

“Improving Voter Registration Performance in Public Assistance Agencies through
Modernizing Data Transfer Systems”

by

Brian Mellor, Senior Counsel, Project Vote

and

Douglas R. Hess, Consultant, Project Vote

Testimony for the Committee on State Voter Registration Databases
of the National Research Council

Workshop VI

March 19, 2009
Cambridge, MA

Summary

Under the National Voter Registration Act of 1993 (the NVRA), a variety of state agencies are required to provide voter registration services and assist their clients in completing and submitting applications. In a large number of states, however, many of these agencies—particularly public assistance agencies—are failing to comply with the law.

This testimony examines possibilities for improving agency voter registration performance and compliance with the NVRA by modernizing the transfer of information between databases at public assistance agencies and election authorities.

The public agency provisions of the NVRA were designed by Congress specifically to reach populations that are often least registered, and that may not be reached through other registration opportunities. The widespread lack of compliance in states across the country means that millions of Americans are being denied the right to register to vote in violation of both the spirit and the letter of the NVRA. Consideration of the special needs of these agencies is therefore paramount for any modernization effort. If we ignore the particular needs of these agencies and their role in registering voters, we create the very scenario the NVRA is meant to prevent: governments facilitating voter registration for some communities of citizens, but not for others.

Therefore, consideration of modernizing voter registration systems must take into account the specific needs of public assistance agencies. Developing systems for the transfer of data from these agencies to election officials could increase the likelihood that clients register, and reduce problems created by the management of data entry and of paper forms all along the process.

Another important point we wish to emphasize in this testimony is the need for technological change that includes monitoring of agency performance. Since many states are currently not complying with the public agency requirements of the NVRA, technological improvements to voter registration systems should include mechanisms that allow for the accurate monitoring and evaluation of agency compliance with the Act.

Without including such monitoring and review processes in these systems, we fear that technological innovations will simply improve how information *could* be sent between databases, without addressing the serious concern that the registration systems may not be generating any data (registrations). Indeed, some past efforts regarding technological improvements in agencies attempting to implement the NVRA seem to have created compliance problems themselves. Thus, we need to make sure that future innovations avoid these problems and ensure that they do not run afoul of the requirements of the NVRA.

Project Vote is pleased to have the opportunity to submit this testimony to the National Academies' Committee on State Voter Registration Databases. As one of the largest non-partisan, non-profit voter participation organizations in the United States, Project Vote works to empower, educate, and mobilize low-income, minority, youth, and other

marginalized and under-represented voters. Project Vote has helped more than six million Americans in low-income and minority communities complete voter registration applications. Currently, Project Vote and partnering organizations are involved in the provision of technical assistance in a number of states regarding implementation of, and compliance with, the public agency provisions of the NVRA. For more information on this work please go to www.projectvote.org/public-agency-registration-.html.

Background

The NVRA became law in 1993, and was implemented by most states in 1995.¹ Proponents of the Act saw it as building on the important work of the Voting Rights Act of 1965.² Major goals of the NVRA include reversing the effects of past discriminatory practices regarding voter registration, and ensuring equal access to registration and voting by all citizens regardless of their background or circumstances.

To accomplish these goals, Congress specifically included in the NVRA language that 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:

If a State does not include either public assistance [or] agencies serving persons with disabilities ... in its agency [voter registration] program, it will exclude a segment of its population from those for whom registration will be convenient and readily available--the poor and persons with disabilities who do not have driver's licenses and will not come into contact with the other principle place to register under this Act. It is important that no State be permitted to so restrict its agency registration program.³

Therefore, among other locations, states are required to designate as voter registration agencies “offices...that provide public assistance” and through “state-funded programs primarily engaged in providing services to people with disabilities.”⁴ Congress specified that the NVRA covers: the Supplemental Nutrition Assistance Program (SNAP, formerly called the Food Stamp Program); Medicaid; the Special Supplemental Nutrition Program for Women, Infants, and Children (WIC); and the Temporary Assistance to Needy Families Program (TANF).

¹ Six states are exempt from the Act: Idaho, Minnesota, North Dakota, New Hampshire, Wisconsin, and Wyoming.

² See: Keyssar, A. (2000). *The Right to Vote*. New York: Basic Books; Piven, F. & Cloward, R. (2000). *Why Americans Still Don't Vote*. Boston: Beacon Press.

³ U.S. House of Representatives. (1993, April 28). Conference Report on H.R. 2, National Voter Registration Act of 1993, page H2082.

⁴ 42 USC§1973gg-5(a).

Offices providing public assistance or disability services are designated as voter registration agencies under the NVRA and they must:

1. Distribute a mail-in voter registration application with “each application for such services or assistance, and with each recertification, renewal or change of address form relating to such service or assistance,”⁵
2. Assist applicants with completing the application forms, and
3. Accept and transmit completed applications to authorities.

It is important to note that an essential feature of the NVRA is that voter registration services are to be offered actively, not passively. That is, compliance with the public assistance agency provisions of the NVRA is not met simply by making voter registration applications available. Clients—when applying for benefits, recertifying their eligibility, or changing address information with the agency—must be given a voter registration application and be offered the same amount of assistance with it that the agency offers with other forms. This is similar to the process required in departments of motor vehicles (DMVs), although the law requires applications at DMVs to simultaneously transfer data from the agency forms to a voter registration application.⁶

In addition to the above requirements, the Act specifies the exact language of the question to be put to clients regarding voter registration services. It further specifies exact language for notifying the client of their right to privacy, that assistance with the forms can be provided, and that their benefits will not be affected based on their decision to register to vote or not. The NVRA also requires language indicating where clients may file complaints regarding violations of their rights to privacy, to decide to register to vote, or to choose a political affiliation. Finally, the Act requires agencies to transmit completed voter registration applications to election authorities within ten days of the date of signature. If the close of registration for federal election is within five days of the applicant’s completion of the form, officials have to transmit the application within five days of the date of signing.⁷ Other federal laws require agencies to keep records related to voter registration for two years.

Ongoing Implementation and Compliance Problems

Since the Act was implemented in 1995, public assistance and disability agencies have helped millions of disabled and low-income citizens complete voter registration applications. However, there remains considerable evidence that millions of clients of these agencies are not being offered the services specified by the NVRA.

⁵ §1973gg-5(a)(4).

⁶ §1973gg-3(c)(2) states that the “voter registration application portion of an application for a State motor vehicle’s license-- (A) may not require any information that duplicates information required in the driver’s license”.

⁷ §1973gg-3(d).

A 2008 Project Vote and Dēmos report, *Unequal Access: Neglecting the National Voter Registration Act 1995-2007*, documented that the number of registration applications from public assistance agencies was in fact at an historic low.⁸ According to the report:

- The numbers of people registering through public assistance agencies in 2005-2006 declined by 49 percent compared to the previous two-year period.
- 2005-2006 numbers represent a stunning 79 percent decline from 1995-1996, the first two years NVRA was in effect.
- Both the numbers of people receiving social services during this time and the numbers of people needing to register have remained high, suggesting that the difference is one of implementation more than demand.

Further discussion of this evidence can be found in notice letters Project Vote has filed with states, reports we have written or co-authored with other organizations on NVRA implementation nationwide or on specific states, findings revealed in litigation, and in testimony that we and others have given to Congress.⁹

Moreover, the Department of Justice has begun investigating state noncompliance with Section 7 of the NVRA. Two of these investigations, so far, have led states to sign agreements with the Department of Justice (Illinois in 2009 and Arizona in 2008), which should markedly improve their compliance with the NVRA in human services agencies.

In addition, states are asked to report to the U.S. Election Assistance Commission (EAC) data regarding the performance or implementation of various provisions of the NVRA, including the number of voter registration applications coming from public assistance and disability agencies. Many states have not been providing complete data regarding Section 7 to the EAC. This deprives Congress—to which the EAC is required to report on the impact of the NVRA each odd numbered year—of information it needs to evaluate the nation’s progress towards the goals of the NVRA.

Substantial harm to the democratic process results when public assistance agencies do not comply with the NVRA. Approximately forty percent of adult citizens in the bottom quintile of households by income were not registered to vote in 2006 (compared to only twenty percent of those in the top quintile).¹⁰

Meanwhile, millions of adult citizens interact with public aid agencies each year. For instance, for the past several years, over 10 million initial applications for the Food Stamp Program alone have been filed in each twelve month period. In short, millions of additional citizens could be registered each election cycle if the NVRA was fully implemented by these agencies.

⁸ Hess, Douglas R. and Scott Novakowski (2008, February). *Unequal Access: Neglecting the National Voter Registration Act*. Washington, DC: Project Vote. Available at: <http://projectvote.org>.

⁹ For these documents, pick “Public Agency Registration” from the menu at <http://www.projectvote.org>.

¹⁰ For more details on disparities in voter registration and voter turnout rates, see: Hess, Douglas R. (2007, September). *Representational Bias in the 2006 Electorate*. Washington, DC: Project Vote. Available at: <http://projectvote.org>

Modernizing Voter Registration in Public Assistance Agencies: Initial Applications

The potential for developing systems to electronically transfer voter registration data from agencies to election officials poses some interesting opportunities for improving how the NVRA works in agencies. As mentioned previously, the NVRA currently requires each agency to distribute paper voter applications to all of its clients. If, instead of offering physical voter registration applications, agencies began offering to transmit electronically on behalf of clients the pertinent information to the election authorities for voter registration, these agencies would be moving in the direction of a simultaneous voter registration procedure—something they currently lack.

Such procedures would, in theory, increase the number of clients who take advantage of the opportunity to register to vote. If clients do not need to fill out “yet another form,” this could increase the response rate to the opportunity to register to vote. Moreover, such a system would likely cut down on errors in the voter registration validation process that occur due to the processing of paper forms (e.g., mistakes arising from poor handwriting, applicant errors on poorly designed forms, or errors in data entry).

In the following section we will discuss some potential problems that need to be resolved for this to work smoothly for citizens completing initial applications for benefits. The next section examines how these implementation issues apply to clients renewing or recertifying their eligibility for benefits or clients updating their address with the agency. A third section on these topics emphasizes the necessity that any modernization efforts include a collection of data for the monitoring of office compliance (which will also facilitate the ability of states to provide data to the EAC for its biennial report to Congress).

I. Steps Required to Implement Electronic Modernization

There are a number of obvious—and some less obvious—issues that must be addressed before voter registration can be incorporated into an electronic benefits application or agency database. However, Project Vote believes all of these issues can largely be addressed within the confines of existing federal and state laws.

1. Public assistance agency databases will have to be linked to voter registration databases so that the relevant data can flow from the public assistance database to the voter registration database. Protocols that can do this are common, and should not be hard to develop for databases as either site.
2. The computer program used as a benefits application by clients or by intake workers must include a module for voter registration. That module must prompt the agency staff to ask the client if they would like to register to vote, and require the staff to check a “yes” or “no” box. The NVRA specifies the specific language of the question that must be asked of clients regarding voter registration. However, to ensure that clients understand that they will not need to complete another form,

agencies should add language to this question explaining what simple additional steps are needed to automatically apply to vote. Moreover, these modules should be able to assist all adults present at the time of application with voter registration.

3. The agency software must be able to collect any information needed on the voter registration application that is not already collected through the benefits process. All applicants need to declare whether they are citizens and whether they are over the age of 18. In some states applicants will also need to declare that they are not felons, ineligible to vote, or mentally incapacitated. Some states request party affiliation, phone numbers, and whether you need assistance to vote or wish to be a poll worker. All of these questions, if not already included in the benefits application, must be included in the voter registration module, and the agency staff will have to be able to enter the answers into the database.
4. The agency needs to obtain and transmit a physical signature for the voter registration application. Physical signatures are required, and in most states voters are also required to affirm that they meet the states voter eligibility requirements. (These affirmations are often redundant to the declarations given above, but are still unfortunately required in most cases.)

This is probably the most complicated issue with introducing an electronic system. Many public assistance agencies that use electronic applications accept “electronic signatures” that are not signatures at all, but more like a personal identification number (PIN). Current election laws would not accept this as a signature for the purposes of voter registration. Nonetheless, it would seem there are a number of solutions that that could be implemented with existing technology.

One solution would be to use an electronic signature pad. The agency staff could read the affirmation and inform the client that by signing the pad they are affirming to the statement read to them. An image file of the signature would then be transmitted to the voter registration database or otherwise linked to it. This solution presents problems because often the person’s signature on a signature pad is different than their signature on paper, making comparisons on absentee ballots or initiative petitions difficult.

A second solution would be to develop a supply of individually coded affirmation signature cards. At the end of the voter registration process, the staff would have the client sign one of these cards. The code on the signature card would then be entered into the client’s electronic file at the assistance agency to link the card to the electronic record (or a record identification number from the agency’s database could be added to non-coded affirmation cards). This signature card would then be mailed to the election officials, who could connect it to the electronic data transmitted to them by the agency and have a complete voter registration application. However, this solution means the process is not entirely paperless, which is one of the benefits of the electronic application.

The issue is further complicated by the fact that, increasingly, agencies with electronic benefits applications assume clients complete applications themselves at home over the Internet, or at a terminal in the agency (much like using a terminal in a public library to access the Internet).

In the former cases, clients would not be able to provide signatures to election authorities; in these cases, an ideal solution would be for the agency to pre-populate a postage-paid voter registration application for each voter-eligible adult in the house and mail it to the client, who would need to simply sign and return it to apply to register to vote. In the latter cases, clients should be given an affirmation card (discussed above) when they enter the agency along with any papers that include the NVRA-required language. If they return this card to the agency staff, the agency would then enter onto it the code which connects it to the client's record. One such card should be given to each adult present, so each can complete a voter registration application or update their voter registration record with their own signature card.

5. The NVRA details specific language to be included on the forms used in public aid and disability offices for voter registration purposes related to the applicants' rights. If the paper forms no longer exist, it is likely that some of this language could be transferred to other documents given to applicants (such as information on the rights and responsibilities of program clients, etc.) or to the screens clients see while applying for benefits on a terminal.
6. Finally, under the NVRA, applicants in public assistance agencies have a right to complete their voter registration applications in private. Clients who wish to complete the application in private may have to be offered a paper voter registration application (and these forms should be kept on hand for clients wishing to take them home). Of course, in situations where clients are seated at a terminal in the agency, or completing their benefits application at home, privacy and the integration of voter registration into the electronic benefits application should not be a problem.

II. Modernizing Voter Registration in Public Assistance Agencies: Recertification of Eligibility and Address Change Procedures

It is worth noting that some of the implementation issues discussed above may also apply to processes for clients updating their address or renewing/recertifying their eligibility for benefits—two situations when the NVRA mandates that voter registration applications be offered. Certainly, the solutions proposed above would apply if recertifications or address changes occurred in the agency at a terminal or at home. Other situations could be addressed as follows:

1. In the case of recertification processes conducted remotely by mail, agencies should just provide the mail-in voter registration form with any materials sent out.

2. In the case of recertifications completed over the phone, voter registration materials should be offered in any materials sent to the client following recertification determination to the client for completion. Voter registration could be offered over the phone as well, with materials then sent to the client for completion.
3. In the case of clients who are already registered to vote, who are informing the public aid offices of an address change, the fact that the election authority would already have a signature on file means that the process could be simplified. The election authorities could simply decide to accept address change notifications from the agency on behalf of the client without an additional transmitted signature. (The address change form the agency keeps would also have a signature). If election officials were unwilling to do this, the client would have to rely on procedures previously discussed.

Currently, the NVRA requires that a change of address form filed for a driver's license will serve as a change of address for registration for federal elections "unless the registrant states on the form" otherwise.¹¹ In essence, this creates an "opt-out" voter registration update system when changing one's address through DMVs. (We are not certain if many states follow this procedure, however.) Public aid agencies may wish to require an affirmative statement from clients (as opposed to the opt-out policy the law requires for drivers license change of address systems). Even so, if clients are already registered and/or the agency has sufficient information to register them, this would reduce the information the agency needs to collect from the client in order to inform the election authorities of a change of address for voter registration purposes.

III. Can Technological Modernization Improve NVRA Compliance?

It is possible that technological changes in how voter registration occurs at agencies, including how data is transferred to election officials, could greatly improve agency compliance with the NVRA. However, according to anecdotal evidence, some technological changes in the past in how agencies comply with the Act have backfired.

For example, inserting the offer of voter registration services into a prompt on the computer screen during intakes at agencies (i.e., the terminal where staff members fill out a benefits application while interviewing clients) has led some agencies to not offer the actual voter registration application to clients as the law requires. Eventually, staff members (perhaps as they turnover) no longer know what to do when somebody does indicate they wish to register to vote. Not handing applicants the voter registration form then appears to lead some agencies to not have applications on hand at all.

In one state, an agency director asked staff members what they do if clients respond affirmatively to this computer prompt during the intake process. It was reported to Project Vote that employees at some sites would simply tell clients to pick up a voter registration

¹¹ See 42 USC § 1973-gg3(d).

application from a box in the lobby as they left, or to go to another agency for the forms—both of which are clear violations of the NVRA.

Likewise, when providing benefits applications through the Internet, many agencies simply provide a link to their state’s voter registration application instead of incorporating the voter registration application into the file clients download and print out. Finally, some agencies, including departments of motor vehicles, have tried to print out pre-populated voter registration applications on-site only to encounter problems when the voter registration applications are redesigned such that they no longer worked with the agency printers or software. In short, instead of improving compliance with the law’s requirements to give clients a voter registration application and offer assistance with it, these changes moved agencies further away from the law.

Sadly, agencies covered by Section 7 of the NVRA do not seem to problem-solve effectively when systems regarding voter registration go awry. This leads to very significant numbers of people being denied their rights under the NVRA.

Given the long history of compliance problems in agencies covered by Section 7, it is essential that systems be developed that include accurate data collection processes for the monitoring of compliance with the NVRA and the evaluation of office performance. This process would not need to be burdensome, and in fact would assist states in collecting the data necessary for the EAC’s biennial report to Congress on the NVRA.

Since registrations need to be transmitted every 10 days or less, it makes sense that this data be collected biweekly, or at least monthly, to allow corrective action to be taken before problems continue for too long. Based on our experience in technical assistance and litigation since the NVRA was implemented, the data that should be collected are:

1. How many of each of the following have they processed:
 - a. Initial applications for benefits;
 - b. Change of address requests; and
 - c. Recertification or renewal forms for benefits.
2. How many responses they received to the so-called declination question (“If you are not registered to vote where you live now, would you like to apply to register to vote here today?”):
 - a. Number of clients answering “Yes”;
 - b. Number of clients answering “No”; and
 - c. Number of clients who did not wish to respond.¹²

¹² The number of non-responses is an essential item as it can be useful in locating offices that have stopped training their staff to go over the question with clients. In addition, some states also offer clients more responses than just yes or no, such as “no, I am already registered” or “this is for updating my registration.” If these are possible responses then, of course, data on these should be collected, too. The number of clients

3. The number of completed voter registration applications that have been, or are being, transmitted to election authorities for the same time period.

With this basic information it is easy for states to monitor agencies and determine which may be having difficulties complying with the law.¹³ For instance, it is easy to determine that a problem may exist if an agency consistently reports a certain number or rate of clients are registering to vote, and then suddenly begins to report no registrations. Likewise, if the number of responses to the declination form language is less than the number of covered transactions taking place, the office may need to take corrective action.

In general, Project Vote has found that the collection of data on office NVRA performance is one of the best ways to ensure compliance and improve agency performance.

Conclusion

When voter registration services through public agencies function well, states can register or update the registrations of tremendous numbers of citizens from communities that often are the least registered. The recent dramatic increases in participation in SNAP (the Food Stamp Program) emphasize the need to improve voter registration assistance in these agencies.¹⁴ For example, in recent years, following efforts to improve their NVRA public agency efforts, Missouri and Tennessee have each assisted thousands of public assistance agency clients with voter registration applications each month. Other states should implement reforms to achieve similar results, avoid litigation from the Justice Department or private plaintiffs, and ensure that the basic civil rights of millions of citizens are preserved.

Project Vote believes that the modernization of voter registration procedures at public assistance agencies could lead to significantly improved performance by making registration easier for clients and the transmission of registrations simpler for agencies. At least as important, modernization of agency procedures, if carefully designed, could help ensure that public assistance agencies end a long and widespread history of compliance problems by providing both agency officials and election officials with the data needed to manage fully their responsibilities under the NVRA.

that had transactions with the agency covered by the NVRA is essential. Otherwise, it can be difficult to determine if the total number of declinations equal the number of covered transactions, an important metric of compliance.

¹³ Although we are focusing on Section 7 of the NVRA, similar data (modified as appropriate) could also easily be collected at other voter registration sites such as motor vehicle offices.

¹⁴ According to the Food Research and Action Center, analyzing data from the U.S. Department of Agriculture, participation in the SNAP/Food Stamp Program is now at the highest it has ever been; participation increased by 4.5 million people (16 percent) from January 2008 to January 2009. See: http://www.frac.org/html/news/fsp/2009.01_FSP.htm