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Paul DeGregorio  
Chairman  
Election Assistance Commission  
1225 New York Avenue, Suite 1100  
Washington, D.C. 20005

**Re: NVRA's Mail Registration Program**

Dear Chairman DeGregorio:

Project Vote is a nonpartisan, nonprofit, organization that works to increase the civic participation of low-income and minority Americans. We provide management and technical assistance to local civic engagement organizations for programs such as voter registration drives. We also support our local partners with an Election Administration Program, which works to make election systems more responsive to the needs of traditionally disenfranchised communities.

We submit these comments on the NVRA's mail registration program for the March 14, 2006, public hearing of the Election Assistance Commission.

**I. Introduction**

The National Voter Registration Act of 1993 (NVRA) is, quintessentially, a voter outreach law. The purpose of the NVRA is to establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office. 42 USC § 1973gg (b)(1). The law seeks to accomplish this by reducing government-imposed procedural barriers to the absolute minimum and by requiring states to establish several expansive opportunities for registration. The NVRA is meant to be a complete, uniform and comprehensive system of voter registration for Federal office.

These intentions are made clear in both the House and Senate Committee reports.

*“Enactment of the Voting Rights Act of 1965 eliminated the more obvious impediments to registration, but left a complicated maze of local laws and procedures, in some cases as restrictive as the outlawed practices,*

*through which eligible citizens had to navigate in order to exercise their right to vote. The unfinished business of registration reform is to reduce these obstacles to voting to the absolute minimum while maintaining the integrity of the election process.”* H. R. Report 103-9.

*“This legislation will provide uniform national voter registration procedures for Federal elections and thereby further the procedural reform intended by the Voting Rights Act.”* S. Report 103-6.

States may not implement the NVRA’s required procedures in ways that reduce opportunities to register, nor may they institute through law, rule or practice additional registration procedures that burden an eligible voter’s access to the registration opportunities created by the NVRA. States may, however, go beyond the requirements of the NVRA to make voter registration even more accessible. For example, states may implement Election Day registration.<sup>1</sup> In this way, the NVRA serves as a floor, not a ceiling, for accessible voter registration procedures for Federal election. Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3rd 1349 (11th Cir. 2005)

## II. Statutory Overview

The NVRA requires states to create a mail voter registration program in furtherance of its goal to reduce barriers to voter registration, increase voter registration in elections for federal office and reach historically disenfranchised communities. There are five elements to the mail program, contained in two subsections of the statute.

1. States must accept and use the federal mail form. 42 USC § 1973gg-4 (a)(1).
2. States may also develop and use their own mail form so long as it meets the criteria established in § 1973gg-7 (b). 42 USC § 1973gg-4 (a)(2).
3. State election officials must distribute the federal mail form and, if the state has developed a state mail form, the state mail form to governmental and private entities, ***“with particular emphasis on making them available for organized voter registration programs.”*** 42 USC § 1973gg-4 (b). (emphasis added)

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<sup>1</sup> The NVRA exempts states with Election Day registration or no registration procedures because “ states which have implemented one or both of these exceptions have lessened the impediments to registration which goes significantly beyond the requirements of the bill.” H.R. Report 103-9.

4. The EAC must develop the federal mail registration form, and do so in consultation with state chief elections officials. 42 USC § 1973gg-7 (a)(1). The EAC may also issue the regulations necessary to carry out this provision. 42 USC § 1973gg-7 (a)(2).
5. The contents of the mail registration form shall require only the necessary identifying information to establish eligibility and to administer voter registration and other aspects of the election. 42 USC § 1973gg-7 (b)(1). The form must include the eligibility standards, an attestation that the applicant meets the eligibility criteria, and a signature under penalty of perjury. 42 USC § 1973gg-7 (b)(2). The form may not require “notarization or other authentication.” 42 USC § 1973gg-7 (b)(3).

### **III. States’ Implementation of the Mail Registration Program**

Some states are implementing NVRA’s mail registration procedures in ways that are expressly contrary to the plain language of the NVRA, while others have burdened mail registration with ancillary laws, administrative rules or procedures that frustrate the intent of the NVRA. Project Vote has encountered three categories of state voter registration practice that are contrary to the NVRA.

#### A. Refusal to “Use and Accept” the Federal Mail Registration Form.

One state refused to accept and process a mailed bundle of federal forms that were timely submitted. The state based its refusal on the grounds that the private voter registration program that collected the applications was not authorized by the state to facilitate mail registration. A second state initially refused to allow Project Vote to use the federal form within the state but, after negotiations, relented when Project Vote agreed to follow some special procedures. A third state promised to subject completed federal registration forms to additional scrutiny.

#### B. Refusal to Distribute Forms Unless Prior Conditions Are Met.

Project Vote is aware of at least four states that refuse to distribute the state form to private entities, thereby stopping their efforts to facilitate the registration by mail of eligible applicants, unless the private entities meet procedural requirements set by state law. These requirements may include pre-registration with the state, mandatory state training, and disclosure of employees’ and volunteers’ personal information. Some states also require burdensome accounting of the use of the forms, such as a log or other record on the disposition of each application. One state took the unusual state of banning the use of the federal form.

### C. Noncompliance with Content Requirements.

Project Vote is aware of several states whose state mail registration application does not meet the content criteria established in § 1973gg-7 (b). We have found three variations of this problem. The first is application forms and procedures that require applicants to provide information that is immaterial to determining eligibility or administering other parts of the election process. The second variation is forms that require applicants to denote eligibility in ways contrary to those specified in the NVRA. The third is applications that require all applicants to supply supplemental information attesting to their eligibility.

## **IV. Discussion**

### A. Accept and Use

The NVRA requires that “Each State shall accept and use the mail voter registration application.” 42 USC § 1973gg-4 (a). The plain language of the statute creates an obligation on the part of election officials to accept the mail registration form, and if timely received, register an applicant if the applicant is eligible under state law. This obligation does not defer to state law, and state law that conditions acceptance of the mail form on other criteria must give way. (See Charles H. Wesley Educ. Found., Inc. v. Cox, 408 F.3rd 1349 (11th Cir. 2005), which found that the NVRA “overrides state law that is inconsistent with its mandates.”)

### B. Distribution of Forms

The NVRA requires that “The chief State election official of a State shall make the forms described in subsection (a) of this section available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs.” 42 USC § 1973gg-4 (b). Again, the plain language of the law does not allow the state to condition distribution of the mail form on other criteria set by state. State laws that establish requirements for entities to take some other action, whether it is register with the state, undergo training or disclose lists of employees or volunteers are contrary to the statute’s language. The phrase “particular emphasis” can only serve to strengthen the claim that the distribution of forms may not be conditioned upon meeting other criteria set by the state.

Secondly, restrictions on private entities’ access to mail registration forms are an obstacle to Congress’s intent to reach out to voters. “Broad dissemination of mail application forms, when coupled with other procedures of this bill, should reach most persons eligible to register to vote, and is, therefore, a key element of the voter outreach feature of this bill.” H. R. Report 103-9. It was to aid in the “broad dissemination” of the mail application that caused Congress to include

the phrase “with particular emphasis on making them available for organized voter registration programs” (which the Wesley Court interprets to “impliedly encourage” voter registration drives).

#### C. Content of the Mail Application

While 42 USC. § 1973gg-4 (a)(2) permits a state to develop and use a mail voter registration form that meets all of the criteria stated in § 1973gg-7(b), a state may not add procedural requirements above and beyond those required in the federal form to their state form for use in federal elections. To do so impermissibly enlarges upon the procedural burden that a registrant must meet in order to become registered for a federal election and frustrates the purpose of the NVRA, which is to reduce procedural bars to voter registration. “The unfinished business of registration reform is to reduce these obstacles to voting to the absolute minimum while maintaining the integrity of the election process.” H. R. Report 103-9.

#### **IV. Conclusion**

Several states are implementing NVRA’s mail registration provisions in ways that expressly contradict the NVRA or frustrate Congress’s purpose in passing the NVRA. The result is that procedural obstacles to voter registration once again threaten to limit eligible citizens’ participation in election for federal office.

Respectfully Submitted,



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Project Vote

Cc: Tom Wilkey, Executive Director, EAC