

JURISDICTION AND VENUE

2. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §1331, as the action arises under the laws of the United States. This Court also has jurisdiction under 42 U.S.C. §1973gg-9(b)(2), as the action seeks injunctive and declaratory relief under the NVRA.

3. Venue in this Court is proper under 28 U.S.C. §1391(b), because a substantial part of the events or omissions giving rise to the claim occurred in this district.

PARTIES

4. Plaintiff American Civil Rights Union, Inc., (“ACRU”) is a non-profit corporation, incorporated in the District of Columbia, which promotes election integrity, compliance with federal election laws, government transparency and constitutional government. Plaintiff ACRU brings this action in its individual and corporate capacities and also on behalf of its members and supporters who are registered to vote in the State of Texas.

5. The Defendant, Zavala County Tax Assessor Collector is the county registrar of voters. As registrar, the Defendant has the power to conduct voter registration and voter roll maintenance pursuant to Tex. Elec. Code Ann. § 12.001 and Tex. Elec. Code Ann. § 15.022(a).

6. Numerous Texas statutes vest power solely in the Defendant to maintain voter rolls and place responsibility on the Defendant to ensure that only eligible voters are on the rolls.

(a). Tex. Elec. Code Ann. § 15.022(a) mandates “[t]he registrar shall make the appropriate corrections in the registration records, including, if necessary, deleting a voter's name from the suspense list.”

(b). Furthermore, Tex. Elec. Code Ann. § 15.022(b) specifically requires the Defendant to, at least monthly, “request from the United States Postal Service any available information indicating address reclassifications affecting the registered voters of the county.”

(c). Tex. Elec. Code Ann. § 16.031 states that “[t]he registrar shall cancel a vote’s registration immediately on receipt of notice ... that the voter’s residence is outside the county; ... that the voter is deceased ... [of] a final judgment of the voter’s mental incapacity without the right to vote, conviction of a felony” and other notices indicating that the voter has an address outside the state or county for voting purposes. Tex. Elec. Code Ann. § 16.0331 states that “the registrar shall cancel the voter’s registration ... if a voter fails to submit to the registrar proof of citizenship” within 30 days of being mailed a notice requesting such proof after the voter is “excused or disqualified from jury service because of citizenship status....”

(d). Tex. Elec. Code Ann. § 18.003(a) requires the Defendant to prepare the certified list of registered voters eligible to vote in upcoming elections. This list is the government record which is used to determine eligibility to cast a ballot in a Texas election.

(e). For each election held in the county in a voting year, Tex. Elec. Code Ann. § 18.003(b) requires the Defendant to “prepare and furnish to the authority responsible for procuring election supplies a certified list of corrections.” This list must contain “(1) the name of each person for whom the information on a list of registered voters furnished under Section 18.001 or Section 18.002 has changed because of cancellation or correction; and (2) an indication that the person’s registration has been canceled or the corrected registration information.”

FACTUAL BACKGROUND

7. Defendant has a federal obligation to maintain accurate and current voter rolls which only contain the names of eligible voters residing in Zavala County. Federal law requires “local election officials [to] perform list maintenance with respect to the computerized [state] list on a regular basis.” 42 U.S.C. §15483(a)(2)(A). Moreover, Section 8 of NVRA requires

Defendant to “conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of – (A) the death of the registrant; or (B) a change in the residence of the registrant . . .” 42 U.S.C. §1973gg-6(a)(4).

Local election officials such as the Defendant are specifically obliged to carry out these list maintenance duties and remove ineligible voters from the rolls pursuant to 42 U.S.C. §1973gg-6(d)(3).

8. Section 8 of the NVRA also requires that Defendant shall “complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters.” 42 U.S.C. §1973gg-6(c)(2)(A). Section 8 of the NVRA mandates that any such list maintenance programs or activities “shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. §1973 *et seq.*)” 42 U.S.C. §1973gg-6(b)(1).

9. Also pursuant to Section 8 of the NVRA, Defendant “shall maintain for at least 2 years and shall make available for public inspection . . . all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters. . . .” 42 U.S.C. §1973gg-6(i).

10. Voter rolls maintained by the Defendant for Zavala County contain more voters registered to vote than citizens eligible to vote. Currently, 8,623 are registered to vote in Zavala County when only 8,205 age eligible citizens live in Zavala County.¹ This represents an implausible registration rate of 105 percent. This has been an ongoing problem in Zavala County

¹This includes 508 voters as of March 2014 who are on the “suspense list.” “An individual on the suspense list is still a registered voter and has the same rights as a non-suspense list voter” according to the Texas Secretary of State and may cast a ballot until such time as the Defendant takes steps to remove the registrant from the rolls. *See*, <http://www.sos.state.tx.us/elections/vr/index.shtml>

and has worsened since 2008. In January 2013, just after the November 2012 federal election, more than 104 percent of citizens old enough to vote were registered to vote in Zavala County. This marked an increase from 102 percent in 2008. Defendant is responsible for allowing this circumstance to occur. By failing to implement a program which takes reasonable steps to cure these circumstances, Defendant has violated NVRA and other federal list maintenance statutes.²

11. The failure of the Defendant to comply with its obligations under federal voter registration laws has undermined the confidence of Texas' properly registered voters in the integrity of the voter registration rolls and, accordingly, in the integrity of elections held across the State of Texas.

12. Zavala County election officials were sent multiple notices about failure to adequately maintain voter rolls throughout 2012 and 2013, including from the Plaintiff. On September 12, 2013, ACRU on its own behalf, on behalf of members and supporters of ACRU who are registered to vote in the State of Texas, sent a statutory notice letter to Zavala County election officials about failures to comply with federal voter registration laws. The letter explained that, according to 2010 Census information and publicly available voter registration data, Zavala County had more registered voters on the official list of registered voters than the county had citizens eligible to vote. The letter, *inter alia*, stated: "Simply, Zavala County has significantly more voters on the registration rolls than it has eligible live voters."

13. The September 12, 2013, letter also sought a variety of publicly available information which would tend to indicate whether or not the Defendant was in compliance with NVRA and other federal laws. Among the data requested were current registration data, the

² This is an action against the Defendant in her official capacity. Defendant's predecessor in interest was responsible for list maintenance during a sizeable portion of the period when the problem manifested and then became acute.

numbers of voters purged pursuant to maintenance obligations, the number of notices sent to inactive voters, the number of voters removed due to criminal conviction, and the most recent number of registered voters.

14. The September 12, 2013, letter also requested public inspection all records concerning “the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency” of official lists of eligible voters, explaining that such records were required to be made available under Section 8 of the NVRA.

15. The September 12, 2013, letter also gave notice that a lawsuit may be brought against to ensure compliance with the requirements of federal voter registration laws.

16. For months, the Plaintiffs have conducted discussions with the Defendant in an effort to obtain compliance with the NVRA, including multiple visits by Plaintiffs to Defendant’s offices to obtain a resolution to this dispute, as well as numerous discussions over seven months before filing of this Complaint, and thus the notice provisions of the NVRA are easily satisfied. Over the seven months of discussions and visits, problems with Zavala County voter rolls have not abated. Indeed, the data show that the problems have persisted. In November 2013, the total number of registrants was 8,626, and at the time of filing this Complaint in March 2014 the total number of registrants is 8,623. In November 2013, the total number of registrants on the suspense list was 449, and at the time of filing this Complaint in March 2014 the total number of registrants on the suspense list is 508. In November 2013, the percent of those registered who reside in and are eligible to vote in Zavala County was 105.13 percent and at the time of filing this Complaint in March 2014 the percent of those registered is 105.09 percent.

PLAINTIFF ACRU

17. Plaintiff ACRU is a corporation with individual members and supporters. Members and supporters enable the mission of ACRU and some make financial contributions to support this mission.

18. An essential and core mission of the Plaintiff is to foster compliance with federal election laws, promote election integrity and ensure that only eligible voters may participate in American election so as prevent dilution of legitimate votes by illegal votes.

19. Plaintiff has members and supporters in the State of Texas. Plaintiff's members and supporters in the State of Texas are registered to vote in the State of Texas. These members and supporters share Plaintiff's interest in the accuracy and currency of official lists of eligible voters in the State of Texas, as the accuracy and currency of these lists directly affects their right to vote.

20. Defendant's actions and omissions have injured and continue to cause injury to members and supporters of Plaintiff who are registered to vote in the State of Texas because they are undermining their confidence in the integrity of the electoral process and potentially diluting the effectiveness of their vote.

21. It is unlikely that any individual supporter would have the ability or the resources to take action to protect their individual interests or redress the injury to their right to vote absent collective action by Plaintiff.

22. Plaintiff itself has been and continues to be harmed by the failure of Defendant to provide substantive responses to requests for election data and the rights to inspect election records concerning the Defendant's voter list maintenance programs and activities, an issue of substantial public importance especially in an election year. Not only has the refusal of

Defendant denied Plaintiff the ability to obtain records and data about an issue of substantial public importance, but it also is preventing Plaintiff from analyzing such records and information and disseminating its findings to the public. Consequently, Defendant is injuring the ability of Plaintiff to carry out its public interest mission.

23. As an integral part of its public interest mission, Plaintiff disseminates information about compliance by state and local officials with federal election statutes, including election integrity statutes. A central activity of the Plaintiff is to promote election integrity and compliance with federal and state statutes which ensure the integrity of elections. Defendant's violation of NVRA has impaired and will impair Plaintiff from carrying out this public interest mission. Plaintiff itself has been harmed by Defendant's noncompliance with the NVRA

COUNT I

(Violation of the NVRA: Failure to Conduct List Maintenance)

24. Plaintiff realleges paragraphs 1 through 23 as if fully stated herein.

25. Defendant has failed to make reasonable efforts to conduct voter list maintenance programs, in violation of Section 8 of NVRA, 42 U.S.C. §1973gg-6 and 42 U.S.C. §15483(a)(2)(A).

26. Plaintiff has suffered an irreparable injury as a direct result of Defendant's violation of Section 8 of the NVRA and 42 U.S.C. §15483(a)(2)(A). Defendant's failure to comply with the NVRA has aggrieved plaintiff by impairing its essential and core mission of fostering compliance with federal election laws, promotion of election integrity and avoiding vote dilution when ineligible voters participate in elections.

27. Plaintiff's members and supporters in Texas will continue to be injured by Defendant's violations of Section 8 of the NVRA because confidence in the legitimacy of

elections in Texas will be undermined and burden their right to vote unless and until Defendant is enjoined from continuing to violate the law.

28. Plaintiff has no adequate remedy at law.

COUNT II

(Violation of the NVRA: Failure to Produce Records and Data)

29. Plaintiff realleges paragraphs 1 through 28 as if fully stated herein.

30. Defendant has not provided substantive statistical or quantitative responses to Plaintiff's written request for data, failed to produce or otherwise failed to make records available to Plaintiff concerning Defendant's implementation of programs and activities for ensuring the accuracy and currency of official lists of eligible voters for Zavala County, in violation of Section 8 of the NVRA, 42 U.S.C. §1973gg-6.

31. Plaintiff has suffered an irreparable informational injury as a direct result of Defendant's violation of Section 8 of the NVRA because the Plaintiff does not have the data and records requested. The NVRA confers upon Plaintiff an individual right to information, and by denying that information to Plaintiff, Defendant caused a concrete injury to Plaintiff.

32. Plaintiff will continue to be injured by Defendant's violations of Section 8 of the NVRA unless and until Defendant is enjoined from continuing to violate the law.

33. Plaintiff has no adequate remedy at law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff prays for a judgment:

1. Declaring that Defendant is in violation of Section 8 of the NVRA;

2. Enjoining the Defendant from failing or refusing to comply with the voter registration list maintenance requirements of Section 8 of the NVRA in the future;
3. Ordering the Defendant to pay Plaintiff's reasonable attorney's fees, including litigation expenses and costs, pursuant to 42 U.S.C. §1973gg-9(c); and
4. Granting Plaintiff further relief that this Court deems just and proper.

Respectfully submitted,

/S/ Eric Bayne

Eric Bayne
202 W. Academy Street
Del Rio, Texas 78840
(830) 469-9069
(830) 778-1613 fax
Eric@EricBayne.com

J. Christian Adams
ELECTION LAW CENTER, PLLC.
300 N. Washington Street, Ste. 405
Alexandria, Virginia 22314
(703) 963-8611
(703) 740-1773fax
adams@electionlawcenter.com
Pro Hac Vice to be filed

H. Christopher Coates
LAW OFFICE of
H. CHRISTOPHER COATES
934 Compass Point
Charleston, South Carolina 29412
(843) 609-7080
curriecoates@gmail.com
Pro Hac Vice to be filed

Attorneys for Plaintiff