

1. VOTER REGISTRATION

THE VOTER REGISTRATION FORM

BACKGROUND

While HAVA attempts in some respects to provide uniformity with respect to voting administration, it may be the case that states, consistent with the legislation, will promulgate different rules that reflect their values, particularly concerning voter registration procedures. Notwithstanding the benefits of this diversity, there are some features of the voting registration process that ought to be represented in all of the states.

As became apparent during 2004, a state's rules or procedures regarding registration may potentially disenfranchise eligible voters and/or prevent the state from being able to identify a winner in a close election. This is particularly true when there are ambiguities in these rules or procedures and disputes about these ambiguities surface during a postelection evaluation of provisional ballots (a problem that is compounded by further ambiguities in the rules and procedures regarding the evaluation of provisional ballots). If, for example, there are 50,000 new registration forms about which there is a serious dispute over whether their submission has resulted in a valid registration under state law—a kind of dispute that occurred in several states in 2004—then the outcome of the election is seriously in doubt if the margin of victory is dependent upon the inclusion or exclusion of provisional votes from these disputed registrants.

As a general principle, any eligible voter who makes the effort to fill out and submit a registration form should not, without good reason, be denied the right to vote. Moreover, in order to encourage more Americans to participate in the election process, the rules for doing so should be clear and easy to comply with. The voter registration form should be as simple as possible and ought to be designed to keep the potential for errors that will disqualify a registration application to a minimum.

RECOMMENDATIONS

- 1.1 When processing voter registration forms, elections administrators should provide registrants with the presumption of eligibility. At the same time, states need to provide clear rules for what missing or incorrect information will be a basis for disqualification and/or the need to correct or amend.

We suggest material omissions that must be corrected by the voter by a date certain but not more than one week before election day, include the following:

1. Name (see below)
 2. Street Address (see below)
 3. City/Town (see below)
 4. Attestation of age and citizenship (see below)
- 1.2 Nonmaterial omissions, that is, blanks or mistakes that should NOT cause disqualification or the need to amend or correct, include the following:

1. Social Security or driver's license number. In this instance, the state must assign the voter a unique identifier.

If there is a slight error in data entry of the number, such as a transposition of numbers, and all of the other voter verification information matches with one of the state databases, the administrator should correct the voter record.

Pursuant to HAVA, first-time voters registering by mail who provide a DMV identification number or last

four digits of their Social Security number on their voter registration form are exempt from identification checks at the polls if the state can verify their information with an existing state database. When computer verification finds records that match some but not all voter information, these “near matches” should be audited for transposed characters, inverted names, or other frequent errors.

If it is absolutely impossible, given the information received from the registrant, to make a match, the elections office should immediately issue notification to the registrant with a precise description of the problem.

2. If there is one place to sign an affirmation of citizenship and age (and/or mental capacity), and that is signed, the failure to check any box that refers to the aforementioned should not be deemed a material omission.
 3. Apartment number
 4. Middle names
 5. Name title (for example, Jr., Sr., III)
 6. Zip code
 7. If under “city/town” the voter identifies his or her county
 8. Failure to enter the word “NONE” in the box requiring driver’s license number or last four digits of Social Security number
- 1.3 More study needs to be undertaken regarding best practices in design and wording selection for a form that is easy to understand, explains the rules, and gathers all of the necessary information. For now, the elements of a registration form should include the following at minimum:
1. The form should include a question about whether the prospective voter was previously registered somewhere else, and, if so, what that last address was.

2. The identification requirements should be boldly and clearly stated.
3. The form should state that if the registrant has not received a notification from the elections office within a certain number of days from the time the form was submitted, that person should contact the elections office. The form should provide a toll-free phone number and Web site for the elections office.

PROCESSING

BACKGROUND

Problems with the processing of new registration forms can cause individuals to be excluded from the rolls even though they are eligible and have done all that state law has asked of them. For example, suppose an individual submits a properly completed registration form by the deadline set by state law, but the state fails to process the form properly, leaving the voter off the rolls but without any way to rectify this administrative error. In addition to the individual injustice of preventing this eligible citizen from voting (unless corrected by means of a provisional ballot), this type of error, if frequent enough in a year with a large volume of new registrations—as 2004 was—could undermine the legitimacy of a close election.

Consequently, it is of paramount importance to the future success of HAVA implementation that, whatever specific rules and procedures states choose to adopt regarding registration, these rules be clear and straightforward and thus not susceptible to postelection disputes about their meaning. Similarly, while we must recognize the burdens that election administrators face in years with high numbers of new registrations, it is nonetheless essential that states have systems in place that enable them to handle such volume and that enable the registrants themselves to make sure that their successful submission of the form results in their ability to cast a valid vote.

RECOMMENDATIONS

1.4 We suggest states consider having two voter registration deadlines:

Early deadline: If a state adopts this system and a voter registers before this date, the elections office must give him or her opportunity to correct the voter registration form if it has been found faulty in any way or if he or she has not, for whatever reason, been put on the registration list. In such an instance, it is the voter's right to be notified of and permitted to make necessary amendments in person or by mail up until election day. In other words, if the elections office has found a material omission for this registrant, the elections office must follow notification and opportunity to correct procedures. Similarly, if the early registrant discovers through the public list (see Recommendation 1.5 below) that he or she has not been registered, he or she has the right to use the correction process up until election day.

In addition, if a registrant has registered by the early date, the deadline for a challenge to that voter's registration must be earlier. In such a case, the voter must be notified by at least one piece of forwardable mail if the elections office concludes the challenge has merit by a clear and convincing evidence standard (see Challenges section, page 28). That voter then has the opportunity to rebut the challenge before election day. Moreover, the challenger may be subject to penalties in the event of an unreasonable and unsuccessful challenge. If, however, after personal notification the voter who has been challenged does not respond, that voter is subject to the same rules as a late registrant, as described below.

Third parties conducting voter registration drives should make all bulk deliveries (as defined by the United States Postal Service) of registration forms by this date to ensure the effective processing of the forms they have collected.

Late Registration Deadline: Under this revised system, if a voter registers by this later date, the elections office should make every effort to notify the voter of any problems and provide the opportunity to make corrections. Again, we point out that this is in the interests of election administrators, candidates, and voters

because it helps to forestall the prospect of a large influx of provisional ballots that must be dealt with after election day. However, in this instance the voter does not have an absolute right to make corrections before election day. If the elections office has taken every reasonable step it can to follow notification and opportunity to correct procedures, and the voter still does not appear on the registration list on election day, he or she would have to cast a provisional ballot, which might or might not be counted (see Chapter 2).

Moreover, if the registrant registered at the late date and is challenged, and the elections office finds clear and convincing evidence the registration is not valid, the voter may vote by regular ballot on election day, but must present documentation of legitimacy, for example, identification as specified by HAVA, within three days. Again, when circumstances warrant, the challenger in such an instance could be subject to serious penalties.

We do not recommend a specific time plan with specific deadlines but instead defer to the states to make the determination as to what is feasible given local conditions. However, none of the recommendations made here should discourage states from making voter registration deadlines closer to election day or adopting election day registration, nor do these proposals necessarily conflict with current election day registration practices.¹

While taking this approach may require more work for elections administrators before the election, we believe it will lighten the burden of processing provisional ballots after the election and will likely lead to a reduction in postelection disputes. It also will help prevent the prospect of an onrush of registration forms at the last minute and the consequent likelihood of administrative error. At the same time, it gives the voter, third-party organizations, and political parties ample opportunity to ensure that registration applications are in proper order—that everybody who should be on the list is there, and anybody mistakenly on the purged list is put back on the eligible registration list.

- 1.5 As an integral component of this modified process, the state should provide, on a continuous basis if possible but certainly by a date certain before the election, a publicly available list of everyone on the registration rolls. This list should be constantly updated on the Web in real time and available in person

and by phone. There should be a separate list of names that have been removed from the registration rolls since the most recent federal election so that voters are given notice, well in advance, that their registration has been purged and are given the opportunity to contest or correct this. All necessary legal precautions should be taken to protect privacy rights with respect to these lists—a voter may notify the elections office of his or her desire not to be publicly listed, and there should be automatic protections for certain categories of voters, such as those involved in law enforcement or victims of spousal abuse.

In the alternative, states should make available to all voters, through the Internet, by phone, and in person, the information necessary for a voter to determine whether he or she has successfully registered to vote. In this regard, New Jersey's proposed legislation is instructive:

The Statewide voter registration system shall include . . . the ability to permit an individual to verify via the Internet whether that individual, and only that individual, is included in the system as a legally registered voter, whether the information pertaining to that individual required by subsection c. of this section is correct, and if not, a means to notify the pertinent county commissioner of registration of the corrections that must be made and to so verify in a way that does not give one individual access to the information required by subsection c. of this section for any other individual.²

Providing these lists will give voters, as well as campaigns, parties, and third-party organizations that engage in voter registration drives, the opportunity to ensure that the registration applications are processed properly and, if there is a question, to take whatever action is necessary to rectify problems or omissions. However, only the voter should be able make changes to his or her registration, and this must be done through filling out a form that the registrant signs under oath.

- 1.6 A unique number should be printed on the registration form and also on a detachable receipt³ that the voter can keep to check

the status of the form. Together with this tracking number should be printed the telephone number and Web site address for the elections office, either of which will work to see if that office received the form. The unique number also can be used by elections officials to track the distribution and return of voter registration forms submitted by third-party organizations. That way, if a voter complains that he or she registered through a third party but is not on the registration list, the elections official can make the appropriate inquiries.

- 1.7 States should have clear rules with respect to whether registration forms collected by third parties are processed as mail-in or in-person registrations.
- 1.8 Third-party voter registration groups should consider providing voters a receipt that serves as proof of attempted registration and as a record of the entity that conducted the registration. The groups also should save a receipt. The Advancement Project recommended the following form in 2004:⁴

MODEL RECEIPT FOR VOTER REGISTRATION APPLICATION SUBMISSION

[INSERT NAME OF VOTER REGISTRATION GROUP]

DATE: _____ TIME: _____

LOCATION: _____

TOTAL REGISTRATION APPLICATIONS SUBMITTED: _____

SIGNATURE OF PERSON RECEIVING FORMS: _____

PRINT NAME: _____

RECEIPT STAMP:

(stamp is not required but suggested where possible)

- 1.9 All states should work toward using electronic poll books (EPBs) at all voting precincts. The EPB is a handheld device that can be employed at the polling site. It functions as a registration database with the ability to identify and verify voter information.

In pilot tests of EPBs in North Carolina and Iowa last year, voter and poll worker reaction was positive. According to a county commissioner in North Carolina,

One promising innovation, piloted through a HAVA grant, in Guilford County, North Carolina, during the 2004 general election, was providing each Election Day precinct with an “electronic poll book.” This enabled precinct officials to confirm the registration of any registered voter who appeared at their polling place and to process “unreported moves” as transfer voters, providing them with a regular ballot rather than a provisional ballot. Of Guilford County’s 201,500 voters, fewer than 2,000 cast provisional ballots with 1,291 ultimately being counted. These numbers were substantially lower than the other larger counties in North Carolina where electronic poll books were not available.⁵

A study of the pilot in Iowa reported,

In many cases, persons with the EPBs were able to navigate through the screens and pull up a voter’s information faster than a poll worker could obtain the information in the hard copy of the election register. Poll workers commented positively on the ability of the handheld machine to generate a receipt with correct precinct information for voters who came to the wrong precinct. The EPB could obtain and print the information in seconds, while it took a poll worker five minutes or more to obtain the information from the County Auditor’s office. In many cases, the poll worker had to call the Auditor’s office 5–10 times before they [sic] were able to reach County Auditor staff. In almost all cases, the information generated by the EPB matched the information obtained from the Auditor’s office.⁶

CHALLENGES

BACKGROUND

State statutes that allow some individuals to file challenges to a person's right to register or vote have long been on the books but were rarely used in practice. This threatened to change in 2004. For example, in Ohio, GOP officials preemptively challenged more than thirty-five thousand new registrants on the grounds that the party sent the registrant a postcard and it was returned as undeliverable. Challenged registrants were required just days before the election to attend a hearing and prove their eligibility. This went on in some areas until the courts put a stop to it. The GOP also announced it would send people to the polls in Ohio on election day and challenge the rights of preselected registrants to vote. Republicans filed similar challenges and/or planned to deploy challengers in many "battle-ground" states, including Nevada, Florida, Wisconsin, Minnesota, Michigan, and Colorado. The Democrats then planned to deploy their own challengers to challenge the Republican challengers.

While small-scale challenges to individual registrants by others with specific knowledge of a problem may, in rare instances, be proper, the large-scale challenge that was put into play in 2004 is decidedly inappropriate in a system in which the elections office has a process for screening registrants. It should accordingly, as a policy and legal matter, be discouraged.

RECOMMENDATIONS

Considering the potential for this tactic to continue to be used by both political parties and others, states need to establish clear standards for challenging names on the registration list. We recommend those standards encompass the following:

- 1.10 There should be a rebuttable presumption that the registrant, having been screened by the elections office, is a legitimate voter.
- 1.11 A challenger should be required to provide clear and convincing evidence, as that term is used legally, to the elections office to

make a challenge.⁷ This means either providing documentary evidence or swearing by affirmation, under penalty of perjury, that the challenger has personal knowledge that the registrant is not legitimate.

1.12 Penalties for false claims should be stiff.⁸

