

Holding an Election Before University Students Can Register

May v. City of Montgomery
(*Myron H. Thompson, M.D. Ala. 2:07-cv-738*)

On Thursday, August 16, 2007, 12 days in advance of a city election, a member of Montgomery's city council and two mayoral candidates filed a federal action in the Middle District of Alabama, complaining that the city's moving its election for mayor and city council from the second Tuesday in October to the fourth Tuesday in August disadvantaged first-time voters at predominantly black Alabama State University because many of them would not have moved to town in time to register to vote.¹ The election date had been moved to comply with the state's implementation of the federal Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA),² which requires sufficient time between an election and a potential runoff for absentee ballots to reach overseas voters.³ The plaintiffs argued that UOCAVA did not apply to elections that did not include federal offices.⁴

The complaint alleged that the earlier election violated section 2 of the Voting Rights Act because it discriminated against black voters,⁵ violated section 5 because it had not yet been precleared,⁶ and violated state law.⁷ The plaintiffs' motion for a temporary restraining order, filed one day after the complaint was filed, discussed only section 5.⁸

The court assigned the case to Judge Myron H. Thompson, who notified the circuit's chief judge that a section 5 claim required a three-judge court.⁹ That

1. [Complaint](#), *May v. City of Montgomery*, No. 2:07-cv-738 (M.D. Ala. Aug. 16, 2007), D.E. 1; [May v. City of Montgomery](#), 504 F. Supp. 2d 1235, 1236 (M.D. Ala. 2007); see Andre Coe, *Election Prompts Lawsuit*, *Montgomery Advertiser*, Aug. 17, 2007.

2. [42 U.S.C. §§ 1973ff to 1973ff-7](#) (2012).

3. *May*, 504 F. Supp. 2d at 1236.

4. [Complaint](#), *supra* note 1, at 6.

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

6. [Complaint](#), *supra* note 1, at 10; see VRA, § 5, 79 Stat. at 439, *as amended*, [42 U.S.C. § 1973c](#).

7. [Complaint](#), *supra* note 1, at 11.

8. [Temporary Restraining Order Motion](#), *May v. City of Montgomery*, No. 2:07-cv-738 (M.D. Ala. Aug. 17, 2007), D.E. 6; see *May*, 504 F. Supp. 2d at 1236–37.

9. [Docket Sheet](#), *May*, No. 2:07-cv-738 (M.D. Ala. Aug. 16, 2007); Interview with Hon. Myron H. Thompson, June 6, 2012.

Tim Reagan interviewed Judge Thompson for this report by telephone on June 6, 2012.

same day, the circuit's chief judge designated a three-judge court for the section 5 claim.¹⁰

When Judge Thompson is assigned a case that is referred to a three-judge court, it is his practice to volunteer to do the logistical legwork in the case.¹¹ On August 20, he conducted a conference with the parties by telephone.¹²

The three-judge court held a short telephone oral argument with the parties and the Justice Department on August 22, and the Justice Department assured the court that the preclearance issue would be resolved promptly.¹³ On August 23, the earlier election was precleared, mooting the section 5 claim, so the three-judge court was dissolved.¹⁴

Noting that the plaintiffs did not seek immediate relief on their section 2 claim, Judge Thompson declined to exercise immediate jurisdiction over the state law claim: "It should be a *state* judge that should enjoin or vacate a *State's* municipal election under *state* law, with that judicial decision subject to review by *state* appellate judges."¹⁵ On February 28, 2008, the parties agreed that the plaintiffs would dismiss their section 2 claim with prejudice and dismiss their state claim without prejudice.¹⁶

10. [Order](#), *May*, No. 2:07-cv-738 (M.D. Ala. Aug. 16, 2007), D.E. 4.

11. Interview with Hon. Myron H. Thompson, June 6, 2012.

12. [Order](#), *May*, No. 2:07-cv-738 (M.D. Ala. Aug. 20, 2007), D.E. 13.

13. [Docket Sheet](#), *supra* note 9; Interview with Hon. Myron H. Thompson, June 6, 2012 (noting that three-judge oral arguments are usually held in person).

14. [Order](#), *May*, No. 2:07-cv-738 (M.D. Ala. Aug. 24, 2007), D.E. 27, [available at 2007 WL 2460607](#); [May](#), 504 F. Supp. 2d at 1236.

15. [May](#), 504 F. Supp. 2d at 1237; *see* Transcript at 3, [May](#), No. 2:07-cv-738 (M.D. Ala. Aug. 23, 2007, filed Aug. 23, 2007), D.E. 23 (informing the parties at a teleconference the day before Judge Thompson's ruling how he was likely to rule).

16. [Judgment](#), *May*, No. 2:07-cv-738 (M.D. Ala. Feb. 28, 2008), D.E. 56.