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CONSTITUTIONAL LAW--WHITE PRIMARIES--RICE V. ELMORE

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CONSTITUTIONAL LAW—WHITE PRIMARIES—RICE V. ELMORE—The right of the negro to vote has constantly been challenged in attempts to destroy or at least to control the exercise of that right.[1] The Fifteenth Amendment secures the right to vote free from interference on a racial basis by the states or the national government.[2] In the states where there is a large negro population[3] varied efforts have been attempted in order to control and nullify the negro vote. These efforts have been manifested in various forms—the grandfather clause,[4] prop-

[1] MANGUM, THE LEGAL STATUS OF THE NEGRO 371 et seq. (1940).

[2] Amendment XV, "The rights 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."

[3] Included in these states are: Alabama, Arkansas, Florida, Georgia, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee, Texas and Virginia.

[4] These clauses provided that anyone descended from a person legally entitled to vote at a certain period when the negro could not vote were presently entitled to vote. ". . . The ostensible purpose . . . was to disenfranchise the Negroes while leaving illiterate whites free to vote." MANGUM, THE LEGAL STATUS OF THE NEGRO 391 (1940). These clauses are no longer effective, having been declared unconstitutional in Guinn v. United States, 238 U.S. 347, 35 S. Ct. 926 (1915).

erty ownership requirements,[5] the poll tax,[6] character tests,[7] and literacy tests.[8]

But these enumerated prerequisites to qualification as a voter operated without racial discrimination. In order to nullify completely the negro vote a more direct scheme, the "white primary," was devised in the one-party southern states.[9] By this means it was proposed to limit the voters in the Democratic primary election to white persons, and because of the strength of the Democratic Party in the South, it was a foregone conclusion that its nominees would be elected in the general election which followed. The only effective vote was cast in the primary election, from which negroes were systematically excluded.[10] To escape from this discrimination the negro turned to the courts. There he achieved his first major victory in *Nixon v. Herndon*,[11] in which

[5] Still required in ten states, it is fast disappearing. 6 BOOK OF THE STATES 88 (1946).

[6] Seven states required payment of a poll tax: Alabama, Arkansas, Mississippi, South Carolina, Tennessee, Texas and Virginia. 6 BOOK OF THE STATES 88 (1946). For a more extensive treatment of the use of the poll tax see, 47 COL. L. REV. 76 at 90, note 93, and p. 92 et seq. (1947); Kallenbach, "Constitutional Aspects of Federal Anti-Poll Tax Legislation," 45 MICH. L. REV. 717 (1947).

[7] Comparatively new, character tests are required by the Constitutions of Alabama (1901) Art. VIII, § 181; Georgia (1877) Art. II, Par. IV (3) as amended; and Louisiana (1921) Art. VIII, § 1.

[8] Literacy tests are required for all voters in fourteen states: Ala. Const. (1901) Art. VIII, § 181 as amended; Ariz. Code Ann. (1939) § 55-201; Cal. Const. (1879) Art II, § 1 as amended; Conn. Const. (1818) Art. XXIX as amended; Del. Const. (1897) Art. V, § 2; Me. Const. (1819) Art. XXIX (added by amendment 1892); Mass. Const. (1857) Art. XX; Miss. Const. (1890) Art. XII, § 244; N.H. Const. (1890) Art. 11; N.Y. Const. (1939) Art. II, § 1; Ore. Const. (1859) Art. II, § 2; Va. Const. (1902) Art. II, § 20; Wash. Const. (1889) Amendment V; Wyo. Const. (1890) Art. VI, § 9. Voters may qualify under literacy or other tests in five states: Ga. Const. (1877) Art. II, ¶ 4; La. Const. (1921) Art. VIII, § 1; N. C. Const. (1868) Art. VI, § 4; Okla. Const. (1907) Art. III, § 4a; S. C. Const. (1895) Art. II, § 4.

[9] Many treatises have been written on the ramifications of the "white primary." See, for example, 47 COL. L. REV. 76 (1947); 20 TEMPLE L. Q. 488 (1947); Folsom, "Federal Elections and the 'White Primary,' " 43 COL. L. REV. 1026 (1943); Evans, "Primary Elections and the Constitution," 32 MICH. L. REV. 451 (1934). "As the Negro became better and better educated, the southern whites, who had never forgotten or forgiven Reconstruction, realized that the disenfranchising constitutional provisions could no longer be depended upon to effect the purpose for which they had been enacted and that, if the Negro vote was to be kept down, some other method would have to be found to accomplish this purpose. The white primary was hit upon as the best possible way of doing this." MANGUM, THE LEGAL STATUS OF THE NEGRO 410 (1940).

[10] The importance of the primary vote in Louisiana and Texas has been set out in United States v. Classic, 313 U.S. 299, 61 S.Ct. 1031 (1941); and Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757 (1944).

[11] 273 U.S. 536, 47 S.Ct. 446 (1927).

the Supreme Court held that a Texas statute which excluded negroes from voting in the Democratic party primaries was unconstitutional as a violation of the equal protection guarantee of the Fourteenth Amendment. But in *Grovey v. Townsend*[12] it was decided that a resolution of the Democratic Party's State Convention excluding negroes from voting in the Democratic primaries was not state action and therefore not in contravention of the Fourteenth and Fifteenth Amendments. The next important step was taken in *United States v. Classic*,[13] in which the Court determined that a Louisiana primary election was an election within the meaning of the Constitution of the United States. Louisiana election officials were indicted under sections 19 and 20 of the Criminal Code for depriving voters of their right to have their ballots counted, and for depriving the candidates of votes cast in their favor. The Court laid down a dual test to determine whether a primary election is an election within the meaning of the Constitution, "[1] where the state law has made the primary an integral part of the procedure of choice, or [2] where in fact the primary effectively controls the choice, the right of the elector to have his ballot counted at the primary, is likewise included in the right protected by Article I, section 2."[14] In *Smith v. Allwright*[15] the Court applied the principle spelled out in the *Classic* case so as to find a primary an election within the meaning of the Constitution. In an action to recover damages, brought by a negro, a qualified voter, against election judges who refused to let him vote in the primary election, the Texas Democratic Party primary was found to be so integrated into the state electoral procedure as to be held state action, and the exclusion of the negro from voting in the primary was held to be in violation of his rights protected by the Constitution. The Court took this opportunity to overrule *Grovey v. Townsend* and thereby assure to the negro the right to vote in a primary election extensively controlled by the state.[16]

[12] 295 U.S. 45, 55 S.Ct. 622 (1935).
[13] 313 U.S. 299, 61 S.Ct. 1031 (1941).
[14] 313 U.S. 299 at 318, 61 S.Ct. 1031 (1941).
[15] 321 U.S. 649, 64 S.Ct. 757 (1944).
[16] But the issue was not dead. An interesting illustration of the reaction to the Classic and Smith cases is this challenge hurled to the South Carolina General Assembly:

"I regret that this ruling by the United States Supreme Court has forced this issue upon us, but we must meet it like men. . . . History has taught us that we must keep our white Democratic primaries pure and unadulterated so that we may protect the welfare and homes of all the people of our State. . . . After these statutes [referring to primaries] are repealed, in my opinion, we will have done everything within our power to guarantee white supremacy in our primaries of our State insofar as legislation is concerned. Should this prove inadequate, we South Carolinians will use the necessary methods to retain white supremacy in our primaries and to safeguard the homes and happiness of our people.

"White supremacy will be maintained in our primaries. Let the chips fall where

I

In order to escape the force of the *Allwright* decision the State of South Carolina eradicated all references to primary elections in its constitution and statutes.[17] The Democratic Party in that state immediately adopted rules to govern the primary elections. On August 13, 1946, the Democratic Party held a primary to nominate candidates for the House of Representatives of the United States, for the Governor of South Carolina, and various other offices. One George Elmore, a negro and a duly qualified elector, presented himself at a regular polling place and requested a ballot. It was refused by the primary managers on the ground that the rules of the Democratic Party restricted voting in its primaries to white persons. An action for a declaratory judgment and injunction was brought in the United States district court alleging violation of rights secured to the plaintiff under Article I, sections 2 and 4, and the Fourteenth, Fifteenth and Seventeenth Amendments to the Constitution of the United States. The district court held that the plaintiff and others similarly situated were entitled to vote in the Democratic primary and enjoined the defendants from excluding qualified voters by reason of their not being of the white race.[18] This decision has been affirmed by the Circuit Court of Appeals for the Fourth Circuit.[19]

The district court, speaking through Judge Waring, rests its decision squarely upon the tests announced in the *Classic* case and followed in *Smith v. Allwright.* The court points out that the repeal of the laws relating to and governing primaries actually had little or no effect on the mode of governance of the Democratic Party or its primaries. The continuation of the former mode of regulation and control was found to be a continuation of state control over the primary election which amounted to state action.[20] The primary remained in effect an integral

they may!" From an address by the then Governor of South Carolina, Olin D. Johnson (now United States Senator from South Carolina) delivered to an Extraordinary Session of the General Assembly. Quoted in 72 F. Supp. 516 at 520 (1947).

[17] The special session of the General Assembly, from April 14 to April 20, 1944, acted to repeal all statutes relating to state regulation of primaries, approximately 150 of them, and set in motion the necessary steps to repeal Article II, section 10 of the State Constitution of 1895, the only reference therein to primaries, which was adopted by the voters at the next general election.

[18] Elmore v. Rice, (D.C. S.C. 1947) 72 F. Supp. 516.

[19] Rice v. Elmore, Civil Action No. 5664, affirmed, C.C.A. 4th, Dec. 30, 1947. See N.Y. TIMES, Dec. 31, 1947, p. 4, col. 3, (C.C.A. 4th, 1947) 165 F. (2d) 387, cert. den., 16 U.S. Law Week 3312 (1948).

[20] 72 F. Supp. 516 at 527 (1947). "It is true that the General Assembly of the State of South Carolina repealed all laws relating to and governing primaries, and the Democratic Party in this State is not under statutory control, but to say that there is any material difference in the governance of the Democratic Party in this State prior, and subsequent, to 1944 is pure sophistry. The same membership was there before

part of the state electoral machinery and effectively controlled the choice of the candidates. The continuation of prior regulation and control was also held to constitute a custom or usage which was the act of the people and the act of the state.[21] Therefore, the right to vote at such a primary could not be denied on the basis of race or color.[22]

2

The exercise of the suffrage in a primary election under certain circumstances may be considered a right which will be protected under the Constitution of the United States.[23] Questions raised regarding such protection go to the extent of direct control which may be exercised by the Congress and of indirect control manifested through the limitations and prohibitions of the Fourteenth and Fifteenth Amendments on the powers of the states. Some differentiation in result may be suggested in considering whether the primary is to nominate candidates for federal or for state offices. The validity of such distinctions is to be considered.

The United States Supreme Court in the *Classic* case concluded that a primary election, which is made an integral part of the procedure of choice or is determinative of the final result, is an election within the meaning of the Constitution.[24] Such an election is subject to the regulations of Congress authorized by Article I, section 4 of the Con-

and after, the same method of organization of club meetings, of delegates to County Conventions, delegates to State Conventions, arranging for enrollment, preparation of ballots, and all the other details incident to a primary election. Of course there were some changes from time to time to meet changing conditions. . . . To say that this is not the action of the State is evading the facts."

[21] 72 F. Supp. 516 at 527 (1947).

[22] 72 F. Supp. 516 at 528 (1947). "I am of the opinion that the present Democratic Party in South Carolina is acting for and on behalf of the people of South Carolina; and that the Primary held by it is the only practical place where one can express a choice in selecting federal and other officials. Racial distinctions cannot exist in the machinery that selects the officers and lawmakers of the United States; and all citizens of this State and Country are entitled to cast a free and untrammelled ballot in our elections, and if the only material and realistic elections are clothed with the name 'primary,' they are equally entitled to vote there." Cf. N.Y. TIMES, Dec. 31, 1947, 4:3; 47 COL. L. REV. 76 at 89 (1947).

[23] Ex Parte Yarbrough, 110 U.S. 651, 4 S.Ct. 152 (1884); United States v. Classic, 313 U.S. 299, 61 S.Ct. 1031 (1941). Cf. Smith v. Allwright, 321 U.S. 649, 64 S.Ct. 757 (1944); Hall v. Nagel, (C.C.A. 5th, 1946) 154 F. (2d) 931 (1946); Mitchell v. Wright, (C.C.A. 5th, 1946) 154 F. (2d) 924; Chapman v. King, (C.C.A. 5th, 1946) 154 F. (2d) 460, cert. den., 327 U.S. 800, 66 S.Ct. 905 (1946).

[24] It is clear that the Court has abandoned the majority decision in Newberry v. United States, 256 U.S. 232, 41 S.Ct. 469 (1921), to the effect that a primary election is not an election under the Constitution and laws of the United States.

stitution.[25] Of course, the power of Congress over elections can only apply to the election of federal officers. But, in general, federal and state officers are selected at the same election, and whatever the power of Congress to regulate and control may be, it would cover the general election.[26] This power extends to the regulation of the time, place and manner of holding elections; a control over the mechanical aspects of a national election. But in so far as the "white primary" is concerned we are faced with a question regarding the qualification of voters. Whether Congress may by statute determine the qualification of voters in national elections[27] seems to be a question settled by Article I, section 2 of the Constitution which provides that the right to determine the qualifications of voters shall be left to the several states.[28] While the right to vote in a national election is, as stated in the *Classic* case, a federal right,[29] it is necessary to examine state law in order to determine who may exercise that right. Ultimately the question as to the right to vote even for federal officers rests upon the action of the state in prescribing the qualifications for voters. The Fourteenth Amendment, requiring equal protection, and the Fifteenth Amendment, ending discrimination on a basis of race, color or previous condition of servitude, are here important in prescribing limitations upon state action.[30]

[25] Article I, section 4, "The times, places and manner of holding elections for Senators and Representatives, shall be prescribed in each State by the legislature thereof; but the Congress may at any time by law make or alter such regulations. . . ."

[26] See Burroughs and Cannon v. United States, 290 U.S. 534, 54 S.Ct. 287 (1934).

[27] It may be argued that since the right to vote at a national election is a federal right the authority given to the Congress in Art. I, § 4 to regulate the manner of holding elections together with the power given in Art. I, § 8, cl. 18 to make all laws which shall be necessary and proper to execute the granted powers, gives Congress the right to establish qualifications for voters. That such was not the intent of the framers of the Constitution may be illustrated by No. LX of THE FEDERALIST (1886) in which Hamilton wrote, at 379, "Its [Congressional] authority would be expressly restricted to the regulation of the *times*, the *places*, and the *manner* of elections. The qualifications of the persons who may choose or be chosen, as has been remarked upon other occasions, are defined and fixed in the Constitution, and are unalterable by the legislature."

[28] Article I, § 2, "The House of Representatives shall be composed of members chosen every second year by the people of the several States, and the electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislature."

[29] The right to vote in national elections might be conceived of as a right of national citizenship. Certainly if it were a right of national citizenship it could be protected directly by means of Congressional legislation authorized by the power to protect the privileges and immunities of citizens of the United States found in the Fourteenth Amendment. But as yet there has been no clear determination that the right to vote is a right of national citizenship.

[30] For discussion as to state action see, 47 COL. L. REV. 76 at 85-90 (1947);

It follows naturally that state control over the election of *state* officers is complete, subject only to the limitations imposed on state action found in the Fourteenth and Fifteenth Amendments. There is a continuous thread running through the elections for both state and federal officers tying the protection of the right to vote to state action. Except to the extent that Congress in exercising its power to control the time, place and manner of holding elections of federal officers, has imposed sanctions against individuals for interfering with the rights of qualified voters, for example, section 19 of the Criminal Code, the Constitution and laws of the United States do not protect the right to vote for either federal or state officers against private interference.[31] In *Smith v. Allwright*, and in the cases enforcing the doctrine there announced, state action was manifested through the application of state statutes to the primary election whereby it became an integral part of the electoral machinery of the state. In *Rice v. Elmore* the fact that the primary was determinative of the final choice in the election was held sufficient to make the primary election state action.

The political party, particularly in the one-party states, has become an essential part of the electoral process by means of its control over elections.[32] In the states where the "white primary" has been enforced the primary elections have been determinative of the final choice of

45 MICH. L. REV. 733 (1947); Hale, "Force and the State: A Comparison of 'Political' and 'Economic' Compulsion," 35 COL. L. REV. 149 (1935).

[31] Amendment XIV, "No State shall . . ."; Amendment XV, "The right of citizens of the United States to vote shall not be denied . . . by any State . . ."; 8 U.S.C. (1940) § 31, "All citizens of the United States who are otherwise qualified by law to vote at any election . . . shall be entitled and allowed to vote at all such elections, . . . any constitution, law, custom, usage or regulation of any State . . . to the contrary notwithstanding"; 8 U.S.C. (1940) § 43, "Every person who, under color of any statute, . . . of any State . . . subjects, . . . any citizen of the United States . . . to the deprivation of any rights, privileges or immunities secured by the Constitution and laws, shall be liable to the party injured. . . ." Cf. 18 U.S.C. (1940) §§ 51 and 52. These are sections 19 and 20 of the Criminal Code prescribing punishment for a conspiracy to deprive a citizen of his federal rights or for the deprivation of such rights by one acting under color of state law.

[32] The primary of the Democratic Party in South Carolina is determinative of the final results of the elections for federal and state officers. Subject to the requirements of the statutes of Congress and the South Carolina Constitution and statutes, the Democratic Party prints the ballots for use in primary and general elections. Acts of Congress, 30 Stat. L. 836 (1899), 2 U.S.C. (1940) § 9, "All votes for Representatives in Congress must be by written or printed ballot, . . ."; South Carolina Constitution (1895) Art. II, § 1, "All elections by the people shall be by ballot, . . ."; S.C. Code (1942) § 2304 (provides the specifications for the type of ballots to be used). By South Carolina Court decisions ballots printed and provided by the various political parties within the state are proper. See, Gardner v. Blackwell, 167 S.C. 313, 166 S.E. 338 (1932).

the people,[33] thereby making the primary an election within the meaning of the Constitution as recognized in the *Classic* case. Such an election controlled by the state is subject to Constitutional prohibitions. It is on this point that the appellants in *Rice v. Elmore* argued that as a result of the repeal of all statutes governing primaries the state no longer controlled the primary and that the Democratic Party of South Carolina had become a private club which could be selective as to its membership.[34] While it can be accepted that a truly private organization may be selective of its membership, it is questionable whether this concept can be extended to include political parties. As Judge Waring put it, ". . . private clubs and business organizations do not vote and elect a President of the United States, and the Senators and members of the House of Representatives of our national congress; and under the law of our land, all citizens are entitled to a voice in such selections."[35]

In all cases there is an adoption by the state of the final result of the primary election when the candidates so chosen are allowed to be placed upon the ballot in the general election which is held under the direct supervision of the state. At the conclusion of the general election, a state official, usually the Secretary of State, certifies the final result in the case of the election of federal officers to the Congress of the United States, and in the case of state officers he certifies and accepts the candidate duly elected.[36] Certainly there is a more solid ground in finding state action with regard to primary elections than there was in finding it in *Marsh v. Alabama*,[37] in which the Supreme Court held that an attempted restriction on religious solicitation in the

[33] "It is a matter of common knowledge that for a great many years the Democratic Party has completely controlled the filling of offices in the State of South Carolina. . . . it is agreed that since 1900 every Governor, member of the General Assembly, United States Representative and United States Senator for the State of South Carolina, elected by the people of this State in the General Elections, was the nominee of the then existing Democratic Party of South Carolina, and that during the past 25 years the Democratic Party of South Carolina has been the only political party in this State to hold State-wide primaries for the nomination of candidates for Federal and State offices. . . . in the Democratic Primary for August, 1946 . . . there were cast for the office of Governor of the State 290,223 votes, whereas in the General Election in November of that year the votes for that same office amounted to only 26,326." Elmore v. Rice, (D.C. S.C. 1947) 72 F. Supp. 516 at 519, 521. Cf. 47 COL. L. REV. 76 at 84, note 56, p. 85, notes 59 and 60, p. 89 (1947); MAGNUM, THE LEGAL STATUS OF THE NEGRO 405 et seq. (1940).

[34] 72 F. Supp. 516 at 521, 526-527 (1947). Brief for the Appellee, Rice v. Elmore, (C.C.A. 4th) p. 11.

[35] 72 F. Supp. 516 at 527 (1947).

[36] In all states there are constitutional or statutory provisions regulating elections and governing the acceptance of the returns thereof.

[37] 326 U.S. 501, 66 S.Ct. 276 (1946).

privately owned community was invalid as an unconstitutional restriction on the freedom of religion. The Court there found that the private community was so like a municipal corporation that it could be regarded as dedicated to a public purpose and that, therefore, the act of the private community was tantamount to state action.[88] So the political party, while technically a private organization, by performing acts of such great importance to the public and the nation has dedicated itself as a public organization. The adoption of the act of the political party by the state can be said to constitute that body an agency of the state, whose acts are the acts of the state, and whose entire operative processes are subjected to constitutional controls.[89]

3

Such a broadening of the scope of the concept of state action as regards final elections and primaries will bring to a logical conclusion the trend first promulgated in the *Classic* case. It may still be thought that with the demise of the "white primary" other modes of discrimination will be adopted by the states and the political parties in order to

[88] In several cases the Court has looked behind the form of the action to see if an actual relation of agency between the organization and the state existed. Cf. Kerr v. Enoch Pratt Free Library, (C.C.A. 4th, 1945) 149 F. (2d) 212 (a corporation was held in fact to be a state function since it had invoked the power of the state for its creation and relied upon municipal funds for its existence). Steel v. Louisville and Nashville Railroad, 323 U.S. 192, 65 S.Ct. 226 (1944) and Tunstall v. Brotherhood of Locomotive Firemen, 323 U.S. 210, 65 S.Ct. 235 (1944). (Indicating that labor unions are subject to the due process clause of the Constitution of the United States included in the Fourteenth Amendment, even though they are private voluntary associations). Query: Will the act of the state courts in enforcing race restrictive covenants be held to be state action? For an argument in the negative see 45 MICH. L. REV. 733 (1947). For the affirmative argument see, McGovney, "Racial Residential Segregation by State Court Enforcement of Restrictive Agreements, Covenants or Conditions in Deeds Is Unconstitutional," 33 CAL. L. REV. 5 (1945).

[89] Another possible means of extending the federal power and the rights, privileges and immunities secured by the Constitution and laws of the United States to the citizens of the United States is through the use of Article IV, § 4 of the Constitution, which provides, "The United States shall guarantee to every State in this Union a Republican Form of Government . . ." It would not be difficult to argue that a republican form of government is one in which all properly qualified citizens shall have the right to vote in all elections, whether a primary or a final election. The essence of a republican form of government is government of, by and for all the people. This cannot be achieved unless all of the people have a voice in the choice of their governmental representatives. But due to the manifest reluctance of the Supreme Court to broaden the interpretation of this clause since it was held in Luther v. Borden, 7 How. (48 U.S.) 1 (1849), to be a political question for the determination of Congress, this argument cannot be seriously proffered at this time. See Field, "The Doctrine of Political Questions in the Federal Courts," 8 MINN. L. REV. 485 (1924); Kallenbach, "Constitutional Aspects of Federal Anti-Poll Tax Legislation," 45 MICH. L. REV. 717 (1947).

nullify the franchise of the negro. In so far as the action is by the state itself we have no difficulty in applying the constitutional limitations. As to action by the political party within itself, the adoption by the state of the party's actions by means of the state's acceptance of the culmination of these actions in placing the party candidates upon the recognized ballot, in effect makes the party an agency of the state, and subjects the internal actions of the party to the constitutional controls. In the case of nomination by convention instead of primary, the act is still state action and the negro cannot be barred on the basis of race or color from party membership with the right to attend or to be represented at such conventions. Discriminative enforcement of party rules against the negro would also be subject to judicial review and invalidation. Still further, some states may emulate the action of the State of Alabama in adopting the "Boswell" Amendment,[40] but it must be pointed out that administrative discrimination in the enforcement of such an enactment would be unconstitutional.[41]

The finding that the adoption of the party action by the state results in state action will prevent the barring of the negro from voting at either the primary or the general election on the basis of race or color. But on that basis or any other it presently appears that the "white primary" has lost its vitality as an effective means for disenfranchising the negro.

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[40] Ala. Const. (1901) Art. VIII, § 181, as amended. This amendment adopted in 1946 requires that all voters be of good character, be able to read, write, understand and explain any article of the Constitution of the United States in the English language, and that they understand the duties and obligations of good citizenship under a republican form of government.

[41] Yick Wo v. Hopkins, 118 U.S. 356, 6 S.Ct. 1064 (1886); Norris v. Alabama, 294 U.S. 587, 55 S.Ct. 579 (1935); Pierre v. Louisiana, 306 U.S. 354, 59 S.Ct. 536 (1939); Smith v. Texas, 311 U.S. 128, 61 S.Ct. 164 (1940); Hill v. Texas, 316 U.S. 400, 62 S.Ct. 1159 (1942); Screws v. United States, 325 U.S. 91, 66 S.Ct. 1031 (1945); and references in note 30, supra.