

NAACP Wins NY School District Voting Rights Trial

By **Cara Salvatore**

Law360 (May 26, 2020, 11:20 PM EDT) -- A New York federal judge ruled Monday that a Hudson Valley school district violated the Voting Rights Act by effectively blocking black and Latino voters' preferred candidates from the school board, ordering a halt to the practice of allowing every voter to cast a vote for every board seat.

U.S. District Judge Cathy Seibel found after a bench trial that in the "unique" East Ramapo Central School District, in which 98% of private school students are white and 92% of public school students are black or Latino, statistical analysis showed that both groups voted as blocs. The minority group has been unable to get a single preferred candidate onto the board since 2007 due to highly organized resistance from the private school community, which is largely Jewish, the judge said.

"The challenged practice 'has operated to invidiously exclude blacks [and Latinos] from effective participation in political life,'" Judge Seibel wrote, noting that under the VRA, it is of no import whether the exclusion was intentional.

The result has been an almost exclusively white, private-school-favoring board that has made "numerous board decisions privileging private school interests and/or harmful to public education. From 2009 to 2014, budgets were cut dramatically, and the board eliminated hundreds of public school teaching, staff, and administrative positions and eliminated classes and programs. The public school buildings fell into disrepair ... graduation rates and test scores sank," Judge Seibel said.

The school district must now submit a plan to overhaul its voting system, and the plan must include splitting up the at-large system into a ward system, with residents in each ward voting for only their own single board member, the judge ordered.

The school board was set to meet Tuesday night to discuss the order, according to a Morgan Lewis & Bockius LLP lawyer for the school district, who declined to provide further comment in advance of the meeting.

Because black and Latino residents mostly live in clusters of the district, splitting the district into wards will create as many as four majority-minority wards, the judge said.

Andrew Clubok, a Latham & Watkins LLP attorney who helped represent the NAACP, said Tuesday that minorities in the district found that "even in their own local community, which is majority black or

Hispanic, they're forced to accept whatever the white majority imposes on them."

Meanwhile, the private school bloc's aim was clear, according to Clubok: "What they fought so hard to protect was their own power."

A key issue was the private school bloc's use of a "slate" system for its preferred candidates. Witnesses who testified for the school board, like board President Harry Grossman, denied the existence of a slating system. But there was indeed a slating system, the judge found.

"Minorities have no input into this process. ... Rabbi [Yehuda] Oshry selects and approves candidates, controls access to the slating process, and submits petitions on behalf of candidates," the judge said.

So strong has the private school bloc been that its candidates didn't need to "advocate policies, campaign, or spend money," the judge said. Their voters would show up for them.

Oshry was called as a witness, but was so reluctant that it took many days and a court-issued warrant for his arrest to get him to finally appear and testify at trial on Feb. 27, the judge said. His and others' extreme evasiveness on the slating matter "suggests their understanding of how that process excludes blacks and Latinos," the judge wrote.

Even the rare nonwhite members who made it onto the board were still exiled from important discussions, like talks about settling this lawsuit, the judge said.

And while the board voted to decrease public school services, it also increased private school services. In one example, the 2017-2018 budget included money for five extra days' worth of private school transportation. The state's education commissioner rejected the budget.

The trial took place in February and March, with closing arguments held via Zoom, making them among the first Zoom trial proceedings in the country as the coronavirus crisis began to spread. All openings, closings and witness questioning at trial were done by Latham associates, according to the partners who oversaw their work.

The coronavirus crisis also had another impact on the trial: On April 30, after closings were finished, it took the life of one of the voting rights activist central to the case, Jose Vitelio Gregorio, who died before he was able to see the outcome of the trial. Gregorio had been in the midst of preparing for trial when he fell ill, according to Clubok, who called Gregorio's passing "heartbreaking."

Latham partner Claudia Salomon added Tuesday, "Jose was a strong advocate for public education in the district, and particularly for Latinos in the community."

The win serves "specifically to honor his memory, and for his family to know that his work had a beneficial outcome," Salomon said.

The NAACP is represented by Corey Calabrese, Russell Mangas, Rakim Johnson, Thomas Pearce, Elizabeth Sahner, Andrej Novakovski, Abhinaya Swaminathan, Nicole Scully, Meredith Cusick, Andrew Clubok, Claudia Salomon, Michael Faris, Serrin Turner, Marc Zubick of Latham & Watkins LLP, and Perry Grossman and Arthur Eisenberg of the New York Civil Liberties Union.

The school district is represented by David Butler, Randall Levine, Clara Kollm, Stephanie Schuster and

William Cravens of Morgan Lewis & Bockius LLP.

The case is NAACP Spring Valley Branch et al. v. East Ramapo Central School District et al., case number 7:17-cv-08943, in the U.S. District Court for the Southern District of New York.

--Editing by Breda Lund.

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