



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW



April 23, 2012

Via Certified Mail

Carol Aichele
Pennsylvania Secretary of the Commonwealth
North Office Building
Harrisburg, PA 17120

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

Dear Secretary Aichele,

We write on behalf of the Black Political Empowerment Project (B-PEP), persons eligible to register to vote who they represent, and others similarly situated to notify you that the Commonwealth of Pennsylvania is not in compliance with Section 7 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5, which requires States, including Pennsylvania, to provide the opportunity to register to vote with every application for public assistance and every public assistance recertification, renewal, and change of address. We urge you, as the Commonwealth's chief election official, to take immediate steps, in conjunction with the Pennsylvania Department of Public Welfare (DPW) and the Department of Public Health (DPH), to bring the Commonwealth into compliance with Section 7.

The Secretary of the Commonwealth was first contacted about these issues in 2009, when Demos, one of the undersigned organizations, advised your office of its findings concerning Pennsylvania's noncompliance with the public agency requirements of the NVRA. Although we appreciate the subsequent discussions your office had with Demos in an effort to improve Pennsylvania's compliance, the results of recent field investigations make clear that Pennsylvania's public assistance offices are still not complying with their obligations under Section 7 of the NVRA.

The NVRA requires Pennsylvania to "designate as voter registration agencies . . . all offices in the State that provide public assistance." *See* 42 U.S.C. § 1973gg-5(a)(2)(A). Each public assistance office must, at a minimum, (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). Moreover, each office must (i) distribute a voter registration application form with *each* application for public assistance and with each recertification, renewal or change of address form; (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 at that time; (iii) provide simultaneously with the inquiry several statutorily required statements, in writing, including that the decision to register or decline to register to vote will not affect the amount of

public assistance provided by the agency; and (iv) provide assistance in 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).

Our investigation demonstrates that Pennsylvania is systematically failing to provide the voter registration services mandated by the NVRA at its public assistance offices. Furthermore, the lack of compliance is also strongly suggested by the data Pennsylvania submitted to the United States Election Assistance Commission (“EAC”) regarding the number of registration applications submitted at Pennsylvania public assistance agencies, and confirmed by field reviews.

According to EAC data, the number of voter registration applications submitted at Pennsylvania public assistance offices decreased precipitously between the 1995-1996 and 2009-2010 reporting periods, from 59,462 in 1995-1996 to just 4,179 in 2009-2010, a reduction of 93%. This huge decrease is particularly significant given that the number of initial food stamp applications in Pennsylvania during the same time frame nearly doubled, from 1,015,968 in 1995-1996 to 1,814,000 in 2009-2010. Moreover, Census Bureau data from 2010 indicate that only 53.6% of low-income voters in Pennsylvania were registered to vote, while 79.7% of high income voters were on the rolls. Accordingly, the decrease in voter registration applications does not reflect any reduction in public assistance caseloads or any lack of low-income residents in need of voter registration.

Observations in the field confirm that the staff at Department of Public Welfare (DPW) and Department of Public Health (DPH) offices are failing to regularly distribute voter registration applications to public assistance clients, as the NVRA requires. Recent visits to nine public assistance offices in five counties showed that a significant percentage of public assistance applicants and clients are not provided any meaningful offer of voter registration, and very few offices provided the required voter registration notices to their clients.

In summary, our investigation has shown the following:

- In each DPW or DPH office visited, the clerks stated that voter registration applications are provided only to benefits applicants who check “Yes” in response to the question whether they “would...like to register to vote here today.” This procedure violates the NVRA, which requires that all persons engaging in covered transactions be provided a voter registration application unless they specifically *decline*, in writing, to receive such an application. 42 U.S.C. § 1973gg-5(a)(6)(A); *Valdez v. Squier*, Nos. 11-2063 & 11-2084, 2012 U.S. App. LEXIS 3390, *19-29 (10th Cir. Feb. 21, 2012) (“[A]n applicant's failure to check either the ‘YES’ or ‘NO’ box on the 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.”).
- Of the clients interviewed, 57% of those who checked “Yes” to the above-referenced voter registration question nevertheless were neither asked about voter registration nor provided with a voter registration application.

- Two of the sites visited, Philadelphia’s South District WIC and Allegheny County’s Three Rivers District DPW, had no voter registration applications on site at all.¹ In the Philadelphia office, the clerk stated that they had some registration applications, “a few months ago.”
- Each of the interviewed clients stated that no voter registration application was attached to or provided with the benefits application or other agency forms. Several of those persons who were not provided a voter registration application stated that they understood that they might receive an application through the mail at a later date. This raises questions about whether and how DPW and DPH employees offer equal assistance to their clients in completing the voter registration application. 42 U.S.C. § 1973gg-5(a)(6)(C).
- Only 25% of the sites visited had signs posted informing clients they could register to vote, and only 12.5% of the sites displayed instructions on how to register to vote. The Pennsylvania law which implements the NVRA requires each agency to “provide reasonable space for nonpartisan signs or posters encouraging voter registration,” 25 *Pa.C.S. § 1325(e)*, and further directs that “The signs and posters shall be provided by the secretary.” *Id.*

In addition to the above, DPW benefits applications do not have the statutorily required language with the offer of voter registration. All written offers of voter registration must also contain the following statements: “If you do not check either box, you will be considered to have decided not to register to vote at this time”; “If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private”; and “If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____.” 42 U.S.C. § 1973gg-5(a)(6)(B)(iii)-(v). Of the three benefits applications that we collected at DPW offices, all of them were missing the first statement and one was missing all three statements.

These problems could (and should) have been prevented. Pennsylvania must recognize its obligations under the NVRA and make sure the NVRA-required voter registration services actually are provided to clients. To this end, Pennsylvania must make prompt changes so that all of its citizens, including the hundreds of thousands of its citizens who receive public assistance, are able to participate in elections. Pennsylvania must institute procedures to ensure that frontline workers perform their federally mandated responsibility to provide voter registration services.

¹ The Three Rivers District DPW office is physically divided into two separate offices, which are next door to each other. The main office provides SNAP, Cash Assistance and Medical Assistance and did not have voter registration applications. The secondary office, which distributes LIHEAP benefits, was able to provide a voter registration application.

This letter serves as a notice letter pursuant to 42 U.S.C. § 1973gg-9(b) in an attempt to obtain compliance with the public assistance provisions of the NVRA without litigation. Please advise us promptly of the steps you intend to take to remedy Pennsylvania's violations of Section 7 of the NVRA. We appreciate your office's past willingness to discuss needed improvements to NVRA compliance, and we hope that you share our concern about the clear evidence that, despite these discussions, public assistance offices in Pennsylvania still are not complying with their obligations under the NVRA. The undersigned counsel are prepared to meet with you and other state officials, at your earliest convenience, to assist in your development of a comprehensive plan for compliance. In the absence of such a plan, we will have no alternative but to initiate litigation at the conclusion of the statutory 20-day waiting period.

Sincerely,

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