

IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF TEXAS
AUSTIN DIVISION

OCA – GREATER HOUSTON and
MALLIKA DAS;

Plaintiffs,

v.

STATE OF TEXAS; CARLOS CASCOS, in his
official capacity as Texas Secretary of State and
Chief Election Officer; WILLIAMSON COUNTY
ELECTIONS DEPARTMENT; and CITY OF
ROUND ROCK;

Defendants.

CIVIL ACTION NO. 1:15-cv-00679

COMPLAINT

Plaintiffs OCA - Greater Houston and Mallika Das ("Plaintiffs"), in their complaint against Defendants State of Texas, Carlos Cascos, in his official capacity as Texas Secretary of State and Chief Election Officer, Williamson County Elections Department, and City of Round Rock ("Defendants"), respectfully allege as follows:

INTRODUCTION AND OVERVIEW

1. This is an action to enforce the Voting Rights Act.
2. Section 208 of the Voting Rights Act of 1965 ("VRA"), as amended (codified as 42 U.S.C. § 1973aa-6) guarantees "any voter who requires assistance to vote by reason of...inability to read or write may be given assistance by a person of the voter's choice other than the voter's employer or agent of that employer or officer or agent of the voter's union."
3. Texas Election Code § 61.033 conflicts with the provisions of the Voting Rights Act by prohibiting voters with an inability to read or write English from receiving assistance by a

person of the voter's choice. To the contrary, Section 61.033 only permits voters to use interpreters that are registered voters in the same county as the voter.

4. This action seeks injunctive relief directing Defendants and all persons acting in concert with them not to deny voters who qualify for assistance under Section 208 an interpreter of their choice based on the interpreter's county of residence.

JURISDICTION AND VENUE

5. This Court has jurisdiction over Plaintiffs' claim under 28 U.S.C. §§ 1331 and 1343(a)(4).

6. Venue for this action is proper in the district in which the claim arose pursuant to 28 U.S.C. §§ 1391(b)(2) and 124(d)(1), the United States District Court for the Western District of Texas, Austin Division.

PARTIES AND STANDING

7. Plaintiff Mallika Das is a registered voter residing in Round Rock, Texas. She is limited English proficient ("LEP") and was harmed by Defendants not allowing her to use her son, Saurabh Das, as an interpreter to assist her in voting on October 31, 2014.

8. Plaintiff Organization of Chinese Americans ("OCA") – Greater Houston is a not-for-profit membership organization, founded in 1979. OCA – Greater Houston is dedicated to the national organization's mission of advocating for and protecting and advancing the rights of Chinese Americans and Asian Pacific Americans. As part of its mission, OCA – Greater Houston promotes civic participation among Asian Americans, including by advocating voter registration and educating its members about the voting process. OCA – Greater Houston has approximately 100 members in its chapter, many of whom are limited English proficient.

9. Defendant State of Texas (“Texas”) is one of the states of the United States of America.

10. Defendant Carlos Cascos is the Texas Secretary of State. The Secretary of State serves as the Chief Election Officer of Texas and is responsible for administering the Texas Election Code. He is sued here for declaratory and injunctive relief in his official capacity.

11. Defendants Williamson County and City of Round Rock (“Round Rock”) are political and geographical subdivisions of the State of Texas, and are subject to the laws of Texas and the Voting Rights Act.

12. Defendant Cascos's failure to instruct voting officials to comply with their legal obligations under Section 208 has caused, and will continue to cause unless remedied, OCA - Greater Houston to suffer legally cognizable injury. Many of OCA - Greater Houston's members will not be able to effectively or fully participate in the election process without access to interpreters of their choice. Furthermore, the unlawful restriction on interpreters of voters' choice has already required and will require OCA - Greater Houston to expend its limited funds and other resources to educate its members and other Asian American voters on how to vote - including instructions on requirements for interpreters of voters' choice - as well as provide other assistance in connection with upcoming elections. These efforts would be unnecessary, and the expenses not incurred, if the Defendants were to comply with their legal obligations to instruct voting officials to allow voters to be assisted by interpreters of their choice, in accordance with Section 208 of the VRA.

13. At all times, all Defendants acted under color of state law.

RELEVANT LAW

14. 42 U.S.C. §1973aa-6 (Section 208 of the VRA) provides: “Any voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter’s choice, other than the voter’s employer or agent of that employer or officer or agent of the voter’s union.”

15. Under Texas law, two separate provisions in the Texas Election Code govern a voter’s right to select an assistant of their choice for language interpretation when casting her ballot at the polling site.

16. Under Texas Election Code § 64.0321, a voter may use an “assistor” of the voter’s choice to help the voter understand and complete the ballot if the voter cannot read the language in which the ballot is written. Relevant parts of the language of this provision substantially mirror Section 208 of the VRA.

17. Under Texas Election Code § 61.034, an “interpreter” of the voter’s choice helps the voter understand and complete the ballot if a voter cannot comprehend the language in which the ballot is printed. There is no equivalent distinction in Section 208.

18. Texas Election Code § 61.033 states that “[t]o be eligible to serve as an interpreter, a person must be a registered voter of the county in which the voter needing the interpreter resides.” No same-county voter registration requirement is applicable when determining eligibility to serve as an “assistor”. No such requirement exists in Section 208 of the VRA.

19. This requirement that interpreters be registered voters in the same county as the voter is reinforced and repeated in the Secretary of State’s Elections Division website under “voters with special needs.” The website states that those who cannot speak English may select a person

registered within their own county to assist in communicating with election officials. *See* Exhibit 1.

FACTS

20. On October 31, 2014, Plaintiff Mallika Das attempted to vote with the assistance of her son, Saurabh Das, at the JB and Hallie Jester Annex located at 1801 E Old Settlers Boulevard in Round Rock. Mrs. Das had voted previously in 2012 in Williamson County without the aid of her son and found it difficult due to her limited English proficiency.

21. Upon arrival, Saurabh introduced himself to the poll worker as his mother's interpreter. The poll worker asked Saurabh to clarify whether he intended to accompany his mother as her "assistant" or "interpreter."

22. Saurabh stated that he intended to interpret for his mother, reasonably believing that the service he was to provide would be to assist his mother by interpreting the English ballot for his LEP mother.

23. The poll official then asked whether Saurabh was a registered voter in Williamson County. Saurabh was registered in neighboring Travis County and responded accordingly.

24. The poll worker stated that in order to be an "interpreter," Saurabh must be a registered voter in Williamson County and refused to allow him to assist his mother.

25. Mrs. Das then entered the poll site without Saurabh. Ultimately, Mrs. Das was unable to vote properly for all of the electoral races since she was unable to sufficiently comprehend the ballot.

FIRST CAUSE OF ACTION

(VIOLATION OF 42 U.S.C. §1973aa-6)

26. Plaintiffs restate and incorporate herein the allegations in the paragraphs above.

27. Section 208 of the VRA provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. §1973aa-6.

28. Under Section 208, a voter who is unable to read or write possesses the right to choose any person regardless of their place of voter registration to assist them at the poll site.

29. In violation of Section 208, Defendants and their employees and agents failed to allow Mrs. Das the person of her choice to assist her by interpreting the ballot for her.

30. Defendants' failure to allow eligible voters to receive necessary assistance from any person of their choice, other than their employers or union officials, as described herein, is a violation of Section 208 and harms Plaintiffs.

SECOND CAUSE OF ACTION

(VIOLATION OF 42 U.S.C. § 1983)

31. Plaintiffs restate and incorporate herein the allegations in the paragraphs above.

32. Section 208 of the VRA provides that "[a]ny voter who requires assistance to vote by reason of blindness, disability, or inability to read or write may be given assistance by a person of the voter's choice, other than the voter's employer or agent of that employer or officer or agent of the voter's union." 42 U.S.C. §1973aa-6.

33. A voter under Section 208 possesses the right to choose any person regardless of their place of registration to assist them at the poll site.

34. In violation of Section 208, Defendants and their employees and agents failed to allow Mrs. Das the person of her choice to assist her by interpreting the ballot for her.

35. Defendants' failure to allow eligible voters to receive necessary assistance from any person of their choice, other than their employers or union officials, as described herein, is a violation of Section 208.

36. By depriving Plaintiffs of right and privileges under Section 208 of the VRA under the color of Texas Election Code § 61.034, Defendants have violated and are liable under 42 U.S.C. §1983.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs OCA – Greater Houston and Mallika Das pray that this Court:

- a. Issue a declaratory judgment declaring that Texas Election Code § 61.033 violates and is inconsistent with the provisions of Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
- b. Enjoin Defendants, their employees, agents, and successors in office, and all persons acting in concert with them, from engaging in any act or practice that denies the rights secured by Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6;
- c. Require Defendants to develop and implement a remedial plan to ensure that voters are permitted assistance from persons of their choice when they cast their ballots, in compliance with Section 208 of the Voting Rights Act, 42 U.S.C. § 1973aa-6.
- d. Awarding Plaintiffs attorneys' fees and costs under 42 U.S.C. §1973l(e);
- e. Awarding Plaintiffs attorneys' fees and costs under 42 U.S.C. §1988; and,
- f. Awarding such other equitable and further relief as the Court deems just and proper.

Dated: August 6, 2015

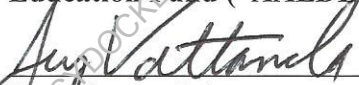
Respectfully submitted,

FISH & RICHARDSON P.C.

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MALLIKA DAS**

* To be admitted Pro Hac Vice

EXHIBIT 1

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Don't have a photo identification for voting? [Election Identification Certificates](#) are available from your local [DPS office](#).

Voters With Special Needs

Services Available to Voters with Special Needs in Texas

Voter Registration

- People with disabilities have the right to register to vote so long as they are eligible, which means they:
 - Are citizens of the United States;
 - Are at least 17 years and 10 months old at time of registration (but to vote, they must be 18 years of age by Election Day);
 - Have not been finally convicted of a felony, or if they have been convicted, have completed all of their punishment, including any term of incarceration, parole, supervision, probation, or have received a pardon;
 - Note: Deferred adjudication is not a final felony conviction.
 - Have not been determined by a final judgment of a court exercising probate jurisdiction to be totally mentally incapacitated or partially mentally incapacitated without the right to vote.
- Individuals who have legal guardians may be eligible to register, depending on whether the court took away their right to vote. All guardianship orders issued after September 1, 2007 must state whether the individual can vote.
- People with disabilities can receive assistance registering to vote from any state agency that provides services to persons with disabilities or from any person they choose.

Accessible Voting Systems

- On September 1, 1999, Texas became the first state to require that all new voting systems be accessible to voters with disabilities and provide a practical and effective means for voters with disabilities to cast a secret ballot.
- In every federal election (and most nonfederal elections), each polling place will offer at least one type of accessible voting equipment or Direct Record Electronic ("DRE") device. This equipment allows voters with disabilities to vote directly on the system or assist them in marking the paper ballot. Depending on the type of system, voters with disabilities may use headphones or other assistive devices to help them vote independently and secretly.
- In certain nonfederal elections held in counties with a population of less than 20,000, accessible machines may not be available at every polling place. To determine if accessible machines will be available or to request an accommodation, contact the early voting clerk of the county or political subdivision holding the election at least 21 days before the election.

All Polling Places in Texas Must be Accessible

Polling places should support voters, not hinder them. When you go to the polls in Texas, you can expect:

- Your polling place will meet strict accessibility standards, including:

- A location on the ground floor that can be entered from the street or via an elevator with doors that open at least 36 inches
- Doors, entrances, and exits used to enter or leave the polling place that are at least 32 inches wide
- Any curb next to the main entrance to the polling place must have curb-cuts or temporary non-slip ramps
- Stairs necessary to enter or leave the polling place must have handrails on each side and a non-slip ramp.
- Removal of all barriers such as gravel, automatically closing gates, closed doors without lever-type handles, or any other barrier that impedes the path of the physically disabled to the voting station.
- Voting systems that are accessible to voters with physical disabilities and can accommodate no vision, low vision, no hearing, low hearing, limited manual dexterity, limited reach, limited strength, no mobility, low mobility, or any combination of the foregoing (except the combination of no hearing and no vision)
- Each polling place will offer at least one type of accessible voting equipment or Direct Record Electronic (“DRE”) device. This equipment allows voters with disabilities to vote directly on the system or assist them in marking the paper ballot. Depending on the type of system, voters with disabilities may use headphones or other assistive devices to help them vote independently and secretly.

Voters May Receive Assistance at the Polls

Tell the election official if you are a voter who needs help to vote. You do not have to provide proof of your disability. Voters are entitled to receive assistance if they:

- Cannot read or write; or
- Have a physical disability that prevents them from reading or marking the ballot.

Voters may be assisted by:

- Any person the voter chooses who is not an election worker;
- Two election workers on Election Day; or
- One election worker during early voting.

Voters **MAY NOT** be assisted by:

- Their employer;
- An agent of their employer; or
- An officer or agent of their union.

The person assisting the voter must read him or her the entire ballot, unless the voter asks to have only parts of the ballot read. The person assisting the voter must take an oath that he or she will not try to influence the voter’s vote and will mark the ballot as the voter directs. If the voter chooses to be assisted by polling place officials, poll watchers and election inspectors may observe the voting process, but if the voter asks to be assisted by a person the voter chooses, no one else may watch him or her vote.

It is illegal for a person assisting the voter to:

- Try to influence the voter’s vote;
- Mark the voter’s ballot in a way other than the way they have asked; or
- Tell anyone how the voter voted.

Voters May Use Interpreters at the Polls

Voters who cannot speak English, or who communicate only with sign language, may use an interpreter to help them communicate with election officials. The voter may select any registered voter from his or her county to be their interpreter. If the voter cannot read the languages on the ballot, the interpreter may also assist by translating the language on the ballot for the voter in the voting booth. (See assistance section above for more details.) If the voter is deaf and does not have a sign language interpreter who can accompany them to help

communicate with the poll worker or read the ballot, the voter should contact his or her local election officials before the election and request assistance.

Curbside Voting

If a voter is physically unable to enter the polling place, he or she may ask that an election officer bring a ballot to the entrance of the polling place or to a car at parked at the curbside. After the voter marks the ballot, they will give it to the election officer, who will put it in the ballot box. Or, at the voter's request, a companion may hand the voter a ballot and deposit it for him or her.

TIP FOR VOTER WITH DISABILITY: If you plan to go alone to vote curbside, it is wise to call ahead so election officials will expect you. Generally speaking, you may vote curbside during the early voting period (the 17th day before Election Day until the 4th day before Election Day) or on Election Day. For a May uniform election date or resulting runoff election, the early voting period is the 12th day before Election Day until the 4th day before Election Day.

Voters May Vote Early, Either in Person or by Mail

Voters who vote during the early voting period may vote at any early voting site in the political subdivision that is holding the election. Alternatively, if a voter will be 65 years of age or older on Election Day, has a disability, or will be outside the county during early voting hours and on Election Day, the voter can apply to vote by mail. Simply submit a completed and signed Application for a Ballot by Mail any time from the 60th to the 9th day before Election Day to the proper county early voting clerk. Please note that for an election held on a Tuesday, the deadline moves to the 11th day before Election Day because the 9th day falls on a weekend. Applications for a Ballot by Mail may also be submitted in person at the main early voting polling location, as long as early voting by personal appearance is NOT taking place. For further information on voting early in person or by mail, including information on assistance in requesting, marking, or mailing a ballot by mail, please read our pamphlet titled "[Early Voting in Texas.](#)" [Get your application here.](#)

For additional information, contact:

Secretary of State

Elections Division

P.O. Box 12060

Austin, Texas 78711-2060

512.463.5650 or 1.800.252.VOTE (8683)

Fax 512.475.2811, TTY 7.1.1

County Election Officials

For a list of county election officials, see the [Secretary of State's website](#)

Disability Rights Texas

Voting Rights Project for Voters with Disabilities

2222 West Braker Lane

Austin, TX 78758

1-888-796-VOTE (8683) (V/TTY)

Fax: 512-323-0902

<http://www.disabilityrightstx.org/contact/>

Coalition of Texans with Disabilities

316 W. 12th Street, Suite 405

Austin, Texas 78701

Phone: (512) 478-3366

Fax: (512) 478-3370

e-mail: cotwd@cotwd.org

Published by the Elections Division of the Secretary of State's office. This pamphlet is available in Spanish, large print, audiotape, or computer disc upon request.

(Este folleto está disponible en Español, tipo de imprenta más grande, cinta magnética para audio, o disco para computadora. Para conseguir una de estas versiones por favor llame sin cargo a la oficina del Secretario de Estado al 1.800.252.VOTE (8683)).

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