



U.S. Department of Justice

Civil Rights Division

Washington, D.C. 20530

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Judith A. Arnold, Esq.
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Office of the Attorney General
200 Saint Paul Place
Baltimore, Maryland 21202-2021

Dear Ms. Arnold:

This is in response to your July 10, 2003 letter to me regarding one of the Frequently Asked Questions ("FAQ") on the Help America Vote Act of 2002 ("HAVA"), 42 U.S.C. 15301 *et seq.*, as it appears on the Voting Section's website. Specifically, your question concerns whether HAVA requires States to verify certain information such as driver's license numbers provided by persons applying to register to vote, and asks for the rationale for the Division's conclusion set forth in the FAQ that States must do so. In your letter, you indicate that you do not believe that HAVA requires "that states verify those numbers or necessarily refuse to register an applicant if the number provided cannot be verified."

The Attorney General has assigned to the Civil Rights Division the Department of Justice's enforcement responsibilities under Section 401 for the uniform and nondiscriminatory election technology and administration requirements of Sections 301, 302, and 303 of Title III of HAVA. 42 U.S.C. §15511. Although the Department states its formal positions with respect to statutes it enforces only through case-by-case litigation, the Department does on occasion offer its general views on the manner in which it intends to enforce a particular statute or set of laws. Therefore, while we cannot issue a formal advisory opinion, we will attempt to answer the questions you have posed to the extent we can based on the Department's responsibilities to enforce Title III of HAVA and other pertinent federal laws. The opinions expressed in this letter are not binding and would not prevent the Department from taking a different position in any future litigation under HAVA or other federal voting rights statutes.

As our FAQ describes, there are two relevant federal law obligations. First, under the National Voter Registration Act ("NVRA"), Section 8(a)(1) requires that covered States "ensure that any eligible applicant is registered to vote in an election" if the "valid voter registration form of the applicant" is submitted, accepted, received or postmarked, as the case may be, within 30 days before the federal election in question (or lesser period if allowed by state law). Second,

Section 303(a)(5) of HAVA requires non-exempt States to begin verifying certain information from all registrants as of January 1, 2004, or with a good cause extension from the Election Assistance Commission, as of January 1, 2006, and Section 303(b) requires States to begin verifying certain information from mail-in registrants as of January 1, 2004.

Section 303(a) contains the requirements for a computerized statewide voter registration list. Section 303(a)(5), entitled "Verification of voter registration information," deals with one of these requirements. Section 303(a)(5)(A) provides that a voter registration application for federal elections "may not be accepted or processed by a State" unless the application includes the applicant's driver license number (if the applicant has such number) or the last four digits of the applicant's social security number (if the applicant does not have a driver license number). If the applicant has neither such number, then the State must assign a unique identifying number. Section 303(a)(5)(A)(iii), entitled "Determination of validity of numbers provided," provides that States "shall determine whether the information provided by an individual is sufficient to meet the requirements of this subparagraph, in accordance with State law."

Section 303(a)(5)(B), entitled "Requirements for State officials," contains additional detail regarding these verification requirements. Section 303(a)(5)(B)(i) provides that state election officials and state motor vehicle officials "shall enter into an agreement to match information in the database of the statewide voter registration system with information in the database of the motor vehicle authority to the extent required to enable each such official to *verify the accuracy* of the information provided on applications for voter registration" (emphasis added). Section 303(a)(5)(B)(ii), provides that state motor vehicle officials and the federal Commissioner of Social Security shall "enter into an agreement ... for the purpose of verifying applicable information" provided by voter registration applicants. That section further provides that the Commissioner "shall develop methods to verify the accuracy of information" provided by States "with respect to applications for voter registration, for whom the last 4 digits of a social security number are provided" and that the information to be verified includes whether the name, date of birth, and social security number provided "match the information contained in the Commissioner's records" and whether the individual is shown by the Commissioner's records to be deceased.

Section 303(b) of HAVA, entitled "Requirements for voters who register by mail," provides that certain categories of persons who register to vote by mail for federal elections for the first time after January 1, 2003, and do not qualify for one of the exemptions in Section 303(b)(3), must submit one of the forms of identification required by Section 303(b)(2)(A) the first time that they vote in a federal election after January 1, 2004. One exemption is Section 303(b)(3)(A), which applies to an individual who registers to vote by mail under Section 6 of the NVRA and includes in the application a copy of one of the required identification documents. Another exemption is Section 303(b)(3)(B), which applies to an individual who registers to vote by mail under Section 6 of the NVRA and provides either a driver's license number or at least the last four digits of the applicant's social security number and "with respect to whom a State or local election official *matches the information* submitted ... with an existing State identification

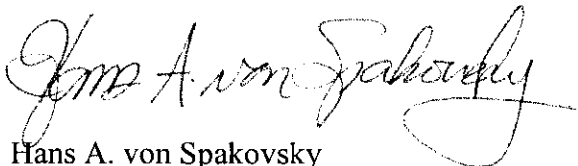
record bearing the same number, name and date of birth as provided in such registration” (emphasis added). If an individual does not qualify for one of the exemptions and does not present the required identification, Section 303(b)(2)(B) provides that he or she may only cast a provisional ballot.

It is clear in §303 that Congress intended, absent some exemption, that voter registration applicants for federal elections must provide certain specific information and States must take certain specific steps to verify this information. Indeed, Congress went to some length in HAVA to describe the steps to be taken by States in verifying registration information for the statewide registration list and for mail-in registrants. The obvious purpose of such verification provisions is to ensure that only eligible individuals are registered to vote, and that those individuals only have one registration at any given time on the statewide list. Under the relevant provisions of the NVRA and HAVA, a State can neither refuse to consider timely and complete registration applications, nor can the State refuse to undertake the verification process for those applications.

It is true that HAVA, like the NVRA, leaves the ultimate decision of whether to register the applicant, including the decision of whether the information provided by the voter has been sufficiently verified, up to the State or local election official charged with that responsibility under State law. However, it is clear under Section 303 that a State must set up a verification system that enables it to determine whether the information provided by a registrant is accurate by comparing it to its own state motor vehicle driver’s license records or federal social security records. Congress obviously intended that where the verification process is working correctly and the results of that verification process indicate that the registrant is eligible, the application will be accepted. Where the results indicate the registrant is not eligible, has provided inaccurate or fraudulent information, or information that cannot be verified, then the application must be denied. If verification cannot be completed between the close of registration and the election date, then the prudent course would be to allow such voters to cast a provisional ballot and to count the ballot only if the registration information is later verified as required under the statute. Contrary to your assertion, a State that does not takes the steps required by the statute to verify this information prior to making a registration effective would appear to be in clear violation of HAVA.

I trust this response answers your inquiry. If you have any further questions regarding this matter, please contact us again.

Sincerely,



Hans A. von Spakovsky
Counsel to the Assistant Attorney General