

[DRAFT]

**ELECTION DAY REGISTRATION  
STATE OF ILLINOIS  
REPORT OF THE ELECTION DAY VOTER REGISTRATION COMMISSION  
NOVEMBER 12, 2008**

I. INTRODUCTION

House Bill 1025, introduced February 8, 2007 in the Illinois General Assembly, proposed amendment of the Illinois Election Code in order to permit local election authorities to accept in-person voter registration on the day of both consolidated primary and general elections in Illinois. A companion bill, House Bill 1753, introduced in the Illinois General Assembly on February 22, 2007 (and adopted by the legislature of the State of Illinois as P.A. 095-0441 on August 27, 2007) established the "Election Day Voter Registration Commission" and empowered the Commission to study possible effects of the initiation and adoption of legislation to make it possible for citizens eligible to vote to both register and vote on Election Day. The legislation called for the Commission to present its findings to the General Assembly, including any recommendation(s) for the adoption of legislation, and then to be abolished no later than January 1, 2009. This is the report of that Commission.

II. BACKGROUND

The U.S. Constitution grants states jurisdiction over the election process, although the authority of the states is not absolute. The Fifteenth, Nineteenth and Twenty-Sixth Amendments to the U.S. Constitution prohibit states from restricting the right to vote based on race or color, gender or minimum age (age 18) of the voter. The U.S. Supreme Court has also found that Congress is within its constitutional authority to pass laws governing the timing of federal elections, voter registration, and access to ballots for the elderly and disabled and in the areas of prohibiting racially discriminatory voting practices. But States continue to have wide powers to qualify voters and to establish rules for the conduct of federal, state and local elections.

Perhaps the most significant federal legislation affecting voting rights has been the landmark National Voting Rights Act of 1965 (42 U.S.C. Sec. 1973, adopted August 6, 1965), which outlawed discriminatory voting practices that had been responsible for the widespread disenfranchisement of African Americans in the United States. Echoing the language of the 15<sup>th</sup> Amendment to the U.S. Constitution, the Act prohibited states from imposing any "... voting qualification or prerequisite to voting, or standard, practice or procedure ... to deny or abridge the right of any citizen of the United States to vote on account of race or color."

Since the adoption of the National Voter Registration Act of 1993 ("NVRA"), Public Law 103-31 (May 20, 1993) the so-called motor-voter registration law -- which was designed to establish national voter registration procedures for federal elections and which specifically encouraged the states to establish procedures for the registration of citizens to vote at the same time that such persons acquired or renewed state drivers licenses -- and the adoption of the Help America Vote Act ("HAVA") (Public Law 107-252, October 29, 2002), in which Congress adopted legislation designed to provide funds to help states modernize election equipment by replacing outdated punch-card

voting systems and established other minimum federal election administration standards, significant effort has been underway to find new and more innovative ways to increase voter registration and voter participation in the election of public officials.

Among its requirements for improvement in election administration, HAVA requires states to develop a single, uniform, centralized, interactive computerized statewide voter registration list defined, maintained and administered at the State level. HAVA requires that the statewide list be coordinated with other agency databases within the state and further requires regular "maintenance" of the statewide list, including the removal of ineligible voters and duplicate names in accordance with the requirements of the National Voter Registration Act of 1993. The 2007 report of the United States Election Assistance Commission indicates that, as of December 31, 2007, the State of Illinois has received some \$143,500,000 in federal funds under HAVA in order to implement the election administration procedures required by the statute; the state has expended slightly more than \$126,000,000 of those funds for various election administration improvements since the adoption of HAVA.

HAVA also established a procedure called the "provisional ballot," which was designed to permit citizens whose registration to vote was challenged or subject to question to cast a ballot and have it set aside, to be counted or not following a post election-day investigation of the voter registration for that citizen to determine if he or she was entitled to vote. It has been reported that, in 2004, some 1,000,000 voters were able to vote and have their ballots counted as a result of provisional balloting. Unfortunately, experience with the provisional ballot in both federal and state elections has apparently determined that it is not only a cumbersome and expensive additional part of the election day voting process but that such ballots are often set aside during the election day rush of other issues and never get fully counted in the vote totals.

Today's heavily transient and mobile society -- where citizens move from one home to another and often from one precinct to another or from one county or state to another frequently, where recent immigrants to this country and where more and more young people, many of whom are attending colleges and universities in communities different from the one in which they were raised, wish to participate in the electoral process for the election of their state and federal government representatives -- has found that the traditional form of pre-election day registration in place in most states is inconvenient and cumbersome and frequently has the effect of causing otherwise eligible citizens not to be able to participate in the election process.

The problem of finding ways to permit eligible citizens to register and to vote for candidates running for public office while also establishing procedures that will ensure that only those citizens eligible to vote are permitted to do so is not new. Indeed, it predates the formation of the United States of America itself.

A Wall Street Journal report, entitled "Will This Election Be Stolen" and published on November 1, 2008 reports that "...in 1742 riots broke out in Philadelphia on Election Day over claims that German immigrants were being used to illegally increase vote totals. George Washington won a race for the Virginia House of Burgesses after buying gallons of liquor for voters; James Madison refused to engage in this common practice and lost his election. New York City was infamous for ballot stuffing throughout the 1800s. In 1844, for example, 135% of the eligible voters turned out to vote."

Similar problems surfaced in the South in the late 1800s, fueled in no small part by the arrival of recent immigrants and the recent freedom of millions of former black slaves who were now considered freedmen and permitted to vote. An anonymous contributor to the Atlantic Monthly Magazine in 1879 wrote that "... (W)e have received an almost unlimited immigration of adult foreigners, largely illiterate, of the lowest class and of other races.... We have added at one stroke four millions and more of ignorant negroes (sic) to our voting population." Thus many native-born, white Americans were predisposed to believe stories of massive voter fraud in every ghetto – party hoodlums stuffing ballot boxes, etc. – even though such stories were believed to be greatly exaggerated.

The propaganda was of course not always false – the late Lyndon Johnson, former President of the United States, reportedly stole his first election to the U.S. Senate in 1948, gaining his 87-vote margin of victory through ballot fraud (an act that his biographer, Robert Caro, called "brazen thievery").

Yet, despite this history, public officials and legislatures have historically looked for legitimate ways to increase voter registration and public participation in the electoral process. Efforts have been made in many states to streamline and/or simplify the pre-election day registration process; yet the problem of large numbers of eligible voters still being denied opportunities to vote because of registration problems has persisted. It has been reported that as recently as the 2000 general election, as many as 3,000,000 voters in the United States were disenfranchised because of registration problems.

One of the more innovative and popular approaches being tried in a number of states, in response to this problem and consistent with the public goal of enhancing citizen participation in the electoral process, is Election Day Registration ("EDR"), a procedure which permits qualified citizens to register to vote and to cast their ballots on the same day at the polling place in their residential precinct. In May, 2008, H.R. 5946 was introduced in the United States Congress, proposing to require states with voter registration requirements relating to federal elections to permit same day, election day voter registration and voting in federal elections. Similar legislation was introduced in both the House of Representatives and the United States Senate; both bills were routinely referred to appropriate legislative committees for consideration.

### III. THE REGISTRATION AND ELECTION BALLOT PROCESS

Election Day Registration procedures are now in place in nine states with several others considering such legislation currently. Although a relatively new phenomenon in state voter registration procedure, the first two states to adopt EDR – the states of Maine and Minnesota -- did so in the early-to-mid 1970s. Nine states now have Election Day registration or same day registration and voting, including Maine, Wisconsin, Minnesota, Idaho, New Hampshire, Wyoming, Montana, Iowa and North Carolina.

Experience with EDR in the states in which it has been adopted indicates that EDR permits pre-election day problems with registration to be remedied by permitting the voter to simply re-register at the time of voting at the polling place. EDR also largely eliminates the need for provisional ballots which as indicated above continue to be used in many jurisdictions when a voter's registration is challenged or is in question.

The passage of the National Voter Registration Act of 1993 as well as the introduction of Election Day Registration in additional states in recent years has reportedly helped to reduce historic obstacles to voting that accompanied the imposition of pre-election voting registration requirements.

Reports from the 2004 general election indicate that 74% of eligible voters participated in states with Election Day Registration, compared to 60% in non-EDR states. The top four states for turnout in 2004 had EDR – Minnesota (78%), Wisconsin (75%), Maine (73%) and New Hampshire (71%). The fifth highest state was Oregon – the universal vote-by-mail state. One voter registration political action group that has studied election trends reports that more than 787,000 votes were cast, in the November 2006 election, by persons who registered on election day in the six states where it was permitted at the time, effectively representing from 5.5 to 18 percent of the citizens in those states who participated in the election. Five EDR states made the list of top 10 voter turnout states in 2006 (Minnesota, Montana, Maine, Wisconsin and Wyoming).

In 2006, Montana became the seventh state in the country to offer residents the opportunity to register to vote and cast their ballot on Election Day. Nearly 4,000 residents – one percent of those voting in the election in 2006 – have been reported to have selected the option, helping to increase turnout in the state to 63 percent, a jump of nearly 10 points over the 2002 federal election. Implementation of the procedure was not, however, entirely smooth; election offices in parts of the state were overwhelmed by Election Day registrants, some of whom had to wait until midnight to be registered and cast their ballots. In Minnesota, where the EDR procedure has been in place for several decades, it is estimated that between 10 and 20 percent of the voters in the state take advantage of EDR to register and vote on the same day. While long lines occasionally occur, one election official in that state estimated that Election Day registrants rarely waited more than 20 minutes.

EDR has been found to increase turnout among certain segments of the population more likely to encounter registration problems – people who move and move frequently, young people (particularly students) and historically disenfranchised voters. While it is commonly believed that EDR disproportionately advantages the Democratic Party over the Republican Party, the procedure empowers voters, not parties. EDR benefits all citizens who wish to participate in the electoral process and encourages all citizens to be actively engaged in the political process. Idaho and Wyoming are both EDR states, whose election administration officials have reported little difficulty with the administration or cost of EDR in elections in those states, and yet Idaho and Wyoming – like much of the West – remain two of the most staunchly Republican states in the country.

States with Election Day Voter Registration have consistently reported voter turnout rates approximately 10-12 percentage points higher than in those states that do not have Election Day Registration. Based on historical experience in other states, it is estimated that adoption of Election Day Registration in Illinois would similarly increase voter participation in the election by perhaps 10-15% over current numbers.

The process of voter registration in states with EDR has been found to be relatively uncomplicated and apparently not significantly expensive to administer. In Minnesota, for example, an individual who is eligible to vote may register on election day at his polling place by appearing in person at the polling place for the precinct in which

that person maintains residence, by completing a registration application, making a prescribed oath and providing proof of residence. Proof of residence may be established by (i) providing a valid driver's license or identification card; (ii) presenting any other document approved by the secretary of state; (iii) for students, by presenting a current student identification card from a postsecondary educational institution, a current student fee statement containing the student's valid address, along with a photo identification card or (iv) having a voter who is registered to vote in the precinct or who is employed by and working in a residential facility in the precinct vouch for the applicant.

Many EDR states support the EDR procedure in an effort to establish authenticity of the registration with a post-election canvas in which a postcard confirming registration is mailed to the person at the address for which the voter was registered. If the postcard is returned to the local election administration by the U.S. Postal Service, that triggers additional activity to investigate the accuracy of the registration which may include a second mailing to the voter/registrant followed by a report of the apparent improper registration – if necessary – to local law enforcement officials.

#### IV. ADMINISTRATIVE ISSUES – COSTS ASSOCIATED WITH ELECTION DAY REGISTRATION IMPLEMENTATION

Notwithstanding the general agreement among county election administrators that the goal of enhancing voter registration and public participation in the election process is admirable and to be encouraged, concern has been raised among Commission members, as well as in comments made by local county clerks and other election administration officials – as it has in other states where Election Day Registration has been considered and/or adopted – that the procedure would result in significant administrative costs to county clerks and/or local boards or commissions of election responsible for the administration of elections throughout the state.

In particular, it has been suggested that additional and perhaps significant costs would necessarily be incurred to (i) provide for an uncertain number of increased ballots and other election day instruction material to permit the same-day registrants to vote in the election; (ii) recruit, add and train additional poll-workers and/or election judges; (iii) address potential problems with distortion of the voter registration rolls and because of the increased potential for both election and voter fraud in the improper registration and/or issuance of ballots to persons not entitled to vote; and (iv) account for the increased numbers of potential registrants due to the impact of university and transient populations and the impact such additional registration requirements might have on other local government administrative obligations. Finally, it has been suggested that the implementation of any EDR procedure would be impractical without the development of a system for fair and equitable funding for the implementation and on-going management of the election-day process.

The history of the adoption of Election Day Registration in those states which have adopted the procedure indicates that the economic cost increases – to the extent they exist – have been relatively insignificant or at least manageable. Administrative officials from one state have estimated that cost at anywhere from \$0.00 to perhaps \$250.00 per precinct, depending on the cost of training and the compensation paid to poll-workers and election judges. Another state administrator has indicated that no additional training was required because it was found that in his state the training of poll-

workers and judges had been sufficiently extensive that the implementation of EDR could be easily handled along with other Election Day responsibilities.

Given the potential for the imposition of costs in the adoption of an EDR procedure, however, it is reasonably believed that any recommendation to the General Assembly for adoption of EDR in Illinois should be accompanied by the adoption of separate authorizing legislation to permit the State to provide such additional funding as may be reasonably required to permit efficient administration of both pre-election day registration and voting (where early voting and/or absentee voting is permitted) as well as same day Election Day Registration and voting.

#### V. ISSUES OF DETERMINING VOTER LEGITIMACY – PREVENTION OF FRAUD IN THE REGISTRATION PROCESS

Although little evidence exists that the adoption of Election Day Registration procedures have escalated the risk of voter fraud, efforts to address obstacles to voter registration – wherever it has been contemplated – have been complicated and frequently defeated because of concerns about potential widespread increases in election and voter fraud. Allegations of the risk of fraud produced widespread disagreement in Congress when the Help America Vote Act of 2002 was being considered and effectively delayed for a time passage of that statute. The infamous terrorist attacks of September 11, 2001 spurred legislative activity resulting in the Real ID Act of 2005 (P.L. 109-13, May 11, 2005), which generally requires states to meet costly minimum standards for drivers licenses and other personal identification cards; some have expressed concern that the statute may be an interim step in the eventual creation of a national identification system and/or ID card – with negative consequences for both privacy and for electoral participation.

In 2002, ballot initiatives in California and Colorado that would have led to the adoption of Election Day Registration in those states were defeated as a result of opposition that argued among other things that EDR would increase the potential for voter fraud; similar fraud allegations have prompted stringent ID proposals in states like Indiana, Georgia and Missouri (with the U.S. Supreme Court just recently approving the identification card requirements for voter registration adopted in Indiana). These concerns notwithstanding, research into the impact of the adoption of EDR provisions in the states where it has been implemented has indicated that EDR does not significantly increase opportunities for voter fraud; indeed, because of the requirement of in-person registration, the likelihood may be marginally diminished.

Early efforts to improve election administration in the United States, begun in the late 19<sup>th</sup> and early 20<sup>th</sup> century, included requirements that voters register in advance of elections and that election officials keep registration records. While reforms such as pre-Election Day voter registration and secret ballot voting reduced opportunities for organized election and voter fraud, they also had a negative impact on electoral participation, making voting especially difficult or at least more difficult for poor and working-class people.

Overall, however, conditions conducive to election and voter fraud have steadily declined in recent decades and those who have studied U.S. election registration and voting systems expect that trend to continue. Three factors have been reported as accounting for this decline – the declining strength of local political parties, machines

and political organizations; strengthened election administration; and improved voting technology. While some voter fraud is likely to occur unfortunately with any electoral system, the human condition being as it may be, current trends suggest that it is more possible today to further open up the political process without significant risks to the integrity of the voting process.

The analysis of allegations of voter fraud in those states which have adopted and implemented EDR -- in the states of Idaho, Maine, New Hampshire, Minnesota, and Wisconsin, where the procedure has been the law for as long as three decades -- indicates that the procedure does not appear to increase opportunities to commit voter fraud. In addition, EDR does not appear to compromise voter roll security; instead, EDR brings the registration process into the polling place where it is conducted under the eyes and the authority of election officials; states require registrants to document their residence and personal identity; and the use of post-election survey audits to verify registrant name and address acts as a catch on erroneous or improper same day registration. The adoption of a system in Illinois that would permit real-time access to registration databases at the polling place is one additional way that the process can be kept free of mistake, abuse or fraud.

## VI. RECOMMENDATION

Given the foregoing and consistent with the often-stated public policy at the federal level, implemented throughout many of the states, that measures be taken that will effectively increase public participation in both elections and the political process in general, it is the recommendation of this Commission:

- (i) that the State of Illinois adopt legislation establishing procedures for the implementation of same day registration of eligible voters on Election Day -- for state and local elections as well as federal general and special elections -- and further,
- (ii) that the State of Illinois provide additional financial support for county and local officials, as may be reasonably required to cover the costs of administration of Election Day Registration and voting, including the training and compensation of poll-workers and elections judges, and the implementation of reasonable and necessary voter identification requirements.

Respectively submitted,

James Ascot, Chairman

Commission Members:

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Elaine Nekritz, State Representative  
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