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 in the Southern District of Texas against the county and county officers on July 20, 2012, to correct districting errors in a primary election for the school board that was held on May 29.[1] With its complaint, the department filed an application for a temporary restraining order and a preliminary injunction.[2]

On November 19, 2011, Judge Vanessa D. Gilmore established an interim districting plan for the county commission because the existing plan had become malapportioned and a new plan had not yet received preclearance pursuant to section 5 of the Voting Rights Act.[3] Commission boundaries are also used for the county department of education's board of trustees; three trustees are elected at large, and four are elected from the four districts, which are called precincts.[4] Of the three trustee seats up for election in 2012, one was at large and two were for precincts; the old precinct lines were mistakenly used for the primary election.[5]

In precinct 4, a Democratic candidate ran unopposed, and the margin of victory for the Republican primary winner was considerably greater than the number of improperly cast votes.[6] In precinct 6, a Republican candidate ran unopposed.[7] There were three Democratic candidates.[8] There were 872 improper votes and 1,396 registered voters improperly excluded from the election.[9] The primary leader was fewer than 400 votes shy of a majority, so a runoff primary election was scheduled for July 31.[10]

---

1. Complaint, Harris Cnty. Dep't of Educ. v. Harris County, No. 4:12-cv-2190 (S.D. Tex. July 20, 2012), D.E. 1; *see* Second Amended Complaint, *id.* (July 27, 2012), D.E. 12; First Amended Complaint, *id.* (July 27, 2012), D.E. 11; *see also* Ericka Mellon, *Lawsuit Claims Districting Errors Flubbed Election*, Hous. Chron., July 21, 2012, at 2.

2. Application, *Harris Cnty. Dep't of Educ.*, No. 4:12-cv-2190 (S.D. Tex. July 20, 2012), D.E. 7.

3. Order, Rodriguez v. Harris County, No. 4:11-cv-2907 (S.D. Tex. Nov. 19, 2011), D.E. 66; Rodriguez v. Harris County, 964 F. Supp. 2d 686, 706–07 (S.D. Tex. 2013); *see* Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304, *formerly* 42 U.S.C. § 1973c (2013) (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination); *see also* Amended Complaint, *Rodriguez*, No. 4:11-cv-2907 (S.D. Tex. Oct. 19, 2011), D.E. 26; Complaint, *id.* (Aug. 5, 2011), D.E. 1.

4. Opinion at 3, *Harris Cnty. Dep't of Educ.*, No. 4:12-cv-2190 (S.D. Tex. Sept. 6, 2012) [hereinafter *Harris Cnty. Dep't of Educ.* Opinion], D.E. 30, 2012 WL 3886427.

5. *Id.* at 3–4.

6. *Id.* at 4.

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

On July 30, the county Democratic Party moved to intervene as a defendant.[11] Judge Lee H. Rosenthal heard the case that day, granted intervention, set August 6 as the deadline for other motions to intervene, and ordered briefing on motions to dismiss the action completed by August 8.[12] The plaintiffs dropped their request for a temporary restraining order.[13]

The leader of the primary election at issue was defeated by a wide margin in the runoff.[14] "It is mathematically possible—not probably—that, had the correct map been used in the May 31 primary, [the primary election leader] would have received the majority needed to win the primary outright, obviating the need for the July runoff that he lost."[15]

After the runoff election, the runoff victor[16] and the county's Republican Party[17] moved on August 3 to intervene as defendants. A voter moved to intervene 13 days later.[18] Judge Rosenthal granted all motions to intervene but the last, which was untimely.[19]

Judge Rosenthal dismissed the action on September 6.[20] There was no constitutional violation, because there was no showing that use of the wrong map was anything other than inadvertent.[21] Moreover, the equities were squarely against the candidate who lost so decisively in the runoff primary election.[22]

The new districting plan for the county commission had been precleared on December 30, 2011, but the court-ordered plan was used because preclearance happened so late in the election calendar.[23] On August 1, 2013, Judge Gilmore determined that the county's new districting plan was not quite unconstitutional.[24]

---

11. Intervention Motion, *id.* (July 30, 2012), D.E. 13.

12. Docket Sheet, *id.* (July 20, 2012) (D.E. 16).

13. *Id.*; *see* Mike Morris, *Education Lawsuit Fails to Stop Runoff*, Hous. Chron., July 31, 2012, at 2.

14. *Harris Cnty. Dep't of Educ.* Opinion, *supra* note 4, at 4.

15. *Id.* at 4–5.

16. Intervention Motion, *Harris Cnty. Dep't of Educ.*, No. 4:12-cv-2190 (S.D. Tex. Aug. 3, 2012), D.E. 17.

17. Intervention Motion, *id.* (Aug. 3, 2012), D.E. 18.

18. Intervention Motion, *id.* (Aug. 16, 2012), D.E. 25.

19. *Harris Cnty. Dep't of Educ.* Opinion, *supra* note 4, at 2, 6, 16.

20. *Id.* at 16; *see* Erin Mulvaney, *Federal Judge Dismisses Suit Over Flawed Primary*, Hous. Chron., Sept. 7, 2012, at 2 ("Sarah Langlois, general counsel for the department of education, said the judge's ruling will protect the department from any future challenges alleging violation of federal law. She said the suit was filed to make sure the board was properly and lawfully elected.").

21. *Harris Cnty. Dep't of Educ.* Opinion, *supra* note 4, at 11–13.

22. *Id.* at 15.

23. Rodriguez v. Harris County, 964 F. Supp. 2d 686, 707 (S.D. Tex. 2013).

24. *Id.* at 804–05, *aff'd*, 601 F. App'x 255 (5th Cir. 2015).