

The National Voter Registration Act at Fifteen

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Foreword

By Frances Fox Piven

The right to vote is iconic in democratic cultures. While other arrangements are also necessary to ensure that citizens have a say in their governments—such as a fair system of drawing districts for representation, periodic elections, a free press, and so on—without the elemental right to vote, democracy fails. This fundamental understanding is reflected in our history of expanding voting rights, first to white working men, then to African American men, then to women, and finally to youth.

However, the expansion of formal rights has not been fully matched by a parallel expansion of the universe of actual voters. We are rightly proud of our history of struggles for democratic rights, but the United States ranks lowest among developed countries in levels of voter participation. We tolerate this because the main reasons for low participation rates are not obvious, but rather are buried in the tangled intricacies of our decentralized and unaccountable arrangements for registering voters and for balloting. Formal rights must be matched by procedures that facilitate the exercise of those rights if they are to be effective, and on this score, our election procedures fall short. They especially fall short at the very outset of the voting process, when we compile lists of those who are eligible to vote—in other words, in our system of voter registration.

In the 1980s, a kind of citizen's movement emerged to help people register to vote in massive numbers. It was a rare moment: an enthusiastic surge of volunteers determined to help register millions of citizens, in part to realize the promise of the Voting Rights Act of 1965. The goal was optimistic and far-reaching: millions, tens of millions of new voters would be enlisted. Instead, the effort stumbled on the myriad ways in which decentralized and archaic registration procedures made registration difficult, not only for citizens, but for volunteers who were trying to help citizens add their names to the voter rolls. Some of the obstacles had to do with long applications that required unnecessary information, others with restrictions on the availability of the forms imposed by local election officials, and still others with the arbitrary methods of purging citizens from the rolls once they were registered. Moreover, the system was—and is—not only needlessly difficult and chaotic but easily susceptible to manipulation by the officials, including the partisan officials who run it.

In other words, the experience of trying to make registration work tutored voting rights groups on the problems of voter registration. The realization grew that the tangled and difficult procedures for voter registration, varying state by state and often by locality, demanded national reform. Gradually a legislative solution was crafted,

the inevitable compromises made, and finally the Congress passed and the President signed the National Voter Registration Act of 1993. The main provisions required registration at driver's license bureaus, public assistance and disability agencies, the initiation of a federal voter registration form that could substitute for the state forms that local officials had controlled (with the added mandate that states allow for mail-in registration), and safeguards on the procedures for purging voters already on the rolls.

This sounds as American as apple pie. But as Estelle Rogers explains in the important report that follows—the first of its kind to comprehensively evaluate the implementation of the NVRA—the reform of American registration procedures has met widespread resistance, some of it attributable no doubt to bureaucratic inertia, and some of it perhaps politically motivated. But whatever the reasons, the conclusion is clear.

After a decade and a half, we know what is working and what isn't. The challenge is to go back to the drawing board and use the experience of the NVRA to fashion needed legislative remedies. If we do, it will be another important step forward for American democracy.

Executive Summary

The National Voter Registration Act (NVRA) became law in 1993, and was implemented by most states in 1995. Its stated goals included increasing the number of eligible citizens who register to vote in America, making it possible for governments to enhance participation, protecting the integrity of the electoral process, and ensuring that accurate and current voter registration rolls are maintained.

The law was hailed by some as “the final achievement of the 1960’s voting rights revolution,”¹ and proponents estimated that it would add 50 million Americans to the voting rolls. And in fact, during the first two years of its implementation, the NVRA contributed to one of the largest expansions of the voter rolls in American history.

Fifteen years after the passage of the NVRA, however, voter registration was once again the central issue surrounding the administration of the 2008 general election, and it is clear that many problems the NVRA sought to address remain uncured, and its full promise remains unfulfilled. Despite surges in voting among some historically underrepresented groups, the 2008 Cooperative Congressional Election Survey found that up to three million voters actively tried to vote in 2008 but were denied, and an additional four million were discouraged from voting due to administrative barriers.² While some provisions of the NVRA—such as the well-known “motor voter” program—have been widely implemented with relative success, other equally important provisions—such as the requirement that public assistance agencies provide voter registration services to their clients—remain commonly neglected. Despite efforts to establish clear standards for state voter list maintenance and voter purges, these issues too continued to plague this election cycle, as they have in every election this decade.

This report summarizes both the triumphs and failings of the 15-year old NVRA, and makes recommendations for finally and fully realizing its promise, with a focus on four key sections of the law:

- I. **Section 5—Registration at Motor Vehicle Offices:** The widespread implementation of the “motor voter” program has been the most successful result of the NVRA in increasing voter registration. However, poor training requirements and lack of oversight and accountability of motor vehicle offices have led to problems with noncompliance, failing to forward applications to election officials in a timely manner, and non-integrated applications that violate the mandates of the NVRA.

“The Congress finds that: (1) the right of citizens of the United States to vote is a fundamental right; and (2) it is the duty of the Federal, State, and local governments to promote the exercise of that right...”

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2. **Section 6—Mail Registration:** One of the keystones of the NVRA was the creation of a simple mail registration form that would be acceptable in all jurisdictions, and the success of this innovation has been undeniable. However, the broad authority claimed by states and localities over the design, use, distribution, and acceptance of these forms has severely undermined the efficiency and impact of Section 6.
 3. **Section 7—Registration at Public Assistance Agencies:** The NVRA mandated the creation of voter registration programs at public assistance and disability services agencies, a requirement designed to reach populations that might not be registered through voter registration services at motor vehicle offices. After initial success in its first two years of implementation, however, Section 7 has been largely neglected (and in some cases almost wholly ignored) by many state agencies. A lack of authority on the part of chief election officials over state public agencies, and a failure on the part of the Department of Justice to enforce the requirement, have contributed to the pervasive failure of Section 7, to the disadvantage of millions of eligible low-income and minority Americans.
 4. **Section 8—Administration and List Maintenance:** The NVRA sets a number of standards for the administration of elections, including requiring disposition notices to alert applicants of the status of their registration application, specifying the circumstances under which a voter’s name may be removed from the rolls, instituting fail-safes for voters who have changed addresses, and establishing list maintenance procedures that are uniform and nondiscriminatory. However, these standards have been often misunderstood, reinterpreted, or ignored by states, resulting in list maintenance and voter purging programs that have violated the NVRA and disenfranchised eligible voters. The list maintenance provisions have been further complicated by the state database matching requirements of the Help America Vote Act of 2002 (HAVA).

Important conversations are currently underway in Congress and around the country about the need for new legislation to modernize America’s voter registration system. This report illustrates how proper implementation, enforcement, and—where necessary—enhancement of the NVRA can go a long way toward solving many of the ongoing registration and election administration problems, and bring us closer to its vision of full and equal democratic access for all Americans.

History and Purpose of the NVRA

The right to vote in the United States has been recognized as central to the essence of citizenship. Yet, voting has been encumbered by onerous procedures and gross inequities for many decades. In the late 19th and early 20th centuries, southern states routinely excluded the poor—particularly racial minorities—through a complex web of poll taxes, residency requirements, and literacy tests that often went unenforced against whites.

In the north, party bosses, more frequently than laws, effectively controlled the size and color of the electorate.³ Even the monumental Voting Rights Act of 1965, though it addressed some of the most glaring and invidious techniques used to exclude racial minorities, did little to alleviate many of the elaborate state laws and administrative rules that discouraged voter registration and voting.

Concerned that nearly 44% of the eligible electorate did not vote in the 1992 election, the U.S. House of Representatives felt compelled to act. Although legislation could not address all of the factors that contributed to that discouraging statistic, it was believed that simplifying and improving the voter registration process would eliminate a major barrier to low participation in the future.

Congress passed the National Voter Registration Act of 1993 (NVRA) with four purposes:

- **To increase the number of citizens who register;**
- **To encourage governments to enhance participation in voting;**
- **To protect the integrity of the electoral process; and**
- **To ensure accurate and current registration rolls.⁴**

The primary means Congress chose to accomplish the first and second goals were mandates that voter registration be offered at venues not generally used for that purpose—e.g., motor vehicle offices⁵ and public assistance agencies—as well as other offices to be designated by the states; and that a simplified federal mail-in voter registration form be created to make registration widely accessible and easy to accomplish. The integrity of the electoral process and accuracy of the voter roll would be ensured by a duty imposed upon the states to engage in regular list maintenance procedures aimed at “cleaning” the voter list without disenfranchising eligible voters. In addition, the law imposed criminal penalties for intimidation and fraud.

Two caveats should be mentioned. First, the NVRA applies only to federal elections.

However, states quickly learned that creating a dual registration system was unduly complicated and costly. Consequently, for all practical purposes, the NVRA is used by the states to govern voter registration across the board. Second, the law does *not* apply to states that have no voter registration at all (North Dakota) and certain states that have same-day registration for federal elections (Idaho, Minnesota, New Hampshire, Wisconsin, and Wyoming).⁶

While a number of states have challenged Congress's authority to enact the NVRA, citing the Constitution's broad grant of authority to the states in the conduct of elections, the courts have consistently upheld the constitutionality of the NVRA under the 10th Amendment, and grounded it as well in Congress's authority to enforce the 14th and 15th Amendments.⁷

This report is designed to survey, at the 15-year mark, the NVRA's successes and failures as a statutory scheme designed to create a national policy on voter registration. There have been both, and it is important to assess what has been accomplished and suggest what might be done to achieve the level of civic participation envisioned by the statute's drafters in 1993. After a brief treatment of the historical context of the NVRA, several of its most important provisions will be discussed in some detail, including motor vehicle registration (page 7), registration by mail (page 11), registration at public agencies (page 19), administration and voter list maintenance (page 23), and enforcement of the NVRA (page 31). Particular attention is paid to what experience has shown to be the flaws and gaps in the statute that could be addressed by remedial action in the future, and what remedial action we recommend.

Motor Voter (Section 5)⁸

It is no accident that the NVRA has been popularly named the “motor voter” law. The innovation of requiring that voter registration services be provided at motor vehicle offices has been a significant and positive development in expanding the franchise.

This provision of the NVRA has also been the most widely accepted and easily implemented. In fact, of the states that responded to the 2006 survey conducted by the Election Assistance Commission (EAC), an average of about 45.7% of the 36.2 million new applications for voter registration originated in motor vehicle offices in 2005-2006.⁹ DuPage County, Illinois, reported nearly 76% of all registrations emanated from motor vehicle facilities in 2004; in Virginia, that figure was over 80%.¹⁰

Nonetheless, even this mode of registration has not been problem-free. For example, the findings of the United States Commission on Civil Rights, reporting on the 2000 election in Florida,¹¹ included the following:

- Many voters who completed voter registration applications at the Department of Highway Safety and Motor Vehicles (DHSMV) when they updated their driver’s license information discovered on Election Day that they were not registered or their names did not appear on the rolls.
- DHSMV examiners did not inform voters that changing their address on their driver’s license did not automatically register them to vote in the new county of residence. In addition, DHSMV did not retain copies of voter registration applications, which are subsequently transmitted to supervisors of elections.
- Once DHSMV transmitted voter registration applications to supervisors of elections offices, there was no verification system in place to ensure that the supervisors of elections received this information.
- Once a driver changed his or her driver’s license address, the DHSMV was not required to forward voter registration applications to supervisors of elections offices for the new resident county of the driver.

Other reports from state motor vehicle offices over the years have noted failures to offer registration at all, excessive lag times in forwarding applications (despite the 10-day deadline in the statute), little or no assistance given to applicants filling out forms, and—probably related to the latter—high rates of rejection of forms emanating from DMVs.

In 2006 testimony before the EAC, Robert Saar, Executive Director of the DuPage

“Each state motor vehicle driver’s license application...shall serve as an application for voter registration...”

County, IL, Election Commission, testified to the full scope of problems uncovered by the 2000 election in Illinois, when literally thousands of people went to the polls only to discover that there was no record that they had registered to vote at motor vehicle facilities. The Illinois Secretary of State responded by creating a task force to study and report on the system's deficiencies. Resulting improvements included transmittal reports tracking each registration, electronic audit files sent from the secretary of state to each local election official, improved training for motor vehicle employees, and better signage at all offices.¹²

As recently as the 2008 election, numerous calls to the "Election Protection" hotline indicated widespread registration problems originating in the Georgia, Kansas, Maryland, and Virginia motor vehicle offices, and individual complaints from many other states as well. One systemic problem arising in Georgia and Maryland is what appears to be a two-step application process. Instead of the voter registration applications being included as part of the driver's license application, these states required the applicant to fill out a separate form if he desired to register to vote. This procedure is in contravention of the NVRA, which prescribes that voter registration be simultaneous with driver's license registration.¹

While no current state law that we have found in any way *impedes* the efficacy of the "motor voter" registration process, the absence of certain mandates upon these agencies creates a loophole that reduces the efficiency and reliability of the system. This creates the need for administrative and statutory reform that will be discussed in the Recommendations section below.

Primarily, it is the lack of oversight and accountability of motor vehicle offices with respect to their voter registration responsibilities that is a great concern. As the Florida findings attest, it is common for applications to be forwarded slowly or not at all. Frequently, address change information is not transmitted to the new county, and no system tracks the movement of applications through the process. This problem is not unique to Florida, nor is this list exhaustive.

Extraordinary as it may seem, other than several early cases challenging congressional authority to regulate the conduct of elections at all, and particularly Congress's right to require extensive state services without paying for them ("unfunded mandates"), there has been very little federal litigation relating to the motor voter provision of the NVRA specifically. One exception was the Department of Justice's lawsuit against the Tennessee Department of Safety (TDOS), as well as several other agencies, for its failure to offer voter registration services in conjunction with drivers license applications and renewals.¹⁴ The case was settled and a consent decree entered, stipulating, among other remedies, that the TDOS would annually train employees in the require-

ments of the NVRA. Not surprisingly, annual motor vehicle registration rates jumped from approximately 80,000 to 148,000 within the first two years of the settlement. (It also follows a predictable pattern that the numbers fell again after the consent decree expired in 2005.)¹⁵

On the state level, New Jersey's Public Advocate and the state's Motor Vehicle Commission settled a lawsuit in 2008, after the Public Advocate received numerous complaints about the agency's failure to offer voter registration in 2006 and 2007.¹⁶

Recommendations

Unlike other provisions of the NVRA, registration through the motor vehicle administration has been widely accepted, if not embraced, by the agencies required to carry it out. Nonetheless, gaps in compliance indicate that this responsibility has not been fully integrated into the DMVs' procedures, leading to inconsistent service to the public.

The Commission on Civil Rights made a few recommendations to address Florida's problems in 2000, and these would be an appropriate starting point to assess other states' compliance as well. Whether legislation or merely administrative rule would be required is a matter that must be evaluated on a state-by-state basis.

Suggested reforms include:

1. Mandate that address changes in drivers' license records be forwarded to the new county so that the voter roll may be updated at the same time.
2. Train DMV workers to provide accurate information about voter registration and assist applicants with their forms.
3. Create a tracking system to ensure that forms are forwarded appropriately within the mandated 10-day period and are received and processed by election authorities.
4. Allocate resources to fund the reforms recommended.

The EAC's 2006 report to Congress indicates that only six states were providing training to *all* public agencies (including DMVs) that conduct voter registration.¹⁷ It is no surprise that widespread complaints of failure to offer registration, lack of staff assistance, and delayed or missing applications persist.

1. **One strategy for simplifying registration is currently being employed in Kansas.** There, the information an applicant supplies to the DMV to apply for a driver's license is sufficient to complete a voter registration application and is transferred electronically to the secretary of state's office automatically, as long as the applicant states a desire to register and attests to her eligibility.
2. **On the other hand, as mentioned previously, states that bifurcate the registration process in motor vehicle offices, rather than providing simultaneous registration, do so in violation of Section 5 of the NVRA.** The Department of Justice should conduct an audit of all state motor vehicle offices' procedures for voter registration services to ensure that they comply with the NVRA and minimize the opportunities for error and delay.
3. **As states more commonly "outsource" government functions, such as the issuance of driver's licenses, the obligation to provide voter registration must extend to the private entity that enters into such a contract with the state.** A recent contract between New Mexico and MVD Express, however, failed to provide that the private entity fulfill the state's "motor voter" responsibility.¹⁸

Mail Registration (Section 6)

One of the keystones of the NVRA was the creation of a simple mail registration form that would be acceptable in all jurisdictions. It was so simple that, in the beginning, it was called “postcard registration.”

The success of the mail-in form has been undeniable. According to the Election Assistance Commission, 22.8% of all applications in 2006 were made through the mail. Unfortunately, however, this effort to simplify the process was hampered from the start by state-imposed restrictions, which have only worsened with time. Section 6 gave the states the option of creating their own forms in addition to the federal form, as long as the state form met the criteria of Section 9(b)—that is, requiring only such identifying information as is necessary to determine the eligibility of the voter and to administer the election process. The states—with the complicity of the courts—have been “pushing the envelope” of this limitation ever since.

“Each state shall accept and use the mail voter registration application form.”

Mail form variations from state to state

Some of the first litigation under the NVRA challenged state laws requiring further information to be supplied on the application form, beyond what is mandated by the NVRA, such as requiring mother’s maiden name, Social Security number, or physical address.¹⁹ (These information requirements are in contradistinction to “eligibility requirements,” such as age or residency, which are necessary preconditions to the right to vote.) Unfortunately, none of the legal challenges to these additional state-imposed information requirements were successful, as the federal courts, notwithstanding the language of the NVRA, gave the states broad discretion in administering voter registration, even to the extent of expanding formal requirements.²⁰

More recently, of course, the trend toward mandatory production of photographic identification²¹ and/or proof of citizenship has only exacerbated the difficulties of many low-income, elderly, and minority citizens in registering to vote. In *Gonzalez v. Arizona*²², plaintiffs brought both statutory and constitutional challenges to Arizona’s proof of citizenship requirement for voter registration (and voting). The NVRA claim was based on the statute’s prohibition on notarization or formal authentication requirements.²³ Nevertheless, the trial court rejected the NVRA claim, reasoning that the statute does not *prohibit* documentation requirements, and indeed permits states to “require such identifying information ... as is necessary to enable ... election official[s] to assess the eligibility of the applicant.”²⁴

Given the legislative history of the NVRA²⁵, which makes it clear that Congress considered *but rejected* the notion of state proof of citizenship requirements, this result is particularly troubling. The case is currently pending in the Ninth Circuit, where one of

the issues on appeal is whether the district court's ruling contravenes Section 6(a)(1) of the NVRA by allowing the state to impose additional documentation requirements beyond those of the federal form.

In Missouri, where a resolution pending in the legislature²⁶ would submit to the voters a constitutional amendment requiring proof of citizenship (over the opposition of the secretary of state), a public campaign in opposition to the amendment features the picture of an elderly African American woman lamenting that the state where she was born, Mississippi, claims to have no record of her birth.²⁷

In the final analysis, the broad authority lodged in states and localities over election administration tends to counterbalance the positive impact of the NVRA. Even the federal form, which is the province of the Election Assistance Commission, is accompanied by 18 pages of state-specific instructions. A 2008 request to the EAC by the state of Michigan would, if approved, direct Michigan applicants to file their federal forms with the appropriate *county or township* election office (of which there are 542 in Michigan), rather than the state, thus further complicating the process, expanding the opportunities for error, and adding pages of county and township listings to the state-specific instructions. At this writing, the Michigan request to the EAC remains in “pending” status. Michigan’s position, however, is clearly contrary to the plain language of the NVRA, which reads: “Forms are returnable to the appropriate state election official.”²⁸

Other technical and redundant questions on the state forms, such as boxes an applicant must check to verify information already contained in a question or an attestation elsewhere on the form—e.g., mental capacity or citizenship—have operated as grounds for rejecting otherwise valid applications.

Obviously, the more complex the form, the more it disadvantages applicants of limited literacy. Despite the NVRA’s admonition that the form may only “require such information as is necessary...to assess the eligibility of the applicant” (Section 9(b)), courts have again given the states wide berth in imposing their own rules. In *Diaz v. Cobb*,²⁹ for example, plaintiffs were unsuccessful in challenging Florida’s voter registration form, which included check boxes that called for information already elicited elsewhere on the form. The court reasoned that the relevant NVRA provision, 42 U.S.C. §1973gg-7(b)(2), read together with HAVA’s requirement of a citizenship check box, directs states to design their forms just as Florida did here. “In particular, the requirement that each eligibility requirement be spelled out, together with an attestation that the application meets each such requirement, and a check-box requirement for citizenship, along with restrictions on duplicative requirements, seems specifically to envision a check-box form.”³⁰

Acceptance of the federal form

The *acceptance* of the form has also been encumbered by state procedures, some of them aimed directly at hampering voter registration drives. *Charles H. Wesley Educational Foundation, Inc. v. Cox*,³¹ for example, was one of the few successful cases holding the line on such onerous requirements. The court ruled that the State of Georgia was not free to reject voter registration applications forwarded by organizers of a voter registration drive based upon state statutes prohibiting acceptance of bundled voter registration applications, nor could the state require the presence of a deputy registrar at the drive. The court held that those statutes were inconsistent with the NVRA (particularly §§ 1973gg-2(a)(2) and gg-6(a)(1)(D)), which requires that states accept voter registration applications delivered by mail and postmarked in time to be processed.

In 2008, some counties in Texas and parishes in Louisiana were actually *refusing to take*, as opposed to rejecting, applications that appeared incomplete. The states were handing such applications back to voter registration groups, and failing to communicate directly with the applicants about the disposition of their applications—despite the clear mandate of the NVRA (in Section 8, discussed below) to do so. In San Diego County, California, registrars refused to give out new application forms until the registration drive’s worker checked her completed cards against each other and against the county’s records for duplicates—thus shifting the burden of election administration from the government to the registration drive.

Although there are strict deadlines for filing voter registration applications (30 days before an election in most states), the processing of forms by the election offices is under no such constraint. There is no deadline imposed by federal law by which an election official must send a disposition notice to an applicant. In 2004, for example, when there were record-setting numbers of new registrants, there were concomitant backlogs, and applicants were frequently not informed of their registration status until it was too late to cure any problems, if indeed they were notified at all.

As mentioned previously, irrespective of the promising and expansive language of the NVRA, federal courts have often upheld state laws and procedures that derogate from the use and acceptance of the federal mail form. In recent years, several states have tried to refuse to accept the federal form altogether:

- In 2006, when New Mexico election officials were questioned, at a meeting with Project Vote and ACORN personnel, about a regulation prescribing that only state forms would be distributed to registration groups, the response was a threat to “red flag” any federal application forms submitted by these groups and subject them to extra scrutiny.³²

- A Colorado regulation also prohibited use of the federal form—until the Election Assistance Commission told the state they could not do so.
- In 2005, Florida attempted to require an additional state form whenever a federal form was submitted, deeming the federal form “incomplete” because it omitted two check boxes that appeared on the state form. However, the EAC rejected the state’s position, on the ground that their requirement amounted to a refusal to accept the federal form.³³

Interestingly, despite the EAC’s position noted above, the courts have given broad latitude to the states to create their own forms that are, in some respects, not substantially equivalent to the federal form.³⁴ Notwithstanding the mandate of NVRA Section 6(a)(2) that state forms “require only such identifying information...as is necessary to... assess the eligibility of the applicant,” state forms have included a wide variety of permutations, some of them patently unnecessary to assess eligibility.

Restrictions on voter registration drives

In addition to the simplified mail-in voter registration form, the NVRA’s authors recognized that registration drives would be an indispensable tool in reaching out to the traditionally disenfranchised. Here, too, the states have proven ingenious in erecting barriers to a simple and widely accessible registration process. In one of the most direct threats to the efficacy of organized voter registration drives, some states have required registration workers to be “deputized” or otherwise made official agents of the state:

- As mentioned above, a Georgia statute required anyone submitting applications to be an “authorized registrar” and further prohibited applications to be “bundled,” i.e., submitted in a group. This law was challenged and was effectively overturned by a consent decree filed in 2006.³⁵
- In Delaware, a registration worker is required to be deputized and trained by the state. Training for deputies is arranged by appointment only at one location in the state, and an application to attend the training must be made 30 days in advance of conducting registration activities.³⁶ In general, formal state requirements, such as deputization, training, registration of the program with the state, and strict time limits on the submission of applications, have become more frequent in recent years as devices to control (and in some cases, shut down) registration drives by community organizations.

Several states have prohibited voter registration workers from being paid on a per-application basis, reasoning that such a compensation plan encourages the submission of

false or duplicative forms. In 2005, Maryland went further—prohibiting workers from being paid at all. Project Vote and ACORN filed suit, resulting in the rescission of the rule.³⁷

Colorado’s legislature passed a law in 2005 that imposed a series of filing and training requirements for voter registration drives, as well as tight deadlines for the submission of application forms.³⁸ (In the same year, Florida passed a comparable law, which was challenged in *League of Women Voters v. Cobb*³⁹ and enjoined on constitutional grounds.) In *Project Vote v. Blackwell*, Ohio’s pre-registration, training, and affirmation requirements for voter registration drives were struck down on the ground that they were pre-empted by the NVRA.⁴⁰ While supporters of these laws argue that they are designed to protect voters, they actually have the opposite effect by significantly impairing the ability of community groups to engage in constitutionally protected voter registration activities aimed at low-income communities and communities of color.⁴¹ Besides, there are usually less onerous alternatives that accomplish the legitimate purpose of promoting the integrity of the registration process. This will be discussed further in the Recommendations section below.

In addition to state statutes that operate to restrict registration drives, numerous administrative rules or informal practices and procedures tend to make registration more difficult. Many of these, whether by design or not, hamper the efforts of community-based voter registration drives that were, in part, spawned by the enactment of the NVRA and the creation of the mail-in form. Despite the fact that Section 6 explicitly imposes a duty upon the states to make forms “available for organized registration programs,” the day-to-day operation of election offices often undermines this obligation.

The procedural impediments to registration seem mundane but nonetheless have a significant impact on the process. Election offices frequently limit the number of state forms they distribute at one time, necessitating many return trips to the office by registration drive workers, who are often volunteers. In Georgia in 2004, the secretary of state tried to cap the total number of forms given to one particular registration group at 10,000, even though the group expected to register many more and in fact ultimately registered more than 22,000 voters.⁴²

Federal forms are rarely distributed at all, and if a drive wants to use the federal form (for example, because it is operating in a metropolitan area on both sides of a state line), the group must bear the expense of making hundreds or thousands of copies. (In Ohio in 2004, this expense was compounded by a directive of the secretary of state dictating a particular *weight* of paper that would be required. The directive was only rescinded only after a loud outcry heard across the country.⁴³)

In New Mexico, state law requires that election officials provide a traceable number on all registration forms so that there is a record of each application processed by a registration drive.⁴⁴ A similar statute is in effect in Nevada.⁴⁵

Without question, in enacting the NVRA, Congress clearly envisioned that voter registration drives would be an indispensable strategy in reaching out to previously under-represented groups in the electorate--but did not envision the many ways in which the states, aided and abetted by the courts, would hamper the efforts of those drives to accomplish that goal. Evidence of this problem is provided in the court's opinion in *ACORN v. Cox*, which rejected plaintiffs' contention that the state's rules prohibiting the copying of finished forms and requiring them to be sealed violated the NVRA (but nevertheless preliminarily enjoined the rules on constitutional grounds):

As a threshold matter, neither the plain language of the NVRA nor the Eleventh Circuit's holding in *Wesley Found. II* prohibit a state from enacting regulations on the manner in which private groups conduct voter registration drives. *Id.* [citing *Charles H. Wesley Educ. Found., Inc., v. Cox* 408 F.3d at 1353]... Accordingly, the copying and sealing restrictions are invalid under the NVRA only if they conflict with the NVRA's regulation of the method of delivery or the form's final content... The Regulation, however, restricts the conduct of private parties during the collection of voter registration applications. The State regulations provide that all valid registration applications that are timely received by the Secretary of State or a registrar will be accepted, regardless of whether the private parties fail to comply with the sealing and copying restrictions.... Accordingly, the Regulation does not conflict with the NVRA.⁴⁶

In other words, the court concluded that the NVRA requires only that the valid application be accepted and processed. The "private parties" conducting the drive, if they violate the copying and sealing rules, are not protected by the NVRA and restrictions on their conduct do not violate the statute. As a practical matter, the proliferation of constraints on the groups disseminating the mail-in form—as well as the courts' permissive attitude toward the form itself—amount to very real frustration of the NVRA's purpose.

Recommendations

In general, more uniformity and predictability and less state discretion would better serve the interests of voters and community groups working to help potential voters to register. Some of these changes could be accomplished by the EAC, which has rulemaking authority over the federal form.⁴⁷

1. **State-specific instructions accompanying the federal form should be limited to the address of the state office where forms must be sent and the deadline for their mailing.**⁴⁸ If there are other unique state eligibility requirements, such as those relating to penal status of the applicant, they should be included as well, but all instructions should be in plain language and limited to 500 words.
2. **State forms should require only the categories of information required by the federal form and should be designed so as to minimize confusion.** For example, check boxes, which are often overlooked by applicants, should be avoided and the information sought by other means.
3. **Federal forms should be available at all voter registration sites in multiples substantially equivalent to the number of state forms at each site.** (State forms should be available as well without limitations on the quantity distributed.) Anyone choosing to download a federal form and make copies must be able to do so using ordinary copy paper. Obviously, the federal form must be accepted by the state on the same basis as the federal form (i.e., with the same level of scrutiny). Though the NVRA states this explicitly in Section 6, states have found ways to disregard it, and a clarifying guideline or amendment should be considered.
4. **A uniform deadline should govern states in their processing of forms and sending disposition notices.** The NVRA makes it clear that the election office has the responsibility of informing the voter of the disposition of her application; this responsibility may not be absolved by handing the application back to the registration worker. Disposition notices must clearly state the reason for rejection of the application and how and by when the defect may be remedied. An applicant who does not receive a disposition letter should be permitted to so affirm, then correct or complete his paperwork on Election Day, and vote by regular ballot. An applicant whose disposition letter or voter registration card is returned undelivered to the Board of Elections should likewise be permitted to fix any problems on Election Day. In the event that the applicant does not appear to vote, the NVRA should be amended so that the purge process in Section 8(d) *must* (not “may”) be initiated before canceling that voter’s registration.⁴⁹ All of these matters should be clarified by Justice Department guidance or an amendment to the statute, since violations of these provisions of the NVRA are frequent—and frequently ratified by the courts.
5. **As noted previously, photographic ID and proof of citizenship requirements violate the spirit, if not the letter, of the NVRA.** The law’s sponsors specifically rejected such authentication rules, and, given subsequent

events and court decisions, the NVRA should be amended to disallow them explicitly.⁵⁰

6. **Deputization and onerous training requirements should be prohibited, as they do nothing to ensure the smooth functioning of the process and only increase the burdens on civic groups wishing to register voters.** Instead of in-person training, the chief election official should prepare simple materials to train registration workers remotely; each worker may then execute an affidavit attesting that he has received the training.
7. **The NVRA should also explicitly disallow bans on the copying of forms and requirements that forms be sealed by the applicant,** since such rules prevent registration groups from performing quality control measures and following up with applicants (including constitutionally-protected “Get out the Vote” programs).
8. **State-imposed filing and recordkeeping requirements for registration drives, and unreasonable deadlines for the submission of applications, also operate to chill the legitimate operations of these drives.** Filing rules should be limited to identifying an agent of the organization and that person’s contact information so that the state may communicate with the drive to address any concerns that arise. Turnaround time for applications should be no less than 10 days—the same time frame imposed by the NVRA on motor vehicle and public assistance agencies for submission of the applications they collect—with a tighter deadline permitted only when the state’s voter registration deadline is less than 10 days away.
9. **Finally, the Department of Justice must vigorously enforce the mandates of Section 6 so that its purpose—to make registration more uniform and more convenient for potential voters—is fully realized.** Recent experience has shown how easy it is for states to backslide in meeting their obligations under the NVRA in general, and the explicit requirements of Section 6 have been widely ignored with impunity. As a result, the Department of Justice must rededicate itself to its leadership role in civil rights enforcement.

Agency Registration (Section 7)

Without question, the least successful provision of the NVRA is the requirement that social service agencies and offices serving the disabled provide voter registration services similarly to motor vehicle offices. While this requirement was a promising way of reaching out to citizens who didn't interact with DMVs, such as those too impoverished to drive or own cars, the reality has not measured up to the promise.⁵¹

In 1995-96, although the NVRA was not fully implemented in all states, the 43 states (plus the District of Columbia) that reported to the Federal Election Commission (the relevant agency at that time), managed to register 2.6 million new voters through public assistance agencies. But by 2005, that number had plummeted to 540,000, a drop of 79%!

This disappointing track record is due to widespread noncompliance with the mandates of Section 7 and a failure of enforcement by the Department of Justice in recent years, not with any lack of clarity in the statute itself. Consequently, as recently as 2006, only 60% of adult citizens in households earning less than \$25,000 were registered to vote, compared to over 80% in households making \$100,000 or more.

In jurisdictions where agencies have been serious about voter registration, dramatic numbers of newly registered voters have been reported:

- In 2008, after a court order was entered in Missouri compelling the state to comply with Section 7, public assistance agencies in that state collected 26,000 voter registration applications from their clients in just six weeks.
- After adopting plans in 2004 to improve agency-based registration, Iowa experienced an increase of 700% over the previous presidential election cycle and 3,000% over the previous year!

While no state laws directly prevent or impede the participation of state agencies in voter registration programs, the fact that the state's chief election official, usually the secretary of state, has no real power over the heads of agencies is a structural problem that could be addressed by amendments to state laws. This problem was pointed out starkly in the trial court opinion in *Harkless v. Blackwell*⁵² where the court found that the secretary of state could not be held responsible for the failure of agencies to offer voter registration in compliance with the NVRA. However, the Sixth Circuit reversed the trial court's decision, making it clear that the coordination function assigned by the NVRA to the state's chief election officer includes ensuring that state agencies comply with the statute.⁵³

“Each state shall designate agencies for the registration of voters in elections for Federal office.”

Many states have been lax in complying with Section 7, and the registration figures from agencies reflect wide swings from year to year, county to county, and agency to agency. In addition, the reporting requirements have been widely disregarded.⁵⁴ Consequently, even the degree to which states comply or are successful in registering new voters is largely unknown. Moreover, field investigations by social scientists, as well as reports from the Department of Justice, show widespread problems of noncompliance. State officials often reveal ignorance of the law, and training materials are inadequate.

In the early years of the NVRA, several states challenged the agency registration requirement in lawsuits testing the constitutionality of the NVRA generally, as well as more narrowly focused litigation to construe the meaning of particular terms in the statute (“offices,” “public assistance,” and “primarily engaged”). Advocacy groups sued several states for failing to provide agency registration. In *ACORN v. Miller*,⁵⁵ for example, the Governor of Michigan had issued an executive order prohibiting state agencies from registering voters until the federal government paid their expenses. The courts soundly rejected the state’s position. In general, the upshot of the legal challenges from both directions was the constitutional validation of agency registration and a broad reading of the language of Section 7.⁵⁶ By and large, it has not been the courts that have stood in the way of agency registration programs but the agencies themselves, as well as both state and federal recalcitrance to enforce the law.

Missouri, where a federal court issued an injunction ordering the state’s largest public assistance agency to provide registration materials and assistance to its clients, provides a clear example of the importance of the Section 7 public agency provision of the Act and the immediate impact of compliance.⁵⁷ As mentioned above, Missouri agencies registered more than 26,000 voters in the first six weeks, and a total of more than 79,000 Missourians in the six and a half months following the order, compared to only 15,568 registered by all Missouri public assistance agencies in all of 2005 and 2006.

In *United States v. Tennessee*,⁵⁸ the parties entered into a consent agreement whereby Tennessee agreed to: (1) implement uniform procedures for the distribution, collection, transmission, and retention of voter registration applications; (2) implement mandatory, annual NVRA training programs for all counselors and employees whose responsibilities included providing Tennessee driver’s licenses, public assistance, or services to residents with disabilities; and (3) ensure the timely collection of voter registration applications and transmittal to the appropriate county election officials. As a result, during 2005 and 2006, Tennessee agencies generated more than 120,000 voter registration applications—more than twice as many as the next highest performing state.

Recommendations

The failure of Section 7 has largely been a failure of leadership. In general, state election officials have failed to notify agencies that they are not in compliance, let alone exercise any regulatory authority over them. Similarly, state agency directors have not made registration a priority with their employees. Many state offices admit to not having registration forms on hand for several years running; many workers do not even know they are required to offer registration. Even agency directors are often in the dark. Compounding the problem is the Justice Department's lax enforcement of Section 7.

- 1. Many of the roadblocks to Section 7 compliance are due to administrative procedures within the agencies themselves.** At a minimum, each agency should appoint an accountable NVRA coordinator to ensure that personnel are trained, that voter registration is consistently offered, that forms are properly transmitted, and that data is kept and reported to the EAC. Agencies should also institute improvements to their registration process: for example, requiring that a receipt be given to anyone filling out an application with a number to call in case the registration card doesn't arrive. With a "paper trail" showing an application was filed, the voter might be able to avoid voting by provisional ballot on Election Day.⁵⁹
- 2. The Department of Justice must commit to enforcement of Section 7.** Since 2001, the Department has filed only two lawsuits under Section 7, one being the case against Tennessee previously mentioned. Predictably, the state's agency registration numbers dramatically improved after the settlement of the suit, proving once again that a little effort in this regard goes a long way. Although the Voting Section issued warning letters to 13 states in 2007, an agreement between the Justice Department and the Arizona Department of Economic Security in 2008 is one of only two other concrete achievements of the Voting Section in enforcing the agency registration requirement in the past seven years.⁶⁰ The other is a December 2008 Memorandum of Agreement with the Illinois Department of Human Services, which mandated that clients be offered the opportunity to register during "remote" (electronic or telephone) interactions with the agencies as well as in-person transactions, and required detailed tracking and reporting of declinations to register.⁶¹
- 3. The limited number of agencies that offer voter registration should be greatly expanded.** Consideration should be given to an Executive Order of the President to this effect. It is possible that autonomous federal programs, such as the Veterans Administration and Social Security, could simply be directed to offer voter registration. Other agencies, operating in partnership with

the states, could be ordered to agree to designation as voter registration sites. The NVRA also requires the states to “designate other offices” as voter registration agencies. These might include private and federal entities, with their consent. Unfortunately, some states have not complied with this mandate, and they should be encouraged to think creatively and reach out to programs that interact with the public, particularly traditionally disenfranchised groups. Unemployment agencies and job training sites, for example, would be opportune venues to reach many low-income citizens.

4. **The states’ chief election officers must be accountable for Section 7 compliance, and indeed for NVRA compliance generally.** While the statute makes this explicit in Section 10 by making the chief election official “responsible for the coordination of State responsibilities,” the courts have occasionally absolved them of real responsibility, apparently finding that “coordination” is something less than “responsibility.” It would be simple for the Department of Justice to issue guidelines to clarify this point.
5. **Improvements in technology have made the efficient, simultaneous registration process more realistic for agencies,** as well as DMVs. As states upgrade their systems, their obligations (and opportunities) to offer voter registration should be kept in mind.

Administration and List Maintenance

(Section 8)

Submission and acceptance of forms

Section 8 sets a number of standards for the administration of federal elections that are widely misunderstood or ignored. First, it makes it clear that forms filed through motor vehicle offices or state registration agencies are deemed submitted when given to such agencies, not when received at the state election board. Consequently, a lag in the transmission of forms by a state agency should not prejudice the voter. Nevertheless, if the agency is so late that a form never arrives at the election board prior to the election, presumably the voter will be required to vote provisionally. Given the wide variances in states' and counties' rules for counting provisional ballots, the voter should not be forced to take this chance.

A related “administration” issue was raised in *ACORN v. Edgar*, one of the early tests of the efficacy of the NVRA as a whole.⁶² Plaintiffs challenged, among other things, Illinois's regulation requiring that anyone submitting the federal registration form must also file an Address Verification Form before the registration could be effective. The court held that this provision violated Sections 8(a)(1) and 8(b)(1) of the NVRA.

...[W]hat controls here is that [the Illinois regulations] are indeed invalid because they violate [NVRA] §§ 8(a)(1) and 8(b)(1) by imposing a requirement that is not authorized by those provisions. If any question existed in that respect (and it does not), both H.Rep. 14 and S.Rep. 30 expressly provide that an applicant's “registration is complete” when the application form alone is tendered to the appropriate office (or on the postmark date if the application form is mailed).

In other words, the state is precluded from imposing additional formal requirements because 8(a)(1) defines registration as complete upon acceptance of a “valid voter registration form,” and 8(b)(1) requires state activities to protect the integrity of the electoral process to be uniform and nondiscriminatory.

Section 8 also requires the state to send the voter a notice of the disposition of his registration application.⁶³ We have seen widespread violation of this law in recent years, when voter registration drives have submitted hundreds of forms at a time. Election officials in some jurisdictions, perhaps overwhelmed by the processing job ahead of them, have been known to hand forms back to the registration workers and tell them to correct real or perceived errors in the forms by contacting the applicants. This is not the responsibility of the registration workers, and is indeed inconsistent with the law.⁶⁴ Nonetheless, it continues to occur, and given the recent growth of registration drives, will likely happen with increasing frequency in the future.

“Each state shall insure that any eligible applicant is registered to vote... and conduct a general program that makes a reasonable effort to remove the names of ineligible voters.”

It is also important to note that there is no federally imposed time limit on the mailing of disposition letters, and some offices, particularly when faced with heavy registration, leave this task to the last minute, preventing any meaningful opportunity for the voter to correct errors or omissions.

Voter list maintenance

On the subject of list maintenance, the removal of a voter from the roll may be accomplished only under certain narrowly defined circumstances. This may be the least understood and most contravened subsection of the NVRA as a whole. Several provisions have proven particularly problematic for local election officials.

A general “list cleaning” program (to remove ineligible voters on the grounds of change in residence) may not be conducted within 90 days of a primary or general election. Such a program must be “uniform, nondiscriminatory, and in compliance with the Voting Rights Act.”⁶⁵ For example, a mailing targeting a particular ZIP code, or only Spanish-surnamed voters, is not permitted.

Finally, the failure of a registered voter to actually vote cannot be, by itself, a ground for removal from the voter roll.⁶⁶ Nevertheless, there is a popular misconception that non-voting justifies purging. Just last year, a Mississippi bill would have required voters to “re-register” if they registered prior to October 1, 2008 and failed to vote in any election between November 3, 2008 and December 31, 2009.⁶⁷ Fortunately, this provision was later dropped from the bill, but the fact that a state senator could have seriously proposed it, in light of the obviously contrary federal law, is alarming.

One of the legitimate grounds for removal of a voter from the rolls under most states’ laws is a felony conviction. The embarrassing case of Florida’s felon list in 2004 provides an important object lesson in just how complicated the application of this seemingly simple procedure can be. In matching the Florida Voter Registration Database (VRD) to a national list of felons, the process matched the first four letters of the first name, middle initial, gender, and last four digits of the Social Security number (when available), and used approximate matches for last name (matching on 80 percent of the letters in the last name) and date of birth. Certain name variations were also explicitly taken into account (Willie could match William; John Richard could match Richard John). The result of this flawed “match” was that approximately 15 percent of the names removed from the VRD were not felons at all and were improperly removed.⁶⁸

It is incumbent upon the state periodically to send “felon lists” to the Board of Elections. But based upon the Florida experience, several safeguards should be implemented. First, the lists must contain enough data, matched exactly, to ensure that the felon cannot be confused with any other voter of the same or similar name. Second,

the state's rule for re-enfranchisement (if any) must be well publicized to the prison authorities and the prison population. Upon exiting the penal system, the felon must be fully informed of his voting status, including what, if any, steps he may take to have his voting rights restored. An affirmative duty must be imposed on parole and probation officers to review these rules with their clients at appropriate junctures. In the razor-close Washington governor's race in 2006, for example, it became clear that many former felons had never been apprised of their rights. The legislature subsequently acted to require authorities to brief all prisoners leaving the system.⁶⁹

The removal of a voter based on a change of address is the most complicated part of the statute. Of course, any voter may *request* to be removed, but this occurs rarely. People who move are apt to notify several government agencies, commercial entities, and friends before they ever think of the Board of Elections. Their failure to notify, therefore, is unlikely to have a nefarious motive—such as the intention to vote in two different jurisdictions. Overwhelmingly, it is due to inadvertence.

Fortunately, the NVRA provides safeguards to ensure that the board of elections removes a voter's name only where it can be certain that she has left the jurisdiction. The law requires that removal of the voter from the voter roll on the ground of a change of residence can only occur (a) if the voter confirms in writing that she has changed address, **or** (b) if she fails to respond to a forwardable notice **and** then does not vote or appear to vote in the next two federal general elections after the notice is mailed.⁷⁰

In other words, the law requires **both** an attempt by the state to directly communicate with the voter **and** the passage of a substantial period of time thereafter in order to be satisfied that she has moved elsewhere. Unfortunately, the application of this process has been widely misconstrued by state and local election officials.

HAVA and database matching

The clear protocols mandated by the NVRA have been further undermined as an unintended consequence of the state database requirement of the Help America Vote Act (HAVA).⁷¹ Now that states are required to create and maintain a statewide electronic database of registered voters, some states have attempted to match a new registrant's data with existing databases of drivers' license numbers, state identification numbers, or Social Security numbers, and deny registration to an applicant whose data does not match.

This use of databases is inconsistent with the purpose of the HAVA requirement, and is notoriously unreliable because of the proliferation of data entry and other errors in such databases.⁷² A settlement and consent decree in *Washington Association of Churches*

v. Reed put a stop to Washington's use of such a match process and made clear that the NVRA rules for registration and list maintenance are still applicable, notwithstanding HAVA's database requirement.⁷³

In another variation on the misuse of the state database, some states have formed regional compacts to share voter registration information, with the object of rooting out duplicate entries—voters who have moved from one state to another without canceling registration in the prior state.⁷⁴

Again, it is important to note that the overwhelming majority of these duplications occur through inadvertence and not criminal intent. It is also obvious, in this mobile society, that there are bound to be duplicate registrations of the same voter, giving rise to the inference that the voter has changed residence. But that inference is only the *beginning* of the process. Two states that suspect they each have the same person on the rolls cannot unilaterally (or bilaterally, as the case may be) cancel the voter's registration in the state where he registered first. Rather, the first state is obligated by the NVRA to send a forwardable letter to the voter and follow the procedure set out in §1973gg-6(d). Instead, some states are simply dropping voters from the rolls in the mistaken assumption that their interstate matching process is a substitute for the NVRA.⁷⁵

Despite frequent violations of Section 8, it has been litigated relatively rarely:

- In *United States v. Pulaski County*,⁷⁶ the parties entered into a consent decree in 2004, whereby the county, without admitting liability, agreed to take certain corrective actions. The specific actions included an agreement not to remove a registrant from the list of eligible voters (1) except at the registrant's request; (2) as provided by Arkansas law by reason of criminal conviction or mental incapacity; or (3) as provided in the NVRA at Section 1973gg-6. Defendants agreed to provide the United States with a list of all registrants listed as inactive in the county and to send confirmation cards to each registrant on the list, postage prepaid by forwardable mail, as part of a process intended to restore to the active list any registrant who had been improperly purged and to prevent future improper removal from the voter rolls. The decree also required defendants to conduct certain pre-election mailing and media campaigns to provide information on registration and polling locations. Finally, the parties agreed that defendants would take actions on Election Day to ensure that poll workers had the tools to help voters to vote in their correct precinct, correct their registration address and vote a regular ballot, or, failing that, to vote a provisional ballot.
- In *ACORN v. Fowler*,⁷⁷ the Fifth Circuit upheld the Louisiana District Court's judgment that ACORN lacked standing to enforce the NVRA list maintenance provi-

sions against the state because it could not demonstrate it had suffered any harm as an organization or as a representative of its members that was traceable to the actions of the defendant election official. This result casts doubt on the efficacy of the private right of action granted by the NVRA in Section 11. Frequently, it is difficult to find an individual plaintiff aggrieved by the actions of election officials in time to cure the problem. For example, a purged voter will probably not be aware of his status until he goes to vote on Election Day. (This issue will be discussed further under “Enforcement of the NVRA,” below.)

- The issue in *United States v. Missouri*⁷⁸ turned on whether the state or local election officials have authority over the list maintenance process. Under Missouri law, the court held that the state was not responsible for enforcement of the NVRA as against local election authorities.⁷⁹ However, the degree of local compliance would be a factor to be weighed in assessing whether the state is reasonably conducting a general list maintenance program. Needless to say, this decision casts doubt on the import of the NVRA’s requirement that the state designate a responsible “chief election official,” and makes it more difficult for aggrieved parties to mount lawsuits against multiple local governmental entities.

Some jurisdictions cancel a registration if the letter notifying the applicant of its disposition comes back as undeliverable. Michigan, Maryland, and Colorado statutorily require cancellation under those circumstances. Such a voter, who has no way of knowing of the non-delivery, shows up at the polls on Election Day and may have no recourse, no matter what the reason for the non-delivery.⁸⁰

- In *ACORN v. Miller*⁸¹ the trial court denied plaintiffs’ claim that a Michigan statute violated the NVRA by providing that the voter be removed from the roll if her voter identification card was returned as undeliverable. The court reasoned that under Michigan law, registration does not occur until the card is received, and therefore Section 8 is not violated by removing a voter who is not yet properly registered. Plaintiffs had argued that the NVRA’s provision in 1973gg-6(a)(1) that an eligible applicant is registered so long as the proper form is submitted within the deadline means that no further steps, such as receipt of the card, are necessary. The court, however, considered this provision to be relevant to time limits only and not to pre-empt the states’ right to determine eligibility, quoting the “Congressional reports”⁸²:

The means of notifying each applicant is not specified, so that each State may continue to use whatever means is required or permitted by State law or regulation. States may adopt whichever procedure they deem best suited to provide notice to the applicant and to provide the registrar with verification of the accuracy of the information provided by the applicant. The Committee

recognizes that such notices are sent by most States as a means of detecting the possibility of fraud in voting registration and intends to give each State discretion to adopt a means of notification best suited to accomplish that purpose...⁸³

- In contrast, in *Common Cause v. Coffman*,⁸⁴ a preliminary injunction was entered to stop election officials from removing from the statewide database, within 90 days of the election, the names of voters whose address confirmation postcards were returned undelivered.

Although Section 6(d) of the NVRA provides that a non-deliverable disposition notice “may” be followed by the protocol described in the list maintenance section (Section 8) of the NVRA, well-intentioned voters are shut out of the process routinely. If the “may” in this section is really intended as a “must,” as would better serve the intent of the statute as a whole, then the statute should be amended accordingly.

Recommendations:

The registration administration provisions of Section 8 (a) are drafted clearly but have been widely ignored.

1. **First, receipt of an application at a motor vehicle or other designated agency is deemed the date of application, irrespective of when (or if) it is received by the appropriate election office.**⁸⁵ But what happens if it is not forwarded to the election board in time to be processed before an election? The statute should provide a remedy for such a voter without the necessity of casting a provisional ballot, which may or may not be counted. If the voter affirms that she applied at a specific office on a specific date, and affirms that she meets all of the eligibility requirements, she should be permitted to vote by regular ballot. Only if some of these facts are in doubt should a provisional ballot be offered.
2. **Second, the statute charges the “appropriate State election official” with sending a disposition notice to the applicant.**⁸⁶ As noted earlier, some election authorities have flouted this duty by handing registration forms back to those who submitted them on behalf of applicants. This is clearly prohibited by the law, but has not been enforced against state or county election officials.
3. **Third, election authorities are constrained from removing the name of a registrant except under limited circumstances**—either

at the request of the registrant, or under state law by reason of criminal conviction or mental incapacity, or under a general list maintenance program to remove names because of death or change of residence.⁸⁷ A list maintenance program may only be carried out only at a time and in a manner consistent with detailed provisions of the statute, which will be discussed below.

The list maintenance requirements of the NVRA, Section 8 (subsections b, c, and d), are so widely misunderstood that amending the statute seems the only effective way to clarify it. Short of that, the Department of Justice should (1) promulgate interpretive guidelines to clarify the mandates of the statute, and (2) file lawsuits against states and counties if necessary. Despite the obvious and widespread violations of the list maintenance law, it has largely gone unenforced.

4. **Section 8 should impose an explicit, affirmative duty upon states to provide adequately detailed felon lists to the election board and regularly to supply lists of prisoners exiting the system** (in states where re-enfranchisement is possible). Given recent experience with significant error rates in “felon purges,” the same 90-day rule applicable to purges based on address changes should be applied to felon purges as well. In other words, any list cleaning process designed to systematically remove felons may not be conducted within 90 days of a federal election. Upon release, all prisoners must be informed of their right to be re-enfranchised (where applicable) and the process for achieving that status. (In light of the importance of voting rights in the prisoner’s reintegration into society, administrative burdens to accomplish re-enfranchisement should be kept to a minimum. Unfortunately, even amending the NVRA will probably have no impact on this state-law issue.)
5. **While an amendment to the NVRA might not be necessary, some guidelines issued by the Department of Justice as to the meaning of “uniform, nondiscriminatory” list maintenance programs would be helpful in giving guidance to election administrators.**
6. **The purging process on the ground of changed residence, which is so widely misunderstood, must be clarified in the statute.** In 2008 in Miami-Dade County, for example, a number of African American voters who had not voted in many years and had not moved in all that time were told they were not on the rolls at all. Clearly, the relevance of one’s failure to vote in two federal elections is misconstrued by the public at large, and frequently by election officials, as if it were an independent basis for removal from the rolls rather than a delineation of a time period. This is a particularly important clarification demanded by the past 15 years’ experience with the NVRA.

7. **As noted previously, the NVRA should be amended to require that the Section 8 purge protocol be observed when a disposition letter or voter registration card is returned as undeliverable.** Currently, election officials “may” use this process but are not required to.
8. **The current tendency by election administrators to reject registrations or purge voters on the basis of the matching of lists—both intrastate and interstate—is in clear contravention of the NVRA.** But since these procedures were devised well after the NVRA’s passage, new language must be added to the statute, to HAVA, or in guidelines under one or both of these statutes, to clarify the legal limits of the match process.
9. **Finally, it is essential that the NVRA be amended to require an exact match, using adequate data fields, before anyone is removed from the voter roll, whether on account of death, felon status, or change of residence.** In addition, meaningful notice to the voter must be required before removal. The right to vote is too important, and the opportunities to correct such errors too limited, to permit anything less. Experience has shown the match processes used by the states to be too error-prone to allow them to continue, and the law should be corrected in light of this experience.

Enforcement of the NVRA

Although it is tempting to conclude that the dearth of litigation under the NVRA over the past 15 years is evidence that the statute's meaning is clear and its goals are being attained, that is far from true. Instead, particularly in recent years, the Department of Justice has shown little will to enforce the law against the states, despite widespread and obvious violations.

Nor have the states done much to keep their own houses in order. To cite only one glaring example, agency and DMV registration in many localities have suffered from a lack of oversight across the board, and the states' chief election officials must be held accountable for NVRA implementation, as the statute requires.

It is also noteworthy that the Department of Justice has never utilized the criminal penalties of Section 12,⁸⁸ which provides for fines and imprisonment in cases of intimidation or voter fraud. In 2006, for example, Project Vote contacted the FBI in Dallas to report an incident in which an intimidating postcard was sent to a voter, threatening him with incarceration if he was a *victim* of voter fraud or was brought to the polls by a political group suspected of voter fraud. The FBI declined to investigate, much less prosecute the offense. A subsequent complaint to the Department of Justice Office of Professional Responsibility, dated April 21, 2008, has never been answered.⁸⁹

Further, the private right of action provided in Section 11⁹⁰ has been shown, as a practical matter, to be a highly imperfect vehicle for enforcing the law. (It is important to note here that the Department of Justice may sue on its own behalf, without a private plaintiff, making the Department's role even more indispensable to vindicating violations of voting rights under the law.) Individual plaintiffs are almost impossible to identify until it is too late for them to achieve a meaningful remedy—the ability to register and to vote. Often, an individual who has been harmed by an NVRA violation will not know it until she appears at the polling place and is told she is not on the roll because, for example, her form was never sent from the disability agency to the election board.

Conversely, an individual who eventually registers successfully is, arguably, no longer injured by the earlier violation of the NVRA, and would then have no standing to sue under the Act.

As a way of circumventing the difficulty of finding individual plaintiffs, some organizations—such as unions or civic groups—have sued on behalf of their members. However, this strategy has also been far from universally successful. For example, as noted earlier, in *ACORN v. Fowler*, the Fifth Circuit upheld the Louisiana District Court's judgment that ACORN lacked standing to enforce the NVRA list maintenance provisions on behalf of its members against the state. In *Diaz v. Hood*, the union plaintiff was

dismissed by the district court on the ground that it had failed to identify any member who was personally aggrieved by the conduct complained of. Eventually, however, the appellate court reversed this decision.⁹¹

In *Harkless v. Blackwell*⁹², the trial court held that ACORN did not have standing to make a Section 7 claim because it “failed to allege anything except ‘a setback to its abstract social interests.’”⁹³ Fortunately, the Sixth Circuit reversed this decision, but without substantively addressing the organizational standing issue.⁹⁴

Clearly, the combination all of these factors constitutes a “perfect storm” to deny meaningful relief for NVRA violations. If the Department of Justice fails in its duty to enforce the law, *and* organizational standing is denied, *and* individual plaintiffs are difficult to identify until they have been irrevocably deprived of their rights—the promises of the NVRA are hollow indeed. Surely, some remedial action must be taken.

Conclusion

The National Voter Registration Act was heralded as a landmark law that would usher in a new era of universal, or nearly universal, enfranchisement and political participation. Yet, registration problems were widely believed to be THE ISSUE of the 2008 election, as hanging chads were in 2000 and long lines in 2004. Clearly, the promise of the NVRA is a long way from fulfillment.

Without reiterating the recommendations included in the foregoing report, we note that there are several categories of improvements that would greatly enhance the efficacy of the NVRA, and thus the enfranchisement of previously unreached voters. Obviously, legislative changes could give the law more clarity—and more teeth. But legislation is generally a long, hard road, and its outcome is often unexpected, and sometimes unwelcome. It should be avoided when change can be made by other means.

Aside from legislation, there are several other more fruitful routes to improving the NVRA. All of them may be characterized under the general rubric of “leadership.”

First, the Department of Justice is charged with enforcement of the NVRA and has been asleep at the switch for many years. Justice has the duty to sue states that are out of compliance, and lawsuits have been few and far between. The Department also has the ability to issue guidance that explains what is expected of the states under the law, elucidates the standards that will be used in assessing compliance, and sets out best practices, such as agency procedures that have yielded large numbers of new voter registrations under Section 7. The Department of Justice simply has not taken advantage of its substantial authority, and the voters have suffered as a result.

Many state election officials have likewise taken a rather passive approach to their responsibilities under the NVRA. Each state’s chief election official must ensure that the state’s registration form is easy to use, that election administrators do not impose unreasonable restrictions on registration drives, and that motor vehicle, disability, and social service agencies consistently fulfill their duties under the NVRA. In addition, some states have failed to designate additional state, federal, and private agencies as voter registration sites, and this mandate of the NVRA should be enforced consistently. Experience has shown that entities that serve low-income and minority citizens can be very effective voter registration agencies when they are committed to compliance with the law. This program can and should be expanded.

Finally, the President of the United States, himself a former voter registration organizer and NVRA litigator, has extensive executive authority to breathe new life into the NVRA by exercising leadership over the Department of Justice and over other cabinet-level departments whose programs are or should be voter registration agencies.

Even without addressing the contours of the president’s power to issue Executive Orders to expand the number of voter registration agencies, he could accomplish a great deal by merely convening the relevant agency and program directors and making it clear what the law requires of them right now. He should also direct additional agencies to accept designation as voter registration sites by states—something the Veterans Administration, under the previous administration, refused to do.

As the debate unfolds in the coming months over “universal registration,” “automatic registration,” “internet registration,” and a plethora of other ambitious proposals to expand enfranchisement and streamline the process, the NVRA remains a powerful tool that should not be ignored.

If it were—finally—vigorously enforced and properly interpreted, this 15-year old statute could well be the transformative law that its authors envisioned.

Notes

- ¹ Moss, Jordan. "Nice Drive to the Ballot Box." *The New York Times*, May 10, 1994.
- ² Stephen Ansolabehere, Cooperative Congressional Election Study, 2008. Release 1: February 2, 2009. Cambridge, MA: M.I.T. Available at <http://web.mit.edu/polisci/portl/detail-pages/portlcces2008.html>.
- ³ See, Dayna L. Cunningham, *Who Are to be the Electors*, 9 Yale L. & Pol'y Rev. 370, 1991
- ⁴ 42 U.S.C. § 1973gg(b) (1993).
- ⁵ A small number of DMVs had already offered voter registration services.
- ⁶ 42 U.S.C. § 1973gg-2(b) (1993).
- ⁷ For an excellent survey of early challenges to the NVRA, see the annotation at 185 A.L.R. Fed. 155 (2003).
- ⁸ A note about numbering of the NVRA's sections: Each is numbered in the statute as 1973gg-#, such as 1973gg-6. Each Section of the NVRA, however, is numbered two greater than its "gg" equivalent. Thus "1973gg-5" is the same as "Section 7" of the NVRA.
- ⁹ U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act 2005-2006*, Report to the United States Congress, June 30, 2007.
- ¹⁰ U. S. Election Assistance Commission, transcript of Public Meeting, Mar. 14, 2006.
- ¹¹ "Voting Irregularities in Florida During the 2000 Presidential Election," (2001). Available at <http://www.usccr.gov/pubs/vote2000/report/main.htm>
- ¹² Available at http://www.eac.gov/News/meetings/031406/ploneexfile.2006-06-26.2480513360/attachment_download/file
- ¹³ Letter from Lisa Danetz, Demos, and Jon Greenbaum, Lawyers' Committee for Civil Rights Under Law, to Christopher Coates, Chief, Voting Section, Civil Rights Division, United States Dep't of Justice, Dec. 31, 2008.
- ¹⁴ *United States v. Tennessee*, No. 3-02-0938, (M.D. Tenn. 2002)
- ¹⁵ These statistics can be found in the two-year EAC surveys at: <http://www.eac.gov/clearinghouse/reports-and-surveys/?searchterm=National%20Voter%20Registration%20Act>
- ¹⁶ Press Release, State of New Jersey, Dep't of the Public Advocate, "New Jersey to Press Forward with Motor Voter Implementation" (Mar. 24, 2008), available at: http://www.state.nj.us/publicadvocate/news/2008/approved/080324_nvra_mou.html
- ¹⁷ U.S. Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006: A Report to the 110th Congress* (2007), at 14.
- ¹⁸ Similarly, Indiana has privatized its public assistance services. See Bob Scott, *Groups Blast Medicaid Privatization*, Apr. 3, 2009, <http://www.jconline.com/article/20090403/NEWS02/904030326>
- ¹⁹ See, for example, *McKay v. Altobello*, No. 96-3458, 1997 WL 266717 (E.D. La. May 16, 1997) (requiring mother's maiden name and Social Security number); *McKay v. Thompson*, 226 F.3d 752 (6th Cir. 2000) (requiring SS number); *Pepper v. Darnell*, 24 Fed. Appx. 460 (6th Cir. 2001) (requiring physical address).
- ²⁰ See also, related discussion of additional address verification form in *ACORN v. Edgar*, at p. 23.
- ²¹ See, e.g., *Crawford v. Marion Cty. Election Board*, 128 S.Ct. 1610 (2008), which upheld Indiana's photo ID law, rejecting a facial challenge based upon the Fourteenth Amendment to the United States Constitution. There was no NVRA claim.
- ²² 435 F. Supp. 2d 997 (D. Ariz. 2006)
- ²³ Sec. 1973gg-7(b)(3)
- ²⁴ Sec. 1973gg-7(b)(1)" (*Gonzalez*, 435 F. Supp. 2d at 998)
- ²⁵ See H.R. Rep. 103-66 (1993) (Conf. Rep.), as reprinted in 1993 U.S.C.C.A.N. 140, 148-49.
- ²⁶ H.J. Res. 9, 95th Gen. Assemb., 1st Reg. Sess (Mo. 2009). Available at <http://www.house.mo.gov/billtracking/bills091/bilxt/intro/HJR00091.htm>
- ²⁷ Georgia also recently passed a proof of citizenship requirement for voter registration. 2009 Ga. Laws, Act 143 (to be codified at Ga. Code Ann. Sec. 21-2-216(g)).
- ²⁸ 42 U.S.C. § 1973gg-6(a)(1)(D) (emphasis added).
- ²⁹ 435 F. Supp. 2d 1206 (S.D. Fla. 2006)
- ³⁰ 435 F. Supp. 2d at 1216
- ³¹ 408 F.3d 1349 (11th Cir. 2005)
- ³² Letter from Michael Slater to Rebecca Vigil-Giron, Mar. 8, 2006, http://www.projectvote.org/images/publications/State-Specific%20Documents/New%20Mexico/New_Mexico_NVRA_Notice_to_Secretary_Vigil-Giron.doc.pdf
- ³³ Letter from Gavin S. Gilmour, Associate General Counsel, Election Assistance Commission, to Dawn Roberts, Director, Division of Elections, Florida Dep't of State (July 26, 2005).
- ³⁴ See, eg., *Diaz v. Cobb*, supra, 435 F.Supp. 1206 (S.D. Fla. 2006) (holding that NVRA's requirement that an application form may require only such information as is necessary to enable the appropriate State election official to assess the eligibility of the applicant and to administer voter registration and other parts of the election process did not prohibit the state from requiring citizenship, felon, and mental capacity check-boxes to be checked on the application.)

- ³⁵ *Charles H. Wesley Educ. Found., Inc. v. Cox*, 2006 No. 1:04-CV1780 WL 522370 (N.D. Ga., Mar. 2, 2006); Ga. Comp. R. & Regs. 183-1-6.03 (2003)
- ³⁶ 15 Del. Code. Ann. tit. 15 § 2060 *et seq.*
- ³⁷ Md. Code Regs. 33.05.03.06 *et seq.*, which was later amended and codified as Md. Code Regs. 33.05.03.06(E)(6).
- ³⁸ Colo. Rev. Stat. §§ 1-2-701, 1-2-702.
- ³⁹ 447 F. Supp. 2d 1314 (S.D. Fla. 2006)
- ⁴⁰ 455 F. Supp. 2d 694 (N.D. Ohio 2006)
- ⁴¹ It also bears mentioning that in both Maryland and Florida, the restrictive laws exempted certain organizations. In MD, unions were not included in the ban on compensation; in FL, political parties were not subject to the paperwork requirements and deadlines. These distinctions allow some organizations a privileged competitive position in the political arena and disadvantage others.
- ⁴² Also that year, the issue was complicated by a HAVA-imposed redesign of forms. In several states, old forms were in wide circulation, and unsuspecting applicants were eventually rejected despite properly filling out the only form they had. Welfare offices and other agencies were especially likely to give out old forms until they ran out. Even as recently as 2008, old forms surfaced in Indiana, causing the registrations of many elderly residents of a nursing home to be rejected until Project Vote filed a lawsuit and obtained an order requiring that the provisional ballots of such applicants be counted. (Despite that order, however, the named plaintiff was denied a provisional ballot at her polling place and was unable to vote. It is not known how many others had the same experience.)
- ⁴³ See Mary B. Beazley and Edward B. Foley, Commentary, *Stealing Votes Before Election Day*, Sept. 29, 2004, http://moritzlaw.osu.edu/electionlaw/ebook/part1/eligibility_rules08.html.
- ⁴⁴ N.M. Stat. Ann., § 1.10.25.8(C) and 1.10.25.10 (B).
- ⁴⁵ Nev. Rev. Stat. Ann. § 293.425.
- ⁴⁶ 2006 U.S. Dist. LEXIS 87080 at *10.
- ⁴⁷ HAVA created the Election Assistance Commission with very limited regulatory authority, but the agency does have jurisdiction over the federal form (as well as such rulemaking authority as is necessary to carry out its duty to report to Congress biennially). See 42 U.S.C. § 15329, referencing NVRA Section 9(a).
- ⁴⁸ The NVRA sets a maximum time frame but not a minimum, which is left to state discretion.
- ⁴⁹ See 42 U.S.C. § 1973gg-4(d).
- ⁵⁰ Federal legislation that would pre-empt states in this regard is currently pending as H.R. 1719, 111th Cong. (2009).
- ⁵¹ Unfortunately the public agency registration provision did not mirror the simple one-step DMV process, as advocates had hoped. A legislative compromise (which was necessary in order to avoid a gutted agency registration provision or no agency registration at all) created the more cumbersome multi-step process in Section 7. See H. R. Rep. No. 103-66, (Conf. Rpt.) on H.R. 2, at H.2082 (Apr. 28, 1993).
- ⁵² 467 F. Supp. 2d 754 (N.D. Ohio 2006), *rev'd and remanded sub nom. Harkless v. Brunner*, 545 F.3d 445 (6th Cir. 2008).
- ⁵³ *Brunner*, 545 F.3d at 452.
- ⁵⁴ 11 CFR § 8.7. The reporting requirements were established by FEC regulation in 1994. At this writing, they have not yet been formally transferred for inclusion in the EAC regulations.
- ⁵⁵ 912 F. Supp. 976 (W.D. Mich. 1995), *aff'd*, 129 F.3d 833 (6th Cir. 1997)
- ⁵⁶ See also *ACORN v. Fowler*, No. 97-0287, 1998 WL 42578 (E.D. La. Feb. 3, 1998), *aff'd*, 178 F.3d 350 (5th Cir. 1999), *Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Scales*, 150 F. Supp. 2d 845 (D. Md. 2001), *United States v. New York*, 255 F. Supp. 2d 73 (E.D.N.Y. 2003), *Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Taft*, 2002 WL 31951263 (S.D. Ohio Nov. 18, 2002), *United States v. Tennessee*, No. 3-02-0938 (M.D. Tenn. 2002), *Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Gilmore*, 190 F.3d 600 (4th Cir. 1998).
- ⁵⁷ *ACORN v. Scott*, No. 08-CV-4084, 2008 WL 2787931 (W.D. Mo. July 15, 2008).
- ⁵⁸ No. 3-02-0938 (M.D. Tenn. 2002).
- ⁵⁹ For detailed recommendations on how public agencies can improve administration of voter registration responsibilities, see Douglas Hess and Scott Novakowski, *Unequal Access: Neglecting the National Voter Registration Act, 1995-2007*. Project Vote, 2008. Available at www.projectvote.org/policy-reports-and-guides.
- ⁶⁰ Press Release, Arizona Dep't of Economic Security, DES Enhances Voter Registration Outreach Efforts (May 15, 2008). Available at: <https://egov.azdes.gov>.
- ⁶¹ See Memorandum of Agreement by and between the United States and the State of Illinois, Dep't of Human Services (Dec. 15, 2008). Available at http://www.usdoj.gov/crt/voting/nvra/il_nvra_agreement.php.
- ⁶² No. 95-C-174, 1995 WL 532120 (N.D. Ill. Sept. 7, 1995).
- ⁶³ 42 U.S.C. § 1973gg-6(a)(1)(2)
- ⁶⁴ 42 U.S.C. § 1973gg-6(a)(2)
- ⁶⁵ 42 U.S.C. § 1973gg-6(b)(1)
- ⁶⁶ 42 U.S.C. § 1973gg-6(b)(2)
- ⁶⁷ S.B. 2910, 2008 Reg. Sess. (Miss. 2008).

- ⁶⁸ See Gregory Palast, *The Wrong Way to Fix the Vote*, Wash. Post, June 10, 2001, at B1.
- ⁶⁹ Wash. Rev. Code § 29A.08.520 (2009).
- ⁷⁰ 42 U.S.C. § 1973gg-6(c)(1).
- ⁷¹ Help America Vote Act of 2002, 42 U.S.C. § 15483.
- ⁷² Justin Levitt, Wendy R. Weiser, & Ana Munoz, Brennan Ctr. for Justice, *Making the List: Database Matching and Verification Process for Voter Registration* (2006).
- ⁷³ No. CV06-0726RSM (W.D. Wash. Mar. 16, 2007) (stipulated final order and judgment). *But cf. Florida State Conference of NAACP v. Browning*, 522 F.3d 1153 (11th Cir. 2008).
- ⁷⁴ The compact states include Iowa, Kansas, Missouri, and Nebraska in one agreement, joined later by South Dakota and Minnesota; and another spearheaded by Kansas, and including Arizona, Arkansas, Colorado, New Mexico, Oklahoma, and Texas. Louisiana, though not participating in any ongoing compact, did inquire of a number of far-flung jurisdictions soon after Hurricane Katrina, to determine whether displaced Louisianans had registered to vote in other states. By letter dated July 21, 2008, Project Vote asked the Department of Justice to investigate Louisiana. To date, there has been no response. The letter may be seen at: http://www.projectvote.org/administrator/images/publications/Justice%20Department%20Correspondence/Coates_letter_re_purging_7-21-08.pdf
- ⁷⁵ Louisiana's process is especially problematic and clearly illegal. Instead of invoking the state equivalent of NVRA Sec. 8, the state has applied a different state statute explicitly intended for cases of suspected fraud, which provides a truncated notice process, for those voters identified as "matches" with the jurisdictions sharing registration data with Louisiana after Hurricane Katrina—many of them merely temporary residences for these "refugees."
- ⁷⁶ No. 4-04-CV-389 SWW (E.D. Ark. 2004)
- ⁷⁷ 178 F.3d 350 (5th Cir. 1999) (King, C.J. and Politz & Benavides, JJ.) (aff'g *ACORN v. Fowler*, No. 97-0287, 1998 WL 42578 (E.D. La. Feb. 3, 1998) (McNamara, J.)).
- ⁷⁸ 535 F.3d 844 (8th Cir. 2008).
- ⁷⁹ The Missouri litigation relates to the Secretary of State's responsibility for Section 7 agency registration compliance, discussed more fully under Agency Registration, at p. 19.
- ⁸⁰ See *ACORN v. Miller*, 129 F.3d 833 (6th Cir. 1997).
- ⁸¹ 912 F.Supp. 976 (W.D. Mich. 1995).
- ⁸² S. Rep. No. 103-6, at 30 (1993); H.R. Rep. No. 103-9, at 14 (1993), as reprinted in 1993 U.S.C.C.A.N. 105, 118, 134.
- ⁸³ *ACORN v. Miller*, 912 F.Supp. at 987. This issue does not appear to have been raised on appeal. 129 F.3d 833 (6th Cir. 1997). Interestingly, last year the U.S. District Court for the Eastern District of Michigan issued a preliminary injunction against the same practice in *United States Student Ass'n. Found. v. Land*, No. 08-14019 (E.D. Mich. Oct. 13, 2008), which was left in place by the Sixth Circuit, No. 2:08-cv-14019 (2009). Appeal is currently pending in the Sixth Circuit.
- ⁸⁴ No. 08-CV-02321-JLK (D. Colo. Oct. 31, 2008).
- ⁸⁵ 42 U.S.C. § 1973gg-6(a)(1)(A) and (C).
- ⁸⁶ 42 U.S.C. § 1973gg-6(a)(2).
- ⁸⁷ 42 U.S.C. § 1973gg-6(a)(3-4).
- ⁸⁸ 42 U.S.C. § 1973gg-10.
- ⁸⁹ A copy of the letter may be found at http://www.projectvote.org/images/publications/Justice%20Department%20Correspondence/OPR_Complaint.pdf.
- ⁹⁰ 42 U.S.C. § 1973gg-9.
- ⁹¹ 342 F.Supp. 2d 1111 (S.D. Fla. 2004); *Diaz v. Sec'y of State of Fla.*, 2005 WL 2402748 (11th Cir. Sept. 29, 2005).
- ⁹² *Rev'd and remanded sub nom. Harkless v Brunner*.
- ⁹³ 467 F.Supp. 2d 754, 761 (N.D. Ohio 2006).
- ⁹⁴ Although standing was ultimately decided in favor of organizational plaintiffs in two of the cases noted above, a recent decision by the U.S. Supreme Court in a challenge to certain environmental regulations, *Summers v. Earth Island Institute*, No. 07-463 (2009) could prove problematic in the future, as it establishes a stringent test for organizational standing, requiring a claim of actual or imminent harm to named individuals that would result from the challenged regulations.

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About Project Vote

Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, legal services, and advocacy to ensure that our constituencies are not prevented from registering and voting.

