

February 9, 2011

By Facsimile and U.S. Mail

The Honorable Hope Andrade
Texas Secretary of State
P.O. Box 12887
Austin, Texas 78711-2887

Dear Secretary Andrade:

We write on behalf of the Texas State Conference of the NAACP, eligible voters it represents, and others similarly situated, to notify you that, based on the investigation we have undertaken, offices of the Texas Health and Human Services Commission (“HHSC”) 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”). Section 7 establishes clear obligations on the part of state public assistance agencies to provide voter registration services¹, for which you as the State’s chief election official share responsibility. The NVRA includes a private right of action in the event that a State fails to correct its noncompliance after its chief election official has received due notice. We urge you as the State’s chief election official, acting in conjunction with HHSC, to take immediate steps to bring the State into compliance with Section 7.

As shown by the data reported to the Election Assistance Commission by your office, the number of agency voter registrations originating from Texas public assistance agencies has plummeted since the implementation of the NVRA in 1995. While HHSC produced 353,550 voter registrations during the first two years of the law’s implementation, the number has dropped by more than 92 percent to a total of 6,338 for the entire state of Texas for the years 2007-2008 combined.² Project Vote met with HHSC staff and attorneys in an effort to address compliance issues of which this drop in numbers is symptomatic. We understand it is HHSC’s intention to make changes to its voter registration system. At this point, it is unclear to us whether the agency’s intended future plans are sufficient to address compliance violations that appear to be long standing, and to prevent future reoccurrence. Regardless, it is clear that HHSC’s current

¹ Pursuant to the NVRA, state public assistance agencies are designated as “voter registration agencies” and are required to provide certain specified voter registration services. 42 U.S.C. § 1973gg-5. Texas public assistance offices must distribute a voter registration application in addition to a voter preference form that 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?” along with other information prescribed by the NVRA regarding the voter registration process, with public assistance applications, recertifications, renewals, and change of address forms. 42 U.S.C. § 1973gg-5(6)(B). Each office also must assist applicants in completing the voter registration form, accept completed voter registration forms, and forward the completed forms to the appropriate election official. 42 U.S.C. § 1973gg-5(a)(4)(A).

² See U.S. Election Assistance Commission 2007-2008 NVRA report, chart 2a, page 39.

voter registration system is out of compliance with the law and must be remedied immediately to comply with the NVRA in accordance with the United States Department of Justice's guidelines for Section 7 compliance³.

Substantial evidence demonstrates that Texas is systematically failing to provide the voter registration services at its public assistance offices that are required by the NVRA. Beyond the dramatic drop in agency voter registrations since implementation of the NVRA, Project Vote has detected numerous instances of noncompliance during investigative visits to 21 HHSC offices in four counties across the state. Of the offices surveyed, one-third were unable to produce a voter registration application form upon request. Several HHSC staff revealed that they were wholly unaware of the agency's duty to provide voter registration services under the NVRA, telling our surveyor that clients are responsible for mailing in completed voter registration application forms themselves, and that HHSC "[does not] do voter registration." As part of our investigation, we spoke to 122 citizen clients at HHSC who had visited the agency to complete a transaction covered by Section 7 of the NVRA. Forty-one (one third) of those clients reported not having been offered voter registration at all during their visit.

As a result of its meetings with HHSC staff, Project Vote proposed, in the form of a Memorandum of Understanding, changes to the current voter registration system that would bring the agency into immediate compliance with the law. We received the enclosed letter from the agency, indicating that they refuse to commit in writing to making the changes necessary to bring Texas into compliance with the NVRA. We are hopeful that HHSC moves forward with sufficient policy changes that will ensure immediate and sustained compliance with the NVRA. However, if Texas fails to take steps to remedy its violations of Section 7, we are prepared to initiate litigation. In this regard, please be advised that this letter serves as notice of a violation of the NVRA pursuant to 42 U.S.C. § 1973gg-9(b), thus allowing us to file suit at the conclusion of the statutory 90-day waiting period if the violations currently occurring in Texas as referenced herein have not been fully remedied.

Please feel free to contact Nicole Zeitler, Director of the Public Agency Voter Registration Program at Project Vote at (202) 546-4173 Ext. 303 to discuss the foregoing. We look forward to hearing from you.

Sincerely,

Gary Bledsoe

Gary Bledsoe, President
Robert Notzon, Legal Redress Chair
Texas State Conference
of NAACP Branches

Nicole K. Zeitler

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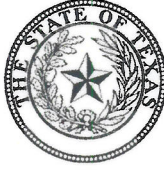
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³ The U.S. Department of Justice's guidance for the voter registration requirements of Sections 5, 6, 7, and 8 of the NVRA are available here: http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php.

Enclosure.

cc: Thomas Suehs
Executive Commissioner
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Brown-Heatly Building
4900 N. Lamar Blvd.
Austin, TX 78751-2316

Lynn W. Blackmore
Associate Commissioner for Family Services
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TEXAS HEALTH AND HUMAN SERVICES COMMISSION

THOMAS M. SUEHS
EXECUTIVE COMMISSIONER

January 14, 2011

Ms. Nicole Kovite Zeitler, Esquire
Director, Public Agency Voter Registration Program
Project Vote
737½ 8th Street, SE
Washington, D.C. 20003
nkovite@projectvote.org

Re: Project Vote's Proposed Memorandum of Understanding

Dear Ms. Zeitler:

This is in response to your correspondence of October 29, 2010, in which you enclosed a draft memorandum of understanding (MOU), and as follow-up to our telephone conversation on November 19, 2010.

As a threshold matter, we believe it is important to address the form of agreement that you have proposed. Our program staff were not expecting to receive a document in the form of a memorandum of understanding (MOU) or written agreement of any kind. While we have welcomed Project Vote's insights and suggestions into Health and Human Services Commission (HHSC) policies and procedures, and will continue to do so, we did not understand or expect a proposed written agreement that would be offered in lieu of litigation. In fact, our staff had not anticipated a threat of litigation at all before receiving your letter, and that threat changed the context of our discussions.

In the context of a potential litigation matter, the proposed MOU would closely resemble a settlement of legal claims. HHSC is unwilling to concede that we are operating in violation of federal laws regarding voter registration requirements. We note that in terms of state budgetary resources, our state is facing unusual deficits. It would be inappropriate to commit state resources without direct legislative approval. Moreover, we find that such an agreement would unduly restrict agency discretion, commit state resources, and would represent a higher form of commitment than we believe wise to make.

Ms. Nicole Kovite Zeitler, Esquire
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Setting aside the form of agreement, we recognize that common ground exists between HHSC and your organization on many substantive goals. At a program level, we believe we are headed in the same direction.

Specifically, HHSC is enhancing its automated systems and forms as described during our recent conversation. We are in the process of updating Texas Integrated Eligibility Redesign System (TIERS) to capture voter registration information from paper applications, recertification/renewal and change report forms, and online application forms. This system change will also update TIERS to automatically include voter registration applications with the application, recertification/renewal and reported change of address packets. We anticipate programming and system updates to be completed in April 2011.]

We are currently updating all program applications, recertification/renewal and change report forms to include the required voter registration language. We anticipate all HHSC forms will be completed by April 2011.

All HHSC eligibility staff participated in a voter registration training program on September 2010. In addition, all newly hired eligibility staff must receive voter registration training as part of their required Basic Skills Training classes.

A voter registration poster has been developed for display in all regional eligibility offices. The posters are scheduled to be sent to the offices no later than January 2011.

HHSC's ability to capture all voter registration information in TIERS is contingent on statewide rollout, conversion of all cases into the TIERS system and subsequent application, recertification/renewal or change of address case action. Statewide rollout of TIERS is estimated to be completed by the end of 2011.

We emphasize that these goals and projections are based on estimates, and should not be construed as binding commitments. Compliance with federal law is important to HHSC, and we look forward to continuing our collaborative relationship with Project Vote.

Sincerely,



Lynn W. Blackmore
Associate Commissioner for Family Services

Attachments

cc: Niyati Shah, Esq., Election Counsel
Stephanie Muth, Chief of Staff