

Unsuccessful Attempt at Federal Mandamus Relief Against State Election Officials

Fox v. Detzner (Mark E. Walker, N.D. Fla. 4:18-cv-529)

A district judge denied as beyond the court's jurisdiction a federal mandamus action seeking an order requiring state election officials to follow the law. The judge also denied a request for a temporary restraining order because the plaintiffs did not comply with the notice requirements of Federal Rule of Civil Procedure 65.

Subject: Voting procedures. *Topics:* Voting technology; matters for state courts; case assignment.

A November 13, 2018, “Complaint in Mandamus and Request for Expedited Consideration” filed in the U.S. District Court for the Northern District of Florida sought to compel Florida election officials to preserve election ballot materials for the November 6 general election as required by law.¹ Among other concerns, the plaintiffs—eight voters—alleged that “[b]ecause of the scheduled statewide recounts commencing as soon as Sunday, November 11, 2008, the unpreserved digital ballot images are in danger of being obliterated and overwritten by the tabulation of recounted ballots.”²

The prayer for relief included a temporary restraining order request.³

Senior Judges Robert L. Hinkle⁴ and William Stafford⁵ disqualified themselves from the case in turn over the next two days. On Friday, November 16, Judge Mark E. Walker denied the plaintiffs immediate relief.⁶ First, “a federal court lacks the general power to issue writs of mandamus to direct state officers in the performance of their duties when mandamus is the only relief sought.”⁷ Second, the plaintiffs had not followed the notice requirements that Federal Rule of Civil Procedure 65 requires for a temporary restraining order.⁸

On Monday, Judge Walker instructed the plaintiffs to inform him how they intended to proceed with the case by noon on the following day.⁹ The plaintiffs responded that they probably would file an amended complaint within the next several days,¹⁰ and they did so on December 26.¹¹ Judge Walker granted the defendants a dismissal on April 2, 2019, finding that the plaintiffs’

1. Complaint, *Fox v. Detzner*, No. 4:18-cv-529 (N.D. Fla. Nov. 13, 2018), D.E. 1; see Jeffrey Schweers, *Seven Lawsuits and Counting: Tallahassee Is Ground Zero*, Tallahassee Democrat, Nov. 14, 2018, at A6.

2. Complaint, *supra* note 1, at 3.

3. *Id.* at 15.

4. Disqualification, *Fox*, No. 4:18-cv-529 (N.D. Fla. Nov. 14, 2018), D.E. 3.

5. Disqualification, *id.* (Nov. 15, 2018), D.E. 4.

6. Order, *id.* (Nov. 16, 2018), D.E. 6.

7. *Id.* at 1–2 (citing *Moye v. Clerk*, 474 F.2d 1275, 1276 (5th Cir. 1973)).

8. *Id.* at 2.

9. Order, *id.* (Nov. 19, 2018), D.E. 26.

10. Notice, *id.* (Nov. 20, 2018), D.E. 27.

11. Amended Complaint, *id.* (Dec. 26, 2018), D.E. 28.

cited legal obligations on election officials did not afford the plaintiffs a private right of action.¹²

12. Opinion, *Fox v. Lee*, *id.* (Apr. 2, 2019), D.E. 82 (granting dismissal without a hearing).