

Voter Registration Fail-Safe

Voters who go to their polling place are sometimes confronted by the reality that despite their efforts to register to vote, they are missing from the voting rolls. A few states have “statewide portability” which allows an individual already registered in the state to update his or her address within the state on Election Day. While a growing number of states have Election Day registration (EDR), the ultimate Election Day fail-safe, most states lack a solution that allows these voters to cast a ballot that will count. States that are not ready or willing to adopt either of these reforms should consider following Michigan’s lead by adopting a “voter registration fail-safe” law that will at least protect citizens who tried to register from being disenfranchised. Michigan’s Election Day fail-safe law allows voters to present proof or attest to the fact that they attempted to register to vote but are not on the rolls through no fault of their own.

Benefits and Examples

Many states continue to rely upon antiquated paper based registration systems, the possibility for mistakes to occur which prevent eligible voters from casting a ballot remains high. Voters who utilize a paper based voter registration application rely on the actions of others to become registered. Whether this involves the DMV, postal service, a third party registration group, or the workers employed at the local elections office, voters utilizing these paper based systems are sometimes surprised to learn that they are not on the voter rolls on Election Day despite their best efforts to complete and submit a registration form.

Often these voters, when not presented with a fail-safe, are forced to vote a provisional ballot which may or may not be counted. “In fact, the Election Assistance Commission reports that in 2014, 31.8% of provisional ballots not counted nationwide were due to the voter not being registered in the state. In comparison, Michigan, had no provisional ballots rejected for this reason in 2014.¹ By offering a voter registration failsafe, states can protect voters from both unintended errors which leave them off the rolls and bad actors who seek to disenfranchise them.

For states that do not have a more comprehensive Election Day fail-safe process, the voter registration fail-safe offers an option to protect the right to vote for citizens who would otherwise be disenfranchised despite their efforts to register to vote.

Providing proof of attempted registration: States can include a receipt on voter registration forms which voters should be told to retain until Election Day. Providing this receipt can be codified into the state’s third party voter registration procedures to ensure that voters receive proof of their attempt to submit a registration. Voters whose names do not appear on the voting rolls would present the receipt as proof of registration and be permitted to vote a regular ballot after completing another voter registration form. Michigan allows for this exact scenario through Sec. 523a of their Election Code. This provision allows Michigan citizens to exercise their right to vote, even in the face of an honest mistake by an election worker or third party group or the actions of a bad actor.

Providing affidavits as evidence of registration: States that do not wish to alter their voter registration form to include a receipt can still utilize a voter registration fail-safe method which has been utilized for those who forget or lose their receipt in Michigan. This method is preferable, as often bad actors do not provide a receipt

even if required under law. Voters who show up at the polls on Election Day that do not have a receipt as proof of registration are asked to sign an affidavit, attesting to when and where they attempted to register to vote. Voters provide an approximate date and location of their registration under penalty of perjury and are then permitted to vote a provisional ballot which is reviewed under the state's regular review process. By requiring voters to attest to the registration circumstances under penalty of perjury, Michigan balances the need to protect voters from bad actors with a sufficient penalty to discourage misuse or abuse.

Through establishing straight forward common-sense provisions, Michigan protects the rights of voters. Instead of focusing solely on punishing bad actors, the voter registration fail-safe provides a real time solution for voters who risk being disenfranchised through no fault of their own. States not ready to adopt a full EDR program should emulate Michigan's fail-safe law as a way to protect their citizens' right to vote.

Sources and Additional Reading

¹ U.S. Election Assistance Commission, 2010 Election Administration and Voting Survey, *available at* http://www.eac.gov/research/election_administration_and_voting_survey.aspx.

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