



**Project Vote's Comments Regarding
Draft Guidelines for Conducting Voter Registration Drives
Virginia State Board of Elections Meeting
May 20, 2013**

Project Vote appreciates this opportunity to provide its perspective on the draft guidelines for conducting voter registration drives proposed by the State Board of Elections (SBE).

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 constituencies can register, vote, and cast ballots that count. Project Vote has considerable experience in conducting voter registration drives and in training groups that engage in voter registration activity.

We have grouped our commentary to correspond to sections of the draft guidelines. In sum, we are concerned that the lack of a hard copy alternative to the training requirement will make it difficult or impossible for low-income voters who lack Internet access and have limited flexibility in their work schedules to meet the training requirement. Additionally, explanation of the rules governing voter registration drives must be clarified so that individuals wishing to conduct drives will not be deterred by uncertainty about applicable requirements. Finally, the guidelines should be revised to remove the suggestion that applications on the federal form will be not accepted and used in compliance with the National Voter Registration Act.

Introduction and Notice of Training Requirement

Every individual wishing to engage in voter registration activity should be permitted and encouraged to do so. Yet, paragraph three of the introduction, which describes the ways to obtain the required training, omits the option of an individual going to a local registrar's office and reading training materials there or obtaining a hard copy of the training materials. Therefore, everyone without Internet access must present him or herself personally at a local registrar's office during the time when a training is conducted. Individuals who lack Internet access and work at hourly wage jobs with little flexibility to leave the workplace during business hours may find it difficult to do this. If a hard copy alternative is not provided, the State Board of Election's implementation of the training requirement will likely decrease voter registration drive activity, with a negative effect on the African American community. Nationwide, African American voters are twice as likely to have registered to vote through a voter registration drive as

are white voters.¹ There is no reason to believe that the relative use of drives by eligible African Americans and whites in Virginia will significantly depart from the national rate.

Registration and Training Requirements for Drives (Page 3)

- *Certification by Organization's Agent:* The third paragraph should be revised to state that at least one agent of the organization seeking to obtain applications must complete the training and certify "that the organization will require training for all persons collecting completed voter registration applications from applicants on behalf of the organization." Requiring the individual who picks up forms to personally ensure training for all individuals would be impractical and would be overly burdensome to that individual. In addition, the guidelines should clarify that only individuals collecting applications need to be trained.
- *Certificate:* The statute does not authorize the SBE to require its *approval* of a person or group before voter registration activity can begin. As it now reads, paragraph four leaves open the possibility that the SBE may grant or withhold approval of individuals or groups on unspecified grounds other than completion of training and registration. It is also potentially misleading to suggest that an individual or group must get a certification to conduct a voter registration drive, even if that individual or group is not subject to the statute. If the SBE insists on providing a formal certificate, the sentence should be amended to read: "Upon completion of the training, the group or individual will receive a certificate stating the group or individual has fulfilled the training requirement."

Rules of the Road

- *Application of Statute's Requirements (Page 4):* The new rules' applicability should be clear. The first sentence of paragraph one suggests that every organization conducting a voter registration drive must meet the registration and training requirements, even though the second sentence of the paragraph makes clear that these requirements apply only to organizations that receive 25 or more applications from the offices of the SBE or a registrar. The first sentence should be revised or deleted to make clear that the registration and training requirements

¹ In 2012, while 4.2 percent of non-Hispanic whites nationally indicated they registered through private drives, 8.1 percent of African-Americans and 6.9 percent of Hispanic voters nationwide registered in this manner. Voting and Registration in the Election of 2012, Table 12, Method of Registration by Selected Characteristics: November 2012, <http://www.census.gov/hhes/www/socdemo/voting/publications/p20/2012/Table12.xls> (reported registration at "registration booth"). Additionally, while only 4.8 percent of non-Hispanic whites nationally indicated they registered at a school, hospital, or campus, 7.4 percent of African-Americans and 8.1 percent of Hispanic voters nationwide registered this way. *Id.*

apply only to a specified category of organizations, however much the SBE may wish to encourage other organizations to register and receive training.

- *Online Registration (Page 4)*: Paragraph two suggests that individual canvassers inform potential applicants about the availability of online registration. The document should also suggest that they inform potential applicants that a Virginia drivers' license or DMV special ID card is needed to register online.
- *Failure to Provide Registration Status*: Paragraph four states that "failure to include the notification of current registration status in Virginia or other state" will "result in the rejection of an applicant's registration." There is no principled reason to reject an application because the applicant, by inadvertence or lack of information, fails to provide information about his or her current registration status in Virginia or in another state.

The Don'ts: Prohibitions and Penalties

- *No. 8 - Writing on Applications (Page 11)*: Organizations internally track which individual canvasser collected the applications by putting the canvassers' initials on an empty spot on a portion of the application that does not contain fields for the applicant's information. This practice helps organizations identify and solve any problems that arise. Virginia statute (including the cited section) does not appear to make this (nor attaching information) illegal. This bullet should be removed.

Frequently Asked Questions

- *Training Availability (Page 16)*: As discussed above, training should be available at the local registrar and the SBE during business hours, either at a computer terminal or using a paper copy of the training material. Hard copies should be available for pick-up so that individuals without Internet access who cannot attend a class during business hours can review the training at a convenient time. This is particularly important for low-income individuals who may have inflexible job schedules and long hours.
- *Use of the Federal Form (Page 17)*: The response to the second question on page 17 about use of the federal form when conducting voter registration activities is misleading. It suggests that Virginia does not comply with the National Voter Registration Act's requirements that states "accept and use" applications submitted on the federal form. See 42 U.S.C. §1973gg-4. The response asserts that the federal form fails to provide required information about whether applicants were convicted of a felony. This is inaccurate. The Virginia instructions for the federal form state that an individual who was convicted of a felony and whose civil rights were not restored is ineligible. The face of the

federal form informs applicants that by signing the application they affirm that they meet the eligibility requirements. Therefore, applicants using the federal form supply necessary information about felony conviction. It is crucial that individuals conducting voter registration drives not be deterred from using the federal form, which Virginia is obligated to accept and use.

- *Availability of Voter Lists (Page 17):* As currently drafted, the response to the third question as to whether an individual may obtain a list of registered voters is “Maybe.” The word “maybe” and the remainder of the answer should be deleted. The NVRA, 42 U.S.C. 1973gg-6(i), requires that states make available to the public “records concerning the implementation of programs and activities conducted for the purpose of ensuring the accuracy and currency of official lists of eligible voters.” *Id.* The list of qualified voters falls squarely within this provision and must be publicly available to all members of the public, not only to certain groups and individuals. The answer should so state and provide information about how an individual may request a copy of the list.

Sworn Affidavit (Page 19):

- *Limit on forms:* In addition, there should not be a limit of 200 applications available to groups because the limit will hinder organizations that want to conduct large-scale drives.
- *Instructions:* The affidavit regarding marking applications should be revised as follows (added text in italics): “I will not mark, add, change, or delete any information on the Voter Registration Application *on the section of the application that is completed by the applicant, other than with permission of the applicant,* nor will I destroy, or dispose of the application in any way.” As previously discussed, organizations internally track which individual canvasser collected the applications by putting the canvassers’ initials on an empty spot on a portion of the application that does not contain fields for the applicant’s information.
- *Revealing Social Security Numbers and Personal Information:* Under item two, the signatory is required to affirm: “I will not copy duplicate or distribute any social security or other personal information from any application.” This suggests that personal information of all voters, not just Social Security numbers, may not be revealed. However, the personal information (other than social security numbers) of all voters is not protected and is public except for applicants who complete the code box applicable to protected voters. This text should be revised to clarify the distinction between personal information (other than social security numbers) of protected voters and that of all other voters, and this section should be consistent with the guidance earlier in the document regarding use of personal information.

- *Returning Unused Applications:* Statement number five, relating to return of unused applications, follows the reference to the criminal penalties in statement number four and suggests that individuals who fail to return unused applications may face criminal penalties, a sanction vastly out of proportion to an omission that in all likelihood would be unintentional. The requirement to return unused forms should be moved to the checklist.

Checklist (Page 20)

- *Applicability of Requirements:* The statements following the fourth, second-last, and last check-boxes suggest that all organizations are subject to the training and affidavit requirement. The checklist should be revised to state clearly that these requirements apply only to organizations whose agent receives 25 or more applications from the offices of the SBE or a registrar.
- *Distribution of Affidavit:* The fifth check-box requires that an organization's volunteers and/or employees have distributed the affidavit form to volunteers and staff. Because the Sworn Affidavit by its terms applies only to individuals and agents of groups picking up 25 or more applications, the check box should clarify that what the organization distributes to its volunteers is the copy of the agent's completed affidavit.

In sum, adjustments to the draft guidelines can significantly clarify the rules and prevent unnecessary burdens for individuals and groups wishing to conduct voter registration drives and engage their fellow citizens.

If you have any questions regarding this comment, please contact Catherine M. Flanagan, Director of Election Administration, at (202) 210-6903.