

**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.,)

Defendants.)

**ANSWER OF DEFENDANTS LUCK AND SCOTT
TO PLAINTIFFS' COMPLAINT**

COME NOW Defendants Luck and Scott, by and through their attorneys, and for their answer to Plaintiffs' Complaint state as follows:

Defendants deny each and every allegation in Plaintiffs' Complaint, unless expressly admitted, and then only to the extent of the referenced response. Any factual averment admitted is limited to the fact itself and does not extend to any conclusions, characterizations, implications, or speculation contained therein or in the Complaint as a whole. Defendants also specifically deny any pseudo-allegations contained in headings, prayers for relief, or unnumbered paragraphs.

1. Defendants Luck and Scott herein deny each and every allegation of Plaintiffs' Complaint not herein admitted.

2. Paragraph 1 of Plaintiffs' Complaint contains legal conclusions and assertions of law which Defendants are not required to admit or deny, and a prayer for relief, to which

no response is required. To the extent any response is necessary, Defendants deny the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

3. Paragraph 2 of Plaintiffs' Complaint consists of legal conclusions and assertions of law which Defendants are not required to admit or deny.

4. Paragraph 3 of Plaintiffs' Complaint consists of legal conclusions and assertions of law which Defendants are not required to admit or deny.

5. Paragraph 4 of Plaintiffs' Complaint consists of legal conclusions and assertions of law which Defendants are not required to admit or deny.

6. Paragraph 5 of Plaintiffs' Complaint consists of legal conclusions and assertions of law which Defendants are not required to admit or deny.

7. Defendants deny each and every allegation contained in Paragraph 6 of Plaintiffs' Complaint, and denies the allegations of Paragraph 6 to the extent that such allegations may apply to other state agencies or departments that may provide public assistance because Defendants lack sufficient knowledge of the daily operations of such agencies and departments to form a belief as to the truth of such allegations. To the extent that Paragraph 6 contains legal conclusions, Defendants neither admit nor deny the same. Further answering, Defendants affirmatively state that Plaintiff O'Neal is registered to vote, although she is on the St. Louis City Board of Election Commissioners' inactive voter list, and that Ms. O'Neal will be able to vote in the August and/or November 2008 elections even if she takes no steps to provide current address information prior to the day of the election.

8. Paragraph 7 of Plaintiffs' Complaint consists of legal conclusions and assertions of law which Defendants are not required to admit or deny.

9. Defendants deny the factual allegations contained in Paragraph 8 of Plaintiffs' Complaint, but to the extent that Paragraph 8 contains legal conclusions and assertions of law, Defendants neither admit nor deny the same. Further answering, Defendants affirmatively state that Plaintiff O'Neal is registered to vote.

10. Defendants deny the factual allegations contained in Paragraph 9 of Plaintiffs' Complaint. Paragraph 9 of Plaintiffs' Complaint contains legal conclusions and assertions of law which Defendants are not required to admit or deny. To the extent any response is necessary, Defendants deny the allegations contained in Paragraph 1 of Plaintiffs' Complaint.

11. Defendants deny the allegations contained in Paragraph 10 of Plaintiffs' Complaint to the extent that they contain legal conclusions, and deny the factual allegations contained in the first sentence of Paragraph 10 of Plaintiffs' Complaint. Defendants are without sufficient knowledge or information to form a belief as to the number of unregistered "low-income" voters in the State of Missouri, and therefore deny the remaining allegations of the second sentence of Paragraph 10 of Plaintiffs' Complaint for lack of information. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the third sentence of Paragraph 10 of Plaintiffs' Complaint, and therefore deny the same.

12. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 11 of Plaintiffs' Complaint, and therefore deny the same.

13. Defendants admit that Plaintiff O'Neal is a St. Louis resident currently receiving food stamps, but are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 12 of Plaintiffs' Complaint, and therefore deny the same.

14. Defendants admit that Deborah Scott is the Director of the Missouri Department of Social Services. Defendants admit that the Department of Social Services administers programs including food stamps, MO HealthNet, and Temporary Assistance for Needy Families. Further answering, Defendants affirmatively state that Missouri's Medicaid program is referred to as MO HealthNet. To the extent that Paragraph 13 contains legal conclusions, Defendants neither admit nor deny the same.

15. Defendants admit that Janel Luck is the Director of the Missouri Department of Social Services, Division of Family Services ("FSD"). Defendants admit that FSD administers the food stamp program and TANF. Further answering, Defendants affirmatively state that FSD eligibility specialists interview persons applying for MO HealthNet and determine whether applicants are eligible to participate in the MO HealthNet program. Further answering, Defendants affirmatively state that the Department of Social Services has offices in each county in Missouri, and in the City of St. Louis, where persons may apply for each of the following programs: food stamps, TANF, and MO HealthNet. To

the extent that Paragraph 14 of Plaintiffs' Complaint contains legal conclusions, Defendants neither admit nor deny the same. Defendants deny the remaining allegations contained in Paragraph 14.

16. Defendants admit the allegations contained in the first sentence of Paragraph 15 of Plaintiffs' Complaint. Further answering, Defendants admit that the Kansas City Board of Election Commissioners is responsible for supervising voter registration within its jurisdiction "in accordance with this subchapter" and shall direct the activities of all deputy registration officials. Mo. Rev. Stat. § 115.141 (2008). The remaining allegations contained in Paragraph 15 of Plaintiffs' Complaint consist of legal conclusions, which Defendants neither admit nor deny.

17. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 16 of Plaintiffs' Complaint, and therefore deny the same.

18. Defendants admit the allegations contained in the first sentence of Paragraph 17 of Plaintiffs' Complaint. Further answering, Defendants admit that the Jackson County Board of Election Commissioners is responsible for supervising voter registration within its jurisdiction "in accordance with this subchapter" and shall direct the activities of all deputy registration officials. Mo. Rev. Stat. § 115.141 (2008). The remaining allegations contained in Paragraph 17 of Plaintiffs' Complaint consist of legal conclusions, which Defendants neither admit nor deny.

19. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 18 of Plaintiffs' Complaint, and therefore deny the same.

20. Defendants admit the allegations contained in the first sentence of Paragraph 19 of Plaintiffs' Complaint. Further answering, Defendants admit that the St. Louis City Board of Election Commissioners is responsible for supervising voter registration within its jurisdiction "in accordance with this subchapter" and shall direct the activities of all deputy registration officials. Mo. Rev. Stat. § 115.141 (2008). The remaining allegations contained in Paragraph 19 of Plaintiffs' Complaint consist of legal conclusions, which Defendants neither admit nor deny.

21. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 20 of Plaintiffs' Complaint, and therefore deny the same.

22. The first sentence of Paragraph 21 of Plaintiffs' Complaint is an assertion of law, which Defendants are not required to admit or deny. Defendants deny that this Court has subject matter jurisdiction over this action, in that one or both Plaintiffs lack standing.

23. Paragraph 22 of Plaintiffs' Complaint consists of legal conclusions and assertions of law, which Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations of Paragraph 22.

24. Defendants admit that Defendant Luck and Defendant Scott are residents of the State of Missouri.

25. Defendants admit that this Court is an appropriate venue for this action, but deny the allegations of Paragraph 24 to the extent they consist of legal conclusions.

26. Defendants admit that Paragraph 25 of Plaintiffs' Complaint accurately quotes 42 U.S.C. §1973gg (b)(1), but deny that the quoted portion of the statute is the sole purpose of 42 U.S.C. §1973gg et seq.

27. Defendants admit that the first sentence of Paragraph 26 of Plaintiffs' Complaint accurately quotes the referenced statute. The second sentence of Paragraph 26 of Plaintiffs' Complaint consists of legal conclusions which Defendants are not required to admit or deny.

28. The allegations contained in Paragraph 27 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny.

29. The allegations contained in Paragraph 28 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny.

30. Defendants admit that the Family Support Division administers the food stamp and TANF programs. The allegations contained in Paragraph 29 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the remaining allegations of Paragraph 28.

31. The allegations contained in Paragraph 30 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny.

32. The allegations contained in Paragraph 31 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the remaining allegations of Paragraph 30.

33. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 31 and 32 of Plaintiffs' Complaint, and therefore deny the same.

34. Defendants deny that participation in the food stamp program increased throughout the 1995-2006 time period. Further answering, Defendants affirmatively state that the average monthly caseload of households receiving food stamps declined during Fiscal Years 1996, 1997, 1998, and 1999. Defendants admit that fewer persons were registered to vote through the Department of Social Services in 2006 than in 1995. Defendants deny the remaining factual allegations contained in the first sentence of Paragraph 33 of Plaintiffs' Complaint. To the extent that Paragraph 33 of Plaintiffs' Complaint contains legal conclusion and assertions of law, Defendants are not required to admit or deny the same. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in the second sentence of Paragraphs 33 of Plaintiffs' Complaint, and therefore deny the same.

34. Defendants admit that during Fiscal Year 1995, the average monthly caseload of households receiving food stamps was 238,699 and that during Fiscal Year 2005 the average monthly caseload was 300,498. Further answering, Defendants affirmatively state

that the average monthly caseload of households receiving food stamps declined during Fiscal Years 1996, 1997, 1998, and 1999. In 1999, the number of households receiving food stamps averaged 171,002 per month.

35. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 35 of Plaintiffs' Complaint, and therefore deny the same.

36. Defendants deny the allegations contained in the first sentence of Paragraph 36 of Plaintiffs' Complaint and affirmatively state that the average number (statewide) of monthly applications for food stamps was 54,902 as stated in the fiscal year 2005 report and that the average number (statewide) of monthly applications for food stamps was 57,253 as stated in the fiscal year 2006 report. Defendants deny the allegations contained in the second sentence of Paragraph 36 of Plaintiffs' Complaint and affirmatively state that the average number of monthly applications for food stamps in Jackson County as stated in the fiscal year 2005 report was 7,244 and that the average number of monthly applications for food stamps in Jackson County as stated in the fiscal year 2006 report was 7,906.

37. Defendants 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 deny the same.

38. Defendants admit that the average number in St. Louis City of monthly applications for food stamps was 8,162 as stated in the fiscal year 2005 report and that the

average number in St. Louis City of monthly applications for food stamps as stated in the fiscal year 2006 report was 8,501.

39. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraph 39 of Plaintiffs' Complaint, and therefore deny the same.

40. Defendants deny that Plaintiff O'Neal has continually received food stamps since 1993 in that Ms. O'Neal submitted new initial applications for food stamps on two occasions in consecutive months in 2005. Further answering, Defendants affirmatively state that Plaintiff O'Neal submitted a new initial application for food stamps in late October 2007, and that prior to that application, her food stamp case had expired. Defendants deny that Plaintiff O'Neal recertified or renewed her food stamp benefits every six months. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 40 of Plaintiffs' Complaint, and therefore deny the same.

41. Defendants deny the allegations contained in the first sentence of Paragraph 41 of Plaintiffs' Complaint. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained the second and third sentences of Paragraph 41 of Plaintiffs' Complaint, and therefore deny the same.

42. Defendants 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 deny the same.

43. Defendants 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 deny the same.

44. Defendants admit that on August 23, 2007, counsel for ACORN sent a letter to Defendant Scott alleging that DSS was not in compliance with the National Voter Registration Act of 1993, but denies the remaining factual allegations contained in the first sentence of Paragraph 44 of Plaintiffs' Complaint. Defendants admit that the Secretary of State was copied on said letter. The first sentence of Paragraph 44 contains legal conclusions which Defendants are not required to admit or deny; to the extent a response is required, Defendants deny the same. The second and third sentences of Paragraph 44 contain legal conclusions which Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the same. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in the second and third sentences of Paragraph 44 of Plaintiffs' Complaint, and therefore deny the same. Defendants admit that a copy of the August 23, 2007, letter received by Defendant Scott is attached as Exhibit A to Plaintiffs' Complaint. Defendants admit that Plaintiffs' Exhibit B is a copy of Defendant Scott's October 11, 2007, letter acknowledging receipt of the August 23, 2007, correspondence.

45. The allegations contained in Paragraph 45 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations of Paragraph 45.

46. The allegations contained in Paragraph 46 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny.

47. The allegations contained in Paragraph 47 of Plaintiffs' Complaint consist of assertions of law and legal conclusions which Defendants are not required to admit or deny. To the extent a response is required, Defendants deny the allegations of Paragraph 47.

48. Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in Paragraphs 48 and 49 of Plaintiffs' Complaint, and therefore deny the same.

49. The third sentence of Paragraph 50 of Plaintiffs' Complaint contains legal conclusions which Defendants are not required to admit or deny. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 50 of Plaintiffs' Complaint, and therefore deny the same.

50. The second sentence of Paragraph 51 of Plaintiffs' Complaint contains legal conclusions which Defendants are not required to admit or deny. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraph 51 of Plaintiffs' Complaint, and therefore deny the same.

51. Paragraphs 52 and 53 of Plaintiffs' Complaint contains legal conclusions which Defendants are not required to admit or deny. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraphs 52 and 53 of Plaintiffs' Complaint, and therefore deny the same.

52. As to Paragraph 54 of Plaintiffs' Complaint, Defendants admit and deny Paragraphs 1 through 53 of Plaintiffs' Complaint in accordance with Defendants' answers above as if set forth more fully herein.

53. Paragraphs 55 and 56 of Plaintiffs' Complaint contains legal conclusions which Defendants are not required to admit or deny. Defendants are without sufficient knowledge or information to form a belief as to the truth of the remaining allegations contained in Paragraphs 55 and 56 of Plaintiffs' Complaint, and therefore deny the same. Defendants deny that injunctive relief is needed for the Department of Social Services to comply with the National Voter Registration Act of 1993 on an on-going basis.

54. Defendants deny that Plaintiffs are entitled to any of the relief requested.

Affirmative and other Defenses

55. Plaintiffs have failed to state a claim upon which relief can be granted. Therefore this case should be dismissed under Rule 12(b)(6).

56. This Court lacks subject matter jurisdiction over this action because Plaintiffs lack standing to sue.

57. Plaintiffs have failed to make the notice required by the National Voter Registration Act of 1993, 42 U.S.C. §1973gg-9(b).

58. In further defense, Defendants incorporate by reference each and every additional affirmative defense pled by any other Defendant in this case.

59. Defendants incorporate by reference any additional affirmative defenses that may be uncovered or made known during the investigation and discovery in this case, as well

as those now made or those that might be added by amendment by any other defendant. Defendants specifically reserve the right to amend this answer to include any such affirmative defenses.

Prayer for Relief

For the reasons stated hereinabove, Defendants request that this Court enter judgment in their favor, award them their costs and expenses, and for such other and further relief as the Court deems just and proper in the premises.

Respectfully submitted,

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ATTORNEYS FOR DEFENDANTS
SCOTT AND LUCK

CERTIFICATE OF SERVICE

I hereby certify that on May 23, 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, Richard J. Cairns, Jon M. Greenbaum, Robert A. Kengle, Mayer S. Klein, Jamie Kathryn Lansford, Brian W. Mellor, John M. Nonna, and Michael Payne.

I hereby certify that on May 23, 2008, the foregoing was mailed by United States Postal Service to the following non-participants in Electronic Case Filing:

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