

IN THE  
UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

UNITED STATES OF AMERICA,  
PLAINTIFF,

versus

CIVIL ACTION NO. 2548

STATE OF LOUISIANA; JIMMIE  
H. DAVIS, C. C. AYCOCK, J.  
THOMAS JEWEL, AS MEMBERS OF  
THE BOARD OF REGISTRATION  
OF THE STATE OF LOUISIANA;  
AND HUGH E. CUTRER, JR.,  
DIRECTOR AND EX OFFICIO  
SECRETARY OF THE BOARD OF  
REGISTRATION OF THE STATE  
OF LOUISIANA,

DEFENDANTS.

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

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IN THE UNITED STATES DISTRICT COURT FOR THE  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

UNITED STATES OF AMERICA,	)	
	)	
Plaintiff,	)	CIVIL ACTION NO. 2548
	)	
v.	)	PLAINTIFF'S PROPOSED FINDINGS OF
	)	FACT
STATE OF LOUISIANA, et al,	)	
	)	
Defendants.	)	

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I.

1.0 This action was brought by the Attorney General of the United States pursuant to 42 U.S.C. 1971 against the state of Louisiana, the members of the State Board of Registration, and the Director of that Board. The action seeks a judgment declaring the invalidity and enjoining the enforcement of the Louisiana voter qualification requirement which conditions registration for voting upon the ability of the citizen to understand and give a reasonable interpretation of any section of the Constitution of the State of Louisiana.

1.1 Defendants Jinnie H. Davis, C. C. Aycock and J. Thomas Jewel are the members of the Board of Registration of the State of Louisiana by virtue of their official positions as Governor, Lieutenant Governor and

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Speaker of the House of Representatives of the State of Louisiana, respectively. Each of these defendants has an office in Baton Rouge, Louisiana.

1.2 Defendant Hugh E. Cutrer, Jr. is the Director and Ex Officio Secretary of the Board of Registration and in that capacity is an agent of the defendant State. His office is in Baton Rouge, Louisiana.

1.3 The Board of Registration is an agency of the defendant State of Louisiana. The office of the Board is in Baton Rouge, Louisiana.

2.0 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 and 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 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.

3.0 Under Louisiana law, registration is, and has been since at least 1898, a prerequisite to voting in any election.

4.0 In addition to the usual qualifications of age, citizenship, and residency, the Constitution and laws of Louisiana prescribe the following requirements and standards:

The Applicant for Registration Must Be Able to Read and Write:

Standards:

- a. He must read and write from the dictation of the registrar any portion of the Preamble of the United States Constitution.
- b. He must execute an application form which is entirely written, dated and signed by him without assistance.

The Applicant for Registration Shall Be a Person of Good Character and Reputation.

Standards:

- a. He has not been convicted of a felony.
- b. He has not been convicted of more than one misdemeanor and sentenced to a term of 90 days or more in jail for each such conviction other than traffic or game law violations within the previous five years.
- c. He has not been convicted of any misdemeanor and sentenced to a term of six months or more in jail other than traffic or game law violations within the previous year.
- d. He has not lived with another in common-law marriage within the previous five years.
- e. She has not given birth to an illegitimate child within the previous five years.
- f. He has not acknowledged himself to be the father of an illegitimate child within the previous five years.

The Applicant for Registration Shall Be Attached to the Principles of the Constitution of the United States and of the State of Louisiana and Must Be Well Disposed to the Good Order and Happiness of the State of Louisiana and of the United States.

Standard:

- a. He must execute an affidavit that he will faithfully and fully abide by all the laws of Louisiana.

The Applicant for Registration Must Understand the Duties and Obligations of Citizenship Under a Republican Form of Government,

Standard:

- a. He must answer correctly four of six questions on the subject of our Constitution and Government. The questions are formulated by the State Board of Registration which at the present time has instituted the use of ten test cards from which the applicant is to select one. The test card contains six questions each with three optional answers.

The Applicant for Registration Shall Be Able to Understand and Give a Reasonable Interpretation of Any Section of the Constitution of the United States or the Constitution of Louisiana.

Standard:

None.

- 5.0 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 are white citizens. Under Louisiana law the Registrars of Voters determine whether each applicant for registration meets the qualifications for registration to vote.
- 6.0 Louisiana law provides for periodic registration but gives each parish the option of adopting permanent registration. Under the periodic system all voters in the parish must re-register every four years. The present four-year period commenced January 1, 1961. 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 two consecutive years or for other grounds set forth in the laws. Forty-two of the 64 Louisiana parishes have adopted the permanent registration system.

7.0 The interpretation test as a voter qualification in Louisiana was adopted in 1921 for the purpose of creating a device to make discrimination against Negroes easy.

7.1 In 1890 Negroes made up 50% of the population and 50% of the voters were Negroes. At that time no requirement of literacy or understanding was imposed as a condition prerequisite to voting.

7.2 In 1898 a constitutional convention adopted a new constitution. This constitution contained a "grandfather" clause by which persons entitled to vote on or before January 1, 1867 or those who were sons or grandsons of such persons were exempted from the literacy and property requirements established by the new constitution. In the same year the Louisiana Legislature directed a complete re-registration of all voters in accordance with the new qualifications.

7.21 The purpose of the "grandfather" clause of the 1898 constitution was to secure white political supremacy in Louisiana by disfranchising Negroes and perpetuating enfranchisement of white persons.

7.3 In 1900 after the new registration under the "grandfather" clause, there were only 5,320 Negroes registered, whereas in 1897 there had been 130,344 Negro voters in the State. By 1910 only 730 or less than 0.5 percent of the adult male Negroes were registered.

7.4 In 1921 six years after the Supreme Court invalidated a similar "Grandfather" clause, another constitutional convention was held and a new constitution was adopted. The "grandfather" clause of the former constitution was abandoned and the interpretation test was substituted in its stead.

7.41 Early in the Convention a decision was made that no records would be kept of the proceedings. The Suffrage Committee's deliberations and discussions were conducted in the utmost secrecy. The Committee met in executive session and its members observed a strict injunction against publicly discussing Committee business.

7.42 During the proceeding, the Chairman of the Suffrage and Elections Committee proposed the Christopher Columbus Plan by which persons whose ancestors came from an area north of the 34th latitude prior to 1492 would be exempted from onerous voter qualifications.

7.43 During the convention a group of Negroes appeared before the Suffrage and Elections Committee and made a plea not to be disfranchised.

7.44 The delegates to the 1921 convention and the public at-large understood that the interpretation test was intended as a substitute for the "grandfather" clause and that the purpose of the interpretation test was to "plug the hole" shot through the suffrage provisions when the United States Supreme Court declared the famous "grandfather" clause invalid.

8.0 The interpretation test was vitalized in the mid-1950's in a setting calculated to insure its discriminatory use.

8.1 During the period 1921 to 1948, white political supremacy was effectively maintained by excluding Negroes from participation in the Democratic Party Primary elections in Louisiana. The percentage of registered voters in Louisiana who were Negroes never rose above 1% between 1921 and 1946, although Negroes constituted more than one-third of Louisiana's adult population during these years. In 1942 only 957 or two-tenths of 1%



of the adult Negroes were registered to vote. At that time there were no Negroes registered to vote in 51 of Louisiana's 64 parishes.

8.2 As the white primary began to fade into disuse after the United States Supreme Court declared it invalid in 1944, the number of Negroes registered to vote in Louisiana rose from 1,029 in 1944 to 7,561 in 1946 to 22,576 in 1948.

8.3 Between 1946 and 1956 the percentage of registered voters in Louisiana who were Negroes rose from 1% to 15%. This rise was brought about by the combination of at least three major factors; the White Primary was extinguished; the interpretation test lay dormant; and Negro efforts to secure the right to vote increased.

8.31 Beginning January 1, 1949, there was a complete re-registration of all voters in the State. Applicants for registration at that time were not required to take the interpretation test. By 1951, a gubernatorial election year, white registration had risen from zero to 894,720; Negro registration to 86,684.

8.32 Negro efforts to gain the franchise increased sharply during this period. Negro veterans returning from World War II were

determined to vote. During this period eleven law suits were filed by Louisiana Negroes seeking to secure the right to vote.

8.4 In early 1956 state officials and private white citizens' groups launched an all out program to maintain racial segregation in Louisiana. This program focused on the disfranchisement of Negroes by removing them from the voter rolls and by subjecting them to the interpretation test as a voter qualification.

8.41 Following the decision of the Supreme Court in Brown v. Board of Education, the Louisiana Legislature, in 1954, created a Joint Legislative Committee to study ways and means of maintaining racially segregated schools in Louisiana. This Committee became known as the "Segregation Committee". Its Chairman was William H. Rainach, State Senator from Claiborne Parish. Counsel for the Committee was William H. Shaw, also from Claiborne Parish.

8.42 In January 1956, Messrs. Rainach and Shaw helped to organize and incorporate the Association of Citizens' Councils of Louisiana. One of the purposes of this organization was to "protect and preserve by all legal means, our historical Southern

Social Institutions in all of their aspects". These institutions include racial segregation in the schools and other public facilities, and also include white political supremacy. Mr. Rainach was the first president of the Association of Citizens' Councils and Mr. Shaw was its Secretary. During 1956 the Association acting particularly through Messrs. Rainach and Shaw helped to organize many local citizens' councils throughout the State whose purposes were the same as those of the Association.

- 8.43 The Association of Citizens' Councils published a pamphlet entitled, "Voter Qualification Laws in Louisiana -- The Key to Victory in the Segregation Struggle", which had been prepared in 1956 by Shaw and Rainach. This pamphlet advocates a two-step program. First, the registration rolls were to be purged of the "great numbers of unqualified voters who have illegally registered", and who "invariably vote in bloc and constitute a serious menace to the community". Second, the Louisiana voter qualification laws, including the interpretation test, were to be strictly enforced, as to all future applicants. The

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pamphlet makes clear that the so-called "unqualified voters" or the "voters who invariably vote in bloc and constitute a serious menace to the community" were the Negro voters and not the white voters. This pamphlet which was labeled, "A Manual of Procedure For Registrars of Voters, Police Jurors and Citizens Councils", received wide distribution throughout the State of Louisiana.

8.44 Pursuant to their program, Citizens' Council organizations conducted voter purges in at least eight parishes during 1956: e.g., Bienville, DeSoto, Jackson, LaSalle, Ouachita, Rapides, Richland and Union. These purges resulted in a substantial reduction in Negro registration but did not significantly affect white registration. The purges were followed by a strict enforcement of the interpretation test so that in permanent registration parishes Negroes seeking to re-register were subjected to the test and the white persons who were already permanently registered were exempted from it.

8.5 In late 1958 and early 1959 the Segregation Committee and the State Board of Registration held joint meetings for each of the

eight congressional districts in Louisiana for the alleged purpose of bringing about "uniform enforcement" of the registration laws but for the actual purpose of demanding that the registrars of voters employ the interpretation test and other requirements to disfranchise Negroes.

8.51 The registrars of voters were required to attend these congressional district conferences. These meetings were also attended by other public officials and citizens councils leaders and members. Present at the meetings were State Senators and State Representatives, the Director of the State Board of Registration, the legal counsel for the State Board of Registration, the State Attorney General and his assistants, Policy Jury Presidents and members, sheriffs, District Attorneys, and Presidents of the District Associations of Citizens Councils. Senator Rainach was the Chairman at these meetings and he and William Shaw were the principle speakers.

8.52 Senator Rainach told the registrars that the fight for school integration in the South had shifted to a fight for the vote of the Negro masses. He told them that during

the Reconstruction Period when Negroes were permitted to vote the public schools of Louisiana were integrated, and that, with the Negroes representing 32% of the population of the state, the Negroes could easily do again what they did during the Reconstruction Era if they should become registered to vote. He impressed upon them that in 1897 their forefathers in Louisiana started a program of voter qualification law enforcement, knowing that such a program would provide "the solution to their problems", and that the present voter qualification laws are adequate "to solve our present problems". He stressed that the registrars have become "the focal point of the solution to our problems".

8.53 William Shaw told the registrars at these meetings that they were on the "very front line" of the battle to maintain segregation. He impressed upon them his notion that the "key to the solution of our whole problem lies in the interpretation of the Constitution". He urged the registrars to require applicants to interpret the constitution and provided them with 24 test cards to be used for this purpose. He instructed the registrars

that the interpretation test is basically a test of native intelligence and not a test of education, and that "most of our white people have it and most of the niggers don't". He advised that the interpretation test would keep most of the Negroes off the registration rolls.

9.0 The interpretation test has consistently been used to discriminate against Negroes.

9.1 In twenty-one parishes where the interpretation test has been used only 9.5 percent of the adult Negroes were registered to vote as of the end of the last full registration period, whereas 76.5 percent of the adult white persons were then registered to vote. Before the interpretation test was introduced in these parishes 25,361 Negroes were registered to vote. By December 31, 1960 only 10,256 Negroes were registered. The registration of white persons was not discernibly affected. The attached table sets forth these facts.

9.2 Negroes highly qualified by literacy standards have been denied registration for their failure to interpret a section of the Constitution to the satisfaction of the registrar in the following parishes: Bienville, DeSoto,

# DISCRIMINATORY EFFECT OF THE INTERPRETATION TEST

PARISH	Voting Age Population (1960) (Pl. Ex. 2)		Registered Voters March 17, 1956 (Pl. Ex. 151)		Registered Voters Dec. 31, 1960 (Pl. Ex. 14)	
	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	7,203	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
<b>TOTAL</b>	<b>212,273</b>	<b>107,446</b>	<b>161,069</b>	<b>25,361</b>	<b>162,427</b>	<b>10,256</b>



East Feliciana, Jackson, Morehouse, Ouachita, Plaquemines, Richland, Union and Webster. Twenty-seven applications of Negro school teachers were rejected on that basis. In these same parishes there are white voters who have supposedly passed the interpretation test but whose application cards indicate that they are barely literate.

- 9.3 The commencement of the use of the interpretation test coupled with the wholesale purging of Negro voters alone effected gross discrimination. The Negroes were challenged by private citizens and removed from the voter rolls by the registrars assertedly on the ground that there were deficiencies in their original registration. Invariably the white voters suffered from the same alleged deficiencies but they were not challenged. The white voters remained voters, exempt from the interpretation test while the Negroes were subjected to it. In the parishes where this occurred Negro registration during a four-year period declined by about 10,000 while the white registration increased by 2,389.

9.4 In addition to the discriminatory effect of the interpretation test brought about by the purge of Negro voters, the interpretation test has been administered so as to discriminate against Negroes.

9.41 In 1954 when the interpretation test was first used in Plaquemines Parish there were approximately 4,100 white persons and only about 60 Negroes permanently registered to vote. There are in this parish 8,633 white persons and 2,897 Negroes of voting age; yet by August 31, 1962 only 51 Negroes were registered to vote whereas 6,726 white persons were registered to vote. Between 1954 and March 12, 1962, 99% of all applications of white persons were accepted while at least 44% of all applications of Negroes were rejected on the basis of the interpretation test.

9.410 White applicants received preferential treatment in the selection of sections to be interpreted. They were given easier test cards than were given to the Negroes. In 1959, 96% of the 1,586 white applicants received either test card No. 2 or test card

No. 8 which are the easiest cards in the set of 25 then in use. Each of these cards (No. 2 and 8) has a clause on freedom of speech and another on freedom of religion. All but seven of the white applicants passed the test in 1959. During the same year only four of the twenty Negroes who applied were registered. No Negro got either card No. 2 or card No. 8. They always got more difficult cards.

9.411 Negroes were discriminated against also in the grading process. The most rudimentary interpretations, if they may be called interpretations, at all, were accepted from white persons as being satisfactory -- interpretations such as the following:

The Section.

The people shall have the right peaceably to assemble.

The Interpretation.

"Always"

The Section.

Every person has the natural right to worship God according to the dictates of his own conscience.

The Interpretation.

"That is his right."

The Section.

No law shall be passed to curtail or restrain the liberty of speech or of the press.

The Interpretation

"Never"

The Section.

Any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

The Interpretation.

"That is his right".

Negroes who made a bona fide effort to interpret were denied registration on the basis of their interpretations.

The Section.

All legislative powers herein granted shall be vested in a Congress of the United States.

The Interpretation.

"All laws or powers given to anyone or group shall go through United States Congress."

The Section.

The judicial power of the United States shall be vested in one Supreme Court and in such inferior courts as the Congress may from time to time ordain and establish.

The Interpretation.

"The Supreme Court is the highest court and its decision is final unless Congress says different for a practical reason or reasons."

The Section.

The people have the right peaceably to assemble.

The Interpretation.

"That one may assemble or belong to any group, club, or organization he chooses as long as it is within the law."

9.412 The registrar assisted white applicants but not Negroes with their interpretations. The white applicants were often told what to write as their interpretations. On January 20, 1956, for example, twenty-six white applicants received the same test card and gave virtually identical interpretations.

9.413 On the basis of these practices, particularly the past practice of giving white applicants easier sections to interpret, a preliminary injunction was entered against the Registrar by the United States District Court for the Eastern District of Louisiana. (See U.S. v. Fox, et al., No. 11625).

9.42 In East Feliciana Parish the interpretation test has been administered so as to discriminate against Negroes.

9.421 In February 1958, there were 1276 Negroes and 2730 white persons registered to vote in East Feliciana Parish. With the appointment of a new registrar

in February, 1958, the interpretation test was inaugurated. By August 31, 1962, 2502 white persons and only eighty Negroes were registered to vote.

9.422 In September 1958, 565 Negroes and 78 white persons were removed from the voter registration rolls on the basis of affidavits of challenge filed by two members of the Citizens' Council of East Feliciana Parish. One of the grounds for removal in the case of 557 of the Negroes was that they had not been required to read and interpret a section of the Constitution. None of the voters, white or Negro, had been required to pass the interpretation test prior to February 1958. Subsequently, the registrar himself challenged about 1500 voters (including about 417 additional Negroes) on the ground that they had failed to date their applications. By mid-1959 the registration rolls were reduced to 1634 white persons and 50 Negroes.

9.423 Between February 1958 and March 1961, about 93% of the white applicants have been accepted (2424 applied, 2261 were accepted); only 32% of Negro applicants were accepted (255 applied, 81 were accepted). Seventy-two Negro applicants (or 54% of those who took the interpretation test) failed the test, while 71 white applicants (or only 3% of those who allegedly took the test) failed to satisfy the registrar with their interpretations. Eight of the 41 Negro school teachers who have taken the test have failed it. At least eight illiterate white persons were registered during the same period.

9.424 Some white persons who registered during the interpretation test era were not required to read or explain anything to the registrar.

9.425 When the test was applied to white persons it was often little more than a sham. Thus, 198 white persons registered in a single day. Mrs. Eva Dees, a

white lady, was asked very simply whether she thought everyone should go to the same church:

And then he read it off-- something about did I think everyone should go, you know, every human being should go to the same church, and I told him I thought they should go to the church of their choice.

9.426 Negroes were required to read the section then to give a perfect interpretation. Rev. Thomas N. Phillips, a Negro, was rejected after interpreting the clause on illegal search and seizure as: "To search you would have to get an authorized authority to read a warrant."

9.43 In Webster Parish the Interpretation test has been used to discriminate against Negroes.

9.431 The interpretation test was introduced at about the time a new registration period began. Prior to that time there were 1,773 Negroes registered to vote. At the end of the new registration period which commenced January 1, 1957, and terminated December 31, 1960, only 130 Negroes had become registered. The level of white registration remained virtually unaffected.

9.432 Not all applicants were required to interpret a section of the constitution. If the registrar knew the applicant, she was



more likely to dispense with the test. She knew a greater proportion of the white people than Negroes.

9.433 While more than 75% of the adult white persons in the parish became registered, highly qualified Negroes were denied registration under the interpretation test. Included among the disfranchised were a Negro school principal, a Negro dentist, a Negro school teacher, and a Negro insurance agent.

9.434 Negroes have been given sections to interpret so complicated that none but those trained in the law could be expected to interpret. One Negro was given the first part of Article 10, Section 1 of the Louisiana Constitution dealing with the power of taxation and the limitations thereon. Another Negro was asked to interpret Article 7, §41 of the Louisiana Constitution which sets forth the classes of cases which may be tried by a judge, those which may be tried by a jury, and the number of jurors who must concur in

in different classes of cases.

Another Negro was assigned Article 14, §24.2 of the Louisiana Constitution authorizing the issuance of bonds for the purpose of constructing and extending the sewerage, water and drainage system of the city of New Orleans, and imposing limitations upon the exercise of that authority.

9.44 In Bienville Parish the interpretation test has been used to discriminate against Negroes.

9.441 In Bienville Parish the combined use of the interpretation test and the purge of Negro voters reduced the number of Negro voters from 587 to 35. After the purge no Negro was registered for at least five years.

9.442 In September 1956, members of a local citizens' council challenged the registration status of about 600 voters in Bienville Parish. About 95% of those challenged were Negroes. They were then removed from the voter rolls by the registrar. The challenges were based on alleged errors made by the registrants in filling out their approved original applications.

Over 80% of the approximately 5,300 white voters (who were not challenged) had the same deficiencies on their original applications.

9.443 After the Negroes were purged, the Parish adopted permanent registration and the white voters were thus permanently in-franchised. The use of the interpretation test in the Parish began about ten months before the purge. The Negroes seeking to reregister were thus required to interpret a section of the constitution to the satisfaction of the registrar.

9.444 During the five year period following the purge, highly qualified Negroes sought to re-register but none were accepted. Five Negro school teachers including one with a Master's Degree from Stanford University and another with a Master's Degree from Columbia University, were denied registration on the basis of the interpretation test. One of the Negro teachers, Mrs. Thelma Tobin, was required to interpret the following provision:

**Art. 10 §16:**

**Section 16. Rolling stock operated in this State, the owners of which have no domicile therein, shall be assessed by the Louisiana Tax Commission, and shall be taxed for State purposes only, at a rate not to exceed forty mills on the dollar of assessed value.**

Her interpretation was deemed not satisfactory. The registrar said she did not accept it, "because she didn't say it was for non-resident owners."

Another Negro, Mr. Moses Smith, was asked to interpret a portion of Article 14, Section 24 of the Louisiana Constitution which reads in part as follows:

~~The provisions of Act No. 110 of the General Assembly, approved July 8, 1890, and Act No. 4, approved June 8, 1916, (except insofar as said latter Act shall have been altered, superseded or repealed by Act No. 51 of 1920), respectively, and the respective amendments to the Constitution of this State, ratifying and carrying same into effect are hereby recognized as being in full force and effect, and all of the rights, powers, duties and functions of the Board of Liquidation, City Dept., in connection with or respect to the several classes of bonds issued or to be issued in accordance with the statutes and amendments, and all vested rights of the present or ....~~

This Section of the Louisiana Constitution consists of approximately ten pages. Mr. Smith was asked to

interpret nearly a page of it. White persons with little or no education passed the interpretation test. Two of them had no education at all. There is no evidence that any white person was denied registration.

9.445 On the basis of these and other practices, the United States District Court for the Western District of Louisiana found that the Registrar had discriminated against Negroes. (U.S. v. Association of Citizens' Councils of Louisiana, et al., 196 F. Supp., 908 (1961))

9.45 In Red River Parish the interpretation test has been used to discriminate against Negroes.

9.451 In Red River Parish the combined use of the interpretation test and periodic registration reduced the number of Negro voters from 1512 to 30. White registration remained substantially unaffected.

9.452 As of March 17, 1956, there were 3,575 white persons and 1,512 Negroes registered to vote in Red River Parish. As of August 31, 1962, 3,047 white persons and 30 Negroes were

registered. The interpretation test was introduced in the parish in late 1956, and a new registration period commenced January 1, 1957. Ninety-three percent of the white persons of voting age became registered during the interpretation test era.

9.453 Generally the interpretation test was administered orally so that no record was made of the sections selected or the answers given. For a short period test cards were used and that showed that white persons were generally given easier sections to interpret than were Negroes. Two hundred and eighty of the white applicants (or over 85%) were asked to interpret the three provisions on Form #4 which is the easiest card in the set of five used. Only 2 of the 36 Negro applicants received the same provisions to interpret. The white applicants received the following provisions which appear on Form #4 to interpret:

Every person has the natural right to worship God according to the dictates of his own conscience.

Any person may speak, write and publish his subjects on all subjects, being responsible for the abuse of that liberty.

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof.

34% of the Negro applicants and only 2.5% of the white applicants received Form #3 to interpret. Each of the three provisions had to be interpreted to the satisfaction of the registrar. The provisions on Form #3 are:

Any person may speak, write and publish his sentiments on all subjects, being responsible for the abuse of that liberty.

No person shall be compelled to give evidence against himself in a criminal case.

No ex-post facto law, nor any law impairing the obligations of contracts, shall be passed.

9.454 The Registrar consciously selected the test cards for applicants and, according to him, he selected a card that he thought the particular applicant could answer. His selection of sections to be interpreted resulted in discrimination against Negroes.

9.46 In Jackson Parish the interpretation test has been used to discriminate against Negroes.

9.461 In Jackson Parish the interpretation test was not used until about March 1960. Negro voters had previously been purged from the voter rolls and after the interpretation test was put in use there was no increase in Negro registration.

9.462 In October 1956 members of a local citizens' council challenged about 900 of the 1113 Negro voters and caused their removal from voter rolls. Only thirteen white persons were similarly challenged although over 50% of the application forms of white voters contained the same deficiencies for which Negroes were challenged.

9.463 When the use of the interpretation test began in March 1960 there were 484 Negroes registered to vote in Jackson Parish. As of August 31, 1962, there were 478 Negroes registered.

9.464 At least 12 Negroes who applied to register during the interpretation test era were denied registration for failing to



interpret to the satisfaction of the registrar. Among them were 2 Negro school teachers. Mrs. Joan Dunn, a Negro college student, testified that the registrar gave her a card containing sections of the Constitution and asked her to read it; after she read it, the registrar took the card back; then asked her to interpret what she read. Mrs. Dunn did not know at the time she read the provisions that she was going to have to interpret them. She failed the test. Two white witnesses having a seventh grade and a fifth grade education, respectively, could not recall taking any interpretation test, although they registered during the period the interpretation test was in use.

9.47 In Cuachita Parish the interpretation test has been used to discriminate against Negroes.

9.471 The Registrar of Voters of Cuachita Parish used the interpretation test as a registration requirement between about April 1956 and September 1962. Due to the combination of purges and use of the interpretation test among

other requirements not previously used the registration of Negroes decreased from 5,782 in March 1956 to 952 as of August 31, 1962. During this same period white registration increased from 24,184 to 24,995.

9.472 In April and May 1956, private citizens challenged the registration status of more than 3000 Negroes. Most of these Negro voters were removed from the rolls. The challenges were based on alleged deficiencies in the original registration of the Negro, including the assertion that those challenged were unable to give a reasonable interpretation of a section of the Constitution. Up to that time, none of the voters, white or Negro, had been required to interpret any portion of the Constitution.

9.473 With the purge of Negro voters, the interpretation test was introduced in Ouachita Parish. Persons challenged were subjected to the test in order to reregister, persons not challenged were not. In the six years that followed, 493

applications of Negroes (or 37.6% of those taking the interpretation test) were rejected where the applicants failed to give the interpretation to the satisfaction of the registrar. During the same period only 52 applications of white persons (or less than one-half of one percent of those taking the test) were rejected where the applicants failed to give an interpretation to the satisfaction of the registrar.

March 1, 1956 - August 31, 1962

	<u>Passed Test</u>	<u>Failed Test</u>	<u>Percent</u>
Negro applications	819	493	37.57
White applications	11,555	53	0.46

9.474 One Negro school teacher, was denied registration three times for failing to interpret sections of the constitution to the satisfaction of the registrar. She finally became registered on her fourth attempt. On one occasion she was denied registration for failure to interpret satisfactorily the Fourth Amendment to the Constitution of the United States. She told the registrar that the Fourth

Amendment means "that nobody could just go into a person's house and take their belongings without a warrant from the law, and it had to specify in this warrant what they were to search and seize." The registrar told her that this was wrong. On her fourth attempt when she finally became registered she was required to interpret Article III, Section I of the United States Constitution. Another Negro school teacher who tried to register after 1958 and failed the interpretation test never tried again because she felt that she had interpreted the section correctly the first time and that there would be no point in returning.

9. 48 In other parishes where the interpretation test has been used the registrars have not kept records sufficiently for a conclusive determination as to what extent discrimination has been practiced. But a study of the application forms of white persons accepted for registration during the interpretation test period discloses that many of the applicants have not acquired a high level of literacy. The manner in which these applications were filled out -- the printing, the handwriting, the misspelling of simple words -- reveals the interpretation test to be a sham rather than a legitimate device for measuring the qualifications of voters.

10.0 The interpretation test vests the registrar with uncontrolled discretion to determine subjectively which persons are qualified to vote.

10.1 The decision whether to use the interpretation test is a matter of discretion with the registrar.

10.10 The registrars of voters in the four largest parishes in Louisiana -- Orleans, Caddo, East Baton Rouge, and Jefferson -- have not in recent years used the interpretation test as a voter qualification, and no official action was taken to require the registrars to do so.

10.11 Twenty-one parishes have used the interpretation test, most of which are located in north Louisiana. It was not until about 1956 that the interpretation test had any significant use even in these parishes.

10.2 The decision as to which applicants will be subjected to the test has been a matter of discretion with the registrar.

10.20 At least three registrars who employed the interpretation test did not apply it to all applicants for registration. One of these registrars understood the test to mean that applicants must be able to interpret and not that they must do so in every case. Another registrar did not give the test to

some applicants because she could tell which of them was qualified and which was not. The third registrar dispensed with the test with applicants she knew.

10.3 The choice of sections to be used in administering the interpretation test is left to the complete discretion of the registrar.

10.30 The registrar is free to select from any of the 499 sections contained in the Louisiana and United States Constitutions. Some registrars have limited the range of sections to be drawn from, others have not.

10.301 The Segregation Committee distributed to registrars sets of 24 cards each containing three sections of the constitution with instructions that they be used in administering the interpretation test. The sections on the separate covers are not of the same difficulty - some are very easy - some very difficult.

10.302 The registrar of Quachita Parish uses a different set -- a set of test cards containing sections chosen by the citizens' council.

10.303 Some of the registrars used the bound volume of the constitution

10.304 One registrar confined herself conclusively to the United States

Constitution; still another used both the Louisiana and the Federal Constitution.

10.31 The registrars have exercised vast discretion in selecting the sections for applicants to interpret.

10.310 At least four registrars just opened the book and found a section for the applicant to interpret.

10.311 Of the registrars using the test card method of selection, some picked the particular card for the applicant while others had the applicants choose their own. At least two of the registrars admitted that they chose sections to be interpreted which they thought would fit the particular applicant.

10.312 Several registrars required an interpretation of one of three sections on a test card, while another required two sections to be interpreted; still another required all three sections to be interpreted.

10.4 The unlimited discretion inherent in the interpretation test extends also to the evaluation or rating of the interpretations. Neither the statutes, the defendants, nor the registrars

have adopted any standards or guides to determining what constitutes a reasonable interpretation of any particular section or groups of sections. The degree of discretion is compounded by the fact that there is no requirement that a written record be made of the sections chosen or the interpretations given.

10.41 In those few parishes where the sections chosen and the interpretations given have been reduced to writing and preserved, the registrars commonly accepted as satisfactory from white applicants, interpretations of one, two or three words by manipulating the selecting of sections to be interpreted. White applicants often received the easiest test cards containing two provisions dealing with the freedom of religion and one provision relating to the freedom of speech. The simple interpretations, if they may be called that, of "freedom of religion" and "freedom of speech" were accepted by the registrars as satisfactory.

10.42 Negroes were denied registration for unsatisfactory interpretations of complicated sections, particularly where no record was made of the interpretations given. A Negro school teacher in Bienville Parish who has a Master's Degree from Stanford University was denied registration for her interpretation of the



provision dealing with taxation of the rolling stock of out-of-state owners. She understood the meaning of the provision. 29 Negro school teachers and many other Negroes obviously literate have been similarly denied registration.

11.0 The effect of the use of the interpretation test has been to reduce drastically the percentage of Negro voters in the parishes where the test has been used. In the twenty-one parishes where the test has been used Negro voters represented 13.6% of the total registered voters prior to the adoption of the interpretation test. On December 31, 1962 Negro voters represented 6.1% of the total registered voters in the twenty-one parishes.

12.0 After the present action was filed, the Louisiana Legislature in its 1962 regular session passed Acts 62 and 63 authorizing the State Board of Registration to devise a new test for determining whether applicants understood the duties and obligations of citizenship. This test is not related to nor is it a substitute for the interpretation test. The Legislature did not repeal the statutes implementing the interpretation test.

13.0 In August 1962 the defendant Board of Registration adopted a resolution providing for a new test to determine whether applicants for registration understood the duties and obligations of citizenship. In September 1962 this new test was put into operation in all parishes in Louisiana. At the same

time all registrars ceased using the interpretation test as a voter qualification.

13.1 The "citizenship test" is to be administered by permitting the applicant to select a test card from a set of ten, and answering correctly four of the six questions contained on the card. Each of the six questions has three optional answers. The applicant must circle the applicable answer on a separate answer card.

14.0 In parishes where the interpretation test has been used the "citizenship" test makes registration more difficult for all future applicants to register than it was for white persons to register prior to the commencement of the use of this test.

15.0 At no time have the defendants ordered a re-registration in those parishes where the interpretation test has been used nor has the defendant Board of Registration taken any other steps to correct the discriminatory effect of the use of the interpretation test.

IN THE UNITED STATES DISTRICT COURT  
FOR THE  
EASTERN DISTRICT OF LOUISIANA  
BATON ROUGE DIVISION

UNITED STATES OF AMERICA, )  
 )  
Plaintiff, )  
 )  
v. )  
 )  
STATE OF LOUISIANA, et al, )  
 )  
Defendants.)

CIVIL ACTION NO. 2548  
\*/  
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, seeking as it does an injunction restraining the enforcement of a State statute by restraining the action of State officers is a proper one 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) to obtain a judgement declaring the invalidity and enjoining the enforcement of State statutes on the ground that the enforcement of such statutes deprives otherwise qualified citizens of the right to vote without distinction of race.

4. The State of Louisiana is properly joined as a defendant by reason of its responsibility as a sovereign state to execute its laws and also under the provision of 42 U.S.C. 1971(c) as amended.

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\*/ Citations of authority and explanations of law as to those Conclusions that we regard warrant such treatment are blocked in single space.

5. The defendants who are members of the Board of Registration of the State of Louisiana, and the defendants Hugh E. Cutrer, Jr. as Director and Ex Officio Secretary of said Board are properly made defendants in this action by reason of their capacity as agents of the defendant State and by reason of their responsibility of Louisiana law to prescribe by general rules and regulations the method of the administration of the voter registration laws and procedures and the quality and forms of records and documents used in the registration process; and by virtue of the authority of the Board to remove at will any registrar of voters in the State of Louisiana.

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

7. 42 U.S.C. 1971(a) secures to every citizen, otherwise qualified, the right to vote without distinction of race or color "any constitution, law, custom, usage or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." This section prohibits the use of any voter qualification requirement which deprives citizens of that right.

8. The Louisiana interpretation test as a voter qualification requirement is contrary to the Fourteenth and Fifteenth Amendments to the Constitution of the United States and 42 U.S.C. 1971(a).

a. The interpretation test was adopted for the purpose of perpetuating the disfranchisement of Negroes.

- b. The interpretation test was put into use in a setting calculated to guarantee its discriminatory enforcement.
- c. The interpretation test vests registrars with arbitrary and unlimited discretion to determine which persons are qualified to vote.
- d. The interpretation test has been used to discriminate against Negroes.

See Davis v. Schnell, 336 U.S. 933 (1949); Lassiter v. Northampton Election Board, 360 U.S. 45; and Gomillion v. Lightfoot, 364 U.S. 339 (1960).

Regardless of the Court's view of the necessity or propriety of any injunction in this case, it is bound to declare the statute unconstitutional. See U.S. v Parke Davis, 365 U.S. 125.

9. In parishes where the interpretation test has been used and a high percentage of the adult white persons but a low percentage of the adult Negroes have become registered to vote, the use of the new "citizenship" test absent a re-registration violates the Fifteenth Amendment and 42 U.S.C. 1971(a).

- a. No test can be imposed which by reason of previous registration will exempt most of the white persons from it and subject most of the Negroes to it.
- b. A state may not seal the effects of discrimination into the voting

system by adopting exclusionary or burdensome registration requirements.

See Guinn v. United States, 238 U.S. 347 (1915); and Lane v. Wilson, 307 U.S. 268 (1938).

In Lassiter, a unanimous Court said:

Appellant argues that that is not the end of the problem presented by the grandfather clause. There is a provision in the General Statutes for permanent registration in some counties. Appellant points out that although the cut-off date in the grandfather clause was December 1, 1908, those who registered before then might still be voting. 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. But this issue of discrimination in the actual operation of the ballot laws of North Carolina has not been framed in the issues presented for the state court litigation. Cf. Williams v. Mississippi, 170 U.S. 213, 225. So we do not reach it. But we mention it in passing so that it may be clear that nothing we say or do here will prejudice appellant in tendering that issue in the federal proceedings which await the termination of this state court litigation.

In Lassiter the Court further said:

A literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot.

For over six years after the interpretation test began to be used in the

twenty-one parishes in Louisiana, almost all white applicants registered freely and without being really required to interpret any section of the Louisiana Constitution. Under those procedures a large percentage of the white persons of voting age are now registered to vote and in many of these parishes are registered permanently. This includes white persons with extremely low levels of comprehension.

Negroes on the other hand were eliminated and were not permitted to register through the discriminatory use of the interpretation test.

After the filing of this suit, the State of Louisiana changed its rules. It now imposes a new burdensome requirement on all applicants. They must be ready to answer a multiple-choice "citizenship" test. The defect in this new procedure is that in the twenty-one parishes where the interpretation test has been used it violates the United States Constitution and hence the State <sup>1/</sup> must be compelled to abandon it.

It is not now open to the State of Louisiana to freeze onto the registration rolls the effect of past discrimination against Negroes. The State from now on cannot impose high standards, even if applied uniformly, when the effect of these standards will be to make registration in the future more difficult for Negroes as a class than it has been in the past for white persons as a class.

In Ross v. Dyer, 312 F.2d 191, (C.A. 5, 1963), the Court of Appeals for the Fifth Circuit said:

The District Judge in his memorandum opinion 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

<sup>1/</sup> The United States takes no position at this time as to the constitutionality of the use of the test in the other Louisiana parishes. Relevant facts on that issue would be under what circumstances white persons were registered in the past and under what circumstances Negroes were kept off the registration rolls. Another relevant fact would be whether educational opportunities have been in fact equal for whites and Negroes.

practical effect of this rule which as to some Negro families perpetuates a segregated system despite the plain purpose of the stair-step 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. Ordinarily, on a declaration by a court of unconstitutional deprivation of rights, the relief is immediate and complete.

In United States v. Dogan, No. 19638 the Court said:

Sheriff Dogan's new instructions by necessary result, re-creates and perpetuates the very discrimination which prevailed under his former instructions and practices.

10. Full and adequate relief in this case requires not only a declaration of the invalidity of the interpretation test and an injunction restraining its enforcement but an order restraining the defendants and their agents, the registrars, in the twenty-one parishes where the interpretation test has been used from enforcing as against future applicants for registration the new "citizenship" test in the absence of a complete re-registration of all voters.

In determining whether an injunction of this type should issue the guidelines for this Court have been laid down in U.S. v. Alabama, et al, 304 F.2d. 583 (5th Cir. 1962). Under the principle in that case, this Court should decide whether the defendants and their agents, the registrars, have been guilty of gross abuse in conducting registration in the past. In this case



the use of the vicious interpretation test has been widespread and the abuses in the administration of the test have been flagrant. This being true this Court, under the principle of U. S. v. Alabama, supra, must decide whether the defendants have made any effort to eliminate the effects of the past discrimination and abuses. Simply by ceasing to use the interpretation test, whether voluntarily or under court order, the defendants do not eliminate the effects of the discrimination against Negroes. The imposition of the new "citizenship" test not only does nothing to eliminate the effects of the discrimination but in itself is contrary to the requirement of the Fifteenth Amendment. See Guinn v. United States, supra; Lane v. Wilson, supra; Lassiter v. Northampton Election Board, supra; Ross v. Dyer, supra; and United States v. Dogan, supra.

To restrain the use of the new "citizenship" test in these twenty-one parishes is not to impose a burden on Federal-State relations. Quite to the contrary, our view is that inaction in view of the long history of discrimination against Negroes in connection with voting in Louisiana would have the inevitable effect of imposing an even heavier burden on Federal-State relations. Despite judicial pronouncements over the years of the principles and meaning of the Fifteenth Amendment, discrimination against Negroes in the voting process continues. The time has come for decisive action - for this Court to do everything within its power to insure that all citizens actually have an equal opportunity to participate in the political process.

Respectfully submitted,

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