The State of New Hampshire

STRAFFORD COUNTY **SUPERIOR COURT**

Hannah Rivers, et al.

v.

The State of New Hampshire

Docket No.: 219-2012-CV-00458

ORDER

The petitioners[1] challenge, invoking both the Federal and the State Constitution, one paragraph of the recently amended voter registration form required by Senate Bill 318 (Chapter 285:2 of the 2012 Session Laws, amending RSA 654:7), effective August 26, 2012. Though under state law voters are not required to be "residents," but only "domiciled" here, the new voter registration form requires prospective voters to execute a declaration stating, among other things:

> In declaring New Hampshire my domicile, I am subject to the laws of the State of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire driver's license within 60 days of becoming a resident.

[1] The State challenges the standing of The League of Women Voters and Joan Ashwell. It does not, however, present such a challenge in regard to petitioners Hannah Rivers, Megan Arsenault, Ariel DeLaura and Taylor Pacheco. These four petitioners appear to be: of voting age; citizens of the United States; living now in New Hampshire; attending college here; having the present intention to leave New Hampshire after graduation; maintaining out-of-state driver's licenses; and having the intent to vote in New Hampshire in the upcoming 2012 general election at different locations. Ms. Rivers lives in Durham; Ms. Arsenault in Manchester; Ms. DeLaura in Keene, and Ms. Pacheco in Dover.
The Court observes that the petitioners have here proceeded, without objection, to seek forms of class-type relief. In this regard, the petitioner, The League of Women Voters, an "organization . . . formed in November 1919 to encourage the active participation of citizens in government . . . [and one which] conducts voter services and citizens education programs about elections, the voting process, and issues" claims distinct injury in the form of not being able to "educate students and others with accurate information as to New Hampshire voting requirements for the upcoming election." V. Pet. ¶ 15. See also Id. at ¶ 14 in regard to the petitioner, Joan Ashwell.

The petitioners seek both preliminary and permanent injunctive relief. For preliminary relief, they seek to have the Court issue a "Proposed Order" which works, at least for the upcoming election, to strike the paragraph at issue, require the re-issuance of a voter registration form without the above stated paragraph, require the Secretary of State to notify New Hampshire Towns and Cities that the re-issued voter registration form is to be used forthwith in registering new voters, and require the Secretary of State to add to his office's website by October 1, 2012 certain information regarding driver's licenses and car registration as is contained in an attached Appendix.

The Court held a hearing on September 19, 2012 in regard to the petitioners' request for preliminary injunctive relief, and has since also received certain supplementary submissions going particularly to background legislative history, and the Governor's veto of SB 318, on June 20, 2012 which was later overridden on June 27, 2012.[2]

At the September 19 hearing, the parties indicated they desired some additional time to seek to reach a settlement. This was accorded, but the parties informed the Court on September 21 that they were unable to achieve a resolution.

The issuance of an injunction, either temporary or permanent, is an extraordinary remedy. N.H. Dep't of Envtl. Servs. v. Mottolo, 155 N.H. 57, 63 (2007). To issue a preliminary injunction, the moving party must establish: 1) likelihood of success on the merits; 2) immediate danger of irreparable harm; and 3) that they have no adequate

[2] In his veto message, the Governor stated, among other things: "Any changes to our voting procedures must ensure a person's constitutional right to vote is protected. This bill does not meet that test." Governor's Veto Message Regarding SB 318, Gov. John H. Lynch (June, 20, 2012) available at http://www.governor.nh.gov/media/news/2012/062012-veto-sb-318.htm.

remedy at law. Id. The Court must be satisfied that an injunction is in the best interest of the public. Unifirst Corp. v. City of Nashua, 130 N.H. 11, 13–14. The Court concludes that the petitioners have demonstrated their entitlement to the preliminary relief they seek.

There can be no question that the right to vote, or the right to exercise "the franchise," is a fundamental one, under both our Federal and State Constitutions. E.g., Newburger v. Peterson, 344 F. Supp. 559, 560 (D.N.H 1972) (three-judge court); Akins v. Sec. of State, 154 N.H. 67, 71 (2006) ("[T]he right to vote is fundamental"); N.H. CONST. pt. I, art.11. It is also clear that the State may not seriously or severely burden or impinge the enjoyment of this fundamental right by a particular group or class of persons otherwise qualified to vote--otherwise similarly situated to other prospective voters--without a showing that the restriction or impingement is "justified by a compelling government interest and must be necessary to the accomplishment of its legitimate purpose." Akins, 154 N.H. at 73 (citation omitted).

The State argues that the challenged voter registration law does no harm in regard to anyone's right to vote, that it "does not affect an individual's right or ability to register or vote in the State of New Hampshire." St.'s Prelim. Hr'g Mem. at 7. The State asserts that "[b]y signing the registration form, a voter swears that he or she is 'qualified to vote' and that he or she '[has] not voted and will not vote at any other polling place this election' . . . [and the form does] not require any voter to register their vehicle in this State and obtain a New Hampshire driver's license in order to vote." Id. at 2. The State contends that "[w]hile the Voter Registration Law does inform registrants that they are subject to the residency laws, it specifically does not identify registrants as residents." Id.

at 7. Further, "the . . . nexus between domicile (a voting requirement) and residency (an automobile registration requirement) makes notification of the residency laws appropriate at the time an individual is declaring a particular town in New Hampshire as their [sic] domicile." Id.

For their part, the petitioners highlight that, as worded, the disputed paragraph causes them, and those like them, to experience considerable confusion, and a chilling effect upon their voting right here, inasmuch as it seems to make this right conditioned upon their willingness to wrongfully allow for the need to take on certain significant financial burdens and practical costs associated with being a "resident." They point out that while the Legislature was also presented this year with a number of bills or efforts which sought to conflate domicile and residency at least for some purposes, these efforts failed. V. Pet. ¶¶ 36–60. They invoke the Newburger case, where the United States District Court for the District of New Hampshire concluded that the State may not constitutionally keep from voting, students who have established a good presence in New Hampshire and their particular community and are of voting age, but have the intention of leaving those communities at a fixed time in the future, that is, upon graduation. 344 F. Supp. at 560, 563. Petitioners aver that the "constitutional right to vote is currently being chilled due to a conflict between the wording in the amended voter registration form and the explicit terms of specific statutes that define domicile and residency in varying ways for differing purposes." V. Pet. ¶ 8.

They offer as well the affidavit of Joan Flood Ashwell, a volunteer Election Law Specialist with the New Hampshire League of Women Voters, who states, among other things, that "[w]e are beginning our voter outreach for this year's elections and we feel

uncertain with the advice we are giving students . . . . I am still not clear as to whether a student should be advised to register their [sic] car or obtain a NH driver's license if they [sic] choose to cast their [sic] ballot in New Hampshire in light of the conflicting NH statutes regarding residency." Aff. of Joan Flood Ashwell, dated Sept. 7, 2012 ¶¶ 9, 11. It is also advanced "upon information and belief" that "eligible voters are declining to exercise their fundamental right to vote and are declining to follow through with the registration process." V. Pet. ¶¶ 85–86.

The Court is not able to read the disputed paragraph as the State suggests. The paragraph does not say that prospective voters may be subject to residency laws by declaring a New Hampshire domicile, but says, with important inaccuracy, that in doing so they all are. The paragraph states that, in taking the step to declare domicile here, a voter becomes "subject to," or comes to need to deal with the requirements of, residency laws.

While the actual "swearing" or "acknowledgement" a voter needs to make in regard to the form does not expressly encompass, in regard to the paragraph, anything more than that a voter "acknowledges . . . [to have] read and [to] understand the above qualifications for voting," the paragraph nonetheless advances, as an important feature, an inaccurate,[3] and confusing expression of the law to be considered by, among others, those prospective voters in the position of the four student petitioners, that is, non-resident persons who otherwise qualify to vote and would now like to register and/or proceed to exercise their voting rights without feeling they are subjecting themselves, in so doing, to residency law obligations.

[3] It is not argued that SB 318, as it amends RSA 654:7, at all supplants or alters the State's law, RSA 654, I and I-a, that actually deals with voting domicile.

It has been sufficiently established that the paragraph has the effect, with the evident uncertainties it creates respecting "resident" status, of substantially or severely burdening the four non-resident student petitioners, and those similarly situated, in following through on the exercise of their right to vote in New Hampshire. The paragraph works also to improperly inhibit education activities associated with voting and the election.

The State offers no compelling justification for this paragraph, which, again, presents an inaccurate expression of the law and has a clear harmful effect on the exercise of voting rights and education in connection therwith.

There is no question that, as the State avers, it "has a strong and appropriate interest in ensuring that all [resident-based or other] fees and taxes are paid," that it has a "strong and legitimate interest in ensuring that those who declare a town within New Hampshire as their domicile, and are residents, pay in full all appropriate fees and taxes," and that those who are domiciled here, but are not residents, otherwise honor fees and charges they need to bear. St.'s Prelim. Hr'g Mem. at 8. Those interests, however, are not at all served by the paragraph at issue which certainly could have been worded to express the State's legitimate interest in getting full taxes and fees fairly paid while not impermissibly impinging upon voting rights. The State could also have expressed to voters the nexus between domicile and residency in a clearer way without the problems as to voting rights the present paragraph presents.

The Court observes that the State did not offer the prevention of voter fraud or keeping "students [from] overwhelming a college community" as compelling justifications for the disputed paragraph. Newburger, 344 F. Supp. at 562.

Though the disputed paragraph, with its problems, may well have been an effort to promote the fair objective of assuring that those who vote in New Hampshire do so with sufficient connection and presence in the state--to be a tool to not permit forms of "drive-by" voting--it remains the case that the State's present voting domicile law stands as the established and exclusive expression of the requisite ties and presence that one needs to have in order to qualify here to vote. Those who by our laws and our constitutions have the fundamental right to vote in New Hampshire must not have that right inappropriately burdened or infringed.[4] It has been sufficiently shown, for purposes of the relief here being sought, that the disputed paragraph does not pass constitutional muster, and hinders education efforts related to the election pertaining to qualifications for registering to vote.

Besides establishing substantial likelihood of success on the merits, the petitioners have also met their burden in regard to the other prongs for obtaining the relief they seek. Without effective relief, fair exercise of the right to vote in the upcoming general election for four of the petitioners (and those like them), and to fairly undertake education activities related to the upcoming election, are in immediate danger of irreparable harm, and the petitioners lack an adequate remedy at law. The Court is also satisfied that injunctive relief at this time to restore the voter registration form to very much what it had been for a number of years prior to August 26, 2012, to have it be much like the form which, it appears, has been in use to register voters already in this election cycle, is consistent with the public interest.

[4] Between 2003 and 2007, the disputed paragraph also appeared in New Hampshire's voter registration form. See RSA 654:7 (2003) amended by RSA 654:7 (2007) (current version Act of June 27, 2012, ch. 285:5 N.H. Laws 654:7). It was removed through legislation in 2007, and SB 318 provides, among other things, for its restoration. The paragraph appears not to have been challenged in court when it was earlier in effect.

Accordingly, the Court signs with this Order, and puts in effect, the petitioners' "Proposed Order," with its specified relief. No injunction bond is required.

So Ordered.

9/24/12
Date

John M. Lewis
Presiding Justice

THE STATE OF NEW HAMPSHIRE
STRAFFORD COUNTY SUPERIOR COURT

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v.

The State of New Hampshire

Docket No. 219-2012-CV-458

PROPOSED ORDER

The Court, having reviewed the record in this matter, finds that the Petitioners have demonstrated that if the requested injunctive relief is not issued, they will suffer irreparable harm, that they have no alternate adequate remedy at law and that there is a substantial likelihood they will succeed on the merits of their case. The Court, therefore directs the Secretary of State to:

a: Strike from the new voter registration form the paragraph that states:

> In declaring New Hampshire as my domicile, I am subject to laws of the state of New Hampshire which apply to all residents, including laws requiring a driver to register a motor vehicle and apply for a New Hampshire's driver's license within 60 days of becoming a resident.

b. Re-issue the voter registration form without the above stated paragraph.

c. Notify every New Hampshire Town and City that the re-issued voter registration form must be used forthwith in registering new voters.

d. Add to its website by October 1, 2012, information regarding driver licenses and car registration as provided in the attached Appendix.

SO ORDERED:

9/24/12
Date

Presiding Justice

JOHN M. LEWIS
PRESIDING JUSTICE

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DRIVER'S LICENSE AND CAR REGISTRATION

Out of state students attending school in New Hampshire do not, as a consequence of choosing to vote in New Hampshire, have to obtain a New Hampshire driver's license or register their car in New Hampshire.

The issue of whether a student must obtain a New Hampshire license and registration depends on whether the student becomes a resident of New Hampshire as defined by our laws.

New Hampshire law defines "resident" in the following way:

> A resident or inhabitant or both of this state and of any city, town or other political subdivision of this state shall be a person who is domiciled or has a place of abode or both in this state and in any city, town or other political subdivision of this state, and who has, through all of his actions, demonstrated a current intent to designate that place of abode as his principal place of physical presence for the indefinite future to the exclusion of all others.

As a result, if an out of state student has the intention to leave New Hampshire at the end of a school year or upon graduation from school, that student does not have an intent to stay in New Hampshire for the indefinite future and there is no requirement to obtain a New Hampshire license or register a car in New Hampshire. If, on the other hand, a student has a definite plan to stay in New Hampshire upon completing their academic program, then the student has become a resident of New Hampshire under our laws and must obtain a New Hampshire license and register their car in New Hampshire.