

**UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI**

ASSOCIATION OF COMMUNITY ORGANIZATIONS FOR
REFORM NOW and DIONNE O'NEAL,

Plaintiffs,

v.

CIVIL ACTION NO.

DEBORAH E. SCOTT in her official capacity as Director of Missouri Department of Public Social Services, JANEL R. LUCK, in her official capacity as Director of Family Support Division, Missouri Department of Social Services, KANSAS CITY BOARD OF ELECTION COMMISSIONERS and MELODIE A. POWELL, JOSEPH D. SERRANO, CYNTHIA THOMPSON, QUENTIN JENNINGS, SHAWN L. KIEFFER, and SHELLEY MCTHOMAS in their official capacities as members of the Kansas City Board of Election Commissioners, JACKSON COUNTY BOARD OF ELECTION COMMISSIONERS and TAMMY L. BROWN, WILLIAM J. BAKER, MICHAEL K. WHITEHEAD, CHARLES E. DUMSKY, CHARLENE DAVIS, and ROBERT C. NICHOLS, JR. in their official capacities as members of the Jackson County Board of Election Commissioners, ST. LOUIS CITY BOARD OF ELECTION COMMISSIONERS and SCOTT LEIENDECKER, MARY WHEELER-JONES, CAROL A. WILSON, EILEEN M. MCCANN, JACK LARY, and CLARENCE E. DULA in their official capacities as members of the St. Louis City Board of Election Commissioners,

Defendants.

PLAINTIFFS MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs' hereby move, pursuant to 42 U.S.C. § 1973gg-9(b)(2) and Rule 65 of the Federal Rules of Civil Procedure, for a preliminary injunction requiring that Defendants to implement immediately and completely the mandatory provisions of Section 7 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5, and take remedial measures to correct the harm Defendants' previous violations of Section 7 have caused and continuing violations will cause. The grounds

for this Motion are fully set forth in the accompanying Memorandum of Law. However, in brief summary:

1. Congress enacted the NVRA in order to increase the number of citizens registered to vote, and thereby enhance voter participation in federal elections.
2. The NVRA mandates that states increase voter registration opportunities in several ways: by making registration available by mail; by requiring that states include a voter registration form as part of all driver's license applications; and by requiring that voter registration services be provided at public assistance offices, disability offices, and other locations. 42 U.S.C. § 1973gg-3, 1973gg-5.
3. Section 7 of the NVRA requires, *inter alia*, that each state designate all state offices "that provide public assistance" as "voter registration agencies" ("VRAs") and that all VRAs distribute voter registration applications with every application, recertification, or change of address with respect to public assistance, assist applicants in completing the applications, and accept completed applications for transmittal to the appropriate local election authority. 42 U.S.C. § 1973gg-5(a)(2)(a), 1973gg -5(a)(4)(a). Missouri, however, is not complying with the Section 7 mandate to provide voter registration services by public assistance offices.

4. The NVRA became effective in 1995. There has been a substantial decline in voter registrations by Missouri public assistance agencies over the period 1995 – 2006.
5. On August 23, 2007, counsel for Plaintiff ACORN, troubled by the substantial decline in voter registrations by public assistance agencies, sent a letter to Defendant Scott, in her official capacity as Director of DSS, providing written notice of the NVRA violation. In compliance with the notice requirements set forth at 42 U.S.C. sec. 1973gg-9, Plaintiffs provided a copy of this letter to Missouri's chief elections officer. The letter stated that in the absence of a plan to remedy DSS's failures to implement the NVRA, ACORN would have no choice but to commence litigation.
6. In her October 11, 2007 response, Defendant Scott attributed the decline in voter registrations through DSS to advances in technology that allow for remote application for public assistance benefits, but do not lend themselves to voter registration. Defendant Scott asserted that the technological changes did not affect DSS voter registration efforts when persons come into the local DSS office.
7. Defendant Scott's assertions are belied by the experience of the individual Plaintiff, as well as several non-party Declarants, all low-income persons who are eligible for public assistance benefits, eligible to register to vote, and who have visited VRA offices in person – in several instances,

subsequent to the October 11 letter – and have not been offered the opportunity to register to vote as required by Section 7 of the NVRA.

8. These violations have interfered with the right to vote of the individual Plaintiff, members of Plaintiff ACORN, and other low-income citizens of Missouri, depriving them of a full and effective participation in the political process. These violations also have caused Plaintiff ACORN to expend resources by conducting voter registration assistance efforts outside local DSS offices that it would not otherwise have expended, thereby diverting resources ACORN needs for community organization, issues campaigns, and other programs in order to realize full achievement of its goals. Defendants' failure to abide by the requirements of the NVRA, therefore, has hampered and impeded ACORN's mission, and continues to cause ACORN irreparable harm.
9. This motion seeks a preliminary injunction to remedy past and prevent future violations of Section 7 of the NVRA and the irreparable harm caused by those violations.
10. Congress has already balanced the equities by expressly providing for a private action for injunctive relief to address violations of the NVRA, *see* 42 U.S.C. § 1973gg-9(b)(2), and reasonable cause exists for the Court to believe that a violation of Section 7 of the NVRA has or is about to occur, *Burlington Northern R.R. Co. v. Bair*, 957 F.2d 599, 601-02, 603 (8th Cir. 1992).

11. Moreover, all factors the Court would consider if this case did not involve a federal statute that expressly provides for injunctive relief weigh in favor of issuance of a preliminary injunction:

- a. Plaintiffs will suffer irreparable harm if the preliminary injunction is not granted;
- b. The balance between this harm, and any harm that issuance of the preliminary injunction will inflict on other parties litigant weigh strongly in favor of issuance;
- c. There is a high probability that Plaintiffs will succeed on the merits; and
- d. Issuing a preliminary injunction is in the public interest.

See Dataphase Systems, Inc. v. CL Systems, Inc., 640 F.2d 109, 113 (8th Cir. 1981).

WHEREFORE, Plaintiffs pray that the Court issue a preliminary injunction enjoining Defendants, their agents, servants, officers and others acting in concert with them to implement immediately and completely the mandatory provisions of Section 7 of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-5, and to take remedial measures to correct the harm Defendants’ previous violations of Section 7 have caused and continuing violations will cause.

Preliminary injunctive relief is necessary as time is of the essence because of the upcoming presidential election in November and the State’s October cutoff for registration to vote in that election. Thus, Plaintiffs request that the Court convene a hearing on this matter at its earliest convenience.

Plaintiffs' counsel anticipate negotiating with opposing counsel an expedited discovery¹ and briefing schedule for the Court's approval and request an early telephone conference with the Court.

Respectfully submitted,

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PRO HAC VICE APPLICATIONS TO BE
FILED

LAWYERS' COMMITTEE FOR
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Jon Greenbaum
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Carlean Ponder

¹ Plaintiffs believe that preliminary discovery would materially assist the Parties and the Court in deciding the instant motion. Plaintiffs will propose to the Defendants a sixty-day preliminary discovery period, including the following: 1) requests for production of relevant documents, including correspondence, training manuals, policy documents and declination forms; 2) a limited number of depositions of state-level and local-level Missouri officials and employees, including depositions noticed pursuant to Fed.R.Civ.P. 30(b)(6); 3) requests for admissions concerning statistics and other readily ascertainable matters; and 4) written interrogatories, including interrogatories relating to the parties' contentions.

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PRO HAC VICE APPLICATIONS TO BE
FILED

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