



Greater Cleveland Voter Coalition

3328 Carnegie Avenue, Cleveland, Ohio 44115
Phone: 216.391.0900 x 13 | Fax: 216.391-6959
www.clevelandvotes.org

February 23, 2006

Mr. J. Kenneth Blackwell

Ohio Secretary of State

180 E. Broad Street, 16th Floor

Columbus, Ohio 43215

Dear Secretary Blackwell,

On November 22, 2005, we sent you a letter (attached) documenting in detail that Ohio is not in compliance with section 7 of the National Voter Registration Act of 1993 that requires all State agencies which provide public assistance to offer voter registration or change of address forms to every one of its clients, and to assist them in completing such forms. We offered to work with you to help bring Ohio into compliance. We received instead a response (attached), dated Dec. 20, 2005, from Judith Grady in your office, stating with absolutely no documentation or refutation of our data, that "Ohio is in compliance with the National Voter Registration Act of 1993". Moreover, we attach the report by Ms. Bringman, which documents that in 5 of 6 counties, the Department of Jobs and Family Services offices visited did not fulfill even the least requirement of the NVRA law. In addition, we have learned that Ohio State Law (ORC Sections 3501 and 3503) reinforces the federal NVRA law in all significant respects.

Ohio's failure to enforce the NVRA law has led to the lack of registration or lack of update of voter address for over 100,000 Ohioans, based on a comparison to the performance of Tennessee, in which the Secretary of State's Office has made major efforts, and some conservative assumptions. In the EAC report of June 30, 2005¹, Tennessee had over 16% of registrations from public assistance agencies whereas Ohio had 1.4%. Ohio's lack of compliance negatively affects low-income citizens, Republican, Democrat, and Independent alike. Finally, according to Ms. Bringman's report, both the Ohio Governor's office and the Department of Jobs and Family Services indicated that you were the responsible party for implementing these NVRA provisions, not the individual counties. Furthermore, as the state's chief officer in

¹ "The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office, 2003-2004". <http://www.eac.gov/docs/NVRA-2004-Survey.pdf>

charge of elections, you are *a priori* responsible for statewide compliance with both state and federal law relating to voter registration, and are specifically named in Ohio state law.

Once again, we repeat our offer to work with you to bring Ohio into compliance. For instance, we are ready to offer ideas on best practices and on how they could be efficiently implemented. Registration for the 2006 elections could be materially improved if you were to take action. Therefore, we ask to hear from you by March 16, 2006 that you are committed to making serious efforts to remediate past practices in the next few months.

In the hope that we can work with you on this for the benefit of Ohio voters,

Yours sincerely,

Cynthia Samples

Roslyn Talerico

Co-Convenors,

Greater Cleveland Voter Coalition

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NEIL A. STEINER
neil.steiner@dechert.com
+1 212 698 3822 Direct
+1 212 698 3599 Fax

May 12, 2006

VIA FEDERAL EXPRESS

Mr. J. Kenneth Blackwell
Ohio Secretary of State
180 E. Broad Street
16th Floor
Columbus, OH 43215

Dear Secretary Blackwell:

We, together with the Lawyers' Committee for Civil Rights Under Law and the National Voting Rights Institute, represent the Ohio chapter of the Association of Community Organizations for Reform Now ("ACORN"), a non-partisan organization that advocates for the rights of moderate to low-income people.

We write to notify you that the State of Ohio is not in compliance with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg, *et seq.* (the "NVRA"), and to demand that you immediately take steps to bring Ohio into compliance. As you know, the NVRA requires Ohio to "designate as voter registration agencies . . . all offices in the State that provide public assistance." *See* 42 U.S.C. § 1973gg-5. Each voter registration agency must, at a minimum, (i) distribute mail voter registration application forms; (ii) assist applicants in completing the voter registration forms; and (iii) accept completed voter registration forms and forward them to the appropriate election official. *See id.* § (a)4(A). Moreover, each designated agency must (i) distribute voter registration materials with each application for assistance and with each recertification, renewal or change of address form relating to such assistance; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address, (iii) inform the applicant, in writing, that the decision to register or decline to register to vote will not affect the amount of assistance provided by the agency; and (iv) provide assistance completing the voter registration forms to the same degree the agency provides assistance in completing its own forms. *See id.* § (a)6.

It is clear that Ohio, and your office in particular, is blatantly disregarding its obligations under the NVRA. The Greater Cleveland Voter Coalition brought Ohio's lack of compliance with the NVRA to your attention by letters dated November 22, 2005 and February 23, 2006. Those letters explained in detail that Ohio's failure to comply with the public assistance provisions of the NVRA were systematic, statewide deficiencies that, under the NVRA and Ohio law, were your responsibility to remedy. Indeed, as explained in the report of Anne Bringman, *Is Ohio*

12359559.1

Complying with Mandatory Federal Voting Registration Law, updated January 2006 (a copy of which is enclosed), none of Ohio's six largest counties is in compliance with this aspect of the NVRA. Taking the example of one critical agency covered by the NVRA, the Department of Jobs and Family Services, the offices in five of the six counties did not have any voter registration forms; the sole office that had the forms had relegated them to an unused corner of the office, without any signs advising assistance applicants of the right to register to vote, and the clerk did not know even know the forms were there, much less provide the requisite assistance in completing them. Rather than attempt to correct these obvious shortcomings, your only response has been to deny Ohio's lack of compliance.

More recently, ACORN's observations and discussions with public assistance recipients in Ohio have further confirmed that these agencies are consistently failing to provide the voter registration opportunities required by the NVRA. ACORN has interviewed individuals leaving public assistance agencies in three of Ohio's largest counties, and has found that virtually none of the public assistance applicants has been offered the opportunity to register to vote.

These observations are confirmed by Ohio's own statistical evidence of the source of voter registration applications. For the most recent period available, the 2002-2004 period, from a base of nearly 8 million registered voters, all of Ohio's assistance agencies collectively registered only 38,821 voters (including both new registrations and changes of address). By contrast, Ohio had more than 4.7 million initial applications and recertifications for Food Stamps, and that is just one of many public assistance agencies where voter registration materials are required to be distributed. Looking further into the numbers, 8 of Ohio's 88 counties received fewer than 10 voter registration forms at assistance agencies, and another 34 counties received fewer than 100 forms.

These results are simply unacceptable. Ohio must recognize its obligations under the NVRA and implement changes promptly so that all of Ohio's citizens, including the hundreds of thousands of its citizens who receive public assistance, are able to participate in the upcoming elections.

This letter will serve as a final attempt to obtain compliance with the public assistance provisions of the NVRA and enable all low-income eligible Ohio citizens to register to vote without the need to resort to litigation. Please advise us promptly of the steps you intend to take to remedy Ohio's violations of Section 7 of the NVRA, including, without limitation, (i) the measures you will implement to assure future compliance and (ii) the steps you will take to provide registration opportunities to those who have been denied their rights under Section 7 of the NVRA in past four years. We are prepared to meet with you at your earliest convenience to assist in your development of a comprehensive plan for compliance. In the absence of such a plan, we will have no alternative but to initiate litigation.

We look forward to hearing from you.

Very truly yours,



Neil A. Steiner

cc: Barbara E. Riley, Director, Department of Job and Family Services
J. Nick Baird, M.D., Director, Department of Health
Michael F. Hogan, Ph.D, Director, Department of Mental Health

Enclosure

Is Ohio Complying with Mandatory Federal Voting Registration Law?

**Anne Bringman
440-829-1164**

Upper-Level Writing Credit

**Professor Hoke
Election Law**

Updated: January 2006

Laura¹ is a single mother. She supports three young children on her own and in order to support her family depends on the aid of Cuyahoga County Jobs and Family services. Laura has a high school education, is the fulltime caretaker of her older mother, and her entire family relies on public transportation for travel. As a young, single mother over eighteen, and as a U.S. citizen, Laura is entitled to accessible voter registration at a place she realistically visits and is conveniently located for individuals and families that share situations similar to Laura's. Despite her lack of time, personal transportation, or reliance on the government for aid, Laura is a U.S. citizen entitled to the same accessibility as other more privileged U.S. citizens to voter registration. The National Voter Registration Act² ("NVRA") requires that each State designate as voter registration agencies all offices that provide public assistance in order to make voter registration more equitably accessible to all of the U.S. population. The State of Ohio is in obvious violation of this portion of the NVRA and thus has exposed itself to significant liability. This paper will examine the legal requirements of the NVRA as it applies to public assistance agencies, provide empirical research on Ohio's Department of Jobs and Family Services at the county level, and suggest strategies to bring Ohio in NVRA compliance.

¹ A composite sketch of a woman who would benefit from the NVRA.

² 42 U.S.C.A. § 1973gg-5 (2005). In relevant part: 2) Each State shall designate as voter registration agencies—(A) all offices in the State that provide public assistance; 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, unemployment compensation 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.

From the beginning, it was a continuous struggle for particular groups of our nation's population to gain enfranchisement to vote. Racial minorities, women, and young adults all battled to gain full participation in the voting process. It seemed that the problems of discrimination at the polls would have ceased since all eligible citizens were eventually given the right to vote. Yet, despite the fact that these groups were entitled to vote, many discriminatory practices even inadvertently were still practiced by our State and Federal governments including unreasonable registration deadlines and inaccessible locations with inconvenient hours. Before the implementation of acts such as the NVRA and eventually the Help America Vote Act³ ("HAVA") in 2002, voter registration seemed to be more restrictive and complicated than actual voting.

The NVRA requires each State to designate as voter registration agencies all the offices in the State that provide public assistance, services to individuals with disabilities, drivers license bureaus, and other discretionary voting registration agencies as determined by individual states.⁴ My empirical research and legal analysis upon visiting the Department of Jobs and Family Services in a sample of 6 major counties in the State of Ohio, is that none are in total compliance with the NVRA. It is the responsibility of the Ohio Secretary of State to ensure the county agencies are in compliance with the NVRA. I have suggested strategies and steps that I believe could bring Ohio in compliance with the NVRA and enable individuals like Laura the access to voter registration that the law requires.

³ 42 USCA § 15301 (2005). The Help America vote act was enacted to provide States funding to improve administration of elections and to upgrade technology used in elections (voting machines).

⁴ 42 USCA § 1973gg-5(a)(2),(3).

I. BACKGROUND OF VOTER REGISTRATION PROBLEMS

Participating in elections has been deemed a fundamental right in the United States of America, but has not always been this way.⁵ In the early history of the United States of America all of the people living in this country were not given the right to vote. Even after disenfranchised groups such as women, racial minorities, and young adults fought for and received a voice in their government through the Constitution, many discriminatory and unfair registration laws and procedures still persisted in this country disproportionately affecting underprivileged citizens, including many racial minorities.⁶

From the beginning of our nation's history the right to vote was not universal. The colonies voting requirements were based on a free man's ownership of land carrying over the Parliament's rule in England.⁷ The rationale behind this was that only a property owner would have the amount of interest and understanding in political decisions necessary to produce an informed voter.⁸ It was not until the 1830's that suffrage was expanded to eighty percent of all white males in the United States with most individual states removing the land ownership voting requirement.⁹ Following the Civil War in 1870, the Fifteenth Amendment was ratified. This Amendment provided that no citizen of the United States would be prevented from voting based on "race, color, or previous condition of servitude."¹⁰ Yet, despite the ratification of this Amendment giving all male Citizens the right to vote- many southern states created insurmountable obstacles to black

⁵ *Reynolds v. Sims*, 377 U.S. 533 (1964); *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966). The Court analyzed the right to vote as fundamental, and under the Fourteenth Amendment's Equal Protection, applied strict scrutiny to the fundamental rights implicated in both claims. See generally, *id.*

⁶ H.R. Rep. No. 103-9, at 109 (1993).

⁷ See Marc W. Kruman, *Suffrage*, The Readers Companion to American History, (2005) at http://college.hmco.com/history/readerscomp/rcab/html/ah_083500_suffrage.htm.

⁸ *Id.*

⁹ Stephen J. Wayne, *The Road to the White House 2000: The Politics of Presidential Elections* 68 (2000).

¹⁰ U.S. Const. Amend. XV, § 1.

men that basically guaranteed that African American men would still not be able to participate in the election process.¹¹ These early examples of discriminatory voting registration practices of States were instituting literacy tests, poll taxes and clauses such as the "grandfather clause" and the "understanding clause" to ensure the suppression of the black vote.¹² Further methods that prevented qualified citizens from participating in elections included: district gerrymandering, purposeful closing of black polling places, and above all else, waves of Ku Klux Klan terrorism in the form of lynching and vigilante violence against blacks and white civil rights activists in the South.¹³ These restrictions and obstacles persisted in the South for the next one hundred years. As African Americans continued their struggle to participate in the elections- women were enfranchised as voters. In 1920, the Nineteenth Amendment was ratified stating the right to vote could not be denied based on sex.¹⁴ This amendment was met with resistance because most men grouped women and minorities together; they doubted either group's ability to participate in the electoral process.¹⁵ Steps in the right direction began for racial minorities with the passage of The Civil Rights Act of 1957.¹⁶ Concern over the deprivation of a constitutional right continued to grow during this time leading to the

¹¹ See Wayne, *supra* note 4, at 68.

¹² See Kimberly C. Delk, *What will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 Loy. Pub. Int. L. 133, 139-40 (2001). The "grandfather clause" gave persons an exemption from the property requirement or the education tests who had been able to vote on or before January 1, 1867, or the son or grandson of such person. *Id.* The "understanding clause" required a potential voter to be able to read and share an understanding of a section of the state's constitution and giving an election official total discretion on who should be allowed or rejected to vote. *Id.*

¹³ See Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 105-27 (2000).

¹⁴ U.S. Const. amend. XIX, § 1.

¹⁵ See Kruman, *supra* note 2.

¹⁶ See Delk, *supra* note 8 at 144. This Act gave the United States Attorney General the right to sue states on behalf of those facing discrimination in the voting process. *Id.*

ratification of the Twenty-Fourth Amendment of the Constitution,¹⁷ and the passage of the Voting Rights Act of 1965.¹⁸ This federal statute prohibited institutionalized structures and practices that have the purpose or effect of disenfranchising or diluting the voting power of protected groups.¹⁹ Congress continued to amend the Voting Rights Act for years to come in order to encompass new forms of discrimination that continued to arise. An amendment was passed in 1975 including voting safeguards for "minority language citizens; Hispanic, Asian, and Native-American citizens whom had also fell victim to "new" as well as traditional voter disenfranchisement.²⁰ The passage of the Voting Registration Act had an immediate affect on southern black registration rates, climbing to sixty-two percent of eligible back voters being registered by 1968.²¹ Yet, as time went on the increase in registration leveled off with 60.8% of all eligible blacks registered to vote in 1986.²²

The last group to become enfranchised voters was young adults between the ages of 18-21.²³ This group gained the right to vote following the ratification of the Twenty-Sixth Amendment of the Constitution arising during the Vietnam Era under the principle that those old enough to fight for their country are old enough to participate in their government.²⁴

¹⁷ U.S. Const. amend. XXIV, § 1. "The rights of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

¹⁸ 42 U.S.C. § 1973.

¹⁹ Samuel Issacharoff et al., *When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000*, at ii (2001).

²⁰ See, *supra* note 13.

²¹ See James E. Alt, *The Impact of Voting Rights Act on Black and White Voter Registration inn the South, in Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990*, at 374 (Chandler, Davidson & Bernard Grofman eds., 1994).

²² See *id.*

²³ U.S. Const. amend. XXVI, § 1.

²⁴ See *id.*

Following the struggle each of these groups endured to gain the right to vote the prediction would be that registration and participation has both grow and equalize but this did not become reality. With growing frustration, voting rights advocates began to shift the focus to voter registration practices.²⁵ As of 1989, the majority of states still had restrictive registration practices; forty-six states and the District of Columbia maintained registration deadlines of up to fifty days before an election.²⁶ These deadlines prevented citizens whose interest in an election peaked as the election day approached from casting a ballot, as by then it was likely too late to register.²⁷ A major part of the registration problem was also the fact that registration was mostly limited to a single central location in a county—often the county courthouse and only available during working hours.²⁸ Besides registration times mirroring working hours, significant travel required to reach registration sites, and continuing intimidation by local registrars and officials continued to impede voter registration.²⁹ Registering to vote was perceived to be more complicated than voting; for instance, in the 1988 general election 37% of nonvoters stated that they did not vote because they were not registered, this by far was the most important reason given for not voting.³⁰

Despite the efforts to ensure enfranchisement of all qualified citizens, reform was needed. Several attempts at reform were attempted including Senate Bill 2574 introduced as the “National Voter Registration Act” in 1972: this bill simplified registration forms to a postcard that would be available at United States Post Offices and

²⁵ See Mark Thomas Quinlivan, *One Person, One Vote Revisited: The Impending Necessity of Judicial Intervention in the Realm of Voter Registration*, 137 U. Pa. L. Rev. 2361, 2363 (1989).

²⁶ *Id.* at 2372.

²⁷ See *id.* at 2372-73.

²⁸ See *id.*

²⁹ See *Id.* at 2375.

³⁰ *Id.* at 2376, n. 100.

sent to every household in the United States before each federal election.³¹ The cards were proposed to be returned no later than thirty days prior to the election for processing and signature verification would have been required at the polls to prevent fraud, but this bill was defeated in the Senate with the reasoning that the protections from fraud were not sufficient.³² Similar legislation was attempted throughout the seventies and eighties; President George Bush vetoed the last defeated attempt in 1991.³³ These pieces of proposed legislation were more likely vetoed because of the uncertain effect they would have on the electorate not exclusively over fraud concerns.³⁴ Especially concerned were Republicans and Southern Democrats who feared this type of bill would create a larger "liberal" electorate.³⁵

Voter participation rates strongly correlate to socioeconomic factors, especially education and income; as a result, minority groups and the poor have experienced lower rates of participation.³⁶ Minorities and the poor who theoretically should have had the largest interest in social change remained disproportionately disconnected from the political process.³⁷ In order to combat these factors and truly attempt to give all qualified citizens a voice in their government the National Voter Registration Act of 1993 ("NVRA") was President Clinton implemented through Executive Order on September

³¹ See *Congressional Quarterly Almanac* 28, at 337 (1972).

³² See *id.*

³³ See generally, Dalk, *supra* note 8, at 148-51. Bill 250 was the proposed "National Voter Registration Act of 1991" wanted to introduce: voter registration opportunities at the Drivers License Bureau and simplified postcard applications made available at federal and state government agencies. This was the immediate precursor to the 1993 National Voter Registration Act and the first attempt to make it through both houses.

³⁴ Quinlivan, *supra* note 21, at 2386-87.

³⁵ *Id.*, at 2387.

³⁶ See *id.* at 2386.

³⁷ *Id.*

12, 1994 the NVRA in an attempt to give all qualified citizens a voice in their government.³⁸

II. THE NATIONAL VOTER REGISTRATION ACT OF 1993

The NVRA was enacted by Congress to: (1) establish procedures in order to increase the number of eligible citizens who register to vote in elections for Federal office; (2) to make it possible for Federal, State, and local governments to implement this Act in ways that will enhance the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure more accurate and current voter registration rolls are maintained."³⁹

This Act made several changes to the voting registration requirements each state was required to meet. First, the "motor voter" provision required States to allow citizens to register to vote at the same time they register or renew their driver's license.⁴⁰ The second provision of the act mandates that States provide voter registration opportunities by mail.⁴¹ The third and most pertinent provision of the NVRA to this paper requires each State to designate as voter registration agencies: all offices in the state that provide public assistances, state-funded programs to individuals with disabilities.⁴² In addition to the "mandatory" voter registration agencies listed above, the state is required to name additional offices as decided by individual states that will also serve as voter registration agencies. The NVRA lists possible examples including public libraries, public schools,

³⁸ Exec. Order No. 12,926, 59 Fed. Reg. 47,227 (Sept. 13, 1994). The bill was signed into law the previous year on May 20, 1993. See, *supra* note 14; See *Acorn v. Edgar*, 880 F.Supp. 1215 (1995).

³⁹ 42 U.S.C.A. § 1973gg(b)(1), (2); See *Disabled in Action of Metropolitan New York v. Hammons*, 202 F.3d 110, 114 (2d Cir. 2000); *National Coalition for Students with Disabilities v. Taft*, 2002 WL 31409443 (S.D. Ohio Aug. 2, 2002).

⁴⁰ 42 U.S.C.A. § 1973gg-3; *Hammons*, 202 F.3d at 114.I

⁴¹ *Id.* at § 1973gg-4.

⁴² *Id.* At § 1973gg-5(a)(2),(3).

offices of city and county clerks, fishing and hunting license bureaus, government revenue offices, and unemployment offices.⁴³ This statute also provides that all departments, agencies and other entities of the Federal Government shall aid the States as much as is practical for them in implementing successful agency-based registration.⁴⁴

Each of the mandatory and discretionary voter registration agencies must meet additional standards besides the services they provide. These agencies are to distribute mail voter registration applications with each application for such service or assistance that the agency also provides unless the applicant in writing declines to register to vote.⁴⁵ This statute also necessitates the agency to have a form in their office asking, "If you are not registered to vote where you live now, would you like to apply to register to vote here

⁴³ *Id.*

⁴⁴ *Id.* at § 1973gg-5(b).

⁴⁵ *Id.* at § 1973gg-5(a)(4)(A). This provision specifies that the distribution must be in accordance with paragraph (6) of the statute which states in its entirety: (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 1973gg-7(a)(2) of this title, 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 1973gg-7(a)(2) of this title, unless the applicant, in writing, declines to register to vote; (B) provide a form that includes--(i) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";(ii) if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";(iv) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and (v) the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____", the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; 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.

today?"⁴⁶ If the agency provides public assistance they must also accompany the above question with the statement, "[a]pplying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."⁴⁷ In addition, employees must be able to offer assistance to applicants in completing the voter registration forms and accept completed forms for transmittal to the appropriate State election official.⁴⁸

The NVRA was required to be implemented by individual states by January 1, 1996, giving the states a significant amount of time to institute a plan for implementation.⁴⁹ This act was met with resistance from the start. Twelve states brought cases against the NVRA resulting in the affirmation of the NVRA's constitutionality and an order for state compliance.⁵⁰ A major example of a lawsuit that challenged the NVRA was in California; it alleged that the NVRA violated the Tenth Amendment because it "commandeers state agencies to administer a federal election program."⁵¹ The Court found in favor of the federal government stating that the NVRA was constitutional under Article 1, Section 4, of the Constitution that allows Congress the power to regulate the "time, place, and manner of the elections."⁵²

Besides affirming the constitutionality of the NVRA there has been limited further litigation defining or putting limitations on the power of the NVRA. In addition,

⁴⁶ See *id.* at § 1973gg-5(a)(6).

⁴⁷ See *id.*

⁴⁸ See *id.* at § 1973gg-5(a)(4)(A).

⁴⁹ See *id.* at § 1973gg.

⁵⁰ See *Delk, supra* note 8, at 154 n. 120. The twelve states that challenged the constitutionality NVRA were: Rhode Island, California, Kansas, Louisiana, Michigan, Mississippi, New York, Pennsylvania, South Carolina, Vermont, Virginia and Illinois. *Id.*

⁵¹ *Wilson v. California*, 878 F. Supp. 1324, 1326 (N.D. Cal. 1995)

⁵² See U.S. Const. art. I, § 4 which provides, "the Times, Places, and Manner of holding elections ... shall be prescribed in each State... but the Congress may at any time by law make or alter such Regulations;" *Wilson*, 878 F. Supp at 1328.

there is limited information on the penalties that an individual state or agency faces for noncompliance with the NVRA. In *Disabled in Action of Metropolitan New York v. Hammons*, the court specified that under the NVRA the term “public assistance” should be construed broadly to include agencies not only involved in the payment process but the application process as well.⁵³ This court rejected the argument that state and city offices in New York that provided applications or medical services to Medicaid patients were considered “public assistance” agencies in the NVRA.⁵⁴ This court further explained that in distinguishing between mandatory and discretionary voting registration offices, the NVRA separates between state and local offices that provide public assistance and federal and nongovernmental offices.⁵⁵ The court found that nongovernmental hospitals, nursing homes, clinics, community-based organizations and other offices, which provided assistance with Medicaid applications, were not mandatory voter registration agencies under the requirements of the NVRA because they were state actors who were delegated essential governmental functions.⁵⁶ A sufficiently close nexus between the state and those agencies is needed to prove their eligibility to be considered a mandatory voting registration agency.⁵⁷

In defining those agencies that are mandatory voting registration agencies, the court relies on Congressional conference report which states, “[b]y public assistance agencies we intend to include those *State* agencies in each State that administer or

⁵³ See *Hammons*, 202 F.3d at 117.

⁵⁴ See *Id.*

⁵⁵ See *Id.* at 119-24.

⁵⁶ *Id.* In addition, this court ruled that public schools were not mandatory voting registration agencies because they were listed as one of the institutions that could be designated as a discretionary voting registration agency. *Id.*

⁵⁷ *Id.*

provide services under the food stamp, Medicaid, the Women Infants and Children (WIC), and the Aid to Families with Dependent Children (AFDC) programs."⁵⁸

Voter registration is the responsibility of the Secretary of State in Ohio.

However, additional responsibility for complying with the NVRA lies with the state agency that is designated as the mandatory voting registration agency and not the local or county branch.⁵⁹ The state agency is responsible to ensure that the county or local office comply with NVRA requirements.⁶⁰ This was not expressly mentioned in the NVRA but the Court in *New York* ruled it would be unreasonable to permit mandatory voting registration agencies to shed its NVRA responsibilities because it chose to delegate its day-to-day services to local agencies.⁶¹

The avenues available to penalize non-compliance with the NVRA and empower private citizens to ensure they are not denied proper access to voter registration are through 42 U.S.C. § 1973gg-9 which: (a) authorizes the Attorney General to bring suit in behalf of the United States to enforce the NVRA: "The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this subchapter." 42 U.S.C. § 1973 gg-9(b) authorizes a private right of action for "a person who is aggrieved by a violation."

Although problems and obstacles existed to implement NVRA into each individual state, primarily the lack of federal funding provided to the states for implementation; NVRA compliance is required. When Congress passed the NVRA considered the "potential financial burdens" that would face states and balanced that

⁵⁸ H.R. Conf. Rp. No. 103-66, at 19 (1993), (emphasis added), reprinted in 1993 U.S.C.C.A. N. 140, 144; *Hammons*, 203 F.3d at 124.

⁵⁹ See *United States v. New York*, 266 F.Supp.2d 73 (2003).

⁶⁰ See *Id.*

⁶¹ See *Id.*

against the right of eligible voters to have access to “meaningful participation in the federal electoral process.”⁶² Both the NVRA and the litigation that defines it clearly leave no doubt that “public assistance” agencies are required to provide voter registration; and the Ohio Department of Jobs and Family Services is a mandatory voter registration agency under the NVRA.⁶³

III. OHIO'S COMPLIANCE WITH THE NVRA

The NVRA has been effective in Ohio since 1996.⁶⁴ Thus, the Act permitted the State of Ohio nearly two additional years following President Clinton's Executive Order to plan, implement and comply with the NVRA.

Nearly ten years later, November of 2005, the State of Ohio persists in non-compliance with certain critical portions of the NVRA. Most notably five of the six counties I visited did not have any voter registration forms. The only location that had the registration form had no forms informing the public of their opportunity to register to vote, no assistance by the clerk with the form as she was unaware the form was at the agency until it had already been found by my colleague in a deserted corner.⁶⁵ Over the past few months I have investigated whether the mandatory provision that voter registration forms are available at state public assistance agencies has been met by the State of Ohio.⁶⁶ To gather empirical data I visited the Department of Jobs and Family Services (“CDJFS”) of 6 of Ohio's 88 counties. Not a single one complies completely with the federal statute.

⁶² *National Coalition for Students with Disabilities Educ. And Legal Fund v. Scales*, 150 F.Supp.2d 845, 855 (D.Md. 2001); *New York*, 255 F.Supp.2d at 80; *See Edgar*, 880 F.Supp. 1215.

⁶³ 42 U.S.C. § 1973 gg-5.

⁶⁴ *National Coalition for Students with Disabilities v. Taft*, 2002 WL 31409443 (S.D. Ohio Aug. 2, 2002). The effective date of the Act varies as to the methods of voter registration.

⁶⁵ *See Mahoning County Department of Jobs and Family Services*, p. 14-15.

⁶⁶ 42 U.S.C. § 1973 gg-5. (discussed *supra*, 7-8).

A. What is legally required by the NVRA for the CDJFS?

In order to be in compliance with the NVRA, a public assistance agency such as the CDJFS must meet the following key requirements: (1) the state must provide voter registration forms all offices in the State that provide public assistance as well as additional agencies assigned at the discretion of the state; (2) opportunity to register to vote with each application for any service or assistance⁶⁷ associated with the agency or to decline registration; (3) a form that advertises the presence of the forms by asking, "If you are not registered to vote where you live now, would you like to apply to register to vote here?"; (4) a statement on this form which conveys that applying or declining to register will not affect their amount of assistance; (5) employees of the agency must be able to offer assistance to applicants in completing the voter registration forms; (6) acceptance and transmittal of completed forms to the appropriate State election official.⁶⁸

B. Are the County Departments of Jobs and Family Services legally in Complying with the NVRA?

The State of Ohio is required to provide voter registration forms at each county's Department of Jobs and Family Services under the "public assistance agency" provision of the NVRA.⁶⁹ Besides those mandated by the NVRA the discretionary agencies chosen by the State of Ohio are: public libraries, state supported colleges and universities, each county treasurer's office, and the Office of the Secretary of

⁶⁷ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2001-2002: by the Federal Election Commission*, p. 14, (2003) available at http://www.cac.gov/election_resources.asp?format=none. This includes any recertification, renewal or change of address associated with the service.

⁶⁸ 42 USCA § 1973gg-5.

⁶⁹ *Id.*

State.⁷⁰ None of the County Departments of Jobs and Family Services agencies that I visited provided the form along with any type of assistance. This made five of the six counties in violation of the central requirement of the NVRA. Mahoning CDJFS was the only agency that had a form in the office; but it was in a deserted corner of the office. Prior to locating the form in the corner, the clerk who waited on me informed me that they did not have any voter registration forms. Even though this agency had a form, the form was difficult to locate, there was no form explaining the opportunity to register to vote was available or that it would not affect an individual's public assistance. Additionally, the clerk told me they didn't have any voter registration forms; I believe that legally violates the employee assistance with the form requirement as well. Despite the Mahoning County CDJFS having the voter registration form, they violated every other requirement.

The Delaware CDJFS supplied a sample voter registration form to assist individuals with registering to vote but did not meet any other requirements of the NVRA including not having any forms for individuals to actually fill out. Lastly, Lake County fulfilled the requirement of having a form that offered an individual the opportunity to register to vote posted on their front window, but did not actually have any voter registration forms.

Half of the agencies presented their own unsuccessful attempt to comply with the NVRA and the other half made no attempt to comply at all violating every requirement of the public assistance voter registration provision of the NVRA.

⁷⁰ *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office: A Report to the 109th Congress by the United States Election Assistance Commission, Table 7, Part VI (June 2005) available at http://www.eac.gov/election_resources.asp?format=none.*

C. Empirical Research Sample at Six County Departments of Jobs and Family Services

1. Mahoning County Department of Jobs and Family Services⁷¹

This was the first county that I visited in order to take a small sample of Ohio's compliance with the NVRA. This office was located in a low income neighborhood of Youngstown. Upon entering the office I waited in line in order to determine if the office a) had the required voter registration application form and b) if so, was the clerk aware of and educated about the form enough to assist me in filling it out. Because of the large size of the office, a fellow law student who had accompanied me on the trip to Youngstown explored the rest of the office. She was looking for a form or sign; which specified that voter registration was available and/or the actual application forms. From where I was standing in line, I was unable to see any such sign or form promoting voter registration.

When I reached the front of the line, I was met with a polite and friendly female clerk who informed me that they did not have voter registration forms. It turns out my colleague did find forms in a remote corner of the office that was comparable to a small dead end hallway. As she informed me of this the clerk who had waited on me as well as the Supervisor of the department stepped out to inform me emphatically that they did have the forms located in that remote corner. I could infer that the clerk herself was unaware of the presence of the forms until informed by her supervisor. The forms were located in a deserted corner of the office in a plastic shelf with no display advertising

⁷¹ John K. Zachariah, Director, 709 North Garland Avenue (do not mail to this address), Mail to P.O. Box 600, Youngstown, Ohio 44501-0600. Hours of operation: 7:15 a.m. - 4:30 p.m.

their presence. It was lost among many other forms including Medicare and "right to a hearing" forms.

Although the Mahoning CDJAFS did have the voter registration application forms I did not find them in compliance with the NVRA. The clerks were unaware of the presence of the form, which would make it impossible for them to assist an applicant in filling one out. In addition, the form was not accessible nor was there any form or display potential applicants of the possibility of registering to vote. The form could not have been farther out of the public's view and clearly not in compliance with the NVRA.

2. Lorain County Department of Jobs and Family Services⁷²

The Lorain CDJFS did not have the form at all. The clerk that waited on me informed me that, "they used to have them." She called a superior on the phone to verify that no one in the building had the forms while I observed the waiting area that did not have any sign or presence of a form indicating that a qualified citizen could register to vote at this agency. The clerk then called me back to her window and confirmed that they had no registration forms but I could go to the Board of Elections several streets away.

3. Franklin Department of Jobs and Family Services⁷³

The approach to the Department of Jobs and Family Services is slightly different in Franklin County. The Franklin CDJFS was not centrally located but rather had satellite offices called Community Opportunity Centers in several different neighborhoods. I visited the North Community Opportunity Center. As at each place previous, I waited in line and was helped by a generally courteous clerk but they also did

⁷² Mary Lou Golski, Director, 42485 North Ridge Road, Elyria, Ohio 44035-1057, Hours of operation: 7:30-4:30 Mon, Wed, Thurs and Friday and 7:30-6:30 on Tuesdays.

⁷³ Douglas Lumpkin, Director, 345 East Fifth Avenue, Columbus, Ohio 43201

not have any voter registration forms. Similarly to the Lorain CDJFS, the clerk informed me that they too used to have the Registration forms and searched for awhile thinking maybe they still had a few. He was unsuccessful in his search and informed me that they did not have any registration forms at their office.

4. Delaware County Department of Jobs and Family Services⁷⁴

My next visit was to the growing county of Delaware, located directly above Franklin County. The Delaware CDJFS was a fairly small office that actually had wooden shelves with a variety of forms including a filled out sample of a mail voter registration application. However, there were no actual blank forms to fill out in the shelves. When I questioned the clerk for more forms, she informed me they did not have any but I could find some on the bottom floor of the same building which housed the Delaware County Board of Elections. Of the entire sample, I found this county to be the closest to compliance with the NVRA. Yet, this is because of the coincidence of being located in the same building as the Board of Elections; but the sample ballot was a more informative display of assistance with the form than any other county produced.

5. Lake County Department of Jobs and Family Services⁷⁵

The Lake CDJFS was also not in compliance with the NVRA. This office did not have any mail voter registration application forms. However, interestingly, this office did have a display paper decorated with an American flag graphic that was easily viewable while waiting in line which advertised the presence of voter registration forms. However, the form itself was not available.

⁷⁴ Mona Reilly, Director, 140 N. Sandusky (2nd floor), Delaware, Ohio 43015-1789, Hours: 8:00-4:45 M,W,Th,F, 8:00-7:00 Tuesday

⁷⁵ Art Iacofano, Director, 177 Main Street, Painesville, Ohio 44077-9967. Hours of operation: 8-4:30, M,T,Th,F, 7:30-6:00 W.

6. Cuyahoga County Department of Jobs and Family Services

The last county office in my sample was Cuyahoga CDJFS⁷⁶ that was blatantly not in compliance with the NVRA. This office did not offer any display or commentary as to why they did not have any voter registration forms. The clerk simply informed me that they did not have any forms at their office and there was no display or sign regarding the right to register to vote there.

D. Response by Governor, Secretary of State, and Ohio Department of Jobs and Family Services

After inquiring at the office of the current Governor Bob Taft, Secretary of State Kenneth Blackwell, and the Ohio Department of Jobs and Family Services the majority of responsibility for ensuring the implementation and compliance with this provision of the NVRA was given to the Ohio Secretary of State by each of these agencies. However, through court rulings and statutory interpretations-a portion of responsibility for compliance is also attributed to the Ohio Department of Jobs and Family Services. It is unreasonable to expect each local agency to be responsible to comply with the NVRA because the local agency carries out the day-to-day operations of the state agency.⁷⁷ However, despite this responsibility the Ohio Department of Jobs and Family Services and Governor's office referred me to contact the Secretary of State's office. Once I reached the Secretary of State, they put me in contact with their Manager of Voter Services, Chris Abbruzzese. He informed me that they oversee this mandatory provision of the NVRA by relying on the local County Departments of Jobs and Family Services to

⁷⁶ Joseph Gauntner Director, Virgil E. Brown Center, 1641 Payne Ave., Room 520, Cleveland, Ohio 44114.

⁷⁷ See, *supra* note 61.

call an 800 number provided by the Secretary of State's office and they will then send out more forms to the requesting agency. All of the responsibility to ensure statewide compliance is put in the hands of 88 separate and distinct counties. The state officials responsible, the Secretary of State and the Ohio Department of Jobs and Family Services do not take any active steps to ensure that the public assistance agencies in the State comply. This is reflected in the daily practices of the respective County Departments of Jobs and Family Services each meeting a different number of requirements of the NVRA but none meeting all. Some in total non-compliance, others meeting only one requirement, and only one agency even having voter registration forms at the office.

IV. STRATEGIES FOR OHIO TO ACHIEVE NVRA COMPLIANCE

The Federal Election Commission and following HAVA, the Election Assistance Commission has tracked the impact of the NVRA on voter registration.⁷⁸ Public assistance agencies in the United States accounted for 4.37% (1,546,671) over half of all agency registration between 1997-98.⁷⁹ As agency registration continues it is steadily responsible for at least a million new voters each reporting period; public assistance agencies accounted for 2.88% (1,314,500) of the total voter registration applications in 1999-2000⁸⁰ and 2.67% of total registration in 2001-02.⁸¹ These numbers are not staggering but continue to be steady and with strong commitment and enforcement by

⁷⁸ The full reports are available at http://www.eac.gov/election_resources.asp?format=none

⁷⁹ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1997-1998: by the Federal Election Commission, p. 2, (1999)* available at http://www.eac.gov/election_resources.asp?format=none. Agency registration accounted for 8.22% (2,909,569) of voter registration applications during this time period.

⁸⁰ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1999-2000: by the Federal Election Commission, p. 2, (2001)* available at http://www.eac.gov/election_resources.asp?format=none.

⁸¹ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2001-2002: by the Federal Election Commission, p.2, (2003)* available at http://www.eac.gov/election_resources.asp?format=none.

individual states' election officials, I am convinced they would rise. As these statistics illustrate, public assistance agencies provide accessible voter registration for over a million individuals in this country every year, that is significant number in the steps towards accomplishing equality in vote registration that the NVRA was enacted to achieve.

In order to bring Ohio in compliance with the NVRA, attention will need to be brought to this issue of voter registration and specifically the lack of current availability of voter registration forms at Ohio's public assistance agencies such as the County Departments of Jobs and Family Services. I believe the problem in Ohio is not due to difficulty in implementation but may be somewhat politically motivated or more likely just not a priority of our current Secretary of State's administration. The majority of the clerks in my sample informed me that they had the mail voter registration forms at one time do not have them now. As mentioned above, the first step needed to fix the problem in Ohio is for citizens to demand the leadership in this state be accountable to enforce the NVRA. The more attention brought to this problem, the quicker and more effective the response from our elected officials will be.

Second, Ohio should avidly pursue any federal funding that could aid in the cost of complying with the NVRA. Specifically, they should explore funding that has been allotted to aid states in the administration of elections through HAVA. Third, Ohio should create specific materials and make them available to agencies to purchase and/or use that are in line with the requirements of the NVRA. They should provide forms, and a standard poster or similar display for each agency to have at their office advertising that

the opportunity to register to vote is available. Most every day citizens would be unaware of this service unless a poster or sign was there to inform them.

A training program should be instituted for the local agency clerks where the importance of complying with the NVRA is explained- as well as how to aid an applicant in filling out a registration form. A friendly and informed clerk would be an asset to our state agencies in successfully complying with the NVRA. Many States such as Oklahoma have a training video and program for human services personnel in order to help them efficiently oversee voter registration activities at their agencies.⁸²

Most importantly in Ohio, the responsibility of ensuring that Ohio's County Departments of Jobs and Family Services is complying with the NVRA should be put where it is legally required to be. The responsibilities belong in the hands of the Secretary of State and the State agency itself and they should not make 88 local counties responsible for statewide compliance. Ohio cannot depend on 88 individual and distinct agencies to comply with a federal statute, and it is unreasonable to have that expectation. A staff member of both the Secretary of State and the ODJFS should be accountable for ensuring that Ohio has an efficient system in place for agencies to order voter registration forms, signs advertising the service is available at the office, and training programs for local agency employees. In addition, a quality maintenance program for agency voter registration where an official from the Secretary of State would conduct onsite visits to verify compliance on a continuous basis.⁸³

Broader steps for the nation would be for Congress to ensure that proper funding is allotted to aid individual state governments with compliance with the NVRA. . I

⁸² See *Id.* at 15.

⁸³ *Id.* The state of Washington has this type of quality maintenance program.

realize that there are many demands for federal funds, but they should budget funding to back up what they have statutorily enacted. For example, in public assistance agencies in Ohio, Congress should budget money to provide these agencies with forms, a suitable registration display and clerk training to assist with the forms. Federal funding would enable a state without extra money such as Ohio to not have to borrow from other programs, etc. in order to comply with the NVRA.

In addition, I would also introduce stricter penalties for non-compliance such as withholding federal funding for other areas such as highway improvements, etc., areas that officials who are not supportive of the NVRA would become more concerned and more likely to comply the statute.

Lastly, I think the United States should consider taking advice from other democratic countries about their approach to voting who have a much larger participation rate.⁸⁴ They approach voting as a collective responsibility of both the government and the citizens. These countries either have no registration but use citizen identity cards or governmental records.⁸⁵ Some nations even impose penalties on citizens who do not exercise their right to vote. The United States is the only western nation that places the entire burden of registration on the individual.⁸⁶

V. CONCLUSION

The NVRA was enacted in order to ensure that individuals like Laura, the individuals in this country most in need of a voice, are given an equitable opportunity to participate in our election process. It was a struggle for all the currently eligible citizens in our country to gain the right to vote and a battle persists with equalizing registration

⁸⁴ See Quinlivan, *supra* note 21, at 2376.

⁸⁵ See *Id.*

⁸⁶ See *Id.*

practices in our country. The NVRA was enacted to equalize this opportunity for the more disadvantaged citizens of our country; but the NVRA cannot be successful unless States such as Ohio implement and continuously ensure that that provisions such as requiring public assistance agencies to provide voter registration forms are being met. In my sample of six of our state's eighty-eight counties none of the counties met all the requirements, and five of the counties did not have a voter registration form in the office. This leads to an assumption that as a state we are not currently complying with a federal statute that was enacted nearly ten years ago.

If Ohio can take several small steps including a more efficient distribution and replacement of voter registration applications program, a standard sign to advertise the service, and a basic training program for agency employees complying with the NVRA could be achieved. In Ohio, the NVRA cannot be successful unless we comply with the necessary requirements. Until then, Ohio is not providing the access to voter registration that the NVRA has entitled to Laura, and Ohio's other disadvantaged citizens.

C

NEIL A. STEINER

neil.steiner@dechert.com
+1 212 898 3822 Direct
+1 212 698 0480 Fax

July 17, 2006

BY TELECOPY AND FEDERAL EXPRESS

Mr. J. Kenneth Blackwell
Ohio Secretary of State
180 E. Broad Street
16th Floor
Columbus, OH 43215

Dear Secretary Blackwell:

We write in response to the May 26, 2006 letter from Judy Grady of your office to Cynthia Samples and Roslyn Talerico of the Greater Cleveland Voter Coalition, on which we were copied. The May 26 letter responds to Ms. Samples and Ms. Talerico's letter of February 23, 2006, and based on an email message we received from Linda Brown of your office, also purports to be a response to our letter of May 12, 2006. Rather than expressing any willingness to comply with your obligations under Section 7 of the National Voter Registration Act, the May 26 letter makes clear that your office and the State of Ohio have no intention of complying with those obligations absent a court order. This letter is our final effort to obtain compliance with the statute without resort to litigation.

The May 26 letter simply ignores many of the specific deficiencies in Ohio's compliance with Section 7 of the NVRA detailed in our May 12 letter, another copy of which is enclosed. And, where it does attempt to respond, the May 26 letter relies on factually deceiving and legally irrelevant statistics to assert that Ohio must have substantially complied with its obligations because a high percentage of Ohio's vote-eligible citizens are in fact registered to vote.

As an initial matter, the May 26 letter denies that you are the Ohio official responsible for compliance with the NVRA because "[n]owhere in the NVRA is it stated that the responsibility for compliance rests solely with the Secretary of State." (May 26 letter at 4.) This argument strains credulity. Section 1973gg-8 of the NVRA provides that "[e]ach State shall designate a State officer or employee as the *chief election official* to be responsible for coordination of State responsibilities [under the NVRA.]" 42 U.S.C. §§ 1973gg-8 (emphasis added). And, Ohio has designated you as the responsible state official -- Section 3501.04 of the Ohio Revised Code provides that the Secretary of State is "the *chief election officer* of the state, with such powers and duties relating to the registration of voters" ORC § 3501.04 (emphasis added). Indeed, even the May 26 letter acknowledges that Section 3501 makes you "the *chief elections officer* for the state." (May 26 letter at 4.) Moreover, at least one federal court has already held that the

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U.S. Austin Boston Charlotte Harrisburg Hartford New York Newport Beach Palo Alto Philadelphia Princeton
San Francisco Washington DC EUROPE Brussels London Luxembourg Munich Paris

Secretary of State is Ohio's chief election official responsible for compliance with the NVRA. See Miller v. Blackwell, 348 F.Supp.2d 916, 922 (S.D. Ohio 2004).

The May 26 letter also asserts that any violations of the NVRA as found in Anne Bringman's research report must be immaterial because Ohio purportedly has more than 7.7 million registered voters out of 8 million vote-eligible citizens, or an approximately 96% voter registration rate. But that statistic is deceptive and misleading, for two reasons. First, Michael McDonald of George Mason University calculates Ohio's 2004 vote-eligible population at slightly more than 8.5 million, not 8 million; hence, even accepting that there are 7.7 million registered voters, the voter registration percentage is only 90%, not 96%. Second, the 7.7 million registered voters itself overstates the actual number of registered voters because the number includes inactive voters -- a portion of whom have moved to another state, moved within the state and re-registered elsewhere or are deceased -- in the ranks of registered voters. If this portion of the inactive voters were removed, the percentage of vote-eligible citizens who are registered would drop even further.

Importantly, even that statistic masks the underlying problem that Section 7 of the NVRA was designed to remedy: There is a disproportionately low voter registration rate among low-income citizens in Ohio. Thus, while the voter registration percentage for all Ohio citizens might be 90%, among those citizens who are likely to utilize the services of public assistance agencies it is a paltry 68%, whereas the voter registration rate is approximately 92% for the most affluent segment of the population. Indeed, these are precisely the citizens whose right to vote that Section 7 of the NVRA was designed to protect. See 42 U.S.C. §1973gg (a)(3) ("Congress finds 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 racial minorities."); see also Condon v. Reno, 913 F. Supp. 946, 959 (D.S.C. 1995) ("Congress was concerned not only with increasing voter participation, but increasing it across the board, so that all segments of society would have equal opportunities. . . . Congress specifically chose to mandate a comprehensive group of agencies as registration sites because, whereas any one of them might over-represent a part of the population, the combination would insure that all parts of the population were afforded the enhanced registration opportunities crated by the NVRA.").

As a legal matter, it is irrelevant whether Ohio has a relatively high or low voter registration rate where, as here, it is clear that the State is ignoring its obligations under the NVRA. As the court in Condon held, even a high voter registration rate is no defense to a failure to comply with the NVRA. See Condon, 913 F. Supp. at 956-57 ("South Carolina sought to support its constitutional arguments with evidence intended to prove that the NVRA is both a costly burden on the State of South Carolina and unnecessary because registration is already easy enough in South Carolina. . . . South Carolina also presented evidence regarding the accessibility of the state's current registration procedures and programs. Although the Court holds that this evidence is irrelevant to

the constitutional issues, it is significant that this evidence served to sustain Congressional findings and purposes underlying the NVRA and demonstrated South Carolina's non-compliance.")

In light of the fast-approaching elections, it is imperative that your office immediately honor its responsibility, as Ohio's chief elections official, to ensure compliance with the NVRA. We are prepared to meet with you in the next two weeks to address the specific steps and follow-up monitoring that need to be undertaken to obtain such compliance. Failing resolution of this issue, however, we will have no alternative but to commence litigation.

Sincerely,



Neil A. Steiner

cc: Judy Grady (by telecopy)

May 12, 2006

VIA FEDERAL EXPRESS

Mr. J. Kenneth Blackwell
Ohio Secretary of State
180 B. Broad Street
16th Floor
Columbus, OH 43215

Dear Secretary Blackwell:

We, together with the Lawyers' Committee for Civil Rights Under Law and the National Voting Rights Institute, represent the Ohio chapter of the Association of Community Organizations for Reform Now ("ACORN"), a non-partisan organization that advocates for the rights of moderate to low-income people.

We write to notify you that the State of Ohio is not in compliance with the National Voter Registration Act of 1993, 42 U.S.C. § 1973gg, *et seq.* (the "NVRA"), and to demand that you immediately take steps to bring Ohio into compliance. As you know, the NVRA requires Ohio to "designate as voter registration agencies . . . all offices in the State that provide public assistance." See 42 U.S.C. § 1973gg-5. Each voter registration agency must, at a minimum, (i) distribute mail voter registration application forms; (ii) assist applicants in completing the voter registration forms; and (iii) accept completed voter registration forms and forward them to the appropriate election official. See *id.* § (a)4(A). Moreover, each designated agency must (i) distribute voter registration materials with each application for assistance and with each recertification, renewal or change of address form relating to such assistance; (ii) inquire of the applicant, in writing, whether he or she would like to register to vote or change his or her voter registration address; (iii) inform the applicant, in writing, that the decision to register or decline to register to vote will not affect the amount of assistance provided by the agency; and (iv) provide assistance completing the voter registration forms to the same degree the agency provides assistance in completing its own forms. See *id.* § (a)6.

It is clear that Ohio, and your office in particular, is blatantly disregarding its obligations under the NVRA. The Greater Cleveland Voter Coalition brought Ohio's lack of compliance with the NVRA to your attention by letters dated November 22, 2005 and February 23, 2006. Those letters explained in detail that Ohio's failure to comply with the public assistance provisions of the NVRA were systematic, statewide deficiencies that, under the NVRA and Ohio law, were your responsibility to remedy. Indeed, as explained in the report of Anne Bringman, *Is Ohio*

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Complying with Mandatory Federal Voting Registration Law, updated January 2006 (a copy of which is enclosed), none of Ohio's six largest counties is in compliance with this aspect of the NVRA. Taking the example of one critical agency covered by the NVRA, the Department of Jobs and Family Services, the offices in five of the six counties did not have any voter registration forms; the sole office that had the forms had relegated them to an unused corner of the office, without any signs advising assistance applicants of the right to register to vote, and the clerk did not know even know the forms were there, much less provide the requisite assistance in completing them. Rather than attempt to correct these obvious shortcomings, your only response has been to deny Ohio's lack of compliance.

More recently, ACORN's observations and discussions with public assistance recipients in Ohio have further confirmed that these agencies are consistently failing to provide the voter registration opportunities required by the NVRA. ACORN has interviewed individuals leaving public assistance agencies in three of Ohio's largest counties, and has found that virtually none of the public assistance applicants has been offered the opportunity to register to vote.

These observations are confirmed by Ohio's own statistical evidence of the source of voter registration applications. For the most recent period available, the 2002-2004 period, from a base of nearly 8 million registered voters, all of Ohio's assistance agencies collectively registered only 38,821 voters (including both new registrations and changes of address). By contrast, Ohio had more than 4.7 million initial applications and recertifications for Food Stamps, and that is just one of many public assistance agencies where voter registration materials are required to be distributed. Looking further into the numbers, 8 of Ohio's 88 counties received fewer than 10 voter registration forms at assistance agencies, and another 34 counties received fewer than 100 forms.

These results are simply unacceptable. Ohio must recognize its obligations under the NVRA and implement changes promptly so that all of Ohio's citizens, including the hundreds of thousands of its citizens who receive public assistance, are able to participate in the upcoming elections.

This letter will serve as a final attempt to obtain compliance with the public assistance provisions of the NVRA and enable all low-income eligible Ohio citizens to register to vote without the need to resort to litigation. Please advise us promptly of the steps you intend to take to remedy Ohio's violations of Section 7 of the NVRA, including, without limitation, (i) the measures you will implement to assure future compliance and (ii) the steps you will take to provide registration opportunities to those who have been denied their rights under Section 7 of the NVRA in past four years. We are prepared to meet with you at your earliest convenience to assist in your development of a comprehensive plan for compliance. In the absence of such a plan, we will have no alternative but to initiate litigation.

We look forward to hearing from you.

Very truly yours,



Neil A. Steiner

cc: Barbara R. Riley, Director, Department of Job and Family Services
J. Nick Baird, M.D., Director, Department of Health
Michael F. Hogan, Ph.D, Director, Department of Mental Health

Enclosure

**Is Ohio Complying with Mandatory Federal Voting
Registration Law?**

**Anne Bringman
440-329-1164**

Upper-Level Writing Credit

**Professor Hoke
Election Law**

Updated: January 2006

Laura¹ is a single mother. She supports three young children on her own and in order to support her family depends on the aid of Cuyahoga County Jobs and Family services. Laura has a high school education, is the fulltime caretaker of her older mother, and her entire family relies on public transportation for travel. As a young, single mother over eighteen, and as a U.S. citizen, Laura is entitled to accessible voter registration at a place she realistically visits and is conveniently located for individuals and families that share situations similar to Laura's. Despite her lack of time, personal transportation, or reliance on the government for aid, Laura is a U.S. citizen entitled to the same accessibility as other more privileged U.S. citizens to voter registration. The National Voter Registration Act² ("NVRA") requires that each State designate as voter registration agencies all offices that provide public assistance in order to make voter registration more equitably accessible to all of the U.S. population. The State of Ohio is in obvious violation of this portion of the NVRA and thus has exposed itself to significant liability. This paper will examine the legal requirements of the NVRA as it applies to public assistance agencies, provide empirical research on Ohio's Department of Jobs and Family Services at the county level, and suggest strategies to bring Ohio in NVRA compliance.

¹ A composite sketch of a woman who would benefit from the NVRA.

² 42 U.S.C.A. § 1973gg-5 (2005). In relevant part: 2) Each State shall designate as voter registration agencies—(A) all offices in the State that provide public assistance; 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, unemployment compensation 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.

From the beginning, it was a continuous struggle for particular groups of our nation's population to gain enfranchisement to vote. Racial minorities, women, and young adults all battled to gain full participation in the voting process. It seemed that the problems of discrimination at the polls would have ceased since all eligible citizens were eventually given the right to vote. Yet, despite the fact that these groups were entitled to vote, many discriminatory practices even inadvertently were still practiced by our State and Federal governments including unreasonable registration deadlines and inaccessible locations with inconvenient hours. Before the implementation of acts such as the NVRA and eventually the Help America Vote Act³ ("HAVA") in 2002, voter registration seemed to be more restrictive and complicated than actual voting.

The NVRA requires each State to designate as voter registration agencies all the offices in the State that provide public assistance, services to individuals with disabilities, drivers license bureaus, and other discretionary voting registration agencies as determined by individual states.⁴ My empirical research and legal analysis upon visiting the Department of Jobs and Family Services in a sample of 6 major counties in the State of Ohio, is that none are in total compliance with the NVRA. It is the responsibility of the Ohio Secretary of State to ensure the county agencies are in compliance with the NVRA. I have suggested strategies and steps that I believe could bring Ohio in compliance with the NVRA and enable individuals like Laura the access to voter registration that the law requires.

³ 42 USCA § 15301 (2005). The Help America vote act was enacted to provide States funding to improve administration of elections and to upgrade technology used in elections (voting machines).

⁴ 42 USCA § 1973gg-5(a)(2),(3).

I. BACKGROUND OF VOTER REGISTRATION PROBLEMS

Participating in elections has been deemed a fundamental right in the United States of America, but has not always been this way.⁵ In the early history of the United States of America all of the people living in this country were not given the right to vote. Even after disenfranchised groups such as women, racial minorities, and young adults fought for and received a voice in their government through the Constitution, many discriminatory and unfair registration laws and procedures still persisted in this country disproportionately affecting underprivileged citizens, including many racial minorities.⁶

From the beginning of our nation's history the right to vote was not universal. The colonies voting requirements were based on a free man's ownership of land carrying over the Parliament's rule in England.⁷ The rationale behind this was that only a property owner would have the amount of interest and understanding in political decisions necessary to produce an informed voter.⁸ It was not until the 1830's that suffrage was expanded to eighty percent of all white males in the United States with most individual states removing the land ownership voting requirement.⁹ Following the Civil War in 1870, the Fifteenth Amendment was ratified. This Amendment provided that no citizen of the United States would be prevented from voting based on "race, color, or previous condition of servitude."¹⁰ Yet, despite the ratification of this Amendment giving all male Citizens the right to vote- many southern states created insurmountable obstacles to black

⁵ *Reynolds v. Sims*, 377 U.S. 533 (1964); *Harper v. Virginia State Board of Elections*, 383 U.S. 663 (1966). The Court analyzed the right to vote as fundamental, and under the Fourteenth Amendment's Equal Protection, applied strict scrutiny to the fundamental rights implicated in both claims. *See generally*, *id.*

⁶ H.R. Rep. No. 103-9, at 109 (1993).

⁷ *See* Marc W. Kruman, *Suffrage*, *The Readers Companion to American History*, (2005) at http://college.hmco.com/history/readerscomp/rcah/html/ah_083500_suffrage.htm.

⁸ *Id.*

⁹ Stephen J. Wayne, *The Road to the White House 2000: The Politics of Presidential Elections* 68 (2000).

¹⁰ U.S. Const. Amend. XV, § 1.

men that basically guaranteed that African American men would still not be able to participate in the election process.¹¹ These early examples of discriminatory voting registration practices of States were instituting literacy tests, poll taxes and clauses such as the "grandfather clause" and the "understanding clause" to ensure the suppression of the black vote.¹² Further methods that prevented qualified citizens from participating in elections included: district gerrymandering, purposeful closing of black polling places, and above all else, waves of Ku Klux Klan terrorism in the form of lynching and vigilante violence against blacks and white civil rights activists in the South.¹³ These restrictions and obstacles persisted in the South for the next one hundred years. As African Americans continued their struggle to participate in the elections- women were enfranchised as voters. In 1920, the Nineteenth Amendment was ratified stating the right to vote could not be denied based on sex.¹⁴ This amendment was met with resistance because most men grouped women and minorities together; they doubted either group's ability to participate in the electoral process.¹⁵ Steps in the right direction began for racial minorities with the passage of The Civil Rights Act of 1957.¹⁶ Concern over the deprivation of a constitutional right continued to grow during this time leading to the

¹¹ See Wayne, *supra* note 4, at 68.

¹² See Kimberly C. Dolk, *What will it Take to Produce Greater American Voter Participation? Does Anyone Really Know?*, 2 Loy. Pub. Int. L. 133, 139-40 (2001). The "grandfather clause" gave persons an exemption from the property requirement or the education tests who had been able to vote on or before January 1, 1867, or the son or grandson of such person. *Id.* The "understanding clause" required a potential voter to be able to read and show an understanding of a section of the state's constitution and giving an election official total discretion on who should be allowed or rejected to vote. *Id.*

¹³ See Alexander Keyssar, *The Right to Vote: The Contested History of Democracy in the United States* 105-27 (2000).

¹⁴ U.S. Const. amend. XIX, § 1.

¹⁵ See Krumm, *supra* note 2.

¹⁶ See Dolk, *supra* note 8 at 144. This Act gave the United States Attorney General the right to sue states on behalf of those facing discrimination in the voting process. *Id.*

ratification of the Twenty-Fourth Amendment of the Constitution,¹⁷ and the passage of the Voting Rights Act of 1965.¹⁸ This federal statute prohibited institutionalized structures and practices that have the purpose or effect of disenfranchising or diluting the voting power of protected groups.¹⁹ Congress continued to amend the Voting Rights Act for years to come in order to encompass new forms of discrimination that continued to arise. An amendment was passed in 1975 including voting safeguards for "minority language citizens; Hispanic, Asian, and Native-American citizens whom had also fell victim to "new" as well as traditional voter disenfranchisement.²⁰ The passage of the Voting Registration Act had an immediate affect on southern black registration rates, climbing to sixty-two percent of eligible black voters being registered by 1968.²¹ Yet, as time went on the increase in registration leveled off with 60.8% of all eligible blacks registered to vote in 1986.²²

The last group to become enfranchised voters was young adults between the ages of 18-21.²³ This group gained the right to vote following the ratification of the Twenty-Sixth Amendment of the Constitution arising during the Vietnam Era under the principle that those old enough to fight for their country are old enough to participate in their government.²⁴

¹⁷ U.S. Const. amend. XXIV, § 1. "The rights of citizens of the United States to vote in any primary or other election for President or Vice President, for electors for President or Vice President, or for Senator or Representative in Congress, shall not be denied or abridged by the United States or any State by reason of failure to pay any poll tax or other tax.

¹⁸ 42 U.S.C. § 1973.

¹⁹ Samuel Issacharoff et al., *When Elections Go Bad: The Law of Democracy and the Presidential Election of 2000*, at ii (2001).

²⁰ See, *supra* note 13.

²¹ See James E. Alt, *The Impact of Voting Rights Act on Black and White Voter Registration in the South, in Quiet Revolution in the South: The Impact of the Voting Rights Act 1965-1990*, at 374 (Chandler, Davidson & Bernard Grofman eds., 1994).

²² See *id.*

²³ U.S. Const. amend. XXVI, § 1.

²⁴ See *id.*

Following the struggle each of these groups endured to gain the right to vote the prediction would be that registration and participation has both grow and equalize but this did not become reality. With growing frustration, voting rights advocates began to shift the focus to voter registration practices.²⁵ As of 1989, the majority of states still had restrictive registration practices; forty-six states and the District of Columbia maintained registration deadlines of up to fifty days before an election.²⁶ These deadlines prevented citizens whose interest in an election peaked as the election day approached from casting a ballot, as by then it was likely too late to register.²⁷ A major part of the registration problem was also the fact that registration was mostly limited to a single central location in a county—often the county courthouse and only available during working hours.²⁸ Besides registration times narrowing working hours, significant travel required to reach registration sites, and continuing intimidation by local registrars and officials continued to impede voter registration.²⁹ Registering to vote was perceived to be more complicated than voting; for instance, in the 1988 general election 37% of nonvoters stated that they did not vote because they were not registered, this by far was the most important reason given for not voting.³⁰

Despite the efforts to ensure enfranchisement of all qualified citizens, reform was needed. Several attempts at reform were attempted including Senate Bill 2574 introduced as the "National Voter Registration Act" in 1972: this bill simplified registration forms to a postcard that would be available at United States Post Offices and

²⁵ See Mark Thomas Quinlivan, *One Person, One Vote Revisited: The Impending Necessity of Judicial Intervention in the Realm of Voter Registration*, 137 U. Pa. L. Rev. 2361, 2363 (1989).

²⁶ *Id.* at 2372.

²⁷ See *id.* at 2372-73.

²⁸ See *id.*

²⁹ See *id.* at 2375.

³⁰ *Id.* at 2376, n. 100.

sent to every household in the United States before each federal election.³¹ The cards were proposed to be returned no later than thirty days prior to the election for processing and signature verification would have been required at the polls to prevent fraud, but this bill was defeated in the Senate with the reasoning that the protections from fraud were not sufficient.³² Similar legislation was attempted throughout the seventies and eighties; President George Bush vetoed the last defeated attempt in 1991.³³ These pieces of proposed legislation were more likely vetoed because of the uncertain effect they would have on the electorate not exclusively over fraud concerns.³⁴ Especially concerned were Republicans and Southern Democrats who feared this type of bill would create a larger "liberal" electorate.³⁵

Voter participation rates strongly correlate to socioeconomic factors, especially education and income; as a result, minority groups and the poor have experienced lower rates of participation.³⁶ Minorities and the poor who theoretically should have had the largest interest in social change remained disproportionately disconnected from the political process.³⁷ In order to combat these factors and truly attempt to give all qualified citizens a voice in their government the National Voter Registration Act of 1993 ("NVRA") was President Clinton implemented through Executive Order on September

³¹ See *Congressional Quarterly Almanac* 28, at 337 (1972).

³² See *id.*

³³ See generally, Dalk, *supra* note 8, at 148-51. Bill 250 was the proposed "National Voter Registration Act of 1991" wanted to introduce voter registration opportunities at the Drivers License Bureau and simplified postcard applications made available at federal and state government agencies. This was the immediate precursor to the 1993 National Voter Registration Act and the first attempt to make it through both houses.

³⁴ Quinlivan, *supra* note 21, at 2386-87.

³⁵ *Id.*, at 2387.

³⁶ See *id.* at 2386.

³⁷ *Id.*

12, 1994 the NVRA in an attempt to give all qualified citizens a voice in their government.³⁸

II. THE NATIONAL VOTER REGISTRATION ACT OF 1993

The NVRA was enacted by Congress to: (1) establish procedures in order to increase the number of eligible citizens who register to vote in elections for Federal office; (2) to make it possible for Federal, State, and local governments to implement this Act in ways that will enhance the participation of eligible citizens as voters in elections for Federal office; (3) to protect the integrity of the electoral process; and (4) to ensure more accurate and current voter registration rolls are maintained.³⁹

This Act made several changes to the voting registration requirements each state was required to meet. First, the "motor voter" provision required States to allow citizens to register to vote at the same time they register or renew their driver's license.⁴⁰ The second provision of the act mandates that States provide voter registration opportunities by mail.⁴¹ The third and most pertinent provision of the NVRA to this paper requires each State to designate as voter registration agencies: all offices in the state that provide public assistances, state-funded programs to individuals with disabilities.⁴² In addition to the "mandatory" voter registration agencies listed above, the state is required to name additional offices as decided by individual states that will also serve as voter registration agencies. The NVRA lists possible examples including public libraries, public schools,

³⁸ Exec. Order No. 12,926, 59 Fed. Reg. 47,227 (Sept. 13, 1994). The bill was signed into law the previous year on May 20, 1993. See, *supra* note 14; See *Acorn v. Edgar*, 850 F.Supp. 1215 (1995).

³⁹ 42 U.S.C.A. § 1973gg(b)(1), (2); See *Disabled in Action of Metropolitan New York v. Hammons*, 202 F.3d 110, 114 (2d Cir. 2000); *National Coalition for Students with Disabilities v. Telf*, 2002 WL 31409443 (S.D. Ohio Aug. 2, 2002).

⁴⁰ 42 U.S.C.A. § 1973gg-3; *Hammons*, 202 F.3d at 114.

⁴¹ *Id.* at § 1973gg-4.

⁴² *Id.* At § 1973gg-5(e)(2),(3).

offices of city and county clerks, fishing and hunting license bureaus, government revenue offices, and unemployment offices.⁴³ This statute also provides that all departments, agencies and other entities of the Federal Government shall aid the States as much as is practical for them in implementing successful agency-based registration.⁴⁴

Each of the mandatory and discretionary voter registration agencies must meet additional standards besides the services they provide. These agencies are to distribute mail voter registration applications with each application for such service or assistance that the agency also provides unless the applicant in writing declines to register to vote.⁴⁵ This statute also necessitates the agency to have a form in their office asking, "If you are not registered to vote where you live now, would you like to apply to register to vote here

⁴³ *Id.*

⁴⁴ *Id.* at § 1973gg-5(b).

⁴⁵ *Id.* at § 1973gg-5(a)(4)(A). This provision specifies that the distribution must be in accordance with paragraph (6) of the statute which states in its entirety: (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 1973gg-7(a)(2) of this title, 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 1973gg-7(a)(2) of this title, unless the applicant, in writing, declines to register to vote; (B) provides a form that includes—(i) the question, "If you are not registered to vote where you live now, would you like to apply to register to vote here today?";(ii) if the agency provides public assistance, the statement, "Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.";(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), "IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.";(iv) the statement, "If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private."; and (v) the statement, "If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____", the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed; 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.

today?"⁴⁶ If the agency provides public assistance they must also accompany the above question with the statement, "[a]pplying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency."⁴⁷ In addition, employees must be able to offer assistance to applicants in completing the voter registration forms and accept completed forms for transmittal to the appropriate State election official.⁴⁸

The NVRA was required to be implemented by individual states by January 1, 1996, giving the states a significant amount of time to institute a plan for implementation.⁴⁹ This act was met with resistance from the start. Twelve states brought cases against the NVRA resulting in the affirmation of the NVRA's constitutionality and an order for state compliance.⁵⁰ A major example of a lawsuit that challenged the NVRA was in California; it alleged that the NVRA violated the Tenth Amendment because it "commandeers state agencies to administer a federal election program."⁵¹ The Court found in favor of the federal government stating that the NVRA was constitutional under Article I, Section 4, of the Constitution that allows Congress the power to regulate the "time, place, and manner of the elections."⁵²

Besides affirming the constitutionality of the NVRA there has been limited further litigation defining or putting limitations on the power of the NVRA. In addition,

⁴⁶ See *id.* at § 1973gg-5(a)(6).

⁴⁷ See *id.*

⁴⁸ See *id.* at § 1973gg-5(a)(4)(A).

⁴⁹ See *id.* at § 1973gg.

⁵⁰ See *Dalk, supra note 8*, at 154 n. 120. The twelve states that challenged the constitutionality NVRA were: Rhode Island, California, Kansas, Louisiana, Michigan, Mississippi, New York, Pennsylvania, South Carolina, Vermont, Virginia and Illinois. *Id.*

⁵¹ *Wilson v. California*, 878 F. Supp. 1324, 1326 (N.D. Cal. 1995)

⁵² See U.S. Const. art. I, § 4 which provides, "the Times, Places, and Manner of holding elections ... shall be prescribed in each State... but the Congress may at any time by law make or alter such Regulations;" *Wilson*, 878 F. Supp. at 1328.

there is limited information on the penalties that an individual state or agency faces for noncompliance with the NVRA. In *Disabled in Action of Metropolitan New York v. Hammons*, the court specified that under the NVRA the term "public assistance" should be construed broadly to include agencies not only involved in the payment process but the application process as well.⁵³ This court rejected the argument that state and city offices in New York that provided applications or medical services to Medicaid patients were considered "public assistance" agencies in the NVRA.⁵⁴ This court further explained that in distinguishing between mandatory and discretionary voting registration offices, the NVRA separates between state and local offices that provide public assistance and federal and nongovernmental offices.⁵⁵ The court found that nongovernmental hospitals, nursing homes, clinics, community-based organizations and other offices, which provided assistance with Medicaid applications, were not mandatory voter registration agencies under the requirements of the NVRA because they were state actors who were delegated essential governmental functions.⁵⁶ A sufficiently close nexus between the state and those agencies is needed to prove their eligibility to be considered a mandatory voting registration agency.⁵⁷

In defining those agencies that are mandatory voting registration agencies, the court relies on Congressional conference report which states, "[b]y public assistance agencies we intend to include those *State* agencies in each State that administer or

⁵³ See *Hammons*, 202 F.3d at 117.

⁵⁴ See *Id.*

⁵⁵ See *Id.* at 119-24.

⁵⁶ *Id.* In addition, this court ruled that public schools were not mandatory voting registration agencies because they were listed as one of the institutions that could be designated as a discretionary voting registration agency. *Id.*

⁵⁷ *Id.*

provide services under the food stamp, Medicaid, the Women Infants and Children (WIC), and the Aid to Families with Dependent Children (AFDC) programs."⁵⁸

Voter registration is the responsibility of the Secretary of State in Ohio. However, additional responsibility for complying with the NVRA lies with the state agency that is designated as the mandatory voting registration agency and not the local or county branch.⁵⁹ The state agency is responsible to ensure that the county or local office comply with NVRA requirements.⁶⁰ This was not expressly mentioned in the NVRA but the Court in *New York* ruled it would be unreasonable to permit mandatory voting registration agencies to shed its NVRA responsibilities because it chose to delegate its day-to-day services to local agencies.⁶¹

The avenues available to penalize non-compliance with the NVRA and empower private citizens to ensure they are not denied proper access to voter registration are through 42 U.S.C. § 1973gg-9 which: (a) authorizes the Attorney General to bring suit in behalf of the United States to enforce the NVRA: "The Attorney General may bring a civil action in an appropriate district court for such declaratory or injunctive relief as is necessary to carry out this subchapter." 42 U.S.C. § 1973 gg-9(b) authorizes a private right of action for "a person who is aggrieved by a violation."

Although problems and obstacles existed to implement NVRA into each individual state, primarily the lack of federal funding provided to the states for implementation; NVRA compliance is required. When Congress passed the NVRA considered the "potential financial burdens" that would face states and balanced that

⁵⁸ H.R. Conf. Rp. No. 103-65, at 19 (1993), (emphasis added), reprinted in 1993 U.S.C.A. N. 140, 144; *Hammers*, 203 F.3d at 124.

⁵⁹ See *United States v. New York*, 266 F.Supp.2d 73 (2003).

⁶⁰ See *Id.*

⁶¹ See *Id.*

against the right of eligible voters to have access to "meaningful participation in the federal electoral process."⁶² Both the NVRA and the litigation that defines it clearly leave no doubt that "public assistance" agencies are required to provide voter registration; and the Ohio Department of Jobs and Family Services is a mandatory voter registration agency under the NVRA.⁶³

III. OHIO'S COMPLIANCE WITH THE NVRA

The NVRA has been effective in Ohio since 1995.⁶⁴ Thus, the Act permitted the State of Ohio nearly two additional years following President Clinton's Executive Order to plan, implement and comply with the NVRA.

Nearly ten years later, November of 2005, the State of Ohio persists in non-compliance with certain critical portions of the NVRA. Most notably five of the six counties I visited did not have any voter registration forms. The only location that had the registration form had no forms informing the public of their opportunity to register to vote, no assistance by the clerk with the form as she was unaware the form was at the agency until it had already been found by my colleague in a deserted corner.⁶⁵ Over the past few months I have investigated whether the mandatory provision that voter registration forms are available at state public assistance agencies has been met by the State of Ohio.⁶⁶ To gather empirical data I visited the Department of Jobs and Family Services ("DJFS") of 6 of Ohio's 88 counties. Not a single one complies completely with the federal statute.

⁶² *National Coalition for Students with Disabilities Educ. And Legal Fund v. Seals*, 150 F.Supp.2d 845, 855 (D.Md. 2001); *New York*, 255 F.Supp.2d at 80; *See Edgar*, 880 F.Supp. 1215.

⁶³ 42 U.S.C. § 1973 gg-5.

⁶⁴ *National Coalition for Students with Disabilities v. Taft*, 2002 WL 31409443 (S.D. Ohio Aug. 2, 2002). The effective date of the Act varies as to the methods of voter registration.

⁶⁵ *See Mahoning County Department of Jobs and Family Services*, p. 14-15.

⁶⁶ 42 U.S.C. § 1973 gg-5. (discussed *supra*, 7-8).

A. What is legally required by the NVRA for the CDJFS?

In order to be in compliance with the NVRA, a public assistance agency such as the CDJFS must meet the following key requirements: (1) the state must provide voter registration forms all offices in the State that provide public assistance as well as additional agencies assigned at the discretion of the state; (2) opportunity to register to vote with each application for any service or assistance⁶⁷ associated with the agency or to decline registration; (3) a form that advertises the presence of the forms by asking, "If you are not registered to vote where you live now, would you like to apply to register to vote here?"; (4) a statement on this form which conveys that applying or declining to register will not affect their amount of assistance; (5) employees of the agency must be able to offer assistance to applicants in completing the voter registration forms; (6) acceptance and transmittal of completed forms to the appropriate State election official.⁶⁸

B. Are the County Departments of Jobs and Family Services legally in Complying with the NVRA?

The State of Ohio is required to provide voter registration forms at each county's Department of Jobs and Family Services under the "public assistance agency" provision of the NVRA.⁶⁹ Besides those mandated by the NVRA the discretionary agencies chosen by the State of Ohio are: public libraries, state supported colleges and universities, each county treasurer's office, and the Office of the Secretary of

⁶⁷ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Offices 2001-2002: by the Federal Election Commission*, p. 14, (2003) available at http://www.fec.gov/election_resources.asp?format=none. This includes any recertification, renewal or change of address associated with the service.

⁶⁸ 42 USCA § 1973gg-5.

⁶⁹ *Id.*

State.⁷⁰ None of the County Departments of Jobs and Family Services agencies that I visited provided the form along with any type of assistance. This made five of the six counties in violation of the central requirement of the NVRA. Mahoning CDJFS was the only agency that had a form in the office; but it was in a deserted corner of the office. Prior to locating the form in the corner, the clerk who waited on me informed me that they did not have any voter registration forms. Even though this agency had a form, the form was difficult to locate, there was no form explaining the opportunity to register to vote was available or that it would not affect an individual's public assistance. Additionally, the clerk told me they didn't have any voter registration forms; I believe that legally violates the employee assistance with the form requirement as well. Despite the Mahoning County CDJFS having the voter registration form, they violated every other requirement.

The Delaware CDJFS supplied a sample voter registration form to assist individuals with registering to vote but did not meet any other requirements of the NVRA including not having any forms for individuals to actually fill out. Lastly, Lake County fulfilled the requirement of having a form that offered an individual the opportunity to register to vote posted on their front window, but did not actually have any voter registration forms.

Half of the agencies presented their own unsuccessful attempt to comply with the NVRA and the other half made no attempt to comply at all violating every requirement of the public assistance voter registration provision of the NVRA.

⁷⁰ *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office: A Report to the 109th Congress by the United States Election Assistance Commission, Table 7, Part VI* (June 2005) available at http://www.eac.gov/election_resources.asp?format=none.

C. Empirical Research Sample at Six County Departments of Jobs and Family Services

1. Mahoning County Department of Jobs and Family Services⁷¹

This was the first county that I visited in order to take a small sample of Ohio's compliance with the NVRA. This office was located in a low income neighborhood of Youngstown. Upon entering the office I waited in line in order to determine if the office a) had the required voter registration application form and b) if so, was the clerk aware of and educated about the form enough to assist me in filling it out. Because of the large size of the office, a fellow law student who had accompanied me on the trip to Youngstown explored the rest of the office. She was looking for a form or sign; which specified that voter registration was available and/or the actual application forms. From where I was standing in line, I was unable to see any such sign or form promoting voter registration.

When I reached the front of the line, I was met with a polite and friendly female clerk who informed me that they did not have voter registration forms. It turns out my colleague did find forms in a remote corner of the office that was comparable to a small dead end hallway. As she informed me of this the clerk who had waited on me as well as the Supervisor of the department stepped out to inform me emphatically that they did have the forms located in that remote corner. I could infer that the clerk herself was unaware of the presence of the forms until informed by her supervisor. The forms were located in a deserted corner of the office in a plastic shelf with no display advertising

⁷¹ John E. Zachariah, Director, 709 North Garland Avenue (do not mail to this address), Mail to P.O. Box 600, Youngstown, Ohio 44501-0600. Hours of operation: 7:15 a.m. - 4:30 p.m.

their presence. It was lost among many other forms including Medicare and "right to a hearing" forms.

Although the Mahoning CDJAFS did have the voter registration application forms I did not find them in compliance with the NVRA. The clerks were unaware of the presence of the form, which would make it impossible for them to assist an applicant in filling one out. In addition, the form was not accessible nor was there any form or display potential applicants of the possibility of registering to vote. The form could not have been farther out of the public's view and clearly not in compliance with the NVRA.

2. Lorain County Department of Jobs and Family Services⁷²

The Lorain CDJFS did not have the form at all. The clerk that waited on me informed me that, "they used to have them." She called a superior on the phone to verify that no one in the building had the forms while I observed the waiting area that did not have any sign or presence of a form indicating that a qualified citizen could register to vote at this agency. The clerk then called me back to her window and confirmed that they had no registration forms but I could go to the Board of Elections several streets away.

3. Franklin Department of Jobs and Family Services⁷³

The approach to the Department of Jobs and Family Services is slightly different in Franklin County. The Franklin CDJFS was not centrally located but rather had satellite offices called Community Opportunity Centers in several different neighborhoods. I visited the North Community Opportunity Center. As at each place previous, I waited in line and was helped by a generally courteous clerk but they also did

⁷² Mary Lou Golaki, Director, 42485 North Ridge Road, Elyria, Ohio 44035-1057, Hours of operation: 7:30-4:30 Mon, Wed, Thurs and Friday and 7:30-6:30 on Tuesdays.

⁷³ Douglas Lumpkin, Director, 345 East Fifth Avenue, Columbus, Ohio 43201

not have any voter registration forms. Similarly to the Lorain CDJFS, the clerk informed me that they too used to have the Registration forms and searched for awhile thinking maybe they still had a few. He was unsuccessful in his search and informed me that they did not have any registration forms at their office.

4. Delaware County Department of Jobs and Family Services⁷⁴

My next visit was to the growing county of Delaware, located directly above Franklin County. The Delaware CDJFS was a fairly small office that actually had wooden shelves with a variety of forms including a filled out sample of a mail voter registration application. However, there were no actual blank forms to fill out in the shelves. When I questioned the clerk for more forms, she informed me they did not have any but I could find some on the bottom floor of the same building which housed the Delaware County Board of Elections. Of the entire sample, I found this county to be the closest to compliance with the NVRA. Yet, this is because of the coincidence of being located in the same building as the Board of Elections; but the sample ballot was a more informative display of assistance with the form than any other county produced.

5. Lake County Department of Jobs and Family Services⁷⁵

The Lake CDJFS was also not in compliance with the NVRA. This office did not have any mail voter registration application forms. However, interestingly, this office did have a display paper decorated with an American flag graphic that was easily viewable while waiting in line which advertised the presence of voter registration forms. However, the form itself was not available.

⁷⁴ Mona Reilly, Director, 140 N. Sandusky (2nd floor), Delaware, Ohio 43015-1789, Hours: 8:00-4:45 M, W, Th, F, 8:00-7:00 Tuesday

⁷⁵ Art Iacofano, Director, 177 Main Street, Palmerville, Ohio 44077-9967. Hours of operation: 8-4:30, M, T, Th, F, 7:30-6:00 W.

6. Cuyahoga County Department of Jobs and Family Services

The last county office in my sample was Cuyahoga CDJFS⁷⁶ that was blatantly not in compliance with the NVRA. This office did not offer any display or commentary as to why they did not have any voter registration forms. The clerk simply informed me that they did not have any forms at their office and there was no display or sign regarding the right to register to vote there.

D. Response by Governor, Secretary of State, and Ohio Department of Jobs and Family Services

After inquiring at the office of the current Governor Bob Taft, Secretary of State Kenneth Blackwell, and the Ohio Department of Jobs and Family Services the majority of responsibility for ensuring the implementation and compliance with this provision of the NVRA was given to the Ohio Secretary of State by each of these agencies. However, through court rulings and statutory interpretations—a portion of responsibility for compliance is also attributed to the Ohio Department of Jobs and Family Services. It is unreasonable to expect each local agency to be responsible to comply with the NVRA because the local agency carries out the day-to-day operations of the state agency.⁷⁷ However, despite this responsibility the Ohio Department of Jobs and Family Services and Governor's office referred me to contact the Secretary of State's office. Once I reached the Secretary of State, they put me in contact with their Manager of Voter Services, Chris Abbruzzese. He informed me that they oversee this mandatory provision of the NVRA by relying on the local County Departments of Jobs and Family Services to

⁷⁶ Joseph Gantner Director, Virgil E. Brown Center, 1641 Payne Ave., Room 520, Cleveland, Ohio 44114.

⁷⁷ See, *supra* note 61.

call an 800 number provided by the Secretary of State's office and they will then send out more forms to the requesting agency. All of the responsibility to ensure statewide compliance is put in the hands of 88 separate and distinct counties. The state officials responsible, the Secretary of State and the Ohio Department of Jobs and Family Services do not take any active steps to ensure that the public assistance agencies in the State comply. This is reflected in the daily practices of the respective County Departments of Jobs and Family Services each meeting a different number of requirements of the NVRA but none meeting all. Some in total non-compliance, others meeting only one requirement, and only one agency even having voter registration forms at the office.

IV. STRATEGIES FOR OHIO TO ACHIEVE NVRA COMPLIANCE

The Federal Election Commission and following HAVA, the Election Assistance Commission has tracked the impact of the NVRA on voter registration.⁷⁸ Public assistance agencies in the United States accounted for 4.37% (1,546,671) over half of all agency registration between 1997-98.⁷⁹ As agency registration continues it is steadily responsible for at least a million new voters each reporting period; public assistance agencies accounted for 2.88% (1,314,500) of the total voter registration applications in 1999-2000⁸⁰ and 2.67% of total registration in 2001-02.⁸¹ These numbers are not staggering but continue to be steady and with strong commitment and enforcement by

⁷⁸ The full reports are available at http://www.eac.gov/election_resources.asp?format=none

⁷⁹ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1997-1998: by the Federal Election Commission*, p. 2, (1999) available at http://www.eac.gov/election_resources.asp?format=none. Agency registration accounted for 8.22% (2,909,569) of voter registration applications during this time period.

⁸⁰ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1999-2000: by the Federal Election Commission*, p. 2, (2001) available at http://www.eac.gov/election_resources.asp?format=none.

⁸¹ *The Impact of The National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2001-2002: by the Federal Election Commission*, p.2, (2003) available at http://www.eac.gov/election_resources.asp?format=none.

individual states' election officials, I am convinced they would rise. As these statistics illustrate, public assistance agencies provide accessible voter registration for over a million individuals in this country every year, that is significant number in the steps towards accomplishing equality in vote registration that the NVRA was enacted to achieve.

In order to bring Ohio in compliance with the NVRA, attention will need to be brought to this issue of voter registration and specifically the lack of current availability of voter registration forms at Ohio's public assistance agencies such as the County Departments of Jobs and Family Services. I believe the problem in Ohio is not due to difficulty in implementation but may be somewhat politically motivated or more likely just not a priority of our current Secretary of State's administration. The majority of the clerks in my sample informed me that they had the mail voter registration forms at one time do not have them now. As mentioned above, the first step needed to fix the problem in Ohio is for citizens to demand the leadership in this state be accountable to enforce the NVRA. The more attention brought to this problem, the quicker and more effective the response from our elected officials will be.

Second, Ohio should avidly pursue any federal funding that could aid in the cost of complying with the NVRA. Specifically, they should explore funding that has been allotted to aid states in the administration of elections through HAVA. Third, Ohio should create specific materials and make them available to agencies to purchase and/or use that are in line with the requirements of the NVRA. They should provide forms, and a standard poster or similar display for each agency to have at their office advertising that

the opportunity to register to vote is available. Most every day citizens would be unaware of this service unless a poster or sign was there to inform them.

A training program should be instituted for the local agency clerks where the importance of complying with the NVRA is explained- as well as how to aid an applicant in filling out a registration form. A friendly and informed clerk would be an asset to our state agencies in successfully complying with the NVRA. Many States such as Oklahoma have a training video and program for human services personnel in order to help them efficiently oversee voter registration activities at their agencies.⁸²

Most importantly in Ohio, the responsibility of ensuring that Ohio's County Departments of Jobs and Family Services is complying with the NVRA should be put where it is legally required to be. The responsibilities belong in the hands of the Secretary of State and the State agency itself and they should not make 88 local counties responsible for statewide compliance. Ohio cannot depend on 88 individual and distinct agencies to comply with a federal statute, and it is unreasonable to have that expectation. A staff member of both the Secretary of State and the ODJFS should be accountable for ensuring that Ohio has an efficient system in place for agencies to order voter registration forms, signs advertising the service is available at the office, and training programs for local agency employees. In addition, a quality maintenance program for agency voter registration where an official from the Secretary of State would conduct onsite visits to verify compliance on a continuous basis.⁸³

Broader steps for the nation would be for Congress to ensure that proper funding is allotted to aid individual state governments with compliance with the NVRA. . 1

⁸² See *id.* at 15.

⁸³ *Id.* The state of Washington has this type of quality maintenance program.

practices in our country. The NVRA was enacted to equalize this opportunity for the more disadvantaged citizens of our country; but the NVRA cannot be successful unless States such as Ohio implement and continuously ensure that that provisions such as requiring public assistance agencies to provide voter registration forms are being met. In my sample of six of our state's eighty-eight counties none of the counties met all the requirements, and five of the counties did not have a voter registration form in the office. This leads to an assumption that as a state we are not currently complying with a federal statute that was enacted nearly ten years ago.

If Ohio can take several small steps including a more efficient distribution and replacement of voter registration applications program, a standard sign to advertise the service, and a basic training program for agency employees complying with the NVRA could be achieved. In Ohio, the NVRA cannot be successful unless we comply with the necessary requirements. Until then, Ohio is not providing the access to voter registration that the NVRA has entitled to Laura, and Ohio's other disadvantaged citizens.