



The League of Women Voters of Ohio Education Fund imPACT e-newsletter.

The purpose of these monthly emails is to provide League members and our partners with information on the most pressing reform issues affecting Ohioans today.

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imPACT on ... Election Reform: Voting in 2010: Ten Swing States

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Voting in 2010: Ten Swing States

A report from DEMOS and COMMON CAUSE

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Many of the elections for governor, the U.S. Senate and House of Representatives will be close in 2010. Potentially, party control of the Senate and House hangs in the balance; gubernatorial races will also be critical, with redistricting to begin shortly after the elections. These dynamics set the stage for election time mischief and attempts at suppression and manipulation of registration and voting rules, especially in close contests where a handful of votes could tip the balance. In other words, the laws and policies governing voting have the potential to be game changing.

In this report, we review a number of election laws and policies in 10 states chosen because they are expected to have close elections. In each state, there are problems with election laws, policies and practices which could impact enough voters to determine election outcomes.

The stakes are high.

This report from examines the following critical election issues in key states, provides a summary chart evaluating each state's practices, and offer recommendations for improvement of these voting procedures.

Voter Registration Issues. Surveys and voter hotlines identified problems with the voter registration process as the top factor causing eligible votes to go uncounted in 2008 and up to 3 million eligible voters were disenfranchised as a result.¹ There are numerous ways inadequate voter registration processes impede citizens from registering to vote and staying on the rolls; such problems are ongoing.

- In most states, registration deadlines fall nearly a month before elections. This means just as the media and much of the public are focusing attention on the races, voters who have not registered are barred from doing so. Every state we reviewed except North Carolina has unreasonably limited voter registration deadlines.
- There are inadequate provisions to allow voters to update their addresses or party affiliations once they are registered.
- Voter registration drives can be so restricted by state law that they become too cumbersome and expensive to conduct.
- Failure to implement the National Voter Registration Act (NVRA), which requires state-based public assistance and disability agencies to conduct voter registration, can block a major avenue for voter registration, especially among lower income Americans. Kentucky for instance has seen a 74 percent decline in registrations from public assistance agencies between the 1996 and 2008 election cycles, while Louisiana saw an 88 percent decline.
- State law can create barriers to voting for formerly incarcerated citizens who have completed their sentences. Kentucky, for example, requires a pardon from the governor to have voting rights restored, effectively blocking some 186,000 people from voting.
- Flawed processes in compiling and verifying voter registration databases can lead to rejection of valid registrations due to typos, poor handwriting, or other clerical errors.

- State law can unreasonably require an exact match between data on voter registration forms and data in existing state databases such as the Department of Motor Vehicles. In these cases, simply including or not including a middle name or transposing of a number can cause a voter's registration to be flagged. Nevada, for instance, requires an exact match of every character of a person's name and birthday with their drivers' license, state ID, or last four digits of their Social Security number.

Voter Identification. While all states have means by which voters identify themselves at polling sites, some states

require very specific forms of ID that are not universally available. That distorts election results by preventing eligible voters from casting ballots. Arizona has one of the more restrictive laws in the nation, requiring voters to bring proof of citizenship to register to vote; the state also accepts only fairly limited forms of ID at polling places. From 2004 to 2008, more than 38,000 registrations were rejected in Arizona despite court documents indicating 90 percent of these were from people born in the United States. Moreover, even though some states allow for a wide range of types of identification, and others permit voters to cast ballots if they forget to bring their ID but sign an affidavit as to their identity, election workers do not always know these laws are on the books and will require certain types of ID anyway.

Provisional Ballots. All states are now required to offer voters provisional ballots when problems arise with registration or voter identification, but use of these ballots varies widely by state. Depending on how they are administered, these ballots can either help voters or mislead them; the rules in some states are so restrictive that a ballot the voter believes was valid will in fact be discarded. Missourians who come to vote without requisite identification will not even be provided with a provisional ballot. In a majority of these states, provisional ballots cast in the wrong precinct - even through no fault of the voter -- will be disregarded.

Voter Suppression/Deception. In every election, there are still efforts to intimidate and deceive voters to suppress turnout. States have not done enough to prohibit these practices, whether they occur via the Internet, flyers, letters, or robo-calls. Very few of the states under review here, or anywhere in the country, have measures in place directly prohibiting deceptive practices or prescribing actions to be taken by officials if deceptive practices are perpetrated. In the last election cycle, robo-calls to voters' homes gave voters incorrect polling location information and e-mails were blasted around the country with misinformation about the voting date. In 2004, deceptive practices were widespread, with flyers distributed in some low income and ethnic minority neighborhoods claiming that voters who had not paid child support or parking tickets would be arrested if they tried to vote.

Caging and Challenge Laws. Most of our states have laws that allow political operatives and ordinary voters to block other eligible voters from casting ballots through "caging" and "challenge" techniques with few evidentiary requirements and little accountability. In Ohio in 2004, partisan operatives challenged 35,000 voter registrations based only on returned non-forwardable mailings; challenges again were threatened in 2008 in other states.

Challenges for New Citizens and Ethnic Minorities. States need better policies to help new citizens and limited

English proficient voters overcome barriers to the voting process. Election administrators also need to be more proactive in their outreach to these communities. New citizens, as well as ethnic minorities born in the U.S., register and vote at lower rates than the general population. In 2008, naturalized citizens voted at a rate more than 10 percentage points lower than that of native born citizens. In most of the states under review the gap was also in the double digits, sometimes high double digits.

Overseas and Military Voters. Overseas voters, particularly our servicemen and women, also face special circumstances in voting. Congress recently passed the Military and Overseas Voter Empowerment Act (MOVE) to require mailing of absentee ballots 45 days prior to an election. The 2010 election will be the first major election in which states have implemented it. It is far from clear that all will meet this requirement and some states, including Colorado, are requesting a waiver. The voices of overseas and military voters need to be heard in our country, and state election officials must take extra measures to ensure that these votes are counted. Regrettably, some states have adopted policies which allow voters to cast ballots via the Internet. These ballots are vulnerable to tampering and to computer glitches. Additionally, voters who send ballots by e-mail and fax must often waive their rights to a secret ballot - an unacceptable practice.

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Political Outlook: Ohio is a swing state as both the *senatorial* and *gubernatorial* races are hotly contested. Gov. Ted Strickland (D), who won 60.5 percent of the vote in 2006, is running for re-election, with a challenge from former Congressman John Kasich (R). Former Congressman Rob Portman (R) and Lt. Gov. Lee Fisher (D) will have a competitive battle for the Senate seat. At least four *House* races will also be close.

Obstacles to Voting: While leaders in Ohio have taken great strides to improve the voting system, there is still room for improvement. Ohio's very early voter registration deadline - a full 30 days prior to the election - may prevent many interested citizens from participating. Ohio also has ongoing issues regarding database matching,

though the Secretary of State has taken major strides to resolve them. Ohio has had problems with deceptive robo-calls and other attempts to prevent individuals from voting by spreading misinformation; Ohio law is not as specific as it should be to combat such practices. Ohio lacks any anti-spam statutes which apply to non-commercial e-mails, which is worrisome because e-mail is a common and rapid method of spreading disinformation. Finally, Ohio continues to toss away provisional ballots that are mistakenly cast in the wrong precinct by otherwise eligible voters.

Exemplary Voting Laws/Procedures: The state is improving its registration practices at state agencies. The state's Department of Job and Family Services entered into a settlement agreement to effectively implement and monitor the NVRA in November 2009.¹² The first several months of data reporting under the agreement are encouraging.

Ohio also allows citizens who have finished their prison sentences to vote. Ohio's implementation of the MOVE Act is exemplary. The state also has exemplary practices with regard to voter registration outreach to newly naturalized citizens.

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