

RECENT DEVELOPMENTS

EXCLUSION OF NEGRO VOTERS BY ALTERATION OF MUNICIPALITY'S BOUNDARY HELD UNCONSTITUTIONAL

Gomillion v. Lightfoot

364 U.S. 339 (1960)

Negro petitioners alleged they were disfranchised by an Alabama statute¹ redefining the boundaries of Tuskegee.² This alteration changed the shape of the city from a rectangle to a twenty-eight sided figure,³ and as a result all but four or five Negro voters were excluded from the city elections. The district court dismissed the complaint on the ground that it had no authority to declare the act invalid, regardless of legislative motive or the statute's actual effect.⁴ The court of appeals affirmed this dismissal, declaring that "in absence of racial or class discrimination appearing on the face of the statute, it could not be held invalid as violative of the fourteenth amendment."⁵ The opinion states that the constitutionality of the establishment of municipal boundaries or voting districts constitutes a "political question,"⁶ and thus is not subject to judicial review.

The Supreme Court reversed the dismissal of the suit,⁷ holding that if petitioners could prove the statute effectively discriminated against Negro voters, they would establish a violation of their right to vote as guaranteed by the fifteenth amendment. A concurring opinion suggests that the act violated only the due process and equal protection clauses of the fourteenth amendment.

When the Supreme Court decides the nature of a question is political, it will not adjudicate the dispute; the Court leaves to the political departments of the government (the executive and legislative) the task of formulating by act or word the proper decision to be applied.⁸ Among the various theories advanced to explain the "political question" doctrine, the most plausible include the concept of separation of powers⁹ and the Court's

¹ Ala. Acts 1957, No. 140.

² *Gomillion v. Lightfoot*, 364 U.S. 339 (1960).

³ *Id.* at 348 (diagram).

⁴ *Gomillion v. Lightfoot*, 167 F. Supp. 405 (M.D. Ala. 1958).

⁵ *Gomillion v. Lightfoot*, 270 F.2d 594 (5th Cir. 1959).

⁶ *Id.* at 598, "The enactment by a state legislature of statute creating, enlarging, diminishing or abolishing a municipal corporation is a political function. It is a governmental act."

⁷ *Gomillion v. Lightfoot*, *supra* note 2.

⁸ See Field, "The Doctrine of Political Questions in the Federal Courts," 8 Minn. L. Rev. 485 (1924); Post, *The Supreme Court and Political Questions* (1936).

⁹ *E.g.*, *Coleman v. Miller*, 307 U.S. 433 (1939) (purported ratification of a constitutional amendment); *Massachusetts v. Mellon*, 262 U.S. 447 (1923) (suit brought by a state to test its political and sovereign rights).

natural apprehension of the practical consequences that would follow from an adjudication of such a dispute.¹⁰

A potential "political question" arises when a legislature alters a municipality's boundary. The general rule is that "the power of increase and diminution of municipal territory is plenary, inherent and discretionary in the legislature."¹¹ However, the validity of such state action is limited by a determination that the individual interests involved outweigh the state's interests in the context of a given case.¹² This limitation is applied in *Gomillion v. Lightfoot* where the Court states, ". . . the conclusion urged by respondents would sanction the achievement by a State of any impairment of voting rights whatever, so long as it was cloaked in the garb of the realignment of political subdivisions."¹³

The *Gomillion* opinion is consistent with the recent trend of the Court's decisions. Where racial discrimination results from a political function, the judiciary will exercise its power to review, thus avoiding application of the "political question" doctrine. This approach is prevalent in the area of purposeful deprivation of Negro voting rights resulting from ingenious state methods.

The first of these devious state actions ruled unconstitutional involved the so-called "grandfather clause."¹⁴ When the state subsequently passed another statute aimed at depriving Negroes of the right to vote, it was struck down (although the statute was non-discriminatory on its face), the Court saying, "the Fifteenth Amendment nullifies sophisticated as well as simple minded modes of discrimination."¹⁵ In the same spirit, the Court held unconstitutional the white primary laws and comparable schemes to accomplish the same end.¹⁶ The Court has also avoided the "political question" in cases involving the inequitable administration of suffrage statutes.¹⁷

¹⁰ *E.g.*, *Mississippi v. Johnson*, 71 U.S. (4 Wall.) 475 (1866). The Court refused to enjoin the President from applying the Reconstruction Acts and stated, "if the President refuses obedience, it is needless to observe that the Court is without power to enforce its processes." Other theories for the "political question" doctrine are lack of satisfactory criteria for a judicial determination and necessity for uniformity and finality in certain political actions, *e.g.*, foreign relations.

¹¹ See *Hunter v. City of Pittsburgh*, 207 U.S. 161, 178-79 (1907) (dictum); 1 *Cooley*, *Constitutional Limitations* 393 (8th ed. 1927).

¹² "Concessions of power to municipal corporations are of high importance; but they are not contracts, and consequently, are subject to legislative control without limitation, unless the legislature oversteps the limits of the Constitution." *Mount Pleasant v. Beckwith*, 100 U.S. 514, 533 (1879).

¹³ *Gomillion v. Lightfoot*, *supra* note 2, at 342.

¹⁴ *Guinn v. United States*, 238 U.S. 347 (1915).

¹⁵ *Lane v. Wilson*, 307 U.S. 268, 275 (1939).

¹⁶ *Nixon v. Herndon*, 273 U.S. 536 (1927), "The objection that the subject matter of the suit is political is little more than a play on words." *Smith v. Allwright*, 321 U.S. 649 (1944); *Nixon v. Condon*, 286 U.S. 73 (1932).

¹⁷ *Davis v. Schnell*, 81 F. Supp. 872 (S.D. Ala. 1949), *aff'd*, 336 U.S. 933. Alabama "Boswell Amendment" gave county registrars complete discretion in administering

A problem closely related to the Negro voting cases involves the dilution of voting strength caused either by deliberate state action¹⁸ or legislative inaction in failing to reapportion electoral units.¹⁹ Georgia's "county-unit" system exemplifies this unequal treatment of electors; ignoring the system's inequality to voters in urban areas, the Court held that "the Federal courts consistently refuse to exercise their equity powers in cases posing political issues arising from a State's geographical distribution of electoral strength among its political subdivisions."²⁰ An extremely persuasive dissent factually demonstrates that the effect of the unit method is particularly harsh on Negro voters, as well as discriminatory against voters in urban areas.²¹

A similar rationale prevails in cases involving non-racial gerrymandering practices resulting from legislative inaction (the more common method of diluting voting strength). In *Colegrove v. Green*,²² the leading case on the subject, Illinois voters attacked the disparity of population in the state's congressional districts as in violation of article I of the Constitution and the fourteenth amendment. Petitioners' suit was dismissed on the ground that the issue presented was "of a peculiarly political nature and therefore not meet for judicial determination."²³ Subsequent cases have relied on the *Colegrove* decision in dismissing suits attempting to remedy the gerrymandering problem.²⁴

One could conclude that the judicial self-restraint present in both these adjudications demonstrates the Court's attitude that establishing electoral units involves a "political question" even when discrimination is shown. This unfavorable conclusion is, in part, rectified in *Gomillion v. Lightfoot*.²⁵ The Court in *Gomillion* looks beyond the "political question" and examines the racial effect of the legislation. This is noteworthy since the Court refused to undertake this evaluation in the "county-unit" case,²⁶ and consequently

registration requirements (*e.g.*, understand and explain any article of the federal constitution). The amendment was found in violation of the fifteenth amendment both in objective as well as manner of administration. *United States v. Raines*, 362 U.S. 17 (1960).

¹⁸ *E.g.*, Ga. Code Ann. §§ 34-3212 to -3218 (1936).

¹⁹ For a general discussion see Lewis, "Legislative Apportionment and the Federal Courts," 71 Harv. L. Rev. 1057 (1957).

²⁰ *South v. Peters*, 339 U.S. 276, 277 (1949).

²¹ *Id.* at 278, "Plaintiffs are registered voters in Georgia's most populous county—Fulton County . . . They show that a vote in one county will be worth over 120 times each of their votes . . . in 45 counties a vote will be given twenty times the weight of each of their votes . . . Population figures show there is a heavy Negro population in the large cities. There is testimony in the record that only in those areas have Negroes been able to vote in important numbers."

²² *Colegrove v. Green*, 328 U.S. 549 (1945).

²³ *Id.* at 552.

²⁴ *Radford v. Gary*, 352 U.S. 991 (1957) (Oklahoma legislative districts); *Remmey v. Smith*, 342 U.S. 916 (1952) (Pennsylvania legislative districts); *Colegrove v. Barret*, 330 U.S. 804 (1947) (Illinois legislative districts); *Turman v. Duckworth*, 329 U.S. 675 (1946) (Georgia county—unit system).

²⁵ *Gomillion v. Lightfoot*, *supra* note 2.

²⁶ *South v. Peters*, *supra* note 20.

arrived at a contrary decision. This racial examination and subsequent holding in *Gomillion* is consistent with the present Court's attitude toward abolishing racial discrimination.

*Gomillion v. Lightfoot*²⁷ attempts to differentiate its decision from *Colegrove v. Green*²⁸ in two ways. The first ground is that the *Colegrove* problem involves legislative inaction which diluted the strength of petitioner's vote while the Tuskegee boundary act was "affirmative legislative action depriving Negroes of their vote and consequent advantages that the ballot affords."²⁹ The second basis for differentiating the two cases is that "where a legislature singles out a readily isolated segment of a racial minority for special discriminatory treatment," a constitutional guarantee is violated, whereas in *Colegrove* in certain areas, the general voting public were the parties subjected to the gerrymandering discrimination.³⁰

The Court's distinction in *Gomillion* between legislative action and inaction is valid only to the extent that courts are more prone to set aside unconstitutional legislation than they are to correct the results of legislative inaction. But this reasoning is weak because the end result (discriminatory practices) is the vital element for the Court to examine, and the means to the discrimination is only of secondary importance. It is significant that the Court has not distinguished inaction from action in other cases of voting rights.³¹

The Court's second distinction between the two cases is also unpersuasive. It is true that Negro voters are discriminated against by the Alabama act, while in Illinois all citizens in gerrymandered electoral units suffered the discrimination. However, the distinction goes no further since there are constitutional bases for giving both electoral groups a judicial remedy. The general voting public's rights to equal congressional representation can be drawn from article I, and the privileges and immunities and equal protection clauses of the fourteenth amendment. Negro voters can rely on the fourteenth amendment to protect their suffrage rights in local elections. Again, the fact that voting discrimination exists should be persuasive.

There are several distinctions between *Gomillion* and *Colegrove* that the Court did not discuss.³² A problem in non-racial gerrymandering cases involves the efficacy of judicial remedies; the present problem involves the selection of a decree appropriate to remedy the situation once the Court has taken jurisdiction and has determined that a constitutional right is violated. The Supreme Court's function is not to determine state congressional districts, but to review and ascertain whether the state has been "reasonable" in establishing representative voting districts. The answer is simple; the Court should return the task of apportionment to the states and grant review if the state fails to meet the "reasonable" test. In *Gomillion* this difficulty

²⁷ *Gomillion v. Lightfoot*, *supra* note 2.

²⁸ *Colegrove v. Green*, *supra* note 2.

²⁹ *Gomillion v. Lightfoot*, *supra* note 2, at 346.

³⁰ *Ibid.*

³¹ *E.g.*, *Smith v. Allwright*, *supra* note 16; *Terry v. Adams*, 345 U.S. 461 (1953).

³² *Supra* note 19.

does not exist. When the Court rules the boundary act unconstitutional, the boundaries of Tuskegee revert to their former state.

There is a somewhat more persuasive distinction between the *Gomillion* and *Colegrove* problems. It is relatively easy for the Court to review state enactments deliberately depriving Negroes of the right to vote, but in a *Colegrove* situation the court by accepting jurisdiction may invite excessive litigation. In almost every state there is a certain degree of malapportionment. Should the Court venture into this "political thicket"? While it is conceded that abandonment of *Colegrove* may add to the Court's burden, the desirability of eliminating such gerrymandering from our democratic process is great enough to overcome this objection.

Another distinguishing fact in the two cases is the problem of legislative responsibility involved in apportioning voting districts. Legislatures in theory are responsive to the desires of the electorate, and if inequality exists, the electorate should remedy it. This rationale is unrealistic because of the inherent nature of our political structure that rural areas and their representatives generally have the dominant position in the state governing bodies and are unwilling to give up their power position by reapportioning in favor of urban areas.³³ These legislators feel that they should be compensated with greater voting strength because of the nature of city politics with its vast facilities to reach more voters.³⁴ Also, they want to protect the power of conservatives which would be sharply curtailed if they gave urban areas their just voting power. Since the malapportioned districts cannot get satisfaction from their state legislatures, they can turn only to the courts or Congress for relief. Congress can scarcely affect the configuration of municipal boundary lines and thus the Court could give enormous impetus in solving this acute problem of unequal representation.³⁵

*Gomillion v. Lightfoot*³⁶ could be the Court's initial step in eliminating these discriminatory practices. The Court is not reluctant to review Negro

³³ Stout, "The Next Election is Already Rigged," *Harpers* (Nov., 1959); Christman, "How Much Will Your Vote Count," *Nation* 333-7 (1959). There are three ways to gerrymander. (1) Disproportionate populations in setting districts, (2) create districts equal in population, but manipulate boundaries to give one party an advantage, (3) ignore population changes, and refuse to redistrict. This deprives growing cities and urban areas equitable representation. See also *supra* note 19, at 1059-66.

³⁴ *E.g.*, Congressman James B. Utt of California's Twenty-eighth District represents 1,007,140 constituents while John B. Bennet, from Michigan's Twelfth Congressional District represents 175,968 persons. See Lewis, "On the Trail of the Fierce Gerrymander," *N.Y. Times*, Feb. 19, 1961 (magazine), p. 17.

³⁵ Christman, *supra* note 33. The malapportionment problem is summed up in the following manner. "A minority of voters elects a majority of the membership of every state legislature in the nation. Since state legislators shape the Congressional districts, the House of Representatives is dominated by rural and small town elements. The question that is involved is not who is to control Congress and pass legislation. The crux of the problem: is America going to uphold the classic democratic ideal of one man, one vote, Or will the vote of the American who happens to live in a city or suburb continue to count for less because of his place of residence?"

³⁶ *Gomillion v. Lightfoot*, *supra* note 2.

discrimination in the establishment of electoral units, and it would be desirable if the same attitude is shown toward non-racial malapportionment cases. The Court presently may be re-examining the *Colegrove* problem,³⁷ If *Gomillion v. Lightfoot*³⁸ is any indication of the Supreme Court's mood, it will find these state voting practices in conflict with the Constitution.

In a number of decisions in the civil rights area, the Supreme Court states their prerogative to examine the "legislative purpose" of a disputed act,³⁹ but *Gomillion v. Lightfoot* represents a change of this judicial standard to the legislation's "actual effect."⁴⁰ The dilemma created by applying the "actual effect" test lies in cases where the legislative purpose is constitutional, but an effect of the legislation is especially adverse to certain groups and appears to be a denial of constitutional guarantees. If the Supreme Court employs the "actual effect" test, they would have to rule the legislation violative of the Constitution, whereas if the test is "legislative purpose," it will be constitutional.⁴¹

In a concurring opinion, Justice Whittaker states that even though the Alabama Legislature's purpose is the exclusion of Negro voters from Tuskegee elections, no violation of the fifteenth amendment exists because they were not totally disfranchised and could still vote in county, state and national elections.⁴² The weight of authority, as well as the explicit language of the fifteenth amendment, is against this rationale. The amendment restricts the power of the national and state government and applies to *all* elections. Thus, it is an untenable view that Justice Whittaker takes when he declares racial discrimination in a local election (when the Negro can vote elsewhere) is outside the scope of the fifteenth amendment.

The majority opinion in *Gomillion v. Lightfoot* is based entirely on the provisions of the fifteenth amendment. As a result, the Supreme Court

³⁷ *Baker v. Carr*, 179 F. Supp. 824 (M.D. Tenn. 1959), *prob. juris. noted*, 29 U.S.L. Week 3154 (U.S. Nov. 22, 1960).

³⁸ *Gomillion v. Lightfoot*, *supra* note 2.

³⁹ *Guinn v. United States*, *supra* note 14; *Yick Wo v. Hopkins*, 118 U.S. 356 (1886); See also *Korematsu v. United States*, 323 U.S. 214 (1944) where the Court said, "all legal restrictions which curtail the civil rights of a single racial group are suspect. That is not to say that all such restrictions are unconstitutional. It is to say that courts must subject them to the most rigid scrutiny." Recent cases where "legislative purpose" was the judicial standard: *Shelton v. Tucker*, 81 Sup. Ct. 247 (1960); *Bates v. Little Rock*, 361 U.S. 516 (1960); *Talley v. California*, 362 U.S. 60 (1960); *NAACP v. Alabama*, 357 U.S. 449 (1958).

⁴⁰ *Gomillion v. Lightfoot*, *supra* note 2, at 341.

⁴¹ A hypothetical case will illustrate this point. A certain sector of Tuskegee becomes a financial burden to the city, and as a result it is forced into near bankruptcy. The legislature enacts a law which alters the city boundaries to exclude this area. One "actual effect" of the legislation is the denial to a large number of Negro voters the right to vote in Tuskegee because they live in the area causing the monetary burden. If the Court relies on the effect test, this enactment would be unconstitutional. However, the "legislative purpose" (avoiding a financial crisis in Tuskegee) does not violate any constitutional guarantees.

⁴² *Gomillion v. Lightfoot*, *supra* note 2, at 349.

ignored the obvious fourteenth amendment violation inherent in the re-districting act. The fourteenth amendment was passed with special intent to protect Negroes from discrimination.⁴³ Its scope is summarized in a leading case which declares, “. . . the Amendment was primarily designed that no discrimination shall be made against the Negro by law because of their color.”⁴⁴ In light of the amendment's intent, it is difficult to ascertain why the Court failed to make it part of their analysis. The Supreme Court might have discussed both the fourteenth and fifteenth amendments in *Gomillion v. Lightfoot*.

⁴³ Nixon v. Herndon, *supra* note 16.

⁴⁴ Buchanan v. Warley, 245 U.S. 60, 77 (1917).