



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW



August 19, 2011

Via Certified Mail

Ms. Ruth Johnson
Secretary of State
Michigan Department of State
Lansing, MI 48918

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

Dear Ms. Johnson,

We write on behalf of the Michigan State Conference of the NAACP, persons eligible to register to vote that it represents, and others similarly situated to notify you that the State of Michigan 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 Michigan, 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 the State’s chief election official, to take immediate steps, in conjunction with the Michigan Department of Human Services (“DHS”), to bring the State into compliance with Section 7.

The NVRA requires Michigan 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; (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).

Our investigation demonstrates that Michigan is systematically failing to provide the voter registration services mandated by the NVRA at its public assistance offices. The data that Michigan has submitted to the United States Election Assistance Commission indicate that, between the 1995-1996 and 2007-2008 reporting periods, the number of voter registration applications submitted at Michigan public assistance offices decreased precipitously – from 79,538 to 10,542 per reporting period, a reduction of 87%. The decrease of 82.5% between the

2005-2006 and 2007-2008 reporting periods is particularly significant. Because the number of initial food stamps applications in 2007-2008 was higher than in any previous reporting period since 1995-1996, it is clear that this decrease did not reflect any reduction in public assistance caseloads. Indeed, the 2007-2008 period included the 2008 presidential election campaign, a particularly historic election for which high voter registration would be expected. Although the most recent EAC report indicates that the number of agency-based voter registrations increased in 2009-2010, the number of food stamp applications more than doubled since that time -- rendering the number of voter registration applications relative to the number of food stamp applications virtually the same-- and we therefore believe that the increase in voter registration applications is largely attributable to the substantial increase in the number of public assistance clients.

Our review indicates that Michigan's noncompliance with Section 7 is the result, in part, of its implementation of a voter registration policy that violates Section 7. The NVRA requires that public assistance offices presumptively distribute voter registration applications to all public assistance applicants and clients, unless the individual applicant or client affirmatively opts out of voter registration by declining "in writing" to register to vote. 42 U.S.C. § 1973gg-5(a)(6)(A). Nevertheless, in defining those times at which voter registration applications must be distributed, DHS policy -- as reflected in BAM 125 -- requires distribution to those completing the DHS-1171 Application for Assistance *only* when the benefits applicant checks "yes" in response to the question, "If you are not already registered to vote at your current address, would you like to register to vote?" The same is true of MI-WIC Policy 1.10(A)(3). Neither requires distribution of a voter registration application if the applicant does not check "yes" or "no," i.e., if the applicant leaves the response boxes blank. This violates the NVRA. *Valdez v. Herrera*, No. 09-668, Memorandum Opinion and Order, at 10-11 (D. N.M. Dec. 21, 2010) ("Section 7 does not make the provision of a voter registration application contingent upon an affirmative request, either written or verbal, from a client. . . . A blank response on the declination provision . . . cannot be a statement 'in writing' for purposes of subparagraph (A) [the voter registration distribution requirement].")

BAM 125's policy instruction with respect to DHS-1171 has a big impact. DHS-1171 is the application for most if not nearly all Michigan public assistance programs; among other programs, it covers food assistance, medical assistance, cash assistance, and state emergency relief. Compounding the problem, the voter registration question itself is buried within the application where people are unlikely to see it: It appears on the bottom of page 14 in Section U of the application, as a single check-off in a section that otherwise contains only text. If individuals don't see the question, and if they are provided a voter registration application only upon answering "yes" to the question, then they are not receiving any offer of voter registration, let alone the registration opportunity Congress mandated in Section 7.

It is our understanding that this policy was instituted in 2007 in conjunction with DHS's abandonment of its then-existing practice to include the voter registration application within the DHS-1171. In 2008, when Dēmos worked with DHS regarding voter registration procedures, we repeatedly urged DHS to reintegrate the voter registration application to ensure that applicants and clients are provided with the opportunity to register to vote, but to no avail. It appears that the 82.5% decrease in submission of voter registration applications at public assistance offices

between the 2005-2006 and 2007-2008 reporting periods is attributable, at least in part, to these changes in policy and practice.

Observations in the field confirm that front line staff at DHS offices are failing to regularly distribute voter registration applications to public assistance clients, as required by the NVRA. In visits to 12 local DHS offices in 10 counties, which occurred between August 2010 and January 2011, a significant percentage of public assistance applicants and clients were not provided any meaningful offer of voter registration:

- More than half of interviewees (75 out of 149) did not notice the voter registration question within the forms they were provided by DHS – regardless of the type of transaction, program, or location/county of the transaction. Of these 75, only six were orally asked by any DHS employee about voter registration. Only three of the 75 received a voter registration application.
- Notwithstanding DHS policy that voter registration application forms are to be provided to clients who check “yes” in response to the voter registration question, fewer than 25% of people who checked “yes” received a voter registration application.
- No one who was at a DHS office to make an address change saw any voter registration question within their benefits forms, was asked orally if they wanted to register, or was provided with a voter registration application.

These problems could (and should) have been prevented. Under Sixth Circuit precedent, both the chief election official and the Director of DHS are responsible to ensure that local offices are implementing the law and thus are responsible for effective supervision of local offices to ensure compliance. See *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). Although BAM 125 requires monthly reporting from local DHS offices, it is our understanding that there is no regular review or effective analysis of the numbers reported, effectively vitiating any oversight.

Moreover, it appears that there are problems with the manner in which some data are collected. For example, local DHS offices must report, *inter alia*, the “number of clients who declined the offer to register to vote” but this figure does not represent the number of clients who in fact declined the offer to register to vote. Rather, the reported figure is calculated by subtracting the number of completed voter registration applications from the total number of assistance applications and redeterminations, a process that *assumes* individuals who did not complete a voter registration application declined the offer to register to vote. Such a calculation prevents meaningful supervision since it does not allow state officials to compare the number of completed applications to the number of persons to whom an application *should have been distributed*.

This failure to comply with the NVRA’s voter registration requirement – which DHS itself has recognized is part of its mission of client empowerment – is not acceptable. Michigan must not

only recognize its obligations under the NVRA but also make sure the NVRA actually is implemented, by making 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. In short, Michigan must change its facially noncompliant policy and 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 the need for litigation. Please advise us promptly of the steps you intend to take to remedy Michigan'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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