

Votes on City Incorporation by Voters Who Might Not Be in the New City

Davis v. Cooney (Eleanor L. Ross, N.D. Ga. 1:16-cv-3844)

A voter filed a suit to stop a referendum on the incorporation of a new city because two regions of the proposed city might not be included in the new city, depending on the results of other litigation, and so voters in those regions allegedly would dilute the plaintiff's vote. The district judge determined that the Equal Protection Clause did not restrict who could vote on incorporation as the plaintiff alleged.

Subject: Ballot measures. *Topics:* Enjoining elections; equal protection; ballot measure.

On October 14, 2016, three days before the beginning of early voting in the general election, a voter filed a federal complaint in the Northern District of Georgia against officers of the board of registration and elections for Fulton County, the county that includes Atlanta.¹ The voter claimed that his vote in a referendum on the incorporation of the City of South Fulton would be diluted by votes from residents of two potential parts of the new city that might not be part of the city, depending on how other litigation came out.²

A potential part of the new city was the Fulton County Industrial District.³ A superior court judge invalidated a restriction on the district's becoming part of a city, but Georgia's supreme court vacated that ruling on ripeness grounds.⁴ Another potential part of the new city was the Cascade Annexation Area, the subject of pending litigation over whether Atlanta had annexed it.⁵

With his complaint, the voter filed a motion for a temporary restraining order.⁶ Five days later, Judge Eleanor L. Ross set the case for hearing on October 27.⁷ At the conclusion of the hearing, Judge Ross denied the voter immediate relief.⁸

Five days later, Judge Ross issued a ten-page opinion noting a lack of "authority for the proposition that the Equal Protection Clause is violated where those outside the proposed city limits are allowed to vote on a referendum incorporating a new city."⁹

1. Complaint, *Davis v. Cooney*, No. 1:16-cv-3844 (N.D. Ga. Oct. 14, 2016), D.E. 1.

2. *Id.*

3. Opinion at 4, *id.* (Nov. 2, 2016), D.E. 26 [hereinafter *Davis* Opinion].

4. *Fulton County v. City of Atlanta*, 299 Ga. 676, 791 S.E.2d 821 (2016); *Davis* Opinion, *supra* note 3, at 4 & n.1.

5. *Davis* Opinion, *supra* note 3, at 5.

6. Temporary-Restraining-Order Motion, *Davis*, No. 1:16-cv-3844 (N.D. Ga. Oct. 14, 2016), D.E. 2.

7. Order, *id.* (Oct. 19, 2016), D.E. 13; see Arielle Kass, *Court Will Hear Case to Stop S. Fulton Vote*, Atlanta J.-Const., Oct. 22, 2016, at 5B.

8. Minutes, *Davis*, No. 1:16-cv-3844 (N.D. Ga. Oct. 27, 2016), D.E. 25; see Arielle Kass, *Judge Won't Block Vote on South Fulton*, Atlanta J.-Const., Oct. 28, 2016, at 2B.

9. *Davis* Opinion, *supra* note 3, at 6.

Voters approved the creation of South Fulton.¹⁰ Three days later, the parties stipulated dismissal of the case.¹¹

10. See Arielle Kass & Mark Niese, *Cityhood Efforts Yield 2 New Cities*, Atlanta J.-Const., Nov. 13, 2016, at 1B.

11. Stipulation, *Davis*, No. 1:16-cv-3844 (N.D. Ga. Nov. 11, 2016), D.E. 29.