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Cc:

Date: Wed, 11 Feb 2015 12:49:50 -0800

Subject: Opposition to HB2177

Honorable Chair and Members,

I regret that I am not able to appear to make my testimony in person as I am traveling. Please let me know that you got this testimony.

I write to you in my opposition of HB2177, I wrote to the House Rules committee, but wanted to add my financial concerns in this committee.

I read the financial impact statement. It does not address any concerns about data breaches from this new system, since there have been two breaches at the Secretary of States office over the last year. This should be addressed.

Also Citizens who vote in other states for various reasons, who will be violating federal law as they may be registered in two states, as Mr Thutt stated in his testimony submitted to the House Rules Committee. This may have legal costs to verify those registrations.

How will inactive voters be affected? Will they be forever be active? The ease with which someone could over take a voter registration is remarkable. It is our duty to keep our voter registration list up to date. This puts our system at the top of the American states for vulnerability to voter fraud.

By auto registering people, we pretty much remove convictions of voter fraud. Non citizens WILL be able to vote, (see Jim Williams letter to Rep Esquivel) but their is no evidence to show that they intended to register to vote under this system. Where is the accountability? It does not exist. This is more than a financial risk for Oregonians who are US citizens. HB2177 strips them of their right to have their votes counted by diluting the vote with non citizens.

Thank you for your consideration.

Janice Dysinger

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SECRETARY OF STATE



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BY EMAIL &amp; U.S. MAIL

June 18, 2014

The Honorable Representative Sal Esquivel  
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Rep.SalEsquivel@state.or.us

Representative Esquivel:

Thank you for your questions regarding voter registration and citizenship verification. Your questions, and the issues they raise, have been the focus of ongoing discussions both locally and nationally. The Elections Division of the Secretary of State works closely with the DMV to accomplish the goals of the Help America Vote Act (HAVA) and to make voter registration as accessible as possible to all Oregonians.

I have attempted to answer your specific questions below. However, it is helpful to first provide some background information as an overview. In Oregon, a person may register to vote either with a paper application or online. When online voter registration was developed in Oregon, the online system was designed to mirror the paper process as much as possible. Online voter registration was approved during the 2009 legislative session and launched in March of 2010. At around the same time beginning in 2008, the Oregon DMV began phasing in over several years a legislatively mandated program to require proof of a customer's "legal presence" in the United States—based on documents supplied to the DMV—before issuing, renewing, or replacing any driver license, driver permit, or identification card. The requirements for establishing "legal presence" to obtain a driver license, driver permit, or identification card from DMV, however, do not correspond perfectly in all instances with the citizenship requirements for registering to vote.

Accordingly, voter registration in Oregon – both in paper and online – relies on the citizenship attestation made by a person registering to vote. If the person registering to vote lies on the form about their citizenship (or any other matter), then the person commits a Class C felony and is subject to fines of up to \$125,000 and/or imprisonment for up to 5 years. ORS 260.993(2); ORS 260.715(1); ORS 161.625; ORS 161.605. The crime of perjury is also a Class C felony, with the same penalties as those for lying on a voter registration form. ORS 162.065; ORS 161.625; ORS 161.605

Once a person submits a registration form, either in paper or online, Oregon law gives county clerks the authority to determine "[t]he qualifications of any person who requests to be registered" (ORS 247.174(1)) and to "inquire into the validity of the registration of any elector" (ORS 247.195(1)). In performing their duties, county clerks have limited access to DMV data, which is updated every week.

The DMV data available to county clerks complies with HAVA and Oregon's online voter registration statute, ORS 247.019, which both make driver license data an important part of the voter registration process. HAVA requires that a person who has been issued a current and valid driver license provide his or her driver license number before he or she can be eligible to vote in a federal election. 42 U.S.C. 15483(a)(5)(A). Further, in addition to requiring you to attest to your citizenship, state statute requires

that you have an Oregon driver license, driver permit, or state identification card to use Oregon's online voter registration system. ORS 247.019(1)(a)-(c).

The driver license requirement in both the federal HAVA law and Oregon's online voter registration statute provides county clerks valuable information to confirm a registrant's identity and eligibility to vote. Clerks primarily use DMV data and the driver license number supplied by the applicant to confirm the voter's name, address, date of birth, and to determine whether the person is already registered. In addition, for online registrations, the DMV data is used to obtain the person's signature for later use to verify the voter's signature on the ballot cast during an election.

The DMV data used by county clerks includes all people issued a valid Oregon driver license, driver permit, or state identification card. ORS 247.019(1)(a)-(c). While that data contains valuable information for county clerks, it has three main limitations for verifying the citizenship attestation made on either a paper or online registration form. First, to obtain a valid license, permit, or identification card today and appear in the DMV data, a person must prove with documentation to the DMV that they have a "legal presence" in the United States. ORS 807.021; ORS 807.400. However, as contemplated by statute, "legal presence" for the DMV is not necessarily the same thing as citizenship for purposes of registering to vote.

For instance, when people interact with the DMV, the internal database at DMV is updated including specific codes regarding their "legal presence." One "legal presence" code in the internal DMV database is for people who are known, validated citizens according to the documentation required by the DMV. These validated citizens are coded as "C" in the internal DMV database. For these people, the "legal presence" code of "C" in the internal DMV database can be used to confirm citizenship.

For others in the internal DMV database, however, the "legal presence" coding is less conclusive. For example, the internal DMV database includes a code for "Permanent Residents." These people are coded as "P" in the database and were permanent legal residents, but not citizens, at the time of their last interaction with the DMV. However, as time passes, these permanent residents may have attained actual citizenship, even though they are still listed with a "P" code in the DMV database because that information has not been updated. Further, under Oregon law, a permanent resident who is not yet a citizen can still register to vote so long as they provide sufficient information to a county clerk to prove that they are, in fact, a citizen at the time of the election. ORS 247.015(3). This statute is meant to enfranchise those people who are sworn-in as new citizens before the election but after the 20-day registration cut off. As a result, at the time they attempt to register to vote, a person coded as "P" for Permanent Resident in the DMV database may be:

- (1) A full citizen entitled to register and vote whose entry in the DMV database simply has not been updated after the person attained citizenship;
- (2) A soon-to-be citizen entitled to register under ORS 247.015(3) and subject to a requirement to supply proof of citizenship to the county clerk; or
- (3) A permanent resident who is not a citizen and who is not entitled to vote.

As a result, the "P" designation in the internal DMV database alone does not provide information that is sufficient for a county clerk to confirm or deny citizenship.

Further, for many people in the internal DMV database, there is not yet any code entered to shed any light on their citizenship status. While some people have a “C” code, “P” code, or other discrete code, a number of people have no code at all. This field remains blank because the person has not yet sufficiently interacted with the DMV to supply the data necessary to assign him or her a code in the database. Without a code in the database, there is no data upon which a county clerk may exclude a person from registering to vote, especially when the person has attested that they are a United States citizen under the threat of severe criminal penalties.

The second main limitation of the DMV data concerns timing. Under SB 1080 (2008), the DMV’s verification of “legal presence” and data collection on this topic is being phased in over time, so new license applicants and those required to renew, for example, must supply documents to verify their legal presence. However, if you have a valid license and are not yet required to renew it, then your data in the internal DMV database may not yet reflect any entry for “legal presence.” Since the DMV began phasing in its “legal presence” coding over several years beginning in 2008, online voter registration implemented in 2010 did not automatically screen registrants against the limited DMV database to verify citizenship. Instead, as with the parallel paper registration process, online registrants were required to attest to their citizenship subject to severe criminal penalties. Over time, of course, the internal DMV database is being updated as people apply for or renew their driver licenses.

The third main limitation concerns the information available to clerks when verifying a voter’s eligibility. While the DMV itself has internal codes in its database for “C,” “P,” and other designations, that specific information is not yet available for county clerks to see. Instead, county clerks see that a person has a record in the database, which means that they have a valid driver license, driver permit, or identification card. Clerks, however, cannot see the specific DMV coding for “legal presence.” My office is currently investigating solutions to make this specific DMV coding information available to clerks so they can use it to carry out their responsibilities to determine the qualifications and validity of voter registrations.

Given these limitations, using the DMV data for voter registration purposes must be done carefully. For example, the DMV data can safely be used to rule-in those coded with a “C” as eligible voters for registration purposes. The DMV database, on the other hand, in many instances cannot be reliably used by itself to rule-out people as ineligible to register to vote. For example, those labeled with a “P” may be eligible – or ineligible – to register given their individual situation. Further, for those without any code in the database there is simply no information that could be used to affirmatively exclude them from registering, particularly when they attest to their United States citizenship subject to severe criminal penalties.

In her discussions about Voter Modernization in the 2013 legislative session, Secretary Brown proposed that any effort to streamline voter registration would only focus on confirmed citizens (those coded with a “C” in the DMV database). This was an important added security feature of the Secretary’s Voter Modernization proposal in 2013. It would have provided a higher level of security and gone a step beyond the current statutory framework for online voter registration.

Given the limitations of the DMV database, we are working to compare Oregon’s voter registration database and DMV database with similar databases in other states. In cooperation with the Electronic Registration Information Center (“ERIC”) project, we hope to identify any duplicate registrations, provide updated address information, and identify potentially eligible voters who are currently not

registered to vote. The ERIC project is primarily focused on cleaning up the registration rolls and also engaging eligible but unregistered voters in the process. The ERIC project alone, however, will not provide increased information on citizenship status for those in the DMV database.

With this background in mind, I would like to now address your specific questions.

**Question #1: What procedures does the SOS employ to utilize the information concerning citizenship (or lack thereof) in batch files received from the DMV?**

County clerks use the DMV data to confirm a voter's identity, including their name, address, and date of birth. When a voter registers online or in paper, they are required to submit a driver license number if they have one. That number is checked against the DMV file for a match with the individual's name and date of birth to confirm identity and verify the person's eligibility to register to vote based on their age. At the present time, because the DMV database cannot be used to reliably rule-out people from registering to vote based on the limited coding for "legal presence," the DMV database is not used to automatically screen people based on those codes. Instead, the strict fines and prison terms associated with falsifying a voter registration form serve as the deterrent.

**Question #2: What steps, in terms of legislative, administrative, and funding initiatives, would be required to permit SOS employees to access the DMV database directly to confirm citizenship with respect to newly-received registrations?**

SOS employees currently have the ability to access some DMV data directly. Administratively, however, three things need to occur to safely use the DMV data to exclude people from registering to vote when those people have otherwise attested to their citizenship. First, the DMV will need to develop codes that better capture citizenship information for purposes of excluding them from registering to vote. For example, instead of an inconclusive "P" code for Permanent Residents, the DMV will need to develop codes that better match a person's eligibility to vote. Second, once adequate codes are in place, DMV will need enough time for everybody to cycle through the DMV to update, renew, or obtain a license, at which point the necessary data in the DMV database will be updated. Third, county clerks will need to be given access to see the new "legal presence" coding in the DMV database so they can use it to help verify a person's eligibility to register.

As far as legislative action is concerned, under the existing statutory framework, county clerks have the primary responsibility to determine "the qualifications of any person who requests to be registered" (ORS 247.174(1)) and to "inquire into the validity of the registration of any elector" (ORS 247.195(1)). Legislative action would be required to amend these statutes, and possibly others, to permit SOS employees to confirm citizenship and determine the qualification of registrants and verify the validity of their registration.

**Question #3: What steps, in terms of legislative, administrative, and funding initiatives, would be required to permit the SOS to run its entire voter registration database against the DMV database directly to confirm citizenship with respect to all Oregon voters?**

The SOS could run the entire voter registration database against the DMV database. Indeed, the ERIC project is designed to do this type of data matching. However, given the current limitations in the DMV coding, comparing for citizenship can be done in only a limited fashion. For example, comparing the voter registration database with the DMV database will reveal a number of registered voters who are coded as "C" in the DMV database. These are confirmed citizens because the DMV database

confirms their status as citizens for the purpose of voting. However, the comparison will also likely show a number of valid registered voters who have no “legal presence” code in the database since their information simply is not yet updated in the database. Further, the comparison might show some people coded as “P” for Permanent Residents who are, in fact, eligible to vote because either they have since become citizens or they are soon-to-be citizens entitled to register under ORS 247.015(3). For those without a code, or those coded with a “P,” the data comparison alone cannot be used to determine conclusively that these people are invalidly registered.

**Question #4: What law or rule prevents DMV from sharing the entire SSN with the SOS?**

No law or rule currently prevents the DMV from sharing a customer’s entire SSN with the SOS for voter registration purposes. See ORS 802.195(3) (permitting DMV to “disclose an individual’s Social Security number from a motor vehicle record to the other agency for use in carrying out the other agency’s governmental functions”). However, due to privacy concerns and the requirements of the Help America Vote Act (see 42 USC § 15483(a)(5)(A)), the Oregon Centralized Voter Registration (OCVR) database is designed to only capture and store the last four digits of a voter’s driver license number and/or SSN. Therefore, our current inter-agency agreement calls for only the last four digits of a person’s SSN to be transmitted to the SOS from the DMV.

**Question #5: If such data can only be used by law for “law enforcement or child support purposes,” isn’t maintaining the integrity of voter rolls “law enforcement”?**

Generally speaking, administration of election law and registering people to vote is not considered “law enforcement.” Furthermore, with improvements in technology and processes (such as ERIC) utilization of full SSNs is not necessary. In instances where a person is accused of falsifying information on their voter registration form, then using the full SSN would be seem appropriate for “law enforcement” purposes.

**Question #6: What steps, in terms of legislative, administrative, and funding initiatives, would be required to permit the SOS to modify the Oregon voter registration form to seek satisfactory proof of citizenship?**

Whether states can require proof of citizenship before a person registers to vote is a matter of pending litigation in federal court. In 2013, the United States Supreme Court in *Arizona v. Inter Tribal Council of Arizona, Inc.* ruled that the National Voter Registration Act (NVRA) preempted a state law requiring voters to present proof of citizenship because the NVRA mandates a uniform federal registration form that requires only attestation of citizenship. Two states, Arizona and Kansas, then sought to have the federal Election Assistance Commission change the federal form to allow states to require proof of citizenship. The Commission denied the states’ request and the states then sued the Commission in a case called *Kobach v. Election Assistance Commission*. Just this spring in March of 2014, the federal district court in that case agreed with the states that the Commission was required to change the federal form to require proof of citizenship. That decision was appealed, and just last month in May of 2014, the U.S. Circuit Court of Appeals for the Tenth Circuit issued a stay stopping enforcement of the lower court’s decision until the issue is resolved on appeal.

Given the uncertain and evolving state of federal law on this issue, your best course may be to consult with Legislative Counsel to determine what legislative options are available. Further, since Oregon’s statutes make the verification of a voter’s eligibility a question decided by county clerks, the

administrative and funding burdens would likely fall on the clerks to determine whether satisfactory proof of citizenship was, in fact, provided along with the voter's registration form.

**Question #7: Does the SOS regard the proof requirements established by the DMV as appropriate, and, if not, why not?**

At this point, the DMV's proof requirements are our best source of information regarding citizenship, at least for those people who have been affirmatively coded as "C" in the internal DMV database. Again, while the DMV data is the most reliable source, we know that the data is incomplete or inconclusive regarding the citizenship of certain people in the database.

**Question #8: Will the SOS support legislation to unify the voter and driver citizenship verification processes and require satisfactory proof of citizenship in connection with voter registration?**

At the present time it is difficult to support such legislation given the uncertain and evolving state of federal law on the subject. Once the litigation is concluded, and the legal parameters are clear, the Secretary would be willing to revisit this issue. The Secretary does, however, support using the DMV data to reach out to and engage more Oregonians into the electoral process, and the Secretary believes that those future outreach efforts should be focused on those Oregonians affirmatively coded as "C" in the DMV database. For the time being, however, Oregon state law places the burden on the individual voter to attest to their citizenship under the threat of severe criminal penalties, and the Secretary supports maintaining those penalties under any proposal to amend or modernize Oregon's voter registration process.

Sincerely,

*/s/ Jim Williams*

Jim Williams  
Elections Director