

Law School of Harvard University
Cambridge 38, Mass.

January 22, 1960.

2361 JAN 25 '60

Mr. Robert L. Carter,
General Counsel, NAACP,
20 West 40th Street,
New York 18, New York.

Dear Mr. Carter:

Some time ago, soon after Gomillion v. Lightfoot had appeared in the F2d advance sheets, Anthony Lewis was in Cambridge, and we discussed the case. I have received from him this week a copy of the rough draft of your petition for certiorari. He suggested that I might comment on it to you, along the line of some of the ideas about the case I expressed to him.

I am glad to do so. However, the more I thought about formulating my comments, the more clearly it appeared that it would be easier to express them by preparing another draft of parts of the petition than in any other fashion. Accordingly, I have done so, and I inclose herewith a copy of the draft I have prepared. Of course, you are free to use all or part of it, as you think fit. I am also sending a copy to Mr. Lewis both for his information and in case you should wish to discuss the matter with him.

You will note that a principal point of difference between my draft and the draft sent to me is that I have very deliberately subordinated the voting issue. This is for two reasons. First, the votes involved are votes in municipal elections, only. Though I gather that may be a principal motivation for the statute involved, voting in municipal elections is pretty clearly derivative from residence in the city, and it alone could hardly be used to require that boundaries remain static. It seems to me that you do better by relying upon all of the incidents of status as residents of the city rather than voting alone or principally, i.e., that you rely more on the Fourteenth than on the Fifteenth Amendment. More importantly, for litigation purposes, a stress on voting takes you that much closer to Colegrove v. Green and South v. Peters, and that is the area above all others you want to avoid. In other words, you have to fear Judge Wisdom's opinion much more than you do Judge Jones's. Also, I have tried to sharpen and clarify the issues somewhat more than I believe the original draft does. I believe the Court is much more likely to take the case if it sees it as involving a somewhat stark, almost mechanical, issue, than it is if it thinks the case involves somewhat delicate evaluations. For that reason, you may well think that my draft at times labors the obvious. All I can say is that that is what I believe is called for.

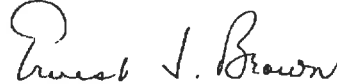
-Mr. Carter-

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I have of course been a little embarrassed by working without a copy of the complaint before me. I have drawn what I could from the draft of the petition and from the opinions in the District Court and the Court of Appeals. Therefore, if you wish to use my draft, please check with care the assertions of alleged fact. For instance, though it is asserted in a number of places that no white voters were removed from Tuskegee, it is never asserted very clearly that no white residents were, though in one or two places in the opinions that seems assumed. The draft of the petition opens the sentence making such an assertion with the phrase "In general", and I did not know whether that was intended as a qualification or not. I have taken the liberty of asserting that it is alleged that no white residents were removed, in preparing my draft. If there is no such allegation, then of course my statements should be changed. You might say "only a token number of white residents" instead, or whatever the complaint. Similarly, I have stated in the first paragraph of my draft of the Statement, ~~that all of the petitioners~~, that all of the petitioners were qualified voters, but I have followed that by question marks to indicate my lack of assurance that there was any such allegation.

Let me apologize for corrections both in the draft I am inclosing and in this letter, but I am rushing both to get them into the mail so that they will reach you tomorrow.

Very truly yours,



Ernest J. Brown.

c: Mr. Anthony Lewis.
Incl.