

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

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

Plaintiffs,)

v.)

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

DEBORAH E. SCOTT, et al.,)

Defendant.)

**RESPONSE OF DEFENDANTS SCOTT AND LUCK IN OPPOSITION TO
DEFENDANT ST. LOUIS CITY ELECTION BOARD'S MOTION TO COMPEL
JOINDER OF THE SECRETARY OF STATE AS AN ADDITIONAL PARTY
DEFENDANT**

Defendants Luck and Scott agree with Plaintiffs that the Secretary of State is not a necessary party to this litigation. Defendants Luck and Scott also write to suggest that the Secretary of State should not be permissively joined as a defendant in this action.

The Secretary of State is not a necessary party.

Rule 19(a)(1)(A) would only require the Secretary of State to be joined as a party to this litigation if her absence would prevent complete relief among the current parties. For the purposes of Rule 19(a)(1), "the focus is on the relief between the parties and not... the speculative possibility of further litigation between a party and an absent person." *National Ass'n for Advancement of Colored People v. Phillips County Election Comm'n*, 2006 WL 156988 at *2 (E.D. Ark. Jan. 18, 2006) (denying motion for joinder). The St. Louis Board of Elections suggests that the Secretary of State could implement a training program for the Department of Social Services, but Plaintiffs have not sought such relief from the Secretary of State, and Family Support Division employees do

receive training on how to comply with the NVRA. Evidence at the preliminary injunction hearing showed that the Secretary of State provided a powerpoint guide to county offices for training purposes, and the Court's preliminary injunction order instructs DSS employees to consult the Secretary of State's NVRA implementation guide. (Ct. Doc. 99, p. 19). Defendants Scott and Luck further note that in a previous telephone conference with counsel for the parties the Court specifically asked whether anyone thought the Secretary of State needed to be a party. At that time, no one said that the Secretary of State should be joined as a party.

The ultimate disposition of this lawsuit will not impair the Secretary of State's ability to perform her duties as chief election officer, or require her to take any action inconsistent with her legal duties as chief election officer. The Secretary of State has not sought to intervene in this litigation. A state agency is not an indispensable party merely because a court's determination of a case will affect it. *See Minnesota Milk Producer's Ass'n v. Glickman*, 153 F.3d 632, 646-47 (8th Cir. 1998). Thus, the provisions of Rule 19(a)(1)(B) do not apply here, and the St. Louis Board of Elections' motion to join the Secretary of State as a party under Rule 19(a) should be denied.

Defendant's request for permissive joinder should be denied.

The St. Louis City Board of Elections does not assert a right to relief from the Secretary of State. The Board fails to identify one question of law necessary to the determination of this controversy that is common all defendants and the Secretary of State. Rather, the Board notes the Secretary of State's responsibility for "the coordination of state responsibilities" under the NVRA. The St. Louis City Board of Elections has not demonstrated that the requirements of Rule 20(a)(2) have been met here. Even if the requirements of Rule 20(a)(2) were fulfilled, this Court should exercise its discretion not to join the Secretary of State as a party as this stage of the litigation.

Denying the St. Louis City Board of Elections' motion will avoid undue expense and delay to the other parties to this litigation.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS
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CERTIFICATE OF SERVICE

I hereby certify that on October 15, 2008, 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.

/s/ Emily A. Dodge
Assistant Attorney General