Farrakhan v. Locke

United States District Court for the Eastern District of Washington
December 1, 2000, Decided ; December 1, 2000, Filed
NO. CS-96-76-RHW

Reporter: 2000 U.S. Dist. LEXIS 22212
MUHAMMAD SHABAZZ FARRAKHAN, et al., Plaintiffs, v. GARY LOCKE, et al., Defendants.

Subsequent History: Affirmed in part and reversed in part by, Remanded by Farrakhan v. Wash., 2003 U.S. App. LEXIS 14810 (9th Cir. Wash., July 25, 2003)

Prior History: Farrakhan v. Locke, 987 F. Supp. 1304, 1997 U.S. Dist. LEXIS 19719 (E.D. Wash., 1997)

Disposition: [*1] Defendants' motion for summary judgment GRANTED. All of Plaintiffs' claims dismissed. Plaintiffs' motion for summary judgment DENIED.

Counsel: For MUHAMMAD SHABAZZ FARRAKHAN, MARCUS X PRICE, RAMON BARRIENTES, TIMOTHY SCHAAF, CLIFTON BRICENO, AL-KAREEM SHAHEED, plaintiffs: Lawrence Arthur Weiser, Alan Lynn McNeil, University Legal Assistance, Dennis Charles Cronin, Hearrean & Cronin PS, Spokane, WA.

MARCUS X PRICE, plaintiff, Pro se, Spokane, WA.

For STATE OF WASHINGTON, GARY LOCKE, RALPH MUNRO, JOSEPH LEHMAN, defendants: Daniel John Judge, Jeffrey Todd Even, Attorney General of Washington, Olympia, WA.

Judges: ROBERT H. WHALEY, United States District Judge.

Opinion by: ROBERT H. WHALEY

Opinion

ORDER GRANTING DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND DENYING PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT

Before the Court are Defendants' motion for summary judgment (Ct. Rec. 127), and Plaintiffs' motion for summary judgment (Ct. Rec. 134). Oral argument was heard on these motions on November 3, 2000. Larry Weiser, Dennis Cronin, and legal intern Jason Vail appeared on behalf of Plaintiffs. Daniel Judge and Jeffrey Even appeared on Defendants' behalf. For the reasons [*2] below, Defendants' motion is granted and Plaintiffs' motion is denied.

RELEVANT FACTS

The facts are not in dispute. Plaintiffs are convicted felons, and are also African-American, Hispanic-American, or Native American. Each Plaintiff has been disenfranchised under Wash. Const. Art. VI § 3, which denies the right to vote to all persons convicted of an "infamous crime." None of the Plaintiffs have had their civil rights restored under Wash. Rev. Code § 9.94A.220. Plaintiffs allege that Washington's felon disenfranchisement and restoration of civil rights schemes result in the denial of the right to vote to racial minorities in violation of the Voting Rights Act, 42 U.S.C. §§ 1971, 1973. Both sides move for summary judgment on all issues.

ANALYSIS

Summary judgment is appropriate if the "pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." *Fed. R. Civ. P. 56(c)*. When considering a motion for summary judgment, a court may neither weigh the evidence nor assess [*3] credibility; instead, "the evidence of the non-movant is to be believed, and all justifiable inferences are to be drawn in his favor." *Anderson v. Liberty Lobby, Inc.,* 477 U.S. 242, 255, 91 L. Ed. 2d 202, 106 S. Ct. 2505 (1986).

1. Felon disenfranchisement.

Plaintiffs move for summary judgment on their allegation that Washington's felon disenfranchisement scheme constitutes improper race-based vote denial in violation of the Voting Rights Act ("VRA"). Specifically, Plaintiffs argue that race bias in, or the discriminatory effect of, the criminal justice system results in a disproportionate number of racial minorities being disenfranchised following felony convictions. Defendants also move for summary judgment, arguing that: (1) Plaintiffs' claims are barred by the doctrines of *Rooker-Feldman* or res judicata because they necessarily imply the invalidity of Plaintiffs' criminal convictions; (2) Plaintiffs cannot bring a VRA suit because they are disenfranchised; and (3) the totality of the circumstances establishes that Plaintiffs were not denied the right to vote on the basis of race.

The Court concludes that Washington's felon disenfranchisement provision [*4] disenfranchises a

disproportionate number of minorities; as a result, minorities are under-represented in Washington's political process. Analyzing the disenfranchisement provision under the totality of the circumstances illustrates that the cause of this reduction is not the voting qualification; instead, the cause is bias external to the voting qualification. Although racial minorities are clearly being disenfranchised in numbers disproportionate to that of their white fellow citizens, the Court is compelled by controlling Ninth Circuit authority to conclude that this disproportionate impact is not sufficient to provide a legal remedy under the Voting Rights Act ("VRA") because Plaintiffs have failed to establish a causal connection between the disenfranchisement provision and the prohibited result.

As an initial matter, the Court must construe the scope of Plaintiffs' claims; specifically, the Court must determine whether Plaintiffs claim that the disenfranchisement provision is invalid as applied to their particular cases, or whether the challenge more generally alleges that the provision is facially invalid with respect to all racial minorities. The *Rooker-Feldman* doctrine [*5] bars any as-applied challenge because such a challenge would require the Court to scrutinize both the challenged disenfranchisement provision and the State court's application of that provision to a particular set of facts. *See Dubinka v. Superior Court,* 23 F.3d 218, 222 (9th Cir. 1994). Even if the *Rooker-Feldman* bar was inapplicable, and the Court construed Plaintiffs' claims as an as-applied challenge [1], there is no evidence in the record that Plaintiffs' individual convictions were born of discrimination in the criminal justice system. The Court construes Plaintiffs' vote denial claims as a facial challenge to the validity of Washington's disenfranchisement provision. [2]

[*6] However, Plaintiffs' vote denial claims create a constitutional problem when construed as a facial challenge. The voting qualification at issue in this case is somewhat unique; unlike other voter qualifications that have previously been invalidated under the Voting Rights Act, such as literacy tests or poll taxes, *see Oregon v. Mitchell,* 400 U.S. 112, 132-33, 27 L. Ed. 2d 272, 91 S. Ct. 260 (1970), a felon disenfranchisement provision is not inherently or inevitably discriminatory. To the contrary, felon disenfranchisement is specifically authorized by the Fourteenth Amendment. *See* U.S. Const. Amend. XIV § 2. Although felon disenfranchisement provisions can be constitutionally infirm if enacted with a discriminatory intent, *see Hunter v. Underwood,* 471 U.S. 222, 85 L. Ed. 2d 222, 105 S. Ct. 1916 (1985), racially-neutral provisions can permanently disenfranchise felons without running afoul of the Constitution. *See Richardson v. Ramirez,* 418 U.S. 24, 41 L. Ed. 2d 551, 94 S. Ct. 2655, 72 Ohio Op. 2d 232 (1974). If the Court ultimately concluded that Washington's provision was invalid with respect to racial minorities, then only white felons could [*7] be disenfranchised so long as racial bias existed in the criminal justice system. That would obviously create an Equal Protection problem. Fortunately, this is not a conflict between two constitutional doctrines. Instead, any conflict is between a statutory VRA claim and a constitutional claim. Since Plaintiffs' remedy would create a new constitutional problem, the Court is compelled to read the VRA in a manner that does not lead to the conclusion Plaintiffs urge. *See Rust v. Sullivan,* 500 U.S. 173, 191, 114 L. Ed. 2d 233, 111 S. Ct. 1759 (1991) ("'A statute must be construed, if fairly possible, so as to avoid not only the conclusion that it is unconstitutional but also grave doubts upon that score.' This doctrine is followed out of respect for Congress, which we assume legislates in light of constitutional limitations."), *quoting United States v. Jin Fuey Moy,* 241 U.S. 394, 401, 60 L. Ed. 1061, 36 S. Ct. 658 (1916). [3]

[*8] Aside from the constitutional conflict, the Court concludes that the totality of circumstances does not establish the requisite causal link between Washington's felon disenfranchisement provision and reduced minority

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[1] Such a challenge may well be more appropriate in light of the fact that Plaintiffs' allege vote denial instead of vote dilution. *See Burton v. City of Belle Glade,* 178 F.3d 1175, 1188 n.8, 21 (11th Cir. 1999). Due to the ambiguity in the law in this area, the Court analyzes Plaintiffs' claims under both rubrics.

[2] This construction also avoids any res judicata bar. Res judicata is further inapplicable since Defendants, the parties urging application of the bar, have not brought forth any evidence that Plaintiffs were afforded a full and fair opportunity to litigate the disenfranchisement issue during their criminal prosecutions. At most, Plaintiffs could have challenged the facts underlying their convictions; that is not equivalent to challenging the subsequent disenfranchisement, which, according to Defendants, flows automatically by operation of law upon conviction of a felony.

[3] There is no conflict between this conclusion and the Fifteenth Amendment, which provides that "the right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." U.S. Const. Amend. XV § 1. The Fifteenth Amendment, upon which the VRA was patterned, does not affirmatively bestow a right to vote; instead, it merely says that the voting rights of racial minorities shall not be less than those of white citizens. If the Court were to conclude that the disenfranchisement provision was invalid under the VRA as applied to minorities, and that it could only be used to disenfranchise white felons, this would bestow voting protections on minorities beyond those created by the Fifteenth Amendment.

access to Washington's political process. To prevail on their VRA claims, Plaintiffs must establish that the State employs a voting "standard, practice or procedure" that results in the denial or abridgement of the right to vote on account of race. 42 U.S.C. § 1973(a). The VRA envisions a totality of circumstances test, under which the Court is "to determine, based 'upon a searching practical evaluation of the past and present reality' whether the political process is equally open to minority voters.'" *Thornburg v. Gingles,* 478 U.S. 30, 79, 92 L. Ed. 2d 25, 106 S. Ct. 2752 (1986) (citation omitted). [4] Although Plaintiffs need not show that discriminatory intent underlies the challenged voting qualification, "a bare statistical showing of disproportionate impact on a racial minority does not satisfy the § 2 'results' inquiry. Instead, 'section 2 plaintiffs must show a causal connection between the challenged voting practice and [*9] [a] prohibited discriminatory result.'" *Smith v. Salt River Agricultural Improvement & Power Dist.,* 109 F.3d 586, 595 (9th Cir. 1997), *quoting Ortiz v. City of Philadelphia Office of the City Comm'rs,* 28 F.3d 306, 312 (3d Cir. 1994).

The most striking thing about this case is that, although the disenfranchisement provision clearly has a disproportionate impact on racial minorities, there is no evidence that the provision's enactment was motivated by racial animus, or that its operation *by itself* has a discriminatory [*10] effect. Instead, a discriminatory effect arises, if at all, only when the provision operates in light of discriminatory activity in the criminal justice system. Stated differently, if there were no discriminatory motivation or effect in the criminal justice system, then there is no evidence that the disenfranchisement provision would have a discriminatory effect. At most, this establishes a flaw with the criminal justice system, not with the disenfranchisement provision. Plaintiffs have failed to establish a claim for vote denial because the causal chain runs, if at all, to a factor outside of the challenged voting mechanism. If the Court concluded that such evidence was sufficient to establish causation, it would effectively broaden the VRA to provide a remedy for societal discrimination outside the context of voting.

Plaintiffs have not offered any evidence of a "history of official discrimination in the state … that touched the right of the members of the minority group to register, to vote, or otherwise to participate in the democratic process," *Thornburg,* 478 U.S. at 36-37, such as to lead the Court to conclude that the circumstances surrounding the disenfranchisement's [*11] provision created an inference of discriminatory intent or a causal connection between the provision and the result. To the contrary, Washington has historically been very liberal in extending elective franchise to racial minorities. *See* Affidavit of Dr. Quintard Taylor at PP 17, Ct. Rec. 130, ex. 47 (concluding that Washington's political process has historically been open to minorities, and that its felon disenfranchisement provision was not intended to disenfranchise racial minorities); Deposition of Dr. Quintard Taylor, p. 38, ll. 3-14, Ct. Rec. 13, ex. 11 (same). Plaintiffs concede that Washington has no history of official acts aimed at limiting the voting rights of African-Americans, but cite 2 examples allegedly evidencing a political climate hostile to minorities at the time the Washington Constitution was drafted: (1) a proposed constitutional provision barring persons of Chinese descent from voting; and (2) the exclusion of "Indians not taxed" from voter roles in Washington's Constitution as originally drafted. [5] Plaintiffs' first example is not evidence of discrimination; to the contrary, the delegates' rejection of this proposal evidences an intent to promote or delimit [*12] minority voting. [6] This rejection is particularly significant because it occurred at a time when anti-Chinese attitudes were prevalent in the Pacific Northwest. *See* Affidavit of Quintard Taylor at P15, Ct. Rec. 130, ex. 47. Similarly, the original exclusion of "Indians not taxed" from Washington's voter roles has a much more benign

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[4] The Court in *Thornburg* identified several non-exclusive factors that trial courts could use in making this determination. *See Thornburg,* 478 U.S. at 44-45, *quoting* S.Rep. No. 97-417 at 28-29, reprinted in 1982 U.S.C.C.A.N. at 206-07. The Court considers these factors illustrative of the type of considerations generally relevant in VRA cases, but declines to rigidly structure its analysis along this framework for the present case.

[5] Plaintiffs also suggest that the fact that felon disenfranchisement provisions were adopted in other states with the intent to disenfranchise minorities indicates that any such provision is somehow inherently bad. The Court disagrees. The disenfranchisement provision is itself facially neutral, and the Supreme Court has concluded that a State can permanently disenfranchise a felon. *See Richardson v. Ramirez,* 418 U.S. 24, 56, 41 L. Ed. 2d 551, 94 S. Ct. 2655 (1974). Absent any evidence that Washington's disenfranchisement provision had some discriminatory intent, the fact that other statutes were so intended is of no consequence.

[6] A delegate to the Washington Constitutional Convention proposed that Article VI § 3 (voter qualifications) be drafted "to deny the vote to Chinese, idiots, insane, one convicted of an infamous crime, or hereafter of embezzlement of public funds." Journal of the Washington State Constitutional Convention 1889 at 638 (Beverly Paulik Rosenow, ed., 1962). This proposal was read and referred to the Committee on Elections and Elective Rights. 418 U.S. at 61. The Committee deleted all reference to ethnicity, and reintroduced an amended version stating that "all idiots, insane persons and persons convicted of infamous crimes are excluded from the elective franchise." *Id.* at 290.

explanation than that suggested by Plaintiffs when viewed in historical context. Most Native Americans were not legally regarded as full citizens of the United States until 1924. *See, e.g., Iowa Mut. Ins. Co. v. LaPlante,* 480 U.S. 9, 18, 94 L. Ed. 2d 10, 107 S. Ct. 971 (1987). *See also* Wash. Rev. Code § 75.56.040. Reservation land and Native Americans living on reservations were historically regarded as beyond the State's taxing power. *See McClanahan v. State Tax Comm'n of Arizona,* 411 U.S. 164, 169, 36 L. Ed. 2d 129, 93 S. Ct. 1257 (1973). Accordingly, a voting qualification omitting "Indians not taxed" merely distinguishes between citizens and non-citizens of a state. [7] This interpretation is consistent with Washington case-law. *See Anderson v. O'Brien,* 84 Wash.2d 64, 85-86, 524 P.2d 390 (1974) [*13] (Hale, C.J., dissenting). [*14]

Plaintiffs' evidence of discrimination in the criminal justice system, and the resulting disproportionate impact on minority voting power, is compelling; however, it is not enough to establish a causal link under controlling Ninth Circuit authority. As explained above, *Salt River* requires more than a showing of disproportionate impact, and it is well-established that "district courts are bound by the law of their own circuit." *Hasbrouck v. Texaco,* Inc., 663 F.2d 930, 933 (9th Cir. 1981). Even if Plaintiffs established that the disproportionate representation of minorities in the criminal justice system was due to discriminatory animus on the part of prosecutors and judicial officials, this would not establish a causal connection between the voting qualification and the [*15] prohibited result in this case because it is discrimination in the criminal justice system, not the disenfranchisement provision itself, that causes any vote denial. [8] Accordingly, evidence of discrimination in the criminal justice system is only useful for establishing a generalized climate of discrimination which hinders minority opportunity to participate in the political process. The Court concludes that such evidence, by itself, is not sufficient to establish a causal link between the voting qualification and the prohibited result. The Eleventh Circuit faced an analogous situation in *Burton v. City of Belle Glade,* 178 F.3d 1175, 1198 (11th Cir. 1999). In that case, the plaintiffs argued that historical discrimination and segregation in housing caused a concentration of African-Americans in a particular neighborhood outside the city limits, and that the city's refusal to annex the neighborhood into its boundaries, thereby allowing the neighborhood's residents to participate in city elections, improperly diluted the voting strength of minority voters within the city limits and denied the voting rights of minorities living beyond the city limits. The circuit acknowledged [*16] that historical patterns of housing discrimination had segregated the African-American community in the neighborhood beyond the city limits, but held that this evidence was insufficient to establish a VRA violation because "although Appellants have presented evidence of housing segregation in Belle Glade and in the two centers, we can find no evidence of any discrimination with respect to *voting." Id.* at 1198 (emphasis in original). While not binding upon this Court, the Eleventh Circuit's decision in *Burton* is helpful in weighing the significance of Plaintiffs' evidence.

The probative value of Plaintiff's evidence of discrimination in the criminal justice system is further limited since it reflects, at most, [*17] discriminatory animus on the part of the executive and the judicial branches; there is no evidence that the legislative branch, which controls voter qualifications [9], continues to cling to the disenfranchisement provision out of animus, or that it is unaware of or unresponsive to disproportionate minority representation in criminal prosecutions. Instead, the record indicates that Washington's Legislature has historically enacted protections for minorities in areas aside from voting qualifications. *See* 1890 Act, Ct. Rec. 130, ex. 68; Taylor affid. at P 14, Ct. Rec. 130, ex. 47. Despite these efforts, the evidence presented by Plaintiffs clearly demonstrates that the disenfranchisement provision continues to disproportionately impact minority voting strength. Any change prompted by this evidence in this area, however, must come from the Washington Legislature; the disproportionate impact evidence is legally insufficient to establish causation under the VRA.

[*18] Finally, there is no evidence from which the Court could conclude that the criminal justice system is so inherently flawed that application of the disenfranchisement provision inevitably results in minority vote denial. Plaintiffs have presented no evidence

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[7] Notably, this same distinction is made in the 14th Amendment. *See* U.S. Cons. Amend. XIV § 2 ("Representatives shall be apportioned among the several States according to their respective numbers, counting the whole number of persons in each state, *excluding Indians not taxed.*") (emphasis added).

[8] By way of analogy, a criminal statute under which a minority defendant is prosecuted might be a vehicle by which a discriminatory result, a conviction, is obtained by a racially-biased prosecutor. However, that does not mean that the criminal statute causes the discriminatory result.

[9] Since the felon disenfranchisement provision is part of Washington's Constitution, a constitutional amendment would be required to amend or repeal it. Pursuant to Wash. Const. Art. XXIII § 1, such amendments may be introduced to the Legislature, and must receive two-thirds approval prior to being subjected to a public vote.

that their own criminal prosecutions were the result of discriminatory animus, or that they were anything but race-neutral. The fact that there is no indication that the disenfranchisement provision functioned in a discriminatory manner or had a discriminatory effect in these particular Plaintiffs' cases demonstrates that the cause of discriminatory effect is not inherent in the provision.

Based upon the foregoing, the Court concludes that the totality of circumstances does not establish the requisite causal link between Washington's felon disenfranchisement provision and reduced minority access to Washington's political process. [10]

[*19] *2. Restoration of civil rights.*

Plaintiffs allege that Washington's scheme for restoration of civil rights violates the VRA because civil rights are not automatically restored upon completion of the terms of a felony sentence; instead, the restoration process is allegedly complex and difficult to complete. Defendants move for summary judgment, arguing that Plaintiffs lack standing, and that the process is not unduly burdensome.

Plaintiffs have failed to establish standing to challenge the restoration scheme because none of the Plaintiffs have presented evidence (or even alleged) that they are eligible for restoration and have attempted to have their civil rights restored. Plaintiff Farrakhan previously moved to amend the Complaint to add a substantive due process claim challenging the restoration scheme; the Court denied the motion on standing grounds, concluding that "because Plaintiff Farrakhan is not yet eligible to seek reinstatement of his voting rights, his alleged injury is too speculative to support a cause of action challenging the constitutionality of the reinstatement provisions." *Farrakhan v. Locke,* 987 F. Supp. 1304, 1315 (E.D.Wash. 1997). This challenge [*20] falls victim to the same inadequacy.

Even if Plaintiffs had standing, the Court would still grant summary judgment to Defendants because there is no evidence that the restoration process unduly impacts minorities because of race. Having concluded that the initial disenfranchisement does not constitute improper race-based vote denial, the reinstatement process logically cannot be illegal unless the Court concludes that something in the process makes restoration difficult or impossible because of race. There is no evidence in the record that the process has such an effect or intent.

CONCLUSION

IT IS HEREBY ORDERED:

1. Defendants' motion for summary judgment **(Ct. Rec. 127)** is **GRANTED.** All of Plaintiffs' claims are **dismissed.**

2. Plaintiffs' motion for summary judgment **(Ct. Rec. 134)** is **DENIED.**

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel.

DATED this 1ST day of December, 2000.

ROBERT H. WHALEY

United States District Judge

ORDER - Filed DEC 05 2000

All claims in this matter having been resolved, **IT IS HEREBY ORDERED:**

1. The District Court Executive shall [*21] **enter judgment** on all claims in favor of Defendants.

2. The District Court Executive shall **close the file.**

IT IS SO ORDERED. The District Court Executive is directed to enter this order and to provide copies to counsel and to Plaintiff.

DATED this 4th day of December, 2000.

ROBERT H. WHALEY

United States District Judge

JUDGMENT IN A CIVIL CASE

This action came to a hearing before the Court. The issues have been heard and a decision has been rendered.

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[10] Defendants also argue that Plaintiffs lack standing to bring a VRA claim because they are disenfranchised. Although not at issue in this case, Plaintiffs' disenfranchisement probably bars them from bringing a vote dilution claim. *See Burton City of Belle Glade,* 178 F.3d 1175, 1188 n.8 & n.21 (11th Cir. 1999) (distinguishing between VRA vote dilution claims, which may only be brought by enfranchised members of adversely affected minority group, with VRA vote denial claims, which may only be brought by disenfranchised minority group members). Instead, the only avenue for redress under the VRA for disenfranchised minority voters is to bring a vote denial claim. If Defendants' interpretation were adopted, states could disenfranchise all minority voters without running afoul of the VRA. Such an interpretation is clearly illogical, and is contrary to the broad reading of the VRA favored by the Supreme Court. *See Chisom v. Roemer,* 501 U.S. 380, 403, 115 L. Ed. 2d 348, 111 S. Ct. 2354 (1991).

IT IS ORDERED AND ADJUDGED that judgment is entered on all claims in favor of Defendants.

DATED: December 5, 2000