



**U.S. Election Assistance Commission  
Public Hearing  
September 6, 2007**

**Testimony of Scott Novakowski  
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Good afternoon Chair Davidson and Commissioners Rodriguez, Hunter, and Hillman and thank you for holding this important hearing. My name is Scott Novakowski, Senior Policy Analyst at Demos: A Network for Ideas and Action. Demos is a non-profit, non-partisan research and advocacy center dedicated to helping America reach its highest democratic ideals.

For the past two years, I have worked as part of a coalition between Demos, ACORN, Project Vote, and now Lawyers' Committee for Civil Rights Under Law working to ensure full implementation of the public assistance requirements of the NVRA.

The NVRA gave the Federal Elections Commission (FEC) the authority to make regulations concerning the implementation of the law. The Help America Vote Act of 2002 (HAVA) transferred the FEC's authority with respect to the NVRA to the Election Assistance Commission (EAC). Therefore, the EAC has the authority to adopt regulations under the NVRA with respect to the national mail-in voter registration form and the reporting of information for the EAC's biennial report to Congress, as did the FEC prior to HAVA. While the bulk of the discussion surrounding the adoption of new NVRA regulations is likely to address the national mail-in voter registration form, we encourage the EAC to accept public comments on additional

possible regulations, specifically those governing the EAC’s biennial report on the impact of the NVRA. I make several recommendations to this effect in my testimony.

Furthermore, Demos strongly recommends that the EAC use its authority to improve and enhance compliance with the public assistance requirements of the NVRA. Under the NVRA, as modified by HAVA, the EAC “[s]hall provide information to the States with respect to the responsibilities of the States under this Act.”<sup>1</sup> We recommend that the EAC exercise this responsibility by issuing to the states a set of best practices for implementation of the NVRA’s public assistance voter registration requirement.

### **Background on NVRA Public Assistance Voter Registration**

As you are aware, Congress enacted the National Voter Registration Act in 1993 to “increase the number of eligible citizens who register to vote in elections for Federal office” and to “protect the integrity of the electoral process.”<sup>2</sup> While the NVRA has received the most attention because of its “motor voter” provision, mail-in registration and purging provisions, Section 7 of the Act requires states to designate as voter registration agencies all offices that provide public assistance benefits, including Food Stamps, Medicaid, Temporary Assistance for Needy Families (TANF), and the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC). In addition to recognizing the inherent suitability of public assistance agencies for large-scale voter registration, Congress included the public assistance provisions because of a basic concern for equity in the voter registration system. Indeed, “[t]he Congressional intent underlying the NVRA’s mandatory public assistance agency voter registration requirement was to provide ‘a useful supplement to motor-vehicle registration

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<sup>1</sup> 42 U.S.C. 1973gg-7(a)(4)

<sup>2</sup> 42 U.S.C. 1973gg(b)(1) & (3).

systems, enabling more low income and minority citizens to become registered.... The agency based registration program is designed to reach out to those sectors of the population which are not likely to have driver's licenses or other identification cards issued by a motor vehicle agency."<sup>3</sup>

The NVRA Implementation Project was launched in 2004 to improve states' compliance with the public assistance provisions of the NVRA. Using nationwide data collected by the Federal Election Commission (FEC) and the Election Assistance Commission (EAC), we found that voter registration applications from public assistance agencies had fallen 59 percent by 2003-2004 as compared with 1995-1996. Since that time, the number of registrations from public assistance agencies has plunged even further, yielding a staggering 80 percent drop since 1995-1996. Seventeen states reported decreases larger than the national figure and nine states reported decreases of 90 percent or more between 1995-1996 and 2005-2006.

While caseloads in some public assistance programs have declined overall since the NVRA went into effect, these declines are not sufficient to explain the declines in voter registration applications through public assistance agencies. For example, in the Food Stamp Program, average monthly participation was about 9.15 million households in 2003 compared with 10.88 million in 1995, a 15.9% decline. As we have seen, the decline in voter registration applications from public assistance offices during the same period nationwide was 59%. Additionally, Medicaid enrollment has increased 32.4% from June 1997 to June 2004.<sup>4</sup>

State-level public assistance registration data, along with field observations and survey data, further reveal states' failures to implement the law. For example, spot checks in

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<sup>3</sup> Condon v. Reno, 913 F. Supp. 946, 952 (D.S.C.) (quoting S. Rep. No. 103-6, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess. (1993) at 14)

<sup>4</sup> Kaiser Family Foundation, "Medicaid Enrollment in 50 States," June 2004, Figure 1.

Department of Job and Family Services offices in six Ohio counties conducted in late 2005 found that there were no voter registration applications available at any of the offices except one. And the applications at that office were buried in a back corner of the office. Also in Ohio, of 103 clients interviewed outside DJFS offices, only three reported being offered the opportunity to register to vote. Between 2002 and 2004, 27 of Ohio's 88 counties each registered fewer than ten voters at public assistance agencies. Amazingly, offices in ten of those counties did not register a single voter in the two-year period. Demos, Project Vote, and the Lawyers' Committee for Civil Rights Under Law have subsequently filed a lawsuit in Ohio on behalf of ACORN and two individual plaintiffs.

More recently, site visits in three large Missouri counties (Jackson and Clay – containing Kansas City, St. Louis City, and St. Louis County) found that across 11 offices visited, not a single office provided a voter registration to the investigator asking for a public assistance application. Surveys outside the offices found that, of 53 clients engaging in NVRA-covered transactions, only four recalled being offered the opportunity to register to vote. Three offices visited did not have voter registration applications on site, even when directly asked by investigators. On August 23, 2007, Demos and Project Vote sent a 90-day notice letter to Missouri officials. Such a letter is the first step in initiating litigation under the NVRA.

In addition to litigation, the NVRA Implementation Project has been providing technical assistance to numerous states over the past three years to improve compliance with the law and to create more effective and efficient voter registration services. The Project's experience has shown that the implementation of key procedural changes can make a significant difference. For example, after state election officials worked with the Project to implement best practices, North Carolina's public assistance agencies registered more voters in four months in 2007 than they did

in the entire preceding two-year period.<sup>5</sup> Similarly, after working with the Project, Iowa increased the number of registrations in their public assistance agencies by 3000 percent over the previous year and 700 percent over the previous presidential election cycle.

## **Recommendations:**

### **Data collection and the EAC's biennial report to Congress**

Under the NVRA, as modified by HAVA, the EAC clearly has regulatory authority when it comes to the Commission's biennial report to Congress on the impact of the NVRA on election administration. The EAC report is one of the only research projects to collect and present in a centralized fashion comprehensive information on state voter registration and can be a potentially valuable source of election data as well as a powerful tool to ensure the law is being properly implemented. Unfortunately, dating back to the years when the report was done by the FEC, it has been plagued by incomplete reporting and sometimes no reporting at all on the part of states. For example, in the 2005-2006 report, it appears that 20 states failed to submit complete statewide data on public assistance registrations.<sup>6</sup> Other states, such as South Carolina and Massachusetts, did not report any data at all on public assistance registrations.

The EAC is responsible under the NVRA to produce a biennial report to Congress so that the lawmaking body can understand the impact of the law. By failing to provide complete data, states are preventing the EAC from performing its duties under the law and frustrating the ability

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<sup>5</sup> For a comprehensive description of North Carolina's success in re-implementing Section 7 of the NVRA, see Demos, *Expanding Voter Registration for Low-Income Citizens*, available at <http://www.demos.org/pubs/NVRA.pdf>.

<sup>6</sup> The 20 states that did not provide complete public assistance data are Alabama, California, Connecticut, Illinois, Kansas, Massachusetts, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, New York, Oklahoma, Oregon, South Carolina, South Dakota, Utah, Vermont, Washington, and West Virginia. See U.S. 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/research\\_reports\\_nvra2006.htm](http://www.eac.gov/research_reports_nvra2006.htm).

of Congress to fully understand the impact of the NVRA. Likewise, gaps in information provided to the EAC by the states hinder the ability of the Department of Justice, the primary government enforcer of the NVRA, to gain a complete understanding of which states are shirking their duties under the law. After all, what good is the enforcement provision of the NVRA if states do not have to submit information that would indicate the need for enforcement?

To help correct this problem, we recommend that the EAC use its regulatory authority with respect to the report to compile and include in its report to Congress a list of the states that provide incomplete data or fail to provide data at all on any aspect of NVRA implementation for which reporting is required. Such a list will present to Congress and the public in a clear and concise way the states that have failed to provide complete data to the Commission. To further ensure enforcement of the law, we recommend that the EAC provide this list of states to the Department of Justice. While the EAC has no direct authority to enforce the law, the provision of this information to the Department of Justice, which does have enforcement authority, would be a useful first step and is fully within the EAC's authority. At a minimum, providing the Department with a list of the states that fail to provide data on their NVRA activities, or that provide incomplete data, would assist the Department in determining whether follow-up contacts or investigation should be commenced to determine the reasons why the data has not been supplied, and specifically whether the gaps in reporting indicate gaps in providing the registration opportunities required by the NVRA.

In same spirit and consistent with the EAC's regulatory authority, we encourage the EAC to engage in greater analysis of the data collected from the states, especially as it relates to public assistance registration. For example, in its past two reports, the EAC has described trends in overall voter registration rates across time. Such analysis allows the reader to understand how

voter registration is functioning in comparison to years passed. Similar analysis of public assistance registration numbers would provide valuable insight into how states are carrying out their Section 7 duties. For example, analysis by Demos indicates that the number of public assistance registrations has decreased by 50 percent since the last EAC report was released in 2003-2004 and 80 percent since implementation of the law in 1995-1996. It seems that such a drastic decline is worthy of mention in the report.

Finally, it would greatly enhance the utility of the report if the EAC were to collect several additional pieces of information from the states. Again, the NVRA provides the EAC with authority to prescribe regulations necessary to implement the law's reporting requirement, including determination of which data to collect from the states. With respect to public assistance agencies, the current survey gathers the basic information, i.e. the number of registrations received from public assistance offices. However, additional information is necessary for a comprehensive understanding of this voter registration activity. Collection of this additional information would greatly advance the survey's purpose to ascertain the impact of the law.

Specifically, we encourage the EAC to request the following additional information:

- The number of applications, recertifications, and changes of address processed by public assistance agencies;
- How often a recipient of public assistance is required to recertify or renew her benefits.
- The individual public assistance programs (i.e. Food Stamps, Medicaid, etc.) administered by each office designated as a public assistance agency; and

- The number of completed voter registration applications submitted by *each* public assistance office or agency.

The current survey does not provide us with the information necessary to contextualize the raw number of applications. We recommend that the survey ask for the number of applications, recertifications, and changes of address processed by each public assistance agency – a figure that represents the total number of transactions in which voter registration should have been offered under the NVRA.<sup>7</sup>

Raw numbers can be misleading without this information. For example, assume that a state registered 10 individuals in its public assistance offices. If that office only had 11 client interactions requiring an offer of voter registration services, it did a fantastic job. However, if 100,000 individuals completed NVRA-covered transactions, registering only 10 of these individuals may be indicative of a serious failure to implement the law. Furthermore, it is wholly possible that as office traffic rises faster than the number of applications completed, an increase in the raw number of applications is actually accompanied by a decrease in the percentage of clients completing voter registration applications.

Additionally, information on how often a recipient is required to renew or recertify benefits will be useful in understanding how many times a single recipient is offered the opportunity to register.

We urge the EAC to seek two final pieces of information to ensure that voter registration services are being offered at public assistance agencies: (1) identification of individual programs

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<sup>7</sup> This information is different than agency caseload, a number that does not capture recertifications, changes of address or initial applicants who were denied benefits but who are still required to be offered the opportunity for voter registration upon application. Nevertheless, caseload data would be preferable (as an indicator of covered transactions) to nothing.



(i.e. Food Stamps, Medicaid, TANF) administered by each office designated as a voter registration agency; and (2) the number of completed voter registration forms submitted by *each* public assistance agency or office. Collecting such information would help ensure that all covered programs are offering voter registration and facilitate identifying offices that may be having difficulties or are especially successful in implementing the law.

Through its survey and report, the EAC has a real opportunity to not only fulfill its goal to be an information clearinghouse on elections, but also to be one of the premier sources of quality data on voter registration. To the extent that a notice and comment period would be required to make these changes, as opposed to the EAC's merely adopting the existing FEC regulations without a comment period, we believe the value of improving the reporting procedures would justify the additional time and study required, and that the opportunity for comment would itself provide valuable information to the EAC.

#### **Further Responsibilities of the EAC Under the NVRA:**

The NVRA states that the FEC “[s]hall provide information to the States with respect to the responsibilities of the States under this Act.”<sup>8</sup> As the federal body charged with providing technical guidance to states on the administration of elections and promulgating rules and regulations on the NVRA, the EAC is in a unique position to play a role in helping to realize Congress’ intent in passing the public assistance provisions of the NVRA.

I would like to take this opportunity to strongly encourage the EAC to issue a set of best practices for implementation of the NVRA in public assistance agencies. Issuing best practices in NVRA implementation fits squarely within the EAC’s role to provide information to states on

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<sup>8</sup> 42 U.S.C. 1973gg-7(a)(4)

their responsibilities under the law. Indeed, the EAC has already issued to great reception best practices on the broad topic of Election Administration<sup>9</sup> and Voting by Uniformed and Overseas Citizens.<sup>10</sup>

The issuance of a set of best practices will serve as a reminder to elections officials of their responsibility under Section 7 while also providing them with a guide to ensuring effective and efficient implementation of the law. Our experience working with states over the past three years suggests that implementing a well-developed set of best practices can dramatically increase voter registration rates at public assistance agencies, involving more low-income citizens in our political process and strengthening our democracy.

Demos' experience in working with states on public assistance voter registration over the past three years has allowed us to develop a set of best practices that we believe will lead to increased numbers of voters being registered. Some examples of recommended best practices in Section 7 implementation include:

- **An NVRA Coordination Team.** An NVRA Coordination Team should be created consisting of state-level representatives of agencies or departments that have a stake in NVRA implementation including, but not limited to, the office of the Secretary of State (or Chief Election Official), the governor's office, agencies that provide public assistance and are designated as voter registration agencies, and the Attorney General's office. The Team should meet regularly to develop procedures and guidelines to assure full compliance with the public assistance registration requirements of Section 7 of the

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<sup>9</sup> See [http://www.eac.gov/news\\_013006.asp](http://www.eac.gov/news_013006.asp)

<sup>10</sup> See <http://www.eac.gov/fvap.asp?format=none>

NVRA, monitor and review the status of compliance, and maintain ongoing oversight of compliance efforts.

- **Section 7 NVRA Elections Coordinator.** The NVRA Elections Coordinator should be an official in the office of the state's Chief Election Official responsible for coordinating the NVRA activities out of that office including recordkeeping and reporting relating to compliance, training, supplying forms, and developing and disseminating promotional materials. The Section 7 NVRA Elections Coordinator should serve as the primary contact for the State Agency Coordinator and individual Agency NVRA Site Coordinators to monitor NVRA compliance and work with Agency employees to improve compliance. This position should involve oversight responsibilities including periodic site visits to public assistance offices to determine whether procedures required by the NVRA are being followed.
- **State Public Assistance Agency NVRA Coordinator.** The duties of the Agency NVRA Coordinator include planning, oversight and coordination of the work of the NVRA Site Coordinators described below, in cooperation with the Section 7 NVRA Elections Coordinator.
- **NVRA Site Coordinators.** Each local public assistance agency office should name an NVRA Site Coordinator whose duties include coordination of implementation of and compliance with the public assistance registration requirements of Section 7 of the NVRA within the local office. Those duties generally include but are not limited to coordinating training of agency employees; ensuring an adequate supply of voter registration applications and declination forms; and forwarding completed voter registration applications to election officials. The NVRA Site Coordinators is responsible

for recordkeeping and reporting to the Agency NVRA Coordinator and the Section 7 NVRA Elections Coordinator and to serve as that agency office's liaison with the Section 7 NVRA Elections Coordinator, the Agency NVRA Coordinator, and any local election boards regarding NVRA issues.

- **Training.** The training of front-line public assistance workers in proper voter registration procedures is essential to ensuring compliance with the law. Training procedures should be developed by the various NVRA Coordinators along with the NVRA Improvement Team with the goal of ensuring that all agency employees responsible for assisting applicants receive at least annual training on their requirements under Section 7 of the NVRA. Additionally, all newly hired employees of designated agencies should receive training in NVRA responsibilities as part of their orientation training. The provision of such training should be monitored and reported to the Agency NVRA coordinator. Evaluation of agency administrators' and staff success in maintaining compliance with NVRA Section 7 requirements should be part of their formal job assessments.
- **Agency Responsibilities.** The training and oversight discussed above should include advising all offices of designated agencies, and all responsible employees, that they must do each of the following:
  - Offer voter registration to every client who is applying, recertifying, or changing their address with respect to public assistance, even if they are doing so by phone, Internet, or mail, or through a representative. A voter registration application, as well as a declination form shall be provided to each client, even if the client is engaging in a transaction by phone, Internet, mail or through a representative.

- Maintain a supply of voter registration applications and declination forms at a location within the office that is as accessible to agency personnel as are public assistance applications and other necessary forms.
  - Make voter registration applications available in an accessible location in client waiting areas with signage indicating that applications may be filled out while the client is waiting.
  - Provide assistance as needed with completing the application and advise as to what fields must be completed.
  - Collect voter registration applications and voter preference forms.
  - Ensure that completed voter registration applications are sent to county elections officials on prompt and regular basis.
  - Post signs in each office in readily visible locations informing clients of the right to register to vote at the office and identifying the NVRA Site Coordinator for the office.
- **Reporting and Tracking.** Proper tracking and reporting of data on public assistance voter registrations is essential to ensuring compliance with the law. Additionally, well-kept records of voter registration activity can protect states against lawsuits. The Chief Election Official of a state, in consultation with the NVRA Improvement Team, should establish procedures for tracking weekly, by email reports to the Section 7 NVRA Elections Coordinator, the office's voter registration activities. The tracking should include for each office: number of voter registration applications completed and sent to the county elections board; number of voter preference forms collected; and the number of clients who applied for public assistance, recertified or changed their address (to allow

comparison to the number of voter registration applications and voter preference forms). To the extent possible, the procedures should use technological advances (such as web-based tracking) to promote quick and efficient review of office compliance. Such procedures should include methods for checking that the number of applications submitted by public assistance agencies is consistent with the numbers received by elections offices.

This list of best practices in NVRA public assistance voter registration implementation is not exhaustive. Demos is available to provide further information on best practices and to put Commission members in touch with elections and public assistance agency administrators who have successfully implemented the NVRA.

The National Voter Registration Act is one of the most important pieces of election legislation passed in the previous fifteen years. It remains the only piece of federal legislation to mandate the government to proactively engage citizens in the democratic process. The work of Demos and our colleagues has documented the serious failure on behalf of many states to adequately implement the public assistance provisions of the law as well as the simple steps that can be taken to significantly improve compliance. Demos applauds the EAC for holding today's important hearing and urge the Commission to seriously consider our recommendations as it develops rules and regulations on the NVRA and continues its role as a advisor to states on election administration.

Thank you for this opportunity to speak before you today. Please do not hesitate to contact me with any further questions.