

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE MIDDLE

DISTRICT OF ALABAMA, EASTERN DIVISION

C. G. GOMILLION, CELIA B. )  
CHAMBERS, ALMA R. CRAIG, FRANK H. ) FILED  
BENTLEY, WILLIE D. BENTLEY, )  
KENNETH L. BUFORD, WILLIAM J. ) FEB 17 1961  
WHITE, AUGUSTUS O. YOUNG, JR., )  
NETTIE B. JONES, DETROIT LEE, ) R. C. DOBSON  
DELLA D. SULLINS AND LYNWOOD T. ) Clerk  
DORSEY, on behalf of themselves )  
and others similarly situated, ) By.....  
Plaintiffs, ) Deputy Clerk

vs. ) CIVIL ACTION NO. 462-E

HOWARD RUTHERFORD, as Mayor )  
of the City of Tuskegee, DR. RILEY )  
LUMPKIN, JAMES L. BRASWELL, JR., )  
L. M. GREGG, W. FOY THOMPSON, and )  
JOHN SIDES, as Members of the Tuskegee )  
City Council; O. L. HODNETT, as Chief )  
of Police of the City of Tuskegee, )  
Alabama; E. C. LESLIE, CHARLES )  
HUDDLESTON, J. T. DYSON, F. C. THOMPSON )  
and VIRGIL GUTHRIE, as Members of the )  
Board of Revenue of Macon County, Alabama; )  
PRESTON HORNSBY, as Sheriff of Macon County, )  
Alabama; WILLIAM VARNER, as Judge of )  
Probate of Macon County, Alabama, City )  
of Tuskegee, Ala., a municipal corp., )

Defendants. )

OPINION, ORDER AND JUDGMENT

This cause, without objection of any of the parties herto, 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, <sup>1/</sup> 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

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<sup>1/</sup> The motion when originally filed on February 10, 1961, was premature in that the defendants Gregg 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.



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.

The defendants, including the substituted defendants Rutherford, Lumpkin, Braswell, Jr., Gregg and Sides <sup>2/</sup> 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. <sup>2/</sup> 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,

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<sup>2/</sup> 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.

<sup>2/</sup> 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.



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 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 insulation 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.

Done, this the 17th day of February, 1961

FRANK M. JOHNSON, JR.  
UNITED STATES DISTRICT JUDGE