

## Expulsion from a Primary Election for Disloyalty to the Party

*McGinley v. Alabama Republican Party (W. Harold Albritton, 2:04-cv-434) and Jones v. Alabama Republican Party (Mark E. Fuller, No. 2:04-cv-500) (M.D. Ala.), Smith v. Alabama Republican Party (1:04-cv-360) and McGinley v. Alabama Republican Party (1:04-cv-579) (Callie V.S. Granade, S.D. Ala.), and McGinley v. Alabama Republican Party (U.W. Clemon, N.D. Ala. 2:04-cv-2203)*

A federal complaint sought restoration to a primary-election ballot for state board of education. The plaintiff alleged that she was stricken from the ballot because of a false rumor that she had left the party. The state's supreme court had stayed a state-court order restoring her to the ballot pending appeal. After the state court determined that the party was entitled to strike the candidate from its ballot, the federal judge dismissed the action as barred by the *Rooker-Feldman* doctrine that among federal courts only the Supreme Court has appellate jurisdiction over state-court proceedings. Postelection actions to nullify the results filed in the state's other two districts were unsuccessful.

*Subject:* Getting on the ballot. *Topics:* Getting on the ballot; matters for state courts; primary election; party procedures.

On May 4, 2004, Kelly McGinley filed a federal complaint in the Middle District of Alabama seeking an order restoring her to the ballot for the June 1 Republican primary election for the state's board of education.<sup>1</sup> She alleged that she was stricken from the ballot because of a false rumor that she had left the party.<sup>2</sup> With her complaint, she filed a motion for a temporary restraining order.<sup>3</sup>

McGinley previously sought relief in state court—Montgomery County's circuit court—on April 19.<sup>4</sup> On April 27, the circuit judge ordered her restored to the ballot,<sup>5</sup> but Alabama's supreme court stayed this order, pending appeal, on May 3.<sup>6</sup>

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1. Complaint, *McGinley v. Ala. Republican Party*, No. 2:04-cv-434 (M.D. Ala. May 4, 2004), D.E. 1 [hereinafter M.D. Ala. Complaint].

2. *Id.* at 1–2.

3. Temporary-Restraining-Order Motion, *id.* (May 4, 2004), D.E. 2.

4. Complaint, *McGinley v. Ala. Republican Party*, No. CV-04-1017 (Ala. Cir. Ct. Montgomery Cty. Apr. 19, 2004), attached as Ex. F, M.D. Ala. Complaint, *supra* note 1; *Ala. Republican Party v. McGinley*, 893 So. 2d 337, 341 (Ala. 2004).

5. Order, *McGinley*, No. CV-04-1017 (Ala. Cir. Ct. Montgomery Cty. Apr. 27, 2004), attached as Ex. G, M.D. Ala. Complaint, *supra* note 1; *Ala. Republican Party*, 893 So. 2d at 339, 342.

6. Order, *Ala. Republican Party v. McGinley*, No. 1031166 (Ala. May 3, 2004), attached as Ex. H, M.D. Ala. Complaint, *supra* note 1.

Judge W. Harold Albritton set the federal matter for hearing on May 6.<sup>7</sup> Following the initial hearing, he continued the matter to May 21.<sup>8</sup> This schedule accommodated the time pressure of the case but allowed time for the state court to act.<sup>9</sup> The parties agreed to a practice of crossfiling in which both courts were provided with filings in each.<sup>10</sup>

Also on May 6, Alabama's supreme court modified its stay to accommodate the time pressure for preparation of absentee ballots to allow the absentee ballots to include McGinley as a candidate.<sup>11</sup>

McGinley filed a renewed motion for a temporary restraining order on May 18, stating that she learned that that day was the deadline for her name to be included on the ballot.<sup>12</sup> Judge Albritton ordered a telephone conference with the parties for 2:00 that afternoon.<sup>13</sup> That day, Alabama's supreme court reached a decision reversing the state judge's ordering McGinley's inclusion on the ballot, reasoning that party officials' striking her from the ballot because of her criticism of the party was not beyond the officials' prerogatives.<sup>14</sup>

On May 21, Judge Albritton dismissed the action as barred by the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state-court proceedings.<sup>15</sup>

On May 24, a voter filed another complaint in the Middle District seeking a writ of mandamus restoring McGinley's name to the ballot.<sup>16</sup> The plaintiff sought a temporary restraining order.<sup>17</sup> On May 25, Judge Mark E. Fuller ruled, "Due to Plaintiff's failure to satisfy the prerequisites to the relief requested as set forth in Federal Rule of Civil Procedure 65(b), the Motion for Temporary Restraining Order is DENIED."<sup>18</sup> Judge Fuller granted a voluntary dismissal on June 2.<sup>19</sup>

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7. Order, *McGinley*, No. 2:04-cv-434 (M.D. Ala. May 5, 2004), D.E. 3.

Tim Reagan interviewed Judge Albritton for this report by telephone on June 18, 2013.

8. Order, *McGinley*, No. 2:04-cv-434 (M.D. Ala. May 6, 2004), D.E. 12; Minutes, *id.* (May 6, 2004), D.E. 16.

9. Interview with Hon. W. Harold Albritton, June 18, 2013.

10. *Id.*

11. Order, *Ala. Republican Party*, No. 1031166 (Ala. May 6, 2004), *attached to* Notice, *McGinley*, No. 2:04-cv-434 (M.D. Ala. May 7, 2004), D.E. 14.

12. Renewed Temporary-Restraining-Order Motion, *McGinley*, No. 2:04-cv-434 (M.D. Ala. May 18, 2004), D.E. 26.

13. Order, *id.* (May 18, 2004), D.E. 29; *see* Minutes, *id.* (May 18, 2004), D.E. 33.

14. *Ala. Republican Party v. McGinley*, 893 So. 2d 337 (Ala. 2004).

15. Opinion, *McGinley*, No. 2:04-cv-434 (M.D. Ala. May 21, 2004), D.E. 36; Minutes, *id.* (May 21, 2004), D.E. 35; *see* D.C. Ct. App. v. Feldman, 460 U.S. 462 (1983); *Rooker v. Fidelity Trust Co.*, 263 U.S. 413 (1923); *see also* Martin A. Schwartz, Section 1983 Litigation 21–24 (Federal Judicial Center 3d ed. 2014).

16. Complaint, *Jones v. Ala. Republican Party*, No. 2:04-cv-500 (M.D. Ala. May 24, 2004), D.E. 1.

17. Temporary-Restraining-Order Motion, *id.* (May 24, 2004), D.E. 2.

18. Order, *id.* (May 25, 2004), D.E. 3.

Judge Fuller resigned on August 1, 2015. Federal Judicial Center Biographical Directory of Article III Federal Judges [hereinafter FJC Biographical Directory], [www.fjc.gov/history/](http://www.fjc.gov/history/)

Two days after the June 1 election, three voters filed a class action in the Southern District of Alabama seeking to nullify the results of the primary election in which McGinley was omitted from the ballot.<sup>20</sup> With their complaint, the voters filed a motion for a temporary restraining order.<sup>21</sup> Judge Callie V.S. Granade denied the motion on June 4 because (1) the plaintiffs had not adequately explained how they had served the complaint and motion on the defendants so the court could not determine whether the defendants yet had notice, and (2) the plaintiffs had not shown the need for relief before defendants could be heard.<sup>22</sup> A June 8 amended motion<sup>23</sup> did not adequately cure the motion's lack of merit.<sup>24</sup>

On July 15, McGinley and a voter filed a federal action in the Northern District of Alabama to nullify the results of the primary election.<sup>25</sup> On August 13, however, Judge U.W. Clemon transferred the case to the Southern District.<sup>26</sup> On October 19, Judge Granade consolidated McGinley's new action with the similar one by McGinley's supporters.<sup>27</sup>

On October 26, Judge Granade dismissed the cases as both without merit and precluded by the state supreme court's decision.<sup>28</sup> An appeal filed in 2005 was untimely.<sup>29</sup>

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judges.

19. Order, *Jones*, No. 2:04-cv-500 (M.D. Ala. June 2, 2004), D.E. 5; see Voluntary Dismissal, *id.* (June 2, 2004), D.E. 4.

20. Complaint, *Smith v. Ala. Republican Party*, No. 1:04-cv-360 (S.D. Ala. June 3, 2004), D.E. 1; see Amended Complaint, *id.* (June 8, 2004), D.E. 15 (adding an additional plaintiff).

21. Temporary-Restraining-Order Motion, *id.* (June 3, 2004), D.E. 2.

22. Order, *id.* (June 4, 2004), D.E. 5.

23. Amended Temporary-Restraining-Order Motion, *id.* (June 8, 2004), D.E. 7.

24. Order, *id.* (June 9, 2004), D.E. 8.

25. Complaint, *McGinley v. Ala. Republican Party*, No. 2:04-cv-2203 (N.D. Ala. July 15, 2004), D.E. 1.

26. Transfer Order, *id.* (Aug. 16, 2004), D.E. 3; see Order, *id.* (Aug. 30, 2004), D.E. 5 (denying a motion for reconsideration).

Judge Clemon retired on January 31, 2009. FJC Biographical Directory, *supra* note 18.

27. Consolidation Order, *McGinley v. Ala. Republican Party*, No. 1:04-cv-579 (S.D. Ala. Oct. 19, 2004), D.E. 21.

28. Order, *Smith*, No. 1:04-cv-360 (S.D. Ala. Oct. 26, 2004), D.E. 41 ("The court will not second guess the party's determination that McGinley did not comply with the requirement that she be 'in accord with, and endorse, the principles and policies of the Republican Party.'"); see Order, *id.* (June 6, 2005), D.E. 47 (denying a motion for reconsideration); Order, *id.* (Mar. 1, 2005), D.E. 45 (same).

29. Order, *Smith v. Ala. Republican Party*, No. 05-13739 (11th Cir. July 26, 2005), *filed as* Order, *Smith*, No. 1:04-cv-360 (S.D. Ala. July 28, 2005), D.E. 50.