

07-77 RILEY V. KENNEDY

DECISION BELOW: 2007 WL 1284912

LOWER COURT CASE NUMBER: 2:05cv1100-MHT

QUESTION PRESENTED:

This Section 5 litigation involves two decisions of the Supreme Court of Alabama, *Stokes v. Noonan*, 534 So. 2d 237 (Ala. 1988), and *Riley v. Kennedy*, 928 So. 2d 1013 (Ala. 2005). Those decisions concern the manner of filling vacancies on the Mobile County Commission and are based on valid, race-neutral, generally-applicable principles of law. The three-judge district court held that both decisions required preclearance to be enforceable. The State submitted the decisions for preclearance, and the Attorney General of the United States interposed an objection. The district court then entered a remedy order vacating a gubernatorial appointment that had relied on these State court decisions to fill a vacancy that had arisen. This appeal presents the following questions:

1. Whether the decision of a covered jurisdiction's highest court that a precleared State law is unconstitutional and, thereby, invalid as a matter of State law is a change that affects voting that must be precleared before it can be enforced.
2. Whether the preclearance of a trial court's ruling that affects voting while that ruling is on appeal and subject to possible reversal establishes a baseline such that the reversal of that decision is a change that must be precleared before it may be enforced.

CERT. GRANTED 11/20/2007