



Project Vote

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QUESTION: HAVA's Use of the Term "Jurisdiction"

In the Help America Vote Act (HAVA), what is the proper interpretation of the term "jurisdiction" in 42 U.S.C. § 15483(b)(1)(A) which requires states to subject individuals to identification requirements if "the individual registered to vote in a jurisdiction by mail"?

SHORT ANSWER

Since all states should have functioning computerized statewide voter registration lists as of January 1, 2006, a state should only subject voter registration applicants to HAVA's identification requirements if the applicant did not previously vote in a federal election in any jurisdiction within the state.

APPLICABLE STATUTORY PROVISIONS

Pub. Law 107-252 § 303(b); 42 U.S.C. § 15483, HAVA:

(b) Requirements for Voters for Voters Who Register By Mail.

(1) In General. Notwithstanding section 6(c) of the National Voter Registration Act of 1993 (42 U.S.C. 1973gg-4(c) and subject to paragraph (3), a State shall, in a uniform and nondiscriminatory manner, require an individual to meet the requirements of paragraph (2) if—

(A) the individual registered to vote *in a jurisdiction by mail*; and

(B) (i) the individual has not previously *voted* in an election for Federal office in the State; or

(ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized list that complies with the requirements of subsection (a).

(2) In General.—An individual meets the requirements of this paragraph if the individual [presents appropriate identification]. (Emphasis added).

Pub. Law 107-252 § 303(d)(1); 42 U.S.C. § 15483, HAVA:

(d) Effective Date.—

(1) Computerized Statewide Voter Registration List Requirements.

(A) In General.—Except as provided in subparagraph B, each State and jurisdiction shall be required to comply with the requirements of subsection (a) on and after January 1, 2004.

(B) Waiver.—If a State or jurisdiction certifies to the Commission not later than January 1, 2004, that the State or jurisdiction will not meet the deadline described in subparagraph (A) for good cause and includes in the certification the reasons for the failure to meet such deadline, subparagraph (A) shall apply to the State or jurisdiction as if the reference in such subparagraph to "January 1, 2004" were a reference to "January 1, 2006".

INTRODUCTION

Many election officials and advocacy organizations are concerned about how voters who register by mail are affected by the Help America Vote Act's (HAVA) identification requirements. After January 1, 2003, HAVA requires that states obtain certain identification from first-time voters who register by mail, unless these voters can be matched with a pre-existing government record (usually state driver's license or the Social Security Administration's databases). 42 U.S.C. § 15483 et seq. In order to vote a regular ballot, HAVA requires that voters who fail the matching criteria present either a current and valid photo identification, or a copy of one of the following: a utility bill, government check, pay check, or other government document showing the voter's name and address. 42 U.S.C. 15483(b)(2)(A).

For a multitude of reasons, states often have difficulty matching an individual's personal information to pre-existing government records. Clerical errors by state employees, such as transposing numbers, misspelling a name, or confusing a first name with a family name, can prevent registration of almost 20% of new voters.¹ Members of many vulnerable groups, such as the elderly, poor, and minorities, are less likely to have appropriate identification or be aware that they are required to present identification prior to voting a regular ballot. Since HAVA allows states to have considerable discretion in the manner in which many of its provisions are implemented, to minimize delay at the polls and ensure that voters are not wrongfully denied the right to vote, a more exacting review of HAVA's identification requirements is appropriate. 42 U.S.C. § 15484; 42 U.S.C. § 15485.

Before reviewing which categories of voters are impacted by HAVA's identification requirements, it is important to understand the nature of state discretion in implementing HAVA. First, HAVA does not prevent state officials from "establishing election technology and administration requirements that are more strict" than those set forth by HAVA. 42 U.S.C. § 15485. Second, HAVA leaves the manner of implementation of its requirements in the hands of state officials. 42 U.S.C. § 15484. Notwithstanding the Act's flexible discretionary provisions, election officials often misinterpret HAVA to require more stringent actions than a more exacting review of the text indicates. The purpose of this analysis is to help remedy misguided interpretations of HAVA's identification requirements so that policy makers can avoid severe and potentially disenfranchising regulations.

DISCUSSION

A careful, plain text reading of HAVA's identification provisions makes it apparent that an applicant who registers to vote by mail is only subject to HAVA's identification requirements if he or she has not previously voted in a federal election in the state. In other words, HAVA exempts applicants who previously voted in a federal election anywhere in the state from successfully passing matching criteria or providing additional identifying information when they are merely transferring their voter registration between jurisdictions (such as counties) within a state.

¹ In a case study by the New York City Board of Elections in September 2004, 99.7% of 3,000 of 15,000 total applicants who failed the matching criteria for driver's license numbers were a result of incorrect data entry by employees in elections offices.

HAVA clearly indicates that a state shall “require an individual to meet the [identification requirements] if the individual registered to vote in a jurisdiction by mail”. 42 U.S.C. § 15483(b)(1)(A). Although the term “jurisdiction” is not defined here, this provision is qualified by the conjunction “and”. As a result, this subsection, (A), must be read in conjunction with one of the two subsequent alternative provisions in subsection (B). The two alternatives in Subsection (B) are as follows:

- (i) the individual has not previously voted in an election for Federal office in the State; OR
- (ii) the individual has not previously voted in such an election in the jurisdiction and the jurisdiction is located in a State that does not have a computerized [statewide voter registration list].
42 U.S.C. § 15483(b)(1)(B) (emphasis added).

1. Subsection (B)(ii) can only apply to states who have not yet created HAVA-compliant statewide voter registration lists .

The deadline for states to have statewide voter registrations lists created and operating under HAVA was January 1, 2004, or January 1, 2006 if a state was granted a hardship waiver. 42 U.S.C. § 15483(b)(1)(B); 42 U.S.C. 15483(d)(1). As such, at this point in time, all states should have created a statewide voter registration list and no state in compliance with this requirement should read Subsection (A) in conjunction with subsection (B)(ii). However, it should be noted that prior to these deadlines, a state that had yet to create a statewide registration list could apply the identification requirements to individuals who registered by mail and did not previously *vote* in a federal election in the jurisdiction of registration (even if the individual had previously *registered* in another jurisdiction within the state).

2. All states should read HAVA's identification requirements in accord with subsection (B)(i).

Since all states should be in compliance with HAVA's statewide voter registration list requirement, state election officials should read HAVA's restriction on mail-in registrants in conjunction with subsection (B)(i) to determine HAVA's minimal requirements. Together, these clauses indicate that a state must subject mail-in registrants who have not previously *voted* in a federal election anywhere “*in the State*” to identification and matching requirements. 42 U.S.C. § 15483(b)(1)(B)(i) (emphasis added). As such, any state that has a functioning statewide voter list should not misconstrue HAVA as requiring additional identification from voters (who previously voted in a federal election) who are transferring registration between counties in the same state. However, HAVA does require additional identification from mail-in registrants who, though previously registered, had yet to exercise their right to vote in a federal election before re-registering in a neighboring county within the same state.