

No Relief from Digital Electronic Voting Machines

Shelby Advocates for Valid Elections v. Hargett
(*Thomas L. Parker, W.D. Tenn. 2:18-cv-2706*)

A district judge denied immediate relief from the use of digital electronic voting machines that did not provide a paper record of votes. The judge did not find use of such machines fundamentally unfair. Nearly a year later, the judge dismissed an amended complaint as no more than a generalized grievance.

Subject: Voting procedures. *Topics:* Voting technology; early voting.

On Friday, October 12, 2018, five days before early voting was to begin for a general election, an organization promoting voters' interests and four individuals filed a federal complaint in the Western District of Tennessee.¹ The plaintiffs alleged that the digital electronic voting machines that would be used by Shelby County, which includes Memphis,

are insecure, lack a voter-verified paper audit capacity, and fail to meet minimum statutory requirements, [so] requiring voters to use those machines violates the voters' constitutional rights to have their votes recorded in a fair, precise, verifiable, and anonymous manner, and to have their votes counted and reported in an accurate, auditable, legal, and transparent process.²

On Monday, the plaintiffs filed an application for a temporary restraining order and a writ of mandamus.³ Judge Thomas L. Parker set the case for a status conference the following morning⁴ and a hearing that afternoon.⁵

At the conclusion of the hearing, Judge Parker announced that "the Court is not convinced that the plaintiff has established and has overcome its burden."⁶

In this case, the plaintiffs are asking this federal court to substitute its judgment for that of the elected officials and the election officials for the state of Tennessee and Shelby County. . . .

1. Complaint, *Shelby Advocates for Valid Elections v. Hargett*, No. 2:18-cv-2706 (W.D. Tenn. Oct. 12, 2018), D.E. 1; *Shelby Cty. Advocates for Valid Elections v. Hargett*, 348 F. Supp. 3d 764, 768 (W.D. Tenn. 2018).

2. Complaint, *supra* note 1, at 2; see *Shelby Advocates for Valid Elections v. Hargett*, 947 F.3d 977, 979 (6th Cir. 2020); *Shelby Cty. Advocates for Valid Elections*, 348 F. Supp. 3d at 768.

3. Application, *Shelby Advocates for Valid Elections*, No. 2:18-cv-2706 (W.D. Tenn. Oct. 15, 2018), D.E. 23; *Shelby Cty. Advocates for Valid Elections*, 348 F. Supp. 3d at 767–68; see *Shelby Advocates for Valid Elections*, 947 F.3d at 980.

4. Notice of Setting, *Shelby Advocates for Valid Elections*, No. 2:18-cv-2706 (W.D. Tenn. Oct. 16, 2018), D.E. 28.

5. Notice of Setting, *id.* (Oct. 15, 2018), D.E. 24; *Shelby Cty. Advocates for Valid Elections*, 348 F. Supp. 3d at 767.

6. Transcript at 80, *Shelby Advocates for Valid Elections*, No. 2:18-cv-2706 (W.D. Tenn. Oct. 16, 2018, filed Oct. 26, 2018), D.E. 44; see *Shelby Cty. Advocates for Valid Elections*, 348 F. Supp. 3d at 767.

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... [U]nlike many temporary restraining orders, the plaintiff is not just asking for the status quo to be maintained.⁷

Judge Parker filed an opinion eight days later: “Plaintiffs here have not shown that Shelby County’s voting system is fundamentally unfair.”⁸

Judge Parker dismissed an amended complaint on September 13, 2019, finding that the court did not have jurisdiction to review the plaintiffs’ policy preferences different from government officials’.⁹ The court of appeals affirmed the dismissal on January 24, 2020: “The long and short of it is that the plaintiffs failed to demonstrate the imminence of any injury in fact, depriving them of Article III standing to bring this claim.”¹⁰

7. Transcript, *supra* note 6, at 79.

8. *Shelby Cty. Advocates for Valid Elections*, 348 F. Supp. 3d at 771.

9. Opinion, *Shelby Advocates for Valid Elections*, No. 2:18-cv-2706 (W.D. Tenn. Sept. 13, 2019), D.E. 140, 2019 WL 4394754; see Second Amended Complaint, *id.* (Apr. 16, 2019), D.E. 104; see also Amended Complaint, *id.* (Jan. 11, 2019), D.E. 63.

10. *Shelby Advocates for Valid Elections v. Hargett*, 947 F.3d 977, 983 (6th Cir.), *cert. denied*, 592 U.S. ____, 141 S. Ct. 257 (2020).