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Constitutional Law--Municipal Redistricting: Deprivation of Right to Vote or Violation of Equal Protection

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it must be precisely defined when one is to be applied in preference to the others.

CONCLUSION

It is difficult to weigh the advantages and disadvantages of the various views. Although the traditional rules may be subject to valid criticism and may be dangerously ambiguous when applied to given factual situations, at least in most cases the status of an existing contract can be predetermined by the parties themselves. With the "center of gravity" test, as yet no court has seen fit to explain adequately what criteria will determine the state whose law will be used and what factors control in establishing that the contacts of one state are stronger than those of another. Until this is accomplished, it may be better to retain the traditional rules with their relatively predictable results, than adopt the "center of gravity" test which can resolve the conflict of laws problem only through the discretion of a trial court.

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CONSTITUTIONAL LAW — MUNICIPAL REDISTRICTING: DEPRIVATION OF RIGHT TO VOTE OR VIOLATION OF EQUAL PROTECTION?

Gomillion v. Lightfoot, 364 U.S. 339 (1960)

The right of a state to redistrict its municipal corporations was seriously limited by a recent unanimous United States Supreme Court decision.[1] Negro citizens of Alabama challenged the constitutionality of Local Act. No. 140 of the Alabama legislature in a suit for a declaratory judgment in the United States District Court for the Middle District of Alabama. They also sought to enjoin the Mayor and officers of the City of Tuskegee and the officials of Macon County from enforcing the Act against them and against other Negroes similarly situated. The plaintiffs alleged that the Act changed the shape of Tuskegee from a square to a ludicrous twenty-eight sided figure which in effect excluded all but four or five of the 400 qualified Negro voters from the city. Plaintiffs further claimed that their rights under the due process and equal protection clauses of the fourteenth amendment had been abridged and that their right to vote, as protected by the fifteenth amendment, had been extinguished. The defendants moved to dismiss the petition for failure to state a cause of action and for lack of jurisdiction in the district court. The court granted the defendants' motion declaring that "[t]his Court

1. Gomillion v. Lightfoot, 364 U.S. 339 (1960).

has no control over, no supervision over, and no power to change any boundaries of municipal corporations fixed by a duly convened and elected legislative body, acting for the people in the State of Alabama."[2] On appeal the Court of Appeals for the Fifth Circuit affirmed the district court's decision.[3]

The case reached the Supreme Court on writ of certiorari. It is to be noted that the highest Court did not have confronting it the truth of the plaintiffs' allegations but was merely faced with the issue of whether the plaintiffs' allegations were sufficient in law to warrant a hearing on the merits. The Court held that the petition was sufficient to withstand this test and, by remanding the case to the district court, somewhat modified two earlier decisions. In *Colegrove v. Green,*[4] the Court had refused to interfere with the redistricting of the state of Illinois, and in *South v. Peters,*[5] the Court had held that Georgia's county unit votes were beyond judicial disturbance.

Three issues were presented to the Court in the attempt to solve the Tuskegee situation. First, what limitations, if any, were imposed upon a state's right to regulate the boundaries of its political subdivisions; second, whether the fourteenth and fifteenth amendments constituted such limitations; and third, whether the Court was willing to abandon the self-imposed restraint of the *Colegrove* and *South* cases.

An early decision dealing with the problem of political boundaries held that a state may freely establish, destroy or reorganize by contraction or expansion, its political subdivisions, *i.e.,* cities, counties or local units.[6] Previous plaintiffs in a number of cases which have come before the Court concerning reorganization or redistricting of such boundaries[7] have claimed injury on the basis of one of two arguments: (1) that the state is prohibited from enacting legislation which constitutes an impairment of the obligation of contracts,[8] and a violation of the due process clause of the fourteenth amendment; and (2) that the state has no power to redistrict where serious economic disadvantages could accrue to the citizens of the former municipality.

Both arguments have been rejected. First, it was held early in our history that the creation of municipalities did not come under the aegis

2. 167 F. Supp. 405, 410 (1958).
3. 270 F.2d 594 (5th Cir. 1959).
4. 328 U.S. 549 (1946).
5. 339 U.S. 276 (1950).
6. Hunter v. Pittsburg, 207 U.S. 161 (1907).
7. *E.g.,* Trenton v. New Jersey, 262 U.S. 182 (1923); Pawhuska v. Pawhuska Oil & Gas Co., 250 U.S. 394 (1919); Commissioners of Laramie County v. Commissioners of Albany County, 92 U.S. 307 (1875).
8. U.S. CONST. art. I, § 10.

of the contract clause.[9] Second, numerous decisions of the Supreme Court have held that the due process clause does not afford protection against inequalities including tax increases which result from the exercise of the redistricting power of the state, nor does it protect against redistricting per se. However, the power of the state to redistrict is not without limitation. The Court has often said that the state may not redistrict without affording some means of recourse for the creditors of the old city and that any legislative redistricting without satisfaction to creditors is null and void.[10]

As has already been indicated, the Supreme Court, in deciding on the motion to dismiss in the *Gomillion* case, was not adjudicating the merits of the controversy. However, it attempted to give some direction to the district court for its determination on remand when it pointed out in strong language that if the allegations should be proven there would be a flagrant violation of the fifteenth amendment, *i.e.,* a deprivation of the right to vote by a state solely because of racial background. Mr. Justice Frankfurter pointed out that:

> When a legislature thus singles out a readily isolated segment of a racial minority for special discriminatory treatment, it violates the Fifteenth Amendment.[11]

In effect the Court reasoned that rather than having changed the municipal boundaries, and thus having incidentally caused inconvenience to the plaintiffs, it would be more accurate to say that the plaintiffs were deprived of their municipal franchise and only incidentally were the boundaries of the municipality changed. Thus, the Court felt that although the state was exercising a power generally considered to be within its domain, it could not exercise this power so as to circumvent a federally protected right. An act generally lawful cannot be performed for the purposes of accomplishing an unlawful or unconstitutional end.[12]

It is important to emphasize that since the Court was not deciding the case on the merits, the reasoning in its decision will have only an advisory effect. Thus, Mr. Justice Whittaker's concurring opinion,[13] asserting that plaintiffs' allegations bring the case under the equal protection clause of the fourteenth amendment rather than under the fifteenth, becomes a significant factor in resolving the case at trial.

The majority based its decision solely on the ground of a violation

9. Dartmouth College v. Woodward, 4 Wheat. 518, 629 (1819).

10. Shapleigh v. San Angelo, 167 U.S. 646 (1897); Mobile v. United States *ex rel.* Watson, 116 U.S. 289 (1886); Mount Pleasant v. Beckwith, 100 U.S. 514 (1879); Broughton v. Pensacola, 93 U.S. 266 (1876).

11. Gomillion v. Lightfoot, 364 U.S. 339, 347 (1960).

12. Western Union Telegraph Co. v. Foster, 247 U.S. 105 (1918); United States v. Reading Co., 226 U.S. 324 (1912).

13. Gomillion v. Lightfoot, 364 U.S. 339, 349 (1960).

of the fifteenth amendment. In the concurring opinion, however, Mr. Justice Whittaker seriously challenged the majority view by contending that in reality there had been no deprivation of the right to vote under the fifteenth amendment. In other words, even if the state did place members of a racial group into one separate division, but did not deny them the right to vote within that division, the state would not be depriving them of their vote in the traditional fifteenth amendment sense.[14] Justice Whittaker pointed out that the decision should be based on a violation of the equal protection clause of the fourteenth amendment. Excluding such a large portion of Tuskegee's population would result in the type of segregation prohibited by the equal protection clause.[15]

Justice Whittaker's view appears to be the more logical approach, and the one which seems to favor the plaintiffs' cause. Equal protection means no more, nor less, than what the phrase expresses to the lay mind. Although the situations under which the general rule will apply will invariably be different in each instance, the rule attempts to bring home the lofty phrase "equality before the law." Thus, the rule would require equal treatment of all persons in a particular situation. In the case at bar, the placing of Negroes outside the boundaries of a city by an act of the legislature, solely on the basis of their racial background, would be forbidden. Furthermore, in treating the problem from this point of view, the *Colegrove* and *South* problems are avoided, and the Court's traditional restraint from interfering in primarily "political questions" remains unchanged.

In the *Colegrove* case, the Illinois legislature had failed to redistrict its congressional districts as required by federal law. The plaintiffs in *Colegrove* sought an order from the federal courts requiring such redistricting so that the plaintiffs' vote might have as great a weight as those in other districts. The Court declined to act because it felt this to be a political question. In the *South* case, the plaintiffs were in a similar situation, and the relief sought was also the same. The alleged violation of plaintiffs' rights arose from a county unit vote system, *i.e.*, each county received a specified number of votes per county throughout the state. Naturally, the white counties received a greater number of unit votes than the Negro counties. The Court declined to act because of the difficulties it foresaw in enforcing its decree.

The majority in *Gomillion* was able to circumvent these problems. In essence both *Colegrove* and *South* presented a problem of dilution of voting power rather than a complete deprivation of voting power in a

14. Terry v. Adams, 345 U.S. 461 (1953); Smith v. Allwright, 321 U.S. 649 (1944); United States v. Classic, 313 U.S. 299 (1941).

15. Cooper v. Aaron, 358 U.S. 1 (1958); Brown v. Board of Education of Topeka, 347 U.S. 483 (1954).

given political unit. Furthermore, the problems in both of these latter cases arose over a long period of time through a series of legislative events. The majority in *Gomillion* distinguished these cases on this basis and held that the allegations at hand took the controversy out of the political sphere and placed it within the area of constitutional controversy.

The Court was not faced with one problem which was raised in the *South* case and although never mentioned in the *Colegrove* case, likewise played a significant role in that decision. This is the problem of administration, *i.e.*, the supervision of the enforcement of the Court's decree. In *Colegrove* the Court would have had to supervise the redistricting of the state of Illinois; in *South* it would have had to supervise an election and proper counting and evaluation of ballots. Mr. Justice Douglas, who had rendered vigorous dissenting opinions in *Colegrove* and *South,* joined in the present opinion where the problem of administration was not in issue. After all, if Act 140 is declared unconstitutional, the City of Tuskegee will automatically revert to its original square shape and no one will have been injured.

The problem raised by plaintiffs has certainly not been conclusively resolved. However, it is significant to note that the Court will look behind apparently valid state acts to enforce long-dormant guarantees of the United States Constitution.

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