

2018 ELECTION: PROTECTING VOTING RIGHTS

A Summary of CLC's Emergency Litigation & Advocacy

This summary highlights CLC's work to protect voting rights during the 2018 Election. It involved both emergency litigation in several states and successful advocacy outside the courtroom. Our work did not end on Election Day, however; these cases will be ongoing and will determine the extent of protection for the right to vote in 2020 and beyond. Visit www.campaignlegal.org for more information regarding CLC's efforts to protect voting rights.

Emergency Litigation

Georgia

Exact Match: Georgia Coalition v. Kemp

Georgia has a strict requirement that information on voter registration forms exactly match the information in preexisting state databases. This protocol resulted in a “pending status” for registration of over 50,000 Georgians—mostly minorities. CLC filed a lawsuit challenging this system, seeking and winning emergency relief for the most egregiously affected victims of the law for the 2018 Election: new citizens. Newly naturalized citizens who attached proof of citizenship to their voter registration application were nonetheless flagged as non-citizens because of old state records that predated more recent naturalization ceremonies. On Election Day, those new citizens would have been required to find (somewhere in the county) a “deputy registrar” to prove (for a second time) that they were citizens eligible to vote a regular, non-provisional ballot. Along with its partners, CLC filed a motion for an emergency preliminary injunction against these aspects of the “exact match” scheme, and won.

Partners: Asian Americans Advancing Justice-Atlanta & Lawyers' Committee for Civil Rights Under Law

Wrong or Missing “Year of Birth”: Martin v. Kemp

Georgia requires voters to provide “year of birth” on the outside of their absentee ballot. Gwinnett County, Georgia—one of the largest and most diverse counties—strictly enforced this requirement (unlike other counties) and rejected hundreds of ballots. In late October, CLC argued in an *amicus* brief that this practice violated the Civil Rights Act's prohibition on vote denial based upon immaterial mistakes or omissions. Weeks later, after the election, other parties advanced CLC's argument, including congressional candidate Carolyn Bourdeaux, and the court adopted CLC's position, ordering that the ballots be counted. Another judge followed suit with an order that all such ballots be counted statewide.

North Dakota

Native American “Residential Addresses”: Spirit Lake Tribe v. Jaeger

Few residents of North Dakota’s Native American reservations had “residential addresses” listed on their IDs. This is because the postal service will only deliver to P.O. Boxes, and many homes lack assigned addresses (or have inconsistent or multiple competing addresses). Yet the legislature mandated that all voter IDs display such addresses. After the Eighth Circuit lifted a statewide injunction against the law, CLC and the Native American Rights Fund filed an “as-applied” lawsuit seeking a temporary restraining order (TRO) and arguing that the requirement was unconstitutional as applied to counties containing Native American reservations. Although the court found the issues raised in our complaint and the evidence a “great cause for concern” and found the “the litany of problems” identified as “clearly predictable and certain to occur,” it concluded that changing the rule right before the election would be too confusing. The court ordered that our six individual plaintiffs be permitted to vote in the 2018 Election, and the case will continue as we seek final injunctive relief for future elections. On Election Day, we deployed staff to monitor polling stations to ensure Native Americans were not disenfranchised.

Partners: Native American Rights Fund, Robins Kaplan LLP & Cohen Milstein Sellers & Toll PLLC

Ohio

Late-Jailed Voters: Mays v. Husted

People who are arrested after the deadline to apply for an absentee ballot and who are detained through Election Day have a constitutional right to vote. Yet many states offer them no mechanism to do so. On Election Day, CLC filed a class action lawsuit with two named plaintiffs who were in jail in Dayton for misdemeanor charges and who had planned to vote on Election Day. The court granted a TRO, requiring absentee ballots to be delivered to the two named plaintiffs. The case will proceed to a final decision. In granting the TRO, however, the court already ruled that CLC’s case was likely to prevail on the merits. If we win final judgment, Ohio will be required to provide all such voters a ballot in future elections.

Partners: Dēmos & MacArthur Justice Center

Arizona

Signature Verification: Maricopa County Republican Party v. Reagan

In prior elections, some Arizona county recorders had indicated that they would stop notifying voters whose absentee ballot signatures were deemed “mismatched” as of 7 P.M. on Election Day—so voters who turned their ballots in on time, just closer to the deadline, were given no opportunity to prove their signatures were genuine. CLC and the ACLU sent a joint letter to the Arizona Secretary of State and the county recorders prior to the 2018 Election, warning that this practice violated the Due Process and Equal Protection Clauses of the Constitution. Maricopa and Pima Counties then publicly confirmed they would continue to provide notice and an opportunity to cure following Election Day. Two days after the election, several county Republican parties sued to enjoin that practice because several rural counties were not permitting voters the same notice and cure opportunity. We filed a brief (with ten hours’ notice) to defend the due process rights of all Arizona voters, calling on the court to order that all Arizona counties give voters the opportunity to confirm their signatures through the

deadline to fix conditional provisional ballots. A hearing held the day after we filed our brief resulted in agreement among the parties to follow the approach we advocated. Nearly 7,000 votes in Maricopa County alone were counted—votes that would previously have been rejected—because of these efforts.

Partners: League of United Latin American Citizens, League of Women Voters, Arizona Advocacy Network Foundation, ACLU, ACLU of Arizona, Scharff PLC

Dual Registration System: LULAC v. Reagan

Earlier in the year, CLC won relief in a case challenging Arizona’s dual registration system, which unconstitutionally treated voters differently depending upon which registration form they happened to complete. Over the Veterans’ Day weekend, CLC filed an emergency motion to enforce the consent decree after noticing that Pima County (home of Tucson) was disenfranchising voters in violation of the consent decree. CLC’s motion stated that because the Secretary of State failed “to ensure compliance with the Consent Decree, many eligible new Americans seeking to cast their first vote as a citizen of the United States and resident of Arizona may [have been] denied their right to vote.” An emergency hearing was held, and although the judge denied relief, he did so without reaching the merits, stating the court had no time to properly address the issues in time to affect the election. CLC will work to ensure this violation is not repeated in future elections.

Partners: LULAC, Lawyers’ Committee for Civil Rights Under Law, Scharff PLC & Shute, Mihaly & Weinberger LLP

Maine

Ranked Choice Voting

Maine’s citizens approved a referendum to adopt ranked choice voting to elect federal officeholders. In a ranked choice voting system, voters rank the candidates in order of preference. If no candidate receives a majority of the votes, the last placed candidate is eliminated and her votes are redistributed to those voters’ second placed candidates. That process continues until a winner emerges with majority support. CLC advocates the adoption of ranked choice voting over plurality voting and traditional runoff elections because it ensures majoritarian principles, prevents “spoiler” situations, ensures better representation of voters, and is preferable to holding a second runoff election. In Maine’s second congressional district in the 2018 election, the incumbent Republican received the plurality—just over 46%. After the third- and fourth-placed finishers were eliminated and their voters’ preferences retallied, the Democratic challenger prevailed with 50.5% of the vote. The incumbent filed a lawsuit in federal court challenging the constitutionality of ranked choice voting and alleging a violation of the Voting Rights Act. CLC filed an amicus brief explaining that plaintiffs’ legal arguments had no merit and were instead policy arguments that should be directed to the voters, the legislature, or Congress.

Non-Litigation Election Work

Utah

CLC consulted on the text of the ballot measure that would create independent redistricting for congressional and state legislative maps. After Election Day, the measure was only leading by a razor-thin margin, so CLC lawyers traveled to Utah to observe the processing of ballots

and ensure all votes were counted. The final figures from the official statewide canvass show that Utah voters approved the redistricting reform measure, with 50.34% in favor and 49.66% opposed—a result outside the recount margin of 0.25%. CLC will now work to implement the measure and assist those in Utah who seek to prevent the legislature from repealing the measure by statute.

Tennessee

Tennessee’s voter registration website and forms contained inaccurate information regarding eligibility of people with former felony convictions. After CLC threatened to sue under the National Voter Registration Act, Tennessee agreed to update its website and distribute an accurate information sheet; the state has committed to correcting its registration form going forward for future elections. Similar successful CLC efforts have led to corrections in eligibility information on voter registration forms in Alabama, Delaware, and Nebraska as well.

Partners: Tennessee State Conference of the NAACP & Bone McAllester Norton PLLC

Nevada

Nevada counties required people with prior felony convictions to go through several additional steps to register to vote, including signing a notarized affidavit and providing proof not required by law. After CLC threatened to sue, the Nevada Secretary of State advised counties to stop their practice, and required them to permit voters to complete a simple, CLC-suggested declaration to affirm their eligibility to vote.

Alabama

The Alabama Secretary of State’s office advised local registrars that eligible incarcerated voters could not use identification printouts provided by jails (which included their photographs) as a valid voter ID. In effect, those jailed voters were somehow required to find the necessary means to travel to the county registrar to obtain another form of ID. After CLC sent a letter challenging this proposal as unduly burdensome under the Constitution, Alabama issued a new guidance to registrars requiring them to accept the printouts from jails as acceptable ID for absentee ballots. This change of course made it possible for hundreds of eligible voters to have their votes counted.

Virginia

Virginia did not permit first-time voters who registered by mail to vote absentee. After CLC sent a letter stating that this disenfranchised incarcerated voters in particular, the Virginia Department of Elections sent a revised guidance to counties requiring them to accept absentee ballots from such voters.

Ohio

Shortly before Election Day, Butler County of Ohio discovered that it had sent out mail-in ballots to approximately 20,000 voters with only six boxes in the driver’s license field rather than the eight required for the full driver’s license number. Butler County officials initially indicated that they would reach out to voters to correct the error but would reject any mail-in ballots without full eight digits. Butler County officials believed that they were required to do so by state law. CLC sent Butler County a letter explaining why it could instead conduct a “soft match” with the six digits and lawfully count such ballots. On November 4, Secretary of State

Husted followed CLC's suggestion and instructed Butler County to count all affected ballots by using the "soft match" procedure.

Restore Your Vote (Arizona, Nevada, Texas, and Alabama)

In the run up to the voter registration deadlines, CLC ramped up its Restore Your Vote campaign, which aims to educate citizens with past convictions about their voting rights and restore these voters to the registration rolls. In August, CLC launched its social media campaign and online toolkit, which has been used by over 46,000 individuals. We hired organizers in Arizona, Nevada, and Alabama to engage in local direct services, canvassing, and public education. We also funded a partner organization in Texas to do the same. These organizers have assisted nearly 5,000 individuals and trained thousands of community leaders on their state laws.

Partners: Southern Poverty Law Center & Houston Justice