Hasty Redistricting of a County Legislature

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

Four voters filed a federal class action complaint in the Eastern District of New York's Central Islip's courthouse on June 6, 2011, alleging that new district lines for the Nassau County Legislature violated the Constitution's Fourteenth Amendment and section 2 of the Voting Rights Act.[1] The plaintiffs drew the court's attention to the urgency of the action by pointing out that the period to collect ballot petition signatures would begin on the following day.[2]

Judge Joanna Seybert received the case file a little after 2:00 p.m. and held a hearing at 3:15.[3] It was not clear whether ballot petitions for legislative elections would be based on old district lines or new district lines.[4]

When they filed their complaint, the plaintiffs noted that the case was related to a 1991 action resolved by Judge Arthur D. Spatt in 1994.[5] A September 24, 1991, complaint by eight Nassau County voters challenged the modified weighting voting scheme for Nassau County's board of supervisors, which consisted of two representatives from Hempstead, the largest municipality, and one from each of the other four municipalities in the county.[6] The board's 108 votes were allocated approximately according to the municipalities' populations, adjusted for the sake of each supervisor's "mathematical possibility of his casting a decisive vote on a particular matter."[7] Denying the defendants' motion for summary judgment on April 14, 1993, Judge Spatt concluded that the scheme violated the principle of one person, one vote.[8] On August 2, 1994, the supervisors agreed to a new districting plan that would be submitted to voters in a November referendum, so the special master appointed by Judge Spatt to draft a plan ceased

1. Complaint, Boone v. Nassau Cnty. Legislature, No. 2:11-cv-2712 (E.D.N.Y. June 6, 2011), D.E. 1 [hereinafter *Boone* Complaint]; *see* Voting Rights Act of 1965, Pub. L. No. 89-110, § 2, 79 Stat. 437, 437, *as amended*, 52 U.S.C. § 10301, *formerly* 42 U.S.C. § 1973 (2013); *see also* Dorsett v. County of Nassau, 732 F.3d 157, 159 (2d Cir. 2013).

2. *Boone* Complaint, *supra* note 1, at 17–18; Transcript at 12, *Boone*, No. 2:11-cv-2712 (E.D.N.Y. June 6, 2011, filed July 24, 2014), D.E. 69 [hereinafter *Boone* Transcript].

3. *Boone* Transcript, *supra* note 2, at 1, 12.

4. *Id.* at 12–16.

5. Notice of Related Case, *Boone*, No. 2:11-cv-2712 (E.D.N.Y. June 6, 2011), D.E. 6; *see* Docket Sheet, Jackson v. Nassau Cnty. Bd. of Supervisors, No. 9:91-cv-3720 (E.D.N.Y. Sept. 24, 1991) [hereinafter *Jackson* Docket Sheet].

6. Jackson v. Nassau Cnty. Bd. of Supervisors, 818 F. Supp. 509, 510–11 (E.D.N.Y. 1993); *Jackson* Docket Sheet, *supra* note 5 (D.E. 1).

7. *Jackson*, 818 F. Supp at 524–26. The municipalities' population shares in the county were 56%, 23%, 17%, 2.6%, and 1.9%; their supervisors' votes were 58, 22, 15, seven, and six, respectively. *Id.* at 524–25.

8. *Id.* at 535.

work.[9] On November 8, Nassau County voters approved the transition from a six-member board of supervisors to a 19-member legislature.[10]

At her June 6, 2011, hearing, Judge Sybert informed the parties,

> My chambers has conferenced with Judge Spatt's chambers with respect to the prior case, and the determination has been made that it is not a related case. Clearly the passage of time and the different issues involved do not warrant that it be related to it and that's already been gone into.[11]

Judge Seybert conducted a preliminary injunction hearing on June 13, 14, 15, 16, and 20, 2011, and then referred the matter to Magistrate Judge Arlene R. Lindsay.[12]

Parallel litigation in state court mooted the federal litigation. State Supreme Court Justice Steven M. Jaeger issued a temporary restraining order against enforcement of the new districts on May 31, 2014.[13] Appellate Division Justice Joseph Covello stayed the injunction on June 2.[14] Justice Jaeger determined on July 21, 2011, that the legislature could not "immediately adjust the nineteen County legislative districts for the 2011 general election."[15] The Appellate Division reversed this decision on August 9.[16] On August 30, New York's court of appeals determined that according to county law the new district lines could not go into effect until the 2013 election to afford a period of commission and public review.[17]

Judge Seybert administratively closed her case on September 23, 2011.[18] On March 5, 2013, Nassau County's legislature passed a new districting plan.[19]

On November 23, 2011, an attorney who represented the plaintiffs in Judge Seybert's case filed a federal complaint against Nassau County officials alleging wrongful retaliation for the attorney's representing plaintiffs in actions against the

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9. Jackson v. Nassau Cnty. Bd. of Supervisors, 157 F.R.D. 612, 616 (E.D.N.Y. 1994).

10. *See Federal Judge Praises Vote on Nassau Charter*, N.Y. Times, Nov. 11, 1994, at B5; *Voters Favor Plan to Create a Legislature*, N.Y. Times, Nov. 9, 1994, at B12 (reporting also, "Each new county legislator will serve part-time, be elected to two-year terms and receive a yearly salary of $39,500.").

11. *Boone* Transcript, *supra* note 2, at 7.

12. Minutes, Boone v. Nassau Cnty. Legislature, No. 2:11-cv-2712 (E.D.N.Y. June 13 through 16 and 20, 2011), D.E. 11, 21, 23, 25, 31; *see* Minutes, *id.* (June 20, 2011), D.E. 30; *see also* Amended Complaint, *id.* (June 23, 2011), D.E. 37.

13. Order, Yatauro v. Mangano, No. 6898/2011 (N.Y. Sup. Ct. May 31, 2014), *filed as* Ex. K, Proposed Order to Show Cause, Yatauro v. Mangano, No. 2:11-cv-3079 (E.D.N.Y. June 30, 2011), D.E. 2 [hereinafter E.D.N.Y. *Yatauro* Proposed Order to Show Cause]; *see Boone* Transcript, *supra* note 2, at 8.

14. Order, *Yatauro*, No. 6898/2011 (N.Y. Sup. Ct. App. Div. June 2, 2011), *filed as* Ex. L, E.D.N.Y. *Yatauro* Proposed Order to Show Cause, *supra* note 13; *see Boone* Transcript, *supra* note 2, at 7–8.

15. Yatauro v. Mangano, 32 Misc. 3d 838, 927 N.Y.S.2d 868 (N.Y. Sup. Ct. 2011); *see* Opinion, *Yatauro*, No. 2:11-cv-3079 (E.D.N.Y. July 1, 2011), 2011 WL 2610562 (remanding the action following the county's attempted removal to federal court).

16. Yatauro v. Mangano, 87 A.D.3d 582, 928 N.Y.S.2d 561 (N.Y. App. Div. 2011).

17. Yatauro v. Mangano, 17 N.Y.3d 420, 955 N.E.2d 343, 931 N.Y.S.2d 36 (2011).

18. Order, *Boone*, No. 2:11-cv-2712 (E.D.N.Y. Sept. 23, 2011), D.E. 65.

19. Letter, *id.* (Mar. 15, 2013), D.E. 67.

county, including Judge Seybert's case.[20] In particular, the complaint alleged spiteful delay by the county legislature in voting on settlements in two of the attorney's earlier cases.[21] On October 18, 2013, the court of appeals affirmed Judge Sandra J. Feuerstein's dismissal of the retaliation action "[b]ecause we find that Plaintiffs had no right to have the settlement approved at all, much less by a certain date."[22]

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20. Complaint, Dorsett v. County of Nassau, No. 2:11-cv-5748 (E.D.N.Y. Nov. 23, 2011), D.E. 1; *see* Amended Complaint, *id.* (Dec. 22, 2011), D.E. 6; *see also* Notice of Related Case, *Boone*, No. 2:11-cv-2712 (E.D.N.Y. Nov. 28, 2011), D.E. 66.

21. Dorsett v. County of Nassau, 732 F.3d 157, 159–60 (2d Cir. 2013).

22. *Id.* at 159–60 (noting that since the action was filed one settlement was approved and the other was not), *aff'g* Opinion, *Dorsett*, No. 2:11-cv-5748 (E.D.N.Y. Nov. 23, 2011), D.E. 39, 2013 WL 272796.

A December 18, 2003, employment action against the county, Complaint, Williams v. County of Nassau, No. 2:03-cv-6337 (E.D.N.Y. Dec. 18, 2003), D.E. 1; *see* Docket Sheet, *id.* (Dec. 18, 2003) (D.E. 17, amended complaint), resulted in a settlement rejected in 2012 by the county legislature, *Dorsett*, 732 F.3d at 160, but was nevertheless brought to resolution in 2014 by settlement, Letter, *Williams*, No. 2:03-cv-6337 (E.D.N.Y. July 10, 2014), D.E. 225. *See* Williams v. County of Nassau, 779 F. Supp. 2d 276 (E.D.N.Y. 2011) (dismissing a co-plaintiff's claim), *aff'd*, 581 F. App'x 56 (2d Cir. 2014), *cert. denied*, 576 U.S. ___, 135 S. Ct. 2806 (2015).

A March 19, 2010, wrongful death action against the county and its police department, Complaint, Dorsett v. County of Nassau, No. 2:10-cv-1258 (E.D.N.Y. Mar. 19, 2010), D.E. 1, resulted in a $7.7 million settlement approved in 2012 by the county legislature, Newsday LLC v. County of Nassau, 730 F.3d 156, 160 (2d Cir. 2013) (affirming a protective order for an internal affairs report and reversing the sealing of a transcript of contempt proceedings against a member of the county legislature who divulged facts stated in the report); Dorsett v. County of Nassau, 289 F.R.D. 54, 62 (E.D.N.Y. 2012) (noting modification of the protective order to facilitate the county legislature's review of the settlement agreement); Dorsett v. County of Nassau, 800 F. Supp. 2d 453 (E.D.N.Y. 2011) (noting a July 20, 2011, statement of settlement and affirming the magistrate judge's protective order), *aff'g* 762 F. Supp. 2d 500 (E.D.N.Y. 2011); *Dorsett*, 732 F.3d at 160.