

## Including a Nickname on the Ballot

*House v. Alabama Republican Party*  
(*R. David Proctor, N.D. Ala. 2:04-cv-703*)

Chris “The Teacher” House filed a pro se federal complaint because a political party would not include his nickname on the primary-election ballot for state board of education. Among the claims was that the party’s refusal to do so amounted to an election change requiring preclearance pursuant to section 5 of the Voting Rights Act because it had listed his nickname before. The Justice Department declared that it had no objection to the exclusion of nicknames, so the section 5 claim was dismissed. The district judge temporarily enjoined printing of the ballots while he considered the case. On consideration, he dismissed the federal claims with prejudice and the state claims without prejudice.

*Subject:* Voting procedures. *Topics:* Primary election; pro se party; section 5 preclearance; matters for state courts.

Chris “The Teacher” House filed a pro se federal complaint in the Northern District of Alabama on April 6, 2004, complaining that the Republican Party was not including his nickname on the June 1 primary-election ballot for state board of education.<sup>1</sup> Among the claims was that because the party had listed his nickname before, its refusal to do so amounted to an election change requiring preclearance pursuant to section 5 of the Voting Rights Act.<sup>2</sup> With his complaint, which he styled as a petition for a writ of mandamus,<sup>3</sup> the plaintiff filed a motion for a temporary restraining order.<sup>4</sup>

At Judge R. David Proctor’s request, the circuit’s chief judge appointed a three-judge district court to hear the complaint.<sup>5</sup> On April 13, Judge Proctor ordered a chambers conference for April 16 and an evidentiary hearing for April 21, and he ordered the parties to meet to discuss stipulations.<sup>6</sup> Judge Proctor wanted to make sure that proceedings would permit the matter to be resolved in time for the printing of the ballots.<sup>7</sup>

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1. Complaint, *House v. Ala. Republican Party*, No. 2:04-cv-703 (N.D. Ala. Apr. 6, 2004), D.E. 1.

2. *Id.* at 1, 3–6, 10; *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).

3. Complaint, *supra* note 1.

4. Temporary-Restraining-Order Motion, *House*, No. 2:04-cv-703 (N.D. Ala. Apr. 6, 2004), D.E. 2.

5. Order, *id.* (Apr. 12, 2004), D.E. 6.

Tim Reagan interviewed Judge Proctor for this report by telephone on May 13, 2013.

6. Order, *House*, No. 2:04-cv-703 (N.D. Ala. Apr. 13, 2004), D.E. 7.

7. Interview with Hon. R. David Proctor, May 13, 2013.

On April 16, the Justice Department declared that it had no objection to the exclusion of nicknames on the primary-election ballot.<sup>8</sup> Following telephone conferences on April 19 with Judge Proctor on behalf of the three-judge court, the section 5 claim was dismissed without prejudice.<sup>9</sup>

On April 21, Judge Proctor enjoined printing of the primary election ballots until further order.<sup>10</sup> Following an April 22 hearing, Judge Proctor dismissed the plaintiff's remaining federal due process claim with prejudice and dismissed the plaintiff's state claims without prejudice.<sup>11</sup>

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8. Stipulations, *House*, No. 2:04-cv-703 (N.D. Ala. Apr. 19, 2004), D.E. 12.

9. Order, *id.* (Apr. 19, 2004), D.E. 10.

10. Order, *id.* (Apr. 21, 2004), D.E. 13; see Val Walton, *Judges to Decide if Candidate's Nickname Should Be on Ballot*, Birmingham News, Apr. 22, 2004, at 2.

11. Order, *House*, No. 2:04-cv-703 (N.D. Ala. Apr. 23, 2004), D.E. 23; see Val Walton, *Judge Rules Against "The Teacher" on Ballot*, Birmingham News, Apr. 23, 2004, at 5 (reporting that Judge Proctor "found, among other things, that Chris House did not present sufficient evidence to show that he is commonly known in the community as 'The Teacher.'").