



January 31, 2018

*Via certified mail and email*

Hon. John A. Gale, Secretary of State  
P.O. Box 94608  
Lincoln, NE 68509  
sos.elect@nebraska.gov

Dear Secretary Gale,

The New York University School of Law Civil Rights Clinic and Campaign Legal Center write to inform you that the state-specific instructions to the National Voter Registration Form (“Federal Form”) inaccurately advise people with felony convictions of the eligibility requirements for voting in Nebraska. In 2005, Nebraska changed its law to automatically restore the voting rights of people with felony convictions two years after completion of their sentence. However, the Election Assistance Commission (“EAC”) has not updated the Federal Form to reflect these requirements. Instead, the Federal Form’s instructions still reflect the pre-2005 law, stating that all people with felony convictions are disenfranchised absent an affirmative restoration of their rights. We urge you to immediately notify the EAC of the new eligibility requirements under the 2005 law and insist upon an immediate update to the Federal Form’s instructions.

**I. Nebraska’s Felony Disenfranchisement Law and the State and Federal Forms**

Prior to 2005, Nebraska permanently disenfranchised people with felony convictions unless their civil rights were restored via an executive pardon. However, in 2005, Nebraska changed its felony disenfranchisement law. Nebraska passed LB 53, which provides for the automatic restoration of voting rights two years after an individual completes her sentence for a felony conviction. Neb. Rev. Stat. § 32-313 (“No person who has been convicted of a felony under the laws of this state or any other state is qualified to vote or to register to vote until two years after the sentence

is completed, including any parole term. The disqualification is automatically removed at such time.”) (enclosed).

Nebraska has accurately updated the Nebraska Voter Registration Application (“State Form”) to reflect the two-year waiting period. It requires voters to declare: “I have not been convicted of a felony or, if convicted, it has been at least two years since I completed my sentence for the felony, including any parole term.” Neb. Sec’y of State, *Nebraska Voter Registration Application*, <http://www.sos.ne.gov/elec/pdf/vr.pdf> (enclosed).<sup>1</sup> However, the state-specific instructions to the Federal Form have not been similarly updated. The Federal Form’s state-specific instructions for Nebraska tell applicants only that they may “not have been convicted of a felony, or if convicted, [they must] have had [their] civil rights restored” in order to vote. Election Assistance Comm’n, *National Mail Voter Registration Form*, <http://www.eac.gov/voters/national-mail-voter-registration-form/> (enclosed). These instructions do not accurately reflect current Nebraska law as amended in 2005 and mislead voters about their eligibility.

## **II. Potential Violations of the National Voter Registration Act & 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). Under the NVRA, the Federal Form must accurately “specif[y] each eligibility requirement” for applicants. 52 U.S.C. § 20508(b)(2)(A). This requirement governs the Federal Form as well as any state-issued mail-in voter registration form used to register voters for federal elections. *Id.* § 20505(a)(2). 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 Nebraska law. If your office has not updated the EAC regarding the change in eligibility requirements pursuant to the 2005 law, your office is required to do so.

The outdated Nebraska instructions on the Federal Form have serious consequences for eligible Nebraska 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 Nebraska who are eligible to vote under state law. The burden is undue because

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<sup>1</sup> Given that the 2005 law changed eligibility requirements for people with convictions and people with convictions may have been previously rejected, we advise that Nebraska make the automatic restoration of rights even more explicit on the State Form. It should state affirmatively that citizens who completed their felony conviction sentences at least two years ago have the right to vote and that their disqualification has been automatically lifted.

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).

### III. Conclusion

If your office did not update the EAC regarding the 2005 change 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 the EAC of the discrepancy between Nebraska's voter eligibility requirements and their description on the Federal Form.

After you have the opportunity to review this letter, please contact us within thirty days to discuss how we can ensure that the Nebraska state-specific instructions on the Federal Form comply with lawful requirements and provide accurate information to eligible Nebraskan voters. 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 in this matter of utmost importance.

Sincerely,

/s/ Nathan Blevins

/s/ Laura Erstad

Nathan Blevins

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

Enclosures: National Mail Voter Registration Form  
Nebraska Voter Registration Application  
Neb. Rev. Stat. § 32-313