

Voting case smashed barriers

Emily Heller/Special to The National Law Journal
January 1, 2007

Pro bono lawyers were key in a series of 2006 voting rights lawsuits, particularly a high-profile Florida case that was the first to hold that voter registration by private groups is protected by the First Amendment.

Litigators from New York's Kramer Levin Naftalis & Frankel teamed up with two advocacy groups—the Brennan Center for Justice at New York University School of Law and the Advancement Project in Washington—to overturn a 2005 Florida law that had shut down voter-registration groups such as the League of Women Voters.

A Miami federal judge issued a preliminary injunction blocking enforcement of the law as an unconstitutional infringement on speech. The ruling in August allowed voter-registration groups to enroll voters in time for the 2006 mid-term elections. The groups had halted efforts for fear of huge penalties the new law would have imposed.

The effect of the decision went well beyond the Sunshine State.

"The Florida case is the leading edge on a new jurisprudence of voting rights," said Deborah Goldberg, director of the democracy program at the Brennan Center. *League of Women Voters of Florida v. Cobb*, No. 06-21265 (S.D. Fla.).

Within a month, the Florida decision was cited in rulings in Ohio and

Georgia striking down voter-registration restrictions. *Project Vote v. Blackwell*, No. 1:06CV1628 (N.D. Ohio), and *Association of Community Organizations for Reform Now v. Cox*, No. 1:06CV1891 (N.D. Ga.).

"A lot of laws were put into place in 2005 and 2006 that would have prevented people from even getting to the polls," said Wendy R. Weiser, deputy director of the Brennan Center's democracy program and co-counsel in the case.

The Florida law imposed fines and deadlines on groups engaged in voter registration but exempted political parties. It provided for a mandatory \$250 fine for each voter registration form submitted more than 10 days after the form was completed, \$500 for each registration form submitted after a registration deadline and \$5,000 for each registration form not submitted at all. The penalties applied without exception. Individual registration gatherers—most of them volunteers—would be personally liable.

"We immediately determined the Florida law had serious constitutional problems," Weiser said.

The case was put together in the hope of taking a winning ruling to other states. "It was going to be a seminal case," Weiser said. "It was extraordinarily important that the case be litigated well and thoughtfully."

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A team of Kramer Levin associates, including Erin Walter and former Brennan Center counsel Craig Siegel, gathered facts in support of a bid for preliminary injunction.

Kramer Levin was under pressure to put the case together quickly because of the impending midterm elections. "We were most eager to get immediate relief because the harm was being felt every day," said Kramer Levin partner Eric Tirschwell, who headed the firm's team on the case. The suit was filed in May.

In addition to boots-on-the-ground factual development, Kramer Levin lawyers brought trial experience. Weiser brought understanding of the constitutional issues and presented arguments in court. The Advancement Project, which seeks to increase voting in low-income and minority communities, brought its close relationships with voter groups and elections supervisors.

"I give Kramer Levin a tremendous amount of credit for their diligence and thoroughness with pleadings, fact development and, of course, the [preliminary injunction] hearing," said Elizabeth S. Westfall, senior attorney with the Advancement Project.

Kramer Levin typically handles white-collar criminal and regulatory defense work. The voting rights litigation was "particularly fun because we don't get to be plaintiffs that often," Tirschwell said. "It's really a whole different ball game."

So far, Kramer Levin, a medium-sized firm of more than 300 lawyers, has donated more than \$1 million in billable time plus \$75,000 in expenses.

"This certainly was a very substantial commitment and undertaking for any firm, and certainly for a firm that is not in the largest tier in terms of lawyers," Tirschwell said. "We understood when we made the commitment that it was going to require the dedication of substantial resources."