

SUPREME COURT OF ALABAMA

Attorney General Troy King, in his official capacity v. Harvey B. Campbell, Jr.; Chad Woodruff; and the Talladega County Judicial Commission

988 So. 2d 969 (Ala. 2007) · No. 1060804 · Decided November 30, 2007

SUMMARY

The Alabama Supreme Court considered a constitutional challenge to Act No. 2006-355, which created a third circuit judgeship in Alabama's Twenty-Ninth Judicial Circuit and provided for its initial filling by gubernatorial appointment. The court held that the appeal was not barred as moot or by election-jurisdiction limitations and reversed the trial court's judgment declaring the Act unconstitutional, remanding the case for further proceedings.

CASE DETAILS

COURT	Supreme Court of Alabama
WRITING FOR THE COURT	Lyons, Justice; Woodall, Justice; Stuart, Justice; Smith, Justice; Bolin, Justice; Murdock, Justice; Cobb, Chief Justice; Parker, Justice
JURISDICTION	Alabama
DECIDED	November 30, 2007
DOCKET	1060804
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	The Attorney General appealed from a trial-court judgment declaring Act No. 2006-355 unconstitutional and ordering that Chad Woodruff, who had won the 2006 election, be sworn in as circuit judge. The Supreme Court denied the appellees' motion to dismiss the appeal, reversed the judgment insofar as it invalidated the entire act, and remanded.
STANDARD OF REVIEW	Disputed factual findings after ore tenus proceedings are presumed correct and will not be reversed unless palpably erroneous or manifestly unjust; when facts are essentially undisputed and the issues are legal, review is de novo.
PRECEDENTIAL VALUE	published precedential opinion

PARTIES

Attorney General Troy King, in his official capacity v. Harvey B. Campbell, Jr., Chad Woodruff, Talladega County Judicial Commission

TOPICS

election law

appellate jurisdiction

constitutional law

statutory interpretation

severability

PRACTICE AREAS

constitutional law

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appellate procedure

QUESTIONS PRESENTED

1. Whether the Supreme Court had subject-matter jurisdiction to review a post-election challenge to the validity of Act No. 2006-355 despite Alabama Code § 17-16-44.
2. Whether the State's failure to appeal the preliminary injunction before the election or otherwise promptly challenge the ballot placement rendered the appeal moot or barred review by estoppel.
3. Whether Woodruff's status as the party nominee or quasi-officer insulated him from the legislative amendment changing the manner and timing of filling the judgeship.
4. Whether Act No. 2006-355's provision for initially filling the newly created judgeship by gubernatorial appointment violated article VI, §§ 152 and 153 of the Alabama Constitution.
5. Whether the unconstitutional appointment provision was severable from the remainder of Act No. 2006-355, including the postponement of the election until 2010.

HOLDINGS

1. Section 17-16-44, Ala. Code 1975, did not eliminate the Court's subject-matter jurisdiction because the action challenged the validity of the law authorizing the election and sought relief concerning the consequences of a potentially void election, rather than merely contesting the conduct or credentials of the election.
2. The State's failure to appeal the preliminary injunction before the election did not moot the appeal or estop the State from pursuing judicial review of the constitutionality of the 2006 Act.
3. Woodruff's status as the Democratic Party nominee did not insulate him from the effect of Act No. 2006-355 or prevent the Legislature from changing or abolishing a statutorily created judgeship.
4. The provision of Act No. 2006-355 directing that the newly created judgeship initially be filled by gubernatorial appointment violated article VI, §§ 152 and 153 of the Alabama Constitution.
5. The unconstitutional appointment provision was severable from the remainder of Act No. 2006-355; the provisions postponing the election until 2010 and commencement of the term until January 2011 remained effective.

KEY QUOTATIONS

“We decline to extend Griggs so as to permit the complete disregard of § 153 and the emasculation of § 152, which provides: “All judges shall be elected by vote of the electors within the territorial jurisdiction of their respective courts.”” (981)

“That aspect of the 2006 Act deferring the onset of the term until January 2011 remains in effect, thereby amending the provision for an election in 2006 in the 1999 Act.” (986)

FACTUAL BACKGROUND

The Alabama Legislature repeatedly postponed creation of a third circuit judgeship in the Twenty-ninth Judicial Circuit. Earlier enactments contemplated filling the position by election, but Act No. 2006-355 changed the method to gubernatorial appointment beginning on or after October 1, 2009, followed by an election in 2010. Chad Woodruff qualified as the Democratic candidate under the prior statute before the 2006 Act was signed, was placed on the ballot pursuant to a preliminary injunction, and won the November 2006 election.

PROCEDURAL HISTORY

Campbell filed a declaratory-judgment action challenging the constitutionality of Act No. 2006-355, which provided for gubernatorial appointment of the initial holder of a newly created circuit judgeship and a later election. The trial court preliminarily required Woodruff’s name to be placed on the 2006 general-election ballot. Woodruff won the election, was joined as a coplaintiff, and the trial court later declared the 2006 Act unconstitutional in its entirety and ordered him installed. The State appealed.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

Remand for further proceedings consistent with the opinion, with the appointment provision severed and the 2006 Act’s postponement of the election and commencement of the judgeship term left in effect.

CASES CITED

- Philpot v. State, 843 So. 2d 122 (Ala. 2002)
- Allstate Ins. Co. v. Skelton, 675 So. 2d 377 (Ala. 1996)
- BT Sec. Corp. v. W.R. Huff Asset Mgmt. Co., 891 So. 2d 310 (Ala. 2004)
- Alabama Republican Party v. McGinley, 893 So. 2d 337 (Ala. 2004)
- Bell v. Eagerton, 908 So. 2d 204 (Ala. 2002)
- Buskey v. Amos, 294 Ala. 1, 310 So. 2d 468 (1975)
- Morrison v. Mullins, 275 Ala. 258, 154 So. 2d 16 (1963)
- Mills v. Green, 159 U.S. 651, 16 S. Ct. 132, 40 L. Ed. 293 (1895)
- Marbury v. Madison, 5 U.S. (1 Cranch) 137, 2 L. Ed. 60 (1803)
- Dennis v. Prather, 212 Ala. 449, 103 So. 59 (1925)

- State ex rel. Norrell v. Key, 276 Ala. 524, 165 So. 2d 76 (1964)
- Lane v. Kolb, 92 Ala. 636, 9 So. 873 (1891)
- State ex rel. Weller v. Schirmer, 131 Ohio St. 455, 3 N.E.2d 352 (1936)
- State ex rel. Core v. Green, 160 Ohio St. 175, 115 N.E.2d 157 (1953)
- Corn v. City of Oakland City, 415 N.E.2d 129 (Ind. Ct. App. 1981)
- Griggs v. Bennett, 710 So. 2d 411 (Ala. 1998)
- State ex rel. Jeffers v. Martin, 735 So. 2d 1156 (Ala. 1999)
- City of Birmingham v. Smith, 507 So. 2d 1312 (Ala. 1987)
- Newton v. City of Tuscaloosa, 251 Ala. 209, 36 So. 2d 487 (1948)
- A. Bertolla & Sons v. State, 247 Ala. 269, 24 So. 2d 23 (1945)
- Union Bank & Trust Co. v. Blan, 229 Ala. 180, 155 So. 612 (1934)
- Hamilton v. Autauga County, 289 Ala. 419, 268 So. 2d 30 (1972)
- Allen v. Walker County, 281 Ala. 156, 199 So. 2d 854 (1967)
- Mitchell v. Mobile County, 294 Ala. 130, 313 So. 2d 172 (1975)
- City of Mobile v. Salter, 287 Ala. 660, 255 So. 2d 5 (1971)
- Allen v. Louisiana, 103 U.S. 80, 26 L. Ed. 318 (1880)
- Springer v. State ex rel. Williams, 229 Ala. 339, 157 So. 219 (1934)
- State ex rel. Crumpton v. Montgomery, 177 Ala. 212, 59 So. 294 (1912)
- City of Birmingham v. Hendrix, 257 Ala. 300, 58 So. 2d 626 (1952)
- In re Upshaw, 247 Ala. 221, 23 So. 2d 861 (1945)
- Birmingham Paper Co. v. Curry, 238 Ala. 138, 190 So. 86 (1939)
- San Ann Tobacco Co. v. Hamm, 283 Ala. 397, 217 So. 2d 803 (1968)