

A Consent Decree on Overseas Voting in Federal Elections Trumps State Law

Harris v. Florida Elections Canvassing Commission
(4:00-cv-453) and *Medina v. Florida Election Canvassing*
Commission (4:00-cv-459) (Maurice M. Paul, N.D. Fla.)

Two removed cases challenged the validity of absentee ballots received from overseas voters after the date of a presidential election. Although one complaint had been amended before removal to omit federal claims, the district judge found that a well-pleaded complaint would have included federal issues. The judge found that a consent decree in previous federal litigation nullified the state's requirement that overseas ballots be received by election day in federal elections. The court of appeals affirmed this decision.

Subject: Absentee and early voting. *Topics:* Absentee ballots; enforcing orders; removal; matters for state courts; case assignment; recusal.

[T]he overseas absentee votes received after November 7th resulted in a net gain to Bush/Cheney of 739 votes. Additionally, the parties agreed that the certified difference between the two candidates in the state as a whole was 537 votes, in favor of Bush/Cheney. Thus, if all the overseas absentee votes received after November 7th were excluded, the result would be that Gore/Lieberman would have an advantage over Bush/Cheney of 202 votes (not considering, of course, the outcomes of the myriad other [lawsuits] pending around the state and federal systems).¹

Florida's governor removed to the Northern District of Florida on December 4, 2000, a November 30 action filed in Leon County's state court to contest the counting of absentee ballots cast by overseas voters and received after 7:00 p.m. on the day of the November 7 presidential election.²

The court assigned the case to Judge William Stafford, who recused himself, so the court reassigned the case to Judge Maurice M. Paul.³ Judge Paul ordered briefing by 9:00 a.m. on December 5 on whether removal was proper in light of an amended complaint filed in state court an hour or so before the case was removed.⁴ The amended complaint alleged violations of state law

1. *Harris v. Fla. Elections Canvassing Comm'n*, 122 F. Supp. 2d 1317, 1320 (N.D. Fla. 2000).

2. Notice of Removal, *Harris v. Fla. Elections Canvassing Comm'n*, No. 4:00-cv-453 (N.D. Fla. Dec. 4, 2000), D.E. 1 (noting filing at 1:41 a.m.); *Harris*, 122 F. Supp. 2d at 1318; see Shana Gruskin, *Absentee Ballot Lawsuits Pile Up*, Ft. Lauderdale Sun-Sentinel, Dec. 1, 2000, at 17A.

3. Order, *Harris*, No. 4:00-cv-453 (N.D. Fla. Dec. 4, 2000), D.E. 3.

Judge Paul died on December 29, 2016. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges.

4. Order, *Harris*, No. 4:00-cv-453 (N.D. Fla. Dec. 4, 2000), D.E. 4 (noting that an amended complaint was filed in state court at 7:48 a.m., the notice of removal was filed in state court at 9:33 a.m., and the notice of removal was filed in federal court at 10:41 a.m.); *Harris*, 122 F. Supp. 2d at 1319.

only.⁵ Also on December 5, the governor filed the required notice that all other defendants—state and county election officials and the Republican nominees—consented to removal.⁶ Judge Paul forgave the tardy filing of this notice.⁷

Following a December 6 hearing,⁸ Judge Paul decided that removal was proper because “the plaintiffs in this case have artfully pled their case to avoid the obviously federal character of the issues they claim.”⁹ Anticipating the arrival of a related removed case, Judge Paul scheduled a second hearing for December 7.¹⁰ Indeed, on December 6, state election officials removed a second and similar Leon County action.¹¹

On December 9, Judge Paul determined that a consent decree arising from litigation in the 1980s protected overseas voters’ federal rights to participate in federal elections by overriding Florida’s election statutes on when overseas absentee ballots had to be received.¹² Judge Paul denied a motion by an Alabama lawyer to file an amicus curiae brief.¹³

The court of appeals affirmed Judge Paul’s ruling on December 11,¹⁴ and the Supreme Court denied the plaintiffs a writ of certiorari on January 5, 2001.¹⁵

5. *Harris*, 122 F. Supp. 2d at 1318.

6. Docket Sheet, *Harris*, No. 4:00-cv-453 (N.D. Fla. Dec. 4, 2000) (D.E. 9).

7. *Harris*, 122 F. Supp. 2d at 1318–19 n.1; see John Seigny, *Gore Banking on Twin Trials*, Tallahassee Democrat, Dec. 6, 2000, at A1.

8. Minutes, *Harris*, No. 4:00-cv-453 (N.D. Fla. Dec. 7, 2000), D.E. 28 [hereinafter *Harris Minutes*].

9. *Harris*, 122 F. Supp. 2d at 1319 n.2; see *Harris v. Fla. Elections Comm’n*, 235 F.3d 578, 579 (11th Cir. 2000) (“the state defendants were being sued to stop them from complying with . . . the order of a federal court”); see also Karla Schuster, *Ballot Suit Moves to Federal Court*, Ft. Lauderdale Sun-Sentinel, Dec. 7, 2000, at 2A.

10. *Harris*, 122 F. Supp. 2d at 1319; Transcript, *Harris*, No. 4:00-cv-453 (N.D. Fla. Dec. 7, 2000, filed Dec. 11, 2000), D.E. 10; *Harris Minutes*, *supra* note 8; see Linda Kleindienst & Karla Schuster, *Bush, Gore Teams Put Through Paces*, Ft. Lauderdale Sun-Sentinel, Dec. 8, 2000, at 1A.

11. Notice of Removal, *Medina v. Fla. Election Canvassing Comm’n*, No. 4:00-cv-459 (N.D. Fla. Dec. 6, 2000), D.E. 1.

12. *Harris*, 122 F. Supp. 2d at 1321–25. See generally Robert Timothy Reagan, *Overseas Voting: The Uniformed and Overseas Citizens Absentee Voting Act* (Federal Judicial Center 2016).

13. *Harris Minutes*, *supra* note 8; see Amicus Motion, *Harris*, No. 4:00-cv-453 (N.D. Fla. Dec. 5, 2000), D.E. 13.

14. *Harris*, 235 F.3d 578.

15. *Harris v. Fla. Elections Canvassing Comm’n*, 531 U.S. 1062 (2001).