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STATE AREA CONFERENCE OF BRANCHES



November 3, 2014

Sarah Reisetter  
Director of Elections  
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Des Moines, Iowa 50319-0075

Delivered by U.S. Mail and email to: [sarah.reisetter@sos.iowa.gov](mailto:sarah.reisetter@sos.iowa.gov)

**Re: Comments on ARC 1679C and Request for Public Hearing**

Dear Ms. Reisetter:

These comments are made jointly on behalf of League of Women Voters of Iowa, Disability Rights Iowa, League of United Latin American Citizens of Iowa, Interfaith Alliance of Iowa, Iowa-Nebraska NAACP State Area Conference, Des Moines Branch NAACP, Iowa Developmental Disabilities Council, Brennan Center for Justice, and American Civil Liberties Union of Iowa.

They pertain to ARC 1679C: the published Notice of Intended Action to amend Chapter 2, "Voter Registration Forms, Acceptability, Registration Dates, and Effective Dates," Chapter 8, "Transmission of Registration Forms by Agencies," and Chapter 11, "Registration Procedure at the Office of Driver Services, Department of Transportation," of the Iowa Administrative Code.

Our organizations share the goal of facilitating electronic voter registration in Iowa as an important step our state must take to expand access to voter registration and keep pace with many voters' increased use of the Internet. However, electronic voter registration must be developed carefully and consistently with existing laws to be

fairly and equally accessible to all eligible Iowa voters. For the following reasons, the regulation must be substantially changed before it is adopted:

1. The regulation needlessly ties electronic voter registration to the possession of a particular form of identification and excludes many Iowans who are eligible to vote.
2. The proposed regulation should be expanded to all agencies that register voters.
3. The regulation must comply with the Americans with Disabilities Act.
4. The regulation should be written to avoid confusion regarding transfer of registration applications.

Each item is discussed briefly in turn. A public hearing should be held and the Voter Registration Commission should proceed slowly and carefully to allow for sufficient input and necessary modifications to the proposed rule.

**1. The regulation needlessly ties electronic voter registration to the possession of a particular form of identification and excludes many Iowans who are eligible to vote.**

Item 5 of the proposed regulation only permits those who already possess a driver's license or non-operator identification card issued by the Iowa Department of Transportation to use electronic voter registration. That limitation excludes all eligible Iowa voters who do not already possess either document from online voter registration. It is also inconsistent with Iowa law, which does not require Iowans to possess a DOT-issued driver's license or non-operator ID to register to vote.

Iowa residents who do not possess a photo ID from the Iowa Department of Transportation, but are otherwise eligible to participate in our elections should be provided equal access to electronic voter registration. According to estimates based on numbers provided by the Iowa DOT in 2013, there are approximately 145,604 eligible Iowa voters (or 6.2 percent of the population) without a DOT issued driver's license or non-operator identification card. Certain populations in Iowa, including people who are elderly, people with disabilities, minority voters, and low-income voters, are especially less likely to have these forms of identification. Obtaining a DOT issued identity card costs money and requires at least one trip to a DOT licensing office, which uniquely burden those Iowa voters.

Any regulation creating a system on online voter registration should be written carefully with the goal of reaching all eligible Iowa voters on a non-discriminatory and fair basis. While online voter registration has the potential to remove barriers to these Iowa voters by making the process more convenient, the proposed regulation excludes nearly 150,000 eligible voters from this new service. As there is no Iowa statute requiring that voters possess a current and valid DOT-issued photo ID to either register<sup>1</sup> or to vote, this requirement should be eliminated as new regulations are drafted.

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<sup>1</sup> The Help America Vote Act of 2002 and Iowa law require a first-time voter who registered by mail to show certain forms of identification, including the options of a valid photo I.D., a current utility bill, bank

We propose a simple solution: Iowa law and regulations direct commissioners on how they must treat incomplete voter registration applications. Any voter registration forms submitted electronically without a signature should be treated like those submitted after the close of voter registration deadline and a commissioner should “send a notice advising the applicant of election day and in-person absentee registration procedures under Iowa Code section 48A.7A.” Iowa Admin. Code 2.8 (48A) (2014); Iowa Code 48A.26 (2014); Iowa Code § 53.2(6) (2014). This notice should also be presented electronically to the applicant on the screen at the time the voter is attempting to register to vote. The voter’s signature should then be captured on Election Day or from their absentee ballot and should be electronically stored for possible future online voter registration by the voter, should the voter move or become inactive. This notice should be provided in addition to the option already present in the current proposed regulation, which states that a voter who attempts to register without a DOT ID “be offered the opportunity to print, complete, sign, and mail a paper copy of the Iowa voter registration application.” ARC 1679C 11.6(3) (proposed).

Accordingly, the Commission should delete proposed new subrule 2.4 (6) and replace it with the following new subrule 2.4 (6):

- **2.4 (6) *Secure Internet website for stand-alone online/electronic voter registration applicants.*** The Secretary of State and the Voter Registration Commission shall establish a secure Internet web site to permit individuals to submit voter registration applications electronically. An electronic voter registration form shall request the information required under Iowa Code 48A.11. During the online registration transaction, the applicant’s last signature on file with the office of driver services, department of transportation, or any other state agency through which the applicant is registering to vote shall be the signature for voter registration purposes. An applicant whose signature is not yet on file with the office of driver’s services or other agency shall be treated like those applications submitted after the close of voter registration deadline, and the commissioner shall provide the voter with a notice advising the applicant of election day and in-person absentee registration procedures under Iowa Code section 48A.7A. Such notice shall be provided on the website once an applicant submits a voter registration form and by mail. In addition, if attempting to register electronically, the applicant shall be provided with the option of printing, completing, and returning to their county auditor a paper voter registration form.

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statement, government check, paycheck, or other government document showing their name and address. § 303(b); Iowa Code § 48A.8 (2014).

In addition, the Commission should delete proposed new subrule 11.6, and adopt the following in Chapter 11:

- 821-11.6(48A) **Signature on attestation required.** The signature required for voter registration shall be obtained in the following manner:

**11.6(1) *In person applicant.*** At the conclusion of the client's applicant's business, clients-an applicant who apply applies to register, or give gives information to update an existing registration shall be asked to sign the registration application attestation, either on a paper copy or an electronic version. Any client applicant who fails to sign the attestation when registering to vote in person using a paper voter registration form shall be deemed to have declined to apply to register to vote.

**11.6(2) *Online driver's license and nonoperator identification renewal applicant.*** During the online driver's license and nonoperator identification renewal transaction, an applicant shall be asked if the applicant would like to register to vote or update an existing voter registration record. If an applicant answers the question in the affirmative, the applicant shall have the opportunity to select a political party and affirm the use of the applicant's last digitized signature on file with the office of driver services, department of transportation, to finalize the voter registration transaction.

**11.6(3) (6) *Stand-alone online/electronic voter registration applicants.*** The office of driver services, department of transportation, shall place a prominent link on its Website to the url of the secure stand-alone online/electronic voter registration Internet Website maintained by the Secretary of State and Voter Registration Commission pursuant to Iowa Admin. Code 821-2.4(6) [using above proposed language for rule 2.4(6)] for applicants who are not renewing an existing driver's license or nonoperator identification.

## **2. The proposed regulation should be expanded to all agencies that register voters.**

Given the potential for online voter registration to facilitate and expand voter registration and civic participation in our state and move voter registration into the digital age, we urge the Commission to expand the proposed rulemaking, as outlined below in greater detail, to mandate that all voter registration agencies implement an electronic system to seamlessly transmit voter registration information from voter registration agencies to the Secretary of State's office.

We urge the Commission to expand the proposed amendments to Administrative Code Rules 821-8.1 (Item 4) and 821-11.6(1) (in Item 5) and new subrule 11.6(2) (in Item 5) to mandate that all voter registration agencies register voters in a paperless

manner. To implement electronic voter registration at all voter registration agencies, we suggest the following amendments to the Administrative Code:

Chapter 2:

- 821-2.4(48A) **Paperless (electronic) registration forms.** ~~Any voter registration agencies and the office of driver services, department of transportation, may~~ shall devise a system of collecting registration applications without using paper forms, in accordance with the following restrictions.

Chapter 8:

- 821-8.1(48A) **Cataloging registration data** ~~Transmission of electronic voter registration applications.~~ Every agency which registers voters in a paperless manner shall ~~daily catalog~~ transmit a file of registration records applications to the ~~computer system used by the registrar on a daily basis.~~ The file shall contain all voter registration records applications collected by the agency during the previous working day, except that the file containing registration records collected on the last day of registration for a regularly scheduled election shall be cataloged not later than 8 p.m. of that day.

### 3. The regulation must comply with the Americans with Disabilities Act.

We are concerned about the potential impact of the proposed electronic voter registration program on lowans with disabilities. As the State Data Center found, approximately 342,362 lowans (representing 11.6% of the population) have some form of a disability.<sup>2</sup> Senior citizens and veterans are more likely to be among those with disabilities.<sup>3</sup> Electronic voter registration would benefit these populations. However, people with disabilities are less likely to drive than the general population and may not be able to travel to a DOT office. So, they are less likely to have either of the two forms of ID as required under the proposed regulations. In addition, these regulations do not specify whether online services will be designed to ensure accessibility to voters with disabilities.

As a result, these proposed regulations may run afoul of applicable laws: Title II of the Americans with Disabilities Act of 1990 (ADA) prohibits public entities from discriminating on the basis of disability. 42 U.S.C. §§ 12101-12213. ADA regulations not only prohibit a public entity from excluding a person with a disability, but also require that public entities not impose eligibility criteria that “screen out or tend to screen out” people with disabilities. 28 CFR §35.130(a)-(b). Finally, ADA regulations prohibit public entities from using criteria or methods of administration that “have the purpose or effect of defeating or substantially impairing accomplishment of the objectives of the public entity’s program with respect to individuals with disabilities.” 28 CFR §35.130(b)(3)(ii).

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<sup>2</sup> <http://www.iowadatecenter.org/Publications/dis13.pdf>.

<sup>3</sup> *Id.*

The current draft regulation lacks specificity regarding the online website accessibility for voters who may use screen readers<sup>4</sup> and other forms of assistive technology that enable equal access to the Internet. This also could limit access to people with disabilities and may impair the purpose of our voting system: to permit every eligible Iowan to exercise the constitutional right to vote.

We propose including the following language in the proposed regulations:

Any web site created to register voters electronically will comply with all requirements under Section 508 of the Rehabilitation Act, and Title II of the Americans with Disabilities Act, to ensure equal access to voters with disabilities. Access experts shall be included in the development of any online voter registration site, and the site's accessibility will be verified by an independent body with expertise in the area.

#### **4. The regulation should be written to avoid confusion regarding transfer of registration applications.**

Finally, ARC 1679 proposes in Item 4 to change the deadline for agencies to transmit voter registration applications from the day they are submitted by the applicant to the agency to the day after the application is submitted. This proposed modification creates confusion and a potential problem for those registration applications that are submitted on the last day of the pre-registration deadline, because those applications would not be transmitted until *the day after* the pre-registration deadline has passed.

Two options to resolve this confusion are: *either* keep the requirement for same-day transmission of a voter registration application in place by deleting the proposed language “during the previous working day;” *or* allow for next-day transmission except on the last day of registration by retaining the language, currently proposed for deletion in Item 4, “except that the file containing registration records collected on the last day of registration for a regularly scheduled election shall be catalogued not later than 8 p.m. of that day.” This latter proposal is included in language we suggest be adopted as new 821-8.1(48A) on page 5 of these comments.

## **Conclusion**

We would welcome the opportunity to work with the Commission to create thoughtful regulations to expand electronic voter registration in Iowa so that it is fair and accessible. In addition, we request a public hearing in which the undersigned stakeholders and members of the public may give input on the proposed regulation. The undersigned organizations\* represent memberships exceeding twenty-five persons entitled to require a public hearing pursuant to Iowa Code § 17A.4(1)(b) (2014). If you have any questions or would like to discuss these recommendations further, please

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<sup>4</sup> “Screen reader” refers to software that translates text and website features into speech for low-vision or blind users.

don't hesitate to contact the undersigned organizations directly. Contact information is provided.

Respectfully,

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