

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MINNESOTA**

American Civil Liberties Union of Minnesota,
National Congress of American Indians, and
Bonnie Dorr-Charwood, Richard Smith and
Tracy Martineau,

Case No: 04-CV-4653 (JMR/FLN)

Plaintiffs,

vs.

Mary Kiffmeyer, in her official capacity as
Secretary of State for the State of Minnesota,

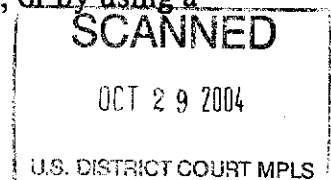
**TEMPORARY RESTRAINING
ORDER**

Defendant.

This matter is before the Court on the motion of Plaintiffs American Civil Liberties Union of Minnesota, National Congress of American Indians, and Bonnie Dorr-Charwood, Richard Smith and Tracy Martineau ("Plaintiffs") for a temporary restraining order pursuant to Rule 65 of the Federal Rules of Civil Procedure. The Court also heard the emergency motion of Kimani Jefferson and Barry Hickthier to intervene in this proceeding. Having heard the arguments of counsel, and based on all of matters herein, THE COURT HEREBY ORDERS AND FINDS AS FOLLOWS:

FINDINGS OF FACT

1. Minn. Stat. Sec. 201.061 was enacted in 2002 by the Minnesota legislature. The law provides certain requirements for voter registration. Subdivision 3 of the law provides that an applicant for registration may prove residency by showing, among other things, a drivers license or student identification card, by having a registered voter vouch for the applicant, or by using a



photographic tribal identification card if the applicant resides on the reservation of a federally recognized tribe and the identification card contains the name, address, photo and signature of the individual.

2. The above provision does not authorize the use of a photographic tribal identification card by American Indian applicants who do not reside on their tribes' reservations, even if those applicants are members of federally recognized tribes and even if the tribal identification cards otherwise meet the requirements that it contain the name, address, photo, and signature of the tribal member.
3. The State argues that the authorization of a photographic tribal identification card by American Indians who reside on their tribes' reservations was an expansion of the registration law intended to broaden the participation of American Indian voters. It argues that such an expansion is not discriminatory against American Indians who do not live on their tribes' reservations.
4. There is no legislative history offered by any of the parties that provides a rational basis to differentiate between the validity of a photographic tribal identification card used by American Indians living on their tribes' reservations and the invalidity of a photographic tribal identification card used by American Indians living off their tribes' reservations.
5. In 2002 Congress enacted the Help America Vote Act, 42 U.S.C. sec. 15301, et. seq., hereinafter referred to as "HAVA." Section 303 of HAVA establishes new requirements for identifying first-time voters who register

to vote by mail. The provision states:

[A] State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if—

(A) the individual registered to vote in a jurisdiction by mail; and

(B)(i) the individual has not previously voted in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list....

(2) Requirements--(A) In general. An individual meets the requirements of this paragraph if the individual—

(i) in the case of an individual who votes in person—

(I) presents to the appropriate State or local election official a current and valid photo identification; or

(II) presents to the appropriate State or local election official a copy of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the voter....

6. Section 304 of HAVA provides that “nothing in this title shall be construed to prevent a State from establishing election technology and administration requirements that are more strict than the requirements established under this title so long as such State requirements are not inconsistent with the Federal requirements under this title”
7. In 2004 the Minnesota legislature enacted Minn. Stat. Sec. 201.061, Subd. 1a. This statute provides that, if a person has registered by mail but the registration is not complete, that person may “complete” the registration by one of four methods. None of these methods authorize the voter to

complete registration by the use of certain documents recognized by HAVA, namely a bank statement, government check, paycheck, or other government document that shows the name and address of the voter.

8. The Secretary of State has advised the Court that there are less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete. Thus, there are less than 600 individuals in Minnesota who could possibly be impacted by the inconsistency, alleged by Plaintiffs, between Minn. Stat. Sec. 201.061 and HAVA with respect to the upcoming November 2, 2004 election.
9. The Plaintiffs argue that Minn. Stat. Sec. 201.061 is inconsistent with HAVA because it does not authorize the voter to complete registration either by a "current and valid photo identification" or by use of a current utility bill, bank statement, government check, paycheck, or other government document that shows the name and address of the individual.

CONCLUSIONS OF LAW

1. Plaintiffs have standing to bring their claims, and the Court has jurisdiction to hear Plaintiffs' claims under 42 U.S.C. Sec. 1983, the Supremacy Clause of the Constitution and 28 U.S.C. Sec. 1331.
2. Plaintiffs have met the four (4) predicate requirements for issuance of a temporary restraining order as set forth in *Dataphase System, Inc. v. CL System, Inc.*, 640 F.2d 109, 113 (8th Cir. 1981). Specifically, Plaintiffs have shown that (a) there is a threat of irreparable to the movants and the members of the organizational plaintiffs who may not be able to exercise

their right to vote on November 2, 2004 unless the Court intervenes, (b) that the balance of harm to the movants and the members of the organizational plaintiffs outweighs any hardship or injury to the defendant if the Court grants the motion, (c) they have a likelihood of success on the merits, and (d) that the granting of the temporary restraining order is in the public interest.

3. The Court specifically concludes that Plaintiffs have demonstrated that they are likely to succeed on their claim that the authorization in Minn. Stat. 201.061, sub. 3, allowing photographic tribal identification cards to be used as sufficient identification to register to vote on election day, provided the persons are members of federally recognized tribes living on their tribal reservations, violates the Equal Protection Clause of the Fourteenth Amendment of the United States Constitution insofar as it does not also authorize the use of a photographic tribal identification card by American Indians who do not reside on their tribal reservations.
4. The Court specifically concludes that Plaintiffs have demonstrated that they are likely to succeed on their claims that Minn. Rule Part 8200.5100, which authorizes certain forms of photographic identification cards to be used together with a utility bill, but not a photographic tribal identification card when presented with a current utility bill, violates the Equal Protection Clause of the United States Constitution.
5. Because there is a compelling need to protect the right of the citizenry to vote, and because no monetary relief is involved, there is no need to post a

bond, pursuant to Rule 65.

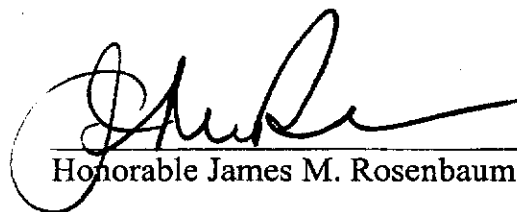
6. This Temporary Restraining Order shall expire in 10 days from the date hereof.
7. The Court reserves the right to amplify on these Findings and Conclusions in a supplemental Order.
8. The motion to intervene remains under advisement.

ORDER

- (1) For purposes of Minn. Stat. Sec. 201.061, subd. 3, tribal identification cards that contain the name, address, signature and picture of the tribal member will have the same status as a Minnesota driver license. Therefore, such tribal identification cards are sufficient proof of identity and residency, and may be used without any other documentation to register to vote on election day in the precinct in which the address on the tribal identification card is located, without regard to whether the tribal members live on or off their tribal reservations.
- (2) For purposes of Minn. Rule Part 8100.5100, photographic tribal identification cards that do not contain any address or a current address can be used to meet the standards of subpart 2(A). Therefore, a tribal member can use such tribal identification card together with a current utility bill to register to vote on election day in the precinct in which the address on the utility bill is located.
- (3) The State shall promptly advise, by electronic mail, County Auditors of the status of tribal identification cards as set forth above, and that the requirements set forth above should be followed on election day November 2, 2004 and thereafter.
- (4) The State shall promptly advise, by electronic mail, County Auditors that if there is no challenge notation on the roster, a pre-registered voter may simply sign the roster, and vote in the usual manner, without presenting proof of identity or residency.
- (5) With respect to the less than 600 voters who attempted to register by mail but whose registrations were deemed incomplete, the Secretary shall promptly advise, by electronic mail, the Auditors of those counties where these 600 voters are found on the voting roster, that a tribal identification card for such voters that contains the picture and name of the voter, with or without address or signature, shall be accepted as sufficient proof of identity to allow that person's registration to be completed and to allow that person to vote on November 2, 2004.

(6) To effectuate this Order the Court directs the State to promulgate a notice substantially identical to that attached as Exhibit A.

Dated: October 29th, 2004



Honorable James M. Rosenbaum

EXHIBIT A

PUBLISHED BY THE MINNESOTA SECRETARY OF STATE

TO: County Auditors, Election Staff and Election Judges

Date: October 29, 2004

RE: Important Changes to Requirements for Proof of Identity on Election Day

For purposes of Minn. Stat. Sec. 201.061, subd. 3, tribal identification cards that contain the name, address, signature and picture of the individual will have the same status as a Minnesota driver license. Therefore, such tribal identification cards are sufficient proof of identity and residency, and may be used without any other documentation to register to vote on election day in the precinct in which the address on the tribal identification card is located, without regard to whether the tribal members live on or off their tribal reservations.

For purposes of Minn. Rule Part 8100.5100, photographic tribal identification cards that do not contain a current address or any address can be used to meet the standards of subpart 2(A). Therefore, such tribal identification cards can be used together with a current utility bill to register to vote on election day in the precinct in which the address on the utility bill is located.

If there is no challenge notation on the voting roster for a pre-registered voter, that voter may simply sign the roster, and vote in the usual manner, without presenting proof of identity or residency.

[only for Auditors in the counties where the less than 600 voters are located]

Records indicate that one or more persons in your county is listed on the voting roster as a person who must show identification or show ID. For these individuals, and only for these individuals, a tribal identification card for such voters that contains the picture and name of the voter, with or without address or signature, shall be accepted as sufficient proof of identity to allow that person's registration to be completed and to allow that person to vote on November 2, 2004.