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IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

LUTHER D. THOMAS, Clerk
By:  Deputy Clerk

<p>CHARLES H. WESLEY EDUCATION FOUNDATION, INC., <u>et al.</u>,</p> <p>Plaintiffs,</p> <p>v.</p> <p>CATHY COX, individually and in her official capacity as Secretary of State of Georgia; LINDA W. BEAZLEY, individually; and KATHY A. ROGERS, in her official capacity as Director of the Elections Division, Office of the Secretary of State of Georgia,</p> <p>Defendants.</p>	<p>CIVIL ACTION NO.</p> <p>1:04-CV-1780-WCO</p>
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CONSENT DECREE AND FINAL JUDGMENT

The above-captioned action was filed on June 18, 2004, against Defendants to enforce the provisions of the National Voter Registration Act of 1993, 42 U.S.C. §§ 1973gg et seq. ("NVRA"). Plaintiffs' First Amended Complaint alleges claims for relief under the NVRA; 42 U.S.C. § 1983; the Voting Rights Act; and the First, Fourteenth, and Fifteenth Amendments to the United States Constitution. Plaintiffs claim that Defendants violated their rights under federal law by (1) rejecting several voter registration applications that Plaintiffs had mailed to Defendants and which were timely received by Defendants, and (2) impermissibly regulating the right to conduct a voter registration drive at times and locations of their choosing, without the necessity of a deputy registrar's presence or permission.

On July 1, 2004, this Court issued a preliminary injunction ordering Defendants to accept and process the voter registration applications that Plaintiffs had submitted and to register any qualified applicants in that group to vote in time for the July 20, 2004, primary elections in Georgia, which included candidates for federal office. See Charles H. Wesley Educ. Found. v. Cox, 324 F. Supp. 2d 1358, 1369 (N.D. Ga. 2004). The Court further preliminarily enjoined Defendants from rejecting any voter registration application on the grounds that it was mailed as part of a “bundle,” collected by someone other than a registrar or deputy registrar, or for any other reason that is contrary to the provisions of the NVRA. Id. On May 12, 2005, the Eleventh Circuit affirmed. See Charles H. Wesley Educ. Found. v. Cox, 408 F.3d 1349 (11th Cir. 2005).

The parties have agreed that in order to avoid protracted, costly litigation, this controversy should be resolved without further litigation. Therefore, in lieu of a trial or final adjudication of any of the facts alleged by Plaintiffs, and based on the evidence of record in this Court, the parties consent to the entry of this Consent Decree. Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED as follows:

1. Based on the allegations contained within Plaintiffs’ First Amended Complaint, and as described in this Court’s order of July 1, 2004, and the Court of Appeals’ order of May 12, 2005, the Court finds and hereby **DECLARES** that the rejection of voter registration applications on the ground that they were submitted in a bundle, or by someone who was not a registrar or deputy registrar, violated the NVRA.

2. With the exception of Plaintiffs' claims under the NVRA and under 42 U.S.C. § 1983, alleging claims for deprivations of federal rights secured under the NVRA, the remainder of Plaintiffs' claims in the Amended Complaint are hereby **DISMISSED WITH PREJUDICE**. Plaintiff's claims under the NVRA and under 42 U.S.C. § 1983 are resolved as indicated herein.

3. The Court finds and hereby **DECLARES** that the 1995 policy of the Secretary of State's Office to reject voter registration applications on the ground that the applications were mailed in a bundle, or submitted by someone other than a registrar or deputy registrar, is inconsistent with federal law and is therefore invalid and unenforceable. The Court further finds and hereby **DECLARES** that, pursuant to the NVRA, private entities have the right to engage in voter registration activity within Georgia and that the Defendants cannot impose unreasonable burdens upon that right.

4. Defendants in their official capacities are hereby **PERMANENTLY ENJOINED** from rejecting any mail-in voter registration application on the basis that such application was collected by someone other than a registrar or deputy registrar, or submitted in a bundle rather than each application being mailed and postmarked separately.

5. It shall not be considered a violation of this Consent Decree for the State of Georgia to establish reasonable and non-discriminatory regulations that govern the conduct of private individuals that engage in voter registration activity within Georgia, so long as such regulations do not authorize or permit any election official to reject or refuse to process any

application solely on the basis of how such application was delivered or packaged or that such application was collected or transmitted by someone other than a registrar or deputy registrar.

6. Defendants in their official capacities shall accept and timely forward to the appropriate county board of registrars for processing any voter registration forms that are delivered to or otherwise received by the Secretary of State's office.

7. The Court finds and hereby **DECLARES** that Ga. Comp. R. & Regs. r. 183-1-6-.03 (as amended eff. 01/17/2006) cannot be construed in a manner that (a) requires or seeks to require the presence or permission of a registrar or deputy registrar whenever voter registration forms are to be accepted by or on behalf of any private entity or (b) restricts or seeks to restrict the times, locations, and circumstances wherein private entities may organize voter registration drives.¹

8. Within 21 days of the entry of this Consent Decree, Defendants shall send to all county boards of registrars within the State of Georgia a written statement in the form attached as Exhibit A to this Consent Decree, acknowledging that the Secretary of State's Office no longer interprets Ga. Comp. R. & Regs. r. 183-1-6-.03 to require the presence of registrars or deputy registrars at private voter registration drives; acknowledging the eradication of the anti-bundling policy; and acknowledging that neither the Charles H. Wesley Education Foundation, Inc., the Nu Mu Lambda Chapter of Alpha Phi Alpha Fraternity, Inc., nor any of their volunteers or members acted improperly and/or in violation of law by

¹ This litigation does not present, and therefore this Consent Decree does not address, the question of whether subparagraphs (3)(o)(2) and (3)(o)(3) of Ga. Comp. R. & Regs. r. 183-1-6-.03 constitute unreasonable interferences with the right of private entities under federal law to assist eligible citizens with voting and voter registration.

organizing voter registration drives and collecting and submitting completed applications to the Secretary of State. Along with that written statement, Defendants shall include a copy of this Consent Decree and shall notify such county boards of registrars that they are not authorized to take any action in violation of the Consent Decree. Defendants shall also, within 21 days of the entry of this Consent Decree, send a copy of the written statement attached as Exhibit A to this Consent Decree and a copy of this Consent Decree to the Wesley Foundation and to each of the approximately 63 applicants to whom Defendants had previously sent a letter notifying them that their voter registration applications had been rejected.

9. On or before March 31, 2006, the parties shall present to this Court a jointly negotiated proposed order regarding the attorneys' fees and costs that should be awarded to Plaintiffs and their counsel pursuant to 28 U.S.C. § 1920 and 42 U.S.C. §§ 1973gg-9 and 1988. Alternatively, in the absence of an agreement as to attorneys' fees, Plaintiffs shall file an appropriate motion for attorneys' fees and costs by March 31, 2006. Defendants shall file a response thereto and Plaintiffs shall file a reply, if desired, in accordance with Local Rule 7.1.

10. Pursuant to Fed. R. Civ. P. 58(a)(2)(B), this Consent Decree shall constitute a Final Judgment of this Court.

IT IS SO ORDERED, this 1st day of March, 2006.


WILLIAM C. O'KELLEY
Senior United States District Judge

IT IS SO ORDERED this _____ day of _____, 2006.

WILLIAM C. O'KELLEY
Senior United States District Judge

CONSENTED TO AND AGREED:

s/ Bradley E. Heard, Esq.

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ATTORNEYS FOR DEFENDANTS

[Official Secretary of State (Elections Division) Letterhead]

[DATE]

To All Chief Registrars:

I am pleased to inform you of the resolution of a lawsuit filed by a local nonprofit charitable foundation challenging the State of Georgia's compliance with the National Voter Registration Act of 1993 (NVRA) as it relates to the rights of private entities to engage in organized voter registration activity in Georgia.

The lawsuit was filed in U.S. District Court in Atlanta in June 2004 by The Charles H. Wesley Education Foundation, Inc., the charitable affiliate of the Nu Mu Lambda Chapter of Alpha Phi Alpha Fraternity, Inc. The Wesley Foundation's Complaint alleged that the Secretary of State's long-standing policy and practice of rejecting mail-in voter registration applications that were submitted in bundles and/or by persons other than registrars, deputy registrars, or the individual applicants, violated the provisions of the NVRA. This policy was put in place by the Elections Division in 1995 and had been continually enforced by this office since that time due to a concern over the disclosure of personal information contained on the voter registration forms. The Wesley Foundation filed its lawsuit after our office rejected several voter registration applications submitted by the Wesley Foundation and Nu Mu Lambda following a voter registration drive that they had organized in DeKalb County in June 2004.

In July 2004, Senior U.S. District Judge William C. O'Kelley issued a preliminary injunction requiring the Secretary of State's office to accept and process the applications submitted by the Wesley Foundation and prohibiting state election officials from rejecting any other voter registration applications solely because they had been submitted in bundles or by persons other than registrars or deputy registrars. The U.S. Court of Appeals for the Eleventh Circuit affirmed Judge O'Kelley's order in May 2005.

As part of the consent decree negotiated by the parties and approved by the Court, the Secretary of State's previous policy prohibiting bundling and requiring the presence of a registrar or deputy registrar at private voter registration drives has been declared to be in violation of the NVRA, and the Secretary of State's office has been permanently enjoined from enforcing that policy in the future. Therefore, by way of this letter, I am hereby notifying all state and local election officials that they are not authorized to reject applications submitted by private voter registration organizers solely on the basis that they were collected by private entities and/or submitted in a bundle. This makes permanent the directive issued to you by this office in July 2004, following Judge O'Kelley's entry of the preliminary injunction.

In addition, the consent decree clarifies that the recently-amended State Election Board regulation restricting the manner in which private entities may collect and submit voter registration applications cannot be construed in a manner that requires a registrar or deputy registrar at private voter registration drives or that regulates the times, locations, and circumstances wherein private groups can organize voter registration drives. However, the Court has provided that the State may establish other reasonable, nondiscriminatory

All Chief Registrars (Cont'd)

[DATE]

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regulations that govern the conduct of private entities that engage in organized voter registration activity within Georgia.

Although the voter registration forms submitted by the Wesley Foundation in June 2004 were inappropriately rejected in accordance with the prior policy of this office, I want to emphasize that neither the Wesley Foundation, the Nu Mu Lambda Chapter of Alpha Phi Alpha Fraternity, nor any of its volunteers or members were found to have engaged in any improper conduct in connection with their voter registration drives. In addition, as the courts' rulings in this case make clear, none of the Wesley Foundation-related entities or individuals violated the law by collecting and submitting voter registration applications in the manner that they conducted these activities. To the extent that any prior communication from or on behalf of this office (whether in court filings or to others) suggested otherwise, such communication is rescinded and withdrawn.

According to the Wesley Foundation's counsel, Bradley Heard, "The resolution of this matter by Secretary Cox and her office is a substantial and positive step in the effort to make voter registration accessible and available to all citizens." It is my desire that all citizens of Georgia continue to enjoy unimpeded access to the voter registration process, and that the legitimacy of the franchise and the privacy of individuals are protected.

Enclosed for your records and review is a copy of the consent decree entered by the court in this case. Should you have any questions in regard to this letter or the consent decree, please feel free to contact Kathy Rogers, Director of the Elections Division, or Cliff Tatum, Assistant Director of Legal Affairs for the Elections Division, at the number above.

Sincerely,

CATHY COX
Secretary of State

Enclosures

Cc: The Charles H. Wesley Education Foundation, Inc.
Georgia Voter Registration Applicants Participating in the June 12, 2004 Voter
Registration Drive at Stonecrest Mall