

**UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION**

INDIANA STATE CONFERENCE OF THE)	
NAACP, for itself and all persons similarly)	
situated,)	
)	
Plaintiff,)	
)	
v.)	CASE NO: 1:09-cv-0849-TWP-DML
)	
MICHAEL A. GARGANO, in his official)	
capacity as Secretary of the Indiana Family)	
and Social Services Administration, et al.,)	
)	
Defendants.)	

JOINT MOTION TO CERTIFY CLASS ACTION

Plaintiff and Defendants hereby jointly move this Court to certify this lawsuit as a class action, pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure. In support of this motion, the parties respectfully state as follows:

1. Plaintiff and Defendants have negotiated and signed a Settlement Agreement which will fully resolve Plaintiff’s claim under Section 7 of the National Voter Registration Act (“NVRA”), 42 U.S.C. § 1973gg-5. Section 7 requires, *inter alia*, that states provide voter registration services to public assistance applicants and recipients. The Agreement provides that, in order to facilitate a full and final settlement of Plaintiff’s claim, the parties shall seek to have this lawsuit certified as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure.¹

2. The parties agree that the class should be defined as follows:

¹ Plaintiff previously filed a motion for class certification on September 14, 2009 [Doc. 52], which Defendants opposed. [Doc. 85]. On January 12, 2011, Magistrate Judge Lynch denied the motion without prejudice as moot, in light of the parties’ agreement in principle for settling this case. [Doc. 132.]

All residents of the State of Indiana who have applied for public assistance through FSSA/DFR, or who have requested recertification or renewal or submitted a change of address relating to public assistance through FSSA/DFR, and who claim that they were not offered the opportunity to register to vote in that transaction or claim that they were not offered assistance in completing a voter registration application, in accordance with 42 U.S.C. § 1973gg-5.

3. The parties agree that this lawsuit satisfies the prerequisites for a class action set forth in Rule 23(a), Fed. R. Civ. Pro., as follows:

a. Rule 23(a)(1) – At a minimum, the proposed class includes hundreds of members, and thus “the class is so numerous that joinder of all members is impracticable”;

b. Rule 23(a)(2) – This lawsuit concerns Defendants’ statewide policies and practices regarding implementation of Section 7 of the NRVA with regard to public assistance clients, and accordingly “there are questions of law and fact common to the class”;

c. Rule 23(a)(3) – The claim of the individual Plaintiff challenges the same policies and practices challenged by the proposed class, and therefore “the claims . . . of the representative parties are typical of the claims . . . of the class”; and

d. Rule 23(a)(4) – The named Plaintiff is qualified and capable of pursuing the common goals of the proposed class, there is no conflict between Plaintiff and the proposed class members with respect to this lawsuit, and Plaintiff’s counsel are experienced and competent in the representation of classes and in matters relating to the implementation of the NVRA; accordingly, “the representative parties will fairly and adequately protect the interests of the class.”

4. The parties agree that this action qualifies as a Rule 23(b)(2) class action because the suit challenges Defendants’ statewide policies and practices regarding

implementation of Section 7 of the NVRA with respect to public assistance clients, and therefore Defendants have “acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole.”

5. The parties agree that Plaintiff should serve as the representative of the proposed class, and that Plaintiff’s counsel should be appointed as class counsel.

The parties are contemporaneously filing a Joint Motion for Class Notice of Proposed Class Action Settlement and Setting of a Fairness Hearing, pursuant to Rule 23(e), so as to expedite the process for approval of the Settlement Agreement by the Court if the Court grants the instant motion for class certification.

Based on the foregoing, the parties respectfully request that this Court forthwith certify this action as a class action under Rule 23(b)(2), define the class in the manner specified above, and appoint Plaintiff’s counsel as class counsel. A proposed Order is attached.

May 12, 2011

Respectfully submitted,

FOR PLAINTIFF:

s/ Mark A. Posner

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