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ELECTION LAW



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Compliance With the Motor Voter Law in New Jersey

by Ronald K. Chen and Alexander Gladney

Americans, including New Jersey residents, vote at a lower rate than the citizens of other democratic countries. From 1948 to 1992, only 56 percent of the voting-age population participated in presidential elections.¹ During the same period, only 49 percent participated in federal elections for the Senate and House of Representatives.²

In contrast, the United Kingdom's voting-age population participated at an average rate of 75 percent, Australia at 85 percent, and New Zealand at 87 percent.³ As we find ourselves on the eve of one of the most exciting presidential elections in years, the record turnout in recent primaries shows that many citizens wish to participate in the democratic process by voting. Yet the requirement of, and barriers to, voter registration continue to stymie more widespread participation.

In 1993, Congress addressed major barriers to voter registration by passing the National Voter Registration Act (NVRA).⁴ Among other things, this federal law requires motor vehicle agencies to offer citizens an opportunity to register to vote when they obtain or renew a driver's license or non-driver identification card. Likewise, an address change submitted to a motor vehicle agency is supposed to trigger an automatic update of the voter rolls.

The NVRA, popularly known as the motor voter law, was implemented nationally in 1995, and caused an immediate increase in voter registration.⁵ Nationally, registrations jumped approximately seven percent from the 1994 federal election to the 1996 federal election,⁶ and voter registration at

motor vehicle agencies has steadily risen. A third of all Americans who were registered to vote at the time of the 2004 presidential election were registered in conjunction with a motor vehicle transaction. Unfortunately, New Jersey residents have not enjoyed the benefits of the motor voter law because the state has not complied with it.

After receiving complaints from voting rights advocates, the Department of the Public Advocate verified this noncompliance by examining practices at motor vehicle agencies and conducting a field investigation in which people exiting motor vehicle agencies were interviewed about their experience. More than 90 percent of the people surveyed were neither handed the required voter registration form nor verbally asked whether they wished to register to vote. In addition, federal voter registration studies were analyzed. The United States Election Assistance Commission (EAC) has ranked New Jersey close to last compared to other states in the percentage of registrations conducted at motor vehicle agencies.⁷

The department took this information to the Motor Vehicle Commission and the attorney general, and engaged in lengthy discussions about how to address New Jersey's historic non-compliance with the federal law, and both agencies responded

positively and joined with the department in a collective effort to rectify the problem. This article will review the history and content of the motor voter law, the history of noncompliance in New Jersey, and what the state is doing now to achieve compliance.

The Department of the Public Advocate

The Department of the Public Advocate is charged with making government more accountable and responsive to the needs of New Jersey residents, especially the most vulnerable populations.⁸ Originally formed in 1974 under Governor Brendan T. Byrne, the department was subsequently dissolved in 1994. After years of vigorous advocacy by a broad coalition of New Jersey citizens, the Legislature adopted the Public Advocate Restoration Act in 2005, and former Governor Richard Codey signed the bill into law. Since its restoration in 2006, the department has undertaken several voting rights initiatives, among them: working to ensure that polling places are accessible to senior citizens and people with disabilities and examining voting machine reliability, usability, accessibility, security and cost. On several election days, the department has represented citizens across New Jersey who were wrongly turned away from the polls. The Department of the Public Advocate is fighting for improved compliance with the motor voter law because it is one of the best vehicles for ensuring greater participation in the election process.

The National Voter Registration Act

The passage of the 1993 National Voter Registration Act was the result of years of effort by advocates who argued successfully that state voter registration laws represented a serious obstacle to the full participation of all citizens in the electoral system. Congress reviewed extensive evidence that registration bar-

riers were preventing eligible voters from casting ballots. The United States has a history of voter registration barriers, dating back to the 19th and early 20th centuries. Congress found that poll taxes, literacy tests, residency requirements, annual registration requirements, and other elaborate procedures depressed voter turnout to 49 percent in the 1924 presidential election.⁹ Even after the federal Voting Rights Act of 1965¹⁰ eliminated poll taxes and literacy tests, voter turnout remained depressed. In the 1992 presidential election, only approximately 60 percent of eligible voters were registered, and of those, 80 percent voted.¹¹ Thus, registration barriers contributed substantially to the low 56 percent turnout of eligible voters in that presidential election.¹²

To cure the problem, Congress determined that registration opportunities should be broadened, and enacted the NVRA to allow voters to register by mail and at various state agencies, including veterans' agencies, social service offices, and agencies that serve people with disabilities. The law also protects voters in other ways. For example, it bars election officials from purging people from the rolls merely because they did not vote regularly.¹³

Perhaps the most important section of the NVRA gives voters the opportunity to register at motor vehicle agencies. Specifically, the NVRA requires motor vehicle agencies to offer to register eligible citizens when they apply for or renew their driver's license, and to use special "short-form" voter registration applications so the voter does not have to provide duplicate information already contained in motor vehicle records.

The law demands that motor vehicle agencies do more than just ask customers whether they would like to vote or make forms available somewhere in the facility.¹⁴ Rather, the applicant should "receive a complete application that includes both the [driver's] license

and voter application forms."¹⁵ A customer who declines to register can do so by checking a box, but it must be done "in writing," and "a record of the declination [must be] created and retained."¹⁶ The NVRA also requires that changes of address accepted by motor vehicle agencies be treated as changes of address for voter registration purposes.¹⁷

New Jersey's Non-Compliance with the Motor Voter Law

The Election Assistance Commission conducts a bi-annual study to determine the effectiveness of the NVRA on a state-by-state basis.¹⁸ The most recent data available shows that in 2005-06, New Jersey ranked as 42 out of 43 states with regard to motor voter compliance.¹⁹ New Jersey's Motor Vehicle Commission accounted for only 92,890 of the 808,794 total new voter registration applications submitted in the state, or 11 percent.²⁰ In other states, on average, motor vehicle agencies accounted for 385,844 of 806,172 total new applications for registration, or 48 percent. Thus, New Jersey's rate of registering people to vote through motor vehicle agencies was more than four times lower than the national average. For a more specific comparison, in neighboring Pennsylvania motor vehicle agencies account for 2,149,828 of the 3,117,883 total new applications for registration, or 69 percent.²¹

Because of these statistics, the Department of the Public Advocate conducted its own investigation in 2007. The public advocate surveyed several groups of New Jersey Motor Vehicle Commission (MVC) customers, including employees of the department, Rutgers students, and consumers at 11 MVC sites.

Of the more than 75 departmental employees surveyed who could recall their interactions at MVC when they went to obtain or renew a driver's license, only two percent said someone had verbally asked them about registration, and only three percent said some-

one had offered them a voter registration form. Of 36 Rutgers students surveyed, 33 said they had neither been given a voter registration form nor asked if they wanted to register to vote. Only three students (eight percent) said they had either been offered a form or asked if they wanted to register.

The public advocate also sent researchers to 11 MVC agencies throughout New Jersey from Feb. 23, 2007, through Feb. 28, 2007. The department surveyed only customers who had just completed transactions at MVC that should have triggered the motor voter law. Out of 494 individuals surveyed, only eight percent said an MVC employee had asked them whether they would like to register. Only one percent said they were offered a registration form. Research confirmed that New Jersey was not adhering to the requirements of the motor voter law.

Many thousands of state residents missed the opportunity to register to vote as a result. Since July 2004, New Jersey has issued only digital driver's licenses, and has required all new or renewal applicants to appear in person at an MVC agency.²² MVC has estimated that between 2005 and 2007, approximately 5 million individuals entered their agencies to obtain or renew licenses.²³ Although not all of these individuals are eligible voters, and many are already registered to vote, a large number of these MVC customers would have been candidates for voter registration. Approximately a million New Jerseyans are eligible to vote but remain unregistered today.²⁴

As one federal court put it in 1995, in *Condon v. Reno*, "Congress...drafted the NVRA to include solutions that work."²⁵ When the investigation was finished, it was apparent that New Jersey's system did not work.

A Collaborative Solution

The findings were presented to the Motor Vehicles Commission and the

attorney general, who, until April 1, 2008, acted as the chief state election official. They were eager to develop a solution that would expand voter registration opportunities for New Jersey citizens and ensure compliance with federal and state law. Working together, the Department of the Public Advocate, the Motor Vehicle Commission, and the Department of Law and Public Safety entered into a memorandum of understanding (MOU) in March 2008.²⁶ An MOU is an agreement, usually among government agencies, that sets out steps to facilitate the implementation of laws or programs of mutual interest. In this case, the MOU establishes practices through which the MVC will actively solicit and collect voter registrations from eligible citizens.

Under the MOU, the MVC and the Division of Elections have agreed to several significant affirmative measures. They will: 1) hand out short-form voter registration applications to all eligible customers at MVC offices; 2) post signs in these offices informing the public about their right to register to vote and reminding employees of their voter registration obligations; 3) train MVC employees about these obligations; 4) ensure that address changes at MVC offices result in updates of voter registration information; 5) conduct random compliance inspections at MVC offices and report regularly on compliance; and 6) reach out to individuals who were denied a registration opportunity in the past and offer them the chance to register.

In accordance with the MOU, MVC will distribute voter registration signature cards that comply with federal²⁷ and state law²⁸ requirements to avoid gathering duplicative information. MVC will furnish these cards to all customers when they apply for or renew a driver's license or identification card. Employees will actually hand customers the registration card with the motor-vehicle application form and explain its significance.

MVC will post signs at every agency to remind customers that they have the option to register to vote. They will also post signs and prompts at every computer terminal to remind MVC representatives of their motor voter obligations.

MVC will implement an enhanced training program for its thousands of frontline employees to instruct them in NVRA compliance. The training classes will be conducted in every MVC office, and will be limited to five employees per class.

When drivers change their license address in person, by mail, via the Internet, or by telephone, their voter registration will also transfer to the new address unless the applicant advises that the change of address is not for voter registration purposes. This rule will apply whether the voter moved within a county or between counties. Because transmitting address changes involves technical challenges, this process will be phased in over time. When voters change the address on their license by mail or in person at an MVC agency, the address of their voter registration will also change, starting immediately. This provision will take effect within 45 days of the execution of the MOU for those who change their license address over the Internet, and within 180 days for those who do so by telephone.

In an effort to maintain a constant level of high NVRA compliance, the MVC will implement random compliance inspections. MVC supervisors will conduct spot checks at least once a month to determine whether personnel are complying with the MOU and the motor voter law. In the interest of transparency, the agency will also post compliance information on its website. Every six months for a two-year period beginning July 1, 2008, MVC will post the number of driver's license and identification card applications and renewals completed, the number of address changes processed, and the number of

voter registrations and address changes transmitted to the Division of Elections.

Finally, MVC and the Division of Elections will coordinate efforts to identify and reach out to MVC customers who were denied voter registration opportunities in past years. MVC will compile a list of all customers who have renewed their driver's licenses since August 2004, but were not mailed a voter registration application with the renewal materials. The Division of Elections will then check the list to determine who is not registered to vote, and will mail registration forms to these individuals. This will give thousands of eligible citizens another chance to register in time for the upcoming presidential election.

Conclusion

The collaborative efforts of the Department of the Public Advocate, the Motor Vehicle Commission, and the state Attorney General's Office will lower barriers to voter registration for New Jersey citizens. The memorandum of understanding should lead to a more efficient and effective voter registration system. With motor voter law compliance greatly improved, citizens should find it easier to participate in the democratic process. This, in turn, should lead to greater turnout and fewer eligible, willing, but unregistered and frustrated voters on Election Day. ☐

Endnotes

1. See International Institute for Democracy and Electoral Assistance (IIDEA), United States Voter Turnout, available at www.idea.int/vt/country_view.cfm?CountryCode=US#Comments.
2. *Id.*
3. See IIDEA, United Kingdom Voter Turnout, available at [www.idea.int/vt/country_view.cfm?CountryCode=GB](http://www.idea.int/vt/country_view.cfm?CountryCode=GB;); IIDEA, Australia Voter Turnout, available at [www.idea.int/vt/country_view.cfm?CountryCode=AU](http://www.idea.int/vt/country_view.cfm?CountryCode=AU;); IIDEA, New Zealand Voter Turnout, available at www.idea.int/vt/country_view.cfm?CountryCode=NZ.

4. See United States Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2003-2004* (hereinafter "2005 EAC REPORT"), at 19, (June 30, 2005), available at www.eac.gov/clearinghouse/docs/reports-and-surveys-nvra-2004-survey-htm.pdf/attachment_download/file.
5. See 2005 EAC Report, *supra* note 5, at 22.
6. See 2005 EAC Report, *supra* note 5, at 23; See United States Election Assistance Commission, *The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005-2006* (hereinafter 2007 EAC Report), at 34, 38 (June 30, 2007), available at www.eac.gov/clearinghouse/docs/the-impact-of-the-national-voter-registration-action-federal-elections-2005-2006/attachment_download/file.
7. N.J.S.A. §§ 52:27EE-1 to -85.
8. H.R. Rep. No. 103-9 at 2 (1993).
9. 42 U.S.C. § 1973.
10. H.R. Rep. No. 103-9 at 2-3 (1993).
11. *Id.*
12. 42 U.S.C. §§ 1973gg-2 to -6.
13. *Condon v. Reno*, 913 F. Supp. 946, 958 (D.S.C. 1995).
14. H.R. Rep. No. 103-9 at 7 (1993) (emphasis added).
15. *Id.*
16. 42 U.S.C. § 1973gg-3(d).
17. See 2005 EAC Report, *supra* note 5;

- 2007 EAC Report, *supra* note 7.
18. 2007 EAC Report, *supra* note 7, at 34 (seven states did not respond to this survey question).
19. *Id.* at 34, 38.
20. *Id.*
21. New Jersey Motor Vehicle Commission, *2004 Annual Report and Survey Assessment* at 13, available at www.state.nj.us/mvc/pdf/About/annual_2004_0930.pdf.
22. New Jersey Motor Vehicle Commission, *March 30, 2006 Service Assessment* at 5, available at www.state.nj.us/mvc/pdf/About/assess2006_0330.pdf. (As license expiration dates become more coordinated, MVC states that it expects approximately 1.5 million people per year to come into MVC offices for license renewals.)
23. See United States Census Bureau, *Reported Voting and Registration of the Total Voting-Age Population, by Age, for States: November 2004*, available at www.census.gov/population/socdemo/voting/cps2004/tab04b.xls; New Jersey Department of Labor and Workforce Development; *Characteristics of Persons in New Jersey: 1999 to 2006*, available at www.wnjin.net/OneStopCareerCenter/LaborMarketInformation/lm119/njadp2006.xls.
24. 913 F. Supp. 946, 959 (D.S.C. 1995).
25. The MOU was drafted with the knowledge that the Division of Elections will transfer to the secretary of state on April 1, 2008, and includes a clause that binds successors.
26. 42 U.S.C. § 1973gg-3(c).
27. N.J.A.C. § 13:17-1.8(b).

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