

# UNEQUAL ACCESS:

## NEGLECTING THE NATIONAL VOTER REGISTRATION ACT, 1995-2007

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# Executive Summary

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Recognizing that burdensome and discriminatory voter registration laws have a damaging impact on American democracy, Congress passed the National Voter Registration Act (NVRA) in 1993 to make voter registration more accessible, with the hope of reducing disparities in voting among various populations. The NVRA remains one of the nation's most important voting rights laws.

Although millions of citizens have taken advantage of voter registration opportunities created by the NVRA, key provisions of the law meant to reach populations with low voter registration rates have been poorly and inconsistently administered in many states. Specifically, states have failed to adequately implement — and the Department of Justice has in recent years failed in their duty to enforce — NVRA provisions that require states to offer voter registration in government agencies providing public assistance benefits.

“Unequal Access: Neglecting the National Voter Registration Act, 1995-2007” details the following:

- The number of voter registration applications from public assistance agencies in 2005–2006 is a small fraction of what it was in 1995–1996, when the NVRA was first implemented (see Figure 1 and Tables 1a and 1b). Indeed, registrations from public assistance agencies declined by 79 percent during this time.
- The decline in registrations from public assistance agencies occurred despite the fact that millions of citizens from low-income households remain unregistered. In 2006, 13 million, or 40 percent of, voting-aged citizens from households earning under \$25,000 were unregistered (see Table 2).
- Many states frequently fail to report data on their public assistance agency registrations to the Elections Assistance Commission, as required for the EAC's biennial report to Congress (see Table 3).
- Recent surveys of clients at public assistance agency sites in more than half a dozen states have found numerous instances where voter registration was not being offered as required by the NVRA; voter registration applications were completely absent at some agency sites.
- States that have adopted improved NVRA procedures have seen dramatic increases in voter registrations at public assistance agencies, indicating the potential for substantial improvement in other states.
- The Department of Justice has taken little action in recent years to enforce the public assistance agency registration requirements of the NVRA, despite being repeatedly presented with strong evidence of states' noncompliance.
- Based on the outcomes in states where recent compliance efforts have been undertaken, states can improve their compliance with the NVRA and increase the number of low-income citizens registering to vote by implementing recommended procedures, outlined in this report, to improve training, monitoring and reporting by agencies.

The NVRA is the only federal law requiring the government to affirmatively offer voter registration to broad segments of the population. Because of noncompliance with the NVRA, however, the

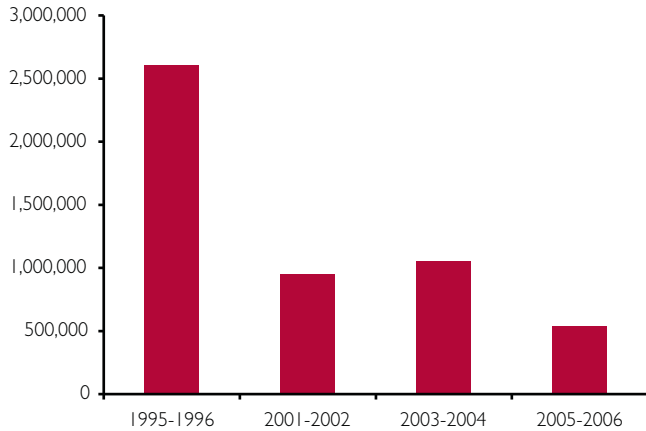
rights of thousands of low-income citizens are violated daily across the nation. Project Vote and Dēmos call on state election and public assistance officials to take immediate action to properly implement this important civil rights law. We also call on the Department of Justice to fulfill its role by actively enforcing the NVRA's requirement for voter registration at public assistance agencies.

# Introduction

Congress passed the National Voter Registration Act (NVRA) in 1993 to “increase the number of eligible citizens who register to vote in elections for Federal office.”<sup>1</sup> Recognizing that unfair and discriminatory registration laws have a “direct and damaging” effect on democratic participation, Congress designed the NVRA to make voter registration more accessible, with the hope of reducing disparities in registration and voting.<sup>2</sup> Key to this goal is Section 7 of the NVRA, which requires states to provide voter registration services at public assistance agencies (see box on Section 7 of the NVRA on page 4). The Act remains the only federal law requiring the government to affirmatively offer voter registration to broad segments of the population.<sup>3</sup>

Unfortunately, many states have failed to fully or consistently implement voter registration in public assistance agencies, and the U.S. Department of Justice has largely ignored violations of the law in recent years. For example, examination of federal data shows that, compared to the number of public assistance registrations achieved during the NVRA’s first years of implementation, 1995–1996, the number of agency-based registrations has declined by 79 percent in the most recent reporting period (see Figure 1).

**Figure 1: Voter Registrations from Public Assistance Agencies**



Source: U.S. Federal Election Commission and U.S. Election Assistance Commission.

*“As a result of states’ noncompliance, millions of low-income citizens have been denied an opportunity to register to vote.”*

As a result of states’ noncompliance, millions of low-income citizens have been denied an opportunity to register to vote, and a significant gap in registration rates between the rich and the poor remains. Indeed, in 2006 only 60 percent of adult citizens in households making less than \$25,000 a year were registered to vote compared to over 80 percent of those in households making \$100,000 or more.<sup>4</sup>

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

<sup>2</sup> 42 U.S.C. § 1973gg(a)(3).

<sup>3</sup> In fact, the United States is one of the only democracies that places the burden on the individual to register to vote. See Frances Fox Piven and Richard Cloward, *Why Americans Don’t Vote* (1988), p. 17. Canada, Germany, Mexico and the United Kingdom all have systems in which the government assumes the responsibility for registering its citizens to vote.

<sup>4</sup> See Douglas R. Hess, Project Vote, “Representational Bias in the 2006 Electorate,” (2006), Table 6: Household Income and Voting Behavior, available at <http://www.projectvote.org>.

This report — co-authored by Dēmos and Project Vote as part of their joint effort to improve NVRA agency implementation nationwide — examines in detail the decline in voter registration at public assistance agencies and presents data for each state.<sup>5</sup> The report also details the potential of the NVRA to increase registration among low-income citizens, the failure of states to collect and report data on their public assistance voter registration programs, and the failure of the

### **Section 7 of the NVRA: Voter Registration in Public Assistance Agencies**

Enactment of the National Voter Registration Act marked a significant expansion of voter registration opportunities in the United States. In addition to the well-known requirement that states offer voter registration to persons applying for or renewing a driver's license (the so-called "Motor Voter" provision), the NVRA requires states to offer voter registration at all offices providing public assistance.<sup>1</sup> Recognizing that low-income and disabled citizens may be less likely to visit motor vehicle departments, Congress included the requirement for registration at public assistance agencies to ensure greater equality of access to voter registration.<sup>2</sup> Indeed, Census data confirm that low-income citizens are less likely to register to vote at a motor vehicle department.<sup>3</sup>

By "public assistance" agencies, Congress meant to include all offices in the state that administer the Food Stamp Program, Medicaid, Temporary Assistance for Needy Families (TANF), and the Special Supplemental Nutrition Program for Women, Infants and Children (WIC).<sup>4</sup> Under the NVRA, with each application for benefits, recertification or renewal of benefits, or change of address notification, a public assistance agency must (among other things):

- Provide the individual with a voter registration application and provide assistance in completing it;
- Provide the individual with a form ("declination form") containing the specific question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?" along with a check-off box indicating the individual's choice;
- Accept completed voter registration application forms and transmit them promptly to the appropriate election official.

States that do not comply with the NVRA are subject to litigation by private individuals or the U.S. Department of Justice. Currently, litigation is underway against officials in Ohio and, at the time of this writing, officials in Arizona, Florida, New Mexico and Missouri have received letters from Project Vote, Dēmos, ACORN and others notifying them of their non-compliance with the law. Such notice letters provide the state with 90 days to correct the violation before litigation can be filed.

<sup>1</sup> This requirement is set out in Section 7 of the NVRA, 42 U.S.C. § 1973gg-5. Section 7 of the NVRA also requires states to offer voter registration at offices providing services to disabled persons, at armed services recruiting offices and at other agencies designated by the state, which may include unemployment offices, libraries, universities and other state agencies.

<sup>2</sup> NVRA Conf. Report 103-66.

<sup>3</sup> U.S. Census Bureau, "Voting and Registration in the Election of November 2004, Table 14," <http://www.census.gov/population/www/socdemo/voting/cps2004.html>.

<sup>4</sup> NVRA Conf. Report 103-66.

<sup>5</sup> This report updates an earlier report by Dēmos, Project Vote and ACORN on NVRA compliance problems. See Brian Kavanaugh, Steven Carbo, Lucy Mayo and Michael Slater, "Ten Years Later, A Promise Unfulfilled" (September 2005), available at <http://demos.org/generatePub.cfm?pubID=634>.

Department of Justice to take action in the face of ever-mounting evidence that rights granted under the NVRA are being denied every day to thousands of citizens across the country.

This report concludes with an outline of effective “best practices” in NVRA Section 7 implementation. These practices are based on the experience of states that have improved their compliance with the NVRA and, as a result, have shown increases in the number of voter registration applications coming from agencies.

## Evaluating Agency Registration: An Overview

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Federal data reveal a troubling decline in the number of voter registration applications coming from public assistance agencies since initial implementation of the NVRA in 1995. Table 1a presents the number of public assistance voter registrations reported<sup>6</sup> to the federal Election Assistance Commission<sup>7</sup> by each state for four two-year election cycles: the first cycle after the NVRA was implemented (1995–1996) and the three most recent cycles (2001–2002, 2003–2004 and 2005–2006).<sup>8</sup>

The percent change in agency-based voter registration between cycles is shown in Table 1b for the following four comparisons:

- The first and the most recent NVRA reports (1995–1996 compared to 2005–2006)
- The two most recent election cycles (2003–2004 compared to 2005–2006)
- A pair of presidential-election cycles (1995–1996 compared to 2003–2004)
- A pair of mid-term election cycles (2001–2002 compared to 2005–2006)

The number of voter registrations from public assistance agencies declined 79 percent between initial implementation (1995–1996) and the most recent reporting period (2005–2006).<sup>9</sup> The decline between the two presidential election cycles was also dramatic: 60 percent. Registrations declined by 43 percent from the previous mid-term election cycle (2001–2002) to the most recent (2005–2006).

According to available data and field observations, the large declines reported in agency-based registration can be largely attributed to states failing to adequately implement the public assistance provisions of the NVRA. Evidence that noncompliance with the NVRA has driven the dramatic decline comes from surveys of public assistance clients and site visits to agency offices. For instance, in late 2005, staff and members of the community organization ACORN surveyed 103 clients coming out of Department of Job and Family Services (DJFS) offices in Ohio. Only three clients

<sup>6</sup> The failure by many states to provide the EAC with complete data has been an ongoing problem. These states are noted on Table 1a. We discuss in greater detail the problem of poor reporting later in this report.

<sup>7</sup> The NVRA requires the Federal Election Commission (FEC) to provide Congress with a biennial report on the impact of the law on the administration of elections. This responsibility was transferred to the Election Assistance Commission (EAC) by the Help America Vote Act of 2002 (42 U.S.C. § 15482). Data on public assistance voter registrations are among those collected by the agency. See Federal Election Commission/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 and 2005–2006, most available at <http://www.eac.gov>.

<sup>8</sup> Several states are not required to implement the NVRA because they offered Election Day Registration at the polling place at the time the Act was passed. Those states, not in our tables, are Idaho, New Hampshire, Minnesota, Wisconsin and Wyoming. North Dakota also is exempt from the NVRA because it has no requirement for voter registration, and therefore is not included in our tables. The District of Columbia is treated as a state for our purposes.

<sup>9</sup> The decline that has occurred since the initial implementation period in 1995–1996 is all the more troubling because compliance with the NVRA was by no means complete even during that period. Indeed, several states, including California, Illinois, Michigan, Pennsylvania, Virginia and South Carolina, flatly refused to implement the NVRA and had to be sued to enforce compliance.

## *Alternative Explanations for the Decline in Agency Registrations*

This report concludes that many states are failing to comply with an important provision of the NVRA. However, it is fair to ask: Are there alternative explanations for the dramatic decline in public assistance registrations? Specifically, questions might address whether declines in public assistance registrations are due to (1) reductions in agency caseloads, or (2) low-income citizens registering to vote in places other than public assistance offices. The evidence indicates that neither of these hypotheses can explain away the dramatic decline in agency registrations over the past decade.

While welfare reform and the booming economy in the late 1990s contributed to a decrease in participation in some public assistance programs, this trend reversed in the first years of the new century. For instance, the Food Stamp Program — by far one of the largest public assistance programs required to offer voter registration — had several hundred thousand more adult citizen participants nationwide in fiscal year 2006 compared to a decade prior.<sup>1</sup>

The second alternative explanation is that, as access to voter registration has increased, citizens that would have registered at public assistance agencies are simply registering elsewhere. While increasing access to registration at other points of contact with the public may affect agency registration numbers at the margin, the available evidence indicates that this is an unlikely explanation for the enormous declines documented in this report.

- First, in states whose data we have examined in-depth, there are counties that are able to maintain levels of registration in both their public assistance agencies and their motor vehicle departments that are significantly higher than other counties within the same state (even when disparities in population and public assistance receipt are taken into account).<sup>2</sup>
- Second, states such as Iowa and Tennessee that have improved their procedures and have experienced significant increases in public assistance registrations have not seen a corresponding drop in the number of citizens registering elsewhere. In fact, both of these states have experienced large increases in motor vehicle department and mail-in registrations at the same time as they saw significant increases in public assistance registrations.<sup>3</sup>
- Third, as Table 2 indicates, there remains a very large pool of unregistered low-income citizens (more than 13 million in 2006). Many of these individuals are interacting with public assistance agencies on a regular basis and frequently change addresses (again, see Table 2). Clearly, these individuals have not registered in other places.
- Fourth, first-hand investigations clearly indicate that states are simply disregarding the law. (See page 5 to 7 regarding client surveys and on-site investigations that have been conducted by Project Vote and ACORN).
- Finally, recently released county-level data from the EAC's 2006 Election Administration and Voting Survey provide further evidence that agencies are not following the law: Dozens of counties across numerous states reported less than 50 public assistance registrations during

<sup>1</sup> See "Food Stamp Households Characteristics Reports" for fiscal years 1996 and 2006 at [http://www.fns.usda.gov/oane/MENU/](http://www.fns.usda.gov/oane/MENU/Published/FSP/FSPPartHH.htm) Published/FSP/FSPPartHH.htm; tables B-10, B-11 and B-12.

<sup>2</sup> See Douglas R. Hess, "Investigating Voting Rights in Missouri: An Assessment of Compliance with the National Voter Registration Act in Public Assistance Agencies," (2007); and Jody Herman and Douglas R. Hess, "Investigating Voting Rights in Colorado: An Assessment of Compliance with the National Voter Registration Act in Public Assistance Agencies," (2008), both available at <http://www.projectvote.org>.

<sup>3</sup> See FEC/EAC reports for 2001–2002, 2003–2004 and 2005–2006.



2005 and 2006.<sup>4</sup> In other words, agencies in these counties registered fewer than two citizens a month over those two years. The number of voters registered in states that have improved their procedures suggests that such low numbers are simply not credible in a state that is in compliance with the law.<sup>5</sup>

<sup>4</sup> We limited our review to those counties that had received more than 5,000 applications from all voter registration sources in 2005 and 2006. If we had included in this review even smaller counties — and if it were possible to examine counties in states that did not provide county-level data — we would presumably have found even more cases of counties with negligible numbers of registrations from public assistance agencies.

<sup>5</sup> See Danetz and Novakowski, footnote 11 for data on the increase in registrations in North Carolina.

reported having been provided a form offering voter registration as required by the NVRA. Spot checks in DJFS offices in six Ohio counties revealed that only one of them had voter registration applications on site. Surveys in 2006 and 2007 outside offices in Arizona, Colorado, Florida, Maryland, Missouri, New Mexico and North Carolina have revealed similar violations of the NVRA.<sup>10</sup> Moreover, it was found that states may meet some of the law's requirements for voter registration services at agencies while neglecting others. For example, several states have not been offering voter registration at all of the required points of contact, including interactions conducted via mail, telephone or Internet.

***“Regardless of how we analyze the data, the conclusion is the same: There has been a very clear and marked decline in the number of voter registrations coming from state public assistance agencies.”***

Later in the report, to control for the possible impact of poor reporting by the states, we analyze agency registration declines for only those states providing complete data for both periods being compared. Regardless of how we analyze the data, the conclusion is the same: There has been a very clear and marked decline in most states in the number of voter registrations coming from state public assistance agencies.

## The Potential of Public Assistance Registration

Millions of low-income citizens are currently excluded from the electorate, and public assistance agencies are well suited to help register these citizens to vote. These agencies are in regular contact with low-income citizens, often helping them to complete government forms. Clients also frequently contact agencies when they change addresses, one of the most common circumstances in which a previously registered voter must re-register. Additionally, voter registration is compatible with many agencies' core mission of empowering economically disadvantaged citizens to participate fully in society. In crafting the NVRA, Congress recognized the potential of public assistance agency-based registration and, to this day, the NVRA remains the only federal law requiring the government to affirmatively offer voter registration to low-income citizens.

Data in Table 2 provide an approximate indication of both the magnitude of the need for voter registration programs in public assistance agencies and the potential of such agencies to help register significant numbers of Americans.

<sup>10</sup> The pre-litigation “notice letters” sent to Arizona, Florida, Missouri, New Mexico and Ohio provide a summary of the investigations in those states. These letters are available at <http://www.demos.org>.

For each state, Table 2 presents (for 2006):

- The number of adult citizens from low-income households
- The number of unregistered adult citizens from low-income households
- The number of all citizens from low-income households who had resided at their address for two years or less
- The average monthly number of adult citizens participating in the Food Stamp Program

As shown in Table 2, more than 13 million low-income adult Americans are not registered to vote. In addition, more than 12 million have moved within the previous two years, providing an indication of the need for frequent updates to voter registration records.

As a conservative estimate of the flow of traffic through public assistance agencies, the table also lists for each state the average monthly number of adult citizens participating in the Food Stamp Program. Nationwide, nearly 12 million low-income adult citizens participate in the Food Stamp Program in a given month. Average monthly Food Stamp participation reflects just one, albeit the largest, program covered by Section 7's registration requirements and thus likely understates the number of persons interacting with NVRA-covered agencies.

Moreover, the experience of states that have adopted reforms underscores the enormous potential of the NVRA:

**North Carolina:** After working with Dēmos, Project Vote and the Lawyers' Committee for Civil Rights Under Law to implement an improved voter registration program, North Carolina's public assistance agencies have experienced a five-fold increase in the average number of voters registering in agencies each month, from 484 to 2,529. *Between January and August 2007, North Carolina's agencies have registered more than 20,000 low-income voters — more than these agencies registered in the entire preceding two years.*<sup>11</sup>

**Iowa:** After adopting plans in 2004 to improve agency-based registration, Iowa experienced an increase in the number of voter registrations by 700 percent over the previous presidential election cycle and an astounding 3,000 percent over the previous year. *In November of 2007, nearly one in five clients who were offered voter registration in Iowa's Department of Human Services agencies took advantage of the opportunity to register.* Iowa already had one of the highest voter registration rates in the nation before implementing these improvements. Thus, its ability to register still more citizens in agencies suggests just how great the potential for the NVRA is in states with lower registration rates. (Table 2 shows that only 33 percent of low-income Iowans are unregistered, compared to a national average of 40 percent.)

*“In November of 2007, nearly one in five clients who were offered voter registration in Iowa's Department of Human Services agencies took advantage of the opportunity to register.”*

**Tennessee:** After being placed under a court order in 2002 for failure to provide voter registration in its public assistance agencies, Tennessee improved its procedures and is now a national leader in public assistance registration. *During 2005 and 2006, Tennessee's public assistance agencies generated more than 120,000 voter registration applications.* This is more than twice as many registrations as the next highest performing state. Indeed, for 2005 and 2006, one in five registrations from assistance agencies in the nation occurred in Tennessee (see Table 1a).

<sup>11</sup> See Lisa J. Danetz and Scott Novakowski, Dēmos: A Network for Ideas & Action, “Expanding Voter Registration for Low-Income Citizens” (updated November 2007), available at <http://demos.org/generatePub.cfm?pubID=1446>. Also note that improved procedures were not implemented in North Carolina until January 2007, so the state's increase in voter registrations is not reflected in Table 1a.

**Maryland:** Maryland registered only 982 public assistance agency clients in the first two years of implementation and was sued for not complying with the NVRA by a private party. While under a settlement agreement imposing a comprehensive implementation plan, the state's agency registrations increased to 32,250 in 1999–2000, only to drop again to 1,151 after the agreement expired in 2001.

As shown in Table 1a and depicted in Figure 1, states once collectively registered more than 2.5 million citizens through public assistance agencies but now register only a fraction of that number. In short, facts such as the large number of low-income citizens that remain unregistered, frequent changes of address among low-income citizens, sizeable participation in public assistance programs, the higher levels of registration achieved during the initial implementation period, and the current results from a few high-performing states all indicate that agencies could be a far more significant source of voter registration. Thousands of eligible low-income voters could be brought into the democratic process every day if states fully complied with the NVRA.

*“Thousands of eligible low-income voters could be brought into the democratic process every day if states fully complied with the NVRA.”*

## Evaluating Agency Registration: State Reporting Problems

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The NVRA requires the Election Assistance Commission to produce a biennial report to Congress on the impact of the law, including a count of voters registered in public assistance agencies. To write the report, the EAC must gather data from each state's chief election official. Beginning with the first report to Congress in 1997, many states have failed to provide the EAC (or the Federal Elections Commission (FEC), which previously was responsible for this data collection) with the required data on NVRA implementation. Table 3 lists those states that either failed to report data or reported data that was incomplete for the election cycles reviewed in this report.<sup>12</sup>

*“The number of states reporting incomplete data or no data on agency registrations has reached an all-time high.”*

The number of states reporting incomplete data or no data on agency registrations has reached an all-time high. For the 2005–2006 reporting period, 13 states failed to provide complete, or even nearly complete, data on public assistance registrations. An additional six states failed to provide any data on such registrations.

Most of the states providing incomplete public assistance data did a better job in reporting motor vehicle department registrations, an indication of the comparative neglect of the NVRA's public assistance provisions. In the 2005–2006 reporting cycle, of the states that provided no data or incomplete data on agency registrations, the majority reported more thoroughly for motor vehicle departments than for public assistance agencies.

<sup>12</sup> Information on the completeness of data provided by the states was derived from the published reports of the U.S. Election Assistance Commission (EAC). In each report, the EAC includes an assessment of the completeness of reporting by the states. Using this data, we calculated the percentage of the total jurisdictions in a state that reported data in any given reporting period. States were then classified as either complete or nearly complete if greater than 90 percent of jurisdictions provided data; incomplete if less than 90 percent of jurisdictions provided data; or as having failed to report if the state provided no data.

Twelve years after the law's implementation, and despite specific instructions from the EAC as to what data to collect and report, it remains unclear why so many states are still failing to meet their federal reporting obligations of the NVRA. Based on the experience and research of Project Vote and Dēmos, however, poor reporting is often an indicator of widespread problems with NVRA compliance.<sup>13</sup>

## State Performance and Incomplete Reporting

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To ensure that reported declines in public assistance registrations are not the result of erratic or incomplete state reporting, this section examines only those states that have provided complete data for both periods in the comparison.<sup>14</sup> Figures for states with complete data for *both* periods in the comparisons are marked with a dagger (†) in Table 1b.

Even when controlling for poor reporting, we still find dramatic declines in the number of citizens registering in public assistance agencies, both for the nation as a whole and for the vast majority of states (see Table 4).

**1995–1996 Compared to 2005–2006.** This comparison shows the decline in registrations since the NVRA went into effect:

- Twenty states provided complete information for both the first (1995–1996) and latest (2005–2006) election cycles.
- Over this period, these 20 states collectively experienced a decline of nearly 1.2 million registrations from public assistance agencies. This represents a decline of 76 percent.
- Over this period, only Maryland and Montana have apparent increases, but this is due to very poor performance in the initial period, as reflected in Table 1a.
- Alaska, the District of Columbia, Florida, Indiana and Texas all experienced declines of over 90 percent during this time.

**1995–1996 Compared to 2003–2004.** Since it may appear unfair to compare registrations in a presidential election cycle (when greater numbers of people typically register) to registrations in a mid-term election cycle, we also compared the first and most recent presidential election cycles:

- Twenty-five states provided complete data for both periods.
- Public assistance registrations for these states declined by nearly 1.2 million, or 60 percent, over these two presidential election cycles.
- Eight states experienced declines of over 80 percent: Alaska, Arkansas, Connecticut, Indiana, Louisiana, Missouri, Texas and Utah.

**2001–2002 Compared to 2005–2006.** The next comparison includes the two most recent mid-term election cycles:

- Twenty-three states provided complete data in both periods.
- The data show a 25 percent decline between these two midterm elections.

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<sup>13</sup> For example, in New Mexico where less than half of the state's jurisdictions provided data for the 2005–2006 reporting period, surveys by New Mexico ACORN found violations in counties throughout the state.

<sup>14</sup> Again, we categorize states with nearly complete reporting (i.e. those with between 90–99 percent of local jurisdictions reporting) as complete for the purpose of this analysis.

**2003–2004 Compared to 2005–2006.** Finally, we compare the two most recent election cycles:

- Twenty-three states provided complete data for both of these periods.
- The data indicate a 38 percent decline in public assistance registrations between 2003–2004 and 2005–2006, representing a drop from 692,217 registrations to 429,121.
- Notably, the previously mentioned improvements in Iowa in 2004 made the state one of the only to see a significant increase in registrations during this period.

Interpretations of the percent change columns in Table 1b need to be made with caution: a large percentage change may be due to a small change in the absolute number in small states or in states that previously reported few registrations. In addition, states may show a sizable improvement in recent numbers when it is really a small adjustment compared to their performance a decade ago.<sup>15</sup> Finally, dramatically uneven county performance within a state can also mask significant problems when looking only at state-level data.<sup>16</sup> In short, the best evaluation comes not from looking just at recent data, but from looking at the state's performance across several election periods (Tables 1a and 1b), the size of a state's unregistered population (Table 2) and the results achieved in states that have made efforts to improve their performance.

## Toward Fulfilling the Promise of the NVRA

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As this report documents, low-income citizens in numerous states across the country are being denied their rights under the National Voter Registration Act. A strong democracy requires equal access to voter registration across all segments of the population. Full implementation of the NVRA is an essential step in ensuring that low-income citizens are able to register to vote. States that have improved their compliance with the NVRA have done so through two means:

- Voluntary cooperation and commitment from state election and public assistance officials to implement known “best practices” that bring them into compliance
- Court orders and settlement agreements resulting from litigation brought by the Department of Justice, individual plaintiffs and/or civic organizations

In addition, this report outlines steps that can be taken by local democracy and anti-poverty organizations to help realize the potential of the NVRA. While litigation may be necessary in recalcitrant states, Dēmos and Project Vote are working to encourage states to voluntarily improve their compliance with Section 7 of the NVRA.

### **State Efforts to Improve NVRA Compliance**

States such as North Carolina and Iowa have worked with Dēmos, Project Vote and others to cooperatively improve implementation of NVRA Section 7. In each state, a dramatic increase in voter registrations from public assistance agencies has followed.

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<sup>15</sup> For instance, when comparing the last two mid-term elections, Oklahoma appears to have increased registrations by at least one-third (or about 3,000 registrations); however, 3,000 registrations is much less than one-tenth of the total decline in performance since the NVRA first went into effect.

<sup>16</sup> For example, between 2002 and 2004, Department of Job and Family Services offices in 10 Ohio counties did not register a single voter. DJFS offices in another 17 counties registered fewer than 10 clients, and another 32 additional counties registered fewer than 100 clients in the two-year period. See Complaint in *Harkless v. Brunner*, available at <http://www.demos.org/pub1025.cfm>.

Through our work in these states and others, we have identified a set of best practices, a general outline of which is sketched below:

- **Form an NVRA Improvement Team.** An NVRA Improvement Team consisting of representatives from the chief election official's office, the designated public assistance agencies, other relevant executive offices, and relevant civic organizations should be formed and should meet regularly to develop and coordinate improved NVRA procedures and monitor systematic reporting from agency sites regarding NVRA performance. The chief election official and state-level public assistance agency should each designate a staff member to be responsible for coordinating NVRA responsibilities.
- **Send an Immediate Directive to Agency/Office Personnel.**
  - A memo should be immediately sent to all offices covered by the NVRA from the agency director detailing the responsibilities of staff under the NVRA, including procedures for offering voter registration, how registration materials are to be ordered, how records are to be kept, how and to whom data are to be reported and detailed instructions on when and to whom to transmit completed voter registration applications.
  - In addition, the memo should request that each local office appoint an NVRA Coordinator to be responsible for the day-to-day functioning of the voter registration program.
- **Train Staff.**
  - Election officials and public assistance agencies should review any current NVRA procedural manuals or training materials for accuracy and update or amend if necessary. Specifically, states must make sure they have appropriate procedures for offering voter registration during "remote transactions" with clients (i.e., interactions that are not on-site).
  - All current agency employees should be re-trained in voter registration procedures, and all new employees should be trained as part of their orientation. Refresher training for agency employees should be conducted at least one a year.
- **Report and Monitor Performance Data.** Frequent reporting and monitoring of the numbers of voter registration applications and declination forms completed at each office is critical to a successful NVRA plan. All agency offices should be directed to begin tracking and reporting to the chief election official's office the following information on a weekly basis:
  - The number of declination forms marked yes
  - The number of declination forms marked no
  - The number of declination forms left blank
  - The number of completed voter registration applications transmitted to the appropriate election official

We have found that submitting these details via e-mail or a Web-based tracking system is easy for staff and helps with accuracy in reporting and monitoring. Data on the number of applications and declination forms should be made available for review by all NVRA Improvement Team members.

- **Explore New Technologies.** In addition to the procedural enhancements discussed above, states are also encouraged to explore new technologies to enhance and streamline voter registration procedures in agencies. One such technology, used by many motor vehicle departments, is simultaneous electronic registration (SER). SER electronically transfers information from the client's application for benefits to a voter registration application, which is then printed out, signed by the client and transmitted to election officials. The client no

longer needs to manually complete the voter registration form, saving time while also reducing language and literacy barriers. Furthermore, problems with legibility and incomplete voter registration forms are largely eliminated.

Dēmos and Project Vote have extensive experience in assisting states with NVRA compliance. States, agencies or local jurisdictions seeking to improve their NVRA programs are encouraged to contact us for *pro bono* technical assistance, including more detailed and situation-specific recommendations than those outlined above.

## **Legal Enforcement to Improve NVRA Compliance**

For states refusing to implement effective NVRA procedures, litigation is the only option to secure compliance. The NVRA provides for the right of private individuals or groups and the U.S. Department of Justice to file litigation in federal court against noncompliant states.

Since the NVRA went into effect, private individuals and organizations have used the right to private action in the NVRA. ACORN is currently a plaintiff, along with individuals denied their rights under the NVRA, in a lawsuit against the Ohio Secretary of State and the Director of the Department of Job and Family Services. Letters informing officials of NVRA violations — a required first step for the initiation of litigation under the NVRA — have been sent to Arizona, Florida, New Mexico and Missouri at the time of this writing.

In the 1990s the Justice Department was an active participant in litigation forcing resistant states to comply with the law. More recently, however, the Department has largely ignored violations of the public assistance provisions of the NVRA; it has filed only one lawsuit to enforce the NVRA's public assistance registration requirements in the past seven years.<sup>17</sup> Dēmos and Project Vote provided officials from the Justice Department's Voting Section with significant evidence of states' noncompliance in a face-to-face meeting in 2004 and several follow-up memos. The Department showed little interest in pursuing enforcement despite the recommendation of career attorneys in the Voting Section.<sup>18</sup> Moreover, a 2005 letter from 30 members of Congress to then-Attorney General Alberto Gonzalez requesting an investigation into NVRA Section 7 non-compliance went unanswered.<sup>19</sup>

In August 2007, however, under intense scrutiny by the newly elected 110th Congress for its selective enforcement of voting rights laws, the Justice Department issued 13 letters to states requesting that they explain their low performance in public assistance registration. These recent actions are encouraging, but the Department's rationale for selecting states is somewhat confusing. For example, seven states received letters because they were "among the ten states with the lowest percentage of voter registration applications received from offices providing public assistance." Why only seven of the ten worst states received letters is unclear. Under the Department's stated criteria, at least Florida, Texas and Virginia should have also received letters.<sup>20</sup>

As analyses and investigations by Project Vote and Dēmos indicate, noncompliance is by no means confined to the states that received letters from the Justice Department, and the omission of other states from this round of letters should not be taken to mean that all other states are in compliance. Indeed, even within states that perform generally well, there are many counties, and individual agencies, that do not.

<sup>17</sup> That lawsuit was filed in Tennessee in 2002. The enormous increase in voter registration applications at Tennessee public assistance agencies resulting from that lawsuit makes it all the more disappointing that the Department has failed to follow up with additional enforcement actions since that time.

<sup>18</sup> See Pam Fessler, National Public Radio, "Justice Dept. Accused of Partisan Voter-Roll Purge," (October 11, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=15198501&sc=emaf>.

<sup>19</sup> The letter is available at [http://projectvote.org/fileadmin/ProjectVote/DOJ\\_Correspondences/Conyers\\_Letter\\_to\\_DOJ.pdf](http://projectvote.org/fileadmin/ProjectVote/DOJ_Correspondences/Conyers_Letter_to_DOJ.pdf).



One final encouraging sign that the Justice Department may once again be serious about enforcing the NVRA is their recent submission of an *amicus* (friend-of-the-court) brief supporting plaintiffs in the *Harkless v. Brunner*<sup>21</sup> case currently on appeal before the Sixth Circuit U.S. Court of Appeals.

Dēmos and Project Vote recommend that the Department of Justice follow up on their recent letters with full investigations and, where necessary, initiate enforcement actions in states that are failing to comply with the NVRA's requirements for voter registration in public assistance offices.

### **Recommendations for Advocacy Groups**

National and state-based advocacy groups, especially those working to empower women, low-income communities and communities of color, should have a particular interest in ensuring that the NVRA is fully implemented. There are various measures advocacy organizations can take to improve NVRA compliance, including conducting compliance investigations at local public assistance agencies and informing officials of violations, informing community members of their right to be offered registration at assistance agencies and urging state legislative leaders to hold oversight hearings on their agencies' compliance with the law.

## Conclusion

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As this report documents, states across the country have failed to comply with the public assistance voter registration requirements of the National Voter Registration Act. The number of voter registration applications from these agencies has declined by 79 percent since implementation of the law in 1995. Analysis of available data suggests that these declines cannot be explained by reductions in public assistance caseloads or the greater availability of voter registration in general. Site visits to agency offices in many states confirm noncompliance with the law.

As a result, a large gap in registration rates remains between our wealthiest and our poorest citizens. A healthy and vibrant democracy can be achieved only when all eligible citizens, regardless of income, are given an opportunity to participate. Full implementation of the NVRA is a proven and effective way to ensure low-income citizens are provided with the opportunity to register to vote. Thirteen years after it was first to be implemented, the time has come to realize the full promise of the National Voter Registration Act.

<sup>20</sup> For more information and analysis of the Department's letters, see Dēmos and Project Vote's October 25, 2007, letter to the Chair and Ranking Member of the House Subcommittee on the Constitution, Civil Rights, and Civil Liberties, available at [http://www.demos.org/pubs/HouseOversightStatement\\_Oct252007.pdf](http://www.demos.org/pubs/HouseOversightStatement_Oct252007.pdf) and Testimony of J. Gerald Hebert, Executive Director and Director of Litigation, Campaign Legal Center, Before the House Administration Committee's Subcommittee on Elections, November 16, 2007.

<sup>21</sup> Nos. 07-3829, 07-4165 (6<sup>th</sup> Cir).



**Table 1a: Voter Registration Applications from Public Assistance Agencies**

State	1995-1996	2001-2002	2003-2004	2005-2006
Alabama	80,096	13,621**	0**	0**
Alaska	3,673	102	151	119
Arizona	17,845**	9,351	11,347	5,323
Arkansas	28,324	8,623**	3,276	4,750
California	129,273*	45,976**	56,034**	20,355**
Colorado	12,255**	6,804 <sup>a</sup>	21,123	10,222
Connecticut	21,061	11,603*	3,821	0**
Delaware	7,889	1,601	1,602**	2,338
District of Columbia	14,268	4,454	3,024	1,196
Florida	158,836	59,460	83,679	13,436
Georgia	103,942	35,802	51,892**	35,747
Hawaii	1,040	277	0**	343
Illinois	33,837	13,891*	10,398**	8,948**
Indiana	83,853*	13,281*	15,071	6,023
Iowa	26,345**	9,655	4,796	11,333
Kansas	8,419**	4,661	5,159	8,093**
Kentucky	63,477	27,269	27,312	25,328
Louisiana	74,636	10,522**	7,391	12,278
Maine	16,849**	7,839*	6,646**	0**
Maryland	982	1,151	1,867	8,788
Massachusetts	10,895**	13,521	7,092	0**
Michigan	79,538**	30,127**	58,401	60,364
Mississippi	33,203**	21,242**	245**	3,309**
Missouri	143,135	34,923	17,637*	15,568
Montana	473**	3,207**	22,959*	3,510
Nebraska	9,564	2,527	10,979	1,548**
Nevada	13,200**	39,444*	6,389	3,307**
New Jersey	54,579	11,611	24,501	5,423**
New Mexico	16,668	3,719	0**	1,214**
New York	358,105	164,924	157,116	0**
North Carolina	74,882	23,781	19,798*	11,607
Ohio	100,129	24,391	38,821	42,599
Oklahoma	58,811	9,633	15,535	12,724*
Oregon	38,446	53,538*	25,926	19,333*
Pennsylvania	59,462*	16,207	30,752	7,266
Rhode Island	3,822**	2,240*	0**	938
South Carolina	20,615	16,253	10,474	12,328 <sup>c</sup>
South Dakota	13,906*	9,020**	7,039	4,360**
Tennessee	147,830	52,373	173,927	120,962
Texas	353,550*	97,644*	66,866*	17,034*
Utah	24,913	3,750**	3,299	611**
Vermont	<sup>b</sup>	143**	0**	45**
Virginia	54,051**	15,817	8,807	7,030
Washington	22,859	13,067	14,771	7,119**
West Virginia	23,212	0**	14,556	7,261**
<b>Total (all states)</b>	<b>2,602,748</b>	<b>949,045</b>	<b>1,050,479</b>	<b>540,080</b>

Source: U.S. Federal Election Commission and U.S. Election Assistance Commission

\* Approximately 90 to 99 percent of local election jurisdictions provided data. These states are treated as complete in the report's analyses.

\*\* Either no data or incomplete data provided (less than 90 percent of local jurisdictions reported).

<sup>a</sup> Colorado election officials report 6,804 registrations for this period whereas FEC reported 56,801.

<sup>b</sup> Vermont was not subject to NVRA in 1995-1996

<sup>c</sup> South Carolina reported 0 registrations to the EAC. However, recent data from the South Carolina State Election Commission indicate the state's public assistance agencies registered 12,328 voters during this period. States not required to implement the NVRA are excluded from this table.

**Table 1b: Percent Change in Voter Registration Applications from Public Assistance Agencies**

State	1995-1996 compared to 2005-2006	1995-1996 compared to 2003-2004	2001-2002 compared to 2005-2006	2003-2004 compared to 2005-2006
Alabama				
Alaska	-97%†	-96%†	17%†	-21%†
Arizona	-70%	-36%	-43%†	-53%†
Arkansas	-83%†	-88%†	-45%	45%†
California	-84%	-57%	-56%	-64%
Colorado	-17%	72%	50%†	-52%†
Connecticut		-82%†		
Delaware	-70%†	-80%	46%†	46%
District of Columbia	-92%†	-79%†	-73%†	-60%†
Florida	-92%†	-47%†	-77%†	-84%†
Georgia	-66%†	-50%	-0%†	-31%
Hawaii	-67%†	-100%	24%†	
Illinois	-74%	-69%	-36%	-14%
Indiana	-93%†	-82%†	-55%†	-60%†
Iowa	-57%	-82%	17%†	136%†
Kansas	-4%	-39%	74%	57%
Kentucky	-60%†	-57%†	-7%†	-7%†
Louisiana	-84%†	-90%†	17%	66%†
Maine		-61%		
Maryland	795%†	90%†	664%†	371%†
Massachusetts		-35%		
Michigan	-24%	-27%	100%	3%†
Mississippi	-90%	-99%	-84%	1251%
Missouri	-89%†	-88%†	-55%†	-12%†
Montana	642%	4754%	9%	-85%†
Nebraska	-84%	15%†	-39%	-86%
Nevada	-75%	-52%	-92%	-48%
New Jersey	-90%	-55%†	-53%	-78%
New Mexico	-93%		-67%	
New York		-56%†		
North Carolina	-85%†	-74%†	-51%†	-41%†
Ohio	-58%†	-61%†	75%†	10%†
Oklahoma	-78%†	-74%†	32%†	-18%†
Oregon	-50%†	-33%†	-64%†	-25%†
Pennsylvania	-88%†	-48%†	-55%†	-76%†
Rhode Island	-76%		-58%†	
South Carolina	-40%†	-49%†	-24%†	18%†
South Dakota	-69%	-49%†	-52%	-38%
Tennessee	-18%†	18%†	131%†	-31%†
Texas	-95%†	-81%†	-83%†	-75%†
Utah	-98%	-87%†	-84%	-82%
Vermont			-69%	
Virginia	-87%	-84%	-56%†	-20%†
Washington	-69%	-35%†	-46%	-52%
West Virginia	-69%	-37%†		-50%
<b>Total (all states)</b>	<b>-79%</b>	<b>-60%</b>	<b>-43%</b>	<b>-49%</b>

† The state provided complete data or nearly complete data for both election cycles used in the comparison. States not required to implement the NVRA are excluded from this table.

**Table 2: Residential Mobility, Voter Registration and Food Stamp Participation of Low Income\* Adult Citizens, 2006**

Numbers in 1000s	Low Income Adult Citizens, 2006	Low Income Adult Citizens Unregistered, 2006	Percent of All Low Income Adult Citizens Unregistered in 2006	Low Income Adult Citizens At Current Address for Two Years or Less, 2006	Adult Citizen Recipients of Food Stamps, FY2006 (Monthly Average)
Alabama	765	234	31%	255	261
Alaska	70	26	38%	33	28
Arizona	597	282	47%	259	206
Arkansas	545	228	42%	202	193
California	2,896	1,274	44%	1,101	566
Colorado	506	229	45%	281	110
Connecticut	282	118	42%	100	115
Delaware	57	21	36%	18	31
District of Columbia	73	23	32%	31	48
Florida	1,884	752	40%	576	553
Georgia	959	381	40%	440	427
Hawaii	100	56	56%	39	47
Illinois	1,185	431	36%	452	591
Indiana	789	385	49%	310	288
Iowa	444	147	33%	207	114
Kansas	421	200	48%	190	90
Kentucky	714	254	36%	261	330
Louisiana	660	221	34%	193	319
Maine	217	51	24%	68	94
Maryland	455	178	39%	151	151
Massachusetts	566	189	33%	194	228
Michigan	1,215	374	31%	402	598
Mississippi	666	202	30%	178	201
Missouri	765	257	34%	287	381
Montana	206	87	42%	94	43
Nebraska	248	107	43%	119	57
Nevada	199	106	53%	94	55
New Jersey	501	207	41%	149	173
New Mexico	335	144	43%	118	103
New York	1,759	711	40%	468	894
North Carolina	1,287	586	46%	470	418
Ohio	1,401	537	38%	530	535
Oklahoma	568	226	40%	244	213
Oregon	524	196	37%	229	232
Pennsylvania	1,544	678	44%	522	578
Rhode Island	96	27	28%	27	32
South Carolina	780	340	44%	262	277
South Dakota	142	45	32%	70	28
Tennessee	974	458	47%	333	451
Texas	3,114	1,273	41%	1,472	975
Utah	238	149	63%	106	58
Vermont	84	31	36%	28	28
Virginia	611	259	42%	170	254
Washington	622	234	38%	281	274
West Virginia	355	152	43%	102	147
<b>Total</b>	<b>32,417</b>	<b>13,064</b>	<b>40%</b>	<b>12,113</b>	<b>11,795</b>

Sources: Current Population Survey, November 2006 Supplement, Census Bureau; Characteristics of Food Stamp Households: FY 2006, USDA.

\* "Low income" for this table is defined as individuals from households with total income below \$25,000.

**Table 3: States Reporting Incomplete or No Data**

	<b>1995-1996</b>	<b>2001-2002</b>	<b>2003-2004</b>	<b>2005-2006</b>
<b>States Required to Implement the NVRA but Provided Incomplete Data*</b>	Arizona, Colorado, Iowa, Kansas, Maine, Massachusetts, Michigan, Mississippi, Montana, Nevada, Rhode Island, Virginia	Alabama, Arkansas, California, Louisiana, Michigan, Mississippi, Montana, South Dakota, Utah, Vermont	California, Delaware, Georgia, Illinois, Maine, Mississippi	California, Illinois, Kansas, Mississippi, Nebraska, Nevada, New Jersey, New Mexico, South Dakota, Utah, Vermont, Washington, West Virginia
<b>States Required to Implement the NVRA, but Provided No Data</b>		West Virginia	Alabama, Hawaii, New Mexico, Rhode Island, Vermont	Alabama, Connecticut, Maine, Massachusetts, New York, South Carolina

\* For the purposes of this report we treat states that provided data from less than 90 percent of their local election jurisdictions as having provided incomplete data.

**Table 4: Voter Registration Applications from Public Assistance Agencies and Percent Change, States with Complete Data**

<b>States included</b>	<b>Initial Implementation Period 1995-1996</b>	<b>Most Recent Reporting Period 2005-2006</b>	<b>1995-1996 compared to 2005-2006</b>
AK, AR, DE, DC, FL, GA, HI, IN, KY LA, MD, MO, NC, OH, OK, OR, PA, SC, TN, TX	1,537,780	369,767	-76%
<b>States included</b>	<b>Presidential Cycle 1995-1996</b>	<b>Presidential Cycle 2003-2004</b>	<b>1995-1996 compared to 2003-2004</b>
AK, AR, CT, DC, FL, IN, KY, LA, MD, MO, NE, NJ, NY, NC, OH, OK, OR, PA, SC, SD, TN, TX, UT, WA, WV	1,953,108	777,589	-60%
<b>States included</b>	<b>Mid-term Cycle 2001-2002</b>	<b>Mid-term Cycle 2005-2006</b>	<b>2001-2002 compared to 2005-2006</b>
AK, AR, CO, DE, DC, FL, GA, HI, IN, IA, KY, MD, MO, NC, OH, OK, OR, PA, RI, SC, TN, TX, VA	516,007	387,585	-25%
<b>States included</b>	<b>Presidential Cycle 2003-2004</b>	<b>Mid-term Cycle 2005-2006</b>	<b>2003-2004 compared to 2005-2006</b>
AK, AZ, AR, CO, DC, FL, IN, IA, KY, LA, MD, MI, MO, MT, NC, OH, OK, OR, PA, SC, TN, TX, VA	692,217	429,121	-38%

## About the Organizations

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Project Vote is a national nonpartisan, nonprofit organization that promotes voting in low-income and minority communities. Through community-based voter registration drives, voter education programs and voting rights advocacy, Project Vote works towards a vision of full participation by all Americans in the democratic process. Project Vote has offices in Washington, DC, and Little Rock, AR.

Dēmos is a national, non-partisan public policy, research and advocacy organization committed to helping America achieve its highest democratic ideals. Through publishing books, reports and articles; hosting debates and forums on key issues; and serving as a resource to policymakers and advocacy campaigns, Dēmos works across the country in pursuit of three overarching goals: a more equitable economy; a vibrant and inclusive democracy; and a public sector capable of addressing shared challenges and working for the common good.

## About the Authors

Douglas Hess first worked for Project Vote in 1994, directing for three years an effort to secure fair and effective implementation of the NVRA. In 2004, and starting again in 2007, he has worked as a consultant on the NVRA at Project Vote. He is a Ph.D. candidate in Public Policy at George Washington University, and earned his M.A. in Policy Studies at Johns Hopkins University. In addition to voting rights, he has worked in other areas of civil and human rights, on children's food and nutrition policy, and with grassroots community organizations in the U.S. and Haiti.

Scott Novakowski joined Dēmos in September 2005. He holds a Master of Social Work degree with a concentration in Policy Practice from the University of Connecticut School of Social Work and a B.A. in Sociology, also from the University of Connecticut. In 2005, Scott was selected as Connecticut's Student Social Worker of the Year by the National Association of Social Workers. At Dēmos, Scott works primarily on securing state compliance with the public assistance provisions of the National Voter Registration Act and other reforms to ensure historically marginalized populations have access to the democratic process. Scott has spoken at various conferences and testified before the Election Assistance Commission on democracy issues and has had articles published in the *Professional Development: The International Journal of Continuing Social Work Education* and *Tompaine.com* among others.