Validity of a Local Special Election

Powell v. Alabama

(L. Scott Coogler, N.D. Ala. 2:08-cv-1345)

On July 29, 2008, Doris Powell, an Alabama voter in Jefferson County's Commission District 1, filed a federal action in the Northern District of Alabama concerning who had been named District 1's commissioner after the previous commissioner was elected mayor of Birmingham in October 2007.[1] Alabama's supreme court had determined, on June 30, that the governor's November 21, 2007, appointee, was the commissioner.[2] The federal plaintiff wanted the winner of a February 5, 2008, special election, held the same day as the federal primaries, to be the commissioner.[3]

Alabama's supreme court reasoned that Act No. 784, the statute enacted in 1977 to permit Jefferson County to fill commission vacancies by special election, was invalid.[4] A more general statute, section 11-3-1(b), specified gubernatorial appointment until the next general election.[5] The general statute was amended in 2004 to apply "[u]nless a local law authorizes a special election."[6] Alabama's supreme court, however, had determined in 2005 that the amendment allowed for only subsequently enacted local laws.[7] In addition, a 2007 amendment repealing any local laws in conflict with the general law further invalidated Act No. 784.[8]

On May 27, 2008, the U.S. Supreme Court had determined that a 1985 statute providing for special elections to replace vacancies in another county—on Mobile County's commission—was never in force or effect, because Alabama's supreme court had determined that the 2004 authorization of such statutes was prospective only.[9]

Powell's action in the Northern District was preceded by an action filed on November 16, 2007, in the Middle District.[10] In possible conflict with how the Supreme Court would later decide the issue, a three-judge Middle District court held on January 22, 2008, that a gubernatorial appointment in light of a statute calling for a special election required preclearance under section 5 of the Voting

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1. Complaint, Powell v. Alabama, No. 2:08-cv-1345 (N.D. Ala. July 29, 2008), D.E. 1 [hereinafter *Powell* Complaint]; *see* Eric Velasco, *Lawsuit Seeks to Block Vote to Fill District 1 Seat*, Birmingham News, July 30, 2008, at 1B.

2. Working v. Jefferson Cnty. Election Comm'n, 2 So. 3d 827 (Ala. 2008); *see* Barnett Wright, *Court Says Bowman Gets Commission Seat*, Birmingham News, July 1, 2008, at 1A.

3. *Powell* Complaint, *supra* note 1.

4. *Working*, 2 So. 2d at 838–42.

5. *Id.* at 829 n.2, 838–41.

6. *Id.* at 829 n.2, 839.

7. Riley v. Kennedy, 928 So. 2d 1013 (Ala. 2008); *Working*, 2 So. 2d at 839–40.

8. *Working*, 2 So. 2d at 840–41.

9. Riley v. Kennedy, 553 U.S. 406, 411, 420–22 (2008); *see* Mary Orndorff, *Riley Upheld in Mobile Case*, Birmingham News, May 28, 2008, at 1B.

10. Complaint, Plump v. Riley, No. 2:07-cv-1014 (M.D. Ala. Nov. 16, 2007), D.E. 1; *see* Dan Murtaugh, *Riley Appointment Faces Challenge*, Mobile Register, Nov. 22, 2007, at A4; Barnett Wright, *Riley Picks Ex-General to Replace Langford*, Birmingham News, Nov. 22, 2007, at 1A.

Rights Act.[11] In the Northern District action, Powell claimed that the invalidation of Act No. 784 was not operable because the invalidation had received section 5 preclearance.[12]

The Northern District's court first assigned its case to Judge James H. Hancock, but he exercised his senior-judge privilege and recused himself.[13] The court reassigned the case to Judge L. Scott Coogler minutes later.[14]

Two days after she filed the complaint, the plaintiff moved for a Rule 16 status conference to expedite the case.[15] On the day after that, Judge Coogler set a status hearing for five days later.[16] Judge Coogler granted the plaintiff's motion for the empaneling of a three-judge court,[17] and the circuit's chief judge appointed the court on August 15, 2008.[18]

On August 27, the three-judge court denied Alabama's motion to dismiss the case.[19] At the three-judge court's direction, Judge Coogler conducted a status conference on September 3.[20] The plaintiff voluntarily dismissed the action on September 5 because the winner of the special election was the only candidate on the ballot for the November 4, 2008, general election.[21] The governor's choice failed to obtain enough signatures to qualify.[22]

Because events mooted the plaintiff's concerns, the three-judge court never had to assemble in person, but they did meet by telephone.[23]

The action in the Middle District was settled on October 29, 2009.[24]

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11. Opinion, *Plump*, No. 2:07-cv-1014 (M.D. Ala. Jan. 22), D.E. 28, *appeal dismissed*, 555 U.S. 801 (2008), *and vacated on settlement*, Order, *Plump*, No. 2:07-cv-1014 (M.D. Ala. Oct. 28, 2009), D.E. 78; *see* Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2010); *see also* Val Walton & Erin Stock, *Riley's Selection Needed OK, Judges Say*, Birmingham News, Jan. 23, 2008, at 1A.

12. *Powell* Complaint, *supra* note 1.

13. Recusal Order, Powell v. Alabama, No. 2:08-cv-1345 (N.D. Ala. July 31, 2008), D.E. 4; Transcript at 3, *id.* (Sept. 3, 2008, filed Sept. 3, 2008), D.E. 37; Interview with Hon. L. Scott Coogler, Apr. 27, 2012.

14. Docket Sheet, *id.* (July 29, 2008); *see* Eric Velasco, *Speed on Commission Seat Lawsuit Requested*, Birmingham News, Aug. 1, 2008, at 2C.

Tim Reagan interviewed Judge Coogler for this report by telephone on April 27, 2012.

15. Rule 16 Motion, *Powell*, No. 2:08-cv-1345 (N.D. Ala. July 31, 2008), D.E. 5; *see* Velasco, *supra* note 14.

16. Order, *Powell*, No. 2:08-cv-1345 (N.D. Ala. Aug. 1, 2008), D.E. 6 (noting that the hearing would be held in a courtroom with a court reporter).

17. *See* Joseph D. Bryant, *Federal Panel to Hear District 1 Lawsuit*, Birmingham News, Aug. 7, 2008, at 4B.

18. Order, *Powell*, No. 2:08-cv-1345 (N.D. Ala. Aug. 15, 2008), D.E. 15.

19. Order, *id.* (Aug. 27, 2008), D.E. 35.

20. Transcript, *supra* note 13, at 3.

21. Motion to Dismiss, *Powell*, No. 2:08-cv-1345 (N.D. Ala. Sept. 5, 2008), D.E. 39; *see* Order, *id.* (Sept. 5, 2008), D.E. 41 (granting the motion to dismiss); *see* Eric Velasco, *Lawsuit Over Election Dropped*, Birmingham News, Sept. 6, 2008, at 1D.

22. *See* Erin Stock, *Bowman Is Ruled Ineligible for Ballot*, Birmingham News, Aug. 30, 2008, at 1D.

23. Interview with Hon. L. Scott Coogler, Apr. 27, 2012.

24. Final Judgment, Plump v. Riley, No. 2:07-cv-1014 (M.D. Ala. Oct. 30, 2009), D.E. 80; Stipulation, *id.* (Oct. 29, 2009), D.E. 79.