UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF TEXAS
GALVESTON DIVISION

VOTING FOR AMERICA, INC., *et al*,	§	
	§	
Plaintiffs,	§	
VS.	§	CIVIL ACTION NO. G-12-44
	§	
HOPE ANDRADE, *et al*,	§	
	§	
Defendants.	§	

ORDER MODIFYING PRELIMINARY INJUNCTION AND DENYING MOTION FOR STAY

The Secretary of State seeks a stay of the preliminary injunction this Court issued August 2nd enjoining five of eight challenged provisions of the Texas Election Code that regulate third-party voter registration activities. Though the Secretary requests a stay of the entire injunction, in her motion and subsequent argument at a hearing before this Court, she focused on the Court's ruling enjoining the provision that limits volunteer deputy registrars ("VDRs") to only accepting and delivering applications given to them by residents of the county in which the VDRs were appointed (the "County Limitation"), and the requirement that VDRs personally deliver, rather than mail, registration applications (the "Personal Delivery Requirement").

In moving for a stay, the Secretary argues that the County Limitation and Personal Delivery Requirement are necessary to track applications and impose accountability on VDRs who might commit fraud. She also

contends that the injunction disrupts traditional county control over voter registration and causes "chaos and confusion" prior to the November election. Def. Tex. Secretary of State Hope Andrade's Mot. for Stay 2, ECF No. 66; Aff. of Brian Keith Ingram 1–2, ECF No. 66-1. For the reasons discussed below, the Secretary's arguments do not meet the high burden for a stay, and the Motion for Stay is **DENIED**. The Court will, however, make a minor modification to the injunction to ensure adequate tracking of VDRs.

I. STANDARD FOR GRANTING A STAY

District courts have the power to modify or stay the injunctions they issue pending appeal. *See* Fed. R. Civ. P. 62(c). When deciding to issue a stay, a district court must consider the following factors: "(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies." *Hilton v. Braunskill*, 481 U.S. 770, 777 (1987). These factors must not be applied "in a rigid mechanical fashion," *Reading & Bates Petroleum Co. v. Musslewhite*, 14 F.3d 271, 272 (5th Cir. 1994) (quoting *United States v. Baylor Univ. Med. Ctr.*, 711 F.2d 38, 39 (5th Cir. 1983) (per curiam)), and a stay may be granted if the moving party "present[s] a substantial case on the

merits when a serious legal question is involved and show[s] that the balance of the equities weighs heavily in favor of granting the stay." *Ruiz v. Estelle*, 650 F.2d 555, 565 (5th Cir. 1981) (per curiam). "Because the burden of meeting this standard is a heavy one, more commonly stay requests will not meet this standard and will be denied. Examples of cases . . . in which stays have been denied [are those] involving . . . First-Amendment violations." 11 CHARLES ALAN WRIGHT ET AL., FEDERAL PRACTICE AND PROCEDURE § 2904 (2d ed. 1995).

II. DISCUSSION

The injunction does not disrupt the traditional county based system of voter registration in Texas. Elected county registrars are still the officials who must receive any voter registration application for an applicant residing in their county. Those county registrars are still the ones who must review applications and determine the eligibility of any applicant who resides in their jurisdiction. With respect to the County Limitation and Personal Delivery Requirement, there are only two differences between the pre and postinjunction regimes. The first is that VDRs duly appointed and trained in another county will be among those able to accept and submit applications to a registrar in a different county. *See* Op. and Order Granting in Part and Den. in Part Pls.' Mot. for Prelim. Inj. 65–69, ECF No. 65. The second is

that VDRs may mail, rather than personally deliver, the applications they collect, as federal law requires. *See id.* at 46–49. Other states with county-based voter registration systems, Mississippi to name just one,[1] impose no restrictions on members of a voter registration drive mailing the voter registration applications that are collected to the appropriate county official.[2] They apparently do so without any apparent disruption to a county-based registration system, "chaos," or greater reported incidence of fraud than exists in Texas.

Nor does the injunction prevent county registrars from tracking the VDRs who are receiving applications from prospective voters and submitting them to registrars. As explained in the Court's opinion accompanying the injunction, the County Limitation "has only a tenuous connection" to application tracking. *See* Op. and Order Granting in Part and Den. in Part Pls.' Mot. for Prelim. Inj. 67–69. Other provisions of the Election Code, which were not enjoined, enable tracking. Section 13.033 gives the applicant the right to inspect the VDR's certificate of

[1] *See* Miss. Code Ann. § 23-15-47 (requiring mail-in applications to be directed to the registrar of the county in which the applicants live).

[2] Moreover, Arkansas maintains a system in which county officials register voters despite allowing those conducting voter registration drives to mail collected applications to the Secretary of State, who then distributes the applications to the appropriate county official. *See Conducting a Voter Registration Drive*, *available at* http://www.sos.arkansas.gov/elections/Documents/voter_registration_guide.pdf.

appointment—a certificate which denotes the VDR's county of appointment.[3] Tex. Elec. Code Ann. § 13.033. Section 13.040 also allows some measure of tracking by requiring the collecting VDR to give signed receipts to each applicant who submits an application and to transmit a copy of those receipts to the county registrar with the delivered applications. *Id.* § 13.040. Because the receipt requirement is still in force, it applies to applications submitted in person or by mail. Finally, to the extent they make an effort to do so given the typical day-to-day traffic at many county offices, county registrars still possess the ability to identify the VDRs who personally deliver applications to their offices.

To ensure the receipts enable sufficient tracking, the Court will modify the injunction to make clear that the required receipt that a VDR must give to the applicant and submit to the county registrar with the application must indicate that county in which the VDR is appointed.

As developed at the stay hearing, the Secretary's arguments about tracking largely end up being not that the county registrars will be unable to identify the VDR appointed in another county who collects an application, but that it will take additional effort to hold VDRs accountable—that is, the Galveston County registrar will have to notify the Harris County registrar to

[3] *See, e.g.*, *Certificate of Appointment for Volunteer Deputy Registrar*, *available at* http://www.sos.state.tx.us/elections/laws/tavrlaws.shtml (last updated March 2012).

report problems with a VDR appointed and trained in Harris County. But this is not a significant burden, especially given that registrars in different counties already have experience interacting on registration issues. *See* Tex. Elec. Code Ann. § 13.072(d) (requiring registrars to forward applications received from out-of-county residents to the registrar of the appropriate county within two days of receipt, and, if the other county is not contiguous, to give written notice of that action to the applicants within seven days of receipt).

The Secretary's stay motion also proposes a hypothetical in which a VDR collects incomplete applications from residents of various counties. Def. Tex. Secretary of State Hope Andrade's Mot. for Stay 2. But the training requirement remains in effect and there is little incentive for a trained VDR to take the time, and often the expense, of collecting applications with the goal of submitting applications that are destined to be rejected. In any event, this argument about potential disenfranchisement ignores the requirement that registrars notify applicants whose applications are rejected or challenged, *see* Tex. Elec. Code Ann. §§ 13.073, 13.075, after which the applicants may submit corrected applications.

While the Secretary argues that that the proximity of the upcoming election accentuates the harms she contends result from the injunction—

harms that this Court concludes are minimal at best because the postinjunction regime still enables tracking—it also means that a stay would continue for the duration of this election the impediments to voter registration efforts that the enjoined provisions imposed.

For the reasons discussed above and previously documented in the Court's opinion accompanying the injunction, the Court concludes that the Secretary has not demonstrated that the "balance of the equities weighs heavily in favor of granting the stay." *Ruiz*, 650 F.2d at 565.

III. ORDER

For the foregoing reasons, **IT IS ORDERED:**

1. Defendant Texas Secretary of State Hope Andrade's Motion for Stay (ECF No. 66) is **DENIED.**

2. The Opinion and Order Granting in Part and Denying in Part Plaintiffs' Motion for Preliminary Injunction (ECF No. 65) is **MODIFIED** as follows:

(a) The text of Paragraph 3(d) of the Order, reading "Tex. Elec. Code Ann. § 13.038, to the extent that it prohibits lawfully appointed and trained VDRs from distributing applications to or collecting applications from residents of counties other than the county in which the VDRs are appointed and trained, and to the extent that it prohibits lawfully appointed and trained VDRs from delivering applications in person or by U.S. mail to the registrars of counties other than the county in which the VDRs are appointed and trained;" is **WITHDRAWN** and **REPLACED WITH** "Tex. Elec. Code Ann. § 13.038, to the extent that it prohibits lawfully appointed and trained VDRs from distributing applications to or collecting applications from residents of counties other than the county in which the VDRs are appointed and trained, so long as those VDRs indicate their county of

appointment on the receipts that they are required to issue to applicants under Tex. Elec. Code Ann. § 13.040, and to the extent that it prohibits lawfully appointed and trained VDRs from delivering applications in person or by U.S. mail to the registrars of counties other than the county in which the VDRs are appointed and trained;"

(b) All other parts of the Order are to **REMAIN IN EFFECT**. A complete version of the modified injunction is attached to this Order.

IT IS SO ORDERED.

SIGNED this 14th day of August, 2012.

Gregg Costa
United States District Judge