

UNITED STATES DISTRICT COURT  
MIDDLE DISTRICT OF FLORIDA  
ORLANDO DIVISION

DAVID B. de TREVILLE	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.
	)	
DENNIS JOYNER, in his official capacity	)	
as Seminole County Supervisor of Elections,	)	
	)	
Defendant.	)	
_____	)	

VERIFIED COMPLAINT – INJUNCTIVE RELIEF SOUGHT

INTRODUCTION

1. Plaintiff David B. de Treville is a United States citizen currently living in Germany. Mr. de Treville’s last permanent residency was in Seminole County, Florida. The Uniformed and Overseas Citizens Absentee Voting Act (“UOCAVA”), 42 U.S.C. §§ 1973ff to 1973ff-6, requires state officials to accept and process voter registration applications from U.S. citizens living overseas and under the Acts’ provisions, Florida is the appropriate state in which plaintiff should register and vote. *See* §1973ff-6(5). Plaintiff meets all qualifications necessary to be a registered voter in the State of Florida. This action arises because defendant Dennis Joyner, Seminole County Supervisor of Elections, refused to register Mr. de Treville, and refused to send an absentee ballot to Mr. de Treville, even though the Supervisor had all information necessary to determine that Mr. de Treville was fully qualified to register to vote

and cast an absentee ballot.

2. Mr. de Treville's voter registration application was received by the Seminole County Supervisor of Elections' office by facsimile transmission in early August 2004. Although Mr. de Treville mailed the original application, it was apparently not received by defendant. Although defendant had plaintiff's facsimile signature and all information necessary under Florida law to determine that Mr. de Treville was eligible to register and receive an absentee ballot, defendant's office determined that plaintiff was ineligible because they did not have an original signature. Defendant's office did not inform Mr. de Treville of that determination until after the deadline to register to vote in the November 2004 elections.

3. Defendant's technical requirement not only misreads state law but violates the federal Civil Rights Act of 1964, and the First and Fourteenth Amendments to the United States Constitution. Plaintiff also challenges defendant's failure to timely process his voter registration application form and notify him of the disposition of the application. He seeks declaratory and injunctive relief, as well as nominal damages.

#### JURISDICTION

4. Plaintiff brings this action pursuant to 42 U.S.C. § 1983 for violation of his 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.

5. 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

6. Plaintiff David B. de Treville is a United States citizen living in Germany who meets all qualifications necessary to be a registered voter. His last permanent residency in the U.S. was in Seminole County, Florida.

7. Defendant Dennis Joyner is the Supervisor of Elections for Seminole County, Florida, and, *inter alia*, is the final policy maker with regard to registering Seminole County residents to vote. He is sued in his official capacity.

#### FACTS

8. Title 42 U.S.C. §1973ff-1 requires state officials to accept and process voter registration applications from U.S. citizens living overseas.

9. Fla. Stat. §97.041 sets forth the qualifications for voter registration. Plaintiff meets each and every qualification and is not disqualified for any reason set forth in that section.

10. Fla. Stat. §97.053(5)(a) sets forth the criteria that determine whether an application for voter registration is complete. Among other things, the application must contain the “Signature of the applicant swearing or affirming under the penalty for false swearing ... that the information contained in the registration application is true and subscribing to the oath required by s. 3, Art. VI of the State Constitution and s. 97.051.”

11. Plaintiff meets each and every requirement necessary to become a registered

voter in Seminole County, Florida. He is currently living in Germany and provided all information required by Fla. Stat. §97.053(5)(a). *See also* 42 U.S.C. §1973ff-6(5).

12. Plaintiff's registration form was faxed and received by defendant Joyner on or about August 4, 2004.

13. The form Mr. de Treville submitted contained all of the information required by Fla. Stat. §97.053(5)(a) to establish his eligibility to vote.

14. In signing the form, Mr. de Treville swore under penalty of perjury that he met each and every requirement to be a registered voter in Seminole County, Florida.

15. Defendant Joyner did not process Mr. de Treville's voter registration application form or notify him of the disposition of his application within thirty days of August 4, 2004. In fact, defendant Joyner did not send any notification to Mr. de Treville regarding his application until Mr. de Treville contacted defendant Joyner's office in October 2004.

16. On or about October 12, 2004, defendant Joyner sent Mr. de Treville an e-mail notifying him that his voter registration was incomplete and had not been processed because he had failed to submit an original signature. This was the first communication regarding his voter registration application that defendant provided to Mr. de Treville. This notice did not provide Mr. Treville sufficient time to cure any defect in his application by the October 4, 2004 registration deadline for voting in the November 2 election.

17. Because plaintiff's application in fact contained his signature, the failure of the postal service to deliver the original application to defendant's office, and therefore the

lack of an original application, is not material in determining whether plaintiff is qualified under Florida law to register to vote in the November election.

18. Plaintiff submitted his application early enough to have been registered to vote in the November 2004 election.

19. Because of defendant's failure to timely register plaintiff to vote, and to notify him of the disposition of his registration application in a timely manner, unless he receives immediate injunctive relief, Mr. de Treville will be deprived of his right to vote in the November 2004 election even though he timely filed his application and is fully qualified to vote.

20. On October 18, 2004, the ACLU of Florida notified defendant that his rejection of plaintiff's voter registration application misinterpreted state law and violated federal law. Because of the impending elections, prompt action was requested. A copy of the letter is attached to plaintiff's Memorandum in Support of Plaintiff's Motion for Temporary Restraining Order as Exhibit 2. Defendant did not respond to the letter.

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

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

23. Plaintiff has no adequate remedy at law because the denial of plaintiff's right to vote cannot be remedied through legal relief after the election has passed.

24. The actions of defendant complained of are under color of state law and were taken pursuant to municipal custom, practice and policy.

#### FIRST CAUSE OF ACTION

25. Defendant Joyner's policy to reject complete, faxed federal post card application forms for voter registration and absentee ballot requests, and his rejection of plaintiff's voter registration application deprived plaintiff of his rights under 42 U.S.C. § 1971(a)(2)(B) and is actionable pursuant to 42 U.S.C. § 1983.

#### SECOND CAUSE OF ACTION

26. Defendant's failure to timely process plaintiff's voter registration application form and notify him of the disposition of his 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

27. Defendant's policy 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.

WHEREFORE, plaintiff respectfully requests this Court:

A. enter a declaratory judgment that the rejection of a complete Federal Post Card Application for registration and absentee ballot that has been received, via facsimile transmission, by the Supervisor of Elections, 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 defendant's failure to register plaintiff and to send him an absentee ballot for the November 2004 elections;

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

D. enter a preliminary and permanent injunction enjoining defendant from rejecting complete Federal post card applications transmitted by facsimile;

E. order defendant Joyner to add plaintiff to the voter registration rolls and to immediately send, by the most expeditious method available, an absentee ballot to plaintiff so that he may cast his ballot for the November 2, 2004, election;

F. award plaintiff nominal damages against defendant Joyner;

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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Trial Counsel

Attorneys for Plaintiff

CERTIFICATE OF SERVICE

I certify that the foregoing document was served by facsimile transmission and by hand delivery, this 19<sup>th</sup> day of October, 2004, to the following:

Dennis Joyner, Supervisor of Elections  
Seminole County  
1500 E. Airport Blvd.  
Sanford, FL 32771  
Phone: 407-708-7700  
Fax: 407-708-7705

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Rebecca H. Steele, Esq.