Correcting Imperfect Voter Registrations

Diaz v. Hood

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

On Tuesday afternoon, October 12, 2004, eight days after the close of voter registration, three would-be voters and four unions filed a federal complaint in the Southern District of Florida's Miami courthouse against Florida's secretary of state and the supervisors of elections for five counties—the three southern-most Atlantic counties in the Southern District, Palm Beach, Broward, and Miami-Dade; another Atlantic county in the Middle District, Duval; and an interior county in the Middle District, Orange—alleging that the counties were improperly failing to process and approve voter registrations.[1] With their complaint, the plaintiffs filed a motion for expedition and consolidation of a motion for a preliminary injunction with a trial on the merits.[2] On Wednesday, Judge James Lawrence King set a hearing on the expedition motion for Friday morning at the Miami courthouse named after him.[3] Also on Wednesday, the plaintiffs filed their preliminary injunction motion.[4]

Judge King heard the expedition motion on Friday.[5] He always has hearings in a courtroom, never in chambers.[6] He would have heard the motion on Thursday, but he wanted to accommodate attorneys who had to travel for the hearing.[7] His motto in a time-sensitive case is "jump right on it."[8] Filers should be ready to proceed at the moment of filing; respondents should be ready shortly thereafter.[9]

An attorney for one of the counties had been a law clerk for Judge King a few decades earlier, and he brought this to the attention of the other parties, but there was no suggestion that the attorney recuse himself.[10]

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1. Complaint, Diaz v. Hood, No. 1:04-cv-22572 (S.D. Fla. Oct. 12, 2004), D.E. 1; Diaz v. Cobb, 541 F. Supp. 2d 1319, 1321 (S.D. Fla. 2008); Diaz v. Cobb, 475 F. Supp. 2d 1270, 1273 (S.D. Fla. 2007); Diaz v. Cobb, 435 F. Supp. 2d 1206, 1208 (S.D. Fla. 2006); Diaz v. Hood, 342 F. Supp. 2d 1111, 1112–14 (S.D. Fla. 2004); Transcript at 5–6, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. Oct. 15, 2004, filed Oct. 20, 2004), D.E. 47 (noting that the complaint was filed at 4:22 p.m.); *see* Gary Fineout & Jay Weaver, *Florida Sued Over Rejected Voters*, Miami Herald, Oct. 14, 2004, at 1B.

2. Expedition Motion, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. Oct. 12, 2004), D.E. 2; *Diaz*, 342 F. Supp. 2d at 1114.

3. Order, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. Oct. 13, 2004), D.E. 5; *Diaz*, 342 F. Supp. 2d at 1114.

Tim Reagan interviewed Judge King for this report by telephone on October 1, 2012.

4. Preliminary Injunction Motion, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. Oct. 13, 2004), D.E. 7; *Diaz*, 342 F. Supp. 2d at 1114.

5. Transcript, *supra* note 1; Minutes, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. Oct. 15, 2004), D.E. 25; *see* Transcript, *supra* note 1, at 6, 11 (noting that expedition was not opposed).

6. Interview with Hon. James Lawrence King, Oct. 1, 2012.

7. Transcript, *supra* note 1, at 16.

8. Interview with Hon. James Lawrence King, Oct. 1, 2012.

9. *Id.*

10. *Id.*

On Tuesday of the second week, Judge King granted expedition and set a preliminary injunction hearing for the following Friday.[11] Also on that Tuesday, the Republican Party moved to intervene as a defendant.[12]

> Clearly the old adage, "justice delayed is justice denied," was quickly discerned by all the attorneys and the Court to be particularly true when considering the issues raised by this important litigation. The absolute deadline for a resolution of these issues was literally "set in concrete" by the November 2, 2004 general election. It also became abundantly clear from the statements of the respective attorneys for the Defendants, that if a decision was not rendered within a sufficient number of days prior to the November 2nd election, that any Order regardless of the outcome, would be impossible to perform due to the passage of time.[13]

On the day of the preliminary injunction hearing, the plaintiffs attempted to file an amended complaint, but the defendants objected.[14] Judge King had not received the amended complaint from the clerk's office in another building by the time of hearing, and the defendants had little opportunity to respond to it; the plaintiffs withdrew the amended complaint.[15]

Four days after the preliminary injunction hearing, on October 26, Judge King dismissed the case for lack of standing.[16] Two individual plaintiffs declined to cure registration defects upon notice of them, the other individual plaintiff did cure and was registered to vote, and the union plaintiffs had not identified specific members who had been harmed by the defendants.[17]

On September 28, 2005, the court of appeals reversed the dismissal, but the court noted that Florida law had changed in the interim.[18] On May 2, 2006, Judge King denied the Republican Party's motion to intervene.[19] Reviewing a second amended complaint,[20] on June 20, Judge King ruled that Florida's rejection of voter registrations for failure to check certain boxes when the correct boxes to check are implied by other information on the application did not violate the Vot-

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11. Order, Diaz v. Hood, No. 1:04-cv-22572 (S.D. Fla. Oct. 19, 2004), D.E. 44; *Diaz*, 342 F. Supp. 2d at 1115.

12. Intervention Motion, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. Oct. 19, 2004), D.E. 34.

13. *Diaz*, 342 F. Supp. 2d at 1115; *see* Jay Weaver, *Judge Takes Up Voter Applications*, Miami Herald, Oct. 16, 2004, at 6B ("King said he had never experienced such a fast hearing schedule in his more than three decades on the federal bench.").

14. Motion to Strike Amended Complaint, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. Oct. 21, 2004), D.E. 56.

15. *Diaz*, 342 F. Supp. 2d at 1115.

16. *Id.* at 1120; Diaz v. Cobb, 541 F. Supp. 2d 1319, 1322 (S.D. Fla. 2008); Diaz v. Cobb, 475 F. Supp. 2d 1270, 1274 (S.D. Fla. 2007); Diaz v. Cobb, 435 F. Supp. 2d 1206, 1208 (S.D. Fla. 2006); *see* Jay Weaver, *Voting Suit Voided*, Miami Herald, Oct. 27, 2004, at 3B.

17. *Diaz*, 342 F. Supp. 2d at 1117–20.

18. Opinion, Diaz v. Secretary of State of Florida, No. 04-15539 (11th Cir. Sept. 28, 2005), *available at* 2005 WL 2402748; *Diaz*, 541 F. Supp. 2d at 1322 & n.3; *Diaz*, 475 F. Supp. 2d at 1274; *Diaz*, 435 F. Supp. 2d at 1208–09; *see Panel Clears Way for Voter Forms Challenge*, Miami Herald, Sept. 29, 2005, at B4.

19. Order, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. May 2, 2006), D.E. 135.

20. Second Amended Complaint, *id.* (May 17, 2006), D.E. 151; *see* Amended Complaint, *id.* (Apr. 7, 2006), D.E. 120.

ing Rights Act or the National Voter Registration Act, but the plaintiffs could attempt to replead constitutional claims.[21]

Reviewing a third amended complaint,[22] on February 27, 2007, Judge King dismissed all claims except for a constitutional challenge to Florida's denial of a grace period to amend incomplete voter registration applications.[23] After a five-day bench trial in 2008, Judge King denied the plaintiffs relief, finding the firm deadline for voter registration to be constitutionally reasonable.[24]

21. *Diaz*, 435 F. Supp. 2d 1206; *Diaz*, 541 F. Supp. 2d at 1323; *Diaz*, 475 F. Supp. 2d at 1274.

22. Third Amended Complaint, *Diaz*, No. 1:04-cv-22572 (S.D. Fla. July 10, 2006), D.E. 170.

23. *Diaz*, 475 F. Supp. 2d 1270; *Diaz*, 541 F. Supp. 2d at 1323.

24. *Diaz*, 541 F. Supp. 2d 1319; *see* Jay Weaver, *Judge: Voter Deadline is OK*, Miami Herald, Mar. 26, 2008, at B3.