

("Potesta"), in their official capacity as Co-Directors of the Indiana Election Division; THOMAS E. WHEELER ("Wheeler"), in his official capacity as Chair of the Indiana Election Commission; S. ANTHONY LONG ("Long"), in his official capacity as Vice-Chair of the Indiana Election Commission; and DANIEL A. DUMEZICH ("Dumezich") and SARAH STEELE RIORDAN ("Riordan"), in their official capacity as members of the Indiana Election Commission, allege the following upon knowledge as to their conduct and upon information and belief as to the conduct of others:

Introduction

1. This action seeks declaratory and injunctive relief on behalf of the named plaintiffs and a class of similarly-situated persons to redress ongoing violations of the obligations imposed by the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §1973gg-5 ("Section 7"), for voter registration by public-assistance agencies in Indiana.

2. Section 7 of the NVRA mandates that all state offices that provide public assistance distribute voter registration application forms for voting in federal elections, assist applicants in completing them, accept completed voter registration applications, and transmit those applications to the appropriate state election official.

3. Section 7 requires all public assistance offices to distribute a voter registration application form with each application for assistance, and each recertification, renewal, or change of address relating to the receipt of public assistance.

4. Section 7 further requires that all public assistance offices provide a form that asks each client whether s/he is registered at his/her current address and if not, whether the applicant "would like to apply to register to vote here today" (the "voter notice form"). The voter notice form must also advise the applicant that "[a]pplying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency," and offer boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote. The form must include the statement, "IF YOU DO NOT CHECK

EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME" in close proximity to the boxes and in prominent type. The form must also advise the client that the office will provide assistance in filling out the voter registration form if the client would like such assistance, and that the client has the option to fill out the application in private. Finally, the form must include a statement, in language prescribed by the statute, that indicates how a client might file a complaint if that client believes that someone has interfered with his/her right to register or to decline to register to vote, or his/her right to privacy or political preference relating to the voter registration.

5. The requirements of Section 7 reflect Congress's intent to "increase the number of eligible citizens who register to vote in elections for Federal office," 42 U.S.C. §1973gg(b)(1), including "the poor and persons with disabilities who do not have driver's licenses and will not come into contact with the other principal place to register under this Act [motor vehicle agencies]." H.R. Con. Rep. No. 103-66, at 19 (1993). The statute also reflects Congress's intent to combat the disproportionate harm to voter participation by racial minorities caused by discriminatory and unfair registration laws and procedures. 42 U.S.C. §1973gg(a)(3).

6. Despite these clear obligations under the NVRA, Indiana's FSSA offices routinely fail to distribute voter registration applications and provide assistance in completing those applications to persons who apply for public assistance, or who submit a recertification, renewal, or change of address form relating to public assistance, as required by Section 7 of the NVRA.

7. Indiana FSSA offices also fail to provide the voter notice form required by Section 7. 42 U.S.C. §1973gg-5(a)(6)(B). This includes, in certain instances, the failure to provide this form in connection with each public assistance transaction named by the statute and, in other instances, the failure to provide a form that comports in material respects with the requirements of the NVRA. Specifically, and with regard to the latter failure, Indiana FSSA offices offer a form whose content differs from that required under 42 U.S.C. §1973gg-5(a)(6)(B) and that fails in material respects to comply with the requirements of 42 U.S.C. §1973gg-5(a)(6)(B).

8. As a result of these ongoing violations, tens of thousands of low-income citizens in Indiana, including plaintiff Alexander and numerous ACORN and NAACP members, have been denied the opportunity to register to vote or to update their voter address upon moving to a new residence address, as is required by Section 7. 42 U.S.C. §1973gg-5(a)(6).

9. As a result of defendants' failure to provide voter registration services at FSSA offices in accordance with Section 7, ACORN, NAACP and their members have expended substantial resources, including staff time and volunteer allocation, in an effort to make voter registration available to minority and low-income citizens, particularly those who should be offered voter registration by FSSA at every public benefits transaction that includes an application, recertification, renewal, or change of address. Thousands of eligible low-income voters, including members of ACORN and NAACP, remain unregistered and effectively disenfranchised as a result of defendants' actions and inaction.

10. Upon information and belief, Indiana has partially delegated the administration of its public assistance program pursuant to a contract between the State and certain for-profit companies, including IBM and Affiliated Computer Services. The delegation process is incomplete, with a portion of the State's FSSA offices administering public benefits programs under the partially-delegated system and the remaining FSSA offices still operating under the prior, non-delegated public assistance administration system.

11. Indiana FSSA offices that have been delegated as well as those remaining under the prior, non-delegated system are operating in violation of Section 7 of the NVRA by failing to provide the required voter registration services to each person who applies, recertifies, renews, or changes an address in connection with public assistance benefits.

12. Defendants are the state officials responsible for ensuring Indiana's compliance with Section 7 of the NVRA.

Named Parties

13. Plaintiff ACORN is a non-profit organization incorporated in Louisiana with Indiana-based offices located in Indianapolis and Gary. ACORN is the nation's largest community organization of low- and moderate-income families, working together for social justice and stronger communities. Since 1970, ACORN has grown to more than 175,000 member families, organized in 850 chapters in 75 cities across the United States and other countries, including over ten thousand members in its two Indiana chapters. ACORN members participate in local meetings, actively work on public policy campaigns, and elect their own leaders from their neighborhoods. ACORN's membership includes Indiana citizens who have applied for public assistance and either are eligible to vote but are unregistered or who need to update their voter registration because they have moved.

14. Plaintiff ACORN and its members expend substantial resources, including staff time and volunteer allocation, to offer voter registration to low-income Indiana citizens. ACORN staff and volunteers expend resources to specifically target their voter registration efforts in high poverty areas in Indiana, including Gary, East Chicago, and Indianapolis. The U.S. Census Bureau reported that the median income of households in Gary was \$26,911, with 33% of people in poverty from 2005-2007.^{1/} In East Chicago, the median household income was \$27,612 with 29% of people in poverty from 2005-2007.^{2/} Indianapolis had a poverty rate of 16% from 2005-2007, with a median income of households in Indianapolis of \$43,687.^{3/} These figures reflect

1. U.S. Census Bureau American Community Survey, *Gary, Indiana, Population and Housing Narrative Profile: 2005-2007*, available at http://factfinder.census.gov/servlet/NPTable?_bm=y&-geo_id=16000US1827000&-qr_name=ACS_2007_3YR_G00_NP01&-ds_name=&-redoLog=false.

2. U.S. Census Bureau American Community Survey, *East Chicago City, Indiana, Population and Housing Narrative Profile: 2005-2007*, available at http://factfinder.census.gov/servlet/NPTable?_bm=y&-geo_id=16000US1819486&-qr_name=ACS_2007_3YR_G00_NP01&-ds_name=&-redoLog=false.

3. U.S. Census Bureau, American Community Survey, *Indianapolis, Indiana, Population and Housing Narrative Profile: 2005-2007*, available at http://factfinder.census.gov/servlet/NPTable?_bm=y&-geo_id=16000US1836003&-qr_name=ACS_2007_3YR_G00_NP01&-ds_name=&-redoLog=false.

very high poverty rates in comparison with a national poverty rate of 12.5% and a real median household income of \$50,233 in 2007.^{4/}

15. ACORN and its members have been forced to expend resources on voter registration in Indiana due to the failure of defendants to ensure compliance with the obligation under the NVRA to provide voter registration services to agency clients. These resources were thus diverted from other efforts that ACORN would have otherwise undertaken to offer voter registration to Indiana citizens and conduct other ACORN activities. These injuries to ACORN and its members will continue in the future so long as defendants fail to ensure compliance with their obligations under the NVRA.

16. Plaintiff Indiana State Conference of the NAACP is the umbrella organization for the 35 Indiana branches of the NAACP, the national civil rights organization. The Indiana State Conference is headquartered in Gary and consists of 4,000-5,000 members across the state in 22 branches with adult members, six to seven college chapters, and five to six high school chapters. NAACP has branches in minority and low-income communities including Gary and East Chicago. NAACP membership includes recipients of public assistance benefits in Indiana, some of whom are not registered to vote at their current addresses.

17. NAACP's mission is to ensure the political, educational, social, and economic equality of rights of all persons and to eliminate racial hatred and racial discrimination, as well as to advance the rights of its members and constituency to participate fully in the nomination and selection of candidates for elective office. In furtherance of its mission, NAACP engages in regular voter registration drives across the State of Indiana, with a particular emphasis on minority communities. Defendants' continued noncompliance with Section 7 results in some of NAACP's members being denied the opportunity to update their voter registration and ultimately cast a ballot that will be counted on Election Day, frustrating the very mission of the organization. As a result of defendants' violations, NAACP is forced to expend resources to

4. Carmen DeNavas-Walt, Bernadette D. Proctor, and Jessica C. Smith, U.S. Census Bureau, Current Population Reports, P60-235, "Income, Poverty, and Health Insurance Coverage in the United States: 2007," <http://www.census.gov/prod/2008pubs/p60-235.pdf>.

assist people with voter registration, including their members, who should have been offered voter registration at the local FSSA office.

18. NAACP increases its voter registration efforts near the time of elections. NAACP allocates volunteers to do voter registration at a particular location based on the relative number of people at that location who are expected to need to register or update their voter registration. But for defendants' failure to offer voter registration services to every person who applies, recertifies, renews, and changes their address for the purpose of receiving public benefits, NAACP would not have been forced to allocate as many volunteers to the task of offering voter registration to people who should have been offered those services by FSSA. As a result of defendants' violations, NAACP has allocated volunteer time to voter registration that could have been devoted to other activities.

19. Plaintiff Paris Alexander is an Indiana citizen who has applied for public assistance benefits in the form of food stamps at FSSA offices, has been eligible for these benefits since March 2009, and currently receives food stamps through FSSA. She meets all the requirements to register to vote in Indiana, but is not registered where she currently resides and was not provided by FSSA with a registration application form and a voter notice form, which would have provided her with the opportunity to update her voter registration in conjunction with her application for food stamp benefits.

20. Defendant Murphy is the Secretary of Indiana's Family & Social Services Administration. The FSSA administers public assistance programs subject to the requirements of Section 7 of the NVRA, including but not limited to food stamps, Medicaid, and Temporary Assistance for Needy Families ("TANF"). Defendant Murphy is sued in her official capacity as Secretary of the FSSA.

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22. Defendant Boggs is the Director of the FSSA's Division of Family Resources. The DFR is the division of the FSSA responsible for public assistance programs subject to the requirements of the NVRA, including but not limited to food stamps, Medicaid, and Temporary Assistance for Needy Families ("TANF"). Defendant Boggs is sued in her official capacity as Director of the DFR.

23. Defendants King and Potesta are the Co-Directors of the Indiana Election Division ("Division"). In this capacity, they "are jointly designated under 42 U.S.C. §1973gg-8 [Section 10 of the NVRA] as the chief state election official[s] responsible for the coordination of state responsibilities under [the] NVRA." Ind. Code §3-7-11-1.^{5/} As such, they are required to undertake a variety of actions, Ind. Code §3-7-11-2, including "[c]oordinat[ing] with the [Indiana Election] commission to oversee the implementation and administration of [the] NVRA by the state, county, municipal, and nongovernmental offices designated as registration sites." Ind. Code §3-7-11-2(1). They also are generally responsible for carrying out the policies, decisions and recommendations of the Indiana Election Commission, and are responsible for maintaining an office for the Indiana Election Division. Ind. Code §3-6-4.2-3. The Indiana Election Division is responsible for providing information on voter registration and absentee ballot procedures, and assisting the Indiana Election Commission and the Secretary of State in the administration of elections. Ind. Code §§3-6-4.2-2, 3-6-4.2-12. The Division also is responsible for calling a meeting of county election boards and registration boards each year in which a general or municipal election is held to instruct them on their duties under the Indiana Elections Title and federal law, including the NVRA. Ind. Code §3-6-4.2-14. Defendants King and Potesta are sued in their official capacities as Co-Directors of the Indiana Election Division.

5. Section 3-7-11-1 states that the officials jointly designated for this purpose are the "co-directors of the [Indiana Election] commission," however, the Indiana Secretary of State has advised that the officials so designated actually are the co-directors of the Indiana Election Division. *See* Exh. 1 to this complaint.

24. Defendants Wheeler and Long are the Chair and Vice-Chair of the Indiana Election Commission ("Commission") and defendants Dumezich and Riordan are additional members of the Commission. In this capacity, they are responsible for administering Indiana election laws, governing the fair, legal and orderly conduct of elections, prescribing a uniform set of election and registration forms for use throughout Indiana, and advising and supervising local election and registration officers. Ind. Code §3-6-4.1-14. This includes the responsibility for adopting "[r]ules (including joint rules with other agencies when necessary) to implement and administer [the] NVRA." Ind. Code §3-6-4.1-14(a)(2)(A)(ii). Defendants Wheeler and Long are sued in their official capacities as Chair and Vice-Chair of the Indiana Election Commission, and defendants Dumezich and Riordan are sued in their official capacities as members of the Commission.

Jurisdiction and Venue

25. This case arises under the NVRA, a law of the United States. This Court has subject matter jurisdiction of this action pursuant to 28 U.S.C. §1331 and 28 U.S.C. §1343(a).

26. This Court has jurisdiction to grant both declaratory and injunctive relief pursuant to 28 U.S.C. §§2201 and 2202.

27. This Court has personal jurisdiction over each of the defendants because each is a citizen of the State of Indiana.

28. Venue is proper in this district pursuant to 28 U.S.C. §1391(b) because a substantial part of the events or omissions giving rise to the claim occurred in this district.

Factual Allegations

National Voter Registration Act of 1993

29. The NVRA has the purpose of "establish[ing] procedures that will increase the number of eligible citizens who register to vote in elections for Federal office." 42 U.S.C. §1973gg(b)(1).

30. In furtherance of that goal, the NVRA mandates that "each state shall designate as voter registration agencies -- (A) all offices in the state that provide public assistance." 42 U.S.C. §1973gg-5.

31. The FSSA local offices are mandatory voter registration agencies under Section 7 of the NVRA.

32. The NVRA requires that "the following services shall be made available" at every public assistance agency:

- (a) "Distribution of mail voter registration application forms";
- (b) "Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance"; and
- (c) "Acceptance of completed voter registration application forms for transmittal to the appropriate State election official." 42 U.S.C §1973gg-5(a)(4)(A)(i)-(iii).

33. The NVRA requires that a voter registration agency that provides public assistance services distribute with each application for service, and with each recertification, renewal or change of address form, a mail-in voter registration application form. Each such voter registration agency must also provide, and clients must complete, a voter notice form that includes:

- (a) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today";
- (b) the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency";
- (c) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote, together with the statement, in close proximity to the boxes and in prominent type, "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT REGISTER TO VOTE AT THIS TIME";
- (d) the statement, "If you would like help in filling out the voter registration form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private"; and
- (e) the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____," the blank being filled by the name,

address, and telephone number of the appropriate official to whom such a complaint should be addressed.

42 U.S.C. §1973gg-5(a)(6)(B).

34. The NVRA requires that "[e]ach State shall 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.

35. In order to ensure state compliance, the NVRA provides a private right of action to "a person who is aggrieved by a violation" of the NVRA. 42 U.S.C. §1973gg-9. The NVRA generally requires that, at least 90 days prior to bringing an action to enforce the NVRA, an aggrieved person or organization must provide written notice to the state-designated "chief election official" in order to identify the violation(s) and to provide the state an opportunity to cure the violation(s) prior to the commencement of litigation.

Indiana's Failure to Offer Voter Registration to Public Assistance Clients

36. Indiana has designated the Co-Directors of the Indiana Election Division as the "chief state election official responsible for the coordination of state responsibilities under [the] NVRA." Ind. Code §3-7-11-1. *See also* n. 5, *supra*. As such, they are responsible, together with the Indiana Election Commission, for the "implementation and administration of [the] NVRA by the state, county, municipal, and nongovernmental offices designated as registration sites under this article," including development of training programs, protection "of the fundamental rights of voters," and development of public awareness programs to assist voters in understanding the services available to them under the NVRA. Ind. Code §3-7-11-2. The Indiana Election Commission is responsible for issuing rules "to implement and administer [the] NVRA." Ind. Code §3-6-4.1-14(a)(2)(A)(ii).

37. Under Indiana law, all offices that administer the food stamps program, TANF, and Medicaid "provide public assistance within the scope of [the] NVRA," Ind. Code §3-7-15-2, and are required to have voter registration materials, including registration applications and voter notice forms to distribute to each person who applies, recertifies, renews, or changes an address

in connection with public-assistance benefits. Ind. Code §§3-7-15-1, 3-7-15-2, 3-7-15-3. *See also* 42 U.S.C. §1973gg-5.

38. The FSSA, through its Division of Family Resources, administers public assistance programs in Indiana including, but not limited to, the food stamps program, Medicaid, and TANF. The Secretary of the FSSA, Anne W. Murphy, is accountable for the overall policy development and management of FSSA. The Director of the DFR, Cathy Boggs, is accountable for the administration of the state's food stamps, TANF, and Medicaid programs.

39. The FSSA has failed to comply and currently is not complying with its obligation under Section 7 of the NVRA to offer clients the opportunity to register to vote or to update their voter registration in conjunction with every application for public assistance benefits, and every renewal, recertification, and change of address relating to the receipt of public assistance benefits. The FSSA also is failing to provide the voter notice form required by Section 7 during each statutorily-covered transaction.

40. Defendants, through their actions and inaction, are responsible for the failure of FSSA to comply with its obligations under Section 7 of the NVRA.

41. The Indiana Election Commission has not adopted any rules to implement and administer the NVRA at Indiana public assistance offices. Likewise, the Co-Directors of the Indiana Election Division have not issued any rules, standards, procedures, or guidance to implement and administer the NVRA at Indiana public assistance offices.

42. The number of voter registration applications received from FSSA offices has declined sharply despite a substantial increase in participation in the Food Stamp program, one of the most widely used public assistance programs covered by Section 7 of the NVRA. The following table shows the average monthly number of adult citizen Food Stamp program participants in Indiana and the average monthly number of voter registration applications collected by public assistance offices in Indiana, since 1995.^{6/} Even by this conservative count,

6. Sources: U.S. Dep't of Agriculture, *Characteristics of Food Stamp Households* (FY1999 through FY2007); Fed. Election Comm'n, *The Impact of the National Voter Registration Act, 1995-1996* (1997); Fed. Election Comm'n, *The Impact of the National Voter Registration Act, 1997-1998* (1999); Fed.

(continued...)

which includes all voter registration applications collected from all public assistance offices, and not just applications collected from those persons participating in the food stamps program, the registration application numbers are dismal and declining rapidly. Voter registration applications originating in public assistance agencies in Indiana have declined 97% since 1995-1996.

Year	Average Monthly Adult Citizen Food Stamp Participation	Average Monthly Public Assistance Agency Registration Applications
1995/1996	N/A ^{7/}	3,494
1997/1998	N/A	1,073
1999/2000	144,500	775
2001/2002	186,500	553
2003/2004	242,500	628
2005/2006	279,500	251
2007/2008	286,000 ^{8/}	105

This decline in registration applications has occurred notwithstanding the fact that large numbers of low income Indiana citizens remain unregistered. In 2008, 41% of adult citizens in households making less than \$25,000.00 per year were not registered to vote compared to 20% of those in households making \$100,000.00 or more.^{9/}

(...continued)

Election Comm'n, *The Impact of the National Voter Registration Act, 1999-2000* (2001); Fed. Election Comm'n, *The Impact of the National Voter Registration Act, 2001-2002* (2003); U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act, 2003-2004* (2005) U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act, 2005-2006* (2007); U.S. Election Assistance Comm'n, *The Impact of the National Voter Registration Act, 2007-2008* (2009); Douglas R. Hess & Jody Herman, Project Vote, *Performance Indicators for Section 7 of the NVRA* (2008), http://www.projectvote.org/images/publications/NVRA/Measuring_States_NVRA_Performance_5-1-08.pdf.

7. Data from 1995-1998 are unavailable.

8. Food stamp program participation data is unavailable for fiscal year 2008. This chart includes data for fiscal year 2007. Source: U.S. Dep't of Agriculture, *Characteristics of Food Stamp Households: Fiscal Year 2007* (2008), available at <http://www.fns.usda.gov/ora/menu/Published/SNAP/FILES/Participation/2007Characteristics.pdf>.

9. Source: U.S Census Bureau, *Current Population Survey, November 2008 Voting and Registration Supplement*.

43. As demonstrated by the above data alone, Indiana's FSSA offices are clearly failing in their obligation to provide the voter registration opportunities mandated by Section 7 to every individual who applies for public assistance benefits, and who renews, recertifies, or changes an address at an FSSA office relating to the receipt of public assistance benefits.

44. Interviews of clients leaving FSSA offices confirm what the data show, namely, that voter registration services are not being provided at each statutorily-covered transaction. In November 2008, Project Vote conducted interviews of 21 individuals exiting Indiana public assistance agencies who had conducted transactions triggering the NVRA's voter registration obligations. None of the 21 individuals interviewed were provided with a voter registration application. None of the 21 individuals interviewed were provided with a voter notice form asking the client if he/she would like to register to vote. Furthermore, 13 of the 21 individuals interviewed had met with a caseworker, yet none of these clients were asked by any FSSA employee, including their caseworker, whether they would like to register to vote. Seven of the 21 individuals were not registered to vote at their current address at the time of the interviews.

45. Project Vote also conducted investigations of seven FSSA offices in November 2008. Only one office out of the seven had voter registration forms available upon request. Staff in the six other offices reported that they had no voter registration application forms and referred the investigator to external agencies, such as the Department of Motor Vehicles, to register to vote. None of the investigated offices had voter registration forms available in the waiting area. Furthermore, FSSA staff in all seven offices admitted they did not provide clients with voter registration application forms with each application, recertification, renewal, and address change. None of the investigated offices offered the required voter notice form as part of the benefits application or along side it.

46. Indiana's failure to comply with Section 7 requirements is widespread. Project Vote's November 2008 investigation reveals that obvious violations are occurring in some of Indiana's most economically depressed cities, Gary, East Chicago, and Indianapolis. Specifically:

- (a) At a Lake County FSSA office located at 110 W. Ridge Road in Gary, a staff person told the Project Vote investigator that the office "doesn't carry voter registration forms any more."
- (b) At a Lake County FSSA office located at 3714 Main Street in East Chicago, a staff person instructed the Project Vote investigator to go to the Driver's License Bureau to get a voter registration application.
- (c) At a Marion County FSSA office located at 3500 Lafayette Road in Indianapolis, an FSSA staff person responded to the Project Vote investigator's request for a voter registration application form by saying, "voting is over" and directing the investigator to the local precinct to register to vote.
- (d) At a Marion County FSSA office located at 1920 Morris Street in Indianapolis, an FSSA staff person told the Project Vote investigator that the office does not do voter registration and that the investigator should go somewhere else to register to vote. The staff person was unable to provide the investigator with any alternative location that would offer voter registration.

47. Other FSSA offices that have adopted the "partially delegated" system of public assistance benefits administration are failing to distribute voter registration application forms, and voter notice forms with the required statements, with each application for assistance, and each recertification, renewal, or change of address relating to an applicant's receipt of public assistance. All FSSA offices, including those with the "partially delegated" administration system, are failing in their duties despite the requirement that "all offices in the State that provide public assistance" must offer the above listed voter registration services required by the NVRA. 42 U.S.C. §§1973gg-5(a)(2)(A); 1973gg-5(a)(6).

48. Defendants are failing in their duties to coordinate Indiana's responsibilities under the NVRA. 42 U.S.C. §1973gg-8.

49. On January 29, 2009, Project Vote sent a letter on behalf of ACORN to defendants King and Potesta, in their capacity as Co-Directors of the Indiana Election Division, in order to "provide written notice of the violation to the chief election official of the State," as required by the NVRA. 42 U.S.C. §1973gg-9. This letter stated that in the absence of a plan to remedy Indiana's failure to implement the NVRA, Project Vote would have no choice but to commence litigation. A copy of the January 29, 2009 letter is attached as Exh. 2.

50. As of the date of this filing, defendants King and Potesta have provided no response to Project Vote's January 29, 2009 letter.

51. Plaintiff Alexander and members of plaintiffs ACORN and NAACP are not being offered the opportunity to register to vote, or update their voter registration information, in accordance with federal law as a result of defendants' noncompliance with Section 7.

52. Plaintiff Alexander is registered to vote at her previous address at 4141 Meander Bend, Indianapolis, Indiana, 46268. Plaintiff Alexander moved from Meander Bend to her new residence at 5602 Whitcomb Court, Apt. A, Indianapolis, Indiana, 46224 during the first week of March 2009. Plaintiff Alexander first visited the FSSA office located at 3500 Lafayette Road in Indianapolis to apply for public assistance benefits (food stamps) the very next week.

53. Plaintiff Alexander met with her caseworker at the FSSA office at 863 Massachusetts Avenue in Indianapolis in April 2009. At no time during the application process did anyone ask her, verbally or in writing, if she wanted to register to vote or update her voter registration information. She was not given any document that inquired if she would like to register to vote at the FSSA office.

54. Plaintiff Alexander is not registered to vote at her current address. She receives public assistance (food stamps) and was not given the opportunity to update her voter registration when she applied for public benefits at the FSSA offices in Indianapolis. Plaintiff Alexander would have updated her voter registration during her benefits application process had FSSA staff offered the opportunity.

55. As a result of defendants' ongoing violation of the NVRA, plaintiffs ACORN and NAACP's members who apply, recertify, renew, or change their addresses for the purpose of receiving public assistance benefits are not being advised that they are able to register to vote, or update their voter registration, at that time. Consequently, defendants are not providing ACORN and NAACP members the opportunity to register to vote at their current address as required by Section 7 of the NVRA.

56. Due to the failure of defendants and the FSSA offices to provide voter registration services to individuals who submit applications for public assistance benefits, recertifications, renewals, and address changes, plaintiff ACORN has borne the burden of reaching out to these individuals to offer them voter registration opportunities. As a means of building stronger communities, ACORN is a strong advocate for broader voter participation and community engagement. More registered voters in an ACORN-served community means that ACORN can encourage more people to vote on Election Day and generate a higher amount of voters, strengthening the community. ACORN members who are registered to vote have a genuine interest in other members of their community being registered to vote. Although ACORN encourages its members to register to vote, not all of its members are registered. Many of ACORN's members receive public assistance and would greatly benefit from being offered the opportunity to register to vote, or update their voter registration, during visits to FSSA offices to apply, recertify, renew, and change their address for public assistance benefits.

57. ACORN seeks to increase political participation in the communities it serves. As part of those efforts, ACORN conducts voter registration drives across the State of Indiana. As a result of defendants' ongoing violations of the NVRA, ACORN and its members have expended substantial resources, including staff time and volunteer allocation, to assist individuals with voter registration who were entitled by law to have been offered voter registration opportunities by staff at FSSA offices. ACORN is also hurt by having to allocate resources assisting people who should have been registered already and in communities where people should have been registered. These injuries to ACORN will continue in the future until defendants' noncompliance with their obligations under the NVRA is remedied.

58. NAACP works to support the civil rights efforts of all people in Indiana, particularly minorities. NAACP also works to encourage civil and electoral participation of traditionally underrepresented groups in the state. Defendants' continued noncompliance with Section 7 has frustrated these efforts, as many low-income and minority Indiana citizens have missed their chance to update their voter registration at FSSA offices as a result of the aforementioned

violations. Moreover, but for defendants' violations, NAACP volunteers would not have had to spend time assisting Indiana citizens with voter registration who should have been offered voter registration opportunities by staff at FSSA offices.

59. Defendants' failure to offer voter registration to all people who apply, recertify, renew, and change their address for the purpose of receiving public benefits has had a direct effect on NAACP's volunteer allocation with respect to its voter registration efforts. NAACP sends its volunteers to do voter registration drives in areas where groups of people congregate. NAACP allocates increased numbers of volunteers to voter registration drives where the need for voter registration services is greatest. Conversely, NAACP sends fewer volunteers to voter registration drive locations where more people are already registered. If FSSA were operating in compliance with the NVRA, NAACP would be able to send fewer volunteers to voter registration drives in communities where people are offered voter registration at regular intervals by FSSA. Defendants' continued noncompliance with the law has forced NAACP to send increased numbers of volunteers to assist people with voter registration who should have been offered those services by FSSA. As a result, NAACP is unable to allocate those volunteers to other activities central to the organization's mission. This unnecessary strain on NAACP's volunteer resource will continue unless and until defendants' violations are remedied.

Class Action Allegations

60. Plaintiffs bring their claims under the NVRA as a class action pursuant to Rule 23(b)(2) of the Federal Rules of Civil Procedure, on behalf of themselves and all other individuals similarly situated, as more specifically described below.

61. Plaintiffs seek to represent the class of all residents of the State of Indiana, past, present, and future, who are eligible to register to vote in Indiana, are not registered to vote at their current residence address, have applied for public assistance through an FSSA office or have requested recertification or renewal or sought a change of address relating to public assistance through an FSSA office, and in that transaction were not provided by the FSSA with a

voter registration application, were not offered assistance in completing a voter registration application by the FSSA to the same degree that the FSSA provides assistance in completing public assistance forms, were not provided such assistance (unless refused) by the FSSA, and/or were not provided with a voter notice form by the FSSA.

62. The named plaintiffs as class representatives, and the class as defined above, meet each of the requirements of Rule 23(a) and (b)(2) of the Federal Rules of Civil Procedure for certification of this case as a class action, for the reasons stated below.

63. *Rule 23(a)(1) -- Numerosity.* The plaintiff class is so numerous that joinder of all members is impracticable. On information and belief, the class is believed to include tens of thousands of Indiana residents, although the exact size of the class is currently unknown. For example, as set forth above, the Indiana Food Stamp program, which is just one of the public assistance programs subject to Section 7 of the NVRA, had 286,000 adult citizen participants per month, on average, during fiscal year 2007 (the last year for which such data are available). If only a small percentage of these individuals were not registered to vote at their current address this would still mean that thousands of public assistance recipients are not registered to vote; in actuality, as set forth above, in 2008 41% of adult citizens in Indiana households making less than \$25,000.00 per year were not registered to vote.

64. *Rule 23(a)(2) -- Commonality.* There are numerous common questions of law and fact in this action that relate to and affect the claims of relief sought by the class. The common legal issue is whether defendants have complied with their responsibilities under Section 7 of the NVRA. The common factual questions include, for example: whether FSSA offices distribute a voter registration application with each application for public assistance, and with each recertification, renewal, and change of address request relating to public assistance; whether FSSA offices distribute a voter notice form with each application for public assistance, and with each recertification, renewal, and change of address request relating to public assistance; whether FSSA offices provide assistance in completing voter registration forms, to the same degree they provide assistance in completing FSSA public assistance forms, unless the public

assistance applicant or recipient refuses such assistance; and whether the Indiana Election Division and the Indiana Election Commission take all actions necessary to ensure that FSSA offices are complying with the requirements of Section 7 of the NVRA.

65. *Rule 23(a)(3) -- Typicality.* The claims of the named plaintiffs, as class representatives, are typical of the claims of the class. The named plaintiffs have been affected by the same practices that plaintiffs allege in this complaint have harmed the class as a whole and other class members individually.

66. *Rule 23(a)(4) -- Adequacy.* The named plaintiffs will fairly and adequately represent the interests of the class. There is no conflict between any named plaintiffs and other members of the class with respect to this action or the claims for relief set forth in this complaint. In addition, plaintiffs' counsel will fairly and adequately represent the interests of the plaintiff class, considering: (a) the work counsel has done in identifying and investigating defendants' compliance with Section 7 of the NVRA; (b) counsel's knowledge of the NVRA and experience in handling litigation asserting violations of the NVRA; (c) counsel's experience in handling complex litigation, including complex voting rights litigation and class actions; and (d) the resources counsel will commit to representing the class.

67. *Rule 23(b)(2) -- Case Maintainable Under this Rule.* This action is properly maintained as a class action pursuant to subsection (b)(2) of Rule 23 in that the challenged conduct is generally applicable to the class such that final injunctive or declaratory relief will necessarily be classwide in scope and appropriate with respect to the class as a whole.

Claim for Relief
(Violation of Section 7 of the National Voter Registration Act of 1993)

68. Plaintiffs incorporate by reference the allegations contained in ¶¶1-66 as if fully set forth herein.

69. Because of the failure to provide the voter notice form and registration opportunities and assistance required by Section 7 of the NVRA, 42 U.S.C. §1973gg-5, defendants have violated and continue to violate the NVRA.

70. Plaintiffs have been aggrieved by this violation of the NVRA and have no adequate remedy at law for defendants' violation of their rights. Declaratory and injunctive relief are required to remedy defendants' violation of the NVRA and to secure ongoing compliance with the NVRA.

Prayer for Relief

WHEREFORE, plaintiffs respectfully request that the Court enter an order:

- (a) certifying a class under Rule 23(b)(2) defined as: "all residents of the State of Indiana, past, present, and future, who are eligible to register to vote in Indiana, are not registered to vote at their current residence address, have applied for public assistance through an FSSA office or have requested recertification or renewal or sought a change of address relating to public assistance through an FSSA office, and in that transaction were not provided by the FSSA with a voter registration application, were not offered assistance in completing a voter registration application by the FSSA to the same degree that the FSSA provides assistance in completing public assistance forms, were not provided such assistance (unless refused) by the FSSA, and/or were not provided with a voter notice form by the FSSA;
- (b) declaring, pursuant to 28 U.S.C. §2201 and 42 U.S.C. §1973gg-9(B)(2), that defendants have violated Section 7 of the NVRA, 42 U.S.C. §1973gg-5, by failing to provide voter registration services as required by the NVRA at offices that provide public assistance, including the FSSA;
- (c) permanently enjoining defendants, their agents and successors in office and all persons working in concert with them, from implementing practices and procedures that violate Section 7 of the NVRA, 42 U.S.C. §1973gg-5;
- (d) directing defendants, under a Court-approved plan with appropriate reporting and monitoring requirements, to take all appropriate measures necessary to remedy the harm caused by their non-compliance with Section 7 of the NVRA, including, without limitation, ensuring that individuals affected by defendants' non-compliance with Section 7 of the NVRA are provided immediate opportunities to register to vote or change their voter registration addresses;
- (e) directing defendants, under a Court-approved plan with appropriate reporting and monitoring requirements, to take all steps necessary to ensure ongoing compliance with the requirements of Section 7 of the NVRA, 42 U.S.C. §1973gg-5, including, without limitation, training and monitoring personnel to ensure that designated agencies are making voter registration materials available, inquiring of all applicants, in writing, whether they would like to register to vote or change their voter registration addresses, assisting applicants in completing the voter

registration applications, and providing other voter registration services and assistance as required by the NVRA;

- (f) awarding plaintiffs costs and disbursements incurred in connection with this action, including, without limitation, reasonable attorneys' fees and costs pursuant to 42 U.S.C. §1973gg-9(c);
- (g) retaining jurisdiction over this action to ensure that defendants are complying with their obligations under the NVRA; and
- (h) awarding such other equitable and further relief as the Court deems just and proper.

DATED: September 15, 2009

Respectfully submitted,

/s/ Benjamin J. Blustein
Benjamin J. Blustein
One of the Attorneys for Plaintiffs

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(212) 358-1353 (telefax)

* Motion to appear *pro hac vice* pending

** *Pro hac vice* applications to be filed

EXHIBIT 1

SECRETARY OF STATE
STATE OF INDIANA



Todd Rokita
Secretary of State

1/26/2009

Nicole C. Kovite
Project Vote
739 8th Street SE, Suite 202
Washington, DC 20003

Re: Correspondence regarding FSSA compliance with NVRA

Dear Ms. Kovite:

The Office of the Indiana Secretary of State is in receipt of your fax and letter dated January 7, 2009 regarding the Indiana Family and Social Services Agency's (FSSA) compliance with the National Voter Registration Act of 1993 (NVRA). Project Vote's interest in state compliance with the NVRA is appreciated.

As Indiana's Chief Election Official, the Secretary of State provides broad and extensive voter registration outreach which has resulted in higher than ever rates of voter registration and participation. As of this date Indiana enjoys a record number of registered voters. Over the past six years, spanning four election cycles, the Secretary of State made annual visits to each county in the state, and facilitated voter registration at dozens of community events. The Secretary of State has also overseen creation and implementation of Indiana's successful statewide voter registration system and implementation of the state's plan under the Help America Vote Act.

However, pursuant to Indiana Code 3-7-11-1, the co-directors of the Indiana Election Division are jointly designated as the state election officials responsible for the coordination of state voter registration responsibilities under the NVRA, *not* the Secretary of State. As such, the narrow issue of NVRA implementation (i.e. the issue of which you complain) has been specifically delegated to the co-directors of the Indiana Election Division, who are appointed by the Governor from a very short list of persons provided by the major political parties.

I have forwarded a copy of your letter to the co-directors of the Indiana Election Division and to the General Counsel for the FSSA. We feel that it would be appropriate for those entities to address the issues raised. Since your letter references the prospect of litigation, I have also forwarded a copy to the Indiana Attorney General.

I suggest that any further correspondence regarding this matter be sent to those copied on this letter and not to the Indiana Secretary of State's office.

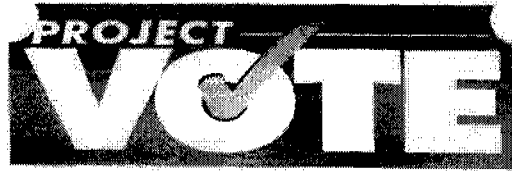
Truly yours,



Jerold A. Bonnet, General Counsel
Office of the Indiana Secretary of State of Indiana

cc: J. Bradley King and Pamela Potesta, Co-Directors, Indiana Election Division
Indiana Family and Social Services Administration, General Counsel.
Office of the Indiana Attorney General, attn: Tom Fisher, Solicitor General.

EXHIBIT 2



By Facsimile and U.S. Mail

January 29, 2009

J. Bradley King
Pamela Potesta
Indiana Election Division
302 West Washington Street
Room E-204
Indianapolis, IN 46204

RE: FSSA noncompliance with National Voter Registration Act of 1993 (NVRA)

Dear Mr. King and Ms. Potesta:

On behalf of Project Vote and the Association of Community Organizations for Reform Now (ACORN), we write to notify you that the Indiana Family and Social Services Administration (FSSA) is not in compliance with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg, et seq. (the "NVRA"). The NVRA establishes clear obligations on the part of state public assistance agencies to provide voter registration services. The law provides for a private right of action in the event that agencies fail to comply with the NVRA. We urge you to take steps to bring the state into compliance.

Federal law requires agencies designated by the state as "voter registration agencies" to provide certain specified voter registration services. See 42 U.S.C. § 1973gg-5, Indiana Code (IC) 3-7-21. FSSA is a designated "voter registration agency" and, therefore must, at a minimum, distribute mail voter registration application forms, assist applicants in completing the voter registration forms, and accept completed voter registration forms and forward them to the appropriate election official. 42 U.S.C. § 1973gg-5(a)(4)(A). More specifically, pursuant to Section 7 of the NVRA, FSSA offices must (i) distribute voter registration materials with each application for assistance and with each recertification, renewal or change of address form relating to such assistance; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address; (iii) inform the applicant, in writing, that the decision to register or decline to register to vote will not affect the amount of assistance provided by the agency; and (iv) provide assistance completing the voter registration forms to the same degree the agency provides assistance in completing its own forms. See 42 U.S.C. § 1973gg-5(a)(6).

Substantial evidence demonstrates Indiana FSSA's failure to provide mandatory voter registration services at its offices as required by the NVRA. For example, the most recent report available from the U.S. Election Assistance Commission concerning voter registration at public assistance agencies shows that Indiana's election officials received only 6,023 registration applications from public assistance agencies in 2005 and 2006. This number represents a 93 percent decrease in voter registrations at public assistance agencies since implementation of the

NVRA and is exceptionally low considering (a) the continuing need for voter registration services in the state and (b) the number of citizens utilizing public assistance in the state. According to the most recent Census data, over 1.5 million citizens of voting age are unregistered in the state and approximately 385,000 citizens of voting age are unregistered from households earning less than \$25,000 a year. Almost 50 percent of all low-income Indianans were unregistered in 2006, the fourth highest rate in the nation.

J. Bradley King
Pamela Potesta
January 29, 2009

Furthermore, over a quarter million adult citizens were participating in the Food Stamp Program – just one of several programs for which voter registration services are required under the NVRA – in an average month during the period when the state assisted only six thousand clients with voter registration applications. In short, the need for public assistance agency registration in the state is still clear and the potential for these programs remains high given the size of the client pool. This decline in performance is particularly troubling since Indiana assisted more than 80,000 citizens with voter registration applications at public assistance agencies in the first two years after passage of the NVRA, during 1995 and 1996.¹

A November 2008 investigation of FSSA agency offices by Project Vote makes it clear that Indiana is disregarding its obligations under the NVRA. Project Vote found that none of the offices it visited were providing voter registration applications to their clients. Nearly all of the offices had no voter registration forms on their premises. None of the benefits applications collected during Project Vote's investigation included the required voter registration materials. FSSA staff members who were interviewed by Project Vote were unaware of their obligations under the NVRA. In fact, several suggested that the investigator must go to the motor vehicle department to obtain a voter registration application. Project Vote found that none of the clients, who were interviewed after completing NVRA-covered transactions in those offices, said they had been offered an opportunity to register to vote.

By requiring states to provide voter registration applications at public assistance agencies, Congress specifically intended to increase voter registration among low-income citizens. FSSA's failure to comply with these provisions of the NVRA has profound consequences. Indiana must recognize its obligations under the NVRA and implement changes promptly so that all of its citizens, including the hundreds of thousands of citizens who receive public assistance, are able to participate in the electoral process.

This letter is our attempt to ensure that Indiana comes into compliance with the public assistance provisions of the NVRA. Please advise us promptly of the steps you intend to take to remedy Indiana's violations of Section 7 of the NVRA, including (i) the measures you will implement to assure future compliance and (ii) the steps you will take to provide registration opportunities to those who have been denied their rights under Section 7 of the NVRA. We are happy to meet with you at your earliest convenience to assist in the development of a comprehensive plan for compliance.

If you do not provide a plan for compliance, we will have no alternative but to initiate litigation. We look forward to hearing from you.

Sincerely,



Nicole C. Kovite
Director, NVRA Implementation Project
Project Vote – www.projectvote.org
nkovite@projectvote.org
(202) 546-4173; Ext. 303 (Work)
(202) 271-5101 (Cell)

¹ Data in the preceding two paragraphs are drawn from *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007* and *Representational Bias in the 2006 Electorate*. Both available at: <http://www.projectvote.org>.

J. Bradley King
Pamela Potesta
January 29, 2009

cc: Indiana Family and Social Services Administration
402 West Washington St
PO Box 7083
Indianapolis, IN 46207-7083
317-233-4454 (Tel.)
www.in.gov/fssa

CERTIFICATE OF SERVICE

Lisa Mecca Davis certifies that she caused a copy of the foregoing Corrected Amended Complaint to be served upon all counsel of record, by this Court's electronic-filing system, this sixth day of October, 2009.

/s/ Lisa Mecca Davis
Lisa Mecca Davis