

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

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
STATE OF ALABAMA AND  
DONALD A. CAYLOR, KEITTE  
SANDERS YON and CHARLES T.  
THOMAS, Members of the  
Board of Registrars of  
Bullock County, Alabama,  
  
Defendants.

CIVIL ACTION NO. 1677-N

MEMORANDUM IN OPPOSITION  
TO DEFENDANT'S MOTION TO  
REVIEW AND RE-EXAM COSTS

On January 5, 1965 a hearing was held on the plaintiff's motion that the members of the Board of Registrars of Bullock County, Alabama show cause, if any they had, why they should not be held in contempt of orders issued by this Court.

On April 27, 1965 this court issued additional orders based upon findings of fact and conclusions of law entered that date. Among these orders was the requirement that the costs incurred in the contempt proceeding be taxed against the defendants, for which execution may issue.

The defendants subject to the orders of April 27, 1965 are Donald A. Caylor, Keitte Sanders Yon and Charles T. Thomas, individually and as members of the Board of Registrars of Bullock County, Alabama. Also subject to the orders are the agents, officers, employees, successors in office and all persons in active concert with the defendants.

In due course, following the April 27 orders, the United States applied for costs to be taxed as ordered. The Clerk of Court taxed the costs on May 18 and the defendants have moved to have the Court review and retax. The defendants object to no item or amount in the Bill of Costs but only to the taxation being placed on them instead of others.

#### ARGUMENT

Whether it is proper to tax public officials charged with the registration of voters in a contempt action is now settled law in this jurisdiction.

On July 7, 1964, in a per curiam opinion, the Court of Appeals for the Fifth Circuit held that Theron C. Lynd, Circuit Clerk and Registrar of Voters of Forrest County, Mississippi, was responsible for costs taxed against him in a contempt proceeding brought before that Court for disobedience of its orders by Lynd acting in his official capacity.<sup>1/</sup> The Court made clear that the costs were properly taxable in its proceedings as they were in proceedings before District Courts,<sup>2/</sup> adopting the "universal rule" that, in civil cases at least, the United States may recover costs as if they were a private individual.<sup>3/</sup>

This construction of Rule 54(d), F.R.C.P. is consistent with the Civil Rights Act of 1957, as amended.<sup>4/</sup> Civil actions or other proper proceedings for preventive relief are authorized

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<sup>1/</sup> United States v. Lynd, 334 F.2d 13(1964)

<sup>2/</sup> Id. at 16

<sup>3/</sup> Pine River Logging & Improvement Co. v. United States  
186 U.S. 279(1902)

<sup>4/</sup> Title 42, United States Code, Section 1971(c).

under 42 U.S.C. 1971(a) and the liability of the United States for costs "the same as a private person" is further provided.

The defendants contention that the imposition of costs against them would be unfair is not supported by the history of this litigation or by their official actions, both in years past or in 1965.

If any single characterization of this case had to be made, it would be the consistent avoidance by the registrars of the official responsibility to conduct their offices as required by state and federal law. Members of the Board of Registrars have been before this court on several occasions, both in formal proceedings and in informal conference. Although it was established as long ago as 1961 that Negroes were not being permitted to vote in Bullock County and although this Court attempted then to remedy this fact by full use of its equity powers, both the plaintiff and this Court have had to exert continuous time and effort to supervise the decree. The most recent indicia of the defendant's lack of compliance were the findings of April 27 that racial discrimination has continued up to and including this year.

There are no special circumstances that excuse the conduct of the defendants. Each defendant testified that he or she had been served with the orders of this court. No recent effort had been made by any defendant or through counsel to seek the advice of the plaintiff or the Court in carrying out legal responsibilities. Indeed, the advice of counsel for the Board was not sought. As state officers the defendants had ample opportunity to secure competent and professional counsel.

CONCLUSION

The plaintiff believes that costs may and should be taxed against the defendants "individually and as members of the Board of Registrars of Bullock County, Alabama."

Respectfully submitted,

JOHN BOAR  
Assistant Attorney General  
Civil Rights Division

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DAVID H. HARLEN  
Attorney  
Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing memorandum for the plaintiff, United States of America, has been served by official United States air mail in accordance with the rules of this Court to the attorneys for the defendants addressed as follows:

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Dated: June 9, 1965

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