



January 28, 2020

Mr. Steve Sandvoss, Executive Director
Illinois State Board of Elections
2329 S. MacArthur Blvd.
Springfield, IL 62704
(Via Certified Mail & E-mail, ssandvoss@elections.il.gov)

The Honorable Jesse White
Illinois Secretary of State
213 State Capitol
Springfield, IL 62756
(Via Certified Mail & E-mail to Nathan Maddox, Senior Legal Advisor, nmaddox@ilsos.net &
Brenda Glahn, Assistant General Counsel, bglahn@ilsos.net)

Re: Compliance with Illinois' Automatic Voter Registration Statute, the National Voter Registration Act, and the Voting Rights Act

Dear Executive Director Sandvoss and Secretary White:

We write on behalf of Asian Americans Advancing Justice | Chicago; CHANGE Illinois; Chicago Votes; Common Cause Illinois; Illinois Coalition for Immigrant and Refugee Rights; and Illinois Public Interest Group Education Fund, Inc., who are the steering committee members of Just Democracy Illinois, and others similarly situated, to notify you of additional violations of Illinois' Automatic Voter Registration statute, 10 ILCS 5/1A-16.1 (the "AVR Statute"), Section 5 of the National Voter Registration Act, 52 U.S.C. § 20504 *et seq.* (the "NVRA"), and Section 203 of the federal Voting Rights Act, 52 U.S.C. § 10503 *et seq.* ("Section 203 of the Voting Rights Act"). This letter serves as an addendum to the notice that we provided on December 13, 2018 ("2018 Notice Letter"), *see* attached, and we adopt the notice of violations stated therein by reference.

Just Democracy Illinois ("Just Democracy") is a broad-based non-partisan coalition of community groups striving to protect and promote the value of every vote, no matter the geographic, racial, ethnic, or party affiliation of the voter. The State Board of Elections ("SBOE"), as the chief election official, and the Secretary of State ("SOS") as the entity in charge of Driver Services, are responsible for compliance with the relevant portions of the NVRA, the AVR Statute, and Section 203 of the Voting Rights Act. *See* 10 ILCS 5/1A-16.1(a); 52 U.S.C. § 20509. The steering committee members of Just Democracy write to you in hope of an amicable resolution of these violations, which are set forth in detail in this letter. Should a resolution not be achievable, Just Democracy, with its retained legal counsel Chicago Lawyers' Committee for Civil Rights, Asian Americans Advancing Justice | AAJC, and pro bono counsel, is prepared to move forward with litigation to protect the rights of Illinois voters.

In addition to reiterating our request for proper implementation and meaningful community involvement, we set forth in this letter further violations of the law. As always, we remain available to discuss these issues further, but we insist upon a written agreement detailing how the State of Illinois will comply with the NVRA, the AVR Statute, and Section 203 of the Voting



Rights Act as well as an agreement to continue a dialogue throughout the course of implementation.

Finally, this letter serves as written notice of current and pending violations, as required by the NVRA. *See* 52 U.S.C. § 20510.

I. Background

When Illinois enacted the AVR Statute in 2017 with unanimous bipartisan support, Just Democracy celebrated this important step in improving the fairness and accuracy of our state’s voting system. AVR received endorsements from a diverse collection of more than 65 non-partisan organizations from around Illinois, who played a critical role in crafting and passing the AVR statute. But any modernization effort must be well-crafted and well-executed, which includes testing by community members before a system is launched, to ensure that the system works as intended.

The passage of the AVR Statute also signaled an opportunity to address longstanding racial disparities in voting access, as well as comparatively-low levels of voter registration and participation by young voters. According to United States Census Bureau data, voter registration rates for Black, Latino, and Asian citizens lag behind the registration rate for White citizens in the state.¹ These disparities are further exacerbated for communities of color who are limited English proficient (“LEP”). In passing the AVR Statute, Illinois government and community leaders recognized that automatic voter registration could narrow gaps in access to voter registration and increase civic engagement.

Unfortunately, the promise of voter modernization and inclusivity has not only gone unfulfilled, it now appears that even basic voter registration services at SOS are mishandled in reckless and willful disregard of Just Democracy’s repeated calls for transparency and accountability. After multiple delays by your offices in implementing the AVR Statute, Just Democracy sent the 2018 Notice Letter in December 2018—not with the intent to be litigious, but to hold your offices accountable to the requirements, intent, and purpose of the NVRA and the AVR Statute. After promising initial discussions to fully understand the driver license and voter registration processes, Just Democracy was again stonewalled in its efforts for accountability by SOS’s Office and for meaningful engagement in AVR implementation. From the information we learned from those initial discussions, conversations thereafter, and reports from community members, Just Democracy identified ongoing issues with compliance with the NVRA, the AVR Statute, and Section 203 of the federal Voting Rights Act. In the spirit of mutual amicability and accountability, in May 2019, we presented your agencies with a Memorandum of Understanding (“MOU”) to address outstanding issues and ensure a process where Just Democracy and other community members had a meaningful voice in the implementation of AVR and help guard against unintended harms. The MOU sought to ensure a modernized, streamlined voter registration process while

¹ *See* UNITED STATES CENSUS BUREAU, Voting and Registration in the Election of November 2018, *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>; UNITED STATES CENSUS BUREAU, Voting and Registration in the Election of November 2016, *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>.



ensuring that ineligible individuals were not inadvertently registered to vote and that all individuals had language access throughout the process. But instead of meaningfully negotiating differences or points of disagreement, your agencies refused the MOU out of hand.

Since that time, it is our understanding that your offices have moved forward with implementation of AVR, possibly with some recommendations from Just Democracy. But efforts to ascertain the exact nature of that implementation by Just Democracy have been rebuffed or ignored. In light of the recent reports that your offices have erroneously caused the registration of innocent non-citizens,² as well as the ongoing problems that Illinois residents have experienced in obtaining REAL IDs,³ Just Democracy believes it is more imperative than ever that community leaders and stakeholders be allowed to assess the details of AVR implementation to date and provide constructive feedback that will be meaningfully considered and incorporated.

II. Requirements of the NVRA, AVR Statute, and Section 203 of the Voting Rights Act

In our 2018 Notice Letter, we set forth the requirements of the NVRA and AVR Statute. We review the pertinent requirements in further detail and also set forth the requirements of Section 203 of the Voting Rights Act.

A. Section 5 of the NVRA

Congress enacted the NVRA “to establish procedures that will increase the number of eligible citizens who register to vote,” and to increase access to this “fundamental right[.]” 52 U.S.C. § 20501. Under the NVRA, a state’s chief election official is responsible for ensuring compliance with Section 5. *See* 52 U.S.C. § 20509. Per the Act, driver’s license offices must provide individuals with an opportunity to register to vote simultaneously with their application for, renewal of, or a change of address to, a driver’s license or state-issued identification card. 52 U.S.C. § 20504(a)(1) & (d); *see also* 52 U.S.C. § 20502(3) (defining “motor vehicle driver’s license” to “include[] any personal identification document issued by a State motor vehicle authority”).⁴ A voter registration application “shall” be included as part of every application for a state driver’s license or ID card. 52 U.S.C. § 20504(c)(1). The voter registration portion of an application “may not require any information that duplicates information” included in other portions of the driver’s license or state identification card application, “other than a second signature,” which serves as an attestation under penalty of perjury that the applicant is eligible to register to vote. *Id.* § 20504(c)(2). And it shall include a statement setting forth eligibility requirements for voter registration. *Id.* § 20504(c)(2)(C). The voter registration portion of the

² *See* JUST DEMOCRACY RESPONDS TO VOTER REGISTRATION OF NON-CITIZENS IN ILLINOIS (Jan. 21, 2020), available at <http://www.justdemocracyillinois.org/current-initiative> & <https://www.clccrul.org/our-statements/2020/1/21/just-democracy-illinois-statement-on-voter-registration-of-non-citizens-in-illinois>.

³ *See e.g.*, Stephanie Zimmerman, *REAL ID? Real Pain in the Neck for Illinois Residents Trying to Get One*, Nov. 8, 2019, CHI. SUN-TIMES, <https://chicago.suntimes.com/2019/11/8/20955723/real-id-drivers-license-long-lines-illinois-secretary-of-state>.

⁴ Hereinafter, any reference to a driver’s license refers to a driver’s license, other than a temporary visitor’s driver’s license, or a State identification card issued by the Secretary of State’s office. The AVR Statute specifically excludes temporary visitor’s driver’s licenses. *See* 10 ILCS 5/1A-16.1.



application also must include a statement that a declination to register to vote or the office through which the applicant registered to vote will be kept confidential. *See* 52 U.S.C. § 20504(c)(2)(D)(ii). Finally, a driver’s license change of address shall automatically serve as an update to an individual’s voter registration unless they decline such update. *See* 52 U.S.C. § 20504(d).

B. Illinois’ AVR Statute

In enacting the AVR Statute, the Illinois’ legislature sought to extend the protections of the NVRA. The AVR Statute, like the NVRA, shall not require an applicant for a driver’s license to provide duplicate information in order to complete an application to register to vote or change his or her registered residence address or name. 10 ILCS 5/1A-16.1(d). Also, like the NVRA, the AVR Statute requires that driver’s license or state identification card applicants must be informed in writing about the qualifications to register to vote in Illinois, the penalties for submitting a false voter registration, and that declining to register to vote will be kept confidential. *See* 10 ILCS 5/1A-16.1(b-10). The AVR Statute also requires SOS’s Office to “review” the documents provided by the applicant to ensure the documents do not indicate that the applicant “does not satisfy the qualifications to register to vote” and if they do “indicate that he or she does not satisfy the qualifications to register to vote in Illinois at his or her residence address, the application shall be marked as incomplete.” 10 ILCS 5/1A-16.1(d),(e). The AVR Statute requires that the SOS’s Office shall inform each driver’s license applicant whether they are currently registered to vote and at what address. 10 ILCS 5/1A-16.1(c).

1. REAL ID Compliant Transactions

The AVR Statute was written not only to comply with the REAL ID Act of 2005, 8 U.S.C. § 1101 *et. seq.*, but also to anticipate its implementation in Illinois. The REAL ID Act is a federal law that imposes additional requirements on state facilities issuing identification cards. Specifically, the AVR Statute requires that a person applying for a REAL ID-compliant driver’s license or state identification card who is a United States citizen will be automatically registered to vote, unless that applicant opts out of being registered. 10 ILCS 5/1A-16.1(b). An eligible voter will be registered to vote and an extra step is required only if the person does not want to vote. As such, we refer to this as the “opt-out” provision.

Opt-out registration is possible because REAL ID compliance requires the applicant to provide documentation indicating their citizenship status and other documentation that would include their age or birthdate. *See* 6 C.F.R. § 37.11. Therefore, the applicant provides proof of voter eligibility and can attest to voter registration eligibility under both the NVRA and the AVR Statute. Because an applicant already has shared enough information to determine voter eligibility, the AVR Statute requires the eligible applicant to be registered to vote unless they ask not to be.

Under the AVR Statute, like the NVRA, the application for a REAL ID-compliant driver’s license or state identification card becomes an application for registering to vote. 10 ILCS 5/1A-16.1(b). Like the NVRA, within this dual-purpose, simultaneous application, the applicant must “attest, by signature under penalty of perjury . . . to meeting the qualifications to register to vote in Illinois . . .” 10 ILCS 5/1A-16.1(b)(4). This “completed, signed application” then “constitute[s] a signed



application to register to vote in Illinois” unless the applicant “affirmatively declined in the application to register to vote. . . .” 10 ILCS 5/1A-16.1(e). In sum, a single signature transaction at a Driver Services facility allows individuals to both apply for a driver’s license or state identification card and register to vote.

2. Non-REAL ID Compliant Transactions

The AVR Statute sets forth different processes for voter registration for non-REAL ID transactions; even after REAL ID is implemented, Illinois residents will be able to choose which type of identification documentation to obtain. During non-REAL ID transactions, a driver’s license applicant who also wishes to register to vote must attest “by *separate* signature under penalty of perjury, to meeting the qualifications to register to vote in Illinois” 10 ILCS 5/1A-16.1(b-5)(3) (emphasis added). This is unlike the REAL ID-compliant transactions, which require only one signature.

During non-REAL ID transactions, driver’s license applicants are not required to show documentation of citizenship. As such, the AVR Statute requires these applicants to (i) affirmatively choose to register to vote, and (ii) attest under penalty of perjury to meeting voter registration eligibility requirements. *See* 10 ILCS 5/1A-16.1(b-5). During non-REAL ID transactions where an applicant chooses to register to vote, at least one signature will be required (a signature attesting to voter eligibility), and it is possible that an additional signature would be required (one for the driver’s license or state identification card portion). Because of this extra step—requiring the applicant to affirmatively choose to attest to their eligibility and be registered—we refer to this portion of the statute as the “opt-in” provision.

C. Section 203

In 1975, Congress added Section 203 to the Voting Rights Act’s array of protections after recognizing the strong link between limited English proficiency and low voter participation, as well as the substantial language barriers that had been erected to discriminate against eligible voters based on national origin, educational level, and language ability. 52 U.S.C. § 10503(a). The purpose of Section 203 is to provide LEP or non-English speaking citizens with the same information and opportunities to participate in the electoral process as the general electorate. LEP voters must be provided with translated voting materials including, but not limited to, voter registration materials, ballots, voter guides, and websites maintained by election officials. *Id.* § 10503(b)(3)(A) and (c). *See United States v. Metro. Dade Cty.*, 815 F. Supp. 1475, 1478 (S.D. Fla. 1993) (holding that Section 203 “should be broadly construed to apply to all stages of the electoral process, from voter registration through activities related to conducting elections, including for example the issuance, at any time during the year, of notifications, announcements, or other informational materials concerning the opportunity to register, the deadline for voter registration, the time, places and subject matter of elections, and the absentee voting process”). In other words, every American citizen has the right to make an informed choice regarding voter registration and voting in the language that they are most comfortable speaking and reading. In Illinois, Section 203 covered jurisdictions include City of Chicago and suburban Cook County for Spanish, Chinese, and Hindi and South Asian languages, and Kane and Lake Counties for Spanish. *See Voting Rights Act Amendments of 2006, Determinations Under Section 203*, 81 Fed. Reg.



87,532 (Dec. 5, 2016). In other words, voter registration language assistance must be provided in Spanish, Chinese, and Hindi and South Asian languages during the relevant driver's license transactions.

III. Violations of Section 5 of the NVRA, the AVR Statute, and Section 203 of the Voting Rights Act

In our 2018 Notice Letter, we explained our understanding of the then-current voter registration processes during driver license transactions, and we identified practices that violated the NVRA and AVR Statute. Although your offices have represented that they have since made changes, to date, we have been unable to verify them despite numerous attempts to do so in a comprehensive way, and whether those changes do, in fact, comply fully with the NVRA and AVR Statute. Moreover, your failure to entertain a MOU that, *inter alia*, allowed for Just Democracy and other stakeholders to have meaningful involvement has left little confidence that even if changes were made, they were made correctly. For example, in our 2018 Notice Letter, Just Democracy explained that SOS's Office was asking for duplicative information during both REAL ID and non-REAL ID transactions, such as age and signatures, in violation of both the NVRA and the AVR statute. Without adequate proof of proper implementation, Just Democracy has no choice but to provide notice again of the violations we identified in our 2018 Notice Letter, and we do so fully by attaching that letter herewith.

In the course of our efforts to work with your office to bring full and meaningful compliance with the NVRA and the AVR Statute, Just Democracy has identified additional areas of noncompliance, as well as noncompliance with Section 203 of the federal Voting Rights Act. We describe these violations below.

A. Failure to Provide Voter Registration to Recently Naturalized Citizens

Section 5 of the NVRA and the AVR Statute require that an individual applying for or renewing a driver's license is provided voter registration services unless they decline to register to vote. *See* 52 U.S.C. § 20504(a)(1); 10 ILCS 5/1A-16.1(b), (b-5). However, when recently naturalized citizens renew a non-REAL ID driver's license, their old, inaccurate immigration status results in SOS's Office's failure to provide them with voter registration services.⁵ Thus, these individuals do not receive the voter registration services that they are entitled to, in violation of the NVRA and the AVR Statute. Citizens should not have a diminished opportunity to vote simply because they became citizens relatively recently.

B. Failure to Automatically Update Voter Files with Changes of Address

Section 5 of the NVRA provides that registered voters who submit a change of address to SOS's Office be permitted to automatically update their address for voter registration purposes unless

⁵ It appears that the Driver Services software is programmed to automatically check a box stating that "I affirm that I was asked if I would like to apply to register to vote or update my voter registration address/name and I declined" for a whole cadre of Driver Services clients who are not provided voter registration services, including currently registered voters, whether or not they actually declined. This troubling problem is discussed further below in this letter.



they decline to do so. *See* 52 U.S.C. § 20504(d). However, according to SOS’s Office, all individuals submitting a change of address, whether they are registered to vote or not, are required to go through the full voter registration process, including providing additional signatures and a new attestation. The failure to automatically update an already-registered voter’s address unless they decline is a violation of the NVRA and threatens to have a disproportionate impact on particular communities who are more likely to be residentially mobile, such as communities of color, young people, and low-income community members. This violation, combined with the SOS’s Office’s failure to consistently inform applicants about their voter registration status (discussed further below in Section III.D), means in practice that voters might be knocked off the voter rolls simply because they have moved, when the legally required processes to update their registrations are not being followed properly.

C. Failure to Provide Required Disclosures and Eligibility Requirements

Section 5 of the NVRA requires SOS’s Office to provide, with each application for and renewal of a driver’s license, voter registration with a written statement that sets forth each eligibility requirement (including citizenship), an attestation under penalty of perjury for meeting those eligibility requirements, and confidentiality disclosures protecting the decision to accept or decline voter registration. *See* 52 U.S.C. § 20504(c)(2)(C) and (D). But these eligibility requirements and disclosures are not provided during every transaction (for example during certain non-REAL ID transactions) or only partially provided; nor does SOS’s Office ensure that signage setting forth these eligibility requirements are visible during relevant transactions. The failure to fully and meaningfully provide eligibility requirements and disclosures is a violation of the NVRA.

D. Failure to Inform Applicants About Their Voter Registration Status

Under the AVR Statute, SOS’s Office is required to inform individuals whether they are currently registered to vote in Illinois, and if registered, at what address. *See* 10 ILCS 5/1A-16.1(c). Individuals need information about their current registration status in order to make a decision regarding voter registration. However, it appears that SOS’s Office is failing to provide this information to individuals consistently and regularly, in violation of the AVR Statute. Just Democracy has raised this issue previously, including in an October 28, 2019 letter to SBOE and SOS’s Office, attached herein. It also appears that personnel of SOS’s Office are, in least some instances during the REAL ID process, giving individuals prepopulated Motor Voter forms with a checkmark next to the box stating, “I affirm that I was asked if I would like to register to vote or update my voter registration address/name and I declined,” – but without having asked or mentioned anything to those individuals about voter registration.

E. Failure to Properly Evaluate and Transfer Relevant Information to SBOE and Election Authorities

Section 5 of the NVRA requires SOS’s Office to transmit the “completed” voter registration portion of a driver’s license transaction to SBOE in a timely fashion. *See* 52 U.S.C. § 20504(e). And the AVR Statute requires “review” by SOS’s Office “of identification documents” provided to them “to confirm that nothing in those documents indicates that the applicant does not satisfy the qualifications to register to vote” and “if the identification documents ... indicate that he or she



does not satisfy the qualifications to register to vote” then “the application shall be marked as *incomplete*.” See 10 ILCS 5/1A-26.1(d) and (e) (emphasis added). The AVR Statute also requires that SOS’s Office transmit completed voter registration applications to the SBOE electronically with all the “personal information needed to complete the person’s registration[.]” See 10 ILCS 5/1A-26.1(f). However, it is apparent that the SOS’s Office is not meaningfully and carefully reviewing or applying information regarding voter eligibility and/or identification documents, given recent reports that the SOS’s office sent information on a number of non-citizen community members to election authorities who then registered them to vote.⁶ It is disturbingly unclear what SOS’s Office, SBOE, and local election authorities know about or do with relevant information about applicants’ citizenship status, including whether individuals indicate citizenship by affirmatively so stating, what documents proving citizenship are provided, and what training personnel receive about these important issues.⁷ The failure to properly evaluate voter registration information and transmit to SBOE relevant voter registration information is a violation of the NVRA and the AVR Statute and poses devastating consequences for the people of Illinois, particularly immigrant communities.

Just Democracy has previously raised the need for SOS’s Office and SBOE to explicitly address how non-citizen community members will be protected in REAL ID and non-REAL ID transactions, given the potentially severe consequences that they face if they are inadvertently registered to vote, including in an October 28, 2019 letter to SBOE and SOS’s Office, attached herein. In that October letter, we reiterated that our organizations have previously recommended specific safeguards to include in the process and remain available to serve as a resource on ensuring that AVR sufficiently guards against the inadvertent registration of non-citizen community members.

F. Failure to Fully Provide Voter Registration in Covered Language

Section 203 of the Voting Rights Act requires language access to voter registration materials in covered jurisdictions. See 52 U.S.C. § 10503(b)(3)(A) and (c). This applies to voter registration through Driver Services for individuals in Chicago and suburban Cook County (Spanish, Chinese, and Hindi and South Asian languages), Kane County (Spanish), and Lake County (Spanish). Many portions of the voter registration process at Driver Services are not translated, including questions regarding an applicant’s age or citizenship. And the few portions that may have been translated have not been provided to Just Democracy or other stakeholders for review to ensure comprehensibility of the translation. All this is in clear violation of Section 203 of the Voting Rights Act. Without language assistance, as well as clear and sound procedures as to how LEP applicants will be treated, LEP citizens are being denied an equal opportunity to register to vote. Furthermore, LEP non-citizens are needlessly vulnerable at SOS’s Office facilities, compounding the insufficient safeguards against inadvertent registration of non-citizens. Just Democracy has

⁶ See JUST DEMOCRACY RESPONDS TO VOTER REGISTRATION OF NON-CITIZENS IN ILLINOIS (Jan. 21, 2020), available at <http://www.justdemocracyillinois.org/current-initiative> & <https://www.clccrul.org/our-statements/2020/1/21/just-democracy-illinois-statement-on-voter-registration-of-non-citizens-in-illinois>.

⁷ To be clear, the law does not require documentary proof of citizenship. But if documents *were* provided as part of a REAL ID transaction or if the individual stated and attested that they are a citizen, that information should be reviewed and handled in accordance with the law.



raised the issues of language access previously, including in an October 28, 2019 letter to SBOE and SOS's Office, attached herein.

IV. Written Notice

Just Democracy sends this letter in a final attempt to amicably resolve issues and properly implement automatic voter registration. Because our numerous efforts to meaningfully engage your offices have stalled, and in light of recent egregious errors by your offices, we have no choice but to send this letter, which serves as written notice pursuant to 52 U.S.C. § 20510(b)(2). We note that because we are within 120 days of a federal election, the applicable waiting period is 20 days. We will be prepared to proceed with litigation if necessary, if the State of Illinois elects to continue down its current path and if there is no satisfactory resolution reached during that period.

We note that the AVR Statute and Section 203 of the Voting Rights Act do not contain a notice requirement. Nonetheless, we provide your offices with written advance notice in the hope that the next 20 days lead to a resolution of these violations. We note that this notice of violations is not the end of the conversation, but the start. We understand that there are many nuances and considerations at play when implementing automatic voter registration, including protecting both eligible voters and immigrants, and we remain open to resolving them in a constructive manner. But that is no excuse for not enforcing the law, potentially improperly implementing the law, and excluding Just Democracy and other community stakeholders from meaningful involvement in ensuring proper implementation. We look forward to your response and ask that you direct all communications directly to our counsel, Ami Gandhi at Chicago Lawyers' Committee for Civil Rights.

Sincerely,

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Encl.

CC:

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**ENCLOSURE 1 TO
JANUARY 28, 2020
NOTICE LETTER
(2018 NOTICE
LETTER)**



December 13, 2018

Mr. Steve Sandvoss, Executive Director
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Via Certified Mail (Return Receipt Requested) & E-mail to Nathan Maddox, Senior Legal Advisor, nmaddox@ilsos.net & Brenda Glahn, Assistant General Counsel, bglahn@ilsos.net

Re: **Compliance with Illinois' Automatic Voter Registration Statute and the National Voter Registration Act**

Dear Executive Director Sandvoss and Secretary White,

As steering committee members of Just Democracy Illinois, we write on behalf of Asian Americans Advancing Justice | Chicago; CHANGE Illinois; Chicago Votes; Common Cause Illinois; Illinois Coalition for Immigrant and Refugee Rights; and Illinois Public Interest Group Education Fund, Inc., and others similarly situated, to notify you of current and anticipated future violations of Illinois' Automatic Voter Registration statute, 10 ILCS 5/1A-16.1 (hereinafter, the "AVR Statute"), and Section 5 of the National Voter Registration Act, 52 U.S.C. § 20504 et seq. (hereinafter, "NVRA"). Just Democracy Illinois (hereinafter, "Just Democracy") is a broad-based non-partisan coalition of community groups striving to protect and promote the value of every vote, no matter the geographic, racial, ethnic, or party affiliation of the voter. Your offices, as the chief election official and the entity in charge of Driver Services, are responsible for compliance with the NVRA and the AVR Statute. *See* 10 ILCS 5/1A-16.1(a); 52 U.S.C. § 20509. We write to you in hope of an amicable resolution of these violations, which are set forth in detail in this letter. Should such a resolution not be achievable, Just Democracy, with its retained legal counsel Chicago Lawyers' Committee for Civil Rights, Asian Americans Advancing Justice | AAJC, Asian Americans Advancing Justice | L.A., and pro bono counsel, is prepared to move forward with litigation to protect the rights of Illinois voters.

I. Introduction

When the AVR Statute was signed into law in 2017 with unanimous bipartisan support, we all celebrated this important step in improving the fairness and accuracy of our state's voting system. The passage of the AVR Statute signified a promise to streamline the registration process and make registration more accessible—which, if implemented properly, has the potential to add over one million eligible voters to Illinois' voting rolls. With its passage, Illinois was poised to be a trailblazer by promising eligible voters that they would be registered automatically not only when they applied for a state identification card or driver's license, but also when they accessed other



state services and benefits. Because, under the AVR Statute, the Secretary of State's office (SOS) was required to be the first agency to implement AVR, SOS had an opportunity to set an example to other agencies of effective implementation practices.

The passage of the AVR Statute also signaled an opportunity to address longstanding racial disparities in voting access. Just Democracy organizations have years of experience working with voters and observing barriers to voting, particularly with communities of color in Illinois. According to United States Census Bureau data, race disparity in voter registration in Illinois is higher than the national average. Voter registration rates for Black, Hispanic, and Asian citizens lag behind the registration rate for White citizens in the state.¹ In passing the AVR Statute, Illinois government and community leaders recognized that making voter registration automatic could help to narrow gaps in access to voter registration and increase civic engagement.

The power of automatic voter registration to achieve these promises depends on proper and timely implementation. Unfortunately, neither have occurred since the AVR Statute's enactment more than a year ago. If it had, eligible voters would have been automatically registered for the November 6, 2018 election, as well as municipal elections in early 2019. Instead, the SOS has suggested that the "automatic" part of automatic voter registration will not be fully rolled out until next summer. In the meantime, the existing system used by SOS violates both the NVRA and the AVR Statute. And the current plan for the eventual implementation of the AVR Statute does not fix these violations; instead, it compounds them.

Below we detail, *first*, the requirements of Section 5 of the NVRA; *second*, the requirements of the AVR Statute; and *third*, a description of the practices and procedures during driver's license and State identification card transactions that violate and that will continue to violate both the NVRA and the AVR Statute. We remain available to discuss these issues further, but we insist upon concrete, demonstrable changes to ensure compliance with the NVRA and the AVR Statute. As such, this letter serves as written notice of current and pending violations, as required by the NVRA. *See* 52 U.S.C. § 20510.

II. Section 5 of the National Voter Registration Act

Congress enacted the NVRA to increase access to the "fundamental right" of voting by "establish[ing] procedures that will increase the number of eligible citizens who register to vote," 52 U.S.C. § 20501. Under the NVRA, a state's chief election official is responsible for ensuring compliance with Section 5. *See* 52 U.S.C. § 20509. Per the Act, driver's license offices must provide individuals with an opportunity to register to vote simultaneously with their application for a driver's license or state-issued identification card. 52 U.S.C. § 20504(a)(1) & (d); *see also* 52 U.S.C. § 20502(3) (defining "motor vehicle driver's license" to "include[] any personal identification document issued by a State motor vehicle authority").²

¹ United States Census Bureau, Voting and Registration in the Election of 2016, Table 4b, Reported Voting and Registration by Sex, Race and Hispanic Origin, for States: November 2016, *available at* <https://www.census.gov/library/publications/2018/demo/p20-582.html>.

² Hereinafter, any reference to a driver's license refers to a driver's license, other than a temporary visitor's driver's license, or a State identification card issued by the Secretary of State's office. The AVR Statute specifically excludes temporary visitor's driver's licenses. *See* 10 ILCS 5/1A-16.1.



Section 5 of the NVRA mandates that state driver’s license or identification card applications or renewal applications shall “serve as an application for voter registration . . . unless the applicant fails to sign the voter registration application.” 52 U.S.C. § 20504(a)(1). A voter registration application “shall” be included as part of every application for a state driver’s license or ID card. 52 U.S.C. § 20504(c)(1). The voter registration portion of an application “may not require any information that duplicates information” included in other portions of the driver’s license or state identification card application, “other than a second signature,” which serves as an attestation under penalty of perjury that the applicant is eligible to register to vote. *Id.* § 20504(c)(2) (italics added). The voter registration portion of the application also must include a statement that a declination to register to vote or the office through which the applicant registered to vote will be kept confidential. *See* 52 U.S.C. § 20504(c)(2)(D)(ii).

III. Illinois’ Automatic Voter Registration Statute (AVR Statute)

Illinois’ Automatic Voter Registration Statute was written to build on the promises of the NVRA. Specifically, as to driver’s license and state identification card transactions, the AVR Statute, like the NVRA, shall not require an applicant for a driver’s license or State identification card to provide duplicate information in order to complete an application to register to vote or change his or her registered residence address or name. 10 ILCS 5/1A-16.1(d). Also, like the NVRA, driver’s license or state identification card applicants will be informed in writing about the qualifications to register to vote in Illinois, the penalties for submitting a false voter registration, and that declining to register to vote will be kept confidential. *See* 10 ILCS 5/1A-16.1(b-10). “If the identification documents provided . . . indicate that he or she does not satisfy the qualifications to register to vote in Illinois at his or her residence address, the application shall be marked as incomplete.” 10 ILCS 5/1A-16.1(e).

a. REAL ID Compliant Transactions

The AVR Statute was also written with the REAL ID Act of 2005 in mind. The REAL ID Act is a federal law that imposes additional requirements on state facilities issuing identification cards. Specifically, the AVR Statute requires that a person applying for a REAL ID-compliant driver’s license or state identification card who is a United States citizen will be automatically registered to vote, unless that applicant opts out of being registered. 10 ILCS 5/1A-16.1(b). In other words, the default here is that an eligible voter will be registered to vote and an extra step is required only if the person does not want to vote. As such, we refer to this as the “opt-out provision.”

Opt-out registration is possible because REAL ID compliance requires the applicant to provide documentation indicating their citizenship status and other documentation that would include their age or birthdate. *See* 6 C.F.R. § 37.11. Therefore, the applicant provides proof of voter eligibility and can attest to voter registration eligibility under both the NVRA and the AVR Statute. Because an applicant already has shared enough information to determine voter eligibility, the AVR Statute requires the eligible applicant to be registered to vote unless they ask not to be.

Under the AVR Statute, like the NVRA, the application for a REAL ID-compliant driver’s license or state identification card becomes an application for registering to vote. 10 ILCS 5/1A-16.1(b). Like the NVRA, within this dual-purpose, simultaneous application, the applicant must “attest, by signature under penalty of perjury . . . to meeting the qualifications to register to vote in Illinois . .



. . .” 10 ILCS 5/1A-16.1(b)(4). This “completed, signed application” then “constitute[s] a signed application to register to vote in Illinois” unless the applicant “affirmatively declined in the application to register to vote. . . .” 10 ILCS 5/1A-16.1(e). In sum, a single signature transaction at a Driver Services facility allows individuals to both apply for a driver’s license or state identification card and register to vote.

b. Non-REAL ID Compliant Transactions

The AVR Statute sets forth different processes for voter registration for both REAL ID-compliant and non-REAL ID transactions; even after REAL ID is implemented, Illinois residents will be able to choose which type of identification documentation to obtain. During non-REAL ID transactions, a driver’s license or state identification card applicant who also wishes to register to vote must attest “by *separate* signature under penalty of perjury, to meeting the qualifications to register to vote in Illinois” 10 ILCS 5/1A-16.1(b-5)(3) (emphasis added). This is unlike the REAL ID-compliant transactions, which require only one signature.

During non-REAL ID transactions, driver’s license applicants are not required to show documentation of citizenship. As such, the AVR Statute requires these applicants to (i) affirmatively choose to register to vote, and (ii) attest under penalty of perjury to meeting voter registration eligibility requirements. *See* 10 ILCS 5/1A-16.1(b-5). In sum, during non-REAL ID transactions where an applicant chooses to register to vote, at least one signature will be required (a signature attesting to voter eligibility), and it is possible that an additional signature would be required (one for the driver’s license or state identification card portion). Because of this extra step—requiring the applicant to affirmatively choose to attest to their eligibility and be registered—we refer to this portion of the statute as the “opt-in provision.”

IV. Violations of Section 5 of the NVRA and of the AVR Statute

a. Current Procedures for Voter Registration (Non-REAL ID Transactions)

Currently, the Secretary of State’s Office has implemented electronic opt-in voter registration. Our review of the current driver’s license application process reveals a multi-step process. First a Driver Services employee asks the applicant for some demographic information, takes the applicant’s photo, and asks the applicant to sign an electronic pinpad. Next, a different Driver Services employee asks the applicant more demographic questions, including the applicant’s date of birth, and inputs that data into an electronic application form. The employee asks the applicant if the applicant wants to register to vote or update their voter registration. If the applicant says yes, then the employee directs the applicant to an electronic pinpad. The pinpad poses two questions: whether the applicant is of eligible age to vote and whether the applicant is a U.S. citizen. The applicant answers “yes” or “no” to both questions by checking the appropriate box. Then the pinpad prompts the applicant for a signature under penalty of perjury that they are eligible to vote. The Driver Services employee then prints out a paper sheet containing all of the applicant’s demographic and other information required for the identification card and asks the applicant to read it, initial some sections, and sign the form if all of the information is true and correct.

This process involves multiple violations of the AVR Statute and of the NVRA. Collection of duplicative information violates both the AVR Statute and the NVRA. *See* 10 ILCS 5/1A-16.1(d);



52 U.S.C. § 20504(c)(2). Nevertheless, the current process requires that applicants share their age multiple times during the application process, both with a Driver Services employee near the beginning of the application process and also later when attesting to voter eligibility.

Similarly, the current requirement that applicants provide three signatures violates the AVR Statute and the NVRA. Under the current system, an applicant must sign their name three times—when their photo is taken, when they are attesting that they are eligible to vote, and on paper when they are verifying the accuracy of information for their identification card. This triplication of information is unnecessary and violates both the AVR Statute and the NVRA. Both the AVR Statute and the NVRA prohibit collection of needlessly duplicative information. *See* 10 ILCS 5/1A-16.1(d); 52 U.S.C. § 20504 (c)(2). Under the AVR Statute, an application for a non-REAL ID compliant identification card that includes a discrete signature attesting to the applicant’s voting eligibility constitutes an application to register to vote. *See* 10 ILCS 5/1A-16.1(e); *see also* 10 ILCS 5/1A-16.1(b-5)(3) (stating that applicants for a non-REAL ID compliant form of identification must attest by separate signature that they are eligible to vote). These provisions allow the SOS to require a second signature but not a third.

b. Proposed Procedures for Voter Registration (REAL ID Transactions)

In August of 2018, the Secretary of State’s Office shared a document called the “REAL ID Automatic Voter Registration Facility Process Flow.” (Referred to herein as the “Process Flow”). *See* Attachment 1. Because we have not received further details, despite repeated requests, this letter focuses on the violations described in the Process Flow.

The “opt out” part of the AVR Statute is the cornerstone of the law and is the provision that would make registration “automatic” for REAL ID transactions. According to the procedures outlined in the Process Flow, SOS plans to require applicants for REAL ID compliant identification documents to provide information about their date of birth three separate times and their citizenship information twice, violating the AVR Statute’s and NVRA’s prohibition on Driver Services facilities from collecting extraneous or duplicative information. *See* 10 ILCS 5/1A-16.1(d) and 52 U.S.C. § 20504 (c)(2). According to the Process Flow, an applicant for a REAL ID compliant ID will be required to share the same basic demographic information with Driver License facility personnel multiple times. First, like the current driver’s license and state identification card transactions, the applicant will need to share their birth date, among other information, with a Driver Services employee. Then, according to the Process Flow, the applicant will provide “acceptable ‘proof’ documents” pursuant to the REAL ID Act, which verify the applicant’s date of birth and their citizenship status. Later, if an applicant wishes to register to vote, the applicant will be directed to an electronic pinpad to “affirmatively answer questions related to being a U.S. Citizen” and to “affirmatively answer” questions related to the applicant’s age.

According to the Process Flow, the SOS plans to continue to implement the triplicate signature requirement that is currently in violation of the AVR Statute and Section 5 of the NVRA. *See* 10 ILCS 5/1A-16.1(d); 52 U.S.C. § 20504 (c)(2). Under the AVR Statute, even two signatures are prohibited for applications for REAL ID-compliant forms of identification. The law requires a consolidated dual-purpose application form, forbids duplication, and specifies that a separate signature attesting to eligibility is only necessary on applications for non-REAL ID licenses. Because a second signature is not necessary on Illinois REAL ID driver’s license or identification



card applications, it is not only forbidden by the Illinois prohibition on duplication, 10 ILCS 5/1A-16.1(d), but also by the NVRA’s prohibition on unnecessary duplication, 52 U.S.C § 20504(c)(2)(A). By requiring more than one signature, the process outlined in the Process Flow document is not automatic, nor is it “opt out.”

V. Violation of AVR Statute Deadline

The SOS was required to implement the AVR Statute by July 1, 2018. 10 ILCS 5/1A-16.9. The SOS has failed to do so. Opt-out voter registration, described in 10 ILCS 5/1A-16.1(b), has yet to be implemented.

VI. Written Notice

We remain open to further dialogue regarding automatic voter registration, and we hope that your offices will accept Just Democracy’s offer of sharing our community experience and expertise to ensure that automatic voter registration is successfully implemented. We have expressed our willingness to work together and desire for community engagement time and time again. Because our previous efforts have gone nowhere, we have no choice but to send this letter, which serves as written notice pursuant to 52 U.S.C. § 20510. We hope the next ninety days lead to a resolution of these violations through demonstrable and concrete steps. If, however, the State elects to continue down its current path, we will have no alternative but to initiate litigation at the conclusion of the waiting period provided for under the NVRA. We look forward to your response and ask that you direct all communications directly to our counsel, Ami Gandhi at Chicago Lawyers’ Committee for Civil Rights.

Sincerely,

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ATTACHMENT 1

Real ID Automatic Voter Registration Facility Process Flow

Pre-flow: The Illinois Secretary of State's Office (SOS) no longer maintains a separate internal Motor Voter database for the purpose of sending voter registration data directly to local election officials. Instead, the SOS sends an electronic file nightly of all the voter registration transactions processed that day directly to the IL State Board of Elections (BOE), and BOE pushes that data to all local election officials statewide via their IVRS system/Web Service.

Illinois State Board of Elections sends the IL SOS a file each week (initialized weekly) reflecting the state's entire Voter Registration database (as maintained by BOE). During the facility process, applicant demographic information is compared against this file, rather than against the previous Motor Voter database that was maintained in-house by SOS.

In Facility:

The DL/ID issuance process begins at an Image Capture Workstation (ICW), where the applicant's photo and signature are captured, to be used for the drivers license/ID Card when manufactured. Limited demographic information (Name, Date of Birth, Gender, Zip Code) is also obtained from the applicant at this point for the purpose of searching for an existing driving record/file, or in the case of a new applicant, to generate a Drivers License/ID number for the applicant, and to pre-populate those demographic fields in the actual application process that follows the ICW step. The ICW is vendor-designed and owned and is not integrated into the rest of the DL/ID application process. Because Illinois has gone to a "photo first" facility processing flow, this signature cannot be used for purposes of voter registration as the voter registration "step" occurs later in the application process, after the applicant has provided/proved their full demographic info, etc.

The applicant then proceeds to a separate station, where the process continues on a SOS designed and owned facility program. After the applicant's full demographic information is completed (the fields above plus SSN and residence address) and this information is verified with acceptable "proof" documents, the facility program compares that applicant information against the weekly updated file from BOE. The AVR enacting statute requires us to make the comparison first and inform the applicant if they are already registered to vote in IL, and if so, at what residence address.

If the applicant has questions about the qualifications to register to vote in Illinois, the penalties for submitting a false voter registration application, or wanting confirmation that declining to vote is confidential and will not affect any services provided by our office, they are directed to signage made available in the facility explaining these issues.

If the applicant is already registered to vote and has submitted documentation of citizenship, but is making a change to their name or address on our system, we will advise the customer that their updated information will be sent to the BOE to update their voter name/address unless they decline to

have the update transmitted to BOE. If the applicant does decline, the applicant will later sign a declination statement on the paper DL/ID application. This information is not transmitted to BOE.

If the applicant is already registered to vote in Illinois and is not making any changes to name/address during the application process, the facility employee bypasses any further voter registration process, and continues the facility process. The applicant will later sign a statement on the paper DL/ID application that indicates they had no changes to their voter registration.

If the applicant is not already registered to vote in IL and presents citizenship documentation, they will be advised that their information will be submitted to BOE to register to vote, unless he/she declines. The applicant is then directed to the voter registration signature pad, located at each facility workstation, where they are required to affirmatively answer questions related to being a U.S. Citizen and that they will be at least 17 years of age on or before the next primary election and at least 18 years of age on or before the next general or consolidated election, and provide a signature. Failure to affirmatively answer the questions or provide a signature will stop the process at that point. Upon affirmatively answering the questions and providing signature on the signature pad, the registration (or change to name/address for existing registration) is written to a computer file that is compiled during the workday and sent to the BOE electronically each evening.

After the voter registration signature pad elements are completed, the system continues with the DL/ID application process. The employee will print the paper driver license/identification card application that is to be read and signed by the applicant. The employee will direct the applicant to read the front and back of the application to make sure all information is correct. Once they have read and understand the application, the applicant will then sign on the line that says applicant signature (signed by ink pen).

**ENCLOSURE 2 TO
JANUARY 28, 2020
NOTICE LETTER
(2019 COMMENT
LETTER)**



October 28, 2019

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Kenneth R. Menzel
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Dear Ms. Wright and Mr. Menzel,

The Just Democracy Illinois coalition submits the following comments regarding the Notice of Proposed Rules for code citation 26 Ill. Admin. Code 220, published in the Illinois Register, Volume 43, Issue 37, pages 9923-9944, on September 13, 2019. These proposed rules would implement automatic voter registration through both the Secretary of State's office and through other designated agencies, as codified at 10 ILCS 5/1A-16.1, 1A-16.2, 1A-16.6, and 1A-16.7.

The Just Democracy Illinois coalition ("Just Democracy") is a broad-based, nonpartisan, and diverse coalition of advocates from across Illinois who work to protect and promote the value of a single vote, no matter the geographic, racial, ethnic or party affiliation of the voter. Over two years ago, the more than 65 organizations in our coalition helped draft and advocated for the passage of a statewide automatic voter registration ("AVR") program. This bill cleared the Illinois General Assembly with unanimous bipartisan support. Just Democracy remains dedicated to ensuring the effective implementation of the State's AVR program, including monitoring compliance with the National Voter Registration Act, the federal Voting Rights Act, and the State's AVR law.

Automatic voter registration is meant to provide the easiest voter registration experience for eligible voters while protecting ineligible voters from inadvertently registering and assisting election authorities in keeping accurate voter registration rolls. To that end, Just Democracy continues to encourage state agencies to prioritize and facilitate community testing of and input on any procedures before they are fully implemented. The experience of other states has shown us that, when AVR implementation is well-crafted and well-executed, it markedly increases voter registration, regardless of the size of the state or the state's partisan makeup.¹

In Illinois, AVR also is intended to address our comparatively-low levels of voter registration and participation by young voters and voters of color. Voter registration rates for Black, Hispanic,

¹ See generally KEVIN MORRIS & PETER DUNPHY, AVR Impact on State Voter Registration (Brennan Center for Justice eds., 2019), available at https://www.brennancenter.org/sites/default/files/2019-08/Report_AVR_Impact_State_Voter_Registration.pdf.



and Asian citizens lag behind the registration rate for White citizens in the state.² One way that advocates aimed to address this disparity was by drafting Illinois' AVR law to include social service and public assistance agencies in addition to the driver's license agency. This innovation presents an opportunity for election authorities to reach communities that previously have been excluded from our voting systems, but only if implementation is well-planned and community tested.

In addition to our concerns with the proposed rules, detailed below, our coalition is alarmed by the numerous reported stories of applicants' difficulties in obtaining REAL IDs. Opt-out voter registration—the truly “automatic” component of AVR—currently is tied to effective implementation of REAL ID. Implementation of opt-out registration through the Secretary of State's office was supposed to be a model for other agencies to follow. We urge the Secretary of State's office and the State Board of Elections to engage with the community to improve REAL ID procedures, which will in turn increase access to AVR.

Our coalition has concerns regarding several aspects of the proposed rules:

- 1) **Lack of protections for age-ineligible applicants:** The proposed rules do not provide a mechanism to screen-out underage applicants in an opt-out system. We are concerned that underage applicants could be automatically registered to vote without realizing their ineligibility. Examples of proposed rules concerning this issue include 220.11 and 220.200(i).
- 2) **Need for further protections to guard against inadvertent registration of non-citizens:** When implemented well, AVR programs protect ineligible voters from inadvertently registering to vote. The proposed rules do not sufficiently clarify how the Driver Services Department within the Office of the Illinois Secretary of State is determining or confirming eligibility as to citizenship. Examples of proposed rules implicating this issue include 220.300(e) and 220.300(f). The proposed rules should explicitly address how noncitizens will be protected in REAL ID and non-REAL ID transactions. Noncitizens face potentially severe consequences if they accidentally register to vote, including potential deportation. Our organizations have previously recommended specific safeguards to include in the process, which would ensure that AVR is properly implemented and sufficiently guards against inadvertent registration of non-citizens. We remain available to serve as a resource on this important issue.
- 3) **Lack of rules related to language access:** We are concerned that there are no proposed rules that relate to language access for voter registration services, as is required under the federal Voting Rights Act. Lack of language access disfavors citizens with limited English proficiency, who thus have a diminished opportunity to register to vote. Without translations

² See UNITED STATES CENSUS BUREAU, Voting and Registration in the Election of November 2018, *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-583.html>; UNITED STATES CENSUS BUREAU, Voting and Registration in the Election of November 2016, *available at* <https://www.census.gov/data/tables/time-series/demo/voting-and-registration/p20-580.html>.



of voter registration materials or other clear procedures as to how limited English proficient applicants shall be treated, some citizens will be denied an equal opportunity to register to vote. Some non-citizens may be vulnerable to confusion around voter registration and could be inadvertently registered which, as described above, could result in severe consequences for the applicant. The proposed rules should state with clarity what is being communicated to limited English proficient applicants, how that information is being communicated, and how those applicants are being protected throughout the application process.

- 4) **Incomplete practices to inform applicants of their current voter registration status:** All applicants at a given agency, regardless of whether that applicant completes a dual-purpose application, should be informed of their current voter registration status, as described at 10 ILCS 5/1A-16.1(c) and 1A-16.2(d). The proposed rules are unclear on this point. *See, e.g.*, 220.200(g), 220.300(d).
- 5) **Rules for other designated agencies rely unnecessarily on practices from the Secretary of State**

- a. **Relying on signatures stored with the Secretary of State:** The purpose of implementing AVR at designated agencies besides the Driver Services Department of the Secretary of State is to capture potential voters who would *not* have registered through the Secretary of State or otherwise. All designated agencies should be able to fully register eligible voters, which includes collecting voter registration signatures. Under the proposed rules, if an applicant does *not* provide a voter registration signature at the designated agency, then the State Board of Elections may look for that applicant's signature first in the Secretary of State's database and later in the statewide voter registration database.

Although Just Democracy does not necessarily take issue with the State Board of Elections looking to other sources for a valid voter registration signature, this practice should be a last resort. The proposed rules seem to anticipate that designated agencies may not collect voter registration signatures at all. This process would defeat the purpose of including designated agencies in the statute, as it would deny complete voter registration to many applicants.

If there are scenarios when an applicant must be kept in pending signature status because the agency cannot provide the applicant's signature, the rules should clarify what information is being shared with the applicant and what follow-up steps are required of the applicant to be able to vote. Relevant rules include 220.120(d), (e), and (f), and 220.200(d).

- b. **Keeping applicants in pending signature status unless they show a driver's license or Illinois identification card:** Proposed rule 220.200(e) requires an applicant to provide a driver's license or Illinois identification card when using a dual-purpose application, or else be put into pending signature status, and cites to the Help America



Vote Act of 2002 (“HAVA”). But applicants may provide a signature for voter registration purposes and provide other identification to comply with HAVA without having a driver’s license or Illinois identification card. Requiring an applicant to provide a driver’s license or Illinois identification card defeats the purpose of expanding AVR to agencies beyond the Secretary of State’s office.

- c. Overly strict proposed requirements for opt-out voter registration programs at designated agencies:** Opt-out voter registration is the cornerstone of the AVR law and, where possible, should be prioritized for implementation at all agencies. Proposed rule 220.200(b) lists documents that an agency must collect before it can establish an opt-out voter registration program. This list mirrors the requirements for obtaining a REAL ID and goes beyond what is required to establish voter eligibility. Holding an agency to this strict standard before it may implement an opt-out voter registration program diminishes much of the power of AVR. The rule should mirror the approach in 10 ILCS 5/1A-16.7 of the AVR statute, which requires only that the agency collect “reliable personal information” sufficient to determine whether the applicant is eligible to register to vote. As discussed above, there must also be protections devised to guard against inadvertent registration of non-citizens, and we remain available to serve as a resource on that issue.
- 6) Lack of rules related to transactions initiated at unnamed agencies, which are then transferred to designated agencies:** Section 5/1A-16.2(a) of the AVR statute provides that “[i]f the designated automatic voter registration agency provides applications, applications for renewal, change of address forms, or recertification forms to individuals for services offered by another agency, then the State Board of Elections and the designated automatic voter registration agency shall consult with the other agency.” This part of the statute was negotiated during the legislative process to ensure that, for example, many transactions originating at the Illinois Department of Healthcare and Family Services are included in AVR. The rules are silent regarding transactions that originate at such other agencies, however, and should be revised accordingly.
- 7) Use of the State Board of Elections’ existing online voter registration portal:** Several proposed rules (for example, 220.200(f), (h), and (l)) contemplate an applicant filling out a dual-purpose application and then being redirected to the State Board of Elections’ online voter registration portal to complete the voter registration application. Under AVR, an applicant should be able to register to vote merely by completing the dual-purpose application, without any additional steps. Furthermore, the State Board of Elections’ online portal requires the applicant to input an Illinois driver’s license or state identification card number, which, again, defeats the purpose of expanding voter registration to other agencies.
- 8) Data collection:** The proposed rules do not adequately address the collection and dissemination of information on registration trends, which will make it difficult to analyze the efficacy of the automatic voter registration program and improve implementation accordingly.



Data collection and privacy protection are not mutually exclusive, and data provided in the collective need not impose privacy risks. Data that will be made available by the State Board of Elections or other agencies should be described in the proposed rules. Related rules include 220.120(f), (i), 220.200(h), (k), and 220.300(k).

- 9) **Automatic voter registration during the closed registration period:** Our coalition understands that election authorities do not process voter registration applications received during the closed registration period. The proposed rules do not clarify, however, what happens to applications submitted during that time or whether applicants are informed about what they need to do to be able to vote in the upcoming election. Related rules include 220.120(g), (l), and (n).
- 10) **Lack of rules related to employee training:** We are concerned that the proposed rules do not address employee training on any topic, including screening of applicants, interacting with confused applicants, data collection, providing language access, or other relevant topics.
- 11) **Miscellaneous additional comments:** There are a few proposed rules where we want to highlight confusing language.
 - a. 220.120(d): This proposed rule states in part that the Secretary of State's office is supposed to send "the signature that was provided for the applicant's driver's license or State identification card to be used for the purpose of completing the voter registration application." It is unclear if this signature is distinct from the one that would normally be sent.
 - b. 220.120(e): The use of the passive voice at the end of this proposed rule makes it unclear who has the option to reject the transfer of the electronic signature—the voter or the election authority.
 - c. 220.11: The definition of "dual-purpose application" should include "Department" as well as "Agency"

As part of the Just Democracy Illinois coalition's commitment to ensuring that the state of Illinois protects vital community interests and implements AVR in compliance with the law, we remain willing to provide support to the State Board of Elections and all implementing agencies. Please direct any reply to Ami Gandhi, Senior Counsel at Chicago Lawyers' Committee for Civil Rights, at either 312-888-4193 or agandhi@clcrul.org. Thank you for your consideration.



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