

2nd Circ. OKs NAACP's NY School District Voting Rights Win

By Sarah Jarvis

Law360 (January 6, 2021, 8:12 PM EST) -- The Second Circuit on Wednesday affirmed the NAACP's win in a bench trial over a Hudson Valley school district's effective block of Black and Latino voters' preferred candidates from the school board, supporting the finding that the district violated the Voting Rights Act.

Judge Rosemary S. Pooler, writing for the panel, said the "largely uncontested" facts that the Southern District of New York relied upon support the finding that minority candidates and residents were denied meaningful access to the slating process for the East Ramapo Central School District. Those facts include the failure of the district to conduct open calls for candidates, the inside connections candidates needed to be slated and the use of only "safe" or politically expedient minority candidates.

"We hold that the totality of the circumstances supports the finding of a [Voting Rights Act] Section 2 violation given the near-perfect correlation between race and school-type; the scant evidence supporting the district's claim that policy preferences, not race, caused election results; the board's blatant neglect of minority needs; the lack of minority-preferred success in elections; the exclusive, white-dominated slating organization; and evidence suggesting the district acted in bad faith throughout the litigation," Judge Pooler said.

The panel said white private school leaders had significant control over the slating process, which worked to ultimately exclude minority interests from the board.

After a bench trial — one of the first in the nation to feature remote proceedings in the wake of the coronavirus pandemic — U.S. District Judge Cathy Seibel found in May 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, Judge Seibel said.

The result was an almost exclusively white, private-school-favoring board that has made "numerous board decisions privileging private school interests [that were] 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 district court ordered the school district to 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 district primarily argued on appeal that at-large voting for board elections do not violate Section 2 of the Voting Rights Act because of the absence of "racial animus" on the part of Orthodox Jewish voters, according to the opinion. But the appellate panel said Congress rejected that line of thinking when it drafted the 1982 amendments to the legislation.

"The unique context of the Voting Rights Act and Congress' clear desire not to require a showing of racial animus indicate that 'on account of race or color' should not be interpreted to require but-for causation," Judge Pooler said. "In sum, our precedent and the legislative history make manifest that Section 2 claims do not require a showing of racial causation."

The panel said in its opinion that from 2008 to 2018, no candidate preferred by the minority population in the district won a contested board election and that each minority candidate who did win did so with the approval and support of the slating organization.

According to the opinion, a school board member said in an April 2018 message to an influential private school community leader that an attorney representing the district in this litigation indicated it would be good for the district's case to have a minority candidate "that the community could support" to run against another public school community candidate who one board member considered "aggressive."

That Black public-school candidate preferred by district leaders won a contested race in 2019 in an election that the district court found was "engineered." The appellate panel said in a footnote to Wednesday's opinion that the district's counsel's purported "advice" on the candidate was deeply troubling and bad legal advice.

"More disturbing, however, is that the advice appears to be directed at aiding the district in flouting the well-established and clear intent of the Voting Rights Act," Judge Pooler said. "Such deceptive posturing has no place in the legal profession."

Andrew Clubok of Latham & Watkins LLP, counsel for the NAACP, told Law360 that it's disgraceful that the school district spent so much money and time to try and prevent people from having their voices heard, adding that people in the school district will now have "a real voice in electing their own representatives."

He said it's important that the Second Circuit found that the district's justifications for its racially exclusionary policies were "not at all persuasive," and that it acted in bad faith.

Clubok called the appellate opinion gratifying, noting that it will help restore the voting rights of the minority population in East Ramapo. He said this is the case that he's proudest of in his career.

"This is the kind of case that people go to law school to be able to participate in," Clubok said.

Counsel for the school district did not immediately respond to a request for comment Wednesday.

Circuit Judges Rosemary S. Pooler, Peter W. Hall and Judge Denny Chin sat on the panel for the Second

Circuit.

The NAACP is represented by Corey Calabrese, Charles Dameron, Russell Mangas, Thomas Pearce, Elizabeth Sahner, Andrej Novakovski, Abhinaya Swaminathan, Nicole Scully, Andrew Clubok, Roman Martinez, Serrin Turner and 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, David B. Salmons, Stephanie Schuster and William Cravens of Morgan Lewis & Bockius LLP.

The case is Clerveaux et al. v. East Ramapo Central School District et al., case number 20-1668, in the U.S. Court of Appeals for the Second Circuit.

--Additional reporting by Cara Salvatore. Editing by Steven Edelstone.