

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF RHODE ISLAND

THE UNITED STATES OF AMERICA,

Plaintiff,

v.

THE STATE OF RHODE ISLAND; A. RALPH MOLLIS, Rhode Island Secretary of State; RHODE ISLAND BOARD OF ELECTIONS; JOHN A. DALUZ, Chairman of the Rhode Island Board of Elections; ROBERT KANDO, Executive Director of the Rhode Island Board of Elections; RHODE ISLAND DEPARTMENT OF HUMAN SERVICES; SANDRA M. POWELL, Rhode Island Department of Human Services Director; RHODE ISLAND EXECUTIVE OFFICE OF HEALTH AND HUMAN SERVICES; STEVEN M. COSTANTINO, Secretary of the Executive Office of Health and Human Services; RHODE ISLAND DEPARTMENT OF HEALTH; MICHAEL FINE, Rhode Island Interim Director of Health, RHODE ISLAND DEPARTMENT OF BEHAVIORAL HEALTHCARE, DEVELOPMENTAL DISABILITIES, AND HOSPITALS; and CRAIG S. STENNING, Director of the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals,

Defendants.

CIVIL ACTION NO. 11-113S

CONSENT DECREE

Plaintiff United States of America initiated this action against Defendants to enforce the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg to 1973gg-10. The

United States alleged that the State of Rhode Island and various State officials violated Section 7 of the NVRA, 42 U.S.C. § 1973gg-5(a)(2) ("Section 7") by failing to provide required voter registration opportunities at offices in the state providing public assistance and/or state-funded programs primarily serving persons with disabilities.

The United States and Defendants, through counsel, have conferred and agree that this action should be settled without the delay and expense of litigation. The parties share the goal of ensuring that all appropriate public assistance and disability services offices in Rhode Island provide voter registration opportunities in compliance with the NVRA. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the NVRA violation alleged by the United States.

The United States and Defendants stipulate and agree that:

1. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 2201, and 42 U.S.C. § 1973gg-9.
2. Venue is proper in this district pursuant to 28 U.S.C. §§ 120, 1391(c).
3. Defendant State of Rhode Island is subject to the requirements of the NVRA. 42 U.S.C. §§ 1973gg-1(4), 1973gg-2(a), 1973gg-5. Defendants have administration, coordination, and management responsibilities for public assistance, disability services, and election services in Rhode Island and are the proper defendants in this case.
4. Defendant Rhode Island Secretary of State A. Ralph Mollis is designated as the chief state election official responsible for coordinating Rhode Island's responsibilities under the NVRA. *See* 42 U.S.C. § 1973gg-8; R.I. Gen. Laws § 17-6-1.3.

5. Notwithstanding the Secretary of State's designation as the chief state election official, the Defendant Rhode Island Board of Elections has the powers and duties to: Arrange and make provisions for the registration of voters pursuant to the National Voter Registration Act (NVRA) of 1993, 42 U.S.C. § 1973gg et seq. The state board shall formulate programs to assist those persons or organizations desiring to register voters and shall provide, pursuant to procedures, rules, and regulations it shall adopt, voter registrations services which may include training sessions, registration materials, manuals and other services for the purpose of registering to vote eligible Rhode Island citizens. R.I. Gen. Laws § 17-7-5(a)(13). Defendant John A. Daluz is the Chairman of the Rhode Island Board of Elections; Defendant Robert Kando is the Executive Director of the Rhode Island Board of Elections.
6. Defendant Rhode Island Department of Human Services ("DHS") is the state body responsible for administering public assistance programs in Rhode Island. R.I. Gen. Laws § 40-6-1. Defendant Sandra M. Powell is the Director of the Rhode Island Department of Human Services.
7. Defendant Rhode Island Executive Office of Health and Human Services ("EOHHS") is the state body responsible for managing the administration of food and nutritional services programs. R.I. Gen. Laws § 42-7.2-6.1(a)(9). Defendant Steven M. Costantino is the Secretary of the Executive Office of Health and Human Services.
8. Defendant Rhode Island Department of Health ("DOH") is the state body responsible for administering the Women, Infants, and Children ("WIC") program. R.I. Gen. Laws § 23-13-17(a). DOH contracts with community health agencies to administer the WIC

program locally. Defendant Michael Fine is the Interim Director of Health in Rhode Island.

9. Defendant Rhode Island Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals (“DBHDDH”) is the state body responsible for administering disability services relating to developmental disabilities, mental health, and substance abuse. *See R.I. Gen. Laws §§ 40.1-1-13 (substance abuse), 40.1-5-4 (mental health law), 40.1-5.4-1 (mental health), 40.1-22-4 (developmental disabilities).* DBHDDH administers developmental disability services and some mental health services directly. DBHDDH contracts with community health agencies to administer substance abuse services and some mental health services locally. Defendant Craig S. Stenning is the Director of the DBHDDH.
10. Section 7 of the NVRA requires the State of Rhode Island to designate as voter registration agencies “all offices in the State that provide public assistance,” as well as “all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.” 42 U.S.C. § 1973gg-5(a).
11. “Public assistance,” as used in Section 7 of the NVRA, includes, but is not limited to, federal- or state-provided food assistance, cash assistance, WIC, medical assistance, child care assistance, and utilities assistance, among others.
12. The Rhode Island DHS, DOH, and EOHHS provide and administer public assistance through various offices in Rhode Island.

13. The Rhode Island DHS and DBHDDH provide and administer state-funded programs primarily engaged in serving persons with disabilities through various offices in Rhode Island.
14. All DHS, DOH, EOHHS, and DBHDDH offices that provide public assistance and state-funded programs primarily serving persons with disabilities in Rhode Island, including those operated by private entities on the state's behalf, as well as all offices that provide WIC services in Rhode Island, must be designated as "voter registration agencies" pursuant to Section 7 of the NVRA, 42 U.S.C. § 1973gg-5(a).
15. Employees and agents of offices designated as "voter registration agencies" must (1) distribute voter registration forms along with each application for the office's services, recertification, renewal, or change of address request relating to public assistance services; (2) provide each applicant with the same degree of assistance in completing the voter registration application forms that the office provides for the completion of its own forms, unless the applicant refuses such assistance; and (3) transmit completed voter registration forms to the appropriate election official, in accordance with procedures set forth in Sections 7(a)(4), 7(a)(5), 7(a)(6), and 7(d) of the NVRA, 42 U.S.C. §§ 1973gg-5(a)(4), (5), & (6) and 1973gg-5(d).
16. Defendants DHS, DOH, EOHHS, and DBHDDH and their employees and agents, including offices operated by private entities on the state's behalf and offices that provide WIC services, failed to provide voter registration opportunities as required by Section 7 of the NVRA in the following ways:

- a. Said Defendants failed to distribute applications for voter registration for elections for Federal office with each application, recertification, renewal, or change of address form for benefits and services, as required by Section 7 of the NVRA.
 - b. Said Defendants failed to provide their clients with a form that contains the information required by Section 7(a)(6)(B) of the NVRA with each application, recertification, renewal, or change of address form for benefits and services; and
 - c. Said Defendants failed to supervise, train, and monitor their employees, agents, and representatives to ensure that they provide, assist with, process, collect, and transmit voter registration applications in compliance with Section 7 of the NVRA.
17. Said Defendants' failure to provide eligible public assistance and disability services clients with the opportunity to register to vote in the manner specified by Section 7 of the NVRA violates Section 7 of the NVRA.
18. The NVRA authorizes the Attorney General to seek declaratory and injunctive relief. 42 U.S.C. § 1973gg-9.

WHEREFORE, the parties having freely given their consent, and the terms of this Decree being fair, reasonable, and consistent with the requirements of the NVRA, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. Defendants DHS, DOH, EOHHS, and DBHDD shall ensure that its counselors, employees, and representatives responsible for providing public assistance and disability services to eligible Rhode Island residents will provide all voter registration opportunities and assistance required by Section 7 of the NVRA. Defendants shall develop and

implement uniform procedures pertaining to the distribution, collection, transmission, and retention of voter registration applications and forms containing the information required by Section 7(a)(6) of the NVRA.

2. Defendant Board of Elections shall develop and implement mandatory, annual NVRA education and training programs for each counselor, employee, or representative responsible for providing public assistance to Rhode Island residents.
3. In any jurisdiction subject to the requirements of Section 203 of the Voting Rights Act, 42 U.S.C. § 1973aa-1a, Defendants Board of Elections, DHS, DOH, EOHHS, and DBHDDH shall (1) ensure the availability of Spanish language versions of the voter applications and forms described by Section 7(a)(6) of the NVRA; and (2) ensure that public assistance offices have access to bilingual staff or translation services to provide assistance in applying to register to vote as described by paragraph 1 above.
4. Defendants DHS, DOH, EOHHS, and DBHDDH shall ensure that agency counselors, employees, and representatives covered by this decree accept completed voter registration applications and transmit them to appropriate election officials within the time periods set forth in Section 7(d) of the NVRA. 42 U.S.C. § 1973gg-5(d).
5. As part of ensuring this compliance with Section 7, not later than 30 days from the date of entry of this decree, Defendants DHS, DOH, EOHHS, and DBHDDH shall appoint a NVRA “site coordinator” at each office covered by this Decree.
 - a. The site coordinator’s responsibilities shall include:

- i. ensuring that voter registration opportunities are provided to each applicant for services at the time of his or her initial application, recertification, renewal, or change of address,
 - ii. maintaining, or supervising the maintenance of, the site's voter registration application data,
 - iii. supervising the administration and storage of the site's declination forms,
 - iv. preparing a report in January and June of each year for the NVRA agency coordinator, who shall forward a copy of the agency report to the Rhode Island Board of Elections, which shall forward to the counsel for the United States documentary evidence of each site's implementation of NVRA compliance, ending at the termination of this decree. The United States may request, in writing, all agency reports without exception from the Board of Elections. The Board of Elections must provide those reports within 20 days of the United States' written request.
- b. Site coordinators shall attend training provided by the State Board of Elections no later than 30 days from the date of entry of this decree that explains their NVRA duties unless such training was already received from the State Board of Elections in calendar year 2011.
 - c. Within 30 days of receiving this training, site coordinators shall, in turn, coordinate/provide NVRA training to all employees at their site who have NVRA responsibilities.

- d. Site coordinators shall coordinate/provide this training to all new employees at the site within 45 days after the new employee's start date.
 - e. For the purposes of appointing site coordinators in compliance with this provision:
 - i. Defendant DBHDDH shall appoint an NVRA site coordinator at its Division of Developmental Disabilities;
 - ii. Each Behavioral Healthcare Treatment Provider that provides state-funded programs primarily engaged in providing services to persons with disabilities shall appoint an NVRA site coordinator at its main clinical office; and
 - iii. These site coordinators shall ensure NVRA compliance at all the treatment program and treatment facility site locations licensed and funded by Defendant DBHDDH.
6. As part of ensuring this compliance with Section 7, no later than 30 days from the date of entry of this decree, Defendants DHS, DOH, EOHHS, and DBHDDH shall appoint an NVRA coordinator for each agency, or in the alternative, one coordinator for all agencies falling under the EOHHS statutory umbrella, that administers public assistance and/or state-funded services for individuals with disabilities.
- a. This coordinator's responsibilities shall include:
 - i. ensuring receipt of monthly application data from each office within the agency that administers public assistance and/or state-funded disability services,

- ii. reviewing the data received from each office in conjunction with the January and June reports from NVRA site coordinators to evaluate whether those data reflect low activity or implementation problems,
 - iii. determining the necessity for a corrective action plan and, if necessary, direct the implementation of the corrective plan within 30 days from the date that such implementation problem is identified,
 - iv. providing technical assistance to site coordinators as necessary, including providing periodic reminders and updates concerning their NVRA responsibilities.
 - b. Agency coordinators shall attend training provided by the State Board of Elections that explains their NVRA duties no later than 30 days from the date of entry of this decree unless such training was already received from the State Board of Elections in calendar year 2011.
 - i. Agency coordinators shall, in turn, oversee the training offered by site coordinators to employees with NVRA duties.
7. Defendants DHS, DOH, EOHHS, and DBHDDH shall ensure that all applicants for assistance and/or disability services, recertifications, renewals, or change of address forms who come into in-person contact with a case worker in the course of their application, recertification, renewal, or change of address are provided the opportunity to register to vote during such in-person contact in accordance with Section 7(a)(6)(B) of the NVRA, unless such applicants decline in writing to register to vote. Defendants DHS, DOH, EOHHS, and DBHDDH shall further ensure that mail-in voter registration

applications and all other notices described by Section 7(a)(6) of the NVRA are enclosed along with each application, recertification, renewal, or change of address form that are sent by mail to public assistance and disability services clients who will not come into in-person contact with a case worker in the course of their application, recertification, renewal, or change of address. Defendant Board of Elections will provide Defendants DHS, DOH, EOHHS, and DBHDDH with sufficient declination and voter registration forms until such Defendants incorporate the declination form and voter registration form into public assistance and/or disability services application, recertification, renewal, or change of address forms. Said Defendants also shall ensure that all online application, recertification, renewal, or change of address procedures for public assistance and/or disability offices covered by the NVRA include means to provide online clients, in a manner accessible to persons with disabilities, immediate NVRA-compliant voter registration opportunities. Should Defendants choose to permit telephonic applications for public assistance and disability services, Defendants shall offer all applicants and clients recertifying or renewing their benefits or changing their addresses by telephone a mail-in voter registration application and other forms described by Section 7(a)(6) of the NVRA and shall provide, by U.S. mail or other means, these materials to those who request them.

8. In such instances where Defendant DBHDDH provides public assistance or funds programs primarily engaged in providing services to persons with disabilities through private entities, DBHDDH shall, within 60 days from the date of entry of this decree,

amend its contracts with those entities to ensure that they provide voter registration opportunities as required by Section 7 of the NVRA.

9. Defendant Board of Elections shall develop methods of tracking, in detail, the extent to which local, on-site agency counselors, employees, and representatives responsible for providing public assistance and disability services in Rhode Island are complying with the NVRA and the individual provisions of this Decree, along with methods of ensuring compliance. Defendant Board of Elections shall supply and deliver an adequate amount of the “Agency Voter Registration Form” in English and Spanish needed to each site coordinator in order to ensure compliance with NVRA. Such form shall not violate the state and federal requirements of confidentiality related to receipt of public assistance benefits.

10. The tracking discussed above shall include, but is not limited to:

- a. Inclusion of NVRA compliance into DHS's, DOH's, and DBHDDH's ongoing, continuous evaluation of its subsidiary agencies and local offices; and
- b. Annual formal auditing by the Board of Elections to determine compliance with the NVRA and this Decree.
- c. Such audits and information collection shall not violate any state and federal confidentiality laws.

11. On May 1 of each year this Decree is in effect, Defendant Board of Elections shall submit to Plaintiff a report, including: (1) a general summary of compliance efforts detailing all steps taken to implement each of the provisions and requirements of this Decree, including any significant implementation problems, staff training needs, and

recommendations for improvement; (2) the results of the tracking described in Paragraphs 8 and 9; and (3) copies of all NVRA procedures and educational and training materials both used in the preceding year and to be used in the next year.

12. For the six months following the date of entry of this decree, on a monthly basis, Defendant Board of Elections shall provide counsel for the United States with a numerical count, for each public assistance and disability-related services office covered by this Decree (a) the aggregate number of public assistance applications, renewals, recertifications, and changes of address for that month; (b) the number of completed voter registration applications completed by a client and transmitted from that office to appropriate election officials for that month; and (c) the number of declination forms collected from clients for that month. After the initial six months of reporting, such information shall be submitted on a quarterly basis.
13. Defendants authorize Plaintiff to conduct audits without prior notice to DHS, DOH, or DBHDDH, to directly contact DHS, DOH, and DBHDDH employees involved in activities covered by the NVRA, and to call or visit local offices providing services covered by the NVRA undercover without identifying its staff as Plaintiff's investigators. Such audits and information collection shall not violate any state and federal confidentiality laws.
14. The Plaintiff may object to any plan, report, or document submitted by Defendants, pursuant to this Decree on the ground that it does not comply, or is not sufficient to ensure compliance with, the NVRA or this Decree. The Plaintiff will do so by submitting to all Defendants a written notice describing any objections. The parties shall make a

good-faith effort to resolve any differences and agree to make any changes sufficient to remedy perceived defects with compliance. In the event the parties are unable to agree upon a resolution of their differences within one calendar month after such written notice is sent to Defendants, either party may seek redress before this Court without further notice.

15. Defendants shall effectively publicize the voter registration opportunities afforded by the NVRA and this Decree to all eligible public assistance and disability services clients covered by this decree. This publicity shall include, but is not limited to 1) signs in public assistance and disability services offices advertising the opportunity to register to vote, and 2) information on the websites of all designated public assistance and/or disability services offices, in a manner accessible to persons with disabilities, as to the availability of voter registration application forms at such offices and a link or links to voter registration information and voter registration application forms on the Rhode Island Board of Elections website.
16. Within one calendar month of the date this Decree is signed by all parties and ordered by the Court, Defendants shall file with the Court, and provide to counsel of record, a written plan describing in detail the efforts Defendants intend to make to comply with each of the provisions and requirements of this Decree. This plan should include a list of all public assistance offices covered by this Decree.
17. The parties to this Decree must employ their best efforts to defend this Decree against any legal challenge.

18. This Decree shall take effect upon approval by the United States District Court for the District of Rhode Island.

19. This Decree shall remain in effect for two years from its effective date, after which date the agreement may be terminated upon agreement by the parties or a determination by the Court that Defendants have achieved substantial compliance with the terms of the decree.

20. To demonstrate that it has achieved substantial compliance with the Decree, Defendants may file a report, with appropriate documentation, with the United States that establishes that Defendants have substantially complied and that Defendants have the means and intent to continue compliance with Section 7 of the NVRA.

- a. After conferring with Defendants, the United States in good faith will determine whether it concurs that Defendants have achieved substantial compliance with the Decree. A conclusion of substantial compliance may not be unreasonably withheld. If the parties agree that substantial compliance has been achieved, they shall file a joint motion with the Court to terminate the decree. If the United States determines that Defendants have not achieved substantial compliance with the Decree, and Defendants dispute this conclusion, then Defendants may file a motion with this Court to terminate the Decree. Defendants shall provide at least 45 days' notice to the United States before filing such a motion. Failure to provide this notice, without obtaining the consent of the United States or the Court for a shorter notice period, shall result in the automatic rejection of Defendants' application without consideration of its merits.

- b. In such a proceeding to terminate the Decree, the burden of proof rests upon Defendants based upon a preponderance of the evidence.
 - c. If Defendants' motion to terminate is granted, they shall immediately be relieved of all obligations that exceed regular NVRA compliance.
 - d. If Defendants' motion to terminate is denied, Defendants may renew their motion three months after the date of denial, upon 45 days' notice to the United States.
21. Upon termination of the decree, Defendants shall be relieved of any obligations that exceed regular NVRA requirements.
22. This Consent Decree encompasses any and all pending investigations by the United States Department of Justice, Civil Rights Division, Voting Section, concerning alleged violations of Section 7 of the NVRA, by the State of Rhode Island and/or any of its departments or agencies.
23. Until the termination of the decree, the Court shall retain jurisdiction of this case to enter further relief or such other orders as may be necessary for the effectuation of the terms of this agreement.
24. As between Defendants and the United States, each party shall bear all of its own costs, expenses, and attorneys' fees in this case.

Date: March 18, 2011

The undersigned agree to entry of this Consent Decree.

For the Plaintiff:

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For the Defendants:

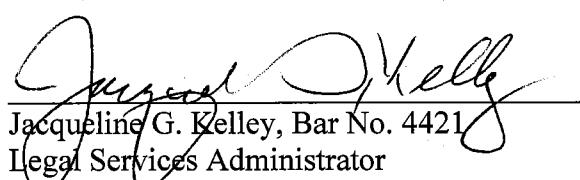
The State of Rhode Island; A. Ralph Mollis, Rhode Island Secretary of State; Rhode Island Board of Elections; John A. Daluz, Chairman of the Rhode Island Board Of Elections; Robert Kando, Executive Director of the Rhode Island Board of Elections; Rhode Island Department of Of Human Services; Sandra M. Powell, Rhode Island Department of Human Services Director; Rhode Island Executive Office of Health and Human Services; Steven M. Costantino, Secretary of the Executive Office Of Health and Human Services; Rhode Island Department of Health; Michael Fine, Rhode Island Interim Director of Health; Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals; and Craig S. Stenning, Director Of the Rhode Island Department of Behavioral Healthcare, Developmental Disabilities and Hospitals



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SO ORDERED this _____ day of _____, 2011

United States District Judge