

No. 21,235

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

UNITED STATES OF AMERICA, APPELLANT

v.

KATHERINE WARD, REGISTRAR OF VOTERS OF MADISON
PARISH, LOUISIANA; AND THE STATE OF LOUISIANA,
APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

PETITION FOR REHEARING
AND BRIEF IN SUPPORT THEREOF

JOHN DOAR
Assistant Attorney General,

DAVID RUBIN
GERALD P. CHOPPIN
PETER SMITH
- Attorneys,
Department of Justice,
Washington, D.C. 20530

IN THE UNITED STATES COURT OF APPEALS

FOR THE FIFTH CIRCUIT

No. 21235

UNITED STATES OF AMERICA, APPELLANT

v.

KATHERINE WARD, REGISTRAR OF VOTERS OF MADISON
PARISH, LOUISIANA; AND THE STATE OF LOUISIANA,
APPELLEES

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF LOUISIANA

PETITION FOR REHEARING
AND BRIEF IN SUPPORT THEREOF

The United States petitions this Court for
a rehearing, for the reasons hereinafter set forth.

1. On August 6, 1965, the President approved the Voting Rights Act of 1965 (Public Law 89-110). Section 4(a) of that Act provides for the suspension of the use of certain tests and devices as voter qualifications. According to Section 4(b) the suspension applies in any State which the Attorney General of the United States determines maintained any test or device on November 1, 1964, and with respect to which the Director of the Census determines that less than 50 percent of the residents of voting age were registered on November 1, 1964, or voted in the presidential election of November 1964. The determinations by the Attorney General and the Director of the Census which make the provisions of section 4 applicable to the State of Louisiana were made and became effective upon publication in the Federal Register on August 7, 1965 (30 F.R. 9897).

2. The Voting Rights Act of 1965 was approved while this case was pending before this Court, six days before the Court's decision. Hence, the requirements of the Act should be taken into

account in determining the form of relief to be afforded. Since the Act was not considered by this Court, and since the provisions of the Act require additions to and modifications of the relief given in the decision of August 11, 1965, a rehearing is warranted under Rule 29 of the Rules of this Court.

3. In addition to reflecting the requirements of the Voting Rights Act of 1965, the decree of this Court should be modified in certain other respects to conform to prior decisions of this Circuit and for purposes of clarification, as more fully elaborated in the brief in support of this petition for rehearing.

Wherefore, it is respectfully submitted that a rehearing should be granted in this case.

JOHN DOAR,
Assistant Attorney General.

DAVID RUBIN,
GERALD P. CHOPPIN,
PETER SMITH,
Attorneys,
Department of Justice,
Washington, D.C. 20530

SEPTEMBER 1965

BRIEF IN SUPPORT OF THE
PETITION FOR REHEARING

This brief is submitted in support of the petition of the United States for a rehearing of this case pursuant to Rule 29 of the Rules of this Court.

1. The Voting Rights Act of 1965 was approved by the President on August 6, 1965. The opinion of the Court in this case, reversing the district court and remanding the cause, was rendered on August 11, 1965. The promptness with which the decision was rendered following the passage of the Act precluded the United States from bringing the changed circumstances and their implications to the Court's attention. Nonetheless, in determining the relief to be afforded, this Court was bound to apply the law in effect at the time its decision was rendered. United States v. Alabama, 362 U.S. 602 (1960); Ziffrin v. United States, 318 U.S. 73 (1942); Vandenbark v. Owens-Corning Glass, 311 U.S. 538 (1941). The Voting Rights Act of 1965 requires significant changes in the relief provided in the order of this Court issued on August 11, 1965.

Section 4 of the Act (79 Stat. 438) provides
in pertinent part:

(a) To assure that the right of citizens of the United States to vote is not denied or abridged on account of race or color, no citizen shall be denied the right to vote in any Federal, State, or local election because of his failure to comply with any test or device in any State with respect to which the determinations have been made under subsection (b) * * * unless the United States District Court for the District of Columbia in an action for a declaratory judgment brought by such State or subdivision against the United States has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color: Provided, That no such declaratory judgment shall issue with respect to any plaintiff for a period of five years after the entry of a final judgment of any court of the United States, other than the denial of a declaratory judgment under this section, whether entered prior to or after the enactment of this Act, determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere in the territory of such plaintiff.

* * *

(b) The provisions of subsection (a) shall apply in any State or in any political subdivision of a state which (1) the Attorney General determines maintained on November 1, 1964, any test or

device, and with respect to which (2) the Director of the Census determines that less than 50 per centum of the persons of voting age residing therein were registered on November 1, 1964, or that less than 50 per centum of such persons voted in the presidential election of November 1964.

A determination or certification of the Attorney General or of the Director of the Census under this section or under section 6 or section 13 shall not be reviewable in any court and shall be effective upon publication in the Federal Register.

(c) The phrase "test or device" shall mean any requirement that a person as a prerequisite for voting or registration for voting (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class.

On August 6, 1965, the Attorney General determined, in accordance with section 4(b) of the Act, that the State of Louisiana maintained, on November 1, 1964, one or more tests or devices as defined in section 4(c), and the Director of the Census determined that less than 50 percent of the

persons of voting age residing in the State of Louisiana voted in the presidential election of November 1964. These determinations were published in the Federal Register on August 7, 1965, and the Act thereby became effective in suspending the use of any test or device as a qualification for registration or voting in any election in the State of Louisiana.

2. In an appendix to its opinion in this case, this Court set forth the text of the decree which the district court is required to enter on remand. Section II. 2(d) of the decree provides that, in order to qualify for registration, an applicant must, inter alia, be "able to demonstrate a reasonable ability to read and write by reading and copying a portion of the preamble to the Constitution of the United States." Although this was an appropriate requirement under the "freezing" relief heretofore given by this Court, see e.g., United States v. Lynd, C.A. 5, No. 22477, June 16, 1965; United States v. Wilbur Ward, C.A. 5, No. 21717, May 25, 1965, the

Voting Rights Act now precludes the application of this requirement anywhere in the State of Louisiana or in Madison Parish. Specifically, section 4 of the Act suspends any Louisiana requirement that an applicant for voter registration "demonstrate the ability to read, write, understand, or interpret any matter"

3. The order should be changed to eliminate this requirement. In addition, the Court should conform the relief to the provisions of the new Act by instructing the district court to enjoin the State of Louisiana and the registrar of Madison Parish from applying, anywhere in Madison Parish, any "test or device" within the meaning of section 4 of the Voting Rights Act of 1964, i.e., any requirement that any applicant for voter registration "(1) demonstrate the ability to read, write, understand or interpret any matter, (2) demonstrate

any educational achievement or his knowledge of any particular subject, (3) possess good moral character,^{1/}

^{1/} Article VIII, Section 1(c) of the Louisiana Constitution provides that an elector must be of "good character." The section then provides that a person shall not be deemed of "good character" if, among other things, he has been convicted of any of a variety of misdemeanors, has borne or fathered an illegitimate child within five years prior to the time of registration, or has lived in common law marriage of the time of registration. These constitutional provisions are implemented by Title 18, Section 32, Louisiana Code, which prescribes the form of the application for registration. The application form contains questions paralleling the "good character" definition in Article VIII.

The legislative history of the Voting Rights Act of 1965 makes it clear that the Louisiana good character test is a "good moral character" test within the meaning of Section 4(c) of the Act, and is suspended by the Act as implemented. In a letter to Senator Javits, dated June 11, 1965, Attorney General Katzenbach stated (111 Cong. Rec. 14049 (Daily Edition, June 23, 1965)):

One of the tests or devices suspended by S. 1564 is any requirement that a person, as a prerequisite for voting or registration for voting, "possess good moral character." I think that it is without question that the Louisiana good character test, which I have described above, would be suspended by operation of S. 1564. S. 1564 is intended to prevent the denial of the right to vote for reasons of lack of good character, irrespective of whether the phrase "good moral character" is used in the law or whether the law, in substance, constitutes a good moral character requirement.

(continued on following page)

or (4) prove his qualifications by the voucher of registered voters or members of any other class." This relief should be operative until the State of Louisiana obtains a declaratory judgment in the District Court for the District of Columbia under Section 4 of the Voting Rights Act of 1965 that no such test or device has been used during the five years preceding the filing of the action for the purpose or with the effect of denying or abridging the right to vote on account of race or color, but in any event until the expiration of five years after entry of the final judgment of any court of the United States determining that denials or abridgments of the right to vote on account of race or color through the use of such tests or devices have occurred anywhere within the State of Louisiana.

1/ (continued from preceding page)

The Attorney General pointed out that although the bill

would suspend the good character provisions of Article VIII, Section 1(c) of the Louisiana Constitution, Louisiana would continue to be free to exclude from the ballot persons convicted of felonies. See Article VIII, Section 6, Louisiana Constitution (implemented by Title 18, Section 42, Louisiana Code) which excludes from the franchise persons "who have been convicted of any crime which may be punishable by imprisonment in the penitentiary, and not afterwards pardoned with express restoration of franchise."

See also Joint Views of Twelve Members of the Judiciary Committee, Sen. Report 162, Part 3, page 24.

4. In addition, the decree should preclude the State of Louisiana from employing in Madison Parish any voter qualification, prerequisite, standard, practice, or procedure other than qualifications, standards, practices, or procedures enacted prior to November 1, 1964, unless the State of Louisiana obtains a declaratory judgment pursuant to Section 5 of the Act that such qualification, standard, practice or procedure does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or until the qualification, standard, practice or procedure has been submitted to the Attorney General of the United States and he has not interposed an objection within sixty days after such submission.

5. Paragraph IL.4(d) of the final decree which this Court directed the district court to enter would require the appellee Ward to:

(d) Receive and process each applicant as expeditiously as possible to the extent that the physical facilities of the registration office permit but in no case less than applicants at one time and in no case refuse to process fewer than applicants at one time. The office of the registrar shall be open during regular business hours for registration from Monday through Friday of each week except on holidays

The Voting Rights Act was designed to afford Negroes -- long deprived of the right to vote -- the opportunity to register expeditiously. It is inconsistent with the purposes of the Act for unregistered persons who are qualified under the provisions of the Act, and who wish to register, to be denied the opportunity to do so before the next election -- whether or not the person resides in an area in which there is a federal examiner. In areas such as Madison Parish where Negroes have long been denied the franchise, Negro applicants may attempt to register in large numbers and the flow may not be evenly spaced.

The registrar should be required to make every reasonable effort to accommodate these applicants at the time they apply. Consequently, we submit that, in light of the new Act, this Court, in addition to requiring that the registrar process a minimum number of applicants, and process each applicant as expeditiously as possible, should require that the registrar take all reasonable steps to insure that, wherever possible, each applicant be given an opportunity to apply on the day he appears for registration.

6. Paragraph II. 2. of the decree which this Court directs the district court to enter on remand contains a provision requiring the appellees to register an applicant if he meets certain specified qualifications and is not disqualified by reason of a specified disqualification, i.e., conviction of a disqualifying crime. The age and residence qualifications specified in the decree are that the applicant be "a citizen and ... 21 years of age or older" and that he have "resided in the State, Parish, and Precinct the required periods." We believe that it would be appropriate to state specifically, as this Court has done in prior cases, see United States v. Wilbur Ward, No. 21717, C.A. 5, May 25, 1965; United States v. Lynd, No. 22477, C.A. 5, June 16, 1965, the cut-off date by which an applicant must be twenty-one and must have resided in the State, Parish and Precinct the required periods, and the length of such periods under state law.

Revised Statutes provides:

(1) He shall have been an actual bona fide resident of the state for one year, of the parish for six months, and of the municipality in municipal elections four months, and of the precinct in which he offers to register as a voter, three months next preceding any election (emphasis added).

The Louisiana legislature has recently amended L.S.A.-R.S. 18:32 to require "substantially the following [application] form" to be used by the State registrars (Act 165 of the Legislature of Louisiana, 1965):

Have you been a resident of this state for more than one year, of this parish for over six months, and lived at your present address for more than three months, immediately preceding this date. (Check one) Yes No

* * * * *

7. I am over twenty-one years of
age and the date of my birth is

(Month) (Day) (Year)

- 15 -

Although this new form contemplates that a person is not qualified unless at the date of registration he is over 21 years of age and has met the prescribed residence requirements, this new law is inoperative since it was passed after November 1, 1964. See section 5 of the Voting Rights Act of 1965 (P.L. 89-110, 79 Stat. 439). The new form notwithstanding, moreover, the legislature did not amend L.S.A.-R.S. 18:31 and thus actually did not affect the age and residence requirements.

7. As the Court stated in its opinion herein, "good administration suggests that the proposed decree be indicated by an appendix" so that "courts within this single circuit [can] achieve a relative uniformity without further delay." Slip Opinion, p. 18. We deem it appropriate, therefore, to set forth, as an appendix to this brief, a proposed decree which modifies the decree of this Court to reflect the requirements of the Voting Rights Act of 1965.

For the foregoing reasons, it is respectfully submitted that the petition for rehearing should be

granted and that the proposed judgment attached hereto as an appendix be substituted for the judgment of the Court.

JOHN DOAR,
Assistant Attorney General.

DAVID RUBIN,
GERALD P. CHOPPIN,
PETER SMITH,
Attorneys,
Department of Justice,
Washington, D.C.

SEPTEMBER 1965

APPENDIX

FINAL DECREE

I. This court finds that the defendants have engaged in acts and practices which have deprived Negro citizens of Madison Parish, Louisiana, of their rights, secured by 42 USCA §1971(a), to register to vote without distinction by reason of race, and that such deprivation has been pursuant to a pattern or practice of discrimination against Negro citizens in the registration processes in Madison Parish, Louisiana.

II. It is ordered, adjudged and decreed by the Court that the Defendant State of Louisiana and the Defendant Katherine Ward, Registrar of Voters of Madison Parish, Louisiana, their agents, officers, employees and successors in office be and each is hereby enjoined from engaging in any act or practice which involves or results in distinctions based on race or color between Negro citizens and other citizens in the registration for voting process in Madison Parish, Louisiana.

III. It is further ordered, adjudged, and decreed by the Court that the Defendant State of Louisiana and the Defendant Katherine Ward, Registrar of Voters of Madison Parish, Louisiana, their agents, officers, employees and successors in office be and each is hereby enjoined, for a period of five years after the entry of any final judgment of any court of the United States determining that denials or abridgments of the right to vote on account of race or color through the use of any "test or device" as defined in section 4(c) of the Voting Rights Act of 1965, Pub. Law 89-110, 89 Cong., 7 Stat. 437, 438-439, have occurred anywhere within the State of Louisiana, and in any event until the United States District Court for the District of Columbia has determined that no such test or device has been used during the five years preceding the filing of the action for the purpose of denying or abridging the right to vote on account of race or color, from

(a) requiring any applicant for voter registration in Madison Parish, as a precondition to such registration, to take or pass any test of literacy, knowledge, or understanding or to comply with any other test or device as defined in Section 4(c) of the Voting Rights Act of 1965, Pub. Law 89-110, 79 Stat. 438-439, i.e., any requirement (including the "good character" requirements specified in Article VIII, Section 1(c) of the Louisiana Constitution and Title 18, Section 32 of the Louisiana Code, except to the extent that these provisions permit disqualification for conviction of a felony) that he (1) demonstrate the ability to read, write, understand, or interpret any matter, (2) demonstrate any educational achievement or his knowledge of any particular subject, (3) possess good moral character, or (4) prove his qualifications by the voucher of registered voters or members of any other class, or (b) rejecting any applicant for voter registration in Madison Parish for failure to comply with any such requirement.

IV. It is further ordered, adjudged, and decreed by the Court that for the period specified in paragraph III, except to the extent that the State of Louisiana has obtained a declaratory judgment under Section 5 of the Voting Rights Act, 79 Stat. 439, that a qualification, prerequisite, standard, practice or procedure enacted subsequent to November 1, 1964 does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, or has submitted such qualification, prerequisite, standard, practice or procedure to the Attorney General of the United States and the Attorney General has not interposed an objection within sixty days after such submission, the Defendant State of Louisiana and the Defendant Katherine Ward, Registrar

of Voters of Madison Parish, Louisiana, their agents, officers, employees, and successors in office are enjoined from determining the qualifications of citizens in Madison Parish, Louisiana in any manner or by any procedure different from or more stringent than the following:

(a) He is a citizen and will have attained the age of 21 years prior to the next election;

(b) He has resided in the State one year, the Parish six months and the Precinct three months prior to the next election;

(c) He is not disqualified by reason of conviction of a disqualifying crime.

V. It is further ordered that Defendant Katherine Ward, her agents, employees, and successors, in conducting registration of voters in Madison Parish, Louisiana, are enjoined and ordered to:

(a) Afford each applicant for registration an opportunity to apply to register whether either the registrar or a deputy registrar is present;

(b) Accept from Negro applicants for registration reasonable proof of their identify, such as:

(1) Authentic licenses or permits issued by any governmental agency or authority, such as driving, hunting, or fishing licenses, library cards, or automobile registrations;

(2) Authentic military identification documents, such as selective service registration cards, discharge papers, or reserve unit identification cards;

(3) Authentic records of the possession or ownership of real property, such as rent receipts, deeds or contracts to purchase or lease, receipts for deposits on utilities, or homestead exemption certificates.

(c) Advise each applicant, when he or she applies, whether the applicant is accepted or rejected; if accepted, the applicant must be registered at that time; if rejected the applicant must be informed of the reason or reasons for his rejection and must be advised of his right to apply directly to this Court to be registered as provided in paragraph VI hereof.

(d) Receive and process each applicant as expeditiously as possible to the extent that the physical facilities of the registration office permit but in no case less than . . . applicants at one time; in no case refuse to process fewer than . . . applicants at one time, and take all reasonable steps to insure that, wherever possible, each applicant is processed on the day he appears for registration. The office of the registrar shall be open during regular business hours for registration from Monday through Friday of each week except on holidays.

VI. Any applicant for registration hereafter rejected or not given the opportunity to apply by the Defendant Katherine Ward, her agents, employees, or successors, may in accordance with 42 USCA §1971(e) apply to this court, or to a voting referee to be appointed by and in the discretion of this court, no

more than 20 days after receipt by the court of the first application, to have his qualifications determined. The court or such referee shall register all such applicants who meet the standards established in this order.

VII. It is further ordered that the Defendant Katherine Ward, her agents, employees, and successors in office shall file a written report with the clerk of this Court and shall mail a copy thereof to the Plaintiff's attorneys on or before the tenth day of each month. Said reports shall state the dates and places applications were received and the hours during which the Registrars were available to receive applications; and also shall contain the name and race of each applicant for registration from the previous monthly period, the date of the application, the action taken on the application, and if the applicant is rejected, the specific reason or reasons for rejecting the application. The first of such reports shall be submitted on the tenth day of the month following the date of this order.

VIII. The Defendant Katherine Ward, her deputies, agents, and successors in office shall, until further order of this Court, make the registration records of Madison Parish, Louisiana, available to attorneys or agents of the United States at any and all reasonable times for the purpose of inspection, copying, and photographing.

IX. Jurisdiction is retained of this cause for all purposes and especially for the purpose of issuing any and all additional orders as may become necessary or appropriate for the purposes of modifying and/or enforcing this order.

X. Costs in this Court are awarded to Plaintiff and taxed against the Defendants.

., 196
United States District Judge

CERTIFICATE OF COUNSEL

I, DAVID RUBIN, counsel in this case, hereby certify that the foregoing petition for rehearing is presented in good faith and not for delay.

/s/ DAVID RUBIN
DAVID RUBIN,
Attorney,
Department of Justice,
Washington, D. C. 20530

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing petition for rehearing and brief in support thereof for appellant has been served by official United States air mail, in accordance with the rules of this Court to the attorneys for appellees addressed as follows:

Honorable Jack P. F. Gremillion
Attorney General
State of Louisiana
Baton Rouge, Louisiana

Harry J. Kron, Jr.
Assistant Attorney General
State of Louisiana
Baton Rouge, Louisiana

Thompson L. Clarke
District Attorney
6th Judicial District
Locker Box 108
St. Joseph, Louisiana

Dated: September 1, 1965

/s/ DAVID RUBIN
DAVID RUBIN,
Attorney,
Department of Justice,
Washington, D.C. 20530