

STATEMENT OF AMERICAN ASSOCIATION OF PEOPLE WITH DISABILITIES,  
DEMOS, LAWYERS' COMMITTEE FOR CIVIL RIGHTS UNDER LAW, LEAGUE OF  
WOMEN VOTERS OF THE UNITED STATES, AND PROJECT VOTE  
SUBMITTED TO THE ELECTION ASSISTANCE COMMISSION  
AUGUST 18, 2010  
ORLANDO, FLORIDA

The undersigned organizations submit the following comments in connection with the Election Assistance Commission's (EAC) August 18, 2010 hearing. We appreciate the agency's willingness to receive testimony about its biennial report to Congress (stated at p. 14 of the Notice of Proposed Rulemaking) and hope that our views will help to inform the judgment of the EAC as it considers issuing regulations or other guidance on the biennial report.

All of our organizations are dedicated to improving the system of elections and promoting civic engagement by making voter registration more accessible to traditionally underserved communities, such as disabled and low income Americans and racial minorities. In particular, we do a significant amount of work related to the National Voter Registration Act of 1993 (NVRA). Consequently, we rely on the Election Assistance Commission for its biennial NVRA report and the data on state compliance contained with it. We have carefully read the EAC reports, and the FEC reports before them, and would like to share with you our observations and recommendations for fulfilling the Commission's monitoring and reporting responsibility.

The EAC's report to Congress can and should be used as an opportunity to underscore the states' obligation to implement the NVRA and to report on its impact on election administration. By these means, the efficacy of the NVRA may be evaluated continuously, based upon an accurate picture of the law's implementation in the states, and compliance will be promoted. We believe that the following recommendations regarding the biennial report would result in a more complete picture of NVRA implementation and would lead to improved state compliance:

1. The EAC, within the biennial report, should include a detailed discussion of NVRA implementation and compliance problems encountered by states as a predicate to its responsibility to make "recommendations for improvements in Federal and State procedures, forms, and other matters." Such information is frequently supplied to the EAC by state and local election officials themselves, who contact the agency with questions or observations concerning the administration of elections. A more comprehensive discussion of state compliance should also draw on survey data, as well as information from other sources, such as application form design, training manuals, and findings adduced in litigation or consent decrees.

When the FEC produced the biennial report (prior to the report on the 2003-2004 election cycle), it consistently included such a discussion. Often without naming the

states involved (though doing so would have been helpful), the report described various problems, such as motor vehicle or Section 7 agencies not transmitting applications promptly, not using the proper forms, or failing to train their staff to help applicants to register. Since the EAC assumed responsibility for the biennial report, it has not consistently included this type of analysis.

We would also like to note our particular concern that the most recent report to Congress actually mischaracterized agency responsibilities with regard to NVRA compliance. At page 9, for example, the report recommended that states “encourage their public service agencies to remind voters to check and update their registration information,” and that states “encourage” agencies to distribute voter registration forms, whereas the law *requires* these agencies to distribute voter registration forms and provide the public with assistance completing these forms. Moreover, the law requires that agencies assist clients not just with updating their registrations but also with registering for the first time. This inaccuracy should be corrected in the next biennial report, if not sooner.

2. In order to facilitate the collection and reporting of accurate voter registration data, the EAC should provide states with increased direction and technical assistance regarding the collection of data required for the biennial report. In this regard, it has become clear over several reporting periods that there is a need for some states to take steps to improve significantly the accuracy of the data they collect and report regarding NVRA registration sources. Reporting the source of voter registration applications could be made much easier and more accurate if states used discreet source codes on the voter registration applications provided to agencies. Some states already use such procedures or similar techniques, which do not violate privacy laws. It should also be noted that there are a few states that, in recent reporting periods, have failed to report any data at all. This fact should be noted prominently in the report.

3. The EAC report should include a complete list of each state’s designated agencies and the department under which they fall, as has been done in some past reports. This will provide clarity as to which specific agencies the state views as falling within the requirements of Section 7 of the NVRA, and will allow users of the report to better understand which additional agencies have been designated by the state.

4. Forthcoming reports should include a brief statement on the status of NVRA litigation, as well as court orders or consent decrees entered during the reporting period. The information itself is clearly germane to an assessment of the impact of the NVRA on the administration of elections, and it is thus an appropriate part of the EAC’s report to Congress. In addition, having a current summary of legal action all in one place would be useful for election officials.

5. The EAC should make a complete, systematic review of State practices with respect to “State procedures, form, and other matters,” since the NVRA requires the biennial report to make “recommendations for improvements” in these areas. The

results of this review should be featured in the next report to Congress. Our own reviews have found that many state forms simply do not conform to the mandates of the NVRA. For example, the voter information (sometimes called “declination”) forms are frequently incorrectly worded, and occasionally not used at all.

We appreciate the opportunity to submit this statement regarding the EAC’s biennial report to Congress and suggestions for improving it. Please feel free to correspond with any of the undersigned organizations if you wish to further discuss our observations or recommendations. We look forward to working with you to make the EAC reports more useful and instructive to the public and to state and local election officials.

#### SIGNATORIES:

The American Association of People with Disabilities is the country's largest membership organization of people with disabilities, founded by the visionaries who created the Americans with Disabilities Act. Our mission is to increase the political, economic and social power of the nation's largest minority.

The Democracy Program at Dēmos, a non-partisan public policy research and advocacy organization, undertakes litigation, advocacy, research and public education to advance a diverse and inclusive democracy reform movement across the U.S., focusing on reform efforts that will lower barriers to participation for populations that have historically been disfranchised from the political process.

The Lawyers' Committee for Civil Rights Under Law is a nonpartisan, nonprofit organization whose principal mission is to secure, through the rule of law, equal justice under law. The Voting Rights Project of the Lawyers' Committee, with the assistance of private law firms, seeks to achieve equality and protect advances in voting rights for racial and ethnic minorities, as well as other traditionally disenfranchised groups, through an integrated program of litigation, voter protection, research, advocacy, and education.

The League of Women Voters of the United States is a nonpartisan, community-based organization that promotes political responsibility by encouraging Americans to participate actively in government and the electoral process. Founded in 1920 as an outgrowth of the struggle to win voting rights for women, the League now has more than 150,000 members and supporters, and is organized in more than 850 communities and in every State.

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Through its research, advocacy, and direct legal services, Project Vote works to ensure that these constituencies are able to fully participate in American civic life by registering and voting.