

FILED

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

JUL 7 1995

FILED ON _____

ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR REFORM NOW (ACORN), et al.,)

Plaintiffs,)

v.)

No. 95 C 174

JAMES R. EDGAR, etc., et al.,)

Defendants.)

MEMORANDUM ORDER

From the outset of these actions brought to uphold and enforce the National Voter Registration Act of 1993 (the "Act," 42 U.S.C. §§1973gg to 1973gg-10) in Illinois, this Court has been prepared to credit the defendants in these actions¹ with the traditional presumption that public officials, when their constitutional and other legal obligations are defined by judicial decree, will honor those obligations by conforming to them. Unfortunately Illinois has not met those expectations with

¹ Although the named defendants are Governor Jim Edgar and a number of other State of Illinois personnel, this opinion will follow (as this Court has previously done) the convenient though imprecise usage of speaking of the State itself as though it were the litigant. Because no Eleventh Amendment considerations are implicated by the Act's requirements, such references to "Illinois" in this opinion also pose no legal problem of that nature. Indeed, defendants' most recent submission (their Second Supplemental Submission Regarding Compliance) has proposed these provisions for inclusion as part of this memorandum order:

The State of Illinois is substituted as sole defendant in these proceedings. All other defendants are dismissed with prejudice.

At least for the present no such order will be entered--that possibility can await further developments in the case.

the alacrity that the just-described legal presumption anticipates (see this Court's May 24, 1996 memorandum opinion and order (the "May 1996 Opinion," 1996 WL 284959²) for further elaboration). It has not been until very recently (in fact, it was not until some time after the issuance of the May 1996 Opinion) that Illinois and its officials have exhibited the kind of compliance with their duties that should have been forthcoming from the outset.

Accordingly this order will provide for the necessary additional relief in implementation of this Court's original March 28, 1995 order of compliance with the Act (880 F.Supp. 1215), as modified by our Court of Appeals (56 F.3d 791)--for convenience that ultimate order of compliance will be referred to here as the "1995 Order." In material part this order conforms to Defendants' Second Supplemental Submission Regarding Compliance tendered June 17, 1996, but it also contains some added detail or added provisions to the extent required by Illinois' earlier delays in compliance.³

Prior Orders

As the basic judicial pronouncement governing this

² Citations to the May 1996 Opinion will refer to the WL * pagination.

³ This order has continued to give Illinois the benefit of the presumption referred to earlier, even though its officials' past performance (or nonperformance) for an extended period has not been such as to justify that level of confidence. This Court has done so in the hope and expectation that Illinois' most recent activities have marked a real shift from the type of reluctance that had been exhibited earlier.

litigation and the parties, the 1995 Order remains in full force and effect. This order modifies the 1995 Order only to the extent that the evidence submitted to this Court has demonstrated to be necessary to enforce Illinois' duties under the Act.

One other prior order of this Court should also be addressed at this time. Illinois is permanently enjoined from administering or enforcing the regulations invalidated by this Court's September 6, 1995 order.⁴

Lost Opportunities To Register

My Opinion at *2 identified the need for Illinois to afford registration opportunities to the enormous number of persons who were never informed of those opportunities because of Illinois' extended period of noncompliance with the Act:

[B]ecause Illinois voluntarily selected a route [to challenge the Act's constitutionality] that necessarily created delays in compliance, very large number of prospective registrants (those who would have been afforded the opportunity to register at the various enumerated Illinois offices between January 1, 1995 and the considerably later dates when such opportunities were first made available) have been deprived of their right to register expressly conferred by the Act.

To deal with that problem, Illinois shall take the following actions beginning not later than August 1, 1996 and continuing for the respective periods specified in the following portions of

⁴ Defendants have asked that an "appropriate judgment" be entered in that respect in accordance with Fed. R. Civ. P. ("Rule") 54(b). Because of the close interrelationship between that subject matter and the rest of this litigation, Rule 54(b) does not fit the situation well, and the permanent injunction order contained in the text should suffice for all purposes.

this order:⁵

1. Until September 30, 1996 Illinois shall provide a toll-free telephone number and a TTY/TDD number through which English-speaking or Spanish-speaking individuals may arrange to register under the Act. Each person calling the toll-free number shall be provided an explanation that such registration may be accomplished by requesting a mail-in registration form and shall upon request be provided with all necessary further assistance (in English or Spanish, as the case may be) for that purpose. Upon the request of any such individual, a mail-in registration form with prepaid postage shall be mailed to him or her. Each such form shall include a code so that an election authority receiving the form shall be able to identify the applicant as having registered during the process provided for in this order. Forms shall be available in any version presently in use (including but not limited to Spanish language).

2. For three consecutive weeks commencing August 1, 1996, both (a) the toll-free telephone number and (b) a statement that explains the registration opportunities and the deadline for registering to vote in the November 1996 general election shall be published prominently in the attached list of 143 newspapers statewide (subject to any changes in that list that may be

⁵ Illinois shall also prepare and disseminate to all news media, in advance of the August 1 date, a press release covering the various aspects of the program of providing voter registration opportunities hereafter described in Paragraphs 1 through 10.

occasioned by any newspapers on that list having ceased publication).

3. Until September 30, 1996 public service announcements (in both English and Spanish) that publicize the toll-free telephone number and explain the registration opportunities under the Act shall be provided to all radio and television stations statewide. Illinois shall also provide the same public service announcements to cable access television.

4. Until the voter registration cutoff date for the November 1996 general election, mail-in voter registration forms shall be offered to each individual who enters an Act-mandated facility, regardless of the reason that the person enters the facility. Each Act-mandated facility shall prominently display posters setting forth the registration opportunities under the Act and the availability of voter registration assistance. Posters in the Spanish language shall also be placed in those offices that serve material numbers of Spanish-speaking persons.

5. Until the voter registration cutoff date for the November 1996 general election, voter registration opportunities under the Act shall be offered at all of the Illinois Secretary of State's Department of Drivers Services facilities to each individual who applies for or renews a motor vehicle license plate or a motor vehicle registration sticker.

6. Until September 30, 1996 voter registration opportunities under the Act shall be extended (a) to all individuals who apply for or renew a motor vehicle license tag

(for that purpose the Secretary of State's Office shall attach a notice or sticker to, or shall include an informational insert in, the license tag renewal notices) and (b) to recipients of Illinois Department of Public Aid assistance checks (for that purpose that Department shall include an informational insert in the envelopes containing such checks). All such recipients shall be advised in both English and Spanish (a) that they have the opportunity to register to vote under the Act, (b) that such registration may be accomplished by calling the toll-free number and then by registering to vote by using the mail-in registration form and (c) that any questions in regard to the forms can be addressed by calling the toll-free number. Such recipients shall also be advised of the voter registration deadline for the November 1996 federal election.

7. For a three week period beginning on August 1, 1996 Illinois shall provide paid-for 30-second media spots in Spanish on Spanish-language radio and television stations providing information as to voter registration opportunities under the Act and publicizing the toll-free number. Illinois shall provide plaintiffs' counsel with (a) the names of the Spanish-language radio and television stations that are selected and (b) the dates and times that the spots are planned to be shown or aired.

8. Until the voter registration cutoff date for the November 1996 general election, voter registration opportunities under the Act and the toll-free number shall be publicized through placards (in both English and Spanish) placed within

approximately 3,500 Chicago Transit Authority buses and trains and PACE buses.

9. All mail-in registrations shall be sent to a single post office box maintained and controlled by the State Board of Elections ("Board"). All such forms shall be sorted by Board personnel expeditiously and shall promptly be routed to the appropriate local election authorities.

10. To implement all of the foregoing provisions in a manner that will facilitate the opportunity of new registrants to vote in the November 1996 federal election, Board's regulations shall be amended forthwith in the following respects, but solely with respect to that November 1996 election:

(a) Any voter who registers by mail under any of the foregoing provisions may vote by absentee ballot if he or she furnishes a written verification of good cause to his or her local election authority. Good cause shall include bona fide absence from the state to attend a college, university or other school.

(b) Local election authorities shall be permitted to correct erroneous mail-in registrations that are timely filed (i.e., postmarked 30 or more days before the election), even though such corrections are completed less than 30 days before the election.

Other Special Provisions as to Bilingual Assistance

As to Cook County, Illinois shall take all measures necessary to ensure full compliance with the bilingual portions of the Voting Rights Act of 1965 and related regulations, as referenced in the Act at 42 U.S.C. §1973gg-9(d)(1). Those measures shall include the provision of Spanish language written materials and Spanish language oral assistance to prospective registrants in accordance with the following:

(a) Spanish language written materials shall be provided with respect to registration assistance at (1) all Act-mandated offices and agencies, (2) all discretionary registration agencies and (3) all polling and other sites designated to effectuate fail-safe registration. "Written materials" include registration notices and forms, acknowledgment notices, confirmation mailings, declination forms, fail-safe voting notices and any other materials used to implement the Act.

(b) Sufficient Spanish language oral assistance shall also be provided, including but not limited to providing such assistance at every central agency site and at every site that falls in whole or in part in a census tract that is 5% Latino or Hispanic ("5% sites") according to the most recent census. At central agency sites and 5% sites, at least one person fluent in Spanish shall be available during office hours (or during polling hours if a polling site).

(c) Each registration site providing Spanish-language assistance shall post a sign in a conspicuous location stating in Spanish that "voter registration forms and assistance are available in Spanish."

(d) To the extent that Illinois does not have direct control over election authorities, Board shall promptly promulgate regulations that require:

(i) that the relevant bilingual written materials referred to in subparagraph (a) shall be provided at each central office location where voter registration occurs and at each polling site;

(ii) that sufficient bilingual oral assistance referred to in subparagraph (b) shall be provided in the same manner as provided at, and at all sites comparable to, those sites referred to in subparagraph (b); and

(iii) that signs shall be posted at each site specified for such oral assistance, conforming to the provisions of subparagraph (c).

As to the State of Illinois outside of Cook County, Illinois shall take all steps, including the promulgation of regulations, necessary to ensure that all agencies in Illinois that provide voter registration services under the Act, and that provide

bilingual assistance in their normal course of business, will provide the same degree of assistance when providing voter registration opportunities under the Act. Those steps shall include:

(a) All such agencies shall post a sign in a conspicuous location at each registration site that provides non-English language assistance stating (in the applicable language) that "voter registration forms and assistance are available in [name of language]."

(b) At any site required by law or state policy to provide non-English language assistance, Illinois shall take all appropriate steps to ensure that sufficient oral assistance is available on site to anyone who wishes to register to vote during normal agency hours.

Training

Illinois shall undertake whatever training sessions are or become necessary for its affected personnel to ensure implementation of the terms of this order.

Reporting Process

To facilitate the confirmation of Illinois' compliance with the provisions of the 1995 Order as supplemented by the terms of this order, by August 15, 1996 each Act-mandated agency shall implement and utilize a monthly voter registration tracking system that shall include the following information for the preceding month:

(a) the number of persons with whom the agency had contact, by site, for purposes of applying for services, recertification, renewal or change of address;

(b) the total number of completed voter registration applications taken at that site and transmitted to the local election authorities; and

(c) the total number of declinations at the site, including separate tallies of how many of the forms were checked "yes," "no" or unmarked.

Promptly after the end of each reporting month those tracking forms shall be sent to the general counsel of each agency. That general counsel shall then compile a monthly report, including site-by-site information, and shall forward the report to Board and to plaintiffs by the fifteenth day of each month, commencing not later than September 15, 1966. In addition, each agency shall maintain Act declination forms in a single place at each office offering voter registration opportunities and shall afford all parties prompt access to such forms upon request.

Illinois shall continue to file with this Court (and to provide to plaintiffs) the monthly filing reports of Illinois' compliance with the Act by the first court day of each month through February 1, 1997. Those monthly filing reports shall continue to examine questions and issues that arise during the reporting period and shall also include the steps undertaken to implement the 1995 Order as supplemented by this order.

Continuing Jurisdiction

This Court retains jurisdiction of these actions. It contemplates reviewing their status promptly after February 1, 1997, when the November 1996 election will have been held and it should be possible to have evaluated Illinois' performance under the Act in that context.



Milton I. Shadur
Senior United States District Judge

Date: July 16, 1996

City and Newspaper	Insertion Date	Space Units	Total	Rate	Group
(Constitutional Amendment advertising that ran for three consecutive weeks as					
Albion Prairie Post					
Aledo Times Record					
Albion News					
Alton Telegraph					
Amboy News					
Anna Gazette Democrat					
• Arlington Heights Daily Herald					
Arthur Graphic Clarion					
Astoria S. Fulton Argus					
Augusta Eagle					
Aurora, Copley Chicago Newspapers					
Barry Western Express					
Beardstown Gazette					
Belleville News Democrat					
Belvidere Republican					
Benton Evening News					
Bloomington Pentagraph					
Bluffs Times					
Bourbonnais Herald					
Breese Journal					
Bushnell Democrat					
Cairo Citizen					
• Canton Daily Ledger					
Carbondale Southern Illinoisan					
Carlinville Macoupin Co. Enquirer					
Carlyle Union Banner					
Carmi Times					
Carrollton Gazette Patriot					
Carthage Hancock Co. Journal Pilot					
Casey Reporter					
Centralia Sentinel					
Cerro Gordo					
Champaign News-Gazette					

City and Newspaper	Insertion Date	Specs Units	Total	Rate	Gross
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(Constitutional Amendment advertising that ran for three consecutive weeks as

- Charleston/Mattoon Journal Gazette
- Chicago, Citizen Newspapers
- Chicago, Daily Law Bulletin
- Chicago, Daily Southtown
- Chicago, Defender
- Chicago, El Dia
- Chicago, El Herald
- Chicago, El Impartial
- Chicago, El Manana
- Chicago, El Norte
- Chicago, Exito
- Chicago, Extra Community Newspapers
- Chicago, Impacto
- Chicago, La Opinion
- Chicago, LaRaza
- Chicago, Lawndale News Group
- Chicago, LaVoz
- Chicago, Lerner Newspapers
- Chicago, Momento
- Chicago, Polish Daily Zgoda (News)
- Chicago Reader
- Chicago Sun Times
- Chicago Tribune
- Christman Leader
- Clinton Daily Journal
- Crystal Lake Times
- Crystal Lake Northwest Herald
- Danville Commercial News
- Decatur Herald & Review
- Decatur Voice
- DeKalb Daily Chronicle
- DeKalb MidWeek

City and Newspaper Insertion Date Space Units Total Rate Gross

(Constitutional Amendment advertising that ran for three consecutive weeks as

- Dixon Telegraph
- Dongola Tri. Co. Record
- 1 Downers Grove Reporter
- 1 Downers Grove Suburban Life Graphic
- DuQuoin Evening Call
- East Dubuque Register
- Edwardsville Intelligencer
- Effingham Daily News
- El Paso Journal
- Eldorado Daily Journal
- Elizabethtown Independent
- 1 Elmhurst Press
- Fairbury Blade
- Fairfield Wayne Co. Press
- Farmington City Journal
- Flora Clay Co. Advocate Press
- Freeport Journal Standard
- Galena Gazette
- Galesburg Register-Mail
- Galesburg Post
- Geneva Kane County Chronicle
- Geneseo Republic
- Georgetown Independent
- Gilman Star
- Glen Ellyn News
- Golconda Herald Enterprise
- Granite City, Suburban Journals
- Granville Putnam Co. Record
- Grayslake, Lakeland Publishing
- Grayville Mercury Independent
- Greenup Press
- Greenview Review/Petersburg Observer
- Greenville Advocate

City and Newspaper

Insertion
Date

Specs
Units

Total

Rate

Gross

(Constitutional Amendment advertising that ran for three consecutive weeks as

Hardin Calhoun Herald

Hardin Calhoun News

Harrisburg Daily Register

Henry Republican

Herrin Spokesman

Hillsboro Journal

Hillsboro Montgomery Co. News

Jacksonville Journal Courier

Jacksonville Showcase

Kankakee Daily Journal

Kewanee Star Courier

Lacon Home Journal

LaFayette Prairie Shopper

Lanark Prairie Advocate

LaSalle Daily News Tribune

Lewistown Fulton Democrat/Havana Democrat

Liberty Bee Times

Lincoln Courier

Litchfield News Herald

Lombard, Lombardian

Louisville Republican

Macomb Journal

Manito Review

Marion Daily Republican

McLeansboro Times Leader

Metamora Herald

Metropolis Planet

Moline Dispatch/Rock Island Argus

Monmouth Review Atlas

Morris Daily Herald

Morrison Whiteside News Sentinel

Mounds Pultsci Enterprise

Mt. Carmel Republican Register

City and Newspaper

Insertion
Date

Specs
Units

Total

Rate

Gross

(Constitutional Amendment advertising that ran for three consecutive weeks as:

Mt. Pulaski Weekly News

Mt. Sterling Democrat Message

Mt. Vernon Register News

Murphysboro American

Nashville News

Neoga News

Newton Press Mentor

Noble County Commoner

Normal Normalite

Norris City Banner

Oblong Gem/Bridgeport Leader

Okawville Times

Olney Daily Mail

Ottawa/Streator Times Press

Pana News Palladium/Nokomis Free Press

Paris Beacon News

Paxton Daily Record

Pekin Daily Times

Peoria Journal Star

Peoria Observer

Perry County Journal

Pinckneyville Democrat

Pittsfield Pike Press

Pontiac Leader

Princeton Bureau Co. Republican

Quincy Herald-Whig

Ramsey News Journal

Rantoul Press

Robinson Daily News

Rochelle News

Rockford Journal

Rockford Register Star

Roseville Independent

City and Newspaper

Insertion
Date

Specs
Units

Total

Rate

Grand

(Constitutional Amendment advertising that ran for three consecutive weeks as

Rushville Times
Salem Times Commoner
Shawneetown Independent
Shelbyville Daily Union
Sorento News
Sparta News Plaindealer
Springfield Illinois Times
Springfield State Journal-Register
Stamton Star Times
Sterling Daily Gazette
Stronghurst County Quill
Sullivan News Progress
Sumner Press
Taylorville Breeze Courier
Thomson Carroll Co. Review
Tuscola Review
Vandalia Leader Union
Vienna Times/Goreville Gazette
Walnut Leader
Waterloo Republic Times
Watsela Times Republic
West Frankfort Daily American
West Salem Times Advocate
White Hall Greene Prairie Press
Wilmington Free Press
Winchester Times
Windsor News Gazette
Yorkville Kendall Record