

STATE BOARD OF ELECTIONS
STATE OF ILLINOIS1020 South Spring Street, P.O. Box 4187
Springfield, Illinois 62708
217/782-4141James R. Thompson Center
100 West Randolph, Suite 14-100
Chicago, Illinois 60601
312/814-6440EXECUTIVE DIRECTOR
Ronald D. MichaelsonBOARD MEMBERS
David E. Murray, Chairman
Lawrence E. Johnson, Vice Chairman
Hannelore Huisman
Judith A. Jones
John J. Lanigan
Langdon D. Neal
Theresa M. Petrone
Wanda L. Rednour

MEMORANDUM

Date: December 15, 1994

From: State Board of Elections

To: Election Authorities

Subject: Implementation of the National Voter Registration Act of 1993

At its regular December meeting held on December 12, 1994, the Illinois State Board of Elections ("the Board") decided not to adopt rules under Section 1A-8 (12) of the Illinois Election Code (10 ILCS 5/1A-8(12)) to implement the National Voter Registration Act of 1993 (42 U.S.C. §§ 1973gg *et seq.* ("NVRA")). The Board concluded that, in the absence of comprehensive enabling legislation, its powers to supervise the administration of registration and election laws in Illinois, given by Article III, Section 5 of the Illinois Constitution of 1970, Section 1A-1 of the Election Code and the rule-making authority aiding that power were insufficient to create a system of implementation that would preserve fair, fraud-free, and orderly elections, especially since the Governor and the Secretary of State both have expressed reservations about the desirability of the program and have not yet acted to implement it in the agencies under their responsibility. In particular point, the Board felt that to use its powers to implement a system of voter registration allowing certain applicants to register to vote for federal offices but not for state offices, the only option open to it absent enabling legislation to change existing law applying to purely state elections, would be to introduce a confusing two-tiered system of election eligibility characterized by chaos in the conduct of elections and the real possibility of uncertainty in their outcome. Thus, the Board concluded that until the General Assembly acts it would be the wiser course for the Board to refrain from action of its own

Nonetheless, certain provisions of NVRA may be self-executing; that is, they may require or at least allow election authorities to satisfy the requirements of NVRA without further enabling state action. The purpose of this memorandum is to explore those possibilities with you and to suggest areas of concern that you may wish to consider with your State's Attorney or legal advisor.

Duties not in Conflict with State Law

NVRA creates some responsibilities which are not in conflict with current state law, at least to the extent that state law does not prohibit what NVRA requires, and there may already be existing authority to perform the additional federally-imposed duties. At least two provisions of NVRA may occupy this category.

- **Record-keeping functions created by Section 9(a)(3) of NVRA and 11 CFR Part 8.** Nothing in current state election law prohibits the collection and retention of the data required by the FEC regulation, and there may already be sufficient authority found in 55 ILCS 5/3-2013(7) to gather and preserve such information.
- **Notice provision under Section 8(d)(2) of NVRA.** Nothing in the Election Code mandates the particular form of the notice which must be sent to voters under the provisions of Sections 4-18, 5-25, and 6-44 of the Election Code so long as the information required by state law is conveyed. The information required by Section 8(d)(2) of NVRA can be added to whatever other information is required by state statute.

State Laws Invalidated by NVRA

In a number of instances the effect of NVRA, by the operation of Article VI of the United States Constitution, the Supremacy Clause, is to invalidate already existing state law. Invalidating existing state law does not in all instances create authority to substitute the provisions required by NVRA, but at least in some circumstances no further state action is required to enforce NVRA after the state law in conflict is stricken. Such provisions are described as "self-executing." Two conditions are necessary before a provision of NVRA is self-executing. First, the provision of NVRA in question must be in direct conflict with some act mandated by state law. Second, once the state law is disregarded, no additional grant of state authority is required to enable the election authority to enforce the provisions of NVRA.

Many provisions of NVRA governing the loss of the right to vote in federal elections are self-executing. NVRA may have the effect of rendering invalid provisions of state law which would otherwise result in loss of right to vote in federal elections, whatever effect those same provisions have on the right to vote in state races. But since the voter is already registered to vote in federal elections, removing the disqualification may leave him or her in precisely the same circumstance as before, with the right to vote in federal elections. No further enabling state action is required to preserve, as opposed to establishing, the right to vote in federal elections. The following state laws on the purging of voters may be invalidated by NVRA with respect to federal elections, allowing the already registered voter to continue to vote in federal elections.

NVRA 8(b)(1) -- No program for purging voter may offend the Voting Rights Act of 1965. The following statutes are probably invalidated to the extent that they can be discriminatorily applied.

- 1) Section 4-12 individual challenges
- 2) Section 5-15 individual challenges
- 3) Section 6-56 lodging house purges;
- 4) Section 6-38 registration judge purges; and