

Accusations of Voter Fraud

Escobedo v. Rogers

(William P. Johnson, D.N.M. 1:08-cv-1002)

A federal complaint alleged aggressive and harassing investigations into the plaintiffs' rights to vote. The district judge denied the plaintiffs immediate relief because the evidence showed that both had voted in the 2008 general election. After the election, the judge dismissed the complaint because there was no imminent threat of further injury to the plaintiffs by the defendants.

Subject: Absentee and early voting. *Topics:* Absentee ballots; recusal; case assignment; registration challenges; citizenship; primary election.

On October 27, 2008, two Latina voters filed a federal complaint in the District of New Mexico against a lawyer and an investigator whom the plaintiffs alleged had engaged in public accusations—accompanied by harassing visits to the plaintiffs' homes—that the plaintiffs and a few others may have voted fraudulently in the June primary election.¹ Three days later, the plaintiffs sought a temporary restraining order against the defendants' challenging voter eligibility for the primary or general elections in 2008.²

The court initially assigned the case to Judge Martha Vázquez; after recusals by Judge Vázquez and Judge M. Christina Armijo, the court reassigned the case to Judge James O. Browning.³ At a November 3 proceeding, Judge Browning informed the parties of his association with one of the defendants and invited requests for reassignment.⁴ The court reassigned the case to Judge William P. Johnson.⁵

When presented with a motion for a temporary restraining order, Judge Johnson found it useful to quickly identify the defendants' lawyers, ensure that they received notice, and convert the motion into one for a preliminary injunction.⁶

1. Complaint, *Escobedo v. Rogers*, No. 1:08-cv-1002 (D.N.M. Oct. 27, 2008), D.E. 1; see Heather Clark, *Civil Rights Groups File Suits on Voter Harassment*, Santa Fe New Mexican, Oct. 28, 2008, at C2; Dan McKay, *Lawsuits Claim Voter Intimidation*, Albuquerque J., Oct. 28, 2008, at D1.

2. Temporary-Restraining-Order Motion, *Escobedo*, No. 1:08-cv-1002 (D.N.M. Oct. 30, 2008), D.E. 7.

3. Transcript at 4, *id.* (Nov. 3, 2008, filed Dec. 3, 2008), D.E. 29; Minutes, *id.* (Nov. 3, 2008), D.E. 19; Docket Sheet, *id.* (Oct. 27, 2008).

4. Minutes, *id.* (Nov. 3, 2008), D.E. 28.

5. Minutes, *id.* (Nov. 3, 2008), D.E. 20.

Tim Reagan interviewed Judge Johnson for this report by telephone on January 29, 2013.

Judge Johnson observed that a duty system might have resulted in a more prompt designation of a judge available to hear the case. Interview with Hon. William P. Johnson, Jan. 29, 2013.

6. Interview with Hon. William P. Johnson, Jan. 29, 2013; see Transcript, *supra* note 3, at 4–5.

He heard testimony on November 3 and 4.⁷ The two plaintiffs had already cast absentee ballots; their attorney argued that they were concerned about whether they would be counted, so Judge Johnson wanted to hear testimony on that issue from the county clerk, recognizing how busy her office would be the day before the election.⁸ Judge Johnson offered to take her testimony by telephone, but someone from her office was able to testify in court, a short distance from the county clerk's office, and Judge Johnson took—out of order—testimony from one of two election judges responsible for overseeing absentee ballots.⁹ The witness testified that one plaintiff's absentee ballot had been received and processed normally, and the other plaintiff's absentee ballot had not yet been received.¹⁰

On election day, Judge Johnson denied the plaintiffs immediate injunctive relief.¹¹ It was undisputed that they had voted in the general election.¹²

On February 6, 2009, Judge Johnson granted the defendants' motion for a more definite statement.¹³ An amended complaint followed on March 2.¹⁴ On April 3, Judge Johnson granted the defendants dismissal because the election was over and there was no imminent threat of further injury to the plaintiffs by the defendants.¹⁵

7. Minutes, *Escobedo*, No. 1:08-cv-1002 (D.N.M. Nov. 3, 2008), D.E. 23; see Dan McKay, *GOP Lawyer Says Intent Was to Investigate ACORN, Not Scare Voters*, Albuquerque J., Nov. 4, 2008, at D1.

8. Transcript, *supra* note 3, at 8–9, 28; Interview with Hon. William P. Johnson, Jan. 29, 2013.

9. Transcript, *supra* note 3, at 28–29, 70–81; Interview with Hon. William P. Johnson, Jan. 29, 2013.

10. Transcript, *supra* note 3, at 76–77.

11. Order, *Escobedo*, No. 1:08-cv-1002 (D.N.M. Nov. 4, 2008), D.E. 21.

12. Opinion at 3, *id.* (Feb. 6, 2009), D.E. 34.

13. *Id.* at 5.

14. Amended Complaint, *id.* (Mar. 2, 2009), D.E. 41.

15. Opinion, *id.* (Apr. 30, 2009), D.E. 54.