



January 31, 2018

*Via certified mail and email*

Elaine Manlove  
State Election Commissioner  
905 S. Governors Ave., Suite 170  
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coe\_vote@state.de.us

Dear Commissioner Manlove,

The New York University School of Law Civil Rights Clinic and Campaign Legal Center write to inform you that Delaware's voter registration forms do not accurately advise people with convictions of the eligibility requirements for voting in Delaware. First, the state-specific instructions on the National Voter Registration Form ("Federal Form") are outdated and inaccurate. In 2013 and 2016, Delaware updated its eligibility requirements with respect to people with convictions but the Federal Form still reflects pre-2013 law, likely leading to misapprehension by many eligible voters. Second, the Delaware Voter Registration Application ("State Form") does not provide the necessary information to people with convictions to determine their eligibility. Rather, it only refers eligible voters to the statutory code. The National Voter Registration Act ("NVRA") requires that both the State and Federal Forms accurately apprise voters of voter eligibility requirements. We urge you to update the State Form to explain the eligibility requirements for people with convictions and immediately notify the Election Assistance Commission ("EAC") of the necessary changes to the Federal Form.

**I. Delaware's Felony Disenfranchisement Law and Delaware's Voter Registration Forms**

Under 2013 and 2016 changes in the law, most people with felony convictions in Delaware have their rights automatically restored upon completion of their sentence. Under current Delaware law, people with convictions for murder or manslaughter (except vehicular homicide), felonies involving bribery, improper influence, abuse of office, or felonies constituting a sexual offense are ineligible to vote

absent a pardon. Del. Const. art. 5, § 2. For all other individuals with felony convictions, their eligibility is automatically restored upon completion of their sentence. *Id.*; 15 Del. Code tit. 15, §§ 6102, 6103. The 2013 and 2016 changes in the law removed a five-year waiting period and the requirement that individuals pay all fines and fees before rights restoration. *See* 2013 Delaware Laws ch. 34 (HB 10) (removing five-year waiting period); 2016 Delaware Laws ch. 311 (SB 242) (removing legal financial obligations requirement).

Unfortunately, despite these recent and important changes to the law, the Federal Form still reflects pre-2013 law and states that people with convictions are only eligible if their “fines and sentence [are] completed at least five years prior to application date.” Election Assistance Comm’n, *National Mail Voter Registration Form*, <http://www.eac.gov/voters/national-mail-voter-registration-form/> (enclosed). These instructions are inaccurate and out-of-date. They do not accurately reflect current law and are likely to mislead thousands of eligible Delaware voters.

Moreover, the State Form fails to provide the necessary information to people with convictions to determine their eligibility. As demonstrated above, Delaware’s eligibility requirements for people with convictions are easily summarized. But the State Form does not provide this information. It only states that an individual “may register to vote” if she is “an ex-felon who meets the requirements as specified by law according to 15 Del. C. Chapter 61.” Office of the State Election Comm’r, *State of Delaware Voter Registration Application and Eligibility Affidavit*, <https://elections.delaware.gov/pubs/stateform.pdf> (enclosed). Eligible citizens should not have to consult an attorney or track down and decipher the statutory codes to determine whether they are able to vote.

Similarly, your office’s website has a frequently asked questions section that includes a question about registration for people with convictions. This section states:

A person convicted felony may register and vote if he/she meets the following requirements:

- Was not convicted of a disqualifying felony as defined in the Delaware Constitution.
- Has completed his/her sentence.

Office of the State Election Comm’r, *FAQs: Voter Registration*, <https://elections.delaware.gov/voter/votereg.shtml> (enclosed). Once again, this description unnecessarily requires individuals to consult other legal sources to determine their eligibility.

We urge you to change your State Form to include the eligibility requirements, update the FAQ section on your website to list the “disqualifying felonies” rather than directing voters to the Delaware Constitution, and inform the EAC of the updated state-specific instructions according to current Delaware law.

## II. Potential Violations of the National Voter Registration Act and United States Constitution

Under the National Voter Registration Act of 1993 (“NVRA”), each state is required to “inform applicants . . . of voter eligibility requirements,” whether they apply via the Federal Form, a state mail-in form, the department of motor vehicles, or any other NVRA agency. 52 U.S.C. § 20507(a)(5). The NVRA further specifies that both the Federal Form and any state-issued mail-in voter registration form used to register voters for federal elections must “specif[y] each eligibility requirement” for applicants. 52 U.S.C. § 20508(b)(2)(A); *see also* § 20505(a)(2) (stating that a state mail-in form should meet “all of the criteria stated in section 20508(b)”). To ensure the Federal Form’s accuracy, a state’s chief election official must notify the EAC of any changes in the state’s voter eligibility requirements within 30 days. 11 C.F.R. § 9428.6.

As discussed above, the Federal Form contains information that is inconsistent with Delaware law. If your office has not updated the EAC on Delaware’s eligibility requirements pursuant to the 2013 and 2016 changes in the law, your office is required to do so immediately.

The outdated Delaware instructions on the Federal Form have serious consequences for eligible Delaware citizens who are informed inaccurately that they are ineligible to register and vote. The Federal Form’s current language, thus, poses an unnecessary and undue burden on the right to vote for those with felony convictions in Delaware who are eligible to vote under state law. The burden is undue because this misstatement of law serves no valid government interest; it is severe because the instructions directly inform eligible voters that they cannot register 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).

Similarly, Delaware’s State Form does not adequately inform applicants with felony convictions of the eligibility requirements under Delaware law. Referring voters to a statutory code section does not meaningfully provide basic information to “inform applicants . . . of voter eligibility requirements,” as required by the NVRA, 52 U.S.C. § 20507(a)(5), and thus, imposes an unnecessary and undue burden on those voters’ ability to access the ballot.

### III. Conclusion

If your office did not update the EAC regarding the 2013 and 2016 changes in eligibility requirements, please do so immediately and inform us of this action. If your office did notify the EAC of this change and the EAC has failed to update its instructions despite your notification, please inform us so that we can address this issue with the EAC directly. Regardless of the source of the errors, we request that your office immediately notify EAC of the discrepancy between Delaware's voter eligibility requirements and their description on the Federal Form.

We also urge you to update the State Form to adequately notify citizens with convictions of the eligibility requirements to vote. Both of these changes are necessary to meet Delaware's responsibilities to its citizens and its duties under the NVRA.

After you have the opportunity to review this letter, please contact us within thirty days to discuss how we can ensure that the Delaware's voter registration forms comply with lawful requirements and provide accurate information to eligible Delaware voters. We would be happy to assist in designing instructions that would fully and accurately inform citizens with past convictions of their rights. 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,

/s/ Nathan Blevins

s/ Laura Erstad

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\*Admitted in New York and California only; practice limited to U.S. courts and federal agencies

Enclosures: Delaware Voter Registration Application and Eligibility Affidavit  
National Mail Voter Registration Form  
Office of the State Election Commissioner, FAQs: Voter Registration