

Challenge to Voter Registrations in an RV Park

Curtis v. Smith (Howell Cobb, E.D. Tex. 9:00-cv-241)

The plaintiffs in this federal action sued to enjoin challenges to 9,000 voter registrations in an RV park that could hold only a fraction of the voters at any one time. The plaintiffs alleged that procedures on the en masse challenge had not been precleared pursuant to section 5 of the Voting Rights Act, and a three-judge district court ultimately agreed.

Subject: Nullifying registrations. *Topics:* Section 5 preclearance; three-judge court; registration challenges; matters for state courts; intervention.

On the afternoon of October 4, 2000, three residents of an RV park near Livingston, Texas, filed a federal complaint in the Eastern District of Texas’s Lufkin courthouse against Polk County’s tax assessor-collector—whose duties include those of the voting registrar—alleging that procedures in place to cancel voter registrations for RV-park residents had not received preclearance as required by section 5 of the Voting Rights Act.¹ The registration challenge was based on the fact that there were many more voters registered at the RV park than could actually lodge there at any one time.² Litigation on the matter was already pending in state courts.³

With the complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction⁴ and a motion to convene a three-judge district court to hear the section 5 claim.⁵

1. Complaint, *Curtis v. Smith*, No. 9:00-cv-241 (E.D. Tex. Oct. 4, 2000), D.E. 1; *Curtis v. Smith*, 121 F. Supp. 2d 1054, 1056–57 (E.D. Tex. 2000); see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge district court).

On June 25, 2013, the Supreme Court declined to hold section 5 unconstitutional, but the Court did hold unconstitutional the criteria for which jurisdictions require section 5 preclearance. *Shelby County v. Holder*, 570 U.S. 529 (2013); see Robert Barnes, *Court Blocks Key Part of Voting Rights Act*, Wash. Post, June 26, 2013, at A1; Adam Liptak, *Justices Void Oversight of States, Issue at Heart of Voting Rights Act*, N.Y. Times, June 26, 2013, at A1.

2. *Curtis*, 121 F. Supp. 2d at 1055–56; see Kathy Walt & James Kimberly, *Residents on Wheels Add New Spin to Senate Race*, Hous. Chron., Sept. 23, 2000, at A1.

3. *Curtis*, 121 F. Supp. 2d at 1057; Order, *Curtis*, No. 9:00-cv-241 (E.D. Tex. Oct. 6, 2000), D.E. 13 [hereinafter Oct. 6, 2000, Order]; see *Challenge to Voting Rights of RV Owners Halted*, Dallas Morning News, Sept. 16, 2000, at 40A; Jay Root, *RV Travelers Key in E. Texas Political Brawl*, Fort Worth Star-Telegram, Oct. 1, 2000, at 1; Terrence Stutz, *3rd Court Enters Fray Over RV Park’s Voter Eligibility*, Dallas Morning News, Oct. 5, 2000, at 31A; Terrence Stutz, *Judge Upholds RV Residents’ Right to Vote*, Dallas Morning News, Oct. 3, 2000, at 21A; John Williams, *Confusion Rules for RV Voters*, Hous. Chron., Oct. 5, 2000, at A31; John Williams, *RV Owners Win Right to Vote in Texas*, Hous. Chron., Oct. 3, 2000, at A15.

4. Motion, *Curtis*, No. 9:00-cv-241 (E.D. Tex. Oct. 4, 2000), D.E. 2; *Curtis*, 121 F. Supp. 2d at 1057.

5. Motion, *Curtis*, No. 9:00-cv-241 (E.D. Tex. Oct. 4, 2000), D.E. 3; *Curtis*, 121 F. Supp. 2d at 1057.

At 4:05 p.m., Judge Howell Cobb convened a telephone hearing on the motion for a temporary restraining order.⁶ At 4:40, Judge Cobb issued a temporary restraining order stopping the county from proceeding with 9,000 registration challenges.⁷ Judge Cobb set another hearing for two mornings later in Beaumont.⁸

On October 6, three persons responsible for challenging the residency status of the 9,000 registered voters moved to intervene in the lawsuit.⁹ At the day's hearing, Judge Cobb granted intervention.¹⁰ He decided to extend the temporary restraining order,¹¹ and he recommended that the circuit's chief judge appoint a three-judge court.¹²

The three-judge court heard the case on October 25.¹³ On November 3, the court issued a preliminary injunction, finding that the en masse challenge to voters' residency statuses required preclearance.¹⁴

Preclearance of the en masse challenge never was sought.¹⁵ Following the 2000 general election, however, a trailing candidate for Polk County commissioner challenged votes for his opponent on the grounds that persons who were not valid residents were allowed to vote.¹⁶ The federal plaintiffs asked the federal court to enjoin the state-court contest.¹⁷ The federal court issued a temporary restraining order on May 23, 2001,¹⁸ but the court determined on June 4 that the state-court action could proceed.¹⁹ The federal court also dissolved its original injunction.²⁰

On October 24, 2002, Texas's court of appeals for Beaumont determined, "The trial court correctly concluded that [the trailing candidate] did not

6. Minutes, *Curtis*, No. 9:00-cv-241 (E.D. Tex. Oct. 4, 2000), D.E. 8.

Judge Cobb died on September 16, 2005. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

7. Temporary Restraining Order, *Curtis*, No. 9:00-cv-241 (E.D. Tex. Oct. 4, 2000), D.E. 4.

8. Docket Sheet, *id.* (Oct. 4, 2000).

9. Intervention Motion, *id.* (Oct. 6, 2000), D.E. 5; *see also* James Kimberly, *RV Owners' Polling Place Is Contested*, *Hous. Chron.*, Sept. 27, 2000, at A19 (reporting that the challengers had ties to the Polk County Democratic Party).

10. Minutes, *Curtis*, No. 9:00-cv-241 (E.D. Tex. Oct. 6, 2000), D.E. 10.

11. *Id.*; *Curtis v. Smith*, 121 F. Supp. 2d 1054, 1057 (E.D. Tex. 2000); *see* Richard Stewart, *RVers Win Once Again in Vote Case*, *Hous. Chron.*, Oct. 7, 2000, at A33; Terrence Stutz, *Judge Reaffirms Order Banning Voting Checks*, *Dallas Morning News*, Oct. 7, 2000, at 33A.

12. Oct. 6, 2000, Order, *supra* note 3; *Curtis*, 121 F. Supp. 2d at 1057.

13. Transcript, *Curtis*, No. 9:00-cv-241 (E.D. Tex. Oct. 25, 2000, filed Nov. 26, 2001), D.E. 35; Minutes, *id.* (Oct. 25, 2000), D.E. 18; *Curtis*, 121 F. Supp. 2d at 1057.

14. *Curtis*, 121 F. Supp. 2d at 1058-63; *see* Juan A. Lozano, *Judges Rule for RV Voters*, *San Antonio Express-News*, Nov. 4, 2000, at 1B.

15. *Curtis v. Smith*, 145 F. Supp. 2d 814, 815-16 (E.D. Tex. 2001).

16. *Speights v. Willis*, 88 S.W.3d 817, 818 (Tex. App. 2002); *Curtis*, 145 F. Supp. 2d at 816.

17. Motion, *Curtis*, No. 9:00-cv-241 (E.D. Tex. May 8, 2001), D.E. 24; *Curtis*, 145 F. Supp. 2d at 816.

18. Temporary Restraining Order, *Curtis*, No. 9:00-cv-241 (E.D. Tex. May 23, 2001), D.E. 26.

19. *Curtis*, 145 F. Supp. 2d at 816-18.

20. *Id.* at 818.

meet his burden of proving violations of the Election Code that materially affected the election.”²¹

21. *Speights*, 88 S.W.3d at 821.