



August 24, 2018

Commissioner Thomas Hicks, Chair  
Commissioner Christy McCormick, Vice Chair  
U.S. Election Assistance Commission  
1335 East West Highway, Suite 4300  
Silver Spring, MD 20910

Re: URGENT Request to Correct Errors in National Mail Voter  
Registration Form

Dear Commissioners Hicks and McCormick,

Campaign Legal Center (“CLC”) writes to inform you that several state-specific instructions on the National Mail Voter Registration Form (“Federal Form”) misinform individuals with felony convictions of the eligibility requirements for voting in their respective states. We urge you to update the Federal Form immediately to ensure that eligible voters are not misinformed and disenfranchised. Specifically, instructions for at least nine states—Alabama, Arizona, Colorado, Connecticut, Maryland, Nevada, South Dakota, Tennessee, and Washington—contain incorrect or incomplete information regarding the eligibility requirements for people with felony convictions to register to vote.

CLC previously notified several of these states of the discrepancies between state laws and state-specific instructions on the Federal Form, urging them to notify the Election Assistance Commission (“EAC”) as required by the National Voter Registration Act (“NVRA”). See *Advocating for State Voter Registration Forms to Comply with the NVRA*, CAMPAIGN LEGAL CTR. (updated June 15, 2018), <https://campaignlegal.org/cases-actions/advocating-state-voter-registration-forms-comply-nvra>. The chief election officials of Alabama and Maryland have notified the EAC of the necessary changes to correct the state-specific instructions on eligibility requirements for people with convictions but the Federal Form remains outdated. We urge the EAC to

update the Federal Form to accurately reflect the laws of each state and properly inform eligible voters of requirements for registration.

**i. Several state election officials have been notified that their state-specific instructions do not accurately reflect their state laws.**

CLC notified Nevada, Tennessee, and Arizona of the inaccurate state-specific instructions on the Federal Form for those states. *See* Letter from CLC to Hon. Barbara Cegavske, Nev. Sec’y of State (Jan. 31, 2018) (enclosed); Letter from CLC to Hon. Tre Hargett, Tenn. Sec’y of State (Jan. 31, 2018) (enclosed); Letter from CLC to Hon. Michele Reagan, Ariz. Sec’y of State (Jan. 31, 2018) (enclosed). The state-specific instructions on the Federal Form for these states suggest that all people with felony convictions are ineligible, while in fact laws in these states allow some individuals with felony convictions to vote.

Additionally, in April 2018, election officials in Alabama and Maryland formally notified the EAC of changes made to their felony disenfranchisement laws that the Federal Form should reflect. *See* Letter from Hon. John H. Merrill, Ala. Sec’y of State, to EAC (April 11, 2018) (enclosed); Email from Mary C. Wagner, Dir., Voter Registration & Petition Div., Md. State Bd. of Elections to CLC (April 20, 2018, 2:08 EDT) (enclosed).

We urge you to update the state-specific instructions immediately for these states to properly inform all eligible voters of their rights.

**ii. The Federal Form also contains outdated or inaccurate state-specific instructions for Colorado, Connecticut, South Dakota, and Washington.**

In addition to the states noted above, CLC has identified that the state-specific instructions on the Federal Form for Colorado, Connecticut, South Dakota, and Washington also contain inaccurate instructions regarding their felony disenfranchisement laws. These inaccuracies create a barrier to voting for eligible voters with felony convictions and can discourage registration and voting. These instructions must be corrected immediately.

**a. Colorado**

Under Colorado law, those convicted of a felony may register to vote if not currently imprisoned or on parole. COLO. REV. STAT. § 1-2-103(4) (enclosed). The Federal Form instructs that voters are ineligible if they are “confined as a prisoner or serving any part of a sentence under mandate.” National Mail Voter Registration Form, at 5. Suggesting that serving *any part of a sentence*

makes an individual ineligible to register to vote misleads those who are serving a sentence but are not under imprisonment or parole—*e.g.*, those under probation. The description on Colorado’s own voter registration form (enclosed) does not include this confusing language; EAC should use the plain language therein as a guide in updating the corresponding section on the Federal Form.

**b. Connecticut**

Under Connecticut law, voting rights are automatically restored upon completion of sentence, discharge from parole and—for those with federal or out-of-state convictions only—payment of all fines. CONN. GEN. STAT. § 9-46a (enclosed). The Federal Form inaccurately states that people must “have had [their] voting rights restored by Registrars of Voters.” National Mail Voter Registration Form, at 5. Neither Connecticut’s own mail-in registration form (enclosed) nor the state statute include such a requirement or language. The Federal Form, thus, misleads eligible voters with past convictions into believing that there is an additional—yet non-existent—barrier to their registration. The Federal Form should be corrected immediately.

**c. South Dakota**

In 2012, South Dakota reformed its felony disenfranchisement laws such that those convicted of a felony on or after July 1, 2012 have different eligibility requirements than those convicted before. *Felony Convictions*, S.D. SEC’Y OF STATE, <https://sdsos.gov/elections-voting/voting/register-to-vote/felony-convictions.aspx>. Voting rights are automatically restored for those convicted of a felony on or after July 1, 2012 who have completed their sentence including parole, probation, and restitution. *See* S.D. CODIFIED LAWS § 12-4-18 (enclosed). Those convicted of a felony before July 1, 2012 must only complete any prison term and parole to have their rights automatically restored. *Felony Convictions*, S.D. SEC’Y OF STATE, *supra*.

However, the Federal Form incorrectly indicates that people are eligible if they are not “currently serving a sentence for a felony conviction which included imprisonment, served or suspended, in an adult penitentiary system.” National Mail Voter Registration Form, at 17. This language not only fails to inform voters of the consequential date-of-conviction factor needed to determine eligibility, but also misinforms voters who are still on parole and probation about their rights. This language must be corrected immediately.

#### **d. Washington**

For a felony conviction in a Washington state court, the right to vote is provisionally restored once a felony sentence is completed, including probation or parole. WASH. REV. CODE § 29A.08.520(1) (enclosed). For a felony conviction in any other state or federal court, the right to vote is restored once the person is no longer incarcerated. *Id.*

The Federal Form states that anyone who is “convicted of infamous crime” is ineligible to vote “unless restored to civil rights.” National Mail Voter Registration Form, at 19. This incorrectly suggests that people convicted of felonies are permanently disenfranchised absent an individualized restoration process, when in fact any person convicted of a felony will have her rights automatically restored after certain criteria are met. The Washington state voter registration form (enclosed) is much more specific in its guidance, requiring voters to affirm that they are “not under Department of Corrections supervision for a Washington felony conviction.” The Federal Form instructions must be corrected immediately.

#### **iii. The Federal Form violates the NVRA and U.S. Constitution.**

The NVRA requires that the Federal Form accurately “specif[y] each eligibility requirement” for registration in each state. 52 U.S.C. § 20508(b)(2)(A). The EAC is charged with developing and maintaining the Federal Form and consulting with states to ensure the accuracy of the eligibility requirements on it. 52 U.S.C. § 20508(a). By providing state-specific instructions inconsistent with current state laws, the Federal Form misinforms and misleads individuals with felony convictions on their eligibility to vote, creating a barrier to voting for many eligible voters with felony convictions.

The inaccurate state-specific instructions place undue burdens on those potential voters who are misinformed on their eligibility by the Federal Form. The burden is undue because the misleading and incomplete information serves no valid government interest; it is severe because the instructions lead eligible voters to believe they are ineligible to vote; and it is discriminatory because it harms a specific group of already vulnerable eligible voters. *See Burdick v. Takushi*, 504 U.S. 428, 434 (1992) (holding that burdens on the right to vote must be weighed against “the precise interests put forward by the State,” that “‘severe’ restrictions . . . must be ‘narrowly drawn to advance a state interest of compelling importance,’” and that the state’s regulatory interest is only “generally sufficient to justify” other lesser “reasonable, nondiscriminatory restrictions” on voting). In other words, the inaccurate and incomplete information on the Federal Form violates the NVRA and imposes a

constitutionally impermissible burden on many eligible voters with felony convictions.

**iv. Conclusion**

We urge you to revise the Federal Form state-specific instructions to accurately reflect the current eligibility requirements for people with felony convictions. After you have the opportunity to review this letter, please contact us immediately to discuss ways to ensure that the Federal Form complies with lawful requirements and provides accurate information to eligible voters. With voter registration deadlines for the November election approaching within 45 days, this matter is urgent and requires your immediate attention.

We would be happy to assist your office to draft instructions that would fully and accurately inform citizens with convictions of their rights. To do so, please contact CLC Senior Legal Counsel Danielle Lang at the phone number or email address listed below at your earliest convenience. Thank you for your attention and cooperation on this matter of utmost importance.

Sincerely,

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