



HB2418 Rulemaking and Implementation Recommendations

July 18, 2013

Rupert Borgsmiller
Executive Director
Illinois State Board of Elections
2329 S. MacArthur Blvd.
Springfield, IL 62704

Dear Mr. Borgsmiller:

We are a group of civil rights and political reform organizations that have organized around voting rights, civic engagement and election issues. We are excited about the many positive changes set forth in HB2418 and we hope these changes will be realized in a way that complies with federal law, is accessible broadly to diverse communities within the state, and is user friendly and easy to understand. We are optimistic that implementation of HB2418, once signed, will be successful. We appreciate the opportunity to highlight those items that we believe are most critical to the successful implementation of the bill. We have worked collaboratively to streamline input to the State Board of Elections (SBOE) and maximize your time and attention. This document sets criteria that we, the undersigned, believe will be important in the rulemaking process provided for in HB2418. We would be happy to discuss any of the issues outlined below at your convenience.

1. Introduction of online voter registration

Many states have successfully implemented online voter registration¹ and we welcome its introduction in Illinois. In our view, there are a number of ways that Illinois can ensure the fair and equitable introduction of online voter registration. Our concerns and recommendations are set out below:

a) Accessibility

- i. **Require the online voter registration tool to be provided in all languages required to be used in the state under section 203 of the Voting Rights Act**

Section 203 of the Voting Rights Act requires that in covered jurisdictions, all election information available in English must be made available in certain minority languages. As of 2013, four Illinois counties (Cook, Lake, DuPage, and Kane) are covered for Spanish language assistance. Cook County is additionally covered for Chinese. Cook County is also covered for Asian Indian languages, and written assistance is required in Hindi. Pursuant to Section 203, all online voter

¹ At least 18 other states currently or will soon offer online voter registration. Brennan Center for Justice, "VRM in the States: Online Registration" (April 12, 2013), available at: <http://www.brennancenter.org/analysis/vrm-states-online->

registration tools and information must, at a minimum², be provided in these languages. The SBOE should explicitly display each language option using each language’s own characters on the home page. For example, the option to view the online registration in Chinese would appear on the home page in Chinese characters.

Chicago Board of Election Commissioners (CBOE) and the Cook County Clerk have experience in creating registration and other election materials in Spanish, Chinese, Hindi, Gujarati, Urdu, Korean, and other languages. We strongly recommend that the SBOE collaborate with local election officials on the translations to maximize effectiveness and efficiency for all jurisdictions. We strongly recommend that the SBOE hire certified translators and create partnerships with community organizations to provide accurate and reliable translations for online registration services.

We urge, at the very least, that you seek assistance from organizations representing language minority communities in order to foresee and avert language-specific translation problems. Unfortunately, publicly available translation tools, like Google Translator, frequently result in a translation that is not clear, complete, or accurate. For instance, on one election jurisdiction home page using Google Translate in Chinese, a field requiring the last 4 digits of SSN was translated into Chinese as requiring “last 4 nuclear submarines.” Such translation errors demonstrate the imperative need to have a fluent speaker review all translations. The Code of Federal Regulations implementing Section 203 states: “It is essential that material provided in the language of a language minority group be clear, complete and accurate. In examining whether a jurisdiction has achieved compliance with this requirement, the Attorney General will consider whether the jurisdiction has consulted with members of the applicable language minority group with respect to the translation of materials.”³ Members of language minority groups also should be permitted to beta test the system in advance to ensure the translation works properly for the needs of each language group. We further recommend that the SBOE include language, including a statement translated into those languages covered by Section 203, in registration materials that informs the voter of his or her right to be assisted by a person of their choice pursuant to Section 208 of the Voting Rights Act.⁴ Many election officials agree that greater awareness about Section 208 is needed, which will lead to even more language assistance without requiring government resources. The state board can be an important player in increasing awareness about this critical resource.

ii. **Ensure that the online registration tool is accessible to people with disabilities**

The Americans with Disabilities Act (ADA) requires that “no qualified individual with a disability shall, by reason of such disability, be excluded from participation in or be denied the benefits of services, programs, or activities of a [state government].”⁵ It is critical that any tool introduced be

² To the extent practicable, online registration tools and instructions should also be made available in additional languages when there is a significant presence of a language minority community in the state or more than ten percent (10%) of the members of a language minority group are of limited English proficiency.

³ 25 C.F.R. § 55.19 (1976).

⁴ It would be helpful to include a statement on translated materials explaining which jurisdictions are legally required to provide translated materials and further explaining that if a voter registers in a language other than English, but lives in a jurisdiction that does not provide translated materials, she can still seek language assistance [as provided by Section 208].

⁵ 42 U.S.C. § 12132.

fully accessible to people with disabilities who may use adaptive devices, screen readers, or other assistive technology. Best practices suggest that any such tool should be tested by individuals with disabilities to ensure its functionality before public release.

Rulemaking should further require that in addition to the affirmation required by the amended 10 ILCS 5/1A-16.5(f) (“By clicking the box below, I swear...”), procedure be developed to provide for personal assistance. We suggest a name field with an adjacent checkbox stating “I confirm that I am authorized by the applicant to assist him/her with his/her application and he/she approved the following oath/affirmation: [set out the text of 10 ILCS 5/1A-16.5(f)(1)-(3) with the second person replacing the first person articles].” There should be a toggle such that either one or other of the boxes can be checked.

iii. **Encourage local election jurisdictions to provide a hyperlink on their websites to online voter registration**

For many voters, the website of their local election jurisdiction is their primary or only source of information regarding voter registration. We suggest that SBOE encourage all local election jurisdictions to provide a hyperlink on their official page to the SBOE page for registering to vote or updating voter registration online.

b) Adequate and Effective Notice

i. **Require that any person whose online registration is rejected be notified, informed of other ways to register, and be able to track their registration online**

There are many points in the registration procedure, from online submission of an individual’s voter registration application to her being registered in the state database, where that individual may fail to advance to the next step. The ideal system would automatically process the user information against the SOS database and provide immediate notification to the user if he has been matched or rejected. However, if immediate notification is not possible, clear communication will be crucial. Amended 10 ILCS 5/1A-16.5(g) provides that an email will be sent to anyone denied registration at the SOS matching stage. We encourage the SBOE also to allow users to indicate that they would like communication by text message and suggest that the website clearly state that the user must provide an email (or phone number) to receive follow up information.⁶ The email notifying persons who were not matched should make it clear that a rejection at this phase does not mean the person is ineligible to register. The letter should explain that the person can try again to register by a) registering online and ensuring all information is entered accurately or b) registering in person at his local election authority, or c) registering by mail. The letter should also provide the registration form, a link to the form, or instructions on obtaining the form in person at her local election authority. In addition, a receipt number should be established to allow voters to track their registration application online. These rules will help reduce confusion and delays on Election Day as the user will learn of and have the opportunity to correct registration errors before Election Day.

ii. **Provide instructions explaining that eligible citizens may either register to vote or update their registration online**

⁶ If funding allows during implementation or in the future, a letter notifying the applicant of the rejection should be sent by mail.

The amended 10 ILCS 5/1A-16.5(f) explicitly states that the online voter registration system may be used for a “change in registration.” This has the capacity to improve the accuracy of the voter registration records immensely. In order for this to happen, however, the public must be made aware that through the online voter registration system they can *both* register to vote for the first time *and* update their existing registration. We suggest that the rules require a statement placed prominently on the website where online and updated voter registration is offered.

iii. **Provide instructions on how eligible citizens without a driver’s license, State ID card, or a Social Security number can register**

Many eligible voters do not have a state driver’s license (DL), State ID (SID) card, and/or Social Security Number (SSN). To ensure that such citizens know their rights, we suggest that the front page of any website offering online voter registration and updating of registration be required to include a statement such as: “If you do not have (1) an Illinois driver’s license or Illinois State identification card or (2) a Social Security Number, you may still register to vote but you will not be able to use the online system. You may register by either downloading, printing, completing, and sending this form [add link] by [add deadline] or by completing a registration form available at your local election authority [link to list of election board offices], Department of Motor Vehicles office, or some libraries and other public buildings by [add deadline].” A link to a downloadable, printable motor-voter form with clear directions for returning the form by mail, fax, or e-mail should accompany this notice. The statement should also inform voters about what forms of identification are accepted for in-person registration or mail-in registration. It should be made clear that state ID or driver’s license is not required to register or vote on Election Day.

c) *Technology and process*

i. **Require only the Driver’s License (DL) or State ID (SID) number, issue date of DL or SID, last four digits of Social Security Number (SSN), and date of birth (DOB) to be matched**

Because an online registration applicant must enter a significant amount of data, and this information must be matched with state databases before the individual is registered to vote, there is a possibility that many eligible individuals will be prevented from registering because of matching problems. The rates at which voters experience matching problems are high. For example, Wisconsin reported a 22% non-match rate in 2008 when comparing voter information in the registration database to a voter’s information in the drivers’ license database.⁷ Personal information may not match for a number of reasons: because voters may be recorded in one database with a shortened version of their name, and another with their full name (e.g. Nick vs. Nicholas); because they include a middle name in one database but not another; because they include a suffix such as Jr. or III in one database but not in another; because they have changed their family name (an effect particularly felt by women); because there are multiple spellings of their name in official databases (particularly felt by immigrants); or because they have updated their address in one database but not another.

⁷ “Voter Registration information often doesn’t match driver records” Wisconsin Journal-Sentinel” (August 28, 2008), available at: <http://www.jsonline.com/news/wisconsin/32585689.html> (last viewed June 11, 2013).

This phenomenon also occurs in Illinois. Pursuant to the Help America Vote Act of 2002 (HAVA), when an individual registers to vote for federal elections using a name, date of birth, and the last four digits of a social security number, the state sends this information to the Social Security Administration (SSA) to verify that there is a record matching this information. SSA weekly reports indicate the number of records for which it is unable to find a match. In Illinois, in the week ending October 9, 2012 (the mail voter registration deadline in Illinois in 2012), SSA was unable to match an individual's name, date of birth, and last four digits of SSN for 6631 out of 35202 individuals.⁸ This is a non-match rate of 18.8%.

Given the large number of people that may be the victims of a non-match, the state should impose only the most necessary matching requirements on online registration applicants. One suggestion is that only the four numbers entered by the applicant (DL or SID number, issue date of DL or SID, last four digits of SSN, and DOB) be matched.⁹ To decrease the number of eligible voters rejected from the registration system due to a user error, we recommend that the SBOE investigate and implement tools to reduce mistakes in the entering of numbers required to be matched for registration. We suggest the board considers asking the user to review a confirmation page before submitting the application, implementing the use of drop down boxes for dates, or any other mechanism that will reduce user error. We ask the SBOE to balance carefully the need to reduce errors with the need to create a quick and easy process for the user.

ii. **Ensure adequate security measures for protection of personal voting records**

In order for a voter to update her registration online, she will need to access her voter registration information first. We suggest that all personal online voter records be available only on a secure site (e.g. an https site), so that voter information cannot be downloaded *en masse*. The system should also ensure voter information cannot be changed by someone who is not the registered voter. This is necessary to include in the rules, as HB2418 only refers to security for the online registration process, not accessing already existing registration data (amended 10 ILCS 5/1A-16.5(b)).

iii. **The system should be built to have Open Source API that can be inserted into other websites; it should be compatible with national voter registration websites like Rock the Vote, Turbo Vote, and UOCAVA, and it should be mobile friendly**

Integration allows third party organizations to do what they do best - outreach and promotion, driving traffic to the technology - and allows state and local election officials to do what they do best - process voter registration applications. We urge the development of an application programming interface (API) that allows for call and response between the official state tool and the Rock the Vote online voter registration tool or other third party organizations. It should also be compatible with the UOCAVA system (i.e. the Federal Voting Assistance Program website). In 2012, the integration of Rock the Vote's online voter registration (OVR) tool and the official state online

⁸ Social Security Administration, "Weekly HAVV Transactions" (October 9, 2012), available at: <http://www.ssa.gov/open/havv/havv-weekly-oct-09-2012.html> (last viewed June 11, 2013).

⁹ We suggest only the numbers be matched, without any requirement of an *exact* match between the name provided through online registration with a name associated with the number provided, given the high risk of mismatches as stated.

portals enabled Rock the Vote, and their 1100+ active partners, to serve the role as the trusted and relevant messenger, making the voter registration ask and encouraging civic participation, while creating a more efficient and streamlined process for election officials processing applications. A well-crafted API tool should allow transfer of information from the a third-party registration tool (i.e. Rock the Vote) to initiate the registration process with the state's official tool for processing .¹⁰

The rules should require the user interface be compatible with mobile devices to ensure equitable access for all, including younger users and those in low income communities who may have access to the internet via cell phones and not personal computers. Additionally, there should be online tutorials and help systems available to users who have common questions or encounter difficulties.

iv. Engage in adequate testing

To ensure the system is free of errors and user friendly, the SBOE should involve a wide range of test users of different backgrounds, skills, literacy levels, ages, and roles (county official, election volunteer, voters, etc.) in all stages of user interface design, including gathering of usability requirements, design of user interfaces, testing, and evaluation

d) Disclosure and transparency

i. Require that statistics on transmission of voter registration information be made public on a regular basis

Amended 10 ILCS 5/1A-16.5 sets out the procedure for the transmission of online voter registration data. It provides that once an applicant has entered her information into the online registration tool and that information is matched by the SOS, that the SBOE transmit the applicant's information to the relevant local election jurisdiction. The election jurisdiction treats that application like any other mail or in-person application and, once she is approved, will send the name and data back to the SBOE for inclusion in the statewide database.

To track registration effectively, we suggest a rule requiring the posting of registration statistics on the SBOE and local electoral authority websites on a weekly basis. The routine posting of registration statistics will avoid repeated FOIA requests, streamline data collection, and allow election monitoring organizations, including the signees of this letter and the media, to do so in real time.

Suggestions for the statistics to be posted, at a minimum, include: the number of submitted online voter registrations, the number of online registration applications matched or rejected by the SOS relative to each electoral board jurisdiction, the number of registration applications submitted to each local election jurisdiction, and the number of verified registrations added to the statewide registration database from each local election jurisdiction. We also ask that the SBOE track and provide information on the number of online voter registrations submitted in each translated language, as well as general demographic information on the age, gender, and ethnicity of those using the online registration system.

¹⁰ If there are security or authenticity concerns regarding the data submitted by third parties, the system could allow third parties to collect and submit non-personally identifiable information and then the user directly inputs personally identifiable information through the official state online registration system.

2. Explanation of new election laws and rules

- a) Require that information given by the SBOE to local election jurisdictions explaining changes to election rules be publicly available*

There are some important provisions in HB2418 that will affect the way local election jurisdictions conduct elections. Two key changes are to grace period voting and provisional ballot counting. Grace period voting is changed by 10 ILCS 5/4-50, 10 ILCS 5/5-50, and 10 ILCS 5/6-100 to require that a ballot be given to any person registering to vote during the grace period. The public should be able to review the instructions given to local election authorities to ensure that those election jurisdictions that did not follow these procedures in 2012 receive adequate instructions for future elections.

In addition, the rules should establish procedures for counting provisional ballots cast in the wrong precinct as part of the implementation of HB2418. Such procedures as well as the means by which they are communicated to local election authorities should be made public to ensure that local elections authorities are accountable for procedures to a) avoid the casting of provisional ballots unnecessarily and b) count all the votes of all voters eligible for each race.

- b) Set up a review period for the new online voter registration tool, in order to receive public comments and implement changes to the system before final implementation in July 2014*

As with any technology, there will likely be glitches in the online voter registration process. The SBOE is required to produce a report to the General Assembly and Governor by January 31, 2014, and we would like public input to be considered both before and after the report to ensure that problems are identified and remedied as part of a transparent public process.

3. Equity in grace period voting

- a) Require sufficient ballots to be printed prior to grace period voting to ensure all voters can vote during the grace period*

The amended 10 ILCS 5/4-50, 10 ILCS 5/5-50, and 10 ILCS 5/6-100 require that if ballots are available when a person registers in the grace period that they be allowed to vote at the same time. Given that 10 ILCS 5/16-5.01 requires that ballots be available for military and overseas voters by at least 45 days before the election, we suggest that the rules require local election jurisdictions to print sufficient ballots by this time for both military and overseas voters, and voters anticipated to register during the grace period. This will ensure equal treatment of all voters during grace period voting.¹¹

4. Introduction of online requests for absentee ballots

- a) Publicize the introduction of online requests for absentee ballots*

¹¹ Such unequal treatment could potentially violate the Fourteenth Amendment by imposing an unequal burden on the fundamental right to vote. See, for example, *Bush v. Gore* 531 U.S. 98 (2000); *Obama for America v Husted* (6th Cir., October 5, 2012), and *Hunter v Hamilton County Board of Elections* 635 F.3d 219 (2011).

The amended 10 ILCS 5/19-2 allows voters to request absentee ballots online. As with online voter registration, absentee ballot requests must be available in at least the languages set out in 1(a) above and must be accessible to people with disabilities as outlined in 1(b). Additionally, to ensure that voters are aware of this new capability, an email should be sent to any voter for whom the statewide voter registration database includes an email address. If practicable, a letter should be sent to all other registered voters, notifying them when the option becomes available and setting out the relevant deadlines. The rules should also require each county/city clerk or board of election (commissioners) website link to this SBOE site.

5. Fairness in provisional ballot counting

This important change to the statute is intended to ensure that votes cast by Illinoisans seeking to exercise their right to vote, but who erroneously cast ballots in the wrong precincts, are counted if the offices for which they voted would have been on their ballot in their correct precinct. It is important that the SBOE adopt standards to guide how and when these votes are identified and counted.

- a) Require the deadline by which a person who casts a provisional ballot must return to their local election authority with additional documentation to be listed prominently on the provisional ballot receipt*

The amended 10 ILCS 5/18A-15 allows voters seven, rather than two, days to provide additional information to their election authority to ensure their provisional ballot is counted. We suggest that the rules should require that this information be placed prominently at polling places and/or is provided in writing to anyone voting by provisional ballot, to ensure they are aware of the new deadline.

Sincerely,

Asian Americans Advancing Justice Chicago
4753 N. Broadway, Suite 502
Chicago, IL 60640
(773) 271-0899

Chicago Lawyers' Committee for Civil Rights
100 N. LaSalle Street, Suite 600
Chicago, IL 60602
(312) 630-9744

Chicago Votes
114 N. Aberdeen
Chicago, IL 60607
(773) 270-3214

Citizen Advocacy Center
182 N. York St.
Elmhurst, IL 60126
(630) 833-4080

Common Cause Illinois
180 W. Washington, Suite 310
Chicago IL 60602
(312) 372-2422

Equip for Equality
1 West Old State Capitol Plaza, Suite 816
Springfield, IL 62701
(312) 895-7328

Illinois Coalition for Immigrant and Refugee Rights
55 E. Jackson Boulevard, Suite 2075
Chicago, IL 60604
(312) 344-2241

Mexican American Legal Defense and Educational Fund
11 E Adams St., Suite 700
Chicago, IL 60603
(312) 427-0701

Illinois Campaign for Political Reform
325 W. Huron, Suite 315
Chicago, IL 60654
(312) 335-1767

Rock the Vote
1001 Connecticut Ave. NW, Suite 640
Washington, DC 20009
(202) 719-9910

Illinois Public Interest Research Group
328 S. Jefferson St., Ste. 620
Chicago, IL 60661
(312) 544-4433

South Asian American Research and Policy Institute
4753 North Broadway St., Suite 502
Chicago, Illinois 60640
(773) 373-9751

