

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

ASSOCIATION OF COMMUNITY
ORGANIZATIONS FOR REFORM NOW, et al.,

Plaintiffs,

v.

DEBORAH E. SCOTT, et al.,

Defendants.

Case No. 08-4084-CV-C-NKL

**PLAINTIFFS' RESPONSE TO DEFENDANT ST. LOUIS CITY
ELECTION BOARD'S MOTION TO COMPEL JOINDER OF THE
SECRETARY OF STATE AS ADDITIONAL PARTY DEFENDANT**

PRELIMINARY STATEMENT

Plaintiffs, by their undersigned counsel, submit this response to the joint motion, 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, in their official capacities (jointly referred to as the "STLEB") to compel the joinder of the Secretary of State as an additional party defendant pursuant to Federal Rule of Civil Procedure 19(a).

As set forth below, the Secretary of State is not a required party who must be joined as an additional party defendant to this action because none of the conditions prescribed in Rule 19(a) (1) apply.

STATEMENT OF FACTS

For purposes of the present motion, Plaintiffs respectfully refer the Court to the facts alleged in Plaintiffs' Complaint, the letters attached thereto as Exhibits A and B, and to the Court's July 7, 2008 Memorandum and Order ("Order") denying Defendants' Motion to Dismiss.

The STLEB is obligated under the National Voter Registration Act of 1993 ("NVRA") and the Missouri-implementing statutes, Mo. Rev. Stat. § 115.145.2, to "instruct and direct" deputy registration officials and mandated state agencies, such as the Department of Social Services ("DSS"), in the performance of their duties. (Order at 10).

The STLEB denies that it is so obligated to, and implicitly admits that it does not, instruct and direct DSS staff in local public assistance offices in the performance of their duties to provide voter registration services.

In their Complaint, Plaintiffs allege that the DSS's failure to fulfill its obligation to provide voter registration services and the local election authorities', including the STLEB, failure to fulfill its obligation to so "instruct and direct" are violations of the NVRA. (*Id.*) Plaintiffs have made no allegations against the Secretary of State.

The Secretary of State has not sought to intervene in this action or otherwise claimed any interest relating to the subject of the action, *i.e.*, the failure of the DSS, the STLEB and other local election authorities to fulfill their obligations under the NVRA.

ARGUMENT

As it did in its unsuccessful motion to dismiss the Complaint, the STLEB contends that, under the NVRA and Missouri's-implementing statutes, it has no obligations or duties to oversee a public assistance agency's implementation or compliance with the NVRA. (STLEB Br. at 1-2, 8, 11). The STLEB contends, however, that the statutes impose those obligations on the Secretary of State (*id.* at 6), and therefore, the Secretary should be a party defendant to this action in order to defend against Plaintiffs' allegations, preclude the possibility of inconsistent obligations in her absence, and to enable the Court to fully grant the relief Plaintiffs have requested.. (*Id.* at 11-12). The STLEB's arguments are based on incorrect premises, namely, (1) that Plaintiffs claim that the STLEB failed to oversee or enforce the DSS implementation of, or compliance with, the NVRA; and (2) that Plaintiffs allege similar violations against the Secretary of State. Consequently, the STLEB's arguments are misplaced.

As is evident from Plaintiffs' Complaint and as recognized by this Court, Plaintiffs' claims against the local election authorities, including the STLEB, have nothing to do with failure to oversee or enforce the DSS implementation of, or compliance with, the NVRA. Rather, Plaintiffs claim the local election authorities, including the STLEB, failed to "instruct and direct" the DSS local public assistance offices in the performance of their duties of offering voter registration services as mandated by the NVRA and Missouri-implementing statutes. (Order at 10). This statutory obligation to so instruct and direct is specific to local election authorities, such as the STLEB. Therefore, the Secretary's joinder as a party defendant to this action is not required to afford Plaintiffs complete relief against the STLEB, nor is there a possibility

of incurring inconsistent obligations. Moreover, and contrary to the STLEB's contention, (*id.* at 2), Plaintiffs' Complaint does not "directly attack[]" the efforts of the Secretary of State in complying with the NVRA. Plaintiffs have not alleged in this action that the Secretary is in violation of the NVRA or the Missouri-implementing statutes, or that she has failed to fulfill her obligations and responsibilities under those statutes. Of course, if the STLEB felt it had grounds to implead the Secretary of State under Rule 14, it could have done so; but its motion under Rule 19 is not well taken.

I. THE SECRETARY OF STATE IS NOT A REQUIRED PARTY

In its motion the STLEB contends that the Secretary of State is a required party to this action pursuant to Federal Rule of Civil Procedure 19 (a) ostensibly because: (1) in her absence the Court cannot fully grant the relief requested by the Plaintiffs; (2) the Secretary claims an interest in the subject-matter of this action and "without being joined would not have an opportunity to defend herself against Plaintiffs' allegations of non-compliance with the NVRA;" and (3) "her absence in this matter may cause inconsistent obligations on the public assistance agencies and local election authorities." (STLEB Br. at 7). However, as set forth above, these contentions are based on false premises and, consequently are misplaced. Moreover, the STLEB has failed to establish the Rule 19 (a) conditions necessary to make the Secretary a required party. Mere speculation and unsupported conclusions are insufficient.

A. The Court Can Grant Complete Relief Absent the Secretary of State

The STLEB contends that this Court is unable to grant complete relief absent joinder of the Secretary of State. (STLEB Br. at 7, 11) However, the STLEB offers no support for that proposition, merely using several pages of its brief to repeatedly iterate provisions of certain Missouri NVRA-implementing statutes applicable to the Secretary and public assistance agencies, (STLEB Br. 3-6 and 7-11). Contrary to its contention, and as demonstrated by this Court's preliminary injunction order, the Secretary's joinder

as a party defendant is not necessary for the Court to grant complete relief among the existing parties to remedy the Defendants' NVRA violations. Moreover, joinder of the Secretary as an additional defendant to this action is not required to obtain injunctive relief against the local election authorities to redress their failure to fulfill their own statutory obligations to instruct and direct public assistance agencies in the performance of their duties to provide voter registration services.

B. The Secretary of State Does Not Claim An Interest Relating to the Subject Matter of This Action

The fact that the Secretary of State is charged with the statutory responsibility for the coordination of state responsibilities under the NVRA and has the statutory authority to promulgate rules to ensure state compliance with the NVRA, does not mean she *claims an interest* relating to the subject NVRA violations at issue in this action. The Secretary has not sought to intervene in this action or claimed an interest in the public assistance agencies' obligation to provide voter registration services or the local election authorities' obligation to instruct and direct the public assistance agencies in the performance of those duties. Consequently, the Secretary is not so situated that disposing of the action in her absence may, as a practical matter, impair her ability to protect an interest that she has not claimed. (*See* Rule 19 (a) (1) (B) (i)).

C. There Is No Risk of Incurring Inconsistent Obligations

Because the Secretary of State has not claimed an interest relating to the subject NVRA violations at issue in this action, it follows that disposing of the action in her absence could not "leave an existing party subject to a substantial risk of incurring double, multiple, or otherwise inconsistent obligations because of the interest," (Rule 19(a) (1) (B) (ii)). The STLEB's diluted paraphrasing of Rule 19(a) (1) (B) (ii) that "[f]ailure to join the Secretary of State would . . . lend (sic) to the possibility of inconsistent obligations in her absence," (STLEB Br. at 12), is insufficient to establish

that element necessary to make the Secretary a required party. The STLEB does not even begin to suggest what inconsistent obligations the Defendants could possibly risk incurring if the Court were to dispose of this action absent the joinder of the Secretary, much less making them "subject to a substantial risk" as the Rule requires. The fact remains that there is no such risk to any existing party.

CONCLUSION

For the reasons set forth above, the Secretary of State is not a person required to be joined as an additional party defendant to this action pursuant to Federal Rule of Civil Procedure 19 (a).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on October 14, 2008, the foregoing was filed electronically with the Clerk of the Court to be served by operation of the Court's electronic filing system upon the following counsel of record for all Defendants: Emily A. Dodge, David B. Raymond, Charles Renner, Bradley A. Constance, Michael J. Payne and Mayer S. Klein.

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