Virginia Voter Registrar Unlawfully Challenges The Voter Registration Of Military Personnel And Spouses

By Samuel F. Wright

This is a follow-up to Law Review 204. Both the U.S. Department of Justice and Virginia’s State Board of Elections have called upon the Stafford County Voter Registrar and have apparently advised him to “cool it” with respect to his efforts to discourage and prevent voting by military personnel and their spouses, but the Registrar has apparently rejected that advice.

Ray Davis, the Registrar of Voters of Stafford County, Va., has formally challenged the voter registration of 100 registered voters in the county through a series of identical form letters. Each of these voters is (or was) a member of the armed forces on active duty or the spouse of such a member. Each voter was directed to appear at a hearing at Mr. Davis’ office Dec. 6, 2005. The letter states that if the voter does not appear as directed, the voter registration of that voter would be canceled Dec. 7.

In his letter, Mr. Davis refers to the Soldiers’ and Sailors’ Civil Relief Act (SSCRA)—he is apparently unaware that Congress comprehensively amended that law (which dates back to World War I) and recodified it in 2003. The new law is called the Servicemembers’ Civil Relief Act (SCRA).

Some of the challenged voters are on active duty and deployed to places like Iraq or Afghanistan. Some of these folks probably have not even received the letters, which were not sent by certified mail. When such a member returns from deployment, months from now, Mr. Davis’ letter will be in a huge stack of unread mail. The whole point of the SCRA, as well as the SSCRA, is that those who are serving our country in combat should be able to devote their full attention to their military duties. The SCRA is intended to remove, to the maximum extent feasible, distractions based on civil matters at home.

Section 202 of the SCRA provides for a mandatory continuance in cases like this. One big improvement made by the SCRA in 2003, as compared to the SSCRA provision, is that the right to a continuance now applies to administrative as well as judicial proceedings. If Mr. Davis were to cancel the voter registration of a deployed servicemember on Dec. 7, based on his or her failure to appear for the Dec. 6 hearing, Mr. Davis would have been flouting Federal law.

In his form letter, Mr. Davis relies solely on the fact that the challenged voter has, according to Mr. Davis, claimed exemption from Virginia’s personal property tax on vehicles, relying on the SSCRA (now SCRA). Here are the relevant SCRA provisions:
“A servicemember shall neither lose nor acquire a residence or domicile for purposes of taxation with respect to the person, personal property, or income of the servicemember by reason of being absent or present in any tax jurisdiction of the United States solely in compliance with military orders.” Section 511(a).

“The personal property of a servicemember shall not be deemed to be located or present in, or to have a situs for taxation in, the tax jurisdiction in which the servicemember is serving in compliance with military orders.” Section 511(c)(1).

“This subsection applies to personal property or its use within any tax jurisdiction other than the servicemember’s domicile or residence.” Section 511(c)(2).

Let us take the case of the hypothetical Col Joe Smith, USMC, assigned to Marine Corps Base Quantico, located just the other side of the county line in Prince William County, Virginia. Colonel Smith is a domiciliary of California—he joined the Marine Corps while living in that state 28 years ago, and he has never established a new domicile in any other state. Colonel Smith cannot commute to Quantico from California, so he buys or rents a house in Stafford County, just a few miles south of Quantico.

Under Section 511 of the SCRA, Virginia and Stafford County are precluded from collecting the personal property tax on Colonel Smith’s vehicle as long as Colonel Smith remains on active duty, remains a domiciliary of a state other than Virginia, and has the vehicle registered in his name alone. Section 511(b) of the SCRA also precludes Virginia from collecting its state income tax on Col Smith’s military salary, so long as he remains on active duty and remains domiciled in another state.

Physically living in Virginia, and specifically in Stafford County, does not make Col Smith a Virginian. He is living in Virginia only because his military duties require that he sleep within a reasonable commuting distance of his duty station. If he chooses, he can become a Virginia domiciliary, but to do so he needs the simultaneous physical presence in Virginia (which he already has) and the intent to make Virginia his home (which he can establish at any time while he has the physical presence in Virginia). Col Smith could register to vote in Stafford County as a way of demonstrating his intent to make Virginia home.

When Col Smith leaves active duty or when he becomes a Virginia domiciliary (whichever comes first), he loses his SCRA exemption from paying Virginia state income tax and personal property tax. If that is the situation of the folks that Registrar Davis has challenged, then Stafford County and Virginia should bill them for the tax they owe, and they should pay it. But note that the letters came not from the tax office but the voter registration office. This appears to be an effort to prevent military personnel and their spouses from voting, not an effort to collect taxes.

If the 100 challenged voters owe personal property tax, Stafford County has remedies such as suing them and putting liens on their personal and real property. Denying these folks the right to vote is not one of the remedies that Stafford County can

Section 1 of the 24th Amendment provides: “The right of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.” (emphasis supplied). In *Harper*, the Supreme Court extended this prohibition to include state and local elections as well. Making the right to vote depend upon a wealth test or upon the payment of any tax or fee is a violation of the Equal Protection Clause of the 14th Amendment.

Now let us take the case of Mrs. Karen Smith, wife of Col Smith. She lives with her husband in the house in Stafford County. She is not on active duty. If she works outside the home, she must pay Virginia state income tax on her salary, regardless of whether she votes in Virginia, or votes somewhere else, or does not vote at all. If she owns a vehicle or other personal (moveable) property, the SCRA does not preclude Virginia and Stafford County from collecting personal property tax on that property.

Mrs. Smith’s right to vote in Stafford County has been challenged by Ray Davis on the grounds that her husband has claimed an exemption from the personal property tax on his vehicle (a vehicle registered and titled in California in Col Smith’s name alone.) Challenging Mrs. Smith’s registration on this basis is unlawful and unconstitutional. Every human being (married or single) has one and only one domicile, and that domicile is not dependent upon the domicile of the individual’s spouse, if any.

Mrs. Smith cannot vote in California, because she has never lived there, either before or after marrying Joe Smith in 1990. While married to Col Smith, Mrs. Smith has registered and voted in each of the five places where the Marine Corps has sent her husband. Her right to register and vote was never questioned by any local election official until she arrived in Stafford County in 2005. If she cannot vote in Stafford County, she cannot vote anywhere. The personal property tax Col Smith has or has not paid on his vehicle has no bearing on Mrs. Smith’s right to vote in Stafford County.