

## **Improperly Canceling Voter Registrations for Changes of Address**

*United States Student Association Foundation v. Land  
(Stephen J. Murphy III, E.D. Mich. 2:08-cv-14019)*

Three organizations filed a federal complaint charging the state with improperly canceling voter registrations based on insufficient indications of residence changes. The district judge determined that the state’s practice of rejecting voter registrations if registration identification cards came back from the post office as undeliverable failed to follow the notice and waiting-period requirements of the National Voter Registration Act. The state’s practice of canceling registrations upon learning that the voter became registered to drive in another state also relied on flawed logic and violated the act. The case was finally resolved by settlement with a payment of \$150,000 in attorney fees and costs to the plaintiffs.

*Subject:* Nullifying registrations. *Topics:* Registration challenges; National Voter Registration Act; attorney fees; intervention.

On September 17, 2008, three organizations filed a federal complaint in the Eastern District of Michigan, charging the state with improperly canceling voter registrations based on insufficient indications of residence changes.<sup>1</sup> With their complaint, the plaintiffs filed a motion for a preliminary injunction and expedited consideration.<sup>2</sup>

Judge Stephen J. Murphy III heard the motion on September 30.<sup>3</sup> On October 13, he issued a preliminary injunction.<sup>4</sup>

Section 8(d) of the National Voter Registration Act restricts how a state may cancel a voter registration for federal elections because of a change in address:

- (1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal Office on the ground that the registrant has changed residence unless the registrant—

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1. Complaint, *U.S. Student Ass’n Found. v. Land*, No. 2:08-cv-14019 (E.D. Mich. Sept. 17, 2008), D.E. 1; *U.S. Student Ass’n Found. v. Land*, 546 F.3d 373, 378 (6th Cir. 2008); *U.S. Student Ass’n Found. v. Land*, 585 F. Supp. 2d 925, 929 (E.D. Mich. 2008); see Amended Complaint, *U.S. Student Ass’n Found.*, No. 2:08-cv-14019 (E.D. Mich. Oct. 7, 2008), D.E. 25; see also *ACLU Files Suit to Guard Mich. Voters*, Detroit Free Press, Sept. 19, 2008, at B2; Khalil E. Hachem, *Lawsuit Surprises Clerk: Ypsilanti Official Named as Defendant in Voter Registration Case*, Ann Arbor News, Sept. 19, 2008, at A3.

2. Preliminary-Injunction Motion, *U.S. Student Ass’n Found.*, No. 2:08-cv-14019 (E.D. Mich. Sept. 17, 2008), D.E. 2; *U.S. Student Ass’n Found.*, 546 F.3d at 378; *U.S. Student Ass’n Found.*, 585 F. Supp. 2d at 929.

3. Transcript, *U.S. Student Ass’n Found.*, No. 2:08-cv-14019 (E.D. Mich. Sept. 30, 2008, filed Oct. 17, 2008), D.E. 28; *U.S. Student Ass’n Found.*, 585 F. Supp. 2d at 929.

4. *U.S. Student Ass’n Found.*, 585 F. Supp. 2d 925; *U.S. Student Ass’n Found.*, 546 F.3d at 376, 379–80; see *Voter Rolls Judgment Muddles Process*, Detroit Free Press, Oct. 19, 2008, at A15.

- (A) confirms in writing that the registrant has changed residence to a place outside the registrar’s jurisdiction in which the registrant is registered; or
- (B) (i) has failed to respond to a notice described in paragraph (2); and  
(ii) has not voted or appeared to vote (and, if necessary, correct the registrar’s record of the registrant’s address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.<sup>5</sup>

Judge Murphy determined that the state’s practice of rejecting voter registrations if registration identification cards came back from the post office as undeliverable failed to follow the notice and waiting-period requirements of the statute.<sup>6</sup> Judge Murphy also determined that the state’s practice of canceling registrations upon learning that the voter became registered to drive in another state failed to comply with section 8(d) and failed to accommodate persons who might be residents of one state for voting purposes and residents of another state for driving purposes.<sup>7</sup>

On October 29, the court of appeals denied Michigan’s motion for a stay of Judge Murphy’s injunction.<sup>8</sup>

On January 29, 2009, a voter moved to intervene as a plaintiff, alleging that she was denied a ballot in the 2008 general election because she had obtained a driver’s license in Georgia.<sup>9</sup> Following a February 19 hearing on her motion,<sup>10</sup> the proposed intervenor withdrew her motion for “personal and family considerations.”<sup>11</sup>

On May 26, 2010, Judge Murphy dismissed the action as settled.<sup>12</sup> At Judge Murphy’s request, Judge Bernard A. Friedman conducted a settlement conference on May 25 from 10:00 a.m. until 7:00 p.m.<sup>13</sup> Among the settlement’s provisions were the following:

- 4. Defendants covenant and agree not to reject or cancel an individual’s voter registration solely on the ground that the individual’s original disposition notice or voter identification card is returned by the Postal Service as undeliverable.
- 5. Defendants further covenant and agree not to cancel an individual’s voter registration on the ground that the individual surrendered his or her Michigan driver’s license or state identification card and obtained a driver’s

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5. Pub. L. No. 103-31, § 8(d), 107 Stat. 77, 84 (1993), 52 U.S.C. § 20507(d); *see U.S. Student Ass’n Found.*, 546 F.3d at 376–77 (quoting statute).

6. *U.S. Student Ass’n Found.*, 585 F. Supp. 2d at 937–39.

7. *Id.* at 939–41.

8. *U.S. Student Ass’n Found.*, 546 F.3d at 389.

9. Intervention Motion, *U.S. Student Ass’n Found. v. Land*, No. 2:08-cv-14019 (E.D. Mich. Jan. 29, 2009), D.E. 46.

10. Docket Sheet, *id.* (Sept. 17, 2008).

11. Notice, *id.* (Mar. 11, 2009), D.E. 53.

12. Dismissal, *id.* (May 26, 2010), D.E. 96.

13. Transcript at 3, *id.* (May 25, 2010, filed June 10, 2010), D.E. 98 [hereinafter May 25, 2010, Transcript].

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license or state identification card in another state—without specific written confirmation that the individual has changed his residence for voting purposes.<sup>14</sup>

The parties agreed that the defendants would pay the plaintiffs \$150,000 in attorney fees and costs.<sup>15</sup>

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14. Settlement Agreement at 3, *id.* (June 24, 2010), D.E. 100.

15. *Id.* at 5; May 25, 2010, Transcript, *supra* note 13, at 6.