Mail-in voting? A "political question" which only State Legislatures and Congress may decide

By Publius Huldah, Sept 20, 2020

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It has become obvious that one of the purposes of the COVID-19 scam is to bring about unrestricted mail-in voting in the toss-up and Red States so that the upcoming presidential election can be stolen by the Left for the senile Joe Biden and his constitutionally ineligible running mate, Kamala Harris.

On September 9, 2020, the Left achieved their goal for the Red State of Tennessee – ***unless*** the Tennessee State government enforces the US Constitution and rejects the federal judge's unconstitutional order.

1. The absurd Order from the US District Court, Middle District of Tennessee

The Tennessee Code permits mail-in voting for certain categories of people [Tenn. Code § 2-6-201]; but requires those who *register by mail* to appear in person at the official place of voting and bring proof of identity when they vote for the first time [Tenn. Code § 2-2-115 (b) (7)].

Our elections are already tainted by the "ghost voters" described in Deroy Murdock's article (published 2017) [here]**.** Murdock showed that throughout the United States, over 3.5 million persons *who didn't exist* were registered to vote. But that number wasn't sufficient to elect Hillary Clinton; so the Left needs more ghost voters. *With mail-in voter* ***registration****, dead people can be registered to vote; and with unrestricted mail-in* ***voting****, those dead people can vote forever.*

The Plaintiffs in this action claim to be distressed about the statutory requirement that first-time voters (*who registered by mail*) appear in person to vote because it forces them to choose between their "health" [they might catch COVID-19 if they go to the polls] and their right to vote. [1]

On September 9, 2020, federal judge Eli Richardson issued a preliminary injunction which has the effect of setting aside, for the upcoming presidential election, the statutory requirement – established by the Tennessee Legislature – that persons *who registered by mail*, show up in person the first time they vote.

Here is Richardson's 29 page Order.

So let's cut 29 pages of bunk down to its essence: Richardson ruled that the Tennessee Legislature's requirement that the first-time voters (*who registered by mail*) physically appear at the polls, imposes a "moderate burden" on voting rights; and the State failed to show the Court that Tennessee has a "legitimate state interest" to justify that burden. [2]

Even worse: Throughout his Order, Richardson writes repeatedly [some 20 times] of Plaintiffs' "First Amendment right to vote"; and says at the end of para 31 of his Order,

"…it is likely that Plaintiffs will prevail on their claim that the first-time voter requirement violates the First Amendment right to vote…"

But the First Amendment makes no mention of a "right to vote". [3] Furthermore, in footnote 22 of his Order, the Judge says:

"In a prior order, the Court declined to address any suggestion that there is no First Amendment right to vote, for any purposes at all, *by mail* in particular… The Court was well aware that *McDonald* supports such a suggestion, but the Court simply did not need to opine on that matter. The Court likewise does not need to do so here…"

What? *The Judge declined to address whether or not a First Amendment right to vote actually exists – even though he has already determined that Plaintiffs are likely to prevail on their claim that the requirement that first-time voters (who registered by mail) show up in person to vote "violates the First Amendment right to vote"*!

2. Why do Plaintiffs and the Judge repeatedly speak of a "First Amendment right to vote", when the Judge isn't prepared to say that such a right even exists?

They may be aware that the federal court has no jurisdiction over this case; but are attempting to fake it by claiming that the case "arises under the Constitution" via the First Amendment.[4]

The judicial power of the federal courts is limited to those few categories of cases enumerated at Article III, §2, clause 1, US Constitution. *Not one of the categories invests the federal court with jurisdiction over this case*. This case can't be said to "arise under the Constitution" because there is no "right to vote" in the US Constitution; and the remaining categories listed in Article III, §2 are clearly inapplicable.

So it appears that Plaintiffs have fabricated a mythical "First Amendment right to vote" in order to provide a pretext for the federal court to exercise jurisdiction in this case – and that the federal judge let them get away with it.

3. Article I, §2, clause 1, US Constitution, negates the absurd claim that there exists a federal constitutional right to vote.

At Article I, §2, cl. 1, the States expressly retained their pre-existing power to determine the qualifications of voters:

"The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, *and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature*." [italics added]

Accordingly, those who are eligible to vote for Representatives *to their State Legislature* are the ones eligible to vote for Members of the federal House of Representatives. [5]

With four later Amendments, the States agreed that they would not deny eligibility to vote to Citizens *on account of* race (15th Amendment), sex (19th Amendment), failure to pay a tax (24th Amendment), and for those 18 years of age or older *on account of age* (26th Amendment). It is important to note that these four amendments do not grant the "right" to vote to the persons described in the Amendments – merely that the suffrage will not be denied to those persons *on account of* their race, sex, etc.

So *the States retained their original authority* to set whatever qualifications for voting they deem appropriate, subject to their agreement that they would not deny suffrage *on account of* a Citizen's being in one of those four categories.

So there is no "right to vote" set forth in the US Constitution. To the contrary, voting is a privilege granted or denied on the basis of whether applicants meet the qualifications for voting set forth within their State Constitution. [6]

4. What does our Constitution say about how the President and Vice President are to be elected?

Article II, §1, cl. 2 and the 12th Amendment set forth the procedures for electing President and Vice President. Those procedures are described **here** under the subheadings, **"Electors appointed by States were to choose the President"** and **"The 12th Amendment establishes procedures for voting by Electors".**

Our current procedures bear no resemblance to the Constitutional requirements. [7] It's too late to obey the Constitution for the upcoming presidential election; so let's see what our Constitution says about the federal elections to Congress.

5. US Constitution: the "times, places and manner" clause

Pursuant to **Article I, §4, clause 1,** *State Legislatures* have the power to prescribe the *Times, Places* and *Manner* of holding Elections for US Representatives [8] and US Senators.[9]

This clause also provides that Congress may make laws which override such State laws.

So the power to determine the time, place and manner of holding such federal elections is delegated *exclusively* to the Legislative Branches of the State and federal governments.

It is up to the State Legislatures to decide which "burdens" are appropriate with respect to the place of voting – with Congress having power to override what a State Legislature decides. The Judicial Branches of the state and federal governments may not substitute *their* views as to which "burdens" are appropriate and which are not. *These are "political questions" granted to the Legislative Branches to decide; and the Judicial Branches – state and federal – may not lawfully interfere.* [10]

It is clear that "manner of voting" includes such matters as a requirement of personal presence at the place of voting. This is what our Framers contemplated, as shown by their words quoted in footnote 8 below. *When a State legislature decides that personal presence is required – that decision can be overturned only by Congress.*

So Judge Richardson's view that the Tennessee Legislature doesn't have a good reason for requiring first time voters (*who registered by mail*) to vote in person and present ID is irrelevant, and his Order is *ultra vires*.

6. What is the State's remedy against the unlawful Court order?

So! You have seen that determining the "place and manner of voting" is a political power *delegated exclusively* to the State and federal Legislatures. It is thus a "political question"; and the federal [and state] Judicial Branches may not substitute their views for those of the Legislative Branches.

And since there is no "right to vote" contained in the US Constitution, the Federal District Court has no jurisdiction over this case. This case doesn't "arise under the Constitution" or fit within any of the other categories of cases enumerated at Article III, §2, cl.1, US Constitution.

So the pretended Order of September 9, 2020, is ultra vires and lawless, and the State of Tennessee has no obligation to obey it.

The duty of the elected and appointed State and local officials is to obey the US Constitution. When the dictates of a federal [or State] judge contradict the Constitution, State officials must side with the Constitution and against the judge. [11]

And what will happen if the State of Tennessee refuses to comply with the Judge's order? The Judge can't enforce his Order. He has to depend on the Executive Branch of the federal government to enforce it. [12] Do you believe that President Trump will send in federal troops to force the State of Tennessee to comply with Judge Richardson's ultra vires Order?

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Endnotes:

[1] How *do* they get their groceries?

[2] Order at paras 29 – 31.

[3] The First Amendment says,

"Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances."

The First Amendment is a limitation on Congress' powers to make laws – it doesn't grant a "right" to vote!

4 In Federalist No. 80 (2nd para), Hamilton states that cases "arising under the Constitution" concern

"…the execution of the provisions **expressly contained** in the articles of Union [the US Constitution]…" [boldface added].

In the 3rd & 13th paras, Hamilton illustrates what "arising under the Constitution" means: He points to the restrictions on the power of the States listed at Art. I, §10 and shows that if a State exercises any of those powers, and the fed. gov't sues the State, the federal courts have authority to hear the case.

5 The 17th Amendment [ratified 1913] provides that those who are eligible to vote for Representatives to the US House are eligible to vote for US Senators.

6 With the **National Voter Registration Act of 1993**, Congress usurped the retained power of the States to set and enforce eligibility standards for voting. In a series of 3 papers, the last of which is **here**, I show how the assertions about *The Federalist Papers* made by the 9th US Circuit Court of Appeals and the Supreme Court, in their attempts to justify their unconstitutional judgments, are ***false***.

7 Our disregard of these constitutional provisions doubtless contributed to the creation of the current chaos.

8 Our Framers told us what "times", "places" and "manner" mean:

In Federalist No. 61 (4th & 5th paras), Alexander Hamilton shows that **"Time"** refers to *when* elections are held. He explains that under the Articles of Confederation [our 1st Constitution], States had been conducting elections from March to November; and that uniformity in the time of elections is necessary "for conveniently assembling the [federal] legislature at a stated period in each year".

"Place": Hamilton also points out that the suffrages of citizens living in certain parts of the States could be defeated by restricting the place of election for Representatives in the House to "an INCONVENIENT DISTANCE from the elector" (2nd para). [caps are Hamilton's].

"Manner" of holding Elections refers to such things as paper ballots or show of hands, the place of voting, and whether the States will be divided into congressional districts for purposes of electing Representatives. James Madison discusses the "**Manner"** of holding Elections in The Records of the Federal Convention of 1787, vol. 2, August 9, 1787:

"Mr. Madison: … the Legislatures of the States ought not to have the uncontrouled right of regulating the times places & manner of holding elections. These were words of great latitude. It was impossible to foresee all the abuses that might be made of the discretionary power. **Whether**

the electors should vote by ballot or vivâ voce, should assemble at this place or that place; should be divided into districts or all meet at one place, shd all vote for all the representatives; or all in a district vote for a number allotted to the district; these & many other points would depend on the Legislatures and might materially affect the appointments …. what danger could there be in giving a controuling power to the Natl. Legislature? Of whom was it to consist? 1. of a Senate to be chosen by the State Legislatures … 2. of Representatives elected by the same people who elect the State Legislatures…" [emphasis added]

Rufus King in the Massachusetts Convention said in The Records of the Federal Convention of 1787, vol. 3, January 21, 1788:

"Hon. Mr. King rose … It was to be observed, he said, that in the Constitution of Massachusetts, and other States, the manner and place of elections were provided for; **the manner was *by ballot*,** and the places *towns*; for, said he, we happened to settle originally in townships…" [emphasis added]

9 When Art. I, §4, cl. 1 was drafted, the State Legislatures were to choose the State's Senators to the US Congress – so the "place" of choosing *the US Senators* would be wherever the Legislature met. With ratification of the 17th Amendment, Congress gained oversight over State laws addressing the "place" of election of US Senators.

10 In *Marbury v. Madison* [**link**], decided 1803, the Supreme Court explained the concept of "political powers" and that the manner in which *political powers* are exercised is beyond the reach of the courts:

"By the Constitution of the United States, the President is invested with certain important political powers, in the exercise of which he is to use his own discretion, and is accountable only to his country in his political character and to his own conscience. …whatever opinion may be entertained of the manner in which executive discretion may be used, still there exists, and can exist, no power to control that discretion. The subjects are political. They respect the nation, not individual rights, and, being entrusted to the Executive, the decision of the Executive is conclusive … [and] can never be examinable by the Courts."

Marbury addresses the political powers exercised by the President. That same deference to the exercise of political powers has long been extended to the acts of the other political branch, Congress. Where the Constitution grants *a political power* to Congress, the manner in which Congress exercises the discretion is also beyond the reach of the Courts. So, for example, if Congress were to exercise the power granted to it by Article I, § 4, clause 1, to make a law banning mail-in voting; its action can never be examined by the Courts – the Courts may not substitute *their* views for those of Congress.

11 *Marbury v. Madison* also stands for the Great Principle that when an Act of one branch of government violates the Constitution, *the other Branches must obey the Constitution and not the unlawful Act*.

[12] Alexander Hamilton made this same point over 200 years ago – see Federalist No. 78 (6th para). If law schools had made *The Federalist Papers* required reading, our Country wouldn't now be in such a mess.

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About the Author: Lawyer, philosopher & logician. Strict constructionist of the U.S. Constitution. Passionate about The Federalist Papers (Alexander Hamilton, James Madison & John Jay), restoring constitutional government, The Bible, the writings of Ayn Rand, & the following: There is no such thing as Jew & Greek, slave & freeman, male & female, black person & white person; for we are all one person in Christ Jesus.

"Publius Huldah" is the nom de guerre of Joanna Martin, J.D., (pictured on the left, right out of law school & newly commissioned US Army JAGC), who is a thoroughly nice person, in addition to all the above. And if you hear otherwise, consider this from Socrates, who reportedly said, "When the debate is lost, slander is the weapon of the loser".

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