

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA DEMOCRATIC PARTY,)
)
 Plaintiff,)
)
 v.)
)
 GLENDA E. HOOD, in her official)
 capacity as Florida Secretary of State,)
)
 Defendant.)
 _____)

Case No. 4:04CV405-SPM

INEZ WILLIAMS,)
)
 Plaintiff-Intervenor)
)
 v.)
)
 BRENDA SNIPES, in her official capacity)
 as Broward County Supervisor of Elections,)
 and GLENDA E. HOOD, in her official)
 capacity as Florida Secretary of State,)
)
 Defendants.)
 _____)

COMPLAINT IN INTERVENTION

INTRODUCTION

1. This action arises because of defendants’ refusal to register a fully qualified applicant to vote because of the failure to check the “yes” box to the question “are you a U.S.

citizen” on a line of the Florida Voter Registration Application Form even though the applicant has sworn, under oath and under penalty of perjury, that “I am a U.S. citizen” on another line of the same form. Defendants’ hyper technical requirements not only misread state law but they violate the federal Civil Rights Act of 1964, and the First and Fourteenth Amendments to the United States Constitution. Plaintiff also challenges defendants’ failure to timely process her voter registration application form and notify her of the disposition of the application. She seeks declaratory and injunctive relief against defendants. In addition, plaintiff seeks nominal damages against Defendant Snipes.

JURISDICTION

2. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of her rights under the Civil Rights Act of 1964, 42 U.S.C. § 1971(a)(2)(B), the National Voter Registration Act, 42 U.S.C. § 1973gg-6, and the First and Fourteenth Amendments to the United States Constitution.

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 and 1343(a)(3). Declaratory relief is authorized by 28 U.S.C. §§ 2201 and 2202, and injunctive relief pursuant to Fed.R.Civ.P. 65.

PARTIES

4. Plaintiff Inez Williams is a resident of Broward County, Florida, who meets all qualifications necessary to be a registered voter.

5. Defendant Brenda Snipes is the Supervisor of Elections for Broward County, Florida, and, *inter alia*, is the final policy maker with regard to registering Broward County

residents to vote. She is sued in her official capacity.

6. Defendant Glenda E. Hood is the Florida Secretary of State. As Secretary of State, she is the chief election officer of the state. Fla. Stat. § 97.012. She is sued in her official capacity.

FACTS

7. Defendant Hood has designed and promulgated a Florida voter registration application form that Florida citizens may use to register to vote. A copy of the application form is attached as Exhibit 1.

8. Line 2 of the Florida form asks, “Are you a U.S. citizen?,” and provides “Yes” and “No” check boxes.

9. Line 17 of the form contains an oath with, *inter alia*, the statement “I am a U.S. citizen.” The applicant must sign the oath, which also warns the applicant that if any information on the form “is not true, I can be convicted of a felony of the third degree fined up to \$5,000 and/or imprisoned for up to five years.”

10. Fla. Stat. §97.041 sets forth the qualifications for voter registration. A qualified voter must be at least 18 years old by the date of the next election, a citizen of the United States, a Florida resident, and a resident of the county in which she seeks to register. An ex-felon or an individual who has been adjudicated mentally incapacitated with respect to voting, may not register to vote unless their right to vote has been restored.

11. Fla. Stat. §97.053(5)(a) sets forth the criteria to be utilized to determine whether an application for voter registration is complete. Among other things, the application must contain “an indication that the applicant is a citizen of the United States.”

12. Plaintiff meets each and every requirement necessary to become a registered voter in Broward County, Florida. She is 77 years of age, and has been a naturalized citizen of the United States for approximately 30 years. She has never been convicted of a felony or adjudicated mentally incompetent.

13. Ms. Williams relocated to Broward County, Florida from New York in May of 2004. Because she has regularly voted and participated in the electoral process since becoming a U.S. citizen, she prepared and mailed in a voter registration application form in July so that she would be able to vote in the November 2, 2004 national election.

14. Ms. Williams's mail-in voter registration form was post-marked and received by Defendant Snipes on or about July 26, 2004.

15. The form Ms. Williams submitted contained all of the information required by Fla. Stat. §97.053(5)(a) to establish her eligibility to vote.

16. In signing the form, Ms. Williams swore, under oath and threat of criminal penalty, that she is a U.S. citizen. She also submitted her address, date of birth, the last four digits of her social security number, and affirmed that she had never been convicted of a felony or adjudicated mentally incompetent.

17. Defendant Snipes did not process Ms. Williams's voter registration application form or notify her of the disposition of her application within thirty days of July 26, 2004. In fact, Defendant Snipes did not send any notification to Ms. Williams regarding her application for approximately sixty days.

18. Defendant Hood's counsel, by letter dated September 28, 2004, notified every supervisor of elections in Florida that an application that did not have the "yes" box on the

citizenship question checked was not complete under Florida law and should therefore be rejected even if the applicant swore under oath on the same form that she was a citizen. A copy of the letter is attached as Exhibit 2.

19. On or about September 30, 2004, defendant Snipes sent Ms. Williams a notification that her voter registration was incomplete and had not been processed because she had failed to check the citizen box on line 2 of the voter registration application form. This was the first and only communication regarding her voter registration application that defendants provided to Ms. Williams. This notice did not provide Ms. Williams sufficient time to cure any defect in her application by the October 4, 2004 registration deadline for voting in the November 2 election.

20. Because the oath includes a certification of U.S. citizenship, the failure to check the “yes” box on line 2 is not material in determining whether plaintiff is qualified under Florida law to register to vote in the next election.

21. Plaintiff submitted her application early enough to have been registered to vote in the August 31, 2004, primary election.

22. Because of defendants’ failure to timely register plaintiff to vote, and to notify her of the disposition of her registration application in a timely manner, Ms. Williams was deprived of her right to vote in the August 31 election.

23. On October 5, 2004, the ACLU of Florida notified defendants that their rejection of voter registration applications for the sole reason that the citizenship box was not checked was a misinterpretation of state law and a violation of federal law. A copy of the letter is attached as Exhibit 3. Neither of the defendants responded to the letter.

24. On October 12, 2004, the ACLU of Florida again notified defendants that their actions were in violation of federal law and again offering to resolve the matter without litigation. A copy of the letter is attached as Exhibit 4. Neither of the defendants responded to the letter. Counsel for the Secretary of State did contact plaintiffs' counsel by phone on October 13 to request that plaintiff seek to intervene in *The Florida Democratic Party v. Glenda E. Hood*, Case No. 4:04cv405 (N.D. Fla.)(Mickle, J.), rather than to file a new action in the Southern District of Florida.

25. The deadline to register to vote for the November 2, 2004, election has passed.

26. Unless restrained by this Court, plaintiff will again be denied the right to vote because of the rejection of her voter registration application. Plaintiff will be irreparably harmed by such denial.

27. Plaintiff has no adequate remedy at law.

28. The actions of defendants complained of are under color of state law and, as to defendant Snipes, are pursuant to municipal custom, practice and policy.

29. Similarly situated applicants in Miami-Dade County have been permitted to register to vote and will be permitted to vote in November 2004.

FIRST CAUSE OF ACTION - DEFENDANTS SNIPES AND HOOD

30. Defendant Hood's policy, as implemented by defendant Snipes, is that voter registration applications submitted on Florida's voter registration application form should be rejected if the applicant has not marked the "Yes" check box next to the citizenship question. Defendant Hood has stated that this policy should be applied even in situations

where the applicant, by signing and dating the application, has attested, under penalty of perjury, that he or she meets this citizenship requirement.

31. Defendant Snipes has followed defendant Hood's policy and rejected plaintiff's voter registration application solely because she failed to mark the "Yes" check box next to the citizenship question.

32. Because plaintiff swore to an oath which included a certification of U.S. citizenship, the failure to check the "yes" box on line 2 is not material in determining whether plaintiff is qualified under Florida law to register to vote in the next election.

33. Defendants' rejection of plaintiff's voter registration application deprives plaintiff of her rights under 42 U.S.C. § 1971(a)(2)(B) and is actionable pursuant to 42 U.S.C. § 1983.

SECOND CAUSE OF ACTION - DEFENDANTS SNIPES AND HOOD

34. Defendants' failure to timely process plaintiff's voter registration application form and notify her of the disposition of her application violates plaintiff's rights protected by 42 U.S.C. § 1973gg-6 and is actionable pursuant to 42 U.S.C. § 1983.

THIRD CAUSE OF ACTION - DEFENDANTS SNIPES AND HOOD

35. Defendant Hood's policy, as implemented by defendant Snipes, has deprived, and will continue to deprive, plaintiff of the right to vote, in violation of the First and Fourteenth Amendments to the United States Constitution. This deprivation may be redressed pursuant to 42 U.S.C. § 1983.

FOURTH CAUSE OF ACTION - DEFENDANT HOOD

36. Some Florida counties, including Miami-Dade, have accepted voter registration application forms when the applicant has failed to check the citizenship box if the applicant has attested to citizenship by signing the oath.

37. Thus, applicants in Miami-Dade County who filled out the voter registration application form in the same manner as did plaintiff, were permitted to register to vote and will be able to vote in the November 2004 election. Plaintiff, a resident of neighboring Broward County, will not be able to vote.

38. Defendant Hood, who is charged with enforcing federal and state election laws in Florida, has an obligation to ensure that eligible voters are able to register to vote under uniform statewide standards. She has failed to do so. Instead, she has issued an opinion and policy that instructs county election supervisors to reject voter registration applications that are complete in all material respects, in violation of federal law, and in full knowledge that some Florida counties have registered individuals who did not check the citizenship checkbox. She has created a situation in which similarly situated individuals throughout the state are treated differently for voter registration purposes.

39. As a direct result of defendant Hood's failure to enforce a uniform, statewide standard of voter registration requirements, plaintiff has been deprived of her right to due process and equal protection of the laws as guaranteed by the Fourteenth Amendment to the United States Constitution. This deprivation may be redressed pursuant to 42 U.S.C. § 1983.

WHEREFORE, plaintiff respectfully requests this Court:

A. enter a declaratory judgment that the rejection of a Florida voter registration application form for the mere failure to check “yes” to the question “are you a U.S. citizen,” where the applicant has sworn, under penalty of criminal sanctions, that she is a U.S. citizen, violates the Civil Rights Act of 1964, 42 U.S.C. §1971(a)(2)(B), and the First and Fourteenth Amendments to the United States Constitution;

B. enter a declaratory judgment that plaintiff’s rights under the Civil Rights Act of 1964, 42 U.S.C. §1971(a)(2)(B), and the First and Fourteenth Amendments to the United States Constitution were violated by defendants’ failure to register plaintiff to vote in time for the August 31, 2004, elections;

C. enter a declaratory judgment that plaintiff’s rights under 42 U.S.C. § 1973gg-6 were violated by defendants’ failure to timely process her voter registration application form and notify her of defendants’ disposition of the form;

D. enter a preliminary and permanent injunction enjoining defendants from rejecting Florida voter registration application forms for the mere failure to check “yes” to the question “are you a U.S. citizen,” where the applicant has sworn, under penalty of criminal sanctions, that she is a U.S. citizen;

E. order defendant Snipes to add plaintiff to the voter registration rolls and ensure that her right to vote is not infringed on November 2, 2004;

F. award plaintiff nominal damages against defendant Snipes;

G. award plaintiff the costs and expenses of this action together with reasonable attorneys’ fees; and

H. retain jurisdiction of this case and grant plaintiff such other and further relief as may, in the discretion of this Court, be just and proper.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document was served by e-mail and overnight delivery, this 14th day of October, 2004, to the following:

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