Ominous Sleeper Provisions Lurk in the 2021 Omnibus Elections Law

The Omnibus Elections Law, Public Act 102-0015[1], specifies many operational changes in the conduct of elections in Illinois. For example, it makes Election Day a holiday and specifies dates for early voting, the primary, and the general election. It may strengthen the state's cybersecurity surrounding elections and e-mails of elections officials. It allows election authorities to create temporary polling places in the jails of smaller counties and remove the ability of local governments to prevent members of the Illinois General Assembly from also holding local office. What we want to focus on here are provisions in the law that may have the most profound effect on the integrity of the elections going forward. Such provisions may actively be promoted by some as improvements in the "fairness of" and "access to" the voting process.

The voting public must be vigilant and question each "reform" with a skeptical eye. Will there be a new set of winners and losers as a result of the change, or will the "reform" advance the goal of making every legal vote count?

Ranked Choice Voting as a process has been in the Illinois Code of Elections prior to the 2021 Omnibus Election Law, but it has not been used in the State as far as we know. It was proposed for implementation by a few legislators in the past, most recently by Jamie M. Andrade, Jr, (D) (HB2416). Introduced in February of 2021, the bill provided that members of the General Assembly and the offices of Governor, Lt. Governor Attorney General, Secretary of State, Comptroller, and Treasurer shall be elected by Ranked Choice Voting. It did not advance out of the House. Ranked Choice Voting was mentioned in the Omnibus law as a process that can be used with voters serving in the military or for voters that are overseas at the time of the election, provided that the election authorities have the capability to administer it.

In Ranked Choice Voting, instead of selecting one candidate in a given race, voters can rank their favorites in order of preference. To win, candidates need to accumulate more than 50% of the first-choice votes through a series of tabulation rounds, that can be a few as one (1). If there is no winner in round one, the candidate with the fewest first-choice votes is eliminated. If you voted for that losing candidate, your vote reverts to your second choice automatically. The process repeats on the computer tabulator until a candidate wins a majority. So, the votes from voters choosing winning candidates stay static in the next round(s) while the second-choice votes of voters who choose the worst performer are alive and are added to the next re-tabulation, and the process repeats until one candidate achieves greater than 50%.

Think about how you could influence the election result in your favor, if you were a trailing candidate. Remember, if your opponent gets greater than 50% of the vote in round one, he or she wins. Do you want spoilers to enter the race? Do you want to appeal to your base with strong convictions or appeal to the whole electorate with the hope of capturing a high number of second place votes? What other strategies might candidates or political parties employ in a ranked choice environment? Both curious minds and devious minds want to know. Before trying to answer these complex questions, read the excellent essay by elections experts Hans A. von Spakovsky and J. Christian Adams entitled: "Ranked Choice Voting is a Bad Choice", Issue brief No. 4996, August 23, 2019, The Heritage Foundation[2]. They summarized the key takeaways:

A. Ranked choice voting is a scheme to disconnect elections from issues and allow candidates with marginal support from voters to win.

B. It obscures true debates and issue-driven dialog among candidates and eliminates genuine binary choices between two top-tier candidates.

C. It also disenfranchises voters because ballots that do not include the two ultimate finalists are cast aside to manufacture a faux majority for the winner.

A second provision in the Omnibus Election Law provides the option to become a permanent vote-by-mail voter with an assigned political party membership. This can eliminate the need to request a vote-by-mail ballot prior to each election cycle. How convenient! But such a system is going to produce a reliable stream of ballots going to mailboxes during a known but short time window. If the voter rolls are not maintained continuously, excess ballots will be generated and sent to addresses, after the voter moved or died. The process lends itself to theft of ballots from mailboxes or illegal sale of the vote to unscrupulous ballot harvesters. Vote-by-mail was tried in many European countries and abandoned due to the high incidences of fraud[3] and we should strive to eliminate it here as well.

A third provision allows for internet voting for persons with disabilities, the details of which shall be provided by the State Board of Elections (SBE).   Internet voting introduces potential chain-of-custody and ballot security issues and puts an additional burden on the election authority to ensure that the credentials of a ballot received matched the credentials of the valid disabled voter. What criteria defines a disabled voter? Must that person possess an Illinois Person with a Disability Identification Card of a specific class and type? Currently, accessible

voting devices are available at in-person voting sites and can be used with the assistance of a special voter services election judges, when necessary. Alternatively, individuals with disabilities should also be able to utilize the current vote-by-mail process. The SBE, working with the legislature, should amend 10 ILCS 5/17-14 [Assistance in marking ballot] to accommodate assisted vote-by-mail ballot submissions.

We are concerned that the disability provision, once implemented, opens up the door for widespread internet voting for everyone in the future. Without proper credentialing of the ballot and the voter, such a system is open to on-line fraud. Perhaps blockchain technology could overcome the credentialing issues, but this technology is still in its infancy. Ronald L. Rivest and coauthors from MIT and Harvard have studied internet voting and conclude: "If vote-casting is entirely software-based, a malicious system could fool the voter about how the vote was actually recorded," "Democracy – and the consent of the governed – cannot be made contingent on whether some software correctly recorded voters' choices[4]."

High School Voter Registration requires high schools to permit voter registrations on school grounds, subject to regulations. No high school may prohibit nonpartisan voter registration on its premises. Students are allowed to register to vote by scanning a QR code with their phone with one form of ID. High School Voter Registration creates the potential for duplicate registrations with the automatic motor-voter registrations through the Secretary of State. It creates the potential for registration of under-age voters. A temporary driver's license of a noncitizen can potentially be used to register to vote. There is not a cross-check or interface capability of the automatic voter registrations to citizenship verification. Just an opt-in where voters attest to eligibility. High School Voter Registration may be another burden on the effort to clean up the voter rolls.

[1]https://ilga.gov/legislation/publicacts/fulltext.asp?Name=102-0015

[2]http://report.heritage.org/ib4996

[3]" Why do Most Countries Ban Mail-in Ballots?: They have seen Massive Vote Fraud Problems" John R. Lott, Jr, President, Crime Prevention Center, August 3, 2020, crimeresearch.org

[4]https://people.csail.mit.edu/rivest/pubs/PSNR20.pdf.

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