NO. 668

IN THE

Supreme Court of The United States

October Term, 1959

C. G. GOMILLION, et al.,

Petitioners,

V.

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

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR RESPONDENTS IN OPPOSITION

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OPINIONS BELOW

The opinion of the District Court (R. 29) is reported at 167 F. Supp. 405. The opinion of the Court of Appeals (Petition, Appendix p. 17) is reported at 270 F. 2d 594.

JURISDICTION

The jurisdictional requisites are set forth in the Petition.

QUESTIONS PRESENTED

1. May a State, by and through its duly constituted Legislature, fix and determine the territorial boundaries of a municipal corporation of that State?

2. May, or should, a Federal Court review the fixing and determination of the territorial boundaries of a municipality by a State Legislature, and annul and set aside the boundaries determined by the State Legislature and fix or substitute different or other boundary lines?

3. In the consideration of a State statute will the Federal Courts make inquiry into the motive or motives of a legislator or of legislators?

4. Should the Federal Courts abstain from exercising jurisdiction or equity powers in cases posing political issues arising from a State's determination of the geographical boundaries of a City, one of its political subdivisions?

STATUTE INVOLVED

Act No. 140, Acts of Alabama, Regular Session, 1957, "To alter, re-arrange, and re-define the boundaries of the City of Tuskegee in Macon County." The Act, with minor typographical errors, is set out in full in the Petition at pp. 2-3.

STATEMENT

The Petitioners' complaint asks for a declaratory judgment that Act 140 of the 1957 Regular Session of the Legislature of Alabama, altering, redefining and rearranging the boundaries of the City of Tuskegee, Alabama, is invalid and in violation of the due process and equal protection clauses of the Fourteenth and Fifteenth Amendments to the Constitution of the United States. The complaint also asks injunctive relief to restrain the Mayor and Officers of Tuskegee, and the Probate Judge and other officials of Macon County,

Alabama, from enforcing said Act, and requiring that Petitioners and others, who are negroes, and who prior to the enactment of Act 140 did, but since the said Act do not now, reside within the corporate limits of the City, "be recognized and treated in all respects as citizens of the City of Tuskegee" (R. 12).

In the District Court respondents moved to strike the complaint and certain exhibits thereto consisting of: a copy of a newspaper story, a copy of an article in *Time* magazine, and unrelated legislation and statements (R. 17-19). Respondents also moved the Court to dismiss the action for failure to state a claim, for lack of jurisdiction, and upon other grounds (R. 26-28).

The District Court held the fixing of municipal boundaries and limits to be a matter for the Legislature and not the Courts, and dismissed the action (R. 29-40). On appeal, the Court of Appeals affirmed. The majority opinion of the Court of Appeals essentially followed the reasoning of the district judge (Petitioners' Appendix p. 17); one judge dissented (Petitioners' Appendix p. 26); and one judge specially concurred, stating that in addition to the holding of the majority opinion he would apply "the doctrine of judicial abstention in political cases" (Petitioners' Appendix p. 52).

ARGUMENT

REASONS FOR DISALLOWANCE OF WRIT

I

THE POWER OF A STATE TO DETERMINE TERRITORIAL BOUNDARIES OF ONE OF ITS MUNICIPAL CORPORATIONS.

We respectfully submit that the judgment of dismissal, affirmed by the Court of Appeals, was entirely proper, and is supported by an unbroken line of decisions by this Honorable Court and other courts. There is no conflict of decisions, and no departure from settled law.

That a state legislature has the power to detach territory from municipalities or to extend, rearrange, or limit the boundaries thereof is universally recognized. This Court long ago, and continuously since, has recognized and announced the rule that counties, cities, and towns are municipal corporations, created by the authority of the Legislature, deriving "all their powers from the source of their creation, except where the Constitution of the State otherwise provides. . . ." And the State Legislature has authority to amend the Charter, enlarge or diminish its powers, "extend or limit its boundaries, divide the same into two or more, consolidate two or more into one . . . and even abolish the municipality altogether in the legislative discretion. Cooley on Const., 2d Ed. 192." *Laramie County v. Albany County,* 92 U. S. 307; *Mount Pleasant v. Beckwith,* 100 U. S. 514; Cooley's Constitutional Limitations, 8th Ed., Vol. I, Chapt. VIII, 393, et seq.

In *Kelly v. Pittsburgh,* 104 U. S. 78, a case of annex-

ation of territory, involving argument under the Fourteenth Amendment, this Court said:

> "What portion of a State shall be within the limits of a City and governed by its authorities and its laws has always been considered to be a proper subject of legislation."

Then in *Hunter v. Pittsburgh,* 207 U. S. 161, the Court again had occasion to consider the power of a State acting through its duly elected and constituted Legislature, and within the limits of the State Constitution, to "expand or contract the territorial area" of a municipality, without hindrance or interference by Federal Courts. In clear, forceful, emphatic language the Court "quickly disposed" of the issues by "the application of well-settled principles.

> "We have nothing to do with the policy, wisdom, justice, or fairness of the act under consideration; those questions are for the consideration of those to whom the State has entrusted its legislative power, and their determination of them is not subject to review or criticism by this court. We have nothing to do with the interpretation of the Constitution of the State and the conformity of the enactment of the Assembly to that Constitution; those questions are for the consideration of the courts of the State, and their decision of them is final."

Then, after referring to numerous prior decisions, the Court continued, saying that the following principles have been established, "and have become settled doctrines of this Court, to be acted upon wherever they are applicable.

"Municipal corporations are political subdivisions of the State, created as convenient agencies for exercising such of the governmental powers of the State as may be entrusted to them. For the purpose of executing these powers properly and efficiently they usually are given the power to acquire, hold, and manage personal and real property. The number, nature, and duration of the powers conferred upon these corporations and the territory over which they shall be exercised rests in the absolute discretion of the State. Neither their charters, nor any law conferring governmental powers, or vesting in them property to be used for governmental purposes, or authorizing them to hold or manage such property, or exempting them from taxation upon it, constitutes a contract with the State within the meaning of the Federal Constitution. The State, therefore, at its pleasure, may modify or withdraw all such powers, may take without compensation such property, hold it itself, or vest it in other agencies, expand or contract the territorial area, unite the whole or a part of it with another municipality, repeal the charter and destroy the corporation. All this may be done, conditionally or unconditionally, with or without the consent of the citizens, or even against their protest. In all these respects the State is supreme, and its legislative body, conforming its action to the state Constitution, may do as it will, unrestrained by any provision of the Constitution of the United States. Although the inhabitants and property owners may, by such changes, suffer inconvenience, and their property may be lessened in value by the bur-

> den of increased taxation, or for any other reason, they have no right, by contract or otherwise, in the unaltered or continued existence of the corporation or its powers, and there is nothing in the Federal Constitution which protects them from these injurious consequences. The power is in the State, and those who legislate for the State are alone responsible for any unjust or oppressive exercise of it."

Some of the later United States Supreme Court cases citing *Hunter v. Pittsburgh* with approval are: *Pawhuska v. Pawhuska Oil Co.*, 250 U. S. 394; *Trenton v. New Jersey*, 262 U. S. 182; and *Faitoute Co. v. Asbury Park*, 316 U. S. 502.

State Courts have also consistently followed the rule so clearly and decisively announced in *Hunter v. Pittsburgh*. In *City of Birmingham v. Norton*, 255 Ala. 262, 50 So. 2d 754, the Supreme Court of Alabama committed Alabama to the rule announced in *Hunter v. Pittsburgh*, quoting in extenso that portion of the opinion set out above. Louisiana has done likewise in *State v. City of Baton Rouge*, 40 So. 2d 477 (483). Also see *Madison Metropolitan Sewer District v. Committee*, 260 Wis. 229, 50 N. W. 2d 424; *State vs. Wellston Sewer District*, (Mo. 1933) 58 S. W. 2d 988, 922, 993:

> "Relators also contend that they have certain inalienable rights more intangible in nature, such as the right to life, liberty, health and the privileges of citizenship, which have been denied them by repeal of the sewer law in violation of the several sections of the state and federal Constitutions cited in this opinion. . . .

> "Speaking to the same question, as bearing on the alteration or dissolution of a municipal corporation, the Supreme Court of the United States said in Hunter v. City of Pittsburgh, 207 U. S. 161, 178, 179, 28 S. Ct. 40, 46, 52 L. Ed. 151, 159: 'Municipal corporations are political subdivisions of the state, created as convenient agencies for exercising such of the governmental powers of the state as may be entrusted to them. . . . The state, therefore, at its pleasure . . . may expand or contract the territorial area. . . .' "

In Kentucky it has been held that, "The extension or reduction of the boundaries of a city or town is held, without exception, to be purely a political matter, entirely within the power of the Legislature of the state to regulate." *Lenox Land Co. v. City of Oakdale,* 125 S. W. 1089, opinion extended, 127 S. W. 538. And, "From whatever point it is viewed, the subject returns to this: The act of incorporating towns, and enlarging or restricting their boundaries, is legislative and political. In its exercise of discretion in such matters the Legislature has plenary power." *Carrithers v. City of Shelbyville,* 104 S. W. 744. See also *State v. Crimson,* 188 S. W. 2d 937.

McQuillin, Municipal Corporations (3rd Ed.), Sec. 4.05, Vol. 2 at page 18 says:

> ". . . the legislature, who may enlarge or diminish its territorial extent or its functions, may change or modify its internal arrangement, or destroy its very existence, with the mere breath of arbitrary discretion. Sic volo, sic jubeo, that is all the sovereign need say. . . ."

Black River Regulat. Dist. v. Adirondock League Club, 121 N. E. 2d 428, 433, (N. Y. Ct. of Appeals, 1954): "The concept of the supreme power of the Legislature over its creatures has been respected and followed in many decisions."

Williams vs. Book, (S. D. 1953) 61 N. W. 2d 290, 294:

> "The power of the legislature in the Control of Counties and other political subdivisions is unrestrained by requirements of due process."

City of New York vs. Village of Lawrence, 165 N. E. 836: "The power to enlarge or restrict the boundaries of an established city is an incident of the legislative power to create and abolish municipal corporations and to define their boundaries."

The foregoing are only a few of the many cases which might be cited as supporting, following and reaffirming the rule enumerated in *Hunter v. Pittsburgh.* To cite or discuss them all would unnecessarily prolong this brief.

Furthermore, the attempt to link the state statute in question to complaints as to registration for voting lodged with or investigated by the Civil Rights Commission, fails to take note of the fact that Act 140 neither cancelled the registration of any voter, nor put any obstacle in the path of any qualified person desiring to register to vote. The right to register or to vote is not affected. Any voter who was formerly a resident within the boundaries of the City of Tuskegee can still vote, except that by reason of his present non-residence he may not vote in city elections, and his rights to vote or his obligation to pay taxes are no greater or

no less than the right of any other citizen, white or negro, who lives in the County outside the boundaries of a municipality. As Judge Jones observed in the majority opinion below, when a person removes from a municipal corporation he loses his membership and the rights (obligations, duties, taxes, and other burdens) incident to such membership, "and this is no less true where the removal is involuntary and results from a change of boundaries than where the resident removes to another place. That this is so does not restrict the legislative power to alter municipal boundaries."

No one has a vested right to be either included in or excluded from a local governmental unit.[1] The confusion that would inevitably result from the vesting in, or assumption by, the Courts of the power and authority "to expand or contract the territorial area" of municipal corporations or other political subdivision, is obvious and tremendous. If the Courts have the power to supervise or control the legislative authority to expand or contract the territorial area of a political subdivision, a city or county, they have by the same token the power to create or destroy such a political subdivision. If the lower court has the power to say to the Legislature of Alabama, "You cannot reduce the corporate limits of Tuskegee", then by the same authority, the Court would have had the right and authority to say to the Legislature, upon petition of these

1. *Hunter v. Pittsburgh,* although studiously ignored by appellants has been cited and followed as late as April 17, 1957, in *Port of Tacoma v. Parosa,* 324 P. 2d 438, 441; and October, 1958, in *People v. City of Palm Springs,* 331 P. 2d 4, where the court observed that no one "has a vested right to be either included or excluded from a local governmental unit." See also *Halstead v. Rozmiarek* (Neb. 1959), 94 N. W. 2d 37.

same plaintiffs, if the corporate limits prior to the act complained of had not included or embraced them, "You must expand the corporate limits of Tuskegee to please these plaintiffs." Can anyone seriously contend that the Court is possessed of such authority? Could anyone seriously contend that the lower Court, or any other Court, could say to the Legislature of Alabama that either Act 232 of 1865-1866, which originally incorporated Tuskegee and fixed its boundaries 2½ miles square; or Act 40 of 1868, which reduced the town limits to one mile square; or Act 210 of 1869-1870, which expanded the boundaries; or Act 299 of 1872, which defined the boundaries; or Act 106 of 1898-1899, fixed for all times the boundaries of Tuskegee?

For the Court below to have granted the relief prayed for by plaintiffs in the case at bar, it would have had to ignore precedents which have been established and repeatedly followed, affirmed, and re-affirmed.

II

LEGISLATIVE MOTIVE

Appellants have attempted to make much of the alleged motive, which they label as intention or purpose, which prompted the passage of the Act in question, going so far as to set out some of the personal and political background of the legislator who introduced the Act (R. 8), and adding as further background other legislation (R. 9), and a newspaper article and the comment of a magazine of national circulation. (R. 9; Exhibit 3, R. 17; Exhibit 4, R. 19; Exhibit 5, R. 22). In the petition they go even further afield and beyond the record by making references to newspaper articles in the New York Times, with reference to a State Leg-

islator, who is no longer a member of the Alabama Legislature, (Petition p. 4); and to the Report of the United States Commission on Civil Rights. (Petition p. 14-15).[2] These references add nothing to the complaint.

It has long been the settled law of the land that the Courts "have nothing to do with the policy, wisdom, justice or fairness of the Act." *Hunter v. Pittsburgh,* supra. "If the State has the power to do an act, its intention or the reason by which it is influenced in doing it cannot be inquired into." *Doyle v. Continental Ins. Co.,* 94 U. S. 535, 541. "We cannot undertake a search for motive in testing constitutionality." *Daniel v. Family Security L. Ins. Co.,* 336 U. S. 220, 224. Also see, *Calder v. People of Michigan,* 218 U. S. 591; *Tenny vs. Brandhove,* 341 U. S. 367; *Arizona v. California,* 283 U. S. 423, 455.

The question concerning legislative motive and intention was considered and laid to rest by Judge Rives in the recent case of *Shuttlesworth v. Birmingham Board of Education,* 162 F. Supp. 372, 381; affirmed 358 U. S. 101:

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2. The quotation on page 15 of the Petition said to be the Civil Rights Commission's observation as to the statute involved in this litigation that "the City of Tuskegee recently moved to decrease" etc., illustrates a complete lack of knowledge as to how Act 140 was enacted. In Alabama, as in most states, we have laws under which municipalities may, by following prescribed procedure, initiate the extending or reduction of corporate limits. Code of Ala. 1940, Title 37, Art. 1, Sec. 134 et seq., Art. 6, Sec. 237, et seq. But here we are dealing with the direct action of the Legislature of Alabama, not with some action by the City of Tuskegee; and the Legislature of Alabama has the power to establish, alter, extend, or contract municipal boundaries. Ala. Constitution of 1901, Sec. 104 (18); *Ensley v. Simpson,* 166 Ala. 366, 52 So. 61; *State v. Gullatt,* 210 Ala. 452, 98 So. 373.

"In testing constitutionality 'we cannot undertake a search for motive'. 'If the state has the power to do an act, its intention or the reason by which it is influenced in doing it cannot be inquired into.' *Doyle v. Continental Insurance Co.*, 94 U. S. 535, 541, 24 L. Ed. 148. As there is no one corporate mind of the legislature, there is in reality no single motive. Motives vary from one individual member of the legislature to another. Each member is required to 'be bound by Oath or Affirmation to support this Constitution.' Constitution of the United States, Article VI, Clause 3. Courts must presume that legislators respect and abide by their oaths of office and that their motives are in support of the Constitution."

III

JUDICIAL ABSTENTION IN POLITICAL CASES

This case is a direct attack upon action of a State in the exercise of a power concerning one of its political subdivisions. The concurring opinion of Judge Wisdom (Petition p. 52) suggests that the Court should "not put a new kind of strain on federal-state relations", and should withhold the exercise of its equity powers in a case such as this. He points out that courts "are incompetent to remap city limits", and discusses and analyzes cases such as *Colegrove v. Green,* 328 U. S. 549; *South v. Peters,* 339 U. S. 276; and *The Cherokee Nation v. The State of Georgia,* 30 U. S. (5 Pet.) 1. Judge Wisdom has clearly covered the matter, and his opinion forcefully illustrates other compelling reasons why the writ should not be granted.

CONCLUSION

For the foregoing reasons it is respectfully submitted that the Petition for a Writ of Certiorari should be denied.

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