



June 13, 2012

Via certified mail and email

Ms. Beth Chapman
Secretary of State
Executive Division
State Capitol Building, Suite S-105
600 Dexter Avenue
Montgomery, AL 36103

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

Dear Ms. Chapman:

We write on behalf of the Alabama Conference of the National Association for Advancement of Colored People, persons eligible to register to vote that it represents, and others similarly situated to notify you that the State of Alabama 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 Alabama, to provide individuals with 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 State's chief election official, to take immediate steps, in conjunction with the Department of Human Resources ("DHR") and the Medicaid Agency, to bring the State into compliance with federal law.

The NVRA requires Alabama 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 (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, 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 or her 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 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).

Data that Alabama has submitted to the United States Election Assistance Commission (“EAC”) indicate that the number of voter registration applications submitted to Alabama public assistance offices has decreased precipitously in the last decade – from 80,096 at the peak in 1995-1996 to 19,059 in 2009-2010, a reduction of 76%. This enormous decline cannot be explained by a smaller caseload at Alabama public assistance agencies: the number of initial Food Stamp applications in the state, for example, *increased* by nearly 60% between these two reporting periods—from 368,862 to 581,882.

Observations in the field confirm that frontline staff at DHR and Medicaid offices regularly fail to distribute voter registration applications to public assistance clients as required by the NVRA.

Our investigation uncovered serious deficiencies with DHR’s administration of voter registration services. For example, visits to DHR offices in 20 counties dispersed throughout the state revealed:

- Half of the offices did not have any voter registration applications available, and could not provide one when requested to do so.
- Three-quarters of offices reported providing voter registration applications only if affirmatively requested by the client, or not at all, in violation of the NVRA. *See Valdez v. Squier*, -- F.3d --, 2012 WL 547404, at *9 (10th Cir. Feb. 21, 2012) (“[The NVRA] must be interpreted as requiring a designated voter registration agency to provide an applicant with a voter registration form unless the applicant declines, in written form, to register to vote. . . . Thus, in sum, [the NVRA] requires an applicant to affirmatively, by way of writing, ‘opt out’ of receiving a voter registration form.”)
- In one office the investigator was told that people need to go to the courthouse to register; in another he was told that the office had not conducted voter registration in seven to ten years.

Moreover, interviews with clients at a subset of these DHR offices confirmed the abject failure of frontline staff to provide mandated voter registration opportunities: (1) Only one of the dozens of clients interviewed recalled seeing a voter registration question with benefits materials; and (2) Not one client interviewed was given a voter registration application or asked by any DHR personnel about voter registration.

Given these serious deficiencies, it is perhaps unsurprising that there appeared to be no processes or procedures in place within DHR offices to ensure that clients are aware of voter registration opportunities. Notwithstanding ALA. ADMIN. CODE § 820-2-2-.07, which requires the Secretary of State's office to prepare and disseminate training materials, no office reported any type of regular voter registration training. Staff in one location reported that the office had recently undergone a compliance audit and voter registration did not even come up.

Observations at ten regional Medicaid Agency offices also produced troubling results. Although some of these offices had voter registration materials on hand, their general practice, like the DHR offices, was to distribute these applications only to clients who affirmatively requested them, rather than to every client who did not decline in writing, as required by law. *See Valdez v. Squier*, 676 F.3d 935 (10th Cir. 2012). Two of the ten offices visited had no voter registration applications available. A receptionist at one of those offices said "we have nothing to do with voter registration" and advised the investigator to go to the library or the courthouse for a voter registration application.

Consistent with these findings, although each of the clients interviewed at Medicaid Agency offices reported being eligible to register to vote:

- Not one client indicated that there was a voter registration question within their benefit forms.
- Not one client interviewed had been given a voter registration application or asked about voter registration during that day's interaction.

The deficiencies outlined in this letter are serious violations of the law. The Secretary of State, the Commissioner of the Department of Human Resources, and the Commissioner of the Medicaid Agency are responsible for ensuring that local offices are implementing the law and thus are responsible for effective supervision of local offices to ensure compliance. *See* ALA. CODE § 17-4-60(a); *id.* at § 17-4-60(d); *see also Harkless v. Brunner*, 545 F.3d 445, 451 (6th Cir. 2008) (chief election official is "responsible for implementing the state's function"); *id.* at 455 (head of "single state agency" responsible for administering public assistance programs has responsibility to provide statewide voter registration services).

Alabama must make sure the NVRA is properly implemented by making prompt changes so that all of its citizens, including the hundreds of thousands who receive public assistance, are able to participate in elections. In short, Alabama must improve its guidance for agency staff and institute procedures to ensure that frontline workers fulfill their federally-mandated obligation to provide voter registration services.

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 the need

for litigation. Please advise us promptly of the steps you intend to take to remedy Alabama's violations of Section 7 of the NVRA. We 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 90-day waiting period.

Sincerely,

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cc: Ms. Nancy Buckner, Commissioner of the Alabama Department of Human Resources; 50 N. Ripley Street; Montgomery, AL 36130

Ms. Stephanie McGee Azar, Acting Commissioner of the Alabama Medicaid Agency; 501 Dexter Avenue; Montgomery, AL 36104