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Nat Robinson
Administrator, Elections Division
Wisconsin Government Accountability Board
17 West Main Street, Suite 310
Madison, Wisconsin 53701-2773

Re: State Practices With Respect to Failed HAVA Matches

Dear Nat:

We are writing in response to your request for information on other states' practices with respect to failed "HAVA matches." As explained below, the approaches that other states have taken to failed matches are far from uniform. Many states impose the only consequences that HAVA prescribes: un-matched, first time voters who registered by mail are required to confirm their identity by alternate means if they are not matched. In contrast, a handful of states have taken an approach that rejects the applications of un-matched voters, turning the purpose of the Help America Vote Act on its head. To date, the GAB has wisely avoided this course of action, and we urge it to continue to resist the calls for misguided action that would disenfranchise Wisconsin voters.

Only four states — Florida, Iowa, Louisiana and South Dakota — prevent voters from being added to the state's official voter registration database if the applicant's driver's license number or Social Security digits are not verified. And even these states do not all require that the number be verified against another database. Florida, for example, permits voters to verify their numbers by showing election officials a copy of their driver's license or Social Security card.¹

Forty-six states and the District of Columbia, in contrast, do not prohibit voters from registering and voting merely because the state has not been able to verify their driver's license number or Social Security digits. The policies of these states are fully consistent with Congress's intent in passing HAVA.

Congress intended HAVA's matching mechanism as a tool for building voter lists with unique numbers associated with each voter as well as an alternative to a strict voter

¹ See § 97.053(6), Fla. Stat.

identification requirement. Early drafts of HAVA contained a requirement that all first-time voters who registered by mail show documentary identification before they cast a ballot. In response to fears that this could disenfranchise poor and minority voters, Congress included matching as a way to relieve first-time voters who register by mail from having to show identification when registering or voting. As Senator Bond put it, “[i]n lieu of the individual providing proof of identity, States may also electronically verify an individual’s identity against existing State databases.”² Thus, matching was not intended as a hurdle voters had to overcome before registering and voting. Rather, it was intended as a safeguard that would provide an alternative path to the franchise for first-time voters who might otherwise be prevented from registering or voting because they did not have documentary proof of identity. Given this history, it would be a perversion of HAVA to prevent voters who are not matched, but who show identification, from registering and casting regular ballots.

Consistent with the purpose of HAVA’s matching provision, in a majority of states voters will be included in the official list of registered voters, and will be placed on the pollbooks, in spite of a failed match. In some states, un-matched voters are listed on the pollbooks as fully registered, active voters. In Nebraska, for example, if the state does not find a match, the voter is treated the same as a voter who has no driver’s license or Social Security number to be matched: she is fully registered, and a unique identifying number is generated and added to the registration record.³ Following HAVA, only if an unmatched voter registered for the first time in the jurisdiction, and did so by mail, does Nebraska require the voter to show identification before voting a regular ballot.

In other states un-matched voters are included in the official list of registered voters, but their registrations are flagged, sometimes with the designations “provisional” or “pending.” In these states, the voters are listed on the pollbooks with a notation that the voter must show identification or sign an affidavit before voting a regular ballot. Washington State, for example, adopted a system for provisional registration after a federal judge struck down its original matching statute, which prevented un-matched voters from registering and casting regular ballots.⁴ In Washington, un-matched voters are provisionally registered and included in the official rolls of registered voters with a

² 148 Cong. Rec. S10488-02, 2002 WL 31317844, *S10489 (daily ed. Oct. 16, 2002) (emphasis added); *see also id.* at 10504 (statement of Sen. Dodd) (in the event of a successful match, “the first-time voter identification requirement is obviated and essentially rendered moot, thereby avoiding the potential disenfranchisement of minority voters”).

³ *Id.* § 32-312.03(4).

⁴ *See Washington Ass’n of Churches v. Reed*, 492 F. Supp. 2d 1264, 1271 (W.D. Wash. 2006).

notation that they must show some identification before casting a regular ballot.⁵ If they do present identification at the polls, they may cast regular ballots.

In refining its policy with respect to un-matched voters, Wisconsin has good reason to adopt the reasoned judgment Congress reached when it adopted HAVA. Under such an approach, a failed match would trigger a requirement to show documentary identification before voting only for first-time voters who registered by mail. As Congress concluded, such a policy is sufficient to protect electoral integrity. And it will do so while avoiding unnecessarily forcing thousands of Wisconsin voters to cast provisional ballots — which have a 70% chance of going uncounted, based on the rates in this year's presidential primaries.⁶

Please do not hesitate to contact us if you have any additional questions.

Respectfully,



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Deputy Director
Democracy Program



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Democracy Program

⁵ See *Washington Ass'n of Churches v. Reed*, No. 06-726, Stipulated Final Order and Judgment (w.D. Wash. 2007), available at http://www.brennancenter.org/page/-/d/download_file_48236.pdf

⁶ See The Pew Center on the States, Electionline.org, *2008 Primary in Review* 30 (July 2008), at <http://tinyurl.com/6e2lfk>. As the U.S. Election Assistance Commission has observed, “[t]he bottom line is that the casting of a proper, traditional ballot constitutes a vote, while the casting or submission of a provisional ballot does not.” U.S. Election Assistance Commission, EAC Advisory 2005-006: Provisional Voting and Identification Requirements, Sept. 13, 2005, available at <http://tinyurl.com/575yjk>.