



AMERICAN CIVIL LIBERTIES UNION

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January 7, 2020

Molly Widen
Office of the Secretary of State
Lucas State Office Building, First Floor
321 East 12th Street
Des Moines, Iowa 50319

Delivered by email to: molly.widen@sos.iowa.gov

Re: Comments on ARC 4804C

Ms. Widen:

These comments are made on behalf of the American Civil Liberties Union of Iowa (ACLU of Iowa) and the American Civil Liberties Union (ACLU).

The ACLU is a nationwide, nonprofit, nonpartisan organization with approximately 1.75 million members, dedicated to protecting the fundamental liberties and basic civil rights guaranteed by the U.S. Constitution and our nation's civil rights laws. ACLU of Iowa is the statewide affiliate of the national ACLU, with thousands of members throughout the state. ACLU of Iowa works in the Iowa legislature, in the courts, and through public education and advocacy to assure the rights of everyone in Iowa.

These comments pertain to ARC 4804C: the published Notice of Intended Action proposing rule making related to felony conviction verification and providing an opportunity for public comment.

The proposed rules must amend Chapter 28, "Voter Registration File (I-VOTERS) Management," of the Iowa Administrative Code in a manner which, consistent with the laws and constitutions of the state of Iowa and the United States, protects the voting rights of all eligible voters.

At the outset, the ACLU of Iowa and the ACLU fully supports the clarity provided specifically by the last sentence of proposed rule 28.4(2), which requires the

Secretary to verify conviction information provided to Secretary before adding an individual to the list of people convicted of a felony. Ensuring the accuracy of the list is properly the responsibility of the Secretary and is necessary to ensure that every eligible Iowa voter is able to exercise their right to vote and aren't striped of their right because of a mistake by the State of Iowa.

We recommend that the Secretary revise ARC 4804C to:

(a) further clarify the process by which the state registrar “shall collaborate with the judicial branch to obtain documentation about felony convictions”;

(b) provide notice to voters the Secretary determines have been erroneously removed from Iowa’s voter rolls.

1. Proposed rule 28.4(2) should expand on the process through which the Secretary and the Judicial Branch will collaborate “to obtain documentation about felony convictions in a timely, efficient fashion.”

The stated intent of ARC 4804C is to “clarify the roles of the Iowa Judicial Branch, the Secretary of State’s office and county auditors regarding the felon database.” To that end, proposed rule 28.4(2) instructs the state registrar and judicial branch to “collaborate” to document felony convictions “in a timely, efficient fashion.”

The roles of the state registrar and judicial branch in ensuring the integrity of Iowa’s “felon database” are presently ambiguous, as highlighted by ARC 4804C’s stated goal of “clarifying” them. But proposed rule 28.4(2), as proposed, does not meaningfully define a process through which the state registrar and judicial branch are to “collaborate” in order to achieve this goal.

The proposed rule does not, for example, outline or describe how or when the process of “obtaining documentation” should commence. Nor does the rule designate specific personnel in either the judicial branch or the Secretary’s office to liaise between agencies or the procedures they will follow—for example, as the rule later does in directing *county* registrars to contact the clerk at the court where a voter’s conviction was apparently lodged if they “have questions.”¹ Notably, it also fails to specify a target timeline or period that the state registrar and judicial branch should strive for to obtain documentation in a “timely” and efficient manner.

These omissions are deeply problematic. Not only do they fail to clarify the respective roles of two government offices in a task affecting the fundamental rights of thousands of Iowans, they also obscure the proposed review process from the public, undermining the accountability that Iowa courts have said is “at the very

¹ See Proposed Rule 28.4(3).

heart of democratic government.”² We believe that the proposed rule should more thoroughly describe the procedure and scope of the collaborative process between the state registrar and the judicial branch, and encourage the Secretary to do so by amending ARC 4804C accordingly.

In the meantime, we understand that a revised, “six-step verification process” could still be forthcoming as the result of the Secretary’s engagement with the judicial branch to ensure information provided by the courts is accurate.³ If so, we are hopeful that the new process will address these concerns and look forward to reviewing and commenting on any additional procedures as they are published.

2. The proposed rulemaking should be amended to ensure that proper notice is given to voters incorrectly removed from the list of persons with felony convictions provided by the Iowa Judicial Branch.

We are encouraged by the Secretary’s commitment to thoroughly review the Iowa database of people with felony convictions to ensure that “eligible voters are not deterred from casting ballots.”⁴ We also welcome the provisions of ARC 4804C that prospectively provide for notice to be sent to voters identified as persons who have committed a felony before action is taken on their registration (i.e., proposed rule 28.4(3)). Such notice is key to an NVRA-compliant voter list maintenance system.⁵

Still, we urge the Secretary to commit to notifying voters it identifies as *already* having been mistakenly removed from voter lists—even if the office sets out to correct these errors. As you know, recent surveys of ineligible voter lists by the press continue to confirm erroneously-identified voters. For example, as of December 2019, more than four percent of entries in Carroll County’s list were incorrect.⁶ Because erroneously-purged voters will rarely have reason to think that they have been taken off voter lists, it is imperative that these voters be alerted to any problem well before they show up to vote on Election Day. That way, those voters can also ensure that their registration is current and active as they set out to cast a ballot.

² *Behm v. City of Cedar Rapids*, 922 N.W.2d 524570 (Iowa 2002); *see also id.* (“If democracy is to function, it is essential that . . . the public may hold officials responsible for their actions.”).

³ Press Release, Sec’y of State Paul D. Pate, *Secretary Pate announces multi-tiered solutions for felon database* (Nov. 20, 2019), https://sos.iowa.gov/news/2019_11_20.html.

⁴ Press Release, *supra* note 2.

⁵ *See* 52 U.S.C. § 20507(d)(1).

⁶ Ryan J. Foley, *Review finds 15 errors on felon list for 1 small Iowa county*, AP News (Dec. 12, 2019), <https://apnews.com/85150fd59ca486d0957a527f0c20fbf9>.

If you have any questions about these needed amendments, please don't hesitate to contact Daniel Zeno, ACLU of Iowa Policy Director at the contact information below.

Sincerely,



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