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**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

Associations of Community Organizations)	
for Reform Now, et al.,)	
)	
Plaintiffs,)	
)	
v.)	Case No.: 08-4084-CV-C-WAK
)	
Deborah E. Scott, et al.,)	
)	
Defendants.)	

**KANSAS CITY ELECTION BOARD’S REPLY SUGGESTIONS IN
SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS’
COMPLAINT OR, IN THE ALTERNATIVE, JUDGMENT ON THE PLEADINGS**

Defendants, the Kansas City Board of Election Commissioners and its Commissioners and Directors, Melodie Powell, Joseph D. Serrano, Cynthia Thompson, Quentin Jennings, Shawn L. Kieffer, and Shelley McThomas, in their official capacity (jointly referred to as the “Kansas City Election Board” or “KCEB”), state the following in support of their Motion to Dismiss Plaintiffs’ Complaint or, in the Alternative, for Judgment on the Pleadings and in reply to Plaintiffs Memorandum of Law in Opposition to Defendant’s Motion to Dismiss (“Opposition”).

Introduction

Plaintiffs, Association of Community Organizations for Reform Now (“ACORN”) and Dionne O’Neal, sued Deborah E. Scott as Director of the DSS, Janel R. Luck as the Director of the Family Support Division of the DSS, the Kansas City Election Board, the Directors and Commissioners of the Jackson County Board of Election Commissioners, and the Directors and Commissioners of the St. Louis City Board of Election Commissioners. Plaintiffs seek injunctive relief against all Defendants for alleged violations of the National Voter Registration

Act (“the NVRA”). Specifically, Plaintiffs seek relief from the Kansas City Election Board for its alleged non-compliance with Mo. Rev. Stat. § 115.145. (Pls. Opp’n 4-7).¹

Plaintiffs’ Complaint should be dismissed because it fails to state a claim upon which relief can be granted against the Kansas City Election Board. Plaintiffs seek futile relief from the Kansas City Election Board. Plaintiffs have not satisfied the procedural mandates of the NVRA that requires notice before an action is filed. Plaintiffs misconstrue Missouri election law and attempt to impose a duty on the Kansas City Election Board that does not exist.

Suggestions

I. Plaintiffs’ Requested Relief Requiring the Kansas City Election Board to Inform Every Public Assistance Agency Within the KCEB’s Jurisdiction as to Each Agency’s Duties Under the NVRA is Futile.

Plaintiffs admit that the Kansas City Election Board is not responsible for the Family Support Division of the Department of Social Services’ (“the DSS”) compliance with the NVRA. (Pls. Opp’n 7.) (stating that “Plaintiffs are not seeking to have the Election Boards enforce the NVRA or hold the Election Boards responsible for the DSS’s inactions”). Accordingly, the only relief that Plaintiffs direct at the Kansas City Election Board is a request for an order requiring the Kansas City Election Board to “notify each NVRA site coordinator of his or her obligations under the NVRA.” (Pls. Opp’n 7). Simply put, this relief is requesting the Kansas City Election Board to perform a futile act.

Essentially, Plaintiffs want the Kansas City Election Board to notify every public assistance agency within the KCEB’s jurisdiction as to each agency’s duties under the NVRA. (Pls. Opp’n 7.) Public assistance agencies know and are presumed to know their responsibilities

¹ Plaintiffs’ Complaint and Motion for Preliminary Injunction failed to assert any relief against the Kansas City Election Board and failed to -assert a violation of Mo. Rev. Stat. § 115.145.

under the NVRA. The duties are recited in Mo. Rev. Stat. § 115.162 (West 2008).² Furthermore, Missouri’s Secretary of State (“the Secretary”) promulgates a guide book, NATIONAL VOTER REGISTRATION ACT-1993: IMPLEMENTATION GUIDE FOR MISSOURI PUBLIC ASSISTANCE AGENCIES, available at http://www.sos.mo.gov/elections/NVRA_ImplementationGuide.pdf (“NVRA Implementation Guide”), reciting the specifics acts that a public assistance agency must perform to comply with the NVRA. As such, it is a futile act to require the Kansas City Election Board to re-notify the DSS about duties the DSS is fully aware it must perform.

II. Plaintiffs Cannot Assert This Action Against The Kansas City Election Board Because They Failed to Satisfy the Notification Requirement Needed to Bring a Claim Under the NVRA.

Plaintiffs admit that the NVRA requires an aggrieved party to notify the Secretary of any alleged non-compliance with the NVRA before the aggrieved party may seek injunctive or declaratory relief from the courts. 42 U.S.C. 1973gg-9 (West 2008)³. If an aggrieved party fails to notify the Secretary of an alleged violation of the NVRA, the party cannot bring an action in the district courts. *Id.*

Plaintiffs seek relief from the Kansas City Election Board and other election authorities for their alleged non-compliance with Mo. Rev. Stat. § 115.145.2.⁴ (Pls. Opp’n 7.) Nonetheless, Plaintiffs did not notify the Secretary that they thought the Kansas City Election Board or any other local election authorities were violating the NVRA. Instead, Plaintiffs notified the Secretary that they believed the DSS was violating the NVRA. (Pls. Exs. A and B.) As such,

² These statutes also may be viewed online at <http://www.moga.mo.gov/statutesearch>.

³ All references, unless noted otherwise, shall be to West 2008.

⁴ Plaintiffs’ Opposition provides, “Plaintiffs seek to hold the DSS responsible for its inactions, and the Election Board responsible for performing their duties as prescribed by Missouri law for implementing the NVRA” (Pls. Opp’n 7.)

Plaintiffs have not followed the necessary procedure to assert this cause against the Kansas City Election Board.

Plaintiffs attempt to circumvent the procedural mandates of the NVRA by arguing that letters notifying the Secretary and the Director of the DSS of the DSS's alleged non-compliance allow them to also assert an action against the Kansas City Election Board. (Pls. Opp'n 8; Compl. Exs. A and B.) Specifically, Plaintiffs contend that a cursory statement placed at the bottom of the letter to the Secretary satisfied the notification requirement of the NVRA.⁵ Neither letter, attached as Exhibits A and B to Plaintiffs' Complaint, asserts any alleged non-compliance on the part of the Kansas City Election Board or any other local election authority.

The primary purpose of the NVRA's notification requirement is to provide alleged violators an opportunity to attempt compliance before facing litigation. *Association of Community Organizations for Reform Now v. Miller*, 129 F.3d 833, 838 (6th Cir. 1997). The form statement inserted at the bottom of their letter to the Secretary could not inform the Secretary, or anyone else, that Plaintiffs believed the Kansas City Election Board was violating the NVRA. As such, Plaintiffs have not satisfied the notification requirement of the NVRA.

III. The Kansas City Election Board Does Not Have A Duty To Instruct And Direct The DSS As To Its Voter Registration Duties Under The NVRA.

Plaintiffs ignore Missouri law regarding deputy registration officials and fail to recognize different voter registration opportunities provided at Missouri's public assistance offices.

⁵ Plaintiffs contend that the following language in their letter to the Secretary satisfied the notification requirement of the NVRA, "We respectfully request that pursuant to your duties to coordinate the NVRA, you notify any additional state or local entities that have a role in implementing Section 7 of the NVRA." (Pls. Ex. A.)

A. The Kansas City Election Board is Not Responsible for Instructing and Directing the DSS Under Missouri’s Voter Registration Opportunity That Complies With the NVRA.

To comply with the NVRA, Missouri offers persons seeking public assistance the opportunity to apply to register to vote at public assistance agencies. Mo. Rev. Stat. § 115.162. Pursuant to Section 115.162, all public assistance agencies, including the DSS, must offer persons applying for public assistance, renewing public assistance, or changing their addresses related to public assistance a voter registration application form. Mo. Rev. Stat. § 115.162. After the application is completed, the public assistance agency is responsible for transmitting the application to the appropriate local election authority. 42 U.S.C. 1973gg-5; Mo. Rev. Stat. § 115.162. A local election authority’s only responsibility under this voter registration opportunity is to verify the information contained on applications that it receives from public assistance agencies and, if the applicant’s information is correct, register the applicant to vote. Mo. Rev. Stat. §§ 115.145, 115.151. The NVRA Implementation Guide promulgated by the Secretary confirms that the only interface between the local election authority and the state agency is the requirement that the state agency must “send all completed voter registration forms to the proper local election authority with-in five days of receipt.” *Id.*

Plaintiffs argue that the NVRA Implementation Guide does not supersede the NVRA or Missouri law. (Pls. Opp’n 7.) The Kansas City Election Board agrees. The NVRA Implementation Guide does, however, illustrate how Missouri’s chief election official interprets her duties under the NVRA, public assistance agencies’ duties under the NVRA, and local election authorities’ duties under the NVRA. The United States Supreme Court has “long recognized that considerable weight should be accredited to an executive department’s construction of a statutory scheme it is entrusted to administer” *Chevron U.S.A., Inc. v.*

National Resource Defense Council, Inc., 467 U.S. 837, 842 (1984). As such, the Court should give deference to the Secretary's interpretation of the NVRA and Missouri election law.

Under this voter registration opportunity, the Kansas City Election Board's only function is to receive voter registration applications from agencies like the DSS, verify the information on the application, and register applicants to vote. Neither Section § 115.162 nor the Secretary impose any other duties on the Kansas City Election Board. Thus, the Kansas City Election Board does not have a duty to instruct and direct the DSS as to its responsibilities under the NVRA.

B. The Kansas City Election Board is Not Responsible for Instructing and Directing the DSS Under Section 115.145.

Missouri offers all persons the opportunity to immediately register to vote. Local election authorities must conduct voter registration at their offices and may appoint deputy registration officials to conduct additional voter registration in other public offices of the state. Mo. Rev. Stat. §§ 115.143, 115.145, 115.147, and 115.151 govern this voter registration opportunity.

Plaintiffs allege that Section 115.145.2 makes all public assistance agencies deputy registration officials. (Pls. Opp'n 5-6.) Alternatively, Plaintiffs allege that if Section 115.145.2 does not make all public assistance agencies deputy registration officials, Section 115.145.2 nevertheless requires local election authorities to instruct and direct every state office as to their duties under the NVRA. (Pls. Opp'n 6.) Plaintiffs isolated reading of Section 115.145.2 ignores other sections of Chapter 115 and yields an illogical result, which requires local election authorities to instruct and direct state agencies that the local election authorities cannot control. (Plaintiffs have admitted that the Kansas City Election Board cannot enforce the DSS's compliance with the NVRA. Pls. Opp'n 7.)

Section 115.145.2 must be construed together with the other sections of Chapter 115 pertaining to voter registration, local election authorities, and deputy registration officials. *Anderson ex rel. Anderson v. Ken Kauffman & Sons Excavating, L.L.C.*, 248 S.W.3d 101, 107 (Mo. Ct. App. 2008) (“Statutes relating to the same subject matter are *in pari materia* and should be construed harmoniously.”); *Surface v. Kelly*, 912 S.W.2d 646, 650 (Mo. Ct. App. 1995) (“Furthermore, it is presumed that the legislature, in enacting a statute, intended a logical result; that it did not intend an unreasonable one.”). When Sections 115.143, 115.145, and 115.147 are read together, the logical and harmonious construction of Section 115.145.2 is clear: 1) local election authorities can appoint deputy registration officials who work at public assistance agencies; 2) if the local election authority appoints a deputy registration official, the local election authority must instruct and direct that deputy registration official on his/her duties; and 3) deputy registration officials must comply with the directions and instructions of the local election authority.

A consistent interpretation of Section 115.145.2 only requires local election authorities to direct and instruct deputy registration officials appointed by the local election authority. Although local election authorities may appoint a deputy registration official at a public assistance agency such as the DSS, the public assistance agency and non-appointed employees of public assistance agencies are not deputy registration officials. Local election authorities do not need to direct and instruct employees of public assistance agencies as to their duties under the NVRA because, unless they are deputy registration officials, the employees are not immediately registering people to vote; the public assistance employees are assisting persons using their service in applying to register to vote. The Kansas City Election Board has not appointed any DSS employees to serve as deputy registration officials. As such, the Kansas City Election

Board does not have a duty to direct and instruct the DSS or any of its employees as to their duties under the NVRA.

Conclusion

Plaintiffs assert that the Kansas City Election Board has a duty to direct and instruct the DSS as to its duties under the NVRA. This contention, however, is misguided. Even if this Court looks beyond the futile relief that Plaintiffs seek and assumes that Plaintiffs properly notified the Secretary, which they have not, Plaintiffs misconstrue Missouri election law. Section 115.145.2 requires the Kansas City Election Board to direct and instruct only those public assistance employees whom it appoints to serve as deputy registration officials, not instruct and direct every public assistance employee within the Kansas City Election Board's jurisdiction. As such, Plaintiffs have attempted to impose a duty on the Kansas City Election Board that does not exist. The Kansas City Election Board is not responsible for the DSS's compliance or lack of compliance with the NVRA.

For these reasons, Plaintiffs have failed to state a claim against the Kansas City Election Board upon which relief can be granted, or, in the alternative, judgment on the pleadings should be granted.

WHEREFORE, for the reasons stated above, Defendants the Kansas City Board of Election Commissioners and its Commissioners and Directors, Melodie Powell, Joseph D. Serrano, Cynthia Thompson, Quentin Jennings, Shawn L. Kieffer, and Shelley McThomas, in their official capacity, request that this Court issue its Order dismissing Plaintiffs' Complaint and granting costs and such other relief as this Court deems just and proper.

Respectfully submitted,

/s/ David B. Raymond

David B. Raymond MO #35633
Husch Blackwell Sanders LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
(816) 983-8000
(816) 983-8080 (FAX)
david.raymond@huschblackwell.com

/s/ Charles G. Renner

Charles G. Renner MO #49868
Husch Blackwell Sanders LLP
1200 Main Street, Suite 2300
Kansas City, Missouri 64105
(816) 329-4702
(816) 421-0596 (FAX)
charles.renner@huschblackwell.com

Attorneys for Defendants the Kansas City
Board of Election Commissioners and
Melodie A. Powell, Joseph D. Serrano,
Cynthia Thompson, Quentin Jennings,
Shawn L. Kieffer, and Shelley McThomas

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 18th, 2008, a true and correct copy of the foregoing was filed electronically with the above-captioned Court, with notice of case activity generated and sent electronically by the Clerk of the Court to those requesting notice.

Arthur A. Benson II
Jamie Kathryn Lansford
Arthur Benson & Associates
4006 Central Avenue
Kansas City, Missouri 64111

John M. Nonna
Richard J. Cairns
Dewey & LeBoeuf LLP
1301 Avenue of the Americas
New York, New York 10019

Jon Greenbaum
Bob Kengle
Carlean Ponder
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

Brenda Wright
Demos: A Network of Ideas & Action
358 Chestnut Hill Avenue, Suite 303
Brighton, Massachusetts 02135

Allegra Chapman
220 Fifth Avenue, 5th Floor
New York, New York 10001

Brian Mellor
Teresa James
Project Vote
196 Adams Street
Dorchester, Massachusetts 02122

Attorneys for Plaintiffs

Emily Dodge
Brett Berri
Assistant Attorneys General

Missouri Attorney General's Office
Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, Missouri 65102

Attorneys for Defendants Scott and Luck

Bradley A. Constance
Stewart, Cook, Constance, Minton & Wight, L.L.C.
501 West Lexington Avenue
Independence, Missouri 64050

Attorneys for Defendants
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.

Michael J. Payne
Frankel, Rubin, Bond, Dubin, Siegel & Klein, P.C.
231 South Bemiston (Clayton), Suite 1111
St. Louis, Missouri 63105

Attorneys for Defendants
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

/s/ David B. Raymond
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Respectfully submitted,

/s/ David B. Raymond

David B. Raymond MO #35633
Husch Blackwell Sanders LLP
4801 Main Street, Suite 1000
Kansas City, Missouri 64112
(816) 983-8000
(816) 983-8080 (FAX)
david.raymond@huschblackwell.com

/s/ Charles G. Renner

Charles G. Renner MO #49868
Husch Blackwell Sanders LLP
1200 Main Street, Suite 2300
Kansas City, Missouri 64105
(816) 329-4702
(816) 421-0596 (FAX)
charles.renner@huschblackwell.com

Attorneys for Defendants the Kansas City
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Cynthia Thompson, Quentin Jennings,
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 18th, 2008, a true and correct copy of the foregoing was filed electronically with the above-captioned Court, with notice of case activity generated and sent electronically by the Clerk of the Court to those requesting notice.

Arthur A. Benson II
Jamie Kathryn Lansford
Arthur Benson & Associates
4006 Central Avenue
Kansas City, Missouri 64111

John M. Nonna
Richard J. Cairns
Dewey & LeBoeuf LLP
1301 Avenue of the Americas
New York, New York 10019

Jon Greenbaum
Bob Kengle
Carlean Ponder
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, N.W., Suite 400
Washington, D.C. 20005

Brenda Wright
Demos: A Network of Ideas & Action
358 Chestnut Hill Avenue, Suite 303
Brighton, Massachusetts 02135

Allegra Chapman
220 Fifth Avenue, 5th Floor
New York, New York 10001

Brian Mellor
Teresa James
Project Vote
196 Adams Street
Dorchester, Massachusetts 02122

Attorneys for Plaintiffs

Emily Dodge
Brett Berri
Assistant Attorneys General

Missouri Attorney General's Office
Supreme Court Building
207 W. High Street
P.O. Box 899
Jefferson City, Missouri 65102

Attorneys for Defendants Scott and Luck

Bradley A. Constance
Stewart, Cook, Constance, Minton & Wight, L.L.C.
501 West Lexington Avenue
Independence, Missouri 64050

Attorneys for Defendants
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.

Michael J. Payne
Frankel, Rubin, Bond, Dubin, Siegel & Klein, P.C.
231 South Bemiston (Clayton), Suite 1111
St. Louis, Missouri 63105

Attorneys for Defendants
St. Louis City Board of Election Commissioners
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/s/ David B. Raymond
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