

Testimony of Michael Slater, Deputy Director, Project Vote

**Hearing on the “National Voter Registration Act: the Challenges Public Agencies Face”
before the Subcommittee on Elections of the Committee on House Administration**

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Chairwoman Lofgren, Ranking Member McCarthy and members of the Subcommittee on Elections, my name is Michael Slater. I testify today in my capacity as Deputy Director of Project Vote, a national nonpartisan, nonprofit organization that promotes registration and voting to Americans who are historically underrepresented in the electorate.¹ It is an honor to be here today to present testimony on the National Voter Registration Act (NVRA), a law meant to ensure that all Americans have equal access to participation in our democracy through voter registration.

Project Vote began efforts to ensure the fair and effective implementation of the public agency registration (Section 7) provisions of the NVRA in 1994, shortly after the law was enacted. Project Vote issued the first reports evaluating NVRA implementation and organized litigation in response to the decision of several states to refuse to comply with the Act. The subsequent court decisions not only upheld the NVRA but reaffirmed Congress’s constitutional authority to regulate federal elections, including the regulation of voter registration procedures.

In 2004, a decade after the start of our original work on the NVRA, Project Vote responded to the alarming decline of public agency registration rates by undertaking a new initiative to ensure states were not only complying with the requirements of Section 7, but were doing so using the most effective practices. For the past four years, we have been assessing states’ compliance with Section 7, developing best practices for agency registration, providing pro bono technical assistance to states and, when necessary, initiating litigation.

My testimony today covers four main areas:

1. the purpose of Section 7 and its relevance today in light of marked disparities in the composition of the electorate,
2. evidence of widespread non-compliance with the law,
3. recent, positive experiences in states that are working to improve compliance, and
4. selected best practices.

¹ Project Vote’s testimony is coauthored by Douglas Hess, who served as director of our NVRA efforts from 1994 to 1996, and continues to work with in this area. I would also like to acknowledge the assistance of Jody Herman.

1. The Purpose of the NVRA and of Section 7

The National Voter Registration Act (NVRA) was passed by Congress in 1993 to increase participation in federal elections by removing obstacles to voter registration and by giving states an affirmative responsibility to offer voter registration services to citizens when they interact with their government. One of the bill's sponsors noted that with the NVRA, Congress was completing the work it had begun with the passage of the Voting Rights Act.

The NVRA's best known provision is its "motor voter" requirement, which instructs states to offer individuals an opportunity to register to vote when they apply for or renew their driver's licenses. An equally important but less well known provision of the NVRA is the requirement in Section 7 that states offer voter registration to individuals when they apply for or recertify their eligibility for public assistance, as well as when they change addresses. The programs covered by the NVRA include, but are not limited to: the Food Stamp Program, Temporary Assistance for Needy Families (TANF), the Women, Infants and Children (WIC) program and Medicaid.²

Section 7 is an important provision of the NVRA because it has the potential to offset the longstanding under-representation of low-income citizens in the electorate. The House Committee reporting on the NVRA explained that Section 7 was included in the Act to ensure that "the poor and persons with disabilities who do not have driver's licenses [would]...not be excluded from those for whom registration will be convenient and readily available."³

Today, the need for the effective implementation of Section 7 is as great as it was in 1993. Indeed, the pool of unregistered citizens is larger than it was when Section 7 was first implemented:

- in 1996, about 52 million adult citizens were unregistered (29 percent);
- in 2004, about 55 million adult citizens were unregistered (28 percent); and
- in 2006, close to 64 million adult citizens were unregistered (32 percent).

Moreover, the proportion of the U.S. voting-eligible population that registers to vote remains highly skewed towards Whites, the educated, the wealthy and the able-bodied. In particular, eligible young minorities and those who have recently moved are disproportionately missing from the registration rolls. Of adult citizens from households with annual incomes below \$25,000 in 2006, approximately 40 percent were unregistered compared to only 20 percent from households with incomes greater than \$100,000. The registration rate for non-Hispanic Whites was 71 percent in 2006, but only 61 percent for non-Hispanic Blacks, 54 percent for Latinos and

² 42 USC Section 1973gg.

³ NVRA House Report 103- 9, p.5.

just 49 percent for Asian-Americans.⁴ As we discuss in our report *Representational Bias in the 2006 Electorate*, minorities lag behind Whites in rates of voter registration, partly because they are disproportionately low-income.

Section 7 holds as great a promise for correcting these disparities as it did in 1993. One public assistance program alone, the Food Stamp Program, served nearly 12 million adult citizens in an average month in Fiscal Year 2006.⁵ Census surveys verify the ability of agency-based registration to reach the populations that Congress was concerned about: registered members of low-income households are several times more likely to have registered through a public assistance office than other citizens.⁶ Furthermore, in these surveys, individuals who indicated they were not able to work due to a temporary or permanent disability were three times more likely to have reported registering to vote through a public assistance office than other registered citizens.

A recent and interesting analysis related to the potential of agency registration comes from the State of Washington where the Secretary of State's office compared the list of registered voters to the list of adult citizen who received public assistance. Their comparison found that of the 1.2 million adult citizens who used the state's public assistance programs in 2006, only 33.5 percent were registered to vote. Even assuming some matches between the lists were missed, this demonstrates that Washington's public assistance agencies have a pool of hundreds of thousands of adult citizens they can reach with much needed voter registration services. Indeed, given that low-income citizens constitute a disproportionate share of the unregistered population, these agencies appear to be able to reach the lion's share of the states 1.4 million unregistered adult citizens.

2. Non-Compliance with NVRA Section 7 is Widespread

Voter registration at public assistance agencies has plummeted from 2.6 million in 1995-1996 to just 550,000 in 2005-2006, a 79 percent decrease. This decline cannot be explained by a decline in public assistance caseloads, the rate of citizenship among applicants or registration rates of low-income individuals. None have changed with any degree of significance; meanwhile, as noted above, the pool of eligible individuals who are not registered to vote has increased by ten million.

Since 2004, Project Vote has analyzed state and county registration data from the Election Assistance Commission (data previously maintained by the Federal Election Commission),

⁴ Hess, Douglas R. *Representational Bias in the 2006 Electorate* (2006, Project Vote), p.11; available at <http://www.projectvote.org>.

⁵ See Table 2 in Hess, Douglas R. and Scott Novakowski, *Unequal Access* (2008, Project Vote and Demos).

⁶ <http://www.census.gov/population/socdemo/voting/cps2004/tab14.xls> and additional analysis of the Current Population Survey November 2004 and 2006 Election Supplements by Project Vote

engaged in conversations with state public assistance agency executives and state election officials, surveyed clients at agencies, interviewed agency personnel, assessed agency offices covered by the NVRA, and pursued public records inquiries related to states' implementation of Section 7. The evidence points overwhelmingly to chronic and pervasive non-compliance by states. The evidence of this decline is detailed in a report we released with Demos entitled *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007*.⁷

As a summary of that report and our ongoing work in specific states, we have found that:

- agency and election officials are often unaware of their responsibilities under Section 7 of the NVRA,
- many agency offices have been found without voter registration materials,
- agency staff often have not been trained to register voters, and
- election officials rarely provide information, support or training to agency staff.

The end result of the near-total breakdown of voter registration service delivery as envisioned by Section 7 is that millions of individuals across the country who are applying for benefits, recertifying their eligibility for benefits or changing their addresses at public assistance agencies are routinely denied their right to an opportunity to register to vote as required by the Act.

Project Vote is currently working to ensure the citizens of Arizona, California, Colorado, Florida, Missouri, New Jersey, New Mexico, North Carolina, Ohio, Oregon and Washington are provided the opportunity to register to vote that is guaranteed to them by the NVRA. Missouri and Arizona are instructive examples of the evidence and degree of non-compliance.

Missouri. Once a leader in public agency registration, Missouri's voter registration applications from public aid offices drop from 143,000 in 1995-1996 to not quite 16,000 in the 2005-2006 cycle (a decline of 89 percent). Approximately 380,000 adult citizens participated in the Food Stamp Program in an average month in 2006, and over a quarter million low-income adult citizens in Missouri were unregistered in 2006. In the first two years of implementation, agency registrations accounted for 15 percent of all registrations in Missouri, for the 2006 cycle they accounted for only 2 percent.

In May 2007, Project Vote visited offices in the four most populous counties in Missouri. Of the eleven public assistance agency sites visited, three had no voter registration applications on hand and none included the required voter registration forms in their applications for benefits. Of 53 clients surveyed outside these offices by Project Vote staff, only four recalled having been offered voter registration despite having met with agency staff while applying or recertifying for benefits. (The NVRA requires that agencies offer voter registration forms and services at times such as these, and further

⁷ Hess, Douglas R. and Scott Novakowski, *Unequal Access* (2008), available at <http://www.projectvote.org>.

requires that agencies provide clients with as much assistance with voter registration applications as any other agency form.)

Arizona. Arizona ranks 47th in the nation in terms of citizens who are registered to vote: 62 percent of adult citizens were registered in 2006 compared to a national average of 68 percent. This registration rate translates into approximately 280,000 low-income citizens who are not registered. Despite this large pool of potential applicants, registrations from Arizona's public assistance agencies has declined steadily, from a peak of 32,137 in the 2000, to 11,347 in 2004 and then to just 5,323 in the 2006. Whereas agency registrations accounted for 6 percent of all registrations in 1997 and 1998, they accounted for only one-half of one percent in 2006.

In late 2007, Project Vote surveyed offices in Maricopa and Pima counties, the state's two most populous counties. In addition to several offices not having the required forms for voter registration, three offices wrongly informed Project Vote staff that they were not required to offer voter registration. Project Vote surveyed eight-nine clients at agency offices who should have been offered an opportunity to register to vote; only eleven were.

I could provide similar information for Colorado, Florida, Ohio, New Mexico and Washington. Instead, I will summarize the results of survey data. Project Votes assessed whether voter registration services were available in 56 public assistance offices in six states. We found that only twenty-one offices could provide voter registration applications upon request. We surveyed three hundred eighty-six clients whose transactions with the public agency were covered by the NVRA. Only seventy-three (less than 20 percent) had been provided with an opportunity to register to vote. In California, where we have not yet conducted client surveys, the statistical data points strongly to noncompliance.

Noncompliance by states has been facilitated by the failure of the Justice Department to enforce the provisions of Section 7. Since 2000, the Justice Department has brought only one lawsuit, against Tennessee in 2002, to enforce the public agency provisions of Section 7. Indeed, the results of Department's enforcement action in Tennessee are instructive as to the great potential of Section 7 and the need for aggressive enforcement: since 2002, Tennessee's public assistance offices regularly file over 50,000 voter registration applications each year. During the 2006 election cycle, one in five voter registrations from public aid offices in the nation came from Tennessee.

In 2004, Project Vote and several other organizations met with representatives of the Civil Rights Division to present our concerns regarding states' noncompliance with Section 7. On several subsequent occasions, we presented further evidence of noncompliance. However, in

contrast to lax enforcement of Section 7, the Justice Department has in this decade brought Section 8 lawsuits against four states and the City of Philadelphia and has had an aggressive program to pressure states to purge their voter rolls since early 2005.

Finally, in 2007, the Department sent letters to eighteen states querying them about various aspects of their implementation of Section 7. The letters themselves raised questions however, which we describe in a February 25, 2008, letter to the Chairman and Ranking Member of the House Committee on the Judiciary.⁸ Last Tuesday, Project Vote, Demos and the Lawyers' Committee for Civil Rights Under Law met with Justice Department officials regarding the evidence of Section 7 non-compliance across the country. We hope, given the overwhelming evidence presented to the Department, that this meeting is a sign that the Department will now engage in vigorous enforcement efforts in the near future.

3. Recent State Efforts to Improve Voter Registration Services at Agencies Yield Results

In recent years, several states have made significant improvements in the delivery of NVRA-mandated voter registration services while others are taking more modest steps. In 2004, Iowa Governor Vilsack, Secretary of State Culver and public assistance agency executives committed themselves to improving NVRA compliance. They took a number of steps, the first of which was an inter-agency meeting to manage the process of improving the delivery of voter registration services. Next, the agency issued a clear, direct memorandum to staff reminding them of their responsibilities and providing clear directives on how registration was to be offered. The state then set up a simple, Internet-based reporting system that each agency office uses weekly to report their voter registration and client interaction numbers. This online reporting system allows managers to monitor office performance and attend to offices that appear to be performing poorly. Agency staff promoted voter registration at the offices through signs, offered clients in waiting rooms an opportunity to register and made sure each client who was being seen for a transaction covered by the NVRA was presented with a voter registration application.

As a consequence of executive leadership, an interoffice memorandum, a simple reporting system and a commitment by staff, the number of applications originating from Iowa's public assistance agencies more than doubled in the election cycle following implementation of reforms. Such a dramatic increase is particularly promising since Iowa already has the fifth highest voter registration rates in the country.

In Oregon in 2004, executive-level personnel from the offices of Secretary of State Bill Bradbury, Governor Kulongoski and the Secretary of the Department of Human Services (DHS) met to develop a plan to improve compliance with the NVRA's public agency registration

⁸ Available at <http://www.projectvote.com>.

requirement. Oregon had been a leader when the NVRA was first implemented, but officials acknowledged that they had not taken steps to ensure continued compliance with the Act. They set about to correct that situation.

Their first step was to revitalize the NVRA site coordinator system, which was the key structure for ensuring the delivery of voter registration services. Each public assistance office that saw clients was to have an NVRA site coordinator whose duties included ensuring all staff members were made aware of their responsibilities to offer voter registration forms to clients, stocking blank voter registration applications, transmitting completed applications to county election officials weekly and reporting total applications collected and transmitted to the Secretary of State's office monthly. By 2004, this system of trained coordinators had decayed.

The Department of Human Services undertook an aggressive site coordinator recruitment initiative that yielded 689 coordinators. The Secretary of State's Election Division responded by developing a detailed training for site coordinators, which Election Division staff presented at six locations around the state in September 2004. DHS took additional steps to improve their compliance with Section 7, including updating the chapter on voter registration in the procedural manual used by office managers and caseworkers and creating an evaluation tool that regional managers use to assess each office's compliance. Unlike Iowa, however, Oregon's DHS refused to agree to regularly track their registration numbers and client caseload. (However, agency registration data is available from election officials.)

In 2007, Project Vote obtained registration data from election officials and examined data for DHS offices in Oregon's five most populous counties. We compared registration data from September 2003 to August 2004 (pre-treatment) with September 2005 to August 2006 (the second year of treatment). We found that the number of registrations had increased by 65 percent. In addition to the reforms mentioned above, Oregon has continued to act on its renewed commitment to Section 7. In January 2008, the Election Division and DHS collaborated to train 499 agency personnel on how to provide clients an opportunity to register to vote in the context of social service delivery.

New Mexico, too, has taken some initial steps to fulfill its NVRA-mandated voter registration responsibilities in offices responsible for the Food Stamps and Temporary Assistance to Needy Families (TANF) Programs. Since last winter, New Mexico officials have been receiving technical assistance from Project Vote and Demos. In February of 2007, these New Mexico offices transmitted only 102 registration applications to election officials. In February 2008, however, these offices transmitted 672 voter registration applications. Although the state still has many counties yet to comply with the NVRA, and the state's WIC and Medicaid offices have not yet been involved in these reforms, the dramatic increase in agency registrations is a hopeful sign of what the state can do when they fully comply. Moreover, these increases came only one

month after the state issued new guidelines to the agencies, demonstrating that performance increases can come about with simple measures.

4. Selected Best Practices

From years of working to help states deliver voter registration services at public assistance agencies, Project Vote has learned that state officials need to follow a few key steps to ensure meaningful compliance with Section 7:

- a. **Establish Inter-agency Cooperation.** Election officials and agency directors must meet regularly to ensure that (i) agency officials understand their responsibilities under the Act, (ii) effective staff training occurs, (iii) voter registration materials are available and (iv) the data collection requirements of the NVRA are being met.
- b. **Appoint NVRA Coordinators.** Each office that serves clients needs to appoint a member of the staff to coordinate NVRA activities. This includes training new staff, transmitting completed voter registration applications to election authorities and reporting data on compliance to agency management and election officials.
- c. **Collect and Measure Agency Registration Data.** The NVRA requires state election officials to report to the Election Assistance Commission the number of applications that originate from Section 7 agencies. Moreover, it has been our experience that agencies that do not collect data on voter registration applications by local agency office cannot manage NVRA implementation and cannot be assured their local offices are complying with the law. Consistent with this experience, we find that when agencies collect and monitor data from their local offices, voter registration application numbers increase markedly.
- d. **Monitor and Act on Registration Data.** Both election and agency officials should monitor and analyze the registration data produced by local offices. For offices that report unusually low registration numbers, or that fail to report, supervisory action should be taken to ensure that NVRA procedures are being followed, staff are trained and supplies are readily available. Moreover, NVRA responsibilities should be made a regular part of evaluations of public assistance offices and their employees.

5. Conclusion

The NVRA holds out the promise that all Americans deserve an equal opportunity to register to vote and participate in our democracy. Many states, however, are undermining that promise and furthering inequalities in our electorate by ignoring the rights of citizens to voter registration

services in public assistance agencies. Congress and the Justice Department need to act so that states quickly comply with their responsibility to provide registration opportunities to all their residents, not just some.