

Constitutionality of a Dual-Majority Requirement

Tigrett v. Cooper

(*S. Thomas Anderson, W.D. Tenn. 2:10-cv-2724*)

A federal complaint alleged vote dilution in a dual-majority requirement for a 2010 referendum on the consolidation of city and county governments. An agreed preliminary injunction enjoined certification of the forthcoming referendum results and required referendum votes in the county to be counted separately for voters within and outside the city. Although the referendum failed, the district judge determined that the case was not moot. In 2014, the judge granted summary judgment against the plaintiffs. Disagreeing on the mootness question, the court of appeals dismissed the appeal.

Subject: District lines. *Topics:* Ballot measure; equal protection; section 2 discrimination; enjoining certification; ballot segregation; intervention.

Approximately four weeks before the 2010 general election, eight Memphis voters filed a federal complaint in the Western District of Tennessee alleging vote dilution for Memphis voters and African American voters in the dual-majority requirements for a referendum on the consolidation of city and county governments into a metropolitan government.¹

Tennessee provided for a county and a city within it to consolidate governments with approval of a majority of the city's voters and a majority of the county voters outside the city.²

About 73% of the entire population of Shelby County resides in Memphis, and the remaining 27% of the population of Shelby County resides outside Memphis. Thus, the votes of non-city residents are weighted in a ratio of 2.5 to 1 to the votes of City residents. Moreover, African-Americans make up approximately 66% of the population of Memphis and 52% of the population of all of Shelby County. African Americans make up approximately 44% of Shelby County's non-city population.³

Attempts to form a Memphis metropolitan government failed in 1962 and 1973.⁴ Memphis, on August 26, 2009, and Shelby County, on September 15, voted to establish a Memphis and Shelby County Metropolitan Government Charter Commission to write and propose a charter for consolidated

1. Complaint, *Tigrett v. Cooper*, No. 2:10-cv-2724 (W.D. Tenn. Oct. 7, 2010), D.E. 1; *Tigrett v. Cooper*, 855 F. Supp. 2d 733, 737 (W.D. Tenn. 2012).

2. *Tigrett*, 855 F. Supp. 2d at 737–38; see Richard Locker, *Att. General Backs "Dual Majorities,"* Memphis Commercial Appeal, Apr. 20, 2010, at B1.

3. *Tigrett*, 855 F. Supp. 2d at 738.

4. *Id.*

government, and the commission adopted a proposed charter on August 9, 2010.⁵

The plaintiffs filed a motion for a preliminary injunction on October 14, 2010, one week after they filed their complaint,⁶ and Judge S. Thomas Anderson issued an agreed preliminary injunction on October 20.⁷ The order enjoined certification of the forthcoming referendum results and required referendum votes in the county to be counted separately for voters within and outside Memphis.⁸

Although the referendum failed,⁹ Judge Anderson ruled on February 17, 2011, that “there is a reasonable expectation that this controversy will recur in the future,” so the case was not moot.¹⁰ On March 2, 2012, Judge Anderson granted limited intervention to several suburban municipalities, within Shelby County but outside of Memphis: intervention with respect to the residency-based vote-dilution Equal Protection claim.¹¹

Also on March 2, 2012, Judge Anderson denied in part the defendants’ motion to dismiss the action.¹² Because the complaint sought prospective relief from an ongoing violation of federal law, the action was not barred by the Eleventh Amendment.¹³ The complaint included valid claims for both Equal Protection and Voting Rights Act relief.¹⁴ The vote dilution claims, however, could not proceed on a Fifteenth Amendment theory of denial of the franchise on the basis of race.¹⁵

Judge Anderson issued summary judgment against the plaintiffs on March 17, 2014, finding that “allowing the residents in the county to vote separately from the residents of the city is justified, given that consolidation would result in a fundamental alteration in the county’s status as a branch of government.”¹⁶ On the Voting Rights Act claim, Judge Anderson found that majority voters in Shelby County have never defeated the minority’s choice in a referendum.¹⁷

5. *Id.*

6. Preliminary-Injunction Motion, *Tigrett*, No. 2:10-cv-2724 (W.D. Tenn. Oct. 14, 2010), D.E. 15.

7. Preliminary Injunction, *id.* (Oct. 20, 2010), D.E. 27.

8. *Id.*; *Tigrett*, 855 F. Supp. 2d at 737.

9. See Clay Bailey, *Suburbs’ Rejection of Merger “Loud and Clear,”* Memphis Commercial Appeal, Nov. 3, 2010, at A1.

10. Order at 8, *Tigrett*, No. 2:10-cv-2724 (W.D. Tenn. Feb. 17, 2011), D.E. 38, 2011 WL 673939; *Tigrett*, 855 F. Supp. 2d at 737.

11. Order at 12, *Tigrett*, No. 2:10-cv-2724 (W.D. Tenn. Mar. 2, 2012), D.E. 81, 2012 WL 691906; see Amos Maki, *Judge Lets Suburbs Intervene in Merger*, Memphis Commercial Appeal, Mar. 3, 2012, at B4.

12. *Tigrett*, 855 F. Supp. 2d 733.

13. *Id.* at 743–47.

14. *Id.* at 749–64.

15. *Id.* at 747–49.

16. *Tigrett v. Cooper*, 7 F. Supp. 3d 792 (W.D. Tenn. 2014).

17. *Id.* at 804.

On December 30, 2014, the court of appeals overturned Judge Anderson's ruling on mootness.¹⁸ "[T]here is no indication that the governing bodies of the City of Memphis or Shelby County intend to consolidate through the formation of another commission in the near future. In the past century, only three consolidation elections have taken place in the City of Memphis and Shelby County."¹⁹

18. *Tigrett v. Cooper*, 595 F. App'x 554 (6th Cir. 2014).

19. *Id.* at 557.