



OFFICE OF THE ATTORNEY GENERAL
STATE OF ILLINOIS

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FILE NO. 05-008

ELECTIONS:
Compliance with the
Help America Vote Act

Mr. Steven S. Sandvoss
General Counsel
Illinois State Board of Elections
1020 South Spring Street
P.O. Box 4187
Springfield, Illinois 62708

Dear Mr. Sandvoss:

I have your letter inquiring whether Public Act 93-1071, effective January 18, 2005, which requires that a centralized, statewide voter registration list be compiled from the voter registration databases of local election authorities, is consistent with title III, section 303 of the Help America Vote Act of 2002 (HAVA) (42 U.S.C.A. §15483 (West Supp. 2005)). For the following reasons, it is my opinion that Public Act 93-1071 is consistent with title III, section 303 of HAVA.

BACKGROUND

HAVA

HAVA (42 U.S.C.A. §15301 *et seq.* (West Supp. 2005)) establishes uniform standards for voting processes in Federal elections and provides states with financial assistance to secure voting systems that ensure the integrity and efficiency of the voting process. Included in the new standards is a requirement that each state develop and maintain a single, statewide list of registered voters. Specifically, title III, section 303 of HAVA provides, in pertinent part:

(1) Implementation

(A) In General

Except as provided in subparagraph (B), *each State, acting through the chief State election official, shall implement, in a uniform and nondiscriminatory manner, a single, uniform, official, centralized, interactive computerized statewide voter registration list defined, maintained, and administered at the State level that contains the name and registration information of every legally registered voter in the State and assigns a unique identifier to each legally registered voter in the State (in this subsection referred to as the "computerized list"), and includes the following:*

(i) The computerized list shall serve as the single system for storing and managing the official list of registered voters throughout the State.

(ii) The computerized list contains the name and registration information of every legally registered voter in the State.

(iii) Under the computerized list, a unique identifier is assigned to each legally registered voter in the State.

(iv) The computerized list shall be coordinated with other agency databases within the State.

(v) Any election official in the State, including any local election official, may obtain immediate electronic access to the information contained in the computerized list.

(vi) All voter registration information obtained by any local election official in the State shall be electronically entered into the computerized list on an expedited basis at the time the information is provided to the local official.

(vii) The chief State election official shall provide such support as may be required so that local election officials are able to enter information as described in clause (vi).

(viii) The computerized list shall serve as the official voter registration list for the conduct of all elections for Federal office in the State. (Emphasis added.)

The list must be maintained according to specified standards (42 U.S.C.A. §15483(a)(2) (West Supp. 2005)), and registration information must be verified against state driver's license records, Federal social security records, and state felony and death records (42 U.S.C.A. §15483(a)(2), (5) (West Supp. 2005)). No voter registration application may be accepted or processed by a state unless the application includes a driver's license number or the last four digits of the voter's social security number, if the applicant does not have a driver's license. 42 U.S.C.A. §15483(a)(5) (West Supp. 2005). Applicants having neither number must be assigned a unique identification number. 42 U.S.C.A. §15483(a)(5)(A)(ii) (West Supp. 2005). Illinois must comply with the requirements for implementing a computerized, statewide voter registration list by January 1, 2006. 42 U.S.C.A. §15483(d) (West Supp. 2005).

Once a statewide voter registration list is created, HAVA is primarily concerned with ensuring the maintenance, accuracy and verification of the list on an on-going basis. The members of Congress who shepherded the legislation through conference committee repeatedly emphasized in floor debate leading to final passage that the purpose of the statewide list is to ensure the accuracy of registration. Moreover, the intent of the legislation is to end multiple registrations by one person, the registration of deceased persons, and the registration of fictitious persons or household pets. 148 Cong. Rec. S10,413-19 (daily ed. Oct. 15, 2002) (statements of Sen. Dodd and Sen. McConnell); 148 Cong. Rec. S10,488-93, S10,496-97, S10,501-09 (daily ed. Oct. 16, 2002) (statements of Sens. Bond, McConnell, Durbin, Kennedy and Dodd); 148 Cong. Rec. H7837 (daily ed. Oct. 10, 2002) (statements of Rep. Ney). Although opponents of HAVA expressed concern that requirements for documentation establishing identity would disenfranchise some voters, there was no disagreement regarding the legislation's fundamental purpose of ensuring the accuracy of registration lists on an on-going basis. 148 Cong. Rec. S10,499 (daily ed. Oct. 16, 2002) (statements of Sen. Clinton). HAVA, however, does not mandate procedures for states to follow in compiling or implementing the statewide list. Rather, the Federal law leaves the "specific choices on the methods of complying with the requirements of this subchapter" to the states' discretion. 42 U.S.C.A. §15485 (West Supp. 2005).

Public Act 93-1071

The General Assembly enacted Public Act 93-1071, effective January 18, 2005, to satisfy the requirements of section 303 of HAVA regarding the compilation of a statewide voter

registration list. Public Act 93-1071 was the initiative of local election authorities, which brought forth the proposal because of disagreements with the State Board of Elections (the Board) over the proper interpretation of HAVA's requirements for a statewide voter registration list. During the Senate debate on House Bill 640 (which, as Public Act 93-1071, effective January 18, 2005, enacted the provisions in question), Senator Haine, the Bill's sponsor, noted that the intent of the legislation was to ensure that local election authorities had some control over the statewide voter registration list, as opposed to the Board being primarily responsible for collecting and entering voter registration applications into the statewide database. Remarks of Sen. Haine, November 17, 2004, Senate Debate on House Bill No. 640, at 55-56.

Public Act 93-1071 added new section 1A-25 to the Election Code (the Code) (10 ILCS 5/1A-25 (West 2004), as amended by Public Acts 94-136, effective July 7, 2005, and 94-645, effective August 22, 2005), providing that the statewide voter registration list be compiled from the voter registration databases of each election authority and that all new voter registration forms and applications be processed through the local election authorities. Section 1A-25 currently provides:

Centralized statewide voter registration list. The centralized statewide voter registration list required by Title III, Subtitle A, Section 303 of the Help America Vote Act of 2002 shall be created and maintained by the State Board of Elections as provided in this Section.

(1) The centralized statewide voter registration list shall be compiled from the voter registration data bases of each election authority in this State.

(2) All new voter registration forms and applications to register to vote, including those reviewed by the Secretary of State at a driver services facility, shall be transmitted only to the appropriate election authority as required by Articles 4, 5, and 6 of this Code and not to the State Board of Elections. The election authority shall process and verify each voter registration form and electronically enter verified registrations on an expedited basis onto the statewide voter registration list. All original registration cards shall remain permanently in the office of the election authority as required by this Code.

(3) The centralized statewide voter registration list shall:

(i) Be designed to allow election authorities to utilize the registration data on the statewide voter registration list pertinent to voters registered in their election jurisdiction on locally maintained software programs that are unique to each jurisdiction.

(ii) Allow each election authority to perform essential election management functions, including but not limited to production of voter lists, processing of absentee voters, production of individual, pre-printed applications to vote, administration of election judges, and polling place administration, but shall not prevent any election authority from using information from that election authority's own systems.

(4) The registration information maintained by each election authority shall be synchronized with that authority's information on the statewide list at least once every 24 hours.

To protect the privacy and confidentiality of voter registration information, the disclosure of any portion of the centralized statewide voter registration list to any person or entity other than to a State or local political committee and other than to a governmental entity for a governmental purpose is specifically prohibited except as follows: subject to security measures adopted by the State Board of Elections which, at a minimum, shall include the keeping of a catalog or database, available for public view, including the name, address, and telephone number of the person viewing the list as well as the time of that viewing, any person may

view the list on a computer screen at the Springfield office of the State Board of Elections, during normal business hours other than during the 27 days before an election, but the person viewing the list under this exception may not print, duplicate, transmit, or alter the list.

ANALYSIS

Public Act 93-1071's Consistency with HAVA

You have inquired whether Public Act 93-1071, which requires that the statewide voter registration list called for in HAVA be compiled from the databases of local election authorities, is consistent with section 303 of HAVA, which mandates that each state create a "single, uniform, official, centralized, interactive computerized statewide voter registration list[.]" The Board apparently is concerned that Public Act 93-1071 is inconsistent with HAVA's mandate of a centralized voter registration list because the Illinois law envisions that the statewide list will be populated with data sent to the Board by local election authorities, and that such an approach provides no independent means for the Board to verify either the accuracy or the timeliness of its official database.

It is my opinion that the creation of a statewide voter registration list by compiling registration information from local lists is an acceptable alternative and one that was contemplated in HAVA. Although HAVA mandates that states implement a "single, uniform, official, centralized, interactive computerized statewide voter registration list[.]" the statute also recognizes the central role of local election authorities in the collection and verification of voter registration information and clearly embraces that role in the creation and management of the

statewide database. Among the requirements of HAVA that define the role of the local election authorities is the mandate that: (1) local election offices have immediate electronic access to the information contained in the computerized list (42 U.S.C.A. §15483(a)(1)(A)(v) (West Supp. 2005)); (2) all voter registration information obtained by any local election official be electronically entered into the database at the time the information is provided to the local election official (42 U.S.C.A. §15483(a)(1)(A)(vi) (West Supp. 2005)); and (3) the chief state election official provide support so that local election officials are able to enter voter registration information (42 U.S.C.A. §15483(a)(1)(A)(vii) (West Supp. 2005)). Far from mandating that the Board assume primary responsibility for the collection and entry of voter registration information, HAVA specifically contemplates a system in which local election authorities have immediate access to the database for the purpose of both obtaining information from and inputting voter registration information into that system. It is well established that where the statutory language is plain, it should be enforced according to its terms. *See BedRoc Ltd., LLC v. United States*, 541 U.S. 176, 183, 124 S. Ct. 1587, 1593 (2004); *Lamie v. United States Trustee*, 540 U.S. 526, 534, 124 S. Ct. 1023, 1030 (2004); *see also State Board of Elections v. Sheldon*, 354 Ill. App. 3d 506, 512 (2004). Thus, it is my opinion that Public Act 93-1071 is entirely consistent with and complements title III, section 303 of HAVA.

My conclusion that Public Act 93-1071 complies with HAVA finds additional support in the Federal guidelines on implementing HAVA's requirement for a statewide voter registration list. Although the details of implementing HAVA's requirement of a statewide voter

registration list were left to the states, Congress also authorized the United States Election Assistance Commission (the Commission), an independent bipartisan commission created under HAVA, to act as a national clearinghouse and information resource regarding Federal election administration and to assist states in meeting the requirements of HAVA by adopting voluntary voting system guidelines interpreting HAVA's provision concerning the creation of a statewide voter registration list. *See* 42 U.S.C.A. §§15321, 15322, 15361 (West Supp. 2005). In August 2005, the Commission issued the "Voluntary Guidance on Implementation of Statewide Voter Registration Lists" (the Guide) to assist states in understanding and implementing HAVA's standards regarding the statewide voter registration list and to encourage state and local election officials to work together to define and assume their appropriate responsibilities for meeting HAVA's requirements. 70 Fed. Reg. 44593, 44594 (August 3, 2005). The Guide discusses computerized statewide voter registration lists and provides:

A computerized statewide voter registration list is a single, uniform, centralized, interactive computerized voter registration list that is technically and functionally able to perform tasks described in Sections 303(a)(1)(A)(i) through 303(a)(1)(A)(viii) of HAVA. In essence, it is the one official list of lawfully registered voters within a State for all elections for Federal office and the only lawful source of Federal registration information for poll books or precinct registers on Election Day. The list must be centrally managed at the State level in a uniform and non-discriminatory manner. *The list must be computerized and technically capable of providing immediate electronic access to appropriate State and local election officials; assigning unique identifiers; affording local officials expedited entry of voter registration information; allowing voter registration information to be verified with other State, local and Federal agencies; providing a means for list maintenance; tracking appropriate voting history;*

and ensuring appropriate system security. (Emphasis added.) 70
Fed. Reg. 44594 (August 3, 2005).

In developing database systems that meet HAVA's requirement for generating a single, uniform, voter registration system, the Guide states:

While HAVA requires that both State and local election officials have immediate access to the voter registration list, ultimately the State must direct the degree of access and control any one official or class of officials have over the list's data.

A State database hosted on a single, central platform (*e.g.*, mainframe and/or client servers) and connected to terminals housed at the local level (often referred to as a "top down" system) is most closely akin to the requirements of HAVA. However, other database systems may also meet the single, uniform list requirement as long as they function consistent with the general rule stated, above.

For example, *a State database that gathers or uploads its information from local voter registration databases to form the statewide voter registration list (often referred to as a "bottom up" system) may serve to meet the single, uniform list requirement.* This is a [*sic*] true as long as the State database, the data and the data flow are defined, maintained, and administered by the State. Thus, the State database must house the only official list of registered voters; establish interactive and compatible software and user protocols that allow each local jurisdiction to seamlessly transfer data to and from the State; require local databases to routinely upload or electronically send registration information to the State; and ensure that the data that forms the official voter registration list is regularly downloaded or otherwise sent electronically to local officials so that they may have immediate access to the entire official list. It is important to understand that in a "bottom up" system the official statewide voter registration list is that list hosted on the State's database and downloaded to local jurisdictions. The list remains static until the State electronically provides the next, updated version. Registration information held solely in a local database is not a part of the official registration list

until it is electronically sent to the State and added to the official list. States must require local information to be uploaded and the official statewide voter registration list to be downloaded on a regular basis. In this way, both State and local election officials will have immediate, real time access to the statewide voter registration list. (Emphasis added.) 70 Fed. Reg. 44595 (August 3, 2005).

The Guide also explains that, at a minimum, the statewide voter registration list must be synchronized with local voter registration databases at least once every 24 hours to assure that the statewide voter registration list contains registration information for all legally registered voters in the state and that local election officials throughout the state have immediate electronic access to the official list. 70 Fed. Reg. 44595 (August 3, 2005). Moreover, the Guide suggests methods that ensure the proper coordination of the statewide voter registration list with voter registration agencies, motor vehicle authorities, the Social Security Administration and death and felony conviction records to assure that the statewide voter registration list is current. 70 Fed. Reg. 44595-96 (August 3, 2005).

Other informal analyses of Illinois' law also support my conclusion. For example, Michael Kitchner, president of the Illinois Association of County Clerks and Recordors, wrote to the Commission requesting an opinion concerning whether new section 1A-25 of the Code, as added by Public Act 93-1071, was consistent with HAVA. Juliet E. Thompson, General Counsel for the Commission, responded by letter dated February 14, 2005, that "[b]ased upon my review of the section of the bill which you identified, I find that the provisions of that section are consistent with HAVA." Additionally, in response to questions posed by various local election

officials, including the DuPage County Election Commission and the Cook and Mason County Clerks regarding whether HAVA permits local election authorities to input voter registration data into the statewide database, the Department of Justice noted that HAVA does not mandate how data must flow into the database, except to require that information obtained by local election officials be electronically entered on an expedited basis,¹ and that HAVA does not prohibit the creation of a "uniform, centralized system pulling its voter registration data from a variety of different sources * * * into the single centralized registration system."²

The Board's Proposed "Hybrid" System

Notwithstanding its concerns about Public Act 93-1071, the Board is advocating that a "hybrid" approach be adopted in order to comply with both Public Act 93-1071 and HAVA. Under this hybrid approach, the registration applications generated by State agencies will be processed by the Board, a process whereby the Board's database would be segmented to be distributed to the local election authorities. The remainder of the registration applications-- that is, those that are locally generated--will continue to be processed initially by the local election authorities, who would then forward the application information to the Board to further populate the Board's database. This approach contemplates that the data originating with the

¹Letter of June 7, 2004, from Jan Kravolec, Deputy Director of Elections, Cook County Clerk's Office, to Hans A. von Spakovsky, Counsel to the Assistant Attorney General, Civil Rights Division, United States Department of Justice, summarizing their discussions in a May 27, 2004, telephone conference call regarding establishing a statewide voter registration list which will be compliant with HAVA.

²Letter of September 8, 2003, from Hans A. von Spakovsky, Counsel to the Assistant Attorney General, Civil Rights Division, United States Department of Justice, to R. Doug Lewis, Executive Director, The Election Center, concerning the design of statewide computerized voter registration lists.

Secretary of State's office and various social service agencies will be transmitted directly to the Board, instead of to the local election authorities. The local election authorities, having immediate access to the Board's database, would determine if the applicant is qualified to register in their jurisdiction. If such a determination is made, the registration application would be entered into the database of the local election authority and the Board. The Board further suggests that the local election authorities may enter into an agreement providing for the simultaneous transfer of voter registration applications to them, as well as to the Board.

Public Act 94-645, effective August 22, 2005, specifically prohibits the hybrid system envisioned by the Board and amends section 1A-25 of the Code to provide that:

(2) All new voter registration forms and applications to register to vote, including those reviewed by the Secretary of State at a driver services facility, *shall be transmitted only to the appropriate election authority as required by Articles 4, 5, and 6 of this Code and not to the State Board of Elections.* The election authority shall process and verify each voter registration form and electronically enter verified registrations on an expedited basis onto the statewide voter registration list. All original registration cards shall remain permanently in the office of the election authority as required by this Code. (Emphasis added.)

Thus, the hybrid system envisioned by the Board is precluded by Public Act 94-645.

The Board's proposed hybrid system also appears to conflict with the Code, the National Voter Registration Act of 1993, and the Board's regulations. The Code provides that county clerks and boards of election commissioners, in cities which have such, shall have full charge and control of the registration of voters within each county or city. *See* 10 ILCS 5/4-4, 5-4, 6-28, 6-49, 6-49.1 (West 2004). Additionally, current section 1A-25 provides that voter

registration forms are to be transmitted to the appropriate election authority (the county clerk or the board of election commissioners) for processing and verification. The National Voter Registration Act of 1993 requires that states provide individuals with the opportunity to register to vote at the same time that they apply for or renew a driver's license and mandates that the state forward the completed application to the appropriate state election official. 42 U.S.C.A. §1973gg-3 (2003). The National Voter Registration Act of 1993 also requires states to offer voter registration opportunities at all offices that provide public assistance and all offices that provide state-funded programs primarily engaged in providing services to persons with disabilities. 42 U.S.C.A. §1973gg-5 (2003). A completed application must be forwarded to the appropriate state election official. 42 U.S.C.A. §1973gg-5 (2003). The Board's regulations implementing the National Voter Registration Act of 1993 provide that each election authority (defined as a city board of election commissioners, a county board of election commissioners, or a county clerk in counties not under the management of a county board of election commissioners) is to accept and process voter registration applications tendered to it by the Secretary of State's office or other designated agencies. 26 Ill. Adm. Code §§216.20, 216.30 (Conway Greene CD-ROM June 2003). Each voter registration application accepted must be processed by the election authority according to the provisions of the National Voter Registration Act of 1993. 26 Ill. Adm. Code §216.30(c) (Conway Greene CD-ROM June 2003). The Board and all other persons accepting voter applications are encouraged to transmit executed applications to election authorities within set time frames. 26 Ill. Adm. Code §216.70 (Conway

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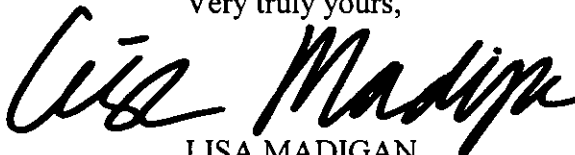
Greene CD-ROM June 2003). Thus, under the Code, the National Voter Registration Act of 1993, and State rules implementing the Federal law, voter registration applications accepted by the Secretary of State are to be transmitted to the local election authority for processing.

Therefore, the hybrid system advocated by the Board would conflict with the provisions of the Code, the National Voter Registration Act of 1993, and the regulations adopted by the Board.

CONCLUSION

For these reasons, it is my opinion that Public Act 93-1071 is consistent with title III, section 303 of HAVA, but that the hybrid system envisioned by the Board is not. Although HAVA does not prescribe a particular model for satisfying its requirements, it does describe, in detail, the features that the computer database must ultimately possess. The end result must be a system that meets the description and capabilities contained in section 303(a) of HAVA, as well as maintenance, security, accuracy and verification standards described in the other parts of the Federal law. A database that does not have these capabilities would violate HAVA. Although Public Act 93-1071 is consistent with HAVA, it does not specify how the Board is to maintain the database or verify the accuracy of information contained on the database. Thus, the Board, in developing the statewide database, must ensure compliance with these principles.

Very truly yours,

A handwritten signature in black ink, appearing to read "Lisa Madigan". The signature is fluid and cursive, with the first name "Lisa" written in a larger, more prominent script than the last name "Madigan".

LISA MADIGAN
ATTORNEY GENERAL