

## Challenge to Removal from Ballot

*Singleton v. Alabama Democratic Party*  
(Mark E. Fuller, M.D. Ala. 2:04-cv-1027)

One week before the 2004 general election, a Democratic candidate for trial judge in Alabama's district courts filed a federal action to have her name restored to the ballot.<sup>1</sup> The candidate's name was removed as a result of state court action arising from a challenge based on her contributing \$150 to the Republican incumbent.<sup>2</sup> The federal complaint, which also included two voters as plaintiffs, included an application for a temporary restraining order against proceeding with the election for the office.<sup>3</sup> Judge Mark E. Fuller denied the application the day it was filed, because the plaintiffs had not provided notice to the defendants.<sup>4</sup>

On October 28, after the plaintiffs had provided the defendants with notice, Judge Fuller held a telephone conference.<sup>5</sup> Again, on the day before the election, Judge Fuller denied the candidate immediate injunctive relief, because she had not filed the action to enjoin the election until after absentee voting had begun.<sup>6</sup>

A week after the election, the candidate moved for a temporary restraining order against certification of the election,<sup>7</sup> which Judge Fuller denied on the following day.<sup>8</sup> On March 30, 2005, after full briefing, Judge Fuller dismissed the case.<sup>9</sup>

Judge Fuller considered very carefully whether the case should be heard by a three-judge court.<sup>10</sup> The plaintiffs' claim that the procedure for removing her from the ballot had not been precleared pursuant to section 5 of the Voting Rights Act,<sup>11</sup> however, was rebutted by undisputed evidence to the contrary,<sup>12</sup> so a three-

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1. [Complaint](#), *Singleton v. Alabama Democratic Party*, No. 2:04-cv-1027 (M.D. Ala. Oct. 26, 2004), D.E. 1.

2. [Opinion](#) at 3–10, *id.* (Mar. 30, 2005), D.E. 30 [hereinafter Mar. 30, 2005, Opinion]; [Order](#) at 1, *id.* (Nov. 1, 2004), D.E. 11 [hereinafter Nov. 1, 2004, Order]; see Robert K. Gordon, *Democrats Disqualify Judicial Candidate*, Birmingham News, Sept. 22, 2004.

3. [Complaint](#), *supra* note 1.

4. [Order](#), *Singleton*, No. 2:04-cv-1027 (M.D. Ala. Oct. 26, 2004), D.E. 2.

Tim Reagan interviewed Judge Fuller for this report by telephone on May 30, 2012. Judge Fuller resigned on August 1, 2015. Federal Judicial Center Biographical Directory of Federal Judges, [www.fjc.gov/history/home.nsf/page/judges.html](http://www.fjc.gov/history/home.nsf/page/judges.html).

5. [Nov. 1, 2004, Order](#), *supra* note 2, at 2.

The election at issue was for an office in Jefferson County, [Complaint](#), *supra* note 1, which is approximately 100 miles north of Judge Fuller's court. Interview with Hon. Mark E. Fuller, May 31, 2012.

6. [Nov. 1, 2004, Order](#), *supra* note 2, at 2–3.

7. [Temporary Restraining Order Motion](#), *Singleton*, No. 2:04-cv-1027 (M.D. Ala. Nov. 9, 2004), D.E. 13.

8. [Order](#), *id.* (Nov. 10, 2004), D.E. 14.

9. [Mar. 30, 2005, Opinion](#), *supra* note 2.

10. Interview with Hon. Mark E. Fuller, May 31, 2012.

11. See Voting Rights Act of 1965, Pub. L. No. 89-110, 79 Stat. 437, § 5, 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).

judge court was not needed.<sup>13</sup> Judge Fuller also carefully considered application of the *Rooker-Feldman* doctrine,<sup>14</sup> which states that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings.<sup>15</sup>

On April 13, 2006, the court of appeals affirmed Judge Fuller's dismissal.<sup>16</sup>

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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.

12. [Mar. 30, 2005, Opinion](#), *supra* note 2, at 18.

13. *Id.* at 17.

14. Interview with Hon. Mark E. Fuller, May 31, 2012; [Mar. 30, 2005, Opinion](#), *supra* note 2, at 11–13.

15. [District of Columbia Court of Appeals v. Feldman](#), 460 U.S. 462 (1983); [Rooker v. Fidelity Trust Co.](#), 263 U.S. 413 (1923); see Martin A. Schwartz & Kathryn R. Urbonya, [Section 1983 Litigation](#) 14–17 (Federal Judicial Center 2d ed. 2008).

16. Order, [Singleton v. Alabama Democratic Party](#), No. 05-13045 (11th Cir. Apr. 13, 2006), available at [2006 WL 952335](#).