

IN THE UNITED STATES DISTRICT COURT FOR THE MIDDLE DISTRICT OF TENNESSEE

AS RECEIVED IN CLERK'S OFFICE

SEP 27 2002

U.S. DISTRICT COURT MID. DIST. TENN.

UNITED STATES OF AMERICA, Plaintiff, v. STATE OF TENNESSEE; RILEY DARNELL, Tennessee Secretary of State, in his official capacity; BROOK THOMPSON, Coordinator of Elections of the State of Tennessee, in his official capacity; MIKE GREENE, Commissioner of the Tennessee Department of Safety, in his official capacity; FREDIA WADLEY, Commissioner of the Tennessee Department of Health, in her official capacity; NATASHA K. METCALF, Commissioner of the Tennessee Department of Human Services, in her official capacity; ELIZABETH RUCKEYSER, Commissioner of the Tennessee Department of Mental Health and Developmental Disabilities, her official capacity; and WENDELL H. GILBERT, Commissioner of the Tennessee Department of Veterans Affairs, in his official capacity, Defendants.

CIVIL ACTION NO 3 02 0938

CONSENT DECREE

I. Stipulations

The United States of America initiated this action pursuant to the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. 1973gg et seq., and 28 U.S.C. 2201, alleging violations of the NVRA arising from Tennessee's voter registration

This document was entered on the docket in compliance with Rule 58 and / or Rule 79 (a).

FRCP. on 10-16-02 By [signature]

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application practices and procedures as they affect registration of voters for Federal elections.

The United States alleged in its complaint that defendants have engaged in practices that have unlawfully denied certain Tennessee citizens full and complete opportunities to register to vote in elections for Federal office by application made simultaneously with an application for a motor vehicle driver's license, by mail, and by application in person at Federal, state, and nongovernmental offices designated by the State, as mandated by Sections 4, 5 and 7 of the NVRA, 42 U.S.C. § 1973gg et. seq.

The challenged practices include the failure of state and agency officials to: provide applications to register to vote simultaneously with applications for motor vehicle driver's licenses (including any renewal applications); request only the minimum amount of information necessary to prevent duplicate voter registration and enable state election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process; distribute voter registration applications with every application for public assistance or services to persons with disabilities (including renewal applications, recertifications, and changes of address); provide voter registration declination forms; and transmit completed voter registration applications in a timely manner.

The United States also acknowledges the substantial steps that the Tennessee Department of Safety (TDOS) has taken to date

to address existing deficiencies in NVRA compliance in that department.

Defendants do not contest that in the past, state and agency officials have failed to make voter registration procedures available in accordance with the requirements of the National Voter Registration Act. Defendants also do not contest that in the past, the State Coordinator of Elections has failed to ensure that state and agency officials were in compliance with the requirements of the National Voter Registration Act.

The parties are desirous of resolving this matter without the need for litigation. Accordingly, they have negotiated in good faith and have agreed to entry of this Consent Order as an appropriate resolution of the claims alleged.

This Court has jurisdiction over the parties and the subject matter of this litigation. This agreement is final and binding between the parties and their successors in office regarding the claims raised in this action.

Accordingly, it is hereby ORDERED, ADJUDGED, AND DECREED that:

II. Defendants Generally

1) On or before December 16, 2002, Defendants shall file with the Court, and provide to counsel of record, a written report identifying the compliance efforts of Defendants as a whole, and by each Defendant agency as identified within this Consent Decree. This report shall be submitted by the Tennessee State Coordinator of Elections (hereinafter "Coordinator of

Elections"), pursuant to his designation of responsibilities as set forth in Section 10 of the NVRA, 42 U.S.C. § 1973gg-8.

Thereafter, on August 1 of each year in which this Consent Decree is in effect, Defendants shall provide to Plaintiff a report for the previous year, in accordance with the following terms:

The Coordinator of Elections shall collect and compile all of the data referenced in this Consent Decree. The Coordinator of Elections shall be responsible for the completion of the annual report as referenced herein, and shall ensure that the data collected from Defendants is complete and consistent with the goals of this Consent Decree. The Coordinator shall submit along with the annual report a certification indicating that all named Defendants are in compliance with this Consent Decree for the referenced reporting period. In the event that the Coordinator of Elections cannot certify that one or more of the named Defendant agencies is in compliance with the terms and conditions of this Consent Decree for the referenced reporting period, Plaintiff shall be entitled to begin the procedures set forth at Section VI of this Consent Decree, "Violation of Consent Decree."

2) Defendants as a whole and each Defendant agency named herein, at the direction of the Coordinator of Elections, shall develop and implement uniform procedures pertaining to distribution, collection, transmission, and retention of Voter

Registration applications and Tennessee Voter Registration Declination Forms;

3) Defendants as a whole and each Defendant agency named herein, at the direction of the Coordinator of Elections, shall develop and implement mandatory, annual NVRA education and training programs for each counselor, employee, agent or representative that is involved in providing applications for Tennessee driver's licenses, public assistance or services to Tennessee residents with disabilities. Counselors, employees, agents or representatives who do not provide such applications are exempt from this provision. The Coordinator of Elections, in conjunction with each agency's Commissioner, shall be responsible for oversight of the training program and the development and updating of all training materials. The training program format shall be left to the discretion of the Coordinator of Elections but must include: a) instruction on the distribution, completion, collection, and retention or transmission of applications for voter registration and Tennessee Voter Registration Declination Forms, and b) NVRA requirements and compliance procedures as they are relevant to Defendants as a whole and to each respective Defendant agency named herein.

4) On or before December 16, 2002, Defendants shall provide to the Court, and to counsel of record, copies of all NVRA educational and training materials to be used for instructing employees, counselors, agents and representatives of their responsibilities under the NVRA, including any instructional or

public education materials to be provided to persons served by those agencies. The Coordinator of Elections shall be responsible for ensuring distribution and appropriate updating of the training materials, and shall further be responsible for providing any and all updated training material(s) to counsel of record for Plaintiff along with subsequent annual reports;

5) The Coordinator of Elections shall compile and submit, with each annual report, a complete numerical count of Tennessee residents who completed either a voter registration application or a voter declination form. The count must identify each Defendant agency's numeric totals for voter registration and declination. Controlled remote access to the computerized voter registration tracking systems of the Tennessee Department of Human Services and the Tennessee Department of Health shall be given to the Plaintiff for purposes of monitoring compliance with this Consent Decree. Such access shall not be construed in any way as compromising the confidentiality of any of the information contained within those systems;

6) In addition to provisions 1 through 5 as set forth above pertaining to all Defendants, each agency, at the direction of the Coordinator of Elections, shall provide a detailed description of all steps undertaken to implement the requirements of this Consent Decree, with particular regard to remedial relief set forth below, including the dates upon which these remedial measures were implemented.

III. Defendants Tennessee Department of Human Services,
Tennessee Department of Health,
Tennessee Department of Veterans Affairs, and
Tennessee Department of Mental Health
and Developmental Disabilities

The Commissioners of the Tennessee Department of Human Services, Tennessee Department of Health, Tennessee Department of Veterans Affairs, and Tennessee Department of Mental Health and Developmental Disabilities (hereinafter "Tennessee agencies" shall work in conjunction with the Coordinator of Elections, and shall be responsible for ensuring compliance by the Tennessee agencies, and their agents and employees, with the NVRA and this Consent Decree. Specifically, the Commissioners shall:

1) Ensure that uniform procedures and documentation are developed, updated, distributed, and implemented pertaining to voter registration in accordance with the NVRA, and that voter registration applications and declination forms are continuously available to counselors, employees and representatives in every agency office in which applications for public assistance and services to persons with disabilities are being provided to Tennessee residents;

2) Ensure that each office that is involved in providing applications for public assistance and services to persons with disabilities maintains additional Mail-in Applications for Voter Registration conspicuously displayed and within the general public's access;

3) Ensure that agency counselors, employees and representatives involved in providing applications for public

assistance and services to persons with disabilities provide, in connection with any application for such service or assistance and each recertification, renewal, or change of address form relating to such service or assistance, services and assistance to such persons as required by Section 7 of the NVRA, 42 U.S.C. §§ 1973gg-5(a)(4), 1973gg-5(a)(6), and 1973gg-5(a)(6)(C), including but not limited to assistance with applying to register to vote. Where such persons indicate that they wish to register to vote, or to change their voter registration address, such counselors, employees and representatives shall ensure that such persons are simultaneously provided a voter registration application, and shall offer assistance in completing the application, consistent with Section 7(a)(6)(C) of the NVRA, 42 U.S.C. § 1973(a)(6)(C). Employees and representatives shall also ensure that every person is provided a form consistent with Section 7(a)(6)(B) of the NVRA, 42 U.S.C. § 1973gg-5(a)(6)(B). To the extent that any Tennessee agency provides services to persons with disabilities at the person's home, the agency shall provide the services described in subsection 7(a)(4)(A) of the NVRA, 42 U.S.C. § 1973gg-5(a)(4)(A), simultaneously at the person's home, in accordance with Section 7(a)(4)(B) of the NVRA, 42 U.S.C. § 1973gg-5(a)(4)(B). To the extent that any agency develops and implements a system that allows it to determine that a client is already registered to vote at his or her current address, and such system has been approved by the Coordinator of Elections and Plaintiff, the agency need not offer voter

registration opportunities in connection with each subsequent agency visit by that registered voter, unless the agency becomes aware of the voter's change of address;

4) Ensure that the Tennessee agencies timely collect voter registration applications and transmit them to appropriate county election officials in accordance with the deadlines set forth in Section 7(d) of the NVRA, 42 U.S.C. § 1973gg-5(d);

5) Ensure that an annual report on each agency's compliance with the NVRA and this Consent Decree is completed and submitted to the Coordinator of Elections in a timely manner;

6) Ensure that appropriate annual employee training is conducted and that training materials are developed, updated, and distributed pertaining to NVRA requirements relevant to each Tennessee agency;

7) Ensure that the Tennessee agencies update as needed, at least annually, any information they currently choose to provide to agency clients regarding the availability of voter registration through the Tennessee agencies;

8) Ensure that declination forms are retained for a period of not less than one year from the date this Consent Decree is signed, and are available for review by any party to this action within thirty (30) days upon reasonable notice and for review by appropriate election officials on election day or during early voting periods if necessary to confirm a voter's registration status;

9) Ensure that any and all on-line applications for public assistance or services to persons with disabilities provided by Tennessee agencies include information regarding voter registration opportunities at the agency, including an electronic link to a Mail-in Application for Voter Registration, such that the opportunity for voter registration is offered simultaneously.

IV. Defendant Tennessee Department of Safety

The Commissioner of the Tennessee Department of Safety shall work in conjunction with the Coordinator of Elections, and shall be responsible for ensuring compliance by the Tennessee Department of Safety (hereinafter "TDOS"), and its agents and employees, with the NVRA and this Consent Decree. Specifically, the Commissioner shall:

1) Ensure that uniform procedures and documentation are developed, updated, distributed, and implemented pertaining to voter registration, and that a simultaneous application process for voter registration is in place in every TDOS office;

2) Ensure that TDOS creates a single simultaneous application process for voter registration and application for motor vehicle driver's license as is required by Section 5(a)(1) of the NVRA, 42 U.S.C. § 1973gg-3(a)(1). The Commissioner shall further ensure that the current TDOS driver's licence application process is modified so that voter registration applications are not withheld or provided only upon request by a Tennessee resident engaging in a qualified driver's license transaction;

not withheld or provided only upon request by a Tennessee resident engaging in a qualified driver's license transaction;

3) Ensure that if TDOS decides to use separate forms for applications for a driver's license and voter registration, that the voter registration application does not require any information that duplicates information required in the driver's license portion of the application, consistent with Section 5(c)(2)(A) of the NVRA, 42 U.S.C. § 1973gg-3(c)(2)(A);

4) Certify to the Court and to counsel of record for Plaintiff by October 1, 2002, that TDOS has discontinued its practice of requiring Tennessee residents making application for drivers' licenses or changes of address to make an affirmative request for an application for voter registration before such application is provided, and has also discontinued its practice of distributing blank Mail-in Applications for Voter Registration to applicants who complete a driver's license transaction at any TDOS office;

5) Provide to the Court and to counsel of record for Plaintiff by October 15, 2002, a detailed description of how TDOS is implementing its simultaneous application process for a motor vehicle driver's license and voter registration as set forth in this Consent Decree;

6) Ensure that TDOS timely collects voter registration applications and transmits them to appropriate county election officials in accordance with the deadlines set forth in Section 5(e) of the NVRA, 42 U.S.C. § 1973gg-3(e);

7) Ensure that any and all on-line applications or renewal applications for driver's licenses and change of address transactions include information regarding voter registration opportunities at TDOS, including an electronic link to a Mail-in Application for Voter Registration, such that the opportunity for voter registration is offered simultaneously;

8) Ensure that all TDOS offices have additional Mail-in Applications for Voter Registration conspicuously displayed and within public access;

9) Ensure that TDOS informs all individuals completing a change of address form that such form cannot be used for first time voter registration or for out-of-county changes of address for voter registration purposes;

10) Ensure that a TDOS annual report on the agency's compliance with the NVRA and this Consent Decree is completed and submitted to the Coordinator of Elections in a timely manner;

11) Ensure that appropriate annual employee training is conducted and that training materials are developed, updated, and distributed pertaining to NVRA requirements relevant to TDOS; and

12) Ensure that TDOS updates as needed, at least annually, any information TDOS currently chooses to provide to agency clients regarding the availability of voter registration through TDOS.

V. Passive Voter Registration Agencies

The Coordinator of Elections shall ensure that those agencies identified in Tennessee Code Ann. § 2-2-202(3) as passive voter registration agencies are in compliance with their

public access, providing assistance to applicants in completing voter registration application forms unless the applicant refuses such assistance; and accepting completed voter registration application forms for transmittal to the appropriate State election official.

VI. Violation Of Consent Decree

If any party believes that any of the above named Defendants is not complying with the conditions or obligations imposed by this Consent Decree, any party must within twenty [20] days of discovering the violation, provide written notice to the Coordinator of Elections, and in good faith attempt to resolve any differences regarding compliance. Any party may, after a period of thirty [30] days of its last good faith attempt to resolve differences regarding compliance, invoke binding mediation with a mediator acceptable to all parties (or if agreement cannot be reached between the parties, within thirty [30] days of the mediation notice, seek a court-appointed mediator). The costs of the mediation must be borne by the non-complying Defendant(s), or if compliance is found, by the petitioning party. If attempts at dispute resolution are unsuccessful, any party may move this Court, upon twenty [20] day written notice to all other parties, for an order to compel or enforce any obligation imposed by this Consent Decree. The notice must state the default or non-compliance alleged and the actions which must be taken to resolve the alleged default or non-compliance. In extraordinary circumstances where immediate

harm would otherwise occur, the mediation and notice periods shall be waived.

VII. Duty To Defend Consent Decree

The parties to this Consent Decree must employ their best efforts to defend this Consent Decree against any legal challenge.

VIII. Jurisdiction

The Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement.

IX. Termination of Consent Decree

This Agreement shall remain in effect through August 1, 2005. Plaintiff may move the court for good cause shown to extend this Agreement.

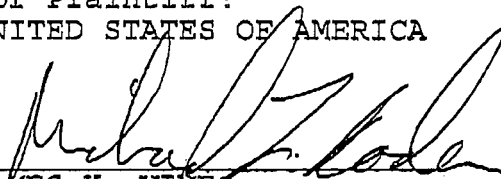
As is ORDERED

Willy J. [Signature]
NSD
10-15-02

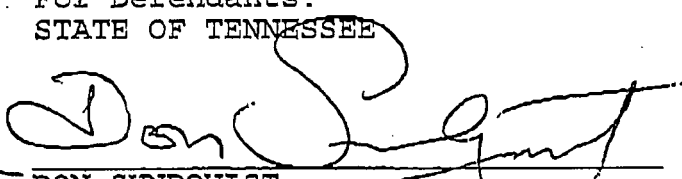
Entered this 27 day of ^{September}~~July~~, 2002.

For Plaintiff:
UNITED STATES OF AMERICA

For Defendants:
STATE OF TENNESSEE

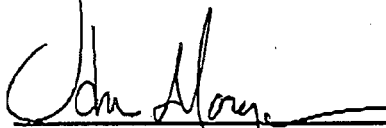


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Assistant United States
Attorney

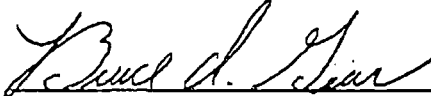


DON SUNDQUIST
Governor of the State of Tennessee

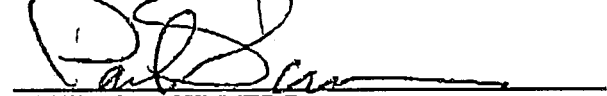
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Chief, Voting Section




JOHN MORGAN
Comptroller, State of Tennessee



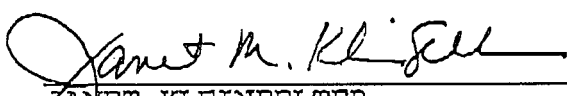
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UNITED STATES DISTRICT JUDGE
MIDDLE DISTRICT OF TENNESSEE