



By Facsimile and U.S. Mail

January 7, 2009

Indiana Secretary of State Todd Rokita
201 Statehouse
Indianapolis, IN 46204

RE: FSSA noncompliance with National Voter Registration Act of 1993 (NVRA)

Dear Secretary Rokita:

On behalf of Project Vote and the Association of Community Organizations for Reform Now (ACORN), we write to notify you that the Indiana Family and Social Services Administration (FSSA) is not in compliance with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg, et seq. (the "NVRA"). The NVRA establishes clear obligations on the part of state public assistance agencies to provide voter registration services. The law provides for a private right of action in the event that agencies fail to comply with the NVRA. We urge you to take steps to bring the state into compliance.

Federal law requires agencies designated by the state as "voter registration agencies" to provide certain specified voter registration services. See 42 U.S.C. § 1973gg-5, Indiana Code (IC) 3-7-21. FSSA is a designated "voter registration agency" and, therefore must, at a minimum, distribute mail voter registration application forms, assist applicants in completing the voter registration forms, and accept completed voter registration forms and forward them to the appropriate election official. 42 U.S.C. § 1973gg-5(a)(4)(A). More specifically, pursuant to Section 7 of the NVRA, FSSA offices must (i) distribute voter registration materials with each application for assistance and with each recertification, renewal or change of address form relating to such assistance; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address; (iii) inform the applicant, in writing, that the decision to register or decline to register to vote will not affect the amount of assistance provided by the agency; and (iv) provide assistance completing the voter registration forms to the same degree the agency provides assistance in completing its own forms. See 42 U.S.C. § 1973gg-5(a)(6).

Substantial evidence demonstrates Indiana FSSA's failure to provide mandatory voter registration services at its offices as required by the NVRA. For example, the most recent report available from the U.S. Election Assistance Commission concerning voter registration at public assistance agencies shows that Indiana's election officials received only 6,023 registration applications from public assistance agencies in 2005 and 2006. This number represents a 93 percent decrease in voter registrations at public assistance agencies since implementation of the NVRA and is exceptionally low considering (a) the continuing need for voter registration services in the state and (b) the number of citizens utilizing public assistance in the state.

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According to the most recent Census data, over 1.5 million citizens of voting age are unregistered in the state and approximately 385,000 citizens of voting age are unregistered from households earning less than \$25,000 a year. Almost 50 percent of all low-income Indianans were unregistered in 2006, the fourth highest rate in the nation. Furthermore, over a quarter million adult citizens were participating in the Food Stamp Program – just one of several programs for which voter registration services are required under the NVRA – in an average month during the period when the state assisted only six thousand clients with voter registration applications. In short, the need for public assistance agency registration in the state is still clear and the potential for these programs remains high given the size of the client pool. This decline in performance is particularly troubling since Indiana assisted more than 80,000 citizens with voter registration applications at public assistance agencies in the first two years after passage of the NVRA, during 1995 and 1996.¹

A November 2008 investigation of FSSA agency offices by Project Vote makes it clear that Indiana is disregarding its obligations under the NVRA. Project Vote found that none of the offices it visited were providing voter registration applications to their clients. Nearly all of the offices had no voter registration forms on their premises. None of the benefits applications collected during Project Vote's investigation included the required voter registration materials. FSSA staff members who were interviewed by Project Vote were unaware of their obligations under the NVRA. In fact, several suggested that the investigator must go to the motor vehicle department to obtain a voter registration application. Project Vote found that none of the clients, who were interviewed after completing NVRA-covered transactions in those offices, said they had been offered an opportunity to register to vote.

By requiring states to provide voter registration applications at public assistance agencies, Congress specifically intended to increase voter registration among low-income citizens. FSSA's failure to comply with these provisions of the NVRA has profound consequences. Indiana must recognize its obligations under the NVRA and implement changes promptly so that all of its citizens, including the hundreds of thousands of citizens who receive public assistance, are able to participate in the electoral process.

This letter is our attempt to ensure that Indiana comes into compliance with the public assistance provisions of the NVRA. Please advise us promptly of the steps you intend to take to remedy Indiana's violations of Section 7 of the NVRA, including (i) the measures you will implement to assure future compliance and (ii) the steps you will take to provide registration opportunities to those who have been denied their rights under Section 7 of the NVRA. We are happy to meet with you at your earliest convenience to assist in the development of a comprehensive plan for compliance.

If you do not provide a plan for compliance, we will have no alternative but to initiate litigation. We look forward to hearing from you.

¹ Data in the preceding two paragraphs are drawn from *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007* and *Representational Bias in the 2006 Electorate*. Both available at: <http://www.projectvote.org>.

Secretary Todd Rokita
January 7, 2009

Sincerely,

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