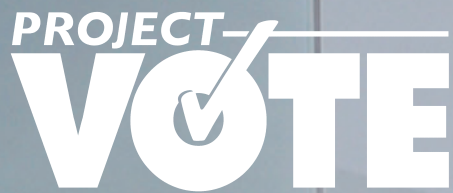


July 2010



Restricting Voter Registration Drives

Community-based voter registration organizations—whether they are partisan or non-partisan, secular or religious, paid or volunteer—serve as critical intermediaries between states and citizens who are currently alienated from the political process. While there are other mechanisms for reaching the tens of millions of eligible Americans who are still not registered to vote—including the National Voter Registration Act’s “motor voter” and public assistance agency programs—there is still no substitute for the simple, affirmative act of sending voter registration canvassers into America’s neighborhoods to help community members complete voter registration applications.

Such voter registration drives, of course, have long been a feature of American politics, and have helped countless Americans become registered voters. But the 2008 election cycle marked a recent high water mark, as a surge of interest in voting and an historically unprecedented presidential race saw many community-based drives achieving record numbers of applications. This tremendous success, however, 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 despite an astonishing absence of factual basis. The second, perhaps more damaging form of backlash came in the introduction of a series of state bills, many of which have passed into law, that were designed to significantly restrict voter registration drives in a number of states. These new laws are the focus of this

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

The Importance of Community-Based Voter Registration Drives

Voter registration drives play a vital role in increasing participation in American democracy, and the need for such efforts is unlikely to lessen in the foreseeable future. As reported in Project Vote's 2009 report *Representational Bias in the 2008 Electorate*, despite surges in participation among certain groups, some 60 million eligible Americans were still not registered to vote in 2008, and this group was disproportionately composed of low-income, minority, and young citizens.¹

This number would have been considerably higher if not for the efforts of civic organizations conducting community-based voter registration drives. As reported in *Representational Bias*, nearly nine million citizens reported having registered "at a voter registration drive"; this total most likely seriously undercounts the total impact of voter registration drives, since an additional 9.4 million citizens reported registering "at a school, hospital, or on campus"—all locations where voter registration drives are often conducted by civic organizations and student groups. "Moreover, it is likely that some portion of the 19.7 million citizens that registered to vote through mail-in voter registration applications received these applications from voter drives or from organizations that distributed these forms through the postal or electronic mail."² Furthermore, community-based registration drives are particularly effective at reaching the very minority populations of eligible Americans who remain disproportionately underrepresented in the American electorate.

Table 1: How Citizens Registered to Vote*¹

	Whites		Non-whites		Total	
Department of motor vehicles	23,877	27%	7,079	25%	30,956	26%
Public assistance agency	746	1%	716	3%	1,462	1%
Registered by mail	14,200	16%	5,503	19%	19,703	17%
School, hospital, or on campus	6,327	7%	3,103	11%	9,430	8%
Town hall or county registration of	26,278	29%	5,268	18%	31,546	27%
Registration drive	5,566	6%	3,409	12%	8,975	8%
On election or primary day	7,456	8%	1,695	6%	9,151	8%
Other	4,675	5%	1,745	6%	6,421	5%
Total	89,125	100%	28,518	100%	117,643	100%

Source: November 2008 CPS; analysis by Project Vote; numbers are in 1000's.

*Percents are of those who recalled how they registered to vote.

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As *Representational Bias* also reports, 12 percent of all reporting Non-Whites said they registered through voter registration drives, versus only 6 percent of Whites. Non-Whites were also more likely to have registered by mail, and on schools, hospitals, or campuses—all locations where voter registration drives are conducted.

Clearly, civic organizations that conduct community-based voter registration drives play a vital role in reaching the millions of unregistered Americans, particularly the demographics who are already underrepresented in the American electorate. It is equally true, then, that attacks on civic organizations, and burdensome legal and administrative restrictions on voter registration drives, have a negative impact on the very minority communities whose voices are most needed—and most often missing—at the voting booth.

Types of Restrictions

Registration and Disclosure Requirements

Several states require individuals or organizations to register with the state 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 when they register with the state, and these numbers must be included on any voter registration applications that the organizations help individuals complete. New Mexico, for example, requires organizations to disclose the identities of all volunteers and employees who will be involved in assisting voters to register before permitting organizations to

conduct voter registration activities. Finally, at least one state requires organizations to file quarterly statements disclosing their voter registration activities.

While reasonable regulation of non-governmental voter registration drives may be necessary, excessively onerous regulation of voter registration activities that significantly limit and even place a halt on community-based voter registration violates fundamental rights of political speech and association guaranteed by the First Amendment. 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 conducting 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. Colorado, for example, employs an effective and reasonable training requirement under which voter registration organizers must attend a state training and then train all individual circulators in their organizations. Circulators must sign an attestation that they will abide by state voter registrations laws and that they are aware of the penalties for violations.²

While a training requirement is not, on its face, 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. For example, Delaware provides mandatory training to voter registration organizations and each canvasser. Training is available only once a month by personnel from the office of

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the Commissioner of Elections. This imposes a prohibitive restriction on organizations conducting large-scale voter registration 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 are imposing a burden on voter registration organizations that may violate the NVRA and the protection of core political speech and association guaranteed by the First Amendment. States can protect their interests in maintaining accurate voter rolls by employing less restrictive training measures such as the program implemented in Colorado. Such “train the trainer” formats are far less burdensome to organizations, while addressing the state’s interest in ensuring voter registration applications are completed accurately by eligible registrants.

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, at least 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, in which 500 applications or more may be completed each day throughout the state.

Placing limitations on the number of applications also runs counter to the NVRA, which expressly states that registration forms must be freely available to facilitate organized voter registration drives.

Some states require voter registration organizations to keep detailed records, such as a log, on the disposition of each application after it is received. It is unclear how such a burdensome requirement either facilitates voter registration or ensures the integrity of the registration process.

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 applications. The latter restriction would, for example, prohibit organizations from creating databases of individuals they helped register. Georgia’s practice of requiring voter registration applications to be sealed before they were handed over to a canvasser, and its prohibition against copying voter registration applications, were both enjoined as violations of the First Amendment. The Court unilaterally dismissed the case and neither party appealed.³

Concern for privacy is the justification most often cited for restrictions on copying. There are a number of problems, however, with these restrictions. First, as part of their efforts to increase voter participation, many voter registration organizations also contact the 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 core political speech and association.

Additionally, organizations may need copies of registrations in order to effectively review the work of canvassers and address any concerns regarding the applications that

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they submit. This enables organizations to identify problems in the voter registration process early and to work with election officials to resolve them.

Finally, maintaining records allows organizations to verify that the individuals they help are, in fact, being registered to vote and appear on the list of registered voters.

Privacy concerns are valid, but these can be addressed through less restrictive means, such as requiring voter registration organizations to cover confidential information, such as driver's license or social security numbers, before copying the applications.

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 conducting efficient and responsible voter registration drives, and—coupled with criminal sanctions for non-compliance—they may chill voter registration activity in violation of the First Amendment. A religious congregation, for example, may have volunteers who do voter registration work 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, which may need to distribute registration applications to its members after weekly services and ask them to return any completed applications the following week.

A second example is that of voter registration drives run by large voter engagement organizations. Such organi-

zations collect and submit hundreds of thousands of applications that must be reviewed for completeness and verified for authenticity where possible. Even though almost every state requires organizations that conduct voter registration drives to submit all completed applications regardless of concerns about their authenticity, verifying applications enables the organizations to address problems with employees as soon as possible. Finally, in states where voter registration drives are taking place in a number of cities, quality control systems may be centralized, 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 rarely a stand-alone requirement, it is commonly part of a complete regulatory scheme. This type of regulation may restrict who can become deputy registrars and how they go about offering voter registration assistance.

Restrictions on Payment

Several states prohibit paying voter registration drive employees on a per application basis. This prohibition is based on the belief that a per-application, or commission, payment may create an incentive for unscrupulous employees to submit fictitious application. This prohibition is reasonable, so long as it is not interpreted so narrowly as to prevent voter registration organizations that employ paid canvassers from setting reasonable performance

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standards for the canvassers, thereby effectively preventing organizations from utilizing paid canvassers.

There have been attempts to impose blanket prohibitions on any type of payment to voter registration canvassers. Maryland, for example, at one time prohibited voter registration drives from paying anyone for collecting voter registration applications—in essence, requiring voter registration drives to be conducted only by volunteers. Maryland entered into a consent decree agreeing to rescind the rule as a result of litigation filed by Project Vote upon the grounds that the law violated the First, Fourteenth and Fifteenth Amendments.

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. A voter registration drive was defined as the "distribution and collection of voter registration applications by two or more persons for delivery to a county clerk and recorder."⁴ The voter registration drive organizer must:

- File a notice of intent and designate an agent, who must be a resident of the state;
- Undergo training established by the secretary of state and successfully complete a test, both of which are to be available online. No voter registration drive number will be issued unless this requirement is met;
- Train circulators before they begin their registration efforts and obtain from each circulator a signed

attestation that he or she will adhere to the rules and statutes governing voter registration activities;

- Submit the applications to the county clerk within 15 days, except that all applications received before the registration deadline must be submitted by the deadline. (Amended 2007);
- Sign a statement specifying that the voter registration drive intends to operate in the state of Colorado; and
- Ensure that the unique voter registration drive number provided to the organizer by the secretary of state is placed on each application, and on the tear-off receipt that is part of every application distributed for use by voter registration drives.

Colorado also prohibits paying circulators per completed registration application. The state once required voter registration drives to use only the registration form designated by the secretary of state, but this rule was amended to permit voter registration drives to also use the federal form. In a 2009 amendment to a regulatory rule, Colorado added the provision that a unique voter registration drive number would not be issued to an organization until the organizer completed the training, and signed the statement of intent and an acknowledgement of responsibilities and penalties.

Lastly, Colorado added a regulatory rule that voter registration drive organizations that provide voter registration forms on their websites, or provide links to a voter registration form, are to advise potential applicants that they must print out the registration and mail it directly to their county clerk and recorder and not to the organization that made the form available.⁵

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Florida

As mentioned above, Florida passed legislation, effective in 2006, that placed onerous burdens on groups that conducted voter registration drives. The law defined a “Third-party Registration Organization” broadly to include any person distributing and collecting applications to anyone other than family members. Political parties were expressly excluded from the definition of third-party registration organizations.

The most ominous provision of the law imposed a punitive set of fines for turning in completed applications late. Fines included:

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

Obviously, this had a chilling effect on community-based voter registration, causing many organizations to curtail or cease their voter registration efforts. The law also held organizations to a strict liability standard (under which even unavoidable violations were punishable), and created a fiduciary relationship between the organization and the applicant.

Finally, the law coerced organizations to submit to very detailed registration and reporting requirements in order to be eligible for a three-fourths reduction in fines. Under these provisions, organizations had to report the dates

and locations of all voter registration activities on a quarterly basis.

After the 2006 restrictions were held to be unconstitutional in *League of Women Voters of Florida v. Cobb*,⁶ Florida amended the law to significantly reduce the most onerous and controversial provisions. The amendments (1) significantly reduced fines for noncompliance; (2) placed a \$1,000 annual limit or cap on the amount of fines that may be levied against a third-party voter registration organization, including its affiliates; (3) removed the unconstitutional exception for political parties; and (4) waived fines for late delivery if the organization was able to show “that the failure to deliver the voter registration application promptly [wa]s based upon force majeure or impossibility of performance.”⁷ A subsequent constitutional challenge to the amended restrictions was not successful and the remaining restrictions are still in force.⁸

Georgia

Georgia encourages, but does not absolutely require, individuals to become deputy registrars if they intend to distribute and collect voter registration applications. There are significant 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 preapproved and published sites; and,
- Cannot receive compensation.

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Following the decision in *Wesley v. Cox (Cox I)*, in which the court held that individuals did not have to be deputy registrars to distribute and collect voter registration applications, Georgia sought to close this new regulatory gap, through a new rule for non-deputies that required applications to be sealed before they were given to a non-deputy and prohibited the copying of completed voter registration applications.⁹ Project Vote filed litigation and the court issued an injunction against enforcement of these restrictions.¹⁰ That injunction was negated when the Court dismissed the case without a finding and neither party appealed. The regulation was changed to allow organizations to copy applications if the applicant assents. Persons assisting others to register must return completed applications to the registrars within 10 days.¹¹ Violations of any of the provisions regulating voter registration drives is punishable by a fine of up to \$5,000 per each violation.¹²

Maryland

Maryland, like Georgia, has a regulatory scheme for voter registration drives.¹³ 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. Neither the state administrator nor any election director is required to qualify an individual as a voter registration volunteer if they determine that the person does not meet the requirements for participation. Volunteers may be disqualified from participating and receiving voter registration forms if they violate any of the instructions or if they don’t meet “standards set by the local board.”¹⁴

The Maryland Board of Elections 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 filed by 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.¹⁵ Maryland has since promulgated regulations that prohibit voter registration volunteers from copying or otherwise collecting information from completed application.

New Mexico

New Mexico’s Legislature passed Senate Bill 67821 in May 2005, which 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 numbers of all of its volunteers or employees, as well as a sworn statement from its employees or volunteers in which they agree 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 678.²² The rules require the secretary of state to provide community-based 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

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individual or organization, though the secretary of state has discretion to increase the number to accommodate special circumstances.

In July 2008, the American Association of People with Disabilities and others filed suit challenging the restrictions on voter registration drives. A motion for preliminary injunction was denied in September of that year. The case is pending as of this time.¹⁶

Missouri

Missouri passed laws in 2006 imposing severe restrictions on voter registration drives conducted by individuals or private organizations. Any person who will be paid or otherwise compensated for soliciting more than 10 voter registration applications must register with the state as a voter registration solicitor, providing the name and address of the solicitor and the person or organization that will be providing compensation. A failure to register is a Class 3 election offense, punishable by up to one year's incarceration and a \$2,500 fine.¹⁷ Persons convicted of a Class 3 election offense are permanently disenfranchised.¹⁸ Voter registration solicitors must submit completed applications to the appropriate election authority within seven days of receipt. This is a strict liability offense; there is no exception for circumstances beyond the control of the solicitor. A failure to submit the applications within seven days is a Class 4 election offense, punishable by up to one year's incarceration and a \$2,500 fine.¹⁹

Delaware

Delaware has exceptionally restrictive voter registration drive laws. An organization wishing to conduct a voter registration drive must register with the state at least 30 days before the commencement of the drive and provide detailed information, including the dates of the registration drive, the location, the "target audience and/or scope of the voter registration drive," the names of individuals who will serve as temporary registrars during the drive, and an attestation by the chief officer of the organization stating that the officer is responsible for the voter registration drive and that he or she will ensure that all persons involved with the conduct of the drive will adhere to Delaware law and rules promulgated under the law.²⁰ All temporary registrars are required to undergo training by the office of the Commissioners of Elections. Trainings are held once a month.²¹

In addition to the strict registration and training requirements, all voter registration drive organizations are to account for the disposition of every voter registration application they receive, by application number.²²

The organizations must:

- Keep a log of all voter registration applications solicited along with a copy of the log relating to the applications;
- Deliver completed applications to election authorities within 10 days; and,
- Place the name of the organization and the name of the solicitor on each application.²³

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The Legal Context of Voter Registration Drives

Voter registration drives conducted by private individuals and organizations are a form of core political speech, analogous to initiative petition drives, and are therefore protected by the First Amendment. Regulations that impose severe burdens on voter registration drives are strictly construed by courts and must serve a compelling state interest if they are to pass constitutional muster.²⁴ Considerations of administrative efficiency or convenience alone do not justify severe restrictions on protected First Amendment political speech. Even when a state has a compelling interest in restricting voter registration drives, the restrictions must be “narrowly tailored,” that is to say the law must be the least restrictive regulation necessary to achieve the state’s interest in ensuring accurate and current voter registration rolls.²⁵

In addition to First Amendment protections, the NVRA protects and encourages voter registration drives by community-based groups, in furtherance of its fundamental purpose: to ensure that more eligible citizens, especially under-represented minority citizens, are registered to vote.²⁶ To that end, Congress mandated that states distribute voter registration forms “with particular emphasis on making them available for organized voter registration programs.”²⁷ Overly-restrictive laws or regulations on voter registration activities may thus violate the letter and the spirit of both the First Amendment and the NVRA.

Federal courts have enjoined the imposition of excessive restrictions on the conduct of voter registration drives in several states. In the 2005 case of *Wesley v. Cox (Cox I)*,²⁸ for example, the Eleventh Circuit ruled that third parties have a protected right under the NVRA to conduct voter

registration drives and enjoined enforcement of state laws that only permitted authorized registrars to accept voter registration applications and prohibited “bundling” applications in a single envelope for delivery. Two years later, in *ACORN v. Cox (Cox II)*, the court ruled that new Georgia restrictions violated the First Amendment, but did not violate the NVRA. In that case plaintiffs challenged Georgia’s amended law, which required each registration application to be sealed before it was handed to the canvasser and prohibited the copying of applications. The court distinguished the contrary NVRA rulings in the two cases by the fact that state officials refused to process valid bundled applications in Cox I, but did process the bundled registrations in Cox II.

In 2006, an Ohio district court struck down multiple restrictions on community-based registrations, in *Project Vote v. Blackwell*, including restrictive training and canvasser registration provisions, disclosure of canvassers names on voter registration applications, method of delivery, and others. Violation of the restrictions was punishable as a felony. The court ruled that the restrictions violated the First Amendment’s protection of core political speech.

In Florida, as discussed above, community-based voter registration was virtually halted by severe restrictions on the conduct of voter registration drives in 2006, coupled with heavy fines for noncompliance. The League of Women Voters of Florida successfully challenged the restrictions in *League of Women Voters of Florida v. Cobb*.²⁹ The legislature amended the law, but did not remove many of the restrictions on community-based voter registration activity. The amended law was subsequently upheld in *League of Women Voters of Florida v. Browning*.³⁰

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Law Enforcement

Until 2008, no criminal charges had been brought against any organization that conducts voter registration drives. Law Enforcement had investigated organizations; particularly the Association of Community Organizations for Reform Now (ACORN), but had found no fraud on the part of the organizations. Individual canvassers who had submitted fictitious applications have been charged and convicted.³¹

Nevada

In 2008, election officials and prosecutors in at least three states began to creatively interpret never-before-used laws restricting payment to canvassers based on the number of applications submitted to threaten and charge organizations and their managers with criminal prosecution. Although ACORN did not pay canvassers on a per-application basis, or refuse to pay a canvasser for hours worked regardless of how few applications the canvasser submitted, Nevada used a similar compensation statute to charge the organization for establishing reasonable performance standards for workers paid by the shift. The prosecutor alleged that it was a violation of the statute to accept compensation under circumstances in which a canvasser would be let go if he or she did not collect a reasonable number of applications.

The law cited by Nevada prosecutors, NRS 293.805, states that:

1. It is [a Class E felony] for a person to provide compensation for registering voters that is based upon:
 - (a) The total number of voters a person registers;

On May 5, 2009 Nevada filed a criminal complaint alleging that ACORN violated NRS 293.805. The prosecutor charged that “ACORN paid the canvassers a rate of

between \$8.00 and \$9.00 per hour, but made continued employment, and therefore continued compensation, contingent upon the canvasser registering 20 voters per shift.” Testimony by a secretary of state investigator, however, shows that ACORN did not terminate canvassers that failed to collect 20 applications, and in fact had a very flexible performance standard. In fact, the average canvasser submitted about 13 applications per shift.

Many states have statutes that restrict how voter registration drives compensate their employees. If prosecutors choose to liberally interpret the statutes to also ban performance standards, voter registration groups will not be able to effectively manage paid voter registration canvassers. Canvassers would be guaranteed employment regardless of how well or poorly they perform. While some would continue to work diligently, others would take advantage of the new interpretation of the law and collect pay with little or no effort.

Pennsylvania

In Allegheny County, Pennsylvania, the District Attorney extended the range of the state’s voter registration canvasser compensation statute to prohibit paying or receiving payment for canvassing under a compensation system that called for performance standards, which he inaccurately dubbed “quotas.” The district attorney charged ACORN canvassers under this the statute based on his expanded interpretation of state law and threatened to also bring criminal charges against ACORN.

The law in question, 25 Pa. Const. Stat. § 1713, provides:

- (a) Prohibition.--A person may not give, solicit or accept payment or financial incentive to obtain a voter registration if the payment or incentive is based upon the number of registrations or applications obtained.

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In response, ACORN filed a lawsuit challenging the constitutionality of the statute as interpreted by the Allegheny County district attorney's office and on its face. The Pennsylvania Attorney General, also named in the lawsuit, responded to the complaint by stating that the state law did not prohibit the use of production standards or "quotas." The Allegheny County District Attorney has been voluntarily dismissed from the suit upon his agreement to stay any prosecution pending the court's decision on the interpretation of state law.

Indiana

Indiana's Secretary of State relied on a statute that made it a felony to turn in applications that are known to be fraudulent to ask the Lake County Prosecutor and United States Attorney for Northern Indiana to file voter registration fraud charges against ACORN. However, local election officials had told the organization that a different statute required it to turn in every application even if it believed that the application was fictitious. The conflicting laws placed the organization in a Catch 22 position. While no charges were filed, different prosecutors could have made different decisions on how to resolve the conflict.

Indiana Code 3-14-2-5(b) provides that a person who "fails to file or deliver to the proper officer a .. form of registration after the ... form has been executed commits a Class A misdemeanor. Indiana Code 3-14-3-1.1 makes it a Class D felony for a person to submit "voter registration applications known by the person to be materially false, fictitious." County election officials in Lake and Marion County told voter registration drives to submit all applications collected by canvassers.

Indiana Secretary of State Rokita argued in his letter to the US Attorney and State Prosecutor that "contrary to

the claims of ACORN, a person who complies with the law to submit completed voter registration applications is not able as a result to evade the law against knowingly submitting false or fraudulent applications." He went on to say that ACORN should have submitted "evidence and contact information for possible suspects to local law enforcement officials." ACORN, had in fact, submitted evidence and contact information for suspected canvassers to election officials, but no action was taken.

If a prosecutor in Indiana or another state with similar statutes adopts the same stance as Secretary Rokita, any organization that institutes a quality control system would be put in the difficult position of having to report to law enforcement every potentially suspicious application, no matter how small the suspicion, or else risk being charged with knowing an application was fraudulent.

Organizations will need to address these issues in jurisdictions that have similar statutes and may have to be concerned about additional statutes lending themselves to overbroad application

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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 registra-

tion 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 application 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.

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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 or not require Social Security numbers on the application.

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, and allow election officials discretion to reasonably exempt organizations that may have unique characteristics that make such a turn around time an onerous burden, such as unions that have monthly meetings.

Payment Per Registration

Prohibiting compensation on a per application basis does not create an onerous burden. Project Vote believes that the best management practice is to compensate canvassers

on an hourly basis. We recommend that states prohibit voter registration drives from paying their employees on a per-application basis. This should not, however, be interpreted to prohibit organizations that compensate canvassers by the hour from establishing reasonable expectations for performance.

Law Enforcement

A number of states would benefit by clarifying legitimately ambiguous or contradictory language, particularly when it comes to the obligation to turn in voter registration applications. Organizations should screen applications to better manage the drive. If threatened with prosecution for knowingly turning in a fraudulent application, the organization may overcompensate and not submit a valid application. Therefore statutes should require an organization to submit every application collected which, at minimum, has a signature and contains enough information for the election official to send a disposition notice.

Fixing the language may not work if the prosecutor is motivated enough to charge an organization for using performance standards to manage the drive. Election laws are often enforced at the county level so an organization working in different counties may face different risks of encountering an aggressive prosecutor willing to be creative with statutory language. Organizations should inform the local prosecutors that have authority to file charges in the county of the policies and procedures employed by the drive. While there may be no formal procedure to obtain approval, there should be a direct request to confirm the policies comply with the law or advise the organization where the policies need to be changed to do so.

Restricting Voter Registration Drives

Conclusions

Voter registration drives make important contributions to our democracy by reaching out to classes of citizens who are underrepresented in the political process. These activities are protected by the Constitution and the National Voter Registration Act. Despite the absence of any indication that voter registration drives, compensated or not compensated, lead to voter fraud, states have increasingly imposed severe restrictions on the activity, in contravention of First Amendment and the express purpose of the NVRA. 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, which have played a key role in registering citizens in communities that have been historically under-represented in the electorate.

Notes

- ¹ Table reproduced from *Representational Bias in the 2008 Electorate*.
- ² 8 COLO. CODE. REGS. § 1505-1 (Rule 44.2.2)
- ³ *ACORN v. Cox*, No. 1:06-cv-01891-JTC (N.D. Ga. Oct. 26, 2007), Mandamus granted in part and denied in part, No. 07-15688, 11th Cir. Feb. 27, 2008), Mandamus denied, No. 08-14419, (11 Cir. Sept. 24, 2008).
- ⁴ C.R.S.A. § 1-1-104 (Rule 44, as amended Dec. 8, 2009)
- ⁵ Id. Rule 44.4.6.
- ⁶ 447 F. Supp. 2d 1314, 1340 (S.D. Fla. 2006).
- ⁷ Fla. Stat. §§ 97.0575(3)(a)-(c).
- ⁸ *League of Women Voters of Florida v. Browning*, 575 F. Supp. 2d 1298. (FL 2008).
- ⁹ GA. Comp. R. & Regs. r. 183-1-6-.03(3)(o)(2).
- ¹⁰ *ACORN v. Cox*, No. 1:06-cv-01891-JTC (N.D. Ga.).
- ¹¹ Id.
- ¹² GA. Code Ann. § 21-2-33.1
- ¹³ Code of Maryland Regulations 33.05.03.06 et. seq.
- ¹⁴ Code of Maryland Regulations 33.05.03.06(G).
- ¹⁵ *ACORN v. Burger*, Montgomery Co. Circuit Court, Case No. 264507V (Nov. 29, 2005).
- ¹⁶ *AAPD v. Herrera*, U.S. District Court for the District of New Mexico (Case 1:08-cv-00702
- ¹⁷ Mo. Rev. Stat. § 115.205, Mo. Rev. Stat. 115.635.
- ¹⁸ Mo. Rev. Stat. § 115.133.
- ¹⁹ Mo. Rev. Stat. § 115.637.
- ²⁰ 15 Del. C. § 2060
- ²¹ 15. Del. C. § 2061
- ²² 15 Del. C. § 2064
- ²³ 15 Del. C. 1102.
- ²⁴ *Meyer v. Grant*, 486 U.S. 414 (1988); *Buckley v. Am. Const. Law Found.*, 119 S. Ct. 636, 525 U.S. 192,
- ²⁵ *Buckley*, supra.
- ²⁶ 42 U.S.C. § 1973gg(a)(3), (b)(1).
- ²⁷ 42 U.S.C. § 1973gg-4(b).
- ²⁸ *Charles H. Wesley Educ. Found., Inc. v. Cox*, 324 F. Supp. 2d 1358 (N.D. Ga. 2004), aff'd 408 F.3d 1349 (11th Cir. 2005)
- ²⁹ 447 F. Supp. 2d 1314, 1340 (S.D. Fla. 2006)
- ³⁰ 575 F. Supp. 2d 1298. (FL 2008)
- ³¹ King County Washington charged a quality control coordinator along with eight canvassers but dismissed the case when it became apparent she had only turned in the applications, as required by the law, and was not part of the scheme with the canvassers.

Project Vote is a national nonpartisan, nonprofit 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.

Disclaimer

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July 2010

