

**FEDERAL JUDICIAL CENTER**  
**CASE STUDIES IN EMERGENCY ELECTION LITIGATION**  
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Assembled here are case studies on emergency election litigation in federal courts. Because of the time constraints in emergency cases, the case records are often not easily available from other sources. These 373 case studies were prepared by Robert Timothy Reagan, Margaret S. Williams, Marie Leary, Catherine R. Borden, Jessica L. Snowden, Patricia D. Breen, and Jason A. Cantone. We are grateful to Christopher Krewson, Matt Sarago, Geoffrey Erwin, Yvonne Washington, George Cort, Vashty Gobinpersad, Donna Pitts-Taylor, and Tyeika Crawford for their contributions to this project. We are especially grateful to the more than 100 judges who contributed their experiences and wisdom to this project in telephone interviews.

Note 1: In September 2014, statutory provisions concerning voting and elections were moved to a new title 52 of the U.S. Code.

Note 2: Some of these cases involve section 5 of the Voting Rights Act, which requires some jurisdictions to receive preclearance from the Justice Department or the District Court for the District of Columbia for changes to voting procedures. (These cases are marked with the topic "section 5 preclearance.") On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 133 S. Ct. 2612 (2013).

## **REGISTRATION PROCEDURES**

### **A County's Improper Refusal to Accept Online Voter Registrations from the State's Website**

*Mullins v. Cole (Robert C. Chambers, S.D. W. Va. 3:16-cv-9918)*

A district judge determined that a county clerk's refusal to accept online voter registrations from the state's website violated equal protection. The judge issued a preliminary injunction five days after the complaint was filed.

**Topics:** Registration procedures; equal protection; class action; student registration.

### **When the Voter Registration Deadline Falls on a Holiday**

*Arizona Democratic Party v. Reagan (Steven P. Logan, D. Ariz. 2:16-cv-3618)*

The state's voter registration deadline fell on a holiday, and a political party sued the state's secretary of state in federal court to have the deadline extended by one day, but the party did not sue until more than a week after the deadline passed. The district judge determined that the secretary's not giving voters an extra day to register violated state law and the National Voter Registration Act, but the judge determined that the party filed the case too late to merit injunctive relief.

**Topics:** Registration procedures; laches; National Voter Registration Act.

### **Extending Voter Registration Because of a Website Crash**

*New Virginia Majority Education Fund v. Virginia Department of Elections (Claude M. Hilton, E.D. Va. 1:16-cv-1319)*

On the last day of voter registration, the state's online registration website crashed, and state officials had no authority to extend the registration deadline as a remedy. Two organizations and two prospective voters filed a federal complaint, and the district judge granted a brief extension to voter registration, to which state officials agreed.

**Topics:** Registration procedures; voting technology.

### **Extending Voter Registration Deadlines Because of a Hurricane**

*Florida Democratic Party v. Scott (4:16-cv-626) and League of Women Voters of Florida v. Scott (4:16-cv-633) (Mark E. Walker, N.D. Fla.) and Georgia Coalition for the Peoples' Agenda, Inc. v. Deal (4:16-cv-269) and Bethea v. Deal (2:16-cv-140) (William T. Moore, Jr., S.D. Ga.)*

District judges in Florida and Georgia extended voter registration by one week in advance of the 2016 general election because of evacuations and government office closings resulting from Hurricane Matthew. In Florida, the judge extended the deadline statewide; in Georgia, the judge extended the deadline only for one county, because only offices in that county did not open again after the hurricane until after the original deadline.

**Topics:** Registration procedures; intervention; case assignment; recusal.

### **Improperly Requiring Dormitory Names on Students' Voter Registration Forms**

*Pitcher v. Dutchess County Board of Elections (Kenneth M. Karas, S.D.N.Y. 7:12-cv-8017)*

A federal complaint challenged the rejection of students' voter registration applications for failure to list dormitory names or room numbers despite the inclusion of valid street and mailing addresses. On the day before the election, the district judge ordered acceptance of registration applications for the student plaintiffs and others similarly situated. Several months later, the suit was closed by consent decree and a stipulated award of attorney fees.

**Topics:** Student registration; registration procedures; class action; attorney fees.

### **Superseded Registration Form**

*Brown v. Rokita (Richard L. Young, S.D. Ind. 1:08-cv-1484)*

On the day before the 2008 general election, a voter filed a class action challenging the nullification of her voter registration because she had not used the latest version of the voter registration form. At a temporary restraining order hearing that day, the parties announced an agreement that would permit voters who submitted old registration forms to cast provisional ballots that would be counted if the registration applications included all necessary information.

**Topics:** Registration procedures; provisional ballots.

### **Segregating Ballots Because of Questionable Registrations**

*Atsaves v. Helander (Virginia M. Kendall, N.D. Ill. 1:08-cv-6199)*

A voter registration team removed an action from state court seeking to segregate votes by voters registered by the team for investigation of improper registration. The district judge determined that the case did not present a federal question because the Help America Vote Act did not afford private rights of action, and relief from section 1983 requires willful and wanton conduct, which the plaintiffs had not alleged.

**Topics:** Help America Vote Act (HAVA); 42 U.S.C. § 1983; intervention; removal; matters for state courts.

### **Regulation of Third-Party Voter Registrations**

*League of Women Voters of Florida v. Browning (Cecilia M. Altonaga, S.D. Fla. 1:08-cv-21243)*

On April 28, 2008, the League of Women Voters filed a federal action in the Southern District of Florida challenging Florida's regulation of voter registration as so burdensome as to cause the League to suspend its voter registration efforts. On the following day, the district judge held a hearing, ordered the parties to submit a proposed consent order on the next day, and set a preliminary injunction hearing for June 19. On August 6, the court denied the League a preliminary injunction. Similar cases were filed in 2006 in the Southern District and in 2011 in the Northern District.

**Topics:** Registration procedures; case assignment.

### **Preclearance of Landowner Voter Registration Requirements**

*Shields v. Engelman Irrigation District (Ricardo H. Hinojosa, S.D. Tex. 7:08-cv-116)*

In response to an April 3, 2008, federal complaint, a district judge and then a three-judge court enjoined new voter registration requirements for a May 10 election by landowners to an irrigation district board of directors for lack of preclearance pursuant to section 5 of the Voting Rights Act.

**Topics:** Registration procedures; section 5 preclearance; three-judge court; voter identification; matters for state courts; intervention; pro se party.

### **Wrongfully Requiring Photo Identification for Voter Registration**

*Pakosz v. Orr (John W. Darrah, N.D. Ill. 1:06-cv-5992)*

On the Thursday before the 2006 general election, a pro se plaintiff filed a federal complaint alleging that he was wrongfully prevented from registering to vote. The complaint was docketed on Monday, and the federal judge issued a temporary restraining order that day requiring the defendants to issue the plaintiff a voter registration card. Defendants had wrongfully required the plaintiff to present photo identification, which was not required by the voter registration statute.

**Topics:** Voter identification; registration procedures; pro se party.

### **Overly Burdensome Voter Registration Rules**

*Project Vote v. Blackwell (Kathleen M. O'Malley, N.D. Ohio 1:06-cv-1628)*

In July 2006, public interest organizations challenged new voter registration laws as overly burdensome, and the court enjoined the new laws. The court awarded the plaintiffs \$321,485.28 in attorney fees and costs.

**Topics:** Registration procedures; attorney fees.

### **Enhanced Requirements for Registering and Voting in Arizona**

*González v. Arizona (2:06-cv-1268), Inter Tribal Council of Arizona v. Brewer (3:06-cv-1362), and Navajo Nation v. Brewer (3:06-cv-1575) (Roslyn O. Silver, D. Ariz.)*

Four months in advance of Arizona's 2006 primary election, a federal complaint challenged proposition 200, a 2004 initiative that enhanced requirements for proof of citizenship for voter registration and proof of identity and residence for voting. The district court acted quickly on the plaintiffs' motions for a temporary restraining order but denied injunctive relief. In 2012, the court of appeals determined en banc that the proof of citizenship procedure for registration is superseded by the National Voter Registration Act but the identification requirement for voting is not. The Supreme Court agreed that the required federal registration form did not permit additional evidence of citizenship.

**Topics:** Citizenship; voter identification; registration procedures; National Voter Registration Act; interlocutory appeal; recusal; section 5 preclearance; primary election.

### **Strict Voter Registration Rules**

*Citizens Alliance for Secure Elections v. Vu (Paul R. Matia, N.D. Ohio 1:04-cv-2147)*

In a challenge to a county's voter registration procedures, claiming that they were so strict as to disenfranchise voters, the court determined, on the case's third day, that provisional ballot procedures were sufficient to protect voters from disenfranchisement.

**Topics:** Registration procedures; provisional ballots.

### **Identification Numbers and Voter Registration**

*Lucas County Democratic Party v. Blackwell (James G. Carr, N.D. Ohio 3:04-cv-7646)*

Eighteen days before a general election, a suit alleged that a directive by Ohio's secretary of state not to process voter registration forms that left blank the box for a driver's license or Social Security number violated the Help America Vote Act and the National Voter Registration Act. The court denied immediate relief, because there was not enough time to develop an evidentiary record.

**Topics:** Registration procedures; Help America Vote Act (HAVA); National Voter Registration Act; laches.

### **Correcting Imperfect Voter Registrations**

*Diaz v. Hood (James Lawrence King, S.D. Fla. 1:04-cv-22572)*

Eight days after voter registration closed for the 2004 general election, three would-be voters and four unions filed a federal complaint alleging that five counties were improperly failing to process and approve voter registrations. At the end of the week, the district court heard a motion to expedite the case; at the end of the following week, the court heard a motion for a preliminary injunction. Four days later, the court dismissed the case for lack of standing, because the plaintiffs either cured or refused to cure their registration defects. In 2005, the court of appeals reversed the dismissal. The district court ruled against the plaintiffs again in 2006, but without prejudice. After a five-day bench trial on a third amended complaint, the court again ruled against the plaintiffs, finding the firm deadline for voter registration to be constitutionally reasonable.

**Topics:** Registration procedures; National Voter Registration Act; intervention; recusal.

### **A Party's Standing to Challenge Voter Registration Procedures**

*Florida Democratic Party v. Hood (Stephan P. Mickle, N.D. Fla. 4:04-cv-405)*

A political party filed a federal complaint challenging election officials' not processing voter registration applications on which applicants did not check a box stating that they were U.S. citizens even if they signed a statement that they were citizens. The district judge ordered a prompt response and then dismissed the case for lack of standing, because the party had not alleged actual denial of registration for one of its members.

**Topics:** Citizenship; registration procedures; National Voter Registration Act.

### **Denial of Voter Registration Efforts**

*Goodwin v. Meyer (William F. Downes, D. Wyo. 1:04-cv-256)*

A federal complaint challenged state proscriptions on voter registration drives. The district judge determined that the plaintiffs had failed to show irreparable injury because voter registration forms were available on the Internet.

**Topic:** Registration procedures.

### **The Right of Felons to Register to Vote After Release**

*CURE-Ohio v. Blackwell (Sandra S. Beckwith, S.D. Ohio 1:04-cv-543) and Racial Fairness Project v. Summit County Board of Elections (John R. Adams, N.D. Ohio 5:04-cv-1948)*

A federal complaint against the state's secretary of state and 21 county boards of elections challenged false representations by election officials that persons convicted of felonies cannot be registered to vote even if they are on parole or have been released from confinement. Following an agreement to provide former prisoners with notices of the right to re-register to vote, the action was dismissed voluntarily. A subsequent action in the state's other district challenged another county's election officials' not including in notices of registration cancellations to felons notices that felons can re-register following confinement. The district judge in the second case held that notices of registration cancellations were not required, but if they are provided they must not be misleading, which they would be if they failed to provide notice of the right to re-register following confinement.

**Topics:** Registration procedures; prisoner voters; class action; case assignment.

### **Bundling Voter Registrations**

*Nu Mu Lambda Chapter v. Cox (William C. O'Kelley, 1:04-cv-1780) and ACORN v. Cox (Jack T. Camp, 1:06-cv-1891) (N.D. Ga.)*

A 2004 complaint alleged that Georgia improperly required newly registered voters to submit their voter registration forms directly to the government rather than to coordinators of voter registration efforts. Thirteen days after the complaint was filed, the court granted the plaintiffs injunctive relief. The court of appeals affirmed in 2005. In 2006, a similar complaint alleged that Georgia was not complying with the earlier precedent. Again, the court granted the plaintiffs preliminary injunctive relief. Two years later, the court vacated the preliminary injunction because the parties had not moved the case forward.

**Topics:** Registration procedures; National Voter Registration Act; enforcing orders; interlocutory appeal.

### **Voter Registration for College Students**

*Saunders v. Andrews (4:04-cv-20) and Lowe v. Davis (4:04-cv-21) (Raymond A. Jackson, E.D. Va.)*

A college student wishing to run for city council filed a federal complaint challenging the denial of his voter registration. On the following day, three other students filed a similar complaint. The federal judge ruled against the students, but a state judge granted one of the students relief. By the time of the general election, two of the students could register because they obtained driver's licenses at their local address.

**Topic:** Student registration.

### **Blaming Candidacy Withdrawal on a Voter Registration Challenge**

*Moseley v. Price (T.S. Ellis III, E.D. Va. 1:03-cv-1320)*

A pro se federal complaint alleged that voting rights violations forced the plaintiff to withdraw from a race that he alleged he was certain to win. According to the complaint, because he registered to vote while he was in the process of moving into a Loudoun County residence, his registration card was returned; a radio journalist made an issue of it, the county's circuit court appointed a special prosecutor, and the state police investigated the matter. The judge dismissed the federal voting rights claims as without merit and dismissed state law claims without prejudice.

**Topics:** Registration procedures; pro se party; matters for state courts.

### **Challenge to Voter Registration Form Stating That Party Affiliation Is Required for Primary Voting**

*Fitzgerald v. Berman (Norman A. Mordue, N.D.N.Y. 1:02-cv-926)*

As voters supporting open primary elections began a voter registration drive as part of their effort to create a new Non-Affiliated Voters Party, they filed a federal complaint challenging voter registration form language stating that only registered members of political parties could vote in primary elections. The district judge considered but denied immediate relief 15 days later. Two years after that, the district judge dismissed the complaint for lack of standing because all established parties wished to retain closed primary elections.

**Topics:** Primary election; registration procedures; pro se party.

### **Voter Registration for Disabled Students**

*National Coalition for Students with Disabilities Education and Legal Defense Fund v. Bush (Robert L. Hinkle, N.D. Fla. 4:00-cv-442)*

A federal complaint alleged that Florida failed to provide voter registration services to disabled students, as required by the National Voter Registration Act, for the 2000 general election. The district judge concluded that “the time to seek any [registration] redress affecting the 2000 election was prior to that election.” Respecting long-term relief, the case settled in May 2001. The judge later learned that a named plaintiff was also a named plaintiff in a similar action in another state; he awarded the plaintiffs zero attorney fees.

**Topics:** National Voter Registration Act; registration procedures; laches; attorney fees.

### **Requiring Social Security Numbers for Voter Registration**

*Schwier v. Cox (Julie E. Carnes, N.D. Ga. 1:00-cv-2820)*

On October 26, 2000, two voters filed a federal complaint challenging a requirement that they provide Social Security numbers as part of their voter registrations. On Friday, November 3, the district judge ruled that to vote the plaintiffs could file their Social Security numbers with election officials and with the court under seal; depending on the resolution of the case, the numbers would either be unsealed or destroyed. In 2002, the district judge ruled that an uncodified provision of the Privacy Act did not provide the plaintiffs with rights of action, but the court of appeals determined in 2003 that the uncodified provision was nevertheless applicable law that did afford private rights of action.

**Topics:** Registration procedures; voter identification; 42 U.S.C. § 1983; attorney fees.

### **Changing Party Affiliation for a Primary Election**

*Van Wie v. Pataki (David N. Hurd, 1:00-cv-322), Van Allen v. Cuomo (Gary L. Sharpe, 1:07-cv-722), and Van Allen v. Walsh (Lawrence E. Kahn, 1:08-cv-876) (N.D.N.Y.)*

Two weeks in advance of a presidential primary election, two voters filed a federal complaint challenging a law that allowed new voter registrants to enroll in a political party up to 25 days before a primary but did not allow a change in party enrollment for already registered voters to go into effect until after the next general election. One week later, after oral argument, the district judge dismissed the complaint, finding compelling the incentive to register for new voters. Actions initiated in 2007 and 2008 were similarly unsuccessful.

**Topics:** Registration procedures; primary election; intervention; pro se party.

## REGISTRATION DATABASES

### **Suit Arising Under State Implementation of the Help America Vote Act Remanded to State Court**

*Ohio ex rel. Mahal v. Brunner (George C. Smith, S.D. Ohio 2:08-cv-983)*

A state's secretary of state removed a mandamus action filed with the state's supreme court concerning the state's compliance with the Help America Vote Act (HAVA). The district court immediately remanded the case, because the mandamus action sought enforcement of the state's HAVA implementing legislation, which meant that the case arose under state law.

**Topics:** Matters for state courts; removal; Help America Vote Act (HAVA).

### **Turned-Away Voters in a Close Election**

*Bennink v. City of Coopersville (Robert Holmes Bell, W.D. Mich. 5:06-cv-82)*

Voters turned away from the polls in a close election on a school bond sued for the right to vote in the election immediately after the election was over. The court denied the plaintiffs the requested relief.

**Topics:** Enjoining certification; registration procedures; provisional ballots.

### **Computerized Voter Registration List**

*United States v. Alabama (W. Keith Watkins, M.D. Ala. 2:06-cv-392)*

The Attorney General sued to enforce Alabama's compliance with the Help America Vote Act's requirements for voter registration databases. The judge appointed the governor as a special master to order compliance.

**Topics:** Help America Vote Act (HAVA); special master.

## NULLIFYING REGISTRATIONS

### **Voter Registration Purges in North Carolina**

*North Carolina State Conference of the NAACP v. North Carolina State Board of Elections (Loretta C. Biggs, M.D.N.C. 1:16-cv-1274)*

Eight days before a presidential election, a federal complaint challenged widespread cancellation of voter registrations based on single instances of undeliverable mail. Finding that the National Voter Registration Act proscribed systematic voter registration cancellations less than 90 days before a federal election and proscribed cancellations based on evidence of residence changes before two federal elections had occurred, a district judge enjoined the voter registration cancellation program at issue in an opinion issued four days before the election.

**Topics:** Registration challenges; National Voter Registration Act.

### **Unsuccessful Effort to Open a Primary Election Because of Allegedly Purged Party Registrations**

*Campanello v. New York State Board of Elections (Joanna Seybert and Sandra J. Feuerstein, E.D.N.Y. 2:16-cv-1892)*

Filed on the day before a presidential primary election, a federal complaint sought to open the parties' primary elections to voters of all parties as a remedy for allegedly improper purging of party registrations. The district judge on miscellaneous duty denied immediate relief. Following their filing of an amended complaint after the election, the plaintiffs declined to respond to a motion to dismiss the case, and so the assigned judge dismissed the case.

**Topics:** Registration procedures; matters for state courts; primary election; National Voter Registration Act; case assignment; class action; ballot segregation; provisional ballots.

### **Purging Voter Registrations Because of Registration in Other States**

*Democratic Party of Virginia v. Virginia State Board of Elections (Claude M. Hilton, E.D. Va. 1:13-cv-1218)*

A federal complaint challenged the purging of voter registrations for persons that appeared to have registered in other states since the last time they voted in Virginia, alleging an excess of errors. The district judge denied the plaintiffs relief, finding several mechanisms in place to correct errors.

**Topic:** Registration challenges.

### **Cancellation of Voter Registrations for Not Voting in the Last Election**

*Colón Marrero v. Conty Pérez (Carmen Consuelo Cerezo, D.P.R. 3:12-cv-1749)*

Five days before a September 17, 2012, voter registration deadline in Puerto Rico, a voter filed a federal complaint challenging the cancellation of her registration because she had not voted in the 2008 general election. The district judge denied the voter immediate relief because (1) the National Voter Registration Act does not apply to Puerto Rico as it does to the states, (2) the Help America Vote Act does not afford a private right of action, and (3) the plaintiff had not justified her bringing the case so late. The court of appeals, on the other hand, found probable success on the merits and remanded the case for an evidentiary hearing. On October 18, the court of appeals determined that relief for the plaintiff had become infeasible. In November, the court of appeals vacated an order issued in the plaintiff's favor by the district court judge under the All Writs Act. After further litigation, the court issued a declaratory judgment in favor of the plaintiffs, which was affirmed on appeal. The courts ruled that canceling a federal voter registration after missing only one general election violates HAVA.

**Topics:** Registration challenges; National Voter Registration Act; Help America Vote Act (HAVA); laches; enforcing orders.

### **Purging Noncitizen Voter Registrations**

*United States v. Florida (Robert L. Hinkle, N.D. Fla. 4:12-cv-285)*

The U.S. Court of Appeals for the Eleventh Circuit determined that a systematic purge of noncitizens' voter registrations violates the National Voter Registration Act. During the 2012 election cycle, the Justice Department brought a federal action against Florida in the Northern District of Florida claiming that Florida was violating the Act. Fifteen days later, the district court ruled against preliminary injunctive relief, because Florida had ceased the purge that prompted the suit. In addition, the district judge ruled that the 90-day proscription against systematic purges did not apply to noncitizens. In another case, a judge in the Southern District came to the same conclusion. Florida resumed its purge upon access to more reliable citizenship data from the Department of Homeland Security. In 2014, the court of appeals held a systematic purge even of noncitizens illegal shortly before an election, when there is little time to correct errors.

**Topics:** Citizenship; registration challenges; National Voter Registration Act; intervention; recusal; case assignment.

### **Threats to Cancel Voter Registrations**

*Chatman v. Delaney (Clifford J. Proud, S.D. Ill. 3:09-cv-259)*

Voters filed a federal complaint because of notices they received that their voter registrations might be canceled in advance of an April 7, 2009, election and absentee ballots they might have cast might not be counted. The county had identified the voters' village as one with a high rate of voter fraud, so it sent registration challenge letters to 558 of its residents. The parties consented to a decision by a magistrate judge who was available and local; the assigned district judge was 110 miles away. The case was resolved by a consent order issued after a conference with the judge.

**Topics:** Registration challenges; case assignment.

### **Voter Registrations for Juvenile Offenders**

*Hamilton v. Ashland County Board of Education (Donald C. Nugent, N.D. Ohio 1:08-cv-2546)*

Adult inmates of a juvenile correctional facility sued to enjoin cancellation of their voter registrations for not being permanent residents. The district court denied the plaintiffs relief. The court of appeals vacated the portion of the district court decision pertaining to state law as a matter for state courts to decide.

**Topics:** Prisoner voters; registration challenges; matters for state courts.

### **Voter Registration Purges in Colorado**

*Common Cause of Colorado v. Coffman (John L. Kane, D. Colo. 1:08-cv-2321)*

A federal complaint alleged that Colorado was engaging in improper systematic purging of voter registration rolls within 90 days of a general election in violation of the National Voter Registration Act. Among the issues in the case was Colorado's practice of canceling new registrations if registration notices came back undeliverable within 20 days of their being mailed. After an evidentiary hearing, the parties stipulated to a temporary restraining order. The state's secretary of state adopted an aggressive interpretation of his attorney's stipulation, but the district judge further restrained the secretary's actions. The litigation proceeded at a normal pace after the election, and the district judge eventually ruled that Colorado's 20-day rule did not violate the National Voter Registration Act because voters affected by it could cast provisional ballots.

**Topics:** Registration challenges; registration procedures; National Voter Registration Act; enforcing orders; case assignment.

### **Citizenship Verification**

*Morales v. Handel (Jack T. Camp, N.D. Ga. 1:08-cv-3172)*

A naturalized citizen sued Georgia for its efforts to purge noncitizens from voter registration rolls. A three-judge court determined that section 5 preclearance was required for the efforts and granted interim relief. Georgia eventually was able to establish procedures that earned preclearance.

**Topics:** Citizenship; registration challenges; Help America Vote Act (HAVA); section 5 preclearance; three-judge court.

### **Partisan Canceling of Voter Registrations**

*Montana Democratic Party v. Eaton (Donald W. Molloy, D. Mont. 9:08-cv-141)*

One political party filed an action against the other political party for launching an effort to nullify several thousand voter registrations based on postal changes of address. Because the state did not fully effectuate the plan, in part because of the filing of the case, the court did not need to grant the plaintiffs relief.

**Topics:** Registration challenges; National Voter Registration Act.

### **Improperly Canceling Voter Registrations for Changes of Address**

*United States Student Ass'n Foundation v. Land (Stephen J. Murphy III, E.D. Mich. 2:08-cv-14019)*

Three organizations filed a federal complaint charging the state with improperly canceling voter registrations based on insufficient indications of residence changes. The district judge determined that the state's practice of rejecting voter registrations if registration identification cards came back from the post office as undeliverable failed to follow the notice and waiting period requirements of the National Voter Registration Act. The state's practice of canceling registrations upon learning that the voter became registered to drive in another state also relied on flawed logic and violated the act. The case was finally resolved by settlement with a payment of \$150,000 in attorney fees and costs to the plaintiffs.

**Topics:** Registration challenges; National Voter Registration Act; attorney fees; intervention.

### **Using Foreclosure Notices to Challenge Voters**

*Maletski v. Macomb County Republican Party (David M. Lawson, E.D. Mich. 2:08-cv-13982)*

Based on a news website's report that one party was planning to use foreclosure notices to challenge voter registrations during the 2008 general election, the other party filed a federal complaint to enjoin the plan. In preparation for a hearing, the parties learned that the news report was not accurate, so the parties stipulated to a dismissal on the day of the hearing.

**Topic:** Registration challenges.

### **Hurricane Displacement and Voter Registration**

*Segue v. Louisiana (Kurt D. Engelhardt, E.D. La. 2:07-cv-5221)*

The complaint challenged Louisiana's notification procedures for challenges to voter registrations based on evidence that the voters had registered elsewhere. The district judge determined that preclearance was not necessary because Louisiana was giving more notice than it was precleared to, and empaneling a three-judge court was not necessary.

**Topics:** Registration challenges; section 5 preclearance; three-judge court.

### **A List of Inactive Voters in Lawrence, Massachusetts**

*¿OÍSTE? v. City of Lawrence (Nathaniel M. Gorton, D. Mass. 1:05-cv-12218)*

On the Friday before a local election, two voters and a political organization filed a federal complaint seeking relief from a recent notification to a large number of potential voters that they had been placed on an inactive list. On Monday afternoon, the judge recessed proceedings for 23 minutes for the parties to agree on a statement to voters in both English and Spanish to be broadcast and printed in the media. Several months later, after three filings stating that the parties were working to resolve matters without litigation, the judge dismissed the case without prejudice.

**Topics:** Registration procedures; case assignment.

### **Widespread Voter Registration Challenges**

*Miller v. Blackwell (Susan J. Dlott, S.D. Ohio 1:04-cv-735)*

One week before the 2004 general election, the Democratic Party filed a federal complaint challenging widespread voter registration challenges—approximately 22,000—by the Republican Party based on returned mail. The court enjoined administrative hearings on the challenges through the election. After the election, the plaintiffs dropped the case.

**Topics:** Registration challenges; intervention; class action; enforcing orders.

### **The Right to Vote While Under Guardianship**

*Prye v. Blunt (Ortrie D. Smith, W.D. Mo. 2:04-cv-4248)*

A prospective voter filed a federal complaint one month in advance of a general election challenging a state's disqualification of voters under guardianship. The district judge denied the plaintiff immediate relief because of state court opportunities to reserve voting rights in limited guardianship. For similar reasons, the judge granted defendants summary judgment against a substituted plaintiff who was erroneously denied the vote because of a misunderstanding about the plaintiff's reserved voting rights. The court of appeals affirmed the summary judgment because the substituted plaintiff had already received a remedy and an advocacy organization co-plaintiff did not have standing to represent the interests of mere constituents.

**Topics:** Registration challenges; matters for state courts.

## **Injunction Against Purging of Minor Party Registrations for Party's Failure to Qualify as an Established Party**

*Green Party of New York State v. New York State Board of Elections (John Gleeson, E.D.N.Y. 1:02-cv-6465)*

Three days before the certification of a gubernatorial election would result in a minor party's demotion from status as an established party because its candidate received an insufficient number of votes for governor, the party filed a federal complaint challenging the stripping of registered party membership for all of its registered members. The district judge issued a temporary restraining order in the party's favor. Later, the court of appeals affirmed a preliminary injunction in the party's favor.

**Topics:** Registration procedures; interlocutory appeal; intervention; getting on the ballot; attorney fees; pro se party.

## **Nullifying University Students' Voter Registrations**

*Copeland v. Priest (George Howard, Jr., E.D. Ark. 4:02-cv-675)*

An October 25, 2002, federal complaint sought the restoration of voter registrations for students and other persons living in university housing. The first judge assigned recused himself because he was out of town, and the second judge recused himself because one plaintiff's father was the governor, whose opponent the judge's wife supported. A third judge granted the plaintiffs relief, finding that the state judge's order nullifying registrations improperly created "an irrebuttable presumption that would-be voters who live at a university address and are not members of the staff at a university are not residents." The court awarded the plaintiffs \$28,221.92 in attorney fees and costs.

**Topics:** Student registration; registration challenges; intervention; matters for state courts; case assignment; attorney fees.

## **Spouses Registered in Different Precincts**

*Bell v. Marinko (James G. Carr, N.D. Ohio 3:02-cv-7204)*

With a primary election 18 days away, a voter filed a federal complaint seeking injunctive relief against the county's hearing a challenge to his voter registration on residency grounds. The district court determined that challenge procedures did not violate the National Voter Registration Act, but there was a probable equal protection violation by a statutory provision raising a question of residence for spouses not separated and not registered in the same precinct. The court temporarily enjoined application of that statutory provision. After the election, the court heard summary judgment motions on an amended complaint adding plaintiffs whose residency challenges were successful; the original plaintiff prevailed in his challenge. The district court dismissed the action, and the court of appeals affirmed.

**Topics:** Registration challenges; equal protection; National Voter Registration Act; primary election.

## **Denial of the Right to Vote Because of Eviction**

*Dowd v. Town of Dedham (Joseph L. Tauro and Marianne B. Bowler, D. Mass. 1:01-cv-10944)*

A frequent pro se plaintiff filed a federal complaint four days before a municipal election. The plaintiff challenged denial of his right to vote arising from his eviction from a residence in the town. The judge granted the plaintiff in forma pauperis status and ordered him to show cause why the complaint should not be dismissed for lack of merit. The court of appeals affirmed dismissal of the action.

**Topics:** Pro se party; registration challenges.

### **Voter Registrations Voided Because a Deputy Registrar Was Dismissed**

*Johnson v. Helander (Charles R. Norgle, Sr., N.D. Ill. 1:00-cv-6926)*

A high-school student filed a federal complaint to validate high-school voter registrations that had been voided because of sloppy work by a deputy registrar. The district judge denied class certification, and he denied immediate injunctive relief. The county attorney presented evidence that the plaintiff had received notice of his voided registration in time to cure it.

**Topics:** Registration procedures; student registration; class action.

### **Voting and Mental Illness**

*Doe v. Attorney General (George Z. Singal, D. Me. 1:00-cv-206)*

One month before the 2000 general election, three women under psychiatric guardianships filed a federal complaint challenging Maine's exclusion of persons under such guardianships from the right to vote. Approximately three weeks later, the court denied injunctive relief. On a more complete record the following year, the court invalidated the franchise exclusion.

**Topic:** Equal protection.

### **Challenge to Voter Registrations in an RV Park**

*Curtis v. Smith (Howell Cobb, E.D. Tex. 9:00-cv-241)*

The plaintiffs in this federal action sued to enjoin challenges to 9,000 voter registrations in an RV park that could hold only a fraction of the voters at any one time. The plaintiffs alleged that procedures on the en masse challenge had not been precleared pursuant to section 5 of the Voting Rights Act, and a three-judge court ultimately agreed.

**Topics:** Section 5 preclearance; three-judge court; registration challenges; matters for state courts; intervention.

## **DISTRICT LINES**

### **Injunction Against a State Law Singling Out One Municipality for a Change in Local Control**

*City of Greensboro v. Guilford County Board of Elections (Catherine C. Eagles, M.D.N.C. 1:15-cv-559)*

On July 2, 2015, a state legislature restructured a city council from five members representing districts and three members elected at large to eight members representing districts, and the legislature removed control over the structure of city government from this city alone. On July 13, two weeks before the beginning of a candidate filing period, a federal complaint challenged the act, and the district judge determined that the act probably violated equal protection by treating the city differently from all other cities in the state, so the election proceeded according to the original council structure. Litigation continues.

**Topics:** Equal protection; intervention; malapportionment.

### **Voting Rights Challenge to a School District Consolidation**

*North Forest Independent School District v. Texas Educational Agency (David Hittner, S.D. Tex. 4:13-cv-1786)*

School district trustees filed a federal voting rights challenge to consolidation of the school district with a neighboring school district. On the day after the case was heard, the challenge pursuant to section 5 of the Voting Rights Act became moot because of the Supreme Court's holding that the criteria for application of section 5 were unconstitutional. The district judge denied immediate relief on the section 2 claim, consolidation proceeded, and the parties stipulated to a nonsuit.

**Topics:** Section 2 discrimination; section 5 preclearance; laches.

### **Inadvertent Use of Wrong District Lines in a Primary Election**

*Harris County Department of Education v. Harris County (Lee H. Rosenthal, S.D. Tex. 4:12-cv-2190)*

A county's department of education filed a federal complaint after a primary election for its board of trustees was held using malapportioned district lines instead of interim lines imposed by a federal judge in another case while preclearance of new lines was pending. The district judge presiding over the new case found no constitutional violation because of a lack of intent, and she found that the equities weighed against the plaintiff because it was unlikely that the districting error had an effect on the election's ultimate outcome.

**Topics:** Election errors; enjoining elections; malapportionment; intervention; 42 U.S.C. § 1983; primary election.

### **Redistricting the Bibb County School District**

*Miller v. Bibb County School District (Hugh Lawson, M.D. Ga. 5:12-cv-239)*

A June 26, 2012, federal complaint alleged malapportionment for a county board of education. The district judge delayed the pending primary election until the day scheduled for a possible primary runoff to give the county enough time to adopt a precleared redistricting plan. By consent order, the judge awarded the plaintiffs attorney fees and costs.

**Topics:** Malapportionment; enjoining elections; section 5 preclearance ; attorney fees.

### **Preclearance of Court-Ordered Redistricting in Alaska**

*Samuelsen v. Treadwell (Sharon L. Gleason, D. Alaska 3:12-cv-118)*

Six days after the candidate filing deadline for Alaska's legislature, four voters filed a federal complaint in the District of Alaska claiming that although Alaska's initial 2011 redistricting had been precleared pursuant to section 5 of the Voting Rights Act, modifications ordered by Alaska's supreme court in May had not. On the day before a three-judge court was to hear the case, the modifications were precleared.

**Topics:** Section 5 preclearance; three-judge court; recusal; case assignment; primary election.

### **Redistricting the Sumter County School Board**

*Bird v. Sumter County Board of Education (W. Louis Sands, M.D. Ga. 1:12-cv-76)*

The district court enjoined July 31, 2012, primary elections for Sumter County, Georgia's board of education, on a May 22 federal complaint. The relief was sought by both the voter plaintiff and the county defendants because of the state's failure to seek timely preclearance for new district lines reflecting the 2010 census. The judge permitted an interest group to intervene for the purpose of proposing a new district plan, but the judge decided to draw his own plan with the assistance of the legislature's reapportionment office.

**Topics:** Malapportionment; enjoining elections; intervention; section 5 preclearance.

### **Redistricting a Board of Education**

*Adamson v. Clayton County Elections and Registration Board (Charles A. Pannell, Jr., N.D. Ga. 1:12-cv-1665)*

A May 11, 2012, federal complaint alleged malapportionment for a county board of education's district lines, because the lines had not been redrawn after the 2010 census. On the day at the beginning of the qualifying period for the primary election, the district judge heard the case and enjoined election procedures until the district lines could be redrawn. With the assistance of the state's reapportionment office, the judge adopted a new districting map in June. There was no primary election that year; all candidates ran in the general election. The court assessed half of the expert's fees to each side.

**Topics:** Malapportionment; enjoining elections; case assignment.

## **Redistricting Kansas**

*Essex v. Kobach (Kathryn H. Vratil, D. Kan. 5:12-cv-4046)*

Kansas was the last state to redraw district lines in light of the 2010 census, and a voter filed a federal action for court-drawn districts on May 3, 2012, a little over a month in advance of candidate filing deadlines. After a day-and-a-half bench trial, a three-judge court issued new district lines for congressional seats, the state legislature, and the state board of education on June 7. The court awarded the plaintiff and some intervenors \$379,447.15 in attorney fees and expenses.

**Topics:** Malapportionment; three-judge court; intervention; attorney fees.

## **A Transitionally Unrepresented District Because of District Restructuring**

*NAACP—Greensboro Branch v. Guilford County Board of Elections (William L. Osteen, Jr., M.D.N.C. 1:12-cv-111)*

The state's restructuring of a county board of commissioners would result in a two-year transition period with one district unrepresented and another district with two representatives. The district judge declined to enjoin the beginning of the candidate filing period, but on further hearing provisionally enjoined the election. The court's ultimate remedy was to swap the election schedule for two districts so that an election would be held for the district that would otherwise be unrepresented instead of another district, an election for which would be held two years later. The state resolved the issue of double representation by appointing one of the duplicate representatives to an at-large seat.

**Topics:** Equal protection; enjoining elections.

## **Using an Old Legislative Districting Plan**

*Smith v. Aichele (2:12-cv-488), Garcia v. 2011 Legislative Reapportionment Comm'n (2:12-cv-556), and Pileggi v. Aichele (2:12-cv-588) (R. Barclay Surrick, E.D. Pa.)*

From January 30 through February 3, 2012, three federal complaints sought to block April 24 primary legislative elections because the district lines were based on the 2000 census. On February 8, the judge denied all requests to delay the primaries. On March 17, 2014, the court of appeals affirmed a judgment against voters because the voters did not reside in districts with legislative seats up for election in 2012.

**Topics:** Malapportionment; enjoining elections.

## **Imminent Elections for a Districting Plan Not Yet Precleared**

*Petteway v. Galveston (Kenneth M. Hoyt, Emilio M. Garza, and Melinda Harmon, S.D. Tex. 3:11-cv-511)*

A federal complaint sought to enjoin the use of new county commission district lines until the new lines could be precleared pursuant to section 5 of the Voting Rights Act. The district judge assigned the case issued a temporary restraining order, but the other two judges of a three-judge court empaneled to hear the section 5 claim determined that the injunction was unnecessary while preclearance procedures were pending. Preclearance required adjustments to the new districting plan, and the court ordered adjustments to the election calendar to accommodate the late-drawn district lines. The district judge assigned the case awarded attorney fees and costs to the plaintiffs, but the court of appeals determined that they were not prevailing parties in the litigation because the injunction did not have an impact on the preclearance process.

**Topics:** Section 5 preclearance; malapportionment; three-judge court; enjoining elections; attorney fees; intervention.

### **Court-Ordered County Precinct Lines While Preclearance Is Pending**

*Vasquez-Lopez v. Medina County (Orlando L. Garcia, W.D. Tex. 5:11-cv-945)*

Eighteen days before the beginning of a ballot qualification period, a federal complaint challenged post-census county redistricting as not precleared pursuant to section 5 of the Voting Rights Act. Thirteen days later, the district judge approved a districting plan proposed by the parties, and later the judge awarded the plaintiffs \$35,546.93 in attorney fees and costs.

**Topics:** Section 5 preclearance; malapportionment; attorney fees.

### **Texas Redistricting in 2011**

*Davis v. Perry (Orlando L. Garcia, W.D. Tex. 5:11-cv-788)*

On September 22, 2011, six days after a three-judge redistricting bench trial on legislative and congressional districts in Texas, voters filed a federal complaint alleging dilution of minority voting strength in their districts. The court ordered the defendants to respond by October 3, and the case was consolidated with a collection of cases already underway.

**Topics:** Malapportionment; three-judge court; case assignment; section 2 discrimination; section 5 preclearance; intervention; attorney fees; removal; pro se party.

### **Malapportioned Districts in an Election Held Soon After the Release of New Census Data**

*Graves v. City of Montgomery (W. Keith Watkins, M.D. Ala. 2:11-cv-557)*

Six weeks and one day in advance of a planned August 23, 2011, election, a federal complaint alleged that the city council districts were malapportioned because they had not been redrawn to reflect the 2010 census. The district judge denied immediate relief and ultimately ruled that redistricting—which the evidence showed to be a work in progress—was not yet required.

**Topics:** Malapportionment; laches.

### **Hasty Redistricting of a County Legislature**

*Boone v. Nassau County Legislature (Joanna Seybert, E.D.N.Y. 2:11-cv-2712)*

On the day before a period of collecting ballot petition signatures for a county legislature election, voters filed a federal complaint challenging new district lines. The district judge held preliminary injunction hearings during the following week, but the state high court's nullification of the district lines mooted the federal case.

**Topics:** Malapportionment; matters for state courts; section 2 discrimination; case assignment; getting on the ballot; class action.

### **Mississippi County Board of Supervisors Malapportionment**

*Madison County Board of Supervisors v. Mississippi (William H. Barbour, Jr., and Louis Guirola, Jr., S.D. Miss. 3:11-cv-119), County Branches of the NAACP v. County Boards of Supervisors (Sharion Aycock, N.D. Miss. 1:11-cv-59 and 2:11-cv-40; Michael P. Mills, N.D. Miss. 1:11-cv-60, 2:11-cv-43, 3:11-cv-27, and 3:11-cv-28; W. Allen Pepper, Jr., N.D. Miss. 2:11-cv-41 and 2:11-cv-42; and Louis Guirola, Jr., S.D. Miss. 3:11-cv-121, 3:11-cv-122, 3:11-cv-123, 3:11-cv-124, 4:11-cv-33, 5:11-cv-28, 5:11-cv-29, and 5:11-cv-30), and Redd v. Westbrook (Louis Guirola, Jr., S.D. Miss. 3:11-cv-321)*

Every 20 years, the interval of time between the decennial census and elections to county boards of supervisors in Mississippi is so short that it is difficult to redistrict the county boards in time for the elections. Among the federal lawsuits filed in 2011 because of this in Mississippi's two districts, 17 sought court intervention to enable redistricting before the election and one sought court intervention to prevent redistricting before the election. Five district judges denied immediate judicial relief. The court of appeals determined that the 2011 elections mooted the cases.

**Topics:** Malapportionment; intervention; case assignment.

### **Constitutionality of a Dual-Majority Requirement**

*Tigrett v. Cooper (S. Thomas Anderson, W.D. Tenn. 2:10-cv-2724)*

A federal complaint alleged vote dilution in a dual-majority requirement for a 2010 referendum on the consolidation of city and county governments. An agreed preliminary injunction enjoined certification of the forthcoming referendum results and required referendum votes in the county to be counted separately for voters within and outside the city. Although the referendum failed, the district judge determined that the case was not moot. In 2014, the judge granted summary judgment against the plaintiffs. Disagreeing on the mootness question, the court of appeals dismissed the appeal.

**Topics:** Ballot measure; equal protection; section 2 discrimination; enjoining certification; ballot segregation; intervention.

### **Section 5 Preclearance for Acquisition of Property**

*City of College Park v. City of Atlanta (Julie E. Carnes, N.D. Ga. 1:08-cv-1464)*

The City of College Park and one of its residents filed a federal complaint against the City of Atlanta in the Northern District of Georgia on April 18, 2008, claiming that Atlanta was violating section 5 of the Voting Rights Act by acquiring an apartment building in College Park to clear the land of structures and people for benefit of the airport without first obtaining preclearance for the change in College Park's electorate. On the day that the complaint was filed, the district judge issued a temporary restraining order enjoining the property acquisition, but the property had already been acquired earlier in the day, so the judge vacated the order. The parties agreed to a settlement.

**Topics:** Section 5 preclearance; three-judge court.

### **At-Large Election to Districts in Memphis**

*Operation Rainbow-Push, Inc. v. Shelby County Election Commission (Jon P. McCalla, W.D. Tenn. 2:06-cv-2451)*

A municipality removed a state-court action challenging an election to a commission because the members were to be selected from districts but elected at large. Observing the potential impact on candidates for other offices in the election, the district judge denied the plaintiffs immediate relief.

**Topics:** Enjoining elections; section 2 discrimination; equal protection; intervention; removal.

### **Emergency Evaluation of Gerrymandering**

*Kidd v. Cox (Beverly B. Martin, N.D. Ga. 1:06-cv-997)*

As the qualifying period for filing candidacy papers closed, a possible candidate filed a constitutional challenge to legislative district lines. The plaintiffs sought an emergency hearing by a three-judge court. The three-judge court extended the deadline and heard the case. The court ruled against the plaintiffs, finding the population deviations to be within constitutional limits, and issued a 46-page opinion on the matter two weeks later.

**Topics:** Malapportionment; section 5 preclearance; three-judge court.

### **Redistricting an Incumbent Out of His District**

*Jenkins v. Ray (Clay D. Land, M.D. Ga. 4:06-cv-43)*

After school board redistricting had received preclearance pursuant to section 5 of the Voting Rights Act, it was discovered that the district line ran through the school board chair's property and his dwelling was no longer in the district he represented. Three months before a school board election, six voters filed a federal complaint challenging the preclearance. The assigned judge issued a temporary restraining order suspending the ballot qualification deadline, and a three-judge court held an evidentiary hearing at the end of the next month. The three-judge court determined that redistricting the incumbent out of his district required preclearance, so election officials allowed him to continue to represent and vote in his original district.

**Topics:** Section 5 preclearance; three-judge court; getting on the ballot; enforcing orders; provisional ballots.

### **Enjoining an Election for New District Lines**

*Morman v. City of Baconton (W. Louis Sands, M.D. Ga. 1:03-cv-161)*

The federal district court enjoined an election for city council because the district lines had recently received preclearance pursuant to section 5 of the Voting Rights Act and a state judge had refused to allow a delay to await preclearance of the new lines. The matter was heard on the afternoon before the scheduled November election. The election was held instead at the time of the presidential primary elections the following March. The matter of attorney fees was settled out of court.

**Topics:** Malapportionment; enjoining elections; section 5 preclearance; three-judge court; attorney fees.

### **Malapportioned City Commission Districts**

*Wright v. City of Albany (W. Louis Sands, M.D. Ga. 1:03-cv-148)*

The district court enjoined the November 2003 election for Albany, Georgia's board of commissioners on a September 24 federal complaint that the commission districts were malapportioned. District lines reflecting the 2000 census had not yet received preclearance pursuant to section 5 of the Voting Rights Act. The judge permitted a mayoral candidate, elected at large, to intervene in an unsuccessful attempt to protect the mayoral election's going forward as planned. With the assistance of the state legislature's Reapportionment Services Office, the judge drew district lines and set an election for February 10, 2004. On the day of the election, the judge kept the polls open until 9:00 p.m. because of problems at some polls. The plaintiffs recovered \$35,647.75 in attorney fees and expenses.

**Topics:** Malapportionment; enjoining elections; section 5 preclearance; intervention; polling hours; attorney fees.

### **New School Board Elections to Accommodate the Decennial Census**

*Cox v. Donaldson (George Howard, Jr., E.D. Ark. 5:02-cv-319)*

Three school board members filed a federal complaint on September 3, 2002, to enjoin a September 17 school board election. Five school board directors served staggered five-year terms, and the opening of all seats to new elections was intended to accommodate the 2000 census data. On the day after the election, the district judge issued an agreed order temporarily enjoining certification of the election. The following May, the parties agreed that the election would be certified only for the position with the expired term.

**Topics:** Enjoining elections; enjoining certification.

### **Communities of Interest in Congressional Districts**

*Kansas v. Thornburgh (Julie A. Robinson, Deanell Reece Tacha, and J. Thomas Marten, D. Kan. 5:02-cv-4087)*

Two months in advance of primary elections, a state's attorney general filed a federal complaint challenging congressional district lines. Approximately one month later, a three-judge court ruled that intervening plaintiffs had not shown an unconstitutional splitting of communities of interest. The attorney general was dismissed for lack of standing.

**Topics:** Malapportionment; intervention; three-judge court.

### **Redistricting Elbert County**

*Brown v. Elbert County (Hugh Lawson, M.D. Ga. 3:02-cv-45)*

In May 2002, voters filed an action in federal court to have the district lines for two county boards redrawn to reflect the 2000 census. The district judge appointed the state reapportionment office to assist him in ordering new district lines and awarded the plaintiffs attorney fees.

**Topics:** Malapportionment; attorney fees.

### **Postponement of a City Council Election for Preclearance of New Districts**

*LULAC Council #682 v. City of Seguin (Orlando L. Garcia, W.D. Tex. 5:02-cv-369)*

A federal judge enjoined a May 4 city council election, because a previous districting plan had become malapportioned and a new plan had not yet received preclearance. The election was held on September 14.

**Topics:** Enjoining elections; section 5 preclearance; malapportionment; three-judge court; attorney fees; early voting.

### **School District Election Enjoined for Lack of Preclearance**

*Reyna v. East Central ISD (Orlando L. Garcia, W.D. Tex. 5:02-cv-257)*

Six days in advance of a candidate filing deadline for school district trustees, a federal complaint sought an injunction of the election because newly drawn district lines had been denied preclearance by the Justice Department. The district judge issued a temporary restraining order against the election, and then a three-judge court issued a stipulated preliminary injunction. An election was held several months later with precleared district lines. The court awarded the plaintiffs \$30,862.50 in attorney fees.

**Topics:** Enjoining elections; section 5 preclearance; three-judge court; attorney fees.

### **Remedying Malapportionment in Place for Decades**

*Diamond v. Town of Manalapan (Patricia A. Seitz, S.D. Fla. 9:02-cv-80065)*

A few weeks before a town commission election, four voters filed a federal complaint alleging malapportionment of commission districts because four commissioners represented 89 residents on one side of town and two commissioners represented 232 residents on the other side of town. The district judge denied the plaintiffs a preliminary injunction, which would disrupt a scheme that had been in place for decades, but ordered a constitutionally valid plan be in place within approximately six months. Following conversion of the commission to at-large elections with at least two commissioners from each side of town, the judge granted a voluntary dismissal of the suit.

**Topics:** Malapportionment; intervention; attorney fees.

### **Elimination of a Constable Precinct**

*Rodriguez v. Bexar County (H.F. Garcia and William Wayne Justice, W.D. Tex. 5:01-cv-1049)*

A district judge issued a temporary injunction against the redistricting of justice of the peace and constable precincts, eliminating one of the five precincts, without preclearance pursuant to section 5 of the Voting Rights Act. After the county obtained preclearance, the judge found Hispanic vote dilution in violation of section 2 of the Voting Rights Act, but the court of appeals reversed the nullification of an election to the new precincts.

**Topics:** Section 5 preclearance; section 2 discrimination; enjoining elections; three-judge court; case assignment.

### **Redistricting New Jersey in 2001**

*Page v. Bartels (Dickinson R. Debevoise, D.N.J. 2:01-cv-1733)*

In an election year for New Jersey, a federal complaint challenged district lines for the state legislature that were adopted on the previous day. On the day that the complaint was filed, the judge signed a proposed order to show cause why the new districts should not be enjoined. At a hearing four days later, the judge determined that there was no likelihood that the plaintiffs would prevail on the merits. The court of appeals ruled one week later that the district court should have empaneled a three-judge court to hear the case. The three-judge court granted summary judgment to the defendants.

**Topics:** Malapportionment; three-judge court.

### **Voting Rights for Annexed Territory**

*Marascalco v. Grenada (Rhesa Barksdale, Neal B. Biggers, Jr., and Glen Davidson, N.D. Miss. 3:00-cv-61)*

Ten days in advance of a municipal election, residents of recently annexed territory filed a federal complaint seeking to halt the election in which they would not be able to vote because the Justice Department denied preclearance to the annexation. A three-judge court heard the case six days later and denied immediate relief. The court doubted its jurisdiction over the matter and expressed concern about the filing of the complaint nearly two months after the denial of preclearance.

**Topics:** Enjoining elections; equal protection; three-judge court; section 5 preclearance; laches.

## **FILLING VACANCIES**

### **Validity of a Local Special Election**

*Powell v. Alabama (L. Scott Coogler, N.D. Ala. 2:08-cv-1345)*

The federal case involved a dispute about whether a county commission vacancy had been filled by gubernatorial appointment or by special election, both of which had occurred. The case included the question of whether the procedure for filling the vacancy required section 5 preclearance. As the next general election drew near, the plaintiff voluntarily dismissed the action because the governor's appointee failed to qualify for the ballot.

**Topics:** Section 5 preclearance; three-judge court.

### **Establishing a New Position Too Late for a Primary Election**

*Shapiro v. Berger (Colleen McMahon, S.D.N.Y. 7:04-cv-5895)*

A prospective candidate for a new judicial position filed a federal complaint alleging that the position was purposely established too late for a primary election. The district judge denied the candidate a preliminary injunction, concluding that the complaint stated no valid federal constitutional claim.

**Topics:** Primary election; getting on the ballot; party procedures; matters for state courts.

### **Removal of an Elected Official as a Violation of Voting Rights**

*Kuhn v. Thompson (Mark E. Fuller, M.D. Ala. 2:03-cv-1136)*

A 2003 complaint challenged the disciplinary removal of Alabama's chief justice for his violating a federal order to remove a Ten Commandments monument from the court building's rotunda. The district judge denied the plaintiffs immediate injunctive relief and granted the defendants' motion to dismiss the complaint. (1) The defendants were entitled to *Younger v. Harris* abstention because the chief justice's appeal to Alabama's supreme court was still pending. (2) The defendants were entitled to judicial immunity. (3) The plaintiffs failed to state a valid claim because the right to elect the chief justice did not include a right to keep him in office for his whole term.

**Topics:** Matters for state courts; 42 U.S.C. § 1983; enforcing orders.

### **GETTING ON THE BALLOT**

#### **Reversing a State Supreme Court's Retroactive Application of a Very Early Ballot Qualification Deadline**

*Daly v. Tennant (Robert C. Chambers, S.D. W. Va. 3:16-cv-8981)*

A state's secretary of state interpreted a state supreme court's opinion to retroactively apply an early ballot qualification deadline for independent and unrecognized-party candidates. Two candidates disqualified by the ruling filed a federal complaint, and the district judge granted the candidates a preliminary injunction against the ruling.

**Topics:** Getting on the ballot; matters for state courts; intervention.

#### **Discrepancies Between the Residence Address and the Registration Address of a Ballot Petition Signer**

*Schintzius v. Showalter (John A. Gibney, Jr., E.D. Va. 3:16-cv-740 and 3:16-cv-741)*

A case removed to federal court in September sought to get a plaintiff candidate on the November ballot for mayor, claiming that plaintiff ballot petition signers were wrongfully disqualified because they gave their residence addresses instead of their registration addresses under circumstances in which the plaintiffs claimed that the signers could lawfully vote using the old addresses. The district judge denied immediate relief.

**Topics:** Getting on the ballot; removal.

#### **Conscience Voting at a National Convention**

*Correll v. Herring (Robert E. Payne, E.D. Va. 3:16-cv-467)*

A delegate to a national presidential nominating convention sought an injunction against a state statute that criminalized failure to vote for the state's primary election winner on the first ballot. The district judge concluded that the statute unconstitutionally infringed on the plaintiff's right to vote his conscience consistent with party rules.

**Topics:** Party procedures; primary election; class action; intervention; laches; attorney fees.

#### **State Court Loss as Res Judicata**

*Kowalski v. Cook County Officers' Electoral Board (John W. Darrah, N.D. Ill. 1:16-cv-1891)*

The federal district judge denied relief to a prospective candidate for county recorder of deeds as barred by res judicata and unsuccessful efforts in state courts.

**Topics:** Getting on the ballot; matters for state courts; pro se party; primary election.

### **A Minor Candidate's Suits to Be on Presidential Election Ballots**

*De la Fuente Guerra v. Democratic Party of Florida* (Robert L. Hinkle, N.D. Fla. 4:16-cv-26), *De la Fuente v. Kemp* (Richard W. Story, 1:16-cv-256) and *De la Fuente v. Kemp* (Mark H. Cohen, 1:16-cv-2937) (N.D. Ga.), *De la Fuente v. South Carolina Democratic Party* (Cameron McGowan Currie, D.S.C. 3:16-cv-322), *De la Fuente Guerra v. Winter* (Robert C. Brack, D.N.M. 1:16-cv-393), *De la Fuente v. Krebs* (Roberto A. Lange, D.S.D. 3:16-cv-3035), *De la Fuente v. Cortés* (John E. Jones III, M.D. Pa. 1:16-cv-1696), *De la Fuente v. Wyman* (Benjamin H. Settle, W.D. Wash. 3:16-cv-5801), and *De la Fuente v. Alcorn* (Liam O'Grady, E.D. Va. 1:16-cv-1201)

A prospective candidate for president filed federal complaints challenging his exclusion from primary election and general election ballots. In no case did a judge grant the candidate relief.

**Topics:** Getting on the ballot; pro se party; laches; primary election; matters for state courts; absentee ballots; interlocutory appeal.

### **Ineligibility to Serve in the Legislature Because of Moral Turpitude**

*Payne v. Fawkes* (1:14-cv-53), *Hansen v. Fawkes* (1:14-cv-55), *Bryan v. Fawkes* (1:14-cv-66), and *O'Reilly v. Board of Elections* (1:14-cv-107) (Wilma A. Lewis, D.V.I.)

Following a pardon, a federal complaint sought to restore a legislature candidate to the ballot after her removal for moral turpitude because of a misdemeanor tax conviction. The federal court restored the candidate to the ballot, but the Virgin Islands' supreme court ruled against the federal court on matters of Virgin Islands law. The federal court remanded two subsequent related lawsuits removed from the Virgin Islands' superior court.

**Topics:** Getting on the ballot; matters for state courts; removal; write-in candidate; recounts.

### **Pro Se Challenge to Ballot Exclusion**

*Sloan v. Kellner* (Mae A. D'Agostino, N.D.N.Y. 1:14-cv-1071)

The district court denied an injunction putting plaintiffs on a primary election ballot on the merits and because of issue preclusion.

**Topics:** Getting on the ballot; matters for state courts; pro se party; primary election; interlocutory appeal.

### **Requirement That a Party's Nominee Be a Member of the Party**

*South Dakota Libertarian Party v. Gant* (Lawrence L. Piersol, D.S.D. 4:14-cv-4132)

A party's nominee was disqualified because the nominee's party change was not effective until it was received by the county auditor, after the nomination. The district judge denied the party and the nominee a preliminary injunction, because the minimal burden of requiring the party change before the nomination was justified by the state's interest in maintaining party integrity.

**Topic:** Getting on the ballot.

### **Remedy for Leaving a Candidate Off of the Ballot**

*Krieger v. Peoria* (David G. Campbell, D. Ariz. 2:14-cv-1762)

During early voting for a position on a city council, a candidate's name was left off of the ballot twice. He filed a federal complaint seeking a special election instead of a third mailing. The district judge granted him the requested relief. The judge and the parties resolved issues of whether the special election would allow for a runoff election and how campaign finance rules would apply.

**Topics:** Election errors; enjoining elections; getting on the ballot; absentee ballots; early voting; primary election; campaign finance.

### **Allowing an Independent Gubernatorial Candidate to Name a Replacement Running Mate**

*Myers v. Gant (Lawrence L. Piersol, D.S.D. 4:14-cv-4121)*

An independent candidate for governor challenged South Dakota's allowing a major-party candidate—but not an independent candidate—to name a substitute candidate for lieutenant governor. The district judge ruled the proscription unconstitutional and issued a preliminary injunction in the candidate's favor.

**Topics:** Getting on the ballot; attorney fees.

### **Illinois's Ballot Access Requirements for a New Party**

*Summers v. Smart (John J. Tharp, Jr., and John Robert Blakey, N.D. Ill. 1:14-cv-5398) and Tripp v. Smart (Michael J. Reagan, S.D. Ill. 3:14-cv-890)*

After failing to obtain enough signatures to appear on the 2014 general election ballot, a minor party filed a federal complaint in the Northern District of Illinois challenging ballot signature requirements for new parties. The district judge denied the party immediate relief, because the party had met the constitutionally suspect criteria. A district judge similarly denied immediate relief in a Southern District case. A new judge in the Northern District later dismissed the case there as precluded by an earlier result in state court. Litigation continues in the Southern District.

**Topics:** Getting on the ballot; laches; recusal; case assignment; matters for state courts.

### **Signature Requirements for an Independent Candidate in New Mexico**

*Parker v. Duran (Martha Vázquez, D.N.M. 1:14-cv-617)*

An independent candidate who did not collect enough signatures to appear on the general election ballot filed a federal complaint challenging the signature requirement as improperly greater than the requirement for minor-party candidates. The district court denied the plaintiff relief, and the court of appeals affirmed dismissal of the case.

**Topics:** Getting on the ballot; equal protection; intervention.

### **Residency of Opposing Candidates**

*McCormick v. Wayne County Election Commission (Arthur J. Tarnow, E.D. Mich. 2:14-cv-12016)*

Two and one-half months in advance of a primary election for a county commission, a candidate filed a pro se federal complaint seeking exclusion from the ballot of two other candidates for failure to actually live in the district. At an evidentiary hearing, during which the plaintiff was represented by counsel, the plaintiff was not able to establish fraudulent residency, so the court denied her a preliminary injunction.

**Topics:** Getting on the ballot; registration challenges; primary election; pro se party; intervention.

### **County-Based Ballot Nomination Signature Requirement**

*Arizona Public Integrity Alliance Inc. v. Bennett (Neil V. Wake, D. Ariz. 2:14-cv-1044)*

Thirteen days in advance of a deadline for primary election nomination petitions, a federal complaint challenged a requirement of a minimum number of signatures in each of at least three counties as favoring less populous counties. After a hearing held two weeks after the complaint was filed, the district judge denied a motion for preliminary relief as barred by laches. Several weeks later, the state conceded that the county-based signature requirement was unconstitutional, and the judge signed a stipulated judgment in the plaintiffs' favor.

**Topics:** Getting on the ballot; laches; equal protection; primary election; early voting.

### **Ballot Petition Circulators Do Not Have to Be Registered Voters**

*Davis v. Johnson (2:14-cv-11818) and Moore v. Johnson (2:14-cv-11903) (Gershwin A. Drain and Matthew F. Leitman, E.D. Mich.)*

Two cases challenged a requirement that ballot petition signatures be collected by registered voters. One case concerned an election for a local school board and the other case concerned election to Congress. Following recusal by the judge who was assigned the first case, the cases were assigned to a new judge who issued a preliminary injunction against the registration requirement for collectors of signatures, and the state elected not to appeal.

**Topics:** Getting on the ballot; primary election; recusal; case assignment.

### **Ballot Access for Minor Parties in Tennessee**

*Tomasik v. Goins (William J. Haynes, Jr., M.D. Tenn. 3:13-cv-1118)*

A federal complaint filed on October 9, 2013, alleged that ballot access rules were so onerous that the Libertarian Party was unable to qualify for a November 21 special election for a state house seat. After an October 31 hearing, the district judge granted the plaintiffs relief, based in part on his rulings in previous related cases. He awarded the plaintiffs \$26,091 in attorney fees and costs.

**Topics:** Getting on the ballot; case assignment; attorney fees; early voting.

### **Seeking Federal Relief for Denial of Certification As a Write-In Candidate After Losing in State Court**

*Bonds v. Orr (Robert M. Dow, Jr., N.D. Ill. 1:13-cv-2610)*

At approximately 1:00 p.m. on the day before an election for a high school district board of education, a federal district court judge received a complaint seeking the plaintiff's listing as a write-in candidate. After a 3:30 hearing, the judge determined that because the plaintiff's claims had already been pursued unsuccessfully in state court, they were barred by the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings.

**Topics:** Getting on the ballot; matters for state courts; pro se party.

### **Bad-Faith Litigation by a Felon to Get on the Ballot**

*Blakely v. City of Laurel Clerk Office (Keith Starrett, S.D. Miss. 2:13-cv-72)*

A would-be candidate for city council filed a pro se federal complaint alleging wrongful disqualification of his candidacy on the basis of old felony convictions. The district judge set the case for hearing nine days later. Two weeks after that, the district judge found the case to have been filed in bad faith because the plaintiff had already lost three similar state-court cases, and the judge sanctioned the plaintiff \$5,000. The court of appeals affirmed the dismissal and the sanction.

**Topics:** Getting on the ballot; pro se party; matters for state courts; recusal.

### **Request to Be on the Ballot on the Eve of a Presidential Election**

*Germalic v. Bullock (Richard G. Andrews, D. Del. 1:12-cv-1347)*

Approximately two weeks in advance of the 2012 presidential election, a plaintiff filed a pro se federal complaint that the state's requirements for being a presidential candidate were too onerous. Three days after the complaint was filed, the district court denied the plaintiff injunctive relief for failure show any effort to meet ballot qualifications and for seeking relief after the ballots had been printed.

**Topics:** Getting on the ballot; pro se party; laches.

### **Remanding to State Court an Emergency Election Case After the Federal Claim Is Withdrawn**

*Oliver v. Lewis (Lee H. Rosenthal, S.D. Tex. 4:12-cv-2568)*

Defendants removed a state court challenge to the disqualification of a primary election victor for party disloyalty. Upon the plaintiffs' agreement to dismissal of a federal constitutional claim by nonsuiting the voter plaintiffs, the district court remanded the case because of the early withdrawal of the federal claim and the complexity of the state claims.

**Topics:** Matters for state courts; getting on the ballot; primary election.

### **Meritless Challenge to Exclusion from an Election for County Judge**

*Ferone v. Board of Elections (Andrew L. Carter, Jr., S.D.N.Y. 1:12-cv-6342)*

After the district judge denied immediate relief to plaintiffs seeking by federal action to reverse the exclusion from the ballot of a prospective candidate whose ballot application papers were defective, the plaintiffs dismissed their case voluntarily.

**Topic:** Getting on the ballot.

### **Ballot Access for a New Party**

*Erard v. Johnson (Stephen J. Murphy III and Laurie J. Michelson, E.D. Mich. 2:12-cv-13627)*

A socialist candidate for Congress filed a pro se federal complaint on August 15, 2012, challenging the state's criteria for listing new political parties' candidates on the ballot. The district court denied the candidate relief, and the court of appeals affirmed.

**Topics:** Getting on the ballot; pro se party; laches; case assignment.

### **Whether City Limits Include a Candidate's Residence**

*Naramore v. Posey (L. Scott Coogler, N.D. Ala. 6:12-cv-2584)*

A would-be candidate for mayor filed a federal complaint challenging his disqualification for residing in unincorporated territory. An interlocutory consent order resolved the immediate issue in the plaintiff's favor after three telephone conferences with the judge and the parties.

**Topic:** Getting on the ballot.

### **Sore Loser on Ballot**

*Libertarian Party of Michigan v. Johnson (Paul D. Borman, E.D. Mich. 2:12-cv-12782)*

On June 25, 2012, the Libertarian candidate for President filed a federal complaint challenging application of Michigan's sore loser statute to disqualify him from the general election ballot because he withdrew from the Republican primary three minutes late. After Michigan responded to the complaint with a motion to dismiss it, the candidate filed a motion for summary judgment. He filed a motion to expedite on August 19. Observing that the candidate had known since May that he would be excluded from the ballot, the district court also concluded that the complaint should be dismissed on the merits. In 2013, the court of appeals agreed.

**Topics:** Getting on the ballot; intervention; laches.

### **Too-Early Ballot Access Requirement for New Political Parties**

*California Justice Committee v. Bowen (Percy Anderson, C.D. Cal. 2:12-cv-3956)*

A month in advance of a primary election, and six months in advance of the general election, minor parties filed a federal complaint challenging the state's ballot-access law for new political parties. The district judge issued a preliminary injunction without argument two weeks later. The state had not justified requiring ballot petition signatures for the general election to be submitted 135 days before the primary election. Following a later bench trial, the judge issued a permanent injunction.

**Topic:** Getting on the ballot.

### **Strict Application of Campaign Filing Requirements**

*Somers v. All Improperly Filed Candidates (3:12-cv-1191) and Smith v. South Carolina State Election Commission (3:12-cv-1543) (Cameron McGowan Currie) and Williams v. South Carolina State Election Commission (Henry F. Floyd, David C. Norton, and Richard Mark Gergel, 2:12-cv-2760) (D.S.C.)*

Many candidates were disqualified from primary ballots following a state supreme court's strict interpretation of a candidacy filing statute. A candidate who was not disqualified filed a federal action attacking the disqualifications. The district court determined that a candidate who was not disqualified and who was not suing as a voter lacked standing for the suit. In a related case, disqualified candidates filed a federal action arguing that the state supreme court decision could not have effect without preclearance pursuant to section 5 of the Voting Rights Act. A three-judge court determined that the state court's interpretation of the statute comported with the statute's plain meaning, so it could not be a change requiring preclearance. Another section 5 complaint alleged that preclearance was required for a state supreme court decision approving a special primary election after it was determined that the only candidate in the original primary election was not exempt from the filing requirements at issue in the previous cases. A new three-judge court determined that the state supreme court's decision was an application of existing law rather than a change in voting procedures.

**Topics:** Getting on the ballot; campaign materials; section 5 preclearance; three-judge court; recusal; case assignment; intervention; laches.

### **A Campaign Manager's Suit to Get His Candidate on the Ballot**

*Woodard v. Allegheny County Board of Elections (Nora Barry Fischer, W.D. Pa. 2:12-cv-535)*

The campaign manager for a special-election candidate for the state legislature filed a pro se federal complaint seeking relief from the disqualification of the candidate's ballot petition signatures. At 4:00 p.m. on the day that the complaint was filed, the district judge conducted a 45-minute telephonic hearing. The judge dismissed the complaint because of the plaintiff's lack of standing to pursue his candidate's case and because the case sought relief from disappointing rulings already issued by the commonwealth's courts in contravention of the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings.

**Topics:** Getting on the ballot; pro se party; matters for state courts.

### **Broad Challenge to Ballot Petition Signature Requirements**

*Dekom v. New York (Joanna Seybert, E.D.N.Y. 2:12-cv-1318)*

The district judge denied immediate relief in a broad prospective challenge to New York's ballot petition signature requirements filed pro se by three prospective candidates. After full briefing, the judge dismissed the action.

**Topics:** Getting on the ballot; pro se party; equal protection; case assignment; recusal.

### **Unconstitutional Residency Requirement for Circulating Ballot Petitions**

*Perry v. Judd (3:11-cv-856) and Shuttleworth v. Moran (3:12-cv-257) (John A. Gibney, Jr., E.D. Va.)*

Two weeks before absentee ballots were to be ordered from printing companies for the 2012 Republican presidential primary in Virginia, Texas Governor Rick Perry filed a federal complaint alleging that his ballot petition was wrongfully rejected four days previously. Among his claims, Perry alleged that Virginia unconstitutionally required persons collecting petition signatures to be Virginia residents. The judge instructed the parties to provide other disqualified candidates with notice of the suit so that they could seek to intervene. On the day that ballot printing was to be ordered, the judge ruled that the ballots should not be printed until after a hearing four days later. The district judge and the court of appeals determined that Perry should have challenged ballot petition rules at the beginning of the petition period rather than at the end. The district judge also opined that it was unconstitutional to require signature gatherers to be residents. A few months later, a would-be candidate for a congressional primary election challenged the residency requirement because it caused him to be just a few signatures short of the requirement for the primary ballot. Perhaps in light of the district judge's earlier opinion, the candidate was certified for the ballot.

**Topics:** Getting on the ballot; laches; primary election.

### **Challenge to a Local Recall Election**

*McBride v. City of Jasper (Zack Hawthorn, E.D. Tex. 1:11-cv-443)*

City councilmembers sued to enjoin a recall election on the grounds that the recall effort was motivated by race and the city improperly allowed voters in multiple council districts to sign a recall petition although only voters in a councilmember's district could vote in the recall election. The parties consented to a magistrate judge's presiding over preliminary injunction proceedings. The injunction was denied.

**Topics:** Section 2 discrimination; enjoining elections; enforcing orders; intervention; case assignment.

### **Correcting a Defective Candidacy Petition**

*Varner v. Husted (Algenon L. Marbley, S.D. Ohio 2:11-cv-748)*

A candidate filed a federal complaint claiming that her candidacy petition was wrongfully rejected because she had withdrawn a defective petition. Similar cases were pending before Ohio's state court, so the district judge set alternate dates for a preliminary injunction hearing, depending upon how promptly the state court ruled. As it turned out, the state court's ruling was favorable to the federal plaintiff, who ultimately won her election.

**Topics:** Getting on the ballot; matters for state courts.

### **Challenge to Weighted Voting in Party Endorsement Procedures**

*Kehoe v. Casadei (Thomas J. McAvoy, N.D.N.Y. 6:11-cv-408)*

Members of a city's party committee filed a federal complaint challenging the elimination of weighted voting, which weighted members' votes for endorsements by the number of party members each represented. The district judge issued a temporary restraining order against the change, and the case settled two years later with a return to weighted voting.

**Topics:** Party procedures; class action; attorney fees.

### **Ballot Errors for Local Election**

*Caudell v. Thomas (William C. O'Kelley, N.D. Ga. 2:10-cv-217)*

A defendant probate judge removed to federal court an action seeking relief from ballot errors in an election for county commissioners. The composition of the commission had recently changed from a chair in post 1 and two other members in posts 2 and 3, all elected at large, to a chair elected at large and four members representing districts 1 through 4. Commissioners in districts 1 and 3 were up for election, but the ballot listed them as running for posts 1 and 3. In addition, the plaintiffs alleged malapportionment. The federal district judge remanded the ballot issue as a state matter but retained the malapportionment challenge for regular proceedings. The parties, however, stipulated to a dismissal.

**Topics:** Election errors; matters for state courts; malapportionment; removal.

### **Exclusion from the Ballot Because of Invalid Ballot Petition Signatures**

*Briscoe v. Biggs (Eric F. Melgren, D. Kan. 2:10-cv-2488)*

A would-be independent candidate for Congress filed a pro se petition for a writ of mandamus ordering his inclusion on the November ballot on the grounds that he was excluded because of improperly invalidated ballot petition signatures. The court denied immediate relief for lack of a likelihood of success on the merits and to protect the public interest in orderly elections.

**Topics:** Getting on the ballot; pro se party.

### **Valid Recall Signatures**

*Davenport v. County of Genesee (Arthur J. Tarnow, E.D. Mich. 2:10-cv-13503)*

When it was determined that a petition to recall the mayor of Flint, Michigan, did not have enough valid signatures to qualify for a recall election, the recall campaign filed an action in state court challenging how signatures were invalidated. The county removed the action to federal court, which denied a preliminary injunction 15 days after the case was removed.

**Topics:** Getting on the ballot; case assignment.

### **Challenging an Age Restriction for the Office of Mayor**

*McClafferty v. Portage County Board of Elections (Sara Lioi, N.D. Ohio 5:09-cv-2210)*

A 21-year-old prospective candidate for mayor challenged a requirement that a mayor be at least 23 years of age, which was established after the plaintiff performed well in a mayoral election at the age of 19. Observing that the next election arose before the plaintiff turned 23 only because of a resignation, the district court denied the plaintiff immediate relief.

**Topics:** Getting on the ballot; ballot language.

### **Ballot Petition Signatures in Public Housing**

*Mendenhall v. Akron Metropolitan Housing Authority (Sara Lioi, N.D. Ohio 5:09-cv-742)*

The district judge determined that it was not a First Amendment violation for a housing authority to prohibit door-to-door solicitation, including the collection of ballot petition signatures, in public housing.

**Topics:** Door-to-door canvassing; getting on the ballot.

### **Fraudulently Withdrawing from a Ballot**

*New York State Republican Committee v. New York State Board of Elections (Richard J. Arcara, W.D.N.Y. 1:08-cv-810)*

In a congressional election in New York, the Republican Party alleged that the Working Families Party's primary winner falsely claimed to be a resident of the District of Columbia so that the Democratic Party nominee could be named also a replacement Working Families Party nominee. The complaint was filed on the Friday before the election, and the court heard arguments that day by telephone. The district judge granted the Republican Party an injunction at 10:17 p.m., and the court of appeals affirmed on Monday.

**Topics:** Getting on the ballot; party procedures; primary election.

### **Ballot Petition Deadline for Minor Parties**

*Baldwin v. Cortés (Yvette Kane, M.D. Pa. 1:08-cv-1626)*

A minor party's complaint alleged that it was improper for the state to require minor parties to submit ballot petitions earlier and with more signatures than what was required for major parties. The court of appeals affirmed a judgment by the district court of no impropriety in the ballot access requirements.

**Topics:** Getting on the ballot; case assignment.

### **Requiring Minor Parties to Qualify for the Ballot in Advance of Major Parties**

*Barr v. Ireland (John T. Copenhaver, Jr., S.D. W. Va. 2:08-cv-990)*

A minor party complained that it was unfair to require it to submit ballot petition signatures in advance of major parties' declaring their candidates. The district judge dismissed the complaint, finding the deadline reasonable in light of the time required to verify signatures in advance of the preparation of absentee ballots. The judge also concluded that the reason that the party did not meet the deadline was that it started collecting signatures too late.

**Topics:** Getting on the ballot; intervention; absentee ballots.

### **Substituting Minor Party Presidential Candidates**

*Barr v. Galvin (Nathaniel M. Gorton, D. Mass. 1:08-cv-11340)*

A minor party filed a federal complaint seeking an order allowing them to substitute its nominees for President and Vice President for the names used to gather ballot application signatures before the party's nominating convention. The judge ruled in favor of the party because it was not clear whether statutory provisions on substitution of candidates applied to minor parties' presidential candidates. After the election, the court of appeals determined that the statutory vagueness should be resolved by state court interpretation.

**Topics:** Getting on the ballot; matters for state courts.

### **Federal Court Intervention in a Party Nomination Dispute**

*Hinkleman v. New York State Board of Elections (David N. Hurd, N.D.N.Y. 5:08-cv-207)*

The district judge declined to resolve an intraparty dispute over who would be the party's nominee in a special legislative election.

**Topics:** Getting on the ballot; class action; party procedures; matters for state courts; case assignment.

### **Providing Election Data Only to Major Parties**

*Green Party of Michigan v. Land (Nancy G. Edmunds, E.D. Mich. 2:08-cv-10149)*

Four days before a January 15 presidential primary, minor parties filed a federal complaint challenging a statute specifying that party-preference data would be given only to the major parties. Approximately one month later, after the secretary of state answered the complaint, the plaintiffs moved for a temporary restraining order. The district court held a status conference 12 days later and heard the motion two days after that. On the following day, the district court temporarily enjoined the state from providing anyone with the party-preference data. On March 26, the district court declared the provision of party-preference data only to major parties to be a violation of equal protection.

**Topics:** Equal protection; primary election; laches.

### **Party Loyalty Oath**

*Kucinich v. Texas Democratic Party (Lee Yeakel, W.D. Tex. 1:08-cv-7)*

Two months in advance of Texas's 2008 Democratic presidential primary election, a candidate filed a federal constitutional challenge to the state party's loyalty oath for presidential candidates. The district court conducted a proceeding on the day that the case was filed. The judge and the parties agreed to a bench trial nine days later. The court ruled against the candidate at the conclusion of the trial and issued an opinion six days later. The candidate withdrew the action while it was on appeal, because he had suspended his presidential bid.

**Topics:** Getting on the ballot; party procedures.

### **Challenging a Puerto Rico Party's Registration**

*Puerto Ricans for Puerto Rico Party v. Dalmau (Gustavo A. Gelpi, D.P.R. 3:07-cv-1867)*

A political party filed a federal complaint in the District of Puerto Rico alleging that another party had been illegally registered as a political party for the 2008 elections. The district judge dismissed the action as a matter for Puerto Rico's commonwealth courts. The court of appeals determined that the action was not necessarily foreclosed by commonwealth court decisions, and the court of appeals held that it was error for the district judge to rely on original Spanish-language commonwealth court opinions. In time, the action was dismissed as moot.

**Topics:** Getting on the ballot; matters for state courts; attorney fees.

### **Opportunity to Cure an Insufficient Number of Ballot Petition Signatures**

*Douglas v. Niagara County Board of Elections (Richard J. Arcara, W.D.N.Y. 1:07-cv-609)*

On the day before a primary election, a complaint alleged that the plaintiff was wrongfully denied a place on the ballot. After the election, the judge concluded that the plaintiff was not entitled to relief.

**Topics:** Getting on the ballot; primary election.

### **Judicial Relief from a Tight Ballot Petition Signature Schedule**

*Sharpe v. Como (Nicholas G. Garaufis, E.D.N.Y. 1:07-cv-1521)*

Because the winner of a special election to fill a city council vacancy did not establish residency in the council district until after the election, the victor declined the victory and the mayor quickly scheduled a new special election, with the ballot-petition-signature collection period to begin immediately. Two prospective candidates filed a federal complaint alleging that they did not have enough notice and time to collect sufficient signatures. The district judge granted relief to one of the plaintiffs, who had collected the greater number of signatures and who had qualified for the first special election.

**Topics:** Getting on the ballot; case assignment; intervention.

### **Disqualification of a Candidate for Failure to Properly File Papers of Candidacy**

*Lawrence v. Board of Election Commissioners (Elaine E. Bucklo, N.D. Ill. 1:07-cv-566)*

A would-be candidate filed a federal complaint challenging a requirement that he file with his nomination papers the receipt he received for filing his statement of economic interest. The district judge granted summary judgment to the defendants. The claims were barred by res judicata because they were not raised in an unsuccessful state court proceeding on the same matter. Nor was it unconstitutional to disqualify as a candidate someone who failed to properly file papers of candidacy.

**Topic:** Getting on the ballot.

### **Burden of New York's Ballot Petition Signature Address Requirements**

*Sundwall v. Kelleher (Lawrence E. Kahn, 1:06-cv-1191) and Lanza v. Wart (David N. Hurd, 5:07-cv-848) (N.D.N.Y.)*

A district judge overruled a minor party's election-eve challenge to a requirement that persons signing ballot petitions provide accurate residential addresses in light of "the complicated ways in which villages, addresses, counties, and townships cross each other's borders" in New York. A different district judge reached a similar decision one year later.

**Topics:** Getting on the ballot; pro se party; primary election.

### **Validity of Ballot Application Signatures**

*Stockman v. Williams (Lee Yeakel and Sam Sparks, W.D. Tex. 1:06-cv-742)*

On September 19, 2006, an independent candidate for Congress filed a federal action to get his name on the ballot. The assigned judge was away that week, so another judge presided over a temporary restraining order hearing. Because absentee ballots would be issued in a few days' time, and because the plaintiff did not name all necessary defendants, immediate relief was denied. The originally assigned judge determined the following week that the case was filed too late to obtain relief.

**Topics:** Getting on the ballot; laches; case assignment.

### **Idiosyncratic Preferences for Name on Ballot**

*NaPier v. Baldacci (D. Brock Hornby, D. Me. 2:06-cv-151)*

A minor gubernatorial candidate filed a pro se complaint two months before the 2006 general election because the state was not acceding to his orthographic preferences for his name, including the printing "Phillip" with the letters "i" represented as just dots with eyebrows and the double "l" represented with a smile under it. The federal court determined that the case was a matter for the state court.

**Topics:** Pro se party; matters for state courts.

### **Excluding an Office from Absentee Ballots**

*Price v. Albany County Board of Elections (Gary L. Sharpe, N.D.N.Y. 1:06-cv-1083)*

The complaint alleged that New York's excluding county party committee positions from absentee ballots in a primary election, to be held in four days, violated the First Amendment. The judge issued as limited a temporary restraining order as possible: he ordered absentee ballots prepared for the party positions, but he ordered them segregated so that a determination of whether to count them could be made after the election.

**Topics:** Absentee ballots; party procedures; ballot segregation; primary election.

### **Unsuccessful Federal Actions to Achieve Different Results from Unsuccessful State Court Efforts to Get on a Ballot**

*Ramratan v. New York City Board of Elections (Nicholas G. Garaufis and Dora L. Irizarry, 1:06-cv-4770), Bert v. New York City Board of Elections (Charles P. Sifton, 1:06-cv-4789), Brown v. Board of Elections (Kiyoo A. Matsumoto, 1:08-cv-3512), Fischer v. Suffolk County Board of Elections (Joanna Seybert, 2:08-cv-4171), Minnus v. Board of Elections (Sandra L. Townes, 1:10-cv-3918), Fischer v. NYS Board of Elections (Joanna Seybert, 2:12-cv-5397), and Pidot v. New York State Board of Elections (Joseph F. Bianco, 2:16-cv-3527) (E.D.N.Y.) and Williams-Bey v. Commissioners of Elections (Katherine B. Forrest, 1:12-cv-3836), Thomas v. New York City Board of Elections (Shira A. Scheindlin, 1:12-cv-4223), and Moore v. McFadden (Edgardo Ramos, 1:14-cv-6643) (S.D.N.Y.)*

In ten cases, district judges denied relief contrary to state court results to prospective candidates in the Eastern District of New York in 2006, 2008, 2010, 2012, and 2016 and in the Southern District of New York in 2012 and 2014.

**Topics:** Getting on the ballot; matters for state courts; primary election; pro se party; case assignment; laches; recusal.

### **Signature Requirements for a Ballot Question**

*Protect Marriage Illinois v. Orr (Elaine E. Bucklo, N.D. Ill. 1:06-cv-3835)*

On July 14, 2006, proponents of an advisory question for the 2006 general election in Illinois filed a constitutional challenge to the petition requirements for getting their question on the ballot. The plaintiffs claimed that the number of signatures required was too onerous, as was the requirement that the signatures and the signers' addresses match voter registration cards. On August 2, the district judge granted the defendants' motion to dismiss the case. The court of appeals affirmed.

**Topics:** Getting on the ballot; ballot measure; intervention.

### **Pro Se Effort to Enjoin Mayoral Election**

*Brown v. Glynn County Board of Elections and Voter Registration (Anthony A. Alaimo, S.D. Ga. 2:05-cv-218)*

Late on the Friday afternoon before the 2005 general election, a would-be candidate for mayor filed a pro se complaint in federal court seeking to reschedule a mayoral election so that she could be included on the ballot; she had been disqualified for not being a resident long enough. The district judge had already left for the weekend, but he heard the case on Monday afternoon. He denied the plaintiff a new election but ordered the county to preserve and tally all write-in ballots. The plaintiff did not prevail in the election.

**Topics:** Getting on the ballot; enjoining elections; pro se party; write-in candidate.

### **Deputy Sheriff's Run for Sheriff and the Hatch Act**

*Caldwell v. United States Office of Special Counsel (Freda L. Wolfson, D.N.J. 1:05-cv-5126)*

A deputy sheriff filed a federal complaint seeking relief and clarification of his right to run for sheriff as a Republican nominee after the Democratic incumbent transferred him to a department receiving federal funds so that his candidacy might violate the Hatch Act. The district judge held telephone conferences with the parties one and two days later. At a hearing five days after the complaint was filed, the parties announced a confidential settlement.

**Topics:** Getting on the ballot; case assignment.

### **A Meritless Suit for a Spot on the Ballot Filed by Apparently Fictitious Plaintiffs**

*Cruz v. Board of Elections (Victor Marrero, S.D.N.Y. 1:05-cv-7679)*

A prospective candidate's unsuccessful pro se suit to be included in a primary election for city council was remarkable for the alleged voter plaintiffs who never appeared and whose mail was returned to the court unopened.

**Topics:** Getting on the ballot; matters for state courts; pro se party; primary election; intervention.

### **Party Quota for a Board of Elections**

*Golden v. Virgin Islands (Raymond L. Finch, D.V.I. 1:05-cv-5)*

An election board incumbent came in fourth as a write-in candidate in a general election for four seats on the board. She filed a federal complaint challenging an attorney general opinion that she could not avoid a maximum quota of four members of the same party on the board by changing her party affiliation after the election. The court denied the plaintiff a preliminary injunction.

**Topics:** Enjoining certification; write-in candidate; laches; primary election.

### **Challenge to Removal from Ballot**

*Singleton v. Alabama Democratic Party (Mark E. Fuller, M.D. Ala. 2:04-cv-1027)*

A candidate filed a federal action because a state court had removed her name from the ballot. The federal court denied her relief because she had not filed the action until after absentee voting had begun and because under the *Rooker-Feldman* doctrine only the Supreme Court has appellate jurisdiction over state court proceedings.

**Topics:** Getting on the ballot; laches; matters for state courts; section 5 preclearance; three-judge court; enjoining elections; enjoining certification.

### **Ralph Nader Off Ohio's Ballot in 2004**

*Blankenship v. Blackwell (Edmund A. Sargus, Jr., S.D. Ohio 2:04-cv-965) and Nader v. Blackwell (George C. Smith, S.D. Ohio 2:04-cv-1052)*

Because Ralph Nader failed to qualify for the 2004 presidential ballot in Ohio, his supporters filed a federal complaint challenging the constitutionality of a requirement that ballot petition circulators be state residents. Because of unclean hands—petition circulators had falsely claimed to be state residents—a district judge denied the plaintiffs immediate relief. On election day, the Nader campaign challenged Ohio's requirement that write-in candidates file a declaration of intent 50 days before the election. The court of appeals determined that the secretary of state had qualified immunity.

**Topics:** Getting on the ballot; write-in candidate; laches; intervention; case assignment.

### **Challenging the Invalidation of Ballot-Access Signatures**

*Van Auken v. Blackwell (Gregory L. Frost, S.D. Ohio 2:04-cv-891)*

In 2004, the Socialist Equality Party failed to qualify a presidential candidate in Ohio for the general election and sought emergency relief in federal court. The district court denied immediate relief because the party had not shown that Ohio's secretary of state had failed to provide a legally required review of their case or that they could not obtain mandamus relief from Ohio's state courts if merited.

**Topics:** Getting on the ballot; matters for state courts.

### **Fatal Defect in a Petition to Replace a Primary Election Candidate**

*Diaz v. New York City Board of Elections (I. Leo Glasser, E.D.N.Y. 1:04-cv-3836)*

The district judge denied a discrimination claim filed by a plaintiff who was excluded as a replacement candidate for a primary election, because the plaintiff's replacement application omitted a required signed consent to replace the withdrawn candidate.

**Topics:** Getting on the ballot; equal protection; primary election; intervention.

### **Minimum County Requirements for Ballot Petitions**

*Committee to Regulate and Control Marijuana v. Heller (James C. Mahan, D. Nev. 2:04-cv-1035)*

Supporters of an initiative to regulate marijuana filed a federal complaint, claiming that Nevada had improperly disqualified signatures on their ballot petition. Three days later, the district judge enjoined the state from taking any action that would prevent the court from providing the plaintiffs with further injunctive relief. One month later, the judge invalidated a state provision requiring a minimum number of signatures from a supermajority of counties for a ballot measure, because the provision favored voters in small counties. Because the judge left in place a provision that resulted in the disqualification of signatures by voters who may not have registered before signing the ballot petition, the initiative failed to qualify for the election. The court of appeals affirmed.

**Topics:** Ballot measure; getting on the ballot; equal protection; registration procedures.

### **Disqualification of a Primary Election Candidate for Previously Running as an Independent**

*Swanson v. Pitt (Myron H. Thompson, M.D. Ala. 2:04-cv-534)*

A would-be candidate for the United States Senate filed a pro se federal complaint alleging that it was improper to exclude him as a candidate in a primary election for having previously run as an independent. The district judge declined to issue a temporary restraining order; later, he granted the defendants summary judgment.

**Topics:** Getting on the ballot; primary election; pro se party.

### **Expulsion from Primary for Disloyalty to Party**

*McGinley v. Alabama Republican Party (W. Harold Albritton, 2:04-cv-434) and Jones v. Alabama Republican Party (Mark E. Fuller, No. 2:04-cv-500) (M.D. Ala.), Smith v. Alabama Republican Party (1:04-cv-360) and McGinley v. Alabama Republican Party (1:04-cv-579) (Callie V.S. Granade, S.D. Ala.), and McGinley v. Alabama Republican Party (U.W. Clemon, N.D. Ala. 2:04-cv-2203)*

A federal complaint sought restoration to a primary ballot for state board of education. The plaintiff alleged that she was stricken from the ballot because of a false rumor that she had left the party. The state's supreme court had stayed a state court order restoring her to the ballot pending appeal. After the state court determined that the party was entitled to strike the candidate from its ballot, the federal judge dismissed the action as barred by the *Rooker-Feldman* doctrine that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings. Post-election actions to nullify the results filed in the state's other two districts were unsuccessful.

**Topics:** Getting on the ballot; matters for state courts; primary election; party procedures.

### **Disqualification as an Independent Candidate for Voting in a Primary Election**

*McClure v. Galvin (Richard G. Stearns, D. Mass. 1:04-cv-10826)*

An attorney and would-be candidate for state senate filed a pro se federal complaint alleging that he was improperly denied a place on the ballot as an independent candidate because he had voted in a primary election. Three weeks later, the court denied the plaintiff injunctive relief because of a Supreme Court precedent upholding a party disaffiliation requirement.

**Topics:** Getting on the ballot; pro se party; primary election.

### **Including a Nickname on the Ballot**

*House v. Alabama Republican Party (R. David Proctor, N.D. Ala. 2:04-cv-703)*

Chris “The Teacher” House filed a pro se federal complaint because a party would not include his nickname on the primary ballot for election to the state board of education. Among the claims was that the party’s refusal to do so amounted to an election change requiring preclearance pursuant to section 5 of the Voting Rights Act because it had listed his nickname before. The Justice Department declared that it had no objection to the exclusion of nicknames, so the section 5 claim was dismissed. The district judge temporarily enjoined printing of the ballots while he considered the case. On consideration, he dismissed the federal claims with prejudice and the state claims without prejudice.

**Topics:** Primary election; pro se party; section 5 preclearance; matters for state courts.

### **Challenging Both Nominating and Voting Procedures**

*White-Battle v. Democratic Party of Virginia (Henry C. Morgan, Jr., E.D. Va. 2:03-cv-897)*

A plaintiff who had desired to be a party nominee for an election to clerk of court filed a pro se federal complaint alleging improprieties in both nomination and voting procedures. The motion was heard and denied six days later. Six months after that, the court granted summary judgment to the defendants.

**Topics:** Getting on the ballot; pro se party.

### **Failure to Qualify for a Primary Election Because of Filing Defects**

*Matheson v. New York City Board of Elections (Edward R. Korman, 1:03-cv-4170), Marchant v. New York City Board of Elections (Kiyoo A. Matsumoto, 1:11-cv-4099), and Marchant v. New York City Board of Elections (Roslynn R. Mauskopf, 1:10-cv-3847) (E.D.N.Y.) and Marchant v. New York City Board of Elections (Katherine Polk Failla, 1:13-cv-5493), Escoffery-Bey v. New York City Board of Elections (Jesse M. Furman, 1:13-cv-5656), Keeling v. Sanchez (Paul A. Engelmayer, 1:13-cv-5731), and Newsome v. New York City Board of Elections (Ronnie Abrams, 1:13-cv-5787) (S.D.N.Y.)*

In 2003, 2010, 2011, and 2013, supporters of a perennial New York primary election candidate filed federal actions—the first three in the Eastern District of New York and the last in the Southern District of New York—challenging the candidate’s exclusion from the ballot for insufficient ballot petition signatures. The first action was successful. Similar actions on behalf of other candidates filed in the Southern District of New York in 2013 were unsuccessful, in once case because relief had been obtained in parallel state court proceedings.

**Topics:** Getting on the ballot; primary election; matters for state courts; pro se party; case assignment; attorney fees; intervention.

### **Ballot Access Requirements in Puerto Rico**

*López-Rutol v. Gracia (Hector M. Laffitte, D.P.R. 3:03-cv-1880)*

A would-be independent candidate for Puerto Rico’s senate filed a federal complaint challenging ballot petition requirements for candidates. The court denied the plaintiff immediate relief. On the one hand, the plaintiffs “waited for the eleventh hour to file the present petition for injunctive relief”; on the other hand, they “erroneously believe[d] that a law imposing any burden upon the right to vote must be subject to strict scrutiny.”

**Topics:** Getting on the ballot; laches.

### **Serving in the Army Reserves While Running for Office**

*Neel v. Pippy (Arthur J. Schwab, W.D. Pa. 2:03-cv-302)*

Eight days before a special election to fill a vacancy in Pennsylvania's senate, three voters filed a federal complaint to block the election of a candidate who was a reserve officer recently called to active duty, claiming that the candidacy violated the Military Code. The district court ordered immediate briefing and held a hearing three days later, after which the court concluded that the Military Code did not afford the plaintiffs a private right of action for their case. The military granted the candidate a waiver, and he won.

**Topics:** Getting on the ballot; intervention.

### **Disqualifying Inactive Voters from Candidacy Petitions**

*Cunningham v. Chicago Board of Election Commissioners (James B. Moran, N.D. Ill. 1:03-cv-1160)*

A February 18, 2003, federal complaint alleged improper disqualification of candidates because of petition signatures by inactive voters. On February 21, the district judge denied the plaintiffs immediate relief because they had not shown that their preferred candidates would be on the ballot but for the disqualification of signatures by inactive voters. The issue was resolved by stipulation in a subsequent case.

**Topic:** Getting on the ballot.

### **Signature Requirements for Independent and New-Party Candidates**

*Delaney v. Bartlett (Frank W. Bullock, Jr., M.D.N.C. 1:02-cv-741)*

On September 6, 2002, a write-in candidate for the U.S. Senate filed a federal challenge to the state's signature requirement for getting on the ballot as an independent candidate. The district court denied pre-election relief, and the candidate was defeated. In 2004, the judge determined that general-election ballot signature requirements for independent candidates—based on the number of registered voters—and new-party candidates—based on the number of voters in the last gubernatorial election—were an unconstitutional combination. The state modified its requirement for independent candidates to be similar to its requirement for new-party candidates.

**Topics:** Getting on the ballot; equal protection.

### **Allowing Any Voter to Challenge Primary Election Ballot Petitions**

*Queens County Republican Committee ex rel. Maltese v. New York State Board of Elections (Arthur D. Spatt, 2:02-cv-4836) and Soleil v. New York (David G. Trager and Allyne R. Ross, 1:04-cv-3247) (E.D.N.Y.)*

A district judge denied a challenge to election laws that permit persons outside of a political party to challenge primary election ballot petitions. In a case filed two years later, a different district judge in the same district agreed with the first judge's reasoning and dismissed a complaint alleging that persons not wishing to run should not be able to challenge ballot petitions.

**Topics:** Getting on the ballot; primary election; matters for state courts; case assignment; pro se party; class action; laches; party procedures; recusal.

### **Requirement That Ballot Petition Witnesses for a Primary Election Be Members of the Party**

*Kaloshi v. New York City Board of Elections (Sterling Johnson, Jr., 1:02-cv-4762), Brown v. New York City Board of Elections (Raymond J. Dearie, 1:04-cv-3662), and Maslow v. Wilson (Edward R. Korman and Nicholas G. Garaufis, 1:06-cv-3683) (E.D.N.Y.)*

A district judge ordered a candidate's name added to a 2002 primary election ballot for state senate on a finding that it was unconstitutional to require that ballot petition signature witnesses be registered members of the party. After the election, the court of appeals vacated the holding, determining that the candidate, who did not prevail in the election, did not have enough signatures to qualify for the ballot after all, even after invalidations for the unconstitutional requirement were taken into account. An action filed in 2004 in the same court challenging the party-membership requirement was unsuccessful, because the second district judge did not agree with the first judge's conclusion. Neither did a district judge presiding over a case filed in 2006, and the court of appeals affirmed the last judge's ruling.

**Topics:** Getting on the ballot; primary election; intervention; matters for state courts; case assignment.

### **Last-Minute Change to Ballot Petition Due Date and Interference with Write-In Votes**

*Swanson v. Alabama (2:02-cv-644) and Campbell v. Bennett (2:02-cv-784) (Myron H. Thompson) and Swanson v. Bennett (2:02-cv-1244) (W. Harold Albritton) (M.D. Ala.)*

Two lawsuits, one initially filed pro se, challenged the constitutionality of a last-minute moving up of the due date for independent candidates' ballot petition signatures. The change had to be precleared pursuant to section 5 of the Voting Rights Act, and it was not known until a week before the new date that it would be precleared in time for the pending elections. The district judge denied temporary restraining orders but issued preliminary injunctions placing aggrieved candidates who otherwise had submitted sufficient numbers of signatures. A post-election action by the original pro se candidate and plaintiff was unsuccessful. On summary judgment after the election, the judge found the sudden change in due date to be a moot issue and other constitutional claims to be without merit.

**Topics:** Getting on the ballot; pro se party; enjoining certification.

### **Preclearance of a Last-Minute Ballot Disqualification**

*Connors v. Bennett (W. Harold Albritton, M.D. Ala. 2:02-cv-482)*

A state party chair filed a federal action challenging a state court order restoring a candidate to a primary ballot as a change in voting practices requiring preclearance pursuant to section 5 of the Voting Rights Act. The party excluded the candidate because of a finding concerning the candidate's residency, but the state court restored the candidate to the ballot. The court ordered service of the complaint on the candidate to afford him an opportunity to intervene. The court ruled against the plaintiff, finding a customary practice of last-minute changes to ballot certifications to correct clerical errors and to accommodate voluntary withdrawals, but not to effect contested disqualifications.

**Topics:** Getting on the ballot; intervention; section 5 preclearance; three-judge court; primary election; matters for state courts.

### **Seeking Two Nominations at the Same Time**

*Avila v. Sandoval (John W. Darrach, N.D. Ill. 1:02-cv-1222)*

A candidate for member of a water reclamation district commission filed a federal complaint seeking to have his opponent removed from the primary ballot because the opponent was also seeking a nomination for the state senate. The district judge granted the plaintiff immediate relief, and the opponent withdrew from the commission race.

**Topics:** Getting on the ballot; primary election; absentee ballots.

### **Ballot Access for a Minor Party in a Special Congressional Election**

*Green Party of Arkansas v. Priest (George Howard, Jr., E.D. Ark. 4:01-cv-586)*

A September 4, 2001, federal complaint challenged a state's ballot access laws, which made it impossible for the Green Party to offer a candidate in a November 20 special election to replace a member of Congress who had been given a presidential appointment. The district judge tentatively granted the plaintiffs relief after a September 13 proceeding, and issued an opinion confirming the injunction four days later: "The State has no compelling interest in allowing unrecognized parties to participate in some elections but not others." The plaintiffs were awarded \$10,165.58 in attorney fees and costs.

**Topics:** Getting on the ballot; attorney fees.

### **Exclusion from Primary Election Ballots for Not Being Members of the Party**

*Rider v. Mohr (John T. Elfvin, W.D.N.Y. 1:01-cv-610), Sementilli v. Commissioners of Elections (Richard Conway Casey, S.D.N.Y. 1:04-cv-6936), and Soleil v. Board of Election (Brian M. Cogan, E.D.N.Y. 1:10-cv-3565)*

In 2001, a candidate for town board filed a federal complaint in the Western District of New York challenging his exclusion from the primary election ballot for the Conservative Party, of which he was not a member. The district judge concluded that the party was entitled to scrutinize non-members for adherence to party philosophy before accepting them as candidates. Three years later, a district judge in the Southern District of New York determined that a prospective candidate for a state assembly primary election ballot who was excluded for not being a member of the party was not entitled to name a replacement candidate. In 2010, a district judge in the Eastern District of New York denied relief to a pro se attorney who refused to file a certificate accepting the Independence Party's permission to run in the party's assembly primary election.

**Topics:** Getting on the ballot; primary election; party procedures; pro se party; recusal; case assignment.

### **Right to Form a Third Party**

*Public Interest v. Armstrong County Board of Elections (Donald E. Ziegler, W.D. Pa. 2:01-cv-1616)*

A voter, a candidate, and a political organization filed a federal complaint challenging exclusion of the candidate from the ballot for a school board. The candidate nominated by the Democratic and the Republican Party was a suspect in jewelry thefts that included the voter as a victim. The voter and others tried to launch a new political party with the candidate as its nominee. The candidate was disqualified because he was a registered Democrat. After a hearing, the court granted judgment to the plaintiffs.

**Topic:** Getting on the ballot.

### **Unlawful Bill of Attainder**

*Cudell v. City of Toccoa (William C. O'Kelley, N.D. Ga. 2:01-cv-105)*

A federal complaint challenged a new state law forbidding members of a city commission from serving as a member of a hospital authority board, which affected only the plaintiff. The district judge consolidated an injunction hearing with a trial on the merits and struck down the new law as an invalid bill of attainder that was also in conflict with other constitutional and statutory requirements.

**Topics:** Getting on the ballot; equal protection; section 5 preclearance.

### **Disqualified Presidential Electors**

*Phillips v. Galvin (Reginald C. Lindsay, D. Mass. 1:00-cv-12067)*

A minor party's presidential campaign filed a federal complaint seeking an injunction placing the party's candidates on the November ballot despite a finding that some of its proposed presidential electors were not qualified. The court ruled against the party, in part because of laches.

**Topics:** Getting on the ballot; laches; interlocutory appeal.

### **Eligibility of a Removed Judge to Run for His Own Vacated Seat**

*Jefferson v. Louisiana Supreme Court (Robert G. James, W.D. La. 3:00-cv-2200)*

A judge removed by the state's supreme court for judicial conduct filed a federal complaint challenging his exclusion from an election to fill his vacant seat. The district judge determined that the federal court lacked jurisdiction to review a state court's judgment.

**Topics:** Getting on the ballot; matters for state courts; primary election.

### **Minor Party State Faction Opposing the National Nominee**

*Browne v. Bayless (Robert C. Broomfield, D. Ariz. 2:00-cv-1774)*

Rival factions of Arizona's Libertarian Party named different presidential nominees for the 2000 election, and the national party's nominee was not the one selected to represent the party on the Arizona ballot. After unsuccessful state court litigation, the national nominee filed an action in federal court, which the district judge dismissed one week later. The action was barred by (1) the *Rooker-Feldman* doctrine, which states that among federal courts only the Supreme Court has appellate jurisdiction over state court proceedings; (2) *Younger* abstention, which avoids undue interference in state functions; (3) the plaintiffs' failure to name indispensable parties; and (4) laches.

**Topics:** Getting on the ballot; matters for state courts; laches; party procedures.

### **Including on the Ballot Nominees of a Fractured Minor Party**

*Watson v. Miller (Paul V. Gadola, E.D. Mich 4:00-cv-40336)*

Supporters of a minor party's presidential nominee filed a federal complaint to require the state's secretary of state to include the nominee on the general election ballot after being denied such relief by the state's supreme court. Two rival factions of the party had put forward separate nominees. The federal district judge ruled that the plaintiffs had not established a clear right to the requested relief, and an appeal was dismissed by stipulation.

**Topics:** Getting on the ballot; party procedures; interlocutory appeal; matters for state courts.

### **A New Party's Qualification for the Ballot in Texas**

*Natural Law Party of Texas v. Bomer (James R. Nowlin, W.D. Tex. 1:00-cv-592)*

A district judge determined that it was proper for election officials to use statistical sampling to determine that a new political party had not submitted enough signatures to qualify for a general election ballot. Moreover, the party waited four weeks to file its complaint and then another week to seek an injunction.

**Topics:** Getting on the ballot; laches; interlocutory appeal.

### **Greater Ballot Signature Requirement for Presidential Candidates**

*Nader 2000 Primary Committee, Inc. v. Cenarrusa (Mikel H. Williams, D. Idaho 1:00-cv-503)*

The Ralph Nader campaign's September 7, 2000, federal complaint alleged that Idaho wrongfully required more ballot qualification signatures for President than it required for other statewide races. At a September 14 hearing, the district court denied the campaign injunctive relief, finding the signature requirement to be reasonable and achievable.

**Topic:** Getting on the ballot.

### **Improper Change in the Ballot Petition Signature Requirement During an Election Cycle**

*Nader 2000 Primary Committee v. Hechler (Charles H. Haden II, S.D. W. Va. 2:00-cv-839)*

A presidential candidate challenged his disqualification from the general election ballot while another candidate qualified by submitting his ballot petition on the day before the number of signatures required to qualify doubled. The district judge granted the plaintiffs a preliminary injunction, also finding that it was probably unconstitutional for the state to require petition circulators to be registered to vote in the state.

**Topics:** Getting on the ballot; attorney fees.

### **Ballot Filing Fee**

*Belitskus v. Pizzigrilli (A. Richard Caputo, M.D. Pa. 3:00-cv-1300)*

Eight days in advance of a filing deadline, a federal complaint objected to a ballot filing fee. The district judge denied immediate relief on the following day and set the matter for hearing two days after that. After the hearing, the judge ordered the commonwealth to provide an alternative to the fee for those unable to pay. The court of appeals affirmed.

**Topics:** Getting on the ballot; equal protection; attorney fees.

### **A Disabled Candidate's Challenge to Signature and Contribution Statutes**

*Herschafft v. New York Board of Elections (1:00-cv-2748) and Herschafft v. New York City Campaign Finance Board (1:00-cv-3754) (Jack B. Weinstein and Carol B. Amon, E.D.N.Y.)*

A pro se federal complaint alleged that a six-week period for obtaining ballot petition signatures failed to adequately accommodate a prospective candidate's history of schizophrenia. A companion complaint challenged contribution reporting requirements for small contributions. Two district judges denied the plaintiff relief.

**Topics:** Getting on the ballot; campaign finance; pro se party; recusal; case assignment.

### **Refusal to Interfere with State Court Litigation Over Control of a Minor Party**

*Essenberg v. Berman (Thomas J. McAvoy, N.D.N.Y. 1:00-cv-317)*

Applying the *Rooker-Feldman* doctrine, in light of pending state court litigation over control of a minor party, the district judge dismissed a complaint challenging the exclusion of a candidate from the party's primary election. The court of appeals dismissed as moot an appeal filed after the election.

**Topics:** Getting on the ballot; matters for state courts; primary election; party procedures.

### **Certification as a Write-In Candidate**

*Pearlman v. Gonzales (Martha Vázquez, D.N.M. 6:98-cv-1160) and Pearlman v. Vigil-Giron (Bruce D. Black, D.N.M. 1:00-cv-1475)*

A pro se litigant filed a federal complaint challenging his exclusion from the gubernatorial ballot as a Green Party candidate because the secretary of state determined that the Green Party had become a major party requiring nomination by primary election. The district judge opined that the plaintiff's exclusion was improper, but she held that the action was barred by the Eleventh Amendment. Two years later, the plaintiff filed another federal complaint seeking an order that the state provide for write-in presidential candidates. A different district judge also determined that the suit was barred by the Eleventh Amendment, and moreover it had been filed too late for the equitable relief sought.

**Topics:** Getting on the ballot; write-in candidate; matters for state courts; laches; pro se party; primary election.

## **BALLOT MEASURES**

### **Votes on City Incorporation by Voters Who Might Not Be in the New City**

*Davis v. Cooney (Eleanor L. Ross, N.D. Ga. 1:16-cv-3844)*

A voter filed a suit to stop a referendum on the incorporation of a new city because two regions of the proposed city might not be included in the new city, depending on the results of other litigation, and so voters in those regions allegedly would dilute the plaintiff's vote. The district judge determined that the Equal Protection Clause did not restrict who could vote on incorporation as the plaintiff alleged.

**Topics:** Enjoining elections; equal protection; ballot measure.

### **Nullifying an Initiative Gag Order**

*Taylor v. Johnson (Corbett O'Meara, E.D. Mich. 5:16-cv-10256)*

A district judge issued a preliminary injunction against a new statute that forbade local officials from providing any information on pending initiatives within 60 days of an election.

**Topics:** Ballot measure; campaign materials; campaign finance.

### **State Court Ballot Litigation and the Federal Deadline for Overseas Ballots**

*Board of County Commissioners v. Duran (1:14-cv-844) and New Mexico ex rel. Salazar v. Duran (1:14-cv-848) (Karen B. Molzen, D.N.M.)*

A state's secretary of state removed two actions to federal court that challenged her refusal to put nonbinding ballot questions on two counties' ballots, citing federal requirements that she transmit absentee ballots to overseas voters imminently. The parties consented to a magistrate judge's presiding over the cases, and the judge determined that she did not have federal jurisdiction over the cases, applying the well-pleaded complaint rule. The state court ruled promptly against the secretary of state.

**Topics:** Getting on the ballot; ballot measure; absentee ballots; case assignment; matters for state courts; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

### **Electronic Bingo and Voting Rights**

*Johnson v. Riley (Sharon Lovelace Blackburn, N.D. Ala. 7:10-cv-2067)*

Voters filed a federal complaint challenging police actions against electronic bingo operations as a violation of the voting rights of the voters who approved the operations. The complaint included a claim that executive orders and police actions violated the Voting Rights Act because they had not received section 5 preclearance. The district judge denied as moot a motion for a temporary restraining order preserving a state-court injunction, because the state court had denied a motion to dissolve its order. The following year, the court accepted a voluntary dismissal.

**Topics:** Section 5 preclearance; matters for state courts; ballot measure.

### **Certification Deadline for Ballot Initiative Signatures**

*Personhood Mississippi v. Hood (Daniel P. Jordan III, S.D. Miss. 3:10-cv-71)*

Supporters of a ballot initiative alleged in a federal complaint unconstitutional application of the year-long signature period because county election officials were sometimes taking too long to certify ballot petition signatures so that the initiative supporters could not efficiently determine where to allocate signature-drive resources. The parties appeared in chambers on the day that the complaint was filed, and the state filed a response three days later. Four days after that, the district judge abstained from providing immediate relief because resolution of issues of state law could moot the federal constitutional issues. Later, the court dismissed the action on stipulation.

**Topics:** Ballot measure; getting on the ballot.

### **Public Disclosure of Referendum Petition Signatures**

*Doe v. Reed (Benjamin H. Settle, W.D. Wash. 3:09-cv-5456)*

Persons who signed a referendum petition filed a federal complaint seeking to enjoin the state's releasing the identities of the over 138,500 signatories. The district court held a proceeding that afternoon and a hearing on the following day, which the state defendants chose not to attend. The court issued a temporary restraining order and held a preliminary injunction hearing a little more than a month later. The district court granted a preliminary injunction, but the court of appeals reversed. At the beginning of its term, the Supreme Court stayed the reversal, reinstating the injunction, but the Supreme Court affirmed the court of appeals at the end of the Court's term. On remand, the district court denied the plaintiffs' as-applied challenge and lifted the injunction. After the petitions were released on the Internet, the court of appeals determined that the case was moot.

**Topics:** Ballot measure; intervention.

### **Preclearance of an Election to Incorporate a City**

*Sabel v. Pinal County (James A. Teilborg, D. Ariz. 2:07-cv-2000)*

A suit to enjoin an election on the incorporation of a city for lack of preclearance was filed three weeks in advance of the election. A three-judge court determined that incorporation elections did not require preclearance.

**Topics:** Section 5 preclearance; enjoining elections; three-judge court; case assignment.

### **Grievance About a Change in Mayoral Power**

*Winstead v. Stodola (William R. Wilson, Jr., E.D. Ark. 4:07-cv-682)*

Five days before a special election, a federal complaint challenged a ballot measure that would convert the position of Little Rock mayor from part time to full time. Following two recusals, the district judge then assigned the case denied immediate relief on the day before the election.

**Topics:** Ballot measure; case assignment; recusal; class action.

### **Constitutionality of a Ballot Measure**

*Ajax Gaming Ventures, LLC v. Brown (William E. Smith, D.R.I. 1:06-cv-336)*

The suit challenged the constitutionality of a ballot measure in an upcoming election. The court denied immediate relief, because constitutionality could be assessed after the election. The measure did not pass.

**Topics:** Ballot measure; intervention.

### **Discrepancies Between Ballot Petitions and Ballot Text**

*Martinez v. Monterey County (Jeremy Fogel, N.D. Cal. 5:05-cv-2950)*

A federal complaint challenged a ballot initiative as different in wording from the text circulated for ballot-access signatures and challenged the change in wording as a change in election procedures requiring preclearance pursuant to section 5 of the Voting Rights Act. In parallel litigation, the state's supreme court provisionally ruled that the electorate should not be denied an opportunity to vote on the initiative unless the text discrepancies were sufficiently misleading. A three-judge federal district court declined to interfere with state proceedings because the state court also had jurisdiction over the federal question. The initiative failed and the state's supreme court subsequently ruled that the text discrepancies were not so great as to merit an injunction against including the initiative on the ballot.

**Topics:** Ballot language; ballot measure; section 5 preclearance; matters for state courts; three-judge court; case assignment.

### **Preclearance of an Election to Create a Hospital District**

*Hernandez v. Kirkham (Marcia A. Crone, E.D. Tex. 1:05-cv-134)*

Eleven days after an election to create a hospital district, five residents filed a federal complaint charging that the election and earlier precinct changes had not received preclearance pursuant to section 5 of the Voting Rights Act. At a district court hearing two days later, the parties agreed to a temporary restraining order that enjoined the conveyance of any property to the hospital district until the end of April. The Justice Department granted preclearance in April, so the district court action was dismissed.

**Topics:** Section 5 preclearance; three-judge court.

### **Initiative to Reallocate Electoral Votes**

*Napolitano v. Davidson (Lewis T. Babcock, D. Colo. 1:04-cv-2114)*

A pro se plaintiff challenged a ballot initiative that would change the allocation of the state's Electoral College votes in the same election, alleging uncertainty in the strategic value of presidential votes. After expedited hearing, the court dismissed the complaint as too speculative.

**Topics:** Ballot measure; pro se party; intervention; recusal.

### **Challenge to a Ballot Initiative Financial Impact Estimate**

*Oregonians for Accountability v. Bradbury (Garr M. King, D. Or. 3:04-cv-1170)*

The district judge dismissed a complaint alleging that a financial impact estimate accompanying a ballot initiative was misleading, because the measure text, summary, and explanatory text would make clear to the voters what the measure would do.

**Topics:** Ballot language; ballot measure; laches.

### **Required Ballot Notice for a Levy Initiative**

*Horton v. Multnomah County (Ancer L. Haggerty, D. Or. 3:03-cv-1257)*

The district judge enjoined application of a statute requiring a possibly misleading notice on ballot initiatives for new levies stating that property taxes could increase by more than three percent if the initiative passed, leaving unstated that an increase that high would only arise from the maximum increase in assessments permitted by law. The court of appeals vacated the injunction pending appeal and reversed the injunction two years later.

**Topics:** Ballot language; ballot measure; matters for state courts; interlocutory appeal; intervention; attorney fees.

### **Preclearance for a Zoning Election**

*Watson v. Fuhrmeister (Karon O. Bowdre, N.D. Ala. 2:03-cv-1960)*

One week before a special election, voters filed a federal complaint alleging that the special election was in violation of section 5 of the Voting Rights Act because the election's question, whether a county precinct would be subject to zoning by a county planning commission, pertained to zoning laws that had not been precleared. Defendants acknowledged that the laws in question had not been precleared, so the court enjoined the election. The action was dismissed on notice of preclearance.

**Topics:** Enjoining elections; section 5 preclearance; ballot measure.

### **Enjoining Nonbinding Voting That Allots One Vote Per House or Apartment Building**

*Andrade v. Pulido (Cormac J. Carney, C.D. Cal. 8:03-cv-1157)*

A federal complaint, which was filed two days before a nonbinding mail-in election was to end, challenged as discriminatory the election on retaining traffic barriers, because one vote was assigned to each house or apartment building. The district judge issued a temporary restraining order on the following day and ultimately ruled against a related election held three years previously using the same vote allocation.

**Topics:** Enjoining elections; ballot measure; equal protection; attorney fees.

### **Failure to Preclear a Change in the Percentage of Votes Needed to Avoid a Runoff Election**

*Luper v. Anchorage (James K. Singleton, Jr., Richard Tallman, and James A. von der Heydt, D. Alaska 3:03-cv-79)*

A federal complaint challenged the forgoing of a runoff election because the leading candidate received more than 45% of the vote and in the same election voters approved a change in law allowing that, claiming that the new rule was invalid because it had not been precleared pursuant to section 5 of the Voting Rights Act. Because the change was precleared after the election, a three-judge court denied the plaintiffs a remedy, reasoning that failure to preclear the change was an innocent oversight.

**Topics:** Section 5 preclearance; three-judge court; ballot measure; matters for state courts; intervention.

### **Defective Suit to Stop an Annexation Election**

*Kleisner v. City of White Sulphur Springs (David A. Faber, S.D. W. Va. 5:03-cv-101)*

A motion for a temporary restraining order against a municipal annexation election omitted an affidavit of immediate injury, verification of the complaint, and reference to defendant notice, so the district judge denied the motion. In addition, a state court had already stayed the election.

**Topics:** Enjoining elections; absentee ballots; ballot measure; matters for state courts; class action.

### **Ballot Petitions Do Not Have to Be Multilingual**

*Padilla v. Lever (Alicemarie H. Stotler, 8:02-cv-1145), Imperial v. Castruita (R. Gary Klausner, 2:05-cv-8940), and Chinchay v. Verjil (Audrey B. Collins, 2:06-cv-1637) (C.D. Cal.) and Madrigal v. County of Monterey (5:06-cv-1407), Melendez v. Board of Supervisors (5:06-cv-1730), Rangel v. County of Monterey (6:06-cv-2202), and Rancho San Juan Opposition Coalition v. Board of Supervisors (6:06-cv-2369) (James Ware) and Heredia v. Santa Clara County (Ronald M. Whyte, 6:06-cv-4718) (N.D. Cal.)*

After nearly four years of litigation, the U.S. Court of Appeals for the Ninth Circuit determined that recall petitions do not have to be offered in multiple languages. The litigation began with a December 12, 2002, complaint challenging a petition to recall a member of Santa Ana, California's school board in a February 4 election. Ultimately, the litigation included complaints filed in 2005 and 2006 as well.

**Topics:** Ballot measure; recusal.

### **Propriety of an Advisory Question on the Ballot in Washington**

*Lamar Co. v. Spokane County Board of County Commissioners (Fred Van Sickle, E.D. Wash. 2:02-cv-326)*

The district court ruled that it was not improper for a county to put on the general election ballot an advisory question on curtailing roadside billboards.

**Topics:** Ballot measure; getting on the ballot; enjoining elections; laches; ballot language.

### **Overturning State Court Blocking of a Ballot Initiative**

*Anderson v. Gale (Richard G. Kopf, D. Neb. 4:02-cv-3257)*

Supporters of a ballot initiative filed a federal complaint seeking relief from a state court invalidation of the initiative as concerning more than one subject. On the day that the complaint was filed, the federal judge held a conference call with the parties and scheduled a hearing for two days later. The judge denied immediate relief so as to not interfere unduly with the coming election and because he found no constitutional problem with the one-subject rule.

**Topics:** Ballot measure; getting on the ballot; intervention; matters for state courts.

### **Enjoining a Water District Annexation for Want of Section 5 Preclearance**

*Thelma Area Neighborhood Corp. v. Evergreen Underground Water Conservation District (Edward C. Prado, W.D. Tex. 5:01-cv-1191)*

A district judge enjoined an election to annex territory to a water conservation district, because the election had not been precleared pursuant to section 5 of the Voting Rights Act. The election was canceled and held three months later than originally scheduled, and annexation failed.

**Topics:** Section 5 preclearance; enjoining elections; ballot measure.

### **Unconstitutionality of a Referendum**

*Nogueras Cartagena v. María Calderón (Hector M. Laffitte, D.P.R. 3:01-cv-1789)*

A Puerto Rico voter filed a pro se federal complaint on June 13, 2001, challenging the constitutionality of a local referendum and a later federal referendum on the U.S. military's continued use of the island of Vieques for explosives exercises. Respecting the imminent local referendum, the court ruled that the plaintiff did not have standing to pursue a general grievance in court. Later, the court issued an order to show cause why claims concerning the federal referendum should not be dismissed, and then the court dismissed those claims.

**Topics:** Ballot measure; enjoining elections; pro se party.

### **Enjoining a Referendum on a Property Transfer**

*Petitioners Alliance v. City Council (Sharon Lovelace Blackburn, N.D. Ala. 2:01-cv-497)*

On the day before a special election, five voters filed a federal complaint seeking to enjoin transfer of assets in frustration of a ballot question, which was a referendum on the city's transfer of assets to a water and sewer board. The judge denied immediate injunctive relief and, in time, granted the defendants a dismissal because the plaintiffs had not alleged infringement of the right to vote.

**Topic:** Ballot measure.

### **Unsuccessful Pro Se Challenge to a Fluoride Ballot Initiative**

*Espronceda v. Krier (H.F. Garcia, William Wayne Justice, and Pamela A. Mathy, W.D. Tex. 5:00-cv-1259)*

One week after the election, a pro se federal complaint challenged the passage of a referendum to add fluoride to a city's drinking water. A little over a year later, a three-judge court granted the defendants summary judgment.

**Topics:** Ballot measure; enjoining certification; pro se party; section 5 preclearance; three-judge court; case assignment; recusal.

## **CAMPAIGN ACTIVITIES**

### **Refusal to Accept a Minor Candidate's Campaign Ads**

*Sloan v. Hearst Media Co. (Paul J. Barbadoro, D.N.H. 1:16-cv-52)*

A pro se federal complaint filed on the afternoon of the day of presidential primary elections challenged the plaintiff's exclusion from televised debates and challenged the refusal of a television station to air the plaintiff's paid ads. The district judge denied the plaintiff a temporary restraining order on the day that the complaint was filed for failure to comply with Federal Rule of Civil Procedure 65(b)(1)'s requirements. A little over two months later, a magistrate judge reviewed the complaint and recommended its dismissal. Reviewing the plaintiff's objections, the district judge adopted the recommendation.

**Topics:** Campaign materials; pro se party; primary election.

### **Direct-Mail Campaigning to Absentee Voters**

*Sheldon v. Grimes (David L. Bunning, E.D. Ky. 2:14-cv-60)*

A primary election candidate filed a federal complaint to obtain mailing addresses for persons who had been sent absentee ballots so that she could target her campaign to them. The district judge declined to invalidate the state law that protected the voters' temporary mailing addresses from the candidate.

**Topics:** Campaign materials; absentee ballots; primary election.

### **Municipal Campaign Signs in a Neighboring Municipality**

*O'Boyle v. City of Delray Beach (Donald M. Middlebrooks, S.D. Fla. 9:14-cv-80270)*

A municipal candidate's federal complaint alleged that a neighboring municipality was wrongfully taking down the candidate's campaign signs in the defendant's municipality. The district judge set the case for hearing on a Friday, four days after the complaint was filed, but the defendant city sought time to find outside counsel because an assistant city attorney was named in the complaint. The judge reset the hearing for the following Monday, but he urged the parties to come to a temporary agreement. A stipulated temporary restraining order forbade the defendant city from taking down the plaintiff's signs in locations where campaign signs were permitted. Months later, the judge awarded the defendant city summary judgment because the taking down of the plaintiff's signs resulted from a single city worker's error that subsequently was corrected.

**Topic:** Campaign materials.

### **Nullifying Campaign Limits Shortly in Advance of an Election**

*New York Progress and Protection PAC v. Walsh (Paul A. Crotty, S.D.N.Y. 1:13-cv-6769)*

On September 25, 2013, a political action committee filed a federal complaint challenging campaign contribution limits. On October 17, the district judge denied a preliminary injunction against decades-old limits challenged in an emergency case that could have been brought earlier. On October 24, the court of appeals ordered the district judge to issue a preliminary injunction. Six months later, the district judge awarded the political action committee summary judgment, and the parties later agreed to an attorney fee award of \$360,000.

**Topics:** Campaign finance; interlocutory appeal; laches; attorney fees.

### **Campaign Contribution Limits for Recall Petition Signatures**

*Citizens for Clean Government v. San Diego (Napoleon A. Jones, Jr., S.D. Cal. 3:03-cv-1215)*

A June 20, 2013, federal complaint challenged contribution limits for a city council recall effort. In an interlocutory appeal, the court of appeals affirmed the denial of immediate relief. The recall effort did not qualify for the ballot, and the incumbent was reelected. On appeal from the final judgment, the court of appeals ruled in 2007 that the district court had not required sufficient justification for the contribution limits.

**Topics:** Intervention; case assignment.

### **Electioneering Communications**

*Hispanic Leadership Fund, Inc. v. Federal Election Commission (T.S. Ellis III, E.D. Va. 1:12-cv-893)*

An August 10, 2012, federal complaint sought a declaration that planned advertisements did not violate fund-disclosure regulations imposed on political advertisements published during the time period preceding the 2012 presidential election. The district judge ruled on October 4 that three of five draft advertisements were electioneering communications subject to regulation because they referred to the presidential candidate for reelection.

**Topic:** Campaign materials; campaign finance.

### **Venue for a Suit Against the Federal Election Commission**

*Hispanic Leadership Fund v. Federal Election Commission (John A. Jarvey, S.D. Iowa 4:12-cv-339)*

A group wishing to run a political advertisement filed a federal complaint against the Federal Election Commission in the Southern District of Iowa because the Commission's advisory to another group suggested that the Commission might not approve the plaintiff's advertisement. Ten days after the complaint was filed, the district court dismissed the action, determining that it should have been filed in Washington, DC.

**Topics:** Corporate electioneering; campaign materials; case assignment.

### **Constitutionality of Proscriptions on False Statements About Candidates**

*Susan B. Anthony List v. Driehaus (1:10-cv-720) and Coalition Opposed to Additional Spending & Taxes v. Ohio Elections Commission (1:10-cv-754) (Timothy S. Black and Susan J. Dlott, S.D. Ohio)*

Two actions filed in late October 2010 challenged the constitutionality of an Ohio statute proscribing false statements about candidates for office. The judge in the first case stayed the federal case pending state executive and judicial proceedings, pursuant to *Younger v. Harris*. The judge in the second case also denied immediate injunctive relief, and the two cases were consolidated for further proceedings after the election. Dismissals for lack of live controversies were reversed by the Supreme Court. The court of appeals affirmed a holding that the statute was unconstitutional and dismissal of a candidate's defamation counterclaim. The parties agreed to an attorney fee award of \$1.3 million.

**Topics:** Campaign materials; matters for state courts; recusal; case assignment; interlocutory appeal; attorney fees.

### **Public Campaign Funds Triggered by an Opponent's Expenditures**

*Scott v. Roberts (Robert L. Hinkle, N.D. Fla. 4:10-cv-283)*

A self-funded gubernatorial candidate filed a federal complaint challenging public matching campaign funds triggered by the plaintiff's spending above a specified threshold. The district court determined that the provision combatted corruption by promoting public campaign financing, but the court of appeals issued a preliminary injunction against the provision because it was not the least restrictive way to combat corruption. After the Supreme Court invalidated a similar provision in another state, the district judge issued a permanent injunction against the provision.

**Topics:** Campaign finance; intervention; primary election.

### **Debate Participation**

*Amsterdam v. KITV 4 (David Alan Ezra, D. Haw. 1:10-cv-253) and Moseley v. Hawaii (Susan Oki Mollway, D. Haw. 1:10-cv-255)*

Two minor candidates for a special congressional election filed pro se emergency actions in the federal court to compel their inclusion in separate televised candidate forums. The district judges denied the plaintiffs relief on the papers.

**Topics:** News media; campaign materials; pro se party.

### **Constitutionality of a Campaign Expenditure Reporting Statute**

*National Organization for Marriage v. McKee (D. Brock Hornby and John H. Rich III, D. Me. 1:09-cv-538)*

Advocacy organizations filed a federal challenge to campaign finance reporting regulations two weeks before an election including a ballot initiative. Able to rule before the election, the court denied the plaintiffs injunctive relief. After the election, the court of appeals affirmed the legal holding.

**Topics:** Campaign finance; ballot measure.

### **Campaign Finance Regulations for Candidates Opposing Self-Funded Candidates**

*McComish v. Brewer (Roslyn O. Silver, D. Ariz. 2:08-cv-1550)*

On August 21, 2008, candidates for office in Arizona filed a federal complaint challenging a campaign finance provision that provided a benefit to candidates whose challengers exceeded statutory thresholds of expenditures. The suit was filed eight weeks after a Supreme Court decision invalidating a similar law. Reluctant to disrupt the finances of an ongoing campaign season, the district court denied immediate injunctive relief. After full litigation, the district court struck down the campaign finance scheme and the Supreme Court ultimately affirmed the district court.

**Topics:** Campaign finance; laches; attorney fees.

### **Last-Minute Challenge to a Debate Exclusion**

*Barr v. Saddleback Valley Community Church (David O. Carter, C.D. Cal. 8:08-cv-927)*

On a Friday afternoon, the Libertarian Party's candidate for President filed a federal complaint challenging his exclusion from a candidate's forum to be held the next day. The district judge denied immediate relief, noting that laches is especially problematic in ex parte proceedings.

**Topic:** Laches.

### **Improper Support for School Board Incumbents**

*Jacob v. Board of Directors (G. Thomas Eisele, E.D. Ark. 4:06-cv-1007)*

A federal complaint alleged that incumbent school board candidates, and not other candidates, were improperly allowed to appear before school district staff meetings. Just over two weeks later, the district judge denied the plaintiffs immediate relief on a finding that the school board had not conspired to advance the incumbents' candidacies. The incumbents were defeated in the election.

**Topics:** Early voting; intervention; equal protection.

### **Issue Ads During Election Season**

*Christian Civic League of Maine, Inc. v. FEC (Louis F. Oberdorfer, D.D.C. 1:06-cv-614)*

An issue-advocacy organization filed a declaratory action in the U.S. District Court for the District of the District of Columbia to challenge a proscription on issue advertising that mentions a candidate close to an election. A three-judge court denied a preliminary injunction against enforcement of the proscription.

**Topics:** Campaign materials; corporate electioneering; three-judge court; intervention; recusal; interlocutory appeal.

### **Get-Out-The-Vote Canvassing**

*Service Employees International Union v. Municipality of Mt. Lebanon (Arthur J. Schwab, W.D. Pa. 2:04-cv-1651)*

The district court was asked to resolve the constitutionality of county requirements for persons who wanted to go door-to-door over the weekend before a general election to encourage voting. In the short term, the counties relaxed their restrictions; in the long term, they revised them.

**Topics:** Door-to-door canvassing; refusal.

### **Voter Interference**

*Democratic National Committee v. Republican National Committee (Dickinson R. Debevoise and John Michael Vazquez, D.N.J. 2:81-cv-3876), Arizona Democratic Party v. Arizona Republican Party (John J. Tuchi, D. Ariz. 2:16-cv-3752), Nevada State Democratic Party v. Nevada Republican Party (Richard F. Boulware II, D. Nev. 2:16-cv-2514), Ohio Democratic Party v. Ohio Republican Party (James S. Gwin, N.D. Ohio 1:16-cv-2645), Pennsylvania Democratic Party v. Republican Party of Pennsylvania (Paul S. Diamond, E.D. Pa. 2:16-cv-5664), North Carolina Democratic Party v. North Carolina Republican Party (Catherine C. Eagles, M.D.N.C. 1:16-cv-1288), and Michigan Democratic Party v. Michigan Republican Party (Mark A. Goldsmith, E.D. Mich. 2:16-cv-13924)*

A voter in Ohio moved to intervene in a 1981 District of New Jersey case, complaining that widespread voter registration challenges in Ohio violated a consent decree between the two major political parties in the New Jersey case. On the day before the 2004 election, the district court in New Jersey granted injunctive relief. A panel of the court of appeals, over a dissent, denied the defendants a stay, but the full court ordered en banc review on election day. Because the plaintiff was allowed to vote, the appeal was subsequently declared moot. In 2016, a suit was again filed in the District of New Jersey to enforce and extend the consent decree, and related actions were filed in six other states. Litigation remains pending.

**Topics:** Registration challenges; intervention; enforcing orders; laches; case assignment.

### **The Right to Campaign in Housing Projects**

*Vasquez v. Housing Authority of El Paso (David Briones, W.D. Tex. 3:00-cv-89 and 3:02-cv-456)*

Successive federal complaints challenged proscriptions on door-to-door campaigning in housing projects. The district judge found the campaign restrictions reasonable as part of viewpoint-neutral regulations that protect housing projects from criminal activity. A panel of the court of appeals held the proscriptions to be unconstitutional, but the full court voted to rehear the appeal en banc. The second case was filed because the first appeal was dismissed when the appellant died. A second panel of the court of appeals agreed with the district judge that the proscriptions were reasonable.

**Topics:** Door-to-door canvassing; case assignment.

## **ELECTION DATES**

### **Consent Litigation Over Section 5 Preclearance**

*Walker v. Cunningham (Lisa Godbey Wood, S.D. Ga. 2:12-cv-152)*

After the Justice Department denied preclearance for county district lines already used in a July 2012 primary election, the incumbents and the county engaged in consent litigation to obtain new district lines from the federal court. A three-judge court enjoined use of the election results. Enlisting the cooperation of the state's reapportionment office, the court drew new district lines, which were used for a special election to be held in May 2013.

**Topics:** Section 5 preclearance; three-judge court; enjoining elections; intervention; primary election.

### **Election Day on the Last Day of Passover**

*Herzfeld v. District of Columbia Board of Elections and Ethics (Emmet G. Sullivan, D.D.C. 1:11-cv-721)*

A rabbi filed a federal complaint when he realized that a special election to fill municipal vacancies was going to be held on the last day of Passover, a day when he could not vote until after the polls would be closed. The district judge scolded the board of elections for not seeking a court order allowing them to adjust the statutorily-mandated special election date, but the judge denied the plaintiff immediate injunctive relief, because the rabbi had early and absentee voting alternatives. The statute was subsequently amended by an act of Congress.

**Topics:** Polling hours; intervention; absentee ballots.

### **Preclearance Required for Special Election Schedule Ordered by a State Court**

*LULAC of Texas v. Ramon (Alia Moses Ludlum, Jerry E. Smith, and Xavier Rodriguez, W.D. Tex. 2:10-cv-58)*

A three-judge district court enjoined a special election set by a state court for lack of preclearance pursuant to section 5 of the Voting Rights Act. Once an uncontested schedule had received preclearance, the district court dissolved the injunction.

**Topics:** Section 5 preclearance; three-judge court; enjoining elections; matters for state courts; primary election.

### **Preclearance for a Special Election**

*Buell v. Monterey County (Jeremy Fogel, N.D. Cal. 5:10-cv-1952)*

A federal complaint alleged that polling place consolidations and the date of the election had not been precleared for a special election to fill a vacancy in the state senate, as required by section 5 of the Voting Rights Act for a county overlapping with the senate district. By the time a three-judge court met to hear the case, the special election had been precleared.

**Topics:** Poll locations; section 5 preclearance; three-judge court; enjoining elections; intervention.

### **Promptness of a Special Election to Fill a Congressional Vacancy**

*Fox v. Paterson (David G. Larimer, W.D.N.Y. 6:10-cv-6240) and Rossito-Canty v. Cuomo (Jack B. Weinstein, E.D.N.Y. 1:15-cv-568)*

A 2010 federal lawsuit sought an injunction requiring a prompt special election to fill a congressional vacancy. After the complaint was filed, the governor decided to combine the special election with the general election occurring in six months. The district judge determined that the Constitution did not require a special election more prompt than that. A 2015 case filed in another district within the same state concerned a vacancy occurring much more in advance of the regular general election, and the district judge ordered the governor to promptly set a special election date.

**Topic:** Enjoining elections.

### **Rushed Election to Fill a Vacancy**

*Butler v. City of Columbia (Cameron McGowan Currie, D.S.C. 3:10-cv-794)*

When a city council member resigned, the city had to decide whether to follow the normal schedule for a replacement election or to add the replacement election to an earlier city election already scheduled. The state's supreme court determined that the replacement election should be on the earlier date. A retired law professor filed a pro se complaint claiming that the early election had not been precleared pursuant to section 5 of the Voting Rights Act. A three-judge court enjoined the early election because it had not been precleared.

**Topics:** Section 5 preclearance; three-judge court; enjoining elections; pro se party; intervention.

### **Approving a Compressed Special Election**

*Chicago Board of Election Commissioners v. Illinois State Board of Elections (Samuel Der-Yeghiayan, N.D. Ill. 1:09-cv-82)*

Election officials sought the blessing of a federal court to compress election deadlines, including those concerning overseas voters, to accommodate a special election set for a vacancy in the U.S. House of Representatives. The district judge approved an election schedule proposed by the parties.

**Topics:** Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); absentee ballots; intervention.

### **Section 5 Preclearance and Holding a Special Election on the Same Day as a General Election**

*Barron v. New York City Board of Elections (Raymond J. Dearie, E.D.N.Y. 1:08-cv-3839)*

A federal complaint sought a court ordered special election at the time of the general election to fill out the last two months of a vacancy in the state's assembly. The complaint included a claim that failure to fill the final two months had not been precleared pursuant to section 5 of the Voting Rights Act. The district judge denied the plaintiffs immediate relief because the candidate that the plaintiffs supported was running unopposed for the seat, so omission from absentee ballots would not be injurious. A three-judge court found that section 5 preclearance was not required for the unusual circumstances.

**Topics:** Getting on the ballot; section 5 preclearance; three-judge court; laches; matters for state courts.

### **Consequences of an Early Primary**

*Hayes v. Michigan Democratic Party (Robert J. Jonker, W.D. Mich. 1:07-cv-1237)*

A party member filed a federal complaint challenging the state Democratic Party's early primary election in violation of national party rules, claiming injury because her preferred candidate decided not to participate in the primary. It was over two weeks before the plaintiff asked for expedited consideration. Less than two weeks later, the court denied immediate relief so as not to interfere with an intraparty dispute.

**Topics:** Party procedures; enjoining elections.

### **Punishment for Early Florida Primaries**

*Nelson v. Dean (4:07-cv-427) and Ausman v. Browning (4:07-cv-519) (Robert L. Hinkle, N.D. Fla.)*

On November 20, 2007, Florida voters filed a state court complaint challenging the state's moving up the 2008 presidential primaries in violation of party rules. The case was removed to federal court on December 7, and a preliminary injunction motion was filed a week later. On January 3, 2008, the district court denied the plaintiffs preliminary injunctive relief because the consequences of the early primaries were still uncertain. In related litigation, federal courts declined to interfere with either party rules or the state's election calendar.

**Topics:** Primary election; party procedures; removal; case assignment.

### **Holding an Election Before University Students Can Register**

*May v. City of Montgomery (Myron H. Thompson, M.D. Ala. 2:07-cv-738)*

The federal action challenged the moving up of a local election, because it meant that students at a predominantly black university would not be in town in time to vote. Soon after the action was filed, the Justice Department precleared the change. The federal court declined jurisdiction over state claims.

**Topics:** Student registration; section 2 discrimination; section 5 preclearance; three-judge court; matters for state courts; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

### **Preclearance for a Soil and Water Conservation District**

*Evans v. Bennett (Beverly B. Martin, N.D. Ga. 1:04-cv-2641)*

Five days in advance of a scheduled election for soil and water conservation district supervisors, two voters filed a federal complaint claiming that matters relating to the election had not received preclearance pursuant to section 5 of the Voting Rights Act. The election was canceled and preclearance was obtained three months later.

**Topics:** Section 5 preclearance; enjoining elections.

### **Nullifying an Election Held Without Preclearance**

*Lyde v. Glynn County Board of Elections (Anthony A. Alaimo, S.D. Ga. 2:04-cv-91)*

Voters filed a federal complaint to enjoin an election for members of a county board of education until changes to the composition of the board were precleared pursuant to section 5 of the Voting Rights Act. The district judge allowed the election to proceed to avoid confusion because there was still time to enjoin the election's results. For part of election day at one polling place, a sign erroneously informed voters that the school board primary had been enjoined, so the judge voided the election. The new composition was precleared in time for a substitute primary election in advance of the general election.

**Topics:** Section 5 preclearance; enjoining elections; enjoining certification; primary election; three-judge court.

### **Section 5 Preclearance Not Required for Misapplication of Election Law**

*Landry v. Kenner (Carl J. Barbier, E.D. La. 2:04-cv-85)*

In a dispute over the date for a special election to replace a mayor elected to the parish council, voters filed a federal complaint alleging that the resigning mayor's setting the election date was contrary to law and therefore a change in voting requiring preclearance pursuant to section 5 of the Voting Rights Act. The district court concluded that actions in violation of law could not be seen as a change in the law, so he dismissed the section 5 case.

**Topics:** Enjoining elections; section 5 preclearance; three-judge court; matters for state courts.

### **Preclearance of a Gubernatorial Recall Election**

*Salazar v. Monterey County (5:03-cv-3584) and Oliverez v. California (5:03-cv-3658) (Jeremy Fogel, N.D. Cal.); Hernandez v. Merced County (1:03-cv-6147) and Gallegos v. California (1:03-cv-6157) (Oliver W. Wanger, E.D. Cal.)*

When the state set a special election on whether to recall the governor, a ballot initiative was moved from a primary election to the earlier special election. Separate federal cases alleged that the recall and the early ballot initiative could not be held because they had not been precleared pursuant to section 5 of the Voting Rights Act as required for four of California's counties. The state obtained preclearance just as a three-judge court met to review the case. The judge presiding over two similar cases in another of the state's districts allowed the court presiding over the cases filed earlier to decide the issues.

**Topics:** Section 5 preclearance; three-judge court; enjoining elections; news media; ballot measure.

### **Objections to Primary Procedures**

*Jones v. Alabama (Richard W. Vollmer, Jr., S.D. Ala. 1:00-cv-442)*

On May 11, 2000, a county commission candidate filed a federal pro se complaint challenging election procedures for a June 6 primary election. On June 1, the candidate moved for a temporary restraining order against the holding of the election. Service of the motion was not confirmed until late at night on Friday, June 2, the response was not docketed until Monday, and the judge was out sick on Monday and Tuesday, so the motion could not be considered until the election was over. In 2001, the judge granted the defendants' motion to dismiss the case. The court of appeals affirmed.

**Topics:** Enjoining elections; primary election; pro se party.

## **ABSENTEE AND EARLY VOTING**

### **An Opportunity to Cure Absentee Ballot Signatures That Do Not Match Voter Registration Records**

*Florida Democratic Party v. Detzner (Mark E. Walker, N.D. Fla. 4:16-cv-607)*

A little over one month in advance of a general election, a political party filed a federal complaint seeking opportunities to cure mismatches between absentee ballot signatures and voter registration signatures, noting an existing opportunity to cure signature omissions. After taking testimony from the local county supervisor of elections, the district judge issued a preliminary injunction requiring an opportunity to cure signature mismatches.

**Topics:** Absentee ballots; equal protection; news media.

### **Counting Federal Overseas Votes on Ballots with State-Election Errors**

*United States v. West Virginia (John T. Copenhaver, Jr., S.D. W. Va. 2:14-cv-27456)*

A state supreme court ordered a replacement candidate for a state legislative election, granting a writ of mandamus that also requested the nullification of absentee ballots already sent out that included the withdrawn candidate's name. The Justice Department sought an injunction requiring that votes for federal offices be counted in the otherwise voided absentee ballots for overseas voters if the overseas voters did not cast corrected ballots. Although the district judge denied the Justice Department preliminary relief, on full briefing the judge ordered federal votes counted for the four ballots at issue.

**Topics:** Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); absentee ballots; matters for state courts.

### **Accommodating a Disabled Voter**

*Mooneyhan v. Husted (Walter H. Rice, S.D. Ohio 3:12-cv-379)*

When a hospitalized voter's absentee ballot did not arrive in time, she asked election officials to deliver it by hand to her, but they refused. Ten days following a federal complaint filed shortly after the polls closed on election day, the district judge ordered that the absentee ballot be counted as a remedy for election officials' failing to accommodate the voter's disability.

**Topics:** Absentee ballots; attorney fees; provisional ballots; laches.

### **Last-Minute Absentee Voting by Last-Minute Prisoners**

*Fair Elections Ohio v. Husted (Susan J. Dlott and S. Arthur Spiegel, S.D. Ohio 1:12-cv-797)*

Prisoner-rights organizations filed a federal complaint seeking provisions ensuring the ability to vote by voters detained during the days immediately preceding the 2012 general election. The district judge denied the plaintiffs immediate relief because they had not presented compelling evidence of disenfranchisement. The state's accommodations for persons with medical emergencies on election day did not create an equal protection violation because of the different burdens placed on election officials. After the case was transferred to another judge in 2014, and after additional discovery, the second judge granted the plaintiffs summary judgment on a showing that the burden on disenfranchised voters outweighed the burden on accommodating late-jailed voters. The court of appeals determined, over a dissent, however, that the plaintiff organizations did not have standing.

**Topics:** Prisoner voters; equal protection; absentee ballots.

### **Extension for Overseas Voters in Wisconsin**

*Romney for President, Inc. v. Wisconsin (William M. Conley, W.D. Wis. 3:12-cv-745)*

A presidential campaign sought an extension for absentee ballots because they were not mailed on time as required by the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA). The matter settled.

**Topics:** Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); absentee ballots.

### **Early Voting on Indian Reservations**

*Wandering Medicine v. McCulloch (Richard F. Cebull and Donald W. Molloy, D. Mont. 1:12-cv-135)*

Members of three Indian tribes sought the establishment of satellite county clerk and recorder offices for voter registration and in-person absentee voting. The first judge assigned to the case denied relief for lack of discriminatory intent and because reservation residents have successfully elected candidates of their choice. After the first judge retired, a second judge determined that the plaintiffs had alleged plausible equal protection and voting rights claims.

**Topics:** Poll locations; equal protection; section 2 discrimination; early voting; absentee ballots.

### **Overseas Absentee Ballot Consent Decree in the Virgin Islands**

*United States v. Virgin Islands (Curtis V. Gómez, D.V.I. 3:12-cv-69)*

Eight days in advance of a primary election, the government sought a consent decree on overseas absentee ballots, which had not been sent to overseas voters in time.

**Topics:** Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); absentee ballots.

### **Late Overseas Ballots in Michigan**

*United States v. Michigan (Robert J. Jonker, W.D. Mich. 1:12-cv-788)*

One week in advance of Michigan's 2012 federal primary election, upon learning that a substantial number of election jurisdictions were not in compliance, the Justice Department filed a complaint to enforce a requirement that absentee ballots be sent to overseas voters at least 45 days in advance of an election. Four days before the election, the court approved a stipulated order extending the deadline for receipt of cast overseas ballots by the number of days that they were sent late.

**Topics:** Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); absentee ballots.

### **Mailing Overseas Absentee Ballots on Time in Georgia in 2012**

*United States v. Georgia (Steve C. Jones, N.D. Ga. 1:12-cv-2230)*

The Justice Department filed a federal complaint against Georgia on June 27, 2012, because a planned primary runoff election would not allow enough time after the initial primary election to mail absentee ballots overseas. The district judge extended the deadline for return of absentee runoff ballots and ordered Georgia to pay for their express delivery. The court retained jurisdiction over absentee voting in Georgia in 2013 and 2014. In 2014, Georgia amended its election laws to comply with the Uniformed and Overseas Absentee Voting Act, so the lawsuit was dismissed.

**Topics:** Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); recusal.

### **Timely Overseas Ballots in Alabama**

*United States v. Alabama (Myron H. Thompson, M.D. Ala. 2:12-cv-179)*

The U.S. Department of Justice alleged violations by Alabama of the Uniformed and Overseas Citizens Absentee Voting Act of 1986 (UOCAVA), as amended by the Military and Overseas Voter Empowerment Act of 2009 (MOVE Act), respecting timely distribution of absentee ballots for a March 2012 primary election. A weekend and two court days later, the district judge ordered the parties to submit a remedy plan within four days. A few days before the election, the judge extended the deadline for casting overseas ballots and ordered publication of the revised overseas absentee voting procedures. In 2014, the judge ordered permanent changes to the election timetable, and he retained jurisdiction over ballot timing in the interim.

**Topics:** Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); primary election.

### **Mailing Nevada's Overseas Ballots on Time**

*Doe v. Miller (Gloria M. Navarro, D. Nev. 2:10-cv-1753)*

On October 8, 2010, the Republican candidate for secretary of state filed a pro se federal complaint seeking relief from a county's failure to mail absentee ballots to some overseas voters on time. The district judge dismissed the complaint as moot because of efforts election officials had already undertaken to remedy the error.

**Topics:** Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); pro se party.

### **Prompt Delivery of Absentee Ballots by Guam**

*United States v. Guam (Frances M. Tydingco-Gatewood, D. Guam 1:10-cv-25)*

On October 6, 2010, the Justice Department filed a federal action to enforce Guam's compliance with the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA). Guam filed a notice that it would not oppose the action, and after an October 13 hearing the district court ordered compliance. For elections in 2012, the district court issued a stipulated order of compliance, because Guam had not yet achieved compliance legislatively.

**Topics:** Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

### **Timely Overseas Ballots for State Elections in Maryland**

*Doe v. Walker (Roger W. Titus, D. Md. 8:10-cv-2646)*

A federal complaint filed 40 days in advance of the 2010 general election complained that absentee ballots had not been sent to overseas voters in time. It turned out that ballots listing only federal offices had already been sent out. The district judge extended the deadline for the state to receive ballots for state offices by ten days to preserve overseas voters' fundamental rights to vote.

**Topics:** Absentee ballots; military ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA).

### **County Differences in Providing Absentee Ballots**

*Vanzant v. Brunner (Susan J. Dlott, S.D. Ohio 1:10-cv-596)*

A federal complaint filed two months before the 2010 general election alleged an equal protection violation because some counties were more generous than others in facilitating absentee voting. The district court denied relief.

**Topics:** Absentee ballots; equal protection.

### **Right to Vote Absentee**

*Cunningham v. Leigh (W. Allen Pepper, Jr., N.D. Miss. 1:10-cv-49)*

A federal complaint, which was filed four days in advance of a meeting of voters to select trustees for a school district, sought an injunction requiring absentee ballots for the meeting. After a telephonic hearing two days after the complaint was filed, the district judge determined that voters do not have a fundamental right to absentee ballots, the plaintiffs had shown no discriminatory intent, and the plaintiffs' evidence of discriminatory impact was weak, so the judge denied immediate relief.

**Topic:** Absentee ballots.

### **Post-Election Verification of a Disabled Voter's Absentee Ballot**

*Ray v. Franklin County Board of Elections (George C. Smith, S.D. Ohio 2:08-cv-1086)*

A voter bedridden and homebound because of diabetes and panic attacks filed a federal action against the county board of elections, claiming that the board had improperly required her to visit the board by the previous day to protect the validity of her absentee ballot. The district court enjoined the board to make reasonable accommodations to the plaintiff's disabilities and awarded the plaintiff \$16,139.50 in attorney fees and costs.

**Topics:** Absentee ballots; attorney fees; case assignment.

### **Military Absentee Ballots 2008**

*McCain-Palin 2008, Inc. v. Cunningham (Richard L. Williams, E.D. Va. 3:08-cv-709)*

On the day before the 2008 presidential election, one party's campaign filed a federal lawsuit alleging that Virginia had not sent absentee ballots to military personnel overseas in time for the voters to return the ballots in time to be counted. The district court ordered an extension of time for accepting absentee ballots from overseas so long as they were cast before the polls closed.

**Topics:** Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); military ballots; absentee ballots; intervention.

### **Accusations of Voter Fraud**

*Escobedo v. Rogers (William P. Johnson, D.N.M. 1:08-cv-1002)*

A federal complaint alleged aggressive and harassing investigations into the plaintiffs' rights to vote. The district judge denied the plaintiffs immediate relief because the evidence showed that both had voted in the 2008 general election. After the election, the judge dismissed the complaint because there was no imminent threat of further injury to the plaintiffs by the defendants.

**Topics:** Absentee ballots; recusal; case assignment; registration challenges; citizenship; primary election.

### **Early Voting Locations**

*Curley v. Lake County Board of Elections and Registration (Joseph S. Van Bokkelen, N.D. Ind. 2:08-cv-287)*

The central question in this case was whether a majority vote or a unanimous vote by members of an election board was required to open satellite locations for early voting. A state court judge issued an injunction favoring the unanimity requirement shortly after the case was removed to federal court. After the parties agreed to maintain the status quo until the federal judge could rule, some of their attorneys filed a similar action in another state court and got a conflicting state court injunction. Employing the All Writs Act, the federal judge vacated the second injunction, but he later determined that his case was not removable.

**Topics:** Early voting; poll locations; matters for state courts; removal; enforcing orders; intervention.

### **Same-Day Registration and Absentee Voting**

*Project Vote v. Madison County Board of Elections (James S. Gwin, N.D. Ohio 1:08-cv-2266) and Ohio Republican Party v. Brunner (George C. Smith, S.D. Ohio 2:08-cv-913)*

Absentee voting began in Ohio 35 days before the 2008 general election; state election law required voters to be registered at least 30 days before the election. Could new voters both register and vote on the same day if they did so after absentee voting began and before the deadline for new voter registrations? On a Wednesday, three public interest organizations and two voters filed a federal complaint in the Northern District against a county in the Southern District that interpreted the law as requiring registration 30 days before voting instead of 30 days before the election. The district judge set the matter for hearing on Monday mid-day. On Friday, the Republican Party and a voter filed a federal action in the Southern District to force Ohio's secretary of state to require voters to be registered for 30 days before voting. Over the weekend, defendants in each case moved to transfer their case to the other district. Both judges denied these motions, and both judges moved up their Monday hearings. On Monday, the Northern District judge ruled that the statute required registration 30 days before the election, not 30 days before voting. That same day, Ohio's supreme court reached the same result. Later that day, the Southern District judge deferred to the state court on the issue. Other issues in the Southern District case received expedited review by another district judge, the court of appeals, and the Supreme Court.

**Topics:** Absentee ballots; case assignment; Help America Vote Act (HAVA); registration procedures.

### **Accommodating Overseas Voters in a Special Election**

*DuPage County Board of Election Commissioners v. Illinois State Board of Elections (Ruben Castillo, N.D. Ill. 1:08-cv-232)*

Election officials filed a federal complaint seeking relief from the time constraints imposed by a special election to fill a seat in the U.S. House of Representatives timed to coincide with a presidential primary election, because the schedule did not give them enough time to provide overseas voters with their ballots on time. The district judge granted the officials departures from statutory deadlines to accommodate the special election dates. The judge modified time deadlines for overseas voters and authorized the use of blank absentee ballots.

**Topics:** Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); intervention.

### **Pro Se Suit to Nullify All Absentee Ballots**

*Freeman v. McKnight (Gary L. Sharpe, N.D.N.Y. 1:07-cv-1123)*

A candidate who earned more voting-booth votes than his opponent, but who trailed after absentee ballots were counted, filed a pro se action to nullify absentee ballots because their mailing envelopes had been discarded so timely mailing could not be verified. The judge determined that the plaintiff had not provided the defendants with proper notice or shown entitlement to immediate injunctive relief.

**Topics:** Absentee ballots; pro se party; enjoining certification.

### **Adding a Weekend Day to Early Voting**

*LULAC v. Texas (Xavier Rodriguez, W.D. Tex. 5:06-cv-1046)*

A federal complaint challenged the exclusion of weekend days from an early voting period for a special congressional runoff election, and the district judge ordered that counties that included parts of the congressional district would have the discretion to extend the early voting period by one day to include a Saturday.

**Topics:** Early voting; case assignment; attorney fees; malapportionment; three-judge court.

### **Equal Provision of Early Voting in Cook County**

*Gustafson v. Illinois State Board of Elections (David H. Coar, N.D. Ill. 1:06-cv-1159)*

A federal complaint charged a city and its county with unequal provision of early voting. The district judge found that the inconsistencies among the jurisdictions were not so serious as to merit federal court intervention.

**Topics:** Early voting; poll locations; primary election.

### **Rejecting Absentee Ballots Without Notice and an Opportunity to Be Heard**

*Zessar v. Helander (David H. Coar, N.D. Ill. 1:05-cv-1917)*

A 2005 federal class action filed four days in advance of a scheduled election charged that the state's absentee voting system did not comply with due process requirements; an absentee vote cast in 2004 was not counted because of an erroneous conclusion that the ballot signature did not match the registration signature. The district judge initially heard a motion for emergency relief on election day, but set the matter for hearing two days later when defendants could participate after the plaintiff's attorney acknowledged difficulties arising from his filing the case so close to an election. Because the plaintiff voted in person on election day, the district judge denied him immediate relief at the second hearing. After certifying both plaintiff and defendant classes, the district judge determined that state procedures violated due process.

**Topics:** Absentee ballots; laches; class action.

### **Late Absentee Ballots in Florida**

*Friedman v. Snipes (Patricia A. Seitz and Alan S. Gold, S.D. Fla. 1:04-cv-22787)*

On the day of the 2004 general election, three voters filed a federal complaint claiming that although they requested absentee ballots on time they did not receive them in time to cast them without a risk that the ballots would not be counted. The district judge assigned to the case set a status hearing for the following morning, but on the day of the hearing she recused herself at the request of the state's secretary of state because of her husband's legal work for one of the major political parties. The judge to whom the case was reassigned reset the hearing for later that day. The second judge granted a temporary restraining order segregating the ballots in question, but he ultimately denied the plaintiffs a preliminary injunction after an evidentiary hearing.

**Topics:** Absentee ballots; ballot segregation; recusal; case assignment.

### **Casting a Provisional Ballot Because the Absentee Ballot Never Arrived**

*White v. Blackwell (David A. Katz, N.D. Ohio 3:04-cv-7689)*

On the morning of a general election, a voter who never received the absentee ballot she applied for filed an action to compel the state to accept her provisional ballot cast on election day. The court determined that the Help America Vote Act compelled relief for the plaintiff, and the judge ordered that all counties in the state accept provisional ballots from voters who did not receive absentee ballots that they applied for. A year later, for a special election, the judge was called upon to provide the same relief. The judge determined that the plaintiff was entitled to attorney fees, and the parties settled on an amount of \$225,000.

**Topics:** Absentee ballots; provisional ballots; Help America Vote Act (HAVA); 42 U.S.C. § 1983; enforcing orders; attorney fees.

### **Public List of Absentee Voters**

*Meehan v. Philadelphia County Board of Commissioners (William H. Yohn, Jr., E.D. Pa. 2:04-cv-5123)*

Relying on a 1994 opinion by the U.S. Court of Appeals for the Third Circuit, Republican committees filed a federal action on election day 2004, complaining that the committees had wrongfully been denied a list of persons who had received absentee ballots so that the committees could initiate challenges to absentee votes. After proceedings late on election day and on the following morning, the district judge signed consent decrees delaying by a few days the counting of absentee ballots. At the end of the week, the plaintiffs voluntarily dismissed their action.

**Topics:** Absentee ballots; recusal; case assignment.

### **Early Voting Locations in Duval County**

*Jacksonville Coalition for Voter Protection v. Hood (Harvey E. Schlesinger, M.D. Fla. 3:04-cv-1123)*

On a Tuesday, the day after early voting started, three voters' rights organizations and two voters filed a federal complaint seeking to compel the county to provide more early voting locations. While the suit was pending, the county agreed to provide a few more sites, but not as many as the plaintiffs sought. The court heard the matter on Friday and issued its opinion on the following Monday. The court denied the plaintiffs immediate relief because they had not shown that the number and locations of early voting sites discriminated against African-American voters.

**Topics:** Poll locations; early voting.

### **Early Voting Locations in Volusia County**

*NAACP v. Lowe (G. Kendall Sharp, M.D. Fla. 6:04-cv-1469)*

On October 7, 2004, African-American voters filed a federal action complaining that the county's only early voting location was not convenient for African-American voters on the county's east side. On the following day, the plaintiffs filed a motion for a preliminary injunction and expedited discovery, and the district judge set a hearing on the motion for 11 days later. Before the hearing occurred, however, the county agreed to open additional early voting locations, so the parties stipulated to a dismissal of the action. The judge ruled that no more than one location was legally required, but the opening of additional sites mooted the case.

**Topics:** Poll locations; early voting.

### **Mailing Overseas Absentee Ballots on Time in Georgia in 2004**

*United States v. Georgia (Charles A. Pannell, Jr., N.D. Ga. 1:04-cv-2040)*

The Justice Department filed a federal complaint against Georgia for mailing primary ballots to overseas voters late. The district judge ordered the following: (1) Georgia will accept faxed ballots, (2) Georgia will accept Internet-based write-in absentee ballots, (3) Georgia will pay for express delivery of absentee ballots, and (4) absentee ballots will be accepted until three days after the election if mailed by election day.

**Topics:** Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); case assignment.

### **Military Absentee Ballots 2004**

*United States v. Pennsylvania (1:04-cv-830) and Reitz v. Rendell (1:04-cv-2360) (Yvette Kane, M.D. Pa.)*

The federal government sued to require Pennsylvania to send out absentee ballots to military personnel overseas in time for them to come back and be counted for a primary election. The judge ordered an extension of the ballots' due date. The judge also ordered an extension for military absentee ballots in the general election on a complaint by parents of two soldiers.

**Topics:** Absentee ballots; military ballots.

### **Court Supervision Over Absentee Ballot Procedures**

*Willingham v. County of Albany (Norman A. Mordue, 1:04-cv-369) and Hoblock v. Albany County Board of Elections (Lawrence E. Kahn, 1:04-cv-1205) (N.D.N.Y.)*

A federal complaint sought an emergency injunction against absentee ballot fraud in an ongoing special election cycle, but the district judge determined that the plaintiffs did not establish a need for immediate federal relief beyond the relief being provided by the state court. At the end of approximately three years of litigation, the case was resolved by consent decrees. Meanwhile, a different federal judge in the same district resolved a dispute over the counting of some absentee ballots by overruling the state's high court's rejection of absentee ballots cast by voters who received them because of errors by the election board.

**Topics:** Absentee ballots; matters for state courts; case assignment; primary election; enjoining certification; class action; attorney fees; intervention; malapportionment.

### **Absentee Ballots Delivered by Third Parties**

*Pierce v. Allegheny County Board of Elections (Joy Flowers Conti, W.D. Pa. 2:03-cv-1677)*

On the Friday before the November 2003 election, two candidates filed a federal action to enjoin the counting of absentee ballots that were delivered to the board of elections by persons other than the voters. The district judge cleared her calendar and held a hearing that afternoon, after which she ordered the ballots in question segregated. The judge conducted a day-long hearing on Monday; on Tuesday, she ruled that the ballots should remain segregated and deemed challenged under state law. State officials and state courts eventually determined that some of the ballots in question were valid and some were not.

**Topics:** Absentee ballots; ballot segregation; matters for state courts.

### **Preclearance Required for Reduction in Polling Locations**

*Miguel Hernandez Chapter of the American GI Forum v. Bexar County (Royal Furgeson, 5:03-cv-816) and American GI Forum v. Bexar County (Fred Biery, No. 5:04-cv-181) (W.D. Tex.)*

A federal complaint challenged a reduction in early voting locations without preclearance pursuant to section 5 of the Voting Rights Act. The district judge issued a temporary restraining order requiring additional voting locations, and the county opened several more. A suit by the same plaintiff and others about seven months later respecting a primary election for political party chairs resulted in a temporary restraining order from a different district judge ordering only one polling place reopened, but preclearance arrived later that day, and the judge dismissed the action except for jurisdiction to enforce the temporary restraining order. The court of appeals stayed the temporary restraining order pending appeal, and the appeal was voluntarily dismissed after the election.

**Topics:** Poll locations; section 5 preclearance; early voting; primary election; ballot measure; attorney fees.

### **Ordering the Use of the Federal Write-In Absentee Ballot in Texas**

*United States v. Texas (Sam Sparks, W.D. Tex. 1:02-cv-195)*

Eighteen days in advance of a federal runoff primary election, the Justice Department sought a court order requiring a state to allow overseas voters to use the federal write-in absentee ballot, as provided by the Uniformed and Overseas Citizens Absentee Voting Act of 1986, and the district court granted the requested immediate relief three days later. A little more than one year later, use of the federal write-in absentee ballot was provided for by state legislation.

**Topics:** Absentee ballots; Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); primary election; section 5 preclearance.

### **A Consent Decree on Overseas Voting in Federal Elections Trumps State Law**

*Harris v. Florida Elections Canvassing Commission (4:00-cv-453) and Medina v. Florida Election Canvassing Commission (4:00-cv-459) (Maurice M. Paul, N.D. Fla.)*

Two removed cases challenged the validity of absentee ballots received from overseas voters after the date of a presidential election. Although one complaint had been amended before removal to omit federal claims, the district judge found that a well-pleaded complaint would have included federal issues. The judge found that a consent decree in previous federal litigation nullified the state's requirement that overseas ballots be received by election day in federal elections. The court of appeals affirmed this decision.

**Topics:** Absentee ballots; enforcing orders; removal; matters for state courts; case assignment; recusal.

### **Counting Federal Write-In Ballots Even If Election Officials Did Not Receive Absentee Ballot Applications**

*Bush v. Hillsborough County Canvassing Board (Lacey A. Collier, N.D. Fla. 3:00-cv-533)*

The district judge ruled that it was improper for counties to not count federal write-in ballots cast by overseas voters solely because the counties had no record of an application for an absentee ballot or solely because the ballots were not postmarked.

**Topics:** Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA); military ballots; absentee ballots; write-in candidate; enforcing orders.

### **Political Party's Mailing Absentee Ballot Applications**

*Republican Party of New Mexico v. New Mexico (Dee Benson, D.N.M. 1:00-cv-1307)*

A federal complaint challenged a new state rule prohibiting political parties from mailing out absentee ballot applications. The case was assigned to a visiting judge after all judges on the local bench recused themselves. The presiding judge denied the plaintiffs immediate injunctive relief, and the case subsequently settled.

**Topics:** Absentee ballots; party procedures; recusal; case assignment.

## **VOTER IDENTIFICATION**

### **Library Cards as Photo Identification**

*Turner-Golden v. Hargett (Aleta A. Trauger and Kevin H. Sharp, M.D. Tenn. 3:12-cv-765)*

A city and a voter filed a federal complaint seeking acceptance of library cards as photo identifications for voting. The emergency motions judge denied immediate relief. The assigned judge later determined that the library cards did not meet the requirements of a state statute for voter photo identification.

**Topics:** Voter identification; matters for state courts; case assignment.

### **Ohio's Voter-Identification Law**

*Northeast Ohio Coalition for the Homeless v. Brunner (Gregory L. Frost and Algenon L. Marbley, S.D. Ohio 2:06-cv-896)*

Public interest organizations challenged Ohio's 2006 voter-identification laws. At the hearing on a temporary restraining order, the parties informed the judge that the case was related to a case already pending before a different judge, to whom the second case was then reassigned. The second judge found the identification laws probably unconstitutional, but the court of appeals stayed his temporary restraining order. The court of appeals also reversed the judge's denial of the state's intervention as a party in addition to the state's secretary of state. The case is now governed by a consent decree.

**Topics:** Voter identification; case assignment; intervention; attorney fees.

### **Extra Proof of Citizenship for Naturalized Citizens**

*Boustani v. Blackwell (Christopher A. Boyko, N.D. Ohio 1:06-cv-2065)*

The August 2006 suit challenged a new law that required naturalized citizens whose citizenship is challenged at the polls to present their naturalization certificates before they can vote. On the day before an injunction hearing, the secretary of state conceded that the law was constitutionally questionable, but he said that there was not enough time for the legislature to cure the law before the upcoming election. The judge issued an injunction forbidding naturalized citizens from being required to provide additional documentation or information before voting. The plaintiffs recovered \$80,000 in attorney fees.

**Topics:** Citizenship; registration challenges; voter identification; attorney fees.

### **Voter Photo Identification**

*Common Cause/Georgia v. Billups (Harold L. Murphy, N.D. Ga. 4:05-cv-201)*

On September 19, 2005, Georgia voters filed a federal complaint challenging the constitutionality of Georgia's voter photo identification law. The district judge signed a proposed order to show cause why a preliminary injunction should not be granted and scheduled a hearing for October 12. On October 18, the court granted a preliminary injunction. Georgia enacted a revised photo identification law in 2006; in 2007, the court determined that the revised law was constitutional. The court of appeals affirmed in 2009.

**Topics:** Voter identification; intervention; news media; section 5 preclearance.

### **American Indian Voter Identification**

*ACLU of Minnesota v. Kiffmeyer (James M. Rosenbaum, D. Minn. 0:04-cv-4653)*

The court determined that recognizing tribal photo identification cards as proof of both identity and address only if the voter resided on a reservation violated equal protection. While the case was pending, the legislature brought the state's law into compliance.

**Topics:** Voter identification; Help America Vote Act (HAVA); equal protection.

### **An Accusation of Widespread Fraudulent Registrations**

*Golisano v. Pataki (John Gleeson, E.D.N.Y. 1:02-cv-4784)*

The district judge denied enhanced identification requirements at a minor party's primary election for governor on allegations of widespread recent fraudulent registrations.

**Topics:** Registration challenges; voter identification; primary election; matters for state courts.

### **Voter Identification in Lawrence, Massachusetts**

*Morris v. City of Lawrence (Rya W. Zobel, D. Mass. 1:01-cv-11889)*

On the day before a municipal election, a voter and two voting rights organizations filed a federal complaint challenging a city's planned voter-identification requirement. Defense counsel acknowledged that voters would show up without identification, because they would not be aware of the new requirement, and they would only be able to vote if they signed their ballots. The court enjoined the requirement.

**Topics:** Voter identification; case assignment.

## **POLL HOURS**

### **No Order Without a Plaintiff**

*In re 2016 Primary Election (Susan J. Dlott, S.D. Ohio 1:16-mc-5)*

A federal district judge ordered a one-hour extension of voting hours in four counties following an anonymous telephone request to the court. A serious traffic accident had resulted in the closure of a trans-state bridge. The court of appeals determined that the court was without jurisdiction to issue an order without a plaintiff.

**Topics:** Polling hours; presiding remotely; intervention; case assignment; primary election.

### **Keeping Polls Open Longer Because of Weather**

*Obama for America v. Cuyahoga County Board of Elections (Solomon Oliver, Jr., N.D. Ohio 1:08-cv-562)*

On the evening of a presidential primary, bad weather was interfering with both ballots and voters getting to the polls. One of the candidates filed a late motion to keep the polls open. Because of technical difficulties, the clerk's office was unable to reach the assigned judge, so the day's duty judge held a telephonic proceeding on the temporary restraining order motion. He decided not to provide relief with respect to polling places in the state's other district, but he did order some polls in his district to remain open late. He ordered ballots cast by voters arriving after the regular closing time to be segregated. The news media reported that polls had already closed by the time they got the judge's order and did not reopen.

**Topics:** Polling hours; case assignment; ballot segregation.

### **Keeping Polls Open Late Because They Opened Late**

*Ohio Democratic Party v. Cuyahoga County Board of Elections (Dan Aaron Polster, N.D. Ohio 1:06-cv-2692)*

Because a county was using new voting equipment, several polls opened late, so one of the parties filed a federal action to delay poll closings as well. The judge assigned the case could not be reached so the motion for a temporary restraining order was heard by the day's duty judge. The judge determined that the problems were localized, so he ordered a late closing for 16 precincts.

**Topics:** Polling hours; voting technology; case assignment; intervention; news media.

### **Long Lines at the Polls**

*Ohio Democratic Party v. Blackwell (Algenon L. Marbley, S.D. Ohio 2:04-cv-1055)*

At 5:54 p.m. on election day 2004, Ohio's Democratic Party filed a federal action to keep polls open longer in two counties, alleging that an insufficient number of voting machines was resulting in long lines, which was discouraging voters. The court ordered the polling places to offer voters alternative methods of voting.

**Topics:** Polling hours; voting technology; provisional ballots; absentee ballots.

### **Keeping Polls Open Late Because of Excessive Registration Purging**

*Maine Democratic Party v. City of Portland (Kermit V. Lipez, D. Me. 2:00-cv-360)*

A large number of voters went to the polls in Portland, Maine, for the 2000 general election to discover that their voter registrations had been canceled. Poll workers referred them to city hall, where lines grew very long. On the afternoon of the election, the Democratic Party sought a temporary restraining order to keep the polls open an extra two hours. All district judges were out of town, so a local circuit judge heard the motion. The judge declined to keep the polls open late but ordered the polls to let voters correct registration errors at the polls and ordered that all voters in line by the time the polls closed be able to vote.

**Topics:** Registration challenges; National Voter Registration Act; polling hours.

### **No Federal Relief from Long Lines**

*Howard v. Currie (Bernard A. Friedman, E.D. Mich. 2:00-cv-74912)*

Having observed long lines in the morning on general election day 2000, a party and its presidential campaign sued for relief from expected long lines in the evening. The court denied relief.

**Topic:** Polling hours.

## **POLLING PLACE PROCEDURES**

### **Limiting Poll Watchers to Counties of Residence**

*Republican Party of Pennsylvania v. Cortés (Gerald J. Pappert, E.D. Pa. 2:16-cv-5524)*

Two and one-half weeks in advance of a presidential election, a federal lawsuit challenged a state statute that required poll watchers to serve only in their counties of residence. Five days in advance of the election, the district judge denied the plaintiffs immediate relief because the requirement had a rational basis and because the last-minute filing was not justified.

**Topics:** Laches; intervention.

### **Voting in a Primary Election at Seventeen If Eighteen by the General Election**

*Smith v. Husted (George C. Smith, S.D. Ohio 2:16-cv-212)*

A federal complaint challenged the state secretary of state's advisory that a law permitting 17-year-olds to vote in a primary election if they will be 18 by the time of the general election did not apply to a presidential primary election because voters in the state's presidential primary election are not voting for a nomination but are voting for delegates to a convention. The federal judge abstained from a ruling on the merits because of pending state litigation over interpretation of the relevant statute. The state court ruled in favor of the federal plaintiffs' position.

**Topics:** Primary election; matters for state courts; laches.

### **Loyalty Oath**

*Parson v. Alcorn (M. Hannah Lauck, E.D. Va. 3:16-cv-13)*

Days before the distribution of absentee ballots was to begin, three voters filed a challenge to a party's requirement that voters in its presidential primary sign a statement that the voters are members of the party. The district judge heard the case on week after it was filed and denied the plaintiffs immediate relief, reasoning, "A private, unenforceable pledge does not pose a severe burden." The party decided not to use the loyalty oath after all, and the plaintiffs dismissed their appeal.

**Topics:** Party procedures; primary election; absentee ballots.

### **Invalid Primary Election**

*Young v. West Point Municipal Election Commission (Michael P. Mills, N.D. Miss. 1:13-cv-99)*

Five voters, including an unsuccessful incumbent in a primary election, filed a federal complaint alleging that a municipal election commission conducted a sham primary election, because the municipal party executive committee was without members and therefore could not properly convey to the election commission the authority to conduct the election. The district judge determined that the plaintiffs had not made a showing sufficient to enjoin the next day's runoff election.

**Topics:** Enjoining elections; primary election; party procedures; case assignment.

### **No-Bid Contract for Election Software**

*Fitrakis v. Husted (Gregory L. Frost, S.D. Ohio 2:12-cv-1015)*

On the day before a general election, a voter filed a complaint charging the secretary of state with contracting for voting software and equipment without public bidding. The judge held a teleconference on the day the case was filed and heard evidence on election morning. The state offered evidence that the purpose of the software was not the tabulation of votes but the reporting of tabulations by the counties to the secretary's office. The judge found the plaintiff's concerns too speculative for immediate relief.

**Topic:** Voting technology.

### **Preventing Long Lines**

*Florida Democratic Party v. Detzner (Joan A. Lenard and Ursula Ungaro, S.D. Fla. 1:12-cv-24000)*

Late on the Saturday before the 2012 general election, because of long lines during early voting, a party filed a complaint seeking relief from anticipated long lines on election day at the polls in three counties. The assigned judge was out of the district when the case was filed, so another judge, selected at random, handled the emergency motion. In response to the lawsuit, the counties created additional opportunities for in-person absentee voting.

**Topics:** Absentee ballots; early voting; case assignment.

### **A Citizenship Check Box on Ballot Applications**

*Bryanton v. Johnson (Paul D. Borman, E.D. Mich. 2:12-cv-14114)*

On September 17, 2012, a county clerk and three voters filed a federal complaint against the state's secretary of state challenging her planned inclusion of a citizenship verification question on ballot applications in the upcoming general election. The district court heard a motion for a preliminary injunction on October 5. After a six-hour hearing, the court granted the injunction. The ballot application question violated equal protection because it was not applied uniformly and because evidence at the hearing showed that voters who failed to check the box would still be permitted to vote.

**Topics:** Citizenship; equal protection; case assignment.

### **Order of Names on the Ballot**

*Crim v. Tennessee Democratic Party (Kevin H. Sharp, M.D. Tenn. 3:12-cv-838)*

A losing primary candidate filed a federal complaint alleging that the victor was improperly included on the ballot and improperly positioned on the ballot because his name was listed alphabetically first. On the next day, after a hearing, the district judge denied the plaintiff immediate relief, finding no wrongdoing and also observing that the plaintiff could have challenged the ballot before the election.

**Topics:** Enjoining certification; getting on the ballot; laches; equal protection; intervention.

### **Write-In Candidates Closing a Primary Election**

*Mazzilli v. Townsley (William J. Zloch, S.D. Fla. 1:12-cv-22432)*

A Florida statute provides that a primary election is open to all voters if only one party fields a candidate for the general election. A ruling by Florida's secretary of state specifies that if anyone registers as a write-in candidate for the general election, then the primary remains closed to voters who are not party members. Several weeks in advance of a primary election in which only one party had candidates, two voters challenged the secretary's ruling. Less than one month later, the court denied immediate injunctive relief because the plaintiffs had failed to include the secretary of state as a defendant. Twelve days later, reviewing an amended complaint, the court held the secretary's ruling a reasonable interpretation of an unambiguous statute serving legitimate interests.

**Topics:** Primary election; write-in candidate.

### **"None of These Candidates"**

*Townley v. Nevada (Robert C. Jones, D. Nev. 3:12-cv-310)*

A June 8 federal complaint sought to prohibit a state from including "none of these candidates" on the ballot, because state law prevented that choice from prevailing. On August 22, the judge granted the plaintiffs relief, but the court of appeals stayed the injunction. Later, the court of appeals determined that the plaintiffs did not have standing because the relief sought—elimination of the none-of-these choice—would not redress the alleged impropriety—not counting none-of-these votes when determining the winner.

**Topics:** Intervention; recusal; case assignment.

### **School Bond Opposition Dilution**

*Duke v. Lawson (Charles Everingham IV, E.D. Tex. 2:11-cv-246)*

Voters opposing a school bond filed a federal complaint to enjoin the opening of school facilities for early voting. A district court magistrate judge denied the plaintiffs immediate relief, so the plaintiffs voluntarily dismissed the case.

**Topics:** Poll locations; early voting.

### **Write-In Lists**

*Rudolph v. Fenumiai (Ralph R. Beistline, D. Alaska 3:10-cv-243)*

Voters challenged Alaska's providing polling places with lists of write-in candidates so that voters could refresh their recollection about who was running and how to spell their names. While a motion for a temporary restraining order was pending, the Justice Department precleared the procedure, so the motion was denied as moot.

**Topics:** Section 5 preclearance; write-in candidate.

### **Enjoining Temperamental Voting Machines**

*Fetzer v. Barlett (Malcolm J. Howard and David W. Daniel, E.D.N.C. 4:10-cv-158)*

A federal complaint filed on Friday, October 29, 2010, challenged the planned use of touchscreen voting machines that the complaint alleged would default to votes for the other party. The district judge assigned to the case was at an airport returning from a week out of town, and he referred the case to a magistrate judge for a status conference the day the complaint was filed. On Saturday, the district judge heard the case and issued a temporary restraining order requiring warning notices at polling places instructing voters to review carefully the machines' registration of the voters' choices.

**Topics:** Voting technology; election errors; case assignment.

### **Election Observers**

*Tucker v. Hosemann (W. Allen Pepper, Jr., N.D. Miss. 2:10-cv-178)*

A federal complaint filed 13 days in advance of the 2010 general election alleged that election practices discriminated against black voters. According to the presiding judge, “Though it was unclear from their pleadings the exact nature of the relief sought by the plaintiffs, the court was able to pinpoint the issue during the TRO hearing [held six days after the complaint was filed].” The judge concluded that the practice by offices of Mississippi’s secretary of state and attorney general of sending observers to federal and state elections held in Mississippi was not a new practice requiring preclearance pursuant to section 5 of the Voting Rights Act.

**Topic:** Section 5 preclearance.

### **Unsuccessful Challenge to Straight-Ticket Voting**

*Meyer v. Texas (Kenneth M. Hoyt, S.D. Tex. 4:10-cv-3860)*

An independent write-in candidate for Congress filed a pro se federal complaint challenging the constitutionality of state election laws favoring party candidates, including straight-ticket voting. The district judge concluded that the complaint did not allege a constitutional violation, and the state laws served the state’s interest in regulating elections.

**Topics:** Pro se party; write-in candidate.

### **Suit to Reopen Polling Places on an Indian Reservation**

*Spirit Lake Tribe v. Benson County (Ralph R. Erickson, D.N.D. 2:10-cv-95)*

Approximately one month before election day, a tribe filed a federal complaint challenging a county decision the previous year to close seven out of eight polling places to promote voting by mail. The district judge issued a preliminary injunction reopening the two polling places on the tribe’s reservation on evidence that both traveling to the remaining polling place and voting by mail were especially difficult for members of the tribe. The parties converted the preliminary injunction into a consent decree.

**Topics:** Poll locations; section 2 discrimination.

### **Fusion Voting**

*Conservative Party of New York State v. New York State Board of Elections (Jed S. Rakoff, S.D.N.Y. 1:10-cv-6923)*

Minor parties in a state that allows candidates to appear as nominees of multiple parties filed an action against a rule established for new voting technology that would give voting preferences in some cases to the major parties. The judge denied immediate relief because the action was brought too close to the election, but the case ultimately resulted in a consent judgment and an award of \$199,000 in attorney fees.

**Topics:** Voting technology; laches; attorney fees.

### **No Right to Cast a Paper Ballot**

*Bryan v. Abramson (Harvey Bartle, D.V.I. 1:10-cv-79)*

A pro se complaint sought a right to cast a paper ballot instead of voting electronically or casting a provisional ballot. The court determined that the complaint did not present a federal question. A local court determined that the claim was without merit.

**Topics:** Matters for state courts; provisional ballots; voting technology; pro se party; Help America Vote Act (HAVA).

### **Adequate Polling Place Resources**

*Virginia State Conference of NAACP Branches v. Kaine (Richard L. Williams and Dennis W. Dohnal, E.D. Va. 3:08-cv-692)*

Eight days before the 2008 general election, voters filed a federal complaint charging Virginia with unequal allocation of polling place resources. A magistrate judge held a settlement conference on the case's third day, after which the plaintiffs decided to withdraw their motion for a preliminary injunction. Two days later, the plaintiffs again sought a preliminary injunction, which the district judge denied on the day before the election. Instead, the judge ordered the posting of notices about curbside voting and that anyone in line at closing time would be able to vote.

**Topics:** Equal protection; polling hours; intervention; case assignment.

### **Preparing for Voting Machine Failure**

*NAACP State Conference of Pennsylvania v. Cortés (Harvey Bartle III, E.D. Pa. 2:08-cv-5048)*

A federal complaint filed 12 days before a general election challenged a directive allowing the use of paper ballots only when all voting machines fail. A day after a hearing, held five days after the complaint was filed, the district judge issued a preliminary injunction requiring the offering of paper ballots when half or more of the voting machines cease to work.

**Topics:** Voting technology; case assignment; intervention.

### **Barack Obama's Citizenship**

*Berg v. Obama (R. Barclay Surrick, E.D. Pa. 2:08-cv-4083)*

A few days before the 2008 Democratic National Convention, an attorney filed a pro se complaint seeking to have Barack Obama declared ineligible to be President, alleging that he is not a natural born citizen. The judge denied immediate relief at an ex parte proceeding where the plaintiff could not confirm service of the complaint on the defendants. Over the next eight weeks, the court received three pro se motions to intervene: one to support the plaintiff, one to challenge John McCain's citizenship, and one to know the facts of the case. The judge dismissed the action for lack of standing, and the court of appeals affirmed.

**Topics:** Pro se party; getting on the ballot; intervention.

### **Bilingual Ballots in Puerto Rico**

*Diffenderfer v. Gómez-Colón (José Antonio Fusté, D.P.R. 3:08-cv-1918)*

Three weeks before ballots needed to be printed for a 2008 election, a federal complaint objected to Puerto Rico's ballots and their instructions being provided only in Spanish. The court certified the case as a class action and ordered that ballots be printed in both Spanish and English. While an appeal was pending, Puerto Rico enacted legislation requiring bilingual ballots in future elections.

**Topics:** Ballot language; class action; attorney fees; case assignment.

### **Preclearance of Nominating Procedures**

*LULAC of Texas v. Texas (Fred Biery, W.D. Tex. 5:08-cv-389)*

Five days after the 2008 presidential primary elections in Texas, and at the beginning of further delegate selection through caucuses, Latino voters and organizations filed a federal complaint attacking how the Democratic Party picked delegates for national and local nominating conventions. The district court dismissed the action and determined that a claim that the nominating procedures had not received section 5 preclearance did not require resolution by a three-judge court, but the court of appeals disagreed. In time, the case was mooted by the Justice Department's granting of preclearance. The court of appeals vacated an award of attorney fees.

**Topics:** Section 5 preclearance; three-judge court; laches; party procedures; attorney fees.

### **Voting Without Notice of Errors**

*ACLU v. Brunner (Kathleen M. O'Malley, N.D. Ohio 1:08-cv-145)*

The January 2008 complaint challenged the selection by a county of new voting machines because the machines would not give voters notice of errors and opportunities to cure them. The district judge determined that by the time the complaint had been filed there was not time for a remedy that would not excessively disrupt the March presidential primary.

**Topics:** Voting technology; laches.

### **At-Large Caucus Precincts**

*Chesnut v. Democratic Party of Nevada (James C. Mahan, D. Nev. 2:08-cv-46)*

In 2008, voters challenged Nevada's Democratic Party's plans for nominating caucuses in which some voters would be able to participate in at-large caucuses at times other than the scheduled time for regional caucuses. The court determined that the party had not exceeded its authority in determining its nominating procedures.

**Topics:** Party procedures; intervention; recusal.

### **Application of Election Law to a Straw Poll**

*Schulz v. Iowa (James E. Gritzner, S.D. Iowa 4:07-cv-350)*

An eight-plaintiff pro se federal complaint challenged the participation fee for Iowa State University's Republican straw poll for the 2008 presidential election, which was to be held two days after the complaint was filed. On the afternoon before the poll, the district judge denied the plaintiffs immediate relief from the bench after a hearing. The court of appeals affirmed, on the day of the poll.

**Topics:** Pro se party; equal protection; interlocutory appeal.

### **Spanish-Language Ballots in Philadelphia**

*United States v. City of Philadelphia (Petrese B. Tucker, E.D. Pa. 2:06-cv-4592)*

Twenty-five days in advance of the November 2006 general election, the Justice Department filed a civil complaint against Philadelphia for failure to provide Spanish-language election resources in violation of sections 203 and 208 of the Voting Rights Act. Twelve days later, the Justice Department moved for a temporary restraining order or a preliminary injunction enforcing the Voting Rights Act and appointing federal election observers. The court declined to order federal observers because of the government's weak case dilatorily brought.

**Topics:** Ballot language; laches; three-judge court.

### **Spanish-Language Ballots in Springfield, Massachusetts**

*United States v. City of Springfield (Michael A. Ponsor, D. Mass. 3:06-cv-30123)*

The Justice Department filed a civil complaint against Springfield, Massachusetts, on August 2, 2006, alleging violations of sections 203 and 208 of the Voting Rights Act for failure to provide Spanish-language election resources for Spanish-language voters. By four days in advance of a September 19 primary election, the court and the parties came to agreement on a consent decree, which operated successfully until its expiration early in 2010.

**Topics:** Ballot language; three-judge court; primary election.

### **Replacing Mechanical Voting Machines with Electronic Voting Machines**

*Taylor v. Onorato (Gary L. Lancaster, W.D. Pa. 2:06-cv-481)*

Approximately five weeks before a primary election, voters and a public interest group filed a federal suit to enjoin replacement of mechanical voting machines with electronic voting machines, relying on the Help America Vote Act (HAVA). On the case's second day, the plaintiffs moved for a preliminary injunction. At the end of the case's first week, the district judge held an informal in-chambers status conference, from which news media were excluded. After a three-day evidentiary hearing beginning a week later, the district judge determined that HAVA did not afford the plaintiffs a private right of action.

**Topics:** Voting technology; Help America Vote Act (HAVA); news media.

### **Voting Equipment for the Blind in Volusia County**

*National Federation of the Blind v. Volusia County (John Antoon II, M.D. Fla. 6:05-cv-997)*

Three months before a municipal election, advocates for the blind and five blind voters filed a federal complaint against a county, charging that the county would not provide voting machines accessible to blind people. The district judge heard a motion for a preliminary injunction ten days later. Eleven days after that, the judge denied the injunction. While an interlocutory appeal was pending, the county bought new voting equipment and the plaintiffs dismissed their case voluntarily.

**Topics:** Voting technology; interlocutory appeal.

### **A Challenge to Paper Ballots for Blind Voters**

*Ramos v. City of San Antonio (Royal Furgeson, W.D. Tex. 5:05-cv-500)*

A federal complaint challenged a switch from touch-screen voting machines to paper optical scan ballots, because of the impact on the ability of voters with vision impairments to vote in secret. A claim pursuant to section 5 of the Voting Rights Act was mooted when the Justice Department precleared the change after the case was filed. The district judge opined that the plaintiffs would prevail on the merits, but a workaround procedure mitigated the impact on vision-impaired voters for the impending election, so the judge denied immediate relief. Three years later, the case settled.

**Topics:** Voting technology; section 5 preclearance; three-judge court; recusal; case assignment.

### **Continuing the Use of Punch-Card Ballots for a Special Election**

*Southwest Voter Registration Education Project v. Shelley (Stephen V. Wilson, C.D. Cal. 2:03-cv-5715)*

Two months in advance of a gubernatorial recall election, a federal complaint challenged the use in some jurisdictions of punch-card ballots. The district judge denied immediate relief because the election would be held before a previous consent decree's decertification of punch-card ballots would go into effect. A three-judge panel of the court of appeals reversed the district court, but an 11-judge en banc panel subsequently affirmed the district court. The governor was recalled.

**Topics:** Voting technology; intervention; laches.

### **Changing How Straight-Party Votes Are Marked Without Preclearance**

*LULAC v. Bexar County (Edward C. Prado, W.D. Tex. 5:02-cv-1015)*

A federal complaint challenged, among other things, a change in ballot construction that required voters to mark their selection for straight-party voting twice instead of once as not precleared pursuant to section 5 of the Voting Rights Act. After four proceedings, the parties and the judge agreed that the change could proceed as if precleared for early voting, but the election-day ballot would use the old method while preclearance was pending.

**Topics:** Early voting; voting technology; section 5 preclearance; intervention; attorney fees.

### **Voters' Right to a Completely Open Primary**

*Snellgrove v. Georgia (Hugh Lawson, M.D. Ga. 5:02-cv-288)*

Four days before a primary election, independent voters filed a federal complaint complaining that the primary election prevented them from voting for a member of one party for one office and a member of a different party for another office. After an evidentiary hearing on the day before the election, the district judge declined to issue an injunction.

**Topic:** Primary elections.

### **Retroactive Preclearance for Emergency Consolidation of Polling Places**

*Leyva v. Bexar County Republican Party (Edward C. Prado, W.D. Tex. 5:02-cv-408)*

Nearly seven weeks after an election for which polling places were consolidated because of an unexpected shortage of poll workers, a federal complaint challenged the consolidations for not being precleared pursuant to section 5 of the Voting Rights Act. The district judge denied immediate relief because the county intended to seek preclearance and election records would be preserved. In time, the county received retroactive preclearance and a three-judge court declined to void the election.

**Topics:** Poll locations; section 5 preclearance; three-judge court; polling hours; primary election; intervention; news media.

### **Paper Primary Ballots for Minor Parties and Machine Primary Ballots for Major Parties**

*Green Party of New York v. Weiner (Gerard E. Lynch, S.D.N.Y. 1:00-cv-6639)*

A minor party filed a federal complaint one week before a primary election challenging the use of paper ballots for minor parties and voting machines for major parties. Following a hearing two days later, the federal judge denied immediate relief on a finding that the use of paper ballots for a minor party would be unlikely to unduly delay the counting of votes. Following complete briefing, the judge granted the defendants summary judgment 17 months later and declined jurisdiction over state law claims.

**Topics:** Voting technology; primary election; matters for state courts; intervention; equal protection.

### **Preference for Faction Loyalists as Party Poll Workers**

*Espada v. Rosado (John S. Martin, S.D.N.Y. 1:00-cv-6469)*

A federal complaint alleged that poll-worker appointments by a political party for a primary election were unconstitutionally targeted to one faction within the party. The district judge denied as immediate relief appointment of three of the plaintiffs as poll workers, because they had already been appointed. The judge denied the defendants' motion for sanctions on a finding that the complaint, which had been dismissed voluntarily, included non-frivolous constitutional claims.

**Topics:** Party procedures; primary election; attorney fees.

### **Preclearance Not Required for How Election Officials Are Selected**

*Selma Coalition for Equality and Change v. City of Selma (Edward C. Prado, W.D. Tex. 5:00-cv-498)*

Unsuccessful candidates in a city council election filed a federal complaint alleging that election procedures had not been precleared pursuant to section 5 of the Voting Rights Act. Two years later, a three-judge court determined that remaining claims for how election officials were appointed were not section 5 violations. The court initially awarded the defendants attorney fees, but denied fees on reconsideration because of the more rigorous standard for awarding fees to defendants in civil rights cases.

**Topics:** Section 5 preclearance; three-judge court; attorney fees; poll locations.

### **Permitting Independent Voters to Vote in Party Primaries**

*Hole v. North Carolina Board of Elections (James A. Beaty, Jr., M.D.N.C. 1:00-cv-477)*

An unsuccessful primary election candidate filed a federal complaint nine days after the election alleging that her First Amendment rights were violated by the state and the party's permitting independents to vote in the election. The district court denied relief as foreclosed by The Supreme Court's 1986 decision in *Tashjian v. Republican Party of Connecticut*.

**Topic:** Primary election.

## **POLLING PLACE ACTIVITIES**

### **Wearing Tea Party Shirts at Polling Places**

*Reed v. Purcell (James A. Teilborg, D. Ariz. 2:10-cv-2324)*

On the Thursday before the 2010 general election day, a voter filed a federal complaint in the District of Arizona seeking the right to wear a shirt at his polling place supporting the tea party, a party that did not appear on the ballot. On Monday, the judge granted the plaintiff temporary relief. In 2011, Arizona's election statutes were revised, mooted the case.

**Topics:** Campaign materials; intervention; attorney fees.

### **Wearing Political Messages at the Polls in Minnesota**

*Minnesota Majority v. Mansky (Joan N. Ericksen, D. Minn. 0:10-cv-4401)*

On the Thursday before a general election, a federal complaint challenged proscriptions on wearing Tea Party shirts and "Please I.D. Me" buttons at the polls. On the following day, the plaintiffs filed a motion for a temporary restraining order. The district judge heard the case on Monday morning and denied immediate relief. Following nearly five years of additional litigation, including an appeal, the judge granted the defendants summary judgment, finding the proscriptions justified as promoting decorum at the polls. A second appeal is pending.

**Topics:** Matters for state courts; news media.

### **Wearing Campaign Buttons at the Polls**

*American Federation of State, County and Municipal Employees v. Land (Patrick J. Duggan, E.D. Mich. 2:08-cv-14370)*

A federal complaint sought relief from proscriptions on wearing campaign buttons or shirts at the general election polls in 2008. The district court held the restriction on speech to be reasonable, and an appeal was dismissed voluntarily.

**Topic:** Campaign materials.

### **Exit Polling in Nevada**

*ABC, Inc. v. Heller (Philip M. Pro, D. Nev. 2:06-cv-1268)*

Four weeks before the 2006 general election, news media sought federal court enforcement of their constitutional right to conduct exit polls within 100 feet of polling places. The court granted the media the relief they sought.

**Topics:** Exit polls; news media; attorney fees.

### **Akron Beacon Journal Access to Polls on Election Day**

*Beacon Journal Publishing Co. v. Blackwell (Paul R. Matia, N.D. Ohio 5:04-cv-2178)*

News media sought injunctive relief on the day before the 2004 general election from restrictions on anyone other than voters, poll workers, and police officers entering a polling place. The district court denied the media relief, but the court of appeals vacated that decision and granted the media injunctive relief a few hours before the polls closed.

**Topics:** Exit polls; news media.

### **Exit Polling in Ohio**

*ABC v. Blackwell (Michael H. Watson, S.D. Ohio 1:04-cv-750)*

On the morning before the 2004 general election, news media challenged a directive by Ohio's secretary of state that exit polling not be conducted within 100 feet of a polling place. Late at night on the day the case was filed, the judge granted the media injunctive relief against the directive.

**Topics:** Exit polls; news media.

### **Intimidating Native American Voters**

*Daschle v. Thune (Lawrence L. Piersol, D.S.D. 4:04-cv-4177)*

Late on the day before a general election, a U.S. Senator up for reelection filed a federal complaint against his challenger, claiming that the challenger's supporters were discouraging Native American citizens from voting through a practice of intimidation. After a nighttime evidentiary hearing, the district court granted a temporary restraining order at 1:45 on the morning of the election.

**Topics:** Party procedures; recusal.

### **Vote Challengers**

*Spencer v. Blackwell (Susan J. Dlott, S.D. Ohio 1:04-cv-738) and Summit County Democratic Central and Executive Committee v. Blackwell (John R. Adams, N.D. Ohio 5:04-cv-2165)*

Federal complaints were filed in both of Ohio's districts late in the week before the 2004 general election challenging a Ohio statute that permitted political parties to appoint poll watchers to challenge persons who may be voting illegitimately. Both judges issued injunctions on Sunday, but the court of appeals stayed the injunctions on Monday.

**Topics:** Registration challenges; intervention.

### **Speculative Complaint About Polling Place Interference**

*Loeber v. Spargo (Lawrence E. Kahn, N.D.N.Y. 1:04-cv-1193)*

A pro se complaint filed a few weeks before the 2004 general election challenged New York districting, among other things. After a hearing on concerns that a United Nations body would oversee New York elections, the district judge dismissed the complaint as speculative and for not naming as defendants parties against whom an injunction would provide the plaintiffs with their desired relief. In 2010, the court of appeals affirmed dismissal of an amended complaint for failure to state a federal cause of action.

**Topics:** Pro se party; malapportionment; Help America Vote Act (HAVA); interlocutory appeal; three-judge court; case assignment.

### **Discriminatory Voter Challengers**

*Curington v. Richardson (Charles R. Simpson III, W.D. Ky. 3:03-cv-665)*

On the Friday before a general election, a federal complaint alleged that a political party was going to selectively position voter challengers in predominantly African-American precincts. On Monday, a state judge denied immediate relief in a related state-court action, and the federal plaintiffs made a tactical decision to withdraw their request in federal court for immediate relief. A year and a half later, the parties settled the case.

**Topics:** Registration challenges; equal protection; matters for state courts.

## **PROVISIONAL BALLOTS**

### **Releasing Names of Provisional Voters**

*Mah v. Board of County Commissioners (J. Thomas Marten, D. Kan. 5:12-cv-4148)*

Three days after the November 2012 general election, an incumbent candidate for a state house of representatives filed a petition in state court seeking an order that a county provide the candidate with the names and addresses of all persons who cast provisional ballots in the county. The defendant board of commissioners removed the action to federal court after a state judge granted the candidate the order she requested. The state's secretary of state sought a federal restraining order against the state court order. The board, however, complied with the state court order by its deadline. The federal judge ordered the candidate not to distribute the list or contact the voters pending further ruling.

Subsequently, the judge ruled that the Help America Vote Act "protects 'access to information about an individual provisional ballot.' It does not protect information 'about the individual casting the ballot.'"

**Topics:** Provisional ballots; Help America Vote Act (HAVA); removal.

### **Provisional Ballots Cast in the Wrong Precinct Because of Poll-Worker Error**

*Hunter v. Hamilton County Board of Elections (Susan J. Dlott, S.D. Ohio 1:10-cv-820)*

In the 2010 election for Hamilton County Juvenile Court Judge, 23 votes separated the two candidates with the validity of many provisional ballots unresolved. The trailing candidate filed a federal action to expand the number of provisional ballots deemed valid when she learned that some, but not all, cast in the wrong precinct would be counted if they were cast in the wrong precinct because of poll-worker error. The district court ordered an investigation into which ballots were cast in the wrong precinct because of erroneous instructions from poll workers. A circuit judge stayed the order, but a full panel dissolved the stay one week later. Litigation continued for 18 months, and then the plaintiff joined the juvenile court bench.

**Topics:** Provisional ballots; election errors; enjoining certification; interlocutory appeal; equal protection; matters for state courts.

### **Validity Requirements for Provisional Ballots**

*Ohio ex rel. Skaggs v. Brunner (Algenon L. Marbley, S.D. Ohio 2:08-cv-1077)*

Ohio's secretary of state removed a mandamus action from Ohio's supreme court concerning validity requirements for provisional ballots. The case was assigned to a judge who was already presiding over related cases. The judge granted summary judgment to the state, but the court of appeals ordered the matter referred to the state court, which held the secretary of state's validity requirements to be too lax. The court of appeals affirmed the district judge's denial of attorney fees.

**Topics:** Matters for state courts; provisional ballots; removal; attorney fees.

### **Provisional Ballots for a Judicial Election in Texas**

*Texas Democratic Party v. Bettencourt (Gray H. Miller, S.D. Tex. 4:08-cv-3332)*

Six days after the 2008 general election, the Democratic candidate for a state judgeship was a few hundred votes behind his opponent. The Democratic candidate filed a federal complaint seeking prompt resolution of several thousand provisional and absentee ballots. Two days later, the district court denied the plaintiff immediate relief. An amended complaint more generally challenging county procedures for voter registration and provisional ballots resulted in a 2012 settlement.

**Topics:** Provisional ballots; absentee ballots.

### **Preclearance of a State Supreme Court Decision That Provisional Ballots Have to Be Cast in the Correct Precinct**

*Kindley v. Bartlett (Terrence W. Boyle, E.D.N.C. 5:05-cv-177)*

A federal class-action complaint challenged a state policy against counting provisional ballots cast in the wrong precinct, a policy recently allowed by the state's supreme court. The federal district court judge denied injunctive relief on a finding that the state was not attempting to enforce the policy in advance of preclearance pursuant to section 5 of the Voting Rights Act.

**Topics:** Provisional ballots; section 5 preclearance; matters for state courts; class action.

### **Provisional Ballot Procedures in Ohio**

*Schering v. Blackwell (Michael H. Watson, S.D. Ohio 1:04-cv-755)*

On election day 2004, a voter filed a federal action challenging a directive by Ohio's secretary of state on the handling of provisional ballots. After an informal status conference, the plaintiff decided not to pursue immediate relief.

**Topic:** Provisional ballots.

### **Casting Provisional Ballots in the Wrong Precinct in Florida**

*Florida Democratic Party v. Hood (Robert L. Hinkle, N.D. Fla. 4:04-cv-395)*

Florida's Democratic Party sought to enforce the Help America Vote Act (HAVA) by enjoining Florida from rejecting provisional ballots cast in the wrong precinct in the 2004 general election. The case was filed on September 29, and the court issued a preliminary injunction on October 21. The court ruled that HAVA does not require the counting of provisional ballots cast in the wrong precinct, but HAVA does require that the provisional ballots be provisionally accepted.

**Topics:** Help America Vote Act (HAVA); provisional ballots.

### **Casting Provisional Ballots in the Wrong Precinct in Michigan**

*Bay County Democratic Party v. Land (1:04-cv-10257) and Michigan State Conference of NAACP Branches v. Land (1:04-cv-10267) (David M. Lawson, E.D. Mich.)*

Local branches of the Democratic Party filed a federal complaint to challenge a state directive that provisional ballots would only be counted if cast in the correct precinct. Three days later, three organizations filed a similar action in the same district, and the court consolidated the two cases. The district court denied a motion by voters to intervene as defendants, but the court permitted their participation as amici curiae. The court denied the Justice Department's motion for a short delay so that it could file an amicus brief. Three weeks after the first case was filed, the court determined that provisional ballots must be counted so long as they are cast in the correct city, village, or township. One week later, the court of appeals reversed in light of a contrary holding in another case issued on the same day.

**Topics:** Provisional ballots; Help America Vote Act (HAVA); 42 U.S.C. § 1983; intervention; case assignment.

### **Compliance with the Help America Vote Act for Provisional Ballots**

*Sandusky County Democratic Party v. Blackwell (3:04-cv-7582) and League of Women Voters of Ohio v. Blackwell (3:04-cv-7622) (James G. Carr, N.D. Ohio)*

Five weeks in advance of the 2004 general election, Ohio's Democratic Party challenged directives by Ohio's secretary of state on provisional ballots as in violation of the Help America Vote Act (HAVA). The court of appeals agreed with the district court that the state was out of compliance, but the court of appeals agreed with the secretary that provisional ballots should be cast in the correct precincts.

**Topics:** Help America Vote Act (HAVA); provisional ballots; voter identification; 42 U.S.C. § 1983; intervention; enforcing orders; presiding remotely; attorney fees.

### **Casting Provisional Ballots in the Right Place**

*Hawkins v. Blunt (Scott O. Wright and Richard E. Dorr, W.D. Mo. 2:04-cv-4177)*

The case concerns whether voters can cast provisional ballots at polling places to which they are not assigned. Claims were mooted by the state's agreeing to alter its procedures for counting provisional ballots.

**Topics:** Help America Vote Act (HAVA); provisional ballots; intervention; case assignment.

## **VOTING IRREGULARITIES**

### **Challenging Disqualified Votes in a Close Election**

*Ron Barber for Congress v. Bennett (Cindy K. Jorgenson, D. Ariz. 4:14-cv-2489)*

Prior to certification of election results in a close election for Congress, the trailing candidate filed a federal complaint challenging the disqualification of some votes. The district court determined that the plaintiff had not justified federal court interference with election administration.

**Topics:** Enjoining certification; election errors; provisional ballots; intervention; recusal; case assignment.

### **Seeking Voter Records to Challenge Crossover Voting**

*True the Vote v. Hosemann (Michael P. Mills, N.D. Miss. 3:14-cv-144) and True the Vote v. Hosemann (Henry T. Wingate and Nancy F. Atlas, S.D. Miss. 3:14-cv-532)*

A federal complaint sought voter information to investigate the possibility of voting in a runoff senatorial primary election for one party after voting in another party's earlier primary election. The judge assigned the case determined that it should have been brought in the other district, which includes the capital. A second suit there was transferred to a district in another state within the circuit because of the federal bench's close ties with the incumbent senator, a candidate in the runoff primary election. The transferee judge dismissed claims under the National Voter Registration Act for failure to comply with the act's notice requirements. By the time of decision, the defendants had disclosed to the plaintiffs all of the information required by the act anyway.

**Topics:** National Voter Registration Act; primary election; recusal; case assignment; attorney fees; matters for state courts.

### **The Legitimacy of President Obama's Reelection**

*Grinols v. Electoral College (Morrison C. England, Jr., E.D. Cal. 2:12-cv-2997)*

Four days in advance of the electoral college's vote, a federal complaint challenged the President's reelection on the grounds that the President was a citizen of Indonesia. The district court ultimately dismissed the action as a political question. The court of appeals affirmed the dismissal on the ground that the case was moot.

**Topics:** Enjoining certification; case assignment.

### **A Suit by Unsuccessful Candidates to Overturn an Election**

*Picard Samuel v. Virgin Islands Joint Board of Elections (Curtis V. Gómez and Raymond L. Finch, D.V.I. 3:12-cv-94)*

Following a general election, unsuccessful candidates filed a pro se federal complaint to nullify the results and enjoin the swearing in of the winners. A district judge denied the plaintiffs a temporary restraining order. The plaintiffs sought reversal of the denial by recusal of the judge, also naming as a recusal ground the judge's sister being a winning candidate in the election. The case was already reassigned to another judge for the sake of efficiency, and the second judge denied the plaintiffs a preliminary injunction because they could not show that the election irregularities of which they complained resulted in their defeats. Later, the second judge dismissed the complaint for lack of standing.

**Topics:** Enjoining certification; election errors; laches; pro se party; voting technology.

### **Challenging Post-Election Disqualification of Winning Candidates**

*Orgeron v. Quartzsite (Roslyn O. Silver, D. Ariz. 2:12-cv-1238)*

A federal complaint challenged the disqualification of a town council election victor for insufficient residency and the disqualification of the mayoral election victor for indebtedness to the city. The district judge ruled in favor of the council victor, but determined that the council victor did not have standing to seek a remedy for the mayoral victor's injury.

**Topics:** Enjoining certification; matters for state courts; case assignment.

### **Write-In Spellings**

*Miller v. Campbell (Ralph R. Beistline, D. Alaska 3:10-cv-252)*

A candidate for Senator sued to enjoin counting write-in ballots for the incumbent unless her name was spelled correctly. The federal judge determined that this was a matter for the state courts if they could act promptly. The state courts ruled in favor of counting misspellings, and the legislature later amended the election statutes to clarify that slight misspellings were permissible.

**Topics:** Write-in candidate; matters for state courts; enjoining certification; ballot segregation; recusal; presiding remotely.

### **Preserving Voting Machine Data**

*Bursey v. South Carolina Election Commission (Cameron McGowan Currie, D.S.C. 3:10-cv-1545)*

After an unknown candidate defeated a well-known candidate for the Democratic nomination to challenge a Republican incumbent U.S. Senator, a pro se plaintiff filed a federal complaint to enjoin election officials from clearing the primary election data from the election machines. After he learned more about the election data, the plaintiff dropped his plea for emergency relief and eventually dismissed his action voluntarily.

**Topics:** Election errors; pro se party; voting technology.

### **A Change in the Mayor's Power Does Not Require Preclearance**

*Patterson v. Esch (William H. Barbour, Jr., S.D. Miss. 3:09-cv-438)*

A mayor filed a federal complaint claiming that a board of selectmen's pending vote to reduce the mayor's powers violated section 5 of the Voting Rights Act, which prohibited changes in voting procedures in covered jurisdictions without federal preclearance. The district judge determined that mayoral powers were not covered by section 5.

**Topic:** Section 5 preclearance.

### **Remedy for a Ballot Printing Error**

*Bennett v. Mollis (William E. Smith, D.R.I. 1:08-cv-468)*

Because of a printing error, some ballots included the name of a candidate that had withdrawn from the race. After a mathematical analysis of how many votes the error could have cost the plaintiffs' candidate, with the help of a political science professor as a technical advisor, the district judge denied the plaintiffs relief.

**Topics:** Election errors; special master; enjoining certification; intervention.

### **A Suit to Prevent a Legislature from Voiding a Close Election**

*Ford v. Beavers (Bernice B. Donald, W.D. Tenn. 2:06-cv-2031)*

On the day before a state senate was expected to void a senator's election to the senate by a very close special election because of concerns that some votes were fraudulent, a federal district judge enjoined senate action on the matter pending a hearing in a federal case filed by the newly elected senator and three voters who voted for her. Following a hearing, the judge issued a declaratory judgment in the plaintiffs' favor. The senate subsequently removed the senator from office, but at the end of the session the judge enjoined the naming of an interim replacement. The senator won the seat again at the next election, an appeal was deemed moot, and the judge awarded the plaintiffs \$117,263 in attorney fees, costs, and expenses.

**Topics:** Election errors; attorney fees.

### **Winner Take All in the Electoral College**

*Gordon v. Cheney (Henry H. Kennedy, Jr., D.D.C. 1:05-cv-6)*

Two days before the Senate was to count presidential electoral votes, a pro se plaintiff filed a federal complaint seeking to enjoin the count on the ground that electoral votes in several states were improperly allocated according to a winner-take-all rule. Two days later, the court denied immediate relief.

**Topics:** Enjoining certification; pro se party.

### **Challenging a Victor's Residence Qualification**

*Harris v. Diaz (Richard M. Berman, S.D.N.Y. 1:04-cv-9124)*

The district judge dismissed a post-election complaint that a victorious legislature candidate did not live in the district he was elected to represent. On the one hand, the appropriate proceeding would be a state court quo warranto action; on the other hand, the time to challenge eligibility was before the election.

**Topics:** Enjoining certification; matters for state courts; laches.

### **Dismissing a Defective Pro Se Application for a Temporary Restraining Order**

*Webb-Goodwin v. Butler (Lance M. Africk, E.D. La. 2:04-cv-2653)*

A candidate who came in sixth in an election rife with mechanical and logistical difficulties filed a pro se federal complaint to nullify the election. The district court denied the plaintiff a temporary restraining order because the plaintiff had shown neither service on defendants nor affidavit compliance with Federal Rule of Civil Procedure 65(b). A state court action was also dismissed for lack of service.

**Topics:** Enjoining elections; voting technology; pro se party; matters for state courts.

### **Unsuccessful Challenge to Close Election Defeats in New Rochelle**

*McLaughlin v. Allen (Charles L. Brieant, S.D.N.Y. 7:03-cv-9886)*

The district judge denied immediate relief to two city council candidates trailing by handfuls of votes after unsuccessful state court challenges to election results. Nearly a year later, the judge granted the defendants summary judgment.

**Topics:** Enjoining certification; matters for state courts; case assignment.

### **Incorrect Election Results Because of a Malfunctioning Voting Machine**

*Shannon v. Jacobowitz (David N. Hurd, N.D.N.Y. 5:03-cv-1413)*

After votes were counted in a November 2003 election for a town supervisor, a challenger was ahead of an incumbent by 25 votes. There was evidence, however, that a voting machine registered only one vote for the incumbent because it failed to advance its tally with each additional vote. Supporters of the incumbent filed a federal complaint alleging that a comparison of the malfunctioning machine to another machine at the same location implied that the incumbent was deprived of approximately 134 votes. The district judge enjoined certification of the election and enjoined the challenger from taking office. In January 2005, the court of appeals determined that the district court's interference with the election was error. The incumbent remained in office through 2007.

**Topics:** Voting technology; enjoining certification.

### **Crossover Votes**

*Foster v. Salaam (Ira De Ment, M.D. Ala. 2:02-cv-1093)*

A federal complaint alleged that Republicans were improperly permitted to vote in a June 2002 runoff Democratic primary election for a seat in Alabama's house of representatives. The district judge determined that the claim under section 5 of the Voting Rights Act was not valid, so a three-judge court did not need to be appointed. The plaintiffs sought voluntary dismissal and pursued the matter in state court.

**Topics:** Primary election; enjoining certification; enjoining elections; section 5 preclearance; three-judge court.

### **Customary Right of Appointment**

*Holley v. City of Roanoke (W. Harold Albritton, M.D. Ala. 3:01-cv-775)*

A federal complaint challenged a refusal by a city council to reappoint a board of education member in violation of a customary practice in which each member of the council names the board member for the council member's district. A three-judge court was appointed to hear a claim that the alleged change in practice violated section 5 of the Voting Rights Act. After a hearing, the court dismissed the section 5 claim because it concerned appointment rather than voting. The original district judge dismissed other claims because the evidence was that the deviation from custom was motivated by policy disagreements rather than by race. A remaining claim was dismissed voluntarily.

**Topics:** Section 5 preclearance; three-judge court; equal protection.

### **Unsuccessful Attempt to Block Electoral College Votes**

*Shtino v. Carlin (Alexander Williams, Jr., D. Md. 8:00-cv-3699)*

The district court denied a December 21, 2000, pro se complaint to enjoin presentation of Florida's electoral votes.

**Topics:** Enjoining certification; pro se party.

## RECOUNTS

### Swing-State Recounts in the 2016 Presidential Election

*Great America PAC v. Wisconsin Elections Commission (James D. Peterson, W.D. Wis. 3:16-cv-795), Stein v. Thomas (Mark A. Goldsmith, E.D. Mich. 2:16-cv-14233), and Stein v. Cortés (Paul S. Diamond, E.D. Pa. 2:16-cv-6287)*

Following the 2016 presidential election in which a candidate earned more votes in the Electoral College than the candidate who received the most popular votes, a minor party candidate sought recounts in the three states that the Electoral College victor won by the smallest margins. The matter was litigated in state courts and in federal courts in the Western District of Wisconsin, the Eastern District of Michigan, and the Eastern District of Pennsylvania with mixed results for the minor party candidate's litigation efforts and no change in the Electoral College outcome.

**Topics:** Recounts; election errors; voting technology; matters for state courts; laches; intervention; recusal; case assignment.

### Emphasis Votes

*Texas Democratic Party v. Dallas County (Jorge A. Solis, N.D. Tex. 3:08-cv-2117)*

During a recount for a state legislative election, one political party and two voters filed a federal action complaining that emphasis votes—in which a voter casts both a straight-party vote and a vote for the specific office—would improperly not be counted because of the switch from punch-card ballots to voting machines. After the recount was completed, the plaintiffs dropped their claims with respect to the specific election, but more general claims remained. The district court found that election procedures with respect to emphasis votes did not discriminate in violation of section 2 of the Voting Rights Act, but they were in violation of section 5 because they had not been precleared. In time, the Justice Department precleared the changes.

**Topics:** Voting technology; recounts; section 5 preclearance; three-judge court; section 2 discrimination; intervention.

### Complete Ohio 2004 Presidential Recount

*Rios v. Blackwell (James G. Carr, N.D. Ohio 3:04-cv-7724), Ohio ex rel. Yost v. National Voting Rights Inst. (Edmund A. Sargus, S.D. Ohio 2:04-cv-1139), and Delaware County Prosecuting Attorney v. National Voting Rights Inst. (James G. Carr, N.D. Ohio 3:05-cv-7286)*

The Green and Libertarian candidates for President sought a complete recount of the 2004 presidential election in Ohio. After a teleconference, the district judge denied injunctive relief because neither candidate had a chance of prevailing in a recount. In Ohio's other district, a county sought an injunction against a recount there, and supporters of the recount removed the action to federal court. The district judge was reluctant to reach a decision inconsistent with the decision reached first by the judge in the other district. The second judge transferred the action to the first judge.

**Topics:** Recounts; presiding remotely; intervention.

### **Unequal Recount Procedures in a Gubernatorial Election**

*Washington State Republican Party v. Reed (Marsha J. Pechman, W.D. Wash. 2:04-cv-2350)*

Supporters of a gubernatorial candidate filed a federal complaint over a weekend challenging recount procedures. The Clerk of Court was able to find a judge available to hear the case on an emergency basis, and the judge held a telephonic conference on Sunday. The judge determined that immediate relief was not required because the ballots in question would be preserved for later examination. Litigation in state and federal court continued as the recount continued, and the federal plaintiffs' candidate ultimately did not prevail.

**Topics:** Recounts; equal protection; intervention; case assignment; matters for state courts.

### **Close Vote in Puerto Rico**

*Rosselló v. Calderón (3:04-cv-2251) and Suárez Jimenez v. Comisión Estatal de Elecciones (3:04-cv-2288) (Daniel R. Domínguez, D.P.R.)*

The 2004 election of Puerto Rico's governor depended upon a recount. One of the candidates filed a federal complaint seeking enforcement of a prompt and just resolution of the recount. The district court began evidentiary hearings in mid-November. One issue to be resolved was how to count ballots in which a voter cast a vote for one party generally but for candidates of other parties for all individual offices. A state case on this issue was removed to the federal court before it was resolved, but Puerto Rico's supreme court resolved the case anyway. The district court vacated the state court's post-removal ruling and commenced additional hearings. The court of appeals determined that removal was improper. In December, the court of appeals ordered a halt to the district court's intervention in the local electoral dispute.

**Topics:** Matters for state courts; enjoining certification; removal; recounts; absentee ballots; intervention; attorney fees.

### **The 2000 Election of the President**

*Siegel v. LePore (Donald M. Middlebrooks, S.D. Fla. 9:00-cv-9009) and Touchston v. McDermott (John Antoon II, M.D. Fla. 6:00-cv-1510)*

Among the litigation over who won the presidential contest in Florida in 2000 were two emergency actions filed in two of Florida's three districts seeking federal court intervention in manual recounts. Both judges denied the plaintiffs immediate relief, and the court of appeals affirmed those decisions en banc. Reviewing a decision by the state's supreme court, however, the U.S. Supreme Court determined that the manual recount procedures violated equal protection.

**Topics:** Recounts; matters for state courts; intervention; equal protection; military ballots; absentee ballots; election errors; voting technology; enjoining certification; voter identification.