

Turned-Away Voters in a Close Election

Bennink v. City of Coopersville

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

Voters turned away from the polls in a close election on a school bond sued for the right to vote in the election immediately after the election was over. The court denied the plaintiffs the requested relief.

Subject: Recounts. *Topics:* Enjoining certification; registration procedures; provisional ballots.

On May 25, 2006, seven plaintiffs filed a federal complaint in the Western District of Michigan claiming that they had wrongfully been turned away from 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.

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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.

Judge Scoville retired on July 31, 2014. Judicial Milestones, www.uscourts.gov/judicial-milestones/joseph-g-scoville.

4. Minutes, *Bennink*, No. 5:06-cv-82 (W.D. Mich. 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.

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 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

7. Opinion at 2–3, 5, *id.* (June 5, 2006), D.E. 26, 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).

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 seventy dollars 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.