

FILED ENTERED
LODGED RECEIVED

★ MAY 24 2006 ★

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
BY _____ DEPUTY

MAY 24 2006

CLERK U.S. DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
DEPUTY

1 [REDACTED]

2 [REDACTED]

3
4 06-CV-00726-EXII

5
6 UNITED STATES DISTRICT COURT
7 WESTERN DISTRICT OF WASHINGTON
8

9 WASHINGTON ASSOCIATION OF
10 CHURCHES, as an organization and
11 representative of its members; WASHINGTON
12 ASSOCIATION OF COMMUNITY
13 ORGANIZATIONS FOR REFORM NOW
14 (ACORN), as an organization and representative
15 of its members; ORGANIZATION OF
16 CHINESE-AMERICANS OF GREATER
17 SEATTLE, as an organization and representative
18 of its members; CHINESE INFORMATION &
19 SERVICE CENTER, as an organization and
20 representative of its clients; FILIPINO
21 AMERICAN POLITICAL ACTION GROUP OF
22 WASHINGTON, as an organization and
23 representative of its members; KOREAN
24 AMERICAN VOTERS ALLIANCE, as an
25 organization and representative of its members;
26 SERVICE EMPLOYEES INTERNATIONAL
27 UNION (SEIU) - LOCAL 775, as an
28 organization and representative of its members;
and WASHINGTON CITIZEN ACTION, as an
organization and representative of its members,

Plaintiffs,

vs.

SAM REED, in his official capacity as Secretary
of State for the State of Washington,

Defendant.

NO. CV06-0726 RSM

DECLARATION OF
CONNOR McCORMACK IN
SUPPORT OF PLAINTIFFS'
MOTION FOR A
PRELIMINARY INJUNCTION

HILLIS CLARK MARTIN &
PETERSON, P.S.

500 Galland Building, 1221 Second Ave
Seattle WA 98101-2925
206.623.1745; fax 206.623.7769

Declaration of Conny McCormack CV06-0726 -
Page 1 of 10

ORIGINAL

1 Pursuant to 28 U.S.C. § 1746, I, Conny McCormack, hereby declare as follows:

2 1. Since 1995, I have been the Registrar-Recorder and County Clerk for Los
3 Angeles County, California, the most populous county in the United States. I am
4 responsible for administering federal, state, and local elections in the county, which now has
5 more than four million registered voters and comprises approximately 5,000 precincts
6 encompassing 88 cities. I submit this declaration in support of Plaintiffs' Motion for a
7 Preliminary Injunction. This declaration is based on personal knowledge, except where
8 otherwise noted.
9
10

11 **I. BACKGROUND**

12 2. For 24 years, I have administered elections in some of the most populous
13 counties in the country. From 1981-1987, I was the elections administrator for Dallas
14 County, Texas; from 1987-1994, I was the registrar of voters for San Diego County,
15 California; and from 1995 on, I have been the Registrar-Recorder/County Clerk for Los
16 Angeles County, California.
17

18 3. In my capacity as the Registrar-Recorder/County Clerk, I maintain election
19 records; property records; business records; and birth, death, and marriage records in several
20 sophisticated database systems. In the United States, only the Social Security
21 Administration and the Pentagon maintain more records than the 200 million records on file
22 in my office. Consequently, I have extensive experience confronting various problems
23 associated with large database systems.
24
25

26 4. Currently, there are 3.8 million voters included on the list of active registered
27 voters in Los Angeles County; there are another 1.5 million voters designated as inactive.
28

1 At least ten significant language minority populations – English, Chinese, Japanese, Korean,
2 Spanish, Tagalog, Vietnamese, Armenian, Cambodian, and Russian – are included in this
3 tally.

4 5. I am currently the President of the California Association of Clerks and
5 Election Officials. In both 2001 and 2005, I was a member of the Election Center’s Task
6 Force on Election Reform.
7

8 **II. OVERVIEW OF NEW REGISTRATION PRACTICES IN CALIFORNIA**

9 6. On January 1, 2006, pursuant to the Help America Vote Act of 2002
10 (“HAVA”), California implemented a new system for attempting to “match” the information
11 on voter registration applications against information maintained by the California
12 Department of Motor Vehicles (“DMV”) or the Social Security Administration.
13

14 7. Under this new system, information on a voter registration form is typed into
15 a local computer and submitted to California’s electronic verification system
16 (“CalValidator”). CalValidator will automatically seek a “match” between this entered
17 information and information maintained by the DMV or Social Security Administration. If
18 CalValidator cannot find a “matching” record, CalValidator will return the record as
19 unverified, with an indication that no match was found.
20

21 8. My office has produced a year-to-date audit of all voter registration forms
22 submitted between January 1 and April 7, 2006. During this time, the CalValidator system
23 used the following “match” protocols: (1) to determine whether registration information
24 “matched” information maintained by the DMV, the system checked to see if each character
25 of the driver’s license number and the first three characters of the last name were exactly the
26 same in both records; (2) to determine whether registration information “matched”
27
28

*Declaration of Conny McCormack CV06-0726 -
Page 3 of 10*

HILLIS CLARK MARTIN &
PETERSON, P.S.

500 Galland Building, 1221 Second Ave
Seattle WA 98101-2925
206.623.1745; fax 206.623.7789

1 information maintained by the Social Security Administration, the system checked to see if
2 each character of the first name, each character of the last name, each character of the year
3 of birth, each character of the month of birth, and each character of the last four digits of the
4 applicant's Social Security number were exactly the same in both records.

5
6 9. My year-to-date audit of voter registration forms submitted between January
7 I through April 7, 2006, showed that an enormous number of voter registration applications
8 – including many from persons who are eligible and currently registered voters – were
9 returned by the statewide registration system as unverified, with an indication that no
10 matching record was found.

11
12 **III. IMPLEMENTATION OF THE CALVALIDATOR SYSTEM AND ITS**
13 **IMPACT ON ELIGIBLE APPLICANTS**

14 10. California has maintained a statewide voter registration database, called
15 CalVoter, since 1996. However, until this year, that system was not regularly updated by all
16 counties, and was not used as the official list of registered voters. Pursuant to HAVA, on
17 January 1, 2006, CalVoter became the official list of voters in the state. CalValidator, a
18 component of the CalVoter system, was also put into use on January 1, 2006 as the official
19 system for verifying information on applications for voter registration.
20

21 11. Until January 1, 2006, Los Angeles County found cause to reject, on average,
22 less than 1% of the voter registration applications received.

23
24 12. Between January 1 and April 7, 2006, according to an audit my office
25 conducted of voter registration applications submitted to date, 28,369 of 64,673 voter
26 registration applications received in Los Angeles County were returned by CalValidator as
27 unverified. This amounts to approximately 44% of all voter registration applications
28

*Declaration of Conny McCormack CV06-0726 -
Page 4 of 10*

HILLIS CLARK MARTIN &
PETERSON, P.S.

500 Galland Building, 1221 Second Ave
Seattle WA 98101-2925
206.623.1745; fax 206.623.7789

1 received in Los Angeles County. These returned applications can be separated into three
2 primary categories:

- 3 • 11,753 of these 64,673 applications were returned by CalValidator as
4 unverified because CalValidator could not "match" the information
5 provided. Thus, approximately 18% of all voter registration applications
6 received in Los Angeles County were returned because of a failed
7 "match."
8
- 9 • 4,837 of 64,673 applications were returned by CalValidator as unverified
10 because of a system error, including a system "time out" or other system
11 "down time." Thus, approximately 7.5% of all voter registration
12 applications received in Los Angeles County were returned solely
13 because of a computer system error.
14
- 15 • 10,945 of 64,673 voter registration applications received in Los Angeles
16 County were returned by CalValidator as unverified because the applicant
17 did not supply a driver's license number or non-driver's identification
18 number on the voter registration form. These applications –
19 approximately 17% of all voter registration applications received in Los
20 Angeles County – were returned solely because of an immaterial
21 omission on the registration form.¹

22 13. Between January 1 and April 7, 2006, thousands of applications by residents
23 of Los Angeles County whose eligibility was not in question were returned by CalValidator
24 as unverified. My staff and I have reviewed and analyzed many of these applications in an
25

26
27 ¹ Revised regulations promulgated by the California Secretary of State and approved by the California
28 Office of Administrative Law on April 24, 2006, now provide that if a valid number can be found in the
CalValidator system for such applications, election officials may submit the application with the found number
to CalVoter as verified.

1 attempt to determine the cause of, and to correct, the failed matches. A few representative
2 examples include:

- 3 • Applicants with last names of De Leon, De La Torre, and Yi Fen.
4 Although the names were properly entered by Los Angeles County staff
5 as they appeared on the voter registration form – with a space in the last
6 name field – the applicants were represented in the DMV database
7 without a space in the last name field. Therefore, the information
8 uploaded to CalVoter did not “match” the information available at the
9 DMV. The applicants were eligible and accurately completed all required
10 fields on the voter registration form.
11
- 12 • An applicant with the last name Moses. The applicant entered both
13 *middle and last names in the area marked “last name” on the voter*
14 *registration form. Los Angeles County staff accurately entered the*
15 *information on the form. Although the applicant’s name was exactly the*
16 *same as the name listed in the DMV database, because middle and last*
17 *names were both entered in one field, the information uploaded to*
18 *CalVoter did not “match” the information available at the DMV. The*
19 *applicant was eligible and provided all necessary information on the voter*
20 *registration form.*
21
- 22 • An applicant with the last name Johnson. The applicant accurately
23 entered name and address on the voter registration form, but mistakenly
24 transposed two digits of the California driver’s license number.
25 Therefore, the information uploaded to CalVoter did not “match” the
26 information available at the DMV. The applicant was eligible to vote.
27 Similar situations occur when similar data entry errors are made by
28 elections staff.

1
2 14. The office of the Los Angeles County Registrar-Recorder/County Clerk
3 attempts to contact all applicants with applications returned by CalValidator, in order to
4 resolve errors in the registration process. As of April 7, 2006, we had placed at least 10,364
5 individual phone calls and mailed at least 15,981 letters to citizens with applications
6 returned this year by CalValidator. We have not been able to contact every voter
7 successfully. For example, in 3,559 calls, we received an answering machine or no answer;
8 in 1,337 calls, the number dialed was incorrect or invalid (which might have been the result
9 of a typographical error in data entry). In addition, even for those applicants with whom we
10 have managed to establish contact, we have not been able to resolve all registration errors
11 successfully; indeed, 453 eligible applicants, perhaps fearing identity theft, refused to
12 provide identifying information over the phone. As a result, despite our efforts to resolve all
13 match failures, we have not been able to successfully match information of many eligible
14 applicants in the CalValidator system.

15 15. Moreover, although my office received thousands of applications between
16 January 1 and April 7, 2006, and although thousands of these applications were returned by
17 CalValidator as unverified, these applications represent only a small fraction of the
18 applications that I expect to receive through the entire voter registration cycle. In previous
19 cycles, voter registration activity in the first few months of an election year has been
20 relatively slow, compared to the volume of voter registration activity later in the year. In my
21 experience, voter registration activity increases dramatically in the months before a major
22 election, as statewide elections draw closer and the deadline for voter registration
23 approaches.

24 16. This year's applications seem to fit the general pattern of voter registration
25 activity: relatively limited voter registration activity early in the year, increasing
26 dramatically as statewide elections approach. Los Angeles County received 64,673
27 applications between January 1 and April 7, 2006 -- an average of 667 applications per day.
28

*Declaration of Conny McCormack CV06-0726 -
Page 7 of 10*

HILLIS CLARK MARTIN &
PETERSON, P. S.

500 Galland Building, 1221 Second Ave
Seattle WA 98101-2925
206.623.1745; fax 206.623.7789

1 During heavy election periods we routinely receive between 11,000 and 25,000 voter
2 registration forms *each day*, with individual days spiking as high as 62,332 forms.

3 17. My office's resources have been strained by the attempt to respond to the
4 thousands of applications returned by CalValidator from January through April 7 of this
5 year. We have between 40 and 68 staff members following up on applications found invalid
6 by CalValidator, at least 24 of whom are dedicated full-time to the endeavor. Most of these
7 staff members were diverted from other positions to assist in responding to applications
8 returned by CalValidator. I have also had to pay overtime for some of these staff members
9 because of this additional work. Moreover, I have been forced to hire 14 "temp" employees
10 thus far to work full-time on responding to applications returned by CalValidator.

11 18. I expect that even at this staffing level, we will be overwhelmed later in the
12 year. I reasonably expect the number of applications returned by CalValidator to grow
13 dramatically as the statewide primary and general elections approach. If we receive
14 applications at a rate similar to that in previous years, and if the rate of applications
15 requiring individual follow-up does not drop to pre-2006 levels – approximately 1% of
16 forms received – it is extremely likely that, at any reasonable staffing level, the office of the
17 Los Angeles County Registrar-Recorder/County Clerk will be unable to contact many voters
18 with applications returned by CalValidator in time to resolve errors in the process.

19 19. Given my 24 years of experience in election administration, the volume and
20 timing of voter registration forms received in offices that I have supervised, and the error
21 rate in "matching" protocols that I have observed, I expect that in any jurisdiction with a
22 sizable number of applications, if a successful "match" is a precondition to registration,
23 eligible voters will – through no fault of their own – be prevented from timely registering to
24 vote.

25 20. HAVA's requirement to either capture or assign a unique identifying number
26 for each voter is a provision that facilitates the smooth administration of elections. It is a
27 valuable means of eliminating duplicate registrations, and enables election administrators to
28 maintain a more accurate voter registration list. However, it is my understanding that the

*Declaration of Conny McCormack CV06-0726 -
Page 8 of 10*

HILLIS CLARK MARTIN &
PETERSON, P.S.

500 Galland Building, 1221 Second Ave
Seattle WA 98101-2925
206.623.1745; fax 206.623.7789

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

process of capturing a unique identifying number for each voter was not intended by HAVA to impact a voter's eligibility, and I believe that it should not be misused as a barrier to the franchise. In my experience, computer system flaws and staff errors have resulted in the failure to match the information of eligible voters to other state databases. Voters should not be penalized as a result of such errors.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Declaration was executed on May 24, 2006 in NEWARK, CALIFORNIA.


CONNOR MCCORMACK

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CERTIFICATE OF SERVICE

I hereby certify that on May 24, 2006, I ~~electronically~~ filed this *Declaration of Conny McCormack* with the Clerk of the Court using the ~~CM/ECF system~~ which will send notification of such filing to the following:

N/A

and I hereby certify that I have sent for service via hand delivered by legal messenger to be served on May 25, 2006 this document to the following non CM/ECF participants:

Sam Reed, Secretary of State, State of Washington
Legislative Building
Olympia, WA 98504-0220

Rob McKenna, Attorney General for the State of Washington
Office of the Attorney General
1125 Washington Street SE
Olympia, WA 98504-0100

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED this 24th day of May, 2006 at Seattle, Washington.

/s/ Sarah A. Dunne /Sarah A. Dunne
Sarah A. Dunne, WSBA #34869

#330304 99732-002 72v4011.doc 5/24/06