

## The New Crackdown on Voter Registration Drives

The past few election cycles have seen a massive increase in voter registration efforts by non-partisan, not-for-profit organizations. These voter registration drives have dramatically increased voter registration rates among groups that have traditionally faced the greatest barriers to voting. Unfortunately, a number of states have recently passed and others are considering bills restricting these voter registration drives. Unless restrictive bills are defeated, either through legislative advocacy or litigation, voter registration drives will be substantially more difficult – and, for some, impossible – in these states in the future.

Below is a summary of recently enacted laws and regulations that create hurdles for voter registration drives in Colorado, Florida, Georgia, Ohio, Maryland, New Mexico, Missouri, and Washington. Other restrictive bills or regulations have been proposed in Arizona,<sup>1</sup> New Jersey,<sup>2</sup> and other states. A small number of states have already existing laws that impose similar burdens, including California and Virginia.

The Florida law was enjoined by a federal judge on August 28, 2006. The Brennan Center represented the plaintiffs in that case, reported at *League of Women Voters of Florida v. Cobb*, 447 F. Supp. 2d 1314 (S.D. Fla. 2006). The Ohio law was similarly enjoined and the Brennan Center also represented the plaintiffs in that case, *Project Vote v. Blackwell*, No. 1:06 cv 1628, 2006 WL 2600366 (N.D. Ohio Sep. 8, 2006).

### Colorado

**Applicability of law.** This new voter registration law applies to any two or more persons who distribute and collect voter registration applications for delivery to election officials.<sup>3</sup>

**Pre-registration and disclosure.** The new law requires all voter registration drive organizers, before registering any voters, to register with the state and to designate an agent who is a state resident.<sup>4</sup> New regulations issued by the Secretary of State prescribe that the organizer must file a “statement of intent” listing the name and contact information of the organization, the name and contact information of the agent, and all counties in which the organization intends to register voters.<sup>5</sup> If the organization plans to register voters in additional counties, the regulations require it to submit a written amendment to its “statement of intent” three business days before commencing voter registration in those counties.<sup>6</sup> The “statement of intent” may be filed up to thirty days before a general election,<sup>7</sup> and it expires at the end of the calendar year.<sup>8</sup>

**Training.** The new law requires the voter registration organizer to be trained by the state, and to train each of their workers in turn.<sup>9</sup> The regulations require organizers to complete state-provided training before engaging in voter registration.<sup>10</sup> The regulations also require

organizers to train individual circulators using materials provided by the Secretary of State and to keep signed attestations from each circulator on file.<sup>11</sup>

**Number issued by Secretary of State.** The regulations provide that the Secretary of State shall assign a unique number (the “VRD number”) to each voter registration drive after the organizer completes the training.<sup>12</sup> The Secretary may deny a VRD number if the Secretary cannot verify the information on the “statement of intent.”<sup>13</sup> Organizations may not engage in voter registration drives until the Secretary issues a VRD number.<sup>14</sup> Once the Secretary of State approves the voter registration drive, she posts on the web the name and contact person of a registration organization.<sup>15</sup>

**Special voter registration forms.** The new law requires voter registration drives to use voter registration application forms approved by the Secretary of State.<sup>16</sup> The regulations allow for use both of the federal voter registration form and special state forms, but encourage groups to use the state forms. The state forms include a tear-off receipt, and voter registration organizers are required to write the VRD number on the application form and on the tear-off receipt,<sup>17</sup> and to ensure that the receipt is given to the applicant.<sup>18</sup> If the voter registration organization provides a link to a voter registration application on its website, it must direct the applicant to send the form to the appropriate county election official, not to the organization.<sup>19</sup>

**Turnaround time.** The new law requires all voter registration circulators to submit completed forms collected from applicants to the voter registration organizer. It further requires the organizer to deliver or postmark the applications to the appropriate county election officials within seven business days after the application is signed, and during the thirty days prior to a book-closing deadline, five days.<sup>20</sup>

**Criminal penalties and fines.** The new law makes it a criminal misdemeanor for a voter registration drive organizer to:

- (1) conduct a voter registration drive without filing a statement of intent, maintaining a designated agent with the state, or using a voter registration application form other than that approved by the Secretary of State;<sup>21</sup>
- (2) fail to complete the training requirements mandated by the Secretary of State;<sup>22</sup> and
- (3) compensate a circulator based on the number of forms circulated or collected.<sup>23</sup>

Additionally, negligent failure to submit a voter registration application to the proper county clerk and recorder in the prescribed manner and within the prescribed time period (that is, five or seven days) will result in a \$50 per form, per day fine.<sup>24</sup> An organizer who has been fined three or more times for negligent failure is guilty of a criminal misdemeanor, as is anyone who intentionally fails to deliver a form within the five-day period.<sup>25</sup>

## Florida

**Applicability of law.** This new voter registration law applies to all persons or organizations that engage in voter registration, except for political parties, state motor vehicle offices, and individuals who seek to register their immediate family members.<sup>26</sup>

**Pre-registration and reporting.** This new law requires each voter registration group, before registering any voters, to name a registered agent with the state and to submit a list of all individuals in charge of voter registration operations, including the group's management and board of directors. Registered groups must submit quarterly reports listing the date and location of each voter registration drive.<sup>27</sup> Although there is no penalty for failure to register with the state, a group that does not do so is subject to higher fines than a group that does.<sup>28</sup>

**Fiduciary duty.** The law also deems voter registration groups to be fiduciaries to the applicants they register to promptly deliver all completed voter registration forms to appropriate election officials.<sup>29</sup>

**Turnaround time.** The law penalizes voter registration groups if any voter registration application is not received by election officials within ten days of the time it is collected.<sup>30</sup>

**Civil fines.** If an individual conducting voter registration on behalf of the group does not promptly deliver a completed application to election officials, the individual, the group's registered agent, and the group's board and managers will all be "personally and jointly and severally liable" for the following fines:

- (1) \$250 for each application received by election officials more than ten days after the applicant delivered the completed form to the organization;
- (2) \$500 for each application collected before the registration deadline but received by election officials after the deadline; and
- (3) \$5,000 for each application collected but not submitted to election officials.

These fines apply regardless of whether the failure to submit the forms within the specified time is intentional or could have been avoided, and regardless of when the forms were mailed. The amount of the fines is reduced by three-quarters if the group pre-registers with the state.<sup>31</sup>

**Criminal Penalties.** A separate provision of the law makes it a third degree felony to "knowingly ... obstruct or delay the delivery of a voter registration form or election ballot."<sup>32</sup>

## Georgia

**Acceptance of Applications Only Under Seal.** A newly enforced Georgia rule requires that no one "may accept a completed registration application form from an applicant unless" the application "has been sealed."<sup>33</sup> The rule also separately prohibits the copying of completed registration applications.<sup>34</sup> Deputy registrars, who must be appointed by the state and comply with a number of rules, including refraining from door-to-door registration drives, are exempt from these rules.<sup>35</sup> Each violation of these rules can trigger a civil penalty of up to \$5000 per violation.<sup>36</sup>

**Turnaround Time.** The rule also requires that "[r]egistration applications shall be mailed or delivered to the registrars as soon as reasonably practicable, but, in any event, not later

than 72 hours” after the form has been signed by the applicant.<sup>37</sup> This deadline is enforceable by the same civil penalty of \$5000 per violation.

## Maryland

**Voter registration volunteers.** Maryland law provides that an individual may register “with the assistance of a volunteer authorized by the state or local board” of elections.<sup>38</sup> According to recent regulations, to qualify as a “voter registration volunteer,” an individual must be of voting age, receive specified training, sign an affidavit, and receive a certificate from the “instructing authority.”<sup>39</sup>

**Training.** The regulations require voter registration volunteers to receive training by the State Administrator or an election director before registering voters.<sup>40</sup> The state or local boards are required to provide training as they “consider[] necessary,”<sup>41</sup> but local boards may establish and publicize a fixed schedule of training sessions.<sup>42</sup> Groups must be treated equitably and given equal access to training.<sup>43</sup> A voter registration volunteer who does not complete the training or who does not comply with the instructions may be disqualified from registering voters.<sup>44</sup> The determination as to whether an individual qualifies as a voter registration volunteer is in the discretion of the State Administrator or election director.<sup>45</sup>

**Local board requirements.** The regulations empower local boards to adopt criteria and procedures for distributing and returning voter registration forms.<sup>46</sup>

**Compensation.** The Maryland Board of Elections adopted a regulation prohibiting voter registration volunteers from receiving any compensation for voter registration activities, but rescinded the regulation in response to a lawsuit. The only remaining compensation regulation prohibits voter registration volunteers from being compensated “on a per registrant basis.”<sup>47</sup>

## Missouri

**Turnaround time.** Missouri’s new law requires any person, paid or unpaid, who “accepts or receives a voter registration application from another person and agrees or offers to submit” that application to the county election authority return the application within seven days from receipt of the application, or face criminal penalties of up to a year in jail and/or up to \$2,500 in fines.<sup>48</sup> There is no requirement that the failure to deliver the application be knowing or deliberate; instead, the law imposes strict criminal liability.

**Registration with the state.** Anyone “who is paid or otherwise compensated” for registering more than ten voters, other than government employees, has to be registered with the state as a “voter registration solicitor,” providing his or her name, residential and mailing addresses, and the name of the individual or organization paying him or her. The solicitor must also affirm under penalty of perjury that all this information is true.<sup>49</sup> A failure to register carries the same criminal penalties as missing the deadline, but anyone convicted is also permanently disenfranchised in Missouri.<sup>50</sup>

**Eligibility requirements.** Only individuals over eighteen who are registered to vote in Missouri may act as solicitors (paid or compensated workers).

### New Mexico

**Applicability of law.** This new voter registration law applies to people who work on behalf of organizations to register voters.<sup>51</sup> The regulations issued by the Secretary of State to enforce the new law define “organization” as “one or more persons organized as a group . . . engaged in voter registration activities.”<sup>52</sup>

**Pre-registration.** The new law requires groups to register with the Secretary of State, providing the name and address of the organization, and the names, permanent addresses, dates of birth, and Social Security numbers of every single person employed by or volunteering with the organization to register voters.<sup>53</sup> Organizations must also provide a sworn statement from each employee or volunteer stating that he or she will obey all state laws and rules.<sup>54</sup> The regulations require that all of this information be turned into elections officials before an agent does any voter registration work in the state.<sup>55</sup>

**Availability of Forms.** The new statute empowers the Secretary of State to issue rules requiring organizations to account for all registration forms they use.<sup>56</sup> The Secretary of State in turn has issued rules limiting the availability of forms to only fifty forms per request.<sup>57</sup> Increases in the number of forms provided are available only at the discretion of the Secretary of State or county clerk.<sup>58</sup> In addition, every form issued to third-party registration groups will include a traceable number,<sup>59</sup> as well as a tear-off receipt to be given to the applicant.<sup>60</sup>

**Turnaround time.** Voter registration organizations must now return voter registration forms to the state or county within forty-eight hours of their completion by the voter.<sup>61</sup>

**Criminal Penalties.** Anyone who willfully violates any provision of the new law is guilty of a petty misdemeanor<sup>62</sup> and subject to criminal penalties, including a \$500 fine and six months in jail for each violation of law.<sup>63</sup>

### Ohio

**Applicability of law.** Many provisions in Ohio’s new law relating to voter registration drives apply only to individuals who receive compensation for their voter registration activities.<sup>64</sup> Several provisions apply to all individuals who engage in voter registration activities, regardless of whether they are paid.

**Pre-registration.** All individuals who receive or expect to receive compensation for registering a voter are required to register with the Secretary of State before registering voters.<sup>65</sup> The Secretary of State will determine what that registration process entails. The new law also requires that each voter registration worker who expects to be paid must sign a written affirmation before being permitted to engage in voter registration, including the individual’s name, date of birth, permanent address, and the name of each county where the person expects to

register voters.<sup>66</sup> All of this information, along with a copy of the signed affirmation, is then posted to the Secretary of State's web site, where it is publicly searchable.

**Training.** All individuals who receive or expect to receive compensation for registering voters are required to complete an online training program to be established by the Secretary of State, before registering voters in the state.<sup>67</sup>

**Past felony convictions.** The law prohibits any person with a felony conviction in any jurisdiction in the United States from registering voters,<sup>68</sup> even though, under Ohio law, the right to vote is automatically restored upon release from prison. Those who have been convicted in federal courts or states other than Ohio may never regain their ability to register voters, while those convicted in Ohio only regain that right after the completion of parole and probation—well after the right to vote is restored.<sup>69</sup>

**Turnaround time.** The new law requires that all voter registration workers—paid or unpaid—must submit voter registration applications within ten days after the form is completed by registrants or by the voter registration deadline, whichever is sooner. The first violation of this provision that does not result in a missed voter registration deadline and concerns fewer than 50 forms is a first-degree misdemeanor; all other violations constitute “election falsification,” a fifth-degree felony that carries an additional penalty of disenfranchisement.<sup>70</sup>

**Documentation with forms submitted.** Each voter registration worker must include a copy of the written affirmation the worker signed before registering voters with each batch of completed voter registration applications the worker submits to election officials.<sup>71</sup> The worker must also personally sign each form he or she helps fill out and provide his or her address and employer.

**Criminal Penalties.** Certain violations of Ohio's election law are considered “election falsification,” which is a fifth-degree felony even for a first offense.<sup>72</sup> “Election falsification” crimes include knowing destruction of a registration form and knowing submission of forms to the wrong place, except for a first offense involving less than 50 forms submitted before a voter registration deadline.<sup>73</sup> They may also include false or incomplete affirmations by a voter registration worker, depending upon the form developed by the Secretary of State. “False registration,” defined as knowingly attempting or registering an unqualified or fictitious voter, knowingly affirming falsely before a registration offer, or altering or submitting false registration forms, is a fifth-degree felony.<sup>74</sup> All violations of Ohio's Election Code not otherwise criminalized are first-degree misdemeanors; a second conviction of any code violation is a fourth-degree felony carrying an additional penalty of disenfranchisement.<sup>75</sup>

## Washington

**Turnaround Time.** A 2003 law requires any person or organization collecting voter registration forms to transmit the forms to the state “at least once weekly.”<sup>76</sup> The law does not provide a penalty for violation of this rule.

## California

**Turnaround Time.** California law requires that individuals and organizations who collect completed voter registration cards shall return the cards to county elections officials or deposit the cards in the postal service within three days, excluding weekends and holidays, of its receipt from a voter.<sup>77</sup>

**Voter Registration Application Form Disclosure and Receipt.** Any person paid to collect voter registrations must list their name, telephone number, and address, and the name and telephone number of their employer, and affix their signature, on each registration card they collect.<sup>78</sup> Persons collecting voter registration applications must also complete a receipt with their address and telephone number and give it to the voter.<sup>79</sup>

**Recordkeeping.** Persons, companies, or organizations that compensate others to collect voter registration applications are required to retain for three years, to be produced on demand, the name, address, and telephone number of each of their employees, and a signed acknowledgement of the employee's receipt of a statement describing their duties under the law.

**Criminal Penalties.** Failure to return a form within three days is a misdemeanor, punishable by fine up to \$1000.<sup>80</sup> The willful failure to give a receipt to a voter with the circulator's name, address, and telephone number is an infraction, punishable by fine up to \$200.<sup>81</sup> People who are compensated for collecting forms and fail to put their information on the form are guilty of a misdemeanor punishable by a \$1000 fine or six months in jail, or, if the violation is found to be willful, one year. A third or subsequent conviction is punishable by fine up to \$10,000 or one year in jail.<sup>82</sup> Failure to comply with the recordkeeping requirements for persons or organizations compensating persons to collect forms is a misdemeanor punishable by a \$1000 fine or six months in jail, or, if the violation is found to be willful, one year. A third or subsequent conviction is punishable by fine up to \$10,000 or one year in jail.<sup>83</sup> When an individual, company, or organization that compensates persons to collect forms submits three or more forms that do not comply with the law (false registrations, defacement of party affiliation, etc.), the elections official shall notify the employer and may forward the forms to the district attorney for possible criminal prosecution.<sup>84</sup>

## Minnesota

**Turnaround time.** Minnesota law requires that anyone accepting a completed voter registration application must submit it to elections officials within ten days after the application is dated by the voter.<sup>85</sup>

**Criminal penalties.** Intentional violation of any provision of the voter registration chapter, including the ten-day deadline, constitutes a felony.<sup>86</sup> Under Minnesota law, felonies without specified penalties are subject to punishment by up to five years in prison and/or fines up to \$10,000.<sup>87</sup>

## Virginia

**Turnaround time.** Virginia law requires that anyone who agrees to mail or deliver a signed voter registration application who fails to do so “in a timely manner” is guilty of a misdemeanor.<sup>88</sup> Applications mailed or delivered within fifteen days of signature are deemed timely, unless a book-closing deadline is sooner.<sup>89</sup>

**Criminal Penalties.** Failure to timely mail or deliver an application is a Class 1 misdemeanor, punishable by up to a year in prison and a fine of \$2500.<sup>90</sup>

## Endnotes

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<sup>1</sup> S.B. 1117, 47th Leg., 2d Reg. Sess. (Ariz. 2006). The bill failed to pass but may be reintroduced in subsequent sessions.

<sup>2</sup> 38 N.J. Reg. 2621(a) (June 19, 2006).

<sup>3</sup> COLO. REV. STAT. ANN. § 1-1-104(50.4) (2006).

<sup>4</sup> *Id.* § 1-2-701(1).

<sup>5</sup> 8 COLO. CODE REGS. § 1505-1 (44.1.1) (2006).

<sup>6</sup> *Id.* (44.1.2).

<sup>7</sup> *Id.* (44.1.4).

<sup>8</sup> *Id.* (44.1.1(e)).

<sup>9</sup> COLO. REV. STAT. ANN. § 1-2-701(2).

<sup>10</sup> 8 COLO. CODE REGS. § 1505-1 (44.2.1).

<sup>11</sup> *Id.* (44.2.2).

<sup>12</sup> *Id.* (44.3).

<sup>13</sup> *Id.* (44.1.2).

<sup>14</sup> *Id.* (44.4.5).

<sup>15</sup> *Id.* (44.3(c)).

<sup>16</sup> COLO. REV. STAT. ANN. § 1-2-702(1).

<sup>17</sup> *Id.* (44.4.3).

<sup>18</sup> *Id.* (44.4.4).

<sup>19</sup> *Id.* (44.4.6).

<sup>20</sup> COLO. REV. STAT. ANN. § 1-2-702(2).

<sup>21</sup> *Id.* § 1-2-703(1).

<sup>22</sup> *Id.* § 1-2-703(2).

<sup>23</sup> *Id.* § 1-2-703(4).

<sup>24</sup> *Id.* § 1-2-703(3).

<sup>25</sup> *Id.*

<sup>26</sup> FLA. STAT. § 97.021(36) (2006), *as amended by* Fla. Laws 2005-277.

<sup>27</sup> *Id.* § 97.0575(1).

<sup>28</sup> *Id.* § 97.0575(2).

<sup>29</sup> *Id.* § 97.0575(3).

<sup>30</sup> *Id.* § 97.0575(3)(a).

<sup>31</sup> *Id.* § 97.0575(3)(a)-(c).

<sup>32</sup> *Id.* § 104.0615(5) (2006).

<sup>33</sup> GA. COMP. R. & REGS. 183-1-6-.03(v)(2) (2006).

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* § 183-1-6-.03.

<sup>36</sup> GA. CODE ANN. § 21-2-33.1(a)(2)

<sup>37</sup> Ga. Comp. R. & Regs. § 183-1-6-.03(v)(3).

<sup>38</sup> MD. CODE ELEC. LAW. § 3-201(a)(6) (2006).

<sup>39</sup> MD. CODE REGS. 33.05.03.06(B) (2006).

<sup>40</sup> *Id.* 33.05.03.06(B) & (C).

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<sup>41</sup> *Id.* 33.05.03.06(D).  
<sup>42</sup> *Id.* 33.05.03.06(D)(1).  
<sup>43</sup> *Id.* 33.05.03.06(D)(2) & (3).  
<sup>44</sup> *Id.* 33.05.03.06(G).  
<sup>45</sup> *Id.* 33.05.03.06(H).  
<sup>46</sup> *Id.* 33.05.03.06(J).  
<sup>47</sup> *Id.* 33.05.03.06(B)(3).  
<sup>48</sup> MO. REV. STAT. § 115.203 (2006).  
<sup>49</sup> *Id.* § 115.205.  
<sup>50</sup> *Id.* § 115.635.  
<sup>51</sup> N.M. STAT. ANN. § 1-4-49 (A) (2005).  
<sup>52</sup> N.M. CODE R. § 1.10.25.7 (A) (2005).  
<sup>53</sup> *Id.* § 1-4-49 (A)(1), (2).  
<sup>54</sup> *Id.* § 1-4-49 (A)(3).  
<sup>55</sup> *Id.* § 1.10.25.8 (A).  
<sup>56</sup> *Id.* § 1-4-49 (C).  
<sup>57</sup> *Id.* §§ 1.10.25.8 (C), 1.10.25.10 (B).  
<sup>58</sup> *Id.*  
<sup>59</sup> *Id.*  
<sup>60</sup> *Id.*  
<sup>61</sup> *Id.* § 1-4-49 (B).  
<sup>62</sup> *Id.* § 1-4-49 (D).  
<sup>63</sup> *Id.* § 31-19-1 (B).  
<sup>64</sup> Ohio Rev. Code Ann. § 3503.29 (2006).  
<sup>65</sup> *Id.* § 3503.29.  
<sup>66</sup> *Id.* § 3503.29(A)-(C).  
<sup>67</sup> *Id.* § 3503.29(C).  
<sup>68</sup> *Id.* § 2961.01(B).  
<sup>69</sup> *Id.*; *id.* § 2967.16.  
<sup>70</sup> *Id.* § 3599.11.  
<sup>71</sup> *Id.* § 3503.29(D).  
<sup>72</sup> *Id.* § 3599.36.  
<sup>73</sup> *Id.*  
<sup>74</sup> *Id.* § 3599.11.  
<sup>75</sup> *Id.* §§ 3599.39-40.  
<sup>76</sup> WASH. REV. CODE. ANN. § 29A.08.115 (2006).  
<sup>77</sup> CAL. ELEC. CODE § 2138 (2006).  
<sup>78</sup> *Id.* § 2159.  
<sup>79</sup> *Id.* § 2158.  
<sup>80</sup> *Id.* § 18103.  
<sup>81</sup> *Id.* § 18107.  
<sup>82</sup> *Id.* § 18108.  
<sup>83</sup> *Id.* § 18108.5.  
<sup>84</sup> *Id.*  
<sup>85</sup> MINN. STAT. § 201.061(1) (2006).  
<sup>86</sup> *Id.* § 201.27(3).  
<sup>87</sup> *Id.* § 609.03(1).  
<sup>88</sup> VA. CODE ANN. § 24.2-1002.01 (2006).  
<sup>89</sup> *Id.*  
<sup>90</sup> *Id.* § 18.2-11.