Bundling Voter Registrations

Nu Mu Lambda Chapter v. Cox
(William C. O'Kelley, N.D. Ga. 1:04-cv-1780) and
ACORN v. Cox (Jack T. Camp, N.D. Ga. 1:06-cv-1891)

On June 18, 2004, a fraternity alumni chapter filed a federal action in the Northern District of Georgia's Atlanta courthouse complaining that Georgia had wrongfully rejected a package of voter registrations that the fraternity had mailed to Georgia's secretary of state.[1] The forms were rejected because they were mailed in bulk, and the secretary understood Georgia law to proscribe private organizations' collecting voter registration forms.[2] By amended complaint five days later, an affiliated foundation, four fraternity members, and a would-be voter substituted themselves as plaintiffs.[3] With the amended complaint, the plaintiffs filed a motion for a preliminary injunction.[4]

Judge William C. O'Kelley heard the motion in Gainesville on June 29.[5] Judge O'Kelley has chambers in both Atlanta and Gainesville.[6] It is his policy to hear Atlanta cases in Atlanta and Gainesville cases in Gainesville if at all possible.[7] He heard the motion on a day he was in Gainesville, which is a bit more than an hour northeast of Atlanta, because of the case's time pressure.[8] Atlanta lawyers frequently practice in Gainesville as well.[9]

On July 1, Judge O'Kelley determined that Georgia's rejecting voter registrations mailed in bulk violated the National Voter Registration Act.[10]

On Friday, July 16, while the injunction was on appeal,[11] the plaintiffs alleged that Georgia was not complying with the injunction and moved for a finding of

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1. Complaint, Nu Mu Lambda Chapter v. Cox, No. 1:04-cv-1780 (N.D. Ga. June 18, 2004), D.E. 1; Charles H. Wesley Educ. Found. v. Cox, 408 F.3d 1349, 1351 (11th Cir. 2005); *see* Transcript at 6, Charles H. Wesley Educ. Found. v. Cox, No. 1:04-cv-1780 (N.D. Ga. June 29, 2004, filed Oct. 6, 2004), D.E. 22 [hereinafter *Charles H. Wesley Educ. Found.* Transcript].

2. *Charles H. Wesley Educ. Found.*, 408 F.3d at 1351; Charles H. Wesley Educ. Found. v. Cox, 324 F. Supp. 2d 1358, 1361–62 (N.D. Ga. 2004).

3. Amended Complaint, *Charles H. Wesley Educ. Found.*, No. 1:04-cv-1780 (N.D. Ga. June 23, 2004), D.E. 3; *see Charles H. Wesley Educ. Found.* Transcript, *supra* note 1, at 12–14.

4. Preliminary Injunction Motion, *Charles H. Wesley Educ. Found.*, No. 1:04-cv-1780 (N.D. Ga. June 23, 2004), D.E. 4.

5. *Charles H. Wesley Educ. Found.* Transcript, *supra* note 1; Minutes, *Charles H. Wesley Educ. Found.*, No. 1:04-cv-1780 (N.D. Ga. June 29, 2004), D.E. 8; *Charles H. Wesley Educ. Found.*, 324 F. Supp. 2d at 1360.

Tim Reagan interviewed Judge O'Kelley for this report by telephone on July 20, 2012.

6. Interview with Hon. William C. O'Kelley, July 20, 2012.

7. *Id.*

8. *Charles H. Wesley Educ. Found.* Transcript, *supra* note 1, at 2 ("while I'm going to be in Atlanta tomorrow, I felt I've got a full day there and this was about the only day I could work this matter in and try to meet the schedule that my law clerk tells me the state indicated we needed to address").

9. Interview with Hon. William C. O'Kelley, July 20, 2012.

10. *Charles H. Wesley Educ. Found.*, 324 F. Supp. 2d at 1365–68; *see* Pub. L. No. 103-31, 107 Stat. 77 (1993), 42 U.S.C. §§ 1973gg to 1973gg-10 (2010).

contempt and sanctions.[12] Judge O'Kelley held a telephone conference on the motion on Monday[13] and then heard the motion on November 17.[14] At the hearing, Judge O'Kelley denied the sanctions motion as moot.[15]

On May 12, 2005, the court of appeals affirmed the injunction.[16] The case was finally resolved by a consent decree issued on March 2, 2006[17] and a stipulated award of $60,000 in attorney fees and costs on April 20, 2006.[18]

On Monday, August 14, 2006, four organizations and an individual filed a federal complaint in the same district alleging that Georgia was violating the holdings of the earlier case by requiring that voter registrations collected by private parties be individually sealed and forbidding their copying.[19] With their complaint, the plaintiffs filed a motion to expedite[20] consideration of a motion for a preliminary injunction.[21]

The court assigned the case to Judge Jack T. Camp, who, on Wednesday, ordered a status conference for the following Monday.[22] At the conference, Judge Camp discussed with the parties an outline of merits issues.[23] At the conclusion of the conference, Judge Camp asked the parties to gear up for a preliminary injunction hearing in early September.[24]

On September 28, following a September 13 hearing,[25] Judge Camp granted the plaintiffs relief.[26] Judge Camp determined that the requirement of sealing and the proscription against copying meant that the plaintiffs were "unable to utilize their quality control measures to ensure that the [registration] workers are not

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11. Notice of Appeal, Charles H. Wesley Educ. Found. v. Cox, No. 1:04-cv-1780 (N.D. Ga. June 23, 2004), D.E. 11.

12. Sanctions Motion, *id.* (July 16, 2004), D.E. 12.

13. Docket Sheet, *Charles H. Wesley Educ. Found.*, No. 1:04-cv-1780 (N.D. Ga. June 18, 2004).

14. Minutes, *id.* (Nov. 17, 2004), D.E. 31.

15. Docket Sheet, *supra* note 13.

16. Charles H. Wesley Educ. Found. v. Cox, 408 F.3d 1349 (11th Cir. 2005).

17. Consent Decree, *Charles H. Wesley Educ. Found.*, No. 1:04-cv-1780 (N.D. Ga. June 18, 2004), D.E. 93.

18. Docket Sheet, *supra* note 13; Proposed Consent Order, *Charles H. Wesley Educ. Found.*, No. 1:04-cv-1780 (N.D. Ga. June 18, 2004), D.E. 95.

19. Complaint, ACORN v. Cox, No. 1:06-cv-1891 (N.D. Ga. Aug. 14, 2006), D.E. 1; *see* Carlos Campos, *Election Board Faces Lawsuit Over Voter Registration Rules*, Atlanta J. & Const., Aug. 17, 2006, at B2.

20. Motion to Expedite, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. Aug. 14, 2006), D.E. 3.

21. Preliminary Injunction Motion, *id.* (Aug. 14, 2006), D.E. 2.

22. Order, *id.* (Aug. 16, 2006), D.E. 5.

Judge Camp retired on November 19, 2010. Federal Judicial Center Biographical Directory of Federal Judges, http://www.fjc.gov/history/home.nsf/page/judges.html.

23. Transcript, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. Aug. 21, 2006, filed Oct. 24, 2006), D.E. 42.

24. *Id.* at 37; Minutes, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. Aug. 21, 2006), D.E. 7.

25. Minutes, *id.* (Sept. 13, 2006), D.E. 36.

26. Preliminary Injunction, *id.* (Sept. 28, 2006), D.E. 37; *see* Carlos Campos, *Ruling Favors Voters' Groups*, Atlanta J. & Const., Sept. 29, 2006, at D6.

submitting fraudulent registration applications" in violation of their First Amendment rights.[27]

As the case moved on to trial, Judge Camp issued a discovery order on October 26, 2007, that favored the defendants.[28] In response to a mandamus petition, the court of appeals determined, "We cannot discern from the district court's October 26, 2007, order the extent to which the court considered and rejected Petitioners' assertions of associational privilege protected by the First Amendment."[29] Judge Camp clarified that "the remaining [discovery] dispute primarily involved the production of copies in Plaintiffs' possession of voter registration applications collected by Plaintiffs in Georgia and sign-in sheets used at voter registration drives conducted by the Georgia State Conference of the NAACP Branches and the Georgia Coalition for the People's Agenda, Inc."[30] Judge Camp noted that in addition to ordering discovery he had also invited presentation of a proposed protective order.[31] The court of appeals denied a renewed mandamus petition on September 24, 2008.[32]

On November 7, observing that neither party had sought to move the case forward, Judge Camp vacated the preliminary injunction and dismissed the action without prejudice.[33]

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27. Preliminary Injunction, *supra* note 26, at 11–19.

28. Order, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. Oct. 26, 2007), D.E. 92.

29. Opinion, *In re* ACORN, No. 07-15688 (11th Cir. Feb. 27, 2008), *filed as* Notice, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. Feb. 28, 2008), D.E. 104.

30. Order at 6, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. June 20, 2008), D.E. 105.

31. *Id.* at 7.

32. Order, *In re* ACORN, No. 08-14419 (11th Cir. Sept. 24, 2008, 2008), *filed as* Notice, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. Sept. 25, 2008), D.E. 109.

33. Order, *ACORN*, No. 1:06-cv-1891 (N.D. Ga. Nov. 10, 2008), D.E. 110.