

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
EASTERN DIVISION

FILED

NOV 14 1965

K. C. JOHNSON, CLERK

BY JCS Clerk

CHARLES BANDY,

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PLAINTIFF

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vs.

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JURY COMMISSION OF
LEE COUNTY, ED E.
JOHNSTON, JR., AS CLERK
OF THE JURY COMMISSION;
H. A. McCURRY AND A.B.
WILLIAMS, JR., AS MEMBERS
OF THE JURY COMMISSION OF
LEE COUNTY; TOM F. YOUNG,
AS DISTRICT ATTORNEY FOR THE
FOURTH JUDICIAL DISTRICT,

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DEFENDANTS.

CIVIL ACTION NO. 720-E

COMPLAINT

I

JURISDICTION

THE JURISDICTION OF THIS COURT IS INVOKED PURSUANT TO TITLE 28 U. S.C., SECTIONS 1331, 1343, 2201, 2202, 2281, 2283, 2284, AND TITLE 42 U.S.C., SECTION 1981 ET SEQ.

THIS CAUSE OF ACTION ARISES UNDER THE FOURTEENTH AMENDMENT TO THE CONSTITUTION OF THE UNITED STATES.

II

PLAINTIFF CHARLES BANDY IS OVER THE AGE OF TWENTY-ONE YEARS, AND IS A CITIZEN OF THE UNITED STATES AND OF THE STATE OF ALABAMA. PLAINTIFF BELONGS TO THAT CLASS OR RACE OF PERSONS COMMONLY DESIGNATED AND REFERRED TO AS NEGROES. PLAINTIFF WAS ARRESTED ON SEPTEMBER 11, 1966, BY POLICE OFFICERS OF THE CITY OF OPELIKA, ON A CHARGE OF ASSAULT WITH INTENT TO MURDER, AND IS AWAITING ACTION OF THE LEE COUNTY GRAND JURY DURING THE WEEK OF NOVEMBER 7, 1966.

DEFENDANTS H. A. McCURRY, A. B. WILLIAMS, JR., AND ED E. JOHNSTON, JR. ARE MEMBERS AND CLERK RESPECTIVELY OF DEFENDANT JURY COMMISSION, WHOSE DUTIES INCLUDE SELECTING THE NAMES OF PERSONS TO GO ON THE JURY ROLL AND INTO THE JURY BOX IN AND FOR LEE COUNTY, ALABAMA.

DEFENDANT TOM F. YOUNG IS THE DISTRICT ATTORNEY FOR LEE COUNTY, ALABAMA, AND AS SUCH WILL PRESENT THE PEOPLE'S CASE IN THE MATTER OF STATE OF ALABAMA V. CHARLES BANDY.

III

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NATURE OF PROCEEDING

THIS IS A CIVIL ACTION BROUGHT BY PLAINTIFF ON HIS OWN BEHALF FOR A DECLARATORY JUDGMENT THAT:

A. QUALIFIED NEGROES ARE SYSTEMATICALLY EXCLUDED FROM AND/OR SYSTEMATICALLY INCLUDED ON THE JURY BOX AND JURY ROLL OF LEE COUNTY, SOLELY BY REASON OF THEIR RACE OR COLOR.

B. THAT THE JURY BOX AND JURY ROLL OF LEE COUNTY DO NOT CONTAIN A REPRESENTATIVE CROSS SECTION OF THE COMMUNITY.

AND FOR A PRELIMINARY AND PERMANENT INJUNCTION,

A. ENJOINING AND RESTRAINING DEFENDANT YOUNG FROM PRESENTING THE AC-

TION PENDING AGAINST PLAINTIFF BANDY IN THE CIRCUIT COURT OF LEE COUNTY, ALABAMA, BEFORE A PETIT JURY, UNTIL THE JURY ROLL AND JURY BOX ARE FILLED IN A MANNER SO AS TO CONTAIN A REPRESENTATIVE CROSS SECTION OF THE COMMUNITY.

B. ENJOINING AND RESTRAINING DEFENDANTS, JURY COMMISSION MEMBERS, FROM SYSTEMATICALLY EXCLUDING AND/OR SYSTEMATICALLY INCLUDING NEGROES FROM OR FOR JURY DUTY IN LEE COUNTY, ALABAMA.

C. ENJOINING AND RESTRAINING DEFENDANTS, JURY COMMISSION MEMBERS, FROM PURSUING A POLICY, PRACTICE, CUSTOM AND USAGE OF LIMITING THE NAMES IN THE JURY BOX AND ON THE JURY ROLL TO MEMBERS OF THE SOCIALLY, POLITICALLY, OR ECONOMICALLY PROMINENT CLASSES.

IV

ALLEGATIONS OF FACTS

THERE EXISTS A SYSTEM, PRACTICE, OR CUSTOM IN THE DRAWING AND ORGANIZING OF GRAND AND PETIT JURIES TO SERVE IN LEE COUNTY, ALABAMA, DESIGNED TO EXCLUDE NEGROES FROM SERVICE ON SUCH JURIES OR TO KEEP THE NUMBER OF NEGROES IN THE JURY BOX SO LOW THAT IT IS UNLIKELY THAT THEY WILL EVER SERVE.

PLAINTIFF AVERS THAT ACCORDING TO THE LAST DECENNIAL CENSUS OF THE UNITED STATES, ITS TERRITORIES AND POSSESSIONS, PUBLISHED BY THE UNITED STATES DEPARTMENT OF COMMERCE, BUREAU OF CENSUS, OF WHICH THE COURTS OF THE UNITED STATES TAKE JUDICIAL NOTICE, THE WHITE POPULATION OF LEE COUNTY 21 YEARS OLDS AND OVER, NUMBERS 17,547, AND THAT THE NON-WHITE POPULATION OF SAID COUNTY IN SAID AGE GROUP NUMBERS 8,913. PLAINTIFF FURTHER AVERS THAT THE GREAT MAJORITY OF THE AFORESAID NON-WHITE POPULATION OF LEE COUNTY ARE CITIZENS OF SAID COUNTY, HOUSEHOLDERS AND FREEHOLDERS IN SAID COUNTY, GENERALLY REPUTED TO BE HONEST AND INTELLIGENT MEN, ESTEEMED IN THE COMMUNITY FOR THEIR INTEGRITY AND GOOD CHARACTER, AND THAT THEY ARE NOT HABITUAL DRUNKARDS NOR AFFLICTED WITH DISEASE OR PHYSICAL WEAKNESS AS WOULD DISQUALIFY THEM TO DISCHARGE THE DUTIES OF JURORS.

NEVERTHELESS, DEFENDANTS HAVE ENFORCED AND PURSUED, AND ARE ENFORCING AND PURSUING A POLICY, PRACTICE, CUSTOM, AND USAGE OF DISCRIMINATING AGAINST NEGROES BY OMITTING THEIR NAMES FROM THE BOX ALTOGETHER OR BY KEEPING THE NUMBER SO LOW THAT IT IS UNLIKELY THAT THEY WILL EVER SERVE.

PLAINTIFF AVERS FURTHER THAT THE METHOD OF SELECTION OF THE NAMES TO BE PLACED ON THE JURY ROLL AND IN THE JURY BOX OF LEE COUNTY IS IRREGULAR AND ARBITRARY AND HAS THE EFFECT OF PLACING IN THE JURY BOX AND ON THE JURY ROLL FOR LEE COUNTY ONLY THOSE PERSONS WHO ARE ECONOMICALLY AND POLITICALLY SUCCESSFUL.

PLAINTIFF AVERS THAT THERE IS BETWEEN THE PARTIES, AN ACTUAL CONTROVERSY AS HEREIN SET FORTH. PLAINTIFF BANDY WILL BE IRREPARABLY INJURED IN THAT HIS CASE WILL BE PRESENTED TO A GRAND JURY NOT CONSTITUTIONALLY CONVENED, AND WILL BE TRIED BEFORE AN UNCONSTITUTIONAL PETIT JURY. TO COMPEL PETITIONER TO STAND TRIAL BEFORE A JURY IN THE SELECTION OF WHICH THERE HAS BEEN EXCLUSION OF PERSONS SOLELY BY REASON OF THEIR RACE OR COLOR, DENIES TO PLAINTIFF DUE PROCESS OF LAW GUARANTEED BY THE FOURTEENTH AMENDMENT TO THE UNITED STATES CONSTITUTION.

PLAINTIFF HAS NO PLAIN, ADEQUATE OR COMPLETE REMEDY TO REDRESS THE WRONGS AND UNLAWFUL ACTS HEREIN COMPLAINED OF, OTHER THAN ~~THIS~~ THIS ACTION FOR A DECLARATION OF RIGHTS AND AN INJUNCTION IMPLEMENTING THE RIGHTS DECLARED.

WHEREFORE, PLAINTIFF PRAYS THAT THIS COURT:

- A. ASSUME JURISDICTION IN THIS MATTER.
- B. ENTER A JUDGMENT DECLARING THAT QUALIFIED NEGROES ARE SYSTEMATICALLY EXCLUDED FROM GRAND AND PETIT JURIES IN AND FOR LEE COUNTY, ALABAMA.
- C. ENTER A JUDGMENT DECLARING THAT GRAND JURIES AND PETIT JURIES IN AND FOR LEE COUNTY ARE NOT REPRESENTATIVE CROSS SECTIONS OF THE COMMUNITY.
- D. ISSUE A PRELIMINARY INJUNCTION AND A PERMANENT INJUNCTION RESTRAINING AND ENJOINING DEFENDANT YOUNG FROM TRYING PLAINTIFF BEFORE A PETIT JURY UNTIL SUCH TIME AS THE GRAND JURIES OF LEE COUNTY ARE SELECTED AND EMPANELED WITHOUT CONSIDERATIONS OF RACE.
- E. ENTER A PRELIMINARY AND PERMANENT INJUNCTION ENJOINING AND RESTRAINING DEFENDANTS FROM SYSTEMATICALLY EXCLUDING NEGROES FROM SERVICE ON JURIES IN AND FOR LEE COUNTY, ALABAMA.
- F. ENTER A PRELIMINARY AND PERMANENT INJUNCTION RESTRAINING AND ENJOINING DEFENDANTS TO EMPTY AND REFILL THE JURY BOX IN SUCH A MANNER THAT THE NAMES THEREIN WILL REPRESENT A CROSS SECTION OF THE COMMUNITY.

G. GRANT SUCH OTHER FURTHER AND DIFFERENT RELIEF AS MAY BE PROPER
AND NECESSARY.

Charles Bandy
PLAINTIFF

I HEREBY CERTIFY THAT I HAVE READ THE ABOVE AND FOREGOING COMPLAINT
AND KNOW THE CONTENTS THEREOF, THAT THE MATTERS AND THINGS SET FORTH THERE-
IN ARE TRUE, EXCEPT SUCH MATTERS AS ARE ALLEGED ON INFORMATION AND BELIEF,
AND AS TO THEM I BELIEVE THE SAME TO BE TRUE.

Charles Bandy
PLAINTIFF

GRAY & SEAY

BY: Salmon S. Gray, Jr.
ATTORNEYS FOR PLAINTIFF
34 N. PERRY STREET
MONTGOMERY, ALABAMA