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Constitutional Law - Voting Rights Act of 1965 - Suspension of Literacy Tests and Federal Registration, South Carolina v. Katzenbach, 86 S. Ct. 803 (1966)

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Constitutional Law—Voting Rights Act of 1965—Suspension of Literacy Tests and Federal Registration.[1]

In *South Carolina v. Katzenbach*,[2] provisions of the 1965 Voting Rights Act, which suspended tests and devices in determining voter qualifications in states coming under the coverage formula,[3] were upheld as a valid exercise of congressional power conferred by the Fifteenth Amendment.[4] The suspension of tests was designed to alleviate the futility of the litigation on a case by case approach embodied in previous civil rights legislation.[5] Precedent enunciated in cases decided prior to and under the 1957 and 1960 civil rights legislation laid some of the groundwork for upholding the 1965 Act[6] and quantitative results attained, or the lack of it under them, also promoted its passage.[7]

The Court was confronted with the propositions that the states may determine qualifications to vote[8] when not circumventing a federally protected right and that a literacy test in itself is not unconstitutional,[9] but, on the other hand, discriminatory application of the tests was supposedly the primary method of preventing qualified Negroes from voting.[10]

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1. 79 Stat. 437, §§ 4(a-d), 5, 6(b), 7, 9, 13(a) and 14; 42 U.S.C. §§ 1973b(a-d), 1973c, 1973d(b), 1973e, 1973g, 1973k(a) and 1973l.

2. 86 S. Ct. 803 (1966).

3. Alabama, Alaska, Georgia, Louisiana, Mississippi, South Carolina, Virginia, 26 Counties in North Carolina and one County in Arizona were brought under the coverage formula by appropriate proceedings on August 7, 1965, 30 Fed. Reg. 9897.

4. U. S. Const. amend. XV, §§ 1 and 2:

> 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.
>
> The Congress shall have power to enforce this article by appropriate legislation.

5. Civil Rights Act of 1957, 71 Stat. 634; Civil Rights Act of 1960, 74 Stat. 86; Civil Rights Act of 1964, 78 Stat. 241.

6. South Carolina v. Katzenbach, *supra* note 2 at 810. See generally, Note, *Federal Protection of Negro Voting Rights*, 51 Va. L. Rev. 1051 (1965).

7. South Carolina v. Katzenbach, *supra* note 2 at 811-812. The Court recites the fact that after four years of litigation in Dallas County, Alabama, Negro registration increased from 156 to 383 out of approximately 15,000 Negroes of voting age.

8. Carrington v. Rash, 380 U. S. 89, 91 (1965); Gomillion v. Lightfoot, 364 U. S. 339, 347 (1960); U. S. Const. Art. I, § 2 " . . . [A]nd the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

9. Lassiter v. Northampton County Board of Elections, 360 U. S. 45, 79 (1959).

10. South Carolina v. Katzenbach, *supra* note 2 at 808.

Several contentions relied upon in contesting the validity of the Act were readily disposed of by the Court. First, the coverage formula made the suspension of tests operative only in those states where less than fifty per cent of the eligible voters were registered on November 1, 1964 or voted in the presidential election of November 1964;[11] but the doctrine of equality of states was held applicable only upon the terms of a state's admission into the Union and not to evils arising subsequent to admission.[12] Secondly, the determination of the fifty per cent registration or voting coverage formula by the Attorney General or the Director of the Census is not subject to judicial review[13] nor is the certification by the Attorney General that the appointment of examiners is necessary.[14] Arguments against validity were based upon a denial of due process and that it constituted a bill of attainder. In answer, the Court held that a state is not a "person" protected by the Due Process Clause of the Fifth Amendment,[15] and that the Bill of Attainder Clause of Article I[16] along with the principle of separation of powers are regarded as protection for individual persons and private groups peculiarly vulnerable to non-judicial determinations of guilt. Furthermore, the states have no standing as parents of its citizens to invoke these constitutional provisions.[17]

Section 5 of the Act[18] provides that if a state or political subdivision,

11. 79 Stat. 437, Voting Rights Act of 1965 § 4 (b); 42 U. S. C. § 1973b(b). See note 3, *supra*, for States affected.

12. South Carolina v. Katzenbach, *supra* note 2 at 819; Coyle v. Smith, 221 U.S. 559 (1911).

13. *Supra*, note 11:

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

14. *Ibid.*

15. U. S. CONST. amend. V:

> No person shall . . . be deprived of life, liberty, or property, without due process of law . . . .

16. U. S. CONST. Art. I, § 9:

> No Bill of Attainder or ex post facto Law shall be passed.

17. South Carolina v. Katzenbach, *supra* note 2 at 816; Com. of Massachusetts v. Mellon, 262 U. S. 447, 485-486 (1923); State of Florida v. Mellon, 273 U. S. 12, 18 (1927).

18. 79 Stat. 437, Voting Rights Act of 1965 § 5; 42 U. S. C. § 1973c. In effect, the District Court of the District of Columbia is made a court of general jurisdiction to hear cases on new voter qualifications imposed by the States covered under the bill. Mr. Justice Black believes the cases should be heard by the Supreme Court acting under Art. III, § 2 under its jurisdiction to try cases in which a State is a party. *Supra* note 2 at 833.

wherein tests and devices have been suspended, enacts any new voting qualifications or procedures, they cannot be enforced unless the United States District Court for the District of Columbia has rendered a declaratory judgment finding that enforcement by a state will not have the effect of denying the right to vote on account of race or color. New qualifications and procedures may also be enforced if submitted to the Attorney General and no objection is raised within sixty days of submission. The contention against the validity of this section was that such a declaratory judgment was in essence an advisory opinion prohibited by Article III, Section 2.[19] This argument was rejected on the grounds that all tests were suspended and therefore any law enacted, which imposed new qualifications or procedures, created a "case or controversy" upon its enactment.[20]

After disposition of the foregoing arguments, the question was said to be narrowed to one of whether Congress has "exercised its powers under the Fifteenth Amendment in an appropriate manner with relation to the States. . . ." [21] The principle applied was:

> As against the reserved powers of the States, Congress may use any rational means to effectuate the constitutional prohibition of racial discrimination in voting.[22]

The Court then proceeded to find that the provisions of the Act under review were rational means[23] to enforce the Fifteenth Amendment and therefore constitutional. Recognizing the unusual nature of portions of the bill, the justification given was that exceptional conditions warrant

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19. U. S. CONST. Art. III, § 2;
The judicial power shall extend to all Cases. . .
Mr. Justice Black, dissenting in part, said:
> The form of words and the manipulations of presumptions used in § 5 to create the illusion of a case or controversy should not be allowed to cloud the effect of that section. (*Supra* note 2 at 833).

20. South Carolina v. Katzenbach, *supra* note 2 at 822.

21. *Id.* at 816.

22. *Ibid.* This principle was formulated from the opinion of Chief Justice Marshall in McCulloch v. Maryland, 17 U. S. (4 Wheat.) 316, 421 (1819):
> Let the end be legitimate, let it be within the scope of the constitution, and all means which are appropriate, which are plainly adopted to that end, which are not prohibited, but consist with the letter and spirit of the constitution, are constitutional.

23. South Carolina v. Katzenbach, *supra* note 2 at 823.

legislative measures not otherwise appropriate.[24] In all probability, even more stringent regulations and drastic measures would have been upheld as a valid exercise of congressional power in light of the conditions sought to be remedied.

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24. *Id.* at 822; Home Bldg. & Loan Ass'n v. Blaisdell, 290 U. S. 398 (1934); Wilson v. New, 243 U. S. 332 (1917).