

STATE OF RHODE ISLAND  
PROVIDENCE, SC

SUPERIOR COURT

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RHODE ISLAND AFFILIATE, AMERICAN CIVIL )  
LIBERTIES UNION )  
) )  
Plaintiff, )  
) )  
v. )  
) )  
RHODE ISLAND BOARD OF ELECTIONS, )  
JOHN A. DALUZ, in his capacity as Chairman )  
of the Board of Elections, FRANK J. REGO, )  
RICHARD H. PIERCE, MARTIN E. JOYCE, JR., )  
in their official capacity as members of the Board of )  
Elections, and ROBERT KANDO, in his official capacity )  
as the Executive Director of the Board of Elections. )  
) )  
Defendants. )  
) )  


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C.A. No. PC 08-

**COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Now comes Plaintiff, the Rhode Island Affiliate, American Civil Liberties Union and for its Complaint against Defendants hereby states as follows:

**PARTIES**

1. The American Civil Liberties Union (“ACLU”) is a non-profit, non-partisan organization dedicated to upholding and protecting the rights and freedoms guaranteed by the United States Constitution and the Bill of Rights. Founded in the 1920s by a small group of devoted civil libertarians, today the ACLU is comprised of nearly 400,000 members and more than fifty affiliates and chapters nationwide. Plaintiff the Rhode Island Affiliate, American Civil Liberties Union (“RI ACLU”) is a Rhode Island non-profit corporation with and is an affiliate of the ACLU with approximately 2,500 members.

2. The Rhode Island Board of Elections (the “Board of Elections”) is a duly authorized board under the Rhode Island General Laws charged with overseeing and enforcement of the election laws in the State of Rhode Island.
3. John A. DaLuz is the Chairman of the Rhode Island Board of Elections and is being sued in his official capacity only.
4. Frank J. Rego, Florence G. Gormley, Richard H. Pierce, and Martin E. Joyce, Jr. are members of the Rhode Island Board of Elections and are being sued in their official capacity only.
5. Robert Kando is the Executive Director of the Rhode Island Board of Elections and is being sued in his official capacity only.

#### **JURISDICTION AND VENUE**

6. This Court has jurisdiction over this matter pursuant to R.I. Gen. Laws §§ 8-2-13 and 8-2-14.
7. Declaratory judgment jurisdiction is based on R.I. General Laws § 9-30-1.
8. Venue is proper in the Superior Court in Providence County under R.I. General Laws § 9-4-3 which allows an action to be brought in the Superior Court of the County in which the plaintiff or the defendant resides.

#### **BACKGROUND FACTS**

9. R.I. Gen. Laws § 17-1-3 allows qualified but unregistered voters to go to their city or town hall to vote for President and Vice-President on Election Day.
10. Specifically, R.I. Gen. Laws § 17-1-3 provides (emphasis added):

Every citizen of the United States who is at least eighteen (18) years of age, whose residence as defined in § 17-1-3.1 has been in this state for at least thirty (30) days, and in the town or city and voting district in which that person desires to cast his or her vote at least

thirty (30) days next preceding the election, and who is registered in that city or town and voting district at least thirty (30) days next preceding any election, shall be entitled to vote in the election; provided, a person may vote in a primary election only if that person is eligible under the provisions of this title. **A person who has not registered to vote, or whose registration has been canceled pursuant to § 17-10-1, may cast a vote for president and vice-president on election day at his or her city or town hall.** The casting of that vote shall commence the process of voter registration and subject the person voting to the requirements and penalties of this chapter.

11. On July 22, 2008, the Board of Elections held a public hearing on a proposed regulation which allowed cities and towns to eliminate city or town hall as a location to have same day voter registration and voting for President and Vice-President on Election Day. The regulation allows cities and towns to petition the Board of Elections for an alternate location for same day registration and voting for President and Vice-President on Election Day.

12. Specifically, the regulation provides:

If the conducting of same day voter registration and voting in a city or town hall has become impracticable due to inadequacy of the available facilities or other concerns, the board of canvassers for that city or town may submit a request to the State Board to designate an alternative facility for same day voter registration and voting. Upon approval by the State Board, the board of canvassers shall allow unregistered voters to register and vote at the designated facility, pursuant to R.I.G.L. § 17-1-3.

A copy of the newly adopted regulation is attached hereto as Exhibit 1.

13. According to the regulation, the Board of Elections' "Rules and Regulations are adopted pursuant to the Administrative Procedures Act (R.I.G.L. § 42-35-et seq.)."

14. The RI ACLU, through its Executive Director Steven Brown, testified against the proposed regulation. The RI ACLU argued that allowing municipalities to

eliminate town hall as the location for same-day voting could cause confusion and hardship for people seeking to exercise their right to vote under §17-1-3. The RI ACLU noted that some people who arrive at their city or town hall to vote, only to be told that they must cast their Presidential ballot at a different location, could be dissuaded from voting, or unable to cast their vote due to time, transportation or other difficulties.

15. During its testimony, the RI ACLU suggested that the Board of Elections allow cities or towns to designate facilities in addition to city or town halls for same day registration and voting for President and Vice-President, but urged the Board of Elections not to allow the elimination of city or town halls as a location for same day registration and voting.
16. In response to a question from a Board of Elections' member, the Board of Elections' legal counsel recommended to the Board that it change the proposed regulation to allow additional locations to city or town halls for same day registration and voting for President and Vice-President instead of allowing cities or towns to eliminate city or town halls as locations.
17. The Board of Elections ignored the advice of their legal counsel and adopted the proposed regulation with its original language.
18. With the newly adopted regulation, a city or town can avoid the explicit requirement of R.I. Gen. Laws § 17-1-3 of allowing same day registration and voting for President and Vice President at city or town hall.

19. In 2004, 21,562 Rhode Islanders were eligible to vote for President and Vice-President only. According to government records, it is unclear how many of the 21,562 were registered at city or town halls on Election Day.
20. The RI ACLU is preparing a voting rights brochure for distribution to thousands of Rhode Islanders prior to Election Day and includes information regarding a citizen's right to register and vote for President and Vice-President at city or town hall. Without a decision from the Court in this case, the RI ACLU will not be able to give completely accurate information regarding voting rights.

**COUNT I  
(DECLARATORY JUDGMENT)**

21. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint as if fully set forth herein.
22. Pursuant to R.I. Gen. Laws § 17-1-3, city and town halls are required to be open on Election Day for same day registration and voting for President and Vice-President.
23. The Board of Elections' newly adopted regulation allows cities and towns to circumvent the requirement of allowing same day registration and voting for President and Vice-President at city or town hall.
24. The RI ACLU seeks a determination of the validity of the legality of the Board of Elections' newly adopted regulation.

**COUNT II  
(INJUNCTIVE RELIEF)**

25. Plaintiff incorporates by reference the allegations contained in paragraphs 1 through 24 of this Complaint as if fully set forth herein.
26. Under Rhode Island law, unregistered but otherwise qualified voters have the right to go to their city or town hall to vote for President and Vice-President on Election Day.
27. The Board of Elections' newly adopted regulation allows cities and towns to eliminate city or town hall as a location for same day registration and voting for President and Vice-President.
28. The Board of Elections' newly adopted regulation conflicts with the requirements of R.I. Gen. Laws §§ 17-1-3.
29. Voters who show up on Election Day at a city or town hall to register and vote for President and Vice-President but find that they must go to another location may suffer irreparable harm because they may not be able to vote for President and Vice-President.
30. The RI ACLU has no other adequate remedy at law to protect the interests of voters who seek to register and vote for President and Vice-President on Election Day.

WHEREFORE, Plaintiff the Rhode Island Affiliate, American Civil Liberties Union respectfully requests that this Court enter judgment in its favor and against Defendants as follows:

- (1) A declaratory judgment declaring that the Board of Elections' newly adopted regulation concerning same day registration and voting for President and Vice-President is null and void as it violates R.I. Gen. Laws § 17-1-3;

- (2) A temporary, preliminary and permanent injunctive relief restraining Defendants from enforcing the newly adopted regulation concerning same day registration and voting for President and Vice-President;
- (3) An award to Plaintiff of reasonable attorneys' fees and costs; and
- (4) Such other and further relief as the Court deems just and proper.

Plaintiff,

**RHODE ISLAND AFFILIATE,  
AMERICAN CIVIL LIBERTIES UNION**

By its Attorneys,

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