

**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.: 04-4653JMR/FLN

Plaintiffs,

COMPLAINT

vs.

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

Defendant.

The American Civil Liberties Union of Minnesota (“ACLU-MN”), the National Congress of American Indians (“NCAI”), Bonnie Dorr-Charwood, Richard Smith and Tracy Martineau, bring this Complaint against Mary Kiffmeyer, the Minnesota Secretary of State (hereafter the “Secretary”), alleging as follows:

INTRODUCTION

1. Federal law, specifically the Help America Vote Act, 42 U.S.C. § 15483, subd. (b) (2002) (“HAVA”), establishes identification requirements for individuals registering or attempting to register to vote by mail who have not previously voted in a particular state for federal office, specifically listing what forms of identification are sufficient at the polling place on election day for such mail registrants. Minnesota Statutes and Rules, and directives issued by the Secretary regarding what forms of identification are sufficient at the polling place for individuals registering to vote by mail

who have not previously voted in Minnesota for federal office, are inconsistent and more restrictive than the requirements established by HAVA. Plaintiffs have brought this conflict, and the failure by the Secretary to abide by governing federal law, to the attention of the Secretary, who has refused to abide by HAVA. Accordingly, Plaintiffs are forced to seek declaratory relief that Minnesota Statutes and Rules and directives issued by the Secretary are contrary to HAVA, and injunctive relief requiring the Secretary to provide prompt and prominent notice to all election officials and election judges regarding the forms of identification that must be accepted as sufficient on election day for individuals who registered or attempted to register by mail and who have not previously voted in Minnesota for federal office.

2. The United States and the Minnesota Constitutions prohibit discrimination and ensure that citizens are not denied due process and the equal protection of the laws. Minnesota Statutes and Rules and directives issued by the Secretary violate the due process and equal protection rights of American Indians desiring to register to vote on election day who did not attempt to register by mail: (1) by accepting photo tribal identification from federally-registered tribes, complete with name, street address and signature, only from American Indians living on the reservation, and not from American Indians with such identification living elsewhere in Minnesota; and (2) by not allowing photo tribal identification from federally-registered tribes without a current address to be used together with a current utility bill as sufficient proof of residence and identity, while accepting multiple other forms of photo identification without a current address, including certain student identification cards, as sufficient when presented with a current utility bill. The Secretary has refused to cure these constitutional violations.

Accordingly, Plaintiffs are forced to seek declaratory relief that Minnesota Statutes and Rules and directives issued by the Secretary are contrary to the United States and Minnesota Constitutions, and injunctive relief requiring the Secretary to provide prompt and prominent notice to all election officials and election judges regarding the forms of tribal identification that must be accepted as sufficient on election day in any county in Minnesota.

THE PARTIES

3. The American Civil Liberties Union of Minnesota (“ACLU-MN”) is a private, non-partisan, membership-supported organization. Its reason for existence is to safeguard the rights and liberties preserved by the Minnesota and United States Constitutions, including the right to vote. The ACLU-MN, through its Greater Minnesota Racial Justice Project, has been engaged in 2004 in helping American Indians residing in Minnesota to register to vote. The ACLU-MN sues on its own behalf and on behalf of its members and beneficiaries who have attempted to register to vote by mail.

4. Plaintiff National Congress of American Indians (“NCAI”) is a non-profit association organized under the laws of Oklahoma. NCAI is the oldest and largest national organization representing the interests of American Indians. NCAI’s membership includes 250 Indian tribes and their members, which account for approximately 72% of all enrolled tribal members in the United States. NCAI’s membership includes eight of the eleven Indian tribes in Minnesota, including the Mille Lacs Band of Ojibwe and the Red Lake Band of Chippewa Indians. NCAI’s membership also includes individual American Indians residing in Minnesota who are not a member of a tribe represented by NCAI. NCAI’s mission is to serve its members by advancing

the interests of tribal self-government, and assisting tribal governments with a broad range of federal policy issues affecting tribal governments. NCAI assists its tribal governmental members and their individual tribal members in participating fully in the electoral process. This assistance includes organization of the Native Vote 2004 Campaign which is an extensive national non-partisan effort to mobilize the American Indian and Alaska Native vote in collaboration with regional organizations, local tribal governments, and centers serving Indian populations, including Indian urban centers. Through the Native Vote 2004 Campaign NCAI assists local tribal governments, such as the Mille Lacs Band of Ojibwe, in coordinating and operating local voter registration drives to inform tribal members of their voting rights. NCAI sues on its own behalf and on behalf of its members who are federally-recognized Indian tribes in the State of Minnesota and/or their individual tribal members.

5. Plaintiff Bonnie Dorr-Charwood (“Dorr-Charwood”) is a natural person, an enrolled member of the Mille Lacs Band of Ojibwe, a federally-recognized Indian tribe located within the territorial boundaries of the State of Minnesota, and a citizen of Hennepin County who resides at 5212 36th Ave., S., Minneapolis, MN 55417. Her only form of picture identification is a tribal member identification card issued by the Mille Lacs Band of Ojibwe, which includes her current address and signature.

6. Plaintiff Richard Smith (“Smith”) is a natural person, an enrolled member of the Fond du Lac Band of Lake Superior Chippewa, a federally-recognized Indian tribe located within the territorial boundaries of the State of Minnesota, and a citizen of Carlton County who resides at Fond du Lac Homes No. 6, Cloquet, MN 55720, and whose only form of picture identification is a tribal member identification card issued by

the Fond du Lac Band of Lake Superior Chippewa. Smith's tribal identification card includes his name, picture and signature.

7. Plaintiff Tracy Martineau ("Martineau") is a natural person, an enrolled member of the Fond du Lac Band of Lake Superior Chippewa, a federally-recognized Indian tribe located within the territorial boundaries of the State of Minnesota, and a citizen of Carlton County who resides at 8213 Belich Street, Cloquet, MN 55720, and whose only form of picture identification is a tribal member identification card issued by the Fond du Lac Band of Lake Superior Chippewa. Martineau's tribal identification card includes her name, picture and signature.

8. Defendant Mary Kiffmeyer is the Minnesota Secretary of State and is the administrator in the State of Minnesota with regard to the conduct of elections and registration of voters.

JURISDICTION

9. This Court has Jurisdiction pursuant to 42 U.S.C. § 1983 and 28 U.S.C. § 1331.

FACTUAL AND LEGAL BACKGROUND

10. Federal law establishes identification requirements for individuals registering to vote by mail who have not previously voted in a particular state for federal office. Specifically, HAVA provides that a mail registrant who votes in person may present the following forms of identification to the appropriate state or local election official as sufficient evidence of identity and address: (1) a current and valid photo identification **or** (2) 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.

42 U.S.C. § 15483, subd. (b).

11. Under Minn. Stat. § 201.061, subd. 1a (2004), an individual with incomplete registration by mail who votes in person may “provide proof of residence by any of the methods authorized for election day registration in section 201.061, subd. 3.” Subdivision 3 sets forth the following methods of providing proof of residence for election day registration: (1) presenting a driver’s license or Minnesota identification card, (2) presenting “any document approved by the secretary of state as proper identification, (3) presenting a current valid student identification card that meets certain standards or a current student fee statement that contains the student’s valid address together with a picture identification card, or (4) having a voter who is registered to vote in the precinct vouch that he personally knows that the individual is a resident of the precinct. Minn. Stat. § 201.061, subd. 3. This Statute is inconsistent with HAVA.

12. Subdivision 3 (2) of § 201.061 references “any document approved by the secretary of state as proper identification.” A rule promulgated by the Minnesota Secretary of State provides that an individual may present the following forms of identification to the appropriate state or local election official as sufficient evidence of name and address for purposes or registration on election day: (1) a current and valid photo identification or (2) a driver’s license, passport, military or student identification that does not have a current address **together** with a recent utility bill showing the current address of the voter. Minnesota Rule 8200.5100. This Rule is inconsistent with HAVA.

13. By an Update dated August 27, 2004, the Secretary advised election officials and judges that “[i]dentification may be required” for mail registrants who “have never voted in a federal election in MN” and that the identification required for such

individuals “is the same as the Election Day Registration identification. (See . . . next page.) A true and correct copy of this Update is Exhibit A hereto. On the next page of the Update, the following forms of identification for Election Day Registration are listed:

- A. An ID with CURRENT NAME AND ADDRESS in the precinct. This includes:
 - Minnesota driver’s license or learner’s permit or receipt for either
 - Minnesota identification card or receipt
 - Student identification card
 - Student fee statement
 - Student registration card
 - Prior registration listed on roster at former address in precinct
 - Authorized Tribal ID
 - Notice of late registration sent by city clerk or county auditor

- B. One of the following ID’s listed below, with a CURRENT utility bill:
 - Minnesota driver license or Minnesota identification card with a former address
 - U.S. Passport
 - U.S. military ID
 - MN student photo ID

The Utility bill must be:

- cable TV, electric, gas, phone, water, garbage, or sewer, and
- due within 30 days of the election, and
- have the voter’s name and current address in the precinct.

. . . [describing vouching process]

14. The Update and the list therein violates HAVA for covered mail registrants because it does not specify for such mail registrants that any “current and valid photo identification” is sufficient identification, with or without address (which would include

tribal identification), and does not specify that “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” is sufficient identification, even in the absence of photo identification. 42 U.S.C. § 15483, subd. (b). The Secretary has likewise issued an Election Judge Guide (pp. 16-17), which repeats the Update list of authorized proof of identity, and nowhere contains information specifying what form of identification is sufficient for mail registrants covered by HAVA. A true and correct copy of this Election Judge Guide is Exhibit B hereto.

15. HAVA does not apply to individuals attempting to register to vote on election day who did not previously register or attempt to register by mail. With respect to election-day registration, Minn. Stat. § 201.061, subd. 3(4) also provides that:

For tribal band members living on an Indian reservation, an individual may prove residence for purposes of registering by presenting an identification card issued by the tribal government of a tribe recognized by the Bureau of Indian Affairs, United States Department of the Interior, that contains the name, street address, signature and picture of the individual. The county auditor of each county having territory within the reservation shall maintain a record of the number of election day registrations accepted under this section.

Consistent with this section, on or about September 10, 2004, the Secretary issued a Memorandum (“Memorandum”) to County Auditors and Election Staff, stating that: (1) tribal identification cards cannot be used as proof of residency for tribal members that do not reside on an Indian reservation; and (2) tribal identification cards can be used by tribal members residing on an Indian reservation only if (i) the tribe is recognized by the Bureau of Indian Affairs, United States Department of the Interior; and (ii) the tribal identification card contains the name, street address, signature and picture of the

individual. A true and correct copy of the Memorandum is Exhibit C hereto.

16. Section 201.061, subd. 3(4) and the Secretary's Memorandum discriminate against American Indians who do not live on the reservation by not allowing them to register on election day with identification found by the State of Minnesota and the Secretary to be sufficient for those living on the reservation. Plaintiff Dorr-Charwood is one such individual who is disenfranchised by this discrimination. She resides at 5212 36th Ave., S., Minneapolis, MN 55417, off the reservation, and her only form of picture identification is a tribal member identification card issued by the Mille Lacs Band of Ojibwe, which includes her current address and signature. She intends to try to register to vote at her polling place on election day, and to use her only photo identification to do so. Her voting rights will be unconstitutionally burdened unless the Courts act to ensure that her tribal identification will be accepted as sufficient identification. The Secretary has refused to act to prevent such unconstitutional discrimination, despite notice. The discrimination faced by Ms. Charwood is faced by substantial numbers of American Indians residing in Minnesota. According to the most recent U.S. Census, there are as many as 32,910 American Indians living off-reservation in Minnesota in the seven metropolitan counties of Minnesota (Anoka, Carver, Dakota, Hennepin, Ramsey, Scott, and Washington counties), with approximately 17,202 American Indians living off-reservation in Hennepin and Ramsey counties alone.

17. Minnesota Rules § 200.5100 Subp. 2 provides additional methods for a person to prove residence on election day. Such rules allow an eligible voter to prove residence using a two-prong method requiring the eligible voter to provide a listed photo identification card together with a utility bill. Under this method an eligible voter can

prove residence by providing one of the photo identification cards listed in § 200.5100 Subp. 2, A, consisting of (1) a Minnesota driver's license or identification card; (2) a United States passport; (3) a United States military identification card; or (4) a student identification card issued by a Minnesota postsecondary educational institution, together with the item listed in § 200.5100 Subp. 2, consisting of an utility bill if the bill (1) shows the voter's name and current address in the precinct; and (2) the due date on the bill is within 30 days before or after the election day. This provision discriminates against many American Indians residing in Minnesota, including Plaintiffs Smith and Martineau, because they cannot use their tribal photo identification, together with a current utility bill, to demonstrate identity and residency such that they can register on election day to vote.

18. Plaintiffs and their members and beneficiaries have no adequate remedy at law for the violations of HAVA, the United States and Minnesota Constitutions that will take place on November 2, 2004 under the published guidance of the Secretary, unless this Court acts to prevent such violations.

COUNT ONE:
THE STATE IDENTIFICATION SCHEME IS INCONSISTENT WITH
CONTROLLING FEDERAL LAW

19. Plaintiffs reallege and incorporate by reference the allegations in paragraphs 1-18 above.

20. The identification standards under Minn. Stat. § 201.061, subd. 3 and Minnesota Rule 8200.5100, as set forth in the Secretary's Update and Election Judge Guide, are more restrictive than and inconsistent with the standards set forth in HAVA for individuals registering or attempting to register by mail who have not previously

voted for federal office in Minnesota. The Minnesota standards violate HAVA for covered mail registrants because Minnesota does not specify for such mail registrants that any “current and valid photo identification” is sufficient identification, with or without address (which would include tribal identification), and does not specify that “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” is sufficient identification, even in the absence of photo identification. 42 U.S.C. § 15483, subd. (b).

21. Under Art. I, section 4 of the United States Constitution, and the Supremacy Clause, the identification standards under Minn. Stat. § 201.061, subd. 3 and Minnesota Rule 8200.5100, to the extent that they do not permit all of the identification methods set forth in HAVA, are inconsistent with and are superseded by HAVA.

COUNT TWO: EQUAL PROTECTION

22. Plaintiffs incorporate and reallege paragraphs 1 through 21 of this Complaint.

23 Pursuant to the Minnesota Constitution, Article II, and the United States Constitution, First and Fourteenth Amendments, Plaintiffs are entitled to due process and equal protection under the law.

24. Minnesota law and the Secretary’s Memorandum provide that tribal identification cards may be used by members residing on an Indian reservation if the tribe is recognized by the Bureau of Indian Affairs, United States Department of the Interior, and the tribal identification card contains the name, street address, signature and picture of the individual, but such a tribal identification card cannot be used as proof of identity

and residency for tribal members that do not reside on an Indian reservation. Minnesota law and the Secretary's Memorandum draw an arbitrary and unconstitutional distinction between tribal members who live on the reservation versus tribal members who live off the reservation and will deprive Plaintiff Dorr-Charwood and members and beneficiaries of the NACI and ACLU-MN of the right to vote in violation of Article I, Sec. 2 of the Minnesota Constitution and the First and Fourteenth Amendments to the United States Constitution.

25. Minnesota law also draw an arbitrary and unconstitutional distinction between tribal members with photo identification, who cannot use such identification, together with a current utility bill, to prove identity and residency, and other individuals who may use the following forms of identification, together with current utility bill, to demonstrate identity and residency: (1) a Minnesota driver's license or identification card; (2) a United States passport; (3) a United States military identification card; or (4) a student identification card issued by a Minnesota postsecondary educational institution. Such distinction will deprive and members and beneficiaries of the NACI and ACLU-MN of the right to vote in violation of Article I, Sec. 2 of the Minnesota Constitution and the First and Fourteenth Amendments to the United States Constitution.

RELIEF SOUGHT

WHEREFORE, Plaintiffs request that this Court enter judgment, including temporary and permanent injunctive relief against Defendant as follows:

1. Plaintiffs are entitled to an order declaring Minn. Stat. § 201.061, Minnesota Rule 8200.5100, and the Secretary's Update and Election Judge Guide, to be inconsistent with and superseded by HAVA with respect to identification that must be

accepted at the polling place on election day for individuals who registered or attempted to register by mail and who never previously voted in Minnesota in a federal election.

2. Plaintiffs are also entitled to an injunction requiring the Secretary to provide immediate and prominent notice to all election officials and judges within Minnesota advising them to accept all forms of identification set forth in HAVA, 42 U.S.C. § 15483, subd. (b) for individuals voting in person who registered or attempted to register by mail and who have not previously voted in Minnesota for federal office. Plaintiffs will submit such proposed notice to the Court for approval.

3. Plaintiffs are entitled to an order declaring Minn. Stat. § 201.061, subd. 3(4) and the Secretary's Memorandum to be unconstitutional under the Minnesota and United States Constitution because they do not allow American Indians who do not live on the reservation to register on election day with identification found by the State of Minnesota to be sufficient for American Indians in federally-recognized tribes living on the reservation.

4. Plaintiffs are also entitled to an injunction requiring the Secretary to provide immediate and prominent notice to all election officials and judges within Minnesota advising them to accept as sufficient proof of identity and residency tribal identification cards from federally-recognized tribes that contain the name, street address, signature and picture of the individual, without regard to whether the American Indian lives on or off the reservation. Plaintiffs will submit such proposed notice to the Court for approval.

5. Plaintiffs are entitled to an order declaring Minnesota Rules § 200.5100 Subp. 2 to be unconstitutional under the Minnesota and United States Constitution

because they do not allow American Indians with current tribal photo identification to use that identification, together with a current utility bill, to demonstrate identity and residency sufficient to allow them to register to vote on election day.

6. Plaintiffs are also entitled to an injunction requiring the Secretary to provide immediate and prominent notice to all election officials and judges within Minnesota advising them to accept as sufficient proof of identity and residency tribal photo identification cards together with a current utility bill, thereby allowing such American Indians to register to vote and vote on election day. Plaintiffs will submit such proposed notice to the Court for approval.

7. Awarding any and all other relief the Court deems just and equitable.

Dated: October 27, 2004

DORSEY & WHITNEY LLP

By s/Timothy E. Branson

Timothy E. Branson (#174713)

Skip Durocher (# 208966)

Robin M. Wolpert (#0310219)

Angela M. Hall (#311066)

50 South Sixth Street, Suite 1500

Minneapolis, MN 55402-1498

Telephone: (612) 340-2600

ATTORNEYS FOR ACLU-MN, NCAI,
and BONNIE DORR-CHARWOOD

Of Counsel:

Teresa Nelson (#0269736)

American Civil Liberties Union of Minnesota

450 North Syndicate Street

Suite 230

St. Paul, MN 55104

Telephone: (651) 645-4097

