

The Case for Election Day Registration in Wisconsin

Executive Summary

Wisconsin voters have been able to register at the polls for 35 years, and during that time the State has boasted one of the highest voter turnout rates in the United States. Election Day Registration (EDR) has made it easier for Wisconsin electors to exercise their right to vote. While EDR has imposed some additional duties on election workers, and some have argued that it provides opportunities for voter fraud, it has also saved the state untold millions of dollars in administrative costs because EDR allows Wisconsin to be exempt from the National Voter Registration Act of 1993. In the current legislative session, eliminating EDR has been mentioned as part of a larger package of election reforms, including voter photo ID. Eliminating EDR would not provide any meaningful increase in ballot security, and would come at a significant financial cost to taxpayers and a loss of convenience cost to voters.

Background

Wisconsin has had EDR since 1976, when it was passed as part of a comprehensive legislative package making changes to the state's voter registration provisions. EDR was first used in the fall elections of 1976.

The Legislature made the following findings in the legislation establishing EDR:

The legislature finds that the vote is the single most critical act in our democratic system of government; that voter registration was not intended to and should not prevent voting; that registration should simply be a remedy against fraud and its burden should be placed upon administrators, not the electorate. The legislature further finds that it is extremely difficult for workers to find time to visit a registration office that is open only during working hours; that transportation costs to remote locations impede registration; and that the act of personal registration is a major cause of limited electoral participation. Therefore, pursuant to the policy of this state and nation to ensure all people the right to vote, the legislature finds it imperative to expand voter registration procedures. Section 1, Chapter 85, Laws of 1975.

At the time the legislation was passed and until January 1, 2006, Wisconsin law only required voter registration in municipalities with a population of more than 5,000. In 2006 there were approximately 176 municipalities with a population of more than 5,000. About 350 municipalities had voter registration before January 1, 2006. With enactment of the Help America Vote Act of 2002 by the federal government, voter registration became mandatory throughout the state.

Reasons to Retain Election Day Registration

1. Convenience for Wisconsin's Voters.

Election Day Registration provides a valuable service to Wisconsin voters, and is consistent with the legislative policy to reduce the burden on voters to participate in the electoral process.

While the name "Election Day Registration" suggests a purpose of registering new voters on Election Day, the majority of voters using the convenience of EDR do so to update their registration to reflect changes in address or name. This saves voters the burden of finding time to make the name or address change at some point before Election Day. In many other states without EDR, voters are required to do so at least 30 days before Election Day.

Election Day Registration and its underlying policies were a Legislative determination in 1975. In 2011 there is an increasing need to accommodate busier voters, particularly in light of the reduction in the availability of government services. Voters want government to provide services conveniently and in a cost effective manner. EDR accomplishes that goal.

Attached is a table showing the number of EDRs in recent November general elections. Note that a large number of these voters were already registered. They used EDR to update their voter registration to reflect an address change or a name change.

2. EDR increases voter participation.

Election Day Registration enables voters to register to participate in the election process when they are more likely to be paying attention, immediately before and on Election Day.

There have been a number of studies nationally and in Wisconsin that demonstrate EDR increases voter participation. Shortly after Minnesota and Wisconsin established EDR, Richard Smolka, a professor at American University and editor of Election Administration Reports, released a study showing that EDR increased turnout in both states. This was remarkable because even in the 1970's both states were among the leaders in voter participation.

Professor Michael McDonald of George Mason University noted in his analysis of 2008 election voter participation that five of the top six states in voter turnout in 2008 used EDR. A group of political scientists at the University of Wisconsin-Madison have noted in two recent studies that EDR increases voter turnout. *The Impact of Election Day Registration on Voter Turnout and Election Outcomes*. Barry C. Burden, Jacob R. Neihsel, November 2010; *The Effects and Costs of Early Voting, Election Day Registration, and Same Day Registration in the 2008 Elections*. Barry

C. Burden, David T. Canon, Kenneth R. Mayer, Donald P. Moynihan December 2009.

A poll conducted following the November 2008 election by political scientists at several Big 10 universities demonstrated that Wisconsin voters were extremely satisfied with their registration and voting experience. Wisconsin voters were more satisfied than voters in other Big 10 states and the nation. *Wisconsin Voter Experiences in the November 2008 General Election*, Barry C. Burden, November 2008.

3. Voters registering on Election Day provide strong proof of eligibility.

The vast majority of voters who register on Election Day do so using a State driver license or ID card.

Under Wisconsin law, a voter registering on Election Day must provide an identifying document that shows the voter's full name and current address. The list of identifying documents is almost identical to the type of identification set out in the Help America Vote Act of 2002 (HAVA) for first-time voters who register by mail.

This requirement has been in effect since EDR was established. It ensures the voter is eligible to vote at the polling place. Most individuals who register to vote on Election Day provide a current Wisconsin driver license. In 2010, the vast majority of voters (94 percent) using EDR provided a driver license to establish proof of current residence.

With the likely implementation of a photo ID requirement for voting in the near future, the public should have even more confidence that a voter registering at the polling place on Election Day is the person the voter claims to be. Even without photo ID legislation, there is no evidence to suggest that voters registering on Election Day are more likely to attempt to cast an illegal ballot.

A small number of voters wishing to register at the polling place are unable to provide current proof of residence. Wisconsin law enables these voters to complete their registration by having a qualified elector of the same municipality corroborate the information on the voter registration form (name, address, date of birth, identifying number). This is often referred to as "vouching." The number of Election Day registrants using a corroborator to complete their registration is very small. See the attached table. The vast majority of voters who register on Election Day using a corroborator have a Wisconsin driver license, but were unable to use it as proof of residence because the address was not current.

4. EDR exempts Wisconsin from the costs and requirements of the National Voter Registration Act of 1993 (Motor Voter or NVRA)

The NVRA requires states to offer voter registration services to citizens seeking services from the Division of Motor Vehicles and state agencies providing social services to low income residents and individuals with disabilities. Wisconsin is exempt from these costly, inefficient procedures because it permits voters to register at the polling place on Election Day.

Registration

In NVRA states, employees of certain non-election agencies are required to offer customers and clients the opportunity to register, to assist with the completion of registration forms, to transmit completed forms to local election officials, and to keep track of the number of people who declined the offer to register. These mandatory duties are in addition to the required services these employees provide which are more directly related to the missions of their respective state agencies.

This process imposes additional transaction costs on state agencies. It introduces opportunity for errors in completing the voter registration forms. Other state agencies are understandably not familiar with or invested in providing voter registration services, and are focused on the efficient delivery of agency-related services, potentially undermining the need to transmit voter registration forms in a timely manner to the appropriate election official.

When election officials receive voter registration forms from other state agencies, they must determine whether the form is properly completed, which may require follow up with the voter. After registration information is entered into the Statewide Voter Registration System (SVRS), notification must be sent to the voter by first class mail confirming the registration.

All of these actions by state and local officials, as well as the poll workers, have transactional costs related to the time and follow up required to obtain and confirm voter registration information.

Voter List Maintenance

Under the terms of the NVRA, state and local election officials will not be able to remove ineligible and non-participating voters for lengthy periods of time. Wisconsin is exempt from these expensive and restrictive NVRA requirements for voter registration list maintenance. Wisconsin law provides several methods of inactivating voters:

- when election mail is returned undeliverable,
- when election mail is not answered after 30 days, and
- following each General Election voters are inactivated who have not voted in the previous four years.

These efforts help to maintain an accurate and current registration list. If Wisconsin must comply with NVRA, for all suspected changes of a voter's residence, Wisconsin will be required to first mail a letter to the voter and include a postage prepaid return mailing. If the voter returns the mailing and provides an updated address or confirms the existing address, any needed changes in the registration can be made. However, if the voter does not respond to the mailing, Wisconsin could not remove the voter from the registration list until two General Elections have passed (most often over four years.) This would dramatically slow down the maintenance of the statewide registration list and reduce Wisconsin's ability to properly cull the list. Furthermore, the sheer cost of mailings that must include postage prepaid return mailings cannot be accomplished within the current G.A.B. or municipal budgets.

In addition to the legislative policies articulated at the enactment of EDR and its success in promoting voter participation, continuing Wisconsin's exemption to the NVRA registration requirements is a primary reason to continue EDR. It has been the consensus policy of the State through both Republican and Democratic administrations that Wisconsin voters are better served by avoiding the procedural complications and inefficiencies caused by the federal NVRA requirements. That benefit cannot be overemphasized and must be carefully weighed in any consideration of eliminating EDR.

5. EDR limits the number of provisional ballots cast.

Without Election Day Registration, Wisconsin would be required to provide provisional ballots to tens of thousands of voters each election, creating a post-election nightmare for local election officials and creating unnecessary uncertainty about the outcome of elections.

While the NVRA has helped increase voter registration and participation in many states, it also has an administrative downside. The experience of states subject to the NVRA registration requirements demonstrates that many of those registration forms are not properly completed, are not forwarded to election officials, or are not added to the voter registration list.

In states without EDR, a voter who claims to be registered but is not on the poll list must be offered the opportunity to cast a provisional ballot. States subject to NVRA and with similar voting age populations have significantly higher rates of provisional ballots. See the attached table for a comparison of the number of Wisconsin provisional ballots with those of similar states.

In addition to the inequity of a voter's registration not being completed when the individual has satisfied their obligation at the DMV or another state agency, provisional ballots require more work for poll workers at the polling place and for municipal clerks following the election. A voter must complete a form that contains all the information needed to register to vote, duplicating a process the voter may have already completed. The poll workers need to make a separate list of provisional

voters. The voter marks a ballot which is secured in an envelope similar to the absentee ballot certificate envelope. The provisional ballot is secured by the poll workers and transferred to the municipal clerk after the polls close.

Following the election, local election officials are required to investigate every provisional ballot to determine whether the voter was properly registered and should have been allowed to cast a ballot. The municipal clerk must determine if the voter is actually registered. The municipal clerk must notify the voter of the disposition of the provisional ballot. The municipal clerk must arrange for the delivery of all provisional ballots that should be counted to the appropriate boards of canvassers to be included in the official election results, possibly requiring the canvassing board to reconvene and amend its totals and certifications.

Responses to the Case against Election Day Registration

1. EDR encourages voters to procrastinate and avoid their responsibility for exercising the right to vote.

One common criticism of EDR is that voters should take the personal responsibility to complete their registration by a date certain before Election Day, making it easier for election officials to prepare voter lists and determine the number of ballots needed on Election Day. Under this argument, voters who do not take this initiative should not be provided special accommodations at the polling place on Election Day.

Government must be responsive to the taxpayers and voters of Wisconsin, who expect a reasonable level of service. Offering them one-stop service at the polling place meets this reasonable expectation. Voter registration is a paper based process, which presents numerous opportunities for mistakes in completing and processing registration forms. EDR offers the voter an opportunity to correct administrative mistakes made by the voter or election officials. Because of the federal NVRA and HAVA laws, voters who may not have registered must still be offered the opportunity to cast provisional ballots. This will result in public relations problems because provisional ballots create the expectation that a person's provisional vote will be counted, when in many cases it will not.

2. EDR creates more work and costs for the municipal clerk after the election.

Municipal clerks are required to enter voter registration information of Election Day registrants into SVRS within 30 days following the election. Without EDR, this work would be done before Election Day.

While EDR imposes additional requirements on municipal clerks, that consequence appears to be consistent with the Legislature's statement of policy that the burdens of voter registration should be placed on election officials and not the electorate. While eliminating EDR would remove that particular burden post-election, it would be replaced with a much greater burden of dealing with provisional ballots and NVRA compliance.

3. EDR creates additional work at the polling place as well as disorder and confusion for voters.

Another criticism raised against EDR is that permitting citizens to register to vote or update their registration at the polling place adds to the responsibilities of poll workers, and also adds to the number of activities besides voting that is occurring at the polling place. This creates longer lines and distractions for voters who are already registered to vote.

Well-managed polling places have separate lines for voters who are registered and voters who need to register. A separate line for voter registration is no more of a distraction for registered voters than separate lines for driver licenses and license plates at the DMV.

4. EDR facilitates voter fraud.

Another perceived problem with EDR is that it facilitates voter fraud because a person may be able to register and vote at more than one polling place. Double voting would not be identified until after Election Day, when it would be too late to undo any mischief which may have affected the outcome of the election.

Elections are the result of many human interactions and processes, which means there will always be an element of risk, whether because of honest mistakes or attempts to cheat the system. The goal of election administration is to minimize mistakes, and to identify and punish cheaters.

Because polling places are not connected to the Statewide Voter Registration System, there is no way to know whether someone is registering to vote fraudulently on Election Day. However, someone who did register and vote in more than one location using his or her own identification would be identified post-election and referred to a district attorney for prosecution. Since 2006 the SVRS has been able to identify persons who vote in more than one location, and the number of cases has been very, very small. To escape detection, someone would have to register and vote using a false identity. When the state adopts voter photo ID, this will be nearly impossible, because it is highly unlikely someone would go to the trouble and expense of fabricating a false identity just to vote, given the potential penalties compared to the small likelihood that one additional vote would alter the outcome of an election.

The most common type of voter fraud is voting by convicted felons. Ineligible felons are removed from poll lists prior to the election, but there is a gap between that matching process and Election Day. Poll workers have a list of felons at the polling place to catch anyone trying to register on Election Day. In the event any slip through, they are identified post-election and referred for prosecution.