

IN THE DISTRICT COURT OF THE UNITED STATES
FOR THE NORTHERN DISTRICT OF ALABAMA
SOUTHERN DIVISION

FRED L. PLUMP,

Plaintiff,

v.

THE STATE OF ALABAMA;
JEFFERSON COUNTY
ELECTION COMMISSION; ALAN
KING, MIKE HALE, and ANNE-
MARIE ADAMS, in their official
capacities as members of the
Jefferson County Election
Commission,

Defendants.

CIVIL ACTION NO.
CV-2:08-cv-1345

AMENDED 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 the defendants are proceeding to enforce changes in election practices which have not been precleared under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, by either the Attorney General of the United States or the U.S. District Court for the District of Columbia.

Parties

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

3. Defendant State of Alabama is a state that, along with its political subdivisions, is a jurisdiction covered under § 4 of the Voting Rights Act, 42 U.S.C. § 1973b, and thus may not enact or seek to administer any change in voting practice or procedure unless and until it receives preclearance under § 5 of the Voting Rights Act, 42 U.S.C. § 1973c. Congress has abrogated the Eleventh Amendment immunity of the State of Alabama with respect to plaintiff's claims in this action.

4. Defendant Jefferson County Election Commission is by statute responsible for appointing election officials and for canvassing and declaring the results of elections for county offices. Alan King, Probate Judge No. 1 for Jefferson County, Mike Hale, Sheriff of Jefferson County, and Anne-Marie Adams, Jefferson County Circuit Clerk, are the members of the Jefferson County Election Commission by virtue of the offices they hold. They are sued in their official capacities.

Facts

5. The Alabama 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. A copy of Act 1977-784 is attached as Exhibit A to this complaint.

6. Act 1977-784 has been precleared under § 5 of the Voting Rights Act by the Attorney General of the United States.

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

8. Jefferson County Commissioner Larry Langford has been elected Mayor of the City of Birmingham. He took office on Tuesday, 13 November 2007. He resigned his seat in District 1 of the Jefferson County Commission, which has a majority-black electorate.

9. The Election Commission called a special election on the first Tuesday in February to fill the vacancy

10. Pursuant to Act 77-784, six candidates properly qualified to have their names placed on the ballot for the February 5, 2008, Special Election. Those candidates were George F. Bowman, William A. Bell, Fred Plump, Orville Ifill, Kamu Afrika and Eric Major.

11. The date of the February 5, 2008, Special Election was submitted to the United States Department of Justice for pre-clearance on November 27, 2007. The United States Department of Justice issued a “no objection” letter to the February 5, 2008, Special Election on January 17, 2008.

12. William A. Bell received slightly more than 56% of the votes cast in the February 5, 2008, Special Election.

13. As required by § 17-12-15, Alabama Code (1975), the Jefferson County Election Commission was scheduled to meet at 12:00 noon on Friday, February 15, 2008, to certify William A. Bell as the winner of the February 5, 2008, Special Election, to fill the vacancy in Commission District 1 on the Jefferson County Commission.

14. On Thursday, February 14, 2008, the Supreme Court of Alabama enjoined the Jefferson County Election Commission from certifying William A. Bell as the winner of the February 5, 2008, Special Election, pending further orders of the Supreme Court of Alabama.

15. The defendants have complied with the February 14, 2008, injunction of the Supreme Court of Alabama, even though their compliance constitutes a change in voting practice which may not be implemented unless it receives preclearance under § 5 of the Voting Rights Act, and even though said change in voting practice has never been submitted for preclearance.

16. On June 30, 2008, the Supreme Court of Alabama held that “Act No. [1977-]784, as a preexisting local law, . . . was repealed by the legislature’s adoption of [Ala. Code] § 11-3-1(f)” in Act 2007-488. *Working v. Jefferson County Election Comm’n*, __ So.2d __, 2008 WL 2569255 (Ala., June 30, 2008) at *11.

17. The Supreme Court of Alabama further held that § 11-3-1(b), Code of Alabama, which was also amended by Act 2007-488, requires the vacancy on the Jefferson County Commission to be filled, first by gubernatorial appointment, then by a special election during the November 2008 general election, and it instructed the Circuit Court to order that a special election to fill the vacancy on the Jefferson County Commission be placed on the November 4, 2008, election ballot. *Id.*

18. On July 25, 2008, the Jefferson County Circuit Court entered an order enjoining the certification of the February special election results, calling a November election for the County Commission District One seat, and setting deadlines for party nominations and independents petitioning for a ballot slot.

19. On July 26, Fred Plump (a party in the *Working* case) filed a motion to amend the Order of July 25 to condition the November election on the preclearance of the failure to certify the February special election and § 11-3-1(b) and (f). The Circuit Court denied that motion on July 28.

20. On July 28, 2008, the State of Alabama made two submissions for preclearance under § 5 of the Voting Rights Act: one letter states, “Specifically, this submission concerns Act No. 2007-488 as it relates to new Ala. Code §§ 11-3-1(b) & (f)” and “Accordingly, the noncertification of the February 5 election is a new practice resulting from the enforcement of new Ala. Code §

11-3-1 (f).” Nevertheless, the State’s submission states that “§ 11-3-1(b) is being implemented in Jefferson County now. . . .”

21. The second submission letter stated, “On remand, the trial court has entered an Order to facilitate voting on the County Commission seat this November. ***That order is the subject of this preclearance submission.***” (Emphasis in original.)

22. Neither request for preclearance has been granted.

23. Unless and until §§ 11-3-1(b) and 11-3-1(f) have been precleared under § 5 of the Voting Rights Act, Act 1977-784, the last precleared statute prescribing the manner of filling vacancies on the Jefferson County Commission, remains in full force and effect.

24. However, in its submission to the Department of Justice the State has taken the position that, should preclearance be denied, Act 1977-784 cannot be enforced because of the stay issued by the U.S. Supreme Court in Governor Riley’s appeal from the judgment in *Plump v. Riley*, __ F.Supp.2d __, 2008 WL 192826 (M.D. Ala., Jan. 22, 2008). The State’s position ignores this explicit disclaimer by the Middle District Court in *Plump*: “The court emphasizes that whether Act No. 77-784 is, in fact, unconstitutional under state law, and whether positions on the Jefferson County Commission must be filled by special election or gubernatorial appointment under state law, are questions we do not reach and this opinion should not be understood in any way as

reaching.” *Id.* at *3. Thus the issues presented in this action are not pending before the U.S. Supreme Court.

25. However, the U.S. Supreme Court is in recess and cannot be expected to act on Governor Riley’s appeal in *Plump* before the first Monday in October. That will be too late to prevent the names of candidates for the District 1 seat on the Jefferson County Commission from being printed on the November 4 general election ballot. That ballot must be certified by September 15, 2008. Consequently, only action by this Court can prevent implementation of the statutory repeal of Act 1977-784 in the event that preclearance of that repeal is not obtained before September 15.

Claims

26. Defendants are violating § 5 of the Voting Rights Act, 42 U.S.C. § 1973c, by administering, without preclearance, a practice different from that in effect in 1977. The plaintiff will be harmed by the failure to preclear the changes in election practices before the November 2008 election, in that implementation of said changes may lead to retrogression of her voting strength as an African American.

Prayer for Relief

A. The plaintiff prays that the Court promptly will convene a three-judge court to hear and decide this matter.

B. The plaintiff prays that the Court will enter a declaratory judgment that until and unless they have received preclearance under § 5 of the Voting Rights Act:

(1) the defendants lack the power to comply with orders of the state courts implementing §§ 11-3-1(b) and 11-3-1(f), Code of Alabama, as amended by Act 2007-488, by placing a special election for District 1 of the Jefferson County Commission on the November 4, 2008, general election ballot, and

(2) the defendants lack the power to comply with the February 14, 2008, injunction of the Supreme Court of Alabama by refusing to certify the results of the February 5, 2008, special election.

C. The plaintiff prays that the Court will grant preliminary and permanent injunctions prohibiting defendants from:

(1) complying with orders of the state courts implementing §§ 11-3-1(b) and 11-3-1(f), Code of Alabama, as amended by Act 2007-488, by placing a special election for District 1 of the Jefferson County Commission on the November 4, 2008, general election ballot, and

(2) complying with the February 14, 2008, injunction of the Supreme Court of Alabama by failing or refusing to certify the results of the February 5, 2008.

D. The plaintiff further prays that the Court will stay entry of the injunctions sought in the preceding paragraph until September 14, 2008, the day before the probate judge's deadline

for sending the ballot to the printers for the November 4, 2008, general election, to provide defendants or other appropriate officials of Jefferson County and/or the State of Alabama an opportunity to submit and to obtain preclearance under § 5 of the Voting Rights Act, of §§ 11-3-1(b) and 11-3-1(f), Code of Alabama, as amended by Act 2007-488, and defendants' refusal or failure to certify the results of the February 5, 2008, special election.

E. The plaintiff prays that the Court will order the defendants to pay their reasonable attorneys' fees, costs, and expenses.

F. The plaintiff prays for such other and additional relief as the Court may deem just and equitable.

Submitted by,

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