



January 31, 2018

Via certified mail

Hon. Michele Reagan, Secretary of State
1700 W. Washington St., Fl. 7
Phoenix, AZ 85007

Dear Secretary Reagan,

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

We urge you to modify Arizona's Voter Registration Form ("State Form") and update the Election Assistance Commission ("EAC") regarding the Arizona-specific instructions on the National Voter Registration Form ("Federal Form") to ensure that Arizona citizens receive complete and accurate information about voter registration requirements. The inaccurate or misleading information on these forms assuredly leads many citizens of Arizona not to exercise their constitutionally protected right to vote. Moreover, the incomplete information on the forms 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. Arizona's Felony Disenfranchisement Law and Registration Forms

Under Arizona law, individuals may not register to vote if they have "been convicted of treason or a felony, unless restored to civil rights." Ariz. Rev. Stat. § 16-

101. However, section 16-101 is not the only Arizona statutory provision governing voting rights for people with felony convictions. Arizona law provides that individuals who have only been convicted of one felony have their voting rights automatically restored upon completion of sentence and payment of fines and/or restitution. Ariz. Rev. Stat. § 13-912 (enclosed).

Therefore, people with single past felony convictions who have completed their sentence and paid all fines and/or restitution are eligible to vote without any further action. This automatic restoration, however, is not disclosed to applicants on Arizona's voter registration forms. Instead, the forms suggest that all people with felony convictions are ineligible absent an affirmative restoration process. The State Form informs applicants that they "cannot register to vote in Arizona if . . . [they] have been convicted of a felony and have not yet had [their] civil rights restored" but fails to inform applicants that their rights may have been automatically restored. Ariz. Sec'y of State, *Arizona Voter Registration Form*, https://www.azsos.gov/sites/azsos.gov/files/voter_registration_form.pdf (enclosed). Further, the form requires voters to affirm, "I am NOT a convicted FELON or my civil rights are restored," without informing eligible voters that their civil rights may have been *automatically* restored. *Id.*

Similarly, the state-specific instructions for Arizona on the Federal Form inform applicants that to "register in Arizona you must . . . not have been convicted of treason or a felony (or have had your civil rights restored)." Election Assistance Comm'n, *National Mail Voter Registration Form*, https://www.eac.gov/assets/1/6/Federal_Voter_Registration_9-21-17_ENG.pdf (enclosed). Once again, the instructions suggest that all individuals convicted of a felony are ineligible absent an affirmative civil rights restoration process. As discussed above, that is not the case for many people with felony convictions.

Finally, the Secretary of State's website compounds this confusion by repeating that individuals cannot register to vote if they "have been convicted of a felony and have not yet had [their] civil rights restored" and not providing any information about automatic voter restoration for first-time offenders. Ariz. Sec'y of State, *Register to Vote or Update Your Current Voter Information*, <https://www.azsos.gov/elections/voting-election/register-vote-or-update-your-current-voter-information> (enclosed). That section of the website also links to the statutory provision, disenfranchising individuals with felony convictions absent rights restoration (Ariz. Rev. Stat. § 16-101) but fails to link or even refer to section 13-912, which provides for *automatic* rights restoration for many people with convictions. *Id.* No other information about voting rights restoration is readily apparent on the

Secretary's website.¹ The clear implication of Arizona's voter registration materials is that all individuals with past felony convictions are ineligible absent an affirmative voting rights restoration process. This is not an accurate portrayal of voter eligibility.

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.

Despite these requirements, as discussed above, the Arizona voter registration forms fail to fully inform applicants with felony convictions of their eligibility under Arizona law. To the contrary, they mislead applicants by suggesting that all people with convictions are ineligible absent affirmative voting rights restoration. Nowhere in these materials does Arizona inform voters that their rights may be automatically restored upon the completion of their sentence. Arizona's failure to provide complete information about voter qualifications on its registration forms neglects its duty under the NVRA to accurately inform applicants of the relevant qualifications to vote.

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

¹ In addition to noting the automatic eligibility of first-time offenders who have completed their sentences and paid their fines and restoration, the Secretary of State should make available information about the available processes for voting rights restorations for people who do not meet the requirements for automatic restoration. Under Arizona law, "a person who has been convicted of two or more felonies and who has received an absolute discharge from imprisonment may have any civil rights . . . restored" by the judge responsible for the initial sentencing or by that judge's successors in the county "in which the person was originally sentenced." Ariz. Rev. Stat. § 13-906(a). This process involves filing an application for restoration of civil rights "no sooner than two years from the date of . . . absolute discharge." Ariz. Rev. Stat. § 13-906(b). Including this information on voter materials would expand access to the franchise for many Arizona citizens who may not be aware that they are eligible to apply to restore their voting rights.

undue burden on the right to vote for those with felony convictions in Arizona who are eligible to vote under state law. The burden is undue because the omissions of automatic restoration information serves no valid government interest; it is severe because the instructions mislead eligible voters about their right 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”).

III. Conclusion

We request that you modify the Arizona 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 Arizona’s voter registration forms comply with lawful requirements and provide accurate and complete information to eligible Arizona 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

Nathan Blevins

Laura Erstad

NYU Law Civil Rights Clinic

245 Sullivan Street, 5th Floor

New York, NY 10012

212-998-6087

Emails: nkb301@nyu.edu

lfe213@nyu.edu

/s/ Danielle Lang

Danielle Lang*

Campaign Legal Center

1411 K Street NW, 14th Floor

Washington, DC 20005

202-736-2200

Email: dlang@campaignlegalcenter.org

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

Enclosures: Arizona Voter Registration Application
National Mail Voter Registration Form
Ariz. Sec’y of State, Register to Vote or Update Your Current Voter Information
Ariz. Rev. Stat. § 13-912