



September 2014

Restricting Voter Registration Drives

by Stephen Mortellaro & Michelle Kanter Cohen

Community-based voter registration drives—whether they are partisan or non-partisan, secular or religious, paid or volunteer—serve as critical intermediaries between states and citizens who are alienated from the political process. While there are other mechanisms for reaching the tens of millions of eligible Americans who are not registered to vote, no substitute exists for the patriotic act of canvassing our country’s neighborhoods to help community members register to vote.

Voter registration drives have long been a feature of American politics and have helped countless Americans register to vote. However, voter registration efforts have also faced resistance and attack from partisan forces opposed to expanding the franchise. After many voter registration drives collected record numbers of applications in the 2007–2008 election cycle, this backlash intensified in two major ways.

First, there has been an increase in allegations of voter registration fraud directed at such efforts. Many of these allegations continue to be reported uncritically by the media, despite an astonishing absence of factual basis.

These allegations—and the public perception of a widespread voter fraud problem—have helped feed the second form of backlash: the introduction of a series of state bills, many of which have passed into law, that significantly restrict the rights of individuals and organizations to conduct voter registration drives.

These restrictions are the focus of this report, which examines the common types of restrictions states impose, describes several legal challenges to restrictions in various states, and concludes with policy recommendations.

The Importance of Voter Registration Drives

Although a variety of voter registration methods exist, a voter registration drive is a powerful tool to register potential voters because it reaches people in their own communities—at their homes, schools, and businesses. According to the 2012 Current Population Survey, 5 percent of voters in the 2012 election cycle reported registering with a voter registration “booth”, and an additional 5.5 percent reported registering at a school, hospital, or campus, which are places where drives are traditionally conducted. Additionally, many of the 13.1 percent of voters who reported registering by mail likely received a voter registration application from a voter registration organization and subsequently mailed it to their election office. These data demonstrate that voter registration drives play a key role in increasing political participation.¹

Voter registration drives especially empower underrepresented groups that may not have the resources, time, or opportunity to register through other methods. Racial minorities disproportionately reported registering through voter registration drives in the 2012 election cycle; while 4.2 percent of Whites reported registering through a drive, the percentage increases to 6.4 percent for Asian Americans, 6.9 percent for Hispan-

ics, and 8.1 percent for African Americans. A similar trend was reported for racial minorities registering on a school, hospital, or campus.

Drive registrations also correlate with income level. A total of 6.9 percent of registrants earning less than \$10,000 per year reported registering directly through a voter registration booth, compared to only 3.9 percent of registrants earning \$150,000 per year or greater. The contrast is even starker for registrations reported on a school, hospital or campus, where the percentage of reported registrations of people earning between \$10,000 and \$14,999 per year was twice as high as the percentage of reported registrations of people earning \$150,000 per year or greater. Between the income extremes, the percentage of reported drive registrations generally decreased as reported income increased. These trends show that the lower a person’s income, the more likely a person is to register through a voter registration drive.

Taken together, these data paint a picture of the American electorate in which voter registration drives are central to enabling political participation—especially for traditionally underrepresented racial minorities and lower-income persons. However, the impact of voter registration drives may be stunted by burdensome restrictions on the canvassers and civic organizations that conduct the drives.

Table 1: How Citizens Registered to Vote in the November 2012 Election ²

Registration Method	# (in 1000s)	%
Department of motor vehicles	37,064	24.2
Public assistance agency	1,838	1.2
By mail	20,064	13.1
Online	4,442	2.9
School, hospital, or campus	8,424	5.5
Government registration office	29,253	19.1
Registration booth	7,658	5.0
Polls on Election Day	9,649	6.3
Other	5,667	3.7
Don't know or refused to say	29,100	19.0
TOTAL	153,157	100%

Table 2: How Citizens Registered to Vote in the November 2012 Election by Race and Ethnicity³

Registration Method	White		African-American		Asian-American		Hispanic	
	#	%	#	%	#	%	#	%
Department of motor vehicles	27,500	24.4	4,723	24.0	832	17.9	3,274	23.9
Public assistance agency	789	0.7	571	2.9	46	1.0	315	2.3
By mail	13,637	12.1	2,440	12.4	1,148	24.7	2,644	19.3
Online	3,156	2.8	453	2.3	242	5.2	548	4.0
School, hospital, or campus	5,410	4.8	1,456	7.4	298	6.4	1,109	8.1
Government registration office	23,894	21.2	3,168	16.1	400	8.6	1,274	9.3
Registration booth	4,734	4.2	1,594	8.1	298	6.4	945	6.9
Polls on Election Day	7,777	6.9	945	4.8	232	5.0	520	3.8
Other	3,832	3.4	827	4.2	200	4.3	603	4.4
Unsure or refused to say	21,865	19.4	3,523	17.9	953	20.5	2,452	17.9
TOTAL	112,706	100%	19,680	100%	4,649	100%	13,697	100%

Table 3: How Citizens Registered to Vote in the November 2012 Election by Income⁴

Income	Registration Method (%)									
	DMV	Assist. Agency	Mail	Online	School / Hospital / Campus	Gov. Regis. Office	Regis. Booth	Polls	Other	Unsure / Refused
Under \$10,000	21.4	7.1	14.6	2.9	7.8	15.4	6.9	7.4	4.3	12.4
\$10,000 - \$14,999	16.2	6.0	11.7	2.9	10.8	22.0	6.6	6.1	3.4	14.2
\$15,000 - \$19,999	22.6	3.8	12.7	1.3	10.0	20.4	4.3	5.2	5.3	14.5
\$20,000 - \$29,999	21.4	2.3	10.8	2.2	6.6	24.4	5.9	7.2	3.8	15.4
\$30,000 - \$39,999	25.3	1.4	11.7	3.0	5.7	19.8	5.5	6.9	4.1	16.5
\$40,000 - \$49,999	23.6	1.0	11.6	2.4	5.3	21.6	4.6	7.0	4.4	18.5
\$50,000 - \$74,999	26.4	0.6	13.2	2.6	5.4	20.0	5.2	6.4	3.5	16.8
\$75,000 - \$99,999	27.4	0.4	13.0	2.8	6.0	18.2	4.7	7.2	3.0	17.3
\$100,000 - \$149,999	26.6	0.3	16.4	3.5	4.9	16.3	3.8	6.2	2.6	19.2
\$150,000 +	25.9	0.3	17.9	3.5	5.4	14.4	3.9	4.9	3.8	20.0
Income unreported	21.8	0.9	9.6	1.8	3.9	22.1	4.5	4.2	3.2	27.9
TOTAL	24.7	1.2	13.2	2.7	5.6	19.3	4.8	6.1	3.5	18.9

Types of Restrictions

Drive or Canvasser Registration Requirements

Several states require individuals or organizations to register with election officials before they begin helping others to register. 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 assign identifying numbers to organizations or individual canvassers when they register with election officials, and these numbers typically must be included on any voter registration applications that the organizations help individuals complete and submit. New Mexico, for example, requires organizations to disclose to the state the identities of all paid and unpaid canvassers who will assist people to register in a drive before permitting organizations to conduct voter registration activities.⁵ A few states, such as California and Virginia, require drive registration only if the drive requests more than a certain number of blank voter registration applications.⁶ At least one state, Missouri, requires each paid canvasser who solicits more than 10 voter registrations to register individually with the state as a "Voter Registration Solicitor."⁷

Drive or canvasser registration requirements that hamper the ability of drives to start up or continually staff their programs deter groups from conducting voter registration drives.

Training Requirements

Some states require organizations to participate in state-provided or -sanctioned training before conducting voter registration activities. This requirement may be imposed on only the organizer of the drive, or on all canvassers participating in the drive. Colorado, for example, requires voter registration organizers to attend a state training (which is available online), and then train the canvassers in their organizations, which includes showing canvassers a state-created video. Drive organizers must sign an attestation that they will abide by state voter registrations laws and that they are aware of the penalties for violations.⁸ In contrast, New Mexico requires all canvassers to receive training directly from

the state, and it allows canvassers to attend trainings either in-person or through the Internet.⁹ Several other states, such as Arizona, provide canvasser training but do not require it.¹⁰

Mandatory state-sponsored training can present problems with scheduling and availability to drives, particularly for large-scale drives that must train canvassers often, and for volunteers who may not be available to attend trainings during business hours. While canvasser training is important, the timing and accessibility of state-sponsored training should not interfere with an organization's ability to its conduct drives.

Conditions on the Availability of Voter Registration Applications

A few states require drives to obtain blank registration applications from election offices; for example, in Massachusetts, without permission, drives may not print blank state voter registration applications from the Internet or photocopy blank applications obtained from an election office, although the federal form may be printed or photocopied.¹¹

Other states place arbitrary conditions or limits on the quantity of blank applications registration drives can obtain from election offices at any one time. For example, Kansas asks drives to file a request in writing if the drive wishes to receive more than 25 applications from an election office.¹² At least one state, North Carolina, combines these two restrictions: drives may not copy the blank state application available on the state website, *and* they must submit a written order form to obtain more than 500 blank applications from an election office.¹³ Virginia's drive registration and training requirements apply only if a drive obtains more than 25 applications from election officials.¹⁴

Conditions on the availability of forms are problematic if they impede drives' ability to maintain the resources needed to reach the prospective voters they intend to engage.

Prohibitions on Copying or Recording Application Information

Some states prohibit photocopying completed voter registration applications before submission to the election officials, while a few others prohibit recording certain information contained on completed applications.¹⁵ These restrictions impede organizations from creating databases of individuals they helped register, which hampers a drive's effectiveness in encouraging new registrants to participate in elections, and interferes with a drive's ability to communicate with community members on issues of common interest. Such restrictions also impede organizations' efforts to internally identify and solve problems, and their measures to verify that applicants they assisted are properly added to the voter rolls.

Concern for privacy is the justification most often cited for restrictions on copying or recording information from a completed voter registration application. However, most of the information provided on an application becomes a matter of public record after the form's submission to election officials, at which time members of the public have the right to copy and record the information. Thus, allowing drives to copy and record the information before submission does not present any further privacy concerns.

Registration and Submission Deadlines

Virtually every state has established a deadline by which it must receive an applicant's completed voter registration form for that applicant to be registered for an upcoming election. Persons who register after this deadline may not vote in an impending election. Section 8 of the NVRA requires that states set their registration deadlines (or "book closing" deadlines) to be no later than 30 days before a federal election.¹⁶ At a minimum, a drive must submit the completed applications it solicits to the appropriate election officials by its state's registration deadline.

Some states have established earlier submission deadlines that require drives to submit completed applica-

tions shortly after the drive collects them. States vary as to how much time drives may have; for example, many states are similar to Virginia, which requires drives to submit completed applications within 10 days of collection.¹⁷ In contrast, Louisiana's submission deadline is 30 days,¹⁸ while New Mexico has the shortest deadline at 48 hours.¹⁹

Unreasonably short deadlines deter organizations from conducting drives and can be particularly harmful to volunteers who have other jobs and obligations. Large drives also need sufficient time to review and verify applications to timely identify and address problems with canvassers.

Restrictions on Who May Canvass

States may impose various restrictions that limit who is eligible to collect voter registration applications. A few states require or incentivize canvassers to be appointed by the state as a "deputy registrar," which typically requires an individual to complete special state training. In Wisconsin, if a drive is not assisted by a canvasser who has been appointed as a special registration deputy, the drive must collect required documentary proof of residence from voters they assist, and submit it with the completed applications; special registration deputies must examine such documents.²⁰ Texas has a rigid restriction that requires canvassers to be appointed by county officials as "volunteer deputy registrars" before they may collect and submit completed voter registration applications. Canvassers may only collect applications from residents of a county in which the canvasser is deputized, a restriction with significant consequences in metropolitan areas covered by multiple counties. Furthermore, to be eligible for appointment as a volunteer deputy registrar, a person must be eligible to register to vote in Texas, meaning that the person must be a Texas resident.²¹

A few other states place restrictions on who may serve as a canvasser. Ohio, for instance, prohibits ex-felons from canvassing,²² and Maryland prohibits persons who will be younger than 18 years old during the next election from canvassing.²³

Restrictions on Canvasser Payment

Several states prohibit paying a canvasser based on the number of completed applications the canvasser collects (“pay-per-registration”). The purpose of the restriction is to avoid creating an incentive for unscrupulous employees to submit fictitious applications. Whether the restriction also prohibits drives from firing canvassers for not meeting work performance goals has been controversial in some states. States that prohibit pay-per-registration compensation schemes typically allow drives to compensate canvassers through other means, such as an hourly wage.

At least one state, Maryland, has attempted to require that canvassers receive no payment from drives. After a lawsuit was filed arguing that this prohibition violated the First and Fourteenth Amendments and the Maryland state constitution, Maryland entered into a consent decree and rescinded the law.²⁴ Current Maryland regulation prohibits compensation based on the number of applications collected.

Texas has a unique set of restrictions that prohibit drives from paying canvassers per application they collect and prevent organizations from making a canvasser’s compensation and employment status dependent on collecting a fixed number of applications.²⁵ These restrictions are currently the subject of litigation (see below on pages 12–13).

Receipt Requirements

Canvassers in some states must provide a receipt to each individual from whom they collect a completed application. The required contents of the receipt vary by state. For example, Nevada requires that canvassers provide their names on receipts,²⁶ and California requires that a canvasser collecting completed applications provide their name, address, phone number, signature; and, if the canvasser is paid, the name and telephone number of the “person, company or organization, if any that agrees to pay money or other valuable consideration for the completed” application.²⁷

Documentary Proof of Citizenship

A hotly contested restriction that a few states have adopted is a requirement that voter registration applicants provide documentary proof of citizenship when they register. Satisfactory documentation may include a birth certificate, naturalization papers, or other official documents demonstrating citizenship.

Although requiring documentary proof of citizenship does not regulate drives directly, such requirements significantly hamper voter registration drives because many citizens, especially low-income and racial-minority citizens, either do not have citizenship documents or do not carry citizenship documents with them regularly.

Furthermore, even for citizens that do have the documents with them, drives are unlikely to have photocopy equipment available at most drive sites, making collecting these documents practically impossible. In Maricopa County, Arizona, drive registrations dropped by 44 percent after Arizona began requiring documentary proof of citizenship.²⁸ After Kansas’s documentary proof of citizenship law went into effect in 2013, the League of Women Voters’ local Kansas affiliates’ registration activities were limited, hindered, or stopped entirely because citizens the organization sought to assist to register could not produce documentary proof of citizenship or would have great difficulty doing so.²⁹

The Legal Context of Voter Registration Drives

The vast majority of courts to address the issue have held that voter registration drives are protected activities under the First Amendment and the National Voter Registration Act of 1993 (NVRA). Court cases, primarily in the federal district courts, have addressed the validity of numerous drive restrictions under these laws, striking down many of them but upholding others. Drive restrictions have also been challenged as unconstitutionally vague for failing to give fair notice to drives of what is expected for the drive to be compliant with the requirements. The Supreme Court has issued few decisions pertaining to drive restrictions, leaving the current state of case law a patchwork of lower court decisions.

First Amendment Protections

Voter registration drives implicate the First Amendment freedoms of speech and expressive association. The freedom of speech generally prohibits jurisdictions from implementing laws that regulate the content of a person's speech, restrict a person from expressing a particular viewpoint, or unreasonably restrict the time, place, or manner of speech.³⁰ These protections apply irrespective of whether the speech is delivered orally, in writing, or through expressive conduct.³¹ The Supreme Court has held that the freedom of speech is especially protective of "core political speech," which includes "interactive communication concerning political change."³² The related freedom of expressive association protects the "right to associate for the purpose of engaging in those activities protected by the First Amendment," including speech activities.³³

When assessing whether a voter registration drive restriction violates these First Amendment rights, most courts have applied the standard prescribed by the Supreme Court in *Anderson v. Celebrezze*³⁴ and *Burdick v. Takushi*.³⁵ Under this standard, courts balance the burden of an election law against the interests that justify that burden.³⁶ If the law imposes a "severe" restriction on First Amendment rights, then the courts

subject the law to strict scrutiny and most likely strike the law down as unconstitutional. In contrast, if the law imposes a lesser burden, then courts subject the law to lesser forms of scrutiny, which the law may or may not survive.³⁷

NVRA Protections

The NVRA protects and encourages voter registration drives by community-based groups, furthering its fundamental purpose to ensure that more eligible citizens, especially underrepresented racial minority citizens, are registered to vote.³⁸ To that end, the NVRA requires states to accept and use the mail voter registration application, and requires states to make voter registration applications "available for distribution through governmental and private entities, with particular emphasis on making them available for organized voter registration programs."³⁹ The NVRA also requires that registration procedures be uniform and nondiscriminatory.⁴⁰

Summary of Litigation Relating to Voter Registration Drive Restrictions

Georgia

In *Charles H. Wesley Education Foundation, Inc. v. Cox* (*Wesley v. Cox*), a voter registration organization and voters challenged Georgia's practice of rejecting completed voter registration applications that were bundled and mailed together to an election office in a single envelope. The state rejected these forms because, in its view, Georgia law prohibited anyone but authorized persons from accepting or collecting voter registration forms.⁴¹ The Eleventh Circuit rejected Georgia's argument that the organization and its volunteers had no standing to challenge Georgia's practice because they had no right to conduct voter registration drives. The Court held that the NVRA impliedly encourages drives and that private drives are a method that facilitates the NVRA-mandated method of mail registration. Further the NVRA limits states' ability to reject forms meeting its standards. Thus, the court held "[t]he NVRA protects Plaintiffs' rights to conduct registration drives and submit voter registration forms by mail" and that organizations conducting drives had standing to sue to protect those rights because their right to conduct drives was a legally protected interest.⁴²

The court then affirmed the lower court's decision to issue a preliminary injunction barring Georgia from enforcing its bundling ban, holding that the NVRA "simply requires that valid registration forms delivered by mail and postmarked in time be processed," and that any additional state restrictions on the method of mailing applications violated the NVRA.

The court further noted that Georgia's bundling ban did not prevent voter fraud or help the state assess applicant eligibility.⁴³ Therefore, the court held that plaintiffs were substantially likely to succeed in their challenge to the ban.

Ohio

In *Project Vote v. Blackwell*,⁴⁴ a federal district court considered whether various drive restrictions in Ohio violated the NVRA and First Amendment rights to speech and association. The restrictions included: requirements that paid canvassers individually preregister with the Secretary of State's office and receive online-only government-sponsored training before participating in a drive; a "direct return" requirement that canvassers personally deliver completed applications to an appropriate state agency within 10 days; and a requirement that paid canvassers disclose on any registration applications they collect their name, address, and the identity of their employer. Violating these restrictions would subject canvassers to criminal penalties.⁴⁵

The court held that while the interests impacted were critical First Amendment rights, the restrictions on them were not likely severe, but they were "substantial," and therefore the court subjected the laws to intermediate scrutiny.⁴⁶ The court then struck down most of the restrictions on First Amendment grounds. The court reasoned that the preregistration and training requirements were vague, irrationally targeted paid canvassers, and placed substantial burdens on canvassers' voter registration drives that were not justified by the state's assertions that compensated workers were more likely to engage fraud—the occurrence of which was minimal.⁴⁷ The court further held that requiring canvassers to personally deliver completed voter registration applications was unconstitutional "under any standard" by severely chilling participation in the voter registration process; the criminal consequences for violating the requirement severely discouraged drives, and the requirement actually hampered the state's interests in efficient administration and fraud prevention.⁴⁸

The court also determined that some of the restrictions violated the NVRA. The court held that the preregistration and training requirements violated both the spirit and letter of Section 8(b)(1), reasoning that the restrictions were "neither uniform nor non-discriminatory," because the requirements applied only to paid canvassers and excluded people who could not be trained over the Internet, especially poor and elderly workers. The

state also offered no concrete justification as to how treating paid and unpaid canvassers differently prevented fraud.⁴⁹ Similarly, the court held that the compelled disclosure requirement violated Section 8(b)(1) because it applied to only paid canvassers and would not deter fraud.⁵⁰

Florida

LWV I

In *League of Women Voters of Florida v. Cobb (LWV I)*,⁵¹ a federal district court considered whether to issue a preliminary injunction barring Florida from enforcing a law that provided significant financial penalties if applications were not received by election officials within 10 days of the applicant turning it in to the drive. The penalty for failing to submit an application within this period was a \$250 fine per application, for which three parties were jointly and severally liable: the individual canvasser, the organization's registered agent, and the individuals responsible for the organization's daily activities. The fine was increased to \$500 if the organization failed to submit a completed application by Florida's registration deadline 29 days before the election, and to \$5000 if the organization entirely failed to submit a completed application. The law held organizations strictly liable for violations and did not allow exceptions for any reason, even if organizations exercised all reasonable care in collecting and delivering applications, and even if the drive was not at fault. The law exempted political parties.⁵²

Expert testimony indicated that the practical impact of the law would be to shut down non-party run voter registration drives.⁵³ Indeed, various organizational plaintiffs in the case, including the League of Women Voters, imposed a moratorium on drives after the law went into effect.

Applying the *Anderson* test, the court determined that the law facially violated the First Amendment because its severe penalties chilled organizations and canvassers from conducting drives and diminished the opportunities Florida residents had to register to vote. The Court also held that the law discriminated against voter registration organizations that were not associated

with political parties when “no appreciable difference” existed between the two entities as to the timeliness in which completed applications were submitted.⁵⁴ Applying the Supreme Court case of *Meyer v. Grant*,⁵⁵ the court rejected the state's claims that the law was permissible as regulating only conduct of collecting and submitting applications and not speech, “[b]ecause the collection and submission of voter registration drives is intertwined with speech and association....”⁵⁶

The court held that these restrictions on First Amendment rights were not necessary to advance the state's interests in preventing fraud, ensuring timely receipt of completed applications, and holding organizations accountable, especially given the minimal record of problems with voter registration organizations and existing criminal penalties. Accordingly, the court preliminarily enjoined enforcement of the law.⁵⁷

LWV II

In response to the ruling in *LWV I*, the Florida Legislature amended the law. The revision significantly reduced the fines; limited the amount a “third party voter registration organization including affiliate organizations” could be fined to \$1000 annually; waived fines for organizations that showed their failure to promptly submit completed applications was due to “force majeure or impossibility of performance”; and removed the political party exemption. The new law also allowed organizations to file reports to reduce the amount they could be fined. The amended law was challenged on vagueness and First Amendment grounds in *League of Women Voters of Florida v. Browning (LWV II)*, in which plaintiffs sought a preliminary injunction barring the law's enforcement.⁵⁸

The court rejected plaintiffs' arguments that the amended law was unconstitutionally vague for failing to give notice of the potential liability to organizations and their volunteers.⁵⁹ Despite organizations' arguments that the law was not clear regarding individuals' liability, was not clear regarding what were “affiliate” entities for purposes of the fine limit, and that it would result in arbitrary or discriminatory enforcement, the court held the law provided fair notice to those who would engage in voter registration activities and established

clear enforcement guidelines. Therefore, the court held Plaintiffs were not likely to succeed on the vagueness claim.

With respect to the First Amendment claims, the court again applied the *Anderson* standard, but it determined that the amended law likely did not violate the First Amendment. Although “[u]ndoubtedly, Plaintiffs’ interactions with prospective voters in connection with their solicitation of voter registration applications constitutes constitutionally protected activity[,]” the court held that, compared with the original law, the amended version substantially reduced the burdens on drives’ First Amendment rights because of the smaller fines, exceptions, and the elimination of the carve-out for political party affiliates. Thus, the court was not substantially certain that the law’s restriction on First Amendment activities outweighed the state’s asserted interests in holding organizations accountable, ensuring all applications were submitted properly and timely, and preventing fraud.⁶⁰ For these reasons, the court did not issue a preliminary injunction.⁶¹

LWV III

Florida enacted new drive restrictions in 2011 as part of restrictive omnibus bill HB 1355, which, among other things, also restricted early voting and permanent portable registration. The law reduced the 10-day application submission period to 48 hours, effectively prohibiting groups from mailing applications to officials.⁶² Organizations were required to file reports of their “registration agents,” which included any paid person or volunteer “who solicits for collection or collects voter registration applications,” including any changes, within 10 days.⁶³ Agents were also required to sign a sworn statement they would obey voter registration laws, but it included a misstatement of the law.⁶⁴ Additional requirements included that organizations place a state-assigned identification number on the back of each application and submit information electronically. Other provisions increased the Secretary of State’s discretion regarding violations.⁶⁵

Voter registration organizations and individuals challenged the new drive restrictions under the First Amendment and NVRA in *League of Women Voters of*

Florida v. Browning (LWV III). The court’s substantive opinion concerned the plaintiff organizations’ request for a preliminary injunction, but the court later adopted its earlier analysis in entering a permanent injunction against enforcing parts of the law.⁶⁶

The court rejected the state’s argument that the challenged provisions did not implicate constitutional rights. The court determined that some of the challenged provisions regulated pure speech activities, and plaintiffs wanted to speak and act collectively with others in collecting voter registration applications which implicated associational rights. Moreover, the court noted that organizations wished to assist others “with the process of registering and thus, in due course, voting,” which itself is a constitutional right.⁶⁷

Applying the *Anderson* standard to the 48-hour requirement, the court doubted the provision’s constitutionality because of the extremely short submission period, significant penalties for noncompliance, and the lack of a legitimate state interest in prohibiting a drive from using the mail to send applications. The court recognized the state’s interest in ensuring prompt delivery of completed applications, but held the 48-hour requirement was not necessary to advance that interest, stating “[i]f the goal is to discourage voter-registration drives and thus also to make it harder for new voters to register, this may work. Otherwise there is little reason for such a requirement.”⁶⁸ The court also indicated that the “virtually unintelligible” law was potentially unconstitutionally vague.⁶⁹

Additionally, the court held that, even if the 48-hour requirement was constitutional, it “plainly” violated the NVRA. Citing *Wesley v. Cox*, the court noted that laws “that have the practical effect of preventing an organization from conducting a drive, collecting applications, and mailing them in” violate the NVRA.⁷⁰ Under the NVRA, the court wrote, “an organization has a federal right to conduct a voter-registration drive, collect voter registration applications, and mail in the applications to a state voter-registration office.”⁷¹

The court also limited the registration agent provisions. It held that the state’s interest in ensuring proper submission of completed applications justified requiring

that organizations file the names of persons who collect applications, but not the names of persons who merely “solicit” applications. The court reasoned that soliciting applications is core political speech. Further, the requirement that organizations report every instance in which a volunteer started or stopped soliciting applications was unmanageable. The court thus limited the scope of the rule.⁷²

The court also enjoined enforcement of the sworn statement and reporting requirements in their entirety, holding that requiring volunteers to sign a legally incorrect sworn statement serves “no purpose other than to discourage voluntary participation in legitimate, indeed constitutionally protected, activities.”⁷³ Similarly, the court determined that Florida had offered no legitimate interest in requiring organizations to file monthly reports with the state describing how many applications were given to and collected from registration agents.⁷⁴ The court held that plaintiffs were not likely to succeed in challenging the remaining restrictions.⁷⁵

New Mexico

In *American Association of People with Disabilities v. Herrera*, a federal district court considered whether to dismiss claims that various drive restrictions in New Mexico violated the First Amendment and the NVRA, as well as claims that the law was unconstitutionally vague.⁷⁶ The challenged restrictions included: (1) a requirement that before beginning a drive, “third-party registration agents” who assist applicants complete a pre-registration process in which agents attend a state-sponsored training and provide personal information to the state; (2) a limit of 50 on the number of registration forms an organization or individual could receive; (3) a requirement that third-party registration agents return completed registration forms to election officials within 48 hours; and (4) criminal and civil penalties “for parties who do not comply with third-party registration laws.”⁷⁷

The court refused to dismiss the First Amendment claims. In doing so, it held that voter registration activities implicate the freedom of speech because they are expressive conduct and intertwined with protected core

political speech. The court further held that voter registration activities implicate the freedom of association.⁷⁸ The Court also noted it should address the burdens the law posed collectively rather than parsing out the burdens posed by each of the four challenged requirements individually.⁷⁹

However, the court dismissed the claims that the pre-registration and training requirements violated the NVRA, holding that neither the NVRA’s language nor its purposes conflicted with these restrictions.⁸⁰ The parties later entered into a settlement based on a new regulation interpreting the law that defined what it meant to “assist” a voter to register.⁸¹

Pennsylvania

In *Project Vote v. Kelly*, a federal district court interpreted the meaning and constitutionality of a Pennsylvania restriction related to canvasser payment.⁸² The restriction stated “[a] person may not give, solicit or accept payment or financial incentive to obtain a voter registration if the payment or financial incentive is based upon the number of registrations or applications obtained.”⁸³

The plaintiffs argued that the restriction violated the First Amendment by preventing them from applying performance standards to their employee canvassers, which made it infeasible to conduct paid drives.

Applying the Supreme Court case of *Meyer v. Grant*, as well as the *Anderson* test, the court upheld the restrictions as they applied to payment structures and financial incentives such as a piece-rate. The court reasoned that the restriction on First Amendment rights was minimal because organizations could pay canvassers under different compensation schemes, and that the state’s interest in preventing voter registration fraud outweighed the burdens the restriction created.⁸⁴

However, while upholding these narrower restrictions, the court held that the law did not apply to discharge practices, and thus did not prohibit an organization from firing a canvasser that did not obtain a required minimum number of complete applications.⁸⁵

Texas

In *Voting for America, Inc. v. Steen*, the Fifth Circuit Court of Appeals reviewed a district court's decision to preliminarily enjoin enforcement of several drive restrictions in Texas.⁸⁶ Under Texas law as interpreted by the Secretary of State, individuals must be deputized as a "volunteer deputy registrar" (VDR) to accept, handle and deliver completed applications on behalf of applicants. The challenged restrictions prohibit non-Texas residents from serving as VDRs (the "Non-Resident Provision"); require individuals who collect completed applications to be appointed as VDRs in the county of the applicant's residence (the "County Provision"); prohibit canvassers from submitting applications by mail on behalf of applicants, instead requiring them to deliver them personally or through another VDR to the county (the "Personal Delivery Requirement"); and prohibit canvassers from photocopying or scanning voter registration applications submitted to the VDR but not yet delivered to the county registrar (the "Photocopying Provision").⁸⁷ An additional restriction makes it unlawful to compensate a canvasser based on the number of voter registrations the canvasser "successfully facilitates," to present a person with a quota of voter registrations to "facilitate" as a condition of payment or employment, or to otherwise cause compensation or employment status to be "dependent on the number of voter registrations that the other person facilitates" (the "Compensation Provision").⁸⁸

The district court preliminarily enjoined the Non-Resident, County, and challenged Compensation Provisions under the First Amendment, and the Photocopying and Personal Delivery requirements under the NVRA. The district court declined to enjoin on the preliminary record a state-prescribed training requirement, a requirement that canvassers "adequately review" applications for completeness in the applicant's presence, and a requirement that canvassers disclose a certificate containing their personal address to prospective registrants.⁸⁹

The appeals court reversed the district court's decision in a 2-1 panel decision. In the majority's view, the Non-resident and County Provisions did not implicate

the freedom of speech because collecting and delivering completed applications were separable from the other aspects of a voter registration drive, and were not, in the court's view, inherently expressive, nor were they activities "inextricably intertwined" with the protected speech of distributing registration applications and urging people to register.⁹⁰ The majority further held that even if the Non-Resident and County provisions did implicate First Amendment interests, they imposed minimal burdens on canvassers' speech because non-VDRs could continue to organize and run a drive, distribute applications, persuade others to register, and assist applicants in filling applications out; under the Anderson test, the restrictions would be outweighed by preventing voter registration fraud (despite the miniscule incidence of fraud).⁹¹

The court then construed the Compensation Provision narrowly to ban drives from paying canvassers per application collected (which the plaintiffs did not challenge) and from conditioning payment or employment on a fixed quota of applications, irrespective of whether the drive made the quota known to the canvasser.⁹² Based on this interpretation, the court assumed, without deciding, that prohibiting quota-based pay was a "lesser burden" not subject to strict scrutiny. Noting that Texas had a "strong legitimate interest in preventing fraud," the court held that the voter registration organizations had "not made a strong showing that their facial challenge [to the Compensation Provision would] prevail," and reversed the lower court's decision to enjoin enforcement of the provision.⁹³

The court also reversed the district court's decisions to enjoin enforcement of the Photocopying Provision and Personal Delivery Requirements under the NVRA. The panel majority reversed the district court's conclusion that applications collected by state-deputized VDRs were in the constructive possession of Texas and were thus subject to federal disclosure under Section 8(i) of the NVRA.⁹⁴ The panel thus held the photocopying restriction did not conflict with the NVRA.⁹⁵ Concerning the Personal Delivery Requirement, the court asserted that requiring VDRs to deliver applications in person did not conflict with the NVRA's requirement that registrars accept applications received by mail, and

the court distinguished it from the laws at issue in *Wesley v. Cox* and *Arizona v. Inter Tribal Council of Arizona* with little explanation.⁹⁶

Judge Davis dissented and would have upheld the district court's injunction. He wrote that the "majority slices and dices the activities involved in the plaintiffs' voter registration drives instead of considering those activities in the aggregate."⁹⁷ The dissenting judge would have rejected the majority's approach to the First Amendment rights of voter registration drives under the Supreme Court cases of *Meyer v. Grant* and *Buckley v. American Constitutional Law Foundation, Inc.*⁹⁸

Arizona and Kansas: Documentary Proof of Citizenship Litigation

Arizona v. Inter Tribal Council of Arizona

In the 2013 case *Arizona v. Inter Tribal Council of Arizona (ITCA)*, the U.S. Supreme Court considered whether Arizona's documentary proof of citizenship requirement for registration was preempted by the NVRA.⁹⁹ Arizona's law required state election officials to reject any application for registration, including a federal form, that was not accompanied by documentary evidence of citizenship.¹⁰⁰ The federal voter registration form requires applicants to attest under penalty of perjury that they are United States citizens, but it does not require documentary proof of citizenship.¹⁰¹

The Supreme Court held that the NVRA's "mandate that States 'accept and use' the Federal Form" "precluded Arizona from requiring a Federal Form applicant to submit information beyond that required by the form itself."¹⁰² The Court held that a presumption against preemption did not apply to legislation like the NVRA that was enacted pursuant to the Elections Clause of the Constitution,¹⁰³ holding that the scope of the Clause is broad and "embrace[s] authority to provide a complete code for congressional elections, including ... regulations relating to registration."¹⁰⁴ The Court then rejected Arizona's argument that the term "accept and use" allowed the state to receive the form but then reject the applicants who did not meet Arizona's documentary proof requirements. The Court reasoned that

if states could impose additional registration requirements on applicants using the federal form, the form would "cease[] to perform any meaningful function, and would be a feeble means" of fulfilling the purpose of the NVRA to "increas[e] the number of eligible citizens who register to vote in elections for Federal office."¹⁰⁵

Arizona argued that its interpretation was required by a conflict between the NVRA and Arizona's constitutional authority to establish qualifications for voting, including citizenship. The Court held that the Elections Clause¹⁰⁶ "empowers Congress to regulate how federal elections are held, but not who may vote in them,"¹⁰⁷ and if the NVRA "precluded [Arizona] from obtaining the information necessary to enforce its voter qualifications," it would raise constitutional questions.¹⁰⁸ But the court also held that no constitutional doubt was raised by its interpretation of the NVRA because another avenue was available to the states; because "a State may request the EAC [Election Assistance Commission, a federal agency charged with implementing the NVRA] alter the Federal Form to include information the State deems necessary to determine eligibility ... and may challenge the EAC's rejection of that request in a suit under the Administrative Procedure Act ... no constitutional doubt is raised by giving the 'accept and use' provision of the NVRA its fairest reading."¹⁰⁹

Kobach v. Election Assistance Commission

Following the roadmap laid out by the Supreme Court in *ITCA*, Arizona then requested that the EAC change the Arizona-specific instructions on the federal form to include Arizona's documentary proof of citizenship requirement. Kansas, which had enacted a documentary proof of citizenship requirement similar to Arizona's, submitted a similar request. Kansas and Arizona sued the EAC in federal district court, arguing that the EAC was required to make the state's modifications to the form. After the judge ordered the EAC to make a decision, the agency, through its acting executive director, denied the requests, reasoning that both Congress and the FEC (the agency that promulgated regulations implementing the NVRA before the EAC's creation) had deliberately rejected documentary proof of citizenship requirements, and that, based on the evidence in the administrative record, documentary proof of

citizenship was unnecessary for states to determine an applicant's citizenship status. The EAC observed that the existing form already provided safeguards to prevent noncitizens from registering to vote, that the States failed to demonstrate that non-citizens unlawfully register by mail in meaningful numbers, and the states had existing enforcement devices. The EAC found that the states' proposal would deter a considerably greater number of eligible voters from registering and would significantly impair the effectiveness of organized voter registration programs, frustrating the NVRA's purposes.¹¹⁰

Following Arizona and Kansas's challenge, the district court rejected the EAC's decision and ordered the EAC to amend the Arizona- and Kansas-specific instructions to include the states' documentary proof of citizenship requirements.¹¹¹ Citing the constitutional avoidance doctrine, the court held that, because the Constitution gives states exclusive authority to establish voter qualifications and the NVRA did not preempt state documentary proof of citizenship laws, the EAC was compelled to amend state-specific instructions whenever a state's legislature determined that a mere oath was not sufficient to effectuate its citizenship requirements.¹¹² Therefore, the court held that the EAC's refusal to amend the Arizona- and Kansas-specific instructions was "agency action unlawfully held" in violation of the Administrative Procedure Act, and it ordered the EAC to amend the state-specific instructions.¹¹³

The EAC and intervenors appealed, arguing that the NVRA grants authority to the EAC to determine what is necessary on the federal form, including with respect to citizenship, and that the EAC's decision was entitled to deference, consistent with the NVRA, and reasonably based on the administrative record.¹¹⁴ The 10th Circuit Court of Appeals stayed the district court's decision pending appeal, which was argued in August of 2014.

Policy Recommendations

Voter registration drives are a vital tool for many Americans to register to vote. The following are policy recommendations that can reduce unnecessary administrative and legal hurdles and ensure that drives continue to serve the critical function of making the electorate more fully representative of our country's citizenry.

Define Voter Registration Drives

Laws 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.

Minimize Drive Registration Requirements

The purpose of requiring a voter registration drive to register itself with the state should be to facilitate contact between the state and the drive to address any concerns that arise. The only drive registration requirements that states should impose on registration drives are requirements (1) that the drive name annually an agent and (2) that the agent provide personal contact information. Furthermore, acceptance of the drive's

registration should be automatic, except where there is a finding that the drive's agent has engaged in previous misconduct related to elections. Any negative determination should be subject to an appeal process.

Train the Trainers

While training requirements are not inherently unreasonable, a requirement that each individual canvasser or circulator must undergo training provided directly by an election official is often very difficult for organizers of community voter registration drives to meet. States can protect their interests in maintaining accurate voter rolls by training drive organizers and allowing the organizers to then train canvassers. These "train the trainer" formats advance the state's interest in receiving accurately completed applications while imposing far fewer burdens on both drives and the state alike. Moreover, by making canvasser training the responsibility of the drive's organizers, the organization can ensure that the training does not unnecessarily delay the start or continued operation of the drive.

To facilitate "train the trainer" requirements, states can require drive organizers to produce reasonable evidence that they have trained their canvassers according to state standards. This can be accomplished by requiring a signed acknowledgement of responsibility from each canvasser. These acknowledgments can be kept in the organization's files for inspection by election officials should a problem arise.

Additionally, states should make training and training materials accessible to drives. Trainings should be available in both in-person and online formats. States should disseminate simple training materials that should include an explanation of what constitutes a complete application, who is and is not eligible to vote, and the laws and rules that must be followed in helping register voters.

Make Blank Applications Freely Available to Drives

States should not place arbitrary limits on the number of blank applications that a drive may request at a time from election officials. Furthermore, states should give drives unfettered access to the blank applications online, and they should allow drives to print blank forms from the state website and photocopy blank forms in the drive's possession.

Limiting drives' access to applications unnecessarily hinders large-scale drives that may be able to collect hundreds of applications every day. Limiting access to blank applications also conflicts with the purpose of the NVRA, which expressly says that states should make applications freely available to organized voter registration drives.

Allow Drives to Record Application Information

States should not restrict voter registration drives from copying or keeping records of completed applications, for such restrictions create a host of unnecessary problems for drives.

For example, as part of their efforts to increase voter participation, many voter registration drives wish to contact the individuals whom they helped register to encourage them to vote. Preventing organizations from developing lists of people they helped register impedes their First Amendment right to express a pro-voting message to prospective voters. Additionally, drives may need copies of registrations to effectively review the work of canvassers and address any concerns regarding the applications that they submit. Thus, the ability to record registration information enables organizations to identify problems in the voter registration process early and to work with election officials to resolve them. Finally, maintaining records allows drives to verify that the persons they help are actually becoming registered and appear on the list of registered voters.

States that have privacy concerns related to Social Security numbers should limit their copying or record-keep-

ing prohibition specifically to the number.¹¹⁵

Submission Deadlines Should Be Reasonable

States that impose a deadline by which canvassers must submit a completed application should ensure the duration is sufficient to accommodate the reasonable needs of voter registration drives. While the state has an interest in ensuring that completed applications are received in time for applicants to become registered by the next election, drives have the same interest, by definition, and that interest can be respected without requiring that drives hurriedly deliver completed applications to the state.

Submission deadlines create significant barriers to conducting efficient and responsible voter registration drives, and—when coupled with criminal sanctions for noncompliance—they may chill voter registration activity in violation of the First Amendment. A religious congregation, for example, may have volunteers who assist eligible people to register as part of another activity that occurs weekly or even monthly. In these situations, a 48-hour submission deadline, or even a 5-day deadline, would impede the registration drive of a church, synagogue, or mosque, whose volunteers may not be able to immediately turn them in.

Additionally, large drives may collect hundreds of thousands of applications, which the drive then reviews for completeness and authenticity before submitting. Although almost every state requires organizations that conduct voter registration drives to submit all completed applications regardless of concerns about their authenticity or missing information, reviewing and verifying applications enables the organizations to address problems with canvassers in a timely manner.

The NVRA provides 10-day submission deadlines for state agencies, except for applications collected within 5 days of the close of registration, when the submission deadline is 5 days. We recommend that states provide timelines that are no more onerous than those provided for state agencies in the NVRA. States should also allow election officials reasonable discretion to exempt partic-

ular organizations that may be excessively burdened by a submission deadline.

Prohibit Drives from Paying Canvassers Per Registration

The best management practice is to compensate canvassers on an hourly basis. We recommend that states prohibit voter registration organizations from paying their employees on a per-application basis. Prohibiting compensation on a per-application basis does not create an onerous burden on drives, and the benefits to election integrity exceed any burden that may exist.

This recommendation should not, however, be interpreted to prohibit organizations that compensate canvassers by the hour from establishing reasonable expectations for work performance, nor should it be coupled with restrictions on establishing such expectations.

Clarify Law Enforcement Standards

Several states would benefit by clarifying laws that require drives to turn in voter registration applications but have ambiguous or contradictory provisions. Clear legal standards are crucial for giving drives fair notice of the state's expectations, which in turn mitigate the risk of drives unwittingly creating and compounding problems for voters.

For example, if a voter registration organization is unexpectedly threatened with prosecution for “knowingly” turning in a fraudulent application submitted to them by an applicant, the organization may attempt to address the problem in good faith but overcompensate by not submitting what are in fact valid applications. To avoid this scenario, state laws should clearly require an organization to submit every application collected that has a signature and contains enough information for the election official to send the voter a disposition notice. Additionally, organizations should inform local election officials and prosecutors of the drive's procedures, and such officials should freely advise organizations on how to ensure that their drives' practices conform to state law.

Conclusion

Voter registration drives make important contributions to our democracy by reaching out to citizens who are underrepresented in the political process. Many courts have held that these activities are protected by the Constitution and the National Voter Registration Act.

Despite the absence of any indication that voter registration drives—whether compensated or not compensated—lead to voter fraud, states have increasingly imposed severe restrictions on drive activities.

States should carefully consider the role voter registration drives play in our political system and the protections they enjoy, and regulate them judiciously. State and local election officials should work together with civic organizations—as opposed to discouraging civic participation in voter registration—to improve the effectiveness of voter registration drives and respect the integral role that drives play in registering citizens to vote.

Notes

1. No single Census survey category is a perfect descriptor of voter registration drives. The Census survey question reported in the data as “Registration booth” is a subset of the applications collected at drives but may not capture community drives that involve canvassing in public places such as a shopping mall or a public transportation hub. As noted, registration at a school, hospital, or campus often occurs through registration drives.
2. *November 2012 Current Population Survey (CPS): Voting and Registration in the Election of November 2012 Table 12—Method of Registration by Selected Characteristics*, U.S. Census Bureau, available at <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/tables.html>; analysis by Project Vote. Raw numbers are estimates calculated using percentages provided in Census data.
3. *Id.*
4. *Id.*
5. N.M. Stat. § 1-4-49(A), N.M. Admin Code § 1.10.25.8(B).
6. E.g., Cal. Elec. Code § 2162; Cal. Admin. Code tit. 2, § 20001(g).
7. Mo. Stat. § 115.205
8. 8 Colo. Code Regs. § 1505-1 (Rule 14.2)
9. N.M. Admin. Code § 1.10.25.8(G)
10. Ariz. Sec. of State, *Voter Registration Drives*, http://www.azsos.gov/election/Voter_Outreach/Voter_Registration_Drives.htm (last visited Feb. 14, 2014).
11. 950 C.M.R. § 57.04
12. Kansas Secretary of State, *Guide for Voter Registration Drives 2* (rev. Apr. 2013), available at http://www.kssos.org/forms/elections/A_Guide_to_Voter_Registration_Drives.pdf
13. North Carolina State Board of Elections, *Voter Registration Drives*, <http://www.ncsbe.gov/ncsbe/Voter-Information/VR-Drives> (last visited Feb. 14, 2014).
14. Va. Code § 24.2-416.6.
15. See, e.g., Tex. Sec’y of State, *Texas Volunteer Deputy Registrar Guide: Frequently Asked Questions*, <http://www.sos.state.tx.us/elections/pamphlets/deputy.shtml> (restriction on copying); Md. Code, Elec. Law § 3-205 (restriction on copying or recording).
16. 52 U.S.C. § 20507(a)(1) (formerly 42 U.S.C. § 1973gg-6(a)(1)).
17. Va. Code § 24.2-1002.01.
18. La. Rev. Stat. § 18:1461.7(A)(1).
19. N.M. Stat. § 1-4-49(B).
20. *Wis. Admin Code § 3.20; Wis. Gov’t Accountability Bd., SRD Training for Municipalities (Final) 2014*.
21. See Tex. Elec. Code §§ 13.031(d)(3), 13.038; Tex. Sec’y of State, *Texas Volunteer Deputy Registrar Guide, Frequently Asked Questions*, <http://www.sos.state.tx.us/elections/pamphlets/deputy.shtml>.
22. Ohio Rev. Code § 2961.01.
23. Code of Md. Regs. § 33.05.03.06(A.), (B.).
24. *ACORN v. Burger*, Case No. 264507V (Montgomery Co. Circuit Ct. Nov. 29, 2005).
25. See Tex. Elec. Code § 13.008.
26. Nev. Rev. Stat. § 293.505.
27. Cal. Elec. Code §§ 2158(b)(1), 2159(a), 18107.
28. Maricopa County Recorder’s Information Center, *All Voter Registrations By Source Month (1999-2007)*.
29. Comment of the League of Women Voters of the United States, the League of Women Voters of Kansas, and the League of Women Voters of Arizona to the Election Assistance Commission at 18 (Jan. 3, 2014), available at http://lwv.org/files/Kobach.EACCComment_LVVV_1-3-1.pdf.
30. E.g., *Consolidated Edison Co. v. Public Serv. Comm’n*, 447 U.S. 530, 535-537 (1980) (explaining that “[t]he First Amendment’s hostility to content based regulation extends not only to restrictions on particular viewpoints, but also to prohibition of public discussion of an entire topic” and “[a] restriction that regulates only the time, place, or manner of speech may be imposed so long as it is reasonable”).
31. *Texas v. Johnson*, 491 U.S. 397, 416 (1989) (holding that for First Amendment purposes, there is no distinction between oral and written speech on the one hand, and conduct on the other hand, if the conduct is expressive).
32. *Meyer v. Grant*, 486 U.S. 414, 422, 425 (1988).
33. *Roberts v. U.S. Jaycees*, 468 U.S. 609, 618 (1984).
34. 460 U.S. 780 (1983).
35. 504 U.S. 428 (1992); see *League of Women Voters v. Cobb*, 447 F. Supp.2d 1314, 1331-32 (S.D. Fla. 2006); *Project Vote v. Blackwell*, 455 F. Supp. 2d 694, 701 (N.D. Ohio 2006), *Am. Assoc. of People with Disabilities v. Herrera*, 690 F. Supp. 2d 1183, 1211-13 (D.N.M. 2010).
36. *Anderson*, 460 U.S. at 789.
37. See *Burdick*, 504 U.S. at 434; *League of Women Voters v. Cobb*, 447 F. Supp. 2d at 1331-32.
38. See 52 U.S.C. § 20501 (formerly 42 U.S.C. § 1973gg).
39. 52 U.S.C. § 20505(b) (formerly 42 U.S.C. § 1973gg-4(b)).
40. 52 U.S.C. § 20507(b)(1) (formerly 42 U.S.C. § 1973gg-6(b)(1)).
41. 408 F.3d 1349, 1351 (11th Cir. 2005).
42. *Id.* at 1353-54.
43. *Id.* at 1354-55.
44. 455 F. Supp. 2d 694 (N.D. Ohio 2006) (issuing a preliminary injunction prohibiting enforcement of several voter registration drive restrictions). The court later issued a permanent injunction barring enforcement of the restrictions, and the court incorporated its reasoning for issuing the preliminary injunction. Partial Final Judgment, *Project Vote v. Blackwell*, No. 1:06-cv-1628 at 6 (N.D. Ohio Feb. 11, 2008).
45. *Project Vote v. Blackwell*, 455 F. Supp. 2d at 699, 702, 706.
46. *Id.* at 701.
47. *Id.* at 704-05.
48. *Id.* at 705-06.
49. *Id.* at 703-04.
50. *Id.* at 707.
51. 447 F. Supp. 2d 1314 (S.D. Fla. 2006).
52. *Id.* at 1322-23.
53. *Id.* at 1323.
54. *Id.* at 1331, 1336.
55. 486 U.S. 414 (1988).
56. *LWV I*, 447 F. Supp. 2d at 1333.
57. *Id.* at 1337-40.
58. 575 F. Supp. 2d 1298, 1302-1305 (S.D. Fla. 2008).
59. *Id.* at 1313, 1319.
60. *Id.* at 1322-25.
61. *Id.* at 1325.

62. *League of Women Voters of Florida v. Browning* (LWV III), 863 F.Supp. 2d 1155, 1160 (N.D. Fla. 2012) (granting preliminary injunction).
63. *Id.* at 1163 (citation and internal quotation marks omitted).
64. *Id.* at 1164-1165.
65. *Id.* at 1165-67.
66. LWV III, 863 F. Supp. 2d at 1163-65; Permanent Injunction and Order for Entry of Judgment at 2, LWV III, 863 F. Supp. 2d 1155 (No. 4:11-cv-628-RH), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/PermanentInjunctionandOrderforEntryofJudgment.pdf>.
67. LWV III, 863 F. Supp. 2d at 1158-59.
68. *Id.* at 1160-62.
69. *Id.*
70. *Id.* at 1162-63.
71. *Id.* at 1157.
72. LWV III, 863 F. Supp. 2d at 1163-65; Permanent Injunction and Order for Entry of Judgment, *supra* note 66 at 3.
73. *Id.* at 1164-65.
74. *Id.* at 1163-65; 1167-68.
75. *Id.* at 1165-66.
76. 690 F. Supp. 2d 1183 (D. N.M. 2010).
77. *Id.* at 1188, 1192.
78. *Id.* at 1214-18.
79. *Id.* at 1219-20.
80. *Id.* at 1224-26.
81. Joint Stip. of Dismissal Without Prejudice, *Am. Assn. of People with Disabilities v. Herrera*, No. 1:08-cv-702 JB/RHS (D.N.M. Nov. 12, 2010).
82. 805 F. Supp. 2d 152 (W.D. Pa. 2011).
83. *Id.* at 158.
84. *Id.* at 185-87.
85. *Id.* at 166-71.
86. 732 F.3d 382 (5th Cir. 2013).
87. *Id.* at 385-86, 396.
88. Tex. Elec. Code § 13.008.
89. *Voting for Am. v. Andrade*, 888 F. Supp. 2d 816, 853 (S.D. Tex. 2012), *reversed sub nom Voting for Am. v. Steen*, 732 F.3d 382 (5th Cir. 2013).
90. *Voting for Am.*, 732 F.3d at 388-92.
91. *Id.* at 396-98.
92. *Id.* at 398.
93. See 52 U.S.C. § 20507(i) (formerly 42 U.S.C. § 1973gg-6(i)); see generally Michelle Kanter Cohen, *Voter Registration Transparency*, Project Vote (2014), available at http://projectvote.org/images/publications/voter_registration_transparency_policy_paper_august_2014.pdf.
94. *Voting for Am.*, 732 F.3d at 399-400.
95. *Id.* at 400.
96. *Voting for Am.*, 732 F.3d at 401 (Davis, J., dissenting).
97. *Id.* at 402-405.
98. 570 U.S. ___, 133 S.Ct. 2247, 2251 (2013).
99. *Id.*
100. *Id.* (citing 42 U.S.C. § 1973gg-7(b)(2) (now codified at 52 U.S.C. § 20508(b)(2))).
101. *Id.* at 2251, 2160.
102. The Elections Clause states “The Times, Places and Manner of holding Elections for Senators and Representatives, shall be prescribed in each State by the Legislature thereof; but the Congress may at any time by Law make or alter such Regulations...” U.S. Const. art. I, § 4, cl. I.
103. *Id.* at 2253 (internal quotations omitted).
104. *Id.* at 2255-56.
105. U.S. const. art. I, § 4, cl. I.
106. *ITCA*, 133 S.Ct. at 2257.
107. *Id.* at 2258-59.
108. *Id.* at 2259.
109. Memorandum of Decision, *Kobach v. U.S. Election Assistance Commn.*, No. 13-CV-4095-EFM-TJJ (D. Kan. Jan. 17, 2014).
110. *Kobach v. U.S. Election Assistance Commn.*, No. 13-CV-4095-EFM-TJJ, 2014 WL 1094957 at *1-2 (D. Kan. 2014).
111. *Id.* at *10-12.
112. *Id.* at *13.
113. See, e.g., Intervenor-Appellants’ Opening Brief, *Kobach v. U.S. Election Assistance Commission*, Nos. 14-3062 and 14-3072 (May 27, 2014), available at <http://moritzlaw.osu.edu/electionlaw/litigation/documents/Kobach36.pdf>.
114. See generally Michelle Kanter Cohen, *Voter Registration Transparency*, Project Vote (2014), available at http://projectvote.org/images/publications/voter_registration_transparency_policy_paper_august_2014.pdf.

About the Authors

Stephen Mortellaro is an Election Counsel working primarily on policy and legal projects in Project Vote's Election Administration Program. Stephen joined Project Vote in September 2013 after earning a JD from The George Washington University Law School. In 2013, Stephen was appointed by the Montgomery County Council to serve on the Montgomery County Right to Vote Task Force.

Michelle Kanter Cohen is an Election Counsel with Project Vote, where her work includes litigation, advocacy, and research related to election administration, and providing assistance in administering voter enfranchisement programs. Ms. Kanter Cohen earned her JD, magna cum laude, from Boston College Law School, and a Bachelor of Arts in Political Science, cum laude, from Yale University. Ms. Kanter Cohen also serves on the Montgomery County Right to Vote Task Force.

Disclaimer

The information contained in this document is for general guidance only. It should not be used as a substitute for consultation with professional legal or other competent advisers. Project Vote is not responsible for any errors or omissions, or for the results obtained from the use of this information.

Project Vote is a national nonpartisan, non-profit 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 that our constituencies can register, vote, and cast ballots that count.

©2014 by Project Vote. This paper is covered by Creative Commons "Attribution-NonCommercial-ShareAlike" license. (See <http://creativecommons.org>.) This work may be reproduced in whole or in part for non-commercial use. Reproduction or adaptation must attribute Project Vote, and must bear the Creative Commons "Attribution-NonCommercial-ShareAlike" license. Please notify Project Vote if reproducing or adapting this work.

"Project Vote" is a trademark of Project Vote, and registered in the U.S. Patent and Trademark Office. The Project Vote logo is a trademark or common law mark of Project Vote.