

CRCL 4.6

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ALABAMA
NORTHERN DIVISION

UNITED STATES OF AMERICA,)
)
Plaintiff,) CIVIL ACTION
)
VERSUS) NO. 2584
)
VICTOR B. ATKINS, AUBREY C. ALLEN) 2/4/65
and JOSEPH BIBB, REGISTRARS OF)
VOTERS OF DALLAS COUNTY, ALABAMA;)
and STATE OF ALABAMA,)
)
Defendants.)

This cause was taken under submission on the 12th day of November 1964 at the conclusion of hearing on plaintiff's motion filed March 5, 1964, during which hearing defendants' "Motion to Dismiss and Answer" filed October 5, ¹⁹⁶⁴~~1963~~, was also considered, together with motion of the defendant State of Alabama, filed in open court November 12, 1964, for judgment or directed verdict. On the same day, leave was given to the parties to file briefs; and the Court having considered the evidence and the briefs filed herein, finds as follows:

This is a supplementary proceeding by the United States seeking orders requiring the defendant members of the Board of Registrars of Dallas County, Alabama, to observe certain requirements and procedures in registering voters. This is also a proceeding in contempt in that certain of the acts complained of are alleged to be in violation of this Court's injunction of November 1, 1963.

The application of the United States seeks an order requiring the defendants to register each applicant for registration whose application discloses that he meets the qualifications and standards theretofore applied by the registrars of Dallas County to other applicants; an order requiring said defendants to register certain named rejected applicants alleged by the United States to have been qualified and to have been rejected for registration on account of race; an order requiring the defendants to provide accommodations and personnel sufficient for the expeditious receipt and processing of applications for registration from all persons who seek to apply for registration

to vote in Dallas County; an order requiring the defendants to file with the Court written proposed standards for the grading of registration questionnaires; and for other supplementary orders. The United States also seeks a specific finding by the Court that the defendants have deprived Negro citizens of the right to vote without distinction of race pursuant to a pattern or practice of discrimination. In its proposed relief, the United States also asks that the Board be enjoined from using new and different registration tests which have been put into use in Dallas County in 1964.

A study of the testimony and documentary evidence submitted in this case discloses that much of the evidence is undisputed. Dallas County, Alabama, has a voting age population of 29,515, of which 14,400 are white persons and 15,115 are Negroes. As of the date of the hearing on this motion, 9,542 white persons and 335 Negroes were qualified voters in Dallas County. Between May 1962 and August 1964, the defendant registrars accepted only 93 of 795 applications of Negroes and 945 of 1,232 applications of white persons.

The defendant registrars receive and process applications for registration in an office in the Dallas County Courthouse which has a front room and a back room, each of which is about 12' by 12'. The front room is where the applicants customarily have filled out the informal portions of the application, taken the oath, and had the supporting witness vouch for them. In the back room, the applicants take registration tests. Customarily the defendant registrars have permitted not more than four applicants in the front room simultaneously and only one applicant at a time to occupy the back room.

The result has been an extremely slow registration process. During the month of October 1963, for example, they processed an average of 27 applicants each registration day. Between October 15 and October 30, 1963, approximately sixty priority numbers were issued to prospective applicants on each of the registration days. On none of these days, however, were sixty

to register, but only 54 were processed.

During the five consecutive special registration days in July, no more than twenty-two persons were able to apply for registration on any one day. On none of these days did the registrars receive applications from all of the prospective registrants who were issued priority numbers. The defendants have given no evidence showing any efforts which have been made by the registrars to streamline the registration system, to use additional facilities in the Courthouse where numerous applicants could apply simultaneously, or to add clerical help to alleviate the gross delays.

The Board of Registrars has, since the date of this Court's decree of November 1, 1962, employed a variety of new registration tests, some of their own making and some prescribed by the Supreme Court of Alabama. In February 1964, the Board began to use a new test promulgated by the Supreme Court of Alabama which required the applicants to answer four questions on government, to read aloud excerpts from the Constitution, and to write from dictation words or phrases from the Constitution. The words for dictation were selected by the registrars and they were very difficult words. In April the Board required applicants to explain one of the excerpts which they read. In September 1964, the Board began to use a revised set of tests which require applicants to answer four questions on government, answer four questions based on written excerpts from the Constitution, and to write from dictation one or more excerpts from the Constitution. These two tests, the February and September tests both, are more difficult than any tests previously required of voters in Dallas County. Insofar as these tests involve elements of oral reading or oral dictation, they violate section 101(a)(2)(C) of the Civil Rights Act of 1964 which requires all literacy tests to be "wholly in writing."

The United States seeks an order which would grant relief against the use of the more stringent tests employed in 1964.

under the statute. In the view of this Court, it was not authorized to supersede or enjoin practices and procedures which were in accord with the letter of State law. Since that time, the Court of Appeals for the Fifth Circuit has ruled to the contrary, and this Court is, of course, bound by that Court's decision. United States v. Duke, 332 F.2d 759 (C.A. 5, 1964). Also, since a previous decision of this Court in this case, the Congress has enacted the Civil Rights Act of 1964, which in section 101(a)(2)(A) provides:

"No person acting under color of law shall ... in determining whether any individual is qualified under State law or laws to vote in any Federal election, apply any standard, practice, or procedure different from the standards, practices, or procedures applied under such law or laws to other individuals within the same county, parish, or similar political subdivision who have been found by State officials to be qualified to vote."

Accordingly, the Court enters the following order:

The motion of defendants to dismiss, filed October 5, 1965, is denied.

The motion of the State of Alabama for judgment or directed verdict, filed November 12, 1964, is moot. The relief granted herein is directed against the Board of Registrars.

This Court specifically finds that the defendants have deprived Negroes of the right to vote without distinction of race or color and such deprivations have been pursuant to a pattern and practice.

It is the order of this Court that the defendants, Registrars of Voters of Dallas County, Alabama, are hereby restrained and enjoined:

1. From failing or refusing to receive and process expeditiously applications for registration to vote;
2. To expedite the registration of voters in Dallas County by receiving and processing at least 100 applications on each registration day, provided that number of persons present themselves for registration;

5.

4. To observe the following procedures for the receipt of applications for registration to vote in Dallas County:
 - (a) Applicants shall be permitted to apply for registration in the order in which they appear at the registrar's office for that purpose.
 - (b) Applicants who appear to apply for registration shall be requested to immediately sign an appearance sheet and shall be issued successive numbers in the order in which they appear and shall be permitted to apply for registration in that order without having to wait in line.
 - (c) An appearance sheet shall be maintained showing the name of each person who offers himself for registration and the priority number assigned to him.
 - (d) At the end of each registration day the defendants shall post in a conspicuous place in the courthouse and on the door of their office the date of the next registration day, the first number which will be called on the next registration day, and the numbers if any which were called that day but were not answered.
 - (e) Any prospective applicants who fail to appear when their numbers are called shall be called first on the next registration day in their proper sequence, but any prospective applicant who fails to appear on two successive days shall lose his priority and must obtain a new number if he still desires to apply for registration.
5. From administering to applicants for registration to vote the insert Part III test now in use. The literacy of applicants shall be judged by their writing in filling out Part II of the application form now in use;
6. From denying registration to Negro applicants on the grounds that they made formal, technical or inconsequential errors or omissions in filling out their application forms;
7. To submit to this Court on or before the fourth Monday of each month a photocopy of the appearance sheet showing each entry not previously submitted to the Court with the symbol "A" indicating all applications accepted, the symbol "R" indicating all applications rejected, and the symbol "F" indicating all persons

No applications shall be allowed to remain in a pending status.

8. In the event the defendants are unable, except for good cause shown, by the end of the special registration days in July 1965, to receive and process all of the applications from persons who have signed the priority sheet and have presented themselves at the provided time to be processed prior to July 1, 1965, this Court will deem that all such persons, not processed, have been denied the opportunity to register within the meaning of 42 U.S.C. 1971(e) and will instruct the voter referee, already appointed by this Court, to receive and process applications submitted by them.

The Court also wishes to make clear that any rejected Negro applicant from this date forward may apply to this Court for registration in accordance with the provisions of 42 U.S.C. 1971(e).

Dated this the 4th day of February 1965.

DANIEL H. THOMAS
District Judge

Filed February 4, 1965, 1:15 p.m.

William J. O'Connor, Clerk