

## Testimony of Lisa J. Danetz, Senior Counsel, Dēmos To the United States Commission on Civil Rights

### Increasing Compliance with Section 7 of the NVRA

April 19, 2013

Thank you, Chairman Castro, Vice Chair Thernstrom, and Commissioners of the United States Commission on Civil Rights, for inviting me to participate in today's briefing on "Increasing Compliance with Section 7 of the NVRA."

#### **Introduction: My Work on this Issue**

Currently, I serve as Senior Counsel at Dēmos: A Network for Ideas and Action. Dēmos is a non-partisan public policy organization working for an America where we all have an equal say in our democracy and an equal chance in our economy. Toward that end, one of our main areas of work is expanding the freedom to vote. Since 2004, Dēmos has conducted extensive research on compliance with Section 7 of the NVRA including statistical analysis and field investigations; published reports on Section 7 of the NVRA; worked with public assistance and election officials in states across the country to improve their compliance with Section 7 of the NVRA; and served as counsel in several cases challenging states' failures to implement the law. In our cooperative work with and our litigation against state officials, Dēmos has partnered with Project Vote, the Lawyers Committee for Civil Rights Under Law, the NAACP, the NAACP Legal Defense Fund, state-based voter registration groups, and many *pro bono* law firms around the country.

In my time at Dēmos, I have worked extensively on efforts to ensure better compliance with and implementation of Section 7's requirements, especially with regard to public assistance agencies. I have advised state election and human services officials about compliance, brought litigation to ensure compliance, and spoken at conferences and written about the issue. In particular, I have had the opportunity and privilege to work cooperatively with state officials in North Carolina, Michigan, and Alabama, and I have been co-counsel in litigation against the states of Ohio, Massachusetts, Georgia, and New Mexico.

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## I. Background

As this Commission is no doubt well aware, in 1993, Congress passed with a bipartisan majority, and the president signed into law, the National Voter Registration Act.<sup>1</sup> Through its many provisions, the NVRA was specifically designed to increase the number of eligible citizens registered to vote and to enhance voter participation in elections.

On the House side, it was the House Administration Committee that considered the bill that became the NVRA. In considering the bill, the Committee was concerned that “low voter turnout in Federal elections poses potential serious problems in our democratic society,”<sup>2</sup> The NVRA was designed to address these problems and thereby achieve a more participatory and representative democracy. The Committee recognized that “failure to become registered is the primary reason given by eligible citizens for not voting” and that “the difficulties encountered by eligible citizens in becoming registered to vote is an issue which can be directly addressed through the legislative process.”<sup>3</sup> Thus, in passing the bill, the House intended Congress to “assist in reducing barriers, particularly government-imposed barriers, to applying for registration wherever possible.”<sup>4</sup>

Sentiment was similar on the Senate side. The Senate Committee on Rules and Administration reported that there were “almost 70 million eligible citizens who did not participate in the 1992 Presidential election because they were not registered to vote.”<sup>5</sup> The Committee stated, “[T]he purpose of our election process is not to test the fortitude and determination of the voter, but to discern the will of the majority.”<sup>6</sup>

By enactment of the NVRA, Congress sought to reduce registration barriers by mandating that states provide the opportunity to register to vote in several specific different ways. The most well-known of these provisions is the requirement that voter registration applications be integrated into drivers’ license applications, the “motor voter” provision from which the law received its nickname. The law also mandated state acceptance of a federal mail-in registration form.

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<sup>1</sup> 42 U.S.C. §§ 1973gg to 1973gg-10.

<sup>2</sup> H.R. Rep. No. 9, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 4 (1993).

<sup>3</sup> *Id.* at 3.

<sup>4</sup> *Id.*

<sup>5</sup> S. Rep. No. 6, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 2 (1993).

<sup>6</sup> *Id.* at 3.

Finally, and most relevant to this briefing, the law required that public assistance agencies and offices that primarily serve people with disabilities must provide voter registration services to ensure that low-income people and people with disabilities also have the opportunity to register to vote. Specifically, such agencies must (i) distribute mail voter registration application forms; (ii) assist applicants in completing the voter registration forms; and (iii) accept completed voter registration forms and forward them to the appropriate election official.<sup>7</sup> Moreover, each agency must (i) distribute a voter registration application with each application for assistance, and with each recertification, renewal, or change of address form relating to such assistance unless the voter registration application is declined in writing; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address; (iii) inform the applicant, in writing, that the decision to register or decline to register to vote will not affect the amount of assistance provided by the agency; and (iv) provide assistance completing the voter registration forms to the same degree the agency provides assistance in completing its own forms.<sup>8</sup> Recognizing that low-income and disabled citizens may be less likely to own motor vehicles, Congress included the requirement for agency-based registration at public assistance agencies to ensure greater equality of access to voter registration.<sup>9</sup> Indeed, Census data confirm that low-income citizens are among the least likely to register to vote at a motor vehicle department.<sup>10</sup>

At the time of its passage, some states implemented the NVRA in a comprehensive fashion while other states aggressively fought implementation. California, Illinois, Michigan, Mississippi, Pennsylvania, New York, South Carolina, and Virginia, for example, all fought the law in court.<sup>11</sup> The federal courts uniformly upheld the law and ruled that it was well within Congress' power to improve citizens' access to participation in federal elections. After the first

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<sup>7</sup> See 42 U.S.C. § 1973gg-5(a)(4)(A).

<sup>8</sup> See 42 U.S.C. § 1973gg-5(a)(6).

<sup>9</sup> H.R. Conf. Report No. 66, 103<sup>rd</sup> Cong., 1<sup>st</sup> Sess. 19 (1993).

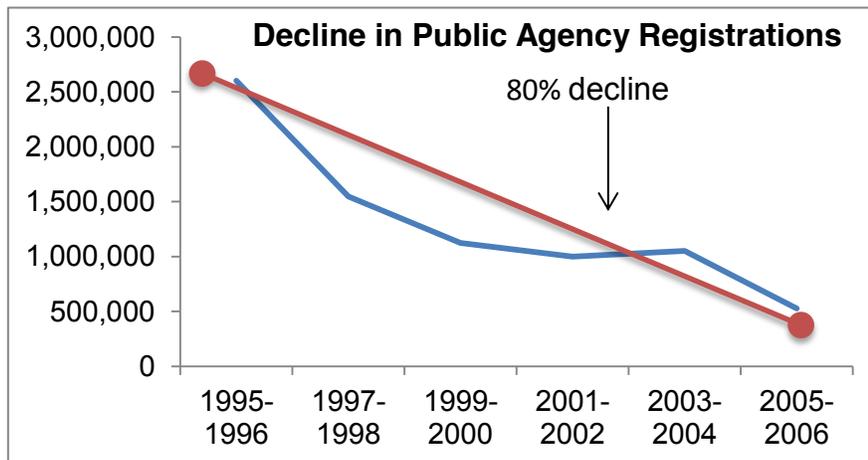
<sup>10</sup> U.S. Census Bureau, "Voting and Registration in the Election of November 2008 – Detailed Tables, Table 14," available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2008/tables.html>.

<sup>11</sup> See, e.g., *Wilson v. U.S.*, 878 F. Supp. 1324 (N.D. Cal. 1995) (California); *ACORN v. Edgar*, 56 F. 3d 791 (7<sup>th</sup> Cir. 1995) (Illinois); *ACORN v. Miller*, 912 F. Supp. 976 (W.D. Mich. 1995), *affd.*, 129 F.3d 833 (6<sup>th</sup> Cir. 1997) (Michigan); *Young v. Fordice*, 520 U.S. 273 (1997) (Mississippi); *ACORN v. Ridge*, 1995 U.S. Dist. LEXIS 3933 (E.D. Penn. 1995) (Pennsylvania); *United States v. New York*, 3 F. Supp. 2d 298 (E.D.N.Y. 1998), *affd. in part, rev'd in part sub nom.*, *Disabled in Action of Metropolitan New York v. Hammons*, 202 F.3d 110 (2d Cir. 2000) (New York); *Condon v. Reno*, 913 F. Supp. 946 (D.S.C. 1995) (South Carolina); *Natl. Coalition v. Gilmore*, 152 F.3d 283 (4<sup>th</sup> Cir. 1998) (Virginia).

few years of implementation, the NVRA was responsible for adding millions of new voters to the registration rolls.<sup>12</sup>

## II. Problems

Unfortunately, the early promise of the NVRA was not sustained with respect to voter registration at public assistance offices. Although 2.6 million individuals submitted voter registration applications to public assistance agencies during the first two years of implementation (1995-1996), ten years later that number had declined by almost 80% -- from over 2.6 million applications to only 540,000.<sup>13</sup> At the same time, the Supplemental Nutrition Assistance 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>14</sup>



In our work to increase compliance with Section 7 of the NVRA, we have seen a strong correlation between low public assistance registration numbers and specific examples of

<sup>12</sup> Federal Election Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996."

<sup>13</sup> Douglas R. Hess and Scott Novakowski, "Unequal Access: Neglecting the National Voter Registration Act, 1995-2006" (February 2008), available at <http://www.demos.org/pub1531.cfm>.

<sup>14</sup> See "Food Stamp Households Characteristic Reports" for fiscal years 1996 and 2006 at <http://www.fns.usda.gov/oane/MENU/Published/FSP/FSPPartHH.htm>; Tables B-10, B-11, and B-12.

compliance problems. Investigations that Dēmos and partners have conducted in states over the years including Ohio, Missouri, New Mexico, Indiana, Arizona, Virginia, Georgia, Maryland and Pennsylvania, among others, have uncovered the following:

- Local offices that do not ever offer the opportunity to register to vote when clients seek to apply for services, or for redeterminations, recertifications, and changes of address with respect to such services (“covered transactions”).
- Local offices that offer the opportunity to register to vote during some but not all covered transactions. In particular, voter registration services are frequently omitted in connection with changes of address.
- Local offices that do not have voter registration applications on site.
- Staff at local offices who are unaware of the office’s obligation to provide voter registration services to public assistance clients.
- Voter registration services that are offered during in-office covered transactions but not to clients who engage in covered transactions via Internet, telephone, or mail.
- Local offices that do not use the statutorily required voter preference forms (also known as declination forms) –i.e. the agency’s written offer of voter registration to clients—or use forms that do not conform in important respects to requirements of the statute.
- Agencies that conduct inadequate staff training and employ no oversight mechanisms to ensure that voter registration policy and procedures have been followed.

When made aware of problems, different states have reacted differently – just as they did fifteen years ago. And, as a result, we and our partners have addressed these problems in different ways. Since 2006, we have brought litigation against nine states and have worked cooperatively with many other states, as identified in the chart below. All of the litigation concluded to date has resulted in favorable decisions or settlements. Generally speaking, the 3 to 4 year settlement agreements include strong monitoring, reporting, training, and oversight provisions. And, as detailed later in this testimony, because of the compliance improvements achieved through this work, almost 2 million *additional* low-income citizens have applied to register to vote at public assistance offices.

**NVRA Section 7 Enforcement Activity by Public Interest Organizations  
2006 – 2013**

<b>Completed Litigation</b>	<b>Pending Litigation</b>	<b>Cooperative Work</b>
OH	LA	AL
MO	MA	CA
NM	NV	CO
IN		MD
GA		MI
PA		MS
		MT
		NC
		OR
		VA
		WA

**III. A Model for Sustainable Institutionalized Compliance with Section 7 of the NVRA**

States that have been able to achieve success in collecting substantial numbers of voter registration applications at public assistance agencies –whether as a result of settlement agreements or cooperative work-- have taken simple steps in line with general principles of effective program management. While specific procedures for NVRA implementation will undoubtedly vary to fit the structure of individual states’ agencies, the following are broad elements we have learned are essential to an effective NVRA plan:

**A. Appointment of a State-Level NVRA Coordinator for Each Agency and Local Coordinators for Each Local Office.**

Someone with authority needs to have overall responsibility and “own” NVRA implementation, to ensure that voter registration services are in fact provided by frontline workers. To that end, state-level NVRA Coordinators should be appointed for each public agency. The duties of the state NVRA Coordinator should include: serving as a liaison between the chief election official’s office, local election officials, and Local NVRA Coordinators; providing technical assistance within the agency; maintaining a list of Local Coordinators and ensuring their replacement in the event of vacancies; coordinating training of Local Coordinators; overseeing monitoring, including reviewing data on a monthly basis and designing

and overseeing corrective action plans, as applicable; and ensuring the agency has an adequate supply of voter registration applications and voter preference forms.

In addition, a local NVRA Coordinator should be appointed for each local agency office to ensure and oversee the general administration of the NVRA in any particular office. Duties of Local NVRA Coordinators should include: serving as a liaison to the State NVRA Coordinator; being responsible for record keeping and data collection; ensuring that newly hired staff are trained on voter registration procedures and providing regular refresher training to current employees; ensuring an adequate supply of voter registration applications and voter preference forms; providing for timely transmission of completed voter registration applications to election officials; and providing for the proper retention of completed voter preference forms for the required 22 months after a federal election.

#### **B. Voter Registration Policies and Procedures That Are in Compliance with the Requirements of the NVRA.**

Each state should review and modify its policies to ensure they are in compliance with the NVRA. The NVRA requires that, unless it is declined in writing, a voter registration application must be distributed with each application, recertification, renewal, and change of address—including those conducted via telephone, mail, or Internet.<sup>15</sup> A voter preference form must be provided with each covered transaction.<sup>16</sup> It is especially important that applicants phoning in an address change be provided with voter registration services since, in most instances, even a previously registered voter must re-register after moving. Agency employees must provide the same degree of assistance in completing the voter registration application as they would in completing the agency's own paperwork.<sup>17</sup> In other words, if caseworkers would review an application for benefits to ensure it is fully completed and signed by the client, they must also ensure that a voter registration application is complete and signed, if the client does not decline to register or refuse assistance. The agency also must transmit completed voter registration applications to the appropriate election official within a prescribed amount of time.<sup>18</sup>

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<sup>15</sup> 42 U.S.C. §1973gg-5(a)(6)(A); *see also Georgia State Conference of NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1329 (N.D. Ga. 2012); *Ferrand v. Schedler*, No. 11-926, 2012 WL 1570094, at \*12 (E.D. La. May 3, 2012).

<sup>16</sup> 42 U.S.C. §1973gg-5(a)(6)(B).

<sup>17</sup> 42 U.S.C. §1973gg-5(a)(6)(C).

<sup>18</sup> 42 U.S.C. §1973gg-5(d).

### **C. Provision of Regular Training and Easy Availability of Voter Registration Policies and Procedures to Front Line Agency Employees.**

In order to implement any voter registration policy, employees need to know what to do. Agencies (in conjunction with elections officials) should create standardized training materials, which should be reviewed on a regular basis to ensure they are accurate and up-to-date. All newly hired employees should be trained on voter registration procedures and current employees should receive refresher training at least annually, although some states' implementing legislation requires training to be conducted more frequently. Records should be kept of the dates of trainings and who is in attendance. Some states have been able to use technological capabilities like webinars or video conferencing, while others have employed a "train the trainer" format, to make regular training more efficient and effective.

Beyond training, it is important to provide policies and procedures in a format easily accessible for reference by front line agency employees. Increasingly, states are integrating the provision of voter registration services into their computer-guided systems that guide covered transactions. Other states maintain their manuals for public assistance registration on election official or agency websites or provide concise desk reference guides to frontline workers.

### **D. Adequate Supply of Voter Registration Applications and Voter Preference Forms for Each Office.**

In order to provide voter registration services, voter registration forms must be available. Each office should ensure that it has at least a two-month supply of each form on hand (voter registration applications, voter preference forms, and any other state-specific forms). Some states have found it helpful to combine the voter registration application and voter preference form into one document. Other states have had success in attaching the voter registration application to the benefits forms used by the agency. States must ensure that the language used on the voter preference form mirrors that required by the NVRA.

### **E. Use of Technology to Integrate Voter Registration Services into Covered Transactions.**

Computer technology comes into play in and streamlines many aspects of implementation of Section 7 at public assistance offices. Technology can be used in training programs, computer-guided systems can guide interactions between frontline workers and clients during covered transactions, and such systems can easily collect voter registration related data. Importantly, as more benefits transactions are conducted online and through Internet-based

systems, the provision of voter registration services must happen online too. At the current time, several states are linking from their online benefits application to a printable voter registration application but also offering clients the opportunity to receive a hard copy voter registration application in the mail, since the client may not have printing capacity. States with online voter registration systems are linking their benefits application to the online registration system but also are automatically mailing voter registration applications to individuals who lack driver's licenses.

#### **F. Implementation of a Comprehensive Oversight Program.**

The most compliant policies and procedures are meaningless if frontline workers are not carrying them out during covered transactions with clients. A key feature of effective NVRA implementation in public assistance agencies, therefore, is a well-developed oversight system of evaluation and tracking. Monitoring each office's performance, through frequent reporting of the numbers of voter registration applications and voter preference forms completed at each office, helps to assess whether the procedures being implemented are effective and allows offices with low performance to be identified for remedial action. In addition, collection of such data helps states to report more accurate information to the Election Assistance Commission.

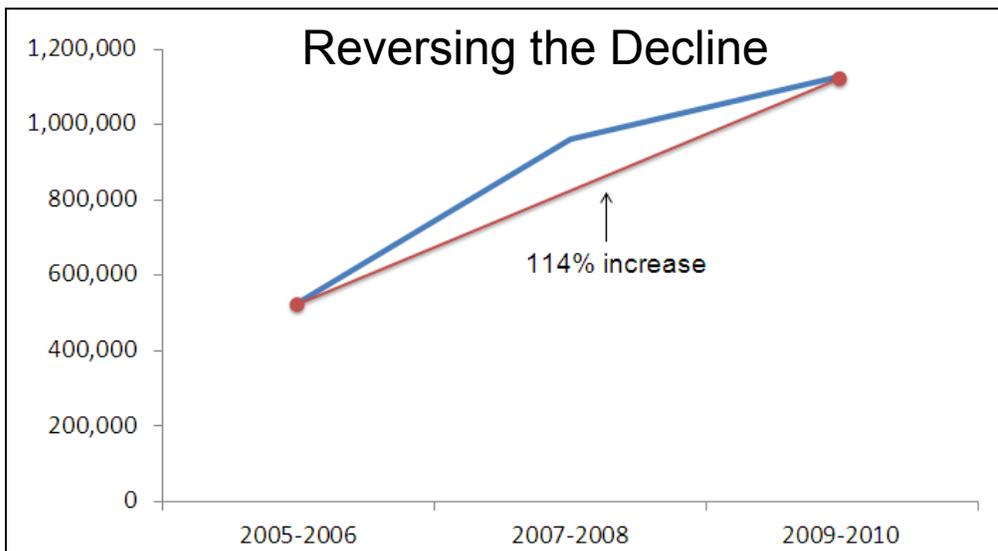
Within the oversight program, a strong system of data collection is likely the most important component to ensuring ongoing institutionalized compliance with Section 7 of the NVRA. Each office should collect and report to the state agency data each month on: the number of voter registration applications distributed to clients; the number of voter preference forms distributed to clients; the number of completed voter registration applications transmitted to election officials; the number of voter preference forms that contain a declination in writing; and the number of applications, recertifications, renewals, and changes of address processed by the agency. Using technology to collect the data –by e-mail, web-based tracking system, or automatically through the computer system that guides benefits transactions-- makes the process easy for local office staff and helps with accuracy in reporting and monitoring. The State NVRA Coordinator and the chief election official should review this data on at least a monthly basis, follow up in offices where the data suggests there may be compliance problems, and implement corrective action plans for those offices found to be neglecting their NVRA responsibilities.

Additionally, voter registration responsibilities should be incorporated into employee performance evaluations like any other federally-mandated aspect of job performance. Random unannounced spot checks by state agency or election officials also are an effective way to ensure procedures are being implemented properly at the local offices.

#### IV. Numbers Show Success of Effective Section 7 Implementation

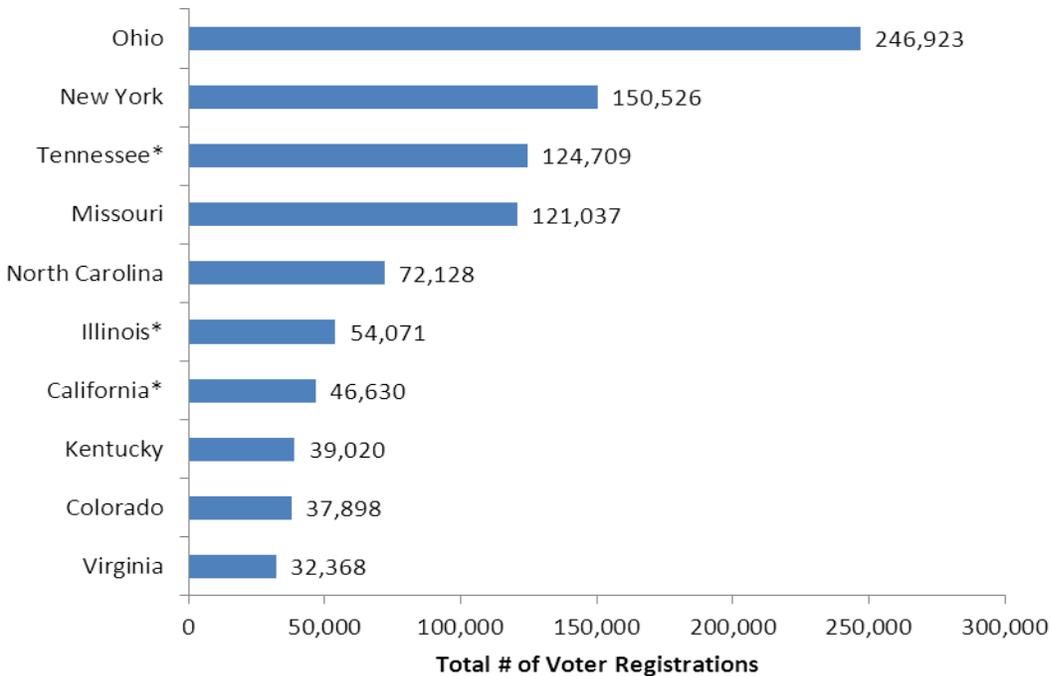
Analysis of data from the biennial NVRA reports issued by the Election Assistance Commission as well as data we have collected as part of our work show the dramatic impact that stepped-up oversight and enforcement of voter registration mandates at state agencies can have in reversing what had been a long decline in registration among low-income and working-class Americans.

In sharp contrast to the trend between the 1995-1996 and 2005-2006 reporting periods, the EAC reports show a 114% increase in the numbers of voter registration applications submitted to public assistance offices between the 2005-2006 and 2009-2010 reporting periods.



Individual state data clearly show the impact of enforcement activity: The number of voter registration applications submitted to public assistance agencies rose sharply in states following re-implementation work and litigation. Indeed, half of the top ten performing states within the last issued (2009-2010) EAC biennial report are states where there was enforcement activity or cooperative effort to improve public agency registration by Demos and its partners. For example, Ohio and Missouri, two states that were sued by clients represented by Demos and its partners and that entered into settlement agreements in 2009, topped the charts. North Carolina, Colorado, and Virginia all worked cooperatively with either Demos or Project Vote to improve voter registration efforts and Section 7 compliance by public assistance offices.

Moreover, as detailed below, Tennessee and Illinois each entered into settlement agreements regarding Section 7 compliance by public assistance offices with the United States Department of Justice.

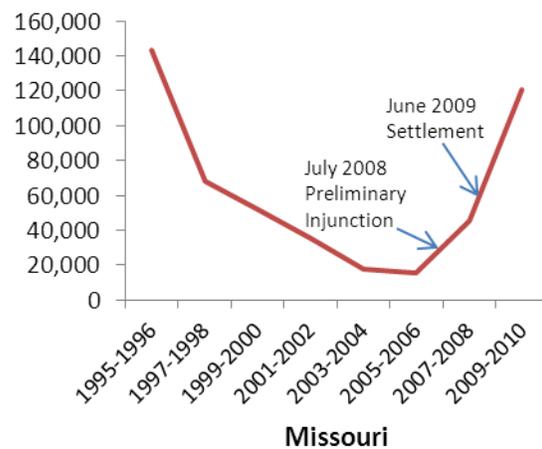
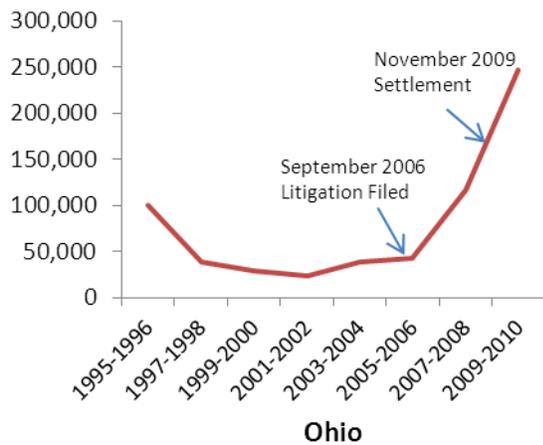


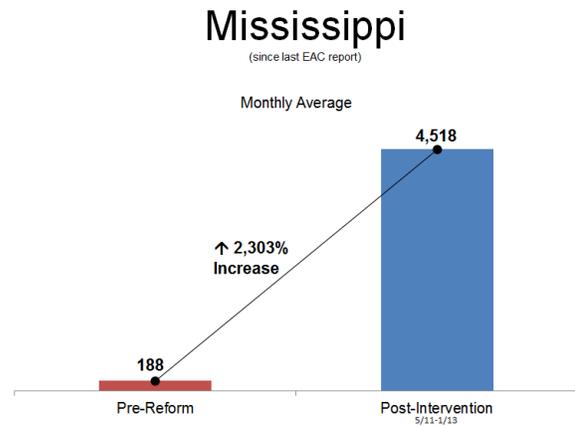
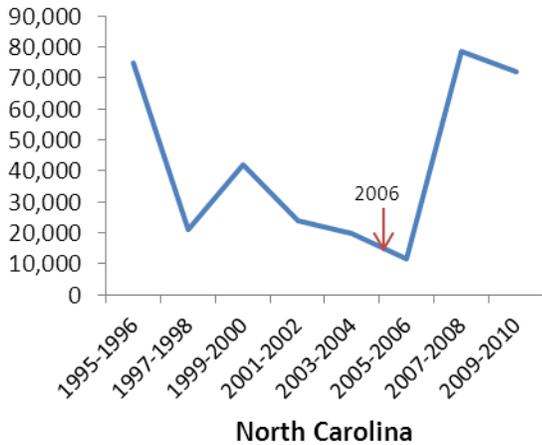
Note (\*): All of the election jurisdictions in each of the states above reported total number of voter registration forms received from public assistance offices to the Election Assistance Commission, with the exception of California (98.3% of jurisdictions), Illinois (88.2%) and Tennessee (97.9%).

Data we have collected from our own work in 16 states also indicates the success of Section 7 interventions. Our interventions have led to almost 2 million *additional* low-income citizens applying to register to vote at public assistance offices, most of which occurred in the last five years. To highlight some of that success:

- Over the three-plus years since Ohio entered into a settlement agreement, the state Department of Jobs and Family Services has reported that its public assistance offices have averaged close to 15,000 voter registration applications submitted per month – compared to a monthly average of 1775 prior to the intervention.

- In Missouri, 512,456 low-income citizens applied for voter registration at the state’s Department of Social Services in the 53.5 months following a successful court action to improve compliance, representing an increase in the monthly average of voter registration applications submitted to public assistance offices of 1376%.
- North Carolina completed its “re-implementation” process six years ago and has maintained an elevated number of voter registration applications submitted to public assistance offices since that time. Overall, the state averages 5.5 times the number of voter registration applications submitted at public assistance offices as it did prior to the re-implementation process.
- In the almost two years since Mississippi started tracking voter registration data reflective of changes to its Section 7 implementation, an additional 90,232 low-income individuals have applied to register to vote through public assistance offices, which translates to an increase of 2303% compared to its earlier performance.

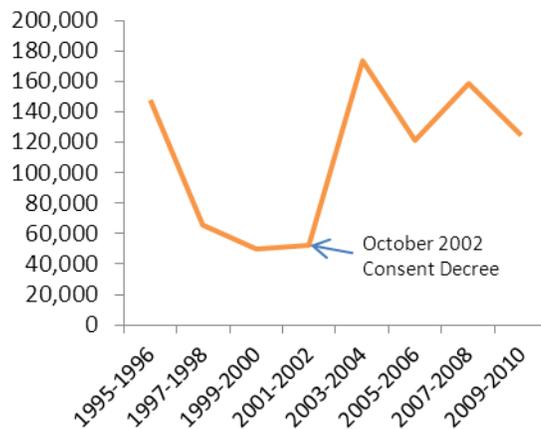




## V. Enforcement Efforts by Department of Justice

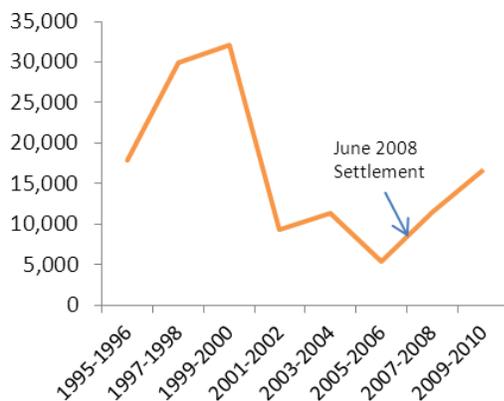
Beyond the work of public interest organizations, the Justice Department has engaged in some but not a significant amount of Section 7 enforcement activity regarding public assistance offices in the last ten years. Nevertheless, voter registration numbers from the states in which the Justice Department has engaged in enforcement activity demonstrate the impact of increased oversight.

During the eight years of the Bush Administration's two terms in office, the Justice Department initiated three Section 7 actions regarding public assistance offices and filed at least one amicus brief in an enforcement action brought by plaintiffs represented by Demos and its partners. In 2002, a lawsuit brought against the state of Tennessee resulted in a consent decree shortly after the Complaint was filed. Although the number of voter registration applications submitted to public assistance offices in Tennessee had more than halved since the first years of the NVRA's implementation, the number of voter registration applications at public assistance agencies in the state shot up more than five-fold after the consent decree. Tennessee has continued to be a national leader in public assistance registration, registering at least 120,000 low-income voters biennially and ranking in the top three for each EAC report since the time of the consent decree.

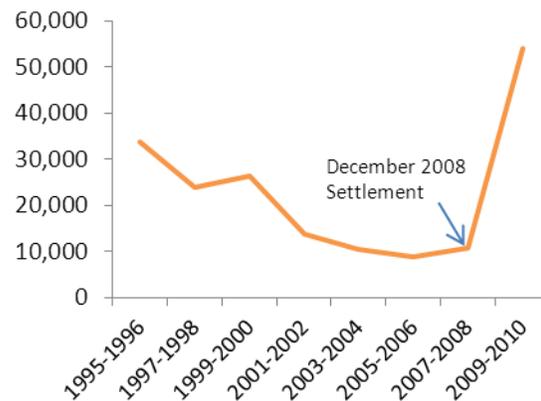


Tennessee

After the Tennessee consent decree, the Bush Justice Department did nothing more regarding voter registration at public assistance offices for about five years. In 2007, the lack of enforcement activity drew scrutiny from Congress, and the House of Representatives' Subcommittee on the Constitution scheduled an oversight hearing. The Justice Department witness who was called to testify cancelled his appearance and the hearing was postponed for a few months. In those months, the Justice Department sent out several letters to states regarding Section 7 compliance. In 2008, the Justice Department entered pre-litigation Memoranda of Understanding with the states of Arizona and Illinois. Like Tennessee, Illinois ranked high in the 2009-2010 EAC report in terms of the absolute number of people submitting voter registration applications at public assistance offices. The Justice Department also filed an *amicus* brief in the Sixth Circuit Court of Appeals supporting the position of plaintiffs, represented by Dēmos and its partners, who challenged the failure of the state of Ohio to provide voter registration services at its public assistance offices.



Arizona



Illinois

The Obama Justice Department has not been particularly active on Section 7 public assistance office compliance issues either. About midway through the first term, the current Administration issued very helpful guidance regarding the NVRA's requirements as a whole, including Section 7's provisions. In 2011, the Justice Department both filed a complaint and entered into a consent decree with the state of Rhode Island, and filed a lawsuit against the state of Louisiana. The Rhode Island consent decree is too recent for any data about its impact to be publicly available through EAC data – though Thomas Perez, the Assistant Attorney General for Civil Rights, has stated that 4171 voter registration applications were submitted in the first four months of the consent decree compared to 457 voter registration applications in the entire two-year period preceding the court action.<sup>19</sup> The Louisiana litigation is pending. Beyond these two cases, the Obama Justice Department has submitted *amicus* briefs in at least two litigations in which Demos and its partners represent plaintiffs challenging states' failures to provide voter registration services at public assistance offices. The Justice Department supported plaintiffs in a case against New Mexico in the Tenth Circuit Court of Appeals, and against Georgia in the Northern District of Georgia.

## Conclusion

American democracy should be a model for the world. A legitimate government “of the people, by the people, and for the people”<sup>20</sup> must vigorously promote and protect the freedom to vote so that all eligible voters can participate in this fundamental exercise in self-government. Effective implementation of Section 7 of the NVRA does just that: It helps millions of people get registered to vote, so that they can fulfill their civic duty as citizens and make their voices heard.

Thank you for the opportunity to testify before you this morning. I am available to answer any questions at this time, and Dēmos is eager to work with you going forward. I can be reached at Dēmos: A Network for Ideas & Action, 358 Chestnut Hill Avenue, #303, Brighton, MA 02135, (617) 232-5885.

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<sup>19</sup> “Prepared Remarks by Assistant Attorney General for Civil Rights Thomas Perez on Voter Rights,” *Main Justice: Politics, Policy and the Law* (April 13, 2012), available at <http://www.mainjustice.com/2012/04/13/prepared-remarks-by-assistant-attorney-general-for-civil-rights-thomas-perez-on-voter-rights/>.

<sup>20</sup> Abraham Lincoln, “The Gettysburg Address” (Nov. 19, 1863), available at <http://showcase.netins.net/web/creative/lincoln.html>.