

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

RICHARD GOODEN, ANDREW JONES, and
EKEYESTO DOSS,

Plaintiffs,

v.

NANCY WORLEY, in her official capacity as
Alabama Secretary of State; NELL HUNTER,
in her official capacity as Jefferson County
Voter Registrar; and ANITA GIBSON,
WALTER LONG, and MOLLY MEADOWS in
their official capacities as Houston County
Voter Registrars,

Defendants.

Civil Action No. _____

COMPLAINT
THREE-JUDGE COURT REQUESTED

INTRODUCTION

This action is filed because, forty years after the passage of the Voting Rights Act of 1965, citizens of Alabama are being denied the right to vote by state officials in violation of state and federal law through the implementation of policies and procedures for voter registration that are required to be, but have not been, “precleared” pursuant to Section 5 of the Voting Rights Act.

1. This is an action to enjoin violations of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c that, if left unchecked, will permit state and local officials to deny the vote to citizens of Alabama in violation of the law.

PLAINTIFFS

2. RICHARD GOODEN is a 64-year-old African American of lawful voting age, a citizen of the United States and a lifetime resident of Birmingham, Alabama.

3. Though Mr. Gooden wanted to register to vote when he turned 18, he was not permitted to register to vote in the State of Alabama until his mid-20s due to Alabama's well-documented and systematic efforts to deny the right to vote to African-American citizens. It was not until the passage of the Voting Rights Act of 1965 that Mr. Gooden, like thousands of African Americans, was finally permitted to vote in his home state.

4. Mr. Gooden was registered to vote from the mid-1960s until 2000, when he was convicted of a felony — driving under the influence of alcohol (DUI) — and informed by the State of Alabama that his voting rights were revoked as a collateral consequence of his conviction.

5. ANDREW JONES is a 47-year-old African American of lawful voting age, a citizen of the United States and a resident of Birmingham, Alabama. Mr. Jones was registered to vote from the mid-1970s until the early 1990s, when he was convicted of felony possession of drugs, and informed by the State of Alabama that his voting rights were revoked as a collateral consequence of his conviction.

6. EKEYESTO DOSS is a 26-year-old African American of lawful voting age, a citizen of the United States and a resident of Dothan, Alabama. Mr. Doss was registered to vote from the late-1990s until early 2000, when he was convicted of felony possession of marijuana, and informed by the State of

Alabama that his voting rights were revoked as a collateral consequence of his conviction.

7. Hundreds of individuals from across the State of Alabama have been identified to Plaintiffs' counsel by the Alabama Board of Pardons and Paroles ("Board of Pardons" or "Board of Pardons and Paroles"), pursuant to The Public Writings Act of the State of Alabama, Ala. Code. § 36-12-40 *et seq.*, as Alabama citizens whose only felony convictions did not involve moral turpitude and who are presently eligible to register to vote.

DEFENDANTS

8. NANCY WORLEY is the Secretary of State of Alabama ("Secretary of State"), and, as such, is vested with the authority, as Alabama's "Chief Election Official," to execute and enforce the state laws related to the elective franchise to preserve public confidence in the democratic process and to facilitate voter participation in elections. She is sued in her official capacity in connection with actions taken under color of state law, including the promulgation of procedures for and the receipt and administration of applications for voter registration. *See* Ala. Code. § 17-4-136.

9. NELL HUNTER is the Jefferson County Voter Registrar ("Jefferson County Registrar"), and, as such, is vested with the authority to grant or refuse an individual's application to register to vote in Jefferson County in accordance with the directives of the Secretary of State. She is sued in her official capacity in connection with actions taken under color of state law, including the refusal by her office of the voter registration application of Plaintiff Gooden on September 21, 2005.

10. ANITA GIBSON, WALTER LONG, and MOLLY MEADOWS are the Houston County Voter Registrars (“Houston County Registrars”), and, as such, are vested with the authority to grant or refuse an individual’s application to register to vote in Houston County in accordance with the directives of the Secretary of State. Each is sued in his or her official capacity in connection with actions taken under color of state law, including the actions (or failure to act) by their office regarding the voter registration application of Plaintiff Doss.

JURISDICTION

11. Jurisdiction is based upon 28 U.S.C. § 1331 and upon 28 U.S.C. § 1343a(3) & (4) for causes of action arising under 42 U.S.C. § 1973c. Jurisdiction for Plaintiffs’ claim for declaratory relief is based upon 28 U.S.C. §§ 2201 & 2202. Jurisdiction for Plaintiffs’ claims for attorneys’ fees is based upon 42 U.S.C. § 1973l(e) & 1988. Venue is proper in this Court under 28 U.S.C. § 1391(b).

RELEVANT STATUTORY AND CONSTITUTIONAL PROVISIONS AND CASES

12. The Alabama Constitution, Article VIII, Section 177 (Recompiled, July 28, 1995), provides in pertinent part:

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability. (emphasis added).

13. The term “felony involving moral turpitude” has been defined by Alabama courts.

14. *Moore v. State*, 12 Ala. App. 243, 250, 67 So. 789 (1915), contains an early definition of crimes of “moral turpitude”:

A felony of moral turpitude is defined in Alabama as “anything done contrary to justice, honesty, principle, or good morals; an act of baseness, vileness, or depravity in the private and social duties which a man owes to his fellow man, or to society in general, contrary to the accepted and customary rule of right and duty between man and man.”

15. In *Williams v. State*, 55 Ala. App. 436, 437, 316 So.2d 362, 363 (Ala. Cr. App. 1975), the court stated:

A better summary of the meaning of moral turpitude can hardly be given than that found in McElroy, *Law of Evidence in Alabama*, Vol. I, s 145.01(7) as follows:

Moral turpitude signifies an inherent quality of baseness, vileness, depravity. *Gillman v. State*, 165 Ala. 135, 51 So. 722. Moral turpitude “implies something immoral itself, regardless of the fact whether it is punishable by law. The doing of the act, and not its prohibition by statute fixes the moral turpitude.” *Pippin v. State*, 197 Ala 613, 73 So. 340. Moral turpitude means ‘something immoral in itself. * * * It must not be merely *mala prohibita*, but the act itself must be inherently immoral. The doing of the act itself and not its prohibition by statute, fixes the moral turpitude. * * * It is the nature of the act itself, and not its legislative characterization or punishment which must be the test in determining whether or not it involves moral turpitude. *Ex Parte Marshall*, 207 Ala 566, 93 So. 451 (471).

16. In *Ex Parte McIntosh*, 443 So.2d 1283, 1284 (Ala. 1983), the Alabama Supreme Court favorably cited C. Gamble, *McElroy's Alabama Evidence*, § 145.01(7) (3d ed. 1977):

The Supreme Court of Alabama has defined the term “moral turpitude” on many occasions and the following are the most commonly found definitions. Moral turpitude signifies an inherent quality of baseness, vileness and depravity. It is immoral in itself, regardless of the fact that it is punished by law. Therefore, an offense for conviction of which a witness’ credibility is lessened must be *mala in se* and not *mala prohibitum*.

17. Ala. Code § 17-3-9 provides:

Any person possessing the qualifications of an elector set out in Article 8 of the Constitution of Alabama, as modified by federal law, and not laboring under any disqualification listed therein, shall be an elector, and shall be entitled to register and to vote at any election by the people.

18. Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c, provides in relevant part:

Whenever a State . . . shall enact or seek to administer any voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting different from that in force or effect on November 1, 1972, such State or subdivision may institute an action in the United States District Court for the District of Columbia for a declaratory judgment that such qualification, prerequisite, standard, practice, or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or in contravention of the guarantees set forth in section 1973b(f)(2) of this title, and unless and until the court enters such judgment no person shall be denied the right to vote for failure to comply with such qualification, prerequisite, standard, practice, or procedure: Provided, That such qualification, prerequisite, standard, practice, or procedure may be enforced without such proceeding if the qualification, prerequisite, standard, practice, or procedure has been submitted by the chief legal officer or other appropriate official of such State or subdivision to the Attorney General and the Attorney General

has not interposed an objection within sixty days after such submission, or upon good cause shown, to facilitate an expedited approval within sixty days after such submission, the Attorney General has affirmatively indicated that such objection will not be made.

FACTS

19. From Reconstruction until the passage of the Voting Rights Act of 1965, Alabama employed virtually every state instrument of disfranchisement available to suppress the Black vote, including terror and violence, literacy tests, poll taxes, a “grandfather clause,” good character tests, and white-only primaries. As a result, only 19 percent of the Black voting-age population in Alabama was registered to vote in 1964, one of the lowest proportions in the South. By contrast, 69 percent of the white voting-age population was registered at that time.

20. As a result of its long history of discrimination against Blacks in voting, the entire State of Alabama is covered by Section 5 of the Voting Rights Act of 1965 pursuant to Section 4 of that statute and the designation by the Attorney General.

21. Following the 1982 renewal of Section 5 of the Voting Rights Act of 1965, the Supreme Court recognized in *Hunter v. Underwood*, 471 U.S. 222 (1985), that Alabama, in violation of the Equal Protection Clause of the Fourteenth Amendment, impermissibly used its felon disfranchisement law to intentionally disfranchise Blacks and to maintain and reinforce white supremacy.

22. In 1995-1996, the Alabama Legislature proposed, and the people ratified, Act 95-443 of the 1995 Regular Session of the Legislature of Alabama, which proposed a constitutional amendment to repeal Article VIII of the Constitution of Alabama of 1901 regarding voting, and replace it with Section 177 (the text of which is set out above).

23. Pursuant to Section 5 of the Voting Rights Act of 1965, the State of Alabama, on April 16, 1996, submitted Act No. 95-443 to the Attorney General of the United States for preclearance.

24. In a June 24, 1996 letter to Lynda Oswald, Alabama Assistant Attorney General, Assistant Attorney General for Civil Rights pursuant to Section 5 of the Voting Rights Act of 1965, interposed no objection to (“precleared”) Alabama’s revised voting law.

25. In the 2003 Second Special Session, the Alabama Legislature adopted Act 2003-415, *codified at* Ala. Code § 15-22-36.1, a law requiring members of the Board of Pardons to provide a procedure for the restoration of voting rights — by issuing a Certificate of Eligibility to Register to Vote (“Certificate of Eligibility”) — to individuals with felony convictions who satisfactorily complete each of the terms and conditions of their sentences.

26. On information and belief, in the course of attempting to discharge its statutory duties the Alabama Board of Pardons and Paroles determined that there was public confusion about the scope of the State of Alabama’s felon disfranchisement law, and/or that agents of the State, including the Secretary of State and Defendant Registrars, were misapplying Alabama’s law, thereby creating confusion and depriving eligible citizens of their right to register to vote and exercise the franchise.

27. To facilitate compliance with Ala. Code § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, William Segrest, Executive Director of the Board of Pardons and Paroles, requested that Troy King, Attorney General for the

State of Alabama, set forth which felonies do not involve moral turpitude under State law.

28. In response to Segrest's request, the Attorney General issued an Opinion which explained that "[i]f a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board of Pardons] for a Certificate of Eligibility to Register to Vote." *See* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.).

29. In the Opinion, the Attorney General did not "provide an exhaustive list of every felony involving moral turpitude," but listed a number of illustrative crimes that have been determined by Alabama courts not to involve moral turpitude, including "violation of liquor laws" and "driving under the influence." *Id.* at 2 (citing *Parker v. State*, 280 Ala. 685, 198 So. 2d 261 (1967); *Finley v. State*, 661 So. 2d 1321 (Ala. Crim. App. 1995)). Thus, if "a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote." *Id.* at 3.

30. Following the Attorney General's Opinion, the Board of Pardons and Paroles issued a press release on May 17, 2005 to inform the public and clarify the operation of Alabama's felon disfranchisement law.

31. The May 17th press release noted that as the Board of Pardons attempted to implement Ala. Code § 15-22-36.1 it "discovered that many eligible voters [were] unaware" that they did not need a "certificate from this agency in order to register to vote." "Under the current law only felonies involving moral turpitude disqualify a person from voting. Convictions for other felonies do not

disqualify a person from voting. If individuals who are already eligible to vote do not ask us for certificates, we can process the other applications more promptly.” The press release stated unequivocally, *inter alia*, that “felony driving under the influence” and “felony possession of drugs” are offenses that do not involve moral turpitude.

32. On information and belief, notwithstanding the dictates of Alabama law, which reflect the express ratification of the people of Alabama, the aforementioned Attorney General’s Opinion, and the press release that was issued by the Board of Pardons and Paroles, within the last six months in the following twenty counties, registrars were directed by the Secretary of State not to register people with any felony conviction — whether or not the felony involved moral turpitude — without a Certificate of Eligibility: Bullock, Chilton, Choctaw, Dallas, Escambia, Greene, Houston, Jefferson, Lowndes, Macon, Madison, Marengo, Mobile, Montgomery, Pike, Randolph, St. Clair, Talladega, Tallapoosa and Tuscaloosa.

33. Registrars throughout Alabama, under the direction of the Secretary of State, are employing practices and procedures that are inconsistent with a Section 5 precleared Alabama law and have not themselves been submitted for preclearance, in violation of Section 5 of the Voting Rights Act.

34. The effect of these practices is to deny the vote to eligible citizens of Alabama.

35. The constitutional amendment that was duly enacted and precleared pursuant to Section 5 of the Voting Rights Act on June 24, 1996 is the law of Alabama with respect to felon disfranchisement in the State and constitutes

the benchmark for Section 5 purposes. Any voting practice or procedure that contradicts, enlarges or frustrates this law constitutes a voting change within the meaning of the Voting Rights Act that must be precleared pursuant to Section 5 before it may legally take effect.

Alabama's Denial of the Franchise to Plaintiff Gooden

36. On September 21, 2005 Plaintiff Gooden attempted to register with Defendant Jefferson County Registrar, but was informed that he was “not eligible” to register to vote because of his felony DUI conviction.

37. Notwithstanding the ratification — by the people of Alabama — of the constitutional amendment narrowing the scope of the State’s felon disenfranchisement law to felons who have committed crimes of moral turpitude, the Attorney General’s Opinion, and the press release issued by the Board of Pardons, Plaintiff Gooden was instructed by Defendant Jefferson County Registrar to apply to the Board of Pardons and Paroles for a Certificate of Eligibility.

38. Plaintiff Gooden was informed later that day by an employee of the Board of Pardons and Paroles that because his felony DUI conviction did not involve moral turpitude, consistent with Alabama law and the related Attorney General’s Opinion, he need not apply for a Certificate of Eligibility since their voting rights were never forfeited.

39. Upon information and belief, an employee of the Board of Pardons telephoned Defendant Jefferson County Registrar on September 21, 2005, and explained that Plaintiff Gooden was not disqualified from voting since his felony conviction did not involve moral turpitude, and, therefore, that a Certificate of Eligibility was not necessary for him to register to vote.

40. Upon information and belief, the employee of the Board of Pardons also offered to fax Defendant Jefferson County Registrar a copy of the press release the Board of Pardons had issued to this effect.

41. Upon information and belief, notwithstanding its recognition that Plaintiff Gooden's felony DUI conviction did not involve moral turpitude, and that, in fact, his conviction was expressly identified under Alabama law and in the Attorney General's Opinion as non-disqualifying crime, Defendant Jefferson County Registrar informed the Board of Pardons that the Defendant Secretary of State had directed them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, without regard to whether or not such felony convictions involved moral turpitude.

42. Efforts to resolve this issue with the Secretary of State, as to Plaintiff Gooden and all similarly situated Alabamians, have been unsuccessful, and the Secretary of State continues to enforce voting practices and procedures that have not been precleared as required by Section 5 of the Voting Rights Act of 1965, which result in the deprivation of the right to vote.

Alabama's Denial of the Franchise to Plaintiff Jones

43. In a June 20, 2005 letter to Plaintiff Jones, the Board of Pardons explained that after reviewing his "application for a Certificate of Eligibility to Register to Vote, we have determined that you were convicted of possession of a controlled substance," which is a felony "that does not appear to this agency to involve moral turpitude." The Board of Pardons determined that, according to Amendment 579 of the Alabama Constitution, Mr. Jones' "conviction does not disqualify [him] from voting." The Board of Pardons, therefore, asserted that "we

are closing our file on your application, as you do not need a certificate in order to be eligible to register.”

44. Plaintiff Jones, after receiving the June 20, 2005 letter from the Board of Pardons, submitted a Voter Registration Form to Defendant Jefferson County Registrar.

45. Notwithstanding the Board of Pardon’s June 20, 2005 letter to the contrary, Defendant Jefferson County Registrar, in a June 30, 2005 letter to Plaintiff Jones, stated that his Voter Registration Form could not be processed because “a person convicted of a felony offense is barred from voting, unless there has been a reinstatement of voting rights.”

46. Defendant Jefferson County Registrar referred Plaintiff Jones to the Board of Pardons to “get [his] voting rights restored.” “If you have already done this,” the letter concluded, “mail a copy of your Certificate of Pardon or Certificate of Registration of Voter Rights to the Jefferson County Board of Registrars.”

47. Inexplicably, Plaintiff Jones was later mailed a Voter Registration Card, which permitted him to vote in “all elections — except municipal.”

Alabama’s Denial of the Franchise to Plaintiff Doss

48. On or about October 5, 2005, Plaintiff Doss attempted to register to vote with Defendant Houston County Registrar, but was informed that he was ineligible to register to vote because of his felony possession of marijuana conviction.

49. Notwithstanding Defendant Houston County Registrar’s recognition that Plaintiff Doss’s felony conviction did not involve moral turpitude,

and that, in fact, his conviction was expressly identified in Alabama law and the Attorney General's Opinion as a non-disqualifying crime, Defendant Houston County Registrar informed Plaintiff Doss that the Defendant Secretary of State had directed them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, without regard to whether or not such felony convictions involved moral turpitude.

50. Plaintiff Doss was instructed by Defendant Houston County Registrar to apply to the Board of Pardons for a Certificate of Eligibility.

Effect of Statewide Practices

51. Upon information and belief, a substantial but unspecified number of similarly situated citizens of Alabama are being denied the right to vote as result of the conduct described above on the part of the Secretary of State and Registrars.

52. The practices of the Secretary of State and Registrars described above are contrary to precleared practices and procedures affecting voting that are required to be, but have not been, submitted to the Attorney General of the United States of a District Court in the District of Columbia for preclearance.

CAUSE OF ACTION

53. Plaintiffs hereby re-allege and incorporate by reference paragraphs 1 through 52 above.

54. Defendant Secretary of State and Defendant Registrars have violated Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. §

1973c, by administering voting practices and procedures that have not been precleared pursuant to Section 5 of the Voting Rights Act.

55. Specifically, Defendant Secretary of State, upon information and belief, directed Jefferson County Registrar, Houston County Registrars, and voter registrars in at least 18 other counties in Alabama, not to register people with felony convictions irrespective of whether or not such convictions involved moral turpitude, in violation of Section 5 of the Voting Rights Act of 1965.

56. This misrepresentation by the Secretary of State of the right of certain persons to register to vote has caused State Registrars in at least twenty counties to refuse to register eligible persons in the State of Alabama.

57. Plaintiffs are without an adequate remedy at law and will suffer irreparable damage unless the actions of the Defendants in violation of the Section 5 of the Voting Rights Act of 1965 are enjoined.

58. The gravity of the rights deprivation that would flow to Plaintiffs and other similarly situated individuals from resolving these critical issues on Defendant Secretary of State's timetable necessitates immediate action.

PRAYER FOR RELIEF

WHEREFORE, THE PREMISES CONSIDERED, the Plaintiffs respectfully request that the following relief be granted:

59. Plaintiffs request that their Section 5 enforcement claims be heard and determined by a court of three judges in accordance with 42 U.S.C. § 1973c and the provisions of 28 U.S.C. § 2284.

60. Plaintiffs request that the Court enter a declaratory judgment that Defendant Secretary of State and Defendant Registrars' actions violate Plaintiffs

rights secured by Section 5 of the Voting Rights Act of 1965. Plaintiffs request that this Court enter a declaratory judgment that Defendant Secretary of State and Defendant Registrars lack the authority, unless and until Defendants obtain preclearance for such practices and procedures after submitting those practices and procedures for preclearance, as required by Section 5 of the Voting Rights Act, to preclude individuals convicted of felonies not involving moral turpitude from registering to vote and voting under Alabama law.

61. Plaintiffs request the award of reasonable attorneys' fees, expenses, and costs under 42 U.S.C. §§ 1973l(e) and 1988.

62. Plaintiffs request such other, further, and different relief as the facts and circumstances may warrant.

Dated: Birmingham, Alabama
December 19, 2005

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