



U.S. Department of Justice

Civil Rights Division

*Freedom of Information/Privacy Acts Branch - NAIC
950 Pennsylvania Avenue, NW
Washington, DC 20530*

October 19, 2011

11-00546-F

John Althen, Esq.
Judicial Watch
425 3rd Street, S.W., Suite 800
Washington, D.C. 20024

Dear Mr. Althen:

This is in further response to your June 23, 2011 Freedom of Information Act request received by the Civil Rights Division on September 12, 2011, seeking access to copies of ". . . communications between the Department of Justice and Estelle Rogers, Director of Advocacy for Project Vote. . . [between] January 20, 2009 to June 23, 2011."

In searching for records responsive to your request, this office located one document that originated with the Department of Justice's Associate Attorney General's office. This office consulted with the Office of Information and Privacy and obtained clearance to provide this document to you in the entirety. Enclosed you will find a copy of the document.

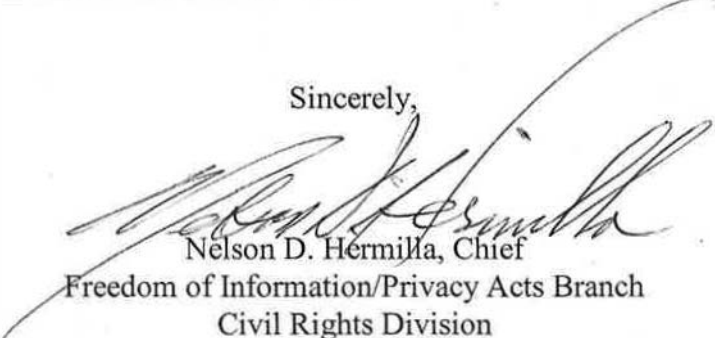
In addition you will find 3 pages of additional Civil Rights Division documents responsive to your request. I have determined that these records may be provided to you subject to the excision of information about individuals pursuant to 5 U.S.C. § 552(b)(6) since disclosure thereof would constitute an unwarranted invasion of personal privacy.

Please note that the Department of Justice contains approximately 30 separate offices that handle FOIA access requests for each of the thirty offices' respective components. The Civil Rights Division handles access requests for Civil Rights Division records only except when records originating with other components are located, then the Division makes referrals or consultations as was done in responding to your request. You may wish to send a FOIA request to other components within the Department such as the Office of Information Policy in search of any additional records that may be responsive to your request.

Although I am aware that your request is the subject of ongoing litigation and that appeals are not ordinarily acted on in such situations, I am required by statute and regulation to inform you of your right to file an administrative appeal. Should you wish to appeal my decision with respect to your request, you may do so by writing, within sixty days, to: Director, Office of Information Policy, United States Department of Justice, 1425 New York Avenue, Suite 11050, N.W., Washington, D.C. 20530. Your appeal must be received by OIP within 60 days of the date of this letter. The envelope should be marked "FOI/PA Appeal." Following review by the

Department, judicial review of the decision of the Attorney General is available in the United States District Court in the judicial district in which you reside, in which you have your principal place of business, or in the District of Columbia.

Sincerely,



Nelson D. Hermilla, Chief
Freedom of Information/Privacy Acts Branch
Civil Rights Division

Enclosures

From: Estelle Rogers [<mailto:erogers@projectvote.org>]
Sent: Tuesday, March 29, 2011 5:02 PM
To: Perrelli, Thomas J. (SMO)
Cc: Hirsch, Sam (SMO); Burrows, Charlotte (SMO); Colangelo, Matthew (CRT); Lewis, Aaron (OAG)
Subject: Follow up to March 17 meeting on NVRA Section 7

Dear Associate Attorney General Perrelli:

At your request, please find attached a letter from the civil rights groups with whom you met on March 17 regarding the Department's "Q and A" guidance on Section 7 of the NYRA. We urge you to make improvements to the document at the earliest opportunity to enhance its effectiveness in the field. But, regardless of when a revised document is distributed, please keep our substantive comments in mind as you discuss Section 7 compliance with the states. Our earlier letter to the Civil Rights Division, with additional comments on the Q and A, is also attached for your convenience.

The Honorable Thomas J. Perrelli
Associate Attorney General
United States Department of Justice
950 Pennsylvania Avenue, NW
Washington, DC 20530-0001

March 29, 2011

Dear Associate Attorney General Perrelli:

Thanks so much to you and your team for meeting with the undersigned voting rights groups on March 17. We look forward to ongoing, regular communication as the Department moves forward on enforcement of Section 7 of the National Voter Registration Act (NVRA).

We are writing to follow up on our discussion of the Department's "Q and A" on the NVRA, which was issued in June 2010. At that time, several of us wrote to the Chief of the Voting Section, Chris Herren, with specific comments and suggestions for additions to the Q and A, and clarifications of several points currently addressed by that document. We attach that letter for your convenience. To our knowledge, none of these matters has been addressed in the Q and A since we raised them, and by attaching that letter, we reiterate these concerns to you. We were told in a subsequent meeting with Assistant Attorney General Tom Perez that the Q and A is intended to serve as a "living document," and both those comments and the additional comments and suggestions set forth in this letter are offered in that spirit.

1. Title and Format

Compliance with the NVRA can be strengthened by clear guidance from DOJ regarding the proper scope and application of the statute and identification of best practices that can help states better implement the law. The Department's recent issuance of Q and A was one small step in the right direction. However, the title and format of the Q and A suggest that the document is more aspirational than a statement of the law and Department policy. In fact, we have heard reactions from election officials in the field that were surprisingly dismissive.

We believe that, using the Department's recently issued "Guidance Concerning Redistricting Under Section 5 of the Voting Rights Act" as a model, the Department could explicitly communicate that the Q and A is formal "Guidance," thus giving it more official stature. Without question, these simple changes would yield a much greater impact on NVRA compliance in the states. It also would be helpful to include some introductory language making clear that the document is intended to advise election officials and the public on what rights and responsibilities are conferred by the NVRA, and that the document represents the Department's position on enforcement and implementation of the statute. We also understand that DOJ intended to make itself available for in-person meetings with state officials to clarify

the requirements of the law, and we hope that these meetings will continue as a complement to the formal mailing of the Guidance.

2. Distribution and Outreach

We urge DOJ to make more aggressive and proactive efforts to ensure that all of the appropriate state and local officials across the country receive a copy of this updated and revised Guidance document. As we understand it, the distribution of the document, to date, has been rather informal. It was distributed at the National Association of Secretaries of State/National Association of State Election Directors' meeting (presumably in July) rather than by means of an organized mailing to state election officials and agency coordinators.

We urge DOJ to initiate such a mailing when the document is next revised, and we hope that any mailing will include a cover letter explaining the importance of the document as an aid to ensuring NVRA compliance and urging state chief election officials to distribute the Guidance to all local election officials. We believe there would be value in also distributing the Guidance to all voter registration agencies, especially public assistance agencies.

In addition, we hope the Department will pursue additional opportunities to present the Guidance and would be happy to make suggestions as to appropriate venues for this purpose. Further, we suggest that the Guidance be displayed more prominently on the Department's website – it requires numerous navigation steps to locate (we count four clicks after one has already found the main page for the Civil Rights Division) and we are concerned that the public and election officials will have difficulty finding it.

3. Affirmative Offer of Voter Registration

The DOJ Guidance document should be updated and revised to make it clear that officials must affirmatively offer the opportunity to register to vote and distribute a voter registration application to all clients at every application for benefits, recertification, and change of address. Too many state public assistance agencies are operating under the assumption that simply distributing the voter preference form fulfills the requirement of offering voter registration, and if a client would like to accept the offer, s/he can request a voter registration application by checking "YES" on the form. A recent decision by the United States District Court for the District of New Mexico in *Valdez v. Herrera*, no. 09-cv-668 (Dec. 21, 2010), found this "opt-in" policy of distributing voter registration applications only to those who request the forms to be in violation of the NVRA.

This is an important legal point that we believe should be integrated into the Q and A. The Q and A should be clear that any state that employs such a policy is in violation of the NVRA. The Q and A should explicitly state that public assistance agencies must distribute a voter registration application form to every client who is

applying for benefits, recertifying, and changing address, as the law requires agencies to employ an "opt-out" rather than an "opt-in" voter registration protocol.

4. Data Collection and Monitoring

We urge DOJ to revise the document to emphasize the central role that full and accurate data collection plays in effective NVRA-compliance efforts. We have found in our litigation and advocacy on Section 7 that a rigorous system incorporating data collection, monitoring, and analysis is a crucial component in agency efforts to assess, maintain, and improve compliance. [The centrality of data collection was raised in our June 18 letter as well, specifically in regard to Questions 41 and 42.] Accordingly, we strongly recommend that the Q and A be amended to include the following separately-bulleted question: "Should States design and implement programs of data collection, monitoring, and compliance analysis regarding voter registration at motor vehicle, public assistance, disability, and other government offices?" The answer should explain that these activities are highly beneficial, and provide the same kind of information feedback and supervisory capabilities that state agencies typically employ in ensuring proper operation of other state programs, including their public assistance programs.

We also consistently have found that the following information is needed for an effective data collection system:

1. the number of individuals who completed one of the following transactions: application for benefits; recertification or renewal of benefits; change of address;
2. the number of persons who accepted the offer of voter registration;
3. the number of persons who declined the offer of voter registration;
4. the number of persons who did not respond to the offer of voter registration; and
5. the number of completed applications for voter registration sent to election officials.

We urge you to add this topic, including the five data elements above, to the Guidance document, making it clear to state election officials that their coordination responsibility extends to directing agency personnel to employ the oversight mechanisms necessary to evaluate and ensure compliance with the law. This also will enable the states to report more fully and accurately to the Election Assistance Commission.

Again, we are grateful that you have invited us to continue this dialogue on the Department's role in providing guidance to the states, and we would be happy to supply any additional information you need as you refine and improve the Q and A. Please contact Jon Greenbaum, Chief Counsel of the Lawyers' Committee for Civil Rights Under Law, in this regard. We look forward to continuing cooperation with you on this important endeavor.

Sincerely,

American Association of People with Disabilities

Dēmos

League of Women Voters

Lawyers' Committee for Civil Rights Under Law

Project Vote

Brennan Center for Justice

Fair Elections Legal Network

NAACP Legal Defense Fund

Paralyzed Veterans of America

cc: Samuel Hirsch, Deputy Associate Attorney General
Charlotte Burrows, Associate Deputy Attorney General
Matthew Colangelo, Senior Counselor, Office of the Assistant Attorney General,
Civil Rights Division
Aaron McCree Lewis, Counsel to the Attorney General

Attachment

From: Herren, Chris (CRT)
To: (b)(6)
Subject: Re: applicants (b)(6)
Date: Tuesday, February 23, 2010 11:04:07 AM

Got it. Thanks

----- Original Message -----
From: Estelle Rogers <(b)(6)>
To: Herren, Chris (CRT)
Sent: Tue Feb 23 11:03:38 2010
Subject: Re: applicants (b)(6)

I hit send prematurely. There's a slightly longer email you should get any minute.
On Feb 23, 2010, at 11:01 AM, Herren, Chris (CRT) wrote:

Thanks very much Estelle.

----- Original Message -----
From: Estelle Rogers <(b)(6)>
To: Herren, Chris (CRT)
Sent: Tue Feb 23 10:49:25 2010
Subject: applicants (b)(6)

Dear Chris,
Now that the application period has closed, I want to heartily recommend two candidates to you. (b)(6)
(b)(6)

From: Estelle Rogers
To: Herren, Chris (CRT)
Subject: Congratulations!
Date: Tuesday, April 20, 2010 1:03:45 PM

I look forward to continuing to work with you, Chris. And please let me know if you need any more feedback regarding hires.
Estelle

Estelle H. Rogers, Esq.
Director of Advocacy
Project Vote
202-546-4173, ext. 310

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From: Herren, Chris (CRT)
To: Estelle Rogers
Subject: RE: why I called you yesterday
Date: Tuesday, December 07, 2010 2:10:00 PM

Thanks very much Estelle.

From: Estelle Rogers [mailto:erogers@projectvote.org]
Sent: Tuesday, December 07, 2010 2:10 PM
To: Herren, Chris (CRT)
Subject: why I called you yesterday

Dear Chris,

I'd still love to talk for real, but in the meantime, the main reason I called is that you have an applicant for the (b)(6) position (b)(6)

(b)(6) qualifies her beautifully for your position, and I hope you will give her every consideration. (b)(6)

(b)(6)

(b)(6) So she would be a great fit, and I recommend her without reservation. Please let me know if I can tell you more. And give me a call if you possibly can. Thanks, and happy holidays.

Estelle

Estelle H. Rogers, Esq.
Director of Advocacy
Project Vote
202-546-4173, ext. 310

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