

**National Voter Registration Act, Section 7: The challenges
that public assistance agencies face**

**Testimony before the
Committee on House Administration, Subcommittee on Elections
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Thank you, Chairwoman Lofgren, Ranking Member McCarthy, and members of the Subcommittee on Elections of the Committee on House Administration, for inviting me to testify at today's hearing on "National Voter Registration Act, section 7: The challenges that public assistance agencies face."

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 center, founded in 2000, whose work has focused on expanding democratic participation and lowering the barriers that exist to that participation. Since 2004, Dēmos has conducted extensive research on compliance with Section 7 of the NVRA including statistical analysis and field investigations, published three reports on the NVRA, worked with public assistance and election officials in states across the country to improve their compliance with the NVRA, and served as counsel in a case currently on appeal in the Sixth Circuit challenging Ohio's failure to implement the law.

In my time at Dēmos, I have worked extensively on efforts to ensure better compliance with and implementation of the NVRA'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 with state officials in both North Carolina and Michigan and I wish to formally commend them to you for their voluntarily undertaking the implementation of best practices with respect to agency-based voter registration. In North Carolina, the improved procedures led to over 34,500 voters registered at the state's public assistance agencies between February 2007 and February 2008, an almost six-fold increase in the average number of voters being registered each month. While the program in Michigan is not yet completely rolled out, the state Department of Human Services will utilize extensive public education materials and also will partner with other agencies and community organizations to reach unregistered voters in a way that is truly innovative.

I. Overview of Problem

As this subcommittee is no doubt well aware, in 1993, Congress passed with a bipartisan majority, and the president signed into law, the National Voter Registration Act.¹ 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,”² and 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.”³ Thus, in passing the bill, the House intended Congress to “assist in reducing barriers, particularly government-imposed barriers, to applying for registration wherever possible.”⁴

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.”⁵ 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.”⁶

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 and 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.

Finally, and most relevant to this hearing, the law required that public assistance agencies and offices that primarily serve the disabled must provide voter registration services to ensure that low-income people and the disabled 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.⁷ Moreover, each agency must (i) distribute voter registration materials with each

¹ 42 U.S.C. §§ 1973gg to 1973gg-10.

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

³ *Id.* at 3.

⁴ *Id.*

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

⁶ *Id.* at 3.

⁷ *See* 42 U.S.C. § 1973gg-5(a)(4)(A).

application for assistance, and with each recertification, renewal, or change of address form relating to such assistance; (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.⁸ Recognizing that low-income and disabled citizens may be less likely to visit motor vehicle departments, Congress included the requirement for agency-based registration at public assistance agencies to ensure greater equality of access to voter registration.⁹ Indeed, Census data confirm that low-income citizens are among the least likely to register to vote at a motor vehicle department.¹⁰

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.¹¹ 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 few years of implementation, the NVRA was responsible for adding millions of new voters to the registration rolls.¹²

The work of Dēmos and its partners during the past several years has demonstrated, unfortunately, that the early promise of the NVRA has not been sustained with respect to voter registration at public assistance offices. For whatever reason, many states are no longer offering voter registration opportunities at their public assistance offices. This is not necessarily because of a deliberate effort to defy the law; it may just be that a lack of consistent oversight and training combined with a high level of staff turnover at agencies has caused the issue to fall off the radar screen in many places. Nevertheless, there are serious compliance problems with this very important law requiring agencies to affirmatively offer low-income people the opportunity to participate in the political process.

Simply stated, public assistance agency-based voter registration has declined dramatically, denying low-income citizens across the country of an opportunity to register to vote. As documented in our recent report *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007*, the number of voter registration applications

⁸ See 42 U.S.C. § 1973gg-5(a)(6).

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

¹⁰ U.S. Census Bureau, "Voting and Registration in the Election of November 2004, Table 14," available at <http://www.census.gov/population/www/socdemo/voting/cps2004.html>.

¹¹ See, e.g., *Wilson v. U.S.*, 878 F. Supp. 1324 (N.D. Cal. 1995) (California); *ACORN v. Edgar*, 56 F. 3d 791 (7th Cir. 1995) (Illinois); *ACORN v. Miller*, 912 F. Supp. 976 (W.D. Mich. 1995), aff'd., 129 F.3d 833 (6th 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), aff'd. 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 (4th Cir. 1998) (Virginia).

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

coming from public assistance agencies has declined by 79 percent since the initial implementation of the law, from over 2.6 million applications in 1995-1996 to only 540,000 in 2005-2006.¹³ At the same time, the Food Stamp 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.¹⁴ Over 13 million low-income adult citizens remained unregistered in 2006 and a staggering income gap in registration rates remains: in 2006, only 60 percent of adult citizens in households making less than \$25,000 a year were registered to vote compared to over 80 percent of those in households making \$100,000 or more.¹⁵

In our work, we have seen a strong correlation between low public assistance registration numbers and specific examples of compliance problems. Investigations that Dēmos and partners such as Project Vote have conducted in states including Ohio, Florida, New Mexico, Missouri, Arizona, Virginia, Maryland and Pennsylvania, among others, have uncovered the following:

- Local offices that do not 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.
- Local offices that do not even have voter registration applications on site.
- Staff at local offices who are entirely unaware of the office’s obligation to provide voter registration to public assistance clients.
- Voter registration services that are offered at in-office interactions but not to clients who interact with the agencies via Internet, telephone, or mail.
- Local offices that do not use the statutorily required “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.

When made aware of the problems, different states have reacted differently – just as they did fifteen years ago. Thus, states such as North Carolina and Michigan have embraced best practices in order to register as many low-income clients as possible. Others, such as Maryland, are in the process of reviewing their NVRA registration procedures to address the decline in the numbers of registrations at public assistance, disability, and other agencies. Unfortunately, other states have been far more resistant to addressing the problem. Ohio, for example, has taken the view that no state official has the obligation to ensure implementation of this federal law, leaving any particular individual’s opportunity to register entirely dependent on how seriously the individual’s local county office takes this federal law. As a result, thousands of low-income citizens in Ohio – and thousands more in other states that have neglected their NVRA

¹³ 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>.

¹⁴ 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.

¹⁵ Source: U.S. Census Current Population Survey, November 2006 Voting and Registration Supplement, analysis by Demos and Project Vote.

responsibilities – have been denied the opportunity to register to vote that the NVRA was intended to provide.

II. Achieving the Promise of Section 7 of the NVRA

A. The North Carolina Experience

North Carolina's experience with public assistance registration over the past several years illustrates both the urgency of the problem and the tremendous gains that can be achieved when states institute improved Section 7 procedures. In 2005-2006, investigation of Section 7 compliance in North Carolina suggested a serious lack of compliance. Interviews conducted outside public assistance offices in two of North Carolina's major cities, Raleigh and Greensboro, yielded not a single person who was offered voter registration services. Data submitted to federal authorities by North Carolina indicated a 73.5 percent decline in public assistance voter registrations between initial implementation of the law in 1995-1996 and 2003-2004.¹⁶ In 2005, public assistance offices in each of 35 counties registered fewer than 10 clients and public assistance offices in 11 of those 35 counties did not register a single client.¹⁷

Armed with these findings, we and our partners contacted Gary Bartlett, the Executive Director of the State Board of Elections since 1993, to convey the seriousness of North Carolina's compliance problem. Mr. Bartlett expressed concern at the survey findings. He described North Carolina's proud history of implementing the NVRA in the mid-90s when many states were resisting implementation and fighting to have the law declared unconstitutional. Mr. Bartlett shared his strong commitment to solving the problem and acted quickly on that pledge. Working cooperatively with Dēmos and its partners, North Carolina implemented a comprehensive compliance plan, and has achieved dramatic increases in the numbers of persons completing voter registration applications at public assistance offices.

While North Carolina registered only 11,600 persons at public assistance agencies in the entire two-year period of 2005-2006, the state has registered over 34,500 persons from February 2007 to February 2008, the first year of North Carolina's re-implementation program. This reflects a nearly six-fold increase in the average monthly number of registrations at North Carolina public assistance agencies and represents a registration rate of approximately 11 percent of those clients offered voter registration services. Such results only underscore the enormous promise of the NVRA in providing the opportunity to vote for hundreds of thousands of low-income Americans, if similar compliance efforts were conducted nationwide.

¹⁶ Lisa J. Danetz and Scott Novakowski, "Expanding Voter Registration for Low-Income Citizens: How North Carolina is Realizing the Promise of the National Voter Registration Act" (updated November 2007), available at <http://www.demos.org/pub1446.cfm>.

¹⁷ *Id.*

B. Best Practices

Through our work in numerous states on implementation of Section 7's requirements, we have identified a number of best practices a state can implement in order to see its agency-based voter registration figures increase and ensure proper compliance with Section 7.

1. Form an NVRA Improvement Team with a Designated Chair.

One helpful element in a statewide plan to implement Section 7 of the NVRA is the creation of an "NVRA Improvement Team" led by a state-level official who can convene the necessary personnel to ensure an effective agency-based registration program. Depending on the state's laws and procedures, the chair may be the state's chief election official, someone in the governor's office, the head of a state agency, the Attorney General, or some other official. The Team should include representatives from the chief election official's office, the designated public assistance agencies, other relevant executive offices, and relevant civic organizations. Through regular meetings and consultation, the Team can develop and coordinate improved NVRA procedures and monitor systematic reporting from agency sites regarding NVRA performance.

In addition, the chief election official and state-level public assistance agencies' officials should each designate a staff member to be responsible for coordinating NVRA responsibilities within their respective departments.

It bears mentioning that the active leadership of a high-level state official can be key to achieving optimal results. North Carolina and Michigan each has a high-level official ensuring that NVRA procedures are put into place while consulting and coordinating with other relevant government officials and agencies. In North Carolina, the effort has been spearheaded by the Executive Director of the State Board of Elections while, in Michigan, the Director of the Department of Human Services has taken the initiative in implementing reforms.

2. Designate Local NVRA Coordinators.

In order to ensure accountability and coordination at each local office that must provide voter registration services, each such office should have a designated NVRA Coordinator. This Coordinator has the responsibility to implement voter registration procedures in his or her local office. Thus, the Coordinator ensures that the local office has an adequate supply of voter registration applications, trains frontline workers regarding their responsibilities under the law, reports data on voter registration activities to the relevant state-level official, forwards completed voter registrations to the relevant elections officials, and serves as the local office expert on voter registration. The Coordinators also have responsibility for whatever additional requirements the state imposes; for example, the Coordinator may have responsibility to ensure that NVRA posters are displayed in the local office lobby.

3. Send An Immediate Directive to Agency/Office Personnel.

At the very onset of an NVRA re-implementation initiative, the relevant agency directors should send memos detailing the responsibilities of staff for compliance with the NVRA to all offices covered by the NVRA. The memo should include procedures for offering voter registration, how registration materials are to be ordered, how records are to be kept, how and to whom data are to be reported, and detailed instructions on when and to whom to transmit completed voter registration applications. The memo also should make clear that each local office must designate an NVRA Coordinator to be responsible for the day-to-day functioning of the voter registration program.

4. Training & Performance Reviews of Staff

Training of NVRA Coordinators and local frontline workers is essential to ensure effective (and actual) implementation of agency-based voter registration. As a first step, election officials and state public assistance agency officials need to review already-existing NVRA written policies, procedural manuals, and/or training materials for accuracy, and should update or amend them as necessary. Next, NVRA Coordinators should be trained by state officials in “train the trainer” programs. The NVRA Coordinators should then train all current local agency employees and ensure that all new employees are trained on voter registration procedures as part of their orientation. Refresher training for agency employees should be conducted at least once per year. Successful compliance with voter registration procedures should be assessed as part of the regular performance reviews that agency personnel receive.

5. Reporting and Monitoring of Performance Data

A key feature of effective NVRA implementation in public assistance agencies is a well-developed system of evaluation and tracking. Monitoring each office’s performance, through frequent reporting of the numbers of voter registration applications and declination forms completed at each office, will help to assess whether the procedures being implemented are effective and will allow offices with low performance to be identified for remedial action. In addition, collection of such data will help a state to report information required for the Election Assistance Commission to make its mandated biennial report to Congress on the impact of the NVRA.¹⁸

Ideally, each agency office should be directed to begin tracking and reporting to the chair of the NVRA Improvement Team the following information on a weekly basis: (1) the number of completed voter registration applications transmitted to the appropriate election official; (2) the number of clients who declined to register; (3) the number of applications, redeterminations or recertifications, and changes of address; and (4) the total number of declination forms (which should be equal to the previous number). Data on the number of applications and declination forms should be made available for review by all NVRA Improvement Team members.

¹⁸ See 42 U.S.C. § 1973gg-7(a)(3).

Submitting these figures via e-mail or a web-based tracking system makes the process easy for local office staff and helps with accuracy in reporting and monitoring. While North Carolina uses an e-mail-based system, both Iowa and Michigan have developed web-based tracking systems. In Iowa, the system allows voter registration supervisors to access a designated website and input voter registration numbers from the previous week. The system works similarly in Michigan although, in that state, NVRA Coordinators must input the number of applications, the number of redeterminations, the number of changes of address, the number of completed voter registration applications, and the number of clients who declined to register. In both states, state-level officials can then visit the website to review office performance. For those working in technology departments of public assistance agencies or governmental offices, web-based systems are fairly simple to create.

In addition to its reporting requirements, North Carolina has instituted a system of in-person unannounced compliance spot checks to assess local public assistance agencies' compliance with Section 7. These visits have also helped improve compliance at the local level.

6. Public Education Regarding Agency-Based Registration

In order to encourage voter registration, a state can undertake many different types of activities to educate the public about the importance of registering to vote. In Michigan, for example, the plan calls for local DHS offices to play a DVD about registering to vote in their office lobbies and to place voter registration posters in the lobby and client interview areas where there is a high likelihood that clients will see them, outreach to local media outlets to announce the DHS offices' voter registration efforts, enlisting County Directors or District Managers to talk about voter registration activities during meetings with community partners, and requesting Community Resource Coordinators to help publicize the availability of voter registration services. In addition, the state DHS is planning to create celebrity public service announcements to be aired statewide.

7. Simultaneous Electronic Registration

New technologies have the potential to enhance and streamline agency-based voter registration procedures. For those states that have the technological capability and resources, one such technology used by many motor vehicle departments is simultaneous electronic registration (SER). SER electronically transfers information from the client's application for benefits to a voter registration application, which is then printed out, signed by the client, and transmitted to election officials. The client does not need to manually complete the voter registration form, saving time while also reducing language and literacy barriers as well as the effect of paperwork fatigue. Furthermore, problems with legibility and incomplete voter registration forms are largely eliminated.

Dēmos and its partners in this work have many examples of training materials, procedure outlines, and other support materials that we are happy to provide to interested states to assist in implementing best practices.

III. Legal Enforcement

It is important to note that the statute specifically tasks the Justice Department with enforcement of the NVRA and we know, from experience, that such enforcement can be quite effective. In the 1990s and early in this decade, the Justice Department was an active participant in litigation that required states to comply with the law and that established the constitutionality of the NVRA.

In 2002, the Department of Justice brought a lawsuit against Tennessee for that state's failure to provide the required voter registration services at public assistance offices. Prior to this lawsuit, in the period 1999-2000, Tennessee received 49,636 voter registration applications through its public assistance agencies.¹⁹ Under the court order in place as a result of that lawsuit, Tennessee's voter registration at public assistance agencies increased dramatically. In 2003-2004, Tennessee's public assistance agencies registered 173,927 voters, 16 percent of the total number of voters registered in the state.²⁰ In 2005-2006, they registered 120,962 voters.²¹ Indeed, in 2005-2006, one in five of all public assistance registrations in the nation occurred in Tennessee.²²

Maryland had a similar experience as a result of litigation, although that litigation was brought by private parties. In the first two years of NVRA implementation (1995-1996), Maryland registered only 982 individuals through its public assistance agencies.²³ After being sued in 1996 for its failure to implement the NVRA and entering into a settlement agreement in 1998, the state saw its registrations increase dramatically to 22,095 in 1997-1998 and again to 32,250 in 1999-2000.²⁴ In 2000, however, the federal court settlement agreement governing Maryland's compliance with the NVRA expired, and the number of voter registration applications processed through Maryland's public assistance agencies dropped substantially: Voter registration applications from public assistance agencies decreased dramatically to 1,151 in 2001-2002, 1,867 in 2003-2004, and 8,788 in the most recent reporting period of 2005-2006.²⁵ Between the height of Maryland's NVRA compliance in 1999-2000 and the most recent reporting period in

¹⁹ Federal Election Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1999-2000."

²⁰ Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003-2004," available at <http://www.eac.gov>.

²¹ Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2005-2006," available at <http://www.eac.gov>.

²² *Id.*

²³ Federal Election Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 1995-1996."

²⁴ Federal Election Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office," 1997-1998 and 1999-2000.

²⁵ Federal Election Commission and Election Assistance Commission, "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office," 2001-2002, 2003-2004, 2005-2006.

2005-2006, the number of voter registrations from public assistance agencies dropped by close to 73 percent. As stated above, Maryland is in the process of reviewing its NVRA registration procedures to address the decline in the numbers of agency-based registrations.

Given the success of litigation in increasing the numbers of voter registration applications completed at public assistance agencies, it is remarkable that the Justice Department has been largely absent from NVRA Section 7 enforcement since the 2002 case against Tennessee. In 2004, Dēmos and Project Vote provided Justice Department officials with significant evidence of states' noncompliance in a face-to-face meeting and several follow-up memos. The Justice Department, however, showed little interest in pursuing additional Section 7 enforcement cases, even while it was actively suing states to conduct more vigorous purges to remove voters from registration rolls.²⁶ Moreover, a 2005 letter from 30 members of Congress to then-Attorney General Alberto Gonzalez requesting an investigation into NVRA Section 7 non-compliance went unanswered. This failure of enforcement has not gone unnoticed.²⁷

In the past several months, however, there have been small but definite signs of interest in enforcement of Section 7 of the NVRA at the Justice Department. In August 2007, under intense scrutiny by the newly elected 110th Congress for its selective enforcement of voting rights laws, the Voting Section issued 13 letters to states requesting that they explain their poor performance in public assistance agency-based registration. In an appeal regarding Ohio's failure to comply with Section 7 of the NVRA, the Justice Department in November 2007 submitted an *amicus* brief supporting the plaintiffs we represent who sought enforcement of the law. Indeed, just last week, Justice Department attorneys met with representatives from Dēmos, Project Vote, and Lawyers' Committee for Civil Rights Under Law to discuss the need for enforcement of Section 7 of the NVRA. We are hopeful that these recent steps indicate a renewed willingness on the part of the Justice Department to resume more vigorous enforcement of Section 7.

Conclusion

The NVRA's goal of lowering barriers to voter registration reflects our nation's commitment to a fully representative democracy in which the voices of all citizens may be heard. The full promise of the NVRA has not yet been achieved, however, because of widespread noncompliance with the requirements of Section 7 for registration at public assistance agencies, disability offices, and other designated agencies. Nevertheless, the example of states that have implemented strong compliance programs and best practices provides encouragement that, with a renewed commitment to full enforcement of the NVRA, we can realize Congress' intent and help hundreds of thousands of additional voters participate in the political process.

²⁶ See Letter from Dēmos and Project Vote to Hon. Jerrold Nadler and Hon. Trent Franks, Subcommittee on the Constitution, Civil Rights, and Civil Liberties, Committee on the Judiciary, February 25, 2008, at 3.

²⁷ See Pam Fessler, National Public Radio, "Justice Dept. Accused of Partisan Voter-Roll Purge," (October 11, 2007), available at <http://www.npr.org/templates/story/story.php?storyId=15198501>.

Thank you for the opportunity to testify this morning. I am available to answer any questions at this time, and Dēmos is eager to work with you going forward.