

Dismissing a Defective Pro Se Application for a Temporary Restraining Order

Webb-Goodwin v. Butler

(Lance M. Africk, E.D. La. 2:04-cv-2653)

A candidate who came in sixth in an election rife with mechanical and logistical difficulties filed a pro se federal complaint to nullify the election. The district court denied the plaintiff a temporary restraining order because the plaintiff had shown neither service on defendants nor affidavit compliance with Federal Rule of Civil Procedure 65(b). A state-court action also was dismissed for lack of service.

Subject: Voting irregularities. *Topics:* Enjoining elections; voting technology; pro se party; matters for state courts.

An unsuccessful candidate for Orleans Parish's school board filed a pro se federal complaint in the Eastern District of Louisiana on Friday, September 24, 2004, to nullify results of a September 18 election and enjoin an October 2 runoff election because of various alleged errors in election administration.¹ The plaintiff came in sixth among six candidates for the second district.² She also filed a pro se action in state court on September 23.³

On September 27, Judge Lance M. Africk denied the plaintiff relief and dismissed the complaint without prejudice.⁴

Although plaintiff avers that she intends to serve the complaint on defendants, there is no evidence before the Court demonstrating that defendants have received notice of this action. . . .

Plaintiff has not submitted an affidavit nor verified the allegations in her complaint. Therefore, plaintiff's application for an *ex parte* temporary restraining order requesting the above-mentioned relief is not in compliance with [Federal Rule of Civil Procedure] 65(b).⁵

The state-court action also was dismissed, and the court of appeal affirmed one of the reasons: lack of effective service on all defendants.⁶

1. Complaint, *Webb-Goodwin v. Butler*, No. 2:04-cv-2653 (E.D. La. Sept. 24, 2004), D.E. 1; see James Varney, *Candidates File Suits Over Polling Mix-Ups*, New Orleans Times Picayune, Sept. 25, 2004, Metro, at 1.

2. See Aesha Rasheed & Brian Thevenot, *School Board Shake-Up*, New Orleans Times Picayune, Sept. 19, 2004, at 1 (reporting also, "Voting machine problems that left at least 90 precincts without voting machines well into election day caused problems in five of the seven districts, particularly the 2nd District.").

3. *Webb-Goodwin v. Butler*, 883 So. 2d 534, 536 (La. App. 2004).

4. Order, *Webb-Goodwin*, No. 2:04-cv-2653 (E.D. La. Sept. 27, 2004), D.E. 3.

5. *Id.* at 2; see Order, *id.* (Oct. 1, 2004), D.E. 6 (denying reconsideration).

6. *Webb-Goodwin*, 883 So. 2d 534, *review denied*, 883 So. 2d 1041 (La. 2004) (noting failure to timely file); see Susan Finch, *Judicial Election to Be Rerun*, New Orleans Times Picayune, Oct. 15, 2004, Metro, at 1.