

BACKGROUND ON *DELGADO V. GALVIN* INTERM SETTLEMENT

In 1993, Congress passed the National Voter Registration Act (NVRA)—commonly known as the “motor voter” law—to boost election participation by ensuring that all eligible citizens have ample opportunities to register to vote. Because Congress determined that low-income citizens and those with disabilities are less likely visit motor vehicle departments (the law’s primary voter registration site), it included Section 7’s requirements for state agencies that provide public assistance, including those that administer federal assistance programs such as food stamps, Medicaid, TANF, and WIC, and disability offices, to assist their applicants and clients in registering to vote.

Many states across the country, like Massachusetts, have been neglecting their responsibilities to provide voter registration at public assistance offices. Starting in 2006, organization including Demos, Project Vote and the Lawyers’ Committee for Civil Rights Under Law have filed lawsuits to rectify these violations in Ohio, Missouri, Georgia, Louisiana, New Mexico, Indiana, Pennsylvania and Nevada. Pre-litigation notice letters have been sent to many other states including Mississippi, Alabama, Arkansas, Michigan, Florida, Texas and Virginia. Some states have worked with our organizations cooperatively to resolve compliance issues without the need for a federal lawsuit, including Mississippi, North Carolina, Colorado Michigan and Virginia.

The aim of all these efforts is simply to ensure that the voting rights of low-income persons are protected and that states comply with their federal-law obligations to provide voter registration services as intended by Congress when it enacted the NVRA.

Parties in Massachusetts Case:

Bethzaida Delgado, NAACP New England Area Conference (NAACP-NEAC), and New England United for Justice (NEU4J) have a lawsuit pending against the Massachusetts Department of Transitional Assistance (DTA) and Secretary of the Commonwealth (SOC). The suit was filed in May 2012, following investigations that began in early 2011 and a pre-litigation notice letter sent to the SOC in December 2011.

The NAACP, the oldest, largest and most effective civil rights advocacy organization in the country, and NEU4J, a community organization, help low-income Massachusetts citizens register to vote.

Ms. Delgado is a DTA client who is eligible to vote but was not offered the opportunity to register in her interactions with DTA offices over several years.

The plaintiffs are represented by voting rights groups Dēmos, Project Vote, the Lawyers’ Committee for Civil Rights Under Law, and the Lawyers’ Committee for Civil Rights and Economic Justice, as well as the law firm of Ropes & Gray LLP.

Defendants named in the suit are Massachusetts Secretary of State William F. Galvin and officials from the Executive Office of Health and Human Services and DTA.

Evidence of federal law violations:

The Massachusetts lawsuit alleges that the Commonwealth failed to provide required voter registration services at public assistance offices, a violation of the National Voter Registration Act of 1993 (NVRA).

According to 2010 Census Bureau data, only 58.2% of the Commonwealth's eligible low-income citizens were registered to vote, as compared to 76.9% of higher-income citizens – a voter registration gap of 18.7%. Despite this gap, the number of voter registration applications reported by Massachusetts public assistance offices has plummeted over the past 10 years – with only 2,007 applications reported in 2009-2010, compared to 26,984 in 1999-2000 – a reduction of over 95%.

The NVRA requires public assistance offices to proactively offer clients the opportunity to register with every application for benefits, recertification of benefits, and change-of-address transaction. Interviews of Massachusetts public assistance clients conducted in the summer of 2011 showed that, of the 174 public assistance clients interviewed, 129, or 73%, reported that they received no offer of voter registration in any manner.

The goal of the suit is obtain concrete changes in DTA practices and procedures that will make voter registration available to every eligible public assistance agency applicant and client in the Commonwealth, as required by federal law.

Interim Settlement Agreement:

After the lawsuit was filed, the Court scheduled a preliminary injunction hearing for August 17, 2012, and established an expedited discovery schedule, to allow quick pre-election relief for the tens of thousands of persons who had been denied the opportunity to register to vote prior to the election. Once the Court ordered a quick hearing schedule, the parties entered into negotiations to see if they could agree on steps the state would take to avoid the expense of litigation. After extensive negotiations with the Commonwealth, the parties reached an interim (short-term) agreement, which was signed on July 5, 2012. It is not a final settlement, but only outlines immediate steps to be taken by the Commonwealth.

Under the terms of the interim agreement, DTA and SOC have agreed to take steps to ensure that DTA clients have opportunities to register to vote prior to the upcoming presidential election.

The Commonwealth agreed to do the following in the next four months:

- Send a mailing with an enclosed voter registration application to all persons who were DTA clients within the last year and may have been denied the opportunity to register.

- Conduct or participate in at least three community voter registration outreach activities in areas with high concentrations of DTA clients.
- Arrange for broadcasts of public service announcements publicizing the availability of voter registration forms and registration assistance.
- Provide training, modify procedures, and increase oversight regarding the required voter registration services.

These changes are required to ensure that DTA employees are now offering, and in the future will offer, their clients the opportunity to vote as required by Section 7.

It is vital that states fulfill their legal obligations under Section 7 of the NVRA, and this interim agreement is a vital first step toward Massachusetts complying with federal law.

NEXT STEPS:

On July 17, 2012, the Court stayed all proceedings until December 31, 2012 to allow the parties to continue to negotiate a long-term agreement. The case has not been dismissed and litigation will resume if there is no final settlement agreement by December 31, 2012.