

CONNECTICUT CITIZEN ACTION GROUP v. PUGLIESE

United States District Court District of Connecticut

September 27, 1984, Decided

Civil No. N 84-431

Reporter: 1984 U.S. Dist. LEXIS 24869

CONNECTICUT CITIZEN ACTION GROUP, et al.,
Plaintiffs, vs. BETTINA PUGLIESE AND JOHN J. ROCK,
Defendants.

contend will increase voter registration among the city's Spanish speaking and black populations.

Opinion

[*1] RULING ON PRELIMINARY INJUNCTION

Findings of Fact

The above action has been instituted pursuant to 42 U.S.C. 1983 claiming interference with rights of free speech and association guaranteed by the first and fourteenth amendments to the United States Constitution and also to 42 U.S.C. 1973, the Voting Rights Act of 1965, as amended, which legislation sounds in rights guaranteed by the fourteenth and fifteenth amendments to the constitution.

This court has jurisdiction over this action pursuant to 28 U.S.C. 1331, 1343, 2201, and 2202, and 42 U.S.C. 1971(d) and 1973j(d).

The plaintiff Connecticut Citizen Action Group (hereinafter "CCAG") is a Connecticut not-for-profit corporation, devoted to the economic and social interests of the poor and moderate income communities through participation in the political process.

The plaintiff Planned Parenthood of Connecticut, Inc. (hereinafter "PPC") is a Connecticut not-for-profit corporation which provides family planning counseling, medical care, and related services through clinics located throughout Connecticut.

Plaintiffs Harrell, Mejil, [*2] Williamson, and Henderson are citizens of the City of Waterbury who seek to be appointed as special assistant registrars. Harrell and Williamson are black, and Mejil is an Hispanic.

Plaintiffs Martinez, Cruz, and Serrano are Hispanic residents of the City of Waterbury who are not registered to vote.

The defendants are the Registrars of Voters of the City of Waterbury.

The plaintiffs seek a mandatory injunction requiring the defendant registrars to take certain actions that plaintiffs

Plaintiffs seek a mandate that the defendant registrars authorize volunteers to conduct both door to door canvassing and community registration drives. Plaintiffs also ask that the registrars provide certain bilingual registration materials, and that a Spanish interpreter be present at the registrars' office until voter registration closes in Connecticut, on October 17th, 1984.

The court found the following facts to be established by the complaint, the supporting affidavits, and the amended stipulation of facts agreed to by the parties. Thirty-six percent of Waterbury residents age 18 or above [*3] are unregistered to vote (approximately 27,500). This group contains a disproportionately high number of the city's Spanish speaking and black adults. According to the 1980 census, Waterbury's adult population is 4.9% Hispanic and 9.4% black.

Voter registration in Waterbury generally takes place at the registrars' office, across from city hall. The office's regular hours are from 8:50 until 4:50, Monday through Friday. Applications for registration are filled out primarily by the registrars and their staff, who speak directly with each applicant in order to gain the necessary information. Neither the defendant registrars, nor any of their staff speak Spanish. If an applicant requires a translator, the registrars may attempt to locate one, if one is available.

The registrars' office provides Spanish translations of the voter's registration oath, a Spanish absentee ballot and application, and Spanish change of address cards. The office does not provide approximately twenty bilingual publications and forms offered free of charge by the Secretary of State's office.

The registration procedures of the Waterbury office differ from that followed in Connecticut's other large cities. [*4] In both Bridgeport and Hartford, volunteers are routinely appointed to be special assistant registrars. After a training session of approximately one half hour, these special assistants canvass neighborhoods, conducting door to door registrations. The special assistants also hold "outreach" registration drives, registering adults in various community centers, clinics, and government offices. The

Hartford Registrar's Office appointed about 200 special assistants in 1984, and the Bridgeport office appointed more than 100. The Bridgeport assistants registered over 3,000 new voters, more than half from minority and low income neighborhoods.

The policy of the Waterbury registrars is not to appoint special assistants. The Waterbury registrars do not conduct door to door registration canvassing. The Waterbury office has held eight outreach sessions in 1984, one of which was held within the last six months. The eight sessions registered 261 new voters. The sessions included two Saturday registrations that had been requested by black community leaders, and one Saturday session at the city's Spanish Action Council.

As of September 29th, 1984, the registrars plan to hold five additional [*5] evening and weekend sessions, all of which are mandated by the Secretary of State. In addition, the registrars may hold an outreach session at the Spanish Action Council on Tuesday, October 2nd.

Plaintiff Maria Martinez is a former Hartford resident, who had been registered by Hartford special assistants during an outreach session. Now a Waterbury resident, Martinez is unregistered. Born and educated in Puerto Rico, Martinez speaks no English. Martinez alleges by affidavit that while in Waterbury, she has never seen any official Spanish-language information on voter registration. She alleges that her inability to speak English would prevent her from registering at the defendants' Waterbury office. Plaintiffs Maria Cruz and Pedro Serrano are also unregistered citizens who speak only Spanish. Cruz and Serrano claim to be unregistered because their lack of English speaking ability has prevented them from registering at the Waterbury office.

Plaintiff Martinez alleges that she learned of the registration procedure from a volunteer who came to her home. She claims that if the volunteer had been empowered to register her, she would now be registered.

Plaintiff CCAG is organized [*6] to increase the political power of minority and low income communities. The CCAG regularly canvasses low income neighborhoods, including those in Waterbury, encouraging residents to register to vote. To that end, plaintiff Merlin Mejil, a CCAG member, asked defendant Pugliese to appoint Mejil as a special assistant registrar. Pugliese informed Mejil that the Waterbury office does not appoint special assistants. Other CCAG members made the same request of the defendants, and were similarly refused. Had these CCAG members been permitted to serve as volunteer assistants, they would have been able to register many residents in the minority and low income neighborhoods that they canvassed. Their actions would have benefited both black and Hispanic citizens.

Plaintiff PPC has voter registration tables set up at its clinics in seven cities throughout Connecticut. Plaintiff Wendy Henderson, a PPC volunteer, asked to serve as a special assistant registrar in Waterbury, in order to register PPC patients. She was refused. Plaintiffs Bora Harrell, a CCAG member, and Hubert Williamson, director of Waterbury's Pearl Street Community center, also wish to serve as volunteer assistant registrars. [*7] Williamson, along with the CCAG and PPC plaintiffs, is registered to vote. Both CCAG and PPC seek to provide registration programs and facilities. Plaintiffs Mejil, Henderson, Harrell, and Williamson seek to be appointed as assistant registrars.

In support of the policies that plaintiffs challenge, the registrars point out that Waterbury's registration levels are higher than those of Hartford: 64% registration for Waterbury, 55% registration for Hartford. They claim that authorizing volunteers to serve as assistant registrars, as is done in Hartford, would increase the risk of fraudulent registration. The registrars' apprehension of fraud is not supported by any records of the Secretary of State's office, which has never received complaints implicating special assistant registrars in fraudulent activities.

Conclusions of Law

Claims at Issue

The plaintiffs who wish to be assistant registrars claim that the defendants' policies violate their *first* and fourteenth amendment rights to associate with others for political ends. The unregistered plaintiffs claim that the registrars' policies violate their constitutional right to participate in the electoral process and their right [*8] of political association. They claim that their right to vote is restricted because of their race or their inability to speak or read English, in violation of both the fourteenth and fifteenth amendments, and the Voting Rights Act of 1965, as amended. They claim that the Waterbury registrars' policies disadvantage the entire city: with proportionately fewer voters, Waterbury's representation within the state is restricted. Although plaintiffs have not requested class certification, they make their claims for themselves and all others similarly situated.

Defendant registrars first claim that the registered plaintiffs and the organizations CCAG and PPC lack standing to sue. They also argue that the unregistered plaintiffs, who do not sue as a class, are not entitled to the broad injunctive relief requested. They posit that the court's jurisdiction is limited to the three individuals. Defendants claim that the court may order the registration of Martinez, Cruz, and Serrano, but no more.

The Registered Plaintiffs' Standing to Sue

The two plaintiff organizations, CCAG and PPC, have established their strong and continued involvement in voter registration. The goal of both [*9] groups is to actively register new voters. Plaintiffs claim that the registrars' policies prevent the groups from achieving a significant part of their organizational purpose. Plaintiffs claim that they have suffered a direct injury from the policies challenged in this action. That claim is sufficient to support the standing of both CCAG and PPC. People Organized for Welfare and Employment Rights v. Thompson, 727 F.2d 167, 170 (7th Cir. 1984).

The individual plaintiffs who wish to be appointed as volunteer assistant registrars gain standing through their participation in voter registration work, and through their membership in the plaintiff organizations.

Class Certification

All plaintiffs in this action seek identical relief. They ask that volunteers who are legally qualified to be assistant registrars be permitted to serve in that role. The volunteers' door to door canvassing and community outreach drives would benefit not only the named unregistered plaintiffs, but all those in Waterbury's minority and low income neighborhoods. Increased registration might even benefit the city as a whole, giving it a greater voice in state and national elections.

The [*10] situation here is that "the very nature of [the case] requires that the decree run to the benefit not only of the named plaintiffs, but also for all persons similarly situated." Cook v. Luckett, 575 F. Supp. 485, 489 (S.D. Miss. 1983) (quoting United Farmworkers of Florida Housing Project, Inc. v. Delray Beach, 493 F.2d 799, 812 (5th Cir. 1974)). The effects of class certification will be gained even though no class is certified. In such a situation, class certification is "unnecessary and inappropriate." Id. at 490. Accord Denberg v. Blum, 93 F.R.D. 131, 132 (S.D. N.Y. 1982) (if benefits sought by plaintiffs would inure to all members of a class similarly situated, then class certification is "unnecessary").

Voting Rights Act

Plaintiffs' action, challenging a registrar's refusal to employ volunteers, appears to be the first such claim to be made under the Voting Rights Act. Section two of the act, relied on by plaintiffs, reads:

No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement [*11] of the right of any citizen of the United States to vote on account of race or color, or [membership in a language minority.]

The court finds that a valid claim under this provision need not allege that the registrars' had invidious intent to deny plaintiffs their right to vote. In contrast, the court finds that Congress' aim in amending section two was to eliminate the necessity of proving intent. Major v. Treen, 574 F. Supp. 325, 342-49 (E.D. La. 1983) (three judge court), cited in Jones v. Lubbock, 727 F.2d 364, 375 n.6 (5th Cir. 1984).

The act's section two is violated if a protected class has had "less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice." 42 U.S.C.A. 1973(b) (West Supp. 1983); United States v. Marengo County Commission, 731 F.2d 1546, 1556 (11th Cir. 1984). Violations of the Voting Rights Act are determined by the "results" of the challenged practices, considered as part of the "totality of the circumstances." Every factor may be weighted. Id. at 1565.

In Marengo County, the Court of Appeals for [*12] the Eleventh Circuit applied the "results" test to a claim of vote dilution, charged against an at-large voting system. The court noted that low minority elected representation is not, by itself, proof of dilution. Nor is unresponsiveness of government to minority needs. But "where a minority can demonstrate a lack of access to the process," then government unresponsiveness becomes significant. Id. at 1565 n.31, quoting Zimmer v. McKeithen, 485 F.2d 1297 (5th Cir. 1973) (en banc) aff'd per curiam sub nom. East Carroll Parish School Board v. Marshall, 424 U.S. 636 (1976).

Other typical factors" of illegal vote dilution were described, such as a history of official infringement of minority registration, and minorities' impairment in "their ability to participate in the political process. Id. at n.32.

"Unresponsiveness" to minorities, highlighted in the Marengo opinion, characterizes the Waterbury registrars. In its brief, amicus curiae, the State wrote that the registrars "have failed to utilize any of the available tools to increase registration." The State stressed that the discretionary system of appointing volunteer registrars, Connecticut [*13] General Statute 9-192, was designed to allow each municipality to form its own registration procedure. Using the statute to forbid all volunteer assistance is, the State concluded, a burden on plaintiffs' first amendment rights.

Unresponsiveness characterizes the absence of door to door canvassing, the scarcity of outreach sessions, the registration of 200 voters compared to Bridgeport's 3,000. Unresponsiveness barely describes the registrars' failure to provide bilingual registration forms available to them at no cost from the state. This unresponsiveness, coupled

with the unregistered Hispanics "lack of access" to the political process, makes for the "totality of the circumstances" that indicate a Voting Rights Act violation.

Preliminary Injunction

The standard for granting a preliminary injunction is described by the Court of Appeals for the Second Circuit as a two part test:

Preliminary injunctive relief in this Circuit calls for a showing of "(a) irreparable harm and (b) either (1) likelihood of success on the merits or (2) sufficiently serious questions going to the merits to make them a fair ground for litigation and a balance of hardships tipping decidedly toward [*14] the party requesting relief."

Jack Kahn Music Co. v. Baldwin Piano & Organ Co., 604 F.2d 755, 758 (2d Cir. 1979), quoting from Jackson Dairy, Inc. v. H.P. Hood and Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979) (per curiam).

The group of unregistered plaintiffs have demonstrated that, but for assistance of volunteers, they could not be registered to vote. The registrars' refusal to authorize volunteers thus restricts a fundamental right; it constitutes an irreparable harm. See Anderson v. Celebrezze, 460 U.S. , 103 S.Ct. 1564, 1569 (1983). The first prong of the Jack Kahn test is met by plaintiffs here.

The second prong presents a more difficult question. The Supreme Court cautioned in Anderson v. Celebrezze that challenges to election laws cannot be resolved by "any "litmus paper test." Id. at 1570 (citing Storer v. Brown, 415 U.S. 724, 730 (1974)). To determine either the likelihood of success or the seriousness of an election law

challenge, the court must balance the "character" of the asserted injury against the government interest at stake. Id. at 1570.

This court will not, under the exigencies [*15] of this preliminary injunction order, follow the full and refined Anderson balancing test. The court finds that the injury suffered by the plaintiffs is considerably more grave than the hardship justifications offered by the registrars. The unregistered Waterbury residents present a complaint that amounts to effective disfranchisement. This infringement of a fundamental right is not off-set by the defendant's rationale. The registrars' apprehension of possible registration fraud is not substantiated by the record. Nor have the registrars shown that the requested relief would be even moderately burdensome to them. Cf. American Party of Texas v. White, 415 U.S. 767, 781 (1974) (government restrictions on election nominations are constitutionally valid if made "in pursuit of vital state objectives that cannot be served equally well in significantly less burdensome ways").

If the Hartford/Bridgeport models were followed, then the assistant registrar training would take no more than one hour. No more than two such sessions are required by the plaintiffs' group of volunteers. The registrars would be required to publicize the outreach session held at the Spanish Action [*16] Council, and to supply a full-time Spanish interpreter at their own office, until the October 17th deadline. These would be the registrars' only responsibilities and expenses. Plaintiffs would assume all other administrative and financial concerns.

In sum, plaintiffs have demonstrated that the hardships caused them by the registrars' policies are greater than the hardships that the registrars will suffer through the requested injunction. The injunction is therefore granted.