

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

FILED

SEP 19 1995

MILTON I. SHADUR, JUDGE
UNITED STATES DISTRICT COURT

ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM
NOW, (ACORN), et al.,

DOCKETED

SEP 20 1995

H. STUART CUNNINGHAM

Plaintiff,

v.

Civil Action No. 95 C 174
Judge Milton I. Shadur

JAMES R. EDGAR, et al.,

Defendants.

UNITED STATES' MEMORANDUM ON EQUITABLE RELIEF

I. INTRODUCTION

Plaintiff, the United States, submits to this Court, its memorandum on equitable relief which is sought against Illinois in order to achieve compliance under the National Voter Registration Act of 1993 ("NVRA" or "Act"), 42 U.S.C. 1973gg to 1973gg-10.

II. FACTS

On June 5, 1995, the Seventh Circuit confirmed this Court's March 31, 1995, order requiring the State of Illinois to comply with the "motor voter" law and enjoined the Illinois state officials "together with all other persons acting in concert with them, from failing or refusing to comply with the law (NVRA)". Association of Community Organizations For Reform Now (ACORN), et al. v. James R. Edgar, et al., 56 F.3d 791 (7th Cir. 1995). Based

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on its own reports, Illinois is failing to comply with the NVRA. On August 1, 1995, Illinois informed this court that agency and mail-in registration would begin on August 28, 1995. See Illinois' Report of August 1995. As of the date of this memorandum, Illinois has not instituted on-site voter registration in the required agencies or provided any mail-in registration applications to Illinois citizens. See Illinois Report of September 15, 1995. Furthermore, of the three states which have been ordered to comply with the NVRA, Illinois remains the only state which has not implemented agency and mail-in registration.¹

Therefore, on September 15, 1995, more than six months after this Court issued its order, more than three months after the Seventh Circuit issued its order and after Illinois scheduled a special federal primary election, the United States filed a request for an entry of an NVRA compliance schedule. Due to Illinois' "reluctance" to comply with the NVRA in an expeditious manner, the United States requests two additional categories of equitable relief: (a) that Illinois issue public service announcements concerning the availability of NVRA voter registration, and (b) that Illinois submit periodic NVRA compliance reports.

¹ California and Pennsylvania have both been ordered to comply with the NVRA, and have commenced implementation in all areas. California began implementation with 45 days of the district court's order and Pennsylvania began implementation within 60 days of the district court's order.

III. THIS COURT IS SPECIFICALLY EMPOWERED TO GRANT THE UNITED STATES' REQUEST FOR EQUITABLE RELIEF

The necessities of this particular case, primarily the upcoming special federal election, justify the equitable relief sought by the United States, and this Court is within its power to grant such relief. The United States Supreme Court has established that "the essence of equity jurisdiction has been the power [of the court] to do equity and to mold each decree to the necessities of a particular case." Weinberger v. Romero-Barcelo, 456 U.S. 305, 312 (1982). In Yakus v. United States, 321 U.S. 414, 440 (1944), the Supreme Court stated that "Courts of equity may, and frequently do, go much farther both to give and withhold relief in furtherance of the public interest." Consequently, the United States' request that Illinois publish and broadcast public service announcements to inform Illinois citizens about NVRA registration, and that Illinois submit specific NVRA compliance reports is certainly within this Court's equitable powers.

1. Illinois should be ordered to file a plan to publish and broadcast public service announcements.

The United States requests that Illinois be required to provide an aggressive public service campaign in order to inform its citizens about federal registration under the NVRA. The United States requests that Illinois be ordered to file a plan by September 21, 1995, to publish and broadcast public service announcements about the NVRA, in Spanish language media and media around the state, calculated to inform the largest percentage of

political registrants feasible, and that the plan be implemented no later than September 28, 1995. The NVRA has been in effect all year in most other states and many Illinois citizens have lost the chance to register to vote under the umbrella of opportunities afforded by the NVRA. With each passing day, and with Illinois' reluctance to fully implement the NVRA, more and more citizens are being harmed. Illinois should be required to furnish its citizens information concerning opportunities for federal voter registration.

The relief requested by the United States is not extraordinary. A similar request for equitable relief was granted in Cabrera v. Fischler, 514 F. Supp. 269 (E.D.N.Y. 1993), when the court required a real estate company to publish advertisements on non-discriminatory housing practices in a Spanish language newspaper, and in a local African-American newspaper, as well as keep an "applicant flow log" keeping relevant information about each applicant, including the applicant's race, color, or national origin which was to be used specifically for complying with the court's order.

2. Illinois should be ordered to submit detailed compliance reports to the Court.

The United States requests that Illinois be ordered to submit to the Court a detailed report on October 2 and October 15, 1995, and in each subsequent month thereafter, a list of each site (with addresses) where NVRA voter registration opportunities will be offered, and for each such site, (a) the number of persons offered the opportunity register during the reporting

period, (b) the number of persons registered for federal elections during the reporting period, (c) the number of persons registered for state and local elections during the reporting period, and (d) the number of persons (and racial and ethnic composition of such persons) being served, to the extent known.

Specific reporting requirements are not uncommon to orders invoking compliance with the certain federal statutes. For instance, reporting requirements have been ordered when states have failed to implement the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff. See United States of American v. State of Tennessee, Civil Action No. 3 90-0958 (M.D. Tenn. 1990) (required specific reports on the action taken by Tennessee in order to ensure that registered voters deployed to the Middle East in Operation Desert Storm were given the opportunity to vote) (attached); United States of America v. State of Delaware, Civil Action No. 92-523 LON (Del. 1992) (required reports to be filed concerning the process of mailing ballots to citizens located abroad, the number of valid absentee voters received by the counties, and to assure compliance with the Uniformed and Overseas Citizens Absentee Voting Act.) (attached).

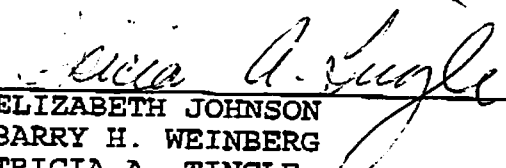
Moreover, the NVRA incorporates record keeping requirements and requires that states report to the Federal Election Commission. Section 8(i)(1) of the NVRA, 42 U.S.C. 1973gg-6(i), requires voter registration officials to maintain for at least two years and to make available for public inspection "all records concerning the implementation programs and activities

conducted for the purpose of ensuring the accuracy and currency of official list of eligible voters."

Since January 1, 1995, Illinois has attempted to avoid compliance with the NVRA and should be required to supply this Court, the United States and all private plaintiffs specific reports which indicate that Illinois is complying with the NVRA as mandated by this Court and affirmed by the Seventh Circuit, as well as inform its own citizens of the opportunity to register to vote under the NVRA. These requests are not unduly burdensome to the State and are necessary here to ensure prompt and full compliance.

JAMES B. BURNS
United States Attorney

Respectfully submitted,
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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing, United States' Memorandum on Equitable Relief and have been served on September 19, 1995, on the parties in this action, by placing a true copy thereof in a sealed envelope, and posting by first class mail (as well as service by fax) on September 19, 1995, addressed as follows which is the last known address:


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IN THE UNITED STATES DISTRICT COURT FOR THE
MIDDLE DISTRICT OF TENNESSEE
NASHVILLE DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TENNESSEE; BRYANT MILLSAPS,
SECRETARY OF STATE OF THE
STATE OF TENNESSEE; WILL BURNS,
COORDINATOR OF ELECTIONS OF THE
STATE OF TENNESSEE,

Defendants.

CIVIL ACTION NO.
8 90 - 0958
TEMPORARY RESTRAINING
ORDER AND PRELIMINARY
INJUNCTION

The Court, having considered the Application of the United States for a Temporary Restraining Order and Motion for Preliminary Injunction and the declarations filed in support thereof, and after service and notice to the State of Tennessee, and having heard counsel for the parties, hereby finds that:

1. Defendants have failed to take such steps as are necessary to ensure that certain overseas citizens who are duly qualified to vote absentee in the November 6, 1990, general election and who have applied in a timely fashion for absentee ballots by electronic transmission, will be given a reasonable opportunity to execute and return such ballots before the polls close on Tuesday, November 6, 1990.

2. There are reasonable grounds to believe that defendants' failure constitutes a violation of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. 1973ff et seq.

This document was entered on the docket in compliance with Rule 58 and/or Rule 79(a), FRCP, on 11-6-90 by [Signature]

3. Military personnel deployed in the Middle East as the result of Operation Desert Shield who are eligible to vote in the State of Tennessee under the aforementioned Act will be irreparably injured by defendants' failure because these military personnel have not been given a reasonable opportunity to apply for, execute and return absentee ballots before the polls close on Tuesday, November 6, 1990 and, as such, they will effectively be denied their right to vote in the November 6, 1990 general election.

4. Issuance of this order will serve the public interest by protecting the right to vote of American citizens overseas, specifically Operation Desert Shield personnel, as that right is set forth in the Uniformed and Overseas Citizens Absentee Voting Act.

5. The degree of harm, if any, that may be suffered by defendants as a consequence of this order is insignificant and, in any event, is outweighed by the irreparable injury which overseas military voters would suffer if this Order were not entered.

WHEREFORE, it is hereby ORDERED, ADJUDGED, and DECREED THAT:

[a] The defendants, their agents, officers, and employees, and all those persons in active concert or participation with them, are restrained and enjoined from failing or refusing to take such steps as are necessary to ensure that military personnel, deployed as part of Operation Desert Shield, who are duly qualified to vote absentee in the November 6, 1990 general

election and who have applied in a timely fashion for absentee ballots by electronic transmission ("fax"), will be given a reasonable opportunity to execute and return such ballots and have their ballots counted. Specifically, defendants shall transmit via fax or some other expeditious means of mailing an absentee ballot to those military personnel deployed as part of Operation Desert Shield who have sent, via electronic transmission, a timely absentee ballot application to the defendants or agents thereof. If such absentee ballots are received by defendants or agents thereof on or before the close of business on November 21, 1990 (and such ballots would have been counted as validly cast ballots if they had been received by the close of the polls on November 6, 1990), defendants shall count those ballots as validly cast ballots.

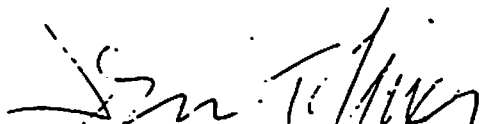
[b] It is further ORDERED that the defendants shall notify the Director of the United States Department of Defense's Federal Voting Assistance Program (FVAP) as soon as this order has been signed and request that the FVAP take such action as is necessary to notify these voters of the extension of time for receipt by Tennessee election officials of such ballots. The state shall assist the FVAP in whatever way necessary to publicize such extension of time.

[c] It is further ORDERED that within 60 days after the November 6, 1990 general election, defendants shall file a report with this Court which sets forth the action taken by the defendants pursuant to this Order. A copy of this report shall

be served on counsel for the United States of America. Such report shall include the details respecting those military personnel deployed as part of Operation Desert Shield and who have requested in a timely fashion via electronic transmission (i.e., fax) an absentee ballot for the November 6, 1990 election.

[d] It is further ORDERED that the Court sets November _____, 1990, at _____ o'clock, United States Courthouse, Nashville, Tennessee, as the time and place for the defendants to be heard, if they deem necessary, to seek dissolution or modification of this Order.

Dated this 5th day of November, 1990.


UNITED STATES DISTRICT JUDGE

times which could be considered sufficient for execution and return by September 12, 1992.

2. Defendants' failure to provide eligible uniformed services and overseas voters a reasonable opportunity to execute and return such absentee ballots would constitute a violation of the Uniformed and Overseas Citizens Absentee Voting Act, 42 U.S.C. §1973ff, et seq.

3. United States citizens located abroad who are eligible to vote in the State of Delaware under the aforementioned Act will be irreparably injured by this failure because they have not been given a reasonable opportunity to execute and return absentee ballots before the closing of polls on Saturday, September 12, 1992, and, as such, they will effectively be denied their right to vote in the September 12, 1992, federal primary election.

4. Issuance of this Order will serve the public interest by protecting the right to vote of American citizens overseas as that right is set forth in the Uniformed and Overseas Citizens Absentee Voting Act.

5. The degree of harm, if any, that may be suffered by Defendants as a consequence of this Order is insignificant and, in any event, is outweighed by the irreparable injury which uniformed services and overseas voters would suffer if this Order were not entered. Under ordinary circumstances, certification of election results would occur no sooner than Monday, September 14, 1992, and the request of the Government to postpone certification

until Friday, September 18, 1992, or as soon thereafter as possible, poses a minimum inconvenience to the State and the public at large as compared to the more serious loss of voting rights by overseas voters. Unofficial results would be available soon after the close of the polls on September 12, 1992.

6. Of those absentee voters who had to affirmatively request the ballots by submitting a completed application, only 16 have been returned as of this date. The threat of disenfranchisement is imminent in that the time by which those outstanding overseas votes must be received to be counted for this election is less than 29 hours from the issuance of this Order.

NOW, THEREFORE, IT IS ORDERED that:

1. The Defendants, their agents, officers and employees and all those persons in active concert or participation with them, are temporarily restrained and enjoined from failing or refusing to take such steps as are necessary to ensure that overseas uniformed services voters and other overseas voters who are qualified to vote in the September 12, 1992, federal primary election and who have applied in a timely fashion for absentee ballots will be given a reasonable opportunity to execute and return such ballots and have their ballots counted. If such absentee ballots are received by the appropriate election officials on or before 5:00 p.m. on Friday, September 18, 1992 (and such ballots would have been counted as validly cast ballots if they had been received by the close of the polls on Saturday,

September 12, 1992), Defendants shall count those ballots as validly cast ballots.

2. Defendants shall immediately inform all local election officials in the State of the provisions of this Order.

3. Defendants shall notify the Director of the United States Department of Defense's Federal Voting Assistance Program ("FVAP") as soon as this Order has been signed and request that the FVAP take such action as is necessary to notify overseas voters of the extension of time for receipt by Delaware election officials of such ballots.

4. Subject to subsequent Orders of this Court, within 45 days after September 12, 1992, Defendants shall file a report with this Court with respect to the September 12, 1992, primary election which sets forth the following information:

(a) the dates on which county election officials for each county in the State of Delaware began and completed the process of mailing ballots to citizens located abroad;

(b) the number of valid absentee ballots, by county, received and counted by the time the polls closed on Saturday, September 12, 1992, from citizens located abroad;

(c) the number of absentee ballots received and counted after the polls closed on September 12, 1992, but prior to 5:00 p.m. on September 18, 1992, from citizens located abroad; and