

United States District Court, M.D. Alabama, Northern Division.

Hosea WILLIAMS, John Lewis and Amelia Boynton, on behalf of themselves and others similarly situated, Plaintiffs, United States of America, Plaintiff-Intervenor,

v.

Honorable George C. WALLACE, as Governor of the State of Alabama, Al Lingo, as Director of Public Safety for the State of Alabama, and James G. Clark, as Sheriff of Dallas County, Alabama, Defendants.

Civ. A. No. 2181-N.

March 17, 1965.

Order March 19, 1965.

Action against the governor of the state of Alabama and other officials to restrain their interference with plaintiffs' proposed march, wherein the United States by leave of court filed its complaint in intervention. The District Court, Johnson, J., held, inter alia, that evidence warranted issuance of injunction restraining defendants from interfering with proposed march by Negro citizens and other members of their class along U.S. Highway 80 from Selma to Montgomery for purpose of petitioning their government for redress of their grievances in being deprived of right to vote.

Order in accordance with opinion.

...

JOHNSON, District Judge.

The plaintiffs as Negro citizens and the members of the class they represent filed with this Court on March 8, 1965, their complaint, motion for temporary restraining order and motion for a preliminary injunction. Jurisdiction is invoked pursuant to 28 U.S.C. ' 1343(3) and (4). This action, authorized by 42 U.S.C. ' 1971(a) and (b) as amended and 42 U.S.C. ' ' 1981 and 1983, seeks relief from the denial of the equal protection of the laws under the Fourteenth Amendment to the Constitution of the United States and seeks redress of the deprivation of rights, privileges and immunities guaranteed by the First, Fourteenth and Fifteenth Amendments to the Constitution of the United States, as implemented by the above-identified Congressional enactments.

The defendant George C. Wallace is the Governor and chief executive officer of the State of Alabama. The defendant Albert J. Lingo is the Director of Public Safety of the State of Alabama, and the defendant James G. Clark, Jr., is the Sheriff of Dallas County, Alabama. The Governor as the chief executive officer of the State of Alabama is charged with the faithful execution of the laws of the State of Alabama

and of the United States of America; in such capacity, the Governor controls and supervises the defendant Albert J. Lingo, and through the defendant Lingo the Governor controls and directs the activities of the Alabama Highway Patrol, also known as the Alabama State Troopers. The defendant Lingo as director is in the active control of the Alabama Highway Patrol.

The plaintiffs seek to have this Court guarantee their right to assemble and demonstrate peaceably for the purpose of redressing their grievances concerning the right to register to vote in the State of Alabama without unlawful interference. Included in the rights plaintiffs seek and ask this Court to adjudicate is that of walking peaceably along the public highway in the State of Alabama between Selma and Montgomery. Plaintiffs *103 also ask this Court to enjoin and restrain the defendants and all persons acting in concert with them from arresting, harassing, threatening, or in any way interfering with their peaceful, non-violent march from Selma, Alabama, to Montgomery, Alabama, for the purpose of protesting injustices and petitioning their State government, particularly the chief executive officer-- the Governor-- for redress of grievances.

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Under Alabama law, registration is prerequisite to voting in any election. In several counties in central Alabama, including Dallas County wherein Selma, Alabama, is located, fewer than 10% Of the Negroes of voting age are registered to vote. [\[FN2\]](#) For the purpose of obtaining better political representation for Negro citizens in these counties, the Negro communities, through local and national organizations, have conducted voter registration drives in recent years. These voter registration drives in Dallas and other central Alabama counties have been intensified since September, 1964. Public demonstrations have been held in these several counties, particularly in Dallas County, for the purpose of encouraging Negroes to attempt to register to vote and also for the purpose of protesting discriminatory voter registration practices in Alabama. The demonstrations have been peaceful. At the same time, cases have been filed in the United States District Courts in this district [\[FN3\]](#) *104 and also in the Southern District of Alabama; [\[FN4\]](#) these cases are designed to secure to Negro citizens their right to register to vote in several central Alabama counties.

As reflected by Appendix 'A' to this opinion, the efforts of these Negro citizens to secure this right to register to vote in some of these counties, have accomplished very little. For instance, in Dallas County, as of November, 1964, where Negro citizens of voting age outnumber white citizens of voting age, only 2.2% Of the Negroes were registered to vote. In Perry County as of August, 1964, where the Negro citizens of voting age outnumber white citizens, only 7% Of the Negroes were registered to vote. In Wilcox County as of December, 1963, where the Negro citizens of voting age outnumber white citizens over two to one, 0% Of the Negro citizens were registered to vote as contrasted with the registration of 100% Of the white citizens of voting age in this county. In Hale County, where Negro citizens

of voting age outnumber white citizens, only 3.6% Of these Negro citizens have been registered to vote. The evidence in this case reflects that, particularly as to Selma, Dallas County, Alabama, an almost continuous pattern of conduct has existed on the part of defendant Sheriff Clark, his deputies, and his auxiliary deputies known as 'possemen' of harassment, intimidation, coercion, threatening conduct, and, sometimes, brutal mistreatment toward these plaintiffs and other members of their class who were engaged in their demonstrations for the purpose of encouraging Negroes to attempt to register to vote and to protest discriminatory voter registration practices in Alabama. This harassment, intimidation and brutal treatment has ranged from mass arrests without just cause to forced marches for several miles into the countryside, with the sheriff's deputies and members of his posse herding the Negro demonstrators at a rapid pace through the use of electrical shocking devices (designed for use on cattle) and night sticks to prod them along. The Alabama State Troopers, under the command of the defendant Lingo, have, upon several occasions, assisted the defendant Sheriff Clark in these activities, and the State troopers, along with Sheriff Clark as an 'invited guest,' have extended the harassment and intimidating activities into Perry County, where, on February 18, 1965, when approximately 300 Negroes were engaged in a peaceful demonstration by marching from a Negro church to the Perry County Courthouse for the purpose of publicly protesting racially discriminatory voter registration practices in Perry County, Alabama, the Negro demonstrators were stopped by the State troopers under the command of the defendant Lingo, and the Negro demonstrators were at that time pushed, prodded, struck, beaten and knocked down. This action resulted in the injury of several Negroes, one of whom was shot by an Alabama State Trooper and subsequently died.

In Dallas County, Alabama, the harassment and brutal treatment on the part of defendants Lingo and Clark, together with their troopers, deputies and 'possemen,' and while acting under instructions from Governor Wallace, reached a climax on Sunday, March 7, 1965. Upon this occasion approximately 650 Negroes left the church in Selma, Alabama, for the purpose of walking to Montgomery, Alabama, to present to the defendant Governor Wallace their grievances concerning the voter registration processes in these central Alabama counties and concerning the restrictions and the manner in which these restrictions had been imposed upon their public demonstrations. These Negroes proceeded in an orderly and peaceful manner to a bridge *105 near the south edge of the City of Selma on U.S. Highway 80 that leads to Montgomery, Alabama, which is located approximately 45 miles east of Selma. They proceeded on a sidewalk across the bridge and then continued walking on the grassy portion of the highway toward Montgomery until confronted by a detachment of between 60 to 70 State troopers headed by the defendant Colonel Lingo, by a detachment of several Dallas County deputy sheriffs, and numerous Dallas County 'possemen' on horses, who were headed by Sheriff Clark. Up to this point the Negroes had observed all traffic laws and regulations, had not interfered with traffic in any manner, and had proceeded in an orderly and peaceful manner to the point of confrontation. They were ordered to disperse and were given two minutes to do so by Major Cloud, who was in active command of the troopers and who was acting upon specific instructions from

his superior officers. The Negroes failed to disperse, and within approximately one minute (one minute of the allotted time not having passed), the State troopers and the members of the Dallas County sheriff's office and 'possemen' moved against the Negroes. The general plan as followed by the State troopers in this instance had been discussed with and was known to Governor Wallace. The tactics employed by the State troopers, the deputies and 'possemen' against these Negro demonstrators were similar to those recommended for use by the United States Army to quell armed rioters in occupied countries. The troopers, equipped with tear gas, nausea gas and canisters of smoke, as well as billy clubs, advanced on the Negroes. Approximately 20 canisters of tear gas, nausea gas, and canisters of smoke were rolled into the Negroes by these State officers. The Negroes were then prodded, struck, beaten and knocked down by members of the Alabama State Troopers. The mounted 'possemen,' supposedly acting as an auxiliary law enforcement unit of the Dallas County sheriff's office, then, on their horses, moved in and chased and beat the fleeing Negroes. Approximately 75 to 80 of the Negroes were injured, with a large number being hospitalized.

[1] The acts and conduct of these defendants, together with the members of their respective enforcement agencies, as outlined above, have not been directed toward enforcing any valid law of the State of Alabama or furthering any legitimate policy of the State of Alabama, but have been for the purpose and have had the effect of preventing and discouraging Negro citizens from exercising their rights of citizenship, particularly the right to register to vote and the right to demonstrate peaceably for the purpose of protesting discriminatory practices in this area. By these actions and by this conduct, the defendants, together with other members of their enforcement agencies, have intimidated, threatened and coerced Negro citizens in this section of Alabama for the purpose of interfering with these citizens and preventing them from exercising certain of their basic constitutional rights-- i.e., the right to register to vote, peaceably assemble, remonstrate with governmental authorities and petition for redress of grievances.

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[10] This Court finds the plaintiffs' proposed plan to the extent that it relates to a march along U.S. Highway 80 from Selma to Montgomery, Alabama, to be a reasonable one to be used and followed in the exercise of a constitutional right of assembly and free movement within the State of Alabama for the purpose of petitioning their State government for redress of their grievances. This is particularly true when the usual, basic and constitutionally-provided means of protesting in our American way-- voting-- have been deprived. [FN6]

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[13] In accordance with the foregoing, an injunction will be issued by this Court enjoining the Governor of the State of Alabama, George C. Wallace; the Director of Public Safety for the State of Alabama, Albert J. Lingo; and the Sheriff of Dallas

County, Alabama, James G. Clark, Jr., together with their agents, employees, successors in office, and all those in active concert or participation with them, from intimidating, threatening, coercing or interfering with the proposed march by these plaintiffs and other members of their class along U.S. Highway 80 from Selma, Alabama, to Montgomery, Alabama. Said defendants will also be enjoined from failing to provide adequate police protection to these plaintiffs in their exercise of this constitutional right. The motion of the defendant Governor for an injunction restraining the march will be denied. All relief sought by the plaintiffs in their motions and the United States in its motions except as herein specifically referred to, will be denied.

*120 APPENDIX 'B'

PLAINTIFFS' PROPOSED PLAN FOR MARCH FROM SELMA, ALABAMA, TO MONTGOMERY, ALABAMA

1. The march will commence on Friday, March 19, 1965 at 10:30 a.m. or any day thereafter provided that plaintiffs will provide at least 48 hours advance notice of the march to Defendants, the United States, and the Court.

2. The number of persons marching will be as follows:

A. There will be no limitation on the number of marchers within the Cities of Selma and Montgomery and along the 4-lane portions of Route 80-East between Selma and Montgomery.

B. The number of marchers will not exceed 300 persons on the 2-lane portion of Route 80.

3. The following are the approximate distances to be covered each day:

A. First Day-march approximately 11 miles stopping at a designated private field with permission of owner which has already been granted;

B. Second day-march approximately 11 miles stopping at a designated field with permission of the owner which already has been granted;

C. Third day-march approximately 17 miles stopping at a designated building and adjoining field with permission of owners which has already been granted;

D. Fourth day-march 8 miles to the western part of Montgomery stopping at an area tentatively selected and to be designated.

E. Fifth day-march from western part of Montgomery to the Capitol.

F. Large tents will be erected at the campsites by professionals. Meetings and song festivals may be held at campsites.

4. Route of march in the City of Selma: Starting at Brown's Chapel A.M.E. Church on Sylvan Street proceeding South on Sylvan to Alabama, then West on Alabama to Broad (Highway 80-East), then South on Broad Street across Edmund Pettus Bridge along Highway 80-East to Montgomery. The march in the City will be conducted in the streets.

5. Route in the City of Montgomery: Marchers will enter the City following Route 80 until it becomes Fairview Avenue and continue on Fairview to Oak Street turning North on Oak Street to Jeff Davis Avenue; then East on Jeff Davis to Holt Street;

then North on Holt to Mobile Street; then on Mobile to Montgomery; then Northeast on Montgomery to Court Square then up Dexter Avenue to Capitol. The March in the City will be in the streets.

6. On the highway, the marchers will proceed on shoulders of the road walking on the left side facing automobile traffic. They will march along road shoulders two abreast and employ single files at places where the shoulder is narrow and on bridges without sidewalks. The marchers will be organized in separate groups of approximately 50 persons (or less) and each group will be under the supervision of a designated group leader.

7. The following supporting services will be provided:

A. Food.

B. Truck-borne washing and toilet facilities.

C. Litter and garbage pickup by truck along route and at campsites.

D. Ambulance and first aid service.

E. Transportation for return to Selma of those marchers in excess of the 300 (or fewer) persons who will continue on the march after the first day. Transportation will also be available for some persons who will join the group on the last day to complete march by entry into Montgomery. F. Lines of communication among the marchers and leaders and certain supporting services will be established by walkie-talkie radios and other means.

8. Liaison will be established between designated leaders of the march and such *121 state and local officials as the agencies concerned shall designate.

9. A mass meeting will be held in front of the Alabama State Capitol on the day the marchers enter Montgomery. There will be a speakers' stand with loud speakers in the street in front of the Capitol. The audience will be on the sidewalks and in the street in front of the Capitol as well as on the Capitol steps. The audience will be directed not to walk on the grass around the Capitol unless the state permits this. The formal program will be conducted between approximately 12 noon and 3:00 p.m.

10. Following completion of the outdoor program:

A. Not more than 20 persons will enter the Capitol Building, proceed to the Governor's office, seek an audience with the Governor and present a petition.

B. Transportation away from the Capitol grounds will be provided by leaders of the march to various destinations including transportation terminals.

11. The march will be orderly and peaceful and otherwise observe the highest standards of dignity and decorum.

Respectfully submitted,

(s) Hosea L. Williams (s) Peter A. Hall

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Plaintiffs Gray & Seay

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