

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.

CA 11 - 1135

COMPLAINT

The United State of America alleges:

1. The Attorney General of the United States brings this action for declaratory and injunctive relief pursuant to the National Voter Registration Act of 1993 (NVRA), 42 U.S.C. § 1973gg to 1973gg-10, and 28 U.S.C. § 2201.

JURISDICTION AND VENUE

2. The Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331, 1345, and 2201, and 42 U.S.C. § 1973gg-9.

3. Venue is proper in this district pursuant to 28 U.S.C. §§ 120, 1391(c).

PARTIES

4. The NVRA authorizes the Attorney General of the United States to bring civil actions on behalf of the Plaintiff United States of America in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out the NVRA. 42 U.S.C. § 1973gg-9(a).

5. Defendant State of Rhode Island is one of the states of United States of America and is subject to the requirements of the NVRA. 42 U.S.C. §§ 1973gg-1(4), 1973gg-2(a), 1973gg-5.

6. Defendant Rhode Island Secretary of State A. Ralph Mollis is sued in his official capacity 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.

7. Defendant Rhode Island Board of Elections is the state body responsible for "arrang[ing] and mak[ing] provisions for the registration of voters pursuant to" the NVRA. R.I. Gen. Laws § 17-7-5(a)(13).

8. Defendant John A. Daluz is the Chairman of the Rhode Island Board of Elections and is sued in his official capacity.

9. Defendant Robert Kando is the Executive Director of the Rhode Island Board of Elections and is sued in his official capacity.

10. 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.

11. Defendant Sandra M. Powell is the Director of the Rhode Island Department of Human Services and is sued in her official capacity.

12. 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).

13. Defendant Steven M. Costantino is the Secretary of the Executive Office of Health and Human Services and is sued in his official capacity.

14. 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.

15. Defendant Michael Fine is the Interim Director of Health in Rhode Island and is sued in his official capacity.

16. 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 and 40.1-5.4-1 (mental health), 40.1-22-4 (developmental disabilities). DBHDDH administers some services directly and contracts with community health agencies to administer some services locally.

17. Craig S. Stenning is the director of the DBHDDH and is sued in his official capacity.

18. Rhode Island requires its disability services agencies to provide clients with voter registration opportunities pursuant to the NVRA. *See* R.I. Admin. Code 46-1-8:0100 § 0100.15.

CAUSE OF ACTION

19. Among other things, 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” and/or “State-funded programs primarily engaged in providing services to persons with disabilities.” 42 U.S.C. § 1973gg-5(a)(2)(A) and (B).

20. The Rhode Island DHS, DOH, and EOHHS are the State entities responsible for administering, or supervising the administration of, public assistance in Rhode Island.

21. The Rhode Island DHS and DBHDDH are the State entities responsible for administering, or supervising the administration of, State-funded programs primarily engaged in providing services to persons with disabilities.

22. All DHS, DOH, and EOHHS offices in the state that provide public assistance must be designated as “voter registration agencies” pursuant to Section 7 of the NVRA, 42 U.S.C. § 1973gg-5(a). Such offices include those providing WIC services in Rhode Island.

23. All DHS and DBHDDH offices in the state that provide State-funded programs primarily engaged in providing services to persons with disabilities must be designated as “voter registration agencies” pursuant to Section 7 of the NVRA, 42 U.S.C. § 1973gg-5(a).

24. Employees and agents of offices designated as “voter registration agencies” under Section 7 of the NVRA 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). Defendants, their employees, and agents at DHS, DOH, EOHHS, and DBHDDH offices that provide public assistance and/or State-funded programs primarily serving persons with disabilities have regularly failed to provide voter registration opportunities as required by Section 7 of the NVRA in the following respects:

- a. Defendants, their employees, and agents have regularly 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. Defendants, their employees, and agents have regularly 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. Defendants failed to supervise, train, and monitor their employees, agents, representatives, and/or subcontractors to ensure that they provide, assist with, process, collect, and transmit voter registration applications in compliance with Section 7 of the NVRA.

25. 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 the NVRA.

26. Unless and until ordered to do so by this Court, Defendants will not offer eligible public assistance and disability services applicants the opportunity to register to vote as required by Section 7 of the NVRA.

WHEREFORE, the United States requests that the Court enter an ORDER that:

1. Declares that the Defendants have failed to ensure implementation of Section 7 of the NVRA;
2. Enjoins the Defendants, their agents and successors in office, and all persons acting in concert with them, from future non-compliance with the requirements of Section 7 of the NVRA; and
3. Requires Defendants, their agents and successors in office, and all persons acting in concert with them, to:
 - a. Take all steps necessary—including adopting appropriate administrative policies or rules—to offer the voter registration opportunities specified by Section 7 of the NVRA;
 - b. Effectively publicize these voter registration opportunities to all eligible public assistance and disability services clients;
 - c. Within 30 days from the date of the Court's order, provide the Court with (1) a remedial plan or program—including appropriate reporting and monitoring requirements—designed to ensure that all eligible persons who apply for public assistance and/or disability services in Rhode Island are offered the opportunity to register to vote as required by Section 7 of the NVRA, and (2) a plan for effectively publicizing the State's remedial plan or program;
 - d. Offer voter registration opportunities to all clients who applied for public assistance or disability benefits or services at covered offices in the four years prior to the date of any final order of this Court but who did not receive voter registration opportunities as required by the NVRA; and

- e. Take all steps necessary to ensure immediate and ongoing compliance with
Section 7 of the NVRA.

The United States further requests that this Court order any additional relief required by the interests of justice.

Date: March 18, 2011

Respectfully submitted,

ERIC H. HOLDER, JR.
Attorney General

PETER F. NERONHA
United States Attorney
District of Rhode Island

Thomas E. Perez / Sub by parameter

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Assistant Attorney General
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CA 11 - 1135

CIVIL COVER SHEET

JS-44 (Rev. 3/08 RI)

I. (a) PLAINTIFFS

United States of America

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

(c) Attorney's (Firm Name, Address, and Telephone Number)

Justin Weinstein-Tull
U.S. Department of Justice
Civil Rights Division, Voting Section

DEFENDANTS

THE STATE OF RHODE ISLAND; A. RALPH

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

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

Attorneys (If Known)

Thomas Palombo, Assistant Attorney General
State of Rhode Island & Providence Plantations

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

- 1 U.S. Government Plaintiff 3 Federal Question (U.S. Government Not a Party)
- 2 U.S. Government Defendant 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 PTF 1 DEF 1
- Citizen of Another State 2 2
- Citizen or Subject of a Foreign Country 3 3
- Incorporated or Principal Place of Business In This State PTF 4 DEF 4
- Incorporated and Principal Place of Business In Another State 5 5
- Foreign Nation 6 6

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

Admiralty
 340 Marine (Injury to Seamen)
 120 Marine (Other)

Admin/Agency Appeals Other
 890 Other Statutory Actions (APA Appeals, IDEA Appeals, Other)

Bankruptcy
 422 Appeal 28 U.S.C. § 158
 423 Withdrawal 28 U.S.C. § 157

Banks and Banking
 140 Negotiable Instruments
 430 Banks and Banking
 875 Customer Challenge to Subpoena (12 U.S.C. § 3410)

Anti-trust
 410 Anti-Trust

Construction Contracts
 130 Miller Act
 190 Other Contracts

Securities Law & Stockholder Suits
 160 Stockholders' Suits
 850 Securities/Commodities/Exchange

Other - Business/Comm.

196 Franchise
 490 Cable/Satellite TV

Consumer Credit
 371 Truth in Lending
 480 Consumer Credit

190 Other Contracts

Constitutional Law
 950 Constitutionality of State Statutes
 440 Other Civil Rights (Constitutionality of Federal Statutes)

Elections and Voting
 400 State Reapportionment
 441 Voting

Other - Civil Rights
 440 Other Civil Rights
 443 Housing/Accommodations
 444 Welfare
 446 Americans with Disabilities

Copyright & Trademark (Intellectual Property)
 820 Copyright
 840 Trademark

Employment Discrimination
 442 Employment
 445 Americans with Disabilities-Employment
 440 Other - Civil Rights

ERISA
 791 Employment Ret. Inc. Security Act

Other Employment Benefits
 190 Other - Contract
 442 Other - Employment

Environmental Law
 893 Environmental Matters

Immigration
 462 Naturalization Application
 463 Habeas Corpus - Alien Detainees
 465 Other Immigration Actions

Indian Law
 890 Other Statutory Actions

Insurance
 110 Insurance Contract

Labor and Occupational Safety
 660 Occupational Safety/Health
 710 Fair Labor Standards Act
 720 Labor/Management Relations
 730 Labor/Management Reporting and Disclosure Act
 740 Railway Labor Act
 790 Other Labor Litigation

Miscellaneous Civil Cases

150 Recovery of Overpayment and Enforcement of Judgment (Collections)
 151 Medicare Act
 152 Recovery of Defaulted Student Loans (excluding Veterans)
 153 Recovery of Overpayment of Veterans' Benefits
 370 Other Fraud
 440 Other Civil Rights (Immigration/Deportation)

450 Commerce
 460 Deportation
 610 Agriculture
 620 Other Food and Drug
 625 Drug related seizure of property
 630 Liquor Laws
 640 Railroad and Truck

Miscellaneous Civil Cases Continued

650 Airline Regs.
 690 Other (Forfeiture)
 690 Other (Health Care)
 810 Selective Service
 870 Taxes (U.S. Plaintiff or Defendant)
 871 IRS-Third Party (26 U.S.C. § 7609)
 890 Other Statutory Actions
 891 Agricultural Acts
 892 Economic Stabilization Act
 894 Energy Allocation Act
 895 Freedom of Information Act
 900 Appeal of Fee Determination under Equal Access to Justice Act

Patents (Intellectual Property)
 830 Patents

Prisoner Petitions

510 Motions to Vacate Sentence (2254)
 510 Motions to Vacate Sentence (2255)
 530 General (Habeas)
 535 Death Penalty
 540 Mandamus and Other
 550 Civil Rights (1983)
 555 Prison Conditions (1983)

Real and Personal Property

210 Land Condemnation
 220 Foreclosure
 230 Rent, Lease and Ejectment
 240 Torts to Land
 290 All other Real Property
 380 Other Personal Property Damage

RICO
 470 RICO

Social Security
 861 HIA (1395ff)
 862 Black Lung (923)
 863 DIWC/DIWW (405(g))
 864 SSID Title XVI
 865 RSI (405(g))

Mass Torts
 360 Other Personal Injury

Products Liability
 195 Contract Product Liability
 245 Tort Product Liability
 315 Airplane Product Liability
 345 Marine Product Liability
 355 Motor Vehicle Product Liability
 365 Personal Injury Product Liability
 385 Property Damage Product Liability

Professional Malpractice
 362 Personal Injury - Med. Malpractice

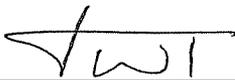
Motor Vehicle Accidents/Slip and Fall
 350 Motor Vehicles
 360 Other Personal Injury

Other Torts and Personal Injury incl. Asbestos cases
 360 Other Personal Injury (Fed. Tort Claims Act)
 310 Airplane
 320 Assault, Libel and Slander
 330 Federal Employers' Liability
 360 Other Personal Injury
 368 Asbestos Personal Injury

V. ORIGIN (Place an "X" In One Box Only)	
<input checked="" type="checkbox"/> 1 Original Proceeding	<input type="checkbox"/> 2 Removed from State Court
<input type="checkbox"/> 3 Remanded from Appellate Court	<input type="checkbox"/> 4 Reinstated or Reopened
<input type="checkbox"/> 5 Transferred from another district (Specify)	<input type="checkbox"/> 6 Multidistrict Litigation
<input type="checkbox"/> 7 Appeal to District Judge From Magistrate Judgment	
VI. CAUSE OF ACTION	Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): National Voter Registration Act of 1993, 42 U.S.C. § 1973gg et seq.
	Brief description of cause: State defendants' non-compliance with Section 7 of the NVRA.
VII. REQUESTED IN COMPLAINT	<input type="checkbox"/> Check if this is a Class Action Under F.R.C.P. 23 DEMAND \$ _____ JURY DEMAND: <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No (Check YES <u>only</u> if demanded in complaint)
VIII. RELATED CASE(S) IF ANY	JUDGE <u>n/a</u> DOCKET NUMBER _____

Because of the need for accurate and complete information, you should ensure the accuracy of the information provided prior to signing the form.

03/18/2011
Date


Signature of Attorney of Record

INSTRUCTIONS FOR COMPLETING CIVIL COVER SHEET JS-44
Authority for Civil Cover Sheet

The JS-44 civil cover sheet and the information contained herein neither replaces nor supplements the filings 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. Consequently a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. Listed below are tips for completing the civil cover sheet. These tips coincide with the Roman Numerals on the Cover Sheet.

- I. COUNTY OF RESIDENCE OF FIRST LISTED PLAINTIFF/DEFENDANT (b) County of residence: For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- III. CITIZENSHIP OF PRINCIPAL PARTIES: This section is completed only if diversity of citizenship was selected as the Basis of Jurisdiction under Section II.
- IV. NATURE OF SUIT: Place an X in the appropriate box. Make sure to select the Nature of Suit from the category which best describes the primary cause of action found in your complaint. You must select only one nature of suit.
- VIII. RELATED CASES, IF ANY: This section of the JS-44 is used to reference related pending cases if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

FOR OFFICE USE ONLY

Receipt # _____ Amount _____ Applying IFP _____ Judge _____ Mag. Judge _____