

## Equal Provision of Early Voting in Cook County

*Gustafson v. Illinois State Board of Elections*

(*David H. Coar, N.D. Ill. 1:06-cv-1159*)

A federal complaint charged a city and its county with unequal provision of early voting. The district judge found that the inconsistencies among the jurisdictions were not so serious as to merit federal-court intervention.

*Subject:* Absentee and early voting *Topics:* Early voting; poll locations; primary election.

Eleven voters filed a federal complaint in the Northern District of Illinois on March 3, 2006, charging Illinois, Cook County, and the City of Chicago with unequal provision of early voting for the March 21 primary elections.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a temporary restraining order and a preliminary injunction.<sup>2</sup> The plaintiffs also filed a notice that their motion would be heard by Judge David H. Coar at 9:00 a.m. on March 6.<sup>3</sup>

At the hearing, Judge Coar asked the parties to take an additional two days to try to resolve their differences.<sup>4</sup> On March 8, he continued the hearing for another day.<sup>5</sup> On March 9, he denied the plaintiffs a temporary restraining order.<sup>6</sup>

I'm going to—I want everybody to understand the basis for the opinion. I'm going to impose a sliding scale here. As Mr. Scanlon noted, we're not talking about ultimately the right to vote. We're talking about the right to vote early. I don't believe—as I've said, I don't believe that mere inconvenience can never constitute a constitutional violation. I can hypothesize a set of facts where inconvenience could rise to a constitutional dimension. I don't think that's what we have here.<sup>7</sup>

The parties were able to come to some agreement on modifications to the locations of early voting sites and their hours of operation, but the plaintiffs continued to seek additional judicial relief.<sup>8</sup>

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1. Complaint, *Gustafson v. Ill. State Bd. of Elections*, No. 1:06-cv-1159 (N.D. Ill. Mar. 3, 2006), D.E. 1; *see Suit Charges Early-Voting Sites Are Unfair*, Chi. Trib., Mar. 4, 2006, at 11.

2. Motion, *Gustafson*, No. 1:06-cv-1159 (N.D. Ill. Mar. 3, 2006), D.E. 5.

3. Notice, *id.* (Mar. 6, 2006), D.E. 6.

Judge Coar retired on December 31, 2010. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

4. Transcript at 22–23, *id.* (Mar. 6, 2006, filed Mar. 17, 2006), D.E. 49 [hereinafter Mar. 6, 2006, Transcript]; Minutes, *id.* (Mar. 6, 2006), D.E. 11; *see* Mar. 6, 2006, Transcript, *supra*, at 4 (“I don't think this is a situation where there truly is an emergency.”).

5. Minutes, *Gustafson*, No. 1:06-cv-1159 (N.D. Ill. Mar. 8, 2006), D.E. 44.

6. Minutes, *id.* (Mar. 9, 2006), D.E. 45; *see Claypool Backers Lose Bid for More Early Voting Sites*, Chi. Trib., Mar. 10, 2006, at 3.

7. Transcript at 162, *Gustafson*, No. 1:06-cv-1159 (N.D. Ill. Mar. 9, 2006, filed Sept. 29, 2006), D.E. 79-2 [hereinafter Mar. 9, 2006, Transcript].

8. Status Report, *id.* (Mar. 10, 2006), D.E. 46; *see* Mar. 9, 2006, Transcript, *supra* note 7, at 100–03 (discussion of agreements between the plaintiffs and several jurisdictions); Tran-

Reviewing a second amended complaint,<sup>9</sup> Judge Coar granted the defendants summary judgment on September 30, 2007:

There is no doubt that there are some differences in the manner in which [early voting] is being applied in different districts. At this point, however, Plaintiffs have advanced insufficient evidence from which a reasonable factfinder could find that the inconsistencies from one jurisdiction to the next are so great that the Federal judiciary must intervene and force the state Board to reconsider how it applies duly considered state election law.<sup>10</sup>

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script at 6–18, *Gustafson*, No. 1:06-cv-1159 (N.D. Ill. Mar. 8, 2006, filed Sept. 29, 2006), D.E. 79-1 (same).

9. Second Amended Complaint, *Gustafson*, No. 1:06-cv-1159 (N.D. Ill. Oct. 17, 2006), D.E. 84; see Amended Complaint, *id.* (July 20, 2006), D.E. 61.

10. Opinion at 23–24, *id.* (Sept. 30, 2007), D.E. 117, 2007 WL 2892667.