

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

UNITED STATES OF AMERICA,

Plaintiff,

v.

STATE OF NEW JERSEY; TAHESHA WAY, in
her official capacity as New Jersey Secretary of
State; and KEVIN S. CORBETT, in his official
capacity as President and CEO of the New Jersey
Transit Corporation,

Defendants.

Civil Action No. 3:21-cv-14618 (PGS)

CONSENT JUDGMENT AND DECREE

The Attorney General filed this action to enforce the National Voter Registration Act of 1993 (NVRA), 52 U.S.C. §§ 20501-11. The complaint alleges that the State of New Jersey's failure to designate offices that provide state-funded transportation programs for persons with disabilities as voter registration agencies (VRAs) and the failure of such offices to provide voter registration services violate Section 7 of the NVRA, 52 U.S.C. § 20506 (Section 7).

The parties, through counsel, have conferred and agree that this lawsuit should be resolved without the delay and expense of litigation. The parties share the goal of ensuring that all state-funded disability services offices in New Jersey provide voter registration opportunities in compliance with the NVRA. Accordingly, the parties have negotiated in good faith and hereby agree to the entry of this Consent Decree as an appropriate resolution of the NVRA violation alleged by the United States.

The United States and Defendants stipulate and agree that:

- i. The Court has jurisdiction over this action under 28 U.S.C. §§ 1331, 1345, and 2201(a) and 52 U.S.C. § 20510(a).
- ii. Venue is proper in this district pursuant to 28 U.S.C. §§ 110 and 1391(b).
- iii. Defendant the State of New Jersey is one of the States of the United States of America. New Jersey is subject to the requirements of the NVRA. 52 U.S.C. §§ 20502(4), 20503.
- iv. Defendant Tahesha Way is the New Jersey Secretary of State, the chief election official of the State. N.J. Rev. Stat. § 52:16A-98(b). As New Jersey's chief state election official, she is responsible for coordination of State responsibilities under the NVRA. 52 U.S.C. § 20509.
- v. Defendant Kevin S. Corbett is the President and CEO of the New Jersey Transit Corporation. New Jersey Transit is New Jersey's public transportation corporation.
- vi. Defendants have administration, coordination, and management responsibilities regarding election services and state-funded disability transportation services in New Jersey and are proper defendants in this case.
- vii. Section 7 of the NVRA requires New Jersey to designate as voter registration agencies "all offices in the State that provide State-funded programs primarily engaged in providing services to persons with disabilities." 52 U.S.C. § 20506(a)(2)(B).
- viii. New Jersey has designated several categories of State, county, and municipal offices as voter registration agencies, including some offices that provide State-funded programs primarily engaged in providing services to persons with disabilities. *See* N.J. Rev. Stat. § 19:31-6.11. New Jersey separately permits voters to request, complete, and return voter registration

forms at designated public agencies, including the New Jersey Transit Corporation. *See* N.J. Rev. Stat. § 19:31-6.3.

ix. A voter registration agency that provides state-funded disability services must distribute a mail voter registration application form with each application for such service—and with each recertification, renewal, or change of address form relating to such service—unless the applicant, in writing, declines to register to vote. 52 U.S.C. § 20506(a)(6). Applicants must have the opportunity to decline to register to vote on a document often called a declination form, which contains all information and check boxes required by Section 7(a)(6)(B) of the NVRA, 52 U.S.C. § 20506(a)(6)(B). *See also* Fed. Election Comm’n, *Implementing the National Voter Registration Act of 1993: Requirements, Issues, Approaches, and Examples* 4-6 to 4-8 (1994) (detailing contents and use of declination form), *available at* <https://perma.cc/RK4J-MP3M>.

x. Voter registration agencies must also assist applicants in completing voter registration application forms (unless the applicant refuses such assistance) and accept completed voter registration application forms for transmittal to the appropriate State election official. 52 U.S.C. § 20506(a)(4)(A)(ii)-(iii). Voter registration agencies must then transmit accepted voter registration applications to appropriate State election officials in accordance with statutory deadlines. 52 U.S.C. § 20506(d).

xi. Access Link, a component of New Jersey Transit, is the primary provider of paratransit services in New Jersey. Paratransit is a comparable transportation service required by the Americans with Disabilities Act for individuals with disabilities who are unable to use fixed route transportation systems. 49 C.F.R. § 37.3; N.J. Rev. Stat. § 27:25-3(d).

xii. Access Link operates as a supplement to New Jersey Transit, providing transportation for persons with disabilities to locations within a defined radius of New Jersey

Transit routes. To provide these services at an affordable rate, Access Link relies on state funding.

xiii. New Jersey has not designated Access Link offices as a voter registration agency, and Access Link offices do not distribute voter registration forms with applications for paratransit services, assist with completion of voter registration forms, or accept voter registration forms for transmittal to appropriate state election officials.

xiv. Pursuant to the Senior Citizen and Disabled Resident Transportation Assistance Act, N.J. Rev. Stat. §§ 27:25-25 to -34, New Jersey established the Senior Citizen and Disabled Resident Transportation Assistance Program (SCDRTAP) to assist the State's 21 counties in establishing county-based transportation programs. Each of New Jersey's 21 counties offers a SCDRTAP program, which is referred to herein as Community Transportation, to primarily serve senior citizens and persons with disabilities. In all but two counties, Community Transportation is currently run by the county or its contractors. In Burlington County and Camden County, Community Transportation is operated by the Senior Citizen United Community Service (SCUCS), a non-profit agency. Community Transportation provides accessible feeder transportation service to accessible fixed-route transportation services, as well as accessible local transit service. N.J. Rev. Stat. § 27:25-28(a)(1).

xv. New Jersey funds Community Transportation through an annual allocation of state funds. New Jersey Transit developed program guidelines and administers state grants for Community Transportation. *See* N.J. Rev. Stat. §§ 27:25-29 to -31.

xvi. New Jersey has not designated Community Transportation offices as voter registration agencies, and Community Transportation offices have not distributed voter registration forms with applications for disability transportation services, assisted with

completion of voter registration forms, or accepted voter registration forms for transmittal to appropriate state election officials.

THEREFORE, with the consent of the parties, it is hereby ORDERED, ADJUDGED, and DECREED that:

1. The State of New Jersey's failure to designate Access Link and Community Transportation as voter registration agencies violates Section 7 of the NVRA.
2. The State of New Jersey, through the Office of the Secretary of State or as otherwise provided by New Jersey law, shall designate Access Link and Community Transportation as voter registration agencies under Section 7 of the NVRA.
3. The State of New Jersey, through the Office of the Secretary of State or as otherwise provided by New Jersey law, shall endeavor to codify this designation in Section 19:31-6.11 of the New Jersey Revised Statutes.
4. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law and in consultation with the Office of the Secretary of State, shall develop and implement uniform policies, procedures, and forms for Access Link pertaining to
 - a. Distribution of voter registration applications and declination forms containing the information required by Section 7(a)(6) of the NVRA;
 - b. Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance;
 - c. Acceptance of completed voter registration application forms for transmittal to the appropriate State election official;
 - d. Transmittal of accepted registration applications to the appropriate State election official pursuant to statutory deadlines; and

- e. Retention of voter registration materials not transmitted to State election officials, including declination forms, for 22 months.

5. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall ensure that Access Link employees, counselors, representatives, and contractors who conduct or facilitate application, recertification, renewal, or change of address transactions provide all voter registration opportunities and assistance required by Section 7 of the NVRA.

6. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall ensure that any person who comes into in-person contact with an Access Link employee, counselor, representative, or contractor in the course of requesting an application, recertification, renewal, or change of address form also receives the opportunity to register to vote during such in-person contact, in accordance with Section 7(a)(6)(B) of the NVRA, unless such applicants decline in writing to register to vote.

7. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall ensure that each Access Link application, recertification, renewal, or change of address form that is sent by mail to an individual who will not come into in-person contact with an Access Link employee, counselor, representative, or contractor in the course of their application, recertification, renewal, or change of address process includes a mail-in voter registration applications and a declination form.

8. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall ensure that all telephonic application, recertification, renewal, or change of address procedures for Access Link involving clients who will not come into in-person contact with an Access Link employee, counselor, representative, or contractor in the course of their

application, recertification, renewal, or change of address process include an offer of voter registration services—including provision of a mail-in voter registration application and a declination form—to those who request them.

9. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall ensure that all online application, recertification, renewal, or change of address procedures for Access Link include means to provide online clients immediate NVRA-compliant voter registration opportunities in a manner accessible to persons with disabilities.

10. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall ensure that Access Link counselors, employees, representatives, and contractors covered by this Decree accept completed voter registration applications and transmit them to appropriate election officials within the time periods in Section 7(d) of the NVRA. Specifically, a completed registration application accepted more than 5 days before the last day for registration to vote in an election must be transmitted to the appropriate State election official not later than 10 days after the date of acceptance. A completed registration application accepted within 5 days before the last day for registration to vote in an election must be transmitted not later than 5 days after the date of acceptance.

11. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall ensure that Access Link offices retain all declination forms for 22 months. *See* 52 U.S.C. § 20701.

12. In any jurisdiction subject to the requirements of Section 203 of the Voting Rights Act, 52 U.S.C § 10503, the State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall:

- a. Ensure the availability of translated versions of the voter registration applications and declination forms described by Section 7(a)(6) of the NVRA at Access Link offices; and
- b. Ensure that Access Link offices have access to bilingual translation services and work with such services to assist in providing voter registration services described by Section 7(a)(4) of the NVRA.

13. The State of New Jersey, through the Office of the Secretary of State and New Jersey Transit or as otherwise provided by New Jersey law, shall develop and implement mandatory NVRA education and training programs, in consultation with the United States, including but not limited to:

- a. Initial training for the Disability Transportation NVRA Coordinator named pursuant to Paragraph 16 and any successor thereto;
- b. Initial training for all NVRA site coordinators named pursuant to Paragraphs 17 and 23(i) and any successors thereto;
- c. Initial training for all other Access Link employees, counselors, representatives, and contractors with NVRA responsibilities, including those with start dates after the date of this Decree; and
- d. Annual refresher training for all Access Link employees, counselors, representatives, and contractors with NVRA responsibilities.

14. The Office of the Secretary of State shall provide New Jersey Transit with sufficient voter registration and declination forms to meet requirements under Section 7 of the NVRA. Nothing in this paragraph shall preclude Access Link from incorporating declination

forms and voter registration forms that meet requirements under Section 7(a)(6) of the NVRA into applications, recertifications, renewals, or change of address forms.

15. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall develop methods of tracking, in detail, the extent to which Access Link is complying with the NVRA and this Decree. Tracking shall include:

- a. Inclusion of NVRA compliance into continuous evaluation of Access Link programs, offices, and employees;
- b. Annual formal auditing to determine compliance with the NVRA and this Decree;
- c. Aggregation on a monthly basis of the number of Access Link applications, renewals, recertifications, and changes of address forms submitted, on an office-by-office basis;
- d. Aggregation on a monthly basis of the number of completed voter registration applications received as part of an Access Link application, renewal, recertification, or change of address transaction, on an office-by-office basis;
- e. Aggregation on a monthly basis of the number of completed voter registration applications transmitted by Access Link offices to appropriate state election officials, on an office-by-office basis; and
- f. Aggregation on a monthly basis of the number of declination forms received as part of an Access Link application, renewal, recertification, or changes of address transaction, on an office-by-office basis.

16. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall maintain the position of Disability Transportation NVRA Coordinator for the State of New Jersey. The Disability Transportation NVRA Coordinator shall:

- a. Attend training provided by the Office of the Secretary of State within 30 days of the entry of this Decree, that explains NVRA requirements for disability transportation offices and the requirements of this Decree;
- b. Oversee the training of individual site coordinators at Access Link and make training available to individual site coordinators at Community Transportation offices;
- c. Oversee training offered by site coordinators to other employees, counselors, representatives, and contractors with NVRA responsibilities at Access Link offices;
- d. Ensure receipt of monthly tracking data described in Paragraph 15(c)-(f) and 23(h) and biannual reports described in Paragraph 17(h);
- e. Review monthly tracking data, reports, and other compliance and audit materials to evaluate whether those data reflect low activity or implementation problems;
- f. Determine whether corrective action plans are needed statewide or at individual offices and, if necessary, direct the implementation of the corrective plan; and
- g. Provide technical assistance to individual offices as needed, including periodic reminders and updates concerning NVRA responsibilities.

17. Within 30 days, the State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall appoint a NVRA site coordinator at each office providing Access Link services. Site coordinators at Access Link offices shall:

- a. Attend training provided by the Disability Transportation NVRA Coordinator within 60 days of being appointed;
- b. Provide initial training to all employees, counselors, representatives, and contractors with NVRA responsibilities within 60 days of receiving training from the Disability Transportation NVRA Coordinator;
- c. Provide training to all new employees, counselors, representatives, and contractors who have NVRA responsibilities within 45 days after the new employee's start date;
- d. Ensure that voter registration opportunities are provided to each applicant for services at the time of their initial application, recertification, renewal, or change of address;
- e. Maintain (or supervise the maintenance of) their office's voter registration application data and materials;
- f. Supervise the administration and storage of the office's declination forms;
- g. Provide all data necessary for tracking compliance with the NVRA and this Order, including data described in Paragraph 15(c)-(f), to the Disability Transportation NVRA Coordinator; and
- h. Prepare a brief report in January and June of each year this Decree remains in effect, documenting compliance with the NVRA and the terms of this Decree and provide this report to the Disability Transportation NVRA Coordinator.

18. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall publicize the voter registration opportunities afforded by the NVRA to eligible Access Link clients. This publicity shall include:

- a. Signs in Access Link offices advertising the opportunity to register to vote;
- b. Signs in or on Access Link vehicles advertising the opportunity to register to vote; and
- c. Information on Access Link websites, in a manner accessible to persons with disabilities, regarding the availability of voter registration applications and services and links to voter registration information and application forms on the New Jersey Secretary of State's website.

19. Within 90 days of the entry of this Decree, the State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall distribute an application to register to vote by mail to all active Access Link clients unless the customer, in writing, declines to register to vote.

20. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall endeavor to distribute an application to register to vote by mail to all inactive Access Link clients within one year of the entry of this Decree, unless the customer, in writing, declines to register to vote. In the event that the State of New Jersey is unable to do so within one year of the entry of this Decree, the State shall report its progress to the United States at that time and shall complete distribution of applications to register to vote by mail to all inactive Access Link clients, unless the customer, in writing, declines to register to vote, within 18 months of entry of this Decree.

21. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall post links to the State of New Jersey's online voter registration platform both on the Access Link website and in the Access Link mobile app within 90 days of the entry of this Decree.

22. The State of New Jersey, through the Office of the Secretary of State and New Jersey Transit or as otherwise provided by New Jersey law, shall take all reasonable and practicable steps to inform county officials responsible for Community Transportation programs of the requirements of Section 7 of the NVRA.

23. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, shall revise program guidelines, rules, or regulations for Community Transportation, in accordance with procedural requirements set out in Section 27:25-29 of the New Jersey Revised Statutes, to establish uniform policies and procedures pertaining to Section 7 compliance. The State of New Jersey shall oversee and enforce these guidelines, rules, or regulations in the same manner and to the same extent as other guidelines, rules, or regulations governing Community Transportation. These policies and procedures shall require:

- a. Distribution of voter registration applications and declination forms during all application, recertification, renewal, and change of address transactions;
- b. Assistance to applicants in completing voter registration application forms, unless the applicant refuses such assistance;
- c. Acceptance of completed voter registration application forms for transmittal to the appropriate State election official;
- d. Transmittal of accepted registration applications to the appropriate State election official pursuant to statutory deadlines;

- e. Retention of voter registration materials not transmitted to State election officials for 22 months, including declination forms;
- f. Use of bilingual translation services in jurisdictions subject to the requirements of Section 203 of the Voting Rights Act, 52 U.S.C. § 10503;
- g. Participation in NVRA education and training programs;
- h. Certification of compliance with the NVRA in monthly reimbursement requests;
- i. Appointment of NVRA site coordinators at each office providing Community Transportation services, whose duties shall match those of Access Link NVRA site coordinators, described in Paragraph 17(a)-(h) of this Decree; and
- j. Publicity regarding voter registration opportunities afforded by the NVRA to eligible Community Transportation clients.

24. The State of New Jersey, through the Office of the Secretary of State and New Jersey Transit or as otherwise provided by New Jersey law, shall use all reasonable and practicable efforts to facilitate compliance with Section 7 of the NVRA at Community Transportation offices. Such efforts must include, but need not be limited to:

- a. Conducting regular training sessions for Community Transportation NVRA Coordinators and other Community Transportation employees and strongly urging county officials and private contractors to send employees to such trainings;
- b. Providing sufficient voter registration and declination forms to Community Transportation programs at no cost to those programs;

- c. Ensuring the availability of translated versions of voter registration applications and declination forms at Community Transportation offices in jurisdictions subject to the requirements of Section 203 of the Voting Rights Act;
- d. Providing signs for Community Transportation programs to display in their offices and in or on vehicles to advertise the availability of voter registration as a component of application, recertification, renewal, or change of address transactions;
- e. Providing sample letters, policies, procedures, and assistance as needed to accomplish mailings and other client communications, including a recommended mailing to existing clients concerning voter registration opportunities; and
- f. Communicating with Community Transportation programs on at least an annual basis concerning the requirements of Section 7 of the NVRA and including information regarding the impact of successful implementation of this Consent Decree.

25. On February 15 and August 15 of each year, the State of New Jersey, through the Office of the Secretary of State and New Jersey Transit or as otherwise provided by New Jersey law, shall submit to the United States a compliance report for the six-month period ending December 31 and June 30, respectively. This report shall include:

- a. A summary of compliance efforts detailing all steps taken to implement each of the provisions and requirements of this Decree, including any significant

implementation problems, staff training needs, and recommendations for improvement;

- b. The results of the tracking described in Paragraphs 15(c)-(f);
- c. Available Community Transportation voter registration opportunity response data reported pursuant to N.J. Admin. Code § 15:10-1.3;
- d. Copies of biannual reports described in Paragraph 17(h); and
- e. Copies of all NVRA procedures and educational and training materials used in the preceding year and any revised materials to be used in the next year.

26. The State of New Jersey, including the Office of the Secretary of State and New Jersey Transit, shall make and maintain sufficient written records of all actions taken pursuant to the Decree to bring about NVRA compliance. Defendants shall make any such records available to the United States upon request.

27. The parties shall provide an annual report to the Court by no later than April 1 of each year this Decree is in effect detailing compliance or noncompliance with the terms of this Decree.

28. The State of New Jersey, through New Jersey Transit or as otherwise provided by New Jersey law, authorizes the United States to conduct audits without prior notice to New Jersey Transit; to contact Access Link employees; and to call or visit Access Link offices without identifying its staff as the United States' investigators.

29. The United States may object to any plan, report, or document submitted by the State of New Jersey, the Office of the Secretary of State, or New Jersey Transit pursuant to this Decree on the ground that it does not comply with the NVRA or this Decree or is insufficient to ensure compliance. The United States shall lodge any such objection by written notice to all

Defendants. The parties shall make a good-faith effort to resolve any differences and to address perceived defects with compliance. Should the parties be unable to reach a resolution within 30 days after the United States has sent a written notice of noncompliance or insufficiency, either party may seek redress before this Court without further notice.

30. If at any time, the United States obtains information that the State of New Jersey is, or is about to be, in breach of any of the terms of this Decree, the United States shall advise the Office of the New Jersey Attorney General in writing by notice sent via overnight mail and email. The State shall have ten business days following transmittal of such notice to respond to the United States and shall reasonably endeavor to address the full scope of the potential breach. The parties shall thereafter attempt immediately to resolve any issues of potential noncompliance.

31. If the parties are unable to agree on a resolution of the issue under the procedures set out in Paragraph 30, the United States may take appropriate action to enforce the terms of this Decree.

32. Nothing in this Decree shall prevent the United States from taking any actions required to enforce any provision of the NVRA.

33. This Decree shall remain in effect for three years, unless a party obtains an extension pursuant to Paragraph 34.

34. The Court shall retain jurisdiction over this action to enter such further relief as may be necessary for the effectuation of the terms of this Decree and to ensure compliance with the NVRA. For good cause shown, any party may move to extend the Consent Decree or to reopen the case.

35. The United States and Defendants shall each bear all of their own costs, expenses, and attorneys' fees in this case.

SO ORDERED.

HON. PETER G. SHERIDAN
UNITED STATES DISTRICT JUDGE

The undersigned agree to entry of this Consent Decree.

For the United States of America:

RACHAEL A. HONIG
Acting United States Attorney
District of New Jersey

KRISTEN CLARKE
Assistant Attorney General
Civil Rights Division

PAMELA S. KARLAN
Principal Deputy Assistant Attorney General
Civil Rights Division

/s/ Michael E. Campion
MICHAEL E. CAMPION
Assistant United States Attorney
United States Attorney's Office
District of New Jersey
Civil Rights Unit
970 Broad Street, Suite 700
Newark, NJ 07102

/s/ Daniel J. Freeman
T. CHRISTIAN HERREN, JR.
RICHARD A. DELLHEIM
DANIEL J. FREEMAN
RACHEL EVANS
Attorneys, Voting Section
Civil Rights Division
U.S. Department of Justice
4 Constitution Square
150 M. Street NE, Room 8.143
Washington, DC 20530

August 27, 2021
Date

For the Defendants:

OFFICE OF THE SECRETARY OF STATE
TAHESHA WAY
Secretary of State

NEW JERSEY TRANSIT CORPORATION

/s/ Robert Giles
Robert Giles, Director
Division of Elections

/s/ Kevin S. Corbett
Kevin S. Corbett, President and CEO

Date: August 27, 2021

Date: August 27, 2021

STATE OF NEW JERSEY
Andrew J. Bruck
Acting Attorney General

/s/ Michelle L. Miller
Michelle L. Miller
Assistant Attorney General

Date: August 27, 2021

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