



· 505 Fifth Ave., Ste. 901 · Des Moines, Iowa 50321 ·

Voter Registration Commission
c/o State Registrar of Voters
Iowa Secretary of State's Office
321 E 12th St
Des Moines, Iowa 50319

17A.7 Petition for Adoption of Rule and Request for Review of Rule

Re: Rule 821-2.16 (47,48A) Form of Official Iowa Voter Registration Application

July 5, 2013

Distinguished Commissioners,

On behalf of the ACLU of Iowa, please accept this petition pursuant to 17A.7 and Iowa Admin. R. 821—1.3(7). We are petitioning for repeal/rescission of new emergency filed Rule 821-2.16 and for normal rulemaking to commence in its stead. In addition and in the alternative, this petition serves to respectfully request modification/amendment of the existing rule.

Summary: Pursuant to Iowa Code 17A.7, we ask that the Voter Registration Commission repeal and rescind Rule 821-2.16, and initiate regular rulemaking procedures to bring the official Iowa voter registration application form, which goes into effect August 1, in line with Iowa Code § 48A.11. We believe this rule was passed without proper notice or public participation. In addition, and in the alternative, pursuant to Iowa Code 17A.7, we ask that the Voter Registration Commission amend/modify the existing rule. **We believe the form put forth in the rule is substantially problematic in three ways**, marked on the attached visual representation of the form:

1. **It implies that a felony conviction--regardless of restoration of rights--is disqualifying.** Compounding this problem is the misalignment/placement of “yes” and “no” boxes within the new “Qualifications” section, not required by statute. We think there is a likelihood of the dual felony questions, combined with mis-matched “yes”/”no” check-boxes in the new “Qualifications” section, resulting in both of the following:
 - a. Some Iowans who have not had their rights restored, and are disqualified by virtue of conviction of an infamous crime, will mistakenly believe they are qualified;
 - b. Some Iowans who have had their rights restored, and are qualified to vote, will mistakenly believe that they are not qualified, and will not register to vote.
2. **It implies that either a current Iowa driver’s license or non-operator ID is required in addition to a social security number.** This is not the law, and will confuse voters who lack government issued photo ID, especially in light of recent coverage of unsuccessful voter ID legislation in Iowa. We believe this has the potential to confuse voters lacking such ID and lead them to believe, incorrectly, they are ineligible to register to vote.
3. **It improperly excludes some Iowa voters who may lack permanent stable housing.**

We have suggested solutions to all three problems in this petition.

Issue 1 – Improper Process

We are asking that rule 821-2.16(47,48A) be rescinded so that regular rulemaking may commence. The Voter Registration Commission passed this rule pursuant to Iowa Code § 17A.4(3).¹ The Commission found that notice and public participation were unnecessary, because “the required elements of the form are established by Iowa Code section 48A.11 and existing rule 821-2.1(48A).”² However, the form actually departs from the required elements of the form required by law. Moreover, to promulgate a rule in this manner requires the agency to find “notice and public participation would be unnecessary, impracticable, or contrary to the public interest.”³ There was no finding that providing notice and a chance for public participation was impracticable or contrary to public interest.⁴ Moreover, notice of a new rule is “unnecessary” only when the change is routine.⁵ Yet, the changes made to the voter registration form are not routine; the changes to the voter registration form have the potential to confuse and discourage people from registering to vote.⁶

It is vital to the democratic process that the public has notice, and the opportunity to be heard when it comes to rules that impact the most fundamental aspect of our democracy – the ability to vote. In the case of a qualified elector’s ability to exercise their right to vote, notice and an opportunity to be heard is necessary to protect that right.⁷ Additionally, there was no showing of any emergency that would require the disregard of the normal rulemaking process.⁸ Finally, we note that the emergency rule was adopted immediately prior to the July 1, 2013 effective date of House File 586 (Iowa 2013), which amends Chapter 17A to now require the determination of good cause to forgo normal rulemaking be made by the Administrative Rules Review Committee rather than the Voter Registration Commission. We believe dispensing with the normal rulemaking process in this case is unjustified. When it comes to changes in the voter registration form, notice and public participation are particularly necessary in order to educate the public about changes in the form so they are encouraged to vote and understand their rights and duties. It also assists the agency in information gathering to create a form that avoids voter confusion or disengagement, as we believe this form, unfortunately, does. Therefore, we ask that rule 821-2.16(47,48A) be rescinded, and normal rulemaking procedures be implemented.

Issue 2 – Substantive Problems with the Voter Registration Form

In the alternative, we ask that rule 821-2.16(47,48A) be modified/amended. This rule was passed pursuant to Iowa Code § 48A.11.⁹ However, we deem that the new form does not comply with Iowa Code § 48A.11. Additionally, we believe that there are three chief problems – all easily fixed – with the new form.

The first issue regarding the form is in regards to question three (“Have you been convicted of a felony?”).¹⁰ Iowa Code § 48A.11 does not state, anywhere, that this question should be included on the

¹ Iowa Admin. Code r. 821-2.16 (2013) (See the official Iowa voter registration application form).

² *Id.*

³ Iowa Code § 17A.4(3) (2013).

⁴ See 35 Iowa Admin. Bull. 2016 (June 26, 2013) (The Voter Registration Commission stated that public notice and participation were unnecessary, because the form complied with Iowa Code section 48A.11).

⁵ See Arthur E. Bonfield, *The Iowa Administrative Procedure Act: Background, Construction, Applicability, Public Access to Agency Law. The Rule Making Process*, 60 Iowa L. Rev. 731, 862 (1979).

⁶ R. Michael Alvares, Thad E. Hall, & Morgan Llewellyn, *How Hard Can it be: Do Citizens think it is Difficult to Register to Vote?*, 18 Stan. L. & Pol’y Rev. 382, 383-385 (“Indeed, conventional wisdom--and academic research--suggest that the voter registration process in the United States can be a barrier that keeps some citizens from participating in elections” ... [R]esearch has concluded that policy and procedural problems like... confusing and complex [registration] forms and requirements, have made the registration process difficult for some eligible citizens.”).

⁷ See Arthur Bonfield, *Some Tentative Thoughts on Public Participation in the Making of Interpretative Rules and General Statements of Policy Under the A.P.A.*, 23 Admin. L. Rev. 101, 104 (1970-1971).

⁸ See 35 Iowa Admin. Bull. at 2016 (The new form was passed because the Commission felt it was unnecessary to notify the public, not because of an emergency).

⁹ *Id.*

¹⁰ State of Iowa Official Voter Registration Form (Aug. 1, 2013).

form.¹¹ The question is confusing, and unnecessary, because it is redundant. Question four (“If convicted of a felony, have your rights been restored?”), sufficiently answers any issues that question three may raise. While it is relevant to ask if a person who has a felony conviction has had his or her right to vote restored, and that question is consistent with the “Affidavit” requirement below, the question of a felony conviction regardless of restoration of rights only serves to further confuse an already confusing labyrinth of rules regarding voter eligibility in Iowa following a conviction of an “infamous crime.” (E.g., in Iowa, as the Commission is no doubt aware, whether one has had their right to vote restored automatically or must apply, and the requirements of said application, depends on the time of the completion of the criminal sentence relative to who occupied the Office of the Governor and which policy within that administration was in force.)

We also believe that question three has the potential to discourage potential voters from registering. As question three is listed in the “qualifications” portion of the form, it has the potential to discourage certain individuals from registering to vote. People may believe that by answering “no” to any of the four questions in the “qualifications” section that they are not qualified to register to vote.¹² Our recommendation is that question three (“Have you been convicted of a felony?”) should be removed from the official voter registration form.

In a related matter, we believe the statement, on the new form, that reads; “If you have answered “No” to either of the first two questions, do not complete this form” should be changed to read as follows, “If you answered “no” to *any* of these questions, do not complete the form.” We believe this makes the registration form clear and avoids the current confusing construction. Answering “no” to questions one, two, or four (assuming question three is redacted from the form) would disqualify a person from voting; not just the first two questions. This proposed change would make the form easier to understand.

The second major issue we have with the form is in regards to the language in box two – ID Number. We believe the language should read as follows, “You must provide your Iowa driver’s license or non-operator ID number if you have one.¹³ **If you have neither you may provide your social security number instead.**” We believe that without this added language box two is potentially confusing to many voters. As it reads now, box two can be interpreted to require *both* a driver’s license or non-operator ID *and* a social security number. However, under Iowa Code § 48.A11, only one of those three forms of identification is required.¹⁴ We are especially concerned about elderly Iowans and others who lack a current driver’s license or non-operator ID. We occasionally receive questions from voters who are confused as to whether Iowa has a photo voter ID requirement law, and who lack a current government issued photo ID. Without clarifying this box, there is a likelihood that a significant number of voters will be confused and incorrectly believe themselves ineligible to register to vote. Based on numbers provided to us by the Iowa DOT relative to the number of registered voters, we estimate that well over 100,000 Iowans lack the first two types of identification. The number of non-registered but eligible voters undoubtedly exceeds that figure.

Our final suggested amendment to the registration form pertains to the language in box five; “If homeless, describe where you reside.”¹⁵ Iowa Code § 48.A11(1)(k) reads as follows, “[e]ach voter registration form shall provide space for the registrant to provide the following information: A space for a registrant who is homeless *or who has no established residence* to provide such information as may be necessary to describe a place to which the person often returns.”¹⁶ There are voters who would not

¹¹ See Iowa Code § 48A.11 (2013).

¹² See, e.g., Marc Meredith & Michael Morse, *The Politics of the Restoration of Ex-Felon Voting Rights: The Case of Iowa*, 1, 4-5 (Jan. 21, 2013) (A person in Iowa must apply to get their voting rights back after being found guilty of a felony. So even if the person has committed a felony under Iowa law, if they apply to reinstate their voting right and it is approved then they are allowed to vote. Thus, question three serves no meaningful purpose).

¹³ State of Iowa Official Voter Registration Form (Aug. 1, 2013).

¹⁴ See Iowa Code § 48A.11 (2013).

¹⁵ State of Iowa Official Voter Registration Form (Aug. 1, 2013).

¹⁶ Iowa Code § 48A.11(1)(k) (2013) (emphasis added).

consider themselves “homeless” or may not want to self-identify themselves as such. Therefore, we believe the language should be changed as follows, “If homeless **or without established residence, describe the location or the place to which you often return.**” That language is consistent with Iowa law under Iowa Code § 48.A11(1)(k) and reduces the likelihood of unnecessary confusion.

Conclusion

We ask that rule 821-2.16(47,48A) be rescinded and new rulemaking begin to create a form that complies with Iowa law and does not create unnecessary voter confusion. The new voter registration form was not promulgated in accordance with the proper process required by Chapter 17A. The form notably departs from the statutory requirements of Iowa Code § 48A.11. Most significantly, the new form has unnecessary and confusing elements that should be fixed or eliminated.

Therefore, we request that the rule be rescinded and proper rulemaking procedures be utilized. This would allow for notice and public participation in the rulemaking process as endorsed under Iowa Code § 17.4(1). In addition, and in the alternative, we ask that our proposed substantive changes be implemented. We believe our proposed changes will better protect and encourage voting in the state, bring the form into compliance with Iowa law, and clarify the law for voters.

Sincerely,

/s/Rita Bettis

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Visual aid accompanying summary on page 1:

STATE OF IOWA OFFICIAL VOTER REGISTRATION FORM		Revised 8/1/2013
1. Qualifications	1. Are you a citizen of the United States?*	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	2. Will you be 18 years of age on or before Election Day?*	<input checked="" type="checkbox"/> Yes <input type="checkbox"/> No
	3. Have you been convicted of a felony?	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
	4. If convicted of a felony, have your rights been restored?*	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No
<p>*If you answered "No" to either of the first two questions, do not complete this form. **If you have been convicted of a felony and your voting rights are not restored, do not register to vote.</p>		
2. ID Number <small>**You must provide your Iowa driver's license or non-operator ID number if you have one.</small>	<input type="checkbox"/> IA driver's license #: _____	
	<input type="checkbox"/> IA non-operator ID #: _____	
	<input type="checkbox"/> Last 4 digits of Social Security number: XXX-XX-_____	
	<input type="checkbox"/> I do not have an IA driver's license, non-operator ID, or Social Security number.	
Additional Information <small>Date of birth and gender are required.</small>	Date of Birth (month, day, year) _____/_____/_____	
	Gender <input type="checkbox"/> Male <input type="checkbox"/> Female	
Phone and/or Email (optional) _____		
Your Name	Last _____	
	First _____	
	Middle _____	Suffix _____
	Street Address (include apt., lot, etc.) _____	
Address Where You Live	City _____	Zip _____ County _____
	If homeless, describe where you reside: _____	
Where You Receive Mail (if different)	Address/P.O. Box _____	
	City _____	State _____ Zip _____
Previous Voter Registration Information	Your name was _____	
	Your address was _____	
	Your city and state were _____	Your zip was _____
Political Affiliation (check only one)	Political Parties: <input type="checkbox"/> No Party <input type="checkbox"/> Democratic <input type="checkbox"/> Republican	
	Non-Party Political Organizations: <input type="checkbox"/> Green <input type="checkbox"/> Libertarian	
WARNING If you sign this form and you know the information is not true, you may be convicted of perjury and fined up to \$7,500 and/or jailed for up to 5 years.	Registrant Affidavit	
	<p>I swear or affirm under penalty of perjury that:</p> <ul style="list-style-type: none"> • I am the person named above. • I am a citizen of the United States. • I have not been convicted of a felony (or I have received a restoration of rights). • I am at least 17 ½ years old. • I live at the address listed above. • I am not currently judged by a court to be "incompetent to vote." • I do not claim the right to vote anywhere else. 	
	Signature _____	Date _____