

Strict Application of Campaign Filing Requirements

Somers v. All Improperly Filed Candidates (3:12-cv-1191) and Smith v. South Carolina State Election Commission (3:12-cv-1543) (Cameron McGowan Currie, Clyde H. Hamilton, and J. Michelle Childs) and Williams v. South Carolina State Election Commission (Henry F. Floyd, David C. Norton, and Richard Mark Gergel, 2:12-cv-2760) (D.S.C.)

Many candidates were disqualified from primary-election ballots following a state supreme court's strict interpretation of a candidacy filing statute. A candidate who was not disqualified filed a federal action attacking the disqualifications. The district court determined that a candidate who was not disqualified and who was not suing as a voter lacked standing for the suit. In a related case, disqualified candidates filed a federal action arguing that the state supreme-court decision could not have effect without preclearance pursuant to section 5 of the Voting Rights Act. A three-judge district court determined that the state court's interpretation of the statute comported with the statute's plain meaning, so it could not be a change requiring preclearance. Another section 5 complaint alleged that preclearance was required for a state supreme-court decision approving a special primary election after it was determined that the only candidate in the original primary election was not exempt from the filing requirements at issue in the previous cases. A new three-judge court determined that the state supreme court's decision was an application of existing law rather than a change in voting procedures.

Subject: Getting on the ballot. *Topics:* Getting on the ballot; campaign materials; section 5 preclearance; three-judge court; recusal; case assignment; intervention; laches.

On May 2, 2012, South Carolina's supreme court adopted a strict interpretation of a candidacy filing statute, an interpretation that conflicted with common practice, so many candidates were disqualified from the state's June 12 primary election.¹ The statute required candidates to "file a statement of economic interests for the preceding calendar year *at the same time and with the same official* with whom the candidate files a declaration of candidacy or petition for nomination."²

1. Anderson v. S.C. Election Comm'n, 397 S.C. 551, 725 S.E.2d 704 (S.C. 2012); see Florence Cty. Democratic Party v. Florence Cty. Republican Party, 398 S.C. 124, 727 S.E.2d 418 (S.C. 2012) (rejecting arguments to relax the strict interpretation); see also Tim Flach, *50 Local Candidates May Be Off Ballot*, Columbia State, May 4, 2012; Tucker Mitchell, *Supreme Court Ruling Knocks Nearly 100 Off S.C. Ballots*, Florence Morning News, May 3, 2012.

2. S.C. Code § 8-13-1356(B) (emphasis added).

On May 4, Amanda Somers, a candidate who was not disqualified, filed a federal complaint in the District of South Carolina on behalf of herself and on behalf of (1) all other properly filed candidates and (2) all persons entitled to vote under the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA).³ In addition to South Carolina’s election commission and other election officials, Somers named as defendants all improperly filed candidates involved in the primary election.⁴

The court assigned the case to Judge Joseph F. Anderson, Jr.,⁵ who recused himself because of family connections to elective offices.⁶ On May 7, the case was reassigned to Judge Cameron McGowan Currie.⁷ On the following day, Judge Currie entered into the case’s docket sheet a text order reminding the plaintiff, “No decision on the merits may be made until all Defendants are served and have an opportunity to respond. Service is a responsibility which rests on Plaintiff and which Plaintiff is directed to accomplish as quickly as possible.”⁸ The plaintiff subsequently dropped all improperly filed candidates as defendants.⁹

Judge Currie held a status conference on the afternoon of May 10.¹⁰ On the day of the conference, a candidate stricken from the ballot moved to intervene as a plaintiff.¹¹ Judge Currie granted intervention,¹² but the motion was withdrawn on the following day.¹³ Also on May 11, the circuit’s Chief Judge William B. Traxler, Jr., named a three-judge district court to hear the plaintiff’s claimed violation of section 5 of the Voting Rights Act.¹⁴ South

3. Complaint, *Somers v. All Improperly Filed Candidates*, No. 3:12-cv-1191 (D.S.C. May 4, 2012), D.E. 1 [hereinafter *Somers Complaint*]; *Somers v. S.C. State Election Comm’n*, 871 F. Supp. 2d 490, 491 (D.S.C. 2012); see 52 U.S.C. §§ 20301–20311; see also *Candidate Sues, Lawmakers Offer Fix*, Greenville News, May 5, 2012. See generally Robert Timothy Reagan, *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act* (Federal Judicial Center 2016).

4. *Somers Complaint*, *supra* note 3.

5. Docket Sheet, *Somers*, No. 3:12-cv-1191 (D.S.C. May 4, 2012) [hereinafter *Somers Docket Sheet*] (D.E. 10).

6. Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

Tim Reagan interviewed Judge Currie for this report by telephone.

7. *Somers Docket Sheet*, *supra* note 5; Transcript at 7, *Somers*, No. 3:12-cv-1191 (D.S.C. May 10, 2012, filed May 11, 2012), D.E. 27 [hereinafter *Somers Transcript*].

8. *Somers Docket Sheet*, *supra* note 5; see *Somers Transcript*, *supra* note 7, at 9.

9. *Somers v. S.C. State Election Comm’n*, 871 F. Supp. 2d 490, 495 (D.S.C. 2012).

10. *Somers Transcript*, *supra* note 7.

11. Intervention Motion, *Somers*, No. 3:12-cv-1191 (D.S.C. May 10, 2012), D.E. 17; *Somers Transcript*, *supra* note 7, at 3, 11–12.

12. *Somers Docket Sheet*, *supra* note 5 (D.E. 18).

13. Intervention Withdrawal, *Somers*, No. 3:12-cv-1191 (D.S.C. May 11, 2012), D.E. 20.

14. Order, *id.* (May 11, 2012), D.E. 21; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (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 district court); see also *Somers Transcript*, *supra* note 7, at 56 (statement by Judge Currie that she would request a three-judge court).

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the

Carolina had decided to comply with UOCAVA by sending overseas absentee ballots for federal offices by the statutory deadline of forty-five days before the election and to send overseas absentee ballots for South Carolina offices later, after the repercussions of the state supreme court's decision had been worked out.¹⁵ The plaintiff alleged that this was an election change requiring section 5 preclearance.¹⁶

The three-judge court—Judge Currie, Circuit Judge Clyde H. Hamilton, and District Judge J. Michelle Childs—heard the action on May 14.¹⁷ Two days later, it dismissed the case for lack of standing.¹⁸ “Counsel for Somers failed to articulate any concrete and particularized injury that Somers has incurred or was likely to incur as a result of the transmission of separate federal and state ballots. Somers, therefore, has no standing as a candidate to pursue a Section 5 claim.”¹⁹ Nor had she shown a relationship with UOCAVA voters close enough to sue on their behalf; the courts were open for them to seek relief on their own.²⁰ Judge Currie observed that standing is often an important issue in an election case and one that the court should consider early in the case.²¹

A second action was filed on June 11, the day before the primary election.²² Five candidates stricken from the ballots alleged that the state supreme court's decision was without current effect because it had not received section 5 preclearance and that the statute in question violated equal protection.²³ The statute exempted incumbents: “This section does not apply to a public official who has a current disclosure statement on file”²⁴ With their complaint, the plaintiffs filed a motion for a temporary restraining order.²⁵

The court assigned this case to Judge Currie as related to the *Somers* case.²⁶ Filing errors by the plaintiff's attorney caused a delay in the case's opening by the clerk's office, so there was a delay in Judge Currie's learning

Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013).

15. *Somers v. S.C. State Election Comm'n*, 871 F. Supp. 2d 490, 493–94 (D.S.C. 2012).

16. *Id.* at 494.

17. *Somers* Docket Sheet, *supra* note 5 (D.E. 31).

Judge Hamilton died on September 2, 2020, and Judge Childs was elevated to a seat on the Court of Appeals for the District of Columbia Circuit on July 25, 2022. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

18. *Somers*, 871 F. Supp. 2d 490; *see* Reagan, *supra* note 3, at 16–17.

19. *Somers*, 871 F. Supp. 2d at 496–97 (footnote omitted).

20. *Id.* at 497–98.

21. Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

22. Docket Sheet, *Smith v. S.C.*, No. 3:12-cv-1543 (D.S.C. June 11, 2012) [hereinafter *Smith* Docket Sheet].

23. Complaint, *id.* (June 11, 2012), D.E. 1; *Smith v. S.C. Election Comm'n*, 874 F. Supp. 2d 483, 491 (D.S.C. 2012).

24. S.C. Code § 8-13-1356(A).

25. Motion, *Smith*, No. 3:12-cv-1543 (D.S.C. June 11, 2012), D.E. 4.

26. *Smith* Docket Sheet, *supra* note 22; Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

that she had the case.²⁷ The clerk's office subsequently established procedures by which assigned judges are notified more promptly of emergency cases assigned to them even if there are delays in the processing of the cases' filings.²⁸

On the day that the case was filed, Judge Traxler referred it to the same three-judge court for the section 5 claim as he empaneled for the first case.²⁹ With Judges Hamilton and Currie in the courtroom and Judge Childs appearing by telephone midway through the hearing, after conducting a court proceeding in another case, the three-judge court conducted a telephonic hearing that same day.³⁰ The court denied the plaintiffs immediate relief.³¹ The court concluded that the state court's interpretation of the statute comported with the statute's plain meaning, so it could not be a change requiring preclearance.³² The court found no equal-protection violation in different financial filing requirements for incumbents and nonincumbents,³³ and the plaintiffs' claim for immediate relief was further burdened by the doctrine of laches.³⁴ An amended complaint filed on September 21³⁵ did not persuade the court to reach a different result.³⁶

On September 20, South Carolina's supreme court reached another conclusion³⁷ that resulted in a section 5 complaint alleging that the court's opinion required preclearance before it could go into effect.³⁸ The state courts' challenge was to resolve a state senate primary election in which it was discovered after the election that the only candidate who qualified for the ballot qualified in error because election authorities mistakenly thought that he was entitled to the incumbent exemption from the dual filing requirement.³⁹ South Carolina's supreme court approved a special primary election as a remedy.⁴⁰ The subsequent section 5 complaint was filed by a voter on September 24, while an October 2 special primary runoff election was pending.⁴¹

27. Interview with Hon. Cameron McGowan Currie, Sept. 6, 2012.

28. *Id.*

29. Order, *Smith*, No. 3:12-cv-1543 (D.S.C. June 11, 2012), D.E. 7; Transcript at 3, *id.* (June 11, 2012, filed Aug. 8, 2012), D.E. 12 [hereinafter *Smith* Transcript].

30. *Smith* Transcript, *supra* note 29.

31. *Smith v. S.C. Election Comm'n*, 874 F. Supp. 2d 483 (D.S.C. 2012).

32. *Id.* at 495.

33. *Id.* at 497.

34. *Id.* at 498–99.

35. Amended Complaint, *Smith v. S.C.*, No. 3:12-cv-1543 (D.S.C. Sept. 21, 2012), D.E. 18.

36. Opinion, *id.* (Oct. 3, 2012), D.E. 42, 2012 WL 4741636 (dismissing the case).

37. *Tempel v. S.C. State Election Comm'n*, 400 S.C. 374, 735 S.E.2d 453 (S.C. 2012); *see The District 41 Roller Coaster*, Charleston Post & Courier, Sept. 22, 2012, at A10.

38. Complaint, *Williams v. S.C. State Election Comm'n*, No. 2:12-cv-2760 (D.S.C. Sept. 24, 2012), D.E. 1 [hereinafter *Williams* Complaint].

39. *Tempel*, 400 S.C. at 376–79, 735 S.E.2d at 454–56.

The candidate was disqualified pursuant to a state judge's ruling. *See Robert Behre, Senate 41 Election Finally in Voters' Hands*, Charleston Post & Courier, Oct. 14, 2012, at B19.

40. *Tempel*, 400 S.C. at 386, 735 S.E.2d at 457.

41. *Williams* Complaint, *supra* note 38; *see Dist. 41 Primary Heads to Runoff*, Charleston Post & Courier, Sept. 19, 2012, at B17.

The injunction he requests would, among other things, prevent [the candidate whose disqualification created the need for a special election] or any other person from appearing on the general election ballot as the Republican Party nominee for the District 41 Senate seat, and effectively ensure the election of the Democratic Party nominee by default.⁴²

Judge Traxler named Circuit Judge Henry F. Floyd and District Judges David C. Norton and Richard Mark Gergel as the three-judge court to hear the new section 5 claim.⁴³ Judges Floyd and Gergel held a telephone conference with the parties on September 27 and set the case for hearing on October 16.⁴⁴ On September 28, the plaintiff filed an amended complaint⁴⁵ and a motion for a preliminary injunction.⁴⁶

The victor of the aberrant primary election won the special primary runoff election on October 2.⁴⁷ On October 18, the court concluded that the state supreme court's opinion was an application of law to an unusual factual situation and not a change in election procedures.⁴⁸

The twice victorious primary-election victor won the general election.⁴⁹

42. Opinion at 2, *Williams*, No. 2:12-cv-2760 (D.S.C. Oct. 18, 2012), D.E. 52 [hereinafter *Williams* Opinion].

43. Order, *id.* (Sept. 27, 2012), D.E. 11.

44. Order, *id.* (Sept. 28, 2012), D.E. 8 (noting Judge Norton's assignment to the case as the judge to preside over matters not requiring three judges); Docket Sheet, *id.* (Sept. 24, 2012) (D.E. 7); see Robert Behre, *Dis. 41 Lawsuit Heard*, Charleston Post & Courier, Oct. 17, 2012, at B18.

45. Amended Complaint, *Williams*, No. 2:12-cv-2760 (D.S.C. Sept. 28, 2012), D.E. 12.

46. Preliminary-Injunction Motion, *id.* (Sept. 28, 2012), D.E. 13.

47. *Williams* Opinion, *supra* note 42, at 5–6; see Robert Behre, *Thurmond Wins Dist. 41 GOP Runoff*, Charleston Post & Courier, Oct. 3, 2012, at B19.

48. *Williams* Opinion, *supra* note 42, at 10–13; see *Thurmond to Remain on Ballot, Judges Rule*, Charleston Post & Courier, Oct. 18, 2012, at B1.

49. See Robert Behre, *Final Election Results Are Becoming Clear*, Charleston Post & Courier, Nov. 8, 2012, at A4.