

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF NORTH CAROLINA

UNITED STATES OF AMERICA,)
)
 Plaintiff,)
)
 v.)
) COMPLAINT FOR DECLARATORY
 NORTH CAROLINA REPUBLICAN PARTY;) AND INJUNCTIVE RELIEF
 HELMS FOR SENATE COMMITTEE;)
 JEFFERSON MARKETING, INC.;)
 COMPUTER OPERATIONS AND MAILING)
 PROFESSIONALS, INC.;)
 DISCOUNT PAPER BROKERS, INC.;)
 CAMPAIGN MANAGEMENT, INC.;)
 EDWARD LOCKE; DOUGLAS DAVIDSON,)
)
 Defendants.)
 _____)

COMPLAINT

The United States of America alleges that:

1. This action is brought by the Attorney General on behalf of the United States, pursuant to Sections 11(b) and 12(d) of the Voting Rights Act of 1965, 42 U.S.C. 1973i(b) and 1973j(d), and Section 131(c) of the Civil Rights Act of 1957, 42 U.S.C. 1971(b).

2. This Court has jurisdiction pursuant to 42 U.S.C. 1973j(f) and 28 U.S.C. 1345.

3. Defendant North Carolina Republican Party is a political party organized, operating and functioning as an official political party in the State of North Carolina. The North

Carolina Republican Party's headquarters are located in Raleigh, North Carolina.

4. Defendant Helms for Senate Committee was the authorized principal campaign committee of Senator Jesse A. Helms for his 1990 campaign for United States Senate from North Carolina. The Helms for Senate Committee's headquarters are located in Raleigh, North Carolina.

5. Defendant Computer Operations and Mailing Professionals, Inc., is a business corporation with its principal place of business in Raleigh, North Carolina formed in 1985 under and by virtue of the laws of the State of North Carolina.

6. Defendant Campaign Management, Inc., is a business corporation with its principal place of business in Raleigh, North Carolina formed in 1985 under and by virtue of the laws of the State of North Carolina.

7. Defendant Discount Paper Brokers, Inc., is a business corporation with its principal place of business in Raleigh, North Carolina formed in 1978 under and by virtue of the laws of the State of North Carolina.

8. Defendant Jefferson Marketing, Inc., is a business corporation with its principal place of business in Raleigh, North Carolina formed in 1978 under and by virtue of the laws of the State of North Carolina. Computer Operations and Mailing Professionals, Inc., Campaign Management, Inc., and Discount Paper Brokers, Inc. are wholly-owned subsidiaries of Jefferson Marketing, Inc.

9. Defendant Edward Locke is a consultant who was retained by and served as an agent of the Defendant Helms for Senate Committee and/or the Defendant North Carolina Republican Party to coordinate a so-called ballot security program in 1990.

10. Defendant Douglas Davidson served as an employee of Defendant Campaign Management, Inc., from 1986 to shortly after the November 6, 1990 general election. During the 1990 campaign, he served as an agent of both the Defendant Helms for Senate Committee and the Defendant North Carolina Republican Party. He also had supervisory and managerial control over the personnel and resources of Campaign Management, Inc., Computer Operations and Mailing Professionals, Inc. and Discount Paper Brokers, Inc., during the 1990 campaign.

11. In the summer of 1990, representatives of Defendant Helms for Senate Committee and Defendant North Carolina Republican Party discussed whether to conduct a so-called ballot security program, a set of activities purportedly designed to combat and deter election fraud, in conjunction with the November 6, 1990, general election and to finance the program with funds from the North Carolina Republican Party [hereinafter referred to as "1990 ballot security program"].

12. In mid-October 1990, the North Carolina State Board of Elections released voter registration figures showing that the statewide black voter registration had increased 10.6 percent between April and October 1990, compared to a 5.3 percent

increase among white registered voters throughout the State during the same period.

13. In mid-October 1990, a poll conducted by the Charlotte Observer was released which showed that the Democratic candidate for United States Senate, Harvey B. Gantt, had an eight-percentage point advantage over the Republican candidate, incumbent Senator Jesse A. Helms.

14. In mid-October 1990, contemporaneous with the release of the voter registration figures referred to in paragraph 12 and the poll showing Mr. Gantt with an advantage in the United States Senate race referred to in paragraph 13, Defendant Locke was contacted by representatives of Defendant Helms for Senate Committee and Defendant North Carolina Republican Party to discuss his availability to coordinate the 1990 ballot security program.

15. On or about October 16 and 17, 1990, Defendant Locke attended a series of meetings at which the 1990 ballot security program was discussed. Among those attending such meetings were Defendant Davidson, Mr. Peter Moore, the campaign manager of the Defendant Helms for Senate Committee, Mr. Thomas Farr, an attorney who had been involved in past ballot security efforts on behalf of Senator Helms and/or the Defendant North Carolina Republican Party, and Mr. Mark Stephens, President of Defendant Jefferson Marketing, Inc.

16. During the meetings referred to in paragraph 15 above, some of the participants formulated a tentative outline for the

1990 ballot security program, which included a mailing targeted to voters who may have changed residences.

17. Representatives of Defendant Helms for Senate Committee and/or Defendant North Carolina Republican Party agreed to retain Defendant Locke to coordinate the ballot security program. The Defendant Helms for Senate Committee and/or the Defendant North Carolina Republican Party agreed that Defendant Locke would be paid a sum of \$2500 plus expenses for his services.

18. At the time the 1990 ballot security program was being formulated, defendants and defendants' agents, officers and employees expected voting in the Helms-Gantt contest to be racially polarized with most whites voting for Senator Helms and blacks overwhelmingly supporting Mr. Gantt.

19. For purposes of Defendant Locke's work on the 1990 ballot security program, Defendant Helms for Senate Committee provided Defendant Locke with an office within the Helms for Senate Committee headquarters in Raleigh. Defendant Helms for Senate Committee also provided Defendant Locke with the assistance of a paid employee of the Defendant Helms for Senate Committee for his work on the 1990 ballot security program.

20. On or about October 22, 1990, Defendant Locke and Defendant Davidson met with Mr. Jack Hawke, Chairman of the Defendant North Carolina Republican Party during the 1990 election season and Ms. Effie Pernell, Executive Director of the Defendant North Carolina Republican Party, and discussed the proposed activities of the 1990 ballot security program.

21. On October 26 and 29, 1990, as part of the ballot security program, at least 81,000 postcards containing the following language were mailed first-class with "address correction requested" to selected voters throughout the State of North Carolina [hereinafter "first-class mailing"]:

Voter Registration Bulletin

If you moved from your old precinct over 30 days ago, contact the County Board of Elections for instructions for voting on Election day.

When you enter the voting enclosure, you will be asked to state your name, residence and period of residence in that precinct. You must have lived in that precinct for at least the previous 30 days or you will not be allowed to vote.

It is a Federal crime, punishable by up to five years in jail, to knowingly give false information about your name, residence, or period of residence to an Election Official.

Paid for by N.C. Republican Party

The return address on the postcard was that of the Defendant North Carolina Republican Party.

22. The first-class mailing was sent to households with at least one registered Democrat in at least 86 selected precincts throughout the State of North Carolina. The postcards were mailed to the address under which the voter(s) in the selected households were registered according to voter registration lists maintained by Defendant Jefferson Marketing, Inc., and/or its defendant subsidiaries, and utilized by Defendant North Carolina Republican Party and Defendant Helms for Senate Committee.

23. According to the voter registration files used as a database for the first-class postcard mailing, black voters

constituted approximately 94 percent of the registered voters within the targeted precincts.

24. The voters targeted to receive the first-class mailing were selected, in part, based upon race.

25. On October 29, 1990, at least 44,000 postcards containing the identical text as the postcard reflected in paragraph 21 were mailed bulk rate to selected voters throughout the State of North Carolina [hereinafter "bulk-rate mailing"]. The bulk-rate mailing postcard did not contain the disclaimer "Paid for by the N.C. Republican Party." The absence of a disclaimer from the postcard for this mailing reflected a deliberate decision.

26. The bulk-rate mailing was sent exclusively to black voters throughout the State of North Carolina, regardless of political party affiliation. The targeted black voters were selected based upon data concerning the addresses of registered voters in North Carolina provided to the defendant organizations by a mass mailing business concern. The data purported to identify more than 260,000 registered voters who had current addresses different from the addresses contained in voter registration lists maintained by Defendant Jefferson Marketing, Inc., and/or its defendant subsidiaries, and utilized by Defendant North Carolina Republican Party and Defendant Helms for Senate Committee. No postcards were mailed to the over 220,000 white registered voters so identified. The postcards were mailed to the targeted black voters at the alternative address provided

to the defendant organizations, not to the address under which they were registered.

27. Of the black voters who were identified as having changed residences by the data described in paragraph 26, at least 22,000 such voters were identified as having new addresses which were within the county in which they were registered to vote.

28. The voters targeted to receive the bulk-rate mailing were selected, in part, based upon race.

29. The text of the postcard, which is set forth in paragraph 21, falsely informed voters who were eligible to vote in the November 6, 1990 election that they were not eligible to vote in that election. Contrary to the text of the postcard:

A. Voters who move out of the precinct in which they are registered and into another precinct within the county in which they are registered more than 30 days prior to an election are still eligible to vote in that election; and

B. Voters who move out of the precinct in which they are registered to any other precinct in the State of North Carolina within 30 days of an election are eligible to vote in that election.

30. The text of the postcard, which is set forth in paragraph 21, falsely informed voters that they would be asked at the polling place to state the length of time they have lived at their residence.

31. The false information described in paragraphs 29 and 30, was included in the text of the postcard to misinform and confuse the targeted voters and others concerning their eligibility and right to vote in the November 6, 1990 election.

32. The statement in the postcard setting forth federal criminal penalties for election fraud was included in the text of the postcard to induce fear and apprehension in the minds of the targeted voters and others concerning their eligibility and right to vote in the November 6, 1990 election.

33. Upon the return of undeliverable postcards to the Defendant North Carolina Republican Party, an effort was undertaken to compile lists of voters whose cards were returned with the intent of using such lists as a basis to encourage the challenge of voters on election day. Employees of the Defendants Helms for Senate Committee, North Carolina Republican Party, Campaign Management, Inc., Computer Operations and Mailing Professionals, Inc., and Discount Paper Brokers, Inc., were all involved in the effort to compile such voter lists from the returned cards. This effort was terminated shortly before the election and subsequent to the initiation of an investigation of the 1990 ballot security program by the United States Department of Justice.

34. On October 31, 1990, and subsequent thereto, Mr. Hawke, in his official capacity as Chairperson of Defendant North Carolina Republican Party, advised the news media that the postcard mailing was a legitimate component of the Party's ballot

security program. Such statements were made by Mr. Hawke after he knew or should have known that the postcard contained false and/or misleading information and that the targeting criteria were, in part, based upon race.

35. Defendant Helms for Senate Committee, no later than five days before election day, knew or should have known that the postcard contained false and/or misleading information and that the targeting criteria were, in part, based upon race.

36. On October 31 and November 1, 1990, an effort was made by Mr. Calvin Kervin, President of Defendant Discount Paper Brokers, Inc., and others to re-mail a group of the first-class postcards that had been mailed to selected voters in Mecklenburg County, after it was discovered that a computer error had caused many of the postcards to such voters to be misaddressed. This effort was undertaken contemporaneous with press accounts reporting that the postcard contained false and misleading information and that state and county election officials had issued press releases correcting the false information conveyed in the postcard.

37. On November 15, 1990, Defendant Locke was paid in full by the Defendant North Carolina Republican Party for his services and the expenses he incurred in assisting in the coordination and implementation of the 1990 ballot security program in connection with the November 6, 1990 general election.

38. Defendant Locke, in his capacity as an agent of the Defendant Helms For Senate Committee and/or Defendant North

Carolina Republican Party, and Defendant Davidson, in his capacity as an agent of the Defendant Helms for Senate Committee and/or Defendant North Carolina Republican Party, and as a principal and/or employee of the Defendants Campaign Management, Inc., Computer Operations and Mailing Professionals, Inc., Discount Paper Brokers, Inc., and Jefferson Marketing, Inc. (and possibly other agents, officers and/or employees of the defendant organizations), played a significant role in establishing the criteria for selecting the voters to be sent the postcards and/or in developing the text that appeared on both versions of the postcard.

39. Defendants North Carolina Republican Party, Helms for Senate Committee, Campaign Management, Inc., Computer Operations and Mailing Professionals, Inc., Discount Paper Brokers, Inc., Jefferson Marketing, Inc., actively participated through its officers, employees and agents in the 1990 ballot security program, including the postcard mailing described above in connection with the November 6, 1990 general election.

40. Black citizens of the State of North Carolina have experienced a long history of discrimination against them on account of their race in voting and other areas, such as education, housing, employment and public accommodations.

41. The socioeconomic status of the State of North Carolina's black citizens is markedly lower than the socioeconomic status of the state's white population. The depressed socioeconomic status of the black population of the

State of North Carolina is related to the effects of past discrimination on account of race. These effects of past discrimination may have the tendency to exacerbate the pernicious effect of practices designed to discourage eligible black voters from exercising their right to vote.

42. The postcard mailing, as described above, was undertaken, at least in part, to influence the election contest for United States Senate on November 6, 1990 between Senator Jesse A. Helms and Mr. Harvey B. Gantt, and in part, to influence future election contests.

43. A purpose of the postcard mailing, as described above, was to intimidate and/or threaten black voters in an effort to deter such voters from exercising their right to vote in the November 6, 1990 general election and future election contests in North Carolina.

44. The postcard mailing, as described above, had the effect of intimidating and/or threatening voters concerning their right to vote in the November 6, 1990, general election and future election contests in North Carolina.

45. The postcard mailing, as described above, had a reasonable tendency to intimidate and/or threaten black voters and others concerning their right to cast a ballot in the November 6, 1990 general election and future election contests in North Carolina.

46. The defendants' actions, as described above, constitute intimidating and/or threatening conduct against black voters, or

an attempt to intimidate and/or threaten black voters, for purposes of interfering with the right to vote in the November 6, 1990 general election in North Carolina in violation of 42 U.S.C. 1971(b).

47. The defendants' actions, as described above, constitute intimidating and/or threatening conduct against black voters and other voters in violation of Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. 1973i(b).

48. Unless enjoined by order of this Court, defendants will continue to engage in actions prohibited by 42 U.S.C. 1971(b) and 42 U.S.C. 1973i(b).

WHEREFORE, the United States prays that this Court enter an order:

(1) Declaring that the defendants' actions as described above constituted an act of intimidation and/or a threat, or an attempt to intimidate and/or threaten, primarily black voters for purposes of interfering with their right to vote, in violation of 42 U.S.C. 1971(b);

(2) Declaring that the defendants' actions as described above constituted intimidating and/or threatening conduct to black voters or other voters, or an attempt to intimidate and/or threaten black voters concerning their right to vote, in violation of Section 11(b) of the Voting Rights Act of 1965, 42 U.S.C. 1973i(b);

(3) Enjoining the defendants, their officers, agents, employees, and all persons in active concert with them, from

undertaking activities which are designed to intimidate, threaten, or coerce voters concerning their right to vote in an election or which are designed to in any way interfere with or discourage the lawful exercise of the franchise; and

(4) Enjoining the defendants, their officers, agents, employees, and all persons in active concert with them, from assisting in or participating in any ballot security program unless the program has been determined by this Court to comply with federal law.

Plaintiff further prays that this Court grant such additional relief as the interests of justice may require, together with the costs and disbursements of this action.

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