

Filed - 8/22/60

Supreme Court of the United States

October Term, 1960

No. 32

C. G. GOMILLION, et al.,

Petitioners,

v.

PHIL M. LIGHTFOOT, As Mayor of
the City of Tuskegee, et al.

On Writ of Certiorari to the United States Court of Appeals
for the Fifth Circuit

BRIEF FOR PETITIONERS

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BRIEF FOR PETITIONERS

Opinion Below

The opinion of the Court of Appeals (R. 34-73), entered by a divided court, is reported at 270 F2d 594.

Jurisdiction

The judgment of the Court of Appeals was rendered on September 15, 1959 (R. 73). On December 4, 1959, by order of Mr. Justice Black, the time within which to file a petition for writ of certiorari was extended to February 1, 1960 (R. 74). The petition was filed on January 30, 1960, and was granted on March 21, 1960. The jurisdiction of this Court rests on Title 28, United States Code, Section 1254 (1).

Question Presented

Whether the Fourteenth and Fifteenth Amendments, which bar deprivations of rights, privileges, immunities and the franchise by reason of race or color, have been contravened where a state, in exercise of its power to rechart the boundary lines of one of its geographical subdivisions, utilizes that power to deny to Negroes the rights and benefits of residence in a municipality, including the right to vote in municipal elections?

Statute Involved

Act No. 140

To alter, re-arrange, and redefine the boundaries of the City of Tuskegee in Macon County.

Be It Enacted by the Legislature of Alabama:

Section 1. The boundaries of the City of Tuskegee in Macon County are hereby altered, re-arranged and re-defined so as to include within the corporate limits of said municipality all of the territory lying within the following described boundaries, and to exclude all territory lying outside such boundaries:

[fol. 14] Beginning at the Northwest Corner of Section 30, Township 17-N, Range 24-E in Macon County, Alabama; thence South 89 degrees 53 minutes East, 1160.3 feet; thence South 37 degrees 34 minutes East, 211.6 feet; thence South 53 degrees 57 minutes West, 545.4 feet; thence South 36 degrees 03 minutes East, 1190.0 feet; thence South 53 degrees 57 minutes West, 675.2 feet; thence South 36 degrees 19 minutes East, 743.4 feet; thence South 33 degrees 50 minutes East, 1597.4 feet; thence North 61 degrees 26 minutes East, 1122.8 feet; thence North 28 degrees 34 minutes West, 50.0 feet; thence North 59 degrees 11 minutes East 1049.3 feet; thence South 30 degrees 48 minutes East,

50.0 feet; thence North 50 degrees 08 minutes East, 341.1 feet; thence North 47 degrees 08 minutes East, 1239.4 feet; thence South 42 degrees 51 minutes East, 300.0 feet; thence South 47 degrees 00 minutes West, 1199.5 feet; thence South 64 degrees 09 minutes East, 1422.0 feet; thence South 24 degrees 13 minutes East 488.7 feet; thence South 73 degrees 25 minutes West, 370.8 feet; thence North 79 degrees 25 minutes West, 2285.3 feet; thence South 61 degrees 26 minutes West, 1232.6 feet; thence South 41 degrees 03 minutes East 792.3 feet; thence South 12 degrees 03 minutes East, 842.2 feet; thence North 88 degrees 09 minutes East, 4403.6 feet; thence South 0 degrees 15 minutes West, 6008.2 feet; thence North 89 degrees 59 minutes West, 4140.2 feet; thence North 34 degrees 46 minutes West, 6668.7 feet; thence North 35 degrees 00 minutes West, 380.4 feet; thence North 16 degrees 55 minutes West, 377.2 feet; thence North 54 degrees 29 minutes East, 497.8 feet; thence North 35 degrees 02 minutes West, 717.5 feet; thence South 54 degrees 03 minutes West, 1241.9 feet; thence North 36 degrees 09 minutes West, 858.4 feet; thence North 44 degrees 28 minutes East [fol. 15] 452.2 feet; thence North 22 degrees 33 minutes East, 4305.9 feet; thence North 86 degrees 43 minutes East, 236.3 feet to the point of beginning.

Section 2. All laws or parts of laws which conflict with this Act are repealed.

Section 3. This Act shall become effective immediately upon its passage and approval by the Governor, or upon its otherwise becoming a law.

This bill became an Act on July 15, 1957 without approval by the Governor.

Statement

Petitioners are citizens of the United States, residents of the State of Alabama, and they are Negroes. Prior to July 15, 1957, when Act 140 became law, petitioners lived in Tuskegee, Alabama, the site of famed Tuskegee Institute.

The town was square in shape and at that time had a total population of 6,707, of which 5,397 were Negroes and 1,310 were white. Its 1,000 qualified electors included 400 Negroes (R. 5).

Pursuant to Act 140 Tuskegee was sharply reduced in size. As redefined the city is no longer four-sided or square in shape but has twenty-eight sides, giving it the semblance of a sea dragon. The new boundaries place outside the city limits all the areas of concentrated Negro residence and Tuskegee Institute as well. Carefully kept within the diminished municipality are all the areas in which white persons reside. As a result, while only 4 or 5 of the heretofore 400 qualified Negro voters are now eligible to participate in municipal elections, no qualified white electors has been affected by the diminution of the city's incloser (R. 6).

The contested legislation is the prodigy of State Senator Sam Engelhardt of Macon County, whose political career has been chiefly distinguished by a consistent and fervent sponsorship of measures and regulations designed to maintain enforced racial discrimination as the uninterrupted policy of the State of Alabama (R. 6).

Litigation was commenced in the District Court invoking federal jurisdiction under Title 28, United States Code, Sections 1331, 1343 and 2201 and 2202. The complaint prayed for judgment declaring Act 140 unconstitutional for the reason that its purpose and effect were to accomplish an unlawful discrimination against Negroes, in violation of the due process and equal protection clauses of the Fourteenth Amendment, and to deny them the right to vote in contravention of the Fifteenth Amendment. In addition, an injunction was sought restraining enforcement of the statute and prohibiting respondents from denying petitioners and other Negroes similarly situated rights and privileges equal to those available to all other citizens in Tuskegee, including the right to vote in its municipal elections (R. 1-9).

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The complaint alleged that Tuskegee was the county seat of Macon County; that 7/8's of the population of Macon County are Negroes; that between January 16, 1956, and June 3, 1957, no Board of Registrars had functioned in that county to permit the registration of qualified voters because all eligible white persons had already registered, whereas thousands of qualified Negroes had not been registered and cannot vote (R. 6)

The trial court granted respondents' motion to dismiss on the theory that the court had no authority to "change any boundaries of municipal corporations fixed by a duly convened and elected legislative body, acting for the people in the State of Alabama" (R. 30). On appeal, the Court of Appeals affirmed by a divided vote, holding that (R. 41):

... in the absence of any racial or class discrimination appearing on the face of the statute, the courts will not hold an act, which decreases the area of a municipality by changing its boundaries, to be invalid as violative of the Fourteenth and Fifteenth Amendments to the United States Constitution, although it is alleged that the enactment was made for the purpose, not appearing in the Act, and with the effect of excluding or removing Negroes from the City and depriving them of the privileges and benefits of municipal membership, including the right to vote in City elections.

Summary of Argument

Deprivations of Fourteenth and Fifteenth Amendment rights pursuant to state action are here involved. Whatever other purposes these provisions may serve, there can be no doubt that their ultimate concern is the protection of Negroes against unequal treatment, discrimination and disenfranchisement under color of state law. See *The Slaughter House Cases*, 16 Wall. 36; *Strauder v. West Virginia*, 100 U. S. 303. Following those early cases, this Court has consistently struck down state imposed racial

ARGUMENT

The Issue Before the Court

At the risk of stressing the obvious, there should be no doubt concerning the issues here for decision. It is premature to consider the nature of the proof necessary to establish petitioners' contentions. All that is presently involved is whether the complaint states a justiciable case or controversy which should be resolved by the trial court. The basis of the major opinion of the Court of Appeals seems to be that petitioners have failed to make out such a cause (R. 34-42). The concurring opinion apparently concedes that a valid cause of action has been stated but concludes that federal jurisdiction should be withheld, because the remedy would be worse than the evil the court is asked to correct (R. 65-73). Both contentions, petitioners respectfully submit, are untenable, and it was error for the District Court not to resolve in a hearing on the merits the questions raised in petitioners' complaint.

The Claimed Violations of the Fourteenth and Fifteenth Amendment Guarantees Here Alleged Entitled Petitioners to a Hearing on the Merits

Petitioners allege in their complaint a purposeful state imposed discrimination which deprives them as Negroes of rights and benefits of residence in Tuskegee, Alabama, including the right to vote in Tuskegee municipal elections. They contend that these deprivations have been accomplished by enforcement of Act 140 which is directed against them and all other Negroes similarly situated, simply because they are Negroes and for no other reason. Unquestionably, if the discrimination charged is racial in origin, a *prima facie* showing of infractions of both the Fourteenth and Fifteenth Amendments has been made. As such, a claim of grave constitutional importance is presented. See *Guinn v. United States*, 238 U. S. 347; *Smith v. Allwright*, 321 U. S. 647; *Terry v. Adams*, 345 U. S. 461; *United States v. Thomas*, 362 U. S. 58; *Smith v.*

Texas, 311 U. S. 128; *Hernandez v. Texas*, 347 U. S. 475; *Shepherd v. Florida*, 341 U. S. 50; *Takahashi v. Fish & Game Commission*, 334 U. S. 410; *Oyama v. California*, 332 U. S. 633; *Shelley v. Kraemer*; *Sweatt v. Painter*, 339 U. S. 629; *Brown v. Board of Education*, 347 U. S. 483; *Gayle v. Browder*, 352 U. S. 903; and *Cooper v. Aaron*, 358 U. S. 1; *State Athletic Commission v. Dorsey*, 359 U. S. 533.

Petitioners are among a group of former Negro residents of Tuskegee, Alabama. Before the enactment of Act 140, Negroes out-numbered whites approximately 5-1 and constituted 2/5's of the qualified voting population. Obviously, Negroes had become an important political force in this municipality, and in time seemed destined to exercise a controlling influence over the local governmental machinery. Even a surface understanding of race relations in this country makes unmistakably clear that efforts to avoid this very result are the roots of much of the invidious racial discrimination which has been practiced in the United States for so long a time.

Faced with the inevitability of future Negro dominance if present conditions prevailed, the challenged statute was enacted to prevent that prospective eventuality. No other reason for the legislation has been offered or established. While admittedly the Constitution does not secure the right of Negroes or of any other group or class to exercise political influence in a community, it does bar the nullification of that influence by the erection of color or caste distinctions.

Residence in Tuskegee has important benefits, not the least of which, in these circumstances, are the relatively intangible attributes of status and convenience. The fact that some of the benefits of municipal residence may be largely intangible and not subject to exact measurement or definition does not mean that in respect to their enjoyment, states are free to practice racial discrimination. See *Sweatt v. Painter*, *supra*; *McLaurin v. Oklahoma State Regents*, 339 U. S. 637.

Obviously the confines and limits of Tuskegee or of any other town, district, village or municipality in the State of Alabama may be determined by the Alabama Legislature. Petitioners accept as settled the principle that there is no abstract constitutional right to residence in a particular municipality or to the benefits incident thereto. Such matters are of local concern, except where the confines and limits are established in contravention of the guarantees of the federal Constitution, see *Schwartz v. Board of Bar Examiners*, 353 U. S. 232; *Konigsberg v. State Bar*, 353 U. S. 252, or the rights and benefits of municipal residence are denied or interfered with because of race. Cf. *Buchanan v. Warley*, 245 U. S. 60; *City of Richmond v. Deans*, 281 U. S. 704; *Shelley v. Kraemer*, *supra*; *Oyama v. California*, *supra*.

The fact that the discrimination effected does not appear on the face of the statute is of little significance. If the unlawful discrimination comes as a result of enforcement or administration of the law, it is unconstitutional despite the fact that the legislation may be innocuous in terms. See *Yick Wo v. Hopkins*, 118 U. S. 356. Cf. *Shuttlesworth v. Birmingham Board of Education*, 358 U. S. 101.

Moreover, the Constitution's censure could scarcely be affected by the fact that the state seeks to accomplish the forbidden discrimination and disenfranchisement through exercise of its power to rechart and redefine one of its geographical subdivisions. Indeed, a state's reliance upon the plenary nature of its power to redefine the boundaries of a municipality under its jurisdiction to avoid the reach of the Fourteenth or Fifteenth Amendment must be regarded as ineffective, petitioners respectfully submit, as are the attempts to evade the restriction against placing undue burdens on interstate commerce by "invoking the convenient apologetics of the police power." *Morgan v. Virginia*, 328 U. S. 373, 380; *Kansas City S. R. Co. v. Kaw Valley Drainage District*, 233 U. S. 75, 79.

The controlling factor determinative of the application of Fourteenth or Fifteenth Amendment proscriptions is whether the deprivations complained of can be said to result from the action of the state. See *Home Tel. & Tel. Co. v. Los Angeles*, 227 U. S. 278; *Screws v. United States*, 325 U. S. 91; *Shelley v. Kraemer*, *supra*. Where the action is that of the state, the form it takes or the source from which it emanates is immaterial, in ascertaining whether constitutional guarantees have been violated. See *Screws v. United States* *supra*; *N. A. A. C. P. v. Alabama*, 357 U. S. 449. *Terry v. Adams*, *supra*.

In *Cooper v. Aaron*, *supra* and more recently in *United States v. Raines*, 362 U. S. 17, this Court took occasion to emphasize that state and local officials are bound by the prohibitions of the Fourteenth and Fifteenth Amendments. Whatever contrary impression the broad language of *Hunter v. Pittsburgh*, 207 U. S. 161; or *Laramie County v. Albany County*, 92 U. S. 317, may give, it is no longer disputed that all governmental authority in this country is subject to the limitations set out in the Constitution of the United States. See *United States v. Mitchell*, 330 U. S. 75, 100; *Wieman v. Updegraff*, 344 U. S. 182, 191, 192; *Cooper v. Aaron*, *supra*.

There can be no doubt that a statute expressly prohibiting Negroes from living in certain areas of a city or certain towns, municipalities or districts of a state violates both the due process and equal protection clauses of the Fourteenth Amendment. *Buchanan v. Warley*, *supra*; *City of Richmond v. Deans*, *supra*. It is also clear that a statute expressly barring qualified Negroes from the polls in municipal elections offends both the equal protection clause of the Fourteenth Amendment, *Nixon v. Herndon*, *supra*; *Nixon v. Condon*, *supra*, and the prohibitions of the Fifteenth Amendment as well, *Smith v. Allwright*, *supra*; *Terry v. Adams*, *supra*. It necessarily

follows that "evasive schemes" designed to achieve the same result are similarly forbidden. *Cooper v. Aaron, supra.*

In 1959, the United States Commission on Civil Rights filed a report in which it clearly established that in many areas of the United States disenfranchisement based upon race or color was still a common practice. (Report of the United States Commission on Civil Rights, 1959, pp. 19-142). Chief among these areas in which such disenfranchisement occurred was the State of Alabama and the County of Macon (*Id.* 69-97, particularly pp. 90-92). Plans are now being readied in Alabama for the elimination of Macon County, which has a large Negro population, as a next step to make certain that the Negro remains politically impotent. Viewed against this background, it becomes readily apparent that Act 140 is a part of a state policy of wholesale disenfranchisement and discrimination to insure maintenance of the *status quo* in Negro-white relations.

Protection of the integrity of the electoral process against prohibitions and burdens based upon race has been of major concern to this Court in its effort to reduce to practical effectiveness the guarantees against discrimination and disenfranchisement which the Fourteenth and Fifteenth Amendments afford. *Guinn v. United States, supra; Lane v. Wilson, supra; Nixon v. Herndon, supra; Nixon v. Condon, supra; Smith v. Allwright, supra; Terry v. Adams, supra; Cooper v. Adams, supra.* See also, *Davis v. Schnell*, 81 F. Supp. 872 (S. D. Ala. 1949), *aff'd*, 336 U. S. 993.

In recent years the Congress and the Executive Branch of the national government have taken steps to eliminate local restrictions which have heretofore successfully prevented Negroes from full participation in the electoral process. The evident purpose of the Civil Rights Act

of 1957 (71 Stat. 637, Title 42, United States Code, Section 1971) was to eliminate the disenfranchisement of Negroes, and the Civil Rights Act of 1960 (Act of May 6, 1960, Public Law, No. 86-449) gives the federal government additional power to accomplish this objective. Pursuant to this authority, litigation has been instituted in several states to aid Negroes in their efforts to become qualified electors. Some of these cases have already reached this Court, *e.g.*, *United States v. Raines*, *supra*; *United States v. Thomas*, *supra*, and similar litigation is in the offing.

Thus, the elimination of racial disenfranchisement pursuant to the full implementation of the guarantees of the Fifteenth Amendment is one of the principal aims of national policy. Based upon these factors it would appear that petitioners' claims are not only fully imbedded in the fabric of constitutional law but affect the national interest as well.

It is respectfully submitted, therefore, that these are the compelling and controlling considerations which entitle petitioners to a hearing on the merits. Only had it been unquestioned that the discriminations claimed could not have been demonstrated under any circumstances could the judgment below have been warranted. Obviously, at this stage of the proceeding that conclusion cannot be reached.

**The Considerations Which Underlay Decision in
Colegrove v. Green and Cognate Cases Are Not
Applicable Here**

In *Colegrove v. Green*, 328 U. S. 549, congressional districting in Illinois pursuant to a 1901 statute was challenged on the grounds that because of the substantial population disproportion involved, the statute violated the equal protection clause of the Fourteenth Amendment. Relief

was denied on the authority of *Wood v. Broom*, 287 U. S. 1, which had interpreted the Federal Reapportionment Act of 1929 (Title 2, United States Code, Section 2a) as making no requirement in respect to "compactness, contiguity and equality in population of districts." The principal ground on which the decision rested, however, was that apportionment necessitated "embroilment in politics, in the sense of party contests and party interests." The federal courts were admonished to stay clear of "this political thicket."

Similarly, relief was denied in *MacDougall v. Green*, 335 U. S. 281, where another Illinois statute required petitions to form and to nominate candidates for new political parties to have a certain number of signatures of qualified voters from at least 50 of the state's 102 counties, notwithstanding the fact that 52% of the state's registered voters were to be found in Cook County; that 89% of the state's population lived in 49 counties, and that only 13% lived in the 53 least populous counties. This Court found nothing unconstitutional in a state policy requiring that candidates for statewide offices secure statewide support.

In *South v. Peters*, 339 U. S. 296, a challenge to the Georgia county unit vote system was also unsuccessful. In a per curiam opinion the Court stated that the equity powers of the federal courts should not be exercised "in cases posing political issues arising from a state's geographical distribution of electoral strength among its political subdivisions."

In *Colegrove*, *MacDougall* and *Peters*, the Court was fearful of involving itself in partisan party politics, and the inequalities alleged raised arguable issues concerning appropriate distribution of a state's political strength as between the more and the less populous areas. Moreover, corrective legislation was a distinct possibility.

Here, however, Alabama is redrawing the boundaries of one municipality in order to deprive Negroes of local politi-

cal power. The validity of statewide districting or general distribution of the state's electoral strength is not in question. The unfreighted issue raised is whether a state may deny Negro citizens rights secured under the Constitution and laws of the United States. As petitioners stated at the outset, this same issue has been before this Court on many occasions and in many guises. Embroilment in political partisanship is not to be feared. The constitutional validity of a form of state enforced racial discrimination is the sole problem petitioners bring here.

It must also be remembered that the primary intendment of the Fourteenth and Fifteenth Amendments was to secure to Negroes full citizenship rights and to prohibit state action discriminating against them as a class on account of their race. See *Slaughter House Cases*, 16 Wall. 36. There speaking of the Thirteenth, Fourteenth and Fifteenth Amendments, this Court, at pps. 71, 72, said:

... no one can fail to be impressed with the one pervading purpose found in them all . . . we mean the freedom of the slave race, the security and firm establishment of that freedom, and the protection of the newly made freemen and citizen from the oppressions of those who had formerly exercised unlimited dominion over him. It is true that only the 15th Amendment, in terms, mentions the negro by speaking of his color and his slavery. But it is just as true that each of the other articles was addressed to the grievances of that race, and designed to remedy them as the fifteenth.

It would be strange indeed for this Court to hold that federal courts are powerless to afford redress, when a claimed violation of these basic guarantees is alleged, simply

because the violation results from the remapping of a municipality. Petitioners contend that such a conclusion would be completely at variance with all that is fundamental in the Court's interpretation of the reach and effect of the Fourteenth and Fifteenth Amendments. See *Cooper v. Aaron, supra*. And see *Muir v. Louisville Park Theatrical Association*, 202 F. 2d 275 (CA 6th 1953), vacated and remanded, 344 U. S. 971. The import of this Court's holdings is that all state acts of racial discrimination or disenfranchisement are beyond the pale.

Moreover, no delicate issue of federal-state relationship is present in the instant case. The Constitution forbids what Alabama is attempting to do, and if petitioners can sustain their allegations, Act 140 must be struck down. This case differs strikingly from *Colegrove* in another important particular. There, it was possible for this Court to conclude that the complainants could successfully appeal to the legislature for correction of the complained of evil. No such conclusion is tenable in the circumstances of this case. The basic reason which brought Act 140 into being was to prevent petitioners and other Negroes from consolidating their growing political strength at the local level and thereby exerting influence over the state legislature. Also, it should be added, this controversy does not involve conflicting views concerning permissible state policy. On the contrary, the Fourteenth and Fifteenth Amendments place absolute limitations on state power, and where the state has exceeded those limitations to petitioners' detriment, redress may be sought in the federal courts. See *Cooper v. Aaron, supra*.

One final distinction should be emphasized. Relief presents no special or peculiar difficulties. The trial court is not required to remap Tuskegee. If it is determined that Act 140 is invalid, it will be struck down and Tuskegee will revert to its old boundaries. Needless to say, the state may

give Tuskegee new limits by enacting another statute. This may necessitate litigation testing the validity of that legislation. But that prospect is not new, see, e.g., *Guinn v. United States, supra*; and *Lane v. Wilson, supra*; *Nixon v. Herndon, supra*; *Nixon v. Condon, supra*; *Grovey v. Townsend, supra*; *Smith v. Allwright, supra*, and has never been a basis for this Court refusing to apply applicable constitutional doctrine.

CONCLUSION

For the reasons hereinabove stated, it is respectfully submitted that the judgment below should be reversed.

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