

INCREASING COMPLIANCE

— WITH SECTION 7 OF THE —

NATIONAL VOTER REGISTRATION ACT

U.S. COMMISSION ON CIVIL RIGHTS

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BRIEFING
REPORT



AUGUST 2016

U.S. COMMISSION ON CIVIL RIGHTS

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- Investigate complaints alleging that citizens are being deprived of their right to vote by reason of their race, color, religion, sex, age, disability, or national origin, or by reason of fraudulent practices.
- Study and collect information relating to discrimination or a denial of equal protection of the laws under the Constitution because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Appraise federal laws and policies with respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin, or in the administration of justice.
- Serve as a national clearinghouse for information in respect to discrimination or denial of equal protection of the laws because of race, color, religion, sex, age, disability, or national origin.
- Submit reports, findings, and recommendations to the President and Congress.
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Increasing Compliance With Section 7 of the National Voter Registration Act

A Briefing Before
The United States Commission on Civil Rights
Held in Washington, DC

Briefing Report

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UNITED STATES COMMISSION ON CIVIL RIGHTS

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Letter of Transmittal

President Barack Obama
Vice President Joe Biden
Speaker of the House Paul Ryan

The United States Commission on Civil Rights is pleased to transmit our briefing report titled “Increasing Compliance with Section 7 of the National Voter Registration Act.” The full report is also available on the Commission’s website at www.usccr.gov.

The report examines state compliance with the National Voter Registration Act’s mandate to provide voter registration forms and assistance to those utilizing public assistance and disability agencies, and the efforts of the Department of Justice and private citizens in enforcing the mandate, found in Section 7 of the Act. The report also looks at trends in voter registration modernization, including electronic and automatic registration, and the use of health benefit exchanges to register voters.

The Commission held a briefing on April 19, 2013. From this testimony and subsequent research, a majority of the Commission made a number of findings and recommendations.

Highlights of the findings include:

- Providing for voter registration at public assistance offices is important to improve minority registration and participation in the election process. U.S. Census Bureau statistics show Hispanics and blacks were, respectively, three and four times more likely than whites to register to vote at a public assistance agency. At least one state has observed that having voter registration offered at public assistance offices benefits voters of all demographics.
- Providing for voter registration at public assistance offices is vital for citizens with disabilities. These citizens struggle with poverty at twice the rate of citizens without disabilities and thus may be more likely to register to vote at those offices.
- Providing for voter registration at public assistance offices is also important for Limited English Proficient persons, who are more likely to be living in poverty than English proficient individuals. The Election Assistance Commission has translated the National Mail Voter Registration form into Spanish and eight Asian languages.
- Congress provided the Department of Justice with authority to sue state agencies that fail to comply with the National Voter Registration Act. The Department has additional tools, including publishing guidance on implementing the National Voter Registration Act, conducting investigations, sending letters of intent to enforce the National Voter Registration Act, and reviewing state data reported to the Election Assistance Commission.
- A recent Election Assistance Commission Report shows that compliance intervention—including cooperative work and/or lawsuits by the Department of Justice or private litigants resulted in seven

of the ten top-performing states under Section 7. Litigation is an effective tool to enforce state compliance with Section 7.

- Integrating voter registration procedures within existing agency processes, including automatic opt out and online processes, is essential to effective National Voter Registration Act compliance. Integrated computerized processes can improve Section 7 compliance and voter registration rates among low-income citizens, Limited English Proficient citizens, and citizens with disabilities.
- The most efficient and cost-effective registration process for states to meet the National Voter Registration Act's requirements is to provide an electronic automatic "opt out" registration process. This process clarifies any confusion an applicant may have regarding the necessity to register to vote in order to receive benefits. It eliminates hard-copy error from the process and does not rely on an agency employee's memory to comply with the registration process.

Highlights of the recommendations include:

- States should have strong oversight of their National Voter Registration Act programs, and Congress should fund a single point of contact in the State Board of Elections who coordinates National Voter Registration Act activities in the state.
- Because compliance with the National Voter Registration Act requires the management of a large volume of data on both voter registration forms and declination forms, Congress should provide resources for states to learn about and invest in technology that streamlines data processing.
- Congress should increase resources for the Department of Justice to provide technical assistance, training about and enforcement of the National Voter Registration Act.
- Congress should expand Section 7 to require federal agencies to agree to be designated as a covered agency under Section 7 when requested by states.
- The Election Assistance Commission should encourage states to move to electronic voter registration rather than relying solely on paper forms, and integrate registration seamlessly with other electronically covered transactions.
- The Election Assistance Commission should reexamine whether it should translate the National Mail Voter Registration form into additional languages.
- The Department of Health and Human Services should ensure federally facilitated Health Benefit Exchanges comply with Section 7. Federal employees who assist the public must be trained in assisting with voter registration, and training must be offered on an ongoing basis.

The Commission is pleased to transmit its findings, recommendations, and positions on Section 7 of the National Voter Registration Act. The intent of the report is to help ensure that all eligible Americans receive an equal opportunity to register to vote and ultimately exercise the most fundamental of our constitutional rights—the right to exercise the franchise.

For the Commission,



Martin R. Castro, Chairman

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EXECUTIVE SUMMARY

In 1993, Congress enacted the National Voter Registration Act, also known as the “motor-voter” bill.¹ The Act requires states to establish voter registration procedures for federal elections that allow eligible voters to register to vote when applying for a driver’s license, by mail, and at public assistance and disability agencies (found in Section 7 of the Act).² This report focuses on whether States have been complying with the congressional mandate to provide voter registration forms and assistance to those utilizing public assistance and disability agencies. This report also examines the Department of Justice’s and private citizens’ enforcement of this provision of the National Voter Registration Act. Finally, this report looks at modernization of voter registration, including electronic and automatic registration, and the use of health benefit exchanges to register voters.

Since its formation in 1957, the U.S. Commission on Civil Rights (Commission) has played a central role in documenting and explaining the need to enact, and then maintain, a strong federal Voting Rights Act. The Commission reported in the late 1950s and early 1960s on the pervasive discrimination in voting that then existed throughout most of the South and that led to the passage of the Voting Rights Act in 1965. The Commission further reported on the initial efforts to enforce the Voting Rights Act immediately after its passage; and provided reviews and analyses that assisted Congress in deciding to extend and expand the act’s temporary provisions in 1970, 1975, and 1982. This report continues the Commission’s record of service in the field of voting rights.

As the country prepares to vote in another presidential cycle, the Commission’s examination of the current state of voter registration – particularly registration access – is timely. The Commission focused on the mandate to provide voter registration opportunities to persons who access services at public assistance and disability agencies under Section 7, because of the understanding that the first logical step to casting a ballot is registering to vote, and that the country works best and benefits most when all eligible citizens have a fair opportunity to register to vote.

With the intent of furthering voter registrations at public assistance and disability agencies, the Commission developed findings and recommendations based on its social science research, review of the legislative history, and briefing testimony.

Highlights of the Findings include:

- Providing for voter registration at public assistance offices is important to improve minority registration and participation in the election process. U.S. Census Bureau statistics show Hispanics and blacks were, respectively, three and four times more likely

¹ National Voter Registration Act of 1993, P.L. 103–31, May 20, 1993, 107 Stat 77 (codified at 52 U.S.C. §§ 20501-20511).

² *Id.*

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than whites to register to vote at a public assistance agency. At least one state has observed that having voter registration offered at public assistance offices benefits voters of all demographics.

- Providing for voter registration at public assistance offices is vital for citizens with disabilities. These citizens struggle with poverty at twice the rate of citizens without disabilities and thus may be more likely to register to vote at those offices.
- Providing for voter registration at public assistance offices is also important for Limited English Proficient persons, who are more likely to be living in poverty than English proficient individuals. The Election Assistance Commission has translated the National Mail Voter Registration form into Spanish and eight Asian languages. The Election Assistance Commission recently updated which languages to translate the form in 2016.
- Perceived problems with local public assistance offices include staff failure to provide voter registration opportunities at the time they should, lack of voter registration applications on site, staff unawareness of the obligation to provide voter registration services, inadequate training, and lack of oversight.
- Multiple entities or individuals in state and local governments may act independently to oversee that state agencies follow the National Voting Registration Act requirements. A state-level coordinator increases the likelihood for statewide agency compliance with the National Voter Registration Act.
- Congress provided the Department of Justice with authority to sue state agencies that fail to comply with the National Voter Registration Act. The Department has additional tools, including publishing guidance on implementing the National Voter Registration Act, conducting investigations, sending letters of intent to enforce the National Voter Registration Act, and reviewing state data reported to the Election Assistance Commission.
- The Election Assistance Commission is responsible for administration of the national voter registration form and state reporting under the National Voter Registration Act.
- A recent Election Assistance Commission Report shows that compliance intervention—including cooperative work and/or lawsuits by the Department of Justice or private litigants resulted in seven of the 10 top-performing states under Section 7. Litigation is an effective tool to enforce state compliance with Section 7.
- Integrating voter registration procedures within existing agency processes, including automatic opt out and online processes, is essential to effective National Voter Registration Act compliance. Integrated computerized processes can improve Section 7 compliance and voter registration rates among low-income citizens, Limited English Proficient citizens, and citizens with disabilities.
- Data management technology can effectively address large volumes of data from both voter registration forms and declination forms created in National Voter Registration Act compliance, which can otherwise be cumbersome, expensive to manage, and error-prone.

- Section 7 requires states to offer voter registration opportunities at certain state and local offices, including public assistance and disability offices. States are only required to have voters “opt in” to register to vote.
- The most efficient and cost-effective registration process for states to meet the National Voter Registration Act’s requirements is to provide an electronic automatic “opt out” registration process. This process clarifies any confusion an applicant may have regarding the necessity to register to vote in order to receive benefits. It eliminates hard-copy error from the process and does not rely on an agency employee’s memory to comply with the registration process.
- Under Section 7, states may designate as voter registration agencies nongovernmental offices (such as private colleges) or federal offices so long as these entities agree.
- Section 7 requires all state offices that provide public assistance (including Health Benefit Exchanges) to offer voter registration and assist applicants in registering to vote.

Highlights of the Recommendations include:

- States should have strong oversight of their National Voter Registration Act programs, and Congress should fund a single point of contact in the State Board of Elections who coordinates National Voter Registration Act activities in the state.
- The Election Assistance Commission should encourage states to move to electronic voter registration rather than relying solely on paper forms, and integrate registration seamlessly with other electronically covered transactions.
- Because compliance with the National Voter Registration Act requires the management of a large volume of data on both voter registration forms and declination forms, Congress should provide resources for states to learn about and invest in technology that streamlines data processing.
- The Election Assistance Commission should reexamine whether it should translate the National Mail Voter Registration form into additional languages.
- Congress should increase resources for the Department of Justice to provide technical assistance, training about and enforcement of the National Voter Registration Act.
- Congress should expand Section 7 to require federal agencies to agree to be designated as a covered agency under Section 7 when requested by states.
- Additional designated agencies should include:
 - Indian Health Services
 - U.S. Citizenship and Immigration Services
 - Department of Veterans Affairs
- The Department of Health and Human Services should ensure federally facilitated Health Benefit Exchanges comply with Section 7. Federal employees who assist the public must be trained in assisting with voter registration, and training must be offered on an ongoing basis.

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INTRODUCTION TO THE NATIONAL VOTER REGISTRATION ACT

After passage of the Voting Rights Act, advocates urged for the creation of a national voter registration system to address some of the remaining barriers to voting. After multiple introduced pieces of legislation, in 1993, Congress enacted the National Voter Registration Act. Generally, the Act requires states to provide voter registration to citizens when applying for a driver's license, by mail, and at public assistance and disability agencies. The National Voter Registration Act has been in effect for over 21 years.

This report focuses on voter registration at public assistance and disability offices. This introduction discusses: (1) the historical background of the need for voter registration reform, which led to passage of the National Voter Registration Act, (2) a description of the major aspects of the Act, (3) the fluctuation in voter registrations at public assistance and disability agencies over the past 21 years, (4) the impacts to minorities, disabled, and Limited English-Proficient individuals, and (5) enforcement efforts by the Department of Justice and private citizens.

Ensuring the Right to Vote for All

The struggle to expand the right to vote to historically disenfranchised groups has experienced a prolonged evolution toward a more inclusive democracy. Following the Civil War, the United States passed the “Reconstruction Amendments” to the Constitution, including the Fifteenth Amendment, which prohibited limitations on suffrage based on race, color, or previous condition of servitude.¹ The United States did not guarantee women the right to vote until 1920, upon ratification of the Nineteenth Amendment.² And it was not until 1952 when Congress passed the Immigration and Nationality Act³ that all Asian immigrants had the right to naturalize and eventually vote.

In 1965, Congress passed the Voting Rights Act. The Voting Rights Act sought sweeping changes by eliminating voting barriers to the ballot for blacks and other minorities.⁴ Signed into law by President Lyndon B. Johnson,⁵ the Voting Rights Act prohibits states from using any voting

¹ U.S. CONST. amend. XV, § I.

² U.S. CONST. amend. XIX.

³ Immigration and Nationality Act of 1952, P.L. 82-414, 66 Stat. 163 (codified as amended at 8 U.S.C. Ch. 12).

⁴ Voting Rights Act of 1965, P.L. 89-110, 79 Stat. 437 (1965) (codified as amended at 52 U.S.C. Subtitle I Voting Rights.).

⁵ President Lyndon B. Johnson, *Remarks in the Capitol Rotunda at the Signing of the Voting Rights Act* (Aug. 6, 1965), transcript available at <http://www.lbjlibrary.net/collections/selected-speeches/1965/08-06-1965.html>; video available at <https://www.youtube.com/watch?v=E2k9AFAoKrU>. See also Special Message to the Congress: The American Promise (Mar. 15, 1965), video available at <https://www.youtube.com/watch?v=5NvPhiuGZ6I&index=44&list=PL7F18B638762EF225>.

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criterion that has the effect of denying or abridging the right to vote based on race or color.⁶ The Act also:

- Bans the use of literacy and other tests and devices that had been misapplied (Section 4(a));⁷
- Authorizes federal registration of voters where local registrars denied the right to vote on account of race or color (Section 6);⁸
- Authorizes the appointment of federal observers to monitor polling place activities on election days to assure that all citizens are permitted to vote and that their votes count (Section 8);⁹ and
- Allows new state laws and procedures affecting voting to be implemented only if they are determined not to have a discriminatory purpose or effect (Section 5).¹⁰

By means of a formula set out in the Voting Rights Act, these special provisions applied (initially for a five-year period) to jurisdictions with a record of discrimination (Section 4).¹¹ The impact of the Voting Rights Act was clear and immediate. In the five years after its enactment, as many African-Americans were registered to vote in the South as had been registered in the previous 100 years.¹² For example, in Mississippi, the registration of African-American voters increased from below 6.7 percent in 1965 to 60 percent in 1968.¹³

Congress amended the Voting Rights Act several times in an effort to address continued voter suppression. These amendments include making the national ban on tests-and-devices permanent, banning practices that have a discriminatory result, and requiring states to print ballots in minority

⁶ See 52 U.S.C. § 10101(a)(1) “Plain Language Meaning: No state or political subdivision may restrict a citizen’s right to vote based on race, color, or other factor such as literacy tests or language barriers.”

⁷ 52 U.S.C. § 10101.

⁸ 42 U.S.C. §§ 1973e(a)-(b), repealed by Fannie Lou Hamer, Rosa Parks, and Coretta Scott King Voting Rights Act Reauthorization and Amendments Act (VRARA) of 2006 § 3(c), enacted as P.L. 109-246 § 3(c), 120 Stat. 580.

⁹ 52 U.S.C. § 10305.

¹⁰ 52 U.S.C. § 10304.

¹¹ Section 4(b) determined which jurisdictions would be subject to the preclearance provisions of Section 5. However, the Supreme Court in *Shelby County v. Holder*, 570 U.S. ____, 133 S. Ct. 2612 (2013) found Section 4(b) unconstitutional. Therefore, all states which previously fell under the coverage formula of Section 4(b) were no longer required to obtain a Section 5 preclearance for any changes made to their voting practices unless they were previously under a Section 3(c) court order.

¹² See J. Mijin Cha, “Registering Millions: Success and Potential of the National Voter Registration Act at 20,” *Dēmos*, p. 12 (2013), available at <http://www.demos.org/sites/default/files/publications/RegisteringMillions-NVRA-Demos.pdf> (citing Spencer Overton, *Stealing Democracy* (2006), at 94-95) (hereinafter “Registering Millions”).

¹³ *Id.*

languages¹⁴—the latter being of particular importance in expanding the Asian, Latino, and Native American vote.¹⁵

‘Complicated Maze’ of Local Regulations Leads to the National Voter Registration Act

Notwithstanding the Voting Rights Act’s success at eliminating “the more obvious impediments to voter registration,”¹⁶ “a complicated maze of local registration laws and procedures” persisted in various states, a maze that made it difficult for eligible citizens to vote.¹⁷

Although voter turnout had increased for thirty years following the Voting Rights Act’s passage, the 1992 presidential election yielded troubling results:¹⁸ nearly 44 percent of the electorate did not vote.¹⁹ To determine why, Congress formed a committee to investigate. That investigation revealed that the “failure to become registered is the primary reason given by eligible citizens for not voting.”²⁰ Congress found that low voter turnout in federal elections posed a serious threat to the democratic ideals of the country and recommended that it “assist in reducing barriers, particularly government-imposed barriers, to applying for registration wherever possible.”²¹

In response, Congress enacted the National Voter Registration Act of 1993.²² In the Act, Congress intended to: (1) establish procedures that increase the number of eligible citizens who register to vote in elections for federal office, (2) make it possible for federal, state, and local governments to implement the Act in a manner that enhances the participation of eligible citizens as voters in

¹⁴ See Voting Rights Act Language Assistance Amendments of 1992, P.L. 102-344, 106 Stat. 921 (1992) (codified as amended at 52 U.S.C. § 10503. S. REP. 102-315, at 5 (1992).

¹⁵ Amendments to the Voting Rights Act of 1965, P.L. 94-73, 89 Stat. 400 (1975) (codified as amended at 52 U.S.C. § 10301. See S. REP. 94-295, at 31 (1975) (amending the Voting Rights Act of 1965 “Based on the extensive evidentiary record demonstrating the prevalence of voting discrimination and high illiteracy rates among language minorities . . . The term language minority citizens refers to those persons who are Asian American, American Indian, Alaskan Natives, or Spanish heritage”).

¹⁶ H.R. REP. No. 103-9, at 2 (1993).

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ See, Lisa J. Danetz, Statement, Senior Counsel, Dēmos, U.S. Commission on Civil Rights, *Increasing Compliance With Section 7 of the National Voter Registration Act*, (Washington, DC, April 19, 2013), p. 94, (hereinafter Danetz Statement) (citing Senate Committee on Rules and Administration reporting that “almost 70 million eligible citizens” did not vote in the 1992 Presidential election); see also <http://www.fec.gov/pages/htmlto5.htm>.

²⁰ H.R. REP. No. 103-9, at 3 (1993).

²¹ *Id.*

²² National Voter Registration Act of 1993, P.L. 103-31, May 20, 1993, 107 Stat 77 (codified at 52 U.S.C. §§ 20501-20511).

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elections for federal office, (3) protect the integrity of the electoral process, and (4) ensure that accurate and current voter registration rolls are maintained.²³

Within the Act, Congress reiterated that “the right of citizens of the United States to vote is a fundamental right”²⁴ and found that “discriminatory and unfair registration laws and procedures can have a direct effect on voter participation in elections for federal office and disproportionately harm voter participation by various groups, including racial minorities.”²⁵ The Act established national procedures for voter registration, including mandates that states offer U.S. citizens the option of registering to vote when they apply for a driver’s license through the mail or in-person at state-designated registration offices, among other means of registering to vote.²⁶

At passage, proponents of the National Voter Registration Act argued the Act would reduce barriers to voting,²⁷ increase voter turnout,²⁸ protect against voter fraud by making violations a federal offense,²⁹ and cost states little to implement, based on the experiences of states that previously used some form of “motor-voter” registration.³⁰

Opponents of the Act, on the other hand, argued that state registration requirements were not burdensome,³¹ and there was little evidence that increasing the number of persons on voter registration rolls would lead to higher voter turnout.³² By making it so easy to register, they believed the Act would increase the likelihood of election fraud.³³ Also, according to opponents, implementation would be costly to the states, in terms of money and other administrative costs, including training.³⁴ With regard to registration at public assistance and disability agencies,

²³ 52 U.S.C. § 20501 (b).

²⁴ 52 U.S.C. § 20501 (a)(1).

²⁵ 52 U.S.C. § 20501 (a)(3), *see also* Kimberly Delk, *What Will It Take to Produce Greater American Voter Participation? Does Anyone Really Know?* 2 LOY. J. PUB. INT. L. (2009), pp. 151–152.

²⁶ National Voter Registration Act of 1993, P.L. 103–31, May 20, 1993, 107 Stat 77 (codified at 52 U.S.C. §§ 20501-20511).

²⁷ U.S. Congress, Senate Committee on Rules and Administration, *National Voter Registration Act of 1993*, report to accompany S. 460, 103rd, 1st sess., S. Rep. No. 103-6, at 2-3; U.S. Congress, House Committee on House Administration, *National Voter Registration Act of 1993*, report to accompany H.R. 2, 103rd Cong., 1st sess., H. Rep. No. 103-9, at 2-5.

²⁸ S. Rep. No. 103-6, at 5.

²⁹ S. Rep. No. 103-6, at 5, 11-13, 20-21, 37. H. Rep. No. 103-9, at 10-11, 14, 20-21.

³⁰ S. Rep. No. 103-6, at 41. *See also* Sen. Daniel K. Akaka, “National Voter Registration Act of 1993,” remarks in the Senate, *Congressional Record*, vol. 139, Mar. 17, 1993 at S3002.

³¹ S. Rep. No. 103-6, at 50-51.

³² *Id.* at 51-52.

³³ S. Rep. No. 103-6, at 52-57. H. Rep. No. 103-9, at 34-37.

³⁴ S. Rep. No. 103-6, at 51. H. Rep. No. at 103-9, at 36.

opponents argued that the time spent assisting applicants with registration forms would distract from providing public assistance and disability services.³⁵

Key Voter Registration Components of the National Voter Registration Act

The National Voter Registration Act facilitated voter registration in three key ways by requiring: (1) state motor vehicle offices to offer voter registration, (2) public assistance and disability offices to offer voter registration, and (3) states to accept mail-in registration forms. Congress also provided for the enforcement of the National Voter Registration Act in U.S. district courts.

Under Section 5 of the National Voter Registration Act, eligible citizens can register to vote when they apply for a driver's license. States must also forward any change of address submitted to the state motor vehicle office to election authorities, which then automatically updates the eligible voter's registration.³⁶

Section 6 of the National Voter Registration Act requires that states accept a standardized federal mail-in application as a means of registering to vote. Instead of having to submit an application in person at a registrar's office, eligible voters can use the federal mail-in form or a state mail-in form that meets the same requirements as the federal form.³⁷

Section 7 expands voter registration access by requiring any office that provides public assistance, as well as state-funded programs primarily engaged in providing services to persons with disabilities, to also provide voter registration services.³⁸

In the National Voter Registration Act, Congress provided both the Attorney General at the Department of Justice and any aggrieved citizen with the right to seek judicial relief.³⁹ If, after notification, the appropriate state election official did not carry out the provisions of the Act, an aggrieved citizen can then bring a civil suit in a U.S. district court.⁴⁰ The Act further provides authority to the Election Assistance Commission⁴¹ to develop the mail-in registration form, for approving a state form, and to produce a biennial report on the impact of the Act with recommendations for improvements.

³⁵ Sen. Mitch McConnell, "National Voter Registration Act of 1993," remarks in the Senate, daily edition, vol. 138, Sept. 21, 1992, at S14206.

³⁶ 50 U.S.C. § 20504.

³⁷ 50 U.S.C. § 20505.

³⁸ 50 U.S.C. § 20506.

³⁹ 50 U.S.C. § 20501.

⁴⁰ 50 U.S.C. § 20501(b).

⁴¹ The National Voter Registration Act designated the Federal Election Commission as the entity to create the mail registration form, to approve any forms developed by the states, and to produce the biannual reports. In 2002, Congress delegated these authorities to the Election Assistance Commission. *See* Pub. L. 107-252, Title VIII, § 802(a), Oct. 29, 2002, 116 Stat. 1726.

Voter Registration Required at Public Assistance and Disability Agencies

During the hearings leading to passage of the National Voter Registration Act, Congress found that “discriminatory and unfair registration laws and procedures can have a direct and damaging effect on voter participation in elections for Federal office, and disproportionately harm voter participation by various groups, including the disabled and racial minorities.”⁴² In Section 7 of the National Voter Registration Act, Congress mandated that states provide voter registration opportunities to persons who access services at public assistance and disability agencies.⁴³ Specifically, it requires states to provide voter registration at all state public assistance offices as well as offices that provide state-funded programs primarily engaged in servicing persons with disabilities.⁴⁴

Congress included these agencies to reach those citizens who may not benefit from the motor-voter provisions of the Act “because they are considered most likely to serve persons of voting age who may not have driver licenses.”⁴⁵ At the time of passage, the House Committee with jurisdiction over voting “strongly believe[d] that the mandatory provision [to provide registrations at public assistance and disability agencies] provides a necessary balance to the motor-voter portion, without unduly burdening State resources.”⁴⁶

Covered agencies must provide applicants for such services—or renewal of services, in addition to applicants submitting address changes—with a voter registration form or a “preference” (or declination) form to sign, indicating a preference to not register.⁴⁷ The law requires state officials working in such offices to assist applicants in completing registration forms and to forward the completed forms to the appropriate state or local election official.⁴⁸ The agencies were not to attempt to influence applicants to register to vote in a certain way or to discourage applicants from applying to register to vote.⁴⁹ States also have the option of designating other offices as voter registration agencies, including “public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue

⁴² H.R. Rep. No. 103-6, at 3 (1993).

⁴³ 52 U.S.C. § 20506.

⁴⁴ 52 U.S.C. § 20506(a).

⁴⁵ H.R. Rep. No. 103-6, at 12 (1993).

⁴⁶ *Id.*

⁴⁷ 52 U.S.C. § 20506. *See also* Gary O. Bartlett, Statement, Executive Director, North Carolina Board of Elections, to U.S. Commission on Civil Rights, *Increasing Compliance With Section 7 of the National Voter Registration Act*, (Washington, DC, April 19, 2013), p. 87 (hereinafter Bartlett Statement).

⁴⁸ *Id.*

⁴⁹ *Id.*

offices, unemployment compensation offices,” as well as federal and nongovernmental offices accepting of the designation.⁵⁰

Initial Implementation of Section 7 and Changes in Voter Registration

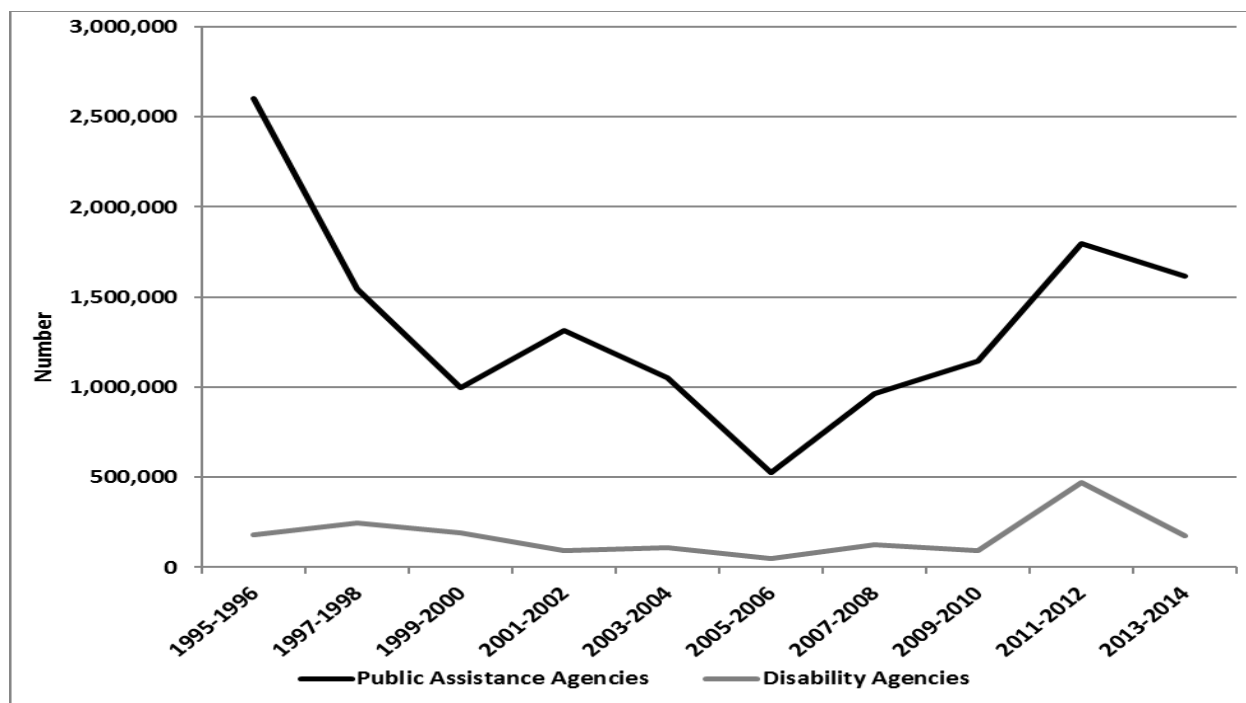
During the first two years after the Act’s implementation, between 1995 and 1996, 2.6 million new voters registered at state public assistance agencies.⁵¹ The increase in registered voters from public assistance and disability offices led to a greater number of eligible voters. Since then, the number of voters registered at public assistance agencies has increased and decreased. For example, voter registrations at public assistance agencies plummeted by nearly 80 percent nationwide between 1996 and 2006, going from 2,602,748 applications to 527,752 applications, as illustrated in Figure 1.⁵² After 2006, voter registration applications increased 67 percent overall.⁵³ However, registrations are still 38 percent below their 1996 peak, dropping to 1.6 million in 2014, as also illustrated in Table 1. Voter registration scholars and experts raise different explanations for this fluctuation in registrations.

⁵⁰ 52 U.S.C. § 20506(a)(3)(B).

⁵¹ Danetz Statement, *infra*, p. 95; *see also* Estelle H. Rogers, “National Voter Registration Act: Fifteen Years On,” American Constitution Society for Law and Policy, p. 2 (2009), *available at* http://www.acslaw.org/sites/default/files/Rogers_-_NVRA_at_15.pdf.

⁵² Brian Kavanagh et al., *Ten Years Later, A Promise Unfulfilled: The National Voter Registration Act in Public Assistance Agencies, 1995-2005*, NVRA Implementation Project, p. 5 (2005), *available at* <http://www.demos.org/sites/default/files/publications/NVRA91305.pdf>. (“The net result of this steady decline is that applications from public assistance offices had fallen 59.64 percent [nationwide] by 2003–2004 as compared with 1995–1996, while applications from all other sources increased by 22.43 percent. In short, states’ poor results at public assistance offices do not reflect a broader decline. . . . Eleven states, including Arkansas, Connecticut, Indiana, Louisiana, Missouri, Texas, Utah and Virginia, reported declines of over 80 percent. States as diverse as Delaware, North Carolina and Oklahoma have seen declines of more than 70 percent in voter registrations at public assistance offices.”). *See* Danetz Statement, p. 4 (“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 percent—from over 2.6 million applicants to only 540,000”).

⁵³ Compare Federal Election Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Election for Federal Office 1995-1996*, Washington, D.C., June 30, 1997, at Table 2, p. 76 with Election Assistance Commission, Report, *The Impact of the National Voter Registration Act of 1993 on the Administration of Election for Federal Office 2013-2014*, Washington, D.C., June, 30, 2015, Table 2(a), pp. 82-83.

Figure 1. Number of Voter Registration Forms Nationwide 1995-2014**Table 1. Number of Registrations by year at Public Assistance and Disability Agencies**

Year	Public Assistance Agencies	Disability Agencies
1995-1996	2,602,748	178,015
1997-1998	1,546,671	247,764
1999-2000	1,314,500	190,009
2001-2002	999,042	92,317
2003-2004	1,050,479	106,615
2005-2006	527,752	47,147
2007-2008	961,664	127,965
2009-2010	1,142,755	91,156
2011-2012	1,795,815	473,003
2013-2014	1,614,432	176,863

Source: Elections Assistance Commission biennial reports (1995–1996 to 2013–2014).

Some scholars believe that decreased voter registration numbers are a direct result of states not implementing the requirements of Section 7 to provide voter registration at public assistance agencies.⁵⁴ Briefing panelist Lisa Danetz from Dēmos indicated that her agency has seen a strong

⁵⁴ R. Michael Alvarez and Jonathan Nagler, “Declining Public Assistance Voter Registration and Welfare Reform: Response,” Dēmos, p. 5 (2009), available at <http://www.demos.org/publication/declining-public-assistance-voter-registration-and-welfare-reform-response>.

correlation between low public assistance registration numbers and specific examples of compliance problems.⁵⁵ For example, in 2006, various private parties (mainly public interest groups) began suing states for noncompliance.⁵⁶ In the aftermath of the lawsuits, the number of registrations rose.⁵⁷

Other scholars believe that the decrease in voter registration at public assistance agencies is a result of declining welfare caseloads after welfare reform passed in 1996,⁵⁸ or that voter registration outreach efforts by community-mobilization organizations have reduced the need for welfare recipients to register to vote at public assistance offices.⁵⁹ For example, briefing panelist Jason Torchinsky argued that largely the same pool of applicants for public assistance or disability would be registered to vote throughout the years, and thus the number of new registrations would inevitably decrease over time.⁶⁰

Ms. Danetz, on the other hand, countered that the number of voter registrations would not necessarily taper off over time, because the number of individuals utilizing public assistance programs is more varied.⁶¹ For example, “the universe of public assistance recipients engaging in applications, renewals, and changes of address is significantly broader so you also have Supplemental Nutrition Assistance Program⁶² and Medicaid,⁶³ both of which are much greater programs and neither of which would have gone down as a result of welfare reform in the mid-’90s.”⁶⁴ Ms. Danetz also noted that the data Dēmos has collected in Ohio shows that registration

⁵⁵ Danetz Statement, *infra*, p. 96.

⁵⁶ U.S. Commission on Civil Rights, *Briefing: Increasing Compliance With Section 7 of the NVRA*, (Washington, DC, April 19, 2013), p. 22 (hereinafter Briefing Transcript), *available at* http://www.usccr.gov/calendar/trnscrpt/FINAL-Transcript-NVRA-Briefing_4-19-13.pdf; Danetz Statement, *infra*, p. 97.

⁵⁷ *Id.*

⁵⁸ David B. Muhlhausen and Patrick Tyrrell, “Welfare Reform a Factor in Lower Voter Registration at Public Assistance Offices,” Heritage Foundation, Center for Data Analysis, p. 1 (2008), *available at* <http://www.heritage.org/research/reports/2008/06/welfare-reform-a-factor-in-lower-voter-registration-at-public-assistance-offices>. See Personal Responsibility and Work Opportunity Reconciliation Act of 1996, P.L. 104-193, 110 Stat. 2105 (1996), *available at* <http://www.gpo.gov/fdsys/pkg/PLAW-104publ193/html/PLAW-104publ193.htm>.

⁵⁹ Muhlhausen, “Welfare Reform a Factor in Lower Voter Registration at Public Assistance Offices,” Center for Data Analysis Report #08-03, Heritage Foundation, p. 2 (June 11, 2008).

⁶⁰ See U.S. Commission on Civil Rights, *Briefing: Jason Torchinsky Testimony*, (Washington, DC, April 19, 2013), pp. 54–55 (hereinafter Briefing Transcript, Torchinsky), *available at* http://www.usccr.gov/calendar/trnscrpt/FINAL-Transcript-NVRA-Briefing_4-19-13.pdf.

⁶¹ Briefing Transcript, pp. 56-57.

⁶² 7 U.S.C. Chapter 51.

⁶³ 42 U.S.C. Subchapter XIX.

⁶⁴ Briefing Transcript, p. 56.

numbers have stabilized over time, as opposed to having decreased.⁶⁵ Thus, Ms. Danetz believes that a decrease in the number of voter registrations should be attributed to another factor, and not to the welfare reform of the 1990s.⁶⁶

According to the Election Assistance Commission report released in late 2013 (which covers the period from 2011 to 2012), 1.8 million voter registration forms were completed at public assistance offices.⁶⁷ This was an increase from 1.14 million from the previous reporting period but lower than the initial high of over 2.5 million registrations in 1995–1996.⁶⁸ Likewise, the Election Assistance Commission report released in 2015 (which covers the period from 2013–2014) shows that 1.6 million individuals registered at public assistance offices during this period.⁶⁹ While more work needs to be done to increase registration rates, the results show that public interest group intervention and cooperation from state election and public assistance officials result in substantial increases in voter registration applications.⁷⁰

Disproportionate Effect on Minorities and Persons with Disabilities

Decreases in the number of new voter registrations taking place at public assistance agencies goes directly to the heart of Congress’s intent and stated purpose behind mandating that states provide voter registration at public assistance and disability agencies. The goal of Section 7 of the National Voter Registration Act is to increase voter registration access for low-income and disabled citizens who need to apply for public assistance or disability benefits.

Statistical data on the effect of income level on voter registration in the 2008 election indicates that an individual in the lowest income “quintile” or bracket in the United States was 30 percent less likely to be registered to vote than someone in the highest income bracket.⁷¹ This remained true for the 2012 election.⁷² The number of low-income individuals registered to vote has

⁶⁵ *Id.*

⁶⁶ *Id.* at 56-57.

⁶⁷ See U.S. Election Assistance Commission, *Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2011–2012: Report to the 113th Congress*, Table 2a, (June 30, 2013) available at http://www.eac.gov/assets/1/Documents/EAC_NVRA%20Report_lowres.pdf.

⁶⁸ See J. Mijin Cha and Victoria Berman, “Preliminary Analysis of the Public Assistance Agency Data Within the Election Assistance Commission 2011-2012 Biennial NVRA Report,” *Dēmos*, (Aug. 1, 2013), available at <http://www.demos.org/publication/preliminary-analysis-public-assistance-agency-data-within-election-assistance-commission>.

⁶⁹ Election Assistance Commission report, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2013-2014*, Washington D.C., June 30, 2015, Table 2(a), at pp. 82-83.

⁷⁰ See Cha and Berman, Preliminary Analysis.

⁷¹ See Registering Millions at p. 12.

⁷² *Id.*

incrementally increased over time. Voter registration among individuals in the lowest income bracket reached 52.7 percent in the 2012 election, a significant increase from 43.5 percent in 1992.⁷³ Yet these numbers show that, as of 2012, approximately half of the individuals in the lowest income bracket were not registered to vote. Further, in the 2014 election, 52 percent of voters earning over \$150,000 voted, as compared to only 25 percent of voters earning less than \$10,000.⁷⁴

Concerns regarding the number of racial, ethnic and language minorities (as well as persons with disabilities) that are registered to vote remain. Data from the 2010 election shows that voter registration rates of blacks and Hispanics at public assistance offices were four times and three-and-a-half times higher, respectively, than for White non-Hispanics.⁷⁵ Consequently, the recent reduction in registration numbers at public assistance offices may have a disproportionate effect on black and Hispanic voter registration rates. In North Carolina, for example, Executive Director Bartlett noted that “... African-Americans have increased participation in Section 7 ... services.”⁷⁶ In other words, African-Americans register to vote at public assistance offices at higher rates than whites in North Carolina.

Disabled citizens face additional barriers to voter registration, as they struggle with poverty at twice the rate of the average non-disabled citizen. Disabled persons aged 18 to 64 represent “15.9 percent of people [] in poverty compared to 7.8 percent of all people ...”⁷⁷ Thus, the likelihood increases that disabled citizens require some form of public assistance or disability benefit and that, given the opportunity, they may register to vote at offices providing such services.⁷⁸ An

⁷³ *Id.*

⁷⁴ See Sean McElwee, “Why Voting Matters: Large Disparities in Turnout Benefit the Donor Class,” *Dēmos*, p. 4 (2015), available at <http://www.demos.org/sites/default/files/publications/Why%20Voting%20Matters.pdf>.

⁷⁵ See U.S. Census Bureau, *Voting and Registration in the Election of November 2010—Detailed Tables*, Table 12—Method of Registration, by Selected Characteristics: November 2010, available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2010/tables.html>.

⁷⁶ Bartlett Statement, *infra*, p. 90.

⁷⁷ See U.S. Census Bureau, *Income, Poverty, and Health Insurance Coverage in the United States: 2010*, p. 18 (2011), available at <http://www.census.gov/prod/2011pubs/p60-239.pdf>. As of 2009 and 2010, disabled American citizens also have lower median incomes and steeper declines in median income than the average American without a disability:

In 2010, 9.5 percent of householders (8.8 million) aged 18 to 64 reported having a disability []. The median income of these households was \$25,550 in 2010, compared with a median of \$58,736 for households with a householder that did not report a disability. Real median income declined for both types of households between 2009 and 2010. The income of households maintained by a householder with a disability declined by 8.5 percent, compared with a 2.1 percent decline for households maintained by a householder without a disability. *Ibid.*, p. 9.

⁷⁸ See U.S. Census Bureau, *Disability Characteristics of Income-Based Government Assistance Recipients in the United States: 2011*, p. 2 (2013), available at <http://www.census.gov/prod/2013pubs/acsbr11-12.pdf>. (“Among those who did work, the median annual earnings for individuals with disabilities was \$19,735, compared with \$30,285 for those without a disability. With lower employment and earnings, on average, individuals with disabilities would appear to be at greater risk for needing assistance.”).

increase in the number of agencies that offer voter registration, including the U.S. Department of Veterans Affairs (Veterans Affairs) and the Social Security Administration will likely increase the number of registered disabled persons and narrow the voter participation gap between disabled and non-disabled persons.

Persons who are Limited English Proficient also face multiple barriers to registration and voting.⁷⁹ Such persons are also more likely to be living in poverty than those proficient in English. Thus, they would benefit from increased voter registration opportunities at public assistance offices.⁸⁰ In 2013, approximately 25 percent of Limited English Proficient individuals lived in households with an income below the federal poverty line, versus 14 percent for English proficient individuals.⁸¹ And because another barrier to registration is language, the Election Assistance Commission has translated the National Mail Voter Registration form into Spanish and eight Asian Languages.⁸²

Federal and Private Enforcement of Section 7

Since the drop in registrations at public assistance and disability agencies, public interest groups have used a combination of litigation and cooperative efforts with state officials to enforce Section 7.⁸³ Dēmos, a public interest group, estimates that their efforts have helped 1,820,633 eligible voters register to vote at public assistance agencies since 2007.⁸⁴

On the other hand, some organizations claim that the Department of Justice's inconsistent enforcement of Section 7, as well as lack of clarity in the statute itself, is partly responsible for the decrease in voter registration at public assistance offices.⁸⁵ For example, during the briefing, Ms. Danetz characterized the Justice Department's Section 7 enforcement as not "particularly active."⁸⁶ In 2012, another advocate testified before a congressional committee that while the

⁷⁹ See J. Mijin and Liz Kennedy, "Millions to the Polls: Language & Disability Access," Dēmos, (2013), *available at* <http://www.demos.org/sites/default/files/publications/Millions%20to%20the%20Polls%20Language%20and%20Disability%20Access.pdf>. The Voting Rights Act requires various forms of language assistance for LEP individuals.

⁸⁰ Jie Zong and Jeanne Batalova, "Limited English Proficient Population of the United States," Migration Policy Institute, July 8, 2015, *available at* <http://www.migrationpolicy.org/article/limited-english-proficient-population-united-states#13>.

⁸¹ *Id.*

⁸² U.S. Election Assistance Commission, "National Voter Registration Form", *available at* http://www.eac.gov/voter_resources/register_to_vote.aspx.

⁸³ See Registering Millions at p. 6.

⁸⁴ *Id.* at 7.

⁸⁵ Estelle Rogers, "National Voter Registration Act: Fifteen Years On," American Constitution Society (Washington, DC, November 2009), p. 12.

⁸⁶ Briefing Transcript, pp. 36–37.

Justice Department “has been actively enforcing several federal voting laws, there have been few actions to enforce the [Act]—and Section 7 . . . in particular.”⁸⁷ Others have claimed that the Justice Department remained “curiously silent . . . when public agency voter registrations were at their lowest nationwide.”⁸⁸ In 2007, after the Election Assistance Commission released its 2005–2006 biennial report, Project Vote opined in a press release that even when data strongly suggested that “many states continue to ignore” Section 7’s requirements, the Justice Department’s enforcement activity remained “virtually nonexistent.”⁸⁹

Since 2000, the Justice Department’s Voting Section has filed over 150 lawsuits, thirteen involving the Act.⁹⁰ Of the thirteen, only four involved Section 7; those suits were against Tennessee in 2002, New York in 2004, and Rhode Island and Louisiana in 2011 (see Table 2).⁹¹ In 2008, the Department entered into two out-of-court settlements with Illinois and the Arizona Department of Economic Security,⁹² and, in 2007, the Department issued warning letters to thirteen states.⁹³ According to Ms. Danetz, the Department has also filed amicus briefs in at least two lawsuits Dēmos and its partner organizations filed - one against New Mexico⁹⁴ and the other against Georgia.⁹⁵

⁸⁷ Wendy R. Weiser, testimony, U.S. House of Representatives, Subcommittee on the Constitution Judiciary Committee, April 18, 2012, p. 20.

⁸⁸ Estelle H. Rogers and Nicole Kovite Zeitler, “Voter Registration Gap, Why It Exists and How to Narrow It,” chap. 13 in *America Votes! Guide to Modern Election Law & Voting*, 2012.

⁸⁹ “Justice Department’s Failure to Enforce National Voter Registration Act Underscores New Report,” Project Vote, Press Release, July 03, 2007, available at <http://www.projectvote.org/newsreleases/225-justice-departments-failure-to-enforce-national-voter-registration-act-underscored-by-new-report.html>.

⁹⁰ “Voting Section Litigation,” Department of Justice, available at <http://www.justice.gov/crt/about/vot/litigation/caselist.php>.

⁹¹ *Id.*

⁹² *Id.*

⁹³ Rogers, *National Voter Registration Act at Fifteen*, p. 21 (2009).

⁹⁴ See Brief for the Civil Rights Division of the United States Department of Justice as Amicus Curiae in Support of Appelles, p. 937, *Valdez v. Squier*, 676 F. 3d 935 (2014), available at <https://www.justice.gov/sites/default/files/crt/legacy/2011/09/30/valdezbrief.pdf>.

⁹⁵ Danetz Statement, *infra* p. 105.

TABLE 2. Justice Department Section 7 Lawsuits—2000–2014

State	Year (Status)	Resolution
Tennessee	2002 (Settled)	<p><i>Sept. 27, 2002</i>—Justice Department filed complaint alleging state violated the Voter Registration Act by failing to implement voter registration opportunities in state public assistance offices and failing to ensure that driver’s license applications, including renewal applications, also serve as voter registration applications.</p> <p><i>Oct. 15, 2002</i>—Court entered consent decree requiring state officials to establish, implement uniform procedures pertaining to distribution, collection, transmission, retention of voter registration applications and develop, implement mandatory annual Voter Registration Act training programs for all counselors, employees whose responsibilities include providing driver’s licenses, public assistance, and services to residents with disabilities.</p>
New York	2010 (Settled)	<p><i>March 22, 2004</i>—Court entered order granting U.S. motion for summary judgment. U.S. complaint alleged state and its public college and university system violate the Voter Registration Act, failing to offer voter registration opportunities at offices serving disabled students at state’s public universities and colleges as statute requires.</p> <p><i>July 14, 2010</i> – Justice Department and New York entered into a consent decree that resolved the allegations that New York failed to provide voter registration for disabled students.</p>
Rhode Island	2011 (Settled)	<p><i>March 18, 2011</i>—Justice Department filed complaint alleging state violated the Voter Registration Act by failing to offer voter registration opportunities in public assistance offices, offices that provide state-funded programs primarily serving persons with disabilities.</p> <p><i>March 25, 2011</i>—Court enters consent decree requiring state officials to ensure voter registration opportunities are offered at all public assistance and</p>

		disability services offices; develop and implement Voter Registration Act training and tracking programs for those offices. Requires state to amend private entity contracts providing state-funded disability programs to ensure that such entities offer appropriate voter registration opportunities.
Louisiana	2011 (Pending)	July 12, 2011 —Justice Department filed complaint against state alleging state and its public assistance and disability agencies violated the Voter Registration Act by failing to offer voter registration opportunities at public assistance agencies, offices providing state-funded disability programs for persons with disabilities throughout state.
Source: U.S. Department of Justice, <i>Cases Raising Claims Under the National Voter Registration Act.</i> , available at http://www.justice.gov/crt/about/vot/litigation/caselist.php .		

In total, the Department has invoked its enforcement authority only twenty-one times between 2000 and 2014. This represents an average of one-and-a-half Section 7 actions per year, even during periods that witnessed a substantial decrease in public agency-derived registration forms and, in reaction to that decrease, a significant increase in private lawsuits seeking to enforce Section 7.

The Department's Voting Section did update its website in June 2010,⁹⁶ creating an expansive "Questions and Answers" (Q&A) page "designed to provide information and guidance to state and local officials . . . concerning the provisions of the [Act] and its interaction with the other statutes enforced by the Department."⁹⁷ The Q&A page is an 8,000-word guide consisting of forty-six answers to questions discussing topics ranging from "what is the [Act]" to what it "requires under Sections 5 through 8" to "what statutory responsibilities the states, EAC [Election Assistance Commission], and [the Department] have in ensuring compliance."⁹⁸ The Q&A page also states that the Department "will consider inquiries from State officials . . . in the hope of providing assistance."⁹⁹ According to Ms. Danetz, this guide has proved "very helpful."¹⁰⁰

⁹⁶ Voting Section, Department of Justice, *National Voter Registration Act of 1993, Questions and Answers*, available at http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php.

⁹⁷ Danetz Statement, *infra*, p. 105; *see also*, Department of Justice, Office of the Inspector General Report, *A Review of the Operations of the Voting Section of the Civil Rights Division*, 2013, p. 100 (discussing how the Act's guidance evolved to include all provisions, not just Section 7, as was originally planned).

⁹⁸ *Id.*

⁹⁹ *Id.*

¹⁰⁰ Danetz Statement, *infra*, p. 105.

The Department also monitors state compliance by reviewing state data published in the Election Assistance Commission's biennial reports, making inquiries and initiating preliminary investigations.¹⁰¹ Although the Department cannot issue advisory opinions on what is required in a particular situation under the Act, it has stated that state officials may contact the Voting Section for additional information.¹⁰² A settlement agreement in November 2015 between the Department and Alabama regarding compliance with Section 5 of the Act demonstrates the latest types of guidance the Department can require or recommend to ensure Section 7 compliance.¹⁰³ For instance, the settlement sets forth specific procedures for handling transactions, staffing recommendations, training requirements, data collection, reporting, and monitoring, and corrective action plans where there are problems.¹⁰⁴

In sum, registrations at public assistance and disability agencies have increased since these enforcement efforts and compliance interventions began. Election Assistance Commission Reports shows that compliance intervention—including cooperative work and/or lawsuits by the Department of Justice or private litigants - resulted in increased voter registrations. For the period of 2009-2010, seven of the ten states with the highest number of voter registrations at public assistance agencies had been involved in Section 7 enforcement.¹⁰⁵

¹⁰¹ *National Voter Registration Act of 1993, Questions and Answers*, Department of Justice, Voting Section, available at http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php.

¹⁰² *Id.*

¹⁰³ Memorandum of Understanding between the Department of Justice and the State of Alabama *et al.* (Nov. 2015), available at <http://www.justice.gov/opa/file/793121/download>.

¹⁰⁴ *Id.*

¹⁰⁵ Danetz Statement, *infra*, p. 45 (collecting the Election Assistance Commission biannual reports and comparing with enforcement efforts by the Department of Justice and by private litigants), available at <http://www.demos.org/sites/default/files/publications/Final%20USCCR%20Testimony.pdf>.

SUMMARY OF BRIEFING PROCEEDINGS

On April 19, 2013, the Commission held a briefing to focus on efforts by both the federal government and public interest groups to ensure compliance with Section 7 of the National Voter Registration Act. The Commission heard from three panelists, who represented state efforts to implement the National Voter Registration Act, and federal and private citizen efforts to enforce.¹ At the briefing, each of the three panelists discussed the challenges and benefits of state compliance with Section 7. The panelists then fielded questions from the Commissioners on the following issues: (1) compliance through cooperation, (2) enforcement and litigation, (2) the fluctuation of voter registrations at public assistance and disability agencies, (4) the impact of welfare reform, if any, on voter registrations at public assistance and disability agencies, and (5) using technology to modernize voter registrations.

Panelist Presentations

Panelist One: Gary O. Bartlett, Executive Director, North Carolina State Board of Elections

Mr. Bartlett testified before the Commission regarding the state of North Carolina's efforts to comply with Section 7. In 1995, he became the Executive Director of the North Carolina State Board of Elections around the same time implementation of the National Voter Registration Act began.

Training Calms Fears

At that time, he realized that public assistance agency employees were concerned about their new role in offering voter registration options. In response, the State Board of Elections organized a teleconference for public assistance employees where election officials answered questions and explained the new federal requirements with written materials. As a result of this training, North Carolina was among the first states in the South to comply with Section 7. North Carolina implemented its compliance plan within two months of development in 2006, and voter registrations more than doubled at public assistance agencies between 2006 and 2007 (a 268 percent increase).² Participation of North Carolina voters who registered at public assistance agencies from the 2004 general election to the 2008 general election increased by 120 percent.³

¹ The three panelists were Gary O. Bartlett, Executive Director of the North Carolina State Board of Elections, Jason Torchinsky, a partner at Holtzman Vogel, and Lisa Danetz, Senior Counsel at Dēmos, a public interest group who works on National Voter Registration Act matters.

² Bartlett Statement, *infra*, p. 89.

³ *Id.* at 90.

In particular, North Carolina saw African-American voter registration at public assistance agencies increase by 346 percent between 2006 and 2012; and for whites, a 271 percent increase.⁴ Further, the state became a leader in registering voters at public assistance agencies.⁵

Mr. Bartlett asserted that North Carolina failed to keep up with its previous compliance efforts as time passed and personnel changes occurred in the State Board of Elections and public assistance agencies. He described an incident in 2006 when he received a call from Project Vote, a nonpartisan 501(c)(3) group, to meet (or to discuss alternatives/alternative actions) before the organization sent a letter of intent to sue. Mr. Bartlett asked Project Vote for an opportunity to remedy the problem before suing, and together they crafted a 14-point plan to ensure compliance with Section 7.⁶ With communication at the state and county levels at its foundation, the plan has worked well from 2006 to present. It includes several parts:

- Monthly progress calls with public interest groups to ensure continued compliance
- An email system to communicate with local offices
- Training programs and workshops for trainers
- Media education and articles about the importance of ballot access
- Dedicated staff at the state level⁷

In addition, the State Board of Elections' Liaison Officer is responsible for managing the state's Voter Registration Act program. The liaison serves as a single point of contact for Section 7 questions and training. The State Board of Elections also performs random "wellness checks" at local assistance agencies to ensure compliance.⁸

State Compliance Progresses

Mr. Bartlett explained that two-thirds of the state's agencies had no problems complying with the implementation plan because it was required by federal law. For the remaining third that refused compliance, half implemented the plan intermittently and half had philosophical concerns against Section 7 as an "unfunded mandate."⁹ County attorneys impressed upon this latter group the necessity of complying with federal law, and eventually the State Board of Elections worked in partnerships with all agencies. Ultimately, with the help of public interest groups and the North Carolina Department of Health and Human Services, all state umbrella agencies signed

⁴ *Id.* at 90.

⁵ See Briefing Transcript, Bartlett Testimony, pp. 7–8.

⁶ Bartlett Statement, *infra*, p. 88; Briefing Transcript, Bartlett Testimony, p. 9.

⁷ Examples of staff include an Elections Public Assistant Coordinator at the County Board of Elections and coordinators from county government offices.

⁸ Bartlett Statement, *infra*, p. 92; Briefing Transcript, Bartlett Testimony, pp. 9–10.

⁹ Bartlett Statement, *infra*, p. 91.

cooperative agreements with the State Board of Elections outlining commitments to Section 7 compliance.¹⁰

North Carolina has been on the cutting edge of technology to assist in Section 7 compliance. It was one of the first states the Justice Department precleared to implement an electronic declination form which public assistance agencies transmit directly to the County Board of Elections.¹¹ This reduces paperwork tremendously and is popular.¹²

Mr. Bartlett believes North Carolina needs to begin an online voter registration system at public agencies as soon as the political climate will allow. He mentioned that the state's Employment Security Commission once had a fully automated voter registration system but reverted to a paper system. Bartlett also testified that North Carolina is in the process of passing a photo voter registration bill that includes a newly designated public assistance agency for senior citizens at the county level.¹³

Mr. Bartlett cited 258,537 new voter registrants from the state's public assistance agencies since 2006, and he believes that having more enfranchised voters makes the country healthier.¹⁴

Panelist Two: Jason Torchinsky, Partner, Holtzman Vogel PLLC

Mr. Torchinsky, a private attorney representing his own views, testified about his concerns over state compliance with Section 7. Mr. Torchinsky stated that the Act is an important and positive piece of legislation that needs to be enforced as a package. He contends that the Justice Department, as noted in a report by the Department's Office of the Inspector General, chose which "bits and pieces" of federal law to enforce based upon policy preferences rather than evenhandedness.¹⁵

¹⁰ Bartlett Statement, *infra*, p. 91.

¹¹ Briefing Transcript, p. 11.

¹² *Id.*

¹³ Briefing Transcript, p. 12.

¹⁴ *Id.*

¹⁵ Briefing Transcript, Torchinsky Testimony, p. 13; Torchinsky Statement, *infra*, p. 106. In contrast to Torchinsky's claim, the Office of the Inspector General report found that "enforcement cases brought. . . by the Voting Section revealed some changes in enforcement priorities over time, corresponding to changes in leadership. . . but did not substantiate allegations about partisan or racial motivations and did not support a conclusion that the [Department of Justice] Voting Section has improperly favored or disfavored any particular group of voters in the enforcement of voting rights laws." Department of Justice, Office of the Inspector General, Oversight and Review Division, *A Review of the Operations of the Voting Section of the Civil Rights Division*, 113, (March 2013).

Enforcement Concerns

Mr. Torchinsky believes the Justice Department unevenly enforced the Act and that the list maintenance requirements of Section 8 are as equally important as the voter registration requirements of Section 7.¹⁶ He stated that Congress showed bipartisan support for the Act and passed the public assistance agency registration requirements because the law included a list maintenance provision.

Mr. Torchinsky commented briefly on North Carolina, saying it was his experience that state employees generally want to comply with federal laws. He indicated that compliance works best when it is cooperative and not in the course of litigation. In his experience, states and government officials become defensive when threatened with litigation; it is not an environment conducive to cooperation.¹⁷

Mr. Torchinsky argued that the Justice Department's Voting Section is engaging in "gotcha methods," using undercover investigators to enter public assistance offices and look for evidence of noncompliance.¹⁸ With regard to the Louisiana litigation,¹⁹ he stated that the plaintiff brought forth by private litigants was registered to vote back in 2008, but when he appeared at state agencies in person on "a couple" of occasions, he was not offered an opportunity to register. Also, Mr. Torchinsky believes that both private litigants and the Justice Department are pursuing technical violations that could be resolved through negotiation instead of costly litigation.²⁰

As for the Rhode Island consent decree, Mr. Torchinsky argued that it reached beyond the requirements of Section 7. Specifically, he raised concern that in a time of struggling state and local budgets Rhode Island was required to fund specially trained site coordinators at every public assistance office and maintain detailed records of every declination.²¹

He also stated that the discovery process between the state and private litigants, or the Justice Department, should not seek personally identifiable information. He stressed that it is important for the courts to limit from discovery any personally identifiable information not needed to prove claims being advanced in cases. Torchinsky asserted that such information is not necessary to

¹⁶ Chairman Castro stated at the beginning of the briefing that the Commission voted to focus on the state of Section 7 compliance. Briefing Transcript, pp. 4-5.

¹⁷ Briefing Transcript, Torchinsky Testimony, p. 14.

¹⁸ *Id.* at 13.

¹⁹ *United States v. Louisiana*, No. 3:11-CV-00470 (M.D. La., filed July 12, 2011) complaint available at http://www.justice.gov/sites/default/files/crt/legacy/2011/07/13/la_nvra_comp.pdf (Case is ongoing.).

²⁰ Briefing Transcript, Torchinsky Testimony, pp. 17-18. Torchinsky later conceded his assertion that there was a lack of negotiation was "somewhat speculative" and that there could have been litigation even if technical violations were resolved. *Id.* at 59-60.

²¹ *Id.* at 18.

enforce the Act, and limitations are important to reduce the possible misuse of citizens' information.²²

Panelist Three: Lisa Danetz, Senior Counsel, Dēmos

Ms. Danetz testified before the Commission regarding her efforts to assist states in their implementation of Section 7. As Senior Counsel at Dēmos, Danetz has worked extensively for the last eight years on issues related to Section 7, in both compliance and policy issues, as well as cooperative efforts with states like North Carolina, and as a part of litigation.²³ She stated that one of the Act's express purposes was to increase the number of registered voters. Discriminatory and unfair registration laws and procedures have a direct and damaging effect on voter participation.

Public Interest Compliance Efforts

In the first years of the Act, 2.6 million individuals were registered to vote at public assistance offices, but over the next 10 years, that number declined to 540,000—an 80 percent drop. Thus, since 2006, Dēmos and its public interest partner organizations have focused on increasing compliance with Section 7. They have conducted investigations in states including Ohio, Missouri, New Mexico, Indiana, Arizona, Virginia, Georgia, Maryland, and Pennsylvania.²⁴ Three of the top 10 performing states in the EAC's 2009–2010 biennial report—North Carolina, Colorado, and Virginia—worked cooperatively with Dēmos or Project Vote to improve Section 7 compliance.²⁵ Their approach to each state is unique and colored by the reception received from state officials.²⁶

Ms. Danetz pointed to Gary Bartlett's willingness to cooperate with her organization in North Carolina to remedy noncompliance, even under threat of litigation. She thinks that such a threat or actual litigation crystalizes priorities for the states. Ms. Danetz has worked cooperatively with 11 other states. Dēmos has completed litigation in six states with favorable decisions or settlements and has pending litigation in three others.²⁷

Ms. Danetz discussed compliance problems in other states. She talked about local offices:

- Not providing voter registration opportunities at the correct time
- Not providing registration applications on site

²² *Id.* at 19.

²³ See Briefing Transcript, Danetz Testimony, pp. 21–22.

²⁴ Danetz Statement, *infra*, p. 96.

²⁵ See *id.* at 101.

²⁶ Briefing Transcript, Danetz Testimony, p. 22.

²⁷ *Id.* at 23–24.

- Not training staff about the obligation to provide voter registration services
- Not having systems in place to ensure implementation
- Not having oversight to ensure voter registration requirements are followed

Ms. Danetz said that in all the settlement agreements she has negotiated, there has been an effective institutionalized compliance plan with strong monitoring, reporting, training, and oversight provisions. She noted that seven of the top 10 performing states for registration from public assistance offices were those with some kind of compliance intervention, through either litigation or cooperative work.

State Registration Highlights

In particular, Ms. Danetz highlighted the Ohio settlement. She said Ohio has averaged almost 15,000 voter registration applications per month at public assistance offices in the three and a half years since the settlement, as compared to just 1,775 applications before the intervention.²⁸ Also, after Tennessee negotiated a consent decree with the Justice Department in 2002, the number of voter registration applications at its public assistance agencies “shot up more than five-fold.”²⁹ Until today, Tennessee “continues 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.”³⁰

In addition, Ms. Danetz stated that North Carolina has kept its numbers at about five and a half times pre-intervention levels since 2006. In Mississippi, the new procedures to increase compliance have been in place for two years, and monthly data show an increase in voter registration submissions. Ms. Danetz also spoke about increased voter registration application numbers in Justice Department settlement agreements with Arizona, Illinois, and Rhode Island. Overall, Ms. Danetz estimated that the work of Dēmos and its partners has led to “close to two million additional low-income citizens who have applied to register to vote at or through public assistance offices.”³¹

Closing the Income Gap

Ms. Danetz concluded that the large voter registration gap in this country—19 to 20 percentage points—is based on income (low-income citizens are registered at around 65 percent and more affluent citizens at around 85 percent). Ms. Danetz believes that adequate enforcement of Section

²⁸ *Id.* at 24–25.

²⁹ Danetz Statement, *infra*, p. 104.

³⁰ *Id.*

³¹ Briefing Transcript, Danetz Testimony, pp. 26–27.

7 is an important element to closing this gap. She proposed a six-part compliance plan that includes:

1. Appointment of a state-level coordinator for each agency and local coordinators for each local office;
2. Review and modification of state voter registration policies and procedures to make them compliant with the Voter Registration Act's requirements;
3. Provision for regular training in and easy availability of voter registration policies and procedures to front-line agency employees;
4. Adequate supplies of voter registration applications and voter preference forms in each office;
5. Use of technology to integrate voter registration services into covered transactions; and
6. Implementation of a comprehensive oversight program with a strong system of data collection and incorporation of voter registration responsibilities into employee performance evaluations.³²

She reasoned that a difference in registration translates into a difference in participation, "which ultimately impacts our democratic decision-making."³³

Discussions Between Commissioners and Panelists

Overall Efficacy of the National Voter Registration Act

Commissioner Michael Yaki asked Gary Bartlett whether he believed the Act resulted in increased voter registration for those who might otherwise not have registered to vote.³⁴

Bartlett replied that he believed so.³⁵

Commissioner Yaki asked Jason Torchinsky and Lisa Danetz whether they believed that Section 7 fosters the right to vote for people in this country.

Both panelists answered in the affirmative.³⁶

³² Danetz Statement, *infra*, p. 100.

³³ Briefing Transcript, Danetz Testimony, p. 22.

³⁴ *Id.* at 63.

³⁵ Briefing Transcript, Bartlett Testimony, p. 63.

³⁶ Briefing Transcript, Danetz Testimony, p. 70.

Cooperative Compliance

Commissioner David Kladney asked Mr. Bartlett to elaborate on how the random, in-person checks of North Carolina's state agencies were accomplished.³⁷

Mr. Bartlett replied that whenever a State Board of Elections employee goes through a county, he or she visits a public agency.³⁸ They check to see whether agencies have adequate voter registration applications available and a wall poster displaying information on voter registration. Also, they check whether state agencies have questions about Section 7 or any other issue.

Commissioner Kladney inquired further about whether training in every office was significantly difficult to achieve in North Carolina.³⁹

Mr. Bartlett responded that the State Board of Elections prepares the trainer at the state level but that training should be increased and continuous due to employee turnover. Mr. Bartlett noted that the most successful measure is constant communication with the agencies and having a single point of contact (Elections Liaison) in the State Board of Elections to answer any questions.⁴⁰

Commissioner Michael Yaki also asked Mr. Bartlett to expound on philosophical differences he encountered in North Carolina.⁴¹

Mr. Bartlett responded that those state agencies resistant to Section 7 compliance thought government should not require voter registration at public assistance agencies, lest applicants think that registering to vote is necessary to receive services. Mr. Bartlett stated that there were at least three county commissioners who refused to comply. In two of the three counties, the county attorney mediated the impasse. The final county commissioner refused to comply until the Justice Department, at the request of Mr. Bartlett, interceded with a phone call. Mr. Bartlett noted that county commissions are elected bodies in North Carolina.⁴²

Mr. Torchinsky added that when he worked in the Justice Department's Civil Rights Division, he witnessed the Department act swiftly to communicate to local officials across the political spectrum that personal views on the law are not relevant in enforcing federal requirements.⁴³

³⁷ Briefing Transcript, p. 28.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ *Id.* at 29.

⁴¹ *Id.* at 41–42.

⁴² *Id.* at 42–43.

⁴³ *Id.* at 44–45.

Commissioner Yaki asked Ms. Danetz if she noticed any difference in Section 7 enforcement depending on whether officials are appointed or elected.⁴⁴

Ms. Danetz responded that while her organization has not done that kind of analysis, she has worked successfully with both elected and appointed officials from both political parties.⁴⁵

Compliance Necessities

Commissioner Roberta Achtenberg asked Ms. Danetz whether monitoring, training, oversight, consistency, and concern from the top and throughout the civil service accurately summarized what is necessary to ensure state compliance.⁴⁶

Ms. Danetz responded that she agreed and added that integrating voter registration procedures within existing agency processes is also essential to make compliance seamless.

Commissioner Achtenberg then asked Ms. Danetz if she was aware of any states that at one time had good processes of monitoring, training, oversight, and integration but subsequently removed them.⁴⁷

Ms. Danetz said that after Michigan, once a leader in Section 7 compliance, revised its benefits processes, voter registration applications plunged. Applications rebounded, however, after public interest groups contacted the state about remedying the problem. Ms. Danetz thought that compliance naturally changes over time because of budget decreases, lack of technological advances, and/or inclusion in high-level thinking. Ms. Danetz thinks that voter registration mostly falls off the radar when people are not paying attention.⁴⁸

Commissioner David Kladney asked Ms. Danetz which state agencies qualify as public assistance agencies under Section 7.⁴⁹

Ms. Danetz explained that this varies from state to state, although the statute spells out mandatory agencies—offices in the state that provide state-funded programs primarily engaged in providing assistance and services to persons with disabilities under 42 U.S.C. § 1973 gg-5(a)(2)(B).

⁴⁴ *Id.* at 43.

⁴⁵ *Id.* at 43–44.

⁴⁶ *Id.* at 46.

⁴⁷ *Id.* at 47.

⁴⁸ *Id.* at 47–48.

⁴⁹ *Id.* at 61.

Commissioner Kladney asked whether Child Protective Services, specifically, qualify as an agency covered by Section 7.⁵⁰

Ms. Danetz replied that, while it is not designated in most states, each state may designate at least one “discretionary voter registration agenc[y]” that is not one of the two mandatory agency types. She gave the example of the Unemployment Office in North Carolina being designated as one of the discretionary voter registration agencies by that state.⁵¹

Mr. Torchinsky clarified that under the statutory language, a discretionary agency can be any of the following: “state or local government offices such as public libraries, public schools, offices of city and county clerks including marriage license bureaus, fishing and hunting license bureaus, government revenue offices, unemployment compensation offices, and offices not described in sub B,” which are the disability offices.⁵²

Enforcement and Litigation

Commissioner Kladney asked Mr. Torchinsky about Rhode Island’s consent decree—whether the state was represented in that case and whether the judge approved the decree.⁵³

Mr. Torchinsky replied in the affirmative to both questions. Commissioner Kladney followed up by stating that Rhode Island was not a victim. Mr. Torchinsky responded that given his experience, it is easier and less expensive for a state to settle a civil rights case and simply agree to whatever the Justice Department says rather than litigate.⁵⁴ Mr. Torchinsky opined that Rhode Island agreed to the consent decree because it was easier and less expensive overall.

Commissioner Kladney responded, saying that a great thing about America is that a client has the freedom to agree.

Mr. Torchinsky stated that yes, while clients do have that freedom, when representing a public assistance agency in a civil rights case, there is a cost/benefit analysis that drives decision making when the Department is demanding something beyond statutory requirements.⁵⁵

Commissioner Kladney continued that he had the impression from Mr. Torchinsky’s testimony that state negotiations are not entered into prior to litigation.

⁵⁰ *Id.*

⁵¹ *Id.*

⁵² *Id.* at 62.

⁵³ *Id.* at 29-30.

⁵⁴ *Id.* at 30-31.

⁵⁵ *Id.* at 31-32.

Mr. Torchinsky replied that it is too difficult to generalize, but that he thought jumping straight to a lawsuit has public relations advantages. He stated that negotiation and cooperation are better approaches than litigation to achieve overall compliance with civil rights laws.

Commissioner Kladney shared that it is his experience in Nevada that Dēmos tried to negotiate prior to litigation, because litigation is very costly.

Mr. Torchinsky agreed that a negotiated outcome in these cases is often “way better” than a litigated outcome.⁵⁶

Commissioner Gaziano posed a hypothetical scenario to Mr. Torchinsky and Ms. Danetz: Would it be an appropriate enforcement position if, under some future administration, the Department’s Civil Rights Division signaled to its entire staff to institute a policy of dismissing Section 7 cases and only focus on Section 8 cases?⁵⁷

Mr. Torchinsky answered that he would not see that as appropriate because it would be a mistake to enforce one section of a civil rights law to the exclusion of other provisions.⁵⁸ Ms. Danetz responded that she could not speak to how the Department operates because she never worked there, but it is the perspective of her organization and its allies that the Department has not been particularly active in Section 7 enforcement.⁵⁹

Commissioner Yaki confirmed with Ms. Danetz that both the Department and private litigants are able to bring causes of action for enforcement in court. He offered this to clarify that even in Commissioner Gaziano’s hypothetical about the Department not enforcing Section 7, an opportunity for private litigants to sue state agencies remains.⁶⁰

Chairman Castro asked Ms. Danetz to speak about what she knew of the Illinois litigation that the Department handled.⁶¹

Ms. Danetz explained the Department entered into a pre-litigation agreement with Illinois, which lasted for a two-year term. She stated that Illinois saw drastic increases in voter registration at public assistance agencies during this period, but then stopped the reporting, which had been required by the settlement, after the two years expired. As a result, Ms. Danetz contended, she could not assess Illinois’ current compliance.⁶²

⁵⁶ *Id.* at 32-33.

⁵⁷ *Id.* at 35.

⁵⁸ *Id.*

⁵⁹ *Id.* at 37.

⁶⁰ *Id.* at 40-41.

⁶¹ *Id.* at 49.

⁶² *Id.* at 50.

Value of Negotiation

Commissioner Kladney asked Mr. Torchinsky why he believed the Justice Department did not first negotiate the issues in the Louisiana litigation before a lawsuit was filed.⁶³

Mr. Torchinsky responded that he did not represent Louisiana but had knowledge of the case from press reports, and it appeared that the Department had not negotiated with Louisiana.

Commissioner Kladney asked if this was speculative.

Mr. Torchinsky agreed that it was somewhat speculative but that he did not see anything about negotiations in press reports. Mr. Torchinsky testified that he believed discussion or negotiation could have resolved the issues; he later responded that he could not specifically identify the issues, and it is possible to litigate even if technical violations were resolved.⁶⁴

Commissioner Achtenberg asked Ms. Danetz whether the six concluded lawsuits by Dēmos ended in favorable outcomes and whether the outcomes were based on factual bases akin to those in other court-supervised agreements.⁶⁵

Ms. Danetz replied that yes, all of the cases concluded favorably with settlement agreements outlining plans to ensure compliance and regular data reporting. However, the agreements were not like consent decrees because most states do not want to admit to the type of factual foundation underlying a typical consent decree. Ms. Danetz stated that most agreements give courts continuing jurisdiction to enforce the terms of the settlement if there is a breach. She added that Dēmos is awarded attorney fees in these lawsuits, which is a sign of prevailing party status and suggests that courts recognize these problems.⁶⁶

Correcting Wrongs

Commissioner Achtenberg asked Ms. Danetz whether the settlement agreements from the six completed litigations mean that something presumably was wrong and, after settlement, whether something is being put in place to correct the wrong.⁶⁷

Ms. Danetz answered in the affirmative.⁶⁸

⁶³ *Id.* at 59.

⁶⁴ *Id.* at 59–60.

⁶⁵ *Id.*

⁶⁶ *Id.* at 64–65.

⁶⁷ *Id.*

⁶⁸ *Id.* at 72–73.

Commissioner Achtenberg also asked Mr. Torchinsky about the factual basis asserted for these settlements.⁶⁹

He replied that this was one of the issues pending in the Louisiana litigation on appeal before the Fifth Circuit because the private plaintiff was already registered to vote, and the organizational plaintiff, the state NAACP, never conducted a voter registration drive. Mr. Torchinsky added that a technical question was also on appeal about whether a notice letter was sent to Louisiana from the private plaintiffs before the litigation was filed.

Commissioner Kladney asked if the first two issues were standing questions.

Mr. Torchinsky answered in the affirmative.

Commissioner Achtenberg also asked if the last technical issue was a procedural problem before the private litigation was filed.

Mr. Torchinsky again answered in the affirmative, that this was a type of procedural defect.⁷⁰

Commissioner Yaki asked Ms. Danetz about the status of the Louisiana litigation, even though she was not involved in bringing the action.⁷¹

Ms. Danetz explained that there are multiple defendants in the Louisiana case, and state agencies were not appealing the district court's ruling for the private litigants. To her knowledge, all three state agencies have certified compliance with Section 7. The other defendant, the Secretary of State, has appealed the case to the Fifth Circuit. Ms. Danetz added that the Justice Department's request for personally identifiable information was dropped, but that she did not think the private litigants' request was dropped.

Commissioner Gaziano commented that Louisiana officials were invited to the briefing but could not participate because of ongoing litigation.⁷²

Three Scenarios

Commissioner Gaziano asked Mr. Torchinsky about his thoughts regarding three scenarios where settlements extend beyond statutory requirements:

1. The record is clear about illegal conduct, and the state agrees to a “sort-of” remedy.

⁶⁹ *Id.* at 65.

⁷⁰ *Id.* at 66–68.

⁷¹ *Id.* at 73.

⁷² *Id.* at 73–74. *United States v. Louisiana*, No. 3:11-CV-00470 (M.D. La., filed July 12, 2011) complaint available at http://www.justice.gov/sites/default/files/crt/legacy/2011/07/13/la_nvra_comp.pdf. As of this report date, litigation is ongoing in this Section 7 compliance case.

2. Bureaucrats circumvent normal political and economic considerations in their own jurisdictions and seek to impose their own pet bureaucratic interest on their state.
3. A collusive suit where there may be a partisan reason, not just a bureaucratic reason, to enter a settlement, which goes beyond what is required by statute.⁷³

Mr. Torchinsky shared that throughout his career in civil rights, he witnessed all three scenarios.

1. In the first scenario, while at the Justice Department, Mr. Torchinsky saw egregious behavior by state and local officials, and the Department imposed “onerous provisions” on jurisdictions in the areas of education, housing, police misconduct, and in very rare circumstances, voting as well.⁷⁴ He also gave an example of a juvenile facility in Mississippi with “deplorable” conditions that ended in the Department imposing strict conditions, which in that case Mr. Torchinsky saw as justified.⁷⁵
2. Mr. Torchinsky stated that he had seen the second “pet interest” scenario as well, and it seemed that bureaucracies never stop growing.
3. As for the third scenario, Mr. Torchinsky stated that while this is a threat, he had not personally seen many examples he could point to in the context of civil rights enforcement. He did think that all three scenarios are serious considerations when looking at civil rights suits and settlements to track which interests led to particular provisions in settlement agreements.⁷⁶

On Registration Rates

Mr. Torchinsky further commented that the overall economy from 1995 forward offers important context for the decreasing trend lines of registration applications at public assistant offices depicted in graphs in Ms. Danetz’s testimony.⁷⁷ He criticized the graphs as inaccurately depicting causation between private compliance efforts and increased registration numbers, and that they did not consider the economic context.

Commissioner Achtenberg asked Ms. Danetz to address Mr. Torchinsky’s assertion that the upward trajectory of voter registration applications is equally explainable by the increase in

⁷³ Briefing Transcript, pp. 67–68.

⁷⁴ *Id.* at 68–69.

⁷⁵ *Id.* at 69–70.

⁷⁶ *Id.* at 70–71.

⁷⁷ *Id.* at 38. Torchinsky cites a 2008 Heritage Foundation study which theorized that decreased voter registration numbers were in part due to welfare reform passed in 1996 and the economy booming in the 1990s, contributing to fewer new applicants for public assistance programs (*Id.* at 39–40). Conversely, the economic collapse of 2008 contributed to more people seeking public assistance and, presumably, increased voter registration numbers in the next five years. Danetz refers to David Muhlhausen’s paper for the 2008 Heritage Foundation report and its subsequent refutation by Alvarez and Nagler in terms of methodology (*Id.* at 45–46).

applications for public assistance as it is for the implementation of good policy in monitoring, training, and oversight for Section 7 compliance.⁷⁸

Ms. Danetz replied that in looking at the monthly covered transactions, the number of agency applications, renewals and change-of-address notifications, one sees the same trend line depicted in the graphs—implying that high numbers of transactions in jurisdictions with good Section 7 compliance mean high numbers of voter registrations through public assistance offices. The graphs were created from state data as well as caseload data. For example, the food stamps caseload was significantly higher in 2005–2006 than in 1995–1996. Thus, the booming economy of the late 1990s and early 2000s cannot explain the downward trend in voter registration applications.

Effects of Welfare Reform

Commissioner Gaziano asked Mr. Torchinsky and Ms. Danetz to further discuss the social science studies published by Heritage Foundation and Dēmos researchers in 2008 regarding whether welfare reform and economic circumstances equally explain changes in voter registration numbers as much as compliance efforts.⁷⁹

Mr. Torchinsky explained that over time the same group of applicants for public assistance necessarily decreases the pool of new voter registrants. However, he conceded that it is difficult to assess this hypothesis without the same personally identifiable information he criticized litigants for seeking in Voter Registration Act litigation.⁸⁰

Ms. Danetz stated that she did not review the social science papers before the briefing, but remembered that the Heritage Foundation study only looked at the Temporary Assistance for Needy Families program. She stated that Medicaid and the Supplemental Nutrition Assistance Program are also in the world of public assistance, are bigger, and with pools of applicants and recipients that would not have decreased as a result of welfare reform in the mid-1990s.⁸¹

Ms. Danetz also stated that Ohio's numbers were stable over time following the November 2009 settlement agreement with the state. She responded that if the Heritage Foundation's theory was correct, one would expect that large numbers of people would come forward first but then taper off over time because they are the same applicants. However, that was not the case in Ohio. Ms. Danetz explained that the low-income population is highly mobile, such that if someone came into the system and is still receiving benefits, he or she needs to change voter registration at the time

⁷⁸ *Id.* at 45–46.

⁷⁹ *Id.* at 51–54.

⁸⁰ *Id.* at 54–56. Torchinsky stated that the problem of tracking repeat applicants also arises when enforcing Section 8 actions to track repeat registrants for voting.

⁸¹ *Id.* at 56–57.

of changing addresses. A public assistance agency is responsible under Section 7 to provide voter registration at the time of address change. She also stated that there is not a general sense that the same people keep coming into public assistance offices repeatedly. Thus, together, these reasons point to why the Heritage Foundation theory may not be accurate.⁸²

As an example to counter Mr. Torchinsky's theory, Commissioner Kladney confirmed with Mr. Bartlett that the implementation plan for North Carolina began in 2006, and that by 2008, registration had increased by 700 percent—from approximately 12,000 to 80,000.⁸³ Mr. Bartlett confirmed that this was indeed the case.⁸⁴

Modernization

Chairman Castro asked Mr. Bartlett to elaborate on his earlier reference to possibly moving to an online voter registration system in North Carolina when the “political climate” would allow it.⁸⁵

Mr. Bartlett explained that concerns about voter fraud or hackers into a voter database seem to scare Democratic and Republican legislators from accepting online registration.⁸⁶

Commissioner Kladney asked if using the technology Mr. Bartlett suggested could solve Mr. Torchinsky's concerns about personally identifiable information stored in paperwork.⁸⁷

Mr. Torchinsky responded that technology can help with tracking and gathering data but that along with technology and its proper implementation comes both acquisition and training costs. Technology is beneficial if it is both cost-effective and well-implemented.⁸⁸

Recent and Emerging Developments in Voter Registration

Since the briefing, there have been many new and emerging developments in voter registration. These include the use of technology to modernize voter registration both online and through automatic registrations. States have also strived for electronic methods to insure more accurate voter rolls. We also discuss designating additional federal agencies as registration sites to increase voter registration. Finally, this section discusses the use of the health benefit exchanges set up under the Affordable Care Act for registering voters.

⁸² *Id.* at 57–58.

⁸³ *Id.* at 58.

⁸⁴ *Id.* at 58–59.

⁸⁵ *Id.* at 48.

⁸⁶ *Id.* at 49.

⁸⁷ *Id.*

⁸⁸ *Id.* at 72.

Registration Modernization

Recently, many states have begun addressing the issue of increasing voter access and registration rates by utilizing computer-based technology to modernize their voter registration systems. This shift has led a number of states to provide (1) electronic registration, which requires certain government agencies to digitally transmit data to election officials;⁸⁹ (2) online registration, which allows voters to complete and submit their registration form electronically;⁹⁰ and, in what appears to be gaining increasing momentum, (3) automatic (or automated) registration, which shifts the burden of voter registration responsibilities to the state to automatically register individuals when they interact with certain government agencies.⁹¹

Online voter registration applications increased significantly between 2010 and 2014.⁹² Based on reports from 33 states, applications received over the Internet accounted for 6.5 percent of the total applications received, up from 1.7 percent in 2010.⁹³ Additionally, according to a two-year study of thirty-eight states using electronic voter registration and/or online voter registration, states benefited significantly after their implementation.⁹⁴ The study found that using these tools had a triple effect of boosting registration rates, increasing voter roll accuracy, and saving money.⁹⁵ For example:

- *Pennsylvania's* registration rates more than quadrupled after implementing electronic voter registration at its motor vehicle facilities in 2005.⁹⁶

⁸⁹ Brennan Center for Justice, "Voter Registration in a Digital Age: 2015 Update," p. 1, October 2015, *available at* https://www.brennancenter.org/sites/default/files/publications/Voter_Registration_Digital_Age_2015.pdf (hereinafter *Registration in a Digital Age*).

⁹⁰ *Id.*

⁹¹ *Id. at 2.*

⁹² Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2013-2014*, Washington, D.C., June 30, 2015 at 4, *available at* http://www.eac.gov/assets/1/Page/2014_EAC_EAVS_Comprehensive_Report_508_Compliant.pdf.

⁹³ *Id.*

⁹⁴ *Registration in a Digital Age at 1-2.*

⁹⁵ *Registration in a Digital Age at 2-3; see also*, National Commission on Voting Rights, "Improving Elections in the United States: Voices from the Field," pp. 19–20, September 2015, *available at* <http://votingrightstoday.org/ncvr/resources/electionadmin/>; J. Mijin Cha and Liz Kennedy, "Millions to the Polls: Practical Policies to Fulfill the Freedom to Vote for All Americans," pp. 14–18, *Dēmos*, 2014, *available at* <http://www.Dēmos.org/sites/default/files/publications/m2p-Main.pdf>; Brennan Center for Justice, "Case for Voter Modernization in 2015," p. 10, Sept. 22, 2015, *available at* https://www.brennancenter.org/sites/default/files/publications/Case_For_Voter_Registration_Modernization_2015.pdf.

⁹⁶ *Registration in a Digital Age at 18.*

- In *Arizona* and *Utah*, over one fifth of all new voter registration applications between 2010 and 2012 were submitted online.⁹⁷
- *Washington State* saved 25 cents per online registration after launching its program in 2008.⁹⁸
- *West Virginia* Secretary of State Natalie E. Tennant noted that one month after the state unveiled its online voter registration program in September 2015, it received over 1,000 submissions from 50 of the state's 55 counties, consisting of 439 new voter registration applications, 349 address changes, 267 party changes and 27 name changes.⁹⁹

The Pursuit of Accuracy

Regarding concern over voter roll accuracy, states are finding that both electronic voter registration and online voter registration limit human error by relieving staff of interpreting illegible handwriting and manually entering voter information.¹⁰⁰

Recognizing these advantages, many states have moved rapidly to make changes. In the last five years, between 2010 and 2015, the number of states utilizing electronic voter registration has increased 58.8 percent, from 17 to 27.¹⁰¹ In that same time, states providing online voter registration has increased 333.3 percent, from 6 to 26.¹⁰²

Three states—Florida, New Mexico, and Oklahoma—recently passed legislation to provide online voter registration but have not yet implemented them.¹⁰³ Alabama has agreed to integrate voter registration into its online driver's license renewal system after receiving a warning letter from the Justice Department citing noncompliance with Section 5 of the Act.¹⁰⁴

As of this report, only two states—Oregon and California—provide automatic voter registration. Oregon, whose bill became law in March 2015, estimated that automatic voter registration would

⁹⁷ *Id.* at 13.

⁹⁸ *Id.* at 6.

⁹⁹ Natalie E. Tennant, "Online voter registration a success across the Mountain State," *Williamson Daily News*, Nov. 9, 2015, available at <http://williamsondailynews.com/news/2145/online-voter-registration-a-success-across-the-mountain-state>.

¹⁰⁰ Registration in a Digital Age at 2.

¹⁰¹ *Id.* at 1.

¹⁰² *Id.*

¹⁰³ National Conference of State Legislatures, "Online Voter Registration," Feb. 2, 2016, available at <http://www.ncsl.org/research/elections-and-campaigns/electronic-or-online-voter-registration.aspx>.

¹⁰⁴ Department of Justice, Memorandum of Understanding, *Agreement with the State of Alabama*, Nov. 12, 2015, available at <http://governor.alabama.gov/assets/2015/11/NVRA-MOU.pdf>.

add roughly 300,000 new voters to the rolls,¹⁰⁵ while California, whose bill became law in October 2015, estimated “up to a million” by 2018.¹⁰⁶ Notwithstanding that only two states currently provide automatic voter registration, in 2015, “legislators in eighteen states plus the District of Columbia and the United States Congress introduced similar bills that would automatically register citizens who interact with motor vehicle offices and ensure that information is electronically and securely sent to the voter rolls.”¹⁰⁷ In 2016, “27 states plus the District of Columbia are considering measures . . . that would automatically register citizens” at motor vehicle departments.¹⁰⁸

Although automatic voter registration appears to be gaining momentum across the country, some have raised concerns about the accuracy of voter databases and the accidental registration of noncitizens in states where DMVs issue driver’s licenses to such residents.¹⁰⁹ To prevent accidental registration of noncitizens, California DMV employees request citizenship attestation before offering registration.¹¹⁰ Additionally, the California Secretary of State confirms citizenship before registering a person to vote.¹¹¹ In Oregon, proof of legal residency is required to obtain a driver’s license, and the data the DMV provides for voter registration includes citizenship status.¹¹² These requirements are more stringent than a traditional voter registration form, which simply requires a voter to verify citizenship status, but does not require any proof of citizenship.¹¹³ California has an entirely separate process to provide drivers licenses for residents in the country illegally, which does not provide any voter registration services.¹¹⁴

¹⁰⁵ Jeff Guo, “It’s Official: New Oregon law will automatically register people to vote,” *Washington Post*, March 17, 2015, available at <https://www.washingtonpost.com/blogs/govbeat/wp/2015/03/17/its-official-new-oregon-law-will-automatically-register-people-to-vote/>.

¹⁰⁶ Aaron Morrison, “California’s Automated Voter Registration Will Launch Ahead of 2016 Presidential Election,” *International Business Times*, Oct. 16, 2015, available at <http://www.ibtimes.com/californias-automated-voter-registration-will-launch-ahead-2016-presidential-election-2144004>.

¹⁰⁷ Brennan Center for Justice, “Automatic Voter Registration,” November 2015, available at <https://www.brennancenter.org/analysis/automatic-voter-registration>.

¹⁰⁸ See <https://www.brennancenter.org/analysis/automatic-voter-registration>, last visited March 11, 2016.

¹⁰⁹ “Critics Warn This New CA Law Will Let Illegal Immigrants Votes,” *Fox News Insider*, Fox News, Oct. 13, 2015, available at <http://insider.foxnews.com/2015/10/13/critics-warn-new-ca-law-will-let-illegal-immigrants-vote>.

¹¹⁰ Jeremy B. White, “California voter law could register millions—for a start,” *Sacramento Bee*, Oct. 20, 2015, available at <http://www.sacbee.com/news/politics-government/capitol-alert/article40547034.html>.

¹¹¹ Melanie Mason, “Here’s how California’s new voter registration law will work,” *LA Times*, October 16, 2015, available at <http://www.latimes.com/politics/la-me-pol-ca-motor-voter-law-20151016-html-htmlstory.html>.

¹¹² Jeff Mapes, “The surprises in Oregon’s pioneering new voter registration system: a Q&A,” *The Oregonian*, March 13, 2015, available at http://www.oregonlive.com/mapes/index.ssf/2015/03/oregons_pioneering_new_voter_r.html.

¹¹³ *Id.*

¹¹⁴ Melanie Mason, “Here’s how California’s new voter registration law will work,” *LA Times*, October 16, 2015, available at <http://www.latimes.com/politics/la-me-pol-ca-motor-voter-law-20151016-html-htmlstory.html>.

It is unlawful under California law for a person who is ineligible to register to vote to knowingly allow himself or herself be registered to vote.¹¹⁵ If an ineligible person is accidentally registered under the California Motor Voter program, then the state can cancel the registration without penalty.¹¹⁶ State laws, however, cannot preempt federal laws that provide stiff penalties for knowingly providing false information to register to vote.¹¹⁷ Automatic voter registration proponents advocate for safe harbors to protect accidentally registered noncitizen voters deemed not to have intentionally committed a state crime.¹¹⁸

Given the newness of automatic voter registration and issues that may arise during implementation, each state and jurisdiction will likely have kinks to work out in providing the opportunity to vote to broader numbers of people.

Designating Additional Federal Agencies as Registration Sites

Expanding the number and kinds of offices offering registration services affects who is more likely to be registered to vote. An additional policy proposal that has become more prominent since the briefing is for additional agencies, including federal government agencies, to begin offering registration services under Section 7.¹¹⁹ As explained above, Section 7 requires that certain state agencies offer voter registration services, and that states designate at least one “other office” that will offer registration services.¹²⁰ At the briefing, panelist Lisa Danetz explained that an

¹¹⁵ Cal. Elections Code § 18100.

¹¹⁶ White, *supra*. See also Cal. Elections Code § 2268 (“If a person who is ineligible to vote becomes registered to vote pursuant to this chapter, in the absence of a violation by that person of Section 18100, that person’s registration shall be presumed to have been effected with official authorization and not the fault of that person.”).

¹¹⁷ See 52 U.S.C. § 20511 (federal crime to knowingly procure or submit false, fictitious, or fraudulent voter registration applications); 18 U.S.C. § 1015(f). This statute only applies to “Whoever knowingly makes any false statement or claim that he is a citizen of the United States in order to register to vote or to vote in any Federal, State, or local election” (so it only applies to aliens not U.S. citizens.) Both offenses are punishable by a fine or imprisonment for up to five years.

¹¹⁸ “Automatic and Permanent Voter Registration: How It Works,” Brennan Center for Justice, p. 7, 2015, *available at* http://www.brennancenter.org/sites/default/files/publications/Automatic_Permanent_Voter_Registration_How_It_Works.pdf (calling for safe harbor provisions).

¹¹⁹ J. Mijin Cha and Liz Kennedy, “Millions to the Polls: Practical Policies to Fulfill the Freedom to Vote for All Americans,” p. 14, Dēmos, 2014, *available at* <http://www.demos.org/sites/default/files/publications/m2p-Main.pdf>; Brennan Center for Justice, *15 Executive Actions*, p. 8, April 15, 2014, *available at* http://www.brennancenter.org/sites/default/files/publications/15_Executive_Actions.pdf.

¹²⁰ 52 U.S.C. § 20506 (a)(3).

unemployment office, for example, could be designated as a voter registration office by the state, as it is in North Carolina.¹²¹

For example, Native Americans trail white Americans in registration percentage by approximately 10 percent.¹²² Offering voter registration at Indian Health Services offices would help narrow this gap.¹²³ Similarly, naturalized citizens have a much lower registration rate than citizens born in the United States.¹²⁴ Offering registration at U.S. Citizenship and Immigration Services offices would raise this rate as well.¹²⁵ Naturalized citizens face additional structural barriers to registration, including lack of knowledge of where to register and language access. Offering assistance in registration would therefore be particularly helpful to naturalized citizens.¹²⁶

States have discretion to request that federal offices, such as the Indian Health Services and U.S. Citizenship and Immigration Services, offer voter registration if the federal office agrees to do so.¹²⁷ The President could direct executive branch agencies to agree when states ask them to offer registration services. In addition, the President could request that independent agencies, such as the Social Security Administration, offer voter registration.¹²⁸ Another possibility is legislation to require federal agencies to agree with states' requests for voter registration. One such piece of legislation was introduced that would require the Director of Veterans Affairs to permit states to designate its offices under the Act.¹²⁹ Requiring federal offices to offer registration services when states request them would expand the Act's reach. For those citizens who interact more frequently

¹²¹ Briefing Transcript, p. 61.

¹²² 39.5 percent of Native Americans are not registered, compared to 29 percent of all citizens. Tova Wang, *Ensuring Access to the Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy*, p. 6, Dēmos, 2012, available at <http://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>.

¹²³ J. Mijin Cha and Liz Kennedy, *Millions to the Polls: Practical Policies to Fulfill the Freedom to Vote for All Americans*, p. 14, Dēmos, 2014; Tova Wang, *Ensuring Access to The Ballot for American Indians & Alaska Natives: New Solutions to Strengthen American Democracy*, p. 14 & n. 43-44, Dēmos, 2012, available at <http://www.demos.org/sites/default/files/publications/IHS%20Report-Demos.pdf>.

¹²⁴ As of 2014, native-born citizens were registered at a rate of 65.5 percent, compared to 55.9 percent for naturalized citizens. Voting and Registration in the Election of November 2014: Table 11—Reported Voting and Registration Among Native and Naturalized Citizens, by Race, Hispanic Origin, and Region of Birth: November 2014, United States Census Bureau, available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2014/tables.html>.

¹²⁵ J. Mijin Cha and Liz Kennedy, *Millions to the Polls: Practical Policies to Fulfill the Freedom to Vote for All Americans*, p. 14, Dēmos, 2014.

¹²⁶ See Tova A. Wong & Youjin B. Kim, *From Citizenship to Voting: Improving Registration for New Americans*, 8 (2011) available at http://www.demos.org/sites/default/files/publications/fromcitizenshiptovoting_demos_2.pdf.

¹²⁷ 52 U.S.C. § 20506(a)(3).

¹²⁸ “15 Executive Actions,” Michael Waldman and Animai Chettiar, eds., Brennan Center for Justice, p. 8, April 15, 2014, available at http://www.brennancenter.org/sites/default/files/publications/15_Executive_Actions.pdf.

¹²⁹ Veteran Voting Support Act, H.R.6625, 110 Cong. § 2 (2008), (as discussed in H.REP. 110-851 (2008), available at <https://www.gpo.gov/fdsys/pkg/CRPT-110hrpt851/html/CRPT-110hrpt851-pt1.htm>).

with federal offices than state offices, such a system would increase their opportunities to register to vote and ensure accurate rolls by capturing changes of address.

Health Benefit Exchanges

Since the briefing, states and the federal government have begun to operate health benefit exchanges pursuant to the Affordable Care Act.¹³⁰ Health benefit exchanges provide citizens the opportunity to enroll in private health insurance or Medicaid.¹³¹ There have been reports that moving from in-person to online Medicaid applications has led to a decrease in voter registration numbers because federally facilitated exchanges do not fully comply with the Act's requirements.¹³² Advocates argue that all such requirements apply to the federally facilitated exchanges even though the federal government runs them, because the federal government is "stepping into the states' shoes" when it sets up an exchange.¹³³

The federal government has acknowledged the importance of voter registration, and health benefit exchanges contain information about how to register to vote.¹³⁴ However, some advocates maintain that the exchanges are not in full compliance with the Act.¹³⁵ For state-run exchanges, states such as California have agreed to fully implement the Act's requirements in state-run health benefit exchanges.¹³⁶ As the process of registering for Medicaid moves online, voter registration services should continue to be offered so that registration numbers do not drop.

¹³⁰ Affordable Care Act actually refers to two separate pieces of legislation — the *Patient Protection and Affordable Care Act* (P.L. 111-148) 124 Stat. 119, (2010) and the *Health Care and Education Reconciliation Act of 2010* (P.L. 111-152), 124 Stat. 1029 (2010), 42 U.S.C § 18001 et seq.

¹³¹ *Id.* 42 U.S.C. Chapter 157, Subchapters III & IV.

¹³² Heather McGhee, Michael Slater, and Elisabeth MacNamara, "Administration's Responsibility to Provide Voter Registration through Federally Facilitated Exchange—Action Needed Now," Dēmos, Letter to President Barack Obama, Oct. 28, 2015, available at <http://www.projectvote.org/wp-content/uploads/2015/10/Letter-to-President-Obama-on-ACA-Compliance-10.28.2015.pdf>.

¹³³ Lisa J. Danetz, Sarah Brannon, and Lloyd Leonard, "Voter registration duties of Health Benefits Exchanges under the National Voter Registration Act," Dēmos, Memorandum, Aug. 8, 2014, available at http://www.projectvote.org/wp-content/uploads/2015/07/vote_aca_nvra_legal_analysis_8-8_14.pdf.

¹³⁴ See Maya Rhodan, "Obamacare Voter Registration Criticized by Left and Right," *Time*, Jan. 24, 2014, available at <http://time.com/1696/obamacare-voter-registration-criticized-by-left-and-right/>.

¹³⁵ Danetz et al., "Voter registration duties of Health Benefits Exchanges," available at http://www.projectvote.org/wp-content/uploads/2015/07/vote_aca_nvra_legal_analysis_8-8_14.pdf.

¹³⁶ See Jean Merl, "State to send voter registration card to Obamacare applicants," *Los Angeles Times*, March 24, 2014, available at <http://articles.latimes.com/2014/mar/24/local/la-me-voter-registration-20140325>.

FINDINGS AND RECOMMENDATIONS

Findings

Background

- Section 7 is critical for the success of the National Voter Registration Act. It requires state offices that provide public assistance and those that provide disability services to offer opportunities to register to vote or update registrations. It also requires offices to provide registration assistance. The National Voter Registration Act and Section 7 have assisted millions of citizens in exercising their right to vote.
- Immediately after implementation of Section 7, 1995–1996, over 2.6 million new voters registered at public service and disability agencies.
- By the 2007–2008 reporting period, voter registration numbers at public assistance offices began to sink significantly—by as much as 80 percent in some states. The reduction was in part the result of states not fully meeting the requirements of Section 7. In 2014, over 617,000 new voters registered at public service agencies throughout the nation.
- In the 2008 and 2012 elections, those in the lowest income bracket were approximately 30 percent less likely to be registered to vote than those in the highest income bracket. In the 2014 election, 52 percent of voters earning over \$150,000 voted, compared to only 25 percent of those earning less than \$10,000. Thus, providing voter registration services at public assistance and disability offices is an important part of efforts to increase registration among low-income citizens.
- Providing for voter registration at public assistance offices is important to improve minority registration and participation in the election process. U.S. Census Bureau statistics show Hispanics and blacks were, respectively, three and four times more likely than whites to register to vote at a public assistance agency. At least one state has observed that having voter registration offered at public assistance offices benefits voters of all demographics.
- Providing for voter registration at public assistance offices is vital for citizens with disabilities. These citizens struggle with poverty at twice the rate of citizens without disabilities and thus may be more likely to register to vote at those offices.
- Providing for voter registration at public assistance offices is also important for Limited English Proficient persons, who are more likely to be living in poverty than English Proficient individuals. The Election Assistance Commission has also translated the National Mail Voter Registration form into Spanish and eight Asian languages. The Election Assistance Commission recently updated which languages to translate the form in 2016.

State Management and Oversight

- Some states experienced resistance to implementing Section 7 from local public assistance agencies. Some agencies expressed resentment at Section 7 being an “unfunded mandate.” They claimed not to have the time or resources needed to offer registration and assist citizens with registration.
- Some agencies did not want to offer registration at public assistance offices for fear that an applicant would believe voter registration was required to receive services. Section 7 prohibits an agency from making any statement to an applicant or taking any action the purpose or effect of which is to lead the applicant to believe that a decision to register or not to register has any bearing on the availability of services or benefits.
- Perceived problems with local public assistance offices include staff failure to provide voter registration opportunities at the time they should, lack of voter registration applications on site, staff unawareness of the obligation to provide voter registration services, inadequate training, and lack of oversight.
- After Section 7-compliant states revise their benefits processes, voter registration rates at public assistance offices may drop due to budgetary reasons, omission of voter registration features in technology upgrades, or overall lack of attention to the issue.
- Multiple entities or individuals in state and local governments may act independently to oversee that state agencies follow the National Voter Registration Act requirements. A state-level coordinator increases the likelihood for statewide agency compliance with the National Voter Registration Act.
- One of the most successful compliance measures is constant communication with agencies and having a single point of contact in the State Board of Elections who coordinates compliance with the requirements of the National Voter Registration Act.
- Those states most compliant with the National Voter Registration Act have well-developed oversight systems for evaluating and tracking voter registration data.
- Many of the most compliant states have the State Board of Elections maintain strong oversight of their National Voter Registration Act programs and provide ongoing training for agencies. Ongoing training is particularly important due to agency staff turnover.

Enforcement of the National Voter Registration Act

- Congress has provided the Department of Justice with authority to sue state agencies that fail to comply with the National Voter Registration Act. The Department has additional tools, including publishing guidance on implementing the National Voter Registration Act, conducting investigations, sending letters of intent to enforce the National Voter Registration Act, and reviewing state data reported to the Election Assistance Commission.
- Private litigants may also sue under Section 7. Most states have elected to cooperate with public interest groups or settle claims rather than go through litigation.

- The Election Assistance Commission is responsible for administration of the national voter registration form and state reporting under the National Voter Registration Act.
- Election Assistance Commission Reports shows that compliance intervention—including cooperative work and/or lawsuits by the Department of Justice or private litigants resulted in increased voter registrations. For the period of 2009-2010, seven of the ten states with the highest number of voter registrations at public assistance agencies had been involved in Section 7 enforcement. Litigation is an effective tool to enforce state compliance with Section 7.

Role of Technology

- Integrating voter registration procedures within existing agency processes, including automatic opt out and online processes, is essential to effective compliance with the Act. Integrated computerized processes can improve Section 7 compliance and voter registration rates among low-income citizens, Limited English Proficiency citizens, and citizens with disabilities.
- Data management technology can effectively address large volumes of data from both voter registration forms and declination forms, which can otherwise be cumbersome, expensive to manage, and error-prone.

Online Registration

- In 2014, Internet voter registration applications increased from the previous election cycle, with 33 states reporting voter registration applications received electronically. Internet applications increased from 1.7 percent in 2010 to 6.5 percent in 2014.

Automatic Registration

- Section 7 requires states to offer voter registration opportunities at certain state and local offices, including public assistance and disability offices. States are only required to have voters “opt in” to register to vote.
- The most efficient and cost-effective registration process for states to meet the Act’s requirements is to provide an electronic automatic “opt out” registration process. This process clarifies any confusion an applicant may have regarding the necessity to register to vote in order to receive benefits. It eliminates hard-copy error from the process and does not rely on an agency employee’s memory to comply with the registration process.
- In Oregon and California, eligible citizens with driver’s licenses are automatically registered to vote unless they opt out of registration.

Designation of Additional Agencies Under Section 7

- Section 7 also requires states to designate “other offices” as voter registration agencies. States are free to determine which other agencies/offices should be designated, which may include public libraries, schools, colleges, universities and community colleges, city and county clerks offices, marriage license offices, fishing and hunting license offices, government revenue offices, and unemployment compensation offices.
- Under Section 7, states may also designate as voter registration agencies nongovernmental offices (such as private colleges) or federal offices so long as these entities agree.

Health Benefit Exchanges

- Section 7 requires all state offices that provide public assistance to offer voter registration and assist applicants in registering to vote.

Recommendations

State Management and Oversight of Section 7 Compliance

- Have strong oversight of their National Voter Registration Act programs and provide ongoing training for their public assistance and disability agencies, and other agencies designated by states under Section 7.
- Be in constant communication with agencies, and Congress should fund a single point of contact in the State Board of Elections who coordinates all National Voter Registration Act activities in the state.
- Regularly review procedures in place at all agencies covered by Section 7 to ensure ongoing compliance, including unannounced checks.
- Implement procedures for regular data collection on National Voter Registration Act-required activities.

Role of Technology

- Implement expanded and creative technology roles to improve oversight and assist state public assistance agencies in managing sound voter registration practices.
- Move to electronic voter registration rather than relying solely on paper forms, and integrate registration seamlessly with other electronically covered transactions.
- Because compliance with the National Voter Registration Act requires the management of a large volume of data on both voter registration forms and declination forms, Congress should provide resources for states to learn about and invest in technology that streamlines data processing.
- Use available technology to integrate automatic data collection into covered transactions.

Online Registration

- The federal government should study opportunities and challenges with online voter registration to increase voter registration rates among populations that rely on public assistance. Congress should support and create funding for states to implement online voter registration systems that take into account Section 7 requirements.

Automatic Registration

- States should enact automatic voter registration where feasible. Where the National Voter Registration Act requires states to offer voter registration, states should give voters the opportunity to opt out of registering rather than asking them to opt-in. States should modernize their systems so that they automatically update citizens' voter registrations when voters register a change of address within the state.

Serving Limited English-Proficiency Voters

- The Election Assistance Commission should reexamine whether it should translate the National Mail Voter Registration form into additional languages.

Department of Justice

- The Department of Justice's efforts to enforce Section 7 through litigation and investigations are an important component in ensuring state compliance. Congress should increase resources to support the Department in providing technical assistance and training about and enforcement of the National Voter Registration Act.

Designate Additional Agencies under Section 7

- States should designate additional agencies under Section 7.
- States should consider designating public and private colleges and universities under Section 7.
- Congress should consider expanding Section 7 to require federal agencies to agree to be designated as a covered agency under Section 7 when requested by states.
- Additional designated federal agencies should include:
 - Indian Health Services
 - U.S. Citizenship and Immigration Services
 - Department of Veterans Affairs

Ensure Health Benefit Exchanges Comply Fully with Section 7

- States should examine whether Health Benefit Exchanges set up to comply with the Affordable Care Act also comply with Section 7 requirements. States must continually monitor changes to Health Benefit Exchanges to ensure they do not fall out of compliance with Section 7. States providing public assistance must train employees in assisting with voter registration, and training must be offered on an ongoing basis.
- The Department of Health and Human Services should ensure federally facilitated Health Benefit Exchanges comply with Section 7. Federal employees who provide assistance to the public must be trained in assisting with voter registration, and training must be offered on an ongoing basis.

COMMISSIONERS' STATEMENTS AND REBUTTALS

Statement of Chairman Martin R. Castro

"The vote is the most powerful instrument ever devised by man for breaking down injustice and destroying the terrible walls which imprison men because they are different from other men." -- Lyndon B. Johnson

At a time when this great weapon of equality is most needed, it seems like it is more difficult to obtain today than it is to obtain an actual weapon in the U.S.

Not long ago, the U.S. Supreme Court, in Shelby County v. Holder, 133 S. Ct. 2612 (2013), at the behest of those who would limit access to the ballot box by people of color, gutted the Voting Rights Act of 1965 (the "VRA"). Those that urged the dilution of voting rights protections claimed they were no longer needed; that States subject to Section 5 of the VRA were not the Jim Crow States they were in the past and that there would be no effort to curtail access to the franchise. However, within hours of the decimation of the VRA by the Supreme Court, five of the nine States that were waiting for VRA Section 5 preclearance for voting changes moved to enact voting restrictions.¹

When one looks at the aftermath of Shelby County, there can be no doubt that access to the polling places of today is being made more difficult, especially for people of color; that while there are no poll taxes in place today, there are barriers to the polls being erected every day in many of the States that had historically been kept at bay from instituting such barriers by the VRA. We see it in the long lines of people waiting to vote in the 2016 Presidential primaries because States have reduced the number of polling places.² But, it is not just reducing or moving polling places and passing voter ID laws, it's also about reducing the ability to vote on weekends or early voting; it's about blocking voter registration efforts as well. There can be no doubt that the voting restrictions implemented since Shelby County have had a clear "racial impact."³

The loss of protections of the VRA make the National Voter Registration Act (the "NVRA") more important than ever in protecting the most vulnerable from injustice by providing them with continued, robust access to the franchise. However, we see that voter registration under the NVRA is also under attack after Shelby County.

¹ available at <http://www.pbs.org/wgbh/frontline/article/with-voting-rights-act-out-states-push-voter-id-laws/>.

² available at <http://www.npr.org/2016/03/25/471891525/arizona-polling-places-overwhelmed-with-long-lines-on-primary-day>.

³ available at <http://harvardlawreview.org/2015/02/its-about-time-place-and-manner-why-and-how-congress-must-act-to-protect-access-to-early-voting/>.

We need to supercharge the NVRA today in order to allow important access to the right to vote to people of color, limited English proficient communities and the disabled. The Commission makes some excellent recommendations on how to strengthen Section 7 of the NVRA and expand locations where persons can register to vote under the NVRA. I'm proud of this report, our findings, and recommendations and strongly urge Congress and the Administration to enact them.

However, my concern is that the call to be hyper vigilant⁴ in the enforcement of the NVRA will fall upon deaf ears. For example, the U.S. Department of Justice ("DOJ"), has only invoked its enforcement authority under the NVRA 21 times from 2000-2014. While a private right of action can also enforce Section 7 of the NVRA, it is important for the DOJ to take the lead and pursue NVRA violations aggressively, especially in light of the loss of Section 5 of the VRA.

We see that some of the same States instituting other kinds of voting barriers are also the ones who are violating the NVRA, such as Texas. Texas, Texas, Texas, what are we to do with you? As always, Texas is at the heart of voter restrictions and efforts to make life more difficult for minorities and LEP communities. Whether it is seeking to undo affirmative action, deny U.S. citizen children of undocumented parents their birth certificates, or fooling people into thinking they have registered to vote under the NVRA when that is not the case, Texas is a repeat offender in the effort to block justice. The present court battle involving the NVRA (an action brought by an individual rather than by DOJ) involves what some would call deceptive practices:

"Currently, people who go to the Texas DPS website to renew their license and/or update the address on their license are asked to check 'yes' or 'no' in response to (sic) the following statement: I want to register to vote. But the information isn't actually used to register anyone to vote.

'They think their voter registration is automatic and it is not. They still have to print and mail in a voter registration form in order to register to vote,' explained Travis County Voter Registrar Bruce Elfant.

According to the lawsuit, Between September 2013 and May 2015, the State received more than 1,800 complaints from voters who completed an online transaction with DPS and mistakenly believed that their registration records were updated too."⁵

The NVRA has to be our line in the sand; the line beyond which we will not allow the forces of injustice, of discrimination, of racism, to proceed forward in taking our country back to a time when access to the ballot box was limited to White men, to a time when deceptive practices were used to keep people from registering to vote and when the law was used as an obstacle rather than an ally to enfranchising every eligible American to vote. We have come too far, bled too much

⁴ See U.S. Commission on Civil Rights, *Increasing Compliance With Section 7 of the National Voter Registration Act*, p. 15 (2016). [hereinafter *Commission Report*].

⁵ available at: <http://kxan.com/2016/03/15/lawsuit-texas-dps-website-doesnt-actually-register-voters/>.

and sacrificed too many to allow ourselves to be once again imprisoned anew by the walls now being built around access to the ballot boxes of America.

Joint Statement of Commissioners Kladney, Achtenberg and Yaki

Every man has a right to one vote, and no more in the choice of representatives. The rich have no more right to exclude the poor from the right of voting, or of electing and being elected, than the poor have to exclude the rich.

Thomas Paine, Dissertation on the First Principles of Government (1795)

The right to vote freely for the candidate of one's choice is of the essence of a democratic society, and any restrictions on that right strike at the heart of representative government.

Reynolds v. Sims, 377 U.S. 533, 555 (1964)

Voting is a fundamental right. Too often, people are prevented from voting not because they do not wish to participate in our democracy, but because of structural barriers to their right to vote. These barriers take the form of onerous registration requirements, voter ID laws that target the poor, too few polling places leading to long lines, or polling place hours that make it difficult for working people to vote. The National Voter Registration Act (NVRA), passed in 1993 by a bipartisan vote, sought to tackle one of these barriers: described as the then-existing “complicated maze” of rules governing how to register to vote.¹

Anyone who is eligible to vote should be able to vote. Although fundamental, the right to vote is increasingly under assault. These efforts to limit the ability of people to vote can be combatted in part by enforcing the provisions of the NVRA. The NVRA mandates that states streamline their registration process in several ways, including offering registration services at agencies which provide public assistance, the subject of this report. Section 7 of the Act governs this type of registration. Registration services at public assistance agencies serve the citizens most likely to not be registered: those who are low-income, predominantly African-American, Native American and Latino, more likely to have a low education level, and highly mobile because of their poverty.² The population served by Section 7 is both less likely to be registered and less likely to have influence over public policy generally. It is therefore vital that this underserved population be provided with voter registration services as required by law.³

History shows us the states are not consistent in complying with this federal law. In 2014, the Presidential Commission on Election Administration called it the “most often ignored” of the

¹ See *Commission Report*, p. 6.

² See *Commission Report*, p. 60.

³ Other provisions of the NVRA include the requirement to offer registration at motor vehicle agencies (Section 5), offer mail-in registration (Section 6), and requirements for voter registration forms (Section 9). 52 U.S.C. §§ 20501-20511; see also Voting Section, Department of Justice, *National Voter Registration Act of 1993, Questions and Answers*, available at http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php.

voting statutes.⁴ States' reasons for not complying range from outright defiance to simple neglect.⁵ The failure to maintain compliance is understandable – employee turnover means new employees may not be aware of the requirements, lack of attention to a service that is not the core service of the agency's mission means that compliance may fall by the wayside – **but that does not make it acceptable**. Public agencies must put systems in place to make the promise of the NVRA a reality for every person they serve. Not to do so is to fail the citizens they serve. It ultimately does a disservice to our democracy by making it less likely these people are properly registered to vote.

Some claim the focus of our attention should not be ensuring that every eligible voter is registered. They would rather concentrate on blocking those not eligible to vote, and make sure registration lists are regularly purged of ineligible voters. This focus led some Commissioners to opine that the Commission should study the enforcement of Section 8 of the NVRA. This section contains the registration list maintenance provisions. However, as explained in a colloquy at the beginning of the briefing, they put no proposal for a Section 8 study forward at the time the concept for this briefing was proposed and voted on by the Commission.⁶ To hear someone complain about it now is without merit. They had their chance for it to be incorporated at the briefing if they had proposed it at the time for the adoption of the concept paper. This failure is theirs.

However, the goals of broad based registration and accurate voter rolls are not mutually exclusive. To the contrary, policies that assist people in registering also assist in ensuring that voter rolls are more accurate.⁷ If people are properly registered, the rolls will not, for example, contain outdated addresses. Registering at an agency like the DMV or a public assistance agency also ensures that people are registering in a context where verifying their identity and citizenship status is already prioritized for other reasons. It provides more protection from fraudulent registration, not less.

Of particular concern to those worried about the security of registration lists are the provisions adopted in Oregon and California for automatic voter registration. This sensible modernization scheme has been proposed in an additional number of states as well. As of today, 28 states have proposed or passed some form of automatic voter registration, and the idea has gained prominent advocates for its ability to increase participation.⁸ States already collect the same personal

⁴ The American Voting Experience: Report and Recommendations of the Presidential Commission on Election Administration, p. 17 (January 2014) available at <https://www.supportthevoter.gov/files/2014/01/Amer-Voting-Exper-final-draft-01-09-14-508.pdf>.

⁵ See *Commission Report*, p. 44.

⁶ See Briefing Transcript, p. 4.

⁷ Accuracy of voter rolls is one of the principal goals of the NVRA. 52 U.S.C. § 20501 (b).

⁸ For a recent summary of state legislative proposals, see Brennan Center for Justice, *Automatic Voter Registration*, April 1, 2016, available at <https://www.brennancenter.org/analysis/automatic-voter-registration>. President Obama endorsed automatic registration as a policy “[t]hat will protect the fundamental right of everybody. Democrats, Republicans, independents, seniors, folks with disabilities, the men and women of our military – it would make sure that it was easier for them to vote and have their vote counted.” President Barack Obama, *Remarks by the President*

information needed for voting as for other purposes – such as obtaining and renewing driver’s licenses. The systems set up in Oregon and California compile that information for voting purposes, relieving individual voters of the step of registering. Many people currently believe that when they move within the state and update their address, their voter registration is automatically updated.⁹ In most places that isn’t true, but Oregon and California are now moving in that direction.

Those who wish not to register to vote are provided with the opportunity to opt out. Existing safeguards to ensure that ineligible voters are not registered continue to function under these systems, and they will become more accurate as more data is made available to voting authorities.¹⁰ There is no reason to believe these proposals make the registration process less secure. These systems have only been instituted recently, so there is limited information on their effect. It stands to reason these new procedures will enable Oregon and California to not only have higher registration rates, but the most accurate voter rolls in the country.

These innovations should be embraced, not stifled. They further the laudable goals of the NVRA. They make the registration process less complex and more accurate. They also have the potential to save states substantial amounts of tax dollars currently spent processing paper forms.¹¹ As more states modernize their voter registration systems, these savings will become a compelling reason for more states to join.

As some states take the initiative to ensure their eligible voters are registered, others struggle to comply with the NVRA’s mandates. As Lisa Danetz of Dēmos demonstrated during the Commission’s briefing, when states fall out of compliance with the NVRA, intervention is necessary and effective.¹² Additionally, data from Dēmos shows the effectiveness of compliance intervention in even starker terms. Total average monthly registrations jumped dramatically after the organization intervened as shown in Figure 2.

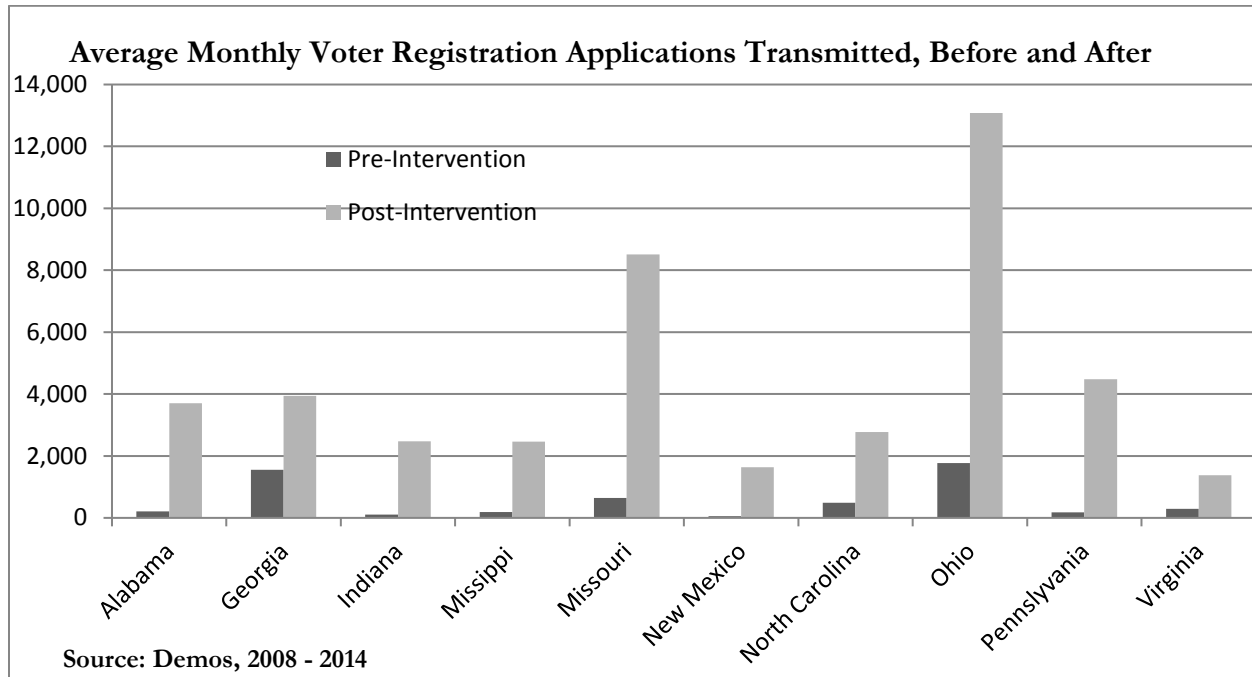
in Address to the Illinois General Assembly, February 10, 2016, available at <https://www.whitehouse.gov/the-press-office/2016/02/10/remarks-president-address-illinois-general-assembly>.

⁹ According to one study, approximately 25 percent of voters believe that updating their address with the postal service automatically updates their voter registration. See Pew Center on the States, *Inaccurate, Costly, and Inefficient: Evidence that America’s Voter Registration System Needs an Upgrade*, p. 7 (2012), available at http://www.pewtrusts.org/~media/legacy/uploadedfiles/pcs_assets/2012/PewUpgradingVoterRegistrationpdf.pdf.

¹⁰ See *Commission Report*, p. 54; Brennan Center for Justice, *Automatic Voter Registration: How It Works*, p. 6-7 (2015), available at <http://www.brennancenter.org/publication/automatic-and-permanent-voter-registration-how-it-works>.

¹¹ The cost savings of moving to a system where voter registrations are submitted electronically rather than on paper forms are well documented. See, e.g., Christopher Ponoroff, Brennan Center for Justice, *Voter Registration in a Digital Age*, p. 18 (2009) available at http://www.brennancenter.org/sites/default/files/legacy/Democracy/Paperless_Registration_FINAL.pdf. Automatic registration as California and Oregon are instituting it has the potential to realize even further savings.

¹² Briefing Transcript, pp. 23-25.

Figure 2. Average Monthly Voter Registration Applications Transmitted, Before and After

Some have criticized DOJ's intervention efforts as coercive, including briefing panelist Jason Torchinsky.¹³ Others, including this Commission, have noted that DOJ could be even more active in this area.¹⁴ Many compliance interventions are done by outside groups, which is allowed by statute, rather than DOJ. It's clear from historical statistics seen above that this kind of intervention encourages full implementation of NVRA in the states. As clarified at the briefing, settlement agreements are only pursued where compliance problems are identified. These interventions are extremely effective in increasing registration rates. As Gary Bartlett of North Carolina testified, rather than coercing states, engagement with DOJ or other groups lets states find a way to come into compliance with the NVRA and avoid litigation.¹⁵

A recent settlement agreement in Nevada shows the kinds of systems states can implement to avoid falling out of compliance with the NVRA in the future.¹⁶ It can serve as a model of effective strategies for implementing and monitoring NVRA compliance. The settlement in its entirety is worthy of examination, but several key provisions will be outlined here.

¹³ Briefing Transcript, pp. 30-31.

¹⁴ See *Commission Report*, p. 50.

¹⁵ Briefing Transcript, pp. 9-11.

¹⁶ Settlement Agreement on NVRA Implementation in Nevada, March 14, 2016, NCLR et al v. Cegavske et al, Case No. 3:12-cv-00316 (D. Nev. 2016), available at <http://www.demos.org/sites/default/files/publications/NCLR%20v.%20Cegavske-Settlement%20Agreement-EXECUTED.pdf>.

Designated individuals responsible for NVRA compliance at the state, agency and local levels

The settlement agreement provides that a state level NVRA coordinator will be designated in the office of the secretary of state. This mirrors the recommendation in the Commission's report. A state-level coordinator is important so that NVRA compliance is not left to wax and wane with the attention individual sites are able to give. Instead, someone on the state level is consistently monitoring compliance.

The agreement went further than the Commission's recommendations by also requiring a coordinator at the agency level and the local level. The Department of Health and Human Services must designate an employee to monitor compliance and oversee the local sites. In addition, each site must assign the responsibility of monitoring NVRA compliance to a specific employee. The local coordinator must report monthly on voter registrations that were submitted. NVRA compliance work will make up only a small part of the jobs of the designated officials, and technological advances will likely streamline compliance procedures. The requirement to designate individuals responsible for compliance makes it less likely that compliance will fall by the wayside.

Ongoing training on NVRA requirements

The settlement calls for semi-annual training for all employees who are required to offer voter registration under the NVRA to the State's citizens. As panelists noted at the briefing, turnover among employees means training must be required on a regular basis. Additionally, as they noted, in the absence of consistent reminders, apathy can set in among employees of longer tenure. Inattention to the Act's requirements is a key reason compliance is not maintained. Training every six months keeps the Act's requirements in the forefront.

Data analysis is required monthly to find possible compliance problems

The settlement requires, and technology allows, the data from the reporting forms submitted by local coordinators to be analyzed for any possible compliance problems on a monthly basis. This ongoing monitoring of the data is easily accomplished and designed to prevent the pattern described above: significant drops in voter registration followed by an intervention that increases registration. Rather than relying on outside groups to flag compliance problems, Nevada will be able to see for itself if its registration numbers are falling.

Plan to provide registration forms in the event of compliance lapse

The settlement contains a plan for local offices to correct instances where they failed to comply with the NVRA and offer voter registration to citizens. In those cases, a voter registration form will be mailed to those who were not given the opportunity to register. It is encouraging to see a plan in place so that failures of compliance can be remedied quickly.

Cooperative efforts between states, DOJ, and voting rights groups lead to sensible plans to implement and monitor compliance with NVRA. These efforts make the right to vote a reality for millions. Our democracy is strengthened when the right to vote is truly extended to all.

Joint Dissenting Statement & Rebuttal of Commissioners Heriot & Kirsanow

This report – including two of the Commissioners’ Statements included in it – is not so much a serious effort to analyze the National Voter Registration Act (“NVRA”) as it is an exercise in partisanship.¹ Its findings and recommendations are essentially a wish list for the Democratic Party.

The most serious problem is that a majority of members of the Commission insisted that we investigate only Section 7 compliance and that we ignore compliance with Section 8. The former was a part of the NVRA favored by Congressional Democrats, while the latter was a part backed by Congressional Republicans.² This was a strange choice for a commission that is charged with the responsibility to ensure that federal agencies properly enforce civil rights law. *The Commission had sworn testimony that the Department of Justice’s Civil Rights Division had made a decision not to enforce Section 8; it had no evidence that the Civil Rights Division was falling down on the job in the enforcement of Section 7. Instead of including an investigation of the problem we had firm reason to believe existed, the Commission chose to investigate only the area the Civil Rights Division was already vigorously pursuing—even a bit too vigorously in that it was requiring jurisdictions to go above and beyond what Section 7 actually requires. With this report, the Commission urges the Civil Rights Division to push its Section 7 requirements even harder.*

¹ Chairman Castro’s Statement is long on theatrical rhetoric and short on analysis of NVRA enforcement. It veers from topic to topic – including a bizarrely harsh denunciation of the public policies of an entire state – many of which have nothing to do with the central subject of this report. We respond to some of his claims *infra* in Section F. Alas, it is yet another example of an increasing trend toward vituperation in the Chairman’s Statements.

The Statement of Commissioners Kladney, Achtenberg and Yaki is more measured in tone and a more serious effort to address these issues. It, however, ultimately suffers from many of the same problems as the staff-written portions of the report. Notably, it overlooks DOJ’s overreach in enforcing Section 7 and the corresponding lack of attention given to Section 8. It also fails to grapple with the costs associated with imposing voter registration requirements on public assistance offices that go beyond what the text of Section 7 requires.

² By contrast, when the Commission conducted a briefing in 2006, it was careful to consider the twin problems of voter fraud and voter intimidation, precisely because doing so was in the interest of non-partisanship. *See Voter Fraud and Voter Intimidation: A Briefing Before the U.S. Commission on Civil Rights Held in Washington, D.C., October 13, 2006.*

The Kladney, Achtenberg and Yaki Statement argues that if we wanted Section 8 of NVRA to be studied in this briefing, we should have proposed it more squarely when the Commission voted to undertake this project. We did argue that Section 8 should have been covered, which is why Commissioner Heriot abstained on the vote to hold this briefing. Then-Commissioners Thernstrom and Gaziano also expressed their unwillingness to examine this topic without also examining Section 8. Contra the suggestion in our colleagues’ rebuttal, we certainly raised this issue at the time the concept paper was adopted. The only thing for which we can fairly be reproached is being too trusting. *See U.S. Commission on Civil Rights, Transcript of January 13, 2012 Business Meeting at 44-47.* We maintain that, regardless of the procedural history of how this topic was chosen, that Section 8 should have been included on the intellectual merits.

One of the most important missions of the Commission, perhaps the most important, is to ensure that the federal bureaucracy is properly executing the law relating to civil rights and voting. As former Chairwoman Mary Frances Berry put it, “We are the watch dog that bites you on the leg, keeps tugging at you and says, “How about this?”³ While we seldom agree with Berry on matters of substance, we do at least agree with her that the Commission should always be a watchdog and never a lap dog. Too often over the last few years, however, it has been anything but vigilant, acting as a cheerleader for the Administration’s enforcement activities rather than as serious critics. This is disappointing.

Still, what is most disturbing is not the scent of partisanship in this report. The Commission is, after all, only a small part of the federal government, and its reports may or may not have a significant effect on policy. There is a greater tragedy. The nation is at a point at which the bad faith failure to enforce all sides of a legislative compromise makes future legislative compromises less likely. That could well have significant ramifications for the nation’s future.

Twenty-three years ago, Democrats and Republicans agreed that making voter registration easier would be a good idea. They agreed that requiring states to provide for voter registration at division of motor vehicles offices would be helpful. Republicans, however, were concerned that the rapid expansion of the voting rolls would result in the compromised integrity of those rolls and that safeguards would be needed to prevent voter fraud. Democrats, on the other hand, were keen to expand the rolls further by making voter registration materials available at public assistance, unemployment insurance and disability services offices too. A compromise gave members of both parties what they wanted. For the Democrats, Section 7 required the above-mentioned state offices to provide voter registration, and for the Republicans, Section 8, which required states to keep their voting rolls up-to-date and uncluttered, was included.

Alas, Section 7 has not just been enforced more vigorously than Section 8. The Civil Rights Division insists that states go beyond what Section 7 actually requires. This, of course, makes it more difficult for public assistance, unemployment insurance and disability services offices to do the jobs they were created for. Meanwhile, Section 8 has received little attention.

No one should wonder why it is difficult for Congress to compromise. When legislative package deals are made, they must be enforced as package deals. If they are not, the party to the bargain who got burned won’t be willing to enter into such a deal again. Nobody wants to be the chump.

A. The NVRA Was Intended as a Bipartisan Compromise with Section 7 and Section 8 Part of a Package Deal.

Democratic legislators tend to be very enthusiastic about making it easier to register to vote. Part of the reason is no doubt ideological—a belief that democracies are stronger when more citizens

³ Will Lester, Election Watchdog Riles Fla. Leaders, *The Lakeland Ledger* (April 16, 2001).

participate as voters. But it is also worth pointing out that those segments of the population that are less likely to register to vote are more likely to vote Democratic.⁴

Insofar as Democrats have a conflict of interest that causes them to press for methods to register younger and lower-income voters, Republicans have the flip side of that conflict of interest. Nevertheless, many Republican legislators have agreed that increased citizen participation is a good thing. The difference has been that they have been more cautious than Democrats about the danger of voter fraud. The easier it is to register, the easier it will be to register fraudulently. Also, the more quickly and automatically an individual can register, the more likely a person who intends to stay in the area only briefly will be registered. Once that person leaves the area, his voter registration may remain on file for decades. The more cluttered the voting rolls with people who have left the vicinity, deceased people, etc., the easier it may be for unscrupulous persons fraudulently to cast votes on their behalf.

Despite these conflicting perspectives, Democrats and a sufficient number of Republicans were able to come together and produce the NVRA. Often called the “Motor Voter Act,” it ensured that registering to vote would be as easy as getting a driver’s license. Each office of the Division of Motor Vehicles in each state would also be a place of voter registration. Furthermore, at the behest mainly of Democrats, state public assistance, unemployment insurance and disability services offices would also be places of voter registration as required by Section 7. At the behest of the Republicans who supported the bill, Section 8 required states to keep their voting rolls clean and uncluttered. This is how democracy is supposed to work—through painstaking compromise.

⁴ See *Commission Report*, p. 52. Commissioners Kladney, Achtenberg and Yaki acknowledge as much in their Statement: “Registration services at public assistance agencies serve the citizens most likely to not be registered: those who are low-income, predominantly African-American, Native American and Latino, more likely to have a low education level, and highly mobile because of their poverty.”

A Pew Research study, for example, indicates that members of the millennial generation (defined as persons between the ages of 18 and 33) are 51 percent Democratic/lean Democratic vs. 35 percent Republican/lean Republican. See Pew Research Center, “A Deep Dive into Party Affiliation: Sharp Differences by Race, Gender, Generation, Education,” April 7, 2015 *available at* <http://www.people-press.org/2015/04/07/a-deep-dive-into-party-affiliation/>. Similarly, an exit poll conducted in 2012 found that 60 percent of voters between the ages of 18-29 voted for Barack Obama, whereas only 37 percent of this age group voted for Mitt Romney. See Cornell University, The Roper Center for Public Opinion Research, *How Groups Voted in 2012*, *available at* <http://ropercenter.cornell.edu/polls/us-elections/how-groups-voted/how-groups-voted-2012/>.

The poor are also disproportionately likely to vote Democratic. Persons whose family income is lower than \$30,000 per year are more likely to be Democrats and less likely to be Republicans than members of any other income bracket. See Pew Research Center, 2014 Party Identification Detailed Tables, April 7, 2015, *available at* <http://www.people-press.org/2015/04/07/2014-party-identification-detailed-tables/>. Data from the Roper Center site also shows that, of persons with incomes under \$50,000 per year, 60 percent voted for Obama and 38 percent for Romney. For persons with incomes over \$50,000 but less than \$100,000, the relevant figures are 46 percent Obama/52 percent Romney. For persons with incomes over \$100,000, the figures are 44 percent Obama/54 percent Romney. See Cornell University, The Roper Center for Public Opinion Research, *How Groups Voted in 2012*, *supra*.

Note that without pairing Section 7 and Section 8, it is unlikely that the bill could have passed Congress. Indeed, many Republicans voted against the bill on the ground that it did not go far enough toward preventing voter fraud. No doubt more of them would have supported the bill had the safeguards against voter fraud been greater, but then the bill might have begun to lose support by Democrats, who were concerned that further safeguards against voter fraud would lean too far in that direction and result is individuals being mistakenly prevented from voting.

As Senator Mark Hatfield (R-OR), a pivotal sponsor of the bill, put it:

In the 101st Congress, I withheld my approval from the National Voter Registration Act, S. 874, as considered by the Committee on Rules and Administration because, as I stated in a section of additional views in the report of S. 874, the bill remained “fatally flawed.”

The flaw in S. 874 was its lack of protection of the system. Yes, accessibility needs to be expanded within the voter registration process, but not at the cost of the integrity of the system. I firmly believe that the rights of individuals to vote must be protected. This in turn means that accessibility to registration must be protected. But this does not mean that the value of an individual's vote should be degraded by allowing fraudulent registrations to remain on the voting rolls. If I am a lawfully registered, eligible voter, I do not want my vote to be diluted by the vote of someone who is not a lawfully registered, eligible voter. S. 874 lacked a mandatory system for keeping the registration rolls clean and accurate, and therefore did not protect the integrity of the system.

Following the Committee's action on S. 874, I worked with the Committee Chairman in crafting an amendment which would address this flaw. We were prepared to offer this amendment on the floor at the end of the last Congress, but S. 874 did not come to the floor for consideration.

With the Committee Chairman, I introduced the National Voter Registration Act of 1993 at the beginning of the 102nd Congress. S. 250 included all of the provisions to which the Chairman and I had agreed in amending S. 874. We have mandated an address verification system which makes a “reasonable” attempt to clean the rolls; and we have allowed states to require mail registrants to vote in person the first time.⁵

Hatfield again described the spirit of compromise fundamental to the bill on another occasion:

Mr. President, I rise again today to support the National Voter Registration Act of 1993 as one of its Republican cosponsors. I only repeat what has been said many times, but just perhaps to give it a little different perspective.

As we review the poor voter turnout over the last few years, I would like to just take 1988 as an example when only half of this Nation's eligible population took part in electing a President.

⁵ S. Rep. No. 102-60 (1991).

During the 1990 congressional elections, the turnout of eligible voters was 36 percent, the lowest since 1942 and the second lowest since 1798.

It is interesting, Mr. President, these statistics drew jeers from the leaders of China's Tiananmen Square crackdown. Referring to the dismal turnout in our 1990 elections, the official Chinese Communist newspaper commented:

“Some people hold American democracy in the highest esteem, believing it to be the model for the free, democratic system. Actually, the American people don't care about their democratic rights or hold them in high regard.”

Mr. President, in the 101st Congress, I withheld approval initially from the National Voter Registration Act, because I considered that the Senate Rules Committee should look at what I thought to be a fatal flaw in the bill. The Rules Committee and the chairman, the chief author of this bill, Senator FORD, did take another look at this bill, and we began to see where we had to strengthen the protection of the voters who do turn out. In other words, we want to liberalize the registration system to draw more voters into the process, but we certainly did not want in any way to create the possibility of fraudulent votes being cast. So this bill was changed to provide for purging of the voting rolls and to require mail registrants to vote in person the first time.⁶

In the House, Representative Bill Thomas (R-CA) described the NVRA in similar terms:

H.R. 2190 was a compromise. As in most compromises, there were wins and there were losses on both sides. As in most compromises, there was an evenhanded handling of difficult areas of conflicts. H.R. 2190 provided an outreach program. A portion of it is known as motor-voter. That was mandated. There was also an extension to other agencies. There were no specific agencies mandated, but rather a general charge that we open up the opportunity for people to register.

The other part of the evenhanded compromise was the acknowledgment that if we are going to add more people to the rolls through this outreach program, there should be a non-punitive method of voter verification. One of the growing difficulties in almost every precinct across the United States is the fact that Americans are very mobile. We move a lot. Aside from the difficulty in getting on the rolls is the virtual impossibility of removing people from the rolls.⁷

Representative Stokes (D-OH) likewise said:

⁶ 138 Cong. Rec. S6858-02.

⁷ 138 Cong. Rec. H4702-05. Thomas claimed in the same speech that H.R. 2190 was different from the version of the NVRA that actually passed Congress because H.R. 2190 provided funding for the states to carry out its requirements, whereas the final version of NVRA did not. Nonetheless, the compromise he describes here – between making registration easier and verification harder – is reflected in the final bill.

Mr. Chairman, I rise in support of H.R. 2190, the National Voter Registration Act, which seeks to remove existing barriers to voter registration, and encourage eligible individuals to register to vote.

Mr. Chairman, H.R. 2190 will encourage voter registration by making the registration process as easy and quick as possible, while ensuring the integrity of the voting rolls and the election process. H.R. 2190 will mandate mail-in registration, and registration at many Federal and State offices, such as public libraries, public assistance offices, city and county clerks' offices, and public schools. H.R. 2190 also provides for a process known as motor-voter registration, which would allow citizens to register to vote when applying for or renewing their driver's license.

Each of the registration methods called for in the bill is a proven method of increasing registration in an efficient and cost-effective manner. Linking voting registration with application for a driver's license would reach about 90 percent of the voting age population.

This bill will not increase voter fraud, as some opponents have claimed. Many of these opponents used this same argument 25 years ago, in the debate over the Voting Rights Act, which eliminated discriminatory registration practices, and extended the right to vote to many black Americans for the first time. In fact, several features of the bill would actually decrease the likelihood of voter fraud, including the requirement that the voting lists be verified periodically. In addition, the bill includes penalties for people who fraudulently register.

In short, Mr. Chairman, this will make tremendous progress toward increasing voting registration and voter participation. It is a measure which is long overdue.⁸

Outside the legislature, prominent leaders of advocacy groups and journalists similarly understood the NVRA as a bipartisan compromise. In a letter to Congress, President of the American Bar Association Talbot D'Alamberte wrote:

We hope members from both parties will put aside their fears of the unknown to support S. 250. It offers the best opportunity to balance the sensitivities of both political parties and to adopt a bill that will provide the opportunity to vote to many persons now faced with unnecessary barriers to exercising their franchise.⁹

And an editorial published in The New York Times read:

A major threat to passage of the Senate version is the Republicans' concern that a provision requiring registration by mail in all states would encourage fraud: one person might register several names.

⁸ 136 Cong. Rec. H262-02.

⁹ 138 Cong. Rec. H4702-05.

Actually, the greatest threat to clean elections lies in fraudulent use of “deadwood”—millions of registrations left on the books by people who have moved and neglected to notify election officials.

Conservatively, 10 to 20 percent of all current registrations represent citizens who no longer live where they are registered. No state's arrangements for purging nonvoters work fast enough-and some states have no such provisions at all.

This weakness would be repaired by the National Voter Registration Act, which resulted from more than a year of painstaking bipartisan negotiations in the House.¹⁰

B. The Obama Administration Has Nonetheless Decided to Ignore The Compromise and Enforces Only the Sections of the NVRA That Happen to Serve Its Partisan Interest.

Despite this legislative history, there is overwhelming evidence – including sworn testimony before this very Commission at a previous briefing – that Obama political appointees at DOJ have decided to in effect to turn a blind eye to evidence of Section 8 violations. Christopher Coates, the former Chief of the Voting Rights Section of the Civil Rights Division, submitted written testimony to this Commission that reads as follows:

In November 2009, a ... lunch meeting was held by Ms. [Julie] Fernandes on the subject of the National Voter Registration Act (NVRA)... In discussions specifically addressing the list maintenance provision of Section 8 of the NVRA, Ms. Fernandes stated that list maintenance had to do with the administration of elections. She went on to say that the Obama administration was not interested in that type of issue, but instead interested in issues that pertained to voter access. During the Bush Administration, the Voting Section began filing cases under the list maintenance provision of Section 8 to compel states and local registration officials to remove ineligible voters. These suits were very unpopular with a number of the groups that work in the area of voting rights. When Ms. Fernandes told the Voting Section was not interested in Section 8 list maintenance enforcement activity, everyone in the room understood exactly what she meant. We understood that she was not talking about Section 8 cases in which there is a claim that the removal procedures of Section 8 were not being complied with; instead, she was talking about the types of cases that the Voting Section filed during the Bush administration whose purpose was to compel the states to comply with the Section 8 directive that they do list maintenance by removing ineligibles from the list.¹¹

Christian Adams, also a former lawyer for the Department of Justice's Voting Section of the Civil Rights Division, testified under oath before the Commission about the same topic. Under questioning by the Commission's General Counsel, he stated:

¹⁰ Raymond E. Wolfinger, “How To Raise Voter Turnout,” *The New York Times*, June 6, 1990.

¹¹ Written Testimony of Christopher Coates at 14-15.

MR. BLACKWOOD: You mentioned Ms. Fernandes. There is a press report also that in front of the entire Voting Section all of the career staff, she explicitly told them this administration would not be enforcing Section 8 of the National Voter Registration Act. Were you there, and did—

MR. ADAMS: I was there—

MR. BLACKWOOD: --she say that?

MR. ADAMS: I was there for that, and it—I can tell you more about that

MR. ADAMS: ... [A] meeting of the entire Voting Section was assembled to discuss NVRA 8. This occurred in November of 2009.

Deputy Assistant Attorney General Julie Fernandes, when asked about Section 8 said, “We have no interest in enforcing this provision of the law. It has nothing to do with increasing turnout, and we are just not going to do it.”

Everybody in the Voting Section heard her say this. Mr. Coates heard her say it. ...

MR. BLACKWOOD: And you heard it as well, though.

MR. ADAMS: I was shocked. It was lawlessness.¹²

After the Commission's report was published, an investigation by DOJ's Office of the Inspector General essentially confirmed Coates' and Adams' account. Although some of the lawyers interviewed interpreted Fernandes merely as strongly discouraging them from bringing Section 8 list maintenance cases, rather than flat-out forbidding them, all agreed that she was more interested in pursuing cases under Section 7 than Section 8 because Section 8 does not expand voter access. It stated:

“Ten attorneys who attended the meeting told the OIG that they interpreted Fernandes's comments to be a clear directive that Division leadership would not approve Section 8 list maintenance cases in the future. One Section attorney told the OIG that he understood Fernandes's statements to mean that proposing a Section 8 case would be futile and that he believed proposing Section 8 would be detrimental to attorneys. Seven Voting Section attorneys told the OIG, however, that they did not believe that OIG would not enforce Section 8 of the NVRA. Among these were three Deputy Chiefs who told the OIG that they believed Fernandes meant that Section 7 cases would be prioritized over Section 8 matters, but that they did not construe her statement to mean that Section 8 cases would not be approved.”¹³

¹² U.S. Commission on Civil Rights, Briefing Transcript, (Washington DC, July 6, 2010), pp. 64-65.

¹³ U.S. Department of Justice, Office of the Inspector General, A Review of the Operations of the U.S. Civil Rights Division, March 2013, at 100: Id. at 100-101.

Coates and others have pointed to two specific incidents indicating under-enforcement of Section 8. There was evidence that many counties in Missouri were not properly doing required Section 8 list maintenance. DOJ brought a suit, in which the major legal issue was whether the state was responsible for ensuring that local officials followed Section 8 list maintenance procedures.¹⁴ The appellate court found that the state was required to have a reasonable program in place for ensuring that localities were following Section 8 and remanded the case back to the district court to “consider any lack of [Local Election Authority] compliance and determine whether any such noncompliance renders Missouri’s effort to conduct a general program’ unreasonable in removing the names of ineligible voters.”¹⁵ Yet instead of letting the district court sort out this factual issue, DOJ leadership ordered the case to be dismissed – which it was.¹⁶

In June 2009, the Election Assistance Commission issued a biennial report regarding which states appeared to be out of compliance with Section 8’s list maintenance requirements. The report identified eight states that reported that no voters had been removed from their lists in the past two years.¹⁷ Coates testified before the Commission that, as chief of DOJ’s Voting Section, he assigned attorneys to look into this matter. In September, he sent a memo based on their work to the Civil Rights Division’s front office, asking for approval to go ahead with Section 8 list maintenance investigations in these states.¹⁸ DOJ senior leadership took no action in response to that memo for fifteen months, at which point they finally authorized the sending of these eight Section 8 list maintenance letters.¹⁹ A team of DOJ attorneys did review the states’ responses, but ultimately concluded that the investigation was moot due to the release of new Election Assistance Commission data in June 2011.²⁰

In response to a question from Commissioner Heriot, Coates clarified that he did not think that Fernandes’ NVRA enforcement policies were racially motivated.²¹ Coates added that the consequence of this policy was “to favor in certain jurisdictions the Democratic party and to favor racial minorities because, in a number of area, the bloated lists, are at [sic] areas where there are

¹⁴ *U.S. v. Missouri*, 535 F.3d 844 (2008).

¹⁵ 535 F. 3d at 851.

¹⁶ U.S. Commission on Civil Rights, Transcript of Commission Business Meeting, September 24, 2010 at 129 (Christopher Coates testifying); Unopposed Motion for Voluntary Dismissal by Lena Bashir, filed March 4, 2009.

¹⁷ Election Assistance Commission, *The Impact of the National Voter Registration Act: 2007-2008* at 58 (Table 4a).

¹⁸ U.S. Commission on Civil Rights, Transcript of Briefing, July 6, 2010 at 35-6.

¹⁹ Office of Inspector General Report at 104-5.

²⁰ *Id.* at 105. The NVRA provides a private right of action. Some private advocacy groups have therefore filed suits to enforce Section 8 of the NVRA. See Hans von Spakovsky, *Suit Filed Over DOJ Refusal to Clean Up Voter Rolls*, *The Daily Signal*, available at <http://www.heritage.org/research/commentary/2013/4/suit-filed-over-doj-refusal-to-clean-up-voter-rolls>.

²¹ U.S. Commission on Civil Rights, Transcript of Briefing, September 24, 2010, at 95.

large numbers of minorities.”²² Needless to say, the propriety of an enforcement policy that just happens to advance the interests of the current President’s political party and of a particular racial group ought to be very much in question.

It is deeply unfortunate that we did not address this important question squarely in this briefing. Instead, the briefing lost its way looking at the details of Section 7 enforcement and neglected to notice the forest.

C. The Department of Justice Is Requiring States to Take Actions That Are Beyond Section 7’s Actual Requirements.

Section 7 is very specific about what it requires for state offices. Each state office that provides “public assistance, unemployment compensation or related services” as well as each office that provides “[s]tate-funded programs primarily engaged in providing services to persons with disabilities” shall, pursuant to paragraph 4(A), make available the following services:

- (i) *Distribution of mail voter registration application forms in accordance with paragraph (6).*
- (ii) *Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.*

In turn, paragraph (6), referenced in paragraph 4(A), states that these offices shall:

- (A) *distribute with each application for [public assistance, unemployment compensation or related services or services to persons with disabilities], and with each recertification, renewal, or change of address form relating to such service or assistance—*
 - (i) *the mail voter registration application described in section 9(a)(2), including a statement that—*
 - (I) *specifies each eligibility requirement (including citizenship)*
 - (II) *contains an attestation that the applicant meets each such requirement;*
and

²² Office of Inspector General Report at 104-5. The report raises the possibility that the Department delayed acting on the memo until it was criticized in a December 15, 2010 editorial for under-enforcement of Section 8. Assistant Attorney General Tom Perez told the OIG that this was untrue and that DOJ instead wanted to wait to send list maintenance letters until the 2010 elections were over, so as to avoid giving the impression that DOJ wanted to influence the elections. Perez pointed to a November 30 e-mail he sent staff asking about the list maintenance letters as proof of this assertion. Still, given the length of the delay, it is plausible that public scrutiny played some role (even if it was not the sole cause) of the Department’s sudden willingness to send Section 8 list maintenance letters.

- (III) *requires the signature of the applicant, under penalty of perjury; or*
- (ii) *the office's own form if it is equivalent to the form described in section 9 (a)(2), unless the applicant, in writing, declines to register to vote*
- (B) *to the greatest extent practicable, incorporate in application forms and other forms used at those offices for purposes other than voter registration a means by which a person who completes the form may decline, in writing, to register to vote in elections for Federal office; and*
- (C) *provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of its own forms, unless the applicant refuses such assistance.*

Unfortunately, consent decrees entered into by the Civil Rights Division and the jurisdiction it has sued often require much more than this. We must therefore take issue with the claim in the Kladney, Achtenberg and Yaki Statement that “settlement agreements are only pursued where compliance problems are identified.”²³ For example, in *United States v. Rhode Island*, Civil Action No. 11-113S, the State of Rhode Island was prevailed upon to agree to costly training, supervision, and recordkeeping in order to avoid even more costly litigation. As witness Jason Torchinsky, who testified at our briefing, stated in his prepared statement:

[W]ith respect to Rhode Island, the notion that the state is now required to fund—in a time of struggling state and local government budgets—specially trained site coordinators at every public assistance office, and maintain detailed records of every instance in which a potential voter declines voter registration assistance, appears to go well beyond what is needed to ensure proper enforcement of the statute.²⁴

As to training, the Rhode Island Consent Decree states:

2. Defendant Board of Elections shall develop and implement mandatory, annual NVRA education and training programs for each counselor, employee, or representative responsible for providing public assistance to Rhode Island residents.

As to supervision by specially trained site coordinators, the Rhode Island Consent Decree states:

5. As part of ensuring this compliance with Section 7, not later than 30 days from the date of entry of this decree, Defendants [Department of Human Services, Department of Health, Executive Office of Health and Human Services and the Department of Behavioral Healthcare,

²³ *Commission Report*, Commissioners Kladney, Achtenberg, and Yaki, p. 54.

²⁴ Prepared Testimony of Jason Torchinsky 4 (April 19, 2013).

Developmental Disabilities and Hospitals] shall appoint a NVRA "site coordinator" at each office covered by this Decree.

- a. *The site coordinator's responsibilities include:*
 - (i) *ensuring that voter registration opportunities are provided to each applicant for services at the time of his or her initial application, recertification, renewal, or change of address,*
 - (ii) *maintaining, or supervising the maintenance of, the site's voter registration application data,*
 - (iii) *supervising the administration and storage of the site's declination forms,*
 - (iv) *preparing a report in January and June of each year for the NVRA agency coordinator, who shall forward a copy of the agency report to the Rhode Island Board of Elections, which shall forward to the counsel for the United States documentary evidence of each site's implementation of NVRA compliance, ending at the termination of this decree. The United States may request, in writing, all agency reports without exception from the Board of Elections. The Board of Election must provide those reports within 20 days of the United States' written request.*
- b. *Site coordinators shall attend training provided by the State Board of Elections no later than 30 days from the date of entry of this decree that explains their NVRA duties unless such training was already received from the State Board of Elections in calendar year 2011.*
- c. *Within 30 days of receiving this training, site coordinators shall, in turn, coordinate/provide NVRA training to all employees at their site who have NVRA responsibilities.*
- d. *Site coordinators shall coordinate/provide this training to all new employees at the site within 45 days after the new employee's start date.*
- e. *For the purposes of appointing site coordinators in compliance with this provision:*
 - (i) *Defendant [Department of Behavioral Healthcare, Developmental Disabilities, and Hospitals] shall appoint an NVRA site coordinator at its Division of Developmental Disabilities;*

- (ii) *Each Behavioral Healthcare Treatment Provider that provides state-funded programs primarily engaged in providing services to persons with disabilities shall appoint an NVRA site coordinator at its mail clinical office; and*
- (iii) *These site coordinators shall ensure NVRA compliance at all the treatment program and treatment facility site locations licensed and funded by Defendant [Department of Behavioral Healthcare Developmental Disabilities, and Hospitals].*

As to recordkeeping, the Rhode Island Consent Decree states:

9. *Defendant Board of Elections shall develop methods of tracking, in detail, the extent to which local, on-site agency counselors, employees, and representatives responsible for providing public assistance and disability services in Rhode Island are complying with the NVRA and the individual provisions of this Decree, along with methods of ensuring compliance. ...*

10. *The tracking discussed above shall include, but is not limited to:*

- a. *Inclusion of NVRA compliance into [Department of Human Services', Department of Health, Executive Office of Health and Human Services' and the Department of Behavioral Healthcare, Developmental Disabilities and Hospitals'] ongoing, continuous evaluation of its subsidiary agencies and local offices; and*
- b. *Annual formal auditing by the Board of Elections to determine compliance with the NVRA and this Decree.*
- c. *Such audits and information collection shall not violate any state and federal confidentiality laws.*

11. *On May 1 of each year this Decree is in effect, Defendant Board of Elections shall submit to Plaintiff a report, including: (1) a general summary of compliance efforts detailing all steps taken to implement each of the provisions and requirements of this Decree. Including any significant implementation problems, staff training needs, and recommendations for improvement; (2) the results of the tracking described in Paragraphs 8 and 9; and (3) copies of all NVRA procedures and educational and training materials both used in the preceding years and to be used in the next year.*

12. *For the six months following the date of entry of this decree, on a monthly basis, Defendant Board of Elections shall provide counsel for the United States with a numerical count, for each public assistance and disability-related services covered by this Decree (a) the aggregate number of public assistance applications, renewals, re-certifications, and changes of address for that month; (b) the number of completed voter registration applications completed by a client and transmitted from that office to appropriate election officials for that month; and (c) the number of*

declination forms collected from clients for that months. After the initial six months of reporting, such information shall be submitted on a quarterly basis.

There's more in the Rhode Island Consent Decree, but we suspect the reader gets the idea: There's a lot in there that is not mandated by NVRA at all.²⁵ Imposing that level of additional work on these agencies almost certainly keeps them from providing the services that constitute their core duties.

The tragedy of all this is that, as Mr. Torchinsky testified, litigation is usually unnecessary in these cases. Most state government agencies want to comply with federal law and would cooperate fully with federal authorities in getting to that point.²⁶

D. The Commission's Recommendations Make It Clear that Some of Its Members Are More Interested in Getting Out the Vote for the Democratic Party Than They Are In Providing Needed Services at Public Assistance Offices.

The report candidly admits that:

“Some states experienced resistance to implementing Section 7 from local public assistance agencies. Some agencies expressed resentment at Section 7 being an “unfunded mandate.” They

²⁵ The Kladney, Achtenberg and Yaki Statement quotes at length from what they view as a model Nevada settlement agreement. It includes provisions that there will be designated individuals responsible for NVRA compliance at the state, agency, and local levels; semi-annual training on NVRA requirements; monthly data analysis to identify potential compliance problems; and plans to mail forms in the event that voter registration is not offered to citizens. Once again, none of this is required by the plain text of the statute, and none of this comes free.

Note that if one telephones the Las Vegas public assistance office on East Flamingo Road (as I had my special assistant do), it takes 15 minutes just to get an answer to the question, “Where are you located?” During that 15 minutes, callers are repeatedly notified of the availability of a suicide prevention hotline, which is evidence of my belief that voter registration is not always a top priority for the unfortunate souls who come to that office for help.

²⁶ An additional point concerns the Civil Rights Division's excessive bargaining power relative to jurisdictions that were subject to pre-clearance under the Voting Rights Act of 1965 (“the VRA”) prior to the Supreme Court's decision in *Shelby County v. Holder*, 133 S. Ct. 2612 (2013). The VRA placed certain jurisdictions, mainly though not exclusively in the South, under special (and quite onerous) rules, requiring them to “pre-clear” any change in their law or practices relating to voting. Even tiny changes, such as the change in the location of the polling station for a particular precinct—from the Methodist Church on Elm Street to the Presbyterian Church across the street—would have to undergo a long process of pre-approval either from the Department of Justice or by the United States District Court for the District of Columbia.

The VRA allowed jurisdictions subject to pre-clearance to “bail out” of that category provided their record of conduct for several years prior to requesting that bailout had been unblemished. This gave the Civil Rights Division unusual leverage over these jurisdictions. They would do almost anything to avoid ruining their chance to bail out.

Shelby County put a stop to this by holding that the method by which jurisdictions were subjected to preclearance was outdated and hence unconstitutional. Consequently, this leverage is not an issue at this time. But if Congress decides to adopt a new formula for determining which jurisdictions will be subject to preclearance, the problem could return.

claimed not to have the time or resources needed to offer registration and assist citizens with registration.”

Well, of course they did. We wonder whether any of our fellow commissioners have ever been inside a public assistance office (or, for that matter, whether they have taken a good look at the Division of Motor Vehicles offices, which have similar mandates under Section 4 of NVRA). The ones we have seen were crowded and apparently tightly-budgeted. Just to be sure that things hadn't changed lately, one of us (Heriot) decided to take a tour of a couple of Washington, D.C. area public assistance offices while writing this statement. Sure enough, they are still crowded and dreary. There does not appear to be a lot of extra money lying around to fund anything but necessary functions. Nor do the staff members look like they have time for extra tasks. Large numbers of unhappy people were waiting patiently for their turn. Things were not moving quickly.²⁷

Nevertheless, in Recommendation 1, the Commission recommends that states “regularly review procedures in place at all agencies covered by Section 7 to ensure ongoing compliance, including unannounced checks.” We suspect this will not please the public assistance offices that have to undergo these compliance procedures and unannounced checks. It seems likely that they will only increase the amount of time those offices must spend on NVRA compliance.

Recommendation 1 goes on to suggest that states “implement procedures for regular data collection on National Voter Registration Act-required activities.” All too often, bureaucrats forget that data collection is not free. First, it takes times and energy to design and implement a data collection. After that, the sheer day-to-day input of data diverts resources away from the public assistance offices primary function—ensuring the public assistance is extended in a timely manner to the all those who qualify and not to those who don't.

Recommendation 2 recommends that States “[i]mplement expanded and creative technology roles” and “[m]ove to electronic voter registration.” Something tells me that the Commission is not the first to think of these points. If it would help relieve the pressure on public assistance offices to expand the role of higher technology, there is no reason that they would not press for such an expansion. We note that in our experience, high-tech solutions are not always all they are cracked up to be.²⁸

We are left to wonder whether our colleagues have not lost sight of the important functions public assistance offices carry out and of the world of limited resources in which we live. The more public assistance offices are required to do to comply with Section 7, the less they will be able to do in administering public assistance. We suspect that if one were to ask public assistance

²⁷ See also n. 25, *supra*.

²⁸ The rollout of [healthcare.gov](http://www.healthcare.gov) is a recent notorious example. See, e.g., Louise Randofsky, “More Problems Expected on Federal Health-Insurance Site in New Year,” *The Wall Street Journal*, November 4, 2014, *available at* <http://www.wsj.com/articles/more-problems-expected-on-federal-health-insurance-site-in-new-year-1415147396>.

recipients which service they would prefer to prioritize, they would reply that, first and foremost, public assistance offices should be public assistance offices. This is one of those (many) situations in which politicians and high-level government functionaries have a conflict of interest with the individuals that seek to represent.

E. Legislative Compromises Often Depend Upon the Future Cooperation of the Executive and Judicial Branches to Effectuate those Compromises. If the Executive and Judicial Branches Act in Such a Way as to Unravel the Bargain and Make One Side the “Winner” and the Other the “Loser,” Fewer Legislative Bargains Will Be Entered into in the Future.

NVRA was signed into law with great fanfare by President Clinton on May 20, 1993. Republican supporters felt that Section 8 would adequately protect against the risk of voter fraud. Perhaps they realized that the Civil Rights Division would be unwilling to enforce Section 8 with the same level of energy that it employs to enforce Section 7. Perhaps that is why they allowed private rights of action to enforce both sections. Alternatively, perhaps they were simply naïve. It was a time of less partisanship in law enforcement. Perhaps they failed to realize that such times do not always last.

It is unclear what the best course for ensuring evenhanded enforcement would be. There are many things that could have been done—some of them controversial, other less so. All of them would have been highly imperfect. For example, Congress could have simply commanded evenhanded enforcement. If, in the course of its oversight duties, it had detected a failure of evenhandedness, it could have earmarked funding for Sections 7 and 8 separately or commanded the Civil Rights Division to spend equal amounts on both. Indeed, even in the absence of an explicit statutory command that the Civil Rights Division evenhandedly enforce Sections 7 and 8, Congress could have used its appropriations power to ensure at least a modicum of evenhandedness.

The one thing that can be said for sure is that the more difficult it becomes to enforce the terms of legislative bargains, the more difficult it will be to reach such bargains in the future. In *The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and its Interpretation*, Daniel B. Rodriguez and Barry R. Weingast discuss this point in a different context—that of Title VII of the Civil Rights Act of 1964. They conclude that many of the crucial compromises made by key Members of Congress were essentially unraveled by overly expansive interpretations of the statute in the decades following its passage. They state:

“Our view offers a new perspective on the growing polarization of the modern Congress in the area of social policy. Because the courts frequently rewrote the terms of legislative bargains, there were decreasing incentives for moderate behavior and, thus, fewer moderate legislators. With

greater polarization, there are fewer opportunities for historic breakthroughs; we would expect to see less social legislation passed.”²⁹

We are concerned about the ability of Congress to pass legislation like NVRA today. Has compromise indeed become less likely than it was in 1993?

F. Some Notes in Rebuttal

1. The Chairman writes:

“At this time when this great weapon of equality is most needed, [it] seems like it is more difficult to obtain today than it is to obtain an actual weapon in the U.S.” (2016, 49)

At the outset, we must acknowledge that the metaphor “weapon of equality” is aesthetically too Jacobin for our taste. That aside, although gun rights is a subject far afield from the core of this report, it is simply not more difficult to vote than to purchase a gun. For one thing, one must pay for a gun, but no charge can be made for the privilege of voting. See U.S. Const. amend. XXIV (prohibiting poll taxes in federal elections); *Harper v. Virginia Board of Elections*, 383 U.S. 663 (1966) (holding poll taxes in state elections unconstitutional). In addition, federal law prohibits possession or receipt of a firearm by drug users, addicts, aliens, fugitives from justice, persons subject to domestic restraining orders, persons with prior convictions for domestic assault, or felons; persons awaiting trial on felony charges are also prohibited from receiving firearms.³⁰ By contrast, some states do permit felons to vote and no state prohibits the other categories in the federal firearms statute from voting.³¹ Some states also impose additional identification or background check requirements for gun purchases that go beyond federal law. See, e.g., Cal. Penal Code 26815 (“No firearm shall be delivered... unless the purchaser, transferee, or person being loaned the firearm presents clear evidence of the person’s identity and age to the dealer”); Conn. Gen. Stat. §§ 29-33 (“no person may purchase or receive any pistol or revolver unless such person holds a valid permit to carry a pistol or revolver issued pursuant to subsection (b) of section 29-28, a valid permit to sell at retail a pistol or revolver issued pursuant to subsection (a) of section 29-28 or a valid eligibility certificate for a pistol or revolver issued pursuant to section 29-36f or is a federal marshal, parole officer or peace officer;” Fla. Stat. 790.065 (requires identification check and criminal background check for purchase of firearms); Ga. Code. Ann. §16-11-172 (“All transfers or purchases of firearms conducted by a licensed importer, licensed manufacturer, or

²⁹ Daniel B. Rodriguez & Barry R. Weingast, *The Positive Political Theory of Legislative History: New Perspectives on the 1964 Civil Rights Act and Its Interpretation*, 151 U. Penn. L. Rev. 1417, 1535 (2003)(discussing the ways in which the grand bargain that resulted in Title VII was unraveled by various executive and judicial interpretations of that statute).

³⁰ 18 U.S.C. 922(g) & (n).

³¹ Philip Bump, “Virginia’s governor will allow ex-felons to vote. Here’s what that would mean in each state,” *The Washington Post*, April 22, 2016, available at <https://www.washingtonpost.com/news/the-fix/wp/2015/05/19/hillary-clinton-wants-to-allow-felons-to-vote-that-could-mean-a-lot-in-a-state-like-florida/>.

licensed dealer shall be subject to the NICS [National Instant Criminal Background Check System]”); Haw. Rev. Stat. §§ 134-2 (“No person shall acquire the ownership of a firearm, whether usable or unusable, serviceable or unserviceable, modern or antique, registered under prior law or by a prior owner or unregistered, either by purchase, gift, inheritance, bequest, or in any other manner, whether procured in the State or imported by mail, express, freight, or otherwise, until the person has first procured from the chief of police of the county of the person's place of business or, if there is no place of business, the person's residence or, if there is neither place of business nor residence, the person's place of sojourn, a permit to acquire the ownership of a firearm as prescribed in this section.”) These checks are much more onerous than the ID requirements for voters.

2. The Chairman writes:

“However, within hours of the decimation of the VRA by the Supreme Court, five of the nine states that were waiting for VRA Section 5 preclearance for voting changes, moved to enact voting restrictions.” (2016, 49)

There is so much wrong with this statement that we cannot respond adequately in the amount of time allotted for rebuttal. As for the notion that the VRA has been “decimated,” we must refer the reader to the Supreme Court’s actual decision in *Shelby County v. Holder*, 570 U.S. ___ (2013). As it makes clear, only a small portion of the VRA—a portion that singled out certain parts of the country for special rules—has been held to be unconstitutional. It is worth noting that these rules, which the Court had already recognized as extraordinary, were originally intended to be very temporary, but had been extended by Congress several times.³²

The part of the Chairman’s statement that we want to draw attention to is the part that states, after the VRA’s supposed “decimation,” “five of the nine states that were waiting for VRA Section 5 preclearance for voting changes, moved to enact voting restrictions.” This reflects a fundamental lack of understanding of the VRA. The nine states that the Chairman is referring to are presumably the nine states to which the special “preclearance” rules applied (i.e. state “covered jurisdictions”). Under the preclearance provisions of the VRA, covered jurisdictions are required to get federal approval (or “preclearance”) before any change in their voting procedures, large or small, can go into effect. These states did not “move to enact voting restrictions” “within hours” of *Shelby County*. They had already enacted certain changes to their voting procedures and were awaiting federal approval. When the Supreme Court essentially nullified the formula for designating which

³² Congress can fix that constitutional infirmity if it decides it wants to reinstitute the special requirement of “preclearance” for jurisdictions that have experienced low voter turnout. The only thing the Court decided was that Congress cannot continue to impose the extraordinary duty of preclearance to jurisdictions based on voter turnout data that is approximately 40 years out of date. Since the 1970s, when this data was collected, the states with low voter turnout have changed.

jurisdictions are subject to the preclearance requirement and which are not, these statutes automatically went into effect.

Moreover, the statutes they had enacted were not nefarious. Rather, they were voter ID requirements. One of us (Heriot) is somewhat skeptical that these laws prevent a lot of fraud or that they prevent many legitimate voters from voting. But the Chairman's intimation that they are malicious in intent is made without any evidence. Note that the Supreme Court has approved a voter ID law in the past and we have little doubt that states are capable of designing such laws in a way that will pass constitutional muster. See *Crawford v. Marion County Election Board*, 553 U.S. 181 (2008).

3. The Chairman writes:

“We see it in the long lines of people waiting to vote in the 2016 Presidential primaries because States have reduced the number of polling places.” (2016, 49)

The NPR article cited in support of this proposition notes only one example – Maricopa County, Arizona – of a local government that has reduced the number of polling places available. There is no indication that the County did this in order to inconvenience minority voters, or that minority voters more inconvenienced by the long lines than were white voters. Indeed, far more Republicans voted in the Arizona primary – 625,770 out of 1,128,603 registered³³ – than did Democratic voters – 468,461 out of 948,983 registered.³⁴ Given that white voters are more likely to be registered Republicans and minority voters are more likely to be Democrats, white voters appear to have been at least as inconvenienced as were minority voters and possibly more so.

The reason for the problem was budgetary. According to the reporter from NPR's Phoenix member station KJZZ, “The state passed a budget last year that cut funding to counties, and we know that county supervisors directed election officials to run a cheap election. And one of the ways they did that was by reducing the number of polling places.”³⁵ Obviously, the money needed to keep additional polling places available must come from somewhere. Sometimes a jurisdiction tries to save money on an election and is surprised by high turnout.³⁶ These things happen. If the

³³ Arizona Secretary of State, *Unofficial 2016 Presidential Preference Election Results*, available at <http://apps.azsos.gov/election/2016/PPE/Results/PPE2016Results.htm#>.

³⁴ Arizona Secretary of State, *Unofficial 2016 Presidential Preference Election Results*, available at <http://apps.azsos.gov/election/2016/PPE/Results/PPE2016Results.htm#>.

³⁵ Jude Joffe-Block, *Arizona Polling Places Overwhelmed with Long Lines on Polling Day*, NPR, Mar. 25, 2016, available at <http://www.npr.org/2016/03/25/471891525/arizona-polling-places-overwhelmed-with-long-lines-on-primary-day>.

³⁶ Mary Jo Pitzl, Anne Ryman, and Rob O'Dell, *Long lines, too few polls anger Phoenix voters*, USA TODAY, Mar. 23, 2016, available at <http://www.usatoday.com/story/news/politics/elections/2016/03/22/arizona-primary-turnout-trump-cruz-kasich-clinton-sanders/82134252/>.

voters—minority or otherwise—think the wrong cost-saving measures were taken they vote those who made the decision out of office.

4. The Chairman writes:

“But, it is not just reducing or moving polling places and passing voter ID laws, [it’s] also about reducing the ability to vote on weekends or early voting...”(2016, 49)

It is far from clear to us that expanding early voting has the dramatic effects that the Chairman claims it does. Paul Gronke, Eva Galanes-Rosenbaum, and Peter Miller of Reed College found that early voting had “a positive impact of early voting reforms on turnout, but only in the one state that first initiated VBM [voting by mail] in 1995 and fully adopted it after 1998, and in that case, only in presidential years... we remain skeptical of those who advocate for early voting primarily on the basis of increased turnout.”³⁷ Kenneth Mayer and researchers at the University of Wisconsin later found that early voting is actually associated with *lower* turnout because it encourages political campaigns to shift resources away from “get out of the vote” efforts just before Election Day.³⁸ Another political scientist has observed that “The people who vote early are the people who would have voted all along.”³⁹

We emphasize that neither of us is an expert in this literature and that we have only studied it briefly during the 30 days that the Commission’s rules allow for rebuttals. That said, we think that the issue is complex enough that comparisons of restrictions on early voting to the poll tax are inappropriate.

Although the two of us here express no ultimate opinion on early voting, we note that there are non-racially-tinged reasons to be against it. Widespread early voting means that some voters will cast their ballots without having crucial information about candidates that comes out late in a race. In primary elections, the problem is compounded because some candidates on the ballot during the early voting period may drop out before Election Day. The Arizona Republican presidential primary is an illustrative recent example:

“Florida Sen. Marco Rubio had a stronger showing in the Arizona Republican primary than [Ohio Governor John] Kasich -- despite the fact that the Florida senator dropped out of the race last week. The reason: Arizona allows early voting by mail in the Republican presidential primary, and thousands of Arizona voters likely cast their ballots before Rubio dropped out. Rubio beat Kasich

³⁷ “Early Voting and Turnout,” PS: Political Science and Politics 639 (October 2007), *available at* <http://earlyvoting.net/files/2012/05/Gronke-Galanes-Rosenbaum-Miller-2007-Early-Voting-and-Turnout.pdf>.

³⁸ Barry C. Burden, David T. Canon, Kenneth R. Mayer, and Donald P. Moynihan, “Election Laws, Mobilization, and Turnout: The Unexpected Consequences of Election Reform,” 58 *American Journal of Political Science* 95 (Jan. 2014).

³⁹ Quoted in Noah Berlatsky, “Down with early voting!” *The Week*, March 11, 2016, *available at* <http://theweek.com/articles/610117/down-early-voting>.

by nearly 18,000 votes. That a non-candidate was leading an actual White House contender by five percentage points led some to question the utility of allowing weeks of early voting in a highly volatile primary in which candidates tend to abruptly leave the race if they have a poor showing in a key state, as Rubio did when Donald Trump trounced him in his home state of Florida last week.”⁴⁰

5. The Chairman writes:

“We see that some of the same States instituting other kinds of barriers also the ones that are violating the NVRA, such as Texas. Texas, Texas, Texas, what are we to do with you? As always, Texas is at the heart of voter restrictions and efforts to make life more difficult for minorities and LEP communities. Whether it is seeking to undo affirmative action, deny U.S. citizen children of undocumented parents their birth certificates, or fooling people into thinking that they have registered to vote under the NVRA when that is not the case, Texas is a repeat offender in the effort to block justice.” (2016, 50)

As to the comment about birth certificates, we understand it to refer to the subject of a letter sent by a majority of the Commission. Texas’s Vital Statistics offices do not accept a Matricula Consular, an identification card issued by Mexican consulates, as a valid form of identification for identifying oneself as the parent of a minor American-born child (and thus for obtaining the child’s birth certificate). There is a pending lawsuit brought by the undocumented parents of children born in Texas.⁴¹ The State of Texas defended its policy by noting that the 2011 Texas legislature commissioned a working group to develop recommendations to improve the security and effectiveness of the state’s birth registration system. It included staff from the Governor’s office, the Department of Homeland Security, the U.S. Department of State, local registrars, and other state and federal agencies. The working group recommended reducing the number of forms of acceptable identification. The reason for that recommendation was to reduce the problems of identity theft, invasion of privacy and related frauds. If anyone can march into a vital statistics office and obtain a child’s birth certificate, unscrupulous individuals may do so to use the certificate as proof of the citizenship of another child of similar age or they may simply be curious about the identity of the child’s father. Research conducted by the Texas Department of State Health Services (“DSHS”) found that the Mexican consulates did not verify the identity of persons seeking the matriculas and that the Mexican consulates do not maintain a centralized database that notes the names of persons to whom matriculas have been issued and by which consulate. Also, DSHS’s research showed that Mexican consulates do not verify the authenticity of documents by persons seeking the matricula, and that registrars in only four of twenty states responding to the DSHS inquiry accepted the matricula as stand-alone identification. Neither the FBI nor the

⁴⁰ Chris Moody, “Kasich lost to Rubio’s ghost in Arizona,” CNN, March 23, 2016, *available at* <http://www.cnn.com/2016/03/23/politics/arizona-republican-primary-john-kasich/>.

⁴¹ See *Perales Serna et al v. Texas Department of State Health Services*, Order, October 16, 2015, *available at* <https://www.documentcloud.org/documents/2461981-texas-birth-certificate.html>.

Department of Justice accept the matricula as a valid form of identification, nor does United States Immigration and Customs Enforcement.⁴²

In denying a request for a preliminary injunction, a federal district court has thus held that:

While the Court is very troubled at the prospect of Texas-born children, and their parents, being denied issuance of a birth certificate, as the evidence presented by Plaintiffs themselves establishes, a birth certificate is a vital and important document. As such, Texas has a clear interest in protecting access to that document. Defendants have presented substantial evidence which suggests they have attempted to vindicate both interests. Specifically, they have provided evidence which substantiates other governmental agencies, including the FBI, the Department of Justice and United States Immigration and Customs Enforcement, have expressed concerns regarding the reliability of the matricula. Although Plaintiffs maintain that at least some of that evidence is outdated or at least questionable, the Court does not presently have a record which permits resolution of that challenge. Moreover, as noted above, Plaintiffs have not presented any evidence which suggests that Defendants have improperly focused on and excluded the matricula and foreign passport without visa as forms of secondary identification.⁴³

We express no ultimate opinion as Commissioners about whether Texas has made the right policy decision about what identification forms to accept in issuing birth certificates. But like the federal district court, we acknowledge the state's interest in recognizing only trustworthy forms of identification. We think it wildly overwrought to paint this technocratic dispute about reliable identification documents as an effort "to make life more difficult for minorities" or "an effort to block justice."

Only one of the Chairman's claims about the supposed benightedness of Texas involves NVRA, the real subject of this report. The Chair claims that people who go to the Texas DPS website to renew their licenses or update the address on their licenses are asked to check "yes" or "no" in response to the statement "I want to register to vote," but that this information is not actually used to register anyone to vote. Instead, would-be voters must print out a separate voter registration application at the end of the online renewal process and send it through the postal mail to the proper authority. With the help of one of our relatives who has a Texas driver's license, we were able to take a look at the relevant screen. A photograph is attached to this statement as an exhibit. See Figure 3. It reads:

Do you want to request a voter application? You will receive a link to a voter application on your receipt page.(Check box)

⁴² *Id.* at 18.

⁴³ *Id.* at 21. The District Judge who authored the opinion (The Honorable Robert L. Pitman) was nominated to the bench by President Obama. Pitman is the first openly gay judge to serve on the Texas federal bench.

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Yes (This does not register you to vote.)

No

Figure 3. Sample Voter Application Request

Complete the information below, then select 'Continue'.

Options

I want to donate \$1.00 to the Glenda Dawson-Donate Life Texas Registry as part of my driver license transaction [?](#)

I want to be an organ donor. You must select the box to receive the donor symbol on your new card, even if you've selected it before.

Request a voter registration application
Required. Do you want to request a voter application? You will receive a link to a voter application on your receipt page. [?](#)

Yes (This does not register you to vote.)

No

We agree that, if technologically feasible at reasonable cost, it might make sense for Texas to revamp the website so that registrants don't need to print out and mail the separate form. However, it is hard to imagine a clearer or more prominent disclaimer. Calling this question "deceptive" is silly.

Finally, we should note some facts and statistics that are in tension with this portrait of an oppressive Lone Star State. In 2015, the unemployment rate for African-Americans nationwide was 9.6 percent, but just 7.5 percent in Texas.⁴⁴ According to data collected by the Henry Kaiser Foundation, the poverty rates for Texas blacks and Hispanics are also lower than for the country as a whole.⁴⁵ Further, the percentage of the population identifying as "Black or African American alone or in combination" grew more quickly in Texas than it did for the country as a whole.⁴⁶ The economic prosperity and business-friendly climate for which Texas has become well-known seems to be attractive to persons of all races.⁴⁷

⁴⁴ Bureau of Labor Statistics, TED: The Economics Daily, Unemployment Rates for African-Americans by State in 2015, available at <http://www.bls.gov/opub/ted/2016/unemployment-rates-for-african-americans-by-state-in-2015.htm>.

⁴⁵ The Henry J. Kaiser Foundation, Poverty Rate by Race/Ethnicity, available at <http://kff.org/other/state-indicator/poverty-rate-by-raceethnicity/>.

⁴⁶ 2010 Census Bureau, The Black Population: 2010, available at <http://www.census.gov/prod/cen2010/briefs/c2010br-06.pdf>.

⁴⁷ See generally Alan Greenblatt, The New Black South, *Governing*, June 2012, available at <http://www.governing.com/topics/economic-dev/gov-new-black-south.html>.

"When Mark Wells moved to the Dallas area last year, he had plenty of company -- and not just because his three sisters had settled there ahead of him. The Kansas native had lived for nearly 20 years in Southern California,

6. The Chairman writes:

“However, my concern is that the call to be hyper vigilant in the enforcement of the NVRA will fall upon deaf ears. For example, the U.S. Department of Justice (“DOJ”) has only invoked its enforcement authority under the NVRA 21 times from 2000-2014. While a private right of action can also enforce Section 7 of the NVRA, it is important for the DOJ to take the lead and pursue NVRA violations aggressively, especially in light of the loss of Section 5 of the VRA.”(2016, 49)

How frequently should the DOJ invoke its enforcement authority under NVRA? We believe that it should be invoked only as frequently as the statute is actually violated. Is there any reason to think that NVRA has been violated more than 21 times in that 14-year period? If there is, the Chairman’s statement does not indicate what it might be. Further, as discussed in greater detail *supra*, there is reason to think that DOJ is ignoring real Section 8 violations while pushing states to do more than is actually required by Section 7. That is the most important story here.

Finally, we can agree with the Chair that we would like to see vigilance in the enforcement of NVRA – in the enforcement of all of NVRA. We very much hope that that cry does not fall on deaf ears.

building up his career in technology. But the state’s long run of double-digit unemployment finally convinced him to listen to his sisters and move to Texas.

He has no regrets. “I told my friends in California, ‘You got to get out of there,’” he says. “There are no jobs and the cost of living is outrageous.”

Whether or not Wells can convince his friends, he’s already part of a much larger trend. Plenty of other African-Americans have decided to move to the South in recent years... As in Atlanta, the north-to-south and city-to-suburb trends among blacks have been reshaping the face of the Dallas-Fort Worth Metroplex, which gained some 233,000 African-American residents between 2000 and 2010 -- the most of any metro area in the country, aside from Atlanta....

... Part of the power of African-Americans in the Dallas area comes not from their rising numbers but their growing prosperity. The Dallas black middle class has entered its virtuous cycle phase. Success is breeding more success, with newcomers not only emulating well established residents but also using them as a base for networking.

For African-Americans in Dallas, more of those professional networks are spreading out into the suburbs. ‘The fact that we’ve got majority-minority suburbs now has been sort of phenomenal,’ says Rick Loessberg, Dallas County’s planning and development director. ‘It’s happened without the horror stories you heard 20 years ago in other places, where there’s been animosity and distrust. It’s the American dream as you would envision it to be.’”

See also Aaron M. Renn, *Black Residents Matter*, CITY JOURNAL, Spring 2016, available at <http://www.city-journal.org/html/black-residents-matter-14336.html>.

“In Texas, Dallas has drawn 110,000 black residents (11.3 percent growth) and Houston just under 100,000 (9.2 percent) since 2010. Austin, a rare liberal city in the South, remains, at 53.4 percent, the whitest major Texas metro – Dallas and Houston double its black population share – but it, too, has seen strong black population growth.”

Rebuttal of Commissioners David Kladney and Roberta Achtenberg

The right to vote is not a stump speech. It is one of the most important rights a citizen possesses. It is the expression of the people's will in a republic. Protection of this right and promotion of electoral participation should not devolve into partisan politics. Each of us, no matter our political inclinations, should work to increase access to the franchise and maintain the security of elections.

Commissioners Heriot and Kirsanow argue that the majority of the Commission supports the recommendations in this report because their implementation would favor Democrats over Republicans. This is not true, nor a legitimate objection to the recommended policies. Electoral participation is a public good. They want to limit access to the ballot box for their own political purposes. The right to vote is guaranteed by the Constitution. Seeking to win elections by stifling the ability to participate of the most marginalized citizens in our society is cowardly.

Commissioners Heriot and Kirsanow appear concerned that the Commission did not study Section 8 of the NVRA; however the scope of the briefing is entirely their fault. When the concept for this report was initially discussed, these two Commissioners, along with former Commissioner Todd Gaziano and Vice Chair Abigail Thernstrom expressed interest in expanding the paper to include Section 8. They met no resistance from the rest of the Commission. As the primary sponsor of this proposal, I stated:

COMMISSIONER KLADNEY: I was told that some people had expressed some interest in [Section] eight. I haven't had time to look at it myself. No one else has submitted a concept paper on it. If someone would submit a concept paper, I would look at it and research it and take a look. I mean, I don't know that much about eight since I haven't looked at it that much, but if someone would submit a paper on it, we can take a look at it and vote on it.¹

Commissioner Gaziano sought clarification about how we would proceed with the proposal to study Section 7, and the following exchange occurred:

COMMISSIONER GAZIANO: But as I understand it, Commissioner Kladney doesn't want to necessarily accept the amendment [to add Section 8] as a friendly amendment right now.

COMMISSIONER KLADNEY: Correct.

COMMISSIONER GAZIANO: So, several of us I think are glad to try to help refine the Concept paper if you don't want to do it today.

¹ U.S. Commission on Civil Rights, *Transcript of January 13, 2012 Business Meeting* (Unedited), Washington, D.C., p. 30-31 [hereinafter January 13 Transcript], available at http://www.usccr.gov/calendar/trnscrpt/Transcript_1-13-12.pdf.

COMMISSIONER KLADNEY: Well, we'll see how the vote is and then we'll working on refining it. We will work on refining it regardless of what the vote is today. How's that?²

When the paper came up for a vote, Commissioners Gaziano and Heriot again ensured that it could be amended to add Section 8 to the report:

COMMISSIONER KLADNEY: I'd like to move to approve my NVRA paper.

CHAIRPERSON CASTRO: Okay. Any discussion, questions?

COMMISSIONER GAZIANO: Would you accept as a friendly amendment that voting on it does not necessarily -- that we'll take a subsequent vote, that this will be put -- a subsequent vote on whether it C-- it won't preclude us from taking a subsequent vote on whether to expand it to include Section 8, as well?

COMMISSIONER KLADNEY: I think I can accept that.

CHAIRPERSON CASTRO: Okay. Any additional discussion or questions? If not, we'll begin to take votes on the NVRA topic. Commissioner Heriot, how do you vote?

COMMISSIONER HERIOT: I'm thinking about this. We're not resolving the Section 8 issue yet.

VICE CHAIR THERNSTROM: Yes. Right.

CHAIRPERSON CASTRO: Correct.³

The paper was approved by 7 of 8 Commissioners. Commissioner Heriot abstained from the vote.

Despite the eagerness of the four conservative Commissioners to study Section 8, no proposal to amend the concept for this report was ever made. At subsequent meetings, none of the four Commissioners brought forth a proposal on how a study of Section 8 would be added, as they promised they would. At the briefing, Chairman Castro specifically asked witnesses and Commissioners to conform their comments and questions to Section 7, as Section 7 was the only topic approved by the Commission for study.⁴ Nevertheless, Commissioner Gaziano attempted to bring up Section 8 at the briefing, long after the scope of the project was defined, researched by Commission staff, and limited as a result of Commissioners' failure to propose a Section 8 study. I repeated the Chair's caution at that time:

COMMISSIONER KLADNEY: Mr. Chairman, excuse me, Commissioner Gaziano. Regarding trying to bring up a discussion about Section 8, and I respect your attempt to do so, when we talked about this concept paper you and I had a discussion on the record, and in that discussion I

² January 13 Transcript, pp. 31- 32.

³ January 13 Transcript, pp. 44-45.

⁴ Briefing Transcript, pp. 4-5.

said I was more than willing to amend my paper if you would make a proposal, because I didn't know much about Section 8 at the time and I actually still don't and I'm not prepared today to discuss it. I think it would be unfair to get into that in light of the fact that **I had asked for a proposal, never received a proposal, and now we're going to be talking about it?**⁵ (Emphasis Added)

With their statement, Commissioners Heriot and Kirsanow are attempting yet again to bring Section 8 into this paper, when it clearly has no place. The action approved by the Commission was to study enforcement of Section 7 of the NVRA. All Commissioners clearly understood that we could consider adding a study of Section 8 enforcement, but no such study was ever approved or authorized. They conveniently forget this bothersome fact. Their statement on Section 8 enforcement lacks relevance, materiality, integrity and intellectual honesty. It is an attempt to substitute their unsubstantiated opinion for a factual study by this Commission. Using testimony from an **unrelated investigation** conducted six years ago over the strong objection of some Commissioners, they claim to speak authoritatively about the Department of Justice's Section 8 policies and practices, *an issue the Commission never studied*. They are merely pandering to their political constituency.

Their statement is devoid of law or logic.

Their partisan attacks, lengthy speculation about Section 8 enforcement, and ruminations on the nature of legislative compromise should therefore be dismissed. Their only other objection to the report is to the nature of Department of Justice settlement agreements in Section 7 cases. They argue that DOJ should not include anything in settlement agreements beyond the bare statutory requirements of Section 7, and that litigation should be disfavored in Section 7 enforcement. (Which, I assume is their position on Section 8 as well.)

The testimony we received at the briefing could not be clearer that both voting rights organizations and states favor collaborative work over litigation.⁶ This makes sense. Litigation is costly and time consuming for all parties, not just the states. No representative from DOJ testified at this briefing, making their attacks on DOJ particularly unfair, but DOJ has the same incentive as voting rights groups to avoid litigation where at all possible. Certainly the threat of litigation forms the background of collaborative agreements, as in all civil cases. Such a threat is necessary for any enforcement at all. Without it, the statute would be toothless.

⁵ Briefing Transcript, p. 34.

⁶ See, e.g. Briefing Transcript p. 9, 23 ("MR. BARTLETT [Gary O. Bartlett, Executive Director, North Carolina Board of Elections]: . . . I asked them to give me the ability to fix it before they would send such a letter [of intent to sue] and told them in plain English that if they want me to have -- give me the ability to make it work. They trusted me enough that we never got the letter. And we think that we have had a good, solid program from 2006 to present.") ("MS. DANETZ [Lisa Danetz, Senior Counsel, Demos]: . . . [Y]ou can see from this list that there are states all over the country where we work cooperatively with states that are serious about fixing problems. In other states, we don't have that luxury.").

They further argue that the requirements in settlement agreements are onerous and detract from the core services of public service agencies. They offer no proof of this assertion other than a visit to a single public service agency, which appeared to struggle to meet the needs of the people who were there requesting services. The logical solution to this problem is to properly fund our public service agencies, not to starve them and then complain when they don't work well. They also fail to acknowledge any technological advancements that could be implemented to ease the workload, or the many ways states can easily support their employees in implementing the NVRA requirements. The Commission's report explains in detail why Congress concluded that offering voter services at public assistance agencies was important.⁷ Settlement agreements flesh out how this goal can be accomplished with modern technology. If states wish to avoid working out such details with DOJ or a voting rights group, they should simply comply with the requirements of Section 7, which are, after all, mandatory federal law.

For his part, Chairman Castro aims his criticism solely at Texas for its misleading practices under the NVRA. Texas is not alone. Nevada is also under investigation by voting rights groups for failing to comply with Section 5 of the NVRA. In a notice letter from Dēmos and Project Vote, the groups explain that Nevada is in violation several provisions of Section 5.⁸ Citizens must fill out an additional form to register to vote, rather than having their driver's license application serve as a voter registration form, as required by Section 5.⁹ For online renewals, although the driver's license renewal process can be completed entirely online, a separate voter registration form is mailed to those who check the box and wish to register to vote. This is not the simultaneous, non-duplicative process that is required by the statute. Nevada does this even though it is technologically feasible to have the Secretary of State's online registration form auto-filled simultaneously. When appearing at the DMV to secure a driver's license, the same box appears on the driver's license application. In more than a few cases, the DMV employee overlooked the box and failed to provide the voter registration form.

According to the Dēmos and Project Vote, the state is also not in compliance because its forms regarding a change of address are misleading. Section 5 requires that a change of address registered with the DMV must also change the address for voter registration, unless the voter opts out. In Nevada, this process only occurs when someone moves within the same county; otherwise

⁷ See *Commission Report*, pp. 10-11 (2016).

⁸ Demos and Project Vote, *Letter Re: Nevada's Non-Compliance with Section 5 of the National Voter Registration Act*, March 7, 2016, available at <http://www.projectvote.org/wp-content/uploads/2016/03/Notice-Letter-on-Nevadas-NVRA-Sec-5-Violations-3.7.16.pdf>.

⁹ For example, Washington D.C. uses a driver's license application with an integrated voter registration form. See District of Columbia Department of Motor Vehicles, DC Driver License or Identification Card Application, available at <http://dmv.dc.gov/sites/default/files/dc/sites/dmv/publication/attachments/DMVLR4%20Rev%2008-10-2015.pdf>.

a new registration form is required. Worse, this distinction is not made clear on Nevada's forms. This kind of lack of compliance occurs throughout the country.¹⁰

Even Illinois has issues with section 5.

Although voting rights groups have not threatened to sue Illinois, like Nevada, online, phone or mail registration triggers a paper form being sent by snail mail to the applicant, who then has to fill it out and send it back, not to the DMV, but their county's voter registrar.¹¹ This leaves unnecessary opportunities for errors to be made. When filling out the driver's license application in person, like Nevada, a box appears on the application asking if the applicant wants to register to vote. If so, the DMV employee assisting the citizen is then supposed to supply a separate voter registration form.

Many states continue to use similar paper-based processes. These systems evolved at the time the NVRA was passed by Congress and computers were not so ubiquitous. Everything thing was more mechanical at the time. This process could easily be improved. Many of the Section 5 and Section 7 compliance problems with paper forms have technological solutions. As noted above, when checking the voter registration box with an online application an electronic registration form could be auto-filled and filed, electronically, with the appropriate county's voter registrar.

It has been demonstrated that updating paper-based systems with 21st century technology can be done at reasonable cost, and ultimately saves states money when they eliminate the cost of processing paper forms.¹² Automatic voter registration is an even better, seamless solution.¹³ Illinois, along with 26 other states, is currently considering adopting automatic voter registration, which would electronically transfer all necessary information from the government agency to the voter registrar.¹⁴ This system, which goes beyond the requirements of the NVRA, is truly the future of voter registration. It would extend the franchise and reinvigorate the promise of voter registration made available to all citizens.

¹⁰ For example, Project Vote frequently sends notice letters describing NVRA violations and urges states to rectify them. See Project Vote, *Notice Letters*, available at http://www.projectvote.org/?litigation_type=notice-letters.

¹¹ See Illinois Secretary of State, *Driver Services: Motor Voter*, available at <https://www.cyberdriveillinois.com/departments/drivers/motorvoter.html> (last visited May 12, 2016).

¹² See, e.g., Stephen Rosenfeld, *Policy Brief: Voter Registration Modernization and the NVRA*, Project Vote, July 1, 2010, available at <http://www.projectvote.org/wp-content/uploads/2010/07/Voter-Registration-Modernization-and-the-NVRA.pdf>.

¹³ See, e.g., Niyati Shah, *Automatic Voter Registration: Best Practices*, Project Vote, August 2015, available at <http://www.projectvote.org/wp-content/uploads/2015/08/Automatic-Registration-Best-Practices-August-2015.pdf>.

¹⁴ See, e.g. Illinois PIRG Education Fund, *The 21st Century Election: County clerks share their perspective on AVR*, May 2016, available at <http://illinoispirg.org/sites/pirg/files/reports/The%2021st%20Century%20Election%20-%20IL%20Report%20FINAL.pdf>.

PANELISTS' WRITTEN STATEMENTS

Panelist One: Gary O. Bartlett, Executive Director, North Carolina State Board of Elections

Testimony on Increasing Compliance with Section 7 of the NVRA before the U.S. Commission on Civil Rights Briefing on Section 7 NVRA, April 19, 2013.

Mr. Chairman and distinguished members of the United States Commission on Civil Rights, thank you for allowing me to provide testimony on increasing compliance with Section 7 of the National Voter Registration Act (NVRA). I am happy to share our state's experiences on this matter as Executive Director of the North Carolina State Board of Elections.

First, let me explain that elections in North Carolina are under the jurisdiction of an independent five-member bipartisan board appointed for four years by the Governor upon the recommendation of the Democratic and Republican parties in our state. The North Carolina State Board of Elections is an independent regulatory and quasi-judicial agency. The opinions expressed herein reflect my personal opinion based upon my experience with Section 7 of the NVRA, and do not reflect the opinion or position of the North Carolina State Board of Elections (herein "SBE").

Section 7 of the NVRA

Each state must arrange for in-person voter registration at certain designated sites that provide services for the public (NVRA Section 7, 42 USC § 1973gg-2(a)(3)). Such sites include any office in a state that provides public assistance or state-funded programs primarily engaged in providing services to persons with disabilities, or Armed Forces recruitment offices. At these sites, voter registration applications must be made available to public services clients applying for benefits, renewing benefits, recertifying benefits, or making a change of address. The public services client should also be able to receive assistance and submit registration information at these sites. If the client is offered the opportunity to register but chooses not to register, he or she signs a "preference form" showing this declination (also known as a "declination form"). The agency must forward all preference forms to the local entity that administers voter registration. Registering to vote at these designated state offices is known as "agency-based registration." North Carolina sets out its agency-based registration in N.C. Gen. Stat. § 163-82.20.

The North Carolina Experience

The National Voter Registration Act was implemented in North Carolina in 1995. For several years, it was considered a model for agency-based registrations. However, through personnel changes in the agencies and the State Board of Elections, emphasis was not maintained as it should have been regarding the federal mandate to offer voter registration to clients at public assistance and disability services agencies.

The NVRA Implementation Project (a collaboration between the advocacy organizations Dēmos, Project Vote and ACORN) began a nationwide effort in 2004 to enhance and improve voter registration procedures in public assistance agencies. Based on findings of surveys conducted as part of this project, in 2006 North Carolina was identified and contacted by the organizations as one of many states with evidence of voter registration inactivity and a dramatic drop in the number of voters registering at agencies. We asked these NVRA advocates to work with us to allow us to improve our Section 7 compliance.

A 14-point compliance plan for North Carolina and public assistance agencies was developed. The elements included (1) communication and coordination with public assistance agencies to advise the agencies regarding their specific duties, (2) updated materials and training sessions for agency personnel, and (3) the tracking of agency compliance on a weekly e-mail report.

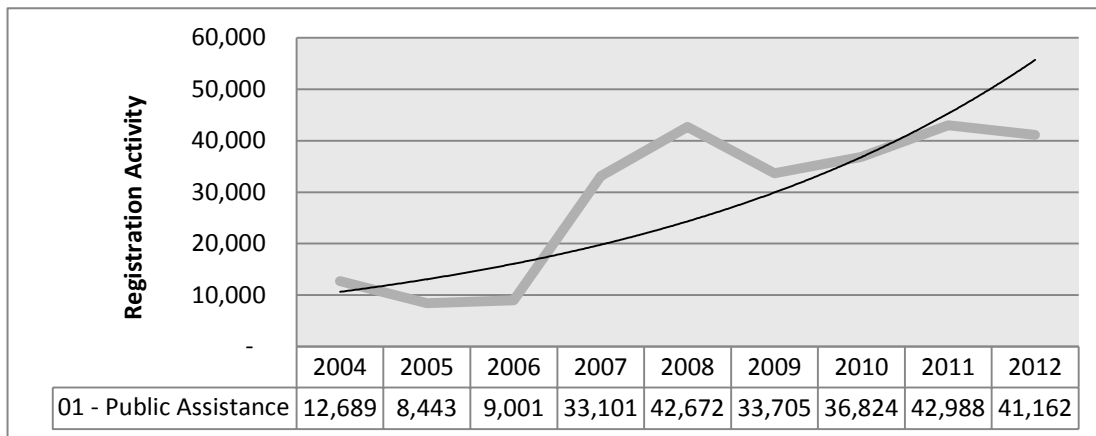
The updated implementation plan began to be set into action within two months of development. Components of the plan included:

- Communication with all agency heads in state government that had voter registration responsibilities, to remind those state umbrella agencies about NVRA compliance requirements. The Governor's Office reminded them about the need to work with the SBE office. We eventually executed formal cooperative agreements with these state agency heads, which obligated each agency's local-level counterparts to comply with the agreement.
- Holding monthly telephone conference calls with the interested advocacy organizations to update them on the plan's progress.
- Publicly advocating in the media the need to improve NVRA compliance. This advocacy impacted popular support for the voter registration efforts.
- Preparing, modifying, and updating agency voter registration manuals, group training, and presentations. These training items are available on the SBE website for easy access by personnel in NVRA agencies.
- Conducting periodic voter registration training and workshops at agency meetings to "train the trainer."
- Dedicating the SBE's Elections Liaison, whose primary duty is voter registration matters, to aid the voter registration efforts of NVRA agencies and serve as the primary point of contact from the SBE office.
- Identifying within each county elections office a position serving as "county site coordinator" responsible for communication with all the county agencies on NVRA matters.

- Monitoring the weekly transmission of preference forms and voter registration application forms from each agency, and then comparing the reported NVRA activity with the numbers of persons applying for benefits at the agencies. The comparison continues to help SBE staff to determine if and where compliance problems may exist.
- Unannounced random in-person checks of NVRA agencies. These have been very effective in obtaining a “true picture” of an agency’s NVRA compliance.
- Establishing an e-mail system to connect all agency site coordinators, to quickly and easily transmit information directly to those persons.
- Posting voter information posters in both English and Spanish at all NVRA agencies.
- Working with the North Carolina General Assembly and other organizations to review laws to allow better implementation of voter registration duties under the NVRA.

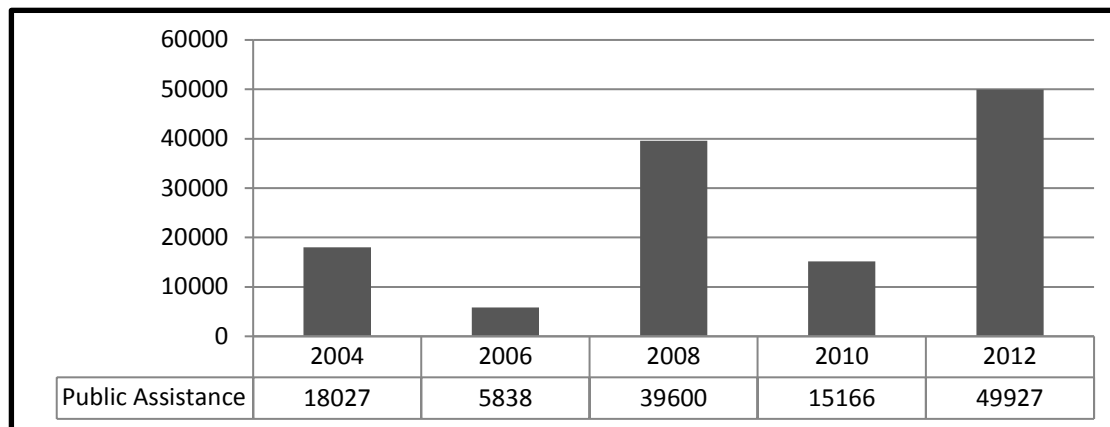
Following the implementation of this plan in 2006, we saw voter registration activity for North Carolina’s public assistance agencies more than double between 2006 and 2007 (a 268 percent increase). In the following year, total voter registration activity for these agencies increased another 29 percent. There was a drop off in 2009 and 2010, but the activity levels rebounded in years 2011 and 2012 (see Figure 4).

Figure 4. Yearly Voter Registration Activity for North Carolina’s Public Assistance Agencies



Voter participation of persons who have registered at public assistance agencies has likewise increased. Comparing the 2004 and the 2008 General Elections, participation of voters who registered to vote at a public assistance agency increased 120 percent (see Figure 5).

Figure 5. Participation of North Carolina’s Public Assistance Voter Registrants



Since 2006, voters of all demographics — including race — appear to have benefitted from having voter registration services offered to them at agencies for public assistance, disability services and our state’s Employment Security Commission. In particular, African-Americans have increased participation in Section 7 NVRA services. The percent increase for agency-based voter registration activity for African Americans between 2006 and 2012 was 346 percent. For whites, it was a 271 percent increase, although the total number of forms processed for applicants of both races during this time period is comparable (112,421 African-Americans; 122,684 whites). African Americans comprise only 22.5 percent of the total registered voters in North Carolina,¹ and only 21.4 percent of the state’s voting-age population² (see Figure 6).

¹ NC State Board of Elections website, Voter Registration Statistics, *available at* http://www.app.sboe.state.nc.us/webapps/voter_stats/results.aspx?date=03-30-2013 (downloaded April 4, 2013).

² US Census Bureau website, Voting Age Population by Citizenship and Race (CVAP), *available at* http://www.census.gov/rdo/pdf/CVAP_CSV_Format_2007-2011_ACS.zip (downloaded April 4, 2013).

Figure 6. Annual National Voter Registration Act Activity in North Carolina, by Race

NVRA Activity by Race	2006	2007	2008	2009	2010	2011	2012	Grand Total
ASIAN	81	271	454	304	343	385	438	2,276
BLACK or AFRICAN AMERICAN	4,566	16,442	20,869	13,711	15,862	20,589	20,382	112,421
AMERICAN INDIAN/ ALASKA NATIVE	259	580	704	687	636	597	614	4,077
OTHER	196	667	887	756	852	909	989	5,256
TWO or MORE RACES	164	595	876	571	659	831	914	4,610
UNDESIGNATED	255	902	1,488	1,082	974	1,240	1,272	7,213
WHITE	5,442	16,978	22,157	18,556	18,969	20,386	20,196	122,684
Grand Total	10,963	36,435	47,435	35,667	38,295	44,937	44,805	258,537

Initially, our renewed focus on NVRA in North Carolina was met with some resistance by some agencies. These agencies were either apathetic towards agency-based voter registration or they were openly hostile toward it. The indifferent agencies indicated that they would offer voter registration as schedules permit, or they could only commit to making voter registration forms available in their lobbies. At the extreme, the totally unreceptive agencies or county officials blatantly refused to comply with the law. These officials asserted that Section 7 of NVRA was an “unfunded mandate” and their staff did not have the time or resources to devote to voter registration and it was not their place to engage in voter registration. Working with the advocates and applicable divisions of the North Carolina Department of Health and Human Services (the state agency which oversees local public assistance agencies), we were able to persuade these agencies to comply with NVRA. As mentioned already, all of the state umbrella agencies signed cooperative agreements with SBE outlining a commitment to Section 7 compliance.

Fortunately, the majority of North Carolina’s public assistance agencies were not opposed to offering voter registration services. The real reason for our state’s decline in agency-based voter registration activity had more to do with lack of awareness, a lack of sustained training programs, and a need for better oversight of the state’s NVRA program. Although our state was a model agency when NVRA was first implemented in 1995, oversight had been largely neglected thereafter because the program was erroneously believed to be on autopilot. Employee turnover, both at the SBE office and at local agencies, contributed to the participation decline. When we made agencies aware of their responsibility, most of them began to cooperate with us immediately. We followed up our awareness efforts with agency training. To monitor compliance, we began to prepare and review reports that showed voter registration and agency preference forms (declination forms) activity. We communicated with agencies whose activity level indicated non-compliance, to identify and correct the issue.

Since 2006, we have continued many of these practices to avoid another decline in NVRA agency compliance. Our primary focus with respect to coordinating agency-based voter registration activity is to create a partnership atmosphere wherein multiple entities share responsibility for Section 7 compliance. In our state, the partners include the SBE office, the individual local

agencies, the corresponding state umbrella agency for these local agencies, and the 100 County Boards of Elections in North Carolina. Our experience shows that persistent engagement with NVRA agencies is the key to a state's Section 7 compliance. As a partner, the SBE office was able to listen to the needs of NVRA agencies and develop solutions for issues raised by the agencies.

Other reflections:

- In the initial reimplementation plan, NVRA agencies were asked to self-report their voter registration activity each week. The agencies had to tally all of the forms collected, report the numbers using a survey tool, and then send the completed preference forms to the appropriate County Board of Elections office. The agencies found these efforts duplicative. In lieu of the self-reporting task, SBE created a web-based tool for the County Board of Elections office to record the forms received from their NVRA agencies. Thus, the agencies were only required to gather the preference forms collected and send them to their County Board of Elections.
- NVRA agencies were concerned that printing the paper-based preference forms was too costly for cash-strapped local agencies, and that having clients complete the forms by hand was too time-consuming. They believed the “decline in writing” process to be tedious and burdensome both to the caseworker and to the services client. As a solution, the SBE office developed an online preference form system that permits agencies to record a client's “preference” for voter registration services using a web-based tool. This paperless system removes the need for the client to “decline in writing” using a paper form. The online preference form system allows agencies to efficiently document their offer of voter registration to a client, but also provides a real-time reporting tool for SBE staff to monitor agency compliance.
- The NVRA agencies and County Boards of Elections desired a direct contact with the SBE office who would be available for questions, training and other Section 7 related needs. One of the primary duties of our Elections Liaison, Veronica Degraffenreid, is to manage the state's NVRA program.

Moving Forward

Although we have seen great success with North Carolina's public services agencies, we realize there is room for continued improvement. Work remains to be done with our disability services agencies and the Employment Security Commission. We are actively engaging officials in charge of these agencies. While they are receptive to our efforts and understand their responsibilities under NVRA, like many government agencies, they have challenges related to lack of resources. Moving forward, it is my belief that technology is the solution. Developments such as online voter registration and a web-based declination system effectively allow NRVA agencies to offer voter

registration to public services clients, and these developments allow election officials to efficiently receive the information.

The single greatest right, responsibility and privilege of any U.S. citizen is the ability to vote. The NVRA charges election officials and state agencies with the responsibility to protect that privilege by ensuring that the opportunity to register to vote is readily available to all eligible citizens. At the office of the North Carolina State Board of Elections, it is our sincere desire to continuously improve our current efforts and to become a resource for any state working to improve their own compliance with Section 7 of NVRA.

Panelist Two: Lisa 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.

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.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 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 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 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

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.

registration forms and forward them to the appropriate election official.⁷ 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.⁸ 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.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

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 percent -- from over 2.6 million

⁷ See 42 U.S.C. § 1973gg-5(a)(4)(A).

⁸ See 42 U.S.C. § 1973gg-5(a)(6).

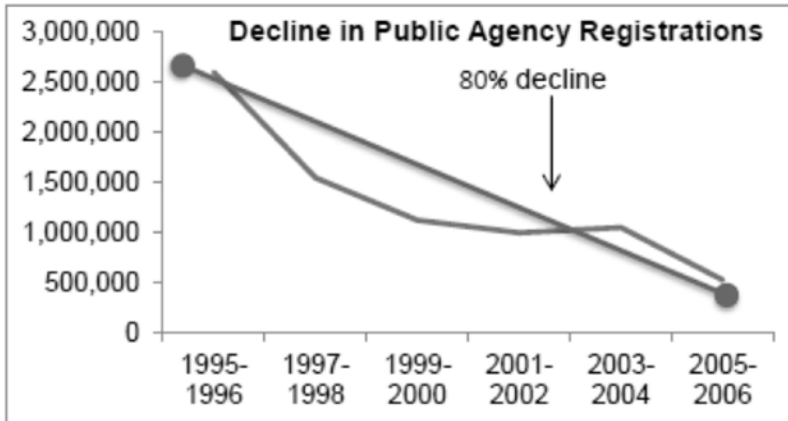
⁹ H.R. Conf. Report No. 66, 103rd Cong., 1st Sess. 19 (1993).

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

applications to only 540,000.¹³ 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.¹⁴



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 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, re-certifications, 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.

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, *available at* <http://www.fns.usda.gov/oane/MENU/Published/FSP/FSPPartHH.htm>; Tables B-10, B-11, and B-12.

- 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

Completed Litigation	Pending Litigation	Cooperative Work
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.¹⁵ A voter preference form must be provided with each covered transaction.¹⁶ 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.¹⁷ 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

¹⁵ 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).

¹⁶ 42 U.S.C. § 1973gg-5(a)(6)(B).

¹⁷ 42 U.S.C. § 1973gg-5(a)(6)(C).

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.¹⁸

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 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

¹⁸ 42 U.S.C. § 1973gg-5(d).

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, re-certifications, 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.

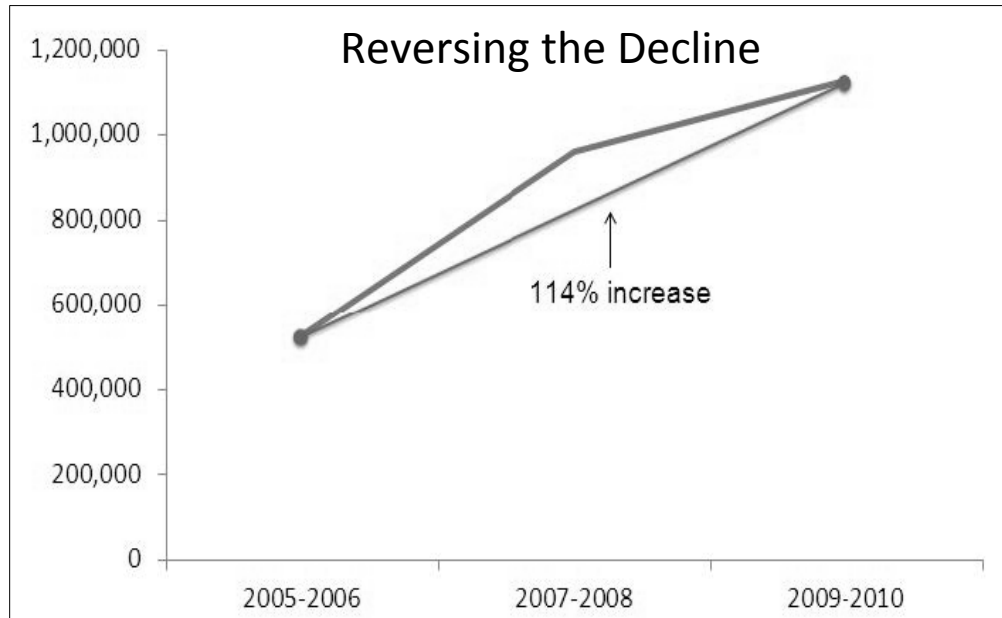
Additionally, voter registration responsibilities should be incorporated into employee performance evaluations like any other federally-mandated aspect of job performance. Random unannounced spot checks by state agency or election officials also are an effective way to ensure procedures are being implemented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

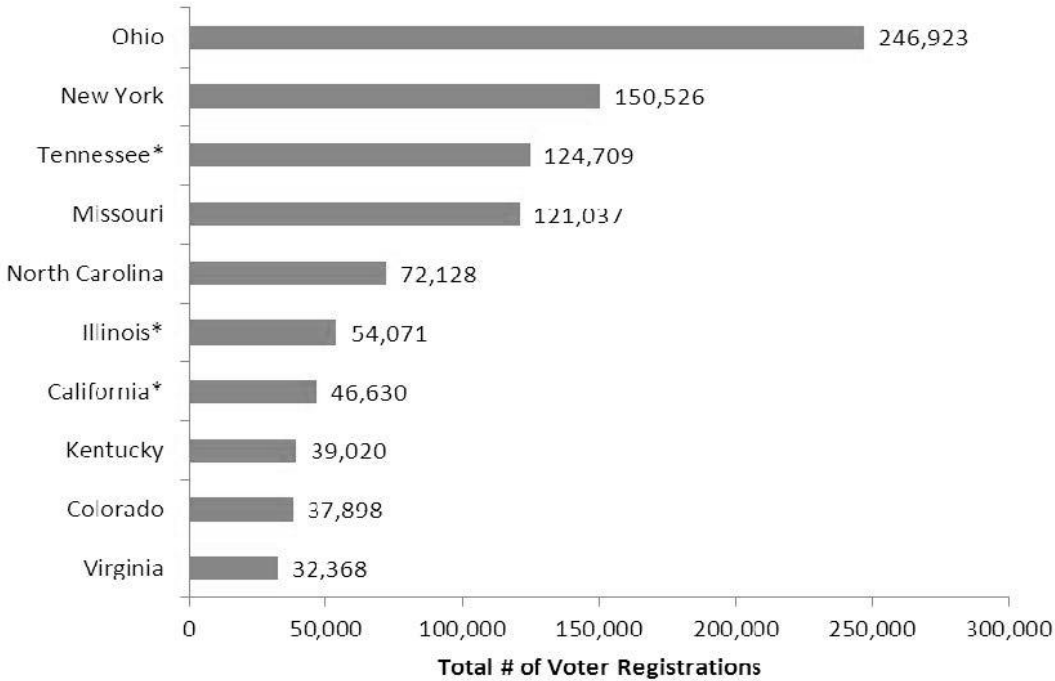
oversight and enforcement of voter registration mandates at state agencies can have in reversing what had been a long decline in registration among low-income and working-class Americans.

In sharp contrast to the trend between the 1995-1996 and 2005-2006 reporting periods, the EAC reports show a 114 percent 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 Dēmos and its partners. For example, Ohio and Missouri, two states that were sued by clients represented by Dēmos and its partners and that entered into settlement agreements in 2009, topped the charts. North Carolina, Colorado, and Virginia all worked cooperatively with either Dēmos 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.

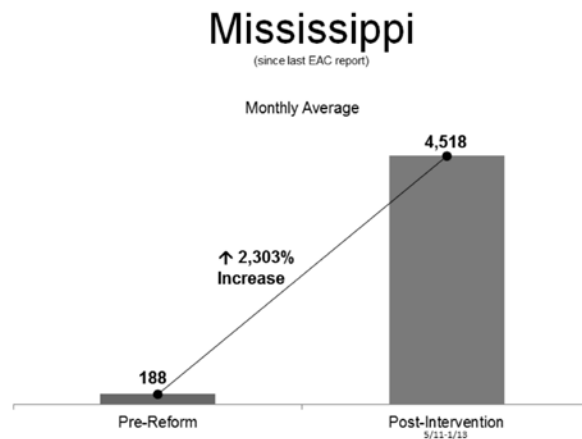
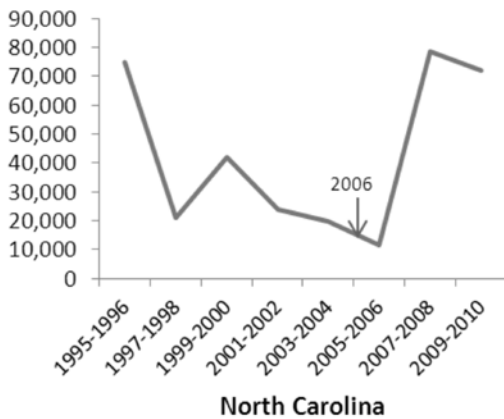
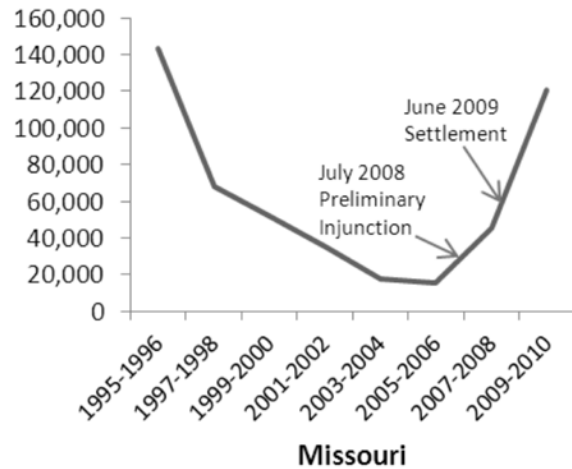
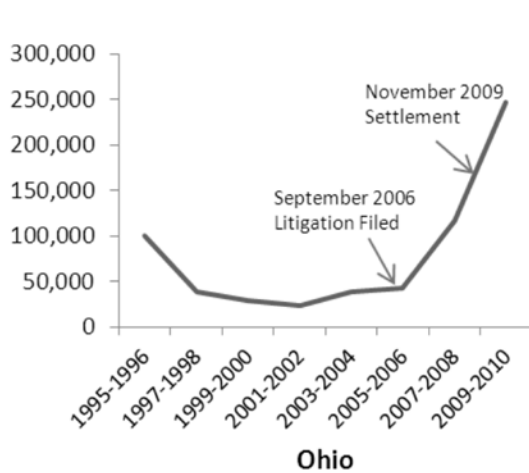


Note (*): All of the election jurisdictions in each of the states above reported total number of voter registration forms received from public assistance offices to the Election Assistance Commission, with the exception of California (98.3 percent of jurisdictions), Illinois (88.2 percent) and Tennessee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

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 percent.
- 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.

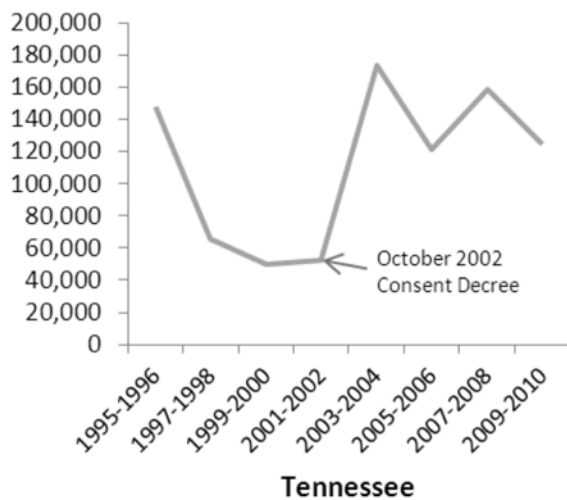
- In the almost two years since Mississippi started tracking voter registration data reflective of changes to its Section 7 implementation, an additional 90,232 low-income individuals have applied to register to vote through public assistance offices, which translates to an increase of 2303 percent compared to its earlier performance.



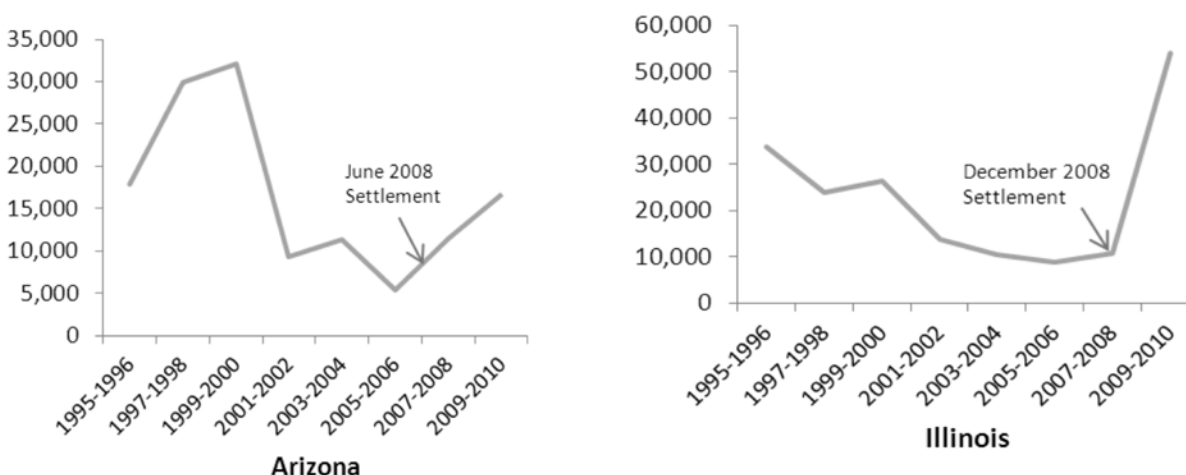
V. Enforcement Efforts by Department of Justice

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 Dēmos 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.



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.



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.¹⁹ The Louisiana litigation is pending. Beyond these two cases, the Obama Justice Department has submitted *amicus* briefs in at least two litigations in which Dēmos 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”²⁰ 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.

¹⁹ “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/>.

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

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.

Panelist Three: Jason Torchinsky, Partner, Holtzman Vogel PLLC

Enforcement of Section 7 of the NVRA, U.S. Commission on Civil Rights, April 19, 2013

Thank you to the Commission and the Commissioners for holding a hearing on enforcement of Section 7 of the National Voter Registration Act.

I am an attorney in private practice, and I want to make clear that the views I express here today are my own, and not those of my firm or of any of my firm's clients. I am here in my personal capacity, and not as a representative of anyone else.

My view on the NVRA is that it is important and positive legislation, but the legislation needs to be viewed and enforced as a whole package adopted by Congress. The legislative scheme agreed upon after careful negotiation within the legislative branch is obviated when federal agencies pick and choose to enforce, or refrain from enforcing, bits and pieces of federal civil rights legislation based on policy preferences rather than even handed enforcement of the law.

I want to address a few points in turn.

First, I take issue with what appear to be the current enforcement priorities of the Department of Justice which ignore parts of the NVRA that are as important as Section 7. Second, I take issue with the "gotcha" methods of enforcement reportedly being engaged in by the Voting Section staff. Finally, I believe that the scope of discovery being pursued in these cases threatens the privacy rights of individuals who register to vote through public assistance agencies, and I believe certain information is perhaps being sought by litigants for reasons unrelated to enforcement of the NVRA.

Uneven Enforcement of the NVRA

I would like to turn your attention to my first point, the uneven enforcement of the NVRA. While getting people who are eligible but not registered to vote onto the voters rolls is important, it is equally important to remember that states must also comply with the list maintenance requirements of Section 8 of the NVRA. It is enforcement of this provision in combination with the public assistance agency registration requirement that enabled Congress to pass the NVRA on a bipartisan basis.

As the recent Department of Justice Inspector General's report noted, there were essentially no enforcement actions under the list maintenance provisions of the NVRA during its first ten years in existence. While some cases were brought between 2004 and 2008, it appears that the Department of Justice has taken no further actions to encourage meaningful compliance with Section 8's list maintenance requirements since then. In fact, the last Section 8 action of current administration was the voluntary dismissal of the enforcement action taken against the State of Missouri, which began in 2005.

The Inspector General's report focused on comments allegedly made by a senior official of the Civil Rights Division in the fall of 2009 that were along the lines of not "caring" about enforcement under Section 8 of the NVRA. It is apparent from the lack of notice letters, requests for information from states, settlements in this area or lawsuits that the current administration is simply not taking actions to enforce Section 8.

Frankly, after reading the Inspector General's report, I was very surprised to learn that Voting Section staff identified a significant number of states that had not removed voters from the rolls due to death in two years, and had not sent any notices to voters. This serves as fairly strong evidence that these states lacked effective list maintenance programs - or perhaps any list maintenance program at all. It took nearly 15 months for approval of the investigation, and by that time the evidence was, according to the OIG report, mooted by the release of post-election 2010 data.

I think many of the lawyers in the room are familiar with the capable of repetition yet evading review theory of standing, and it appears that this may be what happened here. As of the beginning of 2013, we do not know what the Division has done since late 2010 to update its review of these actions. We do know that as of today, not a single Section 8 enforcement action has been brought by the current administration.

Investigatory Techniques and Settlement Practices

I want to take this opportunity to turn to my second point and criticize the Division's enforcement techniques in this area. It appears from the court filings in the Louisiana case, and from media reports, that the Voting Section was using under-cover investigators to troll through public assistance offices looking for evidence of non-compliance with Section 7. Additionally, the Rhode Island consent decree, apparently negotiated between the State and the Voting Section, seems to go way beyond the requirements of the NVRA.

First, let me turn to Louisiana. After reviewing the trial ruling from the court, it seems plain that many of the violations found were technical ones that could have been resolved more readily, sparing the taxpayers of the United States and the State of Louisiana the expense and burden of a trial. Based on the apparently extensive investigation carried out by the Department of Justice in Louisiana, it seems clear many of the changes the Department sought could have been resolved through discussion and negotiation rather than litigation.

Second, with respect to Rhode Island, the notion that the state is now required to fund - in a time of struggling state and local government budgets - specially trained site coordinators at every public assistance office, and maintain detailed records of every instance in which a potential voter declines voter registration assistance, appears to go well beyond what is needed to ensure proper enforcement of the statute.

Discovery Sought in Section 7 Cases

Finally, I have one more criticism of how Section 7 enforcement cases have been carried out by both the Department of Justice and by private litigants. In conducting research and discovery in these cases, the Department and private litigants have reportedly sought discovery that included full dates of birth and social security numbers of persons who sought help at public assistance offices or who registered to vote through public assistance offices.

In my view, wholesale releases to plaintiff organizations of personally identifiable information vital to protecting a person's identity in the modern world of finance and communications serves no purpose that helps advance enforcement of the NVRA. Rather, it seems that this information can be used by litigating groups for unrelated purposes and tied into broader databases used for political advocacy. The courts should not allow discovery of information that runs the risk of releasing personally identifiable information without assurances of appropriate safeguards, particularly when there seems to be little NVRA-related value to litigants for having the dates of birth and social security numbers of individuals.

Conclusion

In summary, I believe that full, fair and even handed enforcement of the NVRA is a good, positive measure for the electorate at large. However, I have serious concerns when the Department of Justice and private litigants seem to favor enforcement of only a portion of the Act to the near exclusion of consideration of other portions of the Act. I also firmly believe that like many civil rights concerns, the issues discovered by private plaintiffs and the Department of Justice in most NVRA enforcement cases can be settled in a cooperative manner without the need to bring cases to trial, or to enter into settlement agreements that go beyond what the Act requires. Finally, I think courts and government agencies need to carefully monitor the information released during these cases in order to ensure the privacy of individuals and to help protect against the improper release or use of information that can too often be used improperly.

Thank you again for the opportunity to present this testimony today, and I look forward to taking some questions.

PANELISTS' BIOGRAPHIES

Gary O. Bartlett

Gary O. Bartlett, a graduate of University of North Carolina at Chapel Hill, has been Executive Director North Carolina State Board of Elections since 1993, member of National Association of State Election Directors and the Standards Board of the Elections Assistance Commission. He has served on the FEC Election Administration Advisory Panel, the Election Center Board of Directors and Task Force on Election Reform, was Co-Chair of National Task Force on Election Accessibility and a member of North Carolina's Four Governors Better Campaigns Committee. He is active in his community of Goldsboro, NC, and the First Christian Church, having served on several advisory boards including Home, Health and Hospice, Kitty Askins Board and chair of Boy Scouts Troop 7 Committee, leaving limited time to enjoy his favorite hobby of golf. He is married and has one son.

Lisa Danetz

Ms. Danetz is a voting rights and campaign finance lawyer who addresses issues of inequality and fairness in elections. She is an expert on implementation of Section 7 of the National Voter Registration Act, has worked cooperatively with and also litigated against states regarding implementation of the National Voter Registration Act, and has engaged in advocacy before Congress and federal executive offices on the issue. Ms. Danetz also has expertise in constitutional litigation and FEC enforcement work to promote and defend campaign finance reforms.

Ms. Danetz has published and been a frequent speaker on voting rights and campaign finance issues, including testimony regarding agency-based voter registration before the Senate Rules and Administration Committee and the Subcommittee on Elections of the Committee on House Administration. She's been quoted in *The New York Times*, *The Washington Post*, and *Bloomberg*, among other publications. She has also appeared on television and radio.

Prior to joining Dēmos, Ms. Danetz spent five years at the National Voting Rights Institute, several years in the private sector doing civil litigation, and held judicial clerkships with United States Circuit Judge Ruggero J. Aldisert, Jr., and United States District Judge Stanley R. Chesler. She received her B.S. from Yale University and her J.D. *cum laude* from New York University School of Law. See http://www.demos.org/sites/default/files/experts/Lisa_Danetz.png.

Jason Torchinsky

Jason Torchinsky specializes in campaign finance, election law, lobbying disclosure and issue advocacy groups. In 2007, Campaigns and Elections Magazine named Jason a "Rising Star of

Politics.” Jason frequently lectures on campaign finance and ethics related subjects and provides commentary to the media on election related matters.

Prior to joining HoltzmanVogel PLLC, Jason was Counsel to the Assistant Attorney General for the Civil Rights Division at the United States Department of Justice. During the 2004 election cycle, Jason served as Deputy General Counsel to Bush-Cheney '04 and Deputy General Counsel to the 2005 Presidential Inaugural Committee.

Jason has also served in other positions in the government. He served as a Special Assistant to the Assistant Attorney General for the Civil Rights Division, in the Eastern District of Wisconsin as a Special Assistant United States Attorney, and at the White House Counsel’s Office as an Executive Assistant. Jason's prior political experience also includes serving in the Republican National Committee Counsel's Office, the Dole-Kemp campaign, the 1996 Republican National Convention, and Congressman Herb Bateman's re-election campaign.

Additionally, Jason has served as counsel for federal jury trials, argued a number of motions and hearings before federal tribunals, and authored a number of briefs for United States Courts of Appeals, including the 3rd Circuit, 7th Circuit, 9th Circuit, and 11th Circuit.

He holds a B.A. in Government and Public Policy from the College of William and Mary and a J.D. from the College of William and Mary School of Law. He is a member of the Virginia Bar, the District of Columbia Bar, the Republican National Lawyers Association and the Federalist Society.

NATIONAL VOTER REGISTRATION ACT STATUTORY APPENDIX

Sec. 7. Voter Registration Agencies

(a) DESIGNATION-

(1) Each State shall designate agencies for the registration of voters in elections for Federal office.

(2) Each State shall designate as voter registration agencies--

(A) all offices in the State that provide public assistance, unemployment compensation, or related services; and

(B) all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.

(3)(A) In addition to voter registration agencies designated under paragraph (2), each State shall designate other offices within the State as voter registration agencies.

(B) Voter registration agencies designated under subparagraph (A) may include—

(i) State or local government offices such as public libraries, public schools, offices of city and county clerks (including marriage license bureaus), fishing and hunting license bureaus, government revenue offices, and offices not described in paragraph (2)(B) that provide services to persons with disabilities; and

(ii) Federal and nongovernmental offices, with the agreement of such offices.

(4)(A) At each voter registration agency, the following services shall be made available:

(i) Distribution of mail voter registration application forms in accordance with paragraph (6).

(ii) Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance.

(iii) Acceptance of completed voter registration application forms for transmittal to the appropriate State election official.

(B) If a voter registration agency designated under paragraph (2)(B) provides services to a person with a disability at the person's home, the agency shall provide the services described in subparagraph (A) at the person's home.

(5) A person who provides service described in paragraph (4) shall not—

(A) seek to influence an applicant's political preference or party registration;

(B) display any such political preference or party allegiance; or

(C) make any statement to an applicant or take any action the purpose or effect of which is to discourage the applicant from registering to vote.

(6) A voter registration agency that is an office that provides service or assistance in addition to conducting voter registration shall—

(A) distribute with each application for such service or assistance, and with each recertification, renewal, or change of address form relating to such service or assistance—

(i) the mail voter registration application form described in section 9(a)(2), including a statement that—

(I) specifies each eligibility requirement (including citizenship);

(II) contains an attestation that the applicant meets each such requirement; and

(III) requires the signature of the applicant, under penalty of perjury; or

(ii) the office's own form if it is equivalent to the form described in section 9(a)(2),

unless the applicant, in writing, declines to register to vote;

(B) to the greatest extent practicable, incorporate in application forms and other forms used at those offices for purposes other than voter registration a means by which a person who completes the form may decline, in writing, to register to vote in elections for Federal office; and

(C) provide to each applicant who does not decline to register to vote the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.

(7) No information relating to a declination to register to vote in connection with an application made at an office described in paragraph (6) may be used for any purpose other than voter registration.

(b) FEDERAL GOVERNMENT AND PRIVATE SECTOR COOPERATION- All departments, agencies, and other entities of the executive branch of the Federal

Government shall, to the greatest extent practicable, cooperate with the States in carrying out subsection (a), and all nongovernmental entities are encouraged to do so.

(c) TRANSMITTAL DEADLINE-

(1) Subject to paragraph (2), a completed registration application accepted at a voter registration agency shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

(d) ARMED FORCES RECRUITMENT OFFICES-

(1) Each State and the Secretary of Defense shall jointly develop and implement procedures for persons to apply to register to vote at recruitment offices of the Armed Forces of the United States.

(2) A recruitment office of the Armed Forces of the United States shall be considered to be a voter registration agency designated under subsection (a)(2) for all purposes of this Act.

Sec. 8. Requirements with Respect to Administration of Voter Registration

(a) IN GENERAL- In the administration of voter registration for elections for Federal office, each State shall--

(1) ensure that any eligible applicant is registered to vote in an election--

(A) in the case of registration with a motor vehicle application under section 5, if the valid voter registration form of the applicant is submitted to the appropriate State motor vehicle authority not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(B) in the case of registration by mail under section 6, if the valid voter registration form of the applicant is postmarked not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(C) in the case of registration at a voter registration agency, if the valid voter registration form of the applicant is accepted at the voter registration agency not later than the lesser of 30 days, or the period provided by State law, before the date of the election; and

(D) in any other case, if the valid voter registration form of the applicant is received by the appropriate State election official not later than the lesser of 30 days, or the period provided by State law, before the date of the election;

(2) require the appropriate State election official to send notice to each applicant of the disposition of the application;

(3) provide that the name of a registrant may not be removed from the official list of eligible voters except--

(A) at the request of the registrant;

(B) as provided by State law, by reason of criminal conviction or mental incapacity; or

(C) as provided under paragraph (4);

(4) conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters by reason of--

(A) the death of the registrant; or

(B) a change in the residence of the registrant, in accordance with subsections (b), (c), and (d);

(5) inform applicants under sections 5, 6, and 7 of--

(A) voter eligibility requirements; and

(B) penalties provided by law for submission of a false voter registration application; and

(6) ensure that the identity of the voter registration agency through which any particular voter is registered is not disclosed to the public.

(b) CONFIRMATION OF VOTER REGISTRATION- Any State program or activity to protect the integrity of the electoral process by ensuring the maintenance of an accurate and current voter registration roll for elections for Federal office--

(1) shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965 (42 U.S.C. 1973 et seq.); and

(2) shall not result in the removal of the name of any person from the official list of voters registered to vote in an election for Federal office by reason of the person's failure to vote.

(c) VOTER REMOVAL PROGRAMS- (1) A State may meet the requirement of subsection (a)(4) by establishing a program under which--

(A) change-of-address information supplied by the Postal Service through its licensees is used to identify registrants whose addresses may have changed; and

(B) if it appears from information provided by the Postal Service that--

(i) a registrant has moved to a different residence address in the same registrar's jurisdiction in which the registrant is currently registered, the registrar changes the registration records to show the new address and sends the registrant a notice of the change by forwardable mail and a postage prepaid pre-addressed return form by which the registrant may verify or correct the address information; or

(ii) the registrant has moved to a different residence address not in the same registrar's jurisdiction, the registrar uses the notice procedure described in subsection (d)(2) to confirm the change of address.

(2)(A) A State shall complete, not later than 90 days prior to the date of a primary or general election for Federal office, any program the purpose of which is to systematically remove the names of ineligible voters from the official lists of eligible voters.

(B) Subparagraph (A) shall not be construed to preclude--

(i) the removal of names from official lists of voters on a basis described in paragraph (3) (A) or (B) or (4)(A) of subsection (a); or

(ii) correction of registration records pursuant to this Act.

(d) REMOVAL OF NAMES FROM VOTING ROLLS- (1) A State shall not remove the name of a registrant from the official list of eligible voters in elections for Federal office on the ground that the registrant has changed residence unless the registrant--

(A) confirms in writing that the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered; or

(B)(i) has failed to respond to a notice described in paragraph (2); and

(ii) has not voted or appeared to vote (and, if necessary, correct the registrar's record of the registrant's address) in an election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice.

(2) A notice is described in this paragraph if it is a postage prepaid and pre-addressed return card, sent by forwardable mail, on which the registrant may state his or her current address, together with a notice to the following effect:

(A) If the registrant did not change his or her residence, or changed residence but remained in the registrar's jurisdiction, the registrant should return the card not later than the time provided for mail registration under subsection (a)(1)(B). If the card is not returned, affirmation or confirmation of the registrant's address may be required before the registrant is permitted to vote in a Federal election during the period beginning on the date of the notice and ending on the day after the date of the second general election for Federal office that occurs after the date of the notice, and if the registrant does not vote in an election during that period the registrant's name will be removed from the list of eligible voters.

(B) If the registrant has changed residence to a place outside the registrar's jurisdiction in which the registrant is registered, information concerning how the registrant can continue to be eligible to vote.

(3) A voting registrar shall correct an official list of eligible voters in elections for Federal office in accordance with change of residence information obtained in conformance with this subsection.

(e) PROCEDURE FOR VOTING FOLLOWING FAILURE TO RETURN CARD- (1) A registrant who has moved from an address in the area covered by a polling place to an address in the same area shall, notwithstanding failure to notify the registrar of the change of address prior to the date of an election, be permitted to vote at that polling place upon oral or written affirmation by the registrant of the change of address before an election official at that polling place.

(2)(A) A registrant who has moved from an address in the area covered by one polling place to an address in an area covered by a second polling place within the same registrar's jurisdiction and the same congressional district and who has failed to notify the registrar of the change of address prior to the date of an election, at the option of the registrant--

(i) shall be permitted to correct the voting records and vote at the registrant's former polling place, upon oral or written affirmation by the registrant of the new address before an election official at that polling place; or

(ii)(I) shall be permitted to correct the voting records and vote at a central location within the same registrar's jurisdiction designated by the registrar where a list of eligible voters is maintained, upon written affirmation by the registrant of the new address on a standard form provided by the registrar at the central location; or

(II) shall be permitted to correct the voting records for purposes of voting in future elections at the appropriate polling place for the current address and, if permitted by State law, shall be permitted to vote in the present election, upon confirmation by the registrant of the new address by such means as are required by law.

(B) If State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address at a polling place described in subparagraph (A)(ii)(II), voting at the former polling place as described in subparagraph (A)(i) and at a central location as described in subparagraph (A)(ii)(I) need not be provided as alternative options.

(3) If the registration records indicate that a registrant has moved from an address in the area covered by a polling place, the registrant shall, upon oral or written affirmation by the registrant before an election official at that polling place that the registrant continues to reside at the address previously made known to the registrar, be permitted to vote at that polling place.

(f) CHANGE OF VOTING ADDRESS WITHIN A JURISDICTION- In the case of a change of address, for voting purposes, of a registrant to another address within the same registrar's jurisdiction, the registrar shall correct the voting registration list accordingly, and the registrant's name may not be removed from the official list of eligible voters by reason of such a change of address except as provided in subsection (d).

(g) CONVICTION IN FEDERAL COURT- (1) On the conviction of a person of a felony in a district court of the United States, the United States attorney shall give written notice of the conviction to the chief State election official designated under section 10 of the State of the person's residence.

(2) A notice given pursuant to paragraph (1) shall include--

- (A) the name of the offender;
- (B) the offender's age and residence address;
- (C) the date of entry of the judgment;
- (D) a description of the offenses of which the offender was convicted; and
- (E) the sentence imposed by the court.

(3) On request of the chief State election official of a State or other State official with responsibility for determining the effect that a conviction may have on an offender's qualification to vote, the United States attorney shall provide such additional information as the United States attorney may have concerning the offender and the offense of which the offender was convicted.

(4) If a conviction of which notice was given pursuant to paragraph (1) is overturned, the United States attorney shall give the official to whom the notice was given written notice of the vacation of the judgment.

(5) The chief State election official shall notify the voter registration officials of the local jurisdiction in which an offender resides of the information received under this subsection.

(h) REDUCED POSTAL RATES- (1) Subchapter II of chapter 36 of title 39, United States Code, is amended by adding at the end the following:

Sec. 3629. Reduced rates for voter registration purposes

The Postal Service shall make available to a State or local voting registration official the rate for any class of mail that is available to a qualified nonprofit organization under section 3626 for the purpose of making a mailing that the official certifies is required or authorized by the National Voter Registration Act of 1993.'

(2) The first sentence of section 2401(c) of title 39, United States Code, is amended by striking out 'and 3626(a)-(h) and (j)-(k) of this title,' and inserting in lieu thereof '3626(a)-(h), 3626(j)-(k), and 3629 of this title'.

(3) Section 3627 of title 39, United States Code, is amended by striking out 'or 3626 of this title,' and inserting in lieu thereof '3626, or 3629 of this title'.

(4) The table of sections for chapter 36 of title 39, United States Code, is amended by inserting after the item relating to section 3628 the following new item:

'3629. Reduced rates for voter registration purposes.'

(i) PUBLIC DISCLOSURE OF VOTER REGISTRATION ACTIVITIES- (1) Each State shall maintain for at least 2 years and shall make available for public inspection and, where available, photocopying at a reasonable cost, all records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters, except to the extent that such records relate to a declination to register to vote or to the identity of a voter registration agency through which any particular voter is registered.

(2) The records maintained pursuant to paragraph (1) shall include lists of the names and addresses of all persons to whom notices described in subsection (d)(2) are sent, and information concerning whether or not each such person has responded to the notice as of the date that inspection of the records is made.

(j) DEFINITION- For the purposes of this section, the term 'registrar's jurisdiction' means-

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- (1) an incorporated city, town, borough, or other form of municipality;
- (2) if voter registration is maintained by a county, parish, or other unit of government that governs a larger geographic area than a municipality, the geographic area governed by that unit of government; or
- (3) if voter registration is maintained on a consolidated basis for more than one municipality or other unit of government by an office that performs all of the functions of a voting registrar, the geographic area of the consolidated municipalities or other geographic units.

(k) CHANGE OF ADDRESS OF REGISTRANT- Any provision of this Act to the contrary notwithstanding, if State law permits the registrant to vote in the current election upon oral or written affirmation by the registrant of the new address, at the polling place described in section 8(e)(2)(A)(i), or at a central location as described in section 8(e)(2)(A)(ii)(I), or at a polling place described in section 8(e)(2)(A)(ii)(II), voting at the other locations described in section 8(e)(2)(A) need not be provided as option.

