

# National Association of Election Officials

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## Reaction to HR1719 – Internet Voter Registration

As the National Association of Election Officials, we specialize in voter registration and election administration issues. Our members are the election professionals within local governments at both the city and county level as well as states. We are a non-partisan, nonprofit organization

Our role is to improve the administration of elections for all voters throughout the nation and to assure that the elections process is fair to all voters regardless of political point of view and regardless of political party.

It is within this context that we offer the House Administration Committee, including both the Democratic and Republican sides, our recommendations and observations concerning HR 1719 concerning Internet voter registration.

We welcome the opportunity to continue to modernize elections. In fact, it has been state and local governments that, without federal legislation, have created most of the innovative and unique solutions that have become commonplace in elections. That is true too of use of the internet for voter information, for serving overseas voters, for locating polling places and for Internet voter registration.

### **Background:**

Following on the lead of Arizona as the first state to offer on-line registration, Washington state and other states (now totaling six states) currently offer Internet registration and the concept is rapidly expanding to others already in the process of developing their own programs.

As an elections community we welcome changes that better serve voters and which can be administered fairly without partisan impact that favors one party over another. Internet voter registration can be a useful process to continue to improve open access to the democratic process in America.

However, online registration must be recognized as only an additional option available to voters. While it will appeal to many voters, we still live in an age when the “digital divide” is still a reality: some segments of society have far more access to computers than others and one of our concerns is that government not place primary emphasis on one method of registration to the detriment of all other methods. We are still developing the capability of Internet voter registration and what does – and does not – work well for voters. Our learning curve on just how it impacts the availability of access to voting is still developing. We are likely to continue to discover how to improve access to all segments of society rather than those initially who have the education, the means, or the technology that allows greater participation.

**Recommendations** for the bill as presented:

Our first set of recommendations is to say we completely agree with the comments of Washington Secretary of State Sam Reed in his letter to the Committee on September 10, 2009:

In support of H.R. 1719, I do have a few recommendations to make it even better legislation.

- **Driver's License or State ID Card.** The online voter registration system *must* be tied to the state driver's licensing agency (DMV or DOL). Without this, there is no signature for the voter registration file. It goes without saying that a sound voter registration system requires a signature from each voter. The online registration systems in Washington and Arizona both link to their state licensing agencies. Because these applicants have previously come into a driver's licensing office in person, online applications are less subject to fraud than paper applications. I recommend inserting the DMV/DOL requirement in place of the reference to "technological security measures" because fraud is not prevented with a piece of technology, but by requiring each user to prove his or her identity.
- **Timing of Registration.** The bill forces every state to adopt a voter registration deadline of 15 days or earlier. This is too close to Election Day and jeopardizes the integrity of the election. For millions of Americans who vote absentee, this is too late. Most states have a 25-30 day deadline. Fifteen days is insufficient time to identify the thousands of duplicate registrations that result each time a person who is already registered submits a new registration application.
- **Prohibiting Cancellation of Invalid Registrations.** For over 15 years, NVRA has stated that once a voter moves and fails to update his or her information through two federal General Elections (a Presidential election cycle), the invalid registration may be cancelled. This bill prohibits states from cancelling registrations that are clearly invalid, even though the person may have moved 15 years ago or died 5 years ago. There is no doubt that this provision will result in inaccurate voter rolls. The provision refers to registrants "on the official list of eligible voters ... to whom a unique identifier has *not* been assigned under the computerized Statewide voter registration list." This sentence makes no sense since the "official list of eligible voters" may only include voters "to whom a unique identifier has been assigned."

While we cannot at this time say whether we support or oppose the legislation, we especially agree with the concerns cited by Secretary Reed on each of the bulleted points.

In addition to Secretary Reed's comments above regarding cancellation of invalid registrations, voter registration numbers largely determine resource allocations. If voters are not removed when they are no longer resident within a jurisdiction, resources (and costs) for such items as mailings, poll workers, voting equipment and ballots become greatly increased.

Many states require minimum resources, e.g., voting machines or ballots, be available based on "eligible" voters. This includes both "active" and "inactive" voters. With the effective repeal, contained in HR 1719, of the NVRA list maintenance provisions, the "inactive" voters will grow to exceed the "active" voters. As election professionals we clearly know that voting is not only about conducting fair and impartial elections, it is also about the "perception of fairness" in elections. If voters perceive that our processes result in more voters on the rolls than the voting age population, then there is little faith that the process protects from the abuse of those who may be inclined to manipulate the election for personal or partisan gain. Please do not ask us to administer a process that is inaccurate by design.

**Safeguards Necessary:** We cannot overstate the *importance* of continuing the processes passed by bi-partisan efforts of both the NVRA and HAVA. List maintenance is a *necessary* process that is important to the future of American democracy because it assures Americans that we pay attention to the details of voter rolls and continued eligibility of voters. We recommend this bill reaffirm the long history of appropriate list maintenance as provided under NVRA.

When HAVA was passed, it was passed with overwhelming bi-partisan support for its provisions of what is necessary for states and local governments to assure voters of their eligibility. This bill needs to reaffirm that Internet registration must be in accordance with the provisions established in HAVA to provide either a drivers license (DL) number OR the last four digits of a Social Security number (and in rare instances, establish another unique identifier if neither DL or state ID card is available). The reason states that have enacted online registration mandate a driver license number is that it is essential to the administration of elections that election officials have a signature on file for each voter. Without a signature, voters will be unable to vote by mail or vote early in many states. Signature comparison is still used to verify authenticity of an application for an absentee ballot and the returned absentee ballot.

These provisions are both *important and necessary* to maintaining a sound voter registration process that protects the integrity of elections in this country. Beyond those concerns, it is expensive to maintain out of date lists, to mail to voters who are not there (because they have moved one or more times between elections), to create and mail sample ballots to ineligible voters or voters no longer living at the given address.

**Cost IS Important:** Make no mistake about it, *cost is important in this economic climate* where employees at state and local levels are being placed on unpaid furlough or are being laid off because local governments don't have enough tax revenues to even pay salaries, let alone administrative costs of new legislative mandates. Congress and state legislatures cannot ignore ongoing costs related to legislative change. The lack of appropriate controls within the legislation means that local governments will be faced with growing voter rolls. As we mentioned above, the allocation of resources, voting equipment, poll workers, sample ballots, and a host of other preparations is dependent on accuracy of voting rolls.

Supplanting email for postal mail carries adverse cost and policy implications. Currently, according to the US Postal Service, 25 to 30 percent of postal recipients are changing addresses in any given year. Email addresses are not more stable than physical addresses, they are changing more rapidly. Additionally, the only email address for many people is their work email. If election officials bombard the email addresses of all the voters with voter registration information and/or "official" elections notices, they will, by necessity of the volume of returned emails, have to hire full time staff to correct email addresses on a continuous basis. With postal addresses, the US Postal Service greatly assists in updating of addresses but with email the entire burden of address updating is left with election officials. And this presumes that there is even a capability of finding or correcting email addresses beyond what the voter may willingly provide; since there is no known single source of such data, it becomes difficult to even comply.

Additionally, when postal mail addressed to a voter is returned as undeliverable—election officials have instant notice that follow-up is necessary to determine if the voter still resides at that location. A change in email address does not evidence a change in residence by a voter. With email addresses, we may or may not know if the email was "delivered". If it is eliminated through an Independent Service Provider as Spam, we may not know it was not delivered; if it is eliminated by the recipients' spam filters, we won't know if it was received. The sending servers utilized by local governments to relay email messages sent to thousands, or hundreds of

thousands (or millions) of voters will also treat mass email as spam and may not alert election officials that all or most of it was blocked.

**Our recommendations:**

- Do not require the collection of email addresses; leave it to the option of voters to provide if they choose. State and local government can choose to do so without Federal legislation.
- Further, do not permit delivery of official *confirmation notices* by email.
- Finally, only permit email delivery of “voter information” as an option for the voter with appropriate notifications to the voter that it may mean missing important election information. We believe firmly that Postal mail, websites with voter information, news media notifications and more traditional methods of voter notification are still valid. We welcome the opportunity to engage newer technologies such as email and Internet but they are not yet as good as they will need to be in order to assure good service to voters. By providing it as an option to the voter for “voter information” only, we can continue to work through the issues related to electronic notifications.
- Email confirmation of residence is virtually impossible: an important safeguard vital to the integrity of elections would be lost.
- Specify that address “verification” and “confirmation” notices continue to be sent by regular mail. Verification by mail of voter residence cannot be conducted by email.

Our reasons:

- ? This raises numerous difficulties:
  - o The same information may not be provided to voters without recorded email addresses creating an “equal protection” problem. There remain significant socio-economic disparities in access to email.
  - o Some states send such election information by mail immediately prior to each election. Others simply provide this type of information as part of each voter’s “voter information” or “voter verification” mailing when they register or make a change to their registration. Would states which have elected to mail such information only when it changes now be required to send repeated mailings for each election?
  - o Based on our experience with similar systems, many voters would not receive these notices due to spam filter blockages of which they may or may not be aware.
  - o Available data indicates that less than 1% of voters voting at their polls on election day in 2008 went to the wrong polling place. Vote by mail, early voting, provisional voting and voting centers have also greatly reduced the reliance on “correct polling place.”
  - o Most states now provide electronic access to this information via their websites. A number of states are experimenting with such electronic transmission with mixed results.
  - o Informing voters of the availability of their registration and election information via a link to a state or local website is recommended as a better alternative than providing voter specific content in an email. This provides greater security and privacy protections and would better facilitate electronic update, by voters, of

outdated information. State and local election officials have invested substantial time and resource into the development and marketing of these voter information websites. Tens of millions of hits to these websites were recorded in 2008 indicating that voters are aware of their existence and are using them.

**Cutoff dates:** We are greatly concerned about the limitation of 15 days for voter registration cutoff. Regardless of how well-intentioned this policy may be, it hinders ability to administer the election. Despite the belief of some that 15 days is adequate, it is a disservice to elections. It places an undue burden on resources to process voter registrations within that time frame. Not only do all the registrations have to be processed during that time but there has to be enough time to allow the election officials time to mail confirmation notices to the address list on the voter registration application to assure that the voter's address is correct and that there is an actual eligible voter at that location. Mailing a voter registration card to the voter is one important step in the checks and balances built into the elections process to assure that we have the correct information and that we establish voter eligibility. We need time to process the applications, then to send the confirmation notice to the address listed by the voter, and the transit time for any returned information. As it was necessary in UOCAVA legislation to provide transit time for ballots and ballot applications, it is also necessary to allow transit time to process voter registrations. In major urban areas, the processing of voters to get them on the rolls can take the 15 days leaving little or no time to allow transit time to assure eligibility prior to an election. Additionally, the extremely short time allowed in HR1719:

- Negatively affects the printing and delivery of accurate poll books, which is paramount to the security of an election; this endangers that process as voters who have not had time to get registration confirmation documents processed may not be in the poll book, thus creating a mountain of provisional ballots. For the voter, the difference is enormous because a qualified ballot is issued if we have the appropriate amount of time versus a provisional ballot which may or may not be counted.
- Negatively affects the states conducting elections by mail as most mail ballots 18-22 days prior to the election. It seriously decreases the amount of time available for transit of a ballot after the registration confirmation is completed.

**Our recommendation:** We recommend the legislation leave the cutoff date for registrations to the individual states themselves where they can best determine the amount of time necessary to meet administrative needs and for determination of eligibility.

**We further recommend for First time voters:** We recommend that the bill specify that voters who are registering by email for the first time within a jurisdiction must meet the individual state's requirements for postal mail registration as compliance with HAVA in the state's processes.

**Privacy For Email Addresses:** We recommend that "electronic mail addresses" referred to in Sec. 4, be excluded from public records – and that they be exempted from FOIA (Freedom of Information Act) requests. Email addresses and their use should be under the control of, and at the option of, the voter; failure to do so may lead to further deterioration of voter participation.

Discussion: As in the case of email addresses for UOCAVA voters, such addresses should be protected from public disclosure for both security purposes and to encourage the use, by the public, of electronic transmission of election information. People are extremely sensitive to abuse of their email addresses, even more so than their telephone numbers, and will readily apply spam filters to unauthorized sources of email as well as voice their complaints, loud and long, to both election officials and elected officials.

**Clarifications Sought:**

- ? Sec. 3 (6)(A) requires election officials to allow **online** updates through the official public website of the election official...*"as well as at any location at which under State law the voter may update the information in person."*

Does this anticipate computer stations in all public registration locations to permit walk-ins to update their registration records online? If so, substantial resources would be required to meet such a requirement. We would recommend ending the sentence following "at any time." This will require public computer terminals in all social service office, all DMV offices, all designated voter registration offices, all election official office etc.

- ? Sec. 5 states that *"the State shall consider an applicant to have provided a 'valid voter registration form' if the applicant has provided the appropriate State or local election official with all of the information necessary to demonstrate that the applicant is eligible to vote in elections for Federal office in the State or local jurisdiction involved."*
- o Is this intended to leave in place or supplant State established eligibility requirements?
  - o What, in addition to the *"information necessary to demonstrate that the applicant is eligible to vote in elections for Federal office"* is envisioned here as being applied by states to deny registrations?
  - o Further, by implication, this appears to suggest that a voter would not be required to use any type of official voter registration form or Web site in order to register to vote. This, in turn, would result in the proliferation of alternate online sites and forms that a voter could use to submit the information needed to register to vote. There would be nothing to prevent political parties, candidates, special interest groups and commercial concerns from establishing such forms and sites. Without conforming state legislation, a "two-tiered" registration system would result: one for federal elections and one for all other types of elections.