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.

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

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

J. LEE RANKIN,
Solicitor General,
Department of Justice, Washington 25, D.C.

In the Supreme Court of the United States

OCTOBER TERM, 1959

No. 668

C. G. GOMILLION, ET AL., PETITIONERS

v.

PHIL M. LIGHTFOOT, AS MAYOR OF THE CITY OF TUSKEGEE, ET AL.

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

MEMORANDUM FOR THE UNITED STATES AS AMICUS CURIAE

The United States joins with petitioners in urging this Court to grant a writ of certiorari to the Court of Appeals for the Fifth Circuit.

This case presents issues of national significance. For many years, the Federal Government, through all its branches, has sought to make meaningful the guarantees of the Constitution and to assure that all of its people enjoy full rights of citizenship without discrimination because of race or color. Actions such as the exclusion of Negroes from Tuskegee not only represent a negation of our national purposes but they also impede the effective participation by those affected in the attainment of their rights.

542057—60

If the allegations of the complaint are sustained, the legislation in question has eliminated from a city in Alabama virtually all of its Negro citizens. They have been deprived of the right to vote in municipal elections in Tuskegee, and of all other rights to benefits which they enjoyed as members of that community. In effect, they have been relegated to a ghetto by an act of the State. No reason for the bizarre redrawing of the boundaries of the City of Tuskegee has been advanced other than that the legal and political rights of citizenship in the municipality should be denied to Negroes because they are Negroes. Such a design, and such a result, are patently unconstitutional. Cf. *Buchanan* v. *Warley,* 245 U.S. 60. "States may do a good deal of classifying that it is difficult to believe rational, but there are limits, and it is too clear for extended argument that color cannot be made the basis of a statutory classification affecting the right set up in this case [*i.e.,* the right to vote]." Holmes, J., in *Nixon* v. *Herndon,* 273 U.S. 536, 541.

The decisions of the lower courts denying relief to petitioners rest on the grounds: (1) the states have plenary and unfettered discretion in regulating the boundaries of their municipalities, and (2) if constitutional limitations on the exercise of that discretion exist, they cannot or should not be enforced by the federal judiciary.

The first ground of decision is contrary to settled law. Even in areas of otherwise exclusive state concern, the states may not use race or color as a basis of legislation affecting rights protected by the Constitution.

As this Court said in *Cooper* v. *Aaron,* 358 U.S. 1, 19, with respect to another area traditionally under state control:

> It is, of course, quite true that the responsibility for public education is primarily the concern of the States, but it is equally true that such responsibilities, like all other state activity, must be exercised consistently with federal constitutional requirements as they apply to state action. * * *

The action of the legislature of Alabama, to the extent that it affected voting rights, contravened the Fifteenth Amendment. Beyond that, because Negroes were specifically singled out for dissimilar treatment, it also violated the Fourteenth Amendment. We are not here dealing with a non-racial dilution of the right to vote but with a total deprivation not merely of that right but of all rights to benefits of citizenship in a municipality, solely on account of race. Nor does this case present any of the relief problems sometimes envisaged by the courts in the legislative apportionment cases. A judgment in this case would require simply a return to the *status quo* existing prior to the discriminatory action of the State, relief traditionally within judicial authority.

This case recalls the admonition of *Strauder* v. *West Virginia,* 100 U.S. 303, 307–308:

> The words of the [Fourteenth] Amendment, it is true, are prohibitory, but they contain a necessary implication of a positive immunity, or right, most valuable to the colored race,—the right to exemption from unfriendly legislation against them distinctively as colored,—exemp-

tion from legal discriminations, implying inferiority in civil society, lessening the security of their enjoyment of the rights which others enjoy, and discriminations which are steps towards reducing them to the condition of a subject race.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted.

J. LEE RANKIN,
Solicitor General.

MARCH 1960.

U.S. GOVERNMENT PRINTING OFFICE: 1960