PROVIDED BY
FindLaw
WWW.FINDLAW.COM

United States District Court
Southern District of Texas
FILED
SEP 12 2003
MMM
Michael N. Milby, Clerk
Laredo Division

United States District Court
Southern District of Texas
ENTERED
SEP 12 2003
MMM
Michael N. Milby, Clerk
Laredo Division

IN THE UNITED STATES DISTRICT COURT

FOR THE SOUTHERN DISTRICT OF TEXAS

LAREDO DIVISION

GONZALO BARRIENTOS, ET AL.,	*	
	*	
Plaintiffs,	*	
	*	
VS.	*	CIVIL ACTION NO. L-03-113
	*	
STATE OF TEXAS, ET AL.,	*	
	*	
Defendants.	*	

MEMORANDUM AND ORDER

This action was brought by eleven Texas State Senators against the State of Texas, its Governor, and Lieutenant Governor, seeking declaratory and injunctive relief under §§2 and 5 of the Voting Rights Act ("the Act"). The complaint primarily attacks two events: first, the decision by the state legislature to consider congressional redistricting legislation this year, notwithstanding that a redistricting plan has already been implemented this decade; second, the declaration by the Lieutenant Governor that redistricting legislation would be considered in a special session without adhering to the so-called "2/3rd Rule." Plaintiffs allege that these two events constitute changes affecting voting within the meaning of the Act and, therefore, are legally unenforceable because preclearance has not been obtained. Defendants have filed a motion to dismiss, arguing that the Act does not apply to either of the challenged events. We agree.

The United States Supreme Court decision in Presley v. Etowah

33

County Commission, et at., 112 S.Ct. 820 (1992), controls this case. Presley makes clear that, while the reach of the Act is broad, it is nevertheless still "an extraordinary departure from the traditional course of relations between the States and the Federal Government," id. at 827, and that its reach is limited to procedures that have "a direct relation to voting and the election process." id. at 829. Thus, the Act is concerned with changes affecting procedures for casting ballots, candidacy requirements and qualifications, and composition of the electorate. Id. at 828. Presley distinguished between changes directly affecting voting by the electorate and "changes in the routine organization and functioning of government." Id. at 829. While the latter may indirectly affect voting, they are not within the scope of the Act.

We readily acknowledge, as did the the Supreme Court, that "in a real sense every decision taken by government implicates voting," which is "but the felicitous consequence of democracy, in which power derives from the people." Presley, 112 S.Ct. at 829. Nevertheless, the Supreme Court insisted that a line must be drawn between events which directly affect the voters and events which, as here, affect the distribution of power between legislators of two different political parties. In the instant case, what will directly affect the voters of this State is a redistricting bill, not the mere consideration of such a bill or the process by which it comes to the floor of the Texas Senate. The Department of

Justice has also concluded that the consideration by the Texas legislature of a redistricting bill without applying the "2/3rd Rule" is not a change affecting voting within the contemplation of the Act. This conclusion, while not binding upon us, is entitled to "considerable deference." Id. at 831.

It is undisputed that any new redistricting bill would have a direct relation to voting. Accordingly, it would have to be precleared under the Act and would thereafter be subject to judicial challenge. However, that time has not yet come.

The motion to dismiss claims under the Voting Rights Act is GRANTED. We also DISMISS claims under 42 U.S.C. §1983, insofar as Plaintiffs claim that the State's decision to consider redistricting legislation and the failure to adhere to the "2/3rd Rule" violate the First, Fourteenth and Fifteenth Amendments to the United States Constitution.

We have promptly issued this brief opinion because of our understanding that another special session of the Texas legislature is imminent. We reserve the opportunity to issue a more detailed opinion hereafter, if appropriate. We also withhold ruling on Plaintiffs' motion to file a first amended complaint. The purpose of the amendment is to add a Count V, complaining of threats to arrest the Plaintiffs and also to require that they pay a monetary sanction for their failure to appear at earlier special sessions. As discussed at the hearing on September 11, 2003, the arrest issue

likely will become moot. Indeed, the Plaintiffs' fear of being coerced to appear at a legislative session is shifting to a fear of being prevented from appearing. For reasons discussed at the hearing, neither the facts nor the law on the issue of threatened monetary sanctions are sufficiently developed at this point to permit an informed decision. Moreover, it is possible that future developments could also moot this issue.

DONE this 12th day of September, 2003.

U. S. CIRCUIT JUDGE PATRICK E. HIGGINBOTHAM

CHIEF U. S. DISTRICT JUDGE GEORGE P. KAZEN

U. S. DISTRICT JUDGE LEE H. ROSENTHAL