

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

MYRNA COLON-MARRERO

Plaintiff

vs

CIVIL 12-1749CCC

HECTOR CONTY-PEREZ, as President of the Puerto Rico State Elections; EDWIN MUNDO-RIOS, as Electoral Commissioner of the New Progressive Party; EDER E. ORTIZ-ORTIZ, as Electoral Commissioner of the Popular Democratic Party; ROBERTO I. APONTE-BERRIOS, as Electoral Commissioner of the Puerto Rican Independence Party; JULIO FONTANET-MALDONADO, as Electoral Commissioner of the Movimiento Unión Soberanista; ADRIAN DIAZ-DIAZ, as Electoral Commissioner of Puertorriqueños por Puerto Rico; CARLOS QUIROS-MENDEZ, as Electoral Commissioner of Partido del Pueblo Trabajador; NORMAN PARKHURST

Defendants

ORDER

Before the Court is a Motion Pursuant to Fed. R. Civ. P. 65 for Preliminary Injunction filed on September 13, 2012 (**docket entry 6**) and Memorandum of Law in support thereof (docket entry 7). The nature of plaintiff's action is defined in paragraph 1 of the Complaint (docket entry 1) which reads:

This is a civil action filed by plaintiff Myrna Colón-Marrero, a citizen of the United States of America residing in Puerto Rico, alleging that the Defendants - the President and the Electoral Commissioners of the Puerto Rico State Elections Commissions (SEC) - unlawfully removed her from the Commonwealth electoral register because she exercised [her] right not to vote in the 2008 election for Resident Commissioner. In so doing, the SEC defendants knowingly breached the National Voter Registration Act of 1993 (NVRA), the Help America Vote Act of 2002 (HAVA), and the first amendment, due process and equal protection clauses of the United States Constitution.

Complaint, at ¶ 1.

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Plaintiff requests injunctive relief and a declaration under the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02:

(a) declaring Article 2.012 of the P.R. Electoral Law unlawful as contrary to the provisions of NVRA and HAVA; (b) enjoining the SEC Defendants from holding any future electoral event concerning a federal office until such time as their acts and conduct comport to the voter registration and list maintenance provisions of NVRA, HAVA and the Constitution; (c) ordering Defendants to immediately activate the plaintiff and all other similarly situated person as registered voters in the General Registry of Voters entitled to vote in the upcoming election for federal office; (d) ordering the SEC Defendants to immediately and individually contact any and all persons who were removed from the General Registry of Voters because they did not vote in the 2008 elections; (e) order the SEC defendants as state officials in charge of implementing the electoral laws to abide by all the voter registration and other applicable mandates of the NVRA, HAVA and the first, due process and equal protection amendments to the Constitution.

Complaint, at ¶ 2.

Although the plaintiff avers constitutional violations to the First Amendment, Due Process and Equal Protection Clauses, the main thrust of her Complaint seeking declaratory and injunctive relief, supported by the factual circumstances of plaintiff Colón-Marrero, is anchored on her 42 U.S.C. § 1983 claim for violation of the two federal statutes invoked, to wit: the NVRA and HAVA. Plaintiff's NVRA claim primarily involves a statutory construction issue on the definition of "State." Plaintiff's likelihood of success regarding the NVRA statutory interpretation is not ascertainable from the arguments set forth in her complaint and memorandum in support of preliminary injunction. While Puerto Rico is not included within the definition of "State" in NVRA, the statute that provides her a private cause of action, she contends that the other statute invoked, HAVA, requires that the Commonwealth comply with NVRA in order to receive federal funding to better its electoral system. However, she acknowledges that "HAVA does not seem on its face to grant Plaintiff a private cause of action and it is unclear whether there is an implied cause of action under § 1983." Memorandum (docket entry 7), at p. 20. Plaintiff reverts, once again, to the rules of statutory construction to claim her right to enforce compliance with NVRA's requirements of National Voter Registration, 42 U.S.C. §§ 1973gg through 1973-10, stating:

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While HAVA does not seem on its face to grant Plaintiff a private cause of action, and it is unclear whether there is an implied cause of action under Section 1983, there is no doubt that HAVA explicitly requires and assumes compliance with all the NVRA provisions for all participating States that solicit funds, and Puerto Rico has applied and received funds for purposes of HAVA. See Complaint, Exhibit E. Under rules of statutory construction, the express inclusion of Puerto Rico in the definition of State in HAVA and HAVA's objective of assuring compliance with NVRA, give favor to the construction that Puerto Rico's obligation under both statute[s] are complementary, such that NVRA compliance is mandate[d].

Id.

Given the statutory construction issues set forth above, the Court cannot make a determination favorable to plaintiff on the likelihood of success prong.

Furthermore, plaintiff has also failed to show Irreparable injury. According to her Complaint, the specific provision of law which she challenges, Article 2.102 of the Puerto Rico Electoral Law, has been in place since 1977. That section requires that any elector, such as plaintiff, who did not vote in a general election, must be excluded from the registry of voters. That law also established a deadline of September 17, 2012 for voter registration which allowed any voter who did not participate in the 2008 election to re-register in order to participate in the 2012 election. The basis of plaintiff's claim of violation to the federal statutes is the consequence of the local law that is being challenged. No justification has been advanced, however, as to why she awaited until four (4) days before expiration of the voter registration deadline in Puerto Rico to seek a preliminary injunction to order defendants to immediately activate her and all others similarly situated persons as registered voters in the general registry of voters entitled to vote in the upcoming election for Resident Commissioner and to order the State Election Commission defendants to immediately and individually contact all persons who were removed from the general registry of voters because they did not vote in the 2008 elections. The irreparable injury claimed was created by plaintiff's own conduct. In sum, it is self-inflicted. She had full opportunity to submit her claims to the Court and obtain a remedy without inflicting upon herself any injury as to her rights as a voter.

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Accordingly, and for the reasons stated, the Motion for Preliminary Injunction (**docket entry 6**) is DENIED. This case will be managed as any other ordinary civil action. Plaintiff shall proceed to serve process upon defendants as provided in Fed. R. Civ. P. 4. Plaintiff's Motion Requesting Order Concerning Expedited Summons, Service of Motions and Preliminary Injunction Hearing (**docket entry 8**) is DENIED.

SO ORDERED.

At San Juan, Puerto Rico, on September 18, 2012.

S/CARMEN CONSUELO CEREZO
United States District Judge