

4-17-2014

President Barack Obama
The White House
1600 Pennsylvania Avenue, NW
Washington, DC 20500

Re: The ACA and NVRA Compliance

Dear Mr. President:

The undersigned groups, representing civil rights, voting rights, women's rights and religious organizations, write to urge you to ensure full enforcement of the National Voter Registration Act of 1993 (NVRA) under provisions of the Affordable Care Act (ACA). Many of us strongly supported the ACA, and all of us agree that the ACA is well on its way to ensuring access to quality, affordable health care for all Americans. We are, however, concerned that the application process for the federally facilitated Health Benefit Exchanges (FHEs or Exchanges) violates the public agency provisions of the NVRA. Accordingly, we call on you to direct the Department of Health and Human Services (HHS) to make changes necessary to ensure compliance.

The National Voter Registration Act of 1993 was enacted with strong bipartisan support, and has enabled over 140 million Americans to register to vote. The NVRA simplified voter registration, making registration more accessible by requiring registration services to be provided by many agencies where Americans interact with their government. In the two decades since the NVRA's enactment, states have offered voter registration services in tandem with driver's license, Medicaid, and other government program transactions. Fully NVRA-compliant agency-based registration is a cost-effective, efficient way to reach unregistered eligible Americans.

Still, there are over 50 million American citizens currently unregistered to vote — almost one in four eligible Americans. The ACA application process can be transformative in addressing this significant gap in our democracy.

We commend your Administration for recognizing on several occasions the applicability of the NVRA to Health Benefit Exchanges. It is within both the spirit and letter of the law that the FHEs are covered by the NVRA; and when the FHEs comply with the NVRA, they will provide a model for state-operated Exchange application processes. Section 7 of the NVRA requires that all offices that provide public assistance within a state also provide voter registration services. The Exchanges created by the ACA provide public assistance because they must offer a single streamlined application for enrollment in insurance affordability programs, such as state Medicaid assistance. Consequently, they must offer voter registration services

as part of that application process. And, when a state does not establish its own Exchange, the ACA mandates that HHS establish and operate an Exchange within that state and assume all the obligations of a state-operated Exchange. The FFEs, therefore, are stepping into the shoes of a state, and are thus responsible for implementing *all* of the state's obligations when operating an Exchange, including offering NVRA-compliant voter registration services.

Fortunately, the NVRA requirements are straightforward and easy to implement. Among other things, the NVRA requires FFEs to

- *distribute* a voter registration application form (unless an individual declines one in writing) via a method that can be accessed by all FFE clients;
- *ask* the applicant, in writing, whether *he or she would like to register* to vote or update his or her voter registration address;
- *inform* the applicant, in writing, that *no one may interfere* with his or her right to register to vote or not, about the right to privacy while registering, and the right to choose a political party; and
- *assist* applicants in completing the voter registration application form with the same degree of assistance that FFE provides clients in completing the health benefits application form.

Currently, the FFE application process is not in accord with these legal requirements. For example, the online benefits application and the paper application contain a question about voter registration that does not use the statutorily-required language and that omits important disclosures.

Furthermore, providing only a link to voter registration, like the FFE online benefits application, does not comply with the law and, from a practical perspective, is grossly inadequate. A link does not sufficiently "distribute" a voter registration application because it requires applicants to have access to a printer, which many applicants do not have. Even if an applicant has a printer, the current link requires the applicant to download and print 25 additional pages of information, fill out the application by hand, and mail the application to the appropriate state-level official.

Additionally, as far as we are aware, the FFE call centers do not offer any voter registration services. For the citizens who apply for ACA benefits over the phone, the link in the online benefits application is not available.

Finally, the NVRA requires "assisters" to offer the same degree of assistance in completing voter registration applications that they offer in completing the Exchanges' own application. To date, however, HHS has not included voter registration in any of its training programs for individuals providing assistance with the completion of Exchange applications.

As a result, the millions of Americans who have sought coverage through the FFEs did not receive an effective offer to register to vote as required by law.

We respectfully request that you direct HHS to bring the FFEs into compliance with all of the requirements of the NVRA. This is important both for the millions of Americans seeking health care through the FFEs, and for the state-operated exchanges that look to the FFEs as a model.

We look forward to continuing to work with your administration to advance our shared interests in expanding access to affordable health insurance, and ensuring that all eligible Americans are provided the opportunity to secure their fundamental right to vote.

Very Sincerely,

American-Arab Anti-Discrimination Committee (ADC)

American Civil Liberties Union (ACLU)

Asian Americans Advancing Justice (AAJC)

Common Cause

Dēmos

International Union, United Automobile, Aerospace & Agricultural Implement Workers of America (UAW)

The Leadership Conference on Civil and Human Rights

League of Women Voters

Mexican American Legal Defense and Educational Fund (MALDEF)

NAACP Legal Defense and Educational Fund, Inc. (LDF)

National Council of Jewish Women

OurTime.org

Paralyzed Veterans of America

Project Vote

The Arc of the United States

Union for Reform Judaism

cc: Secretary Kathleen Sebelius