

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

MYRNA COLON-MARRERO;
JOSEFINA ROMAGUERA-AGRAIT

Plaintiffs

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; LILLIAN
APONTE-DONES, as Electoral
Commissioner of Partido del Pueblo
Trabajador

Defendants

vs

NORMAN PARKHURST; JOHN E.
MUDD

Intervenor Defendants

ORDER

The Court has before it a Motion Requesting Entry of Final Judgment as to First Amendment, Equal Protection, NAVORA,¹ and HAVA² Claims filed by plaintiffs on March 10, 2015 (**D.E. 155**), in which they allege that there is still

¹“NAVORA” is the acronym used by plaintiffs in their latest motion to refer to the National Voter Registration Act. The Court, and all parties, have previously used the more common acronym “NVRA” to refer to that same statute.

²“HAVA” is the acronym commonly used to refer to the Help America Vote Act of 2002.

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pending “(a) final adjudication of Plaintiffs’ constitutional claims under the first amendment and the equal protection clause as to the NAVORA cause of action; and (b) Final Judgment as to both Plaintiffs’ first amendment, equal protection, NAVORA, and HAVA claims.” Motion, at p. 2. As to their first request, plaintiffs aver that “[n]either the District Court nor [the] Court of Appeals decided the constitutional first amendment nor equal protection argument challenges to NAVORA and state law; and the same are presently pending adjudication by this Court.” Id. As to the second, while acknowledging that on “January 30, 2015, this . . . Court entered declaratory judgment in favor of Plaintiffs’ HAVA claim,” they insist that “[t]he Court . . . has yet to formally issue a final Judgment.” Id.

This is a suit in which two voters who had been excluded from Puerto Rico’s electoral registry for their failure to vote in a single election, that is Puerto Rico’s 2008 election for the position of Resident Commissioner, sought judicial protection in the form of declaratory judgment and injunctive relief. Specifically, that the Court declare and enforce their right to be reinstated to the general roll of voters in order to be eligible to vote in the Commonwealth’s 2012 general elections. Their claims for relief, as stated in their Amended Complaint, were for the Court to:

issue the following equitable and declaratory relief under the Civil Rights Act of 1871, 42 U.S.C. § 1983 and the Declaratory Judgment Act, 28 U.S.C. §§ 2201-02: (a) declaring Article 6.012 of the Puerto Rico Electoral Law, Law No. 78 of June 1, 2011, unlawful as contrary to the provisions of NVRA and HAVA; (b) enjoining the S[tate] E[lections] C[ommission] 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

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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.

Amended Complaint (D.E. 19), at p. 2. Plaintiffs raised as an “alternative” claim that “should the Court determine that NVRA is inapplicable to the American citizens residing in Puerto Rico, said exclusion by Congress would be unconstitutional as it would deprive them of equal protection of the law with respect to a fundamental right.” Id., ¶ 41, pp. 13-14.

On January 30, 2015, the Court issued a Declaratory Judgment (D.E. 152) where it expressly found that “Article 6.012 of Puerto Rico’s Electoral Law, by providing for deactivation of an elector’s right to vote for having failed to vote in one general election, violates the two consecutive election and notice requirement for voter removal from the official list of eligible voters under HAVA.” Declaratory Judgment, at p. 7. It was further declared that the Commonwealth’s State Elections Commission was “permanently enjoined from removing from the official list of eligible voters any registrant who did not vote in a single general election” and “affirmatively ordered that no lawfully registered voter may be removed from the official list of eligible voters unless they have not voted in the two immediately preceding elections and have received and have been given notice of an intent to remove them from such list.” Id., at p. 8.

The Court’s January 30, 2015 Declaratory Judgment effectively afforded plaintiffs, pursuant to the provisions of HAVA, the full remedies they had requested in their Amended Complaint. Given the Court’s disposition awarding plaintiffs the entire relief requested on statutory grounds, there was no need for us to embark on an independent adjudication of any of their constitutional

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claims, or on their alternative request for a declaration of unconstitutionality of NVRA's exclusion of Puerto Rico from its terms. See Amended Complaint (D.E. 19), at ¶ 41. After all, HAVA, which expressly includes Puerto Rico in its definition of "State," in its section 15483(a)(4)(A) explicitly incorporates NVRA's requirement for removal of voters from the official list of eligible voters to maintain updated and accurate voter registration records. This provision prescribes that the State system of file maintenance be "consistent with the National Voter Registration Act of 1993. 42 U.S.C. § 1973gg et. seq. (emphasis ours)." The consistency with NVRA, required by HAVA in the substantive provision cited above, mandates that the system remove "registrants who have not responded to a notice and who have not voted in 2 consecutive general elections for Federal office." The protections afforded voters by NVRA is extended to American citizens residing in Puerto Rico through HAVA itself.

More importantly, it is apodictic that "if a case can be decided on either of two grounds, one involving a constitutional question, the other a question of statutory construction or general law, the Court will decide only the latter." Ashwander v. TVA, 297 U.S. 288, 347, 56 S.Ct. 466, 483 (1936) (Brandeis, J., concurring). It is obvious from the Court's adjudication on the statutory provisions that this is exactly what occurred in this case. Accordingly, and contrary to plaintiffs' contention in their Motion Requesting Entry of Final Judgment (D.E. 155), at p. 2, the Court does not have pending a "final adjudication of Plaintiffs' constitutional claims under the first amendment and the equal protection clause as to the NAVORA cause of action," nor of any other independent constitutional claim. Therefore, no judgment need be entered as to either.

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As to their additional averment that final judgment has not been entered on the only claim adjudicated by the Court, which disposition under HAVA made it unnecessary to reach their other claims, the January 30, 2015 decision entitled Declaratory Judgment (D.E. 152) shall be reissued as a Memorandum Opinion Declaring Rights and Granting Equitable Relief with findings of fact and conclusions of law . An amended judgment shall be entered as a separate document, in compliance with Fed. R. Civ. P. 58(a). Said amended judgment, once entered on docket, shall constitute the final judgment in this case, having determined that there is no need to entertain or to adjudicate any of the other claims raised in the Amended Complaint.

Accordingly, plaintiffs' Motion Requesting Entry of Final Judgment as to First Amendment, Equal Protection, NAVORA, and HAVA Claims (**D.E. 155**) is DENIED as to their prayer that a declaration be issued that "NAVORA's exclusion of Puerto Rico from its coverage is a violation of the due process, equal protection and first amendment clause" and that "final judgment [be entered] as to all of plaintiffs' claims under the Constitution, as well as its statutory claim under . . . NAVORA." It is GRANTED, however, as to their request for the entry of final judgment on their claim under HAVA pursuant to Fed. R. Civ. P. 58(a).

SO ORDERED.

At San Juan, Puerto Rico, on June 4, 2015.

S/CARMEN CONSUELO CEREZO
United States District Judge