

## Crossover Votes

### *Foster v. Salaam (Ira De Ment, M.D. Ala. 2:02-cv-1093)*

A federal complaint alleged that Republicans were improperly permitted to vote in a June 2002 runoff Democratic primary election for a seat in Alabama's house of representatives. The district judge determined that the claim under section 5 of the Voting Rights Act was not valid, so a three-judge district court did not need to be appointed. The plaintiffs sought voluntary dismissal and pursued the matter in state court.

*Subject:* Voting irregularities. *Topics:* Primary election; enjoining certification; enjoining elections; section 5 preclearance; three-judge court.

Three months after a June 25, 2002, runoff primary election for Democratic nominee for a seat in Alabama's house of representatives, fourteen voters filed a federal complaint against the declared winner and the Democratic Party claiming that Republicans were improperly permitted to vote in the election.<sup>1</sup> The complaint included a motion for a preliminary injunction against certification of the winner of the runoff election.<sup>2</sup> The complaint also included a claim that the primary-election runoff procedures had not been cleared pursuant to section 5 of the Voting Rights Act.<sup>3</sup> Five days later, the plaintiffs filed a motion to stay the November 5 election for the house seat in dispute.<sup>4</sup> On October 15, Judge Ira De Ment granted the plaintiffs' motion to add Alabama's secretary of state and a probate judge as defendants.<sup>5</sup>

On October 2, Judge De Ment set the matter for hearing on October 17.<sup>6</sup> On October 9, Judge De Ment ruled that the plaintiffs had not stated a section 5 claim requiring the empaneling of a three-judge district court to hear it: "There is no allegation that the Alabama Democratic Party has instituted a new procedure, practice or party rule; rather, the Complaint contains accusations that the Alabama Democratic Party violated Alabama election laws that already have received preclearance."<sup>7</sup> Following the hearing, Judge De Ment

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1. Complaint, *Foster v. Salaam*, No. 2:02-cv-1093 (M.D. Ala. Sept. 25, 2002), D.E. 1.

2. *Id.* at 10, 11, 13, 14; Docket Sheet, *id.* (Sept. 25, 2002).

3. Complaint, *supra* note 1, at 8–10; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 42 U.S.C. § 1973c (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).

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 County v. Holder*, 570 U.S. 529 (2013).

4. Motion, *Foster*, No. 2:02-cv-1093 (M.D. Ala. Sept. 30, 2002), D.E. 2.

5. Order, *id.* (Oct. 15, 2002), D.E. 18.

Judge De Ment died on July 16, 2011. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

6. Order, *Foster*, No. 2:02-cv-1093 (M.D. Ala. Oct. 2, 2002), D.E. 5; Minutes, *id.* (Oct. 17, 2002), D.E. 32.

7. Opinion at 8, *id.* (Oct. 9, 2002), D.E. 10.

granted the plaintiffs' motion to voluntarily dismiss their complaint without prejudice to seek relief in state court.<sup>8</sup>

The defendant candidate was elected to Alabama's house in November.<sup>9</sup>

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8. Order, *id.* (Oct. 22, 2002), D.E. 36; see *Defeated Candidate Denied Relief*, *Montgomery Advertiser*, Oct. 23, 2002, at C3.

9. See *Clash Breaks Out at Polls*, *Montgomery Advertiser*, Nov. 6, 2002, at B1.