

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA**

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NATIONAL ASSOCIATION FOR THE ADVANCEMENT
OF COLORED PEOPLE STATE CONFERENCE OF
PENNSYLVANIA (“NAACP-SCP”), et al.

CIVIL ACTION

Plaintiffs,

– against –

PEDRO A. CORTÉS, SECRETARY OF THE
COMMONWEALTH OF PENNSYLVANIA, et al.;

No. 08-5048

Defendants.
-----x

PLAINTIFFS’ MOTION FOR PERMANENT INJUNCTION

Plaintiffs, by their attorneys, hereby move for a permanent injunction, pursuant to Fed. R. Civ. P. 65, based on the evidence presented to the Court at an evidentiary hearing on October 28, 2008, and submit in support the Memorandum and Order of this Court of October 29, 2008.

This matter involves the provision of emergency paper ballots during elections in the Commonwealth of Pennsylvania.

Following the evidentiary hearing and extensive briefing on plaintiffs’ Motion for a Preliminary Injunction, this Court issued its Memorandum and Order setting forth detailed findings of facts and conclusions of law, including the following: (a) electronic voting machines undoubtedly fail and there is a real danger that a significant number will malfunction throughout the Commonwealth; (b) the delay in voting at a precinct where 50% or more of the voting machines are inoperable will unduly burden and thus deprive many citizens of their right to vote; (c) that injury, if it occurs, will be of the gravest magnitude and will give rise to a violation of at least the Equal Protection Clause of the Fourteenth Amendment to the United States Constitution; and (d) offering and making available paper ballots to voters when 50% of the

machines are inoperable at a polling place is necessary to protect their constitutional right to vote, and no state interest has been advanced to reject it.

In its Memorandum and Order of October 29, 2008, this Court accordingly found that plaintiffs were likely to succeed on the merits, would be irreparably harmed if the preliminary injunction was not granted, that the granting of injunctive relief would cause minimal harm to defendants, and that the granting of the injunction was in the public interest.

Based on the findings of facts and conclusions of law set forth in the Memorandum and Order of October 29, 2008, the Court issued an Order, *inter alia*, preliminarily enjoining the Secretary of the Commonwealth to direct all the County Boards of Elections throughout Pennsylvania as follows:

If 50% of electronic voting machines in a precinct are inoperable, “paper ballots, either printed or written and of any suitable form,” for registering votes (described herein as “emergency back-up paper ballots”) shall be distributed immediately to eligible voters pursuant to section 1120-A(b) of the Election Code. Emergency back-up paper ballots shall be used thereafter until the county board of elections is able to make the necessary repairs to the machine(s) or is able to place into operation a suitable substitute machine(s).

The evidence that was admitted at trial on the Motion for Preliminary Injunction would be admissible at trial, is part of the trial record, and need not be repeated here.

Counsel for defendants have advised counsel for plaintiffs that they do not intend to file a response in opposition to this motion.

WHEREFORE, plaintiffs request, pursuant to Rule 65(a) of the Fed. R. Civ. P., that the preliminary injunction issued on October 29, 2008, be entered as a permanent injunction, as set forth in the annexed Proposed Order.

Dated: Philadelphia, Pennsylvania
_January 23, 2009_____

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*Seeking admission *pro hac vice* in the Eastern District of Pennsylvania.

** Admitted *pro hac vice* in the Eastern District of Pennsylvania.

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PROPOSED ORDER

AND NOW, this ____ day of _____, 2009, for the reasons set forth in the
Memorandum and Order of October 29, 2008, it is hereby ORDERED that:

1. the motion of plaintiffs for a permanent injunction is GRANTED;
2. Defendant Pedro A. Cortés, the Secretary of the Commonwealth of Pennsylvania,
and his successors, are permanently ENJOINED to direct forthwith all county boards of elections
throughout the Commonwealth of Pennsylvania as follows:

If 50% of electronic voting machines in a precinct are inoperable, “paper ballots,
either printed or written and of any suitable form,” for registering votes (described
herein as “emergency back-up paper ballots”) shall be distributed immediately to
eligible voters pursuant to section 1120-A(b) of the Election Code. Emergency
back-up paper ballots shall be used thereafter until the county board of elections is
able to make the necessary repairs to the machine(s) or is able to place into
operation a suitable substitute machine(s);

3. Defendant Pedro A. Cortés, the Secretary of the Commonwealth of Pennsylvania,
and his successors, are further ENJOINED to advise, forthwith, the county boards of elections
throughout the Commonwealth of Pennsylvania of the above-described directive and the entry of
this Order.

BY THE COURT:

The Hon. Harvey Bartle III, C.J.