC's power to file suit in federal court. Provision's language and legislative history show that it was intended to enable an aggrieved person unwilling to await conclusion of extended EEOC proceedings to institute a private lawsuit 180 days after a charge has been filed. Occidental Life Insurance Co. v. EEOC, p. 355.

5. *Seniority system—Unlawful employment practice.*—Under § 703 (h) of Title VII of Act, absent a discriminatory purpose, operation of a seniority system cannot be an unlawful employment practice even if system is discriminatory in its effect. Trans World Airlines, Inc. v. Hardison, p. 63.

CLASS ACTIONS. See **Intervention.**

CLOSED-END INVESTMENT COMPANIES. See **Investment Company Act of 1940.**

COLLEGES. See **Constitutional Law**, III, 1.

COMMERCE CLAUSE. See **Constitutional Law**, I.

CONNECTICUT. See **Abortions**; **Constitutional Law**, III, 5; VI; **Social Security Act**, 1.

CONSPIRACY TO DISTRIBUTE DRUGS. See **Constitutional Law**, V, 2; **Criminal Law.**

CONSTITUTIONAL LAW. See also **Jurisdiction, 2.**

I. Commerce Clause.

State statute prohibiting display of state grade of apples—Burden on interstate commerce.—North Carolina statute requiring that all apples sold or shipped into State in closed containers be identified by no grade other than applicable federal grade or a designation that apples are not graded, violates Commerce Clause by burdening and discriminating against interstate sale of Washington apples. Hunt v. Washington Apple Advertising Comm'n, p. 333.

II. Due Process.

1. *Admissibility of identification evidence—State criminal trial.*—Due Process Clause of Fourteenth Amendment does not compel exclusion, at respondent's state criminal trial on charge of possession and sale of heroin, of identification evidence consisting of police photograph of respondent, testimony of undercover police officer that person shown in photograph was suspect from whom officer had purchased heroin, and officer's positive in-court identification. Reliability is linchpin in determining admissibility of identification testimony for confrontations occurring both prior to and after *Stovall* v. *Denno,* 388 U. S. 293, wherein it was held that determination depends on "totality of circumstances." Manson v. Braithwaite, p. 98.

2. *Murder prosecution—Burden of proving affirmative defense—Retroactivity of Mullaney v. Wilbur, 421 U. S. 684.*—North Carolina Supreme Court, on appeal from petitioner's conviction for second-degree murder, erred in declining, with respect to erroneous jury instruction as to burden on petitioner to prove self-defense, to hold retroactive *Mullaney* rule, which required State to establish all elements of a criminal offense beyond a reasonable doubt and which invalidated presumptions that shifted burden of proving such elements to defendant. While in deciding whether a new constitutional rule is to be applied retroactively it is proper to consider State's reliance on old rule and impact of new rule on administration of justice if degree to which new rule enhances integrity of fact-finding process is sufficiently small, "where the *major* purpose of new constitutional doctrine is to overcome an aspect of the criminal trial that *substantially* impairs its truth-finding function and so raises *serious* questions about the accuracy of guilty verdicts in past trials, the new rule [is] given complete retroactive effect." Hankerson v. North Carolina, p. 233.

3. *Murder prosecution—Fair trial—Jury selection—Pretrial news coverage.*—Absent anything in record, in particular with respect to *voir dire* examination of jurors, that would require a finding of constitutional unfairness as to method of jury selection or as to character of jurors actually

CONSTITUTIONAL LAW—Continued.

selected, petitioner has failed to show that under "totality of circumstances" extensive pretrial news media coverage of his case denied him a fair trial on a charge, *inter alia,* of first-degree murder of one of his children. Dobbert v. Florida, p. 282.

4. *Murder trial—Burden of proving affirmative defense.*—New York law requiring that defendant in a prosecution for second-degree murder prove by a preponderance of evidence affirmative defense of extreme emotional disturbance in order to reduce crime to manslaughter does not violate Due Process Clause of Fourteenth Amendment. Patterson v. New York, p. 197.

III. Equal Protection of the Laws.

1. *Barring resident aliens from state financial assistance for higher education—Strict scrutiny.*—New York statute that bars certain resident aliens from state financial assistance for higher education violates Equal Protection Clause of Fourteenth Amendment. Statute discriminates against a class and is subject to strict scrutiny since it is directed at aliens and only aliens are harmed by it even though its bar against them is not absolute in that those who have applied for citizenship or those not qualified to apply who have filed statements of intent may participate in assistance programs. Nyquist v. Mauclet, p. 1.

2. *Changes in death penalty statute.*—Imposition of death sentence upon petitioner for first-degree murder pursuant to new Florida death penalty statute did not deny him equal protection of laws. Having been neither tried nor sentenced prior to *Furman* v. *Georgia,* 408 U. S. 238, he was not similarly situated to those prisoners whose death sentences under old statute were commuted to life imprisonment after Florida Supreme Court had invalidated old statute under *Furman,* and it was not irrational for Florida to relegate petitioner to class of those prisoners whose acts could properly be punished under new statute that was in effect at time of his trial and sentence. Dobbert v. Florida, p. 282.

3. *City funding of childbirth but not nontherapeutic abortions.*—City of St. Louis, in electing, as a policy choice, to provide publicly financed hospital services for childbirth but not for nontherapeutic abortions, does not violate any constitutional rights. Poelker v. Doe, p. 519.

4. *Independent candidate—Access to ballot.*—In appellees' action challenging constitutionality of Maryland statute requiring an independent candidate for statewide or federal office, in order to qualify for a position on general election ballot, to file 70 days before date of party primaries, nominating petitions signed by at least 3% of State's registered voters, three-judge District Court was not warranted in holding, on basis of this Court's summary affirmance in *Tucker* v. *Salera,* 424 U. S. 959, that

CONSTITUTIONAL LAW—Continued.

Maryland statute's early filing deadline was an unconstitutional burden on an independent candidate's access to ballot. Rather than relying on *Salera* as controlling precedent, District Court should have conducted an independent examination of merits under constitutional standards set forth in *Storer* v. *Brown*, 415 U. S. 724, 742, for determining extent of burden imposed on independent candidates. Mandel v. Bradley, p. 173.

5. *Medicaid program—State funding of childbirth but not nontherapeutic abortions.*—Equal Protection Clause does not require a State participating in Medicaid program to pay expenses incident to nontherapeutic abortions for indigent women simply because it has made a policy choice to pay expenses incident to childbirth. Maher v. Roe, p. 464.

IV. Ex Post Facto Laws.

1. *Changes in death penalty statute.*—Changes in Florida's death penalty statute between time of first-degree murder for which petitioner was convicted and sentenced to death and time of trial are procedural and on whole ameliorative, and hence there is no *ex post facto* violation. New statute simply altered methods employed in determining whether death penalty was to be imposed, and there was no change in quantum of punishment attached to crime. New statute provides capital defendants with more, rather than less, judicial protection than old statute. Dobbert v. Florida, p. 282.

2. *Changes in death penalty statute—Increased burdens on life sentence under new statute.*—Petitioner, having been sentenced to death for first-degree murder under new Florida death penalty statute, may not complain of burdens attached to a life sentence under that statute which may not have attached to old statute which was in effect at time murder was committed. Dobbert v. Florida, p. 282.

3. *Changes in death penalty statute—Warning of death penalty.*—Existence of earlier Florida death penalty statute at time of first-degree murder for which petitioner was convicted and sentenced under changed statute served as an "operative fact" to warn petitioner of penalty which Florida would seek to impose on him if he were convicted of first-degree murder, and this was sufficient compliance with *ex post facto* provision of Constitution, notwithstanding subsequent invalidation of earlier statute. Dobbert v. Florida, p. 282.

V. Fifth Amendment.

1. *Double jeopardy—Conviction of lesser included offense—Bar to subsequent prosecution.*—Double Jeopardy Clause of Fifth Amendment, applied to States through Fourteenth, bars prosecution and punishment for crime of stealing an automobile following prosecution and punishment

CONSTITUTIONAL LAW—Continued.

for lesser included offense of operating same vehicle without owner's consent. Brown v. Ohio, p. 161.

2. *Double jeopardy—Multiple prosecutions—Accused's opposition to consolidated trial.*—Court of Appeals' judgment that although offense under 21 U. S. C. § 846 (conspiracy to distribute drugs) was a lesser included offense of 21 U. S. C. § 848 (conducting a criminal enterprise to violate drug laws), §§ 846 and 848 were not "same offense" for double jeopardy purposes and therefore petitioner's conviction under § 846 did not bar prosecution under § 848, petitioner having opposed a consolidated trial, is affirmed. Jeffers v. United States, p. 137.

3. *Double jeopardy—Retrial after dismissal of information.*—Petitioner's retrial for theft in violation of Assimilative Crimes Act and applicable Indiana statute after dismissal of defective information at his request did not violate Double Jeopardy Clause. Proceedings against petitioner did not terminate in his favor, dismissal clearly not being predicated on any judgment that he could never be prosecuted for or convicted of theft. Lee v. United States, p. 23.

VI. Right of Privacy.

Medicaid abortion benefits—Limitation to "medically necessary" abortions.—Connecticut regulation limiting state Medicaid benefits for first trimester abortions to those that are "medically necessary," does not impinge upon fundamental right of privacy recognized in *Roe* v. *Wade*, 410 U. S. 113, that protects a woman from unduly burdensome interference with her freedom to decide whether or not to terminate her pregnancy. That right implies no limitation on a State's authority to make a value judgment favoring childbirth over abortion and to implement that judgment by allocation of public funds. An indigent woman desiring an abortion is not disadvantaged by Connecticut's decision to fund childbirth; she continues as before to be dependent on private abortion services. Maher v. Roe, p. 464.

COURTS OF APPEALS. See **Investment Company Act of 1940.**

CRIMINAL ENTERPRISE IN VIOLATION OF DRUG LAWS. See **Constitutional Law**, V, 2; **Criminal Law.**

CRIMINAL LAW. See also **Constitutional Law**, II; III, 2; IV; V.

Cumulative fines.—Court of Appeals' judgment imposing cumulative fines for petitioner's separate convictions for violation of 21 U. S. C. § 846 (conspiracy to distribute drugs) and 21 U. S. C. § 848 (conducting a criminal enterprise to violate drug laws), is vacated, and case is remanded. Jeffers v. United States, p. 137.

CUMULATIVE PENALTIES OR FINES. See **Criminal Law.**

DEATH PENALTY. See **Constitutional Law**, II, 3; III, 2; IV.

DEFENSES TO MURDER. See **Constitutional Law**, II, 2, 4.

DELAY OF EQUAL EMPLOYMENT OPPORTUNITY COMMISSION IN BRINGING ENFORCEMENT ACTION. See **Civil Rights Act of 1964**, 2–4.

DENIAL OF STAY. See **Jurisdiction**, 2; **Stays.**

DEPENDENT CHILDREN. See **Social Security Act**, 2.

DETERMINATION OF COVERAGE UNDER VOTING RIGHTS ACT OF 1965. See **Voting Rights Act of 1965**, 1.

DISCLOSURE OF ILLEGITIMATE CHILD'S FATHER. See **Social Security Act**, 1.

DISCRIMINATION. See **Civil Rights Act of 1964**; **Intervention**; **Voting Rights Act of 1965.**

DISMISSAL OF INFORMATION. See **Constitutional Law**, V, 3.

DISMISSAL OF WRIT OF CERTIORARI AS IMPROVIDENTLY GRANTED. See **Certiorari.**

DISPLAY OF SWASTIKA. See **Jurisdiction**, 2.

DOUBLE JEOPARDY. See **Constitutional Law**, V.

DRUG OFFENSES. See **Constitutional Law**, V, 2; **Criminal Law.**

DUE PROCESS. See **Constitutional Law**, II.

EDUCATIONAL ASSISTANCE PROGRAMS. See **Constitutional Law**, III, 1.

ELECTIONS. See **Constitutional Law**, III, 4.

EMPLOYER AND EMPLOYEES. See **Civil Rights Act of 1964**, 1, 5; **Longshoremen's and Harbor Workers' Compensation Act.**

EMPLOYMENT DISCRIMINATION. See **Civil Rights Act of 1964**; **Intervention.**

ENFORCEMENT ACTIONS BY EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. See **Civil Rights Act of 1964**, 2–4.

EQUAL EMPLOYMENT OPPORTUNITY ACT OF 1972. See **Civil Rights Act of 1964**, 2–4.

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION. See **Civil Rights Act of 1964**, 2–4.

EQUAL PROTECTION OF THE LAWS. See **Constitutional Law**, III.

EVIDENCE. See **Constitutional Law**, II, 1, 2, 4.

EX POST FACTO LAWS. See **Constitutional Law**, IV.

EXTREME EMOTIONAL DISTURBANCE AS DEFENSE TO MURDER. See **Constitutional Law**, II, 4.

EYEWITNESS IDENTIFICATION. See **Constitutional Law**, II, 1.

FAILURE TO PRESENT QUESTION IN PETITION FOR CERTIORARI. See **Certiorari.**

FAIR TRIAL. See **Constitutional Law**, II, 3.

FATHERS OF ILLEGITIMATE CHILDREN. See **Social Security Act**, 1.

FEDERAL-QUESTION JURISDICTION. See **Jurisdiction**, 1.

FEDERAL RULES OF CIVIL PROCEDURE. See **Intervention.**

FEDERAL-STATE RELATIONS. See **Banks**; **Civil Rights Act of 1964**, 2–4; **Constitutional Law**, I; III, 5; **Social Security Act.**

FIFTH AMENDMENT. See **Constitutional Law**, V.

FINAL JUDGMENTS. See **Jurisdiction**, 2.

FINANCIAL ASSISTANCE FOR HIGHER EDUCATION. See **Constitutional Law**, III, 1.

FINES. See **Criminal Law.**

FIRST AMENDMENT. See **Jurisdiction**, 2.

FIRST-DEGREE MURDER. See **Constitutional Law**, II, 3; III, 2; IV.

FLORIDA. See **Constitutional Law**, II, 3; III, 2; IV.

FORECLOSURES OF MORTGAGES. See **Banks.**

FOURTEENTH AMENDMENT. See **Constitutional Law**, II, 1, 2, 4; III, 1–3, 5; V, 1.

FUNDING OF ABORTIONS. See **Abortions**; **Constitutional Law**, III, 3; **Social Security Act**, 3.

"GOOD CAUSE" FOR NOT DISCLOSING ILLEGITIMATE CHILD'S FATHER. See **Social Security Act**, 1.

HEALTH, EDUCATION, AND WELFARE SECRETARY. See **Social Security Act**, 2.

HIGHER EDUCATION FINANCIAL ASSISTANCE. See **Constitutional Law**, III, 1.

IDENTIFICATION EVIDENCE. See **Constitutional Law**, II, 1.

ILLEGITIMATE CHILDREN. See **Social Security Act**, 1.

IMPROVIDENT GRANT OF CERTIORARI. See **Certiorari.**

INDEPENDENT CANDIDATES FOR POLITICAL OFFICE. See **Constitutional Law**, III, 4.

INJUNCTIONS. See **Banks; Jurisdiction, 2; Stays.**

INTERSTATE COMMERCE. See **Constitutional Law, I.**

INTERVENING LEGISLATION. See **Social Security Act, 1.**

INTERVENTION.

Timeliness—Fed. Rule Civ. Proc. 24.—Motion of respondent former stewardess for petitioner airline, who had been discharged because of petitioner's no-marriage rule, to intervene in action under Title VII of Civil Rights Act of 1964 challenging legality of that rule was "timely" filed under Fed. Rule Civ. Proc. 24 and should have been granted, notwithstanding it was not filed until after District Court had entered final judgment dismissing action following its determination that plaintiffs were entitled to reinstatement and backpay and parties' agreement on amounts to be awarded each plaintiff. Respondent sought to intervene, not to litigate her individual claim based on no-marriage rule's illegality, but to obtain appellate review of District Court's denial of class-action status of action. United Airlines, Inc. v. McDonald, p. 385.

INVESTMENT COMPANY ACT OF 1940.

Approval of merger—Securities and Exchange Commission's discretion—Judicial review.—In approving merger of a closed-end investment company (Christiana), 98% of whose assets consisted of Du Pont Co. common stock, into an affiliate company (Du Pont), SEC reasonably exercised its discretion under § 17 (b) of Act in valuing Christiana essentially on basis of market value of Du Pont stock rather than on lower basis of Christiana's outstanding stock. Since record before SEC clearly reveals substantial evidence to support its findings and since that agency's conclusions of law were based on a construction of statute consistent with legislative intent, Court of Appeals erred in rejecting SEC's conclusion and substituting its own judgment for that of SEC. E. I. du Pont de Nemours & Co. v. Collins, p. 46.

JOYRIDING. See **Constitutional Law, V, 1.**

JUDICIAL REVIEW. See **Investment Company Act of 1940; Voting Rights Act of 1965.**

JURISDICTION.

1. *Action by state agency in representational capacity—Requisite amount in controversy.*—Requirements of 28 U. S. C. § 1331 are satisfied in action by appellee (a statutory agency for promotion and protection of Washington State apple industry and composed of 13 state growers and dealers chosen from electoral districts by their fellow growers and dealers, all of whom by mandatory assessments finance appellee's operations) challenging constitutionality of North Carolina statute requiring that all apples sold or shipped into North Carolina in closed containers

JURISDICTION—Continued.

be identified by no grade on containers other than applicable federal grade or a designation that apples are not graded. Since appellee has standing to litigate its constituents' claims, it may rely on them to meet requisite amount of $10,000 in controversy. And it does not appear "to a legal certainty" that claims of at least some of individual growers and dealers will not come to that amount in view of substantial annual sales volume of Washington apples in North Carolina (over $2 million) and continuing nature of statute's interference with Washington apple industry, coupled with evidence in record that growers and dealers have suffered and will continue to suffer losses of various types from operation of challenged statute. Hunt v. Washington Apple Advertising Comm'n, p. 333.

2. *Supreme Court—State appellate court's denial of stay of trial court's injunction as final judgment.*—Illinois Supreme Court's order denying stay of trial court's injunction prohibiting petitioners from marching, walking, or parading in uniform of National Socialist Party of America or otherwise displaying swastika, and from distributing pamphlets or displaying materials inciting or promoting hatred against Jews or persons of any faith, ancestry, or race, and also denying leave for an expedited appeal, is a final judgment for purposes of this Court's jurisdiction, since it finally determined merits of petitioners' claim that injunction will deprive them of First Amendment rights during period of appellate review. National Socialist Party of America v. Skokie, p. 43.

JURISDICTIONAL AMOUNT. See **Jurisdiction**, 1.

JURY SELECTION. See **Constitutional Law**, II, 3.

LANGUAGE MINORITIES. See **Voting Rights Act of 1965**, 1.

LEGISLATIVE REAPPORTIONMENT PLANS. See **Voting Rights Act of 1965**, 2.

LESSER INCLUDED OFFENSES. See **Constitutional Law**, V, 1, 2.

LIMITATION OF ACTIONS. See **Civil Rights Act of 1964**, 3, 4.

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT.

1. *Eligibility for compensation—"Situs" test.*—Injuries of both respondents occurred on a "situs" covered by Act, where in case of one respondent truck that he was helping to load when injured was parked inside terminal area adjoining "navigable waters of the United States" within meaning of 33 U. S. C. § 903 (a) (1970 ed., Supp. V), and in case of other respondent pier on which he was injured when he slipped on some ice while marking cargo unloaded from a container was located in terminal adjoining water so that he was working in an "adjoining terminal . . .

LONGSHOREMEN'S AND HARBOR WORKERS' COMPENSATION ACT—Continued.

customarily used . . . for loading [and] unloading" within meaning of § 903 (a). Northeast Marine Terminal Co. v. Caputo, p. 249.

2. *Eligibility for compensation—"Status" test—"Engaged in maritime employment."*—Both respondents (one's job was to check and mark cargo unloaded from a vessel or from a container taken off a vessel, and other's was to load and unload containers, barges, and trucks at a pier) satisfied "status" test of eligibility for compensation under Act, since they were both "engaged in maritime employment" and were therefore "employees" within meaning of 33 U. S. C. § 902 (3) (1970 ed., Supp. V). Northeast Marine Terminal Co. v. Caputo, p. 249.

MARITIME EMPLOYMENT. See **Longshoremen's and Harbor Workers' Compensation Act.**

MARYLAND. See **Constitutional Law**, III, 4.

MEDICAL ASSISTANCE PROGRAM (MEDICAID). See **Abortions; Constitutional Law**, III, 5; VI; **Social Security Act**, 3.

"MEDICALLY NECESSARY" ABORTIONS. See **Abortions; Constitutional Law**, III, 5; VI.

MERGERS. See **Investment Company Act of 1940.**

MEXICAN-AMERICANS. See **Voting Rights Act of 1965**, 1.

MORTGAGE FORECLOSURES. See **Banks.**

MOTHERS OF ILLEGITIMATE CHILDREN. See **Social Security Act**, 1.

MOTIONS TO INTERVENE. See **Intervention.**

MOTOR VEHICLE THEFT. See **Constitutional Law**, V, 1.

MULTIPLE PROSECUTIONS. See **Constitutional Law**, V, 2.

MULTIPLE PUNISHMENTS. See **Criminal Law.**

MURDER. See **Constitutional Law**, II, 2–4; III, 2; IV.

NARCOTIC OFFENSES. See **Constitutional Law**, V, 2; **Criminal Law.**

NATIONAL BANKS. See **Banks.**

NEW YORK. See **Constitutional Law**, II, 4; III, 1.

NO-MARRIAGE RULE FOR AIRLINE STEWARDESSES. See **Intervention.**

NONTHERAPEUTIC ABORTIONS. See **Abortions; Constitutional Law**, III, 3, 5; VI; **Social Security Act**, 3.

NORTH CAROLINA. See **Constitutional Law**, I; II, 2; **Jurisdiction**, 1; **Standing to Sue.**

OPERATING MOTOR VEHICLE WITHOUT OWNER'S CONSENT. See **Constitutional Law**, V, 1.

PHOTOGRAPH IDENTIFICATION. See **Constitutional Law**, II, 1.

PREJUDGMENT WRITS AGAINST BANKS. See **Banks.**

PRELIMINARY INJUNCTIONS AGAINST MORTGAGE FORECLOSURES. See **Banks.**

PRETRIAL IDENTIFICATION EVIDENCE. See **Constitutional Law**, II, 1.

PRETRIAL PUBLICITY. See **Constitutional Law**, II, 3.

PRIVACY RIGHTS. See **Constitutional Law**, VI.

PROCEDURAL SAFEGUARDS. See **Stays.**

PROCEDURE. See **Intervention.**

PUBLIC ASSISTANCE. See **Abortions**; **Constitutional Law**, III, 3, 5; VI; **Social Security Act.**

RACIAL DISCRIMINATION. See **Voting Rights Act of 1965.**

REAPPORTIONMENT PLANS. See **Voting Rights Act of 1965**, 2.

REASONABLE ACCOMMODATION TO EMPLOYEES' RELIGIOUS NEEDS. See **Civil Rights Act of 1964**, 1.

RELIGIOUS BELIEFS PROHIBITING WORK ON SATURDAYS. See **Civil Rights Act of 1964**, 1.

RELIGIOUS DISCRIMINATION. See **Civil Rights Act of 1964**, 1.

RESIDENT ALIENS. See **Constitutional Law**, III, 1.

RETRIALS. See **Constitutional Law**, V, 3.

RETROACTIVITY OF NEW CONSTITUTIONAL RULE. See **Constitutional Law**, II, 2.

RIGHT OF PRIVACY. See **Constitutional Law**, VI.

RIGHT TO FAIR TRIAL. See **Constitutional Law**, II, 3.

RULES OF CIVIL PROCEDURE. See **Intervention.**

SABBATARIANS. See **Civil Rights Act of 1964**, 1.

ST. LOUIS. See **Constitutional Law**, III, 3.

SECOND-DEGREE MURDER. See **Constitutional Law**, II, 2, 4.

SECRETARY OF HEALTH, EDUCATION, AND WELFARE. See **Social Security Act**, 2.

SECURITIES AND EXCHANGE COMMISSION. See **Investment Company Act of 1940.**

SELECTION OF JURIES. See **Constitutional Law**, II, 3.

SELF-DEFENSE AS DEFENSE TO MURDER. See **Constitutional Law**, II, 2.

SENIORITY SYSTEMS. See **Civil Rights Act of 1964**, 1, 5.

SEX DISCRIMINATION. See **Civil Rights Act of 1964**, 2–4; **Intervention.**

"SITUS" TEST OF ELIGIBILITY FOR LONGSHOREMEN'S COMPENSATION. See **Longshoremen's and Harbor Workers' Compensation Act**, 1.

SOCIAL SECURITY ACT. See also **Abortions; Constitutional Law**, III, 5; VI.

1. *Aid to Families with Dependent Children—Required disclosure of illegitimate child's father—Intervening legislation.*—District Court's holding that a Connecticut statute requiring that mothers of illegitimate children, as a condition to receiving AFDC benefits, disclose to appellant Commissioner of Social Services names of children's fathers, was valid provided that state authorities first determine, in accordance with § 402 (a) of Social Security Act, that appellee mothers of illegitimate children did not have "good cause" for refusing to disclose fathers' names, taking into account "best interests of child," is vacated and case is remanded in light of an intervening amendment to Connecticut statute so that District Court can clarify whether appellant is free to make his own "good cause" and "best interests of the child" determinations in absence of effective regulations of Department of Health, Education, and Welfare. Maher v. Doe, p. 526.

2. *Aid to Families with Dependant Children-Unemployed Fathers—Exclusion of fathers unemployed as result of misconduct, strike, or quitting job.*—Regulation promulgated by Secretary of Health, Education, and Welfare pursuant to § 407 (a) of Act, and authorizing States participating in AFDC–UF program, within their discretion, to exclude from definition of an unemployed father entitling family to benefits under program a father "whose unemployment results from participation in labor dispute or who is unemployed by reason of conduct or circumstances which result or would result in disqualification for unemployment compensation under the State's unemployment compensation law," is a proper exercise of Secretary's statutory authority and is reasonable. Batterton v. Francis, p. 416.

3. *Medicaid—State funding of nontherapeutic abortions.*—Title XIX of Act, which establishes a Medical Assistance Program (Medicaid), does

SOCIAL SECURITY ACT—Continued.
not require States to fund nontherapeutic abortions as a condition of participation in program. Beal v. Doe, p. 438.

SOUTH CAROLINA. See **Voting Rights Act of 1965**, 2.

STANDING TO SUE.

State agency performing trade association functions.—Appellee, a statutory agency for promotion and protection of Washington State apple industry and composed of 13 state growers and dealers chosen from electoral districts by their fellow growers and dealers, all of whom by mandatory assessments finance appellee's operations, has standing, in a representational capacity, to bring action challenging constitutionality of North Carolina statute requiring that all apples sold or shipped into North Carolina in closed containers be identified by no grade on containers other than applicable federal grade or a designation that apples are not graded. Hunt v. Washington Apple Advertising Comm'n, p. 333.

STATE AGENCY'S STANDING TO SUE IN REPRESENTATIONAL CAPACITY. See **Standing to Sue.**

STATE FINANCIAL ASSISTANCE FOR HIGHER EDUCATION. See **Constitutional Law**, III, 1.

STATE FUNDING OF ABORTIONS. See **Abortions**; **Constitutional Law**, III, 5; VI; **Social Security Act**, 3.

STATE REAPPORTIONMENT PLANS. See **Voting Rights Act of 1965**, 2.

"STATUS" TEST OF ELIGIBILITY FOR LONGSHOREMEN'S COMPENSATION. See **Longshoremen's and Harbor Workers' Compensation Act**, 2.

STATUTES OF LIMITATIONS. See **Civil Rights Act of 1964**, 3, 4.

STAYS. See also **Jurisdiction**, 2.

Necessity of stay in absence of procedural safeguards.—State must allow a stay where procedural safeguards, including immediate appellate review, are not provided, and Illinois Supreme Court's order denying a stay of trial court's injunction against petitioners denied this right. National Socialist Party of America v. Skokie, p. 43.

STEWARDESSES. See **Intervention.**

STUDENT LOANS. See **Constitutional Law**, III, 1.

SUGGESTIVE IDENTIFICATION EVIDENCE. See **Constitutional Law**, II, 1.

SUPREME COURT. See also **Jurisdiction**, 2.

Notation of the death of Mr. Justice Clark (retired), p. v.

SWASTIKA DISPLAY. See **Jurisdiction**, 2.

TEXAS. See **Voting Rights Act of 1965**, 1.

THEFT OF AN AUTOMOBILE. See **Constitutional Law**, V, 1.

TIME LIMITATIONS ON EQUAL EMPLOYMENT OPPORTUNITY COMMISSION ENFORCEMENT ACTIONS. See **Civil Rights Act of 1964**, 3, 4.

TIMELINESS OF MOTIONS TO INTERVENE. See **Intervention.**

TUITION ASSISTANCE. See **Constitutional Law**, III, 1.

UNDUE HARDSHIP IN ACCOMMODATING EMPLOYEES' RELIGIOUS NEEDS. See **Civil Rights Act of 1964**, 1.

UNEMPLOYED FATHERS. See **Social Security Act**, 2.

UNIVERSITIES. See **Constitutional Law**, III, 1.

UNLAWFUL EMPLOYMENT PRACTICES. See **Civil Rights Act of 1964; Intervention.**

VALUATION OF SECURITIES. See **Investment Company Act of 1940.**

VOIR DIRE EXAMINATION. See **Constitutional Law**, II, 3.

VOTING DISCRIMINATION. See **Voting Rights Act of 1965.**

VOTING RIGHTS ACT OF 1965.

1. *Determination of Act's coverage of State—Preclusion of judicial review.*—Provision of § 4 (b) of Act that a determination of Attorney General or Director of Census that a State is covered by Act "shall not be reviewable in any court," absolutely precludes judicial review of such a determination. Hence District Court and Court of Appeals erred in holding that they had jurisdiction to review petitioners' claims that Attorney General and Director of Census (respondents) had erroneously applied § 4 (b) in determining that Texas is covered by 1975 amendments to Act extending its protections to language minorities, such as Mexican-Americans. A "bailout" suit under § 4 (a) to terminate coverage is Texas' sole remedy. Briscoe v. Bell, p. 404.

2. *Reapportionment plan—Attorney General's objection nunc pro tunc.*—Where Attorney General initially failed to interpose timely objection under § 5 of Act to new plan reapportioning South Carolina Senate found constitutional by District Court for District of South Carolina, his objection to plan, *nunc pro tunc,* after District Court for District of Columbia in subsequent action challenging his failure to object directed him to consider plan without regard to other District Court's decision, is invalid, and therefore South Carolina is free to implement such plan. Morris v. Gressette, p. 491.

WASHINGTON STATE. See **Constitutional Law,** I; **Jurisdiction,** 1; **Standing to Sue.**

WORDS AND PHRASES.

1. *"Adjoining terminal . . . customarily used . . . for loading* [*and*] *unloading."* 33 U. S. C. § 902 (a) (1970 ed., Supp. V) (Longshoremen's and Harbor Workers' Compensation Act). Northeast Marine Terminal Co. v. Caputo, p. 249.

2. *"Engaged in maritime employment."* 33 U. S. C. § 902 (3) (1970 ed., Supp. V) (Longshoremen's and Harbor Workers' Compensation Act). Northeast Marine Terminal Co. v. Caputo, p. 249.

WRONGFUL DEATH. See **Certiorari.**

WRONGFUL MORTGAGE FORECLOSURES. See **Banks.**

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