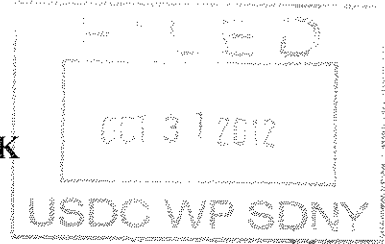


UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK



DYLAN PITCHER; ALEXIS ROE; HANS
DANIEL ROSSO KERN and MICHAEL
JOHNSON,

Plaintiffs,

vs.

DUTCHESS COUNTY BOARD OF
ELECTIONS, ERIK J. HAIGHT, as
Commissioner of the Dutchess County Board of
Elections, and FRANCES A. KNAPP, as
Commissioner of the Dutchess County Board of
Elections,

Defendants.

12 CV 3017

COMPLAINT

JUDGE KARAS

Plaintiffs Dylan Pitcher, Alexis Roe, Hans Daniel Rosso Kern and Michael Johnson (collectively "Plaintiffs") by their attorneys, Lowenstein Sandler PC and the New York Civil Liberties Union, for their Complaint allege as follows:

NATURE OF ACTION

1. Plaintiffs bring this action to protect their fundamental right to vote.
2. Plaintiffs are students that attend college and live on campus in Dutchess County, New York at the following schools: The Culinary Institute of America ("Culinary Institute"), Marist College ("Marist"), and Bard College ("Bard").
3. Plaintiffs attempted to register to vote as residents of Dutchess County.
4. Each of the students completed the New York State Voter Registration forms and provided all or substantially all of the information requested, including a street address and a mailing address. Upon information and belief, Plaintiffs' New York State Voter Registration Forms were rejected by Erik J. Haight, Commissioner of the Dutchess County Board of Elections

(“Commissioner Haight”), merely because the forms did not identify the names and/or numbers of the students’ dormitories.

5. Plaintiffs seek declaratory and injunctive relief because Commissioner Haight’s decision to reject their applications deprives Plaintiffs of their fundamental right to vote.

JURISDICTION AND VENUE

6. This case is brought under 42 U.S.C. § 1983 and the First and the Fourteenth Amendment to the United States Constitution. This Court has jurisdiction of this matter pursuant to 28 U.S.C. §§ 1331 and 1343. Plaintiffs’ action for declaratory and injunctive relief is authorized by 28 U.S.C. §§ 2201 and 2202.

7. Venue lies in this District pursuant to 28 U.S.C. §1391(b) because a substantial part of the events giving rise to Plaintiffs’ claims occurred here and Defendants reside in this district.

PARTIES

8. Each of the Plaintiffs is a citizen of the United States of America, over eighteen years of age, and each will have maintained a residence within Dutchess County, New York for at least thirty days prior to the general election scheduled to take place on November 6, 2012. In addition, each of the Plaintiffs is a college student in Dutchess County and each of them lives in on-campus housing in one of the following schools: Culinary Institute, Marist, or Bard. All of the Plaintiffs consider their Dutchess County address to be their primary residence. In September 2012, each of the Plaintiffs sought to register to vote as a resident of Dutchess County, New York. To that end, each of the Plaintiffs completed a New York State Voter Registration Form.

9. Plaintiff Dylan Pitcher is 18 years old and a citizen of the United States of America. In July 2012, he began school at the Culinary Institute and he moved from his parents' home in Glen Ridge, New Jersey to live on campus at Culinary Institute. Thereafter, his parents moved to Ohio, but Plaintiff Pitcher has never lived in Ohio and he does not plan to live in Ohio.

10. On September 13, 2012 Plaintiff Pitcher completed a New York State Voter Registration Form as part of a voter registration drive on campus at the Culinary Institute that was run by a student organization called SPICE (Student Programming Igniting Campus Entertainment). On his voter registration form, Plaintiff Pitcher provided a street address and a mailing address. Plaintiff Pitcher has not received any communication from the Dutchess County Board of Elections regarding his registration, but he visited the New York State Board of Elections' website to check whether or not he was registered to vote and it indicates that he is not registered.

11. Plaintiff Alexis Roe is 20 years old and a citizen of the United States of America. In August 2009, she began school at Bard and moved from her parents' home in Decatur, Georgia to live on campus at Bard. She has lived on campus at Bard for three consecutive years, and she continues to reside on campus this school year. She has also been employed in Dutchess County.

12. On September 10, 2012, Plaintiff Roe completed a New York State Voter Registration Form as part of a voter registration drive on campus at Bard that was run by the Center for Civic Engagement (the "Center"). Thereafter, she received a letter from the Dutchess County Board of Elections stating that the birth date on her form was "omitted" or not "readable," so Plaintiff Roe submitted a second voter registration form to the Dutchess County Board of Elections via mail on September 26, 2012. She then received a second letter from the

Dutchess County Board of Elections again indicating that her birthdate was “omitted” or not “readable.” She knew that her birth date was not omitted and that it was readable on the second form she submitted, so she contacted the Dutchess County Board of Elections to confirm that she was registered to vote. Plaintiff Roe was told that her second registration form was rejected because it did not include the name and number of her dormitory, but by this time the mail registration and in person registration deadlines had already passed. She also visited the New York State Board of Elections’ website to check her registration and it confirmed that she is not registered.

13. Plaintiff Hans Daniel Rosso Kern is 22 years old and a citizen of the United States of America. In August 2009, he began school at Bard and moved from his parents’ home in Munich Germany to live on campus at Bard. He has lived in Dutchess County ever since and he is committed to the Dutchess County community, as evidenced by his various volunteer efforts.

14. To make sure he was registered to vote, Plaintiff Kern went to the Center for Civic Engagement at Bard and picked up a New York Voter Registration Form. On September 27, 2012, he completed the form and submitted it by mail to the Dutchess County Board of Elections. On his voter registration form, he provided a street address and a mailing address. He also included the name of his dormitory.

15. On October 11, 2012, Plaintiff Kern contacted the Dutchess County Board of Elections to confirm he was registered to vote. He was told that the Dutchess County Board of Elections was inundated with applications, and the only way to ensure he was registered to vote was to submit a completed form in person. The next day, October 12, 2012, was the in person voter registration deadline and he was unable to visit the Dutchess County Board of Elections Office on that date. Plaintiff Kern has not received anything in the mail from the Dutchess

County Board of Elections regarding his registration, but he visited the New York State Board of Elections' website to check whether or not he was registered to vote and it indicates that he is not registered.

16. Plaintiff Michael Johnson is 21 years old and a citizen of the United States of America. In August 2009, he began school at Marist and he moved from his parents' home in Montville, New Jersey to live on campus at Marist. He has have lived on campus at Marist for three consecutive years, and he continues to reside on campus this school year.

17. Plaintiff Johnson has significant ties to the Dutchess County community. He has been employed in Dutchess County as a tutor and he currently works as an intern at the Law Office of Jonna M. Spilbor in Dutchess County. He has also participated in volunteer work in Dutchess County, including working with Grace Smith House, a resource for victims of domestic violence and serving as the Co-Director of the Marist St. Jude Children's Research Hospital's Fundraising Committee.

18. On September 26, 2012, Plaintiff Johnson completed a New York State Voter Registration Form as part of a voter registration drive on campus at Marist that was run by the Marist Democrat and Republican Clubs. On his voter registration form, Plaintiff Johnson provided a street address and a mailing address. Plaintiff Johnson has not received any communication from the Dutchess County Board of Elections regarding his registration, but he visited the New York State Board of Elections' website to check whether or not he was registered to vote and it indicates that he is not registered.

19. Defendant Erik A. Haight is a Commissioner of the Dutchess County Board of Elections and he is being sued in his official capacity. He maintains an office in Poughkeepsie, New York.

20. Defendant Commissioner Knapp (“Commissioner Knapp”) is a Commissioner of the Dutchess County Board of Elections and she is being sued in her official capacity for remedial purposes only. She maintains an office in Poughkeepsie, New York.

21. Defendant Dutchess County Board of Elections maintains its office in Poughkeepsie, New York.

FACTUAL BACKGROUND

Plaintiffs’ Voter Registration Forms

22. Plaintiffs all completed New York State Voter Registration Forms seeking to register to vote as residents of Dutchess County. These forms were completed truthfully by each of the Plaintiffs and contained all or substantially all of the required information indicating that each of the Plaintiffs is legally qualified to register to vote.

23. The New York State Voter Registration Form requests both a street address and a mailing address. Thus, Plaintiffs’ registration forms both identified the street address of their dormitories and set forth an address at which they can receive mail. For certain students, these addresses were one and the same.

24. Plaintiffs’ registration forms did not include their dormitory name and/or numbers, but the New York State Voter Registration Form and the instructions that are attached to the New York State Registration Form do not request this information. See New York State Voter Registration Form attached hereto as Exhibit A.

25. Plaintiffs’ completed voter registration forms were all submitted to the Dutchess County Board of Elections prior to the submission deadline of October 12, 2012.

Defendant Commissioner Haight Rejects Plaintiffs' Registration Forms

26. The Dutchess County Board of Elections consists of two Commissioners that review voter registration forms: Defendant Commissioner Haight and Defendant Commissioner Knapp.

27. Upon information and belief, Defendant Commissioner Haight decided that Plaintiffs' applications, along with many others, should be rejected because the students did not identify the names and/or numbers of their dormitories on their voter registration forms.

28. Upon information and belief, Commissioner Knapp reviewed Plaintiffs' applications and refused to reject the students' registration forms. She believed the students' applications were substantially complete because they provided all the required information to permit them to vote and for the Board of Elections to communicate with them prior to Election Day.

29. Indeed, Commissioner Knapp felt so strongly that these students should be duly registered, that she wrote a letter to the New York State Board of Elections regarding Commissioner's Haight's decision to reject the students' registration forms.

New York State Board of Elections' Advisory Opinion

30. On October 16, 2012, the State Board of Elections had a meeting and it discussed Commissioner Knapp's letter and the rejection of the students' voter registration applications by the Dutchess County Board of Elections.¹

31. Ultimately, the State Board of Elections agreed to send an advisory letter to the Dutchess County Board stating that a student's registration form should be deemed substantially

¹ A webcast of this meeting is posted on the New York State Board of Elections' website at the following address: <http://www.elections.ny.gov/2012Meetings.html>.

complete as long as (1) the address is all within a single election district and (2) the address is sufficient for communicating with the voter.

32. Plaintiffs meet the requirements set forth by the New York State Board of Elections because (1) Culinary Institute, Marist, and Bard are each within a single election district; and (2) Plaintiffs each provided an address at which they can receive mail or communications.

CLASS ACTION

33. Plaintiffs bring this action on their own behalf and, pursuant to Rule 23(a) and (b) of the Federal Rules of Civil Procedure, on behalf of Dutchess County college students that have similarly been denied the right to register to vote in Dutchess County. Specifically, the Plaintiff class includes students who applied to register to vote as residents of on-campus housing at the Culinary Institute, Marist, and Bard; but, had their voter registration forms rejected by Commissioner Haight because they did not provide the names of their dormitories and/or the numbers of their dormitories.

34. Upon information and belief, this class numbers approximately 100 students thereby rendering joinder of these students impracticable.

35. The policies and practices of Defendants challenged here are common to all members of the class and the relief sought will apply to all class members.

36. The claims of Plaintiffs are typical of the claims of the entire class.

37. Plaintiffs will fairly and adequately represent the interests of the class. They, in turn, are represented by counsel who collectively has experience in voting rights, constitutional, and class action litigation.

38. The prosecution of separate actions by individual members of the class would create a risk of inconsistent or varying adjudications which would establish incompatible standards of conduct for the Defendants.

39. Defendants have acted or refused to act on grounds generally applicable to the class, making appropriate injunctive and declaratory relief with respect to the class as a whole.

CLAIM FOR RELIEF

(42 U.S.C. § 1983 Claim For Infringement of the Fundamental Right to Vote In Violation of the First Amendment and the Equal Protection Clause of the Fourteenth Amendment)

40. Plaintiffs repeat and reallege paragraphs 1 through 39 as if fully set forth herein.

41. The exercise of the right to vote is a fundamental right, which is preservative of all other rights in a democracy, and deserves the strictest constitutional protection. Thus, any government policy or practice which significantly burdens that right is constitutionally invalid, unless it is necessary to promote a compelling state interest.

42. The Defendants' policy and practice of denying college students the right to vote merely because they did not include a dormitory name and/or number on their voter registration form places a severe burden on a college students' fundamental right to vote and it is unconstitutional because it is not necessary to advance any compelling interest.

43. Since each of the Plaintiffs have submitted a voter registration form which contains all or substantially all of the required information indicating that each of the Plaintiffs is legally qualified to register to vote, it is unconstitutional to deny Plaintiffs the right to vote.

WHEREFORE Plaintiffs respectfully request that this Court:

1. Certify this lawsuit as a class action.

2. Declare that the policy and practice of Defendants', which denies college students the right to vote merely because they did not include a dormitory name and/or number on their voter registration form, is unconstitutional.


3. Upon declaring Defendants' policy and practices unconstitutional, issue appropriate equitable relief.

4. Grant appropriate interim or preliminary injunctive relief, including but not limited to an order mandating that Plaintiffs and the Plaintiff class be permitted to vote as residents of Dutchess County in the forthcoming general election to be held on November 6, 2012.

5. Award Plaintiffs' counsel fees and costs pursuant to 42 U.S.C. § 1988.

6. Grant such other and further relief as may be just.

Dates: October 31, 2012



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