

Provisional Ballots for a Judicial Election in Texas

Texas Democratic Party v. Bettencourt
(Gray H. Miller, S.D. Tex. 4:08-cv-3332)

Six days after the 2008 general election, the Democratic candidate for a state judgeship was a few hundred votes behind his opponent. The trailing candidate filed a federal complaint seeking prompt resolution of several thousand provisional and absentee ballots. Two days later, the district court denied the plaintiff immediate relief. An amended complaint more generally challenging county procedures for voter registration and provisional ballots resulted in a 2012 settlement.

Subject: Provisional ballots. *Topics:* Provisional ballots; absentee ballots.

Six days after the 2008 general election, the Democratic candidate for a state judgeship was a few hundred votes behind his opponent, and several thousand provisional and absentee ballots remained to be verified.¹ The Democratic candidate and the trailing Party filed a federal action in the Southern District of Texas against the Harris County's tax assessor-collector and voter registrar to compel resolution of the unresolved ballots.² On the following day, the plaintiffs filed a motion for immediate and permanent injunctive relief.³

Judge Gray H. Miller heard the plaintiffs' motion on November 12, the case's third day,⁴ and Judge Miller denied the plaintiffs immediate relief.⁵ On November 14, the *Houston Chronicle* reported that the counting of additional votes reduced but did not erase the Republican candidate's lead.⁶

An amended complaint filed on December 1 added four Harris County voters as plaintiffs and challenged the validity of the county's procedures for voter registration and provisional ballots.⁷ Judge Miller issued a conditional dismissal of the action as settled on November 2, 2009.⁸ On September 2, 2010, the plaintiffs filed a new complaint with a motion to enforce the settlement agreement.⁹ By April 2, 2012, the matter had settled.¹⁰

1. See Alan Bernstein, *Dems Sue Registrar Over Votes for Judges*, Hous. Chron., Nov. 12, 2008, at B1; *County-by-County Results*, Hous. Chron., Nov. 6, 2008, at B6 (547,091 to 547,442).

2. Complaint, *Tex. Democratic Party v. Bettencourt*, No. 4:08-cv-3332 (S.D. Tex. Nov. 10, 2008), D.E. 1.

3. Motion, *id.* (Nov. 11, 2008), D.E. 3.

4. Docket Sheet, *id.* (Nov. 10, 2008) (D.E. 4).

5. *Id.*

6. Alan Bernstein, *Special Ballots Change Nothing*, Hous. Chron., Nov. 14, 2008, at B1.

7. Amended Complaint, *Tex. Democratic Party*, No. 4:08-cv-3332 (S.D. Tex. Dec. 1, 2008), D.E. 10.

8. Order, *id.* (Nov. 2, 2009), D.E. 57.

9. Petition, *id.* (Sept. 2, 2010), D.E. 59.

10. Docket Sheet, *supra* note 4.

The Democratic candidate's efforts in state court to overturn the election results were unsuccessful.¹¹

11. See Alan Bernstein, *Defeated Candidate Eyes Ballot Glitches*, Hous. Chron., Jan. 9, 2009, at B1; Alan Bernstein, *Democrat Contests 230-Vote Loss for Judge Seat*, Hous. Chron., Dec. 12, 2008, at B4; Brian Rogers, *Candidate Will Not Appeal Ruling to Dismiss Election Suit*, Hous. Chron., July 1, 2009, at B2.