



October 28, 2015

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: The Administration's Responsibility to Provide Voter Registration through Federally Facilitated Exchanges – Action Needed Now

Dear Mr. President:

We write with great concern about a matter that we know is important to your Administration – ensuring that eligible Americans can exercise their right to vote. Unfortunately, in implementing the Affordable Care Act (ACA) – which is otherwise a signature achievement – your Administration has thus far failed to ensure that eligible applicants receive the voter registration services that are required by the National Voter Registration Act of 1993 (NVRA).¹ This is a violation of federal law and has resulted in the loss of as many as 1.7 million voter registrations during the first two ACA enrollment periods.

The NVRA was enacted more than 20 years ago with strong bipartisan support. It was designed to increase voter registration by requiring that eligible persons receive voter registration opportunities when applying for services through agencies that administer a variety of programs, including Medicaid and other forms of public assistance. Although these services have long been available because of the NVRA, your Administration is now moving backward on the important goals of the NVRA because it is not providing mandatory voter registration services to applicants who use the Federally Facilitated Health Benefit Exchange processes (FFEs) to apply for health benefits.

The Administration's failure to provide voter registration services to persons who apply for health care through the FFEs is not merely a lost opportunity to increase the numbers of eligible persons who register and vote. It is actually decreasing the numbers of voter registration applications submitted in states that rely on FFEs for ACA enrollment.

For example, before the ACA was implemented, the number of voter registration applications submitted from Medicaid transactions in Mississippi was averaging around 900 per month. After the Medicaid enrollment process was taken over by the FFE in Mississippi, however, the average number of voter registrations per month dropped to only around 150. In Ohio, despite a significant increase in the number of people applying for Medicaid benefits, there has been no increase in the number of voter registrations from public assistance clients. In fact, the number has gone down since the ACA was enacted, dropping from almost 12,000 per month to

¹ National Voter Registration Act of 1993, 52 U.S.C. §§ 20501–20511 (1993).

approximately 10,000 a month. Overall, more than 3 million people have enrolled in Medicaid using healthcare.gov, and none of these individuals has been offered the voter registration services that federal law requires.

The undersigned organizations and our partner organizations have raised the ongoing failure to implement voter registration as required by the NVRA with your Administration on many occasions during the past two and half years. Thus far, the Administration has failed to take any steps to address this problem.

This is an important voting rights issue that can no longer be ignored.

The NVRA requires specific voter registration services to be provided when clients apply for and renew public assistance benefits.² While the state-operated exchanges have embraced their NVRA obligations, the federal government has thus far refused to ensure that the FFEs are complying with the NVRA. As a legal matter, the FFEs have the same obligations as the state-operated exchanges. When a state chooses not to establish its own exchange, the ACA requires that HHS establish and operate an exchange within the state on the state's behalf. Through this process, the FFEs are "stepping into the shoes" of a state, and, therefore, are responsible for fulfilling all of the state's obligations when operating an exchange.

In *King v. Burwell*, the Supreme Court affirmed this understanding of the ACA. Writing for the majority, Chief Justice Roberts said, "State Exchanges and Federal Exchanges are equivalent -- they must meet the *same requirements*, perform the same functions, and serve the same purposes."³ State-operated exchanges are required to offer NVRA voter registration and, therefore, federally-facilitated exchanges must meet the same requirements.

Moreover, people are not being treated equally: a person applying for benefits through a state-operated exchange will receive required voter registration services but an individual applying through an FFE will not. Worse, the NVRA will be meaningless in states with FFEs with respect to a large portion of health benefit clients unless voter registration services are provided through the FFE processes.

The NVRA requirements are uncomplicated and easy to implement. The NVRA requires FFEs to:

- *distribute* a voter registration application form, unless an individual declines in writing, in a manner that all FFE applicants can access;
- *ask* the applicant, in writing, whether *he or she would like to register* to vote or update his or her voter registration address;
- *inform* the applicant, in writing, that *no one may interfere* with his or her right to register to vote, to privacy while registering, or to choose a political party; and
- *help* applicants complete the voter registration application form, to the same degree that assistance is provided in completing health benefits application forms.

² 52 U.S.C. §§ 20506(a)(4)(A), (d) (1993).

³ *King v. Burwell*, 135 S. Ct. 2480, 2489-90 (2015) (emphasis added).

Currently, the application processes at FFEs are not in accord with these legal requirements.

The undersigned groups and other voting rights advocates have been extremely patient in awaiting action on this important issue, understanding that the initial rollout of the ACA was challenging and that the *King v. Burwell* case created additional uncertainty while it was pending. But *King v. Burwell* has now been decided and, as explained, the decision strongly supports the applicability of the NVRA. Furthermore, FFEs have now gone through two successful open enrollment periods. There is no longer any good reason for not improving the voter registration services provided through the FFEs.

The time to act is now. We hope to avoid litigation but we note that the NVRA contains a private right of action.

We respectfully request your Administration commit to taking all necessary steps to bring the FFEs into compliance with the NVRA at the earliest possible date. Voting rights are under attack in many states, and this is a simple step that your Administration can take to help ensure that eligible persons are given their legally mandated opportunity to register to vote.

Yours very truly,



Heather McGhee
President
Demos



Michael Slater
President
Project Vote



Elisabeth MacNamara
President
League of Women Voters of the United States

cc: Secretary Sylvia Burwell