



LAWYERS' COMMITTEE FOR
CIVIL RIGHTS
UNDER LAW



December 8, 2011

Via UPS and e-mail

Mr. William F. Galvin
Secretary of the Commonwealth
Citizen Information Service
One Ashburton Place, Room 1611
Boston, MA 02108-1512
cis@sec.state.ma.us

Re: Compliance with Section 7 of the National Voter Registration Act

Dear Mr. Galvin,

We write on behalf of New England United for Justice, persons eligible to register to vote that it represents, and others similarly situated to notify you that the Commonwealth of Massachusetts is not in compliance with Section 7 of the National Voter Registration Act of 1993 (“NVRA”), 42 U.S.C. § 1973gg-5, which requires States, including Massachusetts, to provide the opportunity to register to vote with every application for public assistance and every public assistance recertification, renewal, and change of address. We urge you, as the Commonwealth’s chief election official, to take immediate steps, in conjunction with the Executive Office of Health and Human Services and the Departments of Transitional Assistance and Public Health to bring the Commonwealth into compliance with Section 7.

The NVRA requires Massachusetts to “designate as voter registration agencies . . . all offices in the State that provide public assistance.” *See* 42 U.S.C. § 1973gg-5(a)(2)(A). Each public assistance office must, at a minimum, (i) distribute voter registration application forms; (ii) assist applicants in completing the voter registration forms; and (iii) accept completed voter registration application forms and forward them to the appropriate election official. *See* 42 U.S.C. § 1973gg-5(a)(4)(A). Moreover, each office must (i) distribute a voter registration application form with each application for public assistance and with each recertification, renewal or change of address form; (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 public assistance provided by the agency; and (iv) provide assistance in completing the voter registration forms to the same degree the agency provides assistance in completing its own forms. *See* 42 U.S.C. § 1973gg-5(a)(6).

Our investigation demonstrates that Massachusetts is systematically failing to provide the voter registration services mandated by the NVRA at its public assistance offices. From data that Massachusetts has submitted to the United States Election Assistance Commission and that the undersigned have received through public records requests, we have determined that the number of voter registration applications submitted at Massachusetts public assistance offices has decreased precipitously in the last decade – from 26,984 at the peak in 1999-2000 to 2,007 in 2009-2010, a reduction of 92.5%. Indeed, this low level of voter registration activity at public assistance offices is reflected in the low voter registration rates of low-income citizens in Massachusetts. In 2010, only 58.2% of the Commonwealth’s low-income citizens were registered to vote compared to 76.9% of affluent citizens – a voter registration gap of 18.7 percentage points. Indeed, in the historic 2008 presidential election and contrary to the norm for a presidential election year, the Commonwealth’s low-income voter registration rate was slightly *lower*, at 58.1%, compared to 86.1% of affluent citizens, a voter registration gap of 28 percentage points.

Our review indicates that Massachusetts’s noncompliance with Section 7 is the result, in part, of its implementation of a voter registration policy that violates Section 7. The NVRA requires that public assistance offices presumptively distribute voter registration applications to all public assistance applicants and clients, unless the individual applicant or client affirmatively opts out of voter registration by declining “in writing” to register to vote. 42 U.S.C. § 1973gg-5(a)(6)(A). Nevertheless, in defining those times at which voter registration applications must be distributed, the Commonwealth’s policy – as reflected in both the Voter Registration Workbook for Agencies at pages 6-7 and WIC’s Motor Voter Program Administrative Manual at page 8 – requires distribution to those applying, recertifying, renewing, or changing an address with respect to the receipt of benefits *only* when the individual checks “yes” in response to the question, “If you are not already registered to vote at your current address, would you like to register to vote?” This violates the NVRA. *Valdez v. Herrera*, No. 09-668, Memorandum Opinion and Order, at 10-11 (D. N.M. Dec. 21, 2010) (“Section 7 does not make the provision of a voter registration application contingent upon an affirmative request, either written or verbal, from a client. . . . A blank response on the declination provision . . . cannot be a statement ‘in writing’ for purposes of subparagraph (A) [the voter registration distribution requirement].”); *see also* U.S. Dep’t of Justice, “Voter Registration Requirements of Sections 5, 6, 7, and 8 of the NVRA” (question 19), *available at* http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php (last viewed on November 22, 2011).

Observations in the field confirm that front line staff at DTA offices are failing to regularly provide the voter registration services required by the NVRA to public assistance clients. In visits to 8 local DTA offices, which occurred between May and August 2011, a significant percentage of public assistance applicants and clients interviewed who should have received an offer of voter registration services, *i.e.* were at the office to apply, recertify, or change an address with respect to the receipt of benefits, were not provided any meaningful offer of voter registration:

- 69% of interviewees (79 out of 115) did not see any voter registration question within DTA forms, were not asked by any DTA personnel about voter registration, and were not given a voter registration application.

- Fewer than 14% of all interviewees were provided a voter registration application.
- Of 92 interviewees who did not provide any response to a voter registration question – either because they did not see any question or saw a question and left it unanswered – only 3 were orally asked about voter registration and only 6 were provided with a voter registration application.

Indeed, there was nothing in the lobbies of any of the DTA offices that might advise clients of the availability of voter registration – no signs, no posters, no stack of voter registration applications on the intake counters. In several offices, DTA personnel *could not even provide* a voter registration application when requested to do so.

Observations at WIC Clinics in five cities, conducted during the same time period, yielded similar results. Among the WIC clients interviewed who should have received an offer of voter registration services, *i.e.* were at the office to apply, recertify, or change their address with respect to the receipt of WIC, only one person reported seeing any form that included a question about voter registration. *Not one* of any of the remaining individuals either saw a written voter registration question or was asked orally about voter registration. Indeed, only one individual among all those who were interviewed received a voter registration application. And, like the DTA offices, there was nothing in the lobbies of all but one DTA office that might advise clients of the availability of voter registration.

These problems should not have occurred. The Secretary of the Commonwealth, the Secretary of the Executive Office of Health and Human Services, the Commissioner of the Department of Transitional Assistance, and the Commissioner of the Department of Public Health are responsible to ensure that local offices are implementing the law and thus are responsible for effective supervision of local offices to ensure compliance. *See Harkless v. Brunner*, 545 F.3d 445, 451 (6th Cir. 2008) (chief election official is “responsible for implementing the state's function”); *id.* at 455 (head of “single state agency” responsible for administering public assistance programs has responsibility to provide statewide voter registration services). Massachusetts must make sure the NVRA actually is implemented by making prompt changes so that all of its citizens, including the hundreds of thousands of its citizens who receive public assistance, are able to participate in elections. In short, Massachusetts must change its facially noncompliant policy and institute procedures to ensure that frontline workers perform their federally mandated responsibility to provide voter registration services.

This letter serves as a notice letter pursuant to 42 U.S.C. § 1973gg-9(b) in an attempt to obtain compliance with the public assistance provisions of the NVRA without the need for litigation. Please advise us promptly of the steps you intend to take to remedy Massachusetts’ violations of Section 7 of the NVRA. We are prepared to meet with you and other state officials, at your earliest convenience, to assist in your development of a comprehensive plan for compliance. In the absence of such a plan, we will have no alternative but to initiate litigation at the conclusion of the statutory 90-day waiting period.

Sincerely,

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cc: Ms. JudyAnn Bigby, Secretary of Executive Office of Health and Human Services
Mr. Daniel J. Curley, Commissioner of the Department of Transitional Assistance
Mr. John Auerbach, Commissioner of the Department of Public Health