

UNITED STATES DISTRICT COURT  
FOR THE MIDDLE DISTRICT OF LOUISIANA

VAYLA NEW ORLEANS, THANH MAI, )  
FLORIDALMA MANSILLA, NORMA )  
FLORES on behalf of themselves and )  
others similarly situated )

Plaintiffs, )

v. )

TOM SCHEDLER in his official capacity )  
as Louisiana Secretary of State ANGIE )  
ROGERS, in her official capacity as the )  
Louisiana Commissioner of Elections )

Defendants )

CIVIL ACTION

CLASS ACTION

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiffs VAYLA New Orleans, Thanh Mai Floridalma Mansilla, and Norma Flores seek declaratory and injunctive relief and allege as follows:

NATURE OF ACTION

1. This case challenges Louisiana Revised Statute Section 18:105(B) which discriminates against naturalized citizens by subjecting them to heightened voter registration requirements. In 1874, Louisiana's legislature passed Act 155. Section 20 of Act 155 required voter registrants born outside the United States to prove they had naturalized into United States citizenship. Such laws targeting foreign born, naturalized voters were once more common, but Louisiana's laws the only one of its kind still enforced in the United States. Similar laws were long ago struck down as discriminatory.

<sup>1</sup> S. Journal, 1874 Leg., Reg. Sess. 245 (La. 1874).

2. Section 18:105





14. VAYLA has over 2,200 total members, includ

United States in 1990, and became a U.S. citizen on January 27, 2015. Since becoming a U.S. citizen, Mansilla has attempted to register to vote twice in Louisiana, both times attesting to her U.S. citizenship. Mansilla remains unregistered to vote due to Section 18:105(B)

18. Defendants' enforcement of Section 18:105(B) prevented Mansilla from being registered to vote after she submitted voter registration forms, thereby blocking her from voting in the 2015 gubernatorial election and the 2016 Presidential primary election. Section 18:105(B) requires her to comply with a discriminatory process or be barred from voting in the November 2016 Presidential elections.

19. Plaintiff Norma Flores is a naturalized U.S. citizen, a resident of Jefferson Parish, Louisiana, and an eligible voter who wants to register and vote in the 2016 general election. Flores is 51 years old. She has never been convicted of a felony nor had her right to vote taken away by a court. She was born in Honduras in 1964, moved to the United States in 1993, and became a U.S. citizen in 2008. Since moving to Louisiana in 2011, she has tried to register to vote in Louisiana three times, each time attesting to her U.S. citizenship, but Flores remains unregistered due to Section 18:105(B)

20. Defendants' enforcement of Section 18:105(B) prevented Flores from being registered to vote after she submitted voter registration forms, thereby blocking her from voting in the 2012 Presidential election, the 2015 gubernatorial election and the 2016 Presidential primary election, among other elections. Section 18:105(B) requires her to comply with a discriminatory process or be barred from voting in the November 2016 Presidential elections.

21. Defendant Tom Schedler is the Secretary of State for the State of Louisiana and is sued in his official capacity. As Secretary of State, Defendant Schedler is Louisiana's chief elections officer and administers Louisiana's laws relating to voter registration. LA. CONST. art.

IV, § 7; LA. REV. STAT. ANN. §§ 18:18, 18:1353, 36:742. Each parish's Registrar of Voters is "[s]ubject to the direction of the secretary of state," LA. REV. STAT. ANN. § 18:58(A), and the Secretary of State prescribes rules to be "applied uniformly by each registrar of voters," REV. STAT. ANN. § 18:18(A)(3).

22. Defendant Angie Rogers is the Commissioner of Elections for the State of Louisiana and is sued in her official capacity as Commissioner of Elections. Defendant Rogers is charged with administering the laws relating to voter registration, LA. CONST. art. IV .

registration.<sup>2</sup> States are required to “accept and use” the Federal Form to register voters at least for federal elections. 52 U.S.C. § 20505(a)(1) States may not impose additional registration requirements on



Voter Registration Act] and is consistent with state law.<sup>4</sup> Louisiana has not rescinded Attorney General Opinion No. 2008-A following Arizona v. ITCA. The Louisiana Attorney General opinion, which on information and belief was authored by Defendant Commissioner of Elections Angie Rogers, remains on the Louisiana Attorney General's website.<sup>5</sup>

C. Louisiana Law Governing Voter Registration for Naturalized U.S. Citizens

28. T

perjury; they are not required to submit or present documentary proof of U.S. citizenship  
to be registered. However, in addition to

specific instructions to the Federal Form also not mention the documentary proof of citizenship requirement for naturalized citizens

#### FACTUAL ALLEGATIONS

A.

In order for your voter registration application to be processed, you must establish that you are a United States citizen. You may provide one of the following forms of documentation:

A Certificate of Naturalization must be presented in the Registrar of Voters Office in person. This document cannot be reproduced. If an applicant cannot appear in person, a family member may appear with it on his or her behalf.

A current U.S. Passport also can be provided, and unlike the Certificate of Naturalization, it may be copied. You may either appear with the original in the Registrar's Office, or provide a legible copy of the two pages which include your picture and personal information, which may be mailed ~~via~~ [ . . . ] to our office.

...

Please supply the necessary information within 10 days of the date of this letter. If you fail to do so, your application will be rejected. At this point, you will need to re-register on a new application. . . .

38. The St. Bernard Parish Registrar of Voters office sends naturalized voter applicants a letter entitled a "Request for Additional Information," which states ~~YOUR~~ APPLICATION TO REGISTER TO VOTE HAS NOT BEEN PROCESSED FOR THE FOLLOWING REASON(S)." In one instance, that office's staff 0 -2.EASI -0.0OcHcR 0.0waf 9 -2.3 [(t)(F

erroneously suggest it is not a requirement for online and mail registration, the website states: “If you are not a natural born U.S. citizen, you must bring supporting documents (i.e. passport or naturalization documents).”

40. Plaintiffs Thanh Mai, Florida Mansilla, and Norma Flores have made multiple attempts to register to vote in Louisiana using the paper Louisiana Voter Registration Application, the online form, and the Federal Form, but remain unregistered because of the challenged law. Despite attesting under penalty of perjury their U.S. citizenship each time they fill out an application, instead of being registered, Mai, Mansilla, and Flores receive nothing back from the Registrar of Voters office to confirm or deny their registration or they receive a letter telling them they must prove their U.S. citizenship within ten days in order to complete the process and be registered to vote.

41. Mai has unsuccessfully submitted three voter registration applications. In each attempt she filled out the form and attested to her citizenship and eligibility to vote. In the fall of 2014, Mai filled out a voter registration form at Loyola University voter registration drive. She received in response neither confirmation of registration nor notice requiring proof of citizenship. In the fall of 2015, Mai was rejected from the polls and was told she was not on the list of registered voters and therefore could not vote.

42. Most recently, in January 2016, Mai submitted the Federal Form via a voter registration drive and soon thereafter submitted an application via the online voter registration system at [geauxvote.com](http://geauxvote.com). Instead of being registered to vote, she received a letter from the Jefferson Parish Registrar of Voters office dated February 10, 2016, stating she was not registered.

She was subsequently mailed a second letter informing her that the Registrar's office had "to believe she was not a U.S. citizen and therefore her registration was invalid. This second letter instructed Mai that she would have to appear in person to prove her U.S. citizenship within 21 days. Because she did not provide documentary proof of her U.S. citizenship, she is currently unregistered to vote.

43. Since becoming a U.S. citizen, Mansilla has tried to register to vote twice but remains unregistered. In February 2015, Mansilla tried to register to vote online using the geauxvote.com system but never received any confirmation of registration. In 2016, she submitted a Louisiana Voter Registration Application. Instead of being registered to vote, she received a letter from the Jefferson Parish Registrar of Voters office requiring her to prove her U.S. citizenship within 10 days. Because she did not provide documentary proof of her U.S. citizenship, Mansilla remains unregistered to vote.

44. Since moving to Louisiana in 2011, Flores has tried to register to vote in Jefferson Parish three times, each time attesting to her U.S. citizenship and eligibility to vote. She submitted a registration form in 2012 and again applied to register at the Office of Motor Vehicles in June of 2015, but never received any confirmation of registration or other communication from the Jefferson Parish Registrar's office. In February 2016, she submitted a Louisiana Voter Registration Application. Instead of being registered to vote, she received a letter from the Jefferson Parish Registrar of Voters office requiring her to prove her U.S. citizenship within 10 days. Because she did not provide documentary proof of her U.S. citizenship, Flores remains unregistered to vote.

45. This election cycle, VAYLA has registered community members at VAYLA's office, local businesses, churches, and other locations, including both the Louisiana state registration

form and the Federal Form. In order to ensure these naturalized applicants registered to vote, VAYLA must drive them to their respective parish Registrar of Voters office to turn in their completed applications and show documentary proof of citizenship. Many of the people being driven to parish Registrar of Voters offices lack the language skills, transportation and familiarity with the voter registration process to complete this task on their own. VAYLA has brought these naturalized U.S. citizen registrants to Registrar of Voters office locations in Orleans Parish, Jefferson Parish and St. Bernard Parish. These trips usually take over an hour each and some require VAYLA's Civic Engagement Coordinator to drive over 80 miles roundtrip.

46. VAYLA is expending money, staff time and other resources helping community members comply with this law. VAYLA's Civic Engagement Coordinator is paid \$14.00 per hour and works 80 hours every two weeks. The Civic Engagement Coordinator has devoted significant time to this effort and, as a consequence, has not been able to complete her routine voter education and civic engagement tasks such as holding two voter education events per month and finishing a Get Out the Vote plan. VAYLA is paying for the expenses of these trips including gas and parking costs. The organization's finite resources could have been spent on core VAYLA activities and programming such as voter mobilization, supporting people, leadership development, social services, education and health programs. Given the competing demands on the nonprofit organization's limited resources, VAYLA's staff is mindful that despite their ongoing efforts on voter registration this year many community members are still not being reached and go unregistered. In this way, Section 18:105(B) causes ongoing and sustained harm to the voting rights of naturalized community members which VAYLA serves and to VAYLA's ability to register them.

B. Louisiana is Unlawfully Applying The Challenged Law to Voter Registration Applicants Using the Federal Form

47. Louisiana voters who register with the Federal Form are being unlawfully required to identify their place of birth and, if they are naturalized citizens, provide documentary proof of citizenship.

48. Despite applicants who submit a federal form attesting to their U.S. citizenship under penalty of perjury, Louisiana state and local election officials will not accept the Federal Form unless the applicant provides his or her place of birth within ten days of the Registrar of Voters mailing a letter acknowledging receipt of the Federal Form. For example, the Orleans Parish Registrar of Voters office will send a letter to applicants who used the Federal Form asking for the applicant's place of birth and informing them that the applicant must come into the office if they were born abroad:

The Registrar of Voters office is unable to process your voter registration application for the reason(s) checked below: . . .

Your place of birth was not provided. Contact the Registrar of Voters office for more information. If born outside of the United States, you must come into the office; however contact our office first! . .

Please provide the requested information within ten (10) days of the date of this letter.

This letter to registrants who submitted the Federal Form informs the registrant that their voter registration application will not be complete until they comply. However, the letter fails to mention the documentary proof of citizenship requirement.

49. Orleans Parish Registrar of Voters staff at the Algiers Point office told Plaintiff VAYLA staff member Jeanna Tran that naturalized U.S. citizen applicants who submit the Federal Form are required to submit proof of citizenship. Additionally, Orleans Parish Registrar



of Voters staff have refused to accept Federal Forms, instead insisting that registrants fill out Louisiana state forms.

50. When Jefferson Parish Registrar of Voters staff do not suspect that a registrant is a naturalized U.S. citizen, they will require documentary proof of citizenship from Federal Form registrants.

51. Plaintiff Mai submitted a Federal Form via a voter registration drive in January 2016. She received a letter from the Jefferson Parish Registrar of Voters office dated February 10, 2016, stating that she was not registered and requiring her to prove her U.S. citizenship within 10 days of the date on the letter. She was subsequently mailed a second letter informing her that the Registrar's office had reason to believe she was not a U.S. citizen and therefore her registration was invalid. This second letter instructed Mai that she would have to appear in person to prove her U.S. citizenship within 21 days.

#### CLASS ACTION ALLEGATIONS

52. Plaintiffs bring this action on behalf of themselves and all those similarly situated pursuant to Federal Rules of Civil Procedure 23(a) and 23(b)(2).

53. The class is defined as:

All naturalized United States citizens residing in Louisiana who are eligible to vote who have applied or will apply, to register to vote but who are not registered to vote.

54. The precise size of the class is unknown, but it likely encompasses thousands of people and is therefore so numerous that joinder of all members would be impracticable. 181,642 foreign-born individuals lived in Louisiana as of fiscal year 2014. 72,250 of those foreign-born individuals were naturalized U.S. citizens. 109,392 of those foreign-

individuals had not yet naturalized.<sup>8</sup> On average in the United States, approximately 60% of naturalized citizens are registered to vote.<sup>9</sup>

55. Questions of law and fact are common to the class including whether Section 18:105(B) violates the Equal Protection Clause by discriminating between groups of citizens based on national origin; (2) whether Section 18:105(B) violates 52 U.S.C. § 10101(a)(2)(A) by imposing different standards and procedures for different individuals applying to register to vote; and (3) whether Louisiana Registrars' application of Section 18:105(B)'s documentary proof of citizenship requirement to applicants who submit the Federal Form is preempted because these Registrars are failing to accept and use the Federal Form as required under the National Voter Registration Act.

56. Plaintiffs' claims are typical of the class. Section 18:105(B) expressly applies to all naturalized U.S. citizen voter registrars with equal force.

57. Plaintiffs will fairly and adequately represent the interests of all members of the proposed class because they seek relief on behalf of the class as a whole and have no interests antagonistic to other members of the class. Plaintiffs, like other members of the proposed class, face discriminatory hurdles in registering to vote. They seek to have Section 18:105(B) declared unlawful and permanently enjoined so that all class members will be able to register to vote on an equal basis with other U.S. citizens.

58. Proposed class counsel will fairly and adequately represent the class. Proposed class counsel is experienced with voting rights litigation and civil rights litigation.

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<sup>8</sup> U.S. Census Bureau, 2014 American Community Survey Year Estimates, Table B05002.

<sup>9</sup> U.S. Census Bureau, 2014 Current Population Survey Table 11. Reported Voting and Registration Among Native and Naturalized Citizens, by Race and Region of Origin: November 2014 available at <http://www.census.gov/data/tables/tseries/demo/votingandregistration/p26577.html> (last visited May 3, 2016)

59. Defendants have acted and will act on grounds generally applicable to the class in executing Section 18:105

within the meaning of the Fourteenth Amendment. For example, but for Section 18:105(B) Plaintiffs Mai, Mansilla, and Flores would be registered to vote. Similarly, due to the Defendants' and parish registrars of Voters offices' enforcement of Section 18:105(B) Plaintiff

the standards, practices, or procedures applied” under Louisiana law to native U.S. citizens registering to vote.

72. Assuming they meet the other voting eligibility criteria listed in REV. STAT. ANN. § 18:101, native born U.S. citizens are registered to vote based on the information they provide and swear to under penalty of perjury on a Louisiana Voter Registration Application or the online voter registration application. By contrast, naturalized U.S. citizens must provide documentary proof of one of the voting eligibility criteria—U.S. citizenship—despite having also sworn under penalty of perjury to their U.S. citizenship.

73. Such discriminatory treatment in the voter registration process based on national origin is not contemplated by A. REV. STAT. ANN. § 18:101, since all U.S. citizens are equally eligible or “qualified to vote” under Louisiana law, 52 U.S.C. § 10101(a)(2)(A) regardless of how they attained U.S. citizenship. Therefore, the standards, practices and procedures applied to all U.S. citizens must be uniform and nondiscriminatory in accordance with 52 U.S.C. § 10101(a)(2)(A).

74. At all relevant times, Defendants have acted under color of state law.

75. Defendants, acting under color of state law, have deprived and will continue to deprive Plaintiffs of their right to voter registration free of discriminatory standards, practices, or procedures which is guaranteed to Plaintiffs by 52 U.S.C. § 10101(a)(2)(A) and 42 U.S.C. § 1983.

### COUNT THREE

(Violation of the Elections Clause, U.S. CONST. art. I, § 4, cl. 1, as to the National Voter Registration Act of 1993, 52 U.S.C. § 20501 et seq. and 42 U.S.C. § 1983)

76. The factual allegations contained in the preceding paragraphs are incorporated into Count Three, as though fully set forth herein.

77. Plaintiffs assert a claim pursuant to 42 U.S.C. § 1983 for violation of the Elections Clause of Article One of the United States Constitution and the National Voter Registration Act, which preempt contrary state laws

78. The National Voter Registration Act (“NVRA”) of 1993, 107 Stat. 77, as amended, 52 U.S.C. § 20501 et seq. was enacted to increase voter registration in a variety of ways. The NVRA mandates the creation of a National Mail Voter Registration Form (“Federal Form”), which can be used to register to vote anywhere in the United States. 52 U.S.C. § 20505(a)(1) States are required to “accept and use” this uniform Federal Form to register voters for federal elections at a minimum. Id. The Federal Form’s instructions for Louisiana do not mention any documentary proof of citizenship requirement of any kind, and Louisiana has neither informed the U.S. Election Assistance Commission (“EAC”) of its Section 18:105(B)’s enforcement nor sought an update to these instructions. 52 U.S.C. §§ 20505, 20508.

79. The NVRA was passed pursuant to the Elections Clause of the U.S. Constitution: “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations, except as to the Places of choosing Senators.” U.S. Const. Art. I, § 4. Federal law enacted pursuant to the Elections Clause displaces and preempts inconsistent state laws.

80. Under the Supreme Court’s decision in *Arizona v. Inter Tribal Council of Arizona, Inc.*, 133 S. Ct. 2247 (2013), a state may not impose a state documentary proof of citizenship requirement on registrants using the federal registration form created pursuant to the NVRA. The Court unequivocally stated

[T]he fairest reading of the statute is that a state-

NVRA's mandate that States "accept and use" the Federal Form. If this reading prevails, the Elections Clause requires that Arizona's rule give way.

Id. at 2257 (citation omitted, emphasis in original).

81. In clear violation of that precedent, Louisiana is imposing its state documentary proof of citizenship requirement on Louisiana naturalized voter applicants who submit the Federal Form. Under *Arizona v. ITCA*, the application of Louisiana's state documentary proof of citizenship requirement for naturalized U.S. citizens registering to vote is preempted as contrary to the NVRA.

82. Louisiana's law and practice conflicts with federal law and the Federal Form and imposes requirements not authorized by and contrary to federal law.

83. Because the Federal Form's state specific instructions do not contain any instructions requiring naturalized U.S. citizens to comply with Louisiana's documentary proof of citizenship requirement, Plaintiffs have a right to register to vote for all elections in Louisiana using the Federal Form, notwithstanding the omission of any documentary proof of citizenship.

84. At all relevant times, Defendants acted under color of state law.

85. Defendants, acting under color of state law, have unlawfully imposed LA. REV. STAT. ANN. § 18:105(B) on voter registration applicants using the Federal Form. Defendants will continue to deprive Plaintiff Mai and members of Plaintiff VAYLA of their right to register to vote using the Federal Form, which is guaranteed to Plaintiffs by the National Voter Registration Act of 1993, 52 U.S.C. § 20501 et seq. 42 U.S.C. § 1983.

#### PRAYER FOR RELIEF

Plaintiffs respectfully request that this Court:

(a) Assume jurisdiction over this matter;





to provide new training and guidance for the Registrar of Voters offices and the volunteer poll workers who serve in elections,

(h) Grant Plaintiffs their reasonable costs and attorneys' fees incurred in bringing this action pursuant to 42 U.S.C. § 1988, 28 U.S.C. § 1920, and as otherwise permitted by law; and

(i) Grant such other relief as this Court deems just and proper.

DATED: May 4, 2016

Respectfully submitted,

Fax: (202) 3311663

\*Application Pending to be Admitted Pro Hac Vice to Practice in the United States District Court for the Middle District of Louisiana

\*\*Application Pending to be Admitted Pro Hac Vice to Practice in the United States District Court for the Middle District of Louisiana and Working Under the Direct Supervision of an Enrolled, Active Member of the District of Columbia Bar