

Remedying Malapportionment in Place for Decades

Diamond v. Town of Manalapan
(Patricia A. Seitz, S.D. Fla. 9:02-cv-80065)

A few weeks before a town-commission election, four voters filed a federal complaint alleging malapportionment of commission districts because four commissioners represented eighty-nine residents on one side of town and two commissioners represented 232 residents on the other side of town. The district judge denied the plaintiffs a preliminary injunction, which would disrupt a scheme that had been in place for decades, but ordered a constitutionally valid plan be in place within approximately six months. Following conversion of the commission to at-large elections with at least two commissioners from each side of town, the judge granted a voluntary dismissal of the suit.

Subject: District lines. *Topics:* Malapportionment; intervention; attorney fees.

Four voters filed a federal complaint in the Southern District of Florida on January 28, 2002, challenging “the Town of Manalapan’s refusal to reapportion its town commission districts. Four commission members currently represent 89 residents on the ocean side . . . and two commission members represent 232 residents on the island side”¹ Four days later, the plaintiffs filed a preliminary injunction seeking at-large elections as an interim remedy for malapportionment, including for the commission election scheduled for March 5.² Judge Patricia A. Seitz set the case for hearing on February 6.³ At the first hearing, she set an evidentiary hearing for February 20.⁴ The hearing, which lasted two days, was later moved to begin on February 21.⁵

On February 8, residents supporting separate incorporation of the ocean side moved to intervene in opposition to the plaintiffs,⁶ and Judge Seitz granted the motion on February 14.⁷

On February 22, Judge Seitz found that residents of the island side were clearly underrepresented, but “because the Town Commission has com-

1. Complaint, *Diamond v. Town of Manalapan*, No. 9:02-cv-80065 (S.D. Fla. Jan. 25, 2002, filed Jan. 28, 2002), D.E. 1; see Tim O’Meilia, *ACLU Jumps Into Manalapan Power Battle*, Palm Beach Post, Jan. 26, 2002, at 1B; *Voting Rights Fight Divides Residents*, Ft. Lauderdale Sun-Sentinel, Jan. 26, 2002, at 3B.

2. Preliminary-Injunction Motion, *Diamond*, No. 9:02-cv-80065 (S.D. Fla. Jan. 29, 2002, filed Jan. 30, 2002), D.E. 5.

3. Order, *id.* (Feb. 1, 2002, filed Feb. 4, 2002), D.E. 11.

4. Minutes, *id.* (Feb. 6, 2002, filed Feb. 8, 2002), D.E. 14.

5. Order, *id.* (Feb. 14, 2002, filed Feb. 15, 2002), D.E. 30; Transcripts, *id.* (Feb. 21–22, 2002, filed Mar. 18, 2002), D.E. 49, 50.

6. Intervention Motion, *id.* (Feb. 8, 2002, filed Feb. 11, 2002), D.E. 15.

7. Intervention Opinion, *id.* (Feb. 14, 2002, filed Feb. 15, 2002), D.E. 23.

menced a process to address the reapportionment of the Town’s election districts, the Court must defer to the Town Commission to address this highly political task.”⁸ “Moreover, the use of the current electoral system for approximately forty years suggests that it has not been grossly onerous and thus, also weighs against Plaintiffs’ claim of irreparable injury.”⁹ “If, however, the Town does not continue its good faith effort to reapportion the current electoral districts, and the de-annexation proposal is brought for a vote before an unfairly constituted Town Commission, the Court will then consider further requests for injunctive relief.”¹⁰ Setting a deadline, Judge Seitz ordered, “the Town of Manalapan shall propose and adopt a constitutionally permissible apportionment plan and if necessary, hold a special election, no later than September 3, 2002.”¹¹

On June 11, voters expanded the town commission to seven seats, all elected at large, with two seats requiring residency on the ocean side and two seats requiring residency on the island side.¹² Following the town’s correction of its malapportionment, Judge Seitz granted a joint motion to dismiss the case on August 21.¹³ According to a news report, “The town agreed to pay \$110,000 to the American Civil Liberties Union, considered a catalyst in the lawsuit to change the way the commissioners are elected.”¹⁴

8. Injunction Opinion at 7, *id.* (Feb. 22, 2002, filed Feb. 25, 2002), D.E. 42.

9. *Id.* at 8.

10. *Id.* at 10.

11. *Id.* (emphasis omitted); see Tim O’Meilia, *Split Town Given Six Months to Rebalance*, Palm Beach Post, Feb. 23, 2002, at 1C (reporting also, “The ruling leaves unsettled the question of whether seasonal residents can be counted as part of the population in determining voting districts.”).

12. See Tim O’Meilia, *Manalapan Elections Altered*, Palm Beach Post, June 12, 2002, at 5B; Tim O’Meilia, *Manalapan to Vote, Then Point to Healing Wounds*, Palm Beach Post, July 7, 2002, at 4C.

13. Dismissal, *Diamond*, No. 9:02-cv-80065 (S.D. Fla. Aug. 21, 2002, filed Aug. 23, 2002), D.E. 83.

14. Tim O’Meilia & Scott McCabe, *Manalapan Settles Voting Suit*, Palm Beach Post, Aug. 8, 2002, at 3B.