Casting Provisional Ballots in the Right Place

Hawkins v. Blunt (Scott O. Wright and Richard E. Dorr, W.D. Mo. 2:04-cv-4177)

Six days after Missouri's August 3, 2004, primary elections, the state's Democratic Party and three Missouri voters filed an action in the Western District of Missouri claiming that Missouri and the Kansas City Board of Election Commissioners had violated the Help America Vote Act (HAVA)[1] and the U.S. Constitution by not permitting the three voters, who showed up to vote at incorrect polling places, to cast provisional ballots and have them counted as if they were cast at the correct polling places.[2] The plaintiffs also filed a motion for a temporary restraining order.[3]

The action was filed in the district's Central Division, where the district holds court at Jefferson City, Missouri's capital.[4] The court initially assigned the case to Judge Nanette K. Laughrey, whose primary chambers at the time were in Kansas City, where the district's Western and St. Joseph Division cases are heard,[5] but Judge Laughrey also heard cases filed in Jefferson City.[6]

Because Judge Laughrey was out of state when the action was filed,[7] Judge Scott O. Wright, whose primary chambers are also in Kansas City and who also hears cases filed in Jefferson City, handled the temporary restraining order motion, which he granted on August 11.[8] Ordinarily, Judge Wright would have conducted a telephonic conference in advance of issuing such an order, but he was in trial at the time, so he issued the order on the basis of the complaint.[9]

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1. Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 42 U.S.C. §§ 15301–15545 (2010). *See generally* Brian Kim, *Help America Vote Act*, 40 Harv. J. on Legis. 579 (2003).

2. Complaint, Hawkins v. Blunt, No. 2:04-cv-4177 (W.D. Mo. Aug. 9, 2004), D.E. 1; *see* James Goodwin, *Democrats File Suit Against Blunt*, Springfield News-Leader, Aug. 11, 2004, at 2B; Jo Mannies, *Judge May Rule Today on Provisional Balloting*, St. Louis Post-Dispatch, Aug. 11, 2004, at B1 ("According to the secretary of state's office, Kansas City accounted for the largest bloc of the 859 provisional ballots reported cast throughout Missouri on Aug. 3.").

3. Temporary Restraining Order Motion, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Aug. 9, 2004), D.E. 4.

4 . Docket Sheet, *id.* (Aug. 9, 2004); *see* W.D. Mo. L.R. 3.1(a).2.

5. W.D. Mo. L.R. 3.1(a).1.

6. Email from Hon. Nanette K. Laughrey to Tim Reagan, May 11, 2012 (noting that at the time of this case District Judges Laughrey and Wright shared the Jefferson City docket with Magistrate Judge William A. Knox).

Judge Laughrey's primary chambers now are in Jefferson City.

7. *Id.*

8. Temporary Restraining Order, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Aug. 11, 2004), D.E. 9; *see* Tim Hoover, *Court Blocks Final Missouri Vote Tally*, Kansas City Star, Aug. 12, 2004, at A1; Jo Mannies, *Judge Rules on Suit Over Provisional Voting*, St. Louis Post-Dispatch, Aug. 12, 2004, at C2.

9. Email from Hon. Scott O. Wright to Tim Reagan, May 2, 2012.

Judge Wright enjoined certification of the primary elections, allowed Missouri to prepare provisional sample ballots for the general election, and set an evidentiary hearing for one week later.[10]

The evidentiary hearing was canceled[11] because the court realized that the case had been assigned in the regular civil draw instead of the special draw for certain cases naming Missouri as a defendant:[12]

> any civil case which names the State of Missouri or any of its agencies as a defendant if the complaint seeks a declaratory judgment that a state law, regulation or rule is unconstitutional on its face or seeks to enjoin the enforcement of a state law, rule or regulation as to all persons because it is unconstitutional on its face.[13]

Not all judges in the district hear Jefferson City cases.[14] In order to prevent judge shopping, the district assigns all of its active judges an equal share of some cases, regardless of where the cases are filed.[15] Chief Judge Dean Whipple ordered the case reassigned,[16] and it was reassigned to Judge Richard E. Dorr in Springfield.[17]

On August 17, five voters moved to intervene to defend Missouri's practices,[18] and Judge Dorr set a telephonic hearing on the motion for 3:00 p.m. three days later, with opposition papers due at noon on the day of the hearing.[19] On hearing day, Judge Dorr denied intervention but permitted the voters to file briefs as amici curiae.[20] Judge Dorr also established September 8 as the deadline for completing briefing on summary judgment motions.[21]

On August 27, Judge Dorr dismissed the Kansas City defendants and vacated the temporary restraining order: the Kansas City Board of Election Commissioners had agreed to count the plaintiffs' votes.[22]

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10. Temporary Restraining Order, *supra* note 8.

11. Order, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Aug. 16, 2004), D.E. 14.

12. Reassignment Order, *id.* (Aug. 13, 2004), D.E. 11.

13. W.D. Mo. Admin. Directive 13, *attached to* Minutes, W.D. Mo. Fed. Practice Comm., Jan. 21, 2004, *available at* www.mow.uscourts.gov/district/fpc/min_01_21_04.pdf (noting that the directive was adopted on Jan. 8, 2004).

14. Interview with Hon. Richard E. Dorr, May 4, 2012.

15. *Id.*

16. Reassignment Order, *supra* note 13.

17. Letter to Counsel, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Aug. 13, 2004), D.E. 12.

Tim Reagan interviewed Judge Dorr for this report by telephone on May 4, 2012.

18. Motion to Intervene, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Aug. 17, 2004), D.E. 15.

19. Order, *id.* (Aug. 19, 2004), D.E. 26; *see* Jo Mannies, *Hearing on Suit Over Ballot Law Is Set Today*, St. Louis Post-Dispatch, Aug. 20, 2004, at C2.

20. Order Denying Intervention, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Aug. 20, 2004), D.E. 33; *see* Jo Mannies, *Suits Over Voting Procedures Echo Nation's Concern on Issue*, St. Louis Post-Dispatch, Aug. 22, 2004, at C7.

21. Order Denying Intervention, *supra* note 20.

22. Order, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Aug. 27, 2004), D.E. 44; *see* Jo Mannies, *Disputed Ballots from Aug. 3 Primary Will Be Counted*, St. Louis Post-Dispatch, Aug. 28, 2004, at 15 ("The Kansas City Election Board has agreed to count all provisional ballots cast Aug. 3 by registered voters, regardless of whether the ballots were cast in the right polling place.").

On October 12, Judge Dorr granted summary judgment to the state defendants, relying in part on representations made by them as to how provisional ballots would be counted in the future.[23]

23. Summary Judgment Order, *Hawkins*, No. 2:04-cv-4177 (W.D. Mo. Oct. 12, 2004), D.E. 65; *see* Jo Mannies, *U.S. Judge Spells Out When They Are Valid*, St. Louis Post-Dispatch, Oct. 13, 2004, at B1.