

CIVIL COVER SHEET

The JS 44 civil coversheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

BLACK POLITICAL EMPOWERMENT PROJECT and PENNSYLVANIA COMMUNITIES ORGANIZING FOR CHANGE, INC., doing business as ACTION UNITED

(b) County of Residence of First Listed Plaintiff ALLEGHENY COUNTY (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) DAVID NEWMANN & VIRGINIA GIBSON HOGAN LOVELLS US LLP, 1835 MARKET ST., PHILA., PA 19103 (267) 675-4600

DEFENDANTS

CAROL AICHELE, GARY D. ALEXANDER & DR. ELI N. AVILA

County of Residence of First Listed Defendant DAUPHIN COUNTY (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff, 2 U.S. Government Defendant, 3 Federal Question (U.S. Government Not a Party), 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, PTF DEF, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with columns: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, TORTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Real Property, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding, 2 Removed from State Court, 3 Remanded from Appellate Court, 4 Reinstated or Reopened, 5 Transferred from another district (specify), 6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 42 USC 1973gg

Brief description of cause: VIOLATION OF SECTION 7 OF THE NATIONAL VOTER REGISTRATION ACT OF 1993

VII. REQUESTED IN COMPLAINT:

- CHECK IF THIS IS A CLASS ACTION UNDER F.R.C.P. 23, DEMAND \$, DECLARATORY AND INJUNCTIVE RELIEF, CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 07/05/2012 SIGNATURE OF ATTORNEY OF RECORD /s/ David Newmann

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

BLACK POLITICAL EMPOWERMENT
PROJECT and PENNSYLVANIA
COMMUNITIES ORGANIZING FOR
CHANGE, INC., doing business as ACTION
UNITED,

Plaintiffs,

v.

CAROL AICHELE, in her official capacity as
Secretary of the Commonwealth, GARY D.
ALEXANDER, in his official capacity as
Secretary of Public Welfare, and DR. ELI N.
AVILA, in his official capacity as Secretary of
Health,

Defendants.

CIVIL ACTION NO. ____-cv-____

COMPLAINT

Plaintiffs Black Political Empowerment Project and Pennsylvania Communities Organizing for Change, Inc., doing business as ACTION United, through their undersigned counsel, assert this Complaint for violations of Section 7 of the National Voter Registration Act of 1993 against Defendants Carol Aichele, in her official capacity as Secretary of the Commonwealth; Gary D. Alexander, in his official capacity as Secretary of the Department of Public Welfare; and Dr. Eli N. Avila, in his official capacity as Secretary of the Pennsylvania Department of Health (collectively, “Defendants”), and in support thereof state as follows:

Jurisdiction and Venue

1. This case arises under the National Voter Registration Act of 1993 (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).

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

3. This Court has personal jurisdiction over each of the Defendants because each is a resident of the Commonwealth of Pennsylvania.

4. 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. In particular, and without limitation, substantial violations of Section 7 of the NVRA have occurred at public service agencies in Berks, Delaware and Philadelphia Counties, as set forth more fully below.

Introduction

5. 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. The NVRA was adopted with widespread bipartisan support as part of an effort to make voter registration more widely available and accessible, thereby increasing the number of properly registered eligible voters for federal elections. 42 U.S.C. § 1973gg(b)(1). The statute also reflects Congress’ intent to combat the disproportionate harm to the voter participation of various groups, including racial minorities, caused by discriminatory and unfair registration laws and procedures. 42 U.S.C. § 1973gg(a)(3).

6. Section 7 of the NVRA requires that, in covered states, all public assistance agencies distribute a voter registration application with each application for public assistance,

and each recertification, renewal, or change of address relating to an individual's receipt of public assistance, unless the client declines, in writing, to register. It further mandates that all public assistance offices in a covered state assist clients in completing a voter registration application (unless a client declines such assistance), provide a form that asks clients whether they wish to register to vote and includes certain specified information concerning the voter registration process, and accept completed voter registration forms for delivery to the appropriate elections authority. Section 7 of the NVRA reflects Congress' intent that registration "will be convenient and readily available [for] the poor and persons with disabilities who do not have driver's licenses and will not come into contact with the other principle [sic] place to register under this Act [motor vehicle agencies]." H.R. Rep. No. 103-66, at 15 (1993) (House-Senate Conference Report).

7. Defendant Carol Aichele, as Secretary of the Commonwealth and "chief elections official," is responsible for ensuring Pennsylvania's compliance with the NVRA. Defendant Gary Alexander, Secretary of Public Welfare, and Defendant Dr. Eli N. Avila, Secretary of the Pennsylvania Department of Health ("Secretary of Health"), are directors of the State agencies responsible for administering Pennsylvania's public assistance programs. All three Defendants have failed to ensure that Pennsylvania provides the voter registration services required by the NVRA to its public assistance clients.

8. As a result of these ongoing violations, thousands of Pennsylvania's low-income citizens who apply for and/or receive public assistance, including members of ACTION United, have not been offered the opportunity to register to vote or to change their voter address upon moving to a new residence. Plaintiffs Black Political Empowerment Project and ACTION United have expended and continue to expend 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. Thousands of eligible voters remain unregistered and effectively disenfranchised as a result of the Defendants’ actions and inaction.

9. Plaintiffs’ action is particularly time sensitive. The deadline to register to vote in Pennsylvania for the 2012 federal election is October 9, 2012. Accordingly, in order to allow sufficient time for Defendants to comply with any order that this Court might issue and to develop and implement appropriate remedial practices and policies to ensure compliance with Section 7 of the NVRA, this matter should proceed on an expedited basis.

Parties

10. Plaintiff Black Political Empowerment Project (“B-PEP”) is a non-partisan community collaborative which was launched in 1986 with its principal place of business in Pittsburgh, Pennsylvania. The organization’s mission is to ensure that all African Americans are registered to vote and that they in fact vote in each and every election.

11. To effectuate this goal, B-PEP encourages voter registration and participation, particularly among minority and low-income citizens, and has committed and continues to commit time and personnel to conducting voter registration drives in Pennsylvania (including, for example, conducting approximately 400 voter registration drives in Pennsylvania since 2008). Those voter registration efforts focus on registering voters in low-income neighborhoods, including the registration of individuals who receive or apply for public assistance benefits. Moreover, the voter registration efforts include updating the voter registration address of previously-registered voters who have moved.

12. Plaintiff Pennsylvania Communities Organizing for Change, Inc., doing business as ACTION United (“ACTION United”) is a not-for-profit corporation organized and existing

under the laws of Pennsylvania, with its principal place of business in Philadelphia. ACTION United has more than 52,000 members throughout the state of Pennsylvania, including members who receive and/or have applied and/or will apply for public assistance benefits through both the Department of Public Welfare and the Pennsylvania Department of Health.

13. ACTION United encourages voter registration and participation, particularly among minority and low-income citizens and has committed and continues to commit time and personnel to conducting voter registration drives in the state of Pennsylvania. Currently, ACTION United is engaged in efforts to register its community members, who are typically low-income citizens, through door-to-door canvass and site-based voter registration events in low-income neighborhoods throughout Philadelphia and Pittsburgh. This program is called “Voter Mobilizer.”

14. ACTION United’s voter registration efforts focus on registering voters in low-income neighborhoods, including the registration of individuals who receive or apply for public assistance benefits. Moreover, the voter registration efforts include updating the voter registration address of previously registered voters who have moved. Although ACTION United encourages its members to vote, ACTION United has members who have applied and/or will apply for, and/or receive and/or will receive, public assistance benefits and who are not registered to vote or who will have moved since registering to vote without having updated their voter registration address.

15. Defendant Carol Aichele is the Secretary of the Commonwealth of Pennsylvania. Defendant Aichele is the chief elections official in the state of Pennsylvania and is responsible for overseeing the elections process. In this capacity, she issues procedures for the return of completed voter registration applications; establishes and maintains a statewide qualified

uniform voter file; and proposes rules, practices and procedures to the legislature to help implement laws regarding Pennsylvania elections. *See* 25 Pa. Cons. Stat. Ann. § 1201; 25 Pa. Cons. Stat. Ann. § 2621. The statutory provision implementing the NVRA and outlining the Department of State’s responsibilities requires that the department shall “[p]rovide for applicants to submit their voter registration application to a commission, the Department of Transportation and other agencies designated in section 1325.” 25 Pa. Cons. Stat. Ann. § 1201. These agencies include “all offices in this Commonwealth that provide public assistance, each county clerk of orphans' court, including each marriage license bureau, all offices in this Commonwealth that provide State-funded programs primarily engaged in providing services to persons with disabilities and all armed forces recruitment centers.” 25 Pa. Cons. Stat. Ann. § 1325.

16. Defendant Gary D. Alexander is the Secretary of the Department of Public Welfare (the “DPW”), which is a voter registration agency per the NVRA and Pennsylvania law. The DPW administers the following public assistance programs that, *inter alia*, are subject to the requirements of the NVRA: Temporary Assistance for Needy Families (TANF), Supplemental Nutrition Assistance Program (SNAP or “food stamps”), State Emergency Relief, and Medicaid.

17. Defendant Dr. Eli N. Avila is the Secretary of the Department of Health (the “DOH”), which is a voter registration agency per the NVRA and Pennsylvania law. The DOH administers the Women, Infants, and Children (“WIC”) program, which is subject to the requirements of the NVRA.

Factual Allegations

National Voter Registration Act of 1993

18. The NVRA, 42 U.S.C. § 1973gg et al., has as its purpose, “establishing procedures that will increase the number of eligible voters who register to vote in elections for federal office.” 42 U.S.C. § 1973gg(b)(1).

19. In furtherance of that goal, the NVRA mandates that “each state shall designate as voter registration agencies . . . all offices in the State that provide public assistance” 42 U.S.C. § 1973gg-5(a)(2).

20. Public assistance offices are required to be voter registration agencies because they serve persons who may be less likely than the general public to come into contact with the Department of Motor Vehicles. H.R. Rep. No. 103-66, at 16, *reprinted in* 1993 U.S.C.C.A.N. 140, 144.

21. Voter registration agencies designated under Section 7 are required to make the following services 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(a)(4)(A).

22. Voter registration agencies designated under Section 7 (“public assistance agencies”) have additional voter registration obligations during specific transactions, called “covered transactions,” with clients and potential clients. Paragraph 6 of Section 7 defines a

covered transaction as “each application for such service or assistance, and . . . each recertification, renewal, or change of address.” 42 U.S.C. § 1973gg-5(a)(6)(A). Section 7 requires that during each covered transaction, the agency:

- (A) distribute [a voter registration form] with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance . . . unless the applicant, in writing, declines to register to vote;
- (B) provide a form [referred to as a “voter preference form”] that includes -
 - (i) the question [referred to as a “voter preference question”], “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”
 - (ii) if the agency provides public assistance, 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.”;
 - (iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), 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 TO REGISTER TO VOTE AT THIS TIME.”
 - (iv) the statement, “If you would like help in filling out the voter registration application 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
 - (v) 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; and
- (C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

42 U.S.C. § 1973gg-5(a)(6).

23. Thus, public assistance agencies are required with each covered transaction to provide a voter preference form that asks whether the client wishes to register and informs the client of certain specified information. If the client declines in writing - such as by checking the “no” box on the voter preference form - then nothing further is required. If the client does not check either box, then the agency must provide the client with a voter registration application, but need not assist the client in completing the application. If the client checks the “yes” box, then the agency must provide a voter registration application and assistance in completing it, unless the client declines the assistance. In short, clients must affirmatively “opt out” of receiving a voter registration application; the provision of the application is not contingent upon an affirmative request, either written or verbal, from the client.

24. 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.

25. 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. If the violation occurred within 30 days before the date of an election for Federal office, the aggrieved person may bring a civil action with respect to the violation and need not provide notice to the state’s chief election official. Alternatively, if the violation occurs within 120 days before the date of an election for Federal office, and it is not corrected within 20 days after receipt of the notice, then the aggrieved person may bring a civil action in an appropriate district court for declaratory or injunctive relief with respect to the violation.

26. As discussed below, the NVRA violations described herein occurred within 30 days before the last election for Federal office, held April 24, 2012, and the NVRA’s notice

requirement is therefore inapplicable. Alternatively, the NVRA violations described herein occurred within 120 days before the April 24, 2012 election, and were not corrected within 20 days after receipt of notice of those violations.

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

27. Like most states, Pennsylvania is subject to the requirements of the NVRA. The Commonwealth does not qualify for any of the limited exemptions contained in the act. 42 U.S.C. § 1973gg-2.

28. Public assistance agencies throughout the Commonwealth have failed and continue to fail to comply with Section 7 of the NVRA. Defendants have failed to ensure that all clients who apply, recertify, renew, or change an address in connection with public assistance benefits are provided with a voter preference form, a voter registration application form, and assistance in completing a voter registration application form.

29. These failures are evidenced by spot-checks and interviews conducted in five counties between February and May 2012, as well as by the Commonwealth's own statistics.

Defendants do not comply with Section 7's requirement to offer voter preference forms

30. Defendants do not comply with Section 7's requirement to offer voter preference forms. Specifically, Department of Public Welfare benefits applications do not include the statutorily required language with the offer of voter registration. 42 U.S.C. § 1973gg-5(a)(6)(B); *see supra* para. 22. For example, of three benefits applications collected recently at DPW offices, all of them were missing one of the required statement and one was missing three of the required statements.

31. Moreover, the location and presentation of the voter preference question in the various Pennsylvania benefits applications make it unlikely that applicants will see or complete the voter registration question. The question appears on page 8 of the Food Stamps applications

under the heading, “Voter Registration (for County Assistance Office Use).” Such a heading would lead a reasonable applicant to ignore the section based on the belief that they were not expected or permitted to fill it in. Indeed, interviews with public assistance clients revealed that 40% of interviewees (32 out of 80) did not notice the voter registration question within the forms they were provided at DPW offices. At WIC offices, 62% of clients (16 out of 26) did not see a question about voter registration on any of the forms.

Defendants do not comply with Section 7’s requirement to provide a voter registration application to all applicants who do not specifically decline, in writing, to register to vote

32. Because Defendants' policy is to withhold voter registration applications from applicants who do not respond in writing to the question of whether they would like to register to vote, Defendants do not comply with Section 7's requirement that voter registration applications must be provided unless the applicant declines in writing to register to vote. In each DPW and DOH office spot-checked, the clerks stated that voter registration applications are provided only to benefits applicants who check “Yes” in response to the questions whether they “would . . . like to register to vote here today.” This procedure violates the NVRA, which requires that all persons engaging in covered transactions be provided a voter registration application unless they specifically decline, in writing, to receive such an application. 42 U.S.C. § 1973gg-5(a)(6)(A).

33. “Pennsylvania’s Guide to Agency-Based Voter Registration Programs” - a written policy issued by the Secretary of the Commonwealth - erroneously requires distribution of voter registration applications to applicants for benefits only when the applicant checks “yes” in response to the voter preference question.

34. In Berks County, five interviews were conducted at a DPW office in Reading. None of the interviewees had been asked about voter registration and none saw a voter registration question in their benefits application. None of them received a voter registration

application. Similarly, at a WIC office in Berks County, the one public assistance client interviewed was not asked orally about voter registration, did not see the voter registration question in the printed materials, and did not receive a voter registration application.

35. In Delaware County, seven interviews were conducted at a DPW office in Chester. None of the people interviewed were asked about voter registration while engaging in a covered transaction, though five of them did see the voter preference question within the application for benefits. One person checked “yes” on the form, indicating that she wished to register to vote, but did not receive an application. In fact, none of the public assistance clients in this office received voter registration applications.

36. Of twenty-three interviewees who visited DPW offices in Philadelphia, only nine were asked about voter registration. Four applicants checked “yes” and four left the space blank – meaning at a minimum eight applicants should have received full voter registration services including applications. Instead, only two did.

37. Additionally, Defendants failed to inquire whether persons who leave the voter preference question blank wish to register. Of the 59 interviewees who left the voter preference question blank state-wide, only eleven were orally asked by any DPW or DOH employees about voter registration and only one received a voter registration application.

38. Notwithstanding Department of Public Welfare policy - and federal law - that people who answer “yes” to the voter preference question are to be given a voter registration policy, two offices had none available. Of the public assistance clients interviewed who had checked “yes,” 50% (4 of 8) were not given an application.

Defendants have Failed to Offer Equal Assistance

39. Defendants have failed to offer equal assistance. The NVRA specifically requires that a voter registration agency, “provide to each applicant who does not decline to register to

vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.” 42 U.S.C. § 1973gg-5(a)(6)(C). Because 50% of the public assistance clients who checked “yes” were not given a voter registration application, they necessarily could not have been provided with equal assistance in completing it.

40. Moreover, the Pennsylvania law implementing the NVRA requires each agency to “provide reasonable space for nonpartisan signs or posters encouraging voter registration,” 25 Pa. Cons. Stat. Ann. § 1325(e), and further directs that, “The signs and posters shall be provided by the secretary.” *Id.* Only 24% of the sites (4 of 17) visited had signs posted informing people they could register to vote, and only 6% of the sites (1 of 17) displayed instructions on how to register to vote.

41. Two of the sites visited, Philadelphia’s South District WIC and Allegheny County’s Three Rivers District DPW, had no voter registration applications on site at all.¹ In the Philadelphia office, the clerk stated that they had some registration applications, “a few months ago.”

42. In the Erie County Department of Public Welfare office, two applicants for public assistance were told that all initial applications must be made via computer at home or at another place with computer access such as a library. Neither were offered voter registration services.

Consequences of NVRA Violations

43. The Commonwealth’s own statistics illustrate its failures. Pennsylvania’s report to the U.S. Election Assistance Commission (“EAC”) reveals that Pennsylvania public assistance

¹ The Three Rivers District DPW office is physically divided into two separate offices which are next door to each other. The main office which provides SNAP, Cash Assistance and Medical Assistance did not have any voter registration applications. The second office, which distributes LIHEAP benefits, did.

offices received only 4,179 voter registration applications in 2009 and 2010. This represents a 93 percent decline since 1995-1996, when Pennsylvania reported 59,462 registrations from public assistance offices. This decline is particularly significant given that the number of initial food stamp applications in Pennsylvania during the same time frame nearly doubled, from 1,015,968 in 1995-1996 to 1,814,000 in 2009-2010. By contrast, following recent reforms in Ohio and Missouri to comply with the NVRA, public assistance agencies in those states have dramatically increased voter registration to an average of more than 16,000 per *month* in Ohio and more than 10,000 per *month* in Missouri. This, despite the fact that both states have lower total population counts, and fewer initial food stamp applicants than Pennsylvania.

44. Defendants' NVRA violations thus have had a dramatic adverse impact on voter registration efforts in Pennsylvania.

Adverse impact on Black Political Empowerment Project's Voter Registration Efforts

45. As a means of building stronger communities, B-PEP has been a strong advocate for citizens to participate in the electoral process. B-PEP has regularly conducted voter registration drives in Pennsylvania since 1986 and continues to do so.

46. Due to Defendants' ongoing violations of the NVRA, B-PEP and its members have expended additional resources, including staff and volunteer time, on efforts to assist individuals with voter registration (including updating prior registration) who should have been offered voter registration through Pennsylvania's public assistance offices. B-PEP reasonably anticipates, based on Defendants' ongoing violations of the NVRA, that this diversion of resources will continue. These diverted resources otherwise would have been and would be spent on other activities of the Black Political Empowerment Project, including but not limited to: conducting political forums, voter registration drives at high schools, voter education

workshops, voter mobilization on election day, and letter writing campaigns; canvassing neighborhoods; and observing and monitoring voting polls. These injuries to the B-PEP will continue in the future until Defendants' violations of their NVRA obligations are remedied.

47. In addition to direct voter registration drives, on a number of occasions, B-PEP has conducted trainings on the requirements of the NVRA for registration agencies. For example, in September 2010, B-PEP trained staff members at the Allegheny County Department of Human Services, Children, Youth and Families office. As a result of Defendants' NVRA violations, B-PEP has been required and will continue to be required to divert resources, including staff and volunteer time, away from its other activities and into projects like these. Training of agency staff on the implementation of the statute is something that is, and should remain, the sole responsibility of the Defendants.

Adverse Impact on ACTION United's Voter Registration Efforts

48. As a means of building stronger communities, ACTION United has been a strong advocate for citizens to participate in the electoral process. ACTION United has regularly conducted voter registration drives in Pennsylvania since 2010 and continues to do so.

49. Due to Defendants' ongoing violations of the NVRA, ACTION United and its members have expended additional resources, including staff and volunteer time, on efforts to assist individuals with voter registration (including updating prior registration) who should have been offered voter registration through Pennsylvania's public assistance offices. ACTION United reasonably anticipates, based on Defendants' ongoing violations of the NVRA, that this diversion of resources will continue. These diverted resources otherwise would have been and would be spent on other activities of ACTION United, including voter education and election day voter mobilization efforts, and ACTION United's other programs related to education, health

care and economic opportunities. These injuries to ACTION United will continue in the future until Defendants' violations of their NVRA obligations are remedied.

50. ACTION United members who have not been and will not be offered the opportunity to register to vote through DPW offices are harmed by Defendants' violations of the law, and will continue to be so harmed until Defendants are required to comply with Section 7 of the NVRA. This includes ACTION United members who are not registered to vote and members who are registered to vote but have subsequently changed their residence address and thus have an interest in promptly receiving information and assistance regarding changing their voter registration to match their new address. ACTION United also encourages civic and voter participation by conducting political forums, voter education workshops, voter mobilization on election day, and letter writing campaigns; and canvassing neighborhoods. As a result of Defendants' NVRA violations, ACTION United has been required and will continue to be required to divert resources, including staff and volunteer time, away from these other activities.

Pennsylvania Has Failed to Correct its Ongoing NVRA Violations

51. Defendants either have disregarded or ignored the decline in registration of voters through public assistance offices and the very low number of persons applying to register to vote through these offices. Indeed, had Defendants been following appropriate practices and procedures for implementation and monitoring of Pennsylvania's responsibilities under the NVRA, they would have discovered that public assistance offices simply have not been offering voter registration services and would have taken steps to remedy these widespread violations long ago.

52. The above-described NVRA violations occurred and continued within 30 days before the date of an election for Federal office on April 24, 2012. Accordingly, Plaintiffs were not obligated to provide notice to Defendants prior to filing this action.

53. Though not required by the NVRA, on April 23, 2012, counsel for Plaintiffs, on behalf of the Black Political Empowerment Project, “persons eligible to register to vote that it represents, and others similarly situated” (April 23, 2012 letter at 1), sent a letter to defendant Aichele notifying her of the NVRA violations. This letter stated that, in the absence of a plan to remedy Pennsylvania’s failures to implement the NVRA, plaintiffs would have no choice but to commence litigation. A copy of the April 23, 2012 letter is annexed hereto as Exhibit 1. Defendants Alexander and Avila were sent a copy of this letter.

54. Despite plaintiffs’ subsequent attempts at negotiating a remedy with the Commonwealth, the violations of the NVRA identified in this letter have not been cured. Accordingly, to the extent Defendants contend notice was required, any and all notice requirements have been satisfied.

55. As a result of Defendants’ continuing failure to ensure compliance with Section 7 of the NVRA, persons applying for and receiving public assistance are still not being offered the opportunity to register to vote.

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

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

57. 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.

58. Plaintiffs and their members 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' current and past violations of the NVRA and to secure ongoing compliance with the NVRA.

59. Any and all conditions precedent to filing this lawsuit have been satisfied or waived.

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, 42 U.S.C. § 1973gg-5, by failing to provide voter registration services at agencies that provide public assistance, including the Pennsylvania Department of Health and the Pennsylvania Department of Public Welfare;

(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, procedures for distribution of voter registration applications and voter preference forms, and training and monitoring personnel to ensure that designated agencies are distributing voter registration application forms to each person who applies for public assistance benefits, and each person who recertifies, renews, and changes address for benefits, inquiring of all such persons, in writing, whether they would like to register to vote or change their voter registration address and providing to them the NVRA-required information concerning the voter registration process, assisting such persons in completing voter registration applications to the same degree that assistance is provided with other public assistance forms, accepting completed voter registration forms, and timely transmitting completed registration forms to the appropriate election authority;

(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: July 5, 2012

HOGAN LOVELLS



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