

IN THE UNITED STATES DISTRICT COURT  
FOR THE WESTERN DISTRICT OF PENNSYLVANIA

ASSOCIATION OF COMMUNITY )  
ORGANIZATIONS FOR REFORM )  
NOW (ACORN); PROJECT VOTE; and )  
MARYELLEN HAYDEN, )

Plaintiffs, )

v. )

TOM CORBETT, Attorney General, )  
Commonwealth of Pennsylvania, )

Defendant. )  
\_\_\_\_\_ )

Civil Action No. 2:09-cv-951

Hon. Nora Barry Fischer

**FIRST AMENDED COMPLAINT**

**INTRODUCTION**

Plaintiffs ACORN and Project Vote are national not-for-profit organizations dedicated to assisting eligible voters in low-income and minority communities to register to vote. ACORN and Project Vote have previously partnered to conduct paid voter-registration drives, most recently in 2008. Project Vote’s voter-registration work is directly related to its mission of promoting democracy by encouraging political participation from all sectors of society. ACORN’s voter-registration work is directly related to its goal of advancing social and economic justice for low- to moderate-income people. Voter registration is an important political activity for both organizations. In this civil rights action, ACORN challenges the constitutionality of a Pennsylvania election statute, 25 Pa. Cons. Stat. § 1713, entitled *Solicitation of Registration*, which makes it a crime to “give, solicit or accept payment or financial incentive to obtain a voter registration if the payment or incentive is based upon the number of registrations or applications

obtained.” District Attorneys, including in Allegheny County, are applying the law to prohibit not only payment per registration, but also any reliance on performance standards or goals that refer to the number of registrations. This application essentially precludes Plaintiffs ACORN and Project Vote from hiring and paying employees to advance the organization’s goal of registering eligible voters, and deters potential canvassers, including Plaintiff Maryellen Hayden from accepting employment with ACORN and Project Vote, thereby imposing a severe burden on Plaintiffs’ First and Fourteenth Amendment rights. Plaintiffs seek a declaration that the statute is unconstitutional and an injunction to block its enforcement.

### **JURISDICTION AND VENUE**

1. This Court has jurisdiction over this action pursuant to 28 U.S.C. §§ 1331 and 1343(3) and (4). Declaratory relief is authorized by 28 U.S.C. § 2201 and Fed. R. Civ. P. 57. Injunctive relief is authorized by Fed. R. Civ. P. 65.
2. Venue lies in the United States District Court for the Western District of Pennsylvania because a substantial part of the events giving rise to Plaintiffs’ claims have occurred and will occur in Allegheny County and Defendant Corbett has offices in the District. 28 U.S.C. § 1391(b)(1) and (2).

### **PARTIES**

#### **Plaintiffs**

3. Plaintiff Association of Community Organizations for Reform Now (ACORN) is a not-for-profit organization incorporated in Louisiana.
4. ACORN has over the course of its nearly forty-year history been one of the nation’s largest

Community organizations of low and moderate income families and continues to work on their behalf on issues of social and economic justices.

5. Project Vote is a nonpartisan, non-profit 501(c)(3) organization incorporated in Louisiana; its principal office is located at 737 ½ 8th Street, S.E., Washington, D.C., 20003. Since its founding in 1982, Project Vote has assisted millions of low-income and minority citizens nationwide in registering and helped to register to vote, trained hundreds of low-income and minority organizers, and provided registrants with nonpartisan, follow-up voter education on issues of voter identification, poll locations, provisional voting and election dates. It has assisted citizens in Pennsylvania to register to vote since 1982, either directly or in partnership with other Pennsylvania-based civic groups, including ACORN.
6. Project Vote is actively developing plans to conduct paid voter-registration drives in Pennsylvania in 2012 — and may also do so in 2010 — in partnership with Pennsylvania-based civic groups. In so doing, Project Vote is developing a voter-registration-drive manual governing the conduct of ProjectVote-funded paid voter-registration drives, which will include a designation of flexible performance standards for canvassers, based upon manager field tests.
7. Project Vote also provides professional training, management, evaluation, and technical services for other voter engagement and voter participation activities in low- and moderate-income communities in Pennsylvania and other states. The organization has provided funding and technical assistance to ACORN for substantial voter registration drives in ACORN communities in Pennsylvania. Project Vote's core mission is to increase levels of voter participation in historically under-represented low- and moderate-income and minority communities. This mission calls for a comprehensive approach.

8. Maryellen Hayden is a Pennsylvania resident who served as the head organizer for Pittsburgh ACORN. In that capacity, she directed the organization's voter registration drives in 2008 and prior years. As head organizer she was responsible for overseeing the supervision of the registration drive staff, including canvassers and quality control employees. Her duties included overseeing and managing midlevel organizers who were directly responsible for the management of canvassers, including the initial and ongoing training of canvassers. She was also responsible for overseeing the management of the separate quality control program and staff, which, along with mid-level management, investigated any suspected irregularities in voter registration applications submitted by canvassers. Because Ms. Hayden was ultimately responsible for ACORN's voter registration drive(s), she is under threat of criminal prosecution under an overbroad and liberal interpretation of 25 Pa. Cons. Stat. § 1713.
9. Ms. Hayden also oversaw the conduct of all-volunteer voter registration drives in the course of her employment. In so doing she found that it was difficult, if not impossible, to recruit volunteers willing to commit enough hours to make any significant progress in helping the substantial population of eligible, unregistered citizens to register to vote. Volunteers also performed the canvassing work less often than paid staffers and therefore needed more frequent training, using resources that could have been used for more productive management of paid staff in the furtherance of ACORN's and Project Vote's missions.
10. In 2010 and beyond, Ms. Hayden intends to personally take part in paid voter registration drives, individually and/or with Pennsylvania civic organizations, in which necessary flexible performance standards will be applied.

Defendant

11. Defendant Tom Corbett is, and at all relevant times was, Attorney General for the Commonwealth of Pennsylvania and as such was operating under color of state law. Mr. Corbett is sued in his official capacity. As attorney general, Defendant Corbett has the duty “to uphold and defend the constitutionality of all statutes so as to prevent their suspension or abrogation in the absence of a controlling decision by a court of competent jurisdiction.” 71 Pa. Cons. Stat. Sec. 732-204(a)(3). Defendant Corbett also has the power to prosecute criminal cases: (1) when requested to do so by a district attorney who lacks the resources to conduct an adequate investigation or prosecution of the case or who represents that there is the potential for an actual or apparent conflict of interest on the part of the district attorney or his office; (2) by order of court if he establishes by a preponderance of the evidence that the district attorney has failed or refused to prosecute and such failure or refusal constitutes abuse of discretion; and (3) when the president judge requests that he intervene in a criminal prosecution. 71 Pa. Cons. Stat. Sec. 732-205.

**FACTUAL ALLEGATIONS**

**Voter Registration is a Crucial Component of Plaintiffs’ Political Advocacy**

12. Voter registration, which promotes political empowerment, is an indispensable component of ACORN’s and Project Vote’s efforts to improve the social and economic conditions of their members and the communities they serve.

13. ACORN’s and Project Vote’s voter-registration campaigns further their political advocacy by, among other things:

- a. Expanding the number of voters from communities that they serve, which allows the organization to advocate more effectively with government entities that

provide services to those communities and to influence political decisions that affect those communities;

- b. Providing opportunities for face-to-face interactions with prospective registrants, during which canvassers inquire whether they are registered to vote and discuss with individuals their opportunity to participate in the political process and provide information on the process of voting;
  - c. Increasing representation of low-income citizens and people of color among registered voters, which are significantly lower than the rates for more affluent citizens. According to the U.S. Census Bureau, in 2006 65% of eligible voters were registered to vote in Pennsylvania. Only 60% of eligible voters earning less than \$40,000 were registered to vote, compared to 76% of those earning more than \$40,000. Disparities were also pronounced when examined along racial lines, with 67% of the eligible white voters in Pennsylvania registered to vote in 2006, whereas only 50% of the eligible black voters were registered.
14. Minority Americans are twice as likely to rely on voter-registration drives to register to vote than are Caucasian citizens, which further enhances the importance of voter-registration activities to Plaintiffs. In 2008, 13.5% of African-American citizens who filled out voter-registration applications did so through voter-registration drives while only 6.2% of Caucasian citizens did so in this fashion.
15. ACORN's and Project Vote's focus on voter-registration issues is longstanding. ACORN and Project Vote championed passage of the National Voter Registration Act of 1993 and ACORN was the lead plaintiff in several legal challenges against states that refused to implement it, thus denying thousands of low-income citizens the opportunity to register to

vote at government agency offices. In 2005 and 2006 ACORN led a coalition of organizations in Pennsylvania that successfully lobbied against a proposed state statute that would have restricted voters' rights, including taking away ex-felons' rights.

16. Recognizing the low voter-registration rates among poor and minority citizens and the importance of encouraging its members to exercise their right to the franchise, ACORN and Project Vote have been conducting non-partisan voter-registration drives since 1982.
17. In 2006, ACORN collected and submitted more than 30,000 voter-registration applications to the Allegheny County Elections Division. Project Vote provided funding, training and quality control documents and technical advice to ACORN in this voter-registration drive .
18. Prior to the 2008 election, ACORN and Project Vote were aware that there were thousands of minority and low-income residents in Allegheny County who were eligible to vote but had not registered. In anticipation of the November election, both organizations made it a priority to expand their voter-registration activities in an effort to alleviate this problem.
19. During 2008, ACORN hired more than 300 registration canvassers. As a result, ACORN was able to collect and submit about 40,000 voter-registration applications to the Allegheny County Elections Division between January and October 2008.

**Project Vote and ACORN'S Training and Quality-Control Programs**

20. Project Vote has developed standardized training programs to teach voter registration canvassers how to do the job correctly. ACORN utilized these programs in its voter registration drives. During the 2008 training program in Allegheny County, which was directed by Maryellen Hayden, registration canvassers were informed of, *inter alia*: a) the lawful qualifications for registering to vote in Pennsylvania; b) the proper method of

completing a voter registration application; and c) the criminal consequences of falsifying a voter-registration application.

21. Indeed, Project Vote and ACORN's training program emphasized to registration canvassers the consequences of violating voter-registration laws and/or committing fraud. ACORN, under the technical advice provided by Project Vote, informed workers that they would report to election officials any suspicions that a canvasser had falsified a voter-registration application and that ACORN and Project Vote would cooperate in prosecuting those individuals.
22. Following the training program developed by Project Vote, ACORN required all registration canvassers to sign statements affirming that they understood these consequences and even posted a sign on the wall of the Pittsburgh office advising workers that if they committed fraud ACORN would turn the perpetrator in to prosecuting authorities and would testify against the individual.
23. Recognizing that in any employment situation even an excellent training program will result in some percentage of employees who cannot or will not do the job correctly, ACORN and Project Vote supplemented the training program with rigorous quality-control practices.
24. Employees were informed that every voter-registration application they submitted would be checked in order to deter misconduct by those who might be inclined to cheat.
25. The verification process developed by Project Vote included a supervisor visually inspecting each application for completion errors or suspicious content, calling the applicants that provided phone numbers to confirm the accuracy and veracity of the information on the registration application, and investigating applications that appeared to contain inaccurate or incomplete data.



26. If the supervisor detected applications that were suspicious, e.g., the handwriting on every application from a particular worker looked the same, the registrant's name was a fictional character (i.e., Mickey Mouse), or the same name appeared on multiple applications, the supervisor would open an investigation and, if the investigation did not disprove the suspicion, complete a "problematic card package" that was then attached to the application(s) before being turned into election officials.
27. ACORN supervisors, including Ms. Hayden, paid particular attention to and investigated workers who submitted problematic registration applications.

**ACORN and Project Vote's Voter-Registration Activities Were Attacked Unfairly During the 2008 Presidential Campaign**

28. During the 2008 Presidential Campaign, the voter-registration efforts conducted by ACORN with the assistance of Project Vote came under attack from various fronts.
29. The charges against ACORN stemmed from the fact that some of the registration applications the organization submitted to election authorities were duplicates for people who were already registered, filled out on behalf of non-existent people, or otherwise improper.
30. Election officials across the country pointed out that the submission of defective or fraudulent voter registrations did not actually result in fraudulently cast ballots. Under federal law, every "Mickey Mouse" and "Abraham Lincoln" who registered to vote would, as first-time voters, have to produce identification in order to vote.
31. Moreover, county elections officials review the registration applications submitted by ACORN or anyone else to ensure that the person is not already registered and that they are legally eligible to vote before officially registering the person and issuing a voter card.
32. Contrary to claims made by the critics of ACORN, and to some extent, Project Vote, the organizations derive no benefit, financial or otherwise, from workers who engage in fraud or

submit deficient voter-registration applications. ACORN and Project Vote's goal is not to register as many people as possible, but to increase the number of people who are legally registered to vote so that they can and hopefully will exercise their right to vote. Deficient or fraudulent applications do not increase the pool of registered voters or lead to more voters.

33. In fact, the submission of fraudulent or deficient voter-registration applications harms ACORN's and Project Vote's effectiveness and ability to advance their organizational missions by wasting valuable staff time and resources to process defective applications, hindering membership donations and other forms of fundraising, embarrassing staff and board members, and besmirching the organizations' reputations with the government officials they are often trying to influence.
34. Consequently, registration canvassers who committed fraud or submitted deficient voter-registration applications during the 2008 voter-registration drive not only worked counter to ACORN and Project Vote's mission, but caused harm to the organization. ACORN, Project Vote, and Ms. Hayden were the victims of a relatively few registration canvassers and suffered because those canvassers did not perform honestly and in accordance with the organization's policies and procedures.

#### **ACORN Cooperated With Election Officials to Identify and Minimize Fraud**

35. Although fraudulent voter registrations are unlikely to lead to actual voter fraud, ACORN and Project Vote nevertheless instituted in their voter registration drives across the country carefully designed training programs for employees and quality-control systems to minimize deficient and fraudulent voter-registration applications.
36. ACORN's and Project Vote's internal policies, which apply nationwide, require that the field organization submit to elections officials *every* voter-registration application collected

by that organization's employees. The rationale is that the potential for disenfranchising voters is too great to allow the registration-application collectors to be given discretion to decide which applications should or should not be turned in. ACORN would only deviate from this practice in its field work in response to local Election Officials' request.

37. In Allegheny County, the Elections Division specifically requested that ACORN submit *every* registration application it collected, including ones that appeared to be deficient or problematic. ACORN advised the Elections Division in January 2008 that it would comply with their request, which was already reflected ACORN's and Project Vote's policies and practices.
38. ACORN also advised the Allegheny County Elections Division in January 2008 that it would
  - a) separate out those applications identified as problematic by the Project Vote quality-control system and turn them in separately with a Problematic Card Cover Sheet; and b)
  - cooperate with any investigation of workers who submitted problematic cards.
39. During this exchange of correspondence and a meeting with the Allegheny County Elections Division, ACORN requested that the Elections Division provide regular feedback to ACORN so that it could improve its performance and identify any registration canvassers who were not performing adequately.
40. ACORN adhered to the foregoing policies and practices, under the technical guidance of Project Vote throughout the 2008 voter-registration campaign.
41. Beginning in March 2008 and at several points throughout the year, as a result of the stringent quality-control measures developed by Project Vote and adopted by ACORN, Ms. Hayden and other ACORN Allegheny County supervisors became suspicious that some workers might be falsifying voter-registration applications. The supervisors turned over to

the Allegheny County Elections Division the possibly defective applications and the identity of the registration canvassers who had submitted them.

42. As the result of an internal investigation, ACORN, under the direction of Ms. Hayden, terminated employees it suspected of submitting fraudulent registrations. Other workers resigned after Ms. Hayden and subordinate ACORN supervisors confronted them with their suspicions. ACORN advised the Elections Division of these personnel changes.
43. When the allegations of fraud against ACORN were escalating nationwide in October 2008, Allegheny County detectives requested that ACORN provide information on thirty of its Pittsburgh-based canvassers, a request which subsequently was narrowed to thirteen canvassers, all of whom were no longer employed by ACORN.
44. ACORN provided the requested employment records for all but two of the people identified by County detectives. ACORN did not provide information on the two individuals in the request because they had no record of those people ever working for the organization. ACORN also provided the detectives with additional information about applications it believed were suspicious.
45. Between March and October 2008, Ms. Hayden and ACORN identified approximately 216 problematic registration applications collected by its canvassers. ACORN turned those applications into the Allegheny County Elections Division as part of a "Problematic Card package."
46. On May 7, 2009, the Allegheny County District Attorney filed criminal charges against five former ACORN employees, and two others about whom ACORN had no records, alleging that they committed various crimes of fraud in connection with the submission of voter-registration applications.

47. All five of the former ACORN employees had been either fired by the organization or resigned after ACORN supervisors confronted them with the problematic applications.
48. ACORN, under Ms. Hayden's direction, either turned individuals in to the proper authorities or cooperated in the criminal investigation of each of the five employees.
49. Among the charges filed against each former employee was one brought under 25 Pa. Cons. Stat. § 1713, *Solicitation of Registration*.
50. The § 1713 charges against all seven individuals were withdrawn by the Allegheny County District Attorney's Office following the filing of this lawsuit and a consent agreement entered into by Plaintiff ACORN and Allegheny County District Attorney Stephen Zappala.
51. Under the consent agreement, Plaintiff ACORN agreed to voluntarily dismiss Mr. Zappala as a defendant in this case in exchange for Mr. Zappala's agreement not to prosecute ACORN under 25 Pa. Cons. Stat. § 1713 pending the entry of a final non-appealable order in this case so long as ACORN continues to compensate its employees based on the number of hours worked and does not compensate its employees based solely on the number of completed voter registrations they obtain. Docket No. 19.

**Application of 25 Pa. Cons. Stat. § 1713, Solicitation of Registration, to ACORN, Project Vote and Maryellen Hayden**

52. The *Solicitation of Registration* statute is a 2002 law that reads as follows:
  - a. Prohibition. – A person may not give, solicit or accept payment or financial incentive to obtain a voter registration if the payment or incentive is based upon the number of registrations or applications obtained.
  - b. Penalty. – A person who violates subsection (a) commits a misdemeanor of the third degree and shall, upon conviction, be sentenced to pay a fine of not less than \$500 nor more than \$2,500 or to imprisonment for not less than one month nor more than one year, or both.

25 Pa. Cons. Stat. §1713.

53. The probable-cause affidavits filed by the Allegheny County District Attorney on May 7 with the charges against the former ACORN employees state that the employees told detectives that they were working under a “quota” whereby ACORN insisted that they deliver a minimum number of registration applications each day. Additionally, the Allegheny County District Attorney and assistant district attorneys have been quoted in various news reports saying that ACORN had a “quota system” for employees and that such a system is a crime under Pennsylvania law, specifically 25 Pa. Cons. Stat. § 1713.
54. The term “quota” is not found in the statute. The Allegheny County District Attorney has indicated that 25 Pa. Cons. Stat. § 1713 prohibits quotas, which they interpret to mean a prohibition both on paying canvassers per registration collected *and* applying performance and productivity standards that in any way correlates with the number of registrations collected.
55. ACORN paid its canvassers by the hour based on the number of hours worked, regardless of how many or how few voter registration applications they submitted.
56. In Pittsburgh during the 2008 campaign, canvassers typically worked 6-hour shifts and were paid \$8 per hour under Ms. Hayden’s direction. The salary paid to canvassers did not vary based on the number of registrations submitted. In other words, for a full 6-hour shift a canvasser would be paid \$48 regardless of whether he or she submitted 1 or 20 registration applications.
57. ACORN does, however, apply performance standards to canvassers based on the number and quality of the applications collected.
58. For instance, ACORN, in conjunction with Project Vote, has a performance, or aspirational, goal that canvassers strive to collect about 20 registration applications per shift. ACORN

supervisors, including Ms. Hayden, did not deduct pay from anyone who failed to meet the performance goal.

59. In fact, in 2008 81% of ACORN's Allegheny County canvassers did not meet the performance goal. The average canvasser collected slightly more than 13 registration applications per shift, which is only 65-70% of the aspirational goal.
60. ACORN, operating from Project Vote's training and quality control manuals, and Ms. Hayden did not fire any Pittsburgh canvassers solely because they failed to meet the performance goal on a particular shift.
61. Under Ms. Hayden's management, supervisors would instead work with canvassers who did not meet the performance goal. For example, they would review the canvasser's techniques and also assess whether the area they were sent into was suitably productive. Supervisors would model proper canvassing techniques by going out with canvassers who were having difficulty and demonstrating the best way to engage citizens.
62. No employer can afford to have unproductive employees. Likewise, ACORN, funded by Project Vote, cannot afford to pay people to gather no or very few registrations. Canvassers must be efficient and productive in order for ACORN and Project Vote to meet their goal to substantially increase by the thousands the number of registered voters living in low- to moderate-income communities.
63. As with any employer, ACORN, Project Vote, and Ms. Hayden must be able to hold canvassers accountable for collecting a reasonable number of registration applications or they will not be able to meet their objective of increasing substantially the number of registered voters in its communities. The quantum of Americans who could be assisted by Plaintiffs

would be substantially reduced, as Ms. Hayden discovered when she conducted an all-volunteer voter registration drive prior to 2008.

64. If Plaintiffs cannot terminate employees who fail to collect even one application, under fear of criminal prosecution, it will be impossible for them to conduct a *paid* voter-registration drive capable of reaching a substantial number of Americans.

65. Prohibiting Plaintiffs from paying canvassers to conduct effective voter-registration drives would impose a severe burden on the organization's political activities and on its effectiveness.

66. Registration drives staffed entirely by volunteers are exponentially less productive and efficient than ones staffed by paid workers. ACORN has found that it is difficult to recruit volunteers to do the canvassing work. Even if they can recruit a sufficient number of volunteers to staff a particular drive, ACORN's experience has been that volunteers collect significantly fewer registrations than do paid canvassers.

67. For example, in 2007, Maryellen Hayden as head organizer of Pittsburgh ACORN attempted to conduct an all-volunteer registration drive with a goal of gathering 1000 signatures. After having great difficulty recruiting the necessary 40 volunteers, they registered only about 100 people for the entire drive, or 2.5 new registrants per canvasser.

68. In order for Plaintiffs to have collected the 40,000 registrations they did in 2008 without being able to pay canvassers, would have required Ms. Hayden and ACORN to attract about 16,000 volunteers. That is, realistically, an unattainable number of volunteers.

69. While 25 Pa. Cons. Stat. § 1713 is ostensibly an anti-fraud measure, the plain language of which prohibits payment on a per application basis, the state has more direct and effective



means to combat voter-registration fraud, ones that do not stifle or affect core First-Amendment-protected political activities. For instance:

- a. Falsification of a voter-registration application is directly prohibited under 25 Pa. Cons. Stat. § 1703, which makes it a misdemeanor of the first degree — carrying a fine of up to \$10,000, imprisonment of up to five years, and a forfeiture of the right of suffrage for ten years — to intentionally impersonate another in an application for registration.
- b. Under 25 Pa. Cons. Stat. § 1707, no person may intentionally insert material into a voter “registration record” — which includes voter-registration applications (25 Pa. Cons. Stat. § 1101A) — that is not in accordance with Title 25.
- c. 25 Pa. Cons. Stat. § 1714 makes the provisions of 18 Pa. Cons. Stat. §§ 4902 (relating to perjury), 4903 (relating to false swearing) and 4904 (relating to unsworn falsification to authorities) applicable to violations of the Election Code (Title 25).

70. 25 Pa. Cons. Stat. § 1713 imposes a severe burden on Plaintiffs by raising the specter of criminal prosecution if they continue to pay canvassers to register voters and apply flexible productivity or performance standards to the employees, which they must do in order to maintain minimal quality and effectiveness.

71. Project Vote, which provides funding to local organizations to conduct paid voter-registration drives, reasonably fears that it will be unable to fund such efforts in Pennsylvania because local organizations, fearing prosecution under 25 Pa. Cons. Stat. § 1713, either will stop conducting paid voter-registration drives entirely or will not conduct such drives if they are required to adhere to Project Vote’s quality-control methods.

72. Absent injunctive relief, Plaintiffs and other organizations involved in paid voter registration are being irreparably harmed by 25 Pa. Cons. Stat. § 1713, particularly if a liberal and overbroad interpretation such as that threatened to be applied by District Attorney Zappala is adopted, because the statute restricts core political activities protected by the First Amendment to the U.S. Constitution, an injury for which there is no adequate remedy at law.

### **CAUSES OF ACTION**

#### **Count 1 – 25 Pa. Cons. Stat. § 1713 Violates the First Amendment to the U.S. Constitution, on its Face and as Applied**

73. Conducting a voter-registration drive, encouraging people to vote and discussing important contemporary political issues implicate expressive, associational and petition-related rights, all of which are protected by the First Amendment.

74. The imposition, and even just the threat, of criminal prosecution for employing commonly accepted practices of performance evaluation in conducting a paid voter-registration drive constitutes a severe burden on constitutionally protected political speech.

75. The existence of criminal statutes that more directly prohibit the fraudulent activities ostensibly targeted by 25 Pa. Cons. Stat. § 1713 — statutes that do not inflict the same burden on constitutionally protected political activities — demonstrates that 25 Pa. Cons. Stat. § 1713 is not narrowly tailored to advance a significant governmental interest.

76. Therefore, 25 Pa. Cons. Stat. § 1713 is unconstitutional on its face in violation of the First Amendment to the U.S. Constitution.

#### **Count 2 – 25 Pa. C.S.A. § 1713 is Unconstitutionally Vague and Overbroad in Violation of the First and Fourteenth Amendments**

77. Even if the Court were to determine that a narrowed construction of 25 Pa. Cons. Stat. § 1713 might be constitutional (and it is far from clear that such a narrowing construction is possible or legally permissible), the statute is still substantially overbroad in that it makes illegal a

significant amount of protected speech and political activity, and thereby violates the First and Fourteenth Amendments to the U.S. Constitution.

78. Furthermore, as demonstrated by the Allegheny County District Attorney's application of the statute to prohibit "quotas," by which he means performance or production standards, 25 Pa. Cons. Stat. § 1713 is so vague as to make it impossible for people regulated thereunder to know what conduct is prohibited and to give law enforcement and election officials sufficiently clear guidance to avoid unconstitutional applications, thereby violating the First and Fourteenth Amendments to the U.S. Constitution.

**Count 3 – Application of 25 Pa. C.S.A. § 1713 to Prohibit Performance and Production Standards for Paid Registration Canvassers Violates the Fourteenth Amendment's Due Process Clause**

79. Enforcement of 25 Pa. Cons. Stat. § 1713 to make criminal the use of performance or productivity standards by Plaintiffs and other voter-registration groups or individuals conducting paid voter registration drives is an unreasonable, unforeseeable expansion of the statute that violates the Fourteenth Amendment's Due Process Clause.

**PRAYER FOR RELIEF**

Whereas the Plaintiffs pray that this Court:

- A. Enter a declaratory judgment finding 25 Pa. Cons. Stat. § 1713, on its face and as applied under an interpretation such as that of District Attorney Zappala, violates the First and Fourteenth Amendments to the U.S. Constitution;
- B. Issue an injunction enjoining enforcement of 25 Pa. Cons. Stat. § 1713;
- C. Award Plaintiffs costs, including reasonable attorney fees, pursuant to 42 U.S.C. § 1988;  
and
- D. Grant such other and further relief as may be just, fair and appropriate.

Respectfully submitted,

/s/ Brian Mellor

Brian Mellor  
Admitted *Pro Hac Vice*  
MA Bar Number 43072  
(202) 553- 4317  
bmellor@projectvote.org

/s/ Teresa James

Teresa James  
Admitted *Pro Hac Vice*  
OH Bar Number 31617  
(202) 553-4344  
tjames@projectvote.org

PROJECT VOTE  
739 8<sup>th</sup> Street SE  
Washington, DC 20003

/s/ Arthur Z. Schwartz

Arthur Z. Schwartz  
PA ID No.: 28645  
Admitted Pro Hac Vice  
ADVOCATES FOR JUSTICE  
& REFORM NOW PC  
Schwartz, Lichten and Bright, Of Counsel  
275 Seventh Avenue Suite 1760  
New York, N.Y 10001  
Phone: (212) 228-6320  
Fax (212) 358-1353  
general.counsel@acornmail.net

/s/ Witold J. Walczak

Witold J. Walczak  
PA ID No.: 62976  
vwalczak@aclupgh.org

/s/ Sara J. Rose

Sara J. Rose  
PA ID No.: 204936  
srose@aclupgh.org

AMERICAN CIVIL LIBERTIES FOUNDATION  
OF PENNSYLVANIA  
313 Atwood Street  
Pittsburgh, PA 15213  
(412) 681-7864

/s/ Claudia Davidson

Claudia Davidson  
OFFICES OF CLAUDIA DAVIDSON  
PA ID No.: 36020  
500 Law and Finance Building  
Pittsburgh, PA 15219  
(412) 391-7709 (p)  
(412) 391-1190 (f)  
cdavidson@choiceonemail.com

ATTORNEYS FOR PLAINTIFFS