



June 1, 2015

Via certified mail and email

Kim Westbrook Strach
Executive Director, North Carolina State Board of Elections
PO Box 27255
Raleigh, NC 27611-7255
kim.strach@ncsbe.gov

RE: *Compliance with Section 5 of the National Voter Registration Act*

Dear Ms. Strach:

We write on behalf of Action NC, Democracy North Carolina, the A. Philip Randolph Institute, persons eligible to register to vote that these organizations represent, Sherry Denise Holverson, Isabel Najera, Alexandria Lane, and others similarly situated to notify you that the State of North Carolina is not in compliance with Section 5 of the National Voter Registration Act of 1993 ("NVRA"), 52 U.S.C. § 20504, which requires States, including North Carolina, to provide individuals with a meaningful opportunity to register to vote when they interact with the Division of Motor Vehicles ("DMV").

Specifically, North Carolina is systematically failing to ensure that a driver's license or identification card application, renewal, or change of address notification serves as a voter registration application or change of address in accordance with Section 5 of the NVRA.

We have worked successfully with the North Carolina State Board of Elections ("NCSBE") in the past, and we hope that we will be able to do so again to help ensure that North Carolina's motor vehicle offices are meeting their legal obligations. We urge you, as the State's chief election official, to take immediate steps, in conjunction with the North Carolina DMV and the Department of Transportation, to bring the State into compliance with federal law.

I. The Requirements of Section 5 of the NVRA

Section 5 of the NVRA requires the DMV to provide individuals with an opportunity to register to vote whenever they apply for, renew, or change their address on a driver's license or state-issued identification card. 52 U.S.C. § 20504(a)(1) & (d); *see also* 52 U.S.C. § 20502(3) (defining "motor vehicle driver's license" to "include[] any

personal identification document issued by a State motor vehicle authority”).

First, the NVRA mandates that when an individual applies for or renews a driver’s license or state-issued identification card (known as a non-operator’s license in North Carolina), the driver’s license or ID card application must also “serve as an application for voter registration ... unless the applicant fails to sign the voter registration application.”¹ 52 U.S.C. § 20504(a)(1). A voter registration application “shall” be included as part of every application for state driver’s license or ID card. 52 U.S.C. § 20504(c)(1). As part of this application, the state may collect additional information necessary to register the individual to vote, but the voter registration portion of a driver’s license or ID card application “may not require any information that duplicates information” included in other portions of the form, “other than a second signature” and an attestation of eligibility. *Id.* § 20504(c)(2).

Second, the NVRA requires that when an individual submits a change of address notification to the DMV, the state must update the individual’s voting address “unless the [individual submitting the form] states ... that the change of address is not for voter registration purposes.” *Id.* § 20504(d).

Finally, the NVRA mandates that when an individual registers to vote or updates their voter registration through the DMV, this information must be “transmitted to the appropriate State election official” within 10 days or, in some cases, within five days.² *Id.* § 20504(e)(1).

II. North Carolina’s Violations of Section 5 of the NVRA

Data from county Board of Elections, as well as the experience of numerous individuals who registered or updated their voter registration information at the North Carolina DMV, demonstrate that the State is failing to comply with Section 5 of the NVRA. At a minimum, North Carolina DMVs are (i) failing to meet their obligation to transmit voter registration information to county Board of Elections offices accurately and timely, and (ii) failing to offer voter registration services to individuals engaging in driver’s license or ID card transactions online.³

A. Failure to Complete and Transmit Voter Registration Applications During In-Person Driver’s License Transactions

The North Carolina DMV systematically fails to transmit voter registration applications to elections officials within the time limits required by the NVRA when consumers indicate a desire to register. These failures have resulted in a significant

¹ If a voter is already registered, their driver’s license application or renewal “update[s] any previous voter registration[.]” 52 U.S.C. § 20504(a)(2).

² “If [the] application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.” *Id.* § 20504(e)(2).

³ Further review, conducted in the context of litigation or otherwise, could reveal additional continuing NVRA violations.

number of individuals who registered (or updated their registration information) with the North Carolina DMV, including the individuals named in this letter, being deprived of their right to cast a regular ballot. Many such individuals attempted to vote and found that their names did not appear on the voter registration roll, or that their listed address was not correct. Such individuals had to cast provisional ballots.⁴ Those who voted provisionally had to spend additional time completing an affidavit and often had to wait a significant amount of time in a separate line in order to cast their ballot. All of these individuals left the polling location without confidence that their voices would be heard in the election.

Many individuals who cast provisional ballots later learned that their votes were not counted because the DMV failed to keep complete and accurate records of the voter registration applications and change of address information it collects or failed to properly train workers on their obligation to provide voter registration services. Thus, DMV errors routinely result in eligible North Carolinians being denied their right to vote.

B. Online Change of Address Transactions

The North Carolina DMV online portal, which allows individuals to remotely engage in change of address transactions, does not comply with the requirements of Section 5. As previously noted, the NVRA requires that “[a]ny change of address form submitted in accordance with State law for purposes of a State motor vehicle driver’s license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.” 52 U.S.C. § 20504(d). Accordingly, when an individual submits a change of address to the DMV, his or her voter registration record must be updated unless the individual opts out.

In North Carolina, an individual can submit a change of address to the DMV through the DMV’s website. *See* North Carolina Department of Transportation: Division of Motor Vehicles, Duplicate Driver License, <https://edmv.ncdot.gov/DuplicateDriverLicense> (last visited May 27, 2015). However, no voter registration services are provided during such online changes of address; individuals are not given the opportunity to opt out and it appears that voter registration records are not updated during such transactions. Instead, individuals are offered only a link to the NCSBE website.

The DMV’s failure to implement procedures by which each change of address updates an individual’s voter registration information constitutes an ongoing NVRA violation.

⁴ It is possible—indeed highly probable—that some individuals who were not on the voter rolls, as a result of the NVRA violations identified in this letter, were unable to take the time to cast a provisional ballot—which often requires waiting in an additional line and completing additional paperwork—and thus were completely deprived of their right to vote.

III. Impact of North Carolina's Non-Compliance with Section 5

Statistical data from the State Board of Elections and county elections officials demonstrate the existence and systemic nature of the violations described above. That the violations have real detrimental effects is backed up by the stories of a number of North Carolinians who have been disenfranchised by the DMV's failure to properly handle their voter registration information.

A. Data from NCSBE and County Boards of Elections

Information provided by North Carolina's 100 counties, pursuant to public records requests, indicates that a significant number of individuals who were forced to vote provisionally in the most recent election had registered to vote, updated their registration information, or requested to do so, through the North Carolina DMV. For example, in the 2014 General Election, 157 individuals who cast provisional ballots in Mecklenburg County (18% of the total number of provisional ballots cast in the county) indicated that they had completed a voter registration application at a North Carolina DMV office.

The problems with DMV's entry and transmission of voter registration applications and changes of address are not limited to certain geographic areas, but constitute a systemic problem across the state. Records produced by county Boards of Elections reveal that hundreds of voters who precinct officials could not find on the rolls in the 2014 General Election were later found to have registered at a DMV office. Statewide, more than 15% of the approved provisional ballots cast by voters with registration roll issues were counted because county elections officials discovered in post-election research that the voter had in fact registered to vote at the DMV. These voters came from 55 different counties. In some counties, a majority of voters who went through the ordeal of casting a provisional ballot because there was "No Record of [the voter's] Registration" had registered at the DMV.⁵

B. Qualified North Carolinians Who Were Disenfranchised by North Carolina's NVRA Violations in the 2014 General Election

The experiences of our individual clients, described below, are representative of the experiences of individuals across North Carolina who were forced to cast provisional ballots in the 2014 General Election despite having registered or updated their registration information at a DMV office. In most cases, these individuals were also completely deprived of the right to vote because their provisional ballots were not counted. They engaged in a wide range of drivers' and non-operators' license transactions either at DMV offices or on the DMV's website.

⁵ For instance, Swain County investigated what happened with ten of the 19 provisional ballots that were cast in the 2014 General Election because there was "No Record of Registration." In all ten cases, the DMV confirmed that the voters had registered through the DMV and the ballots were ultimately approved, indicating a breakdown somewhere in the transmission process that prevented voters from getting on the roll.

- **Sherry Denise Holverson.** Ms. Holverson formerly served in the U.S. Army and recently completed her studies to become a paralegal. She has been actively involved in voter registration efforts in the past. Ms. Holverson moved back to North Carolina—her place of birth—in 2009. In 2014, she moved from Cumberland County to neighboring Harnett County. Shortly after this move, around June 2014, Ms. Holverson visited the DMV office in Raeford, North Carolina (Hoke County) to update the address on her driver’s license. Ms. Holverson explicitly asked to have her voter registration information updated. She left the DMV office assuming that she would be able to participate in the upcoming General Election.

On October 31, 2014, Ms. Holverson went to cast an early ballot in Harnett County and was told that she was not on the registration roll. She was given a provisional ballot, which she was told may or may not be counted. Ms. Holverson’s ballot ultimately was not counted because the Harnett County Board of Elections could not confirm that she had changed her registration information at the DMV.

Ms. Holverson described her frustration with the process, noting: *“You do everything right, and it doesn’t make a difference.”*

- **Isabel Najera.** Ms. Najera became a naturalized U.S. citizen on July 30, 2014. She has lived in Sampson County for over 20 years and visited a DMV office in Sampson County in or around early October 2014 in order to obtain a commercial driver’s license.

While applying for a driver’s license, Ms. Najera was asked whether she wanted to register to vote. She said “yes” and was told that she would be able to vote in the upcoming General Election because the registration deadline, October 10, 2015, was still several days away. Ms. Najera was then asked what party she wanted to affiliate with. After she stated that she was not sure because it was going to be her first time voting, she was told that she would be listed as unaffiliated. She was then given a paper voter registration application to sign.

Ms. Najera went to cast an early ballot in Sampson County on or around October 29, 2014. Ms. Najera described her experience going to vote, noting: *“I was excited to participate in my first election as a U.S. citizen. But, when I went to vote, I was told that my name was not on the registration roll and I was taken to a separate line where I was made to wait for over an hour.”* Eventually, Ms. Najera was given a provisional ballot to cast. However, the DMV had no record of Ms. Najera’s voter registration transaction. Because the county Board of Elections was unable to verify that Ms. Najera had registered at the DMV, her ballot was not counted.

- **Alexandria Lane.** Ms. Lane was born and raised in North Carolina. In April

2013, Ms. Lane moved to Virginia for work and registered to vote in that state. However, approximately one year later—missing her family, her friends, and her home state—Ms. Lane decided to move back to North Carolina.

Around late May 2014, after moving to Wake County, North Carolina, Ms. Lane went to the DMV to get a state driver's license. While she was at the DMV, the worker asked her whether she would like to register to vote. Ms. Lane said "yes."

When Ms. Lane went to an early voting site in Cary on October 27, 2014, she was told that her name did not appear on the registration roll. Ms. Lane was forced to cast a provisional ballot and, because the county Board of Elections was unable to verify that Ms. Lane had registered at the DMV, her ballot was ultimately not counted.

C. Public Records Requests

Documents obtained through public records requests provide evidence that the NVRA violations at the DMV described above have been an ongoing problem. For example, an email exchange among Gary Sims, Deputy Director of the Wake County Board of Elections, Cherie Poucher, Director of the Wake County Board of Elections, Veronica Degraffenreid of the NCSBE, and others described the experience of one North Carolinian that exemplifies an ongoing lack of NVRA compliance by the DMV.

According to this email exchange, Anna Grace Martin, the daughter of Chief Justice Mark D. Martin of the North Carolina Supreme Court, went to the Wake County Board of Elections office on October 16, 2014. Ms. Martin, who was home from college, went to the office to request an absentee ballot. Ms. Martin was told that her name did not appear on the registration roll.

Ms. Martin had registered to vote at a state DMV office—a fact that her father, the Chief Justice, verified. He told the elections official that he had been with his daughter and heard the DMV agent ask Ms. Martin if she wanted to register to vote and had heard his daughter say "yes."

Mr. Sims, of the Wake County Board of Elections, brought this incident to the attention of the NCSBE, which looked into the issue and emailed Mr. Sims to tell him that the DMV did not have any "record of registration for" Ms. Martin. Mr. Sims' response to this message noted that the failure of the DMV to transmit voter registration information is not a new or infrequent problem:

I think what we have here is an agency (that I will not comment on) that has failed to do their job. We have seen this over and over and over again. DMV needs to address their issues. They simply do not get their roll [sic] in registration and this results in a lot of provisionals.

...

What does not make headlines are the number of provisionals denied from DMV not doing their job.

IV. Conclusion

The North Carolina DMV is engaged in continuing violations of the NVRA. The violations result in widespread deprivation of many North Carolinians' right to vote. As North Carolina's chief election official, you are responsible for ensuring that DMV offices are complying with the NVRA. *See, e.g.*, N.C. G.S. § 163-82.2.

North Carolina must ensure that all of its citizens are guaranteed the right to vote and that the NVRA is properly implemented. In short, North Carolina must develop and implement procedures to ensure that the applications of individuals who choose to register to vote or update their voter registration through the DMV are placed on the list of eligible voters and are able to cast a regular ballot with the confidence that their vote will be counted.

This letter serves as notice pursuant to 52 U.S.C. § 20510(b) of violations by North Carolina of Section 5 of the NVRA, 52 U.S.C. § 20504. We are prepared to meet with you and other state officials, at your earliest convenience, to assist in your development of a comprehensive plan that addresses the problems identified in this letter. In the absence of such a plan, we will have no alternative but to initiate litigation at the conclusion of the statutory 90-day waiting period.

Sincerely,

Stuart Naifeh
Naila Awan
Dēmos
220 Fifth Ave., 2nd Floor
New York, NY, 10001
(212) 633-1405

Catherine M. Flanagan
Sarah Brannon*
Project Vote
1350 I Street NW, Suite 1250
Washington, DC 20005
(202) 546-4173

Allison Riggs
Anita Earls
Southern Coalition for Social Justice
1415 West Highway 54, Suite 101
Durham, NC 27707

* Authorized to practice only in Maryland. Practice in DC limited to cases in federal court.

cc: Kelly Thomas (via email)
Commissioner of Motor Vehicles
3101 Mail Service Center
Raleigh, NC 27699-3148
kellyjthomas@ncdot.gov

Anthony Tata (via email)
Secretary of Transportation
1501 Mail Service Center
Raleigh, NC 27699-1501
ajtata@ncdot.gov