FILED
United States Court of Appeals
Tenth Circuit

September 30, 2016

Elisabeth A. Shumaker
Clerk of Court

UNITED STATES COURT OF APPEALS

TENTH CIRCUIT

STEVEN WAYNE FISH, DONNA BUCCI; CHARLES STRICKER; THOMAS J. BOYNTON; DOUGLAS HUTCHINSON; LEAGUE OF WOMEN VOTERS OF KANSAS,

Plaintiffs-Appellees,

v.

KRIS W. KOBACH, in his official capacity as Secretary of State for the State of Kansas,

Defendant-Appellant,

and

NICK JORDAN,

Defendant.

COMMON CAUSE; CONSERVATIVE LEGAL DEFENSE AND EDUCATION FUND; ENGLISH FIRST; ENGLISH FIRST FOUNDATION; GUN OWNERS OF AMERICA; GUN OWNERS FOUNDATION; POLICY ANALYSIS CENTER; PUBLIC ADVOCATE OF THE UNITED STATES; U.S. BORDER CONTROL FOUNDATION; and U.S. JUSTICE FOUNDATION,

Amici Curiae.

No. 16-3147
(D.C. No. 2:16-CV-02105-JAR-JPO)
(D. Kan.)

ORDER AND JUDGMENT

Before **BRISCOE**, **HOLMES**, and **McHUGH**, Circuit Judges.

Kan. Stat. Ann § 25-2309(*l*) requires documentary proof of citizenship ("DPOC") for all forms of voter registration. Plaintiffs-Appellees brought suit in the U.S. District Court for the District of Kansas to challenge that law as applied to applicants registering to vote while obtaining or renewing driver's licenses (the "motor voter" process). The motor voter process is mandated and regulated by federal law, specifically section 5 of the National Voter Registration Act (the "NVRA"). Brought under the private right of action established by the NVRA, 52 U.S.C. § 20510(b), the suit alleged that Kansas's DPOC requirement was preempted by the requirements of NVRA section 5. Plaintiffs-Appellees then filed a motion for a preliminary injunction against Defendant-Appellant Kansas Secretary of State Kris Kobach. They sought to enjoin him from further enforcement of the DPOC requirement as applied to motor voter applications.

The district court granted the preliminary injunction. The court further ordered Secretary Kobach to register persons whose motor voter applications had been suspended or cancelled for failure to provide DPOC. In so doing, the district court held that the Plaintiffs-Appellees had made a strong showing that Kansas's DPOC law was preempted by NVRA section 5, insofar as DPOC was

more than the "minimum amount of information necessary" to prevent duplicate registrations and to "enable State election officials to assess the eligibility of the applicant and to administer voter registration and other parts of the election process." § 20504(c)(2)(B). The district court further found that the Plaintiffs-Appellees had demonstrated irreparable harm, that the balance of the equities favored them, and that an injunction would serve the public interest. Secretary Kobach timely appealed to this court.

Exercising jurisdiction pursuant to 28 U.S.C. § 1292, we hold that the district court did not abuse its discretion in issuing the preliminary injunction. Under the facts of this case, section 5 of the NVRA preempts Kansas's DPOC requirement as applied to motor voter applications. Further, under the circumstances present here, no constitutional doubt arises as to whether the NVRA precludes Kansas from enforcing its voter qualifications under the Qualifications Clause of the U.S. Constitution. Moreover, the district court did not err in finding that the Plaintiffs-Appellees had made a strong showing of irreparable harm, that the balance of equities was strongly in their favor, and that an injunction would serve the public interest. Accordingly, we **AFFIRM** the district court's grant of the preliminary injunction against Secretary Kobach for reasons to be more fully explained in a forthcoming opinion.

ENTERED FOR THE COURT

Jerome A. Holmes
Circuit Judge