



New State Voting Laws II: Protecting The Right To Vote in the Sunshine State

Field Hearing of the Senate Judiciary Committee
Subcommittee on the Constitution, Civil Rights, and Human Rights
January 27, 2012
Tampa, Florida

Project Vote and Voting for America appreciate this opportunity to submit testimony in connection with today's important hearing in Florida. Project Vote is a national nonpartisan, nonprofit organization that promotes voting in historically underrepresented communities. Through its research, advocacy, and direct legal services, Project Vote works to ensure that these constituencies are fully able to participate in American civic life by registering and voting. Voting for America, an affiliate of Project Vote, is a nonprofit, nonpartisan 501(c)(3) organization dedicated to building an American electorate that truly represents the diversity of the American people. Voting for America provides local community partners with the tools, training, and support to conduct successful nonpartisan voter registration drives and help increase the number of registered voters in underrepresented communities across the country. Voting for America joins in submitting this testimony.

Both Project Vote and Voting for America have been active in opposing the Florida voting law enacted last year, popularly known as HB 1355, from the time of its introduction in the spring of 2011. Our testimony against the bill at that time, later comments submitted to the Department of Justice in the (aborted) preclearance process, and participation, both as parties and as attorneys for other clients, in two lawsuits challenging the law are matters of public record. For the purposes of this hearing, however, we restrict our testimony to the severe and deleterious effects that HB 1355 will have on the rights of community-based groups, sometimes called "third parties," to conduct voter registration. Since 1994, Project Vote has been a recognized authority on the voter registration process, conducting trainings and advising community groups across the country on how to build the most productive and reliable systems for helping literally tens of thousands of eligible applicants to join the voter rolls. This experience and expertise underpins our concerns about the "on the ground" impact of HB 1355, even apart from the legal issues raised elsewhere.

1. The Importance of Community-Based Registration Drives

The passage of the National Voter Registration Act (NVRA) in 1993 raised the profile of registration drives, but they had been going on long before. Certainly, the League of Women

Voters had been active for decades. But the NVRA articulated the recognition that registration had become a choke point in the election process, preventing the level of participation Congress desired in our civic life. Instead of expecting people to come to board of election headquarters, the NVRA brought registration to them. Registering at the DMV, for example, has now become commonplace. Less well known (and less universally enforced) is the opportunity afforded by the NVRA to register at certain public agencies serving low income and disabled citizens. In addition, the NVRA created a simple registration form, easily submitted by mail, and encouraged community-based registration drives to make registration more accessible to populations that had been harder to reach.

As a result, voter registration drives have assumed increasing importance in the life of every election cycle and are particularly relied upon by racial minorities seeking to register. The 2010 Current Population Survey indicates that minority citizens in Florida were approximately twice as likely to register to vote through drives as were white voters: 16.2% of African Americans and 15.5% of Hispanics, as opposed to 8.6% of whites. The data from both the 2004 and 2008 election cycles indicate similar patterns: African-American and Hispanic citizens are about twice as likely to register to vote through drives as white voters. In 2004, while 6.6 percent of non-Hispanic whites in Florida indicated they registered through private drives, 17.4 percent of African-Americans and 18.9 percent of Hispanic voters reported doing so. In 2008, 6.3 percent of non-Hispanic white registered voters in Florida were registered through drives versus 12.7 percent of black voters and 12.1 percent of Hispanic registered voters. Among those who said they actually voted in Florida in 2008, 6.3 percent of white voters were registered through drives, whereas 11.5 percent of black voters and 11.5 percent of Hispanic voters were.

2. Provisions of HB 1355

The new Florida law includes several provisions that directly impinge upon the ability of voter registration drives to fulfill their work carefully and efficiently. These include:

- The 48-hour deadline for submission of forms after signing;
- The filing and paperwork requirements for both the organization sponsoring the drive and its individual agents;
- The requirement that the drive account for all forms distributed to it;
- The provision that forms be marked so as to identify the organization conducting the drive;
- And finally, the schedule of fines and penalties for even an inadvertent infraction of the rules, including the threat of an injunction that can be sought by the partisan Secretary of State to shut down the drive altogether.

To cite but one example of a problematic requirement under the new law, an implementing regulation provides that “delivery” of an application by mail is timely if the postmark date is legible and indicates that it is within two days of the execution of the application. However, even with a legible postmark, given that the law imposes a 48-hour (not a two-day) deadline, it is unclear how this rule can be effectively implemented. If the postmark is *not* legible, the date of *receipt* will determine whether the form is timely or not—a rule that is a straightforward violation of the NVRA provision that the date of mailing determines timeliness. This is just one

particular instance of the many unlawful, unworkable, and arbitrary provisions of the law.

3. Burdens on Organizations Conducting Voter Registration Drives

After long experience in the field, Project Vote and Voting for America have developed protocols and “best practices” for the conduct of voter registration drives, which they use to train and guide partner organizations in the field. These include detailed suggestions for staff structure and duties, physical plant and security, and procedures for quality control. The provisions of HB 1355 directly conflict with many of these best practices. As a result, voter registration drives will be more costly, less efficient, and more error-prone. The restrictions of HB 1355 will have the additional unintended consequence of making election officials’ jobs harder.

Most importantly, the 48-hour deadline for turning in forms prevents any meaningful quality control process before the forms are submitted. We recommend (and *require* of our field partners) a multi-step process whereby the application is reviewed by several levels of staff, both visually and by follow-up phone calls, before it is sent or delivered to the election office. Needless to say, this process takes several days, particularly given the importance of contacting the applicant by telephone for confirmation or further information. Our quality control process also makes the job of election officials a lot easier by flagging incomplete or suspicious paperwork for them, and either contacting the applicant, when we are authorized, to complete it, or alerting the county election office that there is a problem.

There are several other provisions of the law that are equally burdensome. Since “canvassers,” those who interact directly with the applicants in the field, are often volunteers or part-time hourly workers, the threat of monetary penalties for even one accidental infraction will inevitably have an impact on their willingness to engage in voter registration activities. Further, the need to file organizational paperwork in advance obviously curtails any spontaneity in conducting a voter registration drive; similarly, the need for individual canvassers to fill out paperwork for the state before they can participate means they cannot engage in such an activity without advance planning. Through several of its onerous provisions, the law imposes ongoing, continuous filing obligations that squelch participation and force staff and volunteers into choosing between providing voting registration assistance and doing unnecessary clerical work.

The filing requirements of HB 1355 are burdensome for any organization without a large professional staff. Groups that routinely conduct voter registration drives in low-income communities are generally low-budget operations themselves, without legions of lawyers on staff who are accustomed to reviewing complicated legal compliance issues. The law is even more burdensome to the many groups whose primary mission *isn't* voter registration but who periodically launch drives, often staffed by volunteers, when a particular election issue *affects* their primary mission, such as low-cost housing or environmental justice groups. Compliance with the complex new rules will involve many staff and volunteer hours, effectively deterring the participation of civic groups in the voter registration process. The scarce resources of these organizations will necessarily be diverted into compliance with the law and its myriad requirements, rather than assisting their constituents with voter registration.

The law also provides that a voter registration drive must “account for” every application form that has been distributed to it. A mother of an 18-year old who interacts with a canvasser at a county fair would be unable to take a form home to her son because the drive would have no way of knowing what happened to it—if she forgets to give it to him, or if he decides to throw it in the trash, the drive is responsible! Similarly, a registration drive at a Sunday church service would be impossible under the law unless someone sat there and counted to be sure every application is given back. This is an absurd rule with absurd implications. It makes voter registration a trap for the unwary, not an uplifting event in the life of an American citizen.

The coding and labeling of voter registration forms distributed to drives will also have a chilling effect on their interaction with the public. If an applicant receives the assistance of a canvasser from an advocacy organization, for instance, her application will now be coded to identify that organization—with whom she may have had no contact before or since--and becomes a public record. No legitimate purpose is served by publicly tying the application to the advocacy organization, and yet that is exactly what this law does.

4. The Role of the Senate Judiciary Committee

By convening this field hearing in Florida, the Subcommittee on the Constitution, Civil Rights, and Human Rights implicitly recognizes that a state law can have a far-reaching impact upon federally guaranteed rights, and that this impact should be examined. For this, we are grateful. Over the past six years, Florida’s legislature has been enacting ever more onerous restrictions on its citizens’ right to register and vote. The state has been challenged in court repeatedly. With respect to HB 1355 alone, there have already been at least three legal actions involving the statute, with more likely in the future. Irrespective of what happens in the courts, however, the Judiciary Committee has the authority and the responsibility to take testimony on the repercussions of the state law and to consider federal legislation if appropriate. We hope that the Subcommittee’s ongoing inquiry into the dangerous and growing national trend of state laws that restrict or deny the right to vote will be a wake-up call to those—both citizens and lawmakers alike--who want to protect this cherished right.

Project Vote and Voting for America appreciate the Subcommittee’s efforts and stand ready to provide whatever assistance you may require.