IN THE SUPERIOR COURT OF FULTON COUNTY STATE OF GEORGIA

WALTER D. ANDREWS; OUIDA W. COLLINS;)	
SHEILA WILLIAMS; LILIVE HAWK; JOHNNY)	
SPARKS; MARY S. CURRY; and ANNIE R.)	
MCCRIMMON;)	
)	
Plaintiffs,)	CIVIL ACTION FILE NO.:
)	
v.)	
)	
CATHY COX, in her official capacity as Secretary)	
of State of the State of Georgia; ROY E. BARNES,)	
in his official capacity as Governor of the State of)	
Georgia; and the STATE ELECTION BOARD;)	
)	
Defendants.)	

WALTED D. ANDDEWG OUDAW COLLING

COMPLAINT

The machinery used to conduct elections in the State of Georgia is fatally flawed, routinely disenfranchising thousands of voters. A hodgepodge consisting of antiquated devices, confusing mechanisms, and equipment having significant error rates even when properly used, Georgia's electoral machinery fails to fully and accurately count all the votes. The extent of the undercount varies greatly, such that voters in some counties have a more than ten times greater likelihood of their vote not being counted than voters in other counties. Moreover, African Americans are disproportionately affected, diluting the strength of their votes. As a result, the electoral machinery used in this State is inconsistent with Georgia law, deprives its citizens of equal protection and due process as guaranteed by the United States Constitution, and violates the federal Voting Rights Act. Plaintiffs bring this action to seek appropriate relief.

Parties, Venue and Jurisdiction

•

Plaintiffs Walter D. Andrews, Mary S. Curry and Annie R. McCrimmon are residents and registered voters of DeKalb County, Georgia.

•

Plaintiffs Ouida W. Collins, LiLive Hawk, and Johnny Sparks are residents and registered voters of Fulton County, Georgia.

•

Plaintiff Sheila Williams is a resident and registered voter of Cobb County, Georgia.

•

Each of the plaintiffs is an African American, has voted in past elections, and intends to vote and participate in future elections. Each of the plaintiffs desires to participate in the electoral process in Georgia on an equal basis with other residents, to have their votes counted, and to ensure that the fundamental requirements of equal treatment and fundamental fairness are followed in connection with elections conducted in this State.

•

Defendant Cathy Cox is Georgia's Secretary of State and serves as chair of the State Election Board. Secretary Cox, who is joined as a defendant solely in her official capacity, is the chief election official of the state. Pursuant to Georgia law, Secretary Cox has the responsibility to approve the type of election machinery available for use by counties in the conduct of elections, and no such machinery may be used without her prior approval. See O.C.G.A. § 21-2-324 (voting machines); § 21-2-353 (vote recorders); § 21-2-368 (optical scanning systems). As Chair of the State Election Board, Secretary Cox has responsibility for supervising and coordinating the work of county officials so as to obtain uniformity in their practices and proceedings and ensure the legality and purity of all elections; to promulgate necessary rules and regulations relating to the conduct of elections; and to take such other action, consistent with

law, as may be necessary to ensure the fair, legal, and orderly conduct of elections. See O.C.G.A. § 21-2-31.

•

Defendant Roy E. Barnes is the Governor of the State of Georgia and is joined in this action solely in his official capacity. Pursuant to Article 5, Section 2 of the Georgia Constitution, Governor Barnes is Georgia's chief executive officer and has the responsibility for ensuring that the laws are faithfully executed throughout the State.

•

Defendant State Election Board is a political body of the State of Georgia. Its members consist of the Secretary of State, who serves as chair, a voter selected by the Georgia Senate, a voter selected by the Georgia House of Representatives, and a representative of each political party satisfying the criteria of O.C.G.A. § 21-2-2. Pursuant to Georgia law, the State Election Board is responsible among other things for supervising and coordinating the work of the Secretary of State and county election officials so as to obtain uniformity in their practices and ensure the legality and purity of elections; formulating and adopting rules and regulations governing the conduct of elections; and taking such other action, consistent with law, as the board may determine to promote the fair, legal, and orderly conduct of elections. See O.C.G.A. § 21-2-31.

•

This Court properly has jurisdiction of the claims asserted in this action.

•

Venue is appropriate in this Court.

Factual Background

•

Georgia law currently authorizes the use of a variety of mechanisms for recording the votes cast during an election, including paper ballot, voting machine (lever), vote recorder (punch card machine), electrical scanning systems, and certain electronic voting systems.

.

Selection of the type of machinery to be used to record the votes cast during an election is left to each county or municipality. Approximately 76 counties use voting machines, 63 counties use optical scanning systems, 18 counties use punch cards, and 2 counties use paper ballots.

•

Each of the mechanisms used in Georgia has a significant rate of error in recording and counting the votes cast in an election.

•

Punch card machines have a substantially higher rate of error than the other mechanisms used in Georgia elections.

•

One type of error that may occur in the tabulation of votes is known as an "undervote." An undervote may occur when -- notwithstanding the voter's actual intent -- the voting mechanism determines that no vote was cast by the voter in a particular race or that more than one vote was cast in the same race. Undervotes also may occur due to voter confusion or voter choice.

•

Punch card machines, unlike some other voting systems in use in Georgia, permit the voter to cast a simultaneous vote for more than one candidate in the same race. As a result, either through error or ignorance, a voter who intends to vote in the race may fail to cast a valid vote. This result is avoided in counties using other voting mechanisms because the voter is precluded from voting for more than one candidate in the same race.

•

According to data released by Secretary Cox, in the 2000 Presidential election, the percentage of undervotes in all counties using optical scanning systems counted at the precinct level was approximately 2.1 percent while the percentage in all counties using punch card systems was approximately 4.7 percent.

1

•

Rates of undervotes vary widely by county. For example, according to the Secretary of State's data, in the 2000 Presidential election, Fulton County and DeKalb County, both of which used punch card machines, had undervote rates of 6.3 percent and 3.7 percent respectively. In contrast, Cobb County and Gwinnett County, which use optical scanning systems, each had an undervote rate of 0.6 percent. Thus, for every 10,000 votes cast, Fulton County had 570 more non-votes than either Cobb or Gwinnett Counties. DeKalb County had 310 more non-votes than in those two counties.

•

Due to the inadequacies of punch card machines, those plaintiffs residing in Fulton County and DeKalb County -- as well as voters residing in other counties using punch card machines -- are significantly less likely to have their votes counted than voters who live in counties using optical scanning systems such as Cobb County and Gwinnett County.

•

Punch card machines are used disproportionately in counties with substantial African American and other minority populations. Moreover, the highest rates of undervote occur disproportionately in precincts with high minority populations. As a consequence, plaintiffs and other minority voters are significantly less likely to have their votes counted than non-minority voters in the state.

•

Because of the substantial error rates resulting from use of punch card systems, voting machines, and optical scanning systems, the Georgia electoral process uses unequal and inconsistent standards, is irrational and the integrity of every election is at risk. As a consequence, plaintiffs' ability to fully participate in the electoral process and the sanctity of their votes has been and will continue to be impaired.

•

While both Secretary Cox and Governor Barnes, according to public accounts, recognize

the problems caused by the state's electoral machinery and have proposed long term solutions, they do not have the ability on their own to remedy the situation. Any solution will require action by the General Assembly. There is no assurance that such action will occur. Nor is there any assurance that legislative action will be timely or adequate.

•

The next statewide election is scheduled for 2002. Unless enjoined by the Court, that election and others in the future likely will be conducted with the same machinery currently in use. Plaintiffs have suffered and will continue to suffer irreparable injury resulting from Georgia's electoral machinery. Plaintiffs have no adequate remedy at law.

Count One: Violation of Right to Vote, Equal Protection and Due Process

•

The use of punch card machines deprives plaintiffs of their right to vote and rights of equal protection and due process guaranteed by the First and Fourteenth Amendments to the United States Constitution, by the Georgia Constitution, and by O.C.G.A. § 1-2-6(a)(4).

•

Plaintiffs' right to vote and their rights of equal protection and due process are also violated by the hodgepodge of electoral machinery used in Georgia elections and specifically by the substantial and varying rates of errors resulting from use of such machinery.

•

The actions of which plaintiffs complain are taken under color of state law and can be redressed pursuant to 42 U.S.C. § 1983.

Count Two: Violation of O.C.G.A. § 21-2-350

•

Pursuant to O.C.G.A. § 21-2-350, no punch card machine shall be used in this state unless it "shall, when properly operated, record correctly and accurately every vote cast". Further, no such machine shall be used unless it "shall be so constructed that a [voter] may readily learn the method of operating it".

•

The punch card machines in use in this state violate O.C.G.A. § 21-2-350 in that they do not, when properly operated, record correctly and accurately every vote cast.

•

Further, the punch card machines in use in this state violate O.C.G.A. § 21-2-350 because they are not so constructed that a voter may readily learn the method of properly operating a machine to reduce the chance that it will fail to accurately and correctly record the voter's vote.

•

Plaintiffs have been injured and will continue to be injured by the use of punch card machines in violation of O.C.G.A. § 21-2-350.

Count Three: Violation of O.C.G.A. § 21-2-365

•

Pursuant to O.C.G.A. § 21-2-365, no optical scanning system shall be used in this state unless it "shall, when properly operated, record correctly and accurately every vote cast". Further, no such machine shall be used unless it "shall be so constructed that a [voter] may readily learn the method of operating it".

•

The optical scanning systems in use in this state violate O.C.G.A. § 21-2-365 in that they do not, when properly operated, record correctly and accurately every vote cast.

•

Further, the optical scanning systems in use in this state violate O.C.G.A. § 21-2-365 because they are not so constructed that a voter may readily learn the method of properly operating a machine to reduce the chance that it will fail to accurately and correctly record the voter's vote.

•

Plaintiffs have been injured and will continue to be injured by the use of punch card

machines in violation of O.C.G.A. § 21-2-365.

Count Four: Violation of Voting Rights Act

•

Section 2 of the federal Voting Rights Act, 42 U.S.C. § 1973(a), provides that no voting practice or procedure can be applied by any state which results in a denial or abridgement of the right to vote on account of race or color.

•

The use of punch card machines in Fulton County, DeKalb County, and the other counties that use them in the State of Georgia violates Section 2 of the Voting Rights Act by abridging plaintiffs' right to vote on account of their race.

•

Georgia's hodgepodge system of voting mechanisms and specifically the resulting substantial and varying rates of error in the processing and tabulation of votes violates Section 2 of the Voting Rights Act by abridging plaintiffs' right to vote on account of their race.

WHEREFORE, plaintiffs request the following relief:

- (a) entry of a declaratory judgement that the use of punch card machines in Fulton County, DeKalb County and the other counties that use them infringes plaintiffs' rights of equal protection and due process guaranteed by the United States Constitution, violates Georgia law, and violates Section 2 of the Voting Rights Act;
- (b) entry of a declaratory judgment that the hodgepodge of electoral machinery used in the State of Georgia infringes plaintiffs' constitutional rights of equal protection and due process, violates Georgia law, and violates Section 2 of the Voting Rights Act due to the substantial and varying rate of error inherent in use of such machinery;
- (c) entry of a permanent injunction prohibiting defendants from conducting any future elections in Georgia using punch card machines, including specifically the counting of votes, certification of results, or declaring of winners;
 - (d) entry of a permanent injunction prohibiting defendants from conducting any future

elections in Georgia using machinery that fails to correctly and accurately record every vote cast;

- (e) in the event defendants fail to or are unable to conduct future elections in a manner that complies with the United States Constitution, Georgia law, and Section 2 of the Voting Rights Act, entry of an order providing for elections under the Court's supervision that comport with all federal and state constitutional and statutory requirements;
- (f) award plaintiffs the cost of this action together with reasonable attorneys' fees pursuant to 42 U.S.C. § 1973l(e) and 42 U.S.C. § 1988; and,
 - (g) enter such other and further relief as deemed appropriate by the Court.

Kenneth S. Canfield Ralph Knowles Doffermyre Shields Canfield Knowles & Devine 1355 Peachtree Street, Suite 1600 Atlanta, Georgia 30309 404/881-8900

Laughlin McDonald Neil Bradley American Civil Liberties Union Foundation 2725 Harris Tower 233 Peachtree Street Atlanta, Georgia 30303 404/523-2721

Gerald R. Weber

ACLU of Georgia 142 Mitchell Street Suite 301 Atlanta, Georgia 30303 404/523-6201 Gary B. Andrews C. Cooper Knowles Andrews & Knowles The Grant Building, Suite 404 44 Broad Street Atlanta, Georgia 30303 404/524-4000

Attorneys for Plaintiffs