United States District Court,
N.D. Illinois, Eastern Division.

ASSOCIATION of COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), et al., Plaintiffs,
v.
James R. EDGAR, et al., Defendants.
No. 95 C 174.

Sept. 7, 1995.

MEMORANDUM OPINION AND ORDER

SHADUR, Senior District Judge.
Among other subjects dealt with at the August 7, 1995 monthly status hearing in this action, this Court directed the litigants to address certain questions raised by their earlier filings as to Illinois' implementation of the National Voter Registration Act of 1993 (the "Act," 42 U.S.C. §§ 1973gg to 1977gg-10[1]). All the parties have done so, and this memorandum opinion and order speaks to the three questioned aspects of Illinois' implementation.

Illinois Reg. § 215.70(f)(2) and (3)

Illinois' State Board of Elections ("Board") has adopted a set of regulations (cited "Reg. § ----") under the rubric "Part 215-Registration of Voters for Federal Elections Only." Among those provisions is a new one-a provision that has never been in existence under state election law-that permits election officials to require new applicants for voter registration to fill out an Address Verification Form before their registrations to vote become effective. Both the United States and the private plaintiffs (all of the latter acting through Maria Valdez, one of the LULAC attorneys) have supplemented their previously-expressed views, and defendants have simultaneously filed their additional response.

What is truly extraordinary about defendants' purported justification of the challenged provision is their lack of recognition of what their proposal really discloses about the sometimes grudging and inappropriate manner in which Illinois' officials have accepted their obligation to comply with the Act. From the very beginning of this action-well before our Court of Appeals upheld this Court's rejection of Illinois' ill-conceived objections to the Act's constitutionality-this Court made it plain that by its own terms the Act applies specifically to elections for *federal* office, which constitute the scope of Congress' jurisdiction as conferred by the Constitution (880 F.Supp. 1215, 1220-21 & nn. 10 & 11 (N.D.Ill.1995)). Hence this Court has sought to be meticulous about not intruding into rules and procedures that bear only on the conduct of state and local elections-except of course to the extent that such matters may nonetheless implicate the operation of the Act.

Almost alone among the states (apparently Mississippi is the only other state that has made the same choice), Illinois has opted for a cumbersome and expensive dual-registration approach to compliance with the Act. And its claimed justification for that choice has been its stated concern about the purity of its own elections for state and local office-its stated concern that if the Act's provisions were to be applied to *all* elections (as virtually every other state has chosen to do), there would be enhanced opportunities for fraud. If that expressed concern were truly sincere-that is, if it were the real reason for Illinois' refusal to adopt the Act's registration provisions across the board-one might expect that any solution that defendants consider appropriate to avoid the possibilities of fraud or other irregularities in any application-to-register process would *first* be adopted by defendants (or at least would be adopted simultaneously) as constraints on registration for Illinois' own state and local elections. Yet Reg. § 215.70(f)(2) and (3) establish an extra burden for federal elections only-a burden that keeps applicants off of the voting rolls until another threshold hurdle, which Illinois has *never* adopted for

[1] As before, this memorandum opinion and order will cite the statutory provisions "Act § ----" referring to the Act's internal numbering rather than to the numbering within Title 42. It is not necessary to provide a statutory conversion table, for the numbering within Title 42 is simply 42 U.S.C. § 1973gg followed by a number that is 2 less than the Act's internal numbering-thus Act § 8(a)(1) corresponds to 42 U.S.C. § 1973gg-6(a)(1). Citations to the legislative history (H.R.Rep. No. 103-9, 103d Cong., 1st Sess. 3 (1993) and S.Rep. No. 103-6, 103d Cong., 1st Sess. 3 (1993)) will respectively take the forms "H.Rep.----" and "S.Rep.----," referring to the page numbers of those congressional reports.

state elections, is cleared.[2]

But it is unnecessary to speculate further as to the sincerity or lack of sincerity of defendants' stated motives. This Court continues to consider, as it has from the outset, that such matters are for the Illinois citizenry to judge. Validity and not possible hypocrisy defines this Court's agenda in passing upon Illinois' implementation of the Act. And as to such validity, what controls here is that Reg. §§ 215.70(f)(2) and (3) are indeed invalid because they violate Act §§ 8(a)(1) and 8(b)(1) by imposing a requirement that is not authorized by those provisions. If any question existed in that respect (and it does not), both H.Rep. 14 and S.Rep. 30 expressly provide that an applicant's "registration is *complete* " when the application form alone is tendered to the appropriate office (or on the postmark date if the application form is mailed).

Defendants' purported justifications for that added requirement are just as empty as their professed concerns seem to be. First, defendants point to S.Rep. 24-25, astonishingly underscoring the last quoted sentence:

> Although the application for voting registration is simultaneous with an application for a driver's license, it is not the intent of the bill to supplant the traditional role of voting registrars over the registration procedure. The bill makes it very clear that the motor vehicle agency is responsible for forwarding voting registration applications to the appropriate State election official. It should be made very clear to any applicant in a driver's license bureau that the application for voter registration is an application which must be reviewed by the appropriate election officials. Only the election officials designated and authorized under State law are charged with the responsibility to enroll eligible voters on the list of voters. This bill should not be interpreted in any way to supplant that authority. *Election officials should continue to make determinations as to an applicants [sic] eligibility, such as citizenship, as are made under current law and practice.*

But that emphasis is truly bizarre, because defendants refuse to acknowledge that the requirement now at issue is *not* one that is "made under current law and practice." Second, defendants advance the equally bogus argument that because their proposed provision authorizes but does not require local election authorities to send address verification forms, that assures uniformity of application within each county, though not from county to county (their Additional Response 4 says "Nor can there be any legitimate concern about uniformity"). But that position is directly at odds with the provision of Act § 8(b)(1) that requires the uniformity and non-discriminatory nature of "[a]ny *State* program or activity to protect the integrity of the electoral process."

In sum, defendants' Reg. § 215.70(f)(2) and (3) are invalid in the respect challenged by plaintiffs. Illinois may not include a provision for the filling out and submission of an Address Verification Form before any applicant's registration to vote becomes effective.

Challenged Voter Affidavit

Under Illinois' proposals (as embodied in defendants' Manual on Implementation of the Act):

> 1. Any voter who has been on the inactive list and who denies a change of residence is permitted to vote only (a) after executing the Illinois Affidavit of Challenged Voter Form and (b) after providing corroborating identification mandated by three sections of the Illinois Election Code.
>
> 2. Any voter who changes residence to an address within the same election jurisdiction cannot vote except by executing the same Challenged Voter Affidavit.

Plaintiffs correctly urge that both of those provisions also violate the Act.

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[2] According to page 3 of the August 14 Supplemental Objections filed by the three plaintiffs other than the United States:

> Current law and practice does not include holding a registrant's application in limbo while an Address Verification Form is sent out. To the contrary, current law and practice allows for the registrant to be placed on the voter rolls and then an Address Verification Form is sent out.

Act § 8(e)(3), which deals with the first situation, allows such a registrant to affirm orally or in writing before an election official at the polling place that he or she continues to reside at the same address. But defendants would deny such a registrant the right to vote unless a *witnessed* written affirmation is furnished together with corroborating identification. Although the parties differ on whether the statutory reference to "oral or written affirmation" gives the option of choosing between those alternatives to the registered voter or to the election authorities, a straightforward reading of that provision suggests the former. But however the provision is read, there is no question that the requirement of witnessing is prohibited by Act §§ 9(a)(2), 9(b)(3) and (7)(a)(6)(A)(i) (cf. also H.Rep. 9). Nor does Act § 8(e)(2)(A) allow the state to require "corroborating identification." Hence the first of the challenged proposals is invalid.

As for the second proposed requirement, Act § 8(f) makes it the *registrar's* burden and not the registrant's to correct the voting registration list where a voter has changed from one address to another within the jurisdiction of the same registrar. That is additionally confirmed by Act § 8(e)(2)(A), which gives the registrant the option to make either an oral or a written affirmation of the address change (contrast the alternative provisions for written affirmation alone contained within the same statutory section). Again the Illinois proposal is inconsistent with the Act and is therefore invalid.

Spanish Language Requirements

In defendants' initial interim report (the one filed on June 22, 1995) defendants acknowledged that the Act's incorporation of the Voting Rights Act of 1965 (Act § 11(d)) required defendants to provide written voter registration assistance in the Spanish language to Cook County residents who needed it. But defendants have not addressed the requirement of the earlier legislation for *oral* language assistance for voter registration (see 42 U.S.C. § 1973aa-1a), which would also be incorporated into the Act.

As the United States points out, that obligation would appear to extend to a number of means for effectuating the Act's provisions as to Spanish-speaking prospective voters: "public service announcements in the Spanish language in the Cook County area, providing assistance in Spanish under the fail safe provisions of the Act, as well as providing oral and written assistance at all registration sites in Cook County" (United States Aug. 14 Response at 8). Defendants have not addressed this problem, and they should come prepared to do so at the next scheduled status hearing.