

**Testimony of Kristen Clarke
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**Before the U.S. House of Representatives
Committee on House Administration
Elections Subcommittee**

**Hearing on Voter Registration and List Maintenance
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Chairwoman Zoe Lofgren and distinguished Members of the Committee, I am Kristen Clarke, Co-Director of the Political Participation Group of the NAACP Legal Defense and Educational Fund, Inc. (LDF). Founded under the direction of Thurgood Marshall, LDF is the nation's oldest civil rights law firm and has served as legal counsel for African Americans in a significant number of important federal voting rights cases, and has been very active in Congressional efforts regarding all of the major legislation affecting minority voting rights over the last several decades. Prior to joining LDF, I served for several years in the Civil Rights Division of the U.S. Department of Justice. Three of those years were spent handling matters arising under the Voting Rights Act of 1965 and the National Voter Registration Act as a Trial Attorney in the Voting Section of the Civil Rights Division. I am honored to have the opportunity to appear before you to share our views and perspective regarding voter registration and list maintenance issues.

Introduction

In recent years, we have witnessed the emergence of several threats to the registration status of minority voters including the development and implementation of purge programs aimed at removing presumptively ineligible voters from registration rolls; challenges mounted against voters inside polling places on Election Day; and non-compliance with the mandates of the National Voter Registration Act¹ at departments of motor vehicles and other designated state agencies. Together, these trends threaten the fragile gains that have been made with respect to registration rates among minority voters. Indeed, new or re-emergent barriers to voter registration move the nation in the wrong direction and the recent problems suggest the need to strengthen compliance with and enforcement of the various voter registration requirements and purge program restrictions that are codified within the NVRA.

¹ Many states have unsuccessfully challenged the National Voter Registration Act as an unconstitutional exercise of Congressional power. See *Voting Rights Coal. v. Wilson*, 60 F.3d 1411 (9th Cir.1995), cert. denied, 516 U.S. 1093, (1996); *Ass'n of Cmty. Orgs. for Reform Now v. Edgar*, 56 F.3d 791 (7th Cir.1995).

determined that the Act's uniform, nationwide procedures were necessary to remedy these practices.

Despite the important achievements of the NVRA, there are issues concerning compliance as well as some evidence that suggests that new and more sophisticated obstacles have emerged that stand as contemporary barriers to electoral participation today. For example, recent steps to remove voters from the registration rolls in Louisiana provide a stark illustration of efforts that serve to undermine the goals of the NVRA.

2007 Louisiana Voter Removal Program

The NVRA contains a number of provisions concerning the maintenance of voter registration lists used to determine eligibility for participation in federal elections. In particular, the NVRA permits states to "conduct a general program that makes a reasonable effort to remove the names of ineligible voters from the official lists of eligible voters" because of the death of the registrant or a change in the registrant's residence. 42 U.S.C. § 1973gg-6(a)(4). The Act also allows states to undertake a general program for removing otherwise ineligible voters from the rolls. *Id.* §§ 1973gg-6(b); § 1973gg-6(c)(2)(A). However, the NVRA also establishes important limits and requires that any program that sets out to protect the integrity of voter registration rolls "shall be uniform, nondiscriminatory, and in compliance with the Voting Rights Act of 1965," 42 U.S.C. § 1973gg-6(b)(1). In addition, the NVRA prohibits voter removal programs that purge voters from the rolls "by reason of the person's failure to vote," 42 U.S.C. § 1973gg-6(b)(2). Although voter removal programs are generally aimed at preserving the integrity of the election rolls by identifying presumably unqualified voters, such programs also run the risk of disqualifying large numbers of qualified registrants.⁷ In addition, these programs place the burden of re-registration squarely on impacted citizens and can thus, discourage voters from participating in the electoral process. For these reasons, voter removal programs should be carefully assessed and scrutinized to ensure that they are not over-inclusive with respect to the scope of persons targeted for removal.

In recent years, it has become increasingly apparent that states are taking steps that may threaten the registration status of voters. A recent purge program carried out in Louisiana provides one stark example. In June 2007, officials in the State of Louisiana began implementing a voter registration cancellation program that sought to identify and remove voters who were presumed to be ineligible because they appeared on the registration rolls in more than one state. Of course, persons impacted by Hurricanes Katrina and Rita who remain displaced are the primary class of persons targeted by this purge program. The state's cancellation program raises a number of questions regarding the methodology used to identify or "match" Louisiana voters with voters whose names appeared on the registration rolls in other states and raises grave concerns given the apparent absence of any fail-safe procedures to help protect the rights of persons incorrectly targeted or falsely matched.⁸ To the extent that Louisiana maintains a single

⁷ See e.g., Florida's efforts to purge former felons from the registration rolls in advance of the 2000 federal election.

⁸ Inadequate match criteria can lead to the purging or cancellation of eligible voters who are misidentified by state authorities and targeted for removal. See e.g., Florida's implementation, and attempted reliance upon, a faulty felon list in the 2004 and 2006 federal elections.

voter registration list that applies to both federal and state elections, the requirements and protections codified within the NVRA are applicable to the purge program as a general matter.

In June 2007, those voters identified and targeted as dual-registrants were mailed a notice that warned recipients that the only way to remain on the Louisiana registration rolls was to submit a certified statement of cancellation of any out-of-state voter registration to their parish's Registrar of Voters. A June 15, 2007 press release issued by the State indicated that this letter was mailed to approximately 55,000 voters. Given the transient status of many displaced Louisianans and given the widely-known problems with mail forwarding services, it remains unclear how many voters actually received these notices. Nevertheless, targeted individuals were given 30 days to submit the statement of cancellation in order to preserve their names on the state's voter registration rolls and remain eligible to vote in Louisiana. In July 2007, many of the voters who had not satisfied the requirements of the first notice were mailed a second notice requiring that they appear in person at their parish's Registrar's office to provide evidence as to why their names should not be removed from the voter registration list. In mid-August, 2007, following the mailing of both notices, approximately 12,000 voters were removed from the State's voter registration lists.⁹ Those voters who were removed, unless they successfully re-registered by the state's voter registration deadline, were ineligible to participate in the most recent gubernatorial and state primary election that took place on October 20, 2007, and may also be ineligible to participate in the upcoming November 17, 2007 general election.

Additional details regarding the State of Louisiana's voter registration cancellation program are yielded through the State's submission of the program to the U.S. Department of Justice for administrative review as required under Section 5 of the Voting Rights Act.¹⁰ The State describes its program as one that seeks to identify and remove "possible duplicates in Louisiana voter registration files and other states' registration files." Louisiana officials believe that there are a number of existing provisions in their election code that permit them to identify and cancel voters who are

⁹ Interestingly, the State of Louisiana has not undertaken an even match that compares the registration lists of Louisiana with the registration lists of all other 49 states. Rather, Louisiana's program, as of September 2007, only sought to compare its registration lists with those of a select number of states and cities including Texas; Georgia; Florida; Tennessee; Colorado; New York, New York; Las Vegas, Nevada; and San Diego, California. It is worth noting that four of the five states that are the focus of the voter registration cancellation program are states where significant numbers of displaced voters have maintained residences since the hurricanes.

¹⁰ As a result of its long history of voting discrimination against African Americans, the State of Louisiana, and all jurisdictions that lie within it, are subject to the preclearance requirements of Section 5 of the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1973c ("Section 5"). 30 Fed. Reg. 9897 (1965). Section 5 provides that any "voting qualification or prerequisite to voting, or standard, practice, or procedure with respect to voting" different from that in force or effect in the State of Louisiana and its respective political subdivisions on November 1, 1964, may not be lawfully implemented unless the state or its subdivisions obtains a declaratory judgment from the United States District Court for the District of Columbia that the change does not have the purpose and will not have the effect of denying or abridging the right to vote on account of race or color, except that such change may be implemented without such judgment if it has been submitted to the Attorney General and the Attorney General has not interposed an objection within sixty days. 42 U.S.C. § 1973c. This particular program remains under review by the Attorney General.

ineligible to vote by virtue of having registered to vote in another state.¹¹ Nevertheless, state officials developed the program and underlying methodology that resulted in the lists of persons deemed to be dual-registrants and these lists were relied upon by Registrars in making assessments regarding voter eligibility.

Flawed Matching Methodology Underlying Louisiana's Voter Removal Program

Persons deemed to be dual-registrants in Louisiana were identified through a database matching system that was put in place after state officials obtained out-of-state voter registration lists from a select number of states and cities. The Secretary of State and Commissioner of Elections developed and subsequently provided a list of these "possible out of state registrants" to Registrars throughout Louisiana. According to state officials, the methodology used to identify these particular individuals entailed comparisons of "name (last, first) and date of birth for matching purposes."

The State indicates that it legitimately obtained out of state voter registration data pursuant to La. Rev. Stat. 18:18(D), which allows the Secretary of State to enter into cooperative agreements with other states to share voter registration information to determine whether a voter is registered in more than one state. However, there does not appear to be any evidence that the state entered into any formal cooperative agreements with the five states or three cities that are the focus of the Louisiana's voter registration cancellation program. Copies of these agreements would be important in any effort to assess the process and methodology underlying other states' voter registration and list maintenance procedures. Indeed, to the extent that other states canvass their rolls on a different schedule than Louisiana or use different rules in updating voters' information on the registration rolls, such variations could create problems in attempting to "match" Louisiana voter registration information with that of other states.

Commissioner of Elections Angie LaPlace identified several scenarios that Registrars may encounter when dealing with "voters who appear to be matches" and proposed an approach for dealing with persons who are registered in Louisiana and out of state but who want to cancel their out-of-state registration; and persons who are registered in Louisiana and indicate that they have never registered out of state, among others. In a June 2007 e-mail to Louisiana Voter Registrars, Commissioner LaPlace indicated, by way of example, that "Lisa A. Anderson" and "Lisa Pruitt Anderson" should be considered a match because with many female voters, "one registration may be under their middle name and one may be under their maiden name as their middle name." A June 2007 e-mail informed Registrars that they had the discretion to "close any event that does not appear to be a match upon visual inspection of the data" but notes that it may be difficult to determine whether there is a match for women "because their names change more frequently." The apparent discretion and broad latitude given to Registrars under this scheme appears to both undercut the goals of the NVRA, and defy the NVRA's requirement that voter removal programs be designed in a manner that is both uniform and non-discriminatory.

¹¹ In particular, officials observe that Louisiana Revised Statute (La. Rev. Stat.) 18:193(G) provides that when a parish Registrar has reason to believe that a person is no longer qualified to be registered for a reason other than a change of address, a voter will be given 21 days to appear in person before his or her parish Registrar to show cause why the voter's registration should not be canceled.

Compliance Problems Among NVRA-Designated Agencies

The NVRA also requires that states make voter registration opportunities widely available at department of motor vehicles (DMVs) and other state agencies.¹² Congress sought to mandate voter registration opportunities at public assistance offices to reach not only those citizens who drive, but also those citizens who are poor or disabled, and who do not drive but participate in public assistance programs.¹³ The NVRA requires entities that provide public assistance to integrate voter registration opportunities into the process during which an individual interacts with the agency (i.e., while the citizen seeks benefits or services.)¹⁴ A designated entity must include voter registration forms when it distributes its own application forms for benefits, renewal, or change of address; provide assistance in completing voter forms to the same degree it provides assistance with its own forms; and submit voter forms and data to the appropriate elections office.¹⁵ Voter registration applications are to be forwarded to the "appropriate State election official" for processing in a timely manner. 42 U.S.C. § 1973gg-3(e); § 1973gg-5(d).

Despite these NVRA requirements, recent evidence suggests that NVRA-designated agencies too often fail to implement training programs regarding the requirements of the NVRA; fail to carry out accurately their registration responsibilities and/or fail to submit completed applications to the appropriate election official. Moreover, recent evidence suggests poor compliance with the NVRA has resulted in the reemergence of disparate practices that undermine the goals of the NVRA. These problems suggest a need to strengthen compliance with and training around the mandates of the NVRA.

In recent years, there have been increasing numbers of complaints from citizens who sought to register to vote while receiving services at an NVRA-designated agency but did not learn until Election Day that their names were not added to the registration rolls. These problems are attributable, in part, to varying practices among agencies regarding the handling of voter registration applications. For example, some agencies consider a voter to have declined the opportunity to register to vote if they do not sign the form, while other agencies consider a declination to be a form that was not completely filled out. Further, while some agencies have a rule of forwarding incomplete applications to the Registrar's office, others discard the forms on location.

There is also evidence which suggests that many NVRA-designated agencies fail to implement any training programs to educate employees about the requirements of the NVRA and thus, many employees are unfamiliar with the Act's transmittal deadline requirements and other substantive requirements. The lack of training may prove particularly acute during the period immediately preceding an election. During the weeks preceding an election, covered agencies are required to transmit voter registration applications to the appropriate election official on an expedited basis to ensure that these

¹² States are required to accept voter registration applications "made simultaneously with an application for a motor vehicle driver's license," 42 U.S.C. § 1973gg-2(a)(1), as well as applications submitted at the offices of other state agencies, 42 U.S.C. § 1973gg-2(a)(3).

¹³ See H.R. Conf. Rep. No. 66, 103d Cong., 1st Sess. 18-19 (1993).

¹⁴ See 42 U.S.C. § 1973gg-3, 1973gg-5(a), § 1973gg-5(a)(6).

¹⁵ See 42 U.S.C. § 1973gg-5(a)(4)(A)(iii), § 1973gg-5(a)(6).

applications are processed in a timely manner. In particular, Section 5(e) of the NVRA states:

(1)..... a completed voter registration portion of an application for a State motor vehicle driver's license accepted at a State motor vehicle authority shall be transmitted to the appropriate State election official not later than 10 days after the date of acceptance.

(2) If a registration application is accepted within 5 days before the last day for registration to vote in an election, the application shall be transmitted to the appropriate State election official not later than 5 days after the date of acceptance.

42 U.S.C. § 1973gg-3. Thus, where officials fail to abide by the NVRA's requirements, the goals of the Act are undermined and potential voters are denied the right to avail themselves of meaningful voter registration opportunities as contemplated by Congress. A federal government-sponsored study of compliance with the NVRA would likely reveal several areas for improved compliance and appears warranted given recent trends.

Public Perceptions Regarding the Voter Registration Process

It is important for the Committee to give consideration to prevailing public perceptions regarding the difficulties associated with the voter registration process as it stands today. A 2006 national survey conducted by International Communications Research determined that there are statistically significant differences among racial groups regarding the difficulties associated with the voter registration process. In particular, the study found that nearly 10 percent of whites perceived difficulty with the registration process compared to 16 percent of Blacks.¹⁶ These disparities widen when looking at a sample of unregistered adults with 25 percent of minority respondents reporting difficulty compared to 13 percent for unregistered whites.¹⁷ This survey data suggests that work remains to address both the real and perceived barriers that may continue to impede minority electoral participation.¹⁸ This data also suggests that perceptions of minority voters may be the result of ongoing challenges encountered in their efforts to register to vote and remain on the registration rolls. Efforts must be made to ensure that these racially disparate perceptions do not translate into lowered political participation among minority voters.

Conclusion

The National Voter Registration Act has played a significant role in making voter registration opportunities more widely available, and it has resulted in a measurable

¹⁶ R. Michael Alvarez, et al., *How Hard Can It Be: Do Citizens Think It is Difficult to Register to Vote*, 18 STAN. LAW & POL'Y REV. 382, 397-98 (2007).

¹⁷ *Id.* at 404.

¹⁸ *Id.* at 406.

increase in the number of eligible voters nationwide.¹⁹ However, the programs and procedures used by states to maintain voter registration lists pose new threats to the fragile gains of the Act. Recent efforts to remove voters deemed no longer eligible to vote, including a recent purge program in Louisiana that targeted and removed persons presumed to be registrants in more than one state, should be carefully scrutinized and examined to ensure that they do not result in the removal of otherwise eligible voters.

In addition, efforts should be taken to strengthen compliance with the mandates of the NVRA among designated agencies, including encouraging the Attorney General to improve enforcement efforts under the Act. Although states have a legitimate responsibility to preserve the integrity of their registration lists, maintenance efforts and purge programs should be carried out in a manner that will preserve the place of eligible voters on voter registration lists and thus, ensure that these citizens are able to exercise their right to vote on Election Day.

¹⁹ See Benjamin Highton and Raymond E. Wolfinger, *Estimating the Effects of the National Voter Registration Act of 1993*, 20 POL. BEHAVIOR 2 (1998).