

To: Concerned Kansas Officials
From: Loud Light, Demos, American Civil Liberties Union of Kansas
Date: November 13, 2019
RE: Kansas's Compliance with Federal Voting Laws

We write to inform you that certain Kansas agencies may not be in full compliance with federal voting laws, and to request to meet with relevant state officials during the 2019 calendar year to collaboratively ensure that every eligible Kansan can vote. Please reply via email to the staff listed below this memo by November 22, 2019 regarding your willingness to meet this year.

As part of our efforts to protect and defend voting rights, we investigated Kansas practices, procedures, and policies for providing voter registration services required by the National Voter Registration Act of 1993 52 U.S.C. §§ 20501, *et seq.* (“NVRA”).

As laid out below, our research and investigation identified several compliance concerns with the requirements of Sections 5 and 7 of the NVRA, 52 U.S.C. §§ 20504, 20506, as well as Section 203 of the Voting Rights Act of 1965, 52 U.S.C. § 10503 (“VRA”). To evaluate Kansas’s compliance with the NVRA and the VRA, we reviewed Election Assistance Commission (“EAC”) data; requested and reviewed public records; and conducted an on-the-ground investigation in September 2019 during which we reviewed office procedures at more than twenty motor vehicle and public assistance agency offices across the state, and interviewed clients at several of these locations.

We know that you share our commitment to protecting Kansans’ voting rights, and we would like to find a time to meet in November or December of this year (2019) to discuss ways that you can ensure Kansas’s compliance with federal voting laws and address the effects of prior noncompliance. We are optimistic that by working together and with other stakeholders we can establish a plan to address and remedy these issues cooperatively. We look forward to hearing from you at the emails below by November 22nd.

I. Kansas’s Compliance with Section 7 of the NVRA; Public Assistance Agency Transactions

A. Overview of Section 7 Legal Requirements

Section 7 of the NVRA requires Kansas to, among other things, “designate as voter registration agencies . . . all offices in the State that provide public assistance.” 52 U.S.C. § 20506(a)(2). “Public assistance” offices include state offices that administer the Supplemental Nutritional Assistance Program (“SNAP”), Women, Infants, and Children (“WIC”), Medicaid, Children’s Health Insurance Program (“CHIP”), Aid to Dependent Children (“ADC”) (funded through Temporary Assistance for Needy Families), and Vocational Rehabilitation. *See* H.R. Rep. No. 103-66, at 19 (1993) (Conf. Rep.); Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q13. In Kansas, these programs are administered by the Kansas Department of Health and Environment (“KDHE”) and the Kansas Department of Children and Families (“KDCF”).

Section 7 of the NVRA requires these public assistance offices to (i) distribute voter registration application forms; (ii) assist applicants in completing the voter registration application forms; and (iii) accept completed voter registration application forms and forward them to the appropriate election official. *See* 52 U.S.C. § 20506(a)(4)(A).

More specifically, each office must (i) distribute a voter registration application form with each application for public assistance and with each recertification, renewal or change of address form (“covered

transactions”), except as explained below; (ii) inquire in writing, through statutorily-prescribed language, whether the applicant would like to register to vote or change their voter registration address (“voter preference question”); (iii) provide, in writing, several statutorily-prescribed disclaimer statements, including notice that the decision whether to register to vote will not affect the amount of public assistance provided by the agency; and (iv) provide assistance in completing the voter registration application form to the same degree the agency provides assistance in completing its own forms, including assistance with providing information necessary to establish eligibility to register to vote. 52 U.S.C. § 20506(a)(6).

Additionally, Section 7 requires that public assistance offices distribute a voter registration application to each applicant or client engaging in a covered transaction unless the applicant or client affirmatively declines to register to vote in writing by answering “no” in response to the voter preference question. *See Valdez v. Squier*, 676 F.3d 935, 945-47 (10th Cir. 2012) (citing 52 U.S.C. § 20506(a)(6)); *see also Action NC v. Strach*, 216 F. Supp. 3d 597, 640 (M.D.N.C. 2016).

Section 7(a)(6) specifically requires that public assistance offices “distribute with *each application*” for public assistance and “with each recertification, renewal, or change of address form” a voter registration application, as well as a form that includes the voter preference question and required disclosures. 52 U.S.C. § 20506(a)(6) (emphasis added). As such, these agencies must provide voter registration during each covered transaction, regardless of whether the transaction takes place in an agency office, over the Internet or via email, telephone, fax, or other remote means. *See, e.g., Action NC*, 216 F. Supp. 3d at 623 (“Sections 5 and 7 of the NVRA apply equally to in person and remote covered transactions”); *Ga. State Conf. of the NAACP v. Kemp*, 841 F. Supp. 2d 1320, 1329 (N.D. Ga. 2012); *see also* U.S. Department of Justice, The National Voter Registration Act of 1993 (NVRA): Questions and Answers, Q24, <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra>.

Finally, Section 7 requires effective distribution of voter registration applications for each covered transaction. 52 U.S.C. § 20506(a)(6)(A). Distribute means “[to] deliver’ or ‘to disperse.’ . . . The statute is very clear in that with each transaction the applicant must be given a form that is described in Section 9 of the NVRA.” *Ferrand v. Schedler*, No. 11-cv-926, 2012 WL 1570094, at *9 (E.D. La. May 3, 2012) (citation omitted), *vacated in part on other grounds, Scott v. Schedler*, 771 F.3d 831 (5th Cir. 2014). Thus, merely providing a link to a voter registration application that an applicant must download, print, and mail fails to comply with the distribution requirement and creates a significant barrier for low-income public assistance clients who often do not have access to printers. Additionally, linking to an online voter registration system like Kansas’s that requires users to have a state-issued driver’s license or state identification¹ is not sufficient because not all public assistance clients have those types of identification, and hence some cannot use the system. Section 7 of the NVRA was designed to reach “the poor and persons with disability who do not have driver’s licenses and will not come into contact with [motor vehicle agencies].” H.R. Rep. No. 103-66, at 16 (1993). To be NVRA-compliant, remote covered transactions must provide clients with the option to request that a paper voter registration application be mailed directly to them in addition to providing other distribution options.

B. Issues Concerning Kansas Section 7 Compliance

For the past several reporting periods, Kansas has reported extremely low numbers of voter registration applications generated through public assistance agencies to the EAC. In the most recent reporting period, for example, Kansas reported only 2,171 agency-generated applications, representing less than one-tenth of one percent of the state population. EAC, *Election Administration and Voting Survey: 2018 Comprehensive Report*, 64 (2018). The numbers Kansas has reported to the EAC compare poorly with those

¹ <https://www.kdor.ks.gov/apps/voterreg/default.aspx>

of other states. For example, in recent years, Kansas had nearly half of the public assistance clients as Nevada² but reported less than 8% of the voter registration applications from public assistance clients. Per reports to the EAC over the last six years, the average voter registrations per year for Nevada was 19,080. Kansas, however, has reported a per-year average of only 1,494 voter registrations.³

These numbers raise concerns about Kansas's compliance with Section 7 of the NVRA. We, therefore, conducted a review of documents detailing Kansas's laws and policies related to the requirements of Section 7 outlined above. We also conducted an on-the-ground investigation. The combination of these low numbers, our review of the relevant documents and our on-the-ground investigation have uncovered several areas of concern.

1. Failure to Distribute Voter Registration Applications to All Who Do Not Decline to Register in Writing

It appears that the Kansas regulations governing KDHE and KDCF covered programs and transactions both treat a blank response to the federally-mandated voter preference question (“If you are not registered to vote where you live now, would you like to apply to register to vote here today?”) as a declination to register to vote. This practice was generally confirmed by our September 2019 on-the-ground investigation, and is a violation of Section 7 of the NVRA.

i. Kansas Department of Health and Environment

The Medical Kansas Economic and Employment Services [Manual](#) governs the policies of Department of Health and Environment programs including Medicaid, CHIP, MediKan and the State Only Plan. The policy manual sets out the following with respect to the requirements the NVRA imposes on the agencies it covers:

The National Voter Registration Act of 1995 requires voter registration to be available in public assistance offices. The Act also requires that anyone applying for or receiving public assistance, including Medicaid, be offered the opportunity to register to vote at the time of initial application, each eligibility review, and each report of a change of address. Each individual must be informed of this registration service and offered assistance in completing the voter registration form or declining the registration activity. The Medical Assistance application for Families with Children and the Medical Assistance Application for the Elderly and Persons with Disabilities offers everyone the opportunity to register to vote or to decline to register. Completion of the voter registration question on the application is not a condition of eligibility for assistance. **If an individual does not sign or complete this page of the application, it is considered a declination of voter**

² See *Monthly Medicaid & CHIP Application, Eligibility Determination, and Enrollment Reports & Data*, Medicaid.gov, <https://www.medicaid.gov/medicaid/program-information/medicaid-and-chip-enrollment-data/monthly-reports/index.html> (last visited Nov. 12, 2019); *SNAP Data Tables*, USDA-FNS, <https://www.fns.usda.gov/pd/supplemental-nutrition-assistance-program-snap> (last visited Nov. 12, 2019).

³ See *Election Administration and Voting Survey: 2018 Comprehensive Report*, 64 (2018).; Election Assistance Commission, *Election Administration and Voting Survey: 2016 Comprehensive Report*, 64 (2016); Election Assistance Commission, *Election Administration and Voting Survey: 2014 Comprehensive Report*, 64 (2014). Arkansas and Mississippi also have similar numbers of individuals on public assistance as Nevada, about double that of Kansas, and have both reported significantly higher numbers of voter registrations than Kansas. Arkansas's reported number of public assistance voter registrations is an average of 13,472 for the last six years. Mississippi's average over the last six years is almost 10 times that of Kansas, at 10,750. All EAC reports are available at <https://www.eac.gov/research-and-data/studies-and-reports>.

registration and has no bearing on case processing or eligibility. Those applying on-line are offered the opportunity to link to the Secretary of State's voter registration site. All those who answer "yes" are to be handed or mailed a voter registration application. The individual's response to the offer to register to vote is to be recorded on a declination form. All declination forms must be retained for at least two years.

Kansas Medical Economic & Employment Servs. Manual 1731 Voter Registration (emphasis added). This language suggests that the policy governing client transactions with Medicaid, CHIP, MediKan and the State Only Plan violate Section 7 of the NVRA by treating a blank response as a declination.

ii. Kansas Department of Children and Families

With respect to the programs the Department of Children and Families administers, TANF (Temporary Assistance for Needy Families), Food Assistance, and the LIEAP (the Low-Income Energy Assistance Program), the following [policy](#) regarding voter registration applies:

The National Voter Registration Act of 1995 requires voter registration to be available in public assistance offices. The Act also requires that anyone applying for or receiving public assistance, including TANF, Food Assistance, Child Care, and LIEAP, be offered the opportunity to register to vote at the time of initial application, each eligibility review, and each report of a change of address. Each individual must be informed of this registration service and offered assistance in completing the voter registration form or declining the registration activity. The ES-3100, Application for Cash, Child Care, and Food Assistance Benefits, offers everyone the opportunity to register to vote or to decline to register. Completion of the voter registration page of the ES-3100 is not a condition of eligibility for assistance. **If an individual does not sign or complete this page of the application, it is considered a declination of voter registration** and has no bearing on case processing or eligibility. Those applying on-line are offered the opportunity to link to the Secretary of State's voter registration site. Change of address forms developed by local offices must include the same voter registration and declination information as is included in the ES-3100. DCF staff taking a report of a change of address or name change by telephone or in person should inform the individual that a change of address or name requires new voter registration and ask the individual if they wish to register to vote. All those who answer "yes" are to be handed or mailed a voter registration application. The individual's response to the offer to register to vote is to be recorded on a declination form. Local offices must keep all declination forms for at least two years.

Kansas Economic & Employment Servs. Manual § 1731. This policy applies to individuals applying for KDCF Food Assistance, Cash Assistance and Child Care assistance through the agency's online portal as well.

As described above, the NVRA does not permit agencies to treat a blank response to the voter preference question as a declination to vote and requires that agencies provide voter registration forms to clients who leave the declination form blank. Like with the Medicaid manual, this language suggests that KDCF Food Assistance, Cash Assistance and Child Care assistance transactions are violating Section 7 of the NVRA by treating a blank response as a declination. Additionally, the written agency policies are consistent with our on-the-ground investigation. None of the staff we spoke with described a policy of distributing voter registrations applications to clients who left the voter preference question blank. Several clients reported not seeing a voter preference question and not being given a voter registration application.

Recommended Improvements:

Agencies: We suggest that both KDHE and the KDCF a) update their policies to clarify that voter registration applications must be provided to any agency client who does not respond to the voter preference question, and hence does not decline to register to vote in writing; and b) train all staff who interact with clients or otherwise distribute voter registration forms on the updated policy.

Secretary of State: The Secretary of State could help all relevant agencies to update their policies and procedures and work to establish a training program for leadership and front-line employees to ensure that staff who interact with clients and those who oversee them are aware of the updated “blanks” policy. The Secretary of State has rulemaking authority to implement the provisions of Kansas’s agency registration process under Kan. Stat. Ann. § 25-2309, and should promulgate a regulation codifying the correct “blanks” policy.

2. *Failure to Adequately Distribute Voter Registration Forms in Agency Transactions*

During online transactions covered by Section 7 of the NVRA, the only voter registration services provided by many Kansas agencies is a link to the Secretary of State’s website. This website requires a client to print and mail her voter registration application and send it to the appropriate election official, or if an individual has a state issued driver’s license or ID card she can use the state’s online voter registration system. This is a violation of Section 7 of the NVRA requirement to “distribute” mail voter registration application with each application for public assistance. 52 U.S.C. § 20506(a)(6)(A). To comply with Section 7, agencies must offer to mail a paper voter registration application directly to any client completing a remote transaction who does not decline in writing or who is not otherwise confirmed to be able to use the online voter registration system. This is especially important as more and more clients conduct transactions online.

i. Kansas Department of Health and Environment

As noted above, the Medical Kansas Economic and Employment Services Manual, Section 1731 “Voter Registration” instructs that “[t]hose applying on-line are offered the opportunity to link to the Secretary of State’s voter registration site.” Kansas Economic & Employment Servs. Manual § 1731. Linking to a separate website alone does not satisfy the distribution requirement of Section 7 of the NVRA. KDHE’s actual practice and policies, however, are unclear. The screenshots we received through public records requests from the KanCare system online application portal (attached)⁴ are not consistent with the policy stated in the Manual. Clients are asked in the portal “Would you like us to send you a voter registration card?” If a voter registration application is mailed to clients following their KanCare transactions that would be NVRA compliant distribution.

ii. Kansas Department of Children and Families

It does seem clear, however, that KDCF is not complying with the NVRA’s distribution requirements in its self-service online application portal.⁵ First, as noted above, Section 1731 of the Kansas Economic and Employment Services Manual has the same language as the Medical Kansas Economic and Employment Services Manual, namely “Those applying on-line are offered the opportunity to link to the Secretary of State’s voter registration site.” Second, screenshots of KDCF’s self-service portal we received from public records requests (attached to this memo) show that clients are only provided a link to the Secretary of State’s website, and no opportunity to request that a voter registration be sent to them in the mail. As stated above,

⁴ <https://www.kancare.ks.gov/consumers/apply-for-kancare>

⁵ <https://cssp.kees.ks.gov/apspspp/sppNonMed.portal>

remote transactions that merely provide a link to the Secretary of State’s website fail to comply with Section 7’s distribution requirement.

Recommended Improvements:

Agencies: We suggest that KDCF a) adopt new policies to ensure that voter registration applications are properly distributed to all clients, including during online remote transactions; and b) modify the voter registration offer made during transactions covered by Section 7 to include an opportunity to receive a paper application unless the client has declined to register in writing or is confirmed to be able to use the online registration system contemporaneously with her covered transaction. During remote transactions conducted online, this can be accomplished by re-programming the KDCF self-service portal to explain the limitations of using the online voter registration system before offering the link to the Secretary of State’s website, and offering clients within the KDCF portal the alternative of requesting that a voter registration application be sent to them in the mail, and then KDCF sending out those mailings.

We also suggest that KDHE similarly adopt new policies to ensure that voter registration applications are properly distributed to all clients, including during online remote transactions. And to the extent that Kansas Medicaid is not currently mailing paper voter registration applications to clients using the KanCare system online application portal but merely providing a link to the Secretary of State’s website, that this online portal also be re-programmed, similar to the recommendations for the KDCF online self-service portal.

3. Covered Agencies May Fail to Consistently Transmit Completed Voter Registration Applications to Appropriate State Officials

Section 7 requires “each voter registration agency” accept “completed voter registration application forms for transmittal to the appropriate State election official.” 52 U.S.C. § 20506(a)(4). Section 7 goes on to set transmittal deadlines for covered agencies, including a hastened transmittal when an election is upcoming.⁶

Our on-the-ground investigation showed that both the KDHE and the KDCF operate offices across the state that have varying practices regarding collection and transmittal of completed voter registration applications, with agencies in some counties refusing entirely to either collect or transmit such applications. For example, staff at the KDCF office in Geary County told our investigator that the office does not collect or transmit completed applications at the office, whereas the receptionist at the agency’s office in Douglas County mails completed applications every Friday. Similarly, staff at KDHE’s office in Wyandotte County stated the office does not transmit applications at all; it is up to the client to mail her completed form.

Refusing to collect or transmit completed applications violates Section 7 of the NVRA and frustrates if not forecloses voters’ ability to readily register to vote in federal elections as envisioned by the NVRA.

Recommended Improvements:

Agencies: We recommend that each agency a) establish a consistent transmittal policy; and b) establish a training program for leadership and front-line employees to ensure that relevant staff are properly trained about their responsibilities to collect and transmit voter registration forms from clients.

⁶ 52 U.S.C. § 20506(d) (“[C]ompleted registration application accepted at a voter registration agency 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.”)

Secretary of State: We recommend the Secretary a) work with the agencies to establish both the transmittal policies and training programs so that both are established in a manner consistent with the Secretary’s responsibilities under the NVRA as Kansas’s Chief Elections Official; and b) monitor these systems in an ongoing fashion to ensure their continued efficacy.

4. *Lack of Voter Preference Question and Disclaimers in Certain Agency Forms and Interactions*

In addition to providing a voter registration application with each application, recertification, renewal or change of address related to an agency service, each NVRA-designated agency must provide a voter preference form that includes the following language:

“(i) the question, “If you are not registered to vote where you live now, would you like to apply to register to vote here today?”;

(ii) if the agency provides public assistance, the statement, “Applying to register or declining to register to vote will not affect the amount of assistance that you will be provided by this agency.”;

(iii) boxes for the applicant to check to indicate whether the applicant would like to register or declines to register to vote (failure to check either box being deemed to constitute a declination to register for purposes of subparagraph (C)), together with the statement (in close proximity to the boxes and in prominent type), “IF YOU DO NOT CHECK EITHER BOX, YOU WILL BE CONSIDERED TO HAVE DECIDED NOT TO REGISTER TO VOTE AT THIS TIME.”;

(iv) the statement, “If you would like help in filling out the voter registration application form, we will help you. The decision whether to seek or accept help is yours. You may fill out the application form in private.”; and

(v) the statement “If you believe that someone has interfered with your right to register or to decline to register to vote, your right to privacy in deciding whether to register or in applying to register to vote, or your right to choose your own political party or other political preference, you may file a complaint with _____.”, the blank being filled by the name, address, and telephone number of the appropriate official to whom such a complaint should be addressed”.

52 U.S.C § 20506(a)(6)(B). At least two agency applications entirely lack a voter preference question, in violation of Section 7 of the NVRA. The Kansas Department of Children and Families’ six-month renewal form and the Low-Income Energy Assistance Program application⁷ both entirely lack any voter preference question or the NVRA mandated disclaimers. The written KanCare Application for Medical Assistance for Families with Children (attached) contains an inadequate voter registration question and no disclaimers or other required language. Screenshots discussed above from Kansas Medicaid’s online portal indicate that the voter preference question within this application is not framed in an NVRA compliant manner and does not include the above-mentioned required disclosure. In addition, the KDCF offices in Wyandotte County and Johnson County provide clients with change of address forms (designated E-S 1512) that lack a voter preference question as well as the disclaimers.

⁷ Kansas Low Income Energy Assistance Program, <http://content.dcf.ks.gov/EES/KEESM/Forms/LIEAP%20Application%20-%20English.pdf> (last visited Oct. 10, 2019).

Recommended Improvements:

Agencies: We recommend that KDHE and KDCF update their forms so that a) every form contains the required voter preference question, framed in an NVRA compliant manner; b) the voter preference question is sufficiently prominent such that clients regularly notice the question and respond to it; and c) that forms also include the disclaimers mandated by the NVRA.

5. *Equal Assistance and Disability Home Services Not Provided by Voter Registration Agencies*

Kansas law does not explicitly require Section 7 covered agencies to provide the kind of equal assistance required by the NVRA at agency offices, nor does such assistance occur in practice, as evidenced by the failure of many designated agencies to provide clients with information on their eligibility to vote after completion of a sentence for a felony conviction.

As noted above in section I.A., for a client who wishes to register to vote, Section 7(a)(c) of the NVRA requires agencies to provide not only general assistance, but “the same degree of assistance with regard to the completion of the registration application form as is provided by the office with regard to the completion of its own forms, unless the applicant refuses such assistance.” 52 U.S.C.S. § 20506(a)(6)(C). “A main thrust of the legislation was for states to play a more active role in promoting the enfranchisement of eligible voters.” *Nat’l Coal. for Students with Disabilities Educ. & Legal Defense Fund v. Scales*, 150 F. Supp. 2d 845, 854-56 (D. Md. 2001). By requiring agencies to provide the same assistance to clients with voter registration as is provided with regard to the completion of agency forms, Section 7 presupposes that an agency representative is knowledgeable about or can access the eligibility requirements of a Kansas resident to vote, including when the individual has a prior felony conviction. In Kansas, people who have been convicted of a felony have their right to vote automatically restored upon completion of their sentences. Kan. Stat. Ann. § 21-6613. The failure of a Section 7 agency to provide potential voters with information about the voting eligibility requirements in Kansas likely prevents substantial numbers of people with prior felony convictions from accessing their restored voting rights and violates the equal assistance provision of Section 7 of the NVRA.

Kansas law governing voter registration applications made on the state form, contained in Kan. Stat. Ann. § 25-2309 does lay out that “If you would like help in filling out the voter registration application form, we will help you. . .”,⁸ but does not explicitly require public assistance agencies to assist applicants in completing voter registration forms, as laid out in 52 U.S.C. § 20506(a)(6)(C). The Kansas statute also does not separately prohibit the use of information relating to a declination to register to vote in connection with an application made at a voter registration agency, as laid out in 52 U.S.C. § 20506(a)(6)(7).

Our on-the-ground investigation showed that Department of Children and Families offices in counties across Kansas were inconsistent in their provision of voter registration opportunities to clients coming into their offices, and the ones we investigated *never* provided individuals with prior felony convictions with information on their eligibility to register and vote. Clients were also not consistently asked about voter registration during KDCF transactions. For example, on one day in Sedgwick County, two out of three clients we interviewed at the KDCF office were not asked if they wanted to register to vote. In Shawnee County, only two of five eligible clients we interviewed at the office were asked if they wanted to register to vote. In Douglas County, one client we spoke to was not asked about voter registration. None of these persons was informed about their ability to register and vote after completing all terms of a felony sentence.

⁸ Kan. Stat. Ann. § 25-2309.

Kansas law and practice likely violate Section 7 of the NVRA by failing to provide Kansas residents with equal assistance in completing voter registration applications or providing residents with information about their eligibility to register to vote during covered transactions.

Kansas law also does not explicitly require agencies that provide disability services in a client's home to provide voter registration services in their client's home, in violation of Section 7 of the NVRA. Section 7 of the NVRA requires that agencies that provide "services to a person with a disability at the person's home" must provide voter registration services at client's homes. *Compare* Kan. Stat. Ann. § 25-2309, *with* 52 U.S.C. §§ 20506(a)(4)(B)–(a)(5). There are likely many Kansas agency offices that do not provide voter registration services at voters with disabilities' homes because agencies are currently not mandated to do so by Kansas law, in violation of the NVRA.

Recommended Improvements:

Agencies: We suggest that a) each agency establish clear policies around equal assistance and a rigorous equal assistance training program that includes knowledge of eligibility requirements, in coordination with the Secretary of State (see below); and b) that the KDHE establish a clear policy on providing voter registration along with in-home disability services.

Secretary of State: We recommend that the Secretary's office a) promulgate a regulation clarifying that Kansas law, consistent with federal law, requires actual equal assistance rather than simply informing clients of the availability of assistance, and sets out specific elements of that assistance—including assistance with eligibility to register to vote; b) work with all relevant agencies to establish a training program to ensure that frontline staff who interact with clients understand their equal assistance responsibilities and are able to carry them out; c) promulgate a regulation that requires agencies that provide disability services in a client's home to provide voter registration services in their client's home; and d) establish a training for all agencies that provide disability services in a client's home on the NVRA voter registration requirements and associated state processes.

6. Tracking and Coding

Given the low numbers Kansas has reported to the EAC for Section 7 covered transactions, voter registration applications generated from Kansas's public assistance and disability agencies may not be coded or tracked to correctly to reflect where they are originating. The NVRA requires the Chief Election Official in the state, the Secretary of State in Kansas, to track and report the number of voter registration applications received or collected in the state by source. *See* 11 C.F.R. §8.7 (b)(6). These coding and tracking issues may exaggerate the appearance of non-compliance and prevent agencies from getting appropriate credit for the voter registration services they are providing.

Recommended Improvements:

Agencies: We recommend the agencies work in cooperation with the Secretary's office to to make sure the voter registration forms they are using are coded for their respective agencies, and that any online systems are able to account for agency origination.

Secretary of State: We recommend the Secretary a) upgrade Kansas's online voter registration platform to allow the state to track the originating "url" of voter registration applications received from public assistance clients registering to vote during their interactions with KDCF or KDHE; b) ensure that paper voter registration forms distributed by all agencies covered by Section 7 of the NVRA are properly coded to be able to determine origination; and c) ensure that local election officials are trained about this coding so that they can properly track the source of voter registrations when adding new or updated applications

to the state voter file. Any codes must not be decipherable by the public so as to ensure compliance with the NVRA's mandate to maintain confidentiality regarding the agency of origin of a voter's registration. *See* 52 U.S.C. § 20507(a)(6).

II. Kansas's Compliance with Section 5 of the National Voter Registration Act of 1993

A. Overview of Section 5 Legal Requirements

Section 5 of the NVRA sets out that “a state motor vehicle driver's license application, including any renewal application, submitted to the appropriate State motor vehicle authority under State law shall serve as an application for voter registration with respect to elections for Federal office unless the applicant fails to sign the voter registration application.” 52 U.S.C. § 20504. Section 5(d) of the NVRA requires that all motor vehicle department change of address transactions must automatically update the client's voter registration information unless the client affirmatively declines.⁹ And the U.S. Department of Justice's website explains that the NVRA requires that, to the extent a State “provides for remote applications for driver's licenses, driver's license renewals, or driver's license changes of address, via mail, telephone, or internet or other means, then provision must be made to include the required voter registration opportunity as well.”¹⁰ As a result, any change of address process, including remote transactions, which does not *automatically* update the client's voter registration violates Section 5(d) of the NVRA.

Section 5 of the NVRA also prevents a DMV's voter registration process from “requir[ing] any information that duplicates information required in the driver's license portion of the form” other than a second signature and attestation of voter eligibility. 52 U.S.C. § 20504.

B. Issues Concerning Section 5 Compliance

1. Change of Address Transactions and Voter Registration

The Kansas Department of Revenue, Division of Vehicles (“DOV”) online platform for change of address transactions appears to send clients to a separate Secretary of State website site for conducting voter registration, requiring clients to take additional steps to have their voter registration address updated. It appears that the information the client filled out for a driver's license address change may be auto-filled in the subsequent voter registration transactions, which would be NVRA compliant for an individual who is not already registered to vote. But it is not clear what happens if a client does not take the extra steps to complete the voter registration portion of the transaction. Under Section 5(d) of the NVRA, any address update reported to DOV by a client who is already registered to vote must serve as an automatic update of their voter registration records unless they opt-out. This means that they should not be required to undertake any additional steps. It is not clear if the current transaction is fully compliant with Section 5(d) of the NVRA. Screenshots of the online change of address process are attached.

⁹ § 20504(d) (“Any change of address form submitted in accordance with State law for purposes of a State motor vehicle driver's license shall serve as notification of change of address for voter registration with respect to elections for Federal office for the registrant involved unless the registrant states on the form that the change of address is not for voter registration purposes.”).

¹⁰ U.S. Dep't of Justice, the National Voter Registration Act Questions and Answers, <https://www.justice.gov/crt/national-voter-registration-act-1993-nvra> (last visited Oct. 11, 2019).

Recommended Improvements:

Division of Vehicles: We suggest that the DOV implement a system in which the online change of address form serves as an automatic update to any voter’s existing registration.

2. Redundant Information May Be Required for Voter Registration

The Secretary of State has adopted a regulation concerning voter registration within the Division of Vehicles to implement Section 5 of the NVRA. Kansas Administrative Regulation § 7-37-1 sets out that the voter registration portion of an application for a driver’s license or non-driver ID can either be part of the DOV application or a separate form given to an individual simultaneously with the DOV application. Kan. Admin. Regs. § 7-37-1. By allowing for two separate forms –one for a driver’s license application and one for voter registration – the state may require a voter to provide duplicate information on each form. Section 5 and the NVRA more broadly were designed to make it easier for voters to register to vote; limiting the amount of information, time and hassle necessary to get registered is critical to achieving this end. By not requiring DOV to offer a simultaneous application for driver’s licenses and voter registrations as part of its implementing regulations, Kansas is potentially requiring voters to provide duplicate information to register to vote at motor vehicle offices, in violation of federal law.

Recommended Improvements:

Division of Vehicles: We suggest the DOV establish a clear policy and implement procedures ensuring that for each covered transaction, the relevant DOV form serves as a voter registration application and requires the client to provide no duplicate information.

Secretary of State: We recommend that the Secretary’s office promulgate a revised regulation that clarifies that voter registration must be offered as part of an application, renewal, or change of address form rather than offered as a separate form or transaction.

III. Kansas’s Compliance with Section 203 of the Voting Rights Act of 1965

A. Overview of VRA 203 Legal Requirements

Section 203 of the Voting Rights Act prohibits discriminatory voting practices related to English literacy and requires that voting materials provided in English also be provided in the languages of relevant minority language populations.¹¹

The applicable requirements of Section 203 are as follows:

Whenever any State or political subdivision subject to the prohibition . . . of this section provides any registration or voting notices, forms, instructions, assistance, or other materials or information relating to the electoral process, including ballots, it shall provide them in the language of the applicable minority group as well as in the English language:

¹¹ 52 U.S.C. § 10503(a) (“The Congress finds that, through the use of various practices and procedures, citizens of language minorities have been effectively excluded from participation in the electoral process. Among other factors, the denial of the right to vote of such minority group citizens is ordinarily directly related to the unequal educational opportunities afforded them, resulting in high illiteracy and low voting participation. The Congress declares that, in order to enforce the guarantees of the fourteenth and fifteenth amendments to the United States Constitution [USCS Constitution, Amendments 14, 15], it is necessary to eliminate such discrimination by prohibiting these practices, and by prescribing other remedial devices.”).

Provided, That where the language of the applicable minority group is oral or unwritten or in the case of Alaskan natives and American Indians, if the predominant language is historically unwritten, the State or political subdivision is only required to furnish oral instructions, assistance, or other information relating to registration and voting.¹²

Section 203 of the Voting Rights Act seeks to "enable members of applicable language minority groups to participate effectively in the electoral process."¹³

B. Issues Concerning VRA 203 Compliance

Through our investigation, we found that Department of Children and Families offices in multiple counties covered by Section 203 of the Voting Rights Act for Spanish language access either had no Spanish speaking employees or did not have voter registration applications in Spanish, and the iKan application for the Department of Vehicles does not have a page translation for Spanish, all in violation of the Voting Rights Act of 1965.

The KDCF office in Haskell County, covered by Section 203 of the Voting Rights Act, did not have any Spanish speaking employees to assist clients with voter registration. Ford and Finney Counties, also covered by Section 203 of the Voting Rights Act, did not have any Spanish voter registration applications available during our visits to the KDCF offices there. In our investigation of the iKan website for the Kansas Division of Vehicles we similarly found the page could not be translated into Spanish; this process is covered by Section 5 of the NVRA and also Section 203 of the Voting Rights Act because of the Spanish language minority covered jurisdictions in Kansas (screenshots attached).

By not providing forms (voter registration applications), notices, assistance and materials in Spanish, as required by Section 203 of the Voting Rights Act, Kansas agencies likely are not in compliance with federal law.

Recommended Improvements:

Agencies: We suggest that KDCF and KDHE establish and implement clear policies providing voter registration materials in Spanish and ensuring employees are available to provide equal assistance to Spanish speakers in locations throughout Kansas with significant numbers of residents who speak Spanish as a primary language, and at minimum in Finney, Ford, Grant, Haskell, and Seward Counties as required by Section 203 of the Voting Rights Act.

Secretary of State: We request that the Secretary's office work with the relevant agencies to ensure that all offices in jurisdictions covered by Section 203, and those beyond with significant Spanish-speaking populations, have Spanish language benefits applications serving as voter registration applications or containing the voter preference question; Spanish language voter registration applications and other forms; and Spanish-speaking employees available to provide equal assistance to Spanish-speaking clients.

* * *

¹² *Id.* at § 10503(c).

¹³ 28 C.F.R. § 55.2(b); *see also U.S. v. Sandoval Cty.* 797 F. Supp. 2d 1249, 1250 (D.N.M. 2011) ("In enacting [Section] 203 of the Voting Rights Act (VRA), . . . Congress intended that language minority populations have substantive access to the ballot." (internal quotations omitted)); *Navajo Nation Human Rights Comm'n v. San Juan Cty.*, 215 F. Supp. 3d 1201, 1220-21 (D. Utah 2016).

Attached to this memorandum, you will find screenshots, forms, and copies of public records we gathered in investigating Kansas's compliance with federal voting law. We know Kansas officials are committed to providing every opportunity for Kansas residents to register and vote, and we hope this memorandum helps you achieve this end. We would welcome the opportunity to discuss this memorandum, and ways that we can work together to bring Kansas into compliance with federal voting law and bring Kansas residents to the polls on election day.

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