

UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF OHIO

CARRIE HARKLESS, TAMECA MARDIS  
and ASSOCIATION OF COMMUNITY  
ORGANIZATIONS FOR REFORM NOW,

Plaintiffs,

v.

J. KENNETH BLACKWELL, in his official  
capacity as Secretary of State, and BARBARA  
RILEY, in her official capacity as Director of  
the Department of Job and Family Services,

Defendants.

CIVIL ACTION NO. \_\_\_\_\_

**COMPLAINT**

Plaintiffs Carrie Harkless, Tameca Mardis and Association of Community Organizations for Reform Now (“ACORN”), through their undersigned counsel, for their Complaint against defendants J. Kenneth Blackwell and Barbara Riley, allege, upon knowledge as to their own conduct and information and belief as to the conduct of others:

**Introduction**

1. This action seeks declaratory and injunctive relief to redress defendants’ ongoing disregard of their obligations under Section 7 of the National Voter Registration Act of 1993 (the “NVRA”), 42 U.S.C. § 1973gg-5. Section 7 of the NVRA mandates that all offices in a state that provide public assistance must distribute voter registration application forms, assist applicants in completing the forms, and accept completed voter registration application forms. Section 7 further requires all public assistance offices to distribute voter registration materials with each application, recertification, renewal or change of address relating to an applicant’s receipt of public assistance. Pursuant to the federal law, the public assistance agencies must also

inquire of every applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address and explain to every applicant that the decision whether to register to vote will not affect the applicant's eligibility for benefits or the amount of benefits available.

2. The requirements of Section 7 reflect Congress's objective to increase the number of eligible citizens who register to vote in federal elections, and to ensure the registration of "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]." 42 U.S.C. § 1973gg(b)(1); NVRA Conference Report (H.Rept. 103-66).

3. Defendant Blackwell, who as Secretary of State and "chief elections official" is responsible for ensuring Ohio's compliance with the NVRA's requirements, including Section 7, has not fulfilled his responsibilities for implementing voter registration opportunities in the state's Department of Job and Family Services ("DJFS"). Defendant Riley, as Director of DJFS -- the state agency responsible for administration of most public assistance programs in Ohio covered by the NVRA -- also has failed to ensure implementation of programs and procedures to make voter registration available in agency offices, as mandated by Section 7.

4. As a result of these ongoing violations, thousands of Ohio's low-income citizens who receive public assistance, including plaintiffs Carrie Harkless and Tameca Mardis, have not been offered the opportunity to register to vote or to change their voter address upon moving to a new residence. ACORN and its members have expended substantial time and resources in an effort to make voter registration available to these low-income citizens -- which would have been unnecessary had defendants complied with the law -- but thousands of eligible voters remain unregistered and effectively disenfranchised as a result of defendants' actions and inaction.

## Parties

5. Plaintiff Carrie Harkless is an Ohio citizen residing at 3520 Beavercrest Drive, Lorain, Ohio. Ms. Harkless receives Food Stamps, Medicaid and cash assistance through Ohio Works First, all of which are administered by the DJFS. Ms. Harkless has received in the past and her daughter currently receives benefits through the Special Supplemental Nutrition Program for Women, Infants, and Children (“WIC”). Ms. Harkless meets all of the qualifications to register to vote in Ohio, and was previously registered to vote in Ohio. Ms. Harkless has moved since registering to vote and has not changed her voter registration address, and she has not been offered the opportunity to register to vote or change her voter registration address on any of her visits to the DJFS.

6. Plaintiff Tameca Mardis is an Ohio citizen residing at 3103 Walton Avenue, Cleveland, Ohio. Ms. Mardis receives Food Stamps and Medicaid assistance, which are administered by the DJFS. Ms. Mardis meets all of the qualifications to register to vote in Ohio, but is not registered to vote and has not been offered the opportunity to register to vote on any of her visits to the DJFS.

7. Plaintiff ACORN is a non-profit organization incorporated in Louisiana, with offices in Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo, Ohio. The main Ohio office is located at 3615 Superior Avenue, Cleveland, OH 44114. 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 member chapters in 75 cities across the United States and other countries, including more than 5,600 members in its six Ohio chapters. ACORN members

participate in local meetings, actively work on public policy campaigns, and elect their own leaders from their neighborhoods.

8. Defendant J. Kenneth Blackwell is the Secretary of State of Ohio. Defendant Blackwell is the chief elections official in the state of Ohio and is responsible for overseeing the elections process. In this capacity, he issues instructions by directives and advisories regarding the proper methods for conducting elections; prescribes the form of registration cards, blanks and records; investigates election fraud and irregularities; trains election officials; promulgates rules, practices, and procedures to implement laws regarding Ohio elections; and compels the observance of Ohio's election laws. Moreover, defendant Blackwell has been vested with responsibility by Ohio law for designing, implementing and administering a program for registering voters at agencies that provide public assistance, including the DJFS.

9. Defendant Barbara Riley is the Director of Ohio's Department of Job and Family Services. The DJFS administers the following public assistance programs subject to the requirements of the NVRA: Food Stamps, Medicaid, Ohio Works First (Ohio's Temporary Assistance for Needy Families program), the Prevention, Retention and Contingency Program, and Disability Financial Assistance.

### **Jurisdiction and Venue**

10. 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).

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

12. This Court has personal jurisdiction over each of the defendants because each is a citizen of the state of Ohio.

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

### **Factual Allegations**

#### **National Voter Registration Act of 1993**

14. The National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg et al., has the purpose of “establishing procedures that will increase the number of eligible voters who register to vote in elections for federal office.”

15. 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. The DJFS local offices are such mandatory voter registration agencies.

16. At every one of these voter registration agencies, the NVRA requires that “the following services shall be made available:

- (i) Distribution of mail voter registration application forms . . .
- (ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.
- (iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.”

42 U.S.C. § 1973gg-5.

17. The NVRA also requires that a voter registration agency that provides public assistance services distribute with each application for services, and with each 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 “declination statement” asking whether s/he would like to register to vote. The agency must explain to the client that the decision to

register will not affect the applicant's eligibility for assistance or the amount of benefits available.

18. In order to ensure state compliance, the NVRA provides a private right of action to "a person aggrieved by a violation" of the NVRA. 42 U.S.C. § 1973gg-9.

#### **Ohio's Failure to Offer Voter Registration to Public Assistance Clients**

19. The NVRA requires that "[e]ach state shall designate a State officer or employee as the chief election official to be responsible for coordination of State responsibilities" under the NVRA. 42 U.S.C. § 1973gg-8.

20. Ohio has designated the Secretary of State – defendant Blackwell – as "the chief election officer of the state[.]" Ohio Revised Code § 3501.04. As the chief election officer, defendant Blackwell is required, among other things, to "prepare rules and instructions for the conduct of elections," Ohio Revised Code § 3501.5(C) and to "investigate the administration of election laws[.]" Ohio Revised Code § 3501.5(N)(1).21. Furthermore, the Ohio legislature has assigned specific responsibility to the Secretary of State to prescribe a program and adopt implementing rules for registering voters and updating voter registration information at "designated agencies." Ohio Revised Code § 3501.05(R) & (T).

21. A "designated agency" under Ohio law is an office or agency that provides public assistance or services to persons with disabilities that is required by the NVRA to implement a voter registration program. Ohio Revised Code § 3501.01(X). The DJFS is such a "designated agency." Thus, each DJFS office is required to follow the program prescribed by the Ohio Secretary of State to make voter registration available to its clients.

22. Ohio Revised Code § 3503.10 requires: (a) the designation of a voter registration coordinator within each designated agency who is responsible for administering all aspects of the

voter registration program as prescribed by the Secretary of State; (b) training of the voter registration coordinator by the Secretary of State; (c) training of those employees within designated agencies who will provide voter registration assistance to the public; (d) the transmittal of written instructions prepared by the Secretary of State to designated agencies regarding the voter registration program; and (e) under the Secretary of State's control and direction, the display in a prominent location in each designated agency a notice that identifies the person designated to assist with voter registration, the nature of that person's duties, and where and when that person is available for assisting in the registration of voters. Ohio Revised Code § 3503.10.

23. There is widespread ongoing noncompliance with the requirements of Section 7 at the state's DJFS offices.

24. DJFS has denied any legal responsibility for ensuring that voter registration services are available at public assistance agencies. Rather, DJFS has indicated that the sole responsibility lies with the Secretary of State's office.

25. The Secretary of State's Office, while admitting a role in the oversight of voter registration services at public assistance agencies, has limited its activities to the maintenance of a toll-free telephone number that county DJFS offices may call to receive more voter registration application forms when they run out, but most counties do not even do that much. Moreover, the Secretary of State's office does not enforce any obligations by the county offices to comply with NVRA requirement or take other action in its oversight role to enforce compliance: It does not provide ongoing training to DJFS offices on voter registration; does not require each DJFS office to report which employee is the designated voter registration official; does not maintain a listing of the designated voter registration officials; does not monitor whether the required signage is in

fact posted in each DJFS office; does not require each DJFS office to report the number of voter registration applications processed by each office in absolute number, as a percentage of applicants or as a percentage of applicants who are not registered to vote; and does not require each DJFS office to maintain the NVRA-mandated declination statements.

26. Defendants have failed to monitor NVRA compliance by DJFS offices or enforce the mandates of Section 7 of the NVRA in such offices -- making Section 7 the only federally mandated program available at the agencies that is not subject to reporting or monitoring by the state. The state's noncompliance with Section 7 requirements in DJFS offices is widespread.

27. For example, in October and November 2005, in spot-checks at the DJFS offices in Lorain County, Franklin County, Delaware County, Lake County, Mahoning County, and Cuyahoga County, there were no available voter registration application forms at any offices except the Mahoning County office. Even in the Mahoning County DJFS office, the intake clerk was unaware that voter registration application forms were available and the forms themselves were buried on a shelf in a remote corner of the room. Specifically:

- (i) At the Cuyahoga County DJFS office located at 1541 Payne Ave., there were no voter registration application forms visible in the waiting room and the clerk said that the office did not have any voter registration application forms. Cuyahoga County includes the city of Cleveland, which the United States Census Bureau has identified as having the highest poverty rate of any large city in the country.
- (ii) The Lorain County DJFS office located at 42485 North Ridge Rd., Elyria, had no forms immediately available. Even when the clerk called her

superior to see if any were available in the building, no forms were located.

- (iii) At the Franklin County DJFS Community Opportunity Center located at 345 East 5th Ave., Columbus, there were no voter registration application forms available in the waiting area. A clerk was unable to locate any forms in the office.
- (iv) At the Delaware County DJFS office at 140 N. Sandusky, Delaware, there were no blank voter registration application forms in the waiting area, and the clerk had no additional forms.
- (v) At the Lake County DJFS office at 177 Main St., Painesville, the clerk did not have any voter registration application forms, even though there was a sign announcing that registration forms were available. There were also no registration forms available in the waiting area.

28. In late 2005, ACORN conducted a survey of individuals leaving DJFS facilities. Out of 103 people interviewed who had gone to DJFS for transactions covered under the NVRA, only three reported that they were offered a form that asked them whether they wanted to register to vote.

29. A comparison between counties is instructive as to the failure to provide voter registration services in the public assistance offices that serve the largest numbers of public assistance recipients in the state. Of the DJFS voter registrations processed in the 2002-2004 period, 1,027 were collected in Athens County (a rural county of approximately 60,000 residents in southeast Ohio ) and 1,044 were collected in Marion County (a county of approximately 65,000 residents in central Ohio ). Each of those small county DJFS offices collected more voter

registration application forms than did their counterparts in such highly populated counties as Franklin, Hamilton, Montgomery, and Summit Counties, each of which has more than 500,000 residents and exceeds the statewide percentage of persons below the poverty line. Indeed, Hamilton County includes the city of Cincinnati, which the United States Census Bureau has identified as having the ninth highest poverty rate of all large cities in the country. These four highly populated counties registered a combined total of just 1,686 voters at DJFS offices. This comparison shows that if the state were complying with the NVRA, thousands more eligible citizens would be registered to vote in Ohio.

30. DJFS offices in ten Ohio counties (Erie, Guernsey, Jefferson, Medina, Morgan, Morrow, Muskingum, Ross, Washington and Wyandot) did not register a single voter in the 2002-2004 reporting period. DJFS offices in another 17 counties (Ashland, Clermont, Coshocton, Hancock, Hardin, Hocking, Jackson, Licking, Logan, Lorain, Mercer, Monroe, Perry, Pickaway, Richland, Seneca, and Union) collected fewer than ten voter registrations; and DJFS offices in 32 additional counties (Adams, Auglaize, Brown, Butler, Champaign, Crawford, Fayette, Fulton, Geauga, Harrison, Henry, Holmes, Huron, Lake, Madison, Meigs, Montgomery, Noble, Ottawa, Paulding, Pike, Putnam, Sandusky, Scioto, Shelby, Summit, Vinton, Warren, Wayne, Williams and Wood) submitted fewer than 100 registrations during the same time period.

31. Defendants' failure to comply with the NVRA is further evidenced by the low overall registration rates at DJFS offices. During 2003 and 2004, DJFS offices statewide processed approximately 4.7 million applications and/or recertifications for Food Stamps (just one of the many assistance programs covered by the NVRA), yet processed less than one half of one percent of that number of voter registration application forms -- even though each of those

Food Stamp applicants should have been offered the opportunity to register to vote and/or to change his or her voter registration address at each application or recertification.

32. On February 23, 2006, the Greater Cleveland Voter Coalition sent a letter to defendant Blackwell outlining the state's failure to comply with Section 7 of the NVRA and requesting that steps be taken to bring Ohio into compliance. A copy of the February 23 letter is annexed hereto as Exhibit A.

33. On May 12, 2006, counsel for plaintiff ACORN sent a letter to defendant Blackwell 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 Ohio's failures to implement the NVRA, ACORN would have no choice but to commence litigation. A copy of the May 12 letter is annexed hereto as Exhibit B. Defendant Riley was sent a copy of this letter.

34. On May 26, 2006, Judy Grady of the Secretary of State's Office responded to the Greater Cleveland Voter Coalition letter, asserting that NVRA compliance was not the responsibility of the Ohio Secretary of State, and suggesting that compliance with the NVRA was unnecessary because Ohio has a relatively high voter registration rate. Ms. Grady copied counsel for ACORN on the letter, apparently considering that a response to the May 12 letter as well. A copy of the May 26 letter is annexed hereto as Exhibit C.

35. Counsel for plaintiff ACORN again wrote to defendant Blackwell on July 17, 2006, offering to meet with him to address specific steps Ohio could take to ensure NVRA compliance. A copy of the July 17 letter is annexed hereto as Exhibit D. Blackwell has ignored and failed to respond to the July 17 letter.

36. Notwithstanding the repeated attempts to secure compliance with Section 7 of the NVRA, the vast majority of Ohio's DJFS offices still are not complying with all of the requirements of Section 7 of the NVRA.

37. As a result of Ohio's continuing failure to ensure implementation of Section 7 of the NVRA at public assistance agencies, persons receiving public assistance are not being offered the opportunity to register to vote that federal law requires.

### **ACORN's Voter Registration Efforts**

38. As a means of building stronger communities, ACORN has been a strong advocate for voter participation. More registered voters in a community served by ACORN means that ACORN can encourage more people to vote on election day and generate a higher turnout of voters, all of which strengthens the community. Members of ACORN who are registered to vote have an interest in other members of their community being registered to vote. As an organization devoted to organizing low-and moderate-income families, many of ACORN's members receive public assistance and should be offered the opportunity to register to vote and/or to change their voter registration address during visits to DJFS offices to apply and/or recertify their eligibility for public assistance. And, although ACORN encourages its members to register to vote, some of them are unregistered.

39. ACORN regularly conducts voter registration drives in Akron, Cincinnati, Cleveland, Columbus, Dayton, and Toledo, and those voter registration efforts specifically include, among other things, collecting voter registration applications from individuals outside of DJFS offices in those counties who were not offered the opportunity to register to vote during visits to the DJFS offices. ACORN has spent hundreds of thousands of dollars each year on voter registration activities in the state of Ohio, and an average of one ACORN employee or

volunteer per day per city has participated in voter registration efforts outside of public assistance agencies.

40. Low and moderate income families change their residence more than wealthier families. Therefore even ACORN members who are already registered to vote have an interest in promptly receiving information and assistance regarding changing their voter registration to match their new address.

### **Plaintiff Harkless Is Denied The Opportunity To Register To Vote**

41. Plaintiff Carrie Harkless is 28 years old and has lived in Lorain, Ohio her entire life. Ms. Harkless has one child, age fifteen months.

42. Ms. Harkless is eligible to register to vote in Ohio and is registered at a past address in Lorain. Just less than a year ago, Ms. Harkless moved to her current address, 3520 Beavercrest Drive, Lorain, Ohio, which is in a different precinct in Lorain, and has not changed her voter registration address because of the time demands of caring for her daughter, working and searching for work.

43. Ms. Harkless first applied for and received Medicaid in September 2004 and has received some form of Medicaid since that time. She first applied for and received benefits through WIC while she was pregnant with her daughter in 2005 and continued to receive WIC benefits until shortly after her daughter was born. Her daughter began receiving WIC at birth and continues to receive it. Ms. Harkless first applied for and received Temporary Assistance to Needy Families (“TANF”) benefits when she was unable to work after her daughter was born, and received TANF assistance until December of 2005. Ms. Harkless reapplied for TANF benefits and first applied for Food Stamps in July 2006. Medicaid, Food Stamps and TANF are

each public benefit programs administered by the DJFS and covered by the NVRA. WIC is also a public benefit program covered by the NVRA.

44. Despite her numerous visits to DJFS offices since 2004, including her most recent visits to the DJFS office located at 42485 North Ridge Road, Elyria, Ohio, in July and August 2006, Ms. Harkless has never been offered the opportunity to register to vote or to change her voter registration address, or advised that she could obtain voter registration application or change of address forms and register to vote or change her voter registration address at the DJFS office. Nor has Ms. Harkless been offered the opportunity to register to vote while she and/or her daughter have received WIC benefits.

45. Had she been advised that she could change her voter registration address or offered the opportunity to change her voter registration address at a DJFS office, Ms. Harkless would have done so.

#### **Plaintiff Mardis Is Denied The Opportunity To Register To Vote**

46. Plaintiff Tameca Mardis is 24 years old and has lived in Cleveland, Ohio her entire life. Ms. Mardis has three children, ages five, two and six months.

47. Ms. Mardis is eligible to register to vote in Ohio and would like to register to vote, but she has not registered to vote because she did not know how or where to do so.

48. Ms. Mardis first applied for and received Food Stamps, Medicaid and Temporary Assistance to Needy Families (“TANF”) in or about February 2001. Food Stamps, Medicaid and TANF are each public benefit programs administered by the DJFS and covered by the NVRA.

49. Ms. Mardis has received Food Stamps and Medicaid since approximately February 2001, and received TANF benefits from approximately February 2001 through June

2004 and from approximately March 2006 through May 2006. She recertified her eligibility for benefits as required, visiting a DJFS office approximately every three to six months.

50. Ms. Mardis most recently applied for TANF and recertified her eligibility for Food Stamps and Medicaid in approximately March 2006, and is not required to recertify her eligibility again until approximately March 2007.

51. Despite her numerous visits to DJFS offices over the past five years, including her most recent visit to the DJFS office located at 2502 West 25<sup>th</sup> Street, Cleveland, Ohio, in March 2006, Ms. Mardis has never been offered the opportunity to register to vote nor advised that she could obtain voter registration application forms and register to vote at the DJFS office.

52. Had she been advised that she could register to vote or offered the opportunity to register at a DJFS office, Ms. Mardis would have done so.

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

53. Plaintiffs incorporate by reference the allegations contained in paragraphs 1 through 52 as if fully set forth herein.

54. Because of the failure to provide the voter information and registration opportunities and assistance required by Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. §1973gg-5, defendants have violated and continue to violate the NVRA.

55. 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:

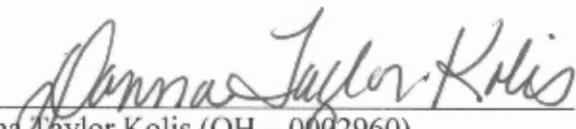
- (i) Declaring, pursuant to 28 U.S.C. § 2201 and 42 U.S.C. § 1973gg-9(b)(2), that defendants have violated Section 7 of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-5, by failing to provide voter registration services as required by the NVRA at agencies that provide public assistance, including the Ohio Department of Job and Family Services;
- (ii) 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;
- (iii) 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 address;
- (iv) 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 address, assisting applicants in completing the voter registration applications, and providing other voter registration services and assistance as required by the NVRA;

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

Dated: Cleveland, Ohio  
September 20, 2006

FRIEDMAN, DOMIANO & SMITH CO., L.P.A.

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