

June 20, 2018

Office of Secretary of State Alex Padilla
Attn: Steven Reyes
1500 11th Street
Sacramento, CA 95814
Steve.Reyes@sos.ca.gov

via email and U.S. mail

Re: Notice of Failure to Designate Voter Registration Agencies

Dear Secretary Padilla:

The ACLU Foundation of Northern California (“ACLU”), representing the American Civil Liberties Union of Northern California, and Disability Rights California (“DRC”), representing Senior and Disability Action and Alice Chiu, write to notify you of your office’s failure to designate certain public offices as Voter Registration Agencies as required by the National Voter Registration Act (“NVRA”) and Cal. Elec. Code § 2400 *et seq.*

The NVRA and implementing state law require the Secretary of State to designate certain public offices as Voter Registration Agencies. Once designated as such, Voter Registration Agencies must offer voter registration services to each person who applies for services, renews their benefits, or notifies the agency of a change of address. Specifically, Voter Registration Agencies must provide both a voter preference form and a voter registration card, assist in completing the forms, and accept the completed voter registration card and timely send it to elections officials. Over the last several years, we have worked with your office to facilitate California’s compliance with NVRA requirements.

To date, your office has failed to make all of the mandatory Voter Registration Agency designations required by law. If California fails to remedy its violations of Section 7 of the NVRA and implementing state law, we will pursue litigation to remedy these failures under 52 U.S.C. §§ 20510(b) and 20510(d)(1), Cal. Code of Civ. Proc. § 526a, and/or Cal. Code of Civ. Proc. § 1085. Accordingly, we request that you respond to this letter **no later than July 11, 2018**.

PURPOSE AND LANGUAGE OF THE NVRA

The NVRA was enacted in 1993 to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal Office.”¹ Section 7 of the NVRA

¹ 52 U.S.C. § 20501(b)(1).

requires all states to designate as Voter Registration Agencies (1) “all offices in the State that provide public assistance” and (2) “all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities.”² Each Voter Registration Agency must offer voter registration services, including (1) offering a voter preference form and a voter registration card to each person applying for services or assistance, renewing services, or notifying the Voter Registration Agency of a change of address; (2) assisting people with filling out the forms unless the applicant refuses assistance; and (3) accepting completed voter registration cards and sending them to the appropriate election official.³ Voter Registration Agencies providing services to person with disabilities that provide service or assistance to persons in their homes must likewise provide voter registration services at the person’s home.⁴ California Elections Code section 2402 vests the coordination of these duties under the NVRA with the Secretary of State.⁵

One of the primary purposes behind the NVRA’s mandatory designation provision is to “accommodate the non-drivers among us and to provide greater opportunity for registration in general.”⁶ The House Report on the NVRA explains:

Offices serving the disabled and recipients of public assistance were identified as the offices ‘most likely to serve the person of voting age who may not have driver licenses.’ By requiring states to designate these offices as voter registration agencies, ‘we will be assured that almost all of our citizens will come into contact with an office at which they may apply to register to vote with the same convenience as will be available to most other people under the motor voter program of this Act.’⁷

VOTER REGISTRATION SERVICES ARE NEEDED IN CALIFORNIA

Voter registration remains perhaps the greatest barrier to political participation in California. California has one of the lowest voter registration rates in the country, and there remain nearly 6.1 million eligible but unregistered voters.⁸ In 2016, California ranked 48th among all states in voter registration.⁹ Over the last several years the state has tried to make voter registration more accessible by, for example, introducing online registration and translating it into nine languages, implementing automatic registration at the Department of Motor Vehicles, offering pre-registration to 16- and 17-year-olds, and making Election Day registration available in every county.

² *Id.* § 20506(a)(2).

³ *Id.* § 20506(a)(4)(A).

⁴ *Id.* § 20506(a)(4)(A).

⁵ Cal. Elec. Code § 2402 (“The Secretary of State is the chief state elections official responsible for coordination of the state’s responsibilities under the federal National Voter Registration Act of 1993 (52 U.S.C. Sec. 20501 et seq.).”)

⁶ *Nat’l Coal. For Students With Disabilities Educ. & Legal Def. Fund v. Allen*, 152 F.3d 283, 292 (4th Cir. 1998)

⁷ *Id.* (internal citations to legislative history omitted).

⁸ California Secretary of State, 15 Day Report of Registration, (May 21, 2018), *available at* <http://elections.cdn.sos.ca.gov/ror/15day-stwddirprim-2018/historical-reg-stats.pdf>.

⁹ U.S. Census Bureau, Voting and Registration in the Election of November 2016, Table 4a, *available at* www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html.

Data indicate that people more likely to be served by Voter Registration Agencies—including people of color, people with disabilities, and low-income Californians—have lower registration rates than the rest of the population. While there has been progress with voter registrations at designated public assistance agencies, registrations at designated offices primarily serving people with disabilities have been declining. A review of your office's NVRA data reveals that registrations at disability services offices reached an eight-year low in 2017. Registrations were down 44% from 2013.

COMMUNICATION WITH YOUR OFFICE REGARDING NVRA

As noted above, since you took office in 2015, we have made multiple attempts to work with your office to address and remedy the designation failures that are the subject of this letter.

We were pleased during the 2014 Secretary of State candidate forums to hear that, as a candidate, you would consider designating additional NVRA agencies. Unfortunately, after several years in office there remain many undesignated agencies.

In September of 2016, the ACLU and DRC submitted to your office and to your state Voter Accessibility Advisory Committee a memo (attached) setting forth detailed analysis of California's implementation of the NVRA and SB 35, the enacting state legislation that you authored. That memo specifically identified the need to better ensure that persons with disabilities were gaining the necessary and legally required access to voter registration. Among this memo's recommendations for addressing this need was to "update the voter registration agency list and designate additional agencies." We received no response from your office. We subsequently made several requests to your NVRA coordinator for a response to our recommendation. On February 17, 2017, your NVRA coordinator informed us that your office would not look into whether there were mandatory Voter Registration Agencies that remained undesignated.

We sent you another letter on April 11, 2017 (attached), urging you to reconsider your position. We again noted a number of offices that are mandatory Voter Registration Agencies under the NVRA that had not been so designated by your office. We offered to provide whatever support we could in implementing additional designations, noting that our organizations were ready to provide toolkits, trainings, and any other support that we could. That letter opened a dialogue between our offices and your Chief Counsel for a few months. Unfortunately, those conversations ended abruptly in November 2017, when your office stopped responding to our inquiries.

Most recently, on April 6, 2018, your office issued a notice designating as Voter Registration Agencies the University of California and California State University offices for students with disabilities (but not the Community College disability services office). That decision, while a step in the right direction, falls far short of remedying the multiple designation deficiencies that we have been calling to your attention.

REQUEST

We hereby request that you take immediate steps to remedy your ongoing failure to designate as Voter Registration Agencies certain public offices that are required by Section 7 of the NVRA and implementing state law to be so designated.

First, we request that your office designate the following programs as “public assistance” Voter Registration Agencies.

- General Assistance/General Relief Programs required by California Welfare and Institution Code Section 17000. These offices served nearly 290,000 individuals in Fiscal Year 2016-17.
- Financial aid programs administered by the California Student Aid Commission. These programs received more than a million applications from students in fiscal year 2016-17.
- Nutrition programs administered by the California Department of Education.

Second, we request your office designate the following programs as Voter Registration Agencies “providing services to persons with disabilities”:

- County agencies responsible for the In-Home Supportive Services program.¹⁰ These offices currently serve approximately 550,000 individuals.
- The California Community Colleges Disability Student Programs and Services offices. These offices served 124,000 students in fiscal year 2016-2017.
- Department of Social Services-Office of Services to the Blind. This office offers information and referral on services, programs, entitlements, and products of benefit to individuals who are blind or visually impaired
- Department of Rehabilitation-Blind Field Services. This office served 6,239 consumers in fiscal year 2015-16.
- Department of Rehabilitation-Deaf and Hard of Hearing Services. This office served 4,391 consumers in fiscal year 2015-16.
- Area Agencies on Aging and other offices under contract with the California Department of Aging to provide programs and services.¹¹ These offices serve hundreds of thousands of individuals every year.
- Local Educational Agency special education offices that interact with sixteen to twenty-two-year-old California students. There are currently more than 140,000 students between 16 and 22 years of age that receive special education services.

Finally, we request that your office’s Voter Registration Agency designations—both the above agencies and those already designated—expressly include “private entities under contract with designated Voter Registration Agencies to provide services or assistance on behalf of the designated Voter Registration Agency,” as required by the NVRA¹² and California Elections Code section 2401(b)(2).

¹⁰ In-Home Supportive Services are currently designated as public assistance agencies. They should be designated as disability services agencies to ensure consumers receive voter registration services in their homes when they apply for and renew services.

¹¹ Alternatively, these offices could be designated as “public assistance” Voter Registration Agencies.

¹² “When a state contracts with a private entity to administer services in an agency that is required to offer voter registration, the ultimate responsibility for ensuring provision of voter registration services remains with the state, and the voter registration requirements under the NVRA remain the same.” The National Voter Registration Act of 1993 (NVRA): Questions and Answers ¶ 24, www.justice.gov/crt/about/vot/nvra/nvra_faq.php (last visited June 19, 2018).

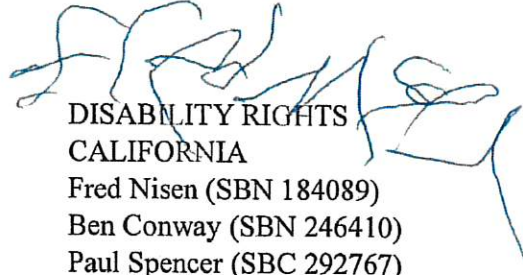
Please respond by contacting Raúl Macías at rmacias@acluca.org or (916) 824-3265; Paul Spencer at Paul.Spencer@disabilityrightsca.org or (619) 814-8509; or Fred Nisen at Fred.Nisen@disabilityrightsca.org or (510) 267-1264, by no later than July 11, 2018.

Sincerely,



AMERICAN CIVIL LIBERTIES UNION
FOUNDATION OF NORTHERN CALIFORNIA
Linda Lye (SBN 215584)
Shilpi Agarwal (SBN 270749)
Raúl Macías (SBN 293208)

*Attorneys for American Civil Liberties Union
Of Northern California*



DISABILITY RIGHTS
CALIFORNIA
Fred Nisen (SBN 184089)
Ben Conway (SBN 246410)
Paul Spencer (SBN 292767)

*Attorneys for Senior and Disability
Action and Alice Chiu*

Attachments



Date: September 23, 2016
To: Members of the Voter Accessibility Advisory Committee
Secretary of State Alex Padilla
From: Raúl Macías, ACLU of California
Paul Spencer, Disability Rights California
Re: National Voter Registration Act and SB 35 implementation at state funded agencies primarily serving people with disabilities

For the past five years, the ACLU and Disability Rights California (DRC) have been conducting outreach at the state and local level to improve implementation of the National Voter Registration Act (NVRA). The following memo includes a summary of what the NVRA and SB 35 require, how designated NVRA agencies that primarily serve people with disabilities are performing in 2016, and recommendations for improving and expanding access to voter registration at offices serving people with disabilities. We urge the Voter Accessibility Advisory Committee to review the recommendations in this memo and consider ways to support and make recommendations to the Secretary of State and our organizations to improve NVRA mandated voter registration opportunities for people with disabilities.

Section 7 of the NVRA

The NVRA was signed into law in 1993. Section 7 of the law aimed to reduce barriers to and expand opportunities for voter registration by requiring public assistance offices and state-funded programs primarily engaged in providing services to persons with disabilities to offer voter registration services to applicants and clients at every agency and office in each state.¹ Section 7 also requires voter registration services be provided at Armed Forces recruitment offices and requires states to designate other offices as voter registration agencies. These offices are collectively referred to as “voter registration agencies” or “NVRA agencies.”

Voter registration services are provided to consumers at the time of application for services, renewal of benefits, and upon notification of a change of address.² Voter registration services include providing:

- a document that asks if the consumer would like to register to vote, including required disclosures, known as a voter preference form;
- a voter registration card; and
- assistance with filling out the voter registration form.³

¹ 52 U.S.C.A. §§ 20501 and 20506 (a)(2).

² *Id.* § 20506 (a)(6)(A)

³ *Id.* §§ 20506 (A)-(C).

The impact of the law was at its highest nationally when the NVRA was first implemented in 1995-96, when registrations at public assistance agencies reached 2.6 million.⁴ Over the next decade, voter registrations steadily declined, reaching a low a decade later in 2005-06 of just over a half million, down 80% from 1995-96.⁵ To combat this decline in voter registrations, public interest organizations like the American Civil Liberties Union, Project Vote, Demos, and Lawyers Committee for Civil Rights Under the Law have brought or threatened litigation around the country, including California, in order to force states to comply.⁶

The NVRA was first implemented in California in mid-1995, after the state was ordered to do so by a federal district court.⁷ Voter registrations reached their peak in the 1995-96 election cycle,⁸ and fell to an all-time low in 2007-08, with registrations declining by 87%.⁹ In mid-2009, voting rights advocates at *Demos* and *Project Vote* sent the Secretary of State (SOS) a notice that the state was in violation of the NVRA.¹⁰ Their investigation in six counties revealed widespread non-compliance with the law.¹¹

In response to the decline in NVRA registrations, in July of 2012, then-Senator Padilla authored legislation (SB 35) to codify many of the best practices the ACLU was developing in a 2011 San Diego County pilot, clarify NVRA responsibilities at the local and state level, and modernize voter registration services at NVRA agencies in California.¹² The law, one of the most comprehensive NVRA enabling statutes in the country, took effect in January 2013.

Senate Bill 35

SB 35 aimed to improve voter registration at NVRA agencies by creating new accountability measures, implementing best practices, and incorporating online registration into online systems at agencies.

⁴ Federal Election Commission, The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 1995-1996, Table 2, 12 (1997), available at www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%201995-1996.pdf.

⁵ U.S. Election Assistance Commission, The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2005–2006 34 (2007), available at www.eac.gov/assets/1/Page/NVRA%20Reports%20and%20Data%20Sets%202006-2005.pdf.

⁶ Project Vote, Voter Registration at Public Assistance Agencies 8 (2014), available at <http://www.projectvote.org/wp-content/uploads/2014/02/POLICY-PAPER-PUBLIC-AGENCY-REGISTRATION-FEB-2014.pdf>.

⁷ *Wilson v. United States*, 878 F.Supp. 1324, 1329 (N.D. Cal. 1995).

⁸ Federal Election Commission, *supra* note 5, at 2.

⁹ U.S. Election Assistance Commission, The Impact of the National Voter Registration Act of 1993 on the Administration of Elections for Federal Office 2007–2008 39 (2009), available at www.eac.gov/assets/1/AssetManager/The%20Impact%20of%20the%20National%20Voter%20Registration%20Act%20on%20Federal%20Elections%202007-2008.pdf.

¹⁰ Letter from Yolanda Sheffield & Nicole Kovite, Project Vote, & Brenda Wright, Demos, to Debra Bowen, California Secretary of State 1 (May 14, 2009), available at <http://www.demos.org/sites/default/files/publications/Notice%20of%20Intent%20to%20Sue%20State%20of%20California.pdf>.

¹¹ Jody Herman & Doug Hess, Project Vote, California's Failure to Comply with the Public Agency Registration Requirements of the NVRA 3-4 (2009), available at www.projectvote.org/images/publications/State-Specific%20Documents/California/FINAL%20PV%20CA%20NVRA%205.7.09.pdf.

¹² S.B. 35, 2011-2012 Leg., Reg. Sess. (Cal. 2012).

Accountability Measures. To address the lack of accountability and confusion over the roles of different agencies under the NVRA, SB 35 made several important reforms to increase accountability by more clearly delineating the responsibilities of the SOS, county elections officials, and state and county voter registration agencies, and by creating a voter registration tracking system.

The SB 35 tracking system requires NVRA agencies and county elections offices to coordinate so that each site where voter registration services are offered have their voter registrations tracked at the site level. The tracking system plays an important role in accountability by allowing the SOS, voter registration agencies, and the public to identify high and low-performing offices and sites. Before this system was in place, counties did not disaggregate the reporting, and instead only reported by total public assistance and disability services registrations thereby making it difficult to pinpoint problems at particular sites.

Modernization. In order to take advantage of online voter registration, SB 35 requires NVRA agencies with online applications to incorporate the voter registration question into their online application and to offer all applicants conducting covered transactions the opportunity to register to vote online.¹³ By mid-2013, all of California's NVRA offices with online applications had incorporated the voter registration question into their online application and were providing a link to online voter registration to applicants who opted to register to vote, including the Department of Rehabilitation's Vocational Services online application.

Best Practices. SB 35 took several of the best practices developed in San Diego County or recommended by national voting rights groups and codified them into state law, including requiring:

- the appointment of NVRA coordinators at voter registration agencies and county elections offices;
- annual trainings for frontline employees at each voter registration agency;
- voter registration materials be made available in Section 203 languages at every agency;
- that consumers who neglect to answer the voter registration question in writing be given a voter registration card; and
- that private entities under contract with a designated voter registration agency provide services or assistance.¹⁴

Because at the time there were some questions about the role of the Secretary of State's office in implementing the NVRA, SB 35 also designated the Secretary of State as the chief state elections official responsible for coordination of the state's responsibilities under the NVRA.¹⁵ The law also gave the office some specific responsibilities, including:

- promulgating regulations, as necessary, to implement the NVRA and SB 35;

¹³ Cal. Elec. Code § 2408 (a) (West 2016).

¹⁴ Best practices requirements at §§ 2401 (b)(2), 2403 (b)(2) and (c), 2404 (a)(1), 2405 (a), 2406 (a)(2) and (a)(4)-(5).

¹⁵ *Id.* § 2402 (a).

- coordinating with each county elections official and voter registration agency to implement the law;
- preparing written training materials for county elections officials and voter registration agencies;
- contacting a voter registration agency if the agency is not complying with the NVRA or SB 35;
- coordinating with each state agency that is responsible for the performance of local agencies and communicate the requirements and best practices for complying with the NVRA and SB 35 and assist the agency’s efforts to help local offices comply with the laws.¹⁶

SB 35 also authorized the Secretary of State to review a voter registration agency’s compliance with the NVRA or SB 35 and to conduct a review of a county elections official’s compliance with the NVRA.¹⁷

Current performance of state funded agencies primarily serving people with disabilities

In California, the following offices are designated as mandatory voter registration agencies primarily serving people with disabilities:

- Department of Rehabilitation vocational rehabilitation services;
- Independent Living Centers;
- Department of Developmental Services - Regional Centers;
- Department of Social Services - Deaf Access Program; and
- State and county mental health providers.

Additionally, the Department of Social Services’ In-Home Supportive Services program has been designated as a public assistance office.

While California’s public assistance offices are on track for the highest total registrations of any year since the NVRA has been implemented, the state’s disability offices have consistently reported a low number of voter registrations, or have returned no voter registrations at all. Looking at each month in 2016 to date, on average 40% of the state’s counties did not record a single registration from an office serving a person with a disability (see Table 1).

Table 1: NVRA Registrations in 2016									
	Jan	Feb	Mar	Apr	May	Jun	July	Aug	Monthly Average
Number of Counties with 0 Registrations at Disability Offices	25	24	19	20	18	27	29	26	23.5
Counties With no Report	3	4	5	6	4	7	3	2	4.3
Total	28	29	24	26	22	34	32	28	27.8

Source: California Secretary of State.

¹⁶ § 2402 (b), 2404 (a)(2)-(4)

¹⁷ § 2402 (b)(1) and (2).

A pattern of low levels of voter registration is consistent among all NVRA disability agencies. The following summaries show the lack of registrations by agency.

In-Home Supportive Services (IHSS)

IHSS does not appear, as required by law, in the monthly SB 35 reports in 31 of the state’s 58 counties (see Table 2). In the 27 counties where IHSS does appear in the SB 35 reports, 12 of those counties have reported only one or fewer registrations per month in 2016, including four counties that have failed to register a single voter all year. The 27 counties where IHSS registrations are tracked average just under five registrations per month.

The ACLU and DRC met earlier this month with the Department of Social Services (DSS), which oversees the IHSS program, about ways to partner on improving registrations at IHSS offices, including trainings, a survey of local offices, and distribution of materials to local IHSS offices.

Number of counties	58
Number of counties with an IHSS office appearing in report	27
Number of counties with an IHSS office in report and 0 registrations in 2016	4
Number of counties averaging more than 1 registration per month in 2016	15
2016 monthly average of registrations for 27 counties with an IHSS office in report	4.9
Total average monthly registrations	133.4
Source: California Department of Social Services, California Secretary of State.	

Regional Centers

Regional centers have 67 offices or branches in the state, but only 57 appear in the SB 35 reports (see Table 3). Of the 57 sites that appear in the reports, 26 have not registered a single voter all year. Only 26 of the 57 sites that appear in the reports have averaged more than one registration per month in 2016. The 57 regional center sites average 1.3 registrations per month.

The ACLU and DRC met with the Department of Developmental Services (DDS) and with the Association of Regional Centers Agencies (ARCA) this month about ways to partner on improving registrations at regional centers. DDS and ARCA have agreed to partner with us on trainings, a survey of local offices, and distribution of training materials to regional centers. We also hope to partner on outreach concerning the right to vote for people under conservatorship.

Number of sites	67
Number of sites appearing in SB 35 reports	57
Number of sites with 0 registrations in 2016	26
Number of sites averaging more than 1 registration per month in 2016	26
2016 monthly average of registrations at 57 sites appearing in SB 35 reports	1.3
Total average monthly registrations	82.4
Source: California Department of Developmental Services, California Secretary of State.	

Vocational Rehabilitation Services

The Department of Rehabilitation's (DOR) vocational rehabilitation services offices almost all appear in the SB 35 reports (see Table 4). However, the sites that do appear have not registered many voters. The 86 sites have averaged only 0.7 registrations per month, and only 15 sites have averaged more than one registration per month in 2016. Twenty-seven DOR sites have not registered a single voter all year.

The ACLU and DRC have reached out to DOR's NVRA coordinator to request a meeting, but DOR has declined to meet.

Number of sites	87
Number of sites appearing in SB 35 reports	86
Number of sites with 0 registrations in 2016	27
Number of sites averaging more than 1 registration per month in 2016	15
2016 monthly average of registrations at 86 sites appearing in SB 35 reports	0.7
Total average monthly registrations	72.0
Source: California Department of Rehabilitation, California Secretary of State.	

Independent Living Centers (ILCs)

There are 56 ILC offices or branches in the state, but only 43 appear in the SB 35 reports. Of the 43 sites that appear in the reports, 34 have not registered a single voter all year. Only four of the 43 sites that appear in the reports have averaged more than one registration per month in 2016. The 43 ILCs appearing in reports have averaged 0.3 registrations per month this year.

The ACLU and DRC met with the Department of Rehabilitation, which oversees ILCs, and with the California Foundation for Independent Living Centers (CFILC) this month about ways to partner on improving registrations at regional centers. DOR and CFILC have agreed to partner with us on trainings, a survey of local offices, and distribution of training materials to ILCs.

Number of sites	56
Number of sites appearing in SB 35 reports	43
Number of sites in report with 0 registrations in 2016	34
Number of sites averaging more than 1 registration per month in 2016	4
2016 monthly average of registrations at 43 sites appearing in SB 35 reports	0.3
Total average monthly registrations	22.8
Source: California Department of Rehabilitation, California Secretary of State.	

Deaf Access Program (DAP)

DAP has 27 offices or branches in the state, but only 22 appear in the SB 35 reports. Of the 22 sites that appear in the reports, 20 have not registered a single voter all year. Only two of the

22 sites that appear in the reports have averaged more than one registration per month in 2016. The 22 ILCs that appear in reports have averaged 0.2 registrations per month this year.

The ACLU and DRC met with DSS, which oversees the DAP offices, this month about ways to partner on improving registrations at IHSS offices, including trainings, a survey of local offices, and creating materials for DAP offices. DAP has already reached out to local offices to begin assessing the current state of NVRA compliance.

Number of sites	27
Number of sites appearing in SB 35 reports	22
Number of sites in report with 0 registrations in 2016	20
Number of sites averaging more than 1 registration per month in 2016	2
2016 monthly average of registrations at 43 sites appearing in SB 35 reports	0.2
Total average monthly registrations	4.4
Source: California Department of Social Services, California Secretary of State.	

State and County Mental Health Providers

We did not analyze the performance of county mental health offices, but there are many counties where the offices do not appear in the SB 35 reports at all, including some large counties. There is no statewide office that oversees county mental health offices. However, there is a state association, the California Behavioral Health Directors Association, which represents county mental health programs. The ACLU and DRC met with that organization this month, and have agreed to partner on trainings and distribution of materials to county behavioral health offices.

Recommendations

The ACLU and DRC have the following recommendations for ways the Secretary of State’s office could improve and expand implementation of the NVRA and SB 35:

1. The Secretary of State should dedicate a staff member to NVRA implementation.

While California has made strides towards improved NVRA compliance, there is still a great deal to be done, and the SOS’s office needs an NVRA Coordinator dedicated to Section 7 implementation and compliance. All of the following recommendations will depend on the ongoing work of a dedicated, high level SOS staff member.

2. The Secretary of State’s NVRA Coordinator should meet regularly with the state-level coordinators of NVRA agencies.

Because state NVRA agencies are ultimately responsible for the compliance of their local NVRA offices, the SOS is required to communicate with and assist state level NVRA agencies with

evaluating and improving local NVRA compliance.¹⁸ Beginning under Secretary Bowen, the ACLU and DRC partnered with Secretary Bowen’s staff on outreach to state agencies concerning SB 35 implementation.

The current SOS NVRA Coordinator should likewise meet regularly with state-level NVRA Coordinators. At these meetings the SOS NVRA Coordinator can share data from SB 35 reports, such as which local agencies are not appearing in the reports and which local agencies are appearing in the reports but not registering voters. The SOS NVRA Coordinator can also use these meetings to share new training materials, tools, and law changes. Representatives from the state NVRA agencies can use these meetings to raise concerns about implementation and questions from their agencies.

3. The Secretary of State’s NVRA Coordinator should hold accountable any local NVRA agency and county elections office that is not complying with the NVRA or SB 35.

The SOS is required to contact a voter registration agency if the agency is not complying with SB 35 or the NVRA,¹⁹ and is permitted to conduct a review of an NVRA agency’s compliance with the NVRA and SB 35.²⁰ Additionally, the SOS is permitted to conduct a review of county elections offices who are not complying with the NVRA, such as failure to submit timely SB 35 reports or are submission of incomplete reports.²¹ The SOS should exercise this authority. For example, if an agency has not registered a voter in three straight months, or the county elections office has submitted late or incomplete reports for several months, the SOS NVRA Coordinator could contact the agency or county elections office and request a conversation with the NVRA coordinator to discuss NVRA policies.

If a voter registration agency continues to fail to register voters, the SOS can use his authority to request data, such as the number of voter preference forms collected in the past 12 months, written policies and procedures, records documenting the training of staff, the number of voter registration cards requested by the agency from the county elections office in the previous 12 months, and the number of applications, renewals and change of address transactions in the previous 12 months.²² The SOS can then use this information to evaluate NVRA compliance, share the results with the agency’s state office, issue recommendations, and post the results on its website. The SOS should consider adding a formalized compliance protocol to the state’s NVRA Manual or formalizing the compliance protocol through regulations.

4. The Secretary of State should maintain lists of NVRA coordinators.

Every voter registration agency and county elections office is required to identify an NVRA coordinator, a requirement that is central to ensuring continuity, accountability and compliance

¹⁸ Cal. Elec. Code § 2404 (a)(4) (West 2016).

¹⁹ *Id.* § 2404 (a)(3).

²⁰ *Id.* § 2404 (b)(1).

²¹ *Id.* § 2404 (b)(2).

²² *Id.* § 2404 (b)(1).

with the NVRA.²³ Despite outreach and trainings offered by the SOS, it is apparent from our local outreach that many offices still do not have NVRA coordinators. To improve compliance, the SOS's office should begin requesting that state NVRA agencies keep updated lists of their NVRA coordinators in each county and share these lists with the SOS NVRA Coordinator on a quarterly or semi-annual basis. This would allow the SOS NVRA Coordinator to stay in touch with NVRA agencies and send them important updates, allow county elections offices to do outreach to local NVRA agencies if they want to offer trainings or resources, and ensure that local NVRA agencies are complying with coordinator requirements.

5. The Secretary of State should continue using a collaborative approach to NVRA implementation.

The former SOS successfully partnered with a variety of stakeholders on NVRA compliance, both governmental and non-governmental, to get information to NVRA agencies. As examples, the SOS NVRA Coordinator worked with voting rights groups including Project Vote and the ACLU, disability rights organizations like DRC, advocates for public assistance recipients like the Western Center on Law and Poverty, and policy organizations like the League of Women Voters and the Greenlining Institute. The SOS's office also established relationships with professional organizations like the California Association of Clerks and Elections Officials, the California Welfare Directors Association, the California WIC Association, the California Foundation for Independent Living Centers, the Association of Regional Center Agencies, the Future of California Elections, and the California Behavioral Health Directors Association, all of which represent the interests of voter registration agencies, elections officials, advocates, and consumers. These relationships led to trainings directly for these organizations and their members, were a resource to get information to NVRA agencies, and led to helpful feedback about practical problems and solutions for on-the-ground NVRA implementation.

The SOS should consider re-establishing these highly effective working relationships by creating a regular NVRA working group that includes representatives from these different interests. This group can meet semi-annually to discuss NVRA implementation, including concerns, best practices, new resources, and new laws.

6. Update the voter registration agency list and designate additional agencies.

The NVRA requires that each state designate as voter registration agencies all offices that provide public assistance and all offices that provide services to persons with disabilities. Because the state does not have a choice regarding designation of agencies matching these descriptions, these agencies are known as "mandatory agencies."²⁴

As California's chief election official, the SOS is required to identify and designate California's mandatory voter registration agencies. Designation of mandatory agencies is critical because formal designation is what puts these agencies on notice as to their voter registration responsibilities. Without formal designation they likely are completely unaware that they are an

²³ *Id.* §§ 2405 (a) and 2406 (a)(2).

²⁴ See e.g. *Disabled in Action of Metropolitan New York v. Hammons*, 202 F. 3d. 110, 115 (2nd Circuit, 2000).

NVRA agency. Such an agency could face a lawsuit under Section 7, even if it was not formally designated.²⁵ There are a number of offices that potentially meet the definition of a mandatory agency because they are state funded and primarily serve people with disabilities. Many of these offices have been designated in other states. Table 7 below outlines agencies that should be designated as mandatory NVRA agencies, and a fuller description of each agency is attached as Appendix A:

Program	Oversight Agency	Type of Office	Number of People Served	Designation in California or Other States
County Substance Abuse Programs	DHCS	Disability	169,875 in 2011-12 SFY	N.Y. and S.C.
College disability services offices	<ul style="list-style-type: none"> • Cal. State Univ. • Cal. Community Coll. Chancellor's Office • Univ. of Cal. 	Disability	<ul style="list-style-type: none"> • Cmty. Coll. disability services: 99,852 students (2010-11) • CSU disability services: 13,779 students (2013) 	Colo., Fla., La., Md., Mass., and Pa.
Division of Workers Comp.	Dept. of Indus. Relations	Disability	578,111 reported injuries in 2013	Fla. and N.Y.
Office of Services to the Blind	DSS	Disability	Unknown	Fla., Mass., N.J., N.M., N.Y., N.C., Or., Pa., S.C., and W. Va.
Area Agencies on Aging	Cal. Dept. of Aging	Pub. Assist./ Disability	Hundreds of thousands of clients served in various programs	Ind., La., Md., N.Y., Or., Pa., Tex., and W. Va.
Local high school special educ. offices	Cal. Dept. of Education	Disability	89,530 students at least 17 years old	Pa.

Conclusion

The ACLU and DRC remain committed to a collaborative approach towards improving compliance with the NVRA and SB 35. We are available to answer questions from the VAAC and partner with the SOS office. We will also continue to reach out to NVRA agencies serving people with disabilities at the state and local level. Please do not hesitate to contact us with questions, concerns, or suggestions.

²⁵ *U.S. v. Louisiana*, CIV.A. 11-470-JJB, 2011 WL 6012992, 4 (M.D. La. Dec. 1, 2011).

Appendix A

County Substance Abuse Programs: Under the current designation, state and county mental health providers are designated as voter registration agencies, but substance abuse programs, which are often within the same county departments, are not.¹ We have received frequent inquiries from county mental health providers about whether county funded substance abuse programs must also provide voter registration services. In some counties, the county substance abuse offices are already providing voter registration services, but based on the SB 35 reports it appears that in many counties they are not.² County substance abuse programs saw almost 170,000 admissions in the 2011-12 state fiscal year (SFY).³

Under the Americans with Disabilities Act (ADA), drug addiction can be a disability. A person with a disability is defined as someone who has or had a physical or mental impairment that substantially limits one or more of his or her major life activities.⁴ This has been interpreted to include drug addiction.⁵ Further, the ADA protects individuals in a rehabilitation program from discrimination if they are not currently using drugs.⁶ At least two states (South Carolina and New York) have designated their substance abuse programs as mandatory voter registration agencies.⁷

The California Community College Disabled Student Programs and Services (DSPS), California State University (CSU) Disability Offices and University of California (UC) Disability Services Offices: Several federal courts have held that disability services offices at state universities and community colleges (in Virginia, Ohio, and New York) must be designated as voter registration agencies.⁸ In California, these offices provide support services and educational accommodations to students with disabilities. DSPS served 99,852 students in 2010-11, and CSU Disability offices served 13,779 students in 2013.⁹ In addition to the three states where federal courts ruled they are required to be designated as mandatory voter registration agencies, at least six more states

¹ Declaration, California Secretary of State 2 (June 26, 2013), *supra* note 1.

² *E.g.* SB 35/NVRA Monthly Reports by County and Agency Office/Site, California Secretary of State Debra Bowen, <http://www.sos.ca.gov/elections/voter-registration/nvra/reports/sb35-nvra-monthly-reports/> (last visited Sep. 19, 2016), at Orange and San Diego Counties.

³ California Department of Alcohol & Drug Programs, Californians in Treatment Report: State Fiscal Year 2011-12 2 (2013), available at <http://www.dhcs.ca.gov/provgovpart/Documents/OARA/OARA%20Reports%20and%20Fact%20Sheets/Californians-in-Treatment-Report.pdf>.

⁴ 42 U.S.C.A. § 12102 (1).

⁵ Equal Employment Opportunity Commission, Technical Assistance Manual Title I of the ADA, § 8.5 (1992).

⁶ 28 C.F.R. 35.131 (a)(2).

⁷ Alcohol and Other Drug Abuse Services, South Carolina (S.C. Code Ann. § 7-5-310 (B)(8) (2014)); Office of Alcoholism and Substance Abuse Services, New York, designated as a disability services office (N.Y. Elec. Law § 5-211 (McKinney 2014)).

⁸ *Nat'l Coal. for Students with Disabilities Educ. and Legal Def. Fund v. Allen*, 152 F.3d 283, 293 (4th Cir. 1998); *Nat'l Coal. for Students with Disabilities v. Taft*, 2:00-CV-1300, 2002 WL 31409443, 3 (S.D. Ohio Aug. 2, 2002); *U.S. v. New York*, 700 F.Supp. 2d 186, 203-04 (N.D.N.Y. 2010).

⁹ California Community Colleges Chancellor's Office, Disabled Student Programs and Services Report 3 (2013), available at <http://extranet.cccco.edu/Portals/1/SSSP/DSPS/Reports/DSPSReport.pdf>; Services to Student with Disabilities, California State University, at Statistical Data- 2013 xls, www.calstate.edu/sas/disabilities.shtml (last visited Sep. 19, 2016).

have designated their university disability services offices as voter registration agencies (Colorado, Florida, Louisiana, Maryland, Massachusetts, and Pennsylvania).¹⁰

In addition to designating DSPS and CSSU Disability Offices, UC disability services offices must be designated as voter registration agencies. While the UC's have a great deal of autonomy under the California Constitution,¹¹ their campus offices serving people with disabilities are not exempt from the federal mandate to provide voter registration.

California's colleges and universities recently agreed to partner with the Secretary of State on providing voter registration through class registration and email notices to all students, and an NVRA designation of campus disability services offices would complement that partnership by providing additional in-person assistance and voter registration opportunities for students with disabilities.

Department of Industrial Relations - Division of Worker's Compensation (DWC): Employees who are hurt on the job and are unable to work are entitled to temporary or permanent disability benefits.¹² In at least two states, workers compensation offices have been designated as voter registration agencies (Florida and New York).¹³ In 2013, there were nearly 600,000 work related injuries reported,¹⁴ and while the applications for workers compensation go to the employer and not DWC, DWC does interact with disabled consumers through its Information and Assistance Unit.¹⁵ Because DWC is primarily serving people with disabilities, it is a mandatory voter registration agency.

Department of Social Services, Office of Services to the Blind (OSB): OSB provides information and referral on services, programs, entitlements, and products of benefit to individuals who are blind or visually impaired and their families or service providers.¹⁶ OSB also administers the

¹⁰ Colorado Secretary of State, NVRA Voter Registration in Colorado 2013 Annual Report 2 (2014), *available at* www.sos.state.co.us/pubs/elections/NVRA/files/reports/2013NVRAReport.pdf; Fla. Admin. Code r. 1S-2.048 § (1)(b) (2015); Louisiana Secretary of State, Implementing the National Voter Registration Act of 1993 for Voter Registration Agencies that Provide Public Assistance or Provide State Funded Programs Primarily Engaged in Providing Services to Persons With Disabilities ("LA NVRA Manual") 3 (2014), *available at* <http://www.sos.la.gov/ElectionsAndVoting/PublishedDocuments/NVRAImplementationManual.pdf>; Md. Code Regs. 33.05.03.02 § (A)(6) (2014); 950 Mass. Code Regs. § 57.02 (2014); Pennsylvania Department of State, Pennsylvania's Guide to Agency-Based Voter Registration Programs ("PA NVRA Manual") 4 (2012), *available at* <http://www.education.pa.gov/Documents/K-12/Special%20Education/2010%20PA%20Guide%20To%20Agency%20Based%20Voter%20Registration.pdf>.

¹¹ Cal. Const. art IX § 9(a).

¹² See Answers to frequently asked questions about workers' compensation for employees, California Department of Industrial Relations, www.dir.ca.gov/dwc/WCFAQIW.html#Basics (last visited Sep. 19, 2016).

¹³ Florida's Department of Financial Services- Division of Workers' Compensation listed in SOS NVRA training as an office serving people with disabilities, but we could not identify designation in statute or regulations (Katrinia Ferguson, Florida Division of Elections, Overview for Voter Registration Agencies 5 (Apr. 16, 2014), *available at* <http://dos.myflorida.com/media/695020/nvra-webinar-for-non-library-vras-4162014.pdf>); New York's Division of Workers Compensation is listed as a discretionary office (N.Y. Elec. Law § 5-211 (McKinney 2014)).

¹⁴ Division of Workers' Compensation, California Department of Industrial Relations, Table 3: Claims by Nature of Injury and Year of Injury (2014), www.dir.ca.gov/dwc/wcis/WCIS_tables/Tables1-3/2013/Table-3.pdf (last visited Sep. 19, 2016).

¹⁵ Information and Assistance Unit, California Department of Industrial Relations, www.dir.ca.gov/dwc/landA.html (last visited Sep. 22, 2016).

¹⁶ Blind Services, California Department of Social Services, www.cdss.ca.gov/cdssweb/PG83.htm (last visited Sep. 22, 2016).

Assistance Dog Special Allowance Program, which provides a monthly payment to eligible persons who use a guide, signal, or service dog to help them with their disability-related needs.¹⁷ At least ten other states have designated their blind services offices as voter registration agencies (Florida, Massachusetts, New Jersey, New Mexico, New York, North Carolina, Oregon, Pennsylvania, South Carolina, Virginia, and West Virginia).¹⁸

California Department of Aging (CDA) - Area Agencies on Aging (AAA): The CDA, through contracts with 33 Area Agencies on Aging, administers programs that serve older adults, adults with disabilities, family caregivers, and residents in long-term care facilities throughout the state.¹⁹ The programs administered by CDA serves hundreds of thousands of Californians,²⁰ and include important services that help seniors stay in their homes, such as Community-Based- Adult Services, Multipurpose Senior Services Program, and many others.²¹ At least nine states have designated their aging services offices as voter registration agencies (Indiana, Louisiana, Maryland, New York, Oregon, Pennsylvania, Texas, Virginia, and West Virginia), usually because they determined those offices were offices primarily serving people with disabilities.²² Most of California's AAA programs are income tested assistance programs and serve many people with disabilities,²³ and CDA is therefore a mandatory voter registration agency.

¹⁷ *Id.*

¹⁸ Fla. Admin. Code r. 1S-2.048 § (1)(b) (2015); 950 Mass. Code Regs. § 57.02 (2014); N.J. Stat. Ann. § 19:31-6.11 (a); N.M. Code R. § 1.10.8.2 (2015); N.Y. Elec. Law § 5-211 (McKinney 2014); North Carolina's Division of Services for the Blind is a voter registration agency, according to the North Carolina State Board of Elections, but we could not identify a designation in a statute or regulation (The National Voter Registration Act of 1993 (NVRA), North Carolina State Board of Elections, <https://www.ncsbe.gov/Elections/NVRA> (last visited Sep. 19, 2016)); Or. Admin. R. 165-005-0055 § (1)(b) (2014); PA NVRA Manual, *supra* note 24; S.C. Code Ann. § 7-5-310 (B)(4) (2014); Virginia's Department for the Visually Handicapped is a voter registration agency, according to the Virginia Department of Elections, but we could not identify the designation in a statute or regulation (Designated State Agencies, Virginia Department of Elections, <http://elections.virginia.gov/index.php/registration/designated-state-agencies/> (last visited Sep. 19, 2016)); W. Va. Code R. §§ 153-28-4.5 and 4.6.

¹⁹ About CDA, California Department of Aging, www.aging.ca.gov/AboutCDA/ (last visited Sep. 19, 2016).

²⁰ California Department of Aging, Program Statistical Fact Sheets at the State Level 2 (2016), available at http://www.aging.ca.gov/docs/DataAndStatistics/Statistics/StatisticalFactSheets/2016/PSA_Level_Program_Statistical_Fact%20Sheets_2016.pdf.

²¹ Programs & Services, California Department of Aging, www.aging.ca.gov/Programs/ (last visited Sep. 19, 2016).

²² Indiana's Area Agencies on Aging are listed as a disability services office (National Voter Registration Act Implementation in Indiana: The First Year 1995, Indiana Election Division, www.in.gov/sos/elections/3001.htm (last visited Sep. 19, 2016); Louisiana's Aging and Adult Services is listed as a disability services office (NVRA Manual, *supra* note 24); Maryland's Offices on Aging is listed without distinguishing between mandatory and discretionary (Md. Code Regs. 33.05.03.02 § (A)(5) (2014)); New York's Office for the Aging is listed as a disability services office (N.Y. Elec. Law § 5-211 (McKinney 2014)); Oregon's Seniors and People with Disabilities Division is listed without distinguishing between mandatory and discretionary (Or. Admin. R. 165-005-0055 § (1)(f) (2014)); Pennsylvania's Office of Aging is listed as a disability services office (PA NVRA Manual, *supra* note 24); Texas's Department of Aging and Disability Services is listed without distinguishing between mandatory and discretionary (Tex. Elec. Code Ann. § 20.001 (a)(2) (Vernon 2013)); Virginia's Department of Aging and Rehabilitative Services is listed without distinguishing between mandatory and discretionary (Virginia Department of Elections, *supra* note 33); West Virginia's Bureau of Senior Services under the Governor's Office is listed as a disability services office (W. Va. Code R. § 153-28-4.1).

²³ Programs and Services, California Department of Aging, www.aging.ca.gov/Programs/ (last visited Sep. 19, 2016).

California's K-12 Special Education Offices: The Department of Justice (DOJ) and the Association of Community Organizations for Reform Now (ACORN) contended in a 1995 lawsuit that Pennsylvania's special education offices within public school districts must be designated as voter registration agencies.²⁴ While that issue was not ultimately decided, DOJ and ACORN did reach a settlement with Pennsylvania which required school districts to offer voter registration as part of the individualized education program (IEP) planning when students turn 17. In the 2013-14 school year, California had nearly 90,000 students enrolled in special education who were at least 17 years old.²⁵ California's special education offices could be designated as mandatory voter registration agencies to the extent they serve students at least 17 years old.

²⁴ Basic Education Circular, Pennsylvania Department of Education, Voter Registration As Part Of Transition To Adult Life (Dec. 1, 1999), available at <http://www.education.pa.gov/Documents/Codes%20and%20Regulations/Basic%20Education%20Circulars/Purdons%20Statutes/Voter%20Registration%20As%20Part%20Of%20Transition%20To%20Adult%20Life.pdf>.

²⁵ Special Education Enrollment by Age and Disability, California Department of Education (2013), <http://dq.cde.ca.gov/dataquest/SpecEd/SpecEd1.asp?cChoice=SpecEd1&cYear=2013-14&cLevel=State&cTopic=SpecEd&myTimeFrame=S&submit1=Submit&ReptCycle=December> (last visited Sep. 19, 2016).



April 11, 2017

Secretary of State Alex Padilla
1500 11th Street
Sacramento, CA 95814

Delivered via email

Dear Secretary Padilla,

Over the past five years, the ACLU of California and Disability Rights California (DRC) have worked closely with the Secretary of State's office, both with your staff and the previous administration, on improving compliance with the National Voter Registration Act of 1993 (NVRA) and on implementing SB 35 (Padilla, 2012), California's NVRA implementing statute. Working together we have made tremendous progress on improving the number of registrations, particularly at public assistance offices.

Unfortunately, we have not made the same gains among offices primarily serving people with disabilities. Last year, in a memo sent to your office and to the Voter Accessibility Advisory Committee on September 23, 2016 (attached), we outlined the lack of registrations at these offices. We also recommended the designation of additional mandatory NVRA offices as voter registration agencies. We did not receive a response from your office at that time.

Since then, we have made several requests to your NVRA Coordinator, Rachelle Delluchi, for a response to our recommendation for the designation of mandatory NVRA agencies. At a meeting on February 8, 2017, and by email on February 17, 2017, we were told that at this time the Secretary of State's office would not evaluate whether there are undesignated mandatory NVRA agencies. We urge you to reconsider, and to conduct the required analysis.

Under the NVRA, states must designate as voter registration agencies all offices in the state that provide public assistance, and all state-funded programs primarily engaged in providing services to persons with

disabilities.¹ As California's chief election official, it is the Secretary of State's responsibility to identify and designate those offices as voter registration agencies.² There are a number of offices that meet the definition of a state funded agency primarily serving people with disabilities that have not been designated as voter registration agencies.

The formal designation of these offices as mandatory agencies by the Secretary of State is critical because formal designation is what puts these agencies on notice as to their voter registration responsibilities. Without a formal designation, these agencies are likely unaware that they are an NVRA agency and are not providing voter registration services. This leaves these offices vulnerable to a lawsuit. Designation of agencies is therefore critical to protect both the Secretary of State and state agencies from liability under the Act.

Because of our work with state and local NVRA agencies over the past five years, we are more than ready to support the new offices that are designated. Your office has already developed training materials for new NVRA coordinators, as well as a detailed NVRA manual. The ACLU has an NVRA Toolkit, with resources for both coordinators and staff directly providing voter registration services. DRC has materials for voters with disabilities. Additionally, our offices have experience coordinating NVRA trainings locally and statewide.

As previously outlined in our September memo, we recommend the designation of the following agencies as mandatory voter registration agencies most of which are designated in other states:

- County Substance Abuse Programs;
- College disability services offices, including University of California campuses, California State Universities, and community colleges;
- Division of Workers Compensation;
- Office of Services to the Blind;
- Area Agencies on Aging; and
- Local high school special education offices.

Please see our attached September memo for more detail on these offices. These offices have been designated in other states, and some were included

¹ 52 U.S.C.A. § 20506 (West)

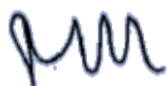
² *Nat'l Coal. for Students with Disabilities v. Taft*, 2:00-CV-1300, 2002 WL 31409443, 3 (S.D. Ohio Aug. 2, 2002).

in the list of agencies you attempted to designate as a Senator in an earlier version of SB 35.

We request that as the state's chief elections official, you respond in writing to us by May 12, 2017. We stand ready to work with you on a timeline for designating those offices and to develop a plan for implementing the NVRA at these offices.

We look forward to working with you on this issue. Please do not hesitate to contact us with any questions.

Sincerely,



Raul Macias
Manager & Staff Attorney
ACLU of California Voting Rights
Project



Paul Spencer
Staff Attorney for Voting Rights
Disability Rights California

CC

Voter Accessibility Advisory Committee