

Native American Voter Identification

ACLU of Minnesota v. Kiffmeyer

(James M. Rosenbaum, D. Minn. 0:04-cv-4653)

A federal court determined that recognizing tribal photo-identification cards as proof of both identity and address only if the voter resided on an Indian reservation violated equal protection. While the case was pending, the legislature brought the state's law into compliance.

Subject: Voter identification. *Topics:* Voter identification; Help America Vote Act (HAVA); equal protection.

Six days before the 2004 general election, on October 27, the ACLU of Minnesota and Native American voters filed an action in the federal district court claiming that Minnesota's statutes, rules, and directives violated equal protection and the Help America Vote Act¹ because of overly restrictive voter-identification requirements for Native American voters.² The plaintiffs moved on the following day for a temporary restraining order.³ On the day after that, District Judge James M. Rosenbaum⁴ held a hearing⁵ and granted the motion.⁶

Many members of the news media attended the hearing, and Minnesota's attorney general argued on behalf of the secretary of state.⁷ Following the in-court proceeding, the judge and the parties met in chambers, where Judge Rosenbaum drafted an injunction in consultation with counsel for both sides.⁸ The attorney general assured the judge and the plaintiffs that he would not file an appeal.⁹

1. Pub. L. No. 107-252, 116 Stat. 1666 (2002), *as amended*, 52 U.S.C. §§ 20901–21145. *See generally* Marie Leary & Robert Timothy Reagan, The Help America Vote Act (Federal Judicial Center 2012); Symposium, *HAVA @ 10*, 12 Election L.J. 111 (2013).

2. Complaint, *ACLU of Minn. v. Kiffmeyer*, No. 0:04-cv-4653 (D. Minn. Oct. 27, 2004), D.E. 1; *see* Pat Doyle, *Voter Registration Suit Seeks Broader Use of Indian ID for Voting*, Minneapolis–St. Paul Star Trib., Oct. 29, 2004, at 5B.

3. Temporary-Restraining-Order Motion, *ACLU of Minn.*, No. 0:04-cv-4653 (D. Minn. Oct. 28, 2004), D.E. 2.

4. Tim Reagan interviewed Judge Rosenbaum for this report by telephone on April 24, 2012.

Judge Rosenbaum retired on August 25, 2010, to take a position with JAMS. Federal Judicial Center Biographical Directory of Article III Federal Judges, www.fjc.gov/history/judges; JAMS Neutrals, www.jamsadr.com/rosenbaum/; *see* James Walsh, *U.S. District Judge Will Step Down in August*, Minneapolis–St. Paul Star Trib., Apr. 23, 2010, at 1B.

5. *See* Notice of Hearing, *ACLU of Minn.*, No. 0:04-cv-4653 (D. Minn. Oct. 29, 2004).

6. Temporary Restraining Order, *id.* (Oct. 29, 2004), D.E. 13; *see* Pat Doyle, *Order Broadens Use of Indian IDs*, Minneapolis–St. Paul Star Trib., Oct. 30, 2004, at 1B; Patrick Sweeney, *Ruling Backs Use of Tribal IDs at Any Polling Place*, St. Paul Pioneer Press, Oct. 30, 2004, at B14.

7. Interview with James M. Rosenbaum, Apr. 24, 2012.

8. *Id.*

9. *Id.*

Judge Rosenbaum found that Minnesota's recognizing tribal photo-identification cards as proof of both identity and address only if the voter resided on a reservation violated equal protection.¹⁰ He ordered that a tribal photo-identification card be accepted as proof of both identity and address, and if the identification card did not show a current address then it be accepted as proof of identity and a document such as a recent utility bill could be used as proof of address, which was the same requirement for voters with driver's licenses containing old addresses.¹¹

Four months after the election, Magistrate Judge Franklin L. Noel¹² held a pretrial conference to address long-term resolution of the complaint.¹³ Judge Rosenbaum presided over a telephone conference about three weeks later.¹⁴

On September 12, 2005, Judge Rosenbaum entered a consent judgment.¹⁵ It recognized that intervening legislation had mooted one of the plaintiffs' claims: a tribal photo-identification card listing a voter's current address could be used as both proof of identity and proof of address regardless of whether the voter lived on a reservation.¹⁶ The consent judgment required Minnesota to recognize a tribal photo-identification card with an old address or without an address as proof of a voter's identity.¹⁷

On the day of the hearing, two other Minnesota voters moved to intervene as plaintiffs.¹⁸ Their attorney presented an argument at the hearing, but he was not included in the in-chambers conference immediately following.¹⁹ Judge Rosenbaum's order acknowledged the motion,²⁰ but did not include a ruling on it.²¹ On March 31, 2005, the motion to intervene was withdrawn.²²

10. Temporary Restraining Order, *supra* note 6.

11. *Id.*

12. Judge Noel retired on August 31, 2018. Judicial Milestones, www.uscourts.gov/judicial-milestones/franklin-l-noel.

13. Minute Entry, *ACLU of Minn. v. Kiffmeyer*, No. 0:04-cv-4653 (D. Minn. Mar. 8, 2005), D.E. 17.

14. *See* Notice of Phone Conference, *id.* (Mar. 22, 2005), D.E. 19.

15. Consent Judgment, *id.* (Sept. 12, 2005), D.E. 22; *see* Lee Egerstrom, *Judge Gives OK for Tribal IDs in Vote Registration*, St. Paul Pioneer Press, Sept. 13, 2005, at 1A; Matt McKinney, *Tribal IDs Cleared for Use at Poll Sites*, Minneapolis–St. Paul Star Trib., Sept. 14, 2005, at 9B.

16. Consent Judgment, *supra* note 15, at 3; *see* Minn. Stat. § 201.061, subd. 3(d).

17. Consent Judgment, *supra* note 15, at 3–5.

18. Motion to Intervene, *ACLU of Minn.*, No. 0:04-cv-4653 (D. Minn. Oct. 29, 2004), D.E. 11.

19. Interview with James M. Rosenbaum, Apr. 24, 2012.

20. Temporary Restraining Order, *supra* note 6, at 1.

21. *Id.* at 6.

22. Order, *ACLU of Minn.*, No. 0:04-cv-4653 (D. Minn. Apr. 1, 2005), D.E. 21; Motion to Withdraw, *id.* (Mar. 31, 2005), D.E. 20.