

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

RALPH D. ABERNATHY, J. E. LOWERY,)
S. S. SEAY, SR., and FRED L.
SHUTTLESWORTH, *

Plaintiffs, (

VS. *

JOHN PATTERSON, individually and)
as Governor of Alabama, EARL JAMES,
individually and as Mayor of *
Montgomery, L. B. SULLIVAN, indi-
vidually and as Commissioner of (
Public Safety of Montgomery, FRANK
PARKS, individually and as Commis- *
sioner of Public Affairs of Montgomery,
MAC SIM BUTLER, individually and as)
Sheriff of Montgomery County, HOLT A.
McDOWELL, individually and as Sheriff *
of Jefferson County, and WILMER
SHIELDS, individually and as Sheriff (

Civil Action

File No. _____

of Marengo County, *

Defendants.)

MOTION FOR A PRELIMINARY INJUNCTION

Come the Plaintiffs, RALPH D. ABERNATHY, J. E. LOWERY, S. S. SEAY, SR., and FRED L. SHUTTLESWORTH, and move this Honorable Court for a preliminary injunction in the above entitled cause enjoining the defendants, JOHN PATTERSON, et. al., their agents, servants, employees, and attorneys and all persons acting in concert with them from:

(a.) Proceeding with trials presently pending before the Circuit Court of Montgomery County, Alabama and which were instituted by the defendants, John Patterson and Frank Parks.

(b.) Levying upon plaintiffs' property, both real and personal which has already been attached, as well as all future levies.

(c.) Engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth Amendments of the Constitution of the United States with respect to freedom of speech, press, assembly, and right to petition for redress of grievances, and the right to free worship.

Grounds in support of said Motion are as follows:

1. Plaintiff, Ralph D. Abernathy is a resident of Montgomery County, Alabama and president of the Montgomery Improvement Association, an organization functioning in the City of Montgomery devoted to the achievement of equality of treatment for members of the Negro race under the Constitution of the United States and through the Christian and non-violent approach.

2. Plaintiff, J. E. Lowery, is a resident of the City of Mobile, Alabama, and president of the Alabama Civic Affairs Association, an organization functioning in Mobile, Alabama devoted to similar aims as those described above.

3. Plaintiff, S. S. Seay, Sr., is a resident of Montgomery County, Alabama, and is executive secretary of the Montgomery Improvement Association.

4. Plaintiff, Fred L. Shuttlesworth, is a resident of Birmingham, Alabama, and is founder and president of the Alabama Christian Movement for Human Rights, an organization located in Birmingham, Alabama similar in purpose to those described above.

5. Each of the plaintiffs herein is over the age of twenty-one years, and a citizen of the United States. Each belongs to the class of persons commonly designated and referred to as Negroes.

6. Defendant John Patterson is governor of the State of Alabama. Said defendant has filed an action in the Circuit Court of Montgomery County, Alabama seeking damages against the plaintiffs and the New York Times Company in the amount of One Million Dollars.

7. Defendants, L. B. Sullivan, Earl D. James, and Frank W. Parks are City officials and members of the Board of Commissioners of the City of Montgomery, Alabama. Each filed in the Circuit Court of Montgomery County, Alabama a Civil Action for damages against the plaintiffs herein and the New York Times Company in the amount of Five Hundred Thousand Dollars.

8. Defendants, Mac Sim Butler, Ray D. Bridges, Holt A. McDowell, and Wilmer Shield are respectively sheriffs of Montgomery, Mobile, Jefferson, and Marengo counties. As such it is their duty to execute and return the process and orders of the Courts of record of the State of Alabama.

9. In pursuance of their objective to advance the equality of treatment of members of the Negro race through Christian and non-violent Constitu-

tional means, plaintiffs, their supporters, and others with whom they have been associated sought to rely on the utilization of educational processes, the various media of press and speech, the right to assembly, and the right to petition for redress of grievances and the peaceful assertion of constitutional rights, which rights are privileges flowing from national citizenship.

10. In or about February, 1960, and continuously thereafter, several of the defendants and divers other co-conspirators, the names of whom are to the plaintiffs presently unknown, entered into a conspiracy, individually and under the authority of their offices, to prevent the plaintiffs from accomplishing their objectives as aforesaid; to deprive plaintiffs of the equal protection of the laws; to deprive them of their rights, privileges, and immunities secured by the Constitution and laws of the United States and to deprive the plaintiffs of their rights to access to a free press, free speech, and peaceful assembly, as well as the right to petition for redress of grievances guaranteed to them under the first Amendment of the Constitution of the United States, as incorporated in the Fourteenth Amendment thereof.

11. On or about March 29, 1960, supporters of the plaintiff and the movement for equality of which they are leaders, on their own, and pursuant to their own responsibility, utilizing the channel of a free press, inserted in the New York Times, a newspaper of national and international reputation, a paid advertisement signed by approximately 64 prominent American from all walks of life, a copy of which advertisement is annexed to the Complaint heretofore filed herein as Exhibit B. This advertisement expressed the opinions, criticisms and comments of these prominent Americans of the developments in the City of Montgomery and the State of Alabama, as described above, for the purpose of:

(a.) Educating the general public on important social and political issues in the free market place of ideas;

(b.) Soliciting support for the defense of the Reverend Martin Luther King, Jr., a leader of the movement in which the plaintiffs participate as active leaders, in a then pending criminal prosecution brought by the State of Alabama against the Reverend Dr. King;

(c.) Soliciting support for the plaintiffs herein and their supporters in their peaceful activities for the enforcement of their right to vote, as guaranteed by the Fifteenth Amendment to the Constitution of the United States.

(d.) Soliciting support for the Negro students of the City of Montgomery, the Negro citizens of that city, and the plaintiffs herein, in their peaceful efforts to end segregation and achieve the constitutional promise of equality before the law.

12. Pursuant to the aforesaid conspiracy, defendants contrived and planned, under the color of law and utilizing their official positions as well as the judicial machinery of the State, actions in libel against the New York Times Company, a foreign corporation and the plaintiffs herein.

13. Plaintiffs were fraudulently joined in said actions for the purpose of deterring them and their supporters as set forth above, from utilizing their constitutional rights and in particular their right to access to a free press, and for the purpose of preventing removal of said causes to the United States District Court from the Circuit Court of Montgomery County, Alabama, a tribunal wherein a policy, custom, and usage of enforced segregation of the races is enforced and pursued. Joinder of the plaintiffs herein in the aforementioned actions in the Circuit Court of Montgomery County, Alabama, therefore constitutes and unconstitutional use of the judicial machinery of the State of Alabama to the detriment and irreparable injury of the plaintiffs, in depriving them of rights, privileges, and immunities secured by the Fourteenth Amendment to the Constitution and, Title 42, United States Code, Sec. 1983, 1985 (3).

14. As a result of said fraudulent actions, fraudulent judgments, without any basis in law or fact, have been awarded to the defendants Sullivan and James in the amount of FIVE HUNDRED THOUSAND DOLLARS (\$500,000) each, and which judgments represent the highest ever awarded in libel actions in the State of Alabama. Because of said fraudulent and extraordinarily high judgments, plaintiffs are required under Alabama Law to post supersedeas bonds in the amount of ONE MILLION DOLLARS (\$1,000,000) each, thereby making it absolutely impossible for the plaintiffs to avail themselves of the rights usually afforded to other citizens under the Alabama statute to obtain a stay of execution pending their exercise of the statutory right to appeal.

15. Plaintiffs are unable financially to post supersedeas bonds in the amount of TWO MILLION DOLLARS (\$2,000,000), in order to stay execution pending appeals in the two cases which have been tried. By virtue of not be-

ing able to post the bonds required, the plaintiffs have been subjected to continuous harassments with respect to the modest personal and real property in which several have a mere equity. Plaintiffs are in addition thereto subjected to preparation for further trials in the Parks and Patterson cases, which are still pending in the Circuit Court of Montgomery County, Alabama.

16. Unless defendants are enjoined from executions, garnishments, and sale of plaintiffs' properties pending outcome of said appeals; and unless defendants are enjoined from further prosecution of trials pending before the Circuit Court of Montgomery County, Alabama as aforesaid, plaintiffs, and each of them, will suffer immediate and irreparable loss of property both real and personal, in addition to the immediate and irreparable injury to the exercise of constitutionally protected rights; as more fully appears in the verified complaint filed herein; which complaint is incorporated herein by reference and made a part of the Motion as if herein set forth in full.

17. Plaintiffs have no plain, adequate and complete remedy at law which can protect plaintiffs' property rights as well as their rights to freedom of expression, of press and assembly, other than recourse to this Honorable Court.

18. Unless this court grants plaintiffs the relief prayed for plaintiffs' will be further relegated to a segregated court system and continue to suffer immediate and irreparable harm to their personal and property rights. Plaintiffs have not and cannot, under the present segregated organization of the Alabama State Courts receive a fair and impartial trial. Recourse to such a system would afford plaintiffs no adequate remedy at law, consistent with the guarantees of the Federal Constitution.

19. The granting of a preliminary injunction by this Honorable Court, though essential to the protection of plaintiffs' personal and property rights will in no way be detrimental to defendants.

WHEREFORE, Plaintiffs respectfully pray:

1. That this Learned Court enter a preliminary injunction:

(a.) Enjoining the defendants herein, their agents, servants, employees, attorneys, and all persons acting in concert with them from proceeding in any manner whatsoever with the libel action in the Circuit Court of Montgomery

County, Alabama, entitled, "Frank Parks vs. The New York Times Company, a corporation, et. al.", and "John Patterson vs. The New York Times Company, a corporation, et. al.", as the above actions relate to the plaintiffs herein.

(b.) Restraining each of the defendants named herein, their agents, servants, employees, attorneys, and all persons acting in concert with them from engaging in a conspiracy designed to deter and prohibit the plaintiffs from exercising rights guaranteed by the First and Fourteenth Amendments with respect to freedom of speech, press, assembly, and right to petition for redress of grievances, and the right to free worship.

2. That this Learned Court enter a declaratory judgment declaring the judgments heretofore awarded to defendants L. B. Sullivan and Earl James in the Circuit Court of Montgomery County, Alabama, to be null and void.

Respectfully submitted:

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