



February 25, 2008

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

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

Dear Chairman Nadler and Ranking Member Franks:

As principals of national non-partisan organizations dedicated to protecting and enhancing the democratic rights of U.S. citizens, we commend the Subcommittee for its Oversight Hearing On Voter Suppression currently scheduled for February 26, 2008. We have reviewed a written statement prepared for presentation to the Subcommittee by Asheesh Agarwal, Deputy Assistant Attorney General for the Civil Rights Division of the U. S. Department of Justice (DOJ).<sup>1</sup> We take this opportunity to submit the following comments regarding one topic that Mr. Agarwal addresses in his statement: the Voting Section's record on enforcing the mandates of the National Voter Registration Act of 1993 ("NVRA").<sup>2</sup>

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<sup>1</sup> Statement of Asheesh Agarwal, Deputy Assistant Attorney General, Civil Rights Division, Department of Justice, before the Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, U.S. House of Representatives, February 8, 2008 (hereafter "Agarwal Statement").

<sup>2</sup> 42 U.S.C. § 1973gg.

Specifically, we are concerned that Mr. Agarwal's statement fails to acknowledge or explain DOJ's record of largely ignoring evidence of state non-compliance with the NVRA's requirements for registering low-income voters, while focusing selectively instead on urging states to purge more voters from their rolls.

Under Section 7 of the NVRA, state public assistance agencies have been required to offer voter registration services to all individuals when they apply for benefits, recertify benefits, or change addresses since 1995. Recognizing that low-income citizens are less likely to own vehicles, Congress enacted these Section 7 mandates so that the NVRA's "motor voter" provisions did not further exacerbate disparities in registration rates between high- and low-income citizens. Whereas 82 percent of households earning \$75,000 or more were registered to vote in 1994, only 54 percent of those earning less than \$15,000 were registered in that same year.<sup>3</sup>

Dēmos and Project Vote have been working since 2004 to investigate, document and remedy states' failures to comply with the public assistance registration requirements of the NVRA. Our latest report, *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007*, published in February 2008 (attached),<sup>4</sup> shows that 12 years after the NVRA's requirements went into effect, voter registrations from public agencies that provide services to low-income Americans have declined dramatically.

Specifically, *Unequal Access* finds that voter registrations generated from public assistance agencies nationwide have declined 79% between 1995-96, when the NVRA was first implemented, and 2005-06, the most recent reporting period. In raw numbers, registrations declined from 2.6 million in 1995-96 to just 540,000 by 2005-06. This decline is even worse than the 59% decline that occurred between 1995-96 and 2003-04, as described in our 2005 report on Section 7 noncompliance, *Ten Years Later: A Promise Unfulfilled*.<sup>5</sup>

Our field observations in multiple states over the past four years also have revealed blatant violations of the law. We have found agencies failing to offer mandated voter registration services, not offering registration during all required interactions, especially when clients change address, failing to provide the notices and assistance required by the NVRA, and failing to train agency staff concerning their voter registration responsibilities.

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<sup>3</sup> Source: U.S. Census Bureau, November 1994 Voting and Registration Work Tables. Table 12: Voting and Registration of Family Members, by Age and Family Income: November 1994, available at <http://www.census.gov/population/www/socdemo/voting/vote-wtabcon.html>.

<sup>4</sup> The report is also available at <http://demos.org/pub1531.cfm>.

<sup>5</sup> See Dēmos, Project Vote, and ACORN, *Ten Years Later, A Promise Unfulfilled*, available at <http://www.demos.org/pub634.cfm>.

On several occasions, Dēmos, Project Vote and ACORN brought states' apparent disregard of Congress' Section 7 mandate to the attention of the Department of Justice. On August 16, 2004, we forwarded the Civil Rights Division a memo that highlighted such noncompliance and requested that the DOJ send a letter to states to remind them of their Section 7 obligations.<sup>6</sup> Dēmos, Project Vote, and People for the American Way Foundation staff met with Hans von Spakovsky, Counsel to the Assistant Attorney General; Joseph Rich, Chief, Voting Section; and Chris Herren, Trial Attorney, Voting Section on September 10, 2004, to discuss the noncompliance outlined in the August memo. We encouraged the DOJ to investigate and take action on the implementation of Section 7's public assistance provisions across the country. Per request by the DOJ, Dēmos and Project Vote subsequently provided the Department with an extensive report on state noncompliance with Section 7, including specific violations in nine states.<sup>7</sup> Thirty members of Congress also wrote to Attorney General Alberto Gonzales in September 2005, asking for an investigation into Section 7 compliance.<sup>8</sup>

To the best of our knowledge, DOJ took no action on these recommendations for the better part of three years following our initial contacts in August and September 2004. Indeed, we know of only one enforcement action initiated by DOJ regarding the public assistance provisions of the NVRA in the past six years (an action against Tennessee that was settled in 2002). Meanwhile, voter registration at public assistance agencies has continued to decline. As noted earlier, the latest data reveal a 79% nationwide decrease in voter registrations from such agencies between 1995-96 and 2005-06. Nine states reported decreases of 90 percent or more during this time period. States registered only half as many voters in public assistance agencies in 2005-06 as they did as recently as 2003-04.<sup>9</sup>

Mr. Agarwal's statement to the Subcommittee asserts that since 2006 the Voting Section "filed lawsuits containing NVRA claims in Indiana, Maine, New Jersey, Philadelphia, and Cibola County, New Mexico."<sup>10</sup> What the statement fails to explain, however, is that four of these five lawsuits were filed not to enhance voter registration opportunities, but instead to force states to conduct massive *purges* of their registration lists under Section 8 of the NVRA.<sup>11</sup>

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<sup>6</sup> Memorandum from Project Vote, Dēmos, and ACORN to R. Alexander Acosta, Assistant Attorney General, Civil Rights Division, and Joseph D. Rich, Chief, Voting Section (August 16, 2004).

<sup>7</sup> Letter from Miles Rapoport, Dēmos and Maxine Nelson, Project Vote to Hans A. von Spakovsky, Counsel to the Assistant Attorney General, Joseph D. Rich, Chief, Voting Section, and Chris Herren, Trial Attorney, Voting Section (October 1, 2004).

<sup>8</sup> Letter from Representative John Conyers, Jr., *et al.*, to Attorney General Alberto R. Gonzales (September 20, 2005).

<sup>9</sup> See *Unequal Access*, Tables 1a and 1b.

<sup>10</sup> Agarwal Statement at 6.

<sup>11</sup> The NVRA claims in the lawsuits against Indiana, Maine, New Jersey and Philadelphia were aimed primarily at requiring purging of voter rolls. Case documents are available at the Voting Section's website, <http://www.usdoj.gov/crt/voting/litigation/caselist.htm>. The DOJ's selective

Mr. Agarwal's statement to the Subcommittee also cites, as evidence of DOJ's attention to NVRA Section 7 compliance, letters of inquiry that former Voting Section Chief John Tanner sent to 18 states on August 31, 2007. Remarkably, after its years of inattention to Section 7 compliance, the Voting Section issued those letters just six weeks after the Subcommittee had first scheduled an oversight hearing at which Mr. Tanner was expected to testify. As you know, that hearing was postponed to October 2007 after DOJ advised the Subcommittee that Mr. Tanner was unavailable for the originally scheduled July 17, 2007 hearing.

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

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

In addition, the DOJ's focus on these states alone is based on a flawed methodology that overlooks serious compliance issues in many other states. The calculation of the ten states with the "lowest percentage" of public assistance applications appears to be based on figures in Table 2b of the June 2007 EAC report that show the percentage of public assistance applications among "categorized" applications.<sup>12</sup> While it is worthwhile to make inquiries of these states, it would be a mistake to assume that this one figure captures all of the states in which compliance is a problem. Nationally, only 57 percent of voter registration applications received by states are reported as "categorized," and in many states the percentage is even lower.<sup>13</sup> The DOJ's measure therefore is an

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

<sup>12</sup> See Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006" (hereafter, "EAC 2005-06 Report"), available at [http://www.eac.gov/docs/EAC\\_NVRArpt2006.pdf](http://www.eac.gov/docs/EAC_NVRArpt2006.pdf).

<sup>13</sup> By "categorized" applications the EAC means only those applications reported by the states as being received from motor vehicle offices, public assistance offices, disability services offices,

incomplete indicator of non-compliance with the public assistance provisions of the law.

New Mexico is one example of this. New Mexico registered only 1,214 persons in public assistance agencies during the entire 2005-2006 period, according to the EAC's data, yet that reflects 20% of the "categorized" applications in New Mexico because only 6,072 total applications were "categorized" in that state.<sup>14</sup> Thus, New Mexico received no compliance inquiry from the DOJ, even though other evidence, including the low overall number of registrations, the sharp drop-off in registration numbers compared to earlier periods, and the failure of over half of the state's jurisdictions to provide public assistance registration data clearly indicates a need for improved compliance in New Mexico.<sup>15</sup> We believe a more in-depth analysis of the data is needed to assure that states are in compliance with the public assistance registration provisions of the NVRA.<sup>16</sup>

The DOJ's long delay in addressing states' responsibility to provide voter registration at public assistance agencies has serious consequences. Through our work to improve compliance in various states, we have seen that thousands of low-income voters are eager to take advantage of the opportunity to register at public assistance agencies when it is offered. In North Carolina, for example, voter registration at public assistance offices has increased dramatically since state officials began working cooperatively with advocates to address the serious problems with non-compliance that previously existed in that state. While North Carolina registered only 11,600 persons at public assistance agencies in the entire two-year period of 2005-06, that state registered at least 31,500 persons in 2007 alone, the first year of North Carolina's re-implementation program. Such results only underscore the fact that lack of enforcement nationwide over the past seven years has deprived hundreds of thousands of low-income Americans of the opportunity to register that Congress intended to provide through the NVRA.

In enacting the National Voter Registration Act, Congress clearly anticipated that state compliance with its provisions would require oversight and enforcement by the Department of Justice.<sup>17</sup> We urge the Subcommittee to take this opportunity to press for answers about the DOJ's long delay in addressing Section 7 enforcement.

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armed forces recruitment offices, and other designated agencies; this does not generally include mail-in applications or in-person applications at local registrars' offices.

<sup>14</sup> See EAC 2005-06 Report.

<sup>15</sup> Dēmos and Project Vote have outlined the evidence indicating that New Mexico is not in compliance with the NVRA in a notice letter that we sent to the state on June 12, 2007. The letter is available at [http://demos.org/pubs/scanned\\_NM\\_notice\\_letter\\_6.12.pdf](http://demos.org/pubs/scanned_NM_notice_letter_6.12.pdf).

<sup>16</sup> It should be noted that five of the DOJ's letters do not address enforcement of the public assistance registration requirements of the NVRA. Letters sent to Iowa, Michigan, Mississippi, Montana and Nebraska instead seek information to identify which "additional" agencies, if any, have been designated to provide voter registration, beyond the public assistance, disability and other offices whose designation is mandatory under Section 7. See 42 U.S.C. § 1973gg-5(a)(3).

<sup>17</sup> 42 U.S.C. § 1973gg-9.

Please do not hesitate to contact us with any questions.

Sincerely,

Handwritten signatures of Miles Rapoport and Maxine Nelson in black ink.

Miles Rapoport  
President, Dēmos:  
A Network for Ideas  
& Action

Maxine Nelson  
President,  
Project Vote