



October 25, 2007

Honorable Jerrold Nadler  
Chair, Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Committee on the Judiciary  
2334 Rayburn House Office Building  
Washington, DC 20515

Honorable Trent Franks  
Ranking Member, Subcommittee on the Constitution, Civil Rights, and Civil Liberties  
Committee on the Judiciary  
1237 Longworth House Office Building  
Washington, DC 20515

Dear Chairman Nadler and Ranking Member Franks:

As principals of national non-partisan organizations dedicated to protecting and enhancing the democratic rights of U.S. citizens, we commend the Subcommittee for its ongoing oversight of the current activities and priorities of the Voting Section of the Civil Rights Division of the U. S. Department of Justice (DOJ). We understand that John Tanner, Chief of the Voting Section, is scheduled to appear before the Subcommittee on Tuesday, October 30, 2007. We take this opportunity to submit the following comments regarding state compliance with, and DOJ enforcement of the agency-based registration requirements of Section 7 of the National Voter Registration Act of 1993 (NVRA).<sup>1</sup> We submitted earlier comments on July 13, 2007, prior to the date when this oversight hearing originally had been scheduled (July 17, 2007), but we wish to update that earlier submission in order to address new developments since that time. It remains our hope that the Subcommittee will investigate the extent to which the congressional mandates for voter registration in public assistance offices contained in Section 7

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<sup>1</sup> 42 U.S.C. § 1973gg-5.

of the NVRA are being honored and enforced. Specifically, we are concerned about the DOJ's past record of largely ignoring evidence of state non-compliance with Section 7's requirements for registering low-income voters, while focusing selectively instead on urging states to purge more voters from their rolls.

Under Section 7 of the NVRA, state public assistance agencies have been required to offer voter registration services to all individuals when they apply for benefits, recertify benefits, or change addresses since 1995. Recognizing that low-income citizens are less likely to own vehicles, Congress enacted these Section 7 mandates so that the NVRA's "motor voter" provisions did not further exacerbate disparities in registration rates between high- and low-income citizens. Whereas 82 percent of households earning \$75,000 or more were registered to vote in 1994, only 54 percent of those earning less than \$15,000 were registered in that same year.<sup>2</sup>

As reflected in data collected by the Federal Election Commission and the Election Assistance Commission ("EAC") and in field observations by our organizations, most states have failed to comply with the congressional mandate set out in Section 7 of the NVRA. In *Ten Years Later, A Promise Unfulfilled*, Demos, Project Vote, and Association of Community Organizations for Reform Now (ACORN) reported a steep decline in voter registrations generated by public assistance agencies since the NVRA was enacted.<sup>3</sup> We found that:

- Registration applications from public assistance agencies nationwide had fallen by 59.6 percent between 1995 and 2004, while registrations from all other sources rose 22 percent.
- The decline was widespread; 36 of 41 states reporting data to the FEC and EAC show a decline in registration applications from public assistance agencies since 1995.<sup>4</sup>

Our field observations in multiple states over the past three years revealed blatant violations of the law. Agencies were failing to offer mandated voter registration services, not offering registration during all required interactions, especially when clients change address, or offering voter registration but failing to use the language required by the NVRA.<sup>5</sup>

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<sup>2</sup> Source: U.S. Census Bureau, November 1994 Voting and Registration Work Tables. Table 12: Voting and Registration of Family Members, by Age and Family Income: November 1994, available at <http://www.census.gov/population/www/socdemo/voting/vote-wtabcon.html>.

<sup>3</sup> See Demos, Project Vote, and ACORN, *Ten Years Later, A Promise Unfulfilled*, available at <http://www.demos.org/pub634.cfm>.

<sup>4</sup> Federal Election Commission and Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office," 1995-1996, 1997-1998, 1999-2000, 2001-2002, 2003-2004.

<sup>5</sup> Memorandum from Project Vote, Demos, Association of Community Organizations for Reform Now (ACORN) to R. Alexander Acosta, Assistant Attorney General, and Joseph D. Rich, Chief, Voting Rights Section, (August 16, 2004); Letter from Miles Rapoport, Demos and Maxine Nelson, Project Vote to Hans A. von Spakovsky, Counsel to the Assistant Attorney General, Joseph D. Rich, Chief, Voting Section, and Chris Herren, Trial Attorney, Voting Section, (October

On several occasions, Dēmos, Project Vote and ACORN brought states' apparent disregard of Congress' Section 7 mandate to the attention of the Department of Justice. On August 16, 2004, we forwarded the Civil Rights Division a memo that highlighted such noncompliance and requested that the DOJ send a letter to states to remind them of their Section 7 obligations. Dēmos, Project Vote, and People for the American Way Foundation staff met with Hans von Spakovsky, Counsel to the Assistant Attorney General; Joseph Rich, Chief, Voting Section; and Chris Herren, Trial Attorney, Voting Section on September 10, 2004, to discuss the noncompliance outlined in the August memo. We encouraged the DOJ to investigate and take action on the implementation of Section 7's public assistance provisions across the country. Per request by the DOJ, Dēmos and Project Vote subsequently provided the Department with an extensive report on state compliance with Section 7, including specific violations in nine states. Thirty members of Congress also wrote to Attorney General Gonzales and staff at the DOJ Civil Rights Division in September 2005, asking for an investigation into Section 7 compliance.

To the best of our knowledge, DOJ took no action on these recommendations for the better part of three years following our initial contacts in August and September 2004. Indeed, we know of only one enforcement action initiated by DOJ regarding the public assistance provisions of the NVRA in the past six years (an action against Tennessee that was settled in 2002). Meanwhile, voter registration at public assistance agencies continued to decline. The EAC's most recent biennial report to Congress on the impact of the National Voter Registration Act, released on June 29, 2007, indicates an 80 percent nationwide decrease in voter registrations from such agencies between 1995 and 2006.<sup>6</sup> Nine states reported decreases of 90 percent or more during this time period. States registered only half as many voters in public assistance agencies in 2005-2006 as they did as recently as 2003-2004. It also appears that states are making little effort to train public assistance caseworkers in conducting voter registration. The EAC report indicates that only six states provide training at least every two years to all voter registration agencies.

Remarkably, however, after years of inaction on NVRA Section 7 compliance, the Department now has suddenly issued letters to 18 states containing inquiries about various aspects of their Section 7 activities. These letters were issued on August 31, 2007, just six weeks after the Subcommittee had first scheduled an

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1, 2004); "The National Voter Registration Act's Public Assistance Requirements: A Promise Unfulfilled," A Report to the U.S. Department of Justice (Demos), January 2005; Memorandum from Lucy Mayo, Demos, and Michael Slater, Project Vote to Chris Herron, DOJ, (February 23, 2005); Complaint at 6-15, *Harkless v. Blackwell* No. 1:06-cv-02284-PAG (N.D. Oh. Sept. 20, 2006).

<sup>6</sup> See Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006," available at [http://www.eac.gov/docs/EAC\\_NVRArpt2006.pdf](http://www.eac.gov/docs/EAC_NVRArpt2006.pdf).

oversight hearing at which Mr. Tanner was expected to testify. As you know, the hearing was postponed when DOJ advised the Subcommittee that Mr. Tanner would be unavailable on July 17, 2007.

We are of course encouraged to see that the Voting Section has begun to make inquiries to certain states regarding their Section 7 activities. However, both the timing and the content of the letters warrant investigation by the Subcommittee. Regarding the timing, we would urge the Subcommittee to seek an explanation of whether the Voting Section issued any such letters after the previous EAC NVRA reports were issued in June 2005 and June 2003, and if not, why not. As noted above, these reports have consistently indicated serious Section 7 compliance problems, and it remains important to understand why the Voting Section has not previously followed up to investigate such problems.

Regarding the content, the letters themselves raise a number of questions. For example, the DOJ's letters to seven of the states indicate that those states are "among the ten states" that had the "lowest percentage" of public assistance applicants (Alaska, Arizona, Hawaii, Illinois, Pennsylvania, Utah, and Vermont). The Subcommittee may wish to inquire why other states in that category, such as Florida, Texas and Virginia, did not receive similar inquiries.

In addition, the DOJ's calculation of the ten states with the "lowest percentage" of public assistance applications appears to be based on figures in Table 2b of the June 2007 EAC report that show the percentage of public assistance applications among "categorized" applications. While it is worthwhile to make inquiries of these states, it would be a mistake to assume that this one figure captures all of the states in which compliance is a problem. Nationally, only 57 percent of voter registration applications received by states are reported as "categorized," and in many states the percentage is even lower.<sup>7</sup> The DOJ's measure therefore may be an incomplete indicator of non-compliance with the public assistance provisions of the law. Indeed, many states that clearly need to improve their compliance with the NVRA's public assistance registration requirements would be overlooked by examining only the percentage of "categorized" applications that come from public assistance agencies,

New Mexico is one example of this. New Mexico registered only 1,214 persons in public assistance agencies during the entire 2005-2006 period, according to the EAC report, yet that reflects 20% of the "categorized" applications in New Mexico because only 6,072 total applications were "categorized" in that state. Thus, New Mexico received no compliance inquiry from the DOJ, even though other evidence, including the low overall number of registrations, the sharp drop-off in registration numbers compared to earlier periods, and the failure of over

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<sup>7</sup> By "categorized" applications the EAC means only those applications reported by the states as being received from motor vehicle offices, public assistance offices, armed disability services offices, armed forces recruitment offices, and other designated agencies; this does not generally include mail-in applications or in-person applications at local registrars' offices.

half of the state's jurisdictions to provide public assistance registration data clearly indicates a need for improved compliance in New Mexico.<sup>8</sup> We believe a more in-depth analysis of the data is needed to assure that states are in compliance with the public assistance registration provisions of the NVRA.<sup>9</sup>

The DOJ's long delay in addressing states' responsibility to provide voter registration at public assistance agencies has serious consequences. Through our work to improve compliance in various states, we have seen that thousands of low-income voters are eager to take advantage of the opportunity to register at public assistance agencies when it is offered. In North Carolina, for example, voter registration at public assistance offices has increased dramatically since state officials began working cooperatively with advocates to address the serious problems with non-compliance that previously existed in that state. While North Carolina registered only 11,600 persons at public assistance agencies in all of 2005-2006, that state has now registered over 20,000 persons just from January through August 2007. Such results only underscore the fact that lack of enforcement nationwide over the past six years has deprived hundreds of thousands of low-income Americans of the opportunity to register that Congress intended to provide through the NVRA.

In enacting the National Voter Registration Act, Congress clearly anticipated that state compliance with its provisions would require oversight and enforcement by the Department of Justice.<sup>10</sup> Yet up until just a few weeks ago, the DOJ has focused selectively on enforcement efforts designed to remove voters from the voting rolls, pressuring states to conduct massive purges of their registration lists under Section 8 of the NVRA, while largely ignoring Section 7's mandate for voter registration in public assistance agencies.<sup>11</sup> We are concerned that the DOJ may seek to deflect detailed examination of its long-standing failure to investigate widespread state non-compliance with the public assistance registration requirements of Section 7 by pointing to the letters it issued shortly after this Subcommittee's first oversight hearing was postponed. We urge the

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<sup>8</sup> Dēmos and Project Vote have outlined the evidence indicating that New Mexico is not in compliance with the NVRA in a notice letter that we sent to the state on June 12, 2007. The letter is available at [http://demos.org/pubs/scanned\\_NM\\_notice\\_letter\\_6.12.pdf](http://demos.org/pubs/scanned_NM_notice_letter_6.12.pdf).

<sup>9</sup> It should be noted that five of the DOJ's letters do not address enforcement of the public assistance registration requirements of the NVRA. Letters sent to Iowa, Michigan, Mississippi, Montana and Nebraska instead seek information to identify which "additional" agencies, if any, have been designated to provide voter registration, beyond the public assistance and disability offices whose designation is mandatory under Section 7. See 42 U.S.C. § 1973gg-5(a)(3). Iowa has already responded to this inquiry by pointing out Iowa Code Section 48A.23, which designates educational institutions in the state as additional agencies to provide voter registration.

<sup>10</sup> 42 U.S.C. § 1973gg-9.

<sup>11</sup> The DOJ's selective enforcement efforts to require purges of state voter registration rolls are described in a letter dated May 8, 2007, from ACORN, Project Vote, Demos, and the Lawyers' Committee for Civil Rights Under Law, to Hon. John Conyers and Hon. Lamar Smith. The letter is available at [http://projectvote.org/fileadmin/ProjectVote/Blog\\_docs/Conyers\\_NVRA\\_Letter\\_2007\\_Final.pdf](http://projectvote.org/fileadmin/ProjectVote/Blog_docs/Conyers_NVRA_Letter_2007_Final.pdf).

Subcommittee to take this opportunity to press for answers about the DOJ's long delay in addressing Section 7 enforcement.

Please do not hesitate to contact us with any questions.

Sincerely,

Handwritten signatures of Miles Rapoport and Maxine Nelson in cursive script.

Miles Rapoport  
President, Dēmos

Maxine Nelson  
President, Project Vote