



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
U N D E R L A W

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June 11, 2012

VIA FEDEX

The Honorable Ken Detzner
Secretary of State
Florida Department of State
R. A. Gray Building
500 South Bronough Street
Tallahassee, FL 32399-0250

RE: National Voter Registration Act Section 7 Compliance

Dear Secretary Detzner:

We write on behalf of the Florida State Conference of the National Association for the Advancement of Colored People ("NAACP"), persons eligible to register to vote that it represents, and others similarly situated to notify you that the state of Florida is not in full compliance with Section 7 of the National Voter Registration Act of 1993 ("NVRA"), 42 U.S.C. § 1973gg-5 ("Section 7") because the Department of Children and Families ("DCF") is not providing federally required voter registration services. We hope to work with you, as Florida's chief election official, to bring Florida into full compliance with Section 7.

Section 7 Requirements

Section 7 of the NVRA requires Florida 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). This includes DCF. Each voter registration agency 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 appropriate election officials. *See* 42 U.S.C. §1973gg-5(a)(4)(A). In addition, each public assistance agency office, must (i) distribute a voter registration application form with *each* application for public assistance, with *each* renewal or recertification, and with *each* change of address transaction (collectively, "covered transactions"), unless the individual

applicant or client affirmatively opts out of voter registration by declining in writing to register to vote; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his 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 public assistance provided by the agency; and (iv) provide the same degree of assistance in completing the voter registration forms as the agency provides in completing its own forms. *See* 42 U.S.C. § 1973gg-5(a)(6).

Prior Section 7 Noncompliance and Enforcement Action

In 2001, several voting rights organizations filed suit in Florida in response to voting irregularities during the 2000 election. The case, *NAACP v. Harris*, resulted in a settlement agreement between plaintiffs and DCF.¹ This agreement, in effect from September 2002 through January 2004, required DCF to: a) implement a set of concrete procedures and computer-based systems to ensure that clients received their federally-mandated opportunities to register to vote, including, but not limited to, orally asking clients the question contained on the voter preference form and orally offering assistance in completing voter registration applications; b) perform quality control checks at each facility; and c) collect, maintain, and report data critical for monitoring NVRA compliance, including, but not limited to, the number of clients served, client answers to the voter preference form and the number of voter registration forms collected.

The number of voter registration applications collected by Florida public assistance agencies spiked during the terms of this agreement. Unfortunately, after the term of this settlement ended, the registration numbers fell significantly, as noted below.

Recent Changes to Florida's Section 7 Compliance Procedures

We are aware that your office promulgated a rule detailing the responsibilities of voter registration agencies that took effect January 2, 2012. Florida Administrative Code Section 1S-2.048 State and Federal-Designated NVRA Voter Registration Agencies-Responsibilities ("Rule").² We believe that the Rule is a positive step towards ensuring the availability of voter registration services at public assistance offices in Florida, but is not sufficient to bring the state into full compliance.

Critically, the Rule does not ensure that every single client is provided a voter registration form during each covered transaction unless that client declines in writing, as is required by the NVRA. *See* 42 U.S.C. § 1973gg-5(a)(6)(A). The NVRA requires public assistance agencies to provide a voter registration form to any applicant or client who leaves the initial question about voter registration blank, because this is not a declination in writing.³ Although the Rule provides for a

¹ *NAACP v. Harris*, No. 1:01-cv-00120-ASG, Doc. 605, 12-20 (S.D. Fla. filed Sept. 4, 2002).

² *See*, Fla. Admin. Code R. 1S-2.048.

³ *See, Valdez v. Squier*, 676 F.3d 935 (10th Cir. 2012).

combined voter preference form and voter registration form that could address this issue, it does not require agencies to actually use this package.⁴ Under the Rule, public assistance agencies may use any voter preference option as long as it ensures “that any programmatic or electronic interface with the client complies with the requirements in subsections (4) and (5) [provide voter registration application and notice of rights].”⁵ However, as discussed below, DCF is not required to use the combined voter preference and registration form prescribed in the Rule. In fact, DCF is currently only providing the voter preference question in the benefits application and only providing a voter registration application to clients who affirmatively request it.

Florida’s Lack of Section 7 Compliance

DCF is violating the NVRA because agency staff are providing voter registration applications only to clients who affirmatively request them rather than to all but those who decline in writing. As a result, clients who do not answer the voter preference question are not provided a voter registration form in violation of the NVRA.

The data that Florida has submitted to the U.S. Election Assistance Commission indicate this violation, and an overall lack of compliance with Section 7 of the NVRA. Voter registration applications submitted to public assistance offices have steadily declined for over a decade while the number of clients seeking public assistance benefits (under the Supplemental Nutrition and Assistance Program, formerly Food Stamps, and Medicaid) has increased by 42% since 1995-1996. Specifically, Florida public assistance agencies collected only 13,707 voter registration applications in 2009-2010. That is a 91% decline since 1995-1996, when Florida reported 158,836 registrations from public assistance offices. It is also an 84% decline since 2003-2004 when the *NAACP v. Harris* settlement agreement terminated.

As discussed above, visits to DCF offices confirmed that the agency is not using the voter preference form provided for in your office’s recent Rule, and is not, in fact, providing a voter registration application during every covered transaction to each applicant or client who does not decline in writing, as required by Section 7. Rather, DCF’s general practice is to distribute voter registration applications only to applicants who affirmatively request them and not to those who do not answer the voter preference question—a clear violation of the NVRA.

Our investigation revealed that many clients, over 42% of those we spoke to, did not see the voter preference question on their benefits applications; and pursuant to DCF’s current practices, these clients were not provided a voter registration application. Virtually all DCF clients interviewed, 95.5%, stated that not one DCF employee had ever discussed voter registration with them. If, as was the practice

⁴ Fla. Admin. Code R. 1S-2.048(6).

⁵ Fla. Admin. Code R. 1S-2.048(6).

under the *NAACP v. Harris* settlement agreement, caseworkers are required to orally ask clients about voter registration, the clients who missed the voter preference question on their benefits application would have been provided a meaningful voter registration opportunity.

Moreover, over 70% of the DCF employees interviewed stated that voter registration applications are not provided with renewal, recertification, or change of address transactions. These results suggest that DCF is violating the NVRA by not providing voter registration services during all covered transactions.

Finally, as noted above, more than 95% of the clients we interviewed stated that no DCF employee had ever discussed voter registration with them at any time. This suggests that DCF is not providing assistance in filling out voter registration applications that is equal to that which it provides for completing its own forms, as required by Section 7. In addition, DCF training procedures appear to allow staff to mail voter registration forms to clients who are conducting in-person transactions, making it nearly impossible for the agency to meet the equal assistance requirement.

Notice and Next Steps

As indicated above, there are significant ongoing problems with the manner in which voter registration services are being provided at DCF. We appreciate your office's past willingness to implement needed improvements to the NVRA policies in Florida, and we hope you share our concern that, despite these efforts, there is more work to be done.

Specifically, during the initial benefits application process, DCF staff are only providing voter registration applications to potential clients who affirmatively request them, whereas the NVRA requires that voter registration applications be provided unless a public assistance applicant or client declines such application in writing. Further, clients who are renewing or recertifying benefits or entering a change of address may not be offered voter registration at all. Finally, equal assistance may not be provided as virtually all clients interviewed stated that no one spoke to them about voter registration.

We are encouraged by the provisions of the new Rule, which may provide a vehicle for addressing some of the problems we have highlighted. In addition, instituting a reliable system for identifying voter registration applications submitted by DCF applicants and clients will help Florida monitor public assistance agency compliance with the new Rule and Section 7.

We would like to meet at your earliest convenience to develop a comprehensive plan for sustained compliance. Nonetheless, we note that this letter serves as a notice letter pursuant to 42 U.S.C. § 1973gg-9(b) in an attempt to obtain compliance with Section 7 without the need for litigation.

In light of your prior efforts to comply with Section 7 and the enactment of the 2012 Rule, we remain hopeful that Florida will act promptly to come into full compliance with Section 7. We look forward to receiving your response and scheduling a time to meet before the conclusion of the 20-day statutory notice period.

Sincerely,



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