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## **Election Officials May Not Refuse Incomplete Voter Registration Applications**

### **QUESTION: Rejection of Incomplete Voter Registration Forms by Election Officials**

Is it a violation of the National Voter Registration Act (NVRA) for election officials to refuse incomplete voter registration applications submitted by a voter registration organization? Some officials have stated that public funds should not be expended to remedy applications generated by private voter registration efforts.

### **APPLICABLE STATUTORY PROVISIONS**

42 U.S.C. § 1973gg-4 (1993). National Voter Registration Act: Mail Registration.

(1) Each State shall accept and use the mail voter registration application form prescribed by the Federal Election Commission pursuant to section 1973gg-7(a)(2) of this title for the registration of voters in elections for Federal office.

(2) In addition to accepting and using the form described in paragraph (1), a State may develop and use a mail voter registration form that meets all of the criteria stated in section 1973gg-7(b) of this title for the registration of voters in elections for Federal office.

42 U.S.C. § 1973gg-6 (1993). National Voter Registration Act: Requirements with respect to administration of voter registration.

In general, in the administration of voter registration for elections for Federal office, each State shall -

(1) ensure that any eligible applicant is registered to vote in an election -

(A) in the case of registration with a motor vehicle application under section 1973gg-3 of this title, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 1973gg-4 of this title, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser

of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application.

### **DISCUSSION**

The refusal by an election official to accept incomplete voter registration applications is a violation of the National Voter Registration Act (NVRA). The law requires that election officials accept and process voter registration applications. This is true regardless of funding issues. The NVRA addresses acceptance of voter registration forms under Sections 4 and 6 of the NVRA. States are reminded that they must comply with the NVRA regardless of budget constraints in 1997 (*Association of Community Organizations for Reform Now v. Miller*, 129 F.3d 833, 837 (6<sup>th</sup> Cir. 1997)).

First, the NVRA explicitly indicates that states must “accept and use” the federal version of the mail-in voter registration application. 42 U.S.C. § 1973gg-4(1). An election official who, acting out of concern that applications may not be complete, may not have been collected in accordance with state law or other concern, refuses to take possession of the applications and process them is neither accepting nor using the form.<sup>1</sup> Although the NVRA gives states the option of developing their own mail-in form, it does not give states the authority to reject their own versions. 42 U.S.C. § 1973gg-4(2). Therefore, state and local election officials must “accept and use” both forms.<sup>2</sup>

Second, Congress anticipated that there would be some applicants who would fail to meet the eligibility criteria or have some deficiency with their applications. To deal with this problem, the NVRA requires that state election officials “send notice to each applicant of the disposition of the application”. 42 U.S.C. § 1973gg-6(a)(2). The disposition notice affords applicants an opportunity to remedy deficiencies and be placed on the voter rolls. For example, if an applicant neglected to provide a date of birth, the applicant could provide that information in response to a disposition notice. Then, if the applicant is found eligible, she will be registered to vote. At a minimum, the applicant would receive

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<sup>1</sup> See *Wesley Educ. Found., Inc. v. Cox*, 408 F.3d 1349 (holding that the State of Georgia is not free to reject voter registration applications forwarded by organizers of voter registration drives, pursuant to state statutes prohibiting acceptance of bundled voter registration applications, and requiring presence of deputy registrar at a voting drive, because these state statutes are inconsistent with sections of the NVRA requiring states to accept voter registration applications delivered by mail and postmarked in time to be processed).

<sup>2</sup> In a letter to the Election Assistance Commission (EAC) dated June 1, 2005, the State of Florida requested permission to treat all Federal Mail Registration Forms received as incomplete until additional questions have been answered. According to its reply letter to the State of Florida, on July 26, 2005, the EAC declared that states may not require additional information in order to deem the application complete. The EAC reasoned that the federal form provided for a self-attestation that the applicant met the state's requirements as described in the state-specific instruction portion of the federal form. 42 U.S.C. §1973gg-7(b)(2)(B). This attestation is deemed sufficient for the state's use in determining eligibility. Most importantly, the language of the NVRA mandates that the Federal form, without supplementation, must be accepted and used by states to add an individual to its registration rolls. 42 U.S.C. §1973gg-4(a).

notice that she is not on the rolls and could take steps to complete a second voter registration application. The refusal to accept incomplete applications by an election official deprives applicants of the notice due to them and, consequently, deprives them of the opportunity to correct the deficiencies and be registered.

Finally, funding difficulties do not relieve election officials of the duty to comply with the NVRA. The United States Constitution explicitly grants Congress the authority to make laws regarding federal elections or alter laws initially promulgated by states. U.S. Const. Art. I, § 4. Unlike laws established under the authority of the Commerce Clause, Article 1, Section 4 of the Constitution does not require Congress to induce compliance with the NVRA by offering financial incentives. *Miller*, 129 F.3d at 837. Although there are costs associated with providing disposition notices, the NVRA mandates that election officials perform this duty. As such, any city clerk's attempt to avoid administrative costs by refusing to accept incomplete applications from voter registration organizations is a violation of the NVRA.