

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

UNITED STATES OF AMERICA,)	
)	
Plaintiff,)	
)	
vs.)	CIVIL ACTION NO. 2829
)	
C. E. FORD, RAYMOND F. LEE,)	
KATIE KEAHEY, as Registrars)	ORDER
of Voters of Choctaw County,)	
Alabama; and STATE OF ALABAMA,)	
)	
Defendants.)	

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.

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 Title 42 U.S.C., Section 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. Rejecting applicants for lack of good character, not evidenced by convictions for crimes specified in the Constitution or laws of Alabama, without giving the applicant notice and an opportunity for a hearing.

d. Failing to pass on each application for registration within a reasonable time.

e. 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, 1965, is undisputed. Between April 20, 1964, and March 1, 1965, 114 white persons of the 119 who applied were accepted, while 34 of the 112 Negroes were accepted as registered voters.

The defendant registrars have, since the original trial of this case in 1963, imposed new and 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. The February and September tests are both more difficult than any tests previously required of voters in Choctaw 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."

Several practices of the defendant registrars are in violation of 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.

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 Choctaw County, Alabama, are hereby restrained and enjoined:

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 writing in filling out Part II of the application form now in use.

2. From denying registration to Negro applicants on the ground 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. From requiring rejected applicants to wait more than 60 days before re-applying for registration.

5. From failing or refusing to receive and process expeditiously applications for registration to vote.

6. To expedite the registration of voters in Choctaw County by receiving and processing at least 100 applications on each registration day, provided that number of persons present themselves for registration.

7. To provide adequate personnel and facilities for the registration of voters so that at least eight applicants can apply for registration simultaneously.

8. To process each application for registration and to mail notification of acceptance or rejection to each applicant within two weeks of the date of application.

9. To observe the following procedures for the receipt of applications for registration to vote in Choctaw 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 issued successive numbers in the order in which they appear and shall be permitted to apply in that order without having to wait in line.

(c) 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.

(d) At the end of each registration day, the defendant registrars shall post in a conspicuous place in the courthouse and on the door of their office the date of the next registration day, the numbers if any that were called for the first time that day but were not answered, and the first number which will be called for the first time on the next registration day.

10. To make available to the plaintiff during the fourth week of every month, commencing with the week of June 28, 1965, for inspection and copying or photographing at the offices of the Board of Registrars of Choctaw County, Alabama, during business hours, all

forms of application and other documents reflecting the processing, registering or rejection of applicants during the preceding month. This order shall remain in effect until further order of the Court.

11. 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 date.

12. To submit to the Court on or before the fourth Monday of each month, beginning in the month following the date of 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.

In order that the referee provisions of the 1960 Civil Rights Act may be implemented, and rejected Negro applicants may apply to this Court for registration under the above standards, the Court further ORDERS and DIRECTS:

1. In the event the defendants do not, except for good cause shown, by the end of October 1965, receive and process all of the applications from persons who have obtained priority numbers prior to October 15, 1965, and who have not failed twice to present themselves for registration when their numbers were called, this Court will deem that all such persons, not processed, have been denied the opportunity to register within the meaning of Title 42 U.S.C., Section 1971(e), and will instruct the voter referee to receive and process applications submitted by them.

2. In mailing to all rejected applicants their notice of rejection, the defendant Board of Registrars, is to use the following form of notice of rejection, and to retain a copy of each such notice of rejection that it mails:

BOARD OF REGISTRARS
CHOCTAW COUNTY
BUTLER, ALABAMA

This is to notify you _____

Age _____

Address _____

your application for registration 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 1971(e) of Title 42 U.S.C. 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

_____ 1965

Board Member, Chairman

Board Member

Although the defendants have not fully complied with the Court's decree of April 13, 1964, the Court does not feel inclined at this time to hold them in civil contempt. The Court is sure that any failure on the part of the defendants was through inadvertance, and not purposeful. However, the Court wishes to make clear that it will not tolerate any disobedience to its orders. This order should serve as an admonishment to the defendants that its terms are to be complied with to the letter.

Dated this the 18th day of June 1965.

~~DANIEL H. THOMAS~~
United States District Judge

U. S. DISTRICT COURT
SOU. DIST. ALA.
FILED AND ENTERED THIS THE
18 DAY OF June,
1965, MINUTE ENTRY
NO. 18664
WILLIAM J. O'CONNOR, CLERK
BY W. J. O'Connor
DEPUTY CLERK