

Voter Registration Drives May Go Digital

September 2014

The Iowa Voter Registration Commission convened earlier this month and considered a proposal submitted by Wiley Rein Election Law attorneys to allow private groups to conduct voter registration drives in the state using electronic devices. Although the Commission concluded it was not in a position to approve the proposal for the remainder of this election cycle, members of the agency expressed interest in proceeding with a rulemaking to allow for third-party digital voter registration drives for the next election cycle.

According to the National Conference of State Legislatures, 20 states currently offer digital voter registration through an official online website (Iowa is not among these states). However, the laws in most states, including even the ones that offer official online voter registration, do not clearly address whether private organizations may register voters using digital means. Thus, most traditional third-party voter registration drives, such as those conducted by civic groups, churches, and employers are still approaching unregistered voters with clipboards, pens, and paper forms in hand.

The biggest legal hurdle to digital third-party voter registration drives is the requirement that applicants sign their completed forms. A completely digital voter registration tool will generally involve applicants signing their completed forms using an electronic device, such as a touchscreen tablet, touchpad, or mouse. Since state voter registration officials generally do not have a protocol in place to accept digital signatures from the general public, digital voter registration tools likely will still rely on the groups conducting the voter registration drives to print out the completed applications, with applicants' digital signatures rendered on the paper forms, and to submit those paper forms to the voter registration offices.

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Absent explicit statutory or regulatory authority, state officials generally have been reluctant to agree to accept digital signatures on voter registration forms. Thus, while some private organizations have created their own online voter registration websites, those efforts typically still require applicants to print out their completed forms, sign them using a “wet signature,” and mail them in on their own. This has prevented third-party groups from using electronic devices to register voters, even as many have ditched the traditional paper “walk books” and transitioned to using iPads while going door-to-door for their voter identification and other activities.

Laws governing how voter registration forms must be completed by applicants are not the only issue organizations involved in voter registration drives have to worry about. Many states require groups to register with state election administrators, particularly if the groups will be collecting completed voter registration forms and submitting them on applicants' behalf. Some states also require specific identifying information to be included on the registration forms linking the groups to the forms they distribute and/or collect.

Voter registration books also generally begin closing in many states as early as 30 days before an election. Thus, groups that have collected completed voter registration forms must ensure that those forms are submitted in time so as not to disenfranchise applicants for the upcoming election in which they expected to be able to vote in. Some states also require groups conducting voter registration drives to meet special, expedited deadlines for submitting completed forms. Strict penalties, including criminal sanctions, often apply if these requirements are not followed.

Tax and campaign finance laws also need to be considered. Generally, non-partisan voter registration drives that assist applicants with registering to vote without regard to their political preferences will not implicate the tax and campaign finance laws. However, voter registration drives that involve exhortations to vote for particular candidates or parties, for example, will count as prohibited or restricted political campaign intervention for tax-exempt groups, and also may trigger registration, reporting, and other obligations under campaign finance laws.

Regardless of how the voter registration process evolves with changes in the law and technology, private entities likely will always have a part to play in encouraging and assisting unregistered citizens to register to vote. It is thus essential that any organizations conducting voter registration drives make sure they understand the applicable laws in their states so that they do not unwittingly disenfranchise the individuals they attempt to register and subject themselves to legal sanctions.