

Supplementary Material

Chapter 7: The Republican Era – Equality/Race/The Rise of Jim Crow

Giles v. Harris, 189 U.S. 475 (1903)

Jackson Giles sued E. Jeff Harris, a member of the board of registrars of Montgomery County, Alabama, after Harris refused to permit Giles to register to vote. Harris claimed that neither Giles nor more than five thousand other African-Americans met state constitutional voting standards. Those standards required voters to either have fought in past wars, including on either side of the Civil War, be a descendant of a veteran or be of “good character,” and “understand the duties and obligations of citizenship under a republican form of government.” Giles claimed that those constitutional provisions were part of a scheme to fraudulently deprive persons of color of the right to vote. His suit asked for an injunction requiring Giles to permit him to register. A judge from the Circuit Court of Appeals for the Middle District of Alabama declared that federal courts had no jurisdiction to order the sought-for relief. Giles appealed to the Supreme Court of the United States.

*The Supreme Court by a 6–3 vote sustained the lower federal court decision. Justice Holmes’s majority opinion declared that federal courts did not have the power to order Alabama to register Giles to vote. Did Holmes merely determine that Giles could not get an injunction? Did he discuss whether the Alabama voting registration laws were unconstitutional? Suppose Giles had asked for monetary damages. Would Holmes have ruled differently? Did persons of color have any meaningful means of relief from voting discrimination after Giles? How do you explain the Holmes opinion given his later sensitivity to free speech rights? Note that Justice Henry Billings Brown, who wrote the majority opinion in *Plessy v. Ferguson* (1896), dissented in this case. How do you explain his different votes in these cases?*

JUSTICE HOLMES delivered the opinion of the court:

...
It seems to us impossible to grant the equitable relief which is asked. . . .

The difficulties which we cannot overcome are two, and the first is this: The plaintiff alleges that the whole registration scheme of the Alabama Constitution is a fraud upon the Constitution of the United States, and asks us to declare it void. But, of course, he could not maintain a bill for a mere declaration in the air. He does not try to do so, but asks to be registered as a party qualified under the void instrument. If, then, we accept the conclusion which it is the chief purpose of the bill to maintain, how can we make the court a party to the unlawful scheme by accepting it and adding another voter to its fraudulent lists? If a white man came here on the same general allegations, admitting his sympathy with the plan, but alleging some special prejudice that had kept him off the list, we hardly should think it necessary to meet him with a reasoned answer. But the relief cannot be varied because we think that in the future the particular plaintiff is likely to try to overthrow the scheme. If we accept the plaintiff’s allegations for the purposes of his case, he cannot complain. We must accept or reject them. It is impossible simply to shut our eyes, put the plaintiff on the lists, be they honest or fraudulent, and leave the determination of the fundamental question for the future. If we have an opinion that the bill is right on its face, or if we are undecided, we are not at liberty to assume it to be wrong for the purposes of decision. It seems to us that unless we are prepared to say that it is wrong, that all its principal allegations are immaterial, and that the registration plan of the Alabama Constitution is valid, we cannot order the plaintiff’s name to be registered. It is not an answer to say that if all the blacks who are qualified according to the letter of the

instrument were registered, the fraud would be cured. In the first place, there is no probability that any way now is open by which more than a few could be registered; but, if all could be, the difficulty would not be overcome. If the sections of the Constitution concerning registration were illegal in their inception, it would be a new doctrine in constitutional law that the original invalidity could be cured by an administration which defeated their intent. We express no opinion as to the alleged fact of their unconstitutionality beyond saying that we are not willing to assume that they are valid, in the face of the allegations and main object of the bill, for the purpose of granting the relief which it was necessary to pray in order that that object should be secured.

The other difficulty is of a different sort, and strikingly reinforces the argument that equity cannot undertake now, any more than it has in the past, to enforce political rights. . . . In determining whether a court of equity can take jurisdiction, one of the first questions is what it can do to enforce any order that it may make. . . . The bill imports that the great mass of the white population intends to keep the blacks from voting. To meet such an intent something more than ordering the plaintiff's name to be inscribed upon the lists of 1902 will be needed. If the conspiracy and the intent exist, a name on a piece of paper will not defeat them. Unless we are prepared to supervise the voting in that state by officers of the court, it seems to us that all that the plaintiff could get from equity would be an empty form. Apart from damages to the individual, relief from a great political wrong, if done, as alleged, by the people of a state and the state itself, must be given by them or by the legislative and political department of the government of the United States.

JUSTICE HARLAN, dissenting,

[The body of Justice Harlan's dissent asserted that the Supreme Court had no jurisdiction to resolve the case.]

As these are my views as to the jurisdiction of this court, upon this record, I will not formulate and discuss my views upon the merits of this case. But to avoid misapprehension, I may add that my conviction is that upon the facts alleged in the bill (if the record showed a sufficient value of the matter in dispute), the plaintiff is entitled to relief in respect of his right to be registered as a voter. I agree with Mr. Justice Brewer that it is competent for the courts to give relief in such cases as this.

JUSTICE BREWER dissenting,

...
[Giles] alleges that he is a citizen of Alabama, entitled to vote; that he desired to vote at an election for representative in Congress; that without registration he could not vote, and that registration was wrongfully denied him by the defendants. That many others were similarly treated does not destroy his rights or deprive him or relief in the courts. That such relief will be given has been again and again affirmed in both national and state courts.

...
JUSTICE BROWN also dissents.