

Turned-Away Voters in a Close Election

Bennink v. City of Coopersville

(*Robert Holmes Bell, W.D. Mich. 5:06-cv-82*)

On May 25, 2006, seven plaintiffs filed a federal complaint in the Western District of Michigan claiming that they had wrongfully been turned away at the polls at a May 2 election in which a school bond proposal received a three-vote majority with a recount pending.¹ With their complaint, the plaintiffs filed a motion for a temporary restraining order.²

On May 26, Magistrate Judge Joseph G. Scoville set the case for hearing on June 1 before District Judge Robert Holmes Bell.³ Following the hearing,⁴ Judge Bell dismissed some of the 11 defendants⁵ and ordered that Michigan be added as a necessary party.⁶

On June 5, Judge Bell denied the plaintiffs a stay of the recount.

The Court is not persuaded that Plaintiffs have shown a likelihood of success on the merits of their claim that they are entitled to the relief requested, i.e., that they should be allowed to cast their votes after the polls have closed, the votes counted and the results made public.

...

It is the public . . . that would suffer the most substantial harm from a stay of the recount. . . . The public has an interest in both the finality and stability of the election process.⁷

The bond remained ahead in votes after the recount.⁸

On July 14, Judge Bell approved a stipulated stay of the action pending a state court action to nullify the election.⁹ In an agreement requiring the losing plaintiff

1. Complaint, *Bennink v. City of Coopersville*, No. 5:06-cv-82 (W.D. Mich. May 25, 2006), D.E. 1; see Amended Complaint, *id.* (June 5, 2006), D.E. 25; see also *Election Error Left Bond in Limbo*, Grand Rapids Press, May 4, 2006, at B3 (reporting on the three-vote margin); *Finding Votes*, Grand Rapids Press, June 4, 2006, at B1 (reporting that the plaintiffs supported the bond measure and were filing the complaint to protect the bond from a recount defeat).

2. Temporary Restraining Order Motion, *Bennink*, No. 5:06-cv-82 (W.D. Mich. May 25, 2006), D.E. 2; Brief, *id.* (May 25, 2006), D.E. 3.

3. Order, *id.* (May 26, 2006), D.E. 4.

4. Minutes, *id.* (June 1, 2006), D.E. 15.

5. Order, *id.* (June 2, 2006), D.E. 18.

6. Order, *id.* (June 2, 2006), D.E. 20.

[I]t seems to this Court that the Secretary of State is an indispensable party to an action such as this because the Secretary of State not only certifies the election, but the Secretary of State as I understand it is who the application to vote goes to, the Secretary of State's Office, and the Secretary of State then prepares the qualified voting list.

Transcript at 4, *id.* (June 1, 2006, filed June 2, 2006), D.E. 17.

7. Opinion at 2–3, 5, *id.* (June 5, 2006), D.E. 26, available at [2006 WL 1547279](#); see Order, *id.* (June 5, 2006), D.E. 27.

8. See John Tunison, *Coopersville Survives Legal Fee Challenge*, Grand Rapids Press, Sept. 29, 2006, at B4; Ed White, *Coopersville Can Count on Millage*, Grand Rapids Press, June 7, 2006, at B1; see also Jodi Burck, *Ballot Snafus Will Lead to Changes*, Grand Rapids Press, June 22, 2006, at 4 (reporting that ballot irregularities prevented a complete recount).

to pay only half of the approximately \$52,000 in fees assessed against her by the state court, the plaintiff waived appeal, so the bond sale could proceed.¹⁰

Judge Bell granted a stipulated dismissal on October 31.¹¹

9. Stipulated Order, *Bennink*, No. 5:06-cv-82 (W.D. Mich. July 14, 2006), D.E. 35; *see Recount Lawsuit Filed*, Grand Rapids Press, July 10, 2006, at B1 (reporting that the state-court plaintiff had paid \$70 for the recount); *see also* Ron Cammel, *Tight School Bond Vote Gets Recount*, Grand Rapids Press, May 17, 2006, at B4 (reporting that the state-court plaintiff was a former school board member).

10. *See Bond Sale Planned*, Grand Rapids Press, Oct. 11, 2006, at B1.

11. Stipulated Dismissal, *Bennink*, No. 5:06-cv-82 (W.D. Mich. Oct. 31, 2006), D.E. 38.