

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

BRIEF FOR APPELLANT

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STATEMENT OF THE CASE

I. The pleadings and procedure

On October 26, 1961, the Attorney General, acting in the name of the United States, filed a complaint in the United States District Court for the Western District of Louisiana against Katherine Ward, Registrar of Voters of Madison Parish, Louisiana, and the State of Louisiana, under 42 U.S.C. 1971, as amended by part IV of the Civil Rights Act of 1957 (71 Stat. 637) and the Civil Rights Act of 1960 (74 Stat. 90) (R. 1). The complaint alleged that the

defendants had denied to Negro applicants for registration the opportunity to make application and to have their qualifications passed upon if they are unable to produce two registered voters to identify them; that the acts and practices of the defendants restricted the opportunity of Negro citizens in Madison Parish to register as voters and to vote but did not similarly restrict white citizens in Madison Parish; that these deprivations of the right to vote have been and are pursuant to a pattern or practice of racial discrimination (R. 2-4). The prayer of the complaint was for a finding that the acts and practices described therein constitute deprivations of the right to vote and that these deprivations were and are pursuant to a pattern or practice and for an injunction to restrain the defendants from:

- (a) requiring that Negro applicants for registration in Madison Parish be identified by registered voters;
- (b) failing and refusing to permit Negro applicants for registration in Madison Parish to identify themselves by reasonable means;
- (c) applying different and more stringent standards to Negro applicants for registration than are applied to white applicants;
- (d) engaging in any act or practice which involves or results in distinction on the basis of race or color between Negro citizens and other citizens in registration for voting in Madison Parish.

On November 29, 1962, the defendants filed their answer in which they denied the allegations of discrimination (R. 5). The case was tried on December 5, 1962.

II. The Louisiana registration requirements

1. Under the Constitution of Louisiana, registration, which is a prerequisite to voting in any election, La. Const. Art. 8, §1(b), is conducted in each parish by a registrar of voters, who is appointed by the police jury or other governing body of the parish. La. Const., Art. 8, §18; L.S.A.-R.S. 18:^{1/}1. Permanent registration is mandatory for parishes containing a municipal corporation of more than 100,000 population, and optional for other parishes. L.S.A.-R.S. 18:231, ^{2/}249.

2. The qualifications which must be possessed by each person desiring to register are set forth in Title 18, §§31 and 35 of the Louisiana Revised Statutes. Section 31 provides that:

a. The applicant must be a citizen of the United States;

b. He must be twenty-one years of age;

c. He must have resided in the State for one year, in the parish six months, in the municipality (in municipal elections) four months, and in the precinct three months;

^{1/} The registrar may be removed by any two members of the Board of Registration, which is composed of the Governor, Lieutenant Governor and Speaker of the Louisiana House of Representatives and which is given the power and duty to adopt rules and regulations for the proper functioning of registration procedures in the State. La. Const., Art. 8, §18.

^{2/} At the time of the trial, Madison Parish had periodic re-registration every four years for all except illiterate persons who were registered prior to January 1, 1961, the date of the beginning of the last re-registration (R. 11). On February 14, 1963, the police jury of Madison Parish changed to a system of permanent registration. A copy of the police jury resolution changing to a system of permanent registration is included in the Appendix at pp. 45-46, infra.

d. He must "be of good character" and must understand "the duties and obligations of citizenship under a republican form of government";

e. He must "be able to read and write", and must "demonstrate his ability to do so when he applied for registration by making, under oath administered by the registrar or his deputy, written application thereof in the English language or in his mother tongue". This application must "contain the essential facts necessary to show that he is entitled to register", and must be "entirely written, dated and signed by him, except that he may date, fill out and sign the blank application for registration in the presence of the registrar or his deputy, without assistance or suggestions from any person or any memorandum ^{3 /} whatever, other than the form of the application itself";

f. The applicant must sign his name if he can do so; if not he must sign his mark, authenticated by the registrar or his deputy, who must then read the application to him, if necessary through an interpreter. The applicant, whether signing individually or by mark, must make affidavit of the truth of the facts therein stated.

3 / Special provisions govern persons who are unable to write their applications in the English language or who are physically disabled and cannot write. There is also a statute, L.S.A.-R.S. 18:36, under which, notwithstanding all the foregoing, illiterates may be registered. This statute remains on the books. An amendment to the Louisiana Constitution, adopted in 1960, however, omitted the constitutional basis for the registration of illiterates, and thus apparently contemplates that illiterates no longer can be registered. Compare La. Const. Art. 8(d) (Supp.) with Art. 8(d) prior to the 1960 amendment.

It is further provided that the inability of any person registered as of November 8, 1960, to read or write for any reason, shall not be grounds for removal from the registration rolls, and in Madison Parish illiterates registered prior to January 1, 1961, do not have to re-register.

In addition to the requirements imposed by Section 31, under Section 35, applicants for registration must "also be able to read any clause in the Constitution of Louisiana or of the United States and give a reasonable interpretation thereof."^{4/}

Finally, an applicant for registration -- and a registrant presenting himself at the polls for the purpose of voting -- must be able to establish "in all cases" that he is the "identical person whom he represents himself to be." Article 8, §1(e) of the Louisiana Constitution.^{5/}

^{4/} The interpretation test was declared unconstitutional in United States v. Louisiana, 225 F. Supp. 353 (E.D. La. 1963).

^{5/} In this case the District Court found as a fact (R. 11-12) that "[o]n January 16, 1961, the Louisiana State Board of Registration issued a letter to all Registrars of Voters of Louisiana outlining the type of proof which the registrars should accept under this requirement. The types of proof included such things as drivers' licenses, homestead exemption certificates, receipts for deposits on utilities, library cards, selective service registration cards, rent receipts, deeds or contracts, hunting or fishing licenses, copies of applications for automobile licenses, or letters from reputable citizens. If the registrar has good reason to believe that an applicant is not the person he represents himself to be, the registrar may require him to establish his identity by producing two credible persons registered to vote in his ward and precinct to identify him under oath. Under the practice in Madison Parish, at least since 1947, applicants who do not identify themselves to the satisfaction of the registrar are not permitted to fill out an application form or otherwise commence or complete the registration process."

3. Superimposed upon the statutory qualifications for registration are the qualifications for voting contained in the Louisiana Constitution (Art. 8, §1). In order to be a qualified voter, one must be registered and must satisfy the same requirements as those which are prerequisites to registration. In addition, the individual must demonstrate ability to read and write in the English language or in his mother tongue, not only by filling out an application form, but also by reading and writing from dictation given by the registrar, or an interpreter duly sworn, any portion of the preamble to the United States Constitution (Art. 8, §1(c)(7)). While the requirement for registration is that the applicant be of "good character," the requirement for voting is that the individual be "of good character and reputation"^{6/} (Art. 8, §1(d) (emphasis added)). In addition, he must be "attached to the principles of the Constitution of the United States and of the State of Louisiana", and "well disposed to the good order and happiness of the State of Louisiana by executing an affidavit that "he will faithfully and fully abide by all of the laws of the State * * *." Art. 8, §1(d).

4. By resolution of August 3, 1962, in compliance with the 1962 amendment to L.S.A.-R.S. 18:191, the State Board of Registration adopted a new "objective

^{6/} One who has committed any of a number of designated acts is not considered of good character, i.e., specified convictions of crime, or living in "common law" marriage or giving birth to or fathering an illegitimate child within five years immediately preceding the date of application. The enumerated acts are not exclusive; rather, "bad character may be established by any competent evidence." Art. 8, §1(c).

test of an applicant's "duties and obligations of citizenship under a republican form of government."^{7/}

A constitutional amendment to similar effect, adopted November 6, 1962, requires that the Board "prepare, adopt and issue a uniform, objective written test or examination for citizenship under a Republican form of government." (La. Const. Art. 8, §18 (1963 Supp.)).

^{7/} To take the test an applicant draws one of ten cards. Each card has six multiple choice questions, four of which the applicant must answer correctly. This test "requires a comprehension of the theory of the American system of government and a knowledge of specific constitutional provisions." United States v. Louisiana, 225 F. Supp. 353, 392 (E.D. La. 1963).

III. The facts, the law, and the decree

On October 22, 1963, the district court filed its findings of fact, conclusions of law, and decree. The following facts are taken from the court's findings.

Appellee Ward has been registrar of voters in Madison Parish since January 1955, having succeeded to the office previously held by her mother, Mrs. Mary K. Ward, who had been registrar for 31 years (R. 10). As of the time of the trial and decision of this case, registration in Madison Parish was periodic so that every four years a complete re-registration was held. The present period began January 1, 1961. The only exception to the requirement of re-registration was in the case of illiterate persons who were registered prior to January 1, 1961^{8/}. No Negro had been registered in Madison Parish during this century prior to the trial of this case (R. 11). In 1960 there were 3,334 white persons and 5,181 Negroes of voting age in Madison Parish. At the end of the last registration period, December 31, 1960, there were 2,713 persons (all white) registered to vote in Madison Parish. As of August 1, 1962, there were 1,760 persons registered to vote in the Parish (all white). As of February 28, 1963, there were 1,918 white and 174 Negroes registered to vote.

^{8/} On February 14, 1963, the police jury of the Parish changed the registration to permanent registration. A copy of the resolution of the police jury is set out in the Appendix to this brief at page

Under Louisiana law, applicants for registration to vote are required to establish their identities to the satisfaction of the registrar. The court found that appellee Ward and her mother, Mrs. Mary K. Ward, prior to the trial of this case used the identification requirement to discriminate against Negroes in the following ways (R. 12):

- (a) Mary K. Ward told Negroes on many occasions when they tried to register from 1947 through 1954 that they would have to have two registered voters to identify them before they could be registered. Negroes were not asked for other reasonable identification nor was it accepted when offered.
- (b) White persons who were registered by Mary K. Ward were not required to produce identification.
- (c) Mary K. Ward referred several Negroes who attempted to register to the Sheriff of Madison Parish, C. E. Hester. Sheriff Hester on one occasion in 1954 told Negroes that he was tired of their trying to register to vote and that no Negro was going to register so long as he was sheriff. No Negro tried to register to vote again until August, 1961.
- (d) Since the time Defendant Katherine Ward took office in January, 1955, she has not required identification from applicants who had been previously registered in the parish. Since she knows most of the white people in the parish and [255] very few of the Negroes; this policy alone inevitably operated to discriminate against Negroes. Inasmuch as no Negroes previously had been registered, that policy also inevitably discriminated against Negroes.

(e) On August 28, 1961, four Negroes appeared at the office of Defendant Ward for the purpose of registering to vote. Defendant Ward would not permit them to make applications for registration but told them instead that they would need two electors to identify them. She did not ask the Negroes for any other form of identification nor would she have accepted any from them. She did not expect that any white persons would identify these Negroes. The Negroes tried unsuccessfully to persuade the Mayor of Tallulah to identify them or to help them find someone who would. They were thus deprived of the opportunity to apply for registration.

In September 1962, the appellee registrar put into effect the new "citizenship" ^{9/} test adopted by the State Board of Registration in the previous month. In addition, since September 1962, applicants are required to read and write from dictation a portion of the preamble to the Constitution of the United States (R. 13).

The court found that prior to September, 1962, the requirements for registration imposed by the appellee registrar permitted applicants to become registered if they were citizens not less than 21 years of age, if they possessed the necessary residence requirements, and if they had not been convicted of a crime. The court also found that applicants were not tested for their literacy, knowledge, intelligence or understanding and that

^{9/} Under the citizenship test, an applicant for registration must answer correctly four out of six questions on citizenship, government, and history.

the application form was used as a means to obtain and record essential information regarding the substantive qualifications of applicants (R. 14).

At about the time that the new requirements were put into effect in Madison Parish (September 1962), the appellee registrar abandoned the strict identification practice which had prevented Negro applicants from making application for registration (R. 14).

The court also found that the acts and practices of the appellee in using the identification requirement to discriminate against Negroes had deprived Negroes of their right to vote without distinction of race or color and that unless restrained by order of this court the appellees would continue to engage in racial discriminatory acts and practices, despite Appellee Ward's testimony to the contrary (R. 14).

The court concluded as a matter of law that the State was properly joined as a party defendant and that the acts and practices of the registrar and her predecessor in office, which violated 42 U.S.C. 1971(a) were also the acts and practices of the State (R. 15). It held that the registrar must accept from Negro applicants any reasonable identification, such as that suggested by the State Board of Registration^{10/} and that the registrar could not constitutionally use the identification requirement in any manner which would impose a heavier burden upon Negro applicants than upon white applicants (R. 16).

^{10/} See fn. 5 , supra p.5.

In its decree the court enjoined the appellees from refusing to accept from Negro applicants for registration reasonable proof of their identity and from applying different and more stringent registration qualifications, requirements, procedures and standards to Negro applicants for registration than those which are applied to white applicants in determining whether or not such applicants are qualified to register to vote in Madison Parish (R. 17). The court also ordered the appellee registrar to submit in writing to the clerk of the court and to the appellant United States, each month, a report as to her progress in receiving and processing applications for registration during the preceding calendar month (R. 18). The costs of the case were taxed against the appellee Ward, in her official capacity as Registrar (R. 18).

SPECIFICATION OF ERRORS

1. The District Court erred in not giving relief against the "freeze."
2. The District Court erred in not awarding costs also against the State.

ARGUMENT

I

The District Court erred in not granting relief from the "freeze" now being applied by the registrar

A. The effect of the Ramsey decision

On February 20, 1964, a division of this Court rendered an opinion in the case of United States v. Ramsey, No. 20596, written by Judge Edwin F. Hunter, Jr., holding, among other things, that the District Court for the Southern District of Mississippi was not required to grant relief against the "freeze" by the voting registrar of Clarke County, Mississippi. Judge Rives dissented. The United States has petitioned for a rehearing en banc in that case in which it is argued that the majority ruling on the granting of appropriate relief against the unconstitutional "freeze" is inconsistent with the will of Congress and with precedent both by the Supreme Court and by this Court. As Judge Rives states in his dissent (slip opinion, p. 34):

The majority opinion meets the problem of freezing by pointing out that since the time the judgment of the district court was entered the defendant registrar has not discriminated against Negroes and some 24 whites have been removed from the poll books. But the nondiscriminatory use of the stricter standards does not rectify the freezing effect caused by past injustices, and the limited purging is but a meager start to a monumental task.

Even aside from what we regard as a clear error of the majority opinion in Ramsey, the decision in that case is not dispositive of the freezing issue in this case if for no other reason than that here the State itself is more deeply involved. In both Ramsey and this case, whites were registered without being subjected to tests of any sort while Negroes were not allowed to register at all. In both cases, too, strict standards and difficult tests began to be imposed to coincide with the registrar's relenting to permit Negroes to apply (under the shadow of federal court actions). However, in Louisiana the state constitution (Article 8 §1d) permitted the registration of illiterates until it was amended on November 8, 1960, and even then the amendment solicitously froze on the voting rolls the illiterates who were then registered. Further, the adoption by the State^{11/} of the new and difficult multiple-choice^{12/} "citizenship" test coincided with the advent of

^{11/} In Ramsey, the State was dismissed.

^{12/} The court in United States v. Louisiana, 225 F. Supp. 353, 392 (E.D. La. 1963) found that the new test was "considerably more difficult than the 'tests' administered to white applicants in the past." Here no tests were administered to whites in the past (R. 14).

of permission being granted to Negroes to register. That this sequence of events was not strictly coincidental is shown by the history of the State's practices set out in United States v. Louisiana, 225 F. Supp. 353 (E.D. La. 1963), in which it was found that the State of Louisiana had purposefully perpetuated the disfranchisement of Negroes on account of their race and then adopted the new "objective" test without conducting a general re-registration, the net effect being to perpetuate further "the differences created by the discriminatory practices of the past" (Id. at 393). Here, too, the District Court held the State, along with the registrar, liable for the discriminatory practices which preceded the employment of the new test. Thus, the Ramsey holding, if valid, is inapposite.

B. The freezing principle is well established by decisions of this Court and the Supreme Court.

Although at least since November 8, 1960, state law has required that applicants for registration to vote be tested for their literacy, knowledge, intelligence and understanding,^{13/} no such tests were imposed on applicants in Madison Parish prior to

^{13/} Miss Ward did not apply the stringent statutory tests. She did not give an interpretation test (L.R.S. 18:35); she did not test applicants on their understanding of the duties and obligations of citizenship (L.R.S. 18:36); she did not have applicants read aloud and write from dictation the Preamble to the United States Constitution (Constitution of Louisiana, Art. VIII, §1(c)); and she did not require applicants to execute an affidavit affirming that the applicant would faithfully and fully abide by all of the laws of the State of Louisiana, (Constitution of Louisiana, Art. VIII, §1(d)).

September, 1962. Whites were registered if they were 21, met the residence requirements, and had not been convicted of a crime. Negroes were not permitted to apply at all because of their race. As a result, as of August 1, 1962, there were 1760 out of 3334 whites of voting age registered and no Negroes out of 5181 Negroes of voting age registered. In September, 1962, the appellee registrar put into effect a new "citizenship" test adopted by the State Board of Registration the previous month and also began to require applicants to read and write from dictation a portion of the preamble to the Constitution of the United States. At about the same time the registrar abandoned the strict identification practice which had discriminatorily prevented Negroes from making application for registration.^{14/}

In order to rectify the discrimination against the Negroes, and to correct the present situation, it is not enough to enjoin future discrimination. Such an injunction leaves appellees free to apply the strict statutory registration requirements to Negroes even though a large number of white persons, registered during a period of flagrant discrimination, never had to satisfy such requirements. Because Madison Parish has a permanent registration system, the results of the past discrimination would be frozen and perpetuated for many, many years, during which Negroes would be

^{14/} Six months later, on February 28, 1963, there were 1918 whites and 174 Negroes registered (R. 11).

precluded from voting because of their race. Complete relief requires, and the United States asked below,^{15/} that this "freeze" be enjoined.

This Court has recognized in United States v. Atkins, 323 F. 2d 733, 744 (C.A. 5, 1963),^{16/} that the Civil Rights Act of 1957 empowers the Court to grant relief of this nature in an appropriate case.^{17/}

^{15/} In the complaint, filed October 26, 1961, appellant asked that the appellees be enjoined from "applying different and more stringent standards to Negro applicants for registration than are applied to white applicants" (R. 4) and the decree includes such an order (R. 17). However, the complaint also asks for "such additional relief as justice may require" (R. 5) and in its proposed decree, a copy of which is included in the appendix to this brief, pp.47-53, infra, appellant asked that appellees be enjoined from "applying different and more stringent registration qualifications, requirements, procedures and standards to Negro applicants for registration than those which have been applied to white applicants from January 1, 1961, to August 31, 1962, in determining whether or not such applicants were or are qualified to register to vote," from using the application form as an examination or test, from requiring applicants to take the "citizenship" test and from failing to register applicants who can read and copy a portion of the preamble to the Constitution of the United States.

^{16/} The Atkins case is discussed at length infra at pp. 30-41.

^{17/} In United States v. Ramsey, supra, the majority opinion observed that "[a]s shown in the Atkins decision, this Court has had the principle under discussion, but has not been faced with a case which required a decision on the subject" (slip opinion, p. 4).

This case, like No. 20,398, United States v. Fox, and No. 20,800, United States v. Duke, both argued ^{18/} and now pending before this Court, is an appropriate one for such relief.

2. This Court has enunciated the "very broad equitable powers a District Court has to issue appropriate mandatory injunctions in order to grant full and complete equitable relief in cases" arising under the 1957 Civil Rights Act. United States v. Dogan, 314 F. 2d 767, 775 (C.A. 5, 1963). In State of Alabama v. United States, 304 F. 2d 583 (C.A. 5, 1962), affirmed per curiam, 371 U.S. 37 (1962), mandatory relief awarded by the lower court was sustained on appeal, and in the course of its opinion this Court said (304 F. 2d at 591):

The aim of equity is to adapt judicial power to the needs of the situation. * * * [T]he nature of the relief is to be molded by the necessities. Porter v. Warner Holding Co., 1946, 328 U.S. 395, 397 . . .; Hecht Co. v. Bowles, 1944, 321, 329 The necessities will encompass, of course, special statutory objectives. 'When Congress entrusts to an equity court the enforcement of prohibitions contained in a regulatory enactment, it must be taken to have acted cognizant of the historic power of equity to provide complete relief in light of the statutory purposes. As this Court long ago recognized, 'there is inherent in the Courts of Equity a jurisdiction to * * * give effect to the policy of the legislature.' Clark v. Smith [38 U.S. 195], 13 Pet. 195, 203' Mitchell v. DeMario Jewelry, 1960, 361 U.S. 288

^{18/} Relief against the "freeze" is also sought in United States v. Wood, No. 21212.

Noting that the 1957 Civil Rights Act was enacted against a background of "spurious, sometimes sophisticated, sometimes crude," practices by which Negroes were effectively denied the right to vote because of color and race alone, this Court concluded that it was "inconceivable" that in authorizing district courts to issue a permanent or temporary injunction "or other order," Congress intended "by this broad language to grant less than effective judicial tools to combat" the discrimination. 304 F. 2d at 591.

3. More specifically, in a similar case this Court decided not long ago that 42 U.S.C. 1971(a) and (c) do not permit voting officials to impose a requirement which, while superficially "equal" in application to both races, actually operates to "freeze" a voting disparity originally created by racial discrimination.

United States v. Dogan, supra. In that case -- involving a suit under sections 1971(a) and (c) -- the Court considered a new requirement that all persons, white and Negro, desiring to pay poll taxes must "see the sheriff."^{19/} Previously the sheriff had required only Negroes to see him, while whites were referred to him only "if there was any question of their precinct or qualification." Holding the new requirement in violation of section 1971(a), the Court said (314 F. 2d at 772, 773):

This new policy, while purporting to apply to Negroes and whites indiscriminately, actually operates to the disadvantage of Negroes on account of their race, as did the previous instruction. Substantially all of the 5,099 white persons of voting age who were liable

^{19/} In Mississippi the sheriff is also the tax collector.

to pay a poll tax have been permitted to do so while not one of the County's 6,483 Negroes of voting age has been listed as paying the tax. Obviously a blanket requirement that all persons who have never paid the poll tax before, that being a relatively small percentage of white people and all Negroes, who now desire to pay their poll tax for the first time must see the Sheriff personally operates unequally and discriminatorily against the Negroes. This calls to mind the cases of Guinn v. United States, 238 U.S. 347 ... (1915), and Lane v. Wilson, 307 U.S. 268 ... (1939); * * * Sheriff Dogan's new instructions by necessary result re-create and perpetuate the very discrimination which prevailed under his former instructions and practices. [emphasis added]

A similar result was reached in United States v. Lynd, 301 F. 2d 818 (C.A. 5, 1962), cert. denied, 371 U.S. 893, in which this Court entered a temporary injunction pending appeal restraining the registrar of Forrest County, Mississippi, from engaging in various discriminatory acts and practices. Mr. Lynd was specifically enjoined from (301 F. 2d at 823):

. . . failing or refusing to give to Negro applicants the same privileges as to reviewing their application forms at the time they are filled out and advising Negro applicants of such omissions as appear on their forms as they are now or heretofore have given to white applicants under similar circumstances . . . [emphasis added].

The type of relief sought here was also granted by the three-judge district court (one judge dissenting) in United States v. State of Louisiana, 225 F. Supp. 353 (E.D. La. 1963), and by the one-judge court in United States v. Penton, 212 F. Supp. 193 (M.D. Ala. 1962).

In United States v. State of Louisiana, supra, the court, inter alia, enjoined use of Louisiana's new multiple choice citizenship test with respect to persons

of voting age who had the requisite residence in the parish (county) before August 3, 1962 (the date of the adoption of the new test) until certain conditions had been met, noting that the new test "is considerably more difficult than the 'tests' administered to white applicants in the past"(225 F. Supp. at 392), stressing the necessity of considering "the constitutional effect of this new action on those who have been discriminated against in the past" (Id. at 393) and further stating that:

The cessation of prior discriminatory practices cannot justify the imposition of new and onerous requirements, theoretically applicable to all, but practically affecting primarily those who bore the brunt of previous discrimination. An appropriate remedy therefore should undo the results of past discrimination as well as prevent future inequality of treatment. A court of equity is not powerless to eradicate the effects of former discrimination. If it were, the State could seal into permanent existence the injustices of the past.

In United States v. Penton, supra, the Court required with respect to both past and future Negro applicants, that the standards to be applied be "consistent with past practices."

212 F. Supp. at 200. He enjoined the defendants "from using . . . different and more stringent qualification requirements for registration . . . than . . . [those] used by the Board . . . since at least January 1, 1956."

United States v. Penton, Civil Action No. 1741-N (M.D. Ala., 1962), Decree, p. 2.

Dogan, Lynd, United States v. Louisiana, and Penton are applications of long-established rules of law exemplified by the "grandfather clause" cases. Guinn v. United States, 238 U.S. 347 (1915), and Lane v. Wilson, 307 U.S. 268 (1939).

As the Court said in the Lane case (307 U.S. at 275-76):

Section 5652 of the Oklahoma statutes makes registration a prerequisite to voting. By §§ 5654 and 5659 all citizens who were qualified to vote in 1916 but had not voted in 1914 were required to register, save in the exceptional circumstances, between April 30 and May 11, 1916, and in default of such registration were perpetually disenfranchised. Exemption from this onerous provision was enjoyed by all who had registered in 1914. But this registration was held under the statute which was condemned in the Quinn case. Unfair discrimination was thus retained by automatically granting voting privileges for life to the white citizens whom the constitutional grandfather clause had sheltered while subjecting colored citizens to a new burden. (Emphasis added.)

In Guinn and Lane, the Court did not permit the determination of present voting rights by reference back to a system which was itself racially discriminatory, even though, unlike here, Negroes were afforded a limited opportunity to qualify as voters. The present case, therefore, is a stronger case for relief than the "grandfather clause" cases. In Guinn and Lane no past wrongdoing could be imputed to the State because denial of the suffrage to Negroes was legal prior to 1866 -- the "freezing" date. In this case, however, the result would be to perpetuate by the freezing device the results of past illegal practices.

4. A provision of the 1957 Civil Rights Act, as amended in 1960, strongly supports the proposition that the relief sought is authorized by the statute. In the voting referee provision of the 1960 Act (which is not directly involved in this case) the referee (or the court itself, see United States v. Manning, 206 F. Supp. 623 (W.D. La. 1962)), is empowered to determine whether any applicant "is qualified under State law to vote." "Qualified under State law" is defined to mean:

. . . qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist. [42 U.S.C. 1971(e)]

Thus, the voting referee provisions specifically incorporate the standard which we contend is proper, and in unambiguous terms direct the referee to court to apply as state law the standards which have in the past been used by state officials. We submit that whatever standards the federal referee is required to follow necessarily must be the standards which a judge may impose on the state registrars pursuant to the broad remedial provisions of section 1971(c), and certainly was bound to impose here under the facts as they unfolded.

If section 1971(c) were held not to impose the same standard as that contained in section 1971(e), the result obviously would be undesirable. Here there has been a finding of a practice of discrimination,^{20/} and Negroes rejected by the registrar are entitled to have the federal court or referee decide if they are qualified, and this decision is made according to the standard embodied in subsection (e). If the registrar is not now ordered

^{20/} Although the District Court did not find, as was suggested by appellant in its "Proposed Findings of Fact," that the unconstitutional and illegal deprivations of the right to vote in this case "have been and are pursuant to a pattern and practice of racial discrimination," it did find that "the acts and practices of the defendants as set forth in Finding No. 6 have deprived Negro citizens of the right to vote without distinction of race or color" (R. 14). The provisions of 42 U.S.C. 1971(e) are available to Negroes whenever a court finds a pattern or practice and thus are available in this case, where a finding of a practice of discrimination has thus been made.

to apply the same standard, his decisions, though consistent with the court's injunctive decree, subsequently will be overturned by the court or referee. This would not only involve the state officials in a meaningless act, but would involve the federal government needlessly in the registration process. If, on the other hand, the registrar himself is directed in the first instance to apply the subsection (e) standard, appeals by Negroes to the federal court will be minimized and the problem will be dealt with by those who ought to bear the responsibility -- the state officials.

5. Federal courts -- including this Court -- frequently have granted relief analogous to that which we seek here in cases outside the area of voting.

For example, in Ross v. Dyer, 312 F. 2d 191 (C.A. 5, 1962), this Court considered the validity of the "brother-sister rule" applied by a local school board under which a child was required to attend the same school attended by an older brother or sister. That rule was "a rule of long standing applied to white and Negroes alike." 312 F. 2d at 194. But this Court said (Ibid.):

In the final analysis the conclusion of the District Judge . . . seems to have been one of pure logic The District Judge . . . reasoned that "the colored plaintiffs do not seek the same treatment as is afforded white students to which they are entitled; in fact, they seek a different, and superior, treatment, by reason of their race. The law does not grant them this." But we think that logic alone is insufficient to overcome the practical effect of this rule which as to some Negro families perpetuates a segregated system despite the plain purpose of the stairstep plan to ameliorate it. That it applies equally to white and Negro overlooks the fact that as to one group, compulsory attendance at certain schools has been the result of unconstitutional discrimination. The purpose of the

court decree is to eradicate that unconstitutional deprivation of equal protection, no matter how felt or manifested.
[emphasis added]

See also, Taylor v. Board of Education of New Rochelle, 191 F. Supp. 181 (S.D. N.Y. 1961), affirmed 294 F. 2d 36 (C.A. 2, 1961), cert. denied, 368 U.S. 940; ^{21/} Marsh v. County School Board of Roanoke County, Va., 305 F. 2d 94, 98 (C.A. 4, 1962); International Salt Co. v. United States, 332 U.S. 392, 401 (1947); cf. United States v. Bausch and Lomb Co., 321 U.S. 707 (1944); United States v. Gypsum Co., 340 U.S. 76 (1950); Ethyl Gasoline Corp. v. United States, 309 U.S. 436, 461 (1940).

6. To be sure, if the relief which we seek were granted and the State did not require re-registration, the effect would be that here, as in United States v. Fox, No. 20,398, United States v. Duke, No. 20,800, and United States v. Wood, No. 21,212, certain state laws relating to the manner in which the qualification of voters is determined could not be applied, i.e., the "citizenship" test

21/ The court of appeals there said (294 F. 2d at 39):

The facts recited above showing the Board's acceleration of segregation at Lincoln up to 1949 and its actions since then amounting only to a perpetuation and a freezing in of this condition negate the argument that the present situation in Lincoln School is only the "chance" or "inevitable" result of applying a neighborhood school policy to a community where residential patterns show a racial imbalance. Rather they make it appear that the Board considered Lincoln as the "Negro" school and that district lines were drawn and retained so as to perpetuate this condition. [emphasis added]

which was put into use in Madison Parish in September 1962, the requirement that applicants read and write from dictation a portion of the preamble to the United States Constitution,^{22/} and the requirement that the application form be "entirely written, dated and signed by" the applicant "without assistance or supervision from any person or memorandum whatever."^{23/} This result, however, is consistent not only with 42 U.S.C. 1971(a), but also with recognized principles of constitutional law.

Section 1971(a) provides, in part, that citizens "shall be entitled and allowed to vote . . . without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State * * * to the contrary notwithstanding." Once a federal court determined that a person has been denied his rights under Section 1971(a), the court may implement the supremacy of federal law by taking whatever steps are required to vindicate those rights, irrespective of whether such implementation results in the subordination of state law. See Sola Electric Co. v. Jefferson Co., 317 U.S. 173,

^{22/} The proposed decree submitted by appellants would have applicants read and copy a portion of the preamble. See Appendix, p. 49 , infra.

^{23/} No applicant whose form shows that he meets the substantive qualifications of Louisiana law could be denied registration because of errors or omissions on his application form. If a form was incomplete, the registrar would have to point out the deficiency and obtain the necessary information. See Appendix, p. 49 , infra.

176 (1942); Garner v. Teamsters Union, 346 U.S. 485, 500-^{24/}
501 (1953); Borders v. Rippey, 247 F. 2d 268 (C.A. 5, 1957).

This Court, in United States v. Dogan, supra, suggested strongly that a provision of a state statute relating to the manner in which a qualification for voting should be determined properly could be disregarded in effectuating rights secured by section 1971(a). There, the Government's complaint requested an order allowing Negroes who had never before sought to pay poll taxes to pay them and vote in the next election even though a specific provision of Mississippi law required that poll taxes be paid by a date already past. The Court decided that it would be premature to resolve that question, but significantly, it said (314 F. 2d at 775):

[O]n June 1, 1962, this Court handed down its opinion in State of Alabama v. United States, 304 F. 2d 583, enunciating the very broad equitable powers a District Court has to issue appropriate mandatory injunctions in order to grant full and complete equitable relief in cases of this character, and specifically upholding the specific and detailed relief granted by the trial court in that case. * * * The scope, nature, and extent of the specific relief to be . . . granted . . . should, of course, be determined by [the trial court] in the light of the trial court's very broad and effective powers and judicial tools for granting full and adequate relief in a case of this kind, as was recognized by this Court in State of Alabama. (Emphasis added.)

^{24/} If there is a conflict between federal and state duties imposed upon a state official, the state duties are, of course, superseded. Cf. Ex parte Siebold, 100 U.S. 371, 386 (1880). A state official, therefore, could not be subjected successfully to state criminal penalties for violating his state duty since his paramount federal duty would be a complete defense in any such criminal proceeding. In re Neagle, 135 U.S. 1 (1890).

Whatever the validity, under ordinary circumstances, of the present Louisiana registration laws, their application in Madison Parish to Negroes would be unconstitutional. As the Supreme Court's decision in Yick Wo v. Hopkins, 118 U.S. 356 (1886), demonstrates, a pattern of discriminatory administrative action taken under a non-discriminatory statute may render the requirements of that statute invalid. The result of Yick Wo was that the ordinance there involved could not be relied upon by state authorities until it was applied in a manner not prohibited by the Fourteenth Amendment -- until, in effect, it was purged of its unconstitutional effects. In Yick Wo, this could be accomplished only by a non-discriminatory relicensing of all wooden laundries, since allowing those licensed under the discriminatory procedure to remain licensed would perpetuate the past discriminatory administrative action.

So here. As long as whites remain registered to vote, after having been registered in accordance with lower standards, the application of current statutory requirements to Negro applicants would constitute a denial of equal protection of the law. These requirements continue to be unenforceable until the State purges them

of their unconstitutional effect. Cf. Lassiter v.
Northampton Electric Board, 360 U.S. 45, 50 (1959). ^{25/}

25/ In Lassiter, the Supreme Court upheld a North Carolina literacy requirement which was part of a provision in the North Carolina Constitution containing a grandfather clause. It was agreed that the grandfather clause was invalid, but the North Carolina Supreme Court had ruled that the literacy test was separable. The appellant, a Negro citizen of North Carolina, urged that this did not end the problem presented by the grandfather clause because there was a provision for permanent registration in some counties and that, although the cut-off date for registration in the grandfather clause was December 1, 1908, those who registered before then might still be voting. The Court said (360 U.S. at 50):

If they were allowed to vote without taking a literacy test and if appellant were denied the right to vote unless she passed it, members of the white race would receive preferential privileges of the ballot contrary to the command of the Fifteenth Amendment. That would be analogous to the problem posed in the classic case of Yick Wo v. Hopkins, 118 U.S. 356, where an ordinance unimpeachable on its face was applied in such a way as to violate the guarantee of equal protection contained in the Fourteenth Amendment.

CC. United States v. Atkins does not
bar this relief

In United States v. Atkins, ^{26/}supra, the Court refused to grant the request of the United States that the Board of Registrars be ordered to register Negroes in the future who possess the qualifications required of whites during the period 1952-60" (323 F. 2d at 743). The Court, although stating that it did "not dispute the power of the federal courts to invoke the freezing principle to give relief when necessary" (Id. at 744), citing United States v. Dogan, 314 F. 2d 767 (C.A. 5, 1963); Guinn v. United States, 238 U.S. 347 (1915); Lane v. Wilson, 307 U.S. 268 (1939); Ross v. Dyer, 312 F. 2d 191 (C.A. 5, 1962); Taylor v. Board of Education, 294 F. 2d 36 (C.A. 2, 1961), cert. denied, 368 U.S. 940, concluded that "since the use of this principle necessarily prevents the state from passing otherwise valid

^{26/} We are, of course, clearly entitled to the "definite standards" relief of Atkins. The Court there directed the district court to issue an injunction (323 F. 2d at 745)

enjoining the members of the Board of Registrars of Dallas County, and their successors in office, 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 Dallas County. The defendant Registrars and their successors in office should be ordered to cease rejecting applicants for errors or omissions in the questionnaire when other answers or information reveal that the applicant is qualified, and to cease using the questionnaire as an examination or test, unless the Registrars present to the court and

(Contd. on following page)

regulations, it should be invoked only where there is a great need for it" (Ibid.). The Court added that "when the application of this principle would mean that the Board must in the future continue to violate state law as did its predecessors, the principle should be used, assuming such use could ever be justified, only if there were no other alternative by which justice could be reached" (Ibid). Then the Court said (Ibid.):

The freezing effect which appellant complains of results from several factors. On the one hand there are those whites whose registration did not comply with even the minimal requirements of State law. We believe that there is a less radical remedy for this injustice than the one suggested by the appellant. Rather than making such unlawful practices a permanent fixture in Dallas County, the district court could, on petition by appellant, purge from the registration list those persons proved by the appellant to have been registered by a procedure which does not meet the minimal requirements of State law. These persons could then reapply for registration subject to the same requirements as everyone else. Such relief would be within the broad equity powers recognized in United States v. Alabama, 5 Cir., 304 F. 2d 583, aff'd per curiam, 371 U.S. 37 (1962). On the other hand are those practices of the present Board which are so strict as to be outside the permissible limits of Alabama law or the Constitution. The procedure of the Registrars which would have had the greatest freezing effect was the practice of not allowing rejected applicants to reapply. The district

26/ (Contd. from preceding page)

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....

court, however, eliminated that problem. Other practices of the Registrars beyond the limitations of the Constitution or Alabama law soon will be eliminated pursuant to this opinion. The only remaining freezing effect could come as a result of differences of practices allowable within the zone of permissible interpretation of Alabama law. Where in this zone, or how strictly the Board will interpret Alabama law, is yet to be determined. As long as there is the ability to reapply, it is unlikely that within this zone there would be any freezing effect so great as to amount to an injustice.

This aspect of the Atkins decision should not bar relief here, for two reasons: (1) Atkins is distinguishable both on its facts and in the relief sought, and (2) if necessary, Atkins should be reconsidered on this point.

1. Atkins is distinguishable

a. In Atkins, the court was asked to order the Board of Registrars "to register Negroes in the future who possess the qualifications required of whites during the period 1952-1960" (Id. at 743). This Court rejected this relief on the ground that it did not wish to make practices which were violative of state law "a permanent fixture in Dallas County" (Id. at 745). In the present case, on the other hand, we are not asking that the practices during the period of discrimination be made a "permanent fixture" in Madison Parish. As we suggested in No. 20,800, United States v. Duke, and in No. 20,398, United States v. Fox, we ask only that the standards used in registering whites be applied to Negroes who were age and residence-eligible during the period of discrimination -- a finite number of people. In addition, this Court might direct the district court specifically to limit the time within which this limited number of Negroes could apply and be registered under the old standards. An appropriate time limit might be found by reference to 42 U.S.C. 1971^{27/}(e). Coordination of the time periods would mean that the registrar, and the referee who reviews the registrar's determination, would both cease to use the relaxed standards at the same time.

^{27/} That subsection provides that when such a finding is made, the court is required, for one year and thereafter until the court finds that the pattern or practice has ceased, to pass on applications for voter certificates under the provisions of subsection (e).

b. In Atkins, the district court had found that the current Board of Registrars had not discriminated against Negroes, and this Court refused to disturb that finding. In the present case the District Court found that the registrar had deprived Negroes of the right to vote without distinction of race or color.

c. Certainly insofar as we request relief having the effect of disregarding the Louisiana state law which requires that the application be filled out by the applicant without assistance, this request has more justification than did the similar request in Atkins. The Court there thought it sufficient simply to require the Board to keep a record of exactly which answers or omissions contribute to the rejection of any applicant and to make this information available to the applicant if he inquires of the Board as to its reasons for rejecting him, so that, if necessary, a court might determine whether the application contained enough errors and omissions so that the rejection was reasonable. But where the incumbent registrar has a history of discrimination against Negroes such as appellee Ward has, this is obviously not sufficient. Moreover, such a registrar does not have available to her the defense--which this Court thought persuasive in Atkins--that it would be

inequitable to require her to violate state law merely because a predecessor had done so. Both appellee and her predecessor consistently violated state law and she can hardly now cloak herself in that law when the time has arrived for undoing the effects of her discrimination;^{28/}

d. With respect to the "citizenship" test and the preamble-dictation test, the Atkins case is entirely distinguishable. In Atkins, the question was whether a board of registration should be required to violate a valid state law in the future because prior boards had violated that same law in the past. The issue with respect to the "citizenship" test and the preamble-dictation test, however, is whether a state may raise the standards for registration by enacting a new law which, as applied, has the effect of freezing unconstitutional discrimination.^{29/} We submit that the

^{28/} It may well be that the actual "law" of the state is not merely the law which appears on the statute books but the law as it was consistently applied. See Nashville, C. & St. L. Ry. v. Browning, 310 U.S. 362, 369 (1940); Monroe v. Pape, 365 U.S. 167, 236 (1961) (dissenting opinion of Frankfurter, J.). Here, the actual law for Fourteenth Amendment purposes may well be Miss Ward's consistent practice. The same was not true in Atkins where the practices apparently changed when Atkins, the new registrar, took office.

^{29/} The District Court here found as a fact that prior to September 1962, applicants were not tested for their literacy, knowledge, intelligence or understanding (R. 14).

answer to this question is governed, not by Atkins, but by Lane v. Wilson, supra where the Court held that Oklahoma could not grant voting privileges for life to white citizens whom the discriminatory grandfather clause (held unconstitutional in Guinn v. United States, supra) had sheltered "while subjecting colored citizens to a new burden." Id. at 275-276. See United States v. Louisiana, supra, 225 F. Supp. 393, 394, where the court used a similar analysis in enjoining the use of the citizenship ^{30/}test in twenty-one Louisiana parishes (not

30/ The relief which the court in United States v. Louisiana, supra, gave with respect to the "citizenship" test is only slightly different from the relief which we requested here. Thus, the court extended the benefit of the relaxed standard to whites, as well as Negroes, who were of voting age and had the required residence in the parish prior to August 3, 1962. Furthermore, the injunction is to last "until there has been a general re-registration of all voters in a named parish, or until it has been shown, to the satisfaction of the court, that the interpretation test has lost its discriminatory effect in the parish" (225 F. Supp. at 397). We believe that these modifications are equitable and appropriate.

While the decree in United States v. Louisiana, supra, does not affect the application form and preamble (from oral dictation) tests, the principle of that case is equally applicable to these latter tests, and therefore squarely supports our position herein with respect to them. The three-judge court there explicitly stated that the new [multiple-choice] test, "or any other procedure more demanding than those previously applied to the white applicants, will have the effect of perpetuating the differences created by the discriminatory practices of the past" (225 F. Supp. at 393). The application form was not administered as a test for white applicants, and thus cannot be used as a test for Negro applicants who were age and residence eligible prior to August 3, 1962, without perpetuating the prior discrimination. The preamble requirement falls into precisely the same "new and onerous requirement" category as the multiple-choice citizenship test.

including ^{31/}Madison).

a. It does not correct the federal wrong (racial discrimination), which is the sole basis for a lawsuit under 42 U.S.C. 1971(c), but merely rectifies violations of state law. Although the remedy would correct racial discrimination where such discrimination violates state law, it would not correct discrimination which remains within the bounds of state law. The Atkins opinion itself recognized that state law may be flexible, and that practices which do not exceed the bounds of state law may nevertheless be discriminatory.

31/ Id. at 385 n. 81:

DISCRIMINATORY EFFECT OF THE
INTERPRETATION TEST

PARISH	Voting Age Population (1960)		Registered Voters March 17, 1956		Registered Voters Dec. 31, 1960	
	White	Negro	White	Negro	White	Negro
Bienville	5,617	4,077	5,328	587	5,175	25
Claiborne	6,415	5,032	5,808	17	5,501	29
DeSoto	6,543	6,753	5,640	762	5,822	594
East Carroll	2,990	4,183	3,000	0	2,845	0
East Feliciana	4,200	4,102	2,812	1,361	2,448	82
Franklin	8,954	4,433	8,297	650	8,260	390
Jackson	6,607	2,535	5,457	1,113	5,804	483
LaSalle	6,799	849	6,861	742	6,823	220
Lincoln	9,611	5,723	7,029	1,166	6,928	860
Morehouse	10,311	7,208	9,400	935	7,489	301
Ouachita	40,185	16,377	24,184	5,782	24,789	729
Plaquemines	8,633	2,897	4,741	49	7,160	47
Rapides	44,823	18,141	26,293	3,160	30,362	3,073
Red River	3,294	2,181	3,575	1,512	3,429	27
Richland	7,601	4,608	7,195	740	6,075	263
St. Helena	2,363	2,082	2,555	1,694	2,478	1,243
Union	7,021	3,006	6,895	1,600	5,911	597
Webster	15,713	7,045	12,618	1,769	12,250	130
West Carroll	6,171	1,389	5,660	292	5,182	70
West Feliciana	1,632	2,235	1,272	0	1,303	0
Winn	6,790	2,590	6,449	1,430	6,393	1,093
TOTAL	212,273	107,446	161,069	25,361	162,427	10,256

2. Atkins should be reconsidered

In any event, if this is necessary here, the Atkins decision should be reconsidered. The Court there recognized that to perpetuate the results of discriminatory behavior constituted an "injustice" (323 F.2d at 744), and accordingly that a remedy must be provided. But the remedy which the Court suggested would not meet the problem. The Atkins opinion states that the United States can purge whites whom it proves not to have satisfied the minimal requirements of state law. This remedy is inadequate, for the following reasons:

a. It does not correct the federal wrong (racial discrimination), which is the sole basis for a lawsuit under 42 U.S.C. 1971(c), but merely rectifies violations of state law. Although the remedy would correct racial discrimination where such discrimination violates state law, it would not correct discrimination which remains within the bounds of state law. The Atkins opinion itself recognized that state law may be flexible, and that practices which do not exceed the bounds of state law may nevertheless be discriminatory.

b. The suggested remedy is impracticable

First. Since due process might well require that an individual white registrant sought to be purged from the registration rolls have an opportunity to be heard, the United States could not obtain the removal of large numbers of white persons registered in violation of state law without endless litigation. The United States, moreover, may not be able readily to ascertain which white registrants were registered in violation of state law.

Second. These difficulties cannot be overcome

by ordering the registrar to purge the rolls herself. It is the registrar who put them there and it is unlikely that she could be trusted to correct what might be so many of her own errors. Moreover, state law provides that persons registered prior to November 8, 1960, may not be removed from the registration rolls because of their inability to read or write.^{32/}

Third. The Atkins opinion does not deal at all with the relationship of the relief sought to subsection (e) of section 1971. The court or referee acting under the finding of a practice of discrimination must apply to Negroes the relaxed standards which were applied to whites during the period of discrimination.^{33/} If Congress thought

^{32/} When the Louisiana Constitution was amended in 1960 to eliminate the provision in Article 8, §1(d) for the registration of illiterates, subsection (f) was added, providing that "the inability of any person to read or write for any reason, who is registered to vote as of November 8, 1960, shall not be grounds for removal of such person from the registration rolls, by the registrar, by challenge of other persons, or by any action of court." On September 28, 1961, the Attorney General of Louisiana ruled that the foregoing subsection applied not only to a person who is registered under a system of permanent registration, but also to persons who are registered under a system of periodic registration. In Madison Parish re-registration was formerly conducted every four years, (registration is now permanent), but illiterates registered prior to January 1, 1961, are not required to re-register (R. 11). As of the latter date, there were 2713 whites registered out of 3334 whites of voting age.

^{33/} Under subsection (e), the court or referee is empowered to determine whether any applicant "is qualified under State law to vote." "Qualified under State law" is defined to mean:

. . . qualified according to the laws, customs, or usages of the State, and shall not, in any event, imply qualifications more stringent than those used by the persons found in the proceeding to have violated subsection (a) of this section in qualifying persons other than those of the race or color against which the pattern or practice of discrimination was found to exist.

that the application of relaxed standards was proper under subsection (e), it must have thought also that the standards must be relaxed to afford appropriate relief under subsection (c) as well. Certainly Congress could not have contemplated that the registrar would apply the strict standards written into the state statute books, while the court or referee would apply the relaxed standards previously applied to whites.^{34/}

II. The District Court Erred in Not
Taxing Costs Against the State

The District Court also erred by awarding costs in this case only against the registrar in her official capacity and not against the State of Louisiana. The taxation of costs is governed by Rule 54(d) of the Federal Rules of Civil Procedure, which provides in pertinent part as follows:

Except when express provision therefor is made either in a statute of the United States or in these rules, costs shall be allowed as of course to the prevailing party unless the court otherwise directs . . .^{35/}

In this case the District Court ordered in its decree that costs be taxed against the appellee Ward in her

^{34/} Indeed, under Atkins, white persons registered in violation of the letter of state law would be stricken off the rolls, while Negroes who satisfy the standards applied to whites during the period of discrimination, i.e., the standards applied to the whites stricken from the rolls, would be placed on the rolls. The result would be that whites would be removed from the rolls at the same time that Negroes with precisely the same qualifications as those whites would be registered.

^{35/} The rule goes on to provide that ". . . costs against the United States, its officers and agencies shall be imposed only to the extent permitted by law." The Civil Rights Act of 1957, 42 U.S.C. 1971(c) provides that "[i]n any proceeding hereunder the United States shall be liable for costs the same as a private person."

official capacity as registrar (R. 18). The court did not tax costs against the appellee State of Louisiana,^{36/} although it held that the State was properly joined as a party defendant and that the unlawful and discriminatory acts and practices of the appellee registrar and her predecessor are those of the appellee State (R. 15). Costs were taxed in the amount of \$1,468.77 (Cf. R. 23-24), but when formal demand by letter was made on the appellee registrar to pay the costs, her attorney responded that "it is impossible for this Registrar of Voters, legally or otherwise, to comply with the demands contained in your letter of February 10, 1964." Both the formal demand letter of the United States Attorney and the letter-response of the appellee registrar's counsel are set out in the appendix to this brief at pp. 54-57, infra.

Thus, it is plain that the effect of the District Court's order taxing costs against only appellee Ward is to deny costs to the prevailing party--the United States. And such a denial is generally regarded as appropriate only where neither side entirely prevailed or where the litigation was thought to be the result of fault by both of the parties. Barron and Holtzoff, Vol. 3, Chapter 11, Section 1196; and see, e.g., Jones v. Schellenberger, 225 F.2d 784, 794 (C.A. 7, 1955); Chicago Sugar Co. v. American Sugar Refining Co., 176 F.2d 1, 11 (C.A. 7, 1949); Dubuque Fire & Marine Ins. Co. v. Union Compress & W. Co., 146 F. Supp. 482 (W.D. La. 1956).

In this case the United States prevailed in proving its allegations of discrimination against both of

^{36/} Nor did the court tax costs against the registrar in her personal capacity, but this point is not being urged in this appeal.

the appellees. Clearly this lawsuit was not made necessary by any fault of the United States. Thus, there is no reason why the government should not receive an effective award of costs; i.e., a taxation of costs against the appellee State. The District Court's failure to do so was an abuse of discretion which should be remedied by this Court. See Yedlin v. Lewis, 320 F. 2d 35 (C.A. 5, 1963); McKnight v. Akins, 192 F. 2d 674 (C.A. 6, 1951); and Lyman v. Remington Rand, 188 F. 2d 306 (C.A. 2, 1951).

CONCLUSION

For the foregoing reasons, it is respectfully submitted that the district court be reversed in part and that the district court be directed to grant the relief sought herein.

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APRIL 1964.

APPENDIX

RESOLUTION

WHEREAS, Act No. 415 of the Louisiana Legislature of 1952 provided for a system of permanent registration of voters in the various parishes of Louisiana, provided that the Police Jury adopt the system of registration of voters and elect to be governed by the provisions of Part X of said Act No. 415, and

WHEREAS, it is the opinion of the Police Jury of Madison Parish, Louisiana, that a system of permanent registration of voters will benefit the voters of Madison Parish, Louisiana, now

THEREFORE, BE IT RESOLVED by the Police Jury of Madison Parish, Louisiana, in regular and legal session convened on this 14th day of February, 1963, that a system of permanent registration of voters be and is hereby adopted for the Parish of Madison, State of Louisiana, and that this Police Jury elects to be governed by the provisions of Act No. 415 of 1952.

BE IT FURTHER RESOLVED that the State of Louisiana be requested to bear the cost of all necessary material required to install this system and, in the event, that such aid is not forthcoming, this resolution shall be null and void.

I, Chas. A. Sparling, Secretary of the Police Jury of Madison Parish, Louisiana, hereby certify that the above and foregoing is a true and correct copy of a resolution passed by the Police Jury of Madison Parish, State of Louisiana, in regular session assembled on February 14th, 1963, at which meeting a quorum was present and voting.

GIVEN this 17th day of March, 1964.



Secretary

IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF LOUISIANA
MONROE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	
	)	
	)	
v.	)	CIVIL ACTION No. 8547
	)	
	)	
KATHERINE WARD, REGISTRAR OF	)	<u>PLAINTIFF'S PROPOSED</u>
VOTERS OF MADISON PARISH,	)	<u>DECREE</u>
LOUISIANA; AND THE STATE OF	)	
LOUISIANA,	)	
	)	
Defendants.	)	
	)	
	)	

Pursuant to the Findings of Fact and Conclusions of
Law entered this date:

1. This Court finds specifically that the defendants have engaged in acts and practices which have deprived Negro citizens in Madison Parish, Louisiana, of the right secured by 42 U.S.C. 1971(a), and that the deprivations of this right have been pursuant to a pattern and practice of racial discrimination.

2. It is ORDERED, ADJUDGED and DECREED that the defendant State of Louisiana and the defendant Katherine Ward, Registrar of Voters of Madison Parish, Louisiana, their agents, officers, employees, successors in office and all persons in active concert with them be and each hereby is enjoined from engaging in any act or practice which involves or results in distinctions of race or color in the registration of voters in Madison Parish, Louisiana.

Specifically, each of said defendants and persons is enjoined from:

- (a) Refusing to accept from Negro applicants for registration reasonable proof of their identity, 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.
- (b) Applying different and more stringent registration qualifications, requirements, procedures and standards to Negro applicants for registration than those which have been applied to white applicants from January 1, 1961, to August 31, 1962, in determining whether or not such applicants were or are qualified to register to vote in Madison Parish, Louisiana.
- (c) Failing to register applicants who meet the following qualifications:
 - (1) He is a citizen of not less than 21 years of age;
 - (2) He has resided in the State, Parish, and precinct the required period;

- (3) He is not disqualified by reason of bad character or conviction of a disqualifying crime; and
 - (4) He is literate and is able to demonstrate his ability to read and write by reading and copying a portion of the preamble to the Constitution of the United States.
- (d) Using the application form (L.R.-1) in any manner or for any purpose different from and more stringent than that for which it has been used in registering white persons in Madison Parish from January 1, 1961, to August 31, 1962. Specifically, the application form is to be used to obtain and record essential information from which it can be determined whether applicants possess the qualifications set forth in sub-paragraph (b)(1)-(3) above. The application form is not to be used as an examination or test. No applicant for registration whose application form shows that he meets the substantive qualifications prerequisite to voting under Louisiana law shall be denied registration because of errors or omissions on his application form.
- (e) Requiring applicants for registration to take or pass the so-called "citizenship" test which was put into use in Madison Parish in the Fall of 1962.

3. It is further ORDERED that said defendants in applying the above qualifications shall comply with the following standards and procedures until there is a complete reregistration:

- (a) Applicants who possess these qualifications must be registered, and it is the duty of the Registrar to determine whether the applicants possess these qualifications.
- (b) If from the information contained on the application form the Registrar is unable to determine whether the applicant possesses the qualifications of citizenship, age, residence, or if the Registrar is unable to determine whether the applicant is disqualified by reason of bad character or conviction of a disqualifying crime, then the Registrar should obtain the necessary information either by pointing out the deficiency to the applicant and permitting him to supply the necessary information on his application form, or by questioning the applicant and noting the necessary information on his form. If the information supplied by the applicant on his application form would disqualify him from registration if true, the registrar shall call this fact to his attention to insure that the information is correct and, if it is incorrect, permit the applicant to correct his answers if he so desires. It is the duty of the registrar to determine whether the applicant is qualified for registration to vote and the Registrar cannot justify the rejection of any applicant on the ground that the Registrar does not have sufficient information

about the applicant from which to determine whether the applicant is qualified, unless the applicant refuses to furnish the necessary information after the insufficiency has been called to his attention.

4. It is further ORDERED that the defendant Registrar shall notify each rejected applicant for registration of the specific reason for his rejection.

5. It is further ORDERED that the defendant Registrar submit to the Clerk of this Court in writing and a copy thereof to the plaintiff on or before the tenth day of each month after the date of this Decree and until further order of this Court, a report as to her progress in receiving and processing applications for registration during the preceding calendar month. The report shall include:

- (1) The dates and places applications were received during the preceding report period and the hours during which the registrars were available to receive applications.
- (2) The action taken by the Registrar on applications for registration during the preceding report period which with respect to accepted applications will state the name and race of the applicant, and date of application; and with respect to rejected applications, the name and race of the rejected applicant, date of application, and the specific reason for his rejection.

6. It is further ORDERED that defendant Registrar make available at the office of the registrar all

registration records of Madison Parish, Louisiana, for inspection and photographing by agents of the United States at any and all reasonable times.

The costs incurred in this proceeding to date are hereby taxed against the defendants.

Done this day of , 1963.

United States District Judge

CERTIFICATE OF SERVICE

I certify that, on the 8th day of April 1963,
I served the foregoing Brief in Support of Plaintiff's
Proposed Findings of Fact, Conclusions of Law, and
Decree together with the Proposed Findings of Fact,
Conclusions of Law, and Decree by mailing copies
thereof by United States Airmail, postage prepaid, to
the attorneys for the defendants, Honorable Jack P. F.
Gremillion, Honorable Harry J. Kron, Jr., and Honorable
Thompson L. Clarke.

RICHARD K. PARSONS

ADDRESS REPLY TO
UNITED STATES ATTORNEY

United States Department of Justice

Post Office Box 33

UNITED STATES ATTORNEY

WESTERN DISTRICT OF LOUISIANA
406 FEDERAL BUILDING
424 TEXAS AVENUE
SHREVEPORT, LOUISIANA

71102

February 10, 1964

Mrs. Katherine S. Ward
Registrar of Voters
Madison Parish
Tallulah, Louisiana

Re: United States of America, Plaintiff, v.
Katherine Ward, et al, Defendants
Civil Action No. 8547

Dear Madam:

In the above entitled and numbered cause a decree was formally entered and signed by U. S. District Judge Ben C. Dawkins, Jr., on October 22, 1963, ordering that costs incurred in the said suit be paid by you in your official capacity as Registrar of Voters of Madison Parish, Louisiana. On December 4, 1963, a Notice of Application to Tax Costs against you in the aggregate sum of \$1,468.77 was filed on behalf of Plaintiff, United States of America, all in keeping with the aforesaid decree. On December 18, 1963, Court costs were formally taxed against you in your aforesaid capacity in the aggregate amount stated.

By this communication we are now making formal demand upon you for payment of the aforesaid costs in the amount of \$1,468.77. Your remittance must be by certified check or bank money order, and should be made payable to the Treasurer of the United States and mailed direct to this office.

Your preferred attention to this matter will be appreciated.

Yours very truly,

EDWARD L. SHAHEEN
United States Attorney

ELS:EVB:db

OFFICE OF
THE DISTRICT ATTORNEY
SIXTH JUDICIAL DISTRICT
EAST CARROLL • MADISON AND TENNESSEE PARISHES

THOMPSON, CLARKE
ATTORNEYS
SHREVEPORT, LOUISIANA
OFFICE PHONE 2114

CLIFF ADAMS
ASSISTANT DISTRICT ATTORNEY
ALLUARD, LOUISIANA

OFFICE PHONE 2114

February 25, 1964

Honorable Edward L. Shaheen
United States Attorney
Western District of Louisiana
Post Office Box 33
Shreveport, Louisiana 71102

Re: United States of America, Plaintiff, v.
Katherine Ward, et al, Defendants
Civil Action No. 8547

Dear Mr. Shaheen:

I am writing this communication in answer to your letter of February 10, 1964, addressed to Katherine S. Ward, Registrar of Voters of Madison Parish, Louisiana, pertaining to the decree which was formally entered and signed by U. S. District Judge Ben C. Dawkins, Jr., on October 22, 1963, ordering that costs incurred in the above numbered and titled cause be paid by defendant in her official capacity as Registrar of Voters.

Also, in reference communication you made formal demand on her for the payment of said costs in the amount of \$1468.77.

For your consideration, please be advised as follows:

(a) The office of Registrar of Voters of Madison Parish is a constitutional office, separate and apart from any other public entity or official. Article 8, Section 18 of the 1921 Constitution of the State of Louisiana, paragraph 1, provides as follows:

"There shall be a registrar of voters for the Parish of Orleans, who shall be appointed by the Governor, and one for each parish in the State, who shall be appointed by the police jury or other governing authority of such parish."

(b) Paragraph two of Article 8, Section 18 of this Constitution prescribed the manner in which the respective registrars of the State shall be compensated for their services, thusly:

"The Governor shall issue a commission to each registrar who shall thereupon make bond, subscribe to such oath, and receive such compensation as the Legislature may prescribe; provided, that the State and the parish shall each pay one-half of such compensation."

(c) Louisiana Revised Statutes of 1950, 15:5.1, as amended, fixes the salary of the Registrar of Voters of Madison Parish at the sum of \$3960.00.

(d) Louisiana Revised Statutes of 1950, 18:6, as amended, in part provides:

"In all other parishes of the state, each registrar shall receive an additional seven hundred and twenty dollars per year for extra clerical help and for expenses; - - "

(e) Louisiana Revised Statutes of 1950, 18:192, as amended, might perhaps have been repealed by implication by Louisiana Revised Statutes of 1950, 18:6, as amended, cited, supra. However, I quote the provisions thereof for whatever it might be worth, viz:

"All books, stationery, and other paraphernalia and supplies necessary to carry on the registration and the necessary expenses for office rent, shall be paid by the parish in which the registration is carried on. However, before the expenses can be collected, the registrar shall furnish the head of the parish governing authority, or in the City of New Orleans, the Mayor, a sworn statement of the expenses necessarily incurred."

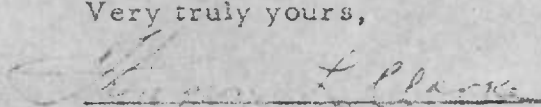
From the above, therefore, it is apparent the respective registrars of voters of the State of Louisiana, have no budget, are not a tax-levying entity, nor do they receive any revenue, compensation or expense allowance other than by the means and in the amounts hereinabove set forth. A judgment, as levied in the above captioned case, in no wise can be considered under the laws of the State of Louisiana as an expense of the Registrar of Voters of Madison Parish and, there-

Honorable Edward L. Shaheen

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fore, it is impossible for this Registrar of Voters, legally or otherwise, to comply with the demands contained in your letter of February 10, 1964.

Very truly yours,


Thompson L. Clarke
District Attorney
Sixth Judicial District

TLC/mp

ccs:

Sheriff C. E. Hester
Tallulah, Louisiana

Miss Katherine Ward
Registrar of Voters of Madison Parish
Tallulah, Louisiana

Madison Parish Police Jury
Tallulah, Louisiana

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing
brief and appendix for appellant has been served by
official United States 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 this 8th day of April, 1964.

/s/ GERALD P. CHOPPIN
GERALD P. CHOPPIN,
Attorney
Department of Justice
Washington, D. C. 20530