

JUN 2 2004
Wh...
Clerk

ORIGINAL

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

CHARLES H. WESLEY EDUCATION
FOUNDATION, INC.; JARU RULEY;
GEORGE L. SHAW, JR.; GERRIC
JOHNSON; MARCHAEUS BACON; and
EARLINE J. CRAWFORD,

Plaintiffs,

v.

CATHY COX, individually and in her
official capacity as Secretary of State of
Georgia; LINDA W. BEAZLEY,
individually and in her official capacity as
Director of the Elections Division, Office of
the Secretary of State of Georgia,

Defendants.

CIVIL ACTION NO.

1:04-CV-1780-WCO

JURY TRIAL DEMANDED

FIRST AMENDED COMPLAINT

Plaintiffs Charles H. Wesley Education Foundation, Inc. ("Wesley
Foundation"), Jaru Ruley, George L. Shaw, Jr., Geric Johnson, Marchaeus Bacon,
and Earline J. Crawford (collectively, "Plaintiffs"), by and through undersigned
counsel, submit their First Amended Complaint in the above-referenced matter as
follows:

3

INTRODUCTION

This is an action for declaratory and injunctive relief, compensatory and punitive damages, and attorneys' fees, in connection with Defendants' interference with voting rights secured under the constitution and laws of the United States, specifically the National Voter Registration Act of 1993, as amended, 42 U.S.C. §§ 1973gg et seq. ("NVRA") and the Voting Rights Act of 1965, as amended, 42 U.S.C. §§ 1971 et seq.

JURISDICTION AND VENUE

1. Jurisdiction is vested in this Court pursuant to 28 U.S.C. §§1331 and 1367.
2. Venue appropriately lies in this District and Division pursuant to 28 U.S.C. § 1391.

PARTIES

3. Plaintiff WESLEY FOUNDATION is a public Georgia nonprofit charitable corporation located in DeKalb County, Georgia. The Wesley Foundation is subject to the personal jurisdiction of this Court.
4. Plaintiff JARU RULEY is an individual male citizen of the United States and the State of Georgia. Mr. Ruley is subject to the personal jurisdiction of this Court.

5. Plaintiff GEORGE L. SHAW, JR., is an individual male citizen of the United States and the State of Georgia. Mr. Shaw is subject to the personal jurisdiction of this Court.

6. Plaintiff GERRIC JOHNSON is an individual male citizen of the United States and the State of Georgia. Mr. Johnson is subject to the personal jurisdiction of this Court.

7. Plaintiff MARCHAEUS BACON is an individual male citizen of the United States and the State of Georgia. Mr. Bacon is subject to the personal jurisdiction of this Court.

8. Plaintiff EARLINE J. CRAWFORD, is an individual female citizen of the United States and the State of Georgia. Ms. Crawford is subject to the personal jurisdiction of this Court.

9. Defendant CATHY COX (“Secretary Cox” or the “Secretary”) is, on information and belief, a female citizen of the United States of America and the State of Georgia and is subject to the personal jurisdiction of this Court. Secretary Cox is the elected Secretary of State of the State of Georgia and the chief elections official of the State of Georgia.

10. Defendant LINDA W. BEAZLEY (“Director Beazley” or “Ms. Beazley”) is, on information and belief, a female citizen of the United States of

America and the State of Georgia and is subject to the personal jurisdiction of this Court. Ms. Beazley is the appointed Director of the Elections Division of the Office of the Secretary of State of Georgia.

FACTUAL ALLEGATIONS

11. One of the Wesley Foundation's primary missions is to support and promote the charitable and educational endeavors and programs of its sibling organization, the Nu Mu Lambda Chapter of Alpha Phi Alpha Fraternity, Inc. ("Nu Mu Lambda"), an unincorporated domestic fraternal association located in DeKalb County. The Board of Directors of the Wesley Foundation is comprised principally of members of Nu Mu Lambda and, wherever feasible, the two organizations work in tandem on charitable and educational endeavors.

12. Plaintiffs Jaru Ruley, George L. Shaw, Jr., Geric Johnson, and Marchaeus Bacon are members of Nu Mu Lambda and active participants in Wesley Foundation-sponsored programs. On June 12, 2004, Plaintiffs Ruley, Shaw, Johnson, and Bacon, along with other members of Nu Mu Lambda, volunteered their services in a voter registration drive co-sponsored by Nu Mu Lambda and the Wesley Foundation.

13. Plaintiff Earline Crawford was one of several participants in a voter registration drive co-sponsored by Nu Mu Lambda and the Wesley Foundation on June 12, 2004.

14. Among its many community service activities, the Wesley Foundation¹ actively participates in a national voter registration and education program of Alpha Phi Alpha Fraternity, Inc., known as “A Voteless People is a Hopeless People.” Since its inception in the 1930s, the “Voteless People” program has sponsored numerous non-partisan voter registration and education activities that are principally designed to increase the voting strength and civic awareness and participation level of African-Americans.

15. Currently, Alpha Phi Alpha and the eight other predominately African-American Greek letter organizations that comprise the National Pan-Hellenic Council have pledged the support of their respective organizations to the National Coalition on Black Civic Participation’s “Unity ‘04 Civic Engagement and Voter Empowerment Campaign.” The goal of the “Unity ‘04” campaign is to register at least 1.5 million new African-American voters nationwide and to

¹Unless otherwise noted, references to the “Wesley Foundation” throughout this Complaint should be construed to include its sibling organization, Nu Mu Lambda.

maximize and mobilize voter turnout in the African-American community during the 2004 election season and beyond.

16. As part of its local commitment to the “Voteless People” and “Unity ‘04” programs, the Wesley Foundation has made plans to conduct several mass voter registration and education drives in the metropolitan Atlanta area during the 2004 election season. One of the principal goals of the Wesley Foundation’s efforts in this regard is to provide the most convenient and least restrictive means for registering the greatest number of eligible voters, wherever they may live, with particular emphasis on African-American voters in the 18- to 30-year-old range.

17. After examining the various means that United States and Georgia laws allow for private individuals and groups to conduct voter registration drives, the Wesley Foundation elected to conduct its registration drives in accordance with the mandates of the National Voter Registration Act and the Federal Election Campaign Act, as opposed to the voter registration procedures contained in the Georgia Election Code (O.C.G.A. §§ 21-2-210 to 21-2-236).

18. The Wesley Foundation chose to use the NVRA voter registration procedures because they provide the most flexible and least restrictive means by which to conduct mass, cross-county and multi-state voter registration drives. The Wesley Foundation considers the ability to offer voter registration services across

county and state lines to be particularly important to its efforts in the Atlanta metropolitan area, given that the area is comprised of approximately 28 counties, some of which border other states, and that the area draws a significant number of African-American tourists from across the nation, particularly in the summer months. The Wesley Foundation also wishes to retain the flexibility that the NVRA allows for private volunteer groups to make quick and independent decisions as to when and where to conduct voter registration drives and to conduct door-to-door voter registration and get-out-the-vote drives.

19. The Wesley Foundation felt that the voter registration procedures contained within the Georgia Election Code were too restrictive and inflexible to be effective for purposes of its “Voteless People” and “Unity ‘04” program implementation because, inter alia, the Georgia Election Code: (a) requires voter registration volunteers to be deputized by county elections officials; (b) does not allow for cross-county or multi-state voter registration; (c) requires that volunteer voter registration sites be pre-approved by county elections officials and published in the local media; (d) requires that voter registration drives be restricted to certain pre-announced and pre-published hours; (e) prohibits the collection of any voter registration applications other than those that originated from applicants in the

county where the drive was located; and (f) prohibits door-to-door voter registration efforts.

20. In examining the NVRA and the regulations and other information published by the Federal Elections Commission (“FEC”) and the U.S. Election Assistance Commission (“EAC”) in relation thereto, the Wesley Foundation learned that it was permissible under the NVRA and the Voting Rights Act for private organizations to collect the voter registration applications that they receive during a registration drive and to mail them in a bundle to the applicable state elections officials for processing. This information also provided that it was permissible, as a cost-saving measure, for volunteers to make photocopies of the NVRA-mandated national voter registration form on regular paper stock and to distribute those photocopied forms to eligible applicants.

21. Having researched and decided on the NVRA-authorized method of voter registration, the Wesley Foundation proceeded to plan for its first voter registration drive of the 2004 election season, which was to occur on Saturday, June 12, 2004, at The Mall at Stonecrest in Lithonia, DeKalb County, Georgia.

22. In the course of planning the drive, Plaintiffs learned that some other organizations had run into difficulties with Secretary Cox and Director Beazley when they submitted completed voter registration applications from Georgia

residents in a bundle to the Georgia Secretary of State's office. Accordingly, Plaintiffs' representatives sought clarification from Defendants as to whether they were taking the position that they would not accept bundled NVRA applications and, if so, on what basis they were making that determination. Plaintiffs specifically referred Defendants to the information provided by the FEC and the EAC, which specifically stated that such a practice was permissible under the NVRA and not a violation of the Voting Rights Act.

23. Plaintiffs also pointed out to Defendants that there is no provision in either the NVRA or the Georgia Election Code that expressly or impliedly prohibits the bundling and mailing of completed voter registration applications by private groups to the Georgia Secretary of State or that requires individual applicants to personally mail their applications, as opposed to allowing voter registration volunteers to submit such applications on their behalf. Indeed, as Plaintiffs pointed out, both the NVRA and the Georgia Election Code provide simply that states "shall accept" NVRA registration applications for voter registration purposes. (42 U.S.C. § 1973gg-4(a)(1); O.C.G.A. § 21-2-219(a).)

24. In response to Plaintiffs' inquiries, Defendants stated that, despite the advice of the FEC and EAC, it was their normal practice not to accept bundled NVRA registration applications from non-deputized volunteer voter registration

drive participants. Defendants claimed that their practice was based on their interpretation of the Georgia Election Code, which they contend requires that applicants individually mail their applications to the Secretary of State. On information and belief, when employing this practice, Defendants make no attempt to determine whether the applicants are qualified under state law to register to vote, nor do they forward such applications to the local county elections officials for a determination of the applicants' eligibility to vote, in accordance with the requirements of the Georgia Election Code.

25. On or about May 14, 2004, after receiving Defendants' response, the Wesley Foundation Plaintiffs immediately provided written notice to Defendants of their violations of the NVRA and requested that they remedy the noted violations within 20 days, pursuant to 42 U.S.C. § 1973gg-9(b). As part of the remedial action, Plaintiffs specifically requested that Defendants establish procedures for accepting properly completed NVRA voter registration applications without regard to whether they were individually mailed or bundled. More than 20 days has now passed, and Defendants' have failed or refused to take appropriate remedial action to correct their violations of the NVRA, in accordance with Plaintiffs' request.

26. On or about June 12, 2004, the Wesley Foundation conducted its previously-planned voter registration drive, in accordance with NVRA and FECA procedures, at The Mall at Stonecrest in DeKalb County, Georgia. The notices and placards posted at the event announced that the registration drive was being conducted pursuant to the authority of the NVRA, that volunteers would accept registration applications from qualified citizens of all 47 states that accept the NVRA form, and that voter registration services would be provided without regard to the political preferences of any person.

27. The Wesley Foundation Plaintiffs had made copies of the NVRA-mandated registration form on regular paper stock, as authorized by the FEC and the EAC, for use at their registration drive. Plaintiffs did not use any registration forms or other materials issued by or under the authority of Secretary Cox, nor did they represent to any member of the public that the registration drive was being conducted pursuant to the authority of the Georgia Election Code or any Georgia county board of registrars.

28. The Wesley Foundation also instructed its voter registration volunteers as to their duties and responsibilities as volunteers and obtained its volunteers' signed agreement to the same. In particular, the Foundation informed its volunteers: that all voter registration services were to be provided on a non-

partisan basis and without regard to the race, sex, religion, age, physical disability or native language of the voter; that all completed registration applications were to be treated as confidential and handled in a safe and secure manner at all times; and that federal and state laws provide severe felony criminal penalties, as well as civil sanctions, against any person who intentionally mishandles or tampers with a voter registration application, or misappropriates another's personally identifiable information, or interferes with any citizen's exercise of his or her constitutional voting rights.

29. During the drive, Wesley Foundation volunteers received and collected registration applications from Georgia residents within and outside of DeKalb County, including one from Plaintiff Earline Crawford. The volunteers also received and collected registration applications from out-of-state applicants. The overwhelming majority of the applications received were from African-American registrants between the ages of 18 and 30 years old, many of whom were first-time voter registrants.

30. At the conclusion of the drive, the Wesley Foundation representatives gathered the approximately 63 completed NVRA voter registration applications that they had received from Georgia residents and mailed them in a bundle to Secretary Cox for processing. They also bundled and mailed the out-of-state

applicants' applications that they had received to the relevant state elections officials.

31. On or about June 14, 2004, after receiving the completed Georgia applications in the U.S. Mail, Defendants' representative called Plaintiffs' representative to ascertain whether the Wesley Foundation had complied with the Georgia Election Code when it conducted its registration drive on June 12, 2004 (e.g., by having a DeKalb County deputy registrar on-site, having the site pre-approved by the DeKalb County Board of Registrars, publicizing the registration date and times in the local media, etc.). Plaintiffs' representative replied that the Wesley Foundation had conducted the drive pursuant to and in full compliance with the NVRA, but not necessarily in full compliance with the Georgia Election Code.

32. On or about June 17, 2004, Defendants' representative informed Plaintiffs' representative that Defendants were rejecting the completed voter registration applications transmitted to Secretary Cox by the Wesley Foundation and that they were refusing to transfer those applications to the appropriate county boards of registrars for a determination of their eligibility under Georgia law, because the applications were received in bundled fashion and because the Wesley

Foundation's registration drive was not conducted in accordance with the Georgia Election Code.

33. Defendants specifically acknowledged that their rejection of the 63 Georgia residents' completed applications less than a week before the June 21, 2004, registration deadline for the July 20, 2004, primary elections in Georgia would potentially result in many of those applicants not being qualified to vote in those elections and/or not having their voter registrations properly updated as requested prior to those elections.

34. On information and belief, all of the 63 completed applications transmitted to Defendants by Plaintiffs were received from individuals who then met and currently meet the qualifications established by Georgia and federal law to vote in federal, statewide, and local elections.

35. Defendants' refusal to accept the applications mailed by the Wesley Foundation and to transmit them to the applicable county boards of registrars would cause grave and irreparable harm to the Wesley Foundation and also to Plaintiff Crawford and the other Georgia residents who completed a valid NVRA voter registration application within the time frames required by law. The Wesley Foundation will continue to be irreparably harmed in their efforts to conduct multi-state and multi-county voter registration drives — particularly given the

significant damage to its reputation and good name in the community that is likely to arise from Defendants' wholesale rejection of the voter registration applications submitted by the Wesley Foundation. Likewise, Plaintiff Crawford and the other applicants who submitted their voter registration applications with the Wesley Foundation in good faith have been and will continue to be irreparably harmed by Defendants' interference with their fundamental voting rights under the constitution and laws of the United States, including their right under the NVRA to complete registration forms at private voter registration drives in locations convenient to them. Many of the 63 Georgia applicants will also be specifically and irreparably harmed by their inability to participate in the July 2004 statewide primary elections in Georgia, to the extent they were not able to resubmit voter registration applications to Defendants by or before June 21, as required by Defendants.

36. There is no provision of the NVRA or the Georgia Election Code that permits Defendants to reject completed NVRA voter registration applications that are submitted to them on the grounds that such applications were submitted in bundled form and/or by a private group that complied with federal law and procedures but did not comply with the voter registration procedures required of county registrars and deputy registrars under the Georgia Election Code.

37. The manner in which a completed registration application is submitted to the relevant elections official (whether individually mailed or bundled and mailed by a private voter registration group, or whether delivered by U.S. mail, private courier, or in person) bears no rational relationship to whether an applicant is qualified under applicable state law to vote.

38. Defendants' policy or practice of accepting or rejecting properly and validly completed voter registration applications from Georgia residents based solely on the manner in which they are delivered to an elections official, or on the manner in which they were collected by third parties, has the effect of applying different voting standards and qualifications upon individuals within the same jurisdiction, in violation of 42 U.S.C. § 1971(a)(2)(A), and is an unfair registration procedure within the meaning of the NVRA.

39. On information and belief, no other state elections official to whom the Wesley Foundation has transmitted completed NVRA voter registration forms in bundled fashion has failed or refused to accept such applications for processing in accordance with the NVRA on the grounds that the Wesley Foundation had either failed to follow state or local voter registration drive procedures and/or that it improperly bundled and mailed the applications.

**COUNT I: INTERFERENCE WITH RIGHTS UNDER THE
NATIONAL VOTER REGISTRATION ACT**

40. The previous Paragraphs of this Complaint are incorporated herein by this reference.

41. By their conduct as previously described in this Complaint, and in spite and willful disregard of Plaintiffs' submission of a prior written notice and a request for remedial action, Defendants have violated Plaintiffs' rights under the NVRA.

42. As a result of the unlawful actions of Defendants, Plaintiffs have been aggrieved, have suffered damage, and are entitled to declaratory and injunctive relief against Defendants in their official capacities. In addition, Plaintiffs are entitled to an award of their attorneys' fees and costs.

**COUNT II: DEPRIVATION OF RIGHTS SECURED BY THE
CONSTITUTION AND LAWS OF THE UNITED STATES
(42 U.S.C. § 1983)**

43. The previous Paragraphs of this Complaint are incorporated herein by this reference.

44. By their conduct as previously described in this Complaint, Defendants have, under color of state law, deprived Plaintiffs of rights secured under the constitution and laws of the United States, including but not limited to rights under the 14th and 15th Amendments to the U.S. Constitution; the NVRA; and the Voting Rights Act. Defendants acted knowingly, intentionally, and maliciously, in violation of clearly established law.

45. As a result of the unlawful actions of Defendants, Plaintiffs have been aggrieved, have suffered damage, and are entitled to declaratory and injunctive relief against Defendants in their official capacities, and to an award of their attorneys' fees and costs. Plaintiffs are also entitled to compensatory and punitive damages from Defendants in their individual capacities only.

PRAYER FOR RELIEF

WHEREFORE, premises considered, Plaintiffs demands a judgment in their favor against Defendants, and requests the following relief:

- a. A declaration that Defendants' actions, policies and practices complained of herein violate the rights of Plaintiffs as secured by the NVRA, the Voting Rights Act, 42 U.S.C. § 1983, and the U.S. Constitution;
- b. An order generally enjoining Defendants from violating the above-referenced federal statutes in the future;

c. An order preliminarily and permanently enjoining Defendants (and any county or local elections officials under Defendants' supervision) from engaging in any practice or applying any procedure to refuse to accept completed NVRA voter registration applications submitted to them solely on the grounds that such applications were submitted in bundled fashion, or by a delivery method other than U.S. Mail, and/or by volunteer voter registration drive organizers who complied with the NVRA but who did not fully comply with the voter registration provisions of the Georgia Election Code.

d. An injunctive order preliminarily and permanently directing Defendants to deliver or transmit to the appropriate county boards of registrars any and all voter registration applications received (or to be received) by Defendants from Plaintiffs at any point on or after May 14, 2004 (the date that notice of a violation under the NVRA was submitted by Plaintiffs to Defendants);

e. Compensatory, punitive, statutory, and other appropriate damages;

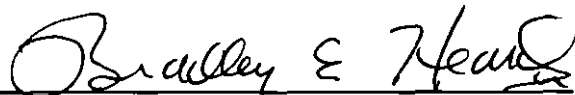
f. Costs and reasonable attorneys' fees in this action; and

g. Such other and further relief as the Court deems appropriate
and in the interests of justice.

Trial by jury is demanded on all counts so triable.

Dated this 23 day of June, 2004.

Respectfully Submitted,



Bradley E. Heard
Georgia Bar No. 342209
Attorney for Plaintiffs

THE HEARD LAW OFFICES, LLC
3695-F Cascade Road SW
Suite 1371
Atlanta, GA 30331-2105
Tel.: 404-344-9255
Fax: 404-344-7578

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

CHARLES H. WESLEY EDUCATION
FOUNDATION, INC., et al.,

Plaintiffs,

v.

CATHY COX, individually and in her official
capacity as Secretary of State of Georgia; LINDA W.
BEAZLEY, individually and in her official capacity
as Director of the Elections Division, Office of the
Secretary of State of Georgia,

Defendants.

CIVIL ACTION NO.

1:04-CV-1780-WCO

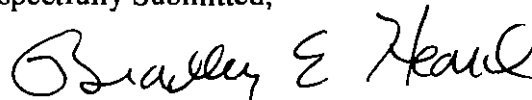
CERTIFICATE OF SERVICE

This will certify that I have this day caused to be served a copy of the within and foregoing **First Amended Complaint** upon the following parties by placing the same in the United States Mail, postage prepaid, addressed to:

Hon. Thurbert E. Baker
Attorney General of Georgia
40 Capital Sq SW
Atlanta GA 30334

Dated this 23 day of June, 2004.

Respectfully Submitted,



Bradley E. Heard
Georgia Bar No. 342209