

DISTRICT COURT OF THE UNITED STATES
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

RALPH D. ABERNATHY, et al,)
 Plaintiffs, :
 vs.)
 Defendants.)
 :
 Civil Action
 File No. _____
JOHN PATTERSON, et al, :

**PLAINTIFF'S POINTS AND AUTHORITIES
IN SUPPORT OF PRAYER FOR TEMPORARY
RESTRAINING ORDER**

POINT I

**THIS COURT HAS JURISDICTION TO
GRANT PLAINTIFF THE RELIEF
PRAYED FOR**

1. The federal courts have plenary power to enjoin violations or threatened violations of constitutionally protected rights, and this Court has jurisdiction to restrain or enjoin violations and/or threatened violations of plaintiff's federally protected constitutional rights.

" . . . (I)t is established practice for this Court to sustain the jurisdiction of federal courts to issue injunctions to protect rights safeguarded by the Constitution... Moreover, where federally protected rights have been invaded, it has been the rule from the beginning that courts will be alert to adjust their remedies so as to grant the necessary relief." Bell v. Hood, 327 U.S. 678, 66 S.Ct. 773 (1946).

See also: Hower v. Weiss Malting Elevator Co., N.Y. 1893,

55 F. 356, 359, 5 C.C.A. 129; Philadelphia Co. v. Stimson, 223 U.S. 605 (1912); Hays v. Port of Seattle, 251 U.S. 233; Pennoyer v. McConnaughy, 140 U.S. 1; City Railway Co. v. Citizens St. Railroad Co., 166 U.S. 557; City of Mitchell v. Dakota Central Telephone Co., 246 U.S. 396, 407; Chicago B. & O. Railroad Co. v. City of Chicago, 166 U.S. 226; American Surety Co. v. Baldwin, 287 U.S. 156, 53 S.C.98.

2. This action by plaintiff is a case arising under the Constitution of the United States.

Jordine v. Walling, 185 F. 2d 662, 668, 3rd Cir. (1950); Osborn v. Bank of U.S. 9 Whet. 738, 6 L.ed. 204 (1824); Amendments 13, 14, and 15 of the U.S. Constitution; Tit. 28, Sec. 1331(a) U.S.C.A.; Hague v. Committee for Industrial Organizations, 307 U.S. 496, 59 S.Ct. 954, 81 L.ed. 1423 (1939), Opinion per Roberts, Jr.; Little York Gold Washing & Water Co. v. Keyes, Cal. 1877, 96 U.S. 199, 24 L. ed. 656; U.S. v. Old Settlers, 1893, 13 S.Ct. 650, 148 U.S. 427, 37 L.ed. 509; Cound v. Atchison, T. & S. F. Ry. Co., C.C.Tex. 1909, 173 F. 527; Anthony v. Burrow, C.C. Kan., 1904, 129 F. 783; King v. Lawson, C.C.S.D. 1897, 84 F. 209; Van Allen v. Atchison, C. & P. R. Co., C.C.Kan., 1880, 3 F. 545; City of Toledo^v Rys. & Light Co., 259 F. 450, C.C.A. Ohio (1919).

See also: Walter P. Villere Co. v. Blinn, C.C.A. La. 1946, 156 F. 2d (1914); Cohen v. Virginia, 6 Wheat. 264.

3. The prayer for relief requested herein is a cause arising under the laws of the United States and this Court has jurisdiction thereof pursuant to Title 28, Sec. 1331(a).

Shapiro v. Goldberg, 192 U.S. 232, 24 S.Ct. 259, 48 L. ed. 419; Ziegler v. Hopkins, 117 U.S. 683, 6 S.Ct. 919, 29 L. ed. 1019; Gage v. Pumpelly, 108 U.S. 164, 2 S.Ct. 390, 27 L.ed. 668; Risty v. Chicago, R.I. & P.R. Co., 270 U.S. 378, 46 S.Ct. 236, 70 L.ed. 641; Put-in-Bay Waterworks, Light and R. Co. v. Ryan, 181 U.S. 409, 21 S.Ct. 709, 45 L.ed.927. See also: Montana-Dakota Utilities Co. v. Northwestern Public Service Co., 341 U.S. 246, 71 S.Ct. 692.

4. This action arises under the laws of the United States and this Court has jurisdiction to restrain violations of the Federal Civil Rights Statute.

Title 28, 1343(3), U.S.C.A.; Douglas v. Jeannette, 319 U.S. 157, 63 S.Ct. 877; Allgeyer v. Louisiana, 165 U.S. 578, 17 S.Ct. 427, 51 L.ed. 832; Raich v. Truax (D.C.) 219 F. 273; Giles v. Harris, 189 U.S. 475, 23 S.Ct. 639, 47 L.ed. 909; Nixon v. Herndon, 273 U.S. 356, 47 S.Ct. 446, 71 L.ed. 759; Hope v. Indiana Manufacturing Co., 176 U.S. 68, 20 S.Ct. 272, 44 L. ed. 374.

5. This Court has equitable jurisdiction to grant the relief sought herein.

Title 28, 1343(4) U.S.C.A.; Title 42, Sections 1983, 1985; Hague v. Committee for Industrial Organizations, supra; Ghadiali v. Delaware State Medical Society, D.C. Del.

1939, 28 F. Sup. 841.

See also: Westminster School District of Orange County v. Mendez, 161 F. 2d 774, C.C.A. Cal. (1947); A.F.L. v. Watson, 327 U.S. 582.

POINT II

PLAINTIFF'S COMPLAINT STATES A LEGALLY SUFFICIENT CAUSE OF ACTION

1. The complaint herein states a legally sufficient cause of action in that it alleges the plaintiff's federally protected constitutional rights are being interfered with and threatened with imminent danger.

Hague v. C.I.O., supra. Cf. Geach v. Moynahan, 207 F. 2d 714 (1953); Douglas v. City of Jeannette, 319 U.S. 157, 63 S. Ct. 877, Rehearing denied, 319 U.S. 782, 63 S.Ct. 1170; Cobb v. City of Malden, 202 F. 2d 701 (1953); Picking v. Pennsylvania Railroad Co., 151 F. 2d 240 (1945), Rehearing denied, 152 F. 2d 753; Hoffman v. Malden, 268 F. 2d 280, C.A. Oregon (1959).

2. The rights herein claimed are privileges inherent in citizenship of the United States secured against state abridgement by the Fourteenth Amendment to the U.S. Constitution.

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."
Amendment 1, Constitution of the United States.

Hague v. CIO, supra; Thornhill v. Alabama, 310 U.S. 88, 60 S.Ct. 736 (1940); Craig v. Harney, 331 U.S. 367, 67 S.Ct. 1249, 1255 (1947), in which defendant in an editorial had criticized the judge's handling of the case as "high handed", "a travesty on justice", "a raw deal", and "a tragedy". The editorial concluded that the judge had "repudiated" the "first rule of justice" so that there was "no way of knowing whether justice was done." The Supreme Court reversed and set aside the contempt citations below.

"Abridgement of freedom of speech and of the press impairs those opportunities for public education that are essential to effective exercise of the power of correcting error through the process of popular government..." Thornhill v. Alabama, supra, (at 741).

"The freedom of speech and of the press guaranteed by the Constitution embraces at the least the liberty to discuss publicly and truthfully all the matters of public concern without previous restraint or fear of subsequent punishment... Freedom of discussion, if it would fulfill its historical function in this nation, must embrace all issues about which information is needed or appropriate to enable the members of society to cope with the exigencies of their period." Thornhill v. Alabama, supra, (at 744).

See also: Roth v. U.S., 77 S.Ct. 1304 (1957, where the Court said:

"The protection given speech and press was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people. This objective was made explicit as early as 1774 in a letter of the Continental Congress to the inhabitants of Quebec:

'The last right we shall mention regards freedom of the press. The importance of this consists, besides the advancement of truth,...in its ready communication of thoughts between subjects, and its consequential promotion of union among them, whereby oppressive officers are shamed or intimidated into more honourable and just modes of conducting affairs.' I. Journals of the Continental Congress 108 (1774)."(At 1308-09).

Slaughter House Cases, 16 Wall 36:

"The right to peaceable assembly and petition for redress of grievances are rights of the citizen guaranteed by the federal Constitution."

Cf. Hague v. C.I.O., supra, where it was said:

"Freedom of speech and of assembly for any lawful purpose are rights of personal liberty secured to all persons, without regard to citizenship, by the due process clause of the Fourteenth Amendment." (at 512).

3. A cause of action for equitable relief has been adequately alleged in that plaintiff has shown irreparable injury.

Hitchman Coal and Coke Co. v. Mitchell, 245 U.S. 229, 38 S.Ct. 65; Beacon Theatres, Inc. v. Westover, 359 U.S. 500, 79 S.Ct. 948, 3 L. ed. 2d 988; Hague v. C.I.O., supra; A.F.L. v. Watson, 327 U.S. 582.

4. Plaintiff has alleged inadequacy of his remedy at law.

Franklin Telegraph Co. v. Harrison, 145 U.S. 459, 12 S. Ct. 900; Beacon Theatres, Inc. v. Westover, supra, where the Court said in an action under the Declaratory Judgment Act in a controversy under the Anti-Trust Laws:

"On proper showing, harassment by threats of other suits or other suits actually brought, involving the issues being tried in this case could temporarily enjoin pending the outcome of this litigation." (at 508).

See also: Pennsylvania v. Wheeling & B. Bridge Co. (US) 13 How. 518, 561, 14 L. ed. 249, 267; Parker V. Winnipiseogee Lake Cotton & Woollen Co. (US) 2 Black 545, 551, 17 L.ed. 333, 337; Enelow v. New York, L. Ins. Co., 293 U.S. 379, 79 L. ed. 440, 55 S.Ct. 310. 6

5. The relief prayed for herein has been adequately alleged in that the complaint has shown the necessity for restraining a multiplicity of actions, to which plaintiff has been subjected and will be subjected to unless the power of this court provides him with the requisite protection of his federally protected constitutional rights.

Phoenix Mutual Ins. Co. v. Bailey, 13 Wall 616 20 L. ed. 501; See also: Root v. Woolworth, 150 U.S. 401, 14 S.Ct. 136, 37 L.ed 1123; Lieter Minerals, Inc. v. U.S. 352 U.S. 220, 77 S.Ct. 287, 1 L.ed. 2d 265.

6. There is no statutory impediment to the granting of the relief prayed for.

(a) 28 U.S.C. 2283:

"A court of the United States may not grant an injunction to stay proceedings in a State court except as expressly authorized by Act of Congress, or where necessary in aid of its jurisdiction, or to protect or effectuate its judgments." (Emphasis ours)

(b) The Civil Rights Act, 42 U.S.C. 1983 specifically authorizes acts in the courts of the United States, which seek relief staying proceedings in state courts, among other things.

(c) This matter is discussed in full in Cooper v. Hutchinson, 184 F. 2d 119 (C.A. 3, 1950). See also: Browder v. City of Montgomery, 146 Fed. Supp. 127 (Md. Ala. 1956).

See also: The landmark Cases of Truax v. Raich, 239 U.S. 33 (1915):

"It is also settled that while a court of equity, generally speaking, has no jurisdiction over the prosecution, the punishment or the pardon of crimes or misdemeanors, a distinction obtains and equitable jurisdiction exists to restrain criminal prosecutions under unconstitutional enactments, when the prevention of such prosecutions is essential to the safeguarding of rights of property."

See also: Jamerson v. Alliance Ins. Co., 87 F. 2d 253;
American Optometric Association v. Ritholz, 101 F. 2d 893;
Barrett, Federal Injunctions Against Proceedings in State Courts, 35 Cal. L. Rev. 545, 549-50 (1947); T. Smith & Son, Inc. v. Williams, 275 F. 2d 397 (5th Cir. 1960).

CONCLUSION

Therefore, it is respectfully submitted that plaintiff has alleged a legally sufficient cause of action in equity.

POINT III

PLAINTIFF HAS ADEQUATELY PRESENTED
A CASE FOR TEMPORARY RELIEF PENDING
MOTION BROUGHT ON BY ORDER TO SHOW
CAUSE

1. All the requirements for temporary relief pendente lite as required by the Federal Rules of Civil Procedure have been met.

Rule 65 Federal Rules of Civil Procedure

2. That plaintiff is imminently threatened with irreparable injury to both property rights and other rights secured to him by the Constitution of the United States is adequately alleged in his complaint and fully supported in the affidavits annexed thereto.

See affidavits and complaint herein.

3. The complaint and the affidavits annexed thereto sufficiently show that plaintiff has no remedy at law against the imminently threatened injury other than recourse to this honorable court.

See affidavits and complaint herein.

Plaintiffs respectfully pray that the temporary ex parte relief pending the hearing be granted.

Respectfully submitted,

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