

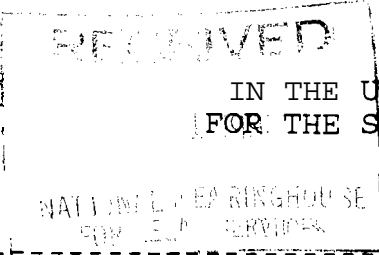
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IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

-----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,

v.

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

Defendant

Civil Action No.

NOTICE OF MOTION AND  
MOTION FOR PRELIMINARY  
INJUNCTION

*Memorandum in  
Support*

TO DEFENDANTS AND THEIR ATTORNEYS:

Please take notice, plaintiffs National Congress for Puerto Rican Rights -- New York City Chapter, et al., hereby move this Honorable Court pursuant to Rule 65 of the Federal Rules of Civil Procedure, to enter a preliminary injunction in favor of plaintiffs and against defendant John E. Sweeney for his failure to implement the mandatory provisions of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §1973gg et seq. and New York Election Law §5-211.

Plaintiffs seek to preliminarily enjoin Defendant with regard to the named plaintiffs and the class, as defined in the accompanying motion for class certification:

- (1) From failing to comply with the National Voter

Registration Act of 1993 ("NVRA");

(2) From failing to comply with New York Election Law §5-211;

(3) To immediately advise all affected offices and officers of the provisions of the Preliminary Injunction Order; and


(4) To submit to this Court and to plaintiffs' counsel, within ten (10) days of the Preliminary Injunction Order, a plan for implementing the NVRA; such plan shall be fully implemented within thirty (30) days of the Order.

The Court will hear this motion on the day of \_\_\_\_\_, 1995 at 9:00 a.m., or as soon thereafter as the matter can be heard.

The preliminary injunction is necessary and appropriate because plaintiffs have met the tests for such relief prescribed under the National Voter Registration Act's remedial provisions.

This motion is further based on the Memorandum in Support of Plaintiffs' Motion for Preliminary Injunction, the supporting declaration of Louise Altman, and such additional evidence as the Court may receive.

Respectfully submitted,

  
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

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

v .

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

Defendant

: Civil Action No.  
:  
:  
: [PROPOSED] ORDER  
: GRANTING  
: PLAINTIFFS' MOTIONS  
: F O R C L A S S  
: CERTIFICATION AND  
: PRELIMINARY INJUNCTION

-----X

ORDER

Plaintiffs' Motions for Class Certification and Preliminary Injunction came on for hearing before this Court on \_\_\_\_\_ -I 1995. The Court hereby finds that the plaintiffs have established the elements required for class certification and that they are entitled to preliminary injunctive relief in accordance with the prescribed remedial scheme dictated by the National Voter Registration Act of 1993 ("NVRA").

Accordingly,

IT IS ORDERED that the plaintiff class is certified in accordance with the definition proposed, as follows:

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;

IT IS FURTHER ORDERED that Defendant is enjoined from failing to comply with the NVRA and New York Election Law §5-211;

IT IS FURTHER ORDERED that Defendant immediately advise all affected offices and officers of the provisions of this Order;

IT IS FURTHER ORDERED that, within ten (10) days of this Order, Defendant shall submit to this Court and to plaintiffs' counsel a plan for implementing the NVRA and New York Election Law §5-211; such plan shall be fully implemented within thirty (30) days of this Order;

IT IS FURTHER ORDERED that, at a future date to be determined, the Court will entertain proposals from the parties regarding an appropriate equitable remedy which will allow the members of the plaintiff class to realize the voter registration opportunities to which they have been legally entitled since January 1, 1995; and

IT IS FURTHER ORDERED that plaintiffs will not be required to

post a bond for security in light of the public interest nature of their claims.

DATED: \_\_\_\_\_, 1995

\_\_\_\_\_  
United States District Judge

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF NEW YORK

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

. Civil Action No.

Plaintiffs,

v .

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

Defendant  
-----;

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPORT OF THEIR  
MOTION FOR PRELIMINARY INJUNCTION

Plaintiffs National Congress for Puerto Rican Rights -- New York City Chapter, et al., respectfully request this Court to enter a preliminary injunction to compel defendant John E. Sweeney's compliance with the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. §1973gg et seq., and the related state statute. The NVRA required the State of New York to implement by January 1, 1995, specific procedures in connection with voter registration in federal elections. Among the procedures required, New York was required to name the governmental agencies which would serve as voter registration agencies. NVRA, 42 U.S.C. §1973gg. New York did so, see New York Election Law §5-211, and the agencies named

are required under the NVRA to undertake a number of voter registration activities. 42 U.S.C. §1973gg-5(a)(4)(A) and - 5(a)(6).

The New York State Department of Labor ("Department") was among the agencies named. However, even after being notified that it would have to comply with the law, the Department has refused to undertake any of its voter registration obligations under federal or state law. As explained below, Congress has directed that an injunction issue when the NVRA is violated, and no showing of irreparable harm is required. Moreover, even if plaintiffs were required to show irreparable harm and a likelihood of success on the merits, in view of 1) the harm to the thousands of persons who are unable to register to vote at the Department's offices, and 2) the Department's blatant and indisputable violation of the law, an injunction is wholly warranted. Accordingly, this Court should enter a preliminary injunction requiring Defendant immediately to commence the voter registration activities required under federal and state law.

#### STATEMENT OF FACTS

A. ~~The NVRA Requires that States Provide Broad-Based Voter Registration Opportunities and Protections by January 1, 1995~~

Congress passed the National Voter Registration Act of 1993 in order:

(1) to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal

office;

(2) to make it possible for Federal, State, and local governments to implement this Act in a manner that enhances the participation of eligible citizens as voters in elections for Federal office;

(3) to protect the integrity of the electoral process; and

(4) to ensure that accurate and current voter registration rolls are maintained.

42 U.S.C. §1973gg(b).

Significantly, Congress found that registration requirements throughout the country were confusing and non-uniform, and that:

[D]iscriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office and disproportionately harm voter participation by various groups, including racial minorities.

42 U.S.C. §1973gg(a)(3). See also Voter Registration Hearing Before Senate Subcommittee on Elections, Committee on Rules and Administration, Report 103-6, 103rd Cong., 2nd Sess. 2 (1993); National Voter Registration Act of 1993, Committee on House Administration, Report 103-9, 103rd Cong., 2nd Sess. 2-3 (1993). Thus, the NVRA's uniform registration mandates were explicitly designed to expand voter registration opportunities and decrease racial disparities in voter registration.

The NVRA became effective in New York on January 1, 1995. The Act requires that the State provide for voter registration in motor vehicle agencies, public assistance agencies, disability agencies, and other agencies named by the State, 42 U.S.C. §1973gg-5(a), and

explicitly authorizes the State, as part of its mandated voter registration obligations, to designate unemployment compensation offices as voter registration agencies. 42 U.S.C. §1973gg-5 (a)(3)(B). In response to this mandate, the State of New York enacted a voter registration statute in which it named the New York State Department of Labor as a voter registration agency and in which it imposed voter registration obligations upon the agency, in accordance with NVRA requirements. New York Election Law §5-211. The state statute requires participation from all offices which administer the Department's programs, id., which, in New York, primarily includes unemployment compensation offices and employment services (i.e., job referral) offices. See, e.g., New York Labor Law 5530.

B. ~~The New York State Department of Labor has Refused to Comply with the NVRA and Related State Legislation and Remains in Violation of Federal and State Law~~

As set forth in the attached declaration of Louise Altman, the New York State Department of Labor has consistently refused to undertake any of its voter registration obligations. In contrast with agencies such as the New York State Department of Motor Vehicles, which has processed nearly 200,000 voter registration applications, and the New York State Department of Social Services, which has processed over 82,000 voter registration applications, the New York State Department of Labor has processed none. See Declaration of Louise Altman, Paras. 3 & 4, and accompanying exhibit.

In accordance with NVRA procedures, 42 U.S.C. §1973gg-9(b) , on May 22, 1995, plaintiff National Congress notified the chief state election official of the Department's non-compliance. See Complaint, Appendix 1. Having waited the requisite 90 days, and having received no reply nor cure of the violation, plaintiffs commenced this suit seeking the Department's compliance with the NVRA and New York Election Law. The Department's failure to respond to the 90-day notice constitutes an implicit admission that it is in violation of these laws. Cf. Weitnauer Tradina Co., Ltd. v. Annis, 516 F.2d 878 (2d Cir. 1975) (defendant's failure to deny allegation advanced in complaint construed as admission); Donovan v. Carls Drus Co., 703 F.2d 650 (2d Cir. 1983) (defendant's failure to respond to request for admissions construed as admission).

#### ARGUMENT

**I. BECAUSE THE NVRA DICTATES THAT INJUNCTIVE RELIEF BE GRANTED FOR VIOLATIONS OF THE NVRA, THE COURT'S TRADITIONAL EQUITABLE DISCRETION HAS BEEN FORECLOSED AND DEFENDANT'S NONCOMPLIANCE WITH THE NVRA IN ITSELF WARRANTS A GRANT OF PRELIMINARY INJUNCTIVE RELIEF**

When a federal statute requires that injunctive relief be granted upon violations of the statute, the traditional balancing test for determining whether preliminary relief should issue does not apply, and injunctive relief must be granted upon a showing of a statutory violation. As the Second Circuit has explained,

[T]he function of a court in deciding whether to issue an injunction authorized by a statute of the United States to enforce and implement Congressional policy is a different one from that of the court when weighing claims of two private litigants. . . . The passage of the statute is, in a sense, an implied finding that violations will harm the public and ought, if necessary, be restrained. . . [T]he legislative goals are the framework within which the court operates in

deciding whether to grant injunctive relief.

United States v. Diapulse Corn. of America, 457 F.2d 25, 27-28 (2d Cir. 1972).

Furthermore, although ordinarily a judge who weighs the propriety of injunctive relief must

exercise flexibility and mold his decree to the necessities of the particular case . . . , ~~Congress may, in an exercise of its constitutionally delegated powers, act to restrict or suide the court's discretion in a particular area.~~

State of New York v. Gorsuch, 554 F. Supp. 1060, 1062 (S.D.N.Y. 1983), citing Weinberser v. Romero-Barcelo, 456 U.S. 305 (1982).

In Weinberser, the Supreme Court articulated guidelines for determining whether Congress has intended to restrict the courts' equitable discretion. The Weinberser Court considered the issue in the context of the Clean Water Act, whose remedial scheme authorizes the granting of "appropriate relief," which may include, but is not limited to, injunctive relief. Id. at 317. Noting that the Act explicitly provides for fines and criminal penalties as means of ensuring compliance, id. at 314, the Court concluded that Congress did not intend to deny courts their traditional equitable discretion and that injunctive relief, while potentially appropriate in a given case, was not automatically required. Id. at 316-20.

In so holding, the Court distinguished TVA v. Hill, 437 U.S. 153 (1978), in which the Court had construed the remedial provisions of the Endangered Species Act. In that case, the Court found, statutory language requiring the protection of endangered species amounted to a congressional determination that the usual

vote, the Black registration rate of 49.7% and the Latin0 registration rate of 38.3% fall far below the 66.1% registration rate for whites. Id., para. 8. These statistics indicate that Congress' goals of equalizing access to voter registration opportunities and decreasing racial disparities in registration, see Voter Resistration Hearing Before Senate Subcommittee on Elections, Committee on Rules and Administration, Report 103-6, 103rd Cong., 2nd Sess. 3 (1993), are less likely to be realized in New York, due to Defendant's noncompliance.

As the overarching purpose of the NVRA was to create uniform nondiscriminatory requirements regarding voter registration which would ease burdensome voter registration procedures, with each day that passes the Department's failure to provide voter registration opportunities imposes irreparable harm. See Auerbach v. Kinlev, 499 F. Supp. 1329, 1340-41 (N.D.N.Y 1980) (making voter registration more burdensome by requiring additional paperwork causes irreparable harm), reversed on other grounds, 765 F.2d 350 (2d Cir. 1985) (later proceeding); Dillard v. Crenshaw County, 640 F. Supp. 1347, 1363 (M.D. Ala. 1986) (interference with exercise of right to vote constitutes irreparable harm). Moreover, the denial of voter registration opportunities plainly inflicts an "injury for which a monetary award cannot be adequate compensation." See Jackson Dairy, Inc. v. H.P. Hood & Sons, Inc., 596 F.2d 70, 72 (2d Cir. 1979).

Finally, the issuance of preliminary injunction would be entirely in the public interest as it would extend to New York's

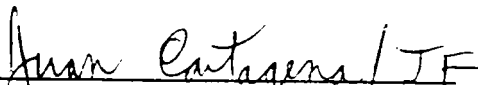
citizens the services and protections which Congress and the New York Legislature determined are necessary to make voter registration more accessible, particularly to groups which are currently under-registered. See generally Miller v. California Pacific Medical Center, 19 F.3d 449, 459 (9th Cir. 1994) ("passage of the statute is itself an implied finding by Congress that violations will harm the public"); Harris v. Graddick, 593 F. Supp. 128, 135-36 (M.D. Ala. 1984) (where Voting Rights Act is violated, "public as a whole suffers irreparable injury"). Indeed, in two recent actions challenging states' failure to implement the NVRA, federal district courts found that the NVRA had been violated and proceeded to issue declaratory and injunctive relief. Wilson v. United States, 878 F. Supp. 1324 (N.D. Cal. 1995) (granting relief against California defendants upon motion for preliminary injunction), aff'd, F.3d , No. 95-15449, slip op. (9th Cir. July 24, 1995); ACORN v. Edgar, 880 F. Supp. 1215 (N.D. Ill. 1995) (granting relief against Illinois defendants upon motion for summary judgment), aff'd, 56 F.3d 791 (7th Cir. 1995). By the same token, foreclosing the voter registration opportunities mandated under the NVRA and New York Election Law dramatically harms the public interest.

#### CONCLUSION

As explained above, it cannot be disputed that Defendant has violated the NVRA and the related state statute and will continue,

absent judicial intervention, to violate these laws. Injunctive relief, therefore, is entirely appropriate and urgently needed. For each week that passes, thousands of New York citizens are being deprived of the opportunity to register to vote, or to update their registrations for change-of-address (or change in party enrollment) purposes, when they apply for unemployment benefits or job referral services at the New York State Department of Labor's branch offices. These persons are entitled access to the streamlined voter registration procedures guaranteed under the NVRA. Therefore, plaintiffs respectfully request that this Court grant plaintiffs' motion for a preliminary injunction, in accordance with the proposed order.

Respectfully submitted,

  
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

DECLARATION OF LOUISE ALTMAN

I, Louise Altman, make the following declaration pursuant to 28 U.S.C. §1746:

1. I am currently Associate Director of Human SERVE, a position I have held since 1988. Human SERVE is a national, non-partisan, nonprofit organization dedicated to expanding voter participation through reform of voter registration laws. Human SERVE is headquartered in the City of New York, New York County, and its program in New York has devoted considerable effort towards advocating for and monitoring the implementation of the New York State voter registration statute which implements the National Voter Registration Act of 1993 ("1993").

2. Prior to the passage of the New York State statute, I was appointed to serve on the New York State Board of Elections Task Force for Implementation of the NVRA. In this capacity, I helped to draft proposed legislation seeking to implement the NVRA. Since January 1, 1995, when the State's new voter registration law became effective, I have actively monitored its implementation through 1) weekly telephone conversations and/or meetings with New York State Board of Elections officials and 2) on-going review of the frequent reports and statistical information issued by the New York State Board of Elections ("Board") regarding progress by various agencies in processing voter registration applications.

3. In the case of the New York State Department of Labor ("Department"), I have been repeatedly informed by New York State Board of Elections officials that, despite requests from the Board that the Department comply with its voter registration obligations,

the Department has consistently refused, to the point where it has refused to accept any voter registration forms from the Board for distribution.

4. The data printout issued by the Board (attached hereto as "Exhibit 1") confirms that the New York State Department of Labor has undertaken none of its voter registration obligations. While the printout shows the progress of all governmental agencies in conducting voter registration for the period from January 1, 1995, through August 31, 1995 (e.g., nearly 200,000 applications processed by the Department of Motor Vehicles and over 82,000 processed by the Department of Social Services), it does not list the New York State Department of Labor because the Department has not registered anyone.

5. I have reviewed the public information and data provided by the Department's Division of Research and Statistics. These data, which according to my understanding are routinely collected and distributed to the public, reveal that during the week beginning on August 20, 1995, 229,700 persons applied for unemployment benefits statewide.

6. Additional data provided by the Division of Research and Statistics reveal that, during the year-long period from July 1, 1994, through June 30, 1995, 636,215 persons applied for employment services (i.e., job referral services) statewide, of whom 297,314 also received unemployment benefits.

7. Additional data provided by the Division of Research and Statistics reveal that, during the month of June, 1995, 180,597

persons received unemployment benefits statewide. Of these, 48,958 were members of a racial or language minority group (defined as Black, Hispanic, American Indian, Alaskan Natives, and Asian and Pacific Islanders), representing 27% of the total. Hispanics receiving benefits numbered 18,869, representing 10% of the total. The remaining breakdown is as follows: Blacks receiving benefits, 24,870 (14% of total); American Indian and Alaskan Natives, 1,027 (.6% of total); Asian and Pacific Islanders, 4,192 (2% of total).

8. I have reviewed the public document issued by the United States Census Bureau, entitled Votins and Resistration in the Election of November 1992. This document reveals that, as of November 1992, 66.1% of eligible white voters in New York State were registered to vote. It also reveals that 49.7% of eligible Black voters in New York State were registered to vote and that 38.3% of eligible Hispanic voters in New York State were registered to vote. Finally, a comparison of the total registration rate in New York State compared with other States reveals that New York State ranks 47th out of the 50 States in percentage of eligible voters who are registered.

Pursuant to 28 U.S.C. 51746, I, Louise Altman, declare under penalty of perjury that the foregoing statements are true and correct, and I would testify to the same if called as a witness. Executed this 13th day of October, 1995.

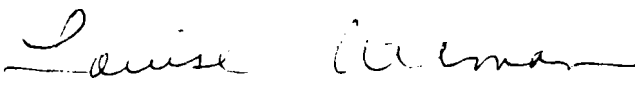
  
\_\_\_\_\_  
Louise Altman

EXHIBIT 1

NEW YORK STATE BOARD OF ELECTIONS  
 NVRA TOTALS BY AGENCY - ALL SITES  
 FOR PERIOD: 01-JAN-95 TO 31-AUG-95

SITE DATA

COUNTY BOARD DATA

Agency	TOTAL APPS	# P DECS	ALRDY REG	MAILED FRM	BLANKS	NEW REG	ADDR CHGS	ENRL CHGS	NAME CHGS	DUPL REGS	INCMPLT	FWD
Advocate for Persons with Disabilities	13	3	0	0	0	2	0	1	0	1	1	3
Alcoholism and Abuse Services	278	421	184	24	182	28	0	4	0	7	16	44
Commission for the Blind	117	237	473	49	20	85	0	3	0	4	0	28
Dept of Health WIC	14408	19008	14921	2588	14081	9701	1458	280	89	408	680	1080
Dept of Social Services	82400	111822	71855	8380	88844	50808	1918	278	278	4517	7105	863
Dept of State	86	8979	240	145	88	28	75	7	0	0	1	35
Military Recruiting Offices	314	84	0	0	0	18	4	0	0	28	13	2
NYS Dept of Motor Vehicles	199855	2197322	8	758	15	27108	11855	2497	18103	1588	1588	
OMRDD	528	870	257	36	574	373	13	0	21	24	58	
Office for the Aging	28	82	310	12	51	13	2	0	4	1	28	
Office of Mental Health	100	79	25	17	7	50	5	0	2	0	28	
Site Code Missing	361	133	83	70	22	38	15	3	23	19	9	
Misc records	45	47	35	0	0	6	0	0	1	5	2	
VEISD	41	278	218	18	70	32	2	0	2	4	1	
Veterans	83	2512	3098	81	884	48	70	0	0	2	4	
Workers Compensation	2341465	91743	19141	106400	194184	38075	13904	2865	24124	14683	3545	
<b>TOTALS</b>	<b>298752</b>	<b>2341465</b>	<b>91743</b>	<b>19141</b>	<b>106400</b>	<b>194184</b>	<b>38075</b>	<b>13904</b>	<b>2865</b>	<b>24124</b>	<b>14683</b>	<b>3545</b>

NOTE: Agency related figures shown in the County Board Data section should equal "Total apps trans to date" in the Site Data section. Discrepancies are due to calculation errors on transmittal forms.