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Sent via email and USPS

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The Honorable Rolando Pablos
Texas Secretary of State
P.O. Box 12887
Austin, TX 78711
Email: secretary@sos.texas.gov

Re: Notice of the Texas Workforce Commission's Failure to Comply with Voter Registration Obligations

Dear Director Temple and Secretary Pablos,

Under the decades-old National Voter Registration Act (NVRA), Texas is required to provide voter registration services to people with disabilities who obtain vocational rehabilitation services from state agencies. However, since taking over vocational rehabilitation services in September 2016, the Texas Workforce Commission (TWC) has failed to provide the voter registration services mandated by the NVRA. **As a result, the State's own data indicates that at least 74,000 voting-age Texans with disabilities are not being offered voter registration services each year, and that number is likely closer to 100,000.**¹

Accordingly, we write on behalf of the Coalition of Texans with Disabilities (CTD)—an organization that works to ensure that persons with disabilities may work, live, learn, play and participate fully in their communities—to notify you that TWC is not meeting its voter registration obligations under the NVRA, corresponding state law, and the Equal Protection Clause of the 14th Amendment. As a result, tens of thousands of eligible Texas voters have been denied their right to register to vote at a designated voter registration agency (VRA).

¹ From September 2015 through August 2016, Texas provided vocational rehabilitation services to 102,852 Texans, 74,309 of whom were 23 or older. Rehabilitation Council of Tex., *2016 Annual Report* 15, 18 (2017), available at <http://www.twc.state.tx.us/files/news/2016-annual-report-rehabilitation-council-texas-twc.pdf>.

Section 7 of the NVRA requires Texas to designate as a VRA any office that provides “public assistance” or “[s]tate-funded programs primarily engaged in providing services to persons with disabilities.”² That VRA must consistently offer voter registration services to individuals who interact with the agency.³ TWC and the Texas Secretary of State have violated and continue to violate these mandates.

The State’s failures have harmed and continue to harm CTD and its members. CTD participates in nonpartisan initiatives to educate voters with disabilities about their rights and mobilize the disability vote. Among other activities, the organization conducts voter registration drives for people with disabilities, including those who receive services from TWC. Additionally, CTD has members who are disabled and receive services, including vocational rehabilitation services, from TWC but who have not been offered an opportunity to register to vote or update their voter registration information.

The State’s failure to offer voter registration services is even more egregious because it represents a recent change in practice. Previously, vocational rehabilitation services were provided through a different agency, the Department of Assistive and Rehabilitative Services (DARS), which was specifically recognized by the Texas Secretary of State as a voter registration agency in 2005. When the Texas Legislature transferred DARS’s vocational rehabilitation services and other programs providing services to persons with disabilities to TWC on September 1, 2016, TWC assumed *all* of DARS’s statutory responsibilities as well, including its voter registration obligations. Yet—without further explanation or any obvious, valid reason—TWC has officially taken the position that, as of the effective date of the transition, “voter registration requirements no longer apply to applicants for vocational rehabilitation services.”⁴ TWC’s refusal to offer voter registration services to its clients thus conflicts with longstanding DARS policy as well as federal and state law.

OVERVIEW OF THE NVRA AND CORRESPONDING STATE LAW

The NVRA was enacted in 1993 to “establish procedures that will increase the number of eligible citizens who register to vote in elections for Federal office.”⁵ To achieve this goal, the NVRA imposes certain requirements on specified state agencies. These provisions have played a critical role in increasing the number of registered voters nationwide. Additionally, and importantly, Texas state law reinforces the NVRA’s mandates.

Specifically, under the NVRA, a state must designate as a VRA any office that provides public assistance or state-funded programs that are primarily engaged in providing services to persons with disabilities.⁶ Each VRA must (1) distribute mail voter registration application forms to program applicants, (2) assist them in filling out the form unless the applicant refuses assistance, and (3) accept the completed form to send to the appropriate state election official.⁷

² 52 U.S.C. § 20506(a)(2).

³ *Id.* § 20506(a)(4)-(7).

⁴ Rehabilitation Servs. Div., Tex. Workforce Comm’n, *Rehabilitation Policy Manual* § 2.4.3, available at <http://www.twc.state.tx.us/manuals/rpm/ch2.htm#2.4.3>.

⁵ 52 U.S.C. § 20501(b)(1).

⁶ *Id.* § 20506(a)(2); see also Tex. Elec. Code § 20.001(a)(5).

⁷ *Id.* § 20506(a)(4)(A); see also Tex. Elec. Code §§ 20.031, 20.032(a), 20.035(a).

In addition, VRAs that provide service or assistance must distribute mail voter registration application forms both when individuals make an initial application to the agency, as well as when they submit to the agency a renewal, recertification, or change of address, unless they decline in writing to register to vote.⁸ VRAs that provide service or assistance to a person at their home must likewise provide voter registration services—distributing forms, assisting applicants with completing forms, and accepting completed forms—at the person’s home.⁹

DARS VOTER REGISTRATION SERVICES AND THE TWC TRANSITION STATUTE

DARS provided voter registration services as directed by the NVRA and the Texas Election Code. State records confirm that scores of persons with disabilities who obtained services from DARS have been registered to vote with the agency’s assistance.

In 2015, the Texas Legislature decided to sunset DARS and transfer all of its functions to TWC and the Health and Human Services Commission (HHSC).¹⁰ The transition statute empowered TWC to administer DARS’s vocational rehabilitation services, directing that *all* such “services and programs and related powers, duties, functions, and activities” of DARS be transferred to TWC, along with *all* “obligations and contracts of [DARS] that are related to a transferred service or program.”¹¹ No exception is made in the statute for voter registration services.

Despite this unambiguous delegation of responsibility, TWC announced that, as of September 1, 2016, “voter registration requirements no longer apply to applicants for vocational rehabilitation services.”¹² In other words, TWC has assumed DARS’s funding and its “powers, duties, functions, and activities”—*except for one*: providing voter registration services.

TWC’s policy and practices violate the NVRA, Texas law, and the Equal Protection Clause of the 14th Amendment, and have resulted in the unlawful denial of voter registration services to countless Texans.

REQUEST

In sum, TWC is failing to provide voter registration services to eligible residents who transact with the agency, in violation of state and federal mandates.

We trust that you share our concerns regarding voter registration practices at TWC and will take immediate steps to remedy the problems highlighted above. The undersigned counsel would appreciate an opportunity to meet with the Secretary of State’s office as soon as possible to assist in developing a comprehensive plan for full compliance. If, however, Texas fails to remedy its

⁸ *Id.* § 20506(a)(6); *see also* Tex. Elec. Code § 20.031.

⁹ *Id.* § 20506(a)(4)(B); *see also* Tex. Elec. Code § 20.032(b).

¹⁰ Tex. Gov’t Code § 531.0202(a); *see* S.B. 200, 84th Leg., Reg. Sess. (2015).

¹¹ S.B. 208, 84th Leg., R.S., ch. 1138, § 33 (2015).

¹² *Rehabilitation Policy Manual* § 2.4.3. While TWC retired this manual in October 2017, its new *Vocational Rehabilitation Services Manual* makes no reference at all to the NVRA or to the provision of voter registration services. This appears to confirm TWC’s continued view that it is exempt from the NVRA’s mandates, but we would welcome TWC’s affirmation to the contrary.

violations of Section 7 of the NVRA, we are prepared to pursue litigation as permitted by 52 U.S.C. § 20510(b), and this letter constitutes the requisite notice under that statute.

We look forward to your response.

Very truly yours,

Beth Stevens

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cc: Keith Ingram, Elections Division, Office of the Secretary of State