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NO. 32

IN THE

Supreme Court of The United States

October Term, 1960

C. G. GOMILLION, et al.,

Petitioners,

v.

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

Respondents.

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

BRIEF FOR RESPONDENTS

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OPINIONS BELOW

The opinion of the District Court (R. 24) is reported at 167 F. Supp. 405. The opinion of the Court of Appeals (R. 34) is reported at 270 F. 2d 594.

QUESTIONS PRESENTED

1. May a State, by and through its duly constituted Legislature, conforming to the State Constitution, 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 Legis-

lature, and fix or substitute different or other boundary lines?

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

4. Should the Federal Courts pass upon a political question such as the determination of geographical boundaries of a political subdivision of a State?

5. 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?

STATEMENT OF THE CASE

The Petitioner's 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. 2-9).

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. 21). Respondents also moved the Court to dismiss the action for failure to state a claim, for lack of jurisdiction, and upon other grounds (R. 22).

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. 24-32). On appeal, the Court of Appeals affirmed. The majority opinion of the Court of Appeals essentially followed the reasoning of the district judge (R. 34); one judge dissented (R. 42); 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" (R. 65).

Petition for writ of certiorari was granted on March 21, 1960 (R. 74).

SUMMARY OF ARGUMENT

1. The Legislature of The State of Alabama altered, redefined and rearranged the boundaries of the City of Tuskegee, a political subdivision of the State. A City such as Tuskegee is a political subdivision of the State, and the State Legislature, within the limits of the State Constitution, may, in its absolute discretion, fix and determine the boundaries of the political subdivision, may extend or limit the boundaries, and may even abolish the municipality altogether. *Laramie County v. Albany County;* 92 U. S. 307; *Mount Pleasant v. Beckwith,* 100 U. S. 514; *Kelly v. Pittsburgh,* 104 U. S. 78;

Hunter v. Pittsburgh, 207 U. S. 161. The extension or reduction of city limits or boundaries is a purely political matter within the absolute power of the State Legislature. The fixing of territorial boundaries is a political function, and in matters of this kind the courts follow the action of the political department of the government which has made the determination. Cf. *Benson v. United States,* 146 U. S. 325. No one has a vested right to be included in or excluded from a local governmental unit.

2. The fact that Petitioners are negroes who, after the redetermination of Tuskegee's city limits, no longer live within the corporate limits of Tuskegee, gives to them no special right to have the new boundaries nullified on the ground of the alleged bad motives of the legislator who introduced the Act, or of the whole Legislature that adopted the Act. It is settled law that the Courts have nothing to do with the policy, wisdom, justice or fairness of such an Act. *Hunter v. Pittsburgh,* supra. Courts do not undertake a search for motive in testing constitutionality. *Doyle v. Continental Ins. Co.,* 94 U. S. 535. *Shuttlesworth v. Birmingham Board of Education,* 162 F. Supp. (N.D. Ala.) 372, 381, affirmed 358 U.S. 101.

3. The issue sought to be presented for adjudication by Petitioners is a political matter not meet for judicial determination, or is one as to which the courts should decline to exercise jurisdiction, see *Colegrove v. Green,* 328 U. S. 549; *South v. Peters,* 339 U. S. 276; or is beyond the scope of traditional limits of proceedings in equity. Cf. *Giles v. Harris,* 189 U. S. 475. Declaring the boundary act invalid would not solve Petitioners complaint, for the courts cannot re-map Tuskegee,

only the Legislature of Alabama can do that, and the Alabama Legislature could enact a new law or successive new boundary laws, with new litigation in the offing, each decision and each new law "progressively increasing the strain on federal-state relations." Judge Wisdom, R. 72.

Previous decisions, already referred to, applied to the allegations of the complaint, demonstrate the unsoundness of the complaint and that it was due to be dismissed by the District Judge. *Ex parte, Poreski,* 290 U. S. 30.

ARGUMENT

There is no need for a trial in the District Court on the merits. The existence of a substantial question of constitutionality of the State statute under attack must be determined by the allegations of the bill of complaint, and, if the question presented is plainly unsubstantial, "either because it is 'obviously without merit' or because 'its unsoundness so clearly results from the previous decisions of this Court as to foreclose the subject and leave no room for the inference that the question sought to be raised can be the subject of controversy' ", the District Judge clearly has the authority to dismiss the action. *Ex Parte Poreski,* 290 U. S. 30.

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 deci-

sions 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 annexation 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 Consti-

tution, 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." (P. 176.)

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 burden 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." (P. 178.)

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 v. Wellston Sewer District,* (Mo. 1933) 58 S.W. 2d 988, 992, 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 questions, 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 pow-

> ers 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. Adirondack 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."

City of New York vs. Village of Lawrence, 165 N. E. 836: "The power to enlarge or restrict the bound-

aries 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." (R. 39.) Petitioners are no longer inhibitants of the City of Tuskegee, and are no longer subject to its governmental pow-

ers and its burden of taxation, and they therefore have no valid basis for claiming a direct voice in the control of its affairs.

Petitioners in their brief[1] at last concede that, obviously, the confines and limits of Tuskegee or any other town, village or municipality in the State of Alabama may be determined by the Alabama Legislature. In Alabama, as in most states, we have laws under which municipalities and their inhabitants may, by following a prescribed procedure and popular vote, initiate the extending or reduction of corporate limits. Code of Alabama 1940, Title 37, Art. 1, §134, et seq., Art. 6, § 237, et seq. Here, however, as to Act 140, we are dealing with direct action of the State, not with some action of the municipality or its inhabitants; and the Legislature of Alabama has the unquestioned power to establish, alter, extend, or contract municipal boundaries. Alabama Constitution of 1901, Sec. 104 (18); *Ensley v. Simpson,* 166 Ala. 366, 52 So. 61; *State v. Gullatt,* 210 Ala. 452, 98 So. 373.

No one has a vested right to be either included in or excluded from a local governmental unit. Petitioners now accept this as settled principle.[2] The determination of a geographical boundary of a political subdivision of a State is purely political, "no appeal lying

1. Petitioners Brief, p. 10.

2. Petitioners Brief, p. 10. Petitioners brush aside *Hunter v. Pittsburgh,* 207 U. S. 161, and *Laramie County v. Albany County,* 92 U. S. 317, as creating a "contrary impression" by "broad language" (Brief p. 11), but these cases are clear and decisive. *Hunter v. Pittsburgh,* 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.

except to the ultimate tribunal of the public judgment, exercised either in the pressure of opinion or by means of the suffrage." Cf. *Yick Wo v. Hopkins,* 118 U. S. 356, 370. 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 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?

Hunter v. Pittsburgh and the other cited cases dem-

onstrate that constitutionality may turn upon and be decided by the State's absolute power of discretion in some fields, of which municipal boundaries is one.

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 reaffirmed.

II

LEGISLATIVE MOTIVE

From the inception of this litigation Petitioners have attempted to make much of the alleged motive or motives, which they label as intention or purpose, which prompted the passage of Act 140, going so far as to set out some of the personal and political background of the State legislator who introduced the Act in the State Legislature (R. 6), and adding as further background a newspaper article and the comment of a magazine of national circulation (R. 7). In the petition for a writ of certiorari they go even more afield citing *The New York Times* and the *Civil Rights Commission Report* (Petition p. 4, p. 14-15). These references can add nothing to their complaint.

The striking down of a state statute is a most serious matter under any circumstances, and particularly should be avoided in a situation where state authority in the field has previously, and consistently been upheld. *Hunter v. Pittsburgh,* 207 U. S. 161; *Mount Pleasant v. Beckwith,* 100 U. S. 514; *Laramie County v. Albany County,* 92 U. S. 307. And the claim of bad

motive cannot be utilized as a device to strike down a constitutional exercise of sovereign power by a State.[3]

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 (N.D. Ala.) 372, 381; affirmed 358 U. S. 101:

> "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.

3. "In theory escape would always be possible if courts were free to scrutinize the motives of legislators . . . but of all conceivable issues this would be the most completely 'political' and no court would undertake it." *The Bill of Rights,* Learned Hand, (Harvard University Press 1958), p. 46, as quoted in *Ames Competition,* Law School of Harvard University, 1960, Brief For The Respondents, *Gomillion v. Lightfoot.*

> 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."

Courts have consistently applied this doctrine in cases involving civil rights as well as property rights.

III

SHOULD THE FEDERAL COURTS PASS ON A POLITICAL QUESTION? JUDICIAL ABSTENTION OR SELF-LIMITATION IN POLITICAL CASES.

This case is a direct attack upon action of the State of Alabama in exercising its power concerning one of its political subdivisions.

The concurring opinion of Judge Wisdom (R. 65, 71) suggests that the Court should not put a "new kind of strain on federal-state relations already severely strained. Control over the political subdivisions of a state including the incorporation of cities and towns and the determination of their boundaries, is a political function of the state legislature and an attribute of state sovereignty in a federal union. So it has always been held. Let the chips fall where they may, the courts have decided. This is the substance of the holdings in *Laramie County v. Albany County,* 1876, 92 U. S. 307; *Town of Mount Pleasant v. Beckwith,* 1879, 100 U. S. 514; and *Hunter v. Pittsburgh,* 1907, 207 U. S. 161. In these and similar cases the citizens who suffered from changes in city limits, by loss of property

values or by increased taxation (if the boundaries are extended) or from lack of fire and police protection (if the boundaries are contracted) and from loss of voting privileges (in the case of a gerrymander), were in the same situation as the plaintiffs are in this case."

Cases such as *Colegrove v. Green,* 328 U. S. 549; *South v. Peters,* 339 U. S. 276; and *The Cherokee Nation v. State of Georgia,* 30 U. S. (5 Pet.) 1; are illustrative of the types of political questions and decisions with which the courts will not interfere. A non-justiciable political question is one which is under our system of government, and separation of powers, committed either to the executive or legislature for final determination.[4] Geographical boundaries pose such questions. Indeed in cases *involving the very life* and *liberty* of citizens it has been held that the geographical limits of a military reservation is beyond the power or competence of the courts; the courts being bound "to follow the political department of the government". *Benson v. United States,* 146 U. S. 325, 331; *United States v. Holt,* 168 Fed. 141, affirmed 218 U. S. 245. Indeed, the alleged deprivations here are less grave than in *Colegrove,* and much less grave than in *Benson* where a man was on trial for his very life.

Judge Wisdom says Petitioners propose a cure worse than the disease (R. 65). *Colegrove v. Green,* 328 U. S. 549, 566. Actually, if *Hunter v. Pittsburgh* and similar cases should be shunted aside, Petitioners claim would not be one for judgment in their favor, see *Giles v. Harris,* 189 U. S. 475, and the relief they seek would

4. See Field, *Doctrine of Political Questions in Federal Courts,* 8 Minn. Law Review, 485; Cf. Finklestein, *Judicial Self-Limitation,* 37 Harvard Law Review, 338, 39 Harvard Law Review 221.

not be a solution of their claims, but would create an area of "friction" between federal and state relations. Cf. *Williams v. Dalton,* (6 Cir.) 231 F. 2d 646.

If Act 140 should be nullified, what then would be the boundaries of Tuskegee? Can any court effectively re-map Tuskegee? An infinite number of different boundaries for Tuskegee may be devised by the Legislature of Alabama. At what point could it be said that the fixing of the boundary was within the proper sphere of the Legislature's powers and free from tainted motives. No one could, or would, suggest the application of judicial guesswork in this field. Petitioners recognize that the decision in this case can afford no settlement of the political boundary line problem. They observe, "Needless to say, the state may give Tuskegee new limits by enacting another statute. This may necessitate litigation testing the validity of that legislation." (Brief p. 17.) They recognize the power of the State to determine the geographical boundaries of Tuskegee[5]; that there is no right to be included in or excluded from the city limits of a political subdivision of the State[6]; and that other, and different boundaries may be determined at any time by the Legislature.[7] These admitted matters constitute the very elements which call for the courts to recognize this a case posing a political question, one beyond the traditional limits of proceedings in equity, and one from which the courts should abstain from interfering.

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5. Brief, p. 10.

6. Brief, p. 10.

7. Brief, p. 17.

CONCLUSION

It is respectfully submitted that the dismissal of the action by the District Court was proper; and that the judgment of the Court of Appeals is right and is due to be affirmed.

Respectfully submitted,

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