Monday, February 10, 2020

In a short per curium opinion, the Sixth Circuit held that party officials’ appeal of an order compelling document discovery was moot after the court dismissed the gerrymandering challenge under the Supreme Court’s Rucho v. Common Cause decision.

In its challenge to Ohio’s redistricting, the Randolph Institute compelled discovery from GOP officials and groups for use at trial against Ohio. The Randolph Institute used 61 documents as exhibits and prevailed on its partisan-gerrymandering claims. But two months later Rucho held gerrymanders were nonjusticiable and the district court dismissed the case against Ohio. The “party third parties” subject to the discovery order, however, appealed the discovery ruling to the Sixth Circuit in Ohio A. Philip Randolph Institute v. Obhof.

As to the 61 trial docs, the Court of Appeals panel (Guy, Sutton, Griffin) held that “[t]here’s not much a court can do about preserving the confidentiality of information ‘widely available to the public.’” As to the documents that remained confidential, the “third parties have already gotten everything they could ask for,” in light of the Randolph Institute’s unchallenged assertion that it securely destroyed the materials. And as to the GOP’s concern about the use of this information during
there is nothing we can do to redress any injury caused by the spread of knowledge itself; those bells cannot be un-rung. As for the use of that knowledge, concerns about what might happen in a yet-to-be-filed future lawsuit are typically not enough to keep a present dispute live. That is particularly true here, where the third parties could easily identify illicit use and get a remedy from the court.

Even though the GOP couldn’t un-ring the bell with respect to the underlying knowledge, however, the news was not all bad for the appellants. The court vacated the trial court’s discovery orders under the Munsingwear doctrine, refusing to “compel the losing party to live with the precedential and preclusive effects of the adverse ruling without having had the change to appeal it.”

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