

December 2010

Election Legislation 2010: Threats and Opportunities Assessment Update

by Erin Ferns Lee

As the 2009-2010 legislative sessions come to a close, it is safe to report that budget concerns and the midterm elections superseded progressive overhauls in election administration on both the state and federal levels. Little can be expected to happen during the lame duck session of Congress. However, a review of recent election legislation advancements and failures, as well as the results of the recent election, may provide some insight into what we can expect in 2011.

This session, we saw a number of positive trends to improve voter registration and voting access, particularly among young people, with at least three states adopting pre-reregistration policies. Meanwhile, restoration of voting rights for ex-offenders, criminalization of voter suppression tactics, and Election Day Registration were debated in a number of states.

However, the voter fraud debates that drove many campaign platforms in the 2010 midterm elections lead us to believe that legislators in 2011 may focus less on increasing access to the polls, and more on erecting new barriers to voting.

Voter ID is an issue that has been widely debated in legislatures year after year, but it now permeates public discussion, with petitions for ballot measures and the election of secretaries of state who promise to support voter ID policies in 2011. Strict voter ID laws passed in two states this session, and the issue will undoubtedly dominate election reform discussions in the near future.

This year, ProjectVote monitored election bills in 45 states. This memo assesses both the threats and opportunities represented by election reforms that have been enacted or that have gained significant support in state legislatures and the U.S. Congress in 2010. We also assess pending bills, as well as issues that we expect to arise in 2011, based on discussions with state-based advocates, recent media coverage, and the partisan makeup of the legislatures and state election directors.

Threats to Voting Rights

Voter ID

State lawmakers and voting rights advocates have strongly fought this issue in several states over the years, often down to the wire. In recent years, some state officials are taking the issue away from the legislature, letting the public decide by voting on ballot measures. A number of states elected secretaries of state this November who have promised to move the issue.

On Election Day, an overwhelming majority of Oklahoma voters approved photo voter ID, (State Question 746), which already faces challenges in court over claims that it violates Oklahoma's state constitution, which guarantees "All elections shall be free and equal. No power, civil or military, shall ever interfere to prevent the free exercise of the right of suffrage."¹

Petitions to put voter ID on state ballots have been filed in Mississippi and Nevada.

Election Day 2010 was also the first time Idaho voters were required to present photo ID, thanks to the passage of HB 496 earlier this year. Secretary of State Ben Ysursa claimed that there were no problems with the new law at the polls, and that "not a large number of voters used the affidavits available to people without ID who still want to vote."²

However, Idaho was criticized for misleading ads that did not explain that there was an affidavit option, leading voting rights advocates to question how many citizens stayed home because they lacked proper ID.³

Similar voter ID bills failed in Missouri and South Carolina this session after much debate. Missouri's HJR 64 was the state's fourth attempt to pass photo ID since the court struck down as unconstitutional the law passed by the legislature in 2006; this year supporters of HJR 64 tried to sweeten the pot by adding early voting provisions to the bill. ProjectVote and the Missourians for Fair Elections, a coalition of state organizations, wrote talking points on the "advance voting" proposal, submitted written testimony, and developed an advocacy strategy for both the House and the Senate, and the bill ultimately failed. South Carolina's HB 3418 failed in conference committee when the Senate did not pick up the bill after reconvening from recess on June 29.

Several more ID bills were postponed in Alabama, Colorado, Rhode Island, and Tennessee.

Despite the relatively unsuccessful pushes for voter ID this session, we will undoubtedly see the issue prominently featured in the legislatures in 2011. Partisan operatives used the 2010 midterm elections to recharge the unfounded "voter fraud" scare, fueling campaign platforms for secretary of state in a number of states and inspiring the filing of voter ID bill drafts for the 2011 session in Texas and New Hampshire. In addition, North Carolina's and Wisconsin's newly elected Republican-dominated legislatures have the state Republican Parties reportedly planning to push photo voter ID in 2011.⁴

The victors of secretary of state races in at least six more states promised to push restrictive voter ID measures in 2011.

In Colorado, secretary of state-elect Scott Gessler (R) stated that he was focused on implementing anti-fraud measures, even though there have been no reported voter fraud issues in the state.⁵ "You have to prevent that stuff," Gessler said on the campaign trail. Gessler also reportedly will support the passage of a proof of citizenship bill in the state, though he acknowledged that the likelihood of its passing would be slim.⁶

Matt Schultz, Iowa's next Republican secretary of state, also credits his victory to a "simple plan to require all voters to show photo identification." As in Colorado, there is no evidence of voter impersonation in Iowa. "If you want

to have accountability, and if we want to make sure people are who they say they are, then require a simple photo ID. I think that is why we won,” said Schultz.⁷

Kansas Secretary of State-elect Kris Kobach (R) focused his campaign on preventing “illegal aliens” from voting with photo ID, despite lacking evidence of such fraudulent votes. “One response to voter fraud is to react to it after the fact,” said Kobach. “It’s better to take proactive measures up front, and that’s where voter ID comes in.”⁸

New Mexico’s first Republican secretary of state in 80 years, Dianna Duran, also reportedly plans to lobby state lawmakers for voter ID in the state.⁹

In November, Texas Secretary of State Hope Andrade (R) illustrated the influence that state elections chiefs have on enforcing controversial procedures. Although voter ID is the subject of a longstanding debate in Texas, it has yet to be enacted. However, Andrade issued a directive to require all first-time voter registrants in Galveston County to present ID that exceeded Help America Vote Act requirements during the 2010 midterm elections, much to the dismay of voters and election officials alike.

“It is not specific enough,” said county registrar, Cheryl Johnson, of the directive. “Although it states ‘any form of identification prescribed by the (secretary of state),’ there is no rule, and I don’t know what other authority (the secretary of state) has. Legislation or rules are needed to clarify this.”¹⁰

Contrary to the regressive secretary of state trend (and despite the infamous “ID Me Please” buttons that Minnesota Tea Party sympathizers wore to the polls in November), Minnesota Secretary of State Mark Ritchie has resisted the hysteria and spoken out against such unnecessary and restrictive measures.

“While portraying election reform as the purview of the Legislature,” Ritchie has testified in legislative committee that implementing a photo voter ID policy would have ‘zero effect’ on the “integrity of the state voting system,” according to a report by Minnesota news clearinghouse, ECM Publishers.¹¹

The following bills remain pending in state legislatures. Most will die or be carried over by January 1, when the remaining states will adjourn.

- **Massachusetts - HB 565, HB 569, HB 581:** These bills require each voter desiring to vote at a polling place to say his name and residence to one of the officers at the entrance, who would then check and repeat the name and address. The election officer will then request the voter to present one of the following forms of identification: a Massachusetts driver’s license, a Massachusetts photo identification card, or a United States passport. The bills are pending in the House and await second readings.
- **Massachusetts - HB 578, HB 587, HB 668, HB 670:** These bills amend election law to require voters to present valid government-issued photo ID before voting. Those who do not have this ID are subject to being challenged and would be permitted to vote provisionally. Such provisional voters would be required to present ID to the registrar within eight days of the election. The bills are pending in the House and await second readings.
- **Michigan – SB 1398:** This bill amends the state photo voter ID law to include absentee ballot applicants. Such applicants would be required to submit a photocopy of a driver’s license, military ID, utility bill, bank statement, or other government document (excluding voter registration card) that shows name and current address along with the absentee ballot application. This bill was introduced in June and is pending in the Senate Campaign and Election Oversight Committee.

Proof of Citizenship:

Anti-immigration debates have intensified in 2010 with the passage of Arizona's controversial SB 1070, which inspired several copycat bills and provided fodder to political campaigns on immigration issues. Fears of noncitizen voting have permeated conservative "election integrity" conversations, even though such voting is virtually unheard of, and has inspired more barriers to the franchise through restrictive election laws.

Arizona and Georgia were the only states that passed laws to require voter registrants to submit proof-of-citizenship with their applications in order to get on the voter rolls. When, in October, the Justice Department had not yet pre-cleared Georgia's 2009 law under the Voting Rights Act, and a federal judge struck down Arizona's law (which had disenfranchised more than 30,000 eligible citizens since its enactment), it seemed that these excessive and damaging policies were going to fall by the wayside.¹²

However, on November 15, Georgia Secretary of State Brian Kemp filed suit, seeking approval from the Justice Department to enforce the 2009 proof-of-citizenship law, which he claims is "a model for election security and integrity." Kemp's suit was filed less than three weeks after Arizona's law was struck down by the Ninth Circuit Court of Appeals because it conflicted with the National Voter Registration Act.

Six other states introduced laws relating to citizenship in 2010, including Massachusetts, Michigan, Tennessee, Washington, and Wisconsin. After much deliberation, Tennessee's HB 270 failed in conference committee. The Republican-sponsored Washington and Wisconsin bills failed upon adjournment.

The following bills are pending in state legislatures. Most will die or be carried over by January 1, when the remaining states will adjourn.

- **Massachusetts – HB 579:** This bill requires any person registering to vote for the first time in the Commonwealth to provide verification of U. S. citizenship, including a birth certificate, passport, or United States naturalization papers.

Any person who transfers, alters, or defaces identification cards, or who makes, uses, carries, sells, or distributes a false identification for the purposes of voting illegally would be guilty of a misdemeanor and punished by a fine of not more than \$500. The bill is pending in the House and awaits a second reading.

- **Massachusetts – HB 583:** Under this bill, "an applicant for registration shall prove, to the satisfaction of the Clerk or Registrar, that he is a citizen of the United States. Such proof may be made by producing a birth certificate or papers of naturalization for inspection, notation of which shall be made a part of the registration of said applicant." The bill is pending in the House and awaits a second reading.
- **Michigan - HB 6386/SB 1370:** This bill requires proof of United States citizenship when registering to vote. The House bill has been in House Committee on Ethics and Elections since June 23, while the Senate bill remains in the Senate Campaign and Election Oversight Committee.
- **Michigan - SB 1447 and SB 1448:** These bills direct the secretary of state to implement a method for issuing Michigan state ID to legal residents who are not American citizens. They have both been pending in the Senate Transportation Committee since August 11, 2010.

Felon Disenfranchisement:

Felon voting rights, whether restricting or restoring, is a rising issue on the state and federal levels. Though restoration appears to be the stronger trend, efforts to restrict felon's access to the franchise persist, particularly from states that already have strict felon voting laws, ranging from disenfranchisement until completion of probation or parole to permanent disenfranchisement for certain felons. Moreover, a new trend is emerging that would determine an ex-offender's ability to access the franchise based on his or her ability to pay restitution, court costs, or fines.

According to a Brennan Center for Justice report, *Criminal Justice Debt: A Barrier to Reentry*, a growing trend in felon punishment is “user fees” or “financial obligations imposed not for any traditional criminal justice purpose such as punishment, deterrence, or rehabilitation but rather to fund tight state budgets.”

“But in the rush to collect, made all the more intense by the fiscal crises in many states, no one is considering the ways in which the resulting debt can undermine reentry prospects, pave the way back to prison or jail, and result in yet more costs to the public.”¹³

In 2010, only one state succeeded in passing such a bill, which legislators called “an overall Republican Party effort to disenfranchise people” for its unequal application of justice based on ability to pay restitution, court costs, or fines.¹⁴ Tennessee's HB 70 provides that a person convicted of a felony may only regain voting rights after he has paid all restitution to the victim or victims of the offense, all fines ordered by the court, and all court costs assessed against the person following the conviction. It was amended to provide an exception where the court has made a finding at an evidentiary hearing that the applicant is indigent at the time of application. The new law is currently in effect.

Voter Registration Drives:

In 2010, new voter registration rates have reportedly dipped by as much as 26 percent when compared to the 2006 election cycle. Fewer groups were engaged in registering voters during this election cycle, resulting in fewer new voters, “especially in poorer areas that are traditionally underrepresented and therefore the usual target of voter registration drives,” according to the *Washington Independent* in October.¹⁵ The publication cites both legislative and public attacks on voter registration drives for the drop in registration efforts and the overall decline in new voter registrations.

In 2010, the majority of voter registration-related bills sought to subject the person who submits someone else's fraudulent voter registration card to criminal prosecution, including Oklahoma's SB 1921, which was enacted in June. California also enacted AB 2101, allowing a court to issue an order prohibiting a person convicted of unlawful voter registration activities from receiving money or compensation for helping another person to register to vote.

As of early November, at least one bill prohibiting variable pay scales in voter registration drives has been pre-filed in Texas. It will be introduced in 2011.

The following bill remains pending in New Jersey until the legislature adjourns in January.

- **New Jersey – SB 2324:** This bill relates to criminal punishment for election or voter fraud activities. It provides that any election officer or employee convicted of fraud with respect to voter registration, an election, or the administration of an election would—in addition to any other penalty provided by law—serve up to five years without parole and be liable for a penalty of no more than \$50,000. The bill is pending in the Senate State Government, Wagering, Tourism and Historic Preservation Committee.

Opportunities in Voting Rights

Youth Voting:

Turnout among young voters in 2008 indicated that 18- to 30-year-olds felt a greater stake in the democratic process, in spite of their ongoing underrepresentation in the electorate. In 2010, lawmakers appeared intent on making registration and voting more accessible to young people, with the introduction of bills to provide preregistration, voter registration on high school or college campuses, and student poll worker programs.

Project Vote is able to provide technical assistance to states seeking to extend voter registration access to underrepresented youth by implementing preregistration or high school registration programs. In 2010, Project Vote provided advocacy materials to stakeholders in some of the following states and will do so again in 2011.

Preregistration

During the 2009-2010 legislative sessions, at least nine states introduced bills to permit citizens who are not yet of voting age to preregister to vote (i.e., registering at age 16 or 17 with the registration taking effect at age 18). In 2010, Rhode Island, Delaware, and Maryland passed laws to allow citizens as young as 16 to preregister to vote. Bills are still pending in three states, and the issue is expected to reemerge in Arizona next year.

The following bills remain pending in state legislatures. Most will die or be carried over by January 1, when the remaining states will adjourn.

- **Massachusetts – HB 683:** This bill allows a citizen who is at least 16 ½ years old to preregister to vote. He will not be permitted to cast a ballot until after his 18th birthday.
- **Michigan – HB 4261 and HB 4337:** These bills would permit 16- and 17-year-old citizens to preregister to vote. Both were adopted by the House in May 2009 and are currently pending in the Senate Campaign and Election Oversight Committee.
- **New York – AB 811/SB 1872:** This omnibus bill would allow for preregistration of 17-year-old citizens. (It also provides for colleges, universities, and high schools to provide voter registration; see “Campus Registration,” below.) The bill is pending in the Assembly Election Law Committee.

Campus Registration

Voter registration on campus has been an interest of the states and Congress since 2009. Last year, a bill was proposed in Congress to amend the National Voter Registration Act to include institutions of higher education as voter registration agencies (S 1125/HR 1729). (This is not to be confused with the Higher Education Act, which already requires public institutions of higher education to at least email students with links to voter registration applications.) Since then, several states, including Arizona, California, Kentucky, Louisiana, and Illinois, have introduced measures to provide voter registration on high school or college campuses.

In May, the Louisiana Legislature adopted House Concurrent Resolution 158, which requests the secretary of state to develop and implement an annual educational and instructional presentation concerning voting and voter registration targeted at high school seniors.

That same month, Arizona adopted HB 2668, directing the Arizona Board of Regents to work with the student government of universities and community colleges to adopt a plan to increase student voter registration and voter

participation. This includes providing information on voter registration and voting opportunities with admission packets and during orientation. It also requires the schools to provide information on voter registration and mail voting deadlines, as well as links to online voter registration from school Web sites.

The following bills remain pending in New York until the legislature adjourns in January.

- **New York – AB 811/SB 1872:** In addition to allowing for preregistration for all 17-year-old citizens, this bill would also require all colleges, universities, and public high schools to make voter registration forms available in the same manner as other voter registration agencies. However, this bill does not require colleges to maintain or collect “declination” forms or reports. The bill further requires all schools to link state information on voter registration qualifications and applications to the school homepage. Finally, colleges and universities would be required to inform students of the right to complete their voter registration form from either their college or their previous address. The bill is pending in the Assembly Election Law Committee.

Student Poll Worker Programs

Permitting citizens as young as 16 to participate in the democratic process as poll workers, election inspectors, or election judges has been a less common but relatively successful subject of legislation. In 2010, New Mexico and New York enacted such bills.

New Mexico’s HB 127 allows citizens as young as 16 to serve as election judges. New York’s AB 4467 allows 17-year-old citizens who are enrolled in a school district to serve as election inspectors or poll clerks. A further bill on the subject is pending in New York.

- **New York - SB 1837:** This bill would allow any full-time student attending a New York college to serve as an election inspector if the student speaks and reads English, is not running for office, and is registered to vote. The bill was adopted by the Senate on June 15 and has since been pending in the Assembly.

Election Day Registration:

Election Day Registration (EDR) policies have existed in several states since the 1970s, and those states boast voter turnout rates that are 10-12 percent above the national average. In the 2010 legislative sessions, EDR bills were introduced in 10 state legislatures and in the U.S. Congress.

California introduced bills in the Senate (SB 1140) and Assembly (AB 1531); the latter adopted the measure, but it failed to pass the Senate before adjournment.

On the federal level, S. 1986—which provides same-day registration during any early voting period and on Election Day—has been pending in the Senate Rules and Administration Committee since October, 2009. However, its lead sponsor, Sen. Russ Feingold (D-WI), will not be returning for the 112th Congress.

The following bill remains pending in New York until the 2009-2010 legislative session adjourns on January 5, 2011.

- **New York – AB 5257/SB 5059:** These bills would allow an eligible citizen to register and vote at any election after providing proof of residence on Election Day. The Assembly bill is in the Assembly Committee on Election Law. The Senate bill is in the Senate Elections Committee.

NVRA Agency Registration:

During the 2009-2010 legislative sessions, bills were introduced in at least four states and the U.S. Congress to improve access to voter registration under the National Voter Registration Act, which requires public assistance agencies, disability service agencies, and motor vehicle offices to also serve as voter registration sites. Proposals range from improving registration practices at NVRA agencies to expanding access to voter registration at universities and correctional facilities. However, few of these bills are currently pending, and none have been active since early this year.

The following bill remains pending in New Jersey until the 2010 legislative session adjourns on January 11, 2011.

- **New Jersey – AB 948:** This bill would change the way the New Jersey Motor Vehicle Commission conducts voter registration under the NVRA. It would require the agency to operate under the presumption that citizens who apply for a driver's license want voter registration materials and assistance with registration, unless the person specifically declines to register for any reason. The bill has been in the Assembly State Government Committee since January.

Online Voter Registration:

Online voter registration gained ground in 2009 when five states passed laws, but there has been little traction in the legislatures since this past summer. Bills were introduced in three states this session (California, Hawaii, and Wisconsin), but none have passed.

Although Project Vote supports the cost-effective accessibility of online voter registration, which allows a person to transmit an application electronically, we hope to see an improvement in how lawmakers approach the issue of broad accessibility. Most legislation introduced in the 2009-2010 sessions requires signatures provided by the applicant when applying for a driver's license or state ID. This restriction reduces the reach of such policies, as America's least advantaged citizens are less likely to possess such forms of ID.

As of mid November, the issue appears to be on deck for the 2011 legislative session in at least one state. The office of Montana Senator Dave Wanzonried (D-Missoula) filed Draft Bill 598, an online voter registration bill for voters with valid driver's licenses.

The following bills remain pending in state legislatures. Most bills will die or be carried over by January 1, when the remaining states will adjourn.

- **U.S. Congress – HR 4449:** The "Responsible Online Voter Empowerment Registration Act of 2010" provides funding for states that choose to implement online voter registration under the condition that the registration is submitted through an official public Web site. It has been pending in the Committee on House Administration since January.
- **HR 1719,** the "Voter Registration Modernization Act of 2009," would require states to make online voter registration available to eligible citizens who wish to register or update their information online. It was introduced in March 2009 and referred to the Committee on House Administration, where its lead sponsor, Rep. Zoe Lofgren (D-CA), currently chairs the Election Subcommittee.

- **S 3301**, the “Online Voter Registration Act of 2010,” was introduced in early May. This bill would establish an online voter registration grant program. It has been read twice and referred to the Senate Committee on Rules and Administration.
- **New Jersey – AB 229**: This bill provides for online voter registration through the secretary of state’s Web site, authorizing use of the NJ Motor Vehicle Commission’s database of digitized signatures to validate submissions. This bill is in the Assembly State Government Committee.

Restoration of Voting Rights:

The confusing array of laws governing a felon’s right to vote has been subject to scrutiny in the legislatures since 2009 on both the state and federal levels. Automatic restoration of voting rights upon release from incarceration, and education or notification of voter eligibility are the most common reforms that lawmakers have introduced to improve or streamline access to voting rights for ex-offenders.

Though several bills are pending, there are only substantial updates from New Jersey. This fall, bills regarding felon voting rights have been pre-filed in Kentucky and Virginia.

The following bills remain pending in the U.S. Congress and state legislatures. Most bills will die or be carried over by January 1, when the remaining states will adjourn.

- **U.S. Congress - HR 3335/SB 1516**: The “Democracy Restoration Act of 2009” would provide the right to vote in federal elections for all eligible citizens after they complete their imprisonment. It also requires the state to notify convicted felons of their restored voting rights upon release. The bills are in each chamber’s Judiciary Committee.
- **U.S. Congress - HR 3576**: The “Ex-Offenders Voting Rights Act of 2009” would secure the federal voting rights of certain qualified ex-offenders who have served their sentences, including probation or parole. The bill has been in the House Judiciary Committee since September 2009.
- **Delaware – HB 17**: This bill amends the Delaware Constitution to eliminate the existing five-year waiting period before eligible felons who have completed all terms of their sentences may have their voting rights restored. The bill was adopted by the House and will be carried over to the 2011 legislative session.
- **New Jersey – AB 877 and AB 1015**: This bill amends state election law to permit probationers and parolees to register and vote. The bill also requires the chief probation officer in each county, the state parole board, and the commissioner of corrections to assist each eligible person under their jurisdiction to complete a voter registration form.
- **New Jersey - SB 557**: This bill permits a person who is on parole or probation to vote, without distinction as to the degree of crime committed. The bill also requires the chief probation officer in each county, the State Parole Board, and the Commissioner of Corrections to assist persons under their jurisdiction who are eligible to vote and desire to vote in completing a voter registration form. In addition, the bill updates the law to reflect an amendment to the New Jersey Constitution concerning the suffrage of individuals adjudicated by a court to lack the capacity to understand the act of voting. The bill was referred to the Senate Law and Public Safety Committee in November.

Opportunities in Voting Rights

- **New York – SB 7546:** This bill would allow parolees the right to register and vote in any election. It is pending in the Senate Elections Committee.
- **New York – SB 1264/AB 3375:** These bills would ensure that convicted felons are notified of their voting rights and provided with voter registration materials at least 30 days before their release from correctional institutions. The bills require the State Board of Elections annually to provide the State Board of Parole with a sufficient number of voter registration materials. The Senate bill is in the Senate Finance Committee, and the House bill is in the Assembly Election Law Committee.

Deceptive Practices:

A few states have pushed legislation to protect voters from tactics designed to mislead or discourage voters from participating in the democratic process. Unfortunately, none of these bills passed before the 2010 midterm elections, when there were reports of deceptive practices and intimidation tactics across the nation, including reports of robocalls falsely telling voters that they could vote online or on Wednesday.¹⁶

We hope to see more states take steps to combat deceptive practices in the near future by implementing laws to monitor and criminalize such efforts before the 2012 presidential election.

The following bills remain pending in state legislatures. Most bills will die or be carried over by January 1, when the remaining states will adjourn.

- **New York – AB 9250/SB 2554:** Under this bill, any person, political committee, labor organization, corporation, or other entity who knowingly communicates or causes to communicate deceptive information (which he or she knows to be false) to prevent or deter another person from exercising his or her right to vote is guilty of a misdemeanor. The Senate adopted its bill on June 15. The Assembly bill has been in the Election Law Committee since May 27.
- **Pennsylvania – HB 2269:** This bill prohibits the purposeful dissemination of false information regarding an election or a person's voter eligibility with the intent to deter or discourage voting. The bill is pending in the House State Government Committee.

Convenience Voting:

Efforts to make the voting process both convenient for the voter and inexpensive to the government have slowed down in 2010. In 2009, no-excuse early voting was the leading election reform, presumably because of high early voter turnout in 2008. In 2010, however, early voting was mostly offered as a “compromise” amendment to voter ID bills in order to gain support for the latter polarizing and partisan issue. (It has yet to make any headway in that arena.)

This fall, early voting was criticized in a study by University of Wisconsin-Madison political science professors Barry Burden and Kenneth Mayer, who found it actually depresses turnout unless accompanied by Election Day Registration. These findings may inspire a resurgence of early voting/same-day-registration hybrid bills in 2011.

“North Carolina and Vermont, two otherwise very different states that combined early voting with same-day registration, had turnout levels in 2008 that were much higher than the overall national figure of 58 percent of

the voting-age population,” Burden and Mayer opined in the *New York Times* in October. “Turnouts in Vermont and North Carolina were, respectively, 63 percent and 64 percent.”

“By removing barriers that require potential voters to register weeks before a campaign reaches its height, less-engaged citizens can enter the voting process late—and political campaigns can respond by maintaining the intensity of their efforts through Election Day.”¹⁷

While most convenience voting legislative activity related to overseas voters (in compliance with the federal Military and Overseas Voter Empowerment Act, Public Law No. 111-84), vote by mail and no-excuse absentee voting bills are still pending in the U.S. Congress and in New York.

The following bills remain pending in U.S. Congress and the New York legislature.

Vote by Mail

- **U.S. Congress – SB 3300:** This bill would establish a vote-by-mail grant program. It was introduced and referred to the Senate Rules and Administration Committee on May 4.

No-Excuse Absentee

- **U.S. Congress – SB 3299:** This bill would amend the Help America Vote Act of 2002 to allow all eligible voters to vote by mail in federal elections with no requirement that the voter state a reason for being unable to vote in person. It has been in the Senate Rules and Administration Committee since May 4.
- **New York – AB 8277/SB 5028:** These bills would allow the legislature to provide a manner in which a qualified voter with an illness or physical disability may vote on or before Election Day without having to vote in person. The Senate bill was adopted on June 8 and is currently pending in the Assembly Committee on Judiciary. The Assembly bill was referred to the Assembly Rules Committee on June 28.

Conclusion

Budget issues, partisan conflict, and the midterm elections diverted attention from legislative efforts to improve the administration of elections in 2010. All was not lost: for example, efforts to improve youth voter registration and participation are on the rise and can be expected to reemerge in 2011, when presumably more emphasis will be put on shaping election law.

Stay Informed

However, while we can expect a resurgence of election bills, lawmakers will likely focus on erecting barriers to the franchise. With partisans and officials bringing misinformed and misleading charges of noncitizen voting and voter fraud to the public debate, we can only expect more regressive policies to gain ground in Congress and the legislatures, as well as on state ballots.

To stay informed about election reform and voting rights related bills in all 50 states and the U.S. Congress, sign up for Project Vote's weekly Election Legislation eDigest. To subscribe, contact Erin Ferns Lee at elee@projectvote.org or visit www.projectvote.org and follow the link.

Notes

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Appendix I:

Election Legislation Threats in the States

California

Voter Registration Drives

Status: **ENACTED**

AB 2101: Allows a court to issue an order prohibiting a person convicted of unlawful voter registration activities from receiving money or compensation for helping another person to register to vote.

Idaho

Voter ID

Status: **ENACTED**

HB 496: Requires voters to present photo ID at the polls, or sign an affidavit and cast a provisional ballot.

Massachusetts

Voter ID

Status: **PENDING**; House Second reading

HB 565, HB 569, HB 578, HB 581, HB 587, HB 663, HB 668, and HB 670: Require voters to present valid government issued photo ID before voting.

Proof of Citizenship

Status: **PENDING**; House Second reading

HB 579: Requires any person registering to vote for the first time in the Commonwealth to provide verification of U. S. citizenship, including a birth certificate, passport, or United States naturalization papers.

Proof of Citizenship

Status: **PENDING**

HB 583: Requires any person registering to vote for the first time in the Commonwealth to provide verification of U. S. citizenship, including a birth certificate, passport, or United States naturalization papers.

Michigan

Proof of Citizenship

Status: **PENDING**

SB 1370/HB 6286: Require proof of United States citizenship when registering to vote.

Voter ID

Status: **PENDING**

SB 1398: Amends the state photo voter ID law to include absentee ballot applicants.

Proof of Citizenship

Status: **PENDING**

SB 1447/S 1448: Direct the secretary of state to implement a method for issuing Michigan state ID to legal residents who are not American citizens.

New Jersey

Voter Registration Drive Restrictions

Status: **PENDING**

SB 2324: Relates to criminal punishment for election or voter fraud activities.

Oklahoma

Voter Registration Drives

Status: **ENACTED**

SB 1921: Subjects the person who submits someone else's fraudulent voter registration card to criminal prosecution.

Tennessee

Felon Disenfranchisement

Status: **ENACTED**

HB 70: Provides that a person convicted of a felony may only regain voting rights after he has paid all restitution to the victim or victims of the offense, all fines ordered by the court, and all court costs assessed against the person following the conviction.

Appendix 2:

Election Legislation Opportunities in the U.S. Congress and the States

United States

Restoration of Voting Rights

Status: **PENDING**

HR 3335/SB 1516 and HR 3576: Provide the right to vote in any federal election for all eligible citizens unless they are incarcerated at the time of the election. It also requires the state to notify convicted felons of their restored voting rights upon release.

Paperless Registration

Status: **PENDING**

HR 4449/SB 3301 and HR 1719: Provide funding for state that choose to implement online voter registration under the condition that the registration is facilitated through an official public Web site.

Vote by Mail

Status: **PENDING**

SB 3300: Establishes a vote by mail grant program.

No Excuse Absentee

Status: **PENDING**

SB 3299: Amends the Help America Vote Act of 2002 to allow all eligible voters to vote by mail in Federal elections

Arizona

Youth Voting; Campus Registration

Status: **ENACTED**

HB 2668: Directs the Arizona Board of Regents to work with the student government of university and community colleges under its jurisdiction to adopt a plan to increase student voter registration and voter participation

Delaware

Restoration of Voting Rights

Status: **PENDING; Carryover to 2011**

HB 17: Amends the Delaware Constitution to eliminate the existing five-year waiting period before eligible felons to have their voting rights restored.

Youth Voting; Preregistration

Status: **ENACTED**

HB 381: This act would allow 16-year-olds to register to vote through the Division of Motor Vehicle when they first apply for their driver's license.

Louisiana

Youth Voting; Campus Registration

Status: **ADOPTED**

HCR 158: This bill requests the secretary of state to develop and implement an annual educational and instructional presentation concerning voting and voter registration targeted at high school seniors.

Maryland

Youth Voting; Preregistration

Status: **ENACTED**

HB 271: This bill alters the qualifications for voter registration to allow an individual who is at least 16 years old to preregister to vote.

Massachusetts

Youth Voting; Preregistration

Status: **PENDING**

HB 683: Allows a citizen who is at least 16 ½ years old to preregister to vote. He or she will not be permitted to cast a ballot until after their 18th birthday.

Youth Voting; Preregistration

Status: **PENDING; Adopted by House**

HB 4261: Permits 16- and 17-year-old citizens to preregister to vote.

Youth Voting; Preregistration

Status: **PENDING; Adopted by House**

HB 4337: Permits 16- and 17-year-old citizens to preregister to vote.

New Jersey

NVRA Registration

Status: **PENDING**

AB 948: Provides citizens who apply for a motor vehicle driver's license from the New Jersey Motor Vehicle Commission with voter registration materials and assistance to register to vote.

Paperless Registration

Status: **PENDING**

AB 229: Provides for online voter registration through the secretary of state's Web site, authorizing use of the NJ Motor Vehicle Commission's database to be used to approve online applications.

New Jersey

Restoration of Voting Rights

Status: **PENDING**

AB 877, AB 1015, SB 557: Amend state election law to permit probationers and parolees to register to vote.

New Mexico

Youth Voting; Student Poll Workers

Status: **ENACTED**

HB 127: Allows citizens as young as 16 to serve as election judges.

New York

Youth Voting; Student Poll Workers

Status: **ENACTED**

AB 4467: Allows 17-year-old citizens who are enrolled in a school district to serve as election inspectors or poll clerks.

Youth Voting; Preregistration/Campus Registration

Status: **PENDING**

AB 811: Promotes both campus registration and the preregistration of any person who is at least 17-years-old.

Youth Voting; Preregistration/Campus Registration

Status: **PENDING**

SB 1872: Promotes both campus registration and the preregistration of any person who is at least 17-years-old.

Youth Voting; Student Poll Workers

Status: **PENDING**

SB 1837: Allows any full-time college student in New York to serve as an election inspector if the student speaks and reads English; is not running for office; and is registered to vote.

Election Day Registration

Status: **PENDING**

AB 5257/SB 5059: Allow an eligible citizen to register and vote at any election after providing proof of residence on Election Day.

Restoration of Voting Rights

Status: **PENDING**

SB 7546: Relates to voting rights for parolees.

Restoration of Voting Rights

Status: **PENDING**

SB 1264/AB 3375: Ensure convicted felons are notified of their voting rights and provided with voter registration materials at least 30 days before their release from correctional institutions

No Excuse Absentee

Status: **PENDING; Both in Assembly**

AB 8277/SB 5028: Allow the legislature to provide a manner in which a qualified voter with an illness or physical disability may vote on or before Election Day without having to vote in person.

Appendix 2: Election Legislation Opportunities in the U.S. Congress and the States

Deceptive Practices

Status: **PENDING**

AB 9250/SB 2554: Prohibits deceptive practices to prevent or deter another person from exercising his or her right to vote is guilty of a misdemeanor.

Pennsylvania

Election Day Registration

Status: **PENDING**

HB 2373: Allows for Election Day Registration if the registrant provides sufficient proof of residence and government issued ID. It would allow the registrant to vote by provisional ballot.

Restoration of Voting Rights

Status: **PENDING**

HB 1072: Provides inmates who are released from state correctional institutions with voter registration materials.

Deceptive Practices

Status: **PENDING**

HB 2269: Prohibits the purposeful dissemination of false information regarding an election or a person's voter eligibility with the intent to deter or discourage voting.

Appendix 3:

Partisan Control of Legislatures and Governor's Offices 2009

Democratic Legislature and Governor

Arkansas
Colorado
Delaware
Illinois
Iowa
Maine
Maryland
Massachusetts
New Hampshire
New Mexico
New York
North Carolina
Oregon
Washington
West Virginia
Wisconsin

Divided Legislature, Democratic Governor

Kentucky
Michigan
Missouri
Montana
Ohio
Pennsylvania

Republican Legislature, Democratic Governor

Kansas
Oklahoma
Tennessee
Wyoming

Republican Legislature and Governor

Arizona
Florida
Idaho
North Dakota
South Dakota
South Carolina
Texas
Utah

Divided Legislature, Republican Governor

Alaska
Georgia
Indiana
Virginia

Democratic Legislature, Republican Governor

Alabama
California
Connecticut
Hawaii
Louisiana
Minnesota
Mississippi
Nevada
New Jersey
Rhode Island
Vermont

Unicameral Legislature, Republican Governor

Nebraska

Appendix 4:

Partisan Control of the Legislatures and Governor's Offices 2011

Democratic Legislature and Governor

Arkansas
California
Connecticut
Delaware
Hawaii
Illinois
Maryland
Massachusetts
Minnesota
Vermont
Washington
West Virginia

Divided Legislature, Democratic Governor

Colorado
Kentucky
New York
Oregon

Republican Legislature, Democratic Governor

Missouri
Montana
North Carolina
South Carolina

Democratic Legislature and Independent Governor

Rhode Island

Republican Legislature and Governor

Alabama
Arizona
Florida
Georgia
Idaho
Indiana
Kansas
Maine
Michigan
New Hampshire
North Dakota
Ohio
Oklahoma
Pennsylvania
South Dakota
Tennessee
Texas
Utah
Wisconsin
Wyoming

Divided Legislature, Republican Governor

Alaska
Iowa
Louisiana
Virginia

Democratic Legislature, Republican Governor

Mississippi
Nevada
New Jersey
New Mexico

Unicameral Legislature and Republican Governor

Nebraska

Appendix 5:

2011 State Election Chiefs

Republican State Election Chiefs

Alabama: Beth Chapman
Arizona: Ken Bennett
Arkansas: Mark Martin
Colorado: Scott Gessler
Florida: Dawn K. Roberts**
Georgia: Brian Kemp
Idaho: Ben Ysursa
Indiana: Charlie White
Iowa: Matt Schultz
Kansas: Kris Kobach
Louisiana: Tom Schedler***
Maine: Charles Summers
Michigan: Ruth Johnson
Mississippi: Delbert Hosemann
Nebraska: John Gale
New Jersey: Kim Guadagno
New Mexico: Dianna Duran
North Dakota: Alvin "Al" Jaeger
Ohio: Jon Husted
South Carolina: Mark Hammond
South Dakota: Jason Gant
Tennessee: Tre Hargett
Texas: Esperanza "Hope" Andrade
Wyoming: Max Maxfield
Utah: Greg Bell, Lt. Governor
Washington: Sam Reed

Democratic State Election Chiefs

California: Debra Bowen (D)
Connecticut: Denise Merrill (D)
Massachusetts: William Galvin (D)
Minnesota: Mark Ritchie (D)
Montana: Linda McCulloch (D)
Nevada: Ross Miller (D)
New Hampshire: William Gardner
North Carolina: Gary Bartlett, director,
State Board of Elections
Oklahoma: M. Susan Savage (D)**
Oregon: Kate Brown (D)
Pennsylvania: Basil Merenda (D)**
Rhode Island: A. Ralph Mollis (D)
Vermont: Jim Condos (D)
West Virginia: Natalie Tennant (D)

Miscellaneous

Alaska: Gail Fenumiai, director, Division of Election
Delaware: Commissioner of Elections,
Department of Elections*
Hawaii: County Official, Office of Elections*
Illinois: Bryan Schneider, chairman of the
State Board of Elections, 2009-2011*
Kentucky:*
Maryland: Linda H. Lamone, state elections
administrator, Maryland State Board of Elections
New York:**
Virginia: State Board of Elections*
Wisconsin: Nathaniel E. Robinson, elections division
administrator, Government Accountability Board

*unknown, unavailable, or undetermined as of November 2010

**governor-elect will appoint new chief of elections in 2011

***holds office until Fall 2011, when an election will be held

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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