

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 2829
)	
)	<u>PLAINTIFF'S BRIEF IN</u>
)	<u>CONTEMPT PROCEEDING</u>
C. E. FORD, RAYMOND F. LEE,)	
KATIE KEAHEY, as Registrars)	
of Voters of Choctaw County,)	
Alabama,)	
)	
<u>Defendants.</u>)	

This cause was taken under submission on the 15th day of March, 1965, at the conclusion of hearing on plaintiff's motion filed November 16, 1964. On the same day leave was given to the parties to file briefs within one week.

The plaintiff's motion requested an order requiring the defendants to show cause why they should not be held in civil contempt of this Court's order of April 13, 1964, and for an order requiring said defendants to register certain applicants for registration who were denied the right to register to vote in Choctaw County, Alabama.

The original action was brought on June 15, 1962 by the Attorney General of the United States pursuant to 42 U.S.C. 1971. Plaintiff's motion for a permanent injunction was heard on February 20, 1963 and on April 13, 1964 the Court enjoined the defendants C. E. Ford, Raymond F. Lee and Katie Keahey from further racial discrimination in the registration of voters of Choctaw County, Alabama, and from engaging in certain acts and practices enumerated in the Decree.

The Court found that from November, 1959 to the date of the trial on February 20, 1963, the defendants engaged in racially discriminatory practices in conducting voter registration in Choctaw County, including the following:

- a. Permitting of assistance to be given to applicants of the white race and the refusal of such assistance to applicants of the Negro race during periods of registration.
- b. Failing to disclose to rejected Negro applicants the reasons for their rejection.
- c. Failing to notify Negro applicants within a reasonable time as to whether or not their applications had been approved.

The Court's order of April 13, 1964 enjoined the Board of Registrars from engaging in any act or practice intended to result or the probable effect of which would be to result in racial discrimination in the registration for voting in Choctaw County.

The Board was, in addition, enjoined from:

- a. Using the questionnaire as an examination or test, unless the Registrars present to the Court and propose to use a definite set of standards for the grading of questionnaires, which said standards shall meet with the approval of the Court as complying with state and federal law.

- b. Rejecting applicants for errors or omissions in the questionnaire when other answers or information reveal that the applicant is qualified.
- c. Failing to pass on each application for registration within a reasonable time.
- d. Failing to notify in writing each applicant of the action taken on his application for registration, whether accepted or rejected, within a reasonable time, and if rejected, the specific reason or reasons for his rejection.

There has been no change in the membership of the Board of Registrars of Choctaw County since the Decree of April 13, 1964. The members then and now are C. E. Ford, Chairman, Raymond F. Lee and Katie Keahey. These defendants were served with copies of the Decree.

It was established in this case that Choctaw County has a voting age population of approximately 9,174, of whom 5,192 are white persons and 3,982 are Negroes. As of February 5, 1963, there were 3,697 white persons and 176 Negroes registered to vote.

Much of the evidence produced at the hearing on March 15, 1964 is undisputed. Between April 20, 1964 (the first registration day after the injunction) and March 1, 1965, 114 white persons of the 119 who applied (95.7%) were accepted; while 34 of the 112 Negroes (30.3%) were accepted as registered voters. At least five of these rejected Negro applicants were college graduates. The chart on the following page is a month-by-month total of registration activity from April 20, 1964 through March 1, 1965.

CHOCTAW COUNTY, ALABAMA

Accepted and Rejected Applications of
White and Negro Applicants

April 20, 1964 through March 1, 1965

		<u>Total Appli- cations</u>		<u>Accepted</u>		<u>Rejected</u>		<u>Percent Rejected</u>	
		<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
April, 1964	W	39		37		2		5.1	
	N		16		6		10		62.5
May, 1964	W	4		4		0		0	
	N		15		1		14		93.3
June, 1964	W	3		3		0		0	
	N		4		0		4		100
July, 1964	W	14		14		0		0	
	N		18		3		15		83.3
August, 1964	W	3		3		0		0	
	N		3		3		0		0
September, 1964	W	14		13		1		7.1	
	N		5		0		5		100
October, 1964	W	24		23		1		4.1	
	N		10		3		7		70.0
November, 1964	W	1		1		0		0	
	N		3		1		2		66.7
December, 1964	W	3		3		0		0	
	N		1		1		0		0
January, 1965	W	3		3		0		0	
	N		22		11		11		50.0
February, 1965	W	8		7		1		12.5	
	N		10		4		6		60.0

		<u>Total Applications</u>		<u>Accepted</u>		<u>Rejected</u>		<u>Percent Rejected</u>	
		<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>	<u>W</u>	<u>N</u>
March, 1965	W	0		0		0		0	
	N		2*		1		1		50.0
Total**	W	119		114		5		4.2	
	N		112		34		78		69.6

* In addition, the application of Franklin R. Williams, a Negro, was submitted on March 1, 1965. It had not been acted on as yet according to the notebook maintained by Registrar Keahey.

** These totals have been obtained by a count of the application forms filed with the Board and photographed by the plaintiff through February 1, 1965. The statistics for February 15 and March 1 are from the notebook of Mrs. Keahey.

The defendant registrars have, since the original trial of this case in 1963, imposed new and more onerous registration tests. 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. In September 1964 the Board began to use a revised set of tests. These revised tests require applicants to answer four questions on government, to answer four questions based on written excerpts from the Constitution, and to write from dictation one or more excerpts from the Constitution. Although some of the testimony of the defendants was contradictory, it appears that applicants were required to obtain a passing score of 50 - 75% on the test questions. It is clear that both the February and September tests are more difficult than any tests previously required of voters in Choctaw County. The use of them thus violates both the Fifteenth Amendment and Title I of the Civil Rights Act of 1964. In so far as these tests involve elements of oral reading or oral dictation, they also violate section 101(a)(2)(c) of the Civil Rights Act of 1964 which requires that all literacy tests must 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. In view of the decisions in cases such as U. S. v. Duke, 332 F.2d 759 (C.A.5 1964), and in view of the requirements of Section 101(a)(2)(A) of the Civil Rights Act of 1964, this relief is appropriate.

Other practices of the defendant registrars are also in violation of federal law and this Court's injunction. White applicants have been afforded assistance in completing their questionnaires; Negro applicants have been denied such assistance.

Negro applicants have been rejected in part on account of technical errors or omissions in completing Part II of the application form. The defendants have not mailed out rejection notices in every case; and the rejection notices have not contained specific reasons for the rejections. In addition, the defendants have introduced a rule that rejected applicants must wait 90 days before they may make a new application, even though no backlog of applicants has existed.

The Negro applicants listed in Appendix A attached hereto, all of whom are qualified to vote as shown by their applications, were denied registration to vote in Choctaw County since the date of this Court's injunction.

Based upon the foregoing, plaintiff respectfully requests this Court to enter further orders in this case along the following lines:

The Defendant Registrars of Choctaw County, Alabama, their agents, employees and successors in office are restrained and enjoined as follows:

- (1) 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 answers in Part II of the application form now in use. In judging literacy, the Board is ordered not to reject for poor handwriting or misspelling if the answers to the questions demonstrate the applicant's ability to read and understand the questions.

- (2) 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.
- (3) From making any changes, beyond those herein ordered, in the procedures or requirements for voter registration in Choctaw County, unless such changes have been first filed with and approved by this Court.
- (4) In order that the referee provisions of the 1960 Civil Rights Act may be implemented in the event the Board does not comply with this order, to use the following form of notice of rejection in place of the notice of rejection currently used by the Board of Registrars of Choctaw County:

BOARD OF REGISTRARS
CHOCTAW COUNTY
BUTLER, ALABAMA

This is to notify you _____

Age _____

Address _____

your application for registration dated _____, 19 ____
has been rejected for the reasons below:

Conviction _____
Illiteracy based on your answers to the following questions on
Part II: _____

You may reapply to the Board after 60 days from the date of your last application. However, you have the right, if you so desire, to apply to the United States District Court for the Southern District of Alabama under the provisions of Section 42 U.S.C. 1971(e). If you elect to apply to the Federal Court, you may, if you wish, use this form to do so. Simply fill in the answers to the questions below, sign your name, and mail this form to the Clerk of the United States District Court, 213 Federal Building, Mobile, Alabama.

1. Your name: _____
2. Your address: _____
3. Your Race: _____
4. Have you tried to register to vote in your County?

_____ Yes

_____ No

5. When did you try to register to vote in your County?
Date: _____
6. Did you fill out a registration form?

_____ Yes

_____ No

7. Did you get registered?

_____ Yes

_____ No

8. If you did not fill out a registration form, give the reasons:

Signed:

Date: _____

Dated this _____ day of _____, 19__

Board Member, Chairman

Board Member

Board Member

- (5) From requiring rejected applicants to wait more than 60 days before re-applying for registration.
- (6) From failing or refusing to receive and process expeditiously applications for registration to vote.
- (7) To produce for inspection and copying or photographing by the plaintiff all forms of application for registration to vote, registration books, notices of acceptance and rejection, correspondence and all related papers and documents from March 15, 1965 to the present time.
- (8) To commence, during the second week of the month following this order, to make available for inspection and copying or photographing at the office of the Board of Registrars of Choctaw County, Alabama, during business hours, all forms of application and other documents reflecting the processing, registering or rejecting of applicants during the preceding month. This order shall remain in effect until further order of the Court.
- (9) To submit to this Court on or before the fourth Monday of each month beginning on the month following this order, a report indicating the name and race of each person registered during that month, the dates applications were received, the action taken by the Board and, in the case of rejected application, the specific reason or reasons for rejection. No application shall be allowed to remain in a pending status.

- (10) To place upon the current and permanent registration rolls of Choctaw County, Alabama, and any official copies thereof, the names of the Negro citizens listed by this Court in the appendix which is attached to this decree and made a part hereof, unless within a fifteen-day period the defendants show to this Court good cause, such as death, subsequent disqualification, or subsequent registration, why any of the listed persons should not be placed upon the said registration rolls.
- (11) Within fifteen days from the date of this decree each person listed in said appendix shall be notified that his name has been placed on the permanent voter registration rolls of Choctaw County, Alabama, by mailing to such person an appropriate certificate of registration entitling him to vote. The defendants shall file with the Clerk of this Court within twenty days from the date of this decree a written report reflecting their compliance with this paragraph of this decree.

The Court should also 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).

Respectfully submitted,

JOHN DOAR, Acting
Assistant Attorney General
DAVID L. NORMAN

DAVID H. MARLIN
Attorney
Department of Justice

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing brief 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:

Honorable Richmond Flowers
Attorney General
State of Alabama
Montgomery, Alabama 36101

Frank Mizell, Esq.
First National Bank Building
Montgomery, Alabama 36101

Dated: March 23, 1965

DAVID H. MARLIN, Attorney
Department of Justice
Washington, D. C. 20530

Appendix A

LIST OF QUALIFIED NEGROES REJECTED BY THE
BOARD OF REGISTRARS SINCE APRIL 13, 1964

<u>Name and Address</u>	<u>Education</u>	<u>Dates of Application</u>	<u>Exhibit No.</u>
Ash, Bernice Box 56, Bolinger	8th Grade	5-20-64	4062
Barner, Lillie Box 15, Cromwell	16th	1-18-65	4112
Barnett, Euril K. Rt. 1, Box 91D, Butler	8th	9-21-64	4096
Bell, Avery Rt. 2, Box 79 Waynesboro, Miss.	3rd	2-1-65	4119
Butler, Lee Box 167, Lisman	16th	1-18-65	4113
Carlisle, Catherine Riderwood, Alabama	12th	10-19-64	4101
Chaney, Booker T. Pennington, Alabama	7th	7-9-64	4088
Chaney, Leslie G. Box 252, Butler	6th	3-3-64 4-6-64 4-20-64	4043 4046 4051
Chaney, Rosie Lee Box 52, Butler	5th	3-3-64 3-20-64 4-6-64	4029 4045 4047
Cottrell, Daisy Pennington, Alabama	12th	4-20-64 5-20-64	4052 4063
Cottrell, Susie L. Pennington, Ala.	6th	4-20-64 5-21-64	4053 4072
Curry, Amanda Yantley	6th	4-20-64 7-6-64 9-14-64 1-12-65	4054 4079 4094 4109
Dixon, Eva Lee Choctaw, Alabama	7th	5-20-64	4064
Dixon, Jessie H. Choctaw, Alabama	5th	4-20-64	4055

<u>Name and Adress</u>	<u>Education</u>	<u>Dates of Application</u>	<u>Exhibit No.</u>
Dubose,, Bernice Route 1, Yantley	6th Grade	3-16-64 4-6-64 2-1-65	4035 4048 4120
Dubose,, Willie P. Route 1, Box 91 Butler	7th	4-21-64 6-15-64	4061 4078
Godfrey, Helen Box 58, Silas	8th	4-20-64	4056
Holcombe, Eva Cullomburg, Alabama	6th	10-19-64	4102
Horn, Ella P. Pushmataha, Alabama	9th	5-20-64 5-20-64	4065 4066
Jackson, Lucie Mae Route 1, Box 156 Yantley	7th	1-13-65	4110
Johnson, Norman Route 1, Silas	6th	7-6-64	4080
Johnson, Sallie Route 1, Silas	6th	5-20-64 7-20-64	4067 4091
Jones, Willie Mt. Sterling, Alabama	6th	4-20-64 5-21-64	4057 4073
Keeton, Viola Lisman, Alabama	6th	1-18-65	4115
Lewis, Daisy Cullomburg, Alabama	11th	7-7-64	4086
McGrew, A. C. Route 1, Silas	7th	7-6-64	4081
May, Emma Route 1, Box 93 Ward	6th	5-20-64 7-20-64 11-16-64	4068 4092 4105
Miller, Willie Mae Butler	6th	5-20-64	4069
Mitchell, Pearlle Lee Route 2, Box 28 Butler	12th	10-19-64	4104
Mosley, Oddie C. P. O. Box 271, Butler	16th	1-18-65	4116
Parker, Rhoda L. Route 1, Box 70, Ward	16th	10-19-64	4105

<u>Name and Address</u>	<u>Education</u>	<u>Dates of Application</u>	<u>Exhibit No.</u>
Portis, Marie Route 1, Box 61 Yantley	12th Grade	1-7-65 2-1-65	4108
Rowe, Viola R. Halsell, Alabama	8th	9-14-64	4095
Ruffin, Fred D. Route 1, Box 31 Yantley	10th	7-10-64 10-5-64 1-18-65	4090 4100 4117
Ruffin, John L. Pushmataha, Alabama	10th	5-21-64	4074
Roberts, Otis P. O. Box 171 Lisman	11th	6-8-64 2-1-65	4076
Taylor, Jimmie Route 1, Box 146B Yantley	5th	2-17-64	4028
Taylor, Minnie Bell Riderwood, Alabama	16th	1-18-65	4118
Townsend, Lillie Yantley, Alabama	5th	5-20-64 7-6-64 1-13-65	4070 4084 4111
Wallace, Curvin Pushmataha, Alabama	5th	9-24-64	4097
Wallace, Peter Route 1, Box 71 Butler	12th	2-1-65	4121
Williams, Henry Route 1, Box 18 Butler	12th	4-20-64 5-20-64 6-8-64	4059 4071 4077
Yarbrough, Emma Route 1, Box 67 Ward	7th	5-20-64 7-20-64	4060 4093