



## MEMORANDUM

**TO:** Adam Ambrogi  
Special Assistant to Commissioner Ray Martinez III  
U.S. Election Assistance Commission

**FROM:** Wendy R. Weiser  
Brennan Center for Justice at NYU School of Law

**DATE:** November 2, 2005

**RE:** Age and Citizenship Box Requirements in HAVA § 303(b)(4)(A)

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Pursuant to your request, this memorandum outlines the Brennan Center's opinion concerning the appropriate treatment of applications for voter registration that do not include check marks in the HAVA-mandated citizenship boxes.

HAVA requires voter registration application forms to include questions about the applicants' citizenship and age. Specifically, voter registration forms must ask each applicant, "Are you a citizen of the United States of America?" and "Will you be 18 years of age on or before election day?" and include "yes" or "no" boxes for the applicant to check. 42 U.S.C. § 15483(b)(4)(A)(i) & (ii). HAVA further requires registration forms to include the statement, "If you checked 'no' in response to either of these questions, do not complete this form." *Id.* § 15483(b)(4)(A)(iii). HAVA is silent as to the consequences of an applicant's failure to check the "yes" boxes on the form. For the reasons stated below, the Brennan Center believes that states should not disenfranchise applicants in that circumstance.

First, states should not penalize voters because of unclear instructions on voter registration application forms. Many voter registration applicants are confused by the ambiguous language required by HAVA to be included on voter registration forms and do not understand it to mean that they must actually place check marks in the boxes on the application forms if their answers to the citizenship and age questions are "yes." Instead, they understand it to mean only that they should not fill out the rest of the form if their answer is "no." Since this is a reasonable interpretation of the HAVA-mandated language, prospective voters who do not check those boxes should be given the benefit of doubt with respect to the ambiguity on the form.

Second, a state's refusal to register an individual for failure to check the age and citizenship boxes is equivalent to denying that individual the right to vote because of a technicality that is not relevant to voting eligibility. This is not only unfair; it is also

inconsistent with federal law. The Voting Rights Act prohibits state officials from denying any person the right to vote “because of an error or omission on any record or paper relating to any application, registration, or other act requisite to voting,” if that error or omission is “not material in determining whether such individual is qualified under State law to vote in such election.” 42 U.S.C. § 1971(a)(2)(B). Check marks in the age and citizenship boxes are by no means material for a state to determine whether or not an applicant is eligible to vote—especially since every voter registration application also includes an affidavit that the applicant must sign swearing or affirming that he or she is a citizen and meets all of the requirements—including the age requirement—to vote under state law. Where an applicant signs an oath or affirmation regarding her age and citizenship, a state’s refusal to accept or process that application merely because it lacks check marks in those boxes would not only violate § 1971(a)(2)(B) but would also deprive the applicant of her right to vote without due process of law. This is especially problematic when the application for voter registration provides no notice to the applicant as to the consequences of failing to check those boxes.

In order to ensure that eligible voters are not inadvertently denied their right to register and vote, the Brennan Center urges the Election Assistance Commission to adopt the following interpretation of the effect of HAVA § 303(b)(4)(A) on the processing of applications for voter registration:

*A State should not reject an application for voter registration for failure of the applicant to place check marks in the “yes” boxes next to the questions concerning the voter’s age and citizenship if the applicant has signed an affidavit on the application form swearing or affirming that the applicant is a citizen of the United States and meets all of the requirements to register to vote in the State, but shall treat the application as though the applicant had answered “yes” to both questions.*

This should be the default rule at the very least with respect to those voter registration applications that do not clearly indicate that failure to check those boxes could result in the state’s rejection of the application.

Please feel free to contact me at 212-998-6130 if you have any further questions.