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FILED
IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK
NATIONAL CONGRESS FOR PUERTO RICAN
RIGHTS -- NEW YORK CITY CHAPTER;
DISABLED IN ACTION OF METROPOLITAN
NEW YORK; GEORGE LUIS DELGADO, JR.;
CAMILLE DIBENEDETTO,

-----X
NATIONAL CONGRESS FOR PUERTO RICAN
RIGHTS -- NEW YORK CITY CHAPTER;
DISABLED IN ACTION OF METROPOLITAN
NEW YORK; GEORGE LUIS DELGADO, JR.;
CAMILLE DIBENEDETTO,

Plaintiffs, : Civil Action No. _____

v.

: CLASS ACTION

JOHN E. SWEENEY, Commissioner,
New York State Department of Labor,
in his official capacity,

Defendant :
-----X

COMPLAINT

1. In this action, plaintiffs National Congress for Puerto Rican Rights -- New York City Chapter; Disabled in Action of Metropolitan New York; George Luis Delgado, Jr.; and Camille DiBenedetto, seek to compel defendant to comply with the mandatory provisions of the National Voter Registration Act of 1993 ("NVRA") and related state legislation. The NVRA requires the States to make voter registration opportunities available by mail, upon application for a motor vehicle driver's license, and in a variety of governmental agencies. In its recent voter registration statute, the State of New York sought to implement the NVRA by naming the state agencies which were to perform voter registration activities. Although the statute requires the New York State

Department of Labor ("Department") to perform such activities, the Department has refused to undertake its voter registration obligations imposed under federal and state law. Plaintiffs bring this action seeking redress from Defendant's deprivation of their right, and the right of their members, to register to vote and participate fully in the electoral process as guaranteed under the NVRA.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the allegations in this complaint pursuant to 28 U.S.C. §§1331, 1345, and 2201, and pursuant to the National Voter Registration Act, 42 U.S.C. §1973gg-9(b). Accordingly, this Court is authorized to exercise pendent jurisdiction over the related state claim, and plaintiffs respectfully request that it do so. Venue is appropriate in that a substantial part of the events or omissions giving rise to the claims occurred in this judicial district.

PARTIES

3. Plaintiff NATIONAL CONGRESS FOR PUERTO RICAN RIGHTS -- NEW YORK CITY CHAPTER ("National Congress") is a non-profit, non-partisan membership organization, comprised of more than 600 members in New York City, whose mission includes promoting and protecting the civil rights of the Puerto Rican and Latino community in New York City. It has a long history of voting rights advocacy, and it encourages its members to become politically

active and provides them with information on voter registration opportunities. Some of its members are not registered to vote, and some of its members have applied for or receive unemployment benefits or job referral services (employment services) in the New York State Department of Labor's branch offices. Consequently, the organization's members would benefit from the voter registration opportunities and opportunities for updating registrations afforded under the NVRA, 42 U.S.C. §1973gg-5, and New York Election Law §5-211, and are harmed by the lack of such opportunities at unemployment compensation offices, employment services offices, and other offices which administer the New York State Department of Labor's programs.

4. Petitioner DISABLED IN ACTION OF METROPOLITAN NEW YORK (DIA) is a non-partisan, nonprofit, membership organization dedicated to improving the legal, social, and economic condition of people with disabilities through organized political activity. It is based in the City of **New** York, New York County, and its members are primarily persons with disabilities. DIA has advocated for increased opportunities for persons with disabilities to participate in the political process. Toward this end, it has worked for the passage of laws which ensure polling site **access** for persons with disabilities. Some of its members are not registered to vote, and some of its members have applied for or receive unemployment benefits or job referral services (employment services) in the New York State Department of Labor's branch offices. Consequently, the organization's members would benefit

from the voter registration opportunities and opportunities for updating registrations afforded under the NVRA, 42 U.S.C. §1973gg-5, and New York Election Law §5-211, and are harmed by the lack of such opportunities at unemployment compensation offices, employment services offices, and other offices which administer the New York State Department of Labor's programs.

5. Plaintiff GEORGE LUIS DELGADO, JR., is a citizen of the United States and a resident of Bronx County in the City of New York. He meets all the requirements for voting in federal elections in New York except that he is not registered to vote at his current residence. He is unemployed and has been collecting unemployment benefits since July 1995.

6. On or about July 15, 1995, plaintiff Delgado visited a New York State Department of Labor unemployment compensation office located at Burke Avenue in Bronx County, where he applied for unemployment compensation benefits. On or about October 4, 1995, Mr. Delgado again visited this office, where he updated his application by reporting on his search for employment. On neither occasion was he provided with a voter registration form; nor was he informed that any such form was available.

7. If he had been offered the opportunity to register to vote while applying for unemployment compensation benefits he would have done so. He is interested in voting, and has been registered and has voted in other locations where he has lived.

8. Plaintiff CAMILLE DIBENEDETTO is a citizen of the United States and a resident of Bronx County in the City of New York. She

meets all the requirements for voting in federal elections in New York except that she is not registered to vote at her current residence. She was unemployed for a period of approximately one to two weeks during late August and early September of 1995.

9. On or about September 5, 1995, plaintiff DiBenedetto visited a New York State Department of Labor unemployment compensation office located at Burke Avenue in Bronx County, where she applied for unemployment compensation benefits. At no time during her application for benefits was she provided with a voter registration form; nor was she informed that any such form was available.

10. If she had been offered the opportunity to register to vote while applying for unemployment compensation benefits she would have done so. She is interested in voting, and has been registered and has voted in other locations where she has lived.

11. Defendant JOHN E. SWEENEY is Commissioner of the New York State Department of Labor and is sued in his official capacity. As Commissioner, he is the administrative head of the Department and is charged with enforcement of applicable laws, including laws governing the unemployment compensation program and the employment services (job referral) program. New York Labor Law 5521, 530. Furthermore, as the head of an agency which has been named as a voter registration agency pursuant to the NVRA, he is responsible for implementing the agency's voter registration program within offices serving the public. New York Election Law §5-211(15).

CLASS ACTION

12. The named individual plaintiffs bring this suit as a class action on their own behalf and on behalf of all other persons similarly situated. The class is defined as all persons who are citizens of the United States and residents of New York State, who are currently receiving or have applied for unemployment benefits or employment services since January 1, 1995, and who meet all requirements for eligibility to vote in federal elections in New York State except that they 1) have never registered to vote; 2) are not registered to vote because they have moved since they last registered to vote; 3) are registered but are planning to move during the time when they are receiving unemployment benefits; 4) are registered but have changed their name since they last registered; or 5) are registered but wish to change party affiliation for purposes of voting in future primaries.

13. As explained in the following paragraphs, this action meets the requirements of Federal Rule of Civil Procedure 23(a) and is a proper class action under Rule 23(b)(2).

14. On information and belief, the class defined in paragraph 12 comprises thousands of persons. Accordingly, the class members are so numerous that joinder is impracticable.

15. There exist questions of law and fact common to the members of the plaintiff class. These common questions include whether the New York State Department of Labor is in compliance with the NVRA and New York Election Law §5-211.

16. The claims of the named plaintiffs are typical of the

claims of the members of the class. Each of the individual plaintiffs would have benefitted from an NVRA voter registration program had the defendant complied with applicable federal and state law.

17. The named plaintiffs will fairly and adequately protect the interests of the class. Plaintiffs have no interests which are antithetical to the interests of the class. Counsel for plaintiffs are well-established in the practice of public interest law with extensive experience in litigating public interest cases involving federal statutes, voting rights claims, and civil rights claims.

18. Defendants are refusing to act on grounds generally applicable to the class, thereby making appropriate final and injunctive relief with respect to the class as a whole. Rule 23(b)(2).

FACTS

19. The National Voter Registration Act is a federal statute codified at 42 U.S.C. §1973gg et., which was signed into law on May 20, 1993. A bipartisan majority enacted the NVRA to require that the States end discriminatory and unfair registration laws which, Congress found, have a direct and damaging effect on voter participation in federal elections and disproportionately harm voter participation by various groups, including racial minorities. 42 U.S.C. §1973gg(a)(3). Finding that the right of United States citizens to vote is a fundamental right and that Federal, State, and local governments have a duty to promote the exercise of this right, Congress enacted the NVRA to increase voter registration and

participation among the eligible population, to protect the integrity of the electoral process, and to ensure the maintenance of accurate and current voter registration rolls as a protection against possible fraud. 42 U.S.C. §1973gg(a) & (b). To these ends, as of January 1, 1995, the effective date of the NVRA, the State of New York has been required to implement the voter registration procedures summarized in paragraphs 20-21 below.

20. Section 7 of the NVRA requires that New York and other states establish procedures for, inter alia, registration of voters in elections for federal office at agencies which provide public assistance and agencies which serve persons with disabilities. Section 7(a) (2) of the NVRA; 42 U.S.C. §1973gg-5(a) (2). The procedures utilized at these agencies must entail, upon every application, renewal, or recertification for services, and upon every change of address submitted, inquiring of an applicant whether he or she wishes to register to vote, distributing a registration form, providing assistance as needed, and transmitting the completed form to the appropriate election official. Section 7(a)(4) (A) and 7(a) (6) of the NVRA; 42 U.S.C. §1973gg-5(a) (4) (A) and -5(a) (6) .

21. Section 7 of the NVRA also requires that states designate other governmental offices to serve as voter registration agencies. Section 7(a) (3) of the NVRA; 42 U.S.C. §1973gg-5(a)(3). The procedures utilized at these agencies must entail, upon every application, renewal, or recertification for services, and upon every change of address submitted, inquiring of an applicant

whether he or she wishes to register to vote, distributing a registration form, providing assistance as needed, and transmitting the completed form to the appropriate election official. Section 7(a)(4)(A) and 7(a)(6) of the NVRA; 42 U.S.C. §1973gg-5(a)(4)(A) and -5(a)(6).

22. The NVRA explicitly authorizes the States, as part of their mandated voter registration obligations, to designate unemployment compensation offices as voter registration agencies. 42 U.S.C. §1973gg-5(a)(3)(B).

23. Pursuant to the NVRA, the State of New York enacted a voter registration law which names the New York State Department of Labor as a voter registration agency. New York Election Law §5-211. Under this law, all offices which administer Department of Labor programs must, upon every application, renewal, or recertification for services, and upon every change of address submitted, inquire of applicants whether they wish to register to vote, distribute registration forms, provide assistance as needed, and transmit the completed forms to the appropriate election official. Id. These voter registration procedures are required to be in place by January 1, 1995. 1994 N.Y. Laws S.8867, §55.

24. Defendant has refused to undertake any of his mandated voter registration obligations in any of the offices which administer Department of Labor programs, including unemployment compensation offices and employment services (job referral) offices.

25. The NVRA, 42 U.S.C. §1973gg-9(b), provides that private

parties may notify the chief state election official of a potential NVRA violation, and may, if the violation is not corrected within 90 days, file suit in federal court.

26. On May 22, 1995, plaintiff National Congress provided notice to New York's chief state election official that the New York State Department of Labor had failed to meet its voter registration obligations. See Appendix 1. Over 90 days have elapsed since the filing of this notice, and plaintiff National Congress has not received a response; nor has the violation been cured.

FIRST CAUSE OF ACTION

27. Defendant's refusal to undertake mandated voter registration obligations constitutes a violation of the NVRA, 42 U.S.C. §1973gg-5(a)(4)(A) and -5(a)(6).

SECOND CAUSE OF ACTION

28. Defendant's refusal to undertake mandated voter registration obligations constitutes a violation of New York Election Law §5-211.

PRAYER FOR RELIEF

29. Unless and until ordered to do so by this Court,

Defendant will not allow eligible citizens to use the methods of voter registration afforded them under the NVRA and New York Election Law to register to vote or to update, through change-of-address procedures or change in party enrollment procedures, their current registrations.

WHEREFORE, plaintiffs pray that this Court:

1. Declare that Defendant is not in compliance with the NVRA;

2. Declare that Defendant is not in compliance with the New York Election Law;

3. Enjoin the defendant, his agents and successors in office and all persons acting in concert with any of them from failing or refusing to comply with the requirements of the NVRA and the New York Election Law;

4. Issue a Preliminary Injunction and Permanent Injunction, under which the defendant, his agents and successors in office and all persons acting in concert with any of them are ordered to take all steps to allow individuals to register to vote or update their current registrations when applying for benefits at unemployment compensation offices, employment services offices, or other offices which administer the New York State Department of Labor's programs, in accordance with NVRA and New York Election Law requirements;

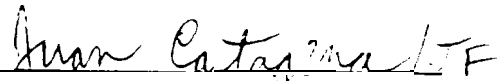
5. Provide an equitable remedy which allows the members of the plaintiff class to realize the voter registration opportunities to which they have been legally entitled since January 1, 1995;

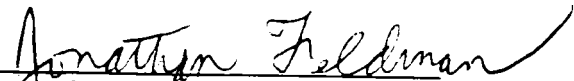
6. Retain jurisdiction over this case until such time as Defendant has complied fully with the mandatory provisions of the NVRA and New York Election Law; and

7. Award plaintiffs their attorneys' fees, including litigation expenses and costs, under the authority of the NVRA, 42 U.S.C. §1973gg-9(c).

Plaintiffs further pray that this Court order such other relief as the interest of justice may require.

By:


Juan Cartagena (JC 5087)


Jonathan Feldman (JF 4545)

COMMUNITY SERVICE SOCIETY
105 E. 22nd Street
New York, NY 10010
(212) 254-8900

Dated: October 13, 1995

Attorneys for Plaintiffs

APPENDIX 1



COMMUNITY
SERVICE SOCIETY
OF NEW YORK
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NEW YORK, N.Y. 10010
212 254-8900 • FAX 260-6218

DAVID R. JONES
PRESIDENT & CHIEF EXECUTIVE OFFICER
STEVEN L. KRAUSE
EXECUTIVE VICE PRESIDENT & CHIEF OPERATING OFFICER
JUAN CARTAGENA
GENERAL COUNSEL

22 May 1995
Certified Mail

Mr. Thomas R. Wilkey
Executive Director
New York State Board of Elections
Swan Street Building, Core 1
Empire State Plaza
Albany, NY 12223-0002

Dear Mr. Wilkey:

Please be advised that the National Congress for Puerto Rican Rights -- New York City Chapter ("National Congress"), through its attorneys, the Community Service Society of New York ("**CSS**"), asserts:

1) Whereas the National Congress is a non-profit, non-partisan membership organization, comprised of more than 600 members in New York City;

2) Whereas the National Congress' mission includes increasing the political participation of its members, who, in turn, are likely to be harmed by violations of the National Voter Registration Act of 1993, 42 U.S.C. **§1973gg, et seq. ("NVRA")**;

3) Whereas the **NVRA mandates** that state public assistance agencies, agencies which **serve** persons with disabilities, and other agencies designated by the state, undertake voter registration (42 U.S.C. **§1973gg-5**);

4) Whereas, pursuant to this NVRA provision, the State of New York designated the New York Department of Labor as a voter registration agency (New York Election Law **§5-211**);

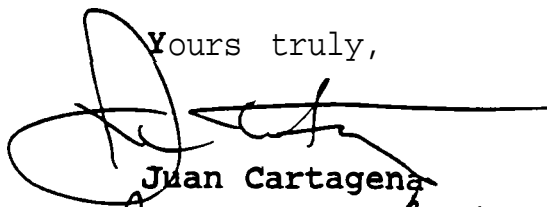
5) Whereas, on information and belief, the Department of Labor has refused to perform its mandated voter registration obligations;

6) Whereas the Department of Labor's refusal to perform its voter registration obligations would violate the NVRA, **§1973gg-5**, and New York Election Law **§5-211**;

Pursuant to the NVRA, **§1973gg-9(b)**, you have now been notified

of potential violations, which can be avoided if the Department of Labor undertakes voter registration activities in the manner prescribed by the NVRA and New York **Election Law §5-211.**

Yours truly,



Juan Cartagena



Jonathan Feldman

Attorneys for National
Congress for Puerto -Rican
Rights -- New York City Chapter