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REPLY TO CHARLESTON

October 11, 2013

Via Email and 1st Class Mail

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Our File No.: 11287

Dear Ms. Andino, Mr. Keck, Ms. Koller, and Ms. Templeton:

We write to provide formal notice on behalf of the League of Women Voters of South Carolina ("the League"), the South Carolina State Conference of the NAACP ("NAACP"), the

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persons eligible to register to vote that the NAACP represents, and others similarly situated that, based on our review and investigation, we conclude that South Carolina agencies providing public assistance benefits, including but not limited to the South Carolina Department of Health and Environmental Control (“DHEC”), the South Carolina Department of Health and Human Services (“DHHS”),¹ and the South Carolina Department of Social Services (“DSS”), are not offering voter registration to public assistance clients as required by Section 7 of the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg-5 (“NVRA”). We urge you to take immediate steps to bring South Carolina agencies providing public assistance benefits, including but not limited to DHEC, DHHS and DSS, into compliance with the NVRA.

Section 7 establishes clear obligations on the part of state public assistance agencies to provide voter registration services. Under the NVRA, state public assistance agencies shall be designated as “voter registration agencies” and are required to provide certain specified voter registration services. 42 U.S.C. § 1973gg-5. With each application, recertification, renewal and change of address transaction (collectively, “covered transactions”), South Carolina’s public assistance agencies must (i) distribute voter registration application forms; (ii) provide assistance in completing the voter registration forms; and (iii) accept completed voter registration application forms and forward them to the appropriate election official. 42 U.S.C. § 1973gg-5(a)(4)(A).

Also, during each covered transaction, agencies must provide clients and applicants written documentation (a “voter preference form” or “declination form”) 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?” (“the voter preference question”); and (ii) includes several statutorily required disclaimers, including, among others, that the decision to register or to decline to register to vote will not affect the amount of public assistance provided by the agency. 42 U.S.C. § 1973gg-5(a)(6)(B). The NVRA requires that public assistance offices distribute voter registration applications to all public assistance applicants and clients, unless the individual applicant or client affirmatively opts out of voter registration by declining “in writing” to register to vote. 42 U.S.C. § 1973gg-5(a)(6)(A); *Valdez v. Squier*, 676 F.3d 935, 947 (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.”). Finally, public assistance agencies must also provide assistance in completing the voter registration forms to the same degree the agencies provide assistance in completing their own forms. 42 U.S.C. § 1973gg-5(a)(6)(C).

Furthermore, voter registration services must be offered by public assistance agencies regardless of whether a covered transaction occurs at the office or remotely (via mail, telephone,

¹ It appears that South Carolina has failed to designate DHHS as a voter registration agency. See S.C. Code Ann. 7-5-310 (2012). DHHS administers Medicaid, and therefore is a state agency providing public assistance that must be designated as a voter registration agency. 42 U.S.C. § 1973gg-5(a)(2)(A). If South Carolina has not designated DHHS as a voter registration agency, that failure violates the NVRA.

or the 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 State Conference of the NAACP v. Kemp*, 841 F.3d 1320, 1331 (N.D. Ga. 2012) (voter registration must be provided during remote transactions).

Our investigation demonstrates that South Carolina’s public assistance agencies are systematically failing to provide the voter registration services mandated by the NVRA. The investigation included review of relevant voter registration data, South Carolina’s laws and regulations, and agency program manuals, as well as visits to DHEC, DHHS and DSS offices at multiple locations throughout the state and conversations with workers and clients at those offices.

At the outset, the State’s own reports to the U.S. Election Assistance Commission reveal that new registrations at public assistance agencies have declined steeply over time. New voter registrations collected by South Carolina public assistance agencies during the most recent reporting period, 2011-2012, totaled 2,298, which represents a reduction of 85 percent from the number of new registrations reported in 2007-2008. <http://www.eac.gov/registration-data/>.²

Although the number of South Carolina public agency registrations would be expected to roughly track changes in the numbers of public assistance clients, this is not the case. At DSS, for example, the relationship between clients and registrations is inversely proportional. The average number of households participating per month in the SNAP program increased by 61 percent during the 2008 to 2012 period, rising from 255,702 in 2008 to 410,491 in 2012. <http://www.fns.usda.gov/pd/16SNAPPpartHH.htm>. In contrast, the number of new registrations collected by DSS decreased by 78 percent, from 2,631 in 2008 to 567 in 2012. See Response to Public Information Request, from Chris Whitmire, South Carolina Elections Commission to Niyati Shah, Project Vote, dated January 22, 2013.

Similarly, data for 2012 confirm that the agencies’ violations are occurring statewide. DHHS offices in 42 of 46 counties failed to produce more than 10 new registrations in all of 2012. Twenty-five DHHS offices did not register a single new voter last year. DHEC collected more than 10 new registrations in only four counties during 2012, and 32 DHEC offices did not collect a single new registration. DSS offices in 24 of the 46 counties failed to collect more than 10 new registrations during the year, and in nine counties DSS offices did not register any new

² In 2007-2008, South Carolina informed the U.S. Election Assistance Commission that the figure it reported as “Total Registrations” (15,320) actually represented only “New Registrations. U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2007-2008*, 41. South Carolina reported an increase in Total Registrations from public assistance agencies in 2011-2012; however, the State’s “Notes” indicate that this figure is “more accurately described as changes to voter records” which includes changes resulting from redistricting. U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act on the Administration of Elections for Federal Office, 2011-2012*, 45. The number of actual New Registrations, the same category reported as 15,320 in 2007-2008, was 2,298 in 2011-2012. *Id.* at 47.

voters.

Indeed, due in part to inadequate registration by public assistance agencies, South Carolina suffers from a severe disparity between the registration rates of poor and affluent citizens. Census data from 2012 indicate that only 29 percent of low-income voters in South Carolina were registered to vote, while 71 percent of high-income voters were on the rolls, a registration gap of over 40 percentage points. CPS Supplements, National Bureau of Economic Research. "Current Population Survey, Voting and Registration Supplement File" (2012); "Machine-Readable Data File" 2012. <http://www.nber.org/data/current-population-survey-data.html>.

Our field investigation confirmed that South Carolina public assistance agencies are engaging in ongoing violations of Section 7. Our investigation included visits to 24 offices of DHEC, DHHS and DSS located throughout South Carolina. We spoke with 54 citizens engaging in covered transactions with the three agencies. At each of the agencies, the majority of the individuals surveyed reported that agency staff did not give them a voter preference form or a verbal offer of voter registration services.³ Also, the majority of clients stated they were not provided with an application to register to vote. More specific information relating to our investigation at agency offices follows:

DHEC. Ninety-four percent of the individuals interviewed indicated they were neither orally asked during the transaction whether they wanted to register to vote nor given a form that included a voter preference question. All of the individuals indicated they were not given a voter registration application during the transaction.

DHHS. Eighty-two percent of the clients interviewed indicated they were not asked orally during the transaction whether they wanted to register to vote and 70 percent indicated they were not given a form that included a voter preference question. Seventy-six percent of the individuals indicated they were not given a voter registration application during the transaction. Only six percent of those interviewed received a voter registration application and assistance from an agency employee in completing it.

DSS: Ninety-five percent of the clients interviewed indicated they were not orally asked during the transaction if they wanted to register to vote and eighty percent indicated they were not given a form that included a voter preference question. Eighty-five percent indicated they were not given a voter registration application during the transaction. Only five percent of those interviewed received a voter registration application and assistance from an agency employee in completing it.⁴

³ It is our understanding that South Carolina public assistance agencies use a separate voter preference form. However, the vast majority of the clients we interviewed at all offices had not seen the form.

⁴ The DSS clients interviewed were engaged in covered transactions relating to the Supplemental Nutrition Assistance Program ("SNAP") and/or Family Independence ("FI") program.

Moreover, our investigation revealed that DHEC, DHHS and DSS offices are not prepared to fulfill their voter registration obligations. At 40 percent of the DHEC offices visited, staff indicated the office had no voter registration applications on site. None of the DHEC waiting rooms we visited displayed signs or voter registration applications in their waiting rooms that would alert clients that voter registration services were available, an indication of the low priority that the offices accord NVRA requirements. At 25 percent of the DHHS offices visited, staff indicated the office had no applications on site, and in 75 percent of those offices no signs or voter registration applications were displayed. At 36 percent of the DSS offices visited, staff indicated that the office had no applications on site, and 82 percent of those offices had no signs or voter registration applications on display.

The results of our investigation demonstrate that DSS, DHHS, and DHEC are engaged in continuing violations of the NVRA. Each agency is failing to provide the voter preference form and to distribute voter registration applications as mandated by the NVRA. Because they are not providing applications, the agencies obviously cannot offer the required assistance in completing them.

Additionally, DSS, DHHS, and DHEC are violating the NVRA because they are failing to offer voter registration services during remote transactions. As explained above, voter registration services required by Section 7 must be provided whether the individuals participate in covered transactions in-person at an office or remotely, such as online, by mail, or over the telephone. South Carolina has an online system that allows individuals to apply for public assistance benefits over the internet, the South Carolina Multi-Agency Partnership Portal (SCMAPP). See <https://scmapp.sc.gov/Default.aspx>. This portal appears to be operated by DSS and allows individuals to apply for SNAP and FI, along with other benefits. The application provided by this portal offers no voter registration services.

See <https://scmapp.sc.gov/BenefitForms/English/QuickReferenceGuide.pdf>. Indeed, there is no mention of voter registration anywhere on the website. Additionally, DHHS fails to provide voter registration services during all covered remote transactions. See Medicaid Policy and Procedures Manual, Section 101.19 and Appendix V; available at http://medsweb.scdhhs.gov/mppm/HTML/Section100/Chapter%20104%20%20Appendix.htm#_Toc358036621; http://medsweb.scdhhs.gov/mppm/HTML/Section100/Chapter%20101%20%20Administrative%20Requirements.htm#_Toc359233916.

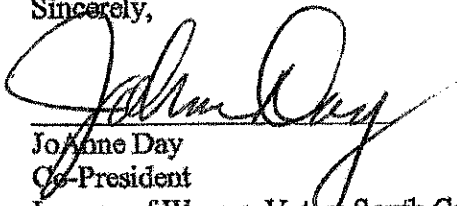
Finally, the South Carolina Elections Commission is not fulfilling its duties under the NVRA. See *Harkless v. Brunner*, 545 F.3d 445, 452 (6th Cir. 2008) (under NVRA, chief election officer is responsible for implementation and enforcement of a state's Section 7 program). Providing guidance, training, and information to public assistance agencies about their voter registration obligations are aspects of such implementation and enforcement. It is our understanding that the Commission provided such training before 2010, after which it stopped making training available.

We would be pleased to work cooperatively with the DHEC, DHHS, DSS, and the Elections Commission to develop a plan for bringing South Carolina into compliance with the NVRA, as we have successfully done with other states. However, if South Carolina fails to take steps to remedy its violations of Section 7 of the NVRA, we are prepared to initiate litigation.

Please be advised that, pursuant to 42 U.S.C. § 1973gg-9(b), this letter serves as notice of NVRA violations by South Carolina agencies offering public assistance benefits, including but not limited to DHEC, DHHS, and DSS. The NVRA allows us to file suit at the end of the statutory 90-day waiting period if the violations have not been fully remedied.

We look forward to hearing from you.

Sincerely,



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