

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF TENNESSEE

FILED
U. S. DISTRICT COURT
MIDDLE DISTRICT OF TENN.

SEP 27 2002

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF TENNESSEE; RILEY
DARNELL, Tennessee Secretary
of State, in his official
capacity; BROOK THOMPSON,
Coordinator of Elections of
the State of Tennessee, in his
official capacity; MIKE GREENE,
Commissioner of the Tennessee
Department of Safety, in his
official capacity; FREDIA WADLEY,
Commissioner of the Tennessee
Department of Health, in her
official capacity; NATASHA K.
METCALF, Commissioner of the
Tennessee Department of Human
Services, in her official
capacity; ELIZABETH RUCKEYSER,
Commissioner of the Tennessee
Department of Mental Health
and Developmental Disabilities,
in her official capacity; and
Wendell H. GILBERT, Commissioner
of the Tennessee Department of
Veterans Affairs, in his official
capacity,

Defendants.

BY _____
DEPUTY CLERK

CIVIL ACTION NO 03 02 0938

JUDGE HAYNES
JUDGE KNOWLES

COMPLAINT

The United States of America, Plaintiff herein, alleges:

1. This action is brought pursuant to the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg et seq., and 28 U.S.C. 2201.

2. This Court has jurisdiction over the allegations in this complaint pursuant to 28 U.S.C. 1331, 1345 and 2201, and 42 U.S.C. 1973gg-9.

3. Defendant State of Tennessee is one of the fifty states of the United States of America and is subject to the requirements of the NVRA.

4. Defendant Riley Darnell is the Secretary of State of the State of Tennessee, and is sued in his official capacity. Defendant Darnell is responsible for the administration of procedures for voter registration and the conduct of elections in the state, to which the requirements of the NVRA apply. Defendant Darnell is sued under both the first and second causes of action as set forth herein.

5. Defendant Brook Thompson is the Coordinator of Elections of the State of Tennessee, and is sued in his official capacity. Defendant Thompson has been designated as the chief State election official responsible for coordination of State responsibilities under the NVRA. Defendant Thompson is sued under both the first and second causes of action as set forth herein.

6. Defendant Mike Greene is the Commissioner of the Tennessee Department of Safety, and is sued in his official capacity. Defendant Greene is the chief administrative and executive officer of the State's motor vehicle driver's license agency. Defendant Greene is sued solely under the first cause of action as set forth herein.

7. Defendant Freida Wadley is the Commissioner of the Tennessee Department of Health, and is sued in her official capacity. Defendant Wadley is the chief administrative and executive officer of the State's health department, which has responsibility for several State offices that provide public assistance. Defendant Wadley is sued solely under the second cause of action as set forth herein.

8. Defendant Natasha K. Metcalf is the Commissioner of the Tennessee Department of Human Services, and is sued in her official capacity. Defendant Metcalf is the chief administrative and executive officer of the State's human services department, which has responsibility for several State offices that provide public assistance and services to persons with disabilities. Defendant Metcalf is sued solely under the second cause of action as set forth herein.

9. Defendant Elizabeth Ruckeyser is the Commissioner of the Tennessee Department of Mental Health and Developmental Disabilities, and is sued in her official capacity. Defendant Ruckeyser is the chief administrative and executive officer of the State's mental health and developmental disabilities department, which has responsibility for several State offices that provide public assistance and/or services to persons with disabilities. Defendant Ruckeyser is sued solely under the second cause of action as set forth herein.

10. Defendant Wendell H. Gilbert is the Commissioner of the Tennessee Department Veterans Affairs, and is sued in his

official capacity. Defendant Gilbert is the chief administrative and executive officer of the State's Veterans Affairs agency. Defendant Gilbert is sued solely under the second cause of action as set forth herein.

11. Sections 5 and 7 of the NVRA, 42 U.S.C. 1973gg-3 and 1973gg-5, require, among other things, that the State of Tennessee establish procedures for persons to register to vote in elections for Federal office through simultaneous application for a state driver's license (including a renewal application); through mail-in application; through application made at all offices of Tennessee agencies that provide public assistance and/or services to persons with disabilities, with each application for such service or assistance, and with each recertification, renewal or change of address form relating to such service or assistance; and through application made at other agencies of the State's choosing. Section 7(a)(4)(B) of the NVRA, 42 U.S.C. 1973gg-5(a)(4)(B), also requires that any Tennessee voter registration agency designated to provide services to a person with a disability at the person's home shall also provide the voter registration opportunity pursuant to its provisions at the person's home.

12. The State of Tennessee was required to implement the provisions of the NVRA beginning January 1, 1995.

13. The State of Tennessee designated the Tennessee Department of Safety as the agency subject to Section 5 of the NVRA, 42 U.S.C. 1973gg-3; and the Tennessee Department of Human

Services, the Tennessee Department of Health, the Tennessee Department of Mental Health and Developmental Disabilities, and the Veterans' Administration, as the agencies subject to Section 7 of the NVRA, 42 U.S.C. 19733gg-5.

FIRST CAUSE OF ACTION

14. In 1994, the Tennessee Legislature enacted legislation, codified at Tenn. Code Ann. § 2-2-201 et seq., designed to substantially conform the voter registration procedures of the State of Tennessee with the NVRA.

15. Section 5(a) of the NVRA, 42 U.S.C. 1973gg-3(a), requires that each State of Tennessee motor vehicle driver's license application (including any renewal application) submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.

16. Section 5(c) of the NVRA, 42 U.S.C. 1973gg-3(c), requires the State of Tennessee to include a voter registration application form for elections for Federal office as part of an application for a State motor vehicle driver's license.

17. Section 5(e) of the NVRA, 42 U.S.C. 1973gg-3(e), requires that a completed voter registration portion of an application for a State of Tennessee motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance, unless the application

is accepted within five days before the last day for registration to vote in an election, in which case it shall be transmitted not later than 5 days after the date of acceptance.

18. Defendants Darnell, Thompson, Greene, and their employees and agents at Department of Safety offices in the State of Tennessee, have failed fully to implement voter registration opportunities required by Section 5 of the NVRA, 42 U.S.C.

1973gg-3, in the following respects:

a. The Tennessee driver's license application neither serves as an application for voter registration, nor simultaneously provides a voter registration form with a Tennessee driver's license application form, for elections for Federal office, as required by Section 5(a) and 5(c) of the NVRA, 42 U.S.C. 1973gg-3(a) and 1973gg-3(c);

b. Completed voter registration applications accepted at State motor vehicle offices are not transmitted to the appropriate State election official within 10 days after the date of acceptance, as required by Section 5(e)(1) of the NVRA, 42 U.S.C. 1973gg-3(e)(1).

c. Completed voter registration applications accepted at State motor vehicle offices within 5 days before the last day for registration to vote in an election are not transmitted to the appropriate State election official within 5 days after the date of acceptance, as required by Section 5(e)(2) of the NVRA, 42 U.S.C. 1973gg-3(e)(2).

d. Defendants have failed to develop and implement substantive training procedures to ensure that Department of Safety agents, employees and representatives provide, process, collect, and transmit completed voter registration applications in compliance with Section 5 of the NVRA, 42 U.S.C. 1973gg-3.

e. Defendants have failed to develop and implement uniform rules governing the provision of applications for voter registration for Federal office, or the processing, collection, and mailing of completed voter registration applications, consistent with the requirements of Section 5 of the NVRA, 42 U.S.C. 1973gg-3.

19. Unless and until ordered to do so by this Court, Defendants will not provide eligible persons who apply for State driver's licenses at all offices of the Tennessee Department of Safety, the opportunity to register to vote in elections for Federal office in the manner that is required in Section 5 of the NVRA, 42 U.S.C. 1973gg-3.

SECOND CAUSE OF ACTION

20. As part of its obligation to begin implementation of the NVRA on January 1, 1995, the State of Tennessee was required by Section 7(a) of the NVRA, 42 U.S.C. 1973gg-5(a), to designate as voter registration agencies "all offices in the State that provide public assistance" and "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities"; as well as any other agencies that the State chooses to designate as voter

registration agencies. 42 U.S.C. 1973gg-5(a)(2) and 1973gg-5(a)(3)(A).

21. Employees and agents of those State agencies designated by Section 7(a)(2) of the NVRA, 42 U.S.C. 1973gg-5(a)(2), must ask their clients whether they wish to register to vote; distribute voter registration forms along with each application for the agency's benefits or services, including recertifications, renewals, and changes of address relating to such benefits or services; provide assistance to persons wishing to register to vote unless they refuse such assistance; and transmit the completed voter registration forms to the appropriate election official; in accordance with procedures set forth in Section 7(a)(4), 7(a)(6), and 7(d) of the NVRA, 42 U.S.C. 1973gg-5(a)(4) & (6), and 1973gg-5(d).

22. Defendants and their employees and agents at offices that provide either public assistance or state-funded programs primarily engaged in providing services to persons with disabilities, including but not limited to the Tennessee Department of Human Services, the Tennessee Department of Health, the Tennessee Department of Mental Health and Developmental Disabilities, and the Tennessee Department of Veterans Affairs, failed fully to implement the opportunity to register to vote in elections for Federal office in the manner specified by Section 7 of the NVRA, 42 U.S.C. 1973gg-5, in the following respects:

a. Failure to distribute applications for voter registration for elections for Federal office with each

application, recertification, renewal, or change of address form for the agency's benefits or services, as required by Section 7(a)(6)(A) of the NVRA, 42 U.S.C. 1973gg-5(a)(6)(A);

b. Failure to transmit completed voter registration applications accepted at the above-named Tennessee agencies to the appropriate State election official within 10 days after the date of acceptance, as required by Section 7(d)(1) of the NVRA, 42 U.S.C. 1973gg-5(d)(1);

c. Failure to transmit completed voter registration applications accepted at the above-named Tennessee agencies to the appropriate State election official within 5 days after the date of acceptance, as required by Section 7(d)(2) of the NVRA, 42 U.S.C. 1973gg-5(d)(2);

d. Failure to provide to their clients a form that contains the information required by Section 7(a)(6)(B) of the NVRA, 42 U.S.C. 1973gg-5(a)(6)(B), with each application, recertification, renewal, or change of address form for the agency's benefits or services;

e. Failure to implement substantive training procedures to ensure that the above-named agencies' employees, agents and representatives provide, process, collect, and transmit completed voter registration applications in compliance with Section 7 of the NVRA, 42 U.S.C. 1973gg-5;

f. Failure to develop and implement uniform rules governing the distribution of applications for voter registration, and the processing, collection, and mailing of

completed voter registration applications consistent with the requirements of Section 7 of the NVRA, 42 U.S.C. 1973gg-5.

23. Defendants' failure to provide the opportunity to register to vote in elections for Federal office in a manner consistent with Section 7 of the NVRA to persons who apply for services at all offices in the State of Tennessee that provide either public assistance or state-funded programs primarily engaged in providing services to persons with disabilities, including but not limited to the Tennessee Department of Human Services, Tennessee Department of Health, Tennessee Department of Mental Health and Developmental Disabilities, and the Tennessee Department of Veterans Affairs, constitutes a violation of Section 7 of the NVRA, 42 U.S.C. 1973gg-5.

24. Unless and until ordered to do so by this Court, Defendants will not provide eligible persons who apply for services from all offices in the State of Tennessee that provide either public assistance or state-funded programs primarily engaged in providing services to persons with disabilities, including but not limited to the above-named agencies, the opportunity to register to vote in elections for Federal office in the manner required in Section 7 of the NVRA, 42 U.S.C. 1973gg-5.

WHEREFORE, Plaintiff United States prays for an order:

1. Declaring that Defendants have failed fully to implement procedures as set forth under the provisions of the NVRA, 42 U.S.C. 1973gg et seq., which allow persons to apply to

register to vote in elections for Federal office, in violation of Sections 5 and 7 of the NVRA, 42 U.S.C. 1973gg-3 and 1973gg-5;

2. Enjoining the Defendants, their agents and successors in office, and all persons acting in concert with any of them from failing or refusing to comply with the requirements of Sections 5 and 7 of the NVRA, 42 U.S.C. 1973gg-3 and 1973gg-5; and,

3. Ordering the Defendants, their agents and successors in office and all persons acting in concert with any of them to:

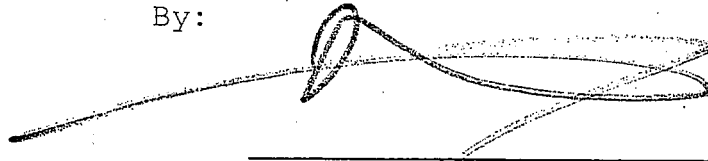
A. Take all steps necessary to offer the opportunity to apply to register to vote in elections for Federal office in the manner specified by Sections 5 and 7 of the NVRA, 42 U.S.C. 1973gg-3 and 1973gg-5; and

B. Provide the Court within 45 days from the date of the Court's order a plan designed to offer the opportunity to apply to register to vote in elections for Federal office in the manner specified by Sections 5 and 7 of the NVRA, 42 U.S.C. 1973gg-3 and 1973gg-5, to persons who apply for State driver's licenses and services from all offices in the State of Tennessee that provide either public assistance or state-funded programs primarily engaged in providing services to persons with disabilities.

Plaintiff further prays that this Court order such other relief as the interest of justice may require.

JOHN ASHCROFT
Attorney General

By:



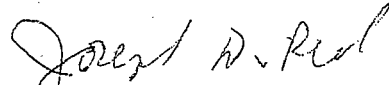
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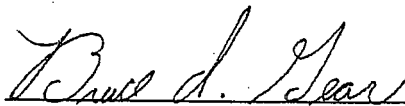
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