

Preclearance of a Last-Minute Ballot Disqualification

Connors v. Bennett

(W. Harold Albritton, M.D. Ala. 2:02-cv-482)

A state party chair filed a federal action challenging a state-court order restoring a candidate to a primary-election ballot as a change in voting practices requiring preclearance pursuant to section 5 of the Voting Rights Act. The party excluded the candidate because of a finding concerning the candidate's residency, but the state court restored the candidate to the ballot. The federal court ordered service of the complaint on the candidate to afford him an opportunity to intervene. The federal court ruled against the plaintiff, finding a customary practice of last-minute changes to ballot certifications to correct clerical errors and to accommodate voluntary withdrawals, but not to effect contested disqualifications.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; intervention; section 5 preclearance; three-judge court; primary election; matters for state courts.

On April 29, 2002, the executive-committee chair of Alabama's Republican Party filed a federal action in the Middle District of Alabama challenging a state-court order restoring a candidate to the June 4 primary-election ballot as a change in voting practices requiring preclearance pursuant to section 5 of the Voting Rights Act.¹ After the chair submitted names for the ballot, he determined that one candidate was not eligible for the ballot because of the candidate's residency, but the state judge ordered the candidate's name restored to the ballot because it had been removed too late.² With his complaint, the chair filed a motion for a temporary restraining order and a preliminary injunction.³

On April 30, the circuit's chief judge designated a three-judge district court to hear the section 5 claim originally assigned to Judge W. Harold Al-

1. Complaint, *Connors v. Bennett*, No. 2:02-cv-482 (M.D. Ala. Apr. 29, 2002), D.E. 1; *Connors v. Bennett*, 202 F. Supp. 2d 1308, 1310 (M.D. Ala. 2002); see Amended Complaint, *Connors*, No. 2:02-cv-482 (M.D. Ala. May 14, 2002), D.E. 44 (adding a voter as a plaintiff); see also Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, as amended, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge district court); Malcomb Daniels, *State GOP Files Suits to Contest Flowers Run*, Birmingham News, May 1, 2002, at 2.

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).

2. *Connors*, 202 F. Supp. 2d at 1310-14; see Malcomb Daniels, *Flowers Back on Ballot for Senate*, Birmingham News, Apr. 24, 2002, at 1; Malcomb Daniels, *GOP Boots 3 Out of Primary: Reasons Include Fee Payment, Residency*, Birmingham News, Apr. 16, 2002, at 1.

3. Motion, *Connors*, No. 2:02-cv-482 (M.D. Ala. Apr. 29, 2002), D.E. 2.

britton.⁴ Added to the court were local Judge Myron H. Thompson and Atlanta Circuit Judge Frank M. Hull.⁵ Judge Hull attended the case's hearing in person in Montgomery and otherwise worked with the other judges by telephone.⁶ Because this case occurred before the prevalence of electronic filing, parties submitted all filings to each judge.⁷

On May 1, the three-judge court denied the chair a temporary restraining order, set trial on the action's merits for May 14, and ordered service of the complaint on the candidate to afford him an opportunity to intervene.⁸ The schedule accommodated the parties' agreed time needs for discovery.⁹ On the following day, the candidate moved to intervene.¹⁰ The court granted intervention on May 8.¹¹

At the May 14 hearing, some evidentiary issues were resolved by an agreed stipulation of facts based on a stipulation of facts proposed by the court.¹² After the hearing, the court ruled in favor of the defendants, issuing a published opinion three days later.¹³ The court found a customary practice of last-minute changes to ballot certifications to correct clerical errors and to accommodate voluntary withdrawals, but not to effect contested disqualifications, so the state court's decision was not a change in law requiring section 5 preclearance.¹⁴

On June 4, the candidate came in third in the primary election.¹⁵

4. Designation Order, *id.* (Apr. 30, 2002), D.E. 3.

Tim Reagan interviewed Judge Albritton for this report by telephone on June 18, 2013.

5. Designation Order, *supra* note 4.

6. Interview with Hon. W. Harold Albritton, June 18, 2013.

7. *Id.*

8. Order, *Connors*, No. 2:02-cv-482 (M.D. Ala. May 1, 2002), D.E. 5; *see* Malcomb Daniels, *Court Denies GOP's Request to Oust Flowers*, Birmingham News, May 2, 2002, at 6.

9. Interview with Hon. W. Harold Albritton, June 18, 2013.

10. Intervention Motion, *Connors*, No. 2:02-cv-482 (M.D. Ala. May 2, 2002), D.E. 9.

11. Order, *id.* (May 8, 2002), D.E. 24.

12. Interview with Hon. W. Harold Albritton, June 18, 2013.

13. *Connors v. Bennett*, 202 F. Supp. 2d 1308, 1310 (M.D. Ala. 2002); *see* Malcomb Daniels, *Judges Say Flowers May Stay on Ballot*, Birmingham News, May 15, 2002, at 3.

14. *Connors*, 202 F. Supp. 2d at 1314–21.

15. *See* Malcomb Daniels, *Erwin, Murphy in GOP Runoff for Senate Seat*, Birmingham News, June 5, 2002, at 5 (reporting that the candidate received 4,663 votes, the two leaders received 6,756 and 5,034 votes, respectively, and a fourth candidate received 705 votes).