

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

ASSOCIATION OF COMMUNITY)
ORGANIZATIONS FOR REFORM NOW,)
et al.,)
)
Plaintiff,)
)
v.)
)
DEBORAH E. SCOTT, et al.,)
)
Defendant.)

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

**SUGGESTIONS IN OPPOSITION TO PLAINTIFFS’ MOTION FOR
PRELIMINARY INJUNCTION OF DEFENDANTS SCOTT AND LUCK**

Plaintiffs assert that Defendants Scott and Luck have failed to ensure that the Department of Social Services is fulfilling its obligations under Section 7 of the National Voter Registration Act of 1993 (“NVRA”). This Court should deny Plaintiffs’ request for a preliminary injunction because the Department is in compliance with the NVRA and Plaintiffs lack standing.

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STANDARD OF REVIEW

In order to obtain preliminary injunctive relief, the movant bears the burden of establishing:

- (1) whether there is a substantial probability movant will succeed at trial;
- (2) whether the moving party will suffer irreparable injury absent the injunction;
- (3) the harm to other interested parties if the relief is granted; and
- (4) the effect on the public interest.

Dataphase Systems, Inc. v. C.L. Systems, Inc., 640 F.2d 109, 112-113 (8th Cir. 1981). The court must consider these factors and balance the equities to determine if “justice requires the court to intervene to preserve the status quo until the merits are determined.” *Id.* at 113.

Plaintiffs assert that the statute allows them to seek injunctive relief to “prevent violations” of the NVRA, and that the *Dataphase* factors do not apply. (See Ct. Doc. 3, p. 7). A statutory provision that creates a private right of action, does not thereby create a “statutory entitlement to obtain a particular remedy.” *EEOC v. Waffle House, Inc.*, 534 U.S. 279, 301 (2002). Rather, it remains the court’s role to determine whether a particular remedy, including an injunction, is appropriate in the litigation at hand. *Id.*

Plaintiffs rely on *Burlington N. R.R. Co v. Bair*, 957 F.2d 599 (8th Cir. 1992) in support of their argument that this Court should not apply *Dataphase*. In *Bair*, the reason that the Eighth Circuit did not engage in the balancing of the equities that is usually required to determine whether an injunction should be granted was that one of Congress’ explicit purposes in enacting the Railroad Revitalization and Reform Act of 1976, 49 U.S.C. §11503,

was “to balance the needs of carriers, shippers, and the public.” 957 F.2d 599 at 600, 602. The Eighth Circuit held that, based on that statutory language, Congress had already “weighed the potential equities between state and local governments and railroads in enacting the 4-R Act” and that Congress had determined as a public policy matter that the equities would support injunctive relief in the event of a violation or imminent violation. 957 F.2d at 602. Thus, the courts could not reweigh Congress’ balancing of the underlying policy considerations. *Id.*

In contrast, when Congress enacted the National Voter Registration Act of 1993, it did not balance the needs of persons and government entities impacted by the statute or weigh potential equities. 42 U.S.C. §1973gg (b) (Purposes) (2008). Therefore, this Court should apply the *Dataphase* factors to Plaintiffs’ request for injunctive relief.

PLAINTIFFS NOT LIKELY TO SUCCEED ON THE MERITS

The Department of Social Services, Family Support Division county offices are required to provide voter registration services as set forth in Section 7 of the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg-5 because each of these offices is a “voter registration agency.” 42 U.S.C. §1973gg-1(5). Section 7 provides in pertinent part “At each voter registration agency” voter registration applications are to be distributed with applications for public assistance “and with each recertification, renewal, or change of address form relating to such service or assistance.” 42 U.S.C. §1973gg-5 (4)(A)(i), (6)(a) (2008).

The Department of Social Services has been complying with the NVRA since the law became effective in Missouri. The Department makes voter registration services available to

public assistance applicants and recipients at all in-person interviews (including home visits) for “application to any IM [income maintenance] program; recertifications; reinvestigations; and a change of address report.” (Def.’s Resp. to Pls.’ Prod. Req. No. 16, Income Maintenance Manual Section 0105.026.05, Distribution of Voter Registration Forms, Ex. A, p. 3). The Family Support Division’s policy on Interview Procedures also instructs employees to offer voter registration. (Income Maintenance Manual Section 0105.025.00). These policies are available in the on-line Income Maintenance Manual. (Def.’s Ex. A, p. 6, Defs’ Resp. Pl.’s Prod. Req. No. 25; www.dss.mo.gov/fsd/iman).

The Department also requires eligibility specialists to offer to provide additional voter registration application forms to the applicant or recipient to give to other household members who are not physically present in the office, but may wish to register. In addition, voter registration services are available upon request to anyone who comes to an FSD office, whether or not they are DSS clients. (Def.’s Ex. A, p. 3, Manual Section 0105.026.05; Dep. of Rachel Morris, p. 124, l. 3-19; Dep. of Patrick Moody, p. 11, l. 17-22; Dep. of Joseph Darcy, p. 39, l. 15 through p. 40, l. 3). The Department even instructs eligibility specialists how to register individuals from other states. (Def.’s Resp. to Pl.’s Prod. Req. No. 16, Income Maintenance Manual Section 0105.026.05.15, Ex. A, p. 4).

In all Jackson County offices and Chouteau, voter registration forms are available in the waiting area. (Dep. of Patrick Moody, p. 11, l. 24 through p. 12, l. 14; Dep. of Thomas Jakopchek, p. 37, l. 19-21). Greeters and information staff also have the voter registration forms at the downtown Kansas City office. (Dep. of Jakopchek, p. 38, l. 3-11).

Plaintiffs have expressed dissatisfaction with the procedures that the Department of Social Services has adopted in order to comply with the NVRA. But as long as the Department's actions do not violate the NVRA, Plaintiffs cannot challenge the manner in which the Department has chosen to execute its statutory duties or obtain injunctive relief with respect to those procedures. *See City of Philadelphia v. Klutznick*, 503 F.Supp. 659, 661 (D. Pa. 1980) (preliminary injunction denied where Census Bureau was not violating procedural regulation or statute).

Moreover, 42 U.S.C. §1973gg-9 (b) does not create a private cause of action for injunctive relief to prevent indefinite claimed violations for which no notice has been provided. The plain language of Section 1973gg-9(b) states that a private party who has provided notice of a violation of the NVRA to a state's chief election official may seek injunctive relief "with respect to the violation" stated in that notice. §1973gg-9(b)(2). Plaintiffs' notice letter indicated declining numbers of voters registered through the Department of Social Services, and asserted that unspecified individuals who had visited DSS offices did not remember being offered voter registration services. (See Defs' Mot. to Dismiss Reply, p. 2). Plaintiffs' notice was inadequate, and Plaintiffs should not be granted injunctive relief for alleged violations that were not set forth in the notice.

The Department of Social Services provides training on the NVRA policy and monitors compliance through case reviews and interview observation.

In the June 30, 2008, telephone conference, Plaintiffs indicated that they will ask the Court to include training and monitoring requirements in a preliminary injunction order against the Department of Social Services. The NVRA does not require monitoring. The

Department was providing training on the NVRA to employees before Plaintiffs filed this lawsuit. Eligibility specialists (caseworkers) are trained on the NVRA during new employee orientation training. (Defs' Ex. G, p. 5, Dep. of Antoinette Briguglio-Mays, p. 18, l. 20-22; Dep. of Thomas Jakopchek, p. 25, l. 12-16). The Department's role in providing voter registration services is an explicit objective of the Family Support Division's orientation training. (Defs' Ex. B, Resp. Prod. Req. No. 15, pp. 5-8). New eligibility specialists undergo six weeks of classroom training, which includes situational or practice interview training for public assistance programs. (Defs' Ex.C., pp. 2-3, Dep. of Charles Bentley, p. 46, l. 21 through p. 47, l. 12). Actual voter registration forms are distributed and discussed during the interview training. (Dep. of Bentley, p. 83, l. 2-9; 48, l. 22-p. 49, l. 18; Defs' Ex. B, pp. 16, 28). An interview application checklist which specifies that voter registration must be offered is used during the training. (Defs' Ex. I, p. 2).

During orientation, eligibility specialists are provided with materials that they can reference in performing their job, including the caseworker reference guide. (Dep. of Bentley, p. 47, l. 5-13). This guide lists voter registration in the rights and responsibilities sections of the Department's public assistance programs. (Dep. of Jakopcheck, p. 30, l. 10-16; Defs' Ex. B, pp. 3-4, 17-18). Supervisors reinforce the caseworker reference guide with eligibility specialists as part of their on-the-job training. (Dep. of Jakopcheck, p. 25, l. 12-21).

Supervisors review the voter registration policy, and any updates or changes to policy, with their staff. (Dep. of Joseph Darcy, p. 53, l. 18-22) The Department issued a memo to all county offices in June 2007 instructing them to use the Secretary of State's NVRA

implementation guide in training. (Defs' Ex. C, pp. 8-11, Dep. of Sharon Denney, p. 22, l.22 through p. 23, l. 5; p. 24, l. 25 through p. 25, l. 9). This guide was shown to employees at the Prince Hall office in a powerpoint presentation in 2007. (Dep. of Joseph Darcy, p. 53, l. 23-25). Antoinette Briguglio-Mays, a supervisor at the Chouteau office, watched the powerpoint with a group of employees and they discussed it. (Dep. of Mays, p. 7, l. 7, p. 13, l. 23 through p. 14, l. 8; p. 35, l. 7-13).

Supervisors have procedures in place to ensure that eligibility specialists are in fact offering voter registration as required by the NVRA. Supervisors conduct case reviews of every case assigned to probationary eligibility specialists. (Dep. of Joseph Darcy, p. 58, l. 12 through p. 59, l. 2). After an eligibility specialist has passed probation and is a regular DSS employee, supervisors continue to review four randomly selected cases of each eligibility specialist every month. (Dep. of Darcy, p. 58, l. 15-17). The supervisor is required to check whether the eligibility specialist offered voter registration and entered a voter registration-related comment into the client's computerized record. (Defs' Ex. B, p. 21; Dep. of Mays, p. 37, l. 3-9). If voter registration was not offered, the supervisor reviewing the case documents that. (Dep. of Richard Warren, p. 29, l. 4-15). After the direct supervisor has performed a case review, the program manager will also review the file to see whether there is documentation that voter registration services were offered. (Dep. of Warren, p. 19, l. 25 through p. 20, l. 25). In addition, if a recipient or applicant calls a supervisor to discuss concerns with his or her case, the supervisor will review the case. (Dep. of Mays, p. 39, l. 13-20).

Compliance with the NVRA is also enforced through supervisor observations of client interviews at county offices. The supervisor uses the interview observation checklist, which requires the supervisor to check whether voter registration was offered. (Dep. of Dep. of Darcy at p. 56, l. 18 through p. 57, l. 2; Dep. of Mays at p. 23, l. 21 through p. 24, l. 2; Defs' Ex. I, p.2). The supervisor observes new eligibility specialists' interviews at least two to three days per week. (Dep. of Mays, p. 36, l. 16-21). The supervisor has the option to substitute one interview observation for one of each non-probationary eligibility specialist's monthly case reviews. (Dep. of Mays, p. 37, l. 10-16). Supervisors are expected to observe at least one interview per quarter for each eligibility specialist. (Dep. of Richard Warren, p. 21, l. 10-17).

ACORN lacks standing

“[A] plaintiff must demonstrate standing for each claim he seeks to press and for each form of relief that is sought.” *Davis v. Fed. Election Comm'n*, 2008 WL 2520527 at *6 (2008), quoting *Daimler Chrysler Co. v. Cuno*, 547 U.S. 332, 352 (2006) (internal quotes omitted). The essence of standing is “whether the litigant is entitled to have the court decide the merits of the dispute or of particular issues.” *Warth v. Seldin*, 422 U.S. 490, 498 (1975). If a plaintiff cannot establish standing, the Court must enter judgment in defendants' favor as to that plaintiff's claims. *McConnell v. Fed. Election Comm'n*, 540 U.S. 93, 226 (2003).

In order for ACORN to have standing to bring suit as an organization, ACORN would have to have suffered an actual injury. An organization will not have standing unless there has been a concrete, demonstrable injury to its activities “which drains its resources and is

more than simply a setback to its abstract social interests.” *National Fed’n of the Blind v. Cross*, 184 F.3d 973, 979 (8th Cir. 1999).

Plaintiffs allege that ACORN “regularly conducts voter registration drives in the St. Louis Metro area, Kansas City, and Springfield, Missouri.” (Pls’ Compl., ¶ 50). In fact, ACORN has not conducted a voter registration drive in Springfield since 2006 because ACORN decided not to conduct a voter registration drive in Missouri unless “a full-time trained quality control supervisor” was available. (Defs’ Ex. L, Dep. of Jeffrey Ordower, p. 104, l. 1-13). ACORN alleges that it has devoted time and resources to attempts to register individuals leaving DSS offices as part of ACORN’s voter registration initiatives. However, such efforts are a small fraction of a voter registration drive. The Division of Family Services has two offices in St. Louis City and four offices in Jackson County. (Dep. of Thomas Jakopchek, p. 37, l. 4-9; www.dss.mo.gov/fsd/office/index.htm). ACORN investigates “a couple hundred” sites as possible locations where staff will attempt to register people to vote as part of a registration drive, about half of which will ultimately be chosen. (Dep. of Ordower p. 107, 1-9).

In selecting sites for voter registration drives, ACORN considers people traffic, past success in registering voters, and whether employees continue to encounter what they deem a “high percentage” of unregistered persons. (Dep. of Ordower, p. 107, l. 17 through p. 108, l. 8). Many DSS offices in St. Louis and Kansas City are located in buildings that contain other governmental and non-governmental agencies and services. For example, 4411 North Newstead contains not only the Prince Hall FSD office, but the Children’s Division, a Department of Health and Senior Services Office, Adult Basic Education, the Annie Malone

Child Care Center (which serves more than 400 clients, see www.anniemalone.com/services.html and www.anniemalone.com/our-facilities.html, visited Jun. 28, 2008), a dialysis center, a Hopewell Mental Health Center, Computer Village, the Fathers' Support Center¹, and Black Expo. (Dep. of Joseph Darcy, p. 23, l. 2-16). ACORN's registration efforts outside buildings that house DSS county offices reach and are designed to target many citizens who are not DSS clients, as well as DSS clients who did not apply, reapply, or recertify for public assistance, or change their address, on a particular visit to the county office. Although DSS is in compliance with the NVRA, it is doubtful that ACORN would stop registration attempts outside Prince Hall and other locations housing DSS as long as ACORN continues to encounter individuals who have not chosen to register to vote, or to update their addresses for voting purposes. ACORN's use of resources to register voters outside DSS offices is not fairly traceable to the Department's NVRA practices.

Plaintiffs claim that DSS offices have failed to offer voter registration opportunities to individuals applying or recertifying benefit eligibility at DSS offices and that "Defendants' violations have thus hampered and impeded ACORN's mission, requiring ACORN to expend resources it would not otherwise have expended, and diverted resources needed for community organization, issues campaigns, and other programs for full achievement of its goals." (Pls' Compl. ¶ 52). However, ACORN admits that there is a budget specifically

¹ The Fathers' Support Center is a non-profit organization that provides health care and job training in addition to other services. See www.fatherssupportcenter.org/services (visited Jun. 28, 2008).

allocated for its voter registration drives in Missouri separate from the moneys for its other initiatives, programs, and community organization efforts. This year's budget for ACORN's voter registration drives in Missouri is approximately \$600,000.00. (Dep. of Ordower, p. 103, l. 9-18). ACORN's voter registration efforts receive significant funding from Project Vote. (Dep. of Ordower, p. 74, l. 15- p. 75, l. 1; p. 76, l. 14- p. 77, l. 1). Some of the money that ACORN budgets for voter registration drives is money that ACORN anticipates will be raised through future fundraising efforts. ACORN has not yet raised all of the funds it has budgeted for this year's voter registration efforts in Missouri. (Dep. of Ordower, p. 103, l. 3-18).

Except for the State of Minnesota in 2004, where "there were a number of groups doing voter registration, so it seemed appropriate to reduce our goal," ACORN has not reduced its voter registration drive goals unless the budget (e.g., failure to meet fundraising goals) required reducing the goal. (Dep. of Ordower, p. 117, l. 5 through p. 118, l. 15). ACORN does not plan to hold a voter registration drive in the year 2009 because "there's absolutely no money in an off year.... There won't be a dime in 2009, to do it..." (Dep. of Ordower at 110, l. 24 through p. 111, l. 2).

When ACORN develops a target number of persons to register to vote in a registration drive, ACORN considers how many persons other organizations may register to vote. (Dep. of Ordower, p. 98, l. 11-20). In Missouri, the only other organization whose registration numbers or efforts ACORN considers in establishing its registration goals is the Missouri Progressive Vote Coalition's goals for voter registration. (Dep. of Ordower, p. 104, l. 16 through p. 105, l. 4). ACORN does not consider how many citizens state or county

government agencies in Missouri have provided with voter registration services when it sets its voter registration drive goals. ACORN has not suffered an actual concrete injury, as opposed to a conjectural, hypothetical injury. Without a showing of injury in fact, ACORN does not have standing. *Community Stabilization Project v. Cuomo*, 199 F.R.D. 327, 332 (D. Minn. 2001).

ACORN's asserted injuries are not redressable.

ACORN admits that there are many reasons why a person may not be registered to vote or eligible to vote. (Dep. of Jeffrey Ordower, p. 106, l. 19-24). According to the U.S. Election Administration Commission's June 30, 2007, report to Congress, 92.5% of the estimated voting age population of Missouri was already registered to vote in 2004; 90.5% of the estimated voting age population of Missouri was registered to vote in 2006. (*The Impact of National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006*, p. 21, attached for the Court's convenience as Ex. J).

ACORN focuses on registering African-Americans to vote. (Dep. of Ordower, p. 98, l. 11-14; p. 105, l. 9-13). ACORN's generalized concern about maximizing minority voter registration and participation in St. Louis and Kansas City does not create injury in fact sufficient to confer standing. *Community Stabilization Project*, 199 F.R.D. at 332. ACORN headquarters provides its guess of how many African-Americans are not registered to vote in Missouri to ACORN staff in Missouri. (Dep. of Ordower, p. 98, l. 13-17). ACORN's Missouri State Head Organizer did not know how ACORN derived its assessment of how many African-American citizens are not registered. (Dep. of Ordower, 105, l. 14 through p. 106, l. 20). The Missouri State Head Organizer's responsibilities

include overseeing ACORN's voter registration drives. United States Attorney's Office, Eastern District of Missouri, [Eight ACORN Voter Registration Workers Indicted on Federal Election Fraud Charges](#), December 21, 2007, News Release, *available at* www.usdoj.gov/usao/moe/press_release.html (visited Jun. 17, 2008).

Standing requires that a plaintiff has suffered the invasion of a legally protected interest that is concrete and particularized. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992). It must be "likely" as opposed to merely "speculative" that a decision in plaintiff's favor would redress an injury in fact. *Id.* at 561. ACORN does not know how many Missouri residents are not registered to vote at their current address. ACORN does not know how many African-American Missouri residents are not registered to vote at all. (Dep. of Ordower, p. 106, l. 8-24). The NVRA contemplates that significant numbers of unregistered persons will decline to register when public assistance agencies offer voter registration services to them, otherwise the Act's provision for the use of declination forms would be superfluous. (See 42 U.S.C. §§ 1973gg-5, 1973gg-6(i)(1) (2008)). ACORN merely speculates that injunctive relief would increase the number of African-American registered voters in St. Louis or Kansas City, which is the goal of ACORN's registration drives. ACORN does not have a legally protected interest that has been concretely injured and its asserted injury is not redressable. "Suits that promise no concrete benefit to the plaintiff" but pose theoretical questions "are often inspired by the psychological smart of perceived official injustice, or by the government-policy preferences of political activists." *Community Stabilization Project*, 199 F.R.D. at 332, quoting *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 104 (1998). The instant lawsuit is one such case.

Plaintiff O'Neal does not have standing

In order to have a justiciable claim, a litigant must meet three constitutional standing requirements: (1) they must have directly suffered an injury in fact, (2) the injury must be fairly traceable to the challenged conduct, and (3) a favorable court decision must be likely to redress the injury. *See Northeastern Florida Contractors v. Jacksonville*, 508 U.S. 656, 663 (1993); *Pucket v. Hot Springs School Dist. No. 23-2*, 526 F.3d 1151, 1157 (8th Cir. 2008). The allegedly illegal action must cause some threatened or actual injury before a person has standing. *Linda R.S. v. Richard D.*, 410 U.S. 614, 617 (1973).

Mo. Rev. Stat. § 115.165 provides:

A registered voter who has changed his or her residence within an election authority's jurisdiction and has not been removed from the list of registered voters ... shall be permitted to file a change of address with the election authority or before an election judge at a polling place and vote at a central polling place or at the polling place that serves his or her new address upon written or oral affirmation by the voter of the new address. MO. REV. STAT. §115.165.2 (2008).

The existence of this statute shows why Ms. O'Neal lacks standing to press this case. Ms. O'Neal first registered to vote in 1986. (Defs' Ex. M., Dep. of O'Neal at 39, l. 4-6). She last voted in 1993. (Dep. of O'Neal at 43, l. 6-9). She has lived in St. Louis at all times since 1993. (Dep. of O'Neal at 44). She has not been removed from the list of registered voters. *See* Ex. K, (Voter Registration Records).

It is clear that Ms. O'Neal has not been concretely injured by the Department's actions or inactions. Her right to vote is unaffected because she can go to a polling place, update her residence information, and then vote. She has suffered no injury in fact, no injury traceable to the challenged conduct, and a favorable court decision will not redress her

injury. Ms. O'Neal is already registered and can vote in the next election by using the procedures set forth in § 115.165.2, therefore she does not have standing.

ACORN does not have associational standing

Further, ACORN does not have standing to sue on behalf of its members. An organization has associational standing only if (1) its members would otherwise have standing to sue in their own right; (2) the interests the organization seeks to protect are germane to its purpose; and (3) neither the claims asserted nor the relief requested requires the participation of individual members in the lawsuit. *Hunt v. Washington State Apple Adver. Comm'n*, 432 U.S. 333, 343 (1977). As discussed in the preceding section, Ms. O'Neal does not have standing because there is no injury in fact to redress, therefore, ACORN cannot meet the first requirement of associational standing. *See Community Stabilization Project v. Cuomo*, 199 F.R.D. at 333 (even if former tenants were members, they had no injury in fact; redressability requirement not met).

ACORN also fails to meet the third element of associational standing. Ms. O'Neal's circumstances illustrate this point. Someone else read Ms. O'Neal's declaration to her, she did not personally read it before signing; the declaration was not explained to her, and apparently Ms. O'Neal did not understand that she needed to tell someone that the declaration contained inaccurate material statements. (Dep. of O'Neal, p. 36, l. 1-21). Ms. O'Neal testified that the Declaration attached to Plaintiffs' Complaint did not accurately represent the time periods when she was receiving food stamps (Dep. of O'Neal, p. 33; Dep. Ex. 1, ¶ 2). Ms. O'Neal also testified that Paragraph 4 of her Declaration incorrectly stated that she went to a DSS office every six months to recertify

or renew her food stamps. (Dep. of O’Neal, p. 47, l. 22 through p. 48, l. 16). Ms. O’Neal testified that unless she has to open a new case, she mails forms, including responses to reinvestigations, to the DSS office. (Dep. of O’Neal, pp. 16-17). She recertifies or renews her benefits on an annual basis. (p. 16, l. 3-13). Except for one occasion in 2007, the last time Ms. O’Neal went inside a DSS office was when she lived on Martin Luther King (prior to December 2004). (Dep. of O’Neal, p. 9, l. 17-23; p. 21). The existence and extent of any injury to its members who have applied for DSS public assistance programs requires individualized proof and the participation in the suit of an individual who has suffered a redressable injury. Because no such individual is participating in this suit, ACORN lacks associational standing. *Cuomo*, 199 F.R.D. at 333; *Missouri Protection & Advocacy Servs., Inc. v. Carnahan*, 499 F.3d 803, 810 (8th Cir. 2007).

**PLAINTIFFS WILL NOT SUFFER IRREPARABLE HARM IF
INJUNCTIVE RELIEF IS DENIED.**

ACORN will not suffer any irreparable harm if its request for preliminary injunction is denied because it has already determined its budget and goals for voter registration efforts leading up to the 2008 election. ACORN does not plan to conduct any voter registration drives in 2009.

Because Ms. O’Neal cannot show the threat of an actual injury, she cannot show irreparable harm. The Eighth Circuit has reaffirmed “the importance of irreparable harm in the *Dataphase* analysis.” *Planned Parenthood Minnesota, North Dakota, South Dakota v. Rounds*, 2008 WL 2550722 at *6, n. 5 (8th Cir. 2008). “The basis of injunctive relief in the federal courts has always been irreparable harm and inadequacy of legal remedies.” *Id.*,

quoting *Beacon Theatres, Inc. v. Westover*, 359 U.S. 500, 506-07 (1959). In some cases, lack of irreparable injury is all that the Court need look at in the *Dataphase* analysis. *Rounds*, 2008 WL 2550722 at *6, n. 5; see also *Watkins v. Lewis*, 346 F.3d 841, 844 (8th Cir. 2003) (failure of movant to show irreparable harm is independently sufficient basis to deny injunctive relief). This is such a case. “Irreparable harm will not be found where alternatives already available to the plaintiff make an injunction unnecessary.” *Curtis 1000, Inc. v. Youngblade*, 878 F.Supp. 1224, 1248 (N.D. Iowa 1995). Because, under Missouri statute, Ms. O’Neal need not provide current address information until election day in order to vote, she does not face any irreparable harm.

HARM TO OTHERS AND THE PUBLIC INTEREST

The public has an interest in being able to vote, which is already facilitated by opportunities to register to vote by mail, and at a variety of locations including driver’s license offices, the health department, unemployment offices, and public libraries. While the Department of Social Services has significant responsibilities to offer voter registration, the Department is already complying with the requirements of the NVRA. Issuing an injunction that would require the Department to do more will hinder the Department in carrying out its mission to provide for the needs of its most vulnerable citizens.

CONCLUSION

The balance of plaintiffs’ unlikelihood of success with the lack of irreparable harm likely to result to plaintiffs in the absence of preliminary injunctive relief and with the potential harm to the interests of the defendants and the public in the granting of such relief counsels against entry of preliminary injunctive relief.

WHEREFORE, defendants Scott and Luck pray this court to deny plaintiffs' request for preliminary injunctive relief.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on July 1, 2008, the foregoing was filed electronically with the Clerk of Court to be served by operation of the Court's electronic filing system upon the following: Arthur Benson, Jamie Kathryn Lansford, John M. Nonna, Michael Payne, Mayer S. Klein, Bradley A. Constance, David Raymond, Richard J. Cairns, Brian W. Mellor, Jon M. Greenbaum and Robert A. Kengle

I hereby certify that on July 1, 2008, the foregoing was sent by electronic mail to the following non-participants in Electronic Case Filing:

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