



October 1, 2013

Via Mail and Fax
Lieutenant Governor Kim Guadagno
225 W. State Street
P.O. Box 300
Trenton, NJ 08625

Re: National Voter Registration Act Non-Compliance

Dear Lt. Governor Guadagno:

We write on behalf of the New Jersey State Conference of the NAACP, eligible voters it represents, and others similarly situated, to provide you with formal notice that the New Jersey Department of Human Services ("DHS")¹ is not offering voter registration to public assistance clients that complies with Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-5 ("NVRA"). Section 7 establishes clear obligations on the part of state public assistance agencies to provide voter registration services, for which you as the State's chief election official are responsible. The NVRA includes a private right of action in the event that a State fails to correct its noncompliance after its chief election official has received due notice. As noted, this letter constitutes that notice. Accordingly, we hereby urge you as the State's chief election official, acting in conjunction with DHS, to take immediate steps to bring the State into compliance with Section 7.

¹ DHS's Division of Family Development ("DFD") is responsible for administering, directing and overseeing the public assistance programs, including but not limited to, Supplemental Nutrition Assistance Program ("SNAP"), Temporary Assistance to Needy Families ("TANF"), and General Assistance, all of which are implemented through the County Welfare Agencies ("CWAs"). See N.J. Admin. Code § 10:80-1.1. Additionally, DHS's Division of Medical Assistance and Health Services ("DMAHS") is responsible for supervising public assistance programs including but not limited to Medicaid, which is also administered by CWAs. See N.J. Admin. Code § 10:70-1.3; N.J. Admin. Code § 10:71-1.5. Collectively, DHS, DFD, DMAHS, and the CWAs are referred to herein as "New Jersey Public Assistance Agencies."

Pursuant to the NVRA, state public assistance agencies are designated as “voter registration agencies” and are required to provide certain specified voter registration services. 42 U.S.C. § 1973gg-5; N.J. Stat. Ann. § 19:31-6.11. Thus, New Jersey public assistance offices must provide, with each public assistance application, recertification, renewal, and change of address transaction (collectively, “covered transactions”) a voter information form that asks the client, in writing, the question “If you are not registered to vote where you live now, would you like to apply to register to vote here today?” (referred to herein as “the voter preference question”), along with other disclosures required by the NVRA regarding the voter registration process. 42 U.S.C. § 1973gg-5(a)(6). New Jersey public assistance offices must also distribute a voter registration application with each covered transaction unless the client declines in writing to register to vote. *Id.* As voter registration agencies, each public assistance office also must assist applicants in completing the voter registration form, accept completed voter registration forms, and forward the completed forms to the appropriate election official. 42 U.S.C. § 1973gg-5(a)(4)(A). These voter registration services must be offered by voter registration agencies regardless of whether a covered transaction occurs at the office or “remotely” (via mail, telephone, or the internet). *See Ferrand v. Schedler*, No. 2:11-cv-00926-JTM-JCW, 2012 WL 1570094, at *9 (E.D. La. May 3, 2012) (“Indeed, [Section 7’s] plain language makes clear that voter registration must be offered to clients and applicants with ‘each’ covered transaction, including remote transactions.”); *Ga. NAACP v. Kemp*, No. 1:11-cv-1849-CAP (N.D. Ga. Jan. 30, 2012) (holding that voter registrations must be provided during remote transactions). Finally, public assistance offices must also provide clients the “same degree of assistance” in completing voter registration application forms as they do in completing their own forms. 42 U.S.C. § 1973gg-5(a)(6)(C).

Based upon our investigation, including review of relevant voter registration data, DHS’s policies, visits to County Welfare Agencies (CWAs) throughout the state, and conversations with workers and clients at those CWAs, New Jersey is failing to consistently provide the required voter registration services at its public assistance offices. The State’s own reports to the U.S. Election Assistance Commission (“EAC”) reveal that voter registration at state public assistance offices has steadily declined since the 1995-96 reporting period, when New Jersey reported 54,579 voter registrations from public assistance offices, except for two minor upticks in 2003-04 and 2011-12. This overall decline occurred despite a sharp *increase* in the number of clients seeking public assistance benefits since 1995. By 2001-02, voter registrations from public assistance agencies in New Jersey plummeted to 11,611, and even further to 5,423 in 2005-06. From 2007 to 2010, New Jersey reported only 409 voter registration applications from public assistance agencies – or an average of 103 applications per year – despite having an average of over 200,000 households per month participating in the food stamp program (SNAP) during that same period. While the most recent EAC report shows an increase in public assistance agency voter registrations (up to a total of 18,348), this number is far below even a modest uptick in 2003-04 when New Jersey reported 24,501 voter registrations but had almost half of the number households participating in the food stamp program as in 2011-12. New Jersey reported an average of 9,174 voter registration applications per year in 2011-12, despite having an average of almost 390,000 households per month participating in the food stamp program during the same period. These data are evidence of longstanding and ongoing violations of Section 7 by New Jersey Public Assistance Agencies.

Between April and September 2013, we spoke to 64 clients who engaged in a covered transaction at nine CWAs across New Jersey. An overwhelming majority reported that they

were not provided voter registration services in compliance with the requirements of the NVRA. 88% of the interviewed clients reported that a voter registration application was not included with their paperwork. 69% reported that they were given no form or paperwork that included the voter preference question. And 86% reported that no CWA employee asked them about voter registration. The results of these investigations confirm the ongoing violations of Section 7 by New Jersey Public Assistance Agencies.

Further, we have identified specific practices and policies of New Jersey Public Assistance Agencies that violate Section 7 of the NVRA. In April 2010, in response to concerns about Section 7 compliance in New Jersey, DHS executed an Implementation Plan that laid out certain procedures to improve compliance. According to this Implementation Plan, New Jersey Public Assistance Agencies ask clients the voter preference question only when prompted by a computer-guided system. If the client refuses to answer, the worker keys in a 'No' response to the voter preference question and prints out the voter information form for the client's signature. Clients who refuse to answer the voter preference question are not provided a voter registration application. Workers at CWAs verify that this is a current and ongoing practice. But, as stated above, pursuant to Section 7, a voter registration application must be provided during each covered transaction unless a client him- or her- self declines in writing. 42 U.S.C. 1973gg-5(a)(6) (A). When a client chooses not to answer the voter registration question, this does not constitute the required declination in writing. *Valdez v. Squier*, 676 F.3d 935, 945-946 (10th Cir. 2012) (holding that an applicant's failure to answer the declination form does not constitute a declination in writing). Therefore these clients must be offered a voter registration application; and DHS's current practice and policy violates Section 7 on a continuing and ongoing basis by failing to provide a voter registration application to clients who do not answer the voter preference question.

It is also clear that New Jersey's Public Assistance Agencies are engaged in continuing violations of the NVRA because their practices do not ensure that all clients who engage in covered transactions consistently receive a voter information form or a voter registration application. None of the electronic and paper public assistance benefits applications for food stamps (SNAP), TANF, General Assistance (GA), or Medicaid include either a voter information form or a voter registration application. Instead, pursuant to the same April 2010 Implementation Plan, during covered transactions a computer-guided interview system is to be used that requires public assistance agency workers to ask clients the voter preference question. According to the Implementation Plan, workers then key the client's response into the computer-guided system, print a voter information form with the client's response, and obtain the client's signature on the voter information form. Only those clients who answer yes to the voter preference question are provided a voter registration application. But our investigation reveals that there are occasions when computer-guided systems created by the Implementation Plan are not used during an interview; instead, workers enter information onto the system after an interview. And, because application materials do not include the voter information form or a voter registration application, there is no other mechanism to provide voter registration when the computer-guided system is not used; and clients are not provided voter registration services in continuing violation of Section 7.

Furthermore, not all CWAs use or have the computer-guided system created by the Implementation Plan. As such, there is no mechanism to offer voter registration because neither the paper nor electronic benefits materials include a voter information form or voter registration

application. Therefore, New Jersey public assistance agencies violate and continue to violate Section 7 by failing to offer the voter information form and voter registration applications to clients during *each* covered transaction.

New Jersey Public Assistance Agencies further engage in continuing violations of Section 7 by failing to offer voter information forms and voter registration applications during covered transactions to Medicaid-only recipients. Unless a client is also applying for SNAP, TANF, or GA, he or she will not be interviewed using the computer-guided systems created by the Implementation Plan. Because New Jersey benefits applications do not include a voter information form or a voter registration application, and as confirmed by our interviews with clients and workers at CWAs, Medicaid-only clients are not offered voter registration services in continuing violation of Section 7.

New Jersey Public Assistance Agencies are also violating Section 7 by failing to consistently offer voter information forms and voter registration applications during change-of-address transactions. Our investigation shows that clients currently can submit changes of address by telephone or mail, as well as in-person. Upon submission, a letter requiring appropriate verifications is sent to the client. Once verifications are received, a worker enters the change of address onto the computer system which prompts workers to ask the voter preference question. However, by that time, clients are not present or available to answer the voter preference question and, therefore, are not offered voter registration services in continuing violation of Section 7.

Finally, our investigation reveals that even on the few occasions that a voter registration application is provided to clients, New Jersey Public Assistance Agencies fail to provide equal assistance in completing voter registration applications in violation of Section 7. Indeed, workers at CWAs tell us that clients are often encouraged to complete voter registration applications elsewhere so that workers may attend to other cases. This is a continuing failure to provide equal assistance in completing voter registration applications.

Of course, we would prefer not to litigate and would hope to work cooperatively with you and with the Commissioner of DHS to develop an effective plan for bringing New Jersey into compliance with the NVRA, as we have successfully done with other states. However, if New Jersey fails to take steps to promptly remedy its violations of Section 7 of the NVRA, we are prepared to initiate litigation. In that regard, as mentioned at the outset, please be advised that this letter serves as notice of violations of the NVRA pursuant to 42 U.S.C. § 1973gg-9(b). If the state is unwilling to make a commitment to fully remedy the violations within 20 days, we are prepared to file suit.

Thank you for your attention to this matter. We look forward to hearing from you.

Respectfully yours,



Niyati Shah
Sarah Brannon

Project Vote
805 15th Street, NW, Suite 250
Washington, D.C. 20005
(202) 546-4173 ext. 302

Frank Askin
Rutgers Constitutional Law Clinic
123 Washington Street
Newark, NJ 07102

Eileen O'Connor
Mark Posner
Lawyers' Committee for Civil Rights Under Law
1401 New York Avenue, NW
Suite 400
Washington, DC 20005
(202) 662-8389

David Rubino
Demos
220 Fifth Avenue, 5th Floor
New York, NY 10001
(212) 633-1405

Anson Asaka
NAACP
4805 Mount Hope Drive
Baltimore, MD 21215
(410) 580-5789

cc: Jennifer Velez, Esq.
Commissioner New Jersey Department of Human Services
222 South Warren Street
P.O. Box 700
Trenton, NJ 08625