

A Challenge to Paper Ballots for Blind Voters

Ramos v. City of San Antonio
(*Royal Furgeson, W.D. Tex. 5:05-cv-500*)

A federal complaint challenged a switch from touchscreen voting machines to paper optical-scan ballots, because of the impact on the ability of voters with vision impairments to vote in secret. A claim pursuant to section 5 of the Voting Rights Act was mooted when the Justice Department precleared the change after the case was filed. The district judge opined that the plaintiffs would prevail on the merits, but a workaround procedure mitigated the impact on vision-impaired voters for the impending election, so the judge denied immediate relief. Three years later, the case settled.

Subject: Voting procedures. *Topics:* Voting technology; section 5 preclearance; three-judge court; recusal; case assignment.

Three voters filed a federal complaint in the Western District of Texas on May 26, 2005, against San Antonio and Bexar County election officials challenging a switch from touch screen ballots to paper optical scan ballots in a June 7 municipal runoff election as violating state and federal law, including section 5 of the Voting Rights Act.¹ “The Plaintiffs’ main objection . . . is that the paper optical scan ballot does not allow a visually-impaired voter to enjoy the right of a secret ballot, a right Texas has long recognized.”² With their complaint, the plaintiffs filed an application for a temporary restraining order.³

On the following day, Judge Xavier Rodriguez—who joined the bench on August 1, 2003—recused himself, because he had represented San Antonio as a lawyer within two years; Judge Rodriguez transferred the case to Judge Royal Furgeson.⁴ The circuit’s chief judge named Circuit Judge Edward C. Prado and Western District of Texas Judge Earl Leroy Yeakel III to join Judge Furgeson as a three-judge district court to hear the section 5 claim.⁵ On May 31, however, the plaintiffs filed an amended application for a temporary restraining order in light of the Justice Department’s preclearance of the touch screen ballots.⁶

1. Complaint, *Ramos v. City of San Antonio*, No. 5:05-cv-500 (W.D. Tex. May 26, 2005), D.E. 1; see Voting Rights Act of 1965, Pub. L. No. 89-110, § 5, 79 Stat. 437, 439, *as amended*, 52 U.S.C. § 10304 (requiring preclearance of changes to voting procedures in jurisdictions with a certified history of discrimination and requiring that preclearance disputes be heard by a three-judge district court).

2. Opinion at 5, *Ramos*, No. 5:05-cv-500 (W.D. Tex. June 7, 2005), D.E. 14.

3. Temporary Restraining Order Application, *id.* (May 26, 2005), D.E. 2.

4. Order, *id.* (May 27, 2005), D.E. 3; see Federal Judicial Center Biographical Directory of Article III Federal Judges [FJC Biographical Directory], www.fjc.gov/history/judges.

Judge Furgeson retired on May 31, 2013. FJC Biographical Directory, *supra*.

5. Order, *Ramos*, No. 5:05-cv-500 (W.D. Tex. May 27, 2005), D.E. 4.

Judge Prado retired on April 2, 2018, and Judge Yeakel retired on May 1, 2023. FJC Biographical Directory, *supra* note 4.

6. Renewed Temporary Restraining Order Application, *Ramos*, No. 5:05-cv-500 (W.D.

Following a June 1 hearing, Judge Furgeson denied the plaintiffs immediate relief on June 7.⁷ “While the Court finds that Plaintiffs have shown a likelihood of success on the merits, this factor is outweighed by the other factors to be examined in a request for injunctive relief.”⁸

Counsel for both sides described an accommodation that had been worked out previously between these parties in separate litigation that allowed visually-impaired voters to vote using paper optical scan ballots without revealing their vote to a third party.

The accommodation, or “workaround” option as counsel referred to it during oral argument, involves polling place attendants who provide telephones to visually-impaired voters. The visually-impaired voters are assisted in dialing a secure number, which is answered by Bexar County Election Board officials who instruct the visually-impaired voter how to vote confidentially for their preferred candidate. As explained to the Court, [the voter] is instructed that, “to place a vote for Candidate X, tell the attendant assisting you to mark an ‘A’ on the ballot; to place a vote for Candidate Y, tell the attendant assisting you to mark a ‘B’ on the ballot” The attendants at the polling place do not know what the ‘A’ or ‘B’ stand for, nor do they know for whom the visually-impaired voter desires to vote. Using this method, visually-impaired voters are able to vote in confidence and maintain the secrecy of their ballot.

. . .

On the basis of the scant facts before it, the Court finds that while the “workaround” accommodation is inferior to the touch-screen [direct recording electronic (DRE)] machine in terms of meeting the needs of all voters and particularly those with visual impairments, it will suffice this one time, in light of the fact that the election is ongoing.⁹

Judge Furgeson dismissed the case as settled on August 12, 2008.¹⁰

Tex. May 31, 2005), D.E. 5; *see* Order, *id.* (June 17, 2005), D.E. 15 (denying section 5 claim as moot); Opinion, *supra* note 2, at 14 (noting preclearance).

7. Opinion, *supra* note 2.

8. *Id.* at 4.

9. *Id.* at 45–46 (footnotes omitted).

10. Order, *Ramos*, No. 5:05-cv-500 (W.D. Tex. Aug. 12, 2008), D.E. 70; *see* Amended Complaint, *id.* (June 30, 2005), D.E. 18.