



# POLICY BRIEF

## **Compliance Issues and Legal Responses to the National Voter Registration Act By Ryan Patrick July 30, 2013**

### **Executive Summary**

Section 7 of the National Voter Registration Act of 1993 (NVRA) requires that certain agencies provide vote registration assistance when a person either applies for or renews services with that agency. Many of these agencies are mandated by the NVRA, but others are chosen within a state, by the state. When a state has failed to follow the mandate and a required agency does not provide voter registration services as required, the Attorney General may file suit if there is no aggrieved person, however the NVRA provides a private right of action for a citizen to file suit as well. The citizen must notify their chief election officer of the failure and if it is not remedied that person then may sue. The Department of Justice has had many successful suits for NVRA failures for a variety of reasons, across the country, but there have been no successful suits in Nebraska, private or governmental.

### **Agencies Subject to the NVRA**

Per the VRA, “any office [ . . . ] that provides either public assistance or state-funded programs primarily engaged in providing services to persons with disabilities must offer voter-registration services. Armed Forces recruitment offices must also provide voter registration services.”<sup>1</sup> The State must also designate additional agencies beyond the offices that provide public assistance and services to persons with disabilities.<sup>2</sup>

Nebraska has explicitly designated several offices as agencies under the NVRA:

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<sup>1</sup> *Questions and Answers*, United State Department of Justice, [http://www.justice.gov/crt/about/vot/nvra/nvra\\_faq.php](http://www.justice.gov/crt/about/vot/nvra/nvra_faq.php) (last visited 5/29/13)

<sup>2</sup> 42 U.S.C.A. 1973gg-5(a)(3).

- the Office of the Election Commissioner and County Clerk<sup>3</sup>
- the Department of Motor Vehicles<sup>4</sup>
- the Department of Education
- the Department of Health and Human Services<sup>5</sup>
- the Office of the Secretary of State<sup>6</sup>

Similar to NVRA requirements of the DMV, the Department of Education and the Department of Health and Human Services are required to provide registration services at application, review, or change of address.

The following agencies fall under the purview of the Department of Health and Human Services:

- Nebraska Aid to Dependant Children
- Nebraska Medication Assistance Program
- Nebraska Special Supplemental Nutrition Program for Women, Children, and Infants
- Nebraska Supplemental Nutrition Assistance Program (SNAP)<sup>7</sup>

The following agencies are under the Department of Education:

- Nebraska Head Start
- Nebraska Vocational Rehabilitation

Armed Forces agencies are required to establish Installation Voting Offices (IVA) offices at all military installations to assist with the voting and registration process for mail-in and absentee voting and register voters at recruitment offices.<sup>8</sup>

### **Non-Compliance with the NVRA and Legal Responses**

The Justice Department has filed multiple lawsuits to force states to comply with the National Voter Registration Act.<sup>9</sup> These cases are in regard to several issues:

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<sup>3</sup> Neb. Rev. Stat. § 32-302.

<sup>4</sup> Neb. Rev. Stat. § 32-308.

<sup>5</sup> Neb. Rev. Stat. § 32-310.

<sup>6</sup> Neb. Rev. Stat. §32-321.

<sup>7</sup> Neb. Rev. Stat. § 32-310.

<sup>8</sup> Department of Defense Instruction 1000.04 (Sept. 13, 2012).

<sup>9</sup> *Cases Raising Claims Under the National Voter Registration Act*, United States Department of Justice, [http://www.justice.gov/crt/about/vot/litigation/caselist.php#nvra\\_cases](http://www.justice.gov/crt/about/vot/litigation/caselist.php#nvra_cases) (last visited 5/29/13).

States purging voter rolls within 90 days of an election,<sup>10</sup> failing to offer voter registration at public assistance agencies<sup>11</sup> or other designated agencies including universities<sup>12</sup> and Department of Motor Vehicles, failure to timely process registration applications, and failure to ensure a uniform program which removes ineligible voters per NVRA guidelines.<sup>13</sup> In Nebraska, litigation has been brought for the State's failure to follow the voter list requirement of the NVRA, which allows access to voters' name and address information, but this case was dismissed for not having a private cause of action because it was not in regard to a federal election.<sup>14</sup> The NVRA does not provide a private right of action for State issues.

For federal matters, the NVRA allows an aggrieved person to bring a civil action for injunctive or declaratory relief.<sup>15</sup> Requests for monetary damages have been denied to a plaintiff, with the court instead requiring that the State come into compliance with the NVRA.<sup>16</sup> In successful civil suits by an aggrieved person, the courts have demanded the states remedy whatever way they were in breach of the NVRA and follow the law.

### **Ability to File Suit Under the NVRA**

The National Voter Registration Act provides multiple options to file suit in regard to breaches of the law under 42 U.S.C. § 1983.<sup>17</sup> The Attorney General may file suit in district court if necessary to carry out the NVRA if there is no aggrieved person.<sup>18</sup> The NVRA also provides a Private Right of Action in federal elections. The aggrieved person must notify the chief election official of their state of a violation, and if the violation is not corrected within 90 days after receipt of the notice or within 20 days after receipt if the violation occurred within 120 days before the date of an election, the person may file suit in the appropriate district court.<sup>19</sup> In addition, an association may sue under the

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<sup>10</sup> *United States v. State of Florida*, (N.D. Fla. 2012).

<sup>11</sup> *United States v. State of Louisiana*, (M.D. La. 2011); *United States v. State of Tennessee*, (M.D. Tenn. 2002).

<sup>12</sup> *United States v. State of New York*, (N.D.N.Y. 2004).

<sup>13</sup> *United State v. State of Indiana, et al.*, (S.D. Ind. 2006); *United States v. State of Missouri, et al.* (W.D. Mo. 2005).

<sup>14</sup> *Dobrovolny v. Nebraska*, 100 F. Supp.2d 1012 (Neb. 2000).

<sup>15</sup> 42 U.S.C.A. § 1973gg-9(b)(2).

<sup>16</sup> *National Coalit. for Students with Disabi. V. Bush*, 173 F.Supp.2d 1272 (N.D. Fla. 2001).

<sup>17</sup> 9 Am. Jur. Pl. & Pr. Forms Elections § 21.

<sup>18</sup> 42 U.S.C.A. § 1973gg-9(a).

<sup>19</sup> 42 U.S.C.A. § 1973gg-9(b).

NVRA if it can show that its members were not given a chance to register or were purged from the voter rolls.<sup>20</sup>

There have been many cases for breaches of the National Voter Registration Act, with not one part of the Act responsible for more litigation than another. While no litigation has so far been successful in Nebraska, in many other states agencies have been found in breach of the NVRA, with suits brought under the private right of action provided by the NVRA, by the Attorney General, private individuals, and associations. Monetary rewards are not provided by the NVRA and injunctive and declaratory relief is sought instead with the breaching agency required to correct its non-compliance.

### **Recommendations**

1. Independent monitoring and compliance of various state agencies must be occasionally done to ensure that agencies are following NVRA requirements. Agencies required to provide voter registration materials are not always self-policing. By randomly, occasionally asking these agencies to provide a person with their voter registration services or materials, it is possible to learn of any infractions. These agencies in breach must demonstrate a resolution and correction to the fault.
2. The State should provide a set list of all offices that are required to provide voter registration services under the NVRA and why. By providing a set list of precisely those offices that must provide these services, it would eliminate any question of which offices may or may not be required to do so. At present, there is still some question among state agencies as to what is considered “public assistance” and which offices fall into that category. This should be settled by each state to avoid and further confusion.
3. The office of the Election Commissioner should provide an online and printed list of state agencies required to provide voter registration services. By doing so, a potential registrant could make educated decisions about how to register to vote while doing other state agency business rather than relying on the assumption that the DMV and election offices are the only place to do so.

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<sup>20</sup> *Assn. of Community Organizations for Reform Now v. Fowler*, 178 F.3d 350 (5th Cir. 1999), National Coalition for Students with Disabilities Educ., *Legal Defense Fund v. Bush*, 170 F. Supp. 2d 1205 (N.D. Fla. 2001).