



Via First Class and Electronic Mail

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August 13, 2014

Re: Compliance with Section 7 of the National Voter Registration Act

Dear Mr. Ziriaux:

We write on behalf of the Metropolitan Tulsa Urban League, the League of Women Voters of Oklahoma and Metropolitan Tulsa, and the YWCA Tulsa, persons eligible to vote whom these organizations represent, and others similarly situated to notify you that the State of Oklahoma is not in compliance with Section 7 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5. Section 7 requires states, including Oklahoma, to provide citizens a meaningful opportunity to register to vote when interacting with public assistance agencies. As Oklahoma's chief election official, you are ultimately responsible for the State's compliance with the NVRA. *Harkless v. Brunner*, 545 F.3d 445, 451-53 (6th Cir. 2008); *Scott v. Schedler*, 2013 WL 264603, at *16 (E.D. La. 2013). We therefore urge you to take immediate steps to bring the State into compliance with Section 7.

Our organizations have ten years of experience in working with states, either cooperatively or through litigation, to ensure compliance with the NVRA. We hope to work amicably with you to remedy Oklahoma's non-compliance. However, we will pursue litigation if necessary.

I. The Requirements of the National Voter Registration Act of 1993

Section 7 of the NVRA requires Oklahoma "public assistance agencies" to (i) distribute voter registration application forms; (ii) assist applicants in completing the voter registration forms; and (iii) accept completed voter registration application forms and forward them to the appropriate election official. See 42 U.S.C. § 1973gg-5(a)(4)(A). "Public assistance agencies" include, at a minimum, those agencies that administer the Supplemental Nutritional Assistance Program ("SNAP"), Medicaid, the Special Supplemental Food Program for Women, Infants, and Children ("WIC"), Temporary Assistance for Needy Families ("TANF"), and the State Children's Health Insurance Program ("SCHIP"). See H. R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.); Okla. Admin. Code § 230:15-5-122(a); U.S. Department of Justice, The National

Program (“SNAP”), Medicaid, the Special Supplemental Food Program for Women, Infants, and Children (“WIC”), Temporary Assistance for Needy Families (“TANF”), and the State Children’s Health Insurance Program (“SCHIP”). See H. R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.); Okla. Admin. Code § 230:15-5-122(a); U.S. Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q13, *available at* http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php. In Oklahoma, these programs are administered by the Department of Human Services (“DHS”), the Department of Health (“DOH”), and the Oklahoma Health Care Authority (“OHCA”).

More specifically, each office must distribute written documentation that (i) includes the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?” and (ii) includes several written disclaimers including that the decision to register or to decline to register will not affect the amount of assistance provided by the agency. *Id.* § 1973gg-5(a)(6)(B). In Oklahoma, this document is called a “Voter Registration Statement.” See Okla. Admin. Code § 230:15-5-125(a). The NVRA also requires that the public assistance office distribute a voter registration application with each application, recertification, renewal, and change of address (“covered transaction”) unless the applicant or client declines in writing. *Id.* § 1973gg-5(a)(6)(A). To decline “in writing,” a client must affirmatively opt out by checking “no” on the Voter Registration Statement. See *Valdez v. Squier*, 676 F.3d 935, 945-46 (10th Cir. 2012) (“[A]n applicant’s failure to check either the ‘YES’ or ‘NO’ box on the voter declination form does not constitute a declination ‘in writing.’ [The NVRA] requires an applicant to affirmatively, by way of writing, ‘opt out’ of receiving a voter registration form.”). Agency staff must provide the same degree of assistance in completing the voter registration application as is provided in completing the agency’s own forms. 42 U.S.C. § 1973gg-5(a)(6).

Such voter registration services must be provided by public assistance agencies regardless of whether the transaction takes place in the agency office or remotely via phone, mail, email, or Internet. *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.”); *Georgia Conf. of the NAACP v. Kemp*, 841 F.3d 1320, 1331 (N.D. Ga. 2012) (voter registration must be provided during remote transactions).

As discussed below, Oklahoma’s public assistance agencies are failing to comply with these requirements.

II. Non-Compliance Facts

Oklahoma's non-compliance with the NVRA is indicated by several sources of information: data reported by Oklahoma officials to the federal Election Assistance Commission ("EAC"); population data reported by the U.S. Census Bureau; the administrative regulations governing voter registration at Oklahoma public assistance agencies; and fieldwork coordinated by our organizations at DHS and WIC offices in several counties.

a. Voter Registration Data Indicate Non-Compliance

The biennial EAC data show that the number of voter registration applications reported statewide by Oklahoma public assistance agencies declined dramatically since the initial implementation of the NVRA – from 58,811 registrations in 1995-1996 to only 11,122 in 2011-2012, a decline of 81 percent.¹ At the same time, the average monthly participation in the SNAP program, just one of the programs covered by the NVRA, rose from 361,364 to 614,947.²

This decline in agency registrations cannot plausibly be attributed to high voter registration rates among public assistance agency clients. In fact, low-income citizens in Oklahoma are grossly underrepresented among registered voters. According to the U.S. Census Bureau, only 61 percent of Oklahoma citizens in households making less than \$25,000 were registered to vote in 2012, compared to 81 percent of those in households making \$150,000 or more.³

County-level data, also from the EAC, strongly indicate that specific agency offices have particularly severe problems complying with their duties under the NVRA. For example, seven counties reported not receiving a single voter registration from public assistance agencies in the two-year period leading up the 2012 presidential election.⁴ Furthermore, 40 percent of

¹ See Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996*, Table 2, p. 9, available at <http://www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf>; U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2011-2012*, Table 2a, p. 41, available at http://www.eac.gov/assets/1/Documents/EAC_NVRA%20Report_lowres.pdf.

² U.S. Department of Agriculture; Economic Research Service. *Supplemental Nutrition Assistance Program (SNAP) Data System: Time Series Data*, available at [http://www.ers.usda.gov/data-products/supplemental-nutrition-assistance-program-\(snap\)-data-system/time-series-data.aspx#.U7HZJK1dXBE](http://www.ers.usda.gov/data-products/supplemental-nutrition-assistance-program-(snap)-data-system/time-series-data.aspx#.U7HZJK1dXBE).

³ U.S. Census Bureau, Current Population Survey, analysis by Demos.

⁴ See U.S. Election Assistance Commission, 2012 NVRA Report Datasets, available at <http://www.eac.gov/registration-data/>.

Oklahoma's 77 counties failed to produce over 10 voter registration applications from public assistance agencies during this two-year period. Such minimal numbers of reported registrations should be considered *prima facie* evidence of non-compliance with the NVRA, which our experience in other states has confirmed.

Finally, we obtained additional data from publicly available sources and the State Board of Elections through a public records request. Those data indicate that in 2012, DHS offices opened 218,862 SNAP cases and denied 108,832 SNAP applications, representing a total of 327,694 applications for SNAP services.⁵ However, DHS offices ordered only 51,000 Voter Registration Statement forms and 33,000 Voter Registration Application forms in 2012. In 2011, State Board of Elections records indicate that DHS offices did not order a single voter registration application form or Voter Registration Statement form, while it appears there were a total of 339,643 total applications for SNAP.⁶ Thus, it appears that DHS offices were not supplied with nearly enough Voter Registration Statement forms to have provided one to each applicant for benefits, and they almost certainly did not have enough Voter Registration Application forms to provide one to every person who did not decline in writing to receive one.

b. Oklahoma Regulations Violate the NVRA

The low incidence of voter registration through public assistance offices is likely a result, in part, of a facially deficient Section 7 implementation policy. The regulations governing the Oklahoma Department of Human Services state that “[w]hen an applicant or recipient submits an Oklahoma Voter Registration Statement indicating that he or she wants to register to vote, the person is provided an Oklahoma Voter Registration Application.” Okla. Admin. Code § 340:65-11-3(a)(2)(A). If an applicant or client leaves the Statement blank, “it is presumed the person does not wish to register.” *Id.* § 340:65-11-3(a)(1)(B). The regulations are silent as to whether a voter registration application must be provided if the Voter Registration Statement is left blank, but from every indication the presumption in § 340:65-11-3(a)(1)(B) quoted above is being applied in derogation of—and conflict with—the plain language of the NVRA’s requirement that a voter registration application must be distributed unless the client declines in writing.

⁵ See Oklahoma Department of Human Services, Monthly Statistical Bulletins, Supplemental Nutrition Assistance Program (Food Stamps) Cases Opened and Applications Denied by Category, type, and County, Jan. – Dec. 2012, <http://www.okdhs.org/library/stats/sb/default.htm?year=2012> (last viewed June 25, 2014).

⁶ See Oklahoma Department of Human Services, Monthly Statistical Bulletins, Supplemental Nutrition Assistance Program (Food Stamps) Cases Opened and Applications Denied by Category, type, and County, Jan. – Dec. 2011, <http://www.okdhs.org/library/stats/sb/default.htm?year=2011> (last viewed June 25, 2014).

Similarly, regulations promulgated by the State Board of Elections instruct workers in all voter registration agencies to distribute a voter registration application if an applicant or client checks “yes” on the Statement, but includes no directive to provide a voter registration application if the Statement is left blank. *See* Okla. Admin. Code § 230:15-5-125(a). The State Board of Elections’ 10-minute training video likewise fails to provide such an instruction. As discussed above, the NVRA is clear that a voter registration application must be distributed if the Statement is left blank. *See Valdez*, 676 F.3d at 947 (“If an applicant is passive, i.e., does not check either “YES” or “NO” on the declination form and thereby indicate his or her intent in writing, [the agency] must . . . still provide him or her with a voter registration form . . .”). *See also* U.S. Dep’t of Justice, “National Voter Registration Act of 1993 (NVRA): Questions and Answers” (question 24), *available at* http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php (last viewed Jan. 9, 2014).

c. Fieldwork at DHS and WIC Offices Confirms NVRA Violations

Fieldwork uncovered additional direct and indirect evidence of Section 7 violations. A significant percentage of the agency clients who were interviewed reported that they received no voter registration services whatsoever when they engaged in covered transactions. Even among those clients who appear to have received some voter registration information, many reported that they did not decline to register in writing but were not provided a voter registration application. Finally, in contravention to Oklahoma policy (*i.e.*, Okla. Admin. Code § 230:15-5-125), most clients reported that they received no oral mention at the agency of their right to register to vote.

Additionally, as described in more detail below, discussions with DHS and WIC employees revealed an inadequate understanding of the NVRA’s requirements, particularly as they relate to when a voter registration application must be distributed.

Department of Human Services

Interviews with 84 clients and applicants engaging in covered transactions at nine offices across four counties reveal widespread and repeated NVRA non-compliance. All 84 clients should have been offered the opportunity to register to vote, yet they reported that:

- Thirty-five percent (29 of 84) received no voter registration services whatsoever. These clients did not see the Voter Registration Statement; they were not provided with a voter registration application; and they were not asked orally by agency staff if they wanted to register to vote;

- Thirty-seven percent (31 of 84) did not even see the required Voter Registration Statement form, and thus could not have declined in writing;
- Ninety-five percent of the clients who left the Voter Registration Statement blank (35 of 37) —either intentionally or because they did not see the Voter Registration Statement—were not provided with a voter registration application;
- Eighty-nine percent (75 of 84) were not asked orally if they wanted to register; and
- The one client who marked in writing on her Voter Registration Statement that she wanted to register to vote was *not* provided with a voter registration application.

Discussions with agency staff revealed their inadequate understanding of the applicable NVRA requirements. Staff at seven offices stated that a voter registration application is only provided to clients or applicants who check “yes” on the Voter Registration Statement, confirming that the agency is failing to comply with the NVRA’s requirement that an application be provided unless the client declines in writing. Staff at another office seemed to be under the impression that the Voter Registration Statement *was* the voter registration application and that completing the Statement itself would register the client to vote. This office did not appear to even have an actual voter registration application on hand when one was requested.

WIC

Similar to DHS, interviews with 40 applicants or clients engaging in covered transactions at nine WIC offices in two counties further confirmed widespread NVRA violations. All 40 clients should have been offered the opportunity to register to vote, yet they reported that:

- Forty percent (16 of 40) received no voter registration services whatsoever. They did not see the Voter Registration Statement; they were not given a voter registration application; and they were not asked orally if they wanted to register to vote;
- Among the fifty-eight percent of clients who left the Voter Registration Statement blank (23 of 40) —either intentionally or because they did not see it—not a single client was provided with a voter registration application;
- Fifty-five percent (22 of 40) did not see the required Voter Registration Statement; and
- Sixty-eight percent (27 of 40) were not asked orally if they wanted to register to vote.

Once again, discussions with WIC staff members demonstrated that a number of frontline workers were unaware of the basic procedures required by the NVRA and that they did not follow them. Staff at 7 offices clearly indicated that a voter registration application is only

provided to clients who proactively ask for one or check "yes" on the Voter Registration Statement. Staff at another office indicated that completing the Voter Registration Statement would itself register the client; the staff member said that it was not necessary to complete a separate voter registration application.

III. Conclusion

The above information provides ample notice that Oklahoma is engaging in continuous and ongoing violations of Section 7 of the NVRA. As chief election official, you must take action to ensure that these agencies perform the federally mandated responsibility to provide voter registration services.

We are ready and eager to meet with you and other state officials at your earliest convenience to assist in your development of a comprehensive plan for compliance, as we have successfully done with other states. However, this letter constitutes formal notice pursuant to 42 U.S.C. § 1973gg-9(b), and if Oklahoma fails to take steps to remedy its violations of Section 7 of the NVRA, we will be prepared to initiate litigation at the conclusion of the statutory 90-day waiting period.

We look forward to hearing from you.

Sincerely,



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