



December 13, 2018

Mr. Steve Sandvoss, Executive Director
Illinois State Board of Elections
2329 S. MacArthur Blvd.
Springfield, IL 62704

Via Certified Mail (Return Receipt Requested) & E-mail to ssandvoss@elections.il.gov

The Honorable Jesse White
Secretary of State
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Springfield, IL 62756

Via Certified Mail (Return Receipt Requested) & E-mail to Nathan Maddox, Senior Legal Advisor, nmaddox@ilsos.net & Brenda Glahn, Assistant General Counsel, bglahn@ilsos.net

Re: Compliance with Illinois' Automatic Voter Registration Statute and the National Voter Registration Act

Dear Executive Director Sandvoss and Secretary White,

As steering committee members of Just Democracy Illinois, we write on behalf of Asian Americans Advancing Justice | Chicago; CHANGE Illinois; Chicago Votes; Common Cause Illinois; Illinois Coalition for Immigrant and Refugee Rights; and Illinois Public Interest Group Education Fund, Inc., and others similarly situated, to notify you of current and anticipated future violations of Illinois' Automatic Voter Registration statute, 10 ILCS 5/1A-16.1 (hereinafter, the "AVR Statute"), and Section 5 of the National Voter Registration Act, 52 U.S.C. § 20504 et seq. (hereinafter, "NVRA"). Just Democracy Illinois (hereinafter, "Just Democracy") is a broad-based non-partisan coalition of community groups striving to protect and promote the value of every vote, no matter the geographic, racial, ethnic, or party affiliation of the voter. Your offices, as the chief election official and the entity in charge of Driver Services, are responsible for compliance with the NVRA and the AVR Statute. *See* 10 ILCS 5/1A-16.1(a); 52 U.S.C. § 20509. We write to you in hope of an amicable resolution of these violations, which are set forth in detail in this letter. Should such a resolution not be achievable, Just Democracy, with its retained legal counsel Chicago Lawyers' Committee for Civil Rights, Asian Americans Advancing Justice | AAJC, Asian Americans Advancing Justice | L.A., and pro bono counsel, is prepared to move forward with litigation to protect the rights of Illinois voters.

I. Introduction

When the AVR Statute was signed into law in 2017 with unanimous bipartisan support, we all celebrated this important step in improving the fairness and accuracy of our state's voting system. The passage of the AVR Statute signified a promise to streamline the registration process and make registration more accessible—which, if implemented properly, has the potential to add over one million eligible voters to Illinois' voting rolls. With its passage, Illinois was poised to be a trailblazer by promising eligible voters that they would be registered automatically not only when they applied for a state identification card or driver's license, but also when they accessed other



state services and benefits. Because, under the AVR Statute, the Secretary of State's office (SOS) was required to be the first agency to implement AVR, SOS had an opportunity to set an example to other agencies of effective implementation practices.

The passage of the AVR Statute also signaled an opportunity to address longstanding racial disparities in voting access. Just Democracy organizations have years of experience working with voters and observing barriers to voting, particularly with communities of color in Illinois. According to United States Census Bureau data, race disparity in voter registration in Illinois is higher than the national average. Voter registration rates for Black, Hispanic, and Asian citizens lag behind the registration rate for White citizens in the state.¹ In passing the AVR Statute, Illinois government and community leaders recognized that making voter registration automatic could help to narrow gaps in access to voter registration and increase civic engagement.

The power of automatic voter registration to achieve these promises depends on proper and timely implementation. Unfortunately, neither have occurred since the AVR Statute's enactment more than a year ago. If it had, eligible voters would have been automatically registered for the November 6, 2018 election, as well as municipal elections in early 2019. Instead, the SOS has suggested that the "automatic" part of automatic voter registration will not be fully rolled out until next summer. In the meantime, the existing system used by SOS violates both the NVRA and the AVR Statute. And the current plan for the eventual implementation of the AVR Statute does not fix these violations; instead, it compounds them.

Below we detail, *first*, the requirements of Section 5 of the NVRA; *second*, the requirements of the AVR Statute; and *third*, a description of the practices and procedures during driver's license and State identification card transactions that violate and that will continue to violate both the NVRA and the AVR Statute. We remain available to discuss these issues further, but we insist upon concrete, demonstrable changes to ensure compliance with the NVRA and the AVR Statute. As such, this letter serves as written notice of current and pending violations, as required by the NVRA. *See* 52 U.S.C. § 20510.

II. Section 5 of the National Voter Registration Act

Congress enacted the NVRA to increase access to the "fundamental right" of voting by "establish[ing] procedures that will increase the number of eligible citizens who register to vote," 52 U.S.C. § 20501. Under the NVRA, a state's chief election official is responsible for ensuring compliance with Section 5. *See* 52 U.S.C. § 20509. Per the Act, driver's license offices must provide individuals with an opportunity to register to vote simultaneously with their application for a driver's license or state-issued identification card. 52 U.S.C. § 20504(a)(1) & (d); *see also* 52 U.S.C. § 20502(3) (defining "motor vehicle driver's license" to "include[] any personal identification document issued by a State motor vehicle authority").²

¹ United States Census Bureau, Voting and Registration in the Election of 2016, Table 4b, Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2016, *available at* <https://www.census.gov/library/publications/2018/demo/p20-582.html>.

² Hereinafter, any reference to a driver's license refers to a driver's license, other than a temporary visitor's driver's license, or a State identification card issued by the Secretary of State's office. The AVR Statute specifically excludes temporary visitor's driver's licenses. *See* 10 ILCS 5/1A-16.1.



Section 5 of the NVRA mandates that state driver's license or identification card applications or renewal applications shall "serve as an application for voter registration . . . unless the applicant fails to sign the voter registration application." 52 U.S.C. § 20504(a)(1). A voter registration application "shall" be included as part of every application for a state driver's license or ID card. 52 U.S.C. § 20504(c)(1). The voter registration portion of an application "may not require any information that duplicates information" included in other portions of the driver's license or state identification card application, "other than a second signature," which serves as an attestation under penalty of perjury that the applicant is eligible to register to vote. *Id.* § 20504(c)(2) (italics added). The voter registration portion of the application also must include a statement that a declination to register to vote or the office through which the applicant registered to vote will be kept confidential. *See* 52 U.S.C. § 20504(c)(2)(D)(ii).

III. Illinois' Automatic Voter Registration Statute (AVR Statute)

Illinois' Automatic Voter Registration Statute was written to build on the promises of the NVRA. Specifically, as to driver's license and state identification card transactions, the AVR Statute, like the NVRA, shall not require an applicant for a driver's license or State identification card to provide duplicate information in order to complete an application to register to vote or change his or her registered residence address or name. 10 ILCS 5/1A-16.1(d). Also, like the NVRA, driver's license or state identification card applicants will be informed in writing about the qualifications to register to vote in Illinois, the penalties for submitting a false voter registration, and that declining to register to vote will be kept confidential. *See* 10 ILCS 5/1A-16.1(b-10). "If the identification documents provided . . . indicate that he or she does not satisfy the qualifications to register to vote in Illinois at his or her residence address, the application shall be marked as incomplete." 10 ILCS 5/1A-16.1(e).

a. REAL ID Compliant Transactions

The AVR Statute was also written with the REAL ID Act of 2005 in mind. The REAL ID Act is a federal law that imposes additional requirements on state facilities issuing identification cards. Specifically, the AVR Statute requires that a person applying for a REAL ID-compliant driver's license or state identification card who is a United States citizen will be automatically registered to vote, unless that applicant opts out of being registered. 10 ILCS 5/1A-16.1(b). In other words, the default here is that an eligible voter will be registered to vote and an extra step is required only if the person does not want to vote. As such, we refer to this as the "opt-out provision."

Opt-out registration is possible because REAL ID compliance requires the applicant to provide documentation indicating their citizenship status and other documentation that would include their age or birthdate. *See* 6 C.F.R. § 37.11. Therefore, the applicant provides proof of voter eligibility and can attest to voter registration eligibility under both the NVRA and the AVR Statute. Because an applicant already has shared enough information to determine voter eligibility, the AVR Statute requires the eligible applicant to be registered to vote unless they ask not to be.

Under the AVR Statute, like the NVRA, the application for a REAL ID-compliant driver's license or state identification card becomes an application for registering to vote. 10 ILCS 5/1A-16.1(b). Like the NVRA, within this dual-purpose, simultaneous application, the applicant must "attest, by signature under penalty of perjury . . . to meeting the qualifications to register to vote in Illinois . . .



. . .” 10 ILCS 5/1A-16.1(b)(4). This “completed, signed application” then “constitute[s] a signed application to register to vote in Illinois” unless the applicant “affirmatively declined in the application to register to vote. . . .” 10 ILCS 5/1A-16.1(e). In sum, a single signature transaction at a Driver Services facility allows individuals to both apply for a driver’s license or state identification card and register to vote.

b. Non-REAL ID Compliant Transactions

The AVR Statute sets forth different processes for voter registration for both REAL ID-compliant and non-REAL ID transactions; even after REAL ID is implemented, Illinois residents will be able to choose which type of identification documentation to obtain. During non-REAL ID transactions, a driver’s license or state identification card applicant who also wishes to register to vote must attest “by *separate* signature under penalty of perjury, to meeting the qualifications to register to vote in Illinois” 10 ILCS 5/1A-16.1(b-5)(3) (emphasis added). This is unlike the REAL ID-compliant transactions, which require only one signature.

During non-REAL ID transactions, driver’s license applicants are not required to show documentation of citizenship. As such, the AVR Statute requires these applicants to (i) affirmatively choose to register to vote, and (ii) attest under penalty of perjury to meeting voter registration eligibility requirements. *See* 10 ILCS 5/1A-16.1(b-5). In sum, during non-REAL ID transactions where an applicant chooses to register to vote, at least one signature will be required (a signature attesting to voter eligibility), and it is possible that an additional signature would be required (one for the driver’s license or state identification card portion). Because of this extra step—requiring the applicant to affirmatively choose to attest to their eligibility and be registered—we refer to this portion of the statute as the “opt-in provision.”

IV. Violations of Section 5 of the NVRA and of the AVR Statute

a. Current Procedures for Voter Registration (Non-REAL ID Transactions)

Currently, the Secretary of State’s Office has implemented electronic opt-in voter registration. Our review of the current driver’s license application process reveals a multi-step process. First a Driver Services employee asks the applicant for some demographic information, takes the applicant’s photo, and asks the applicant to sign an electronic pinpad. Next, a different Driver Services employee asks the applicant more demographic questions, including the applicant’s date of birth, and inputs that data into an electronic application form. The employee asks the applicant if the applicant wants to register to vote or update their voter registration. If the applicant says yes, then the employee directs the applicant to an electronic pinpad. The pinpad poses two questions: whether the applicant is of eligible age to vote and whether the applicant is a U.S. citizen. The applicant answers “yes” or “no” to both questions by checking the appropriate box. Then the pinpad prompts the applicant for a signature under penalty of perjury that they are eligible to vote. The Driver Services employee then prints out a paper sheet containing all of the applicant’s demographic and other information required for the identification card and asks the applicant to read it, initial some sections, and sign the form if all of the information is true and correct.

This process involves multiple violations of the AVR Statute and of the NVRA. Collection of duplicative information violates both the AVR Statute and the NVRA. *See* 10 ILCS 5/1A-16.1(d);



52 U.S.C. § 20504(c)(2). Nevertheless, the current process requires that applicants share their age multiple times during the application process, both with a Driver Services employee near the beginning of the application process and also later when attesting to voter eligibility.

Similarly, the current requirement that applicants provide three signatures violates the AVR Statute and the NVRA. Under the current system, an applicant must sign their name three times—when their photo is taken, when they are attesting that they are eligible to vote, and on paper when they are verifying the accuracy of information for their identification card. This triplication of information is unnecessary and violates both the AVR Statute and the NVRA. Both the AVR Statute and the NVRA prohibit collection of needlessly duplicative information. *See* 10 ILCS 5/1A-16.1(d); 52 U.S.C. § 20504 (c)(2). Under the AVR Statute, an application for a non-REAL ID compliant identification card that includes a discrete signature attesting to the applicant’s voting eligibility constitutes an application to register to vote. *See* 10 ILCS 5/1A-16.1(e); *see also* 10 ILCS 5/1A-16.1(b-5)(3) (stating that applicants for a non-REAL ID compliant form of identification must attest by separate signature that they are eligible to vote). These provisions allow the SOS to require a second signature but not a third.

b. Proposed Procedures for Voter Registration (REAL ID Transactions)

In August of 2018, the Secretary of State’s Office shared a document called the “REAL ID Automatic Voter Registration Facility Process Flow.” (Referred to herein as the “Process Flow”). *See* Attachment 1. Because we have not received further details, despite repeated requests, this letter focuses on the violations described in the Process Flow.

The “opt out” part of the AVR Statute is the cornerstone of the law and is the provision that would make registration “automatic” for REAL ID transactions. According to the procedures outlined in the Process Flow, SOS plans to require applicants for REAL ID compliant identification documents to provide information about their date of birth three separate times and their citizenship information twice, violating the AVR Statute’s and NVRA’s prohibition on Driver Services facilities from collecting extraneous or duplicative information. *See* 10 ILCS 5/1A-16.1(d) and 52 U.S.C. § 20504 (c)(2). According to the Process Flow, an applicant for a REAL ID compliant ID will be required to share the same basic demographic information with Driver License facility personnel multiple times. First, like the current driver’s license and state identification card transactions, the applicant will need to share their birth date, among other information, with a Driver Services employee. Then, according to the Process Flow, the applicant will provide “acceptable ‘proof’ documents” pursuant to the REAL ID Act, which verify the applicant’s date of birth and their citizenship status. Later, if an applicant wishes to register to vote, the applicant will be directed to an electronic pinpad to “affirmatively answer questions related to being a U.S. Citizen” and to “affirmatively answer” questions related to the applicant’s age.

According to the Process Flow, the SOS plans to continue to implement the triplicate signature requirement that is currently in violation of the AVR Statute and Section 5 of the NVRA. *See* 10 ILCS 5/1A-16.1(d); 52 U.S.C. § 20504 (c)(2). Under the AVR Statute, even two signatures are prohibited for applications for REAL ID-compliant forms of identification. The law requires a consolidated dual-purpose application form, forbids duplication, and specifies that a separate signature attesting to eligibility is only necessary on applications for non-REAL ID licenses. Because a second signature is not necessary on Illinois REAL ID driver’s license or identification



card applications, it is not only forbidden by the Illinois prohibition on duplication, 10 ILCS 5/1A-16.1(d), but also by the NVRA’s prohibition on unnecessary duplication, 52 U.S.C § 20504(c)(2)(A). By requiring more than one signature, the process outlined in the Process Flow document is not automatic, nor is it “opt out.”

V. Violation of AVR Statute Deadline

The SOS was required to implement the AVR Statute by July 1, 2018. 10 ILCS 5/1A-16.9. The SOS has failed to do so. Opt-out voter registration, described in 10 ILCS 5/1A-16.1(b), has yet to be implemented.

VI. Written Notice

We remain open to further dialogue regarding automatic voter registration, and we hope that your offices will accept Just Democracy’s offer of sharing our community experience and expertise to ensure that automatic voter registration is successfully implemented. We have expressed our willingness to work together and desire for community engagement time and time again. Because our previous efforts have gone nowhere, we have no choice but to send this letter, which serves as written notice pursuant to 52 U.S.C. § 20510. We hope the next ninety days lead to a resolution of these violations through demonstrable and concrete steps. If, however, the State elects to continue down its current path, we will have no alternative but to initiate litigation at the conclusion of the waiting period provided for under the NVRA. We look forward to your response and ask that you direct all communications directly to our counsel, Ami Gandhi at Chicago Lawyers’ Committee for Civil Rights.

Sincerely,

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ATTACHMENT 1

Real ID Automatic Voter Registration Facility Process Flow

Pre-flow: The Illinois Secretary of State's Office (SOS) no longer maintains a separate internal Motor Voter database for the purpose of sending voter registration data directly to local election officials. Instead, the SOS sends an electronic file nightly of all the voter registration transactions processed that day directly to the IL State Board of Elections (BOE), and BOE pushes that data to all local election officials statewide via their IVRS system/Web Service.

Illinois State Board of Elections sends the IL SOS a file each week (initialized weekly) reflecting the state's entire Voter Registration database (as maintained by BOE). During the facility process, applicant demographic information is compared against this file, rather than against the previous Motor Voter database that was maintained in-house by SOS.

In Facility:

The DL/ID issuance process begins at an Image Capture Workstation (ICW), where the applicant's photo and signature are captured, to be used for the drivers license/ID Card when manufactured. Limited demographic information (Name, Date of Birth, Gender, Zip Code) is also obtained from the applicant at this point for the purpose of searching for an existing driving record/file, or in the case of a new applicant, to generate a Drivers License/ID number for the applicant, and to pre-populate those demographic fields in the actual application process that follows the ICW step. The ICW is vendor-designed and owned and is not integrated into the rest of the DL/ID application process. Because Illinois has gone to a "photo first" facility processing flow, this signature cannot be used for purposes of voter registration as the voter registration "step" occurs later in the application process, after the applicant has provided/proved their full demographic info, etc.

The applicant then proceeds to a separate station, where the process continues on a SOS designed and owned facility program. After the applicant's full demographic information is completed (the fields above plus SSN and residence address) and this information is verified with acceptable "proof" documents, the facility program compares that applicant information against the weekly updated file from BOE. The AVR enacting statute requires us to make the comparison first and inform the applicant if they are already registered to vote in IL, and if so, at what residence address.

If the applicant has questions about the qualifications to register to vote in Illinois, the penalties for submitting a false voter registration application, or wanting confirmation that declining to vote is confidential and will not affect any services provided by our office, they are directed to signage made available in the facility explaining these issues.

If the applicant is already registered to vote and has submitted documentation of citizenship, but is making a change to their name or address on our system, we will advise the customer that their updated information will be sent to the BOE to update their voter name/address unless they decline to

have the update transmitted to BOE. If the applicant does decline, the applicant will later sign a declination statement on the paper DL/ID application. This information is not transmitted to BOE.

If the applicant is already registered to vote in Illinois and is not making any changes to name/address during the application process, the facility employee bypasses any further voter registration process, and continues the facility process. The applicant will later sign a statement on the paper DL/ID application that indicates they had no changes to their voter registration.

If the applicant is not already registered to vote in IL and presents citizenship documentation, they will be advised that their information will be submitted to BOE to register to vote, unless he/she declines. The applicant is then directed to the voter registration signature pad, located at each facility workstation, where they are required to affirmatively answer questions related to being a U.S. Citizen and that they will be at least 17 years of age on or before the next primary election and at least 18 years of age on or before the next general or consolidated election, and provide a signature. Failure to affirmatively answer the questions or provide a signature will stop the process at that point. Upon affirmatively answering the questions and providing signature on the signature pad, the registration (or change to name/address for existing registration) is written to a computer file that is compiled during the workday and sent to the BOE electronically each evening.

After the voter registration signature pad elements are completed, the system continues with the DL/ID application process. The employee will print the paper driver license/identification card application that is to be read and signed by the applicant. The employee will direct the applicant to read the front and back of the application to make sure all information is correct. Once they have read and understand the application, the applicant will then sign on the line that says applicant signature (signed by ink pen).