

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION

ASSOCIATION OF COMMUNITY)
ORGANIZATIONS FOR REFORM)
NOW, et al.)
)
Plaintiffs,)
)
vs.)
)
DEBORAH SCOTT, et al.,)
)
Defendants.)

Case No. 2:08CV04084 NKL

**JOINT AMENDED ANSWER OF 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**

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, in their official capacity (jointly referred to as the "St. Louis City
Election Board"), and for their Joint Amended Answer to Plaintiffs' Complaint, state as
follows:

Introduction

1. The St. Louis City Election Board admits that Plaintiffs' Complaint seeks
declaratory and injunctive relief. However, the remaining allegations contained in
Paragraph 1 of Plaintiffs' Complaint state legal conclusions which do not require a
response from the St. Louis City Election Board. In the event any of the statements
contained in Paragraph 1 are construed to make an allegation against the St. Louis City
Election Board, the St. Louis City Election Board states that the National Voter
Registration Act of 1993 (the "NVRA") speaks for itself.

2. Paragraph 2 of Plaintiffs' Complaint states legal conclusions which do not require a response from the St. Louis City Election Board. In the event any of the statements contained in Paragraph 2 are construed to make an allegation against the St. Louis City Election Board, the St. Louis City Election Board states that the NVRA speaks for itself.

3. Paragraph 3 of Plaintiffs' Complaint states legal conclusions which do not require a response from the St. Louis City Election Board. In the event any of the statements contained in Paragraph 3 are construed to make an allegation against the St. Louis City Election Board, the St. Louis City Election Board states that the "NVRA" speaks for itself.

4. Paragraph 4 of Plaintiffs' Complaint states legal conclusions which do not require a response from the St. Louis City Election Board. In the event any of the statements contained in Paragraph 4 are construed to make an allegation against the St. Louis City Election Board, the St. Louis City Election Board states that the "NVRA" speaks for itself.

5. Paragraph 5 of Plaintiffs' Complaint states legal conclusions which do not require a response from the St. Louis City Election Board. In the event any of the statements contained in Paragraph 5 are construed to make an allegation against the St. Louis City Election Board, the St. Louis City Election Board states that the "NVRA" and the NVRA Conference Report speak for themselves.

6. The St. Louis City Election Board is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 6 of Plaintiff's Complaint and, therefore, denies the same.

7. The St. Louis City Election Board admits that it is a local election authority and that they are Commissioners and Directors of the St. Louis City Election Board. The St. Louis City Election Board denies all remaining allegations contained in Paragraph 7 of Plaintiffs' Complaint.

8. The St. Louis City Election Board denies the allegations contained in Paragraph 8 of Plaintiffs' Complaint.

9. The St. Louis Election Board is without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 9 of Plaintiffs' Complaint and, therefore, denies the same.

10. The St. Louis Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 10 of Plaintiffs' Complaint and, therefore denies the same.

Parties

11. The St. Louis City Election Board admits that Plaintiff ACORN claims that it is a not-for-profit organization. By way of further answer, the St. Louis City Election Board is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 11 of Plaintiffs' Complaint and, therefore, denies the same.

12. The St. Louis City Election Board admits that Plaintiff O'Neal claims to be a St. Louis resident. By way of further answer, the St. Louis City Election Board, states that they are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in paragraph 12 of Plaintiffs' Complaint and, therefore, denies the same.

13. The St. Louis City Election Board admits that the Defendant Scott is the Director of Missouri Department of Social Services ("DSS") and that the DSS is the state agency responsible for administration of public assistance programs in Missouri. By way of further answer, the St. Louis City Election Board is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 13 of Plaintiffs' Complaint, and therefore, denies the same.

14. The St. Louis City Election Board admits that Defendant Luck is the Director of the Family Support Division of the Missouri DSS. By way of further answer, the St. Louis City Election Board is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 14 of Plaintiffs' Complaint, and therefore, denies the same.

15. The St. Louis City Election Board admits that Jackson County Board of Election Commissioners are the designated election authority for the jurisdiction of the City of Kansas City, within Jackson County, Missouri. The St. Louis City Election Board states that the duties of the election boards are established by Missouri law and deny all other allegations contained in Paragraph 15 of Plaintiffs' Complaint which are inconsistent with Missouri law.

16. The St. Louis City Election Board admits the allegations contained in Paragraph 16 of Plaintiffs' Complaint.

17. The St. Louis City Election Board admits that Jackson County Board of Election Commissioners is the designated election authority for the jurisdiction of Jackson County outside the City of Kansas City, Missouri. The St. Louis City Election Board states that the duties of election authorities are established by Missouri law and

deny all other allegations contained in Paragraph 17 of Plaintiffs' Complaint which are inconsistent with Missouri Law.

18. The St. Louis City Election Board admits the allegations contained in Paragraph 18 of the Plaintiffs' Complaint.

19. The St. Louis City Election Board admits that they are the designated election authority for the jurisdiction of the City of St. Louis, within St. Louis City, Missouri. The St. Louis City Election Board states that its duties are established by Missouri law and deny all other allegations contained in Paragraph 19 of Plaintiffs' Complaint which are inconsistent with Missouri law.

20. The St. Louis City Election Board admits the allegations contained in paragraph 20 of Plaintiffs' Complaint.

Jurisdiction and Venue

21. The St. Louis City Election Board admits the allegations contained in Paragraph 21 of Plaintiffs' Complaint.

22. The St. Louis City Election Board admits the allegations contained in Paragraph 22 of Plaintiffs' Complaint.

23. The St. Louis City Election Board admits the allegations contained in Paragraph 23 of Plaintiffs' Complaint.

24. The St. Louis City Election Board admits the allegations contained in Paragraph 24 of Plaintiffs' Complaint.

Factual Allegations

25. The St. Louis City Election Board states that the statements contained in Paragraph 25 are legal conclusions which no responsive answer is necessary. To the

extent the statements in Paragraph 25 are construed as allegations against these Defendants, NVRA speaks for itself and any interpretation which is inconsistent with the NVRA is hereby denied.

26. The St. Louis City Election Board admits that the DSS is a mandatory voter registration agency. By way of further answer, the St. Louis City Election Board states that the NVRA speaks for itself and any interpretation which is inconsistent with the NVRA is hereby denied.

27. Paragraph 27 of Plaintiffs' Complaint states legal conclusions which do not require a response from these Defendants. In the event any of the statements contained in Paragraph 27 are construed to make an allegation against the St. Louis City Election Board, the St. Louis City Election Board states that the NVRA speaks for itself and any interpretation which is inconsistent with the NVRA is hereby denied.

28. Paragraph 28 of Plaintiffs' Complaint states legal conclusions which do not require a response from these Defendants. In the event any of the statements contained in Paragraph 28 are construed to make an allegation against the St. Louis City Election Board, the St. Louis City Election Board states that the NVRA speaks for itself and any interpretation which is inconsistent with the NVRA is hereby denied.

Missouri's Failure to Offer Voter Registration to Public Assistance Clients

29. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 29 of Plaintiffs' Complaint and, therefore, denies the same.

30. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 30 of Plaintiffs' Complaint and, therefore, denies the same.

31. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 31 of Plaintiffs' Complaint and, therefore, denies the same.

32. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 32 of Plaintiffs' Complaint and, therefore, denies the same.

33. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 33 of Plaintiffs' Complaint and, therefore, denies the same.

34. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 34 of Plaintiffs' Complaint and, therefore, denies the same.

35. The St. Louis City Election Board states that the report speaks for itself and denies all remaining allegations contained in Paragraph 35 of Plaintiffs' Complaint.

36. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 36 of Plaintiffs' Complaint and, therefore, denies the same.

37. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 37 of Plaintiffs' Complaint and, therefore, denies same.

38. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 38 of Plaintiffs' Complaint and, therefore, denies the same.

39. The St. Louis City Election Board admits that the SOS reported that the St. Louis City Election Board received 2,776 voter registrations during this time period. By way of further answer, the St. Louis City Election Board believes that the number of voter registration applications received from DSS and DHSS were slightly less than 2,776.

40. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 40 of Plaintiffs' Complaint and, therefore, denies the same.

41. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 41 of Plaintiffs' Complaint and, therefore, denies the same.

42. The St. Louis City Election Board admits that Plaintiff is not currently registered to vote. By way of further answer, the St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 42 of Plaintiffs' Complaint and, therefore, denies the same.

43. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 43 of Plaintiffs' Complaint and, therefore, denies the same.

44. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 44 of Plaintiffs' Complaint and, therefore, denies the same.

45. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 45 of Plaintiffs' Complaint and, therefore, denies the same.

46. The St. Louis City Election Board denies the allegations contained in Paragraph 46 of Plaintiffs' Complaint.

47. The St. Louis City Election Board denies the allegations contained in Paragraph 47 of Plaintiffs' Complaint.

How Defendants' Lack of Compliance Impacts ACORN's Voter Registration Efforts

48. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 48 of Plaintiffs' Complaint and, therefore, denies the same.

49. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 49 of Plaintiffs' Complaint and, therefore, denies the same.

50. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 50 of Plaintiffs' Complaint and, therefore, denies the same.

51. The St. Louis City Election Board states they are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 51 of Plaintiffs' Complaint and, therefore, denies the same.

52. The St. Louis City Election Board denies the allegations contained in Paragraph 52 of Plaintiffs' Complaint.

53. The St. Louis City Election Board denies the allegations contained in Paragraph 53 of Plaintiffs' Complaint.

Claim for Relief
(Violation of Section 7 of the National Voter Registration Act of 1993)

54. The St. Louis City Election Board hereby incorporates its responses to Paragraphs 1-53 as if set forth fully herein.

55. The St. Louis City Election Board denies the allegations contained in Paragraph 55 of Plaintiffs' Complaint.

56. The St. Louis City Election Board denies the allegations contained in Paragraph 56 of Plaintiffs' Complaint.

Further Answer As To All Counts

The St. Louis City Election Board specifically denies each and every allegation contained in Plaintiffs' Complaint not specifically admitted herein, including those contained in Plaintiffs' prayer for relief.

Joint Affirmative Defenses of The St. Louis Election Board

1. Plaintiffs' Complaint fails to state a claim upon which relief can be granted against 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.

2. Plaintiffs' Complaint is barred because Plaintiffs have failed to name all necessary and indispensable parties, specifically, the Missouri Secretary of State. The Secretary of State is Missouri's chief state election official responsible for coordinating

the State's responsibilities under the NVRA and has the authority to promulgate rules to ensure compliance with the NVRA. The Secretary of State has prepared the NVRA Implementation Guide, which requires the Secretary of State to provide direction and training to Missouri's public assistance agency.

3. Plaintiffs Complaint is barred because Plaintiffs have failed to satisfy the procedural prerequisite to assert a claim under the NVRA because Plaintiffs did not provide written notice to the Missouri Secretary of State regarding the St. Louis City Election Boards' alleged NVRA violations before filing this lawsuit nor did they provide notice to the St. Louis City Election Board.

4. Plaintiffs' Complaint is barred because the St. Louis City Election Board has no obligation to oversee the DSS's compliance with Section 7 of the NVRA, has absolutely no control over DSS employees, and has no ability to enforce DSS's compliance with Section 7 of the NVRA.

5. Plaintiff ACORN lacks standing to bring this cause of action because Plaintiff ACORN is not an aggrieved party under the terms of Section 7 of the NVRA.

6. Plaintiff O'Neal lacks standing to bring this cause of action against the St. Louis City Election Board because Plaintiff O'Neal is not an aggrieved party in under the terms of Section 7 of the NVRA and has failed to comply with the prerequisite notice requirements.

7. The St. Louis City Election Board lacks sufficient knowledge or information at this time from which to form a belief as to whether or not they may have additional defenses. The St. Louis City Election Board reserves the right to assert additional defenses which become available as this matter proceeds.

WHEREFORE, Defendants St. Louis City Board of Election Commissioners and Scott Leindecker, Mary Wheeler-Jones, Carol A. Wilson, Eileen M. McCann, Jack Lary and Clarence E. Dula, having fully answered Plaintiffs' Complaint, respectfully requests that the Court issue its Order and Judgment dismissing Defendants St. Louis City Board of Election Commissioners and Scott Leindecker, Mary Wheeler-Jones, Carol A. Wilson, Eileen M. McCann, Jack Lary and Clarence E. Dula from this matter or, in the alternative, dismiss Plaintiffs' Complaint, for an award of reasonable attorney's fees and costs and other such orders as this Court may deem just and proper in the premises.

Respectfully submitted,

FRANKEL, RUBIN, BOND,
DUBIN, SIEGEL & KLEIN, P.C.

By s/Michael J. Payne

Michael J. Payne, #498816
231 S. Bemiston Avenue
Suite 1111
St. Louis, Missouri 63105-1914
(314) 725-8000
(314) 726-5837 (fax)
mpayne@frankelrubin.com

Attorney for Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system to all parties this 30th day of September, 2008.

s/Michael J. Payne
Michael J. Payne, #498816