



January 31, 2018

Via certified mail and email

Hon. Barbara Cegavske, Secretary of State
State Capitol Building
101 N. Carson Street, Suite 3
Carson City, NV 89701
Email: nvelect@sos.nv.gov

Dear Secretary Cegavske,

Campaign Legal Center and New York University School of Law Civil Rights Clinic write to inform you that Nevada's current voter registration forms fail to accurately advise people with convictions of the eligibility requirements for voting in Nevada. Under Nevada law, first-time non-violent felony offenders have their right to vote restored automatically upon the end of their sentence. Yet, Nevada's voter registration forms suggest that all felony convictions are disqualifying absent affirmative restoration of the right to vote.

We urge you to immediately modify Nevada's Voter Registration Application ("State Form") and update the Election Assistance Commission ("EAC") regarding the Nevada-specific instructions on the National Voter Registration Form ("Federal Form"). The inaccurate or misleading information on these forms assuredly leads many citizens of Nevada not to exercise their constitutionally protected right to vote and likely violates the National Voter Registration Act's requirement that all voter registration forms accurately inform voters of the state's eligibility requirements. We recognize that these errors and omissions in the forms may be unintentional and administrative in nature and we hope they can be resolved swiftly.

I. Nevada's Felony Disenfranchisement Law and Nevada Voter Registration Forms

Under Nevada law, “a person convicted of a felony in the State of Nevada who has served his or her sentence and has been released from prison,” Nev. Rev. Stat. § 213.157 (enclosed), or “who receives an honorable discharge from parole” . . . [i]s immediately restored to . . . [t]he right to vote” unless their conviction falls under certain exceptions, Nev. Rev. Stat. § 213.155 (enclosed). These exceptions concern citizens convicted of a category A felony, a category B felony involving use of force or substantial bodily harm to the victim, or two or more separate felonies. Nev. Rev. Stat. §§ 213.155, 213.157. In other words, citizens with a single non-violent felony conviction (or several non-violent felony convictions arising out of the same incident) are eligible to register to vote once their sentence has been fully discharged. Nev. Rev. Stat. §§ 213.155, 213.157. Other individuals with felony convictions must affirmatively seek to restore their voting rights. Nev. Rev. Stat. §§ 213.155, 213.157, 213.090.

Nevada's voter registration forms do not explain these eligibility requirements and suggest that all felony convictions are disqualifying in the same way. First, the State Form requires every applicant to affirm: “I am not laboring under any felony conviction or other loss of civil rights that would make it unlawful for me to vote.” State of Nev., *Voter Registration Application*, <http://www.nvsos.gov/sosvoterregform/forms/voterregpk.pdf> (enclosed). The clear implication of this language is that *any* felony conviction is disqualifying. This affirmation requirement is inconsistent with Nevada's automatic voting rights restoration for first-time nonviolent felonies. Second, the state-specific instructions for Nevada on the Federal Form are similarly misleading. They state that applicants must “have [their] civil rights restored if [they] were convicted of a felony.” Election Assistance Comm'n, *National Mail Voter Registration Form*, <http://www.eac.gov/voters/national-mail-voter-registration-form/> (enclosed). This language clearly suggests that all individuals “convicted of a felony” must affirmatively restore their civil rights when, in fact, Nevada has made voting rights restoration automatic for many people with convictions.

Finally, your office's website does not provide clarification for citizens with past convictions seeking information about their eligibility to vote. While your website has a page titled “Restoration of Voting Rights in Nevada,” it does not provide an explanation in plain language of who is automatically eligible to vote. It states only the following:

In 2003, the Nevada Legislature passed Assembly Bill 55, which restored, among other things, the right to vote for persons convicted of certain felonies. Pursuant to NRS 213.155, persons convicted of certain felonies and have been discharged honorably are immediately restored

the right to vote. NRS 213.157 provides that persons convicted of certain felonies who have served out their sentence are immediately restored the right to vote.

Nev. Sec’y of State, *Restoration of Voting Rights in Nevada*, <http://nvsos.gov/sos/elections/voters/restoration-of-voting-rights-in-nevada> (enclosed). Nowhere does the website specify which “certain felonies” qualify for automatic restoration. Eligible citizens should not have to consult an attorney or track down and decipher the statutory codes to determine whether they can vote.

II. 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.

Despite these requirements, as discussed above, the Nevada State Form fails to fully inform applicants with felony convictions of their eligibility under Nevada law. To the contrary, it misleads applicants as to the applicable qualifications under state law by requiring voters to affirm “under penalty of perjury” that they are “not laboring under *any* felony conviction or other loss of civil rights that would make it unlawful for me to vote.” State of Nev., *Voter Registration Application* (emphasis added). The most sensible reading of this sentence, without more information, is that any felony conviction makes it unlawful for a citizen to vote. As a result, eligible applicants who have fully discharged their sentence resulting from non-disqualifying felony convictions will probably read this form and wrongly believe they are ineligible. This incomplete and misleading language violates Nevada’s duty under the NVRA to accurately inform applicants of the relevant qualifications to vote. Similarly, the state-specific instructions on the Federal Form—which state that applicants must “have [their] civil rights restored if [they] were convicted of a felony” and thus imply a requirement of an affirmative restoration process for all people with felony convictions—also fail to meet the basic NVRA requirements.

These inaccurate and misleading voter registration forms have serious consequences for eligible Nevada citizens who will read these forms and believe they are ineligible to vote. The forms’ current language thus poses an unnecessary and

undue burden on the right to vote for those with felony convictions in Nevada who are eligible to vote under state law. The burden is undue because the misleading and incomplete information on the forms 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).

III. Conclusion

We request that you immediately modify the Nevada State Form to ensure its accuracy and completeness and notify the EAC of the proper eligibility information for inclusion 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 Nevada’s voter registration forms comply with lawful requirements and provide accurate information to eligible Nevada voters. We would be happy to work with your office to design instructions that would fully and accurately inform citizens with past 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,

/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: Nevada Voter Registration Application
National Mail Voter Registration Form
Nevada Secretary of State, Restoration of Voting Rights in Nevada
Nev. Rev. Stat. §§ 213.155, 213.157