



March 7, 2016

Via Overnight Mail and Electronic Mail

Honorable Barbara K. Cegavske
Nevada Secretary of State
101 N. Carson Street, Suite 3
Carson City, NV 89701

Re: Nevada's Non-Compliance with Section 5 of the National Voter Registration Act

Dear Secretary Cegavske:

We write on behalf of Mi Familia Vota Education Fund, Eleanor Newell, and other persons similarly situated to notify you that the State of Nevada is not in compliance with Section 5 of the National Voter Registration Act of 1993 ("NVRA"). 52 U.S.C. § 20504. Nevada is failing to provide its citizens with NVRA-mandated voter registration opportunities through the Department of Motor Vehicles ("DMV") when they apply for, renew, or submit a change of address with respect to a driver's license or state-issued identification card.

As Nevada's chief election official, you are responsible for ensuring the State's compliance with the NVRA. We therefore urge you to take immediate steps to bring the State into compliance with Section 5.

We are ready and eager to work with you to remedy Nevada's non-compliance. As you are well aware as a result of our Section 7 lawsuit, Dēmos and Project Vote each have ten years of experience in working with states across the country, either cooperatively or through litigation, to ensure compliance with the NVRA. While we would prefer to work cooperatively, we are prepared to initiate litigation at the end of the statutory 90-day waiting period should Nevada fail to remedy its violations of the NVRA. *See* 52 U.S.C. § 20510(b).

The Requirements of the National Voter Registration Act

Section 5 of the NVRA requires that the DMV provide a voter registration opportunity simultaneously with any driver's license or state-issued identification card application, renewal or change of address. Specifically, each application for a driver's license or non-driver identification card submitted to the DMV, including any renewal application, "shall serve as an application for voter registration ... unless the applicant fails to sign the voter registration application." 52 U.S.C. § 20504(a)(1). If the voter is already registered, the application or renewal "update[s] any previous voter registration by the applicant." *Id.* § 20504(a)(2). The voter registration portion of the application "may not require any information that duplicates information required in the driver's license portion of the form," except a second signature and an attestation of eligibility. *Id.* § 20504(c)(2)(A). Furthermore, any additional information required for voter registration may be only the minimum amount necessary to prevent duplicate voter registrations and to enable election officials to assess eligibility and administer the election process. *Id.* § 20504(c)(2)(B). The voter registration portion of the form must also include various statements and disclosures related to voter eligibility and restrictions on the use of information provided on the voter registration form. *Id.* § 20504(c)(2)(C)-(D).

The NVRA also requires that any driver's license change of address form "shall serve as notification of change of address for voter registration ... unless the registrant states on the form that the change of address is not for voter registration purposes." *Id.* § 20504(d). In other words, when a voter changes her address with the DMV, the voter's registration address must also be updated unless the voter opts out. Section 5 of the NVRA does not distinguish between moves within a county or moves to a new county, and a voter's registration address must therefore be updated wherever she moves within a state.

Finally, the DMV must transmit to election officials all completed voter registration applications within 10 days, unless the application is received within 5 days of the registration deadline, in which case it must be transmitted within 5 days. *Id.* § 20504(e).

Nevada's Non-Compliance with Section 5 of the NVRA

I. Nevada's Driver's License Application and Renewal Processes Violate the NVRA

The DMV's driver's license application and renewal processes are facially non-compliant with Section 5 of the NVRA because (a) the driver's license application and renewal procedures do not serve to register applicants to vote and (b) in order to register to vote, driver's license applicants must provide a significant amount of information that is duplicative of information required on the driver's license forms.

A. In-Person Driver’s License Applications and Renewals

Applications and in-person renewals for driver’s licenses and identification cards are completed using the “Application for Driving Privileges or ID Card” (DMV-002). The form asks whether the applicant would like to register to vote or make changes to her current voter registration:

ALL APPLICANTS MUST COMPLETE THIS SECTION

| | |
|---|--|
| VOTER REGISTRATION OR ADDRESS CHANGE | Would you like to register to vote or make changes to your current voter registration? <input type="checkbox"/> YES <input type="checkbox"/> NO |
| | If you are a U.S. citizen and already registered to vote in Nevada, this form will update your voter registration address. <input type="checkbox"/> I do <i>or</i> <input type="checkbox"/> I do not want my address updated for voter registration purposes. |
| | Did you move to a different county? <input type="checkbox"/> Yes <input type="checkbox"/> No <i>If yes, you must submit a NEW voter registration application.</i> |
| | VOTER REGISTRATION APPLICATION NUMBER: |

DMV policy documents indicate that if an applicant checks “yes,” the worker must provide the applicant with a separate voter registration application. Thus, rather than the DMV-002 “serv[ing] as” a voter registration application, the applicant must affirmatively request in writing a voter registration application, which must be completed separately from the driver’s license application. The voter registration form provided is blank and, to complete it, the applicant must provide information already entered on the DMV-002, in violation of Section 5. Furthermore, the voter registration form does not contain the statements related to confidentiality required by Section 5(c)(2)(D).

Like other Nevada citizens, Eleanor Newell was required to take the extra step of asking for and completing a separate voter registration application. Ms. Newell moved to Minden, Nevada from Bozeman, Montana in September 2014. On October 8, 2014, she visited the Carson City DMV office in order to apply for a Nevada driver’s license. Ms. Newell was not asked orally if she wanted to register to vote and indeed had to affirmatively request a voter registration application. Contrary to the requirements of Section 5, Ms. Newell was required to fill out the entire voter registration application, including information duplicating that which she provided on her driver’s license application.

Section 5 further requires that applicants who are already registered voters in the state must be able to use their driver’s license application or renewal to update their existing voter registration, such as a change in name, address, or party affiliation. 52 U.S.C. § 20504(a)(2). In Nevada, however, registered voters who complete a DMV-002 and have moved to a different county must complete a separate voter registration form with duplicative information if they want to update their registration. Worse, the DMV-002 contradicts itself about what a registered voter who has moved to a new county must do in order to remain registered: one box states that the form will update the voter registration address of a citizen “already registered to vote in Nevada,” while another box states that a registered Nevadan who moves to a different county must submit a new voter registration application.

B. Online Renewals

In addition to using the DMV-002 in person at a DMV office, a Nevada driver may also renew her license using the MyDMV online portal. The MyDMV portal asks the driver if she would like to register to vote or update her voter registration. Clicking “yes” results in a separate blank voter registration application being mailed to the driver. This procedure violates Section 5 because the renewal form does not “serve as” a voter registration application and, if the applicant wants to register, she must provide duplicate information on a separate application form. Furthermore, unlike the in-person process at a DMV office, she must wait several days for the voter registration application to arrive in the mail. And as with the paper form, the confidentiality statements required by Section 5(c)(2)(D) do not appear.

Would you like to register to vote or make changes to your current voter registration? If yes, a separate application will be mailed to you.

Yes
 No

Failing to provide a simultaneous, non-duplicative voter registration process when applicants apply for or renew a driver’s license violates the NVRA and must be remedied immediately.

II. The DMV’s Change of Address Procedures Violate the NVRA

The DMV’s change of address procedures do not comply with Section 5’s requirement that “[a]ny change of address form” submitted for driver licensing purposes “shall serve as notification of a change of address for voter registration . . . unless the registrant states on the form that the change of address is not for voter registration purposes.”

Drivers in Nevada may report a change of address by mail, in person at the DMV, or through the MyDMV online portal. As implemented, all of these methods of reporting an address change violate the NVRA because they require the voter to opt in for the address change to update her voter registration, rather than automatically updating it unless the voter opts out, and they do not update a voter’s registered address at all if the voter has moved to a new county.

Voters reporting a change of address by mail use the “Change of Address Notification By Mail” form (DMV-022). The DMV-022 states “If you are a U.S. citizen and already registered to vote in Nevada, this form will update your voter registration address information,” and provides two check-boxes by which the voter may indicate her answer: “I do” or “I do not want my address updated for voter registration purposes.”

Voter Address Change If you are a U.S. citizen and already registered to vote in Nevada, this form will update your voter registration address information.
 I do or I do not want my address updated for voter registration purposes.
If you moved to a different county, you must submit a new voter registration form for that county.
Register online at RegistertoVoteNV.gov OR indicate if you want a new registration form mailed to you: Yes No

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Thus it appears the voter must affirmatively indicate on the form if she wants the change to apply to her voter registration, in violation of Section 5's requirement that the change apply unless the voter opts out.

The DMV-022 form further violates Section 5 because the (non-compliant) opt-in procedure described above only applies to registered voters who move within a county. It states "If you moved to a different county, you must submit a new voter registration form for that county" and gives the voter the option of completing a new voter registration form online at the Secretary of State's website or having a separate blank voter registration application mailed to her. Neither option is compliant with Section 5's requirement that the change of address be applied to voter registration unless the applicant affirmatively opts out.

In addition to violating Section 5, the voter registration language on the DMV-022 is unnecessarily confusing. For example, the form explicitly states that if the voter is a U.S. citizen and "already registered to vote in Nevada" the form will update her voter registration. Despite this language, however, the form can only (and contrary to the NVRA) be used to update her voter registration if she was already registered *in the same county*, not "in Nevada."

The online change-of-address portal available through MyDMV also violates Section 5. A Nevadan updating her driver's license address who also wants to update her voter registration is not advised that the address change will update her voting address or told how to opt out of such an update. There is no check box to indicate that the address change should not be applied to an existing voter registration. Instead, the voter is instructed to check a box to receive a separate voter registration application in the mail. Thus, the website suggests that even a voter reporting an address change within the same county must submit a new voter registration application, in violation of Section 5's automatic update and opt-out procedures.

In addition to the non-compliant procedure described above, a sidebar appears at various points throughout the portal instructing users, "If you would like to register to vote or update your voter registration please contact your county registrar." This instruction also violates Section 5 and has the potential to unnecessarily confuse people who use the portal.

Finally, a driver may also update her address in person at the DMV using the same form used to apply for or renew a driver's license. As with other methods of reporting an address change and contrary to Section 5's opt-out procedures, drivers who have moved within a county must affirmatively opt in to having their voter registration updated, and, if a driver has moved to a new county, she must request and complete a new voter registration application, again in violation of Section 5.

III. The DMV's Failure to Transmit Voter Registration Applications and Changes of Address Violates the NVRA

Even when voters acquire and complete a blank voter registration application during covered DMV transactions, the DMV appears to routinely fail to transmit these applications to the appropriate election officials within Section 5's transmittal deadline. DMV employees in two of seven offices visited told interviewers that their offices *do not* transmit completed voter registration applications. Instead, the customers are required to mail them in on their own. Furthermore, emails between election officials obtained through a public records request indicate that at least one DMV office had simply stopped sending any voter registration applications to the county clerk. In 2013, that same office had sent to the county clerk a box of "probably 200" voter registration changes of address, dating back to 2012. The DMV's failure to transmit completed voter registration applications in a timely manner violates Section 5.

IV. Misinformation Provided by DMV Employees Suggests a Lack of Effective Training

Misinformation regarding the voter registration deadline provided to Ms. Newell by a DMV employee resulted in her being prevented from voting in the 2014 election. As discussed above, Ms. Newell visited the Carson City DMV on October 8, 2014, and, after affirmatively requesting a voter registration application, was able to obtain, complete, and submit a voter registration application. Upon submission of her registration application, the DMV employee assured her that she had met the registration deadline to participate in the November election. However, Ms. Newell discovered the day before the election that she was not registered. As you know, Nevada has a staggered voter registration deadline: registration at the DMV closes 31 days before an election, but a voter can still register in person at the county clerk's office up to 21 days before an election. If Ms. Newell had been provided accurate information on October 8, she still could have registered in person at the Clerk's office during this 10-day window. Instead she was forced to sit out an important federal election because of the DMV's mistake. Part of your duty to "coordinate" implementation of the NVRA is to provide accurate training to agency employees to ensure such incidents do not occur.

Ensuring Compliance with the NVRA

Nevada is engaging in continuous and ongoing violations of Section 5 of the NVRA. As Nevada's chief election official, it is your responsibility to take immediate action to ensure that the DMV complies with the NVRA and provides the voter registration services mandated by federal law.

We are ready and eager to meet with you and other state officials to develop a comprehensive plan for NVRA compliance, as we have successfully done in many states. Such meetings will allow us to find solutions that not only comply with the law but also best meet the DMV's needs, and to do so expeditiously to the benefit of both our and the DMV's clients. Should it become

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necessary, however, we are prepared to initiate litigation at the end of the statutory 90-day waiting period.

Please contact James Tucker at (702) 415-2941 or jtucker@armstrongteasdale.com to set up a meeting.

Thank you, and we look forward to working with you.

Sincerely,



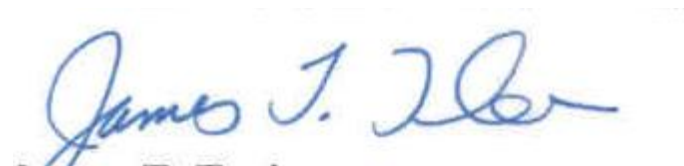
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