

4844

LAW OFFICES OF  
GAILLARD, GAILLARD & SMITH

712-718 ANNEX FIRST NATIONAL BANK BUILDING

MOBILE, ALABAMA

March 9, 1960

S. PALMER GAILLARD  
S. PALMER GAILLARD, JR.  
WALTER F. GAILLARD  
HARDY B. SMITH

Re: Edward B. Evans et al vs.  
J. O. Sims, as Mayor of  
the Town of Gulf Shores,  
Alabama, et al.

Mrs. Alice J. Duck  
Clerk of the Circuit Court  
of Baldwin County  
Bay Minette, Alabama

Dear Mrs. Duck:

I enclose an amendment to the Bill of Complaint in the above styled cause, the effect of which is to strike as parties complainant, Messrs. William W. Pearce and J. H. Posey.

I have mailed copies of the enclosed motion to Messrs. Pearce and Posey and a copy to Mr. J. B. Blackburn, one of the Solicitors for Respondents.

Will you please file the original motion.

Very truly yours,

GAILLARD, GAILLARD & SMITH

By: Hardy B. Smith  
Hardy B. Smith

HBS/wb

EDWARD B. EVANS, ET AL., )

Complainants, )

VS. )

J. O. SIMS, as Mayor of the )  
Town of Gulf Shores, Ala- )  
bama, ET AL., )

Respondents. )

IN THE CIRCUIT COURT OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 4844

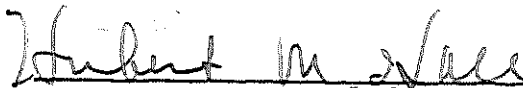
DECREE SUSTAINING DEMURRER

This cause coming on to be heard on this date, which is the date heretofore set for hearing this cause by the order made in this cause on February 9, 1960, is submitted on respondents' demurrer to the complainants' original bill of complaint; upon consideration of all of which it is, therefore, ORDERED, ADJUDGED AND DECREED by the Court as follows:

1. The respondents' demurrer to the complainants' original bill of complaint shall be and it is hereby sustained.

2. The complainants are allowed twenty (20) days from this date to amend their said bill of complaint, if they shall elect so to do.

ORDERED, ADJUDGED AND DECREED on this the 15th day of February, 1960.

  
Judge

*m*  
DECREE SUSTAINING DEMURRER

EDWARD B. EVANS, ET AL.,

Complainants,

VS.

J. O. SIMS, as Mayor of the Town  
of Gulf Shores, Alabama, ET AL.,

Respondents.

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA  
IN EQUITY NO. 4844

EDWARD B. EVANS, ET AL  
Complainants

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA

VS.

J. O. SIMS, as Mayor of  
the Town of Gulf Shores,  
Alabama, ET AL  
Respondents

IN EQUITY NO. 4844

ORDER OF DISMISSAL

A written stipulation having been filed herein by complainants and by respondents providing for the dismissal of the suit by complainants with prejudice, and that the costs herein, including the entry of this order, shall be taxed against the respondents; it is ORDERED, ADJUDGED and DECREED by the Court that the bill of complaint is hereby dismissed with prejudice and that the respondents go hence without day.

It is further ORDERED, ADJUDGED and DECREED by the Court that the costs of Court in this proceeding be taxed against the respondents, The Town of Gulf Shores and J. O. Sims as Mayor of the Town of Gulf Shores, Alabama, and D. L. Hastings, P. L. Armstrong, William C. Crowell, W. Forest Crotwell and Otto Kaemmerer, as Members of the Council of the Town of Gulf Shores, Alabama.

Made and entered into on this 5 day of April, 1960.

Hubert M. Stone  
JUDGE

FILED  
APR 21 1960  
ALICE L. DUCK, CLERK  
REGISTER

Edward B. Evans, Et Als

Complainants

VS:

J. O. Sims as Mayor of the  
Town of Gulf Shores, Alabama,  
Et Als

Respondents

IN THE CIRCUIT COURT OF BALDWIN

COUNTY, ALABAMA

IN EQUITY NO. 4844

Comes Harry H. Smith and withdraws as one of the Solicitors  
for the Complainants in said cause.

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*Harry H. Smith*  
\_\_\_\_\_  
Harry H. Smith

FILED  
1001  
CLERK  
OFFICE



Commencing with the issue dated October 1, 1959, in The Onlooker, a newspaper published at Foley, Alabama, and thereafter each consecutive week, ending with the issue dated October 22, 1959, there was published a legal notice, a copy of which is attached hereto and made a part hereof, and marked "Exhibit B". The said notice purports to set out in detail the Bill to be introduced in the legislature of Alabama and described, by metes and bounds, the area which was proposed to be included in the extended limits in the Town of Gulf Shores. All of this area is shown on "Exhibit A" as "Area B" and "Area E". No other notice of the proposed introduction of the Bill mentioned in said notice was published. When the Act was finally passed, it omitted from the area of the extended limits of the Town of Gulf Shores that portion of the original published description, which is shown on "Exhibit A" as "Area E".

3. The Act was passed as Act Number 492 Regular Session, 1959, the title to which is as follows: "An ACT to alter, rearrange, and extend the boundaries and corporate limits of the Town of Gulf Shores in Baldwin County." The said title clearly indicates that the territory described would become a legal part of the limits of the Town of Gulf Shores upon adoption of the Act. But the said title is misleading and in conflict with the body of the Act in that the territory to be included in the extended limits of the Town of Gulf Shores was not automatically made a part of the Town of Gulf Shores upon the adoption of the Act and the said territory would not become a part of the Town of Gulf Shores unless approved by a majority of the voters in an election to be held in accordance with the body of the Act. The said Act, instead of automatically extending the limits of the Town of Gulf Shores merely provided for an election to determine whether or not the limits should be extended, and in so doing the said Act is vague, uncertain and indefinite in that it provided,

"The notice of the election shall be given by the Probate Judge of Baldwin County, and the election shall be held, conducted and results thereof canvassed in the manner prescribed by Article 2 of Chapter 5 of Title 37, Code of Alabama 1940, for giving notice of and conducting elections on the question of annexing territory to cities of twenty-five thousand or more inhabitants insofar as such provisions of said article may be appropriate."

The complainants charge that the Act does not set out any method or agency by which a determination might be made of which provisions of the said Article 2 of Chapter 5, of Title 37, may be appropriate. The Complainants charge that the said Act is unconstitutional in that it violates the provisions of Article 4, Section 45 of the Constitution of Alabama.

4. Complainants further charge that said Act is unconstitutional in that it violates Section 106 of Article 4 of the Constitution of Alabama, because there was a material change in the description of the territory to be included as set out in the published notice and as finally enacted by the legislature. The omission constituted that property shown on "Exhibit A" hereto attached as "Area E", which was a vital and material omission. The said "Area E" included in the legal notice and excluded in the final passage of the Act consists of approximately Seventy-Three (73) acres of property directly facing the Gulf of Mexico and has thereon Seventy-Three (73) buildings, Fifty-Five (55) of which are valuable dwellings. The total acreage actually annexed and shown as "Area B" on "Exhibit A" is approximately One Thousand Thirteen Hundred and Forty-Eight (1348) acres in extent, of which approximately Four Hundred Sixty-One (461) acres are in a lagoon shown on the map, leaving a total of Eight Hundred Eighty-Seven (887) acres on which buildings could be erected. The omission of "Area E" is based on no reason and in order to accomplish it, a line was drawn down the middle of the paved highway parallel with the Coast of the Gulf of Mexico. The part omitted consisted of water front property with riparian rights and is the most



valuable area per acre of that property included in the area published in the aforementioned notice.

The omission of "Area E" would place a much greater burden on the remaining area actually annexed because the valuable property comprising "Area E", which was omitted, cannot be made to share the burden of the expense of the municipality. There is no basis whatsoever for not requiring the omitted area to share its part of the burden of police protection, fire protection and other benefits it may derive from the extension of the limits of the Town of Gulf Shores.

Because of this material change in the description of the property as final adopted in the Act the said Act is unconstitutional as hereinabove alleged.

5. Complainants show that an election was held to-wit: December 18, 1959, and it is claimed by the respondents that a majority of the qualified voters in "Area B" as shown on "Exhibit A" voted in favor of including said area within the Town limits of the Town of Gulf Shores, Alabama. Complainants, upon information and belief, allege and charge that the said election was not duly held according to law but that following the said election the respondents have undertaken to assume jurisdiction over the said area as a part of the Town of Gulf Shores area for the purpose of assessing license taxes, excise taxes and have otherwise assumed jurisdiction over the property in the said area. Complainants show that the respondents have absolutely no right nor jurisdiction over the said area and that your complainants will be greatly damaged if respondents are permitted to collect license taxes, excise taxes and to otherwise exercise jurisdiction over said area.

PRAYER FOR PROCESS

WHEREFORE, the premises considered, your complainants make J. O. Sims as Mayor of the Town of Gulf Shores, Alabama, and D. L. Hastings, P. L. Armstrong, William C. Crowell, W. Forest Crotwell and Otto Kaemmerer, as Members of the Council of the

Town of Gulf Shores, Alabama, parties respondent to this Bill of Complaint and complainants respectfully pray that due process shall be issued to them and each of them in accordance with the rules and practices of this Honorable Court, requiring them and each of them to answer, plead or demur to this Bill of Complaint within the time and in the manner required by law and the rules of this Honorable Court.

PRAYER FOR RELIEF

Your complainants further respectfully pray that upon a presentation of this Bill of Complaint the Court will grant a temporary injunction enjoining each and every one of the respondents from asserting or exercising any jurisdiction over the area annexed, and as officers of the Town of Gulf Shores, over the area purported to be included within the limits of the Town of Gulf Shores by virtue of the Act hereinabove set out, and that upon a hearing of this cause a final decree shall be entered declaring the said Act unconstitutional and permanently enjoining the respondents and each and every one of them from asserting and exercising any jurisdiction as such officers of the Town of Gulf Shores over the said area. Your complainants further pray for such other further different and additional relief as may be just and proper, the premises considered.

Edward B. Evans  
Edward B. Evans

STATE OF ALABAMA )  
(  
COUNTY OF BALDWIN )

Before me, the undersigned, a Notary Public, in and for the State of Alabama at large, personally appeared Edward B. Evans, one of

the complainants in the foregoing Bill of Complaint, who is known to me and who being by first duly sworn, deposes and says that he has read the foregoing Bill of Complaint and that the allegations therein contained are true and correct.

Edward B. Evans  
Edward B. Evans

Subscribed and sworn to before me this the 9 day of February 1960

Hardy B. Smith  
Notary Public State of Alabama at Large

HARRY H. SMITH and  
GAILLARD, GAILLARD & SMITH  
Solicitors for the Complainants

Hardy B. Smith  
Hardy B. Smith

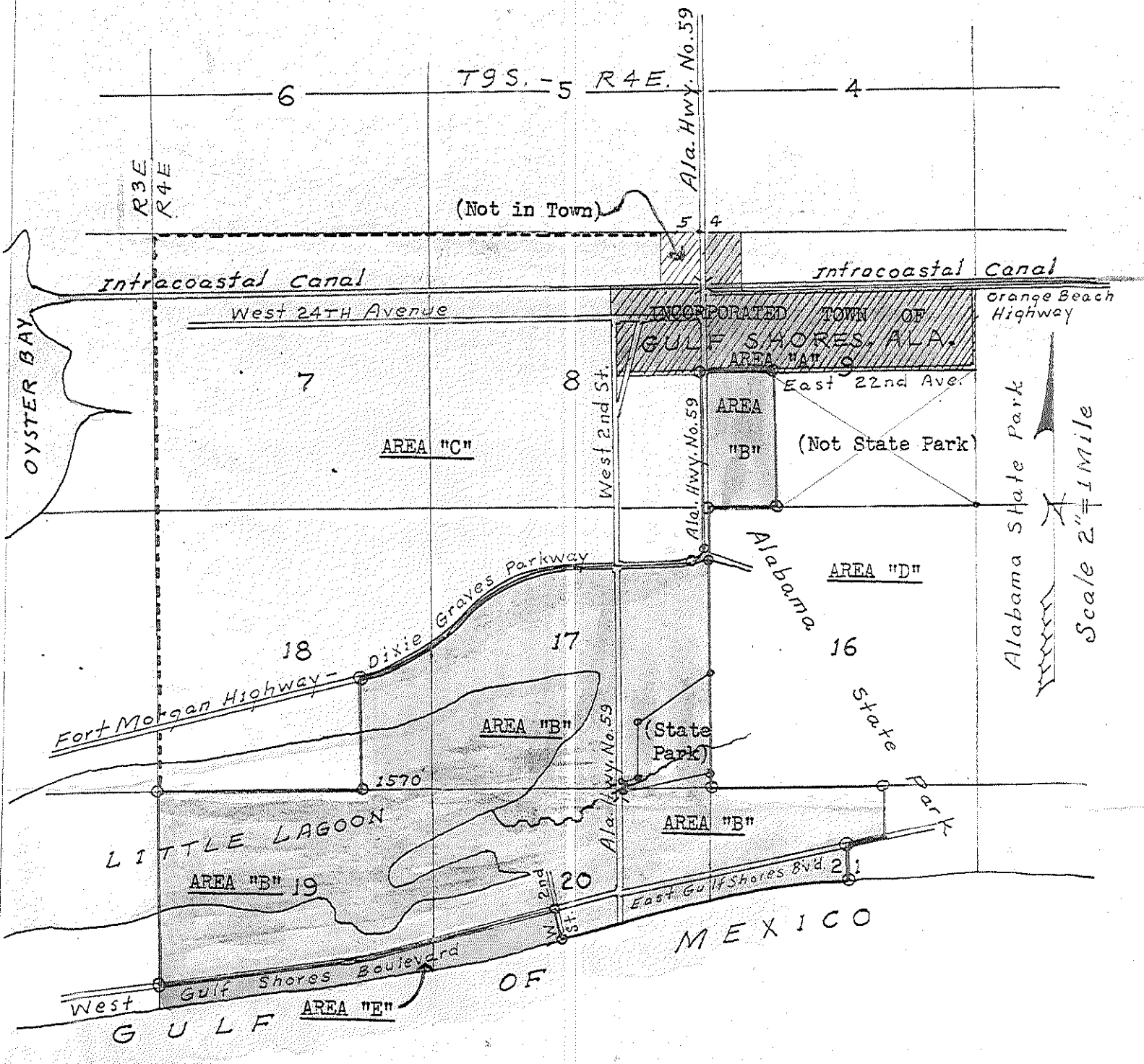
The foregoing petition for a temporary injunction, pending a final hearing of this cause, having been presented to me for fiat and the Court being of the opinion that no substantial injury is likely to result to complainants from delay, it is ORDERED, ADJUDGED and DECREED by the Court that the application for a temporary injunction be and the same is hereby set down for a hearing on the 15 day of February, 1960, at Council Bluffs, Iowa at 9 A.M.

It is further ORDERED, ADJUDGED and DECREED by the Court that notice of the time and place reported for hearing of the application be given the respondents named therein, such notice to be given them at least three days prior to the hearing of the application, and that they be served with a copy of the Bill of Complaint.

ORDERED, ADJUDGED and DECREED by the Court this the 9 day of February, 1960.

Hubert M. Hall  
Hubert M. Hall  
Circuit Judge.

EXHIBIT "A"



PLAT OF GULF SHORES, BALDWIN COUNTY, ALABAMA  
TOWNSHIP 9 SOUTH, RANGE 4 EAST

Scale 2 inches : 1 mile

Certified correct this the 13th day of Jan., 1960

*G.B. Allen*  
Surveyor, Ala. Reg. No. 1326  
Rte. 1, Box 204, Elberta, Ala.

- |          |   |          |                            |
|----------|---|----------|----------------------------|
| AREA "A" | Incorporated Town of Gulf Shores, Alabama                                   | AREA "C" | Rejected area, as in Map 1 |
| AREA "B" | Annexation Area defined in Senate-amended Bill enacted without advertising. | AREA "D" | State Park Land            |
|          |   | AREA "E" | Omitted in enacted Bill    |

SUMMONS AND COMPLAINT

MOORE PRINTING COMPANY - BAY MINETTE, ALA.

The State of Alabama,  
Baldwin County.

Circuit Court, Baldwin County

No. 4176

TERM, 19

TO ANY SHERIFF OF THE STATE OF ALABAMA

You Are Commanded to Summon J.O. Sims as Mayor of the Town of Gulf Shores,  
Alabama, et als

to appear and plead, answer or demur, within thirty days from the service hereof, to the complaint filed in  
the Circuit Court of Baldwin County, State of Alabama, at Bay Minette, against J.O. SIMS,  
as Mayor of the Town of Gulf Shores, Alabama, et als, Defendant  
by Edward R. Evans, et als

Witness my hand this 9th day of February 1960, Plaintiff

[Signature], Clerk

**STATE of ALABAMA**

Baldwin County

**CIRCUIT COURT**

EDWARD B. EVANS, et als

Plaintiffs

vs.

J.O. SIMS, as Mayor of the Town

of Gulf Shores, Alabama, et als  
Defendants

**Summons and Complaint**

Filed February 9, 1960

Alice J. Duck Clerk

Plaintiff's Attorney

Defendant's Attorney

Defendant lives at

Received In Office

Feb. 9, 1960

Sheriff.

I have executed this summons

this Feb 10 1960

by leaving a copy with

J.O. Sims  
D. L. Hastings  
J. G. Armstrong  
Wm. C. Crowell  
W. Forest Crowell  
Otto Summers

Sheriff claims 600 miles at

Ten Cents per mile Total \$ 60.00

TAYLOR WILKINS, Sheriff

BY Taylor Wilkins  
DEPUTY SHERIFF

Taylor Wilkins Sheriff.

Barbils Duck Deputy Sheriff.

Gulf Shores

EDWARD B. EVANS, ET AL.,	)	
Complainants,	)	
VS.	)	IN THE CIRCUIT COURT OF
	)	BALDWIN COUNTY, ALABAMA
J. O. SIMS, as Mayor of	)	
the Town of Gulf Shores,	)	IN EQUITY NO. 4844
Alabama, ET AL.,	)	
Respondents.	)	

DEMURRER TO ORIGINAL BILL OF COMPLAINT  
I.

Now come the respondents and each of the respondents, separately, and demur to the original bill of complaint that has been filed against them in this cause, and as grounds of such demurrer assign, separately and severally, the following:

1. There is no equity in the bill of complaint.
2. No facts are alleged on which the relief sought can be granted.
3. It affirmatively appears that the complainants have an adequate remedy at law.
4. No facts are alleged to show any right on the part of the complainants to prosecute this action.
5. No facts are alleged to show any right on the part of any of the complainants to prosecute this action.
6. The allegations of the bill of complaint are conclusions of the pleader.
7. The allegations of the bill of complaint are vague, indefinite and uncertain.
8. No facts are alleged to show that the complainants, or any of them, have any right to question the validity of the election described in the bill of complaint.
9. No facts are alleged to show that the complainants, or any of them, have any right to <sup>question</sup>~~consider~~ the validity of the election described in the bill of complaint at this time.
10. No facts are alleged to show that the complainants, or any of them, have any right to question the validity of the election described in the bill of complaint in the manner set out in the said bill of complaint.

11. The allegations of the bill of complaint are vague, indefinite and uncertain and no facts are alleged to show any injury to the complainants, or any of them.

12. The allegations of the bill of complaint are vague, indefinite and uncertain and no facts are alleged to show where the complainants or any of them reside.

13. No facts are alleged to show that the complainants or any of them reside within the area which they allege was improperly annexed to the Town of Gulf Shores, Alabama, a municipal corporation.

14. The allegations of the bill of complaint are conclusions of the pleader and no facts are alleged to show that the Legislative Act described in the bill of complaint is unconstitutional.

15. It affirmatively appears that the complainants do not come into this court of equity with clean hands.

16. The complainants seek relief against the Town of Gulf Shores, Alabama, a municipal corporation, without making it a party to this action.

17. It affirmatively appears that the Town of Gulf Shores, Alabama, a municipal corporation, is a necessary party to this action.

18. It affirmatively appears that the Town of Gulf Shores, Alabama, a municipal corporation, is an indispensable party to this action.

19. No facts are alleged to show that the acts complained of will result in irreparable damage to the complainants.

20. No facts are alleged to show that the acts complained of will result in irreparable damage to any of the complainants.

21. It is multifarious.

22. It affirmatively appears that the writ of injunction or restraining order which is sought in this cause would interfere with the rights of the Town of Gulf Shores, Alabama, a municipal corporation, and it is not made a party to this action.



23. No facts are alleged to show that the election referred to in the bill of complaint was not duly held according to law.

24. No facts are alleged to show that the acts complained of will interfere with the conduct of business or other property rights of the complainants or any of them.

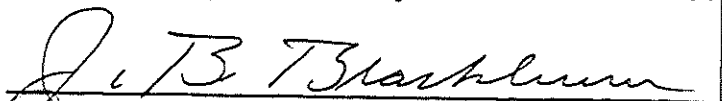
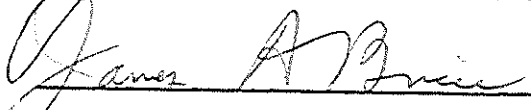
25. No facts are alleged to show that the acts complained of will irreparably injure the complainants or any of them.

II.

Now come the respondents and each of the respondents, separately, and demur to that aspect of the original bill of complaint by which the complainants seek a temporary injunction enjoining each and every one of the respondents from asserting or exercising any jurisdiction over the area annexed and as officers of the Town of Gulf Shores over the area purported to be included within the limits of the Town of Gulf Shores by virtue of the Legislative Act set out in the bill of complaint, and as grounds of such demurrer assign, separately and severally, grounds numbered 1 through 25, both inclusive, just as though each of the said grounds was specifically rewritten here.

III.

Now come the respondents and each of the respondents, separately, and demur to that aspect of the original bill of complaint in which the complainants are seeking to have the Legislative Act described in the said bill of complaint declared unconstitutional, and as grounds of such demurrer assign, separately and severally, grounds numbered 1 through 25, both inclusive, just as though each of the said grounds was specifically rewritten here.

  
  
Attorneys for respondents

EDWARD B. EVANS, ET AL,  
Complainants,

) IN THE CIRCUIT COURT OF  
) BALDWIN COUNTY, ALABAMA

VS.

) IN EQUITY

J. O. SIMS, as Mayor of the  
Town of Gulf Shores, Alabama,  
et al,

) NO. 4844  
)  
)  
)

Respondents.

AMENDED BILL OF COMPLAINT

TO THE HONORABLE HUBERT M. HALL, JUDGE OF SAID COURT, IN EQUITY SITTING:

Now come the Complainants in the above styled cause and amend their Bill of Complaint heretofore filed by adding thereto as party respondent, The Town of Gulf Shores, Alabama, it being the municipal corporation of which the other parties respondent are Mayor and Council Members respectively, and which municipal corporation claims to exercise jurisdiction and control over the area described in Exhibit "A" attached to the original Bill as Area "B".

GAILLARD, GAILLARD & SMITH  
Solicitors for Complainants

*Hardy B. Smith*  
Hardy B. Smith

Service accepted on behalf of the Town of Gulf Shores, Alabama and J. O. Sims, W. Forest Crotwell, D. L. Hastings, P. L. Armstrong, William C. Crowell and Otto Kaemmerer

*J. B. Blackburn*  
J. B. BLACKBURN  
Solicitor for Respondents *James A. Brice*

FILED

MAR 4 1960

ALICE J. DUCK, Register

248

EDWARD B. EVANS, ET AL.,  
 Complainants,

- VS -

J. O. SIMS, as Mayor of  
 the Town of Gulf Shores,  
 Alabama, ET AL.,

Respondents

) IN THE CIRCUIT COURT OF  
 )  
 ) BALDWIN COUNTY, ALABAMA  
 )  
 )  
 )

) IN EQUITY NO. 4844  
 )

Now comes Hardy B. Smith, one of the Solicitors of Record for the Complainants in the above styled cause and amends the Bill of Complaint heretofore filed in the above styled cause, as amended, by striking therefrom as parties complainant William W. Pearce and J. H. Posey. Your movant shows unto the Court that he filed this motion at the particular instance and request of the aforesaid William W. Pearce and J. H. Posey.

Your movant prays that this Court will relieve these parties from any responsibility for the payment of any costs arising out of this proceeding.

GAILLARD, GAILLARD & SMITH  
 Solicitors for Complainants

By: Hardy B. Smith  
 Hardy B. Smith

**FILED**  
 MAR 14 1960  
 ALICE J. DUCK, CLERK REGISTER

