
In the
Court of Appeal
of the
State of California
Third Appellate District

CO88700

GINA GLEASON,
Plaintiff and Appellant,

v.

ALEX PADILLA,
in his official capacity as Secretary of State of the State of California
Defendant and Respondent.

Appeal from the Superior Court of Sacramento County
Honorable James P. Arguelles and the Honorable Timothy M. Frawley
(Ret.)
Case No. 34-2014-800001786-CU-WM-GDS

**APPLICATION TO FILE BRIEF AMICI CURIAE AND BRIEF
AMICI CURIAE OF PUBLIC INTEREST LEGAL FOUNDATION, J.
CHRISTIAN ADAMS, AND HANS VON SPAKOVSKY IN
SUPPORT OF PLAINTIFF AND APPELLANT**

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CERTIFICATE OF INTERESTED ENTITIES OR PERSONS

(California Rules of Court, rule 8.208)

Pursuant to California Rules of Court, rule 8.208, Amicus Public Interest Legal Foundation, by and through its undersigned counsel of record, hereby certifies that there are no interested entities or persons to list in this Certificate pursuant to California Rules of Court, Rule 8.208(e)(3).

Date: January 13, 2020

Respectfully submitted,



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APPLICATION TO FILE AMICUS CURIAE BRIEF

Pursuant to California Rules of Court, rule 8.200(c), the Public Interest Legal Foundation (hereinafter the “Foundation”), J. Christian Adams, and Hans von Spakovsky respectfully submit this application to file the accompanying *amici curiae* brief in support of Plaintiff and Appellant Gina Gleason. Pursuant to California Rules of Court, rule 8.200(c)(3), *amici* states that no one, other than *amici* and their counsel, authored the accompanying brief in whole or in part nor did any person, other than *amici*, make a monetary contribution intended to fund the preparation or submission of the accompanying brief.

IDENTITY AND INTEREST OF PROPOSED AMICUS

The Public Interest Legal Foundation, Inc., (the “Foundation”) is a non-partisan, public interest organization incorporated and based in Indianapolis, Indiana. The Foundation’s mission is to promote the integrity of elections nationwide through research, education, remedial programs, and litigation. The Foundation also seeks to ensure that voter qualification laws and election administration procedures are followed. Specifically, the Foundation seeks to ensure that the nation’s voter rolls are accurate and current, working with election administrators nationwide and educating the public about the same. In order to advance its mission, the Foundation has brought numerous private actions for violations of the National Voter Registration Act in federal courts across the country. The Foundation also

investigates voter registration systems, resulting in numerous publications outlining its findings of voter registration errors, concerns, and vulnerabilities. (See Public Interest Legal Foundation Reports, [https://publicinterestlegal.org/category/reports/.](https://publicinterestlegal.org/category/reports/))

J. Christian Adams is the Foundation's President and General Counsel. Mr. Adams is a former General Counsel to the South Carolina Secretary of State. Mr. Adams served as an attorney in the Voting Section at the Department of Justice. During his tenure with the Department of Justice, Mr. Adams was involved in multiple enforcement actions under the Voting Rights Act. He received the Department of Justice award for outstanding service and numerous other Justice Department performance awards. He has litigated election law cases throughout the United States involving violations of the National Voter Registration Act and the Help America Vote Act. Mr. Adams brought the first private party litigation resulting in the cleanup of corrupted voter rolls under the National Voter Registration Act of 1993. Due to his extensive experience, Mr. Adams is frequently sought out for opinions and testimony on election integrity by congressional committees, state and local election officials, and news organizations.

Hans von Spakovsky is one of the members of the Foundation's Board of Directors. Mr. von Spakovsky served as a career civil service lawyer in the Civil Rights Division, receiving three Meritorious Service Awards (2003, 2004, and 2005). Mr. von Spakovsky then served as Counsel to the Assistant

Attorney General for Civil Rights (2002-2005). In that capacity, Mr. von Spakovsky helped coordinate the enforcement of federal voting rights laws, including the Voting Rights Act, the National Voter Registration Act, the Help America Vote Act, and the Uniformed and Overseas Citizens Absentee Voting Act. Mr. von Spakovsky also served two years as a member of the Federal Election Commission, the agency charged with enforcing campaign finance laws for congressional and presidential elections. He has extensive experience concerning voter registration and elections, previously serving on the Board of Advisors of the U.S. Election Assistance Commission, the Fulton County, Georgia Board of Registrations and Elections, and as a vice chairman of the Fairfax County, Virginia Electoral Board. He has testified before state and congressional committees and made presentations to, among other organizations, the National Association of Secretaries of State, the Federalist Society, the National Conference of State Legislatures and the American Legislative Exchange Council. He also has taught as an adjunct professor at the George Mason University School of Law—since renamed the Antonin Scalia Law School.

Amici believe that this brief will aid in the Court’s consideration of the requirements of the National Voter Registration Act and the Help America Vote Act.

Counsel for Plaintiff and Appellant consents to the filing of this brief. As of this filing, Respondent has not responded to a request for consent.

Amici respectfully request that this Court grant this application and accept the attached brief for filing.

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Respectfully submitted,



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**BRIEF *AMICI CURIAE* OF PUBLIC INTEREST LEGAL
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INTRODUCTION

Appellant contends that “California’s failure to transfer rather than cancel registrations of voters who had notified election officials ... that they moved to another county within California violates the NVRA and the HAVA.” (AOB 37; see also ARB 11–12.) *Amici* have extensive experience both with the interpretation and enforcement of these federal laws and file this brief in order to assist the Court with its consideration of the substantive legal issues on appeal.

SUMMARY OF THE ARGUMENT

The National Voter Registration Act of 1993, Pub. L. No. 103-31, 107 Stat. 77 (now codified at 52 U.S.C. § 20501 *et seq.*) (“NVRA”) and the Help America Vote Act of 2002, Pub. L. No. 107-252, 116 Stat. 1666 (now codified at 52 U.S.C. § 20901 *et seq.*) (“HAVA”) were both enacted to improve the nation’s elections processes. To that end, both statutes include provisions for coordination of activities within a state so that voter rolls are accurate and current.

Yet according to evidence brought forth by Appellant Gleason, California has failed to comply, or was delayed in complying, with certain laws designed to improve the accuracy and currency of lists of registered

voters. (See AOB 20, 32.) Inaccurate lists of registered voters can lead to the disenfranchisement of voters and of referendum signers.

ARGUMENT

The NVRA has four stated purposes: first, to “increase the number of eligible citizens who register to vote in elections for Federal office;” second, to “enhance[] the participation of eligible citizens as voters in elections for Federal office;” third, “to protect the integrity of the electoral process;” and, finally, “to ensure that accurate and current voter registration rolls are maintained.” (52 U.S.C. § 20501, subd. (b).) Nearly 10 years later, Congress passed HAVA. According to the Election Assistance Commission, the agency created by HAVA, the law “was passed by the United States Congress to make sweeping reforms to the nation’s voting process.” (Help America Vote Act, Election Assistance Commission, <https://www.eac.gov/about/help-america-vote-act>.) One such “sweeping reform” was the requirement that the states implement statewide voter registration databases. (*Id.*)

I. The NVRA Requires Updates to Previous Voter Registrations.

Under the NVRA, “[a]n application for voter registration ... shall be considered as updating any previous voter registration by the applicant.” (52 U.S.C. § 20504, subd. (a)(2). See also Questions and Answers, The National Voter Registration Act of 1993 (NVRA), U.S. Department of Justice, <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> [“This

application for voter registration must be considered as updating any previous voter registration by the applicant.”].) The NVRA also explicitly states that “[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license shall serve as notification of change of address for voter registration” unless so stated by the registrant. (52 U.S.C. § 20504, subd. (d). See also Questions and Answers, The National Voter Registration Act of 1993 (NVRA), U.S. Department of Justice, <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> [“This means that all changes of address submitted to State motor vehicle offices must be forwarded to election authorities unless the registrant affirmatively requests otherwise by opting out on the form.”].) These requirements not only aid the states in maintaining accurate and current lists of registered voters but streamline the voter registration process for an increasingly mobile population.

However, according to evidence presented by Appellant Gleason, California is canceling or failing to update registrations of individuals who have moved to another county in California. (AOB 20; ARB 18, fn. 12.) This is in violation of the provisions of the NVRA that require updates to voter registrations. In *amici*’s experience, when a state fails to accurately maintain voter rolls, there are ripple effects that are difficult to remedy later, if at all.

II. HAVA Requires a Centralized Database to be Coordinated with State Agencies and Updated on an Expedited Basis.

Additionally, HAVA established the requirement for “a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State.” (52 U.S.C. § 21083, subd. (a)(1)(A).) The law states that this centralized list “serve[s] as the single system for storing and managing the official list of registered voters throughout the State.” (*Id.* at subd. (a)(1)(A)(i).) Further, HAVA states that the centralized database “shall be coordinated with other agency databases within the State[.]” (*Id.* at subd. (a)(1)(A)(iv).) This requirement builds upon the requirement in the NVRA that the Department of Motor Vehicle offices must share a change of address information with election officials.

HAVA also requires that “[a]ll voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.” (*Id.* at subd. (a)(1)(A)(vi).)

It is undisputed that California did not have a HAVA-compliant database until recent years. The potential effects of California’s delay are immeasurable.

III. California's Failures to Comply with Federal Law Adversely Affected Appellant.

The failures and delays described above are not harmless. Inaccurate lists of registered voters not only can affect a voter at the polling place, but it also can hinder an individual's right to participate in the petition process. That is what has happened here. Appellant Gleason provides evidence that California's failures and delays "had a dramatic negative impact on the validation of [Appellant's] referendum signatures." (AOB 20.) Respondent's hands are not clean and Respondent's attempts to downplay the significance of California's violations of federal law (RB 34–37), ring hollow.

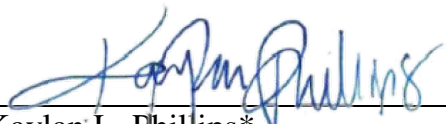
CONCLUSION

Federal law provides safeguards to ensure the accuracy and currency of voter registration rolls. Delays or failures to comply with these federal laws should be taken into consideration in this case.

Respectfully submitted,



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**Pro hac vice motion to be filed.*

CERTIFICATE OF WORD COUNT

I certify that the attached *Amici Curiae* Brief contains 1654 words and uses 13 point Times New Roman font.

Dated: January 13, 2020

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DECLARATION OF SERVICE

I hereby certify that I caused the foregoing document to be served via the following methods.

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[x] By United States mail: I served the attached documents by enclosing true copies of the documents in a sealed envelope with postage fully prepaid thereon. I then placed the envelope in a U.S. Postal Service mailbox within the State of California, addressed as follows:

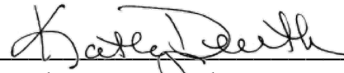
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I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Dated: January 13, 2020



Kathy Denworth

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