IN THE UNITED STATES DISTRICT COURT FOR THE

EASTERN DISTRICT OF LOUISIANA

BATON ROUGE DIVISION

UNITED STATES OF AMERICA, Plaintiff, v. BOARD OF REGISTRATION OF THE STATE OF LOUISIANA, ET AL., Defendants.	)	CIVIL ACTION NO. 2866

PLAINTIFF'S PROPOSED FINDINGS OF FACT, CONCLUSIONS OF LAW AND DECREE

Proposed Findings of Fact

1. Defendants John J. McKeithen,* C. C. Aycock and Vail M. Deloney* are the members of the Board of Registration of the State of Louisiana by virtue of their official positions as Governor, Lieutenant Governor and Speaker of the House of Representatives of the State of Louisiana, respectively. Each of these defendants has an office in Baton Rouge, Louisiana. Defendant Hugh E. Cutrer, Jr., is the Director and Ex Officio Secretary of the Board of Registration and

* Parties automatically substituted pursuant to Rule 25(d)(1), Federal Rules of Civil Procedure.

in that capacity is an agent of the defendant State. His office is in Baton Rouge, Louisiana. The Board of Registration is an agency of the defendant State of Louisiana. The office of the Board is in Baton Rouge, Louisiana.

2. Under the Constitution and laws of Louisiana, the Board of Registration is required to prescribe by general rules and regulations the method of the administration of the voter registration laws of the State of Louisiana, and the procedures and the character and forms of records and documents used in the registration process. The Board is authorized to remove, at will, any registrar of voters in the State of Louisiana. It is the duty of the defendant Director, Hugh E. Cutrer, Jr. who was appointed by the Board, to administer the rules and regulations of the Board, and to perform such other duties as may be directed by the Board in connection with the powers of the Board and the promotion of registration of voters of the State.

3. Under Louisiana law, registration is, and has been since 1864, a prerequisite to voting in any election.

4. Each parish in Louisiana has a registrar of voters who is an appointed official and an agent of the defendant State. All of the registrars in Louisiana and their deputies are white citizens. Under Louisiana law the registrars of voters determine whether each applicant for registration meets the qualifications for registration to vote.

5. Louisiana law provides for periodic registration for all parishes that do not contain a municipal corporation of one hundred thousand population, but gives each parish the option of adopting permanent registration. Parishes which contain a municipal corporation of 100,000 population must have permanent registration. Under the periodic system all voters in the parish must re-register every four years. The last complete four-year period commenced January 1, 1961 and the present period began on January 1, 1965. Under the permanent registration system a voter is not required to re-register unless his name is removed from the voter rolls for his failure to vote in four consecutive years (two years in Orleans Parish) or for any grounds set forth in the laws. At the time of the trial, 63 of the 64 Louisiana parishes were under the permanent registration system.

6. The application form requirement for voter registration was adopted as a voter qualification in Louisiana in 1898 for the purpose of creating a device to discriminate against Negroes. Almost all white persons, but no Negroes, were exempted from the application form test in that illiterate whites but not Negroes could qualify under the provisions of the "grandfather" clause adopted simultaneously with the application form test.

7. The application form test was never intended to function as a device to distinguish literate persons from illiterate persons. From the time of the adoption of the application form test in 1898 until 1960,

Louisiana law authorized the registration of illiterates whose application forms were to be completed by the registrar.

8. The inherent discriminatory potential of the application form test was officially reaffirmed in the 1950's when state officials urged that the test be applied retroactively to Negroes but not to white persons so as to purge Negroes from the voter rolls, and that it be used prospectively in tandem with the constitutional interpretation test to disfranchise Negroes.

9. The application form in use at the time of the trial of this case was designed as a device to permit the rejection of applicants who make technical errors or omissions in completing the application form. The deceptive appearance of the form as an application rather than as a test, its small size and print, the omission of key words and punctuation marks, the misleading placement of blank spaces, the jumbling of the information out of regular sequence, and the use of obscure and recondite phrasing all invited misinterpretation on the part of the applicant which the registrar could treat as rejectable error.

10. In administering the application form test, the registrars rejected plainly literate applicants for reasonable answers reasonably expressed; for reasonable omissions on the form, whether advertent or otherwise; and for information on the form inconsistent with information about the applicant, not in itself disqualifying, which the registrar obtains from extrinsic sources.

11. The registrars gave many applicants whatever aid, assistance, and instructions the applicants needed to complete the application form satisfactorily. Applicants who failed the test were rejected because they were either arbitrarily or discriminatorily denied the aid, assistance, and instructions afforded to other applicants.

12. The application form test has consistently been used to discriminate against Negroes.

(a) The application form test was used generally for the first time in Louisiana when in the mid-1950's Citizens Council members challenged the registration of large numbers of Negro voters on the ground that they had failed to complete the application form without errors or omissions. In fact, the challenged Negroes had satisfied all the requirements imposed by the registrars at the time they registered. White voters were not purged although their application forms suffered from the same alleged deficiencies as did those of the Negroes who were purged.

In most parishes where there were purges, Negroes were required to re-register and were subjected to the standards on the application form test used by the Citizens Council to purge them and were also required to take the constitutional interpretation test. The white voters, not having been challenged, in

effect were exempted from these tests. The discrimination brought about by the purges and the use of the new tests was frozen into the system in parishes such as Bienville, De Soto, Jackson, Ouachita, and Rapides, which had previously permanent registration.

(b) Fifty-five percent of the State's adult Negro population reside in the seventeen parishes where the application form test has been administered most strictly. In sixteen of these parishes (Orleans Parish excluded) 42.4% of the Negro applicants but only 2.3% of the white applicants who applied after the adoption of strict standards on the test have failed the test. In Orleans Parish 64.4% of the Negro applicants and 12.0% of the white applicants have failed the application form test. In other parishes, where strict administration of the application form test is a very recent innovation, the test has resulted in the rejection of a much higher percentage of Negro applicants that of white applicants.

(c) Negroes highly qualified by literacy standards have been denied registration in significant numbers in the following parishes on the basis of highly technical

errors or omissions on their application forms: Bienville, Caddo, De Soto, East Baton Rouge, East Carroll, East Feliciana, Iberville, Jackson, Madison, Orleans, Ouachita, Red River, Tangipahoa, Union, Webster, West Carroll, West Feliciana. White applicants in each of these parishes have admitted receiving from the registrar whatever aid and assistance was necessary to help them complete their forms successfully, or the registrar has admitted giving assistance to white applicants under certain circumstances. Negroes denied registration in these parishes for failing the application form test would not have been rejected if the registrars applied to them the same standards and procedures applied to white persons.

13. Beginning in 1960, and more actively between 1962 and 1965, the officers and agents of the Board of Registration sought to achieve strict enforcement of the application form test in all parishes. This resulted in the recent rejection of plainly literate applicants, a significant majority of whom are Negroes, in parishes where practically no persons were rejected prior to the intercession of the Board.

14. Since at least 1900, the State of Louisiana has provided for Negroes public educational opportunities significantly inferior to that provided for white persons.

The use of the application form test served inevitably to discriminate against Negroes because of the inferior educational opporutnities provided them by the State.

15. The application form test is not a reasonable test of literacy. Thousands of applicants have been denied registration for failing the application form test after having successfully completed both a multiple-choice test on citizenship and government and a test of their ability to read and write a portion of the preamble to the United States Constitution.

16. The effect of the use of the application form test has been to discriminate against Negroes and the test has served throughout the state as an unwarranted deterrent to the efforts of Negroes to become registered voters.

17. In 1960, the legislature added five "moral character" voter disqualifications to the existing felony conviction disqualification, and revised the application form to require applicants to indicate their qualification or disqualification under the new requirements. This was done at a time when thirty-nine parishes containing approximately 84% of the state's Negro adult population had already adopted permanent registration.

In 1962, simultaneously with the legislature's adoption of a multiple-choice citizenship test, the legislature authorized the Board of Registration to jumble the information on the application form out of regular sequence and to put into use more than one version of the form. Five different versions of the

form went into use upon the mandate of the Board in September 1962, at a time when forty-nine parishes containing 89% of the state's adult Negro population were operating on permanent registration.

The 1960 and 1962 changes in the application form made registration more difficult for all future applicants than it had been for white persons prior to the introduction of the changes. The use of the new requirements on the application form inevitably discriminated against Negroes since they constituted the vast majority of the unregistered class.

18. A substantial majority of the persons now registered to vote in Louisiana registered at a time when the application form was not used as a test.

19. In June 1965, five months after submission of this case for decision, the Louisiana legislature revised the application form test by passing of Act 165, Louisiana Acts of 1965. The law became effective June 28, 1965. It repeals the application form previously set out in LRS 18:32 and replaces it with a less complicated form which seeks from the applicant essentially the same information sought on the old form. Under the new requirement applicants no longer must state their age in years, months, and days; they need not state who their house holder is; and they may indicate their qualification under the six "moral character" requirements by checking either Yes or No. The Board of Registration is expressly authorized by Act 165 to change and rearrange the order of the questions on the form and the registrars may still use alternate versions of the form.

Proposed Conclusions of Law

1. This Court has jurisdiction over this action under 42 U.S.C. 1971(d), 28 U.S.C. 1345 and 28 U.S.C. 2281.

2. This action is a proper action to be heard by a district court of three judges.

3. The Attorney General of the United States is authorized to institute this action under 42 U.S.C. 1971(c).

4. The State of Louisiana and the State Board of Registration are properly joined as defendants.

5. The defendant members of the Board of Registration of the State of Louisiana, and the defendant Hugh E. Cutrer, Jr., as Director and Ex Officio Secretary of said Board, are properly made defendants in this action.

6. Each of the sixty-four registrars of voters in the State of Louisiana is an agent of the defendants.

7. The existence and enforcement of the provisions of Article 8, Section 1 of the Constitution of Louisiana, and of the statutes implementing Article 8, Section 1 of the Constitution of Louisiana insofar as they require applicants for voter registration to complete the prescribed application form without assistance is in violation of the Fourteenth and Fifteenth Amendment to the Constitution of the United States and 42 U.S.C. 1971(a).

8. Applicants who possess the substantive qualifications established by Louisiana law must be registered, and it is the duty of the registrars to determine whether the applicants possess those qualifications.

9. No procedural or substantive requirement for voter registration can be imposed which, by reason of previous history of registration, has the inevitable and intended effect of exempting most of the white persons from it and subjecting most of the Negroes to it. A state may not seal the effect of discrimination into the voting system by adopting exclusionary or burdensome registration requirements and standards.

10. A state which has for many years systematically denied to Negroes public educational opportunities equal to that afforded white persons may not impose requirements for voter registration which penalize Negroes and favor white persons because of the disparity in public education provided by the state for the two races, irrespective of whether the educational disparity independently constituted a denial of the equal protection of the laws.

11. Full and adequate relief in this case so as to correct past discrimination must include an order requiring the defendants to place on the voter rolls all those persons which the evidence shows were denied registration for failing the application form test.

12. On its face, the new voter application form, absent the requirement that it be filled out without

assistance, does not appear to violate the Fifteenth Amendment and 42 U.S.C. 1971(a), provided that it is used reasonably to secure information about the applicant and not as a test.

Proposed Decree

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

It is ADJUDGED AND DECREED that the provisions of Article VIII, Section 1 of the Louisiana Constitution and the provisions of the statutes of Louisiana insofar as they provide for or relate to the requirement that electors must complete the prescribed application form for registration without aid or assistance are unconstitutional.

It is ORDERED that the defendants, including all parish registrars, their agents and successors are enjoined from enforcing or giving any further effect to the requirement of Article VIII, Section 1 of the Louisiana Constitution and the statutes implementing Article VIII, Section 1 insofar as they pertain to the requirement that applicants for voter registration shall complete without aid or assistance the prescribed application form.

It is ORDERED that the defendants and the registrars of the individual parishes shall, within a reasonable period of time from the date of this decree not to exceed ninety (90) days, place on the voter rolls the names of all persons not already registered who have been denied registration because of errors or omissions on their application forms and whose forms show the applicants

to be qualified by reason of age, residence, and non-conviction of a felony. The defendants shall submit to the Clerk of this Court within 120 days from the date of this decree a list showing the names of all persons placed on the voter rolls in compliance with this decree, and names not so placed and reasons therefore.

It is further ORDERED that the Board of Registration shall forthwith direct all registrars to cease using the LR-1 application form and shall direct them to use in its place the new application form prescribed in Act 165, Louisiana Acts of 1965. The registrars shall commence to use the new application form immediately and shall use it until otherwise ordered by this Court, and shall comply with the following standards and procedures:

(a) The registrars may judge the literacy of applicants on the basis of their completion of the application form, but in judging literacy, the registrars may not take into account bad handwriting and spelling so long as the answers are legible and responsive;

(b) Applicants who possess the qualifications established by Louisiana law must be registered, and it is the duty of the Registrar to determine whether the applicants possess these qualifications.

(c) 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.

It is further ORDERED that the United States shall have the right to inspect and copy the voter registration records of any parish at reasonable intervals not to exceed once every three months per parish.

The Court retains jurisdiction for this and such other purposes as may become necessary to effectuate the terms of this decree.

Costs are hereby taxed against the defendants.

_____
United States Circuit Judge

_____
United States District Judge

_____
United States District Judge

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MEMORANDUM

This memorandum is submitted in support of Plaintiff's Proposed Findings of Fact, Conclusions of Law and Decree in this case.

On June 3, 1965 the Louisiana legislature adopted a statute revising the form of application for registration to be used in Louisiana and that statute became effective on June 28, 1965. The application form is specifically set forth in the statute. It may be presumed that this statute was enacted pursuant to Article VIII, Section 1 of the Louisiana Constitution which, although setting

forth the form of application, provides that said form shall be used "until or unless otherwise provided by law."

The legislature could not, and did not, affect the provision of the Louisiana Constitution challenged in this case -- that is, that portion of Article VIII, Section 1 which provides that each applicant for registration shall demonstrate his ability to read and write by filling out the application form "without assistance or supervision from any person or any memorandum whatever." The Supreme Court of Louisiana has interpreted this provision of the constitution to mean that the application form must be filled out perfectly and that applicants may be denied registration for errors or omissions in completing the application form, however immaterial those errors or omissions may be. The State of Louisiana through its agents has also interpreted this provision of the constitution in the same manner and thousands of Negro applicants have been denied registration as a consequence.[1/]

The essential issue in this case remains to be decided, and the factual context in which the case has been submitted for decision is unchanged. Arbitrary and discriminatory use of the application form has been a major feature of Louisiana's registration procedure for approximately a decade, and for over sixty-five years Negroes have been wrongly denied registration

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1/See Part IV of Plaintiff's Trial Brief.

through the use of a variety of more obvious devices. This factual setting compels a decision, even if the change in Louisiana law reduces the need for the far-reaching specific relief requested in plaintiff's trial brief.

The State has not come forth and said it will remedy the abuses of the past by having a complete reregistration; it does not say it will now allow persons so long denied a fair and reasonable chance to register to come in and do so; and it does not relinquish what it views as its right to deny registration for errors, omissions, or misunderstandings on the application form. Even the new act provides for the jumbling up of the information on the forms and the continued use of several versions of the form.

It is clear from the evidence introduced in this case and from the arguments made in our original brief that the requirement of the Louisiana Constitution that the application form must be filled out perfectly without assistance is unconstitutional. This fact is unaffected by the action of the legislature, and this Court should proceed to declare unconstitutional that portion of the Louisiana Constitution. In doing so, this Court should make clear that future use of any application form in Louisiana cannot be a device to reject applicants in the absence of unmistakable illiteracy. The legislature of Louisiana is to be commended for adopting a less technical registration form; but neither this

nor any other form should be used as a means for rejecting applicants.

If the new application form is to be used constitutionally in Louisiana, it must be used as a record of information about the applicant reflecting his substantive qualifications. Accordingly, no applicant who shows an ability to read and write by his answers on the application form can be denied registration on the basis of errors or omissions on the form. If the applicant answers some of the questions on the form and his answers are responsive and reasonably legible, he cannot be denied registration on the ground that he is not sufficiently literate. The registrars may not reject applicants on account of poor handwriting or misspellings on the application form.

The registrars have a duty to register all qualified applicants and to determine the true facts about the qualifications of each applicant. As the District Court ordered in U. S. v. Wilder, 22 F. Supp. 749, 755 (W.D.La. 1963):

> (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.

We urge the Court to decide this case and require on a state-wide basis use of the procedure set out above from the Wilder case.

Respectfully submitted,

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