

## Requiring Social Security Numbers for Voter Registration

*Schwier v. Cox (Julie E. Carnes, N.D. Ga. 1:00-cv-2820)*

On October 26, 2000, two voters filed a federal complaint challenging a requirement that they provide Social Security numbers as part of their voter registrations. On Friday, November 3, the district judge ruled that to vote the plaintiffs could file their Social Security numbers with election officials and with the court under seal; depending on the resolution of the case, the numbers would be either unsealed or destroyed. In 2002, the district judge ruled that an uncodified provision of the Privacy Act did not provide the plaintiffs with rights of action, but the court of appeals determined in 2003 that the uncodified provision was nevertheless applicable law that did afford private rights of action.

*Subject:* Registration procedures. *Topics:* Registration procedures; voter identification; 42 U.S.C. § 1983; attorney fees.

On October 26, 2000, two voters filed a federal complaint in the Northern District of Georgia challenging a requirement that they provide Social Security numbers as part of their voter registrations.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a preliminary injunction.<sup>2</sup> On the following day, the court directed the defendant, Georgia's secretary of state, to respond to the motion by the close of business on October 31.<sup>3</sup> On Friday, November 3, Judge Julie E. Carnes granted the plaintiffs immediate relief: in order to vote, they could file their Social Security numbers with election officials and with the court under seal; depending on the ultimate resolution of the case, the numbers would be either unsealed or destroyed.<sup>4</sup>

On May 14, 2002, Judge Carnes granted summary judgment to the secretary, finding that an amended complaint was not supported by private rights of action.<sup>5</sup> The court of appeals reversed on August 11, 2003.<sup>6</sup>

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1. *Schwier v. Cox*, 439 F.3d 1285, 1285–86 (11th Cir. 2006); *Schwier v. Cox*, 340 F.3d 1284, 1286 (11th Cir. 2003); Docket Sheet, *Schwier v. Cox*, No. 1:00-cv-2820 (N.D. Ga. Oct. 26, 2000) (D.E. 1).

2. Docket Sheet, *supra* note 1 (D.E. 3); *Schwier v. Cox*, 412 F. Supp. 2d 1266, 1268 (N.D. Ga. 2005).

3. Docket Sheet, *supra* note 1 (D.E. 4).

4. *Schwier*, 340 F.3d at 1286 & n.2; *Schwier*, 412 F. Supp. 2d at 1268; Docket Sheet, *supra* note 1 (D.E. 8).

Judge Carnes was elevated to the court of appeals on July 31, 2014. Federal Judicial Center Biographical Directory of Article III Federal Judges, [www.fjc.gov/history/judges](http://www.fjc.gov/history/judges).

5. *Schwier*, 439 F.3d at 1286; *Schwier*, 340 F.3d at 1286; *Schwier*, 412 F. Supp. 2d at 1269; *see* Docket Sheet, *supra* note 1 (noting that a February 20, 2001, amended complaint added a third plaintiff, D.E. 14 to 16).

6. *Schwier*, 340 F.3d 1284; *Schwier*, 439 F.3d at 1286; *Schwier*, 412 F. Supp. 2d at 1269; *see* Bill Rankin, *Court Revives Challenge to Voter ID Rules*, Atlanta J.-Const., Aug. 13, 2003, at A1.

Section 7 of the Privacy Act provides, “It shall be unlawful for any Federal, State or local government agency to deny to any individual any right, benefit, or privilege provided by law because of such individual’s refusal to disclose his social security account number.”<sup>7</sup> Some provisions of the Privacy Act were codified at 5 U.S.C. § 552a, but this provision was instead added as a note to the section.<sup>8</sup> The court of appeals determined that it created a federal right enforceable under 42 U.S.C. § 1983.<sup>9</sup>

The Voting Rights Act proscribes irrelevant voter registration information:

No person acting under color of law shall . . . deny the right of any individual to vote in any election because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting, if such error or omission is not material in determining whether such individual is qualified under State law to vote in such election . . .<sup>10</sup>

The court of appeals determined that this provision also was enforceable through section 1983.<sup>11</sup>

On remand, Judge Carnes granted summary judgment to the plaintiffs on January 31, 2005.<sup>12</sup> The court of appeals affirmed her decision on February 16, 2006.<sup>13</sup> A June 27, 2006, consent decree awarded the plaintiffs \$175,000 in attorney fees and costs.<sup>14</sup>

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7. 5 U.S.C. § 552a note; Pub. L. No. 93-579, § 7(a)(1), 88 Stat. 1896, 1909 (1974).

8. *Schwier*, 340 F.3d at 1288–89.

9. *Id.* at 1290–92, 1297; see Daniel P. Tokaji, *Public Rights and Private Rights of Action: The Enforcement of Federal Election Laws*, 44 Ind. L. Rev. 113, 140–41 (2010).

10. 52 U.S.C. § 10101(a)(2)(B).

11. *Schwier*, 340 F.3d at 1294–97.

12. *Schwier v. Cox*, 412 F. Supp. 2d 1266 (N.D. Ga. 2005); *Schwier v. Cox*, 439 F.3d 1285, 1286 (11th Cir. 2006); see Carlos Campos, *Voters Win Suit Over Registration*, Atlanta J.-Const., Feb. 2, 2005, at B6.

13. *Schwier*, 439 F.3d 1285.

14. Consent Decree, *Schwier v. Cox*, No. 1:00-cv-2820 (N.D. Ga. June 27, 2006), D.E. 90.