

MUNICIPALITIES**Boundaries, Elections—Alabama**

C. G. GOMILLION, et al., etc. v. Howard RUTHERFORD, as Mayor of the City of Tuskegee, et al.

United States District Court, Middle District, Alabama, Eastern Division, February 17, 1961, Civil Action No. 462-E, ____ F.Supp. ____

SUMMARY: Twelve Negroes brought a class action in federal district court against officials of the city of Tuskegee and of Macon County, Alabama, challenging a 1957 legislative Act which redrew the city's boundaries so as to exclude all but four or five qualified Negro voters, but no qualified white voter [2 Race Rel. L. Rep. 856 (1957)]. It was charged that the statute's purpose and effect was to deny plaintiffs the right to vote in any city elections and to participate generally in city affairs, and to deprive them of police protection, street improvements, and other rights of municipal citizenship. Plaintiffs requested a declaration that the Act as applied to them violated the due process and equal protection clauses of the Fourteenth Amendment, and the Fifteenth Amendment, and prayed for injunctions against the enforcement of the Act as to them and their class. The court, however, sustained defendants' motion to dismiss the complaint for failure to state a claim upon which relief could be granted, and for lack of jurisdiction. 3 Race Rel. L. Rep. 1220 (1958).

On appeal, the Court of Appeals for the Fifth Circuit affirmed, one judge dissenting. The majority, supporting the principle relied on by the district court, cited authority to the effect that "the power of increase and diminution of municipal territory is plenary, inherent, and discretionary in the legislature, and, when duly exercised, cannot be revised by the courts." Further, it was declared that in considering such statutes, courts are to refrain from inquiring into legislative motive and are not to be influenced by the opinions of legislators. The "universally recognized sovereign power" of a state legislature to enact a statute of this nature, reserved by the Tenth Amendment, is not to be restricted by prohibiting its exercise, the court added, although as an incidence of it Negroes are purposely excluded from a city and from participation in its affairs. 4 Race Rel. L. Rep. 993 (1959).

On further appeal, the United States Supreme Court reversed and ordered the trial court to consider the truthfulness of the allegations in plaintiffs' original suit. If true, the Supreme Court said, they "would abundantly establish that [the Act] was not an ordinary geographic redistricting measure even within familiar abuses of gerrymandering. [Rather] . . . the conclusion would be irresistible . . . that the legislation is solely concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote." It was declared that the reservation of power to the states by the Tenth Amendment "is not carried over when state power is used as an instrument for circumventing a federally protected right." 5 Race Rel. L. Rep. 974 (1960).

In the district court, plaintiffs' motion for judgment on the pleadings was sustained, the challenged Act being declared unconstitutional and each of the defendants, his agents, and/or successors in office being permanently enjoined from enforcing the Act against plaintiffs and those similarly situated. The court pointed out that the only material allegation of the complaint not admitted by defendants' answer was that concerning the state legislature's intent in passing the 1957 Act. However, since the allegations as to the effect of the redistricting measure remained uncontradicted, the court stated that the conclusion was "irresistible, tantamount for all practical purposes to a mathematical demonstration" that the legislature had been "solely concerned with segregating white and colored voters" by placing Negro citizens outside the city limits so as to deprive them of their municipal vote. Such racially discriminatory treatment depriving those discriminated against of voting rights was held to be in violation of the Fifteenth Amendment.

OPINION, ORDER
AND JUDGMENT

This cause, without objection of any of the parties hereto, is now submitted upon the plaintiffs' motion filed herein on February 10, 1961 (and refiled on February 15, 1961), pursuant to Rule 12(c), Federal Rules of Civil Procedure, wherein plaintiffs seek to have this Court render judgment in their favor as prayed for in their complaint.

It now appears that since the pleadings in this cause are closed and since the motion for judgment is timely made,¹ it is necessary and appropriate, for a proper consideration of said motion, for this Court to now review and analyze the pleadings for the purpose of determining whether plaintiffs are entitled to the judgment and injunction they seek.

Plaintiffs allege they are Negro citizens and resided in the municipal limits of Tuskegee as those limits were constituted prior to the enactment of Act No. 140 of the 1957 Regular Session of the Alabama Legislature, passed on July 15, 1957; that prior to the enactment of said Act No. 140, the City of Tuskegee was square-shaped, containing approximately 5,397 Negroes, of whom about 400 were qualified as voters in the City of Tuskegee, and approximately 1,310 white persons, of whom approximately 600 were and are presently qualified voters in said city. Plaintiffs further allege that as the city limits were redrawn and redefined by said Act. No. 140, the municipal limits of Tuskegee resemble a "sea dragon" with twenty-eight sides and with Negro neighborhoods eliminated; that no white persons, but several thousand Negroes, including all but four or five qualified voters, were excluded or removed from the municipal limits of the City of Tuskegee by said Act. No. 140. Plaintiffs further allege that said Act deprives them and the class they represent in this action of the right to vote in municipal elections in the City of Tuskegee and denies them other rights incidental to their being residents of the City of Tuskegee solely on account of their race and color.

1. The motion when originally filed on February 10, 1961, was premature in that the defendants Greer and Sides had not been substituted as defendants, as provided by Rule 25(d) of the Federal Rules of Civil Procedure. However, the substitution has now been effected without objection, and each of the substituted defendants (Rutherford, Lumpkin, Braswell, Jr., Gregg and Sides) has answered. The motion for judgment is now submitted to the Court without objection on the part of any defendant.

The defendants, including the substituted defendants Rutherford, Lumpkin, Braswell, Jr., Gregg and Sides² by their answer admit the capacity in which plaintiffs sue, admit the capacity in which each of said defendants is sued, and admit the jurisdiction of this Court to hear and determine the issues involved herein.³ Each of said defendants by his answer admits, further, the following facts: That the Negro plaintiffs prior to the enactment of Act No. 140 did, but, subsequent to the enactment of said Act, do not now reside within the corporate limits of the City of Tuskegee, Alabama; that said Act was enacted by the Legislature for the State of Alabama and that said map, attached to the complaint as "Exhibit 2", correctly portrays the corporate limits of the municipality of Tuskegee before and after the enactment of Act No. 140; that prior to the enactment of said Act the corporate limits of the City of Tuskegee formed a square and that after the enactment of said Act the corporate limits were as shown on said "Exhibit 2"; that prior to the enactment of said Act there were residing within the corporate limits of the City of Tuskegee approximately 5,397 Negroes, of which number approximately 400 were registered voters, and approximately 1,775 white persons, of which number approximately 650 were registered voters; that after the enactment of said Act all but four or five white families and all but two white voters who formerly resided within the old corporate limits resided within the new corporate limits; that several thousand Negroes who formerly resided within the old corporate limits did not reside within the new corporate limits after the enactment of said Act, and only approximately eight or ten Negro voters resided

2. These substituted defendants were made parties defendant by order of this Court made pursuant to a motion for substitution as authorized by Rule 25(d) of the Federal Rules of Civil Procedure, since each was by election made an official of the City of Tuskegee and each has now assumed the office and duties of former defendants Phil M. Lightfoot, as Mayor, and G. B. Edwards, Jr., L. D. Gregory, Frank A. Oslin, and H. A. Vaughan, Jr., as Members of the Tuskegee City Council.

3. The jurisdiction of this Court was originally denied by these defendants. This denial was upheld by this Court and by the Court of Appeals for the Fifth Circuit, the opinions of this Court and the Court of Appeals for the Fifth Circuit being reported in 167 F. Supp. 405 and 270 F. 2d 594, respectively. This Court and the Court of Appeals for the Fifth Circuit were reversed by the Supreme Court of the United States, the opinion reported in 364 U.S. 339, with the Supreme Court specifically holding that this Court had jurisdiction and that the plaintiffs were entitled to prove their allegations.

within the new corporate limits; and that no person who resides beyond the corporate limits of the City of Tuskegee may vote in any municipal election.

It appears from the foregoing that the only material allegation of the complaint that the defendants have not by their answer admitted as being true is that portion relating to the intent of the Legislature for the State of Alabama in passing Act No. 140. As to this particular part of this case, the Supreme Court of the United States in *Gomillion, et al. v. Lightfoot, as Mayor*, 364 U.S. 339, stated:

"These allegations, if proven, would abundantly establish that Act 140 was not an ordinary geographic redistricting measure even within familiar abuses of gerrymandering. If these allegations upon a trial remained uncontradicted or unqualified, the conclusion would be irresistible, tantamount for all practical purposes to a mathematical demonstration, that the legislation is solely concerned with segregating white and colored voters by fencing Negro citizens out of town so as to deprive them of their pre-existing municipal vote."

Since, as stated by the Supreme Court upon its review of this case, these allegations concerning the effect of the geographic redistricting measure remain uncontradicted, the conclusion is—as far as this Court is now concerned—irresistible, "tantamount for all practical purposes to a mathematical demonstration", that the Legislature of the State of Alabama in enacting Act No. 140 was solely concerned with segregating white and colored voters by putting the Negro citizens out of the municipal limits so as to deprive them of their municipal vote. Therefore, when a legislature singles out an isolated segment of a racial group and imposes upon that group discriminatory treatment because of its color, which discriminatory treatment deprives said group and the members thereof of its right to vote, then the action of said legislature violates the Fifteenth Amendment and exceeds the scope of relevant limitations imposed by the United States Constitution. In such instances, when a state—whether the action be by the chief executive, the legislature, or any of the state officers acting within the scope of their authority as such—exercises power "wholly within the domain of state interest, it is insulated from federal judicial review. But such insula-

tion is not carried over when state power is used as an instrument for circumventing a federally protected right." In the latter instances, as was so aptly stated by the Supreme Court in *Lane v. Wilson*, 307 U.S. 268, 275, "The [Fifteenth] Amendment nullifies sophisticated as well as simple-minded modes of discrimination."

From the foregoing, this Court reaches the firm conclusion that Act No. 140 of the 1957 Regular Session of the Alabama Legislature, passed July 15, 1957, denies to these plaintiffs and the class they represent constitutional rights as guaranteed by the Fifteenth Amendment to the Constitution of the United States. This Court is of the further conclusion that the motion of the plaintiffs for judgment on the pleadings must be sustained by the undisputed facts appearing in all the pleadings, supplemented by the law of this case as laid down by the Supreme Court of the United States. It necessarily follows that said Act must be declared unconstitutional and that each of said defendants, his agents, and/or successor in office, should be permanently enjoined from enforcing or executing said Act against these plaintiffs and those similarly situated.

In consideration of the foregoing and for good cause, it is:

ORDERED, ADJUDGED and DECREED that plaintiffs' motion for judgment on the pleadings, filed herein pursuant to Rule 12(c), Federal Rules of Civil Procedure, be and the same is hereby granted. It is further

ORDERED, ADJUDGED and DECREED that Act No. 140 of the 1957 Regular Session of the Alabama Legislature and each part thereof as applied to the plaintiffs and the class which they represent is unconstitutional and void in that said Act deprives plaintiffs and other Negro citizens similarly situated of their rights secured and guaranteed by the Fifteenth Amendment to the Constitution of the United States. It is further

ORDERED, ADJUDGED and DECREED that each defendant, his successor in office, assigns, agents, servants, employees, and persons acting on his behalf, be and each is hereby permanently enjoined and restrained from enforcing Act No. 140 of the 1957 Regular Session of the Alabama Legislature as said Act may be applied to these plaintiffs, or any other Negroes similarly situated. It is further

ORDERED, ADJUDGED and DECREED

that a copy of this opinion, order and judgment, together with a writ of injunction to be prepared by the Clerk of this Court, be served by the United States Marshal for this district upon each of the defendants herein named. It is further

ORDERED, ADJUDGED and DECREED that the costs incurred herein be and they are hereby taxed against the defendants, for which execution may issue.

ORGANIZATIONS NAACP—Florida

Theodore R. GIBSON v. FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE.
Edward T. GRAHAM v. FLORIDA LEGISLATIVE INVESTIGATION COMMITTEE.

Supreme Court of Florida, December 19, 1960, Rehearing denied January 17, 1961, 126 So.2d 129, 133.

SUMMARY: [For previous developments in this case, see 5 Race Rel. L. Rep. 814 (1960)]. On appeal from the circuit court's decisions, the state supreme court affirmed the order against the present chapter president. The constitutionality of a 1959 statute renewing the authority of the Committee was upheld on the basis of the court's previous decision as to the 1957 Act, the statutes and attacks thereon being "identical." The court distinguished the cases of *NAACP v. Alabama* [3 Race Rel. L. Rep. 611 (1958)] and *Bates v. City of Little Rock* [5 Race Rel. L. Rep. 35 (1960)] on the ground that they involved a compulsory indiscriminate disclosure of an entire NAACP list under circumstances that would result in the functioning of the Association being completely stultified because of the deterrent effect of fear of economic and social retribution and threats of physical violence which would destroy members' freedoms of speech and assembly. Here, however, appellant was required only to have available records from which to testify as to the associational status of specified individuals otherwise identified as having subversive connections, a matter within the Committee's announced purposes. Therefore, the court pointed out that the "rank and file," "legitimate and good faith" members of the organization would be adequately protected against retribution and that those with subversive connections are not entitled to the same associational privacy. However, the court reversed the order as to the past president. It emphasized that this appellant had been questioned only as to membership in the NAACP, and not as to affiliation with the Communist party or related groups, in the face of uncontradicted and considerable testimony concerning possible reprisals against any known active NAACP leader. "To justify subordinating the private right to public action, the announced public necessity must be established clearly and unequivocally," the court declared, and no such necessity was shown by the record here, especially when the information ultimately sought concerning affiliations of allegedly known Communists could be obtained from the appellant in the other case.

THORNAL, J.

By direct appeal, we are requested to review an order of the circuit court upholding the validity of Chapter 59-207, Laws of Florida, 1959, and adjudging petitioner Gibson guilty of contempt of Court for failure to comply with a subpoena duces tecum issued by appellee Committee.

We must pass upon the constitutionality of Chapter 59-207, Laws of Florida, 1959. We must also determine whether the compelled response to the subpoena duces tecum would be violative of various constitutional rights asserted by appellant.

Appellant Gibson is admittedly the president of the Miami branch of the National Association