

Crossover Votes

Foster v. Salaam (Ira De Ment, M.D. Ala. 2:02-cv-1093)

Three months after a June 25, 2002, runoff primary election for Democratic nominee for a seat in Alabama's house of representatives, 14 voters filed a federal complaint against the declared winner and the Democratic Party claiming that Republicans were improperly permitted to vote in the election.¹ The complaint included a motion for a preliminary injunction against certification of the winner of the runoff.² The complaint also included a claim that the primary runoff procedures had not been cleared pursuant to section 5 of the Voting Rights Act.³ Five days later, the plaintiffs filed a motion to stay the November 5 election for the house seat in dispute.⁴ On October 15, Judge Ira De Ment granted the plaintiffs' motion to add Alabama's secretary of state and a probate judge as defendants.⁵

On October 2, Judge De Ment set the matter for hearing on October 17.⁶ On October 9, Judge De Ment ruled that the plaintiffs had not stated a section 5 claim requiring the empaneling of a three-judge court to hear it: "There is no allegation that the Alabama Democratic Party has instituted a new procedure, practice or party rule; rather, the Complaint contains accusations that the Alabama Democratic Party violated Alabama election laws that already have received preclearance."⁷ Following the hearing, Judge De Ment granted the plaintiffs' motion to voluntarily dismiss their complaint without prejudice to seek relief in state court.⁸

The defendant candidate was elected to Alabama's house in November.⁹

1. [Complaint](#), *Foster v. Salaam*, No. 2:02-cv-1093 (M.D. Ala. Sept. 25, 2002), D.E. 1.

2. *Id.* at 10, 11, 13, 14; [Docket Sheet](#), *Foster*, No. 2:02-cv-1093 (M.D. Ala. Sept. 25, 2002).

3. [Complaint](#), *supra* note 1, at 8–10; *see* Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (2012) (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 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 Cnty. v. Holder](#), 570 U.S. ___, 133 S. Ct. 2612 (2013); *see* Robert Barnes, *Court Blocks Key Part of Voting Rights Act*, Wash. Post, June 26, 2013, at A1; Adam Liptak, *Justices Void Oversight of States, Issue at Heart of Voting Rights Act*, N.Y. Times, June 26, 2013, at A1.

4. [Motion](#), *Foster*, No. 2:02-cv-1093 (M.D. Ala. Sept. 30, 2002), D.E. 2.

5. [Order](#), *id.* (Oct. 15, 2002), D.E. 18.

6. [Order](#), *id.* (Oct. 2, 2002), D.E. 5; [Minutes](#), *id.* (Oct. 17, 2002), D.E. 32.

7. [Opinion](#) at 8, *id.* (Oct. 9, 2002), D.E. 10.

8. [Order](#), *id.* (Oct. 22, 2002), D.E. 36; *see* *Defeated Candidate Denied Relief*, Montgomery Advertiser, Oct. 23, 2002, at C3.

9. *See* *Clash Breaks Out at Polls*, Montgomery Advertiser, Nov. 6, 2002, at B1.