



Project Vote is the leading technical assistance and direct service provider to the voter engagement and civic participation community. Since its founding in 1982, Project Vote has provided professional training, management, evaluation and technical services on a broad continuum of key issues related to voter engagement and voter participation activities in low-income and minority communities.

RESTRICTING VOTER REGISTRATION DRIVES

Voter registration drives make an important contribution to American democracy by reaching out to eligible citizens from historically disenfranchised or underrepresented communities. Poor people, members of many ethnic and racial minorities, new citizens, young people and former felons are registered to vote at lower rates than affluent, white and older voters. Yet all citizens have an equal stake in the political decisions that affect their lives.

Inadequate funding for election administration combined with a highly partisan political environment make it unlikely that states will play a leading role in overcoming the disparity in registration rates. One only has to look at the performance of public agencies. The National Voter Registration Act (NVRA) of 1993 requires state agencies that offer public assistance to also offer voter registration opportunities. In 1995-1996, public agencies registered 2.6 million voters; ten years later the number has declined 59% to barely one million. 2003-2004.ⁱⁱ

Partisan or non-partisan, secular or religious, paid or volunteer, voter registration organization are important intermediaries between states that are unable to ensure that all eligible citizens are registered and those citizens who are currently alienated from the political process.

739 8th Street, SE
Suite 202
Washington, D.C. 20003

2101 South Main Street
Little Rock, AR 72206
1-800-546-8683

www.projectvote.org

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Voter registration drives, of course, have long been a feature of American politics, but the 2003-2004 election cycle marked a recent high water mark. Project Vote alone helped register 1.15 million individuals in 26 states. The success of voter registration activities elicited an organized backlash that came in two parts. The first part consisted of exaggerated or inaccurate allegations of voter registration fraud, many of which were uncritically reported by the media. Repetition soon turned unsubstantiated – and even disproved – allegations into presumed facts. The second part was a series of bills, many of which have already passed into law, designed to significantly restrict voter registration drives in a number of states. These new laws are the focus of this report.

This policy brief examines restrictions on voter registration drives, gives examples from several states, and concludes with some reasonable policy recommendations.

The Legal Context of Voter Registration Drives

Voter registration drives by private individuals and organizations are an expression of political speech protected by the First Amendment. They which Congress passed with the express intent of facilitating voter registration drives by non-government organizations. Unnecessary or overly-restrictive laws or regulations on voter registration activities may violate both the First Amendment and the NVRA. States must ensure that any laws or regulations restricting voter registration activities are “narrowly tailored to serve an overriding state interest.”

Types of Restrictions

Registration and Disclosure Requirements

Several states require individuals or organizations to first register with the state before helping register voters. Organizations may be required to

designate an agent, typically a resident of the state, who is responsible for complying with the state’s law. A few states give organizations unique numbers after they register that must be included on any voter registration applications that they help individuals complete.

New Mexico requires organizations to disclose the identities of all volunteers and employees who will be involved in helping register voters before engaging in any voter registration activities. Finally, at least one state requires organizations to file quarterly statement disclosing their voter registration activities.

Excessive registration and disclosure requirements for voter registration activities have a chilling effect on organizations’ First Amendment rights that are rarely justified by any compelling state interest. They also may create an excessive burden on voters who rely on organizations for access to voter registration.

Training Requirements

Some states require organizations to participate in state-provided or sanctioned training before engaging in voter registration activities. This requirement may be imposed on just the organizer of the registration drive or it may be imposed on all volunteers and employees who will be involved in the registration drive. At least one state does not require all volunteers and employees to attend state training, but does require the organization to obtain and keep a signed statement from each person engaged in voter registration activities agreeing to abide by applicable laws and rules.

While a training requirement may not, on its face, seem unreasonable, the implementation of such a requirement is often problematic. For example, one state provides mandatory training once a month, by appointment, and only at the state capital. This does not meet the needs of organizations conducting large-scale voter drives where dozens of workers may be recruited each day in several cities across the state.



If states offer mandatory training at infrequent intervals or at inaccessible locations and therefore restrain organizations from pursuing voter registration activities in an effective manner, they may be violating organizations' First Amendment rights and rights granted to them by the NVRA.

On the other hand, a requirement that organizations provide training to their own volunteers and employees and obtain statements from them acknowledging their responsibilities is far less burdensome to organizations and also meeting state's interest in ensuring voter registration applications are completed accurately.

Limitations and Restrictions on Voter Registration Applications

Some states, through rule or practice, place arbitrary limits on the quantity of applications registration drives can obtain at any one time. For example, one state limits the number of applications to 50 at a time, and another to 500. These limitations clearly reduce the effectiveness of large-scale registration drives, where 500 applications or more may be completed each day. Limitations also fly in the face of the NVRA, which expressly states that registration forms must be freely available to facilitate organized voter registration drives.

Some states require that detailed records, such as a log, be kept on the disposition of each application. It is unclear how such a burdensome record-keeping requirement either facilitates voter registration or ensures the integrity of the registration process.

Some states discourage registration drives from using the federal voter registration application. At least two states even bar voter registration drives from using the federal form or refuse to accept it if used. Georgia recently lost a court case and the subsequent appeal when it was sued over its refusal to accept and process federal registration forms submitted by a registration drive.

Prohibitions on Copying or Recording

Some states prohibit photocopying completed voter registration applications while a few others prohibit making any records of information contained on completed application. The latter restriction would, for example, prohibit organizations from creating databases of individuals they helped register. Concern for privacy is the justification most often cited, but there is no reason to believe that registrants cannot consent to sharing their voter registration information with organizations or that this publicly available information has been used to infringe on voters' privacy.

There are a number of problems, however, with these restrictions. First, many organizations contact individuals whom they helped register in order to encourage them to vote. Preventing organizations from developing such lists and therefore impeding their ability to contact voters with a message about voting interferes with their First Amendment rights to free speech.

There are pragmatic concerns as well. Voter registration drives may have quality control programs that keep completed applications, sometimes correlated with the volunteer or employee who helped applicants complete the forms, in case questions arise later about their authenticity.ⁱⁱⁱ Finally, maintaining records allow organizations to verify that the individuals they helped are, in fact, being registered to vote and appear on the list of registered voters. This enables organizations to identify problems in the voter registration process and to work with election officials to resolve them.

States that require applicants to disclose their full Social Security number can satisfy privacy concerns by prohibiting organizations from copying or recording the number.

Transmittal Periods

While some states do not set a period of time in which completed applications must be transmitted to elections officials, many states do. A few states have set extremely short transmittal deadlines—48 hours



in one state, 72 hours in another. Short deadlines create significant barriers to running efficient and responsible voter registration drives.

A religious congregation, for example, may see its volunteers as part of another activity that occurs weekly or even monthly. In these situations, a forty-eight hour deadline or even a 5-day deadline would impede the registration drive of a church, synagogue or mosque that distributes registration applications to its members after weekly services and asks them to return completed applications the following week.

A second example is that of a voter registration drive run by large, professional voter engagement organizations, such as Project Vote. This organization may need time to review applications for completeness, process them according to their internal business rules, and verify the applications' authenticity. In states where voter registration drives are taking place in a number of cities, quality control systems may be centralized with professionals in one or more locations, which adds to an organization's need for a reasonable transmittal period.

Deputization

Several states require individuals to become agents of the state—deputy or temporary registrars—before they can assist others in completing voter registration applications. But “deputization” is not a single requirement, it is a complete regulatory scheme. Regulations may restrict who can become deputy registrars and how they go about offering voter registration assistance. We will look at Georgia's deputization schemes in the examples below.

Restrictions on Payment

Several states prohibit paying voter registration drive employees on a per application basis. This prohibition is based on the theory that a per application payment creates an incentive for the employee to engage in fraud. This prohibition is analogous to a prohibition on paying petition circulators per signature.

Maryland recently took the excessive step of prohibiting voter registration drives from paying individuals at all for collecting voter registration

applications—in essence, requiring voter registration drives to be an all-volunteer effort. In the face of litigation brought by Project Vote and our field partner, ACORN, alleging violations of our First, Fourteenth and Fifteenth Amendments rights, Maryland signed a consent decree agreeing to rescind the rule.

Examples from States

COLORADO

Colorado's legislature passed Senate Bill 05-206 in 2005. The bill created a series of requirements and prohibitions for the organizer of a voter registration drive, including:

- A requirement to file a notice of intent and designate an agent, who must be a resident of the state;
- A requirement to undergo training established by the Secretary of State;
- A requirement to return voter registration applications within 5 days of completion;
- A prohibition on using any voter registration application other than one designated by the Secretary of State; and,
- A prohibition against paying circulators per completed registration.

Failure to comply with any of these provisions is a misdemeanor.

The Secretary of State then promulgated “Rules Regulating Voter Registration Drives,” in August 2005.^{iv} These rule requires that:

- The organizer train circulators before they begin their registration efforts and obtain from each a signed attestation that he or she will adhere to the rules and statutes governing voter registration activities; and,
- The organizer ensures that a unique voter registration drive (VRD) number provided to the organizer by the Secretary of State is placed on each application.

Colorado has a unique provision in statute requiring voter registration drives to use only the form designated by the Secretary of State. The Secretary of State has designated special state forms for this purpose.



Colorado expressly forbids voter registration drives to using the federal voter registration form— a clear violation of the NVRA.

FLORIDA

Florida's Legislature passed House Bill 1589^v in 2005, which is affective January 1, 2006. The law defines "Third Party Registration Organization" broadly to include any person distributing and collecting applications to anyone other than family members, but it excludes political parties from this definition. The most ominous provision of the law, designed to chill voter registration activities, is a punitive set of fines for turning in completed applications late or not at all. Fines include:

- \$5,000 per application for failing to turn in a completed voter registration applications;
- \$500 per application for turning in completed registration applications after the close of voter registration; and,
- \$250 per application for failing to turn a completed application within 10 days of receiving the application.

The law also holds organizations to a strict liability standard and creates a fiduciary duty from the organization to the applicant.

The law's fine structure is used to coerce organizations to submit to a detailed set of reporting requirements by reducing the fine structure by three fourths for those organizations that comply with the law's registration and reporting provisions. Under these provisions, organizations must report quarterly the dates and locations of all voter registration activities during that quarter.

GEORGIA

Georgia Voter Registration Regulations require individuals to become a deputy registrar if they intend to distribute and collect voter registration applications. There are severe limitations placed on deputy registrars. They:

- Are appointed at the discretion of local election officials;
- Cannot collect applications door to door;

- Can only collect applications from pre-approved and published sights; and,
- Cannot receive compensation.

Georgia interpreted a recent Court decision^{vi} to mean that individuals do not have to be deputy registrars to distribute and collect voter registration applications. To close this new regulatory gap, Georgia proposed a new rule for non-deputies that:

- Requires applicants to seal the application before giving it to a non-deputy,
- Prohibits non-deputized persons from copying an application, and,
- Requires everyone to turn in applications within 72 hours.

The Rule is pending Department of Justice pre-clearance.

MARYLAND

Maryland, like Georgia, has a regulatory scheme^{vii} for voter registration drives. The state requires "voter registration volunteers (VRV)" to be trained and then certified by the state. Only after training and certification may individuals obtain blank state voter registration applications, distribute them, collect and return them.

Recently, the Maryland Board of Election implemented a regulation that prohibited a voter registration volunteer from receiving compensation for voter registration activities. Maryland rescinded the regulation in response to a lawsuit by ACORN and Project Vote. Further, the State acknowledged in a consent decree filed in October 2005 that voter registration drives may occur outside the voter registration volunteer framework. Maryland has since promulgated regulations that prohibit voter registration volunteers from copying or otherwise collecting information from completed application.^{viii}

NEW MEXICO

New Mexico's Legislature passed Senate Bill



678^{ix} in May 2005 that includes provisions regulating the activities of “third party registration agents.” The law requires organizations to disclose to the Secretary of State the names, addresses, dates of birth and Social Security number of all of its volunteers or employees and a sworn statement from its employees or volunteers agreeing to abide by applicable laws and regulations. Under the Secretary of State’s regulations, this must be done before the organization engages in any voter registration activity.

Organizations must transmit completed applications to election officials within 48 hours, unless a weekend or holiday intervenes, in which case completed applications must be submitted the next business day.

The Secretary of State issued rules in August 2005 to implement provisions of SB 678.^x The rules require the Secretary of State to provide third party registration agents with voter registration forms that have tear-off receipts for the applicants and traceable numbers. They also limit the number of voter registration forms to 50 per individual or organization, though the Secretary has discretion to increase the number to accommodate special circumstances.

Policy Recommendations

Define Voter Registration Drives

Laws and rules regulating voter registration activities are often poorly written or conflicting. If states decide to regulate large-scale voter registration activities, it is in their best interest to define “voter registration drive” and to do so in way that exempts some registration activities by individuals. One definition is:

A coordinated effort by two or more individuals to provide assistance to 300 or more members of the general public in [STATE] in completing and submitting voter registration applications. Nothing in this statute shall apply to individuals’ voter registration activities that are directed to family members or members of organizations to which the individuals also belong.

Project Vote recommends that states specifically exempt from the definition of a voter registration drive individuals who offer to help register (1) family members, (2) individuals with whom they live, and (3) members of organizations to which they also belong. This last exemption would allow, for example, members of a congregation to help one another complete the registration form.

Registration of Voter Registration Drives

The only registration requirements that states should impose on registration drives is to (1) name annually an agent or organizer and (2) require the agent to provide his or her contact information. The point of a registration requirement should be to facilitate contact between the state and the registration drive in order to address any concerns that arise.

Registration should not be confused with application. Acceptance of the registration should be automatic, except where there is a finding that the agent has engaged in previous misconduct related to elections. Any negative determination, of course, should be subject to an appeal process.

Training

States should charge their chief election officials with the responsibility to design and disseminate simple materials to train people involved in voter registration drives. These materials should be designed with principles of adult education in mind. They should include an explanation of (1) what constitutes a complete application, (2) who is and is not eligible to vote, and (3) the laws and rules that must be followed in helping register voters.

Any training should be the responsibility of the voter registration drive, which is best able to ensure that the training does not unnecessarily delay the start or continued operation of the drive.

It is not unreasonable for the state to require evidence that voter registration drives have trained their workforce according to state standards; for



example, by requiring a signed acknowledgement of responsibility from each of its employees or volunteers. These acknowledgments can be kept in the organization's files for inspection by election officials should a problem arise.

Recording Information

States should not prohibit voter registration drives from copying or otherwise keeping records of completed applications. Such records are critical to ensure the quality of the registration work, to verify whether applicants are being registered, to communicate with applicants who have not been registered and to facilitate Get-Out-the-Vote activities. States that have privacy concerns related to Social Security numbers should limit their copying or record-keeping prohibition specifically to the number.

Transmittal Time

States that impose a time period during which a completed application must be submitted should be sure the duration is sufficient to accommodate the reasonable needs of voter registration drives large and small. The NVRA provides for 10 days for state agencies, except for applications collected within 5 days of the close of registration, in which case the transmittal period is 5 days. We recommend that states provide timelines that are no more onerous than those provided for state agencies in the NVRA.

Payment Per Registration

Paying voter registration drive employees per completed application creates, at worst, an incentive for fraud. We recommend that states prohibit voter registration drives from paying its employees in this manner.

Conclusions

Voter registration drives make important contributions to our democracy by reaching out to classes of citizens who are under-represented in the political process. These activities are protected by the Constitution and the National Voter Registration Act. States should carefully consider the role voter registration drives play in our political system and the protections they enjoy, and regulate them judiciously.

End Notes

ⁱ "Ten Years Later: A Promise Unfulfilled: The National Voter Registration Act in Public Agencies, 1995-2005." ACORN, Demos and Project Vote. 2005.

ⁱⁱ "Presentation to the United States Election Assistance Commission: Effective Voter Registration and Submission of Completed Applications." Testimony of Holli Holliday, Project Vote National Director. October 25, 2005. Washington, D.C.

ⁱⁱⁱ "Ensuring Integrity in Voter Registration Drives." Project Vote. November 2005.

^{iv} 8 CCR 1505-1

^v Chapter 2005-277

^{vi} *Wesley Foundation v. Cox*. Georgia refused to accept a set of bundled Federal Mail Voter Registration Applications because they had not been collected under the State's deputy registrar scheme. The District Court ruled that Georgia must accept and process the applications regardless of the manner in which they were collected. The 11th Circuit Court of Appeals upheld the decision. More information can be found on the web site of the plaintiff's attorneys, Molden, Holley, Fergusson Thompson & Heard, at http://www.moldenholley.com/NVRA_Lawsuit.htm

^{vii} Code of Maryland Regulations 33.05.03.06 et. seq.

^{viii} Code of Maryland Regulations 33.05.03.06(E)(6).

^{ix} NMSA 1-4-49.

^x New Mexico Administrative Code 1.10.25 et. seq.