

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

FILED

DEC 10 1965

K. C. DOBSON
Clerk

By
Deputy Clerk

UNITED STATES OF AMERICA,

Plaintiff,

vs.

THE STATE OF ALABAMA and
PERRY O. HOOPER, Judge of
Probate of Montgomery County,
Alabama,

Defendants.

CIVIL ACTION NO. 2255-N

ORDER ON PRETRIAL HEARING

This cause coming on to be heard on a pretrial hearing on December 9, 1965, and all parties being represented by counsel, the following action was thereupon taken:

1. The following pleadings were allowed:

Complaint and answer of each defendant thereto. It is understood that Judge Perry O. Hooper as Judge of Probate of Montgomery County, Alabama, is a defendant in this cause in his capacity as Judge of Probate of Montgomery County, Alabama, as an agent of the State of Alabama, and in a representative capacity as Judge of Probate of one of the counties of the State of Alabama.

2. It was agreed by all the parties, without waiving any of the objections or defenses raised in the pleadings heretofore filed, that the following are the issues in controversy in this cause:

AN ISSUE OF LAW as to whether the requirements of the Constitution and the statutes of the State of Alabama for the payment of a poll tax as a prerequisite to voting in Alabama violate the Fourteenth and Fifteenth Amendments to the Constitution of the United States and Section 1971(a) of Title 42 of the United States Code.

AN ISSUE OF FACT as to whether the purpose and effect of the requirements of and the administration of the poll tax in the State of Alabama as a precondition to voting violate the Fourteenth and Fifteenth Amendments to the Constitution of the United States and Section 1971(a) of Title 42 of the United States Code.

As to the issue of law, it is stipulated and agreed that said issue be submitted to the Court at 10 a.m., December 20, 1965, upon the pleadings, the briefs of the parties, which are to be filed with the Court on or before December 17, 1965, as to said issue, and the oral arguments to be presented commencing at 10 a.m., December 20, 1965, in the United States District Courtroom, Montgomery, Alabama.

As to the issue of fact as above stated, it is stipulated and agreed that if the United States prevails upon said issue of law, no further proceeding in this case will be necessary or appropriate; however, if the United States does not prevail upon said issue of law, the case is to be finally submitted to the Court upon the issue of fact as above stated, at a time and place to be subsequently specified and designated by the Court, and said submission is to be upon the pleadings as herein outlined and the proof to be offered by the parties.

In the event the cause proceeds to the issue of fact and a submission is made thereon, it is understood and agreed between the parties that the theories, arguments and proof in support of the position of the United States will generally consist of the following:

(1) Journals of the debates and contemporaneous newspaper articles, all in connection with the proposal for and the adoption of the Alabama Constitution of 1901.

(2) Evidence as to the practice and policy of the State of Alabama, through its various agencies and officials, designed to promulgate and perpetuate a racially segregated society and to do this through statutory enactments, judicial decisions, and custom and usage throughout the State of Alabama.

(3) Evidence concerning the discretion vested in the officials of the State of Alabama as to the manner of administering the Alabama poll tax requirements. The proof to be offered in support of this theory will be by depositions and other designated records.

(4) The practice and effect of the State of Alabama having denied equal educational and employment opportunities to Negroes who are now of the age where a poll tax payment is required under Alabama law. The evidence in support of this contention will consist generally of (a) reports

of the Alabama Department of Education, (b) United States census statistics, (c) State of Alabama Department of Personnel records, and (d) Alabama poll tax records.

(5) That the Alabama poll tax as administered is not reasonably related to the interest of the State of Alabama in raising revenue. The proof generally in support of this contention will consist of (a) reports of the Alabama comptroller, and (b) other State records reflecting the cost of administering the poll tax as opposed to the revenue derived therefrom.

(6) That the Alabama poll tax as required and as administered is not a reasonable means of ensuring an interested electorate. The evidence generally to be relied upon in connection with this theory will consist of State statutes and other evidence heretofore referred to relating to the manner in which the Alabama poll tax law is administered, and

(7) That the Alabama poll tax as required and administered deters interested citizens of low income qualified to vote from being eligible to exercise their franchise. The evidence upon this theory will consist generally of social security records and census statistics.

To each of the contentions and theories as above outlined, the defendants, separately and severally and without waiving any objections to the jurisdiction of this Court or other defenses heretofore raised, plead the general issue.

In the event this cause proceeds to a trial upon the issue of fact as above set out, the United States is ORDERED and DIRECTED to furnish counsel for the defendants on or before January 17, 1966, with sufficient identifying information so as to enable said counsel for the defendants to ascertain the official records and portions thereof which are to be relied upon and offered in evidence by the United States. The defendants are ORDERED and DIRECTED to furnish counsel for the United States on or before February 1, 1966, such identifying information as it relates to their defenses

It is further ORDERED:

(1) That the depositions taken in this cause will be submitted and received in evidence, subject to the right of either of the parties to make timely objections as to relevancy and materiality, and subject to objections noted at the time of the taking of the testimony. In this

connection, the United States on or before January 17, 1966, is to furnish opposing counsel and the Court with fair summarizations of the deposition evidence relied upon. The counsel for the defendants on or before February 1, 1966, are to furnish opposing counsel and the Court with fair summarizations of the deposition evidence relied upon by the defendants.

(2) That testimony from trials of other actions brought by the United States against public officials in Alabama under Section 1971(a) of Title 42 of the United States Code will be submitted and received in evidence, subject to the right of either of the parties to make timely objections as to relevancy and materiality.

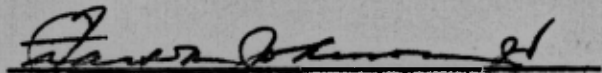
(3) That information and statistics published in official reports of Federal and State agencies may be cited and referred to without introducing such reports in evidence.

(4) That official matters and reports of State and Federal legislative debates and committee hearings may be cited and referred to without introducing such reports into evidence, and

(5) That machine copies of documents and official records, such as registration books, poll tax lists and receipts, educational records and employment records, may be introduced, subject to appropriate objections.

It is further ORDERED by the Court that all of the above-named allowances and agreements be and the same are hereby binding upon all parties in the above-styled cause unless this order be hereafter modified by order of the Court.

Done, this the 10th day of December, 1965.


UNITED STATES DISTRICT JUDGE