

IN THE DISTRICT COURT OF THE UNITED STATES FOR THE
MIDDLE DISTRICT OF ALABAMA,
NORTHERN DIVISION

RECEIVED

2007 NOV 16 A 10:51

DEBRA P. HACKETT, CLK
U.S. DISTRICT COURT
MIDDLE DISTRICT ALA

FRED L. PLUMP,

Plaintiff,

v.

HONORABLE BOB RILEY, as Governor of
the State of Alabama,

Defendant.

CIVIL ACTION NO.

2:07 cv 1014-

Complaint

1. This is an action to enjoin violations of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c. This action is necessary because Governor Bob Riley persists in his attempts to enforce election procedures which have not been precleared by either the Attorney General of the United States or the U.S. District Court for the District of Columbia. This Court has previously enjoined Governor Riley from enforcing these same procedures with regard to a county commission vacancy in Mobile County.

Parties

2. Fred L. Plump is a citizen of Alabama and a registered voter in Commission District 1 of Jefferson County.

3. Bob Riley is Governor of Alabama and is sued in his official capacity.

Facts

4. Jefferson County Commissioner Larry Langford has been elected Mayor of the City of Birmingham. He will take office on Tuesday, 13 November 2007. He has resigned from the Jefferson County Commission.

5. The Legislature adopted Act 784 in the 1977 Regular Session (hereafter "Act 1977-784"), providing that when a vacancy occurs on the Jefferson County Commission, the Election Commission of Jefferson County shall call a special election if a county-wide election will be held within 180 days after the vacancy occurs. A county-wide election will be held on the first Tuesday in February (5 February), 2008, which is within 180 days after Commissioner Larry Langford resigned. A copy of Act 1977-784 is attached as Exhibit A (pages 3-7). Act 1977-784 has been precleared by the Attorney General of the United States.

6. Act 1977-784 was used to call elections in 1982 to fill two vacancies on the Commission.

7. After the election of Commissioner Langford as Mayor, the Jefferson County Election Commission met and unanimously adopted the resolution attached as Exhibit A. The resolution calls an election to fill the vacancy in District 1 of the Jefferson County Commission for 5 February 2008. The Election Commission consists of Alan King [Probate Judge (Place 1) of Jefferson County]; Anne Marie Adams [Circuit Clerk for Jefferson County]; and Mike Hale [Sheriff of Jefferson County]. Each is a member of the Election Commission of Jefferson County by virtue of the office he or she holds.

8. Act 2004-455 amended Ala. Code § 11-3-6 to allow local laws to provide an exception to the general rule of appointments by the Governor to fill vacancies. The Attorney General of the U.S. issued a “no objection” letter regarding Act 2004-455 on 28 September 2004. Act 1977-784 would be allowed under the exception created by Act 2004-455.

9. Despite Act 2004-455, Governor Riley asserts that he has the authority to appoint a commissioner for Jefferson County because Act 2004-455 has been held to be prospective only in *Riley v. Kennedy*, 928 So.2d 1013 (Ala. 2005). See the attached newspaper articles from the *Birmingham News* of 11 October 2007 (Exhibit B), 30 October 2007 (Exhibit C), and 14 November 2007 (Exhibit D).

10. In *Yvonne Kennedy v. Bob Riley*, No. 2:05-cv-01100-MHT-DRB (M.D. Ala.), on August 18, 2006 (Doc. 23), this Court ordered that “Judgment is entered in favor of plaintiffs ... and against defendant Bob Riley” and ordered the State of Alabama to obtain preclearance in accordance with § 5 before enforcing the decisions of the Alabama Supreme Court in *Stokes v. Noonan*, 534 So.2d 237 (Ala. 1988), and *Riley v. Kennedy*, 928 So.2d 1013 (Ala. 2005). This Court granted further relief to the Kennedy plaintiffs on 1 May 2007 (Doc. 48).

11. Governor Riley attempted to obtain preclearance of the *Stokes* and *Riley* decisions for use in the Mobile County Commission vacancy, but the Attorney General of the United States interposed an objection on 8 January 2007. The State has not sought preclearance of the *Stokes* or *Riley* decisions for any other purpose. Therefore, the State of Alabama may not

enforce or seek to administer the two State Supreme Court decisions, *Stokes v. Noonan* and *Riley v. Kennedy*.

12. Governor Riley has appealed to the United States Supreme Court from the decision of this court in *Yvonne Kennedy v. Bob Riley*. The case is docketed as *Riley v. Kennedy*, No. 07-77 (U.S. Sup. Ct.).

13. On 6 November 2007, Governor Riley filed a "Brief ... in Opposition to Motion to Dismiss or Affirm" in the Supreme Court. In that brief Governor Riley argued that the decision below is not moot because, among other reasons, "a vacancy is imminent in Jefferson County. The underlying facts and legal situation are not identical each time a vacancy arises. Nonetheless, a showing that the preclearance status of that *Stokes v. Noonan* and *Riley v. Kennedy* is moot has not been made." Brief in Opp. 2.

14. Despite his assertion to the U.S. Supreme Court, the Governor takes the position that *Kennedy v. Riley* is not applicable outside of Mobile County and does not affect his right to make an appointment to fill the Jefferson County vacancy.

15. The plaintiff desires to participate in an election to fill the unexpired term of Commissioner Larry Langford.

Claim

16. The defendant Riley has violated or is about to violate the Voting Rights Act by administering, without preclearance, a practice different from that in effect in 1977.

17. The plaintiff is without an adequate remedy at law and will suffer irreparable damage unless the actions of the defendant in violation of the Voting Rights Act are enjoined.

Prayer for Relief

18. The plaintiff prays that the Court will consolidate this action with *Yvonne Kennedy v. Bob Riley*, No. 2:05-cv-01100-MHT-DRB (M.D. Ala.).

19. If the Court does not consolidate this action with *Kennedy v. Riley*, the plaintiff prays that the Court will convene a three-judge court to hear and decide this matter.

20. The plaintiff prays that the Court will enter a declaratory judgment that the defendant Riley lacks the power to appoint a person to fill a vacancy on the Jefferson County Commission unless and until the defendant obtains preclearance of the change in election procedures, as required by Section 5 of the Voting Rights Act, and that pending such preclearance the Election Commission of Jefferson County has the authority to call a special election for District 1 of the Jefferson County Commission.

21. The plaintiff prays that the Court will grant preliminary and permanent injunctions to enjoin the defendant Riley not to deliver the commission or other appointment papers to any person for the Jefferson County Commission District 1 vacancy unless and until the defendant obtains preclearance, as required by Section 5 of the voting Rights Act.

22. The plaintiff prays that the Court will order the defendant Riley to pay his reasonable attorneys' fees, costs, and expenses.

Submitted by,



James U. Blacksher
P.O. Box 636
Birmingham AL 35201
phone 205-591-7238
fax 205-591-0709
email
jblacksher@ns.sympatico.ca

Edward Still
Edward Still Law Firm LLC
2112 11th Avenue South
Suite 201
Birmingham AL 35205-2844
phone: 205-320-2882
fax: 877-264-5513
email: Still@votelaw.com

Attorneys for the plaintiffs