

IN THE CIRCUIT COURT OF JEFFERSON COUNTY, ALABAMA

RICHARD GOODEN, on behalf of himself
and all others similarly situated,

Plaintiff,

v.

NANCY WORLEY, in her official capacity as
Alabama Secretary of State, and NELL
HUNTER, in her official capacity as
Jefferson County Registrar,

Defendants.

Civil Action No.

**COMPLAINT FOR DECLARATORY JUDGMENT, TEMPORARY
RESTRAINING ORDER, MANDATORY INJUNCTION, AND WRIT
OF MANDAMUS**

Plaintiff, Richard Gooden, alleges as his complaint for a declaratory judgment, temporary restraining order, mandatory injunction, and a writ of mandamus against Nell Hunter, Jefferson County Voter Registrar (“Defendant Jefferson County Registrar”) and Nancy Worley, Alabama Secretary of State (“Defendant Secretary of State”)(collectively “Defendants”), the following:

NATURE OF THE ACTION

1. This is an action seeking a declaratory judgment that individuals convicted of felonies not involving moral turpitude, as expressly set forth in the Alabama Attorney General’s Opinion, *see* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.), which is grounded in and supported by Alabama case law, are eligible to register and

vote under Alabama law and need not apply to the Alabama Board of Pardons and Paroles (“Board” or “Board of Pardons and Paroles”) for a Certificate of Eligibility to Register to Vote (“Certificate of Eligibility”) as a prerequisite to registering or voting in Alabama. This action also seeks a temporary restraining order, mandatory injunction, and a writ of mandamus against Defendant Jefferson County Registrar to permit Plaintiff, and all others similarly situated, to register to vote in Jefferson County by Friday, September 30, 2005, the close of registration for the October 11, 2005 municipal elections for residents of Birmingham, Alabama. Further, this action seeks a temporary restraining order, mandatory injunction, and writ of mandamus against Defendant Secretary of State to provide effective notice to Defendant Jefferson County Registrar by September 30, 2005, and to all County Registrars for the State of Alabama promptly thereafter, that Plaintiff, and all other similarly situated individuals with felony convictions not involving moral turpitude, as enumerated by the Attorney General, are eligible to register and vote, and are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles. Finally, this action seeks a temporary restraining order, mandatory injunction, and a writ of mandamus against Defendant Secretary of State to direct Jefferson Parish Board of Registrars to register Plaintiff, and all other similarly situated individuals in Jefferson County by September 30, 2005, and direct all County Registrars for the State of Alabama to register promptly all similarly situated individuals in their respective counties.

PARTIES

Plaintiff

2. RICHARD GOODEN is a 64-year-old African American of lawful voting age, a citizen of the United States and a lifetime resident of Birmingham, Alabama. Though he wanted to register to vote when he turned 18, Mr. Gooden, like many other African Americans, was not permitted to register to vote in the State of Alabama until his mid-20s due to Alabama's relentless and systematic efforts to deny voting and office holding to Blacks. From Reconstruction until the passage of the Voting Rights Act of 1965, Alabama utilized every state instrument of disfranchisement available to suppress the Black vote and to safeguard white supremacy, including terror and violence, literacy tests, poll taxes, and white-only primaries. Alabama also tailored its felon disfranchisement law to require the loss of voting rights for only those crimes committed primarily by Blacks. As a result, only 19 percent of the Black voting-age population in Alabama was registered to vote in 1964, one of the lowest proportions in the South. By contrast, 69 percent of the white voting-age population was registered at that time. It was not until the passage of the Voting Rights Act of 1965, which suspended literacy tests, that Mr. Gooden was finally permitted to vote in his home state. Mr. Gooden was registered to vote from the mid-1960s until 2000, when he was convicted of felony driving under the influence of alcohol (DUI), and told by the State of Alabama that his voting rights were revoked.

Defendants

3. NELL HUNTER is the Jefferson County Registrar, and, as such, is vested with the authority to grant or refuse an individual's application to register to vote in Jefferson County. She is sued in her official capacity in connection with actions taken under color of state law, including the refusal of her office to register Plaintiff on September 21, 2005.

4. NANCY WORLEY is the Secretary of State of Alabama, and, as such, is vested with the authority, as Alabama's "Chief Election Official," to execute and enforce the state laws related to the elective franchise to preserve public confidence in the democratic process and to facilitate voter participation in elections. She is sued in her official capacity in connection with actions taken under color of state law, including the promulgation of the receipt and administration of applications for registration. *See* Ala. Code. § 17-4-136.

FACTS

5. The Alabama Constitution, Article VIII, Section 177

(Recompiled), provides in pertinent part:

(a) Every citizen of the United States who has attained the age of eighteen years and has resided in this state and in a county thereof for the time provided by law, if registered as provided by law, shall have the right to vote in the county of his or her residence. The Legislature may prescribe reasonable and nondiscriminatory requirements as prerequisites to registration for voting. The Legislature shall, by statute, prescribe a procedure by which eligible citizens can register to vote.

(b) No person convicted of a felony involving moral turpitude, or who is mentally incompetent, shall be qualified to vote until restoration of civil and political rights or removal of disability.

6. Ala. Code § 17-3-9 provides:

Any person possessing the qualifications of an elector set out in Article 8 of the Constitution of Alabama, as modified by federal law, and not laboring under any disqualification listed therein, shall be an elector, and shall be entitled to register and to vote at any election by the people.

7. Ala. Code § 17-4-124 provides:

Any person to whom registration is denied shall have the right of appeal, without giving security for costs, within 30 days after such denial, by filing a petition in the circuit court in the county in which he or she seeks to register, alleging that he or she is a citizen of the United States over the age of 18 years having the qualifications as to residence prescribed by law and entitled to register to vote under the provisions of the Constitution of Alabama, as amended. Upon the filing of the petition, the clerk of the court shall give notice thereof to the district attorney authorized to represent the state in said county, who shall appear and defend against the petition on behalf of the state. The issues shall be tried in the same manner and under the same rules that other cases are tried in such court and by a jury, if the petitioner demands it. The registrars shall not be made parties and shall not be liable for costs. An appeal will lie to the Supreme Court in favor of the petitioner if taken within 42 days from the date of the judgment. Final judgment in favor of the petitioner shall entitle him or her to registration as of the date of his or her application to the registrars.

8. In the 2003 Second Special Session, the Alabama legislature promulgated Act 2003-415, *codified at* Ala. Code § 15-22-36.1, a law enabling members of the Board of Pardons and Paroles to provide a procedure for the restoration of voting rights — by issuing a Certificate of Eligibility — to individuals with felony convictions who satisfactorily complete the conditions of their sentences.

9. Upon information and belief, to implement Ala. Code § 15-22-36.1, and to determine which felonies require the issuance of a Certificate of Eligibility as a prerequisite to registering to vote, William Segrest, Executive Director of the Board of Pardons and Paroles, requested that Troy King, Attorney General for the State of Alabama, clarify which felonies did not involve moral turpitude.

10. The Attorney General, upon information and belief, in response to Segrest's request, issued an Opinion which explained that "[i]f a person has been convicted of a felony that does not involve moral turpitude, that person remains eligible to vote and is therefore ineligible to apply [to the Board of Pardons and Paroles] for a Certificate of Eligibility to Register to Vote." See Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.). (A copy of the Attorney General's Opinion is annexed as Exhibit A.) The Attorney General in that Opinion did not "provide an exhaustive list of every felony involving moral turpitude," but listed a number of crimes that have been determined by Alabama courts not to involve moral turpitude, including "violation of liquor laws" and "driving under the influence." *Id.* at 2 (citing *Parker v. State*, 280 Ala. 685, 198 So. 2d 261 (1967); *Finley v. State*, 661 So. 2d 1321 (Ala. Crim. App. 1995)). Thus, if "a person is convicted solely of a felony that does not involve moral turpitude, that person remains eligible to vote." *Id.* at 3.

11. The Board of Pardons and Paroles issued a press release on May 17, 2005, upon information and belief, to effectuate the intent and

substance of the Attorney General's Opinion. (The Board's press release is annexed as Exhibit B.) The press release noted that as the Board worked to implement Ala. Code § 15-22-36.1, it "discovered that many eligible voters [were] unaware" that they did not need a "certificate from this agency in order to register to vote." "Under the current law only felonies involving moral turpitude disqualify a person from voting. Convictions for other felonies do not disqualify a person from voting. If individuals who are already eligible to vote do not ask us for certificates, we can process the other applications more promptly." While the press release did not provide an exhaustive list of felonies involving moral turpitude, it noted that "felony driving under the influence" and "felony possession of drugs" are offenses that do not involve moral turpitude.

12. Notwithstanding the clear direction provided by the Attorney General's Opinion, and the press release that was issued by the Board of Pardons and Paroles, local Registrars represented to agents of Plaintiff's counsel that Registrars in the following twenty counties: Bullock, Chilton, Choctaw, Dallas, Escambia, Greene, Houston, Jefferson, Lowndes, Macon, Madison, Marengo, Mobile, Montgomery, Pike, Randolph, St. Clair, Talladega, Tallapoosa and Tuscaloosa, were directed by the Secretary of State not to register people with felony convictions – whether or not the felony involved moral turpitude – without a Certificate of Eligibility.

13. On September 21, 2005 Plaintiff attempted to register with Defendant Jefferson County Registrar, but was told that he was “not eligible” to register to vote because of his felony DUI conviction.

14. Plaintiff was instructed by Defendant Jefferson County Registrar to apply to the Board of Pardons and Paroles for a Certificate of Eligibility.

15. Plaintiff was told later that day (September 21, 2005) by an employee of the Board of Pardons and Paroles that since his felony DUI conviction did not involve moral turpitude, the Attorney General had determined that he, and similarly situated individuals, need not apply for a Certificate of Eligibility since their voting rights were never lost.

16. Upon information and belief, an employee of the Board of Pardons and Paroles telephoned Defendant Jefferson County Registrar on September 21, 2005 and explained that Plaintiff was not disqualified from voting since his felony conviction did not involve moral turpitude, and, therefore, that a Certificate of Eligibility was not necessary for him to register to vote. Upon information and belief, the employee of the Board of Pardons and Paroles also offered to fax Defendant Jefferson County Registrar a copy of the press release the Board had issued to this effect.

17. Upon information and belief, notwithstanding its concession that Plaintiff's felony DUI conviction did not involve moral turpitude, and that, in fact, his conviction was expressly identified in the Attorney General's Opinion as non-disqualifying crime, Defendant Jefferson County Registrar told the Board of Pardons and Paroles that the Defendant

Secretary of State had directed them not to register individuals with felony convictions who had not obtained a Certificate of Eligibility, irrespective of whether or not such felony convictions involved moral turpitude.

18. In an attempt to resolve this matter amicably on Friday, September 23, 2005, Plaintiff's counsel faxed two copies to a valid facsimile number and mailed, via next day service, a letter that sought the cooperation of Defendant Secretary of State in resolving the issues set forth herein in time for Plaintiff and similarly situated individuals in Jefferson County to register by Friday, September 30, 2005 and for all subsequent elections. (A copy of Plaintiff counsel's letter to the Defendant Secretary of State is attached as Exhibit C.) In light of the time-sensitive nature of this action, the letter requested a facsimile response from the Defendant Secretary of State by Monday, September 26, 2005.

19. Defendant Secretary of State did not respond to Plaintiff counsel's letter by late Monday afternoon, September 26, 2005, counsel for Plaintiff then contacted the office of Secretary of State. Counsel for Defendant Secretary of State explained that she was unaware of the letter, and was unfamiliar with Attorney General's Opinion. Plaintiff's counsel faxed additional copies of the letter to, and requested an opportunity to speak directly with, Defendant Secretary of State as quickly as possible. On Tuesday, September 27, 2005, when Plaintiff's counsel twice telephoned Defendant Secretary of State, the Defendant still had not responded to Plaintiff Counsel's letter, but counsel explained that

Defendant Secretary of State had requested that the Attorney General further clarify his Opinion as to which crimes involve moral turpitude. Counsel for Defendant Secretary of State agreed to fax a copy of the Defendant Secretary of State's letter to the Attorney General. As of the time of filing of this complaint, Defendant Secretary of State had provided its clarification letter (a copy of which is annexed as Exhibit D), but repeated requests by Plaintiff's counsel to speak directly with Defendant Secretary of State have not been honored.

CAUSES OF ACTION

Count One

20. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

21. Defendant Jefferson County Registrar's refusal to register Plaintiff, an otherwise eligible voter, violates his rights as guaranteed by Constitution of the State of Alabama, Ala. Const. art. VIII, § 177 (amend. 579), and Ala. Code 1975 § 17-3-9.

Count Two

22. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

23. On information and belief, Defendant Jefferson County Registrar, and Registrars in 19 other counties in Alabama, represented that they were directed not to register people with felony convictions

irrespective of whether or not such convictions involved moral turpitude, in violation of Plaintiff's rights, and similarly situated individuals, as guaranteed under the Constitution of the State of Alabama, Ala. Const. art. VIII, § 177 (amend. 579), and Ala. Code 1975 § 17-3-9.

24. This misrepresentation by the Secretary of State of the right of certain persons to register to vote has caused voter registrars in at least twenty counties to refuse to register to register persons who are eligible under the law. This misrepresentation by the Secretary of State may discourage eligible persons from registering to vote. This can only be counteracted by the Secretary of State giving notice to all voter registrars and to the public of the correct eligibility requirements.

Count Three

25. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

26. Plaintiff, pursuant to § 17-4-124 of the Alabama Code, appeals Defendant Jefferson County Registrar's refusal to register him to vote.

Count Four

27. Plaintiff hereby re-alleges and incorporates by reference paragraphs 1 through 19 above.

28. Plaintiff is without an adequate remedy at law and will suffer irreparable damage unless the actions of the Defendants in

violation of the Alabama Constitution and laws are enjoined. More specifically, Plaintiff and other similarly situated individuals are entitled to register to vote in Jefferson County by September 30, 2005, the last day of registration for the October 11, 2005 municipal election in Birmingham, Alabama.

29. The gravity of the rights deprivation that would flow to Plaintiff and other similarly situated individuals from resolving this on Defendant Secretary of State's timetable necessitates immediate action.

PRAYER FOR RELIEF

WHEREFORE, PREMISES CONSIDERED, the Plaintiff respectfully requests that the following relief be granted:

30. Plaintiff requests an order under Ala. Code § 17-4-124 reversing the refusal of the Jefferson County Registrar to register him.

31. Plaintiff seeks declaratory judgment that individuals convicted of felonies not involving moral turpitude, as enumerated by the Attorney General and grounded in Alabama case law, are eligible to register and vote under Alabama law, and that, accordingly, individuals with felony convictions not involving moral turpitude need not apply to the Board of Pardons and Paroles for a Certificate of Eligibility as a prerequisite to registering or voting in Alabama.

32. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Jefferson County Registrar to provide to Plaintiff, and similarly situated individuals in

Jefferson County, by Friday, September 30, 2005, the registration deadline for the October 11, 2005 municipal elections in Birmingham, Alabama effective notice that individuals with felony convictions not involving moral turpitude are eligible to vote without a Certificate of Eligibility from the Board of Pardons and Paroles.

33. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Jefferson County Registrar to register Plaintiff, and similarly situated individuals in Jefferson County, by Friday, September 30, 2005, the registration deadline for the October 11, 2005 municipal elections in Birmingham, Alabama.

34. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Secretary of State to provide effective notice to the Defendant Jefferson County Registrar by September 30, 2005, and each of the other counties promptly, that individuals with felony convictions not involving moral turpitude, as enumerated by the Attorney General, are eligible to register and vote, and are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles.

35. Plaintiff requests a temporary restraining order, mandatory injunction, and writ of mandamus to require Defendant Secretary of State to direct the Defendant Jefferson County Registrar by September 30, 2005, and each of the other counties promptly, to permit individuals with felony convictions not involving moral turpitude, as enumerated by the

Attorney General, to register to vote and expressly state that such individuals are not required to apply for or obtain a Certificate of Eligibility from the Board of Pardons and Paroles.

36. Plaintiff requests a temporary restraining order and mandatory injunction to require Defendant Secretary of State to give notice to the public by (a) posting a prominent notice on the Secretary of State website (<http://www.sos.state.al.us/>) and (b) issuing a press release to all the usual news outlets notified by the Secretary of State that persons who have been convicted of a felony which does not involve moral turpitude and listing the examples of those crimes as discussed in the letter of Attorney General, Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005).

37. Plaintiff requests such other, further, and different relief as the facts and circumstances may warrant.

38. The following Exhibits are in the Appendix:

- a. Attorney General Opinion, *see* Ala. Op. Atty. Gen. No. 2005-092 (March 18, 2005), 2005 WL 1121853 (Ala. A.G.).
- b. Press Release Issued by the Alabama Board of Pardons and Paroles, dated May 17, 2005.
- c. Letter from Ryan P. Haygood, Assistant Counsel, NAACP Legal Defense & Educational Fund, Inc. to Nancy Worley, Alabama Secretary of State, dated September 23, 2005.
- d. Letter from Nancy Worley, Alabama Secretary of State to Troy King, Alabama Attorney General, dated May 11, 2005.

Dated: Birmingham, Alabama
September __, 2005

Submitted by,

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Verification

I affirm under penalty of perjury that the foregoing statements of fact are true and correct. Signed this ____ day of September 2005.

Richard Gooden

Affirmed under penalty of perjury before me this __ day of September 2005.

Notary Public, State at Large

My commission expires _____

Certificate of Notification

I certify that I notified the defendants of this action and when and where I would file complaint and the application for a temporary restraining order as follows:

At approximately 4:15 p.m. on 28 September 2005, I spoke to Ms. Hope Ayers, Assistant Attorney General assigned to the Secretary of State's office and faxed to her a draft copy of the complaint at 4:20 p.m.

At approximately 4:29 p.m. on 28 September 2005, I faxed a copy of the draft complaint to Ms. Nell Hunter with a cover letter asking her to give it to her attorney immediately.

At approximately 8:45 a.m. on 29 September 2005, I spoke to Mr. Charles Wagner of the Jefferson County Attorney's Office (who was returning my call from the previous afternoon) and faxed a draft copy of the complaint to him. Shortly after 9:00 a.m., Mr. Jeff Sewell, also of the County Attorney's Office, called and informed me that the State Attorney General was working on an opinion letter that should clear up Mr. Gooden's problem. He said that he had been told that the letter would be issued within an hour or so. I agreed to wait a short period of time for that letter to be issued. Mr. Sewell and I spoke twice more during the morning, but no letter was forthcoming from the Attorney General.

I spoke to Mr. Rushing Payne, Assistant Attorney General, about 1:30 p.m. and was told that his department was checking with the U.S. Department of Justice regarding whether the Secretary of State could change

her interpretation of the law without preclearance under Section 5 of the Voting Rights Act of 1965.

At 2:35 p.m. I informed Mr. Sewell that I would file the complaint this afternoon and he agreed to call the Attorney General.

Date: _____

Edward Still