

# **Eliminating Barriers to Voting: Election Day Registration**

A Report on a Conference Co-Sponsored by

**Brennan Center for Justice  
at NYU School of Law**

**and**

**Demos – A Network for Ideas and Action**

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## **Introduction**

On November 30, 2001, the Brennan Center for Justice at NYU School of Law and Demos: A Network for Ideas and Action co-sponsored a conference entitled: “Eliminating Barriers to Voting: Election Day Registration.” The purposes of the conference were to explore the potential impact of Election Day Registration (“EDR”); to discuss the administration of EDR and to learn how concerns raised about EDR are being addressed in states that have long experience with the system; and to discuss the prospects for advancing EDR in additional states.

The conference proceeded in four stages:

- Opening remarks by Burt Neuborne, legal director of the Brennan Center and John Norton Pomeroy Professor of Law at NYU School of Law, about the potential value of Election Day Registration
- A panel of experts -- Curtis Gans of the Committee for the Study of the American Electorate; Professor Francis Fox Piven of the City University of New York; and Professor Raymond Wolfinger of the University of California at Berkeley -- addressed the question: “What Is the Relationship Between Election Day Registration and Voter Turnout?”
- A panel of experienced election administrators -- Hon. Julie Flynn, Deputy Secretary of State from Maine; Hon. Joan Growe, former Minnesota Secretary of State; and Julietta Henry, Executive Director of the Milwaukee Board of Election Commissioners -- discussed the question: “How Do We Make Election Day Registration Work”
- A panel of citizen activists and reform-minded legislators -- Antonio Gonzalez, President of the Southwest Voter Education Project and the William C. Velázquez Institute; Hon. Andrew Fleischmann, member of

the Connecticut House of Representatives; Larry Marx, Executive Director of Wisconsin Citizen Action; and Hon. Scott Stringer, member of the New York State Assembly -- helped us to consider: "What Is the Future of Election Day Registration?"

This report shares with a wider audience the insights offered by conference participants. With the exception of the first section, which closely tracks Professor Neuborne's inspirational opening remarks, the report does not seek to reproduce verbatim the panelists' remarks. For that purpose, a 75-page transcript of the conference has been prepared and is available on the Brennan Center website. Those interested in more information about the issues introduced in this report may obtain from Demos its policy paper, entitled "Expanding the Vote: The Practice and Promise of Election Day Registration." The Brennan Center and Demos can also supply a selective bibliography of academic studies on EDR and voting.

## **The Value of Election Day Registration** **by Burt Neuborne**

How times change. In 1965, the original Voting Rights Act set a 50 percent turnout as the trigger for Justice Department intervention in elections in states with a history of minority disenfranchisement. At that time, the thinking was that such a low turnout was clear evidence of a democratic malfunction. What was then considered a dangerous aberration is now regarded as a normal part of American politics. Turnout for virtually every election conducted in this country, from city council races to the presidential election, falls either near or well below the halfway mark. The reaction of our elected representatives has been not alarm

but acceptance.

Despite the shift in sensibilities, we cannot evade the conclusion that our democracy is in crisis. Our elections fail to fulfill the basic functions we expect of them, providing us with results that do not accurately capture the true interests and concerns of the public. Even more importantly, the level of public disengagement with the political process calls into question the moral integrity of our democracy. Although our nation professes a belief in political equality, it practices something else entirely. To clean up our political culture, we need Election Day Registration (“EDR”).

At a bare minimum, elections ought to capture the will of the people. This does not happen in the United States because of marked differences between the voting and the non-voting populations. The voting population is, on the whole, wealthier and better educated than its counterpart. American society being what it is, these differences in class translate into racial and ethnic differences as well.

However, the concern about our habitually low turnouts is not a concern about representation alone. One could devise a procedure in which a small randomized sample of individuals from a variety of backgrounds, a miniature portrait of America, selected our legislators. Since the demographic differences between voters and non-voters would be statistically insignificant, we could be confident that the election returns reflected the will of the people. But we could still not claim to have a real democracy. The reason is that democracy is more than a means by which individual preferences are aggregated. The purpose of

democracy is something deeper. It is to create a community in which the members have equal stakes in political outcomes and a sense of belonging that is generated by participation.

Instead of a community of political equals, the U.S. is a regime with three tiers of citizenship. At the top are “super citizens,” a tiny minority of the population wealthy enough to fund election campaigns. Next come “ordinary citizens,” the 40 to 50 percent of the population who vote. Finally, we have the “spectator citizens,” the remaining segment of the population. American politics follows a simple dynamic: super citizens propose ideas for acceptance by ordinary citizens, while spectator citizens watch the debate unfold. Thus, we have candidates who passionately call for a repeal of the estate tax while opposing any reduction in the payroll tax.

This hierarchy is a symptom of what I call the “lethal compromise.” The compromise addresses the conflict between two rival conceptions of democracy, egalitarianism and elitism. The egalitarian conception belongs to the modern era and holds that the right to vote ought to be available to all citizens. Elitism, on the other hand, harkens back at least to the time of Aristotle and stands for the principle that only the best and brightest citizens ought to belong to the electorate. Of the two ideas, elitism has played the greater role in shaping American democracy, providing the foundation for the numerous wealth, race, and gender restrictions on voting rights that first created the spectator citizen class.

The “lethal compromise” bridges the two ideas in a cunning way. Like the

elitist model of democracy, the compromise disapproves of a franchise that is open to all citizens. However, it escapes the heated outrage that elitism provokes because it embraces the progress the U.S. has achieved in removing formal barriers to political participation.

What makes the compromise lethal is that it allows our democracy to carry the appearance of equality while providing little of the substance. Legal developments, such as the ratification of the Nineteenth Amendment and the demise of Jim Crow, promise to remove the category of spectator citizens. Yet, for too many, this promise is left unfulfilled, because barriers that are neutral on their face, but discriminatory in effect, are left standing — one of the most important being early voter registration.

Following the terms of the compromise, informal barriers such as early registration pose little worry because they confront everyone — in a state with early registration, no one can vote without having previously registered. However, by making the voting process more cumbersome and more time consuming, early registration erects a barrier to voting that some social classes can overcome and others can't. Thus, despite the new formal freedoms they enjoy, spectator citizens are forced to retain their status.

EDR offers a means of addressing the problem of the spectator citizen. At the very least, EDR makes voting more accessible by making voting a one-stop process. Furthermore, if EDR were to be widely adopted, we would witness two major developments in American politics.

First, EDR would raise the level of political engagement in traditionally non-voting communities. Early registration inhibits engagement by making the value of registration abstract. The deadlines lapse before the campaigns heat up. Only at the end of the campaign season, when press coverage is most intense and the candidates are competing at their highest levels, does the importance of participation become concrete. EDR allows citizens to register when their interest in participation is at a peak. Additionally, grass-roots organizations can harness the momentum of the election cycle to turn out unprecedented numbers of voters. As a result, groups usually excluded from politics can feel connected to the democratic process.

Second, politicians would have to remove their electoral blinders and finally pay attention to the needs of all their constituents. Right now, almost all of the decisions politicians make, from how they campaign to what policies they support, are influenced by opinion polls. Pollsters arrive at their results by constructing focus groups or randomized samples of individuals taken from the voting rolls. The results are skewed, but that doesn't matter — spectator citizens are not players in the political game. With EDR, though, pollsters have to cast a wider net because they simply don't know what the electorate will look like. When every citizen is a potential voter, politicians can no longer afford to overlook the needs of any community.

Politicians often vow to “end politics as usual.” If they are sincere, they would do well to consider the advice and insights compiled in this report. We

deserve a democracy in which all voices may speak and be heard as equals, regardless of race, ethnicity, wealth, or gender. Election Day Registration is an important way to make this vision a reality.

## **The Impact of Election Day Registration**

Ostensibly instituted as a so-called “good government” reform, voter registration in the U.S. has been associated with efforts to suppress the vote since its inception in the 1800s. Registration was adopted at the behest of politicians who were upset about the dissolution of wealth and property requirements for voting and sought additional means of keeping the electorate small and manageable. Registration was used in the South as a means of disenfranchising African Americans and poor farmers and in the North as an obstacle to voting by urban workers.

Many formal legal barriers to the vote of earlier times – such as poll taxes and literacy tests – have since been removed. But a number of facially neutral election rules, including early voter registration deadlines, persist in dampening overall voter participation and stratifying the voting and non-voting populations along demographic lines, such as income and education level. EDR is one significant way to eliminate non-formal barriers to voting.<sup>1</sup>

### ***EDR and the Increase in Voter Turnout***

EDR has been adopted in six states. Maine, Minnesota, and Wisconsin adopted EDR in the early 1970s. In 1977, President Jimmy Carter proposed

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<sup>1</sup> Frances Fox Piven & Richard Cloward, *Why Americans Still Don't Vote, and Why Politicians Want It That Way*, Chapters 3 and 4 (Boston: Beacon Press, 2000).



legislation to create a national same-day registration provision, but the bill was never passed. Since then, Idaho, New Hampshire, and Wyoming have adopted EDR, but they did so in the early 1990s only to avoid having to comply with the National Voter Registration Act of 1993 (“NVRA”), a federal law (sometimes known as the “Motor Voter” Act) that requires states to permit voter registration at state agencies such as motor vehicle departments.

Administrators from Maine, Minnesota, and Wisconsin report that EDR has become a familiar part of the election process in their states. Voters know about EDR, like the option, and often avail themselves of the opportunity to register to vote on Election Day. In Wisconsin, over 3 million citizens have used on-site registration since its inception in 1976. For Minnesota, which adopted EDR in 1974, the figure is over 4 million. About 70% of that state’s registrations now take place on Election Day.

In addition, those three states have managed to achieve high rates of turnout even as voting has fallen nationwide. Maine, for example, ranked 21<sup>st</sup> in voter turnout among the 50 states before implementing EDR in 1972, but in 2000 ranked as one of the top three states, as does Minnesota. Meanwhile, Wisconsin bucked a national trend in 2000, when the state’s voter turnout climbed 8.6 percent over 1996 levels, the largest increase of any state in the union. All of the states with EDR report voter turnout rates well above the national average – and

for more than a decade, Maine, Minnesota, and Wisconsin have averaged turnout rates at least 12 percent higher.<sup>2</sup>

Rigorous quantitative studies by political scientists conclude that the higher turnout in states with EDR results in large part from the elimination of registration deadlines. These studies estimate that, with all other factors held constant, EDR can increase turnout in the average state by anywhere from 5 to 7 percent. According to one study, nationwide implementation of EDR would increase participation in presidential elections by 8.5 million voters.<sup>3</sup>

What is more, these estimates are sizeable, but they may actually understate the power of EDR in particular cases. To isolate EDR's direct impact, the studies hold constant all other political factors -- such as voter mobilization campaigns or the outreach efforts of candidates and political parties. Researchers assume for the purposes of their analysis, in other words, that people involved in politics will not respond strategically to the introduction of EDR. But people *do* respond strategically to changes in political rules, so the effects of EDR may be greater than the studies predict.

For example, it appears unlikely that political activism will be unaffected by the availability of EDR. Activists in states with EDR have mounted extremely successful voter mobilization drives among targeted constituencies, precisely

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<sup>2</sup> Supporting data was obtained from the Federal Elections Commission.

<sup>3</sup> Craig L. Brians & Bernard Grofman, "Election Day Registration's Effect on U.S. Voter Turnout," *Soc. Sci. Q.* 82(1): 171-83 (March 2001); Benjamin Highton, "Easy Registration and Voter Turnout," *J. Pol.*, 59: 565-75 (1997); Mark J. Fenster, "The Impact of Allowing Day of Registration Voting on Turnout in U.S. Elections from 1960 to 1992," *Am. Pol. Q.*, 22(1): 84

because they could capitalize on the excitement of the last days of the election and draw previously unregistered voters to the polls. In the 2000 presidential election, Milwaukee election administrators handled an unprecedented 81,000 on-site registrations, after organizers used the EDR option to wage effective get-out-the-vote campaigns among both Latinos and African Americans. These last-minute registrants may well have decided the outcome of the presidential race in Wisconsin, which Vice President Gore won by 6,500 votes.

In addition, the political conditions that make it possible to enact or to sustain EDR may also encourage a general shift in the attitude of state election officials, prompting them to become more pro-active in effectuating the right to vote. In many states without EDR, election officials take a limited view of their responsibilities, insisting that their sole function is to protect the integrity of election results. Same-day registration bills are likely to pass in additional states, however, only if voters compel their elected representatives to accept the principle that voting should be as easy as possible. If the senior government official responsible for elections in a state embraces this view, local administrators may also be encouraged to broaden their conception of their duties to include not only ensuring ballot integrity but also facilitating exercise of the franchise. In Maine, Minnesota, and Wisconsin, where top administrators have long promoted the policy behind EDR, election officials have created innovative and effective campaigns to spur voting.

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(Jan. 1994).

### ***EDR and More Accurate Elections***

In addition to carrying the potential to broaden the electorate, EDR provides a safeguard against administrative errors that have historically prevented already registered voters from casting their ballots. During the 2000 elections, many citizens who had taken advantage of opportunities provided by the NVRA, found that their names had been excluded from the voter rolls, even though their applications had been submitted in advance of their state's deadlines. A July 2001 Federal Election Commission study reported that the 2000 election produced a record number of complaints about the poor implementation of NVRA-mandated registration procedures. An August 2001 Congressional report found that at least 25 states had voters who were either “illegally purged from the voter rolls or not added in a timely fashion” in the 2000 elections. According to a 2001 Caltech/MIT report, the total number of wrongly excluded votes ranged from 1.5 to 3 million. Had EDR been more widely implemented, these numbers would presumably have been far lower, because voters whose names were missing from the rolls on Election Day could simply have registered again.

### ***The Demographic Impact and Partisan Effects of EDR***

Although EDR has become a popular option for voters in six states, we do not know -- and probably cannot know -- exactly who takes advantage of EDR. Detailed demographic studies of EDR usage would require segregation and review of ballots cast by those registering on Election Day and collection of demographic

information about the voters that could be correlated with each ballot. Given the right to a secret ballot, such studies probably cannot be performed.

Survey research has been used, however, to assess the socio-economic and political consequences of higher turnout and measures to increase voter turnout.<sup>4</sup>

Some of the results are surprising. Analyses of non-voters in the U.S. find disproportionate numbers of individuals at the lower range of income and education. Because economically disadvantaged individuals differ from the rich in how they vote, one might expect that by making registration easier, a state would change the ideological tilt of elected officials. However, some recent studies challenge this conclusion.<sup>5</sup>

According to some political scientists, lower registration barriers do not have a consistent partisan impact because their chief beneficiaries are “the young and the restless” -- new voters and those who have recently moved. In the U.S., 33 percent of the population changes its address in any two-year period. Not surprisingly, these recent movers, who constitute 43 percent of all non-voters, are less likely than others to vote. In addition, the young tend to be more mobile than the general population, and many have never voted before. The studies show that these non-voting groups tend to share the political preferences of the voting population, so having everyone vote would not change electoral outcomes. In

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<sup>4</sup>Benjamin Highton & Raymond E. Wolfinger, “The Political Implications of Higher Turnout,” *B.J. Pol. Sci.* 31, 179-223 (2001).

<sup>5</sup>*See id.* at 179; Ruy A. Teixeira, *The Disappearing American Voter* 138-41 (Washington, D.C.: Brookings Institution, 1992); Raymond E. Wolfinger & Steven J. Rosenstone, *Who Votes?* 88 (New Haven: Yale University Press, 1980).

addition, middle class citizens, rather than the poor, tend to be the ones who take advantage of EDR.<sup>6</sup>

Although the non-partisan impact of higher voter turnout is highly counter-intuitive, anecdotal experience under EDR appears to confirm it. Julie Flynn, Deputy Secretary of State of Maine, and Joan Growe, former Secretary of State of Minnesota, both report that although EDR has been responsible for substantial increases in voter turnout, it has not carried any obvious partisan implications. In both states, the chief differences between those who register on Election Day and those who register earlier have to do not with education or income but with place of residence. Urban voters, who are more likely to change addresses, use EDR to a greater extent than their rural counterparts.

Notwithstanding the studies and the anecdotal evidence, politicians and their parties plainly believe that EDR carries the potential to unseat incumbents and to alter the partisan balance in a state. As a result, pro-reform activists have run into intense opposition from party insiders on both sides of the aisle. In Massachusetts, effectively a one-party state, powerful Democrats have led the fight against EDR. In other states, Republicans have opposed eliminating pre-election registration requirements, believing that Democrats are less adept at mobilizing

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<sup>6</sup> Craig L. Brians & Bernard Grofman, "When Registration Barriers Fall, Who Votes? An Empirical Test of a Rational Choice Model," *Soc. Sci. Q.* 82: 161-76 (March 2001).

partisans to meet the deadlines. Opponents from both sides agree that EDR introduces an otherwise avoidable volatility into elections: It becomes more difficult to make confident predictions about voting behavior by an identifiable political base. Putting words into the mouth of a typical incumbent, former Minnesota Secretary of State Joan Growe explains: “There’d be all these people, and I wouldn’t know them, and I wouldn’t know how they’d vote.” Thus, although universal voting might not effect aggregate changes in political outcomes, EDR draws opposition because it can influence the results of individual elections by allowing new voting blocs to emerge at the election’s eleventh hour.

Some EDR advocates -- including Professor Neuborne, as we have seen earlier -- believe that the unpredictability introduced by EDR will force political candidates and parties to be more responsive to the needs of the entire community. If all eligible voters are potential voters on Election Day, such advocates argue, it will be risky for candidates to speak only to previously registered constituents. Other political observers are skeptical that EDR will have such an effect. Commenting on the Republican strategy to overcome Michael Dukakis’ sizeable Labor Day lead in the 1988 presidential election, Prof. Raymond Wolfinger of Berkeley suggested that the first George Bush did not reach out to poor people in states with EDR but instead effectively asked: “How many flag factories can I visit next week? How many times can I mention the ACLU?” That observation suggests that EDR may prompt politicians to wage more inclusive

campaigns only if outreach to previous non-voters appears to be a more effective strategy than tactics that neutralize their vote.

### ***How Political Movements Can Use EDR***

With the removal of pre-election registration requirements, social activists can enjoy greater success in voter mobilization and thus greater political influence. Larry Marx, Executive Director of Wisconsin Citizen Action, hails EDR as “the single best tool we have for lifting turnout.” Marx recalls how in 1984, the grass-roots organization “Big Vote,” and later re-titled the “National Coalition for Black Civic Participation,” was able to bring tens of thousands of new African American voters to the polls of Milwaukee, contributing to the highest turnout in the city’s history. Indeed, Big Vote was so successful that voting centers in predominately Black neighborhoods actually ran out of ballots.

Antonio González, President of the Southwest Voter Education Project and the William C. Velázquez Institute, claims that with EDR, even community organizations with very limited resources can enjoy successful mobilization drives. Instead of mobilizing “cold” voter registration, asking people to register to vote in some future election and before electoral choices and issues may have crystallized, organizers can more effectively spend their resources on “hot” registration, getting people to register and vote on the same day for a specific candidate or ballot initiative. In other words, the organizations can “fuse voter registration and education activities with get-out-the-vote activities into one seamless turnout



campaign” and thereby enjoy greater success in bringing traditionally non-voting groups to the polls. The resources that community organizations save by combining these efforts can then be used for a wide range of additional activities, including public education, lobbying, litigation, and other forms of advocacy.

In California, where signatures are being gathered to put an EDR initiative on the ballot in November 2002, some activists are already strategizing about how they might use EDR to increase political participation among the state’s growing Latino population. With its high rates of naturalization and a growing second generation, the Latino community has the potential to become a decisive political voice. Because of low turnout rates, however, political campaigns in California typically devote few resources to tapping the Latino vote. Univisión, the nation’s largest Spanish language television station, receives little advertising revenue from political campaigns even though it draws a larger market share in southern California than any English language station. By making every eligible citizen a potential last-minute registrant, on-site registration could push candidates to take the community more seriously. In fact, the prospect of greater income from political advertising is reportedly one of the reasons why Univisión executives support EDR.

EDR can also benefit independent or insurgent candidates outside the two-party system. For example, in Minnesota, Jesse Ventura won the governor’s office in 1998 by mobilizing many young, first-time voters during the final days of the

campaign. About 16 percent of the total vote on Election Day represented new voters registering for the first time at the polls. Half of these individuals were under age 29, and many of them were from blue-collar districts. Exit polls show that almost everyone who registered to vote on Election Day voted for Ventura.

### **Election Day Registration in Practice**

Officials who have actually overseen the operation of EDR over long periods of time -- those from Maine, Minnesota, and Wisconsin -- can speak with the greatest insight and authority about how to make it work in the real world. What we learn from them is that EDR's potential to increase voter turnout can best be realized with active, ongoing support and involvement by administrators at all levels. The need for such engagement may seem to support oft-voiced fears of election administrators in other states that the logistics of EDR are too burdensome, but the officials who know best disagree.

### ***The Ethic of EDR: Voting Is a Right, Not a Privilege***

Undoubtedly, one of the reasons why EDR has been so successful in Maine, Minnesota, and Wisconsin is that it took root in fertile political ground. Both Minnesota and Wisconsin have historically been characterized by their politically engaged citizenry and willingness to look beyond the two major parties for political leadership. In Maine, the adoption of EDR was a proactive legislative response to court review of a proposed 30-day residency requirement for voting. Maine's Supreme Judicial Court warned that the long residency requirement would violate the Equal Protection Clause of the U.S. Constitution. Noting that the residency requirement exceeded existing statutory time limits for registration, which in turn reflected a legislative judgment that the time needed to register a voter is a matter of minutes, not days, the Court concluded that Maine had no reason to deny the franchise to citizens who had resided in the state for less than 30 days.<sup>7</sup> State legislators then decided to follow the Court's opinion to its logical conclusion and not only rejected the residency requirement but also established EDR.

Another factor contributing to the success of EDR has been the philosophy of the states' election administration agencies. Officials in Maine, Minnesota, and Wisconsin recognize that voting is a fundamental right, not a privilege afforded only to those who can negotiate complicated registration rules and deadlines. As former Secretary of State Growe eloquently stated: "The system, as much as

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<sup>7</sup>Opinion of the Justices, 303 A.2d 452 (Me. 1973).

people think it [does], does not belong to the political candidates, it does not belong to the political parties, and it does not belong to the election administrators. It belongs to the electorate.”

This positive attitude translates into concrete steps to promote voting. Maine asks employers to print the message “Vote” on paychecks distributed in the days before the election. The state also sponsors the highly successful “Vote in Honor of a Veteran” campaign, in which voters can receive buttons mentioning the name of a chosen veteran after they cast their ballots. Both Maine and Minnesota use state agency offices for the purpose of voter registration -- and did so even before enactment of the NVRA and even though they are not subject to its requirements.

Minnesota has also instituted a variety of initiatives encouraging young people to vote. For example, municipal election offices have worked with local colleges to develop procedures that allow students to register more easily. Since most college student IDs do not feature an address, which is likely to change from year to year, college administrators provide election administrators with lists matching students with their current addresses. Poll workers can then accept student IDs as valid proof of identification when the students seek to register. In another effort to encourage voting among young adults, the Secretary of State’s office has aired a series of promotional advertisements, including one spot in which basketball phenomenon Kevin Garnett urges his fellow 18-year-olds to vote.

Clearly, in these states, EDR is only one part of a larger commitment to increase democratic participation.

### ***The Challenges of EDR Administration***

One of the greatest obstacles to introducing EDR in states with pre-election registration requirements is the skepticism -- sometimes outright opposition -- of election officials. They are used to the way things have always been done and see no reason to change. Consequently, EDR advocates can expect to hear predictions that having voting stations double as registration sites will result in long lines and paperwork that cannot properly be handled in the allotted time. Reluctant officials may also complain that poll workers, who are notoriously undertrained and underpaid in many states, will be asked to do too much and that more mistakes will therefore be made. Allaying these fears is an important part of any campaign to enact EDR.

The examples of Maine, Minnesota, and Wisconsin ought to provide much comfort on this score. Senior administrators in these states have made EDR work smoothly by consulting with municipal officials and poll workers from the very beginning and by treating them as partners in its execution. By soliciting input from local officials as to how registration should work on Election Day, and by providing workers with the training they need, administrators have given the people with direct responsibility for implementing EDR confidence in their ability -- and eagerness -- to make it a success.

The ease of transition from a conventional registration system to EDR may vary from state to state. Deputy Secretary of State Flynn reported that Maine was able to make the switch to EDR with considerable ease because the pre-existing election system was decentralized, and registration continued to take place at the offices of local registrars, rather than at polling places. Because registrars were accustomed to handling voter registration duties, they had little trouble taking on the additional responsibilities of EDR. States that implement on-site EDR will require additional training of poll workers.

Once EDR is in place, officials will need to find ways to ensure that voter traffic on Election Day flows easily. If delays at polling places become common, voters are likely to become discouraged, and EDR will become a victim of its own success.

Public education plays an important role in avoiding long poll lines. In Milwaukee, where the time to register to vote rarely exceeds an hour, election officials work with local television news programs to provide information throughout Election Day on how and where citizens can register to vote. Billboards and newspaper advertisements are also used to spread the message.

Pre-election registration can also reduce the Election Day crunch. In Maine, election officials visit the state's largest malls to register voters in advance of Election Day. The state also uses its web site to offer on-line registration cards, which users can print out and bring to the voting station on Election Day. The

Internet also offers a way to get information about election rules, candidates, and ballots to voters, whether or not they register ahead of time.

The choice of polling station also plays a significant role in the success of EDR. Secretary Growe has suggested that Minnesota set up polling stations at places like St. Paul's 3M plant, one of the state's largest workplaces, thereby allowing citizens to vote without interrupting their workday. Milwaukee is placing more of its polling sites in public schools so that their computer systems can be used to process registrations.

Increased funding can improve election administration, and not just in EDR states. Improved pay helps election districts attract new, more qualified people to sit at the polls. And bigger budgets allow EDR states to supplement staff at the polls with designated on-site registrars.

### ***Fraud, or the Specter of Fraud***

Opponents of EDR often evoke the specter of fraud to defeat reform efforts, because EDR makes it easier for dishonest people to vote in multiple locations, or outside the district of their residence, without being detected until after the election. Election officials point out, however, that incidents of organized fraud by voters are extremely rare, in states with or without EDR, and in very few cases has illegal voting affected the outcome of an election.

As Secretary Growe says: "Fraud is a real issue. It's also a red herring." Most instances of misconduct by voters stem from confusion or ignorance, not an

intent to deceive. For example, individuals who have recently moved within a state may not know where to vote and may erroneously seek to cast their ballots where they used to live. Julietta Henry, Milwaukee's Executive Director of the City Board of Elections, views malfeasance by election administrators as a greater threat to the integrity of an election than voter fraud.

Nonetheless, states with EDR have adopted a number of measures to address potential fraud. In Maine, voter eligibility rules and the penalties for fraud are posted in all polling places. Wisconsin will do the same after confusion about whether people with prior felony convictions were entitled to vote in the 2000 elections. Both states also mail out non-forwardable confirmation cards to all newly registered voters; if they are returned as undeliverable at the given address, the person is purged from the voter list.

States can also take simple steps to avoid problems with fraud by voters who claim to be someone other than they really are. Minnesota makes document requirements more stringent for Election Day or mail-in registration. In Wisconsin, where voters can use a variety of documents to prove age and residency, some Assembly Republicans have recently proposed tighter ID requirements.

Maine has a clever system to address the risk of voter fraud. The state requires that each voter registering on Election Day provide photo identification, but if such identification cannot be provided, or if a poll worker believes the



person is not eligible to vote in the district, the voter is given a “challenged ballot.” The vote is counted, but if any race is close enough for the challenged ballots to make a difference, registrars investigate and make sure that the voter casting the ballot actually lives in the district and did not vote at any other polling place. This safeguard, like provisional ballots in other states, allows as many people as possible to vote, yet gives election administrators discretion to ensure voting integrity.

Even in states with a history of voter fraud, many concerns about improper voting could be allayed by creating statewide electronic databases of registered voters that allow poll workers to check a putative voter’s status and enter a new registration in “real time.” Seven states now have functioning electronic databases, and 10 others are developing them, although not all of the systems offer “real time” data entry or access. With such digital age improvements, concerns about voter fraud can be laid to rest.

## **The Future of Election Day Registration**

After the controversy surrounding the 2000 presidential election in Florida, many states have begun to take a serious look at their election systems, considering new ways to protect the right to vote. This newfound concern for democracy creates an opportunity for EDR advocates to make real headway in removing pre-election registration requirements. With various state legislatures debating same-day registration proposals, EDR has the potential to become a populist, non-partisan election reform in many parts of the country.

### ***Expanding EDR***

Advocates of EDR should be prepared for powerful opposition from both state legislators and election officials. In several states, this coalition has successfully convinced the public that on-site registration will threaten the security of the electoral process. Registrars in Connecticut succeeded in quashing attempts to adopt EDR there with a simple but effective slogan: “Election Day should be for voting.” To counter such attacks, advocates will have to demonstrate the extent to which opposition to EDR is motivated by narrow self-interest. Message campaigns will have to be developed on two fronts.

First, supporters need to persuade legislators, the media, and the public that EDR is an ideologically neutral way to improve politics. Empirical studies showing that EDR has no partisan implications may be helpful in this regard. But reformers should also make the case that EDR makes legislators better

representatives, by encouraging them to look beyond their established political base to neglected constituencies with historically low voter turnout. By employing clergy and non-partisan elder statespeople as campaign message-bearers and by couching their message in patriotic terms, reformers can most effectively appeal to the political conscience and public ideals.

Second, EDR supporters must quell fears about administrative nightmares and voting fraud. They will have to publicize the experiences of election administrators in EDR states and forge alliances with progressive election officials in their own state. Compromises may need to be made to advance the ultimate goal of full and fair participation on Election Day. For example, in California, EDR advocates drafted an initiative that lengthened the period for pre-election registration from 14 to 28 days to secure support from election administrators for EDR. The registrars sought the 28-day cut-off for ordinary registration to give them more time to prepare for the additional responsibilities involved with on-site EDR. (Unfortunately, the initiative failed in 2002).

Sponsors of EDR legislation should also take care to coordinate their activity with supporters in the field. Reformist policymakers in Connecticut suffered a defeat in 2000 because a package of election reform went before the legislature for consideration before grass-roots activists could mobilize public support.

Whether or not individual campaigns to extend EDR to particular states should be accompanied by a campaign at the national level is a matter of some dispute. Curtis Gans, of the Committee for the Study of the American Electorate, warns that a national discussion on EDR would be conducted in extremely heated terms and would be seen, correctly or not, as a partisan debate. As a result, it could diminish support for EDR in the states most likely to adopt it. In addition, state implementation of the NVRA -- which created federal requirements for state election officials -- suggests that top-down approaches to EDR may be less likely to secure faithful implementation. Prof. Frances Fox Piven points out that in New York, Governor Pataki eliminated funding for the state office charged with overseeing progress under the Motor Voter Act. Absent a show of strong support from their own constituents, state legislators and executives might feel little need to ensure that EDR flourishes in their state.

### ***Wisconsin: Defending EDR***

To sustain improvements in voter access, activists and legislators cannot simply get election laws passed; they also must work to defend them once in place. A case in point is the State of Wisconsin, where the success of Election Day mobilization efforts has bred reaction from political opponents.

Immediately after the 2000 election, opponents of EDR in the City of Milwaukee charged that “widespread voter fraud” had occurred. These accusations were based on three incidents. First, a student from Marquette

University claimed that he had cast several ballots in the election. His story was later proven to be false by an extensive investigation by the Milwaukee District Attorney -- in fact, Milwaukee did not see a single instance where an individual cast multiple votes. Second, an out-of-state Democratic operative paid a \$5,000 fine for visiting the city's Salvation Army hostel and giving cigarettes to the homeless to encourage them to vote. And finally, the *Milwaukee Journal Sentinel* found that 361 ex-felons had cast ballots while on probation or parole, when they are not entitled to vote. (There is no official notification provided to ex-felons of restrictions on their voting rights, and a voter fraud investigation resulted in no prosecutions.)

These three incidents were used by EDR critics to stir up worries that the state's system of registration was too lax. Conference participants from Wisconsin reported that the state's General Assembly passed numerous bills to reform the state's "maximal means" approach to proving state residence. Instead of allowing voters to use leases, utility bills, or a statement of residency from a neighbor who has already been registered to vote, these measures would require all voters to show photo ID before registering, a requirement that some have likened to a new poll tax. Although the state Senate defeated the Assembly bills, a *Journal Sentinel* poll found that over 70% of Wisconsin voters approve of a photo ID requirement for registration.<sup>8</sup>

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<sup>8</sup>Steven Walters, "Most Back Showing Ids Before Voting," *Milwaukee Journal Sentinel*, Mar. 18, 2001.

Some opponents of on-site registration in Wisconsin have sought to undermine its effectiveness by exploiting the fact that anyone can visit a voting station to observe the electoral process. In a special election for state senate, disaffected members of the state Republican Party recruited individuals to go to polling sites in minority districts to serve as unofficial “poll watchers.” Their purpose was to obstruct voting by issuing wanton challenges of ballots and registrations. Worried that similar tactics may occur in the future, Commissioner Henry is consulting with non-partisan good government organizations and local churches and synagogues to create teams of rival poll watchers. The hope is that their presence may compel their partisan counterparts to behave more responsibly.

## **Conclusion**

Both the Brennan Center and Demos are eager to assist citizens, organizations, and legislators around the country who are interested in promoting EDR in their state. For technical assistance and policy support for state-based advocacy campaigns on EDR, call Demos: 212-663-1405. For analysis of the law in your state affecting the introduction of EDR, legal assistance with drafting an EDR initiative or bill, or counseling on an EDR proposal that is already in draft, call the Brennan Center: 212-998-6730.