



Testimony in Support of LB 112
Nebraskans for Civic Reform
March 9th, 2017

I would like to submit testimony in support of LB 112 in my official capacity as Director of Voting Rights with Nebraskans for Civic Reform, a nonpartisan nonprofit advocacy organization that works to create a more modern and robust democracy. LB 112 is a simple change in how we treat provisional ballots. Under current law, provisional ballots go through a process of investigation, verification, and certification and it is at this point where the county election official and board of canvassers determine whether the provisional ballot will be accepted or rejected.

This process is required by state law to be completed in 7 days, but Nebraska has the authority to modify that timeline to accommodate the time needed for the counties to crosscheck provisional ballots cast in other counties. Currently 7 states¹ have implemented a similar portable registration with a variety of deadlines.² Pennsylvania also has a deadline of 7 days while Utah and Oregon provide 14 days to process provisional ballots.

Reasons for Rejecting Provisional Ballot:

1. Voter not properly registered in county before deadline for registration for the election
2. Information is received that shows the voter has resided, registered, voted in any other county or state since registering to vote in county where provisional ballot is cast
3. Credible evidence that voter has voted elsewhere or has otherwise voted early
4. Voter didn't complete or sign the registration required in 32-915

¹Seven states have portable voter registration within the state: Delaware, Florida, Maryland, Ohio, Oregon, Pennsylvania, Utah. Another 15 states allow for Election Day Registration and therefore do not need portable voter registration. Brennan Center "VRM in the States: Portability", 2/3/17. Last accessed 3/8/17 // www.brennancenter.org/analysis/vrm-states-portability

²Delaware (day following election), Florida (noon 4th day after election), Maryland (If filled out provisional ballot because could not present ID at polling place have until 2nd Wednesday after election to present ID), Ohio (Earliest of hearing or 11th day), Oregon (14 days), Pennsylvania (7 days), Utah (14 days). NCSL Study "Provisional Ballots", 6/19/2015. Last accessed 3/8/17. [http://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx#time allotted](http://www.ncsl.org/research/elections-and-campaigns/provisional-ballots.aspx#time%20allotted)



5. Residence address provided on registration application is not in the county or precinct where provisional ballot cast
6. Voter failed to complete and sign the certification envelope

While there are several reasons a provisional ballot may be rejected³, LB 112 is narrowly tailored to address only one reason for rejection, where the voter was not properly registered in county before deadline for registration for the election. LB 112 further limits the application to those provisional ballots cast by individuals already registered in Nebraska, just not in the county of their current residence. In short, an individual the moves from one county to another, but fails to update his or her voter registration, under LB 112, would be able to complete a provisional ballot, update their voter registration, and have their vote counted if confirmed the provisional ballot was the only ballot cast. LB 112 addresses a large percentage of provisional ballots currently rejected. In 2012 and 2014 general elections, approximately 80% of rejected ballots would have been counted had LB 112 been in effect.

Statewide Provisional Ballot Totals

	2012 – Primary	2012 – General	2014 – Primary	2014 - General
Total	1,661	14,917	1,786	6,266
Accepted	1,301	11,742	1,381	5,131
Rejected	360 (21%)	3,175 (21%)	405 (29%)	1,135 (22%)
LB 112 Rejected ⁴	192 (53%)	2,559 (80%)	212 (50%)	144 (88%)

Regardless of whether LB 112 passes, county election officials will still need to process, investigate, and certify the provisional ballots, LB 112 just allows them to accept more ballots after expending significant time and resources. It is estimated to cost a county approximately \$33.36 per provisional ballot.⁵ Nancy Joseff, Cass County clerk, estimates about \$3.36 to administer the provisional ballot at the polling site, \$20 of county staff time for initial review and recommendation of provisional ballot, and \$10 for final canvass board

³ Reasons listed were compiled from statute, Section 32-915, and codes included in report from Secretary of State’s office in response to records request for provisional ballots cast and determinations reported by the counties.

⁴ These are provisional ballots that were rejected by the board of canvassers but would have been accepted had LB 112 been in effect.

⁵ Morfeld, Adam S. “Addressing Constitutional Concerns and Strengthening Nebraska’s Election Administration: A Roadmap to Substantive Reform”, 90 Neb. L. Rev. (2013) Available at <http://digitalcommons.unl.edu/nlr/vol90/iss3/6>



determination, creation of new reports, and final processing of information in the voter database.⁶ It is possible that the change in law and notice of portable registration would reduce the number of voters returning to their old polling place to cast a ballot and instead going to their correct polling place to cast a provisional ballot, confident that it will be counted. While this could increase the number of provisional ballots that would need to be processed by the county, the increased number would include the voter updating their voter registration, improving the accuracy of Nebraska’s voter rolls. Furthermore, the creation of a statewide reporting structure by the Secretary of State could streamline the process and alleviate some of the burden on the county election officials investigate the provisional ballots.

Conclusion

In short, flexibility exists in federal law to allow for Nebraska to adjust the timeline to provide a cushion for counties to compare provisional ballots cast in their county to those in other counties to catch duplicates prior to certifying their election results. Implementing portable voter registration and passing LB 112 is respectful of the counties’ time, allowing them to count more ballots after expending the energy and resources to process provisional ballots. It expands the franchise to more voters and encourages them to go to their correct polling place. Finally, it improves the integrity and accuracy of the voter registration data by encouraging more voters to update their voter registration.

⁶ Morfeld, Adam S. “Addressing Constitutional Concerns and Strengthening Nebraska’s Election Administration: A Roadmap to Substantive Reform”, 90 Neb. L. Rev. (2013) Available at <http://digitalcommons.unl.edu/nlr/vol90/iss3/6>