

Preclearance of a Last-Minute Ballot Disqualification

Connors v. Bennett

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

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 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 primary ballot, he determined that a 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.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 court to hear the section 5 claim originally assigned to Judge W. Harold Albritton.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 com-

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*, 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); 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 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.

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.

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.*

plaint 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.¹⁴

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

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); Malcomb Daniels, *Judges Say Flowers May State 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).