

IN THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA
Alexandria Division

R. LEIGH GILLETTE,)
)
Plaintiff,)
)
v.)
) Civil No. _____
)
BETTY E. WEIMER, in her individual and)
official capacity as General Registrar, Prince)
William County, Virginia; PRINCE)
WILLIAM COUNTY ELECTORAL)
BOARD; HELEN K. CRAM, GUY)
ANTHONY GUIFFRÉ, and KEITH A.)
SCARBOROUGH, in their individual)
capacities and official capacities as members)
of the Prince William County Electoral)
Board; and JANE DOE NO. 1 and JANE)
DOE NO. 2,)
)
Defendants.)

COMPLAINT

Preliminary Statement

1. Prince William County election officials refused to allow plaintiff R. Leigh Gillette to vote in state and local elections on November 6, 2007, in violation of the United States Constitution, Voting Rights Act, and Virginia law, because he was unable to present an identification card,.

Jurisdiction

2. This action arises under the First and Fourteenth Amendments to the United States Constitution, and Section 5 of the Voting Rights Act, 42 U.S.C. § 1973c, and 42 U.S.C. § 1971(a)(2)(B). This Court has jurisdiction over plaintiff's federal claims pursuant to 28 U.S.C.

§ 1331, and supplemental jurisdiction over plaintiff’s state claim for violation of Virginia Code § 24.2-643 (B) pursuant to 28 U.S.C. § 1367(a). Suit is authorized by 42 U.S.C. § 1983.

Parties

3. Plaintiff R. Leigh Gillette (“Gillette”) is a resident and citizen of Prince William County Virginia, where he is an eligible and registered voter.

4. Defendant Betty E. Weimer (“Weimer”) is the general registrar for Prince William County, Virginia. As such, she is responsible for supervising poll workers on election day. She is sued in her individual and official capacities.

5. Defendant Prince William County Electoral Board (“Electoral Board”) is a three-member body appointed by the local judiciary. The responsibilities of the Electoral Board include appointing officers of election and instructing them in their duties.

6. Defendants Helen K. Cram, Guy Anthony Guiffré, and Keith A. Scarborough are members of the Electoral Board. They are sued in their individual and official capacities.

7. Defendants Jane Doe No. 1 (“Doe No. 1”) and Jane Doe No. 2 (“Doe No. 2”) are or were officers of election who worked at the Enterprise Elementary School polling place in Prince William County during the November 6, 2007 election.

8. At all times relevant, all defendants acted under color of state law.

9. Venue is proper in this district because all of the actions took place within this district and defendants’ offices are within this district.

Factual Allegations

10. By statute, election officials in Virginia are required to ask voters at the polls to present identification. However, “if a voter is entitled to vote except that he is unable to present one of the forms of identification listed above, he shall be allowed to vote after signing a

statement, subject to felony penalties for false statements . . . , that he is the named registered voter who he claims to be.” Virginia Code § 24.2-643 (B).

11. The requirement that voters be requested to produce identification at the polls was added by 1996 Virginia Law, Ch. 72, enacted March 1,1996. Prior to 1996, Virginia voters were not requested to produce identification at the polls.

12. On November 6, 2007, elections were held in Prince William County for state Senate, House of Delegates, and a number of local offices. Polls were open from 6:00 a.m. to 7:00 p.m.

13. At approximately 6:30 p.m., Gillette and his wife stopped at their polling place at Enterprise Elementary School on their way to a class at a county recreation center. His wife stayed in the parking lot while Gillette went inside to vote.

14. At the polling place, when Gillette got to the front of the line, Doe No. 1 asked him for identification.

15. Gillette told Jane Doe No. 1 that he did not have identification with him. Doe No. 1 told Gillette that he would not be able to vote. Gillette told Doe No. 1 that she was mistaken. Jane Doe No. 1 said that she would speak with the person in charge of the polling place, Doe No. 2.

16. Shortly thereafter, Gillette was called over to where Doe No. 2 was holding a telephone. Doe No. 2 told Gillette that she was speaking to the county registrar, and handed Gillette the phone.

17. A woman on the other end of the phone , believed to be defendant Weimer, read to Gillette the portion of Virginia Code § 24.2-643 that lists the acceptable forms of identification, and told Gillette that he needed identification to vote

18. After speaking with the woman on the phone, Gillette left the polling place. He did not have time to go home to retrieve his identification. He was therefore unable to vote in the election.

19. The defendants had no legitimate interest in refusing to allow Gillette to vote.

20. Upon information and belief, the defendants maintain and enforce a policy or practice of refusing to allow voters to vote without presenting identification.

21. The Commonwealth of Virginia is a covered jurisdiction under Section 5 of the Voting Rights Act of 1965, 42 U.S.C. § 1973c. As such, prior to implementing any changes in its standards, practices or procedures with respect to voting it is required to secure a declaratory judgment from the United States District Court for the District of Columbia that said changes do “not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color.” Alternatively, the Commonwealth may implement a change if it has submitted the change to the Attorney General of the United States and the Attorney General has not interposed an objection within sixty days after such submission. 42 U.S.C. § 1973c.

22. Prince William County is a political subdivision of the Commonwealth of Virginia and as such is also a covered jurisdiction subject to the preclearance requirements of Section 5 of the Voting Rights Act.

23. The Commonwealth did submit 1996 Virginia Law, Ch. 72 to the Attorney General of the United States for preclearance on March 19, 1996, and the statute was precleared on May 17, 1996.

24. The procedures administered by defendants in denying plaintiff Gillette the right to vote because he did not produce identification constitute a change in standards, practices or procedures with respect to voting within the meaning of Section 5 of the Voting Rights Act.

25. The procedures administered by defendants requiring plaintiff Gillette and any other voters to produce identification in order to vote have not received preclearance under Section 5 of the Voting Rights Act, either through a declaratory judgment action in the United States District Court for the District of Columbia or through administrative submission of the changes to the Attorney General of the United States.

Claims for Relief

COUNT I

First and Fourteenth Amendments

26. Plaintiff Gillette was denied the right to vote because of a requirement imposed on him by defendants which is not required of other voters of the Commonwealth.

27. Plaintiff is a fully qualified and registered voter of Prince William County. Defendants denied the right to vote to plaintiff and other qualified Prince William County residents who did not carry identification. Other fully qualified and registered voters in Prince William County were allowed to vote because—in addition to their qualifications—they carried and presented identification, a fact that is not material to the right to vote in Virginia.

28. Voters in other counties in Virginia who were similarly situated to plaintiff in that they were fully qualified and registered voters who did not carry identification were allowed to vote because election officials there complied with federal and state law.

29. Defendants' unequal treatment of Gillette and other qualified voters who did not carry identification violated the Equal Protection Clause of the Fourteenth Amendment.

30. Defendants' denial of Gillette's right to vote violated the First Amendment to the United States Constitution as applied to the states by the Fourteenth Amendment and 42 U.S.C. § 1983.

COUNT II
Voting Rights Act

31. The failure of defendants to secure preclearance of their practice or procedure of refusing to allow voters to vote without presenting identification from the Attorney General of the United States or by securing a declaratory judgment from the United States District Court for the District of Columbia violates plaintiff's rights guaranteed by Section 5 of the Voting Rights Act, 42 U.S.C. §1973c.

COUNT III
Voting Rights Act

32. By enacting Virginia Code § 24.1-643(B), the Commonwealth has determined that as a matter of law a production of identification by a voter is not material in determining whether he or she is qualified under State law to vote. Denying plaintiff Gillette the right to vote because he did not produce identification violated his right to vote under 42 U.S.C. § 1971(a)(2)(B).

COUNT IV
Virginia Law

33. The defendants' refusal to allow Gillette to vote without presenting identification violated Virginia Code § 24.2-643 (B)

Request for Relief

Plaintiff respectfully requests that this Court:

A. Convene a court of three judges, pursuant to 28 U.S.C. § 2284 and 42 U.S.C. § 1973(h) to hear plaintiff's claim under Section 5 of the Voting Rights Act (Count II).

B. Exercise supplemental jurisdiction, pursuant to 28 U.S.C. § 1367(a) to hear plaintiff's claim under Virginia Code § 24.2-643 (B) (Count IV).

C. Declare that defendants actions in requiring voters to present identification in order to vote violates the First and Fourteenth Amendments of the Constitution of the United States, 42 U.S.C. § 1971(a)(2)(B), 42 U.S.C. § 1973c and Va. Code § 24.2-643 (B).

D. Enjoin the defendants from continuing to require voters to present identification in order to vote;

E. Award nominal damages to plaintiff for the denial of his right to vote;

F. Award plaintiff's attorney's fees and costs pursuant to 42 U.S.C. § 1988 and 42 U.S.C. § 1973l(e); and

G. Grant such other relief as this Court deems just and proper.

Respectfully Submitted,

R. LEIGH GILLETTE

By counsel:

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