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

Re: Public Agency Requirement of The National Voter Registration Act

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 are pleased that the Commission is turning its attention to the National Voter Registration Act (NVRA). The NVRA plays an important role in our democracy, both by minimizing procedural obstacles to voter registration and by requiring states to take affirmative steps to offer registration opportunities. One such step is offering voter registration opportunities at public service agencies. This helps states reach out to low-income Americans, who are disproportionately under-represented on the voter rolls.

Project Vote has a unique perspective to bring to the issue of public agency registration. We and Association of Community Organizations for Reform Now (ACORN) worked together in the first few years after the passage of the NVRA to ensure states properly implemented the Act. Our efforts led to, among other things, *Association of Community Organizations for Reform Now v. Miller* and *Association of Community Organizations for Reform Now v. Edgar*, two prominent cases upholding the Constitutionality of the NVRA. Two years ago, ACORN, Demos and Project Vote created the NVRA Implementation Project to assist states to better provide voter registration services at public assistance agencies.

This letter provides Project Vote's testimony on states' implementation of the public agency registration requirement of the NVRA for the March 14, 2006, public meeting of the Election Assistance Commission (EAC). We review the public agency section of the statute, weaknesses in states' implementation, critical elements for effective implementation, suggested best practices, and recommendations for action by the EAC.

I. Statutory Overview

States must designate as voter registration agencies all offices that provide public assistance,¹ all offices that provide state services to people with disabilities,² and must designate other state offices.³ In general, each voter registration office shall distribute the mail voter registration application,⁴ provide assistance to applicants in completing the form,⁵ and accept and transmit the form to election officials.⁶

Voter registration agencies that provide public services or benefits must provide each person applying for benefits, renewing or recertifying benefits, or making a change of address,⁷ a voter registration application⁸ and a form that includes the question: "If you are not registered to vote where you live now, would you like to apply to register to vote here today?"⁹ The form must also include the statement: "Applying to register or declining to register will not affect the amount of assistance that you will be provided by this agency."¹⁰

Agency personnel may not influence an applicant's party registration,¹¹ display a "political preference or party allegiance,"¹² discourage applicants from registering,¹³ or intimate that the decision to register or not register "has any bearing on the availability of services or benefits."¹⁴

Voter registration agencies must transmit the voter registration application to appropriate election authorities "not later than 10 days after the date of acceptance"¹⁵ except when the

¹ 42 U.S.C. § 1973gg-5 (a)(2)(A)

² 42 U.S.C. § 1973gg-5 (a)(2)(B)

³ 42 U.S.C. § 1973gg-5 (a)(3)(A)

⁴ 42 U.S.C. § 1973gg-5 (a)(4)(A)(i)

⁵ 42 U.S.C. § 1973gg-5 (a)(4)(A)(ii)

⁶ 42 U.S.C. § 1973gg-5 (a)(4)(A)(iii)

⁷ 42 U.S.C. § 1973gg-5 (a)(6)(A)

⁸ 42 U.S.C. § 1973gg-5 (a)(6)(A)(i)

⁹ 42 U.S.C. § 1973gg-5 (a)(6)(B)(i)

¹⁰ 42 U.S.C. § 1973gg-5 (a)(6)(B)(ii)

¹¹ 42 U.S.C. § 1973gg-5 (a)(5)(A)

¹² 42 U.S.C. § 1973gg-5 (a)(5)(B)

¹³ 42 U.S.C. § 1973gg-5 (a)(5)(C)

¹⁴ 42 U.S.C. § 1973gg-5 (a)(5)(D)

¹⁵ 42 U.S.C. § 1973gg-5 (d)(1)

application is received within 5 days of the close of voter registration, in which case the application must be transmitted “not later than 5 days after the date of acceptance.”¹⁶

II. States’ Failure to Provide Voter Registration Services

The NVRA Implementation Project—a collaboration between ACORN, Demos and Project Vote—has investigated over the past two years states’ compliance with the public agency requirements of the NVRA. We have reviewed ten years’ worth of statistical information on public agency registration provided by the states in response to the EAC, formerly FEC, biennial voter registration survey. We have administered surveys to applicants and clients departing public assistance agencies to determine whether they were offered voter registration services. And we have met with officials responsible for managing state human services departments in several states and then conducted visits to their field offices to observe their voter registration procedures. We have found:

- ?? In 1995-1996, agencies collected 2.6 million voter registration applications. By 2003-2004, that fell by 59.6% to one million applications. 34 of the 39 states that are both covered by the NVRA and provided sufficient data for analysis experienced an overall decline in the number of public agency registrations.¹⁷
- ?? Agencies in five of nine states failed to offer clients and applicants covered by NVRA voter registration services more than 50% of the time.
- ?? Many senior human service agency managers are unaware of their agencies’ responsibilities under the NVRA, fail to train supervisors or line staff to implement the NVRA, and fail to provide field offices with the necessary forms required by the Act.
- ?? States’ chief election officials rarely provide guidance or training to public agencies with respect to their responsibilities under the NVRA, nor do they sufficiently monitor the submission of voter registration applications.

III. Reasons for Declining Rates of Registration at Public Assistance Agencies

In our view, voter registration at public assistance agencies is declining in most states because those states are failing to offer voter registration services as required by the NVRA. Our field

¹⁶ 42 U.S.C. § 1973gg-5 (d)(2)

¹⁷ NVRA Implementation Project, *Ten Years Later: A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2000* (authored by Brian Kavanagh, Steve Carbo, Lucy Mayo & Michael Slater), July 2005, available at http://www.projectvote.org/fileadmin/PV/PDF/Tens_Years_Later_A_Promise_Unfulfilled.pdf

research has found that states with declining registration have few, if any, systems in place to implement the public agency requirement of the NVRA.

Based on our discussions with staff of state chief election officials and with public assistance agency staff at all levels, we believe there are two main causes for agencies' failure to implement the NVRA. The first cause is the loss of institutional memory among senior and supervisory staff of public assistance agencies. This is also true for the states' chief election officials. The second cause is resistance by agency staff to the voter registration mandate of the NVRA.

Ten years' after the Act's implementation, it is not surprising that many of the managers who developed their agencies' response to NVRA and oversaw the first implementation plans are no longer with the agencies. This is especially true of senior managers who may have been political appointees and left with the changes of administration that most states have undergone. Many states experienced budget crisis in the late 1990's that forced cut backs in both supervisory and line staff. In addition, many of the chief election officials who were present during the initial implementation of the NVRA are no longer in office and many state election directors have also left or retired.

Hostility or resistance among agency leadership and staff to the NVRA's voter registration mandate is the second leading cause of states' poor registration performance. Many staff whom we met expressed frustration that voter registration was part of their responsibilities, believing that it was a separate and distinct activity from providing public benefits. Others acknowledged feeling uncomfortable asking clients or applicants if they wanted to register to vote. Still others, especially managers, expressed resentment at the time and resources voter registration demanded from the agency.

IV. Remedies

Any bureaucracy that delivers a service, whether drivers license, home inspection, or road maintenance, needs to establish systems to deliver that service. In our view, the systems agencies must have in place to comply with the law include components that:

- ?? Adequately and regularly train line staff in offering and administering voter registration;
- ?? Assign selected staff in field offices the responsibility to ensure an adequate supply of declination forms and voter registration forms, and to submit completed applications within the allotted time;
- ?? Educate management staff with respect to their legal responsibilities; and,

- ?? Collect sufficient data on numbers of applications, recertifications or renewals, change of addresses, completed declination and completed voter registration for an agency to police its own compliance and engage in remediation.

In addition, there are a number of best practices an agency can implement to maximize voter registration. These include:

- ?? Verbally offer the opportunity to register to vote at the front of a client or applicant interview;
- ?? Offer voter registration to clients and applicants in the waiting or reception room;
- ?? Promote voter registration services throughout offices with posters, buttons, waiting room videos or other material;
- ?? Give special recognition to offices that show an increase in the number of voter registrations; offices that perform poorly are given supervisory attention; and,
- ?? Integrate of voter registration services with computerized case management procedures, where possible.

The NVRA Implementation Project provides a detailed set of recommended practices and examples of model procedures in our manual “Maximizing Voter Registration Opportunities in Human Service Agencies: An Important Responsibility for Agencies and Clients.”¹⁸

A review of agreements concluding litigation related to public agency registration finds many of the systems and practices recommended above. For example, Florida agreed to:

- (1) create and implement a computerized voter registration system at the agency, with procedures including assistance with application completion;
- (2) collect data regarding the number of clients who were offered voter registration preference forms; number of registered clients; number of registered clients who declined to vote; number of clients who updated their registration records; number of voter registration applications sent to county election supervisors;

¹⁸ The NVRA Implementation Project, *Maximizing Voter Registration Opportunities in Human Service Agencies: An Important Responsibility for Agencies and Clients*, (authored by Lucy Mayo, Scott Novakowski and Michael Slater), November 2005.

- (3) train annually employees responsible for NVRA voter registration procedures; and,
- (4) promote voter registration opportunities through posting signs regarding voting registration in English, Spanish and Creole in waiting rooms.

V. Recommended Role of the Election Assistance Commission

The Election Assistance Commission has an important leadership role helping states comply with the public agency requirement of the NVRA.¹⁹

First and foremost, we recommend that the EAC communicate with chief election officials, governors and public services agency directors to remind them of their responsibilities under the NVRA. A systemic communications program, including letters, presentations at conference, and formal guidance will help overcome the loss of institutional memory that is partly to blame for declining compliance in the states.

A second step is to collect more comprehensive data on voter registration programs at public assistance agencies. The EAC needs to redesign its survey instrument to include more specific questions on the number of client and applicant transactions covered by the NVRA, the number of declinations completed and the responses, and the number of submitted registrations. Better data will allow for a more accurate assessment of registration performance at state agencies.

In 1994, the FEC's National Clearinghouse on Election Administration issued a very detailed guide on NVRA implementation.²⁰ The EAC should consider researching, writing and distributing an updated guide on NVRA implementation, based on the experiences and lessons of the past ten years, to help guide states. The guide should include the status of existing practices, barriers to registration, and best practices. The EAC should consider organizing a companion conference.

Finally, the EAC should refer non-complying states to the US Department of Justice.

VI. Conclusion

States are not in compliance with the public agency requirements of the NVRA. States can remedy that situation by devoting management attention to implementing basic systems of

¹⁹ "The Election Assistance Commission shall provide information to the States with respect to the responsibilities of the States under this subchapter." (42 U.S.C. § 1973gg-9 (a) (4))

²⁰ Federal Election Commission, *Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches and Examples*, (prepared by the National Clearinghouse on Election Administration. January, 1994.

service delivery and adopting a handful of inexpensive best practices. The EAC can facilitate improved implementation by advising states of their responsibilities, collecting more comprehensive data, and providing technical assistance through researching and publishing information on registration barriers and best practices. The EAC should refer recalcitrant states to DOJ for enforcement action.

Respectfully Submitted,



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Cc: Tom Wilkey, Executive Director, EAC