

Challenge to a Local Recall Election

McBride v. City of Jasper
(*Zack Hawthorn, E.D. Tex. 1:11-cv-443*)

City councilmembers sued to enjoin a recall election on the grounds that the recall effort was motivated by race and the city improperly allowed voters in multiple council districts to sign a recall petition although only voters in a councilmember's district could vote in the recall election. The parties consented to a magistrate judge's presiding over preliminary-injunction proceedings. The injunction was denied.

Subject: Recall elections. *Topics:* Section 2 discrimination; enjoining elections; enforcing orders; intervention; case assignment.

On September 13, 2011, three members of the city council for Jasper, Texas, and six other residents filed a federal complaint in the Eastern District of Texas's Beaumont courthouse to enjoin a November 8 recall election against the councilmember plaintiffs on the grounds that the recall was motivated by their vote to hire a Black police chief.¹ Ten days later, the plaintiffs filed a motion for a preliminary injunction.²

The court assigned the case to District Judge Ron Clark.³ According to local procedures, 15% of Judge Clark's civil cases, other than patent infringement cases, were randomly selected for assignment to one of two magistrate judges for pretrial matters, and Magistrate Judge Zack Hawthorn drew this case.⁴ The parties consented to Judge Hawthorn's presiding over preliminary-injunction proceedings, keeping their options open for possible permanent-injunction proceedings later.⁵

On September 26, Judge Hawthorn agreed to hear the motion on October 5.⁶ The hearing was later reset for October 7.⁷ On October 3, three voters, who were named as defendants in the original complaint⁸ but not included as

1. Complaint, *McBride v. City of Jasper*, No. 1:11-cv-443 (E.D. Tex. Sept. 13, 2011), D.E. 1; see Allan Turner, *Bitterness in an East Texas Town*, *Hous. Chron.*, Sept. 4, 2011, at A1 (referring to the recall as "a political dispute of unprecedented bitterness").

2. Preliminary-Injunction Motion, *McBride*, No. 1:11-cv-443 (E.D. Tex. Sept. 23, 2011), D.E. 5.

3. Docket Sheet, *id.* (Sept. 13, 2011).

4. Intervention Order at 1 n.1, *id.* (Oct. 6, 2011), D.E. 26.

Tim Reagan interviewed Judge Hawthorn for this report by telephone on August 29, 2012.

5. Interview with Hon. Zack Hawthorn, Aug. 29, 2012.

6. Order, *McBride*, No. 1:11-cv-443 (E.D. Tex. Sept. 26, 2011), D.E. 6.

7. Order, *id.* (Sept. 29, 2011), D.E. 9 (noting consent by the parties for a magistrate judge to hear the motion).

8. Complaint, *supra* note 1.

defendants in an amended complaint,⁹ sought to intervene in defense of the recall election.¹⁰

Judge Hawthorn denied intervention on October 6, determining that the interests of the would-be intervenors were adequately represented by other parties.¹¹ That same day, one of the would-be intervenors moved to quash a subpoena for his testimony at the October 7 hearing, claiming disability.¹² Judge Hawthorn denied the motion to quash after 5:00 p.m. on October 6, and it was docketed on the following day.¹³ Because the motion was resolved after hours, Judge Hawthorn's chambers made a special effort to email the decision to counsel that evening.¹⁴

When the witness did not appear for the hearing, the court issued a warrant for his arrest.¹⁵ The witness testified in the afternoon, after which he was released from custody.¹⁶

The hearing continued on October 11,¹⁷ and Judge Hawthorn denied the plaintiffs preliminary injunctive relief on October 20.¹⁸

This dispute requires an intense examination of the City of Jasper's charter—a poorly written and conceived instrument that allows voters of one district to force a recall election of a neighboring district's representative. Common sense suggests that the ability to recall a single-member-district's representative should be restricted to only those voters with the authority to vote in the recall election itself. However, the City of Jasper's charter, as written and interpreted by Texas's Ninth Court of Appeals, provides that a small percentage of the city's qualified voters can force a recall election—every three months—of an elected council member for whom they can never actually vote to recall in the voting booth. Undoubtedly, this result cheapens the finality of a general election outcome and will deter conscientious citizens from serving as elected representatives in the future.

Nonetheless, a federal court cannot intervene and stop a local election merely because it was permitted by an arcane portion of a city charter.¹⁹

9. Amended Complaint, *McBride*, No. 1:11-cv-443 (E.D. Tex. Sept. 29, 2011), D.E. 8.

10. Intervention Motion, *id.* (Oct. 3, 2011), D.E. 12.

11. Order, *id.* (Oct. 6, 2011), D.E. 26.

12. Motion, *id.* (Oct. 6, 2011), D.E. 28.

13. Order, *id.* (Oct. 7, 2011), D.E. 29; Interview with Hon. Zack Hawthorn, Aug. 29, 2012.

14. Interview with Hon. Zack Hawthorn, Aug. 29, 2012.

15. Warrant, *McBride*, No. 1:11-cv-443 (E.D. Tex. Oct. 7, 2011), D.E. 30; Transcript at 9, 52, 78, *id.* (Oct. 7, 2011, filed Oct. 14, 2011), D.E. 35 [hereinafter Oct. 7, 2011, Transcript]; Minutes, *id.* (Oct. 7, 2011), D.E. 33 [hereinafter Oct. 7, 2011, Minutes].

16. Oct. 7, 2011, Transcript, *supra* note 15, at 203–22; Oct. 7, 2011, Minutes, *supra* note 15; Order, *McBride*, No. 1:11-cv-443 (E.D. Tex. Oct. 7, 2011), D.E. 32.

17. Transcript, *McBride*, No. 1:11-cv-443 (E.D. Tex. Oct. 11, 2011, filed Oct. 14, 2011), D.E. 36; Minutes, *id.* (Oct. 11, 2011), D.E. 34.

18. Order, *id.* (Oct. 20, 2011), D.E. 37 [hereinafter Oct. 20, 2011, Order]; see Allan Turner, *Bid to Halt Jasper Recall Vote Fails*, Hous. Chron., Oct. 22, 2011, at B2.

19. Oct. 20, 2011, Order, *supra* note 18, at 25–26.

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One plaintiff survived the recall election, and two did not.²⁰ The plaintiffs voluntarily dismissed the case on November 29.²¹

20. See *Election Notebook*, Hous. Chron., Nov. 9, 2011, at B4.

21. Notice, *McBride*, No. 1:11-cv-443 (E.D. Tex. Nov. 29, 2011), D.E. 39; Order, *id.* (Dec. 21, 2011), D.E. 41.