

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS

TIMUEL BLACK, VINNIE HALL and)	
CLEO WILSON, on behalf of themselves)	
and all persons similarly situated,)	
)	Civil Action No:
Plaintiffs,)	
vs.)	
)	
WILLIAM M. McGUFFAGE, Chairman;)	
ELAINE ROUPAS, Vice Chairman; KAY D.)	
HOLLOWAY, DAVID E. MURRAY, PHILLIP)	
R. O’CONNOR, ALBERT PORTER,)	
and WANDA L. REDNOUR, members of the)	
Illinois State Board of Elections, all in their)	
official capacities; and the CHICAGO BOARD)	
OF ELECTION COMMISSIONERS,)	
)	
Defendants.)	

COMPLAINT

Preliminary Statement

1. This is a civil rights class action brought by individual African-American voters pursuant to 42 U.S.C. §§ 1973(f) and 1983 and 28 U.S.C. §§ 2201 et. seq., challenging the non-uniform, arbitrary and unequal system of voting in Illinois as violative of Section 2 of the Voting Rights Act of 1965, 42 U.S.C. § 1973, and the Fourteenth Amendment to the Constitution of the United States.

2. Defendants McGuffage, Roupas, Holloway, Murray, O’Connor, Porter, and Rednour (“state defendants”), without justification, through the certification and approval of election systems, treat voters unfairly and unequally by approving for use in some election jurisdictions punch card voting systems which have a substantially higher rate of error in recording, counting and tabulating votes, than the optical scan voting systems which defendants

authorize for use in other election jurisdictions. The state defendants also treat voters unequally by allowing voters in election jurisdictions using optical scan systems to be notified prior to the completion of the voting process of errors in the ballots they have marked and affording these voters the opportunity to correct their ballots and to have their votes counted (“error notification”), while simultaneously and arbitrarily denying voters in election jurisdictions using punch card voting systems similar notification of errors in their ballots. Plaintiffs charge that the state defendants maintain an unlawful system of voting by certifying these non-uniform systems and procedures, which individually and in combination systemically deny the voters in election jurisdictions with punch card systems the right to have their votes counted on a basis equal to other voters. Defendant Chicago Board of Election Commissioners (“Chicago Board”) is charged with selecting the punch card voting system with its statutorily created procedures and conducting elections using said voting systems.

3. Plaintiffs assert that the certification and approval of these voting systems and related procedures, and the conduct of elections under these voting systems and related procedures, constitutes a denial of due process and of equal protection of the laws. Plaintiffs further charge that defendants’ certification and approval of such systems and related procedures, and conduct of elections under these systems and related procedures, has a disparate impact on the rights of African-American voters to have their votes accurately recorded, counted and tabulated, in that they reside and vote primarily in election jurisdictions in which only punch card systems are used and in which error notification is prohibited as a matter of state law. Plaintiffs seek declaratory and injunctive relief to insure that all voters in Illinois, and in particular African-American voters in Illinois, are afforded equal treatment and fundamental fairness in voting in elections.

Jurisdiction

4. Plaintiffs invoke the jurisdiction of this Court under 28 U.S.C. §§ 1331, 1343(a)(3), and 1343(a)(4).

Venue

5. Venue is proper in this Court under 28 U.S.C. § 1391(b)(2), in that a substantial part of the events giving rise to the claim arose in this district.

Parties

6. Plaintiffs Timuel Black, Vinnie Hall and Cleo Wilson are United States citizens, registered voters, and residents of the City of Chicago and of Cook County, Illinois. Plaintiffs are African-Americans.

7. Defendant members of the Illinois State Board of Elections William M. McGuffage, Elaine Roupas, Kay D. Holloway, David E. Murray, Phillip R. O'Connor, Albert Porter, and Wanda L. Rednour are duly appointed under state law and charged with carrying out the duties and responsibilities entrusted to the Illinois State Board of Elections ("Board"). Each member is sued in his or her official capacity. Under the Illinois Election Code, 10 ILCS 5/1-1 et. seq., the Board is the governmental entity charged with the duty to: provide general supervision over the administration of the election laws throughout the State of Illinois (5A-1); consult with election authorities concerning the conduct of elections in accordance with the laws of Illinois and the United States (5/A-8(2)); certify and approve electronic, mechanical and electric voting systems for use in individual election jurisdictions (24-1, 24A-3, 24B-3); ensure that these systems conform to the Election Code, including requiring these systems to register correctly every vote cast, and to not count votes for an office when the voter has cast more votes for such office than the voter is entitled to cast (24-1, 24A-16(b), 24B-16(e)); approve voting

systems with precinct tabulation optical scan technology capability to ensure that said systems may be set to return any ballot on which the number of votes for an office or proposition exceeds the number of votes which the voter is entitled to cast, or any ballot which cannot be read by the automatic tabulating equipment (24B-4), and to ensure that any voter who spoils his or her ballot, makes an error, or has a ballot returned by the automatic tabulating equipment may return the ballot to a judge of election and get another ballot (24B-6); open and canvass the election returns in elections for the electors of the President and Vice-President of the United States and declare which set of candidates received the highest number of votes (21-2); and canvass the votes given for United States Senators and Representatives, State executive officers, judges of the Supreme Court, judges of the Appellate Court, judges of the Circuit Court, Senators and Representatives to the General Assembly, States Attorneys and Regional Superintendents of Schools, and transmit to the State Comptroller a list of the persons elected to the various offices and to the Supreme Court the names of persons selected to judgeships and those who failed to win retention (5/22-7).

8. Defendant Chicago Board of Election Commissioners is charged under the Illinois Election Code with selecting the system of voting used in elections and performing all other duties of an election authority within the election jurisdiction of the City of Chicago, including conducting elections.

Plaintiff Class Action Allegations

9. Plaintiffs bring this action on their own behalf and on behalf of a class and a subclass of all persons similarly situated pursuant to Rules 23(a) and 23(b)(2) of the Federal Rules of Civil Procedure. The plaintiff class consists of all voters in election jurisdictions in Illinois using punch card voting systems or any system prohibited by Illinois law from providing error

notification to voters. The plaintiff sub-class is all African-American voters who reside in such districts.

10. The plaintiff class and sub-class satisfy all of the prerequisites stated in Rule 23(a):

(a) Millions of individual voters are required to vote in election jurisdictions with punch card voting systems, and thus in jurisdictions which may not under Illinois law provide error notification. More than one million of these voters are African American.

(b) There are questions of law and fact common to the class and the sub-class. The common questions include whether certifying the punch card system, and allowing error notification to be provided only in election jurisdictions with optical scan technology, as well as conducting elections under these systems, violates the Fourteenth Amendment and Section 2 of the Voting Rights Act.

(c) The claims of the named plaintiffs are typical of the claims of the class. The named plaintiffs are registered to vote in the City of Chicago, which has a punch card voting system that is technologically capable of providing error notification, but is prohibited by law from doing so. Thus, like all class members, plaintiffs are denied an accurate and reliable system for recording, counting, and tabulating their votes, as well as the opportunity afforded to voters in other election jurisdictions to receive error notification and to cast a valid ballot should they mistakenly cast more votes for an office than allowed by law, or where the original ballot cannot be read by the tabulating equipment. Each plaintiff's claim is also typical of the claims of members of the sub-class. Each plaintiff is African-American, and like most African-Americans in Illinois, lives in an election jurisdiction with a punch card voting system that is prohibited by law from providing error notification.

(d) The named plaintiffs will fairly and adequately represent the interests of the class and the subclass. They have no interests antagonistic to the class or the sub-class. They seek declaratory and injunctive relief on behalf of the entire class and such relief will benefit all members of the class. Finally, they are represented by counsel who are competent and experienced in civil rights and class action litigation.

11. The class and the sub-class satisfy Rule 23(b)(2) because the defendants have engaged in a course of conduct common to all members of the class and the sub-class, and final declaratory and injunctive relief in favor of the class and the sub-class is therefore appropriate.

Facts

12. Plaintiffs are registered voters in the City of Chicago, have voted in past elections including the Presidential election of 2000, and intend to vote in future elections in Chicago, Illinois. Each desires to vote and participate in the electoral process on an equal basis with other voters, to have his or her intended votes counted, and to insure that equal treatment and fundamental fairness are accorded to all voters in Illinois.

13. Illinois law authorizes the use of a variety of methods and systems for recording, examining, counting and tabulating votes cast during an election, including paper ballots, mechanical voting machines, electronic voting systems which use punch card ballots, and optical scan voting systems which use paper ballots.

14. Selection of the voting method or system to be used to record the votes cast during an election is left to each election jurisdiction. In practice, only two voting systems are used in Illinois. The state defendants have approved and certified: electronic voting systems with punch card ballots in 98 jurisdictions, including Cook County and the City of Chicago; and optical scanning systems with paper ballot sheets marked by pen in 12 jurisdictions. Defendant

Chicago Board has chosen to use, has obtained authorization from the state defendants to use, and as the election authority of its respective jurisdiction, is conducting elections using a punch card voting system.

15. Punch card voting systems used in election jurisdictions in Illinois have significantly higher rates of error in recording, counting, and tabulating votes than the optical scan voting systems used in other Illinois jurisdictions.

16. One type of error that may occur in the recording, counting or tabulating of votes is known as an “overvote.” An overvote occurs when – notwithstanding the voter’s actual intent – the voting system determines that more than one vote was impermissibly cast in the same race. Overvotes may occur due to voter confusion or processing error.

17. Electronic voting systems using punch card ballots and optional scan voting systems using paper ballots permit the voter impermissibly to mark his or her ballot for more than one candidate in the same race. In addition, both systems may read stray, unintended marks as overvotes. Both systems are programmed, as required by state law, not to count these overvotes. As a result, a voter who intends to vote for a candidate may, due to voter or processing error, not have his or her intended vote counted.

18. In election jurisdictions using optical scan voting systems, state law allows error notification and thereby substantially reduces the risk that a voter will not have his or her vote counted. Specifically, for these jurisdictions, state law allows the voter to insert his or her ballot directly into the tabulation equipment, or for polling place personnel to do so while the voter is still in the polling place; requires the tabulating equipment to return any ballot with an overvote or which cannot be read; and allows the voter who has a ballot returned the opportunity to correct the vote by obtaining a new ballot.

19. In the Presidential election of 2000, ten of the twelve voting districts in Illinois with optical scan voting systems provided, as permitted by Illinois law, error notification to voters of overvotes and of any ballot that could not be read and allowed voters to correct their ballots.

20. Illinois law prohibits error notification on punch card voting systems, though these systems are technologically capable of providing such notice.

21. The punch card voting systems presently operated in the election jurisdiction for the City of Chicago is technologically capable of providing error notification of overvotes, undervotes (where apparently no vote is cast for an office) and of ballots which cannot be read.

22. The Illinois legislature has repeatedly refused to amend Illinois law to allow error notification to voters in election jurisdictions using punch card voting systems.

23. According to data released by the Election Board, in the 2000 Presidential election the rate of votes not counted on ballots cast in all jurisdictions using optical scanning systems with error notification was approximately 0.88%, while the error rate in all jurisdictions using punch card systems was approximately 4.08%.

24. Error rates vary widely by election jurisdiction. For example, according to the Election Board's data, in the 2000 Presidential election DeKalb County and McHenry County, which used optical scanning systems with error notification, had error rates of 0.34% and 0.32%, respectively. In contrast, the City of Chicago, which used a punch card voting system, had an error rate twenty times as great, 7.06%.

25. Due to the punch card voting systems' increased risk of error and the statutory prohibition on error notification for this system, plaintiffs residing in Chicago – as well as voters residing in other jurisdictions using this system – are significantly less likely to have their

intended votes counted than voters who live in counties using optical scanning systems such as DeKalb County and McHenry County where voters are notified of overvotes and other ballot infirmities.

26. In election jurisdictions with substantial African-American populations, there is a disproportionately high use of punch card voting systems on which error notification is prohibited, which result in substantially higher rates of voting error. Moreover, the highest rates of votes not being counted within these election jurisdictions occur disproportionately in precincts with high African-American populations. As a consequence, plaintiffs and other African-American voters are significantly less likely to have their votes counted than non-minority voters. Thus, in elections at all levels, including municipal elections, African-American voters have less opportunity than other members of the electorate to fully participate in the electoral process, to form coalitions with like-minded voters, and to elect representatives of their choice.

27. The next municipal elections in Chicago will occur on February 27, 2001. The next statewide election is scheduled for 2002. Unless enjoined by this Court, these elections and others in the future will be conducted under the non-uniform, unequal systems and procedures set forth above.

28. Plaintiffs have suffered and will continue to suffer irreparable harm as a result of Illinois' system of voting. Plaintiffs have no adequate remedy at law.

**First Claim For Relief:
Violation of Equal Protection and Due Process**

29. The state defendants' certification and approval of the punch card voting system and the Chicago Board's selection and use of the punch card voting system deprives plaintiffs of

their rights to due process and to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

30. The state defendants' certification and approval of voting systems with non-uniform procedures for error notification and the Chicago Board's failure to provide error notification to its voters deprives plaintiffs of their rights to due process and to equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution.

**Second Claim for Relief:
Violation of Voting Rights Act**

31. The state defendants' certification and approval of the punch card voting system and the Chicago Board's selection and use of the punch card voting system violates Section 2 of the Voting Rights Act by abridging plaintiffs' right to vote on account of their race.

32. The state defendants' certification and approval of voting systems with non-uniform procedures for error notification and the Chicago Board's failure to provide error notification to its voters violates Section 2 of the Voting Rights Act by abridging plaintiffs' right to vote on account of their race.

Prayer For Relief

WHEREFORE, plaintiffs request the following relief:

(A) entry of a declaratory judgment that: (1) the state defendants' certification and approval of the punch card voting system and the Chicago Board's selection and use of the punch card voting system violates plaintiffs' rights to due process and to the equal protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution and Section 2 of the Voting Rights Act; and (2) the state defendants' certification and approval of voting systems with non-uniform procedures for error notification and the Chicago Board's failure to provide error notification to its voters violates plaintiffs' rights to due process and to equal

protection of the laws guaranteed by the Fourteenth Amendment to the United States Constitution and Section 2 of the Voting Rights Act;

(B) entry of a preliminary injunction and following a trial on the merits, a permanent injunction, prohibiting the state defendants from certifying and approving, and the Chicago Board from selecting and using, punch card voting systems; and, further prohibiting all defendants from performing any other actions to facilitate conducting any future elections in Illinois, unless all voters are provided error notification of overvotes, undervotes and other ballot irregularities and the opportunity to correct their ballots and to have their intended votes counted;

(C) in the event defendants fail to or are unable to conduct future elections in a manner that complies with the United States Constitution 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 constitutional and statutory requirements;

(D) award plaintiffs the costs of this action together with reasonable attorneys' fees pursuant to 42 U.S.C. § 19731(e) and 42 U.S.C. § 1988; and,

(E) enter such other and further relief as deemed appropriate by the Court.

Respectfully submitted,

One of plaintiffs' attorneys

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