

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff)	
)	
v.)	CIVIL ACTION NO. 1677-N
)	
STATE OF ALABAMA, ET AL.)	
)	
<u>Defendants</u>)	

9/13/61

FINDINGS OF FACT, CONCLUSIONS OF LAW, AND DECREE

This action came on for trial before the Court without a jury on the 29th and 30th of March, 1961. At the close of the trial, the Court enjoined the defendants from continuing the practice of limiting the number of persons a registered voter could vouch for each year. At the same time, the court reserved ruling on the other issues for the reason that the Court was impressed with the sworn statements of the Registrars that they were ready and willing, even to the point of eagerness, to register all qualified Negro citizens in Bullock County. At that time, the Court ordered the Registrars to report in writing as to the progress of registration in Bullock County during April, May, and June 1961.

Thereafter the defendants filed their first report for the month of April, 1961, which showed that approximately 140 Negroes had signed up to be registered

since March 30, 1961; that the Board had been in session two days; that on the first day 15 applications were processed, 5 of which were rejected and 4 were not acted upon; that on the second registration day in April, the Board processed 26 applications, rejected 3, and did not act upon 15.

On May 24, 1961, the Court reviewed the second report of the Bullock Board. This report showed that as to those applications which were in the suspense file at the time of the last report, 10 applicants had been registered and 10 had been rejected. The report also revealed that on the two registration days in May the Board processed 50 Negro applicants and registered 15. At that time the Court examined each of the 32 rejected applications and advised the defendants that it appeared to the Court that applications were rejected for technical and inconsequential errors or because the applicant had not signed the oath before the Registrars.

Thereafter the Registrars registered these 32 applicants. This information was furnished to the Court in a report filed June 26, 1961. On the basis of this report, and for good cause, the Court, on June 29, 1961, reserved ruling on the issues in this case for another three months and directed the Registrars to file more detailed monthly reports as to the progress of registration in Bullock County.

This matter is now before the Court on the motion of the United States of America for an order requiring the Registrars of Bullock County to expedite registration, which motion came on for hearing on September 8, 1961.

After reading the affidavits filed by the plaintiff, hearing the oral testimony of witnesses, examining the exhibits received in evidence, and reviewing

the monthly reports of the Registrars, the Court summarizes the record of the Board of Registrars since March 1961, as follows:

During the five months following this Court's order of March 30, 1961, over 700 Negro citizens of Bullock County signed their names on the Registrars' priority lists as the first step toward applying to register to vote. Only about 250 of these persons have been afforded the opportunity to make application. About half of these applications were rejected by the defendants. About 400 Negroes who have signed the priority lists are still waiting to apply for registration. Of the approximately 4400 Negro citizens of voting age in the County, only about 130 are presently registered, whereas over 95 percent of the white citizens of voting age in the county are registered.

The defendants are currently receiving only twenty-four applications each registration day. The defendants' exhibits show, however, that on March 7, 1960, when all the applicants were white citizens, the defendants received 45 applications in one day.

The Board of Registrars advised the Negroes that there would be no registration on July 4, 1961. Yet the Board did work on July 4 and received applications from white citizens on that day. The testimony of a white witness shows that he was told when to come in to register; that he was allowed to come back on August 7 to complete his application, and that someone else produced a supporting witness to vouch for him.

The defendants have been requiring Negroes to apply in a small room adjoining a courtroom. They are allowed to apply in groups of eight, and the next group of eight is required to wait until the slowest applicant of the previous group has finished his application. Large numbers of Negroes wait in the

courtroom for their chance to apply, some of them returning repeatedly and waiting all day for their names to be called. The large courtroom, which seats about 200 persons, is used as a waiting room, rather than as a registration room. The defendants have been practicing token registration in the face of the large backlog of Negro citizens waiting to apply.

The Court can do no less than conclude that the registrars have failed to live up to their sworn statements that they were ready and willing to register all qualified Negro citizens in Bullock County, and would do so if given the opportunity.

NOW THEREFORE, the Court makes the following:

FINDINGS OF FACT

1. Under Alabama law registration is a prerequisite to voting in any election. (Code of Ala., Title 17, Sec. 12; Ala. Const., Art. VIII, Sec. 178 (1901).)

2. A person is entitled to be registered to vote if he makes application for registration and possesses all of the qualifications and none of the disqualifications provided by law. (Ala. Const., Art. VIII, Sec. 177, Code of Ala., Title 17, Sec. 12.) To qualify, he must be a citizen of not less than 21 years of age; he must have resided in the state two years, in the county one year, and in the precinct three months (Ala. Const., Art. VIII, §178); he must be able to read and write any article of the Constitution which may be submitted to him; he must be of good character and embrace the duties and obligations of citizenship (Code of Ala. Title 17, § 32).

He is disqualified if he has been convicted of certain specified crimes including felonies and crimes

involving moral turpitude, or if he is an idiot or insane (Ala. Const., Art. VIII, § 182; Code of Ala., Title 17, § 15).

3. Registration for voting is conducted in each county by a three-member board of registrars. These registrars are appointed by a state board comprised of the Governor, Auditor, and Commissioner of Agriculture and Industries (Ala. Const., Art. VIII, § 186; Code of Ala., Title 17, §21). The salaries of the registrars are paid by the state (Code of Ala., Title 17, §24). The board of registrars of each county receives and passes upon applications for registration and determines whether or not each applicant is qualified to register (Ala. Const., Art. VII, §186). The boards of registrars are authorized to make such rules and regulations as will accomplish in as expeditious a manner as possible the registration of those entitled to register (Code of Ala., Title 17, § 53).

4. The present Board of Registrars of Bullock County, Alabama, is comprised of Julius P. Tompkins, Chairman, K. S. Yon, Sr., and John Guthrie, Jr. These men began functioning as a Board of Registrars in March 1960.

5. In Bullock County the total population is 13, 462. Of this number 9,681 are Negroes and 3,781 are white persons. Persons of voting age number 4,450 Negroes and 2,387 whites. In 1960, there were five Negroes and 2,266 white persons registered to vote in Bullock County. During the nine years preceding 1960 the number of Negroes registered to vote in Bullock County has never exceeded six. The number of white persons registered during this same period has never been less than 2,138.

6. Prior to March 1960, the members of the Board of Registrars of Bullock County, have engaged in

the following acts and practices for the purpose and with the effect of depriving Negroes of their right to register to vote without distinction of race or color:

- (a) In 1954 the Board of Registrars refused to permit Negroes to make application for registration.
- (b) Between December 1955 and January 1957, the Board of Registrars received at least twenty applications from Negroes and rejected all of them.

7. The defendants have perpetuated the existing disparity in voter registration between white residents of Bullock County and Negro residents by the following acts and practices:

- a. By requiring each applicant for registration to produce a registered voter to vouch for him and by refusing to permit any registered voter to vouch for more than two applicants during any calendar year.
- b. By adopting and applying arbitrarily strict and technical standards in grading applications.
- c. By failing and refusing since the Court's interim order of March 30, 1961, to adopt efficient and expeditious methods for the registration of applicants in Bullock County.
- d. By presently requiring applicants for registration to use an application form different from the form which the defendants furnished applicants prior to March 30, 1961.

8. In receiving and acting upon applications for registration by white and Negro residents of Bullock County, the defendants have discriminated against Negro applicants by the following acts and practices:

- a. By arbitrarily rejecting qualified Negro applicants while registering white applicants no better qualified.

- b. By permitting white citizens to apply for registration before Negro citizens who under the rules established by the Board are entitled to apply prior to the white citizens.
- c. By falsely informing Negroes regarding the days on which the Board would receive applications for registration and by receiving applications from white residents at times during which Negroes had been told there would be no registration.

9. The acts and practices of the defendants as described in paragraphs six, seven, and eight have been pursuant to a pattern and practice of racial discrimination.

CONCLUSIONS OF LAW

1. This Court has jurisdiction of this action under 42 U.S.C. 1971(d) and 28 U.S.C. 1345.

2. The Attorney General of the United States is authorized to institute and prosecute this action on behalf of the United States pursuant to 42 U.S.C. 1971(c), for the purpose of obtaining relief against acts and practices by the defendants which deprive certain citizens of their rights and privileges secured by the laws and the Constitution of the United States.

3. The State of Alabama is properly joined as a party defendant pursuant to Section 601(b) of the Civil Rights Act of 1960.

4. The acts and practices of the defendant registrars which violate Section 1971(a) are also the acts and practices of the defendant State. Civil Rights Act of 1960, Section 601(b).

5. Under the terms of the Fifteenth Amendment and Section 1971(a) of Title 42 U.S.C. the defendants have a duty to process applications for voter registration in Bullock County without regard to race or color.

Where, as is established by the evidence in this case, the vast majority of one race is already registered while but a token number of the other race has succeeded in registering, this general constitutional and statutory duty of the defendants requires that they process applications by members of the less favored race without undue delay. The defendants may not preserve the existing racial imbalance by arbitrarily adopting stricter standards and time-consuming procedures.

6. These deprivations of rights secured by 42 U.S.C. 1971(a) and by the Fifteenth Amendment have been and are pursuant to a pattern and practice of racial discrimination in Bullock County, Alabama within the meaning of 42 U.S.C. 1971(e).

The evidence in this case showing a history of racially discriminatory acts and practices in Bullock County warrants the issuance of a decree which is not only prohibitory but which is mandatory in nature. The Civil Rights Act of 1957, as amended in 1960, was adopted to protect the right to vote in just such instances. To accomplish its purpose, the Congress of the United States authorized the courts to utilize the full equitable powers possessed by the court. Complete relief in this case requires that the decree be framed so as (1) to correct the effect of the Board's past discriminatory practices, (2) to forbid the continuation of such discriminatory practices, (3) to insure the expeditious and non-discriminatory taking and processing of applications, and (4) to provide for supervision and possible expeditious enforcement of this Court's decree. The decree which will be entered is designed to require the defendants to conduct registration in Bullock County on a fair, non-discriminatory, and equal basis.

D E C R E E

Pursuant to the Findings of Fact and Conclusions of Law made and entered by this Court on this date, it is the ORDER, JUDGMENT, AND DECREE of this Court that the State of Alabama, Julius P. Tompkins, J. W. Guthrie, Jr., K. S. Yon, their agents, officers, employees and successors in office, be and each is hereby enjoined from:

1. Engaging in any act or practice which involves or results in distinctions based on race or color between Negro citizens and other citizens in the registration for voting and voting processes in Bullock County, Alabama.
2. Enforcing any limitation as to the number of times any person may serve as a voucher or supporting witness in connection with registration for voting in Bullock County.
3. Applying or enforcing different qualification tests or standards to Negro applicants in Bullock County from those applied and enforced since 1954 to other applicants in Bullock County.
4. Rejecting Negro applicants for formal, technical or inconsequential errors in the application and registration process.
5. Using a form of application or questionnaire different from or more stringent than that used for registering persons in Bullock County prior to March 30, 1961.

It is the further ORDER, JUDGMENT, AND DECREE of this Court that the said defendants:

1. Maintain in an orderly form and in a permanent roll a priority list of all persons appearing for registration.
2. Receive and process applications for registration of each and every person whose name

appears on the priority lists as of the date of this decree within sixty calendar days of the issuance of this decree.

3. Issue successive numbers to applicants who hereafter appear before the defendants to apply for registration or to transfer their registration in the order in which they appear, and such applicants shall be permitted to apply for registration or transfer their registration in that order.

4. Post, at the end of each registration day, in a conspicuous place in the courthouse and office or place of registration, 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. 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 after being called on two successive registration days shall lose his priority and must obtain a new number if he still desires to apply for registration.

5. Receive and process applications for registration of each and every person whose name hereafter is entered on the priority list within five registration days of such entry. •

6. Notify each applicant whose application is rejected of the specific reasons for his rejection within ten days after his application is processed. With respect to accepted applications, the registration certificates shall be mailed within ten days after the date the application is processed.

7. Maintain a full and regularly functioning Board of Registrars in Bullock County, Alabama. Failure to provide a functioning Board in Bullock County will be

considered by the Court as a denial by the defendants of the opportunity to register to vote to any applicant applying to the Court to be registered under the provisions of the Civil Rights Act of 1960 (42 U.S.C. 1971(e)) during the period or periods that the Board does not function.

8. Post in a conspicuous public place or publish in a newspaper published in the County the times when and the places where applications for registration will be received in the various outlying beats or precincts. Twenty days prior to the first registration day in any outlying beat or precinct, the defendants shall file with this Court a report showing the specific places, dates and hours of registration and the procedure to be used in determining the priority by which applicants will be permitted to apply.

9. Submit to the Clerk of this Court in writing on or before the 5th day of each month after the date of this decree and until further order of this Court a report as to their progress in accepting applications during the preceding month. This report shall include:

- (a) The dates and places and hours of receiving applications for registration during the preceding report period.
- (b) The number, name, and race of each person signing the priority list during the preceding report period.
- (c) The name, race, and priority number of all persons whose applications for registration were received and the dates on which such applications were received.
- (d) The action taken by the defendants on applications for registration during the preceding report period which, with respect to accepted applicants, will state the name and race of the applicant and the date the certificate of registration was mailed out, and with respect to rejected applicants, the name and race of the rejected applicants and a duplicate copy of

the notification of rejection and reasons therefor, and the date on which such notification was mailed to the applicant. The reasons given for rejection shall include the exact nature of the error or errors on the application form or any other reason for which the applicant was rejected.

For the effectuation of this decree, it is the further ORDER, JUDGMENT AND DECREE of this Court that the plaintiff, United States of America, acting through its appropriate investigative agencies, report in writing directly to this Court on or before the 5th day of each month after the date of this decree and until further order of this Court the dates and places the defendant registrars have received applications for registration during the preceding month, the name and race of each person signing the priority list during the preceding report period, and the name and race of each applicant for registration accepted or rejected during the preceding report period.

It is the further ORDER, JUDGMENT AND DECREE of this Court that the defendants shall until further order of this Court make all registration books and records of Bullock County, Alabama, available to the agents of the United States at any and all reasonable times and places for inspection and copying.

It is the further ORDER, JUDGMENT AND DECREE of this Court that the plaintiff, United States of America, acting through the United States Department of Justice and the United States Attorney for this District, from time to time, when requested by the Court, furnish information to the Court for the purpose of:

(1) Assisting this Court in determining whether the provisions of this decree are being fully and completely complied with, in good faith, by each of said defendants.

(2) Assisting this Court in determining whether the institution and prosecution of contempt proceedings are necessary and/or justified.

It is the further ORDER, JUDGMENT AND DECREE of this Court that the plaintiff, United States of America, acting through the United States Department of Justice and the United States Attorney for this District, institute and prosecute in this Court any contempt proceedings that may arise in this action subsequent to the entering of this decree.

It is the further ORDER, JUDGMENT AND DECREE of this Court that the plaintiff, United States of America, submit to this Court within thirty days from the date of this decree the names and addresses of at least six qualified persons to be considered by the Court for appointment as voting referees in the event this Court at some later date considers such appointments necessary and appropriate.

This Court retains jurisdiction of this cause for the purpose of issuing any and all additional orders herein that may, in its judgment, become necessary or appropriate for the purpose of modifying and/or enforcing this decree.

It is ORDERED that the United States Marshal of this District serve forthwith copies of this decree on each and all of the defendants in this case and on the Governor, the Auditor, the Commissioner of Agriculture and Industries of the State of Alabama, and the Attorney General of the State of Alabama.

It is ORDERED that the costs incurred in this proceeding be and they are hereby taxed against the defendants, for which execution may issue.

Done this the _____ day of September, 1961.

FRANK M. JOHNSON, JR.
UNITED STATES DISTRICT JUDGE