

Comments on HR 1719 as revised 12/3/09

Legislative Group Analysis (bi-partisan or non-partisan input)

Tom and Staff:

We will provide you with technical change suggestions below where we think it will help acceptance of and support for you bill within the elections community. We have identified several issues below as raising substantial opposition within the elections community and will welcome the opportunity to work with you to overcome these problems.

In this case, state governments have initiated the changes that prompt Congress to want to accelerate the process. Moving rapidly from state-to-state is the concept of on-line registration and it is likely that most of the states will do this on their own within the next few years, with or without Federal laws to do so. They may do it differently than described in this legislation but it is a trend that will catch on rapidly. They are more likely to do it quicker with Federal legislation – if there are funds actually appropriated (not simply authorized) to make this happen. We recommend that you write in a funding trigger that indicates implementation occurs when Congress appropriates the funds to fully implement the mandates of the bill. State and local government deficits are real. There is no, repeat no money, for State and local governments to do this legislation with its mandated support services, without funding to implement the legislation. Doing so will remove significant opposition that is likely to come from state and local governments based simply on cost factors alone.

Overall impression: the bill has substantial merit. There is clearly support for on-line registration because states have moved to do so and there is considerable local interest too. Our concerns are practical in nature: for us to support legislation, we have to feel that it is workable, manageable and affordable – and that it maintains key elements to insure that Americans fundamental faith in the process continues. As a profession we are committed to fair and accurate elections; our support for – or opposition to – legislation is directly tied to assuring that fairness.

In summary, we believe the bill can gain wide support from the elections community IF it is changed:

- Page 2 Line 1 & 2 (See comments in the section).
- If assurances that records and/or personal information can be verified before applicants are truly eligible to vote:
- See P2 Acceptance of Application comments below; see P2, Confirmation, see comments below;
- See P3 Protection of Security Information and the comments made therein;
- See P4, Signature Requirement and the comments in that section;
- See P5 Comments on Paragraph 2 – Expect the states to actively oppose this as written.
- See P5 Comments on Fail Safe Voting
- Requirements on Page 7 and Page 9 (P7-lines 24 through P8 lines 1 and 2) and on Page 9 Line 17. The language in each of these needs to remove the specific number of days (currently in the bill 15days and 7 days consecutively) to simply state that the deadlines

shall be in accordance with state deadlines. Without these specific changes, we would anticipate that many in the elections community would actively oppose the bill. While one or two states may indicate that they like these deadlines because it is what *their* state does, that is not sufficient reason to accept that as a mandate for all states. The intensity of opposition to these two provisions, coming from both Democratic and Republican election officials, means that a change is necessary in both of these sections to obtain elections professionals support for the legislation. And as long as either of these are in the bill, the overwhelming majority of us will be actively opposed to the bill.

This analysis of the provisions of HR1719 revised is our best unvarnished advice we can give on acceptance of this legislation. The recommendations contained herein are technical comments or concerns that we believe will help the legislation be more implementable.

P2 Line 1&2

Can you give us some language that says reasonable on-line assistance? The language as written can become a quagmire as to whether a state or local government had personnel sitting and waiting to provide assistance. Automated on-line assistance is one matter but increasing FTEs to handle this will kill state support for the idea of on-line registration because it can lead to enormous resources being allocated for compliance.

P2 Lines 6-7 – “Acceptance” of application

If “acceptance” is expressly defined as “receipt,” this provision is merely redundant of the preceding provision. Undefined, however, use of the word “acceptance” may be interpreted to imply that the applicant is registered and eligible to vote. The language of lines 3-5 [Sec 7A(a)(3)], requires online “submission” of the application form. Sec. 7A(b) requires “a notice confirming the State’s receipt of the form,” In light of this, Sec 7A(a)(4) appears redundant and a potential source of ambiguity and litigation.

The point is: when is a registration a registration? In election practice and parlance it is a registration when it is confirmed that the applicant has provided accurate, verifiable information to confirm eligibility in most states. If the expectation is that a registration becomes a registration when the voter files it (or enters it on-line), then it will lead to less support for the legislation. We are back to the concept of “trust but verify” that advocacy groups loved to say about voting equipment. Similarly, it applies here as well.

The states that have introduced on-line registration successfully all have provisions to assure that the registrant can be matched in a DMV file before they complete the registration. This is an active protection that is necessary to make the sure the application is valid and eligible.

P2 Lines 8-14 -- Confirmation of receipt

Systems would need to be set up to automatically generate a confirmation notice, by e-mail or mail, to on-line registrants. Not all on-line registrants will have an e-mail address or want such address used for such notifications. As written, this section requires that such electronic confirmation be sent, with a regular mail notice being a state option. Should provide that an electronic confirmation be sent if the registrant records an e-mail address and requests such notice.

Upon processing of a registration application, such transaction is already required to generate a regular mail notice pursuant to Section 8(a)(2) of the NVRA. And the inclusion of the language in these lines of the bill should not be considered as substitutes for confirmation mailings. For instance, the requirements should include provisions that let election officials start the cancellation process or even outright rejection of the application if the email is returned as undeliverable. Email alone is not enough to assure eligibility but a failed email is likely enough to start a cancellation process. In order for this to even start the cancellation process, NVRA would have to clearly include that as an option. Under current law this would be irrelevant to the initiation of the cancellation process.

P2 Lines 15-24 – Provision of Service in Nonpartisan Manner

Paragraph (1) is unenforceable. Paragraph (2) could be interpreted that even party preference selection online is prohibited. We think you may need to consider assurances of bi-partisan displays rather than no ... Paragraph (3) is an invitation to litigation.

No comparable provisions are contained in the NVRA with respect to other methods of registration except with respect to voter registration agency personnel who are providing voter registration services. [NVRA Sec. 7(a)(5)] An online registration application is more comparable to a mail registration application which is governed by NVRA Sec. 9.

P3 Lines 1-6 – Protection of Security of Information -- concerns were expressed that there appeared to be no sanction against someone “creating” a fraudulent registration. While some of this may be covered by Sec. 13 of the NVRA we need specific language that addresses fraudulent registrations and penalties for such actions.

P3 – Telephone based systems -- No comment.

P4 Line 5 – P5 Line 3 – Signature requirement

Needs to explicitly require that signatures available in other databases be authorized by the voter for use in voter registration. Language does not authorize the use of on-file voter signatures for registration purposes. Without specific authorization, privacy restrictions on state databases could prevent the sharing of signatures even though such signatures are “contained in” databases covered by the Act.

P5 -- Paragraph (2)

While appearing similar to Sec. 303(b)(2) of the HAVA, **this section creates a very different, and, from an election integrity standpoint, unacceptable set of criteria.**

Provides that if a registrant's signature is not available in any state database prior to voting, the registrant may provide the signature at the time of voting in person (Ai) or by mail (Aii).

Lines 15-16 -- Regarding by-mail ballots, no voters' ballot should ever be signed. Signatures are generally provided on a "ballot return envelope."

Further provides that if a person fails to meet the requirement of (A)(i), they may cast a provisional ballot. However, the only way a person can fail to meet the requirement of (A)(i) is by their own refusal to provide their signature when they appear to vote. Since a provisional ballot also requires a signature, this option seems to be absurd. The result of providing a provisional ballot to a person who refuses to sign is that their ballot will not be counted which is the equivalent of no ballot being cast.

Regarding providing an original signature with a ballot by mail, many states verify ballots by mail by way of signature comparison to the original voter registration. If there is no signature on file with which to compare the one provided with the ballot, this verification process breaks down. Again, as above, to "count" an unsigned by-mail ballot "as a provisional ballot" is a logical absurdity.

In both cases of "Fail Safe Voting," the authorization of a "provisional" ballot may create a fictitious ballot or it may create the untenable prospect of persons voting without ever providing a signature contrary to all other registration requirements of the NVRA (and virtually every state law). The point here is that integrity of the process is totally lost as written in this provision of the bill. Again, we have encountered substantial concern from election officials regarding the prospect of registrations with no prior signature. We are concerned that such opposition appears intense enough to jeopardize support for the bill within the elections' community.

P7 Lines 4-10 -- ID required for on-line registrants

Sec. 2(c) of the bill makes voters who register online subject to the same ID requirements as those who register by mail [HAVA Sec. 303(b)]. This provides equal treatment for all persons who do not register in-person and provides an important means of verification and measure of security to the bill.

P7-8 – 15 day deadline preserved [See preamble comments on our first page]

This was addressed at length in our original comments which remain relevant. With the expanded use of vote-by-mail and early voting, "election day" is rapidly becoming an archaic concept. The growth of early voting, in particular, mitigates in favor of preserving an adequate preregistration deadline. Further, administratively, a 15 day deadline provides inadequate time for many jurisdictions to complete the confirmation process authorized by NVRA Sec. 8(b).

Thus, by default, this confirmation process would fail to meet the “uniformity” requirement of that section. Confirmation is important to the integrity of the elections process and the overwhelming majority of states recognize it as a vital necessity.

P8 Line25 – P9 Line 1 – Online updates available at all in-person registration locations

We would recommend striking “as well as at any location.” The “as well as at any location” requirement appears to require public computer terminals in all social service office, all DMV offices, all designated voter registration offices, all election official offices, etc. If a person is at a location where they can update their registration information in person, requiring public on-line access at these locations would generate a huge and redundant expense. The fiscal implications of this for state and local governments are gigantic because it at least implies that some sort of device or computer or terminal must be provided to achieve this. Even if Congress says it will provide the funds to do this, the impractical requirement of establishing *and maintaining* these would be enormous.

P9 Lines 11-19 – Processing updated information [again, this section creates such significant opposition to the bill that changes must be made for support of the bill. Again, we recommend that this deadline conform with deadlines established in each state.]

New provision establishing a 7 day cutoff for processing registration updates, like the 15 day cutoff for new registrations, is administratively infeasible. No confirmation process could be executed within this timeframe. Such confirmation procedures are necessary both to verify the validity of the voter’s information and to help protect the voter from fraudulent changes to his/her registration record. In addition, election day registration books are often generated more than 7 days prior to election day. Address changes or other updates made barely a week prior to an election, would not be recorded on the election day voting roster even if recorded in the central voter registration database.

Many states simply allow election day registration changes (principally address changes) as well as enabling same-day-registration or registration changes during early voting. The imposition of a separate set of federally mandated timetables for these activities would complicate the process unnecessarily, requiring wholesale changes in voter registration system programming and would accomplish little to enable voter participation.

P10 Lines 8-9 – E-mail notification upon revision

Again, this section requires that such electronic confirmation be sent, with a regular mail notice being a state option. Again, not all on-line registrants will have an e-mail address or want such address used for such notifications. Should provide that an electronic confirmation be sent if the registrant records an e-mail address and requests such notice. Any such transaction would already generate a regular mail notice pursuant to Section 8(a)(2) of the NVRA. The point, once again, is that Confirmation of information is critical to voter registration to confirm eligibility. Email cannot provide this assurance.

P10 Lines 12-13 Effective Date – 2012

The effective date for requiring the availability of internet voter registration pursuant to Sec. 2 of the bill is January 1, 2016. For purposes of program development, there is little difference between creating a system for new registrations and one for changes to existing registrations. Effective dates should coincide.

P11-Lines 5-8. What is meant by your notes on dropping removal provisions? Please explain.

P12-13 -- Prohibiting use of electronic mail address for other than official purposes—Good

P14 – Sec. 5

The new subsection “(k)” of Section 8 of the NVRA added by this section is extremely ambiguous. It could be interpreted to supersede other confirmation and verification requirements of the NVRA as well as otherwise valid requirements of state law. The intent of this provision should be clarified or it should be dropped. At the risk of over repeating, confirmation of information is critical to the process. The saying initiated by some in support of voting reform language of other bills is “trust, but verify.”