

2010 Issues in Election Administration

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Voter Registration Services at Public Assistance Agencies: *Complying with Federal Voting Law*



This paper provides information to legislators, government officials, journalists, and interested citizens about voter registration services at state public assistance agencies and offices that serve persons with disabilities, which are required by the National Voter Registration Act of 1993 (NVRA).

Many state agencies are not in compliance with the public agency provisions of the NVRA, a situation that not only contributes to the continued disparity in registration rates between lower-income and upper-income Americans, but also leaves states vulnerable to costly litigation.

Through greater oversight by legislators and election officials, and by the implementation of best practices by agency staff, states can fulfill the requirements of federal law and also register large numbers of younger Americans, lower-income residents, and people with disabilities.

What is the NVRA?

The National Voter Registration Act of 1993 is a landmark civil rights law that requires states to affirmatively offer voter registration services to citizens.¹ Major goals of the NVRA include reversing the effects of past discriminatory practices regarding voter registration, and ensuring equal access to registration and voting by all eligible citizens regardless of their background or circumstances.

Unfortunately, key provisions of the NVRA have been poorly implemented in many states, and poorly enforced by state and federal authorities. Younger and lower-income citizens are disproportionately harmed as a result of government inaction.

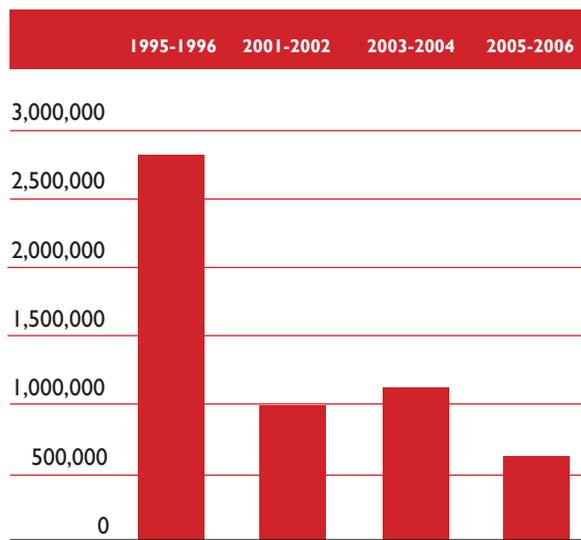
The NVRA is perhaps best known for its “motor voter” provisions, which require motor vehicle departments to provide individuals with the opportunity to register to vote. An equally important but less well-known provision of the NVRA is the requirement that state public assistance agencies – such as those accepting applications for SNAP (formerly the Food Stamp Program), WIC, Medicaid, and disability services – provide voter registration services to their clients. The public agency provisions of the NVRA were designed by Congress specifically to reach populations that are often least registered, and that may not be reached through other registration opportunities (including the “motor voter” program.)

The requirements for compliance with the public agency provisions are relatively simple. Under Section 7 of the NVRA, offices providing public assistance or disability services are designated as voter registration agencies and they **must**:

1. **Distribute** a mail-in voter registration application for public assistance or disability services, and with every recertification, renewal, or change of address form relating to such service or assistance. The office must also provide a “declination form” with every covered transaction that asks the client if he/she would like to register to vote in language prescribed by the NVRA;
2. **Assist** applicants with completing the application forms unless the applicant refuses such assistance; and
3. **Accept** completed voter registration application forms for transmittal to the appropriate state election official no later than 10 days after the date of acceptance or five days before the last day for registration to vote in an election.²

In the first few years following passage of the NVRA, millions of citizens registered to vote at public assistance agencies. In recent years, however, agencies have been neglecting the law, and election officials, legislators, and the Justice Department have failed to provide the necessary oversight.

Voter Registrations from Public Assistance Agencies



Source: U.S. Federal Election Commission and U.S. Election Assistance Commission.

A 2008 Project Vote and Demos report, *Unequal Access: Neglecting the National Voter Registration Act 1995-2007*, examined EAC data to document that the number of registration applications from public assistance agencies was in fact at an historic low. According to the report, from 1995-1996 to 2005-2006, the number of public assistance agency-based registrations plummeted by 79 percent.

This steep decline occurred despite increasing numbers of people needing to register to vote and increasing participation in public assistance programs.³

More recent data shows that this trend continues. The EAC report on 2007-2008 reveals a 62% drop in voter registration applications out of public assistance agencies since implementation of the NVRA. Fourteen states reported decreases of over 80% since implementation, while six states failed to report any data at all on Section 7 compliance during

this period.⁴ The widespread lack of compliance in states across the country means that millions of Americans are being denied the right to register to vote in violation of both the spirit and the letter of the NVRA.

What Effect Does Noncompliance Have on the Electorate?

As mentioned above, the NVRA is best known for its “motor voter” provision, which requires motor vehicle departments to offer voter registration to individuals applying for or renewing their drivers’ licenses. However, some populations are less likely than others to drive and therefore less likely to be assisted by the “motor voter” requirement, including younger Americans, lower-income residents, and people with disabilities, urban residents, and elderly women. The public agency registration provisions of the NVRA were designed to reach these populations, all of which already face additional barriers to registration.

The disparity in registration rates between affluent and lower-income Americans is substantial and affects millions of citizens.

In 2008, only 65 percent of adult citizens in households making less than \$25,000 per year were registered to vote, compared to 85 percent of those in households making \$100,000 or more.⁵

Thus, offering registration to low-income citizens through public assistance agencies addresses a significant policy goal.

By failing to implement the public agency registration provisions of the NVRA, states miss an opportunity to narrow significant disparities in voter registration.

Project Vote estimates that reasonable compliance with Section 7 of the NVRA during recent election cycles would have resulted in the collection of several million additional voter registration applications each year by health and social services agencies.

What Are Public Assistance Agencies Doing Wrong?

Surveys of public aid offices, requests for state records related to NVRA management, and conversations with public officials over the past four years have revealed overwhelming evidence of poor compliance with the public agency provisions of the NVRA in numerous states:

- Many agencies fail to distribute a voter registration application form with every covered transaction as required by the NVRA; instead, a written offer of

registration is presented alone, placing the burden of registration on the client.”

- Many social service agencies do not even stock the voter registration applications necessary to comply with the NVRA.
- Current procedures regarding voter registration services in agencies often do not comply with federal and/or state law.
- Training materials for agency personnel regarding voter registration services are often missing, go unused, or misinform staff about required procedures.
- Monitoring or evaluation of agency performance and staff compliance with the NVRA is usually non-existent or insufficient.
- Voter registration services are not being adapted to handle an increasing number of remote transactions with public aid agencies via the Internet or over the phone.

What Are The Risks of Noncompliance?

States that do not comply with the NVRA are subject to litigation by private plaintiffs and the U.S. Department of Justice. Federal Courts have established important precedent with respect to enforcement of the public agency provision. While local agency offices are responsible for carrying out their day-to-day voter registration

obligations under the NVRA, both the state's chief election official—typically the secretary of state—and statewide agency directors can be held accountable for noncompliance. Indiana and New Mexico are currently defendants in litigation brought by civil rights organizations (including Project Vote, Demos and the Lawyers' Committee for Civil Rights Under Law). Previous suits brought in Missouri and Ohio have already led to settlement agreements to ensure compliance with Section 7, and both states have seen dramatic results.

In Missouri, the voting rights groups filed suit on behalf of a public assistance recipient when the state's Department of Social Services (DSS) did not offer registration applications to clients as required by the NVRA.⁶ A federal judge found that plaintiffs were likely to prevail on the merits, and that the violations were due, in part, to DSS's failure to monitor NVRA compliance and failure to ensure that it could supply its offices with a sufficient number of voter registration applications. The court granted plaintiffs' motion for preliminary injunction and ordered state agencies to comply with the NVRA. **This order resulted in over 57,000 registrations from the period in mid-August, when DSS complied with the court order, to the end of the year—far more than were collected by all Missouri agencies in the previous two years combined.** In the following year, DSS agencies collected over 120,000 applications. In June 2009 the parties reached a settlement that ensures full and future compliance with

the NVRA. If Missouri sustains its current rate of registration it will be well on its way to reclaiming its status as a leader in public assistance registrations.

In Ohio, the same voting rights groups brought suit on behalf of public assistance recipients who were not offered the opportunity to register or change their voter registration addresses on any of their visits to the state Department of Job and Family Services (DJFS).⁷ The United States Court of Appeals for the Sixth Circuit found that states should be held responsible for implementing the requirements of Section 7 of the NVRA. Specifically, the court ruled that the Secretary of State, as Ohio's chief election officer, can be sued for noncompliance with the NVRA. The court also found that the director of DJFS is responsible for ensuring local agencies' compliance with Section 7 and will also be legally liable for noncompliance. In November 2009 the parties agreed to a settlement agreement that requires, among other things, systematic tracking and monitoring to ensure compliance with the NVRA. This agreement has resulted in an immediate and dramatic increase in voter registration applications at Ohio public agencies, with DJFS reporting 49,844 completed applications during the first three months of 2010 alone.

States that are not in compliance with the NVRA also risk investigation by the U.S. Department of Justice (DOJ). In 2008 the DOJ entered into settlement agreements regarding

the NVRA with both the Arizona Department of Economic Security and the Illinois Department of Human Services. States that continue to fail in their obligations under the public agency provision of the NVRA can expect additional investigations from civil rights groups and the DOJ, which may lead to litigation.

How Can States Fix The Problem And Avoid Costly Litigation?

State legislators, election officials, and agency directors must coordinate their efforts to ensure compliance with the NVRA and avoid costly litigation. Project Vote recommends the practices listed below, which are drawn from the experience of states that have taken steps to improve NVRA compliance. Project Vote can provide additional details and the technical assistance necessary to implement these reforms.

Agency Officials

Orally Offer Voter Registration

Agency staff should be trained to include an oral offer of registration with every application, recertification, renewal, or change of address transaction.

Promote the use of seamless or combined forms in agencies

Investigations have often found agencies to lack voter registration applications or improperly provide them to clients.

Solution: Attach voter registration application forms and information to benefits assistance application, recertification, renewal, and change of address forms to promote a seamless process and increased voter registration numbers at the agencies.

Appoint NVRA Coordinators

Agency sites have frequently been found without necessary supplies and the training necessary to comply with the NVRA.

Solution: Each agency site should have a trained NVRA Coordinator who is responsible for maintaining voter registration supplies, promptly sending completed applications to election officials, and reporting NVRA data to agency and election officials. NVRA Coordinators should be trained by election officials to orient new staff at their offices regarding proper voter registration procedures.

Provide training and support to agency personnel

Agency personnel are required by the NVRA to assist clients with voter registration forms as they would any other agency form.

Solution: In order to comply with the law, staff must be trained in how to properly

register clients to vote. On an annual basis agencies should develop training materials and conduct training sessions in conjunction with state election officials. New staff should be trained as necessary.

Collect registration data from public assistance agencies

Agency officials cannot know if their offices are complying with the NVRA unless they monitor the number of registrations originating from each agency site.

Solution: Web-based reporting systems are a promising trend in this area; they are inexpensive, simple to implement, and easy to use.

Monitor and evaluate registration data

Agency sites that fail to implement the NVRA should face corrective action.

Solution: Agency officials should regularly review registration data from each agency site, focusing NVRA Coordinators' attention on offices with poor reporting, unusually low registrations, or frequent problems with incomplete forms. Periodic evaluations of Agency employees, as well as offices, should include a section on NVRA compliance.

Election Officials

Appoint an NVRA Coordinator

Election officials and social service agency officials do not interact.

Solution: Appoint an NVRA Coordinator to communicate with and educate agency directors and agency staff members regarding their responsibilities under the NVRA. This person should also help design the relevant training for agency personnel, ensure that forms are available to agencies in sufficient numbers, and promote compliance through the monitoring of agency performance.

Monitor registrations collected by public assistance agencies

Election officials cannot know whether their state is complying with Section 7 unless they monitor the number of voter registration applications originating from each agency site. States also need this data to report accurate and complete numbers to the EAC for its bi-annual report to Congress.

Solution: Require agency sites to file on-line reports on the number of clients seen and the disposition of all offers of voter registration services. Iowa and Colorado have seen success with such systems.

Review agency registration performance and act on the findings

Data collected from agency sites needs to be used to improve performance and correct non-compliance.

Solution: Election officials should frequently analyze reports from sites to evaluate performance and identify anomalies. The NVRA Coordinator should work with agency management to remedy agency sites that fail to report, or that report unusual results (e.g., sudden declines in registrations, or low numbers of registrations from populous counties).

State Legislators

Oversee social services agencies covered by the NVRA

Many agencies do not have procedures in place to monitor NVRA compliance and remain unaware of their NVRA responsibilities.

Solution: Agency oversight by the legislature should review staff training procedures, the design and use of voter registration forms in the agencies, and compliance monitoring.

Require regular compliance reporting

States are to report NVRA performance data to the Election Administration Commission (EAC) every two years for the Commission's report to Congress. Many local agency sites fail to provide data to the state so that election officials can meet this obligation.

Solution: Establish reporting requirements at the state level so that agency performance can be monitored and reported.

Promote the use of seamless or combined forms in agencies

Investigations have often found that agencies lack voter registration applications or improperly provide them to clients.

Solution: Enact legislation requiring voter registration applications to be integrated into or combined with agency application, recertification, and address change forms along with all language required by the NVRA.

Modernize and Improve NVRA Compliance

Social service agency transactions increasingly take place remotely (e.g., by telephone or the Internet). Unfortunately, agencies have not developed ways to include voter registration services in these remote transactions. NVRA compliance can be improved by amending enabling statutes to modernize public agency voter registration and ensure increased registration numbers with some simple solutions.

Solution: Codify standards and procedures to require: all remote transactions with the agency to include voter registration services; consistent and complete reporting for monitoring and evaluation; an oral offer of registration with every application, recertification, renewal, or change of address; and a designated NVRA coordinator for each agency. Any technology upgrade should include voter registration services at the public assistance agencies to facilitate

electronic transmission of registration information to state election officials.

Involve additional agencies in voter registration

The NVRA allows states to designate additional agencies to provide voter registration. To reach additional populations that are disproportionately unregistered, legislatures should pass legislation to include additional agencies in voter registration (e.g., unemployment agencies, etc.).

Notes

¹ Six states are exempt from the NVRA: Idaho, Minnesota, North Dakota, New Hampshire, Wisconsin, and Wyoming.

² §1973gg-5(a)(4).

³ See Hess, Douglas R. and Scott Novakowski, *Unequal Access: Neglecting the National Voter Registration Act of 1993*. Project Vote, February 2008. Available at <http://projectvote.org/policy-reports-and-guides.html>.

⁴ The Impact of the National Voter Registration Act on Federal Elections, 2007-2008. U.S. Elections Assistance Commission, July 2009. Available at http://www.eac.gov/program-areas/research/doc/nvra-report-final_congress.pdf/attachment_download/file

⁵ For more details on disparities in voter registration and voter turnout rates, see: Hess, Douglas R. and Jody Herman, *Representational Bias in the 2008 Electorate*. Project Vote, November 2009. Available at: <http://projectvote.org/reports-on-the-electorate-/440.html>

⁶ *Association of Community Organizations for Reform Now (ACORN) v. Scott*, No. 08-CV-4084-NKL (W.D.Mo. Jul. 15, 2008). See <http://projectvote.org/litigation/282.html>.

⁷ *Harkless v. Brunner*, 545 F.3d 445 (6th Cir.). See <http://projectvote.org/litigation/326.html>.

Other Resources Available

For the following reports and other resources, please visit Project Vote's Public Agency Registration Project at <http://projectvote.org/public-agency-registration.html>.

Project Vote Policy Paper: *Voter Registration Services at Public Assistance Agencies*. April 2010. Available at <http://projectvote.org/public-agency-reg/364.html>.

Case Study: *Registering Low-Income Voters through Public Assistance Agencies in Missouri: A Success Story of the Public Agency Voter Registration Project*. Available at <http://projectvote.org/public-agency-reg/364.html>.

Report: *Unequal Access: Neglecting the National Voter Registration Act of 1993*, by Douglas R. Hess and Scott Novakowski. February 2008. Available at <http://projectvote.org/public-agency-reg/364.html>

The Full Text of the National Voter Registration Act of 1993: http://www.usdoj.gov/crt/voting/42usc/subch_ih.htm

For additional information or technical assistance:

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Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure that our constituencies can register, vote, and cast ballots that count.

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