

# VOTING RIGHTS

## Voting Rights: School Boards

*Haynes v. Wells,*  
538 S.E.2d 430 (Ga. 2000)

Under Georgia law, to qualify as a candidate for a school board, at the time at which he or she declares his or her candidacy, a person must swear by affidavit that he or she is eligible to vote in the district in which he or she is running. A candidate who files a change of address form for purposes of a driver's license is not automatically qualified to vote within that district.

### FACTS AND PROCEDURAL HISTORY

Haynes defeated Wells in the Democratic primary for the fifth-district seat on the Clayton County School Board. After losing the primary, Wells contested the election by alleging that Haynes was ineligible to vote in the fifth district at the time of the primary, and thus was ineligible to run for a seat on the school board.

Haynes had moved into the fifth district four days before declaring his candidacy and requested a change of address on his driver's license to reflect his new residence. Haynes clearly intended to fulfill the statutory obligations imposed on persons filing a notice of candidacy. However, because the requested change was not made within those four days, he fell short of strict compliance. The trial court held that Haynes was not an eligible candidate for the fifth-district seat and ordered that his name be removed from the election ballot. Because of the approach of the election, Haynes moved for an expedited appeal. The Georgia Supreme Court granted the appeal and affirmed the trial court's decision. By affirming the trial court's decision, the Georgia Supreme Court effectively rejected the candidate chosen by the electorate. As noted by the dissent, this result seems contrary to the fundamental principle of democracy. The dissent suggested that there is some support for giving the judiciary the power to

declare an election void and order a new election necessary to maintain the voters' free choice.

#### ANALYSIS

Under the Official Code of Georgia, when filing a notice of candidacy, a candidate must swear by affidavit "[t]hat he or she is an elector of the county or municipality of his or her residence eligible to vote in the election in which he or she is a candidate." Ga. Code Ann. § 21-2-132(e)(4) (1998). The timing set forth in the statute is critical. When the candidate submits a candidacy form, he or she must simultaneously present a sworn affidavit stating that he or she is eligible to vote in the pertinent election at the time of filing.

If a change-of-address form for purposes of a driver's license is sufficient to serve as notice of a change of address for voter registration under federal and State law, what was insufficient about filing a driver's license form? A change-of-address form for purposes of a driver's license must be forwarded by the Department of Public Safety to the Secretary of State, who, in turn, forwards the change of address information to the county board of registrars for appropriate action. Ga. Code Ann. § 21-2-221(e). Until the County board of registrars determines whether the voter requirements have been met, a person is not eligible to vote within a particular district. *Id.* Haynes filed the change-of-address form for his driver's license only four days before declaring his candidacy, and the Clayton County records revealed that his voter registration had not been recorded by that time. If his voter registration had not been recorded at the time at which he declared his candidacy, then he could not truthfully sign the affidavit stating that he was a resident eligible to vote in the election. Therefore, Haynes was ineligible to vote in the fifth district when he declared his candidacy, thus making his declared candidacy illegal under the Georgia Code Annotated Section 21-2-132(e).

The court held Haynes completely responsible for his ineligibility to vote in the election. Despite the administrative delay in processing his change of address, Haynes could have assured his eligibility to vote by notifying the County Registrar directly of his change of residency. It was his own failure to do so that resulted in his ineligibility to vote.

## COMMENT

Georgia law is clear that a candidate must be eligible to vote in the district in which he or she is running *at the time at which he or she declares his or her candidacy*. In this case, Haynes had alternatives other than changing his driver's license. As the court noted, he could have presented a change-of-residency form directly to the Clayton County Registrar. Had he done so, he would have been eligible to vote in the fifth district when he declared his candidacy. This decision is consistent with Florida law as it concerns the qualifications of school-board members and voter registration.

In Florida, the Department of Highway Safety and Motor Vehicles must provide to each individual who either applies for a new license or changes an address on an existing license the opportunity to update a voter-registration record. As in Georgia, submitting a change-of-address form for a driver's license in Florida does not automatically serve as notice of a change-of-address for purposes of voter registration. Florida Statutes Section 97.058 provides that the information gathered at the Department of Highway Safety must be sent to the proper election authority.

Florida election law provides that a school-board candidate must legally reside within the district at the time of qualifying, as opposed to the date of nomination. Fla. Stat. § 230.04 (2001). To qualify for nomination, each candidate must take an oath that he or she is a qualified elector of the given county and is qualified to hold the office to which he or she desires to be nominated. *Id.* § 99.021.

## RESEARCH REFERENCES

- 21 Fla. Jur. 2d *Elections* §48 (1998).
- 46 Fla. Jur. 2d *Schools Universities and Colleges* §47 (1998).  
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**Voting Rights: Voting Rights Act of 1965**

***Dillard v. Baldwin County Commissioners,***  
225 F.3d 1271 (11th Cir. 2000)

Standing will be adequately established when intervenors challenge the constitutionality of the election scheme to which

they are subjected. Such an intervenor will have stated a claim if he or she asserts that he or she is being subjected to, and his or her voting power is being affected by, an illegal election scheme that was created because of or on account of race. Additionally, a federal-court order will not be shielded from constitutional challenges simply because the order is implemented by local officials.

#### FACTS

The suit originated in 1986 when Dillard and other black voters sued the Baldwin County Commission [Commissioners] because the at-large system the Commission used to elect new members violated Section 2 of the Voting Rights Act of 1965. *Dillard*, 225 at 1274. The Commission conceded liability, and the trial court ordered it “to increase its membership from four to seven persons elected from single-member districts in order to ensure a majority-black voting district.” *Id.* The court noted that, because the population of black voters was decreasing, the size of the Commission must be increased to seven. The court’s decision created a district with a black population over sixty-three percent.

In October 1996, the intervenors moved to have the 1988 order vacated based on subsequent circuit-court decisions and on the Supreme Court’s decision in *Holder v. Hall*, 512 U.S. 874 (1994). The intervenors argued that, when the court increased the Commission from four to seven members to create a black-majority district, it went beyond “its authority granted by Congress in the Voting Rights Act, and violate[d] the Tenth and Eleventh Amendments” of the Constitution. *Dillard*, 225 F.3d at 1274 (quoting Complaint at ¶ 7).

The plaintiffs moved to dismiss the intervenors’ complaint based on lack of standing and argued that the complaint failed to state a claim upon which the court could grant relief. The district court granted the motion to dismiss and held that the intervenors had standing insofar as they claimed that the order violated their rights, but that they failed to state a claim upon which relief could be granted. They also failed to state a claim under Section 2 of the Voting Rights Act because they did not allege that the result was voter discrimination on account of race. The court found that the “[i]ntervenors failed to state a claim under the Tenth and Eleventh Amendments because the rights deprivation alleged was the result of state rather than federal authority.” *Id.*

at 1275. Lastly, the court denied the intervenors' claim of relief under Federal Rule of Civil Procedure 60, because they did not file a motion and because the rule does not provide a substantive cause of action. The intervenors appealed.

#### COURT'S ANALYSIS

##### **Standing to Bring Suit**

To satisfy the constitutional requirements of standing, a plaintiff must show that (1) the plaintiff has suffered an "injury in fact" — an invasion of a legally-protected interest that is concrete and particularized, and actual or imminent, (2) there is a causal connection between the injury and the conduct of which the plaintiffs complained, and (3) it is likely that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–561 (1992). Regarding the issue of standing, the *Dillard* plaintiffs argued that private citizens cannot have standing to assert Tenth Amendment claims except in circumstances when they establish some particularized injury that could be redressed under some other constitutional or statutory provision. The *Dillard* plaintiffs argued that the Supreme Court had previously found that plaintiffs' standing to assert Tenth Amendment claims was contingent on their having standing to assert some other constitutional or statutory claim. The Eleventh Circuit Court of Appeals found the *Dillard* interpretation to be incorrect and held that case precedent shows that, to have standing to bring a Tenth Amendment claim, the plaintiff must show that it suffered an injury in fact caused by the challenged action.

The *Dillard* plaintiffs also argued that the intervenors lacked standing because they did not allege a sufficiently concrete and particularized injury. The court found this argument unpersuasive based on its prior ruling in *Meek v. Metropolitan Dade County*, 985 F.2d 1471 (11th Cir. 1993). In *Meek*, the court affirmed the residents' standing to challenge the constitutionality of the election scheme to which they were subject, stating that the residents were seeking "to vindicate important personal interests in maintaining the election system that governed their exercise of political power" and that this was a "tangible, actual, or prospective injury." *Dillard*, 225 F.3d at 1277 (quoting *Meek*, 985 F.2d at 1480).

The court also rejected the *Dillard* plaintiffs' claim that, if *Meek* did control in the present case, *Meek* was decided

incorrectly given subsequent Supreme Court cases. The court determined that none of the cases which pointed to the plaintiffs were controlling, and ultimately concluded that it was bound by *Meek*. The court therefore concluded that the intervenors had standing to assert their claims in this case.

#### INTERVENORS' CLAIMS

The intervenors appealed the district-court ruling that they had failed to state a claim under Section 2 of the Voting Rights Act, the Tenth Amendment, the Eleventh Amendment, and Federal Rules of Civil Procedure 60.

#### **Section 2 Voting Rights Act Claims**

The district court noted that, to state a valid claim under Section 2 of the Voting Rights Act, the intervenors would have to allege "that the court's . . . order result[ed] in vote-discrimination against them on account of race, color or membership in a language minority." *Dillard*, 225 F.3d at 1280. The district court found no such claim. The intervenors did allege that the district court's order "intentionally increased the size of the Baldwin County Commission and redrew the district lines specifically in order to create a majority black district." *Id.* The court found this allegation to be sufficient, based on its decisions in *Nipper v. Smith*, 39 F.3d 1494 (11th Cir. 1994), and *White v. Alabama*, 74 F.3d 1058 (11th Cir. 1996). In both cases, the court held that a district court could not remedy a Section 2 violation by changing the size of the county commission. Thus, the court held that,

[b]y alleging that they are being subjected to, and their voting power is being affected by, an illegal election scheme that was plainly created because of or on account of race, the Intervenor have adequately stated a claim for section 2 violation of the Voting Rights Act.

*Dillard*, 225 F.3d at 1281.

#### **Tenth and Eleventh Amendment Claims**

The district court reasoned that the defendants, the Baldwin County Commissioners, could not deprive the intervenors of any right guaranteed under these amendments because "[t]he tenth and eleventh amendments protect against certain exercises of federal power [and] do not give individuals any rights against the exercise of state authority." *Id.* (emphasis omitted). The court was

unpersuaded by the district court's reasoning inasmuch as it failed to realize that the action being challenged is the allegedly unconstitutional decision of the federal district court and not merely a state activity. An activity that is performed on the authority of a federal-court order is not an "exclusive exercise of state power simply because it is performed by state actors." *Id.* The court held that this federal-court order would not be shielded from constitutional challenges simply because the order was implemented by local officials.

### **Federal Rules of Civil Procedure Rule 60 Claim**

The district court dismissed the intervenors' Rule 60 claim because it "operates by motion only and because [it] does not define the substantive law as to the grounds for vacating judgments, but "merely prescribes the practice in proceedings to obtain relief." *Id.* at 1282 (quoting Order at 11 (quoting 1946 advisory comm. nn., Fed. R. Civ. P. 60)). The court held that the intervenors' filing of an independent action did not negate their ability to obtain relief under Rule 60 because the rule specifically provides that relief is available through an independent action. *Id.* Additionally, although Rule 60 did not provide a substantive cause of action, the court already had established that the intervenors did have substantive causes of action; therefore, Rule 60 provided a way in which the intervenors could seek relief from the original order.

### **Intervenors Ask Court to Modify the Order**

The court denied the request to modify and remand for supervision only because it believed that issues still remained that would best be addressed by the district court. Those issues dealt with whether the original order "was predicated on findings of intentional discrimination by the legislature" and whether the original remedy was "appropriate to remedy a violation of the Fourteenth Amendment." *Id.* Thus, the court reversed the district court's dismissal of the intervenors' complaint and remanded for further proceedings.

### **RESEARCH REFERENCE**

- Eugene McQuillin, *The Law of Municipal Corporations* vol. 3, §§ 12.02.40, 12.02.45, 12.02.50, 12.02.55, 12.02.60 (3d ed., West 2001).

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