

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

**ST. LOUIS CITY BOARD OF ELECTION COMMISSIONERS’  
MEMORANDUM OF LAW IN OPPOSITION TO  
PLAINTIFFS’ MOTION FOR PRELIMINARY INJUNCTION**

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 Board of Elections”), state the following in opposition to Plaintiffs’ Motion for Preliminary Injunction and Memorandum in Support.

I. **PRELIMINARY STATEMENT**

Plaintiffs Dionne O’Neal and the Association of Community Organizations for Reform Now (hereinafter referred to as “ACORN”) have sued Deborah E. Scott as Director of the Missouri Department of Public Social Services, Janel Luck as the Director of the Family Support Division, the St. Louis City Board of Elections, the Kansas City Board of Elections and the Jackson County Board of Elections for alleged violations of the National Voter Registration Act (hereinafter referred to as “NVRA”). Plaintiffs have generally alleged in the Motion for Preliminary Injunction that the Defendants violated

and continue to violate the NVRA by failing to provide voter information and registration opportunities and assistance required by Section 7 of the NVRA. More specifically, Plaintiffs seek injunctive relief against all of the Defendants for the alleged violations of Missouri's public assistance offices of the Department of Social Services failures to comply with their obligations to distribute mail voter registration forms, to assist recipients in completing these forms, and accepting voter registration forms and transmitting them to election officials. Although not articulated or even referenced in Plaintiffs' Motion for Preliminary Injunction, Plaintiffs claim in reference to the local election boards is that they have failed to comply with Mo. Rev. Stat. § 115.145.

Plaintiffs' Motion for Preliminary Injunction does not make any specific allegations against the St. Louis City Board of Elections. Furthermore, Plaintiffs' Proposed Preliminary Injunction Order is entirely void of any action which Plaintiff seeks to require the St. Louis City Board of Elections to engage in regarding compliance with Section 7 of the NVRA. Plaintiffs' Motion for Preliminary Injunction should be denied based upon the arguments present in its Motion to Dismiss, and as supplemented herein.

## II. STATEMENT OF FACTS

In addition to the facts as set forth herein, the St. Louis City Board of Elections incorporates by reference herein, the facts as alleged in their Memorandum in Support of Their Motion to Dismiss previously filed with this Court.

In 1993 Congress enacted the National Voter Registration Act (hereinafter referred to as "NVRA"), which governs voter registration for federal elections. 42 U.S.C. § 1973gg-2 to § 1973gg-9. The NVRA provides, in relevant part, that each State must designate all offices in the State that provide public assistance as mandatory voter

registration agencies. Additionally, each State must also designate as mandatory voter registration agencies all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities. 42 U.S.C. § 1973gg-5(a)(2)(A)&(B).

In addition to the services typically provided, these public assistance/disability service offices which are designated as mandatory voter registration agencies, are required to: (1) distribute voter registration applications to applicants; (2) offer applicants assistance in completing the forms unless the applicants refuse such assistance; and (3) accept completed forms for transmittal to the appropriate State election official. 42 U.S.C. § 1973gg-5(a)(4)(A). The voter registration applications must be distributed with each application for public assistance and/or disability services and with each recertification, renewal, or change-of-address form relating to such services or assistance unless the applicant, in writing, declines to register to vote. 42 U.S.C. § 1973gg-5(a)(6)(A).

Under the NVRA, each state is required to designate a state officer or employee as the chief state election official to be responsible for coordination of state responsibilities under the NVRA. 42 U.S.C. § 1973gg-8. Missouri has designated the Secretary of State as the chief election official to coordinate NVRA responsibilities for Missouri. § 115.136(1). Further, the Secretary of State is charged with promulgating rules to ensure the State's compliance with the NVRA. Mo.Rev.Stat. § 115.136(6).

In Missouri, the NVRA was implemented via the enactment of HB 1411 which amended Missouri's statutory scheme and incorporated the provisions of the NVRA into state law. The portions of the bill relevant herein are Section 115.136, which outlines the

duties of the Secretary of State, and Section 115.162, which outlines the responsibilities of the county Department of Social Services Offices.

Section 115.136, places the following specific responsibilities on the Secretary of State relative to the subject of this suit:

"1. The secretary of state shall be the chief state election official responsible for the coordination of state responsibilities under the National Voter Registration Act of 1993.

2. The secretary of state shall be responsible for the transmission of requested data from the election authorities to the Federal Election Commission.

3. The secretary of state shall supply each election authority with a list of all public assistance agencies and armed forces recruitment offices that are designated as voter registration sites within the jurisdiction of the election.

4. The secretary of state shall consult with the Federal Election Commission in the formation of a national mail voter registration application form.

5. The secretary of state shall be responsible for the transmission to the appropriate election authority of the notification by the United States attorney of the conviction of a Missouri citizen for a federal felony offense.

6. The secretary of state may promulgate rules only to ensure state compliance with the National Voter Registration Act of 1993.

7. Any person who is aggrieved by a violation of the National Voter Registration Act may provide written notice of the violation to the secretary of state and may bring a civil action pursuant to the process prescribed by section 11 of the National Voter Registration Act of 1993."

In accordance with her duties under these statutes, the Secretary of State, in February, 2007, published the National Voter Registration Act – 1993; Implementation Guide for Missouri Public Assistance Agencies. This action by the Secretary of State appears to be an obvious indicator that the Secretary of State has the authority and the obligation to coordinate and promulgate rules to implement the NVRA in reference to state public-assistance agencies.

Section 115.162, places specific duties on certain agencies which are designed to ensure that the NVRA is fully implemented in Missouri. Section 115.162 affirmatively places the duty to provide voter registration forms to those receiving public assistance on the county Department of Social Services offices. These forms are to be provided to the state agencies by the Secretary of State, not the local election authorities. Section 115.162 places the following specific responsibilities on all state offices providing public assistance:

"1. A voter registration application shall be provided by the secretary of state in all offices of the state that provide public assistance, all offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, and other offices as directed by the governor. In addition all armed forces recruitment offices shall be considered a voter registration agency.

2. At each voter registration agency, the following services shall be made available:

(1) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance;

(2) Acceptance of completed voter registration application forms for transmittal to the election authority located in the same county or any city not within a county, or if there is more than one election authority within the county, to the election authority nearest to the office of the agency. The election authority receiving the application forms shall review the applications and forward any applications pertaining to a different election authority to that election authority;

(3) Voter registration sites shall transmit voter registration application forms to the appropriate election authority not later than five business days after the form is completed by the applicant;

(4) If a voter registration agency provides services to a person with a disability at the person's home, the agency shall provide the services provided in this section at the person's home.

3. An applicant declining to register in any agency shall be noted in a declination section incorporated into the voter registration form used by the agency. No information relating to a declination to register to vote in connection with an application made at a voter registration agency may be

used for any purpose other than voter registration."

Under this statutory scheme, the Secretary of State has the responsibility for the coordination of state responsibilities under the NVRA, the ability to promulgate rules to ensure compliance with the NVRA, and the obligation to provide voter registration applications to all offices in the State that provide public assistance. Mo.Rev.Stat. §§ 115.136(1), 115,136(6) and 115.162(1). Under this statutory scheme, all offices in the State which provide public assistance shall provide assistance with the completion of voter registration forms and forward the voter registration forms to the appropriate election authority. Mo. Rev. Stat. § 115.162.

No provision of the NVRA or Missouri's Revised Statutes require the individual election boards to engage in any of the conduct Plaintiffs allege they have failed to do under the NVRA including, implementing a program for registering voters at designated agencies and implementing a training program or insuring State agencies' compliance with their responsibilities under the NVRA. Not only do individual elections boards in the State of Missouri not have the responsibilities to engage in these acts, the elections boards in this State do not have the authority to engage in such activity.

### III. ARGUMENT

A preliminary injunction is an "extraordinary remedy, and the burden of establishing the propriety of an injunction is on the movant." *Watkins Inc. v. Lewis*, 346 F.3d 841, 844 (8<sup>th</sup> Cir. 2003) citing *Calvin Klein Cosmetics Corp. v. Lenox Labs, Inc.*, 815 F.2d 500, 503 (8<sup>th</sup> Cir. 1987).

In order to succeed on a preliminary injunction motion, the Plaintiff bears the burden of showing an entitlement to injunctive relief. *Gelco Corp. v. Coniston Partners*,

811 F.2d 414, 418 (8<sup>th</sup> Cir. 1987). The applicable test when a preliminary injunction should be granted demands the movant to demonstrate that (1) they have a likelihood of success on the merits; (2) there exists, absent the injunction, a significant risk of irreparable harm to the movant, (3) the balance between the harm to the movant and the injury that granting the injunction will inflict on the Defendants, and (4) granting the injunction will not adversely affect the public interest. *Dataphase Systems, Inc. v. C.L. Systems, Inc.*, 640 F.2d 109, 113 (8<sup>th</sup> Cir. 1981). A preliminary injunction should not be granted unless the movant, “by a clear showing, carries the burden of persuasion.” *Mazurek v. Armstrong*, 520 U.S. 968, 972 (1997). Plaintiffs’ argument that this Court should apply the “reasonable cause” standard articulated in *Burlington North R.R. Co. v. Bair*, 957 F.2d 599 (8<sup>th</sup> Cir. 1992), does not afford the Plaintiffs the right to pursue their claims against the wrong parties.

**1. Likelihood of Success on the Merits.**

Plaintiffs cannot succeed on the merits for at least three independent reasons. As such, this Court should deny Plaintiffs’ Motion for Preliminary Injunction against the three election authorities and dismiss Plaintiffs’ claims against them.

First, as articulated in the St. Louis City Board of Elections’ Memorandum in Support of Their Motion to Dismiss, they are not proper party defendants in this litigation. Under Missouri law, the responsibility for implementing those provisions regarding voter registration of those receiving public assistance falls squarely upon the Department of Social Services and the Secretary of State. Mo.Rev.Stat. § 115.136(1). Under the facts as alleged in Plaintiffs’ Motion for Preliminary Injunction, Plaintiffs’ allegations that specific county offices are not complying with their duties under state and

federal law is not sufficient to state a claim against St. Louis City Board of Elections, the Kansas City Board of Elections and the Jackson County Board of Elections.

Plaintiffs have failed to allege any specific act of the St. Louis City Board of Elections which violate the NVRA or state law. Rather, Plaintiffs have alleged that the Department of Social Services, through a subunit, the Family Support Division, have failed, and continue to fail, to provide the voter registration opportunities mandated by Section 7 of the NVRA. Plaintiffs' Complaint, Para. 31. Specifically, Plaintiffs allege that Plaintiff O'Neal was not asked by any employee of the Department of Social Services if she was registered to vote or if she wanted to apply to register to vote; she was not given any document that asked if she was registered to vote, whether she needed to update her voter registration for her current address, or whether she would like to apply to register to vote at the DSS office that day. Plaintiffs' Complaint, Para. 41. No specific allegation is made in reference to the three named local election authorities.

As set forth above, in Missouri, the NVRA was implemented via the enactment of HB 1411 which amended Missouri's statutory scheme and incorporated the provisions of the NVRA into state law. The portions of the bill relevant herein are Section 115.136, which outlines the duties of the Secretary of State, and Section 115.162, which outlines the responsibilities of the county Department of Social Services Offices.

Section 115.136, places the following specific responsibilities on the Secretary of State relative to the subject of this suit:

"1. The secretary of state shall be the chief state election official responsible for the coordination of state responsibilities under the National Voter Registration Act of 1993.

2. The secretary of state shall be responsible for the transmission of requested data from the election authorities to the Federal Election Commission.

3. The secretary of state shall supply each election authority with a list of all public assistance agencies and armed forces recruitment offices that are designated as voter registration sites within the jurisdiction of the election.

4. The secretary of state shall consult with the Federal Election Commission in the formation of a national mail voter registration application form.

5. The secretary of state shall be responsible for the transmission to the appropriate election authority of the notification by the United States attorney of the conviction of a Missouri citizen for a federal felony offense.

6. The secretary of state may promulgate rules only to ensure state compliance with the National Voter Registration Act of 1993.

7. Any person who is aggrieved by a violation of the National Voter Registration Act may provide written notice of the violation to the secretary of state and may bring a civil action pursuant to the process prescribed by section 11 of the National Voter Registration Act of 1993." (Emphasis added).

In accordance with her duties under these statutes, the Secretary of State published the National Voter Registration Act – 1993; Implementation Guide for Missouri Public Assistance Agencies. Local election officials have no authority to promulgate rules to insure compliance with Section 7 of the NVRA.

Section 115.162, places a number of specific duties on designated agencies that are designed to insure that the NVRA is fully implemented. Section 115.162 affirmatively places the duty to provide voter registration forms to those receiving public assistance on the county Department of Social Services offices. Section 115.162 places the following specific responsibilities on all state office providing public assistance:

"1. A voter registration application shall be provided by the secretary of state in all offices of the state that provide public assistance, all offices that provide state-funded programs primarily engaged in providing services to persons with disabilities, and other offices as directed by the governor. In addition all armed forces recruitment offices shall be considered a voter registration agency.

2. At each voter registration agency, the following services shall be

made available:

(1) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance;

(2) Acceptance of completed voter registration application forms for transmittal to the election authority located in the same county or any city not within a county, or if there is more than one election authority within the county, to the election authority nearest to the office of the agency. The election authority receiving the application forms shall review the applications and forward any applications pertaining to a different election authority to that election authority;

(3) Voter registration sites shall transmit voter registration application forms to the appropriate election authority not later than five business days after the form is completed by the applicant;

(4) If a voter registration agency provides services to a person with a disability at the person's home, the agency shall provide the services provided in this section at the person's home.

3. An applicant declining to register in any agency shall be noted in a declination section incorporated into the voter registration form used by the agency. No information relating to a declination to register to vote in connection with an application made at a voter registration agency may be used for any purpose other than voter registration."

Under this statutory scheme, the Secretary of State has the responsibility of the coordination of state responsibilities under the NVRA, the ability to promulgate rules to ensure compliance with the NVRA, and provide voter registration applications to all offices in the State that provide public assistance. Mo.Rev.Stat. §§ 115.136(1), 115.136(6) and 115.162(1). Additionally, all offices in the State which provide public assistance shall provide assistance with the completion of voter registration forms and forward the voter registration forms to the appropriate election authority. Mo.Rev.Stat. § 115.162.

No provision of the NVRA or Missouri's Revised Statutes require the individual election boards to engage in any of the conduct Plaintiffs allege the State has failed to do under the NVRA including, implementing a program for registering voters at designated agencies and implementing a training program or insuring State agencies' compliance with their responsibilities under the NVRA. Not only do individual elections boards in the State of Missouri not have the responsibilities to engage in these acts, the elections boards in this State do not have the authority to engage in such activity.

Missouri's statutory scheme to implement the NVRA does not give any authority to local election officials to enforce the statutes against State agencies. Local election officials have no authority to insure compliance with the provisions of the NVRA. As set forth in Section 115.136, the Secretary of State is the chief election official designated to fulfill this role and promulgate rules to enforce the NVRA in reference to state public-assistance agencies, not the local election officials.

Second, this Court lacks jurisdiction in light of Plaintiffs' failure to follow the necessary prerequisites prior to filing a lawsuit under the NVRA. The NVRA creates a limited private right of action. 42 U.S.C. § 1973gg-9(b). Under the NVRA, an aggrieved person cannot file suit unless that individual has sent written notice of the alleged violation to the State's chief election official and the violation is not corrected within 90 days following receipt of the notice or within 20 days following receipt if the alleged violation occurs within 120 days of the election. 42 U.S.C. § 1973gg-9(b)(2). In this case, Plaintiff O'Neal has wholly failed to allege that she sent the St. Louis City Board of Elections notice of her allegations of the Defendants violations of the NVRA. Plaintiffs claim compliance with the notice requirements of § 1973gg-9(b)(2) in that they sent

correspondence to the Secretary of State. However, Plaintiffs did not even reference the St. Louis City Board of Elections in this correspondence. On this basis alone, the Court should deny Plaintiffs' Motion for Preliminary Injunction against the St. Louis City Board of Elections and dismiss Plaintiffs' claims against them.

Plaintiffs have not alleged any notice pursuant to 42 U.S.C. § 1973gg-9(b)(2) was ever provided to the St. Louis City Board of Elections. In fact, supporting the St. Louis City Board of Elections argument above regarding the proper party in interest, notice was sent to the Secretary of State, who actually does have the obligation to coordinate compliance with Section 7 of the NRVA in the State of Missouri. Instead of filing suit against the proper parties in this matter, parties whom were notified of the alleged violations and have responsibilities under the NVRA and Missouri's Revised Statutes, Plaintiffs selectively sued three election boards in the State of Missouri who were not provided notice of the alleged non-compliance.

Third, ACORN lacks standing to bring its Complaint, or seek injunctive relief, against the St. Louis City Election Board. Standing to sue is the requisite interest that parties must have in a controversy before the court. *State ex rel. Schneider v. Stewart*, 575 S.W.2d 904 (Mo. App. 1978). In order to demonstrate standing, a plaintiff must satisfy the requirements of Article III of the Constitution. *Valley Forge Christian College v. Americans United for Separation of Church and State*, 454 U.S. 464, 471 (1982). As an aspect of justiciability, the standing question is whether the plaintiff has alleged such a personal stake in the outcome of the controversy as to warrant his/her invocation of federal-court jurisdiction and to justify exercise of the court's remedial powers on his/her behalf. *Warth v. Seldin*, 422 U.S. 490, 498-499 (1975).

To demonstrate standing on its own behalf, an organization must show that it has itself suffered an injury. Particularly, an organization must be seeking to vindicate a right or immunity that the organization itself enjoys. *Warth*, 422 U.S. at 511. A mere interest in a particular issue is not sufficient to confer standing upon an organization. *Sierra Club v. Morton*, 405 U.S. 727, 735 (1972). Rather, to demonstrate standing on its own behalf, an organization is required to show that its ability to further its goals has been impaired so as to constitute far more than a simple setback to the organization’s abstract social interests.” *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982) citing *Sierra Club*, 405 U.S. at 739.

In this case, ACORN alleges that it is a community organization whose members “participate in local meetings, actively work on public policy campaigns, and elect their own leaders from their neighborhoods” Plaintiffs’ Complaint, Para. 11. It also alleges that “members of ACORN who are registered to vote have an interest in other members of their community being registered to vote.” Plaintiffs’ Complaint, Para. 48. Plaintiff ACORN claims that as a result of the allegations of non-compliance with Section 7 of the NVRA, ACORN has spent money trying to register low and moderate-income individuals to vote. Plaintiffs’ Complaint, Para. 51. The general conclusions that the defendants’ violations have “hampered and impeded ACORN’s mission, required 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” is the exact setback to abstract social interests which the Supreme Court in *Sierra Club*, indicated would not constitute organizational standing.

The allegations contained within Plaintiffs' Complaint are insufficient to accord organizational standing to ACORN to proceed against the Defendants herein.

Plaintiff ACORN lacks standing to sue on its *own* behalf, because it is not seeking to vindicate a right or immunity that ACORN enjoys. *Warth*, 422 U.S., at 511. Plaintiff ACORN suggests that their efforts would have been “unnecessary” absent Defendants alleged violations of the NRVA. However, such an allegation has been found to be deficient in *Harkless v. Blackwell*, 467 F.Supp.2d 754 (N.D. Ohio, 2006) and *ACORN v. Fowler*, 178 F.3d 350 (5<sup>th</sup> Cir. 1999). ACORN itself enjoys no legal right itself to public-assistance agencies' compliance with the NVRA. Furthermore, ACORN has no legal right to spend less money than it does on its organizing activities.

The criteria which must be met in order for an association to vindicate the rights of its members are as follows: 1) that its members would otherwise have standing to sue in their own right; 2) that the interests it seeks to protect are germane to the organization's purpose; and 3) neither the claim asserted nor the relief requested requires the participation of the individual members in the lawsuit. *Hunt v. Washington State Apple Advertising Commission*, 432 U.S. 333 (1977). An association must meet each of these requirements in order to have standing. *Terre Du Lac Association, Inc. v. Terre Du Lac, Inc.*, 772 F.2d 467, 470 (8<sup>th</sup> Cir. 1985).

Plaintiff ACORN fails to allege the necessary elements to satisfy the test for associational standing in the instant case.

On the face of the Complaint, ACORN fails to succinctly assert its purpose making the task of ascertaining whether the interests at stake in this case are “germane” to its purpose. *Hunt*, 432 U.S. at 343. ACORN describes itself as being “devoted to

organizing low and moderate-income families” in paragraph 11 of their Complaint. Liberally construing this statement to be ACORN’s purpose would still not confer standing in this case because it is not germane to the interests in their Complaint. The ability to obtain voter registration assistance and materials at offices providing public assistance is not germane to the purpose of organizing low and moderate-income families. The alleged noncompliance by the Department of Social Services in no way interferes with ACORN’s ability to conduct its activities of organizing low and moderate-income families.

Furthermore, ACORN’s allegation that it has been required to conduct voter-registration activities that would have been otherwise unnecessary absent the Department of Social Services’ alleged noncompliance with the NVRA does not confer standing. ACORN makes absolutely no allegation that its ability to organize low and moderate-income people would be improved if the Department of Social Services and/or the local election authorities were to offer additional training and voter registration materials. This exact issue was addressed in *Harkless*, 467 F. Supp.2d 754, in which the Court found that ACORN failed to establish associational standing to sue. The Court in *Harkless*, based upon the same reasons discussed herein, found that ACORN did not have standing to sue for alleged violations of Section 7 of the NVRA.

ACORN itself has not suffered any identifiable injury. Additionally, ACORN has not set forth any interest at stake which is germane to ACORN’s purpose as set forth in the Complaint or Motion for Preliminary Injunction. ACORN has failed to allege that it is or represents an “aggrieved party” under the NVRA. As such, ACORN lacks

associational standing to sue in this matter and their Motion for Preliminary Injunction should be denied and their Complaint should be dismissed.

**2. Irreparable Harm and Balancing of the Harms**

If Plaintiffs could show a likelihood of success on the merits, which they cannot, the balancing of the hardships support a denial of injunctive relief in this case. Plaintiffs' claim in their Memorandum in Support of their Motion for Preliminary Injunction that "the Defendants" would not suffer any burden if the injunctive relief is granted. Plaintiffs' Memorandum in Support of Preliminary Injunction, P. 13. Plaintiffs' statement in reference to the local election authorities is absolutely inaccurate. The St. Louis City Board of Elections is currently required to defend a lawsuit in which they were not properly notified under the notification requirements of the NVRA and which they are not a proper party. The St. Louis City Board of Elections is preparing for two upcoming elections and, as a result of this lawsuit and Plaintiffs' request for a preliminary injunction, are required to divert time, money and valuable resources from their election preparation to defend a lawsuit in which they are not a proper party. As such, the St. Louis City Board of Elections respectfully requests that this Court deny Plaintiffs' request for injunctive relief and dismiss them from this lawsuit.

**3. Granting the Injunction Would Adversely Affect the Public Interest.**

The public interest is better served by the Court denying Plaintiffs' Motion for Preliminary Injunction as to the local election authorities and allowing the local election authorities the opportunity to return to their tasks of running fair and honest elections. Protracted litigation between the Plaintiffs and the state agencies administering social

services frustrates the local election authorities' abilities to comply with their obligations in conducting elections.

IV. CONCLUSION

For the foregoing reasons, this Court should deny Plaintiffs' Motion for Preliminary Injunction and dismiss 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 as parties to this litigation, or alternatively dismiss the case and the claims of the Plaintiffs. Further, 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 move this Honorable Court for reasonable attorney's fees, including litigation expenses, and costs, pursuant to 42 U.S.C. § 1973gg-9(c).

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 1st day of July, 2008.

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