



June 10, 2013

T. Christopher Herren  
Chief, Voting Section  
Civil Rights Division  
Room 7254 - NWB  
Department of Justice  
950 Pennsylvania Ave., N.W.  
Washington, DC 20530

RE: Comment Under Section 5 Re Virginia Acts of Assembly Chapter 465 (2013)

Dear Chief Herren:

Please consider Project Vote's comments to the pending submission by Virginia requesting that the Department of Justice issue a determination that the proposed voting changes in Chapter 465 of the Virginia Acts of Assembly – 2013 Session do not deny or abridge the right to vote on account of race, color, or membership in a language minority group. Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Project Vote takes a leadership role in nationwide voting rights and election administration issues, working through research, litigation, and advocacy to ensure constituencies can register, vote, and cast ballots that count.

Our comments address the change that Chapter 465 makes to Section 24.2-418 that prohibits an individual or organization from sending pre-populated voter registration forms to potential applicants to assist them in registering, unless specifically requested by the recipient. Project Vote believes that this voting change should be rejected under Section 5 because it will adversely affect registrations by minority and disabled populations. We are not submitting a comment at this time on the other change to voter registrations procedures included in Chapter 465 and the states request for pre-clearance.

*Background:*

Chapter 465 changes several sections of Virginia's election laws affecting voter registration by individuals and organizations, in addition to the prohibition in Section 24.2-418 against sending pre-populated forms. The SBE has issued draft Guidelines relating to Voter Registration activity which implement the new law. Project Vote provided the SBE comments identifying a number of concerns raised by the draft. The SBE subsequently revised and approved the draft Guidelines. Based on the SBE public meeting on May 22, 2013, and information we have received from SBE staff about the revisions to the Guidelines that the Board finally approved, Project Vote does not object to Chapter 465 changes relating to voter registration drives. However, the SBE has not published the final Guidelines, and Project Vote may submit supplemental comments addressing

elements of the final document of which we are not aware.

**Section 24.2-418: Prohibition on Pre-populated Voter Registration Forms<sup>1</sup>**

Virginia's response to question (c) regarding Section 24.2-418 states:

Section 24.2-418 is amended to add that no voter registration application can be pre-populated with information the applicant is required to provide, unless directed by the applicant. Currently, there is no restriction on pre-populating information on the application.

The provision prohibits organizations from sending pre-populated voter registration forms to individuals whom the organization believes are not registered to vote unless they are directed by the individuals to do so. The prohibition undermines the goal of such programs – to include individuals who are not already engaged in the democratic process. Concern that pre-populated forms increase the prevalence of voter fraud, the ostensible rationale for the change, are not grounded. When an applicant signs a prepopulated form, she affirms the accuracy of the information as well as her eligibility under penalty of perjury— as do all applicants.

Programs that send pre-populated application forms reduce the incidence of records containing incorrect information due to scrivener errors and illegible handwriting. Incorrect information afflicts 12 million registration records nationwide according to one recent study, a number that includes numerous voters who have moved but not completed the paperwork necessary to vote in their new address.<sup>2</sup> Minority citizens are disproportionately likely to change residences; U.S. Census respondents who self-identified as Hispanic/ Latino or Black/African American had significantly higher mover rates than White respondents.<sup>3</sup> Therefore, programs that send pre-populated applications with the recipient's correct address benefit Virginia's minority communities to a larger extent than non-minority communities, and conversely, their elimination disproportionately affects such communities.

---

<sup>1</sup> The new revision to Section 24.2-418 states:

*Unless directed by the applicant or as permitted in § 24.2-411.1 or 24.2-411.2, the registration application shall not be pre-populated with information the applicant is required to provide.*

<sup>2</sup> Pew Center on the States, "Inaccurate, Costly, and Inefficient: Evidence that America's Voter Registration System Needs an Upgrade," at 4 (Feb. 2012), available at [http://www.pewstates.org/uploadedFiles/PCS\\_Assets/2012/Pew\\_Upgrading\\_Voter\\_Registration.pdf](http://www.pewstates.org/uploadedFiles/PCS_Assets/2012/Pew_Upgrading_Voter_Registration.pdf).

<sup>3</sup> US Census Bureau (David K. Ihrke and Carol S. Faber), Geographical Mobility: 2005 to 2010 Population Characteristic (issued Dec. 2012), available at <http://www.census.gov/prod/2012pubs/p20-567.pdf>.

The prohibition will have a similar affect on the disability community. Pre-population programs also ease the registration process for disabled applicants by decreasing scrivener errors and legibility problems that lead to rejections. Outlawing these programs will decrease registration of disabled citizens.

Project Vote appreciates the opportunity to provide insight into the voting change that prohibits organizations or individuals from conducting registration programs using pre-populated forms. If you have any questions, please contact me at [bmellor@projectvote.org](mailto:bmellor@projectvote.org) or by phone at 202-553-4317.

Sincerely,



Brian Mellor  
General Counsel  
Project Vote  
805 15<sup>th</sup> St., N.W.  
Suite 250  
Washington, D.C. 20005  
(202) 553-4317