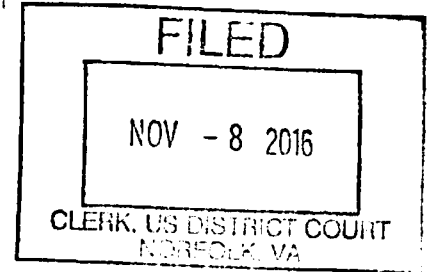


SUBJECT TO DEFECT

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION



THEODORE PACE,  
a Prospective Voter in the  
Commonwealth of Virginia,

CASE NO.: 2:16cv6541

Petitioner,

DONNA PATTERSON, General Registrar  
for the City of Virginia Beach

Respondent.

**Petition for *Ex Parte* Injunctive Relief**

COMES NOW, Theodore Pace ("Petitioner"), by and through undersigned counsel, and  
as for his Petition for Injunction Relief states the following:

**Jurisdiction and Venue**

1. Petitioner is a citizen of the Eastern District of Virginia and resides at 1912 Frizzell Drive, Virginia Beach, Virginia 23455. Mr. Pace was born on September 9, 1929 and is a veteran of the Korean War and retired with 20 years of continuous service in 1967 for the United States Air Force. He resides in the Eastern District of Virginia.

2. This matter presents a federal question for determination by the Court pursuant to the provisions of the Voting Rights Act and the Americans with Disabilities Act (42 U.S. Code § 12101 *et seq.*), including the Voting Accessibility for the Elderly and Handicapped Act and in connection with Rule 65 of the Federal Rules of Civil Procedure.

3. Petitioner is properly registered to vote and but for his current physical condition is able to vote with the aid of an absentee ballot.

4. Petitioner was brought to the emergency room of Sentara Norfolk General Hospital on the evening of Sunday November 6, 2016 with cardiac issues and difficulty breathing secondary to congestive heart failure.

5. Upon information and belief, Petitioner was admitted to a hospital, as defined by the Code of Virginia, sometime after midnight on Monday, November 7, 2016.

6. At 2:00 p.m. on November 7, 2016, petitioner was physically incapacitated and restrained by cardiac monitoring and intravenous pharmacological support in the critical care ward of the Sentara Norfolk General Heart Hospital. He remains there and will be for the entirety of Election day, November 8, 2016.

7. Pursuant to Virginia Code section 24.2-705, Petitioner had until 2:00 p.m. on Monday, November 7, 2016 to make an emergency request for an absentee ballot to be delivered to him. Petitioner was unable to fulfill the time requirement of Va. Code § 24.2-705 because of his physical incapacitation. This statute was ostensibly designed and promulgated for the protection of the voting rights of individuals in Petitioner's position, but it falls short in this instance and impairs, arbitrarily, a fundamental right.

8. In *United States v. Cunningham*, (E.D. Va., 2009) 2009 U.S. Dist. LEXIS 98010; 2009 WL 3350028, the Court entered an injunction requiring the counting of late-arriving absentee ballots because it found that the ballots were sent out late and this justified modifying the deadline. Furthermore, it is fundamental that the protections of Federal Law clearly preempt State law provisions that impair or limit a fundamental right. *Nat'l Fedn. of the Blind, Inc. v. Lamone*, 813 F.3d 494 (4th Cir. 2016). "The right to vote is "a fundamental political right." *Yick Wo v. Hopkins*, 118 U.S. 356, 370, 6 S. Ct. 1064, 30 L. Ed. 220 (1886). Indeed, "[n]o right is more precious," and "[o]ther rights, even the most basic, are illusory if the right to vote is

undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17, 84 S. Ct. 526, 11 L. Ed. 2d 481 (1964). "For our citizens overseas, voting by absentee ballot may be the only practical means to exercise [the right to vote]. For the members of our military, the absentee ballot is a cherished mechanism to voice their political opinion." *Bush v. Hillsborough County Canvassing Bd.*, 123 F. Supp. 2d 1305, 1307 (N.D. Fla. 2000).

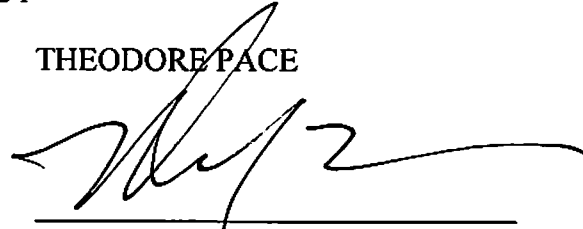
9. Va. Code § 24.2-705 is in conflict with the Americans with Disabilities Act and the Voter Rights Act, both of which preempt this statute. As stated by the U.S. Department of Justice, "Title II of the ADA requires state and local governments ("public entities") to ensure that people with disabilities have a full and equal opportunity to vote. The ADA's provisions apply to all aspects of voting, including voter registration, site selection, and the casting of ballots, whether on Election Day or during an early voting process." [https://www.ada.gov/ada\\_voting/ada\\_voting\\_ta.htm](https://www.ada.gov/ada_voting/ada_voting_ta.htm) . In addition, the Voting Accessibility for the Elderly and Handicapped Act of 1984 (VAEHA) requires that "voters must be provided an alternate means of voting on Election Day.

10. By not complying with a request for an absentee ballot which the Respondent did after due request by the undersigned in order to protect this precious right, the registrar is violating the Americans with Disabilities Act because there is no undue burden in providing the ballot and this situation substantially justifies modifying the otherwise applicable, but wholly arbitrary deadline of Va. Code § 24.2-705 just as the Court in *United States v. Cunningham* did.

11. By his signature below, undersigned counsel certifies that this matter presents an exigent circumstance inasmuch as the exercise of the vote will be futile after 7:00 p.m. today and that the registrar respondent was contacted about the matter of court relief earlier today.

WHEREFORE, for the foregoing reasons, Petitioner Theodore Pace, by counsel, requests that this Court Grant him injunctive relief and Order the Registrar for the City of Virginia to provide him forthwith an absentee ballot so that he will be allowed to cast his absentee vote today November 8, 2016 at the appropriate polling place.

THEODORE PACE

  
\_\_\_\_\_  
Of Counsel

Michael F. Imprevento, Esq.  
VSB No. 23926  
Breit Drescher Imprevento, P.C.  
600 22<sup>nd</sup> Street, Suite 402  
Virginia Beach, Virginia 23451  
757-670-3884 - Phone  
757-299-8035 - Fax  
[mimprevento@breitdrescher.com](mailto:mimprevento@breitdrescher.com)  
*Counsel for Petitioner, Theodore Pace*

## CERTIFICATE OF SERVICE

The undersigned counsel did, on the 8<sup>th</sup> day of November 2016 hand-deliver the pleadings filed in Civil Action number - 2-16 CV 654 to an Assisted United States Attorney.

A handwritten signature in black ink, appearing to read "W. F. H.", with a long horizontal flourish extending to the right.

8 Nov 2016

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF VIRGINIA  
NORFOLK DIVISION

THEODORE PACE,  
a Prospective Voter in the  
Commonwealth of Virginia,

CASE NO.: \_\_\_\_\_

Petitioner,

DONNA PATTERSON, General Registrar  
for the City of Virginia Beach

Respondent.

**Order**

This Cause came on this 8<sup>th</sup> day of November, 2016, to be heard upon the Petition filed by the Petitioner, Theodore Pace, by counsel seeking an Order commanding that the Registrar of the City of Virginia Beach provide him forthwith with an emergency absentee ballot and the matter was heard by the Court;

It appearing that Section 24.2-705 of the Code of Virginia sets an arbitrary deadline of 2:00 p.m. on the day before the election for an incapacitated person to seek an absentee ballot to be brought to him, and that the petitioner was physically incapacitated from doing so at that time, his right to vote would be impaired in the absence of an order granting relief. The Petitioner continues to be hospitalized and unable to vote and his right to participate in the 2016 election cycle will be extinguished if he is not provided with an absentee ballot;

It is therefore Ordered that the Registrar of the City of Virginia Beach provide to Michael F. Imprevento, Esquire as designated representative of Mr. Pace an absentee ballot for execution by him in accordance with law.

It further appears to the Court that the fundamental right to vote as set forth in the Voting Rights Act of 1965 and the Americans with Disabilities Act among other laws and statutes, that

the right to vote is a fundamental political right and that the petitioner was physically unable to request relief prior to 2:00 p.m. as set forth in the Virginia Code and that he should nonetheless be allowed to exercise his federally protected right to vote.

It is so Ordered:

DATE: \_\_\_\_\_

\_\_\_\_\_  
JUDGE



\_\_\_\_\_  
Michael F. Imprevento, Esq. (VSB No. 23926)  
Breit Drescher Imprevento, P.C.  
600 22<sup>nd</sup> Street, Suite 402  
Virginia Beach, Virginia 23451  
(757) 622-6000 Phone  
(757) 670-3895 Facsimile  
*Counsel for Ted Pace*

## **Initial Civil Case Assignment (Direct)**

**Case 2:16-cv-00654 has been directly assigned to:  
presiding Judge Rebecca Beach Smith from deck N-Civil (Civil Rights)  
referral Judge Douglas E. Miller from deck N-Civil (Civil Rights)MJ**

**Assign another case (Direct)?**

**Process Assignment Labels**



Court Name: United States District Court  
Division: 2  
Receipt Number: 24683832932  
Cashier ID: tgamborg  
Transaction Date: 11/08/2016  
Payer Name: BREIT DRESCHER IMPREVENTO

CIVIL FILING FEE  
For: BREIT DRESCHER IMPREVENTO  
Case/Party: D-VAE-2-16-CV-000654-001  
Amount: \$400.00

CHECK  
Check/Money Order Num: 10240  
Amt Tendered: \$400.00

Total Due: \$400.00  
Total Tendered: \$400.00  
Change Amt: \$0.00

BREIT DRESCHER IMPREVENTO, PC

2:16cv654