

UNITED STATES OF AMERICA,
Plaintiff
v.
MAR LUCY, REGISTRAR OF VOTERS OF
QUACHITA PARISH, LOUISIANA, et al
Defendants

PLAINTIFF'S MEMORANDUM IN
OPPOSITION TO DEFENDANT
LUCKY'S MOTION FOR SUMMARY
JUDGMENT.

HAR LUCKY, REGISTRAR OF VOTERS OF
QUACHITA PARISH, LOUISIANA, et al
Defendants

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The Complaint alleges in detail the significant history of voter registration from 1953 when Mrs. Lucky took office. During this period, Negro registration rose to about 8,500 in January 1956 compared to about 24,000 white registrations. As the result of a series of voter purges, some of which the defendant Citizens Council participated in, Negro registration had dropped to 725 voters by

April 1961 while white registration remained virtually the same. In addition to the claim that these purges were conducted for the purpose and with the effect of depriving Negro voters, on account of their race, of the right to vote, the Complaint also alleges that starting in 1956 Mrs. Lucky applied different and more stringent standards to Negroes than to white persons in the administration of various aspects of the voter registration process. These aspects were described specifically, as including the following:

(1) The requirement that each applicant for registration be able to establish his identity.

(2) The requirement that each applicant be able to read and interpret a provision of the Constitution.

(3) The requirement that each applicant fill out his own application card without assistance.

(4) The evaluation of applications and the determination as to whether each applicant is qualified.

(5) The evaluation of the qualifications and the status of registrants and the determination as to whether registrants are entitled to remain on the registration rolls.

The defendant Lucky and the defendant State joined in their answers. They deny the principal allegations of the Complaint generally and then describe their own version of the purges, the rejections of applicants since 1956, and the inspection of the parish voter registration records by the plaintiff. Except for formal changes and the recitation of recent events, the principal affidavit in support of this motion for summary judgment is identical with the Answer.

2. The Motion for Summary Judgment

In support of her motion for summary judgment under Rule 36(b), F.R.C.P., Mrs. Lucky has attached three affidavits - two made by herself and one by a former deputy registrar. The affidavits of Mrs. Lucky form the basis of the motion; the deputy's affidavit is cumulative.

Mrs. Lucky states in her affidavit that she became registrar on January 2, 1933; that prior to 1936 many persons became registered to vote in Ouachita Parish who could not and did not meet the legal qualifications; that during the latter part of January 1936 she began a systematic check of each registrant beginning in an orderly manner with Ward 1 with no regard to race and commenced to clean up the voting rolls; that during March and April 1936 a number of citizens inspected the voter registration records; that she resented their intrusion; that she acquiesced to it as required by Louisiana law; that she checked each challenged voter's card prior to sending out notices for removal from the rolls and found that all had serious defects in their qualifications except for 103 which were discovered just recently and which will be restored to the rolls if she finds them qualified and still living; that after the local citizens ceased their challenges she continued her efforts as begun in January 1936 and completed the notices and advertisements during June 1937; that from these efforts 5,348 Negroes and 10,542 white persons were removed from the rolls of Ouachita Parish; that from 1936 through 1961 she has rejected as not being qualified 279 Negroes and 421

white persons; that the rejected applications are retained in her office and the reasons for such rejections are recorded; that prior to April 1956 she removed 634 Negroes and 225 white persons from the rolls; and that the plaintiff has been furnished all of her records for copying and has been given other data.

B. ARGUMENT

A motion for summary judgment must be measured by the standards set out in Rule 56(c), F.R.C.P.:

The judgment sought shall be rendered forthwith if the pleadings, depositions, and admission on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law.

When acting under Rule 56, the Court must take as true all allegations of the opposing party (plaintiff here) which are not incredible on their face and are not conclusions of law, Whitaker v. Coleman, 115 F.2d 325 (3th Cir. 1940); 3 Moore, Federal Practice 2209 (2nd Ed.). The moving party has the burden of negating the existence of any material issue of fact.

The amendment of Rule 56(c) recently adopted by the Supreme Court would not impose any greater burden on the plaintiff.^{1/} The amendment requires the following:

^{1/} The amendments to the rules of Civil Procedure adopted by the Supreme Court on January 21, 1963, may be found in 211 F. Supp. No. 3 ante p. 377.

When a motion for summary judgment is made and supported as provided in this rule, an adverse party may not rest upon the mere allegations or denials of his pleading, but his response, by affidavit or as otherwise provided in this rule, must set forth specific facts showing that there is a genuine issue for trial. If he does not so respond, summary judgment, if appropriate, shall be entered against him.

The Advisory Committee's Note explains that the amendment is designed to counter a tendency in the Third Circuit to permit a party opposing a motion for summary judgment to rest on his pleadings even when the moving party by affidavit demonstrates that there is no genuine issue for trial. The Committee adds that no change in the ordinary standards applicable to the summary judgment motion is intended, and comments:

where evidentiary matter in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no opposing evidentiary matter is present.^{2/}

The defendants' motion for summary judgment should be denied because the supporting affidavits fail to touch upon many of the substantive allegations of the Complaint.

^{2/} See Advisory Committee's Note on Rule 56, Amendments to Rules of Civil Procedure, p. 62, found at 112 F. Supp. No. 1, ante p. 377.

fail to controvert these allegations which they do touch upon, and are not entirely correct in the facts which they recite.

1. Defendant's affidavits fail to show that Negroes were not discriminatorily removed from the voter registration rolls of Ouachita Parish in 1930.

The Complaint alleges that over 3,700 of the approximately 5,500 Negro voters in Ouachita Parish were challenged by the defendant Citizens Council and that the defendant registrar acted upon these challenges knowing that they were directed against Negro voters but not against white voters similarly situated. It also alleges that the registrar mailed to the challenged Negroes citations requiring them to appear at her office within ten days to prove their qualifications and that she sent out these citations knowing that in the usual course of the business of her office she would be unable to receive proof of their qualifications within the ten-day period. It is further alleged that the defendant registrar failed and refused to accept such offers of proof on behalf of more than 30 of these challenged Negro registrants per day, that a majority of them were denied entrance to the registrar's office and denied an opportunity to establish their qualifications and that their names were stricken from the rolls of registered voters by the defendant registrar for failure to respond to the citations of challenge. The Complaint also alleges that with respect to those Negro registrants who were admitted to the registrar's office the defendant registrar refused to accept in support of their qualifications the affidavits of bona fide registered voters of Ouachita Parish who were

in all respects qualified under Louisiana law to swear to the qualifications of challenged registrants. Over 2,700 Negroes were removed from the voter registration rolls of Ouachita Parish by the defendant registrar as a result of the Citizens Council's challenges.

In answer to all this, Mrs. Lucky says that prior to the Citizens Council's challenge she began a systematic check of the voter rolls of Ouachita Parish without regard to race and that after the Citizens Council's challenge she continued her efforts to clean up the rolls, which she completed about June 1957. She says that as a result, 5,548 Negroes and 10,543 white people were removed from the rolls. Mrs. Lucky does not say whether these figures include the persons removed from the rolls as a result of the Citizens Council's challenges. They apparently do since, according to the Complaint, only about 5,500 Negroes were registered to vote in Ouachita Parish in January 1956.

Assuming Mrs. Lucky's statement to be true, many questions of fact remain to be decided by this Court including the following:

(a) How many persons of each race were challenged by the Citizens Council?

(b) What were the criteria upon which the Citizens Council's challenges were based?

(c) How many persons of each race were challenged by Mrs. Lucky?

(d) What were the criteria upon which Mrs. Lucky's challenges were based?

(e) Were Mrs. Lucky's criteria the same as the Council's?

(f) Did either Mrs. Lucky or the Citizens Council use the same criteria for both Negroes and whites?

(g) How many persons of each race were not challenged by either the Citizens Council or Mrs. Lucky?

(h) Were any of them vulnerable to challenge by any of the standards applied by either Mrs. Lucky or the Citizens Council?

(i) What did the people challenged by the Citizens Council have to do to get back on the registration rolls?

(j) What did the people challenged by Mrs. Lucky have to do to get back on the registration rolls?

(k) Did all persons challenged have the same opportunity to get back on the registration rolls before an election took place?

(l) How many persons of each race were challenged more than one time?

2. Defendant's affidavits fail to controvert that different and more stringent standards have been applied to Negro applicants than have been applied to white applicants for registration to vote in Ouachita Parish since 1936.

The Complaint alleges that since 1936 the defendant registrar has applied different and more stringent standards to Negroes than to white persons in the administration of various aspects of the registration process including identification, the interpretation test, the application card test, and the determination of whether registrants should remain on the voter rolls.

With respect to this period Mrs. Lucky only says that she has rejected the applications of 878 Negroes and 421

white persons as not being qualified. Assuming her statement to be correct, there remains to be decided by this Court the following questions of fact:

(a) What were Negro applicants for registration required to do to identify themselves?

(b) What were white applicants for registration required to do to identify themselves?

(c) Was the requirement the same for Negroes and white persons?

(d) Were Negroes required to interpret a section of the State or Federal Constitution?

(e) Were white persons required to interpret a section of the State or Federal Constitution?

(f) Was the interpretation test administered in the same manner to both Negroes and white persons?

(g) Was the interpretation test graded the same for both Negroes and white persons?

(h) Was the application form used as a test for Negroes?

(i) Was the application form used as a test for white persons?

(j) Was the application form test administered in the same way to both Negroes and white persons?

(k) Was the application form test graded the same way for both Negroes and white persons?

(l) Did the registrar scrutinize the registration status of Negro voters to determine whether or not they should be removed from the voter registration rolls?

(a) Did the registrar scrutinize the registration status of white voters to determine whether or not they should be removed from the voter registration rolls?

(a) Did the registrar subject the registration status of Negro and white voters to the same degree of scrutiny?

3. Defendant's affidavits are misleading with respect to the facts they purport to relate.

The single fact alleged by Mrs. Lucky which most tends to support her position that the 1956 purges were not discriminatory is her statement that 10,543 white persons were removed from the rolls during 1956 and the first part of 1957. However, as is pointed out in the plaintiff's counter affidavit, the voter registration records of Ouachita Parish contain only 3,972 applications of white persons who were removed from the voter registration rolls of the Parish during this period. Of these, 655 were apparently removed for not voting. In addition, the records contain typewritten lists which show the names of another 1,726 white persons who were purportedly removed from the rolls during this period but whose application cards are no longer in existence. Six hundred and forty-six of these appear on a list which indicates that the reason for removal was failure to vote. Thus, according to the records, no more than 5,696 white persons were removed from the rolls between January 1956 and June 1957 and at least 1,200 of these were removed for failing to vote.

Furthermore, of the approximately 13,000 applications of white persons still registered in December 1960 who had become registered prior to the purges, over 5,000 of them or more than one-third had errors or omissions of the type for which Negroes were challenged and removed from the rolls. On the other hand, only 32 of the approximately 5,700 Negroes registered as of March 17, 1956, were still registered in December 1960 and 70 of these had been challenged by the Citizens Council in 1956 and only stayed on the voter rolls by getting three voters to vouch for them.

Applicants for registration to vote in Ouachita Parish were not tested prior to 1956. Thus, only about one-half the white voters have ever been subjected to any registration test at all, while virtually every Negro voter has been subjected to the higher standards imposed by Mrs. Lucky since January 1, 1956.

With respect to the period since the purge, the only fact given by Mrs. Lucky is that from 1956 through 1961 she has rejected 878 Negro applicants and 421 white applicants. She does not say how many persons of each race applied. According to plaintiff's counter affidavit, the voter registration records show that between the 1956 purge and March 31, 1961, Mrs. Lucky accepted approximately 11,755 applications of white persons and 928 applications of Negroes. During this same period she rejected 1,028 applications of Negroes or about 324. On the other hand, she rejected only 461 applications of white persons, so

that she passed whites about 96% of the time.

In United States v. Wilder (Civil Action No. 8695, W.D. La.), the Court held that:

The fact that the defendant Registrar has over a six-year period rejected 64% of the applications of Negroes and has accepted 98% of the applications of white persons creates the presumption that Negro citizens have been deprived of the right to vote without distinction of race or color; and in the absence of proof by the defendants that the rejected Negroes were not qualified under the standards and requirements applied to the accepted white persons, discrimination must be found.

Mrs. Lucky's affidavit does not touch upon any of the specific aspects of the voter registration process in which it is alleged she has been discriminating. The counter affidavit of the plaintiff, however, sets forth specific facts which support those allegations. According to that affidavit the voter registration records include Affidavits of Identity for Negroes but not for white applicants. This would indicate that Negroes, but not white persons, were required to have vouchers.

Furthermore, since no voter vouched more than twice over a two year period, it would appear that they were not permitted to vouch more often. With fewer than 1,000 Negroes registered at the time, such requirements could be a significant deterrent to Negro registration, especially

in precincts where there were few Negroes registered.

The plaintiff's counter affidavit also demonstrates that highly qualified Negroes have been rejected for registration because the registrar was not satisfied with their interpretations of constitutional passages and because of technical "errors" on their application cards, while at the same time nearly all white applicants passed even with the same "errors" on their applications.

It has also been shown that the registrar has subjected the applications of Negro voters to a greater degree of scrutiny than the applications of white voters in determining whether there was a basis for their removal from the rolls.

All of the facts presented by the plaintiff's evidence racially discriminatory practices which have been engaged in by the defendants. Mrs. Lucky, in her affidavit, does not even deny generally that she has been discriminating against Negroes in conducting the registration of voters in Ouachita Parish.

C. SUMMARY

This is an extremely complex case. A great variety of practices are alleged to have occurred over a six-year period. It is hardly a proper case for summary judgment. The affidavit in support of defendant's motion recites only a few facts which, if true, would be insufficient to support a judgment because they do not controvert many of the material allegations of the Complaint.

Moreover, by counter affidavit the plaintiff has disputed some of the facts upon which the defendant relies. Since there are numerous issues of material fact that are in dispute, the plaintiff respectfully requests that defendant Lucky's Motion for Summary Judgment be denied.

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