Customary Right of Appointment

Holley v. City of Roanoke
(W. Harold Albritton, M.D. Ala. 3:01-cv-775)

A federal complaint challenged a refusal by a city council to reappoint a board-of-education member in violation of a customary practice in which each member of the council named the board member for the council member's district. A three-judge district court was appointed to hear a claim that the alleged change in practice violated section 5 of the Voting Rights Act. After a hearing, the court dismissed the section 5 claim because it concerned appointment rather than voting. The original district judge dismissed other claims because the evidence was that the deviation from custom was motivated by policy disagreements rather than by race. A remaining claim was dismissed voluntarily.

Subject: Voting irregularities. *Topics:* Section 5 preclearance; three-judge court; equal protection.

On June 25, 2001, plaintiffs filed a federal challenge in the Middle District of Alabama to a refusal by Roanoke's city council to reappoint Cheryl Sims to the city's board of education in violation of a customary practice in which each member of the council named the board member for the council member's district.[1] The plaintiffs were Sims, the council member who selected her, the county commissioner whose district included the board-of-education district at issue, and three additional voters.[2] The defendants were the city, its mayor, and the three council members who voted to block Sims's reappointment.[3] With their complaint, the plaintiffs filed a motion for a temporary restraining order, a preliminary injunction, and the designation of a three-judge district court to decide their claim that the change in procedure violated section 5 of the Voting Rights Act.[4]

On July 2, at the request of Judge W. Harold Albritton, the circuit's chief judge designated a three-judge court.[5] Added to the court were local Judge

1. Complaint, Holley v. City of Roanoke, No. 3:01-cv-775 (M.D. Ala. June 25, 2001), D.E. 1; Holley v. City of Roanoke, 162 F. Supp. 2d 1335, 1337 (M.D. Ala. 2001).

2. Complaint, *supra* note 1, at 5; *Holley*, 162 F. Supp. 2d at 1338; Holley v. City of Roanoke, 149 F. Supp. 2d 1310, 1312 (M.D. Ala. 2001).

3. Complaint, *supra* note 1, at 5–6; *Holley*, 162 F. Supp. 2d at 1338; *Holley*, 149 F. Supp. 2d at 1312.

4. Motion, *Holley*, No. 3:01-cv-775 (M.D. Ala. June 25, 2001), D.E. 2; *see* 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).

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).

5. Designation Order, *Holley*, No. 3:01-cv-775 (M.D. Ala. July 2, 2001), D.E. 11.

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

Myron H. Thompson and Tampa Circuit Judge Charles R. Wilson.[6] That same day, Judge Albritton set the matter for hearing on July 11.[7]

On July 3, however, the three-judge court ordered the parties to brief the court by July 9 on whether section 5 applied to the case so that the court could determine whether to proceed with a hearing before the three-judge court.[8] After briefing, including on the defendants' motion to dismiss the action, the three-judge court decided to proceed with a two-day hearing beginning on July 11.[9] Judge Wilson traveled to Montgomery for the hearing.[10] On July 12, the court dismissed the section 5 claim because the allegations concerned appointment rather than voting.[11]

On July 16, Judge Albritton denied the plaintiffs immediate injunctive relief, finding that the plaintiffs' "evidence, unchallenged and taken as true for purposes of this motion, tends to show not that the Defendants changed any existing practice because of [the council member's] race, but rather because they disagreed with Plaintiff Sims' vocal support of continued federal court supervision over the Roanoke City School System."[12] Judge Albritton also declined jurisdiction over the plaintiff's state claims, finding that "these claims raise complex issues of state law."[13]

After additional briefing, Judge Albritton dismissed, on September 21, many of the plaintiffs' claims, but he declined to dismiss a claim against the city for a possible unconstitutional deviation from the custom of allowing each council member to select one member of the board of education.[14]

On January 24, 2002, Judge Albritton granted the plaintiffs a voluntary dismissal.[15]

6. Designation Order, *supra* note 5.

7. Order, *Holley*, No. 3:01-cv-775 (M.D. Ala. July 2, 2001), D.E. 12.

8. Order, *id.* (July 3, 2001), D.E. 13.

9. Order, *id.* (July 9, 2001), D.E. 19; Minutes, *id.* (July 24, 2001), D.E. 26 (single-judge hearing); Minutes, *id.* (July 24, 2001), D.E. 25 (three-judge hearing).

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

11. Holley v. City of Roanoke, 149 F. Supp. 2d 1310 (M.D. Ala. 2001); Holley v. City of Roanoke, 162 F. Supp. 2d 1335, 1337 (M.D. Ala. 2001).

12. Opinion, *Holley*, No. 3:01-cv-775 (M.D. Ala. July 16, 2001), D.E. 24.

13. Order, *id.* (July 16, 2001), D.E. 23; *see Holley*, 162 F. Supp. 2d at 1337.

14. *Holley*, 162 F. Supp. 2d at 1342–43.

15. Order, *Holley*, No. 3:01-cv-775 (M.D. Ala. Jan. 24, 2002), D.E. 37.