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LEADING COURT DECISIONS PERTINENT TO PROPOSED VOTING RIGHTS ACT OF 1965

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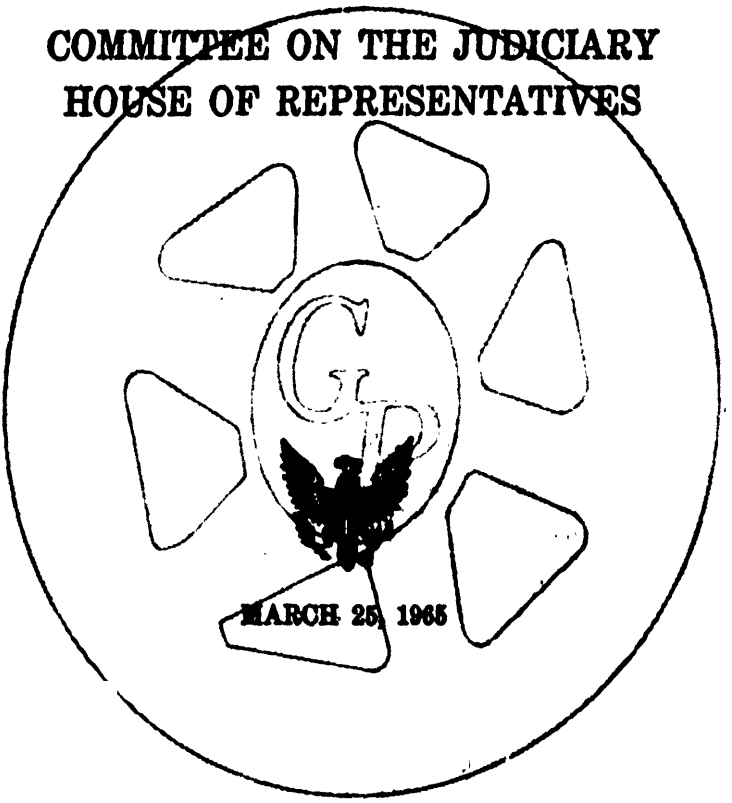

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LEADING COURT DECISIONS PERTINENT TO PROPOSED VOTING RIGHTS ACT OF 1965

WILLIAMS *v.* MISSISSIPPI.

ERROR TO THE SUPREME COURT OF THE STATE OF MISSISSIPPI.

No. 531. Argued and submitted March 18, 1898.—Decided April 25, 1898.

The provisions in section 241 of the constitution of Mississippi prescribing the qualifications for electors; in section 242, conferring upon the legislature power to enact laws to carry those provisions into effect; in section 244, making ability to read any section of the constitution, or to understand it when read, a necessary qualification to a legal voter; and of section 264, making it a necessary qualification for a grand or petit juror that he shall be able to read and write; and sections 2358, 3643 and 3644 of the Mississippi Code of 1892, with regard to elections, do not, on their face, discriminate between the white and negro races, and do not amount to a denial of the equal protection of the law, secured by the Fourteenth Amendment to the Constitution; and it has not been shown that their actual administration was evil, but only that evil was possible under them.

At June term 1896 of the Circuit Court of Washington County, Mississippi, the plaintiff in error was indicted by a grand jury composed entirely of white men for the crime of murder. On the 15th day of June he made a motion to quash the indictments, which was in substance as follows, omitting repetitions and retaining the language of the motion as nearly as possible:

Now comes the defendant in this cause, Henry Williams by name, and moves the Circuit Court of Washington County, Mississippi, to quash the indictment herein filed and upon which it is proposed to try him for the alleged offence of murder: (1) Because the laws by which the grand jury was selected, organized, summoned and charged, which presented the said indictment, are unconstitutional and repugnant to the spirit and letter of the Constitution of the United States of America, Fourteenth Amendment thereof, in this, that the Constitution prescribes the qualifications of electors, and that to be a juror one must be an elector; that the Constitution also requires that those offering to vote shall produce to the election officers satisfactory evidence that they have paid their taxes; that the legislature is to provide means for enforcing the Constitution, and in the exercise of this authority enacted section 3643, also section 3644 of 1892, which respectively provide that the election commissioners shall appoint three election managers, and that the latter shall be judges of the qualifications of electors, and are required "to examine on oath any person duly registered and offering to vote touching his qualifications as an elector." And then the motion states that "the registration roll is not *prima facie* evidence of an elector's right to vote, but the list of those persons having been passed upon by the various district election managers of the county to compose the registration book of voters as named in section 2358 of said code of 1892, and that there was no registration books of voters pre-

pared for the guidance of said officers of said county at the time said grand jury was drawn." It is further alleged that there is no statute of the State providing for the procurement of any registration books of voters of said county, and (it is alleged in detail) the terms of the constitution and the section of the code mentioned, and the discretion given to the officers, "is but a scheme on the part of the framers of that constitution to abridge the suffrage of the colored electors in the State of Mississippi on account of the previous condition of servitude by granting a discretion to the said officers as mentioned in the several sections of the constitution of the State and the statute of the State adopted under the said constitution, the use of said discretion can be and has been used in the said Washington County to the end complained of." After some detail to the same effect, it is further alleged that the constitutional convention was composed of 134 members, only one of whom was a negro; that under prior laws there were 190,000 colored voters and 69,000 white voters; the makers of the new constitution arbitrarily refused to submit it to the voters of the State for approval, but ordered it adopted, and an election to be held immediately under it, which election was held under the election ordinances of the said constitution in November, 1891, and the legislature assembled in 1892 and enacted the statutes complained of, for the purpose to discriminate aforesaid, and but for that the "defendant's race would have been represented impartially on the grand jury which presented this indictment," and hence he is deprived of the equal protection of the laws of the State. It is further alleged that the State has not reduced its representation in Congress, and generally for the reasons aforesaid, and because the indictment should have been returned under the constitution of 1869 and statute of 1889 it is null and void. The motion concludes as follows: "Further, the defendant is a citizen of the United States, and for the many reasons herein named asks that the indictment be quashed, and he be recognized to appear at the next term of the court."

This motion was accompanied by four affidavits, subscribed and sworn to before the clerk of the court, on June 15, 1896, to wit:

1st. An affidavit of the defendant, "who, being duly sworn, deposes and says that the facts set forth in the foregoing motion are true to the best of his knowledge, of the language of the constitution and the statute of the State mentioned in said motion, and upon information and belief as to the other facts, and that the affiant verily believes the information to be reliable and true."

2d. Another affidavit of the defendant, "who, being first duly sworn, deposes and says: That he has heard the motion to quash the indictment herein read, and that he thoroughly understands the same, and that the facts therein stated are true, to the best of his knowledge and belief. As to the existence of the several sections of the state constitution, and the several sections of the state statute, mentioned in said motion to quash, further affiant states: That the facts stated in said motion, touching the manner and method peculiar to the said election, by which the delegates to said constitutional convention were elected, and the purpose for which said objectionable provisions were enacted, and the fact that the said discretion complained of as aforesaid has abridged the suffrage of the number mentioned therein, for the purpose named therein; all such material allegations are true, to the best

of the affiant's knowledge and belief, and the fact of the race and color of the prisoner in this cause, and the race and color of the voters of the State whose elective franchise is abridged as alleged therein, and the fact that they who are discriminated against, as aforesaid, are citizens of the United States, and that prior to the adoption of the said constitution and said statute the said State was represented in Congress by seven Representatives in the lower House, and two Senators, and that since the adoption of the said objectionable laws there has been no reduction of said representation in Congress. All allegations herein, as stated in said motion aforesaid, are true to the best of affiant's knowledge and belief."

3d. An affidavit of John H. Dixon, "who, being duly sworn, deposes and says that he had heard the motion to quash the indictment filed in the *Henry Williams case*, and thoroughly understands the same, and that he has also heard the affidavit sworn to by said Henry Williams, carefully read to him, and thoroughly understands the same. And in the same manner the facts are sworn to in the said affidavit, and the same facts alleged therein upon information and belief, are hereby adopted as in all things the sworn allegations of affiant, and the facts alleged therein, as upon knowledge and belief, are made hereby the allegations of affiant upon his knowledge and belief."

4th. An affidavit of C. J. Jones, "who, being duly sworn, deposes and says that he has read carefully the affidavit filed in the *John Dixon case* sworn to by him (said C. J. Jones), and that he, said affiant, thoroughly understands the same, and adopts the said allegations therein as his deposition in this case upon hearing this motion to quash the indictment herein, and that said allegations are in all things correct and true as therein alleged."

The motion was denied and the defendant excepted. A motion was then made to remove the cause to the United States Circuit Court, based substantially on the same grounds as the motion to quash the indictment. This was also denied and an exception reserved.

The accused was tried by a jury composed entirely of white men and convicted. A motion for a new trial was denied, and the accused sentenced to be hanged. An appeal to the Supreme Court was taken and the judgment of the court below was affirmed.

The following are the assignments of error:

1. The trial court erred in denying motion to quash the indictment, and petition for removal.

2. The trial court erred in denying motion for new trial, and pronouncing death penalty under the verdict.

3. The Supreme Court erred in affirming the judgment of the trial court.

The sections of the constitution of Mississippi and the laws referred to in the motion of the plaintiff in error are printed in the margin.[1]

[1] The three sections of article 12 of the constitution of the State of Mississippi above referred to read as follows:

Section 241. "Every male inhabitant of this State except idiots, insane persons and Indians not taxed, who is a citizen of the United States, twenty-one years old and upwards, who has resided in this State two years, and one year in the election district, or in the incorporated city or town in which he offers to vote, and who is duly registered as provided in this article, and who has never been convicted of bribery, burglary, theft, arson, obtaining money or goods under false pretences, perjury, forgery, embezzlement or bigamy, and who has paid, on or before the 1st day of February of the year in which he shall offer to vote, all taxes which may have been legally required of him, and which he has had an opportunity of paying according to law for the two preceding years, and who shall produce to the officer holding the election satisfactory evidence that he has paid said

Mr. Cornelius J. Jones for plaintiff in error.

Mr. C. B. Mitchell, for defendant in error, submitted on his brief.

MR. JUSTICE MCKENNA, after stating the case, delivered the opinion of the court.

The question presented is, are the provisions of the constitution of the State of Mississippi and the laws enacted to enforce the same repugnant to the Fourteenth Amendment of the Constitution of the United States? That amendment and its effect upon the rights of the colored race have been considered by this court in a number of cases, and it has been uniformly held that the Constitution of the United States, as amended, forbids, so far as civil and political rights are concerned, discriminations by the General Government, or by the States, against any citizen because of his race; but it has also been held, in a very recent case, to justify a removal from a state court to a Federal court of a cause in which such rights are alleged to be denied, that such denial must be the result of the constitution or laws of the State, not of the administration of them. Nor can the conduct

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taxes, is declared to be a qualified elector: but any minister of the Gospel in charge of an organized church shall be entitled to vote after six months' residence in the election district, if otherwise qualified."

Section 242. "The legislature shall provide by law for the registration of all persons entitled to vote at any election, and all persons offering to register shall take the following oath or affirmation: 'I, ----------, do solemnly swear (or affirm) that I am twenty-one years old (or I will be before the next election in this county), and that I will have resided in this State two years and ---------- election district of ---------- county for one year next preceding the ensuing election (or if it be stated in the oath that the person proposing to register is a minister of the Gospel in charge of an organized church, then it will be sufficient to aver therein two years' residence in the State and six months in said election district) and am now in good faith a resident of the same, and that I am not disqualified from voting by reason of having been convicted of any crime named in the constitution of this State as a disqualification to be an elector; that I will truly answer all questions propounded to me concerning my antecedents so far as they relate to my right to vote, and also as to my residence before my citizenship in this district; that I will faithfully support the Constitution of the United States and of the State of Mississippi, and will bear true faith and allegiance to the same. So help me God.' In registering voters in cities and towns not wholly in one election district the name of such city or town may be substituted in the oath for the election district. Any wilful and corrupt false statement in said affidavit, or in answer to any material question propounded as herein authorized shall be perjury."

Section 244. "On after the first day of January, A.D. 1892, every elector shall, in addition to the foregoing qualifications, be able to read any section of the constitution of this State; or he shall be able to understand the same when read to him, or give a reasonable interpretation thereof. A new registration shall be made before the next ensuing election after January the first, A.D. 1892."

Section 264 of article 14 of the constitution of the State of Mississippi, above referred to, reads as follows:

Section 264. "No person shall be a grand or petit juror unless a qualified elector and able to read and write; but the want of any such qualification in any juror shall not vitiate any indictment or verdict. The legislature shall provide by law for procuring a list of persons so qualified, and the drawing therefrom of grand and petit jurors for each term of the Circuit Court."

The three sections of the Code of 1892 of the State of Mississippi, above referred to, read as follows:

Section 2358. How list of jurors procured.—"The board of supervisors at the first meeting in each year, or a subsequent meeting if not done at the first, shall select and make a list of persons to serve as jurors in the Circuit Court for the next two terms to be held more than thirty days afterwards, and as a guide in making the list, they shall use the registration books of voters; and it shall select and list the names of qualified persons of good intelligence, sound judgment and fair character, and shall take them as nearly as it conveniently can from the several election districts in proportion to the number of the qualified persons in each, excluding all who have served on the regular panel within two years, if there be not a deficiency of jurors."

Section 3643. Managers of election appointed.—"Prior to every election the commissioners of election shall appoint three persons for each election district to be managers of the election, who shall not all be of the same political party, if suitable persons of different political parties can be had in the district, and if any person appointed shall fail to attend and serve, the managers present, if any, may designate one to fill his place, and if the commissioners of election fail to make the appointments, or in case of the failure of all those appointed to attend and serve, any three qualified electors present when the polls should be opened may act as managers."

Section 3644. Duties and powers of managers.—"The managers shall take care that the election is conducted fairly and agreeably to law, and they shall be judges of the qualifications of electors, and may examine on oath any person duly registered and offering to vote touching his qualifications as an elector, which oath any of the managers may administer."

of a criminal trial in a state court be reviewed by this court unless the trial is had under some statute repugnant to the Constitution of the United States, or was conducted as to deprive the accused of some right or immunity secured to him by that instrument. Upon this general subject this court in *Gibson* v. *Mississippi*, 162 U.S. 566, 581, after referring to previous cases, said: "But those cases were held to have also decided that the Fourteenth Amendment was broader than the provisions of section 641 of the Revised Statutes; that since that section authorized the removal of a criminal prosecution before trial, it did not embrace a case in which a right is denied by judicial action during a trial, or in the sentence, or in the mode of executing the sentence; that for such denials arising from judicial action after a trial commenced, the remedy lay in the revisory power of the higher courts of the State, and ultimately in the power of review which this court may exercise over their judgments whenever rights, privileges or immunities claimed under the Constitution or laws of the United States are withheld or violated; and that the denial or inability to enforce in the judicial tribunals of the States rights secured by any law providing for the equal civil rights of citizens of the United States to which section 641 refers and on account of which a criminal prosecution may be removed from a state court, is primarily, if not exclusively, a denial of such rights or an inability to enforce them resulting from the constitution or laws of the State rather than a denial first made manifest at or during the trial of the case."

It is not asserted by plaintiff in error that either the constitution of the State or its laws discriminate in terms against the negro race, either as to the elective franchise or the privilege or duty of sitting on juries. These results, if we understand plaintiff in error, are alleged to be effected by the powers vested in certain administrative officers.

Plaintiff in error says:

"Section 241 of the constitution of 1890 prescribes the qualification for electors; that residence in the State for two years, one year in the precinct of the applicant, must be effected; that he is twenty-one years or over of age, having paid all taxes legally due of him for two years prior to 1st day of February of the year he offers to vote. Not having been convicted of theft, arson, rape, receiving money or goods under false pretences, bigamy, embezzlement.

"Section 242 of the constitution provides the mode of registration. That the legislature shall provide by law for registration of all persons entitled to vote at any election, and that all persons offering to register shall take the oath; that they are not disqualified for voting by reason of any of the crimes named in the constitution of this State; that they will truly answer all questions propounded to them concerning their antecedents so far as they relate to the applicant's right to vote, and also as to their residence before their citizenship in the district in which such application for registration is made. The court readily sees the scheme. If the applicant swears, as he must do, that he is not disqualified by reason of the crimes specified, and that he has effected the required residence, what right has he to answer all questions as to his former residence? Section 244 of the constitution requires that the applicant for registration after January, 1892, shall be able to read any section of the constitution, or he shall be able to understand the same (being any section of the organic law), or give a reasonable in-

terpretation thereof. Now we submit that these provisions vest in the administrative officers the full power, under section 242, to ask all sorts of vain, impertinent questions, and it is with that officer to say whether the questions relate to the applicant's right to vote; this officer can reject whomsoever he chooses, and register whomsoever he chooses, for he is vested by the constitution with that power. Under section 244 it is left with the administrative officer to determine whether the applicant reads, understands or interprets the section of the constitution designated. The officer is the sole judge of the examination of the applicant, and even though the applicant be qualified, it is left with the officer to so determine; and the said officer can refuse him registration."

To make the possible dereliction of the officers the dereliction of the constitution and laws, the remarks of the Supreme Court of the State are quoted by plaintiff in error as to their intent. The constitution provides for the payment of a poll tax, and by a section of the code its payment cannot be compelled by a seizure and sale of property. We gather from the brief of counsel that its payment is a condition of the right to vote, and in a case to test whether its payment was or was not optional, *Ratcliff* v. *Beale*, 20 So. Rep. 865, the Supreme Court of the State said: "Within the field of permissible action under the limitations imposed by the Federal Constitution, the convention swept the field of expedients, to obstruct the exercise of suffrage by the negro race." And further the court said, speaking of the negro race: "By reason of its previous condition of servitude and dependencies, this race had acquired or accentuated certain peculiarities of habit, of temperament, and of character, which clearly distinguished it as a race from the whites. A patient, docile people; but careless, landless, migratory within narrow limits, without forethought; and its criminal members given to furtive offences, rather than the robust crimes of the whites. Restrained by the Federal Constitution from discriminating against the negro race, the convention discriminates against its characteristics, and the offenses to which its criminal members are prone." But nothing tangible can be deduced from this. If weakness were to be taken advantage of, it was to be done "within the field of permissible action under the limitations imposed by the Federal Constitution," and the means of it were the alleged characteristics of the negro race, not the administration of the law by officers of the State. Besides, the operation of the constitution and laws is not limited by their language or effects to one race. They reach weak and vicious white men as well as weak and vicious black men, and whatever is sinister in their intention, if anything, can be prevented by both races by the exertion of that duty which voluntarily pays taxes and refrains from crime.

It cannot be said, therefore, that the denial of the equal protection of the laws arises primarily from the constitution and laws of Mississippi, nor is there any sufficient allegation of an evil and discriminating administration of them. The only allegation is ". . . by granting a discretion to the said officers, as mentioned in the several sections of the constitution of the State, and the statute of the State adopted under the said constitution, the use of which discretion can be and has been used by said officers in the said Washington County to the end here complained of, to wit, the abridgment of the elective franchise of the colored voters of Washington County, that such citi-

zens are denied the right to be selected as jurors to serve in the Circuit Court of the county, and that this denial to them of the right to equal protection and benefits of the laws of the State of Mississippi on account of their color and race, resulting from the exercise of the discretion partial to the white citizens, is in accordance with and the purpose and intent of the framers of the present constitution of said State. . . ."

It will be observed that there is nothing direct and definite in this allegation either as to means or time as affecting the proceedings against the accused. There is no charge against the officers to whom is submitted the selection of grand or petit jurors, or those who procure the lists of the jurors. There is an allegation of the purpose of the convention to disfranchise citizens of the colored race, but with this we have no concern, unless the purpose is executed by the constitution or laws or by those who administer them. If it is done in the latter way, how or by what means should be shown. We gather from the statements of the motion that certain officers are invested with discretion in making up lists of electors, and that this discretion can be and has been exercised against the colored race, and from these lists jurors are selected. The Supreme Court of Mississippi, however, decided, in a case presenting the same questions as the one at bar, "that jurors are not selected from or with reference to any lists furnished by such election officers." *Dixon* v. *The State*, Nov. 9, 1896, 20 So. Rep. 839.

We do not think that this case is brought within the ruling in *Yick Wo* v. *Hopkins*, 118 U.S. 356. In that case the ordinances passed on discriminated against laundries conducted in wooden buildings. For the conduct of these the consent of the board of supervisors was required, and not for the conduct of laundries in brick or stone buildings. It was admitted that there were about 320 laundries in the city and county of San Francisco, of which 240 were owned and conducted by subjects of China, and of the whole number 310 were constructed of wood, the same material that constitutes nine tenths of the houses of the city, and that the capital invested was not less than two hundred thousand dollars.

It was alleged that 150 Chinamen were arrested, and not one of the persons who were conducting the other eighty laundries and who were not Chinamen. It was also admitted "that petitioner and 200 of his countrymen similarly situated petitioned the board of supervisors for permission to continue their business in the various houses which they had been occupying and using for laundries for more than twenty years, and such petitions were denied, and all the petitions of those who were not Chinese, with one exception of Mrs. Mary Meagles, were granted."

The ordinances were attacked as being void on their face, and as being within the prohibition of the Fourteenth Amendment, but even if not so, that they were void by reason of their administration. Both contentions were sustained.

Mr. Justice Matthews said that the ordinance drawn in question "does not describe a rule and conditions for the regulation of the use of property for laundry purposes, to which all similarly situated may conform. It allows without restriction the use for such purposes of buildings of brick or stone; but as to wooden buildings, constituting

all those in previous use, divides the owners or occupiers into two classes, not having respect to their personal character and qualifications for the business, nor the situation and nature and adaptation of the buildings themselves, but merely by an arbitrary line, on one side of which are those who are permitted to pursue their industry by the mere will and consent of the supervisors, and on the other those from whom that consent is withheld, at their mere will and pleasure." The ordinances, therefore, were on their face repugnant to the Fourteenth Amendment. The court, however, went further and said: "This conclusion and the reasoning on which it is based are deductions from the face of the ordinance, as to its necessary tendency and ultimate actual operation. In the present cases we are not obliged to reason from the probable to the actual, and pass upon the validity of the ordinances complained of as tried merely by the opportunities which their terms afford of unequal and unjust discrimination in their administration. For the cases present the ordinances in actual operation, and the facts shown establish an administration directed so exclusively against a particular class of persons as to warrant and require the conclusion that, whatever may have been the intent of the ordinances as adopted, they are applied by the public authorities charged with their administration, and thus representing the State itself, with a mind so unequal and oppressive as to amount to a practical denial by the State of that equal protection of the laws which is secured to the petitioners, as to all other persons, by the broad and benign provisions of the Fourteenth Amendment to the Constitution of the United States. Though the law itself be fair on its face and impartial in appearance, yet, if it is applied and administered by public authority with an evil eye and an unequal hand, so as practically to make unjust and illegal discriminations between persons in similar circumstances, material to their rights, the denial of equal justice is still within the prohibition of the Constitution. This principle of interpretation has been sanctioned in *Henderson* v. *Mayor of New York*, 92 U.S. 259; *Chy Lung* v. *Freeman*, 92 U.S. 275; *Ex parte Virginia*, 100 U.S. 339; *Neal* v. *Delaware*, 103 U.S. 370; and *Soon Hing* v. *Crowley*, 113 U.S. 703."

This comment is not applicable to the constitution of Mississippi and its statutes. They do not on their face discriminate between the races, and it has not been shown that their actual administration was evil, only that evil was possible under them.

It follows, therefore, that the judgment must be

Affirmed.

GUINN AND BEAL v. UNITED STATES.

CERTIFICATE FROM THE CIRCUIT COURT OF APPEALS FOR THE EIGHTH CIRCUIT.

No. 96. Argued October 17, 1913.—Decided June 21, 1915.

The so-called Grandfather Clause of the amendment to the constitution of Oklahoma of 1910 is void because it violates the Fifteenth Amendment to the Constitution of the United States.

The Grandfather Clause being unconstitutional and not being separable from the remainder of the amendment to the constitution of Oklahoma of 1910, that amendment as a whole is invalid.

The Fifteenth Amendment does not, in a general sense, take from the States the power over suffrage possessed by the States from the beginning, but it does restrict the power of the United States or the States to abridge or deny the right of a citizen of the United States to vote on account of race, color or previous condition of servitude.

While the Fifteenth Amendment gives no right of suffrage, as its command is self-executing, rights of suffrage may be enjoyed by reason of the striking out of discriminations against the exercise of the right.

A provision in a state constitution recurring to conditions existing before the adoption of the Fifteenth Amendment and the continuance of which conditions that amendment prohibited, and making those conditions the test of the right to the suffrage is in conflict with, and void under, the Fifteenth Amendment.

The establishment of a literacy test for exercising the suffrage is an exercise by the State of a lawful power vested in it not subject to the supervision of the Federal courts.

Whether a provision in a suffrage statute may be valid under the Federal Constitution, if it is so connected with other provisions that are invalid, as to make the whole statute unconstitutional, is a question of state law, but in the absence of any decision by the state court, this court may, in a case coming from the Federal courts, determine it for itself.

The suffrage and literacy tests in the amendment of 1910 to the constitution of Oklahoma are so connected with each other that the unconstitutionality of the former renders the whole amendment invalid.

The facts, which involve the constitutionality under the Fifteenth Amendment of the Constitution of the United States of the suffrage amendment to the constitution of Oklahoma, known as the Grandfather Clause, and the responsibility of election officers under § 5508, Rev. Stat., and § 19 of the Penal Code for preventing people from voting who have the right to vote, are stated in the opinion.

Mr. Joseph W. Bailey, with whom *Mr. C. B. Stuart*, *Mr. A. C. Cruce*, *Mr. W. A. Ledbetter*, *Mr. Norman Haskell* and *Mr. C. G. Hornor* were on the brief, for plaintiffs in error:

Determination of the constitutionality of the Grandfather Clause in the Oklahoma constitution, not being necessary to a full solution of this case, this court will not pass upon the constitutionality of such provision. *Atwater* v. *Hassett*, 111 Pac. Rep. 802; Bishop on Stat. Crime, §§ 805–806; *Braxton County* v. *West Virginia*, 208 U.S. 192; *Burns* v. *State*, 12 Wisconsin, 519; *Devard* v. *Hoffman*, 18 Maryland, 479; *Liverpool Co.* v. *Immigration Commissioners*, 113 U.S. 39; *Mo.*,

Kans. & Tex. Ry. v. *Ferris*, 179 U.S. 606; §§ 19, 20, Penal Code; § 5508, Rev. Stats. (§ 19, Penal Code); *Smith* v. *Indiana*, 191 U.S. 139; *Cruce* v. *Cease*, 114 Pac. Rep. 251; *New Orleans Canal Co.* v. *Heard*, 47 La. Ann. 1679.

As to the nature of suffrage, see Jameson on Const. Conventions, § 336.

Suffrage in the States of the American Union is not controlled or affected by the Fourteenth Amendment to the Constitution of the United States. Blaine's Twenty Years in Congress; Brannon's Fourteenth Amendment, 77; *Coffield* v. *Coryell*, 4 Wash. C. C. 371; Miller's Lectures on Const., 661; *Minor* v. *Happersett*, 21 Wall. 162; *Slaughter House Cases*, 16 Wall. 36; *Strauder* v. *West Virginia*, 100 U.S. 303; 1 Willoughby's Constitution, 534; 2 *Id.* 483; 5 Woodrow Wilson's Hist. Am. People.

The Grandfather Clause does not violate the Fifteenth Amendment to the Constitution of the United States. *Atwater* v. *Hassett*, 111 Pac. Rep. 802; *Dred Scott Case*, 19 How. 393; *Dodge* v. *Woolsey*, 18 How. 371; *Fairbanks* v. *United States*, 181 U.S. 286; *Fletcher* v. *Peck*, 6 Cranch, 87; *Mills* v. *Green*, 67 Fed. Rep. 818; *Mills* v. *Green*, 69 Fed. Rep. 852; *Mitchell* v. *Lippencott*, 2 Woods, 372; *McClure* v. *Owen*, 26 Iowa, 253; *McCreary* v. *United States*, 195 U.S. 27; *Pope* v. *Williams*, 193 U.S. 621; *Southern R. R.* v. *Orton*, 6 Sawyer, 32 Fed. Rep. 478; *State* v. *Grand Trunk R. R.*, 3 Fed. Rep. 889; Stimson's Fed. & State Const. 224; *United States* v. *Reece*, 92 U.S. 214; *United States* v. *Cruickshank*, 92 U.S. 542; *United States* v. *Anthony*, 11 Blatchf. 205; *United States* v. *Des Moines*, 142 U.S. 545; *Webster* v. *Cooper*, 14 How. 488; *Williams* v. *Mississippi*, 170 U.S. 214; *Yick Wo* v. *Hopkins*, 118 U.S. 356.

Even though the exemption privilege provided in the Grandfather Law may be invalid, yet, the body of the law may be permitted to stand. *Albany* v. *Stanley*, 105 U.S. 305; *Trade Mark Cases*, 100 U.S. 82; *Little Rock &c. Ry.* v. *Worthen*, 120 U.S. 97.

The exception does not deny or abridge the right to vote on account of race, color, or previous condition of servitude.

The purpose and motive which moved the legislature to submit and the people to adopt the amendment are not subject to judicial inquiry.

The exception which is challenged as vitiating the entire amendment, even if open to judicial inquiry, is valid, because it applies without distinction of race, color, or previous condition of servitude.

In support of these contentions, see *Bailey* v. *Alabama*, 219 U.S. 219; *Cruce* v. *Cease*, 28 Oklahoma, 271; *Home Ins. Co.* v. *New York*, 134 U.S. 594; *McCray* v. *United States*, 195 U.S. 27; *Ratcliffe* v. *Beal*, 20 So. Rep. 865; *Smith* v. *Indiana*, 191 U.S. 138; *Soon Hing* v. *Crowley*, 113 U.S. 703; *United States* v. *Reese*, 92 U.S. 214; *Williams* v. *Mississippi*, 170 U.S. 213; *Yick Wo* v. *Hopkins*, 118 U.S. 356.

Mr. Solicitor General Davis for the United States:

The questions propounded by the Circuit Court of Appeals are raised by the facts as certified and are indispensable to a determination of the cause.

The answer to the second question propounded by the court, is that the Grandfather Clause of the amendment to the constitution of Oklahoma of the year 1910 is void because it violates the Fifteenth Amendment.

The so-called Grandfather Clause incorporates by reference the laws of those States which in terms excluded negroes from the franchise on January 1, 1866, because of race, color, or condition of servitude, and so itself impliedly excludes them for the same reason.

The doctrine of incorporation by reference has been frequently enunciated and applied. *Bank for Savings* v. *Collector*, 3 Wall. 495; *Donnelly* v. *United States*, 228 U.S. 243; *Ex parte Crow Dog*, 109 U.S. 556; *In re Heath*, 144 U.S. 92; *In re Hohorst*, 150 U.S. 653; *United States* v. *Le Bris*, 121 U.S. 278; *Viterbo* v. *Friedlander*, 120 U.S. 707. See also: Endlich, Interp. Stats., § 492; Potter's Dwarris, pp. 190–192, 218; Sutherland, Statutes, 2d ed., § 405.

What is implied in a statute is as much a part of it as what is expressed. *Gelpcke* v. *Dubuque*, 1 Wall. 175, 220; *United States* v. *Babbit*, 1 Black, 55, 61; *Wilson County* v. *Third Nat. Bank*, 103 U.S. 770, 778.

Whether at a given time a man was entitled to vote is a mixed question of law and fact, to be resolved only by consulting the law fixing the qualifications for suffrage and then the facts as to his possession of those qualifications.

While the Fifteenth Amendment did not confer the right of suffrage upon anyone, it did confer upon citizens of the United States from and after the date of its ratification the right not to be discriminated against in the exercise of the elective franchise on account of race, color, or previous condition of servitude. *United States* v. *Reese*, 92 U.S. 214; *United States* v. *Cruikshank*, 92 U.S. 542.

In all cases where the former slave-holding States had not removed from their constitutions the word "white" as a qualification for voting, the Fifteenth Amendment did in effect confer upon the negro the right to vote, because, being paramount to the State law, it annulled the discriminating word "white" and thus left him in the enjoyment of the same right as white persons. *Ex parte Yarbrough*, 110 U.S. 651; *Neal* v. *Delaware*, 103 U.S. 370.

If, therefore, the date fixed in the Grandfather Clause had been the year 1871—after the adoption of the Fifteenth Amendment—instead of the year 1866, the constitutions and laws to which it referred, and which were by such reference made a part of it, would have been already purged of the vice of racial discrimination, and the amendment itself would have been likewise free from it. To reflect upon the change which would be wrought in the meaning of this Grandfather Clause by the substitution of the year 1871 for the year 1866 is to be confirmed in the conviction of its utter invalidity.

The necessary effect and operation of the Grandfather Clause is to exclude practically all illiterate negroes and practically no illiterate white men, and from this its unconstitutional purpose may legitimately be inferred.

The census statistics show that the proportion of negroes qualified under the test imposed by the Grandfather Clause is as inconsiderable as the proportion of whites thereby disqualified.

In practical operation the amendment inevitably discriminates between the class of illiterate whites and illiterate blacks as a class, to the overwhelming disadvantage of the latter.

The necessary effect and operation of a state statute or constitutional amendment may be considered in determining its validity under

the Federal Constitution. *Bailey* v. *Alabama*, 219 U.S. 219; *Ho Ah Kow* v. *Nunan*, 5 Sawyer, 552; *Home Insurance Co.* v. *New York*, 134 U.S. 594, 598; *Yick Wo* v. *Hopkins*, 118 U.S. 356. See also: *Brimmer* v. *Rebman*, 138 U.S. 78, 82; *Chy Lung* v. *Freeman*, 92 U.S. 275, 278; *Dobbins* v. *Los Angeles*, 195 U.S. 223, 240; *Henderson* v. *Mayor of N.Y.*, 92 U.S. 259, 268; *Lochner* v. *New York*, 198 U.S. 45, 64; *McCray* v. *United States*, 195 U.S. 27, 60. See also: *Maxwell* v. *Dow*, 176 U.S. 581; *Minnesota* v. *Barber*, 136 U.S. 313, 319; *Missouri* v. *Lewis*, 101 U.S. 22, 32; *Quong Wing* v. *Kirkendall*, 223 U.S. 59, 63. Distinguishing—*Barbier* v. *Connolly*, 113 U.S. 27; *Soon Hing* v. *Crowley*, 113 U.S. 703; and *Williams* v. *Mississippi*, 170 U.S. 213.

The answer to the first question propounded by the court is that the Grandfather Clause being in violation of the Fifteenth Amendment and void, the amendment of 1910 to the constitution of Oklahoma as a whole is likewise invalid. The unconstitutional portion of the amendment is not separable from the remainder. *Connolly* v. *Union Sewer Pipe Co.*, 184 U.S. 540, 564–565; *Reagan* v. *Farmers' Loan & Trust Co.*, 154 U.S. 362, 395.

The first question certified by the Circuit Court of Appeals should be answered in the negative; the second question in the affirmative.

Mr. Moorfield Storey for the National Association for the Advancement of Colored People:

All discriminations respecting the right to vote on account of color are unconstitutional.

Whether the Oklahoma amendment constitutes such a discrimination is to be determined by its purpose and effect, and not by its phraseology alone.

The undoubted purpose and effect of the amendment is to discriminate against colored voters. *Anderson* v. *Myers*, 182 Fed. Rep. 223; *Bailey* v. *Alabama*, 219 U.S. 219; *Brimmer* v. *Rebman*, 138 U.S. 78; *Collins* v. *New Hampshire*, 171 U.S. 30; *Chy Lung* v. *Freeman*, 92 U.S. 275; *Galveston &c. Ry.* v. *Texas*, 210 U.S. 217; *Giles* v. *Harris*, 189 U.S. 475; *Giles* v. *Teasley*, 193 U.S. 146; *Graver* v. *Faurot*, 162 U.S. 435; *Hannibal & St. Jo. R. R.* v. *Husen*, 95 U.S 465; *Henderson* v. *Mayor of New York*, 92 U.S. 259; *Lochner* v. *New York*, 198 U.S. 45; *Maynard* v. *Hecht*, 151 U.S. 324; *Minnesota* v. *Barber*, 136 U.S. 313; *Mobile* v. *Watson*, 116 U.S. 289; *New Hampshire* v. *Louisiana*, 108 U.S. 76; *People* v. *Albertson*, 55 N.Y. 50; *People* v. *Compagnie Générale*, 107 U.S. 59; *Postal Tel.-Cable* v. *Taylor*, 192 U.S. 64; *Schollenberger* v. *Pennsylvania*, 171 U.S. 1; *Scott* v. *Donald*, 165 U.S. 58; *Smith* v. *St. Louis & So. W. Ry.*, 181 U.S. 248; *State* v. *Jones*, 66 Ohio St. 453; *Strauder* v. *West Virginia*, 100 U.S. 303; *Voight* v. *Wright*, 141 U.S. 62; *Williams* v. *Mississippi*, 170 U.S. 213; *Ex parte Yarbrough*, 110 U.S. 651.

Mr. J. H. Adriaans filed a brief as *amicus curiae*.

Mr. John H. Burford and *Mr. John Embry* filed a brief as *amici curiae*.

MR. CHIEF JUSTICE WHITE delivered the opinion of the court.

This case is before us on a certificate drawn by the court below as the basis of two questions which are submitted for our solution in order to enable the court correctly to decide issues in a case which it has under consideration. Those issues arose from an indictment and

conviction of certain election officers of the State of Oklahoma (the plaintiffs in error) of the crime of having conspired unlawfully, willfully and fraudulently to deprive certain negro citizens, on account of their race and color, of a right to vote at a general election held in that State in 1910, they being entitled to vote under the state law and which right was secured to them by the Fifteenth Amendment to the Constitution of the United States. The prosecution was directly concerned with § 5508, Rev. Stat., now § 19 of the Penal Code which is as follows:

"If two or more persons conspire to injure, oppress, threaten, or intimidate any citizen in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same, or if two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured, they shall be fined not more than five thousand dollars and imprisoned not more than ten years, and shall, moreover, be thereafter ineligible to any office, or place of honor, profit, or trust created by the Constitution or laws of the United States."

We concentrate and state from the certificate only matters which we deem essential to dispose of the questions asked.

Suffrage in Oklahoma was regulated by § 1, Article III of the Constitution under which the State was admitted into the Union. Shortly after the admission there was submitted an amendment to the Constitution making a radical change in that article which was adopted prior to November 8, 1910. At an election for members of Congress which followed the adoption of this Amendment certain election officers in enforcing its provisions refused to allow certain negro citizens to vote who were clearly entitled to vote under the provision of the Constitution under which the State was admitted, that is, before the amendment, and who, it is equally clear, were not entitled to vote under the provision of the suffrage amendment if that amendment governed. The persons so excluded based their claim of right to vote upon the original Constitution and upon the assertion that the suffrage amendment was void because in conflict with the prohibitions of the Fifteenth Amendment and therefor afforded no basis for denying them the right guaranteed and protected by that Amendment. And upon the assumption that this claim was justified and that the election officers had violated the Fifteenth Amendment in denying the right to vote, this prosecution, as we have said, was commenced. At the trial the court instructed that by the Fifteenth Amendment the States were prohibited from discriminating as to suffrage because of race, color, or previous condition of servitude and that Congress in pursuance of the authority which was conferred upon it by the very terms of the Amendment to enforce its provisions had enacted the following (Rev. Stat., § 2004):

"All citizens of the United States who are otherwise qualified by law to vote at any election by the people of any State, Territory, district, . . . municipality, . . . or other territorial subdivision, shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitu-

tion, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding."

It then instructed as follows:

"The State amendment which imposes the test of reading and writing any section of the State constitution as a condition to voting to persons not on or prior to January 1, 1866, entitled to vote under some form of government, or then resident in some foreign nation, or a lineal descendant of such person, is not valid, but you may consider it in so far as it was in good faith relied and acted upon by the defendants in ascertaining their intent and motive. If you believe from the evidence that the defendants formed a common design and coöperated in denying the colored voters of Union Township precinct, or any of them, entitled to vote, the privilege of voting, but this was due to a mistaken belief sincerely entertained by the defendants as to the qualifications of the voters—that is, if the motive actuating the defendants was honest, and they simply erred in the conception of their duty—then the criminal intent requisite to their guilt is wanting and they cannot be convicted. On the other hand, if they knew or believed these colored persons were entitled to vote, and their purpose was to unfairly and fraudulently deny the right of suffrage to them, or any of them entitled thereto, on account of their race and color, then their purpose was a corrupt one, and they cannot be shielded by their official positions."

The questions which the court below asks are these:

"1. Was the amendment to the constitution of Oklahoma, heretofore set forth, valid?

"2. Was that amendment void in so far as it attempted to debar from the right or privilege of voting for a qualified candidate for a Member of Congress in Oklahoma, unless they were able to read and write any section of the constitution of Oklahoma, negro citizens of the United States who were otherwise qualified to vote for a qualified candidate for a Member of Congress in that State, but who were not, and none of whose lineal ancestors was, entitled to vote under any form of government on January 1, 1866, or at any time prior thereto, because they were then slaves?"

As these questions obviously relate to the provisions concerning suffrage in the original constitution and the amendment to those provisions which forms the basis of the controversy, we state the text of both. The original clause so far as material was this:

"The qualified electors of the State shall be male citizens of the United States, male citizens of the State, and male persons of Indian descent native of the United States, who are over the age of twenty-one years, who have resided in the State one year, in the county six months, and in the election precinct thirty days, next preceding the election at which any such elector offers to vote."

And this is the amendment:

"No person shall be registered as an elector of this State or be allowed to vote in any election herein, unless he be able to read and write any section of the constitution of the State of Oklahoma; but no person who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read

and write sections of such constitution. Precinct election inspectors having in charge the registration of electors shall enforce the provisions of this section at the time of registration, provided registration be required. Should registration be dispensed with, the provisions of this section shall be enforced by the precinct election officer when electors apply for ballots to vote."

Considering the questions in the light of the text of the suffrage amendment it is apparent that they are twofold because of the twofold character of the provisions as to suffrage which the amendment contains. The first question is concerned with that provision of the amendment which fixes a standard by which the right to vote is given upon conditions existing on January 1, 1866, and relieves those coming within that standard from the standard based on a literacy test which is established by the other provision of the amendment. The second question asks as to the validity of the literacy test and how far, if intrinsically valid, it would continue to exist and be operative in the event the standard based upon January 1, 1866, should be held to be illegal as violative of the Fifteenth Amendment.

To avoid that which is unnecessary let us at once consider and sift the propositions of the United States on the one hand and of the plaintiffs in error on the other, in order to reach with precision the real and final question to be considered. The United States insists that the provision of the amendment which fixes a standard based upon January 1, 1866, is repugnant to the prohibitions of the Fifteenth Amendment because in substance and effect that provision, if not an express, is certainly an open repudiation of the Fifteenth Amendment and hence the provision in question was stricken with nullity in its inception by the self-operative forces of the Amendment, and as the result of the same power was at all subsequent times devoid of any vitality whatever.

For the plaintiffs in error on the other hand it is said the States have the power to fix standards for suffrage and that power was not taken away by the Fifteenth Amendment but only limited to the extent of the prohibitions which that Amendment established. This being true, as the standard fixed does not in terms make any discrimination on account of race, color, or previous condition of servitude, since all, whether negro or white, who come within its requirements enjoy the privilege of voting, there is no ground upon which to rest the contention that the provision violates the Fifteenth Amendment. This, it is insisted, must be the case unless it is intended to expressly deny the State's right to provide a standard for suffrage, or what is equivalent thereto, to assert: *a*, that the judgment of the State exercised in the exertion of that power is subject to Federal judicial review or supervision, or *b*, that it may be questioned and be brought within the prohibitions of the Amendment by attributing to the legislative authority an occult motive to violate the Amendment or by assuming that an exercise of the otherwise lawful power may be invalidated because of conclusions concerning its operation in practical execution and resulting discrimination arising therefrom, albeit such discrimination was not expressed in the standard fixed or fairly to be implied but simply arose from inequalities naturally inhering in those who must come within the standard in order to enjoy the right to vote.

On the other hand the United States denies the relevancy of these contentions. It says state power to provide for suffrage is not disputed, although, of course, the authority of the Fifteenth Amendment and the limit on that power which it imposes is insisted upon. Hence, no assertion denying the right of a State to exert judgment and discretion in fixing the qualification of suffrage is advanced and no right to question the motive of the State in establishing a standard as to such subjects under such circumstances or to review or supervise the same is relied upon and no power to destroy an otherwise valid exertion of authority upon the mere ultimate operation of the power exercised is asserted. And applying these principles to the very case in hand the argument of the Government in substance says: No question is raised by the Government concerning the validity of the literacy test provided for in the amendment under consideration as an independent standard since the conclusion is plain that that test rests on the exercise of state judgment and therefore cannot be here assailed either by disregarding the State's power to judge on the subject or by testing its motive in enacting the provision. The real question involved, so the argument of the Government insists, is the repugnancy of the standard which the amendment makes, based upon the conditions existing on January 1, 1866, because on its face and inherently considering the substance of things, that standard is a mere denial of the restrictions imposed by the prohibitions of the Fifteenth Amendment and by necessary result re-creates and perpetuates the very conditions which the Amendment was intended to destroy. From this it is urged that no legitimate discretion could have entered into the fixing of such standard which involved only the determination to directly set at naught or by indirection avoid the commands of the Amendment. And it is insisted that nothing contrary to these propositions is involved in the contention of the Government that if the standard which the suffrage amendment fixes based upon the conditions existing on January 1, 1866, be found to be void for the reasons urged, the other and literacy test is also void, since that contention rests, not upon any assertion on the part of the Government of any abstract repugnancy of the literacy test to the prohibitions of the Fifteenth Amendment, but upon the relation between that test and the other as formulated in the suffrage amendment and the inevitable result which it is deemed must follow from holding it to be void if the other is so declared to be.

Looking comprehensively at these contentions of the parties it plainly results that the conflict between them is much narrower than it would seem to be because the premise which the arguments of the plaintiffs in error attribute to the propositions of the United States is by it denied. On the very face of things it is clear that the United States disclaims the gloss put upon its contentions by limiting them to the propositions which we have hitherto pointed out, since it rests the contentions which it makes as to the assailed provision of the suffrage amendment solely upon the ground that it involves an unmistakable, although it may be a somewhat disguised, refusal to give effect to the prohibitions of the Fifteenth Amendment by creating a standard which it is repeated but calls to life the very conditions which that Amendment was adopted to destroy and which it had destroyed.

The questions then are: (1) Giving to the propositions of the Government the interpretation which the Government puts upon them

and assuming that the suffrage provision has the significance which the Government assumes it to have, is that provision as a matter of law repugnant to the Fifteenth Amendment? which leads us of course to consider the operation and effect of the Fifteenth Amendment. (2) If yes, has the assailed amendment in so far as it fixes a standard for voting as of January 1, 1866, the meaning which the Government attributes to it? which leads us to analyze and interpret that provision of the amendment. (3) If the investigation as to the two prior subjects establishes that the standard fixed as of January 1, 1866, is void, what if any effect does that conclusion have upon the literacy standard otherwise established by the amendment? which involves determining whether that standard, if legal, may survive the recognition of the fact that the other or 1866 standard has not and never had any legal existence. Let us consider these subjects under separate headings.

1. *The operation and effect of the Fifteenth Amendment.*

This is its text:

"Section 1. The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude.

"Section 2. The Congress shall have power to enforce this article by appropriate legislation."

(a) Beyond doubt the Amendment does not take away from the state governments in a general sense the power over suffrage which has belonged to those governments from the beginning and without the possession of which power the whole fabric upon which the division of state and national authority under the Constitution and the organization of both governments rest would be without support and both the authority of the nation and the State would fall to the ground. In fact, the very command of the Amendment recognizes the possession of the general power by the State, since the Amendment seeks to regulate its exercise as to the particular subject with which it deals.

(b) But it is equally beyond the possibility of question that the Amendment in express terms restricts the power of the United States or the States to abridge or deny the right of a citizen of the United States to vote on account of race, color or previous condition of servitude. The restriction is coincident with the power and prevents its exertion in disregard of the command of the Amendment. But while this is true, it is true also that the Amendment does not change, modify or deprive the States of their full power as to suffrage except of course as to the subject with which the Amendment deals and to the extent that obedience to its command is necessary. Thus the authority over suffrage which the States possess and the limitation which the Amendment imposes are coordinate and one may not destroy the other without bringing about the destruction of both.

(c) While in the true sense, therefore, the Amendment gives no right of suffrage, it was long ago recognized that in operation its prohibition might measurably have that effect; that is to say, that as the command of the Amendment was self-executing and reached without legislative action the conditions of discrimination against which it was aimed, the result might arise that as a consequence of the striking down of a discriminating clause a right of suffrage would be enjoyed by reason of

the generic character of the provision which would remain after the discrimination was stricken out. *Ex parte Yarbrough*, 110 U.S. 651; *Neal* v. *Delaware*, 103 U.S. 370. A familiar illustration of this doctrine resulted from the effect of the adoption of the Amendment on state constitutions in which at the time of the adoption of the Amendment the right of suffrage was conferred on all white male citizens, since by the inherent power of the Amendment the word white disappeared and therefore all male citizens without discrimination on account of race, color or previous condition of servitude came under the generic grant of suffrage made by the State.

With these principles before us how can there be room for any serious dispute concerning the repugnancy of the standard based upon January 1, 1866 (a date which preceded the adoption of the Fifteenth Amendment), if the suffrage provision fixing that standard is susceptible of the significance which the Government attributes to it? Indeed, there seems no escape from the conclusion that to hold that there was even possibility for dispute on the subject would be but to declare that the Fifteenth Amendment not only had not the self-executing power which it has been recognized to have from the beginning, but that its provisions were wholly inoperative because susceptible of being rendered inapplicable by mere forms of expression embodying no exercise of judgment and resting upon no discernible reason other than the purpose to disregard the prohibitions of the Amendment by creating a standard of voting which on its face was in substance but a revitalization of conditions which when they prevailed in the past had been destroyed by the self-operative force of the Amendmend.

2. *The standard of January 1, 1866, fixed in the suffrage amendment and its significance.*

The inquiry of course here is, Does the amendment as to the particular standard which this heading embraces involve the mere refusal to comply with the commands of the Fifteenth Amendment as previously stated? This leads us for the purpose of the analysis to recur to the text of the suffrage amendment. Its opening sentence fixes the literacy standard which is all-inclusive since it is general in its expression and contains no word of discrimination on account of race or color or any other reason. This however is immediately followed by the provisions creating the standard based upon the condition existing on January 1, 1866, and carving out those coming under that standard from the inclusion in the literacy test which would have controlled them but for the exclusion thus expressly provided for. The provision is this:

"But no person who was, on January 1, 1866, or at any time prior thereto, entitled to vote under any form of government, or who at that time resided in some foreign nation, and no lineal descendant of such person, shall be denied the right to register and vote because of his inability to so read and write sections of such constitution."

We have difficulty in finding words to more clearly demonstrate the conviction we entertain that this standard has the characteristics which the Government attributes to it than does the mere statement of the text. It is true it contains no express words of an exclusion from the standard which it establishes of any person on account of race, color, or previous condition of servitude prohibited by the Fifteenth Amendment,

but the standard itself inherently brings that result into existence since it is based purely upon a period of time before the enactment of the Fifteenth Amendment and makes that period the controlling and dominant test of the right of suffrage. In other words, we seek in vain for any ground which would sustain any other interpretation but that the provision, recurring to the conditions existing before the Fifteenth Amendment was adopted and the continuance of which the Fifteenth Amendment prohibited, proposed by in substance and effect lifting those conditions over to a period of time after the Amendment to make them the basis of the right to suffrage conferred in direct and positive disregard of the Fifteenth Amendment. And the same result, we are of opinion, is demonstrated by considering whether it is possible to discover any basis of reason for the standard thus fixed other than the purpose above stated. We say this because we are unable to discover how, unless the prohibitions of the Fifteenth Amendment were considered, the slightest reason was afforded for basing the classification upon a period of time prior to the Fifteenth Amendment. Certainly it cannot be said that there was any peculiar necromancy in the time named which engendered attributes affecting the qualification to vote which would not exist at another and different period unless the Fifteenth Amendment was in view.

While these considerations establish that the standard fixed on the basis of the 1866 test is void, they do not enable us to reply even to the first question asked by the court below, since to do so we must consider the literacy standard established by the suffrage amendment and the possibility of its surviving the determination of the fact that the 1866 standard never took life since it was void from the beginning because of the operation upon it of the prohibitions of the Fifteenth Amendment. And this brings us to the last heading:

3. *The determination of the validity of the literacy test and the possibility of its surviving the disappearance of the 1866 standard with which it is associated in the suffrage amendment.*

No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted. Whether this test is so connected with the other one relating to the situation on January 1, 1866, that the invalidity of the latter requires the rejection of the former is really a question of state law, but in the absence of any decision on the subject by the Supreme Court of the State, we must determine it for ourselves. We are of opinion that neither forms of classification nor methods of enumeration should be made the basis of striking down a provision which was independently legal and therefore was lawfully enacted because of the removal of an illegal provision with which the legal provision or provisions may have been associated. We state what we hold to be the rule thus strongly because we are of opinion that on a subject like the one under consideration involving the establishment of a right whose exercise lies at the very basis of government a much more exacting standard is required than would ordinarily obtain where the influence of the declared unconstitutionality of one provision of a statute upon another and constitutional provision is required to be fixed. Of course, rigorous as is this rule and imperative as is the duty not to violate it,

it does not mean that it applies in a case where it expressly appears that a contrary conclusion must be reached if the plain letter and necessary intendment of the provision under consideration so compels, or where such a result is rendered necessary because to follow the contrary course would give rise to such an extreme and anomalous situation as would cause it to be impossible to conclude that it could have been upon any hypothesis whatever within the mind of the law-making power.

Does the general rule here govern or is the case controlled by one or the other of the exceptional conditions which we have just stated, is then the remaining question to be decided. Coming to solve it we are of opinion that by a consideration of the text of the suffrage amendment insofar as it deals with the literacy test and to the extent that it creates the standard based upon conditions existing on January 1, 1866, the case is taken out of the general rule and brought under the first of the exceptions stated. We say this because in our opinion the very language of the suffrage amendment expresses, not by implication nor by forms of classification nor by the order in which they are made, but by direct and positive language the command that the persons embraced in the 1866 standard should not be under any conditions subjected to the literacy test, a command which would be virtually set at naught if on the obliteration of the one standard by the force of the Fifteenth Amendment the other standard should be held to continue in force.

The reasons previously stated dispose of the case and make it plain that it is our duty to answer the first question, No, and the second, Yes; but before we direct the entry of an order to that effect we come briefly to dispose of an issue the consideration of which we have hitherto postponed from a desire not to break the continuity of discussion as to the general and important subject before us.

In various forms of statement not challenging the instructions given by the trial court concretely considered concerning the liability of the election officers for their official conduct, it is insisted that as in connection with the instructions the jury was charged that the suffrage amendment was unconstitutional because of its repugnancy to the Fifteenth Amendment, therefore taken as a whole the charge was erroneous. But we are of opinion that this contention is without merit, especially in view of the doctrine long since settled concerning the self-executing power of the Fifteenth Amendment and of what we have held to be the nature and character of the suffrage amendment in question. The contention concerning the inapplicability of § 5508, Rev. Stat., now § 19 of the Penal Code, or of its repeal by implication, is fully answered by the ruling this day made in *United States* v. *Mosley*, No. 180, *post*, p. 383.

We answer the first question, No, and the second question, Yes.

And it will be so certified.

MR. JUSTICE MCREYNOLDS took no part in the consideration and decision of this case.

LASSITER *v.* NORTHAMPTON COUNTY BOARD OF ELECTIONS.

APPEAL FROM THE SUPREME COURT OF NORTH CAROLINA.

No. 584. Argued May 18–19, 1959.—Decided June 8, 1959.

1. A State may, consistently with the Fourteenth and Seventeenth Amendments, apply a literacy test to all voters irrespective of race or color. *Guinn* v. *United States*, 238 U.S. 347. Pp. 50–53.
2. The North Carolina requirement here involved, which is applicable to members of all races and requires that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language," does not on its face violate the Fifteenth Amendment. Pp. 53–54.

248 N.C. 102, 102 S.E. 2d 853, affirmed.

Samuel S. Mitchell argued the cause for appellant. With him on the brief were *Herman L. Taylor* and *James R. Walker, Jr.*

I. Beverly Lake argued the cause and filed a brief for appellee.

Malcolm B. Seawell, Attorney General of North Carolina, and *Ralph Moody*, Assistant Attorney General, filed a brief for the State of North Carolina, as *amicus curiae*, urging affirmance.

MR. JUSTICE DOUGLAS delivered the opinion of the Court.

This controversy started in a Federal District Court. Appellant, a Negro citizen of North Carolina, sued to have the literacy test for voters prescribed by that State declared unconstitutional and void. A three-judge court was convened. That court noted that the literacy test was part of a provision of the North Carolina Constitution that also included a grandfather clause. It said that the grandfather clause plainly would be unconstitutional under *Guinn* v. *United States*, 238 U.S. 347. It noted, however, that the North Carolina *statute* which enforced the registration requirements contained in the State Constitution had been superseded by a 1957 Act and that the 1957 Act does not contain the grandfather clause or any reference to it. But being uncertain as to the significance of the 1957 Act and deeming it wise to have all administrative remedies under that Act exhausted before the federal court acted, it stayed its action, retaining jurisdiction for a reasonable time to enable appellant to exhaust her administrative remedies and obtain from the state courts an interpretation of the statute in light of the State Constitution. 152 F. Supp. 295.

Thereupon the instant case was commenced. It started as an administrative proceeding. Appellant applied for registration as a voter. Her registration was denied by the registrar because she refused to submit to a literacy test as required by the North Carolina statute.[1]

[1] This Act, passed in 1957, provides in § 163–28 as follows:
"Every person presenting himself for registration shall be able to read and write any section of the Constitution of North Carolina in the English language. It shall be the duty of each registrar to administer the provisions of this section."
Sections 163–28.1, 163–28.2, and 163–28.3 provide the administrative remedies pursued in this case.

She appealed to the County Board of Elections. On the *de novo* hearing before that Board appellant again refused to take the literacy test and she was again denied registration for that reason. She appealed to the Superior Court which sustained the Board against the claim that the requirement of the literacy test violated the Fourteenth, Fifteenth, and Seventeenth Amendments of the Federal Constitution. Preserving her federal question, she appealed to the North Carolina Supreme Court which affirmed the lower court. 248 N.C. 102, 102 S.E. 2d 853. The case came here by appeal, 28 U.S.C. § 1257(2), and we noted probable jurisdiction. 358 U.S. 916.

The literacy test is a part of § 4 of Art. VI of the North Carolina Constitution. That test is contained in the first sentence of § 4. The second sentence contains a so-called grandfather clause. The entire § 4 reads as follows:

> "Every person presenting himself for registration shall be able to read and write any section of the Constitution in the English language. But no male person who was, on January 1, 1867, or at any time prior thereto, entitled to vote under the laws of any state in the United States wherein he then resided, and no lineal descendant of any such person, shall be denied the right to register and vote at any election in this State by reason of his failure to possess the educational qualifications herein prescribed: Provided he shall have registered in accordance with the terms of this section prior to December 1, 1908. The General Assembly shall provide for the registration of all persons entitled to vote without the educational qualifications herein prescribed, and shall, on or before November 1, 1908, provide for the making of a permanent record of such registration, and all persons so registered shall forever thereafter have the right to vote in all elections by the people in this State, unless disqualified under section 2 of this article."

Originally Art. VI contained in § 5 the following provision:

> "That this amendment to the Constitution is presented and adopted as one indivisible plan for the regulation of the suffrage, with the intent and purpose to so connect the different parts, and to make them so dependent upon each other, that the whole shall stand or fall together."

But the North Carolina Supreme Court in the instant case held that a 1945 amendment to Article VI freed it of the indivisibility clause. That amendment rephrased § 1 of Art. VI to read as follows:

> "Every person born in the United States, and every person who has been naturalized, twenty-one years of age, and possessing the qualifications set out in this article, shall be entitled to vote . . . ."

That court said that "one of those qualifications" was the literacy test contained in § 4 of Art. VI; and that the 1945 amendment "had the effect of incorporating and adopting anew the provisions as to the qualifications required of a voter as set out in Article VI, freed of the indivisibility clause of the 1902 amendment. And the way was made clear for the General Assembly to act." 248 N.C., at 112, 102 S. E. 2d 860, 861.

In 1957 the Legislature rewrote General Statutes § 163–28 as we have noted.[2] Prior to that 1957 amendment § 163–28 perpetuated the

[2] Note 1, *supra*.

grandfather clause contained in § 4 of Art. VI of the Constitution and § 163–32 established a procedure for registration to effectuate it.[3] But the 1957 amendment contained a provision that "All laws and clauses of laws in conflict with this Act are hereby repealed."[4] The Federal three-judge court ruled that this 1957 amendment eliminated the grandfather clause from the statute. 152 F. Supp., at 296.

The Attorney General of North Carolina, in an *amicus* brief, agrees that the grandfather clause contained in Art. VI is in conflict with the Fifteenth Amendment. Appellee maintains that the North Carolina Supreme Court ruled that the invalidity of that part of Art. VI does not impair the remainder of Art. VI since the 1945 amendment to Art. VI freed it of its indivisibility clause. Under that view Art. VI would impose the same literacy test as that imposed by the 1957 statute and neither would be linked with the grandfather clause which, though present in print, is separable from the rest and void. We so read the opinion of the North Carolina Supreme Court.

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.[5] 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.

We come then to the question whether a State may consistently with the Fourteenth and Seventeenth Amendments apply a literacy test to

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[3] Section 163–32 provided:

"Every person claiming the benefit of section four of article six of the Constitution of North Carolina, as ratified at the general election on the second day of August, one thousand nine hundred, and who shall be entitled to register upon the permanent record for registration provided for under said section four, shall prior to December first, one thousand nine hundred and eight, apply for registration to the officer charged with the registration of voters as prescribed by law in each regular election to be held in the State for members of the General Assembly, and such persons shall take and subscribe before such officer an oath in the following form, viz.:

"I am a citizen of the United States and of the State of North Carolina; I am ... years of age. I was, on the first day of January, A. D. one thousand eight hundred and sixty-seven, or prior to said date, entitled to vote under the constitution and laws of the state of ....., in which I then resided (or, I am a lineal descendant of ....., who was, on January one, one thousand eight hundred and sixty-seven, or prior to that date, entitled to vote under the constitution and laws of the state of ....., wherein he then resided."

[4] N. C. Laws 1957, c. 287, pp. 277, 278.

[5] Section 163–31.2 provides:

"In counties having one or more municipalities with a population in excess of 10,000 and in which a modern loose-leaf and visible registration system has been established as permitted by G. S. 163–48, with a full time registration as authorized by G. S. 163–31, such registration shall be a permanent public record of registration and qualification to vote, and the same shall not thereafter be cancelled and a new registration ordered, either by precinct or countywide, unless such registration has been lost or destroyed by theft, fire or other hazard."

all voters irrespective of race or color. The Court in *Guinn* v. *United States*, *supra*, at 366, disposed of the question in a few words, "No time need be spent on the question of the validity of the literacy test considered alone since as we have seen its establishment was but the exercise by the State of a lawful power vested in it not subject to our supervision, and indeed, its validity is admitted."

The States have long been held to have broad powers to determine the conditions under which the right of suffrage may be exercised, *Pope* v. *Williams*, 193 U.S. 621, 633; *Mason* v. *Missouri*, 179 U.S. 328, 335, absent of course the discrimination which the Constitution condemns. Article I, § 2 of the Constitution in its provision for the election of members of the House of Representatives and the Seventeenth Amendment in its provision for the election of Senators provide that officials will be chosen "by the People." Each provision goes on to state that "the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." So while the right of suffrage is established and guaranteed by the Constitution (*Ex parte Yarbrough*, 110 U. S. 651, 663–665; *Smith* v. *Allwright*, 321 U.S. 649, 661–662) it is subject to the imposition of state standards which are not discriminatory and which do not contravene any restriction that Congress, acting pursuant to its constitutional powers, has imposed. See *United States* v. *Classic*, 313 U.S. 299, 315. While § 2 of the Fourteenth Amendment, which provides for apportionment of Representatives among the States according to their respective numbers counting the whole number of persons in each State (except Indians not taxed), speaks of "the right to vote," the right protected "refers to the right to vote as established by the laws and constitution of the State." *McPherson* v. *Blacker*, 146 U.S. 1, 39.

We do not suggest that any standards which a State desires to adopt may be required of voters. But there is wide scope for exercise of its jurisdiction. Residence requirements, age, previous criminal record (*Davis* v. *Beason*, 133 U. S. 333, 345–347) are obvious examples indicating factors which a State may take into consideration in determining the qualifications of voters. The ability to read and write likewise has some relation to standards designed to promote intelligent use of the ballot. Literacy and illiteracy are neutral on race, creed, color, and sex, as reports around the world show.[6] Literacy and intelligence are obviously not synonymous. Illiterate people may be intelligent voters. Yet in our society where newspapers, periodicals, books, and other printed matter canvass and debate campaign issues, a State might conclude that only those who are literate should exercise the franchise. Cf. *Franklin* v. *Harper*, 205 Ga. 779, 55 S. E. 2d 221, appeal dismissed 339 U.S. 946. It was said last century in Massachusetts that a literacy test was designed to insure an "independent and intelligent" exercise of the right of suffrage.[7] *Stone* v. *Smith*,

[6] World Illiteracy at Mid-Century, Unesco (1957).

[7] Nineteen States, including North Carolina, have some sort of literacy requirement as a prerequisite to eligibility for voting. Five require that the voter be able to read a section of the State or Federal Constitution and write his own name. Arizona Rev. Stat. § 16–101; Cal. Election Code § 220; Del. Code Ann., Tit. 15, § 1701; Me. Rev. Stat., c. 3, § 2; Mass. Gen. L. Ann., c. 51, § 1. Five require that the elector be able to read and write a section of the Federal or State Constitution. Ala. Code, 1940, Tit. 17, § 32; N. H. Rev. Stat. Ann. §§ 55:10–55:12; N. C. Gen. Stat. § 163–28; Okla. Stat. Ann., Tit. 26, § 61; S. C. Code § 23–62. Alabama also requires that the voter be of "good character" and "embrace the

159 Mass. 413–414, 34 N. E. 521. North Carolina agrees. We do not sit in judgment on the wisdom of that policy. We cannot say, however, that it is not an allowable one measured by constitutional standards.

Of course a literacy test, fair on its face, may be employed to perpetuate that discrimination which the Fifteenth Amendment was designed to uproot. No such influence is charged here. On the other hand, a literacy test may be unconstitutional on its face. In *Davis* v. *Schnell*, 81 F. Supp. 872, aff'd 336 U.S. 933, the test was the citizen's ability to "understand and explain" an article of the Federal Constitution. The legislative setting of that provision and the great discretion it vested in the registrar made clear that a literacy requirement was merely a device to make racial discrimination easy. We cannot make the same inference here. The present requirement, applicable to members of all races, is that the prospective voter "be able to read and write any section of the Constitution of North Carolina in the English language." That seems to us to be one fair way of determining whether a person is literate, not a calculated scheme to lay springes for the citizen. Certainly we cannot condemn it on its face as a device unrelated to the desire of North Carolina to raise the standards for people of all races who cast the ballot.

Affirmed.

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duties and obligations of citizenship" under the Federal and State Constitutions. Ala. Code, Tit. 17, § 32 (1955 Supp.).

Two States require that the voter be able to read and write English. N. Y. Election Code § 150; Ore. Rev. Stat. § 247.131. Wyoming (Wyo. Comp. Stat. Ann. § 31–113) and Connecticut (Conn. Gen. Stat. § 9–12) require that the voter read a constitutional provision in English, while Virginia (Va. Code § 24–68) requires that the voting application be written in the applicant's hand before the registrar and without aid, suggestion or memoranda. Washington (Wash. Rev. Code § 29.07.070) has the requirement that the voter be able to read and speak the English language.

Georgia requires that the voter read intelligibly and write legibly a section of the State or Federal Constitution. If he is physically unable to do so, he may qualify if he can give a reasonable interpretation of a section read to him. An alternative means of qualifying is provided: if one has good character and understands the duties and obligations of citizenship under a republican government, and he can answer correctly 20 of 30 questions listed in the statute (*e. g.*, How does the Constitution of Georgia provide that a county site may be changed?, what is treason against the State of Georgia?, who are the solicitor general and the judge of the State Judicial Circuit in which you live?) he is eligible to vote. Geo. Code Ann. §§ 34–117, 34–120.

In Louisiana one qualifies if he can read and write English or his mother tongue, is of good character, and understands the duties and obligations of citizenship under a republican form of government. If he cannot read and write, he can qualify if he can give a reasonable interpretation of a section of the State or Federal Constitution when read to him, and if he is attached to the principles of the Federal and State Constitutions. La. Rev. Stat., Tit. 18, § 31.

In Mississippi the applicant must be able to read and write a section of the State Constitution and give a reasonable interpretation of it. He must also demonstrate to the registrar a reasonable understanding of the duties and obligations of citizenship under a constitutional form of government. Miss. Code Ann. § 3213.

DAVIS ET AL. *v.* SCHNELL ET AL.

Civil Action No. 758.

UNITED STATES DISTRICT COURT, S. D. ALABAMA, S. D.

January 7, 1949.

1. Elections⇐5

The states may prescribe the qualifications for the exercise of the franchise so long as they do not contravene the Fifteenth Amendment or other provisions of the federal Constitution. U.S.C.A. Const. Amend. 15.

2. Elections⇐18

The states may prescribe a literacy test for electors.

3. Constitutional law⇐211, 253

State action which denies due process or equal protection of the laws in exercise of the right of suffrage is prohibited by the Fourteenth Amendment. U.S.C.A. Const. Amend. 14.

4. Elections⇐18

The Fifteenth Amendment guarantees the free exercise of the right of franchise as against state discrimination based upon race or color. U.S.C.A. Const. Amend. 15.

5. Constitutional law⇐215
Elections⇐18

The Boswell Amendment to the Constitution of Alabama, which provides that only persons who can "understand and explain" any article of the Constitution of the United States to the reasonable satisfaction of the Board of Registrars may qualify as electors, attempts to grant to such board arbitrary power to accept or reject any prospective elector and is a denial of equal protection of the law guaranteed by Fourteenth Amendment. Const. Ala. 1901, Amend. No. 55; U.S.C.A. Const. Amend. 14.

6. Constitutional law⇐14
Statutes⇐190

When a word or phrase in a statute or Constitution is ambiguous, the court must in construing the meaning of such word or phrase attempt to determine whether an exact meaning was intended and if so to ascertain that meaning.

7. Evidence⇐11

The court may judicially notice the history of the period immediately preceding the adoption of the Boswell Amendment to the Constitution of Alabama prescribing electoral qualifications. Const. Ala. 1901, Amend. No. 55.

8. Constitutional law⇐47
Elections⇐121(1)

The state Democratic executive committee is an official arm of the state in Alabama and its action constitutes state action, and the activities of such committee in sponsoring and leading the fight for the adoption of the Boswell Amendment to the Alabama Constitution prescribing electoral qualifications are admissible in determining whether the amendment is a contrivance by the state to thwart equality in the enjoyment of the right to vote by the citizens of the United States on account of race or color. Code Ala. 1940, Tit. 17, §§ 341, 343, 347, 389; Const. Ala. 1901, § 190; Amend. No. 55.

9. Elections⇐18

The evidence and facts which the court may judicially notice showed that the Boswell Amendment to the Alabama Constitution, which provides that only persons who can understand and explain any article of Constitution of the United States may register as electors, was intended as a grant of arbitrary power to get around a decision of the Supreme Court of the United States and to restrict voting on a basis of race or color and not to provide a definite and reasonable standard. Const. Ala. 1901, Amend. No. 55.

10. Elections⇐18

Evidence showed that the administration of the Boswell Amendment to the Constitution of Alabama, which provides that only persons who can understand and explain any article of the Constitution of the United States may register as electors, has been arbitrarily used for the purpose of excluding Negro applicants for the franchise, whereas white applicants with comparable qualifications were being accepted and that as a rule only Negroes are required to submit to such tests. Const. Ala. 1901, Amend. No. 55.

11. Elections⇐18

The Boswell Amendment to the Constitution of Alabama, which provides that only persons who can understand and explain any article of the Constitution of the United States may register as electors, both in its object and the manner of its administration is unconstitutional because it violates the Fifteenth Amendment. Const. Ala. 1901, Amend. No. 55; U.S.C.A. Const. Amend. 15.

12. Elections⇐18

The Fifteenth Amendment nullifies sophisticated as well as simple-minded modes of discrimination and hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race, and the fact that Boswell Amendment to the Constiution of Alabama made no mention of race or color did not save itf rom being unconstitutional. Const. Ala. 1901, Amend. No. 55; U.S.C.A. Const. Amend 15.

13. Courts⇐262.4(11)

Where the Boswell Amendment to the Constitution of Alabama, which provides that only persons who can understand and explain any article of the Constitution of the United States may register as electors, was unconstitutional, Negro citizens were entitled to injunctive relief. Const. Ala. 1901, Amend. No. 55; U.S.C.A. Const. Amend 15.

Action by Hunter Davis and others, in their own behalf and on behalf of all Negro citizens of Mobile County, Ala, similarly situated, against Milton Schnell, individually and as a member of the board of election registrars of Mobile County, Ala., and others, for a declaratory judgment that the Boswell Amendment to the Constitution of Alabama is unconstitutional and for injunctive relief against enforcement thereof.

Judgment for plaintiffs in accordance with opinion.

David R. Landau and George N. Leighton, both of Chicago, Ill., for plaintiffs.

A. A. Carmichael, Atty. Gen. of Alabama, Silas C. Garrett III, Asst. Atty. Gen. of Alabama, E. C. Boswell, of Geneva, Ala., Ira B. Thompson, of Montgomery, Ala., Kenneth Griffith, of Cullman, Ala., and Carl M. Booth, Circuit Sol., of Mobile, Ala., for defendants.

Before McCORD, Circuit Judge, MULLINS and McDUFFIE, District Judges.

MULLINS, District Judge.

This case was tried before a duly constituted three-judge District Court.

Under the amended complaint, this suit is brought by ten Negro citizens of Mobile County, Alabama, against the Board of Registrars of said County and the individual members thereof, to declare and secure their rights to register as electors. The plaintiffs bring the action on their own behalf, and on behalf of all Alabama citizens similarly situated.

The plaintiffs allege that registration is a prerequisite of the right of a citizen of Alabama to vote in any election, Federal, State or local.[1]

The plaintiffs allege that at a general election held on November 7, 1946, there was submitted to and adopted by the people of Alabama an amendment to Section 181 of the Constitution of Alabama (popularly called and referred to herein as the Boswell Amendment), changing the requirements for registration of electors so that only those persons who can "understand and explain" any article of the Federal Constitution can be registered as electors.[2] They allege that this amendment was purposely sponsored, its adoption obtained, and its provisions are being administered so as to prevent the plaintiffs and others, because of their race, from exercising their right to vote.

The plaintiffs aver that they appeared before the defendants, members of the Board of Registrars for Mobile County, Alabama, and, acting under color of law, the defendants required the plaintiffs, all members of the Negro race, to explain an article of the Federal Constitution, which they did, and the defendants informed them that the

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[1] Title 17, Section 12, Code of Alabama 1940, so provides.

[2] Section 181 of the Constitution of Alabama, as amended:

"After the first day of January, nineteen hundred and three, the following persons, and no others, who, if their place of residence shall remain unchanged, will have, at the date of the next general election, the qualifications as to residence, prescribed in section 178 of this article, shall be qualified to register as electors provided they shall not be disqualified under section 182 of this constitution: those who can read and write, understand and explain any article of the constitution of the United States in the English language and who are physically unable to work and those who can read and write, understand and explain any article of the constitution of the United States in the English language and who have worked or been regularly engaged in some lawful employment, business, or occupation, trade, or calling for the greater part of the twelve months next preceding the time they offer to register, including those who are unable to read and write if such inability is due solely to physical disability; provided, however, no persons shall be entitled to register as electors except those who are of good character and who understand the duties and obligations of good citizenship under a republican form of government." [Amend. No. 55].

defendants were not satisfied with the explanations given, and refused to register them.

It is further averred that said Section 181, as amended, requiring applicants for registration to "understand and explain" any article of the United States Constitution, together with the provisions of Title 17, Section 33, Code of Alabama 1940,[3] vests in the Board of Registrars unlimited discretion to grant or deny the plaintiffs and others similarly situated the right to register as electors; that said Amendment provides no definite, reasonable or recognizable standard or test to be applied in determining the qualifications of electors; that defendants refused to register plaintiffs and other qualified Negro applicants, while at the same time defendants were registering white applicants with less qualifications; that plaintiffs, solely because of their race and color, were required to make lengthy explanations of articles of the Constitution of the United States, while white applicants were being registered without being required to make any such explanations.

Plaintiffs further allege that they possess all of the qualifications and have none of the disqualifications to register as electors, except that they are unable to comply with or reasonably satisfy the defendants that they can comply with the requirements of the Boswell Amendment, which requirements they aver are void in that they are vague, uncertain, undefined, and provide no discernible standard; that said Amendment, without mentioning either race or color, was adopted for the purpose and with the intent of the proponents thereof to create a scheme to prevent qualified Negroes from voting; that the qualification to "understand and explain" any article of the Constitution is a mere subterfuge designed for the purpose of depriving plaintiffs and others of the right of franchise on account of race or color; that it has become the general and habitual practice of the defendants, acting under color of law, to refuse to register Negro residents of said county, including the plaintiffs, on the pretext that they are unable to "understand and explain" any article of the Federal Constitution. The plaintiffs further allege that they have been denied the right to register as electors solely on account of their race or color.

The plaintiffs aver that an actual controversy exists between the plaintiffs and the defendants within the meaning of Title 28, Section 400, United States Code (now Section 2201 of Revised Title 28, United States Code), in that the plaintiffs contend that Section 181 of the Constitution of Alabama, as amended, is unconstitutional on its face and because of the manner in which it is administered, as being violative of the provisions of the Fourteenth and Fifteenth Amendments and other provisions of the Constitution of the United States while the defendants contend that said Boswell Amendment is constitutional both on its face and in the manner in which it is administered.

Plaintiffs seek a declaratory judgment declaring the Boswell Amendment unconstitutional and ask for injunctive relief against the further enforcement of the provisions of the same. Plaintiffs waived their prayer for damages.

The defendant board and two of the individual members thereof answered the complaint. They deny that the Boswell Amendment is

[3] Title 17, Section 33, Code of Alabama 1940:
"Any person making application to the board of registrars for registration who fails to establish by evidence to the reasonable satisfaction of the board of registrars that he or she is qualified to register, may be refused registration."

unconstitutional and deny that they administer the registration laws differently as to white and Negro applicants, and aver that they administer the laws fairly to all applicants for registration, without regard to race or color. They admit that the individual defendants compose the Board of Registrars of Mobile County; they admit that at least three of the plaintiffs, Hunter Davis, Julius B. Cook, and Russell Gaskins, applied to the board for registration and were rejected; they aver that the records of the board do not disclose that any of the other plaintiffs ever applied to them for registration, and deny that any application for registration has ever been refused on account of race or color. They admit, and the Court finds, that an actual controversy exists between the plaintiffs and the defendants and that the contentions of the parties with reference thereto are substantially stated in the amended complaint.

E. J. Gonzales, the third member of the defendant board, declined to join in the answer filed by the other defendants, stating that he could not join in all of the denials contained in their answer. He filed no formal answer, but testified and represented himself on the trial of the case.

Only two of the plaintiffs, Hunter Davis and Julius B. Cook, testified on the trial. From the evidence we find that these two plaintiffs presented themselves to the defendant board seeking to register as electors and that they presented satisfactory evidence of their qualifications to register as electors, but their applications were denied. The evidence shows they had the residential qualifications prescribed by Section 178 of the Constitution of Alabama, having continuously resided in the State of Alabama, in the County of Mobile, and in the precinct or ward where they lived for more than two years immediately preceding the time when they applied for registration; that they were over the age of twenty-one years, and had been regularly engaged in lawful employment, business or occupation for the greater part of the twelve months next preceding the time at which they offered to register; that they are citizens of Alabama and of the United States, of good character, and possess all other qualifications of electors, unless it be said that they can be required to "understand and explain" any article of the United States Constitution to the reasonable satisfaction of the members of the defendant board. These two plaintiffs have none of the disqualifications set out in Section 182 of the Alabama Constitution.

We further find from the evidence that prior to the filing of this suit said Board of Registrars required Negro applicants for registration as electors in Mobile County to attempt to explain at least some article of the United States Constitution, while no such requirement was exacted of white applicants. We also find that the plaintiffs Davis and Cook were refused registration as electors because of their race or color.

Prior to this suit defendant board did not keep records of rejected applicants, whether white or Negro. The members of said board went into office in October, 1947. Registration records of said board, which were not disputed, were introduced showing that during their tenure, prior to March 1, 1948 (the filing date of this suit), 39 colored applicants were registered; that subsequent to March 1, 1948, 65 colored applicants were registered and 57 were rejected, the records

of these 57 rejected applicants showing, in substance, that they were rejected because they could not "understand and explain" an article of the Federal Constitution. These records show that three white persons who were registered after this action was filed were asked to explain a provision of the Federal Constitution. The records of 11 rejected white applicants show that they were denied registration on grounds other than the requirements of the Boswell Amendment. The defendants offered nine colored witnesses, all of whom with one exception were public school teachers of good education, who testified that they were registered by the defendant board, some of them being asked if they could explain provisions of the Federal Constitution. The members of the defendant board generally required Negro applicants to explain or interpret provisions of the Federal Constitution, and did not generally require white applicants to do so.

The evidence shows that during the incumbency of the defendant board that more than 2800 white persons have been registered and approximately 104 Negroes. The estimated population of Mobile County is 230,000 of which approximately 64 per cent is white and 36 per cent is colored.

[1–4] The States, not the Federal Government, prescribe the qualifications for the exercise of the franchise, and Federal Courts are not interested in these qualifications unless they contravene the Fifteenth Amendment or other provisions of the United States Constitution. The States have a right to prescribe a literacy test for electors. Guinn v. United States, 238 U.S. 347, 35 S.Ct. 926, 59 L.Ed. 1340, L.R.A. 1916A, 1124. However, state action which denies due process or equal protection of the laws in the exercise of the right of suffrage is prohibited by the Fourteenth Amendment. Nixon v. Herndon, 273 U.S. 536, 47 S.Ct. 446, 71 L.Ed. 759; Nixon v. Condon, 286 U.S. 73, 52 S. Ct. 484, 76 L.Ed. 984, 88 A.L.R. 458. The Fifteenth Amendment guarantees the free exercise of the right of franchise as against state discrimination based upon race or color. Guinn v. United States, supra; Lane v. Wilson, 307 U.S. 268, 59 S. Ct. 872, 83 L. Ed. 1281.

The subject matter of the Boswell Amendment is within state power, and its validity depends upon whether it squares with the Fourteenth and Fifteenth Amendments. We think it does not.

The original Section 181 of the Constitution of Alabama has stood for nearly 50 years and has provided definite standards for passing upon the qualifications of prospective electors. The original section provided for two qualifications, the possession of either of which was sufficient to permit registration. An applicant was required to be able to "read and write any article of the constitution of the United States in the English language," or in the alternative, he could qualify if he owned, assessed and paid taxes on real or personal property of an assessed value of $300. The Boswell Amendment dropped the property qualification, and adopted a qualification requiring not only that an applicant be able to "read and write" but also that he be able to "understand and explain any article of the constitution of the United States in the English language."

Do the words "understand and explain" as used in the Boswell Amendment furnish a reasonable standard whereby boards of reg-

istrars may pass on qualifications of prospective electors, or are these words so ambiguous, uncertain, and indefinite in meaning that they confer upon said boards arbitrary power to register or to refuse to register whomever they please.

"Understand" is a word of many meanings and "a verb of very extensive signification."[4] Understanding may be based upon learning or knowledge or upon rumor or hearsay. It may mean to apprehend, or to comprehend, partially or fully. It may deal with meaning, import, intention or motive. It may mean to appreciate the force or value of a thing or proposition. It may mean that a person is informed or that he had merely received notice or heard of something. To understand may mean to imply, infer or assume, or it may contemplate knowing the meaning or the supposed meaning. It may mean to interpret.

"Explain" is also a word of indefinite meaning; it may mean to make plain, manifest or intelligible; to clear of obscurity; to expound, to illustrate by discourse or by notes.

The Boswell Amendment requires a prospective elector to "understand and explain any article of the constitution of the United States in the English language." There is no requirement that the understanding or explanation be in writing. The language does not call for a simple, fair or reasonable understanding or explanation. It does not say that the understanding and explanation must be partial, full, complete, definite, proper, fair, reasonable, plain, precise, correct, accurate, or give any rule, guide or test as to the nature of the understanding or explanation that is required. The Amendment does not say to whose satisfaction the applicant must "understand and explain," but under the statutes,[5] it must be to the reasonable satisfaction of a majority of the members of one of the 67 boards of registrars that are provided for the 67 counties of Alabama.

The members of these boards are not required to be lawyers or learned in the law,[6] and it is fair to assume that many members of these boards do not have a good or correct understanding of the various articles of the Constitution, and that they might not be able to give any explanation of many of them. Many members of the boards of registrars might justly and properly say to an applicant for registration, "My legs do better understand me, sir, than I understand what you mean."

No uniform, objective or standardized test or examination is provided whereby an impartial board could determine whether the applicant has a reasonable understanding and can give a reasonable explanation of the articles of the Constitution (if, indeed, the test were to be a *reasonable* understanding and a *reasonable* explanation). If such a test or examination were provided to be administered to all prospective electors alike, then the boards of registrars would have definite guides to control their judgment in determining whether or not an applicant could "understand and explain" the provisions of the Constitution. Under such a test with proper questions or guides a record could be made which would give a rejected applicant a definite basis upon which he could seek and obtain a proper judicial review of the board's action, and the reviewing court would have something definite

[4] *Dearing, Sink & Co. v. Smith & Wright*, 4 Ala. 432, 438.
[5] See Note (3) above.
[6] Title 17, Section 21, Code of Alabama 1940.

to act upon in ascertaining whether an applicant had been rightfully or arbitrarily and unjustly denied the right of suffrage.

As pointed out, "understand" may mean to interpret. This meaning requires an exceedingly high, if not impossible, standard. The distinguished Justices of the Supreme Court of the United States have frequently disagreed in their interpretations of various articles of the Constitution. We learn from history that many of the makers of the Constitution did not understand its provisions; many of them understood and believed that its provisions gave the Supreme Court no power to declare an act of Congress unconstitutional. An understanding or explanation given by the Supreme Court a few years ago as to the meaning of the commerce clause does not apply today. Among our most learned judges there are at least four different understandings and explanations of the Fourteenth Amendment to the Constitution as to whether it made the first eight Amendments applicable to state action.[1] Such a rigorous standard—to interpret—is clearly within the legitimate range of the meanings of the phrase "understand and explain," and illustrates the completeness with which any individual or group of prospective electors, whether white or Negro, may be deprived of the right of franchise by boards of registrars inclined to apply this one of the innumerable meanings of such an indefinite phrase.

The words "understand and explain" do not provide a reasonable standard. A simple test may be given one applicant; a long, tedious complex one to another; one applicant may be examined on one article of the Constitution; another may be called upon to "understand and explain" every article and provision of the entire instrument.

[5] To state it plainly, the sole test is: Has the applicant by oral examination or otherwise understood and explained the Constitution to the satisfaction of the particular board? To state it more plainly, the board has a right to reject one applicant and accept another, depending solely upon whether it likes or dislikes the understanding and explanation offered. To state it even more plainly, the board, by the use of the words "understand and explain," is given the arbitrary power to accept or reject any prospective elector that may apply, or, to use the language of Yick Wo v. Hopkins, 118 U.S. 356, 366, 6 S. Ct. 1064, 1069, 30 L. Ed. 220, these words "actually do confer, not a discretion to be exercised upon a consideration of the circumstances of each case, but a naked and arbitrary power to give or withhold consent * * *." The board has the power to establish two classes, those to whom they consent and those to whom they do not—those who may vote and those who may not. Such arbitrary power amounts to a denial of equal protection of the law within the meaning of the Fourteenth Amendment to the Constitution, and is condemned by the Yick Wo and many other decisions of the Supreme Court.

[6, 7] When a word or phrase in a statute or constitution is ambiguous, it is the duty of the court, in construing the meaning of that word or phrase, to attempt to determine whether an exact meaning was intended and if so, to ascertain that meaning. If an exact meaning of the phrase "understand and explain" were to be discovered by a process of construction in this case, it might be that a suitable and definite standard could be found, which would not give to the board of

[1] Cf. *Adamson* v. *California*, 1947, 332 U.S. 46, 67 S. Ct. 1672, 91 L. Ed. 1903, 171 A.L.R. 1223.

registrars arbitrary power. However, a careful consideration of the legislative and other history of the adoption of this Amendment to the Constitution of Alabama discloses that the ambiguity inherent in the phrase "understand and explain" cannot be resolved, but, on the contrary, was purposeful and used with a view of meeting the decision of the Supreme Court of the United States in Smith v. Allwright, 321 U.S. 649, 64 S. Ct. 757, 88 L. Ed. 987, 151 A.L.R. 1110. The history of the period immediately preceding the adoption of the Boswell Amendment, of which we take judicial notice, and the evidence in this case prove this.

[8] The State Democratic Executive Committee is an official arm of the State [8] and its action constitutes state action. Smith v. Allwright, supra. The activities of this committee in sponsoring and leading the fight for the adoption of the Boswell Amendment are admissible and material in determining whether the Boswell Amendment is a contrivance by the State to thwart equality in the enjoyment of the right to vote by citizens of the United States on account of race or color.

The State Democratic Executive Committee spent its funds and led the fight to secure the adoption of the Boswell Amendment in its endeavor "to make the Democratic Party in Alabama the 'White Man's Party.'" [9] The chairman of this committee was instrumental in originating the Amendment and in making recommendations to the legislative committee as to changes he deemed advisable in Alabama's election laws to meet the "Texas case," under which Democratic primaries could no longer be limited to white votes. An overwhelming majority of the membership of this committee "took the position that we should be Militant Democrats and continue to fight for white supremacy in our State." [10]

The 72 members of this State Committee were urged to contact the members of the county Democratic executive committees, some 2,500 in number, and all of the general election officials, some 14,000 in number, to secure their support in the campaign for the adoption of the Boswell Amendment, on the basis that the purpose of the Boswell Amendment was to restrict Negro registration.[11]

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[8] The State Democratic Executive Committee is the official governing body of the Democratic party in Alabama; its members are elected by the voters in Democratic primaries. Cf. Title 17, Section 341, Alabama Code of 1940. Said committee is authorized to prescribe rules and regulations governing matters of party procedure. Title 17, Section 389. It has the authority to determine who shall be qualified as members and candidates for nomination, who shall be entitled to vote in primary elections, and to fix assessments to be paid by candidates for nomination at a primary election. Title 17, Section 347. Compensation of officers and expenses of all primary elections are paid out of the county or municipal treasury in the same manner and to the same extent as provided for the payment of expenses and officers of general elections held under the general election laws of Alabama. Title 17, Section 343. Section 190 of the Alabama Constitution provides that the legislature shall make provision by law for the regulation of primary elections, but provides that primary elections shall not be made compulsory.

[9] In a letter dated August 27, 1946, addressed to the members of the State Democratic Executive Committee, the chairman of that committee, among other things, said:

"45 ballots were cast in favor of the State Committee expending up to $3,500.00 in a campaign to have the 'Boswell Amendment' adopted, 7 ballots were cast against such expenditure, and 1 ballot was not voted. * * *

"I might add that while a few members of our State Committee have expressed the thought that the funds of the State Committee should not be expended in a campaign either for or against the adoption of the proposed 'Boswell Amendment,' yet the great majority of the members of our Committee have taken the position that since the emblem of our Party is a crowing rooster with the words 'White Supremacy' above the rooster, and the words 'For the Right' below the rooster that it is entirely proper that the State Democratic Executive Committee should lead the fight to maintain the traditions of our Party in this State by adopting the proposed amendment to our Constitution and endeavoring, as far as it can legally be done, to make the Democratic Party in Alabama the 'White Man's Party.'"

(From Plaintiffs' Exhibit 5.)

[10] Plaintiffs' Exhibit 7.

[11] Plaintiffs' Exhibit 6.

In the Alabama Lawyer, the official organ of the State Bar of Alabama, in the July 1946 issue, a distinguished Alabama lawyer, writing in opposition to the adoption of the Boswell Amendment, which was at that time awaiting action at the hands of the people of Alabama, said:

"Let us be frank and honest with ourselves. You and I know that the people of our State are expected to adopt this Amendment in order to give the Registrars arbitrary power to exclude Negroes from voting."

In the October 1946 issue of the same official publication, an equally distinguished Alabama lawyer, who favored the adoption of the Boswell Amendment, declared with reference to that Amendment:

"* * * I earnestly favor a law that will make it impossible for a Negro to qualify, if that is possible. If it is impossible, then I favor a law, more especially a constitutional provision, that will come as near as possible, making possible, the impossible."

[9] All of the foregoing but illustrates the intention and general understanding of the Legislature and electorate of Alabama at the time this Amendment was proposed and adopted by a small majority of a light vote. Such a history further demonstrates that this restrictive Amendment, coming on the heels of the decision of the Supreme Court of the United States in the Smith v. Allwright case, was intended as a grant of arbitrary power in an attempt to obviate the consequences of that decision.

Thus, the process of attempted construction of an ambiguous phrase by reference to legislative history and to the intent of the makers of the phrase in this instance only reinforces the conclusion that the provision in question was incorporated for the purpose of allowing arbitrary action, and not for the purpose of providing a definite and reasonable standard.

The defendants argue that the Boswell Amendment is not "racist in its origin, purpose or effect," but, as has already been illustrated, a careful consideration of the conditions existing at the time, and of the circumstances and history surrounding the origin and adoption of the Boswell Amendment, and its subsequent application, demonstrate that its main object was to restrict voting on a basis of race or color. That its purpose was such is further illustrated by the campaign material that was used to secure its adoption.

The Alabama Democrat,[12] a campaign document in the form of a newspaper published in support of the adoption of the Boswell Amendment consisted in its entirety of arguments urging the voters to adopt the Amendment for the purpose of restricting voting by Negroes. This document carried the headline: "WARNING IS SOUNDED: BLACKS WILL TAKE OVER IF AMENDMENT LOSES" and the footline: "VOTE WHITE—VOTE RIGHT—VOTE FOR AMENDMENT NO. 4."

Similarly, an editorial of the Talladega Home, reproduced in said document, asked the question: "What is the Boswell Amendment?" and answered the question by saying, "It is a measure designed simply and solely to enable registrars legally to hold down the number of Negro registrants."

[12] Plaintiffs' Exhibit 8.

[10] Furthermore, the administration of the Boswell Amendment by the defendant board demonstrates that the ambiguous standard prescribed has, in fact, been arbitrarily used for the purpose of excluding Negro applicants for the franchise, while white applicants with comparable qualifications were being accepted. The evidence is without dispute that this Amendment has been used to disqualify many Negro applicants for registration while it does not definitely disclose that it has been used to disqualify a single white applicant. It is further shown that as a rule the Boswell test of "understand and explain" is required of Negroes while no such exaction is made of white applicants.

[11, 12] It, thus, clearly appears that this Amendment was intended to be, and is being used for the purpose of discriminating against applicants for the franchise on the basis of race or color. Therefore, we are necessarily brought to the conclusion that this Amendment to the Constitution of Alabama, both in its object and the manner of its administration, is unconstitutional, because it violates the Fifteenth Amendment. While it is true that there is no mention of race or color in the Boswell Amendment, this does not save it. The Fifteenth Amendment "nullifies sophisticated as well as simple-minded modes of discrimination," and "It hits onerous procedural requirements which effectively handicap exercise of the franchise by the colored race although the abstract right to vote may remain unrestricted as to race." *Lane* v. *Wilson*, 307 U.S. 268, 275, 59 S. Ct. 872, 876, 83 L. Ed. 1281. Cf *Smith* v. *Allwright*, supra; *Guinn* v. *United States*, supra.

We cannot ignore the impact of the Boswell Amendment upon Negro citizens because it avoids mention of race or color; "To do this would be to shut our eyes to what all others than we can see and understand." [13]

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[13] *United States* v. *Butler*, 297 U.S. 1, 61, 56 S. Ct. 312, 317, 80 L. Ed. 477, 102 A.L.R. 914.

No. 606. SCHNELL, MEMBER OF THE BOARD OF ELECTION REGISTRARS OF MOBILE COUNTY, ET AL. *v.* DAVIS ET AL. Appeal from the United States District Court for the Southern District of Alabama. *Per Curiam:* The judgment is affirmed. *Lane* v. *Wilson*, 307 U.S. 268; *Yick Wo* v. *Hopkins*, 118 U.S. 356. Cf. *Williams* v. *Mississippi*, 170 U.S. 213. MR. JUSTICE REED, in view of the fact that a constitutional provision of a state is involved, presented by the Attorney General, is of the opinion that probable jurisdiction should be noted and the case set down for argument. *A. A. Carmichael*, Attorney General of Alabama, and *Silas C. Garrett, III*, Assistant Attorney General, for appellants. *Loring B. Moore* and *George N. Leighton* for appellees. Reported below: 81 F. Supp. 872.

SUPREME COURT OF THE UNITED STATES

No. 67—October Term, 1964.

Louisiana et al., Appellants, v. United States } On Appeal From the United States District Court for the Eastern District of Louisiana.

[March 8, 1965.]

Mr. Justice Black delivered the opinion of the Court.

Pursuant to authority granted in 42 U.S.C. § 1971 (c) (1958 ed., Supp. V), the Attorney General brought this action on behalf of the United States in the United States District Court for the Eastern District of Louisiana against the State of Louisiana, the three members of the State Board of Registration, and the Director-Secretary of the Board. The complaint charged that the defendants by following and enforcing unconstitutional state laws had been denying and unless restrained by the court would continue to deny Negro citizens of Louisiana the right to vote, in violation of 42 U.S.C. § 1971 (a) (1958 ed.)[1] and the Fourteenth and Fifteenth Amendments to the United States Constitution. The case was tried and after submission of evidence,[2] the three-judge District Court, convened pursuant to 28 U.S.C. § 2281 (1958 ed.), gave judgment for the United States. 225 F. Supp. 353. The State and the other defendants appealed, and we noted probable jurisdiction. 377 U.S. 987.

The complaint alleged, and the District Court found, that beginning with the adoption of the Louisiana Constitution of 1898, when approximately 44% of all the registered voters in the State were Negroes, the State had put into effect a successful policy of denying Negro citizens the right to vote because of their race. The 1898 constitution adopted what was known as a "grandfather clause," which imposed burdensome requirements for registration thereafter but exempted from these future requirements any person who had been entitled to vote before January 1, 1867, or who was the son or grandson of such a person.[3] Such a transparent expedient for disfranchising Negroes, whose ancestors had been slaves until 1863 and not entitled to vote in Louisiana before 1867,[4] was held unconstitutional in 1915 as a viola-

[1] "All citizens of the United States who are otherwise qualified by law to vote at any election by the people in any State, Territory, district, county, city, parish, township, school district, municipality, or other territorial subdivision shall be entitled and allowed to vote at all such elections, without distinction of race, color, or previous condition of servitude; any constitution, law, custom, usage, or regulation of any State or Territory, or by or under its authority, to the contrary notwithstanding." 16 Stat. 140, 42 U.S.C. § 1971 (a) (1958 ed.).

[2] The appellants did not present any evidence. By stipulation all the Government's evidence was presented in written form.

[3] La. Const. 1898, Art 197, § 5. See generally Eaton, The Suffrage Clause in the New Constitution of Louisiana, 13 Harv. L. Rev. 279.

[4] The Louisiana Constitution of 1868 for the first time permitted Negroes to vote. La. Const. 1868, Art. 98.

tion of the Fifteenth Amendment, in a case involving a similar Oklahoma constitutional provision. *Guinn* v. *United States*, 238 U.S. 347. Soon after that decision Louisiana, in 1921, adopted a new constitution replacing the repudiated "grandfather clause" with what the complaint calls an "interpretation test," which required that an applicant for registration be able to "give a reasonable interpretation" of any clause in the Louisiana Constitution or the Constitution of the United States.[5] From the adoption of the 1921 interpretation test until 1944, the District Court's opinion stated, the percentage of registered voters in Louisiana who were Negroes never exceeded one percent. Prior to 1944 Negro interest in voting in Louisiana had been slight, largely because the State's white primary law kept Negroes from voting in the Democratic Party primary election, the only election that mattered in the political climate of that State. In 1944, however, this Court invalidated the substantially identical white primary law of Texas,[6] and with the explicit statutory bar to their voting in the primary removed and because of a generally heightened political interest, Negroes in increasing numbers began to register in Louisiana. The white primary system had been so effective in barring Negroes from voting that the "interpretation test" as a disfranchising device had fallen into disuse. Many registrars continued to ignore it after 1944, and in the next dozen years the proportion of registered voters who were Negroes rose from two-tenths of one percent to approximately 15% by March 1956. This fact, coupled with this Court's 1954 invalidation of laws requiring school segregation,[7] prompted the State to try new devices to keep the white citizens in control. The Louisiana Legislature created a committee which became known as the "Segregation Committee" to seek means of accomplishing this goal. The chairman of this committee also helped to organize a semiprivate group called the Association of Citizens Councils, which thereafter acted in close cooperation with the legislative committee to preserve white supremacy. The legislative committee and the Citizens Councils set up programs, which parish voting registrars were required to attend, to instruct the registrars on how to promote white political control. The committee and the Citizens Councils also began a wholesale challenging of Negro names already on the voting rolls, with the result that thousands of Negroes, but virtually no whites, were purged from the rolls of voters. Beginning in the middle 1950's registrars of at least 21 parishes began to apply the interpretation test. In 1960 the State Constitution was amended to require every applicant thereafter to "be able to understand" as well as "give a reasonable interpretation" of any section of the State or Federal Constitution "when read to him by the registrar."[8] The State Board of Registration in cooperation with the Segregation Committee issued orders that all parish registrars must strictly comply with the new provisions.

The interpretation test, the court found, vested in the voting registrars a virtually uncontrolled discretion as to who should vote and who should not. Under the State's statutes and constitutional provisions

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[5] La. Const. 1921, Art. VIII, §§ 1(c), 1(d).
[6] *Smith* v. *Allwright*, 321 U.S. 649.
[7] *Brown* v. *Board of Education*, 347 U.S. 483.
[8] La. Act 613 of 1960, amending La. Const., Art. 8, § 1(d), implemented in La. Rev. Stat. §§ 18:35, 18:36. Under the 1921 constitution the requirement that an applicant be able "to understand" a section "read to him by the registrar" applied only to illiterates. La. Const., 1921, Art. 8, § 1(d); compare *id.*, § 1(c).

the registrars, without any objective standard to guide them, determine the manner in which the interpretation test is to be given, whether it is to be oral or written, the length and complexity of the sections of the State or Federal Constitutions to be understood and interpreted, and what interpretation is to be considered correct. There was ample evidence to support the District Court's finding that registrars in the 21 parishes where the test was found to have been used had exercised their broad powers to deprive otherwise qualified Negro citizens of their right to vote; and that the existence of the test as a hurdle to voter qualification has in itself deterred and will continue to deter Negroes from attempting to register in Louisiana.

Because of the virtually unlimited discretion vested by the Louisiana laws in the registrars of voters, and because in the 21 parishes where the interpretation test was applied that discretion had been exercised to keep Negroes from voting because of their race, the District Court held the interpretation test invalid on its face and as applied, as a violation of the Fourteenth and Fifteenth Amendments to the United States Constitution and of 42 U. S. C. § 1971(a).[9] The District Court enjoined future use of the test in the State, and with respect to the 21 parishes where the invalid interpretation test was found to have been applied, the District Court also enjoined use of a newly enacted "citizenship" test, which did not repeal the interpretation test and the validity of which was not challenged in this suit, unless a reregistration of all voters in those parishes is ordered, so that there would be no voters in those parishes who had not passed the same test.

I.

We have held this day in *United States* v. *Mississippi*, *ante*, p. ——, that the Attorney General has power to bring suit against a State and its officials to protect the voting rights of Negroes guaranteed by 42 U.S.C. § 1971(a) and the Fourteenth and Fifteenth Amendments.[10] There can be no doubt from the evidence in this case that the District Court was amply justified in finding that Louisiana's interpretation test, as written and as applied, was part of a successful plan to deprive Louisiana Negroes of their right to vote. This device for accomplishing unconstitutional discrimination has been little if any less successful than was the "grandfather clause" invalidated by this Court's decision in *Guinn* v. *United States*, *supra*, 50 years ago, which when that clause was adopted in 1898 had seemed to the leaders of Louisiana a much preferable way of assuring white political supremacy. The Governor of Louisiana stated in 1898 that he believed that the "grandfather clause" solved the problem of keeping Negroes from voting "in

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[9] "Although the vote-abridging purpose and effect of the [interpretation] test render it *per se* invalid under the Fifteenth Amendment, it is also *per se* invalid under the Fourteenth Amendment. The vices cannot be cured by an injunction enjoining its unfair application." 225 F. Supp., at 391–392.

[10] It is argued that the members of the State Board of Registration were not properly made defendants because they were "mere conduits," without authority to enforce state registration requirements. The Board has the power and duty to supervise administration of the interpretation test and prescribe rules and regulations for the registrars to follow in applying it. La. Rev. Stat. § 18: 191A; La Const., Art. 8, § 18. The Board also is by statute directed to fashion and administer the new "citizenship" test. La. Rev. Stat. § 18: 191A; La. Const., Art. 8, § 18. And the Board has power to remove any registrar from office "at will." La. Const., Art. 8, § 18. In these circumstances the Board members were properly made defendants. Compare *United States* v. *Mississippi*, *ante*, at 12–13.

There is also no merit in the argument that the registrars, who were not defendants in this suit, were indispensable parties. The registrars have no personal interest in the outcome of this case and are bound to follow the directions of the State Board of Registration.

a much more upright and manly fashion" [11] than the method adopted previously by the States of Mississippi and South Carolina, which left the qualification of applicants to vote "largely to the arbitrary discretion of the officers administering the law." [12] A delegate to the 1898 Louisiana Constitutional Convention also criticized an interpretation test because the "arbitrary power, lodged with the registration officer, practically places his decision beyond the pale of judicial review; and he can enfranchise or disfranchise voters at his own sweet will and pleasure without let or hindrance." [13]

But Louisianans of a later generation did place just such arbitrary power in the hands of election officers who have used it with phenomenal success to keep Negroes from voting in the State. The State admits that the statutes and provisions of the state constitution establishing the interpretation test "vest discretion in the registrars of voters to determine the qualifications of applicants for registration" while imposing "no definite and objective standards upon registrars of voters for the administration of the interpretation test." And the District Court found that "Louisiana . . . provides no effective method whereby arbitrary and capricious action by registrars of voters may be prevented or redressed." [14] The applicant facing a registrar in Louisiana thus has been compelled to leave his voting fate to that official's uncontrolled power to determine whether the applicant's understanding of the Federal or State Constitution is satisfactory. As the evidence showed, colored people, even some with the most advanced education and scholarship, were declared by voting registrars with less education to have an unsatisfactory understanding of the constitution of Louisiana or of the United States. This is not a test but a trap, sufficient to stop even the most brilliant man on his way to the voting booth. The cherished right of people in a country like ours to vote cannot be obliterated by the use of laws like this, which leave the voting fate of a citizen to the passing whim or impulse of an individual registrar. Many of our cases have pointed out the invalidity of laws so completely devoid of standards and restraints. See, *e.g.*, *United States* v. *L. Cohen Grocery Co.*, 255 U.S. 81. Squarely in point is *Schnell* v. *Davis*, 336 U.S. 933, affirming 81 F. Supp. 872 (D. C. S. D. Ala.), in which we affirmed a district court judgment striking down as a violation of the Fourteenth and Fifteenth Amendments an Alabama constitutional provision restricting the right to vote in that State to persons who could "understand and explain any article of the Constitution of the United States" to the satisfaction of voting registrars. We likewise affirm here the District Court's holding that the provisions of the Louisiana Constitution and statutes which require voters to satisfy registrars of their ability to "understand and give a reasonable interpretation of any section" of the federal or Louisiana constitutions violate the Constitution. And we agree with the District Court that it specifically conflicts with the prohibitions against discrimination in voting because of race found both in the Fifteenth Amendment and 42 U.S.C. § 1971 (a) to subject citizens to such an arbitrary power as Louisiana has given its registrars under these laws.

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[11] Louisiana Senate Journal, 1898, p. 88.
[12] *Ibid.*
[13] Kernan, The Constitutional Convention of 1898 and its Work, Proceedings of the Louisiana Bar Association for 1899, pp. 59–60.
[14] 225 F. Supp., at 384.

II.

This leaves for consideration the District Court's decree. We bear in mind that the court has not merely the power but the duty to render a decree which will so far as possible eliminate the discriminatory effects of the past as well as bar like discrimination in the future. Little if any objection is raised to the propriety of the injunction against further use of the interpretation test as it stood at the time this action was begun, and without further discussion we affirm that part of the decree.

Appellants' chief argument against the decree concerns the effect which should be given the new voter-qualification test adopted by the Board of Registration in August 1962, pursuant to statute [15] and subsequent constitutional amendment [16] after this suit had been filed. The new test, says the State, is a uniform, objective, standardized "citizenship" test administered to all prospective voters alike. Under it, according to the State, an applicant is "required to indiscriminately draw one of ten cards. Each card has six multiple choice questions, four of which the applicant must answer correctly." Confining itself to the allegations of the complaint, the District Court did not pass upon the validity of the new test, but did take it into consideration in formulating the decree.[17] The court found that past discrimination against Negro applicants in the 21 parishes where the interpretation test had been applied had greatly reduced the proportion of potential Negro voters who were registered as compared with the proportion of whites. Most if not all of those white voters had been permitted to register on far less rigorous terms than colored applicants whose applications were rejected. Since the new "citizenship" test does not provide for a reregistration of voters already accepted by the registrars, it would affect only applicants not already registered, and would not disturb the eligibility of the white voters who had been allowed to register while discriminatory practices kept Negroes from doing so. In these 21 parishes, while the registration of white persons was increasing, the number of Negroes registered decreased from 25,361 to 10,351. Under these circumstances we think that the court was quite right to decree that, as to persons who met age and residence requirements during the years in which the interpretation test was used, use of the new "citizenship" test should be postponed in those 21 parishes where registrars used the old interpretation test until those parishes have ordered a complete reregistration of voters, so that the new test will apply alike to all or to none. Cf. *United States* v. *Duke*, 332 F. 2d 759, 769–770 (C. A. 5th Cir.).

It also was certainly an appropriate exercise of the District Court's discretion to order reports to be made every month concerning the

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[15] La. Act 62 of 1962, amending La. R. S. 18:191A.

[16] La. Act 539 of 1962, amending La. Const., Art. 8, § 18.

[17] Like the District Court, we express no opinion as to the constitutionality of the new "citizenship" test. Any question as to that point is specifically reserved. That test was never challenged in the complaint or any other pleading. The District Court said "we repeat that this decision does not touch upon the constitutionality of the citizenship test as a state qualification for voting." 225 F. Supp., at 397. The Solicitor General did not challenge the validity of the new test in this Court either in briefs or in oral argument, but instead recognized specifically that that issue was not before us in this case. And at oral argument in this Court the attorney for the United States stated that the Government has pending in a lower court a new suit challenging registration procedures in Louisiana "under the new regime," *i. e.*, employed subsequent to the invalidation of the interpretation test in this case. The new "citizenship" test, he said, "is simply not an issue in this proceeding and was not invalidated in the lower court and we are not here challenging it."

registration of voters in these 21 parishes, in order that the court might be informed as to whether the old discriminatory practices really had been abandoned in good faith. The need to eradicate past evil effects and to prevent the continuation or repetition in the future of the discriminatory practices shown to be so deeply engrained in the laws, policies, and traditions of the State of Louisiana, completely justified the District Court in entering the decree it did and in retaining jurisdiction of the entire case to hear any evidence of discrimination in other parishes and to enter such orders as justice from time to time might require.

Affirmed.

MR. JUSTICE HARLAN considers that the constitutional conclusions reached in this opinion can properly be based only on the provisions of the Fifteenth Amendment. In all other respects, he fully subscribes to this opinion.

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