



June 11, 2012

Via Mail and Fax or Email

Mark Martin
Arkansas Secretary of State
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Re: Compliance with Section 7 of the National Voter Registration Act

Dear Secretary Martin,

We are writing on behalf of Arkansas State Conference of the National Association for the Advancement of Colored People, League of United Latin American Citizens, persons eligible to register to vote who they represent, and others similarly situated to notify you that the State of Arkansas 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 Arkansas, 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 Arkansas’s chief election official, to take immediate steps, in conjunction with the Arkansas Department of Health (ADH) and the Department of Human Services (DHS), to bring the State into compliance with Section 7.

The NVRA requires Arkansas 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 Arkansas 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 Arkansas submitted to the United States Election Assistance Commission (“EAC”) regarding the number of registration applications submitted at Arkansas public assistance agencies.

According to EAC data, the number of voter registration applications submitted at Arkansas public assistance offices decreased precipitously between the 1995-1996 and 2009-2010 reporting periods, from 28,324 in 1995-1996 to just 4,078 in 2009-2010, a reduction of 86%. This decrease is particularly significant given that the number of initial food stamp applications in Arkansas during the same time frame rose 40%, from 528,693 in 1995-1996 to 877,751 in 2009-2010. Accordingly, the decrease in voter registration applications does not reflect any reduction in public assistance caseloads.

Observations from our field investigation confirm that the staff at Arkansas Department of Health and Department of Human Services offices are failing to regularly distribute voter registration applications to public assistance clients, as the NVRA requires. Recent visits to six public assistance offices in three counties showed that a significant percentage of public assistance applicants and clients are not provided any meaningful offer of voter registration.

In summary, our investigation has shown the following:

- Every clerk we spoke with 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.” 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.”).
- Seven of the clients surveyed checked “Yes” to the question asking whether they would like to register to vote. Five of those seven were not given voter registration applications.
- 87% of clients we surveyed stated that no agency employee mentioned voter registration to them.
- 90% of the clients we surveyed did not see a voter registration application attached or linked to their benefits application. Voter registration applications were not attached to the Request for Assistance forms and Change Report forms that we collected at each DHS office.
- Change Report Forms are used by public assistance clients in Arkansas to provide a change of address update; therefore, this process is covered by Section 7 of the NVRA. *See* 42 U.S.C. § 1973gg-5(a)(6)(i). None of the Change Report forms we

collected included the statutorily required question asking whether the client would like to register to vote.

- Only three of the six offices we visited displayed signs informing people that they could register to vote there, and only two of the offices displayed voter registration applications in their waiting areas.

In addition to the above, DHS benefits applications do not have the statutorily required language with the offer of voter registration. All written offers of voter registration must specifically ask “If you are not registered to vote where you live now, would you like to apply to register to vote here today?” 42 U.S.C. § 1973gg-5(a)(6)(B)(i). The DHS benefits applications have a similar - but not identical - question. They also fail to include the following required statements: “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency”; “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)(ii)-(v).

These problems could (and should) have been prevented. Arkansas must recognize its obligations under the NVRA and make sure the NVRA-required voter registration services actually are provided to clients. To this end, Arkansas 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. Arkansas must institute procedures to ensure that frontline workers perform their federally mandated responsibility 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 litigation. Please advise us promptly of the steps you intend to take to remedy Arkansas’ violations of Section 7 of the NVRA. We hope that you share our concern about the clear evidence that public assistance offices in Arkansas 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. 42 U.S.C. § 1973gg-9(b)(2).

Sincerely,

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