



January 31, 2018

Via certified mail and email

Hon. John C. Wobensmith, Secretary of State
Jeffrey Building
16 Francis St.
Annapolis, MD 21401
john.wobensmith@maryland.gov

Dear Secretary Wobensmith,

Campaign Legal Center writes 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 Maryland. In 2016, Maryland changed its law to automatically restore the voting rights of people with felony convictions after completion of their term of imprisonment. However, the Election Assistance Commission (“EAC”) has not updated the Federal Form to reflect these requirements. Instead, the Federal Form’s state-specific instructions for Maryland still reflect the pre-2016 law, stating that felons must have completed probation and parole before they may register and vote. We urge you to immediately notify the EAC of the new eligibility requirements under the 2016 law and insist upon an immediate update to the Federal Form’s instructions.

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

Prior to 2016, Maryland disenfranchised people with felony convictions until completion of parole and probation. However, in 2016, Maryland changed its felony disenfranchisement law. Maryland passed SB 340, which provides for the automatic restoration of voting rights after an individual completes her sentence of imprisonment for a felony conviction. Md. Code Ann., Elec. Law § 3-102(b) (“An individual is not qualified to be a registered voter if the individual: . . . has been

convicted of a felony and is currently serving a court-ordered sentence of imprisonment for the conviction . . .”).

Maryland has accurately updated the Maryland Voter Registration Application (“State Form”) to reflect this change. It states that in order to register, citizens must: “Not have been convicted of a felony, or if [they] have, [they must] have completed serving a court-ordered sentence of imprisonment.” Md. Sec. of State, *Maryland Voter Registration Application*, http://elections.state.md.us/voter_registration/documents/English_Internet_VRA.pdf (enclosed).¹ However, the state-specific instructions to the Federal Form have not been similarly updated. The Federal Form’s state-specific instructions for Maryland inform applicants that they may “not have been convicted of a felony, or if [they] have, [they must] have completed serving a court ordered sentence of imprisonment, including any term of parole or probation for the conviction” in order to vote. Election Assistance Commission, *National Mail-In Voter Registration Form*, <http://www.eac.gov/voters/national-mail-voter-registration-form/> (enclosed). These instructions do not accurately reflect current Maryland law as amended in 2016 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. 52 U.S.C. § 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 Maryland law. If your office has not updated the EAC regarding the change in eligibility requirements pursuant to the 2016 law, your office is required to do so immediately.

The outdated Maryland instructions on the Federal Form have serious consequences for eligible Maryland citizens who are informed inaccurately that they are ineligible to register and vote. The Federal Form’s current language thus poses an

¹ We also note that while the State Form is accurate, it could and should be drafted to be more accessible to a layperson and ensure that people with past convictions are not dissuaded from registering to vote. For example, the State Form could state that in order to register: “Applicants must not be currently serving a court-ordered sentence of imprisonment for a felony. Applicants with past felony convictions who have completed their prison sentences are eligible to vote even if still on parole or probation.”

unnecessary and undue burden on the right to vote for those with felony convictions in Maryland 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 interest 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”).

III. Conclusion

If your office did not update the EAC regarding the 2016 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 Maryland'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 Maryland state-specific instructions on the Federal Form comply with lawful requirements and provide accurate information to eligible Maryland voters. Please contact CLC Senior Legal Counsel Danielle Lang at the phone number or email address listed below. Thank you for your attention and cooperation in this matter of utmost importance.

Sincerely,

/s/ Danielle Lang

Danielle Lang*

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

Enclosures: National Voter Registration Form
Maryland Voter Registration Application
Md. Code Ann., Elec. Law § 3-102