



January 22, 2014

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

Re: The ACA and the NVRA

Dear Mr. President:

Thank you for your leadership in enacting the Affordable Care Act, and for your commitment to helping all Americans access quality, affordable health care, a goal that the undersigned strongly support. Nevertheless, we are concerned that the federally facilitated Health Benefits Exchanges' (FHEs) application process is violating the public agency provisions of the National Voter Registration Act of 1993 (NVRA), and request that you direct the Department of Health and Human Services to make the changes necessary to ensure compliance.

The National Voter Registration Act of 1993 was enacted 20 years ago with strong bipartisan support, and it has enabled over 140 million Americans to register to vote. The Act simplified voter registration and made it more accessible by requiring convenient registration services to be provided where Americans interact with their government. In the two decades since the NVRA's enactment, states have offered voter registration services in tandem with driver's license transactions, Medicaid, and other government programs. When these public agencies have fallen out of NVRA compliance, however, our organizations have helped restore compliance through advocacy, training and litigation. Our decade of experience helping enforce the NVRA has proven that fully compliant agency-based registration is a cost-effective, efficient way to reach unregistered eligible Americans.

Still, there are over 50 million American citizens currently unregistered to vote — almost one in four eligible Americans. With NVRA compliance, the ACA application process can be transformative in addressing this problem in our democracy. As experts on NVRA implementation, we are eager to help your Administration with this effort.

We commend your Administration for correctly acknowledging the applicability of the NVRA to Health Benefits Exchanges on several occasions. It is within both the spirit and letter of the law that the FHEs fall under the NVRA. Moreover, it is critical that the FHEs comply with the NVRA to provide a model for state-operated Exchange application processes. Pursuant to the NVRA, all offices in a state that provide public assistance are voter registration agencies and must provide specific voter registration services. This applies to all Exchanges created by the

Affordable Care Act because they provide public assistance within the states, including state Medicaid assistance. Project Vote and Demos have prepared a detailed legal analysis explaining why the NVRA applies to all Exchanges, including the FFEs. A copy of that legal analysis has been provided to your staff in the past but we are happy to provide it again upon request.

Fortunately, the NVRA requirements are uncomplicated and easy to implement. Among other things, the NVRA requires FFEs to:

- *distribute* a voter registration application form, unless an individual declines in writing, via a method that can actually be accessed by all potential FFE clients;
- *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 or not, right to privacy while registering, and right to choose a political party; and
- *help* applicants complete the voter registration application form, to the same degree as is provided in completing the health benefits application form.

Currently, the FFE application process is not in accord with these legal requirements. The online portal and the paper application contain a question about voter registration that does not use the statutorily-required language and omits important disclosures. Furthermore, providing only a voter registration link does not comply with the law and, from a practical perspective, is grossly inadequate. A link does not “distribute” a voter registration application because it requires applicants to have access to a printer, which many applicants do not have. Even if an applicant has a printer, the current link requires the applicant to hunt for the voter registration application form, download and print 25 pages of mostly irrelevant information, fill out the application by hand, and mail it.

As far as we are aware, the FFE call centers do not offer any type of voter registration services. For the citizens who apply for ACA benefits over the phone the link in the benefits application portal is not available.

Finally, the NVRA requires assisters to be trained to offer the same level of assistance in completing voter registration applications that they offer in completing the Exchanges’ own application. Our experience in over a dozen states proves that this training can be easy and effective. To date, HHS has not included voter registration in any of its training programs for individuals providing assistance with the completion of Exchange applications.

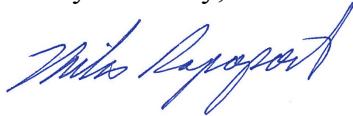
The result has been that the several million Americans who have sought coverage through the FFEs did not receive an effective offer to register to vote as required by law.

We are eager to work with your staff to help make voter registration with the ACA application a seamless process, and have offered an initial list of steps to take in the online and Navigator contexts. We respectfully request that you direct HHS to bring the FFEs into compliance with all the requirements of the NVRA. This is important both for the millions of Americans who

will seek health care through the FFEs and for the state-operated exchanges that look to the FFEs as a model.

We look forward to continuing to work with your administration to advance our shared interest in expanding access to affordable health insurance, and ensuring that all eligible Americans are provided with the opportunity to secure their fundamental right to vote.

Very Sincerely,



Miles Rapoport
President
Dēmos



Michael Slater
President
Project Vote

cc: Secretary Kathleen Sebelius