

Michigan Election Reform Alliance.org - Testimony

Statement to the House Committee on Redistricting and Elections
February 23, 2012

Regarding S 751 QVF File Management

From: Jan BenDor, Ypsilanti, MI, 734-484-1744, jan@bendor.org

Jan BenDor is a former Deputy Clerk in Michigan, an accredited Michigan Election Administrator, and Statewide Coordinator of MERA.

S 751 QVF File Management

Legislation should improve the management of the Qualified Voter File, not further complicate it. SB 751 fails this basic test.

If SB 751 offers solutions, we would like to know what the problem is. Legislation that does not solve a demonstrated problem simply wastes the taxpayers' money and very importantly, wastes the time of local election administrators who already have a complex system of rules to implement.

The authors of this legislation apparently do not know that the Qualified Voter File already permits a local clerk to obtain a count of "active" voters. The report module allows one to remove records marked "cancelled," "rejected" or "verify address" from the total. If the concern is to allow local clerks to more accurately identify the size of their voting population, for the legal purposes of staffing the polls, drawing precinct lines, and ordering proper supplies of ballots, then all the legislature has to do is authorize the use of the current system for these purposes.

Is there a problem with fraudulent votes for dead voters or those who have moved out of state? To fraudulently vote is already a five year felony in Michigan. Our surveys have found absolutely no reports or prosecutions for such crimes for the past ten years.

The bill's provision to "automatically challenge" a ballot from a voter classified "inactive," also shows ignorance of how the current system works. The National Voter Registration Act (NVRA) prescribes a specific process for cancelling a voter when that elector appears to have moved. Any provision such as this one that preempts the NVRA process and prematurely denies the right to vote would violate federal law.

Ballots do not suddenly appear from voters. Any voter must first apply to vote, whether in person or absentee. A local clerk who receives an AV application from a voter undergoing the NVRA cancellation countdown would be authorized to remove the voter's "verify address" code and countdown status, since the AV application itself serves to confirm that the voter is still a resident and a qualified elector. The same applies to such a voter who appears to vote at the polls.

What problem is going to be solved by authorizing the Board of Elections to conduct the NVRA process ("send notices," etc.) instead of the local clerks who are the sole managers of voter

registration records under Michigan Election Law? MERA conducted a thorough study of the Bureau's attempted purge of voters in 2006-2009, during which they spent \$1.9 million in a highly flawed process. (See the online report at <http://www.michiganelectionreformalliance.org/2006MIVoterPurge.pdf>)

MERA's research showed that not only did the Bureau create confusion and large numbers of errors, and fail to uniformly process returned mail as the NVRA requires, but also that the cost per voter cancelled under the Bureau's purge was far higher than in a project in which local clerks were assisted in this process. (\$16.31 vs. \$1.58 per cancelled record.)

Is there a problem with the Qualified Voter File holding too many obsolete "inactive" voter records? Reportedly, Michigan has more voter names than voting age adults, but there are no national standards for this. Given the mobility of the population, we could legitimately have as many as 20-25% of voters in transition. Simply labeling them as inactive won't do much.

Without needing any legislation, the SOS could and should identify those jurisdictions having problematic backlogs, and assist them with the correct procedures for cancellation under the National Voter Registration Act. There will soon be another opportunity to identify voters who have moved. In 2012, after redistricting, every jurisdiction will send out new voter identification cards. The cards that are undeliverable (and shall not be forwarded) form the basis for the NVRA postcard process.

Proper maintenance of the local jurisdiction's voter file would prevent the need for special rules on precincting, etc.

MERA recommends a number of file management improvements that would require only minimal legislative action:

1. The SOS should publish formal policies on Michigan's voter registration list maintenance. There should be a regular report on file maintenance problems and solutions, with documented statistics on the size and turnover of records in the QVF. The reports should give prominence to local clerks who have conducted efficient, effective, and creative programs.
2. Voter registration activities should be much more closely tied into ongoing governmental data gathering so as to raise the frequency of voter information updating. For example, the voter renews a Driver's License only every four years. During this period, the typical Michigan resident has already moved at least once. Instead, tie voter registration to high school and college registration, employment registration, auto insurance and vehicle license registration, and registration for governmental benefits. These efforts could and should be combined with much more thorough compliance with NVRA requirements to provide voter registration at government agencies.
3. The SOS can provide training to clerks in the conduct of a Master Card Audit. This process compares electronic records to physical records (signature Master Cards) and efficiently prompts investigation and correction of possibly obsolete registration records.
4. The Legislature should provide local clerks with the authority to access state Department of Community Health death records. Currently, clerks get a monthly report of death

certificates from their county clerk, but the report does not permit information on deaths out of state or deaths in prior years.

5. The Legislature should fund a major upgrade of the Qualified Voter File software. Currently, the system is online but not in real time. The QVF and the Driver's License files are still separate, resulting in many duplicate registrations as DL branch staff input new applications to vote that may have minute discrepancies in name, address, etc. These two systems should be merged into one online, real time database.

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Regarding HB 5061, S 751 and S 754 Photo ID

From: Jan BenDor, Ypsilanti, MI, 734-484-1744, jan@bendor.org

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How Photo ID Requirements Weaken Election Security: The Voter's Signature is Still the Gold Standard for Voter Identification

In Michigan, the voter's identity for election purposes has always been a signature, signed in the presence of a sworn election official, to register to vote, and to apply to vote at the polls.¹

This is a secure system: it is very hard to put a forged signature past experienced election administrators, who are skilled in handwriting identification. In one recent case, election administrators in a Michigan township could tell the difference between signatures of father and son with the same name, when the return envelopes for their absentee ballots were accidentally switched.

Michigan's longtime reliance on the signature as the basic ID for elections is the reason you must sign an affidavit before a sworn official in order to apply to register to vote. The federal Help America Vote Act of 2003 mandated that mail-in registration be permitted. However, in Michigan you cannot register by mail and immediately apply for an absentee ballot or sign legal petitions. Under Michigan law, you must first vote in person at an election, where you apply to vote and sign your name before a sworn official. This ensures that the voter's identity is established by their signature in person before voting and is available for confirmation by matching.

Although Michigan changed its law to request photo ID at the polls in 1996,² the law was ruled unconstitutional by then-Michigan Attorney General Frank Kelley in 1997. A decade later, in response to a request for an advisory opinion from the State Senate Republican leadership, the Michigan Supreme Court overruled this opinion by a 5-2 party-line vote. While an option remains to sign an affidavit in lieu of photo ID, the option is not widely publicized.

When requesting photo ID was re-instituted, the Secretary of State estimated that 377,000 registered voters had no photo ID, and 600,000 residents of voting age had no photo ID.³ So the request for photo ID placed a considerable potential burden on large numbers of eligible voters, as has already been amply discussed in previous testimony; but it did nothing to improve the security of voter identification. Quite the contrary.

Replacing the signature match with a photo ID has made it easier, not harder to impersonate a voter. Prior to the 1998 implementation of the Qualified Voter File, every polling place used a book of assembled voter master cards as the precinct voter list. An election worker compared the voter's signature on the application to vote, against the original signature on the voter's

registration master card. Once identity was verified, the voter was issued a ballot.

Although local Clerks still maintain these master cards, they are no longer present at the polling place. The precinct voter list is now a printout generated from the Qualified Voter File, with the voter's address, birth date and internal voter identification bar code listed, but no signature to check, and no standard photo to match either!

Instead, election workers are now required to ask for certain forms of photo ID, which must include the voter's name and photo. Election workers have no voter registration "photo standard" to match against, so all they can do is approve the voter if, in their unguided judgment, the face of the person present remotely resembles the photo ID presented.

It is relatively easy to get a fake photo ID that matches your face--ask any teenager who wants to pass as age 21. Anyone with a digital camera, the right software, and a laminator can create a facsimile of a "government-issued" photo ID.

In addition, election workers have a tough time figuring out if that low quality ID photo is really the person standing before them. For example, a Drivers License photo might be four years old, and in that time, people change haircuts, hair color, facial hair, make-up, hats, clothing, and facial features by cosmetic surgery, injuries, or health conditions.

There is no clear guidance for the situation in which the election worker cannot match the person to the photo. Should they refuse the application to vote? Should they challenge the voter's ballot? What can the voter do to protect his or her right to vote in this situation? Photo ID not only makes it easier to impersonate a voter, but also makes it easier to disenfranchise the voter, if the alternative of signing an affidavit is conveniently ignored and the voter is unaware of her rights.

In contrast, the elements of a voter's signature change very little. Even age and illness leave the basic characteristics of the signature unaltered. According to Ruth Holmes, Certified Document Examiner and handwriting expert, "A signature is unique to every individual. While there may be shared characteristics due to education, heredity and circumstances, there are distinct characteristics which allow a trained observer of signatures to verify the identity of an individual."⁴

This is why the noun, "signature," connotes an unchanging and trustworthy identity. Used as an adjective, as in "this is his signature move," it connotes an instant identification.

Requiring any kind of photo as identification is a poor substitute for the signature match. Photo ID is also logically invalid because there is no standard of record for comparison. There is no standard photo of a voter in the elections records in the same way there is a standard signature on file, so a photo does not provide independent validation of personal identity.

The photo Id request adds unnecessary cost, time and work to the voting process. And it seriously weakens the security and integrity of our elections.

For the most trusted and secure election, a person's unique signature is still the Gold Standard for voter identification and it should be restored to the voting process, not replaced and abandoned.

Footnotes

1. Michigan Election Law Chapter XXIII, Registration of Electors. MCL 168.495 Registration affidavit; MCL 168.497 Validity of Registrations (2) (defines officials who may register); 168.499 (1) "signing the registration application before the clerk..."; 168.500 Procedure for applicant unable to write; 168.501 Precinct and master registration card files; 168.504; Notarization requirement for remote registration by disabled elector; 168.766 Absent voters' ballots-- verification by election inspectors.
2. PA 583 was overruled by Michigan Attorney General Opinion #6930.
3. As reported in the Michigan Citizen, <http://michigancitizen.com/mi-supreme-court-requires-voter-photo-id-p4830-1.htm>. Web site of National Conference of State Legislatures <http://www.ncsl.org/?tabid=16602>
4. Email from Ruth Holmes to Nancy Bedell, MERA Secretary, January 29, 2012.

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Regarding S 754 Photo ID to Register

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S 754 Photo ID to Register.

This provision should be dropped.

The requirement that a citizen present a photo ID to register adds no security value to Michigan elections. To the contrary, it promotes a risk to security. This proposal represents "security theater," the illusion of security, which risks lulling officials into inattention to what really matters in secure voter registration.

A photo ID is not a standard for identity. As MERA has discussed at length in our statement on the Signature as Gold Standard for Identity (submitted separately), a photo ID is easily faked. No voter registration official has a means to verify the authenticity of a photo ID since there is no official record of it for reference. There is a centralized database of Drivers Licenses that is totally separate from the Qualified Voter File. The Driver License Database retains a low resolution signature image which is exported to the QVF with a voter's application to register, but no photo image is exported. Officials have no access to authenticate other approved forms of government-issued photo ID.

In contrast, the voter's physical signature on the affidavit to apply to register to vote, constitutes a witnessed document which is then stored on that voter's Master Card for future reference.

When an official witnesses the signing of the affidavit, what matters is that the voter understands and affirmatively indicates that he or she is in fact a U.S. citizen, a resident at the given address, and age 18 or will be at the time of the next election. If the official is distracted by another, irrelevant matter, this will inevitably cause inattention to the primary process of a voter registration.

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From: Jan BenDor, Ypsilanti, MI, 734-484-1744, jan@bendor.org

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S 754 Third Party Voter Registration

Unfettered third party voter registration is not an ephemeral privilege, but is actually implied by the U.S. Constitution's First Amendment clauses on assembly and petition. Since valid petition signatures must be from registered voters, the right to meet to assist individual citizens in satisfying the legal conditions for petitioning should be regarded as a guaranteed right that shall not be infringed upon. Any infringement would also infringe upon the right to assemble and petition the government. Therefore, all of the proposed Sec. 509v (2) D should be dropped as unconstitutional.

There would be little need for third party voter registration drives if Michigan were to ramp up its voter registration services in compliance with the National Voter Registration Act of 1993. At the present time, despite some improvement in the provision of mail-in forms at some State agencies, Michigan still fails to provide voter registration before a sworn official at State Offices, Universities, and many other locales. Many other states, notably Connecticut, have made voter registration services a priority and have reached documented success in raising the percentage of eligible adults who are registered to vote. An improved program in Michigan would require cooperation between the Secretary of State and the Governor, who administers State service agencies.

Michigan also fails to incentivize its 1700 local Clerks and 83 County Clerks to go out into the community and conduct registration activities. When was the last time you saw such an official at a public event where voter registration was offered? When was the last time your local nursing home or high school had a visit from a local registration official?

In the breach, Michigan has left voter registration up to amateurs, who have sought to do their best, even when denied "assistantizing" by their County or local Clerk. Restricting and punishing such dedicated citizens is certainly not in the public interest, even if it were constitutional.

The proposal to have the SOS punitively manage third party registration programs simply will not substitute for a thoughtful and comprehensive program in which the officials who are responsible and authorized to register voters, and to assistantize local trained volunteers, do their jobs.

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